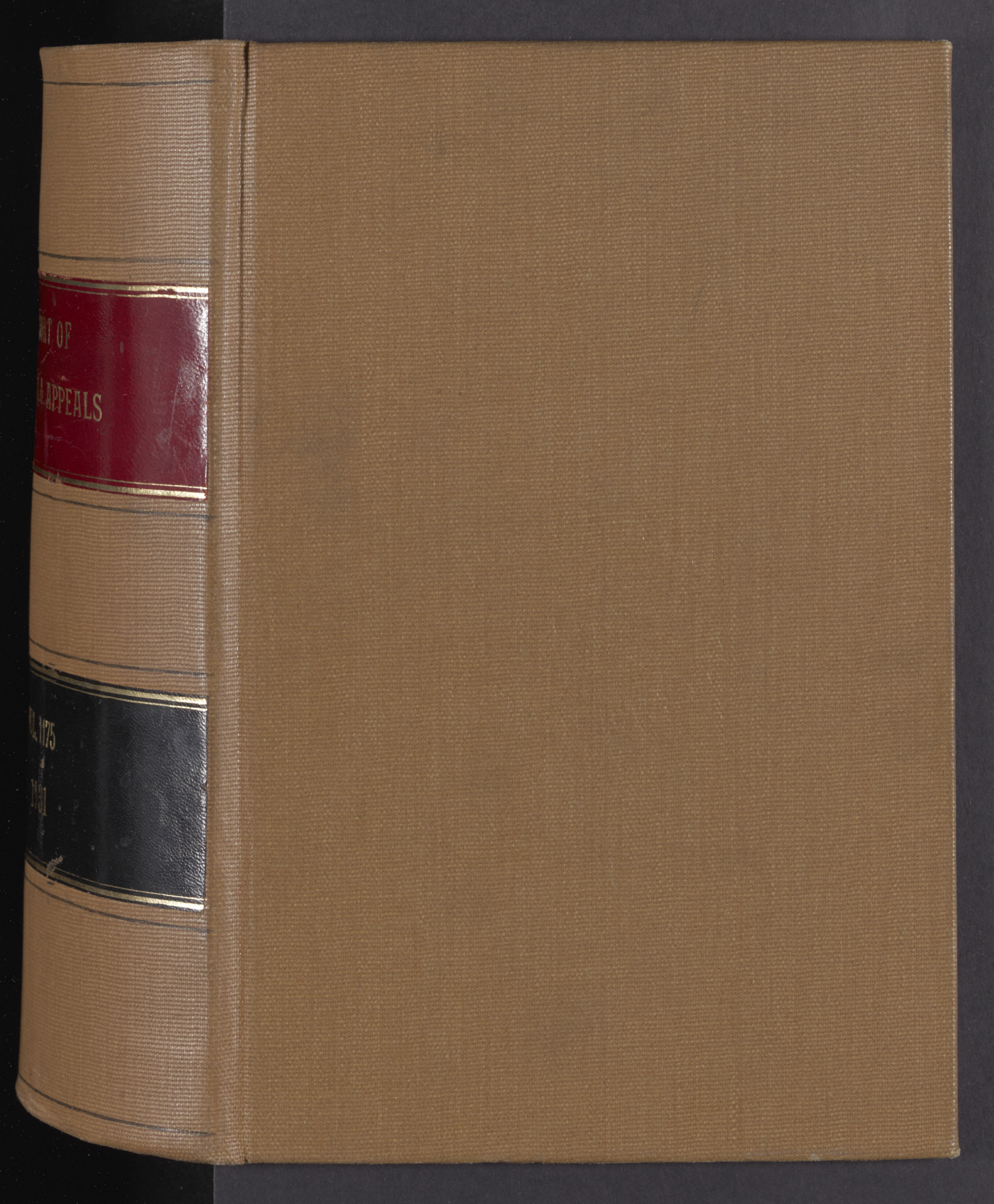

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## Petition of Defendant for Leave to File Answer.

(Filed May 18, 1928.)

## IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>*and*<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce.<br>PETITION OF DEFENDANT FOR LEAVE TO FILE ANSWER. |

TO THE HONORABLE EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of MARY N. McKEE, respectfully shows:

1. The petitioner herein is designated as and is the defendant in the above entitled cause.

2. This suit was commenced by Ralph H. McKee, husband of the petitioner, in order to obtain a divorce on the ground of the alleged desertion of the petitioner, all of which is more fully set forth in the original petition filed in this cause by the said Ralph H. McKee.

3. Your petitioner, at the time of the commencement of this suit, and at all times thereafter, was and is a resident of the City and State of New York, her abode being more particularly at No. 2727 Spuyten Duyvil Parkway, New York.

New Jersey State Library

4. The above entitled cause was commenced in the month of November, 1927, and your petitioner verily believes that the said Ralph H. McKee duly obtained out of this court an order of publication in this cause.

5. On or about the 11th day of January, 1928, there was left at petitioner's residence, during her absence, a copy of an order of publication issued out of the Court of Chancery of New Jersey, ordering and directing the petitioner to appear and answer, on or before the 6th day of March, 1928, in an action for divorce filed in said Court of Chancery of New Jersey, and attached to the order of publication was a copy of the original petition in the cause, which prayed for a divorce against the petitioner upon the ground of desertion. The said Ralph H. McKee alleged in said original petition that he was a bona fide resident of the State of New Jersey, and the petitioner, believing that said allegation was wholly false, and that by the making thereof the said Ralph H. McKee was attempting to deceive the courts of the State of New Jersey, and that by the bringing of the action in New Jersey the said Ralph H. McKee was attempting to deprive the courts of the State of New York of their jurisdiction of the marital status, immediately consulted and advised with her attorneys in the City of New York, to wit, the firm of Trowbridge & Fox, of 74 Trinity Place, New York City.

6. Petitioner thereupon fully disclosed to her attorneys in the City of New York all of the facts known to her and believed by her, and thereupon, upon the advice of her said attorneys in the City of New York, the petitioner filed a complaint in the New York Supreme Court, New York County,

wherein and whereby your petitioner sought to enjoin the prosecution of the action in the State of New Jersey.

7. Your petitioner is advised and believes that a hearing was held at a special term of the New York Supreme Court upon her complaint and the affidavits thereto annexed, and upon the answering affidavits of the defendant in the New York Supreme Court action, and upon said hearing before the Honorable Joseph M. Callahan, an order was signed on the 7th day of March, 1928, by the said the Honorable Joseph M. Callahan, denying the motion of your petitioner for an injunction pendente lite of the litigation in the State of New Jersey.

8. Your petitioner is advised and believes that an appeal was taken from said determination of the Honorable Joseph M. Callahan in the New York Supreme Court, New York County, in the suit aforementioned, to the New York Supreme Court, Appellate Division, First Department, and said appeal was duly argued before the New York Supreme Court, Appellate Division, First Department, and the order of the Honorable Joseph M. Callahan was affirmed by said court.

9. In the meantime and pending the litigation in the State of New York, wherein your petitioner sought to enjoin the action in the State of New Jersey, the said Ralph H. McKee proceeded with his suit herein, obtained an order of reference to a Special Master, and brought the matter on to a hearing before one J. Stanley Griffin, a Special Master in Chancery.

10. Your petitioner was then advised by her attorneys in New York City to consult and retain

counsel in the State of New Jersey, which your petitioner proceeded to do, and was advised by said attorneys in the State of New Jersey to appear in this cause and contest and defend the same.

11. Your petitioner is desirous and has always been desirous of contesting the action commenced by the said Ralph H. McKee, and verily believes that she was contesting the same by reason of the proceedings brought in the State of New York, and was at all times relying upon the advice of her counsel herein.

12. Your petitioner now shows that the allegations contained in the original petition of Ralph H. McKee in this cause are false, in that said Ralph H. McKee is not and has not been a bona fide resident of the State of New Jersey as alleged in his petition aforesaid, and in that your petitioner herein did not desert the said Ralph H. McKee in the month of January, 1925, and has not wilfully, continuedly and obstinately deserted the said Ralph H. McKee.

13. The facts with reference to the residence of the said Ralph H. McKee are as follows:

The said Ralph H. McKee is, in fact, a resident of the State of New York, and has attempted to set up a colorable residence in New Jersey solely for the purpose of bringing his action for divorce. All the business and social interests of the said Ralph H. McKee are centered in the State of New York. He is Professor of Chemical Engineering in Columbia University, and has a laboratory in the University buildings where he carries on research work in connection with his teaching, and where he does his consultant work for clients. The said

Ralph H. McKee is a member of several clubs in the City of New York and of the Teachers College Country Club situated at Ossining, N. Y., where he maintains two rooms which he visits frequently, and wherein he has his furniture and personal belongings. The said Ralph H. McKee has exerted every effort in attempting to set up a colorable residence in the State of New Jersey solely for the purpose of bringing this action for divorce in the State of New Jersey. Your petitioner is informed and verily believes that the said Ralph H. McKee now maintains a room in a rooming house at 607 Bergen Avenue, Jersey City, N. J., which, so far as petitioner has been able to learn, is a very small room, furnished by the proprietress of the rooming house, and which, with the exception of a few books and some clothing, contains none of the personal belongings of the said Ralph H. McKee. The occupation of the room in question as his home is clearly not in keeping with the dignity and standing of a person with the position and income of the said Ralph H. McKee.

14. The facts with regard to the alleged desertion of the said Ralph H. McKee by the petitioner are as follows:

The said Ralph H. McKee has treated petitioner in a cruel and inhuman manner, and has repeatedly committed acts of cruelty and violence upon the petitioner; the said Ralph H. McKee has failed and refused to show toward petitioner the affection, consideration and respect due her as his wife, but, on the contrary, his attitude towards her, when alone with her and in the presence of others, both in action and word, has been violent, brutal and insulting; that the said Ralph H. McKee has repeatedly asserted that a wife is her husband's in-

ferior, and that the petitioner, in particular, was his inferior, and the actions and attitude of the said Ralph H. McKee towards the petitioner has habitually been based upon this principle; that the said Ralph H. McKee has refused to recognize or even consider the petitioner's judgment or desires in matters of interest common to the parties and their children; that he has habitually ignored questions and remarks put and made by her to him concerning such matters, and privately, as well as before members of their family, has summarily, and without cause, and moved merely by the whim of the moment, ordered her to be silent; that the said Ralph H. McKee has compelled the petitioner to overtax her physical strength at house work, although well able to employ servants to relieve her; that the said Ralph H. McKee has frequently abused the petitioner, calling her insolent and offensive names and epithets; that on numerous occasions the said Ralph H. McKee has physically assaulted petitioner, slapping her, striking and bruising her; that in 1917, in the presence of one of petitioner's sisters, said Ralph H. McKee forcibly pushed petitioner out of the room, and forcibly compelled her to retire; that in 1918 and 1920, in the presence of a domestic servant, the said Ralph H. McKee violently shook petitioner; that in the presence of the aforesaid sister and of the children of the parties, without provocation, the said Ralph H. McKee scratched the petitioner's face with his fingers from forehead to chin, causing petitioner's face to become red and swollen; that in 1922 said Ralph H. McKee struck and knocked down the petitioner; that in the latter part of 1922 or in the early part of 1923 the said Ralph H. McKee threw the petitioner on the floor and hurt her back; that about June 21, 1924 the said Ralph H.

McKee seized the petitioner by the shoulders and shook her for five minutes continuously; that on or about August 11, 1924, while the petitioner was ill with asthma, the said Ralph H. McKee again assaulted her, with resulting injuries to her back; that early in July, 1925, the said Ralph H. McKee again assaulted the petitioner, severely shaking her and bruising one of her arms; that under the circumstances it has become entirely unsafe for the petitioner to live and cohabit with the said Ralph H. McKee.

15. Petitioner further shows that in October, 1925, she instituted a suit for separation against the said Ralph H. McKee, upon the ground of cruel and inhuman treatment by the said Ralph H. McKee. The said Ralph H. McKee duly appeared in said action and filed an answer, and said action duly came on for trial in New York in the month of January, 1927. The said Ralph H. McKee, just before the trial commenced, pleaded with the petitioner not to proceed with the trial of the cause, upon the ground that the publicity of such trial would interfere seriously with the business and reputation of said Ralph H. McKee, and at the urgent solicitation of the said Ralph H. McKee an agreement of separation, drawn by the said Ralph H. McKee personally, was entered into between the petitioner and the said Ralph H. McKee, and the action for separation was discontinued. A copy of this separation agreement is annexed hereto as Exhibit A.

16. The said Ralph H. McKee paid to the petitioner the sum of $200.00 per month until he instituted his suit for divorce in New Jersey, whereupon he ceased paying said $200.00 per month.

WHEREFORE your petitioner respectfully prays that an order will be entered in this cause permitting her to file an answer herein, and vacating the order of reference heretofore entered, and setting this cause for final hearing.

MARY N. McKEE,
Defendant-Petitioner.

GROSS & GROSS,
Solicitors of Defendant-Petitioner.

---

State of New Jersey,
County of Hudson, } ss.:

Mary N. McKee, being duly sworn, on her oath deposes and says:

That she is the petitioner in the foregoing petition; that she has read the foregoing petition and knows the contents thereof, and that the foregoing petition, and the matters therein contained, are true, to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, she believes them to be true.

MARY N. McKEE.

Sworn and subscribed to before
me this 17th day of May, 1928.

THEODORE H. MATTIL,
Attorney at Law of
New Jersey.

## Schedule A.

Memorandum of agreement between Ralph M. McKee, whose residence is 607 Bergen Avenue, Jersey City, N. J., first party, and Mary Noyes McKee (Mrs. Ralph H. McKee) second party.

It is agreed as follows:

1. That the present suit between the two parties to this agreement is to be discontinued by second party (plaintiff) within two days of signing of this agreement.

2. That the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month.

3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks.

4. That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall spend half of their vacation time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter.

5. That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft), or in schools of equal grade, at the expense of the first party, under the same general conditions as they are at present.

6. That on the starting of any legal suit between the parties to this agreement, except one to enforce

the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease.

7. This agreement shall have as its minimum duration July 1, 1928.

8. That this agreement is in duplicate and shall become active and enforceable on the two copies being signed by the two parties concerned.

Signed this 24th day of January, 1927, in New York City, N. Y.

First party RALPH H. McKEE,
Second party MARY N. McKEE.

---

**Answering Affidavits.**

(Filed May 26, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
*and*
MARY N. McKEE,
Defendant.

On Petition for Divorce.

AFFIDAVIT.

State of New Jersey, }
County of Hudson, } ss.:

Ralph H. McKee, of full age, being duly sworn, according to law, upon his oath, deposes and says:

*Answering Affidavit of Ralph H. McKee.*

1. I am the petitioner in this cause and the husband of the defendant Mary Noyes McKee.

2. This suit was instituted by me to secure an absolute divorce from the said defendant on the ground of desertion.

3. Prior to January 13th, 1925, the defendant and I resided at 39 Claremont Avenue, New York City.

4. On the morning of Tuesday, January 13th, 1925, I arose, as was my custom, went to the apartment door to get the newspaper and bring in the milk. This I did and as I passed the door of Mrs. McKee's room, I noticed that her bed had been occupied but that she was not in it. I then went to the front of the house to look for her but did not find her and on going back noticed a note on the hall table, in her handwriting, addressed to me. This I opened and was greatly shocked at finding this note from her. It stated that she had left and was going to live with her sister and that if I wanted anything further to do with her it would have to be through her attorney.

5. This desertion of me came as a great shock, particularly in view of the happenings of the previous week. On the previous Friday night we had had as guests at dinner, Mr. and Mrs. Owen from Oklahoma City, Oklahoma, friends of mine of more than twenty-five years' standing. After the dinner at the apartment we attended a theatre of Mrs. McKee's choosing. The play was "Annie Dear," and after the theatre I had taken the party for an after theatre supper and made an engagement for the next day to meet at Tiffany's, to see the jewels

which they had. This courtesy I had previously arranged for through my friend Mr. George Kuntz, Vice-President of Tiffany's and the gem expert of America. We spent a very pleasant hour and a half at Tiffany's and Mrs. McKee, as well as the others in the party, seemed to enjoy herself exceedingly. Following this, Mrs. McKee went with Mrs. Owen to visit about town and I took Mr. Owen to the lower part of Manhattan to show him the business section of New York City, he not having previously been in New York.

6. On Sunday, in the morning, I asked Mrs. McKee to go for a walk with me in Riverside Park and she declined, somewhat coldly. Sunday afternoon I again suggested that we go for a walk and she again declined and said she didn't care to go walking. A little later I asked her to go with me to a tea being given on Monday afternoon in honor of Professor Chandler, oldest of the professors of chemistry at Columbia University. This invitation she declined. On Monday morning I stepped into her room where she was at the time when she appeared to be lacing a shoe. I put my arms about her in a caressing way. She jerked herself away, and said, "You'll not have a chance again to do that to me." I thought at the time that she meant thereafter she would keep the door of her bedroom closed, but in the light of what happened the next day I now interpret it differently. That evening (Monday) I turned on the radio and called her attention to the fact that the evening newspaper was in the front room but she came in the front room only for a few minutes and then went back into her bedroom and spent the evening there. I read some scientific books and about 9:30 or 10 o'clock went to bed and as I passed her room called to her and told her it was about bed-time.

7. Nothing occurred during this period, or indeed in the previous ten days which led me to expect any such action on her part. It is significant that she makes no complaint whatever in her papers of my conduct towards her prior to her desertion of me. I felt deeply hurt at this sudden and unexpected departure from our home, and perhaps even more at the message which she left in her wake.

8. As I reflected upon the situation and considered the welfare of our children, I thought perhaps she had fallen under some strange influence, and I was hopeful that I could show her the error of her ways and persuade her to return home. That day I called up Mrs. McKee at here sister's residence but Mrs. McKee refused to talk to me over the telephone. A little later that day I received a letter from her attorneys, dated and written the previous day, January 12th, 1925, saying that they had been retained by her to institute a suit for separation and suggesting a conference. I telephoned to her several times and had two conversations with her but could not get her to meet me personally. I also wrote her several letters, receiving one letter of January 17th from her in acknowledgment of certain papers which I sent her. On February 11th, I had a conference with Mrs. McKee in the presence of her attorneys, at the office of her attorneys and again urged her to reconsider her thoughts in the matter and resume married life with me. This meeting adjourned to meet a week later at the same place. I went to her attorneys' office on this date but did not get to discuss matters with Mrs. McKee as her attorneys asked that this second conference be again postponed and it was postponed until about the last

of February. At this conference I again urged her to return to me.

9. For some seven years preceding 1916, Mrs. McKee and myself, together with our family, lived at Orono, Maine, where I was head of the Department of Chemistry at the University of Maine. In March, 1916, I moved to Ridgefield Park, New Jersey but Mrs. McKee stayed in Maine and did not join me until July 1st of that year. We then lived at 187 Bergen Avenue, Ridgefield Park, New Jersey, for a period of two years. During the last half of this period I was teaching at Columbia University and commuted from Ridgefield Park to Columbia University, New York City. We had numerous friends both in Ridgefield Park and at Leonia, New Jersey, a few miles away, and we visited these friends in Leonia and they visited us. July 1st, 1918, we moved to 1 Johnson Avenue, Spuyten Duyvil, New York City and there remained until September 15th, 1920. In September, 1920, we moved to 854 West 180th Street, New York City and continued to live there until the last of March, 1924, when we moved into a Columbia University owned apartment at 39 Claremont Avenue, New York City, at which apartment I was living at the time of Mrs. McKee's desertion of me on January 13th, 1925, and indeed continued to live there for about six weeks more, alone, our children being away at school.

10. In the year 1920, Mrs. McKee and I discussed the purchase or leasing of the home, at Leonia, New Jersey, of Dr. Arthur M. Buswell, a fellow professor of mine at Columbia University, who, in that year resigned his professorship to accept one at the University of Illinois. Prior to that time

we, with our children, had visited at Dr. Buswell's home and were attracted to the house itself and to the vicinity. Upon learning that Dr. Buswell intended moving to Illinois I conferred with him with a view either to purchase or leasing, with an option later to purchase his house, but at that time nothing came of the negotiations. I also discussed this and asked the advice of my close friends, the late Prof. Thomas B. Freas and Prof. Arthur W. Hixson, who resided within a block of the Buswell house.

11. For years prior to 1925 I visited numerous persons at Leonia, New Jersey, sometimes with Mrs. McKee and sometimes alone and was very much attracted to the neighborhood for several reasons, among others, that there live in Leonia, about thirty persons who are professors at Columbia University and others who are teachers at New York University, many of whom I knew and at least ten of whom I knew intimately. Furthermore, the condition of my health in 1925 was such that made it desirable for me to be in the country and the fact that Leonia combined the advantages of being in the country, that there were many of my friends living there and also that it was in proximity to Columbia University, New York City, and the fact that at this time I had an opportunity to sublet my apartment at 39 Claremont Avenue for the remaining period of my lease, led me to move to Leonia.

12. I moved to Leonia, New Jersey, on February 27th, 1925, my residence being at 210 Christie Heights Street, next door to Prof. Morse, one of my close friends and at the end of the same street and only a few blocks away from me, two of my

closest friends, the late Prof. Thomas B. Freas and Prof. Arthur W. Hixson, and only a block farther away from the former residence of Prof. Buswell, which residence I had considered purchasing.

13. In March or April, 1925, I was invited by Dr. Arthur W. Hixson, a fellow professor in the Department of Chemical Engineering at Columbia University, to join a club in Leonia, known as the "Neighborhood Club" of which Dr. Hixson was then Vice President. I accepted said invitation, was proposed and elected a member of said club and remained a member of said club continuously thereafter until sometime after October, 1926, the date of my removal to Jersey City, New Jersey. This club held meetings once a month and I was a regular attendant at the meetings of the club during my period of residence in Leonia and took part in the discussions and other activities of the club, most of which activities were of a civic nature.

14. During the entire period of my residence in Leonia I was a regular attendant at the First Presbyterian Church of Leonia, located on Central Avenue, about two blocks south of my residence. During this period of my residence in Leonia, which was from February 27th, 1925, to the latter part of September, 1926, I lived continuously at 210 Christie Heights Street and slept at said residence every night except that occasionally, not over twice a month in 1925 and once a month in 1926, I slept elsewhere, and in the summertime when occasionally I passed week-ends at Ossining, New York, at a country club, connected with Columbia University. During this entire period I took my breakfast regularly at the home of Mrs. Clara E. Bennett, at the corner of Broad Avenue and Christie

Heights Street and frequently partook of other meals at her home.

15. During this period of residence in Leonia, I commuted to and from New York City, except Sundays, in order to perform my duties as Professor of Engineering at Columbia University.

16. I am informed and believe a residence of one year in New Jersey is a pre-requisite of the right to vote and after my residence in New Jersey had continued for upwards of one year, that is, in April or May of 1926, I became a registered voter of the Town of Leonia and would have voted in the election held in June of that year but for the fact that on Election Day I was in Kansas City, Missouri, on a business matter.

17. During the period of my residence in Leonia, New Jersey, my son, William Noyes McKee, spent a considerable length of time during the period of his vacation from school, with me, at my Leonia residence.

18. During this period Columbia University considered my residence as Leonia, New Jersey, as is evidenced by the 1925 and 1926 directories of Columbia University, wherein my address was listed as 210 Christie Heights Ave., Leonia, N. J., on page 25 of the 1925 directory and page 24 of the 1926 directory.

19. During the period of my residence in Leonia I wrote Mrs. McKee at least two dozen letters, many of which gave my Leonia address and in many of these letters I urged her to return and repair the injustice she was doing me and our chil-

dren. I also 'phoned her from this address and gave her my Leonia telephone number.

20. In the summer of 1926 I obtained some new business connections along consulting chemical engineering lines. One of these required my presence quite regularly at Arlington, New Jersey and I found that my residence at Leonia, New Jersey, was exceedingly inconvenient from this standpoint. Accordingly, the latter part of September, 1926, I moved to Jersey City. At the suggestion of Mr. Eugene M. Markush, Vice President of the Pharma Chemical Company and a friend of long standing, I took a sitting-room and alcove bedroom at 607 Bergen Avenue, Jersey City and have continued to reside at that location up to the present time. I have slept at said address every night during said period except about once a month when it has been necessary for me to remain over night in New York City or elsewhere and except occasionally in the summertime when I have spent week-ends at the Teachers' College Country Club of Columbia University, generally with my children, or I was away on business or vacation trips outside the States of New York and New Jersey.

21. I have at 607 Bergen Avenue, one room as a sitting-room, about fifteen feet by fifteen feet and off of it an alcove bedroom. In the sitting-room there are four large windows and the alcove has another large window. The major portion of the furnishings of these rooms belongs to me and I have also a large number of books there and in addition, my personal effects and clothing are in my home at this address.

22. The location of 607 Bergen Avenue is near Belmont Avenue and is one of the choicest loca-

tions in Jersey City. On the entire block front, on which my residence is, there are only four buildings, a church and three residences. The church is the Methodist Church on the corner of Bergen and Belmont Avenues; the next house going north is the one in which I live. The third building is the residence of George Tennant, a lawyer. The fourth and last building on the block is the residence of Mr. S. W. Kagan, head of the chain of stores which bears his name.

23. During this period I have been a regular attendant at the First Presbyterian Church, located about two blocks away from my residence in Jersey City. During all this period I have commuted to and from New York City daily except Sundays, in order to perform my duties as a Professor of Chemical Engineering at Columbia University. I became a registered voter in Jersey City and have voted both at the primary and regular elections, as will appear from the election records.

24. During the period that I have resided at Jersey City, both my son, William Noyes McKee and my daughter, Margaret Harper McKee, have spent half of their vacations from school with me at my home at 607 Bergen Avenue and have regarded this residence as their home. Columbia University has considered 607 Bergen Avenue, Jersey City, New Jersey, as my residence, as appears from page 27 of the 1927 directory of Columbia University.

25. For the years 1925, 1926 and 1927, I have paid income taxes in New York State as a non-resident and have paid federal income taxes as a resident of New Jersey at the office of the Collector of Internal Revenue, Newark, New Jersey.

26. During my residence in Jersey City I have written numerous letters to Mrs. McKee, beginning shortly after I moved to Jersey City. In these letters I gave my address as 607 Bergen Avenue, Jersey City, and the telephone number as Bergen 203-J and in these letters have urged her to return to me and join in a united family. I have telephoned Mrs. McKee from my residence at Jersey City and she has telephoned me at this same residence.

27. The attempted justification of defendant's desertion of me is a tissue of falsehoods. I have never been a person of any such qualities and no one knows that better than the defendant, she having lived with me from the time of our marriage in 1902 to the date of her desertion of me in 1925. Her allegations that I often or ever stated that a wife is a husband's inferior and that she, the defendant, was my inferior are and each of them is absolutely false and without any foundation of fact. I never made any such assertion in kind or substance.

28. I deny that my attitude toward defendant "when alone with her and in the presence of others both in action and word has been violent, brutal and insulting." On the contrary, I have always been considerate of defendant when alone with her or in the presence of others.

29. It is also false that I ignored defendant or refused to recognize or even consider defendant's judgment or desires. Instead of ignoring her I paid her every attention which a husband should pay to his wife on all occasions.

30. The allegations that I habitually ignored questions and remarks put and made by her con-

cerning matters of interest common to the parties and their children, and privately as well as before members of the family ordered her to be silent are each and all of them absolutely false and without basis. I have never bade her to be silent or used similar expression. The allegation that deponent has compelled defendant to overtax her physical strength at housework is false. I never objected to defendant having such help as was necessary and as I could afford to employ, and most of the time since we came to Ridgefield Park, New Jersey, in 1916 we had at least one domestic servant in our employ. The statements made that deponent has frequently abused the defendant, calling her insolent and offensive names and epithets, and that on numerous occasions deponent has physically assaulted defendant are each and all of them absolutely false and without the slightest foundation. I have never resorted to physical violence with her or treated her other than kindly and as a companion and wife should be treated. The allegation that eleven years ago, viz., in 1917, deponent forcibly pushed defendant out of room and compelled her to retire is absolutely false and is denied. So likewise are the statements relative to occurrences eight and ten years ago that I violently shook defendant. I never did anything of the kind. The allegation that I scratched the defendant's face with my fingers from forehead to chin is absolutely false and bears every indication of having been made out of whole cloth. Deponent is not that kind of man. The allegation that deponent struck and knocked down the defendant in 1922 is also false. It likewise is obviously untrue, as is also that in 1923 deponent threw defendant on the floor. The allegation that about June 21, 1924, deponent seized the defendant by the shoulders and shook

her for five minutes continuously is absolutely false and untrue. It happens to be that on June 21, 1924, I was at Clinton, Missouri, and I recall the date definitely as it is the day after my birthday and I had spent the birthday with my sister and aunt at Clinton, Missouri. The statement that on or about August 11, 1924, while defendant was ill with asthma deponent assaulted her with resulting injuries to her back is absolutely false. The allegation that early in July, 1925, I again assaulted the defendant, severely shaking her and bruising one of her arms is untrue. It is to be noted that this incident was six months after defendant abandoned deponent. I recall that on or about July 9, 1925, defendant and our son, Billy, came to our former apartment, which was then subleased, by telephone appointment with me, so that she might select some books and furniture. I arrived before her and after she arrived brought defendant into the front room and introduced her to Mr. and Mrs. James W. Martin, Jr. who had sublet the apartment from me furnished some months before. Defendant, Billy and I then left the front room to go into the hall where the books were. While we were selecting the books she accused me of not giving her address to persons who had called on the telephone for her during the period after she abandoned me the previous January. I stated to her that I had always given to such persons her correct address. She said, "That isn't so, and I have proof of it," and thereupon went into the front room and I followed her. When she arrived there she said to Mr. and Mrs. Martin, who were still there, that she wanted to tell them what kind of man I was and stated that I was a liar and deceptive, and started to tell of my alleged failure to give her correct address to telephone callers. I urged her not to go over that as we had been over

that in the hall. I then took her arm and urged her to leave the room and not continue abusing me. She pulled away from my grasp. I did not grasp her roughly and only took her arm for the purpose of attracting her attention. She did not express any pain following my taking of her arm on that occasion. Subsequently she and I left the room and went into the hall where the books were and there for a period of fully three hours she was employed in removing books from the book cases and piling them in piles on top of the book cases, and gave no evidence whatever of any injury to her arm. The affidavits of Mr. and Mrs. James W. Martin, Jr. who were present at the time are annexed hereto.

31. The petition in this cause was filed on November 12, 1928, and as appears from the proofs of inquiry on file with this court, the defendant was personally advised of that fact on November 23, 1928. Thereafter, and on or about December 27, 1928, I was informed and believe that Gross & Gross, the defendant's present solicitors, applied to the office of John Milton who was then acting for me, for copies of the papers, stating that they expected to appear for Mrs. McKee.

32. On January 11, 1928 the order of publication and certified copy of the petition were served upon the defendant. That order of this court directed the defendant to appear and file her answer on or before March 6th, 1928.

33. The defendant entered no appearance and filed no answer, but set about to harass and embarrass me and to subject me to great expense, by instituting an action in the New York Supreme Court, which is still pending, to enjoin me from

prosecuting this suit. That she was fully aware of the fact that the order of this court required her to appear and answer in this suit on or before March 6, 1928, and of her rights in the premises, is plain from this statement in her affidavit of February 8, 1928:

> "Plaintiff has also been advised by her attorneys that she may go to the trouble and expense of appearing generally in the courts of the State of New Jersey to contest her husband's claim or she may appear specially for the purpose of contesting the jurisdiction of that court by showing that the courts of this state have jurisdiction of the marital status since the matrimonial domicile of the parties is still in this state. Plaintiff can also allow judgment to be taken against her by default and then later attack the decree when attempt is made to enforce it in this state."

In that same affidavit she falsely represented to the New York court that she could not "financially afford" to employ counsel to appear to contest this case. Her application for a restraint pendente lite was denied. She then applied for a stay pending appeal, and it was granted. That her appeal was interposed solely for the purpose of harassing me is perhaps best evidenced by the fact that the Appellate Court, five judges sitting, unanimously affirmed the judgment of the court below without opinion.

34. The defendant in her petition now seeks to excuse her conduct by representing to this court that she believed that the allegations with respect to my residence in New Jersey in the petition filed by me in this cause, were "wholly false." That she

had no ground for believing that those allegations were false, and that the representations made by her to the New York courts and upon which she sought to restrain me from maintaining this suit, were made without any basis in fact, and without her having made any effort to ascertain the fact, is apparent from the statements made in her reply affidavit of March 5, 1928, after she had put me to considerable expense and trouble in employing counsel and in securing numerous affidavits to disprove the charges made against me. In that affidavit she says:

> "Deponent cannot deny the various statements made by defendant to establish the fact that he has become a New Jersey resident because she has no personal knowledge or information with respect to such matters."

35. There is nothing new in her present petition. It is simply a repetition of the groundless charges which she asserted in the New York courts.

36. On May 6th, 1928, I telephoned the defendant and inquired whether or not she intended to appear in this suit but she declined to say whether she would or would not. I thereupon instructed my solicitor to have the Special Master to whom the cause was referred set down an early day for the hearing. The Master fixed May 10th. I immediately telegraphed to my witnesses, one of whom came all the way from Missouri, and several of whom came from out of the state, and my evidence was submitted to the Master on that day and I understand has been favorably acted upon.

37. When the separation suit instituted by Mrs. McKee in October, 1925 came on for trial in Jan-

uary, 1927, I appeared in court with my counsel, prepared to defend the case. After waiting several days for the case to be reached it was finally called and Mr. Benjamin Reass of the firm of Hirsch, Newman & Reass, of 100 Broadway, New York City representing Mrs. McKee, suggested that an effort be made to compose the difficulties of the parties. This was communicated to the court and the case was postponed. Mrs. McKee and I discussed our problems in the presence of our respective attorneys on several occasions thereafter and on Sunday, January 23rd, 1927, I received a telephone call from my superior, Dean George P. Pegram. Dean Pegram said he had had a conference with Mrs. McKee and that she had asked him to talk the matter over with me. I met Dean Pegram and he discussed her viewpoint in the matter and I told him that I regretted her unwillingness to come back to me and hoped she would change her mind in that regard in the near future. We discussed other matters and Dean Pegram said that he would have a conference with her and let me know the result. That evening he telephoned me and suggested that we meet the next day, January 24th.

38. After this conference with Dean Pegram I prepared, without consultation with anyone, a memorandum of agreement following the lines of this conference with Dean Pegram, and on Monday, January 24th, the case was again called but adjourned until the afternoon. I showed Mrs. McKee the memorandum of agreement which I had prepared and she stated that it did not provide enough money for her and also she desired me to turn over most of the furniture which had been in storage to her and I verbally agreed to do this.

Mrs. McKee's attorney, Mr. Reass, and my attorney, Mr. Kirby, were present at this conference and the agreement was read over by both Mr. Reass and Mrs. McKee at this time. After certain minor changes in pen, Mrs. McKee said she was prepared to sign the agreement. Immediately preceding the signing of this agreement, I mentioned to Mrs. McKee and the attorneys that the main purpose in entering such an agreement was in the hope that Mrs. McKee would reconsider her attitude and resume marital relations with me and Mr. Reass, Mrs. McKee's counsel, stated that he saw no reason why we should not resume such marital relations. It was with a view to bring about such a resumption of marital relations that I put into the agreement the provision marked three thereof that the second party, Mrs. McKee, should discuss with me our family affairs and particularly the possibility of a "united family", at least once in each six weeks. A copy of the agreement is annexed to the defendant's petition. It is referred to as a "separation" agreement. The word separation is nowhere present in the agreement. There is nothing therein to indicate that we agreed to live apart. But on the contrary the agreement does contemplate a meeting between us once every six weeks to bring about, if possible, not a separation, but an opposite result, namely, a "united family."

39. Paragraph 9 of the defendant's petition is so worded as to give the impression that I violated the orders of the New York courts, staying me from proceeding with the New Jersey suit. The fact is that I have obeyed the orders of the New York courts and I have no disposition to violate the orders of the courts of that state or of any other state.

40. Paragraph 16 of the defendant's petition suppresses the fact that she received the sum of $200.00 a month continuously from the time of the making of the said agreement down to and including March, 1928, and that thereafter, in accordance with section six of the said agreement, a copy of which is annexed to her petition she has since been receiving from me the sum of $100.00 per month.

RALPH McKEE.

Sworn and subscribed to before me this
26th day of May, 1928.

IRENE WALSH,
Notary Public
of New Jersey.

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**Affidavit.**

IN CHANCERY OF NEW JERSEY.

RALPH H. McKEE,
Petitioner,

*and*

MARY N. McKEE,
Defendant.

State of New York,
County of New York, } ss.:

John J. Kirby, being duly sworn, deposes and says: That he is an attorney at law, admitted to

practice in the State of New York, with an office at No. 55 Liberty Street, in the Borough of Manhattan, City of New York, and that he resides at No. 65 West 89th Street, in said Borough and City.

That he is attorney for Ralph H. McKee, the petitioner herein, in an action which was brought in the State of New York by Mary N. McKee, the defendant herein, as plaintiff against said Ralph H. McKee, for an injunction restraining said Ralph H. McKee, from prosecuting the above entitled action, and that deponent personally conducted the said litigation in behalf of said Ralph H. McKee.

That deponent has read the affidavit of I. B. Halpern, Esq., verified the 17th day of May, 1928, and attached to the petition of the above named defendant for leave to file an answer herein.

With reference to the statement in said affidavit on page two thereof, that "defendant immediately appealed from the order denying a temporary injunction to the Appellate Division of the Supreme Court", etc., deponent begs to state that the decision of Mr. Justice Callahan referred to in said affidavit was rendered on March 7th, 1928, as follows:

> "The moving papers herein do not satisfactorily show that the defendant's alleged residence in New Jersey is a mere colorable one or assumed for the purpose of escaping the New York statutes. Where there is a prima facie proof of residence in the foreign state the litigation in that state under the rules of comity should not be interfered with. The legal force or effect on the plaintiff here of the judgment if any obtained in New Jersey is not before the court on the present motion. The credit given to such judgment often de-

pends on such matters as the appearance of the parties therein, etc., which are not at present determined. Motion for injunction pendente lite is denied. Order signed.

(sgd) J. M. C."

and on the following day, viz.: March 8th, 1928, deponent caused to be served on defendant's attorneys in said New York action, the order denying defendant's motion, which embodied said decision, and a notice of the entry of said order. Deponent did not receive the notice of appeal served in behalf of the above named defendant (the plaintiff in the New York action) until March 12th, 1928, five days after said decision was rendered.

On information and belief that the statement in said affidavit that the temporary restraining order of the Appellate Division was served on petitioner herein on or about March 23rd, 1928, is an error. That as deponent is informed by the above named petitioner, said restraining order was not served on petitioner until March 26th, 1928.

That the statement in said affidavit that the said appeal came on to be heard before the Appellate Division on March 27th, 1928, is an error; that said appeal did not come on to be heard before the Appellate Division until April 27th, 1928.

(sgd) JOHN J. KIRBY.

Sworn to before me this
21st day of May, 1928.

(sgd) AGNES M. MOORE,
Notary Public.
Queens County Clerk's No. 3026.
N. Y. County Clk's No. 994, Reg. No. O-680.
Term Expires March 30th, 1930.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| RALPH H. McKEE, Petitioner, *and* MARY N. McKEE, Defendant. | On Petition for Divorce. |

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

State of New York, }
County of New York, } ss.:

James W. Martin, Jr., being duly sworn, deposes and says:

I am the same James W. Martin, Jr., who, October 4, 1926, gave an affidavit in a similar case between the above parties.

I know the plaintiff in the above entitled action and I also know the defendant.

In March, 1925, I took a sub-lease of the apartment of Dr. McKee at No. 39 Claremont Avenue in the Borough of Manhattan, City of New York, which apartment had been occupied by Dr. McKee and Mrs. McKee up to some time in January, 1925.

I have read the portion of the affidavit of Mary N. McKee verified the 17th day of May, 1928, at paragraph 14 thereof, in which she refers to an incident which occurred in July, 1925. I was present at the time of said incident and witnessed all that occurred at the time in question.

It was on or about July 9th, 1925. At about 8 o'clock that evening, Mrs. McKee and Dr. McKee's

son, Billy, came to the apartment for the purpose, as I was informed, of selecting some books that were in the apartment and discussing the question of storing the furniture. My sub-lease of the apartment was about to expire at the time in question, and did expire the following month. Dr. McKee was there at the time of the arrival of Mrs. McKee and their son. After Dr. McKee greeted Mrs. McKee and the son that evening, he brought them into the front room of the apartment and introduced them to my wife, who was then present, and to me. Dr. McKee and Mrs. McKee and their son, Billy, then left the room to go into the hall where the books were. Mrs. McKee returned shortly afterwards into the room where my wife and I were, followed by Dr. McKee, a few steps behind. The moment she entered the room, Mrs. McKee said hurriedly and excitedly that she wished us to know what kind of a man Dr. McKee is, and then started to tell of some personal incident, the recital of which was unintelligible to me. In the midst of this recital, Dr. McKee said "Let's not go over that here as we have been all over that before." He then took her arm and urged her to leave the room with him as she continued to recite these incidents referring to Dr. McKee. Mrs. McKee pulled away from Dr. McKee's grasp and said "Let my arm alone." There was no evidence in Mrs. McKee's attitude or in her tone of voice that she felt any pain from the grasp of the arm at that time, and it did not occur to me that there was any roughness displayed by Dr. McKee on this occasion.

Mrs. McKee left the room at this point and went into the hall where the books were, along with Dr. McKee and Billy. From the point where I was in the front room, I could see Mrs. McKee in the hall where the books were, and I saw her removing books from the book cases and piling them

in piles. She removed a great quantity of books at this time, and was occupied about three hours in this work.

During this period I observed her closely and I saw no indication whatever that she had any pain in her arm or shoulder, in fact, she was using both arms in the work she was engaged in during this period, lifting numerous books and taking them out of the cases and piling them on the top of the cases. During this period I heard Dr. McKee offer his assistance to her in the matter of segregating and piling the books, and Mrs. McKee declined this offer of assistance on his part.

At no time that evening did Mrs. McKee complain that she was injured in any way or suffered any pain as a result of Dr. McKee taking hold of her arm.

JAMES W. MARTIN, Jr.

Sworn to before me this
24th day of May, 1928.

E. Robbins Lawrence,
Notary Public,
Nassau County.

(Seal)

Certificate Filed in New York County.
New York County Clerk's No. 871.
New York County Reg. No. 9072A.
Commission Expires March 30, 1929.

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
*and*
MARY N. McKEE,
Defendant.

On Petition for Divorce.

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

State of New York, }
County of New York, } ss.:

Martha C. Martin, being duly sworn, deposes and says:

I am the same Martha C. Martin who gave an affidavit, in a somewhat similar action between the above mentioned parties, verified the 5th day of October, 1926.

I was present on or about the 9th day of July, 1925, at the apartment formerly occupied by Dr. and Mrs. McKee, and then occupied by my husband and me and our child, at No. 39 Claremont Avenue in the Borough of Manhattan, City of New York.

I recall that at about 8 o'clock that evening Mrs. McKee and Dr. McKee's son, Billy, came to the apartment and that Dr. McKee was there at the time of the arrival of his wife and son. After their arrival, Dr. McKee brought Mrs. McKee and their son into the front room of the apartment and introduced them to me and to my husband, who was also present. Dr. McKee, Mrs. McKee and their son, Billy, then left the room to go into the hall

where the books were. Mrs. McKee returned shortly afterwards into the room where my husband and I were, followed by Dr. McKee, a few steps behind. The moment she entered the room Mrs. McKee said hurriedly and excitedly that she wished us to know what kind of a man Dr. McKee is, and then started to tell of some personal incident, the recital of which I could not understand. In the midst of the recital Dr. McKee suggested that they should not go over that as they had been all over it before, and thereupon took her arm and urged her to leave the room with him. Mrs. McKee pulled away from Dr. McKee's grasp and asked him not to take her arm. There was no evidence in Mrs. McKee's attitude or in her tone of voice at the time that she felt any pain from Dr. McKee's grasping her arm, and Dr. McKee did not display any roughness towards her on this occasion.

Mrs. McKee left the room at this point and went into the hall where the books were, accompanied by Dr. McKee and Billy. I remained in the front room during a portion of the time that Mrs. McKee was in the hall where the books were. I observed her moving books from the book cases and piling them up in piles on top of the cases. She removed a great quantity of books while I observed her, and she still was engaged in this work when I went to my bedroom about 11:00 P. M.

During the period before I went to the bedroom to put my small son to bed and after I returned, I observed Mrs. McKee closely and saw no indication whatever that she had any pain in her arm or shoulder.

I also heard Dr. McKee offer assistance to Mrs. McKee in the matter of segregating and piling the books, and heard Mrs. McKee decline this offer of assistance on the part of Dr. McKee.

At no time that evening did Mrs. McKee complain that she was injured in any way or suffered any pain as a result of Dr. McKee's taking hold of her arm.

MARTHA C. MARTIN.

Sworn to before me this
25th day of May, 1928.

GROVER PEYTON,
Notary Public,
Westchester County, N. Y.

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## Petition for Alimony Pendente Lite.

(Filed June 15, 1928)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
*and*
MARY N. McKEE,
Defendant.

On Petition for Divorce.

TO THE HONORABLE EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of MARY N. McKEE, the above named defendant, respectfully shows:

1. The defendant's husband, Ralph H. McKee, the above named petitioner, has recently filed a

petition against the defendant in this suit for divorce, for the cause of an alleged desertion by the defendant.

2. The defendant has been served with process of citation, and has filed her petition in this cause for leave to be admitted as a party defendant.

3. The charge made against the defendant by her husband in his said petition is wholly untrue; and on the contrary defendant says that she is not in fault herein, and has not wilfully, continuedly and obstinately deserted her said husband, the petitioner herein.

4. The defendant, at the time of the commencement of this suit, and at all times thereafter, was and is a resident of the City and State of New York, her abode being more particularly at No. 2727 Spuyten Duyvil Parkway, New York City.

5. The defendant now shows that the allegations contained in the original petition of Ralph H. McKee in this cause are false, in that the said Ralph H. McKee is not and has not been a bona fide resident of the State of New Jersey as alleged in his petition aforesaid, and in that the defendant herein did not desert the said Ralph H. McKee in the month of January, 1925, and has not wilfully, continuedly and obstinately deserted the said Ralph H. McKee.

6. The facts with reference to the residence of the said petitioner Ralph H. McKee are fully set forth in the defendant's affidavit hereto annexed. The facts with regard to the alleged desertion of the said Ralph H. McKee by the defendant are likewise set forth in the affidavit hereto annexed.

7. The defendant further shows that in October, 1925, she instituted suit for separation against the said Ralph H. McKee upon the ground of the cruel and inhuman treatment of her by the said Ralph H. McKee. Said Ralph H. McKee duly appeared in said action and filed an answer, and said action duly came on for trial in New York in the month of January, 1927. The said Ralph H. McKee, just before the trial commenced, pleaded with the defendant not to proceed with the trial of the cause, upon the ground that the publicity of such trial would interfere seriously with the business and reputation of said Ralph H. McKee, and at the urgent solicitation of the said Ralph H. McKee an agreement of separation, drawn by the said Ralph H. McKee personally, was entered into between the defendant and the said Ralph H. McKee, and the aforesaid action for separation was discontinued. A copy of this separation agreement is annexed hereto as Exhibit A.

8. The said Ralph H. McKee paid to the defendant under the terms of the agreement marked Exhibit A, the sum of $200.00 per month until he instituted his suit for divorce in New Jersey, whereupon he ceased paying $200.00 per month and has up to and including May 1, 1928, paid $100 per month.

9. The defendant is desirous of contesting the action of the petitioner.

10. The defendant is destitute of means to support herself and her children, and to defend the suit herein commenced by the petitioner, as she has no income whatsoever other than that furnished her by the petitioner herein, and a few dollars occasionally earned by the baking of cakes and the sale thereof.

11. The exact status as to the defendant's income is fully stated in the affidavit of the defendant hereto annexed.

12. The defendant is informed and verily believes that her husband has an income of more than $30,000 per annum, as the petitioner is on the professorial staff of Columbia University, and is remuneratively employed as a consulting chemist by various concerns in the United States and in foreign countries, the exact situation, of course, not being disclosed to the defendant herein.

13. The defendant has obtained in her action in New York affidavits now on file in said courts of New York disclosing retainers from the Tennessee Copper Company and from the Oxford Paper Company. A more particularized statement of the petitioner's income is contained in the defendant's affidavit annexed hereto.

14. The following children have been born of the marriage aforesaid, to wit: Margaret Harper McKee, age 19; William Noyes McKee, age 17.

WHEREFORE the defendant prays that an order may be made requiring the petitioner to pay her a proper allowance for her support and maintenance, and that of the children of the marriage in her custody, until the termination of this suit; and also to pay forthwith a reasonable sum for the fees of counsel in defending this case for her, and for such other relief as the circumstances of this case may render fit, reasonable and proper.

And your petitioner will ever pray, &c.

(Signed) GROSS & GROSS,
Solicitors of and counsel with
defendant, Mary N. McKee.

## Exhibit A.

Memorandum of agreement between Ralph H. McKee, whose residence is 607 Bergen Avenue, Jersey City, N. J., first party, and Mary Noyes McKee (Mrs. Ralph H. McKee) second party.

It is agreed as follows:

1. That the present suit between the two parties to this agreement is to be discontinued by second party (plaintiff) within two days of signing of this agreement.

2. That the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month.

3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks.

4. That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall spend half of their vacation time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter.

5. That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft), or in schools of equal grade, at the expense of the first party, under the same general conditions as they are at present.

6. That on the starting of any legal suit between the parties to this agreement, except one to enforce

the terms of this agreement, the amount payable under the paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease.

7. This agreement shall have as its minimum duration July 1, 1928.

8. That this agreement is in duplicate and shall become active and enforceable on the two copies being signed by the two parties concerned.

Signed this 24th day of January, 1927, in New York City, N. Y.

First party RALPH H. McKEE.
Second party MARY N. McKEE.

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**Affidavit.**

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
*and*
MARY N. McKEE,
Defendant.

On Petition for Divorce.

State of New Jersey, County of Hudson, } ss.:

Mary N. McKee, being duly sworn, on her oath deposes and says:

I am the defendant in the above entitled cause, and I have read the foregoing petition for alimony, and I do depose that all the matters therein contained are true, to the best of my knowledge, information and belief.

I was married to the petitioner Ralph H. McKee at Carthage, Ill., on the 26th day of June, 1902. We have two children, viz., Margaret Harper McKee, age 19, and William Noyes McKee, age 17. Margaret is this month graduating from Bryn Mawr College, and William attends the Taft Preparatory School.

I met the petitioner some years prior to our marriage. He was then teaching at Carthage College, located at Carthage, Ill. It is my native city, and I was then a student in the college. I married him after my graduation. The petitioner was teaching chemistry at a small Illinois college at a salary of $1200.00 per year.

He is now, and has been since 1918, professor of chemical engineering at Columbia University, with an income, I am informed and verily believe, arising from his salary, consultation and annual retainer fees, fees for investigations and for giving evidence as an expert witness, amounting to at least $30,000.00 per annum.

In 1918, the petitioner received his appointment as a member of the faculty of Columbia University, and we moved to New York City, where we resided together until January 13, 1925. On that date I ceased to live any longer with the petitioner and have lived separately from him ever since, for the reasons and under circumstances which I shall now attempt to set before the court in detail.

My husband was always a very difficult person to live with. He was ever overbearing, imperious and quick in temper, ungenerous and inconsiderate

in thought and act. After 1918, i. e., after he began to reap the fruits of financial success, however, these unfortunate qualities became much more exaggerated. He deliberately ceased to treat me as if I were a companion and wife. He pointedly ignored me in the presence of others, as well as when we were alone, habitually treated me with brutal contempt, abused me at his pleasure, even resorting to physical violence and, finally, sought to compel me to live with him on a basis—consent to which would have meant degradation—and to make out of the sacred relationship of marriage a coarse and mercenary thing. His attitude is explicable only in the light of his oft repeated assertion that a wife is a husband's inferior; that she is intended and created by nature to serve his caprice and that, in particular, I was his inferior and that in consideration for his support, I must cheerfully acquiesce to every kind of insult and assault. If I refused to recognize his demands, no matter how unfair or how unreasonable, he would have recourse to physical violence.

The petitioner's attitude toward me when I was alone with him or in the presence of the children or even of the servants was constantly and continuously inconsiderate. He markedly ignored me whenever he could and became very much irritated immediately upon the expression by me of an opinion or judgment upon any matter at all, though it might touch the family or myself ever so closely. I could take no part in the most general conversation, but he would say "Now, don't start your tongue running, the children and I are talking." At other times: "You shut up; we are talking." This was a matter of frequent occurrence within the last two or three years of our life together. Late in 1923 and in 1924 he would raise

his arm as though to strike me, saying, "Shut up, no one asked you to speak." The petitioner told the children they did not need to do what I told them; if they were going to do it anyway, they might go ahead, but, otherwise, pay no attention to what I said. He said in New York a woman could have nothing to say about her children, where they should live or how they should live or about anything else; that a man did just as he pleased.

In the summer of 1922 I suffered severely with bronchial asthma. The weather was extremely hot and for many days every breath was an effort. The petitioner and I were alone in the apartment, both children being away at camp. Of course, I received no sympathy whatsoever from him. He kept continually repeating that a married woman had no right to be sick and it was her business to work. He would tell me if I was not able to do the work, I ought to get out and give him a chance to get a younger woman who could. In the morning he would grasp the foot of my bed and shake it, demanding "Aren't you going to get me anything to eat? Will I have to go to a restaurant for breakfast? You refuse to get my breakfast for me, do you? You refuse to get it?" When the weather became too hot for him he said he had to get out of town and went. Frequently he would not inform me that he intended to be out for dinner until dinner time. He would then telephone that he did not expect to be home and when I asked him to let me know in advance if he did not expect to come, so that I could be spared the unnecessary labor of cooking during the terrific heat, he said it was my business to prepare dinner for him whether he came to eat it or not.

In December 1919, while we were living at Spuyten Duyvil, after a fire in the laundry destroy-

ing practically all the table linen, the petitioner refused to have the insurance money used to replace the linen, saying that we did not need linen for he had his clubs in which to entertain his friends. Every statement of household furnishing needs was met with the same reply, petitioner saying it did not matter how we live since he had his clubs. Every suggestion for modern equipment for house or kitchen was met with the objection that these were schemes for women to get out of work and he would have none of them around. On one occasion I told him that it was necessary for me to have a winter coat or I would not go out at all. He gave me $15 for one. I told him what he, of course, knew, that it was impossible to get one for that amount. He said "You will have to, for we really haven't got the money." I learned subsequently that on the same day he sent a check for $600 as a gift to Wooster College. On another occasion in 1922 or 1923, when the window curtains had refused to hold together any longer—some of them had been in use for 18 years—the petitioner accused me of tearing them up in order to get new ones. He said we did not have the money to buy any. I learned subsequently that he had at that time made a gift of $400 to his sister to assist in remodeling her house. I was always as economical as possible in providing for the furnishing of the house, for the food and needs of the household. I was never extravagant and I believe I can justly say that I made whatever money I had go as far as it could reasonably be expected to go. Nevertheless, the petitioner often left us without means to keep going, compelled me to undergo the humiliating experience of borrowing from my relatives and near friends to buy food and clothing for the children and myself, although he had plenty of money with which to supply us.

Moreover, I have become convinced from the incidents already mentioned, from my husband's general attitude and from the matters which I now relate, that after we came to New York he made up his mind to force me to leave him or to rid himself of me in some way or other. He deliberately decided to make things so unpleasant that I would be compelled, as I was, to leave him. Soon after we had come to live in New York the petitioner said he had learned that here when a man began to make money, it was customary for the woman he had been supporting to get out and give him a chance to get a younger woman. He said a man did not care to take a woman as old and homely as myself about with him; he liked to be seen with a young one. He told me his friends here would not wish to associate with me. When I spoke of going anywhere or accepting an invitation he would laugh and say, "Do you think those people would care to associate with you?"

The following are some of the instances adverted to above, in which the petitioner exerted physical violence upon me in order to punish me for failing to obey one of his commands or in order to compel me to comply with his wishes or just on general principles when he was angry with me.

The petitioner is a large man about 5′ 9″ in height, weighing approximately 215 lbs. I am slightly built, have been in failing health for the last few years and am 5′ 5″ in height and weigh 110 lbs.

In the Spring of 1920 while I was working on a ladder at Spuyten Duyvil, the petitioner was lying upon a sofa in an adjoining room. He called to me to go upstairs and bring him a laundry slip. I told him Billy, our son, was upstairs, and knew where it was, and asked him to call to Billy to

bring it down. He said, "No, you go for it." I told him again Billy would bring it for him; whereupon he came over to me jerked me from the ladder, struck me on each side of the face leaving marks of his hands, shook me all the way upstairs and said, "Now, when I tell you to do a thing, you go and do it."

In September 1920 we were packing china preparatory to moving from Spuyten Duyvil to West 180th Street. There were some flower pots which I asked my husband not to pack, as Margaret wished to put some of her plants in them. When I returned they were gone, and the petitioner said he had packed them. I remined him that I had told him that Margaret did not want them packed. He struck me in the face, saying "It is not up to you to tell me what to do."

On a Christmas Day, when we were living at 180th Street, in the presence of my sister, Helen M. Noyes, whose corroborating affidavit is annexed hereto, I was standing in the doorway between the dining room and living room of our apartment discussing with the children the decorations for the Christmas tree. The petitioner came in and without any provocation and nothing being said by any one, scratched the entire side of my face from the forehead to the chin, so that my face became red and swollen.

In September 1920 at the time we were moving from Spuyten Duyvil to West 180th Street, the petitioner slapped my face. This incident was observed by Mr. Harry L. Whaley who was moving into the house at Spuyten Duyvil, which we were then moving out of.

In July 1922, while working very hard getting my daughter ready for camp, the petitioner announced that it was bed time and when I answered

that it would be some time before I could finish the work I was doing, he knocked me down, and as soon as I was upon my feet again, he slapped me and continued slapping me as I backed away from him until he got me in a corner where he stood in front of me slapping me on one side of the face and then the other.

Again, in January 1924, when the petitioner was beginning to prepare for bed, I observed that the light was still on in the living room. The children and I used the bedrooms in the evenings, as petitioner liked to read and sleep on the sofa in the living room. I asked him if he were going to bed and remarked that the light was still lit in the living room. He ordered me to go and put it out. Without replying, I took up my sewing; whereupon he picked me up and threw me across the room so that my spine struck against a raised door sill. I was very seriously shaken and hurt and the petitioner and my son had to lift me on a bed. On this occasion I found it necessary to call upon a physician.

The petitioner was always supercilious and condescending in sexual relations, as well as everything else. He held that every woman was crazy for a man; that a husband could make himself as obnoxious as possible and it would be condoned by the offer of that indulgence. He said in all larger cities there were houses full of women, there for one purpose and that proved the real nature of women; that women were all alike; that they might try to pretend otherwise but that was their real nature.

He was not considerate of either my feelings or my health in this respect or in any other, particularly after we came to New York to live. He claimed he had a right to sexual intercourse at any

time he wishes; that I could have nothing to say about the matter. On cold nights when he would come in late at night, he would come to me, because, he said, it was the quickest way for him to get warm. This seriously affected my health.

He told me a "funny" story about a man who indulged tri-weekly. Afterwards he said that was the way people did and insisted upon that number. If he were away or any times were missed for any reason, they must be made up. He later increased his claim to five times a week.

In the Spring of 1924 the petitioner said he had decided to pay me $5.00 a time for sexual intercourse and I could have that money to run the house. I told him it was impossible for me to live with him on that basis, but he would offer me the $5.00 nevertheless. I refused to touch it but he would leave it on the bed. Then he took to putting it beside my place at the table, saying "for last night." He would do this in the presence of the children and also before the maid. I told him this was absolutely intolerable and if he insisted upon putting it on that basis there would be no occasion for him to leave anything. Then he would put three dollars at my place, saying "You refused to do your duty last night." He would tell me if I wanted money I know how to get it. When I would say such a position was intolerable, he would say, "No, you say *I* don't pay high enough."

When I would try to discuss matters with my husband he would say "You come to my room six time as I want you to, then, perhaps, we can discuss matters."

Before he left for Europe in 1924 I told him such a situation was utterly intolerable; we could not continue in that way. He would just laugh and ask "What are you going to do about it?"

I decided that I would wait until he came back from Europe and find out if his attitude had changed. I thought he might see things differently after a change and a rest. He came back shortly before Christmas 1924, and he acted precisely in the same manner as he had before his trip, continuing to insist that I live with him upon the humiliating basis described above. I was now afraid to live with him alone. I had not been alone with him since June 1924. The children were both away at school. The life I had been compelled to lead with him had broken my health. I feared physical and nervous injury if he was to have me alone in his power. I took advice of counsel, related the matters herein set forth and, relying upon counsel's advice, I left the petitioner on January 13, 1925 and went to live with my sister, Helen Noyes, at the Colonial Hotel, Columbus Avenue and 81st Street, New York City. I was entirely without personal means. When my sister left town, I then went to live for a few weeks at 114 West 79th Street, New York City, where my sister also had previously lived, and remained there until about the middle of July, when, together with Billy, I went to Carthage, Illinois, to my mother's home where we joined Margaret, who had gone there after the close of college.

During the period since January 13, 1925, my husband had send me approximately $100.00 per month, which sum I found totally inadequate for my support, and having no source of income whatsoever, I instituted in October, 1925, a suit for separation against the said Ralph H. McKee, upon the ground of his cruel and inhuman treatment. Said Ralph H. McKee duly appeared in said action and filed an answer, and said action duly came on for trial in New York in the month of January,

1927. The said Ralph H. McKee, just before the trial commenced, pleaded with me not to proceed with the trial of the case upon the ground that the publicity of such trial would interfere seriously with his business and reputation, and at his urgent solicitation an agreement of separation, drawn by my husband personally, was entered into between us, and the action for separation was discontinued. A copy of the separation agreement is annexed hereto as Exhibit A.

The said Ralph H. McKee paid to me under the terms of said separation agreement the sum of $200.00 per month until he instituted his suit for divorce in New Jersey in November, 1927, whereupon he ceased paying said sum of $200 and has paid $100 per month for the month of March, April and May, 1928.

The facts with reference to the residence of the said Ralph H. McKee are as follows:

The said Ralph H. McKee is, in fact, a resident of the State of New York, and has attempted to set up a colorable residence in New Jersey solely for the purpose of bringing his action for divorce. All the business and social interests of the said Ralph H. McKee are centered in the State of New York. He is professor of Chemical Engineering in Columbia University, and has a laboratory in the University buildings where he carries on research work in connection with his teaching, and where he does his consultant work for clients. The said Ralph H. McKee is a member of several clubs in the City of New York, and of the Teachers College Country Club situated at Ossining, N. Y., where he maintains two rooms which he visits frequently, and wherein he has his furniture and personal belongings. The said Ralph H. McKee has exerted every effort in attempting to set up a col-

orable residence in the State of New Jersey solely for the purpose of bringing this action for divorce in the State of New Jersey. Your petitioner is informed and verily believes that the said Ralph H. McKee now maintains a room in a rooming house at 607 Bergen Avenue, Jersey City, N. J., which, so far as petitioner has been able to learn, is a very small room, furnished by the proprietress of the rooming house, and which, with the exception of a few books and some clothing, contains none of the personal belongings of the said Ralph H. McKee. The occupation of the room in question as his home is clearly not in keeping with the dignity and standing of a person with the position and income of the said Ralph H. McKee.

I am at present destitute of means to support myself and to defend myself in this suit. I have no means of support other than the moneys sent to me by the said Ralph H. McKee, excepting that occasionally I bake cakes and sell them, the earnings from which rarely total as high as $3.00 per month.

In particular, I have read an affidavit filed in this cause by my husband, the said Ralph H. McKee, in which affidavit he states that I am well able to assume the payment of expenses brought about by litigation herein. I am now referring to paragraph 7 of the said affidavit, which was taken on the 1st day of June, 1928. It is untrue as stated in said paragraph 7, that I have unnecessarily engendered litigation herein. The fact should be borne in mind that I am not the moving party in this litigation; that the litigation was brought in a jurisdiction which is not my domicile; that the litigation commenced by my husband is unwarranted, and I am amply justified in defending myself against the accusations of his suit.

It is true, as stated in paragraph 7 of the affidavit hereinabove referred to, that I am one of the four children of the late Laura M. Noyes, of Carthage, Ill., and that I am the beneficiary under my mother's will to the extent of one-fourth of her residuary estate. My mother died on January 8, 1928. The fact is, however, that my mother's property consisted in the main of real estate of the value of approximately $29,000, which real estate is now and has been for some time past unmarketable and unsaleable. My mother's personalty totaled at the most the sum of $4,500.00. I have received no income whatsoever from this trust estate, and can truthfully say that I expect no income whatsoever from this estate.

It is untrue as stated by my husband in paragraph 7 of the affidavit hereinabove referred to, that the very fine residence in Carthage, Ill., has a market value of $12,000 to $15,000. This has been appraised recently at $5,000 and is part of the real estate of my late mother, which total value is $29,000.

It is untrue, as stated in paragraph 7 of the affidavit hereinbefore referred to, that the late Mrs. Noyes was offered $250.00 an acre in cash for the 160 acre tract. I believe this offer was made sevral years ago for the 80 acre tract, but at that time the value of farm lands was inflated, but due to bad crop conditions for the past two or three years the 80 acre tract is now unsaleable. The 160 acre tract is undeveloped land of problematic value.

It is untrue as stated in paragraph 7 of said affidavit that the late Mrs. Noyes had considerable money loaned out on mortgages, notes and other forms of collateral.

In paragraph 9 of the affidavit aforesaid the petitioner, Ralph H. McKee, states that I am the

owner of lots 25 and 26 in Block 3 of Bancroft Addition, Oklahoma City, Oklahoma. I have never heard of my being the owner of said lots, and if I am, this is news to me. The fact remains, however, that I have no income from these lots. At one time I recall that I was the owner and had a deed for lots 13 and 14 in Block 37 of the Military Addition to Oklahoma City. At present I have not the deed to these lots, and I do not know whether I am still the owner of same or not. This deed I believe was in the possession of Mr. Ralph H. McKee, the petitioner herein. The fact remains that I have no income whatsoever from these lots. I verily believe that the two lots aforesaid are not at the present time worth more than $400 and I have in my possession letters from real estate operators in that territory who have offered me no higher than $400 for the lots aforesaid.

It is true, as stated in paragraph 10 of said affidavit that I maintain a bank account in the Corn Exchange Bank, West 231st Street, New York City, but it is untrue as stated in said affidavit that I have a balance to my credit in said bank of approximately $600.00.

I reiterate that I am at present destitute and must rely entirely upon the allowance of alimony which will be made to me by this court.

It should also be noted that after the 9th of this month my daughter Margaret will be living with me, and I shall be obligated to support her.

I verily believe that my husband is well able to pay me an allowance of $500.00 per month pending the final determination of this suit. My husband's income, I verily believe to be not less than $30,000 a year. He is one of the most distinguished American chemists. His reputation is world wide and brings to him numerous retainers under which he

is paid large sums of money. For the past ten years my husband has been very secretive about the amount of his income and its source. He has, I verily believe, attempted to conceal the same from me. He received a salary as Professor of Columbia University of at least $6,000 per year. He employs in addition to his secretary, several research chemists continually at his laboratory, engaged in assisting him in his private business, and he pays for their services out of his own funds. I know that he has been consulted and retained by the following firms (by some of them very frequently): Tennessee Copper Company, Oxford Paper Company, Lorillard Tobacco Company, Lehn & Fink, Inc., Intarvin Co., Viscose Co., E. B. Badger & Sons Co., Charles Lanegan & Co., Chemical City Rayon Co., Rohm & Hass and Joseph Roeback. I am quite certain that there are many others whose names I do not know. Besides, he frequently serves as an investigator and as an expert witness. I know him to have been engaged as a witness in an action against the DuPonts, involving millions of dollars, a patent litigation which ran over a long period of time. I believe him to have numerous investments and to have property of large value. I also understand that said Ralph H. McKee is the owner of valuable patents, and has a remunerative income therefrom.

On information and belief I can state from affidavits filed in a previous action in New York, that Mr. McKee received from the Oxford Paper Company the sum of $4,000.00 in 1925, and the sum of $3,666.67 in 1924; that he received from the Tennessee Copper Company numerous retainers from the year 1916 on. From 1918 to 1925, which was the time included in the affidavit of Mr. Frank H. Rude made on Feb. 2, 1926, Mr. McKee received

an annual retainer of $3,000.00 a year, exclusive of expenses incurred for the account of the said Tennessee Copper Co. I verily believe that Ralph H. McKee is still employed by the Tennessee Copper Company and by the Oxford Paper Company, and by various other concerns.

Referring to my bank balance in the Corn Exchange Bank, I can say that on May 23, 1928, my balance was unusually high, to wit, $281.90, of which about $70.00 was club money held by me. On June 2, 1928, when I received my last balance statement it showed a balance in the Corn Exchange Bank of $121.90, the $70.00 club money still being included in this sum.

(Signed) MARY N. McKEE.

Sworn and subscribed to before me
this 11th day of June, 1928.

THEODORE H. MATTIL,
Attorney at Law of N. J.

## Affidavit.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>*and*<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

State of Illinois, }
County of Hancock, } ss.:

Helen M. Noyes, being duly sworn, on her oath deposes and says:

I am a sister of Mary N. McKee, the defendant herein, I reside at present in the City of Carthage, Illinois.

I resided in the City of New York for a period of nine years, from early in 1919 to April 1928. I have on many occasions visited the home where my sister was living with her husband, the petitioner, and have observed the conduct of the petitioner towards his wife. He was constantly finding fault with her, telling her to shut up, that he was talking to the children and she should not interfere; that she had no sense; and continuously ignored questions which she would ask him about matters pertaining to the household.

When the petitioner and my sister lived together at Ridgefield Park in 1917 I visited them there, and saw the petitioner take my sister by the shoulders and force her to go to bed before 9 P. M. She refused to go and resisted, but the petitioner forcibly compelled her to go to bed. This violent

conduct I have noticed on other subsequent occasions.

At Christmas of 1921 or 1922, when the petitioner and defendant lived at 180th Street, New York City, my sister was standing in the doorway between the dining room and living room in the apartment occupied by them, talking to the children about decorations for the Christmas tree. The petitioner, Ralph H. McKee, came along, and without any words passing between him and his wife, or any provocation, scratched the defendant's face with his fingers from the forehead down to the chin, causing her entire face to become red and swollen.

I frequently advanced money to my sister to help her to pay household bills for running the house of the petitioner, because of the petitioner's failure to properly provide his wife with money for such purpose.

My observation of the conduct of the said Ralph H. McKee was that he was constantly insulting her and doing everything humanly possible to compel her to leave him.

My mother, the late Laura M. Noyes, died on January 8, 1928, and since April of this year I have made my abode at Carthage, Illinois, and I am familiar with every detail of my mother's estate. The real property left by my mother consisted of the dwelling house in which she had made her home, the value of which is no more than Five thousand Dollars ($5,000.00). The premises were assessed for the year 1927 at the sum of $2,400.00 and will be the same for the year 1928. My mother also left two tracts of land, one of 160 acres, which is undeveloped and rented for pasture, and the other a farm of 80 acres. The value of the pasture land is not more than Twelve thousand Dollars

($12,000.00) and it would probably not sell at this time for more than Nine thousand ($9,000.00) Dollars. It is rented for Five hundred Dollars ($500.00) a year and from this must be taken the amount of the taxes and repairs. The 80 acre farm is rented for grain rent which varies in amount. The net income from this farm in 1927 was approximately Two hundred forty-five Dollars ($245.00). Its value is not more than Twelve thousand Dollars ($12,000.00) and at the present time could in all probablity not be sold for that amount. The total real estate left by my mother has a possible valuation of Twenty-nine thousand Dollars ($29,000) and no more.

I have been advised by my attorney and so charge and state that no income whatever from my mother's estate is now available to my sister, Mary N. McKee.

HELEN MILLER NOYES.

Subscribed and sworn to before me this
11th day of June A. D. 1928, by
Helen M. Noyes above named.

VIOLET E. COCHRAN,
Notary Public.

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And I further certify that I have authority to Administer Oaths, under the laws of the State of Illinois and that my Commission will expire on October 12, 1931.

VIOLET E. COCHRAN,
Notary Public.

State of Illinois, }
Hancock County, } ss.:

I, Jas. W. Westfall, County Clerk and Clerk of the County Court, in and for said County, the same being a Court of Record, having a Clerk and Seal, certify that Violet E. Cochran, Esq., before whom the foregoing affidavit is a Notary Public in and for the town of Carthage in the County of Hancock and State of Illinois, duly commissioned and qualified as such, that his commission bears date on the 12th day of October, 1927, and will expire on the 12th day of October, 1931, as appears from the records of my office, and as such Notary Public he is authorized by the laws of the State of Illinois to Administer Oaths, take and certify Acknowledgments of Deeds, Mortgages and other Instruments of Writing under Seal, and I further certify that his signature above written is genuine, and entitled to full faith and credity.

WITNESS my hand and Seal of said Court
(L.S.) at my office at the Court House in the City of Carthage, in said County, this 11th day of June, A. D. 1928.

JAS. W. WESTFALL,
Clerk.

## Affidavit.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>*and*<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce |

State of Illinois,
County of Hancock, } ss.:

J. Arthur Baird, on oath being first duly sworn, now deposes and says that he is an attorney at law in the State of Illinois, and has been since 1905, and that he is familiar with the real estate of the late Laura M. Noyes, having frequently walked over the eighty acre farm and the one hundred and sixty acre tract of pasture land, belonging to the late Laura M. Noyes, deceased.

That he has been practicing law in the State of Illinois since 1905 and that during that time has been the owner of real estate in Hancock County, Illinois and is acquainted with the real estate values of farm lands in said County and State, and this deponent does further state as follows: I knew said Laura M. Noyes in her life time, for many years and up to the date of her death in January, 1928.

That he has been handling the eighty acre tract of farm land for a number of years previous to and up to the time of her death and collecting the rents, both cash and grain, from said eighty acre farm; and he further states that the net income from said

eighty acre tract of land, after the payment of taxes, repairs for fences and leasing said farm, did not exceed two hundred and fifty dollars for the year 1927.

That he has for a number of years been a regular licensed real estate dealer in said County and State and that he is familiar with the current real estate values in said County and State at the present time. In my judgment the present value of said eighty acre tract of farm land would not exceed one hundred fifty dollars per acre. In my judgment the one hundred and sixty acre tract of land could not be sold on the present real estate market for over ten thousand dollars.

Lands do not sell readily in this part of the country at the present time because of the poor crop conditions in the last two or three years. The rental value of said one hundred and sixty acre tract of land, in my opinion, would be about four hundred and fifty to five hundred and fifty dollars per year, from which taxes and repairs for fences would have to be deducted.

I have been acquainted with Mrs. Noyes and her family all my life and never heard her mention owning any other tracts of land than the two just above mentioned, except her residence in the City of Carthage, and believe and know in reason that said tracts of land is the only real estate owned by her.

In the handling and leasing of said farm I have talked over business with the late Laura M. Noyes, and have always found her to be a woman of sterling character, and she was so regarded by everybody that has ever talked with me about her. She is considered in this community as a conservative business woman, in moderate means, but is not considered and never has been considered by any one

in my hearing as one of the wealthy women of this town.

Dated this 11th day of June, A. D. 1928.

J. ARTHUR BAIRD.

Subscribed and sworn to before me this
11th day of June, A. D. 1928, by
J. Arthur Baird above named.

VIOLET E. COCHRAN,
Notary Public.

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And I further certify that I have authority to Administer Oaths, under the laws of the State of Illinois and that my Commission will expire on October 12, 1931.

VIOLET E. COCHRAN,
Notary Public.

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State of Illinois, }
Hancock County, } ss.:

I, Jas. W. Westfall, County Clerk and Clerk of the County Court, in and for said County, the same being a Court of Record, having a Clerk and Seal, certify that Violet E. Cochran, Esq., before whom the foregoing affidavit is a Notary Public in and for the town of Carthage in the County of Hancock and State of Illinois, duly commissioned and qualified as such, that his commission bears date on the 12th day of October, 1927, and will expire on the 12th day of October, 1931, as appears from

the records of my office, and as such Notary Public he is authorized by the laws of the State of Illinois to Administer Oaths, take and certify Acknowledgments of Deeds, mortgages and other Instruments of Writing under Seal, and I further certify that his signature above written is genuine, and entitled to full faith and credit.

WITNESS my hand and Seal of said Court at my office at the Court House in the City of Carthage, in said County, this 11th day of June, A. D. 1928.

(L.S.)

JAS. W. WESTFALL,
Clerk.

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**Affidavit.**

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
*and*
MARY N. McKEE,
Defendant.

} On Petition for Divorce.

State of Illinois,
County of Hancock, } ss.:

Ernest O. Reaugh on oath being first duly sworn deposes and says, that he is now and has been a resident of the County of Hancock and State of Illinois for more than twenty-eight years last past.

Affiant further states that he is now and has been for a number of years Secretary of the Carthage Saving Loan and Building Association of Carthage, Illinois, which said Building and Loan Association makes loans exclusively on real estate in said City of Carthage; that he was Recorder of Deeds of said Hancock County, Illinois for a period of eight years; and following that as an Abstractor of Titles for a number of years; that he is now the Vice President of the Hancock County National Bank of Carthage, Illinois; that by reason of his experience above set forth, he is well acquainted with the value of city property in the City of Carthage and farm lands in Hancock County, Illinois.

The affiant further states that he knew Laura M. Noyes in her lifetime, and that she died on January 8, 1928; that the said Laura M. Noyes died owning real estate consisting of a residence in the City of Carthage, Illinois and two farms, one consisting of eighty acres and the other consisting of 160 acres; that the value of the residence property in said City of Carthage is $5,000; that, in my judgment, is all that the property could be sold for and if it were necessary to make a quick sale of the same that it probably would not sell for more than $4,000 or $4,500; that the farm consisting of eighty acres is unimproved excepting fences and some tile; that, in my judgment, the value of this farm is not more than $12,000; that the farm consisting of 160 acres is used exclusively as pasture land, and is unimproved excepting the fences; that said land is not valuable for anything but pasture, and in my opinion, is not worth over $12,000.

Dated, this 11th day of June, 1928.

ERNST O. REAUGH.

State of Illinois, }
County of Hancock, } ss.:

Subscribed and sworn to before me
this 11th day of June, A. D. 1928,
by Ernest O. Reaugh.

VIOLET E. COCHRAN,
Notary Public.

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And I further certify that I have authority to Administer Oaths under the laws of the State of Illinois and that my Commission will expire on October 12, 1931.

VIOLET E. COCHRAN,
Notary Public.

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State of Illinois, }
County of Hancock, } ss.:

I, Jas. W. Westfall, County Clerk of the County Court, in and for said County, the same being a Court of Record, having a Clerk and Seal, certify that Violet E. Cochran Esq., before whom the foregoing affidavit is a Notary Public in and for the town of Carthage in the County of Hancock and State of Illinois, duly commissioned and qualified as such, that his commission bears date on the 12th day of October, 1927 and will expire on the 12th day of October, 1931, as appears from the records of my office, and as such Notary Public he is authorized by the laws of the State of Illinois to Administer Oaths, take and certify Acknowledgments of Deeds, Mortgages and other Instruments of

Writing under Seal, and I further certify that his signature above written is genuine, and entitled to full faith and credit.

WITNESS my hand and the Seal of said court at my office, at the Court House in the City of Carthage, in said County, this 11th day of June, A. D. 1928.

JAS. W. WESTFALL,
Clerk.

(L.S.)

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**Affidavit.**

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. MCKEE,
Petitioner,
*and*
MARY N. MCKEE,
Defendant.

On Petition for Divorce.

State of Illinois,
County of Hancock, } ss.:

David E. Mack, on oath being first duly sworn, deposes and says, that he is an attorney at law in the State of Illinois, and has been such attorney since 1886, in the active practice of law and that he is the legal advisor in the estate of Laura M. Noyes, deceased, and was also friend and legal adviser of said late Laura M. Noyes.

That he has been practicing law since 1886 and during that time has also been the owner of real

estate, and has loaned money on real estate for many years and is acquainted with real estate values in Hancock County. And that he is familiar with the status of the estate of Laura M. Noyes and this deponent does further state as follows: I knew said Laura M. Noyes in her lifetime. She died on January 8, 1928, leaving a last will and testament, a copy of which is annexed to my affidavit, which was duly probated in the County Court of Hancock County, Illinois and a petition for the probate of said will and for letters testamentary was filed of which a copy is hereto attached. The real estate of the late Laura M. Noyes consisted of a residence in Carthage, Hancock County, Illinois, the value of which was not more than $5,000.00. This, in my judgment, would be the outside figure and a quick sale for the same could not be obtained for more, probably, than $4,000.00 or $4,500.00. I know of two farms owned by the late Laura M. Noyes at the time of her decease, both in Carthage Township, Hancock County, Illinois, one of eighty acres, and one of one hundred and sixty acres. The eighty acres has no improvements excepting fences; except to a small degree, some tile, that is, in my judgment, it is not thoroughly tiled. It has no buildings, and, in my opinion, and I am acquainted with its value, it would not be worth over $12,000.00; and the other tract consists of pasture land without any improvements excepting the fences which would not be worth over $12,000.00. This land is not valuable for anything but pasture. These lands would not now sell quickly as crop conditions here for two years have been very poor and fiancial conditions in the Mississippi Valley have been bad for the last five years, by reason whereof land has not, for some time been selling. The rental value of said one hundred and sixty acre tract, in my

opinion, for a gross sum, would not exceed the sum of five hundred dollars ($500.00), from which must be taken the taxes and repairs. The annual rental value of the said eighty acre tract would not, in my opinion, exceed six hundred dollars ($600.00) per year, from which must be taken taxes and improvements.

I know, in a general way, of the personal estate, as well as the real estate of the late Laura M. Noyes, and the above and foregoing was all the real estate which she owned at the time of her decease, and her personal estate would not exceed the sum, in my opinion, and I speak as attorney for the estate, of forty-six hundred dollars ($4,600.00), and in my opinion, from a careful consideration of the will of the late Laura M. Noyes, Mary N. McKee, the wife of Ralph H. McKee, would not receive any income from the same at present, nor, probably, for some time to come.

The will however, which is attached, speaks for itself.

In my judgment, the net income total of said estate of said Laura M. Noyes would not exceed the sum of Twelve Hundred Dollars ($1,200.00) per year.

I have known said Laura M. Noyes since prior to her marriage, and have known her all my life and have been acquainted for many years with her financial condition and with her reputed financial standing in this community, and with her friends in this community, and desire to say, in my opinion, that she never was reputed to be worth one hundred thousand dollars, or any appreciable proportion of the same, in this community, and in my judgment she never was reputed to be worth more, in all probability, in this community, than the figures above stated. I have discussed, during her

lifetime, her business matters with her, have discussed her real estate, and loaned money for her for many years, and know said Laura M. Noyes to have been a woman of sterling integrity and she was so regarded by the entire community, that is, those of said community that knew her, and I feel it is utterly impossible that she ever stated that she was offered $250.00 per acre, for the 160 acre farm above mentioned, as it was only a timber pasture farm, and even in the inflated price in this country, it would never, in my judgment, have brought more than $100.00 per acre and was not the character of land that would, in any way, have approached $250.00.

And I desire, further, to state that from my best information and knowledge of the estate of said Laura M. Noyes, thru many years of acquaintance, and the settlement of her estate, and the knowledge of the affairs of said estate, and values, said Laura M. Noyes never had an interest in securities the sum of fifty thousand dollars at any time, and never had but a small fraction of that amount loaned out.

Dated, this eighth day of June, A. D. 1928.

DAVID E. MACK (Seal)

State of Illinois }
County of Hancock } ss.:

Subscribed and sworn to before me this 8th day of June, A. D. 1928, by David E. Mack, above named.

VIOLET E. COCHRAN,
Notary Public.

And I further certify that I have authority to Administer Oaths, under the laws of the State of Illinois and that my commission will expire on October 12, 1931.

VIOLET E. COCHRAN,
Notary Public.

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State of Illinois
Hancock County } ss.:

I, Jas. W. Westfall, County Clerk and Clerk of the County Court, in and for said County, the same being a Court of Record, having a Clerk and Seal, certify that Violet E. Cochran, Esquire, before whom the foregoing affidavit is a Notary Public in and for the town of Carthage in the County of Hancock and State of Illinois, duly commissioned and qualified as such, that his commissions bears date on the 12th day of October, 1927, and will expire on the 12th day of October, 1931, as appears from the records of my office, and as such Notary Public he is authorized by the laws of the State of Illinois to Administer Oaths, take and certify Acknowledgments of Deeds, Mortgages and other Instruments of Writing under Seal, and I further certify that his signature above written is genuine, and entitled to full faith and credit.

WITNESS my hand and the Seal of said Court at my office, at the Courthouse in the City of Carthage in said County, this 11th day of June, A. D. 1928.

(L. S.)

JAS. W. WESTFALL
Clerk.

Page 1.

Carthage, Illinois

I, Laura Miller Noyes, residing in Carthage, Illinois, do declare this to be my last will, as follows——

First—I wish my funeral expenses, and my debts I may have at the time of my death, to be paid out of money, notes or bonds I may have at the time of my death.

Second—I wish three hundred dollars to be paid to Haidee Noyes Berry, she being the adopted daughter of my late husband, Wm. H. D. Noyes and his first wife, and she having received her share in the estate of said Wm. H. D. Noyes just after his death.

Third—The balance of my property, both real and personal, I wish to divide equally among my four daughters, Fannie Noyes Gibb, Mary Noyes McKee, Helen Miller Noyes and Julia Tate Noyes, —except to leave the share of Mary Noyes McKee in trust—the trustees being her three sisters, Fannie Noyes Gibb, Helen Miller Noyes and Julia Tate Noyes, unless she may be single at the time the estate is settled, in which case she shall receive her share unconditionally, just as do her sisters. If the trust fund is established at the time of settling the estate, it shall be discontinued and her share turned over to her, in case she shall afterward become single. In case of her death before such event, the trust fund shall be continued, with the same trustee in favor of her two children—Margaret Harper McKee and William Noyes McKee—until the death of their father, and then

turned over to them in equal share if they shall, at that time, have reached the age of twenty-five years. In the event

Page 2

of the death of one of the two said children the entire share of their mother shall go to the one remaining—under the same conditions of trust. And in the event of the death of both of said children prior to the death of their father or to the time that they (their father then being dead) have reached the age of twenty-five years or that the survivor of them has reached that age, then this fund shall revert, in equal shares, to any of my daughters who may be still living.

In case of the death of any of my daughters, except Mary Noyes McKee, before the estate is divided, I wish the entire estate to be divided equally among those who survive.

The real estate, consisting of about 160 acres owned by me, being the N. W. Quart. of sec. 11, and 80 acres the W. half of the N. E. Quarter of sec. 29, both in twp. 5, north of the base line range 6 West of the fourth prin. merd. in the County of Hancock, State of Illinois, being all the real estate which I now own (excepting my home property in the City of Carthage in said Hancock County) may be sold and the proceeds equally divided (after paying the expense of the upkeep) until such time as all may decide it will be best to sell.

A price, to which all my daughters shall agree, may be put on our home in Carthage, in said county (Lot 5 block 20) and if Helen Miller Noyes and Julia Tate Noyes wish to purchase same, they shall pay to Fannie Noyes Gibb and Mary Noyes McKee the amount of their shares in said home

property, the amount of the share of Mary Noyes McKee remaining in trust as heretofore stated.

All property of every nature and description which hereunder shall go to my said daughter Mary Noyes McKee shall, if her present husband is still living go to said trust fund for her until the death of her said husband, that is to say her present husband now living, being Ralph Harper McKee, or until she ceases to be his wife by a divorce granted either of them.

I appoint Fannie Noyes Gibb and Helen Miller Noyes and Julia Tate Noyes executors of this will without bond.

Signed and sealed by me this 14th day of February A. D. 1925.

LAURA MILLER NOYES (SEAL)

The above and foregoing instrument is now here signed, sealed, published and declared by the above named testatrix Laura Miller Noyes as and for her last will and testament, in the presence of us the undersigned and each of us and we the undersigned, each of us, at the request of said Laura Miller Noyes and in her presence and in the presence of each other, sign our names hereto as attesting witnesses of said foregoing will and testament, and we and each of us further certify that in our opinion, at the time of the execution of said last will and testament said Laura Miller Noyes was of sound and disposing mind and memory.

Dated this 14th day of February A. D. 1925.

DAVID E. MACK
EDWARD G. MACK

PETITION FOR PROBATE OF WILL AND LETTERS TESTAMENTARY:

IN THE COUNTY COURT OF HANCOCK COUNTY.

In *Probate,* March Term, A. D. 1928.

State of Illinois, }
County of Hancock, } ss.:

In the Matter of the Last Will and Testament of Laura Miller Noyes, Deceased.

To the Hon. Warren H. Orr, Judge of the County Court of Hancok County, Illinois:

The petition of the undersigned Fannie Noyes Gibb, Helen Miller Noyes and Julia Tate Noyes represents that Laura Miller Noyes who was at the time of her death a resident of the County of Hancock, State of Illinois, and departed this life at her home in Carthage in Hancock County, State of Illinois, on or about the 8th day of January, A. D. 1928, leaving a Last Will and Testament, duly signed, published and attested, as believed by your petitioner, and which by is herewith presented to your Honor for Probate. That said Will is subscribed by David E. Mack and Edward C. Mack as witnesses to the execution thereof.

The said Testatrix in her said Last Will nominated and appointed Fannie Noyes Gibb, Helen Miller Noyes and Julia Tate Noyes, your petitioners Executors thereof, and that your petitioners are willing and ready to accept and undertake the office and trust confided to them.

And you petitioners further show that the said deceased died seized and possessed of Real Estate valued at or about $29,000.00; and of Personal Property estimated to be worth about $4,500.00.

The said deceased left surviving her the following named persons as her only heirs at law, legatees

and devisees; and their respective places of residence, so far as known are as follows:

| *Names* | *Relationship* | *Residence* |
|---|---|---|
| Haidee Noyes Berry | daughter by adoption of the late husband of said deceased, but not a daughter by adoption of said deceased. | Walkerton, Indiana |
| Fannie Noyes Gibb | daughter | Carthage, Illinois |
| Mary Noyes McKee | daughter | 2727 Spuyten Duyvil Parkway, Spuyten Duyvil, New York, N. Y. |
| Helen Miller Noyes | daughter | Carthage, Illinois |
| Julia Tate Noyes | daughter | Carthage, Illinois |
| Margaret Harper McKee | grand-daughter | 2727 Spuyten Duyvil Parkway, Spuyten Duyvil, New York, N. Y. |
| William Noyes McKee | grand-son | 2727 Spuyten Duyvil Parkway, Spuyten Duyvil, New York, N. Y. |

Your petitioner further represents that the following of the above named persons are minors (or under disability), to wit: William Noyes McKee who is a minor.

WHEREFORE, your petitioners pray that said will may be admitted to probate, and Letters Testamentary thereon issued to Fannie Noyes Gibb, Helen Miller Noyes and Julia Tate Noyes, post-office address at Carthage, Illinois, after proper hearing proof and qualification; and that the hearing on the probate of said will may be set for the

5th day of March, A. D. 1928, at 10 o'clock A. M., or as soon thereafter as the matter can be heard, and that all other orders necessary may be made.

Your petitioners further represent to your Honor that Wm. M. Gordon, Jr., Arthur Baird and James D. Baird are persons of discretion, not related to the deceased nor interested in the administration of her estate, and they respectfully recommend their appointment by the Court of Appraisers.

Dated, January 14, 1928.

FANNIE NOYES GIBB,
HELEN MILLER NOYES,
JULIA TATE NOYES.

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State of Illinois, }
Hancock County, } ss.:

Fannie Noyes Gibb, Helen Miller Noyes and Julia Tate Noyes, being duly sworn, depose and say that the facts averred in the above peition are true, according to the best of her knowledge, information and belief.

FANNIE NOYES GIBB,
HELEN MILLER NOYES,
JULIA TATE NOYES.

Subscribed and sworn to before me, this 16th day of January, A. D. 1928.

VIOLET E. COCHRAN,
(Seal) Notary Public.

## Answering Affidavits on Application for Alimony Pendente Lite.

(Filed June 20, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,

*and*

MARY N. McKEE,
Defendant.

State of New Jersey, }
County of Hudson, } ss.:

Ralph H. McKee, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the petitioner in this cause. I have read the petition of the defendant Mary N. McKee and the affidavits thereto annexed.

2. I deny that the petition in this cause was recently filed as alleged in paragraph 1 of the petition herein. The fact is that it was filed on November 12, 1927, and although the defendant was personally informed thereof on or about November 23, 1927, she made no effort to enter an appearance but undertook to harass me and to delay the prosecution of this cause by instituting a suit in the New York Supreme Court and when the court decided in my favor she took an appeal to the Appellate Division of the New York Supreme Court. That Court, five judges sitting, unanimously affirmed the judgment of the court below. Thereupon

I sought to learn from the defendant whether she intended to contest this suit. She refused to say whether she would or not, whereupon I instructed my solicitor to proceed before the Special Master to whom the cause had been referred. After the hearing the Master reported recommending a decree. Just before the Master filed his report, the defendant filed a petition for leave to answer. As I have heretofore pointed out, the obstructive tactics adopted by the defendant have greatly delayed this cause and have subjected me to great expense.

3. The allegations of paragraphs 3 and 5 of her petition with respect to the cause of desertion are fully met by the proofs taken before the Master herein and the affidavits filed in this cause verified May 26, 1928 in opposition to her application for leave to answer.

4. Paragraph 4 of the defendant's petition is denied.

5. Paragraph 6 of the defendant's petition is denied. The facts with respect to my residence are fully set forth in the testimony taken before the Special Master herein as well as in the affidavits filed on my behalf in opposition to her application for leave to answer, to which I beg leave to refer.

6. It is true that in October, 1925 the defendant instituted a suit against me for a separation alleging cruel and inhuman treatment and that I promptly filed an answer. She urged in that suit the same infamous charges which she now makes against me, and sought to obtain alimony during the pendency of the suit, but her application was denied. When the case was reached for trial I appeared in court with my counsel prepared to

meet her charges. I deny that I pleaded with defendant not to proceed with the trial of the cause upon the ground that the publicity of such trial would interfere seriously with my business and reputation and that at my urgent solicitation a separation agreement was drawn. I never entered into any separation agreement with the defendant. The action was discontinued by the defendant because she knew that the charges made against me were without the slightest foundation in fact. The facts surrounding the discontinuance of her suit are fully set forth in paragraphs 37 and 38 of my affidavit verified May 26, 1928 and filed in opposition to her petition for leave to answer.

7. I have paid the defendant the sum of $200.00 per month up to and including March, 1928, and since that time the sum of $100.00 a month, all in accordance with the "united family" agreement, copy of which is annexed to the defendant petition marked "Exhibit A."

8. I deny paragraph 9 of her petition. She does not desire in good faith to contest this cause, but seeks merely to delay and embarrass me in its prosecution.

9. It is untrue that the defendant is destitute of means to support herself. She is amply able to support herself both physically and financially, and I am now contributing $100.00 a month to her in accordance with the "united family" agreement above referred to. The two children of our marriage are now and have always been well supported by me.

10. The allegations of paragraphs 11, 12 and 13 are either untrue or misleading. The true situation

with respect to my income is hereinafter set forth at length.

11. Our daughter Margaret is 20 years of age and not 19 as stated in the petition and affidavit of the defendant.

12. From the date of my marriage to defendant on June 26, 1902, down to the date of her abandonment of me, I have never given her any cause whatever for leaving my home.

13. Since she abandoned me I have supported, maintained and educated our children, Margaret Harper McKee and William Noyes McKee, to the best of my ability, and I have continuously contributed to the support of defendant and am still contributing more than I can afford, considering the amount of my property and income, as I shall hereinafter set forth.

14. My income during the years 1921 to 1927, both inclusive, was as follows, and was so reported by me in my income tax returns:

| | |
|---|---|
| 1921 | $ 6,517.90 |
| 1922 | $ 9,857.13 |
| 1923 | $ 7,300.71 |
| 1924 | $11,276.35 |
| 1925 | $12,745.25 |
| 1926 | $ 9,078.18 |
| 1927 | $ 9,571.22 |

This is an average of about $9,478.11 and includes all the moneys that I have received from my profession as a teacher, from my work as a consulting engineer and from my investments and from all other sources during said years. I have

no other income than the said average amount from any source whatever.

15. Out of this income I have paid for the support and education of our daughter, Margaret H. McKee, during the year

| | |
|---|---|
| 1925 | $3,240.23 |
| 1926 | $2,740.88 |
| 1927 | $2,899.54 |

This makes an average of $2,963.55. The year 1928 will be at least as much as the average of the previous years. Margaret H. McKee has been a student in Bryn Mawr College at Bryn Mawr, Pennsylvania, and graduated from this college earlier this month. The said average amount of $2,963.55 is the average amount which I have expended during the years 1925, 1926 and 1927 for her tuition, board, clothing, summer vacations, allowance, dental bills, medical bills and other necessary expenses.

16. Margaret H. McKee is twenty years old not nineteen as given in defendant's affidavit. She is entering the College of Physicians and Surgeons and has a period of training ahead of at least four years, during which she will continue to be of great expense to me. It is to be expected that her expenses during this period will equal or exceed those which she has had as a college student at Bryn Mawr College, to wit, a yearly average of $2,963.55.

Out of my said income I have spent for the support and education of our son, William N. McKee, during the year

| | |
|---|---|
| 1925 | $3,266.49 |
| 1926 | $2,855.80 |
| 1927 | $3,073.49 |

The amount which I have paid or shall be required to pay for the year 1928 will be at least as much as the average which I have paid for the three preceding years, that is, $3,065.26 per year. It will probably be somewhat more inasmuch as William N. McKee will be a senior in school the coming year. Said William N. McKee is a student at the Taft School at Watertown, Connecticut, and the said amount of $3,065.26 is the average actual amount which I have yearly expended during the years 1925, 1926 and 1937 for his tuition, board, clothing, summer vacations, allowance, dental bills, medical bills and other necessary expenses. Following his completion of his preparatory course a year hence he will then enter college for a college course of four years, and the anticipated expenses yearly for this college course will probably not be less than the average of his expenses has been for the three years just past, that is, $3,065.26 yearly.

17. It may seem as if I have expended too large a proportion of my income upon my children, but I have maintained my son and daughter at these high grade and expensive institutions, viz., Bryn Mawr and Taft School, for the reason that I desire them to obtain the best education that is possible, and to have a start in life equal in educational advantages to the start which I had at their age, and I am making and am willing to continue to make a great personal sacrifice with that end in view. Furthermore, it has been defendant's wish that the children be kept in these particular schools even at a sacrifice by her as well as by myself. This is confirmed by the memorandum of agreement of January 24, 1927, Item 5 of which states: "That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft) or in schools of equal grade, at the expense

of the first party under the same general conditions as they are at present." This condition was inserted at the suggestion of the defendant, which suggestion she made to Dean Pegram and to me personally in January, 1927, when she was seeking an excuse so that she might discontinue the New York case.

18. In addition to these amounts expended for the support and education of our children, I have contributed to the support of my wife since her abandonment of me. This was an average of about $100.00 a month for 1925 and 1926, and for the year 1927 $2,532.14, and for $1928 $200.00 a month until about April first and $100.00 a month since then.

19. The allegation in Mrs. McKee's affidavit that I have a total income of approximately $30,000 annually is without any foundation. I have stated above my entire income during each of the years 1921 to 1927 and my income for this year, 1928, will not be greater than the average income ($9,478.11) of these years. Indeed, owing to the time which I have had to give to the litigation with the defendant in 1928, a total of seven hearings in New York and in New Jersey, I have not been able to give as much time to my business as it has needed, and in consequence my income for 1928 will probably suffer therefrom.

20. My salary as a professor at Columbia University is $6,000 out of which there is deducted 5%, or $300.00, annually as retirement and disability insurance, so that I actually receive net $5,700. In connection with my professional work as professor at Columbia University I have expenses to incur which make the net amount which

I receive as salary from that University considerably less than the amount just set forth ($5,700).

21. While it is true that I receive from the Tennessee Copper Company an annual retainer of $3,000 a year, I am required to employ a laboratory assistant for this work and to pay laboratory expenses amounting to a total of about $2,000 a year, leaving me a net income from this source of $1,000 a year.

22. While it is true that I have received from the Oxford Paper Company for the past four years each about $4,000, again I had to employ an assistant and pay laboratory expenses in connection with the work of said company, and pay for both the sum of $2,200, so that I have received a net income from the Oxford Paper Company of about $1,800. My retainer by the Oxford Paper Company is uncertain and of a temporary character.

23. With reference to the numerous individuals and companies referred to for whom it is said I have been doing consulting work, with the exception of the Oxford Paper Company and the Tennessee Copper Company, the amount received from these has been small, and indeed from most of them I have received nothing at all. Some of them I have never heard of before. I beg to state that everything I have received from these firms, including the Oxford Paper Company and the Tennessee Copper Company, is included in the computation of my net income as set forth on page 2 of this affidavit and goes to make the average income of $9,478.11 which I have received during the past seven years. From some of these firms I have received no retainers in seven years; from others very small amounts in said period; and all that

I have ever received from each of them is included in the computation from which my said income is made up, and the total received from all combined during the period of seven years is only approximately $2,000 if we exclude the Tennessee Copper Company and the Oxford Paper Company.

24. My net worth at the present time over and above all my indebtedness is about $20,000, some of which I inherited from my father's estate and the balance saved out of my earnings, and this is all that I have to protect me against the vicissitudes of age. I have no endowment policies or other sources from which I can obtain revenue. I am at present just fifty-four years old and have not more than about ten years more of active career as a teacher at Columbia University or as a consulting chemical engineer.

25. Mrs. McKee, on the other hand, as has been shown in my previous affidavit, has possessions at least equal to my assets. I accept the correction made in her affidavit that the lots which she owns are No. 13 and No. 14 of Military Park Addition to Oklahoma City instead of the lots in Bancroft Addition mentioned by me. She formerly held a mortgage on Lots 25 and 26 in Block 3 of Bancroft Addition to Oklahoma City, and this led me to confusion between the two. The attached affidavit of U. M. Baughman, verified the 9th day of June, 1928, makes an offer of $750.00 for these lots, and it is my belief that these lots are even far more valuable than this offer of Mr. Baughman's.

26. In my previous affidavit I have shown that the defendant is one of the four heirs of her mother, Laura M. Noyes, and has property worth approximately $25,000.

27. I mention these facts to the Court to show that the defendant has adequate means to reimburse me for the expenses to which I have been put due to her vexatious litigation in New York and her delay in appearing in the present case, and further that she has adequate means to pay her counsel for any services which they may render for her in this action.

28. Considering the amount of my resources and my income it will be necessary, if any greater allowance is made to my wife than she is now receiving and has been content to receive for the past nearly three and one-half years, to withdraw my said daughter or my said son, or both of them, from the high grade schools which they are now attending and place them in such schools of lower grade which would be within my slender means.

29. The statements of the defendant in her affidavit that I was always a very difficult person to live with, was always overbearing, imperious, quick in temper, ungenerous and inconsiderate in thought and act, are and each of them is absolutely false. I have never been a person of any such qualities and the fact that she lived with me for a period from the time of our marriage in 1902 to the date of her desertion of me in 1925, is a strong indication of the falsity of her charges.

30. The allegation that after 1918, or at any other time, I ceased to treat her as if she were a companion and wife, and pointedly ignored her in the presence of others, habitually treated her with brutal contempt, abused her, or resorted to physical violence or sought to compel her to live on a basis that was degrading or making out of marriage a course and mercenary thing are and each of

them is absolutely and unqualifiedly false. I have never treated defendant other than kindly and as a companion and wife should be treated, have never ignored her in the presence of others, treated her with contempt or abused her. I have never resorted to physical violence with her, or sought to compel her to live on any such basis as she avers in said affidavit.

31. Her allegations that I often or ever stated that a wife is a husband's inferior and that she was intended to serve his caprice, and that she, the defendant, was my inferior, and that she must cheerfully acquiesce in every kind of insult and assault, are and each of them is absolutely false and without the slightest foundation in fact. I have never made any such assertion in kind or substance, nor did I ever state, as defendant avers, that if she refused to recognize my demands I would have recourse to physical violence.

32. I deny that my attitude towards defendant when alone with her or in the presence of the children or of servants, was constantly and continuously inconsiderate, but on the contrary I have always been considerate of defendant when alone with her or in the presence of the children or of the servants.

33. It is also false that I ignored defendant whenever I could, or became irritated upon any expression by her of an opinion or judgment in any matter. Instead of ignoring her, I paid her every attention which a husband should pay to his wife on all occasions and I call to the Court's attention the fact that in the four days which preceded her unjustifiable desertion of me, we attended together a theatrical performance of her own selection, and

I visited Tiffany's with her upon the invitation of the Vice President, in order that we might see the display of gems there, invited her to accompany me twice in walks and invited her to attend a tea held at the home of one of the professors at Columbia University.

34. The allegation in her affidavit that she could take no part in the most general conversation and that I bade her not to start her tongue running, is false, as also is the statement that such prohibition on my part was a matter of frequent occurrence within the last two or three years of our married life. I never bade her not to start her tongue running, or used similar expressions.

35. I deny that either late in 1923-1924, or at any other time, I ever raised my arm as though to strike defendant, saying "shut up, no one asked you to speak."

36. Her statement that I told the children that they need not do what defendant told them, and that if they were going to do it any way, they might go ahead, but otherwise they should pay no attention to what she said to them, is absolutely false. I never told the children anything of the kind, but on the contrary always instructed them to mind their mother, and to do what she told them. It is also false that I ever stated to defendant that in New York a woman could have nothing to say about her children, where they should live or how they should live or about anything else or that a man did just as he pleased.

37. I deny that in the summer of 1922 I kept continually repeating to defendant that a married woman had no right to be sick, and that it was her

business to work, or that I would tell her that if she was not able to do the work, she should get out and give me a chance to get a younger woman who could. I never made any such suggestion then or at any other time.

38. The allegation that I ever grasped the foot of the bed in which she lay, shook it, and asked her why she didn't get up and get breakfast for me, are without the slightest foundation in fact. I never did any such thing and the story is wholly false.

39. So far as the allegations are concerned that I would not inform defendant that I intended to be out for dinner until dinner time, I beg to state that with the possible exception of two or three times that summer, I always telephoned her when I did not expect to be home, and on the occasion of these two or three times, I 'phoned her just as soon as I learned that it was impossible for me to be home for dinner. I never stated, however, as alleged in said affidavit, that it was defendant's business to prepare dinner for me whether I came home to eat it or not.

40. The allegation that in December 1919, while we were living in Spuyten Duyvil after a fire in the laundry destroyed practically all the table linen I refused to have the insurance money used to replace the linen, stating that we did not need linen, as I had my clubs in which to entertain my friends is wholly false. I recall that after the fire in question which destroyed about one-third of the table linen, the defendant suggested to me that as linen was high at the time, and we had sufficient to get along with, she would not purchase any, or would postpone the purchase until the cost became

less. I never stated in words or substance to defendant that we did not need linen for the reason that I had my clubs in which to entertain my friends, nor did I state to her at any time in words or substance as stated in said affidavit, that it did not matter to me where we lived or how we lived since I had my clubs. I never lived at any clubs to which I belonged and at the time I only belonged to the Chemists Club and the Faculty Club, both of which are very inexpensive, and I lunched at the Faculty Club for the reason that it was inexpensive, and secondly, convenient to the University and I could attend faculty committee meetings there during the luncheon hour. The dues in the Faculty Club were at that time only $10 a year.

41. I deny that any suggestion concerning modern equipment for the house or kitchen was met by me with the objection that these were schemes for women to get out of work, and that I would have none of them around. On the contrary, the fact is, that about this time I went with the defendant to purchase a modern equipment for our house, and I never refused to purchase any modern equipment which she suggested at any time, and often urged her at different times to buy labor saving devices for the house.

42. It is untrue that on one occasion defendant told me that it was necessary for her to have a winter coat or she could not go out, and that I gave her $15 for one, and told her that she would have to do with that for we really had no money. I never refused to give her sufficient means to purchase a winter coat, or any other clothing that she required at any time during our married life. At the time which she fixed for this incident, viz.: the time when I made a contribution to Wooster Col-

lege, she had a right to draw upon my bank account and there was sufficient balance there at any time for her to have purchased clothing for her needs. So far as concerns the gift to Wooster College, my Alma Mater, I did make a contribution to an endowment fund then being collected for the College. The amount of my contribution was $500. This contribution was with the approval of defendant. A short while before that at the suggestion of defendant, I had made a contribution of $500 to a library endowment fund then being collected for her Alma Mater, viz.: Carthage College. Both contributions were made with the knowledge and approval of defendant, and are the only contributions which I made for educational purposes from the time of our marriage in 1902 to that date.

43. The allegation that I accused defendant at one time of tearing up curtains in our house in order to get new ones, is without any foundation in fact, as also is the statement that I made a gift of $400 to my sister to assist in remodeling her house. I never made any contribution to my sister of $400 or any other amount to assist in remodeling her house, or for any other purpose.

44. The statement that I often left defendant and our children without means to get along, and compelled her to undergo the humiliating experience of borrowing from her relatives and near friends to pay for food and clothing for the children and herself, are and each of them is absolutely and maliciously false, and without the slightest foundation for their support. I never left her and our children without means to keep them going; I never compelled defendant to undergo the experience of borrowing from her relatives and near friends to pay for food and clothing for the

children and herself. I never knew of her borrowing from anybody except on one occasion when she borrowed $75 from her mother. At the time in question she had two $100 bills, besides other moneys which I had left with her for the purpose of meeting her expenses. I believe that she made that loan from her mother for the express purpose of embarrassing me, and not at all because she needed it. This loan was made at a time when I was away. As soon as I learned subsequently that she had borrowed this money, which she did not need, I repaid it immediately to her mother.

45. I deny that I ever at any time made up my mind to force defendant to leave me, or to rid myself of her or that I decided to make things so unpleasant that she would be compelled to leave me, or that she was compelled to leave me. She left me of her own accord and without any justification, and obstinately refused to return, although frequently requested by me to do so.

46. That allegations in said affidavit that I said after defendant and I had come to New York, or at any other time that I had learned that here in New York when a man began to make money it was customary for the woman he had been supporting to get out and give him a chance to get a younger woman, are and each of them is absolutely false. I never learned any such thing and I never stated to defendant that I had learned any such thing, and I know of no such custom in New York or any other place.

47. The allegations that I said to defendant that a man did not care to take a woman as old and homely as herself about with him, and that a man liked to be seen with a young woman, and that I

told her that my friends here would not wish to associate with her, and that when she spoke of going anywhere or accepting an invitation, I would laugh and say, "Do you think these people would care to associate with you," are and each of them is absolutely false and without any foundation whatever. The fact is, as I have heretofore stated that within four days of the time that she abandoned me, I extended five invitations to defendant, one to go to Tiffany's, one to attend a theatrical performance, one to a tea at the home of one of the Columbia professors, and twice to accompany me on walks. The practice of these four days with reference to extending invitations to her was the practice that I invariably resorted to during all the period of our married life.

48. That allegations that in the Spring of 1920 or 1921 or any other time while defendant was working on a ladder at Spuyten Duyvil I came to her, jerked her from the ladder and struck her on either side of the face, leaving marks of my hands, shook her up the stairs and said now when I tell you to do a thing do it, are and each of them is absolutely false. No such incident ever took place at Spuyten Duyvil or any other place, and I never struck her then or at any other time.

49. I deny that in September, 1920, I struck her in the face during an alleged argument over the packing of some flower pots. I never struck her at that time or at any other time.

50. It is untrue that on Christmas Day (1920-1921, the year of which is not given), while defendant was standing in the doorway between the dining room and living room of our apartment, discussing with the children the decorations for the

Christmas tree, and nothing being said by any one, I came in and without any provocation scratched the entire side of her face from her forehead to her chin, so that her face became red and swollen. I never scratched her at any time.

51. The allegation that in September, 1920, upon the occasion of our moving from Spuyten Duyvil to West 180th Street, I slapped defendant's face, is absolutely false. I never slapped her face at that time or at any other time.

52. I deny that in July, 1922, after announcing that it was bedtime, and receiving from the defendant an answer that it would become time before she could finish her work, I knocked her down and as soon as she was on her feet again, slapped her and continued slapping her as she backed away until I had her in a corner where I stood in front of her slapping her on one side of the face and then on the other. No such incident ever took place. I never slapped her in the face in my life, and I never knocked her down at any time or assaulted her in any way whatever.

53. It is wholly untrue that in January, 1924, I picked defendant up and threw her across the room so that her spine struck against the raised door sill, and that she was seriously shaken and that Billy and I had to lift her on to a bed. No such incident ever occurred.

54. The allegations contained on pages 8 and 9 of defendant's affidavit with respect to our sexual relations are and each of them is outrageously false. Because of the extraordinary character of these allegations, I do not think it proper to discuss them in detail. I do state, however, to the

Court, that there is absolutely no foundation for any of them.

55. I do not know whether the statement contained in her affidavit (on page 11 thereof) that she left me relying upon the counsel's advice on January 13th, 1925 is true, but I do know there was no justification of her abandonment of me on that date.

56. The statements of the defendant with respect to her moneys and income are misleading. She admits that she maintains a bank account in the West 201st Street Branch of the Corn Exchange Bank, but says that on May 23rd, 1928, her balance was $281.90. I have in my possession three checks, each for $100.00, given to her over a period of three months, to wit, March 8th, April 13th, and May 6th, which indicate that they were deposited by her in the said bank on May 23rd, 1928. The said bank requires a minimum deposit of at least $200.00.

57. The Carthage residence of the late Laura M. Noyes, the mother of defendant, consists of approximately a dozen rooms and is equipped with furnace, hardwood floors, electric lights, hot and cold water, bath and other modern improvements, on a corner lot of about an acre in area. Obviously the figure put upon it of $5,000 is wholly inadequate.

58. Annexed hereto is an affidavit of U. M. Baughman of Oklahoma City, stating that in his opinion lots 17 and 18 in block 37, corner of 32nd Street and Indiana Avenue, Oklahoma City, are worth $750 in cash. Through inadvertence, in my previous affidavit, I erroneously stated the lots to

be lots 25 and 26, block 3 of Bancroft Addition, Oklahoma City. The said Baughman offers to pay said sum for the lots. I believe that the value fixed by him is very conservative and that they are worth considerably more as I have previously pointed out.

59. In the affidavit of Helen M. Noyes, the sister of the defendant, she states that she frequently advanced money to the defendant to help her to pay household bills for running my house because of my failure to properly provide for my wife. This I believe to be untrue. I always provided my wife with sufficient moneys for the purpose of running my household and while I do not know whether or not defendant borrowed money from her sister, I do aver that it was entirely unnecessary for I always adequately provided for her support and for the maintenance of our household. I do believe that the money which she claims to have advanced has been advanced to the defendant on her share of the money coming to her from her mother. She does not say how much she advanced but I am informed and believe that it is considerable. The said Helen M. Noyes held a position which I secured for her many years ago in a hospital in New York from which she received a salary of $300 per month. It is significant that after her mother died she gave up this lucrative position and repaired to Carthage, Illinois.

RALPH H. McKEE.

Sworn and subscribed to before me this
16th day of June, 1928.

IRENE WALSH,
Notary Public of
New Jersey.

State of Oklahoma, }
Oklahoma County, } ss.:

AFFIDAVIT VERIFYING APPRAISEMENT OF REAL ESTATE.

I, the undersigned, U. M. Baughman, being first duly sworn, upon oath say:

I am a resident of Oklahoma City, Oklahoma and have been for more than twenty years last past, during the whole of which time I have been engaged in the buying and selling and making loans upon real estate in and about Oklahoma City, and I am at this time President of the First Mortgage Loan Company, 315 North Harvey Street, Oklahoma City.

I am familiar with

> Lots 17 and 18, Block 37 in Military Park Addition to Oklahoma City, Oklahoma,

record title to which rests in Mary Noyes McKee. At one time I owned one pair of lots adjoining them, which said lots I sold at and for the price of $700.00 about six months ago.

Said lots 17 and 18 in Block 37 are nicely situated at the corner of 32nd Street and Indiana Avenue in the northwestern residence district of Oklahoma City. They are served with sewer and city water, also electric service, gas and telephone are available. These lots are, in my opinion, well worth the sum of $750.00 reckoned at a fair cash price. In fact I would be willing to pay that sum for them at this time. I have heretofore sought from the owner with the idea of purchasing the same for myself or selling them as appropriate to other persons but have not had any response to my

inquiries addressed to the owner although my letters have not been returned.

WITNESS my hand this 6th day of June, 1928.

U. M. BAUGHMAN.

Subscribed and sworn to before me,
the undersigned Notary Public, on the
6th day of June, 1928.

HAZEL PEDERSON,
Notary Public.
My commission expires Dec. 17, 1929.
(Seal)

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## Special Master's Report.

(Filed May 31st, 1928.)

IN CHANCERY OF NEW JERSEY.

66-162.

Between

RALPH H. MCKEE,
Petitioner,
*and*
MARY N. MCKEE,
Defendant.

On Petition for Divorce.

In pursuance of an order of this Court, made in the above entitled cause, bearing date the seventeenth day of March, 1928, whereby it was referred to me, the subscriber, one of the Special Masters of

this Court, to ascertain and report as to the truth of the allegations of the petition, and my opinion thereon; and that I do return, together with my report, and as part thereof, such depositions and other evidence, as might be produced before me, in pursuance of said order:

I do respectfully report that I have been attended by Thomas H. McNulty, Esquire, representing John Milton, Esquire, Solicitor of the petitioner, and have in his presence taken the depositions of the witnesses produced before me, and have examined the matters referred to me.

And I do find and report that it is proved to my satisfaction that the petitioner, Ralph H. McKee, and the defendant, Mary N. McKee, whose maiden name was Mary Coyle Noyes, were lawfully married on the twenty-sixth day of June, 1902, by Reverend Hyde, a Minister of the Gospel, at Carthage, in the State of Illinois, as in the petition alleged.

And I do find and report that it is proved to my satisfaction that the petitioner and the defendant lived together as husband and wife from the time of their marriage until the thirteenth day of January, 1925, at which time, the defendant deserted the petitioner, and in my opinion the desertion since the last mentioned date has been wilful, continued and obstinate.

And I do find and report that the facts and circumstances under which the desertion took place are as follows:

Petitioner and defendant, after their marriage, lived for a number of years at Lake Forest, Illinois. Petitioner then accepted a position at the University of Maine, and moved with his family to Orion, Maine. They remained here until the middle of March, 1916, when petitioner moved to Ridge-

field Park, N. J., and Mrs. McKee joined him here in July, 1916. They lived here until July, 1918, and petitioner having been appointed to the instruction staff at Columbia University during this time, he moved with his family to New York City, and in 1924, moved into one of the University buildings, which is reserved for faculty members, at No. 39 Claremont Avenue. Petitioner and defendant continued to live here until January 13th, 1925, when defendant deserted petitioner. Petitioner got up that morning, and saw that defendant was not in her room; he looked through the various rooms of the apartment and returning to the hall, found a letter addressed to himself, and on opening it, found it was from his wife, stating that she had gone away, and he could communicate with her through her attorneys. Petitioner has made various efforts to induce his wife to return to him, but defendant has refused to return, and has never lived with petitioner since January 13th, 1925.

The reason which caused or provoked the desertion was that defendant became tired of petitioner, and did not wish to live with him any longer.

And I find and report, respecting the residence of the petitioner, that it is proved to my satisfaction that petitioner was a bona fide resident of the State of New Jersey, when this cause of action arose, and has ever since and for more than two years next preceding the commencement of this action, continued to be such resident, as in the petition alleged.

And I find and report that there were two children born of the marriage aforesaid, to wit: Margaret Harper McKee, age nineteen, and William Noyes McKee, age eighteen, who are now in the custody of the petitioner.

And I do find and report that I have made inquiry of the petitioner, as to whether or not any

previous proceedings have been had between him and the defendant, respecting their said marriage or its dissolution, or the maintenance of defendant, and I find and report that defendant started a suit in the New York Supreme Court against petitioner, which petitioner defendant by affidavits and denials, and which was dismissed by mutual agreement on January 24th, 1927. Thereafter, in November, 1927, petitioner started his present action in New Jersey, and was served with an injunction from the New York Courts, regarding the New Jersey suit, which injunction was decided in favor of the petitioner. Defendant then appealed the case, and a stay was granted, but on May 4th, 1928, the Court of Appeals, confirmed the ruling of the lower court, and dismissed the appeal.

All of which will more fully appear by the testimony of the witnesses produced before me, and the exhibits offered in evidence and marked by me, and which are annexed to this my report, and returned herewith.

And I do find and report that it is proved to my satisfaction that ever since January 13th, 1925, and for more than two years prior to the filing of the petition in this cause, the defendant, has wilfully, continuedly, and obstinately deserted the petitioner.

And I do find and report that I am of the opinion that all the material facts alleged in the petition are true, and that a decree of divorce should be granted for the cause of desertion, pursuant to the prayer of the petition.

I do further recommend that Margaret Harper McKee and William Noyes McKee be committed to the care and custody of the petitioner.

J. STANLEY GRIFFIN,
Special Master.

## Depositions.

IN CHANCERY OF NEW JERSEY.

66-162.

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| Between<br>RALPH H. McKEE,<br>Petitioner,<br>*and*<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

Depositions taken in the above entitled cause, before me, J. Stanley Griffin, a Special Master in Chancery of New Jersey, this tenth day of May, 1928, at two o'clock in the afternoon, at my office, Room No. 806, No. 921 Bergen Avenue, Jersey City, Hudson County, New Jersey, in the presence of Thomas H. McNulty, Esquire, representing John Milton, Esquire, Solicitor of the Petitioner.

J. STANLEY GRIFFIN,
Special Master.

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State of New Jersey,
County of Hudson, } ss.:

I, Margaret McAghon, do solemnly swear that I will faithfully and truly take stenographically and reproduce in typewriting the testimony to be given in a certain cause now pending in the Court of Chancery of New Jersey, wherein Ralph H. McKee

is petitioner and Mary N. McKee is defendant, so help me God!

MARGARET McAGHON.

Sworn to and subscribed before
me this 10th day of May, 1928.

J. STANLEY GRIFFIN,
Master in Chancery
of New Jersey.

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CLARA BENNETT, being duly sworn, according to law, on her oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your full name? A. Clara E. Bennett.

Q. Where do you reside, Mrs. Bennett? A. No. 490 Broad Avenue, Leonia, New Jersey.

Q. Do you know the petitioner, Dr. McKee? A. I do.

Q. How long have you known him? A. Since about the first of February, 1925.

Q. Under what circumstances did you meet him? A. He came to my house to inquire for rooms, and also for table board; I had no rooms, and sent him down to Mrs. Wragge's for rooms.

Q. Where is Mrs. Wragge's located? A. Broad Avenue and Christie Heights Street, about a block west of me.

Q. Is Mrs. Wragge here today? A. She is.

Q. Can you point her out? A. Yes (indicating one of the witnesses present).

Q. After that, how often did you see Dr. McKee?

A. He came over to my house for breakfast and dinner.

Q. For how long? A. For, I should say about a year and a half, or a year and seven or eight months.

Q. Did he have breakfast and dinner at your house regularly? A. Well, fairly regularly; he was there the greatest part of every week; sometimes he went away on business trips, for a couple of days or something like that; and then he would tell me where he was going and when I could expect him back.

Q. Did you see any of Dr. McKee's family there? A. He had a son there at times, and a brother, a sister I believe, and an aunt or something like that.

Q. Did you ever see his wife, Mrs. McKee? A. No, I haven't.

Q. Would you know her by sight? A. No, I would not.

Q. You never met his wife? A. No.

Q. So far as you know, what was Dr. McKee's business? A. Well, I understood he was a consulting engineer, and he was a friend of other friends of ours there, in Leonia, and that was as far as I inquired in taking him for meals; he wasn't boarding with me.

Q. Did you know that he was a teacher? A. Yes.

Q. Did you have any other teachers there? A. I had some Leonia teachers there, yes; some from Leonia High School.

Q. During the time Dr. McKee was there? A. Yes, during the time he had his meals there; he didn't live in my house, you know.

Q. During the time the boy was there with you, did you ever have any conversation with the boy in which he referred to his home? A. No, I did not;

I had no conversation with him other than to greet him and know that I was introduced to him as his son.

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MRS. LOUISE WRAGGE, being duly sworn, according to law, on her oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your full name? A. Mrs. Louise Wragge.

Q. Where do you live, Mrs. Wragge? A. No. 210 Christie Heights Street, Leonia, N. J.

Q. How long have you known Dr. McKee? A. Since February, 1925.

Q. Under what circumstances did you meet him? A. He came to my house to inquire for a room and I had one that was suitable and he engaged the room and lived there.

Q. Can you tell us what kind of a room it was? A. Fifteen feet square; a large room, master bedroom of the house.

Q. How long did Mr. McKee remain there? A. Until 1926, sometime in the latter part of September.

Q. Was he there regularly? A. Well, quite regularly; he would go off on business trips, and he would say, "I am going away for a day or two or three days, and if any one calls, refer them to my office."

Q. Did he sleep there? A. Yes, oh, yes.

Q. Did he receive any telephone calls? A. Well, he had quite a few telephone calls, and mail, etc.

Q. Did you notice what sort of mail he got? A. Oh, all sorts of mail, periodicals and mail belonging to the chemical industry, I believe, and other mail.

Q. Did you see any of the other members of his family? A. I did; I met a brother; I met his sister, and I also met his son and an aunt at different times.

Q. Did you ever see Mrs. McKee there? A. I didn't.

Q. Do you know Mrs. McKee? A. I do not.

Q. What did Mr. McKee do during the evenings when he was home? A. Why, he was very quiet in his room; seemed to me to be marking papers or something of that sort; had his radio going and would retire very regularly at half-past nine.

Q. Was it your radio? A. No, Dr. McKee's radio, which he had installed himself.

Q. Did he have any guests at your home? A. Just his sister, brother, aunt and son.

Q. You are the owner of this house at No. 210 Christie Heights Street? A. I am.

Q. You said the boy, Dr. McKee's boy, stopped at your house? A. Yes.

Q. Did you have any conversation with the boy? A. No, not any more than when the doctor was there, and we talked about different schools and things like that.

Q. Was he in the Doctor's company while he was there? A. Oh, yes, always with his father; went to church with him and everything.

Q. Where did they go to church? A. Presbyterian Church, Leonia, N. J.

Q. Can you tell us what kind of a residential section this Leonia is? A. Very nice; very high class residential section.

Q. Quiet. A. Very quiet.

Q. How was the room furnished? A. Oh, a bed and a dresser, and different chairs, and a mirror, and different closets and things like that.

Q. Would that room accommodate a man and wife comfortably? A. It would, yes, it would.

Q. Do you have any University professors in Leonia? A. Oh, yes, quite a few. When Dr. McKee came, Dr. Freese had recommended him.

Q. Dr. Freese is whom? A. He has passed out; he is also a Columbia University man.

Q. Do you know Mrs. McKee? A. No.

Q. You wouldn't know her if you saw her? A. No.

Q. Have any women ever lived with the doctor while he was at your residence? A. Oh, no, I wouldn't allow anything of that sort.

Q. So far as you know, the Doctor never lived with his wife, while he was residing at Leonia, N. J.? A. Oh, no.

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JOHN WRAGGE, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. John Wragge.

Q. Where do you live? A. No. 210 Christie Heights Street, Leonia, N. J.

Q. You are a son of the witness who testified before you? A. Correct.

Q. What is your business? A. Heating supplies and garage.

Q. You own your own business? A. Yes.

Q. Where? A. No. 118-120 Central Avenue, Leonia.

Q. How long have you known Dr. McKee? A. Since February, 1925.

Q. How long have you lived at No. 210 Christie Heights Street? A. Approximately twenty-three years.

Q. Been there continuously? A. All the time.

Q. How often did you see Dr. McKee there? A. Practically all the time; that is, he slept there almost all the time, except for terms in the summer vacation when he was absent with his son, so far as we knew, and sometimes over week ends.

Q. How long did he continue to reside there? A. Until some time in the fall of 1926.

Q. Did you ever see any of Dr. McKee's family at your home? A. Yes—son, sister, aunt and brother.

Q. Did he ever have any guests there? A. Not that I know of.

Q. Were you home evenings? A. In every evening.

Q. When you were home, what was Dr. McKee doing? A. Usually in his room with closed doors, and I couldn't tell you what was going on there. He listened to the radio there, and he used to correct papers, and things like that.

Q. Could you listen in on the radio? A. Occasionally.

Q. When was the radio installed? A. Shortly after he was with us.

Q. Did you ever discuss it with him, the installation of it? A. Yes.

Q. Can you tell us what conversation there was about it? A. Well, I ruined it once, to tell the truth, and he had to fix it.

Q. What kind of an aerial did he have on the radio? A. Outside.

Q. Outdoor aerial? A. Yes.

Q. How was it constructed? A. Why, it ran from the garage to the house, to just outside the window and then it was brought in through the window to the room.

Q. How far a distance? A. Approximately 75 feet.

By the Master:

Q. How long did Mr. McKee live there? A. From February, 1925 until the Fall of 1926.

Q. That was in Leonia, N. J.? A. Yes.

Q. Did his wife ever visit him there? A. No, not to my knowledge.

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ARTHUR W. HIXSON, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. Professor, where do you live? A. Leonia, N. J.

Q. And how long have you lived there? A. About nine years.

Q. What is your profession? A. I am a teacher of chemical engineering at Columbia.

Q. Do you know the petitioner, Ralph H. McKee? A. I do.

Q. Is he associated with you there at Columbia? A. He is associated there as a fellow instructor, yes.

Q. And did Dr. McKee ever take up his residence in Leonia, N. J.? A. He moved over there, yes.

Q. When? A. In February, 1925.

Q. Did you see him there? A. I did.

Q. Did you commute with him back and forth? A. Occasionally we met back and forth on the train, yes.

Q. Was he in your company evenings? A. Once in a while he would call at my house, and I have been with him at meetings and occasionally in the town.

Q. Did you propose him for membership in any organization up there? A. I did.

Q. What was it? A. The Men's Neighborhood Association.

Q. And he became a member? A. He did.

Q. Did you ever attend Church with Dr. McKee? A. Yes, I have been there when he's been there.

Q. What church? A. Presbyterian Church.

Q. Are there very many college men or professors at Leonia? A. Oh, quite a number.

Q. About how many, if you know? A. Oh, from about twenty-five to fifty, I suppose.

Q. Professor, did you have any conversation with Dr. McKee as to where he should locate? A. Well, he told me he wanted a place to live, and I suggested some places.

Q. Did you suggest the place where he went to live? A. I don't know as I suggested that particular place, no.

Q. Did you suggest the name of Mrs. Bennett to him? A. I did.

Q. Did you ever discuss with Dr. McKee any proposed purchase or lease by the Doctor of the Buswell property in Leonia? A. I think we talked about it, yes.

Q. Can you recall approximately when that was? A. It was prior to Buswell's leaving; I don't know just when it was; it was around 1920 or 1921.

Q. Is that a residential property? A. Yes.

Q. Do you know Mrs. McKee, the wife of Dr. McKee? A. I have met her, yes.

Q. Would you know her, if you saw her again? A. I suppose I should.

Q. Did you ever see Mrs. McKee at Leonia since January, 1926? A. I don't think so.

ROBERT JOHNSTON, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Robert Johnston.

Q. Where do you live, Mr. Johnston? A. No. 246 Christie Heights Street, Leonia, N. J.

Q. Do you know Dr. McKee? A. Yes, I have known him since about March, 1925.

Q. Where did he live then, if you know? A. He was living at Mrs. Wragge's, and eating at the same place I was, Mrs. Bennett's.

Q. Both in Leonia? A. Yes.

Q. When did he leave there? A. Well, I drove him to Jersey City with his belongings sometime in September; I don't know just what time it was, in September, 1926.

Q. Do you know whereabouts in Jersey City it was? A. Well, I have forgotten the address; I have the address home, but I have forgotten it.

Q. You are not familiar with Jersey City? A. I am not.

Q. How long was he in Leonia? A. Well, we ate at the same table; that is, with my wife and boy and I, during 1925 and 1926 up to the time he moved.

Q. Leonia is rather a small place isn't it? A. Yes.

Q. What is your business, Mr. Johnston? A. Magazine illustrator, just at present.

Q. What was your business then? A. Then I was on the New York World; I wrote the Radio Experiment Column for a while.

Q. Did you advise him in regard to the installation of the set that he had, that he brought to Leonia? A. Well, we discussed the matter.

Q. What kind of a set did Dr. McKee have?

A. Well, I think it was a Neutrodyne set; I have forgotten the name of the concern which made it, some concern in New York, but the aerial was an outdoor aerial.

Q. Was that a temporary aerial? A. No, it's supposed to be a permanent aerial; it was put up with the idea of getting distance, and only a man who intended to stay would do that.

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LESLIE HAND, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Leslie Hand.

Q. Where do you live, Mr. Hand? A. No. 607 Bergen Avenue, Jersey City, N. J.

Q. How long have you lived there? A. I have lived there for eighteen months.

Q. Do you know Dr. McKee? A. Yes, I do.

Q. How long have you known him? A. Oh, I have known him for nearly eighteen months, all but two weeks, I imagine.

Q. What kind of a place is this No. 607 Bergen Avenue, Jersey City? A. Well, it's a private house; it's a very large house and very well kept on the inside.

Q. I show you some pictures and I ask you if you recognize it on that picture? A. Oh, yes (examining same).

Q. Will you point it out? A. Yes (indicating the second house from the left side of the picture); it is next to the Methodist Church.

Q. What part of this house are you located in? A. I am located right in there on the top floor on the right side when I face the house.

Q. Where is Dr. McKee located? A. He's right below me on the right side when I face the house.

Mr. McNulty: I offer this picture in evidence and ask that it be marked.

Marked Exhibit P-1.

Q. How often have you seen Dr. McKee there? A. Well, except for an occasional break that we had when he went away on business trips or away with his son and daughter, I saw him pretty near every night.

Q. Have you been in his company? A. Oh, yes.

Q. Did you ever meet any of the members of his family? A. Yes, I have met his son and daughter.

Q. Did you ever see Mrs. McKee there? A. No.

Q. Do you know Mrs. McKee? A. No, I don't.

Q. Have you ever seen any woman there with him? A. No, I did not.

Q. What kind of a room did Dr. McKee have there? A. Well, it is quite a large room; it has a bed and table and chairs and a dresser and he has a radio.

Q. A corner room is it? A. No, it's on the side of the house.

Q. What are the dimensions of it approximately? A. About fifteen by fifteen.

Q. When did Dr. McKee first come to live there? A. I came there the first week of October, and the Doctor came just two weeks after.

Q. What year? A. 1926.

Q. Then you have known the Doctor from the time he came to live at No. 607 Bergen Avenue? A. Oh, yes, that's the time he moved in there.

Q. That's from October, 1926? A. Yes.

Q. Continuously? A. Yes.

Q. And you never saw his wife around there? A. No, I didn't.

Q. And he never lived with any woman there? A. No, not to my knowledge.

Q. Have you been in the company of Dr. McKee's children? A. Yes, I have.

Q. What are their names? A. Margaret and William.

Q. Have they ever stopped at this address? A. Yes, they have.

Q. Did they ever have any guests there? A. Margaret had some guests there from her college, Bryn Mawr College.

Q. Did you meet them? A. I met them.

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CARL W. BECKER, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Carl W. Becker.

Q. Where do you reside? A. No. 607 Bergen Avenue, Jersey City, N. J.

Q. With whom do you live there? A. Mrs. McWinter.

Q. You room with this gentleman who preceded you on the stand? A. Yes, sir.

Q. How long have you known Dr. McKee? A. Since the latter part of October, 1926.

Q. How often did you see Dr. McKee during that period? A. He used to come home from work a little later than we did, and we didn't go out to supper until after he came home, and we saw him every night unless he was away on business trips.

Q. Did you ever meet any members of his family? A. Son and daughter.

Q. What are their names? A. William Noyes McKee and Margaret McKee.

Q. You have been in their company? A. Yes.

Q. Did they have any guests there? A. Margaret had a girl chum from Bryn Mawr College.

Q. Would you know the Doctor's wife if you saw her? A. No, I would not.

Q. Did he ever live with any woman, while he was there at No. 607 Bergen Avenue? A. No, sir.

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EUGENE A. MARKUSH, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Eugene A. Markush.

Q. Mr. Markush, where do you live? A. 122 Jewett Avenue, Jersey City, N. J.

Q. What is your business? A. Manufacturer of dyes; I am Vice President of the Pharma Chemical Corporation.

Q. Where do they have their laboratories? A. Bayonne.

Q. How long have you known Dr. McKee? A. A little over five years.

Q. And what have been your relations with him since you've known him? A. Well, beginning in a business way for about a year, and then along social lines.

Q. Did you ever visit Dr. McKee at home? A. Quite frequently, yes.

Q. Were you accompanied by anybody else when you went there? A. By my wife, yes, and sometimes, my children.

Q. Has he visited you? A. Yes.

Q. Where did you visit Dr. McKee? A. At his home, No. 607 Bergen Avenue, Jersey City, N. J.

Q. Can you tell us what kind of rooms he had

there? A. Why, he had a large room with an alcove; I think it had three windows, well furnished.

Q. Did you ever meet Mrs. McKee? A. I did not.

Q. You wouldn't know Mrs. McKee? A. No.

Q. Did you ever see any other woman in the company of Dr. McKee? A. No, except his daughter.

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RALPH H. McKEE, the petitioner, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Ralph H. McKee.

Q. Where do you live, Dr. McKee? A. No. 607 Bergen Avenue, Jersey City, N. J.

Q. Doctor, you are the petitioner in this cause? A. I am.

Q. And the defendant, Mary N. McKee is your wife? A. Yes.

Q. When were you married? A. June 26th, 1902.

Q. Where and by whom? A. By the Reverend S. H. Hyde at Carthage, Illinois, at the home of the bride.

Q. Who was present at that time? A. There were present, perhaps, one hundred guests, and of those, Mr. Charles F. Lambkin was best man.

Q. Is he here today? A. He is.

Mr. McNulty: I offer in evidence an exemplified copy of the marriage record, certifying that the petitioner, Ralph H. McKee was married to Miss Mary Coyle Noyes, on the 26th day of June, 1902 by Reverend S.

H. Hyde, a Minister of the Gospel, and ask that it be marked.

By the Master:

Q. Is that a copy of your marriage record? A. Yes, sir.

The Master: Marked Exhibit P-2.

By Mr. McNulty:

Q. Now, directly after your marriage, where did you go to live? A. I had been living at Lake Forest, Illinois, and continued for a number of years to live at Lake Forest, Illinois. I left there in the summer of 1909, and went to accept a position at the University of Maine, Orion, Maine.

Q. Did you live with Mrs. McKee at Lake Forest? A. I did.

Q. As man and wife? A. Yes, and we had one daughter born there.

Q. What was her name? A. Margaret.

Q. Alright? A. Then in the summer of 1909, we moved, Mrs. McKee and daughter and myself, to Orion, Maine, where the University of Maine was situated and continued to live there as man and wife, and daughter, and a son was born, during this time, this son being William.

Q. Are those the only two children you have? A. Yes.

Q. How long did you continue to live at Orion, Maine? A. Until about the middle of March, 1916, when I came to Ridgefield Park, N. J., and Mrs. McKee kept the children in Maine for a few months, because of the fear of infantile paralysis, which was then prevalent, and she joined me about July 1, 1916, at Ridgefield Park, N. J. We re-

sided there at No. 187 Bergen Avenue, Ridgefield Park, N. J., until about July 1st, 1918. The last year of this time I commuted to Columbia University, having been appointed as one of the instruction staff. In July, 1920, moved to No. 1 Johnson Avenue, Spuyten Duyvil, New York City, and continued to live there as man and wife and family until the middle of September, 1920. We then took an apartment at No. 854 West 180th Street, New York City, and continued to live there until about the last day or two of March of 1924, when we moved to one of the University owned buildings, which is reserved for faculty members, at No. 39 Claremont Avenue, New York City. This is about where No. 117th Street would be, if it was a street on the west side, but it isn't, and it's only a block from my work. Continued to live there with Mrs. McKee, until her desertion of me on January 13th, 1925.

Q. And how long after that? A. I continued to live there until February 27th of that same year on which day I moved to Leonia, New Jersey. I lived at Leonia, New Jersey, at No. 210 Christie Heights Street.

Q. At all these various places at which you resided, you lived with Mrs. McKee as man and wife? A. Yes, until January 13th, 1925.

Q. That was the date she left you? A. Yes.

Q. And then after that, where did you go to live? A. I continued to live at No. 39 Claremont Avenue from January 13th to February 27th, 1925, and then moved to Leonia, N. J., where I lived at No. 210 Christie Heights Street, until about September 15th or 20th, 1926. I then, due to some new business situations arising in connection with my work, for which Leonia was inconvenient and Jersey City was convenient, this being work at Arlington, New

Jersey, I moved to New Jersey, or rather to Jersey City, Mr. Robert Johnston taking my possessions and myself in his car to No. 23 Van Reipen Avenue, Jersey City, New Jersey, where I lived for some three or four weeks, at the rooming place of Mrs. Margaret O'Brien. I found this place was not satisfactory and looked around for other places to live, visiting quite a number of places. I found a satisfactory place at No. 607 Bergen Avenue, Jersey City, and moved to that place from Van Reipen Avenue about the middle of October, 1926 and have continued to live there ever since.

Q. I show you picture, which has been marked Exhibit P 1, and ask you if the arrow indicates where your room is? A. That indicated my sitting room; this sitting room has four windows and it has an alcove room off it, with a double bed in it, so that there are five windows which belong to my suite. This location I chose not only on account of the pleasantness of the room itself, but also on account of the good location, both for convenience, and the high-class of this location. There are only three other buildings on the block, the Methodist Church, this double house in which I live, Mr. George Hening's house, and Mr. S. W. Kagan's house, head of the Kagan Chain Stores.

Q. Now, Doctor, when you came to Leonia, how much time did you spend there during the time you resided in Leonia? A. I spent, with the exception of the week-ends in the summer time, which week-ends I normally spent at a country club, and with the exception of perhaps two trips or three of about two or three days, and one of about one week, on which I was away attending conventions, chemical conventions or other conventions, I spent all my time at No. 210 Christie Heights Street, Leonia, N. J.

Q. Did you attend Church in Leonia? A. I did.

Q. What Church? A. Attended quite regularly the First Presbyterian Church of Leonia, which is located about three blocks east of my residence there.

Q. Did you join any clubs of Leonia? A. I did; I joined the Men's Neighborhood Association, which is a club of Leonia, and concerns itself largely with the politics of the town, and was a member for a year and a half about.

Q. Did you make any acquaintances in Leonia, Doctor? A. Yes; before I moved out there, I had previously visited Leonia, perhaps two or three times a year, for the previous six or eight years, and I had a number of acquaintances out there.

Q. What influenced you to come to Leonia? A. I had lived in Ridgefield Park, only two miles away from Leonia previously, and I had visited in Leonia, liked it, not only because of its wide streets, and the fact that it is a quiet residential place with no manufacturing, but also because it held, of the suburban group of college professors, probably more than any two or three other suburbs; there were probably thirty or forty of Columbia professors, besides quite a number of N. Y. U. professors, and other college professors; and quite a number of the artist colony are out there; it is quite the largest suburb around New York, having sixty or so men who make art pay them for a profession. I had some time previously discussed the purchase of the Buswell property, or at least, the leasing of it, but we did not come to an agreement on price. Mrs. McKee and I had previously been guests at the Buswell house, of the Buswell family, and when Professor Buswell was transferred to the University of Illinois, I wanted to lease his house. Mrs. McKee and myself had also been guests of other

people in Leonia, and other people of Leonia, both when we were in Ridgefield Park and New York City.

Q. What was the condition of your health on going to Leonia to live? A. I was in a very nervous state; in fact, the University physician, Dr. McKaslin, advised me to take some steps to relieve the strain, and suggested that I look for a place where I would be quiet, particularly when the time to sleep came, and that was an added incentive, as well as my personal liking for Leonia.

Q. When did you come to Jersey City? A. I came to Jersey City about the middle of September, 1926, perhaps as late as the 20th of September.

Q. Will you tell us what kind of accommodations you found in Jersey City? A. The first place that I went to, No. 23 Van Reipen Avenue, I had a sitting room with a small alcove room off of it. While I had come there and examined the room in the evening, I had not appreciated how dark it was going to be, but it was on the south side of the street; that is the room faced the north; it was the nicest room of the apartment, but there were too many trees in front of it, and I found that the room was dark and somewhat damp, and I didn't like it, and promptly notified Mrs. O'Brien that I rather expected to make a change, though I didn't make the change for sometime, ten days or two weeks after I told her.

Q. How far away from No. 607 Bergen Avenue is this Van Reipen address? A. Oh, I should say about three-quarters of a mile. Van Reipen Avenue is on the north side of Journal Square, two blocks, and No. 607 Bergen Avenue is at Belmont Avenue, or one house this side of Belmont Avenue. Belmont Avenue is just five minutes ride on the bus to Journal Square.

Q. Tell us what kind of quarters you have at No. 607 Bergen Avenue? A. I have a large room which is roughly fifteen by fifteen, and off of it is a small alcove room, in which there is a double bed. The room itself has one closet in it, and as that was not sufficient, I hired a second closet which is in the hall just outside of the door, to contain my possessions. The sitting room has three large windows and one side window and the alcove room has one front window; the four windows face east, and the one window faces north. The furniture in the room is principally mine; in value it is more than two-thirds mine, though in number of pieces, it is half or a little less. I have a radio; in fact, I have two radios in there, with a high grade loud speaker; it is a good outfit as those things go. I have also what is known as a health machine, in order to get exercise indoors, and it is probably sometimes spoken of as a lazy man's way of getting exercise. I have also probably half a dozen pictures, which are personal possessions, there.

Q. Doctor, what are your social connections in Jersey City, and what have they been since you came here? A. I had a number of acquaintances in Jersey City, particularly in the chemical field. Mr. Markush who has testified here, lives less than two blocks away, and he's been a friend of five or six years. Dr. Eldred whom I have known for ten years is two blocks away, and there are others, as well. I might add, that I have been a guest of each of these houses, and they, to some extent, have been guests at my house, though I have not the facilities for entertaining, as I would like.

Q. Now, Doctor, let us go back to the time you lived at No. 39 Claremont Avenue, New York City. How long did you live with Mrs. McKee there? A. From the last of March, 1924, to the 13th day of January, 1925.

Q. What happened on the 13th day of January, 1925? A. I got up that morning, to get the newspaper and bring in the milk there, and did so, and as I came back from having placed the milk in the refrigerator, I noticed that Mrs. McKee was not in her bed, which was in a separate room, but the bed had been used; and then I went back to the dining room, and to the front rooms of the apartment to see if she was there and didn't find her there, and with curiosity in my mind, I went back again to see if I had overlooked her in her room, and as I went back, I noticed a letter lying on the hall table, directed "Ralph," and picked it up and opened it, and found that it was a letter saying that she had gone away, and that if I wanted anything more to do with her, I should do it through her attorney.

Q. I show you a letter without date, and I ask you in whose handwriting that is? A. This is in Mrs. McKee's handwriting.

Q. And is it the letter to which you referred just a moment ago? A. Yes, it is.

Q. And the envelope attached? A. The envelope attached is the envelope in which I found this letter.

Mr. McNulty: I offer this letter and envelope in evidence.

Letter and envelope marked Exhibit P-3.

Q. I show you a letter dated January 12th, 1925, from Hersh, Newman and Reass, lawyers at No. 100 Broadway, New York City, addressed to you together with the envelope—do you recognize that letter? A. I recognize that letter as a letter that I received in the afternoon of January 13th, 1925.

Mr. McNulty: I offer that in evidence.

Marked Exhibit P-4.

Q. Doctor, did you know your wife was going to leave? A. I had not the slightest hint of it. As I look back now, there are some things that I know now can be interpreted as planning to leave, but at that time, it was like a clear shot out of the sky.

Q. Have you ever lived with Mrs. McKee since as man and wife? A. I have not.

Q. How often have you seen Mrs. McKee since she left in January, 1925? A. An average of perhaps once a month, once in five weeks, about once a month.

Q. Have you made any efforts to induce her to return to you? A. I have; I have invited her by word of mouth and by letters; approximately thirty letters I have written in which I have invited her and urged her to come back, and offered to provide proper accommodations, which would be to her liking, provided she would come and live with me.

Q. With what result? A. Always with negative result. At first, she would sometimes reply to me by letter or by word, but later on she has refused to even discuss it.

Q. I show you a letter dated March 11th, 1925, and ask you if you recognize that? A. I do; this is written in my wife's handwriting, and is one that I received about that date.

Q. In response to one that you wrote? A. Yes, one that I had written perhaps three days or four days earlier.

Mr. McNulty: I offer that in evidence.
Marked Exhibit P-5.

Q. I show you another letter dated March 29th, 1925, and ask you to identify that? A. This is a letter in my wife's handwriting and is one that I received about March 29th, 1925.

Mr. McNulty: I offer that in evidence. Marked Exhibit P, 6.

Q. Doctor, did you have any trouble with Mrs. McKee prior to January 13th, 1925? A. None whatever.

Q. Were you at home during the week prior to January 13th, 1925? A. I was.

Q. Was Mrs. McKee in your company? A. Yes.

Q. Did you have any friends visit you at your home? A. Mr. F. B. Owen and his wife, each of whom we had known for thirty years or more, and who were close personal friends, joined us for dinner and then for theater on the Friday preceding the 13th; that would be, I believe, January 9th, the 13th was Tuesday. I had purchased tickets for a theater, and after dinner at the apartment the four of us went to the theater, but the principal actor had been suddenly taken ill, so that we got our money back, and went to a ticket agency, and Mrs. McKee chose the play we would go to, which happened to be "Annie Dear." We went to that, and then had an after-the-theater supper, and left the Owens at their hotel, and then went home to the apartment. I had made an appointment for the next day, and we went down to Tiffany's.

Q. By Tiffany's, you mean what? A. Tiffany & Co., jewelers on Maiden Lane. Mr. George Kunz was the Vice President of Tiffany, and is a close personal friend, and he showed us all the jewels of Tiffany for about an hour and a half or two hours, and following that, Mrs. McKee and Mrs. Owen went elsewhere in the City, and Mr. Owen and myself visited downtown New York, as this was the first time he had been in New York, their home being in Oklahoma City, Oklahoma. On Sunday morning, I suggested to Mrs. McKee that we go for a walk, and she refused rather curtly. I

said no more about it, and on Sunday afternoon, I asked her to go with me to a tea which was to be given to Professor Chandler; he is the Columbia chemist, being an old man, and the ranking American chemist, he then being about eighty-seven, and I had the office that he had previously, we then being personal friends. She declined to do that, so I let that go, and about four o'clock I again proposed that we take a walk in Riverside Park, and she declined. The next morning I went into her room, and put my arm around her, and she jerked herself away; she was about two-thirds dressed, and she said, "That's the last time you will have a chance to do that." I at that time, thought that she meant she was going to keep her door locked, but I now interpret it differently in view of what happened the next day. On Monday night I came home and we talked for a while as usual. I didn't notice anything different; I gave her the newspaper after dinner, and I went inside and turned the radio on, and I was reading with the radio music on, and later she brought the newspaper in, and dropped it down; she said nothing to me, and then went on out, and she was busy in her room for the rest of the evening. I called to her when it was time to go to bed, and she said, "H'mm," or something like that, and the next thing I knew was finding the note on the table the next morning.

By the Master:

Q. Will you state whether or not any previous proceedings have been had between you and your wife relative to your marriage or its dissolution or her maintenance? A. I have sent her money continually since she left, though she is as well off financially as I am. There was a suit for separa-

tion and alimony brought by Mrs. McKee, summons and complaint being served in October, 1925, some ten months after the desertion, but not placed on the day calendar until April, 1926, and postponed a number of times by her counsel, and did not appear on the day calendar until approximately January 17th, 1927. This case was then passed from day to day, and it was dismissed by mutual consent on January 24th, 1927. This suit was in the Supreme Court of New York. I did not put in a counter-claim for separation because I thought there was a chance of getting her back, and did not want to put in anything. I simply defended the action by denials and affidavits. After I had started the New Jersey suit, by filing complaint on November 12th, 1927, and personal service on her in the middle of November, 1927, I was notified to appear in Court in New York on January 11th, in connection with an injunction from the New York Courts, regarding this New Jersey suit. The temporary injunction was met in the New York Courts, and Judge Callaghan decided in my favor. This temporary injunction case was appealed by Mrs. McKee, and a stay asked, and the stay was granted, and the Court of Appeals, five judges sitting, and all five unanimously agreed that the decision of the lower Court in my favor be sustained, and that was on last Friday. There was a summons and complaint for a permanent injunction, but that has never been filed in the Court; in fact, the decision, as rendered on the temporary injunction, I am advised, is so worded as to stop even the permanent injunction.

Q. Then as I understand it, your wife sued you in the New York Court for separation and maintenance and her suit was dismissed by mutual consent? A. Yes.

Q. And subsequently, after you had started your

action in New Jersey, she endeavored to restrain that suit by an injunction issuing out of the Supreme Court in New York, but has failed to do so? A. Yes.

Q. How many children were born of the marriage—what are their names and ages? A. There are two children born of the marriage, Margaret Harper McKee, age nineteen, but will be twenty next month, and William Noyes McKee, age eighteen, but will be nineteen the twenty-sixth of July next.

Q. Are they residing with you? A. They spend half their vacation time with me, and half with their mother. The boy is at Taft School, Waterbury, Connecticut, and the girl is a senior at Bryn Mawr College, Bryn Mawr, Pennsylvania.

Q. They are being supported by you, are they? A. They are.

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CHARLES F. LAMBKIN, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Charles F. Lambkin.

Q. Where do you live, Mr. Lambkin? A. At Keytesville, Missouri.

Q. Do you know Dr. McKee? A. Yes, I have known him fifty years, I think.

Q. Do you know the defendant, Mrs. McKee? A. I have met her, yes; I have met her a number of times.

Q. Do you recall the marriage between Dr. McKee and Mrs. McKee? A. Very well.

Q. Where was the marriage performed? A. Carthage, Illinois, at Mrs. McKee's home.

Q. Did you attend the ceremony? A. Yes, sir; I was the best man, got his marriage license, and got his health certificate, and witnessed it afterwards.

Q. Who performed the ceremony? A. I don't know, Judge; the Minister there, I met him at the time, but I was a stranger in Illinois.

Q. How long since is it? A. That was in 1902; sometime in the last part of June; near the end of June.

Q. Do you know anything about their married life since? A. No, I don't know anything; of course, I was in his home out there.

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SAMUEL E. GREEN, being duly sworn, according to law, on his oath, testifies as follows:

Direct Examination by Mr. McNulty:

Q. What is your name? A. Samuel E. Green.

Q. Where do you reside? A. No. 107 West 128th Street, New York City.

Q. Where do you work? A. No. 39 Claremont Avenue, New York City.

Q. What is your occupation? A. Well, I run the elevator there, elevator operator.

Q. How long have you been so engaged? A. Ten years.

Q. Do you know Dr. McKee? A. Yes, sir.

Q. Is he here? A. Yes, Dr. McKee is sitting there (indicating petitioner).

Q. Do you know his wife? A. Yes, sir.

Q. How do you know them? A. Why, they was living there; they had an apartment there.

Q. They had an apartment at the place where you work? A. Yes, sir.

Q. When did you last see Mrs. McKee? A. Well, in the evening after midnight, I think it was in January, I was working nights then.

Q. What year? A. 1925. She called to me to bring a couple of trunks for her; I take the trunks down and put them on the taxi, and she cleared out that evening; and the following week, I changed to day duty, and Mrs. McKee come down with a hat box, and a couple of bags, and I saw her off then also.

Q. She loaded up the bags and took them out with her? A. Yes, she took things with her.

Q. Have you seen her since then? A. No, I haven't seen her.

Q. Have you seen Dr. McKee there since then? A. Well, I saw him until he moved out afterwards, but I haven't seen him since then. He moved out about two months after she left.

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I certify that the foregoing depositions were taken by Margaret McAghon, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer sworn as above stated, and I believe that they accurately state the evidence given.

J. STANLEY GRIFFIN,
Special Master.

## Notice of Fixing Decree and Counsel Fee.

(Filed July 28, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,

*and*

MARY N. McKEE,
Defendant.

On Petition for Divorce.

Notice.

To Thomas McNulty, Esq.
1 Exchange Pl., Jersey City, N. J.,
Solicitor of Petitioner.

Sir:

Please take notice that we shall present the final decree in this matter to the Hon. John J. Fallon, Vice Chancellor, for entry thereof on Monday, the 28th day of July, 1930, at 10:30 A. M. (daylight saving time) or as soon thereafter as counsel can be heard, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, N. J.

And take further notice that we are sending you a copy of the final decree as proposed to be entered by us.

Please take further notice that we shall ask for a counsel fee of $5,000.00.

Yours, &c.

GROSS & GROSS,
Solicitors of Defendant.

Dated, July 23, 1930.

[6758]

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# New Jersey Court of Errors and Appeals

Between

RALPH H. MCKEE,
Petitioner-Appellant,

and

MARY N. MCKEE,
Defendant-Appellee.

On Appeal from Court of Chancery.

## BRIEF FOR PETITIONER-APPELLANT.

### Introductory Statement.

This is an appeal from a Decree of the Court of Chancery dismissing a petition for divorce filed on the ground of desertion.

Petitioner is a professor of chemical engineering in Columbia University and a consulting engineer. Defendant and he were married in 1902. They have two children, and in the year 1924, and up to January 13th, 1925, were living together with their family in an apartment at 39 Claremont Avenue, in the City of New York. On November 1st, 1924, the husband took a business trip to Europe leaving his wife and family at home. He returned from this trip on December 21st, 1924 (p. 107, l. 30). Prior to his departure for Europe there had, from time to time, if the testimony of defendant is to be believed, been trouble between husband and wife, characterized by the Vice-Chancellor who sat

in the case as "petty bickerings." Thus this Vice-Chancellor says:

> "The troubles between them appear to me to have been such as may well be characterized as petty bickerings. They certainly were not such as to establish a matrimonial offense for which a decree of divorce might have been granted" (p. 22, ll. 28-33).

Before the husband went to Europe the wife secretly consulted counsel concerning her marital relations and her right to leave her husband and her rights after leaving her husband. There were no "petty bickerings" between the time of the return of the husband from Europe and January 13th, 1925, the date of desertion charged. Because of the wife's insistence, husband and wife had for some two years been sleeping in separate rooms (p. 112, l. 30) and defendant had refused to have intercourse with petitioner since June 21st, 1924. During the night of January 12th to January 13th, 1925, the wife surreptitiously removed her personal belongings from the matrimonial home, and departed therefrom without the knowledge of her husband. He discovered her departure on the morning of January 13th, 1925, when he found her gone and a note upon the hall room table which advised him that she had left him; that he would hear from her lawyers, and that any further communication with her should be through her lawyers (p. 117, l. 20).

On the same day the husband received a letter from a firm of lawyers in New York, dated January 12th, 1925,—the day before she left—advising him that they had been retained by his wife to begin an action against him because of his extreme cruelty and inhumanity and failure to provide

properly for her, demanding that he enter into a separation agreement with her with adequate provisions for her support, and telling him that if he did not agree to enter into such an agreement by January 16th they would commence suit (p. 121, l. 10).

The husband, after the receipt of this letter, had several consultations with his wife in the offices of these attorneys in which he unsuccessfully sought to have her return to him. After these conferences, because he realized she would not then return and because she needed money he started to pay her the sum of One hundred ($100) Dollars per month, but without entering into any formal agreement.

The husband had a lease upon the apartment in New York, where he lived, which expired on October 1st, 1925. He remained in this apartment alone up to February 25th, 1925, when he took rooms in Leonia, Bergen County, New Jersey, and has ever since resided and been domiciled in this State. On March 1st, 1925, he sub-let this apartment for the balance of his term to a family by the name of Martin; Mr. and Mrs. Martin took possession of the same and remained in the same until the end of petitioner's term. Mr. and Mrs. Martin were both witnesses on the trial below.

Beginning with March, 1925, and up to the time of the institution of this suit the husband continued to pay to the wife One hundred ($100) Dollars per month, at the same time fully supporting his two children, a daughter then at Bryn Mawr College in Philadelphia and a son then at Taft School in New Haven, and during all of that time endeavored to induce his wife to return to him and live with him in matrimony. These requests to return were made verbally and by letter and on at least two

occasions he sought the intervention of people who he thought might influence the wife to return to him. These people were repulsed by the wife, and his wife at that time forbade him to bring any other people into their affairs. He also made her presents of money, above the monthly allowance, and offered to take his wife out. All of these tenders of good will were, however, rejected.

The wife, although she had threatened to institute suit for limited divorce against the husband at the time of the separation, did not then do so but appeared satisfied with her status until the month of October, 1925, when she—without warning, and while he was paying her One Hundred ($100) Dollars a month which she had theretofore accepted—filed a complaint in the Supreme Court of the County of New York for limited divorce on the ground of extreme cruelty. A copy of this complaint is in evidence as Exhibit P-44 (p. 1046). The husband filed an answer denying the allegations of this complaint (Exhibit P-45, p. 1051). There was no new quarrel between the parties when this suit was started, but the immediate cause for filing this complaint in New York seems to have been the miscarriage of the September, 1925, check for One Hundred ($100) Dollars, which had been mailed to the wife while she was at Carthage, Illinois. It was not received by her. Application for alimony pendente lite was made upon the filing of this complaint. This application was denied. After the application had been denied the husband continued his efforts to have his wife return and live with him and also voluntarily continued to pay her One Hundred ($100) Dollars per month. He made these requests both by letter and personal invitation, but in vain. In January, 1927, the case instituted by the wife in New York was ready for trial and appeared upon the

day calendar of the Supreme Court in the City of New York. No overtures to settle or otherwise dispose of it had been made by the husband other than the continued requests that she return to him and live with him as his wife. When the case was called for trial the husband answered ready and the case was marked ready; the wife, however, advised by her attorneys that she could not succeed in the suit, and fearful that she might imperil the separate maintenance which she was then receiving, and might be forced to return to her husband if she prosecuted the action, sought the intervention of Dr. George B. Pegram, Dean of the School of Engineering at Columbia University under whose jurisdiction her husband, Dr. McKee, was. She called upon Dr. Pegram on a Friday, told him that the suit was coming up on Monday morning next; that it would do nobody any good to bring it out in public if it could be settled, and requested his help to bring her and her husband together so that they might make *such arrangements* as would make it unnecessary to go forward with the court proceedings (p, 1141, l. 10). At that time she told Dr. Pegram that she was quite *unwilling* to have full marital relationship with Dr. McKee and that she had developed an antipathy towards him to such an extent that she was unwilling to live with him as his wife (p. 1145, l. 10). At that time she also discussed with Dr. Pegram a suitable allowance from her husband to herself, telling him that her husband was then paying her One Hundred ($100) Dollars per month and that this allowance was not a *suitable fraction* of Dr. McKee's income for him to allow his wife under the circumstances (p. 1135, ll. 30-40). Dr. Pegram informed Dr. McKee of the request which Mrs. McKee had made, telling him that she requested a conference, and

at the same time telling him that she was not willing to resume marital relations with him (p. 1137, l. 30), to which Dr. McKee replied expressing himself as regretting that the situation had come to such a pass as that (p. 1138, l. 1). Dr. McKee, however, agreed to meet Mrs. McKee on Monday morning before court, and Dr. Pegram reported back to Mrs. McKee the conversations which he had had with her husband. When the McKee case next came up, Mr. and Mrs. McKee did meet in an effort to settle their marital differences, and thereafter met for several days, mostly alone, but some times with their lawyers. Mr. McKee continually requested his wife to again take up married life with him but she refused and during these conferences she suggested and her lawyer suggested that Mr. and Mrs. McKee have a *nominal* home together (p. 623, l. 10). Mrs. McKee says that during a conversation with her lawyer she agreed to return to her husband upon conditions. The conditions were that they were not to have *a full life together.* It would be only a home together with the proviso that if he treated her as she should be treated and that she could recover from the feeling which she had that then they might live their whole life together (p. 774). This offer, according to Mrs. McKee, was not *fully stated* to Mr. McKee. It was stated by Mr. Newman, her attorney, who suggested to Mr. McKee that they *have* a *nominal* home together, which would give them a chance to have the children with them, and it would save Mr. McKee's honor and his dignity because no one would know about the private arrangement (p. 775, ll. 1-10). Mrs. McKee testified that beginning with the summer of 1923, all sexual intercourse with her husband had been repulsive to her (p. 706, l. 10). She had reached a mental attitude that it was ab-

solutely repulsive to her (p. 705, l. 30). She had consulted lawyers on October 30, 1924, as to what was possible to be done under the circumstances (p. 706, l. 27), and thereafter had continuously consulted with them up to the time of the signing of the so called "United Family Agreement" in January, 1927 (p. 707, l. 26). She had consulted with them *about her conduct towards* Mr. McKee and had asked them whether she should meet him under the circumstances and they had first advised her not to and afterwards advised her to meet him (p. 708, l. 1). Mrs. McKee, in January, 1927, by her own admissions, was therefore not willing to live with her husband as his wife and was acting under the guidance of her attorney when the proposition for a nominal home was made. She had agreed to this nominal home proposition with her attorney (p. 775, l, 30), and after she had agreed to the same, she called upon Dr. Pegram and made the proposition to Dr. Pegram to have it conveyed to her husband as he testified. Dr. McKee, during these conversations in January, 1927, rejected the proposition for a nominal home and again requested his wife to live with him. He did this while he was alone with her and also in the presence of the lawyers, but she refused and insisted upon living separate and apart and on an agreement to that effect. Petitioner says: "I told her that I was not interested in the question of a separation agreement but that if we could get a step further towards getting together and living together later, I would be glad to do it," and she said to me that "she did not feel like doing that now, that is getting together as a united family now, but possibly she would later on" (p. 263). In the hope of inducing his wife to return, petitioner personally prepared the United Family Agreement (Exhibit P-95, pp. 1052-1054). This agreement

originally provided in Paragraph 2 thereof, for the payment of One Hundred sixty-six ($166.00) Dollars a month during the life of the agreement. This sum, after discussion, was changed to Two Hundred ($200.00) Dollars a month.

The important section of the Agreement to the petitioner as stated by him, is Paragraph 3 which reads:

> "That the second party (Mrs. McKee) agrees to discuss with the first party (Mr. McKee) their family affairs and in particular the possibility of a united family at least once in each six weeks.'

This agreement, as it originally stood, was written by Dr. McKee without consulting counsel, and in and by it, he, realizing that his wife would then not return to him, yielded everything to her upon the one condition that she should agree to continue with him negotiations looking towards a united family and her return as his wife. After the execution of the United Family Agreement (Exhibit P-95, pp. 1052-1054) Mr. McKee continued his efforts to induce Mrs. McKee to return to him as his wife. He wrote her letters requesting her return and also met her pursuant to the stipulation contained in the United Family Agreement for the discussion of their family affairs and for the purpose of urging her to return to him. This continued until November, 1927, when Mr. McKee finally made up his mind that it would be useless further to urge his wife to return, whereupon on November 13th, 1927, he filed his petition for divorce on the ground of desertion.

The Vice-Chancellor who heard the cause below found that petitioner was a bona-fide resident of

the State of New Jersey since February 25th, 1925 (p. 32, l. 35); that his suit had been commenced November 13th, 1927; that in October, 1925, the wife had instituted a suit for limited divorce in the New York Supreme Court against her husband on the ground of extreme cruelty; that said suit was discontinued on January 24th, 1927, and that the period of time between October 25th, 1925, and January 24th, 1927, while this action was pending, could not be computed as part of the period of defendant's alleged desertion and that the petition had, therefore, been prematurely filed (p. 22, l. 38; p. 33, l. 10). The Vice-Chancellor found that defendant had not sustained her defense of justification by proving extreme cruelty, as alleged by her in her answer. But in addition to finding that the petition was prematurely filed, the Vice-Chancellor also found that the petitioner had not established that he had made bona fide efforts to induce his wife to return to him and that his wife's desertion was obstinate. For these reasons the petition in the case was dismissed with an allowance of counsel fee of $1,500 to the defendant.

From the decree of dismissal petitioner has appealed while defendant has appealed from so much of the same as allows her a counsel fee of $1,500 on the ground that such allowance is insufficient.

## ARGUMENT.

### POINT I.

**The finding of the court of chancery that the petition in this cause was prematurely filed is erroneous.**

Petitioner filed his petition on November 13th, 1927, alleging that defendant deserted him in the month of January, 1925. The learned Vice-Chancellor who heard the cause found that in the month of October, 1925, *defendant* in this suit instituted against petitioner in the New York Supreme Court an action for limited divorce on the ground of extreme cruelty; that said action was at issue in January, 1927, when as a result of conferences and negotiations between the parties and their attorneys it was discontinued; that the time during which said suit was pending could not be computed as part of the statutory period during which the defendant wife wilfully, continuedly and obstinately deserted her husband, and thereupon concluded that the petition had been prematurely filed, and dismissed the same. He cited in support of his conclusion "Marsh v. Marsh, 14 N. J. Eq. 350; Chipchase v. Chipchase, 48 N. J. Eq. 540; Weigel v. Weigel, 62 N. J. Eq. 677; Von Bernuth v. Von Bernuth, 76 N. J. Eq. 494, McLaughlin v. McLaughlin, 90 N. J. Eq. 322; Rinehart v. Rinehart, 91 N. J. Eq. 354; O'Brien v. O'Brien, 142 Atl. 900."

It may for the purpose of this argument be conceded that the suit instituted by the defendant wife in this case against her husband in the Supreme Court of the State of New York was instituted and prosecuted by her in good faith.

It may also for the purpose of this argument be conceded that these cases and other cases decided in the Court of Chancery support the learned Vice-Chancellor in his conclusion insofar as the cases decided in the Court of Chancery go, but it is respectfully submitted that the question thus decided by the learned Vice-Chancellor in this case is an open question in this Court, and that the reasoning upon which the conclusions arrived at in the cases decided in the Court of Chancery and upon which the learned Vice-Chancellor relied in this case is faulty, and that a correct consideration of the premises demands a reversal of the conclusion arrived at in this case upon this question and of the Decree predicated thereon.

Under our statute an actual desertion must be (1) wilful—that is intended by the deserter; (2) obstinate—that is, persisted in *against the will* of the deserted; and (3) continued—that is, without interruption for the statutory period.

> Danielly v. Danielly, 93 N. J. Eq. 356, 358.

The petitioner in an action for divorce on the ground of desertion must therefore establish (1) willfulness (2) obstinacy and (3) continuity of the desertion, as above defined, in order to succeed, and it follows that a defendant in order to defeat such an action, assuming that petitioner has otherwise made out a prima facie case, must produce evidence to establish the absence of (1) willfulness (2) obstinacy and (3) continuity in the desertion as above defined.

The burden thus cast upon the petitioner in the presentation of his proof is purely statutory. If he complies with the statutory requirements he is

entitled to a divorce; if not, he fails. It seems to follow that any defense which may be made in such a suit to the grounds of divorce must also be confined within and bounded by the statutory requirements hereinbefore set out. In other words, a defendant can only succeed, if, after the defense is in, the case shows that petitioner failed in showing that the desertion was either (1) wilful or (2) obstinate or (3) continued, as defined in the case hereinabove cited.

I believe the foregoing statement to be a proper and necessary postulate in the consideration of the cases next to be considered and the argument to be advanced.

The rule enforced by the learned Vice-Chancellor in this case had its origin in the case of Marsh v. Marsh, 14 N. J. Eq. 315, and in the case of Chipchase v. Chipchase, 48 N. J. Eq. 514, affirmed on opinion below, 49 N. J. Eq. 594. The Marsh case stopped in the Court of Chancery.

In the Marsh case the husband filed a petition for divorce in August, 1861, alleging desertion in the month of March, 1858. The wife alleged by way of defense that at the time of the alleged desertion the husband had instituted proceedings in the Court of Chancery against her to obtain a divorce on the ground of adultery. She established the fact that from March, 1858, to the 4th of June, 1861, the wife was separated from her husband while his suit for divorce on the ground of adultery was pending and that therefore only six months of the alleged desertion had continued after the Decree of Dismissal in the former suit. In the Marsh case it also appeared that the wife, upon the institution of the divorce suit, had *voluntarily* removed from the marital home.

In the Marsh controversy both the first petition, grounded on adultery, and the second petition, grounded on desertion, *were filed by the petitioner.* The Chancellor in this juncture said:

> "Does a separation under such circumstances constitute *wilful* desertion in contemplation of law? I am clear that it does not" (p. 317).

The Chancellor thereupon found that:

> "The case established by the evidence constitutes no legal desertion.
>
> 1. Because where the wife separates herself from her husband pending a suit against her by her husband for divorce on the ground of adultery, the legal presumption is that such separation took place by the procurement or with the assent and approbation of the husband.
>
> 2. Because it is legally improper for the parties to co-habit together during the pendency of such suit."

The Chancellor in this case said that the separation under the circumstances existing was *not* wilful—that is, *intended* by the deserter—yet the wife *voluntarily* left the home.

Wilful is defined in the dictionary as "of set purpose—self determined, voluntary." Surely since the wife in that case left of *her own free will* and continued away from her husband *of her own free will* the Chancellor's finding that this desertion was not wilful is contrary to the definition of the word and is contrary to the definition of the word as employed in our statute, and as the meaning of that word is defined in our cases. I submit that

there was error in declaring that the separation in this case was not wilful.

Dealing now with the first reason advanced in the Marsh case. In deciding the case, the Chancellor says:

> "That where a husband institutes suit for divorce on the ground of adultery and a wife separates herself from her husband pending such suit, the legal presumption is that such separation took place by the *procurement* or with the *assent* and *approbation* of the husband."

The presumption thus adverted to is a *rule of evidence* which deals with *the state of mind* of the *petitioner* in the divorce suit. In a suit for divorce on the ground of desertion the desertion must be *obstinate,* that is, persisted in *against the will of the petitioner* and the legal presumption is that where such *petitioner* has, during the required statutory period of desertion, instituted a prior proceeding to bring about a divorce, the absence of the spouse from the home during the pendency of such prior litigation will be presumed to be with the assent and approbation of the petitioner, and not such an obstinate separation as will amount to the *obstinate* desertion required by statute. There is logic in this presumption, for it is logical to assume that, where one spouse *institutes* a suit against the other to terminate their marriage, the absence of the other spouse from the home is most agreeable to the spouse seeking freedom, and hence is not obstinate or persisted in against the will of the divorce seeking spouse. The first reason given in the Marsh case for dismissing the bill therefore goes to the ground of obstinacy, and amounts

merely to this: that where, in an action for divorce on the ground of desertion, the *defendant,* has been absent from the marital home for the statutory period, and during a part of the time making up said statutory period, the *petitioning* spouse had another and prior suit pending against the defendant to dissolve their marriage or to bring about a divorce from bed and board or to bring about separate maintenance, the time during which such other and prior suit was pending cannot be charged against such defendant as an *obstinate desertion* of such petitioner because the absence of such defendant from the home of such petitioner is assumed to be agreeable to such petitioner, and with his assent and approbation, or by his procurment. To the extent thus indicated I consider that that opinion was sound.

Dealing now with the second of the reasons in the Marsh case which reads:

> "2. Because it is legally improper for the parties to co-habit together during the pendency of such suit."

it seems to me that said reason was unnecessary for a proper determination of the case, that the language is loosely employed, and that there is no "legal impropriety" for the parties to co-habit during the pendency of such a suit if they desire to do so. Since, ~~however~~, the result of such co-habitation is necessarily the condonation by the injured party of the wrong suffered and a destruction of the cause of action upon which the suit is founded, and since the law favors the continuation of the marital state and actively discourages divorce, I can see no *"legal impropriety"* in the parties co-habiting during the pendency of a divorce suit.

New Jersey State Library

The next case to be considered is Chipchase v. Chipchase, 48 N. J. Eq. 549, affirmed 49 N. J. Eq. 594, on opinion below. In the Chipchase case we have a bill for divorce on the ground of desertion filed by the wife May 16th, 1890, alleging desertion by the husband in August 1885. During this statutory period of desertion the *petitioner* in this case in the year 1887 instituted in the Courts of New York an action against defendant for divorce on the ground of adultery. Subsequent to the institution of the New York action a stipulation was entered into between the parties by which defendant paid a counsel fee and provided for the payment to his wife for their child of $14.00 a month, which amount was paid by him under this stipulation up to the time of the trial of the New Jersey action. The bill of complaint in the New Jersey action was dismissed because of the pendency of the New York action. The learned Vice-Chancellor said:

> "Desertion in this state to form a ground for divorce must not only be wilful and continued but must be *obstinate,* and this involves a consideration of the attitude assumed and maintained *by the obstinate party.* Desertion cannot be considered as obstinate on the part of one when the separation is acquiesced in by and entirely satisfactory to the other who never entertains nor manifests any desire that the separation nor the causes which brought it about should cease."

This language was affirmed by the Court of Errors and Appeals, and is agreeable to logic and reason.

This Court, in the Chipchase case, has therefore ruled that where it appears in an action for divorce

on the ground of desertion that the *petitioner* in the pending action has, during the time relied on as constituting the statutory period of desertion, maintained another and prior action for divorce or separation from the defendant, the time during which such other and prior action was pending cannot be counted as part of the statutory period of desertion because it will be presumed that during the pendency of such prior action the alleged desertion by the defendant was *not* obstinate and against the will of the *petitioner* but amounted only to a separation from him either by his procurement or with his assent and approbation.

And the opinion in the Chipchase case is the only pronouncement in this court dealing *squarely* with the effect upon the right of a petitioner to a divorce on the ground of desertion, of a prior marital suit pending during the statutory period of desertion in the later case.

Many cases dealing with the question have been decided in the Court of Chancery since the opinion in the Chipchase case. These cases may be divided into two classes—cases in which the petitioner in the pending action instituted the earlier or prior proceeding—cases which are naturally governed by the rule in the Chipchase case—and cases in which the *defendant* in the pending action has instituted the prior proceeding to terminate the marital relation.

The following is, I believe, a complete list of the cases in which the petitioner in the pending action had, during the statutory period of desertion, instituted some other proceeding for the dissolution of the marriage:

Johnson v. Johnson, 65 N. J. Eq. 606;
Lake v. Lake, 80 N. J. Eq. 350;

McLaughlin v. McLaughlin, 90 N. J. Eq. 322;
Rinehart v. Rinehart, 91 N. J. Eq. 354;
Barbour v. Barbour, 94 N. J. Eq. 7;
Cook v. Cook, 97 N. J. Eq. 264;
O'Brien v. O'Brien, 142 Atl. 898, affirmed on opinion below 147 Atl. 911.

These cases can all be sustained on the rule laid down in the Chipchase case.

Cases in which the defendant in the pending action had during the statutory period of desertion instituted some proceeding for the dissolution of the marriage, are, I believe, only five in number. They are

Drayton v. Drayton, 54 N. J. Eq. 298;
Weigel v. Weigel, 63 N. J. Eq. 677, affirmed on opinion below, 65 N. J. Eq. 398;
Von Bärnuth v. Von Bärnuth, 76 N. J. Eq. 487;
Remond v. Remond, 95 N. J. Eq. 650;
Hartpence v. Hartpence, 121 Atl. 513.

The case now at bar belongs to this latter class, and it is this class of cases which I believe ~~have~~ had been improperly decided, because in my opinion the action of a defendant in filing suit cannot raise a presumption *as to the state of mind* of a petitioner.

Of the cases belonging to this latter class, two reached the Court of Errors and Appeals. They are

Weigel v. Weigel, supra, 63 N. J. Eq. 677, affirmed on opinion below, 65 N. J. Eq. 398;

Remond v. Remond, supra, unreported in the Court of Chancery, 95 N. J. Eq. 650, Court of Errors and Appeals.

The cases in the second class will now be considered.

*Drayton* v. *Drayton,* 54 N. J. Eq. 294.

Action by the wife against the husband for desertion. Suit was instituted by the husband against the wife on the ground of adultery, but after the statutory period of desertion was complete and the wife's cause of action for desertion had become vested. The question under consideration was not considered. It was held that mere institution of suit after statutory period of desertion was complete will not avail as a defense to a suit by the wife for divorce on the ground of adultery (54 N. J. Eq. 298, 302).

*Weigel* v. *Weigel,* 63 N. J. Eq. 677, affirmed on opinion below, 65 N. J. Eq. 398.

Action by the husband on the ground of desertion. Action by the wife during the statutory period of desertion for a divorce from bed and board for alleged cruelty. Hearing upon the wife's bill and decree of dismissal of the wife's bill, all during the statutory period of desertion in the husband's case. Defense that time consumed during the pendency of wife's case should not be counted as statutory period of desertion in husband's case, denied on the ground that wife's suit had not been instituted in good faith, but was a fraud on the court, on the law and on the defendant.

The question now before the court was therefore not properly under examination in the Weigel case since the case went off on the bad faith of the wife in instituting her suit; yet the Vice-Chancellor who wrote in the Weigel case dealt with the Chipchase case and said:

> "In the Chipchase case, Vice-Chancellor Green (his opinion was unanimously adopted by the Court of Appeals) declared, 'Argument is not necessary to enforce the position that the party who is *prosecuting* a suit for divorce on the ground of adultery cannot maintain that the separation of the opposite party during the pendency of such suit is *obstinate* as understood with reference to desertion as a ground of divorce. Chapman v. Chapman, Ten G. R. 396, is to the same effect.' "

The learned Vice-Chancellor having thus quoted the Chipchase case, which dealt with a *prior* suit instituted by a *petitioner,* as supporting the argument which he advanced which was concerned with a *prior* suit instituted by the *defendant,* then continues in what I consider to be an unnecessary dictum to develop his theories of the law upon the subject, citing no cases in support of the proposition advanced by him. Thus he says at page 680:

> "The general proposition appears to be indisputable that the separation of one spouse from the other pending a suit between them for divorce is justifiable and is therefore not an obstinate desertion during that period."

The learned Vice-Chancellor thus extends the rule in the Chipchase case beyond its natural scope and meaning.

Again he continues:

> "If the previously pending suit were for divorce on the ground of adultery, co-habitation would ordinarily condone the offense and *deprive the complainant of a remedy.* The same principle applies if the divorce suit is a limited one from bed and board on the ground of extreme cruelty, for if the wife, who is in such cases usually the complainant, continues to live with her husband pending such a suit she throws doubt upon the extremity of the cruelty of which she alleges she is the victim. Ordinarily co-habitation 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 wants in such cases to 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 * * *.
>
> In such a case it is of no significance whether the complainant succeeds or fails in the suit by which she presents her claim. Her separation is *not obstinate* for the reason that there is a *justifiable cause* for it and that it is *her right to have a judicial determination* of what she believes to be real grievance, unembarrassed by presumptions adverse to her which would necessarily attend upon continued co-habitation with her husband."

When the learned Vice-Chancellor says that such a separation is not obstinate for the reason that there is a justifiable cause for it, he certainly falls into error. Obstinacy represents the state of mind of the deserted spouse. The mere fact that the

deserting spouse bringing the action has or believes she has a justifiable cause for it, does not in any way indicate that her separation from the other spouse was *agreeable* to that other spouse, and therefore not obstinate. Again when the learned Vice-Chancellor says that it is her right to have a judicial determination of what she believes to be real grievance, unembarrassed by presumptions adverse to her which would necessarily attend upon continued co-habitation with her husband, and advances this alleged right in support of the position which he takes he goes beyond the case. It may be conceded that she has a right to such judicial determination unembarrassed by presumptions that would necessarily attend upon continued co-habitation with her husband, but there is no requirement that she should co-habit. It may also be conceded that if she does co-habit and is the injured party that condonation will follow, but all of this, to my mind, has no value in determining whether or not the separation from the other spouse is obstinate or against the will of the other spouse, although her continued voluntary separation will be plenary evidence that such separation on her part is wilful.

It seems to me that the learned Vice-Chancellor is unnecessarily worried in this opinion about depriving the woman of her remedy. She always has that remedy and relief will be accorded her if the facts warrant it.

If a wife leaves her husband and deliberately separates herself from him she does so at her peril, the peril of not succeeding in any litigation which she may subsequently institute. Being forced to institute her suit at her peril why should she enjoy any greater right of protection when she attempts to set up the pendency of such a suit in defense of an action instituted by the other spouse? But is

*Von Bernuth* v. *Von Bernuth*, 76 N. J. Eq. 487.

Action by wife against the husband on ground of extreme cruelty, petition being filed October 5, 1908. Cross petition by husband filed May 5, 1909, on ground of desertion which did not ripen by the expiration of the two year period into a cause of action until after filing of original petition, wife's desertion on March 19, 1907 being alleged. Wife's petition dismissed. A portion of the term relied on by the husband for the accrual of his cause of action in his proceeding was taken up by the pendency of the suit on the wife's prior petition. Vice Chancellor Howell, in his opinion, did not consider the effect of the prior proceeding on any of the requisites of desertion, but merely said: Weigel v. Weigel applies; the prior proceeding was not brought in good faith; a decree of divorce should be granted.

not all of this beside the question? The pendency of her suit can under no circumstances be evidence of the obstinate state of mind of the other spouse. Her voluntary separation from the other spouse must necessarily continue wilful, even though she institutes suit during the statutory period of desertion accruing to the other spouse upon what she believes to be justifiable cause. If she cannot succeed in her cause why should not her absence be wilful and obstinate desertion, and if continued for the statutory period, why does it not amount to a cause of action on the ground of desertion for the other spouse?

*Remond* v. *Remond,* 95 N. J. Eq. 650 (E. & A.)

An unreported case in the Court of Chancery. Upon the trial of suit it appeared that the defendant began a suit for divorce on the ground of desertion against his wife after the cause of action for desertion accruing to the wife had become vested and was complete, but before the institution of the suit reported in 95 N. J. Equity at page 650. To this prior suit by the husband the wife had filed a cross petition. Both the suit of the husband and of the wife had been dismissed without prejudice. Held, that institution of husband's suit after wife's cause of action was complete, prevented application of the rule contended for. Further, that since the prior suit of the husband and of the wife had both been dismissed without prejudice, the rule could not be applied.

It is true that in this case Justice Trenchard writing approved of the rule as laid down in McLaughlin v. McLaughlin, 90 N. J. Eq., 322, and quoted therefrom, but I submit that this also is mere dictum and not dispositive of the question.

So much for the cases in which the defendant instituted suit during the running of a statutory period of desertion claimed by a petitioner.

I have heretofore allocated the case of Johnson v. Johnson, 65 N. J. Eq. 606, to the class in which the petitioner in the pending action has, during the statutory period of desertion, filed another suit. An examination of this case will, however, disclose that while the petitioner in that case had theretofore filed such a previous suit, the defendant also filed a petition against her husband on the ground of desertion and that her petition was dismissed. In the Johnson case, the action was instituted by the husband and the court said:

> "In order to maintain his right to a decree, the petitioner must prove not only a willful and continued desertion *but an obstinate one* although the wife's desertion from the husband may have continued for the term of two years and may have been *willful on her part,* yet if she had a *justifiable cause* for living in a state of separation from her husband it was not an *obstinate desertion* of him."

In the Johnson case the fact that a prior suit had been instituted by the plaintiff husband, certainly was evidence that the separation of the parties was by the procurement of the husband, with his assent and approbation and therefore not obstinate, i. e., against the will of the petitioner, but in so far as this language in the Johnson case is applied to the suit instituted by the wife, I repeat that I fail to see how the institution of a suit by the wife can in any way reflect the mental state of the husband; how the institution of the suit by the wife can raise a presumption that her separation from her husband is not *against the will of her*

*husband.* As I view the matter, the institution by the wife of her suit can have absolutely no value in determining whether her separation from her husband amounted to an obstinate desertion, i. e., a desertion against the will of her husband. Evidence establishing obstinacy must, it seems to me, necessarily be evidence of the husband's conduct and of his actions and of inferences drawn therefrom, and the obstinacy of the petitioner, it would seem, can never be determined from either the state of mind or the acts, or the rights, or the privileges *of the defendant.*

The distinction here sought to be established was referred to, although not discussed by Vice-Chancellor Stevenson, in Lake v. Lake, 80 N. J. Equity 350, at page 351, where, after referring to Weigel v. Weigel, supra, he says:

> "The fact of a prior matrimonial litigation between the husband and wife upon a subsequent divorce suit between them, has sometimes I think, been considered *without regard to certain important distinctions,* which however, need not be examined for the purpose of this present case."

In the case of Lake v. Lake, the prior matrimonial litigation had been instituted by the petitioner in the then pending litigation, consequently that case was governed by the rule laid down in Chipchase v. Chipchase, supra and I venture to say that what the learned Vice Chancellor referred to when he wrote the sentence above quoted, was the very distinction which I am trying to call to the attention of the court.

The language in the Johnson case, supra, hereinbefore just quoted and the language in the Marsh case, supra, namely:

> "Because it is legally improper for the parties to cohabit together during the pendency of suit",

is the language which I believe has led to an erroneous result in the opinions rendered in the cases above cited. The Court of Chancery lays down the mandatory rule that in a suit for divorce for desertion, none of the time occupied by the pendency of a former proceeding for divorce *by one of the parties against the other* can be computed as part of the time of desertion in the later case and that this is so where the same party is petitioner in both cases or is petitioner in the later one and the defendant in the prior one, or vice versa, provided the first suit was bona fide.

Out of the cases of Johnson v. Johnson, and Weigel v. Weigel, supra, the Court of Chancery formulated that *mandatory* rule predicated on legal impropriety of cohabitation of the parties pending a divorce suit and thus stripped the cause of action for desertion of the requisites set up by the statute and set up a *new non statutory defense to the same.* It is this mandatory rule which has been applied in the case at bar against the petitioner. Let us now see how it has been applied in other cases in the Court of Chancery.

> *McLaughlin* v. *McLaughlin,* 90 N. J. Eq. 322.

In this case, the wife brought the prior proceeding and the wife also brought the later proceeding. Chancellor Walker denied a motion to dismiss the first petition and said he would entertain an application to dismiss the second petition and to amend the first.

Though no motion was pending on the second petition he stated *what would be* the problem before him if the first petition were dismissed and the petitioner proceeded on her second, in these words at pages 323, 324:

> "If I should grant the order asked for and dismiss the first petition as of June 1st, 1918, then the parties would have been living separate and apart during the pendency of a suit for divorce between them up to and within four months prior to the commencement of the second suit, and, under the statute, the desertion must have been willful, continued and obstinate for an uninterrupted period of two years next before the filing of the petition. This brings me to the *question* in the case, which is, *whether, as the first suit is still pending, there could be any 'obstinate' desertion by the defendant of the petitioner between the time of the filing of the first petition, on October 28, 1916, and the present time.*"

Now the answer to that question is: Yes, there could be an obstinate desertion by the defendant. While a presumption of non-obstinacy would arise against petitioner because of her institution of the prior proceeding, it would be possible, if it were the fact for petitioner to show that in fact she did not consent to her spouse's desertion and that it was in fact against her will. In 1911, eight years before, Chancellor Pitney in Sarson v. Sarson had answered this question in the affirmative and had granted a divorce despite the pendency of prior proceedings. In 1925, six years later, Vice Chancellor Bentley, in Cook v. Cook, answered the question in the affirmative and likewise granted a

divorce despite the pendency of the prior proceeding.

But Chancellor Walker said: No! The rule is that pending a divorce suit, the parties do not have to cohabit for if they had to cohabit and did cohabit, the cohabitation would amount to condonation and the cause of action would be gone. Therefore, the rule is that the time of pendency of that proceeding cannot be counted. "The doctrine that the time consumed in a previous divorce suit cannot be counted as any part of an *obstinate* desertion in a subsequent one between the same parties, is too firmly established in this court to now be questioned."

I submit that in this the learned Chancellor was in error. The doctrine stated was unquestionably firmly established—as *language* only; it is not firmly established as decision—unless Sarson v. Sarson (Docket 31, p. 474, 1911, unreported), before this case, or Cook v. Cook, 97 N. J. Eq. 264 (1925), after it, can be expunged from the reports.

Having stated the "firmly established" rule, however, the court decided it would be a hardship if it had to be applied at some later time to bar petitioner, so the court stretched a point—denied the application to dismiss the first petition and said it would entertain an application to dismiss the second and amend the first.

Chancellor Walker also decided the next case, Rinehart v. Rinehart, 91 N. J. Equity, 353. Here the petitioner in both prior and later suits was again the same. Chancellor Walker again stated the flat rule but said he would not apply it just as he had refused to apply it in the early unreported case of Eardley v. Eardley, Docket 33, page 356, because in the prior suit in this case, the citation had not been served personally on the defendant who could not be found.

In Byrne v. Byrne, 93 N. J. Equity, 5, Chancellor Walker, in a dictum, again stated the rule but did not apply it. Here the wife brought the first suit on the ground of adultery. Thereafter the parties cohabited. Thereafter, the husband brought this suit on the ground of desertion. Chancellor Walker said that the rule did not apply here because after the cohabitation, the prior suit ceased to be pending in good faith.

In the next case, Barbour v. Barbour, 94 N. J. Equity, 7, Chancellor Walker again rendered the decision and again stated the rule in a dictum. This case was a petition for a decree of nullity. The court held that the proofs did not sustain the petiion and dismissed it. The court then went on to say that *if* a later petition should be filed for divorce on the ground of desertion by the petitioner, that then the McLaughlin case would apply to require deduction of the time of pendency of the nullity proceedings saying at page 8:

> "In a suit for divorce for desertion, none of the time occupied by the pendency of the former bona fide proceeding for divorce by one of the parties against the other can be computed as part of the time of desertion in the later case. McLaughlin v. McLaughlin, 90 N. J. Equity, 322 and cases cited. The reason why the time of pendency of the first proceeding cannot be computed as part of the time of desertion in the later one, is that pending the first suit the petitioner could not cohabit with the petitioner without condoning the offense charged and condonation would destroy the cause of action for divorce. Byrne v. Byrne, 93 N. J. Equity, 5. * * * The settled doctrine of the law requires that pend-

> ing a suit for the dissolution of marriage, and, equally, for nullity, the parties should not live together and their living apart pending such proceedings bona fide, does not constitute desertion within the meaning of the statute. See Marsh v. Marsh, 14 N. J. Equity, 315."

It is to be noted that in this elaborate dictum Chancellor Walker purports to follow and restate the language of his opinion in the McLaughlin case. He says there is a flat rule equally applicable to all cases of prior matrimonial suits between the parties making it mandatory to deduct the time of their pendency. The only reason he gives is the reason which he said in McLaughlin v. McLaughlin is the only reason assigned by the cases, to wit: The settled doctrine of the law requires that pending a suit for the dissolution of marriage, the parties *should not live together,* because cohabitation would equal condonation and condonation would destroy the cause of action for divorce; he cites and rests on the old case of Marsh v. Marsh, which first stated that it was *legally improper* for the parties to co-habit pending suit.

Chancellor Walker thus again stated the rule contended for as a mandatory rule of law, predicated on legal impropriety of cohabitation of the parties pending a divorce suit which legal impropriety denudes a desertion of the requisites required as a cause of divorce for desertion. In so doing, I again submit, Chancellor Walker is in error—his dictum in this case is directly opposed to the holdings in Sarson v. Sarson and Cook v. Cook and consequently cannot accurately state the law.

The next case was Hartpence v. Hartpence, 121 Atl. 513, decided by Vice Chancellor Backes. Here a prior proceeding was brought by the wife on the

ground of extreme cruelty and the later proceeding before the court was brought by the husband on the ground of desertion. In this case Vice-Chancellor Backes granted the divorce. His reasoning however, is peculiar, for in it he both states the flat inexorable rule of law contended for and in the next breath, says that it is not a flat rule of law, but only a rule of evidence. He says first, that time of pendency of the prior proceeding must ordinarily be counted out because, "It is settled doctrine that pending a bona fide suit for divorce, the parties are *justified in not living together,* and their living apart, does not constitute desertion for the time being within the meaning of the statute"; but that this rule does not apply to the case before him because the prior suit was obviously not brought in good faith. Then he says that even if the time of pendency of the prior suit had to be deducted because a suit was pending in good faith, and with that deduction less than two years remained nevertheless, despite the flat rule of law, a divorce could be granted, saying at page 514:

> *"It is also to be observed that if, after deducting the time taken up by a previous suit for divorce, less than two years remain, the petitioner is not necessarily barred, because such a suit stands merely as evidence in the cause on trial that the separation was not willful and obstinate during its pendency, and, like other evidence, may be outweighed and overcome, as it was here overcome.* Here it appears clearly that during the three months preceding the institution of the suit, and for nearly two years after its dismissal, the desertion was wilful and obstinate and that during its pendency the mental attitude of the defendant underwent no change."

This brings us to Cook v. Cook, 97 N. J. Equity, 264 (1925). In this case, defendant deserted petitioner in July, 1916. On April 27, 1917, petitioner commenced suit for divorce on the ground of adultery, the citation was personally served on defendant. On July 2, 1922, petitioner filed another suit for divorce on the ground of desertion, alleging desertion in July, 1916. The prior proceeding had not been terminated.

If the rule contended for is law,—if the period of prior pendency *must* be deducted—it is obvious that no divorce could be granted here. A master had so reported and he did so because he thought there was a rule of law, as stated by defendant, which required him so to do. The Court, however, reversed the master and *granted a divorce* despite the pendency of the prior proceeding, although it had been brought in good faith.

And in the unreported case of Sarson v. Sarson (Docket 31, p. 474) (1911), cited in Cook v. Cook, supra, at page 267, Chancellor Pitney granted a divorce on the ground of desertion despite a bona fide prior proceeding, even though if he had been required to "count out" the time of pendency of the prior proceeding and did count it out, an insufficient time would have remained and no divorce could have been decreed.

If it were true that there was a flat rule of law as contended that the time of pendency of a bona fide prior proceeding must be deducted, no divorce could have been granted in either of these cases. If it is true, as stated, in Marsh v. Marsh, and restated by Chancellor Walker in McLaughlin v. McLaughlin, and Barbour v. Barbour, and by Vice Chancellor Backes, in Hartpence v. Hartpence, that the law does not require parties to live together pending a suit for divorce, and that they are justi-

fied in not living together pending such suit, and that it is legally improper for them to cohabit during such pendency, obviously, no divorce could have been granted because the period of legally improper cohabitation if deducted from the alleged period of desertion would have left an insufficient time remaining. Vice Chancellor Bentley, unaffected by language, however strong, courageously and correctly analyzed the matter. He found that there is no "rigid rule of law to be applied as, for example, is the statutory rule or direction that a written will is not probatable unless witnessed by two individuals or declared to be his will, to both witnesses at the same time." He found only that the institution of a prior action *by a petitioner* gives rise to a *rebuttable presumption* that by its institution and during its pendency the *petitioner* consented to the desertion by the other party so that the desertion by the other party during the period could not be considered against the will of the *petitioner* and therefore *obstinate*. There being no rigid rule of law making it mandatory to deduct the pendency of time or a prior suit, but merely a rule of evidence—a presumption, arising from the pendency of the prior suit and its effect on one of the statutory characteristics of desertion as a cause for divorce, to wit: obstinacy, Vice Chancellor Bentley held that facts could be adduced rebutting the presumption of non-obstinacy. Satisfactory evidence was so adduced and he thereupon granted a divorce. In so doing, he cited as authority the unreported case of Sarson v. Sarson, decided by Chancellor Pitney hereinabove referred to, which likewise was wrongly decided if there is such a rule of legal impropriety of cohabitation and mandatory deduction of time of pendency of prior suit, as contended.

In Jacobs v. Jacobs, 100 N. J. Equity, 482, where the question was again presented, Vice Chancellor Bentley denied a divorce, *not* however, because of any flat rule of law requiring deduction of pendency of prior proceeding, but *because* the presumption of non-obstinacy and consent was not rebutted. He was very careful to point out at page 485:

> "Where it can be shown that the desertion by the defendant was really against the wishes of the petitioner, even though there was a former suit pending, the reasoning of Easter v. Easter, 75 N. H. 270, adopted by Chancellor Pitney in Sarson v. Sarson (Docket 31, p. 474), which I followed in Cook v. Cook, supra, should cause the above fact (the desire of the complaining spouse for a resumption of cohabitation), to overcome the presumption, and the former suit should not be permitted to operate as a bar. But in the present case, that has not even been attempted."

My examination of the cases has therefore disclosed that the rule contended for is *not* law. We find Chancellor Walker in dicta in McLaughlin v. McLaughlin and Barbour v. Barbour, saying that there is a flat rule of law applicable to all cases, whether the same party was or was not petitioner in both proceedings, requiring deduction of time of pendency of the prior proceeding resting on a supposed rule that the law abhors cohabitation between the parties pending suit because cohabitation would condone the offense—a rule of law that "It is legally improper for parties to cohabit pending suit."

But then we find Cook v. Cook, following Sarson v. Sarson, a case which everyone except V. C. Bentley seems to have overlooked. If the state

ments of legal impropriety of cohabitation and legal justification for non-cohabitation during pendency were ever correct statements of law, certainly they must be held to have been clearly overruled by Cook v. Cook.

With the determination that the rule contended for is not law, it seems clear that the prior proceeding has no greater weight bearing on the existence of the characteristics of desertion requisite for a divorc than as evidence in this cause. In so far as the defendant, Mrs. McKee is concerned, it appears clearly from the evidence that she left the present petitioner, Dr. McKee, with the intent not to cohabit and with a fixed settled determination not to return; that her mental attitude underwent no change during the pendency of the suit by her in New York; that not only was the petitioner not required to make advances to her because of her fixed settled determination, but that he nevertheless did more than the law required him to do and did urge her to return. In so far as the claim may be urged that the present defendant, petitioner in the prior proceeding was justified in assuming by the institution of her action that her husband was not averse to continued separation pending her suit, one need merely examine the Record of Events as set forth in Point III of this brief for petitioner, to find a non-conformity of this contention with the facts.

Although it has been demonstrated that the prior proceeding does not as a matter of law, stop the running of time and bar the present proceeding and that the flat rule contended for, together with its bulwark, the rule of legal impropriety of cohabitation and justification for non-cohabitation pending suit is not law, it seems pertinent, before closing the analysis, to consider the propriety of erecting the rule of legal impropriety pursuant to

the statements that there is such a rule contained in the cases. It seems clear that there is no basis for the erection of such rule and it seems odd that the defendant can emphasize at one and the same time, the policy of the state in favor of marriage and continuance of cohabitation thereunder and a rule that the law requires separation of the parties. Doubtless, absence of cohabitation after the institution of suit for divorce is essential to the successful maintenance of such suit, but the policy of the law favors the continuance of the marriage relation, not its destruction or enervation. It seems absurd to say that the law requires the parties to remain separate until the legal adjudication of pending proceeding for divorce, or forbids their reconciliation before decree, or considers impossible the existence of a purpose or conduct which may in time constitute a cause for divorce, merely because proceedings have been begun. If such were the law, the mere filing of a petition for divorce would be equivalent to a decree of separation, beyond the control of the parties. But the well settled policy of the law is directly to the contrary. It was thus stated in Arnaboldi v. Arnaboldi, 101 N. J. Equity, 126, at 131:

> *"The law requires that parties who are married shall remain married until freed by judicial pronouncement, and until free, shall live together until one or the other of such parties shall have committed one or more of the defined offenses.* It is not every grievance that one may have against the other, either temporary or permanent, that shall be allowed to destroy this solemn compact. Whether petty or weighty, there is no middle ground. *The state has said that if either of the parties be guilty of extreme cruelty, adultery or deser-*

*tion, the other may, upon meeting certain safeguards, secure a divorce either absolute or limited. For less than this, no such decree shall be made, and it, therefore follows that no separation shall occur.* Having taken each other for better or worse, anything less than the state has declared to be a ground for divorce must be borne or overcome."

Moreover, such a rule would be directly contrary to the established doctrine that a spouse who deserts does so at her peril and has the burden of proving as her justification the guilt of her spouse, by clear and satisfactory proof (O'Brien v. O'Brien, 142 Atl. 898; Rogers v. Rogers, 81 N. J. Eq. 479; Suydam v. Suydam, 79 N. J. Eq. 144), and that justification is established only by evidence sufficient to constitute on behalf of the deserting party, a cause of action for divorce or judicial separation (Arnaboldi v. Arnaboldi, supra; O'Brien v. O'Brien, supra; Rogers v. Rogers, supra; Calicchio v. Calicchio, supra). Obviously, where a wife deserts on penalty of proving as justification a real cause of action for divorce committed by the deserted spouse, a real deterrent to promiscuous separation is offered. Parties who are married find it wise to respect the policy of the law that parties who are married shall remain married until freed by judicial pronouncement, and until freed, shall live together until one or the other such party shall have committed one or more of the defined offenses, and separation follows not promiscuously and unwisely but only for cause warranting dissolution of the marriage.

No limitation of this rule is required and it would seem foolish to create as a limitation the doctrine that if a party who deserts has no legal ground for

separation, her desertion becomes sanctified into a defense by her institution of action predicated on her belief that she has a good cause for relief. Our Court of Errors and Appeals in Rogers v. Rogers and in Calicchio v. Calicchio, has affirmed the doctrine stated by the Court of Chancery and followed by it as late as the O'Brien case, 142 Atl. 898, that mere *belief* in justification is not sufficient. No reason suggests itself for allowing a party erroneously so believing, "to raise herself up by her own boot straps" by the institution of action.

And no hardship or unfairness results from the refusal to erect a rule of legal impropriety of cohabitation pending suit. Assume that the wife deserts and thereafter institutes action for divorce. The husband, defendant in said suit, may either desire cohabitation or may consent to her separation and not desire cohabitation. If he wants to resume cohabitation and her separation is against his will, the failure to erect a rule of legal impropriety or legal justification contended for certainly creates no hardship. If the wife agrees to cohabitation that is an end of the suit and the purpose of the law against dissolution of the marriage is achieved; if the wife refuses and insists on going on with the suit, she does so on pain of proving that she has a good cause of action which is no more than the chance she takes if she does not start suit and which is the chance the Court of Errors and Appeals in Rogers v. Rogers says she must take. If the husband on the other hand does not want to resume cohabitation, again the failure to erect the rule of legal impropriety not only is not required to achieve a desirable result but if applied would result in an unhappy consequence. If the petitioning wife likewise does not want to resume cohabitation, she must proceed on the cause alleged in

her petition and if her cause is not a good one, she cannot later use the period of pendency as part of a period of desertion by the defendant, because her consent destroys the requisite of obstinacy. If however, despite her suit, she really wants to resume cohabitation with her husband, she is not prejudiced if her cause of action is dismissed because she has misconceived her remedy. For she may nonetheless count in the period of pendency as part of the period of desertion in a later action because it continued against her will. This is the situation in Cook v. Cook. If the flat rule of legal impropriety or legal justification for non-cohabitation obtained, however, this result could never have been achieved.

The analysis made, it is submitted shows clearly that the rule contended for is not law, and shows, moreover, that there is no good reason for now judicially enacting such a rule into law.

## POINT II.

**Even if it be conceded arguendo, that there is a flat rule of law requiring that the time of pendency of a prior bona fide proceeding between the same parties must be deducted from the period alleged to constitute the period of desertion in the later proceeding, the rule does not apply in the case subjudice because the prior proceeding was not brought in good faith.**

Defendant left petitioner's home on January 13, 1925. During the later years of the married life of these parties, there had been some friction between them. Defendant regarded petitioner as an overbearing man, who did not treat her with consideration and kindness, who was penurious and not

liberal, who regarded her as his inferior and who was interested in sexual intercourse when she wasn't.

By defendant's own testimony, as early as the Spring of 1923, she had reached the mental attitude that sexual intercourse with her husband was absolutely repulsive to her (p. 705, ll. 20-24; p. 706, ll. 1-11). She admits however that she had intercourse with him as late as June 21, 1924 (pp. 686, 687). Despite the fact that the testimony discloses no trouble between the parties, defendant admits that she made deliberate secret preparation to leave petitioner and actually did leave his home without any notice, secretly on January 13, 1925. The details of her secret deliberate preparation and leaving, despite no actual trouble between the parties, her consultation with the law firm of Hirsh, Newman & Reass, in October or November, of 1924, and her actual leaving on January 13, 1925, despite no actual trouble between the parties, are set out in Point III of this brief.

So far as the fact of her desertion on the present action is concerned, it is unquestioned law that her leaving was at her peril—at the peril of proving justification by establishing the guilt of this petitioner by clear and satisfactory proof and by establishing as his guilt, the commission of such acts as would entitle her to a cause of action for divorce.

After leaving she did not begin any legal action for separation in January, 1925, nor did she begin one in February, nor in March, nor did she institute any until October, 1925, nine months after the separation, the suit started being in form, action for a decree of divorce from bed and board on the ground of this petitioner's extreme cruelty, praying for an allowance for support. That action was

not formally discontinued until January, 1927. She claims the period between October and January cannot be counted as any period of desertion by her.

Even if there is a rule of law which requires non-computation of pendency of prior proceeding, which there is not, defendant concedes that such rule applies only if the prior proceeding was brought in good faith. Defendant relies chiefly on the case of Weigel v. Weigel, 63 N. J. Eq. 677, for the flat rule. That case states the requirement of good faith in these words at page 681:

> "But in all the cases which state the proposition in general terms, there is an assumption that the case which relieves from the duty of cohabitation, pending it, is one brought in good faith, in order to submit to the consideration of the court, a condition of facts which the complaint *really believes entitles her to the relief sought.*"

If in New York, there were a proceeding for maintenance on the ground of abandonment and failure to support such as that provided in Section 26 of our Divorce Act, and that action was instituted in New York, it is unquestionable that there would be no requirement of deduction of the time of pendency of such proceeding.

Lake v. Lake, 80 N. J. Eq. 350 at 352.

There is no such proceeding in New York however, and no support can be decreed in New York except as incidental to a decree of divorce from bed and board. The action brought by the defendant in New York was such an action for divorce from bed and board, urging as the cause petitioner's extreme cruelty.

It is unnecessary to examine the law of the State of New York to ascertain the requirements for successful maintenance of such an action in that state, because the question presented to us is this defendant's belief as to the requirements of successful maintenance and her belief as to the possibility of successful prosecution of that action. The question presented to us under the doctrine of Weigel v. Weigel, is whether this defendant brought that action really believing that she could submit to the court a condition of facts entitling her to the relief sought, which was a decree from bed and board on the ground of petitioner's extreme cruelty and as a corollary incident—maintenance.

An examination of her own statements shows clearly that she did not believe she could successfully procure the relief sought and that therefore her action was not brought in good faith. The evidence discloses that she brought the action only for the purpose of forcing this petitioner to give her money after the monthly check for the month of September, 1923, which he had sent her, had miscarried and was not received by her. Until the pay check had miscarried, she did nothing. When the pay check miscarried, then she brought the suit. In her letter of October 20, 1925, she wrote:

> "I have brought legal action because I felt that there was no other way by which you would understand that it was necessary to recognize your obligations to the children and myself. If you consider, you will recall that you have not sent me money every month, as you intimate in your letter."

Assuming that she was not getting support, in order to get support in New York she had to bring

an action for separation—she had to prove her assertion of extreme cruelty, entitling her to the relief of a judicial decree of desertion predicated on the cause alleged. She brought the suit in order to *force* this petitioner to give her *money*—but she did not bring the suit believing that it would entitle her to a decree of desertion—she did not believe that she could prove extreme cruelty, legally entitling her to a decree of desertion. This is proved from her own testimony. A few days before her husband left for Europe in October, 1924, she presented all the facts she had to the firm of Hirsh, Newman & Reass, her lawyers, and asked them their opinion on those facts. This was their opinion as she herself details it:

> "Q. What did they tell you? A. They told me I should be separated from him, *but the law would not allow me to do that under the circumstances*" (p. 721, ll. 33-35).

It seems unnecessary to add argument after this admission of the defendant.

No further facts occurred after October nor have any facts been alleged to have occurred by defendant or by any witness on her behalf after October, which could have added to or changed the situation so far as the claim of this petitioner's cruelty is concerned. Defendant brought her action despite her belief in the frailty of her case in order to get this petitioner to give her money. She did not believe, however, that she could succeed in getting the court to say she was legally entitled to a separation.

This state of mind of defendant is further shown, if further proof is necessary, by her attitude in January, 1927, when her New York suit was on the calendar for trial. She exerted every effort to pre-

vent it from coming to trial, although defendant says in paragraph 6, of the amended answer filed in this cause, that "the said petitioner, just before the trial commenced, pleaded with the defendant not to proceed with the trial of the case upon the ground that the publicity of such trial would interfere seriously with the business and reputation of said petitioner, and at the urgent solicitation of said petitioner, an agreement of separation, drawn by the said petitioner personally, was entered into between the defendant and the said petitioner and the action for separation was discontinued". The testimony is undisputed that it was the defendant, Mrs. McKee, who did everything she knew to prevent the case from coming to trial and yet continue to receive payments from her husband which he had been voluntarily making to her. She it was who went to Dean Pegram—this is shown both by her own testimony and that of Dean Pegram. She it was who begged Dean Pegram to help her in having such arrangements made so that the court proceedings would not go on (p. 1141, Deposition of Dean Pegram). Under the cases, her unwillingness to prove the charges alleged, may properly be looked to in considering the intent with which the action was brought.

## POINT III.

**The desertion of petitioner by defendant was obstinate for the statutory period—herein of the united family agreement.**

While the question of obstinacy is factual, the applicable rules of law are well-settled.

Where a wife deserts her petitioning husband, the law casts upon the petitioner the duty of mak-

ing honest efforts to terminate the separation and to procure his wife's return.

Hall v. Hall, 60 N. J. Eq. 469;
Symon v. Symon, 94 N. J. Eq. 353, at 356.

This rule is subject to the exception that "where it is manifest from the circumstances under which the desertion took place, or from her temper and disposition, or from any other fact in the case, that honest effort on the husband's part to terminate the separation would be unavailing, or if successful in bringing the desertion to an end, would be so only temporarily, the duty of making it does not exist."

Hall v. Hall, 60 N. J. Eq. 469 (Er. & App.) revg. in part, 59 N. J. Eq. 402;
Rogers v. Rogers, 81 N. J. Eq. 479 (Er. & App.) revg. 81 N. J. Eq. 311;
O'Brien v. O'Brien, 142 Atl. 898, at 904;
McCauley v. McCauley, 88 N. J. Eq. 392, at 396.

A finding that the defendants' desertion was obstinate for the statutory period would be mandatory under the proofs in this case, even if petitioner had made no efforts to procure his wife's return, for the proofs disclose defendant wife's settled fixed determination not to return to petitioner as his wife and the consequent futility of effort.

But the proofs disclose that petitioner, nevertheless, did make every effort of a just man to procure his wife's return, and that she obstinately resisted those efforts.

**Vice-Chancellor's Conclusions.**

The Vice-Chancellor sitting below thought otherwise. In his conclusions he found the following:

FIRST.—*That the wife was willing to return and that expression of sorrow or repentance by petitioner for the grievances complained of would have been sufficient to effect that end.*

> "An unmistakable manifestation of affection and kindness to his wife and an indication to her of sorrow and repentance for alleviation of the grievances alleged by her, some of which, even though they may not in fact be matrimonial offenses, are corroborated by the daughter and other witnesses in the wife's behalf, would, in my judgment, have effected a reconciliation between the parties" (p. 35, l. 40; p. 36, l. 11).

The facts are, however, that defendant secretly planned to desert when there was no actual trouble between the parties; secretly consulted lawyers; ceased intercourse; had a feeling of repulsion for her husband and a revulsion for sexual intercourse with him, according to her own testimony; on leaving insisted on a division of the furniture; continuously reiterated refusal to return to him, then offered to return only on the condition of no sexual intercourse, an unjustifiable and unlawful condition.

> Rogers v. Rogers, 81 N. J. Eq. 311 (Er. & Ap.).

As for the Vice-Chancellor's opinion that an expression of sorrow or apology would have been sufficient to induce defendant to return, defendant herself testified that:

> "An apology wouldn't be enough. It would have to be an assurance that it would be different.

Q. What assurance did you want? A. I don't know.

Q. Did you ever know what assurance you wanted? A. No, I never did" (p. 765, ll. 9-15).

SECONDLY.—*Petitioner, the Vice-Chancellor found did not make an honest effort to induce his wife to return.*

(a) The Vice-Chancellor intimated that all petitioner did was to write letters and "The petitioner's letter writing was not the fairest means to utilize in an endeavor to impress upon his wife his sincere desire to have her become reunited with him in matrimonial relation" (p. 37, ll. 11-15).

If petitioner had done nothing but letter writing and urged only that letter writing as his efforts expended, the statement thus made would be warranted. That, however, is not this case. The proofs were clear that petitioner employed every method known. He asked defendant to return to him at personal conferences and at conferences with her attorneys; he urged her by letters and by telephone; he paid her money regularly although not required to by any court order and even after the court had specifically declared it would not order, he gave her presents; he tried to employ friends to intercede but defendant repulsed them and forbade petitioner's resorting to any more friends; he tried to get himself invited to petitioner's home to press his case there, but was repulsed.

The learned Vice-Chancellor was perhaps mislead by the argument of defendant's counsel that letter writing alone isn't sufficient, strongly relying on Baxter v. Baxter, 101 N. J. Eq. 236. But this is clearly not the situation presented by Baxter v. Baxter, where the husband refused ever to see his

wife, where he contributed nothing to his wife's support until compelled to by court order, where during the whole period of separation he spoke to his wife only "once or twice over the telephone, perhaps oftener"; where he inserted a notice in the paper that as his wife had left his bed and board he would not be responsible for her debts, where he "wrote her several letters from time to time all of which were registered, with demand for return receipt," in some of which he asked her to "return home and perform her wifely duties"; where he came into court, pointed only to those letters because he could point to nothing else and said: "they show my sincere desire to have my wife return and the continued effort expended by me to accomplish that purpose." This is not such a case.

By letter dated March 10, 1925 (Ex. P-21), petitioner asked defendant to return and "live with me a normal and right married life." In several of the letters written by petitioner, he makes the same request.

The learned Vice-Chancellor in his conclusions, says:

> "In many of the letters written to his wife he inquires whether she will return *to live with him in a normal way.* Such an invitation might reasonably be regarded as an affront to a woman of such gentle character as I judge the defendant to be, having in mind my observation of her and the manner in which she deported herself while she was in attendance at court, and while testifying as a witness in her own behalf" (p. 37, ll. 15-23).

In the first place, it is to be noted, the Vice-Chancellor has twisted the phrase used by petitioner. Petitioner asked her to return to live with

him a *"normal and right married life."* The Vice-Chancellor would have it a request to live "in a *normal way."* I do not propose to argue what the latter phrase might mean or suggest to a woman of fine or coarse sensibilities. I do know, however, that there is no doubt as to the meaning and propriety of the phrase actually used. Defendant says she knew what the phrase meant (p. 589, ll. 5-9), and she herself never says she felt herself affronted or aggrieved, and for the very good reason that the phrase meant what it says and was directed to what petitioner had a right to speak about to his wife.

Defendant had been refusing to have sexual intercourse with petitioner; she said it gave her a feeling of revulsion. It was her said refusal which was in a large measure responsible for the "petty bickerings" and friction between the parties. The only time she offered to return was on the condition of no sexual intercourse. Petitioner testified that in his opinion a married life without sexual intercourse is not a normal married life. The Court of Errors and Appeals has said in Rogers v. Rogers, 81 N. J. Eq. 479, that the wife has no right to impose as a condition on her return to her husband, abstention from sexual intercourse. Both petitioner and defendant understood each other. He kept begging her to return and live a normal married life with sexual intercourse; she kept refusing to return at all except that on one occasion she said she would return providing there was no sexual intercourse.

The Court of Errors and Appeals has said that an offer to return without sexual intercourse is no offer to return at all. Where a wife refuses sexual intercourse or offers only the "non-return" of return without sexual intercourse, the impropriety of asking her to actually "return", to return and to live

the normal married life with sexual intercourse, is not easily apparent.

(b) In any case, says the Vice-Chancellor, petitioner's efforts smack of insincerity and the requests to return contained in his letters were a studied legal performance.

> "Notwithstanding the great number of letters written by the petitioner to his wife, in many of which he invited his wife to return to live with him, *it is manifest to me that a smack of insincerity permeated the entire activities of the petitioner.* Throughout the several days of the hearing of the cause during which the petitioner testified I carefully observed his mannerism in testifying. He *impressed me* that his letter-writing in so far as it contained requests for his wife to return to live with him, was the result of a studied purpose on his part—not really to have his wife return to live with him but to make evidence for himself. *His keeping of copies of the letters which he wrote to his wife fortified my judgment in this respect*" (p. 36, ll. 11-26).

In the first place, the Vice-Chancellor is plainly in error on the "fortification" for his judgment. One of the parties to this suit did make and keep copies of letters written; but it was *not* petitioner —it was defendant. In the second place, petitioner's letters, like his other activities do not smack of insincerity but are unaffected, natural, honest and sincere, and fit naturally into the chronological sequence of events. The cry of studied performance was raised by defendant's counsel in his brief below. His indictment was that petitioner's letters are not sincere, but are only studied

attempts "to put himself in the right; that he inserted requests to return parenthetically, only because his lawyer told him that the law stated that a husband must show that he had urged his wife to come back and terminate the separation, and he followed instructions to the letter, like a man of science. "Far better for his case would it have been if he had written one or two really imaginative letters, with a convincing tone, such as a student of the arts or the humanities could have written. "The letters offered in evidence of the petitioner undoubtedly do contain statements in which can be found a request by the petitioner that the defendant return and live with him, but as we have argued, these letters are merely studied attempts to put the petitioner in the right, and more important still, to make evidence for himself."

If petitioner had been acting on lawyer's advice in asking defendant to come back in order to build up a case that would look well in court, the letters probably would have been dressed up in the fashion of a student of the arts or the humanities. But if they had been so dressed up, those letters would never have been the natural expressions of Dr. McKee, but would have been unnatural studied efforts to build up a case. Petitioner's letters are, however, natural and unaffected, with no window dressing. When on May 29, 1925, petitioner wrote: "Relative to going to the 39 Claremont Avenue Apartment to get a lot of things, I wish you wouldn't think of doing it, it seems like making our living apart permanent. Better come and join your husband and live with me again *I want you*" (Ex. P-22), he undoubtedly spoke from his heart. His letters fit the man and his wife; they are not manufactured—they ring true in the history of events.

When on March 29, 1925, defendant wrote a letter (Ex. P-152) refusing petitioner's request to return, she didn't say she did not believe he wanted her back; she just refused, said it was impossible. As our courts have pointed out, if the defendant herself ever had the slightest doubt about petitioner's sincerity or the sincerity of any one of his offers, there was a very easy way to put his sincerity to the decisive test and that was by accepting his offer and simply tendering herself ready and willing to live with him again as his wife.

Newing v. Newing, 45 N. J. Eq. 498, at 502;
Fisher v. Fisher, 85 N. J. Eq. 194, at 198, 199.

But she admits she was never willing to accept.

The question here involved is one of state of mind. Words may be spoken or written sincerely or insincerely. Acts may seem to have one meaning when isolated and yet actually have another when considered with relation to the series of events preceding those acts and the series of events succeeding those acts. The state of a man's mind is not like a laboratory specimen which can be smeared on a glass and examined under a microscope. What it is can be determined only from the outward expressions and manifestations of the individual. These outward manifestations and expressions taken alone by themselves and separated from the life and relationship of which they form a part likewise can form no basis for sure judgment when thus insolated, they are smeared on a glass for laboratory inspection.

Consequently for the convenience of the court in examining the relative states of mind of these parties, particularly in view of the size of the

record, I shall set forth the expressions and acts of these parties, their relationship with each other and with third persons as they occurred chronologically and in full so that the respective manifestations of the mind within may be considered in the light of and as part of the living conduct of which they formed a part. I have attempted in the Record of Events which follows to accurately state the events as they occurred and to accurately present opposing versions of any particular event.

**Record of Events.**

Petitioner and defendant were married on June 26, 1902 (p. 99, l. 5). They lived together as man and wife and had two children. Their married life together continued until January 13, 1925. Petitioner and defendant were at that time living together in their home at 39 Claremont Avenue, New York City (pp. 102, 103). On that date, defendant deserted petitioner—left his house with the intention of living separate from petitioner (p. 115, ll. 32-40, pp. 116, 117; pp. 579, 580, 581).

In the summer of 1923, defendant had reached the mental attitude that sexual intercourse with her husband, petitioner, was absolutely repulsive to her (p. 705, ll. 27-38).

They last had sexual intercourse together on June 21, 1924, as defendant testified (p. 570, ll. 9-18; p. 686, ll. 16-18, p. 687, ll. 14-15), or in March, 1924, as petitioner testified (p. 113, ll. 4-12).

Petitioner was interested in having sexual intercourse; defendant's sister testified petitioner was angry with defendant because she would not cohabit with him as man and wife (p. 450, ll. 23-26). Defendant testified that during the month of October, 1924, petitioner would call her

and ask her to sleep with him, perhaps three or four times a week, but she refused (p. 702, ll. 15-30).

Defendant consulted lawyers about her matrimonial affairs at least three months prior to her desertion. She fixes the date for the first consultation as October 30, 1924 (p. 706, ll. 18-21). Her sister puts the date earlier (p. 456). Defendant however never told her husband that she had consulted lawyers (pp. 720, 581). Defendant did, however, tell her sister, Frances Gibb, who visited defendant in October, 1924, that she was thinking of leaving her husband and was consulting the law firm of Hirsh, Newman and Reass about leaving him (p. 454, ll. 10-25) but the sister likewise did not tell petitioner (p. 454, ll. 25-27). The lawyers told her "she should be separated from him but the law would't allow her to do that under the circumstances" (p. 721). Mrs. Gibb, defendant's sister came from Illinois to visit her on October 1, 1924 (pp. 433, 434), and slept in the same room with defendant throughout her whole stay in New York which lasted until the middle of December, 1924 (p. 434, ll. 277-36; p. 448, ll. 28-40) and during all that time knew of her own knowledge that defendant slept separate and apart from her husband, petitioner (p. 448, ll. 28-40). Defendant did some packing of things during the period of Mrs. Gibb's visit (p. 480, ll. 20-28).

During this period, defendant needed some dental work (pp. 767, 796, 797). Defendant obtained an estimate from Dr. Brophy in August of $550 (p. 767) or $500 (p. 797). She discussed the estimate with petitioner (p. 797). He suggested consultation with another dentist. She did consult with another dentist who agreed to do it for less (p. 808). Defendant said she preferred Dr. Brophy

in whom she had confidence and petitioner agreed that in a matter of importance, like the major dental operation proposed, he wouldn't want a new man either (p. 797). Defendant had the work done and went to the dentist twice after petitioner's return from Europe, to wit, on December 24, 1925 and December 31, 1925 (p. 798). "The bill came on January 1st and it was for $600.00 instead of $500.00 and he (petitioner) made no objection to it except he wanted to know what the extra $100.00 was for" (p. 798). Petitioner paid this bill during 1925 (p. 120).

On November 1, 1924, petitioner left on a business trip for Europe (p. 106). Petitioner advised his wife of the proposed trip the same day he learned he was going to Europe which was ten days or so before he left (p. 358). Petitioner left money for defendant to carry her over during the time he was away; he says he left $250 in cash; checks amounting to about $350 made out to cash and checks made out for particular bills (pp. 108, 109). Defendant says petitioner left only $100 and some $350 in checks (p. 713, et seq.). The checks were marked in evidence as Exhibits P-153, P-154, P-155, P-156. Although defendant contended she had to borrow money Exhibit P-153, dated November 5, 1924, was not cashed until November 5, 1924, and Exhibit P-154, dated December 15, 1924, was not cashed until December 22, 1924 (pp. 714, 715). This was the day after the husband had returned from his trip.

Petitioner advised defendant he would return on December 21, 1924 (p. 361); sent six letters to her from Europe (p. 108); though he received letters from his children he received none from her in reply (pp. 108, 360); in his letters he advised her of the date of his return (pp. 360, 572). Defendant

admitted receiving three letters which were marked in evidence as Exhibits P-158A, P-159A, P-160A (pp. 742, 743). Defendant did not, however, meet him at the dock (p. 572). The letters are newsy, friendly and such as a husband of a friendly wife would write.

Petitioner brought back with him Christmas presents for his children and for defendant (p. 112). Petitioner testified he gave defendant a large bunch of gloves from Italy, a book or two, some pieces of jewelry, not of an expensive type (pp. 113, 361). Defendant admitted she received a Christmas present but said it was jewelry of little value and a blanket (p. 575).

The children left for school about January 5, 1925 (p. 113). On January 7, 1925, a friend of petitioner's, F. B. Owens of Oklahoma telegraphed that he and his wife were coming for a visit (p. 113). They came and on Friday, January 9, 1925, had dinner with petitioner and defendant at their home (p. 576). After the dinner, petitioner, defendant and Mr. and Mrs. Owens went to theatre (p. 577) and thereafter, all four went to an after-theatre supper (p. 114). The next day, Saturday, January 10, 1925, petitioner arranged with Mr. George Kunz, Vice-President of Tiffany's for a showing of that famous firm's jewels, and all four went to Tiffany's to inspect the collection (pp. 114, 587).

On Sunday, January 10, 1925, petitioner invited defendant to go for a walk. Petitioner says she refused (p. 115). Defendant quotes petitioner as saying: "If you can get ready in three minutes you can go for a walk with me" (pp. 578, 579). Petitioner thereafter requested defendant to attend a tea given for his predecessor at Columbia University but she refused.

On the morning of Monday, January 12, 1925, petitioner went into defendant's room while she was getting dressed. Petitioner put his arms around her and hugged her. He was repulsed. Defendant said "You'll not have a chance to do that again" (p. 115). Defendant describes the incident thus: "He grabbed me tightly by the shoulders with one arm and held me like a vise and put his hand down on my breast and pinched me" (p. 579).

On the morning of Tuesday, January 13, 1925, petitioner found that defendant had deserted him—had left the apartment with her personal things and some things from the apartment (p. 119) and had left a note, addressed to petitioner, advising him of her departure and that "You will hear from my *lawyers, with whom you will kindly have any further communication*" (p. 117).

That same day, petitioner received a letter from Hirsh, Newman & Reass, lawyers, dated January 12, 1925, advising him that they had been retained by defendant "to begin an action for separation against you" and offering him the opportunity to enter into a "separation agreement with her" (p. 121).

Petitioner had no intimation that she was going to leave him—the desertion came as a complete surprise to him (p. 119).

Petitioner tried to get hold of defendant on the telephone and requested permission to see her but she stuck to the determination expressed in her "desertion" note for him to have further communication with her through her attorneys, and wouldn't see him except at her attorney's office (p. 126). She requested that he forward certain Liberty Bonds and by letter of January 14, 1925, petitioner forwarded them to her (p. 127); defendant acknowledging receipt by her letter of January 17, 1925 (p. 128).

Petitioner had the threat of defendant's attorneys to face. They threatened suit, or in the alternative, a separation agreement and said "if we do not hear from you by the 16th instant we will assume that you do not desire to enter into such an agreement and will commence suit (action for separation) against you" (p. 127). Petitioner didn't know the law, and without consulting attorneys thought that a separation agreement was necessarily the only course (p. 367).

Petitioner thereupon wrote to defendant's attorneys by letter of January 15, 1925, denying the charge in their letter of January 12th, and advising them of his regret at the unfortunate turn of affairs; that in view of their letter which threatened a separation suit or a separation agreement, that a separation agreement would be the preferble course, that he was inexperienced in such matters and felt it advisable to consult counsel (p. 364, Exhibit D-1). Petitioner wrote to defendant about January 20th or 25th, saying "why should we go to the trouble in this matter, the only persons who could be benefited would be the attorneys, and that the thing to do was to iron out our own troubles" (p. 129). This letter was not produced by defendant.

Between January 14, 1925, and March 23, 1925, petitioner had numerous telephone conversations with defendant and had conferences with defendant in the presence of her lawyers, Hirsh, Newman and Reass, and of his own counsel, John J. Kirby (p. 132). Defendant says, however, the first telephone conversation occurred on Feb. 28, 1923, when petitioner called asking for a meeting (p. 582).

Mr. Kirby testified these conferences occurred on February 6, 1925, February 9th, 1925 and

March 5, 1925, all of which occurred at the office of defendant's attorneys (pp. 860, 861, 871).

At the first conference, held on February 6, 1925, the question of finances only was discussed, defendant insisting that petitioner's income was larger than petitioner stated it was (pp. 132, 873). The question of reconciliation was not discussed at this conference nor was anything said about a separation agreement (p. 874). The next day, petitioner sent defendant a check for $200.00 (p. 130), which was marked in evidence Exhibit P-157 (p. 730), and was paid on Feb. 11, 1925 (p. 730). Defendant acknowledged receipt of this check which "you so kindly sent me" by her letter of February 13, 1925 (p. 132).

The next conference was held on February 9, 1925. At this conference Mr. John J. Kirby testified, petitioner and defendant withdrew from the presence of their attorneys to consult privately (p. 875). They were gone about fifteen minutes and returned; petitioner said he wasn't able to make any headway (p. 875). Petitioner testified he asked defendant to return to him and she refused (pp. 132, 133). Thereafter the question of petitioner's income was again discussed and the conference again broke up (p. 875).

The parties then met privately on Saturday, February 28, 1925 (pp. 582, 583). Defendant says at this conference petitioner said after angry preliminaries:

> " 'Well, I will give you seventy-five dollars a month,' and I said to him he knew that no one could live on seventy-five dollars a month. I said, 'Of course you know that I have well earned a share in your income and I expect to have it.' He replied and said 'I would like to

> see you get it.' I also told him—asked him about paying my daughter's bill, the college bill which the rules of the college said must be paid by the first of March or no classes can be attended. This bill had to be paid and I asked him if he would pay it, and he said, 'I will not; unless I am appointed her guardian I will pay no bills' " (p. 584).

Petitioner denies that the above is correct and as a matter of fact says he told defendant he had already paid his daughter's college bill the previous day, producing a check to Bryn Mawr College in substitution (p. 951).

The next conference was held on March 5, 1925 (p. 875). Mr. Kirby thus set forth what transpired at the conference of March 5th, 1925:

> "They discussed the amount of money which Doctor McKee should contribute to her support during the period which she was away from him as they had discussed the same matter at the previous two conferences. In the course of that conference Mr. Newman said he understood there was no possibility of the parties getting together. She (Mrs. McKee) was then present. And Doctor McKee said that isn't so, I invited Mrs. McKee last Saturday to return and live with me and Mrs. McKee said, 'No, you did not,' and Doctor McKee said 'Mary, quit this foolishness and come back and live with me now,' and she said 'I will not' " (pp. 861, 877).

Defendant denied that at this conference the question of her returning to her husband was discussed at all, or in any other conference at any

time (p. 748). She said that at that conference this is what occurred:

> "After a few preliminaries Mr. Newman said, 'You have been unbearably cruel to your wife both in private and in public,' and Mr. Kirby said, 'not in public,' and Mr. Newman said, 'Yes, in public also.' He didn't say anything and Mr. Newman said, 'I will assume that it is your desire to bring about a reconciliation with your wife.' Mr. McKee didn't answer, and Mr. Newman said, 'Is that your desire?', and Mr. McKee looked at Mr. Kirby and Mr. Kirby slightly bowed his head and then Mr. McKee slightly bowed his head" (pp. 586, 587; 746, 747).

Mr. Kirby was asked whether such conversation or performance occurred and flatly denied that it did and unqualifiedly contradicted defendant (pp. 867, 868).

Petitioner wrote to defendant by letter dated March 10, 1925 (Ex. P-21). The last paragraph of that letter read: "You had better change your mind and come and live with me a normal and right married life. Won't you?" (p. 588). Defendant received this letter and took it down and showed it to her attorney, Mr. Newman (p. 588).

Thereafter and prior to March 23, 1925, Mr. Newman, defendant's attorney, telephoned to Mr. Kirby, petitioner's attorney, stating that it was evident to him from the statements defendant had made to him that there were no prospects of the parties getting together (p. 871). Mr. Kirby communicated this conversation to petitioner (p. 871).

Petitioner refused to believe there was no prospect of a reconciliation and on March 23, 1925, wrote a letter to defendant which was marked in

evidence as Exhibit P-13, and enclosed a check for $100.00 (pp. 133, 134). This letter reads:

> "New York City, March 23, 1925. Dear Mary, Mr. Kirby wrote me that Mr. Newman had telephoned and stated that it was evident to him that you and I could not resume our joint domicil, from the statements you had made to him. I had a conference with Mr. Kirby on Saturday and talked the matter over with him. There is no reason as I can see it why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do this? To-day I received another letter from Mr. Kirby stating 'Mr. Newman called me and stated that as Mrs. McKee hadn't received any money from you in several weeks, a contribution for her support would be welcome.' *Though you are not treating me right* in absenting yourself from our home *I don't want you to suffer* from lack of really needed money and am accordingly enclosing my check for $100.00 for your use. Ralph."

Defendant replied with a letter dated March 29, 1925, marked in evidence as Exhibit P-152, in which she flatly refused petitioner's invitation to her to return (p. 327). This letter reads:

> "March 29, 1925. Dear Ralph: Thank you for sending the check for one-hundred dollars which I have cashed. Your continued refusal, for a number of years to live a 'right and normal married life, has made it impossible for us to live together.' Very sincerely—Mary" (p. 327).

During this time, petitioner was given an opportunity to and did make arrangements to sublease his apartment at 39 Claremont Avenue, New York City, to James W. Martin, Jr. (pp. 339, 811). Petitioner made a month to month "temporary" sublease, and the sub-lessee, Mr. Martin thus reported petitioner's own explanation for his insistence on that arrangement:

> "Doctor McKee said that he was uncertain how long we could have possession of the apartment house because he was uncertain as to when Mrs. McKee would return. I told Doctor McKee if he would give me time enough to find another place to rent that such an arrangement would be satisfactory. For that reason we came to this agreement for a temporary lease" (p. 812).

Mr. Martin, his wife and son moved in about March 1, 1925 (pp. 39, 813).

Petitioner thereafter had several conferences with defendant and wrote to her on April 22, 1925, enclosing check for $100. In that letter, he said in part:

> "I hope you have considered matters as I talked them over with you a week ago. There is no real reason why we cannot agree in these matters. I am enclosing check for $100 for your use. Better change your mind and come and live right with me again. Ralph McKee" (p. 135).

The matters thus referred to, petitioner testified were, "coming back and living with me in joint domicile" (p. 136).

Defendant testified she had a meeting with petitioner pursuant to his telephone request on April 15, 1925 (p. 590). She thus details the conversation:

> "He got out his papers he had brought before—the expenses of the children, and he said he would send me seventy-five dollars a month, and he said if his income increased he might send me a little more" (p. 590).
>
> "Q. Did he say anything else to you? A. It seems to me there was some other conversation. I can't remember now just what it was" (p. 591).

Defendant's reply letter of April 30, 1925, merely acknowledges receipt of the check and makes no reference to the offer (Ex. P-16, p. 137).

Petitioner's next letter, of May 10, 1925, is again a friendly letter, begging defendant to reconsider. But defendant sent no reply letter until petitioner on May 24, 1925 sends check for $100. (Ex. P-19, p. 98). Defendant replies on May 27, 1925 acknowledging receipt of the check and asks:

> "Will you kindly set a time which would be convenient for me to have my belongings removed from the apartment—together with my share of the other furnishings? Would Tuesday June 2nd be a convenient time?" (Ex. P-20, p. 141.)

Petitioner had imagined he was making progress. He had been sending defendant checks each month for $100 after his first check of $200. He had just paid $100 to Dr. Brophy on account of the dental work defendant had done in November and December of 1924 (pp. 140, 141). This letter was the first intimation to petitioner that defendant

would want to take furniture out of the apartment (p. 148). Petitioner replied to this letter on May 29, 1925, saying:

> "Relative to going to the 39 Claremont Avenue apartment to get a lot of things I wish you wouldn't think of doing that, it seems like making our living apart permanent. Better come and join your husband and live with me again. I want you" (p. 149, Ex. P-22).

This was commencement time at the University and petitioner's time was taken up (pp. 149, 150). Defendant again wrote regarding the things in the apartment. Petitioner gave in but made one more try.

> "On receipt of this phone me without delay and we will arrange a mutually convenient hour unless you have changed your mind and you are willing to let the apartment stand as it is. That would be better, perhaps later you will feel like coming back to me" (Ex. P-25, letter June 19, 1925, p. 154).

On June 22, 1925, petitioner again wrote enclosing check for $100 and again asking defendant to change her mind and come and live with him (Ex. P-26, p. 154). Defendant's reply, and it will be noted that the only regular replies were to letters enclosing checks, acknowledged receipt of the check without more (Ex. P-27, p. 155).

Thereafter petitioner went to a chemical meeting with his son, Billy (p. 155), and on his return, met with defendant by appointment at the apartment at 39 Claremont Avenue, on July 9, 1925, pursuant to defendant's request to take out some of her belongings (pp. 155, 156).

This incident is also very illuminating on the respective attitudes of petitioner and defendant, and on petitioner's efforts to procure a cessation of the separation.

The outstanding point in the whole incident is petitioner's effort to dissuade defendant from insisting on a division of belongings because it seemed to make the separation permanent and her insistence on splitting things up (pp. 817, 847). Mr. Martin thus detailed the conversation on that night:

> "Mrs. McKee had said she came that night to separate—to get some of her things or take her things with her or to have them segregated so she could send for them. They went out into the hall and Doctor McKee said 'Why go through all of this now this evening? Why not put this separation of these books off?' Mrs. McKee said no, she wanted to go through with it at that time. Doctor McKee said that he wished she wouldn't; that it seemed to make it more serious. That probably if they didn't do it there wouldn't be any necessity for the separation of the books. Mrs. McKee stated no, she wished to separate the books and take the things with her to her home.
>
> Q. Then what? I would like you to tell us in your own way what happened and give us as complete a picture as you can. A. I would say that conversation carrying that thought in it was repeated several times during the course of the evening because the separation of the books and the conversation lasted until eleven o'clock at least. I think it was after eleven" (pp. 816, 817). "The gist of the conversation was 'Why separate these books at the present time? Why not wait until some other time?' Mrs. McKee

said, 'No, I want to take my things—I want to do it right now. I want to do it tonight.' Doctor McKee said 'To separate the things now seems to make this difficulty between us more definite' " (p. 847).

Defendant says nothing about the above in her testimony, but she testifies among other things to an alleged conversation, shortly after arrival in which petitioner wanted to know what she ran away with (p. 596). Both Mr. Martin (p. 819) and Mrs. Martin, in her deposition, flatly deny that any such conversation took place.

Defendant further states on page 596 of her testimony that petitioner insisted on trying to discuss their affairs before the Martins and that she said "I would not discuss it with the Martins; it was nothing that concerned them," etc., and threatened to go home if he persisted. Both Mr. Martin and Mrs. Martin absolutely deny that any such conversation took place. Mr. Martin says that on the contrary, defendant embarrassed him very considerably by herself coming into the room where they were and stating that she wished to tell his wife and him what kind of a man Doctor McKee was (p. 822); and that petitioner took her by the arm, gently, not harshly, and said, in the tone of voice of an embarrassed man, as if to calm her (p. 844), "Come, let's discuss that by ourselves" (pp. 822, 823, 843, 844).

Other testimony of defendant in regard to this meeting might be adverted to, e. g., her testimony that she asked Mrs. Martin if she knew about the blanket with the pink border, which Mrs. Martin in her testimony flatly denies. But enough has been referred to.

The conflict between the testimony of Mr. and Mrs. Martin and that of defendant on the details

of this meeting is sharp and complete and does not seem susceptible of more than one interpretation.

At the said meeting, defendant selected books she claimed were her own, and petitioner and the son placed them in piles (p. 817). Petitioner then packed the books and sent them to her. His letter of July 23, 1925, in which he enclosed a check for $100 again expressed the sentiments the Martins had heard him express throughout the meeting of July 9th:

> "I packed some of the books you picked out as those you wanted. They make me sorrowful, for to pack them seems to make definite your determination not to come back and live with me again. Better change your mind and come and live with me again" (p. 157, Exhibit P-28).

Nothing eventful happened from now until October. Defendant was away from New York in Carthage, Illinois, with the children during this period. By her letter of July 27, 1925, she acknowledges receipt of petitioner's check for One Hundred ($100.00) Dollars (p. 158) and discusses petitioner's suggestion that the son be sent to a different school, concerning which petitioner had had conversations with her as early as March or April (p. 158). A few days later petitioner telegraphed defendant to send Billy back to New York so that petitioner could send him to camp, but defendant did not do so. On August 12th, 1925, petitioner wrote defendant telling her that the Martins expected to vacate the apartment on August 20th, and that he expected to put the furniture and things in storage. These words are significant: "You may change your mind about continuing to refuse to live

with me and this furniture will then be available for our use." The Martins did move out on August 20th, 1925, and the furniture was taken out by the Manhattanville Express and Van Company on August 29th, and was taken by them to their storage house (p. 193). Defendant replied to the letter last referred to by her letter of August 23rd, which letter is taken up entirely with what she wanted done with the furniture (p. 163). Petitioner wrote on August 26th, to defendant in Illinois enclosing a check for One Hundred ($100.00) Dollars, and telling her that he was hard at work packing (p. 163). This was just three days before the Express Company moved the furniture (p. 193).

Petitioner again wrote on August 29th, advising that the furniture had just been taken out for storage and that he regretted he had not learned sooner of her desire for several articles which he thought of no use and had therefore discarded. Defendant wrote on September 4th, 1925, acknowledging receipt of the check sent on August 26th (pp. 164, 165). Petitioner then wrote on September 8th, enclosing his check No. 946 for One Hundred ($100.00) Dollars (see p. 196, Exhibit P-40; p. 198, Exhibit P-42). This check, it was testified, was never received and the letter was not produced. Defendant wrote on September 23rd, stating that she was advised that petitioner would be out of town and wanted him to have the letter when he returned. In the letter she talked about the children (p. 165). The petitioner and defendant then had some telephone conversations and petitioner wrote to defendant by letter of October 13th, 1925, asking whether Billy had enough woolen underwear and talking about Margaret. Petitioner closed again by asking defendant to reconsider and return to him (pp. 123-124). Three days before, unbe-

known to petitioner, defendant had sworn to her complaint in New York (Exhibit P-44, p. 1049).

Immediately thereafter petitioner was served with a Summons and Complaint in a suit by defendant against him for separation and maintenance. Petitioner wrote on October 18th, 1925, saying that he was completely upset by receiving the Summons and Complaint. He said in this letter:

> "I had been hoping that you would change your mind and be willing to come back and live again with me and the children. That would be the happiest way for you, for them and for me. I don't know what to write to you for I can't see what you think you can gain by giving court and newspaper publicity to our domestic affairs. I have tried twice to reach you on the telephone to arrange a meeting to discuss what this action will mean to the children, but the telephone girl at your place makes inquiry and reports to me that you are not in. Nobody will gain anything by this suit except your lawyers. It looks as if they were instigating you to this action. I am enclosing a check for one hundred dollars. I do not know whether you want this this month or not in view of your legal action. Is it your wish I keep sending you money each month as I have been doing? Better think it over, little girl, and stop the legal action" (p. 167).

Petitioner said the suit at that time came as a complete surprise to him. He said "I thought things were going much better and that the matter would be gradually cleared up and she would come to live with me" (p. 168). She had not said a word about instituting such a suit in June, July, August or September (p. 168).

Defendant replied to petitioner's letter in which he complained about the suit with a letter of October 20th, 1925, acknowledging receipt of his check for One hundred ($100.00) Dollars and complaining only about money saying: "If you consider you will recall that you have not sent me money every month, as you intimate in your letter" (p. 168). Petitioner replied directly setting forth a list of his checks showing that he had given her Two hundred ($200.00) Dollars in February and One hundred ($100.00) Dollars each month thereafter (pp. 195-196). Defendant did not reply.

Petitioner was now puzzled as to what he should do as he had written to his wife in his previous letter he didn't know whether she wanted him to continue sending money in view of her separation suit that she had started. Receiving no reply he again wrote by letter of October 29, asking her whether she wanted a check in November and asking her to please have her attorney make up his bill to November 1st, saying:

> "I presume you and he expect me to take care of this out of my income. Whatever is paid him makes that much less for you, Bill and Margaret and myself but I suppose it will have to be paid" (pp. 196, 197).

On November 2nd, petitioner filed his answer to the separation action brought by his wife (p. 200). He did not however file any counterclaim or countersuit for separation because he was trying to get her to return to him and didn't want to have any legal decision which would handicap her returning to him (p. 378).

On November 3rd, 1925, or just prior thereto, petitioner received a visit from Mr. Harry A.

Whaley, who advised him that defendant said she had not received the September check. Petitioner then wrote defendant a letter bearing date November 3rd, 1925 advising her to stop payment on the check if it turned up and enclosing a check to replace it (p. 198).

At about this time petitioner and defendant met at Mr. Whaley's home at 520 West 230th Street, New York City for a conference (p. 895). Defendant fixes the date at November 3rd, 1925 (p. 600) and petitioner fixes it at about the same time (p. 996). Petitioner and defendant agree that the conference was arranged at the request of petitioner, made by telephone (pp. 996, 601, 778, 779). Defendant thus states the telephone conversation:

> Mr. McKee called me on the telephone and asked me to meet him there. He spoke of Mr. Whaley having come to see him and he said—we had a conversation about things and he asked me to meet him some place and I suggested Mrs. Tildsley's home. He said he didn't want to go to Mrs. Tildsley's. He said Mr. Whaley has come to talk to you and why not meet at his house" (p. 601).

They met at about 7 or 7:30 in the evening (p. 996). There were present at the conference petitioner, defendant, Mr. Whaley and Miss Whaley (pp. 996, 601). Mr. Whaley suggested that he leave the room but he was requested to stay (pp. 601, 914). Defendant says of this: "Mr. Whaley said, 'You have come to talk over your own affairs and we will leave the room', and Mr. McKee said, 'No, you have gone to talk with Mrs. McKee and you have talked with me and I would rather you would stay' " (p. 601). Mr. Whaley says they both

said, "No, stay" (p. 914). Defendant said, "Miss Whaley left the room" (p. 601). Mr. Whaley says his sister was present during the conference, that she was there when petitioner asked defendant to come and live with him (p. 895).

Petitioner thus testified as to the conversation which took place at that meeting:

> "We talked about the children and their work at school first, then I said to Mrs. McKee to quit her—to change her attitude and consider coming back to me. 'I have asked you a number of times to come back to me and you don't seem to be willing. Change your mind and come on back and live with me. We can have a home for the children—a nice home—and then you and I can be happy and be much better than living this separate existence.' She said 'I don't want to consider that; I won't do it. I want you to provide for me separately and give me enough money to take care of myself well and of the children. You are making at least $20,000 a year or maybe $50,000 and you ought to give me about $12,000.' I told her I wasn't making any such money and that I was only making about $10,000—in fact a little less than that, and at that time I was spending at the rate of approximately $9,000 for herself and the children and that was all that I could afford to do" (p. 997).

Defendant describes the conversation which took place thus:

> "Q. Did you have a conversation with Doctor McKee that night? A. Yes, he had his brief case and went over the same thing that he was spending for the children, and he said he would send me seventy-five dollars a month.

Q. You say Mr. Whaley was there listening to it? A. Yes, I said again that seventy-five dollars a month was not to be considered. So he got up to go then and he said 'Now you remember I have asked you to come back and live with me and you have refused', and I said 'You have never asked me to come back and live with you.' Mr. Whaley said 'I never saw anybody leave my house like that before.' He went after him and Mr. McKee came back. Mr. McKee then said goodnight to Mr. Whaley, but not to me" (p. 602).

Defendant on cross examination further testified as follows:

"Q. And didn't you after Doctor McKee left have a conversation with Miss Whaley in which she asked you why you did not accept Doctor McKee's invitation to return home and live? Yes or No? A. She asked me that question, yes. It isn't fair to leave that there without the rest of it.

Q. Then I suppose you told Miss Whaley why you didn't accept his invitation? A. I said he had never asked me" (p. 782).

Mr. Whaley testified to the following conversation:

"She was there and he came in and said 'How do you do Mary', and she spoke to him. Then he spoke to her and said 'Why not come up to live together? I have a home over in New Jersey and we can live there.' She says 'I won't do it.' Then she talked about finances and one thing another, I don't remember all the conversation, and the doctor seemed to be put out about it.

> Q. Tell us what he said? A. He left and I met him outside and I said 'Doctor, that ain't the right way to leave us', and he said 'I am so upset; excuse me.' Then he came back and the sister said to Mrs. McKee 'Why don't you do as the doctor said?', and she said 'I won't do it; I don't believe a word he says'" (p. 895).

Mr. Whaley testified on cross examination that he heard the whole conversation, but that he at no time heard defendant say "You have never asked me to come back" (p. 914), and definitely reiterated his testimony that petitioner said to defendant "Mary, why don't you come back and live with me?" which request defendant refused with a flat "I won't do it" (p. 912). It is interesting to note in this connection Mr. Whaley's testimony that in September of 1928 defendant threatened to hurt him if he did not forget petitioner's request to have her return at this conference. Mr. Whaley testified as follows to these threats:

> "She said the doctor never asked me to come back. I related the conversation as I heard it. She said 'The doctor never asked me to come back', and I said 'He certainly did' and she said 'If you testify to that I will make it hot for you'" (p. 916).

After the above conference petitioner wrote to defendant on November 12th, 1925, enclosing a check for $100.00. In this letter he begs her to please be reasonable with him with respect to the children and says:

> "If you would only do this I think and believe you would find the next step and the

> most important step, in its influence on the whole family, much easier. Billy, Margaret and I need a home and without you we can not have a whole home. How about making it a home having four members" (p. 199).

Defendant replied by letter of November 18th, which merely acknowledged the enclosure and also the earlier check to replace the lost September check (p. 200). Thereafter petitioner telephoned the defendant inviting her to have Thanksgiving dinner at Lorber's with Margaret and him (p. 603). That dinner was held but defendant says petitioner didn't say anything at the dinner. He didn't enter into a conversation (p. 603).

Petitioner thereafter wrote to defendant by letter of December 12th, 1925. In this letter he enclosed a check for $100.00 for her December needs and also a second check for $100.00 as a Christmas present for herself and the children and says: "We had all better plan to spend Christmas together. What say you?" (p. 201). Defendant says that in addition he sent word with the children inviting her and her sister to have Christmas dinner with the children and with him (pp. 603, 604). It might be noted that petitioner would certainly not have invited the sister to such dinner if he was merely desiring to make evidence for himself at his requested conferences as defendant contends.

The next letter petitioner received from defendant was her letter bearing date January 15th, 1926 (p. 202). In the meantime he wrote her a letter dated December 24th, 1924, in which he expressed his regrets that she and her sister Helen had refused to have Christmas dinner with him (pp. 203, 204).

On January 14th, 1926, petitioner wrote to defendant enclosing check for $100.00 stating that he

expected to be able to send her something more later in the month, and again requesting her to please change her mind and come back and live with him (p. 204).

Defendant wrote to petitioner by letter of December 16th, 1925, which she says she finds was not sent (p. 202). The enclosed letter purported to be a reply to petitioner's letter of December 12th, enclosing a Christmas present. Defendant acknowledges the checks and as to the second, or Christmas present check says: "I will use it to get some Christmas gifts for the children as you say, and the rest can go toward their room and board while here" (p. 202). She thus refused to accept the present for herself.

On January 26, 1926, petitioner again wrote to defendant enclosing an additional check for $70.00 pursuant to his promise to try to send something extra this month (p. 206), which check defendant acknowledged in her letter of January 27th (p. 207).

In petitioner's next letter dated February 14th, 1926, he complains that he is short of cash but encloses a Valentine check for $50.00 (pp. 207, 208). Petitioner's next letter of February 17th, 1926, complains bitterly about the trouble he was being subjected to by defendant's lawyers and asks:

> "Why make all this trouble for me and incidentally to reflect on yourself?. Better quit this business of trying to go it alone and come and live a normal married life with me. I would like to have you and we would both be happier. Won't you do it?" (p. 208).

To petitioner's request for a home for all, defendant replies to her letter of February 19th, 1926 that

> "It is necessary to provide a home *for the children and myself.* There is no reason why our affairs could not be settled without resorting to the publicity of court action, excepting your refusal to do so. Billy has written that he expects to be off bounds on Saturday. Very sincerely—Mary" (p. 211).

The language above referred to deserves particular attention because it is to be noted throughout the testimony, especially the testimony later to be adverted to regarding the conference of January 24th, 1927, that petitioner always took the position that he wanted a home for all four and would not settle on any other basis, and that he would not accede to defendant's position that she should have a separate home for herself and the two children, with the petitioner having merely a right of visitation.

Petitioner replied directly by his letter of February 22nd, 1926 and says:

> "It is just as necessary that the children have a home with me as with you and there is no reason why we should not all be happy in the same home" (pp. 211, 212).

Petitioner again wrote three days later enclosing a check for $100 and asking "What do you think about doing what I discussed in my letter of a few days ago?" (p. 167). Defendant replied by a letter of March 5, 1926. She acknowledged receipt of the check. As to petitioner's request to her she says:

> *'I do not think it is necessary to say anything more than I have already said many times to you in regard to the other matter to*

*which you refer in your letter. I am sure you know my mind on that point"* (p. 213).

Petitioner did not write again for a week and in his next letter which is dated March 12, 1926, after he had been definitely repulsed by the defendant he says nothing about his previous request but merely encloses check for $100 (pp. 214, 215).

It is to be noted that the checks which were sent regularly each month with extra checks being sent for Christmas time and the month following were not sent under court order or court compulsion of any kind (p. 215). Defendant did not until the Fall of 1926 make any effort to compel petitioner to pay her anything (p. 215).

Defendant acknowledged the receipt of the check by letter of March 14th, 1926. Defendant's attorneys during this period were apparently hard at work obtaining information as to petitioner's income. Petitioner writes in his letter of March 21st, 1926, complaining about the trouble it has made him and wondering how many people have been asked for affidavits regarding him and his income (p. 217). Defendant replied in her letter of March 29th, 1926, that her attorneys have been going to various people for the information "and some of it is proving quite interesting" (p. 218).

On April 7th, 1926, petitioner again wrote enclosing a check for $100.00 and expressed surprise that she had not cashed the February 25th and March 12th checks until March 30th (p. 219). Defendant acknowledges receipt of the check by a letter of April 14th, 1926, in which she gives a new address (pp. 219, 220).

Thereafter petitioner enlisted the efforts of Doctor Brophy, defendant's dentist and a mutual friend in an effort to have her return. Defendant says of this:

> "Doctor Brophy asked me what I thought about taking up my home with my husband again. He told me Dr. McKee had asked him to ask me what I thought about it" (pp. 788, 789). "Dr. Brophy had talked with him about the matter and said he would speak to me and he did and asked me if there was any possibility of patching up the differences in our family and I said it would all depend upon Mr. McKee" (p. 610).

Petitioner in his letter of April 15th, 1926, refers to Dr. Brophy's discussion with her and said:

> "I would like to get together with you and see if we cannot come to a common view in the matter. How about having dinner with me some evening at Lorber's or somewhere else if you prefer? Telephone me and we will set an evening" (p. 221).

In this letter, petitioner requested defendant to telephone him to fix an appointment. Defendant testified she didn't telephone, she didn't have a telephone, she shouldn't have telephoned anyhow if she had, she would wait until he telephoned her, "under those circumstances" "she would wait under all circumstances" (p. 789).

Petitioner wrote again on April 18th, 1926, saying in part:

> "I have not heard from you in reply to my last letter regarding our getting together and talging things over. Call me up, preferably in the morning, and we will get together" (p. 223). Defendant wrote a letter which apparently crossed in which she said "If you really wish to talk things over with me as you

say, I will meet you at Mr. Newman's office on Thursday afternoon at three o'clock" (p. 222).

Defendant says that thereafter a conference took place at the office of Mr. Newman, her attorney, on April 22nd, 1926, petitioner having called her for the conference (p. 607). Defendant says she waited for petitioner to telephone her; that he did not telephone her; a meeting was arranged at that telephone conversation and that she suggested Mr. Newman's office because "our meetings in public places had been too unpleasant and Mr. Newman advised me to have the meeting at his office" (p. 608). She thus states what occurred at this conference:

"He objected to Mr. Kutz being there. Mr. Kutz said he did not intend to stay so we could have a talk alone. I was sitting at the table alone and Mr. McKee sat at the end of the table with his hands behind his head and sat and said nothing whatever. I said nothing whatever. We sat I suppose twenty minutes that way and finally he said 'It seems as though we ought to live together' and I said 'How can we do that?'—No, I didn't reply to that. Then he sat a long time again and then he said again 'It seems as though we ought to live together', and I said 'How can we do that?' and he said 'We can take a room in some inexpensive hotel now and discuss this matter later'. He said 'Are you willing to promise twelve times a month?' and I said 'I always refused to put my life on any such basis'. He said 'If you are not willing to promise that there is no use of discussing the matter', and he got up and went away" (pp. 607, 608).

Petitioner denies that any conversation was had as to promising twelve times a month or any number of times and as to the cheap hotel allegation says:

> "What I said is that if she did not wish to keep house in an apartment we could take rooms in a hotel. There was no statement about living more meanly than before or a cheap hotel" (p. 193).

Petitioner wrote again on May 7th, enclosing check for $100 (p. 224). Petitioner wrote again on May 10th, 1926, writing some newsy gossip about the children and his office.

In April, after the meeting in Newman's office of April 22nd, 1926, the parties had another meeting on the mezzanine floor of the Pennsylvania Hotel (p. 235). Defendant places this meeting in June, 1926 (p. 611). This meeting occurred at the request of petitioner (p. 611). As a matter of fact defendant says, "None of the meetings were at my request; they were all at his" (p. 613). Defendant thus details the conversation:

> "Q. Do you recall what was said to you Mrs. McKee? Can you state what the conversation was? A. I can't recall the conversation; I recall the end of it. He said 'I have asked you to come back with me and remember I have, and you have refused to do it,' and I said to him 'But you have never asked me to come back and live with you,' and he laughed and said, 'I will say it now—Will you come back and live with me?' and laughed and went away, before I had a chance to say nothing at all" (p. 612).

Petitioner admits that he asked defendant to come back to live with him at this conference

(p. 235), but says defendant misstates his language. He said:

> "I asked her to come back that is true—but I did not tell her to remember that I asked her to come back, and run away" (p. 989).

Petitioner wrote again on June 9th, enclosing check for $100.00 and advising defendant that he was about to leave on a trip (p. 226). Defendant then wrote to petitioner for the first time since her letter of April 19th on June 10th. In this letter defendant said:

> "I have postponed writing really because I have felt greatly indignant that you should so abuse the confidence of an acquaintance. Please do not drag anyone else into our affairs. After using them to arrange a meeting with me, you say nothing and do nothing that will help to settle the matter" (p. 226, Exhibit P-74).

Defendant says she referred in that letter to Dr. Brophy and to Mr. Whaley also (p. 790).

Petitioner says there is nothing that he knows of that he did to abuse the confidence of an acquaintance, except that he had asked Dr. Brophy from his personal friendship for him as a personal friend to help in the matter (p. 227). While we have not Dr. Brophy's testimony nor the testimony of a disinterested witness as to what occurred at the conference after Dr. Brophy's efforts were enlisted, we have Mr. Whaley's testimony as to what occurred at the conference at his house from which it would seem clearly to appear that his confidence had not been abused. So petitioner wrote to de-

fendant saying: "You do me an injustice when you say I did not use Dr. Brophy squarely. I did." In this letter petitioner also begs defendant to be fair with him in the matter of the children (Exhibit P-75, p. 228).

Defendant writes next on July 16th, 1926. In this letter she says:

> "In the light of certain facts which have come to me since we talked together some weeks ago, it seems possible that you did not make clear to me just what you intended. Under the circumstances if you so desire I will be at Mr. Newman's office on Monday afternoon for the purpose of continuing the conversation. You will understand that although I am as always willing to reach any *reasonable agreement* in settling our difficulties and avoiding publicity *my position in the matter is in no way changed.* You will of course let me know whether you wish to do this and if so at what time" (p. 229).

Petitioner says he understood by her statement that she was willing to reach any reasonable agreement but her position in the matter was in no way changed, that she meant she would not return to live with him. On the day that petitioner received this letter he left for Copper Hill, Tennessee (p. 234) and replied from there by his letter of July 21st, 1926 (fol. 233).

In this letter petitioner complains that he does not understand what was not understood correctly by defendant; she seemed at the previous meeting to understand perfectly that his position was a united home and so complained on that question. He said he would be glad to meet her and talk

matters over in the presence of a neutral party or two, but that he would rather not meet at her lawyer's office, and as he said in his letter of August 19th, 1926 (Exhibit P-80) either "by ourselves or if you prefer in the presence of a neutral party or two" (p. 243). There were numerous meetings throughout this period (p. 229). It is difficult to separate them.

As defendant says in this period "We had so many meetings I can't recall the dates" (p. 612).

The subject of the talk at the various meetings petitioner testified was "the question of her returning to me and the question of Margaret's schooling and Billy's schooling" (p. 229), and he was urging her at practically every meeting to return to him to live together (p. 230).

After petitioner returned from Tennessee, he had a number of telephone conversations with defendant (p. 236). In the conversations she told him *that Mr. Newman had advised her not to meet privately but to meet with petitioner in Newman's office* (p. 236).

On August 13th, 1926, petitioner wrote to defendant enclosing check for $100 and stated to her that "there is no reason why you and I should not get together privately and without the presence of your Mr. Newman. His advice to you, which you quoted, to not meet me except at his office is not sound legal advice and just the reverse of what the law wishes" (p. 236).

Defendant replied by her letter of August 17th, 1926. Although she herself had said in her letter of July 16th, 1926, that "In the light of certain facts which have come to me since we talked together some weeks ago, it seems possible that you did not make clear to me just what you intended" and that under the circumstances she was prepared

to have another meeting, she now says she can't see what good another meeting will do (p. 229).

She says in this letter:

> "As to your suggestion that we meet again to talk matters over, you will remember that on all the occasions, except two, when we have done so, all you did was to go over a supposed list of your expenditures and make the statement that you would send me seventy-five dollars a month. On the first of the two exceptions Billy and I went to the apartment on your representation that you wished to make a division of the household effects when you had no such intention. The second exception was when I saw you in Mr. Newman's office the latter part of April and the sum of your statements was that it would seem we ought to live together but that if we did we would live more meanly than ever that we could take a room in some cheap hotel. In view of all this I cannot see what would be gained by another interview" (p. 237).

As to her statement that at every meeting all petitioner did was to go over a supposed list of expenditures and make the statement that he would send her Seventy-five ($75.00) Dollars a month.

It is to be noted that during the whole period during which defendant had deserted and lived apart from petitioner he had continued to send her at least $100 a month.

In February, 1925, he sent her $200.00. He sent her $100.00 each month thereafter until Christmas of 1925 when he sent her $100.00 and $170.00 extra.

In January of 1926 he sent her $100.00 again and in February sent her $50.00 extra, and in March,

April, May, June and July he sent her $100.00 each month.

As a matter of fact just four days before, on August 13th he sent her a check for $100.00 to cover August, which she acknowledged in this letter. Durall this time he was under no court order or compulsion of any kind (p. 428), but continued to pay her because "I felt I wanted to keep in her good graces and that one way to do it was to acquiesce insofar as I could with her wishes and to take care of it by sending her money from month to month" (pp. 428, 429). He did it to keep in her good graces and good will (p. 429).

It seems hardly likely that all petitioner did in meetings held at intervals over a period of nineteen months was to state that he would send $75.00 a month, when during that period of nineteen months he voluntarily sent and continued to send at least $100.00 each month.

His actions here certainly seem to speak louder than her words.

Defendant points out two exceptions. The first, the meeting of July 9th in the apartment at 39 Claremont Avenue with the Martins present, when "I went to the apartment on your representation that you wished to make a division of the household effects *and you had no such intention*" (p. 237). In the first place, it will be noted that defendant made the request for the division of furnishings by her letter of May 27th, 1925 (Exs. P-20, P-141). She then said, "Will you kindly set a time which would be convenient for me to have my belongings removed from the apartment, etc.?"

To that letter petitioner replied by his letter of May 29th, 1925, by saying, "I wish you wouldn't think of doing that. It seems like making our living apart permanent."

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She wrote again for an appointment for the purpose of making a division on June 8th, 1925 (p. 150), and on June 19th, 1925, petitioner again wrote her to please change her mind on making a division (pp. 153, 154).

She replied on June 25th, merely acknowledging receipt of check which he had sent on June 22nd (p. 155), but said nothing about changing her mind.

Finally the meeting of July 9th was held. It must be conceded from the testimony of the Martins' that petitioner in the apartment tried to dissuade defendant from making a division of the furniture or the books; tried to prevent this act which would make the separation seem more permanent. To this extent perhaps defendant is justified when she says, "You had no intention to make a division of the furniture."

Her second exception was the meeting of April 22nd in Mr. Newman's office. Petitioner denies that he said "It would seem we ought to live together" and says he vigorously urged her to live together with him.

As to her claim that he said, "But if we do live together we would live more meanly than ever, that we could take a room in some cheap hotel." Petitioner absolutely denies this and says: "What I said is that if she did not wish to keep house in an apartment we could take rooms in a hotel" (p. 239).

Defendant next says in her letter: "Each time I have seen you outside the office you have contrived to place me in a most embarrassing position so that aside from all legal aspects it would be impossible for me to allow myself to be so placed again" (p. 237). She never tried to explain however in what way she was embarrassed. She makes no claim that petitioner did anything to her at

these meetings except talk to her. Apparently the only way in which she was embarrassed was by what petitioner said. So petitioner says of these words:

> "I do not know what she has reference to excepting the fact that I invited her to come back and live with me. She seemed to think that was embarrassing her, and she only wanted to discuss the question instead of that how much money I would provide and as to my giving her the complete charge of the children, which I would not consent to" (p. 239).

Petitioner replies in his letter of August 19th, 1926, denying the various statements she made which appear from the other facts in the case to be without foundation, and telling her that he would meet her in any neutral place "by ourselves, or if you prefer, in the presence of a neutral party or two" (p. 243). No question, of course, could arise if a neutral party or two were present.

It seems wise to quote this letter of petitioner:

> "Dear Mary: Your letter of the 17th received. I would like to meet you and talk things over and see if matters can not be helped but this must be in some independent and neutral place. I should not meet you at Mr. Newman's office, as you suggest, for the reasons I have told you over the telephone or in a letter, reasons which are obvious as well. You misquoted me in your letter in certain respects, e. g., regarding living in 'some cheap hotel.' If you will recall the conversation you will recall that I did not suggest our living in 'some cheap hotel.' I did suggest that living in a hotel might be less work while the children

were away at schools and asked you to consider it when you said that running an apartment was too much trouble. If this were done a suite in a hotel fitted to our station and finances could be chosen. Your statement of what other things have been discussed when we have talked things over is also not correct. I have each time urged you to come back and live with me but you have insisted that you didn't wish to do so and instead several times insisted that you should have twenty thousand dollars a year and later at other times that you should have two-thirds of my income. I then each time went over matters trying to show you that that was impossible and that the best thing would be for you to come back and live with me. Also that keeping the children in their present schools was exceedingly expensive and to give you any large amount would mean that the children would have to be taken from these schools—which you said you would not consent to. Your statement regarding your visit to the apartment last August is also untrue. Why make such statements? I would like to meet and discuss our matters with you whenever you would be willing to do so in some neutral place by ourselves or if you prefer in the presence of a neutral party or two. Will you meet me?" (pp. 242, 243).

Petitioner testified in respect to his statements made in his letter that at practically all the meetings he begged her to come back to him but she insisted that she should have Twenty thousand ($20,000.00) Dollars a year from him as separate maintenance away from him and should have com-

plete control of the children and should be away from him with the children (p. 244).

As to his income, petitioner says he wasn't earning Twenty Thousand ($20,000.00) Dollars a year, but about half of that and that he pointed out what his income was to her, showing her his income tax reports and showing her what his expenditures had been for the children (pp. 244, 245).

Defendant replied by her letter of August 24th, 1926, and her words here are significant. The letter reads:

> "Dear Ralph: In answer to your letter of August 19, I shall be glad to meet you to talk over matters *if,* as I said before, it is your intention to discuss things with the purpose of really *forming some plan by which our affairs can be settled without publicity*" (p. 245).

This letter clearly indicates the position of defendant who stated that her position had never changed during all the period. She wanted a plan "by which our affairs could be settled without publicity". If she wanted to come back and live with petitioner, obviously there would be no plan; no publicity. The plan to settle without publicity that she wanted therefore could obviously mean only a plan of settlement in which she would not return to her husband and in which she would not live together with him. The next letter that was produced was defendant's letter of September 8th, 1926 (p. 249).

Petitioner testified that he wrote her a letter prior to this which was not produced (p. 247). This appears so from the language of defendant's letter. She first gives her address and then says "as to the other matters you mentioned in your

letter I have already placed it *entirely* in the hands of *Mr. Newman*" (p. 247).

The letter to which this was a reply was not produced, but petitioner says that

> "I must imagine it was urging her not to go ahead with the law suit which she had filed the summons and complaint and in which I answered, but for us to get together and live together" (p. 247).

During this period there was another meeting in Mr. Newman's office. Petitioner describes the meeting at pages 239, 240 and 241 of his testimony. One of her attorneys tried to come in but he insisted that defendant and he be left alone. At this meeting petitioner says he urged her to return, but defendant refused to return and demanded instead a large proportion of his income. Petitioner thus sets forth the result of the conference:

> "It started out with an invitation to her to return and for her to be willing to meet me not only this time but other times where we could be private and discuss things without fear of somebody eavesdropping upon us. I invited her to return; she said she would not—did not care to, and I argued it for a few minutes and then, seeing I was making no progress, began to talk about the children and their schooling. That was proven to be the best way I could get her to consider our family affairs because she was, like myself, much interested in the children. I then went back to the question of our getting together. She did part of the talking and I did part of it. It is impossible for me to quote the exact words, but I remember one phrase I think she used at that time, 'You know

> I am not interested in considering going back and living with you; you make things too hard for me and I am not interested in living with you'. She said she didn't care to live with me unless I would give her complete control of the money, and even then she wanted the children, and when I discussed that she backed out from the question of even accepting the money and control the finances and said she didn't want to live with me at all" (pp. 240, 241).

On September 11th, 1926, petitioner again wrote, enclosing check for $100.00 (p. 248).

In this month petitioner and his brother paid a visit to defendant at her Spuyten Duyvil address (p. 615). Defendant describes this visit on page 615 of her testimony. They were seated in the sun porch by her son when they came in. She did not invite them into the house although they were "there for an hour and a half or two hours" (p. 616). She can't remember that petitioner said anything directly to her. "He may have. Then later he suggested that we should all go out to dinner some place". Mrs. McKee later testified, however, that she was not invited to dinner by petitioner (p. 773).

About October 1, 1926, papers were served on petitioner's attorney, Mr. Kirby, in defendant's application for temporary alimony and counsel fees (p. 248). Petitioner wrote to her on October 6, 1926, telling her that he had been working on the reply papers; that he was sick at the thought of the publicity the matter would be given and that he had hoped she would realize that he was doing what he could for her (p. 248).

Defendant replied in her letter of October 8th. She says:

> "I have met and talked with you on numerous occasions as your representation to me and to others that you wished to do this. But at no time would you consider the matter seriously or *change your position in any respect.* I cannot continue to exist as I have been doing, and *a home must be provided for the children as well as myself.* You yourself *know that I have well earned a share of your income.* I have always been most anxious, as you know, & nothing would make me happier now than to settle the matter out of court" (p. 249).

Petitioner admits that he would never change his position—that he wanted defendant to return to him and live with him in married life (p. 251).

Defendant however in this letter again reiterates her own position that she didn't want to do that but wanted a separate home provided for herself and the children.

Petitioner wrote again on October 11th enclosing a check for $100 (p. 251).

Further letters passed between petitioner and defendant; October 16th (p. 252); October 19th (p. 253); October 21st (p. 324).

Four letters passed between the parties in November: November 7th (p. 253); November 10th (p. 254); November 11th (p. 324); November 17th (p. 208), which are not particularly fruitful except for the friendly discussions contained in petitioner's letters and the usual monthly enclosure of $100.

Petitioner then wrote on December 5th (p. 325) and in this letter states that he has paid $500 to defendant's attorneys.

Defendant acknowledges that she received this payment in her letter of December 13th (p. 255).

Defendant's application for alimony *pendente lite* was denied (p. 428), but petitioner nevertheless continued to pay defendant without any court order and despite the fact that he was not under any compulsion—to keep in her good graces and in her good will (pp. 428, 429).

Petitioner then sent her another letter and enclosing a check for December and a Christmas present, which letter was not produced (pp. 255, 256). Just before Christmas in this year petitioner testified he called defendant asking her for an opportunity to visit her at her home at Spuyten Duyvil, and that she agreed. He went to her house and she refused to let him in. After standing in the snow for a long time outside her house he called her on the telephone and told her that he had just come from the house, etc. Defendant admitted he called. First she testified he said he was outside (p. 771). Later she said he did not tell her he just came from the house (p. 771). Still later she admitted he did say he just came from the house (p. 809). She admitted the petitioner told her that he had made an engagement with her the day before and that he had just come from her house which he visited pursuant to such engagement, and that he was sorry he hadn't kept the engagement, but she said she had not made any such engagement (p. 809).

In answer to the question "He just drew it up from the air?" she answered "He may have drawn it from the law" (p. 809).

It is to be noted that whenever petitioner *wrote* requesting an engagement defendant now says he was laying the foundation for a suit, if he failed to write, that he didn't do his duty; but to a telephone conversation and a telephone engagement there are no witnesses. It would certainly seem

foolish for petitioner to say over the telephone that he had made an appointment the day before over the telephone, if no such appointment had been made.

On January 14th, 1927, petitioner sent defendant a check for $100 by a letter missing from the files (p. 269). (See Exhibit P-97, p. 269.) At this time defendant had been away from petitioner for two years.

Shortly thereafter the separation suit instituted by defendant appeared in the calendar. Defendant says the case first appeared on Wednesday, January 19th, 1927 and that they all appeared in court that day, although the case was not reached (p. 617).

On Thursday, January 20th, 1927, a conference was held in Mr. Newman's office between petitioner, defendant, Mr. Kirby and Mr. Newman (p. 620).

At the conference Mr. Kirby testified there was discussed largely the question of imminence of the action and the possibility of the case being settled in some way that was satisfactory to both sides. At the end of the conference petitioner invited defendant to come back and live with him saying: "Mary, come back and live with me." She replied: "No, I will not" (pp. 880, 881).

Defendant denies that anything was said at all about her living with petitioner (p. 641) and thus details what was said at the conference:

> "Mr. McKee had some typewritten papers of some kind. He didn't read them and we didn't read them, but he said he would send me forty dollars a week, and he said 'This is what the papers say; he would send me forty dollars a week and that I would agree to withdraw my

> case in New York City and that I would sign this agreement saying that I would withdraw this case, but that he could not sign the agreement because Columbia University would consider him guilty and dismiss him from the university' " (pp. 600, 621).

When these words of defendant were submitted to Mr. Kirby, he unqualifiedly denied that any such agreement was presented or that any such talk took place (p. 869).

Another conference was held between the parties at Mr. Newman's office on Saturday, January 22nd, 1927. Defendant says this conference was arranged: "Because Mr. Newman had made this suggestion to me, that it might be possible to have a nominal home together. We would live in the same house" (pp. 621, 622).

Defendant thus described what was said at this conference:

> "This conference was between Mr. McKee and Mr. Kirby, and Mr. Newman and myself, and Mr. Newman said that he had suggested to me, and after consideration I had agreed, that he would present the matter to them, and Mr. Newman said the purpose was that it would save Mr. McKee's reputation which seemed to be his main consideration, and would give us each the opportunity of having the children with us if we had a nominal home together, each of us living our own lives, and Mr. Kirby broke in and said he wouldn't consider anything of the kind. Mr. Kirby said to me 'Are you willing to live in New Jersey with Mr. McKee; that's his home?' I said 'Where we live is a very minor consideration, but there is no reason for his living in New

Jersey except that he thinks that is an easy place to get a divorce.' Mr. Kirby said 'You refuse to live in New Jersey with him?', and they both got up, and I said, 'No, I have not refused', but they both went out and that was the end of that" (p. 623).

Mr. Kirby thus describes this conference:

"That was a very short conference, at the outset of which Mr. Newman made the suggestion which I have stated to you in an introductory way, would Doctor McKee be willing to take up his residence with Mrs. McKee living together in the same rooms without meeting each other and seeing each other at all for appearance sake. I said it was not a proposition which I would think of putting to Doctor McKee, and I wouldn't do it. Thereupon I said turning to Mrs. McKee 'Are you willing to go to New Jersey where your husband is living and live with him?', and she said 'No', and we stood up and left the office" (p. 881).

The nominal home arrangement proposed as the condition on which defendant would return to petitioner was an arrangement wherein defendant and petitioner would not live together as man and wife, but would occupy separate rooms. This was so understood by the parties. So defendant testified as follows:

"Q. Did you ask Mr. Newman what he meant by nominally living together? A. We discussed it; I knew what he meant.

Q. What did he mean? A. I have stated it as nearly as I can.

Q. Did he mean that you were to occupy one room and he another? A. Yes, that was my understanding.

By the Vice-Chancellor:

Q. Was that said in the discussion between you and Mr. Newman? A. No.

By Mr. Walscheid:

Q. Wasn't that said by Mr. Newman to you? A. It wasn't said, no. That's what I understood, but it wasn't said. I presume any one would think that was what was meant of course.

Q. Didn't you on your direct examination testify that that was what was said and that was what was meant? A. I said in talking with Mr. McKee we discussed that" (p. 778).

Defendant has on occasion stated that she was afraid of being alone in the house with her husband—afraid of his violence. For example, vide (p. 723). Defendant, however, certainly couldn't have been very much afraid of petitioner when the above suggestion of a "nominal home" was made.

After this Saturday morning conference when her offer to return on unlawful conditions was rejected, defendant was undoubtedly in an agitated condition. She had in the October preceding submitted to the Court upon an application for alimony pendente lite *her whole case as now developed in the Court of Chancery of New Jersey.*

Upon the case thus presented alimony pendente lite *had been refused.* She had no evidence other than what had been submitted in her affidavits to the Supreme Court of the State of New York. Since alimony pendente lite had been refused she could reasonably anticipate that she would lose her case on final hearing, and her lawyers had undoubt-

edly advised her that if she had no more and no better evidence to present at final hearing of the New York separation suit, her case would be dismissed.

She could not afford to go to trial and risk an adverse adjudication since such a result would definitely establish that she had *wilfully* and *without just cause* deserted her husband and had *obstinately* remained away from him for two years. It would also justify her husband in refusing further to make the *voluntary* payments which he had theretofore made to her—and she was determined not to go back to him as his wife. Undoubtedly all of this was discussed between her and her attorneys. Her husband was a professor at Columbia University and to a certain extent in the public eye. She knew, or thought she knew, that he dreaded the publicity of a court trial. The day of publicity and scandal was at hand. If she could because of his fear of that publicity induce him to agree to some separation agreement, or to a postponement of the trial upon terms beneficial to her, the situation would be saved. But Dr. McKee had made no overtures. The case was marked ready for both sides and would have to be tried *unless she could prevent it.* What was to be done under the circumstances?

She put herself in touch with Dean Pegram, Dr. McKee's superior at Columbia University for the purpose of obtaining the separation agreement she desired, or at least some postponement of the suit. She told Dean Pegram she sought his help to get her husband to make such arrangements as would make it unnecessary to go forward with the Court proceedings (p. 1141). The record of events as disclosed by the testimony—the conferences with Dean Pegram, the resultant conferences between

defendant and her husband as a result of which the United Family Agreement was signed and her separation suit discontinued are set forth below.

She tells us what *her* secret purpose was in signing the United Family Agreement (pp. 644, 645). And Exhibit P-172 tells us just as clearly what she was secretly trying to accomplish through Dean Pegram and in her conference with her husband thereafter on Monday, January 24, 1927. She went into that conference armed with written instructions from her lawyers as to what she was to bring back out of the conference. Those instructions read:

> "In consideration of my wife's adjourning the trial of the action commenced by her against me for separation in the Supreme Court of the State of New York, County of New York, I, Ralph H. McKee, do hereby waive any right or cause of action which I may claim to have against my said wife, Mary N. McKee, in force in the State of New York, and covenant and agree that I will begin no action against her affecting our marital status in the State of New Jersey" (Exhibit P-172).

A study of this exhibit plainly shows the attitude and state of mind of defendant at the time of the final hearing of her New York separation suit. It plainly shows that what she wanted was to live apart from her husband; what she wanted, because of her fear of losing the separation suit because her desertion which she had wilfully commenced, had continued obstinately, was not a resumption of marital relations, but some paper from petitioner waiving her wrongful conduct—some paper which would through some legerdemain *create* justification for her (see p. 644, Exhibit P-172).

With this situation clearly in mind, let us return to the record of events.

Defendant called on George B. Pegram, Dean of the School of Engineering of Columbia University. Defendant had a conference with him on this day, Saturday, January 22nd, 1927 (or Friday evening, as Dean Pegram recalled it), and a longer conference on Sunday morning at which Mrs. Tildsley was present (see Pegram's Deposition, p. 1134 and pp. 623, 624).

Dean Pegram then conferred with petitioner on Sunday afternoon (Dep., p. 1135, p. 260).

Thereafter Dean Pegram telephoned to defendant (Dep., p. 1144).

Dean Pegram testified that at such conferences with him, defendant told him

> "that *she was quite unwilling to have full marital relations with Doctor McKee* and from what she said I understand that she had developed an antipathy towards him to such an extent that she was unwilling to live with him as his wife" (Dep., p. 1145).

She said she desired to avoid the publicity of the trial the next day would entail (Dep., p. 1136); that she had some fear that petitioner desired to withdraw their son from the school in which he then was, in which school she strongly desired him to continue (Dep., p. 1136). She told him

> "that to bring out a suit of that kind in public could do no one any good, if it could be settled without being brought out in a public court, and that she wanted to talk the matter over with me with a view to seeing whether I might help to bring her and her husband together and *getting them to make such arrangements as*

*would make it unnecessary to go forward with the court proceedings"* (Dep., p. 1141).

Defendant denied that she said anything to Dean Pegram about her willingness or unwillingness to live with her husband and said:

> "All I asked him was to see Mr. McKee about the advisability of having a reconciliation" (p. 625, ll. 23-25).

But just a few questions later defendant says that Dean Pegram called her after conferring with petitioner and "He asked if I would care to meet Dr. McKee" (p. 625, ll. 39-40; p. 626, ll. 4-6). It would hardly seem likely if all she asked Dean Pegram was to arrange a reconciliation that he would have to ask her whether she cared to meet petitioner.

After conferring with defendant, Dean Pegram had a conference with petitioner on Sunday afternoon. He reported to him that defendant had said in substance that she was unwilling to live with him as man and wife in the future (Dep. p. 1135). Petitioner expressed himself as regretting that the situation had come to such a pass as that (Dep. p. 1137).

Dean Pegram also told petitioner defendant's position on the schools in which the children were, and the petitioner said there could hardly be any question between them on that score. Petitioner confirms this testimony (pp. 260, 261).

Thereafter Dean Pegram telephoned to defendant and told her that petitioner would be glad to confer with her before the time set for the opening of the court proceedings on the next day (Dep. p. 1144), and thereafter telephoned to petitioner and told him that defendant would meet him in

the Court Room a little before the time for court (p. 261, ll, 30, 31).

Defendant says Dean Pegram in this conversation said:

> "Mr. McKee was favorable to the proposition. He didn't say what the proposition was. I understood it was a proposition about having a referee" (Bk. 4, pp. 626, ll. 9-14).

Dean Pegram says he doesn't recollect any reference at all at the conferences to the question of a referee (Dep. p. 1148).

Petitioner testified that after he had been told by Dean Pegram that defendant would see him before court, he prepared a memorandum (pp. 261, ll. 36, 37), without any consultation or advice from his lawyer (p. 333).

Mr. Kirby testified that he never saw the memorandum before it was produced by petitioner in court the next day and says "He told me he had prepared it because of some conference which the Dean of his Department at Columbia University had had with him in which an effort was made to bring about a settlement of the difficulties in which they then were" (p. 865).

Petitioner had prepared that agreement, it will be remembered, after Dean Pegram had told him that defendant was unwilling to resume full marital relations with him, and although he thought he had a perfect defense to the separation suit (pp. 378, 396), because as he testified he was unwilling to have her separated from him and wanted her to come back and was arguing towards it and was trying to accomplish that result in as clear steps as he thought he could do it (p. 382).

On Monday morning, January 24th, both attorneys answered "ready." It was found that the

case could not be reached and the case was adjourned by the Court until two o'clock (p. 864). Defendant said she saw Mr. Reass, her attorney and he said the case had been postponed until the afternoon and said she and petitioner could go into a room that he showed them to talk things over (p. 626). Petitioner showed a copy of the memorandum he had prepared to his attorney, Mr. Kirby, and Mr. Kirby saw him either show or give a copy of the paper to defendant and go off with her to confer, after which Mr. Kirby left the court-room, not to return until two o'clock (p. 864).

Defendant thus details the conference with petitioner alone on this morning:

> "He said the proposition of Mr. Newman's was idiotic. I said that would be a way of avoiding any trouble at the university; *no one would know what our private arrangements were;* no one would know but we were living in harmony, and that it would give him the opportunity of having the children too, and he said he didn't care anything about that. He said the only question is 'Are you willing to promise eighteen times a month?'
>
> By the Vice-Chancellor:
>
> Q. It is eighteen times a month this time; it was twelve times a month before? A. Yes, your Honor.
>
> By Mr. Blumberg:
>
> Q. Go ahead with the conversation with Doctor McKee! A. I said if he was going back to that same thing there was no use of talking about it; if he wanted to do this thing *that Mr. Newman* suggested—*my feeling toward him was only one of repulsion;* it couldn't be anything else—but if he wanted to have a

*nominal* home together and would treat me with the ordinary consideration that one member of a family expected from the other, that I would try to overcome that feeling and then we could resume our living together.

Q. What did Doctor McKee say to that? A. He said that same thing about asking if I was willing to promise eighteen times a month and if I wasn't there would be no more said.

Q. Did you say you were going on with the case at all? A. No, I didn't say anything about it. Then he said—he took some papers out of his pocket and said he had written out —why there was no reason why we should not write out our own separation agreement, and I said I wasn't interested in any separation agreement that he would make; *that I wanted it legally and finally.*

Q. Did he show you the separation agreement? A. No.

Q. You didn't look at it? A. No.

Q. Did he ask you to look at it? A. No, he had it in his hand; I don't know whether he asked me to look at it" (pp. 627, 628).

Petitioner says that he read a copy of the memorandum to her and gave her a copy to read herself (p. 216).

Petitioner testified that defendant wanted to be separated (p. 381), and that he said to her

> "Can't we arrange it so we can live together and have the children with us instead of being separated" and that she said she was not and she said: "I am not ready to do that; I think the thing for you to do is to provide for me and I will give the children a home and you can come and see them from time to time" (p. 380).

Petitioner says that the conversation is approximately as follows:

> "that this is an unfortunate thing about us, and she said, 'I have got to have money enough to live on decently', and made some statements as to how much money and 'I want to take care of the children and you can come and see them.' I said, 'No, the thing to do is to have you and I to get together; won't you get together with me and we can have a home and we can have the children with us. Let's take them from the schools in which they are and put them in New York schools.'
>
> Q. What did she say to that? A. She said, 'I don't want to'" (pp. 383, 384).

Petitioner said that then all the seven original items of his memorandum were discussed and that the discussion primarily concerned itself with items 2 and 3, item 2 being concerning the amount of money $166.00, as to it being insufficient, and No. 3 was regarding the question of our getting together as to the united family for the purpose of getting if possible a united family a little later. The united family provision read:

> "That the second party (defendant) agrees to discuss with first party (petitioner) our family affairs and in particular the possibility of the united family at least once in each six weeks" (p. 263).

Petitioner says:

> "I told her that I was not interested in the question of a separation agreement but that if we could get a step further towards getting

> together and living together later, I would be glad to do it," and she said to me that "she did not feel like doing that, that is getting together as a united family now, but possibly she would later on" (p. 263).

Petitioner said that:

> "she said she wanted at that time to live separately; that she wanted to avoid the notoriety of going on with the hearing of the suit and that she wanted more money" (p. 430).

Petitioner however insists that he himself was looking only to have her return. He said he was arguing for her to return and insisting upon it in as clear steps as he thought he could make it (p. 382) and again reiterates that he was absolutely sincere in the matter of trying to get her back (p. 382).

Defendant's counsel in endeavoring to show a lack of sincerity asked:

> "Did you manifest any affection by attempting to caress your wife or use any words of endearment which would soften her up with a view of acceding to your wishes?"

Petitioner answered as follows:

> "From the experience which I had in the past to do so would only make her mad and I did not do so, just as on January 12th, the day before she left me, I went in and put my arm around her and she pulled away and said to me 'You will not have a chance to do it to me again'" (p. 384).

This answer obviously states the truth, as defendant's own testimony that during this conference "my feeling toward him was only one of repulsion" (p. 627), clearly demonstrates.

Defendant and petitioner both agree that he then took defendant to lunch (pp. 628; 379).

Defendant testified:

> "I said we were going to agree to have a referee or something like that and he said, 'I am going to lunch with you' and he did. We had lunch in a restaurant but there was no opportunity to say much; it was a very crowded restaurant" (p. 628).

After lunch they returned to the Court. Mr. Kirby testified to the next occurrence as follows:

> "I returned again at 2 o'clock and when the case was called Judge Tierney, who was the presiding judge, called Mr. Reass and me to the table and said 'Is there any possibility of settling the case?' He said he had spoken to us similarly when it was on the calendar the previous week. We both said we didn't think there was. He said, 'I will adjourn my court at 3 o'clock and I will meet the parties and their counsel in my chambers to see if a further effort can be made to settle.' We then went out into the corridor and Doctor McKee conferred with Mrs. McKee at some distance apart and I spoke to Mr. Reass" (p. 866).

Petitioner testified that before going out to the lawyers again, he and defendant had agreed on all the terms of the agreement except Paragraph 2 which was the money provision (p. 264).

Petitioner thus testified:

> "We went outside in the corridor and saw the lawyers and each of them read over the agreement and she argued for a larger amount of money and I called attention to my financial condition. It wouldn't permit me to give any considerable sum. Finally it was suggested by one of the attorneys a figure of $200.00, I think Mr. Kirby, and she said that it was not enough, but Mr. Reass rather led her to accept it and she did agree as a compromise figure" (p. 264).

Mr. Kirby thus details the rest of the conference:

> "In a few minutes the four of us got together and with each of them holding a copy of this agreement, Mrs. McKee said the amount provided in the agreement was not enough. I don't recall the amount—I think it was $166.00. She wanted more. Finally Doctor McKee agreed to give her a certain amount—I think it was $200.00. Then Mr. Reass suggested there ought to be some time up to which the agreement should run so far as the payments were concerned, and some one suggested, I think Doctor McKee, that the elder of the two children would be graduated from Bryn Mawr in June, 1928—the year of June, 1928. Then some one suggested, either Doctor McKee or Mr. Reass, that the date July 1, 1928, be inserted in the agreement, and that was done. Then Mrs. McKee said, 'If I sign the agreement (addressing her remarks to Doctor McKee), you may begin a suit against me next week,' and Doctor McKee said 'Yes; either of us may begin a suit if either of us signs this agree-

> ment, and it is discontinued at that time.' Thereupon she said 'All right, I am ready to sign the agreement.' They each signed the agreement in duplicate in the presence of each other and Mr. Reass and myself. As I recall it they each initialed the changes that were made in the agreement, then Doctor McKee said before we separated, 'My only purpose in signing the agreement is the hope that it will bring Mrs. McKee and me together again.' Mr. Reass said something to the effect that would be a good consummation or something like that, and we parted. I may say we went back before the judge and stated to him the case had been settled and he marked it discontinued on the calendar, and I think the next day or two after that I entered the usual order of discontinuance" (pp. 865, 866).

Petitioner confirms Mr. Kirby's testimony that new paragraph 7, which reads:

> "This agreement shall have as its minimum duration July 1, 1928" was "put in after the discussion and completion of Paragraph 2 at the suggestion of Mr. Reass. He suggested there ought to be an item put in that this should have as its minimum duration a period to include the time until Margaret would graduate from college" (p. 264).

and that this was suggested just before the agreement was signed.

Petitioner confirms Mr. Kirby's testimony that Mrs. McKee asked whether petitioner could begin suit against her and that he replied "Either one could begin suit at any time" (pp. 265, 400).

Defendant says:

> "He (petitioner) said 'I could take the case up again if I wanted to just where it was, if I wanted to. No mention of his bringing suit; he didn't discuss that at all" (p. 633).

Petitioner testified that Paragraph 3 of the agreement, which was the united family provision of the agreement, was his own suggestion (p. 432) and that he would not have signed the agreement if it did not carry that provision (p. 432).

Defendant testified when questioned as to what petitioner said as to the purpose of the agreement that "He said it was a separation agreement that he had wrote out himself" (p. 631). Petitioner denies this.

Petitioner testified that his real purpose in signing that agreement was in order that defendant might come back and live with him that there might be a united family (pp. 428, 429, 430). He said that was his primary thought and the actuating reason which induced him to draw and sign the agreement (p. 430).

He further testified that he made it known to his wife at the time he signed the agreement, and he made that known in the presence of the lawyers. Petitioner is corroborated by Mr. Kirby who testifies that petitioner said before they separated: "My only purpose in signing the agreement is the hope that it will bring Mrs. McKee and me together again" (p. 866), and he again reiterated that on cross-examination (p. 885).

Although defendant said that she did not state her purpose in signing the agreement she was nevertheless after considerable argument between counsel allowed to state her purpose which she did, at page 78 of her testimony. Her testimony is:

"My purpose in signing it my husband had just refused my offer of having a home together and my purpose in signing the agreement was to end the suit began in New York in a manner favorable to myself by his written acknowledgment that my action was justified by his written consent to our living separate and apart, and by my agreement to get along on the small sum of $200.00 a month for the next year and a half. To obtain his promise at the end of that time—that he would at the end of this time make me an allowance sufficient to maintain myself and the children in a manner that was comfortable and suitable" (p. 644).

Defendant testified to one further statement in relation to this conference of January 24th, 1927, which petitioner denied and on which Mr. Kirby flatly contradicted her.

Defendant testified at page 633 that she did not ask petitioner anything about the possibility of his starting suit "except he was to sign an agreement not to bring suit against me either in New Jersey or New York on the basis of our family affairs". She did not speak to petitioner about signing it but spoke to her attorney (p. 633). She does not know whether any copy of such agreement was given to petitioner at that time (p. 634). Not only did petitioner contradict defendant on this point but Mr. Kirby (p. 869 of his testimony) flatly denied that anything was said about any such agreement and indeed it would have been completely inconsistent with petitioner's admitted statement that either one was free to start suit at any time after the signing of the United Family Agreement marked Exhibit P-95.

The next day, January 25th, 1927, petitioner wrote to defendant enclosing a check for the balance of the month and also twenty-five dollars extra. He said, "I don't think you will have cause to regret the results of our conference yesterday afternoon" (p. 257). Petitioner had now won his first victory in his effort to get the defendant to return to live with him, and was justly happy about it.

Defendant replies by her letter of January 30, 1927, acknowledging receipt of the check, and asking petitioner to "stop maligning me" (p. 268). She, however, did not state in what respect she thought he was maligning her, and does not undertake to explain it in the testimony.

Petitioner writes in his letter of January 31, 1927, that her accusation is without basis (p. 269).

Defendant had requested a meeting for the purpose of dividing up the furniture which was in storage. Petitioner wrote by letter of February 3, 1927, arranging for a meeting in the waiting room of the Pennsylvania Station on Friday, February 4th, 1927. He says:

> "I am sorry you did not like any of the three places I suggested over the telephone. Having dinner with me at a restaurant would have been nicest. It seems too bad to have a meeting for such a discussion. It would be much better if you would come and live with me. Better come back" (p. 270).

The conference suggested was held (p. 271). Defendant said she lost her pocketbook and petitioner loaned her $10.00 (p. 271). At the conference, petitioner testified, they discussed some things about the furniture and also the question of petitioner's coming and seeing defendant, and taking

some souvenirs and calling upon her socially. He tried to invite himself up, but defendant said things were not in shape for her to have him up yet. Defendant says that petitioner did not ask to come up and call on her, but said he wanted to come up and go through everything in the place, and "I said I objected to his going through all of my papers" (p. 654). In the evening of that conference petitioner had dinner with defendant and their daughter, Margaret (p. 272).

Petitioner wrote to defendant by letter of February 6, 1927, enclosing check for Two Hundred Dollars for February *and expressing his pleasure that she had joined him for dinner Friday night* (p. 272).

Defendant wrote on February 7, 1927, advising that the doctor found nothing organically wrong with Margaret (p. 273).

Defendant wrote next on February 11, 1927, acknowledging receipt of the check for $200, and thanking petitioner for the loan (p. 273).

On February 20, 1927, petitioner and defendant had dinner together at the Campus Restaurant on 32nd Street (p. 657).

During this period a considerable portion of the furniture was taken from storage and sent to defendant. Petitioner wrote in his letter of February 27, 1927:

> *"I hope the taking of the major part of the furniture out of storage and your using it to furnish your apartment will make matters more pleasant for you. Perhaps a little later you will be willing to join me and we can have all of it together"* (p. 274).

Defendant also wrote by letter of February 27th, 1927, asking for the rest of the bedroom furniture.

Petitioner testified that there were only three pieces and she already had two of them (p. 279).

Petitioner replied by letter of March 5, 1927, enclosing check for $200 for March.

Defendant wrote by letter of March 7, 1927, complaining that she had not yet received the china or the mirrors, and that "there are a number of your things here, including photographs of Wooster girls, Clinton Academy souvenirs and other things. If you care to have them saved, let me know at once" (p. 283). Petitioner testified that at their prior conference she had agreed to let him come to the house to look at the souvenirs and to call on her, but in this letter she merely states that she will save the souvenirs. There is no statement that she would be willing to have him call on her.

Petitioner replied by letter on March 13, 1927, explaining about the china and the mirrors, and telling her he would like to keep the souvenirs *and again expressing the hope that the family will be all together and united soon* (pp. 284, 285).

Defendant wrote on March 17th, 1927, acknowledging receipt of check for $200. The remainder of the letter is taken up entirely with a discussion of the furniture.

The next letter is from defendant to petitioner, dated March 31, 1927. This reads:

> "As according to our agreement we are to meet once in six weeks and as on Sunday it will be six weeks since our last meeting, I will be in the lobby of the Waldorf Astoria at 4 o'clock on Sunday afternoon, April 3."

Petitioner testified that he had been having meetings in January, February and March, pursuant to the agreement, and that "at the meetings we dis-

cussed the children and their work. We discussed the question of her coming back and living with me, and we discussed some questions of furniture" (p. 289). At these meetings he had asked her to return and live with him. In general her reply was not a definite reply, although some times it was almost a refusal so far as the present was concerned (p. 289), but she did indicate that there might be a change of heart in relation to the matter, or at least she was willing to consider it (p. 289). There was, as usual, a copy of the preceding letter in the file in defendant's handwriting, which was introduced in evidence marked Exhibit P-110A. Petitioner denied that it was a fact that it was three months since the last meeting, and testified that he had seen her at least once in between (p. 973). He said:

> "I can't fix the date, but it was the time I asked her if she wanted a radio set and she said she did and in consequence of that I sent up to her by Bill when he was home on his spring vacation, part of the radio set, and tried to take the rest of the parts myself, and she refused to let me come up to the apartment" (p. 973).

At the very least, defendant did not deny that petitioner spoke to her on April 2, 1927, and on Friday, April 8, 1927, which dates are referred to in his letter of April 10, 1927 (p. 287). In this letter he enclosed check for $200 for April, talked about the furniture and said:

> "As I told you Friday I hope to send you the balance of the radio set in 10 days or two weeks" (p. 288).

Defendant did not reply to this letter, and on May 9th, 1927, petitioner again wrote to defendant, enclosing check for $200. He says:

> "The radio set I am getting for you is about complete, and I hope to get all the parts to you this week" (p. 290).

Petitioner testified that thereafter he tried to go to defendant's apartment to instal the balance of the radio, but that defendant refused to let him come up to her apartment (p. 290). Defendant admitted this. In answer to the question:

> "Q. When did you refuse to let him come in and set up the radio? A. I refused to let him come in and go through everything in the house. It was in the summer of 1927" (p. 769).

Petitioner arranged a meeting for June 1st, 1927, at the Campus Restaurant (p. 293). The engagement was made for one o'clock. Through some mixup, the parties did not meet at this time. Petitioner says he had another appointment at 2:15, and when defendant did not arrive at one he waited as long as he could, and then had to leave (p. 291). Defendant says she was only five minutes late and that petitioner did not wait for her.

Petitioner wrote the next day, June 2, 1927, expressing his regrets that she did not keep the appointment. He says in this letter:

> "I was very sorry you did not keep your appointment with me for yesterday lunch. I waited until long after 1 o'clock for you but you did not show up. For more than a month I have been trying to arrange a session with

you, preferably at your apartment so I could bring the radio parts with me and set up the set, but you have declined each time for one reason or another until yesterday—and then did not keep the appointment! I told you I had another engagement in the middle of the afternoon, so you should not expect me to wait for you until 1:35 or later. You wrote me earlier, Mar. 17th, saying you would pack my special things you have 'or you can come up and sort them out yourself.' However when I have wanted to come after those and sort them out you have refused to let me come at all. What is the idea? Why don't you live up to your agreement with me and let me have a talk with you every once in a while? Also you agreed not to have your bills sent to me but the Manhattanville Express Co. sent me one of your bills for $80 with the request that I pay it as they have not succeeded in getting the money from *you. If you will come and live with me I will of course pay your bills, but otherwise it is your job to live on the $200 a month I have been sending you. What about your coming to live a normal married life with me?* I thought earlier that you wanted a radio set. Am I now to understand that you don't want me to give you the set and set it up as I offered to do when I last talked to you? If you don't want the gift express it to me collect at Jersey City, and I will find another use for it. It is too expensive an outfit to be not used. Call me on the phone when you are willing to arrange an appointment with me, preferably at your apartment where I can get my college day pictures, souvenirs, etc. Also we should talk over Bill's situation" (pp. 291, 292)..

Petitioner testified that during all this period defendant had constantly put him off when he had requested an appointment with her, saying not now or it would be some time in the future, or words to that effect. The last time before he wrote her she said she didn't want him up to the apartment (p. 293).

Defendant replied by letter of June 6th, 1927, which was the first letter she had written since March 31, 1927 (p. 294). She first explained that she was only five minutes late and that the failure to meet on June 1, 1927, at the Campus Restaurant must have been his fault for not waiting, and then she says that after her letter of March 31, 1927, in which she asks for an appointment because that was the end of the six weeks period, "it was five or six weeks later before you did call me" (p. 294). Certainly defendant was in error when she made the statement that petitioner did not call for five or six weeks. Obviously, from petitioner's letters he had at least some conversation in regard to a radio set, and he further testified that he had at least one conference during this period.

Petitioner replied the next day by his letter of June 7th, 1927 (p. 294). After discussing the meeting at which the parties missed connections he asked "What about the moving bill, my getting my pictures, etc., radio, etc. I will phone you tomorrow and try to arrange a meeting for Wednesday or Thursday, preferably Thursday" (p. 296). Petitioner is certainly a rare manufacturer of letters if his talk about "my getting my pictures, etc.," did not refer to some prior conversation about his getting them or if his question about the radio did not refer to a prior conversation he had with defendant in regard to such radio.

A meeting was held shortly thereafter. Petitioner testified that it was held in the restaurant

in the Grand Central Station between June 7th and June 13th, 1927 (p. 296). Defendant fixes the date exactly as June 8, 1927 (p. 639). Petitioner testified that at this conversation, while he did not recall the exact details he argued about his coming up to her apartment visiting her and she said she didn't want him to come to the apartment. He said further that it would be desirable for them to get together and live together, but she made a remark about not now, or postponing any consideration. Defendant testified to the conversation thus:

> "Mr. McKee as usual sat and said nothing. I told him about the children's schooling and whatever I could think of that might be of interest to him, and when we got through the dinner and left the restaurant, I was taking a train to Brooklyn, and he left me and said "There are certain other things I wanted to talk to you about.' I said 'Why didn't you talk about them?' and he said 'You talked so much I didn't have a chance.' "

Defendant's memory is apparently an amazingly reliable one. It will be noted that in the next letter of petitioner to defendant he refers to several things of importance which he wanted to take up with her just as he was leaving, and it will also be noted that defendant has admitted that she has carefully studied the testimony in the case.

Petitioner next wrote on June 13, 1927, enclosing check for $200. He says:

> "There were, as I said to you when you were leaving, several more things of importance which we should talk over. I will phone you in a few days and arrange for our getting to-

gether for an hour. Why not be willing for us to live together?" (p. 297.)

Defendant neither phoned or wrote in response to this letter (p. 667).

The colloquy between the Court and defendant concerning her attitude to this letter is illuminating:

"By the Vice-Chancellor:

Q. What was your response to that if anything madam? Did you phone him or write him in response to that letter because that letter says 'Why not be willing for us to live together"? A. Your honor—

Q. I am asking you whether you phoned him or wrote him? A. No, I didn't write him or phone him as far as I can remember.

Q. That was a request in a very cold blooded fashion. It says why not let us live together or words to that effect? A. He never asked me whether I was willing.

Q. He said in that letter why not let us live together? A. Why should he say that?

Q. Why didn't you write him and say you didn't understand and that he never made any overtures or say 'Yes, sure, I am willing to live with you'? If you were willing for requests from your husband to live together there was one that you at least might have said something about? A. Your Honor I gave him every opportunity.

Mr. Walscheid: I ask that be stricken out.

Witness: I couldn't put the little things in letters.

Q. That is not a little thing, Madam. You were waiting for some request from him? A. I

was waiting for some expression of regret on his part for the way he was treating me, and some intimation if we lived together he would treat me in a different manner.

Q. If married people are going to be peeved at little things very few of us would be living together. If you were willing to live away because you were peeved— A. I lived with him for twenty-two years under constant abuse.

Q. The fact that you lived that long indicates it could be very great, and amounts to in law what we call condonation" (pp. 667, 668).

Petitioner wrote again on June 27th, 1927. In this letter he refers to the Manhattanville Express Co., bill for cartage of the furniture to defendant, and states that he has learned that she has not as yet paid it and enclosed check for $80 therefor, which he says he will consider as an advance (p. 298).

Defendant replies by letter of July 6, 1927 (pp. 298, 299). In this letter she says that under the January 24, 1927, agreement petitioner is to pay the cartage charges and she is therefore returning the bill with the check attached.

Petitioner replied on July 9th, 1927, and plainly stated his position. He wrote:

"I don't understand your sending me the $80 check back. This is your account and you should pay it, it is not one I should pay. I am returning herewith this check and the bill of yours. *If you will come and live with me I will of course take care of your bills but to do that in addition to sending you $200 a month is too much.* I am enclosing herewith a second check for the balance for July, i. e. $120."

Defendant replied by letter of July 14th, 1927, which is her last letter until after petitioner instituted action for divorce in November, 1927, and in this letter she says he is to pay the bill and that is all.

Petitioner thereupon on July 20, 1927, replied to defendant *and agreed to pay the bill for cartage.*

Petitioner wrote again on August 12, 1927, enclosing check for $200, and stating that he would get in touch with her shortly for a meeting. Petitioner testified that he did have a meeting shortly thereafter which was held on the mezzanine floor of the Pennsylvania Hotel (p. 302). Defendant fixes the date of the meeting as August 27, 1927, and the place as the Campus Restaurant (p. 640). Petitioner testified that at this meeting he, as usual, discussed the children and the question of her coming back with him and living with him (p. 302). She said at this time that she did not care to and was even more positive than she had been previously. While before her attitude had seemed to be not now, now she seemed to be more positive (p. 302). Defendant says, however, that there was not much conversation, that he would not converse, and that she said "If you write me a letter misrepresenting what took place at this conference as you have at other conferences, I shall have to refuse to see you again without a witness" (p. 641). It will be noted that the only person who ever suggested having a neutral witness at the conferences was petitioner.

Petitioner then went on a trip west and on his return on September 15, 1927, sent defendant, as usual, a check for $200 for September (p. 303).

Petitioner again wrote on September 28, saying that their daughter Margaret wanted a red velvet dress and requesting defendant to make it for her

and enclosing check for $40 to cover the cost of materials. Petitioner says:

> "If you would come and live with me we could settle such matters easier and more pleasantly than by phone. Better change your mind and come and live with me" (p. 304).

Petitioner says that he did not as yet consider defendant's determination not to live with him as absolutely final and irrevocable (p. 304), even though in a meeting in September, she called him a dog (p. 315).

Petitioner next wrote on October 9, 1927, again asking about Margaret's dress and discussing the son Billie and closing with the words "better come over here and live with me" (p. 305). Defendant did not reply.

Petitioner again wrote on October 15, 1927, enclosing check for $200. Defendant did not reply to this letter either.

Petitioner again wrote on November 3, 1927, enclosing check for $200. In this letter he complained that Margaret is being forced to do part of the work on the dress and that Margaret has all she can do in her college work and "she should not be doing dress making during the college months."

Shortly after the writing of this letter, petitioner had a conference with defendant. Defendant thinks the date was November 7th, 1927; she says that it was between the 3rd and 10th (p. 675). Petitioner says that at this meeting he asked defendant to sign a deed to transfer a small amount of real estate, of which he was part owner (the home of his father). The property was in Clinton, Missouri. Petitioner thus details the discussion as to this property:

"There was a possibility of selling the property there; there was an opportunity of selling the property and the question came up as to whether we could give a deed for it and I suggested that what we ought to do is to deed the property to the McKee Book Store Corporation, which was owned essentially by myself, my brother and my sister, and let the corporation then try to get what it could out of the property, and I asked her if she would sign the deed and she said in reply 'What is there in it for me?'"

Defendant admits the conversation about the deed (pp. 675, 676). She said the same question was also discussed at a meeting in October held on the mezzanine floor of the Pennsylvania Hotel (p. 641). She thus describes what she said:

"He wanted me to sign papers transferring some property at Clinton, Missouri to a corporation called the McKee Book Store Corporation. I said I could see no reason for doing it. It was the house where his sister had lived for many years. He made *no suggestion about selling it.* It was where his sister lived" (p. 676). "I said I couldn't see any reason for doing that. It was the house in which his sister lived. There *was talk* of *selling* it and I could see no reason for putting it into the corporation" (p. 641).

Defendant also testified that at this latter meeting of November 7, 1927, petitioner mentioned the dress and said that Margaret told him she was making the dress or something like that, and defendant told him she was not.

Petitioner next wrote on November 10, 1927, and said that in looking over Margaret's letter she wrote contrary to defendant's statement that Margaret had not done any work on the dress. Petitioner also writes that "the more I think of it, the more I dislike your digger's attitude as expressed in your statement 'What is there in it for me' when I suggested something there ought to be done" (p. 308). Petitioner testified that this reference to "What is there in it for me" was the statement she made when he asked her to sign the deed.

Petitioner said that he decided along in October that there was no chance of making a happy home between them because at the last meetings in September and October she had been so vehement in her expressions regarding him, in one case calling him a dog, and in another case asking "What is there in it for me" in the way of money (p. 315). At one of the last meetings he testified that after they had been talking for perhaps a half hour or an hour, she insisted that he had been making more money than he said he had been making, and that he should give her more than $200 a month. He told her that it was not so, and that the amount he was spending for her and the children was all he could afford, and more than he could afford, and she said that was not true, and she didn't want to do business with such a dog or live with such a dog as he was.

He was convinced now that there was no use in hoping that she might return, and definitely made up his mind about the first of November or the last of October (p. 315). Petitioner had been rebuffed so often, and now so completely that he decided there was absolutely no more hope.

Petitioner in November took steps, therefore, to institute suit for divorce and the citation was tested on November 15, 1927 (p. 334).

After suit was started in November, 1927, petitioner wrote to defendant on December 13, 1927, sending her a check for $100, and also *enclosing check for $50* for *Christmas present* for herself and $25 each for the children (p. 309).

Defendant replied by letter of December 22, 1927 (p. 310). This letter was the first she had written since July 14, 1927. After acknowledging receipt of the Christmas present, defendant coyly says: "But do you know you forgot to enclose the regular check for $200?"

Mr. McNulty, an attorney and counsellor at law of this State (p. 923), together with Earl H. Morse, witness in this case, visited defendant at her home in Spuyten Duyvil on November 22, 1927 (pp. 678, 852). Mr. McNulty testified that he went there in order to comply with the rules governing proof of inquiry as to the defendant (p. 924), and Mr. Morse went because he knew defendant and could personally identify her (p. 852). Mr. McNulty told her that the purpose of his visit was to give her notice of pendency of the suit. She asked him who represented petitioner, and he told her Mr. John Milton, a lawyer of 1 Exchange Place, Jersey City. She asked what she should do about the matter, and he told her to take it up with her lawyer. She said she had not been served with any papers and he said, "You will be in due time." She asked him again what she should do and he said to advise her lawyers there has been a suit started in New Jersey (p. 928). Defendant thus describes the occurrence:

> "Mr. McNulty and Mr. Morse came to my home in Spuyten Duyvil and told me that Mr. McKee was instituting a suit for divorce and that the papers would be sent to me. I re-

member speaking to Mr. Morse about this and he had been at our house on the first day of October—I said to Mr. Morse, when you came to our house the first of October you knew before that that Mr. McKee was going to bring a suit for divorce. He didn't answer" (p. 678).

He had been to her house, she testified, on October 1, 1924:

"By Vice Chancellor:

Q. You mean to say Mr. Morse at that time when he called to your house on October 1, 1924, knew Mr. McKee intended to start suit for divorce? A. Yes" (p. 679).

Mr. Morse absolutely denies that when he visited Mrs. McKee on October 1, 1924, he had any knowledge of any divorce or separation proceedings (p. 858).

Mr. McNulty likewise testified that no such conversation as defendant relates took place (p. 926), and both Mr. McNulty and Mr. Morse testified that there was no time during the conversation with defendant when both of them were not together (pp. 925, 859).

Defendant's mother died on January 8, 1928, and on January 11, 1928, petitioner wrote to defendant in Carthage, enclosing check for $100 for January, and *additional check for $200 to cover traveling expenses of defendant and Margaret for the Carthage trip* (p. 312).

Defendant wrote on January 16, 1928, thanking petitoner for the checks and asking for certain china (p. 312).

Petitioner replied on January 25, 1928, enclosing additional checks for $100 each for December

and January. He said he was doing so only on condition his action be not construed as prejudicing his divorce suit (p. 314). *There was no reply to this letter.*

By this letter of February 14, 1928, petitioner also enclosed check for $200 (pp. 315, 316).

In the meantime defendant had brought action in New York to enjoin petitioner from proceeding with his divorce in New Jersey on the ground that petitioner was not a resident of New Jersey, but a resident of New York (p. 317).

Defendant's suit was dismissed by the court (p. 316).

Petitioner wrote on March 8, 1928, "I was naturally gratified at the just decision rendered by the New York Court and published today."

There are later letters in evidence by petitioner which merely advise of check enclosures.

There seems only one conclusion possible from the history of events. The proofs in this case show beyond any dispute that petitioner made sincere efforts to induce his wife to return to him but that those efforts failed only because the defendant had a fixed determination not to return to him as his wife.

**A. Petitioner's state of mind and efforts. The record of events shows clearly that petitioner made sincere efforts to terminate the separation and induce his wife to return to him.**

(a) Contrary to the Vice Chancellor's intimations that petitioner employed only letter writing to impress on his wife his sincere desire to have her return to him, the record of events show that petitioner employed every possible method. Petitioner went to her for personal conferences and ex-

pressed his desires to her in person; he went to lawyer's conferences and made his advances to her there, as corroborated by the testimony of Mr. Kirby; he tried to arrange private conferences with her and made his requests and expressed his desires at the private conferences; when she accused petitioner by letter of not doing anything in the private conferences, he offered by letter to have them in the presence of a neutral party or two (p. 243, ll. 22-27). He employed friends—Mr. Whaley and Dr. Brophy. Defendant repulsed them and by letter of June 10, 1926, directed petitioner not to employ anyone else and not to drag anyone else into the matter. Though under no court compulsion of any kind, petitioner sent defendant at least One Hundred ($100.00) Dollars a month and also Christmas presents and additional money. He tried to get himself invited up to defendant's home, but she wouldn't have him.

In fact, defendant's counsel in his brief, in endeavoring to list efforts which petitioner could have made but didn't, found himself with but three "golden opportunities missed."

First, he didn't use the daughter Margaret, who in answer to the question, "You were anxious of course to have your father and mother reunited were you not?" Answered, "I wanted to *if mother thought it was best*" (p. 1013, ll. 37-39)—he didn't use her efforts to effect a reconciliation.

Anyone who has observed Mrs. McKee on the witness stand must have concluded that she is a woman with fixed ideas, not easily persuaded and stubbornly determined to have her way. The court had to admonish her against trying to run the trial as she desired (pp. 750, 781). Undoubtedly her husband, trying to persuade her to change her mind and return to him, would have commit-

ted a fatal blunder definitely annihilating any stray lurking germ of hope that the obstinate perverseness of defendant might be dissipated, if he had resorted to measures which Mrs. McKee had definitely said *must not* be resorted to.

Defendant had expressly told petitioner she didn't want the matter discussed with the children —she did not want the children brought into the matter and didn't want them used (see Eg. p. 272, ll. 25-35). Petitioner would have undoubtedly achieved great heights in the affections of this woman, if the daughter came home and reported to her that petitioner had discussed the separation with her and urged her to return, after defendant had given instructions forbidding such action.

Second, the petitioner did not use his brother, who was with him on a visit to Spuyten Duyvil in the fall of 1926. Defendant says that the brother was a fine fellow. Nothing else appears in the testimony about the brother. Defendant's counsel says: Defendant says he is a fine fellow. There's a golden opportunity missed and a bad omission. Petitioner fell down on the law's requirement because he didn't use that brother.

Without arguing at length on this great mistake of petitioner's, it seems sufficient to point to defendant's ultimatum of June 10, 1926, to petitioner not to employ anyone else and not to drag anyone else into the matter, after he had but recently attempted to use the efforts of Dr. Brophy and Mr. Whaley.

And as to the fact that petitioner did not on this occasion state in words his desire for his wife's return—with the children present, after he had been warned not to discuss the matter before them; with his daughter there sick; and of all things, in front of his brother, it seems sufficient to say that

it is fortunate for petitioner that he did not at this meeting also, express his desire that his wife return. If he had, this occurrence would have been branded as a very important studied legal performance, with the brother especially escorted as a witness.

Defendant's counsel said in his brief:

> "Another omission characteristic of the insincerity of Dr. McKee, is his persistence in arranging meetings outside of the defendant's home, such as public restaurants, public parks, and public libraries, and occasionally the law office of Mrs. McKee's attorney".

This was a most brazen statement. It is true that petitioner said he would rather Mrs. McKee would not insist on meeting him only in the office of her lawyer and that he said he would meet her, if she preferred, in the presence of a neutral witness or two (see letter of August 19, 1926). But to say or imply that petitioner didn't want to go to defendant's home is too much. The facts are beyond dispute that petitioner couldn't get himself invited up despite earnest efforts; defendant wouldn't have him. Although he sent her a radio (undoubtedly, a studied legal performance), defendant wouldn't let him come up to fix it. Although she said she would let him come up to look over his old memoirs defendant changed her mind and admits she refused to let him come up in the summer of 1927 despite his requests. And after petitioner made an appointment with her to go to her home and did go, she left him standing out in the snow and wouldn't let him in.

(b) Contrary to the Vice Chancellor's statement, the Record of Events shows that petitioner's

efforts were not an insincere studied legal performance, but were sincere, honest efforts to induce his wife to return which failed because defendant had a fixed determination not to return to him as his wife.

The cry of studied legal performance applied to the letters of petitioner or to the rest of his conduct is without basis. He says he was sincere and he was. As to his letters, an examination shows that seventy-nine letters written by petitioner to defendant prior to the institution of this action were produced. Of these, twenty-eight contained requests to return. Of course two contentions can be made: (1) the fact that some letters contained no request, shows he did not do his duty, (2) the fact that twenty-eight letters contained such request shows a studied legal performance. The Vice-Chancellor predicated his charge of insincerity on the ground that petitioner kept copies of his letters. However the facts show precisely the opposite. Petitioner never consulted his attorney as to his letters nor did he ever show them to him (p. 862, ll. 35-40). Cf. Defendant (p. 753, ll. 19-29). Petitioner kept no copies of his letters (see Eg. p. 863, ll. 1-40). Cf. Defendant (p. 763, ll. 38-41; p. 737, ll. 1-10). She made and kept a copy of practically every letter she wrote, and they were produced and are in evidence in this cause. Petitioner's testimony shows, as he testified, that he kept no log book, recording events or conversations. Cf. Defendant and her admitted record of events (p. 724, ll. 11, 12), and her custom to "write to her mother" (p. 724, ll. 6-10), all of which letters she has (p. 736, ll. 20-37), and her remarkable ability to place dates with precision when she chose.

As to private conferences, petitioner's testimony was that he made every effort at private meetings

and conferences to induce his wife to return. The only conflicting testimony came from defendant. Consider what she says about them.

She says first:

> "I never asked for a conference" (p. 752, ll. 11-13).
>
> "None of the meetings were at my request; they were all at his" (p. 613, ll. 10-12).

Then she says that at every private conference, all he did was take out his papers and say he would send $75 a month. As to this it must be admitted that his actions speak louder than her words. If all he wanted the conferences for was to tell her that, he could have done so without asking for a conference to tell it to her. But he had no reason to call her to discuss that matter because he was actually sending her more money than that and continued to send her more. Though under no court compulsion of any kind before her application for alimony in the fall of 1926 was made and after it was made, he continued to send her at least $100 a month with Christmas presents and additional money, beginning on February 7th, 1925, with a check for $200, and sending at least a check for $100 each month thereafter.

In Holst v. Holst, 101 N. J. Eq. 682, the court regarded the failure of petitioner to contribute anything to his wife's support after the desertion except under the compulsory order of the court of importance in deciding that petitioner did not do what he could have done in getting his wife to return (see p. 690). Here, not only did petitioner pay without any court order, but he paid even after the court had said it would not order.

Then defendant conceded that petitioner had asked her to return at their personal conferences,

but qualified the admission by statements that he added phrases like "But if you do we'll live more meanly than ever in a cheap hotel."

Finally, she asserts that the question of her returning was never discussed in any conference at any time, except the one of January 22, 1927, when she offered to return on condition that there be no sexual intercourse (p. 748), and denies that she was ever asked at any time to return or that she ever said I do not care to return (pp. 672, 673).

She cannot be believed. If it be true that she never said she didn't care to return in those personal conferences, Messrs. Kirby, Whaley and Dean Pegram swear she positively said she would not return.

Her statement that she was never invited to return and that that matter was never discussed at any conference, that "he never asked me if I was willing" (p. 667) must be branded as false.

She raised the question in her conference with Dean Pegram; Messrs. Kirby and Whaley swear the question was raised at the conferences at which they were present; that at those conferences petitioner requested her to return and that she absolutely refused.

So far as their private meetings go, it is a case of her word against his. But the record discloses that in every single instance where her testimony leads her into contact with persons other than her husband, she is contradicted by those others. She was contradicted and petitioner was corroborated as to the meeting of July 9, 1925, by Mr. and Mrs. Martin; as to the Whaley meeting by Mr. Whaley; as to the Pegram meeting by Dean Pegram; as to the visit of Messrs. Morse and McNulty by both Mr. Morse and Mr. McNulty; as to the conferences in February and March of 1925, and of January,

1927, in the presence of the attorneys by Mr. Kirby. If it were necessary the many contradictions and evasions in her own testimony could be referred to. But this seems unnecessary.

Her own letters corroborate petitioner's testimony that he urged her to return and that she spurned those advances, demanding instead a separate home for herself and her children. Her letter of March 29, 1925, was a flat and unqualified refusal. So also her letters stating that she wanted a home for the children and herself, that she wouldn't change her position in any respect, that she is willing to consent to a reasonable agreement but her position is unchanged, that she will consent to a plan to settle without publicity, that the fault is with him—he wouldn't change his position, but she wants a home for herself and her children, as contained in such letters as that of July 19, 1926, August 24, 1926, September 7, 1926, and October 8, 1926, definitely corroborate petitioner's testimony.

And it is settled that her expressions may be looked to for corroboration of petitioner.

> *McCauley* v. *McCauley*, 88 N. J. Eq. 392, at 396.

The clearest proof, however, of the sincerity of petitioner's efforts is the record of events in chronological sequence. That record shows honest, uncolored, unceasing effort.

Petitioner says he requested defendant to return to him at a private conference of the parties in Mr. Newman's office on February 9, 1925, and again in a personal conference on February 28, 1925, which defendant denies. Then at the conference in the presence of attorneys on March 5, 1925, after

her denial of his request at the private conferences, Mr. Kirby and petitioner both swear that petitioner made a clear and unmistakable advance which was definitely rejected by defendant.

Petitioner's letter of March 10, 1925, contained a request without any equivocation. Defendant admitted she showed the letter to her lawyer. Kirby swears that that lawyer told him that from what defendant told him there was no chance of the parties getting together. Kirby swears he told that to petitioner. Petitioner on March 23, 1925, wrote to defendant saying that he could see no reason for that conclusion and asking her to come back to him. She wrote on March 29, 1925, saying "It is impossible for us to live together." That petitioner's attitude at this time as thus indicated was not "manufactured" is corroborated by the testimony of Mr. Martin who says petitioner would only make a temporary month-to-month sublease of his apartment to Martin because he was uncertain when his wife would return. Here, as elsewhere throughout the record of events, we find petitioner preparing and hoping that defendant would return to him, and in that preparation seizing on any and every device and opening by which he might achieve his hopes.

There was at least one personal conference in April. Then came petitioner's next letter of May 10, 1925, begging defendant to reconsider. Defendant does not reply to that but instead writes asking for a day to remove from the apartment "*my* belongings—together with *my share* of the other furnishings."

Petitioner writes telling her he wishes she wouldn't think of doing it—"it seems like making our living apart permanent." He tries to put her off—to get her to change her mind—but without

success. The meeting is finally arranged and held on July 9, 1925.

The attitude expressed in those letters is corroborated by the actions and efforts of petitioner at that meeting. Mr. and Mrs. Martin testified petitioner kept begging defendant all evening not to make the division because it seemed to make their living apart more serious—that probably if they didn't do it there wouldn't be any necessity for it. Indeed in her letter of August 17, 1926, defendant reproaches petitioner for "representing" that he would make a division when he had no such intention.

Defendant remained away in Illinois until the end of September. Petitioner wanted the son to go to camp and defendant didn't want him to do so —the boy didn't go. The lease on the apartment was up. Petitioner sent the furniture to storage because maybe she would change her mind and it would be again available for use.

And then, like a bolt out of the blue, in October, petitioner was served with defendant's summons and complaint in an action for separation against him. What had happened? The check he had sent to Illinois in September hadn't reached her. Petitioner was completely upset and told defendant how badly he felt in his letter of October 18, 1925. He tells of his hopes. He tells her to think what her action will mean to her children. Defendant's reply is money. "You haven't sent me a check every month". Petitioner looks through his records and can find no support for the allegation there, then he learns from Mr. Whaley that the September check never arrived, so in November he sends her two checks, one to cover the lost September check.

Then petitioner arranges a meeting at the home of Mr. Whaley on November 3, 1925. Petitioner

testified he asked defendant to come back and that she refused; Mr. Whaley so testifies. Defendant says "he never asked me". Defendant admits Miss Whaley, now an invalid who has suffered two strokes, asked her after petitioner left why she didn't accept petitioner's invitation. Defendant says Miss Whaley wasn't present and that she replied: "Because he never asked me." Mr. Whaley says Miss Whaley was present throughout and that defendant's reply was "I don't believe a word he says".

Petitioner wrote on November 12, 1925, asking for one home for four. There was no reply. He arranged for Thanksgiving dinner with her. He sent her $100.00 as a Christmas present and invited her and her sister to Christmas dinner. He sent her extra money in January, extra money in February.

Petitioner again writes requesting a home for all. Defendant replies on February 19, 1926:

> "It is necessary to provide a home *for the children and myself.* There is no reason why our affairs could not be settled without resorting to the publicity of court action, *excepting your refusal to do so.*"

Petitioner replies on February 22, 1926:

> "It is just as necessary for the children to have a home with me as with you and there is no reason why we should not all be happy in the same home."

He renews his request three days later.
Defendant replies on March 5, 1926:

> *"I do not think it is necessary to say anything more than I have already said many*

*times to you in regard to the other matter to which you refer in your letter. I am sure you know my mind on that point."*

Petitioner, definitely repulsed now subsides for a while. Then about April 15, 1926, he enlists the efforts of Doctor Brophy. Defendant admits this —admits Dr. Brophy talked to her about the possibility of patching up their differences. Petitioner followed that up with a letter asking for a conference; he arranged the meeting and it was held with petitioner on April 22nd. Petitioner says he there asked her to come back to him. Defendant says petitioner said "It seems as though we ought to live together, but if we do we'll live more meanly in an inexpensive hotel and you must promise twelve times a month."

Petitioner arranged another meeting in June at the Pennsylvania Hotel. Petitioner says he, as usual, renewed his request. Defendant twists this into: "I have asked you to come back with me and remember I have, and you have refused to do it."

On June 10, 1926, defendant wrote petitioner, telling him not to drag any of their other friends in because he was only abusing their confidence. "After using them to arrange a meeting with me, you say nothing and do nothing that *will help to settle the matter.*"

What has she said will settle the matter? Nothing but separation with a separate home for herself and children.

She writes on July 16th that maybe she was mistaken about his meaning, maybe he's willing to do what she wants. Another meeting is agreeable to her. But "You will understand that although I am as always willing to reach any *reasonable agreement* in settling our difficulties and avoiding

publicity, *my position in the matter is in no way changed".*

Petitioner replies and says his position hasn't changed—he wants a united home for all. But he's agreeable to a meeting in a neutral place, not in her lawyer's office.

Defendant replies that in the private conferences outside her lawyer's office he has always contrived to place her in a most embarrassing position. But as I have said above, the only thing he is charged with doing at those conferences is talking, so the only thing that could have embarrassed her was his words. Defendant had charged him with misstating those conferences. Petitioner replies on August 19th:

> "I'll meet you by ourselves, or if you prefer, in the presence of a neutral witness or two."

Defendant replies on August 24th: "I'll meet you if it is your intention of *really forming some plan by which our affairs can be settled without publicity.*" The plan in her mind, as I have pointed out above could have been only a plan in which they would live separately.

Petitioner wrote a letter not produced and on September 8th she replied: "As to the other matters you mentioned in your letter, I have already placed it entirely in the hands of Mr. Newman."

The parties then had a meeting in Newman's office. Petitioner says he asked her to come back. But she as usual refused and demanded a separate home for herself and children, and lots of money.

In October, defendant made application for temporary alimony. Petitioner begged her to reconsider. She replied on October 8th. "No; You wouldn't change *your* position in any respect. A home must be provided *for the children and me. I have well earned a share in your income.*"

Petitioner agrees that his position was unchanged—he was using every effort for a united family. He was repulsed again—he marked time. November passed and defendant's application for temporary alimony was denied.

Petitioner nevertheless continued to send defendant money every month, as he had done before she began her suit for separation or her application for temporary alimony to keep in her good graces, although during all this time he was not under court order nor court compulsion of any kind.

Petitioner sent defendant a *Christmas present.* He tried to visit her at her place at Spuyton Duyvil after making a telephone engagement as he testified but was left standing outside in the snow.

Then in January, defendant's separation suit came up for hearing. A conference was held on January 20, 1925 in the presence of the attorneys. Petitioner and Mr. Kirby testify petitioner said: "Mary, come back and live with me" and that she replied: "No, I will not." She denies it.

Then on January 22, 1925 another conference was held in the presence of the attorneys at Mr. Newman's office. At this time defendant admits she made her first offer to return (p. 734), but she made it on condition that the parties do not live together as man and wife, do not have sexual intercourse, but have only a "nominal home." This offer was rejected and petitioner had a right to reject that offer because the offer was predicated on an unlawful condition.

*Rogers* v. *Rogers,* 81 N. J. Eq. 479, at 484, 485. Petitioner, as always, was trying for a united family, in which defendant would live with him as his wife.

Defendant had the opportunity here at these conferences, certainly to return to petitioner as his

wife, if she ever wanted to. But she refused. She went to Dean Pegram, the head of petitioner's department. She told him she was anxious to avoid the publicity the trial would entail. She told him she was, however, not willing to live with petitioner as man and wife. She asked him to use his good offices to make some plan. Dean Pegram reported to petitioner that defendant was unwilling to live with him as man and wife. Petitioner said he was sorry things had come to such a pass. Dean Pegram told him of the things defendant wanted—children kept in same schools; more money and asked petitioner whether he would be willing to confer with defendant. Petitioner of course was willing to have another conference and make another attempt to get his wife back.

Here was a situation where he had been definitely repulsed for two years. Despite his every effort, his wife had insisted on a separate home for herself and the children. She had repeatedly declared that her position was unchanged in that respect. But he wanted her—he wanted her as his wife. He prepared a memorandum without consulting anybody else—he gave in to defendant on the children; he raised the income provision from $100 to $166. But he insisted on inserting the provision "That the second party (defendant) agrees to discuss with first party (petitioner) our family affairs and in particular the possibility of the united family at least once in each six weeks" (pp. 262, 263). That, to him, was the gist of the agreement.

The next day, Monday, January 24, 1927, the parties got together in a room by themselves in court. Petitioner said Newman's nominal home proposition was idiotic; that he wanted defendant back as his wife and he urged her to come back. Defendant says he said that but he said:

"You must promise eighteen times a month." (Before she testified he said twelve times a month.) With defendant unwilling to come back as his wife, petitioner then discussed his memorandum which provided that she must at least agree to discuss and consider coming back as his wife. The money question proved a stumbling block. He took her out to lunch but the place was crowded and they couldn't talk. They came back to the court house and conferred between themselves. They agreed on all the terms except money, and went out to their lawyers. Defendant wanted a lot more but her lawyer got her to agree to $200.00 and a change was made accordingly. The terms of the agreement were discussed although defendant on the witness stand did some equivocating on this question—she didn't have a copy, it wasn't read to her, it was, it wasn't explained to her, it was. Just before the agreement was signed her attorney suggested it run at least until the daughter graduated from college, which would be in June, 1928, and a provision of minimum duration to July 1, 1928, was inserted. Petitioner expressed his hope that the agreement would be the means of bringing defendant back to him and that that was his purpose in signing it, and Mr. Kirby corroborates him. Compare defendant's purpose, not expressed there, but given at the hearings: *"to end the suit in a manner favorable to herself by petitioner's written acknowledgment that her action was justified by his consent to their living separate and apart"* (p. 644).

This language needs no comment.

Defendant now says that as part of the agreement arrived at, petitioner was to sign an agree-

ment that he would not bring suit against her in New York or New Jersey. This is denied by petitioner and Mr. Kirby and is shown to be completely unfounded by provision No. 6 in the memorandum, which defendant admits was explained to her by petitioner and by Mr. Reass, her attorney (p. 632) and by the testimony of petitioner and Mr. Kirby that in response to her question, petitioner said either one was absolutely at liberty to start suit against the other, although defendant says that in response to her question, petitioner said that she was at liberty to start suit but said nothing about his own rights.

Petitioner now had won his first victory in all his efforts to get defendant back. Now she at least agreed to discuss the matter of going back. He wrote her and told her he didn't think she'd have cause to regret it.

Thereafter defendant wanted to divide up the furniture in storage. Petitioner tried to dissuade her again but to no avail.

A conference was held in February at which the question was discussed as well as the question of petitioner's calling on her. Defendant said things were not in shape yet to receive him. They had dinner together later in February.

Letters passed in March. Defendant discussed furniture. Petitioner expressed the hope that the family would soon be united. He had telephone conferences with her and he testified at least one conference in March at which he offered to send her a radio set which offer she accepted.

Then on March 31, 1927, defendant wrote a letter which reads simply:

> "As according to our agreement we are to meet once in six weeks and as on Sunday it will be six weeks since our last meeting, I will

be in the lobby of the Waldorf Astoria at 4 o'clock on Sunday afternoon, April 3."

One wonders about studied legal performance when reading this letter.

Petitioner sent her part of the radio set promised, spoke to her on the telephone or in conferences on April 2, 1927, and on April 8, 1928, and on April 10, 1927, wrote expressing the hope he could send the balance of the radio set in 10 days or 2 weeks.

There was no reply. Petitioner tried to get himself invited to install the rest of the radio and to pay a visit but was refused despite repeated efforts.

Petitioner received the bill for the cartage of furniture to defendant from the Express Co. On June 2, 1927, he wrote to her enclosing the bill, saying:

"If you will come and live with me I will of course pay your bills but otherwise it is your job to live on the $200 a month I have been sending you. What about your coming to live a normal married life with me."

He writes again asking her about the radio and his coming up. They had a meeting at which he says he asked her to come back and to let him come up to visit her but she refused. Defendant says petitioner sat and said nothing.

Petitioner again wrote on June 13, 1927, saying he will phone for another appointment and again asks, "Why not be willing for us to live together?"

Defendant admits she said nothing. She has constantly maintained, despite the mass of evidence as to his efforts and that he was sincere, that she didn't believe petitioner was sincere.

Our courts have pointed out that if this defendant really had the slightest doubt about peti-

tioner's sincerity, there was a very easy way to put his sincerity to the decisive test and that was by accepting his offer and simply tendering herself ready and willing to live with him again as his wife.

> *Newing* v. *Newing,* 45 N. J. Eq. 498, at 502;
> *Fisler* v. *Fisler,* 85 N. J. Eq. 194, at 198, 199.

But she admits she never accepted.

Despite all these repulses, petitioner keeps on—he still had hope. Defendant writes him that he should pay the $80 express bill. Petitioner replied on July 9, 1927:

> "If you will come and live with me I will of course take care of your bills but to do that in addition to sending you $200 a month is too much."

Defendant wrote on July 14, 1927, and says: "You are to pay the bill and that's all."

*This was the last letter she wrote to petitioner until December, after this action was instituted.*

What did petitioner do? As usual, he acceded to defendant's wishes and paid the bill.

They had a meeting in August. Petitioner says he again asked her to return and that she seemed more positive than ever in her refusal.

After being away on a trip in September, petitioner wrote, on September 28, enclosing money for a dress for Margaret and again asking her to come and live with him. *There was no reply.*

Petitioner kept on and again asked her to return in his letter of October 9, 1927. *There was no reply.*

They had conferences in September, October and the early part of November. Petitioner says that

in response to his request to her to return, she refused, saying she was entitled to more money and called him a dog, and said she didn't care to live with such a dog as he was. Then he asked her to sign a deed to some property in which he had a one third interest in Clinton, Missouri. He says she replied, "What is there in it for me." She says:

> "It was the house his sister was living in. There was talk of selling it. There was no talk of selling it. I couldn't see any reason for doing it and *I wouldn't do it.*"

In November, petitioner began this action. He had made effort after effort in as clear steps as he knew how but was rejected and spurned at every turn. There is a limit to human endurance.

The record of events shows that petitioner's efforts bear the unmistakable stamp of sincerity. His was no "frame up" or "studied legal performance."

**Defendant's Attitude.**

THE ATTITUDE AND CONDUCT OF DEFENDANT AS REVEALED BY HER OWN TESTIMONY NOT ONLY CORROBORATES PETITIONER'S TESTIMONY AS TO THE REACTION TO HIS EFFORTS BUT DISCLOSES A FIXED DETERMINATION ON HER PART NOT TO RETURN AND THE UTTER FUTILITY OF ATTEMPTS ON THE PART OF PETITIONER TO EFFECT A RECONCILIATION.

*1—Defendant's desertion when there was no trouble after secret deliberative preparation.*

Consider the manner in which she deserted petitioner after deliberate preparation at a time when

it is unquestioned that there was no trouble between the parties. First, her sister was brought on from the west on October 1, 1924, to live in the house. This witness kept a memorandum of what occurred while she was there (Book 2, p. 407). Although the witness didn't keep a diary regularly, she began one and kept keeping one covering her stay in New York (p. 453, ll. 25-27). In October of 1924, defendant secretly consulted the New York law firm of Hirsh, Newman & Reass (p. 706). She told her sister she was thinking of leaving her husband and was consulting that law firm about leaving him (p. 454, ll. 24-25). She never told her husband she was consulting lawyers (p. 581), but let him leave for Europe, come back, lived with him and then deserted him without revealing those secret consultations. Her sister likewise did not tell petitioner (p. 454, ll. 26-27). Her daughter knew defendant was consulting lawyers about leaving petitioner *in September,* from what her mother told her, but didn't tell petitioner because "it wouldn't be fair to if she didn't wish me to tell" (pp. 1029, 1030).

During this period that defendant was making ready to leave she discussed with petitioner, an estimate of $500 for dental services (p. 797) and although another dentist agreed to do the same work for less (p. 808) petitioner told her to have the work done by the higher priced man in whom she had confidence (p. 797). She had the work done, the balance of the work being done on December 25, 1925, and on December 31, 1925, after petitioner had returned from Europe (p. 798).

Then despite the fact that there was no trouble on petitioner's return from Europe she secretly continued her plans to leave him and she left. As late as the Friday before the Tuesday on which she left,

they had dinner with Mr. and Mrs. Owens, in their apartment. Then defendant and petitioner went with defendant to the theatre that evening. The next day, Saturday, they all went to Tiffany's to view the jewels there.

On Monday, she straightened up the apartment. On Monday night she sent part of her personal belongings out to her sister's. On Tuesday morning she left the apartment with the rest of her belongings, leaving behind a note which read "Ralph. I am going to stay with Helen as your attitude towards me and your treatment of me are unbearable. You will hear from my lawyers, with whom you will kindly have any further communication. Mary" (p. 117). And on the same day, a letter arrived from her lawyers dated the preceding day, threatening petitioner with suit for separation if he would not sign a separation agreement. She left him although her lawyers told her "she should be separated from him but the law wouldn't allow her to do that under the circumstances" (p. 721).

*2—Her definite refusal after abandonment to return and her studied steps under legal advice.*

Consider her attitude after her abandonment without notice after deliberate preparation, as given by her own testimony. She kept copies of all her letters (pp. 736, 737). She consulted with her lawyers continuously after she left at least up to the time of the United Family Agreement on January 24, 1927 (p. 707), reported the results of the several conferences to them and was evidently consulting with them and acting under their advice at all times. She submitted any letters saying "you had better come back and live with me" or things of that kind to them (p. 753). She consulted them about having meetings with petitioner (p. 607).

"Oh, yes, I reported to them" about the meeting at Mr. Whaley's house (p. 601).

She kept a record of events (p. 724). She didn't keep a diary in the form of a diary but was accustomed to write to her mother of the events in the house (p. 724), and of the conversations had (p. 735), all of which letters she has (p. 736).

Her letters to petitioner above adverted to show her firm, fixed, immovable determination to live separate and apart from him and not to cohabit with him as man and wife. His letter of March 10, 1925, inviting her to return she did not answer but showed to her lawyer (p. 588). To petitioner's request to her contained in his letter of March 23, 1925, she replied point blank in her letter of March 29, 1925, that she would not return to him (Ex. P-152, p. 327). Her other letters through the remaining period stating her fixed and unchangeable position to live separate and apart from him in a separate home for herself and children have already been adverted to.

*3—Her insistence on dividing and taking away the furniture despite the protestations of petitioner.*

The facts have been clearly shown above and defendant can offer but a puny denial to the testimony of Mr. Martin.

*4—Her admitted revulsion to petitioner and her admission at the trial that she never intended to return unless she received an assurance, the nature of which assurance she herself never knew.*

Her own testimony that as early as the spring of 1923 she had reached the mental attitude that sexual intercourse with her husband was absolutely repulsive to her (p. 704), her admitted refusal of intercourse after June 21, 1924 (pp. 687, 702), her

statement that at the very time the "nominal home" proposition was made on January 22, 1927, and at the discussions on January 24, 1927, her feeling toward petitioner was one of repulsion (p. 627), abundantly attest to the absolutely fixed state of mind of this woman who as an afterthought said she would have been willing to return if petitioner had apologized, and then later qualified it by saying:

> "An apology wouldn't be enough. It would have to be an assurance it would be different.
>
> Q. What assurance did you want? A. I don't know.
>
> Q. Did you ever know what assurance you wanted? A. No, I never did" (p. 765).

*5—Her imposition of the unlawful condition of no sexual intercourse.*

Finally we have her testimony that on the only occasion in which she agreed to return to petitioner, which was on January 22, 1927, and January 24, 1927, she imposed as a condition thereof no sexual intercourse. The details of those conferences have all been set forth, how she demanded an out and out separation, then the unlawful condition on return, the so called "nominal home", how on January 23, 1927, she told Dean Pegram she wouldn't live with petitioner as man and wife, but would in a nominal home, and his intervention, which intervention finally resulted in the United Family Agreement; her testimony describing the conferences at which the United Family Agreement was made; that first she talked "nominal home"; that petitioner said it was idiotic and wanted her back as his wife but she says, only if she'd promise eighteen times a month; her testimony that she went back to the nominal home

proposition; that he then in desperation turned to his memorandum; her statement of her own purpose in signing it, which she didn't state at the time. Her offer to return and live with him under the same roof shows she was not afraid of him and was willing to live in the same house with him, but her imposition of the unlawful condition of no sexual intercourse on her only offer to return shows she was never willing to return to live with petitioner as his wife.

Little more need be said. The proofs show conclusively that petitioner made the robust efforts the law required to induce defendant to return to him.

But it is submitted the proofs show also the utter futility of any attempts at reconciliation by petitioner, because of the fixed state of mind of the defendant.

And on facts very similar to the case at bar, the Court of Errors and Appeals has so held.

> Rogers v. Rogers, 81 N. J. Eq. 479 (Er. & Ap.) rev'g 81 N. J. Eq. 311;
> Hall v. Hall, 60 N. J. Eq. 469 (Er. & Ap.) rev'g in part 59 N. J. Eq. 402.

In Rogers v. Rogers, supra, the courts found the following facts:

> "The petitioner was shown to have been a miserly and penurious man. His income was small, to be sure, and that was a reason for economy, but not for the penuriousness in which he indulged, and which amounted to considerable privation to his wife and children" (p. 481).
>
> "The indications are quite strong that the husband of petitioner was to a considerable

degree, derelict in his duty to treat his wife with consideration and kindness" (p. 312).

"The indications are that the husband was penurious; that he was inclined to be miserly, and that he was not dealing with his wife in a reasonable and liberal way" (p. 313).

"Defendant charged further that he 'treated her as a servant and did not permit her to be mistress of the household and rear her children as his wife'" (p. 483).

"He was also charged with being entirely too passionate for his wife" (p. 484).

There were these further facts: The husband "remained away for two years without any effort to effect a reconciliation with his wife, and it throws great light on his character when we see that he made no effort to see these little children. A man who can remain away for two years from his children is liable to be the sort of man who would stay away from his wife and care nothing for her" (81 N. J. Eq. at 313). "He stayed away for two years in silence without communication with his wife and children."

In that case the wife also offered to return on these conditions: (1) separate rooms and no sexual intercourse; (2) the wife should have the handling of the money which provided the food, fuel and so forth for household needs, in other words that the wife should be trusted, as wives in families of this kind usually are trusted, with disbursing the moneys to run the household" (p. 313).

Vice-Chancellar Stevenson said: "The indications are that there is not a great deal of affection in the heart of this man or he would have accepted these conditions imposed rather than be separated not only from his wife but from his children" (p. 313), and said further, at page 314:

> "Viewing the matter in that way I do not believe that Mr. Rogers, the petitioner here, acted as a reasonably, just and intelligent man ought to have acted when he stayed away for two years in silence without communication with his wife and children and during a large part of that time, submitting to the inevitable, contributed money from week to week for the support of these children whom he seems not to have cared to see or have anything to do with."

He denied petitioning husband's application for divorce on the ground that he had not made proper efforts to induce his wife to return.

This court reversed the decision, on the ground that the condition of no sexual intercourse imposed by the wife was unlawful and on the further ground that the attitude of defendant wife showed that any overtures the husband might have made to her would have been futile and therefore excused the husband from making any effort.

Chancellor Walker, in delivering the opinion of the Court of Errors and Appeals, said at page 485:

> "The learned vice-chancellor in the court below lays considerable stress upon the want of proper approaches by the husband to the wife and the absence of sincere effort on his part to induce a reconciliation and her return. We, however, think that this cause falls within that class of adjudicated cases which excuse the husband from making an effort in the direction just mentioned because it is apparent to us from the wife's conduct—her actual desertion of her husband, the imposition of unlawful and unreasonable conditions before

she would return, her removing her furniture and belongings from his house in his absence, bringing a suit for alimony shortly after the separation—that any overtures or efforts made by her husband to induce her to return would have been entirely futile." See Hall v. Hall, 65 N. J. Eq. (20 Dick.) 709; Sterling v. Sterling, 71 N. J. Eq. (1 Buch.) 59; Purnell v. Purnell, 70 Atl. Rep. 187.

Note the parallel in the factors Chancellor Walker regarded as decisive:

1. Her actual desertion.

That is here present, with the further facts of her secret deliberative preparation.

2. The imposition of unlawful and unreasonable conditions before she would return.

Here there was no offer to return at all for two years and then the offer was predicated on the same unlawful condition of no sexual intercourse. And while the wife in Rogers v. Rogers, supra, only asked for control of the money to buy food and run the household, this defendant demanded control of lots of money.

3. Her removing her furniture and belongings from his house in his absence.

Here, she removed her belongings from his house in absence of petitioner and insisted on taking her share of the furniture despite the earnest efforts of petitioner to dissuade her.

4. Bringing a suit for alimony shortly after the separation.

Here she threatened a separation suit at the very time of leaving, and actually brought a suit for separation.

We have here in addition defendant's admitted repulsion to petitioner and to sexual intercourse with him.

The case of Hall v. Hall, supra, is to the same effect, the Court of Errors and Appeals in that case also reversing a Vice Chancellor on the same grounds.

**The United Family Agreement.**

As for the "United Family Agreement," the circumstances under which it was made and its purpose have been set forth at length above in the Record of Events.

Defendant's counsel calls it a "separation agreement." Not many words need be spent on that label. It was not a "separation" agreement. It does not anywhere contain the words "separation" or "living apart" or any other language to that effect, nor does it so provide. And the theory that if, when this agreement was signed it was contemplated that the defendant might or would be living separate from her husband for at least one day or one week thereafter, that thereby the agreement became a separation agreement by which the parties or either of them agreed to live separate and apart for one day, or one week, or consented to the other spouse's living separate and apart for such time, is of course without basis.

The fact was that the defendant was living separate and apart from her husband. The fact was that she was then refusing to return to petitioner except on the unlawful condition that she would return, *not* to live with petitioner as man and wife. The fact was that defendant was refusing to come back and live with petitioner as man and wife at that time. Petitioner was face to face with those

facts, those conditions; that was the factual situation which existed. The United Family Agreement was drawn and executed in the light of those existing facts and only because of those existing facts, was superimposed on that factual situation. With defendant living apart as she was and with defendant in the frame of mind she was, it may be conceded that when petitioner executed that agreement he faced the facts as they were and at least thought it not beyond the realms of possibility that defendant would not cease living apart one day thereafter or even one week thereafter. Miracles do not happen with great frequency.

But to concede that petitioner had at least the perspicacity and understanding of the normal human being in recognizing that a certain factual condition existed does not prove that he bound himself to see that that factual situation continued or that he consented to its continuance. Knowing that that factual situation existed, petitioner also knew, what defendant says her lawyers told her, that this is not Africa or Russia, and that he couldn't lawfully go out and drag his wife back to his house the next day or the next week if she didn't want to come back the next day or the next week. The circumstances under which this agreement was made, petitioner's efforts, his conduct, his declarations, the very agreement itself show clearly that petitioner did not express his willingness or give his consent to defendant's living separate and apart and that as a matter of fact the very purpose of that agreement was to procure a discontinuance of the factual situation existing and to bring defendant back to petitioner. And, even if we do not argue strenuously with defendant's counsel when he plasters the label "separation agreement," even if this was, what it is not, a real

separation agreement, under the law of this state it is the circumstances which count.

Power v. Power, 66 N. J. Eq. 320 (Er. & App.);
Caffrey v. Caffrey, 74 N. J. Eq. 834 (Er. & App.);
Scotland v. Scotland, 96 N. J. Eq. 49;
Cowan v. Cowan, 97 N. J. Eq. 163.

In Power v. Power, supra, the husband refused to live with the wife after they had lived together for some years and separated from her. The parties signed a separation agreement, the terms of which are described by the court at page 322:

> "This being the attitude of the parties, an agreement was prepared, and on November 15th, 1899, Mrs. Power, on the advice of Mr. Westervelt and having, she says, no other alternative, joined with her husband and a trustee in signing it. This writing declares that Dr. and Mrs. Power agree that they will live and continue to live, apart; that Mrs. Power shall not remain in Montclair, but outside of that town shall have the right to choose her own separate residence; that she shall execute proper instruments for relinquishing her right of dower; that she shall have the custody of the children until they are seven years of age, after which their custody shall be subject to further arrangement, and that Dr. Power will pay to the trustee $95 a month for the support of Mrs. Power and the children during her natural life, subject to deduction in certain specified events."

The wife brought suit for divorce and the defendant husband set up the agreement as negating the

presence of the essential requisites. The court found the agreement not conclusive as establishing consent on the part of the wife and granted the divorce non obstante the agreement.

The court said, at pages 323, 324:

> "The effect upon this desertion produced by the agreement of November 15th, 1899, requires more consideration. It is certain that the agreement did not give to either spouse, as against the other, the right to continue the separation. Notwithstanding it, each was entitled to demand of the other a resumption of marital relations. Miller v. Miller, Sax. 391; Aspinwall v. Aspinwall, 4 Dick. Ch. Rep. 302. Consequently the only question is *whether it either indicates or gave rise to a change in the mental attitude of either party, showing mere consent to the separation instead of protest on the part of the wife, and instead of obstinate persistence on the part of the husband.*
>
> In solving this question the terms of the instrument are, of course, important, and they militate strongly against the petition of the appellant. But from the very nature of the inquiry they cannot be conclusive; they are only a part of the circumstances from which the truth must be inferred. No matter how explicit the declaration of the wife's agreement to live apart from her husband and to release him from his marital obligations, it is credible that she was but yielding to the necessities of the case, still recognizing, as the law recognized, the continuance of marital duty, both for herself and for her husband. And it is equally credible that the husband was aware of this condition and remained separated from his wife, not because he believed she assented to

such separation, but because his resolution never to resume cohabitation was unaltered. If such a state of facts appears, they constitute willful, continued and obstinate desertion, no matter what is said in articles of separation. 1 Bish. Mar. & Div. (6th ed.) Sec. 805b. Such was the decision in Nott v. Nott, L. R. 1 P. & D. 251, and in Crabb v. Crabb, L. R. 1 P. & D. 601, the judge ordinarily remarked upon the distinction between a separation induced by a written agreement and a separation of which the real cause was the determination of a husband to abandon his wife, and the writing only put a false face upon the transaction. In Moores v. Moores, 1 C. E. Gr. 275, Chancellor Green gave effect to such a deed of separation as a ground for defeating an application by the husband for divorce, because the wife's desertion, notwithstanding her continued purpose not to live with the complainant; but he based his conclusion also upon the fact that the husband had never intimated a desire or even a willingness that the state of separation should cease. Evidently he thought that such an intimation, made in good faith, would strip the deed of its force. His quotation from the opinion in Butler v. Butler, 1 Pars. Sel. Cas. 335, clearly shows that when such a deed has been signed, the question still remains whether the separation resulted from or was continued because of the agreement expressed in it, or was the willful and perverse conduct of a deserter.

If, with this view of the question at issue, we consider the evidence, the statutory fault of the husband is proved."

The rule of Power v. Power was approved and applied in Caffrey v. Caffrey, 74 N. J. Eq. 834.

Here also, the defendant husband refused to live with the wife. The parties entered into a separation "agreement" (signed only by the husband), which read as follows:

> "This agreement made this tenth day of June, A. D. 1902, between Lewis Caffrey and his wife, Alice Caffrey both of the City and County of Camden and State of New Jersey, I Lewis Caffrey give to my wife Alice Caffrey the Privilege to go and come whenever she likes in male and female company at Day or night. As I have not the time to go with her, and she has the right to live with her parents until I am ready to go to housekeeping or go with my wife's parents to live and when I go to live with her parents I hereby agree to pay one half of the expenses of the keeping of the house. That is in a few months time it is my intention to live with her as I cannot at present.
>
> I Alice Caffrey agree to extend the time from a few months to the month November 1902 but it is agreed that she will not go and live with his mother.
>
> LEWIS W. CAFFREY.
>
> Signed Sealed and delivered
> in the presence of
>
> PHILIP SCHMITZ."

The Court of Errors granted the wife a divorce despite the "agreement," discussing the question in these words, at pages 837, 838:

> "As bearing upon the consent of the wife, and the intention of the husband, the so-called agreement of June 10th, 1902, required consideration.

Without reference to the fact that it was not signed by the wife, or its other informalities, it is certain that the agreement did not give to either spouse, as against the other, the right to continue the separation. Miller v. Miller, 1 N. J. Eq. (Sax.) 391; Aspinwall v. Aspinwall, 49 N. J. Eq. (4 Dick.), 302.

Consequently, the only question is whether it indicates or gives rise to a change in the mental attitude of either party, showing consent to separation instead of protest on the part of the wife and obstinate persistence on the part of the husband.

The answer to this question depends not alone upon the language of the paper-writing, but upon a consideration of all the circumstances of the case as disclosed by the evidence. From these we incline to think that, in extending the time for going to housekeeping from June 10th, 1902, until the next following November, *the wife was but yielding to the necessities of the case, still recognizing, as the law recognized, the continuance of marital obligations, both for herself and her husband.* We think it equally clear that the husband was fully aware of this state of mind of his wife and remained separated from her, not because he believed she assented to such separation, but because his resolution never to cohabit with his wife was unaltered. Such a state of facts constitute willful, continued and obstinate desertion. Power v. Power, 66 N. J. Eq. (21 Dick. 320; 1 Bish. Mar. & D. (6th ed.) Sec. 805b."

In Scotland v. Scotland, 96 N. J. Eq. 49, the Court again approved the doctrine of Power v. Power. The court said, at page 51:

"He willfully and obstinately deserted her in 1915, and the desertion continued for more than two years. Her right of action to a divorce was vested (Gordon v. Gordon, 89 N. J. Eq. 535), unless the separation agreement interrupted the continuity. A desertion may be willful and obstinate notwithstanding such an agreement. Power v. Power, 66 N. J. Eq. 320."

In Cowan v. Cowan, 97 N. J. Eq. 163, the court again approved the rule of Power v. Power, supra. The holding of the court is expressed in the syllabus:

"Where a husband in fact deserted his wife, under circumstances that would entitle her to a divorce, a release given by the husband to the wife dealing almost entirely with real estate, but providing as a consideration the release of the husband from maintenance and support of the wife, does not create a consent by one spouse to the other as to the other's desertion."

The court considered the effect of the "agreement" in this case, at pages 164, 165:

"The remaining question to be considered is whether or not the release signed at the time of the settlement as to the property was an agreement by the wife to live separate and apart from her husband, thereby an acquiescence on her part. Without reciting the release in full, it is sufficient to say that it deals almost entirely with the real estate owned by the wife and by the husband and wife jointly.

One clause is that 'in consideration of my wife, Fanny Cowan, releasing me from the support and maintenance of her, I do quit-claim any and all right of courtesy, &c., in the real estate.

The defendant's counsel does not say that this is an absolute agreement to live apart, but it is an implied agreement. I cannot agree with him as to this.

The case of Power v. Power, 66 N. J. Eq. 320, was one as to the effect of an agreement, which in *express terms* provides for the separate living of the parties. The court of errors and appeals said: 'The effect upon this desertion produced by the agreement * * * requires * * * consideration. It is certain that the agreement did not give to either spouse, as against the other, the right to continue the separation. Notwithstanding it, each was entitled to demand of the other a resumption of marital relations.'

This case is followed by Hollingshead v. Hollingshead, 91 N. J. Eq. 261, and in Young v. Young, 94 N. J. Eq. 155.

These cases hold, in substance, that *circumstances under which the agreements were executed should be taken into consideration in order that the court may determine whether or not such agreement creates a consent by the one spouse or the other as to the other's desertion.*"

The circumstances under which the agreement here was executed, as well as the testimony of Dean Pegram, petitioner and Mr. John J. Kirby, clearly negate any contention that the petitioner signed said agreement by way of consent to defendant's continued desertion.

Defendant's argument in her brief on this question may conveniently be considered now. Her proposition was that "the separation agreement having been executed on January 24th, 1927, no suit could have been instituted until two years thereafter."

Defendant says that result is required on principle and by the authorities. Defendant's reasoning, however is wrong, and the authorities do *not* support her.

Defendant's argument "on principle" is this. The execution of a separation agreement constitutes consent to living apart necessarily, inevitably and always. This agreement may be repudiated after its making. Such repudiation destroys the consent. A cause of action can arise dating from the repudiation of the agreement after the making, but not before the date of that repudiation.

Defendant expresses this reasoning in the following language:

> "Either party has the right, at any time, to abrogate the agreement of separation, and to demand a renewal of the marital status. But this latter fact in no wise vitiates the consent which is attached to the original making of the agreement. In other words, when the agreement of separation is made and entered into, the parties to agree to live separate and part, and each, by affixing his and her signature thereto, consents to the separation of the other spouse. What transpires the following week, the following month, or the following year, indicative of a discontinuance of that consent, should not militate against the consent of the first instance."

This reasoning, defendant says, requires the rule that "the existence of a separation agreement is a bar to an action for desertion, unless the said separation agreement has been repudiated by one of the parties thereto."

Applying the reasoning to the facts, defendant says: The agreement was made on January 24, 1927; it necessarily constituted consent on that day. It couldn't have been repudiated until the next day (or sometime later in that day, the law disregarding fractions of days) no cause of action for desertion could arise until such repudiation, which repudiation could not date before January 25, 1927. Therefore no action for divorce could be brought until two years later to wit: January 25, 1929. This action having been brought before is premature.

Defendant's language is:

> "If the agreement of January 24, 1927—call it a separation agreement or call it a 'United Family Agreement'—does anything, it does certainly indicate a clear assent on the part of Dr. McKee on that day to the situation as it existed on that day, and we therefore repeat that it is inconceivable that any action for divorce could be instituted earlier than January 25, 1929."

The reasoning thus advanced is palpably unsound because its premise is wrong, to wit, the execution of even a real separation agreement does *not* per se necessarily and inevitably constitute a consent by both signing spouses, to separate living by the spouses.

The reasoning is not sound because it is perfectly possible to sign such an agreement as an acceptance of a situation, and at the same time not change a

mental attitude of opposition to continuance of desertion or to create thereby a mental attitude of consent to the beginning or continuance of a cesser of cohabitation. Indeed that situation is so far not unknown as to have been the actual situation presented in Power v. Power, 66 N. J. Eq. 320, and in the later cases cited on this point in both briefs, and is indeed the situation presented in the case before the court.

And the cases themselves say: The execution of such agreement does not by itself necessarily constitute, manifest, or create consent to the desertion; that we must look at the circumstances under which it was executed, regardless of its language, to determine whether or not the execution of such an agreement creates consent or indicates or gives rise to a change in the mental attitude of either party showing consent.

So in Power v. Power, supra, where the wife was petitioning for divorce and the husband set up the separation agreement, the court said at page 324:

> "No matter how explicit the declaration of the wife's agreement to live apart from her husband and to release him from his marital obligations, it is credible that she was but yielding to the necessities of the case, still recognizing, as the law recognized, the continuance of marital duty, both for herself and for her husband. And it is equally credible that the husband was aware of this condition and remained separated from his wife, not because he believed she assented to such separation, but because his resolution never to resume cohabitation was unaltered. If such a state of facts appears, they constitute willful, continued and obstinate desertion, no matter what is said in articles of separation."

So in Caffrey v. Caffrey, 74 N. J. Eq. 834, the court again declared that neither the execution nor the terms of the agreement were conclusive on the question of obstinacy. Justice Trenchard, speaking for the Court of Errors and Appeals, said at page 837:

> "The only question is whether it indicates or gives rise to a change in the mental attitude of either party, showing consent to separation instead of protest on the part of the wife and obstinate persistence on the part of the husband.
>
> The answer to this question depends not alone upon the language of the paper-writing, but upon a consideration of all the circumstances of the case as disclosed by the evidence."

Defendant's counsel is wrong, not only in his reasoning on principle, but in his statement of the holdings of the cases. The doctrine contended for that the execution of a separation agreement necessarily constitutes consent to separation, thereby destroying obstinacy, and that therefore "the existence of a separation agreement is a bar to an action for desertion unless the said separation agreement has been repudiated by one of the parties thereto," is not only not the doctrine enunciated by the cases, as defendant contends, but is directly opposed to them.

To prove his thesis, defendant's counsel takes up each case cited, and contends each one supports his contention that no action can be brought until after the execution of the separation agreement, and then not until after the expiration of two years from the date of a repudiation thereof.

An examination of the four cases shows however:

1. The execution of the agreement was not held a bar in any case, although in no single one is any mention made of a "repudiation".

2. In the leading case of Power v. Power, supra, where the agreement was entered into after the physical separation, it is expressly held that the desertion began on the date of the physical separation which antedated the agreement and continued uninterrupted on through it.

3. In one case, Cowan v. Cowan, supra, which is the only case in which the report does not give dates, an examination of the pleadings on file shows that the action was brought less than two years after the date of the execution of the agreement.

4. The language of all the cases is that the execution of the agreement does not necessarily constitute consent—and if there is no consent obviously there can be no revocation of such non-existent mental state.

To take up the cases in order in the light of what defendant says they hold, to wit: That the existence of a separation agreement is a bar to an action for desertion unless the said separation agreement has been repudiated by one of the parties thereto and that therefore in each of the cases cited, it was held that no action for divorce could be brought until more than two years after the making of the agreement because the action could only date from a repudiation after the making of the agreement.

In Power v. Power, 66 N. J. Eq. 520, the desertion occurred in *September, 1899,* the separation agreement was made a few months later in *Novem-*

*ber, 1899,* and the petition for divorce on the ground of desertion was filed in *1902,* three years after the making of the separation agreement. A divorce was granted despite the agreement. Defendant's argument is that the divorce was granted because within the three years after the making of the separation agreement in 1899, petitioning wife repudiated it and that the desertion dates from the date of repudiation; that the case holds the period of desertion could not include any period prior to the making of the agreement.

Without characterizing defendant's statements, the shortest answer is the case itself. The Court of Errors and Appeals held that the period of desertion for which the divorce was granted began on the date of the physical separation, September, 1899, which came before and antedated the separation agreement which was made on November, 1899, and that the desertion continued not interrupted by the separation agreement. Justice Dixon, speaking for the Court of Errors and Appeals, said at page 325:

> "On all the evidence we can reach no other conclusion than that the desertion, which took place in September, 1899, began and has continued because of the wilful, persistent and obstinate desertion of Dr. Power to abandon his wife."

There was absolutely nothing in the case to show any repudiation by the wife from which repudiation the desertion for which her divorce was granted could date. If there were, certainly Vice Chancellor Pitney in the Court below would not have overlooked it and it is clear from his opinion in 65 N. J. Eq. 93, that the petitioner never in fact formally repudiated the agreement and demanded

a resumption of marital relationship. Vice Chancellor Pitney denied a divorce on the ground that the making of the agreement was itself instantly fatal to the existence of obstinacy and to complainant's suit, and expressed surprise that the action should have been brought. The Court of Errors and Appeals, in reversing, directed its attention solely to the question whether the making of the agreement "indicated or gave rise to a change in the mental attitude of either party, showing some consent to the separation instead of prejudice on the part of the wife, and instead of obstinate persistence on the part of the husband", page 323—it considered solely whether by the making of the agreement the petitioner had consented to the living apart by her husband. The court nowhere in its opinion said that the agreement was a bar but that it was subsequently repudiated by the wife and that the desertion dated from such repudiation, but found rather that the circumstances under which the agreement was made showed that its making was not a manifestation of consent by the wife and that therefore the desertion which took place before continued to be obstinate despite the agreement and that the desertion dated from the date of the physical desertion before the agreement, not from the date of some repudiation which took place after the agreement. That the explanation of defendant is fantastic and that this case goes not on the ground of repudiation made subsequent to the agreement appears not only from absence of mention of repudiation, but from the expressed finding of the court. It might be noted in passing that defendant would do better to quote the entire language of the opinion in Power v. Power, than to draw erroneous inferences from a portion of one paragraph therein.

The next case considered was Caffrey v. Caffrey, 74 N. J. Eq. 835. Here the separation agreement was made and entered into June 10, 1902. Under it the petitioner agreed to live apart until November, 1902. Justice Trenchard, speaking for the Court of Errors and Appeals, said at page 837:

> "The only question is whether it indicates or gives rise to a change in the mental attitude of either party, showing consent to separation instead of protest on the part of the wife and obstinate persistence on the part of the husband.
>
> The answer to this question depends not alone upon the language of the paper-writing, but upon a consideration of all the circumstances of the case as disclosed by the evidence."

and said thereafter at page 838:

> "We incline to think that the wife, in yielding, under these circumstances, to her husband by granting the extension of time for going to housekeeping, did not consent to a separation even for the limited time named in the writing of June 10th, 1902."

In Scotland v. Scotland, 96 N. J. Eq. 49, the desertion occurred in 1915; the separation agreement was entered into thereafter; the action for divorce was instituted in 1919. For this case to support the defendant's contention as to its holding, we must find from this case that the making of the agreement itself constituted consent; that thereafter there was a change of attitude or repudiation by the petitioner. However, not only is there no evidence of repudiation but the court expressly

rests its holding on the ground that the agreement did not interrupt the continuity of obstinacy. The court said at page 51:

> "He (the defendant), willfully and obstinately deserted her in 1915, and the desertion continued for more than two years. Her right of action to a divorce was vested (Gordon v. Gordon, 89 N. J. Eq. 555) unless the separation agreement interrupted the continuity. The desertion may be willful and obstinate notwithstanding such an agreement. Power v. Power, 66 N. J. Eq. 320".

Defendant says, "We are confident that no decision can be found which would permit the institution of a divorce suit less than two years after the making of the agreement. The cases above referred to clearly show that the defendant has no basis for this assertion and an examination of the pleadings on file in the case of Cowan v. Cowan, 97 N. J. Eq., 163, shows that the suit in that case although instituted more than two years after the desertion was instituted less than two years after the making of the agreement. The petition in the case was filed on April 30, 1924, alleging desertion on April 13, 1922. The answer set up a separation agreement on December 7, 1922, approximately one and one-half years before the petition was filed. The court granted a divorce relying on the case of Power v. Power among others, saying, "These cases hold in substance that circumstances under which the agreements were executed should be taken into consideration in order that the court may determine *whether or not* such agreement *creates a consent* by the one spouse or the other as to the other's desertion." This decision was affirmed by the Court of Errors and Appeals, 99 N. J. Eq. 448.

It would be improper to add in refutation of what the defendant says these cases hold anything more than the cases themselves.

As to Moores v. Moores, 16 N. J. Eq., 275, cited on page 13 of defendant's brief which defendant calls, "The leading case in this jurisdiction," that was merely a situation in which the court found lack of obstinacy. This case was cited in Power v. Power, 66 N. J. Eq. 320, above referred to and indeed if it is defendant's contention that Moores v. Moores is inconsistent with Power v. Power, and the later cases which without exception follow Power v. Power, certainly it was overruled by these cases.

Defendant, being in error as to the rule required by sound reasoning and the cases, naturally reaches an erroneous conclusion on applying the non-existent rule to the facts of this case. Defendant says: "In the final analysis, *the test is* whether the alleged desertion of Mrs. McKee was *obstinate.*" The making of the agreement constituted a consent to that desertion. "We come back to our original proposition that no wilful or obstinate desertion can be spelled out until either the agreement is repudiated, or the possibility of a reunited family is blasted and the situation thereafter continues for a period of two years."

He looks at the agreement and says: "True enough, the possibility of a united family is adverted to in the agreement and a discussion of that possibility once in each six weeks is contracted for, but can it be said that the covenant looking forward to the discussion of the possibility of the United family *makes the separation less of an actuality?*"

Even if it had not already been demonstrated that neither the wording of a real separation agree-

ment providing by its terms that the parties shall live separate and apart indefinitely or for a stated period, nor the execution of the agreement is determinative on the state of mind of the parties (and, perforce the question of obstinacy) but that the circumstances surrounding the parties and the agreement must be looked into, the said reasoning of the defendant based on the wording of the agreement at the very least is not persuasive. He says the question is the obstinacy of Mrs. McKee—that is, her persistence in non-cohabitation against the will of petitioner. He then says that true enough petitioner insisted on a clause requiring defendant to discuss coming back to him. But, he says, the fact is that the parties were separated and petitioner's state of mind can't obliterate that fact.

Of course, the parties were separated—this case would never have arisen if they weren't. But the question is *petitioner's state of mind during that separation.* The separation—the factum of non-cohabitation being present and admitted, *the test is obstinacy—state of mind.* The proposition that petitioner's attitude of mind as regards a state of separation could not have been one opposed to and not consenting to that state of separation for the reason that that state of separation existed merits, at the very least, the mild characterization that it represents neither logic nor common sense.

Having based her claim to non-obstinacy on the proposition that the execution of the agreement is conclusive, defendant did not deal with the circumstances surrounding its execution—that is, except to repeat as if proved the statement in paragraph 6 of the answer that the petitioner, just before the trial of the New York suit was reached, pleaded with the defendant not to proceed with the trial and as a result of that urgent solicitation

by petitioner, the agreement in question was drawn up. It seems unnecessary to again repeat the testimony of Dean Pegram and petitioner, together with that of defendant herself, showing that *she* did the pleading and that petitioner acceded to it only when he got her to contract to at least discuss resuming cohabitation, although she persisted in her intent not to do so, except on the unlawful "nominal home" condition of no sexual intercourse. Nor does it seem necessary to again review all the other circumstances under which the agreement was made which were fully set forth in the Record of Events and show beyond any doubt that defendant never once wavered from her persistent determination not to resume cohabitation and that petitioner did not, by executing the agreement, waver from his position of opposition thereto but executed it in the hope and as a means of accomplishing a cessation of the separation.

Counsel for defendant in his brief endeavored to turn the United Family Agreement in his favor by arguing that since defendant signed the agreement requiring her to discuss with petitioner the possibility of a united family she bound herself to discuss that possibility and therefore her separation was not wilful. Of course the proofs clearly showed, and defendant herself admitted, her unwillingness to return to petitioner as his wife at the very time she signed the agreement, and she admitted the above requirement meant nothing to her—that her purpose in signing the agreement was to obtain some paper which would look like a consent to and recognition by petitioner of her right to live separate and apart from him.

Nevertheless, the learned Vice-Chancellor apparenty decided the important thought to be derived from the United Family Agreement was that it showed defendant had bound herself to consider

the possibility of returning, and that defendant was not really deserting if she was willing to discuss the possibility of her returning, although possessed of a determination not to return, and while actually persisting in her determination to live separate and apart by doing so and refusing to return.

The Vice-Chancellor said in his conclusions:

> "The aforesaid United Family Agreement is strongly indicative that the wife had not obstinately deserted the petitioner within the purview of the law. She certainly did not keep herself aloof from him during the period of her separation. She met him on occasions when he expressed a desire to meet her" (p. 24, ll. 30-36; p. 35, ll. 31 to 37).

In the first place, even if defendant wife did not "keep herself aloof," that fact is immaterial and irrelevant on the question of whether or not she was willing to return to petitioner as his wife, which the proofs show she was not willing to do.

In the second place, the question of obstinacy is a question of the state of mind of petitioner—was defendant's separation from him and refusal to live with him as his wife against his will? The proof is clear that defendant did not want to return—except on the unlawful nominal home condition of no sexual intercourse. The circumstances under which the United Family Agreement was made and the agreement itself show that petitioner's mind persisted opposed to her determination to remain apart and was directed to bringing her and her husband together. The events subsequent to the United Family Agreement as shown in the Record of Events, show petitioner's continued opposition

to defendant's actions and her continuance in her perverse refusal to return to live with petitioner. Just how defendant's condescension to talk to petitioner at his request, while persisting in her refusal to return, changes petitioner's state of mind to one of "non-obstinacy" is difficult to see.

## POINT IV.

### Defendant's desertion of petitioner was without legal justification.

Defendant's abandonment of petitioner on January 13, 1925, with intent to live separate and apart from him was demonstrated by abundant testimony and is not controverted.

#### The Plea of Justification.

Defendant in her answer filed alleged justification for her desertion at the time she deserted on the ground that petitioner "treated her in a cruel and inhuman manner" (amended answer, paragraph 4) and on the further ground that petitioner was "supercilious and condescending in sexual relations as well as everything else"; "that the petitioner claimed he had a right to sexual intercourse at any time he wished, and that the defendant had nothing whatever to say about the matter. That the petitioner's conduct in this regard seriously affected defendant's health" (Answer, paragraph 5).

#### The Law.

The law on the question of justifying desertion is well settled.

"A wife who deserts does so at her peril and has the burden of proving her justification by establishing the *guilt* of her spouse by *clear* and *satisfactory proof*.

O'Brien v. O'Brien, 142 Atl. 898;
Rogers v. Rogers, 81 N. J. Eq. 479;
Suydam v. Suydam, 79 N. J. Eq. 144.

The rule was thus stated in Suydam v. Suydam, supra, at page 149:

> "A wife who leaves her husband does so at her peril and assumes the burden of making the desertion constructively his by establishing his guilt by clear and satisfactory proof."

Justification is established only by evidence sufficient to constitute on behalf of the deserting party a cause of action for divorce or judicial separation.

Arnabaldi v. Arnabaldi, 101 N. J. Eq. 126;
O'Brien v. O'Brien, supra;
Calichio v. Calichio, 85 N. J. Eq. 213, 96 Atl. 658;
Rogers v. Rogers, 81 N. J. Eq. 479.

The rule is thus stated by Chancellor Walker, speaking for the Court of Errors and Appeals in Rogers v. Rogers, supra, at page 483:

> "Under our statute desertion is justified when the deserting party has been so offended against as to authorize at his or her instance a decree for divorce or judicial separation, but the guilt of the offending party must appear by clear and satisfactory proof. Dray-

ton v. Drayton, 54 N. J. Eq. (9 Dick.) 298, 301; Suydam v. Suydam, 79 N. J. Eq. (9 Buch.) 144, 146."

The cases are gathered and the rule again stated in Arnabaldi v. Arnabaldi, supra. The syllabus reads:

> "Continued desertions, as contemplated by the New Jersey Divorce Act, is justified only when it is shown by clear and satisfactory proof that the deserting party has been so offended against as to authorize, at his instance, a decree for divorce or judicial separation".

Where the wife seeks to justify her desertion of her husband, relied on by him for a divorce, because of his cruel treatment, she has the burden of proving his cruel treatment *of such a character* as to authorize at her instance a decree of judicial separation.

> Calichio v. Calichio, 85 N. J. Eq. 213, 96 Atl. 658;
> O'Brien v. O'Brien, 142 Atl. 898.

And it is settled that "The only cruelty recognized by our law, which may warrant one spouse in abandoning another is such as denominated "extreme cruelty" which our Court of Errors and Appeals has defined to be such cruel conduct as endangers the *safety* of the person or the *health* of the aggrieved party, either actually inflicted or reasonably apprehended."

> O'Brien v. O'Brien, supra, at page 900.

## The Proofs.

Defendant failed to adduce proofs sufficient to constitute justification under the law. The allegations of cruelty in her answer fell into three classes:

(1) His attitude towards her which was characterized by lack of affection for her, regarding her as his inferior; calling her offensive names and epithets, refusing to consider her desires in matters of interest common to the parties and to their children.

(2) Acts of physical violense, so that

> "Under the circumstances it has become entirely unsafe for defendant to live and co-habit with said petitioner."

(3) Condescension and lack of consideration in sexual relations, which seriously affected defendant's health.

As to (1), petitioner's attitude, little or no evidence was introduced. As to offensive epithets, the only charge made against petitioner throughout the entire case was defendant's testimony that he called her a fool and said she had no brains.

There was testimony that petitioner and defendant often quarreled and that he often told her to shut up in conversations. Helen Noyes, defendant's sister, testified that in the summer of 1924: "My sister often asked him questions to which he refused to give any answer whatever. I heard him tell her many times to shut up, that she ought not to take part in the conversation with the children" (p. 535, ll. 35-40).

"Q. That is the outstanding thing in your mind concerning the life at 39 Claremont Avenue? A. Constant friction.

Q. That is the outstanding thing in your mind? A. Yes.

By the Vice-Chancellor:

Q. And that kind of conduct you are alluding to as friction that he would criticise his wife about something and would not allow her to join in conversations in the home? A. He told her to shut up" (p. 536, ll. 1-18).

As to the allegation that petitioner refused to consider defendant's judgment or desires in matters of interest common to the parties and the children, no testimony was introduced, except the discussions, after the separation, as to whether Billy should be continued in Taft School or sent to Lincoln School or to a military school, on which questions petitioner acceded to defendant's wishes.

As to the allegation that petitioner has compelled defendant to overtax her physical strength at housework although well able to employ servants to relieve her, the only testimony on this question was that of Mrs. Hooker, who testified that when petitioner and defendant rented the home of her sister for the summer of 1918 in Spuyten Duyvil, although her sister had had three maids, a furnaceman, and a part time laundress, defendant had only one maid (p. 550), and the further uncorroborated testimony of defendant that when defendant returned from Europe in 1924, he dismissed the maid she had and paid her two weeks in advance (p. 578).

As to (2)—The acts of violence alleged by virtue of which it has become entirely unsafe for defendant to live with petitioner, a number are alleged in the answer.

The first one is alleged in the answer to have occurred in 1917 when in the presence of one of defendant's sisters, petitioner forcibly pushed defendant out of the room and compelled her to retire. The only testimony as to this alleged act comes from defendant's sister, Helen Noyes, who says that in 1917 about nine o'clock one evening in their home in Ridgefield Park, N. J., she saw petitioner forcing defendant to go over to the stairway (pp. 528, 529). She said what petitioner wanted defendant to do was to go upstairs to bed (p. 542, ll. 1-19). Defendant said nothing about this alleged occurrence.

The next act alleged in the answer is that in 1918 and 1920, in the presence of a domestic servant, petitioner violently shook defendant. Neither defendant nor any one else gave any testimony as to this.

The next act alleged in the answer is that in the presence of the aforesaid sister and children, petitioner scratched defendant's face with his fingers from her forehead to chin, causing defendant's face to become red and swollen. Helen Noyes, defendant's sister, testified as to this alleged occurrence. She thus described this incident:

> "I think it was late in 1923 or 1922 I was there for the Christmas celebration and Mrs. McKee and the children and I were in the dining room and living room—it had an archway between it. We were discussing the Christmas celebration and Mrs. McKee was standing in this archway between the dining room and living room when Mr. McKee came in from the back of the apartment and without any words whatever took his fingers and scratched her entire face from her forehead down to her chin.

She was quite red and obviously was suffering from it. So far as I could see there was no provocation for it.

Vice-Chancellor: I will strike that out.

Tell us what happened.

(Witness continuing) Mrs. McKee expressed some pain and Mr. McKee became angry.

Q. What did he do or say? A. As near as I remember he went and laid down on a couch and didn't talk at all for a while.

Q. You say on this occasion without any provocation he came out from this room and set upon her and scratched her face? A. As he passed this door he scratched her. She was standing in the archway.

Q. And walked by her and scratched her face in the way you indicated and said nothing to her? A. I don't recall whether he said anything" (pp. 524, 525).

She admitted she made an affidavit that this occurred in 1921 or 1922 (p. 536) and later said she didn't know whether it was Christmas of 1921, 1922, 1923 (p. 537). This occurrence seems so utterly improbable that it overtaxes one's credulity. There was no other testimony on this alleged occurrence, either by defendant or anyone else.

The next act alleged is in 1922 at which time it is alleged petitioner "struck and knocked down defendant." Defendant gave no testimony as to this alleged occurrence, nor did anyone else.

The next act alleged in the answer is that in the latter part of 1922 or in the early part of 1923, petitioner threw defendant on the floor and hurt her back. Defendant testified as to this:

"As nearly as I can remember it was in the spring of 1923 while we were living on 180th Street. It was his custom to lie on the sofa in the living room and sleep so that the children could occupy the bedrooms, and the children had returned. I was sewing in the sewing room and I went to see that the children were settled for the night, and I noticed that Mr. McKee was getting ready for bed and the light was still on in the living room and I mentioned it and I went back to the sewing room to sew. He said to come and put it out. I didn't answer but simply went back to the sewing room and went on with my sewing, and he came in and picked me up bodily and threw me against the door so I fell in the doorway with my spine against the door sill. I couldn't move at all. He called my son and he came out of his room.

Q. Your husband was there? A. Yes, and my son and my husband raised me and put me on the bed. I had to consult a physician about that" (pp. 689-690).

Defendant did not mention her daughter at all in connection with this occurrence but her daughter in answer to the question "Do you recall an occasion when your mother was lying across the entrance of the door?" said "Yes, there was once when I saw her lying across the entrance to the sewing room and she was badly hurt, and my father and brother had to lift her and put her to bed" (p. 1016, ll. 30-38). The date was later fixed as 1922 or 1923 (p. 1018, ll. 5, 6). She did not see what occasioned the hurt (p. 1016, l. 40; p. 1017, ll. 3-4).

The next act alleged is that about June 21, 1924, petitioner seized defendant by the shoulders and shook her for five minutes continuously. There was no corroboration to this act either. Defendant testified that on this night, after having sexual intercourse with petitioner, she advised him that the children had gone to the country club:

> "Q. Tell us what happened? A. Then he commenced to storm about my allowing the children to go up to the country club without chaperoning them myself. I told him they had gone up under Mrs. Nelson's care. The Nelsons lived in the same house with us and they went to the same club, and he kept on storming about leaving the children run around alone.
>
> Q. Was that before or after the sexual intercourse? A. After.
>
> Q. Then what? A. Finally I said to him that I didn't go out and leave my family without any means of support; that I didn't go out and leave my family without sufficient food as he did so I had to borrow money to get along. Then he wanted to know from whom I borrowed the money. He spoke in a very loud voice and I told him I didn't care to discuss the matter any more that night, that I would tell him about it the next day. Then he rushed into that room and grabbed me by the shoulders.
>
> Q. Then what happened? A. Then he came in and grasped me by the shoulders and shooked me for at least five minutes very severely.
>
> Q. Anything else? What was the result of his shaking? A. He went back to his own bed.

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

Q. What did you do after he released you if anything? A. I stayed in my own room.

Q. Were the children in the house at that time? A. No, they were at the country club. There was no one else in the apartment" (pp. 686, 687, 688).

The next allegation in the answer is that on or about August 11, 1924, while defendant was ill with asthma, petitioner again assaulted her with resulting injuries to her back. Petitioner gave the following testimony as to an alleged act of violence in August, 1924:

"The children were at home then and I was sleeping on the sofa in the living room, a sofa that was quite short—shorter than I am myself—and I looked up and Mr. McKee was standing over me, and I said 'What do you want?', and he didn't reply at all and grasped me by the shoulder and violently forced my head back into the corner point of the sofa in a twisted position, and with his hands on my shoulders he jumped up and down on his knees.

Q. What do you mean? Was he trying to have intercourse with you? A. No, your Honor.

Q. Was he in a lying position on the sofa? A. Yes.

Q. He was lying on top of you? A. He had his hands on my shoulders to brace himself and was jumping up and down.

Q. Where were his knees, on the sofa? A. No, on me.

Q. You were lying there prostrate and he was on top of you and had hold of your shoulders and his knees on you? A. Yes.

Q. What part of your body was his knees on? A. On my abdomen. On my stomach and my hips" (p. 689).

It seems sufficient to say of this story that if petitioner kept jumping up and down on defendant's abdomen with his knees on that abdomen and his two hundred pounds of weight as the driving force in the manner defendant details, defendant would undoubtedly not have lived to tell that story in court. Defendant offered no witnesses to this alleged occurrence, either.

The last allegation is that early in July, 1924, petitioner again assaulted defendant severely, shaking her and bruising one of her arms. No testimony at all was offered on this alleged act.

In addition, defendant's daughter, Margaret, testified to one act which was not alleged and which her mother did not refer to and to other acts which her mother did not mention. She testified that she remembered once her father struck her mother in the face (p. 1014, ll. 20-24). This happened in 1922 or 1923 (p. 1015, l. 16). "It was once when I saw him stand her in the corner and hit her with his fist all over the body". "There were many strikes. I came in while he was doing it. I tried to hold his hand. He threw me off for a while and then he stopped. I don't remember the condition of my mother's face after this beating" (pp. 1014, 1015). It is significant that no allegation of this act is set forth in the answer and that defendant herself nowhere referred to it in her testimony.

The daughter, Margaret, also testified that "when he went by her (petitioner) he would strike her

just for no reason—he would shove her against the wall with his elbow or something like that (p. 1015, ll. 39, 40; p. 1016, ll. 1-9). Defendant herself never mentioned any such thing.

It seems unnecessary to refer to the bias of this daughter who knew her mother was consulting lawyers and knew her mother was going to leave her father in January, 1925, in the preceding September (p. 1029), but never told her father because "it wouldn't be fair to if she didn't wish to tell it" (p. 1030, ll. 10-15), who says she was in the next room when she heard Mr. Whaley recall with her mother the meeting between petitioner and defendant and "wrote it down to be sure I would remember it" at her mother's suggestion (p. 1033, ll. 12-16), who tried to keep her father out of her mother's apartment when he called "because I didn't know whether he should come in or not; I didn't know what technical thing would be violated" (p. 1022, ll. 28-40; p. 1023, l. 18); who testified to the above acts which were not even alleged in the answer and as to which her mother, the defendant, herself did not testify.

As to (3)—the allegation of condescension and lack of consideration in sexual relations which injured defendant's health, defendant testified that in the spring of 1923 petitioner began to conduct their sexual relations on a financial basis. She gave the following testimony:

> "He had contended before that I should be earning money. He said women didn't make parasites of themselves any more and it was my place to earn money. Then in the spring of 1923 he said he had thought of a way for me to earn the money to run the house and that he would pay me for sexual intercourse and I would have that money to run the house.

Q. He had been providing moneys to run the house previously, hadn't he? A. Not adequately.

Q. You don't mean that you put yourself on that plane even though he suggested it of commercializing your body? A. I told him I would not consider it so he would put five dollars on the bed or he would put it on the table and say that is for last night. At times when he would leave to go away I would say I had no money to provide for the table. He would say 'You didn't do your duty last night; you won't get any.' *He said that in the presence of the children and me.*

By Mr. Blumberg:

Q. You say that started in the spring of 1923 and continued until June, 1924? A. Yes.

Q. What did you say to all that? A. I refused absolutely to put myself on any such basis. I would refuse except when he would be away and return. I thought he would perhaps forget about it.

By the Vice-Chancellor:

Q. You mean after such intercourse he would leave money for that purpose? A. Yes, every time.

By Mr. Blumberg:

Q. Was there ever any discussion or protest? A. I told him it was impossible for me to live on any such basis.

By the Vice-Chancellor:

Q. But you did? A. I didn't, your Honor, except when he would be away for several weeks and I would start in again thinking he would forget it.

Q. Each time after the intercourse he would leave money behind him? A. Yes" (pp. 695-696).

Defendant also testified that at a conference held on April 22, 1926, petitioner asked her to return and said: "Are you willing to promise twelve times a month?", and I said: "I always refused to put my life on any such basis." He said: "If you are not willing to promise that there is no use of discussing the matter" (pp. 607-608). She later testified that at a conference between the two on January 24, 1927, petitioner said nothing else mattered. "The only question is: 'Are you willing to promise eighteen times a month?' " (p. 627).

There was no attempt made to corroborate this testimony in any way excepting by the testimony of the defendant's sister, Mrs. Gibb, who visited defendant from October 1 to the middle of November, 1924. She testified that defendant told her that she had abstained from having sexual intercourse with petitioner for some time, that she would refuse to have sexual intercourse with him under the conditions he imposed. These were: (1) "For one thing she said that he required her before he would discuss any matter with her at all to sleep with him three times a week. To make that a practice otherwise he would not discuss anything." And (2) "She thought he should be kinder to her" (p. 459, ll. 33-40; p. 460, ll. 4, 5).

No testimony was introduced in support of the allegation that petitioner's conduct in sexual relations had affected defendant's health "seriously," as alleged, or in any other way.

On this question of sexual relations, petitioner testified that defendant's interest in sexual relations had been tapering off for a considerable period prior to her desertion (p. 232). To the question, "What reason would she assign for that" he said that she would answer "I do not feel that way tonight" and "Let's leave it go" "and I would ask the

next night and the night following and I would get the same reply" (p. 232). In his opinion, the trouble between him and his wife was largely his lack of producing a sufficient amount of money for her and her increasing lack of interest in sexual intercourse. While at the age that he and his wife were there was not the same desire for sexual intercourse as there had been in the previous years, he was interested in it occasionally, and she not at all.

The above are the allegations and the proof offered in support. It seems clear that defendant was not legally justified in leaving petitioner on January 13, 1925. There is conflict in testimony as to the reason for the breach between these people who had lived together since their marriage in 1902. It seems clear from the testimony of petitioner after the separation that she thought the petitioner was not as liberal with money as she thought he should be—in fact, an attempt was made to show she borrowed money from her sister, Helen Noyes, which was paid back (pp. 543-544). It seems also true that she regarded petitioner as overbearing and not as considerate of her as she thought he should have been, and that he regarded himself as her superior. But it is certainly clear that none of these things gave her any legal justification for deserting him.

As for the acts of violence alleged, the stories recounting them are either highly improbable in the unbelievable viciousness they detail, or are uncorroborated. No corroboration was offered as to any act of violence committed within two years of the desertion of petitioner on January 13, 1925.

Defendant admits she continued to have sexual intercourse with petitioner as late as June 21, 1924. And the life of the parties thereafter until the desertion, as well as the actions and testimony of de-

fendant after the desertion on January 13, 1925, do not afford any basis for any claim that defendant left petitioner through fear of her physical safety or that any legal cause was given her during this period. Her sister, Mrs. Gibb, says she came on in October, 1924, because she was afraid to leave defendant alone in the house, but Mrs. Gibb came East not with a gun but with a diary; and not even Mrs. Gibb, a planted witness, can say anything more about petitioner in October than that he was unpleasant and wanted his wife to sleep with him. At this time defendant felt no qualms about talking to petitioner about dental work she wanted done. She talked to petitioner about Dr. Brophy's estimate of $500 (p. 799) and although another dentist agreed to do it for less (p. 799), the niggardly, penurious petitioner told her to have it done by Dr. Brophy, in whom she had confidence (p. 799).

On petitioner's return from Europe he brought her a Christmas present. He came back on December 21, 1924, and she lived with him until January 13, 1925, during which time she can say nothing worse about him than that he was not very pleasant.

It is unquestioned that on Friday, January 9, 1925, just four days before she deserted petitioner she had dinner with petitioner and Mr. and Mrs. Owens and went to theatre with him that evening, and that on the next day was with him and the others at Tiffany's.

During all this time she wasn't afraid to stay with him and said nothing about leaving. During the whole period after she left, she did not say a word about being afraid to return for fear of any physical violence, and never mentioned it.

On January 22, 1925, she did offer to return to and live with him in the same house; her only con-

dition being: no sexual intercourse. Her offer certainly negates the presence of any fear for her physical safety.

As for the sexual relations allegation, the claim of intercourse on a payment basis is not corroborated and there is no testimony whatsoever to indicate on the part of the petitioner any abuse or attempted abuse, of his marital rights. The plain fact of the matter seems to be that defendant ceased to have any interest in sexual intercourse.

**Vice-Chancellor's Conclusions.**

The Vice-Chancellor found defendant's charge of extreme cruelty not sustained and her claim of justification unfounded, expressing his finding in these words:

> "It is regrettable that the petitioner and defendant, after many years of undoubted happiness in their marriage relation, such relation should have been marred by such happenings as disclosed by the proofs, but a few years prior to their separation. The troubles between them appear to me to have been such as may well be characterized as 'petty bickerings.' *They certainly were not such as to establish a matrimonial offense for which a decree of divorce might have been granted*" (p. 25, ll. 27-37).

**Decisions of Court of Errors and Appeals.**

The decision of the Vice-Chancellor on this question is sustained by the decisions of the Court of Errors and Appeals.

> Rogers v. Rogers, 81 N. J. Eq. 479 (Er. & App.), rev'g 81 N. J. Eq. 311;

Hall v. Hall, 60 N. J. Eq. 469 (Er. & App.), aff'g in part 59 N. J. Eq. 402.

The picture of petitioner defendant has painted is that of an overbearing man, who did not treat her with consideration and kindness, who was penurious and not liberal, who regarded her as his inferior, who was interested in sexual intercourse when she wasn't. As a result of his said nature and conduct there was in the language of Helen Noyes, friction between them.

This picture was painted for the Court in the two cases above cited, and accepted as a true representation; but it was held insufficient.

In Rogers v. Rogers, supra, the court found the following facts:

> "The petitioner was shown to have been a miserly and penurious man. His income was small, to be sure, and that was a reason for economy, but not for the penuriousness in which he indulged, and which amounted to considerable privation to his wife and children" (p. 481).
>
> "The indications are quite strong that the husband of petitioner was to a considerable degree derelict in his duty to treat his wife with consideration and kindness" (p. 312).
>
> "The indications are that the husband was penurious; that he was inclined to be miserly, and that he was not dealing with his wife in a reasonable and liberal way" (p. 313).
>
> "Defendant charged further that he 'treated her as a servant and did not permit her to be mistress of the household and rear her children as his wife'" (p. 483).
>
> "He was also charged with being entirely too passionate for his wife" (p. 484).

Vice-Chancellor Stevenson denied the husband's petition for divorce on the ground that her desertion was not obstinate, saying at page 314:

> "Viewing the matter in that way I do not believe that Mr. Rogers, the petitioner here, acted as a reasonably, just and intelligent man ought to have acted when he stayed away for two years in silence without communication with his wife and children and during a large part of that time, submitting to the inevitable, contributed money from week to week for the support of those children whom he seems not to have cared to see or have anything to do with."

The Court of Errors and Appeals reversed the decision finding that the wife's desertion was not justified and that efforts to induce the wife to return, if made, would have been fruitless.

Chancellor Walker, in delivering the opinion of the Court of Errors & Appeals, said at page 483, et seq:

> "It must be conceded that Mrs. Rogers left her husband and has remained away from him. She does not deny it. In her answer she seeks to justify it by alleging that her husband had been guilty of cruel and inhuman treatment toward her; that he treated her as a servant, and did not permit her to be mistress of the household and rear her children as his wife; that after the separation he refused to provide her with money for the support of herself and children.
>
> Under our statute desertion is justified when the deserting party has been so offended against as to authorize at his or her instance

a decree for divorce or judicial separation, but the guilt of the offending party must appear by clear and unsatisfactory proof. Drayton v. Drayton, 54 N. J. Eq. (9 Dick.) 298, 301; Suydam v. Suydam, 79 N. J. Eq. (9 Buch.) 144, 146.

Assuming that the charge of cruelty in the defendant's answer is sufficiently pleaded and that the pleader intends to charge the extreme cruelty which is cause for divorce a mensa et thora under our statute, still it is not proved, that is the facts testified in support of the allegation do not in and of themselves constitute extreme cruelty. But even if they did, being an affirmative defence, the burden of proving it would be upon the defendant, and, as it amounts to a matrimonial offence pleaded in bar of a suit for divorce, it would have to be supported by corroborating evidence, the same as though it were made the basis of an application for divorce. Letts v. Letts, 79 N. J. Eq. (9 Buch.) 630, 632. The same rule was applied in Garcin v. Garcin, 62 N. J. Eq. (17 Dick.) 189.

So far as the question of venereal disease is concerned, the wife only suspected it and did not accuse her husband of it, much less prove it. Therefore, no fact is presented which makes a case of extreme cruelty visited by the husband upon the wife through sexual intercourse while he was so afflicted, and the case does not fall within Cook v. Cook, 32 N. J. Eq. (5 Stew.) 475, 479, and Crane v. Crane, 62 N. J. Eq. (17 Dick.) 21, 26.

As to her father's assertion of the reason for the imposition of the condition under which she might return, namely, that they

were to occupy separate rooms because the petitioner was entirely too passionate for his wife, it is sufficient to say that the court is not given to be informed of any facts which might show extreme cruelty arising out of gross abuse of marital rights. The court of chancery in English v. English, 27 N. J. Eq. (12 C. E. Gr.) 71, granted a decree of divorce from bed and board forever on the ground of extreme cruelty, consisting mainly in gross abuse by the husband of his marital rights, rendering it unsafe for the wife to cohabit with him, or be under his command or control, which decree, however, was reversed in this court (Ibid. 579), but only because it was apprehended that further acts of the same abuse would not be attempted if the wife should return to him (at p. 585), and the divorce was refused and the bill dismissed, but without prejudice, so that the facts urged in the complaint before the court might be used if the case should again be brought. But the case at bar does not come within this doctrine for want of proof of any gross abuse of marital rights such as would constitute extreme cruelty.

While the support of his wife and children by the petitioner was meagre and possibly not all that he could and should have provided out of such means as he had, nevertheless the mere fact of failure to provide sufficient support for a wife does not constitute desertion by the husband under our statute. See Palmer v. Palmer, 22 N. J. Eq. (7 C. E. Gr.) 88; Skean v. Skean, 33 N. J. Eq. (6 Stew.) 148; Thomas v. Thomas, 74 Atl. Rep. 125, 127.

The learned vice-chancellor in the court below lays considerable stress upon the want

of proper approaches by the husband to the wife and the absence of sincere effort on his part to induce a reconciliation and her return. We, however, think that this cause falls within that class of adjudicated cases which excuse the husband from making an effort in the direction just mentioned, because it is apparent to us from the wife's conduct—her actual desertion of her husband, the imposition of unlawful and unreasonable conditions before she would return, her removing her furniture and belongings from his house in his absence bringing a suit for alimony shortly after the separation—that any overtures or efforts made by her husband to induce her to return would have been entirely futile. See Hall v. Hall, 65 N. J. Eq. (20 Dick.) 709; Sterling v. Sterling, 71 N. J. Eq. (1 Buch.) 59; Purnell v. Purnell, 70 Atl. Rep. 187.

The above views lead to a reversal of the decree below and the granting of a final decree of divorce to the petitioner and appellant."

81 N. J. Eq. pages 483, 484, 485.

In Hall v. Hall, supra, the court found the following facts:

"I have found as a result of the evidence that the defendant was overbearing, unkind and sometimes profane. He seems to have been dominated by a supreme regard for self."

59 N. J. Eq. 407-408.

"It is quite certain that, on some occasions, the husband swore at her. I have little doubt that he, by his unkindness and want of sympathy often made her unhappy" (p. 404).

"When, in the fall of 1895, she was suffering from the disease of which I have spoken, marital intercourse between the parties should have ceased. It is admitted that it did not. The wife says it caused her pain, and her testimony in this regard is corroborated by the medical witnesses" (p. 404).

"On the Sunday before she left, according to the decided weight of evidence, he, without provocation, in the presence of a guest, at the dinner table, raised a carving fork, swore at her, and in an angry tone said, 'I have a good mind to throw this at you'."

On defendant's return home from work on the day of her departure, a servant handed him the following note from petitioner's father:

"Mr. Thomas Hall:

Dear Sir: I have been obliged to take my daughter home on account of your cruel and unmanly treatment of her. While you may not regard it as such, the effect has been so marked, that after due consideration and advice, I have been obliged to take this step. My lawyers, Cary & Whitridge, 59 Wall Street, New York City, will receive any communication that you may desire to make" (p. 404).

Vice-Chancellor Stevens dismissed the wife's petition for divorce, holding that she had not proved extreme cruelty under the statute. The upper court affirmed this portion of the decree. Vice-Chancellor Stevens also denied the husband's cross petition for divorce on the ground that the husband had not made proper efforts to return and that her desertion was therefore not obstinate. The Court of Errors and Appeals reversed this portion of the

decree and directed that a decree of divorce be entered in favor of the cross-petitioner, the husband.

## POINT V.

### Petitioner was a bona fide resident of this State for the requisite statutory period.

This proposition was proved by abundant testimony at the hearings. The testimony was gathered and applicable rules of law presented in the brief submitted to the Vice Chancellor on the case below. Counsel for defendant in his brief conceded that "we must frankly confess to the court that we are *not* convinced that the petitioner was not a bona fide resident of the State of New Jersey".

The Vice Chancellor sitting below so found, stating his finding in these words:

> "Petitioner alleges that on February 25, 1925, he took up his residence in New Jersey. The defendant has questioned herein the bona fides of the petitioner's residence in this state. The proofs herein satisfactorily establish, in my judgment, that the petitioner has been a bona fide resident of New Jersey since February 25, 1925" (p. 32, ll. 29-36; p. 22, ll. 28-33).

### Conclusion.

It is respectfully submitted that the decree below should be reversed and the cause remanded to the Court of Chancery for the purpose of entering therein a decree in favor of the petitioner.

October Term, 1930.

Respectfully submitted,

J. EMIL WALSCHEID,
of Counsel with Petitioner-Appellant.

# New Jersey Court of Errors and Appeals

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner-Appellant,<br>*and*<br>MARY N. McKEE,<br>Defendant-Appellee. | On Appeal from the Court of Chancery. |

## BRIEF OF DEFENDANT-APPELLEE.

### FIRSTLY, HEREIN, OF DEFENDANT-APPELLEE'S CROSS APPEAL.

#### THE AWARD OF $1500 COUNSEL FEE TO THE DEFENDANT WAS INADEQUATE.

A fair presentation of this appeal requires us, at the outset, to argue the defendant-appellee's own cross appeal.

It will be noted that the petitioner-appellant appealed from the entire decree made in this cause on the 28th day of July, 1930, and, in particular, in his petition of appeal assigns as one of the reasons for the appeal the fact that "the court allowed to the defendant a counsel fee which was excessive in amount, not justified by the financial circumstances of petitioner, and not required by the work done in this case" (Case, p. 4).

The petitioner-appellant has abandoned this ground of appeal. It is nowhere argued in the

printed brief of 203 pages which was furnished to counsel. Not having been argued, the said ground of appeal must be considered as abandoned, and this court should conclude that the amount so awarded is now satisfactory to the petitioner-appellant.

However, we do not intend to abandon our cross appeal. It will be noted from the Notice on Cross Appeal and the Petition on Cross Appeal (Case, pp. 5-7) that Mary N. McKee, the defendant-appellant herein, appeals from so much of the Final Decree of Dismissal as adjudges and decrees that the petitioner pay to the defendant a counsel fee of $1500, on the ground that said award of $1500 is inadequate, and in no manner commensurate with the services rendered by the defendant's solicitors.

We are quite fortunate, indeed, in being able to point to the State of Case and the petitioner's brief filed herein as indicative of the huge task which faced the solicitors of the defendant. In view of the concrete evidence afforded by the State of Case itself, our argument herein will not be lengthy.

We maintain strenuously that the award of $1500 was wholly inadequate for the varied, extensive and successful services rendered by the solicitors of the defendant. We shall summarize the services as so rendered:

We were first consulted by Mrs. McKee in reference to a pending litigation in the State of New Jersey—the case *sub judice*—and were instructed to apply for leave to file an answer within time, the fact being that the defendant had unsuccessfully sought to enjoin this action by proceedings taken in New York. The petition of the defendant for leave to file an answer was duly prepared, and an order to show cause obtained, and service effected. The answering affidavits of the petitioner were duly received and considered. The matter

was fully argued before the Vice Chancellor, and leave was given to the defendant to file her answer.

Subsequently a petition for alimony *pendente lite* was prepared and served upon the petitioner, and the matter fully argued before the Vice Chancellor (see papers contained in the supplemental state of case).

The answer of the defendant was then prepared and filed, and the matter was at issue.

The case required constant and thorough preparation, and many hours were consumed in conferences with Mrs. McKee, the defendant, and in examining all of the correspondence, New York pleadings, and records in the case.

We have examined the State of Case, and can state therefrom the 11 days of actual trial work was participated in, and these days we enumerate as follows:

Jan. 28, 1929—pp. 39-141
Jan. 30, 1929—pp. 142-215
Mar. 4, 1929—pp. 216-286
Apr. 4, 1929—pp. 286-390
Apr. 5, 1929—pp. 391-542
Apr. 23, 1929—pp. 542-642
Sept. 11, 1929—pp. 642-737
Oct. 1, 1929—pp. 737-792
Oct. 15, 1929—pp. 793-859
Oct. 16, 1929—pp. 859-976
Oct. 17, 1929—pp. 976-1045

In addition to the foregoing, the case, we might state, was set for trial for Oct. 28, 1928 and not tried, and also was set for a hearing on June 29, 1929, and not tried. These latter dates are of importance in conjunction with the dates enumerated, because each continued hearing and the resultant lapse required additional discussions and re-prep-

arations, so to speak, with client, and a careful analysis of the testimony previously adduced.

The petitioner was not satisfied with these hearings, but conducted several hearings in New York City, where the attendance of the solicitors for the defendant was required. These hearings took place on the 10th day of July, 1929, in New York City (Case, p. 1064), and on the 19th day of October, 1928 (Case, p. 1120).

Furthermore, depositions were taken of witnesses in Michigan, these depositions consisting of written interrogatories and cross interrogatories propounded by the respective solicitors herein (Case, p. 1149).

Then, at the conclusion of the hearing, the argument of the petitioner required, as it appears, a brief of 160 typewritten pages, which brief we were required to read and painstakingly study, and in defendant's behalf we filed a brief of 90 typewritten pages. The petitioner saw fit to file a reply brief of about 75 pages. Our answer to that was a one page note.

Our file herein consists of 5 huge folders, containing all of the pleadings herein, letters over 200 in number, exhibits, correspondence, etc. We cannot attempt to list the numerous telephone calls which the case required.

For these services, which extended over a period of more than two years, and for which we received preliminary compensation in the sum of $350, the court awarded $1500. We feel that these services were easily worth the sum which we asked for in our notice to settle the final decree, to wit, the sum of $5,000 (Supplemental State of Case, p. 132).

We have just narrated the services rendered by us in as brief and summary a fashion as we could. May we now be permitted to view this allowance from another angle?

The stenographic notes and the transcript of the testimony in this matter consisted of many typewritten books—about 1200 pages in all. For these services the stenographer received the sum of $809.50 (see stenographer's affidavit hereto annexed). The printing of 30 copies of the state of the case and the supplemental state of the case required 1302 pages. The brief required 203 pages. At $1.00 a page (and we understand that the brief cost more than that), the printer in this case received the sum of $1500. IN OTHER WORDS, THE TRANSCRIBING OF THE BRIEF AND THE TESTIMONY IN THIS CASE WERE DONE AT A COST TO THE PETITIONERS FAR EXCEEDING THE AWARD MADE TO THE SOLICITORS OF THE DEFENDANT.

At no stage of the proceedings did the petitioner spare any expense. In his determined efforts to obtain a divorce herein, the petitioner engaged the services of high priced counsel in this state. His first solicitor was John Milton, former corporation counsel of Jersey City, and former Prosecutor of Hudson County—one of the ablest lawyers in the County. Mr. Milton was the solicitor herein, as appears from the brief filed by the petitioner-appellant (Brief, p. 128). Mr. Milton turned over the work herein to an associate of his, Mr. Thomas McNulty, an industrious and conscientious advocate. Mr. McNulty was in attendance at every hearing of the trial, and rendered plenary assistance throughout the case, for which he must have been compensated. That Mr. McNulty was in attendance at every hearing of the case see the remarks of the court (Case, p. 1028).

Mr. Milton and Mr. McNulty, at their own suggestion, or at the suggestion of Mr. McKee—we believe the latter—went to the further expense of

retaining as trial counsel herein Mr. J. Emil Walscheid, a man of vast trial experience, and a man who commands extraordinarily large fees in this community. Mr. Walscheid is counsel for the Municipality of North Bergen in this County, and is also County Counsel for the County of Hudson.

In addition thereto, Mr. McKee skillfully produced a host of witnesses, including residents of Jersey City and of Leonia, and including another distinguished attorney, Mr. John J. Kirby, of the New York Bar. Mr. Kirby conducted one of the hearings in New York City (Case, p. 1120), and Mr. Kirby was in attendance at one of the hearings in Jersey City.

We repeat again that Mr. McKee, the petitioner herein, spared no expense in this litigation. High priced lawyers, complete stenographic records, a host of witnesses, were all none too sufficient for the petitioner. Having indulged in such luxuries, so to speak, can it now be said that counsel for the defendant should not be adequately compensated for the successful services rendered by them?

Perhaps, in the petitioner's opinion, the solicitors for the defendant are in no manner comparable to his own array of legal talent, but the petitioner should be reminded that the defendant did not lose this case, but won it, and a fee which is clearly inadequate even for losing counsel becomes drastically so for successful counsel.

The court conceded at the argument that counsel had done excellent work, that the services performed were herculean, and that if the petitioner could afford to pay more, a much larger fee would have been awarded. The court clearly erred in viewing the case solely from the standpoint of the petitioner's ability to pay. A sounder method of approach would have been to consider the sums ex-

pended by the petitioner at that time, particularly the transcript of the stenographic record, needlessly protracted by the petitioner himself.

Furthermore, we do not understand just why a conclusion can be reached that the petitioner is unable to pay this sum. His own affidavits, which are a part of the proceedings herein, indicate that he has an average annual income of about $9,478.11 (Supplemental State of Case, p. 81). The defendant believes that his income is about $30,000 a year (see affidavit of Mary N. McKee, p. 42). We believe that the defendant's figure is nearer correct, when we see the lavishness of the petitioner's expenditures in his efforts to get a divorce. Mr McKee had the case tried after the fashion of a millionaire.

We do not understand just why an allowance of $5,000, which is, admittedly, but half a year's salary of the doctor, is too much to compensate solicitors who have diligently spent two years in the conduct of this litigation.

To add insult to injury, the petitioner did not even pay the $1,500 which was awarded to the defendant as a counsel fee after the final decree of July 28, 1930. Quite the contrary. An appeal was taken from this decree. This was in line with the petitioner's general conduct, and in line with his general hypocritical protestations of sincerity, when his every act portrayed a malicious and persistent desire to attain his own ends. Perhaps, to the petitioner, the defendant and her counsel were synonymous. Any means to thwart counsel for defendant would be thwarting the defendant herself, and why pay anything to counsel for the defendant, when, by the simple expedient of filing a Notice of Appeal and Petition of Appeal, time for paying any counsel fee could be postponed for a year

or two. Our analysis of this hypocrisy is buttressed by the fact that the question of counsel fees is not even argued by the petitioner in his brief.

We most respectfully submit that the Court of Chancery erred in making this award of $1,500 for counsel fees, and that this court should in its remittitur direct that counsel fees herein be fixed in the sum of $5,000.

## HEREIN, OF DEFENDANT'S REPLY TO THE ARGUMENT OF THE PETITIONER-APPELLANT.

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### Introductory Statement.

The brief filed by the petitioner-appellant is a strictly partisan and forensic effort. It is submitted that the argument is so inaccurate and so colored that that court can derive little assistance therefrom. These appeals are decided upon the entire record and not upon any so-called "record of events" as is presented by any of the advocates in the cause. The same would undoubtedly apply to any version of the record which we might present and hence we shall not burden the court with any details of any "record of events" but shall make this argument an argument upon the record.

The parties to this suit were married on the 26th day of June, 1902, and lived together as husband and wife for more than twenty-two years. Two children were born of the marriage, to wit, Margaret Harper McKee, a daughter, now about twenty-two years of age, and who appeared before the Court on the last day of the hearing, and William Noyes McKee, a son, now about twenty years of age.

The petitioner in this case, the husband, Dr. Ralph H. McKee, a professor of chemistry in Columbia University, instituted suit as above entitled in this Court in November, 1927, alleging in paragraph 2 of his petition (Case, p. 8) that the defendant deserted him in January, 1925, and that for more than two years last past the said defendant had wilfully, continuedly and obstinately deserted the petitioner.

It is to be observed in the answer and amended answer filed by the defendant herein that the allegations contained in paragraph 2 are denied.

The defendant not only denies that the desertion was continued and obstinate, but likewise denies that the desertion was wilful.

In the answer filed by her, the defendant seeks, by paragraphs 4 and 5 thereof, to justify her living separate and apart from her husband, the petitioner, on the ground of the extreme cruelty of the petitioner, which in effect, if established, according to the cases in this jurisdiction, makes the petitioner the deserter constructively.

In paragraph 6 of her answer, the defendant sets forth facts indicating that the petitioner has no cause of action herein, by reason of the prior pendency of a suit for separation in the State of New York, and by reason of the entering into of an agreement for separation.

At the outset, it should be borne in mind that the husband, Dr. Ralph H. McKee, is the party who is seeking affirmative relief. No affirmative relief whatsoever is sought in this suit by the wife, Mrs. Mary N. McKee. The burden of proving the case is undoubtedly upon Dr. McKee.

Chief Justice Gummere, speaking for the Court of Errors and Appeals in the case of

> *Gordon* v. *Gordon,* 90 Equity 535, 105 Atl. 242,

says:

> "The burden is upon the petitioner to prove his case, and all uncertainties of fact should be resolved against him."

The situation is indeed an unfortunate one. Here we have parties who have been married for over twenty-two years, with two fine children, who find

themselves in a position where they are living separate and apart. The husband, instead of making the efforts of a just man to improve the situation, institutes this suit for a dissolution of the marriage—*a "vinculo,"* so to speak. Any decree herein in his favor would necessarily result in leaving the defendant penniless and helpless, a rather harsh termination of a married life dating back to 1902.

It would be well to bear in mind throughout any consideration of this case the undoubted policy of not only this State, but practically every Anglo-Saxon jurisdiction tending to promote and stabilize the marriage relation, and not lightly to dissever the ties of matrimony. The foregoing proposition has been adverted to very often by the courts of this State.

Chancellor Walker, in the case of

*Rinehart* v. *Rinehart,* 91 Equity 354, 110 Atl. 29,

says:

> "Furthermore, in divorce cases, the State is a party whose interest the Court will at all times save and protect. And as the law favors marriage and disfavors divorce, the Court will do nothing to facilitate the latter, but will only dissolve the marriage relation when the complaining party is strictly entitled to a decree."

And in the oft-cited case of

*Grant* v. *Grant,* 84 Equity 81, 92 Atl. 791,

Vice-Chancellor Lewis gives the following citation from "Bishop on Marriage, Divorce and Separation":

> "The public, which we have seen to be a party in all divorce suits, occupies a unique

position, sometimes embarrassing to the Court. It does not ordinarily appear by counsel, and when without counsel does not plead. As against this party when only thus represented by what is called the conscience of the court, the plaintiff is entitled to a decree on his case being fully proved. But this party, unlike the others, never loses a right by laches; and so whenever a defense comes out in the evidence, whether alleged or not, it is fatal to the proceeding. A maxim in this suit therefore is that a cause is never concluded as against a judge; and the court may, and to satisfy its conscience sometimes does, of its own motion, go into an investigation of the facts not contested by pleadings."

See also:

*Feickert* v. *Feickert,* 98 Equity 444, 131 Atl. 576;
*Kirschbaum* v. *Kirschbaum,* 92 Equity 7, 111 Atl. 697.

The defendant was successful in the court below. After a lengthy hearing which, as we have already stated consumed the greater part of eleven days, and after extended argument, the learned trial court filed conclusions dismissing the petitioner's petition (Case, p. 29). The trial court had the benefit of observing all of the witnesses, their demeanor on the stand and their manner of testimony. The trial court had a thorough familiarity with all of the aspects of the case. The decision of the trial court was arrived at not hastily but after a most thorough consideration of all of the evidence and of all of the legal points advanced by the solicitors. Decision was not rendered until eight months after the last day of the final hearing.

## POINT ONE OF THE ARGUMENT.

We note that the petitioner devotes the first part of his brief to a discussion of the proposition that the finding of the Court of Chancery that the petition in this cause was prematurely filed is erroneous. It is submitted that the court below not only followed established precedent in arriving at its conclusion but also as a proposition of law, these precedents are sound. Before answering the argument of the appellant we desire to expound in our own way the proposition as it was argued before the Court of Chancery.

In addition to the defendant's denial of paragraph 2 of the petition, the defendant, in paragraph 6 (Case, p. 18) of her amended answer specifically states:

> "Defendant further shows that in October, 1925, she instituted a suit for separation against the said petitioner, upon the ground of crued and inhuman treatment by the said petitioner. The said petitioner duly appeared in said action and filed an answer, and said action duly came on for trial in New York in the month of January, 1927. The said petitioner, just before the trial commenced, pleaded with the defendant not to proceed with the trial of the cause, upon the ground that the publicity of such trial would interfere seriously with the business and reputation of the said petitioner, and at the urgent solicitation of the said petitioner an agreement of separation drawn by the said petitioner personally, was entered into between the defendant and the said petitioner, and the action for separation

> was discontinued. A copy of this separation agreement is annexed hereto as Exhibit A. By reason of the facts contained in this paragraph and the existence of the agreement aforesaid, the defendant states that petitioner has no cause of action herein,"

and paragraph 6 of the amended answer is verbatim paragraph 5 of the original answer.

What are the facts chronologically? The defendant left the home at No. 39 Claremont Avenue, New York City, on the 13th day of January, 1925. In the month of October, 1925, she, in good faith, instituted a suit for separation in the State of New York, by serving the summons and complaint in said suit upon her husband. An answer was duly filed by the husband, and numerous proceedings were had in said suit in New York. In fact, the said suit was set for a hearing in the month of January, 1927, which suit was settled, and thereupon discontinued. This takes us to the month of January, 1927. Ten months later, the present action in New Jersey is instituted, to wit, in November, 1927.

It is clearly settled in this State that in a suit for divorce for desertion, none of the time occupied by the pendency of another proceeding involving the marriage relationship, whether it be for divorce, nullity or separate maintenance, can be computed as part of the time of the desertion in the later case; and this is the rule whether the same party is petitioner in both cases or is petitioner in the former one and defendant in the second one, or vice versa. In fact, as the learned Chancellor pointed out in the case of

this rule is sounder when, as in the case *sub judice,* the defendant in the second suit is the plaintiff or petitioner in the prior litigation.

Mr. Francis Child in his recent treatise entitled, "The Law on Divorce in New Jersey", says on page 21 of his work:

> "If it appears that there have been previous proceedings affecting the marriage or its dissolution, it may be that such previous proceedings, will bar or postpone the petitioner's right to relief.
>
> "It has been held by the Court that in a suit for desertion, none of the time occupied by the pendency of a former proceeding for divorce by one of the parties against the other can be computed as part of the time of the desertion in the later case; and this rule is the same where the same party is petitioner in both cases, or is the petitioner or the defendant in the prior one, provided the first suit or suits was or were bona fide * * *.
>
> "The Chancellor's opinion in the McLaughlin case sets at rest any doubt which may have existed about the rule above mentioned applying to desertion cases. The same rule applies to pending proceedings for nullity."

In the case of *McLaughlin* v. *McLaughlin,* the whole question is very fully discussed by the present Chancellor. The reason for the rule, the Chancellor points out, relying upon adjudicated cases in this State both in this Court and the Court of Errors and Appeals, is that the party who instituted

the prior proceeding could not have cohabited with the other party pending the said prior suit without condoning the offense. The Chancellor then proceeds to demonstrate that a defendant who is complained against and asserts his innocence, has nothing to condone, condonation being the privilege of the injured party, and not of the injuror, and that therefore perhaps the rule should only apply to a case where the defendant in the second suit was the petitioner or plaintiff in the prior proceeding (which is our case). As the Chancellor puts it:

> "The only reason assigned in the cases as to why the time of the pendency of the first proceeding cannot be computed as part of the time of the desertion in the later one is that pending the first one the petitioner could not cohabit with the defendant without condoning the offense charged by the former. It is to be observed that the defendant, who is etiher innocent or guilty, has, in neither case, anything to condone, and therefore it may seem that the reason does not apply where the same party is defendant in both cases. However, the doctrine that the time consumed in the previous divorce suit cannot be counted as any part of an obstinate desertion in a subsequent one between the same parties is too firmly established in this court to now be questioned."

This rule was given further recognition by the Chancellor in the cases of:

> *Rinehart* v. *Rinehart,* 91 Equity 354, 110 Atl. 29;
> *Barbour* v. *Barbour,* 94 Equity 7, 118 Atl. 778.

To be sure, if the prior action is not brought in good faith, its pendency cannot be set up as a defense to the second suit, but the good faith of the defendant, Mrs. McKee, in instituting her suit in New York cannot be seriously questioned. The suit in New York was a simple separation suit, prosecuted diligently and in good faith, and in fact settled with a practical acknowledgment that there should be paid temporarily to the said defendant the sum of $200.00 per month—this sum of $200.00 being deemed insufficient by the wife, but accepted by her as a temporary arrangement, with the expectation that a larger sum would be agreed upon later if the parties could not adjust their differences otherwise. The suit was settled by the present petitioner practically consenting to her separation, a termination totally agreeable to the prayers contained in Mrs. McKee's separation suit in New York.

A leading case in this jurisdiction expounding the doctrine of good faith, so-called, is

*Weigel* v. *Weigel,* 63 Equity 677,

referred to in practically all of the later decisions, and in that case, Vice-Chancellor Grey specifically says that it is of no significance whether the complainant succeeds or fails in the suit (the prior suit) by which the claim is presented.

It might be well to quote from the opinion of Vice-Chancellor Grey in *Weigel* v. *Weigel*:

> "The general proposition appears to be indisputable that the separation of one spouse from the other, pending a suit between them for divorce, is justifiable, and is therefore not an obstinate desertion during that period. If

the previously pending suit were for divorce on the ground of adultery, cohabitation would ordinarily condone the offense, and deprive the complainant of her remedy. The same principle applies if the divorce sought is a limited one from bed and board on the ground of extreme cruelty. For if the wife (who is, in such cases, usually the complainant) continues to live with her husband, pending such a suit, she throws doubt upon the extremity of such cruelty of which she alleges she is the victim. 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.

"But in all the cases which state the proposition in general terms, there is an assumption that the case which relieves from the duty of cohabitation, pending it, is one brought in good faith, in order to submit to the consideration of a court a condition of facts which the complainant really believes entitles her to the relief sought. In such a case it is of no significance whether the complainant succeeds or fails in the suit by which she presents her claim. Her separation, pending it, is not obstinate, for the reason that there is a justifiable cause for it, and that it is her right to have a judicial determination of what she believes to be real grievance, unembarrassed by presumptions adverse to her which would necessarily attend upon continued cohabitation with her husband."

There can be no doubt that if the prior suit was a suit for separation or limited divorce from bed and board on the ground of extreme cruelty, as was the case instituted by Mrs. McKee in New York State, that the rule here propounded still applies.

See the foregoing citation from *Weigel* v. *Weigel,* supra.

See also the case of

*Lake* v. *Lake,* 80 Equity 350, 86 Atl. 767 (Opinion by Stevenson, V. C.).

The pleadings in the New York proceedings were offered in evidence at the hearing. We learn from the testimony of Ralph McKee (Case, p. 199, fol. 30) that he was served at 11:35 on the 14th day of October, 1925, with a copy of the summons and complaint in the New York action, this summons and complaint being offered in evidence and marked Exhibit P-44 in evidence, without objection. This Exhibit P-44 (Case, p. 1046) is the ordinary summons and complaint for separation and separate maintenance, and in the prayer thereof recites:

> "Wherefore plaintiff demands a separation from the bed and board of defendant; that a reasonable provision be made for her support and maintenance and for the support, education and maintenance of the two children of the parties, and that the custody of both of the aforesaid children be awarded to the plaintiff, and for such other and further relief as may be just and proper, together with the costs and disbursements of this action."

As the alleged desertion took place on the 13th day of January, 1925, and the suit for divorce in New Jersey was commenced on the 13th day of No-

vember, 1927, superficially we have a period of two years and ten months. But as Vice-Chancellor Backes puts it in the case of

*Hartpence* v. *Hartpence,* 121 Atl. 513,

"time out" must be allowed for the prior litigation in the State of New York, which occupied a period from the 14th of October, 1925 to the 24th of January, 1927, or a period of one year and three months. This leaves the petitioner with only one year and seven months of a continued desertion at the most.

It is to be noted that the petitioner cannot now use the present date of 1930 as being corrective, because the pendency of the present suit likewise removes the element of obstinacy. See:

*Lederer* v. *Lederer,* 95 Equity 558, 123 Atl. 241

(an opinion by the late Vice-Chancellor Bentley).

*Myles* v. *Myles,* 77 Equity 265, 76 Atl. 1037;
*Rinehart* v. *Rinehart,* supra.

It is submitted that the petitioner's action herein is entirely premature, and that by reason of the argument herein, the petitioner has no cause of action herein.

The petitioner, in his brief endeavors to convince this court that the aforestated well settled propositions of law are unsound and that this court should adopt an entirely new rule whereby this entire doctrine should be excised from the annals of New Jersey Divorce Jurisprudence. In particular the petitioner sees absolutely no point to the rule

where the defendant in the proceedings before the court was the petitioner or plaintiff in the prior proceedings (which is our case), although we submit that the rule is much sounder in that instance, and it has been so recognized by our courts, as we have already shown.

Apparently the petitioner would retain this rule where the same party is the plaintiff, petitioner or complainant in the two proceedings.

On page 36 of his brief the petitioner presents an argument to this effect.

> "It seems clear that there is no basis for the erection of such rule and it seems odd that the defendant can emphasize at one and the same time, the policy of the state in favor of marriage and continuance of cohabitation thereunder and a rule that the law requires separation of the parties. Doubtless, absence of cohabitation after the institution of suit for divorce is essential to the successful maintenance of such suit, but the policy of the law favors the continuance of the marriage relation, not its destruction or enervation."

The argument so advanced is circular, if we may use that expression. The petitioner states that the rule is unsound because the policy of the law favors the continuance of the marriage relation and does not favor parties being separated even though a suit is in progress. But why not go the whole length. *The policy of the law favors the continuance of the marriage relation and hence this defense is allowed in this jurisdiction.* The petitioner himself is seeking to destroy the marriage relation and is thwarted by the salutary rule which requires him to wait the statutory period of two years.

It seems to us that the rule which permits a party to use as a defense the pendency of prior litigation is a fair, decent and honest one. If a party separates from the spouse why shouldn't the time taken in a genuine litigation be considered "time out" as Vice Chancellor Backes expresses it. A wife leaves her husband. She believes that she is justified in so doing. In fact she starts a suit for separation. This litigation may be pending for a long period of time. If she is unsuccessful in the litigation she should be permitted to return to her husband. There is no necessity for putting upon her the risk of establishing the case. If the law favors the continuance of the marriage relation, this defense being only a defense in abatement, is a most commendable and sound proposition of law.

The petitioner maintains that the prior proceedings were not brought in good faith. We should dismiss this as unworthy of comment in view of the fact that the litigation in New York was actually settled by the signing of a separation agreement drawn by the petitioner himself. With such a termination so favorable to the defendant can it now be said that the proceedings were not brought in good faith? If it does anything, the separation agreement is a practical acknowledgement of the good faith of the proceedings in New York. These proceedings in New York were discontinued upon the signing of a separation agreement. If the petitioner can now raise the cry that the proceedings were not brought in good faith, his procurement of the separation agreement of January 24th, 1927 was a fraud upon the defendant.

We are giving this agreement of the defendant some attention because on page 43 of his brief petitioner quotes from the record the statement by the defendant to the effect that her attorneys told her

that she should be separated from the petitioner "but the law would not allow her to do that under the circumstances." We do not recall any such remark having been made by the defendant. It is so contrary to every statement made to us in conferences and so contrary to the statements made by the defendant upon the stand and so contrary to the logic of the situation, that we believe that the stenographer erred in transcribing the answer. The answer which Mrs. McKee made was incorrectly transcribed. What she really did say is "They told me I could have a separation from him; that no law would compel me to live with him under the circumstances." We have filed an affidavit in this court to the effect that this is the correct answer. We were unable to get the original notes of the stenographer because these notes were lost. See affidavit of Louis Beechner annexed to this brief.

Personally we do not attribute much importance to the answer but in view of the fact that the petitioner has devoted much time to it in his brief and in view of the fact that our client, the defendant, is quite upset about it we are giving it this brief attention.

## POINT TWO.

### The execution of the separation agreement is conclusive of the fact that the present suit was prematurely instituted.

The execution of the separation agreement by both parties on January 24th, 1927, is conclusive of the fact that the present suit was prematurely instituted.

We have just contended that the pendency of the suit for separation in New York, demonstrates that this present suit was prematurely brought.

Another aspect of the case is likewise convincing of the fact that Dr. McKee, the petitioner herein, had no cause of action when he filed his petition for divorce on the 13th day of November, 1927—and that aspect is the separation agreement of January 24th, 1927.

Counsel for the petitioner, in his brief devotes pages 158 to 180 to a discussion of the agreement of January 24th, 1927, terming it rather euphemistically the "United Family Agreement." The entire argument is devoted to a consideration of several cases in this jurisdiction, which supposedly hold that the existence of a separation agreement is not necessarily conclusive as to the element of obstinacy on the part of one of the spouses.

It seems to us that counsel misses the point entirely. We shall repeat the agreement advanced in the court below. It is elementary that these agreements are binding so long as and only so long as the parties are willing to be bound thereby. Either party has the right, at any time, to abrogate the agreement of separation, and to demand a renewal of the marital status. But this latter fact in no wise vitiates the consent which is attached to the original making of the agreement. In other words, when the agreement of separation is made and entered into, the parties de agree to live separate and apart, and each, by affixing his and her signature thereto, consents to the separation of the other spouse. What transpires the following week, the following month, or the following year, indicative of a discontinuance of that consent, should not militate against the consent of the first instance.

To put it differently, we might concede (for the purposes of this argument only), that perhaps Dr. McKee did repudiate the agreement after it was drawn, but the question still remains how, in view

of the fact that the agreement was made and entered into on the 24th day of January, 1927, does the said petitioner calculate that there has been two years of obstinate, wilful and continued desertion on the part of Mrs. McKee?

If the agreement of January 24th, 1927—call it a separation agreement or call it a "United Family Agreement"—does anything, it does certainly indicate a clear assent on the part of Dr. McKee on that day to the situation as it existed on that day, and we therefore repeat that it is inconceivable that any action for divorce could be instituted earlier than January 25th, 1929.

The view which we here advance is amply supported by a consideration of the authorities. A leading case in this jurisdiction is the case of

*Moores* v. *Moores,* 16 Equity, 275

In the case of *Moores* v. *Moores,* the complainant sought a divorce from his wife, on the ground of desertion. No cross-complaint or cross-petition was filed by the wife. Two grounds of defense were presented. Firstly, that the separation by the wife was justified by reason of the alleged extreme cruelty of the complainant, and secondly, that the element of obstinacy was absent, by reason of the fact that the wife had lived apart from the husband with his consent, under and by virtue of written articles of separation entered into by and between the parties. The Court, in commenting upon the facts, stated that "after the execution of the agreement, there is no pretence that the husband has ever expressed his dissent from the agreement, or his desire to terminate it." The Court then says:

> "It is well settled that a mere separation of husband and wife does not constitute deser-

tion within the meaning of the statute. To constitute desertion, the wife must absent herself from her husband of her own accord, without his consent, and against his will. Drake v. Drake, Halst. Dig. 385, 'Divorce', Sec. 1; Jennings v. Jennings, 2 Beas. 38; Cook v. Cook, Ibid. 263; Bishop on M. & Div., Sec. 511. * * *

"The complainant is before the court, seeking redress for a wrong done by the defendant in refusing to discharge her matrimonial obligations. But what right has he to complain of any act, as a violation of his rights, which was done with his assent. The general maxim of the law is volenti non fit injuria. If the complainant has sustained no injury, he has no ground for redress. Admitting that the agreement for separation by the husband and wife was not binding, that the conduct of the wife in absenting herself from her husband was unjustifiable and even criminal, it will not at all aid the complainant's case. * * *

"In Butler v. Butler, 1 Parsons' Sel. Cas. 335, where this question was under consideration, the court said: 'Although no court determining on the marriage relation, recognizes such consent separations as arrangements strictly legal; yet when it is clearly shown that the withdrawal of a wife or husband from mutual cohabitation, has been the result of such an understanding or agreement; or where the withdrawal of one has received the subsequent approbation of the other, the continuity of absence, under such circumstances, is not a wilful and malicious desertion. The malice of the desertion arises from its being the perverse act of the one, in refusing the performance of the matrimonial obligations and duties, which

> the other has the legal right to require. But when such separation has been the result of mutual arrangements, and these clearly established in proof, then each is in equal fault in this particular, and neither can claim a legal right against the other, in consequence of an act in which he or she has been an equal participant. Such assent or acquiescence, however, are revocable acts; and if either party persists in a state of separation after such revocation, he or she thenceforth occupies the position of a party quitting cohabitation on his or her own motion."

The doctrine in *Moores* v. *Moores,* as interpreted in later cases, is to the effect that the existence of a separation agreement is a bar to an action for desertion, unless the said separation agreement has been repudiated by one of the parties thereto.

In the cases cited by the petitioner in his brief, the action for divorce was brought more than two years after the making of the said agreement. To be sure, the petitioner argues quite strenuously that this fact, was a mere incident and was not in any manner the basis of the decision. But the fact is as we have set it forth.

In

*Power* v. *Power,* 66 Equity, 320

the parties were married June 24th, 1891, cohabited until September, 1899, and entered into an agreement of separation on November 15th, 1899. The petition in the Court of Chancery for divorce because of the husband's desertion, was filed in November, 1902, or three years after the making of the separation agreement. (The statutory requirement for divorce for desertion being at that time,

as now, two years.) The Court specifically states the view expressed by us, in the following manner:

> "The effect upon this desertion produced by the agreement of November 15th, 1899, requires more consideration. It is certain that the agreement did not give to either spouse as against the other, the right to continue the separation. Notwithstanding it, each was entitled to demand of the other a resumption of marital relations."

And in

> *Caffrey* v. *Caffrey,* 74 Equity, 835; 70 Atl. 922

the alleged separation agreement was made and entered into June 10th, 1902, and suit for divorce was not instituted until April 6, 1906, almost four years thereafter.

And in the case of

> *Scotland* v. *Scotland,* 96 Equity 49; 124 Atl. 608

the separation agreement was entered into in 1915, and the matrimonial action instituted in 1919, or about four years thereafter.

It is advisable at this point to consider more fully the agreement of January 24th, 1927, and to demonstrate that the making of this agreement is indicative of the consent of Dr. McKee to his wife's separation. It should be borne in mind that Mrs. McKee had a suit pending in the State of New York, for separate maintenance, that this suit was about to be reached on the Court Calendar, and that in settlement of this suit, the petitioner, Dr.

McKee, himself drew and prepared the agreement in question. In order that the agreement might be before the Court, we now set forth the agreement in full:

"Memorandum of agreement between Ralph H. McKee whose residence is 607 Bergen Avenue, Jersey City, N. J., first part, and Mary Noyes McKee (Mrs. Ralph H. McKee) second party.

"It is agreed as follows:

"1. That the present suit between the two parties to this agreement is to be discontinued by second party (plaintiff) within two days of signing of this agreement.

"2. That the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month.

"3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks.

"4. That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall spend half of their vacation-time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter.

"5. That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft) or in schools of equal grade, at the expense of the first party, under the same general conditions as they are at present.

"6. That on the starting of any legal suit between the parties to this agreement, except

one to enforce the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease.

"7. This agreement shall have as a minimum duration July 1, 1928.

"8. That this agreement is in duplicate and shall become active and enforceable on the two copies being signed by the two parties concerned.

"Signed this 24th day of January, 1927, in New York City, N. Y.

"First party RALPH H. McKEE,
"Second party MARY N. McKEE."

While the agreement in question does not use the words "separation" or "separate and apart," it is submitted that the context of the agreement shows it to be a separation agreement.

In the case of

*Devine* v. *Devine,* 89 Equity 51, 104 Atl. 370,

Vice-Chancellor Leaming set forth *verbatim* an agreement which did not contain the words "Separation or separate and apart," and considered it a separation agreement.

Similarly with the agreement in question, by paragraph "3" thereof, the parties agree to discuss with each other their family affairs, and in particular the possibility of a united family at least once in each six weeks. The fact that they agree to discuss the possibility of a united family, indicates that they are living separate and apart.

Likewise, paragraph "4" of the agreement provides that the children shall spend half of their

vacation-time with each party. This shows that the parties are to live separate and apart.

Likewise, paragraph "7" gives as the minimum duration of the agreement, July 1st, 1928. We should note that the duration is not the maximum, but the minimum. In other words, that the agreement is to be in effect at least until July 1st, 1928, and perhaps for a longer period.

We submit that it must be clear that the making of this agreement constitutes a consent to a separation, and that even though it may be repudiated by either party, still on that day the consent of both parties to the separation was clearly present.

The facts in this case are so entirely different from that in the case of *Power* v. *Power,* so strongly relied upon by counsel for the petitioner herein, that we believe a full consideration of the case of *Power* v. *Power* would only serve to strengthen the view that the drawing of this separation agreement disposes of any cause of action which the petitioner in this suit might have had.

In *Power* v. *Power* the separation agreement was drawn by the husband, and practically forced upon the wife, and it was the husband who was seeking to take advantage of the separation agreement. In the case *sub judice,* Dr. McKee drew the agreement in his own words, and in his own language, as he himself testified, and he is now trying to avoid the full force and effect of that agreement. He drew the agreement voluntarily, and without any coercion, and after fully considering the matter,

To visualize the situation, Mrs. McKee had brought a suit for separate maintenance, and, as she testified, was ready to proceed therewith, and in order to avoid any further publicity, was willing to enter into the separation agreement in question, which she thought was a victory for herself,

and which she thought was an acknowledgment on the part of Dr. McKee that her separation was justified, and consented to. To draw this agreement, and on the strength of it to have the litigation in New York discontinued (see paragraph "1" of the agreement) and then to turn around ten months later and institute suit against Mrs. McKee, is contrary to equity, and a fraud.

That Dr. McKee viewed the agreement of January 24th, 1927, as a settlement of the litigation, can be gathered from his letter to Mrs. McKee, dated January 24th, 1927 (error for January 25th, 1927) Exhibit P-94, Case, p. 257, which letter reads as follows:

> "I am enclosing check for $50.00 of which $25.00 is for January 25th to January 31st, i. e., one-quarter of a month, and $25.00 for any extra expenses that you may have had.
>
> "I don't think you will have cause to regret the results of our conference yesterday afternoon. I have just telephoned Billy, telling him that the suit has been settled, and that there will be no newspaper publicity in the matter. He seemed to be relieved, and was glad to know that everyone agreed that he and Margaret are to spend half vacation with each of us.
>
> "Tried to reach Margaret, but she was said to be out to a movie, and so will phone her tomorrow morning, as there is no telling when she will get in tonight.
>
> "With best wishes,"

We urge that this letter, written the day after the making of the separation agreement, clearly demonstrates the mental attitude of the petitioner

in this suit. He seems pleased at the making of the agreement, and thoroughly satisfied with it. He adverts to the children spending half of their vacation with each of the parties, and vacation time is, as I gather it, six months off; clearly an acquiescence to a separation for a period of six months at any rate, and of course the usual appendage about coming back and living with him is omitted from the letter.

In the final analysis, the test is whether the alleged desertion of Mrs. McKee was obstinate, and if Mrs. McKee, as she did, started a separation suit which was settled only by the making of an agreement drawn by Dr. McKee, which in effect consents to that separation, we fail to see how the alleged desertion can be termed obstinate.

True enough, the possibility of a united family is adverted to in the agreement, and a discussion of that possibility once in each six weeks is contracted for, but can it be said that the covenant looking forward to the discussion of the possibility of the united family makes the separation less of an actuality? To put it in the best way for the petitioner, he consented that the parties should live separate and apart, with the hope that eventually there would be a reunion, but this is still a separation, and we come back to our original proposition that no wilful or obstinate desertion can be spelled out until either the agreement is repudiated, or the possibility of a reunited family is blasted, and the situation thereafter continues for a period of two years.

It should like wise be borne in mind that Mrs. McKee signed the agreement, and consented thereby to the terms thereof. If Dr. McKee's argument is correct, then Mrs. McKee's separation was not wilful, because she too covenanted to discuss the

possibilities of a united family, and faithfully, as the testimony indicates, performed her part of the agreement.

We respectfully submit that on this phase of the case likewise, the petitioner has brought his suit prematurely, and that the statutory period of two years' desertion is not present in this case. The petitioner's haste in instituting suit is indeed unseemly.

We quote again from the Chancellor's opinion in *Rinehart* v. *Rinehart* (supra) to the effect:

> "The law favors marriage and disfavors divorce. The Court will do nothing to facilitate the latter, but will only dissolve the marriage relation when the complaining party is strictly entitled to a decree."

As regards the effect of the separation agreement, we quote from Mr. Child's treatise on the laws of divorce in New Jersey, as follows:

> "Ordinarily a separation agreement entered into voluntarily by both parties will, while it is in effect, bar the running of the statutory period of desertion and until one of the parties to such separation agreement has expressed dissent to living apart and a desire to resume marital relations, there can be no desertion, because, as has been before stated, the element of obstinacy is not present; but where the husband by whose procurement the separation agreement was entered into, had a fixed determination never to live with his wife again in spite of her desire to continue to live with him, and had stated that if the wife did not sign the separation agreement she would get

no support for herself and children, the fact that the wife signed the separation agreement, since which time she has received support, will not bar her from maintaining an action for divorce on the grounds of desertion."

## POINT THREE.

**Petitioner has not endeavored in good faith to induce defendant to return to him.**

An outline of our argument under this point is as follows:

A. Preliminary remarks.
B. Analysis of petitioner's conduct in January and February, 1925.
C. Concerning the testimony of Mr. John J. Kirby.
D. Concerning the testimony of Mr. Whaley.
E. Concerning the testimony of Mr. & Mrs. James W. Martin, Jr.
F. Analysis of the letters written by Dr. McKee.
G. Concerning what Dr. McKee failed to do.
H. Mrs. McKee's attitude in the matter of returning to her husband.

### A.

The law in this state which requires the husband to make advances to his wife to procure her return, is too well settled to require extended citation. Treatises on divorce, and digests afford the lead to a vast number of cases. Vice Chancellor Leaming, in the case of

cites about thirty cases when he says,

> "Our Legislature has provided that desertion, as a ground of divorce, must be willful, continued and obstinate for the statutory period. A wife's desertion, though willful, cannot be adjudged obstinate unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end, under the particular circumstances of the case. This is the established test in this state by a long and harmonious line of decisions. Jennings v. Jennings, 13 N. J. Eq. 38; Cornish v. Cornish, 23 N. J. Eq. 208; Bowlby v. Bowlby, 25 N. J. Eq. 406, affirmed 25 N. J. Eq. 570; Meldowney v. Meldowney, 27 N. J. Eq. 328; Taylor v. Taylor, 28 N. J. Eq. 207; Belden v. Belden, 33 N. J. Eq. 94; Sargent v. Sargent, 36 N. J. Eq. 644, 646; Herold v. Herold, 47 N. J. Eq. 210, 20 A. 375, 9 L. R. A. 696; Chipchase v. Chipchase, 48 N. J. Eq. 549, 22 A. 588, affirmed 49 N. J. Eq. 594, 26 A. 468; Van Wart v. Van Wart, 57 N. J. Eq. 598, 41 A. 965; Taylor v. Taylor, 73 N. J. Eq. 745, 70 A. 323; Rector v. Rector, 78 N. J. Eq. 386, 404, 79 A. 295; Shaw v. Shaw, 89 N. J. Eq. 214, 108 A. 6; Hyer v. Hyer, 91 N. J. Eq. 147, 108 A. 180; Horwath v. Horwath, 91 N. J. Eq. 435, 110 A. 576; Hahn v. Hahn, 93 N. J. Eq. 296, 115 A. 652."

Mr. Francis Child, in his work on the divorce law of New Jersey, says, on page 122 thereof,

> "The law of this state, as construed by the courts, has imposed upon a deserted husband

the duty to endeavor in good faith to induce his wife to return, and until this duty is performed, or a good cause shown for its nonperformance, the desertion is not obstinate.

"Our law has not laid down any set rule in regard to the duty imposed upon a husband of inviting the return of a wife who has separated herself from him, where she is to blame for the separation. When this question comes before the court, it is said that the only test of any practical value in a large number of cases is, taking all the conditions and circumstances into consideration—'has the man acted like a just man?'

"Ordinarily, this doctrine imposes upon the husband the duty of offering a suitable home, adequate support suitable to the situation and life of the parties, kindly treatment, foregiveness and a full resumption of martial relations."

Biddle, in his work entitled, "New Jersey Divorce Practice", discusses the question more fully—Biddle, Second Edition, pages 82, et seq. Biddle says,

"The law casts upon the husband a 'preeminent duty to make the advances of a just man'—to seek out and request his wife to return and restore the broken home. * * *

"Considering then these advances, it is required that they be sincere, just and in very truth such as might reasonably be expected to induce the wife to resume cohabitation. * * *

"They must be just. He must rise above petty resentment to slights and insults, or the warmth or anger of the parting scene, and play the man. He is not excused by her threat,

made in a moment of anger, never to live with him and obtain a divorce. * * *

"They must, in fact, be advances for her return; fond expressions in his letters that belie his acts; or if they exhibit no desire or willingness to return, or propose that he be allowed to get a divorce; 'not one robust effort to rejoin her' are alike insufficient."

There can be no question in this case as to the contributing fault of Dr. McKee, the petitioner. His portrayal of himself, on the witness stand, as a gentleman who never quarreled with the defendant, never struck her, never was angry with her, nor ever raised his voice to her, lacks completely any shred of corroboration, and Mrs. McKee's testimony, supported by the evidence of her two sisters, and by the disinterested and impressive evidence of the daughter, Margaret McKee, contradicts this smug portrayal.

Of one thing we can be sure, and that is that the petitioner was in some large measure to blame for the unpleasant conditions which for many months existed in the McKee household. A few extracts from the transcribed testimony are convincing of this.

"By the Vice-Chancellor:

"Q. You have detailed that one instance. Will you tell us some other time when you saw your father slap or strike your mother? A. I know whenever we were talking, father and I, and mother would want to say something, he would say 'Shut up' and slap her.

"Q. How frequently did that occur? A. I don't remember how frequently, but it was not unusual at all.

"Q. Do you recall any other incidents about slapping or beating? A. I do not recall any other particular incidents—many different times.

"Q. Do you know that he slapped her at any other times that you cannot state the particular incidents? A. Oh yes. When he went by her, he would strike her just for no reason.

"Q. Strike her in what way? Just give me an idea. A. He would shove her against the wall with his elbow, or something of that sort.

"Q. Then the household at times was not very harmonious, was it? A. No.

"Q. Do you know whether your father was angry when he did that, or was he cool and collected? A. He was angry most of the time anyhow.

"By the Vice Chancellor: Not very pleasant at home? A. No." (Testimony of Margaret McKee [Case, pp. 1015-1016] pp. 478, 479).

"By the Vice-Chancellor:

"Q. Did you observe the manner of living between Dr. McKee and his wife at any time while they lived at 39 Claremont Avenue just shortly before the leaving? A. Yes, I did.

"Q. You were visiting them there? A. No. I was right in the city, and I often dropped into the apartment.

"Q. Did you ever see anything that happened between Mr. and Mrs. McKee while you were in the apartment in the way of quarrels or anything else? A. Yes.

"Q. What did you observe and when? A. Every time I was there, practically.

"Q. You have to fix some time. A. Well, in the Summer of 1924 I was staying at Columbia, and I cannot tell you the dates, but after I

would leave the laboratory there I would go over to the apartment at 39 Claremont Avenue late in the evening, and was in the apartment when Mr. McKee came home many times. I think every time he came in, if he said anything it was unpleasant.

"Q. Don't characterize it as unpleasant; tell us what was said. A. My sister often asked him questions to which he refused to give any answer whatever.

"Q. Was there anything that happened between them? A. I heard him tell her many times to shut up; that she ought not to take part in the conversation with the children.

"By Mr. Walscheid:

"Q. That is the outstanding thing in your mind concerning the life at 39 Claremont Avenue? A. Constant friction.

"Q. That is the outstanding thing in your mind? A. Yes.

"By the Vice-Chancellor:

"Q. And that kind of conduct you are alluding to as friction, that he would criticize his wife about something and would not allow her to join in conversations in the home? A. He told her to shut up." (From the cross examination of Helen Noyes, sister of Mrs. McKee, Case, pp. 535 to 536.)

In view of the part that Dr. McKee undoubtedly played in the matrimonial difficulties, the efforts which he made to induce his wife to return should have been robust indeed.

In addition, it should be borne in mind that these parties were not newly married, so to speak, but had cohabited as man and wife, in refined surroundings, for more than twenty-two years. They

had two children who were being brought up with the utmost care and attention, and in whom both parents had an undoubted parently love and interest. With this as a circumstance, one can easily gather the efforts which the doctor should have made to effect a reunion.

Our thesis is that the petitioner herein made no sincere effort to have his wife return to him, and that his story, as recounted on the witness stand and evidenced by his many letters, does not ring true; that the whole story, as so recounted is a well studied, scientific effort to establish one of the essentials of his cause of action.

As Vice Chancellor Fallon said in the case of

*O'Brien* v. *O'Brien,* 142 Atl. 900,

in estimating the sincerity of an endeavor to effect a reconciliation:

> "The court properly considers the intent, design and purpose of the petitioner's activity."

We shall now proceed to amplify our thesis herein by calling the Court's attention to a number of items which belie the sincerity of the efforts made by the petitioner herein to effect a reconciliation, and which, we submit, clearly prove his acquiescence in his wife's separation.

**B.**

The sincerity of the petitioner's efforts to effect a reconciliation may be tested by analyzing his conduct at the time Mrs. McKee left and shortly thereafter. This short period affords an opportunity of anaylsis when the petitioner has not as yet engulfed himself in legal advice and studied effort to

make out a proper case for himself. Mrs. McKee left the household on the 13th day of January, 1925, leaving behind her a note which read as follows:

> "Ralph, I am going to stay with Helen, as your attitude towards me and your treatment of me are unbearable.
>
> "You will hear from my lawyers, with whom you will kindly have any further communication.
>
> "MARY."

(Case, p. 117.)

On the same day the petitioner received a letter from Messrs. Hirsch, Newman & Reass, Mrs. McKee's lawyers, dated the preceding day, in which the lawyers write:

> "We have been retained by your wife to begin an action for separation against you because of your unbearable cruelty and inhumanity, and failing to properly provide for her.
>
> "Before serving the papers, we are writing you to give you an opportunity, if you so desire, to enter into a separation agreement with her which will contain adequate provision for her maintenance.
>
> "If we do not hear from you by the 16th instant, we will assume that you do not desire to enter into such an agreement, and will commence suit against you.
>
> "Very truly yours,
>
> "HIRSCH, NEWMAN & REASS."

We submit that here was the first of many golden opportunities for the petitioner to seek out his wife

immediately and urge her, with some demonstration of contrition for his conduct, to return to him forthwith. Can it be gain-said that this would have been the natural reaction of a sincere and just man, whose wife, after more than twenty-two years of married life, had suddenly left his abode, leaving behind a short note indicating on her part not a permanent desertion but a temporary stay with her sister, Helen? Decisive action at this juncture would have been natural action, an action which would have spoken louder than the voluminous letters which he started writing over a month later. It seems to us that the petitioner's non-action, so to speak, at this crisis indicates a clear acquiescence and consent to the separation.

Let us see just what the petitioner does do. On January 14th, 1925, the day after Mrs. McKee's departure, he writes a letter to her as follows:

"January 14, 1925.

"Mrs. R. H. McKee
c/o Miss Helen Noyes
Roosevelt Hospital
(Harriman Laboratory)
New York City.

"Enclosed find Liberty, 4½% bonds 15082648 and 15082649, also Fourth Liberty 4½% bond A O 1125671. These belong to you. Kindly acknowledge receipt.

"Very truly yours,

"RALPH H. McKEE."

(Testimony, Case, p. 127).

On page 127, folio 21 (Case), we find Dr. McKee saying that Mrs. McKee asked him over the telephone to send her the bonds which he had of

hers, although on page 126 the petitioner had directly and flatly contradicted himself by saying that he had tried to reach Mrs. McKee on the telephone without success, and that he was likewise unable to get Miss Noyes, sister of Mrs. McKee, on the telephone. We believe that Mrs. McKee's explanation that she had not telephoned, and that the bonds were sent unsolicited, is the true story of what happened.

We would call the attention of the Court to the first of the numerous contradictions in the testimony of Dr. McKee. The doctor's conduct on the 13th and 14th of January, 1925, is testified to by him on cross examination as follows (Case, pp. 419 to 422):

> "Q. Did you telephone to Mrs. McKee the day she left you? A. I tried to and could not, as I recall, get her to answer.
>
> "By the Vice-Chancellor:
>
> "Q. Where did you telephone to? A. Her sister's residence where she said she was going.
>
> "By Mr. Blumberg:
>
> "Q. Where was that? A. I think at that time the Hotel Colonial.
>
> "Q. You knew she was at the Hotel Colonial did you not from her letter to you? A. Yes, she said she was going to her sister Helen and I think at that time in the Hotel Colonial, although she changed residences from time to time.
>
> "Q. And on January 14, 1925, you wrote this letter to Mrs. McKee, Exhibit D-3? A. Yes.
>
> "Q. Do you recall on direct examination you stated you didn't know any other address to

address it to other than the Roosevelt Hospital in New York City? A. I don't recall that. I may not have known she was at the Hotel Colonial until—Yes, I think I knew that her residence was at the Hotel Colonial at that date.

"By the Vice-Chancellor:

"Q. How do you account for addressing that letter? A. Because that was a safer address than the hotel. It was addressed to Harriman Laboratory enclosing the bonds. It is part of the Roosevelt Hospital where her sister Helen Noyes worked.

"Q. And did you try to telephone to Mrs. McKee on January 14th? A. I don't recall that. I may have tried on January 14th. I think it was on January 13th I tried.

"Q. On January 13th where did you try to telephone to her? A. I think the Colonial Hotel or possibly also the Harriman Laboratory, Roosevelt Hospital.

"Q. Where was it that you telephoned to her at either of the two places or both? A. I am inclined to think both places.

"Q. Did you leave word who called? A. I think I did in one case.

"Q. Which case? A. Harriman Laboratory.

"By Mr. Blumberg:

"Q. You stated on your direct examination you telephoned to the Colonial Hotel and you were told she was not in and you thought she was in? A. I so stated, but I am not certain it was the first time I telephoned to her. I tried several times.

"By the Vice-Chancellor:

"Q. Why didn't you go to either one of those places and make whatever inquiry you wanted to when you found you couldn't get any connection by 'phone? It was near at hand? A. No, it wasn't.

"Q. It was within the city? A. It was a two hour trip.

"Q. If you were really interested in wanting your wife to come back and live with you? A. At that time your Honor I was probably angry at the treatment I had received and it was only after I had had a chance to calm down and think over it that I made any efforts to get her to come back.

"Q. What was your purpose of telephoning her if you were in an angry mood? A. I wanted to find out the situation rather than to have her come back.

"Q. If that was the real purpose why didn't you go there in person? A. If she wouldn't answer the 'phone I didn't think she would answer in any other way. Later on—

"Q. I was only speaking about that day? A. Yes.

"By Mr. Blumberg:

"Q. Do you remember the Vice-Chancellor asking you why you wrote such a cold letter on January 14, 1925? A. I don't recall. He may have asked it. I have had so many questions asked me within two hours.

"Q. Don't you remember stating you wrote the letter in that fashion because Mrs. McKee demanded these bonds rather coldly?

"Mr. Walscheid: Why don't you give him the question?

"Vice-Chancellor: Why don't you object?

"Mr. Walscheid: I do object.

"Mr. Blumberg: I will withdraw the question.

"Q. Did Mrs. McKee request the return of these bonds? A. I don't recall whether she did or not. I don't think she requested the return of them. They were not in her possession. They were merely in her name. I paid for them.

"By the Vice-Chancellor:

"Q. Why were you so willing to forward the bonds to her within a few days after she had left you? A. I think this was after the second or third time I telephoned.

"Q. But it was the day following the day of her departure? A. Yes, but I telephoned several times.

"Q. She didn't make any request that you send her these bonds and the next day after her departure you sent her the Liberty bonds. You sent a letter speeding the departed guest? A. It looks like it was, but I think at the time —I don't know just what the communication was. It may have been due to some telephone conversation" (Case, pp. 419 to 422).

In other words, Dr. McKee, on January 14th, 1925, gets in touch with Mrs. McKee by a letter in which he returns to her three Liberty Bonds—no comment whatever about Mrs. McKee's having left the house, no request to have her return, no indignation expressed, merely a few perfunctory lines addressed in a very businesslike manner; and on the following day, Dr. McKee, the petitioner, finds time to write a lengthy letter to Hirsch, Newman & Reass, in which he emphatically throws all of the

blame upon Mrs. McKee, expresses no dissent to the alleged desertion, makes no request that Mrs. McKee return, and in fact adopts the idea expressed in the lawyers' letter, to the effect that a separation agreement be entered into. As the doctor put it, *"There appears to me to be only one thing to do"*—a reconciliation being far from his mind as *another thing* to do. This letter is Exhibit D-1, and reads as follows:

"New York City,
39 Claremont Avenue,
January 15, 1925.

"Messrs. Hirsh, Newman & Reass,
100 Broadway,
New York City.

"Gentlemen,

"I wish to acknowledge receipt of your letter dated the 12th instant, wherein you state you have been retained by Mrs. McKee to bring an action for separation against me.

"Of course, it is needless for me to say that I absolutely deny the charges made against me by Mrs. McKee, as contained in your letter. Furthermore, as Mrs. McKee has undoubtedly informed you, she left our house and home on Tuesday, January 13, 1925, of her own volition, and certainly without any wish, or urging, on my part, and surely from the standpoint of a layman like myself, this uncalled for action on her part shows that she deserted me, and not that I deserted her.

"In view of your letter, there appears to me to be only one thing to do, and that is to follow the course expressed in your letter and endeavor, if possible, particularly for the sake

of Mrs. McKee and the children, to have a conference, and, if agreeable, to enter into a separation agreement.

"It will, therefore, be necessary for me to at once secure the services of a reputable lawyer to represent me in this matter, for I am not at all familiar with the procedure in legal matters, my life being cast along scientific lines, and, consequently, I do not feel capable of taking care of a situation like this without obtaining legal advice and guidance.

"As you must be aware, this matter comes suddenly upon me, your letter being simultaneous with Mrs. McKee's departure, and, of course, I have not had an opportunity to get in touch with a lawyer to advise me,—but I will arrange to do this at once so that he may communicate with you in my behalf.

"Unfortunately, I am just leaving the city, to be absent until Thursday next, January 22, as a witness in a law case pending in Delaware. You will, therefore, appreciate that it will be impossible for me to obtain an attorney and acquaint him with the situation and have our conference, looking toward the adjustment of this unfortunate affair, before the end of next week.

"I assure you, however, that I will give these matters and arrangements the prompt attention they deserve, and I want to close by assuring you that I personally very much regret the unfortunate turn of affairs.

"Very truly yours,

"RALPH H. McKEE."

(Case, p. 364).

Again calling attention to Exhibit D-1, we note that Dr. McKee is in no haste about getting his wife back, or about anything else for that matter, as he naively informs Messrs. Hirsch, Newman & Reass that he can do nothing until the end of the following week.

The next letter written by Dr. McKee is Exhibit D-2, and is dated February 7th, 1925, and reads as follows:

"Mrs. Mary N. McKee
c/o Miss Helen Noyes
Colonial Hotel
New York City

"Dear Mary:

"Your lawyer asks that I send you some money. He did not suggest an amount.

"Enclosed find a check for $200.00 payable to your order. This will, I presume be sufficient to carry you until after the close of the separation agreement conferences.

"Very truly yours,

"RALPH H. McKEE."

(Case, p. 368)

This letter likewise contains no suggestion that Mrs. McKee return to him, and is, in fact, a complete assent to the separation, and particularly adverts to separation agreement conferences. This letter is dated February 7th, 1925, and the Court should be reminded of the fact that on February 6th, 1925 these parties had a lengthy conference in the presence of their respective attorneys, at which nothing whatsoever was said about a reconciliation. (See testimony of John J. Kirby, Case, p. 873.)

"Q. Will you tell the court what exactly took place at the conference on February 6, 1925? A. The conference was really a question of Doctor McKee's finances. Mr. Reass opened the conference by stating of course the parties were separated and Doctor McKee should support his wife in accordance with his means, and he said he was informed by Mrs. McKee that Doctor McKee had an income of $50,000 a year. Doctor McKee said there was nothing to that; that his income over a period of six or seven years as I recall it averaged about six or seven thousand a year. That he was spending seven thousand dollars in the education of his two children, one of whom was then at Bryn Mawr and the other in the Taft School, and in order to support himself and his wife he was dipping into the small principal which he had. The discussion at this conference was largely a discussion of finances of the two parties along the lines I have just mentioned.

"Q. You said Mr. Newman was not there? A. No, sir. I never met Mr. Newman until the third conference.

"Q. Was there anything said about a reconciliation at that conference? A. Nothing that I recall.

"Q. Nothing at all? A. No, sir.

"Q. You were there and would recall? You were present during the whole conference? A. Yes.

"Q. And the entire conference dealt with the financial arrangements between the parties? A. That's correct." (Case, p. 873.)

Strange indeed that nothing was said about a reconciliation on February 6th, 1925. It can only

be accounted for by the fact that the separation was agreeable to the doctor, and that he was not playing the part of a just and honorable man in endeavoring to have his wife return to him. The letter of February 7th, 1925 is in line with what took place the preceding day at the conference on February 6th, 1925.

No letter was written after February 6th, 1925 until March 10th, 1925. As this is the first letter offered in a long chain by the petitioner to support his contention, it is advisable to set this letter forth in full.

"Dear Mary:

"I am returning the report of February 2nd, of Dr. Alexander, which you gave me last week. Am also sending a similar report of March 3rd, which just lately came. Apparently Billy is all right now.

"You had better change your mind and come back and live with me a normal and right married life. Won't you?

"RALPH H. McKEE."

The foregoing is the first letter in which we find a request for a resumption of the marital status. There is of course, some evidence that a request was made on March 5th, 1925, and we shall discuss this under our next point. But the fact stands out pre-eminently that at the psychological moment the doctor fell down completely. Not only were no efforts made to effect a reconciliation, but his entire conduct bespoke a smugness which belied any wilfulness on the part of the defendant or any obstinacy. The situation was so satisfactory to the petitioner, that his attention was focused upon the making out of a separation agree-

ment. Not until he had seen fit to move to New Jersey, and had had several conferences with his attorney and Mrs. McKee's attorney, did his studied efforts to demonstrate his offers to his wife result.

We have a situation which can best be described by stating that the natural reflex was to acquiesce in the separation; the studied and scientific coloring was to pretend a dissatisfaction with the separation, and numerous requests to have his wife return.

## C.

In corroboration of his efforts to have his wife return, the petitioner presents us with the testimony of Mr. John J. Kirby, a member of the New York Bar, and Dr. McKee's attorney in the litigation in New York. Mr. Kirby takes the stand towards the close of the hearing, and testifies as to what transpired during six conferences between the parties and their respective attorneys, in the offices of Hirsch, Newman & Reass, New York attorneys of Mrs. McKee. The testimony as introduced was in the nature of surprise testimony, which the defendant was unable to answer by any counter-testimony of Mr. Newman, or Mr. Reass, or Mr. Kutz of the New York office of Hirsch, Newman & Reass. However, an examination of the testimony of Mr. Kirby is so damaging to the case of the petitioner, that we respectfully submit that it is a complete answer to any contention on the part of the petitioner that he made any effort to have his wife return to him.

It is to be noted that Mr. Kirby was present at three conferences which, as he testifies, took place on February 6th, February 9th and March 5th, 1925, all within a period of less than two months

after the alleged desertion by Mrs. McKee, on January 13th, 1925.

The import of Mr. Kirby's testimony as to the conference of February 6th, 1925, is given in full under our prior subdivision B herein. We might say that here was another of Dr. McKee's golden opportunities to establish conclusively his efforts to have his wife return, and what happened? Not a word is said in the conference of February 6th, 1925, about a reconciliation. The conference deals entirely with the terms of a financial settlement. If Dr. McKee was sincere in his opposition to his wife's separation, he could have at this juncture set forth his position very plainly and very fully. He could at this juncture have been somewhat apologetic for any part that he had in the rupture, and sought in good faith a reconciliation. Nothing was said about this however.

Similarly, on February 9th, 1925, the same lengthy discussion takes place with reference to the terms of the financial settlement, and nothing at all was said about a reconciliation. This is Mr. Kirby's testimony.

We come now to the third conference, of March 5th, 1925. We submit that even assuming that what Mr. Kirby testifies to took place, did take place, we are far, far short of fulfilling the requirements of the law, to the effect that the husband must make a just and sincere effort to have his wife return. It seems that at this conference, financial matters were again discussed, and then parenthetically (we note that all the demands of Dr. McKee are made parenthetically) Dr. McKee says to Mrs. McKee that he had met her (Mrs. McKee) on the previous Saturday, and had spoken to her about her coming back and living with him, and that she said "You didn't suggest that to me", and he said

"I did." She then said "You didn't", and then he said "Why, Mary, stop this foolishness and come back and live with me", and she said "I will not", and then the parties resume their talk about finances. (Case, bottom of p. 876, et seq.)

Mr. Kirby is quite positive that the words of Dr. McKee were "Mary, stop this foolishness and come back and live with me", and that Mrs, McKee's reply was "I will not", and that is all there was to it. It is submitted that no case can be built upon such a "perfunctory and artificial plea, enveloped in all the paraphernalia of a studied legal performance."

It is necessary again to visualize the situation. Here we have a conference between litigants and lawyers, at which conference considerable time is spent in discussing the financial settlement. Out of a clear sky, as it were, the husband suddenly interjects the remark, "Mary, stop this foolishness and come and live with me", and the wife is supposed to reply "I will not", and that is all there is to it. Does it need any argument to convince the judicial mind that such an interjection in no wise meets the requirement of the law, to the effect that the husband must make an honest effort to have his wife return? So much could have been said at this conference to establish the petitioner's sincerity that this absence is indicative of the utter lack of sincerity on the part of the husband—a factor which militates against the element of obstinacy in this supposed desertion.

One naturally wonders why Dr. McKee did not set forth his position with a little more fullness, and a little more contrition; why he did not state his pre-eminent desire to have a united family; why he did not state, as a man of his years and experience should have stated, that perhaps he was in the wrong, and that if he were, he would see to it

that matters would be righted; why he did not use a trifle more tact and charm (if we may so designate it) in his remarks. A sudden propounding of a question, "Mary, stop this foolishness and come back and live with me," would certainly not be conducive to end the separation. Indeed, one wonders, at the necessity of terming the separation a piece of foolishmess, in the presence of all of these parties. One wonders further at the peremptory tone of the remark, "Come back and live with me." Another golden opportunity missed, and the whole thing smacks of an indifference to the separation, and a consent thereto.

The idea here set forth is adverted to in the case of

*Olcott* v. *Olcott,* 26 Atl. 469, not officially reported.

In that case, under similar circumstances, there was a sudden interjection by the husband, to the effect that the wife should return and live with him, and the Court completely disregards such remarks as indicative of any effort towards reconciliation, saying:

> "A husband who, by some unfortunate occurrence, had become separated from his wife, to whom he was still attached; and who, after the excitement—possibly anger—attendant on the separation had in cooler moments formed a sincere desire for reconciliation, would naturally seek that result in a private interview with his wife, when they could talk over the situation calmly and dispassionately. The complainant did not adopt this plan, and although on several occasions he went to the house to see the children, both while living at

> Cooley's and while living at Caldwell, he does not pretend that on any occasion did he make the slightest allusion to his wife's returning to him, until he went there with a witness; and it is remarkable that on one of the first of these occasions the witness was his lawyer friend, Mr. Wills. Instead of then, in a conciliatory and pleasant manner, discussing the unpleasant present condition of affairs, and suggesting their discontinuance by her return, he postponed all allusion to the matter until he was about leaving, when he blurted out, without any apparent connection with his former conversation, the remark, 'Fanny, are you ready to live with me at the home that I have already tendered you?' This language was repeated, substantially in the same way when Mr. Wills again accompanied him, and on another occasion with Mr. Frank Olcott, and on another occasion with Mr. Napier. Without going into the matter in detail, I am convinced that there is nothing in the evidence to show any sincere desire on his part to effect a reconciliation, nor in these different interviews any evidence that the separation was not entirely satisfactory to his feelings and wishes."

The petitioner makes much of the point that Mr. Kirby flatly contradicts the version of the story, as given by Mrs. McKee. That may very well be, but the Court should note that Mr. Kirby likewise flatly contradicts the version of the story as given by Dr. McKee himself. Dr. McKee, although he was the party who is alleged to have made the remarks, and who was vitally interested therein, is rather hazy in his recounting of the story—and this is his story:

"Q. Who was present at that conference? A. Mr. Reass, Mr. Kirby, Mrs. McKee and myself. That's my recollection. Possibly Mr. Newman was there; if so, Mr. Reass was not.

"Q. Was any suggestion made at that conference by any of the attorneys, that a separation agreement be entered into? A. I think there was such a suggestion made by Mr. Reass.

(It is to be noted that Mr. Kirby is emphatic to the effect that there was no talk whatsoever about a separation agreement. Case, p. 874, fol. 25.)

"Q. Do you recall what he said? A. No, I don't recall the details, but that was along the general line of his conversation.

"Q. Is that the conference in which you first asked Mrs. McKee to return to you, as you stated in your direct examination? A. I think I asked her at that time to return to me. Still, I am not certain whether it was that, or the next one, in February. There were two in February.

"Q. Who did the talking at this conference, Mr. Kirby or you? A. I did most of the talking. Mr. Kirby did part of it. Mr. Kirby possibly did one-third, and I did two-thirds. I am speaking of the first conference.

"Q. Did Mr. Kirby state at those conferences that it was your desire to have Mrs. McKee come back and live with you? A. I don't think he did. I think I stated that.

"Q. When you stated that, who made the reply, Mrs. McKee or her attorney? A. Mrs. McKee.

"Q. What did she say? A. The first reply was made by the attorney, that he didn't so

understand I wanted to come back and live with her. I stated I certainly did, and so stated to Mrs. McKee. Then she said, 'Well, I didn't so understand you,' and then I repeated my request for her to return in particular words.

"By the Vice-Chancellor:

"Q. Then what did she say when you repeated it? A. I don't think she replied direct" (Case, pp. 370 and 371).

As there clearly was only one conference at this time in which the question of Mrs. McKee's return was in any manner adverted to, Dr. McKee must be referring to the incident, the date of which Mr. Kirby fixes as March 5th, because Mr. Kirby is quite positive—and so is Mrs. McKee, that at the two conferences in February, nothing was said about the possibility of a reconciliation.

One who is partisan to Mrs. McKee can indeed smile at the complete divergence of the testimony of Dr. McKee and of his attorney. In all fairness, we might say that Dr. McKee's testimony is nearer to Mrs. McKee's version of what happened than is Mr. Kirby's. To my mind, the important thing that stands out, considering the three versions of what transpired, is that some few words were spoken concerning a reconciliation, but that these words were so meaningless and vague that none of the parties has a very clear recollection of what did take place in that half minute. This serves to strengthen our opinion that Dr. McKee missed the golden opportunity to set forth his sincere desire to have his wife return to him.

There are no conferences concerning which Mr. Kirby can testify, until two years later, which takes

us into January, 1927, and even at these conferences we find the same parenthetic interjections of studied legal phrases, such as "Are you willing to go to New Jersey, where your husband is living, and live with him?" (Case, p. 881, fol. 35); "Mary, come back and live with me" (Case, p. 881, fol. 15).

Viewing the testimony as to the conferences held in January, 1927, prior to the signing of the separation agreement, we must remind the Court that these meetings took place two years after the alleged desertion, and nearly two years after the conference concerning which Mr. Kirby had previously testified. Just why Mr. Kirby was not present at other conferences, has not been brought out by the petitioner, and certainly much credit cannot be placed in conferences taking place in January, 1927, because the suit for divorce was instituted in November, 1927, and as we understand the law, the desertion does not really commence until the date when the husband has made a *bona fide* effort to have his wife return, and such effort has been unavailing. (See Child's Law on Divorce in New Jersey, p. 124):

> "The commencement of the desertion, if the deserter be the wife, ordinarily does not begin until the date when the husband makes a bona fide effort to have the wife return. If such effort could not be made, or would have been unavailing if made, then the commencement of the desertion is the date of the separation. In all cases, it may be said that the commencement of the desertion is that moment of time when the deserter finally determines never to resume marital relations."

We believe that the argument which we have advanced under this subdivision is most important. Dr. McKee, the petitioner, had ample opportunity to present his appeal to his wife *in extenso,* at three conferences in February and March, 1925, when there were present two attorneys, in addition to the parties themselves. It is submitted that a sincere man, aggrieved by the unfortunate turn of events, would have in good faith, and quite naturally, made a plea to his wife to return, which could have convincingly demonstrated his views in the matter. His not having done so, is cogent evidence of the lack of obstinacy.

**D.**

It is submitted that the witness, Whaley, in no manner corroborated Dr. McKee in his contention that he was continually endeavoring to have Mrs. McKee return to him. The petition in his brief discusses the occurrence at the home of Mr. Whaley, No. 520 West 230th Street, New York City, on the 3rd day of November, 1925, or at about that time. The first thing that we note in reading this argument is the variance between the occurrence as testified to by Dr. McKee and as testified to by his witness, Mr. Whaley. In other words, the very witness offered by the petitioner contradicts him in the narration.

If we would believe Dr. McKee, at this conference of November 2nd, 1925, which took place about ten months after the alleged separation and during the pendency of Mrs. McKee's suit for separation, he asked Mrs. McKee to change her attitude and consider coming back.

"By the Vice-Chancellor:

"Q. After that? A. We talked about the children and their work at school first, and then I said to Mrs. McKee to quit her—to change her attitude and consider coming back to me. 'I have asked you a number of times to come back to me and you don't seem to be willing. Change your mind and come on back and live with me. We can have a home for the children—a nice home—and then you and I can be happy and be much better than living this separate existence.' She said, 'I don't want to consider that; I won't do it. I want you to provide for me separately and give me enough money to take care of myself well and of the children. You are making at least $20,000 a year or maybe $50,000, and you ought to give me about $12,000.' I told her I wasn't making any such money and that I was only making about $10,000—in fact a little less than that, and at that time I was spending at the rate of approximately $9,000 for herself and the children and that was all that I could afford to do.

"Q. Is that the whole conference as you remember it? A. No, that wasn't the whole conference. 'We can live much cheaper if we live together, so that the $9,000 which I am now spending on you and the children can go much further, and with that I spend on myself, we can have a nice home. Better change your mind and come and live with me.' She said, 'I don't care to do that. I want to live separate.' I was excited and got up and left and Mr. Whaley came to me just outside the door and said, 'You mustn't do that; you mustn't go off and leave us that way,' or words

> to that effect. I told him I was much excited and I oughtn't to do that, and I came back and said goodnight to each of the three who were there."

Mr. Whaley, in telling what transpired at that time, testifies as follows:

> "Q. Tell us the conversation. A. She was there and he came in and said 'How do you do, Mary,' and she spoke to him and then he spoke to her, and said 'Why not come up and live together? I have a home over in New Jersey and we can live there'. She says, 'I won't do it.' Then she talked about finances, and one thing and another, I don't remember all the conversation, and the doctor seemed to be put out about it" (Case, p. 895, fol. 25).

In the first place, we submit that the evidence of Mr. Whaley flatly contradicts the lengthy talk adverted to by the doctor. It indicates that no such strenuous statement or plea was made by Dr. McKee, and if we assume Mr. Whaley's statement to be true, it must be clear that such an interjection in the midst of a conversation as "Why not come up and live together? I have a home over in New Jersey and we can live there," is entirely inadequate to establish the efforts at reconciliation which the law requires. See

> *Olcott* v. *Olcott,* 26 Atl. 469, not officially reported,

from which we have already quoted. See also our discussion of the conference of March 5th, 1925, as this interjection is quite analogous to the remarks testified to by Mr. Kirby. The interjection is also

similar to the remarks stated over and over again in Dr. McKee's letters, and it is submitted that they are merely studied, legal phrases.

We believe that the evidence of Mrs. McKee as to what took place on this day differs but slightly from the statement made by Mr. Whaley, although the approach is somewhat different. At any rate, there is a clear contradiction in the evidence as between Dr. McKee on the one side, and Mrs. McKee on the other. Mr. Whaley was in part discredited by his inability to state his correct age (Case, pp. 887, 888, 903). Mr. Whaley thought he was born in 1851, but would not admit to being a day over fifty-four years of age. Mr. Whaley, on the witness stand appeared to be a decrepit old gentleman, whose intelligence was of a low order, and yet this witness seems, in our opinion, to have, if anything, strengthened the case of the defendant.

For the correct version of what transpired at Mr. Whaley's house that evening, see Testimony of Margaret McKee, Case, pages 1010 and 1011.

## E.

It is of importance at this point to discuss what transpired at the apartment at No. 39 Claremont Avenue, New York City in July, 1925. Dr. McKee, shortly after the alleged desertion by Mrs. McKee, and with undue haste, leased the apartment, as equipped and furnished at No. 39 Claremont Avenue, to a Mr. James W. Martin, Jr. Mrs. McKee met the doctor at this apartment in July, 1925, for the purpose of sorting out some books which belonged to the parties. The doctor and his wife were at this apartment from eight o'clock until eleven o'clock. We gather from the evidence that Dr. McKee desires to fix this occasion as an in-

stance where he sought to have his wife return. Petitioner makes much of this in his brief. A casual examination of the evidence discloses quite convincingly that the doctor did not use this occasion to effect a reconciliation with his wife. On direct examination Dr. McKee testified as follows:

> "Q. At that time, did you have any conversation with her about returning to you? A. Nothing, excepting that I expressed regret at her choosing books and taking books which were later to be sent to her, and expressed regret because it seemed like making permanent the separation. I do not recall that I directly asked her to return to me" (Case, p. 156, fol. 15).

It will be noted that on his direct examination the doctor states that he does not recall asking Mrs. McKee to return to him. He contradicts himself when he is recalled to the stand several months later, because his later version of what took place is as follows:

> "Q. Did you have a conference with Mrs. McKee with respect to the division of the furniture at that time? A. Yes.
>
> "Q. Did you show any affection towards Mrs. McKee on that occasion? A. Yes.
>
> "By the Vice-Chancellor:
>
> "Q. What was the manifestation of it? A. In expressing the hope—
>
> "Q. What you said or did? A. I asked her to return to me. I remember the question about the division of the furniture was an unfortunate thing because it would make our separation permanent and I didn't want that to

occur, and that was discussed and I argued with her to leave the things there and later she might change her mind and come and live with me there or elsewhere.

"Q. Is that what you mean by showing her a mark of affection? A. Yes.

"Q. That's your explanation of it? A. Yes" (Case, bottom of p. 951 to top of p. 952).

It is to be noted that on January 30th, 1929, the doctor testifies that he does not remember having asked Mrs. McKee to return to him on this occasion in July, 1925, yet, on the 16th day of October, 1929, the doctor is quite certain that he did ask Mrs. McKee to return to him on this same occasion. No further comment is needed upon this contradiction.

In order to substantiate his case, the doctor took the testimony of Martha Carol Martin, wife of James W. Martin, Jr., before a Commissioner in the City of New York. This testimony is Exhibit P-179 (Case, p. 179). The examination of this witness is of no assistance to the doctor whatsoever, for Mrs. Martin was quite emphatic that she did not recall anything that was said between Dr. McKee and Mrs. McKee on the occasion in July, 1925 when they were in the apartment at No. 39 Claremont Avenue (see Exhibit P-179, Case, pp. 1111, 1112, 1113).

In passing, we might note the arduous preparation which Dr. McKee gave to this litigation. The doctor gave most of the witnesses a typewritten set of questions and answers, as will be noted from the testimony of Martha Carol Martin (Case, p. 1107). The doctor was scientific indeed in his study of the litigation.

Mr. James W. Martin, Jr., purports to give what he calls the gist of the conversation:

"Q. And you and Mrs. Martin were sitting in the living room? A. Yes.

"Q. Will you state again what you heard Mr. and Mrs. McKee talking about? A. You mean when she came in?

"Q. While they were sorting out the books? A. Oh, I can only give you the gist of the conversation. This was in 1925.

"Q. You don't remember exactly what was said? A. I can remember the gist of it.

"By the Vice-Chancellor:

"Q. If you don't remember what it was how can you give the gist of it? A. The gist of the conversation was 'Why separate these books at the present time? Why not wait until some other time?' Mrs. McKee said, 'No, I want to take my things—I want to do it right now. I want to do it tonight.' Doctor McKee said, 'To separate the things now seems to make this difficulty between us more definite.' Of course I knew he was referring to the separation.

"Q. Don't tell us that. Tell us what was said? A. That conversation was repeated more than once, several times in the evening. The other conversation regarding the books was as to whether they were of any value or whether they were hers and had been given to her by so and so, and there were books which Doctor McKee purchased.

"By Mr. Blumberg:

"Q. You think that was the gist of the conversation? A. Yes.

"Q. Did you make any effort to hear what was going on in the adjoining hall?

"By the Vice-Chancellor:

"Q. You were talking with your wife about other matters? A. Yes. Will you let me explain?

"By Mr. Blumberg:

"Q. I ask you were you paying any particular attention to these parties? A. No.

"Q. You weren't eavesdropping were you? A. No, I was not.

"Q. And what you saw were these people sorting out the books? A. Yes.

"Q. Were you staring at them? A. I was looking at them from time to time.

"Q. Did you have any business of your own to attend to at that time? A. Unfortunately I did not. We were there in the house; Doctor McKee and his wife had called. It was an embarrassing episode we had to go through.

"By the Vice-Chancellor:

"Q. You and your wife were sitting in the alcove? A. Yes.

"Q. You were talking to one another? A. Yes, talking to one another or looking at the paper.

"By Mr. Blumberg:

"Q. You were sitting in the alcove? A. Yes" (Case, bottom of p. 846 to p. 848, fol. 30).

It is apparent from Mr. Martin's testimony that he did not hear Mr. McKee make any effort to have his wife return to him. In addition, it is difficult to conceive of what value Mr. Martin's testimony is—it being only the gist of the conversation, so to speak, and having been overheard in an adjoining room, when Mr. Martin was undoubtedly occupied with other matters.

Mrs. Martin was more accurate in her detailing of what transpired, saying frankly that she did not remember any of the conversation. The petitioner's detailing of the purport of the testimony of Mr. and Mrs. Martin is, of course, quite different from ours. We submit, however, that the petitioner's version (Petitioner"s Brief, pp. 67-67) is inaccurate. The truth of the situation can only be gathered from a reading of the entire testimony of Mr. Martin and Mrs. Martin, and it is our humble contention that a reading of the complete testimony will demonstrate that Mr. and Mrs. Martin in no manner corroborate the statement of Dr. McKee, that in their house and in their presence he asked Mrs. McKee to return to him.

## F.

We shall now discuss, though not at such great length as the petitioner has, the numerous letters written by Dr. McKee, which have been offered in evidence, and which counsel for the petitioner insists demonstrated the good faith of the petitioner, his sincere desire to have his wife return, and the constant and continued effort expended to accomplish that purpose.

Without mincing words, we submit that the letters so written are patently self-serving, insincere, and written in order to bolster up a case woefully devoid of any convincing evidence. What a simple matter it would be to establish the performance of the duty to make advances for the wife's return, if that could be done by sending out letters, all of them concluding with the suggestion that the wife come back and live again with the husband. Instead of five letters, or ten letters, the petitioner could write five hundred or ten hundred letters.

Mere number is not argument. In fact, a little circumspection would lead one to the conclusion that too many letters make out too good a case, and too good a case does not exactly ring true.

We have discussed hereinbefore, under subdivision "B" of our argument, under Point Three, the fact that no statements were contained in the first letters written, to the effect that Mrs. McKee should come back and live with her husband. Letters containing such statements were not written until the parties had had three conferences, until Dr. McKee had retained a lawyer, and until Dr. McKee had actually changed his residence, as he testified, to the State of New Jersey, which, unlike New York, recognizes desertion as a ground for divorce, and quite admirably provided that as an element in the husband's case, he must show an endeavor on his part, in good faith, to induce his wife to return.

The first letter containing a request so-called as we have said before, is the letter of March 10th, 1925:

> "Dear Mary:
>
> "I am returning the report of February 2nd, of Dr. Alexander, which you gave me last week. Am also sending a similar report of March 3rd, which just lately came. Apparently Billy is all right now.
>
> "You had better change your mind and come back and live with me a normal and right married life. Won't you?
>
> "RALPH H. MCKEE."

At this point, we desire to be permitted to state our opinion of the letters written by the doctor (Counsel for petitioner in his brief ridicules our

analysis, but we do not hesitate to repeat it). They bear the unmistakable imprint of a studied effort to put himself in the right, and peculiarly, the studied effort is the effort of a man of science, not the effort of a man of the imaginative arts, such as the humanities. And yet this is not very peculiar, in view of the fact that Dr. McKee is a man of scientific bent, a leader in the field of chemistry. We submit that a man of science, in writing these letters, would simply interject parenthetically in all of the letters written by him, the same shibboleth "Come back and live with me"; "Come back and live a normal and right married life," etc., etc. Far better for his case would it have been if he had written one or two really imaginative letters, with a convincing tone, such as a student of the arts or the humanities could have written—a letter in which the writer was quite apologetic, quite contrite, tactful and diplomatic, with a tinge of insistency and indignation, and with a clear and convincing argumentative tone—a letter devoted entirely to the effort in hand, and not one dealing with the consummate nonsense that practically all of the letters deal with. But in building up his case, the doctor acted as a man of science would. The law stated that a husband must show that he had urged his wife to come back and terminate the separation. If that was the case, well, let each letter or most of the letters contain a paltry sentence or two demonstrative of this urging.

We would call the attention of the Court to the fact that not a single letter in which the request to terminate the separation is contained, deals wholly with that subject, but that each of such letters deals with other matters, and then as an afterthought contains the request in question.

The Court of Errors and Appeals in this State has settled this question in

*Baxter* v. *Baxter,* 101 Equity 236, 136 Atl. 191.

In that case, as in our case, the petitioner, the husband, was continually writing letters, which were strikingly similar in tone to the letters of Dr. McKee; for instance, the first letter, dated June 1st, 1923, in the case of *Baxter* v. *Baxter,* "I would like to have you return to the home and fulfill your duties as a wife." The letter of July 27th, announcing the removal to Jersey City, a location characterized by Baxter as being very convenient to his business, again asks the wife to "return to her home and attend to her wifely duties." How strikingly similar to the letter of Dr. McKee dated May 10th, 1925, in which he announced his removal to Leonia, New Jersey, and concluded by saying, "Come and join your husband, as a married woman should." This letter is set forth in full hereinafter. The other letters of Baxter, it appears, were in similar vein, and the Court says that there would be no good purpose in setting them down in detail. Baxter recurs to wifely duties again and again. Mr. Justice Parker, speaking for the Court in *Baxter* v. *Baxter,* says:

> "The rule in cases of this kind has been settled in a number of our decisions; a leading authority being Hall v. Hall, 60 N. J. Eq. 469, 46 A. 866, where it was said:
>
> 'That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded is declared by all our cases; and, ordinarily,

> when the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him'—citing cases.

"(1) The same rule was stated in slightly different language by Vice-Chancellor Leaming in the recent case of Davenport v. Davenport, 97 N. J. Eq. 14, 127 A. 29, where he said:

> 'A wife's desertion, though willful, cannot be adjudged obstinate, unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end, under the particular circumstances of the case.'

"The authorities are collected in that opinion, and need not be repeated here.

"(2) This case is not within the exception noted in the Hall case, and on which that decision turned. Our reading of the evidence satisfies us that the separation was due in large measure to the conduct of the husband; that his wife left him because she had concluded, if perhaps erroneously, still justifiably, that she was not wanted; that there was nothing in her conduct to justify the conclusion that it would be useless to ask her to come back; and that a series of registered letters enlarging on her 'wifey duties' without one phrase of affection in them, accompanied by a lawyer's letter and an advertisement repudiating responsibility for her debts, was very far from being the course of conduct that would naturally tend to induce her to return. The Vice-Chancellor,

> therefore, properly held that her desertion, conceding that it was a desertion, was not obstinate; and the decree dismissing the petition will therefore be affirmed."

To the same effect is

*Popovics* v. *Popovics,* 129 Atl. 126,

another opinion of the Court of Errors and Appeals.

Mr. Justice Minturn, in *Popovics* v. *Popovics,* says:

> "A plea of that character must be supported by at least proof of his bona fide intention, and some proof of his heartfelt contrition for his past conduct. (Citing cases.)
>
> "In establishing the sincerity of such an appeal, the Court necessarily proceeded upon the theory of *quo animo,* and in reaching any satisfactory conclusion as to his motives, the old adage that conduct speaks louder than words, must needs play an important part."

See also the opinion of Vice-Chancellor Fallon, in

*O'Brien* v. *O'Brien,* 142 Atl. 902,

affirmed by the Court of Errors and Appeals, per curiam.

It will serve no useful purpose to set forth in full the letters written by the petitioner, but for the convenience of the Court, we will submit just a few of the letters, to illustrate our point that the request was couched in parenthetic fashion, in all of the letters:

EXHIBIT P-17.

"210 Christie Heights Ave.,
Leonia, N. J.
May 10, 1925.

"Dear Mary,

"Billy is still in trouble on demerits. Last week he had 28 and 30 is the limit and brings dismissal. Can you bring any pressure to bear on him that will make him get to meals and classes on time? That he is always late in whatever he does seems his biggest trouble.

"I haven't had a report on his studies lately. If you have send me a copy.

"It has been embarrassing to be around the apartment at 39 Claremont Ave. and to have to dodge questions of our mutual friends as to when you were 'coming home' etc. If I answered one way I would get you in bad and if I answered the other I would have trouble on my hands. Accordingly I have moved out here. You will recall I have always liked Leonia and indeed spoke of moving out here in 1922 when my apartment lease expired but did not because neither you nor Margaret liked the idea. I am living on the same street as Prof. Hikson and Prof. Freas and not far fro- them and see them often. I am next door to Prof. Morse. I don't know whether you know him or not. It is nice out here but dreary for me living in a boarding house.

"I wish you would do what I talked over with you at our last getting together * * * come and join your husband as a married woman should. Won't you?

"RALPH."

EXHIBIT P-26.

"210 Christie Heights Ave.,
Leonia, N. J.
June 22, 1925.

"Dear Mary,

"Enclosed find check for $100.00 which I trust will take care of your present day needs. I would suggest that you have this cashed by the office where you room rather than to take it to the lawyer at 100 Broadway for to have the lawyer cash it adds each time to the charges he makes * * * and these charges come ultimately out of the fund available to the McKee family.

"Billy and I are leaving tomorrow for three days in Providence, R. I. Better change your mind and come and live with us, you and we would be more happy.

"RALPH"

"P. S. I can't find the field glasses or the best wool blankets. Where are they?"

EXHIBIT P-37.

"210 Christie Heights Ave.,
Leonia, N. J.
Oct. 13, 1925.

"Dear Mary,

"Billy writes me he has plenty of wool underwear. You said over the telephone that he had none. Has the kid got some new underwear or do you know what is the situation?

"I have not received as yet the lists of what is in the boxes that were in the basement of 39 Claremont Avenue which list you were to send me.

"Had a nice letter from Margaret but she did not say what grades she got on her two special examinations. Do you know what they were?

"I wish you would get over your huff and permit our family circle to get together again. The present situation is hard on the children as well as on you and I. Better come and live with me.

"RALPH"

EXHIBIT P-51.

"Jan. 14, 1926
210 Christie Heights St.,
Leonia, N. J.

"Dear Mary,

"Enclosed find check for $100.00. I expect to be able to send you something more the latter part of this month. You may plan on it.

"Received a note from Margaret saying she had sprained her ankle. Apparently it is only a light sprain and she ought to get over it quickly.

"Things have not been going well with me the last few weeks. No one single thing but most every thing works in the way it shouldn't.

"You have now been away a full year. You had better change your mind and come back and live with me. Be a good girl and come along.

"RALPH"

"Twin girls came to the Works today."

EXHIBIT P-98.

"Feb. 3, 1927
10 A. M.

"Dear Mary,

"I will see you at the waiting room of the Pennsylvania station which is adjacent to the telephone booths on Friday afternoon at four o'clock. Will meet you near the door into the big room containing the ticket offices, etc. This is probably the most convenient place for you as it is an express stop on your subway.

"I am sorry you did not like any of the three places I suggested over the telephone—having dinner with me at a restaurant would have been nicest.

"It seems too bad to have a meeting for such a discussion. It would be much better if you would come and live with me. Better come back.

"Yours truly

"RALPH"

EXHIBIT P-103.

"607 Bergen Ave.,
Jersey City, N. J.
Feb. 27, 1927.

"Dear Mary,

"Let me know just as soon as you have the telephone working in your new apartment and its number.

"I hope the taking of the major part of the furniture out of storage and your using it to furnish your apartment will make matters more pleasant for you. Perhaps a little later

you will be willing to join me and we can have all of it together as well as all the family together.

"It is too bad that sofa and mahogany rocker upholstering are not as clean as they were but remember they have been in use two years since you last saw them so they shouldn't be expected to be in as good condition.

"Have just finished writing to Bill and Margaret.

"Yours truly,

"RALPH"

EXHIBIT P-115.

"June 13, 1927.

"Dear Mary,

"Herewith is check for $200.00 for your use for June.

"There were, as I said to you when you were leaving, several more things of importance which we should talk over. I will phone you in a few days and arrange for our getting together for an hour. Why not be willing for us to live together?

"RALPH"

EXHIBIT P-123.

"Sept. 28, 1927.

"Dear Mary,

"Margaret wants a red velvet dress, pretty bad. I tried to reach you by phone but apparently you were out. From what she said and you said the materials will cost $35 to $40. Will you make it for her, including purchasing, if I provide the materials. On the

New Jersey State Library

supposition that you will I am enclosing a check for $40. payable to you for that purpose.

"If you don't want to do the work send the check back. I have not hinted to her that I could make her the extra $40 gift at this time.

"If you would come and live with me we could settle such matters easier and more pleasantly than by writing or telephoning. Better change your mind and come and live with me.

"Let me know at once whether you will make this dress for her at once, for it needs to be done promptly if at all.

"Yours

"RALPH"

About one hundred fifty letters were written by Dr. McKee and his wife, in this interchange of correspondence.

Again to visualize the situation, it should be borne in mind that Dr. McKee continued writing letters from the 14th day of January, 1925 until the institution of suit for divorce herein, and even after that.

It is submitted that if the doctor was genuinely sincere in his endeavor to effect a reconciliation, he would have made some mention in the aforesaid letters of his intention to start suit for divorce unless his wife did return to him; and yet, the letters are entirely silent in this regard. Scrupulously the letters are penned—a case must be built—and yet no statement with a tinge of insistence to the effect that unless the wife returned, and unless she ceased in her obstinancy in continuing to stay away, he would be compelled to institute suit for divorce.

The doctor is questioned on this phase of the case in the following manner:

"Q. You stated Doctor McKee on direct examination that you started the New Jersey proceedings in November of 1927, is that correct? A. That is correct.

"Q. Did you ever write to Mrs. McKee telling her if she didn't come back and live with you you would start divorce proceedings? A. I never threatened her.

"By the Vice-Chancellor:

"Q. Did you admonish her if she didn't become reconciled to you you would institute a proceeding against her? A. I discussed it with her but I don't know whether I admonished or threatened.

"Q. Did you ever tell her before you actually started the suit in New Jersey that you would institute a suit for divorce? A. No, but I mentioned to her that I could.

"By Mr. Blumberg:

"Q. You don't recall in any of these 152 letters ever writing to Mrs. McKee that if she didn't come back and live with you you would start suit for divorce in New Jersey? A. I don't know that I did or threaten her with such a suit.

"Q. You never suggested to her in these letters that if she didn't come back you would institute a suit for divorce did you? A. No, that would be a threat."

And on page 412, Case, bottom of page 407 to page 408, folio 30, further testimony on this score is as follows:

"By Mr. Blumberg:

"Q. You wrote a letter to Mrs. McKee on November 3, 1927. No complaints in that let-

ter was there, Exhibit P-126? A. Yes, there was—'I have not heard from you in reply to my last few letters'. Then there is also another paragraph—'Margaret writes me that she is doing part on the velvet dress,' whereas it was arranged that Mrs. McKee was to do it.

"By the Vice-Chancellor:

"There is nothing contained in that letter that you were aggrieved at her not meeting you or writing letters other than the first few words that you read? A. The second paragraph your Honor. Other than that there isn't.

"Q. Eight days after that letter you signed an affidavit in your divorce proceeding? A. That is correct.

"Q. Had you made up your mind to institute your divorce suit at the time you wrote that letter? A. I had been considering it for a month or more, but had not made up my mind until a day or two before I started the suit.

"Q. Is that the last letter you wrote to her before the institution of the suit for divorce? November 11th is the date of the affidavit and November 14th is the date of the filing of the petition?

"Mr. Blumberg: A letter of November 10th, Exhibit P-127.

"Q. I want to know why in these several letters of November 3rd and November 10th you didn't mention to your wife your contemplated divorce suit and ask her to come back and live with you?

"Mr. Walscheid: Why should he do it?

"Vice-Chancellor: I am asking it now. In other words the state of the man's mind is go-

ing to be considered by me. I don't care what people put in letters.

(Last question repeated.)

"Q. That is giving her a final opportunity of being reconciled to you before you started your suit? A. I didn't feel there was a possibility of her coming back. Matters changed that there was no possibility if I asked her before the divorce suit was started or after. These things had become accumulated and there were four or five different things which I mentioned during the months of June, July, August, September and October" (Case, p. 412, fol. 35 to p. 414, fol. 10).

Chancellor Runyon in the case of

*Driver* v. *Driver,* 28 Equity 392,

which on its facts is somewhat similar to the case *sub judice* adverts to the fact that the petitioner had never told his wife that if she did not come back and live with him, he would apply for a divorce. This fact is one of the elements which the Chancellor considers in determining that the efforts and statements of the petitioner were not sincere, and did not comply with the statutory requirements.

The letters offered in evidence by the petitioner undoubtedly do contain statements in which can be found a request by the petitioner that the defendant return and live with him, but as we have argued, these letters are merely studied attempts to put the petitioner in the right, and more important still, to make evidence for himself.

The petitioner's testimony, that at practically all of the conferences with Mrs. McKee he discussed

with her the question of a reconciliation, and endeavored to have her change her mind, is not corroborated. Mrs. McKee explicitly denies that anything of this sort was mentioned at the numerous conferences.

On page 593 of the case, dealing with Mrs. McKee's testimony, we find that Mrs. McKee testified:

> "By Mr. Blumberg:
>
> "Q. In the last paragraph of this letter the doctor said—'I wish you would do what I talked over with you at our last getting together—come and join your husband as a married woman should.' When was the last time you saw him. A. In the middle of April. He had said nothing about living together.
>
> "By the Vice-Chancellor:
>
> "Q. Did he ever in any talks he had with you personally request you to live with him? A. He never did, never, and in fact, when I offered to do so at the end of January, 1927, in Mr. Newman's office he refused to do so."

On page 595 of Case, folio 20:

> "By the Vice-Chancellor:
>
> "Q. Did Dr. McKee at any of these meetings that he had with you that you have alluded to show any mark of affection towards you? A. No, your Honor, he has shown no affection towards me at any time."

And on page 640 of Case, folios 20, et seq., as to Mrs. McKee's testimony:

> "Q. I show you a letter of August 12, 1927, Exhibit P-121? A. Yes.

"Q. And in that letter Doctor McKee says—'I want to have a talk with you very soon. Will get in touch with you by phone and find a time that will be mutually convenient'? A. Yes, I think it was the 27th of August I saw him.

"Q. Where did you see him that day? A. At the Campus Restaurant; I had lunch with him.

"Q. What was the conversation you had that day? A. There wasn't much conversation; he wouldn't converse. He just sat silent most of the time. I remember asking him—when we were leaving the restaurant I said to him 'May I ask you why you wanted me to come down to see you?' because he had insisted I should come because he had other engagements. I said, 'I ask you why you wanted me to come' because he had said nothing, and he did not reply to that. I said, 'If you write me a letter misrepresenting what took place at this conference as you have at other conferences, I shall have to refuse to see you again without a witness.'

"Q. This was in August, 1927? A. Yes.

"Q. What was his response to that? A. He didn't say anything to that."

And page 93 of Book 5 of Mrs. McKee's testimony:

"By Mr. Blumberg:

"Q. Was anything said at that conference of February 20th about your being reunited? A. No, it was never mentioned. Anything of that sort was never mentioned at all."

See also pages 661 and 662 of Mrs. McKee's testimony.

We submit that it was in line with Dr. McKee's scientific planning of this case to write a large number of letters to prove his insistence upon his wife's return. Insistence however, is not the element of sincerity which the law requires.

There is no one to corroborate the doctor as to the details of the conversations which he had with Mrs. McKee, and in view of the unequivocal denial of Mrs. McKee, we maintain that the doctor's statements of what took place should be disregarded. The burden of proof in this instance is undoubtedly upon the petitioner.

In order further to bolster his case, the petitioner would in his letters often refer to alleged conversations had with the defendant, in reference to his efforts at a reconciliation, but this method of proof is not available to the petitioner. Mere writing of a letter recounting what was alleged to have taken place, is no proof at all of what took place, and Mrs. McKee recognized this artifice quite clearly in several of her letters. For instance, on the 10th day of June, 1926, she wrote him expressly as follows:

EXHIBIT P-74-A.

"Spuyten Duyvil,
June 10, 1926.

"Dear Ralph,

"I have neglected acknowledging the receipt of the check for one hundred dollars which you sent me last month.

"I have postponed writing really because I have felt greatly indignant that you should so abuse the confidence of an acquaintance.

"Please do not drag anyone else into our affairs. After using them to arrange a meet-

ing with me, you say nothing and do nothing that will help to settle the matter. It is so patent that you do this only in order to make an opportunity of writing a letter in which the statements are quite contrary to the real interview and which you think you can later use as evidence. You must see that this is quite unfair to the party you employ,

"Sincerely."

On August 17th following, Mrs. McKee wrote in similar vein:

EXHIBIT P-79-A.

"Spuyten Duyvil,
August 17, 1926.

"Dear Ralph,

"Thank you for the check for one hundred dollars which I received yesterday.

"As to your suggestion that we meet again to talk matters over, you will remember that on all the occasions, except two, when we have done so, all you did was to go over a supposed list of your expenditures and make the statement that you would send me seventy-five dollars a month. On the first of the two exceptions Billy and I went to the apartment on your representation that you wished to make a division of the household effects when you had no such intention. The second exception was when I saw you in Mr. Newman's office the latter part of April and the sum of your statements was that it would seem we ought to live together but that if we did we would live more meanly than ever that we could take a room in some cheap hotel.

"In view of all this I cannot see what would be gained by another interview.

"Each time I have seen you outside the office you have contrived to place me in a most embarrassing position so that aside from all legal aspects it would be impossible for me to allow myself to be so placed again.

"However if you wish to see me 'sometime in the next few days' as you say and wish to discuss matters with me—facts as they are without pretense—with a real intention of settling our affairs and avoiding publicity, I shall be very glad to do so. We can meet in the library of Mr. Newman's office where we can have our discussion without interruption and alone if you so prefer.

"Sincerely."

We respectfully submit that the writing of Dr. McKee's letters is of very little evidential value, and they are so patently insincere that the Court should disregard them entirely, in coming to any conclusion as to the efforts made by Dr. McKee to effect a reconciliation. If anything, the large number of the letters, their content, their omissions, and their studied legal phrases, justify an affirmative conclusion to the effect that they were not written in good faith.

We respectfully submit, further, that the court below was absolutely right in concluding that the petitioner's letter-writing "in so far as it contained requests for his wife to return to live with him, was the result of a studied purpose on his part—not really to have his wife return to live with him but to make evidence for himself." While there is no direct statement in the evidence to the effect that Dr. McKee kept copies of letters which he sent to

his wife, there is evidence to the effect that he kept his wife's letters, and from his demeanor in court, any spectator would be justified in believing that Dr. McKee kept every single record or item dealing with his family status, including copies of letters sent to his wife. We are quite fair in stating that Dr. McKee made every appearance in the court room with a large suitcase packed with the documents in this litigation.

## G.

Dr. McKee stands convicted of having failed to make the proper efforts at reconciliation, not only by the steps which he did take, but also by certain omissions, readily available to a man who was acting in good faith.

We have already called the Court's attention, under Subdivision B of this point, to the fact that Dr. McKee failed to take any decisive steps whatsoever at the time that Mrs. McKee, the defendant, is alleged to have left him. We have already called the attention of the Court to the fact that Dr. McKee did not make the proper advances or the proper requests at the numerous conferences with Mr. Kirby and Mrs. McKee's lawyers. In fact, assuming Mr. Kirby's version to be true, at the first two conferences, Dr. McKee was absolutely silent as to any reconciliation, and as to the third and main conference of March 5th, 1925, Dr. McKee is alleged to have said about ten words in reference to a reconciliation. Similarly, at the conference with Mr. Whaley, the evidence at best for Dr. McKee is that about ten or twelve words were again spoken with reference to a reconciliation; and, of course, numerous letters written contained glaring omissions, to which we have just adverted.

At this juncture we might state that the petitioner's contention summarized on page 136 of the petitioner's brief, that Kirby, Whaley, Martin and Pegram, are corroborating witnesses, has absolutely no merit. As we have stated in the preceding paragraph the testimony given by these witnesses, even if believed, falls far short of establishing any fair effort on the part of the petitioner to have his wife return to him. If anything, they demonstrate in their testimony that no sincere effort was made by the petitioner to have his wife return—that he merely made a studied interjection which could later be used in evidence.

We submit that Dr. McKee went about the business of effecting a reconciliation in a manner not calculated to impress one with his sincerity. For instance: Dr. McKee had numerous conferences and numerous meetings with his daughter, Margaret McKee, and yet in not one of them did he seek to use her efforts in an endeavor to effect a reconciliation. It would seem that a parent who in good faith desired to effect a reconciliation would most naturally turn to a grownup child as an instrumentality whereby the reconciliation could be effected, and yet his daughter, Margaret McKee, is quite positive in her testimony that her father never asked her to use her efforts to effect a reconciliation. This is the testimony in that regard (Case p. 1012, fol. 25 to p. 1013, fol. 30).

> "Q. Did your father ever ask while in your company to try and reconcile he and your mother? A. No, he never did.
>
> "Q. Did your father ever speak to your mother in your presence to see if the family could be reunited? A. No.
>
> "Q. Did your father ever say in his talks with you or in any correspondence he had with

you that he had ever asked your mother to return again to live with him and she had refused? A. I think he did.

"Q. In what respect? Tell us when and under what circumstances? A. I am not sure of it.

"Q. If you are going to guess at it, I don't want it. If you have a fair recollection of it I would be glad to hear it. A. I am pretty sure once he told me in a conversation he had asked mother to come back and live with him and she had refused.

"Q. Did you tell your mother that? A. Yes.

"Q. What did she say? A. That he had not said that.

"Q. Did you report that back to your father when you saw him thereafter? A. I don't think I did.

"Mr. McNulty: If your Honor please she has referred to one specific instance. I would like to have the time fixed when her mother spoke to her about speaking to the father.

"Vice-Chancellor: She does not know it was definitely said.

"Witness: That my mother asked me to speak to my father?

"Vice-Chancellor: Yes.

"Witness: She did it several times.

"Q. Tell me when that was? A. It was once just after she started the suit and I know several times before that.

"Q. And having in mind what she asked you to speak to him about you did speak to your father? A. Yes" (Case, pp. 1012 to 1013).

And it is worthy of note that the daughter testifies that her mother asked her to see her father

about the marital difficulties, and to see if there was any possibility of her parents' living together again (Case, p. 1012, fol. 15).

We do not believe that it is necessary to go into this discussion of the doctor's failure to have his daughter intercede for him, any further. The mere statement of his failure to so use his daughter's efforts is convincing of the fact that the doctor had no sincere desire for a reconciliation, and that his wife's separation was to his liking.

The petitioner in his brief deems it advisable to ridicule this entire argument as to Doctor McKee's failure to suggest to Margaret McKee the advisability of a reconciliation. While petitioner's comment is quite caustic we respectfully submit that the Doctor's continued and protracted silence is evidence of his insincerity.

We note another occasion when Dr. McKee and his brother visited the house of Mrs. McKee in September, 1926. Mrs. McKee at that time was living in Spuyten Duyvil. Mrs. McKee's testimony in reference to this visit is as follows (Case, p. 615, top to p. 616, fol. 10):

> "Q. Did Dr. McKee visit you at any of these houses? A. Yes. Once he and his brother came when we lived in the bungalow on Arlington Avenue.
>
> "Q. Spuyten Duyvil? A. Yes, in September, 1926.
>
> "Q. What did Doctor McKee say when he came there that day? A. Billy went to the door. The entrance was through a sun porch, and Billy answered the knock on the door and then he came and told me it was his father and his uncle, his father's brother. He had seated them in the sun porch, so Margaret and I went out to see them and Mr. McKee didn't even

speak, and his brother greeted me as he always did and took me in his arms and kissed me as he always did, and Mr. McKee didn't speak to me.

"By the Vice-Chancellor:

"Q. Was there any talk between you? A. His brother and I talked. Mr. McKee said something; I don't remember what. Oh, yes, Margaret had been quite ill and we talked about it.

"Q. Who talked about it? A. All of us.

"Q. I understood you to say Doctor McKee did not talk to you? A. Not to me, but in the conversation. He didn't greet me when he first came in. I can't remember that he said anything directly to me; he may have. Then later he suggested that we should all go to dinner some place but of course Margaret was too ill, and Billy went with his father and his uncle.

"By Mr. Blumberg:

"Q. How long were they in the house? A. Oh, they were there an hour and a half or two hours.

"By the Vice-Chancellor:

"Q. Did Mr. McKee's brother do anything or try to bring you together? A. Nothing said about that.

"Q. Nothing said about the differences between you and Mr. McKee. A. Nothing at all; there was nothing mentioned" (Case, p. 615, top to 616, fol. 10).

It is evident from the foregoing recital, the facts of which are corroborated by the testimony of Margaret McKee (Case, p. 1021), that Dr. McKee did not see fit at this time to make any effort at all

towards effecting a reconciliation, and from Mrs. McKee's statement of the splendid character of Dr. McKee's brother, this brother could very well have been used as a medium for effecting a reconciliation. This is simply another of the golden opportunities missed by the petitioner.

Another omission characteristic of the insincerity of Dr. McKee, is his persistence in arranging meetings outside of the defendant's home, such as public restaurants, public parks, and public libraries, and occasionally the law office of Mrs. McKee's attorney. In fact, Dr. McKee only made two visits to the home of Mrs. McKee, as the evidence demonstrates, one visit being the one just referred to, and the other visit being the one testified to by Dr. McKee, Mrs. McKee and the daughter, Margaret. It took place on Christmas Eve, 1927, after the divorce suit in New Jersey had been instituted. Miss Margaret McKee's testimony, a contradiction of Dr. McKee's version of the episode, most certainly affect the credibility of the petitioner. The testimony of what took place on that occasion may be found as follows: Testimony of Mrs. Mary N. McKee, Case, page 616; testimony of Margaret McKee, Case, page 1021, folio 20, page 1023, bottom; testimony of Ralph H. McKee, Book 6, page 961.

It is noteworthy indeed that on neither of these occasions did Mr. McKee go to the house for the purpose of effecting a reconciliation, nor did he, while at the house, make any statement at all, looking towards a reconciliation, and this despite the fact that a genuine opportunity was offered in the presence of witnesses for a display of sincerity. The Vice-Chancellor, in questioning Dr. McKee was quite insistent upon learning just why Dr. McKee did not avail himself of the best method available of effecting a reconciliation, that is, visits to the abode of the defendant.

Another striking omission, we submit, is the failure of Dr. McKee to provide a home for Mrs. McKee. If Dr. McKee was really sincere in his desire to have his wife return to him, we submit that he would not have abandoned his home at No. 39 Claremont Avenue, New York City as quickly as he did. Mrs. McKee left the doctor on January 13th, 1925, according to testimony, and we find that Dr. McKee moves to New Jersey on February 27th, 1925—moves not to a home, but to a rooming house. This sudden giving up of the home and this haste in moving to New Jersey, and this failure to have a home open for Mrs. McKee, is indicative of the fact that the doctor was not averse to the separation, and if he was not averse to it, the separation was not obstinate.

It is to be noted, in the case of

> *Rogers* v. *Rogers,* 81 Equity, 479, 86 Atl. 935,

so strongly relied upon by the petitioner to indicate that the petitioner was excused from making any advances at all,

> "The petitioner continued to occupy his house from the time of the separation until the filing of the petition in the cause."

It seems, indeed, that the doctor has no corroboration whatsoever of any sincere efforts to effect a reconciliation. The testimony of Mr. Whaley and of Mr. John Kirby are not corroborative of any sincere desire to effect a reconciliation. They simply affirm, if indeed they prove anything, that Dr. McKee made a statement to Mrs. McKee to the effect that she should come back and live with him, but the cases, as we have shown, are quite clear to the

effect that such a statement does not satisfy the requirements of the law of this State.

See also:

*Goldberg* v. *Goldberg,* 137 Atl. 438, 101 Eq. 284 (Court of Errors and Appeals);
*Holst* v. *Holst,* 139 Atl. 333, 101 Equity 682 (Chancery).

**H.**

There remains to be discussed one more subdivision under this point. Our courts have held that where it is manifest from the circumstances of the case that no efforts on the part of the husband could terminate the separation, the duty of making advances does not exist.

*Hall* v. *Hall,* 60 Equity, 469;
*Rogers* v. *Rogers,* 81 Equity, 479, 86 Atl. 935;
*O'Brien* v. *O'Brien,* 142 Atl. 900, affd. per curiam 105 Equity, 250.

The consideration of all that we have said thus far must indeed be convincing of the fact that this exception to the rule is not applicable in the case *sub judice.* As we have shown, the parties were married over twenty-two years, cohabited for that time, and brought up two fine children. The husband has, by the clear weight of the evidence, contributed in no small measure to the facts which led up to the desertion, and all of the evidence and statements of Mrs. McKee indicate that she was not averse to going back and living with the petitioner. The proviso that conditions be different cannot affect her willingness to return, because the proviso

was such that a sincere man and a reasonable husband would accede to.

Mrs. McKee's attitude in this regard can be gathered from a consideration of some of the testimony. In her direct examination Mrs. McKee testifies as follows:

> "Q. At that time were you willing to go home and live with your husband as man and wife? A. Under suitable conditions. Not under the old conditions.
>
> "Q. Were you willing to go home at that time to live with your husband? A. Under suitable conditions.
>
> "Q. What do you mean? A. If I could be convinced that my husband regretted his actions and they would not be repeated I would go with him today.
>
> "By the Vice-Chancellor:
>
> "Q. And you wouldn't be subjected to constant abuse that you spoke of? A. Yes.
>
> "By Mr. Walscheid:
>
> "Q. During all that time he had been denying the charges you made against him? A. I don't recall.
>
> "Q. He denied them to your sister? A. He did not.
>
> "Q. She so testified? A. He said 'No, I don't think I struck her' when she asked him again he didn't say anything.
>
> "Q. If he had said 'I am sorry; I won't do it again,' you would have been willing to go home and live with him again? A. Yes.
>
> "Q. You think so? A. I know it.
>
> "Q. Sorry for what?
>
> "Vice-Chancellor: She has mentioned several matters that she felt aggrieved at.

"By the Vice-Chancellor:

"Q. Are those the matters you hoped he would express a sorrow for? A. Yes.

"By Mr. Walscheid:

"Q. And unless and until he expressed sorrow you would not go back? A. Exactly."

The lengthy correspondence between the parties clearly indicates that Mrs. McKee was not adamant in her refusal to return. Mrs. McKee replied to most of the letters written by the petitioner, and the tone of these letters is not unfriendly. Mrs. McKee attended all of the many conferences suggested by the petitioner, with but one or two exceptions, and her letters, it seems, indicate quite clearly that she was open to any just advances which the petitioner would make, but these advances were not forthcoming.

On February 19th, 1926, about a year after the alleged desertion, Mrs. McKee writes to Dr. McKee as follows:

"51 West 76th Street,
February 19, 1926.

"Dear Ralph:

"Thank you for sending the check for fifty dollars which I received the first of the week.

"You speak of attacks being made on you but you do not say by whom or along what line. Is the committee you mention a committee appointed by the board? I am of course interested to know what has happened and hope you have succeeded in settling the affair.

"As to the matter referred to in your letter of yesterday, it is necessary to provide a home for the children and myself. There is no reason why our affairs could not be settled with-

out resorting to the publicity of a court action, excepting your refusal to do so.

"Billy has written that he expects to be off bounds on Saturday."

This letter, it will be seen, quite clearly evinces the desire on Mrs. McKee's part to have a home for herself and the children, and she plainly states that it is Dr. McKee's fault that their troubles have not been settled. And on April 19th, 1926 Mrs. McKee again writes to her husband in reference to a conference which Dr. McKee desired. This letter is as follows:

"Spuyten Duyvil,
April 19, 1926.

"Dear Ralph:

"Your letter reached me on Saturday.

"If you really wish to talk things over with me as you say, I will meet you at Mr. Newman's office on Thursday afternoon at three o'clock.

"As my telephone is not yet adjusted, I will call you on Wednesday to see if that time suits you.

"Sincerely"

Great reliance is placed by the petitioner upon a letter dated March 29th, 1925, marked Exhibit P-152, written by Mrs. McKee to her husband. This letter was offered in evidence in the *ex parte* hearing before Special Master Griffin. The letter reads as follows:

"March 29, 1925.

"Dear Ralph:

"Thank you for sending the check for $100, which I have cashed.

"Your continued refusal for a number of years to live 'a right and normal married life' has made it impossible for us to live together.

"Very sincerely yours,

"MARY."

Dr. McKee was questioned quite closely by the Vice-Chancellor in reference to this letter. The questions and answers on this phase of the case are as follows:

"Q. So that your wife used the words 'normal married life' in that letter? Did you ever dicuss that with her what she meant by 'normal married relation'? A. No; I thought she understood it, and I understood it.

"Mr. Walscheid: I now desire to and reattach Exhibit 151 in this case, being Exhibit P-5 before the Special Master in the uncontested divorce case, to the exhibits in this uncontested divorce case attached to the Special Master's Report.

"Q. In this letter your wife said 'Your continued refusal to live a normal married life.' Did you and she discuss that as to what was meant? She called your attention to your refusal to live a normal married life? A. I don't know what she is referring to, unless it was in connection with the letter to which that was an answer. She did in conversations at that time insist that she ought to have very much more money for spending than she had been receiving—than we had been spending for the house.

"Q. You didn't consider that was what she meant? She says, 'Your continued refusal to live a normal married life.' We are trying to find out whether you know what that alluded

to? A. I am not certain, but I think if you look at the previous letter to which that is a reply that it may have been a quoting from my letter to her.

"By Mr. Walscheid:

"Q. It is in quotation marks in the letter? A. And also at that time she was very anxious for me to supply a considerable increase in money which I was unable to do.

"Vice-Chancellor: You stated that language was quoted in that letter?

"Mr. Walscheid: Yes (showing letter to Vice-Chancellor).

"By the Vice-Chancellor:

"Q. Her statement in this letter, which is marked Exhibit P-152 in this case, reads—'Your continued refusal, for a number of years to live a "right and normal married" has made it impossible for us to live together.' Now what does that refer to? Was there anything objectionable to which that related? Did it have any reference to living an abnormal life, or was there anything that she was finding fault with? A. No, excepting the question of finances, and she was in general tired of married life relations.

"By Mr. Walscheid:

"Q. Is Exhibit P-13 the letter which immediately precedes the one which we have just been discussing? A. It is the one and contains the same phrase in the middle of the letter.

"By the Vice-Chancellor:

"Q. You mean Exhibit P-13? A. Yes, my letter to Mrs. McKee of March 23rd of which the letter referred to of March 29th, Exhibit P-152, is a reply reads—'There is no reason as

I see it why you and I should not resume our joint domicile and live a right and normal married life together. Are you willing to do this?'

"Q. Now then her letter to which we have been referring reads—'Your continued refusal, for a number of years to live a "right and normal married life" has made it impossible for us to live together.' I am trying to ascertain if I can what that wording has reference to. To me it might indicate something other than what you mention as to the qeustion of money between you? A. I think it does call for something more, but money was the important matter and the question of the marriage relation was another item.

"Q. What do you mean by the marriage relation? A. At that time—for a year she had not occupied the same room with me.

"Q. Why would that warrant her in making that statement referring to your refusal? A. I don't think it does warrant it" (Case, pp. 327, fol. 20 to p. 39, fol. 30).

It is apparent that this letter was written in response to the letter of Dr. McKee dated March 23rd, 1925, in which he states that there is no reason why the parties should not resume their joint domicile and "live a right and normal married life together."

It is to be noted that the doctor does nothing in response to this letter to indicate to the defendant that it is possible for them to live together and that he has not refused to live a right and normal married life. We are confident that this letter, in view of all the circumstances, and in view of the numerous conferences which later took place, and the numerous expressions of Mrs. McKee, cannot be used to prove her attitude herein. At any rate, it is not

manifest that honest effort on the husband's part to terminate the separation would have been unavailing.

## POINT FOUR.

### Defendant's alleged desertion of the petitioner was justified.

We believe that the points heretofore discussed are dispositive of this matter. However, it is advisable to consider other angles of the case and we shall devote this point to a brief discussion of our conviction that the defendant's alleged desertion of the petitioner was legally justified.

The petitioner has devoted pages 180 to 203 of his brief to an exposition of a proposition that the defendant's desertion was without legal justification. It is quite evident that a reading of this portion of the petitioner's brief would lead one to the conclusion that the defendant was exposed to the extreme cruelty of the petitioner, that is, if the evidence offered by the appellant is to be believed.

Counsel for the petitioner refers to the incident of 1922 or 1923 when, as Miss Helen Noyes, sister of Mrs. McKee testified, the doctor walked by Mrs. McKee and scratched her entire face from her forehead down to her chin, and says that "This occurrence seems so utterly improbable that it overtaxes one's credulity" (p. 186 of petitioner's brief).

Just why the occurrence should seem improbable and just why it should overtax one's credulity is not demonstrated. The only inference which we can draw from counsel's remark is to the effect that if believed, the occurrence was of such a nature as to spell out extreme cruelty.

Counsel refers to the incident of August, 1924 (p. 190 of petitioner's brief) and says thereof:

> "It seems sufficient to say of this story, that if petitioner kept jumping up and down on defendant's abdomen, with his knees on that abdomen, and his 200 pounds of weight as a driving force, in the manner defendant details, defendant would undoubtedly not have lived to tell that story in court."

We again say that the only inference from an argument of this nature is to the effect that the occurrence in question was undoubtedly an act of extreme cruelty.

The extreme cruelty required by the statute depends upon a consideration of all of the facts and all of the circumstances. It further depends upon the statements of the witnesses whose evidence must first be believed by the court. In cases of this nature much of importance must necessarily be omitted. The trial cannot be protracted and the complaining party will undoubtedly introduce but a small portion of the acts relied upon in order to indicate the cruelty.

The law on the question is well settled. Extensive citation is not required.

Mr. Justice Kalisch, speaking for the Court of Errors and Appeals, in the case of *Doty* v. *Doty*, 114 Atl. 546, 92 Equity 660:

> "What that cruel conduct must consist of in order to justify a wife to leave her home, seems to us was well stated by Vice-Chancellor Van Fleet, in Black v. Black, 30 N. J. Eq. at page 221, where that learned jurist said:
>
> > 'To justify a divorce a mensa et thoro, actual physical violence need not be proved, but such conduct, by the husband, must be shown as will justify the court in believing

> that, if he is allowed to retain his power over his wife, and she is compelled to remain subject to him, her life or her health will be endangered, or that he will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. Close v. Close, 10 C. E. Gr. 529; English v. English, 12 C. E. Gr. 585.'
>
> "This legal rule was approved and applied by this court in Smith v. Smith, 40 N. J. Eq. 595, 5 Atl. 109, a case for divorce upon the ground of extreme cruelty."

Viewed in the light of *Doty* v. *Doty,* citing the familiar quotation from Vice-Chancellor Van Fleet in *Black* v. *Black,* we feel that enough evidence has been adduced to indicate that if conditions continued to exist as they had in 1924, and Mrs. McKee remained subject to such conditions, her health would have been endangered and her life would have been one of such extreme discomfiture and wretchedness as to incapacitate her to discharge the duties of a wife.

The charges of extreme cruelty brought by Mrs. McKee derive importance from a totally unexpected angle. Dr. McKee, in his testimony, was insistent upon painting himself as a model husband, as a man who at no time became angry, as a man who never reproached his wife, and as a man who never struck her or committed any acts of physical violence. That such a painting by him was not at all necessary to the merits of his contention is beside the point. Suffice it to say that the statements so made by him are absolutly contradicted by Mrs. McKee and by all of her witnesses. His credulity in this respect has been so shattered

that the court should disregard his testimony entirely. Every opportunity was given to Dr. McKee by counsel to state his conduct truthfully. On the last day of the hearing, just before the doctor left the stand, he was questioned, very carefully, as to his conduct, and he specifically insisted that he never slapped his wife, never struck her in anger and never told her to shut up—not even once, as he put it (Case, pp. 1004 to 1006). He specifically denied the incident of June, 1923, when he threw his wife forcibly on to the doorsill, and his son and daughter were compelled to assist his wife (Case, bottom of p. 1005). And yet, his daughter, an entirely disinterested witness (despite the comments of counsel for petitioner in his brief), testifies concerning numerous occasions of physical violence on the part of the father, and says that her father, telling her mother, in an angry tone to shut up, was not an unusual occurrence—an occurrence which took place many different times—that her father was angry most of the time anyhow—that Dr. McKee would shove Mrs. McKee with his elbow or something of that sort, and that the home was not a very pleasant one, and that Dr. McKee struck Mrs. McKee hard enough to throw her against the wall (Case, pp. 1015 and 1016).

In view of the daughter's testimony, the testimony of the defendant, and the testimony of Miss Helen Noyes, sister of Mrs. McKee, we submit that the doctor was quite inaccurate, to put it charitably, in all his statements of his conduct; and the doctor does not produce a single witness to corroborate his version of his attitude towards Mrs. McKee.

It is not necessary to discuss the ruptured relations between Dr. McKee and Mrs. McKee, which resulted from their sex disputes. If Mrs. McKee's

story is to be believed, and in view of the discrediting of Dr. McKee just outlined, it would seem that there is no reason why Mrs. McKee should not be believed, the doctor's placing of sexual intercourse on the basis testified to by Mrs. McKee, was not only insulting, but certainly an act of extreme cruelty.

Naturally enough, the items referring to this dispute are not items which can be corroborated, as they involve the most intimate relations between the parties. However, no reason suggests itself to our mind why Mrs. McKee's statements should not be believed. On this phase of the case, see

*English* v. *English,* 27 Equity 579.

The cases cited by the petitioner to support his contention that the defendant's alleged desertion was without legal justification, are based upon facts in no wise similar to the facts in the case sub judice. Each case must necessarily rest upon its own facts. It remains for the Court to apply the rule set forth in *Doty* v. *Doty,* supra.

## POINT FIVE.

### Petitioner was not a bona fide resident of the State of New Jersey.

The petitioner has gone far in an endeavor to establish his *bona fide* residence in the State of New Jersey. The question really is, has he not gone too far? The question of residence has been so thoroughly gone into by the petitioner, and with such extensive foresight and preparation, that one can only conclude that in the petitioner's mind, this was the big item of the case. It is not enough

to bring one witness from Leonia—several must be brought. It is not enough to bring the landlady of the house at No. 607 Bergen Avenue, Jersey City, New Jersey, but other occupants of the house must be produced in court. In order to establish his residence, the petitioner believes it necessary to take the testimony of two youths who had lived at No. 607 Bergen Avenue, Jersey City, N. J., but had since moved to Detroit, Michigan. And depositions must be taken of witnesses in the City of New York. The depositions of janitors and maids, who glibly state that the petitioner's occupancy of dormitories in the State of New York during all this period, was only a casual occupancy by the petitioner. Practically all of the witnesses are drilled and coached. And George G. Tennant, former Judge of the Court of Common Pleas, must be brought in to establish the fact that the doctor attended church in the City of Jersey City. Very carefully indeed has the doctor seen to it that his catologue address in Columbia University is No. 607 Bergen Avenue, Jersey City, New Jersey; that his income tax is payable to the Collector of Internal Revenue, in Newark, N. J.; that he is registered to vote in the State of New Jersey; that his daughter's bills are mailed to him at No. 607 Bergen Avenue, Jersey City, New Jersey. But the question still remains in our mind whether the painstaking and laborious efforts of the professor were not too painstaking to be sincere. We are inclined to believe that this case is no better than one of the ordinary "emigrant" cases so styled by Vice-Chancellor Stevenson in the case of

*Mason* v. *Mason,* 69 Equity, 292.

As the Vice-Chancellor says in *Mason* v. *Mason:*

> "The class of cases to which the present one belongs, appears to be constantly increasing,

> and certainly calls for the utmost care and the closest scrutiny to prevent the fraudulent use of our divorce laws by citizens of other states, and especially by citizens of the State of New York. New York is the only state near us in which an absolute divorce cannot be obtained on the grounds of desertion. It is a significant fact that the petitioners in these suspicious cases—these emigrants from other states—who so promptly apply for divorce on the ground of desertion, commenced in the state from which they come, almost uniformly are from the State of New York. Deserted spouses in Pennsylvania and Connecticut and other states nearby, except New York, seem to be able to redress their matrimonial grievances at the place where the desertion first occurred; at any rate they very rarely, after establishing a residence in New Jersey, seek in this court a divorce on account of the desertion which took place in the state from which they come."

The petitioner, in his brief, places great reliance upon the case of

*Wallace* v. *Wallace,* 65 Equity 359.

In that case, the Court quotes with approval from the comments of one of the Special Masters in Chancery to this effect:

> "A person may legitimately move to another state in order to avail himself or herself of the laws of that state. This is a general rule applicable to suitors in divorce cases as well as to other persons. Consequently, an avowal that the object in moving to another jurisdiction was to get a divorce does not show il-

legality or even impropriety of motive, though it may well induce the court to require strict proof of residence in good faith."

In the case *sub judice* there was no avowal that the petitioner's object in moving to New Jersey was to take advantage of the New Jersey divorce laws. In fact, the petitioner, on being asked the question (Case, pp. 340-342) as to his reasons for coming to New Jersey, states several specific reasons and expressly avoids stating that he came to New Jersey for the purpose of obtaining a divorce in New Jersey. The reasons which Dr. McKee gives were, firstly, that it was embarrassing to him to be around the apartment at No. 39 Claremont Avenue with people asking questions regarding Mrs. McKee and himself; secondly, that it was more economical to live in a one-room apartment; thirdly, that reasons of health required his moving to New Jersey, and fourthly, that his business connections in New Jersey made a New Jersey residence more suitable.

We submit that if the doctor had been man enough to admit the truth, to wit, that he had moved to New Jersey a little more than a month after the alleged separation by his wife, in order to take advantage of the New Jersey divorce laws, one could have had little quarrel with him, and the whole line of cross examination, which counsel was compelled to go into in order to show the falsity of the doctor's statements, would have been unnecessary. But the doctor was not man enough to admit the truth. He had to equivocate.

The reasons given by the doctor do not stand the test of logic. It was just as economical, considering time spent and carfares and what not, to live in a one-room apartment in New York City.

And this argument of economy borders upon the ridiculous when we consider that the doctor maintained adjunct apartments, so to speak, at No. 21 Claremont Avenue (Case, p. 1094), and later at the John Jay Hall (Case, Exhibit P-176) on Amsterdam Avenue, New York; the adjuncts being as elaborate as the alleged residence in New Jersey. There would have been no difficulty in using these adjuncts as the real domicile. To move from No. 39 Claremont Avenue to Leonia in order to avoid the questions of friends at No. 39 Claremont Avenue, was like "jumping from the frying pan into the fire," because, as the doctor testified, he had very many very close friends in Leonia. The doctor's sudden decision that his health required him to move to New Jersey was indeed fortunate, coming as it did in February, 1925, when his wife had left him in January, 1925. The fact that his business connections made it desirable to live in New Jersey, is a ridiculous contention because the doctor's main business was at Columbia University and the lengthy trip from Leonia to Columbia University and back, each day, and likewise, the lengthy trip from No. 607 Bergen Avenue, Jersey City, N. J. to Columbia University each day, convinces one that the trouble is endured because the end is desirable.

We would not characterize the doctor as any better than a boarder under the analysis given by Vice-Chancellor Stevenson in *Mason* v. *Mason*, supra.

It does seem that the residence feature of this case bears greatly upon the sincerity of the petitioner. We cannot insist too strongly that a sudden departure to New Jersey, about six weeks after his wife left him, is evidential of his insincerity. Here we have the doctor who had been living for many years in the State of New York, hastily mak-

ing a retreat to another state whose divorce laws are more liberal than the laws of the jurisdiction of his domicile. We have the doctor abandoning his established home, to which his wife could have easily returned, if his efforts had been sincere and honorable, and withdrawing to the hardships of boarding in a locality quite some distance from his business affairs. That this boarding was a hardship is evident from the fact that the doctor maintained what he termed rest rooms at No. 21 Claremont Avenue, New York City, and at John Jay Hall, New York, during all of the period of his residence in New Jersey.

We believe that the doctor moved to New Jersey for the purpose of obtaining a divorce here, and that his residence in New Jersey is only temporary. The *aminus manendi,* adverted to by the petitioner in his brief, was lacking. The petitioner was not a *bona fide* resident of the State of New Jersey.

## Conclusion.

We believe that what we have herein set forth demonstrates that the lower court was correct in dismissing the petition herein.

In the first place the petition was filed prematurely. The pendency of the litigation in New York could not be considered as part of the statutory two years. Viewed from this angle the time of the alleged desertion was much less than two years, and in addition the separation agreement drawn on January 24th, 1927 was a complete termination of the prior dispute and the two year period must have commenced at a time later than January 24th, 1927. The commencing of the litigation in November, 1927, was therefore improper.

The justice of the situation requires that that marital status be maintained and that the unseemly haste of the petitioner in his efforts to rid himself of his wife, should be thwarted. It should be emphasized that the defense of premature institution of suit is only a plea in abatement so to speak. The petitioner on this score should be compelled to wait the period exacted by the statute and if he still feels, at the end of that period that he has a just cause of action and no reconciliation has been effected, he can institute this suit again.

Similarly, on the other features of the case, the decision dismissing the petition is pre-eminently correct. Doctor McKee has been thoroughly discredited as a witness. The testimony of his daughter Margaret McKee (Case, pp. 1008 to 1045) proves that the petitioner is an unconscionable prevaricator and a hypocrite whose testimony the lower court could have rightly disregarded. This language may seem harsh but the petitioner has no hesitancy in characterizing the testimony of Mrs. McKee as false testimony and stating that she cannot be believed (Petitioner's Brief, p. 136). We smile at the audacity of the petitioner in stating on page 136 of his brief, that "the record discloses that in every single instance where her testimony leads her into contest with others than her husband, she is contradicted by those others." This statement we say is audacious, and is quite uncalled for, in view of the argument which we have presented hereinbefore.

The petitioner's retreat to New Jersey, six weeks after the alleged desertion and his persistence in his endeavor to get this divorce, raise a clear inference of hypocrisy on his part. This is the individual whom petitioner's counsel would have us believe was most desirous of maintaining the marital status.

We can also repeat that no relief whatsoever was sought in the Chancery proceedings by Mrs. McKee. The petitioner was the moving party and upon him rests the burden of proof.

We repeat that a reversal of the decree of the Court of Chancery would be a cruel termination of twenty-two years of married life, and the result of such reversal would be the helplessness of the defendant, when it was she who toiled with the petitioner and assisted him in reaching his eminent station in life.

We respectfully submit that the decree of the Court of Chancery dismissing the petition herein should be affirmed and that that part of the decree adjudging that the petitioner pay to the defendant a counsel fee of $1,500.00 should be modified to the extent that a counsel fee of $5,000.00 be allowed to the defendant.

Respectfully submitted,

GROSS & GROSS,
Solicitors of Defendant-Appellee.

LEO BLUMBERG,
of Counsel and on Brief.

## Exhibit A.

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner-Appellant,<br>and<br>MARY N. McKEE,<br>Defendant-Appellee. | On Appeal from the Court of Chancery.<br>AFFIDAVIT. |

State of New Jersey, }
County of Hudson, } ss.:

Mary N. McKee, being duly sworn on her oath, deposes and says:

1. I am the defendant herein. I and my solicitors have made frequent objections to the State of the Case as submitted herein. In fact, before the State of the Case was printed my solicitors insisted that Mr. Walscheid, the solicitor of the petitioner, show them the proofs before printing, and Mr. Walscheid did not do so. After the State of the Case was printed, my solicitors filed with this court their objections to it and the matter was continued for some time and finally argued before Vice-Chancellor Fallon.

2. The objections which I stated were some three hundred fifty in number. I see in the State of the Case that Mr. Walscheid, as solicitor of the petitioner, has corrected many of the errors. I have

been unable to have the State of the Case corrected and have complained to my solicitors.

3. In particular, the State of the Case ascribes a reply to a question which is not in fact the reply which I made. This question will be found on page 721, lines 33-35 of the State of the Case. The question in the State of the Case reads as follows:

> "Q. What did they tell you?
> A. They told me I should be separated from him but the law would not allow me to do that under the circumstances."

The answer which I really gave should read:

> "They told me I could have a separation from him; that no law would compel me to live with him under the circumstances."

It is quite clear to me that I never made the answer ascribed to me, as my attorneys in New York frequently told me that I had an excellent cause of action against Dr. McKee and would succeed in my suit against him.

4. There are numerous other mistakes but at the suggestion of my solicitors I am not calling them to the attention of the court.

5. The State of the Case also fails to include a letter which Mr. Harry L. Whaley wrote to me under date of January 25, 1927. This letter was offered in evidence as Exhibit D-4 and a copy of it is as follows:

"Spuyten Duyvil, N. Y. C.
Cor. Edgehill Terrace,
1/25/27

Mrs. Mary N. McKee,
Spuyten Duyvil, N. Y. C.

My Dear Mrs. McKee:

I am very glad to know that your case has been settled, and trust that you received as much if not more than Mr. McKee told me that he was willing to give you nine thousand $9,000 a year.

I trust that the future will be brighter for you, and your children.

With kindest regards, I am

Sincerely yours,

HARRY L. WHALEY."

MARY N. McKEE.

Sworn and subscribed to before
me this 4th day of February, 1931.

ABRAHAM RUDWAY,
Attorney at Law of N. J.

## Exhibit B.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

RALPH H. MCKEE,
Petitioner-Appellant,

and

MARY N. MCKEE,
Defendant-Appellee.

On Appeal from the Court of Chancery.

AFFIDAVIT OF LOUIS BEACHNER, COURT STENOGRAPHER.

State of New Jersey,
County of Hudson, } ss.:

Louis Beachner, being duly sworn on his oath, deposes and says:

1. I am a court stenographer and reporter and am the official shorthand reporter of the Honorable John J. Fallon, Vice-Chancellor. I took all of the stenographic notes in the above entitled case at the hearing before the said Vice-Chancellor.

2. Mr. Leo Blumberg, of counsel with the defendant herein, about two months ago requested me to submit to him the original notes herein in order that some features of the State of the Case might be corrected. I was ill at the time and in fact was ill for three weeks thereafter. Upon my recovery from my illness I made diligent search for my original notes. I looked at my home and at my office, but was unable to find the said notes.

3. I have also been requested to state the exact amount which the petitioner herein paid me for my services in transcribing the stenographic notes of the hearings. The sum paid me was $809.50.

LOUIS F. BEACHNER.

Sworn and subscribed to before
me this 4th day of February, 1931.

ANGELO LIMON,
Attorney at Law of N. J.

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TESTIMONY.

*For Petitioner:*


| | | |
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| Clara E. Bennett, | | |
| | Direct | 49 |
| | Cross | 50 |
| Louise Wragge, | | |
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John J. Kirby,
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Harry L. Whaley,
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Thomas McNulty,
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*Defendant's Witnesses:*

Frances Gibb,
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John G. Jansen,
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| P-2—Photostatic Copy of 1926 Directory ..... | 91 | " " |
| P-3—Photostatic Copy of 1927 Directory ..... | 91 | " " |
| P-4—Photostatic Copy of 1928 & 29 Directory ..... | 91 | " " |
| P-5—Check, dated Oct. 6, 1926 ... | 96 | 1045 |
| P-6—Check, dated Oct. 17, 1926 ... | 97 | 1045 |
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| P-8—Photostatic Copy of Envelope containing Income Tax Blank ..... | 100 | Not printed |

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| P-9—Letter from Columbia University addressed to 210 Christie Heights Street, Leonia, N. J. | 101 | Not printed |
| P-10—Letter from Columbia University, addressed to 607 Bergen Ave., Jersey City, N. J. | 101 | " " |
| P-11—Envelope with name of Ralph written thereon | 124 | 1046 |
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| P-17—Letter, dated May 10, 1925 | 138 | " " |
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| P-20—Letter, dated May 27, 1925 | 141 | " " |
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| P-22—Letter, dated May 29, 1925 | 149 | " " |
| P-23—Letter, dated June 8, 1923 | 150 | " " |
| P-23A—Letter Copy of Exhibit P-23 | 152 | Not printed |
| P-24—Letter, dated June 9, 1925 | 152 | Read in Rec. |
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| P-27A—Letter—Copy of Exhibit P-27 | 155 | Not printed |
| P-28—Letter, dated July 23, 1925 | 156 | Read in Rec. |
| P-29—Letter, dated July 27, 1925 | 157 | " " |
| P-29A—Letter—Copy of Exhibit P-29 | 159 | Not printed |
| P-30—Telegram, dated July 30, 1925 | 160 | Read in Rec. |

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| P-31—Letter, dated Aug. 12, 1925 | 161 | Read in Rec. |
| P-32—Letter, dated Aug. 23, 1925 | 162 | " " |
| P-32A—Letter—Copy of Exhibit P-32 | 163 | Not printed |
| P-33—Letter, dated Aug. 26, 1925 | 163 | Read in Rec. |
| P-34—Letter, dated Aug. 29, 1925 | 164 | " " |
| P-35—Letter, dated Sept. 4, 1925 | 164 | " " |
| P-35A—Letter—Copy of Exhibit P-35 | 165 | Not printed |
| P-36—Letter, dated Sept. 23, 1925 | 165 | Read in Rec. |
| P-36A—Letter—Copy of Exhibit P-36 | 166 | Not printed |
| P-37—Letter, dated Oct. 13, 1925 | 166 | Read in Rec. |
| P-38—Letter, dated Oct. 18, 1925 | 166 | " " |
| P-39—Letter, dated Oct. 20, 1925 | 168 | " " |
| P-39A—Letter—Copy of Exhibit P-39 | 169 | Not printed |
| P-40—Letter, dated Oct. 24, 1925 | 195 | Read in Rec. |
| P-41—Letter, dated Oct. 29, 1925 | 196 | " " |
| P-42—Letter, dated Nov. 3, 1925 | 198 | " " |
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| P-46—Letter, dated Nov. 18, 1925 | 200 | Read in Rec. |
| P-46A—Letter—Copy of Exhibit P-46 | 200 | Not printed |
| P-47—Letter dated Dec. 12, 1925 | 201 | Read in Rec. |
| P-48—Letter, dated Jan. 15, 1926 | 201 | " " |
| P-48A—Copy of Exhibit P-48 .... | 205 | Not printed |
| P-49—Letter dated Dec. 16, 1925 | 201 | Read in Rec. |
| P-49A—Copy of Exhibit P-49 .... | 203 | Not printed |
| P-50—Letter dated Dec. 24, 1925 | 203 | Read in Rec. |
| P-51—Letter, dated Jan. 14, 1926 | 204 | " " |
| P-52—Letter, dated Jan. 27, 1926 | 204 | " " |
| P-52A—Letter—Copy of Exhibit P-52 | 207 | Not printed |

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| P-53—Letter, dated Jan. 26, 1926 | 206 | Read in Rec. |
| P-54—Letter, dated Feb. 14, 1926 | 207 | " " |
| P-55—Letter, dated Feb. 17, 1926 | 208 | " " |
| P-56—Letter, dated Feb. 16, 1926 | 209 | " " |
| P-57—Letter, dated Feb. 19, 1926 | 210 | " " |
| P-57A—Copy of Exhibit P-57A ... | 211 | Not printed |
| P-58—Letter, dated Feb. 22, 1926 | 211 | Read in Rec. |
| P-59—Letter, dated Feb. 25, 1926 | 212 | " " |
| P-60—Letter, dated Mar. 5, 1926 | 213 | " " |
| P-60A—Letter—Copy of Exhibit P-60 ..... | 214 | Not printed |
| P-61—Letter, dated Mar. 12, 1926 | 214 | Read in Rec. |
| P-62—Letter, dated Mar. 14, 1926 | 216 | Read in Rec. |
| P-62A—Letter—Copy of Exhibit P-62 ..... | 217 | Not printed |
| P-63—Letter, dated Mar. 21, 1926 | 217 | Read in Rec. |
| P-64—Letter, dated Mar. 29, 1926 | 218 | " " |
| P-64A—Letter—Copy of Exhibit P-64 ..... | 218 | Not printed |
| P-65—Letter, dated April 7, 1926 | 219 | Read in Rec. |
| P-66—Letter, dated April 14, 1926 | 219 | " " |
| P-66A—Letter—Copy of Exhibit P-66 ..... | 221 | Not printed |
| P-67—Letter, dated April 15, 1926 | 221 | Read in Rec. |
| P-68—Letter, dated April 19, 1926 | 221 | " " |
| P-68A—Letter—Copy of Exhibit P-68 ..... | 222 | Not printed |
| P-69—Letter, dated April 18, 1926 | 222 | Read in Rec. |
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| P-71—Letter, dated May 7, 1926.. | 224 | " " |
| P-72—Letter, dated May 10, 1926 | 224 | " " |
| P-73—Letter, dated June 9, 1926 | 225 | " " |
| P-74—Letter, dated June 10, 1926 | 226 | " " |
| P-74A—Letter—Copy of Exhibit P-74 ..... | 227 | Not printed |
| P-75—Letter, dated July 9, 1926 | 227 | Read in Rec. |

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| P-76—Letter, dated July 16, 1926 | 228 | Read in Rec. |
| P-76A—Letter—Copy of Exhibit P-76 | 223 | Not printed |
| P-77—Letter, dated July 21, 1926 | 233 | Read in Rec. |
| P-78—Letter, dated Aug. 13, 1926 | 235 | " " |
| P-79—Letter dated Aug. 17, 1926 | 236 | " " |
| P-79A—Letter—Copy of Exhibit P-79 | 238 | Not printed |
| P-80—Letter, dated Aug. 19, 1926 | 242 | Read in Rec. |
| P-81—Letter, dated Aug. 21, 1926 | 245 | " " |
| P-82—Letter, dated Aug. 24, 1926 | 245 | " " |
| P-82A—Letter—Copy of Exhibit P-82 | 246 | Not printed |
| P-83—Letter, dated Sept. 8, 1926 | 246 | Read in Rec. |
| P-83A—Letter—Copy of Exhibit P-83 | 247 | Not printed |
| P-84—Letter, dated Sept. 11, 1926 | 248 | Read in Rec. |
| P-85—Letter, dated Oct. 6, 1926 | 248 | " " |
| P-86—Letter, dated Oct. 8, 1926 | 249 | " " |
| P-86A—Letter—Copy of Exhibit P-86 | 250 | Not printed |
| P-87—Letter, dated Oct. 11, 1926 | 251 | Read in Rec. |
| P-88—Letter, dated Oct. 16, 1926 | 252 | " " |
| P-89—Letter, dated Oct. 19, 1926 | 252 | " " |
| P-89A—Letter—Copy of Exhibit P-89 | 253 | Not printed |
| P-90—Letter, dated Nov. 7, 1926.. | 253 | Read in Rec. |
| P-91—Letter, dated Nov. 10, 1926 | 254 | " " |
| P-92—Letter, dated Nov. 17, 1926 | 254 | " " |
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| P-96A—Letter—Copy of Exhibit P-96 | 267 | Not printed |

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| P-98—Letter, dated Feb. 3, 1927.. | 269 | " " |
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| P-99A—Letter—Copy of Exhibit P-99 ..... | 283 | Not printed |
| P-100—Letter, dated Feb. 6, 1927 | 271 | Read in Rec. |
| P-101—Letter, dated Feb. 7, 1927 | 273 | " " |
| P-101A—Letter—Copy of Exhibit P-101 ..... | 273 | Not printed |
| P-102—Letter, dated Feb. 11, 1927 | 273 | Read in Rec. |
| P-102A—Letter—Copy of Exhibit P-102 ..... | 274 | Not printed |
| P-103—Letter, dated Feb. 27, 1927 | 274 | Read in Rec. |
| P-104—Letter, dated Feb. 27, 1927 | 275 | " " |
| P-104A—Letter—Copy of Exhibit P-104 ..... | 276 | Not printed |
| P-105—Letter, dated Mar. 6, 1927 | 281 | Read in Rec. |
| P-106—Letter, dated Mar. 7, 1927 | 282 | " " |
| P-106A—Letter—Copy of Exhibit P-106 ..... | 283 | Not printed |
| P-107—Letter, dated Mar. 13, 1927 | 284 | Read in Rec. |
| P-108—Letter, dated Mar. 17, 1927 | 285 | " " |
| P-108A—Letter—Copy of Exhibit P-108 ..... | 286 | Not printed |
| P-109—Letter, dated April 10, 1927 | 287 | Read in Rec. |
| P-110—Letter, dated Mar. 31, 1927 | 288 | " " |
| P-110A—Letter—Copy of Exhibit P-110 ..... | 290 | Not printed |
| P-111—Letter, dated May 7, 1927 | 290 | Read in Rec. |
| P-112—Letter, dated June 2, 1927 | 291 | " " |
| P-113—Letter, dated June 6, 1927 | 294 | " " |
| P-113A—Letter—Copy of Exhibit P-113 ..... | 295 | Not printed |
| P-114—Letter, dated June 7, 1927 | 296 | Read in Rec. |
| P-115—Letter, dated June 13, 1927 | 297 | " " |
| P-116—Letter, dated June 27, 1927 | 298 | " " |

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| P-117—Letter, dated July 6, 1927 | 298 | Read in Rec. |
| P-117A—Letter—Copy of Exhibit P-117 | 299 | Not printed |
| P-118—Letter, dated July 9, 1927 | 299 | Read in Rec. |
| P-119—Letter, dated July 14, 1927 | 300 | " " |
| P-119A—Letter—Copy of Exhibit P-119 | 300 | Not printed |
| P-120—Letter, dated July 20, 1927 | 301 | Read in Rec. |
| P-121—Letter, dated Aug. 12, 1927 | 301 | " " |
| P-122—Letter, dated Sept. 15, 1927 | 303 | " " |
| P-123—Letter, dated Sept. 28, 1927 | 303 | " " |
| P-124—Letter, dated Oct. 9, 1927 | 305 | " " |
| P-125—Letter, dated Oct. 15, 1927 | 306 | " " |
| P-126—Letter, dated Nov. 3, 1927 | 307 | " " |
| P-127—Letter, dated Nov. 10, 1927 | 307 | " " |
| P-128—Letter, dated Dec. 13, 1927 | 309 | " " |
| P-129—Letter, dated Dec. 22, 1927 | 310 | " " |
| P-129A—Letter—Copy of Exhibit P-129 | 311 | Not printed |
| P-130—Letter, dated Jan. 11, 1928 | 311 | Read in Rec. |
| P-131—Letter, dated Jan. 16, 1928 | 312 | " " |
| P-131A—Letter—Copy of Exhibit P-130 | 313 | Not printed |
| P-132—Letter, dated Jan. 25, 1928 | 313 | Read in Rec. |
| P-133—Letter, dated Feb. 14, 1928 | 315 | " " |
| P-134—Letter, dated Mar. 8, 1928 | 316 | " " |
| P-135—Letter, dated April 13, 1928 | 317 | " " |
| P-136—Letter, dated May 6, 1928 | 317 | " " |
| P-137—Letter, dated June 15, 1928 | 318 | " " |
| P-138—Letter, dated June 29, 1928 | 319 | " " |
| P-139—Letter, dated July 12, 1928 | 319 | " " |
| P-140—Letter, dated Aug. 15, 1928 | 320 | " " |
| P-141—Letter, dated Sept. 14, 1928 | 321 | " " |
| P-142—Letter, dated Oct. 8, 1928 | 321 | " " |
| P-143—Letter, dated Nov. 14, 1928 | 321 | " " |
| P-144—Letter, dated Dec. 7, 1928 | 322 | " " |

| | Offered Page | Printed Page |
|---|---|---|
| P-145--Letter, dated Dec. 23, 1928 | 322 | Read in Rec. |
| P-146—Letter, dated Jan. 4, 1929 | 323 | " " |
| P-147—Letter, dated Feb. 4, 1929 | 323 | " " |
| P-148—Letter, dated Oct. 21, 1926 | 324 | " " |
| P-149—Letter, dated Nov. 11, 1926 | 324 | " " |
| P-150—Letter, dated Dec. 5, 1926 | 325 | " " |
| P-151—Letter, dated Mar. 11, 1925 | 326 | " " |

| | Offered page | Printed page |
|---|---|---|
| P-152—Letter, dated Mar. 29, 1925 | 327 | Not printed |
| P-153—Check of Ralph H. McKee | 714 | 1054 |
| P-154—Check of Ralph H. McKee | 716 | 1054 |
| P-155—Check of Ralph H. McKee | 716 | 1055 |
| P-156—Check of Ralph H. McKee | 717 | 1055 |
| P-157—Check of Ralph H. McKee | 730 | 1055 |
| P-158A—Letter, dated Nov. 10, 1924 | 742 | 1056 |
| P-159A—Letter, dated Nov. 20, 1924 | 743 | 1057 |
| P-160A—Letter, dated Dec. 2 | 743 | 1058 |
| P-161—Check of Ralph H. McKee | 755 | 1058 |
| P-162—Check of Ralph H. McKee | 755 | 1059 |
| P-163—Check of Ralph H. McKee | 756 | 1059 |
| P-164—Check of Ralph H. McKee | 756 | 1060 |
| P-165—Check of Ralph H. McKee | 756 | 1060 |
| P-166—Check of Ralph H. McKee | 757 | 1061 |
| P-167—Check of Ralph H. McKee | 758 | 1061 |
| P-168—Check of Ralph H. McKee | 758 | 1062 |
| P-169—Check of Ralph H. McKee | 758 | 1062 |
| P-170—Check of Ralph H. McKee | 759 | 1063 |
| P-171—Check of Ralph H. McKee | 759 | 1063 |
| P-172—Waiver of action, Referred to as yellow sheet | 792 | 1064 |
| P-173—Library Card | 806 | Not printed |
| P-174—Colloquy by Counsel | 920 | 1065 |
| P-175—Deposition by William Roach | 920 | 1066 |
| P-176—Deposition by Dominick Angelotta | 920 | 1072 |
| P-177—Deposition by Rose Flynn | 920 | 1080 |
| P-178—Deposition by Kate Savage | 920 | 1090 |
| P-179—Deposition by Martha Carrol Martin | 920 | 1100 |

| | Offered page | Printed page |
|---|---|---|
| P-180—Card | 934 | Not printed |
| Deposition of George W. Roberts | | 1120 |
| Deposition of George B. Pegram | | 1132 |
| Deposition of Leslie Hand | | 1149 |
| Deposition of Carl W. Becker | | 1161 |
| D-1—Letter, dated Jan. 15, 1925 to Hirsch Newman & Reass | 364 | Read in Rec. |
| D-2—Letter, dated Feb. 7, 1925 Mrs. Mary McKee | 368 | " " |
| D-3—Letter, dated Jan. 14, 1925 Mrs. Mary McKee | 368 | " " |
| D-4—Letter of Harry L. Whaley to Mrs. McKee | 911 | Not printed |
| D-4A—Envelope | 912 | " " |

## Notice of Appeal.

(Filed—Aug. 6, 1930.)

## IN CHANCERY OF NEW JERSEY

Between

RALPH H. MCKEE,
Petitioner,

and

MARY N. MCKEE,
Defendant.

On Petition, etc.

The petitioner, Ralph H. McKee, hereby appeals from the whole and every part of the decree made in the above entitled cause on the 28th day of July, 1930, by the Chancellor of the State of New Jersey, on the advice of Vice Chancellor John J. Fallon, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated, July 29, 1930.

THOMAS McNULTY,
Solicitor of Petitioner.

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

J. EMIL WALSCHEID,
Of counsel with Petitioner.

## Petition of Appeal.

(Filed—Aug. 20, 1930.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

RALPH H. McKEE,
Petitioner-Appellant,

and

MARY N. McKEE,
Defendant-Appellee.

On Appeal From the Court of Chancery.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Ralph H. McKee, the appellant in the above entitled cause respectfully shows that:

1. Petitioner finds himself aggrieved by a decree on final hearing made in the Court of Chancery by Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John J. Fallon, bearing date July 28th, 1930, in a certain cause in said Court of Chancery, wherein the said Ralph H. McKee was petitioner and Mary N. McKee was defendant, in this respect, to wit, that the said decree adjudges that "the petition of petitioner herein be and the same is hereby dismissed" and further adjudges that "the petitioner pay to the defendant the costs of this suit to be taxed, and also a counsel fee of Fifteen Hundred Dollars, and that defendant have execution therefor according to the practice of this court."

And your petitioner appeals from the whole of said decree and from each and every part thereof because the same is erroneous, for the following reasons:

1. The court should have adjudged the defendant guilty of willful, continued and obstinate desertion for the term of two years, within the meaning of an Act of the Legislature of the State of New Jersey, entitled, "An Act providing for divorces and for decrees of nullity of marriage, and for alimony and the maintenance of children (Revision of 1907)," approved May 17th, 1907, being Chapter 216 of the Laws of 1907, and the acts amendatory thereof and supplementary thereto, and should have decreed that petitioner and defendant be divorced from the bonds of matrimony for the cause aforesaid.

2. The court should have adjudged that the desertion of petitioner by defendant was obstinate for the term of two years, within the meaning of Chapter 216 of the Laws of 1907.

3. The court should have adjudged that petitioner was under no duty to make efforts to bring his wife's desertion to an end, because it should have adjudged that honest effort on the petitioner's part to terminate the separation would be unavailing, or, if successful in bringing the desertion to an end, would be so only temporarily.

4. The court should have adjudged that the pendency of the action for divorce from bed and board instituted by this defendant against this petitioner in the State of New York, referred to in the Answer filed by defendant, did not affect and did not interrupt the willfulness, continuity and/or obstinacy of the desertion of petitioner by defend-

ant, and that the time of pendency of such action could, and should be, counted as part of the period of desertion of petitioner by defendant in this cause.

5. The court should have adjudged that the execution by petitioner and defendant of the so-called "United Family Agreement" referred to in the Answer filed by defendant in this cause did not affect, destroy or interrupt the willfulness, continuity and/or obstinacy of the desertion of petitioner by defendant.

6. The Court of Chancery admitted illegal evidence prejudicial to the defendant over the objection of defendant.

7. The Court of Chancery refused to admit legal evidence beneficial to the defendant against the objection of the defendant.

8. The Court of Chancery, in violation of agreement made with counsel for petitioner, refused to afford to counsel for petitioner oportunity to cross examine Margaret McKee, one of the witnesses offered by defendant.

9. The court allowed to the defendant a counsel fee which was excessive in amount, not justified by the financial circumstances of petitioner and not required by the work done in this cause.

Your petitioner therefore prays that said Decree of said Chancellor may be wholly and in all things reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this honorable court shall seem meet.

And your petitioner will ever pray.

J. EMIL WALSCHEID,
Solicitor for and of counsel with Appellant.

## Notice on Cross Appeal.

(Filed , 1930.)

IN CHANCERY OF NEW JERSEY.

66-162

| | |
|---|---|
| Between<br><br>RALPH H. MCKEE,<br>Petitioner,<br>and<br><br>MARY N. MCKEE,<br>Defendant. | On Petition for Divorce. |

To Thomas McNulty and J. Emil Walscheid, solicitor for and of counsel with the petitioner.

Sirs:

PLEASE TAKE NOTICE that Mary N. McKee, the defendant herein, appeals from so much of the final decree of dismissal entered herein on the 28th day of July, 1930, as adjudges and decrees that the petitioner pay to the defendant the counsel fee of Fifteen Hundred Dollars on the ground that said award of Fifteen Hundred Dollars is inadequate and in no manner compensatory for the services rendered by the defendant's solicitors.

Yours, &c.,

GROSS & GROSS,
Solicitors of Defendant.

I conceive that there is good cause for the appeal herein.

LEO BLUMBERG,
Of counsel for the Defendant.

Dated, Sept. 17, 1930.

## Petition on Cross Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

RALPH H. MCKEE,
Petitioner-Appellant,

and

MARY N. MCKEE,
Defendant-Appellee.

On Appeal from the Court of Chancery.

Petition of Defendant-Appellee on Her Cross Appeal.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Mary N. McKee, defendant-appellee in the above entitled cause, on her cross appeal respectfully shows that:

1. The petitioner, the defendant-appellee, finds herself aggrieved by a part of the decree of dismissal on final hearing made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable John J. Fallon, Vice Chancellor, which decree bears date the 28th day of July 1930, and was made in a certain cause wherein Ralph H. McKee was petitioner and Mary N. McKee was defendant. Petitioner is aggrieved by the last paragraph of said decree of dismissal wherein it is adjudged and decreed that Ralph H. McKee pay to Mary N. McKee the costs of suit to be taxed and also a counsel fee of Fifteen hundred Dollars.

2. The reasons and grounds for the cross appeal of Mary N. McKee, the defendant herein, are as follows:

a. The award of Fifteen hundred Dollars as counsel fee herein is inadequate and insufficient to compensate counsel for the defendant for the services rendered by them.

b. An award of Five thousand Dollars should have been made as requested by defendant's solicitors as said sum of Five thousand Dollars is a reasonable and fair compensation for counsel for defendant in view of the protracted, extensive and successful services rendered by them.

Wherefore, your petitioner respectfully prays that the said decree of the Chancellor may be reversed and set aside as to that portion thereof which awards to the defendant the sum of Fifteen hundred Dollars as counsel fees and that this Honorable Court will direct the payment of fees in the sum of Five thousand Dollars, and that the petitioner on her cross appeal may have such relief in the premises as to this Honorable Court shall seem meet according to the prayers herein.

And your petitioner will ever pay.

GROSS & GROSS,
Solicitors for and of counsel with
defendant-appellee on her cross-appeal.

## Petition.

(Filed—Nov. 14, 1927.)

IN CHANCERY OF NEW JERSEY.

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

The petition of Ralph H. McKee, of the City of Jersey Ciy, in the County of Hudson and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife Mary N. McKee, the defendant in this suit, on the 26th day of June, 1902, by Reverend Hyde, a Minister of the Gospel, at Carthage, in the State of Illinois.

2. Defendant deserted petitioner in the month of January, Nineteen hundred and twenty-five; ever since which time, and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner has been a bona fide resident of the State of New Jersey continuedly since the 27th day of February 1925, residing at Leonia, New Jersey from February 27, 1925 to about September 1926; from September 1926 ever since at Jersey City, New Jersey; defendant is now a resident of the City of New York, State of New York.

4. Two children were born of the marriage aforesaid to wit, Margaret Harper McKee, age nineteen, and William Noyes McKee, age seventeen, who are in the custody of your petitioner.

5. Your petitioner prays, that the marriage between your petitioner and the defendant may be

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

And your petitioner will ever pray, etc.

RALPH H. McKEE,
Petitioner.

JOHN MILTON,
Solicitor for Petitioner.

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State of New Jersey,
County of Hudson, } ss.:

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

RALPH H. McKEE.

Sworn and subscribed to before me
this 11th day of November, 1927,
at Jersey City.

JOHN J. MULVANEY,
Master in Chancery of N. J.

A true copy.

THOMAS BARBER,
Clerk.

## Answer.

(Filed—June 23, 1928.)

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

The defendant Mary N. McKee, answering the petition herein, says:

1. The allegations contained in paragraph 1 of said petition are admitted.

2. The defendant denies the allegations contained in paragraphs 2 and 3 of said petition.

3. The allegations contained in paragraph 4 of said petition are admitted.

4. The defendant states that the petitioner herein has treated her in a cruel and inhuman manner, and has repeatedly committed acts of cruelty and violence upon the defendant; the said petitioner has failed and refused to show toward defendant the affection, consideration and respect due her as his wife, but, on the contrary, his attitude towards her, when alone with her and in the presence of others, both in action and word, has been violent, brutal and insulting; that the said petitioner has repeatedly asserted that a wife is her husband's inferior, and that the defendant, in particular, was his in-

ferior, and the actions and attitude of the said petitioner towards the defendant have habitually been based upon this principle; that the said petitioner has refused to recognize or even consider the defendant's judgment or desires in matter of interest common to the parties and their children; that he has habitually ignored questions and remarks put and made by defendant to him concerning such matters, and privately, as well as before members of their family, has summarily, and without cause, and moved merely by the whim of the moment, ordered her to be silent; that the said petitioner has compelled the defendant to overtax her physical strength at house work, although well able to employ servants to relieve her; that the said petitioner has freequently abused the defendant, calling her insolent and offensive names and epithets; that on numerous occasions the said petitioner has physically assaulted defendant, slapping her, striking and bruising her; that in 1917, in the presence of one of defendant's sisters, said petitioner forcibly pushed defendant out of the room, and forcibly compelled her to retire; that in 1918 and 1920 in the presence of a domestic servant, the said petitioner violently shook defendant; that in the presence of the aforesaid sister and of the children of the parties, without provocation, the said petitioner scratched the defendant's face with his fingers from forehead to chin, causing defendant's face to become red and swollen; that in 1922 said petitioner struck and knocked down the defendant; that in the latter part of 1922 or in the early part of 1923 the said petitioner threw the defendant on the floor and hurt her back; that about June 21, 1924 the said Ralph H. McKee, the petitioner herein, seized the defendant by the shoulders and shook her for five minutes continuously; that on or about August 11,

1924 while the defendant was ill with asthma, the said petitioner again assaulted her, with resulting injuries to her back; that early in July 1925 the said petitioner again assaulted the defendant, severely shaking her and bruising one of her arms; that under the circumstances it has become entirely unsafe for the defendant to live and cohabit with the said petitioner.

5. Defendant further shows that in October 1925 she instituted a suit for separation against the said petitioner, upon the ground of cruel and inhuman treatment by the said petitioner. The said petitioner duly appeared in said action and filed an answer, and said action only came on for trial in New York in the month of January 1927. The said petitioner, just before the trial commenced, pleaded with the defendant not to proceed with the trial of the cause, upon the ground that the publicity of such trial would interfere seriously with the business and reputation of the said petitioner, and at the urgent solicitation of the said petitioner an agreement of separation, drawn by the said petitioner personally, was entered into between the defendant and the said petitioner, and the action for separation was discontinued. A copy of this separation agreement is annexed hereto as Exhibit A. By reason of the facts contained in this paragraph and the existence of the agreement aforesaid, the defendant states that petitioner has no cause of action herein.

(Signed) GROSS & GROSS,
Solicitors of Defendant.

## Order to Show Cause.

(Filed June 15, 1928.)

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | On Petition for Maintenance. |

This matter being opened to the court by Gross & Gross, solicitors of the defendant, Mary N. McKee, upon reading and filing the petition for alimony of the defendant, Mary N. McKee and the affidavits thereto annexed, it is on this 15th day of June, 1928,

ORDERED, that the petitioner, Ralph H. McKee show cause before this court on Monday at 10 A. M. (Daylight Saving Time), nine o'clock Eastern Standard Time, June 18th, 1928, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, N. J., why an order should not be entered herein requiring him to pay to the defendant, Mary N. McKee, his wife, a proper allowance for her support and maintenance, and also for the support of the children of the marriage, and also a reasonable sum for counsel fees to enable the said Mary N. McKee to defend said suit. And it is further

ORDERED, that a copy of this order to show cause and a copy of the petition and affidavits upon which the same is based be served upon the solicitor of the petitioner this day.

E. R. WALKER,
C.

Respectfully advised,
JNO. J. FALLON,
V. C.

## Order for Payment of Alimony.

(Filed June 20, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. MCKEE,
Petitioner,
and
MARY N. MCKEE,
Defendant.

On Petition for Divorce.

This matter being opened to the court by Gross & Gross, of counsel with the defendant, and in the presence of Thomas McNulty, solicitor of the petitioner; and good cause being shown by the petition and affidavits herein why the defendant should receive alimony pendente lite; it is, thereupon, on this 20th day of June, 1928, on motion of Gross & Gross, solicitors of the petitioner:

ORDERED, that Ralph H. McKee, the above named petitioner, do pay to his wife, Mary N. McKee, the above named defendant, or to her solicitors, the sum of Two Hundred ($200.00) Dollars per month, on the 15th day of each and every month hereafter, from the date of this order until the determination of this suit, for the support and maintenance of said defendant Mary N. McKee. And it is further

ORDERED, that the said Ralph H. McKee do pay to the said Mary N. McKee, or to her solicitors, Gross & Gross, a counsel fee of $350.00.

E. R. WALKER,
C.

Respectfully advised,
J. J. FALLON,
V. C.

## Order of Reference.

(Filed July 10, 1928.)

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

This matter being opened to the court by Thomas McNulty, solicitor of the petitioner, and Gross and Gross, solicitors for the defendant; and upon reading the consent hereto underwritten:

It is thereupon on this 10th day of July, 1928,

ORDERED that the above stated cause be referred to Honorable John J. Fallon, one of the Vice Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making of the above order.

THOMAS McNULTY,
Solicitor of petitioner.

GROSS & GROSS,
Solicitors of defendant.

## Amended Answer.

(Filed Jan. 30, 1929.)

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

The defendant Mary N. McKee, answering the petition herein, says:

1. The allegations contained in paragraph 1 of said petition are admitted.

2. The defendant denies the allegations contained in paragraphs 2 and 3 of said petition.

3. The allegations contained in paragraph 4 of said petition are admitted.

4. The defendant states that the petitioner herein has treated her in a cruel and inhuman manner, and has repeatedly committed acts of cruelty and violence upon the defendant; the said petitioner has failed and refused to show toward defendant the affection, consideration and respect due her as his wife, but, on the contrary, his attitude towards her, when alone with her and in the presence of others, both in action and word, has been violent, brutal and insulting; that the said petitioner has repeatedly asserted that a wife is her husband's inferior, and that the defendant, in particular, was his in-

ferior, and the actions and attitude of the said petitioner towards the defendant have habitually been based upon this principle; that the said petitioner has refused to recognize or even consider the defendant's judgment or desires in matters of interest common to the parties and their children; that he has habitually ignored questions and remarks put and made by defendant to him concerning such matters, and privately, as well as before members of their family, has summarily, and without cause, and moved merely by the whim of the moment, ordered her to be silent; that the said petitioner has compelled the defendant to overtax her physical strength at housework, although well able to employ servants to relieve her; that the said petitioner has frequently abused the defendant, calling her insolent and offensive names and epithets; that on numerous occasions the said petitioner has physically assaulted defendant slapping her, striking and bruising her; that in 1917, in the presence of one of defendant's sisters, said petitioner forcibly pushed defendant out of the room, and forcibly compelled her to retire; that in 1918 and 1920 in the presence of a domestic servant, the said petitioner violently shook defendant; that in the presence of the aforesaid sister and of the children of the parties, without provocation, the said petitioner scratched the defendant's face with his fingers from forehead to chin, causing defendant's face to become red and swollen; that in 1922 said petitioner struck and knocked down the defendant; that in the latter part of 1922 or in the early part of 1923 the said petitioner threw the defendant on the floor and hurt her back; that about June 21, 1924, the said Ralph H. McKee, the petitioner herein, seized the defendant by the shoulders and shook her for five minutes continuously; that on or about August 11, 1924, while the defendant was ill with

asthma, the said petitioner again assaulted her, with resulting injuries to her back; that early in July, 1924, the said petitioner again assaulted the defendant, severely shaking her and bruising one of her arms; that under the circumstances it has become entirely unsafe for the defendant to live and cohabit with the said petitioner.

5. That the said petitioner was always supercilious and condescending in sexual relations as well as everything else, holding that a husband could make himself as obnoxious as possible. That petitioner was inconsiderate of either defendant's feelings or health in this respect or in any other, particularly after your petitioner and defendant came to New York to live. That the petitioner claimed he had a right to sexual intercourse at any time he wished, and that the defendant had nothing whatever to say about the matter. That the petitioner's conduct in this regard seriously affected defendant's health.

6. Defendant further shows that in October, 1925, she instituted a suit for separation against the said petitioner, upon the ground of cruel and inhuman treatment by the said petitioner. The said petitioner duly appeared in said action and filed an answer, and said action duly came on for trial in New York in the month of January, 1927. The said petitioner, just before the trial commenced, pleaded with the defendant not to proceed with the trial of the cause, upon the ground that the publicity of such trial would interfere seriously with the business and reputation of the said petitioner, and at the urgent solicitation of the said petitioner an agreement of separation, drawn by the said petitioner personally, was entered into between the

defendant and the said petitioner, and the action for separation was discontinued. A copy of this separation agreement is annexed hereto as Exhibit A. By reason of the facts contained in this paragraph and the existence of the agreement aforesaid, the defendant states that petitioner has no cause of action herein.

GROSS & GROSS,
Solicitors of defendant.

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## Schedule A.

Memorandum of agreement between Ralph H. McKee, whose residence is 607 Bergen Avenue, Jersey City, N. J., first party, and Mary Noyes McKee (Mrs. Ralph H. McKee), second party.

It is agreed as follows:

1. That the present suit between the two parties to this agreement is to be discontinued by second party (plaintiff) within two days of signing of this agreement.

2. That the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month.

3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks.

4. That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall

spend half of their vacation time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter.

5. That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft) or in schools of equal grade, at the expense of the first party, under the same general conditions as they are at present.

6. That on the starting of any legal suit between the parties to this agreement, except one to enforce the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease.

7. This agreement shall have as its minimum duration July 1, 1928.

8. That this agreement is in duplicate and shall become active and enforceable on the two copies being signed by the two parties concerned.

Signed this 24th day of January, 1927, in New York City, N. Y.

First party: RALPH H. McKEE.

Second party: MARY N. McKEE.

## Opinion Letter of Vice Chancellor.

COURT OF CHANCERY OF NEW JERSEY.

Chambers of
VICE CHANCELLOR JOHN J. FALLON
Jersey City, N. J.

July 21, 1930.

Mr. Thomas McNulty,
Solicitor of Petitioner,
1 Exchange Place,
Jersey City, N. J.

Messers. Gross & Gross,
Solicitors of Defendant,
15 Exchange Place,
Jersey City, N. J.
Ralph H. McKee v. Mary N. McKee
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Gentlemen:

I have determined in the above-stated matter that the petitioner's petition should be dismissed for the reason that the petitioner has not substantiated the allegations of his petition. I am convinced that the defendant has not wilfully, continuedly and obstinately deserted the petitioner for the term of two years within the purview of the Divorce Act. The petitioner and defendant were married January 26, 1902, and lived together as husband and wife for a period of more than twenty-two years. Two children were born of the marriage—Margaret Hopper McKee, a daughter, now upwards of twenty-one years of age, and William Noyes McKee, a son, now upwards of nineteen years of age. The petitioner is a professor of chemical engineering in Columbia Univer-

sity. He is also a consulting engineer. In the case *sub judice* he alleges that his wife deserted him on January 13, 1925. In October 1925 Mrs. McKee instituted a suit against her husband in New York courts for a limited divorce, basing her action on the ground of extreme cruelty, and she therein prayed for allowance for her support. Said proceeding was at issue and came on regularly for hearing in January 1927, when, as a result of conferences and negotiations between the parties themselves, and through their respective attorneys, said suit was discontinued, and a "United Family Agreement" (copy of which is annexed to the answer and marked Schedule A, and which was offered and admitted in evidence) was entered into between said parties. Said agreement is dated January 24, 1927. Paragraph 3 of said agreement provides that both parties agree to discuss their family affairs and in particular the possibility of a united family at least once in each six weeks. The suit *sub judice* was commenced November 13, 1927. At the time of the alleged desertion both parties resided in New York City. Petitioner alleges that on February 25, 1925, he took up his residence in New Jersey. The defendant has questioned herein the *bona fides* of the petitioner's residence in this state. I am of the opinion that the petitioner has satisfactorily established that he has been a *bona fide* resident of New Jersey since February 25, 1925. The defendant urges that the period of time between October 1925 to January 1927 cannot be computed as part of the term of defendant's alleged desertion. Such is my opinion, and in view thereof I consider that the petitioner's petition was prematurely filed. The New York suit interrupted the continuity of the term of the alleged desertion by the defendant.

In *Weigel* v. *Weigel,* 63 N. J. Eq. 677, affirmed 65 N. J. Eq. 398, it was held "The continued separation of the complainant who is prosecuting a suit for divorce from bed and board on the ground of the alleged extreme cruelty of the defendant, cannot, during the pendency of such a suit, be held to be an obstinate desertion, nor can part or the whole of the period of the pendency of such suit be computed as part of period of desertion in a subsequent suit between the same parties for divorce on the ground of desertion. If the wife, pending her suit charging her husband with extreme cruelty, continued to cohabit with him, she would prejudice her suit. Her absence is therefore not obstinate but justifiable. In such case it is of no significance whether she succeeds or fails in her suit." In the same case it was held, "It is essential that the wife's suit be a true presentation of what she believes to be an actual grievance. If it be shown that it was in truth based on allegations of fact which she personally knew to be false, it is a fraud on the court, on the law and on the defendant attacked by it, and its pendency is no defence to a subsequent suit for desertion by the husband." In *McLaughlin* v. *McLaughlin,* 90 N. J. Eq. 322, it was held, "In a suit for divorce for desertion none of the time occupied by the pendency of a former proceeding for divorce by one of the parties against the other can be computed as part of the time of the desertion in the later case; and this, whether the same party is petitioner in both cases or is petitioner in the later one and defendant in the prior one, or *vice versa,* provided the first suit was *bona fide.*" See also *Von Bernuth* v. *Von Bernuth,* 76 N. J. Eq. 494; *O' Brien* v. *O'Brien,* 142 Atl. 900. If the defendant continued to live with the petitioner pending

the determination of the suit which she instituted against him through the New York courts for a limited divorce on the ground of extreme cruelty she would thereby discredit her suit by throwing doubt upon the extremity of the cruelty which she alleged. 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. This proposition of law has been declared time and again by our courts.

The petitioner herein is obliged to sustain the burden of proof that his wife's separation from him during the period of the pendency of the New York suit, October 1925 to January 1927, was *obstinate* upon her part, within the purview of our Divorce Act. I do not find from the proofs herein that such may be regarded as the fact.

Aside from the fact that the petitioner's petition, in my judgment, was prematurely filed and that the petitioner has failed to establish that the defendant, his wife, had wilfully, continuedly and obstinately deserted him for a period of two years, the aforesaid "United Family Agreement" is strongly indicative that the wife had not *obstinately* deserted the petitioner within the purview of the law. She certainly did not keep herself aloof from him during the period of her separation. She met him on occasions when he expressed a desire to meet her. Notwithstanding the great number of letters written by the petitioner to his wife, in all of which or nearly all of which he invited his wife to return to live with him, it is manifest to me that a smack of insin-

cerity permeates the entire activities of the petitioner. It appears to me that if he really desired to effect a reconciliation with his wife, an unmistakable manifestation of affection and kindness, and an indication of sorrow or repentance to his wife for alleviation of the grievances alleged by her, some of which, at least, even though they may not be regarded as matrimonial offenses, are corroborated by witnesses in her behalf, would have effected a reconciliation between the parties. The "United Family Agreement" entered into between the parties manifests, in some degree at least, that a final separation between them was not contemplated when said agreement was signed. The law favors marriage and a continuance of the marriage relation. It disfavors divorce or separation. The petitioner and defendant are both beyond middle age. As mentioned hereinabove they have two grown children. The proofs do not disclose the bent of the son's prospect in life, but as to the daughter the proofs disclose that she contemplates a professional career. She has enrolled and is now engaged in studies in the College of Physicians and Surgeons, in New York City. It is regrettable that the petitioner and defendant, after many years of undoubted happiness in their marriage relation, such relation should have been marred by such happenings as disclosed by the proofs, but a few years prior to their separation. The troubles between them appear to me to have been such as may well be characterized as "petty bickerings." They certainly were not such as to establish a matrimonial offense for which a decree of divorce might have been granted. Nevertheless the *bona fides* of Mrs. McKee's suit in the New York courts, based upon her allegations of extreme cruelty, cannot very well be questioned herein. She may

have considered herself as very much aggrieved, so much so that the alleged grievances constituted, in law, extreme cruelty, and even though her suit had gone to trial and was determined adverse to her, it could not reasonably be urged that her suit was not instituted in good faith. Consequently, the period of time during the pendency of such suit cannot be regarded as a *continuity* of the period of two years during which the petitioner must prove, in the case *sub judice,* if he were to succeed therein, that his wife had wilfully, continuedly and obstinately deserted him. Letter-writing was not, in my judgment, the fairest means of endeavoring to impress upon the defendant, the petitioner's sincere desire to have his wife become reunited with him in matrimonial relation. In many of the letters written by the petitioner to his wife he asks whether she will return to live with him in a normal way. Such an invitation clearly does not commend itself as a manifestation of sincerity in the invitation. It may be regarded as an affront to a woman of gentle character, as I consider the defendant to be, judging from my observation of her while she was testifying as a witness before me. In *Gordon* v. *Gordon,* 89 N. J. Eq. 535, Chief Justice Gummere speaking for the Court of Errors and Appeals said—the burden is upon the petitioner to prove the case and all uncertainties of fact should be resolved against him. In *Rinehart* v. *Rinehart,* 91 N. J. Eq. 354, Chancellor Walker says, "Furthermore, in divorce cases the state is a party whose interest the court at all times will save and protect. And as the law favors marriage and disfavors divorce, the court will do nothing to facilitate the latter, but will only dissolve the marriage relation when the complaining party is strictly entitled to a decree."

I am availing myself of this means of communicating to counsel my determination of the case *sub judice,* because I leave to-morrow morning on my vacation (which will be interrupted by my necessary return to Jersey City for the hearing of motions on Monday, July 28th) and the thought that counsel will be glad to hear from me the result of my determination, notwithstanding I have not prepared for filing a formal opinion in the matter.

I will advise a decree in accordance with the conclusions hereinabove expressed. The form of the decree may be presented to me for my signature on my next motion day, Monday, July 28th. If an appeal is to be had therefrom, and I am advised thereof, I will prepare and file a formal opinion.

Respectfully,

JN. J. FALLON,
Vice Chancellor.

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## Decree of Dismissal.

(Filed—July 28, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
and
MARY N. McKEE,
Defendant.

On Petition for Divorce.

This cause coming on to be heard in the presence of Thomas McNulty, solicitor and J. Emil Wal-

scheid of counsel with the petitioner; and Gross & Gross, solicitors and of counsel with the defendant, on the petition, answer and oral proofs taken in open court, whereupon and upon duly considering the said pleadings and proofs and also upon hearing and considering the arguments of counsel herein, and it appearing to the court that the petitioner herein has not sustained the truth of the allegations of the petition and is not entitled to the relief prayed for by him; it is thereupon, on this twenty-eighth day of July, 1930, on motion of Gross & Gross, solicitors and of counsel for the defendant

ORDERED, ADJUDGED AND DECREED, that the petition of the petitioner herein, be and the same is hereby dismissed. And it is further

ORDERED, ADJUDGED AND DECREED, that the petitioner pay to the defendant the costs of this suit to be taxed and also a counsel fee of $1,500.00 and that the defendant have execution therefor according to the practice of this court.

E. R. WALKER,
C.

Respectfully advised,

JOHN J. FALLON,
J. C.

## Conclusions.

(Filed—Sept. 12, 1930.)

IN CHANCERY OF NEW JERSEY.

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| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | 66/162.<br>On Petition for Divorce.<br>On Final Hearing. |

1. Petitioner alleges his wife deserted him on January 13, 1925. In October 1925 she instituted a suit against him in the New York Supreme Court for limited divorce, basing her action on the ground of extreme cruelty, and therein prayed for an allowance for her support. In January 1927 when said suit was called for hearing the parties as a result of conferences and negotiations between themselves and their respective attorneys discontinued the suit and entered into a separation agreement. The petitioner commenced the suit *sub judice* November 13, 1927. *Held*, that the period of time between October 1925 and January 1927 cannot be computed as part of the term of the defendant's alleged desertion, and because thereof the petition herein was prematurely filed.

2. 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.

3. The continued separation of a complainant who is prosecuting a suit for divorce from bed and board on the ground of alleged extreme cruelty of the defendant, cannot, during the pendency of such a suit, be held to be an obstinate desertion, nor can part or the whole of the period of the pendency of such suit be computed as part of period of desertion in a subsequent suit between the same parties for divorce on the ground of desertion. If the wife, pending her suit charging her husband with extreme cruelty, continued to cohabit with him, she would prejudice her suit. Her absence is therefore not obstinate but justifiable. In such case it is of no significance whether she succeeds or fails in her suit.

4. It is essential that the wife's suit be a true presentation of what she believes to be an actual grievance. If it be shown that it was in truth based on allegations of fact which she personally knew to be false, it is a fraud on the court, on the law and on the defendant attacked by it, and its pendency is no defense to a subsequent suit for desertion by the husband.

5. In a suit for divorce for desertion none of the time occupied by the pendency of a former proceeding for divorce by one of the parties against the other can be computed as part of the time of the desertion in the later case; and this, whether the same party is petitioner in both cases or is petitioner in the later one and defendant in the prior one, or *vice versa,* provided the first suit was *bona fide.* The peti-

tioner is obliged to sustain the burden of proof that his wife's separation from him during the period of the pendency of the New York suit was *obstinate* upon her part within the purview of our Divorce Act. All uncertainties of fact must be resolved against him.

6. In estimating the sincerity of an appeal by the petitioner to his wife for her to return again to live with him, contained in a series of letters addressed to her by him, the court necessarily proceeds upon the theory *quo animo,* and in reaching any satisfactory conclusion as to his motives, the old adage that conduct speaks louder than words must needs play an important part.

Mr. THOMAS MCNULTY, for Petitioner (Mr. J. Emil Walscheid of counsel).

Messrs. GROSS & GROSS, for Defendant.

FALLON, V. C.

I am convinced that the defendant has not wilfully, continuedly and obstinately deserted the petitioner for the term of two years within the purview of the Divorce Act, and because thereof I will advise a decree dismissing the petitioner's petition. The petitioner and defendant were married January 26, 1902, and lived together as husband and wife for a period of more than twenty-two years. Two children were born of the marriage—Margaret Hopper McKee, a daughter, now upwards of twenty-one years of age, and William Noyes McKee, a son, now upwards of nineteen years of age. The petitioner is a professor of chemical engineering in Columbia University. He is also a consulting engineer. He alleges that his wife deserted him on

January 13, 1925. I deem it unnecessary to advert herein to the facts and circumstances leading thereto. It will suffice to say that the wife considered herself aggrieved by the acts and conduct of her husband toward her, and particularly by acts and conduct immediately preceding the date of the alleged desertion. In October 1925 she instituted a suit against her husband in the New York Supreme Court for a limited divorce, basing her action on the ground of extreme cruelty, and therein prayed for an allowance for her support. Said proceeding was at issue and came on regularly for hearing in January 1927, when, as a result of conferences and negotiations between the parties themselves, and their respective attorneys, said suit was discontinued, and a "United Family Agreement" bearing date January 24, 1927 (copy of which is annexed to the defendant's answer and marked Schedule A) was entered into between said parties. Provision was made therein for the wife's support. Paragraph 3 of said agreement provides that both parties shall discuss "their family affairs and in particular the possibility of a united family at least once in each six weeks." The parties had many meetings subsequently. At the time of the alleged desertion the parties resided in New York City. Petitioner alleges that on February 25, 1925, he took up his residence in New Jersey. The defendant has questioned herein the *bona fides* of the petitioner's residence in this state. The proofs herein satisfactorily establish, in my judgment, that the petitioner has been a *bona fide* resident of New Jersey since February 25, 1925. His suit was commenced November 13, 1927. It is urged in defendant's behalf that the period of time between October 1925, when she instituted her aforesaid suit against her husband in the New York Supreme Court for a limited divorce

on the ground of extreme cruelty, and January 24, 1927, when such suit was discontinued, cannot be computed as part of the period of defendant's alleged desertion. I am in accord with the defendant in such respect. In view thereof I am of the opinion that the petition herein was prematurely filed. The New York suit interrupted the continuity of the period of the defendant's alleged desertion of the petitioner. 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. *Weigel* v. *Weigel,* 62 N. J. Eq. 677 at pp. 680, 681. The aforesaid rule of law has been declared time and again by our courts. I deem it necessary to cite only the cases of—*Close* v. *Close,* 25 N. J. Eq. 526; *English* v. *English,* 27 N. J. Eq. 579; *Black* v. *Black,* 30 N. J. Eq. 215; *Taylor* v. *Taylor,* 73 N. J. Eq. 745 and *Pinkinson* v. *Pinkinson,* 92 N. J. Eq. 669, at p. 671. In *Weigel* v. *Weigel, supra,* it was held—"The continued separation of the complainant who is prosecuting a suit for divorce from bed and board on the ground of alleged extreme cruelty of the defendant, cannot, during the pendency of such a suit, be held to be an obstinate desertion, nor can part or the whole of the period of the pendency of such suit be computed as part of period of desertion in a subsequent suit between the same parties for divorce on the ground of desertion. If the wife, pending her suit charging her husband with extreme cruelty, continued to cohabit with him, she would prejudice her suit. Her absence is therefore not obstinate but justifiable. In such case it is of no significance whether she succeeds

or fails in her suit." In the same case it was held—"It is essential that the wife's suit be a true presentation of what she believes to be an actual grievance. If it be shown that it was in truth based on allegations of fact which she personally knew to be false, it is a fraud on the court, on the law and on the defendant attacked by it, and its pendency is no defense to a subsequent suit for desertion by the husband." I do not find any proof in the case *sub judice* to warrant this court in determining Mrs. McKee's New York suit to be other than a true presentation of what she believed to be an actual grievance. In *McLaughlin* v. *McLaughlin,* 90 N. J. Eq. 322, Chancellor Walker held—"In a suit for divorce for desertion none of the time occupied by the pendency of a former proceeding for divorce by one of the parties against the other can be computed as part of the time of the desertion in the later case; and this, whether the same party is petitioner in both cases or is petitioner in the later one and defendant in the prior one, or *vice versa,* provided the first suit was *bona fide.*" See also *Von Bernuth* v. *Von Bernuth,* 76 N. J. Eq. 494 and *O'Brien* v. *O'Brien,* 6 N. J. Adv. Rep. 1300, aff'd 105 N. J. Eq. 250; 142 Atl. 900, aff'd 147 Atl. 911. The defendant's separation from her husband while proceedings at his instance were pending against her in this court does not constitute a wilful desertion in contemplation of law. Desertion is a question of intention. It is the intent which constitutes the offense. Any circumstances which render it necessary or proper that she should reside elsewhere than with her husband is a valid defense to a charge of desertion. *Marsh* v. *Marsh,* 14 N. J. Eq. 315. In the suit *sub judice* the burden is on the petitioner, in order to prove a wilful and obstinate desertion, to show affirmatively that the defendant

left of her own choice, against his will, and that she continued to stay away when it was her duty to return. And even if it were shown that the original separation was wrongful on the part of the defendant, yet the petitioner must show that he has sought, by proper steps, to bring about her return. *Wood* v. *Wood*, 62 N. J. Eq. 688. Desertion cannot be considered as obstinate on the part of one, when the separation is acquiesced in by, and entirely satisfactory to, the other, who neither entertains nor manifests any desire that the separation, nor the causes which brought it about, should cease. *Chipchase* v. *Chipchase*, 43 N. J. Eq. 549. The petitioner herein is obliged to sustain the burden of proof that his wife's separation from him during the period of the pendency of the New York suit—October 1925 to January 1927—was *obstinate* upon her part within the purview of our Divorce Act. I do not find from the proofs herein that such (obstinacy) may be regarded as the fact. As stated in *Gordon* v. *Gordon*, 89 N. J. Eq. 535 he must prove his case—and all uncertainties of fact should be resolved against him. Aside from the fact that the petition herein was prematurely filed, and that the petitioner has failed to establish the burden cast upon him of proving that the defendant wilfully, continuedly and obstinately deserted him for a period of two years, the aforesaid "United Family Agreement" is strongly indicative that the wife had not *obstinately* deserted the petitioner within the purview of the law. She certainly did not keep herself aloof from him during the period of their separation. She met him on occasions when he expressed a desire to meet her, and he was thus afforded ample opportunity to manifest to her that he was sincerely desirous of having her return again to live with him. An unmistakable manifes-

tation of affection and kindness to his wife and an indication to her of sorrow and repentance for alleviation of the grievances alleged by her, some of which, even though they may not in fact be matrimonial offenses, are corroborated by the daughter and other witnesses in the wife's behalf, would, in my judgment, have effected a reconciliation between the parties. Notwithstanding the great number of letters written by the petitioner to his wife, in many of which he invited his wife to return to live with him, it is manifest to me that a smack of insincerity permeated the entire activities of the petitioner. Throughout the several days of the hearing of the cause during which the petitioner testified I carefully observed his mannerism in testifying. He impressed me that his letter-writing, in so far as it contained requests for his wife to return to live with him, was the result of a studied purpose on his part—not really to have his wife return to live with him but to make evidence for himself. His keeping of copies of the letters which he wrote to his wife fortified my judgment in this respect. In estimating the sincerity of an appeal such as the petitioner made to his wife through a series of letters addressed to her by him, the court necessarily proceeds upon the theory *quo animo,* and in reaching any satisfactory conclusion as to his motives, the old adage that conduct speaks louder than words must needs play an important part. *Popovics* v. *Popovics,* 98 N. J. Eq. 305 at p. 352. The "United Family Agreement" entered into between the parties evidences that a final separation was not contemplated when said agreement was signed. It expressly provides that the petitioner and defendant shall meet together at least once in each six weeks with a view of reestablishing their marital relation. The defendant did not

default therein. The concluding paragraph of said agreement reads—"This agreement shall have as its minimum duration July 1, 1928." The instrument was prepared by the petitioner himself and should be construed most strongly against him. The law favors marriage and a continuation of the marriage relation. It does not favor divorce or separation. *Rinehart* v. *Rinehart*, 91 N. J. Eq. 354. The petitioner's letter-writing was not the fairest means to utilize in an endeavor to impress upon his wife his sincere desire to have her become reunited with him in matrimonial relation. In many of the letters written to his wife he inquires whether she will return *to live with him in a normal way.* Such an invitation might reasonably be regarded as an affront to a woman of such gentle character as I judge the defendant to be, having in mind my observation of her and the manner in which she deported herself while she was in attendance at court, and while testifying as a witness in her own behalf.

I will advise a decree dismissing the petition.

Dated, Hoboken, N. J., September 12, 1930.

## Substitution of Solicitor.

(Filed Sept. 25, 1930.)

IN CHANCERY OF NEW JERSEY.

66/162

Between

RALPH H. MCKEE,
Petitioner,
and
MARY N. MCKEE,
Defendant.

On Petition, &c.

I HEREBY CONSENT to the substitution of J. Emil Walscheid, Esq., as solicitor of petitioner in the above stated cause in my place and stead.

Dated, August 15th, 1930.

THOMAS MCNULTY,
Solicitor of Petitioner.

## Minutes of Hearing.

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
and
MARY N. McKEE,
Defendant.

On Petition for Divorce.

Final hearing before Hon. JOHN J. FALLON, Vice-Chancellor.

Chancery Chambers,
Jersey City, January 28, 1929.

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APPEARANCES:

MR. THOMAS McNULTY, Solicitor for Petitioner (Mr. J. Emil Walscheid, of Counsel).

MESSRS. GROSS & GROSS, Solicitors for Defendant (appearing by Mr. Leo Blumberg).

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PETITIONER'S CASE.

Mr. Walscheid: May it please the court I desire to vary the ordinary order of proof by putting on a number of witnesses who are non-residents so they may get away.

Vice-Chancellor: All right, proceed.

ARTHUR HIXSON, being sworn.

Direct Examination by Mr. Walscheid:

Q. What is your profession or occupation? A. I am a chemical engineer at Columbia University.

Q. Where do you reside? A. Leonia, New Jersey.

Q. How long have you resided in Leonia, New Jersey? A. I resided there nine years this next May.

Q. Are you acquainted with Ralph H. McKee? A. I am.

Q. How long have you known him? A. Since 1917.

Q. Where did you become acquainted with him? A. Columbia University.

Q. Is he also engaged at Columbia University? A. Yes.

Q. In what capacity? A. Professor of Chemical Engineering.

Q. You say you live in Leonia, New Jersey? A. Yes.

Q. Do you know where Professor McKee lived in 1925? A. What part of 1925?

Q. Well, did he live in Leonia during any part of the year 1925? A. He did.

Q. Do you remember when he started to live there? A. I think somewhere the last of February or the first of March.

Q. In the year 1925? A. Yes.

Q. Did you see him there? A. I did.

Q. Associate with him there? A. Yes.

Q. How did you meet him, and when and where? A. I met him going back and forth from Leonia to the college.

Q. Going to the same destination that you went to? A. Yes, sir.

Q. And returning from the University to Leonia? A. Yes, sir.

Q. How often would you meet him doing that? A. Well, once or twice a week and oftener sometimes.

Q. How long did he continue to reside in Leonia? A. I think until possibly the summer of 1926, or later.

Q. So that from the later part of February or the first of March, 1925, until the summer of 1926, he would go back and forth to Columbia University at the same time you did from Leonia? A. Usually.

Q. Did you ever see him in Leonia in the evenings? A. Yes.

Q. Where did you see him then? A. Well, I have seen him at meetings of the Mens Neighborhood Club.

Q. Are you a member of the Mens Neighborhood Club? A. I am.

Q. Were you during the period of 1925 and 1926 you testified to a member of it? A. Yes, sir.

Q. And an officer of that club? A. I was.

Q. You say you met him at the Mens Neighborhood Club? A. I did.

Q. Was he a member of the club? A. He became a member of the club, yes.

Q. About when did he become a member of the club? A. Sometime during 1925 I think. I don't know just exactly.

Q. And continued on as long as he remained in Leonia as a member? A. I think so.

Q. Did you meet him—

By the Vice-Chancellor:

Q. Where did that club meet? A. Met at the Presbyterian Church of Leonia.

By Mr. Walscheid:

Q. In Leonia? A. Yes.

Q. How frequently would it meet? A. It met monthly I think, or eight times a year.

Q. Did you attend any church in Leonia? A. I did.

Q. What church did you attend? A. Presbyterian.

Q. Do you know whether or not Professor McKee attended any church in Leonia? A. I saw him there.

Q. At the church which you attended? A. Yes, sir.

Q. How often have you seen him there? I suppose you can't tell exactly? A. I saw him there on different occasions on Sundays.

Q. During that period of time were there any other professors or officers of Columbia University residing in Leonia? A. Yes.

Q. Can you tell us approximately how many? A. I can't tell you; I don't know. Anywhere from twenty-five to thirty or forty perhaps.

Q. Were there any other college professors of any other universities residing at Leonia? A. Yes, sir.

Q. What other university?

Mr. Blumberg: I don't think it is material.

Vice-Chancellor: It is hardly material that I can see. I cannot see any harm in it.

A. New York University.

Q. About how many of those were there? A. I don't know; maybe a half dozen.

Q. Did you personally know these other college professors? A. Yes, sir.

Q. Do you know whether or not Professor McKee was acquainted with them? A. I have no definite knowledge. I presume he was.

Q. Did you have any conversation with Professor McKee before he came to Leonia as to his locating there? A. I did.

Q. Will you tell us what that conversation was?

Mr. Blumberg. I object if your honor please.

Mr. Walscheid: As to this man's state of mind. We are trying to establish that he desired to locate there, as to his state of mind as to why he came there.

Vice-Chancellor: I will sustain the objection. It is a self serving declaration and is made out of the presence of the defendant. There is no way to combat it.

Q. Did you have any discussion with him before he went to live there as to where he was to live? A. I did.

Q. Did you make any recommendations of any place to him? A. I made some suggestions.

Q. What were the suggestions that you made? A. I suggested that he get in touch with Mrs. Bennett who lives in Leonia; that she might have accommondations which he might secure.

By the Vice-Chancellor:

Q. Did you know at that time he was a married man? A. I did, yes, sir.

Q. Did you know he was not living with his wife? A. No, sir.

By Mr. Walscheid:

Q. Did you ever have any talk with Mr. McKee, or Doctor McKee, about the purchase of any property in Leonia?

Mr. Blumberg: I object.

Vice-Chancellor: I do not see the materiality of it. I do not want to shut it out if you think it is material.

Mr. Walscheid: It goes along the same lines as to this man's state of mind.

Vice-Chancellor: To show his intent to reside there?

Mr. Walscheid: Yes.

Vice-Chancellor: I will permit it subject to the objection.

Witness: He spoke to me a number of times about securing property in Leonia.

Vice-Chancellor: Try and fix the time when he spoke to you.

Witness (continuing): I can't tell definitely when it was. It was in the years I have been connected with Columbia University. He spoke about property with the idea he wanted to move there. I think one was owned by Professor Buswell.

Q. Professor Buswell's house? A. Yes.

Q. Was Professor Buswell a professor in Columbia? A. I don't know what his title was.

Q. He was connected with Columbia? A. Yes.

Q. Was he in possession of a piece of property in Leonia? A. He was.

Q. Was he leaving to go west? A. Yes, he was expected to.

Q. When was that—what year? A. It might have been 1923 or 1924.

Q. 1923 or 1924. That was before he moved out there in 1925? A. Yes.

By the Vice-Chancellor:

Q. Do you know when he did move? A. It was at the time Professor Buswell received a call to

go to the University of Illinois. I don't remember when that was.

Mr. Walscheid: He has testified he moved out there in February or March, 1925.

Q. Did you say he moved out there in February or March, 1925? A. Yes, I did.

Mr. Walscheid: He was telling you that Professor McKee moved out there and Professor Buswell who was connected with Columbia lived in Leonia up to sometime in 1923 or 1924.

Witness: I think it must have been in those years.

By Mr. Walscheid:

Q. When he received a call to go to Illinois? A. Yes.

Q. During the part of the time that we are discussing, namely, from February, 1925, to the summer of 1926, did you visit Professor McKee at his home in Leonia? Did you visit there? A. I stopped there a time or two to call to take him to a meeting or two. I don't remember having visited him.

Q. You stopped there to pick him up to take him to the club meeting? A. I think I did once or twice.

Q. Did he visit or call at your home? A. He did.

Q. Was that in the evening? A. As I remember it was.

Q. Were the calls frequent or infrequent? A. Not frequently.

Cross Examination by Mr. Blumberg:

Q. When did you first become acquainted with Doctor McKee? A. In 1917.

Q. You knew that Doctor McKee was married, did you not? A. I did.

Q. You did know that? A. He told me he was.

Q. Yet you told the Vice-Chancellor you didn't know he was married?

Vice-Chancellor: I understood him to say he did.

Q. Did you know Mrs. McKee? A. I met her several times.

Q. Where did you meet her? A. At Professor McKee's office, at a reception of the University.

Q. You never visited Doctor McKee at his home in New York did you? A. I think I was at his home once in New York.

Q. Where was his home in New York? A. I think they call it the Riverdale section.

Q. You didn't seem to recall the definite date that Doctor McKee moved out to this house in Leonia, did you? A. Well, I can't say the exact date. It was somewhere in the last of February or the first of March.

Q. What sort of a house was this that Doctor McKee lived in in Leonia? A. As far as I know it was a private residence.

Q. Were you ever in that residence? A. Never was.

Q. Never saw Doctor McKee's room in that residence? A. I don't recall being in his room.

By the Vice-Chancellor:

Q. You were never in the house? A. No.

By Mr. Blumberg:

Q. Never been in the house? A. I have been to the house but never in the house.

Q. Did you see Doctor McKee often at his house there? A. I saw him occasionally.

Q. You said on your direct examination that you called for him once or twice to take him to a meeting? A. It might have been more.

Q. It couldn't have been much more? A. It might have been three or four times. Not more than that.

Q. Was that the only occasion you had to call for Doctor McKee at his house? A. I may have stopped to take him to church.

Vice-Chancellor: Do not say that unless you are sure of it.

Witness (continuing): I am trying to the best of my knowledge. This thing is rather hazy in my mind as to whether I met him one or two times or three or four times. I know I called several times.

Q. To take him to the meetings? A. Yes; and possibly once or twice to church.

Q. This whole period is rather hazy in your mind as to the meetings with Doctor McKee? A. Not particularly so.

Q. How many times did you see Doctor McKee in the Presbyterian Church in Leonia? A. I should say at least three or four.

Q. Did you attend there regularly every Sunday? A. Not every Sunday. I do more or less regularly.

Q. Practically every Sunday? A. Yes.

Q. And yet you only saw Doctor McKee there three or four times in a period of eighteen months?

A. I saw him that many times at least. I can't tell you how many.

Q. Did Doctor McKee request you to propose him to the Men's Neighborhood Club? A. I don't recall that he did. I don't know who did propose him; whether I did or some one else. I don't remember; I may have.

Q. Did you know that Doctor McKee was living separate and apart from his wife in Leonia? A. I heard that he was living apart from her.

Q. You did hear that from Doctor McKee? A. I did.

Q. You knew Professor Buswell at Columbia University? A. I did.

Q. Is that the gentleman whose house Doctor McKee considered purchasing? A. Yes.

Q. Do you recall what year Doctor Buswell left Leonia? A. I don't recall definitely. The most definite statement I could make was when he got a call to go to the University of Illinois.

Q. You said 1923 or 1924? A. Yes.

By the Vice-Chancellor:

Q. Mr. McKee did not buy the Buswell house? A. He did not.

By Mr. Blumberg:

Q. Isn't it the fact that Doctor Buswell left Leonia in 1920? A. I can't tell you exactly.

Q. That may be the fact he left in 1920? A. It doesn't seem to me it could be as soon as that.

By the Vice-Chancellor:

Q. As a matter of fact you do not know when he left? A. I stated I did not know definitely.

Q. Do you know any more definitely it was 1923 or 1924 he left there than 1920 or 1921? A. No, I can't say I would know more definitely.

By Mr. Blumberg:

Q. It is quite likely he might have left in 1920?

Vice-Chancellor: That is just as objectionable as the matters he mentioned a moment ago. Why mention it?

Mr. Blumberg: We will show it was in 1920.

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CLARA E. BENNETT, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live Mrs. Bennett? A. 490 Broad Avenue, Leonia, New Jersey.

Q. How long have you lived there? A. I lived in that house nine years. Previous to that I lived for fifteen years on Park Avenue.

Q. In Leonia? A. In Leonia.

Q. Do you know Doctor McKee? A. I do.

Q. How long have you known him? A. Since sometime during February, 1925.

Q. How did you become acquainted with him? A. He came to my house to ask for a room.

Q. Anything else? A. I didn't have a room and I sent him to a party to see if he could get a room there.

Q. Where did you send him to? A. Mrs. Wragge.

Q. Where was she located? A. On Christie Heights Street.

Q. How far away is that from you? A. About a block and a half.

Q. Is Mrs. Wragge here? A. She is.

Q. After that did you see Mr. McKee after you sent him to Mrs. Wragge? A. I did. He took his dinner and breakfast at my house.

Q. By dinner, you mean the evening meal? A. Yes, the evening meal.

Q. And that commenced when? When did he first start to take his breakfast and dinner at your house? A. About the last part of February.

Q. How long did that continue? A. That continued except for some week ends and a short period during the summer until I think about the first of October, 1926.

Q. What time in the morning did he take his breakfast? A. He would take his breakfast between eight and nine. I think about eight o'clock or a quarter after.

Q. And his dinner? A. We served dinner from 6:15 until 7.

Q. And during that time you knew where he was living? A. He was living at Mrs. Wragge's.

Q. During that time was he visited by any members of his family? A. He was. He was visited by his son several times and a sister and a man, I believe a brother.

Q. And were you introduced to them? A. I was.

Q. When you say he took his meals at your house did that include Sunday? A. Quite frequently—not always. There were some week-ends he was away.

Cross Examination by Mr. Blumberg:

Q. You have a rooming house in Leonia, I understand? A. I have.

Q. Have many boarders there? A. Oh, anywhere from ten to twelve.

Q. And you also serve meals? A. I did. I do not now.

Q. You say Doctor McKee had breakfast and dinner at your house as I understood it? A. Yes.

Q. And you say he was there every day of the week? A. He was there every day. He was there almost every morning and for dinners. Occasionally he was called out of town on business, but he always informed me when he was going and when he would be back so we would be prepared. That was a rule of my house because it was not a public dining room.

Q. Was he ever away for more than one week at a time? A. I don't recall; he may have been.

Q. Was he ever away for more than five days at a time? A. I don't recall that he was. He might have been. If it was it was not more than once or twice a week he was away.

Q. You have no record of how many meals he had in your house? A. No.

Q. Have you any copy of invoices you rendered to the doctor? A. No. It being a private place I did not present any bills or keep any records.

By the Vice-Chancellor:

Q. Did you keep a book of the number of people and the amount you received from them? A. No. It wasn't a question of bookkeeping. I never presented any bills. They always paid me when the week or time was up. It was done more in a family way.

Q. How could you determine at the end of the year if it was profitable or not? A. I had my check books.

Q. Did you keep any record at the end of the year? A. No, I had no definite record. I did it more as a family. We didn't call it a boarding

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house. I think any party living there would feel badly if you called it that.

By Mr. Blumberg:

Q. How many times did you see Doctor McKee's son? A. I don't remember.

Q. Did you see him more than five times? A. I think so.

Q. You knew he was attending school out of town? A. Naturally, because we haven't any higher school than a high school in our town.

Q. How old is Doctor McKee's son if you know? A. I have no idea. This boy was between sixteen and twenty.

Q. He didn't eat meals regularly with Doctor McKee? A. No. Whenever he was in town he came and ate meals there with his father.

Q. You testified in this case before in Jersey City? A. Yes, up at Journal Square.

Q. Have you been subpoenaed to come here today? A. Why, I don't know. I came as a witness that's all. As a matter of fact I didn't receive any subpoena. I don't think so.

Q. You say you were not subpoenaed to come here today? A. No.

By the Vice-Chancellor:

Q. Why did you come? A. I was asked to come to testify as to the meals he took at my house.

By Mr. Blumberg:

Q. Did you discuss this case with any attorney before you came? A. Absolutely not.

Q. Never discussed it? A. I know nothing about the people. I was asked to come here and state that he took his meals, which he did.

Q. Did you discuss this case with anyone since you gave your testimony last May? A. No, sir.

Q. Did you know that Mr. McKee was having matrimonial troubles? A. I did not.

Q. You did not know it? A. Absolutely no. He didn't live at my house. I asked no personal questions.

Q. Did you know that Doctor McKee's wife was living in New York? A. I did not.

Q. Did you ever inquire why Doctor McKee's wife was living in New York? A. I didn't inquire as to his wife or family. He wasn't in the house only for his meals. He came well recommended.

Q. Did you talk to him in your house? A. Occasionally about the weather. I didn't see the people only for meals.

Q. Did Doctor McKee ask you to keep a record of the fact he was boarding at your house? A. He did not.

Q. When did he leave Leonia that you know of? A. Either the last part of September or the first part of October, 1926.

Q. You have no record of that? A. No. I know it was shortly after school opened that year.

Q. Did he say where he was going? A. I understood he was going to Jersey City.

Q. Did anyone tell you where he was going?

By the Vice-Chancellor:

Q. Did he tell you? A. I don't remember whether he did or some one else in the house. He said he wouldn't be there any more he was going to Jersey City.

By Mr. Blumberg:

Q. When Doctor McKee left did he ask you to keep in mind he was having breakfast and dinner

at your house? A. No, he never suggested anything about his being there or anything.

Q. You don't know anything about the room that Doctor McKee had at Mrs. Wragge's house? A. I knew what room he had. Not while Doctor McKee was there, but I had been to the house before.

By the Vice-Chancellor:

Q. You knew about his living there only from what he or this woman told you? You didn't see him? A. I saw him at the window when I was passing. I rarely go down that street.

By Mr. Blumberg:

Q. Are you being compensated for coming here today? A. I am not.

Q. Were you compensated before? A. No.

By the Vice-Chancellor:

Q. They give you railroad fare, don't they? A. I haven't talked about it.

By Mr. Blumberg:

Q. Did you get railroad fare before when you testified? A. I came down in a car.

Q. How did you come down today. A. In an automobile.

Q. You will be compensated today? A. I don't know; it is my first experience being a witness. I was just asked if I was willing to say if he had his meals there.

Q. You can't give us any definite line as to what percentage of breakfasts Doctor McKee had at your house? A. I would say five mornings a week; possibly six.

Q. Every morning in the year? A. With the exception of one morning or two when he was out of town.

Q. He was only out of town once or twice? A. Yes, I remember it was not very often. He usually showed up for dinner, and quite often for dinner when we were not expecting him. That was a nuisance.

Q. You never saw the doctor's daughter? A. I did not. I never saw any member of his family except his son and sister and I believe a brother. I am not positive about who the gentleman was.

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LOUISE WRAGGE, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mrs. Wragge where do you live? A. 210 Christie Heights Street, Leonia.

Q. How long have you lived there? A. Twenty-five years.

Q. Own the property? A. I do.

Q. Do you know Doctor McKee? A. I do.

Q. When did you first meet him? A. The latter part of February, 1925.

Q. How did you come to meet him? A. He was sent to me for a room which I had and engaged the room.

Q. For a room at 210 Christie Heights Street, Leonia? A. Right.

Q. And he at that time engaged that room? A. Yes, sir.

Q. Did he live in it? A. He lived in it, yes, sir.

Q. From the latter part of February, 1925 until when did he live in that house? A. October, I think. It was sometime the latter part of September or the beginning of October.

Q. Of what year? A. 1926.

Q. What size room did he have? A. Fifteen feet by fifteen feet.

Q. What fittings were there in the room? A. Oh, it was a master bedroom and it was fitted up for a couple or one or two people. I have had it let to a couple since then.

Q. On which side of the house was it, the front of the house? A. Well, not exactly in the front. There is a kind of a bay-window that looks out the side.

Q. You had a bay-window there? A. Three windows.

Q. And that bay-window looked out on the side of the building? A. Yes.

Q. And from that bay-window you could also look out on the street? A. Yes.

Q. It is a detached house, isn't it? A. Oh, yes.

Q. During the period of time that you have mentioned, namely from February, 1925 to September or October 1926, did he receive his mail there? A. Oh, yes, many and different magazines—chemical magazines—and all sorts of periodicals.

Q. And you would take care of that? A. Yes, and place them in his room.

Q. Would he return and live there nightly in his room? A. Every night with the exception when he was away on business trips two or three times. He would leave word for anybody that called him to leave word at his office in Columbia.

Q. Did he receive any telephone calls there? A. Yes, occasionally.

Q. Did you meet any of the members of his family—any relatives? A. I did.

Q. Who did you meet? A. A brother, sister, aunt and his son.

Q. How frequently did you see his brother there?

A. I think his brother called there four times when he lived there.

Q. And the sister? A. She was there about three times.

A. And the son? A. The son I think was there on two or three occasions in the summer when he had his vacation.

Q. Also an aunt was there? A. Yes.

Q. How often was she there? A. She was there once.

Q. Did you know Mrs. McKee? A. I did not; no, sir.

Q. Did you know that Mr. McKee was a married man? A. Well, he was there some time when I learned that.

Q. Do you know what Mr. McKee did there during the evening when he was at home? A. As near as I know he had a radio and would be correcting papers. He was a busy man, and always quiet and had the door shut and would correct papers and things of that sort.

Q. This radio—was that a radio that belonged to the house? A. No, it belonged to him. He installed it with my son after he came there.

Q. And set it up in his room? A. Yes.

Q. Do you know whether or not the doctor went to church in Leonia? A. Oh, yes. We took him down on one occasion and brought him home on another occasion.

Q. What church? A. He went to the Presbyterian Church.

Q. Did he ever go there with his son? A. Oh, yes. It was on one of those occasions when the son was there we picked him and the son up.

Q. Now this house of yours at this address, is that in a residential section of Leonia? A. It is—restricted.

Q. Restricted residential section? A. Yes, sir.

Q. Were there other roomers in your house except Doctor McKee? A. I did. I had another nice couple, Mr. and Mrs. Clarke.

Q. That's all you had? A. At that time.

Q. Will you tell me how Doctor McKee's room was furnished? A. Oh, it was fitted up for a couple. My husband and I used to have it. My husband is dead six years.

Q. It is the room you and your husband used? A. Yes. We occupied it previous to his death.

Q. I suppose it had a double bed? A. A double bed and two closets, a dresser and two chairs.

Q. How did Doctor McKee happen to go to your place do you know? A. I believe he was recommended from one of the professors or through Mrs. Bennett.

Q. You mean Professor Frease? A. Yes, I think Professor Frease. I asked him when he came who sent him. I don't take anybody without references. I am very particular.

Q. During the time that Doctor McKee lived at your house he lived there alone, didn't he? A. Yes.

Cross Examination by Mr. Blumberg:

Q. Do you keep any records Mrs. Wragge? A. Not exactly. I don't keep records. I keep a little book you know when they pay.

Q. You do keep a record? A. Yes, when they pay.

Q. Would that book show the first time that Doctor McKee paid his rent? A. I don't know if I ever kept an account for Doctor McKee; I will tell you why. His check was there every week.

Q. You couldn't say definitely then the first week he came to Leonia, could you? A. Oh, yes.

Q. When was that? A. In February sometime; I think the last week.

Q. Did he move all his belongings up there when he came? A. He had grips and books, etc.

By the Vice-Chancellor:

Q. How do you fix the time in February, 1925? A. Well, the latter week.

Q. How do you fix that? What do you fix it upon? A. Well, I just remember that time.

Q. How do you know it wasn't in January or March? A. I know that because the way I let the room. There was a gentleman there before and I know the room was empty a month.

Q. This book you spoke about would show the name of the other man who occupied the room in January or whenever it was? A. Yes. I would know just about.

By Mr. Blumberg:

Q. Who occupied that room before Doctor McKee? A. A gentleman who went south; he was away on business. McCoy I think his name was.

By the Vice-Chancellor:

Q. How long had he lived with you? A. Not long; his business called him away. He was very sorry to leave.

By Mr. Blumberg:

Q. You say Doctor McKee's son only came there two or three times? A. Yes.

Q. And that was in the summer time? A. Yes.

Q. The summer of 1925? A. Yes, 1925.

Q. Was Doctor McKee there in Leonia during the summer of 1926? A. Oh, yes; he was there,

and would go away to his son to Ossining, I think it was.

Q. Was the son there in 1926? A. I couldn't say.

Q. Was he there in the summer of 1926? A. That I couldn't say positively.

Mr. Walscheid: Was he there in the summer of 1926?

Mr. Blumberg: In Leonia.

Witness: I couldn't say positively.

Q. Will you describe more fully the furniture that was in that bedroom that Doctor McKee occupied? A. They were mahogany pieces, and a very large rocker and a small rocker and a very large dresser.

By the Vice-Chancellor:

Q. The furnishings you had in there when you occupied the room? A. Yes, the furnishings my husband and I had when we occupied the room.

By Mr. Blumberg:

Q. He occupied only the one room? A. Yes, but the large one.

Q. All the furniture in that room was your furniture? A. It was.

Q. Doctor McKee never brought in any furniture? A. No.

Q. Positive about that? Never took any of his furniture to your house? A. No, sir.

Q. If he did take any you would know it, would you? A. I would.

Q. You say the radio he did bring over there? A. Yes, he did; it wasn't very large. It was a small one.

JOHN WRAGGE, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live Mr. Wragge? A. 210 Christie Heights Street, Leonia.

Q. How are you related to Mrs. Louise Wragge? A. Son.

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

Q. How long have you lived at 210 Christie Heights Street, Leonia? A. Practically my entire life.

Q. What is your business? A. Royal Supply Company and Parkway Garage.

Q. Where are you in business? A. 118-120 Central Avenue, Leonia.

Q. For yourself? A. Yes.

Q. Do you know Doctor McKee? A. I do.

Q. Since when have you known him? A. Since February of 1925.

Q. Where did you become acquainted with him? A. Where?

Q. Yes. A. At my home.

Q. Did Doctor McKee live at your home? A. He did.

Q. And from thenceforth how long did he live in your home? A. The early fall of 1926.

Q. Do you know what room he occupied? A. I do.

Q. What room did he occupy? A. Do you want the specific location of the room?

Q. What floor was he on? A. Second floor, east side of the house.

Q. How often would Doctor McKee be in that room? A. Practically. You mean the time of the day or the number?

Q. Would he be there continually? How often

would he be there daily? A. He would be there daily and almost nightly. He slept there.

Q. Did you ever see any members of Doctor McKee's family there? A. I did.

Q. Who did you see there? A. A son, a brother, a sister and a woman I understood to be his aunt.

Q. Did he live there alone? A. He did.

Q. Do you know whether he received any mail there? A. He did.

Q. How frequently did he receive mail? A. Almost daily.

Q. Was he home in the evenings? A. He was.

Q. During that whole period of time was he home in the evenings? A. He was.

Q. How would he spend his evenings at home? A. His room was closed; I couldn't tell. He had a radio there and would play it. Sometimes I was invited in to listen to it. He was quite busy. I know he did paper work but what it was I couldn't say.

By the Vice-Chancellor:

Q. Was you engaged in the automobile business then? A. No, not then.

Q. What time did you get home at night? A. Usually for supper.

By Mr. Walscheid:

Q. You said something about a radio. Do you know when it was installed? A. Yes.

Q. When was it installed? A. In the neghborhood of the fall of 1925. He may have been there three or four months when it was installed.

Q. Did you help with the installation of it? A. I did.

By the Vice-Chancellor:

Q. If it was three or four months after he came there it wouldn't be in the fall? A. It is somewheres about three or four months after he was there.

Q. That would be about May or June? A. That's right.

Q. Why did you say in the fall? A. I don't know just what prompted me to say that. The only reason I said the fall was probably because the radio season was coming on.

Q. How do you fix the time when Mr. McKee came to your mother's house and left there finally? A. Due to my inception in this particular business in New York prior to February. In that way I can gauge pretty accurately when he came.

Q. How do you fix the time when he left? A. Because that was just prior to my entering into the garage business, and I discussed with him the garage business.

Q. When did you enter into the garage business? A. The late fall or around December.

Cross Examination by Mr. Blumberg:

Q. When did Doctor McKee leave Leonia?

Vice-Chancellor: You mean his mother's house?

Mr. Blumberg: Yes.

Witness: The early fall of 1926.

Q. Did you visit with him after that? A. I did.

Q. Where? A. At 607 Bergen Avenue, Jersey City.

Q. What was the occasion for your seeing him there? A. A visit.

By the Vice-Chancellor:

Q. How did you come to pay the visit? Did he invite you or did you go there uninvited? A. He invited us.

Q. Was somebody else there besides you? A. Yes, my mother.

Q. When was that? A. I should say three or four months after he had left.

Q. When would that be? I am trying to find out when he left? A. The early fall I would say he left; the latter part of September or October. It was probably January or February; I know it was cold weather.

Q. Of 1927? A. Yes.

By Mr. Blumberg:

Q. How many times did you visit Doctor McKee at 607 Bergen Avenue? A. I believe once;—not more than twice.

Q. You say Doctor McKee invited you to come out there? A. He did.

Q. By 'phone or by letter? A. I don't just recall; it was through my mother. I was told we were going to Doctor McKee.

Q. And you went down with your mother? A. I did.

Q. Did you see the room he had at 607 Bergen Avenue, Jersey City? A. I did.

Q. After your visit to that place at 607 Bergen Avenue did you see Doctor McKee again? A. Yes.

Q. When? A. I saw him in Leonia.

By the Vice-Chancellor:

Q. Where in Leonia? A. I saw him in Mr. Johnson's, a resident of Leonia. I saw him on several other occasions also.

By Mr. Blumberg:

Q. When were those occasions? A. He paid us a visit probably three or four times, and outside of that I saw him.

Q. You say the door to Doctor McKee's room was closed most of the time? A. When he occupied it.

Q. How do you know he was in the room? A. If he wasn't in there it was usually opened.

Q. Is that the only way you would say he was in there? A. Yes.

By Mr. Walscheid:

Q. Did you visit Doctor McKee in that room? A. Oh, yes; at his request.

Vice-Chancellor: He said he was invited in there to listen to the radio.

Q. Do you know whether or not Doctor McKee belonged to any club in Leonia? A. I understood he did.

Q. Did you belong to the club yourself? A. No.

Q. Do you know whether Doctor McKee went to church in Leonia? A. Yes.

Q. What church did he attend? A. The Presbyterian.

Re-cross Examination by Mr. Blumberg:

Q. What church did you attend? A. Methodist.

Q. You didn't see Doctor McKee in the Presbyterian Church? A. No, but I took him there once and several times he mentioned he was going to church, and I naturally assumed he was going there. He went there at the time of the day when church was in session.

Q. You only took him there once? A. That's right.

ROBERT JOHNSTON, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mr. Johnston where do you live? A. 246 Christie Heights Street, Leonia.

Q. What is your occupation? A. I am an artist. I have spent some time in writing radio articles for newspapers.

Q. How long have you lived at 246 Christie Heights Street? A. I guess I lived there about a year and a half, but we lived in Leonia about nine years.

Q. Where did you live previous to 246 Christie Heights Street? A. I lived with Mrs. Bennett.

Q. The witness who was on the stand here this morning? A. Yes.

Q. Do you know Doctor McKee? A. I didn't know him before he came to live with Mrs. Bennett; before he came to eat with her. He lived with Mrs. Wragge.

Q. You met him while he was eating at Mrs. Bennett's? A. I had, with my wife and myself.

Q. When was that? A. The early part of March 1925.

Q. At that time did you know where he was living? A. Well, I believe I knew he was living at Wragge's.

Q. Did you after that visit Mr. McKee at Wragge's? A. Yes.

Q. Was that in the evening? A. Yes.

Q. You alone or with your wife? A. Well, both ways.

Q. Did you visit there frequently? A. Well, occasionally. We used to discuss radio and different things, and I came to see what kind of a set he had. We were talking about aerial and things of that kind and we had a lot in common.

By the Vice-Chancellor:

Q. He had the kind of a set you had to have an aerial? A. Yes; he wanted to have a good aerial and there isn't one person in ten who has a good one, so we put up a good one.

By Mr. Walscheid:

Q. What kind of an aerial did he have? A. It was put up to stay put and do the best for the set.

Q. Was it permanent? A. Oh, absolutely.

Q. Do you know how long Doctor McKee remained at Wragge's? A. Well, he stayed there I think until September 1926. We drove him with his belongings to Jersey City.

Q. Who is we? A. My wife and boy and I.

Q. Do you know where you drove him to on this occasion? A. 23 Van Reipen Avenue.

Q. In Jersey City? A. Yes.

Q. Do you know whether or not he took up his residence at 23 Van Reipen Avenue? A. He took his radio there. I have never been to see him there.

Q. Did you ever see him again after he left Leonia? A. Yes.

Q. Where? A. Well, in Leonia, in my home.

Q. Did you visit him in Jersey City? A. No, I did not.

By the Vice-Chancellor:

Q. I understood the last witness to say that after Mr. McKee went to Jersey City he met him in your home? A. Yes; but not in Jersey City.

By Mr. Walscheid:

Q. You did see Doctor McKee in your home? A. Oh, yes.

Q. Frequently? A. Well, he called on us occasionally and Mrs. Johnston invited him out to dinner. I think he only accepted that invitation once, but he has called on us when he was in Leonia.

Cross Examination by Mr. Blumberg:

Q. How many times did the doctor visit you in Leonia after he moved to Jersey City? A. I can't place it exactly; maybe three or four times. It may have been more or less.

Q. Where were you living when he visited you? A. 246 Christie Heights Street.

Q. Your own house? A. Yes.

Q. A one family house? A. Yes.

Q. On what occasion was this that John Wragge was at your house? A. He did the plumbing in our house and his being there probably had something to do with that. He didn't do the plumbing, but he supplied the heating apparatus for the house.

Q. He just happened to be there when Doctor McKee came? A. Yes; we had difficulty with it as you do in a new house.

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EUGENE A. MARKUSH, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mr. Markush, where do you live? A. 122 Jewett Avenue, Jersey City.

Q. What is your business? A. A dye manufacturer. I am Vice-President of the Pharma Chemical Corporation.

Q. Where have they their place of business? A. Bayonne.

Q. Do you know Doctor McKee? A. Very well.

Q. How long have you known him? A. Six years.

Q. How did you become acquainted with him? A. He was called in as a consulting engineer.

Q. You became acquainted with him in a business way? A. Yes.

Q. Did you afterwards become acquainted with him in a social way? A. Our relations developed in a social line.

Q. Did you ever visit Doctor McKee? A. I did.

Q. Where did you visit him? A. At his home at 607 Bergen Avenue.

Q. When you went there were you accompanied by anybody? A. Yes; sometimes alone and sometimes I was accompanied by my wife and child.

Q. This 607 Bergen Avenue is in Jersey City? A. Yes.

Q. Did he visit you? A. Yes, quite often.

Q. At your present home? A. At my present home, yes.

Q. Can you tell us what kind of room or rooms Doctor McKee has at 607 Bergen Avenue? A. It consists of a sitting room and an alcove. It is very well furnished.

By the Vice-Chancellor:

Q. A sitting room and an alcove. Any other rooms? A. No.

Q. Where is the bed? A. In the alcove.

By Mr. Walscheid:

Q. Did you ever meet any members of his family there? A. Yes; a daughter and son.

Q. Were you introduced to both of them? A. Oh, yes.

Q. And the daughter and son and father visited at your house? A. Oh, yes; a number of times.

Q. His daughter? A. His daughter too, yes.

Q. When you met the daughter and son where did you first meet them? A. I think at Doctor McKee's home. Yes, at Doctor McKee's home.

Q. Was it 607 Bergen Avenue? A. Yes, at 607 Bergen Avenue.

Q. Did you have anything to do with Doctor McKee moving to 607 Bergen Avenue? A. Yes.

Q. Will you tell us about that? A. I suggested to Doctor McKee to move to 607 Bergen Avenue.

Q. From where? A. Doctor McKee was also living in Jersey City at that time.

Q. Where? A. I couldn't tell exactly; it was near Journal Square.

Q. Do you know the name of the street? A. No.

Q. Was it 23 Van Reipen Avenue? A. Yes, it was.

Q. He was living at 23 Van Reipen Avenue? A. Yes.

Q. You suggested that he ought to move to 607 Bergen Avenue? A. Yes.

Q. Why did you make that suggestion to him? A. The widow of a friend of mine was living there and I wanted to help her along to rent her room, and I wanted to have Doctor McKee of course near to me.

Q. And 607 Bergen Avenue was nearer to you than 23 Van Reipen Avenue? A. Yes.

Q. Much nearer? A. Oh, yes; it is only a block and a half away.

Cross Examination by Mr. Blumberg:

Q. Did you know Doctor McKee in 1923? A. Yes.

Q. Where was he living at that time? A. To the best of my knowledge in Leonia.

Q. Did you ever visit him while he lived in New York? A. No, not at his home.

Q. You never met Mrs. McKee, did you? A. I did not.

Q. Did you ever visit Doctor McKee in Leonia? A. No.

Q. You did not? A. No.

Q. And the first time you did visit him was where? A. I visited him at Columbia University.

Q. I mean the first time you came to any alleged residence of the doctor. Where was the first alleged residence of the doctor that you went to? A. 607 Bergen Avenue.

By the Vice-Chancellor:

Q. You did not visit him at Van Reipen Avenue? A. I did not.

By Mr. Blumberg:

Q. And you say this house at 607 Bergen Avenue is owned by a friend of yours? A. Yes.

Q. What is her name? A. Mrs. Winter.

Q. Did Doctor McKee and his son ever have dinner in your house? A. Doctor McKee and his daughter; I am not positive about the son.

By the Vice-Chancellor:

Q. You said a moment ago Doctor McKee and his son and daughter? A. I am positive about the daughter.

By Mr. Blumberg:

Q. You are positive that Doctor McKee and his son came to your house in Jewett Avenue? A. Yes.

Q. You are not positive he had dinner there? A. I don't know.

Q. On how many occasions would you say that Doctor McKee's daughter was in your house? A. Perhaps twice.

Q. Are you sure of that?

Vice-Chancellor: He said perhaps twice.

Q. Surely once? A. Yes.

Q. Who was there on that occasion when Doctor McKee and his daughter had dinner at your house? A. My wife and myself of course. I don't know whether we had other visitors; Doctor McKee visited quite often.

Q. Was the person that owned that home at 607 Bergen Avenue there also? A. I don't know.

Vice-Chancellor: What is the purpose of asking that? Are you suggesting any indiscretion here? There is nothing in the pleadings to warrant that.

Mr. Blumberg: I think it is very important.

Q. Was Mrs. Winter there? A. I don't know.

Q. You recall the occasion of that dinner, do you not? A. Yes.

Q. You would recall who was present when that dinner took place? A. I don't know because Doctor McKee visited me quite frequently.

Q. You know that Mrs. Winter was there on that occasion? A. No.

By the Vice-Chancellor:

Q. Did Mrs. Winter ever have dinner with you when other people were there?

By Mr. Blumberg:

Q. Did Mrs. Winter have dinner at your house when Doctor McKee was there? A. Positively I do not know.

Q. Is your wife in court today? A. Yes, she's here.

Re-direct Examination by Mr. Walscheid:

Q. Mr. Markush, when was it that you first visited Doctor McKee at 607 Bergen Avenue? A. Well, it must have been the very first time—I don't know the exact day; in 1926, in October.

Q. And from thenceforth you visited there frequently? A. Very frequently, yes.

Q. And how often a week would you say? A. Perhaps two and sometimes three times, and sometimes once; but very often.

Q. Were those visits in the evenings? A. Evening, and also in the morning hours.

Q. When did you last visit there? A. Perhaps a week ago.

Q. A week ago? A. Yes.

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MARION E. WINTER, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mrs. Winter, where do you live? A. 607 Bergen Avenue.

Q. Jersey City? A. Jersey City.

Q. How long have you lived there? A. Three years.

Q. Do you rent rooms there? A. Yes, I rent part of my house.

Q. Do you know Doctor Ralph H. McKee? A. Yes, I do.

Q. When did you first meet him? A. I met him after my husband died sometime in 1925, the early part of the spring.

Q. You first met him in 1925? A. Yes, in 1925.

Q. Did he ever come to live at your house? A. What do you mean?

Q. Did Doctor McKee ever come to live at your house? A. Well, yes, he rented a room in 1926; sometime in October.

Q. 1926? A. Yes.

Q. Does he still live in that room? A. Yes, he still lives there.

Q. And has he lived there continuously since that date? A. He does.

Q. Will you describe the room you rented to him? A. He has a sitting room with four windows, measuring 15x15, with an alcove with a window on the side, and he also rents a room for his daughter. She spends half time—a little less than half of the time with him.

Q. Where is his daughter's room as compared to his own? A. It is in the back part of the house on the same floor.

Q. So that you see much of his daughter, do you? A. Oh, yes; and his son.

Q. And the son also? A. And the son also lives there when he is on his vacation; he occupies a room with Doctor McKee when the other rooms are taken. Most of the time they are taken.

Q. In other words when the house is full he rooms with Doctor McKee? A. Yes.

Q. And when the house is not full does the son occupy a room himself? A. Yes, when he has a chance; but not often.

Q. Do you know whether or not Doctor McKee

receives mail? A. Yes; five and six pieces of mail —different magazines and letters and circulars.

Q. Do you know whether or not be receives telephone calls? A. Yes.

Q. Has he a radio installed in his room? A. Yes, he has.

Q. Has he had that there all the time he lived there? A. The son brought him a loud speaker the first visit he was there.

Q. Before that did he have another loud speaker? A. Yes, he had a small one but the son took it away.

Q. The furniture in the room, will you describe that? A. Doctor McKee owns two wicker chairs, a health machine, a radio, an electric heater, lamps. I think that's about all excepting his books and engineer's things on the table.

Q. Has he many books there? A. Quite a number; he has a bookcase full of books.

Q. Has he a desk there at which he works? A. He has a drop-leaf desk; I think it is more convenient. If he wants a table he can draw it up and if not close it down.

Q. How many chairs are in the room? A. Five.

Q. What other furniture is in the room which belongs to you? A. A dresser, a chiffonier, a book case, a bed, table, and three chairs are mine and two chairs are his.

Q. What kind of a bed, a double bed? A. Yes; he wanted it on account of his son when he is staying with him.

Q. From October, 1926, forward to the present time how frequently would you say Doctor McKee occupied that room? A. I would say almost every day excepting when he went away on business trips. Some week-ends he usually spent with his children and he always took a vacation perhaps each summer with the children, and sometimes even his daughter's friends accompanied them.

Q. These vacations that you talk about were in the summer? A. Yes.

Q. And the week-ends were in the summer? A. Yes; the week-ends were also in the summer.

Q. Did he receive any visitors in that room? A. Yes; I would say he had his brother there, Rev. Sadler and Doctor Eldridge, and a Mr. Morey, his friend, and Mr. and Mrs. Markush. Mrs. Wragge was also there.

Q. With the exception of Mrs. Wragge who lives in Leonia the other parties all live in the Bergen section? A. Yes.

Q. And this Rev. Mr. Sadler? A. Is the minister of the church Doctor McKee attends.

Q. Where is that church located? A. About three blocks from our home.

Q. Do you know Mr. George Tennant? A. Yes.

Q. Has he been a caller on Doctor McKee? A. Yes, he was, and Doctor McKee and both of his children had dinner with them—with the Tennants.

Q. Where do the Tennants live in relation to your house? A. Right next door.

Q. 609? A. No. 613. It is right next door. I don't now how the street is numbered.

Q. As to table board—would the doctor take table board? A. No, he doesn't except Sunday breakfast which he eats in his room. I prepare a tray and I take it up.

Q. That is Sunday breakfast? A. Yes; and if his children are there his children have breakfast with him.

Q. And when the children are there you take up a tray for two or three as the case may be? A. Yes; he has a good size table.

Q. Has Doctor McKee a key to your house? A. Oh, yes; and each of the children has a key also.

Cross Examination by Mr. Blumberg:

Q. Do you own this house, Mrs. Winter? A. No, I don't; I lease it.

Q. When did you lease it? A. I leased it August, 1926.

Q. When did your husband die? A. 1924, November the 23rd.

Q. Were you living in Jersey at that time? A. I lived in Stamford, Connecticut.

Q. Where did you live in Jersey City before you lived at 607 Bergen Avenue? A. I leased the house and lived there right away.

Q. Do you recall the exact date that Doctor McKee moved in? A. I am sorry I can't say; it was sometime in the middle of October.

Q. 1927? A. 1926.

Q. You rented one room only to Doctor McKee? A. At that time I rented two rooms, a sitting room and an alcove as a bedroom, and later on this son and his daughter came to live in New York; then I rented another room to Doctor McKee's daughter.

Q. How many rooms does Doctor McKee occupy now? A. A sitting room and a bedroom for his own use and Doctor McKee's daughter another bedroom. Of course they could use the living room for any callers he has.

Q. Isn't the sitting room and the bedroom really one room? A. I don't think you would call it—you could call it. It would make a very exceptional large room.

Q. There is no door to it? A. It has an arch.

Q. Just a section of the room? A. It depends on how you would take it.

Q. What rent does the doctor pay? A. Eleven dollars a week for his room.

Q. You say that some of the furniture belongs to Doctor McKee? A. Yes.

Q. When did he bring that over to your home? A. I think early in the spring. He moved it in during the winter, and the spring he—

Q. The spring of 1927? A. Yes, that would be it.

Q. Did you have dinner with Doctor McKee at Mr. Markush's house? A. Yes, I did.

Q. You were there? A. Yes; his daughter was there also.

Q. Only on one occasion? A. Yes.

Q. On how many occasions did the daughter visit him? A. Where?

Q. At 607 Bergen Avenue? A. She is there three days every week.

By the Vice-Chancellor:

Q. The daughter? A. Yes. The son is away and he spends only half of his vacation time with Doctor McKee.

By Mr. Blumberg:

Q. How long does his daughter stay? A. She is in school now. She comes in the evening and she leaves with Doctor McKee in the morning. Sometimes she is there on Sunday.

Q. Is she there evenings? Does she stay there every night? A. Yes, and she stays there during the day too.

Q. Is she there every night? A. No; I said about three times a week.

Q. Those three times a week she stays there over night? A. Yes.

Q. And you know that in the daytime she attends school? A. Yes, I know.

Q. You never testified in this case before, did you? A. I didn't testify; I gave an affidavit and I was ready to testify but the case was called off.

Q. You never testified before the Special Master in this case, did you? A. No, I didn't.

Mr. Walscheid: There are two depositions if your Honor please, Carl W. Becker and Leslie Hand, which is in the file.

Vice-Chancellor: I have here the depositions.

Mr. Walscheid: These depositions I now offer to deal with the topic of residence. Is it desirable that I should read them to your Honor?

Vice-Chancellor: No, I think not. I have to read them later myself.

Mr. Walscheid: Then I offer the depositions of Carl W. Becker and Leslie Hand at this time.

Vice-Chancellor: They need not be marked. Perhaps it has a filing mark.

Mr. McNulty: Dated December 11, 1928, being the date they were delivered to the Clerk in Chancery.

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GEORGE KIS, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Kis? A. 607 Bergen Avenue, Jersey City.

Q. What is your business or profession? A. I am a civil engineer.

Q. With whom are you connected? A. I am connected with a radio store, Lamberg Brothers, New York City.

Q. Where do you live? A. 607 Bergen Avenue, Jersey City.

Q. How long have you lived there? A. Since the first half of June, 1928.

Q. Do you know Doctor McKee? A. Yes.

Q. How long have you known the doctor? A. Since I am living there.

Q. Since June, 1928? A. Yes.

Q. Do you know any other members of his family? A. His daughter.

Q. What is her name? A. Margaret McKee, and his son, William.

Q. Where did you first meet them? A. Right there at Doctor McKee's.

Q. At 607 Bergen Avenue? A. Yes.

Q. Is that where you met Doctor McKee? A. Yes.

Q. Where was Doctor McKee living at the time you met him? A. Right there on the same floor with me.

Q. At 607 Bergen Avenue, Jersey City? A. Yes.

Q. Do you know whether or not Miss McKee has a room there? A. Yes, she has a room next to my room.

Q. Did she have that room during the whole time you lived there? A. Well, I think so; she was staying there about a couple of times every week. I don't know how regular.

Q. Do you see Doctor McKee frequently at 607? A. I see him often, but not so often as I could because I am not there, and when I come home he is mostly in his room and retired for the night. But I know just as well when he is leaving because I have to wait for the bathroom in the morning until I hear him coming out of the bathroom.

Q. How many other people live on that floor excepting you and the McKees? A. Mrs. Winter and Miss McKee, and Doctor McKee and me.

Q. That's all? A. Yes.

Q. Do you see him on Sundays? A. Yes, Sunday mornings.

Q. Do you ever see him at night time? A. Yes, often.

Q. I mean at 607 Bergen Avenue? A. Yes. Sometimes we go out together for dinner.

Q. You have gone out to dinner with him from 607? A. Yes.

Q. Alone or with anybody else? A. No, just alone.

Q. Where do you go to dinner? A. Mostly the Y. M. C. A. or the Y. W. C. A.

By the Vice-Chancellor:

Q. Do they let you in the Y. W. C. A.? A. Yes.

By Mr. Walscheid:

Q. To eat, I suppose? A. Yes.

Q. Have you visited Doctor McKee in his room? A. Several times.

Q. In the evening? A. Mostly in the evening when he is home.

Cross Examination by Mr. Blumberg:

Q. Are you here under subpoena?

By the Vice-Chancellor:

Q. Were you asked to come here or were you served with a paper? A. I was just asked.

By Mr. Blumberg:

Q. Doctor McKee asked you? A. Yes.

Q. Did he tell you what to testify to? A. I asked him what I should testify to.

By the Vice-Chancellor:

Q. What did he tell you? A. That I knew he is living there and that I knew him and his family.

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STEVIE MOREHOUSE, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mrs. Morehouse where do you live? A. Well, just now I live in Elizabeth, 755 Jefferson Avenue.

Q. Elizabeth, New Jersey? A. Yes.

Q. Do you know Doctor McKee? A. I do.

Q. When did you first become acquainted with him? A. Why, in January, 1927.

Q. Where did you become acquainted with him? A. At 607 Bergen Avenue, Jersey City.

Q. Did you live there? A. Beg pardon!

Q. Did you ever live there? A. Yes, I had a room there.

Q. When did you take the room there? A. About the sixteenth of January.

Q. Of what year? A. 1927.

Q. How long did you continue to live there? A. Until the latter part of April, 1927.

Q. When you moved there was Doctor McKee living there? A. He was.

Q. And during that time did you become acquainted with any members of his family? A. Yes, his son, Billy.

Q. Any others? A. No.

Q. How often did you see Billy there? A. Well, during that time I think I saw him twice; once or twice. I have seen him often since.

Q. Where? A. At 607 Bergen Avenue.

Q. Oh, you called there, have you? A. Frequently.

Q. Have you ever lived there on any other occasion? A. No, just visiting.

By the Vice-Chancellor:

Q. Who do you call to see? A. Mrs. Winter.

By Mr. Walscheid:

Q. During the time you were living there was Doctor McKee in his rooms daily? A. Yes; if I recall he was there every day with the exception I think once he was away on a week-end. I think he visited his son.

Q. You have sons of your own, have you? A. Yes.

Q. Did they meet Billy? A. Why, no; it was arranged once they should meet but something happened.

Q. It didn't come to pass? A. No, it did not; my son Herbert is about the age of Doctor McKee's son.

Q. Doctor McKee at night—how would you know he was in his room? A. Well, he has a radio and he usually turns it on, but not to such an extent you could call it a nuisance. He turned it low but you could hear it.

Q. You could hear the radio at night? A. Yes.

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RALPH H. McKEE, being sworn.

Direct Examination by Mr. Walscheid:

Q. Doctor McKee, how old are you? A. Fifty-four and a half.

Q. What is your business or occupation? A. I am a chemical engineer. I am a professor of chemical engineering in Columbia University. I am also a consulting engineer.

Q. Where do you do your engineering work? Have you any clients along that line? A. I have some regular clients along that line—the Tennessee Copper Company and the Oxford Paper Company.

Q. Where are they located? A. The Tennessee Copper Company has plants all over in the south but their office is at 61 Broadway, and I am chemical engineer for the New York office. The Oxford Paper Company has plants in Rumford, Maine; St. John, New Brunswick, and West Carrolton, Ohio. I am director of their research department.

Q. Have you any clients in Hudson County? A. I have had. At the present time I do not have.

Q. What clients have you had in Hudson County? A. I had one, the Pharma Chemical Company, of which Mr. Markush, who testified before, was vice-president, and the Pilot Laboratory, Inc., of Arlington, New Jersey, and a company manufacturing a nicotine product at Newark Junction, and a company manufacturing pyretheum extract, whose plant is at Linden, New Jersey.

Q. How long have you been connected with Columbia University? A. Since September, 1917.

Q. And always in the capacity of Professor of Chemical Engineering? A. My first title was that of associate, and after July 1, 1918, my title was Professor of Chemical Engineering.

Q. Before that time where were you? A. I lived in Ridgefield Park, New Jersey, and was at the head of the research department of the Tennessee Copper Company which had a plant at Ridgefield Park, New Jersey.

Q. Near Leonia? A. Yes, some miles from Leonia, and I had some friends in Leonia.

Q. At that time did you live in Leonia? A. In Ridgefield Park.

Q. How long did you live there? A. From March 15, 1916, to July 1, 1918, which would make it two years and a quarter.

Q. And prior to that where had you been employed? A. I had been employed as Professor of Chemistry and Chemical Engineering at the University of Maine.

Q. How long were you there? A. Seven years.

Q. When did you leave? A. I left there to go with the Tennessee Copper Company March 15, 1916.

Q. And before going to the University of Maine where had you been? A. I was Professor of Chemistry at Lake Forest University, Illinois. I was there for nine years, having the title of instructor ~~at first~~.

Q. When did you leave there? A. September, 1909.

Q. You are a graduate of which college or institution? A. I have a number of degrees—six all told. The college is Wooster College, Wooster, Ohio.

Q. You graduated from that institution? A. I did.

Q. When? A. 1895.

Q. Any other colleges? A. I entered the University of Chicago and received a doctor's degree in 1901.

By the Vice-Chancellor:

Q. Doctor of what? A. Doctor of Philosophy. I also took some lectures in the University of Berlin in the summer of 1906. I also received an hon-

orary degree of Doctor of Laws at Carthage, Illinois.

By Mr. Walscheid:

Q. Where do you live now, Doctor? A. 607 Bergen Avenue, Jersey City.

Q. How long have you lived there? A. Since about the middle of October, 1926.

Q. Can you tell the exact date when you moved to that place? A. Yes (witness refers to books).

Q. You are refreshing your recollection? A. Yes, by looking at a check book. I moved to 607 Bergen Avenue, I think, on October 22nd. I have here a check covering payment for one and a fraction weeks.

Q. You have a check or a check book? A. A check book.

Q. Showing that you paid rent for that period of time? A. Yes. That is the first check stub I have for payment of rent to Mrs. Winter.

By the Vice-Chancellor:

Q. Would that be payment in advance? A. Yes.

By Mr. Walscheid:

Q. Just prior to that where did you live? A. At No. 23 Van Reipen Avenue, ~~New~~ Jersey City, a house that Mrs. Margaret O'Brien was in charge of.

Q. When did you move in there? Can you give us the exact date? A. I moved in on October 6, 1926.

Q. Did you locate there from October 6, 1926, until you moved to Bergen Avenue—607 Bergen Avenue? A. I did.

Q. Have you anything to refresh your recollec-

tion as to the date when you moved in there? A. I have my check stubs showing that on October 6th I paid rent for a week and a part of a week, and a second check stub showing that I again paid rent on October 17th.

Q. And they are the only two checks that went to that Van Reipen Avenue place? A. Yes.

Q. Who moved you to the Van Reipen place? Who took you there? A. Mr. Robert Johnston.

Q. How did he take you there? A. In his automobile.

Q. Anybody else in the party? A. Yes, we had a very full automobile load, Mrs. Johnston and the son Ward.

Q. Did you have your belongings or some of your belongings in this automobile? A. I had practically all my belongings there. I didn't have quite all, but at another time I took a suit case of other stuff.

Q. Where did you come from when you moved to 23 Van Reipen Avenue? A. I came from 210 Christie Heights Street, Leonia, New Jersey, where I had been living for approximately eighteen months.

Q. Do you know when you moved to the Leonia Heights address? A. Christie Heights.

Q. Yes, I beg your pardon? A. Yes, on February 27, 1925.

Q. How do you know it was the day on which you moved in? A. I have a check stub made out to Mrs. Wragge covering rent of rooms from February 27th to March 8th.

Q. Is that the first? A. It is the first check stub I have covering payment to Mrs. Wragge.

Q. When you moved to Christie Heights Street address where did you come from? Where did you

move from? A. I moved from 39 Claremont Avenue, New York City.

Q. When you moved to the Christie Heights address did you live there continuously during the period of time you say you lived at that address? A. I did.

Q. Sleep there at night? A. Yes.

Q. Where did you take your meals during that time? A. I took my breakfast regularly with Mrs. Bennett. My dinners would be taken as regularly with Mrs. Bennett. My lunches were very largely taken as in previous years at the Faculty Club at Columbia University.

Q. Describe to us how you would spend your time beginning in the morning and concluding at night on week days at Christie Heights? You had your breakfast? A. I would rise in the morning and then go directly to—

Vice Chancellor: After you got through with your toilet.

Q. After you had your breakfast where would you go? A. To a street car in front of Mrs. Bennett's. I would take my breakfast there and go to Columbia University.

Q. By commuting? A. Yes.

Q. How would you go by trolley? A. The trolley car to the Fort Lee Ferry and either walked or took a street car to Columbia University.

Q. Which is at 118th Street and Broadway? A. Yes. My office was at 119th Street.

Q. And you would spend the day there? A. Yes, and when the day was done would often times get in touch with my friends Frease or Hixson and ask them if they were ready to go home at five o'clock, and we would go home together.

Q. Back to Leonia? A. Yes.

Q. Frease and Hixson also lived in Leonia? A. Yes. They were in the same building I was.

Q. Why did you move to Leonia? A. I have a number of friends in Leonia mostly with the University and there was a very considerable number of university people who were simply acquaintances in Leonia, and after Mrs. McKee's desertion of me on January 13th I had continued to live at 39 Claremont Avenue for some six weeks but found it annoying because people all asked me about her and our family situation, and I then had an opportunity also of subleasing my apartment.

Q. Let me interrupt you a moment! This Claremont Avenue apartment—was that in a building owned by Columbia University? A. Yes.

Q. Was it occupied by members of the faculty and others connected with it? A. Yes.

By the Vice-Chancellor:

Q. When did you say it was your wife deserted you? A. January 13, 1925.

By Mr. Walscheid:

Q. So you knew all the other occupants at that address on Clarement Avenue? A. Yes.

Q. Knew them socially and in a business way? A. Yes.

Q. And you said it was embarrassing to you to live there in that house alone? A. Yes, they were asking me questions on the elevator and I had no one to take care of the apartment.

Q. Going back to Leonia. When you moved to this Christie Heights address did you receive your mail there? A. I did. May I interrupt?

Q. Yes. A. There is another reason why I changed if you would like to have it, and that was that Doctor Shorlitt in conversation with him and telling him of my situation suggested to me, and also that was later confirmed similarly on the advice of Doctor McCastline, that it would be good for me if I could get away from the locality where this thing had happened and live some place where it would be quieter and I would be free from the unpleasant situation that existed at 39 Claremont Avenue.

Q. Did you give your Leonia address to Columbia University as your home address? A. Yes, I did; and they have for the last four years in the official directories of the institution from beginning in the fall of 1925 counted me as a New Jersey resident and so recorded me in the official directories.

Q. Have you any of those? A. I have the directories here.

Q. Will you turn to the pages where you are thus recorded beginning with 1925? A. In the 1925 directory on page 25 I am given as residing at No. 210 Christie Heights Avenue. It is there recorded Ave., Leonia, New Jersey.

Mr. Walscheid: I have photostatic copies of that sheet which I desire to offer in evidence.

Mr. Blumberg: I saw them before.

(Photostatic copy marked Exhibit P 1 in evidence without objection.)

Witness: In 1926 on page 24 the college again has me recorded as living at 210 Christie Heights Avenue, Leonia, New Jersey.

Q. Is that a photostatic copy of that record? A. It is.

Vice-Chancellor: Any objection to it?

Mr. Blumberg: I think it is a self serving declaration but I have no objection.

(Photostatic copy marked Exhibit P 2 in evidence.)

Witness: In the 1927 directory on page 27 Columbia University has me recorded as living at 607 Bergen Avenue, Jersey City, and this is a photostatic copy of that page.

Mr. Walscheid: I offer it in evidence.

(Photostatic copy marked Exhibit P 3 in evidence without objection.)

Witness: In the 1928-1929 directory on page 32 Columbia University has me recorded as living at 607 Bergen Avenue, Jersey City, and this is a photostatic copy of that page.

Mr. Walscheid: Which I offer in evidence.

Vice-Chancellor: Any objection to that?

Mr. Blumberg: May I see the directory itself?

Mr. Walscheid: Yes (handing counsel directory).

Mr. Blumberg: No objection.

(Photostatic copy marked Exhibit P 4 in evidence.)

Q. And did you during the course of years from 1926 upward receive your official notification from Columbia University at the several addresses shown upon these exhibits? A. Yes.

By the Vice-Chancellor:

Q. Is Mrs. O'Brien in court—with whom you lived on Van Reipen Avenue? A. No. I have not been able to find her. She has moved.

By Mr. Walscheid:

Q. While you were at Leonia did you take part in the social activities of the community? A. I did.

Q. In what way? A. I went to see friends and friends came to see me. I was a member of a civic club, the Neighborhood Club, and I attended church.

Q. What church did you attend? A. The Presbyterian Church, which is the church which I have normally attended all my life.

Q. Were you visited by members of your family? A. I was.

Q. By whom? A. By my sister from Clinton, Missouri.

Q. What is her name? A. Inez L. McKee. By my brother C. R. McKee from Milwaukee, by my aunt Miss Clara Ricketts from Finlay, Ohio, and my son lived with me for part of the time each year.

Q. Your son's name is what? A. William—commonly called Billy.

Q. You said the Neighborhood Club was a civic organization? A. The function of it was. The name was the Neighborhood Club.

Q. Did it take part in the political activities of the community? A. Not so much politically as the question of beautifying the town, that is, planting the shade trees along the streets and activities of that type.

Q. And you were a member of that organization? A. For a year and a half, that is, from the spring of 1925.

Q. Pay dues in it? A. Yes.

Q. Were you registered to vote? A. I was.

Q. When were you registered to vote? A. I was registered to vote in the early spring of 1926 and would have voted at the June election excepting at

that time I happened to be in Kansas City on business.

Q. Was that 1926 or 1927? Was that in 1926 or 1927? A. That was about a year after I was—

Q. About a year after you became a resident? A. Yes. That would be 1926.

Q. Did you vote? A. I did not vote in Leonia. I have voted a number of times in Jersey City.

Q. I was going to come to that later on. Did you meet any of these professors and college officers in Leonia socially? A. Oh, yes, and of course travelled to and fro with them. Professor Morse lived next door to me. Professor Hixson who testified here, I visited at his house. Professor Freese was a friend of many years' standing who had visited me in Ridgefield Park, visited me in Leonia, and a number of others as well.

Q. Prior to February 1926, and prior to the separation, both you and your wife Mrs. McKee had visited in Leonia? A. Yes.

Q. Where had you visited? A. We had visited in a house of Professor Freese. We had visited in the house of Professor Buswell whose house I considered buying, and discussed the matter with Professor Freese and Professor Hixson.

Q. And you considered buying that house while Mrs. McKee was living with you? A. Yes. That was in 1920 or possibly 1921.

Q. And did you at that time discuss with her the question of buying this house? A. I did, and also the question of leasing it with an option to buy it.

Q. But you finally did not buy it? A. That's correct.

Q. Is there any reason why? A. There were two reasons which entered into it. One was that the price—we couldn't agree perfectly on a price,

though very near, and the second was that Mrs. McKee expressed an objection to living in Leonia.

Q. And you at the time yielded to her? A. Yes.

Q. You liked Leonia? A. Oh, yes.

Q. Will you describe to us the room that you had in Leonia? A. It was a large room facing east—having several windows facing east and also one window facing north towards the street. It was on the east side of the house and projected out from the house so that it did have a window facing the street as well as the windows facing east.

Q. How was it furnished? A. A double bed, brass or metal—I believe brass, and a large dresser, a table, some four chairs, large closets, a book case part of the time—

Q. Did you have your books at Leonia? A. Partly, and partly in my office at Columbia, and while I was in Leonia I still had part of them at Claremont Avenue. I did not visit Claremont Avenue until the expiration of the lease which was originally September and was extended to December first.

Q. After September first did you bring any furniture to Leonia? A. Principally books.

Q. Was that 1925 or 1926 your lease expired? A. September, 1925.

Q. When you moved to Van Reipen Avenue why did you move there? A. I moved there principally because I was having a good deal of work to do in connection with the Pilot Laboratory Inc. of Arlington, New Jersey, and I found that Leonia, New Jersey was not a convenient place from which to reach Arlington, New Jersey.

Q. And that was the reason you moved to Jersey City? A. Yes.

Q. And to Van Reipen Avenue? A. Yes.

Q. At Van Reipen Avenue who was the pro-

prietor or operator of that house? A. Mrs. Margaret O'Brien.

Q. Will you describe the room you had there? A. I had a room about 12x13 as a sitting room, and an alcove bedroom about 6 or 7 by 12 off of it. It carried a double bed. The room had one large closet, a dresser, table and chairs and fitted up in the ordinary way of a sitting room.

Q. You had a radio installed at Leonia? A. I did.

Q. Did you also have a radio installed at Van Reipen Avenue? A. No. I started to but got it half way and thought the place was one I would not want to stay in. I notified Mrs. O'Brien and left about five or six days after.

By the Vice-Chancellor:

Q. Who recommended you to the O'Brien residence? A. I was looking in Jersey City for a place —or rather I looked in the newspapers and found an ad of one place and I went there and that place had been taken, and as I went from the place I noticed a sign out "For Rent" and I stopped in and took that place.

Q. Any checks showing the payment of rent to that person? A. Yes.

By Mr. Walscheid:

Q. You haven't the checks here today, you just have the stubs? A. I thought I did until I looked a few months ago.

Q. Are you sure you had them? A. I looked for them on Saturday.

Vice-Chancellor: We will now take a recess until two o'clock.

(Afternoon Session.)

Q. I show you a check dated October 6, 1926 drawn to the order of Margaret O'Brien for $415.00. Is that your check? A. It is.

Q. Did you hand it to Mrs. O'Brien? A. I did, in payment for room rent.

Q. And it came back to you through your bank? A. Yes.

Mr. Blumberg: I object to it.

Vice Chancellor: It can't hurt you. If he can't couple it up it won't help him. It is not particularly significant. Mr. Walscheid appreciates that he must prove the continuation of the residence in this State.

Q. At the time that you gave this check to which you referred to did you owe Mrs. O'Brien for any other thing beside rent for your room? A. No, I did not.

Mr. Walscheid: I ask it to be put in evidence.

(Check marked Exhibit P 5 in evidence.)

Vice-Chancellor: What is your objection Mr. Blumberg?

Mr. Blumberg: I think it is immaterial, self serving. It certainly does not—

Vice-Chancellor: I will receive it for what it is worth. I presume counsel will couple it up with something else.

Q. I show you a check dated October 17, 1926, drawn to the order of Mrs. O'Brien for $10.00. Was that drawn by you? A. Yes. It was to Mrs. O'Brien.

Q. For room rent? A. Yes.

Q. And it came back to you through the bank? A. It did.

Q. And that time did you owe Mrs. O'Brien for anything other than room rent? A. No. Nothing.

Q. Does that cover the full period of time for which you paid rent to Mrs. O'Brien? A. Yes.

Q. Do you know Mrs. O'Brien's signature, or do you not? A. Not exactly. I had seen it otherwise than this but I do not think I could definitely identify it.

Q. But you handed it to her personally? A. Yes.

Mr. Walscheid: I ask that be marked in evidence.

Vice-Chancellor: You object to it for the same reason?

Mr. Blumberg: Yes.

Vice-Chancellor: I will admit it for the same reason.

(Check marked Exhibit P 6 in evidence.)

Q. I notice that both of these checks Exhibits 5 and 6 are drawn upon the Ridgefield Park Trust Company at Ridgefield Park, New Jersey. When did you open that account? A. In March 1916, and I have had it continuously in that bank and its successors since. Since, the Ridgefield Park is the present name of the bank. It was formerly the First National Bank of Ridgefield Park, New Jersey.

Q. And you still carry it there? A. I still carry a checking account there.

Q. Where besides that do you bank? A. I keep a business account in Corn Exchange Bank, University Branch, New York City. The Ridgefield Park Trust Company account being what might be spoken of as my personal finances.

Q. Have you any other account in New Jersey besides that Ridgefield Park Trust Company? A. No. I have a safe deposit box in another bank in New Jersey.

Q. Where is that? A. Central Trust of New Jersey at Journal Square.

Q. Central Trust? A. Oh, no! The Trust Company of New Jersey.

Q. When you get that name you refer to what? A. To a key tag which they gave me at the time I took the box.

Q. How long have you had that box? A. Since—for about two years.

Q. During the time that you lived in New Jersey beginning with February 1925, can you tell us in a general way how you would spend your evenings? A. My business is one which requires me to do an exceptional amount of reading, and my ordinary routine is to buy a newspaper on the way home, come home, wash up, go to dinner, come back, read the newspaper for perhaps a half an hour and then go to my work which consists of reading American, English, French and German periodicals of chemical character, and also correcting papers or whatever university work may require as well as my work as a consulting chemical engineer.

Q. And while you lived in Leonia where did you do that work? A. I did that in my room at No. 210 Christie Heights Street, Leonia.

Q. In the evenings? A. Yes, in the evenings.

Q. And when you lived in Van Reipen Place where did you do that work? A. I did that work there too. I may add that in Leonia—and at 607 Bergen Avenue, Jersey City, I ordinarily turned my radio on in a faint way and used it as a sort of a music to accompany me in my reading.

Q. You did this same work in the evening at Van Reipen Avenue? A. Yes.

Q. And you also did it in the evening at 607 Bergen Avenue? A. Yes.

Q. Was that your usual routine? A. Yes.

Q. You are married are you not? A. I am.

Q. When were you married? A. June 26, 1902.

Q. Before going into that topic— You said something about voting from the Bergen Avenue residence. Do you remember when you voted from the Bergen Avenue residence? A. I voted both at Primary and General Elections. I have voted I think three times besides registering.

By the Vice-Chancellor:

Q. You made returns to the United States Government in the way of a federal income tax? A. I did.

Q. In what district did you make those returns? A. Through the Newark branch of the Federal Income Tax Bureau.

Q. Since what time? A. March 1926. I reported for 1925 and each year since then.

Q. Did you ever make returns through the New York District? A. Not for Federal. Yes, I did for Federal, but I make my returns to the State as a non-resident. Before that as a resident.

By Mr. Walscheid:

Q. You did that since 1926? A. Yes, since 1926.

Q. You have made returns in New York as a non-resident? A. Yes.

Q. And since 1926 you have made returns to the United States Government through the Newark District? A. Yes. I have if you care for them exhibits which might be used in that connection.

Q. Let's see what you have? (Witness hands papers to counsel.)

Vice-Chancellor: Show them to counsel and see if he has any objection to them.

Q. I show you a photostatic copy of a certificate issued by Charles F. Stoebling, Clerk of the Hudson County Board of Elections. Did you receive that? A. I received the original of that and had a photostatic copy made.

Q. What date is that? A. It is dated February 16, 1927, stating that I voted on November 8th—No, this is dated February 16, 1928, stating that I voted on November 8, 1927, ballot No. 9.

Q. In the 17th Election District of the 9th Ward of Jersey City? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Photostatic copy of certificate marked Exhibit P-7 in evidence without objection.)

Q. I show you a photostatic copy of an envelope addressed to you at 607 Bergen Avenue, Jersey City, from the New York State Income Tax Bureau. Do you know when you received that? For what year is it? A. This is an income tax blank—this contains the income tax blank for the year 1927 to be filled out in 1928, and was sent to me by the New York State Income Tax Bureau on the basis that I was a non-resident of New York State.

Mr. Walscheid: I offer that in evidence.

(Photostatic copy of envelope marked Exhibit P-8 in evidence.)

Vice-Chancellor: No objection to these?

Mr. Blumberg: No, sir.

Q. I show you what purports to be a communication from Columbia University of the City of New York addressed to you at 210 Christie Heights Street, Leonia, New Jersey, dated February 15, 1927. Did you receive that? A. I did.

Q. When did you receive it? A. I received it

about the same date notifying me that they were notifying the Federal and State Tax Bureaus that I had received my salary of $6,000 from Columbia University, and that I was a non-resident of the State of New York.

Q. And did you receive that at the address given—210 Christie Heights Street, Leonia, New Jersey? A. I did.

Mr. Walscheid: I offer that in evidence.

(Communication marked Exhibit P 9 in evidence without objection.)

Q. I show you a similar communication from Columbia University of the City of New York dated February 18, 1928, addressed to you at 607 Bergen Avenue, Jersey City, in re State Income Tax of the State of New York. Did you receive that? A. I did—about that date February 18, 1928.

Q. And did you receive it at that address 607 Bergen Avenue, Jersey City? A. Yes.

Q. I suppose you received it through the mail? A. I did.

Q. As was Exhibit P 9? A. I did.

Mr. Walscheid: I offer that in evidence.

(Communication marked Exhibit P 10 in evidence without objection.)

Q. You were married when? A. June 26, ~~1926~~ 1907.

Q. And whom did you then marry? A. Mary Coyle Noyes.

Q. Where were you married? A. Carthage, Illinois.

Q. By whom? A. Rev. S. H. Hyde.

Q. Have you a certificate of marriage? A. No, I do not have, but there was one.

Mr. Blumberg: We admit the marriage.

Q. Any children born of the marriage? A. Yes, two. Margaret McKee—

Q. When was she born? A. June 13, 1908, and William McKee.

Q. Born when? A. July 26, 1910.

Q. How old is your wife by the way? A. She is now fifty-one and a half years old.

Q. After your marriage I suppose your wife was happy for a period of time, was she? A. For a period of time.

Q. Until when? A. I should say quite happy until about 1909 or 1910. Something developed, and then it quieted down, and in 1920 and 1921 there were other troubles of a more severe character, but things went along in a moderate way until she deserted me in 1925—January 13th.

Q. In 1924 and up to—beginning with January 1, 1924, where were you living then? A. At 854 West ~~108~~ 180th Street until about the last of March, 1924.

Q. And where did you move to from there? A. In about the last of March, 1924, moved to 39 Claremont Avenue a university owned apartment only a block from Columbia University.

Q. And there you took a lease of the apartment? A. Yes.

Q. For how long a period of time? A. The University only leases from year to year, but it is understood that it is a lease as long as one wants to stay.

Q. In other words you took a lease for a year and continued to hold from year to year thereafter? A. Excepting their leases were the first of October. So the first year I only had a lease from the first of April to the first of October, and the

second year from the first of October to the first of October.

Q. And you continued to live at that place until February 27, 1927? A. Yes.

Q. Tell us in your own way if you will of your life with your wife in that apartment? A. Which apartment?

Q. The Claremont Avenue apartment? A. I was telephoned to by the chairman of the University Committee of Buildings and told there was an apartment vacant. I had been an applicant for a number of years for such an apartment, and I went over to see the apartment and did not that first day succeed in seeing the apartment itself but I saw one which was a duplicate of it on the 8th floor, whereas this apartment was on the 10th floor. I telephoned Mrs. McGee and asked her to come down and go there with me and we went over first to the 8th floor apartment and looked it over and then a little later got in touch with the woman who had charge of the 10th floor apartment and succeeded in finding her in and went upstairs and saw that apartment.

Q. You and Mrs. McKee together? A. Yes. Then arranged for the leasing of that apartment and moved in about a week later. I was not under lease at the old place so I was free to move in.

Q. How many rooms were there in this Claremont Avenue apartment? A. Seven rooms, two baths and a hallway which is a sort of a reception room.

Q. Who all lived in the apartment when you rented it? A. When I rented it?

Q. Yes? I mean after you rented it did you and your children live there? A. Yes, the children, and for a time a maid and later the children went to school and Mrs. McKee's sister came and lived there.

Q. Now detail in your own way your life in that apartment up to the separation on January 13, 1925?

Vice-Chancellor: I would like to have that definitely stated because I note that the answer states the parties were then living together in July, 1925, because the defendant says in July, 1925, he assaulted her. Apparently somebody is wrong in their pleadings.

Witness: We were not living together in July, 1925.

Vice-Chancellor: All right; go ahead.

Q. In other words I would like you to tell your own story as to your marital affairs?

Vice-Chancellor: Especially shortly preceding this desertion.

Witness: We moved in as I said the last of March.

By the Vice-Chancellor:

Q. What year now? A. 1924. I hired the Manhattanville Van & Express Company to do the hauling and the packing of the goods necessary in their travel. Then we had quite a little bit of new work done on the apartment. The sum total of moving expenses were I think $130.00, of which $80.00 was for packing done by the other party. This is my recollection of the amount, but the total expenses were for fixing up the apartment $633.00.

By Mr. Walscheid:

Q. What I particularly desire doctor, is the story of your relations with your wife beginning at that

time so as to show the court what the relations then were?

Vice-Chancellor: I will have to find out what the cause of this desertion was.

Q. That's what I am trying to bring out, so tell it as characteristically as you can? A. I think the moving in had perhaps something to do with it because about the time we moved in—shortly thereafter, Mrs. McKee became quite dissatisfied with this apartment and criticised it very severely.

Q. What did she say? That is important? A. She said the apartment was too small, we having been previously in a nine room apartment, and this seven room apartment was too small even after the children were away to school. She discarded two beds—brass beds which we had had in the nine room apartment saying there was not enough room for them in this apartment.

Q. So you had how many bedrooms in the new apartment in use? A. Three. The fourth was not used.

Q. All right, go ahead? A. Then she urged the change of the childrens' schools from New York to out of New York—Billy having been at Barnard School—and she urged that he be transferred to another school which was done at her request, the Taft School at Watertown, Connecticut, and that Margaret be sent to Bryn Mawr College though my preference was for Barnard College which was right across the street from us and which if she had attended I would not have to pay any tuition.

Q. Did you have any difference of opinion as to the continuation of the residence in this apartment? A. Not as to continuation but rather criticism for having chosen as small an apartment as seven rooms. There was no ~~consideration of~~ objection as any other

apartment or place to move to but there was criticism of this particular apartment.

Q. Was there any criticism of you as to keeping the two children at Barnard, or was there any difference of opinion as to that? A. Not so much as the boy at Barnard. There was some, but there was a decided difference of opinion between us as to Margaret who graduated that June, from Barnard College to Bryn Mawr College because I wanted her to go to Barnard College.

By the Vice-Chancellor:

Q. Surely that wouldn't disrupt the marriage relation as to where the children were to go to school? A. It certainly did not because I acquiesced with her wishes in the matter.

Q. I am trying to find out what happened between you two people which caused a disruption of the marriage or the felicity that might be expected to be between you? A. I was on a leave of absence from Columbia University from July 1, 1924 to February 1, 1925, and a little later, that is, in October, made arrangements to go abroad in behalf of the Oxford Paper Company and for another firm with whom I had been closely associated, Badger & Sons Company in Boston.

By Mr. Walscheid:

Q. For how long a period of time were you to be away? A. Seven weeks.

Q. And did you go abroad? A. I did, on November 1st, returning on December 21st.

Q. Of what year? A. 1924.

Q. Of 1924? That is during the period of time you lived in the Claremont Avenue apartment? A. It was.

Q. Was there any discussion about the trip abroad? A. Not to amount to anything. There was a question as to whether I couldn't continue and stay longer and take her with me, but it was strictly a business trip and I had to be back—I wanted to be back when the children were home on a vacation on December 21st.

Q. Did she wish to go with you on that trip? A. She did not, and I left her ample funds.

Q. When you left did she come to see you off? A. No, she didn't come down to the pier at all or even said good-bye in the house except I said good-bye, but she did not.

By the Vice-Chancellor:

Q. Was there some trouble between you at that time? A. There was coldness between us—nothing more.

Q. What was it about? I am trying to find out what the cause of the coldness was? A. I do not know, your honor. In fact when the desertion came on January 13th following when I returned it was a complete surprise to me.

Q. The 13th or 20th? A. January 13, 1925. It was a complete surprise to me. I had not thought but that the family coldness would be removed as it had been from time to time previously.

Q. You returned on the 21st of December, did you? A. I did.

By Mr. Walscheid:

Q. On that day did your wife come to meet you? A. She did not.

Q. Did she know you were coming back? A. Yes, she knew it.

By the Vice-Chancellor:

Q. How did she know? A. I had written her. I wrote her some half dozen letters while I was abroad. I didn't receive from her any letters while I was abroad. She had my address. The children wrote me.

Q. Were you writing to her in the customary affectionate way in which a husband writes to his wife? Were they cold or not? A. They were not cold.

Q. There was no trouble between you and your wife in any respect that you could see? A. There was none.

By Mr. Walscheid:

Q. When you left what arrangements did you make with her about funds during your absence? A. I left her with $250.00 in money and I left with her some—I think $350.00 in the way of checks made out to cash to be used in case of emergency, and when I returned, though there had been no emergency, I found she had cashed all of these checks and paid none of the bills excepting those for which I had left checks made out for the particular bills.

Q. In other words when you left you made out checks to pay particular bills? A. Rent particularly.

Q. What else? A. Telephone—

By the Vice-Chancellor:

Q. How much was the rent a month? A. As a university man I got it at $138.70. For an outsider it was $190.00 I think.

Q. You left checks for $350.00 did you? A. Be-

sides the rent. I left checks payable either to her or cash for $350.00.

Q. And you left $250.00 in cash? A. Yes.

Q. The checks were intended for what? A. The $250.00?

Q. No, the checks? A. For any emergency that were to arise.

Q. They were not for rent? A. No, in addition to checks for the rent.

Q. You didn't say anything about checks in addition. You said $350.00 in checks and $250.00 in cash? A. Payable in cash or to Mrs. McKee.

Q. For emergency as you expressed it. You apparently left other checks, did you? A. Yes, I did.

Q. What other checks? Are they checks for rent only? A. I am quite certain there were checks for other purposes.

Q. Are you sure you left the checks for rent? A. I am certain of that.

Q. Exclusive of the $350.00 checks which you speak of? A. Yes.

By Mr. Walscheid:

Q. When you came back she didn't come to meet you? A. She did not.

Q. When did you first see her? A. When I got to the house.

Q. Did you kiss her? A. I did.

Q. Tell us what your reception was? A. I greeted her as a husband would greet his wife by kissing her and received rather—

By the Vice-Chancellor:

Q. Tell us what she said, or did? A. She practically said or did nothing. She was cold in her reception of me, and I then inquired regarding the

children and tried to—and got information as to when they would be home. I believe one of them was already home and the other one would be home the next day or two.

Q. Can you recall what the conversation was between you and her at that time? It seems to be an important affair in your life? A. I should say there was not more than three or four minutes' conversation before she went off to another part of the house.

Q. What did you say to her when you came in? A. I said, "Hello, Mary."

Q. And you kissed her? A. Yes.

Q. What did she say? A. "Hello," or some such word as that.

Q. She kissed you freely did she? A. She did not kiss me. I kissed her but she did not kiss me.

By Mr. Walscheid:

Q. Did you have any conversation as to what she had done during your absence? A. No.

Q. Why not?

By the Vice-Chancellor:

Q. You are after telling me you inquired as to the children? A. I did inquire as to when they would be home. One of them I think was home. I am not certain when they got home that day or the previous night. The other one a day later.

Q. Did you ask how the children were? A. Yes, and the responses I got were rather non-committal.

Q. What were they? A. She didn't know how they were doing in school. She thought all right, and that Margaret and Billy would be here and could tell me more about themselves in a day or so.

By Mr. Walscheid:

Q. That was on December 21st? A. Yes.
Q. Now go ahead—

By the Vice-Chancellor:

Q. What time of the day or night was it you got home to your house? A. About two o'clock in the afternoon or perhaps between one and two in the afternoon. I made inquiry if she knew anything as to what might have happened at the department of chemical engineering at Columbia University and was told she did not know anything. She had no news from there. I looked at the mail which accumulated on my desk and went over that and found a large number of bills which hadn't been paid—some 23 in fact, and later I received another bill of $600.00 which—well I am a little ahead. We went ahead and prepared for Christmas.

Q. Did you quarrel with your wife about anything that night? A. No, not at all.

Q. You say she went to another part of the apartment. What did you mean by that? A. She went out to another room.

Q. What did she say when she was going out, anything? A. Nothing. It was simply an absence of statements rather than a positive statement. Then we arranged for the Christmas celebration.

Q. On that day? A. Yes.

Q. I am trying to find out what happened that day. You got in about half past 1 or 2 o'clock. What you told us already did not take very long? A. It did not take very long.

Q. Did you remain at home that afternoon or did you go out? A. I think I remained at home all afternoon.

Q. Did you have any further talk with your wife?

A. Undoubtedly I did, but I do not recall what it was. My wife was not very demonstrative.

Q. Did you tell her about your trip to Europe? A. I did, and particularly the trip back which was a very stormy one. That afternoon we began to plan for the Christmas presents of the children.

By Mr. Walscheid:

Q. Who did? A. Mrs. McKee and myself.

Q. She took part in that? A. Yes.

By the Vice-Chancellor:

Q. Who brought up that question? How did it come about that you discussed it? A. I think I brought that up because it was only a few days from then, and I brought some Christmas presents and was unpacking my grip. I had brought some Christmas presents for each one of the family—the children and Mrs. McKee.

By Mr. Walscheid:

Q. Did you bring Mrs. McKee a present? A. Yes.

Q. Did you tell her on the 21st? A. No, I kept it until Christmas, as I recall, but I showed her the ones I bought for the children.

Q. At that time was Mrs. McKee rooming with you? A. She had not been rooming with me since about I guess, three years.

Q. Before that time? A. Yes, before that time. Probably not quite as long as that, probably two years. Since we moved into 39 Claremont Avenue there was twin beds in the room of so-called three-quarter size. I occupied one but she did not occupy the other but had generally slept with Margaret in another room. The second bed in my room was vacant.

Q. So that at least for two years prior to this Christmas you had not had sexual intercourse with your wife?

Vice-Chancellor: He didn't say that.

Witness: I had had sexual intercourse once in February and once in March, 1924, and not at all during the rest of 1924, and not at all in 1925 before she left.

Q. After she separated from you in January, 1925, did you ever again have sexual intercourse with her? A. I did not.

Q. Getting back to Christmas of 1924. Tell us about that Christmas of 1924? A. At Christmas the children were there, Billy and Margaret, Mrs. McKee and myself. We had an ordinary type of Christmas there. The children and I on a number of times went to the moving picture theatre during the Christmas week and each time she was invited to go with us and declined, and in fact she rarely went or would accept invitations to go to the moving picture theatre with us. We went possibly five or six times during that vacation period of two weeks.

Q. Wouldn't she go with you? A. No.

Q. Did you give her a present Christmas? A. Yes, I gave her a—

Q. What did you give her? A. As I recall I gave her several presents, I gave her a large bunch of gloves which I brought from Italy, and I gave her a book or two and something in the way of clothing. I have forgotten what it is now.

Q. Did you have any company before the 13th of January? A. Yes. The children left for their schools along about the 5th of January, and about the 7th of January I got a telegram from a close friend, Mr. F. B. Owen of Oklahoma, saying that he and

his wife were going to be in New York the latter part of that week and hoped to have the pleasure of seeing myself and family. I had known this man Owen for more than approximately 40 years, and I had known his wife 30 years—both close personal friends.

Q. Did they come on? A. They came on.

Q. When? A. They arrived on a Thursday or Friday which would be January 8th or 9th, and on Friday the 9th we had them for dinner in the apartment and then went to a theatre.

Q. Mrs. McKee attend the theatre with you? A. Yes, in fact she picked the theatre. The play was "Annie Dear," and after the theatre we went to an after-theatre supper and left the Owens. They went to their hotel and we came home having made an engagement with them for the next morning. The next morning we met them and went to the big jewelry house of Tiffany. It happens to be that Mr. George Kunz is vice-president of Tiffany's and a personal friend of ours, and he took us and showed us their particularly valuable jewelry.

Q. Who was in that party? A. Mrs. McKee, Mr. and Mrs. Owen and myself. We spent about two hours there and Mrs. McKee and Mrs. Owen went shopping somewhere and Mr. Owen and I went downtown as he had not been in New York before and wanted to see the town.

By the Vice-Chancellor:

Q. Mr. Kunz is the diamond expert is he not? A. Yes.

By Mr. Walscheid:

Q. While the Owens were present how did Mrs. McKee act towards you? A. Just as fine as could be.

Q. After they left did you make any advances to her? A. They left on Saturday. On Sunday I suggested to her that Sunday morning regarding taking a walk out to Riverside Park. We were only a block from Riverside Park. She said "No, I don't want to." In the afternoon I asked her to go with me to a tea given for Professor Chandler whose office I now have and whose private laboratory at Columbia University I have had for a number of years. He was about 87, and she said "No, she didn't want to go," and then in the middle of the afternoon I asked her to go walking with me again suggesting we could have a pleasant time as we were not ~~out of doors~~ during all day. She said "No, I don't want to go walking with you." She seemed a little put out that I had asked her. I then went to reading and she either read or did something else. On Monday morning I got up and matters were as they had been for the previous years. Monday evening I came home and brought the newspaper and turned on the radio and asked her if she wanted to see the newspaper and she took it and then later returned it to me, and I sat in the front of the apartment reading until it was bedtime and when bedtime came I went to bed and called her attention it was bedtime. There was no heated discussion at all. There was one thing too. On Monday morning when I got up I looked in her room. She was about dressed—

Q. What Monday was this? A. Monday morning, January 12th. I looked in her room. She was about dressed. She was putting on one shoe. I went in and put my arm around her and she backed away and said "You will not have a chance to do that again." I at the time thought she was going to keep her bedroom locked but from what I know now—from what happened the next day I put a different interpretation on it. On Tuesday morn-

ing I got up and went to the front door to get the newspaper and took the milk and put the milk in the refrigerator, and as I passed her door I—or rather Margaret's door, she was occupying that bed, and I saw that her bed had been mussed but she was not there.

Q. What time of the morning was that? A. Oh, about 7:30. I took the newspaper and went out to the front room looking for her. I was surprised she was up that early. I didn't see her and came back. Coming back through the dining room—or rather through the hall, I noticed a note on the hall table addressed to me and I picked that up and opened it, and in it was a statement—

Q. Have you that note? A. No. I have a photostatic copy of that note. The original is in the records in the undefended case in possession of Mr. Griffin.

Mr. Walscheid: It is annexed to the Master's Report.

Mr. Blumberg: I would like to see the photostatic copy of it.

Mr. Walscheid: You want to see this photostatic copy?

Mr. Blumberg: Yes, thank you.

Q. I show you a note. Is that the note you referred to? A. It is.

Q. Consisting of how many sheets? A. Consisting of a double sheet only the first page of which is written on.

Mr. Walscheid: I ask it be marked in evidence.

Vice-Chancellor: That is the note which is attached to the Master's Report in what?

Mr. Walscheid: Attached to the Master's

Report in the case of McKee v. McKee—Docket 66, page 162. The report is filed May 31, 1928, made by J. Stanley Griffin as Special Master.

Vice-Chancellor: Suppose you read that letter into the record.

Mr. Walscheid: All right. The date is January 13th.

Q. The date January 13th was written by whom? A. This paper was dated by me.

Q. The date is in pencil written by you? A. Yes.

Mr. Walscheid (reading from letter):

"Ralph: I am going to stay with Helen as your attitude towards me and your treatment of me are unbearable. You will hear from my lawyers, with whom you will kindly have any further communication. Mary." I offer in evidence the envelope upon which is written in ink the word "Ralph."

Witness: This is the envelope in which this note from Mrs. McKee was found by me on the morning of January 13th.

Q. That word "Ralph" on the envelope is in her handwriting? A. It is.

Q. And the note of course is in her handwriting? A. Yes, it is.

Mr. Blumberg: There is a notation on the note.

Vice-Chancellor: What do you mean the pencil notation?

Mr. Walscheid: Yes, there is some notations if you want them in.

Vice-Chancellor: Read them into the rec·

ord and state whether they were there when the note was originally received by Mr. McKee.

Q. In examining the note which I just offered in evidence there is some writing on the inside of it. Whose writing is that—the writing at the top of the page which reads "Jan. 13, 1925. This found on the hall table this morning on my arising about 7.45. Ralph McKee"?

By the Vice-Chancellor:

Q. Whose writing is that? A. My writing. The other writing on the note is by the court. It is 66-162 Exhibit P 3 McKee v. McKee—J. Stanley Griffin, Special Master in Chancery of New Jersey.

Mr. Walscheid: I find here a record of the marriage attached to the Master's Report which I desire to offer in evidence.

Vice-Chancellor: No objection is there?

Mr. Blumberg: No.

Vice-Chancellor: Suppose you read the gist of it.

Mr. Walscheid (reading): Certificate of record of marriage James W. Westfall, County Clerk of said County hereby certifies that Mr. Ralph Harper McKee was married to Miss Mary Coyle Noyes on the 26th day of June 1902 by S. H. Hyde, a Minister of the Gospel duly authorized to solemnize marriages by the statutes of the State of Illinois as appears by the certificate attached to the license granted therefor by the County Clerk of said County and now on file in my office. In Witness Whereof I have hereunto subscribed my name and attached the seal

of said County in my office at Carthage this 22nd day of March, A. D. 1928. James W. Westfall, County Clerk, with the seal of the County of Hancock in the State of Illinois attached.

Vice-Chancellor: There is some marks thereon.

Mr. Walscheid: This certificate bears the following: "Exhibit P 2 56-162 McKee v. McKee, J. Stanley Griffin, Special Master in Chancery of New Jersey.

Vice-Chancellor: You say 56 or 66?

Mr. Walscheid: 66 is the record. This is written however 66-162 and attached to that certificate is that record of the marriage to which he makes reference.

Vice-Chancellor: All right.

Q. When you received this note on the morning of January 13, 1925, Mrs. McKee was gone, was she? A. She was.

Q. Any of her things gone? A. Yes, her personal things and some things from the apartment.

Q. Had you noticed the absence of those things before that date? A. I had not, before.

Q. Had you any notice or intimation from her prior to that date that she was going to leave? A. I had none, but as I look back I recall certain things as having been planned for before.

Q. What were those things? A. As early as a year before, that is, along in January and February when we were living at 854 West 180th Street, she went over correspondence and old letter files destroying part and saving part and even part from my desk as well. Then her insistence during 1923, in the winter of 1923 and the spring of 1924, that I invest my money in real estate rather than

in any form of investment which would prevent—which would mean she would be able to dictate as to how it would be handled later. Then her insistence on the children going out of town to schools and her statement to me a number of times that she had consulted a lawyer as to her rights in domestic affairs, and then later her statement that she had consulted a lawyer in October relative to dentist's work which she had had done in October of which I knew nothing of until after her desertion when I received a bill for $600.00.

Q. Have you that bill? A. I have the bill but I do not know for certain whether I have it here or not. I have checks which I paid in payment of it.

Q. Here? A. Yes.

Q. When did you pay that dentist bill? A. I paid in part on time as I was able to raise the money during the year 1925.

Q. Paid it by various checks? A. About $100.00 at a time.

Q. After she left did you receive any further communications bearing upon her leaving? A. Yes, the same day I received a letter by special delivery from a firm of attorneys who said they had been retained by her and demanding that I make a settlement with her. This letter was written on January 12th though she did not desert me until January 13th.

Q. I show you a letter attached to the marriage license hereinbefore referred to and ask you if that is the letter? A. This is the letter from Hirsch, Newman & Reass of January 12, 1925.

Mr. Walscheid: I offer the letter in evidence.

Mr. Blumberg: I would like to see it.

Mr. Walscheid: Haven't you seen it?

Mr. Blumberg: No.

Mr. Walscheid: I offer the letter in evidence. Shall I read it in the record?

Vice-Chancellor: Yes.

Mr. Walscheid (reading from letter):

Letterhead of Hirsch, Newman & Reass, Counsellors at Law, 100 Broadway, New York City. Telephone Rector 1511. January 12, 1925. Mr. Ralph H. McKee, Havemeyer Hall, Columbia University, New York City. Dear Sir: We have been retained by your wife to begin an action for separation against you because of your unbearable cruelty and inhumanity and failing to properly provide for her. Before serving the papers we are writing you to give you an opportunity if you so desire to enter into a separation agreement with her which will contain adequate provision for her maintenance. If we do not hear from you by the 16th instant we will assume that you do not desire to enter into such an agreement and will commence suit against you. Very truly yours. (Signed) Hirsch, Newman & Reass. Bearing the initials in the left hand side of the paper N-L. Also bearing the endorsement 56-162 Exhibit P 4 McKee v. McKee, J. Stanley Griffin, Special Master in Chancery of New Jersey.

Q. Now, Mr. McKee, had you at any time prior to January 12, 1925, or at any other time been cruel to your wife? A. I had not.

Q. Had she ever complained to you of any cruelty of any kind? A. No.

Q. Had she ever complained to you of any lack of support? A. Yes, in the sense that she wanted a larger apartment than the 7 room apartment where

we were, and also because I would not buy a house but preferred to lease instead of buying.

Q. And in no other sense excepting the ones that you just mentioned? A. No other ones excepting those and repetition of those and items of that character.

Q. What were the arrangements in the final form prior to the separation insofar as the support of Mrs. McKee was concerned? A. I am not certain as to whether I understood your question.

Q. What were your money arrangements with her just prior to that time? A. So far as possible bills were paid by check and in addition to that at the beginning of each week I would give her an amount of money whatever she said she would want generally in payments of ten or twenty dollar bills, and sometimes before the end of the week she would ask for something more if there had been occasion to spend more than what had been planned for.

By the Vice-Chancellor:

Q. Didn't you have any arrangement with her whereby you gave her a stated sum each week for household expenses? A. Not at that time. She had had the right to check on my Ridgefield Park checking account and had that for six or eight years.

Q. How would she provide foodstuffs for the table? Where would she get that? A. From the grocer and with money which I gave her or in some cases would have it charged and the bill would come in.

Q. Then you didn't give her any money with which to run the house? You just let her contract the bills and paid them by check? A. No, I gave her approximately $50.00 a week and more if she

wanted it. Then in addition to that if she contracted any bills they were paid by check.

By Mr. Walscheid:

Q. How long had that practice been going on figuring back from the 12th of January, 1925? A. Perhaps five or six years, and before that she had an account. She had the right to check on my account.

By the Vice-Chancellor:

Q. Before that? A. Yes.

By Mr. Walscheid:

Q. How or why was the change from the checking account to the method which existed at the time of the separation? A. In June—in the spring of 1921 she spoke about taking the children to her mother to see her mother that summer. I said to her "No—let's wait until August and I will go with you and we will all go together." Nothing more was said about it. That was about March. Nothing more was said about it until about June 3rd or 4th, 1921. I came home from the University and found on her table a note saying she had taken the children and had gone to see their grandmother with them. That day the bank had called me up and asked me if it was all right to cash some rather large checks of Mrs. McKee. I told them whatever she did was all right. I discovered she had cashed a number of checks including overdrawings on the Ridgefield Park account, something probably like—I don't know the exact amount now—altogether $300.00.

Q. You mean the overdraw was that? A. No, I

think the overdraw was perhaps $125.00. At that time I wrote to her and tried to get some explanation from her as to why she had done this and couldn't get any explanation. I stopped her signature on the ~~bank~~ book. I didn't know what was going to happen. A little bit later I telegraphed her and got her to come back. She met me at my brother's place in Milwaukee, I coming from a chemical society meeting at Detroit and meeting her there at Milwaukee and bringing her and the children back.

Q. When she left to go west in June—was it in June, 1921? A. Yes.

Q. Did you know she was going? A. I had not the slightest hint of it. She stopped the milk and fired the maid we had, and all that I know of it was the note when I arrived home.

Q. Have you that note? A. Yes (producing envelope).

Vice-Chancellor: How would that be helpful Mr. Walscheid, because it clearly appears these people got along harmoniously subsequent to that?

Mr. Walscheid: I didn't intend to go into that. It just slipped in.

Q. Is that the note? A. This is the note and this is the envelope in which it came.

Vice-Chancellor: Show it to counsel.

Mr. Walscheid: Counsel has a copy of it.

Vice-Chancellor: Any objection to it going in?

Mr. Blumberg: No.

Mr. Walscheid: I offer it.

(Envelope marked P 11 in evidence. Note marked P 12 in evidence.)

Q. That note is in her writing—Exhibit P 12, and also the envelope? A. Yes.

Q. In the letter of January 13th Mrs. McKee says she is going to stay with Helen. Who is Helen? A. Her sister, Helen Noyes.

Q. Where was she living at that time? A. She was living on 70th Street.

By the Vice-Chancellor:

Q. New York City? A. Yes. I don't recall the exact number of the house on the street.

By Mr. Walscheid:

Q. After January 13th, after the receipt of this letter from this law firm, what, if anything, did you do in relation to your marital matters? A. I tried to reach Mrs. McKee on the telephone.

Q. Where? A. At her sister Helen's, and did not succeed.

Q. Did you get her sister? A. No, I did not. Her sister was working at another place so I did not expect to get her sister. Then in a day or two afterwards—I think that day, I wrote a letter to the law firm stating that this thing had come on me so sudden I did not want to discuss it with them until I had a chance to consult counsel, and that I didn't think there was a possibility of doing that for several days as I was to go out of town on a business trip the next day or the next few days, but as soon as I would return I would get in touch with them, which I did.

Q. Did you eventually see Mrs. McKee again? A. Yes.

Q. When did you next see her? A. I tried to see her. I made telephone appointments, in other ways, but did not succeed in seeing her until I saw her in the office of her counsel.

Q. Where did you try to get in touch with her? A. At her sister's residence.

Q. And did you get either her sister or Mrs. McKee on the telephone at any time? A. Yes, I got Mrs. McKee, but she did not want to discuss matters over the telephone and wouldn't see me except she would see me at her attorney's office.

Q. Did you invite her to see you alone? A. Yes.

Q. Over the telephone? A. I did.

By the Vice-Chancellor:

Q. Why didn't you call at her sister's house to see her? A. Because when I had 'phoned I could hear the telephone operator asking somebody if she was there and the indication was she was there but didn't want to talk to me, and I thought there was no chance to see her at the sister's house. Later I tried to see her but she refused to let me in her apartment.

Q. Why didn't you write her a letter? A. I think I did. Mrs. McKee has those letters and if she will let me see the file—I think I wrote her a letter within a few days. (Counsel for defendant hands to counsel for petitioner file of letters.) (Witness continuing) I wrote her at least two letters in January and possibly two or three in February as well.

Mr. Walscheid: Are these all the letters?

Mr. Blumberg: There are some more here. It would take four or five hours to read them over.

Mr. Walscheid: I don't intend to.

Vice-Chancellor: The record should show what they are.

Mr. Walscheid: There are two packages

of letters one marked in lead pencil 1925 and the other 1926.

Vice-Chancellor: He says he wrote two in January and two in February. Try and find them and refer to them. All the letters should go in evidence showing the activities of the parties towards reconciliation if they lean that way.

Mr. Walscheid: Yes.

Q. I show you a batch of letters marked 1925 and see if you can find the letters which you have reference to? A. I talked to her apparently on the 14th. Here is one letter on the 14th and another letter on February 7th.

Vice-Chancellor: Let us keep to January 14th first.

(Witness continuing) She had asked me over the 'phone to send her the bonds which I had of hers. This I did, and the letter reads—"January 14, 1925. Mrs. Ralph H. McKee c/o Miss Helen Noyes, Roosevelt Hospital (Harriman Laboratory) New York City. Enclosed find third Liberty 4½% bonds #1,582,648 and #1,582,649; also fourth Liberty 4½% bond A01125671. These belong to you. Kindly acknowledge receipt. Very truly yours, Ralph H. McKee."

By the Vice-Chancellor:

Q. That letter does not have any address to your wife which you customarily addressed her? A. It did not.

Q. What was the reason? A. It was simply a business letter in response to request for the bonds received in such a well mannered form I felt there

was no possibility of discussing things between us. I do not find the second January letter; it has apparently not been placed in here.

By Mr. Walscheid:

Q. Do you find a copy of a letter from Mrs. McKee to you? A. I do.

Q. In her handwriting? A. Yes, of date January 17th acknowledging receipt of the bonds.

Mr. Walscheid: I offer the copy of Mrs. McKee's letter.

Vice-Chancellor: How does that read?

Mr. Walscheid: "Copy. Jan. 17, 1925. Dr. Ralph H. McKee, 39 Claremont Ave. New York. I hereby acknowledge the receipt of my Third Liberty Loan 4½% bonds #1,582,648 and #1,582,649, and my Fourth Liberty Loan 4½% bond #A01125,671 which were forwarded to me. M-N-M."

By the Vice-Chancellor:

Q. That was seemingly rather unusually addressed—not customary to other letters you received? A. It is not in the customary form as later ones were.

Q. It was the same as yours. It seems too cold and brutal if I can use the expression for it? A. It was.

By Mr. Walscheid:

Q. Have you the letter which you received? A. It corresponds with the letter you have except it reads "Very truly yours, Mary M. McKee."

Q. You say there should be another January letter which is not there? A. There should be.

By the Vice-Chancellor:

Q. Have you a copy of it? A. I do not think I have; I didn't make any copy. I did this first one because it was in type.

By Mr. Walscheid:

Q. The first one you have reference to is the letter of January 14th in relation to the Liberty Bonds? A. Yes.

Q. And I suppose it was written at your place of business? A. Yes, and possibly dictated—no, I wrote it myself.

Q. Do you remember what the contents of this other January letter was? A. Yes, it was a letter as I recall—and my recollection is quite definite in the matter—a letter written about the last of January, say the 20th or 25th, saying why should we go to the trouble in this matter, the only persons who could be benefited would be the attorneys, and that the thing to do was to iron out our own troubles.

Q. How was that letter addressed? A. That letter I am quite certain would start with "Dear Mary," as almost all my letters did.

By the Vice-Chancellor:

Q. Did you receive any reply to that letter? A. I apparently did not because—I might add I did not receive replies to more than one-third or one-fourth of those I wrote. The first letter after January 17th I have is February 12th, and that apparently was in answer to one in February rather than to the one in January.

By Mr. Walscheid:

Q. Looking through this file marked 1925, do you find any letter in February? A. I find a letter of February 7th written on my letter-head.

Q. Is the letter you have just referred to in answer to the February 7th letter? A. Yes, it is.

Q. Will you read into the record the letter of February 7, 1925? A. (Witness reading) "February 7, 1925. Mrs. Mary N. McKee D2 c/o Miss Helen Noyes, Colonial Hotel, New York City. Dear Mary: Your lawyer asks that I send you some money. He did not suggest an amount. Enclosed find a check for $200.00 payable to your order. This will, I presume be sufficient to carry you until after the close of the separation agreement conferences. Very truly yours, Ralph H. McKee."

By the Vice-Chancellor:

Q. What was the reply you received to that?

By Mr. Walscheid:

Q. Is there in this file of 1925 a copy of a reply to that letter? A. There is a copy of it excepting that it is wrongly dated. My original letter was dated Hotel Colonial, February 12, 1925. The copy reads February 13, 1925.

Vice-Chancellor: That copy is contained in the 1925 file of letters which counsel for the defendant has furnished to counsel for the petitioner?

Mr. Walscheid: Yes.

Q. Now read this letter please! A. (Witness reads) "February 13, 1925. Dear Ralph. With

Mr. Reass' assistance I succeeded in cashing the check which you so kindly sent me. You asked if there were any other bills. Margaret was to have gone to see Dr. Andrews again during the holidays but did not get it done, so when she was over she went to see him and had another X-ray treatment for the wart. When Dr. Andrews looked at my hand to see if the wart treatment had been entirely effective, he saw at once that there was something wrong. He said the trouble affecting the ends of my fingers was not a temporary thing but would grow worse unless it was taken care of. I presume Margaret's bill will be sent to you and that none will be rendered for mine until the treatment is completed and will then come to me * * *. M-N-M."

By the Vice-Chancellor:

Q. The original letter which you have before you the beginning has the words "Check for $200.00" which the copy does not disclose, is that right? A. That is correct.

Q. And the concluding part of the letter says "Yours very truly, Mary Noyes McKee?" A. That is correct.

By Mr. Walscheid:

Q. Did you write her again after that? A. Yes; I wrote her—in fact I continued writing her on perhaps an average of two letters a month for the last few years—1925, 1926 and 1927. At least up to the middle of 1927.

Q. What is the next letter you remember writing to her? A. I wrote to her in March after the February letter and the last two January letters, only one of which we have here.

Q. What date is the next March letter, if you re-

member? A. The next March letter in the file is dated March 23, 1925.

Q. Now between January 14, 1925 and March 23, 1925, did you have any conferences with the lawyers of Mrs. McKee? A. I did not with them alone, but with them in her presence. I also had numerous telephone conversations with her.

Q. During the conferences did you ask her to return to you? A. I did. I do not think I so asked her in the first one, but I did in the second and in others.

By the Vice-Chancellor:

Q. Did you ever ask her in the presence of her lawyers? A. I have.

By Mr. Walscheid:

Q. You said in the first conference which you had with Hirsch, Newman & Reass you did not ask her to return? A. I do not think I asked her to return then.

Q. What did she at that time want? A. She at that time insisted that I give her two-thirds of my income which she stated was $30,000, so that would be $20,000, and that I give her entire control of the children and that I should not even have the privilege of coming and seeing them. I of course could not, because I do not make that much money, furnish that much money, and I did not consider that I should not have the privilege of having them with me approximately half of the time.

Q. At the second conference with Hirsch, Newman & Reass? A. At the second conference I suggested to her that we ought to get together as there was no occasion for disrupting the family; there was no reason why the family couldn't live to-

gether particularly on account of the children, and it would be better for her and better for me if we lived a normal married life together.

Q. What did she say to that? A. She said she couldn't consent to it; she wanted to live her own life.

By the Vice-Chancellor:

Q. What reason do you know of that she had for that statement of her's? A. I think she had found she made a mistake in ever getting married.

Q. In her answer she complains of your cruelty. Was there anything said at these conferences with the lawyers about cruelty? A. Nothing excepting that I had not provided sufficient for the family.

Q. In answer she complains of your striking her and hurting her back. Was anything like that said at the conferences in the presence of the lawyers? A. I do not recall there was anything said about that.

By Mr. Walscheid:

Q. In these conferences with her lawyers were you represented by counsel? A. Yes, Mr. John J. Kirby.

Q. On March 23rd you wrote her a letter? A. I did.

Q. Is that the letter (showing witness a letter)? A. That is the letter.

Mr. Walscheid: I offer it in evidence.

Vice-Chancellor: Let it be marked.

(Letter marked Exhibit P 13 in evidence without objection.)

Q. Will you read that letter? A. (Witness reads) "New York City, March 23, 1925. Dear

Mary: Mr. Kirby wrote me that Mr. Newman had telephoned and stated that it was evident to him that you and I could not resume our joint domicil, from the statements you had made to him. I had a conference with Mr. Kirby on Saturday and talked the matter over with him. There is no reason as I can see why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do this? Today I received another letter from Mr. Kirby stating 'Mr. Newman called me and stated that as Mrs. McKee hadn't received any money from you in several weeks, a contribution for her support would be welcome.' Though you are not treating me right in absenting yourself from our home I don't want you to suffer from lack of really needed money and am accordingly enclosing my check for $100.00 for your use. Ralph."

Q. Did you enclose a check for $100.00? A. I did.

Q. Was it cashed by her in due course? A. It was.

By the Vice-Chancellor:

Q. Did you receive a letter in reply to that? A. I did not. The next letter I received was only on April 30th and I had written several other letters making enclosures between that.

By Mr. Walscheid:

Q. What next letter do you find in this lot? A. April 6, 1925, a letter from me to my wife.

Q. Written from where? A. Written from Baltimore at the Hotel Emerson on the hotel stationery.

Q. Read it please. A. (Witness reads) "Dear Mary: I want to have a talk with you but have

thought it best to wait until after Billy returns to school. I find that apparently I am going to be down here all week instead of just to Wednesday. I will telephone you the first of the week to see when will be convenient for you. Ralph H. McKee."

Q. Did you receive any letter from her in reply to that? A. I did not.

Mr. Walscheid: I ask it be marked.

(Letter marked Exhibit P 14 in evidence without objection.)

Q. When is the next letter you find? A. April 22, 1925.

Q. Written by you to her? A. Yes, and enclosing a letter.

Q. Will you read the letter? A. (Witness reads) "April 22, 1925. Dear Mary: I tried to get you on the phone both yesterday and today but failed. Mr. Taft writes me that Billy is again in trouble and that he has again had to write to him that he is in danger of being dismissed from school. A letter from Billy today says he will be here next Monday to see Dr. Gaugh. I suggest that I meet him and take him to Dr. Gaugh's as I did once before and that you meet us at the Grand Central as before. You have been with him in his two last visits to Dr. Gaugh. I hope you have considered matters as I talked them over with you a week ago. There is no real reason why we can not agree in these matters. I am enclosing check for $100 for your use. Better change your mind and come and live right with me again. Ralph McKee."

Mr. Walscheid: I ask that this letter be marked.

(Letter marked Exhibit P 15 in evidence without objection.)

Q. Did you enclose a check in that letter to her order? A. Payable to her.

Q. And was it cashed do you know? A. It was.

Q. In that letter you say "I hope you have considered matters as I talked them over with you a week ago. There is no real reason why we can not agree in these matters." What were the matters you talked to her about the week preceding that letter? A. Coming back and living with me in joint domicile.

Q. What did she then say about going back? A. In my conference she had—

Vice-Chancellor: We are speaking about that conference.

(Witness continuing) There were at least one or two before that.

Q. In that letter you spoke of a conference about a week before? A. Primarily the question of living with me as man and wife.

Q. What had she again said regarding that offer to you? A. She didn't care to consider it.

By the Vice-Chancellor:

Q. Is that what she said? A. "I didn't care to consider it."

By Mr. Walscheid:

Q. Between this letter which is marked Exhibit P 15 and Exhibit P 14, the preceding letter, had you more than one conference with her? A. I am quite certain that I had had. I can't say I had

more than one conference, but I think I had. Of course I had one and possibly two.

Q. In this other conference, if there was such a conference preceding the one you have just mentioned, was there any talk about her coming back? A. Yes. In fact all the time there was in every conference practically until this divorce suit was filed talk about her coming back to me.

Q. Upon your part? A. Yes.

By the Vice-Chancellor:

Q. Was there talk about you and her getting together while the New York suit was pending? A. Yes.

By Mr. Walscheid:

Q. Did you receive a reply to the letter of April 22, 1925? A. A reply in part.

Q. What is the date of that reply? A. April 30, 1925.

Q. How does it read? A. It reads: "Hotel Colonial, April 30, 1925. Dear Ralph: Thank you for sending me the check for $100 which Mr. Newman was kind enough to have cashed for me. Yours very truly, Mary."

Mr. Walscheid: I offer it in evidence and desire to have it marked.

(Letter marked Exhibit P 16 in evidence without objection.)

Q. Did she meet you at the Grand Central Station when Billy came in? A. I do not recall in this case whether she did. She did in other cases I know.

By the Vice-Chancellor:

Q. This was the occasion when you were to go to Dr. Gaugh's? A. I think she did; she met me twice, and I think it was this time or a later time when I took Billy to Dr. Gaugh.

By Mr. Walscheid:

Q. That is in April, 1925. What is the next letter that you wrote her? A. The next letter that I wrote was on May 10th, according to this.

By the Vice-Chancellor:

Q. You are referring to list of letters handed you by counsel for your wife? A. Yes.

By Mr. Walscheid:

Q. That list is the list of 1925 and contains a letter under date of May 10, 1925? A. Yes.

Q. And you wrote that letter? A. I did.

Q. Where did you write it from? A. From my residence in Leonia, New Jersey, 210 Christie Heights Ave., Leonia, New Jersey.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 17 in evidence without objection.)

Q. Will you please read it? A. (Witness reads) ("210 Christie Heights Ave., Leonia, N. J., May 10, 1925. Dear Mary: Billy is still in trouble on demerits. Last week he had 28 and 30 is the limit and brings dismissal. Can you bring any pressure to bear on him that will make get to meals and classes on time? That he is always late

in whatever he does seems his biggest trouble. I haven't had a report on his studies lately. If you have send me a copy. It has been embarrassing to be around the apartment at 39 Claremont Ave. and to have to dodge questions of our mutual friends as to when you were 'coming home', etc. If I answered one way I would get you in bad and if I answered the other I would have trouble on my hands. Accordingly I have moved out here. You will recall I have always liked Leonia and indeed spoke of moving out here in 1922 when my apartment lease expired but did not because neither you nor Margaret liked the idea. I am living on the same street as Prof. Hixson and Prof. Freas and not far from them and see them often. I am next door to Prof. Morse. I don't know whether you know him or not. It is nice out here but dreary for me living in a boarding house. I wish you would do what I talked over with you at our last getting together—come and join your husband as a married woman should. Won't you?—Ralph."

Q. Did you receive a reply to that letter? A. I did not.

Q. Received no reply to the letter marked Exhibit P 17? A. I did not.

Q. When next did you write her? A. I apparently wrote her next on May 23rd, and then again on May 24th.

Mr. Walscheid: This letter of May 23rd I offer in evidence.

(Letter marked Exhibit P 18 in evidence without objection.)

Q. I ask you to read it? A. (Witness reads) "May 23, 1925"— This letter is written upon my personal stationery and the heading also reads: "Ralph H. McKee, Ph. D. Consulting Chemical

Engineer, Telephone Morningside 1400, Broadway and 117th Street, New York City.— "May 23, 1925. Mrs. Mary N. McKee, Hotel Colonial, New York City. Dear Mary: I have just received the enclosed card. You should cancel the circulation card you now have and take out one in your own name. Ralph."

Q. To what does that refer? A. It refers to the fact that she still was using the Public Library card and taking books from the New York Public Library under that name.

Q. Did you receive a reply to that? A. No.

Q. When next did you write her? A. The next letter I wrote was on May 24, 1925.

Q. And is in the file produced by counsel for the other side? A. It is.

Mr. Walscheid: I offer the letter in evidence.

(Letter marked Exhibit P 19 in evidence without objection.)

Q. Will you read it please? A. (Witness reads) "May 24, 1925. Dear Mary. I am sending by same mail a bulletin from Carthage College. They still have your address apparently as 39 Claremont Ave. Paid yesterday a hundred dollars on Brophy's bill for your work. Am enclosing check for $100. for your use. Gave Margaret the first of the week $38.95 extra for a new trunk. From what Margaret said Billy seems to be making something of an effort now. Hope he keeps it up. With love—Ralph."

Q. And did you send her a check for $100.00? A. I did.

Q. In that letter? A. I did.

Q. Did she use it? A. She did, and I have an acknowledgment from her.

Q. You say in this letter "Paid yesterday a

hundred dollars on Brophy's bill for your work." What does that refer to? A. It refers to payment of the old bill for dental work which reached me on February 1st but was for work done in October and November of 1924.

Q. And of which you had no knowledge until you received the bill? A. Yes. I had no knowledge until I received that bill for $600.00, though the dentist tells me—

Vice-Chancellor: Never mind that.

Q. You received an answer to that letter? A. I did.

Q. Is that the answer (showing witness letter)? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 20 in evidence without objection.)

Q. Will you please read that letter? A. (Witness reads) "Hotel Colonial, 81st St. & Columbus Ave., May 27, 1925. Dear Ralph. Your check for $100.00 reached me yesterday. It is of course entirely inadequate. As you know one could not possibly live on that amount—without considering the extra expenses of the children. Compare it with what you are spending for yourself. Will you kindly set a time which would be convenient, for me to have my belongings removed from the apartment—together with my share of the other furnishings? Would Tuesday June 2nd be a convenient time? Billy does seem to be improving and he may make it yet if he is allowed to continue quietly and without mental disturbance. Yours very truly—Mary Noyes McKee."

(Further hearing continued to Wednesday, January 30, 1929.)

(Continuation of Final Hearing, January 30, 1929.)

Mr. Blumberg: I have just drawn another paragraph to the answer. I don't think there is any objection to it.

Vice-Chancellor: You are asking leave to amend?

Mr. Blumberg: Yes.

Vice-Chancellor: Show it to counsel and state the purpose of it.

Mr. Blumberg: In looking over the answer I notice I didn't insert one paragraph which perhaps should be in—perhaps it would come under the allegations as I had it before. In all respects the answer is the same as originally filed excepting I have added another paragraph to paragraph 4 as follows: "That the petitioner was always supercilious and condescending in sexual relations, as well as everything else, holding that a husband could make himself as obnoxious as possible. That petitioner was inconsiderate in manner to defendant's feelings of health in this respect or any other, particularly after the petitioner and the defendant came to New York to live. That the petitioner claimed he had a right to sexual intercourse at any time he wished and that the defendant had nothing whatever to say about the matter. That the petitioner's conduct in this regard seriously affected defendant's health." I don't think there is any objection.

Mr. Walscheid: There is a great deal of objection to it.

Vice-Chancellor: I can't see much merit in it; I can't see you ought to have much objection.

Mr. Walscheid: Excepting it tells me nothing.

Vice-Chancellor: I think I will permit the amendment; it is in accord with the rest of the answer. I indicated the other day that the matters I saw set forth in that answer are not very enlightening as to what the alleged cruelty was.

Mr. Walscheid: Does your Honor think that as to this new paragraph it ought to be more specific so that we can meet it—specific as to time and acts?

Vice-Chancellor: Mr. W a l s c h e i d, the answer as I recall reading it before indicates some of these very things that are now narrated in the language just read. It indicates that the husband was not kindly disposed towards his wife in his endeavor to indulge in sexual intercourse, and that he was abrupt with her. I think too it indicates what the language just read indicates that he endeavored to manifest his desire to have sexual intercourse at times when it was pleasurable for him so to do in disregard of her rights in the matter. The nature of the other answer is such as I recall it that I do not see that that new matter can surprise the petitioner. I will permit the amendment. If during the course of the hearing anything develops that warrants the petitioner to seek further time within which to produce proofs to meet that which may have caused surprise by reason of that amendment, I will grant that privilege.

Mr. Walscheid: I would like to interrupt the examination of Doctor McKee. We are now able to produce Mrs. O'Brien and she

is here. I would like to examine her on the question of residence.

Vice-Chancellor: All right; call Mrs. O'Brien.

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MARGARET O'BRIEN, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mrs. O'Brien, where do you live? A. I live at the present time at 68 Van Reipen Avenue, Jersey City.

Q. And did you formerly live at 23 Van Reipen Avenue? A. Yes, sir.

Q. Did you live there in October, 1926? A. Yes, sir.

Q. And you know Doctor McKee who is sitting here? A. Yes, sir.

Q. And in October, 1926 were you running a boarding house at— A. No; a rooming house.

Q. At 23 Van Reipen Avenue? A. Yes, sir.

Q. Did Doctor McKee come to live with you there about October 6, 1926? A. Yes.

Q. Did he thereafter live with you in this house at 23 Van Reipen Avenue? A. Yes, in the house.

Q. How long did he continue to live there? A. Close on to three weeks.

Q. Where did he live in the house? A. He had the second floor front.

Q. He had the second floor front room did he? A. Yes.

Q. Was he there regularly during that period of time? A. Yes.

Q. Spend his evenings at home? A. Yes; as far as I know he has been there every evening.

Q. Did he pay you for the time that he lived there? A. Yes, sir; he gave me two checks.

Q. I show you Exhibit P 5 made out to the order of Mrs. Margaret O'Brien. Is that your endorsement on it? A. Yes.

Q. Did you receive that check for rent from him? A. Yes.

Q. For this room that he occupied? A. Yes.

Q. I show you Exhibit P 6 made out to the order of Margaret O'Brien for $10.00 endorsed by you. Was it cashed by you? A. Yes.

Q. Were these checks received by you in payment for the time which he lived at your house? A. Yes.

Cross Examination by Mr. Blumberg:

Q. Did you own the house at 23 Van Reipen Avenue?

Mr. Walscheid: I object to it.

A. No.

Vice-Chancellor: She said no.

Q. Were you a tenant in that house? A. I ran a rooming house, I leased it by the year.

Q. Who was the landlord? A. Mrs. Roetger.

By the Vice-Chancellor.

Q. At the time Mr. McKee was there who was the owner? A. Mrs. Roetger.

By Mr. Blumberg:

Q. How long were you there? A. I was there four years.

Q. When did you leave that house? A. The 12th of May, 1928.

Q. And went to 68 Van Reipen Avenue? A. Yes.

Q. And you lived on Van Reipen Avenue since that time? A. Yes.

Q. Who told you to come here today? A. Who told me? I was subpoenaed here.

Q. Anybody speak to you about the case? A. No.

Q. Not a word? A. No, sir.

Q. Did Doctor McKee speak to you? A. Why he called me up regarding it.

Q. Somebody did speak to you? A. Regarding coming here?

By the Vice-Chancellor:

Q. When did you hear of it? A. They have been trying to get me for a month.

Q. When did you hear, within the last few days? A. Yes.

Q. Over the 'phone? A. Yes.

Q. Who spoke to you? A. Why I couldn't tell you because I didn't answer it. I had one of my girls answer it.

Q. You said you were subpoenaed? A. Yes.

Q. Have you the subpoena with you? A. Yes.

Q. Some one asked you to come here? A. Yes.

Q. Did they tell you what you were to come here for? A. Yes.

Q. What did they say to you? A. They said I should come here to give my evidence as to Doctor McKee living with me.

Q. Is that all was said to you? A. Yes.

By Mr. Blumberg:

Q. Have you any records? A. Of what?

Q. Of the roomers of that house? A. Yes, I have a ledger.

Q. Have you a ledger showing when Doctor McKee lived at your place? A. Yes.

Q. Have you that with you? A. No, I didn't think it was necessary.

Q. Did you look at it before you came here today? A. No.

Q. Didn't you look at the ledger before you came here today? A. No, I remembered.

Q. You remembered he was there in October 1916? A. Yes.

Vice-Chancellor: If you have any doubt about it Mr. Blumberg I suppose she will let you see it.

Witness: Yes.

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RALPH H. McKEE, recalled.

Continuation of Direct Examination by Mr. Walscheid:

Q. Do you find in the files which have been produced by the other side a copy of the letter which was last referred to? A. I do; excepting that the signature is M-N-M'K-.

Q. And this copy is in the handwriting of Mrs. McKee? A. It is.

Mr. Walscheid: I offer the copy from the files as produced.

(Copy marked Exhibit P 20A in evidence without objection.)

Q. Now the last letter I spoke about was one dated May 27th. Going back to March 10, 1925, there has been a letter produced by Mr. Blumberg, dated March 10, 1924, a letter written by you. Was that really written March 10, 1925? A. I am quite

New Jersey State Library

certain that is simply an error and should be March 10, 1925, as I recall the incident referred to in the letter, communicating with Dr. Alexander, as taking place in the spring of 1925.

Mr. Walscheid: I offer the letter in evidence.

Mr. Blumberg: No objection.

(Letter marked Exhibit P 21 in evidence.)

Q. Now, returning to Exhibit P 20 and P 20A, the letter of Mrs. McKee, in that letter she says "Will you kindly set a time, which would be convenient, for me to have my belongings removed from the apartment—together with my share of the other furnishings." When you received that letter with that paragraph in it had you prior to that time had any ~~intimation~~ intention that Mrs. McKee would want to take furniture out of the apartment? A. This is the first intimation along that line that I recall.

Q. And that came immediately in response to this letter of yours sending her $100.00, did it? A. It did.

Q. Did you have any talk with her? A. I wrote her on the receipt—on the 29th on its receipt.

Q. Is that the letter? A. The letter before me is the letter to which I refer.

Q. Dated May 29th? A. It is dated May 29, 1925.

By the Vice-Chancellor:

Q. That's the letter to your wife? A. Yes.

By Mr. Walscheid:

Q. In reply to this letter of May 27th? A. It is.

Mr. Walscheid: I offer it in evidence.

Mr. Blumberg: No objection.

(Letter marked Exhibit P 22 in evidence.)

Q. Will you kindly read it? A. (Witness reads) "Leonia, N. J., May 29, 1925. Dear Mary. Yours of the 27th received. The amount I send you should not be inadequate, it is about what I spend on myself. Of course I spend additional amounts on you and each of the children, e. g. in May I spent $100 on an unexpected dental bill for you and an equal amount on Margaret. Not so much in May for Billy but more in April. Relative to going to the 39 Claremont Ave. apartment to get a lot of things I wish you wouldn't think of doing that, it seems like making our living apart permanent. Better come and join your husband and live with me again. I want you. Of course if you insist on it I will arrange for you to get the things but I can not do it June 2nd. That is just the day before commencement at Columbia and I am too busy. Also Sister Inez is coming a couple of days later for a week's visit. In other words the later part of the month would be much better, if at all. Better change your mind about wanting these things and come and lead a right and normal married life with your husband and children. Won't you? With love—Ralph."

Q. Did you receive a reply to that letter? A. I did not; I got a letter on June 8th.

Q. Is that the next time you received any letter from her? A. It was, but it was not in reply to that letter.

Q. In the interim did you see her and talk to her about not taking the furniture and not taking this step? A. I do not think I did unless I talked to

her over the telephone for a brief—just for a few minutes, but I have no recollection of having a personal conference. In fact I would be at commencement then and just thereafter was very busy.

Q. And this was just at commencement time? A. Yes; June 3rd or 4th was commencement.

Q. The next letter you received from her is dated what date? A. June 8, 1925.

Q. Is that the letter? A. This is the letter.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit 23 in evidence without objection.)

Q. Will you read it please? A. (Witness reads) "Hotel Colonial, 81st St. & Columbus Ave.—June 8, 1925. Dear Ralph: In view of Margaret's nervous condition and her needs for the summer, as well as her own wishes and other reasons, including lack of means for her maintenance, I decided to send her to Carthage, where she will have arrived by the time this reaches you. She was very much hurt by your accusations on Saturday as she has always been straight forward and truthful with you. Billy is to come to me when he comes over. There must be no interference with this plan. And please do not have anything in the apartment disturbed, nor anything belonging to us in the basement, until I can attend to them myself. You say that matters must be kept quiet in order that you may retain your position. How quiet they can be kept, as you must realize, depends upon yourself. Sincerely—Mary."

By the Vice-Chancellor:

Q. That letter would indicate there had been some correspondence between you and her between

that letter and the letter of a few moments ago? A. There might have been a telephone call, but there was a conversation of possibly along the line of Billy even before the May 27th letter.

Q. What about the accusation relating to Margaret of the Saturday preceding? There is some reference in the letter about Margaret's feelings being hurt? A. I do not recall distinctly what they were excepting that I was arguing with Margaret on the question of spending part of the time with me as well as part of the time with her mother, and that she wasn't playing fair with me.

Q. In there she said that Margaret was honorable and felt hurt? A. The statement is "She was very much hurt by your accusations on Saturday as she has always been straight forward and truthful with you." I think I have a letter from Margaret written about this same date in which she is extremely friendly to me. I think this is without basis.

Vice-Chancellor: I will have to strike that latter part out.

By Mr. Walscheid:

Q. "She was very much hurt by your accusation on Saturday as she has always been straight forward and truthful with you." Had you accused Margaret of being untruthful before? A. No; but I recall what the situation was. Mrs. McKee is not at all friendly with my sister, and I learned that Margaret was going to take this trip and talked to her on the 'phone.

Q. Going to make what trip? A. To illinois without my knowledge and she would not then see my sister, and I told her it was not a right way to treat my sister.

By the Vice-Chancellor:

Q. The letter would indicate by the time you received the letter she would be in Carthage? A. I think I learned of it before; I am not certain that that was the time.

By Mr. Walscheid:

Q. Did you reply to that letter? A. I did, on June 9, 1925.

Q. Before going into that, is there a copy of the letter of June 8th in the files? A. There is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 23A in evidence without objection.)

Q. Did you answer this letter of June 8th? A. I did, on June 9, 1925, and this is the letter that I find in the files.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 24 in evidence without objection.)

Q. Please read it! A. (Witness reads) "June 9, 1925, N. Y. City. Dear Mary: I am annoyed at your persuading Margaret to run off to Carthage without seeing her father or saying good-bye to him or even telephoning. You say that you "decided to send her to Carthage." Doing this without my knowledge and with Margaret herself planning to go to Arcadia camp and talking over these camp plans with me is almost unbelievable and most unfair to me and to Margaret. As for your suggestion that I "keep quiet in order that you may retain your position"—don't for a moment

think that I care more for my position than I do for my family. Relative to the things in the apartment if you want them come to get them sometime in the last two weeks of this month as was earlier arranged. I can probably arrange to go there with you for them almost any day after the 17th. Let me know your wishes as to which day. Ralph."

Q. You had no knowledge of your daughter going to Carthage before she went? A. No. The answer I gave to the judge a few minutes ago in which I thought I recalled her telephoning me was incorrect. I had no knowledge of that; it must have been some other time. I don't now recall regarding which the statement by Mrs. McKee was based, if it had a basis.

Q. Did you receive any reply to that letter? A. I did not.

Q. What's the next time you wrote her? A. June 19, 1925.

Q. Is that the letter? A. This letter I have in my hand is the letter I wrote to her.

Q. Produced from the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 25 in evidence without objection.)

Q. Please read it! A. (Witness reads) "June 19, 1925, New York. Dear Mary: As I wrote you some days ago I would be back and ready to go to the apartment at 39 Claremont Ave. on or after June 18th. I have tried to reach you by phone four times yesterday (4, 6 7 and 10 P. M.) and three times today (9 A. M., 12:30 and 5 P. M.) but in no case could get an answer from your room phone. Mr. & Mrs. Martin are here now but one or

both are going away next week. I have been trying to get you by phone so we could go to the apartment today, tomorrow (Saturday) or Monday. Bill and I want to go to Ossining or I would say Sunday also. On receipt of this phone me without delay and we will arrange a mutually convenient hour—unless you have changed your mind and are willing to let the apartment stand as it is. That would be better, perhaps later you will feel like coming back to me. Ralph McKee."

Q. Any reply to that letter? A. No reply.

Q. When is the next letter by you and she? A. The next letter is a letter I wrote on June 22, 1925.

Q. And in the interim did anything happen to the apartment? A. Not that I know of.

Q. Is that the letter you wrote? A. This letter from the file produced by the defendant is the letter that I wrote.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 26 in evidence without objection.)

Q. Please read it! A. (Witness reads) This letter is written on my personal stationery but written from 210 Christie Heights Avenue, Leonia, New Jersey: "June 22, 1925. Dear Mary: Enclosed find check for $100 which I trust will take care of your present day needs. I would suggest that you have this cashed by the office where you room rather than to take it to the lawyer at 100 Broadway for to have the lawyer cash it adds each time to the charges he makes—and these charges come ultimately out of the fund available to the McKee family. Billy and I are leaving tomorrow for three days in Providence, R. I. Better change your mind and come and live with us, you and we would be more happy. Ralph. P. S. I can't find

the field glasses or the best wool blankets. Where are they?"

Q. Did you receive a letter in reply to that? A. I did.

Q. Have you it? A. This is the letter (handing counsel letter).

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 27 in evidence without objection.)

Witness: The letter reads: "108 West 79th Street, June 25, 1925. Dear Ralph. Thank you for sending the check which I received today. Hastily—Mary."

Q. Is there a copy of that letter in the files? A. There is.

Q. Is that it? A. This is the copy of the letter and differs from the other only in the use of the word "West" instead of "W."

Mr. Walscheid: I offer the copy in evidence.

(Copy marked Exhibit P 27A in evidence without objection.)

Q. Then I suppose you went away after that check was sent with Billy? A. I did, to a chemical meeting and taking Billy with me as a guest at that meeting. I thought it would be of interest to him, and it was.

Q. When you returned did you write her again? A. I did not write for several weeks. I did telephone and I did have at least one conference with her.

Q. Between the time of the last letter and this next letter? A. Yes; and in fact at that time she came—I met her by appointment and she came to

the apartment to select some books that she wanted.

Q. By that you mean the Claremont Avenue apartment? A. Yes.

Q. When did she come to the Claremont Avenue apartment? A. My recollection it was July 9th.

Q. Were you and she alone then? A. We were.

Q. Any other parties there? A. The people who had sub-let the apartment, Mr. and Mrs. Martin and their small son was there. Billy came with her and all told six of us were there.

Q. At that time did you have any conversation with her about returning to you? A. Nothing excepting that I expressed regret at her choosing books and taking books which were later to be sent to her, and expressed regret because it seemed like making permanent the separation. I do not recall that I directly asked her to return to me.

By the Vice-Chancellor:

Q. What did she say when you made those statements to her? A. "I want the books," or words to that effect.

By Mr. Walscheid:

Q. That's all that was taken out at that time? A. They were not actually taken out; they were assorted out and I sent them to her.

Q. The next letter is a letter under date of July 23, 1925? A. Yes.

Q. Is the letter before you from the file as produced by the defendant? A. This is the letter, yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 28 in evidence without objection.)

Q. Please read it! A. (Witness reads) "210 Christie Heights Ave., Leonia, N. J., July 23, 1925. Dear Mary: Enclosed find check for $100. for your use. Tell Billy I have in mind a nice birthday present for him but that he will have to wait until he is here next Friday to pick it out for himself. It is something he has expressed a wish for. See if he can guess what it is. I packed some of the books you picked out as those you wanted. They made me sorrowful, for to pack them seems to make definite your determination not to come back and live with me again. Better change your mind and come and live with me again. With love—Ralph."

Q. Was there a reply to that letter? A. There was no reply to that letter. I did receive a letter from her on July 27th which did not reply to anything in that letter.

Q. Have you the letter which you received on July 27th? A. I want to correct that; there is a P. S. reply to one item.

Q. What is that one item? A. The acknowledgment of the receipt of $100.00. This P. S. reads—

Mr. Walscheid: I offer the letter in evidence.

(Letter marked Exhibit P 29 in evidence without objection.)

Q. Will you read the letter? A. (Witness reads) "Carthage, Illinois, July 27, 1925. Dear Ralph: I have not received the record of Billy's grades nor the letters from the Taft School which you said you would send. As to the Lincoln School, even if their methods were approved, Billy has not been brought up according to that system and it would be very confusing for him to change now and they would probably live up to the promise of their catalogue about as well as the Horace Mann School. Another

thing it would be disastrous to give Billy the idea that he did not have to work—that you would look up a school where it would be easy for him and he could do as he liked. When he gets to college he will not have Lincoln School ideas to work under. Billy has been in Dr. Meylan's camp two summers and both times were in worse condition when he returned than when he went. That is not the sort of thing he needs now, and as I told you last spring I cannot consent to his going there this summer. Here he is improving steadily and apparently will be in better condition by school time than he has ever been before. Yours—Mary. P. S. Your letter has just come. Thank you for sending the check for $100."

Q. The letter which had just come was the letter Exhibit P 28? A. It was.

Q. And do you remember where that was sent to? A. That was sent to Carthage, Illinois.

Q. Where she then was with whom? A. With her mother; with the children's grandmother, Mrs. Laura M. Noyes.

Q. Were the children with her there or was Margaret alone? A. No; both children were there at that time.

Q. July 23rd when you wrote that letter she was in Carthage, Illinois? A. She was.

Q. So you had no conversation with her concerning the matters in that letter Exhibit P 29 after July 23rd? A. I had not.

Q. How long prior to that date, July 23rd, did you have any conversation with her concerning the matters mentioned in that letter, Exhibit P 29? A. I had conversation with her regarding going to the boys' camp as early as March or April and regarding Lincoln School a month or more earlier—I mean earlier than July 23rd.

Q. Is there a copy of that letter of July 27th, Exhibit P 29, in the files which have been produced by the other side? A. There is.

Q. Is that the copy? A. I have the copy before me.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 29A in evidence without objection.)

Q. How long did Mrs. McKee remain in Carthage during that summer? A. Until early in September of 1925?

Q. And when next did you write her? A. I think, I am quite certain I telegraphed her between the time that I wrote her and before—between the last letter I received from her and the time I wrote her. I am in error, it was later.

Q. After this letter of July 27, 1925, Exhibit P 29, did you receive any communications from her before you next wrote her? A. I did not. Yes I did.

Q. What did you receive? A. I telegraphed her and I received a telegram from her. This telegram was one of July 30, 1925, from Carthage, Illinois, and I possibly received it on the succeeding day.

Q. What did you telegraph her? A. Relative to Billy returning and going to camp for the last half of the summer boys' camp where I had made arrangements for him to go. This was the camp of Dr. Meyland, and I had paid the fee and made arrangements for him to enter about August 1st.

Q. Did he ever go to that camp that summer? A. No, he did not; she kept him in Carthage, Illinois.

By the Vice-Chancellor:

Q. Your wife said for the two previous seasons he was not in good condition? A. That was an in-

correct statement. He had gained in weight and had become a strong fellow and when he left he was in good physical health according to Doctor Meyland who was at the head of the university division of physical education.

Q. Did it come to your attention through your wife in that letter that she wrote you just in what respect he was in worse condition when he returned from camp than when he went in? A. I had not heard before any suggestion that he was in worse condition.

Q. There was just a statement in the letter that he was in worse condition when he came back. Is there any detail there? A. None whatever. I telegraphed Mrs. McKee.

Q. What was the response to that? A. The response to that telegram was a telegram which I have before me of July 30, 1925, from Carthage, Illinois.

Mr. Walscheid: I offer it in evidence.

(Telegram marked Exhibit P 30 in evidence without objection.)

Q. Please read it! A. (Witness reads) "Doctor Ralph McKee, Columbia University, New York, N. Y. Send all Taft school letters immediately to me here. Mary N. McKee."

Q. Had there been any discussion between you and her while she was in Carthage, Illinois, regarding the Taft School letters? A. None whatever.

Q. Had there been any discussion about Taft School while she was in Carthage, Illinois? A. No, excepting in her letter of July 27th to me she mentions the Lincoln School which I had suggested as being for Billy a better school than the Taft School, and as it later developed he lost that year due to being in a school of a low type and had to repeat the year.

Q. Was there anything in your correspondence or telegram to her which would induce her to send you a telegram on July 30th asking for all Taft School letters? A. There was this—I do not have a copy of the telegram I wrote—but it was to the effect that according to the arrangement that I had made, a verbal agreement with Mr. Taft who is the head of the Taft School in Watertown, Connecticut, Bill was to go to a summer camp and get in better physical condition as one of the conditions of which he would allow him to return to that school. He had done very poor—failed to a considerable amount in his work and the faculty had passed a resolution that he be not permitted to return to Taft School, but at Mr. Taft's request that resolution was rescinded and he out of personal friendship for me and because he liked the boy, agreed to permit him to return if he would go to a boys' camp for the last half of the summer.

Q. Does that to your mind explain the request for the Taft School letters? Was there anything concerning that matter in the Taft School letters, or did she think there was? A. She thought there was and there certainly was discussion as to his poor work and he was in a bad situation.

Q. And as to whether or not he was to go to camp was that also in the letters? A. I do not think so. I think that was when I went up there to save his execution.

Q. When did the next correspondence pass between you and Mrs. McKee? A. The next correspondence was a letter of mine of August 12, 1925, which I find here among those produced by the defense.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 31 in evidence without objection.)

Q. Will you read Exhibit P 31? A. (Witness reads) "New York City or rather just out of New York. Aug. 12, 1925. Dear Mary: The Campbells want our apartment as of Sept. 1st instead of Oct. 1st as I had expected. This will mean a saving to me of a month's rent and works out well as the Martins expect to go into their own house Aug. 20th. Accordingly I am expecting to vacate as of Aug. 31st, sending a few things to Ossining and putting the rest of my things in storage. You may change your mind about continuing to refuse to live with me and this furniture will then be available for our use. A woman often changes her mind. What are your plans? Do you expect to return to New York by Aug. 25th and then to have some place where you will want this furniture sent? If not I will have it put in a storage room, pay the rent to Oct. 1st and turn over the key and right to this room to you and then you can do with it what you wish. I refer here to your part of the furniture. I will store elsewhere mine and keep control of it myself. What do you wish done with the canned fruit? I have looked into the question you raised and find that the graduates of Lincoln School have done much better than the graduates of Taft School in Columbia College. However this question is of little moment now. With love—Ralph."

Q. Did you receive a reply to that letter? A. I did and I have it here; reply of August 23, 1925.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 32 in evidence without objection.)

Q. Please read it! A. (Witness reads) "Carthage, Illinois, August 23, 1925. Dear Ralph: Your letter concerning the furniture received. All

my things in the basement are things I wish to keep. When you went through them, some may have seemed of no account, because you did not know what they were, but I wish them saved. The weights in the clock should be boxed separately and some paper put around the works. Nothing should be put inside the old secretary on account of the weight. The canned fruit had best be packed in a barrel. The silver cream and sugar are a little worn but I wish to keep them as the girls gave them to me—also I want the tin sugar scoop, big meat fork, earthenware jars and iron griddle because they were Grandmother's. Yours—Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. There is.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 32A in evidence without objection.)

Q. When is the next letter that passed between you? A. The next letter is also a letter from me to her dated August 26, 1925, which I find.

Q. Is it in the file produced? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 33 in evidence without objection.)

Q. Please read it! A. (Witness reads) "New York, N. Y., Aug. 26, 1925. Dear Mary: Enclosed find check for $100.00 for your use. Dr. Chandler died last night in West Hartford, Conn. The funeral will probably be Friday at the University Chapel. Have been hard at the packing the last few days. Give my love to Bill and Margaret. With best birthday wishes—Ralph."

Q. When is the next one between you and your wife? A. The next letter is again a letter of mine of August 29, 1925, which I find here in the file produced by the other side.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 34 in evidence without objection.)

Q. Please read it! A. (Witness reads) This letter is on paper having the heading "Teachers College Country Club, Ossining-On-Hudson, New York" dated Aug. 29, 1925—"Dear Mary: I received your letter two days ago. Why didn't you write more promptly and I could have saved all of the things you mention. I did save for you most of them but the old meat fork and one old earthenware jar were discarded as apparently not worth packing. The stuff went to storage this morning and I am glad the job is finished. Campbell takes the apartment Monday. I am dead tired as I have packed nearly every night beginning Aug. 20th. What trunks and boxes were in the basement at 39 Claremont? I do not know whether I got them all out. I only got three boxes—Ralph H. McKee."

Q. When is the next letter? A. I received from Mrs. McKee the next letter under date of September 4, 1925, written from Carthage, Illinois.

Q. Have you the letter? A. I have the letter before me.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 35 in evidence without objection.)

Q. Please read it! A. (Witness reads) "Carthage, Illinois, Sept. 4, 1925. Dear Ralph: Thank you for sending the check for $100.00. I was sorry

to hear of the death of Dr. Chandler. We have not decided just what day we shall return to New York but probably between the fifteenth and twentieth. Very sincerely—Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. Yes, except the signature is M— instead of Mary.

Mr. Walscheid: I offer the copy in evidence.

(Copy marked Exhibit P 35A in evidence without objection.)

Q. What is the next letter between you and your wife? A. The next letter is a letter from Mrs. McKee to me which letter I have here of September 23, 1925.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 36 in evidence without objection.)

Q. Read it! A. (Witness reads) "110 West 79th Street, Sept. 23, 1925. Dear Ralph: Billy said you were going out of town for a time so I am writing this that you may have it when you return. I got in communication with Mr. Taft and found there was some mistake about Billy not being allowed to come back to school. Mr. Taft was quite willing for him to come and had a place for him so I sent him over. I am so glad he could go for he was so anxious to do so. He liked the school so much and besides he did not wish to leave with last year's record standing against him. He seems determined to redeem himself in every way this year. Yours very truly—Mary."

Q. Is there a copy of that letter in the file produced? A. There is excepting that the signature is M-N-M instead of Mary.

Mr. Walscheid: I offer the copy.

(Copy marked Exhibit P 36A in evidence without objection.)

Q. What is the next letter between you and your wife? A. The next letter is a letter from me to her dated October 13, 1925.

Q. Is it in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 37 in evidence without objection.)

Q. Read it! A. (Witness reads) "210 Christie Heights Ave., Leonia, N. J., Oct. 13, 1925. Dear Mary: Billy writes me he has plenty of wool underwear. You said over the telephone that he had none. Has the kid got some new underwear or do you know what is the situation? I have not received as yet the lists of what is in the boxes that were in the basement of 39 Claremont Avenue which list you were to send me. Had a nice letter from Margaret but she did not say what grades she got on her two special examinations. Do you know what they were? I wish you would get over your huff and permit our family circle to get together again. The present situation is hard on the children as well as on you and I. Better come and live with me—Ralph."

Q. Did you receive a reply to that? A. I did not.

Q. When is the next letter? A. A letter from me to her under date of October 18, 1925, which I find here in the file produced by the other side.

Mr. Walscheid: I offer it.

(Letter marked Exhibit P 38 in evidence without objection.)

Q. Read it! A. (Witness reads) "210 Christie Heights Ave., Leonia, N. J., Oct. 18, 1925. Dear Mary: The receiving Wednesday of your 'summons and complaint' with its many false statements has completely upset me. I had been hoping that you would change your mind and be willing to come back and live again with me and the children. That would be the happiest way for you, for them and for me. I don't know what to write to you for I can't see what you think you can gain by giving court and newspaper publicity to our domestic affairs. I have tried twice to reach you on the telephone to arrange a meeting to discuss what this action will mean to the children, but the telephone girl at your place makes inquiry and reports to me that you are not in. Nobody will gain anything by this suit except your lawyers. It looks as if they were instigating you to this action. I am enclosing a check for one hundred dollars. I do not know whether you want this this month or not in view of your legal action. Is it your wish I keep sending you money each month as I have been doing? Better think it over, little girl, and stop the legal action. Yours truly—Ralph."

Q. Now that summons and complaint which you mention in your letter. What was that? What was the nature of that suit? A. It was a suit for separation in New York, which separation suit was started by Mrs. McKee against me.

Q. And the summons and complaint that you refer to in your letter is the summons and complaint in that particular separation suit? A. It is.

Q. Had she given you any intimation before the receipt of the summons and complaint that she proposed any such action or did it come to you as a surprise? A. Earlier, that is in March or February, it had been discussed particularly in the

conferences which I had had with her in the presence of her attorney in her attorney's office, but at the present time that came as a complete surprise. I thought things were going much better and that the matter would be gradually cleared up and that she would come to live with me.

Q. And by the present time you mean as of October 18, 1925? A. Yes, and just preceding that, September and August.

Q. In May, June, July, August or September had she spoken to you about instituting such a suit or make a statement she would institute such a suit? A. I do not recall that there was any in May, though there might have been. There certainly was not in the later days.

Q. Of the year 1925? A. Yes.

Q. Did you receive a letter in reply to this letter of October 18th? A. I did.

Q. Exhibit P 38? A. I did.

Q. Have you the letter? A. I have the letter.

Q. Will you produce it? A. Here it is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 39 in evidence with objection.)

Q. Please read it! A. (Witness reads) "110 West 79th Street, New York, October 20, 1925. Dear Ralph: Thank you for sending the check for one hundred dollars ($100.00) which I received today with your letter. I have brought legal action because I felt that there was no other way by which you would understand that it was necessary to recognize your obligations to the children and myself. If you consider you will recall that you have not sent me money every month, as you intimate in your letter. Besides one-hundred dollars a month is very far below the amount of support to which I

know the children and myself are entitled. As I have already said I brought legal action only after I became convinced that you would not otherwise do the right thing by us. Yours very truly—Mary Noyes McKee."

Q. Have you a copy of that letter in the file produced by the other side? A. There is, except the signature is M-N-McK-.

Mr. Walscheid: I offer the copy in evidence.

(Copy marked Exhibit P 39A in evidence without objection.)

Vice-Chancellor: We will now take a recess until two o'clock.

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(Afternoon session.)

Mr. Walscheid: May I interrupt the proceedings to put on a witness? His testimony will be short.

Vice-Chancellor: All right.

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SAMUEL E. GREEN, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Green? A. 107 West 128th Street, New York City.

Q. And where do you work? A. 39 Claremont Avenue.

Q. What do you do at 39 Claremont Avenue? A. I run the elevator.

Q. Do you still run the elevator there? A. Yes.

Q. How long have you been engaged in the running of the elevator there? A. Ten years.

Q. Is there just one elevator in the building? A. No, two.

Q. Side by side? A. Side by side.

Q. Do you know Doctor McKee who is sitting at my left? A. Yes.

Q. Do you know Mrs. McKee? A. Yes; Mrs. McKee is sitting on the other side.

Q. Were they tenants at 39 Claremont Avenue? A. Yes, sir.

Q. When did you last see Mrs. McKee just before going on the stand? A. Why, I remember one evening after midnight I was called by Mrs. McKee to bring down a couple of trunks.

Q. Where was that that you were called upon to help bring down the trunks? A. 101.

Q. From her apartment at 30 Claremont Avenue? A. Yes, sir.

Q. And the apartment number is 101? A. Yes.

Q. Was Mr. McKee present at that time? A. Not to my knowledge.

Q. Do you remember when that was? A. I couldn't specify a date; I was not interested at that time, I can't tell the date.

Q. Can you tell the year? A. I think 1925.

Q. Can you tell the month? A. It was in January, after midnight.

Q. January 1925? A. Yes.

Q. One night after midnight? A. Yes.

Q. What did you do for Mrs. McKee? A. I brought the trunks down and put the trunks on the taxi that evening and she went off.

Q. What kind of trunks were they? A. Wardrobe trunks.

By the Vice-Chancellor:

Q. You say in the evening after midnight? A. After twelve o'clock midnight.

By Mr. Walscheid:

Q. How many of these trunks were there? A. I think two trunks, if I remember.

Q. Did she on that occasion say anything to you as to where she was going? A. No, sir; absolutely not.

By the Vice-Chancellor:

Q. Just merely asked you to take the trunks down? A. Yes, sir.

By Mr. Walscheid:

Q. Did you help take them out of the room? A. Yes, I took the trunks and put them on the taxi.

Q. I suppose you carried them all alone from the room and put them on the elevator? A. Yes, I was all alone that night.

Q. When you took the trunks down you were on night duty? A. Yes, sir.

Q. Did you see her subsequent to that time? A. No, sir; only the following week when I changed to my day duty.

Q. Then you saw her once more? A. She came in with a hat box and a couple of bags.

Q. And what happened then? A. She went off that morning; I think it was in the morning.

Q. Did she take anything out of the apartment on that morning? A. No, only the hat box and a couple of bags and I put them on the taxi.

By the Vice-Chancellor:

Q. What time of the day was that? A. It was some time around eleven o'clock.

By Mr. Walscheid:

Q. On that occasion did she let herself into the apartment with a key, or don't you know that? A. She just came down with the bags and I helped her with them.

By the Vice-Chancellor:

Q. Did she come down in the elevator? A. Yes, sir.

By Mr. Walscheid:

Q. Did you see her go up that morning? A. No.

Q. But you saw her that morning come into the elevator with a hat box and a couple of bags? A. A hat box and a couple of bags.

Q. What kind of bags do you mean, traveling bags? A. Traveling bags.

Q. How soon after the removal of the trunks was it that you saw her with the hat box and bags? How many days intervened? A. The following week. I don't know whether it was a Monday or Tuesday, but it was that week I was on day duty.

Q. You took the trunks out on the night shift and on the day shift you took the bags? A. Yes.

Q. On this occasion when you took her down with the hat box and bags did you see Mr. McKee about? A. No, sir.

Q. He wasn't there then as far as you know? A. No, I didn't see Mr. McKee.

Q. After that did you see Mrs. McKee? A. I haven't seen her since then.

Q. You saw her today didn't you? A. Yes, I did.

Q. Did you see her before you went on the stand? A. No, sir.

Q. Did you see her in the elevator today and talk to her or did she talk to you? A. Not today; that was the day—that was the last time I was here.

Q. Did she talk to you then? A. She just said I didn't have to appear if I didn't want to; that's all. I wasn't compelled to.

Q. Did she say anything about your testifying against her? A. No, sir, absolutely not. All she said I didn't have to appear if I didn't want to.

Q. Didn't want to appear at this trial? A. Yes, sir. She wanted to know if I had any grievances against her because her dress was lost in the apartment at that time and it couldn't be found at that time and it was misplaced by some of the maids and they thought the boys had taken it.

By the Vice-Chancellor:

Q. You say she asked you whether you had any grievance against her because of that? A. Yes.

Q. What did you say? A. I said "Absolutely not; I just came to tell the truth."

By Mr. Walscheid:

Q. What did she say to that if anything when you told her that? A. She didn't say anything more.

By the Vice-Chancellor:

Q. When was it she told you you didn't have to come if you didn't want to, after she mentioned about the grievance? A. It was a Monday come this week.

By Mr. Walscheid:

Q. That was at the time this conversation took place? A. Yes.

Q. What the Vice-Chancellor would like to know is the order of event at that conversation. Who spoke first? A. Mrs. McKee said that to me.

Q. What did she say? A. She wanted to know if I had any grievance against her.

Q. That's the first thing she said to you? A. Yes.

Q. And what did you say? A. I said "No, absolutely not", because she thought I had a grievance against her on account of the dress.

By the Vice-Chancellor:

Q. Did she say that? A. Yes.

By Mr. Walscheid:

Q. When you told her you had no grievance what else did she say? A. Nothing else.

By the Vice-Chancellor:

Q. When was it she told you you didn't have to appear if you didn't want to? A. It was last Monday here when I was in court.

Q. She talked to you on two occasions? A. No, just this one occasion.

Q. Once in the elevator and once in this court? A. No, that was the first time I saw Mrs. McKee on Monday here, and she said these words to me going down in the elevator.

Q. Did she tell you in the elevator you didn't have to come if you didn't want to? A. Yes, she said I didn't have to appear if I did not want to.

Q. Did that whole conversation take place in the elevator? A. In the elevator.

Q. No conversation in the court room or in the hallway? A. No, sir.

Cross Examination by Mr. Blumberg:

Q. What time did that conversation take place that you speak of? A. I think it was going on after four o'clock when we left the court here. It took place in the elevator.

Q. At the end of the day? A. Yes, sir.

Q. Was anybody with Mrs. McKee? A. There was a man and woman with her.

Q. Is that the lady sitting in the back there (indicating)? A. Yes, sir.

Q. That is Mrs. McKee's sister, isn't it? A. I don't know her, but I saw the sister. I remember her in the elevator.

By the Vice-Chancellor:

Q. You mean that is the lady who was with her sitting in court? A. Yes.

By Mr. Blumberg:

Q. Who started the conversation you or Mrs. McKee? A. Mrs. McKee started the conversation.

Q. What was the first thing she said? A. She said "Sam, you don't have to appear if you don't want to." She said to me if I had any grievance against her on account of a dress that was lost in the apartment, and I told her no.

Q. The first thing she said "You don't have to appear if you don't want to"? A. She said that to me.

Q. And did you answer that remark? A. I said "I only have to come and tell the truth."

Q. Are you sure that's what she told you? A. I am sure that she told me I didn't have to come unless I want to.

Q. Isn't it possible you are mistaken? A. I don't think I understand.

Q. Isn't it the fact she said "Are you compelled to appear here today"? A. No, sir.

Q. Sure about it? A. She didn't ask me that.

Q. You didn't answer her remarks at all? A. Only the words that she had told me and I answered back, that's all.

Q. Then she said, "Have you a grievance against me"? A. If I had anything against her and I told her no.

By the Vice-Chancellor:

Q. Did she mention the grievance? A. Yes.

Q. What did she say to you about the grievance? A. She wanted to know if I had any grievance against her because the dress was misplaced in the apartment. She thought I was sore about that.

Q. She said all that to you? A. No, she didn't say all that; that's what she thought.

Q. During the conversation in the elevator she asked you whether you had any grievance against her because of a dress having been lost in the apartment? A. And I said, "No, absolutely not; I only came to tell the truth."

By Mr. Blumberg:

Q. All this took place in the elevator? A. This took place in the elevator last Monday afternoon, four o'clack.

Q. When you got down to the bottom of the elevator, the first floor, everybody left? A. Yes.

Q. You and Mrs. McKee separated? A. Yes.

Q. How long did you say you worked at 39 Claremont Avenue? A. Ten years.

Q. You are still working there? A. Yes.

Q. You took down trunks for Mrs. McKee's family a lot of times, did you not? A. I can't re-

member a lot of times. No, sir, I don't remember lots of times.

Q. Several times do you remember taking them down? A. No, sir.

Q. How many times did you take trunks down for Mrs. McKee's family? A. The only time I remember when I was called upon to take these trunks down.

Q. Did you take trunks down when the children went to school? A. Not to my knowledge.

Q. You don't remember that? A. I am only here to tell you what I done; I can't go no further than that.

Vice-Chancellor: That's right, you are only here to tell what you remember.

Q. You remember it was after twelve o'clock when you took the trunks down? A. It was after mid-night because I had gone to sleep and the bell rang and she called me and asked me to take the trunks down.

Q. Could it have been about nine o'clock when you took them down that night? A. I could not recall it now the exact time because I wasn't interested at that time.

By the Vice-Chancellor:

Q. But you said it was after twelve o'clock at night? A. Yes.

Q. He asked you could you be mistaken; whether it was around nine o'clock? A. I am sure it was twelve o'clock.

Q. You say you were awakened from your sleep to answer the bell? A. Yes.

Q. Do you usually go to sleep around nine o'clock? A. At twelve o'clock.

By Mr. Blumberg:

Q. Mrs. McKee didn't tell you where she was going? A. No.

Q. You didn't ask her? A. No.

By the Vice-Chancellor:

Q. Was anybody occupying the taxi with her when she went away? A. No, sir.

By Mr. Blumberg:

Q. Did you tell Doctor McKee you saw Mrs. McKee take the trunks away? A. No, sir, he didn't say anything to me only when he asked me to appear in court at the time when I brought the trunks, and he wanted to know if I brought the trunks down for Mrs. McKee and I told him yes.

By the Vice-Chancellor:

Q. When did he ask you that? A. That was at the time when Mrs. McKee went away.

Q. He asked you whether you had taken some trunks down for Mrs. McKee, did he? A. I told him, "Yes, I did."

By Mr. Blumberg:

Q. You were working on the night shift that week? A. Yes.

Q. And the following week on the day shift? A. Yes.

Q. Did Doctor McKee occupy the apartment the following weeks at all?

Vice-Chancellor: He may not know that; he says he didn't see him.

Witness: I didn't see him; I don't know.

Q. Do you remember Doctor McKee telling you to change the lock on that door? A. No, sir, he didn't tell me.

Q. You don't remember that? A. No, sir; no he never told me anything about the lock.

Q. Do you know that the lock was changed on this apartment? A. I don't know anything about the lock.

Q. You say you never saw Doctor McKee there after the night that Mrs. McKee left? A. No, sir, I didn't.

By the Vice-Chancellor:

Q. There is another elevator running there besides yours? A. Yes.

By Mr. Blumberg:

Q. Who was in the apartment the following week when she took the hat box? A. Mrs. McKee came on with the bags and I helped her in the taxi.

Q. You took down packages twice for Mrs. McKee? A. No, only once when I changed to day duty.

Q. The second time you did take them down?

By the Vice-Chancellor:

Q. How many times did you take things out for Mrs. McKee? A. Twice.

Q. The first time was the trunks and the following week was the bags? A. Yes.

By Mr. Blumberg:

Q. Did you ever make any affidavits in this case? A. No, sir, absolutely not.

Q. Never did? A. I never signed an affidavit.

Q. Do you remember when the furniture was removed out of that apartment in 1925? A. I think about two months after Mrs. McKee left the apartment Mr. McKee moved out. I moved some of the furniture out myself.

By the Vice-Chancellor:

Q. You helped to move the furniture? A. I helped him move some of the furniture at 39 Claremont Avenue.

By Mr. Blumberg:

Q. You moved some furniture for Doctor McKee at 39 Claremont Avenue? A. Yes.

Q. So you did see Doctor McKee after that day? A. That was two months after she moved out when he called upon me at that time to move out this furniture for him.

Q. To 21 Claremont Avenue? A. Some of the things, the other things went to storage.

Q. 21 Claremont Avenue is a few doors down? A. About four or five houses down from where I work.

Q. Did you take them up to an apartment in that house? A. Up to some room he was occupying at that time.

Q. You saw the room he was occupying?

By the Vice-Chancellor:

Q. Did you see him in the room there? A. I just took them down to the rooms he was supposed to occupy.

Q. He told you to take them to a particular room, did he? A. 21 Claremont Avenue.

Q. Where were you to put them in at 21 Claremont Avenue? A. Just a student's room.

Q. Took them to some student's room? A. Yes.

Q. When you took them there was Mr. McKee there? A. He accompanied me at the same time.

By Mr. Blumberg:

Q. What floor did you take this furniture to? A. I don't remember whether it was the fifth floor or not; I don't remember the floors.

Q. But you took them upstairs, didn't you? A. Yes.

Q. Did you carry them up or did he have an expressman carry them up? A. I helped to move the stuff down by a little hand truck.

Q. You are sure that was two months after she moved out? A. That was two months after.

Q. After Mrs. McKee had the trunks out? A. Yes.

Q. That is about March, 1925?

By the Vice-Chancellor:

Q. Do you know? A. I don't know what month.

By Mr. Blumberg:

Q. Do you remember what furniture you took out that day? A. A desk and chairs.

By the Vice-Chancellor:

Q. How many things in all about? A. I would say probably about eight pieces of furniture; something like that.

By Mr. Blumberg:

Q. Did you take any beds out? A. No, sir.

Q. Were there any beds in the apartment that you saw at 21 Claremont Avenue? A. No, sir.

Q. Didn't see any? A. No, sir.

Q. Did Doctor McKee tell you he was living at 21 Claremont Avenue? A. He didn't tell me; he just told me to take them down there.

By the Vice-Chancellor:

Q. To where, A. 21 Claremont Avenue.

Q. You say he accompanied you; he went with you? A. No, Mr. McKee sent the elevator boy there to show me where to put this stuff, that's all I know.

Q. Did you ask the elevator boy where you were to put Mr. McKee's things? A. Yes, he showed me a little room there.

Q. And you went to a particular place designated and put the things in there that you brought down? A. Yes, sir.

Q. What was in that room that you put those things in if you remember? A. I don't know if anything more was in the room; a couple of chairs or something like that.

By Mr. Blumberg:

Q. Did Doctor McKee tell you he was moving to that house? A. No, sir, he didn't tell me he was moving.

Vice-Chancellor: You can ask him what was said. This witness is not as good a witness as we ordinarily have. He intends to tell the truth but you are putting the question into his mouth did Doctor McKee tell you he was going to move down there. Ask him what he said.

Q. What did Doctor McKee tell you when he told you to take this stuff out? A. He didn't say anything more to me; just to take those things down.

Q. Did you see Doctor McKee again at 39 Claremont Avenue? A. He came about once or twice I think.

Q. Came to take the rest of the stuff out, didn't he?

Mr. Walscheid: I object to the form of the question.

Vice-Chancellor: I will let him ask it.

By the Vice-Chancellor:

Q. What did you see Doctor McKee do when he came back on the subsequent occasion, if anything? A. As far as I know he moved out.

Q. You say some of the things went to storage? A. Yes, and some went down to the other house.

By Mr. Blumberg:

Q. Did you take the stuff to the storage house? A. No, sir.

Q. Who took them there? A. An expressman.

Q. It was an expressman that took them down to the storage house, is that so?

Vice-Chancellor: What is the pertinency of this line of examination?

Mr. Blumberg: That question was whether Doctor McKee lived at 21 Claremont Avenue during the time he said he lived in Leonia, New Jersey. This man says he took the furniture there about two months later.

Vice-Chancellor: All right, go ahead.

Q. Did you see Doctor McKee at 21 Claremont Avenue? A. What does he mean, after I took the things down?

By the Vice-Chancellor:

Q. At the time you took them down or afterwards? A. At that time he was there; Mr. McKee was there.

Q. He told you to ask the elevator boy where you were to put the things? A. Yes, sir.

Q. When you put the things in that room was he then there? A. No, sir, not at that time.

Q. When was he there? A. He came there afterwards.

Q. While you were there and before you went away? A. Before I came away.

Q. Were you there anytime after that when you brought those things there? A. No, sir, not after that.

By Mr. Blumberg:

Q. Did you ever see Doctor McKee there at 21 Claremont Avenue? A. No, sir.

By the Vice-Chancellor:

Q. He wants to know if you saw Doctor McKee going into that apartment 21 Claremont Avenue at any time after that? A. No, sir.

Vice-Chancellor: You can appreciate Mr. Walscheid the purpose of the examination appears to be they think they might be able to show that he did not live all of the time in Leonia.

By Mr. Blumberg:

Q. When the expressman came for the trunks you helped him bring them down? A. No sir, I

had nothing to do with the other stuff. I just took down the chairs and desk.

Q. Did you help the expressman? A. No, sir.

Q. Didn't bother with him at all? A. No, sir.

Q. You are sure you took two trunks down for Mrs. McKee that night? A. Yes, as far as I remember two trunks.

Q. That's as far as you remember? A. Yes.

By the Vice-Chancellor:

Q. Are you sure it was two trunks? A. I know that; you can't get away from that.

By Mr. Blumberg:

Q. It may have been a hand bag? A. No, it was a trunk.

Q. One trunk or two trunks? A. Two trunks.

By the Vice-Chancellor:

Q. Did you carry them on your back? A. No, I rolled them out.

By Mr. Blumberg:

Q. Don't you remember at that time taking down two trunks for Mrs. McKee's daughter and giving them to an expressman? A. No, I don't.

By the Vice-Chancellor:

Q. The trunks you took down you say you put in a taxicab with Mrs. McKee? A. Yes, at midnight.

By Mr. Blumberg:

Q. Did you talk to Doctor McKee about this case? A. No, I didn't say anything to him.

Q. Talk to him yesterday about this case? A. No, sir, not to my recollection.

By the Vice-Chancellor:

Q. Did you see him yesterday? A. Yes, here in court.

Q. You were not here yesterday? A. No, Monday; not yesterday.

By Mr. Blumberg:

Q. Did you speak to Doctor McKee at all today? A. He just said to me he is glad to see me here.

By the Vice-Chancellor:

Q. Did you speak or did he say that to you? A. He said he is glad to see me here.

By Mr. Blumberg:

Q. You didn't say anything else to him today? A. Nothing more.

Q. And he didn't say anything more to you today? A. No.

Q. Did you see him yesterday? A. No, sir.

Q. And you didn't go home with him Monday, did you? A. No.

Q. You didn't see him Monday night, did you? A. No.

Q. When did you tell him that Mrs. McKee spoke to you? A. I told him that today after he said he was glad I was here, and I said to him "Mrs. McKee said to me I didn't have to appear in court if I didn't want to."

Q. Didn't I ask you a few minutes ago whether you spoke to Doctor McKee? You didn't tell me that, did you?

Vice-Chancellor: It is clear that he did not; the record will show that. You asked him to detail all that was said and now his recollection is apparently refreshed by your subsequent questions.

Q. Did you speak to Mr. Walscheid today here? A. No, sir.

Q. Sure about that? A. No.

Q. You won't change your mind at all? A. I never spoke to him at all.

Q. Did you go to any office to speak to Doctor McKee and a lawyer? A. No, sir.

Q. You did not? A. No, sir.

Re-direct Examination by Mr. Walscheid:

Q. Mr. Green in regard to the time when you moved things for Doctor McKee, you moved that down by a hand truck in front of the building, didn't you? A. Yes, sir.

Q. And you pushed that hand truck around to 21 Claremont Avenue? A. Yes.

Q. And you placed those things in a room at 21 Claremont Avenue? A. Yes, sir.

Q. At that time there was an expressman there wasn't there, or don't you remember? A. I don't remember? I know there was an expressman there but I don't know whether it was at that time. I think the heavy things went first.

Q. You can remember that the expressman had been there and had taken out some of the heavy things and that you took out what was left? A. What was left?

Q. The light things? A. Yes.

Q. In the hand truck? A. Yes.

Q. So that when you went at that time to the apartment the apartment was empty; there were no beds in it?

Mr. Blumberg: I object to the leading.

Vice-Chancellor: He says you are leading him.

Q. Was there anything in the apartment except the things you took there? A. Not to my knowledge.

By the Vice-Chancellor:

Q. When you moved those things out that you took out was there anything left in the apartment that you saw? A. I didn't take notice of that.

By Mr. Walscheid: :

Q. Have you any way of recollecting the time when you took out the things? A. It is two months after Mrs. McKee left the house.

Q. Why do you say it was two months? What makes you say that? A. He moved out two months after Mrs. McKee went away.

Q. Why do you say that? A. That's what I remember when he called for me.

Q. That's your recollection? A. Yes.

Q. Have you anything to fix it by?

By the Vice-Chancellor:

Q. Why do you remember that? A. Why I certainly remember it wasn't right away when I moved those things out; it was after Mrs. McKee left there.

By Mr. Walscheid:

Q. You can't give any reason why you say it was two months after?

Vice-Chancellor: I don't see any use of wasting any more time on that.

Q. Do you know Mr. and Mrs. Martin? A. Yes.

Q. They moved into this Claremont Avenue apartment, didn't they? A. I know they were living there.

Q. 39 Claremont Avenue? A. Yes, sir.

Q. And they moved in that apartment shortly after Mrs. McKee left? A. Yes, I know that.

Q. Do you know when they came in, what month? A. I don't know the particular months because I didn't make any record of them.

By the Vice-Chancellor:

Q. You say that Martins moved in after the McKees moved out? A. Yes.

By Mr. Walscheid:

Q. When the Martins moved in Mr. McKee's furniture remained in there didn't it? In other words they sub-let Mr. McKee's place? A. Yes, I know that.

Q. So that the Martins were in there using Mr. McKee's furniture? A. Yes, sir.

Q. Do you know when the Martins moved out? A. I think they was just there for the summer.

Q. Isn't it the fact that Mr. McKee's furniture didn't go until the end of the summer of 1925?

Mr. Blumberg: I object, your Honor.

Vice-Chancellor: I will let him ask it; it is contrary to what he said before. He said when he moved those things out there was nothing left in the apartment.

Q. Didn't Mr. McKee's furniture remain in that apartment during the whole time that the Martins were living there?

Mr. Blumberg: I object to it.

Vice-Chancellor: I will sustain the objection.

Mr. Walscheid: I said nothing on that score; that was opened up by my friend. That was opened up by Mr. Blumberg.

Mr. Blumberg: I will withdraw my objection.

Q. Isn't it the fact Mr. Green that Mr. McKee's furniture remained in that apartment during the whole time that the Martins lived there after subletting the apartment? A. Yes, sir.

Q. When do you think that the Martins moved out? A. I don't know anything about that.

Q. Did they move out in the winter time, the spring time, in the summer time or in the fall? A. I didn't keep any tract of those things, but I know they were there for some time.

Q. How many months in your opinion was Mr. Martin there after Mrs. McKee left in January of that year? A. For a short time; I don't think it was very long.

By the Vice-Chancellor:

Q. You said they stayed there for the summer? A. They stayed there for the summer; I know that.

By Mr. Walscheid:

Q. You know they stayed there for the summer of that year? A. Yes.

Q. Isn't it the fact that you moved out these little pieces that you talked about after the Martins had moved out? A. After they left.

Q. Is that the fact? A. Yes.

By the Vice-Chancellor:

Q. At the time you moved those little things you said here was nothing else in the apartment, is that right? Was there any furniture remaining in the apartment after you took the things out? A. I don't know what was in the apartment. I know some things went out; it was about two months after.

Re-cross Examination by Mr. Blumberg:

Q. You have no doubt that you took the stuff yourself from 39 Claremont Avenue to 21 Claremont Avenue? A. I did take something there.

Q. To an apartment on the fourth or fifth floor?

Vice-Chancellor: He couldn't remember the floor.

Q. How do you remember this day in January, 1925? A. Because at that time Mrs. McKee was there; she was living there at that time.

Q. That might be February 1925?

By the Vice-Chancellor:

Q. Did you get your New Year's present from Mrs. McKee at that time? A. Mr. McKee.

By Mr. Blumberg:

Q. Is that the only way you remember it was January 1925? A. I don't remember the date but it was in that month.

Q. How do you know it was January, 1925? A. How do I remember? Well, as far as I remember it was.

By the Vice-Chancellor:

Q. Why do you say it was January rather than February, March or April? A. It was in January when Mrs. McKee asked me to do those favors.

By Mr. Blumberg:

Q. Do you remember an expressman coming and taking the furniture out of 39 Claremont Avenue? You remember that, don't you? A. Yes, sir, I remember.

Q. He took them to storage?

Mr. Walscheid: I object to it.

Vice-Chancellor: He said it.

Q. Wasn't it the same day you took the little pieces to 21 Claremont Avenue? A. I don't know; I can't remember that.

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RALPH H. McKEE, recalled.

Continuation of Direct Examination by Mr. Walscheid:

Q. Breaking into the chain of evidence, do you remember—you have testified when Mrs. McKee left the apartment, haven't you? A. Yes.

Q. Do you remember the date? A. January 13, 1925.

Q. And shortly after that did you have any talk with Green, the last witness? A. I did within a few days. I asked him—I inquired also of the other elevator boys whether they had taken things down for Mrs. McKee or whether they had seen her

go away, and Green said he had taken her down on this Tuesday morning early, perhaps five or six o'clock. I recognize this is in conflict with his—

Q. He said what time? A. Five or six o'clock in the morning.

Q. Did you subsequently move anything from 39 Claremont Avenue? A. I did in August, but not until August, excepting a few things that I took out to Leonia, New Jersey.

Q. After January 13, 1925, you testified that you sub-let the apartment? A. Yes, on March 1st.

Q. Who were the tenants? A. James W. Martin, Jr., and his wife and son.

Q. And they moved in when? A. As of March first.

Q. How long did they continue? A. Until August 20th.

Q. Did they move in and remain in possession of your furniture? A. Yes.

Q. They sub-let your apartment and furniture? A. They did.

Q. They continued in possession of that furniture until August 20th? A. Yes.

Q. After that was the furniture taken out? A. Yes.

Q. When was it taken out? A. By the Manhattanville Express & Van Company on August 29th.

Q. 1925? A. 1925, excepting a few articles which were sent by me by means of this elevator boy, Sam Green, to 21 Claremont Avenue.

Q. And the things that went out by way of express what were they generally speaking, the household furniture? A. Almost the whole household furniture.

Q. Where did that go? A. To the storage house of the Manhattanville Express & Van Company, and that storage house is on Old Broadway just north of 125th Street.

Q. And who is at the head of that storage house? A. Mr. George Roberts is the present owner, and at that time either he was the owner alone or with his father.

Q. And has he made a deposition in this cause? A. He has made a deposition in New York in connection with this suit.

Q. Now the goods which you took out and which Green helped you to take out, what did they consist of? A. A desk, some chairs, a dresser, a single bed. I think that's all.

Q. And they went where? A. In the storage room at 21 Claremont Avenue for perhaps six weeks.

Q. They went directly from there into a storage room at 21 Claremont Avenue? A. Yes, at 21 Claremont Avenue.

Q. And were they afterwards used by you? A. They were used to some extent in a room which was on the seventh floor of 21 Claremont Avenue.

Q. When did you begin to use them at 21 Claremont Avenue? A. I began to use them along about the middle of October or the latter part of October, 1925, for an afternoon nap which the doctor advised me to take about two or three times a week. I went there generally after lunch to take such nap.

Q. Did you ever remain over night in that room? A. I didn't in 1925, but I think I did the first few months of 1926 in case of inclement weather, and particularly when I was at the university for some university affair late at night.

Q. How many times did you thus use that room do you think? A. For night use?

Q. Yes. A. For night use probably, oh, about once in two months or three or six weeks.

Q. During what period of time did you have that room? A. I had that room from October, 1925, to I think in June, 1926.

Q. And during all that time you had your room in Leonia? A. Yes, and earlier.

Q. You had the room in Leonia earlier? A. Yes.

Q. And commuted back and forth to Leonia? A. Yes.

Q. Is that 21 Claremont Avenue also a university building? A. It is; and the seventh floor was reserved for university professors for temporary quarters.

Q. And the room which you had there on that seventh floor, what was its dimensions? A. I would say perhaps 9 x 10 or 11; about 9 x 10.

Q. What did you have in there? A. A single bed, a dresser, a book case, a settee, and a chair and a lamp.

Q. Now will you go back to the letters? After Mrs. McKee's letter to you of October 20, 1925, being Exhibit P 39, the copy of which being Exhibit P 39A, when next did you communicate with her? A. The next letter?

Q. By letter or otherwise? A. By letter was the next communication so far as I recollect and that was by a letter of October 24th to her, 1925.

Q. Have you that letter before you? A. I have.

Q. As taken from the files produced by the other side? A. It is.

Q. Is this the letter (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 40 in evidence without objection.)

Q. Will you kindly read that letter? (Witness reads): "210 Christie Heights Ave., Leonia, N. J., Oct. 24, 1925. Dear Mary: I have looked up the matter you mentioned in your letter and find you are mistaken about my not sending you money every month. It was, however, not the same time of month each month. I sent you as follows:

| Check No. | Date | Amt. |
|---|---|---|
| —— | Feb. 7, 1925 | $200.00 |
| 830 | March 23 | 100.00 |
| 847 | April 22 | 100.00 |
| 870 | May 24 | 100.00 |
| 886 | June 22 | 100.00 |
| 906 | July 23 | 100.00 |
| 928 | Aug. 26 | 100.00 |
| 946 | Sept. 8 | 100.00 |
| 982 | Oct. 18 | 100.00 |

All of these have been returned to me by the bank and carry your endorsement, except the last two, and I presume they will come in the next time the bank sends me cancelled checks. Check over the matter and you will find you were mistaken in the matter, I am quite sure. With best wishes—Ralph."

Q. Did you receive a reply to that letter? A. I did not.

Q. Did you write her again? A. I wrote her again on October 29, 1925.

Q. Have you that letter before you? A. I have.

Q. Which is the original as produced from the file of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 41 in evidence without objection.)

Q. Please read it? A. (Witness reads): "At office, New York, N. Y., Oct. 29, 1925. Dear Mary: I have not heard from you as to your wish regarding my continuing to send you money each month. Your letter in reply to mine of Oct. 18 did not answer this question. I am planning my expenditures for November and need to know whether I

am to send you a check in Nov. Shall I? In this connection I wish you would have your attorney send a bill up to Nov. 1st. I presume you and he expect me to take care of this out of my income. Whatever is paid for makes that much less for you, Billy and Margaret and myself, but I suppose it will have to be paid. Please have this done promptly. Mr. Farnham was burned in the big laboratory last Friday, died yesterday and is to be buried tomorrow. Dr. Burke was hit by an auto Monday evening and ten ribs broken, also otherwise hurt but today promises to get well. Hastily, Ralph."

Q. Did you receive a reply to your last letter from Mrs. McKee? A. I did not.

Q. Did you receive a letter from anybody else replying to your last letter? A. I think I received a reply from Hirsch, Newman & Reass of which the letter before me is a copy.

Q. Where is the original, do you know? A. I imagine that the original is in my file in the office; I didn't bring over any letters from attorneys.

Q. Do you find in the file as produced by the other side a copy of the letter which you received from this law firm? A. I do; that is I think this is the copy of the letter I received. I received a letter of the same general tenor.

Q. But you can't say whether it is an exact copy? A. No.

Mr. Walscheid: I ask that this copy be marked for identification.

(Marked J. E. W. 1 for Identification.)

Q. Will you remember to produce the original of this letter from the attorneys at the next hearing? A. Yes, if I have it I will.

Q. What is the next correspondence passing be-

tween you and Mrs. McKee? A. Next is a letter from me to Mrs. McKee of November 3, 1925.

Q. Is the original before you? A. It is.

Q. Is it one of the letters produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 42 in evidence without objection).

Q. I ask you to read it? A. (Witness reads) "New York City, Nov. 3, 1925. Dear Mary: Mr. Whaley tells me that you have not received my check #946 mailed to you on Sept. 8 for $100. I am of the opinion that it has been lost in the mail or has been mislaid at Carthage. If it turns up do not attempt to cash it as I will notify the bank to stop payment on it. I am enclosing a new check to replace the above lost check. I trust this will reach you promptly. Hope you had a good visit with Billy. I certainly enjoyed my visit with him. Yours, Ralph."

Q. This check which was sent out on September 8th for $100.00, was that sent to Carthage? A. Yes.

Q. Was she in Carthage at the time you sent it? A. She was.

Q. Did you stop payment on that one? A. Yes.

Q. Did it ever turn up? A. It never turned up.

Q. Did you receive a reply to that letter? A. I did not.

Q. Did you write her again? A. I wrote her again on November 11, 1925.

Q. Have you the original before you? A. I have.

Q. From the file produced by the other side? A. It is.

Q. Is this it? (indicating) A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 43 in evidence without objection).

Q. Will you kindly read it? A. (Witness reads) "Nov. 12, 1925. Dear Mary: Enclosed find a check for your use of one hundred dollars. I wish you would be more reasonable, little woman, and consider I had some rights with the children, rights equal to yours. If you would only do this I think and believe you would find the next step and the most important step, in its influence on the whole family, much easier. Billy, Margaret and I need a home and without you we can not have a whole home. How about making it a home having four members? Yours—Ralph."

Q. At this time you had been served with a summons and complaint in the New York action for separation, hadn't you? A. Yes, fully a month—about a month before.

Q. Have you that summons and complaint with you? A. I have it or a copy; I think I have the original (handing papers to counsel).

Q. Is this the summons and complaint which had been served upon you? A. It is.

Q. And when was it served upon you? A. It was served upon me at 11:35 on October 14, 1925.

Mr. Walscheid: I offer it in evidence.

(Marked Exhibit P 44 in evidence without objection).

Q. At the time when you wrote this last letter, Exhibit P 43, had you filed an answer in your suit? A. Yes.

Q. Is that a copy of the answer? (indicating) A. It is a carbon copy.

Q. Filed November 2, 1925, or don't you know? A. Sworn to November 2nd and filed either that date or probably the next day.

Mr. Walscheid: I offer it in evidence.

(Marked Exhibit P45 in evidence without objection).

Q. Did you receive a reply to this letter, Exhibit P 43, of November 12, 1925? A. Yes, I did, a letter of November 18, 1925.

Q. Have you it? A. I have it.

Q. Is that it? (indicating). A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 46 in evidence without objection).

Q. Please read it? A. This is on stationery bearing a heading "Allied Flags, 110 West 79th Street, Nov. 18, 1925. Dear Ralph: Thank you for sending the check for $100 also the one earlier in the month not received in September. Sincerely—Mary Noyes McKee."

Q. Have you a copy of that letter in the files produced by the other side? A. There is excepting that copy is not signed.

Q. Is this the copy? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 46A in evidence without objection).

Q. When next did you write to Mrs. McKee? A. On December 12, 1925.

Q. Did you receive any letters from her between November 18th and December 12, 1925? A. No.

Q. Is that the letter you wrote her on December 12, 1925? (indicating). A. It is.

Q. Taken from the file produced by the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 47 in evidence without objection).

Q. Please read it? A. (Witness reads) "Dec. 12, 1925. Dear Mary: I enclose check for $100.00 for your December needs. Also a second check for the same amount as you will want to get some Christmas presents for Billy and Margaret, the rest keep for yourself as your present. I saw Margaret on Thursday evening. Was with her from about five to eight. She seems better adjusted than last year tho not doing as well as she should even yet. Margaret will be back here Tuesday Dec. 22 and Billy a couple of days earlier. We had all better plan to spend Christmas together. What say you? —Ralph H. McKee."

Q. Did you receive a reply to that letter? A. I received a reply on January 15th.

Q. Is that the last letter? A. Yes, but it enclosed a letter of December 16th, and refers to it.

Q. Kindly produce the letter of January 15th with its enclosure? A. I have it here.

Q. Is that the letter? (indicating). A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 48 in evidence without objection).

Q. Where is the enclosure? A. Here it is.

Mr. Walscheid: I offer that in evidence.

(Letter marked Exhibit P 49 in evidence without objection).

Q. Will you please read the letter which you received on January 15, 1926, being Exhibit P 48? A. (Witness reads) "51 West 76th St., January 15, 1926. Dear Ralph: I find the enclosed letter was not sent when it should have been. If there are any developments in the scarlet fever situation I'm sure you will let me know at once. Margaret sprained her ankle Sunday evening and had to use crutches Monday but walked without them on Tuesday & thought she would be all right. Sincerely—Mary." I find I have put in pencil, for it is my writing, on the first line after the word "letter"—"of Dec. 16, 1925."

Q. Will you read the enclosure, Exhibit P 49? A. (Witness reads) "110 West 79th Street, December 16, 1925. Dear Ralph: Thank you for the check for $100.00 of December eleventh. Also the second of the same date for the same amount. I will use it to get some Christmas gifts for the children as you say and the rest can go toward their room and board while here. Sincerely—Mary."

Q. So that in that letter of December 16th, Exhibit P 49, she does not acknowledge any part of that money as a present for herself? A. She does not.

Q. She will spend the $100.00 which you sent for the children and her as a present for what purpose? A. "For Christmas gifts for the children and the rest will go towards their room and board while here."

Q. Does she say anything about accepting your invitation to spend Christmas with the family? A. She does not.

Q. Do you find a copy of Exhibit P 49, the letter of December 16th, in the file produced by the other side? A. I do, excepting that the signature is "M" instead of "Mary."

Q. Is that the copy? (indicating). A. It is the copy.

Mr. Walscheid: I offer the copy in evidence.

(Copy marked Exhibit P 49A in evidence without objection).

Q. Now in the meanwhile and before you received this letter of January 15th, had you written to her again? A. Yes, on December 24, 1925.

Q. Do you find the original of that letter in the file produced by the other side? A. I do.

Q. Is that it? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 50 in evidence without objection).

Q. Please read it? A. (Witness reads) "210 Christie Heights Ave., Leonia, N. J., Dec. 24, 1925. Dear Mary: I have received Christmas cards from the following addressed to Mr. & Mrs. These are all of those in which I think you will have an interest. I will or have sent Christmas cards to each.

I. N. Stephenson
Pearls
Chase
Needhams
Kate Estabrooke
Jas S. Stevens
A. S. Holmes
Johansen

Have a package from Ella Knight which I forwarded to you. Sorry you and Helen refused to have Christmas Dinner with Margaret, Billy & me

tomorrow. It would have been much nicer for us all to get together tomorrow for Christmas dinner. With best wishes—Ralph."

Q. Did you receive a reply to this letter of December 24, 1925, being Exhibit P 50? A. I received no reply.

Q. When next did you write to her? What's the next correspondence that passed between you? A. I would like to see the 1926 file. (Counsel for defendant hands witness file of letters). (Witness continuing) The next letter is January 14, 1926.

Q. Do you find the original in the file produced by the other side? A. I do.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 51 in evidence without objection).

Q. Please read it? A. (Witness reads) "Jan. 14, 1926, 210 Christie Heights St., Leonia, N. J. Dear Mary: Enclosed find check for $100.00. I expect to be able to send you something more the latter part of this month. You may plan on it. Received a note from Margaret saying she had sprained her ankle. Apparently it is only a light sprain and she ought to get over it quickly. Things have not been going well with me the last few weeks. No one single thing but most every thing works in the way it shouldn't. You have now been away a full year. You had better change your mind and come back and live with me. Be a good girl and come along. Ralph. Twin girls come to the Works today."

Q. That letter was written practically on the anniversary of her leaving, wasn't it? A. Yes, just a year and a day afterwards.

Q. And when you say you expect to be able to send her something more, did she ask you for it or did you do it without request? A. It was a suggestion of mine.

Q. And did you send her something in addition the end of the month? A. I think there is a check for Seventy Dollars.

Q. Did you receive a reply to this letter of January 14th? A. The letter of January 15th which has been offered in evidence as Exhibit 48 has some discussion on some things, but I do not think I received it in reply to this. I think it was written independently.

Q. You think it crossed? A. It has a discussion of Margaret's sprained ankle.

Q. Excepting for this letter of January 15th, did you receive any reply to this letter of January 14th? A. Yes, on January 27th I received a reply to that letter.

Q. Not until January 27th? A. That's correct.

Q. Have you that letter? A. I have.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 52 in evidence without objection.)

Q. Do you find in the files a copy of Exhibit P 48? A. I do, excepting it is signed "M" instead of "Mary."

Q. Is that it? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 48 A in evidence without objection).

Q. Now these various replies that you have testified, as to the majority of them I did not ask you whether they were in Mrs. McKee's handwriting.

All that you have identified are in Mrs. McKee's handwriting, are they not? A. They are.

Q. Before reading this letter from her under date of January 27th, do you find in the file another letter from you to her? A. Yes, one of January 26, 1926.

Q. Is this the letter which you thus find? A. It is.

Q. And you find it in the file produced by the other side? A. I do.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 53 in evidence without objection).

Q. Will you please read it? A. (Witness reads) "Jan. 26, 1926, New York City. Dear Mary: Enclosed is check for seventy dollars which will fully cover the extra expenses which you had due to the children's Christmas visits. The extra hundred dollars I sent you in December was for Christmas presents for the children and for a Christmas present for yourself and I thought my letter was plain in this respect. A letter just this morning received from Mr. Taft says that Bill is not immune from scarlet fever—as shown when Bill took the Dick test. However the time has passed when a case could be developed from the second patient and "we can consider the immunizing question more at our leisure." He will write again. These last two weeks I have been pretty near crazy by some attacks on my professional standing by certain parties. I am however managing to meet them and show they are without basis—at least I think I am. Margaret comes Friday does she not? Yours—Ralph."

Q. Now the last letter which you received from

her is the letter of January 27th which you have heretofore referred to? A. Yes, and which is marked Exhibit P 52.

Q. Will you read Exhibit P 52? A. (Witness reads) "51 West 76th St., January 27, 1926. Dear Ralph: Thank you for the check for seventy ($70) dollars which I received today. I am very sorry to hear that matters have not been going well with you. If there is anything I can do to help you, I shall, of course, be glad to do it at any time. Yes, Margaret expects to come over on Friday, but I do not know at what time as she is planning to motor over. Yours—Mary."

Q. Do you find a copy of Exhibit P 52 in the file produced by the other side? A. I do, excepting that the signature is "M" instead of "Mary."

Q. Is that copy in Mrs. McKee's handwriting? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P-52A in evidence without objection.)

Q. What is the next communication that passed between you and your wife? A. The next is a letter of mine of February 14, 1926.

Q. Do you find the original of that in the file produced by the other side? A. I do.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-54 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Leonia, N. J., Feb. 14, 1926. Dear Mary: Enclosed is the kind of a Valentine you like—a check for fifty dollars. I can not just now send more because what I

have in the two banks is less than a hundred fifty and there is one bill that has to be paid tomorrow. Will send you some more later on this month. Have two bills from Taft, one for $715 and the other for a small amount. I don't see where I am going to be able to pay this before it is way over due. This attack on me is driving me crazy. I had my defense on two afternoons (Monday & Thursday) this past week and made out fairly well though the Committee is prejudiced against me. Yours—Ralph."

Q. Did you receive a reply to that letter or did you send her another letter before you received a reply? A. I sent her a letter which apparently passed her letter in reply enroute.

Q. But in line of dates precedes her reply? A. Yes.

Q. Do you find that letter produced by the other side? A. A letter dated February 18, 1826.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-55 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Havemeyer Hall, New York, N. Y., Feb. 17, 1926. Dear Mary: Your lawyers are certainly stirring up trouble. I received a letter from the Chemical Catalog Co., Inc., scolding about this matter. I am enclosing a copy of their letter. I also received a letter from Mr. Meserue along the same line. Why make all this trouble for me and incidentally to reflect on yourself? Better quit this business of trying to go it alone and come and live a normal married life with me. I would like to have you and we would both be happier. Won't you do it?—Ralph H. McKee."

Q. And attached to that letter you find in the files a copy of a letter from the Chemical Catalog Company, Inc.? A. Yes, this is the copy of the letter which I enclosed to Mrs. McKee when writing on February 18th.

Q. And sent with Exhibit P-55? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-56 in evidence without objection.)

Q. Will you please read Exhibit 56? A. (Witness reads):

(Copy)

"THE CHEMICAL CATALOG COMPANY, INC.
19 East 24th Street
New York

February 16, 1926.

Dr. Ralph H. McKee,
Columbia University,
Department of Chemical Engineering,
New York, N. Y.

Dear Mr. McKee:

A lawyer's clerk has just called on us asking for certain information about income you are supposed to be deriving from royalties on a book we have published for you. It is of course an annoyance and a nuisance to have to stop our routine work and go through our records at an irregular time for doing this, in order to total any amounts that may be coming to you as royalties. On the other hand, if we do not do this we are likely to be summoned as witnesses in any suit that may be brought against you in connection with this matter.

As a matter of fact, it is quite likely that there will be no royalties coming to you for some time in view of the fact that you were paid in advance against these royalties before the book was published, and that one third of any subsequent royalties that might accrue from the sale of this book will be paid to the American Chemical Society, thus reducing any royalties you might draw, if any, by that much. It is undoubtedly an infinitesimal amount that will come to you in the way of royalties, in the event that any should accrue, and it seems to us that we are being unnecessarily annoyed to find out what this small amount might be.

Yours very truly,

THE CHEMICAL CATALOG COMPANY, INC.,
(Signed) F. W. ROBINSON,
President."

Q. Now the next communications comes from her, does it not? A. It does.

Q. Have you that? A. I have it; it is dated February 19, 1926.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-57 in evidence without objection.)

Q. Please read it? (Witness reads) "51 West 76th Street, February 19, 1926. Dear Ralph: Thank you for sending the check for fifty dollars which I received the first of the week. You speak of attacks being made on you but you do not say by whom or along what line. Is the committee you mention a committee appointed by the board? I am of course interested to know what has happened

and hope you have succeeded in settling the affair. As to the matter referred to in your letter of yesterday, it is necessary to provide a home for the children and myself. There is no reason why our affairs could not be settled without resorting to the publicity of court action, excepting your refusal to do so. Billy has written that he expects to be off bounds on Saturday. Very sincerely—Mary."

Q. Is there a copy of that letter just read, being Exhibit P-57, in the files produced by the other side? A. Yes, a copy in Mrs. McKee's handwriting but without the signature and without the words "Very sincerely."

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P-57A in evidence without objection.)

Q. What is the next communication between you? A. The next communication is one from me of February 22, 1926.

Q. Do you find the original in the files produced by the other side? A. I do.

Q. Is that it (indicating)? A. That is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-58 in evidence without objection.)

Q. Please read it? A. (Witness reads) "210 Christie Heights St., Leonia, N. J., Feb. 22, 1926. Dear Mary: Replying to yours of the 19th I am glad to know that Billy is probably off bounds now. He certainly has "enjoyed" being on bounds most of the time this school year. I am glad you are coming to see the need of a common home for the children you and me. It is just as necessary that

the children have a home with me as with you and there is no reason why we should not all be happy in the same home. If you would only get over your mad spell we could all live happily together once again. The attacks which have been made on me have been by Dr. Walker, Dr. H. K. Moore and Prof. Jackson, partly before the Com. on Ethics of the Amer. Inst. of Chem. Engineers and partly on my job at Columbia. They have also used somewhat your desertion of me as an item. Saw Helen at the Sigma Xi meeting Wednesday evening at the Amer. Museum of Natural History. I nodded at her twice but she did not give me any notice. Sincerely—Ralph."

Q. When you speak of Helen in this letter which you have just read, whom do you mean? A. Her sister Helen.

Q. Who is here in court now? A. Yes.

Q. Did you receive a reply to that letter? A. No; I wrote another letter before I received any reply.

Q. Under what date did you write that letter? A. February 25, 1926.

Q. Is the original of that before you in the file produced by the other side? A. It is.

Q. Is this it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-59 in evidence without objection.)

Q. Please read it? A. (Witness reads) "210 Christie Heights St., Leonia, N. J., Feb. 25, 1926. Dear Mary: Enclosed is check for one hundred dollars to apply on your expenses. Received short letters from Billy and Margaret this week. Nothing of news in them but still it was nice to get them.

Nor have I any particular news regarding myself. What do you think about doing what I discussed in my letter of a few days ago. Yours truly—Ralph."

Q. Did you receive a reply to that letter? A. I did; the reply being especially to the two last letters.

Q. Under what date? A. March 5, 1926.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-60 in evidence without objection.)

Q. Will you please read it? A. (Witness reading) "51 West 76th Street, March 5, 1926. Dear Ralph: Thank you for the check for one hundred dollars which I received on Saturday. I do not think it is necessary to say anything more than I have already said many times to you in regard to the other matter to which you refer in your letter. I am sure you know my mind on that point. Very sincerely—Mary."

Q. Now the "other matter" which she refers to, what is that "other" matter? A. The question of her returning to live with me.

Q. And you had referred to that? A. In the previous letters.

Q. Had she on various occasions told you what her mind was on that point? A. Yes; particularly in conferences which we had from time to time.

Q. What did she say her mind was on that point? A. That she didn't care to come and live with me, and that she would not do it.

By the Vice-Chancellor:

Q. Did she state reasons for it? A. No, not generally. Some of the times she had said that I did

not provide adequately for the family, and at other times she stated that I was cruel and she didn't want to live with me.

By Mr. Walscheid:

Q. Is there a copy of the letter just read, namely, Exhibit P-60, in the file produced by the other side? A. There is, excepting it is not signed.

Q. Is it in your wife's handwriting? A. It is.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 60A in evidence without objection.)

Q. When is the next correspondence between you and your wife? A. The next is a letter of mine of March 12, 1926, to her.

Q. Do you find the original letter in the files produced by the other side? A. I do.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 61 in evidence without objection.)

Q. Please read it? A. (Witness reads): "210 Christie Heights St., Leonia, N. J., March 12, 1926. Dear Mary: Enclosed find check for $100.00 for your use. Do you get any real information from Billy as to how he is getting along. If so what do you hear? I have given you all I have heard. I am worried for it looks to me as if he was headed for pretty much of a failure at the end of the year. Paid $400 on Bill's bill at Taft, but owe yet about as much more, all on the charges for the second semester. Had to borrow at the

bank to get the money to make this and another family payment. With best wishes—Ralph."

Q. These checks that you have been sending to her since October, since the institution of this suit represented by Exhibit P 44, were they made under any court order in that proceeding? A. No; the court—

Q. Did your wife immediately after the institution of that suit apply to the court for a fixation of a sum to be paid by you to her in that suit?

Mr. Blumberg: I object to it; I think the records will show.

By the Vice-Chancellor:

Q. What is the fact? A. I think it was a little later.

By Mr. Walscheid:

Q. So that up to that time no effort had been made by Mrs. McKee to force you to pay any specific amount in this court action represented by the summons and complaint, Exhibit P 44? A. That is correct.

Q. Did she at any time make such an application? A. She made it in the fall of 1926.

Q. So she made it practically a year after she filed her summons and complaint? A. Yes.

(Further hearing continued to March 4, 1929.)

March 4, 1929.

RALPH McKEE, recalled.

Continuation of Direct Examination by Mr. Walscheid:

Q. Is there a reply to this Exhibit P 61? A. Yes, there is one of March 14, 1926.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 62 in evidence without objection.)

Q. Will you please read it? A. (Witness reads): "51 West 76th Street, March 14, 1926. Dear Ralph: Thank you for the check for $100.00 which I received last evening. Not having any definite news about Billy's work, I was much worried about him and called him up yesterday. While he still has a number of demerits, he did not say how many, he thinks he has improved much in his studies. Said he had a grade of 83 in history last week, and seemed quite enthusiastic. If he is not discouraged he may pick up now. I felt much relieved after talking with him. Tried to find you at the office today but had not your other 'phone number. Sincerely—Mary."

Q. What other 'phone number was there excepting your office 'phone? A. I presume my residence 'phone at 210 Christie Heights Street, Neonia, New Jersey.

Q. Is that the only other 'phone you had at that time? A. Yes.

Q. And is that a copy of the letter which was just read (indicating)? A. It is.

Q. In Mrs. McKee's handwriting? A. Excepting it is signed "M" instead of "Mary."

Q. And marked "copy"? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 62A in evidence without objection.)

Q. What is the next letter that passed between you? A. A letter of March 21, 1926, from myself to Mrs. McKee, which letter I have here.

Q. And which is produced from files produced by the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 63 in evidence without objection.)

Q. Will you be good enough to read it? A. (Witness reads): "210 Christie Heights St., Leonia, N. J., March 21, 1926. Dear Mary: Had a nice hour with Margaret last night. Emerson Blackford joined us at dinner and Margaret seemed to enjoy his company—he is a fine young man. Received a letter from Mr. Taft. Bill will leave there Saturday a little after noon and must be back on the afternoon of Saturday, April 10. He enclosed the customary health certificate and baggage check but did not say anything regarding Billy's grades or demerits. How many people and whom have been asked for affidavits regarding me and my income? I keep hearing of another one from time to time, and each time in a way that makes trouble between me and them. Yours truly—Ralph."

Q. Now in relation to the first paragraph of that letter in which you say, "Had a nice hour with Margaret last night. Emerson Blackford joined us at dinner and Margaret seemed to enjoy his company." Where was this dinner, at Christie Heights? A. No, it was some place in New York, but I have forgotten just what restaurant.

Q. Did you receive a reply to that letter? A. Yes; a letter of March 29, 1926.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 64 in evidence without objection.)

Q. Please read it? A. (Witness reads): "51 West 76th Street, March 29, 1926. Dear Ralph: I'm glad you had such a nice visit with Margaret. Perhaps Emerson would like to go down to the college some time and meet some of the girls. As to your question concerning affidavits—my attorney asked Mr. Kirby for a list of the people with whom you were connected and the amounts you received from each, but he refused to give it to them. So the only way they had of finding out was the method they are following of going to the people themselves for the information—and some of it is proving quite interesting. Hoping you and Billy will have a nice trip South—Sincerely, Mary."

Q. Is this a copy of the letter (indicating)? A. It is.

Q. And is it in Mrs. McKee's handwriting? A. It is.

Q. It has no signature? A. Excepting the signature and it is marked a copy.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 64A in evidence without objection.)

Q. When is the next letter? A. The next letter is a letter of mine to Mrs. McKee of April 7, 1926.

Q. Is that the letter (indicating)? A. This is the letter produced from the files of the other side.

Mr. Walscheid: I offer the letter.

(Letter marked Exhibit P 65 in evidence without objection.)

Q. Please read it? A. (Witness reads): "April 7, 1926. 210 Christie Heights St., Leonia, N. J. Dear Mary: Billy tells me that you are planning to move up to Spuyten Duyvil and to take the Lyman house. I don't see what you want with that large house, even for a few months. It will mean lots of work to take care of it and you know you don't like house work. I telephoned to your former residence and they told me you had moved but could not give me either your new address or phone number. Send me both when you write. I will send this to the Lyman house on the supposition it will reach you. Enclosed find check for $100 for your use. Billy apparently enjoyed his trip and it did him much good and at the same time I had a good visit with him, which did me good. In going over the cancelled checks tonight I noted with surprise that you did not cash the Feb. 25 and Mar. 12 checks I sent you until March 30th. Yours—Ralph."

Q. And did you receive a reply to that? A. Yes, of April 14, 1926.

Q. Is that the reply (indicating)? A. That is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 66 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, April 14, 1926. Dear Ralph: Thank you for the check for $100.00 which I received on Friday. The address Spuyten Duyvil is enough, though Netherland Avenue can be added if preferred. The telephone is not yet adjusted but prob-

ably will be in a day or two. I too, am much worried about Billy. It seems to me the best thing we could do for him this summer would be to send him to a good military summer camp. He is too young for Plattsburg and not strong enough anyway. I sent for a Culver catalogue, but it disappeared before I examined it carefully. From the superficial examination I did give it I thought it would be an excellent place for him. I think you went in for military drill at about that age and said it was of great benefit to you. Besides getting his body straightened out and strengthened, if he registers early enough he would have a horse of his own to take care of and ride and would be taught horsemanship. At a military camp he would have to carry out instructions exactly & at once and that certainly would be of great benefit to him. He did not fall in with the idea particularly when I mentioned it to him—nevertheless I think it would be of greater benefit to him than anything else he could do. Of course I did not mention to him his having to obey instructions exactly but that is one thing that he does need to learn. The vacation is too long to spend it all in idle pleasure and he is too young and immature to take a "job". There are doubtless other good military camps but I do not know where. Harold McMahon went to Culver one summer & enjoyed it very much I was told & they thought it was a fine thing for him. Sincerely—Mary."

Q. Is that a copy of the letter just read (indicating)? A. Yes; excepting it does not carry the signature.

Q. And it is in your wife's handwriting? A. Yes.

Q. Taken from the file produced by your wife? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 66A in evidence without objection.)

Q. What is the next letter? A. The next letter is a letter from me to her of April 15, 1926.

Q. And taken from the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P67 in evidence without objection.)

Q. Please read it? A. (Witness reads): "April 15, 1926. Dear Mary: I sent you a letter with check enclosed early this month but I do not know that it reached you. However it has not been "returned to sender" so I hope it reached you. I also asked for your new correct address and telephone number. Let me have these soon. Dr. F. H. Brophy discussed, at my suggestion, with you the question of our getting together and living together an ordinary married couple life. I would like to get together with you and see if we cannot come to a common view in the matter. How about having dinner with me some evening at Lorber's, or somewhere else if you prefer? Telephone me and we will set an evening. Be a nice girl and let's get together. —Ralph."

Q. Did you receive a reply to that letter? A. Yes; one of April 19th.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 68 in evidence without objection.)

Q. Read it, please? A. (Witness reads): "Spuyten Duyvil, April 19, 1926. Dear Ralph: Your let-

ter reached me on Saturday. If you really wish to talk things over with me as you say, I will meet you at Mr. Newman's office on Thursday afternoon at three o'clock. As my telephone is not yet adjusted I will call you on Wednesday to see if that time suits you. Sincerely.—Mary."

Q. Who is Mr. Newman? A. Mr. Newman was her attorney, of the firm of Hirsch, Newman & Reass.

Q. So that in reply to your invitation to go to dinner with you she invited you to meet her at her attorney's office? A. Yes, sir.

Q. Is that a copy of that letter (indicating)? A. It is, excepting it is not signed and is labelled copy.

Q. Produced from the files of the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit 68A in evidence without objection.)

Q. Before receiving that letter of April 19th from your wife which you have just read, it appears you wrote her another letter on April 18, 1926, didn't you? A. I did.

Q. Is this the letter produced from the files of the other side (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 69 in evidence without objection.)

Q. Please read it? A. (Witness reads): It carries the heading "Teachers College Country Club, Ossining-On-Hudson, New York. April 18, 1926. Dear Mary: I am glad to know your address. Let me know your telephone number as soon as you have it. It don't seem to me that a military camp

is likely to be the best place for Billy—particularly when he hardly knows which is the dangerous end of a horse. A regular boys' camp or a light work, out of door job, seems to be wiser. I think I can get him a job at the N. Y. Botanical Garden if he wants it. What would you think of such a job for him? I have not heard from you in reply to my last letter regarding our getting together and talking things over. Call me up, preferably in the morning, and we will get together. With best wishes.—Ralph."

Q. To that letter the only reply you received, if it is a reply, is the letter of April 19th which has been offered in evidence as Exhibit P 68? A. No; I received on April 23rd a letter which is really a direct reply to that letter.

Q. In the meanwhile did you go to the office of Mr. Newman at that time with her—I mean in response to her invitation written to that letter of April 19th.? A. I went to Mr. Newman's office several times, but I do not recall whether directly in response to that letter, nor do I at this instance have in mind the exact dates when I went there.

Q. You say you did receive a letter in reply to your letter of the 18th of April? A. I have it here.

Q. Is that it (indicating)? A. Yes; I have one of April 23rd.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 70 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, April 23, 1926. Dear Ralph: The telephone has been connected—Kingsbridge 3142. Sincerely—Mary."

Q. Do you find any copy in the file produced by the other side? A. I do not see it.

Q. What is the next letter that passed between you? A. A letter from me to her of May 7th.

Q. Is that it (indicating)? A. Yes.

Q. Found in the files produced by the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 71 in evidence without objection.)

Q. Please read it? A. (Witness reads): "May 7, 1926. Dear Mary: Enclosed is check for $100. for your use. Please let me know when this reaches you as I have no number for the house you are in and must send it only to the street. Happily the street is a short one. I was in Philadelphia Wednesday evening and yesterday. Margaret came in to meet me. We had dinner together and went to the theatre afterwards. She is sure a lovely girl. With best wishes—Ralph."

Q. There seems to be no reply to that letter—no direct reply? A. There is not.

Q. What is the next letter that passed between you and her? A. A letter from me to Mrs. McKee of May 10, 1926.

Q. And is that the letter (indicating)? A. This is.

Q. Produced from the files of the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 72 in evidence without objection.)

Q. Please read it? A. (Witness reads): "May 10, 1926. Dear Mary: Billy has written definitely that he wants to work on the poplar forestry work for the Oxford Paper Co. this summer and indeed has signed a contract to work this summer. I have

approved the contract. Did I send you a letter from Dr. Caldwell of the Lincoln School relative to Billy's working this summer vs. his going to a summer camp? If not let me know and I will send you a copy. I wrote Dr. Caldwell regarding the matter and asked his advice. He strongly preferred the forestry work. Billy will be working most of the summer 9 to 4 or 9 to 5 at the Bronx Botanical Gardens so you and I will have a chance to become acquainted with him once again. I scarcely had such an opportunity last summer but you did. He will probably go for a minor part of the summer to Oxford County, Maine. Just when I do not know. I moved into my office in the Havemeyer Annex Saturday. It is not really fitted up but will serve, as it is, as well as the old dark office. Working in an office without outside windows has gotten on my nerves. I have been doing it for six months. With best wishes—Ralph."

Vice-Chancellor: We will now take a recess until 1:45.

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(Afternoon Session.)

Q. What is the next letter that passed between you and Mrs. McKee? A. A letter from me to her under date of June 9, 1926.

Q. And is this the letter produced by the other side (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 73 in evidence without objection.)

Q. Will you please read it? A. (Witness reads) "Leonia, N. J., 210 Christie Heights St., June 9,

1926. Dear Mary: Enclosed find check for $100.00 for your use. I was surprised to have Billy phone me and apparently he was surprised to be able to get away from school for a few days. It is fine to have both him and Margaret here at this part of the country again. I am leaving Sunday for a ten day trip. Would that you were in a frame of mind to go along with me! With best wishes—Ralph."

Q. Did you receive a reply to that? A. I received a letter dated June 10th.

Q. Which is not a reply to that? A. Which is not a reply; apparently the two passed enroute.

Q. Is that the letter you have before you? A. It is.

Mr. Walscheid. I offer it in evidence.

(Letter marked Exhibit P 74 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, June 10, 1926. Dear Ralph: I have neglected acknowledging the receipt of the check for one hundred dollars which you sent me last month. I have postponed writing really because I have felt greatly indignant that you should so abuse the confidence of an acquaintance. Please do not drag anyone else into our affairs. After using them to arrange a meeting with me, you say nothing and do nothing that will help to settle the matter. It is so patent that you do this only in order to make an opportunity of writing a letter in which the statements are quite contrary to the real interview and which you think you can later use as evidence. You must see that this is quite unfair to the party you employ. Sincerely—Mary."

Q. What did that have reference to? A. That

had reference to the fact that I had asked our dentist, Dr. Brophy, to have a talk with Mrs. McKee and urge her to return to live with me.

Q. Did you receive any report from Dr. Brophy in the matter? A. He reported to me verbally, or rather over the telephone, that he had not been able to get any interest shown by Mrs. McKee in the matter.

Q. Was there anything that you had done that you know of abusing the confidence of an acquaintance? A. No; excepting that I had asked him from his personal friendship for me as a personal friend to help in the matter.

Q. Is that all you had done with him? A. Yes.

Q. I show you a letter produced from the files of the other side. Is that a copy of the letter you just read? A. It is, excepting the lack of signature, and is also labelled copy.

Mr. Walscheid: I offer this copy in evidence.

(Copy marked Exhibit P 74A in evidence without objection.)

Q. And this copy is in the handwriting of Mrs. McKee? A. Yes.

Q. What is the next letter that passed between you? A The next letter that I find here is one of July 9, 1926, from me to Mrs. McKee.

Q. And you find that in the files produced by Mrs. McKee? A. Yes.

Mr. Walscheid:: I offer it in evidence.

(Letter marked Exhibit P-75 in evidence without objection.)

Q. Please read it? A. (Witness reads) "July 9, 1926, Leonia, N. J. Dear Mary: About June 9 I

sent you a check but I have heard nothing from you as to whether you received it or not, nor has it come back to me from the bank as paid. Did you receive it? Enclosed is a check for $100 payable to your order. Kindly acknowledge receipt. You do me an injustice when you say I did not use Dr. Brophy squarely. I did. It was you, if anyone, who misled him. You know well that I have been trying my best to get you to get over your huff and come back and live with me and the children. Why don't you do it Dr. Stout tells me Bill is doing well at his work. I am real proud of him and you ought to be too. Margaret and he are both better off than at camps which you suggested, and also you and I are also better off to have them where we can see them. I do think however it would be far fairer for you not to insist on keeping one with you each Sunday. Sunday is almost my only day of freedom and it would be fine for Margaret, for Bill and for me if they spent their Sundays with me at the Country Club at Ossining. We could go out Saturday afternoon and they could be back with you Sunday night. To ask them to stay with you every night is not fair to them or to me. If they were away at camp you would not have them any of these July nights. Be fair with me in the matter, please do. With best wishes —Ralph."

Q. Is there a reply to that letter? A. Yes; a reply of July 16th.

Q. Is that it (indicating)? A. That is it, yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-76 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, July 16, 1926. Dear Ralph: Thank you

for the check for $100.00 which I received on the twelfth. I received the one you sent for the same amount about a month ago though I may have overlooked acknowledging it. In the light of certain facts which have come to me since we talked together some weeks ago, it seems possible that you did not make clear to me just what you intended. Under the circumstances if you so desire I will be at Mr. Newman's office on Monday afternoon for the purpose of continuing the conversation. You will understand that although I am as always willing to reach any reasonable agreement in settling our difficulties and avoiding publicity my position in the matter is in no way changed. You will of course let me know whether you wish to do this and if so at what time. Sincerely—Mary."

Q. The paragraph in that letter "In the light of certain facts which have come to me since we talked together some weeks ago, it seems possible that you did not make clear to me just what you intended". Do you know what that has reference to? A. I do not now recall although I may have learned it at different conferences. I don't think I ever knew.

By the Vice-Chancellor:

Q. Just what was that talk which you had. A. I cannot say, your honor, excepting we did have talks perhaps in this period of 1926 about once every month or two months, and I do not know now just what she refers to here.

Q. What was the subject of the talk of the meetings which you had? A. The question of her returning to me and also the question of Margaret's schooling and Billy's schooling.

Q. What overtures had you made to her in personal contract with her about returning to live to-

gether or about reconciliation? A. I had been urging her at practically every meeting I arranged.

Q. What did you say to her on these occasions? A. I would say to her such things as "Let's get together; there is no reason for us being apart. We can live together and it would be better for the children and better for you and me. If you don't want to take care of a house—if you don't want to live in a house we can take an apartment or go to a hotel."

Q. What was her reply? A. Oftentimes there was no reply, and when she did she said "I don't care to live with you."

Q. What reason did she assign to you for not being willing to live with you? A. She said I didn't furnish sufficient finances there and also she was tired of married life.

Q. Was it at those conferences that those statements were made by her to you? A. Yes.

By Mr. Walscheid:

Q. In that same letter she says "Under the circumstances if you so desire I will be at Mr. Newman's office on Monday afternoon for the purpose of continuing the conversation." Did you go to Mr. Newman's office? A. I do not recall whether at that date I went to Mr. Newman's office or not. I did a number of times, but in every case such as this I would telephone to her and tried to make other arrangements.

Q. What do you mean by that? A. For a date to meet her elsewhere. I did not want to go to her lawyers' office and talk in the presence of her lawyer. I thought the talk should be between ourselves.

Q. Did you tell her that? A. Yes.

Q. What did she say? A. Sometimes she would acquiesce and sometimes not. If I was to meet her in her attorneys' office it was in the presence of Mr. Newman or Mr. Reass or Mr. — there was a third member of the firm, a younger member.

By the Vice-Chancellor:

Q. Did you at any of these meetings in the presence of these men importune your wife to return to live with you? A. I did in the presence of Mr. Newman.

By Mr. Walscheid:

Q. Did you at all of these meetings do that? A. I think not all, though there is a question in the case of one—in the presence of Mr. Reass or one in the presence of the others.

Q. Do you think there is one in which you did not? A. There is one I think which I did not.

Q. When was that if you can remember in relation to the first time she left you? A. At one of the earlier meetings I think, the second. There was one that was not held in the library of this firm. The other meetings were in the library.

Q. Where was this meeting held? A. I think in Mr. Hirsch's office—I mean Mr. Reass' office, of that firm.

Q. The third paragraph of that letter—"You will understand that although I am as always willing to reach any reasonable agreement in settling our difficulties and avoiding publicity my position in the matter is in no way changed." What did you understand she meant when she said her position was in no way changed? A. That she would not return to live with me.

By the Vice-Chancellor:

Q. What did she say to indicate that? A. She said so a number of times and once or twice in letters.

Q. Said that she did not want to return to live with you. Did she assign any particular reason or not? A. She didn't want to live with me; that she was tired of living with me and did not want to live with me.

Q. Didn't you think that was a queer thing for her to say after she lived with you a number of years and struggled along with you and brought up your children? A. It was not, your honor, because she had been tapering off in her interest in married life for the previous ten years. There had been less and less interest in married life.

Q. How did that manifest itself? A. Perhaps mostly based on the question of sexual intercourse.

Q. I understood you to say there was no difficulty in that respect until two years prior to the separation? A. Not that there was no difficulty, but there was no absolute refusal, but there was beginning a number of years earlier a very much decreased interest.

Q. What reason would she assign for that? A. "I do not feel that way tonight", and "Let's leave it go," and I would ask the next night and the night following and I would get the same reply.

By Mr. Walscheid:

Q. I show you what purports to be a copy of the letter which you just read and which is produced from the file of the defendant. Is that a copy? A. It is, excepting it does not have the signature and does have the word "copy" written on it.

Q. Is it in the handwriting of Mrs. McKee? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P-76A in evidence without objection.)

Q. What is the next letter which passed between you and Mrs. McKee? A. A letter from me to Mrs. McKee of July 21, 1926.

Q. Is that it (indicating)? A. This is it.

Q. Produced from the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-77 in evidence without objection.)

Q. Please head it? A. (Witness reads) "Copperhill, Tenn., July 21, 1926. Dear Mary: Your letter received Monday morning but I was engaged for most of the day with conferences I could not well cancel. Tried to reach you by phone but received a "busy" signal. Why did you not mention the subject when I called you and was talking to you on the phone Friday and again on Saturday? I will be glad to see you and talk matters over with you most any time, however my day on Monday was closely tied up with my guests and with business and I had to leave for here that evening. When we do meet it must be in some neutral place rather than your lawyers' office as it is not unknown for such a type lawyer to plant witnesses who swear they overheard conversations which actually never took place. We can meet some other place just as well. Just what do you mean by not having understood correctly some phase of our conversation at our meeting last March or April? You seemed at the time to understand clearly that I wanted you to come back to live with me and the children a normal married life, but you declined

to do it but instead wanted me to give you all my income and complete care and charge of the children and threatened in case I did not to start legal separation proceedings within a week—which proceedings were started shortly afterwards much to my regret. What new phase or information or change of mind has come to you? Are you now willing to come back to married life with me? I do not expect to be back in New York or Leonia until next Tuesday or Wednesday. If you write me in answer to the above, as I hope you will, please mark the envelope "Personal" as I do not have my regular stenographer now and otherwise the envelope might be opened by the new girl. Had a fine visit from Aunt Clara and Inez. Yours truly—Ralph H. McKee."

Q. That letter, P-77, was written from Copperhill, Tennessee? A. Yes.

Q. And it is evidently in response to the letter P-76 of which the copy, Exhibit P-76A is now before you, isn't that so? A. Yes.

Q. You say something in that letter about leaving on Monday evening? A. Yes.

Q. You say in this letter "Your letter received Monday morning". I suppose that means the Monday preceding the 21st? A. Yes.

Q. Do you remember how soon after you left for Copperhill, Tennessee? A. That evening or afternoon.

Q. The day upon which you received that letter, that is, the letter Exhibit P-76? A. P-77—Yes, P-76.

Q. And that is the reason you answered it from Copperhill, Tennessee? A. Yes.

Q. That letter, Exhibit P-77, seems further to deal with the topic of conversation which you had with Mrs. McKee and to which she refers in P-76? A. It does.

Q. Does that refresh your recollection as to what that conversation was? A. No, excepting as to the time and the fact that at that time she threatened in case I did not turn over my income and give her complete care and charge of the children to start legal separation proceedings within a week, and they were started shortly thereafter.

Q. You testify to that now that they were? A. Yes.

Q. And that meeting of March or April referred to was brought about at your request? A. I think so because—while I do not recall that particular one practically all the meetings were at my request. I would say that more than nine-tenths of them were at my request.

Q. At this meeting referred to in this letter of Exhibit P 77, the meeting of March or April, did you at any other meeting ask her to return to you and live with you a normal married life? A. I did; I remember the time of the meeting and the place, but I do not remember at whose instigation the meeting was held.

Q. Where was the meeting held? A. On the mezzanine floor of the Pennsylvania Hotel.

Q. And you and she were alone then? A. Yes, for an hour or an hour and a half.

Q. Discussing the question of her return to you? A. For a considerable portion of that time; the other portion being concerned with the children.

Q. Now what is the next letter. A. The next letter is a letter from me to her of August 13, 1926.

Q. Is that a letter produced from the file by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 78 in evidence without objection).

Q. Please read it? A. (Witness reads) "210 Christie Heights St., Leonia, N. J., Aug. 13, 1926. Dear Mary: Enclosed find check for $100.00 for your use. Kindly acknowledge receipt. As I told you in the several telephone conversations which I have lately had with you there is no reason why you and I should not get together privately and without the presence of your Mr. Newman. His advice to you, which you quoted, to not meet me except at his office is not sound legal advice and just the reverse of what the law wishes. The law wishes us to settle our matrimonial difficulties out of court if possible. When I put the question to Mr. Kirby he said "by all means meet her privately rather than in the presence of her attorney or in his office and see if you and she can clear your troubles." What do you say to getting together with me for a talk sometime in the next few days? Yours—Ralph."

Q. At that time had she told you that Mr. Newman, the lawyer advised her not to meet you privately? A. She had.

Q. And had you conveyed that information to Mr. Kirby? A. I had.

Q. And who is Mr. Kirby? A. Mr. Kirby was my attorney.

Q. In the then pending New York separation suit? A. Yes.

Q. And he had given you the advice which you had set forth in that letter? A. Yes.

Q. Did you receive a reply to this letter? A. Yes.

Q. Have you it? A. I have it; it is of the date of August 17, 1926.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 79 in evidence without objection).

Q. Before reading that letter did your wife meet you privately as suggested in the last paragraph of your letter of August 13, 1926, Exhibit P 78? A. Not immediately. She did some time later but not in direct reply to that.

Q. So that the next event that happened between you is that letter of August 17th? A. Yes.

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, August 17, 1926. Dear Ralph: Thank you for the check for one hundred dollars which I received yesterday. As to your suggestion that we meet again to talk matters over, you will remember that on all occasions, except two, when we have done so, all you did was to go over a supposed list of your expenditures and make the statement that you would send me seventy-five dollars a month. On the first of the two exceptions Bill & I went to the apartment on your representation that you wished to make a division of the household effects when you had no such intention. The second exception was when I saw you in Mr. Newman's office the latter part of April & the sum of your statements was that it would seem we ought to live together but that if we did we would live more meanly than ever that we could take a room in some cheap hotel. In view of all this I cannot see what would be gained by another interview. Each time I have seen you outside the office you had contrived to place me in a most embarrassing position so that aside from all legal aspects it would be impossible for me to allow myself to be so placed again. However if you wish to see me "sometime in the next few days" as you say and wish to discuss matters with me—facts as they are without pretense—with a real intention of settling our affairs and avoiding publicity, I shall be very glad to do so. We can meet in the library of Mr. New-

man's office where we can have our discussion without interruption and alone if you so prefer. Sincerely—Mary."

Q. I find in the files produced by the other side what purports to be a copy of that letter. Is that it? (indicating). A. It is except it is not signed and it does carry the word "copy."

Q. And is it in the handwriting of Mrs. McKee? A. It is.

Mr. Walscheid: I offer this copy in evidence.

(Copy marked Exhibit P 79A in evidence without objection).

Q. Is it true as stated in this letter, Exhibit P 79, that on all the occasions except two when you and she met all you did was to go over a supposed list of your expenditures and make the statement that you would send her seventy-five dollars a month? A. That is not true.

Q. Then she deals with the two exceptions and says "On the first of the two exceptions Billy & I went to the apartment on your representation that you wished to make a division of the household effects when you had no such intention." What is the truth about that? A. It was not a case where I made such a representation; it was a case where she wanted to pick out certain books and she came there on July 9th when the Martins were occupying the apartment, a year before that.

Q. And that was at her request for the purpose of obtaining books, that meeting in the apartment? A. Yes.

Q. The second exception was "When I saw you in Mr. Newman's office the latter part of April & the sum of your statements was that it would seem

we ought to live together but that if we did we would have to live more meanly than ever that we could take a room in some cheap hotel." Is that true? A. It is true that I—not exactly that. What I said is that if she did not wish to keep house in an apartment we could take rooms in a hotel. There was no statement about living more meanly than before or a cheap hotel.

Q. Was a hotel mentioned, or did you get that far? A. No; this was an invitation extended to her in the presence of her attorney and my attorney, Mr. Kirby, who was then present.

Q. She says in her letter, Exhibit P 79 "Each time I have seen you outside the office you had contrived to place me in a most embarrassing position so that aside from all legal aspects it would be impossible for me to allow myself to be so placed again." Do you know what she has reference to? A. I do not, excepting the fact that I invited her to come back and live with me. She seemed to think that was embarrassing her, and she only wanted to discuss the question instead of that of how much money I would provide and as to my giving her the complete charge of the children, which I would not consent to.

Q. She then continues in Exhibit P 79 "However if you wish to see me 'sometime in the next few days' as you say and wish to discuss matters with me—facts as they are without pretense—with a real intention of settling our affairs and avoiding publicity I shall be very glad to do so. We can meet in the library of Mr. Newman's office where we can have our discussion without interruption and alone if you so prefer." Did that meeting at Mr. Newman's office take place? A. Yes.

Q. Were you alone? A. No; from the start one of her attorneys came in and I insisted it was to

be a meeting of Mrs. McKee and myself only. He wanted—or said he might be able to help, and I told him that I did not care to have a meeting with him present unless my attorney was present which he was not, and insisted that he leave so that we could talk between ourselves and we did talk there.

Q. Can you tell us what that conversation was? A. It started out with an invitation to her to return and for her to be willing to meet me not only this time but other times where we could be private and discuss things without fear of somebody eavesdropping upon us, I invited her to return; she said she would not—did not care to, and I argued it for a few minutes and then seeing I was making no progress began to talk about the children and their schooling. That has proven to be the best way I could get her to consider our family affairs because she was like myself much interested in the children. I then went back to the question of our getting together. She did part of the talking and I did part of it.

Q. What did she say in detail as to what she would do and what she wouldn't do? A. It is impossible for me to quote the exact words, but I remember one phrase I think she used at that time "You know I am not interested in considering going back and living with you; you make things too hard for me and I am not interested in living with you."

By the Vice-Chancellor:

Q. Did you ask her what it was she meant by saying you make things too hard for her? A. I did ask her and she said she didn't care to live with me unless I would give her complete control of the

money, and even then she wanted the children, and when I discussed that she backed out from the question of even accepting the money and control the finances and said she didn't want to live with me at all.

By Mr. Walscheid:

Q. During that conversation did you offer to allow her to control the finances? A. I said that I would consider it, but it seemed to me I ought to have part control of it.

By the Vice-Chancellor:

Q. Why did she want to control the finances? What brought that up if you had been providing liberally for her? A. She has claimed that I had not been providing liberally. I had been spending approximately nine thousand dollars a year and she said that was not enough.

By Mr. Walscheid:

Q. Did she tell you in that conversation what her plans were; did she tell you what she wanted to do? A. Yes; she told me she wanted me to turn over a large portion of my income to her and give her complete control of the children and the children's education, and I could come and see them. I would have no say so far as her control was concerned.

Q. Are those the conditions under which she wanted to return? A. No; she did not want to return.

Q. That is what she wanted without returning? A. Yes; she did not want to return.

Q. You did not agree to that? A. I did not.

Q. What is the next letter that passed between you? A. A letter of mine to her of August 19, 1926.

Q. That's only two days after the letter Exhibit P 79, which is dated August 17, 1926? A. It is.

Q. And looking at that letter would you say that that letter was written before you had this conference in Mr. Newman's office? A. I think this is written before.

Q. Before the conference? A. Yes, I am quite certain.

Q. This letter is produced from the files produced by the other side? A. It is.

Q. And it is addressed by you to Mrs. McKee? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 80 in evidence without objection.)

Q. Please read it? A. (Witness reads): "210 Christie Heights St., Leonia, N. J., Aug. 19, 1926. Dear Mary: Your letter of the 17th received. I would like to meet you and talk things over and see if matters can not be helped, but this must be in some independent and neutral place. I should not meet you at Mr. Newman's office, as you suggest, for the reasons I have told you over the telephone or in a letter, reasons which are obvious as well. You misquoted me in your letter in certain respects, e. g., regarding living in 'some cheap hotel.' If you will recall the conversation you will recall that I did not suggest our living in 'some cheap hotel.' I did suggest that living in a hotel might be less work while the children were away at schools and ask you to consider it when you said that running an apartment was too much trouble. If this were done a suite in a hotel fitted to our

station and finances could be chosen. Your statement of what other things have been discussed when we have talked things over is also not correct. I have each time urged you to come back and live with me, but you have insisted that you didn't wish to do so and instead several times insisted that you should have twenty thousand dollars a year and later at other times that you should have two-thirds of my income. I then each time went over matters trying to show you that that was impossible and that the best thing would be for you to come back and live with me. Also that keeping the children in their present schools was exceedingly expensive and to give you any large amount would mean that the children would have to be taken from these schools—which you said you would not consent to. Your statement regarding your visit to the apartment last August is also untrue. Why make such statements? I would like to meet and discuss our matters with you whenever you would be willing to do so in some neutral place by ourselves or if you prefer in the presence of a neutral party or two. Will you meet me? Sincerely—Ralph H. McKee."

Q. Is it true as stated in the letter, Exhibit P 80, that in this conversation to which you there refer you did not suggest living in some cheap hotel, but did suggest that living in a hotel might be less work while the children were away to school and asked your wife to consider it when she said that running an apartment as too much trouble? A. It is true.

Q. Is it also true as stated in the letter, Exhibit P 80, that in all of the meetings you had with her you urged her to come back and live with you, but that she had insisted that she did not wish to do so? A. That is correct with the possible exception of the one meeting in Mr. Newman's office.

Q. The early meeting that you spoke of? A. Yes.

Q. And did she on several occasions as mentioned in this letter insist that she should have twenty thousand dollars a year from you? A. Yes, and complete control of the children.

Q. And that twenty thousand dollars was to be for her separate maintenance away from you with the children? A. Yes.

Q. And that later on other times she requested that you give her two-thirds of your income for separate maintenance? A. Yes, including the children.

By the Vice-Chancellor:

Q. Were you earning twenty thousand dollars a year at the time that letter was written? A. No; half of that.

Q. Did your wife know that? A. She ought to have known that, though she stated in affidavits I earned thirty thousand dollars.

Q. Did you in any letter say to her you were not making twenty thousand dollars a year? A. I said it to her verbally and in affidavits and in the presence of her attorneys what my income was, and had given her attorneys a list of my total income for a series of years.

By Mr. Walscheid:

Q. You say in the letter Exhibit P 80, that in reply to her request for twenty thousand dollars for separate maintenance or two-thirds of your income for separate maintenance, "I then each time went over matters trying to show you that that was impossible." Did you do that? A. I did.

Q. In what manner did you go over these mat-

ters with her on these occasions when she wanted twenty thousand dollars or two-thirds of your income? A. I showed her a list of what my income had been each year as reported to the Federal Income Tax Bureaus, and I also went over and showed her what the expenditures had been for the children and how much they were amounting to each six months or something.

Q. You have stated that conference in Mr. Reass' library took place after August 19, 1926, and after this letter, Exhibit P 80, was written. Do you know how long after? A. I do not recall the exact date, but I imagine it was within a week.

Q. Is there any reply to this letter of August 19th, or is this the last letter? A. The next letter is a letter from me to her.

Q. Is it produced from the file produced by the other side? A. It is.

Q. Is this it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 81 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Aug. 21, 1926. Dear Mary: Do you know a party by the name of Clinton B. Townsend or Mrs. Meneely? (Not C. *P.* Townsend). I have a wedding invitation for three weeks hence and am not certain I know either of the parties or their parents. Do you? Yours—Ralph."

Q. Now the next letter between you is from her, is it? A. Yes.

Q. Is that the letter (indicating)? A. It is.

Q. Dated August 24, 1926? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 82 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, August 24, 1926. Dear Ralph: In answer to your letter of August 19, I shall be glad to meet you to talk over matters if, as I said before, it is your intention to discuss things with the purpose of really forming some plan by which our affairs can be settled without publicity. I should much prefer to have this meeting in the office of my attorney where we should not be interrupted. But if you have a suitable place in mind I should be willing to see you elsewhere, in the afternoon, or in the morning if you prefer. You can 'phone me Wednesday afternoon or Thursday morning. Sincerely—Mary."

Q. And it was after you received this Exhibit P 82 that the meeting was held in Mr. Newman's office? A. I think so; there were several meetings held in Mr. Newman's office.

Q. I am talking about this meeting which is running through these exhibits which have been offered in evidence, these last three or four? A. Yes.

Q. Is this a copy of the letter just read produced from the file of the other side (indicating)? A. It is.

Q. In Mrs. McKee's handwriting? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 82A in evidence without objection.)

Q. What is the next letter that passed between you? A. A letter from Mrs. McKee of the date of September 8, 1926.

Q. Is that the letter (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 83 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, September 8, 1926. Dear Ralph: As we are remaining in Supyten Duyvil our mail address will still be Spuyten Duyvil, New York City. We expect to have the same telephone number as soon as it is transferred. As to the other matter you mentioned in your letter, I had already placed it entirely in the hands of Mr. Newman. Sincerely—Mary."

Q. What letter does she refer to? A. I think to the letter of August 19th.

Q. Exhibit P-80? A. I am not certain if she does; I think there is a letter missing because this apparently refers to a letter in which I was asking about her address and telephone number and some other matters.

Q. What would the other matters be? A. I must imagine it was urging her not to go ahead with the law suit which she had filed the summons and complaint and in which I answered, but for us to get together and live together.

Q. And she was at that time active in that law suit in September 1926, or thereabouts? A. Yes.

Q. What was she doing at that time? A. I had talked with her over the matter and she had said she was going ahead and force an issue in connection with the separation suit, and I learned that she was at that time gathering affidavits.

Q. Is there a copy of the letter, Exhibit P-83, in the file produced by Mrs. McKee? A. Yes, except the signature is "M" instead of "Mary."

Q. Is that the copy (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P-83A in evidence without objection.)

Q. What is the next letter that passed between

you? A. The next letter was a letter from me of September 11, 1926 to Mrs. McKee.

Q. Is this the letter which I produce from the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Ehxibit P-84 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Leonia, N. J., 210 Christie Heights St., Sept. 11, 1926. Before breakfast! Dear Mary: Enclosed find check for one hundred for your use. Let me know as soon as you have your telephone installed. Hope Margaret is much better and is feeling all right now. She is ill so seldom that when she has anything hang on as this trouble has it worries me. Yours—Ralph."

Q. What is the next letter between you and Mrs. McKee? A. Another letter from me to Mrs. McKee of October 6, 1926.

Q. Is it the letter which I produce from the files of the other side? A. It is.

Mr. Walscheid. I offer it in evidence.

(Letter marked Exhibit P-85 in evidence without objection.)

Q. Please read it? A. (Witness reads) "210 Christie Heights St., Leonia, N. J. Oct. 6, 1926. Dear Mary: I have just finished, with Mr. Kirby's help, replying to the papers your attorney served on Mr. Kirby a few days. It makes me sick to realize the publicity which this action of yours is due to give us here in New York City papers. I had hoped you would think better of the matter and realize that I was doing as much for you and the children as I could. Yours—Ralph."

Q. What does that refer to about the papers? A. There were papers served along about the first of October on Mr. Kirby petitioning for temporary alimony and counsel fees.

Q. And have you those papers with you? A. I have.

Q. And when you referred in Exhibit P-85 to the reply papers which you just finished with Mr. Kirby's help you refer to papers you used in that separation suit in New York? A. Yes.

Q. Is there a reply to that letter Exhibit P-85? A. Yes, there is a reply of October 8, 1926.

Q. Is that it (indicating)? A. This is it.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-86 in evidence without objection.)

Q. Please read it? A. (Witness reads) "2627 Arlington Avenue, October 8, 1926. Dear Ralph: Your letter of the sixth reached me this evening. No one can regret more than I do the necessity of pressing this matter in public. As you know, I have delayed week after week and month after month hoping that you would be willing to settle our affairs by ourselves. I have met and talked with you on numerous occasions as your representation to me and to others that you wished to do this. But at no time would you consider the matter seriously or change your position in any respect. I cannot continue to exist as I have been doing and a home must be provided for the children as well as myself. You yourself know that I have well earned a share of your income. I have always been most anxious, as you know, and nothing would make me happier now than to settle the matter out of court. Most sincerely—Mary."

Q. Looking in the file produced by the other side is there a copy of that letter? A. There is.

Q. Is that a copy (indicating)? A. Excepting it is not signed, and the fourth word from the end is "affair" instead of "matter."

Q. And it is in the handwriting of your wife? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P-86A in evidence without objection.)

Q. Now referring to P-86 in which your wife says "I have met and talked with you on numerous occasions as your representation to me and to others that you wished to do this. But at no time would you consider the matter seriously or change your position in any respect." In what respect, if any, did you change your position? A. That I wanted her to return to me and live with me a married life.

Q. What does she mean by change of position? A. I think what she was referring to I was not willing to have a legal separation agreement and to furnish her money and give her charge of the children, but on the other hand my offer was I wanted her and myself and the children to have one home.

Q. And was that your position throughout? A. It was.

Q. And did you at all times make that plain to her? A. Yes.

Q. Had you at any time after she left you in January 1925 in any way indicated to her that under any circumstances would you agree to her living separate and apart from you and to furnish the money for her and the children, or for herself alone? A. No; the only thing that was at all along

that line was the letter that I wrote to her attorneys at the time—the next day or the same day that she left, which might be so interpreted as to agreeing to separation, though that was not my thought.

By the Vice-Chancellor:

Q. If that was not your thought why did you so write? A. At that time of course I was so wrought up and almost out of my head. At that time the thing had just occurred, but I said at that time to them that I wouldn't say but what it might be necessary to arrange a separation. I did not agree to it in any sense.

By Mr. Walscheid:

Q. What is the next correspondence between you? A. The next is a letter from me to her in reply to this last letter.

Q. Is this the letter which I produce from the files of the other side (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-87 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Oct. 11, 1926. Dear Mary: I don't understand your letter of the 8th. How you can say such things when the history of the situation has been so different is more than I can understand. Enclosed is check for $100 for your use. Yours—Ralph."

Q. Did you receive a reply to that? A. Yes.

Q. That is the letter of October 19th? A. It is.

Q. The next letter? A. The next letter is October 16th from me to her.

Q. Is this the letter produced from the files of the other side (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P-88 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Oct. 16, 1926. Dear Mary: Enclosed is an invitation from Dean and Mrs. Woodbridge to the wedding of Helena Woodbridge on October 30th at the University Chapel. Yours—Ralph."

Q. Did you receive a reply to that? A. I did; a letter of October 19. That is, in reply to my two last letters.

Q. Is that the letter before you? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 89 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, October 19, 1926. Dear Ralph: Thank you for the check for one hundred dollars which I received last week. The wedding invitation which you sent came yesterday. Did you wish me to answer it? Or did you think I should go as a matter of policy—I presume not as you did not send the card for the reception. Yours truly—Mary."

Q. Is there a copy of that letter produced from the files of the other side? A. There is, except it does not carry the signature or the words "Yours truly" which precede it.

Q. And is that copy in the handwriting of Mrs. McKee? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 89A in evidence without objection.)

Q. What is the next letter between you and Mrs. McKee? A. A letter from me to her under date of November 7, 1926.

Q. Produced by the other side? A. Yes.

Q. Is that it? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 90 in evidence without objection).

Q. Please read it? A. (Witness reads) "Nov. 7, 1926. Dear Mary: I received an invitation addressed to both of us to certain Columbia University Teas and a bill asking us to pay dues. I presume you are not interested in either but will enclose it with this. I have not attended but a few in past years and do not expect to attend this year. Received an "at home" dancing invitation from the Curtis family who were friends of Margaret but whom you and I have only just met. I showed the invitation to Margaret but she apparently did not want to go. The invitation needed no reply, even from Margaret to whom it was primarily addressed. I have mislaid it or I would let you see it. Probably I will find it if I did not give it to Margaret when I saw her. It is for the Thanksgiving vacation. I note that Thursday's Sun and Friday's Times had full discussion of the McKee separation suit. Neither Mr. Kirby or myself saw any reporters. Did you or your attorney talk to any? If not where did they get their information? Yours truly—Ralph."

Q. Did you receive a reply to that? A. I did, under date of November 10th.

Q. Have you it? A. Yes, I have.

Mr. Walscheid: I offer it in evidence.
(Letter marked Exhibit P 91 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, Nov. 10, 1926. Dear Ralph: I do not care for the invitation to the University teas. But I like Mrs. Curtis very much and if the invitation is for a "coming out" party for one of her daughters as would seem from your letter I should not wish to ignore it. I should be glad if you would look it up and let me have it. As to information in Thursday or Friday's papers I know nothing regarding the source. It certainly did not come from my attorneys nor from me. If you knew me at all you would know that I should never give an interview. Sincerely—Mary."

Mr. Walscheid: The November and December letters are missing.
Mr. Blumberg: That's all we have.

Q. What is the next letter? A. One of November 17, 1926 replying to a letter which I had written earlier and sending her a check, but which I do not find in the file.
Q. In the file produced? A. Yes.
Q. The letter is before you, is it? A. It is.

Mr. Walscheid: I offer it in evidence.
(Letter marked Exhibit P 92 in evidence without objection).

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, Nov. 17, 1926. Dear Ralph: Thank you for sending check for $100 which I received on

Saturday and was able to cash today. Very sincerely yours—Mary."

Q. What is the next letter that passed between you? A. The next letter I imagine—the next letter was a letter from me to her which I do not find here.

Q. You do not find it in the file produced? A. No, I do not find it, but I do find a reply to it in her letter of December 13, 1926.

Q. Is that the letter of December 13, 1926? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 93 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, Dec. 13, 1926. Dear Ralph: Billy said he could do better in his other subjects but he puts so much time upon his history. I talked with Mr. Taft and he said he would ask one of the masters to make out a study schedule. He also said that Mr. Reardon who has Billy's history would see if he could help him to a better method of studying history. This ought to help the youngster. Whatever you do do not scold him. There is nothing so paralyzing to ambition and effort. I know he wants to do it and he certainly has the ability but he does not seem to know how to apportion his time. Yes, Hirsch, Newman & Reass did receive the $500, which you sent according to the order of the court. I believe they sent their acknowledgment to Mr. Kirby. Sincerely—Mary."

Q. Can you from that letter say in the letter which you wrote and which Exhibit P 93 is a reply to, speak about a sum of $500. which was paid to Hirsch, Newman & Reass? A. Yes, and that is the reply to that.

Q. You find no copy of this letter Exhibit P 93 in the file as produced? A. No.

Q. Nor do you find a copy of Exhibit P 92 in the file as produced? A. No, I do not find either.

Q. What is the next letter in the correspondence? A. The next letter was a letter from me to her in which I sent her a check of $100., but I do not find it in the file as produced.

Q. You find no letter in reply to your letter sending the $100? A. No, I do not.

Q. Are there any other letters that you remember prior to January 4, 1927, which you wrote to her and which are not in the file as produced. A. I think there is still another letter in December 1926, as well as the one I referred to a moment ago in 1927. The December 1926 letter, as I recall it, carried a Christmas present of money, but I do not know now but could ~~tell~~ by looking at my check book.

Q. A Christmas present to her? A. Yes.

By the Vice-Chancellor:

Q. By "her" you mean your wife? A. Yes.

By Mr. Walscheid:

Q. That is the only other letter that is not produced in this file? A. I think there is one in November, two in December, and one in January.

Q. Four altogether? A. Four altogether from my recollection.

Q. Then the next letter in the file is under date of January 24, 1927? A. Yes.

Q. Written by you? A. Yes.

Q. And is this the letter as produced from the file of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 94 in evidence without objection).

Q. Please read it? A. (Witness reads) "607 Bergen Avenue, Jersey City, January 24, 1927. Dear Mary: I am enclosing check for $50.00 of which $25.00 is for January 25/31, i. e., ¼ month (200—100)÷4 and $25.00 for any extra expenses you may have had. I don't think you will have cause to regret the results of our conference yesterday afternoon. I have just telephoned Billy telling him that the suit has been settled and that there will be no newspaper publicity in the matter. He seemed relieved and was glad to know that every one agreed that he and Margaret are to spend half vacation with each of us. Tried to reach Margaret but she was said to be out to a movie and so will 'phone her tomorrow morning as there is no telling when she will get in tonight. With best wishes—Ralph H. McKee."

Q. This yellow piece of paper which I find in the file, have you ever seen that before? A. I have never seen this before.

Mr. Walscheid: I ask it be marked for identification.

(Marked J.E.W. 2 for Identification).

Q. This letter Exhibit P 94 speaks about a settlement of the suit in New York, does it? A. It does.

Q. And had such a settlement been brought about? A. Yes.

Q. Will you tell us in your own way without reference to any of the letters just what that settlement was, and just how it was brought about? A. Do you wish me to detail the events leading up to that settlement?

Q. I think so. A. The suit for separation brought by Mrs. McKee had been put on the calendar in the New York Court and was up in Part 3 of that court. It came on the day calendar about January 18th and when it came on Mr. Kirby answered that we were ready in behalf of the defendant, and the other side answered that they were ready. Then there were another case or two ahead of it and when it came time for our case to be heard we went to the tables and at that time a Mr. Reass in behalf of the defendant went—

Q. In behalf of who? A. In behalf of the plaintiff, Mrs. McKee, went to the judge and said to him he thought—

Mr. Blumberg: I object to what he said.

Q. Mr. Reass was the attorney representing—

By the Vice-Chancellor:

Q. As a result of what he said tell us what happened? A. I could overhear what he said.

Q. But your wife may not have heard it.

Mr. Walscheid: He was her attorney.

Vice-Chancellor: I will receive it subject to the objection of Mr. Blumberg.

Witness: That he thought they ought to make one more trial for a settlement of the case without a hearing. The judge said "All right, we will take another case and you can see what you can do." Then at that suggestion I had a conference with Mrs. McKee at that time. I took her out to lunch for a total of two hours and a half.

By Mr. Walscheid:

Q. You and she alone? A. Yes, and she was not willing to come back and live with me.

Q. Tell us what she said and what you said? A. I asked her at that time to come back and live with me. She said she didn't care to consider it but the thing to do was to make an agreement which would avoid publicity and newspaper notoriety. She again asked for two-thirds of my income and complete control of the children. I would not consent, and then we went—as I said before we had lunch—and after lunch we talked it over again avoiding talking it over at lunch because there were other people around. Again we reported back we couldn't come to an agreement.

Q. Reported back to whom? A. To our attorney, or at least I reported back to Mr. Kirby, and I think she did as well, and I think I also said to her attorney we apparently could not come to an agreement. It was suggested that we have another conference in the presence of our attorneys. That next conference took place on a Saturday morning as I recall in Mr. Newman's office in the presence of Mr. Kirby as well as Mr. Newman.

Q. Who was present at that conference? A. Mrs. McKee and myself as principals and Mr. Kirby and Mr. Newman I think rather than Mr. Reass, although Mr. Reass may have been present part of the time. I know Mr. Newman was present all the time. Then we did not get anywhere at that time.

Q. Tell us what was said and done at that time? A. The attorneys did most of the talking. Mrs. McKee and I did very little talking. Mr. Newman raised the question as to whether I would be willing to turn over the children to her and to give her—what sum I would be willing to give her.

Q. For what? For separate maintenance? A. Yes, and Mr. Kirby spoke up at once and said his client was not willing to turn the children over to her and that he was not also willing to provide for a separation—maintenance and separation. Then that meeting adjourned after fifteen minutes. It was only a short meeting. The next that happened so far as my personal knowledge is concerned was that the dean of the School of Engineering at Columbia University, in which school I am a professor, telephoned me on Sunday morning or Sunday noon saying that Mrs. McKee had been to see him, and in fact had been to see him twice, on Saturday afternoon and Sunday morning, and wished if possible to arrange some kind of an agreement between herself and myself in order to avoid publicity that the trial would bring out, and he asked me if I would meet him. I told him I would at whatever hour he said. He suggested I meet him around late in the afternoon as he had another engagement, and I did meet him at Columbia University in his office at half past five or six o'clock.

Q. On that Sunday? A. On that Sunday. He told me Mrs. McKee had been to see him accompanied by one of her friends and that she had said she did not care to live with me but did wish that he would use his good offices in arranging some kind of an arrangement by which she could live separately and have more of an income and also some assurance that the children would be taken care of at the schools in which they were then in. He assured her he told me that so far as his knowledge of me I was anxious to keep the children at the schools in which they were then in as she was. Also that from his previous conversation with me he thought it was too bad she could not get together with me and live with me. He told me of

her desire to live separately and her desire particularly for more money. I told him that I was perfectly willing to arrange so far as the children's schooling was concerned, and would be willing to arrange temporarily for her to have more money, but that he thought it was too bad for us not to live together as there was no real reason why we should not live together, and following this talk between him and myself I went home and wrote out a memorandum agreement along the lines suggested which he had transferred from her to me, and got it into shape, and about that time he telephoned me saying he had had—I am a little ahead of myself. At that time I had said to him that the thing to do was for her and me to get together and there was more chance if we got together than if we had attorneys present. He agreed with me and about eleven o'clock at night he telephoned to me saying he had another talk with Mrs. McKee and that she was willing to meet me. He said if you will do so it must be before court meets in the morning as the case was the first case on the calendar the next morning. He said he would get in touch with Mrs. McKee and telephoned me a few minutes later again saying that Mrs. McKee would meet me in the court room a little before the time for court. We met there. I was there a little time before court and she did not come for a little while, but I told the attorneys, Mr. Kirby and Mr. Reass, of what had happened and they saw the judge and asked that the matter be postponed until the afternoon session, which he agreed to. We met and after some talk and certain modifications of the memorandum which I had written out—

Q. You and she met alone, did you? A. Yes.

Q. Did you have that memorandum with you? A. I did.

Q. Did you show it to her? A. Yes.

Q. And discussed it with her? A. Yes, and discussed it, and after we had discussed it for a while—perhaps an hour—and showed it to the attorneys, Mr. Kirby and Mr. Reass.

Q. Altogether? A. Yes, and the amount of money to be paid her was changed from $166.00 a month to $200.00 a month.

Q. You mean the memorandum contained a payment of $166.00 a month and was changed to $200.00 a month? A. Yes, and another item was added, both of these being in pen, to the effect that this was to continue until July 1, 1928.

Q. That's in the paper now is it? A. Yes.

Q. Where is that paper? A. I have one of the two originals here (producing paper).

Q. And the changes which you speak of which were made in the agreement or the paper were made in pen and ink? A. They were.

Q. You said that you discussed this agreement with Mrs. McKee while you were alone that morning? A. Yes.

Q. Did you read it to her? A. Yes, and gave her a copy to read herself.

Q. Did you discuss the various terms of it? A. Yes, and discussed again, two parts of it particularly in the presence of her attorney and my attorney.

Q. What was discussed when you and Mrs. McKee were alone together? Tell us as nearly as you can what was done in relation to that agreement at that time? A. All the seven original items were discussed at that time, but the discussion primarily concerned itself with items 2 and 3, item 2 being concerning the amount of money $166.00, as to it being insufficient, and No. 3 was regarding the question of our getting together as to the united

family for the purpose of getting if possible a united family a little later.

Q. Article 3 of this paper reads how? A. "That the second party agrees to discuss with first part their family affairs and in particular the possibility of the united family at least once in each six weeks."

Q. What was said by you to her in relation to that paragraph, and what did she say in relation to it? A. I told her that I was not interested in the question of a separation agreement, but that if we could get a step further towards getting together and living together later I would be glad to do it. Later on I spoke to her that the principal purpose that was in the—

Q. No, let us get this chronologically. A. She said to me at the time, not in these words but to this effect, that she did not feel like doing that, that is getting together as a united family now, but possibly she would later on.

Q. Was anything else said about that paragraph 3 that you can remember while you and she were alone? A. Not while we were alone.

Q. But the other paragraph 2 was discussed? A. Yes.

Q. The question of raising that to $200.00? Did she want $200.00 or more? A. She asked for more. She asked I think for $300.00, although I am not certain as to just what amount it was, an amount considerably more than $166.00, on the basis if she got an apartment she would have to pay $150.00 a month for the apartment and that would not give her enough to live on.

Q. Did you and she agree upon the terms of this agreement when you went to see the lawyers, or didn't you? A. No, we did not agree. We still were having paragraph 2 under discussion when we went again to see the lawyers.

Q. But you had agreed on paragraph 3? A. We had agreed on all the other paragraphs except No. 2.

Q. What did you say when you went again to the lawyers? A. We were all in an unused room in the court. We went outside in the corridor and saw the lawyers and each of them read over the agreement and she argued for a larger amount of money and I called attention to my financial condition. It wouldn't permit me to give any considerable sum. Finally it was suggested by one of the attorneys a figure of $200.00 I think by Mr. Kirby, and she said that it was not enough, but Mr. Reass rather led her to accept it and she did agree as a compromise figure.

Q. When was the new paragraph 7 put in that agreement which reads "This agreement shall have as its minimum duration July 1, 1928"? A. This was put in after the discussion and completion of paragraph 2 at the suggestion of Mr. Reass. He suggested there ought to be an item put in that this should have as its minimum duration a period to include the time until Margaret would graduate from college.

Q. Did she graduate prior to July 1, 1928? A. She did, in June 1928.

By the Vice-Chancellor:

Q. Who drafted this paper which you refer to as an agreement? A. I did through the suggestion from the dean.

Q. The actual draftsmanship was your handiwork? A. Yes.

By Mr. Walscheid:

Q. Through whose suggestion? A. Through her suggestions as delivered by the dean.

Q. And the paper was signed by both of you? A. Not yet.

Q. What then happened? A. Before it was signed I called attention to the four parties present, there were three parties besides myself, that the principal purpose of this was with a view of getting together as a common family, and it was thought this might lead to that, and also a question was raised by Mrs. McKee regarding paragraph 6 which reads "That on the starting of any legal suit between the parties to this agreement except one to enforce the terms of this agreement, the amount payable under paragraph 2 shall at once decrease to $100.00 a month, and the other terms of this agreement cease.", and she said this would leave me free to start a suit if I wanted to. I said it would leave us both free to start a suit within a week if we wanted to. Finally it was signed as of January 24, 1927 by both of us.

Q. And that is your signature and her signature? A. It is.

Mr. Walscheid: I offer it in evidence.

(Agreement marked Exhibit P 95 in evidence without objection).

By the Vice-Chancellor:

Q. Of what significance did you consider the recital to be of the minimum duration of July 1, 1928? You appreciated the purpose of that recital, didn't you? A. I don't know as I understand your question.

Q. You appreciate that the last recital that the minimum duration period of July 1, 1928 was to be effective? A. Yes.

Q. All that was contained in that agreement was to become effective until July 1, 1928? A. Yes.

Q. Why did you state that you and your wife would have a right to start a suit and thus put an end to the agreement, or words to that effect? A. Perhaps it is I wasn't enough of a lawyer to be consistent. My understanding was that either one of us could start a suit and unless some such suit was started this would have a definite ending point. It would not be stopped by anything else except by the starting of a suit.

Q. I have not read that paper yet but it seems to me what you and your wife discussed about that item was the reduction from $200.00 to $100.00 a month in the event that suit started? A. And the other terms of this agreement cease.

Q. That which you have referred to precedes the clause last written which says the minimum duration of the agreement to be July 1, 1928? A. It could then be reconsidered possibly by my having more finances and could arrange for a different rate.

By Mr. Walscheid:

Q. Or by a reconciliation? A. Yes.

Vice-Chancellor: You lawyers will have something to talk about when you come to argue about the relative items of that agreement. We will not discuss it now.

Mr. Blumberg: It says minimum duration, not maximum duration.

Vice-Chancellor: I am just calling your attention to it.

Q. And thereupon this suit was discontinued that day? A. It was.

Q. And then the letter Exhibit P 94 follows the discontinuance of that suit? A. It does.

Q. Have you read that? A. Yes.

Q. What is the next correspondence between you? A. The next correspondence that I have here is a letter of January 30, 1927 from Mrs. McKee to me.

Q. Will you read it? A. (Witness reads) "Spuyten Duyvil, January 30, 1927. Dear Ralph: Thank you for the check for fifty dollars which I received on the twenty-sixth. One quarter of two hundred dollars is fifty dollars the amount of the check. This is nothing extra. It seems to me since I have subjected myself to live in such utter poverty in order to save your reputation and standing for the sake of the children, the least you can do in appreciation is to stop maligning me. What you say about me reflects on the children as well. I shall be at the Pennsylvania Hotel on Wednesday afternoon at two o'clock, on the Mezzanine where I talked with you last summer, in order to arrange about the furniture according to the agreement of last Monday. If this time does not suit your convenience please write me at what time you will be there. Yours very truly—Mary Noyes McKee."

Mr. Walscheid: I offer that in evidence.

(Letter marked Exhibit P 96 in evidence without objection).

Q. I show you from the files produced by the other side what purports to be a copy of that letter. Is it a copy? A. It is, excepting the signature is not complete.

Q. And is it in your wife's handwriting? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 96A in evidence without objection).

Q. Looking at Exhibit P 96, in paragraph 2 of same I quote "It seems to me since I have subjected myself to live in such utter poverty in order to save your reputation and standing for the sake of the children, the least you can do in appreciation is to stop maligning me. What you say about me reflects on the children as well." Had you said anything about Mrs. McKee? A. No.

Q. Did you malign her to any one? A. No.

By the Vice-Chancellor:

Q. Did you write to inquire what she meant by that? A. I think I telephoned her, your honor—no I wrote to her; I wrote to her the next day I got the letter.

By Mr. Walscheid:

Q. In this letter Exhibit P 96 she also said "I shall be at the Pennsylvania Hotel on Wednesday afternoon at two o'clock, on the Mezzanine where I talked with you last summer, in order to arrange about the furniture according to the agreement of last Monday." Was there any agreement made about the furniture? A. She asked for and I agreed to let her have a portion of the furniture that was in storage.

Q. What is the next letter that passed between you? A. One of January 31, 1927 from me to her.

Q. Is that letter from the files produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 97 in evidence without objection).

Q. Please read it? A. (Witness reads) "Jan. 31, 1927, N. Y. City. Dear Mary: Your letter of

Jan. 30th just received. You are in error in your mathematical calculations. I sent you on Jan. 14 a check for $100 covering January. This would mean $25 for the last fourth of January. The check of Jan. 24 covered $25 for the last fourth of January making $50 total for the last fourth. Also there was another $25 enclosed as an "extra." You are in error in criticizing me in the matter as giving "nothing extra," as in reality I have paid you $75 for the last quarter of the month. Have tried to get you on the phone once and will try again a little later. It happens I am busy on Wednesday afternoon as it is the first day of the second semester and I have some people coming in here then. Your accusation about my "maligning" you is without basis. I have done nothing of the sort—I have been keeping still as I can—in the several languages at my command. Yours very truly—Ralph."

Q. Is there another letter missing? A. There is a letter of January 14th missing from the file as produced.

Q. Can you tell what was in that letter of January 14th? A. I do not know, but I do know from the reference here there was a check for $100. in it.

Q. What is the next letter that passed between you? A. A letter from me to her under date of February 3, 1927.

Q. Is that the letter produced by the files of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 98 in evidence without objection).

Q. Will you please read it? A. (Witness reads) "Feb. 3, 1927, 10 A. M. Dear Mary: I will see

you at the waiting room of the Pennsylvania Station which is adjacent to the telephone booths on Friday afternoon at four o'clock. Will meet you near the door into the big room containing the ticket offices, etc. This is probably the most convenient place for you as it is an express stop of your subway. I am sorry you did not like any of the three places I suggested over the telephone—having dinner with me at a restaurant would have been nicest. It seems too bad to have a meeting for such a discussion. It would be much better if you would come and live with me. Better come back. Yours truly—Ralph."

Q. Had you telephoned her suggesting three places? A. Yes.

Q. And she had refused? A. Yes.

Q. What is the next letter? A. A letter from her to me of February 4, 1927.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 99 in evidence without objection).

Q. Please read it? A. (Witness reads) "2727 Spuyten Duyvil Parkway, February 4, 1927. Dear Ralph: Where is the china? Was it lost enroute? There is none here. They brought glass and kitchen stuff but no china. And neither of the large mirrors is here. Yours—Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. No, there is not.

Q. What is the next letter? A. A letter from me to her.

Q. You find it in the file produced by the other side? A. Yes, a letter of February 6th.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 100 in evidence without objection).

Q. Please read it? A. (Witness reads) "607 Bergen Ave., Jersey City, Feb. 6, 1927. Dear Mary: Did you find your pocketbook? It was lucky I was there to let you have the needed "aid." Enclosed is check for $200. to cover your February expenses. Kindly acknowledge receipt. Was glad you joined us for dinner Friday evening. Yours truly—Ralph."

Q. What does that refer to the "aid"? A. I met her at a conference and she had lost her pocketbook.

Q. Where, in the Pennsylvania Hotel? A. I think at the Pennsylvania Hotel; it may have been at the Pennsylvania Station. She lost her pocketbook and I lent her $10.00.

By the Vice-Chancellor:

Q. What was that reference that you were glad she had dinner?

Mr. Walscheid: I am going to get to that.

By Mr. Walscheid:

Q. At that conference what was discussed. A. Some things regarding the furniture that were missing from there and also the question of my possibility of coming and seeing her and taking some souvenirs there and calling upon her.

Q. You mean calling upon her for what purpose. A. Socially, and she said things weren't in shape for her to have me up yet.

Q. You tried to invite yourself to visit her? A. I did.

Q. At that conference did you also discuss the question of coming back? A. Yes, but only briefly.

Q. The letter also said "Was glad you joined us for dinner Friday evening." Whom did she join if anybody? A. Margaret and I had dinner together and she joined with us. It was a dinner between Margaret and Mrs. McKee and myself.

Q. When was that arranged for that dinner? A. By telephone.

Q. At your suggestion? A. Yes.

Q. You invited her? A. Yes.

Q. Where was the dinner had; what restaurant? A. I think in the restaurant at the Pennsylvania Depot, and Margaret then left going back to Bryn Mawr.

Q. And at that dinner was the question of her returning discussed? A. I don't think so, because she left at the same time Margaret did and it probably was not discussed in front of Margaret.

Q. Is there a reply to that letter?

By the Vice-Chancellor:

Q. Why would it not be discussed in front of Margaret? Didn't you think Margaret would try to bring about a reconciliation? A. I had tried to discuss the matter in front of the children and she objected to such discussion.

Q. You mean your wife? A. Yes, particularly in the presence of Billy. That is where I tried previously.

By Mr. Walscheid:

Q. And you thought she did not like to do that? A. I felt quite certain she did not.

Q. Is there a letter of February 7, 1927 from her? A. Yes.

Q. Is that it? (indicating). A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 101 in evidence without objection).

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, February 7, 1927. Dear Ralph: You will be interested to know that the doctors found no organic trouble with Margaret but did find her decidedly ænemic. She is to take an iron preparation until spring vacation and see him again then. Sincerely—Mary." 10

Q. Is there a copy of that letter produced in the files by the other side? A. Yes.

Q. In your wife's handwriting? A. It is.

Mr. Walscheid: I offer it in evidence. 20

(Copy marked Exhibit P 101A in evidence without objection.)

Q. What is the next letter that you find? A. The next letter I find is a letter from her of February 11th.

Q. To you? A. To me, replying to a letter enclosing a check which I had sent her some days earlier.

Q. But the letter from you to her enclosing the check is not there? A. It is there, February 6th. 30

Mr. Walscheid: I offer the letter from Mrs. McKee.

(Letter marked Exhibit P 102 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, February 11, 1927. Dear Ralph: Thank you for sending the check for two hundred dollars 40

which I received on the eighth. Also for the loan of the ten dollars on the fourth which I returned through Margaret on Monday. I found my pocketbook at home. Yours truly—Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. There is, except it does not carry the signature or the words "Yours truly."

Q. Is it in the handwriting of your wife? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 102A in evidence without objection.)

Q. What is the next letter that passed between you and your wife? A. I wrote to my wife under date of February 27, 1927.

Q. Is that the letter produced from the files by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 103 in evidence without objection.)

Q. Please read it? A. (Witness reads) "607 Bergen Avenue, Jersey City, N. J. Feb. 27, 1927. Dear Mary: Let me know just as soon as you have the telephone working in your new apartment and its number. I hope the taking of the major part of the furniture out of storage and your using it to furnish your apartment will make matters more pleasant for you. Perhaps a little later you will be willing to join me and we can have all of it together. It is too bad that sofa and mahogany rocker upholstering are not as clean as they were but remember they have been in use two years since you last saw them so they shouldn't be expected to

be in as good condition. Have just finished writing to Bill and Margaret. Yours truly—Ralph."

Q. What is the next letter in the correspondence? A. A letter of the same date from Mrs. McKee to me, that is, of February 27th.

Q. Have you it? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 104 in evidence without objection.)

Q. Read it please? A. (Witness reads) "Spuyten Duyvil, February 27, 1927. Dear Ralph: You will recall that when I bought the bed-room furniture, you yourself had set the limit of expenditure for new furniture at two thousand dollars. Then, although I spent only eight hundred you refused absolutely to pay for it saying you had your clubs in which to entertain your friends and it did not matter what we had in the house. As you continued to refuse to pay this bill, I was compelled to borrow money to do so. Then, although I squeezed every penny handed out for household expenses even harder than before, it took me four years to repay this loan. Is it right or fair for you now to take this furniture for your own personal use? You will have the same clubs you had at that time and I have taken this apartment up here at a rent far in excess of what I can afford in order that the children, especially Margaret, might have a respectable place in which to have their friends at this critical period when they are forming their friendships for life. I took this apartment on your direct promise that I should have this furniture to make it presentable. As I told you at that time the walls are sloping and the furniture must be carefully arranged to make it look like anything.

If you have any affection for your children or any desire to retain their affection you will do your share in this matter. Yours very truly—Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. There is.

Q. Is that the copy (indicating)? A. It is.

Q. Signed by and written by your wife? A. In her handwriting.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 104A in evidence without objection.)

By the Vice-Chancellor:

Q. What about that statement in that letter about your agreeing to pay two thousand dollars for the furniture and she bought it for eight hundred dollars, and she then stinted herself four years in order to pay it? A. This is not the fact.

By Mr. Walscheid:

Q. Going into this letter, P 104. When was this furniture bought? A. In September 1920 when I was in England.

Q. When you were in England? A. Yes.

Q. For what apartment or what house was it bought? A. It was bought for the apartment at 854 West 180th Street which Mrs. McKee had selected in my absence while I was on my way to Europe.

Q. Was it bought in your absence? A. Yes.

Q. Did you know of its purchase at that time? A. No, I did not know of its purchase until I saw it brought into the apartment when I returned later, about the—somewhere in September.

Q. Was there any agreement before you left that she should buy furniture for that apartment? A. No, there was none.

Q. Was there any agreement before you left that she should spend two thousand dollars for bedroom furniture at that time? A. No, there was not.

Q. How many pieces of bedroom furniture were involved in this purchase? A. There were three single beds of perhaps three-quarter size, two dressers and a book case, and the total cost was eight hundred and ten dollars. The two thousand dollars that she refers to was the amount of money I received for my trip to Europe.

Q. You say you had received two thousand dollars? A. No, I was to receive—as a matter of fact I was not able to collect it until two years after.

Q. You mean you went on a business trip? A. Yes.

Q. For whom did you go? A. Sir William McKenzie of Toronto.

Q. And you were to receive two thousand dollars for that trip? A. Yes.

By the Vice-Chancellor:

Q. Had you stated to your wife she might expend that two thousand dollars for this furniture? A. I had not; in fact it came out of the clear sky when I saw the furniture there.

Q. You say your wife in that letter just read states that you had agreed to let her spend two thousand dollars? A. I had not.

Q. She so states? A. Yes.

By Mr. Walscheid:

Q. Then she goes on "Then although I spent only eight hundred you refused absolutely to pay for it." What happened to that furniture, was it paid for?

A. Not all at once, but in the next four or five months.

By the Vice-Chancellor:

Q. Out of her house money? A. No.

Q. She says she stinted herself for four years? A. She did say so.

By Mr. Walscheid:

Q. Did you pay for it? A. I paid for it, but part of it was paid for through her. I gave her the money.

By the Vice-Chancellor:

Q. Did it take four years or four months? A. About four months.

Q. She says four years, doesn't she? A. Yes, she does.

Q. What do you say as to that? Is she wrong or are you right when you said it was paid within four months? A. It was paid for within four or five months.

By Mr. Walscheid:

Q. She also says in that letter when you refused to pay for this furniture you said you had your clubs at which to entertain your friends and it did not matter what you had in the house. Is that true? A. It is not true; there was no such discussion or statement.

By the Vice-Chancellor:

Q. Was your wife given to making mis-statements to you in conversations or in letters? This

is the first mis-statement that you called attention to in the letters? A. Not before she left me; since then, yes.

By Mr. Walscheid:

Q. Then she goes on "Is it right or fair for you now to take this furniture for your own personal use?" Where was the furniture at that time? A. Of the three pieces she got two.

Q. She got two of them? A. Yes.

Q. Where was the third piece? A. It was in storage.

By the Vice-Chancellor:

Q. Was it all in storage before she took the two pieces? A. Yes.

Q. So you took two pieces and the third was left in storage? A. Yes.

By Mr. Walscheid:

Q. Why was it left in storage? A. I had had this bed and the book case and a dresser in a room in one of the Columbia University dormitories in a room there which I used for taking a nap in the afternoon. At the time these things were sent to her I vacated that room about that same time—perhaps a few days later—sending to her the stuff that was in storage and part of the stuff that was in my room, and then I vacated the room and sent the part that was in the room into storage which included that one bed and the book case.

By the Vice-Chancellor:

Q. If you had hopes of having your wife returning to you and reestablishing a home why didn't

you send that bed to that apartment that was rented rather than send it to storage? A. It was Margaret's bed and book case and I wanted that if possible to put in a room a little later where Margaret could live with me. It did not occur, but that was my thought.

Q. Did you express that thought to your wife in any way, or to Margaret? A. I think I said so to Mrs. McKee, but I don't believe I said so to Margaret.

By Mr. Walscheid:

Q. She further goes on in this letter Exhibit P 104 "You will have the same clubs you had at that time and I have taken this apartment up here at a rent far in excess of what I can afford." Did you see the apartment she took? A. I have tried to see it; I was never allowed to go into the apartment excepting one evening later—that is since.

Q. At that time was you consulted as to the apartment she was taking? A. No, she simply told me of it.

Q. She didn't consult you as to the apartment? A. No.

By the Vice-Chancellor:

Q. Why should she consult you? You were only paying her a stated amount; there was no reason why she should consult you? A. But I wanted to see her.

Q. As indicated in her letter she wanted to have a good home on account of the children and she said it was the crux of their lives where life's friendships were to be formed or something like that. That is the reason why I asked why you didn't send the other piece of furniture there instead of leaving it

in storage? A. It wasn't in storage; I sent it to storage a little later.

By Mr. Walscheid:

Q. She says in this letter Exhibit P 104 "I took this apartment on your direct promise that I should have this furniture to make it presentable." Did you promise her in any of the conferences that she might have all of the furniture she mentioned to make this particular apartment presentable? A. No; I told her I would send her approximately all that was in storage, and I did.

Q. Before receiving this letter, Exhibit P 104, had she in any other way requested you to send her or to let her have this additional furniture that she craved, excepting in this letter? A. I think she had by telephone or by personal conference I do not recall which. We had a number of almost daily telephone messages in that month when she was fitting up the apartment.

Q. What is the next letter? A. The next letter is a letter of March 5th from me to her.

Q. Is it in the file produced by the other side? A. It is.

Q. Is this it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 105 in evidence without objection.)

Q. Read it please? A. (Witness reads) "March 5, 1927. Jersey City, N. J. Dear Mary: Here is check for $200 for your March expenses. You are wrong about my saying that in 1920 a two thousand dollar sum was to be spent for furniture. Nothing of the kind. I am not one who spends

money before I get it and I did not collect this extra sum until two years afterward. I paid the $800 slowly as it was much more than we could afford. I am going to see Billy at Watertown soon —this next next week. Yours—Ralph."

Q. Is that statement in this letter contained "I paid the $800 slowly" true? You paid it? A. Yes.

By the Vice-Chancellor:

Q. By slowly you mean four or five months? A. Yes, sir.

Q. Pay it by check? A. I don't know; I have a copy of the bill from the firm which shows the dates of payments.

Vice-Chancellor: I don't know the significance, but counsel can obtain a statement showing how that was paid for. There is a difference between four years and four months.

Mr. Blumberg: It says it took four years to pay back the furniture.

Vice-Chancellor: Yes, it does say that.

Mr. Blumberg: It took four years to pay the loan.

Vice-Chancellor: This witness says he paid it.

By Mr. Walscheid:

Q. What was the next letter? A. A letter of March 7, 1927 from Mrs. McKee to me.

Mr. Walscheid: I offer it.

(Letter marked Exhibit P 106 in evidence without objection.)

Q. Read it please? A. (Witness reads) "Spuyten Duyvil, March 7, 1927. Dear Ralph: I have not received the china nor the mirrors. Won't you please attend to this right away for I want to get settled. There are a number of your things here —photographs of Wooster girls, Clinton Academy souvenirs and other things. If you care to have them saved let me know at once. Yours very truly —Mary."

Q. Is there a copy of that letter in the file produced by the other side? A. There is, excepting the signature is "M" instead of "Mary."

Q. In the handwriting of your wife? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 106A in evidence without objection.)

Q. I find here what purports to be in the file produced a copy of a letter under date of February 4, 1927 written by Mrs. McKee to you. Is that a copy of Exhibit P 99? A. Yes.

Mr. Walscheid: I offer it.

(Copy marked Exhibit P 99A in evidence without objection.)

Q. Is that a correct copy of Exhibit P 99? A. It is, excepting some phrase written under the date "should have been March 4th."

Q. And is that "should have been March 4th" in your wife's handwriting? A. It is.

By the Vice-Chancellor:

Q. Is the signature correct? A. Yes, that's her signature.

By Mr. Walscheid:

Q. What is the next? A. The next is a letter from me to her of March 13, 1927.

Q. Is that the letter found in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 107 in evidence without objection.)

Q. Please read it? A. (Witness reads) "607 Bergen Ave., Jersey City, N. J., Mar. 13, 1927. Dear Mary: I have been expecting to hear from you as to what your new telephone number is as soon as they make the connections. I telephoned some days ago on trial but the central said that 2142 has been discontinued. Are you going to have a telephone or are they just slow getting it in or is it in and you have not given me the number yet? Sent you a check about ten days ago for March but have not had from you an acknowledgment of its receipt. Did you get it? $200. I got your note of inquiry relative to china. All of it was sent to you except one barrel. This one container had some special things of mine which you do not want and some china that you may want and some of the gold band china given by my closest boyhood friends. A little later I will go over it and separate the things. One barrel which they were to take to you had some china in it. I opened it to check just which it was; I saw it put on the wagon. I was surprised to get your letter stating regarding the china that "There is none here." Have you opened all the barrels and boxes? The large mirrors are, as I told you, at Ossining and I can not get at them until I go up there. They are screwed onto the doors and in consequence will not have their frames in good condition. I thought you had decided you didn't want them or either of them but did want the hooks that were on the red one. Yes, of course, I want those old souvenirs

of my college days. Will you put them in a box for storage and send me a list in detail of them. While you have no interest in them now you and I will when we gather the family together under one roof as I hope we will some of these days soon. With best wishes—Ralph."

Q. What is the next letter? A. The next letter is a letter of March 17th from Mrs. McKee to me.

Q. Have you it? A. I have.

Q. Is that it (indicating)? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 108 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, March 17, 1927. Dear Ralph: Thank you for sending the check for two hundred dollars which I received on March eighth. From the list we made out of the things I was to have from storage these are still missing, 5 Oriental Rugs. 1 Carpet rug. Cherry Rocker. Sewing stand (2 drawers & drop leaves). Mirror for large dresser. Small oak frame mirror. Large oak frame mirror. Weathered oak frame mirror. Goose neck lamp. Serpentine front dresser. 1 of the twin beds. Sofa cushions. Bed spreads. 2 clocks. Part of the kitchen ware. 6 stemmed sherbets. 7 lemonade glasses. Water glasses. 3 Rag rugs. Kitchen table. All of the china. 15 Green bordered plates. 18 Brown bordered plates. 12 Flowered bordered plates. 2 Chop plates. 2 Vegetable dishes. 2 Platters. 1 Chinese Plate. 1 China Coffee Pot. 100 piece Gold Band dinner set. You were to send all of this china to me though you said you might want some of it when you had your own apartment. It does not seem possible that all this china could be packed in one barrel. Will you look it up at once

for some of it may have been misplaced. It is not here for everything has been unpacked except one of the skirt boxes from the basement which contains the children's keepsakes. When the first load came up Mr. Roberts said one of the large dresser mirrors was stored in the back of the room where it could not be reached until the other things were taken out, but it did not come with the second load. Can't you look these things up this week end so we can have everything straightened out and be through with it. If some of the things you want now are packed with these things send me a list and I will repack them for you or you can come up and sort them out yourself. Sincerely—Mary. P. S. I do not know why you should be told my telephone was discontinued. They took it out of the other place, and put it in here the day I moved. It was not out an hour and the number is the same —M."

Q. Do you find in the file which was produced by the other side a copy of that letter? A. I do, excepting the signature is "M".

Q. And is the handwriting in your wife's writing? A. Yes.

Mr. Walscheid: I offer it.

(Copy marked Exhibit P 108A in evidence without objection.)

(Further hearing continued to April 4, 1929.)

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April 4, 1929.

RALPH H. McKEE. Recalled.

Direct Examination by Mr. Walscheid continued:

Q. What is the next letter in the correspondence between you and your wife? A. April 10, 1927.

Q. A letter from you? A. From me to her.

Q. Taken from the file produced by the other side? A. Yes.

Q. Is that the letter (indicating)? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 109 in evidence without objection.)

Q. Please read it? A. (Witness reads) "April 10, 1927. 607 Bergen Ave., Jersey City, N. J. Dear Mary: Enclosed is a check for $200 for your use for April. I am going to the American Chemical Society meeting this week but on my return I will get in touch with you and arrange to meet you. In view of our numerous conversations over the phone all thru March and the arrangement made with you by telephone April 2 I presume this will be satisfactory to you. I have been checking up on the list you sent me several weeks ago. A part of the list were destroyed or worn out and discarded before you left me, a part were thrown away when I packed because they were worthless, a part I have been using ever since you left me and you knew that I expected to keep using them and a few things are at my rooms in Ossining. I feel you ought to be well satisfied with the portion of the items, in storage you took. Of the 121 items in storage you took all except 13. The 13 that are still there are Nos. 2 & 6 Oak Dresser & mirror from servant's room. Nos. 9 & 14 Packages of shelves. No. 37 Arm chair, gift of Aunt Clara to me. Nos. 7, 8, 30 Packages of books mostly chemistry. No. 121 Trunk of Chemists pictures. No. 83 Piano seat chest of business papers. No. 50 Barrel of Gold Band China given by my boyhood friends. No. 53 Small box, whose contents I forget. No. 59 My box of pre college day souvenirs. Of the

above Nos. 2, 6, 9, 14, 7, 8, 30 and 121 you are welcome to if you want them but I believe you said you did not care for them. In addition, though I had been using them in my room for two years, I sent you because you asked for them. Set Encyclopedia Britannica. Standard Unabridged Dictionary. Large Mahogany rocking chair. Small mahogany desk chair. Suit case of small items. As you know I have no list of the items in boxes that were in storage, so I cannot send you a list such as you suggest. Better do as I earlier suggested: —send me a detailed list of those things which you have received which would be of personal interest to me, putting them aside and I will either come and get them or send for them. As I told you Friday I hope to send you the balance of the radio set in ten days or two weeks. You should find it of considerable pleasure to you. Bill apparently enjoyed much his Bryn Mawr trip. I hope he does much better in school this spring. He sure needs to. Yours truly—Ralph H. McKee."

Q. My attention has been called to a copy of letter which should have been in the file and which precedes the one which has just been marked? A. That's correct, I have it here.

Q. Is that it (indicating)? A. It is, yes.

Q. Letter from Mrs. McKee to you? A. Yes, of March 31st.

Mr. Walscheid: I offer it.

(Letter marked Exhibit P 110 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, March 31, 1927. Dear Ralph: As according to our agreement we are to meet once in six weeks, and as on Sunday it will be six weeks since our last meeting, I will be in the lobby of the

Waldorf-Astoria at four o'clock on Sunday afternoon, April third. I will meet you in the northeast part of the lobby. Sincerely—Mary."

Q. Now the meetings which she refers to were agreed upon in pursuance of the terms of the agreement which was signed up at the time of the dismissal of the New York action? A. Yes.

Q. And had you been having those meetings? A. Yes.

Q. And at those meetings what did you discuss? A. We discussed the children and their work; we discussed the question of her coming back and living with me, and we had discussed some questions of furniture.

Q. At all of these meetings did you discuss her coming back and living with you? A. I think at all of them; at least on five or six of these meetings.

Q. Up to March 31, 1927? A. I think—so far as the ones which had occurred in January and February and March, or January and February, I know we talked of her coming back and living with me.

Q. And had you in these meetings asked her to return and live with you? A. I did.

Q. And what did she say in reply to those invitations? A. In general the reply was not a definite reply, that is, it was not a plain refusal, though sometimes it was almost a refusal so far as the present was concerned.

Q. But she did indicate to you there might be a change of heart in relation to this matter? A. Yes, or at least she was willing to consider it.

Q. I take from the files produced by the other side what purports to be a copy of that letter. Is it in your wife's handwriting? A. It is.

Q. And is it a copy excepting for the signature? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 110A in evidence without objection.)

Q. What is the next letter according to the files? A. A letter from me to Mrs. McKee of May 9th.

Q. Is this the letter (indicating)? A. It is.

Q. Produced from the file of the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 111 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave., Jersey City, May 9, 1927. Dear Mary: Enclosed find check for $200.00 for your use for May. I have not received written acknowledgment re April check but presume you receive it or else you would have written me or mentioned it one of the times I called you up on the phone. The radio set I am getting for you is about completed and I hope to get all the parts to you this week. Had a fine visit with Margaret Saturday & Sunday. With best wishes—Ralph H. McKee."

Q. In that letter you speak of a radio set you were getting. A radio set for her at that time? A. Yes.

Q. Did you get it for her? A. I did.

Q. Did you give it to her? A. Yes, but she did not complete it because she refused later to let me come to the apartment.

Q. She refused later to let you come to the apartment to install it? A. Yes.

Q. But she did get the set? A. Yes.

Q. What is the next letter in the correspondence? A. Another letter from me to her of June 2nd.

Q. Is that the letter taken from the files of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 112 in evidence without objection.)

Q. Please read it? A. (Witness reads): "June 2, 1927. Dear Mary: I was very sorry you did not keep your appointment with me for yesterday lunch. I waited until long after 1 o'clock for you but you did not show up. For more than a month I have been trying to arrange a session with you, preferably at your apartment so I could bring the radio parts with me and set up the set, but you have declined each time for one reason or another until yesterday—and then did not keep the appointment! I had told you I had another engagement in the middle of the afternoon, so you should not expect me to wait for you until 1:35 or later. You wrote me earlier, Mar. 17th, saying you would pack my special things you have 'or you can come up and sort them out yourself'. However when I have wanted to come after these and sort them out you have refused on some pretext or another and now refuse to let me come at all. What is the idea? Why don't you live up to your agreement with me and let me have a talk with you every once in a while? Also you agreed not to have your bills sent to me but the Manhattan Express Co. sent me one of your bills for $80 with the request that I pay it as they have not succeeded in getting the money from you. If you will come and live with me I will of course pay your bills but otherwise it is your job to live on the $200 a month I have been sending you. What about your coming to live a normal married life with me? I thought earlier that you wanted the radio set. Am I now to understand that you don't want me to give you the set and set it up as I offered to do when I last talked to you? If you

don't want the gift express it to me *collect* at Jersey City and I will find another use for it. It is too expensive an outfit to be not used. Call me on the phone when you are willing to arrange an appointment with me, preferably at your apartment where I can get my college day pictures, souvenirs, etc. Also we should talk over Bill's situation. Yours—Ralph."

By the Vice-Chancellor:

Q. I observe, Mr. McKee, from time to time you use the word "normal" in requesting her to come and live a normal married life with you. What significance is that word "normal" in the letters you have been sending to your wife? A. As other people live a married life, and not as we have been living, that is, she living in one room—having her bedroom in one room and leaving the bed, the empty bed next to me in the other room.

Q. Did you ever explain to your wife that is what you meant by the use of that word in the letters or was it ever questioned? A. I don't think it was ever questioned. It was not only that, but the question of going out with me and going with me to affairs that we might go to.

Q. So that's what you had in mind by the use of the word 'normal"? Did you ever discuss with her what you said in that letter about the word "married"? A. I don't think there was any misunderstanding between us. I don't think it was ever discussed or questioned.

By Mr. Walscheid:

Q. What is the next letter in the correspondence between you? A. A letter from Mrs. McKee to me of June 6, 1927.

Q. Before going into that letter and reverting back to P 112 just offered in evidence, you spoke in your letter that you had been for more than a month trying to arrange a session with Mrs. McKee preferably at her apartment. Had you been trying to arrange a meeting with her? A. Yes; I had probably telephoned to her and certainly in the three months perhaps as many as six or seven times.

Q. What had her answer been? A. Generally not now, or it would be some time in the future or words to that effect, but the last time before I wrote her she said she didn't want me to come. I asked her if she didn't want me to come up and she said "No".

Q. That was to her apartment? A. Yes.

Q. Then she did agree to meet you as indicated in your letter P 112? A. I remember where it was; I don't think it was mentioned there.

Q. Where was it? A. At the Campus Restaurant nearly opposite Gimbel's on 32nd or 33rd Street, and we made an engagement for one o'clock. I waited until 1:45 and she did not show up. I had to then go to keep a 2:15 engagement elsewhere in the city.

Q. Of which she knew? A. Yes.

By the Vice-Chancellor:

Q. How did she know it? A. I told her when I made the engagement at ten o'clock that morning.

By Mr. Walscheid:

Q. Now you say the next letter in the correspondence is the letter of June 6th? A. From Mrs. McKee to me.

Q. Have you the original there? A. I have.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 113 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, June 6, 1927. Dear Ralph: Your letter is impossible to understand. You remember it was after ten when you called me on Wednesday and I told you later in the afternoon would be much more convenient for me. But when you said you had an engagement later and asked me to see you at one o'clock, I told you I would try and thought I could be there by one. It was five minutes after one, or rather five after twelve, by the clock on the Pennsylvania station as I was crossing thirty-second street. The street was not crowded so that, had you been there and waited even five minutes you could easily have seen me on the street. You know that it is a long trip from here downtown and when I went down the steps I found they were all torn up where they are cutting out the hill for Johnson Avenue and I had to make quite a detour. When I had had to re-arrange my day so hurriedly in order to meet your convenience and make that long trip down it certainly was not too much to expect you to wait five minutes—I waited until ten minutes of two for you. When you had made an engagement to have lunch there how can you say you were in too great a hurry to be able to wait five minutes. And how can you write that I have refused to see you. I wrote you saying that according to the agreement I would meet you on April third, the end of a six weeks period. But you wanted to go to the movies that afternoon and said you would call me later. It was five or six weeks later before you did call me. And you really should not expect me to cancel engagements that have been made a week or two when you can just as well make an engagement with me ahead of time. Your other

statements were as you know quite contrary to fact. I thought you would be interested in hearing some things about Billy. I can meet you at six-thirty, possibly a few minutes before, on Wednesday in that same neighborhood but I should have to leave about seven-fifteen. Or I could meet you about the same time on Thursday or at some time on Friday. You will let me know if you wish to meet me at any of these times. Sincerely—Mary."

Q. According to the letter of June 6th she was at this place? A. She was there.

By the Vice-Chancellor:

Q. She was there at five minutes after the appointed time? A. No, because I was there to 1:30. I even telephoned my office at 1:30 to inquire if she had phoned regarding—

Vice-Chancellor: I will strike that part out.

By Mr. Walscheid:

Q. Is there a copy of this last letter, Exhibit P 113, in the file produced by the other side? A. Yes, excepting that it does not carry the signature.

Q. And is in the handwriting of your wife? A. It is .

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 113A in evidence without objection.)

Q. What is the next letter in the correspondence? A. A letter of June 7, 1927 from myself to Mrs. McKee.

Q. Is that the letter as produced from the file of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 114 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave., Jersey City, June 7, 1927. Dear Mary: I received this afternoon your letter of yesterday. I don't see how it could have taken you so long to get to the Campus restaurant from the Penn. Station. I was at the Campus restaurant sitting at the door from three minutes to one until twenty minutes after one, waiting for you. This time was shown by the restaurant clock and also by my own watch. I afterwards checked my watch and found it right. I left to go to a quick eating place as I did not think you were coming and I had an engagement as you knew elsewhere at three o'clock. What about the moving bill? My getting my pictures etc.? Radio? I will telephone you tomorrow and try to arrange a meeting with you for Wednesday or Thursday, preferably Thursday. I want to have a talk with you. Yours—Ralph."

Q. What is the next letter in the correspondence? A. A letter from me to Mrs. McKee of June 13, 1927.

Q. In the interim do you know whether you did meet Mrs. McKee between June 7th and 13th? A. Yes, I invited her for dinner and we had dinner together in the restaurant at the Grand Central Station in a restaurant on the lower level.

Q. What did you discuss during that session? A. I do not recall the details regarding it. I do know I argued on the question of my coming up—visiting her apartment, and said I wanted to see her apartment and that she should not be so offish in general.

Q. What did she say to your request to visit her

apartment? A. That she didn't want me to come to the apartment.

Q. Was the question of her returning and living with you again discussed? A. Yes, but only in a minor way.

Q. What do you mean by a minor way? A. I said something about—I don't of course recall the words now; that it would be desirable for us to get together and live together. She made some remark about not now, or postponed any consideration.

Q. Now the next letter in the correspondence? A. A letter from me to Mrs. McKee of June 13, 1927.

Q. Is that the letter in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 115 in evidence without objection.)

Q. Please read it? A. (Witness reads) "June 13, 1927. Dear Mary: Herewith is check for $200 for your use for June. There were, as I said to you when you were leaving, several more things of importance which we should talk over. I will phone you in a few days and arrange for our getting together for an hour. Why not be willing for us to live together?—Ralph."

Q. When you refer to a few more things of importance which we should talk over, were those matters discussed at this Grand Central Station meeting or not? A. No; I think they were different things regarding the children and I also wanted to fix up the radio.

Q. What do you mean by that? A. I wanted to go to her apartment and fix up the radio and have a chance to visit with her.

Q. Did you tell her that? A. Not in this letter.

Q. But you did personally? A. I don't think I did as to the additional things, but that's what I had in mind and did discuss them with her later at the next meeting.

Q. What is the next letter? A. Still another letter from me to her of June 27, 1927.

Q. Is this letter produced from the files of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 116 in evidence without objection.)

Q. Please read it? A. (Witness reads) "June 27, 1927, Jersey City, N. J. Dear Mary: Have you yet paid the Manhattanville Express Co. bill concerning which I wrote and asked several weeks ago? From what word came from them indirectly to me I infer you have not. I enclose herewith check for $80 made out to the Manhattanville Express Co. order for your convenience and one of their old bills (date of May 6th) in which they bill you for the $80 hauling but which they sent to me when they failed to collect from you. Send both to them and get their receipt on the bill. I will consider the check an advance. With best wishes—Ralph H. McKee."

Q. Now what is the next letter? A. A letter from Mrs. McKee to me of July 6, 1927.

Q. Have you it? A. I have.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 117 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, July 6, 1927. Dear Ralph: According

to our agreement of January twenty-fourth you were to pay cartage charges for the furniture sent up here, so I do not see why you should send the bill to me. I am returning the bill with the check attached. You can have your secretary mail them directly to the Manhattanville Express Co. You should not have told Mr. Roberts to make the bill out to me. Very sincerely—Mary."

Q. And do you find a copy of that letter in your wife's handwriting? A. Excepting the signature.

Q. Is that the copy (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 117A in evidence without objection.)

Q. What is the next letter? A. The next letter is a letter from me to Mrs. McKee of July 9, 1927.

Q. And do you find it in the file produced by the other side? A. Yes.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 118 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Jersey City, N. J. 607 Bergen Ave. July 9, 1927. Dear Mary: I don't understand your sending me the $80 check back. This is your account and you should pay it, it is not one I should pay. I am returning herewith this check and the bill of yours. If you will come and live with me I will of course take care of your bills but to do that in addition to sending you $200 a month is too much. I am enclosing herewith a second check for the balance for July i. e. $120. Your truly—Ralph."

Q. What is the next letter? A. A letter from Mrs. McKee to me of July 14, 1927.

Q. Have you the original? A. I have.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 119 in evidence without objection.)

Q. Is that Exhibit P 119 in response to your letter of July 9th? A. Yes.

Q. Please read it? A. (Witness reads) "2727 Spuyten Duyvil Parkway, July 14, 1927. Dear Ralph: According to the agreement of January you were to send me two hundred dollars on or before the fifteenth of each month. You are not at liberty to deduct from that amount. I am returning your check for one hundred and twenty dollars. Kindly let me have one for the two hundred dollars at your earliest convenience as my bills were due the first of the month. As to the Manhattanville account, as you know you were to send me the furniture and take care of the expense of its transfer so let us have no further discussion of that bill. You should not have told Mr. Roberts to make it out to me. Moreover you have not by any means sent me all of the things you promised to send. When will you do so? Very sincerely—Mary."

Q. Do you find a copy of that letter in your wife's handwriting in the file produced by the other side? A. Yes, excepting it has "M" for signature.

Q. Is this the copy (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhbit P 119A in evidence without objection.)

Q. What is the next letter in the correspondence? A. A letter from me to Mrs. McKee of July 20th.

Q. And is the original of that in the file produced by the other side? A. It is.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 120 in evidence without objection.)

Q. Please read it? A. (Witness reads) "July 20, 1927. Old Orchard, Me. Dear Mary: Your letter of the 14th has been forwarded to me. You are wrong about my agreeing to pay for the truckage on the furniture. All I did was to tell Mr. Roberts that I would guarantee the account's payment by you. You knew that the bill was yours to pay, but you have simply wished it on me because I am a financially responsible individual. I am returning with this check 477 for $120 and also a new check for $80. Strictly speaking I should not send this second check but I am going to do it for the children's sake—they have been so fine this trip to Maine. Yours truly—Ralph H. McKee."

Q. That letter was written from Maine? A. From Old Orchard, Maine.

Q. Were the children with you at that time? A. Yes, together with a guest of Margaret's. I had taken them up there for a vacation trip.

Q. And does that mean you yielded to her on the eighty dollar proposition? A. It does.

Q. And paid the bill in dispute? A. It does.

Q. What is the next letter? A. Another letter from me to Mrs. McKee of August 12, 1927.

Q. Is that the letter produced from the files of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 121 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Aug. 12, 1927. Dear Mary: Herewith check for $200 for your use. I want to have a talk with you very soon. Will get in touch with you by phone and find a time that will be mutually convenient. Hastily yours—Ralph H. McKee."

Q. That letter is dated August 12th. Did you have a talk with her thereafter, or didn't you? A. I did, but I do not recall the exact date.

Q. Do you remember where it was? A. I think that it was on the mezzanine floor of the Pennsylvania Hotel.

Q. What did you discuss? A. The same things as we lately did, that is, the children and the question of her coming back with me and living with me.

Q. What did she say about coming back and living with you? A. She said she didn't care to do so and was even more positive than she had been previously.

By the Vice-Chancellor:

Q. Why do you say that? A. It was a question that "I don't care to do so," that is, "I don't care to live with you."

By Mr. Walscheid:

Q. Sometimes she had been saying "not now"? A. Early in the spring of 1927 it had been "not now."

By the Vice-Chancellor:

Q. On this occasion you say she said she did not care to live with you, is that right? A. Yes.

Q. Did you say anything to her as to why she

had made that statement to you when she had said all along she might later on? A. I don't think so, but I argued on the question about her coming back; it would be best for her and for me and the children.

Q. What did she say to that? A. She said, "I don't care to come back and live with you."

Q. She did not say she would not come back and live with you? A. I so understood it.

Q. You say that is what she said, "I don't care to go back and live with you?" A. Yes.

By Mr. Walscheid:

Q. The next letter in the correspondence is what? A. Another letter of mine of September 15th to her.

Q. 1927? A. Yes.

Q. And is this the letter produced from the files of the other side (indicating)? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 122 in evidence without objection.)

Q. Please read it? A. (Witness reads): "New York, N. Y., Sept. 15, 1927. Dear Mary: Just returned from long trip west. Herewith find check for $200.00 for your use for September. With best wishes—Ralph H. McKee."

Q. What is the next letter in the correspondence? A. Another letter from me to Mrs. McKee.

Q. Is this the letter produced from the file of the other side (indicating)? A. Yes; a letter of September 28, 1927.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 123 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Sept. 28, 1927. Dear Mary: Margaret wants a red velvet dress pretty bad. I tried to reach you by phone but apparently you were out. From what she said and you said the materials will cost $35 to $40. Will you make it for, including purchasing, if I provide the materials. On the supposition that you will I am enclosing a check for $40 payable to you for that purpose. If you don't want to do the work send the check back. I have not hinted to her that I could make her the extra $40 gift at this time. If you would come and live with me we could settle such matters easier and more pleasantly than by writing or telephoning. Better change your mind and come and live with me. Let me know at once whether you will make this dress for her at once, for it needs to be done promptly if at all. Yours—Ralph."

Q. Did you receive a reply to that letter? A. I did not, excepting that sometime later Margaret in conversation said that they had purchased materials—that she and her mother had purchased materials for the dress. The dress was actually made much later, not until May or June of the following year.

Q. So that Mrs. McKee accepted your check for $40.00 without acknowledging receipt of it and without telling you she would buy the materials and make the dress? A. Yes.

Q. And didn't communicate with you at all in relation to the matter? A. She did not.

By the Vice-Chancellor:

Q. The tenor that letter would indicate to me that you did not accept as final the statement made by Mrs. McKee to you at a previous meeting when she said she would not live with you? A. I did not

accept it as final. In fact, I invited her to return to me in later conferences as late as October.

By Mr. Walscheid:

Q. What is the next letter in the correspondence? A. A letter from me to Mrs. McKee of October 9, 1927.

Q. Is that the letter produced from the files of the other side (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 124 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Jersey City, N. J., Oct. 9, 1927. Dear Mary: I wrote you fully a week or more ago sending $40 and asking several questions but have not had a word from you in reply, though I asked for a prompt one. Did you get my letter with its enclosure? What are you going to do about the dress? Will you make it and send it to Margaret? Or will you hold it until she is here Thanksgiving? Or have you time enough to make it at all? Had a letter from Mr. Taft saying he would have the athletic instructor see what he could do towards straightening up Bill's back but he ordinarily sat and stood in such poor postures that he was not very sanguine. Mr. Taft stated he feared not much would be accomplished due to Bill's 'attitude' towards school suggestions. Also got the Taft bill and sent some money on account. Better come over here and live with me—Ralph."

Q. In that letter you again called her attention to the fact you had sent her forty dollars and asked her questions about the dress, when it was to be made. Did she reply to that letter? A. She did not.

Q. Nor acknowledge the receipt of the money? A. No.

Q. At that time where was your daughter Margaret? A. In Bryn Mawr College; I had spoken to her perhaps a week or ten days before.

Q. And so far as you knew she did not know anything about the making of the dress—your daughter? A. About October 9th or so I learned from Margaret when she came over—or by a letter, that she did know of the dress. Perhaps more likely October 15th.

Q. But your wife didn't communicate with you in relation to it? A. No.

Q. What is the next letter in the correspondence? A. A letter from me to Mrs. McKee of October 15, 1927.

Q. And you find the original in the file produced by the other side? A. I do.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 125 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Oct. 15, 1927. Dear Mary: Enclosed find $200.00 for your use. There are heavy accounts coming in this month of October. $137 for dentist bill. $765 Taft School. $916 Bryn Mawr College. And several smaller ones of $20 to $40. How I will get together money to pay all whether I will is a question. They are coming too heavy. Kindly acknowledge receipt of this. Also answer my letter of two weeks ago. Yours—Ralph H. McKee."

Q. What is the next letter in the correspondence? A. Another letter from myself to Mrs. McKee of November 3, 1927.

Q. And is this the original produced from the files by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 126 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave., Jersey City, N. J., Nov. 3, 1927. Dear Mary: Enclosed find check for $200 for your use for November. I have not heard from you in reply to my last few letters. Margaret writes me that she is doing part on the velvet dress. This is different from what I wanted and what I wrote to you when sending you the check. Margaret has all she can do in her college work—she shouldn't be doing dressmaking during the college months. I was hoping you would make it as I asked you. Do you remember the Henri Zay we once visited on 72nd St. when his sister, Mrs. Frank Blackford was there. He died yesterday and his funeral will be tomorrow. His sister and her tall daughter Mary are here. You will recall that Mary visited us at Ridgefield Park. She seems even bigger than she was then. I may go to the funeral. Yours—Ralph."

Q. What is the next letter in the correspondence? A. Another letter from me to Mrs. McKee; a letter of November 10, 1927.

Q. Is that the letter produced from the file produced by the other side? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter market Exhibit P 127 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Nov. 10, 1927. Dear Mary: I looked up the letter of

Margaret's and find she wrote as I said and contrary to your statement. She wrote, "When I was home last week-end, we worked on the velvet dress some more. It's very good looking—and extremely swank." Since seeing you have received the grades of Billy, but presume you have received a copy also. If not write me and I will have a copy made and send it to you. Partly excellent and partly very poor. The more I think of it the more I dislike your digger's attitude as expressed in your statement to me of, 'What is there in it for me?' when I suggested something that ought be done. Be reasonable. Yours truly—Ralph."

Q. In the first part of the letter you refer to a contrary statement made by your daughter. What statement was that contrary to? Had you had any conversation with Mrs. McKee? A. Yes, I had quite a number of conferences and conversations—a number of telephone conversations.

Q. What was the statement made by Mrs. McKee that her daughter's statement was contrary to? A. That Margaret—she made the statement that Margaret had not been working on the dress.

Q. And I find at the bottom of this letter the statement "The more I think of it the more I dislike your digger's attitude as expressed in your statement to me of 'What is there in it for me?' when I suggested something that ought to be done." Will you explain that? A. I had asked her to sign a deed to transfer a small amount of real estate in which I was part owner, the home of my father.

Q. Located where? A. In Clinton, Missouri, in which I was heir to one-third. There was a possibility of selling the property there; there was an opportunity of selling the property and the question came up as to whether we could give a deed

for it and I suggested that what we ought to do is to deed the property to the McKee Book Store Corporation which was owned essentially by myself, my brother and my sister, and let the corporation then try to get what it could out of the property, and I asked her if she would sign the deed and she said in reply "What is there in it for me?"

Q. And that reference in the letter with that expression is in connection with that deed? A. Yes.

Q. What is the next letter in the correspondence between you? A. Another letter from me to Mrs. McKee of December 13, 1927.

Q. And is the original of that letter in the file produced by the other side? A. Yes.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 128 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Dec. 13, 1927. Dear Mary: Enclosed find check No. 546 for $100 for your use in December in accordance with our agreement. I am also ~~sending~~ $25 each for your use in getting Christmas presents for Bill and Margaret—also $50 for a Christmas present for yourself with my best wishes. (Check No. 547 for $100.) Mr. Taft has sent notice that Bill will be home on Saturday next (Dec. 17) and need not return until about three weeks later. Margaret writes that she got a grade 100 in her examination in Physics and 80 in Economics—both grades of which she has reason to be proud. Yours truly—Ralph."

Q. Does that mean that that check for $100.00

New Jersey State Library

was for presents, or does it mean for separation purposes? A. I sent her two checks, one for her account since the divorce proceeding had been started, and another one for $100.00 for Christmas. I later sent her another check for December, making a total of $300.00 for December.

Q. So after you started this present divorce proceeding you sent her a Christmas present? A. Oh, yes.

Q. Had she asked for it? A. No.

Q. You received a reply to that letter, didn't you? A. Yes, it is the first reply I received since July.

Q. And have you the reply? A. I have a letter of December 22, 1927.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 129 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Spuyten Duyvil, December 22, 1927. Dear Ralph: The extra check for one hundred dollars for Christmas was quite unexpected and very nice indeed. I shall use the childrens' share for something they want particularly and mine will certainly be useful. Thank you so much for all of it. And the one hundred dollars extra this month which you sent according to your verbal promise will go to settle bills long overdue. I'm surely glad to have them cleared up. But do you know you forgot to enclose the regular check for two hundred dollars. I have waited thinking you would remember the omission yourself. Do let me have it at once for my regular bills are waiting and expenses are heavy this month. Thanking you again for the extra

Christmas money for all of us. Sincerely—Mary."

Q. Is there a copy of that letter in the files produced by the other side in your wife's handwriting? A. Yes, excepting the signature is "M".

Q. Is that the copy (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 129A in evidence without objection.)

Q. What is the next letter in the file produced by the other side? A. A letter of January 11, 1928 from me to Mrs. McKee.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 130 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Jersey City, N. J., Jan. 11, 1928. Dear Mary: I was exceedingly sorry to learn from Margaret's letter received this afternoon of your mother's death. She was a woman to be proud of. I am enclosing herewith three checks for $100 each. No. 570 for your use for January under our agreement of about a year ago. No. 571 for your use due to the extra expense you will be subject to in this emergency. No. 572 for Margaret to cover her traveling expenses for this Carthage trip. Give her my love and sympathy. With sympathy and best regards to the rest of the family, I am, Sincerely—Ralph."

Q. It appears from that letter that your wife's mother died about January 10th or 11th, 1928? A. I think January 8, 1928.

Q. And in that letter you are enclosing her a check for an extra one hundred dollars? A. I am

enclosing to her two extra checks, for one hundred dollars each, one for her own expenses and one for the expenses to which she had been put by taking Margaret to her mother's funeral.

Q. To Carthage, Illinois? A. Yes. This letter was sent to Carthage, Illinois.

Q. And at that time you had started your divorce proceedings? A. Yes, two months earlier.

Q. Did you receive a reply to that letter? A. I did, a letter of January 16, 1928.

Q. Is that the reply (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 131 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Carthage, Illinois, January 16, 1928. Dear Ralph: Thank you for your letter of January eleventh with its enclosures of checks. I cannot follow your reasoning. Do you wish the paper concerning Dr. Osterholm returned? And I wish you would answer my letter of November eighth or ninth. I should like to get those things disposed of. I shall be returning to New York probably the last of this week or next. And I think you should send me the china other than the gold band dinner set, as they were all gifts to me from Mother, except the flowered plates and they were a gift from Cousin Kate's mother whom you did not know. You can surely see how much I wish to keep them. Yours —Mary."

Q. That letter seems to have referred to her letter of November 8th or 9th. We did not find that letter? A. I don't think there was any letter received. There is a reference in my letter later on to it.

Q. You didn't receive that letter of November 8th or 9th? A. No.

Q. Is there a copy of the letter Exhibit P 131 in the file produced by the other side? A. There is.

Q. In your wife's handwriting? A. Yes.

Q. Is that it (indicating)? A. Excepting the signature is different.

Mr. Walscheid: I offer it in evidence.

(Copy marked Exhibit P 131A in evidence without objection.)

Q. What is the next letter in the correspondence between you and your wife? A. A letter of mine to Mrs. McKee of January 25, 1928.

Q. Is the original of that letter in the file produced by the other side? A. It is.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 132 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Jan. 25, 1928. Dear Mary: I received some days ago your letter of Jan. 16th from Carthage. Yes, I would like to have again the paper concerning Dr. Osterholm if you have no further use for it. Relative to the china you mention I think I have in the barrel nothing or nearly nothing of that china. I think you have it. In this connection I would like to have the personal college, etc., items you promised me. You ask that I answer your 'letter of November eighth or ninth.' I have carefully gone over your late letters and find none of this date nor any within a month earlier or later. Moreover I don't recall receiving any letter from you about that time. Apparently it never reached

me. If you have a copy of it please make me a copy and send it to me. My attorney calls to my attention that our divorce suit which I started by filing the proper papers on November 12, 1927 while legally starting in New Jersey on that date would not be legally started, if it were being tried in New York, until service of notice of publication was made on you or your representative at your residence, if your residence were known. In other words the laws of the two states differ in the legal definition of the time of the commencement of a suit. Whether 'the starting of any legal suit between' us in accordance with our agreement of Jan. 24, 1927 would be interpreted as beginning as under the law of New Jersey or as under the law of New York I do not now know. In this uncertainty I am willing, provided I do not thereby lose any rights which I otherwise would have, to send you an additional hundred dollars each for December and this month, making $200 each for Dec. & Jan. (besides the $100 extra sent you for each of these months) instead of the $100 a month called for under that agreement after the starting of a suit between us. With this in view I am enclosing herewith a check for $200 to make for each of the months Dec. 1927 and Jan. 1928 an amount of $200 a month. Note that the check carries an acknowledgment on it that by this payment I am not to lose any rights which I would otherwise have. Kindly acknowledge receipt. Yours truly—Ralph H. McKee."

By the Vice-Chancellor:

Q. To what did that recital in that letter relate provided you did not lose any rights? A. I wondered if I sent her the $200.00 a month which

is contrary to the agreement where I was to have sent her $100.00 a month after suit started, I would thereby lose my right and cancel my suit for divorce in New Jersey.

Q. At that time had you made up your mind you wanted to be divorced or were you still anxious to have your wife return to you? A. I decided along in October that there was no chance of making a happy home between us.

Q. Why? A. Because at the last meetings in September and October she had been so vehement in her expressions regarding me, in one case calling me a dog and in other cases spoke of "what is there in it for me" in the way of money, that I did not think there was any possibility of making a happy home out of it, and I gave up all hope and belief there could be one.

Q. Is that the time you made up your mind definitely she would not return to live with you, or when did you make up your mind? A. About the first of November, or the last of October.

Q. Up to that time you had hopes she might return to live with you? A. Yes, and even invited her in October.

Br. Mr. Walscheid:

Q. What is the next letter? A. The next letter is of February 14, 1928 from me to Mrs. McKee.

Q. Is the original of that letter in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 133 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Jersey City, N. J., Feb. 14, 1928. Dear Mary: I replied

to your letter of Jan. 16th stating I would like to have back the clipping regarding the death of Dr. Osterholm. Also at the same time, Jan. 25, I sent you a check for $200 and asked you to acknowledge receipt but have heard no word from you regarding its receipt. For the same reasons as I wrote you on Jan. 25 I am again this month sending you a check for $200, instead of one for $100 in accordance with our agreement of Jan. 24, 1925. Note that the check carries an acknowledgment on it that by this payment of 200 instead of 100 dollars I am not to lose any rights which I would otherwise have. Yours truly—Ralph."

Q. What is the next letter in the correspondence? A. A letter of March 8, 1928 from myself to Mrs. McKee.

Q. Is the original of that in the file produced by the other side? A. It is.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 134 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Mch. 8, 1928. Dear Mary: I was naturally gratified at the just decision rendered by the New York Court and published today. Herewith is enclosed check No. 599 for one hundred dollars in accordance with our agreement of Jan. 24, 1927. This covers March. Yours truly—Ralph H. McKee."

Q. In that letter you refer to a decision of the New York Court. What is that you refer to? A. A decision of Judge Callahan of the New York Supreme Court refusing an injunction which Mrs. McKee had asked restraining me from suing in the New Jersey courts.

Q. For divorce? A. For divorce.

Q. In other words after you started your suit for divorce in New Jersey she went to the Supreme Court of New York for an injunction to restrain the prosecution of your New Jersey suit? A. Yes, both temporary and permanent injunction.

Q. And that relief was denied her by the decision referred to in your letter of March 8th? A. Yes.

Q. What is the next letter? A. A letter from me to her of April 13, 1928.

Q. Is the original in the file produced by the other side? A. Yes.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 135 in evidence without objection.)

Q. Please read it? A. (Witness reads) "April 13, 1928. 607 Bergen Ave., Jersey City, N. J. Dear Mary: Herewith find enclosed check for $100 for your April expenses. Yours truly—Ralph H. McKee."

Q. What is the next letter in the correspondence? A. A letter from me to Mrs. McKee of May 6, 1928.

Q. Is it produced from the files of the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 136 in evidence without objection.)

Q. Please read it? A. (Witness reads) "Jersey City, N. J., May 6, 1928. Dear Mary: I enclose herewith check for $100.00 for your use in May. Please acknowledge receipt. Was sorry to have you

feel so hard and take the view you did in this afternoon's telephone conversation. Margaret did her part nicely at the May Day at Bryn Mawr. Yours truly—Ralph."

Q. What is the reference "You are sorry you take the view you did in this afternoon's telephone call"? A. I don't recall what that was. I did have a telephone conversation about that time in which I was insisting on having certain rights in the children. Half the time she was saying they belonged more to her than to me.

By the Vice-Chancellor:

Q. Why did she use that expression "Take it so hard and feel so sorry"? A. I used that expression myself.

Q. You can't tell me any more definite what that was she took so hard or felt so bad about? A. I can't place it definitely at this time.

By Mr. Walscheid:

Q. What is the next letter in the correspondence? A. A letter from me to her of June 15, 1928.

Q. A letter from you to her? A. Yes.

Q. Is the original in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 137 in evidence without objection.)

Q. Please read it? A. (Witness reads): "June 15, 1928. Dear Mary: Enclosed find check for one hundred dollars for June. Yours truly—Ralph H. McKee."

Q. What is the next letter in the correspondence?

A. A letter from me to Mrs. McKee of June 29, 1928.

Q. Is the original in the file produced by the other side? A. It is.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 138 in evidence without objection.)

Q. Please read it? A. (Witness reads): "June 29, 1928. Dear Mary: I sent a check for 350.00 payable to Gross & Gross to Mr. McNulty to cover your counsel fees. I trust you or they have received it and that it is satisfactory. It is odd that when my attorney takes action that the newspapers make no mention but every time your attorney takes action the newspapers are full of it. Have you seen the enclosed? Return them to me later if you have no use for them. Yours—Ralph."

Q. Did you enclose the newspaper clipping? A. I did.

Q. What is the next letter that passed between you? A. A letter from me to Mrs. McKee of July 12, 1928.

Q. Is the original in the file produced by the other side? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 139 in evidence without objection.)

Q. Please read it? A. (Witness reads): "July 12, 1928. Jersey City, N. J. Dear Mary: Enclosed is my check for $200.00 for your use for July. I have just received word that the divorce case has been referred to Vice-Chancellor John J. Fallon for hearing. I hope you and your attorneys

will not try to hold up the hearing or delay it and that the matter can be cleared up promptly. Yours truly—Ralph."

By the Vice-Chancellor:

Q. So at that time although you were anxious to have her return to you you were anxious to be divorced? A. Yes; once it was started I wanted it to go through promptly.

By Mr. Walscheid:

Q. What is the next letter in the correspondence? A. A letter from me to her under date of Aug. 15, 1928.

Q. Is the original in the file produced by the other side? A. It is.

Q. Is that lt (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 140 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Aug. 15, 1928. Dear Mary: Herewith find $200 for your use for August. Yours truly—Ralph H. McKee."

Q. Referring back to P 139, I notice that you are again sending a check for $200.00. Had anything happened in the interim? A. Yes, the court had ordered a change from $100.00 to $200.00.

Q. The Court of Chancery of New Jersey in this suit? A. Yes.

Vice-Chancellor: My recollection is the reason was that he had been paying $200.00.

Mr. Walscheid: Yes, that was the reason.

Q. What is the next letter in the correspondence?

A. A letter from me to Mrs. McKee dated September 14, 1928.

Q. Is the original in the file produced by the other side? A. It is.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 141 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Sept. 14, 1928. Dear Mary: Herewith is check for $200. for your use for September. Yours truly—Ralph H. McKee."

Q. What is the next letter in the file produced by the other side? A. A letter of October 8, 1928 from me to Mrs. McKee.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 142 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Jersey City, N. J. October 8, 1928. Dear Mary: Herewith is check for $200. for your use for October. Yours truly—Ralph."

Q. What is the next letter in the file produced by the other side? A. A letter from me to Mrs. McKee of November 14, 1928.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 143 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave. Jersey City, N. J. Nov. 14, 1928. Dear

Mary: Enclosed find check for two hundred dollars payable to your order. Yours truly—Ralph."

Q. What is the next letter in the file produced by the other side? A. A letter of mine to Mrs. McKee of December 7, 1928.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 144 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave. Jersey City, N. J. Dec. 7, 1928. Dear Mary: Enclosed find check for two hundred dollars payable to you for your December use. I wish you a pleasant Christmas. Yours truly—Ralph."

Q. What is the next letter in the file produced by the other side? A. There is a letter in between from her.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 145 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Spuyten Duyvil, December 23, 1928. Dear Ralph: I was very sorry to hear through Margaret of the death of Aunt Clara this morning. I realize how much you thought of her. Sincerely—Mary."

Q. There is no copy of that letter in the files, is there? A. There is not.

Q. What is the next letter in the files produced by the other side? A. A letter of January 4, 1929 which I sent to Mrs. McKee.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 146 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave. Jersey City, N. J. Jan. 4, 1929. Dear Mary: Enclosed is check for $200.00 for your use for January. I have been notified that our trial has been set for Monday January twenty eighth. I hope this time your lawyers will not aid the reporters from tabloid newspapers in the airing of our affairs in the newspapers. Yours truly—Ralph H. McKee."

Q. What is the next letter in the files produced by the other side? A. A letter from me to Mrs. McKee of February 4, 1929.

Q. Is that it (indicating)? A. It is.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 147 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Jersey City, N. J. Feb. 4, 1929. Dear Mary: Enclosed find check for two hundred dollars for your use for February. Yours truly—Ralph."

Q. Does that conclude the file excepting for certain omissions? A. Yes.

Q. Do I understand there were some letters in the uncontested file that you desire to offer in evidence? A. Yes.

Q. I find here three additional letters which were evidently omitted while going through the files, one under date of October 21, 1926 produced by the other side. Is that your signature (indicating)? A. Yes.

Q. Did you write it to your wife? A. I did.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 148 in evidence without objection.)

Q. Please read it? A. (Witness reads): "October 21, 1926. Dear Mary: Yours of 19th received. There was no card to the reception received in connection with the invitation to Helena Woodbridge and so of course I could not forward it. The plain fact we must face is that we were not invited to the reception. In reply to your question you can answer it or not as you please—I will answer for myself. Yours truly—Ralph."

Q. Do you recall what the question was? A. I think it was as to whether I would reply to the invitation to the wedding.

Q. I find another letter under date of November 11, 1926? A. Yes.

Q. Did you send that letter to your wife? A. I did.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 149 in evidence without objection.)

Q. Please read it? A. (Witness reads): "Nov. 11, 1926. Dear Mary: Enclosed find check for $100 for your use. Kindly acknowledge receipt. I have found the Curtis invitation for 4 to 7 Nov. 27th and sending it herewith. Please return it. I have just lately received the enclosed addressed to Prof. & Mrs. McKee. I wrote Lake Forest College expressing regret could not be present. This need not be returned. Yours truly—Ralph."

Q. I find a letter dated December 5, 1926 signed by you. Is that your signature (indicating)? A. It is.

Q. Did you send it to your wife? A. I did.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 150 in evidence without objection.)

Q. Please read it? A. (Witness reads): "607 Bergen Ave. Jersey City, N. J. Dec. 5, 1926. Dear Mary: I wish to acknowledge receipt of the clipping regarding the Lake Forest celebration of its 50th anniversary and to thank you for it. I think I will send it on to Ronney as he may be interested in seeing it—you recall he is an alumnis of Lake Forest College. About a month ago or a little less I sent you through your attorneys five hundred dollars. Did you receive it? I have not had an acknowledgment of its receipt from you. This was to pay the fees of your attorney firm. Yours truly —Ralph H. McKee. Did I give you my new phone number? It is Bergen 203 J. I am not generally here until after 7:15 P.M."

Q. And was that the phone number of your Jersey City address? A. Yes.

Q. And before that time had she had the phone number of other places where you lived in New Jersey? A. She had.

By the Vice-Chancellor:

Q. What was the purpose of giving her your phone number? A. If she desired to call me up in case anything happened.

By Mr. Walscheid:

Q. Now I find in the uncontested file two letters, one under date of March 11, 1925. Is that written in your wife's handwriting? A. Yes, a letter written to me by her.

Q. And was it received by you? A. It was.

Q. At or about March 11, 1925? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Letter marked Exhibit P 151 in evidence without objection.)

Q. Please read it? A. (Witness reads): "March 11, 1925. Dear Ralph. Thank you for sending me Doctor Alexander's report of Billy's condition. I am afraid you did not study it very thoroughly or you would have seen that while his condition is much improved he is still far from well. As to the other part of your letter Mr. Newman will answer you. Yours very truly—Mary."

Q. Who was the Mr. Newman referred to? A. Mr. Newman was her attorney in connection with the case she had filed at that time. No, it had not been filed yet; her attorney with whom we were having conferences at this time, March, 1925.

Q. And as to the other part of this letter "Mr. Newman will answer you", what did that refer to? A. If you will look back in my letter I think you will find there is an invitation from me to return to me.

Q. The letter preceding that? A. Yes.

Q. Exhibit P 151 just read has been taken from the exhibits forming part of the uncontested divorce record, being marked Exhibit P 5 McKee v. McKee, J. Stanley Griffin, Special Master in Chancery of New Jersey. The exhibits are attached to the Master's Report in the uncontested divorce case. I find enclosed with the Master's Report as part of the exhibits in the uncontested divorce case 56-162, Exhibit P 6, McKee v. McKee, J. Stanley Griffin, Special Master in Chancery of New Jersey, being a letter dated March 29, 1925, and signed "Mary". Is that letter in your wife's handwriting? A. It is a letter from her to me.

Q. And received by you? A. Yes.
Q. On or about March 29, 1925? A. Yes.

Mr. Walscheid: I offer it in evidence.
(Letter marked Exhibit P 152 in evidence without objection.)

Q. Please read it? A. (Witness reads) "March 29, 1925. Dear Ralph: Thank you for sending the check for one-hundred dollars which I have cashed. Your continued refusal, for a number of years to live a "right and normal married life" has made it impossible for us to live together. Very sincerely—Mary."

By the Vice-Chancellor:

Q. So that your wife used the words "normal married life" in that letter? Did you ever discuss that with her what she meant by "normal married relation"? A. No; I thought she understood it, and I understood it.

Mr. Walscheid: I now desire to and reattach Exhibit 151 in this case, being Exhibit P 5 before the Special Master in the uncontested divorce case, to the exhibits in this uncontested divorce case attached to the Special Master's Report.

Q. In this letter your wife says "Your continued refusal to live a normal married life." Did you and she discuss that as to what was meant? She calls your attention to your refusal to live a normal married life? A. I don't know what she is referring to unless it was in connection with the letter to which that was an answer. She did in conversations at that time insist that she ought to

have very much more money for spending than she had been receiving—than we had been spending for the house.

Q. You didn't consider that was what she meant? She says "Your continued refusal to live a normal married life". We are trying to find out whether you know what that alluded to? A. I am not certain, but I think if you look at the previous letter to which that is a reply that it may have been a quoting from my letter to her.

By Mr. Walscheid:

Q. It is in quotation marks in the letter? A. And also at that time she was very anxious for me to supply a considerable increase in money which I was unable to do.

Vice-Chancellor: You stated that language was quoted in that letter?

Mr. Walscheid: Yes (showing letter to Vice-Chancellor).

By the Vice-Chancellor:

Q. Her statement in this letter, which is marked Exhibit P 152 in this case, reads—"Your continued refusal, for a number of years to live a 'right and normal married' has made it impossible for us to live together." Now what does that refer to? Was there anything objectionable to which that related? Did it have any reference to living an abnormal life or was there anything that she was finding fault with? A. No, excepting the question of finances, and she was in general tired of married life relations.

By Mr. Walscheid:

Q. Is Exhibit P 13 the letter which immediately precedes the one which we have just been discuss-

ing? A. It is the one and contains the same phrase in the middle of the letter.

By the Vice-Chancellor:

Q. You mean Exhibit P 13? A. Yes, my letter to Mrs. McKee of March 23rd of which the letter referred to of March 29th, Exhibit P 152, is a reply reads—"There is no reason as I see it why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do this?"

Q. Now then her letter to which we have been referring reads—"Your continued refusal, for a number of years to live a 'right and normal married life' has made it impossible for us to live together." I am trying to ascertain if I can what that wording has reference to. To me it might indicate something other than what you mentioned as to the question of money between you? A. I think it does call for something more, but money was the important matter and the question of the marriage relation was another item.

Q. What do you mean by the marriage relation? A. At that time—for a year she had not occupied the same room with me.

Q. Why should that warrant her in making that statement referring to your refusal? A. I don't think it does warrant it.

By Mr. Walscheid:

Q. Now in addition to these letters in which you made overtures to have your wife return, what other efforts did you make or cause to have had to have her return to you? A. The most active—the most important invitations to return or to try to get her to return were in the personal conferences.

By the Vice-Chancellor:

Q. You stated all those? A. I didn't mention any number, but they were often.

Q. You mentioned throughout the case as a result of letters and conversations you had numerous meetings and at those meetings you would request her to live with you and you undertake to some extent to try and state what she said in reply. Was there anything more in addition? If there are any that you can recall with any degree of certainty it might be well for you to tell them? A. They were I think the ones that I have given, all about of equal importance with many others, and they were of the same general tenor. Then I had numerous conversations with her over the telephone, possibly —oh two or three times a month at least on an average and sometimes as many as two or three times a day, and in those I also invited her to come back and live with me. I also asked friends to come and intercede.

Q. Who? You will have to mention them? A. The first I believe was Mr. Whaley, and I met Mrs. McKee at the house of Mr. Whaley and his sister.

By Mr. Walscheid:

Q. By pre-arrangement? A. By pre-arrangement with Mrs. McKee and Mr. Whaley.

Q. Can you fix the time? A. Yes; this was in the fall of September of 1925, and invited her to return and live with me, and we discussed some things regarding the children and other things of mutual interest for perhaps an hour. Mr. Whaley was there during practically all of that time, and his sister, Miss Whaley, was there for a part of that time.

By the Vice-Chancellor:

Q. Did the Whaleys hear what was said by you and your wife? A. They did, and took part to some extent in the conversation. In October 1925 I went to see neighbors we had had in Spuyten Duyvil, Dr. and Mrs. Tildsley. Dr. Tildsley is the active Superintendent of High Schools of New York City, and tried to get them to intercede and take a hand and to talk to Mrs. McKee regarding it. I found that Mrs. Tildsley was very much prejudiced against me.

Mr. Walscheid: You can't tell about that unless Mrs. McKee was present.

(Witness continuing.) She was not present. I was unsuccessful in that. I wanted to get their help but was unable. It later developed that Mrs. Tildsley had lent a hand to Mrs. McKee.

Mr. Blumberg: I object to it.

Q. Did that information come to you through Mrs. McKee? A. No, through an affidavit I saw of Mrs. Tildsley.

Vice-Chancellor: I can't let you state that.

(Witness continuing.) I was unsuccessful.

By Mr. Walscheid:

Q. In getting them to intercede? A. Yes. Then later I had a talk with Doctor Brophy, a dentist, who telephoned me regarding certain dental work that he was doing upon Margaret and Mrs. McKee.

Q. When was that? A. In the spring of 1926, and I asked him to have a talk with Mrs. McKee and to see what he could do towards getting her to take a more friendly attitude towards me. He also—

Mr. Blumberg: I object to the conversation.

Q. He did consent did he? A. Yes.

Q. And later reported back to you what he had done?

By the Vice-Chancellor:

Q. Has there been anything about that visitation in the letters of Mrs. McKee to you? A. Yes, you may recall she used the phrase "Do not bring any of our other friends in this affair."

By Mr. Walscheid:

Q. And this was that dentist that that letter referred to? A. Yes.

By the Vice-Chancellor:

Q. Where is his place of business? A. On 59th Street, New York City.

By Mr. Walscheid:

Q. Any others? A. At the time of the dropping of the New York case in January 1927 I made the statement that my principal reason for entering upon this agreement was in order that I might bring about a united family, and Mr. Reass, Mrs. McKee's attorney, at that time stated—

Mr. Blumberg: I object to it.

(Witness continuing.) Mrs. McKee was present, and he said he saw no reason why we should not get together. I stated to him I hope you will lend a hand so that we can get together.

Q. Was there anybody else present there besides Mr. Reass? A. Mr. Kirby, my attorney was present.

By the Vice-Chancellor:

Q. That was 1924? A. Yes—No, it was 1927, January 24, 1927.

Q. I understood you to say January 1924; I took that to mean 1924?

By Mr. Walscheid:

Q. Does that cover about all? A. That is all so far as outside parties are concerned. No, that isn't all; I made use of the children of course and numerous times had Margaret and Billy.

Q. Didn't she object to your making use of the children in that way? A. Well, I don't know in their conversation with her that they stated they were doing it in my behalf.

Q. I thought there was one letter of hers in which she made some objection to your asking the children to intercede. I may be in error about that? A. That is correct, there was some mention of it but I don't know if it was a letter, but she did object. One time I had taken Billy to the dentist and met Mrs. McKee at the Grand Central Station when he was going back to school.

By the Vice-Chancellor:

Q. There is something in one letter about her objection to mentioning something to your daughter?

Mr. Walscheid: That's the one I had reference to.

A. I don't recall what that is now. At the Grand Central Depot I started to talk to Billy and tried to get him to tell her what he had told me and she objected and said "We will settle it ourselves."

By Mr. Walscheid:

Q. At the time you had made up your mind that your wife would not come back to you in October or November 1927, did you tell her at that time that you would institute a divorce against her? A. I did not threaten her; I told her very shortly thereafter, a few days thereafter.

Q. After what? A. After the starting that I had instituted a suit for divorce.

Q. What if anything did she say to that? A. Either at that time or the next time she said something about that she had been expecting it.

By the Vice-Chancellor:

Q. The citation that I find in the pleadings in the case Docket 66 page 162, indicates that the citation is tested November 15, 1927. So that you started your suit did you approximately one month after the time when you said you concluded she would not return to live with you? A. Yes; in fact I think a little earlier, because I signed on November 11th, if I remember. So the first real decision was just a day or two days before the fifteenth.

By Mr. Walscheid:

Q. And your decision to start your divorce proceedings followed some altercation in which she called you a dog? A. That was a month earlier.

Q. What are the details of that? What brought that about? A. We had met—I do not recall the exact date—but we had met as we did several times at 33rd Street, either the Pennsylvania Hotel or the Pennsylvania Railroad Station, and we had been talking for perhaps a half an hour or an hour. She had been insisting that I was making more money than I had said I was making and that I ought to give her more than the $200.00 a month that I had been paying, and I had told her that was not so, that I had given some figures from my income tax and that the amounts which I was spending for her and the children were all that I could afford, and even more than I could afford, and she said—I do not know if I can give the exact words—but to the effect that I was not truthful in it and she didn't want to have to do business with such a dog as I was or to live with such a dog as I was.

(Afternoon Session.)

Cross Examination by Mr. Blumberg:

Q. Doctor McKee, when did you first engage Mr. Kirby? A. About the last of January, 1925.

Q. And wasn't it on Mr. Kirby's advice that you moved to New Jersey? A. It was not.

Q. You moved to New Jersey in February 1925, is that right? A. February 27, 1925.

Q. That's about six weeks after the alleged desertion of your wife, is that so? A. Yes.

Q. And that was after you had engaged Mr. Kirby? A. About a month or so.

Q. And it was also subsequent to conferences which you had had at Mr. Newman's office in New York City, isn't that so? A. Yes, I had I think two conferences in Mr. Newman's office, though not with Mr. Newman; with Mr. Reass of that firm.

To be inserted on page 335
before afternoon session.

By the Vice-Chancellor:

Q. That was the first unkind statement she had made to you throughout all the time you had met her? A. I know she used the same phrase in 1926 in a conference about the same place, the Pennsylvania Station or the Pennsylvania Hotel. She used the term "dog" to me once before.

Q. Did that term "dog" that she used in anywise couple up her statement in the letter of March, 1925, about your continued refusal to live a normal married life? A. I don't think so; I don't think it has any relation excepting the question I didn't give enough money.

By Mr. Walscheid:

Q. In your opinion your trouble was largely your lack of producing a sufficient amount of money to her? A. That; and her unwillingness—her increasing lack of interest in married life.

Q. And by increasing lack of interest in married life do you mean increase in lack of interest in sexual intercourse?

Vice-Chancellor: Ask him what he meant.

Q. What do you mean by that expression "lack of interest"? A. She had gradually decreased in her interest and willingness to have sexual intercourse from what it had been in years gone by.

By the Vice-Chancellor:

Q. At the age that you and your wife were then was there the same desire for sexual intercourse as there had been in the previous years? A. No, I don't think so, but I was interested in it occasionally, and she not at all.

Vice-Chancellor: We will now take a recess until half-past one.

Q. Prior to your moving to New Jersey? A. Maybe only one or two; two I think though.

Q. Was Mrs. McKee present at those conferences? A. She was.

Q. Did you tell her then that you contemplated moving to Leonia, New Jersey? A. I did not.

Q. When did you first tell her you moved to Leonia, New Jersey? A. About a month after I had moved there.

Q. That is about March 1925? A. Yes.

Q. Sure it wasn't in April 1925? A. It might have been; but I don't think so.

Q. Or May 1925? A. I wrote her in probably one of these letters about May, but I had talked to her on the telephone earlier. I don't know just when that date was, but possible the last part of March.

Q. You talked to her in the latter part of March and told her you moved to Leonia, New Jersey? A. I don't know whether I told her my address, but that I had moved to Leonia.

Q. You have no doubt about that? A. I have some doubt as to the exact date.

Q. You wrote her a letter in May 1925 telling her you were living in Leonia, New Jersey? A. It may have been in April; it is one of the letters that was read here.

Q. Have you any doubt you told her before you wrote this letter to her that you lived in Leonia, New Jersey? A. I have no doubt about it.

Q. You are positive you told her that? A. Yes. I do not recall that I gave her my street address.

Q. But you are positive you told her you lived in Leonia, New Jersey? A. Yes.

Q. And that was about a month before you wrote that letter? A. I don't remember exactly.

Vice-Chancellor: His best recollection is it was the latter part of March. He says

he may have written the letter in May or April. It is one of the letters in evidence.

Q. Is this the letter you refer to, May 10, 1925, marked Exhibit P 17? A. Yes, May 10, 1925.

Q. Exhibit P 17? A. Yes, Exhibit P 17.

Q. In that letter you state—"It has been embarrassing to be around the apartment at 39 Claremont Ave. and to have to dodge questions of our mutual friends as to when you were 'coming home', etc. If I answered one way I would get you in bad and if I answered the other I would have trouble on my hands. Accordingly I have moved out here. You will recall I have always liked Leonia and indeed spoke of moving out here in 1922." Don't you gather from that letter that is the first intimation you gave Mrs. McKee you were living in Leonia? A. No, I don't. I think that is the first time I gave her my street address; but before that I gave her over the 'phone the fact I had moved to Leonia at that time when I had an opportunity to sub-rent the apartment.

Q. This is the same address that you stated you lived in in February 1925—210 Christie Heights Avenue? A. Yes.

Q. And this is more than two months after you moved to Christie Heights?

Vice-Chancellor: You mean the date of the letter.

A. Yes.

Q. And you had written several letters to Mrs. McKee in the meantime, did you not? Just look at them! A. Yes.

Q. And you did not state in any one of those letters you lived on Christie Heights Street, Leonia? A. I did not.

Q. And you waited until May 10th until you wrote that to her? A. These letters were not written from New Jersey.

By the Vice-Chancellor:

Q. Which letters? A. The intermediate letters.

Q. You mean the ones preceding May 10th? A. Yes; one from Baltimore and one from New York City.

By Mr. Blumberg:

Q. Let's look at Exhibit P 13. In that letter you state—"There is no reason as I can see it why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do this?" You said that did you not, Doctor? A. Yes.

Q. Where did you expect Mrs. McKee to live with you if you didn't give her your address in Leonia? A. She was writing me at my office and I expected her to live with me in Leonia.

Q. Why did you not tell her in that letter of March 23rd that you had a home in Leonia and that's where you wanted to live with her? A. I could at that time have gone back and lived in Claremont Avenue if I wanted to, but I wanted her to live with me in Leonia. The place was not important; the important thing was for her to come and live with me.

Q. Wasn't it important if you were making a sincere effort to have her return to you to let her know where you were living at that time? A. No, because where we were living might only be a temporary one and we might move to a house of our own. We have never before lived in just a room or two. We might for a day or two and we would

undoubtedly following that have gotten an apartment or more likely a house.

Q. Now, Doctor, wasn't it the fact at that time you were living at Claremont Avenue and you were only paying rent at Leonia Heights? A. No; I had sub-rented the house to the Martins.

Q. When did the Martins move in? A. The first of March 1925 and this is written March 23, 1925.

Q. Where do the Martins live now? A. Manhattan Avenue, Crestwood, New York.

Q. That is the best explanation you can give for not having notified Mrs. McKee before May 10, 1925, that you had moved to Leonia? A. I had notified her by word of mouth over the 'phone.

Q. It does not appear by this letter you lived there? A. It does not appear.

Q. Does it not appear by the letter that that was the first intimation you had given her you were living in Leonia?

Mr. Walscheid: What is the exhibit number?

Mr. Blumberg: Exhibit P 17.

A. It might be so interpreted, but that was not the truth.

Q. You knew in February 1925 that you could not obtain a divorce for desertion in the State of New York? A. I did not.

Q. You did not know that? A. No. I beg your pardon, I did know, because I asked the question—one of the first questions I asked my attorney why she was talking separation instead of divorce, and they told me.

By the Vice-Chancellor:

Q. They told you what? A. That she couldn't sue for a divorce in New York.

By Mr. Blumberg:

Q. Did you know that you couldn't sue for divorce in New York? A. I learned of it.

Q. And you learned at that time that the State of New Jersey recognizes it? A. I did not know that until much later.

Q. You learned that after you moved to New Jersey? A. Yes, a couple of months afterwards and through a World almanac that I happened to run across.

Q. Quite a fortunate circumstance that you did move to New Jersey at that time?

Vice-Chancellor: Do not argue with him.

Q. Will you state again Doctor McKee what your reason was in coming to New Jersey? A. There were several reasons. I was living in the apartment by myself attempting to take care of it by myself. This was unsatisfactory of course, and I had a lease that ran until October 1925. I had an opportunity to rent it and did sub-let it to Mr. James Martin, Jr., and so retrieve part of the rental expenses.

Q. That was no reason for moving to New Jersey.

Vice-Chancellor: He is trying to state it.

(Witness continuing): It was embarrassing to me to be around the apartment with people asking questions regarding Mrs. McKee and myself, and so it was desirable to move away from there and I naturally thought of New Jersey because I had lived there before, and because many of my friends did live in Leonia, New Jersey. I had even tried to rent or to buy—to consider renting or buying

a house in Leonia, New Jersey, the house of Professor Bunnell when he left Columbia University and went to the University of Illinois, but had not done so. It was rather that I should, as I had more friends in Leonia than any place else, move to Leonia, and I did.

Q. Would you say you had more friends in Leonia than you did on Claremont Avenue? A. Yes.

Q. Sure about that? A. Yes.

Q. The first reason is the reason of economy, you didn't want to continue such a large apartment? A. And the attempt to take care of it. The economy of money and labor.

Q. This Claremont Avenue apartment was a few blocks from Columbia University? A. Only a few feet; in fact it overlooked part of Columbia University.

Q. So that as far as the first reason goes you could very readily have rented an apartment in the neighborhood of Columbia University? A. I said I didn't want an apartment; I didn't want to take care of half a dozen rooms. I am not a capable housekeeper.

Q. You could have rented a room at Columbia University could you not? A. Yes, but I would be subject to the same embarrassing questions as I mentioned before.

Q. What embarrassment would you be subjected to at Claremont Avenue? A. It is no honor for a man to have his wife desert him.

Q. Now Doctor McKee, you told me you had more friends in Leonia than at Claremont Avenue? A. Yes.

Q. Wouldn't it be more embarrassing in Leonia than at Claremont Avenue? A. No.

Q. Why not? A. Because they were closer

friends and I could and did explain the matter to them—friends of many years' acquaintance.

Q. So your closest friends were in Leonia? A. Yes.

Q. And your closest friends would cause you less embarrassment than your less closer friends at Claremont Avenue? A. Yes, because they did not ask questions.

Q. You mean the people in Claremont Avenue asked you questions? A. They did.

Q. Who did? Who asked you questions at Claremont Avenue? A. Professor John Nelson and Mrs. John Nelson, Professor and Mrs. Chaddock. You are referring now to Claremont Avenue?

Q. At 39 Claremont Avenue. I asked the question about 39 Claremont Avenue? A. Doctor William H. McCastline. There were undoubtedly others but I do not recall. Even the superintendents and help asked me as well.

Q. Who is Professor Nelson, a Columbia man? A. He is, as well as those mentioned Columbia University, and their wives.

Q. You met Professor Nelson when you lived in Leonia and Claremont Avenue? A. Occasionally.

Q. And it is quite as likely he would ask you that question at Columbia University? A. No, because we do not ordinarily talk family matters but business only, and the membership of Columbia University is quite large and it would be a month —from time to time. It was often when I was living in the same apartment.

Q. Did the professors at Columbia University ask you why your wife was not living with you? A. I do not think they framed the question as blunt as that.

Q. Did they ask you annoying questions?

A. They asked me such questions as "I haven't seen Mrs. McKee lately; where is she? Is she away?"

Q. You say then that the second reason is that you wanted to avoid the annoyance and questions which were being asked at Claremont Avenue. That was your second reason for moving to Leonia, New Jersey? A. I don't remember whether it was the second; it was one of the reasons.

Q. And the third reason was reasons of health, is that right? A. Yes. Naturally after such an experience it put me in a very nervous condition.

Q. Would that same reason apply to your living in Jersey City? A. Now you mean?

Q. Yes? A. I am not in good health now, though perhaps my appearance would mean the appearance of good health.

Q. You lived in Leonia until October 1926, is that right? A. Approximately. I think it was the last week or so in September 1926.

Q. And you gave up the apartment which you had under lease at 39 Claremont Avenue on September 1, 1925, is that so? A. Right. ~~Martins had it March 1 to August 20.~~

Q. And didn't you order your mail forwarded to 21 Claremont Avenue after you moved out of that apartment on September 1, 1925? A. No.

Q. You didn't order your mail forwarded there? A. No. My mail after I gave up my apartment at 39 Claremont Avenue and for six months previous had been going to 210 Christie Heights Avenue, Leonia, New Jersey.

Q. If you didn't order your mail forwarded to 21 Claremont Avenue, you removed some of your furniture to 21 Claremont Avenue, did you not? A. A small amount.

Q. What furniture did you move? A. A bed, a rocker, a dresser and a couple of chairs.

Q. That's enough to outfit a living room and a bedroom was it not? A. It was not. It was simply enough to outfit a bedroom which I used in the afternoons and not at night.

Q. When you occupied this bedroom at 21 Claremont Avenue did the people ask you questions as to where your wife was? A. No, because it was an apartment used in the same way by other professors. This apartment was reserved for professors and were largely men who lived in the suburbs and kept a room there so on rainy nights or for some other reason they could come and have a room for themselves.

Q. You didn't mention anything about 21 Claremont Avenue in your testimony before the Special Master?

Mr. Walscheid: I object to it as immaterial.

Vice-Chancellor: I will permit it. You see where it is leading to.

A. I don't recall.

Q. You didn't say anything on your direct examination here until Mr. Green took the stand? A. I never lived there.

By the Vice-Chancellor:

Q. You stayed there from time to time? A. The doctor ordered me to take afternoon naps, but I did not use it for staying there nights. Not more than one night a month.

Q. Your boy stopped there once or twice? A. No.

Q. Was he at that apartment? A. I don't think so; not at 21 Claremont Avenue at all.

By Mr. Blumberg:

Q. Did you ever sleep there nights? A. I did perhaps during the time I had it a half a dozen times.

Q. How long did you have that room at 21 Claremont Avenue? A. About seven or eight months.

Q. You did sleep there a half a dozen times? A. In the seven months, yes.

Q. You took no furniture to Leonia, did you? A. No. That is I took no bedroom furniture. I did take a radio and some things of that kind.

Q. You made an affidavit did you not in the New York suit entitled Mary N. McKee v. Ralph H. McKee?

Vice-Chancellor: Why not show it to him?

Mr. Blumberg: I have the book here your Honor.

Vice-Chancellor: What page is it on?

Mr. Blumberg: Page 105 of this book. This paragraph I am pointing to?

Witness: Yes I made such an affidavit.

Q. The statement on page 3 that deponent, meaning you, took an apartment at 21 Claremont Avenue in 1925 and had all of his belongings removed to said address and maintained said apartment until at or about August, 1926, is absolutely false.

Vice-Chancellor: Are you asking a question now?

Mr. Blumberg: I am reading from the affidavit this statement in said affidavit on page 3 thereof that deponent took an apartment at 21 Claremont Avenue in 1925 and

had all his belongings moved to said address and maintained said apartment until at or about August, 1926, is absolutely false. That deponent never took an apartment at 21 Claremont Avenue and never lived at this address and that his belongings were moved from 39 Claremont Avenue when his lease at that apartment terminated in August, 1925, to the storage warehouse of the Manhattanville Express Company and there remained until substantially all of said belongings were delivered to the plaintiff about March 1, 1927, in accordance with the verbal agreement to do so referred to in deponent's main affidavit herein.

Q. You made that statement under oath on March 5, 1928, did you not? A. Yes, and it is true.

Q. Isn't it the fact that you did move some of the furniture to your apartment at 21 Claremont Avenue? A. Her statement was that I took an apartment. I didn't.

Vice-Chancellor: Just answer the question.

Witness: Yes, some. It is not an apartment; it is one room.

Q. You didn't state in your affidavit that Mrs. McKee was wrong about it being an apartment and it was a room, did you?

Vice-Chancellor: You can readily see he did not. You can ask questions on it and argue it afterwards if you wish. A room may be said to be an apartment.

Mr. Blumberg: Can a witness equivocate in an affidavit?

Vice-Chancellor: He said it is absolutely false. He did have some things there that were read off if I believe his testimony here now would be false.

Q. You did rent a room at 21 Claremont Avenue did you not? A. I did rent a room but I did not live there.

Q. Did you pay rent for it? A. I did.

Q. How much rent did you pay? A. I could not say without referring to my check book; but I think it was about Twenty Dollars a month.

Q. And you did take furniture to that room did you not? A. A small amount.

Q. The amount that you enumerated before? A. Yes.

Q. You didn't tell the court in New York anything about you did you?

Mr. Walscheid: I object to it.

Vice-Chancellor: I can't see the materiality of it. There has been so much went in that is immaterial.

A. I think if you refer to the main affidavit I did refer to it. I did in one affidavit in the New York case.

Vice-Chancellor: I presume Mr. Blumberg's purpose is to try and indicate that the petitioner did not set up a bona fide residence in New Jersey.

Mr. Blumberg: Not at the times he stated. I understand he is living on Bergen Avenue now.

Q. You offered in evidence certain catalogues of Columbia University did you not? A. No.

Q. Certain sheets of a catalogue of Columbia University? A. No.

By the Vice-Chancellor:

Q. There were some such things referred to? A. I think it is the directories, not catalogues.

By Mr. Blumberg:

Q. You yourself gave the information to Columbia University that you were living in Leonia?

By the Vice-Chancellor:

Q. The items stated in those directories were given by you to the authorities so they could print them? A. Yes.

Q. The reason for it was you had to make that known to the officials as occasion required? A. Yes.

By Mr. Blumberg:

Q. In addition to the room at 21 Claremont Avenue and the room at 210 Christie Heights Street, Leonia, New Jersey, you also had a room in Ossining, New York, did you not? A. I have a room, or rather two rooms, in a country club there; non-heated rooms that are assigned to me because of my membership in the club.

Q. Two rooms? A. Yes.

Q. Furnished rooms? A. They were not furnished when I got them. I took the furnishings from the basement of the apartment and took them up there and furnished them with discarded furniture.

Q. And did you at that time also have a room in

John Jay Hall at Columbia University? A. At which time?

Q. At the same time you had this room in Leonia, New Jersey?

Vice-Chancellor: Leonia or Ossining?
Mr. Blumberg: Leonia.

A. No.

Q. Did you ever have a room in John Jay Hall at Columbia University? A. Yes.

Q. It is a dormitory is it not? A. It is.

Q. What time did you have that room? A. I had the room at 21 Claremont Avenue from about November first—I beg your pardon September first, or the latter part of August. I did not have the room for my use until from November first until the following June. Many things were put in the basement and then moved later to John Jay Hall about November 10th or about November 1, 1926, and I had already moved to John Jay Hall about the first of October, 1926, or the last of September, and I had that room until about the end of the University year. That was a room on the thirteenth floor reserved for university professors—on the floor reserved for university professors.

Q. You had that room you say until June, 1927? A. No. Wait a moment! No, I had that room only until January, 1927.

By the Vice-Chancellor:

Q. You said to the end of the university year. Were you mistaken? A. Yes, I am mistaken.

By Mr. Blumberg:

Q. What do you mean the year 1927 or 1928? A. 1927—about January, 1927.

By the Vice-Chancellor:

Q. You are sure it wasn't last year? A. No.

By Mr. Blumberg:

Q. How many months did you have that room? A. From about November 1st to January; that would be November, December and January, three months.

Q. You didn't mention that room in your direct examination did you? A. I wasn't asked.

Q. Did you have a bed in that room? A. Yes, it was a room used in the same way and for the same purpose as 21 Claremont Avenue, that is, a room used under the doctor's orders for rest between one and two o'clock several times a week.

Q. Is that a dormitory? A. Yes.

Q. For professors? A. No; excepting that floor was reserved for university professors. There were a number of others like myself who lived out of town.

Q. Did you sleep there over night occasionally? A. I don't think I slept there over night more than two times.

Q. Did you sleep there in the afternoon? A. About three times a week.

Q. The same as at 21 Claremont Avenue? A. Yes; excepting at 21 Claremont Avenue I probably did four times a week in the afternoons.

Q. Did you pay rent for that room? A. Yes.

Q. And who did you pay rent to, Columbia University? A. Yes.

Q. Whose furniture was in that room? A. Partly university furniture and partly my own that had been moved from 21 Claremont Avenue.

Q. So you moved furniture from 21 Claremont Avenue to John Jay Hall? A. Ultimately; it was

in storage in the basement at 21 Claremont Avenue about five months in between.

By the Vice-Chancellor:

Q. You are referring to the basement now of 21 or 39 Claremont Avenue? A. 21.

Q. My recollection is the furniture you took from 39 to 21 was put in that room? A. Yes, but I moved out because they wanted to take my room and other rooms and make an apartment for one of the professors and his family.

Q. And then that furniture was put in storage? A. Yes.

By Mr. Blumberg:

Q. Wasn't any of that furniture taken to John Jay Hall? A. Not when I ceased to have the room at 21 Claremont Avenue. There was five months in between when I did not have a room at either place.

Q. So that you took the furniture from the basement of 21 Claremont Avenue to John Jay Hall? A. Part of that I had taken over.

Q. Is that all of the furniture which had been originally in the room at 21 Claremont Avenue? A. No, only a part of it.

Q. What part of it? A. A bed and a dresser and one small chair, one desk chair and some books and a book case.

Q. Where is that furniture now? A. Mrs. McKee has part of it and part of it is in storage with the Manhattanville Van & Express Company storage house.

Q. You send some of the furniture you had in that room to Mrs. McKee? A. I did.

Q. And it was furniture other than that which you enumerated now? A. Yes, I sent part of it to Mrs. McKee and part of it went to the Manhattanville Van & Express Company storage rooms.

Q. You had a rocker in that room did you not? A. No, I had a university rocker. I first moved over a rocker and sent it to storage.

Q. You sent that to Mrs. McKee didn't you? A. Yes.

Q. Did you send it from your room in John Jay Hall? A. No.

Q. After you left your room in Leonia you took a room in Van Reipen Avenue in Jersey City, is that right? A. I did.

Q. And you stated in your direct examination you paid a week and a half rent for that room? A. I did not.

Q. What rent did you pay? A. I paid a total of two weeks and a half rent and I stayed there two weeks and a half.

Q. What did you pay first, that's what I am getting at? A. First? I don't know; you will have to look at the exhibits which were put in by Mrs. O'Brien. From the amounts of those checks I can tell you.

Q. What was your reason in moving to Jersey City? A. I have besides my university work considerable—I do considerable outside consulting work and the companies with which I am doing that were primarily the Oxford Paper Company and the Tennessee Copper Company, both of whose offices are downtown in New York City, but the thing that was determining was I was having conferences at Arlington, New Jersey, with a concern known as the Pilot Laboratories, and I was needed there quite often and it is extremely difficult to get from Leonia to Arlington, New Jersey. I felt

the most convenient way was to go to New York and then come back to Arlington, and from Jersey City it is comparatively simple to get to and from Arlington.

Q. Is the Pilot Laboratory still in Arlington? A. It is.

Q. Is it still in business? A. It is in business but I think it has moved to Carlstadt or it will move. It has built a building there. I have not been connected with the company for some months.

Q. When were you first engaged by officials of the Pilot Laboratory Company? A. I don't recall the exact date, perhaps July 1926 or August 1926.

Q. And do you recall for how long you worked for them? A. I worked for them for possibly six months; then did not work for them, and then worked again and ceased working last June or July—about a year ago—perhaps May, a little less than a year ago.

Q. May 1928? A. Yes.

Q. And for how long a time prior to May 1928 had you worked for them? A. Perhaps eight or ten months.

Q. That makes a total of about sixteen months? A. Yes; maybe more like twelve months.

Q. What sort of work did you do for the Pilot Laboratory? A. Advised them on the question of their operations. They were manufacturing organic compounds and needed the help of an experienced chemical engineer.

Q. And what official or officials of that company were you dealing with? A. Primarily with the president.

Q. What's his name? A. Mr. S. G. Turnbull.

Q. Did you have occasion to go out to Arlington, New Jersey? A. Yes.

Q. How often? A. For a time several times a

week and at other times when I was on other work I went to Arlington.

Q. Did you do this after your university hours, this work? A. Aside from my university work, not necessarily after. Oftentimes it was before and sometimes on days when I had no university work.

Q. You teach in Columbia University? A. Teaching is but a small part of my work.

Q. How many days a week do you have classes at Columbia University? A. Will you repeat your question?

Q. On an average how many times a week do you have classes at Columbia University? A. It depends upon what you call classes. If you mean a group of students in front of me four times the fall semester and two times a week the spring semester, but the class room work is a very small part of my work at Columbia University.

Q. You go to Columbia University every day? A. No.

Q. How many times a week do you go there? A. Many weeks I go there every day and sometimes two or three times a week.

Q. You go all the way from 607 Bergen Avenue, Jersey City, to Columbia University? A. It is not far. I leave the house and in fifty minutes I am in my office.

Q. And before where you lived? A. Before where I lived an hour and fifteen minutes to Leonia.

Q. And for the time you lived on Claremont Avenue? A. About ten minutes walk. Before that I lived up at Spuyten Duyvil where it was fifty minutes.

Q. You had some other concerns in Jersey City you said you worked for is that so? A. There

were other concerns but not in Jersey City. I have none in Jersey City, but there are other concerns around Jersey City I worked for.

Q. What concerns were those? A. Earlier I had done work for the Pharma Chemical Company of Bayonne, of whom Mr. Markush, who testified here, is vice-president and technical director. I had also—

Q. When you say earlier when do you mean, earlier than 1925? A. Yes, about 1923 or 1924.

Q. Your work was then no reason why you lived in Jersey City, was it? A. The business acquaintances which had been begun had been kept up in a social way.

Q. Any other concerns in this neighborhood? A. Yes, there was an nicotine plant at Newark Junction, and the man who I looked to for my pay was a Mr. James S. Brulin.

Q. When did you work there? A. About I think the summer and fall of 1926.

Q. Were you still working at the plant when you came to Jersey City? A. Yes, though my work was off and on. It wasn't continuous work.

Q. Was that one of the reasons you moved to Jersey City because you worked in the vicinity? A. It was another element, but it was primarily the Arlington plant.

Q. Are you working for any plants in this vicinity at this time? A. No; and yet I have been asked to and will probably begin work with the Arlington plant in the near future.

Q. But you haven't worked for them since May 1928 have you? A. May or June or July; it was in the summer.

Q. You continued to reside in Jersey City since 1928 even when there were no plants in this neighborhood you were working for? A. I would say 61

Broadway, New York City, is in this neighborhood, and I am there several times a week.

Q. What plant is at 61 Broadway? A. The head office of the Tennessee Copper Company of which I am the chemical engineer.

Q. You were working for them while you were at Spuyten Duyvil? A. Yes.

Q. And at Leonia? A. Yes, and Ridgefield Park.

Q. And while you lived on Claremont Avenue? A. Yes.

Q. Where were you living when you worked for the Pharma Chemical Company in Bayonne? A. 180th Street, New York City.

Q. Did you visit the plant of the Pharma Chemical Company? A. No, it was not plant business. I aided them in placing something before the Tariff Board regarding the importation of chemicals from Germany. It was a test case that was brought up and carried to the United States Supreme Court for the importation of chemicals from Germany testing the tariff act.

Q. At any rate from February 1925 you have not maintained any home for your wife?

Mr. Walscheid: I object to it.

Vice-Chancellor: He can say yes or no.

A. I did always maintain a place where she could be taken care of along with myself and with herself, and I was always ready up until the time I started the divorce suit ready to provide a home.

Q. You know Mrs. Gibb? A. Yes.

Q. Mrs. McKee's sister? A. Yes.

Q. And she lived at your house on Claremont Avenue during October 1924, did she not? A. She was there as a visitor; I would hardly say she lived there.

By the Vice-Chancellor:

Q. I suppose you mean she stopped there with you for a time? A. Yes.

By Mr. Blumberg:

Q. She stopped there for a month? A. More than that.

Q. But she was there during the whole month of October? A. Yes.

Q. And you left for Europe in November, 1924, is that correct? A. Yes.

Q. Miss Gibb was there at the time? A. Yes.

Q. When did you first tell your wife you were going to Europe? A. The same day I learned I was going to Europe which was ten days or so before I left.

Q. When did you obtain your tickets or arrange for your passage to Europe? A. A few days after that. I can give you the exact date if you want me to; I have my checks here.

Q. Lets look at them? (Witness produces checks.) A. I find I am mistaken; I have only the Ridgefield Park checks here. It is the Corn Exchange.

By the Vice-Chancellor:

Q. Approximately how many days before you sailed for Europe did you buy your ticket? A. About a week.

By Mr. Blumberg:

Q. You say you made up your mind a few days before you purchased your ticket? A. I don't say I first learned of it. There had been some little

talk but it was finally decided upon by the companies in whose employ I was.

Q. You were on speaking terms with Mrs. McKee at that time? A. Yes.

Q. What did you tell her about the trip to Europe? A. I don't know as I understand what you mean.

By the Vice-Chancellor:

Q. Did you talk to her about your contemplated trip to Europe? A. It was a trip that was all decided in a single day and the day before there wasn't one chance in twenty of my going. As soon as I learned of it I told her about it that I was going and raised the question as to whether she would be interested in going on the trip which was strictly a business trip and would mean very hard traveling. I doubted if she would be because she had refused to go on a vacation trip only three months before in July, 1924, where I had arranged for us to go to Newfoundland and had to cancel it because she said she didn't want to go on the sea.

By Mr. Blumberg:

Q. Did you ask Mrs. McKee to go with you or did you not? A. I don't know that I asked her. I told her I could arrange it if she wanted.

Q. Isn't that asking her to go? A. It would be put in the form of a question and I don't think I did put it in the form of a question.

By the Vice-Chancellor:

Q. What conversation did you have about the trip to Europe about her going with you? A. I simply told her that the Oxford Paper Company

and the Badger Company were furnishing me with funds to go to Europe and that I was going to Italy and certain other portions and the question I would like to know was whether she would like to go with me. It wasn't a thing that I considered particularly of importance because I travel a good deal.

Q. Was Miss Gibb present at the time you had this talk with your wife? A. I don't think so.

By Mr. Blumberg:

Q. That was the first time you spoke of going to Europe? A. No, I think I had mentioned it a month or two earlier. This was my half year's leave of absence and I thought I could get the Oxford Paper Company to finance the trip, but there was a question of Badger Company bearing a part of the expense.

Q. Did you tell your wife what boat you were leaving on? A. Yes.

Q. And was she at the boat to see you off? A. She was not.

Q. What boat did you go on? A. I left on the Conte Verde of the Sabaudo Line, an Italian line.

Q. You say you wrote to your wife while you were in Europe? A. A half dozen letters.

Q. Six letters? A. Yes; and some postal cards.

Q. Did you advise your wife just when you would return? A. I told her when I left.

By the Vice-Chancellor:

Q. Did you advise her? A. Yes; and gave her the date on which I expected to return.

By Mr. Blumberg:

Q. And you told her you would return on December 31, 1925? A. No; December 20th. The

boat was a day late so I did not arrive until the 21st.

Q. Did you tell her the boat you would return on? A. Yes.

Q. Did you write to her confirming that you would return on December 20, 1924? A. Yes.

Q. You also wrote what boat you were coming on? A. Yes; the Leviathan.

Q. Have you copies of those letters? A. No.

Q. Your wife was not at the pier when the boat arrived was she? A. No.

Q. And you went directly to the house at 39 Claremont Avenue? A. No, I first went through the customs and it took an hour or so and then came over and took a subway up to the house, or rather the apartment.

Q. Was Miss Gibb still at the apartment? A. No, I understood she had left the previous day.

Q. And Miss Noyes, another sister of Mrs. McKee, was there was she not? A. I don't think so.

Q. Was your two children home at that time? A. I think one of them came home that day or the next, and the other a day or so later. I am not certain as to just which day they came home.

Q. Did Mrs. McKee write to you while you were in Europe? A. I did not receive any letter so I do not think she wrote me. She had my address.

Q. Did you receive letters from your children at that time? A. I did.

Q. And you say you left funds with Mrs. McKee before you left for Europe? A. Yes.

Q. What did you leave with her? A. I left not only the apartment house checks, that is, checks for rent, etc., I left $350.00 in checks payable to her and something more than $200.00 of cash.

By the Vice-Chancellor:

Q. You detailed all that before? A. Yes.

By Mr. Blumberg:

Q. Did you leave any checks for rent? A. I did; not with her though. That is I arranged they would be sent and not bother her with them.

Q. Why didn't you give those checks to Mrs. McKee? A. Because she is very careless in business matters and I didn't want any question of the rent not being paid promptly.

Q. When you came back it was just about Christmas time wasn't it? A. December 21st.

Q. And you say you bought Christmas presents for your children and Mrs. McKee? A. Yes.

Q. What did you bring Mrs. McKee?

Vice-Chancellor: He has detailed all that. What's the use of going over that Mr. Blumberg?

Mr. Blumberg: Just a few questions.

Vice-Chancellor: All right.

A. I brought her gloves and I brought her pieces of jewelry, not of an expensive type, and perhaps other things, perhaps a total of a half a dozen things.

Q. On your direct examination you said you gave her a large box of gloves which you brought from Italy, is that so? A. It is.

Q. And you also gave her a book or two? A. Yes, but they didn't come from Europe.

Q. Was it one book or two books? A. I am not certain but it has been a habit in the family on my side to give books to the children and Mrs. McKee. I was brought up in a book store.

Q. And something in the way of clothing? A. Gloves are clothing, and the small pieces of jewelry, inexpensive.

Q. You didn't say anything in your direct ex-

amination about inexpensive jewelry? A. I don't think I did. I do not think I mentioned all the things I brought back.

Q. All these things you gave her for Christmas, is that right? A. I may have given her some of them a day or two before Christmas when I was unpacking, but I think I saved them for Christmas.

Q. Is this the jewelry you brought back from Europe, Doctor McKee, the jewelry that was purchased in Europe (showing witness a small box)? A. Yes.

Q. Is that it? A. This is one part of it. I do not remember whether this was given to Margaret or to Mrs. McKee.

By the Vice-Chancellor:

Q. What would you call it a brooch? A. I would call it a brooch and a silver bracelet. This has had part of it removed.

Q. You mean the bracelet since you brought it over? A. Yes. This pin was of interest because it came apparently, according to my recollection, from the same man on the steps of the Milna Cathedral from whom Mrs. McKee had purchased a pin of the same kind when we were over there in 1906. It was only a twenty-five or fifty cent pin, so its value was nothing to me.

By Mr. Blumberg:

Q. Is that the box you gave her the gifts in? A. I don't know; I don't think so; but this is my writing and this has been filled in (indicating).

By the Vice-Chancellor:

Q. You mean the floral decorations? A. It has been placed on the box.

Q. But the writing is there? A. Yes, but the box I don't recall ever having seen before.

Q. In the affectionate way in which you addressed it to Mrs. McKee from Mr. McKee? A. Yes. It was a habit in the family to address it different, one from Mr. McKee to Mrs. McKee and another from the lady of the house and using different terms. I do not think I have ever seen that box before.

Q. It is your handwriting, there is no question about it? A. On the label that is placed on the box.

Q. Then the label accompanied this gift? A. I don't know.

Q. It accompanied some gift did it not? A. Yes, it did.

Q. Was the floral decoration on the label? A. Yes.

Mr. Blumberg: I ask it be marked for identification.

(Marked L. B. 1 for Identification.)

By Mr. Blumberg:

Q. Your wife left the apartment you testified on direct examination on January 14, 1925, is that the right date? A. No, it is not the right date.

Q. What is the right date? A. January 13, 1925.

By the Vice-Chancellor:

Q. You don't know whether she left on January 13th or 14th? She left some time between the time you went to sleep and morning? A. Yes, the bed ~~was~~ warm slept in. I inferred it was in the morning.

By Mr. Blumberg:

Q. Do you recall writing a letter on January 15, 1925, to Hirsch, Newman & Reass, who were the attorneys of Mrs. McKee? A. I recall writing a letter to them but I don't know whether it was on that date or not. May I see it? (After examining letter.) Yes, I wrote a letter on January 15, 1925, to Hirsch, Newman & Reass.

Q. Will you read that letter? (Witness reads) "New York City, 39 Claremont Ave. January 15, 1925. Messrs. Hirsch, Newman & Reass, 100 Broadway, New York City. Gentlemen. I wish to acknowledge receipt of your letter dated the 12th instant, wherein you state you have been retained by Mrs. McKee to bring an action for separation against me. Of course, it is needless for me to say that I absolutely deny the charges made against me by Mrs. McKee, as contained in your letter. Furthermore, as Mrs. McKee has undoubtedly informed you, she left our house and home on Tuesday, January 13, 1925, of her own volition, and certainly without any wish, or urging, on my part, and surely from the standpoint of a layman like myself, this uncalled for action on her part shows that she deserted me, and not that I deserted her. In view of your letter, there appears to me to be only one thing to do, and that is to follow the course expressed in your letter and endeavor, if possible, particularly for the sake of Mrs. McKee and the children, to have a conference, and, if agreeable, to enter into a separation agreement. It will, therefore, be necessary for me to at once secure the services of a reputable lawyer to represent me in this matter, for I am not at all familiar with the procedure in legal matters, my life being cast along scientific lines, and, consequently, I do not feel capable of taking care of a situation like this

without obtaining legal advice and guidance. As you must be aware, this matter comes suddenly upon me, your letter being simultaneous with Mrs. McKee's departure, and, of course, I have not had an opportunity to get in touch with a lawyer to advise me—but I will arrange to do this at once so that he may communicate with you in my behalf. Unfortunately, I am just leaving the city, to be absent until Thursday next, January 22, as a witness in a law case pending in Delaware. You will, therefore, appreciate that it will be impossible for me to obtain an attorney and acquaint him with the situation and have our conference, looking toward the adjustment of this unfortunate affair, before the end of next week. I assure you, however, that I will give these matters and arrangements the prompt attention they deserve, and I want to close by assuring you that I personally very much regret the unfortunate turn of affairs. Very truly yours, Ralph H. McKee."

Mr. Blumberg: I would like to have it marked.

(Letter marked Exhibit D 1 in evidence without objection.)

Vice-Chancellor: What about the letter that the lawyer wrote?

Mr. Blumberg: That was offered in evidence.

Q. You didn't put in that letter Doctor McKee you were desirous of having Mrs. McKee come back and live with you? A. No.

Q. You had not consulted a lawyer yet had you? A. No.

Q. And in this letter you stated that if agreeable you wanted to enter into a separation agree-

ment, didn't you? A. I said I think it may be desirable to enter into one. I don't think I said I wanted to.

By the Vice-Chancellor:

Q. That letter indicates to me there were some differences between you as a result of which you considered, in view of the receipt of that letter, you wanted to enter into a separation agreement? A. I don't think that is quite so.

Vice-Chancellor: What was the course that was suggested in that previous letter?

Mr. Blumberg: (Reads letter of Hirsch, Newman & Reass.)

Q. Had there been some marital differences prior to the receipt of that letter? A. This letter was written the day before she left. She left the same day I received it.

Q. What was the occasion for her leaving? I am trying to find that out? A. I don't know your Honor.

Q. Why were you so willing to enter into a separation agreement? A. I of course was much provoked on finding this letter on the table. I had previously in 1921 had the previous experience of her going off and leaving me and didn't know there was any other way than do that, and then as I thought over it there I was less provoked than at the time I wrote this letter—at the time I got her letter—and when I got over it later on what it meant to the children I still felt it was the wrong thing to do.

Q. At the other hearing I tried to ascertain from you what the real differences were between you and your wife which occasioned her leaving you and

you could not inform me what the reasons were. You said you didn't know of any reason why she should leave you? A. Your questions were what had happened just previously which might have occasioned that. There was nothing happened previously. It later developed she had been planning that for sometime.

Vice-Chancellor: I will have to strike that out.

Q. My recollection is from the time you went to Europe and up to the time she left there were no real quarrels between you to which you could ascribe her reason for leaving? A. That is true.

Q. If that is so why were you so ready, as manifested by the letter which you wrote to the lawyers, to agree to a separation agreement because as therein stated of your unbearable conduct or whatever it was? A. I did not know at that time that it was even possible to file a separation suit on that.

Q. Why should you want a separation suit at that time? A. I didn't. I tried to arrange for a conference and in between I even talked to her—tried to talk to her and she would not talk to me.

Q. There is an old saying that actions speak louder than words. In this letter to the lawyers you expressed a willingness to join with the suggestion of those lawyers that a separation agreement be prepared between the two of you. You thought it was the best course? A. I thought it was the only course.

Q. Why? A. Because I was too ignorant of what might be done there and also I had not gotten over being provoked because she had gone off and left me.

Q. You mean to say you kept a hatred in your

heart and mind since 1921 up to this time? A. No, but when this came it brought to my mind what happened in 1921.

By Mr. Blumberg:

Q. Did you ever at any time use the words "separation agreement" since January 1925? A. Yes.

Q. In letters to the lawyers, Hirsch, Newman & Reass or to Mrs. McKee? A. I did in affidavits that were made out.

Q. Let me show you a letter of February 7, 1925, to Mrs. McKee. Will you read the letter of February 7, 1925, to Mrs. McKee?

Vice-Chancellor: Written on your letterhead.

(Witness reads) "February 7, 1925. Mrs. Mary N. McKee, c/o Miss Helen Noyes, Colonial Hotel, New York City. Dear Mary: Your lawyer asks that I send you some money. He did not suggest an amount. Enclosed find a check for $200.00 payable to your order. This will, I presume be sufficient to carry you until the close of the separation conferences. Very truly yours—Ralph H. McKee."

Vice-Chancellor: I think you had better have that letter marked.

(Letter marked Exhibit D 2 in evidence without objection.)

Mr. Blumberg: I would like to offer a letter dated January 14, 1925.

(Letter marked Exhibit D 3 in evidence without objection.)

Mr. Blumberg: I will read the letter—"January 14, 1925. Mrs. Ralph H. McKee

c/o Miss Helen Noyes, Roosevelt Hospital (Harriman Laboratory), New York City. Enclosed find third Liberty 4¼% bonds #1,582,648 and #1,582,649; also fourth Liberty 4¼% bond A01125671. These belong to you. Kindly acknowledge receipt. Very truly yours—Ralph H. McKee."

Q. Now, going back to Exhibit D 2, you didn't express any desire in that letter that your wife come back and live with you, did you? A. Not in that letter.

Mr. Walscheid: Doesn't the letter speak for itself?

By the Vice-Chancellor:

Q. Why did you not in that letter indicate your willingness to have your wife return again to live with you if you so intended? A. I was expecting we were to have some conferences at her attorney's office and it is better to do those things in a verbal way. In general I have rather followed the practice of acquiescing so far as possible to her wishes.

By Mr. Blumberg:

Q. Had you retained Mr. Kirby at the time of this letter of February 7, 1925, if you recall? A. Oh, yes.

Q. Had you retained him? A. Yes.

Q. Had you had any conference prior to February 7, 1925?

Vice-Chancellor: You mean with Mr. Kirby?

Mr. Blumberg: At Mr. Newman's office with Mrs. McKee.

A. About this time—I don't remember the exact date—between February 5th and 12th there was a conference at Mr. Newman's office.

Q. Before this letter or after this letter? A. I don't know; it was about that time.

Q. Who was present at that conference? A. Mr. Reass, Mr. Kirby, Mrs. McKee and myself. That's my recollection. Possibly Mr. Newman was there; if so Mr. Reass was not.

Q. Was any suggestion made at that conference by any of the attorneys that a separation agreement be entered into? A. I think there was such a suggestion made by Mr. Reass.

Q. Do you recall what he said? A. No, I don't recall the details, but that was along the general line of his conversation.

Q. Is that the conference in which you first asked Mrs. McKee to return to you as stated in your direct examination? A. I think I asked her at that time to return to me. Still I am not certain whether it was that or the next one in February. There were two in February.

Q. Who did the talking at these conferences, Mr. Kirby or you? A. I did most of the talking; Mr. Kirby did part of it. Mr. Kirby possibly did one-third and I did two-thirds. I am speaking of the first conferences.

Q. Did Mr. Kirby state at those conferences that it was your desire to have Mrs. McKee come back and live with you? A. I don't think he did. I think I stated that.

Q. When you stated that who made the reply, Mrs. McKee or her attorney? A. Mrs. McKee.

Q. What did she say? A. The first reply was made by the attorney that he didn't so understand I wanted to come back and live with her. I said I certainly did, and so stated to Mrs. McKee. Then

she said "Well, I didn't so understand you," and then I repeated my request for her to return in particular words.

By the Vice-Chancellor:

Q. Then what did she say when you repeated it? A. I don't think she replied direct.

By Mr. Blumberg:

Q. Didn't you ask for a direct reply? A. Yes.
Q. But she still persisted in not replying to you? A. I think that's what happened. Either that or she said it in effect.

Vice-Chancellor: If you don't know don't guess at it.

Witness: It is hard for me to keep these various conferences separate.

By Mr. Blumberg:

Q. Then starting with your letter of March 23, 1925, and continuing throughout you constantly expressed in your letters a request that Mrs. McKee return and live with you, is that so? A. No.

Vice-Chancellor: I suppose the letters will speak for themselves. Some of those letters may not have that statement in it.

Q. Let's look at the letter of March 23, 1925—"I had a conference with Mr. Kirby on Saturday and talked the matter over with him. There is no reason as I can see it why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do

this?" Was that paragraph put in there as a result of your conference with Mr. Kirby? A. Only indirectly. I had asked him if there was any legal reason why it could not be done and he said no there is no legal reason why it couldn't be done and the law would welcome it. Then I went ahead and asked her. I asked her before verbally several times.

Q. No legal reason for what? A. To go back after we had conferences.

Q. Weren't you advised by Mr. Kirby that it was necessary for you to make a request or demand that Mrs. McKee return to you? A. No.

Q. You weren't advised it would be beneficial to your case? A. No.

Q. It was a spontaneous remark on your part? A. No. Before I had been making verbal requests.

Q. You no longer talked about separation agreements? Your talk was now directed to have Mrs. McKee return to you? A. That is correct.

By the Vice-Chancellor:

Q. How do you reconcile your statement of your express willingness to enter into this separation in response to the letter of the lawyers and the statement in your letters about your desiring to have her return to live with you? A. At first I did not think there was any chance of her coming back and I was angry and provoked when I found her note, and I thought from my own viewpoint of things and in conferences with Mr. Kirby I found that it was no handicap of the fact I had legal conferences to my taking her back.

Q. Did the lawyers try to get you to become reconciled? A. Mr. Kirby did, and later on, on January 24, 1927, Mr. Reass one of her attorneys did.

He said there was no reason why we shouldn't live together.

Q. What did you say to that? A. I told him it was the primary—I was relying on the agreement.

Q. What did your wife say? A. Nothing.

Q. So after that the so-called agreement was signed by you and your wife? A. No, later.

Q. On the same day? A. Three minutes before.

By Mr. Walscheid:

Q. You mean the conferences were ten months before?

Vice-Chancellor: Three minutes.

Mr. Walscheid: Yes, but the signing of the papers was almost a year after the conferences.

Witness: Yes, a year and a half.

By Mr. Blumberg:

Q. And at these conferences Mr. Reass threatened to institute suit against you did he not? A. I don't think so. Mr. Reass took a conciliatory attitude in the matter and wanted to arrange something without instituting a suit.

By Mr. Walscheid:

Q. What conferences are we now talking about? A. The February conferences of 1925.

By Mr. Blumberg:

Q. At any rate in that letter of January 12, 1925, they threatened to start suit against you? A. That is correct.

Q. And you knew at the time of writing these letters that Mrs. McKee had an attorney? A. Yes.

Q. And you knew if any suit was instituted you would have to have some defense to it didn't you? A. Either that or allow it to go undefended.

Q. Isn't it a fact you were writing all these things only for the purpose of having a defense for the suit which was pending at that time? A. No. If it had been I wouldn't have gone to all the other trouble besides the letters.

Q. And if it had been you wouldn't tell me so?

Mr. Walscheid: That is not a proper question.

By the Vice-Chancellor:

Q. Did you keep copies of the letters you wrote to your wife? A. Only of those which I wrote on the typewriter.

Q. Not all these letters that are written in pen? A. No—excepting one or two.

Q. Did your lawyer tell you it would be advisable for you to keep copies of any of the letters? A. No.

By Mr. Blumberg:

Q. You knew Mrs. McKee was keeping all the correspondence did you not? A. I had no acknowledgement from her excepting I thought she would.

Q. And likewise you were keeping the letters that Mrs. McKee sent to you? A. I think I have all of them.

Q. You offered them in evidence? A. I am not certain they are all there. I offered all I had.

Q. Will you explain again just what you had in

your mind when you used the phrase "a right and normal married life together"? A. I can't. Simply the ordinary life that a husband and wife ordinarily live together. That would include the question of social relations and sexual relations.

Vice-Chancellor: To me it is an unusual thing for a husband to write to his wife asking her to come back and live a *normal* married life. That is bothering me considerably. She says it in one of her letters and you to her. I am trying to find out what is behind that word *normal.* I haven't been able to find it out yet.

Q. Do you consider you and your wife were living a *normal* life together up to January, 1925? A. Not quite, no.

Q. And why not quite? A. Because she had been refusing, though I had asked her for it several times, to have sexual intercourse. She had also refused to go out with me, out walking or to various affairs and to go on vacation trips with me, so that in that respect I do not think that it was an ordinary married life, that is, a *normal* married life.

By the Vice-Chancellor:

Q. For how long a period of time do you say that conduct was carried on previous to the separation? A. It had begun to show a couple of years earlier, but it was decided since April of the year 1924.

By Mr. Blumberg:

Q. Do you put any emphasis on the fact that your wife wouldn't go out with you? A. Yes.

Q. Didn't you testify either in this court or in some affidavit that on the Saturday before the separation you and your wife with some friends went to Tiffany's? A. Yes.

Q. Was she with you at that time? A. Yes, but the next day she refused to go out.

Q. And the night before you went to a show in New York called "Annie Dear"?

Mr. Walscheid: She went with the others; not with him alone.

Q. Do you say you and your wife had not gone out, excluding the question of others, for a period of six months before the separation? A. Excepting two or three times in six months.

By the Vice-Chancellor:

Q. Didn't you go out and eat meals in some places? A. Yes, to restaurants and the Faculty Club for meals. That was often done.

By Mr. Blumberg:

Q. After the separation you and she went to meals together did you not? A. No, only a few times. Perhaps a total of six times.

Q. And did you then define the relation as not normal because of the separation? A. I don't call going to meals as sociable.

Q. You are a scientific man are you not Mr. McKee?

Mr. Walscheid: What do you mean by that?

Vice-Chancellor: He said so.

Q. You don't consider an occasional objection to going out as abnormal do you Doctor McKee? A.

No, but I do consider it not like an ordinary married man and his wife—refusing almost continually to going out unless somebody else is with them.

By the Vice-Chancellor:

Q. Doctor, even though she did refuse to go out with you that shouldn't disrupt the marriage? A. No.

By Mr. Blumberg:

Q. And isn't it a condition that you imposed upon your wife before you would have her return to you? A. No.

Q. And to live a normal life? A. Yes, but in other ways I asked her without any such limitation.

Q. Did you in any of your letters ever state to your wife that you would be more tactful in the future and would endeavor to make the home more pleasant? A. I don't know as I used the word tactful, but I am quite certain in a number of letters I spoke about so we could live together in a happy way and there was no reason why we shouldn't adjust ourselves to that end.

Q. In none of the letters that you wrote did you at any time indicate you were at fault in any way, did you?

Mr. Walscheid: Don't the letters speak for themselves?

Vice-Chancellor: I guess that's so; they will have to speak for themselves.

Mr. Blumberg: I don't recall they do.

Vice-Chancellor: What's the use of considering that. There is an awful lot of insincerity somewhere and I am trying to find out where it was.

Q. You not only wrote to Mrs. McKee but you telephoned to her did you not? A. I did.

Q. You not only telephoned her but you met her occasionally? A. I telephoned her occasionally, wrote her occasionally and met her from time to time.

Q. You never said anything in your telephone or in your personal conversations with Mrs. McKee about her coming back to live with you? A. Yes, I did.

Q. When was suit instituted against you in New York? Do you know the date? A. You refer to the injunction suit?

Q. The separation suit in New York instituted by Hirsch, Newman & Reass? A. October, 1925, I think, and it was put on the calendar in April, 1926, and came on the day calendar about October, 1926. The papers have been put in as exhibits.

Mr. Walscheid: Only some of them; not the whole record. Those dates will show on the records.

Q. And that case came on for hearing about January, 1927, did it not? A. Yes.

Q. And were you prepared at that time to meet all the charges of Mrs. McKee? A. Yes.

Q. You didn't file any counterclaim in that suit did you?

Mr. Walscheid: I object to it as immaterial whether he did or not.

Vice-Chancellor: What do you mean by a counterclaim? By a counterclaim you mean a counter-suit for separation?

Mr. Blumberg: Yes.

Mr. Walscheid: I withdraw the objection.

A. No, I did not file any because at that time I was trying to get her to return to me and I didn't want to have any legal decision on papers which would handicap her returning to me.

Q. You stated in your direct examination when the suit for separation came up the attorneys on both sides requested a delay until the afternoon session, is that so? A. No. Mr. Reass, her attorney, asked us that and my attorney consented.

Q. You mean it was Mr. Reass's suggestion that there be a continuance until two o'clock? A. Yes.

Q. Did you speak to Mrs. McKee during morning recess? A. I think I did. I am not certain whether that is the day I took her to lunch and then talked to her after lunch again.

Q. What did you say to her during lunch time? A. During lunch time we talked about other things than the separation. It was not a proper place; the restaurant was crowded.

Q. Was anybody else to lunch with you? A. No.

By the Vice-Chancellor:

Q. I had in mind that continuance was suggested for the purpose of enabling a possible settlement of the matter? A. It was.

Q. And I think you said you went out to lunch with Mrs. McKee and I think you said heretofore something about because of the crowded condition of the restaurant you didn't talk as freely as you might? A. That is true.

Q. Did you say anything to her during that recess in an endeavor to effect an adjustment of the matters in this suit? A. Yes, I did, for a half an hour or an hour before lunch and also after the lunch period.

Q. Can you remember what you said? A. I don't know whether I can give you the exact words but it

was about like that, that can't we arrange it so we can live together and have the children with us instead of being separated and you having the children for part of the time or most of the time, and I scarcely getting a chance to see them.

Q. Do you recall what she said? A. She said she was not—she said "I am not ready to do that; I think the thing for you to do is to provide for me and I will give the children a home and you can come and see them from time to time."

Q. So she did go to lunch very readily with you when you asked her to; no reluctance upon her part? A. There was.

Q. How did she manifest that? A. She said "I don't know whether I ought to go out with you or not, but we can just as well be at lunch as be here together" and I hoped we might talk things over at lunch, but it happened to be we got into a crowded lunch room so it was impossible to talk during lunch period.

By Mr. Blumberg:

Q. The situation is that she at that time had a suit in court against you for separate maintenance, isn't that so? A. Is separate maintenance the same as separation? If it is the same, yes.

Q. And you went out to talk about settlement of that suit, didn't you? A. No, we went out to see if we could come to some agreement among ourselves not necessarily to the separation suit, but to see if we couldn't come to some agreement which would stop this. On my part I was trying to bring her back to me.

By the Vice-Chancellor:

Q. Did you have a desire to put an end to the litigation between you and your wife and with a

view of you and your wife living together again as husband and wife with your children? A. Absolutely; nothing else.

By Mr. Blumberg:

Q. And when you went out did you speak at all about the money feature of the case? A. I don't recall that we did when we went out, but we did when we were in the court house at the first part of our conference in which she said she wanted me to provide for her an apartment so she could take the children and I objected to it and said that wasn't the way to do it.

Q. Did she mention any amount she wanted? A. I don't know if she did at that time. She had earlier—$8,000.

Q. Per year? A. Yes, out of my $9,000.

Q. Isn't it the fact that really what you talked about at the luncheon conference was the amount of settlement to be made? A. No.

Q. It was not? A. No.

By the Vice-Chancellor:

Q. Did you discuss that at the luncheon? A. Not at the luncheon, but before the luncheon she raised it. We had conferences in three places.

By Mr. Blumberg:

Q. Did you at the luncheon discuss drawing up any agreement? A. No.

Q. Did you discuss the making of any agreement? A. No.

Q. So that your idea of settling the matter was to have Mrs. McKee come back and live with you? A. I was not ready to sign any separation agree-

ment because to do so would be to give her—there would be no chance of her coming back.

Q. The only way you wanted to settle the case at that time was to have Mrs. McKee come back and live with you? A. Yes.

By the Vice-Chancellor:

Q. Wasn't that the purpose? A. At that time that is what I was trying for.

By Mr. Blumberg:

Q. And that's what you insisted upon, that alone? A. I didn't say that alone. I talked of other things as well, but that is what I was looking towards and insisting upon in as clearest steps I thought I could make it.

By the Vice-Chancellor:

Q. I gather that counsel's purpose in asking those questions he is trying to ascertain if you were sincerely then desirous of having your wife return and live with you and have the home rehabilitated, or whether you seemingly pretended so to do and at the same time willing to have the separation affected? A. No, I was sincere in the matter of trying to get her back.

By Mr. Blumberg:

Q. Did you ask Mrs. McKee pointblank to come back and live with you at that time? A. I did after the luncheon.

By the Vice-Chancellor:

Q. When do you recall you spoke to her in that respect? A. She proposed there that I give her

control of the children and a portion of my income.

Q. $8,000 you said? A. I don't know whether she did then. I said "No bring the children home and let us live together."

By Mr. Blumberg:

Q. Did you make the first remarks or did Mrs. McKee make the remarks? Did you speak first or did she speak first? A. When?

Q. At the luncheon conference with respect to the marital disputes? A. We had no conference at lunch; it was a half an hour before in the court house and then we went to lunch and we couldn't discuss it at the luncheon and there was no conference at the luncheon session.

Q. At the court house there was no one else present prior to going out to lunch? A. Not directly present.

Q. And did you first come out and say the only way this case can be settled is by your coming back and living with me? A. No. To do so would be the only way to limit the thing, and from what I know of Mrs. McKee I had to go in steps.

Q. What did you say? A. You mean did I speak first or did she?

By the Vice-Chancellor:

Q. Who made the overtures to bring about a reconciliation if any such were made? A. I did; I made the overtures. It was Mr. Reass who made the overtures for us to get together, her attorney.

Q. I want to know just what you recall you said in making your overtures? A. I don't know as I could give you exactly what I said, but it was approximately the following, that this is an unfortunate thing about us, and she said "I have got

to have money enough to live on decently," and made some statements as to how much money and "I want to take care of the children and you can come and see them." I said "No, the thing to do is to have you and I to get together; won't you get together with me and we can have a home and we can have the children with us. Let's take them from the schools in which they are and put them in New York schools."

Q. What did she say to that? A. She said "I don't want to."

Q. What importunity did you urge upon her? The manner and sincerity in which you made it may have some bearing upon my conclusions? A. The thing which is most dear to Mrs. McKee and also myself are the two children, and I found by use of argument of the children I could do more than anything else. That was the argument that I used there as I did at a number of other times.

By Mr. Blumberg:

Q. Did you use the expression "lead a right and normal married life" at that meeting? A. I don't think so.

Q. Did you manifest any affection by attempting to caress your wife or use any words of endearment which would soften her up with a view of acceding to your wishes? A. From the experience which I had in the past to do so would only make her mad and I did not do so, just as on January 12th, the day before she left me, I went in and put my arm around her and she pulled away and said to me "You will not have a chance to do it to me again."

Q. Have you related the substance of your overtures that morning? A. Yes.

Q. And Mrs. McKee said at that time that she

wouldn't live with you? A. No, she did not say "I don't want to," but words to that effect.

Q. Did she say that she would consider it later? A. No, though the implication was there might be in the future a change of mind.

By the Vice-Chancellor:

Q. How did you arrive at that implication? A. As I knew her when she said "I don't want to," there was a thought it wasn't possible.

Q. You mean the manner in which she said that was not convincing to you that she meant what she said? A. No; I took it as meaning what she said, but "I don't want to now but possibly there might be a change in my mind."

By Mr. Blumberg:

Q. You are not mistaken about the whole conference on Wednesday morning are you? A. This is not the Wednesday morning conference.

Q. What one is this? A. The one on the 21st, the first day when Mr. Reass asked us to confer.

Q. What date was that? A. About the 18th or 19th of January.

Q. You are talking about the trial in January the first day you came to court? A. Yes.

Q. You are sure that at that time you had a conference with Mrs. McKee? A. No, not the first day we went to court, but the first time we were up before the judge.

By the Vice-Chancellor:

Q. It was a day the case was to be called and Mr. Reass suggested a continuance until two o'clock? A. The case was called and he suggested it.

Q. And he had the case put off until the afternoon session? A. That was not the first time it was on the calendar but the first time it was called.

Q. When the hearing was imminent? A. We answered "ready."

By Mr. Blumberg:

Q. Do I understand you went to the court house one day and the case was not even called? A. The calendar was called but the case was not called. The calendar was called on Monday and we did not get to the case we had until I think it was Wednesday about twelve o'clock and the case was called and our side answered ready and their side answered ready, and Mr. Reass met the judge. I think Mr. Kirby too came up and they stood before the judge.

Q. How many days did you go to court before the case was called? A. The time would seem like a month but I think it was only four or five days.

Q. Did you see Mrs. McKee in court during those days? A. I think so.

Q. About four or five days before the case was called? A. Not before it was called but before the final disposing of the case on January 24th.

Q. That first day you say you spoke to Mrs. McKee at lunch did you have a conference that afternoon in Mr. Newman's office? A. I can't place the days. We had two conferences at Mr. Newman's office that week. I can't place which dates they were.

Q. You had two conferences at Mr. Newman's office? A. Yes.

Q. How many conferences with Mrs. McKee that week in all? A. I think two that week and one the next.

Q. The one the last was on a Monday morning? A. Yes.

Q. You say you had two conferences with Mrs. McKee on that Monday morning? A. I think so.

Q. On the first conference to which you testified Mrs. McKee said "I don't want to live with you?" A. No, she didn't say that by the swing of the hand; she didn't do that.

Q. What did she say? A. She said "I don't wish to" or words to that effect.

Q. In the manner of your saying it? A. Yes.

Q. Did that end the conference? A. No, we talked on and I argued with her but there was no change.

Q. Did Mrs. McKee say anything about entering into a separation agreement at that time? A. I think so, yes. She wanted me to provide a considerable amount of money—more than I could do—and to take complete charge of the children and I only to go and see them occasionally.

Q. Did she want you or say to you she wanted you to enter into any written agreement with her in reference to this? A. I don't recall that she did. I don't remember any mention of the word "written," for example.

Q. When did that conference end? At what point of the conversation? A. When there seemed to be no chance of coming to any agreement.

Q. And both of you went back to court I understand? A. I don't remember where she went.

Q. You went back to court? A. Either the court or Mr. Kirby's office.

Q. The case was on at two o'clock was it not? A. Yes, but I think we separated at twenty minutes to two.

Q. Did you get to court that afternoon? A. I do not remember. I know there was another case

that was put on there and when we had said we were going to have a conference another case was put on and it lasted a day and a half or two days.

Q. Did you go any place that afternoon with Mrs. McKee? A. I don't remember if that is the day we had one of the conferences at Mr. Newman's office or not.

Q. You had a conference with Mr. Newman around that time? A. Either that day or the next and another on Saturday.

Q. Was Mrs. McKee present? A. Yes.

Q. And Mr. Newman and Mr. Kirby? A. Mr. Reass and Mr. Kirby I think.

Q. What was discussed at that conference? A. The first or the second?

By the Vice-Chancellor:

Q. The time when you were all together? A. We were altogether twice.

By Mr. Blumberg:

Q. The first conference? A. Mr. Newman and Mr. Kirby did most of the talking at both of those conferences. There were proposals somewhat similar to the ones which had been presented to me. They were presented by Mr. Newman and Mr. Kirby argued that I did not want to enter upon such a course in the matter.

Q. Did Mr. Newman suggest the making of a separation agreement? A. No, but he did want to discuss the question of the conditions for such an agreement.

Q. What did you say to that? A. Mr. Kirby replied.

Q. What did he say? A. Mr. Kirby told him I was not interested and moreover the conditions

which he suggested were not reasonable for me to accede to, and that I was far more interested in some arrangement which would bring Mrs. McKee back to me rather than—

Q. Mr. Kirby said you were not willing to provide for the separation—that you were not willing to provide for maintenance and separation? A. He certainly was unwilling and I was unwilling. I don't know what the word "maintenance" means there but for a separation agreement I was unwilling to accede to that and we were prepared to defend the case.

Q. Can't you say whether you used the words separation and maintenance at those conferences? A. I don't think we did.

Q. Didn't you yourself use that expression at the last hearing "maintenance and separation"? A. Possibly.

Q. Didn't you on direct examination say "Q. For what? For separate maintenance?" and Mr. Kirby spoke up at once and said "his client was not willing to turn the children over to her and that he was not also willing to provide for a separation —maintenance and separation." Do you recall that? A. I don't recall; I might have said so. I don't deny it.

Q. Then Mr. Kirby did say at that time he was not willing to have you enter into a separation agreement? A. I think that is correct because we had a perfect defense to that and he was unwilling to have me enter into a separation agreement.

Q. Did the meeting end then? A. I think there was some arguments to and fro by both attorneys for perhaps another twenty minutes or half hour.

Q. Then the meeting adjourned; it was a short meeting? A. The first meeting was a meeting for perhaps a total of twenty minutes or forty minutes. The second meeting was a very short meeting.

Q. What happened after this first meeting? Did you go to court again? A. I went home.

Q. Did you go to court again after that first meeting in Mr. Newman's office? A. If it was Wednesday I went in on Thursday. Yes, it was Thursday morning because I know we did not go on Friday.

Q. Saturday you went to Mr. Newman's office again? A. Yes.

Q. And Mrs. McKee and Mr. Kirby were all there? A. Yes.

Q. What was discussed at that second conference? A. This conference was called by Mr. Newman, that is, he 'phoned to Mr. Kirby and Mr. Kirby 'phoned to me and we went down and Mr. Newman again proposed the same things as he proposed before, and Mr. Kirby said "Is that all you have to suggest?" or words to that effect, and he said "Well, that is about all," and Mr. Kirby said "We don't care to consider that," and we got up and left. It was a conference of only ten minutes.

(Further hearing continued to April 5, 1929.)

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April 5, 1929.

RALPH H. McKEE, recalled.

Cross Examination Continued by Mr. Blumberg:

Q. You have already testified to a previous conference which you had with Mrs. McKee a few days preceding the second conference in Mr. Newman's office? A. Yes.

Q. And at this conference in Mr. Newman's office on Saturday your position still was you

wanted Mrs. McKee to come back to live with you? A. Yes.

Q. And that you were entirely opposed to signing any separation agreement? A. Yes. I don't know as I said so at that time, but it was by implication because we were not ready to sign such separation agreement as Mr. Newman proposed.

Q. That was your position at the time anyhow even if you didn't say so? A. Yes.

Q. The next step is a telephone call from Dean Pegram is that right? A. What do you mean by the next step?

Vice-Chancellor: Towards reconciliation I suppose.

Mr. Walscheid: He is dealing with the execution of what we call the united family agreement.

Vice-Chancellor: Did Dean Pegram have anything to do with it?

Mr. Walscheid: If you will read the Dean's deposition. But what he was asked about was the next step. These things were going on.

Q. What time did you leave Mr. Newman's office? A. I presume something like ten-thirty or eleven or maybe twelve o'clock Saturday morning.

Q. And you didn't see Mr. Newman any more that day did you? A. No, I did not.

Q. And Dean Pegram called you up Saturday afternoon? A. No; Dean Pegram called me up on Sunday morning as I recall it.

Q. And you had a conference with Dean Pegram? A. Yes.

Q. And you testified to that at the last hearing did you not? A. Yes.

Q. And you stated that Dean Pegram told you Mrs. McKee had been to see him? A. Yes, twice.

Q. And Dean Pegram said something to you about a settlement of the case? A. Yes, he said she wanted if possible to settle the case outside of court.

Q. And pursuant to that conversation which you had with Dean Pegram did you go to see him? A. No, my conversation was when I did go to see him.

Q. When did you go to see him Sunday night? A. Sunday about six o'clock.

Q. Had you drawn this agreement Exhibit P 94 before you went to see him? A. Oh, no.

Q. But that agreement was drawn when you went to court on Monday morning was it not? A. I wrote it out following the suggestions which Dean Pegram had transmitted to me from Mrs. McKee to include those items after I went home on Sunday night and then typed it on Monday morning.

Q. In other words that agreement was drawn pursuant to suggestions from Mrs. McKee as transmitted to you from Dean Pegram? A. This is correct.

Q. There is no doubt about it? A. Oh, no; Dean Pegram testified to that in the New York commission.

Vice-Chancellor: I will have to strike that out. If it appears there all right, but you can't testify to it.

Q. In other words after you talked with Dean Pegram your entire attitude in this matter changed? A. Oh, no.

Q. You have been testifying all along have you not that up to Saturday morning your position was you wanted Mrs. McKee to live with you? A. That

is true and that was for the purpose of having her.

Q. Didn't you testify this agreement was made pursuant to the suggestions of Mrs. McKee transmitted through Dean Pegram? A. Yes, largely; and there were some things of mine in there.

Q. Didn't you testify that Mrs. McKee told Dean Pegram that she wanted a separation agreement? A. I don't think I so testified.

Q. Let me read you what you testified to at the last hearing: "He (Dean Pegram) told me of her desire to live separately and her desire particularly for more money * * * and following this talk between him and myself I went home and wrote out a memorandum agreement along the lines suggested which he had transferred from her to me." A. That is correct.

Q. "And got it into shape"? A. That is correct.

Q. So you knew that day Mrs. McKee's position was she wanted to live separate, you knew that? A. Oh, yes, she said that clear back in January, 1925.

Q. Then you went back to Leonia did you that night? A. No, Jersey City.

Q. You went back to Jersey City? A. Yes.

Q. And you drafted that agreement in Jersey City? A. Yes.

By the Vice-Chancellor:

Q. What was the date of the agreement? A. January 24, 1927, Exhibit P 94.

By Mr. Blumberg:

Q. And I ask you again this agreement was drawn pursuant to Mrs. McKee's suggestions transmitted to Dean Pegram? A. Yes. Of course it carries some of my ideas.

Q. And one of those suggestions was a desire on Mrs. McKee's part to live separately? A. Yes.

Q. And wasn't that agreement drafted so she could live separately?

Mr. Walscheid: I object to it. The agreement is in evidence and there isn't a word in there about her living separately.

Vice-Chancellor: I will overrule the question. You can call his attention to it.

Mr. Blumberg: He went into all of this himself on direct examination.

Vice-Chancellor: Yes, but there is an objection to it now. If the agreement speaks for itself you ought not try to change it.

Q. There is nothing in this agreement, Doctor McKee, which says Mrs. McKee should live with you?

Mr. Walscheid: I object to it.

Vice-Chancellor: I will sustain the objection. You can show him the agreement if you want.

Q. How long did it take you to draw up this agreement P 95? A. About an hour.

Q. Did you consult with Mr. Kirby before you drew up this agreement? A. I did not.

Q. You went to court on Monday morning and met Mrs. McKee? A. Yes.

Q. At whose suggestion was it that paragraph 1 be inserted in the agreement? Paragraph 1—"That the present suit between the two parties to this agreement is to be discontinued by second party (plaintiff) within two days of signing of this agreement." A. That was mine.

Q. That was the attorney? A. Yes, and her's also, as I understand.

By the Vice-Chancellor:

Q. Why did you recite in the captain of the agreement "whose residence is" (mentioning Jersey City)? Why was that put in that way without putting in the place of residence of Mrs. McKee? A. I don't recall unless it was that I was uncertain what her legal residence was, whether it was at 607 Bergen Avenue or should be Nettleton Avenue, Spuyten Duyvil.

Q. Was it the purpose of emphasizing in your own favor you were a resident of Jersey City? A. No. At the time the thought was we could get together and live together later. It was not for any phrase of that kind.

By Mr. Blumberg:

Q. And your thought was you would get together and live together later? A. Yes.

Q. Meaning of course you were not living together at that time? A. That is the fact.

Q. At the time of the signing of this agreement? A. That is correct.

Q. And not for the following day either?

Vice-Chancellor: What does that mean?

Mr. Blumberg: They were not living together for the following day.

Vice-Chancellor: Perhaps the witness can understand it.

Mr. Blumberg: I will reframe it.

Q. Referring again to Paragraph 1 of this agreement Exhibit P 95, you were quite anxious to have this suit discontinued were you not? A. Not particularly, because we felt, Mr. Kirby and I, that we had a complete defense for it and that the suit was really a bluff.

By the Vice-Chancellor:

Q. I thought you stated you were not anxious to have the case come up because of publicity that might result from it? A. That is true, but it wasn't we were afraid of the case.

By Mr. Blumberg:

Q. Referring to paragraph 2 of the agreement that the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month." You originally put in there $166.66 a month did you not? A. $166.66.

Q. And who gave you that figure $166.66? A. I don't know how that was raised. The item of course was an item as transmitted through Mrs. McKee. I think I discussed that amount and as to what might be considered a reasonable amount.

By the Vice-Chancellor:

Q. You said she was seeking $8,000 a year from you? A. It was figured out that was impossible.

Q. When did she seek out any new amount? A. She had not made known to me a new figure. Her attorney wrote to Mr. Kirby one time and—this was really a year previous—suggesting that I send her approximately $200.00 a month, and from that Mr. Kirby and I took this figure of $8,000 a year that was talked of before or after as only a bluff, and it was only $200.00 that she was expecting or something less.

By Mr. Blumberg:

Q. Is this your phraseology also paragraph 2? A. I think the whole is my phraseology.

Q. And you prepared a memorandum in such a manner that you agreed to pay her $200.00 during the entire life of the agreement, or $166.66 during the entire life of the agreement? A. I did not.

By the Vice-Chancellor:

Q. Did you prepare the agreement with $166.66 in it originally? A. Yes.

Q. How did that come to be stricken out and changed? A. At the time of a personal conference between Mrs. McKee and myself.

Q. What brought it about? A. She said she couldn't live on it and that she had to have more and I finally said I didn't see how I could spare it paying for the children and the expenses that I was. We went ahead and I did.

By Mr. Blumberg:

Q. Referring to paragraph 3 that reads—"That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks." A. Yes.

Q. Does that refer to the fact that at that time the family was separated? A. Yes.

Vice-Chancellor: They were separated at the time.

Mr. Blumberg: Yes.

Q. Does it refer to the fact they would be separated for six weeks? A. No. It says "at least once in each six weeks." It might be the next day. In fact in this particular case I think I had conversations on the telephone and personally within the next six weeks at least a dozen times.

Q. Doesn't that indicate that the parties would be separated that one day anyhow?

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

Vice-Chancellor: I will sustain that objection.

Mr. Blumberg: Mr. Walscheid said there is nothing in the agreement about separation.

Mr. Walscheid: There isn't.

Q. Look at paragraph 4—"That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall spend half of their vacation time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter." This is dated January 24, 1927, you will note. When was the vacation time of Margaret Harper McKee and William Noyes McKee after January 24, 1927? A. Margaret had a vacation about three or four days after that, and at the end of the semester, and William had one in March and of course they had in the summer time and at Christmas.

By the Vice-Chancellor:

Q. Had you in mind that agreement would likely continue that long as the summer time or Christmas? A. There was a possibility of it and in fact later on Mrs. McKee—

Q. I was trying to find out what your frame of mind was at that time? A. There was a possibility of it.

By Mr. Blumberg:

Q. The idea was to have each of the children

spend half of their vacation with you and half with Mrs. McKee? A. Yes.

Q. At separate places?

Vice-Chancellor: It doesn't say so.

Q. Paragraph 5 reads—"That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft), or in schools of equal grade, at the expense of the first part, under the same general conditions as they are at present." Was that put in at Mrs. McKee's suggestion? A. No, it was not at Mrs. McKee's suggestion; it was at mine.

Q. Paragraph 6 reads—"That on the starting of any legal suit between the parties to this agreement, except one to enforce the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease." At whose suggestion was that paragraph put in? A. It was discussed in part with Dean Pegram and I do not know whether it came from Mrs. McKee. The form of it was mine but the gist of it may have come from Mrs. McKee. It may have been his suggestion or may have arisen in discussing it with him as my suggestion.

By the Vice-Chancellor:

Q. Was that language contained in that agreement a result of your own thought or was it copies from some letter submitted by your attorney? A. It was entirely the result of my own language.

Q. You never had experience in any legal matters before. In one of your letters you said you were a scientific man and you preferred to be advised by attorneys in matters of that kind?

A. That is correct. I have had experience in chemical matters but not law.

Q. Have you had occasion to use language such as contained in that sentence? A. No, I do not recall.

By Mr. Blumberg:

Q. Was this paragraph 6 discussed at all at the conference with the attorneys on Monday? A. It was read by them and I don't think it was discussed or mentioned in particular. The items which were mentioned were paragraph 3 and paragraph 2 and paragraph 5 particularly.

Q. Was paragraph 6 discussed at any conference with Mrs. McKee that day? A. Yes, I think so. I think we discussed it and went over it paragraph by paragraph.

By the Vice-Chancellor:

Q. Was it or was it not? A. I think it was.

By Mr. Blumberg:

Q. To some extent? A. Yes.

Q. To what extent was it discussed? A. I know this that at the time of the signing, just a few minutes before, the question came up and Mrs. McKee said "This will leave you free to start a suit in New Jersey?" I said "Yes, I can start one next week and you can start one next week, but it will come under this paragraph if you did."

Q. Was that just before the agreement was signed? A. Yes, in the presence of the attorneys.

Q. And the attorneys were present? A. Yes.

Q. And you stated to her you could start a suit within a week if you wanted? A. Yes.

Q. And she could do likewise? A. No. She said "I could start a suit within a week," and I said "Yes, and she could at anytime she pleased."

Q. Who was it that said that you or she? A. She started it and I finished it up.

Q. What did Mrs. McKee say to you at this conference? A. She said a good many things.

Q. About that paragraph agreement, this particular paragraph of the agreement, paragraph 6? A. Words to the effect that if this agreement was signed that I could start a suit next week, and I told her "Yes, and she could start a suit next week if she wanted."

By the Vice-Chancellor:

Q. Yes, but if you started a suit immediately after the way it reads the $200.00 a month would drop to $100.00 a month. A. Yes.

Mr. Walscheid: The same thing if she started.

Witness: Yes, that was recognized and mentioned in connection with this paragraph.

By Mr. Blumberg:

Q. I want to know who mentioned—who said suit could be started within a week? A. Mrs. McKee, and I said "Either of us could; that she could or I could."

Q. And Mrs. McKee's lawyer was present at that time? A. Yes.

Q. And heard you say you could start a suit within a week and the terms would be reduced to $100.00? A. I didn't say it in those words, but he had seen it and read it.

Q. Which lawyer of Mrs. McKee was there? A. Mr. Reass.

Q. And he permitted Mrs. McKee to sign that agreement after you explained that the starting of a suit by you within a week would decrease the allowance to $100.00 a month?

Mr. Walscheid: I object.

Vice-Chancellor: I will sustain the objection as to what he permitted her to do. He may have permitted her to do something in the minds of some people which may be disadvantageous to her interests.

Q. Paragraph 7 reads—"This agreement shall have as its minimum duration July 1, 1928." That was inserted after you had drawn the agreement isn't that so? A. Yes.

Q. And you wrote it in in longhand in your own handwriting? A. Yes.

Q. When was that written in? A. That morning five minutes before the agreement was signed.

Q. At whose suggestion was it put in? A. By Mr. Reass.

Q. Mr. Reass suggested that there be a clause to the effect that the minimum duration be July 1, 1928? A. He didn't put it quite in that form but I suggested a shorter form and it met with his approval.

Q. Was anything said about the maximum duration of that agreement?

Mr. Walscheid: I object to that question.

Vice-Chancellor: I will permit it.

A. Yes, there was too. I said to the group that the main purpose of this was to bring about a reunion in the family and Mr. Reass said he saw

no reason why it could not be done. In other words he took the viewpoint that the charges which had been made against me were not severe enough, were not such as would prevent such a reunion in the future.

Q. That's what Mr. Rease told you? A. Yes. He did not go into all those details.

Q. You are sure about it? A. He went into some of them.

Mr. Walscheid: About what?

Mr. Blumberg: About what Mr. Reass told him.

Q. Was this agreement signed in the presence of the attorneys? A. Yes.

Q. And you considered this a settlement of the suit did you not? A. No, I knew the suit would have to be dismissed formally before the judge. I had been told that at the time by one of the attorneys there.

Q. Didn't you consider as far as you were concerned this terminated the suit in New York State? A. No. I had been told a few minutes before that if this was signed that day—I don't know what the word is—the dismissal papers would have to be filed with the judge.

Q. You wrote a letter to your wife the same day telling her the suit had been settled? A. Yes, because I went down to Mr. Kirby's office and he wrote out a form of dismissal and had it taken over and signed by Mr. Newman and we had it then as the final papers for filing, and I think the paper was even signed that afternoon.

Q. Then you went home and wrote your wife a letter did you not the same day? A. No, I didn't. I went to my office and I wrote her a letter of

about that same day. Whether it was at home or at the office I do not recall.

Q. Is this the letter you wrote, Exhibit P 94, dated January 24, 1927? A. Yes.

Q. And in that letter you enclosed a check to Mrs. McKee? A. Yes.

Q. And you stated—"I don't think you will have cause to regret the results of our conference yesterday afternoon. I have just telephoned Billy telling him that the suit has been settled and that there will be no newspaper publicity in the matter"? A. I think this must be an incorrect date because I had no conference with her "yesterday afternoon." This must have been really written on the 25th. I slipped a date on the calendar.

Q. You wrote it the next day? A. I imagine so.

Q. You don't say anything in that letter about telling Mrs. McKee to come back? A. Except this—"I don't think you will have cause to regret the results of our conference yesterday afternoon," and if so it would mean she would come back and have a united family.

Q. And do you recall where it was addressed to? A. I do not recall. I imagine I addressed it to her at the Spuyten Duyvil address.

Q. And you also put in that letter—"He (meaning Billy) seemed relieved and was glad to know that every one agreed that he and Margaret are to spend half vacation with each of us." Doesn't that look forward to a continued separation? A. No, I don't think so necessarily. Mrs. McKee had been bringing pressure to bear so that he had not been spending half his vacations with me previously and he had expressed regret of that to me.

Q. Did you have a conference pursuant to that agreement within six weeks of January 24, 1927? A. I can't give you the exact date, but I do know

I had many conversations with Mrs. McKee within the next two weeks.

Q. Telephone conversations? A. No, I think other conversations as well.

Q. To meet Mrs. McKee? A. I can't give you the exact dates. I know I had telephone conversations and I met her a couple of times.

Q. And you continued living at Bergen Avenue, Jersey City? A. Yes.

Q. And you continued writing these letters to Mrs. McKee? A. Yes, I tried and did have conferences with her and talked to her over the telephone as well.

Q. Then you wrote Mrs. McKee a letter on January 31, 1927, Exhibit P 97. This is the letter you wrote on January 31, 1927? A. Yes.

Q. Had you seen Mrs. McKee prior to January 31, 1927? A. I do not recall whether I had or not. I remember I had talked to her many times.

Q. You don't recall whether you had spoken to her prior to January 31, 1927? A. No, that was in the first week.

Q. Had you spoken to her on the telephone? A. Yes, several times. She had called me up several times.

Q. Did she write to you at or before January 31, 1927? A. She must because—I know she did.

Q. You don't say anything in that letter about Mrs. McKee coming back and living with you do you, of January 31, 1927, a week after the signing of that agreement? A. No. I had said it in my telephone or in my conferences which we had before that or later, and in my telephone conversations with her. I didn't discuss it there.

Q. You end up your letter by saying—"Your accusations about my maligning you is without basis. I have done nothing of the sort. I have

been keeping still as I can in the several languages at my command." A. You are not reading it correctly.

Q. Then you read it (handing witness letter). A. (Witness reads) "Your accusation about my 'maligning' you is without basis. I have done nothing of the sort—I have been keeping still as I can—in the several languages at my command."

Q. Did Mrs. McKee accuse you of maligning her? A. Yes.

Q. What did she say? A. I will have to see the letter. I don't recall the exact words.

Q. She accused you of maligning her in one of her letters to you? A. In a letter just preceding that to which this was an answer.

Q. Is this the letter of January 30th in which she says you are maligning her? Suppose you read the letter again? A. This is not the letter I received; this is a copy of the letter and not the letter.

Mr. Walscheid: I have no objection to your using the copy.

Mr. Blumberg: The exhibit is 96.

Mr. Walscheid: I object to his reading it into the record again.

Mr. Blumberg: Oh, I see.

Q. Will you read the letter Exhibit P 96?

Vice-Chancellor: Do you want it in the record again?

Mr. Blumberg: I don't care about that.

A. (Witness reads letter.)

Q. This is the letter which you received in which she states you have been maligning her? A. Yes, without basis.

Q. Did you telephone Mrs. McKee and ask her in what respect she thought you were maligning her? A. No, I wrote her at once on the receipt of the letter. You will note that her letter is the 30th and probably reached me on the 31st, and I wrote on the 31st.

Q. Did you have any idea to which she referred to when she accused you of maligning her? A. I know I had not been maligning her and accordingly could not know what she referred to.

Q. You never inquired what Mrs. McKee referred to?

Mr. Walscheid: He has already testified to that.

By the Vice-Chancellor:

Q. Did you ever inquire? A. I think I did at subsequent conferences and got no satisfactory answer.

Q. Did you or did you not? If you say you don't recall say it? A. I remember it being discussed but whether it was a telephone conversation or whether it was a personal conference I am not certain.

By Mr. Blumberg:

Q. Did you go and ask her what she meant by using that expression? A. I don't remember the details of it. I remember it was discussed, that's all.

Q. You stated Doctor McKee on direct examination that you started the New Jersey proceedings in November of 1927, is that correct? A. That is correct.

Q. Did you ever write to Mrs. McKee telling her

if she didn't come back and live with you you would start divorce proceedings? A. I never threatened her.

By the Vice-Chancellor:

Q. Did you admonish her if she didn't become reconciled to you you would institute a proceeding against her? A. I discussed it with her but I don't know whether I admonished or threatened.

Q. Did you ever tell her before you actually started the suit in New Jersey that you would institute a suit for divorce? A. No, but I mentioned to her that I could.

By Mr. Blumberg:

Q. You don't recall in any of these 152 letters ever writing Mrs. McKee that if she didn't come back and live with you you would start suit for divorce in New Jersey? A. I don't know that I did or threaten her with such a suit.

Q. You never suggested to her in these letters that if she didn't come back you would institute a suit for divorce, did you? A. No, that would be a threat.

By the Vice-Chancellor:

Q. Did you ever ask those lawyers from whom you received the letter which bears date January 12, 1925, which was said to be written to you as attorneys for your wife, what they meant by the recital in their letter that you were said to have been guilty of cruelty and inhumanity towards your wife. Did you ever try to find out what they meant, or your wife meant by that? A. In the papers that he filed—

Q. No, I am speaking about that letter? A. Yes, I asked in the early stages there as to what was meant—in our first conferences.

Q. Who did you ask? A. Well, now, it was either Mrs. McKee or Mr. Reass in the presence of Mr. Kirby.

Q. This letter which is attached to the Special Master's report in the previous suit and is marked Exhibit P 4 in that suit, is dated January 12, 1925, and begins—"We have been retained by your wife to begin an action for separation against you because of your unbearable cruelty and inhumanity and failing to properly provide for her." Now when you got together with those lawyers or by any other means, did you endeavor to find out what your wife meant when she charged you with cruelty and inhumanity? A. I did not. I denied to them that and they came back and said that I had not provided sufficient money for her, and discussions were largely on the question of money.

Q. In a letter addressed to you by your wife under date of March 29, 1925, which is P 152, there is contained the statement that I alluded to several times reading as follows: "Your continued refusal, for a number of years to live a 'right and normal married life' has made it impossible for us to live together." Did that statement in your wife's letter indicate to you that it had relevancy to the statement made in the letter of her lawyers of January 12, 1925, that you were alleged to be guilty of unbearable cruelty and inhumanity towards her? A. I don't think so. That is, I never took the letter from the lawyers, after I got acquainted with the situation, in any other way than a sort of a legal phrase. They wanted to arrange a separation in which I would turn over the children and my money to Mrs. McKee.

Q. But your wife when she left you on the 13th or 14th left a note dated the 13th which you say you found on a table in your home? A. Yes.

Q. And she said in that that you would hear from her lawyers? A. Yes.

Q. Now the letter which you received from the lawyers bearing date January 12th— A. Postmarked January 12th.

Q. In that letter I called your attention you were charged with unbearable cruelty and inhumanity towards her. Didn't that suggest to you what she meant by that in view of what you stated to me to be the fact that you had no serious misunderstandings with her? A. I took it that it was primarily a legal phrase in there and I didn't take that question of unbearable cruelty seriously because there was no basis for it.

Q. You appreciated as a man connected with Columbia University that for your wife to charge you and have it come out in the public press or through the courts that you were said to have been subjecting her to unbearable cruelty would put you in a very nasty position before the public and before the board of governors up there? A. That is correct.

Q. Didn't that prompt you to inquire what that allegation was intended to mean? A. No, I don't think I did because I took this as a case where she wanted more money and it was simply a legal phrase.

Q. I call your attention Mr. McKee in that letter there are three matters mentioned, one, unbearable cruelty, the other inhumanity, and the third failure to provide. You couldn't have coupled up the first two with the last? A. I took the first two with the last and all our conferences of February were along that line.

Q. You mean the failure to provide? A. Yes.

Q. And at no time was there any discussion between you and the lawyers or between your wife and the lawyers about this allegation of unbearable cruelty or inhumanity? A. Yes, it was raised.

Q. What was it? A. She accused me of scratching her face in 1917; she accused me of pushing her upstairs I think in 1920; she accused me of shaking her in the summer of 1924 at a date when I was in Missouri. The next day was my birthday and I was in Missouri on my birthday, and she accused me—there are fifty pages of it, your Honor.

Q. Of what? A. Of various accusations.

Q. You mean her accusations made against you? A. They are the same ones that are copied from the original ones which Mr. Newman read.

Q. But at the conferences between you were there original statements to that effect between some of the parties? A. Yes, they were mentioned.

By Mr. Blumberg:

Q. When did you decide to start your suit in New Jersey? A. About the first of November, 1927, after certain things had happened.

Q. What had happened that prompted you to start your suit? A. She did not reply to my letters. She did not—and you will notice that I had received no letters in reply from her only one I think since June, though I had written her half a dozen or more. When I telephoned to meet her I was not allowed to, and I wanted to come out to the apartment and visit her and take a radio out and she refused to allow me to, but one of the most important was that she changed her attitude regarding the children, and whereas Margaret up to say sometime in July was spending half of her time

with me, about that time she insisted upon Margaret, or at least Margaret told me so, staying more with her, and Margaret only put in perhaps one-fifth of her time with me and four-fifths with her. That is she would not divide the children's time in accordance with the united family agreement. She wouldn't see me and she wouldn't answer my letters.

By the Vice-Chancellor:

Q. She didn't say she wouldn't; you said she did not? A. When I called her up she said she would possibly at some other time. She said "I will not do it this week."

By Mr. Blumberg:

Q. You didn't put all these objections in writing, did you? A. No.

Q. You didn't write anything about it to Mrs. McKee?

By the Vice-Chancellor:

Q. You didn't put in a letter your grievances against her? A. I think I did about questions about Margaret not spending half time with me as well.

By Mr. Blumberg:

Q. You wrote a letter to Mrs. McKee on November 3, 1927. No complaints in that letter was there, Exhibit P 126? A. Yes, there was—"I have not heard from you in reply to my last few letters." Then there is also another paragraph—"Margaret writes me that she is doing part on the

velvet dress," whereas it was arranged that Mrs. McKee was to do it.

By the Vice-Chancellor:

Q. There is nothing contained in that letter that you were aggrieved at her not meeting you or writing letters other than the first few words that you read? A. The second paragraph, your Honor. Other than that there isn't.

Q. Eight days after that letter you signed an affidavit in your divorce proceedings? A. That is correct.

Q. Had you made up your mind to institute your divorce suit at the time you wrote that letter? A. I had been considering it for a month or more, but had not made up my mind until a day or two before I started the suit.

Q. Is that the last letter you wrote to her before the institution of the suit for divorce? November 11th is the date of the affidavit and November 14th is the date of the filing of the petition?

Mr. Blumberg: A letter of November 10th, Exhibit P 127.

Q. I want to know why in these several letters of November 3rd and November 10th you didn't mention to your wife your contemplated divorce suit and ask her to come back and live with you?

Mr. Walscheid: Why should he do it?

Vice-Chancellor: I am asking it now. In other words the state of the man's mind is going to be considered by me. I don't care what people put in letters.

(Last question repeated.)

Q. That is giving her a final opportunity of being reconciled to you before you started your suit? A. I didn't feel there was a possibility of her coming back. Matters changed that there was no possibility if I asked her before the divorce suit was started or after. These things had become accumulated and there were four or five different things which I mentioned during the months of June, July, August, September and October.

By Mr. Blumberg:

Q. The next letter is Exhibit P 128, December 13, 1927?

Vice-Chancellor: That is after the suit.
Mr. Blumberg: Yes.

Q. You don't say anything in that letter about having instituted suit do you—December 13, 1927? A. No, but she knew. She had been notified early in November.

By the Vice-Chancellor:

Q. How do you know that? A. Because Mr. McNulty and Mr. Morse went to her apartment and notified her in person.

Q. Who told you that? A. Mr. McNulty and also Mr. Morse. November 23rd I think it was.

Q. What did Mr. McNulty report to you he had notified her of? A. Of the start—that the divorce case was being started, and I think I saw her.

Q. I am asking you what he reported to you? A. I think he gave her a paper, a legal paper, so she would have formal notice of it.

Q. That was before December 13th you are talking about? A. Yes, and I had a number of conversations over the telephone.

Vice-Chancellor: I want to call counsel's attention to the fact the citation was returned *non ess* on December 2, 1927. I am going to look for the affidavit of inquiry. You go ahead Mr. Blumberg while I look for that paper.

By Mr. Blumberg:

Q. You received two letters from Mrs. McKee—or one rather, Exhibit P 129, did you not of December 22, 1927? A. I see the letter of that date from Mrs. McKee probably received the next day.

Q. And after you started these divorce proceedings you sent her a Christmas present did you not? A. Yes; I didn't hate her.

Vice-Chancellor: I find an affidavit dated November 25, 1927 made by one Earle H. Morse stating that he resides in Nutley, New Jersey, and that he knows Mary N. McKee, the defendant, as well as her husband, and he states therein he knows the McKees lived at 2727 Spuyten Duyvil Parkway, Spuyten Duyvil, New York, and on November 22, 1927 he accompanied Mr. Thomas McNulty to that address. He says in this affidavit in his presence and hearing Mr. McNulty stated to her that her husband Doctor Ralph H. McKee had commenced a suit against her in the Court of Chancery of New Jersey for divorce and that the purpose of the inquiry was to give her notice so that she might appear and defend the suit. There is another affidavit dated January 12, 1928 stating that on January 11, 1928 he made service upon Mrs. McKee of a copy of the petition of divorce and order of publication by leaving it

with Mrs. Fink for Mrs. McKee, and accompanying such copy of petition for divorce filed January 5, 1928 was a notice of the order of publication dated January 5, 1928.

Q. On January 11, 1928, the same day that service is alleged to have been made on Mrs. McKee, you addressed a letter to her, Exhibit P 130? A. Yes.

Q. And in that letter you wrote about the death of Mrs. McKee's mother? A. Yes.

Q. And you sent her money to make a trip to Carthage? A. Not only that but for Margaret's expenses to go to Carthage, a total of $200.00 extra.

Q. And you recall Mrs. McKee received that letter in Carthage, do you not?

Vice-Chancellor: He said he addressed it to Carthage.

Mr. Blumberg: I am trying to point out she wasn't in New York on January 11th.

Vice-Chancellor: They say they left it with a Mrs. Fink.

Mr. Walscheid: Served by publication.

Mr. Blumberg: The point I am making she didn't get the notice until some time later. I am not objecting to service. I am pointing out the paper was not received until long after January 11th.

Mr. Walscheid: What was not received?

Mr. Blumberg: A copy of the divorce petition.

Mr. Walscheid: She had notice on January 11th.

Vice-Chancellor: And that notice was that suit had been started and the purpose of the inquiry was to afford her an opportunity of defending if she so desired.

Q. Did you ever tell Mrs. McKee verbally you would start your suit unless she came back to live with you? A. I don't think I ever threatened her as I would be if I made such a statement as that.

Q. You think if you made such a statement it would be a threat? A. Yes.

Q. The fact is you did start a suit? A. Yes.

Q. And you didn't tell her of that fact, did you? A. I did tell her I would start suit and discussed it with her.

Q. Coming back to your residence in Leonia, Doctor McKee. You stated you went to Leonia every night after February 27th? A. Not every night, no. I was away on business trips and on week-ends to the extent of perhaps eight or ten times during the summers at the country club and other times. Practically every night excepting when I was away.

Q. And did you advise your children that Mrs. McKee had left you on January 13th? A. Yes, I did, and discussed it with them.

Q. When did you advise them of that, do you recall? A. I don't recall how I advised them, but I did advise them either by letter or telephone within a day or two.

Q. And you advised them that your residence was in Leonia, New Jersey? A. No, it wasn't at that time. It was 39 Claremont Avenue at that time.

Q. Did you advise them on or before March 1, 1925 that your residence was in Leonia, New Jersey? A. I don't think I did. I might have on March 1st. I may have waited until we exchanged our customary letters. They ordinarily wrote to my office and not to 39 Claremont Avenue.

Q. If you wrote them a letter in March 1925 and the fact was you did live in Leonia you would so advise them, wouldn't you?

Mr. Walscheid: I object to that as a conclusion.

Vice-Chancellor: I will sustain that objection.

Q. I show you this letter dated March 16, 1925 addressed to Bill. Is that in your handwriting? A. Yes.

Q. Signed by you? A. Yes.

Q. Who is Bill? A. Bill is my boy.

Q. And you wrote him that letter on March 16, 1925? A. I did.

Q. You didn't state in that letter you lived in Leonia?

Mr. Walscheid: I object to it as immaterial.

Vice-Chancellor: What is the significance of the letter as to its materiality?

Mr. Blumberg: Your honor will recall I have been trying to show through the letters written to Mrs. McKee, particularly the letter of May 11, 1925, in which he gave Mrs. McKee the first intimation he was living in Leonia, were merely for the purpose of establishing a residence. In this letter he says to his son "Perhaps you will go to Leonia when I go".

Vice-Chancellor: I will overrule the objection and let him read it.

Mr. Walscheid: Why should it be read? It is in evidence now if it is offered.

Mr. Blumberg: I offer it for identification.

(Letter marked L. B. 2 for Identification.)

Q. You wrote a letter on March 10, 1925, to Billy, did you not? A. Yes, I wrote that.

Q. That's in your handwriting? A. It is and signed by me.

Mr. Blumberg: I offer that for identification.

(Letter marked L. B. 3 for identification.)

Q. When Mrs. McKee left the apartment in January, 1925, you changed the lock did you not? A. No. I did later in February when I needed new keys.

Q. You changed the lock in February, 1925? A. No, I had new keys made and the locksmith told me he would have to change the tumblers as they were worn.

Q You didn't have to have new keys made because the lock was worn? A. No, because Mr. Martin came in there and I had no key for him. I had to have a second key and when Mrs. Martin came I had still to have additional keys made.

Q. Did you telephone to Mrs. McKee the day she left you? A. I tried to and could not, as I recall, get her to answer.

By the Vice-Chancellor:

Q. Where did you telephone to? A. Her sister's residence where she said she was going.

By Mr. Blumberg:

Q. Where was that? A. I think at that time the Hotel Colonial.

Q. You knew she was at the Hotel Colonial did you not from her letter to you? A. Yes, she said she was going to her sister Helen and I think at that time in the Hotel Colonial, although she changed residences from time to time.

Q. And on January 14, 1925, you wrote this letter to Mrs. McKee, Exhibit D 3? A. Yes.

Q. Do you recall on direct examination you stated you didn't know any other address to address it to other than the Roosevelt Hospital in New York City? A. I don't recall that. I may not have known she was at the Hotel Colonial until—yes, I think I knew that her residence was at the Hotel Colonial at that date.

By the Vice-Chancellor:

Q. How do you account for addressing that letter? A. Because that was a safer address than the hotel. It was addressed to Harriman Laboratory enclosing the bonds. It is part of the Roosevelt Hospital where her sister, Helen Noyes, worked.

Q. And did you try to telephone Mrs. McKee on January 14th? A. I don't recall that. I may have tried on January 14th. I think it was on January 13th I tried.

Q. On January 13th where did you try to telephone her? A. I think the Colonial Hotel or possibly also the Harriman Laboratory, Roosevelt Hospital.

Q. Where was it that you telephoned to her at either of the two places or both? A. I am inclined to think both places.

Q. Did you leave word who called? A. I think I did in one case.

Q. Which case? A. Harriman Laboratory.

By Mr. Blumberg:

Q. You stated on your direct examination you telephoned to the Colonial Hotel and you were told she was not in and you thought she was in? A. I so stated, but I am not certain it was the first time I telephoned to her. I tried several times.

By the Vice-Chancellor:

Q. Why didn't you go to either one of those places and make whatever inquiry you wanted to when you found you couldn't get any connection by 'phone? It was near at hand? A. No, it wasn't.

Q. It was within the city? A. It was a two-hour trip.

Q. If you were really interested in wanting your wife to come back and live with you? A. At that time your honor I was probably angry at the treatment I had received and it was only after I had had a chance to calm down and think over it that I made any efforts to get her to come back.

Q. What was your purpose of telephoning her if you were in an angry mood? A. I wanted to find out the situation rather than to have her come back.

Q. If that was the real purpose why didn't you go there in person? A. If she wouldn't answer the 'phone I didn't think she would answer in any other way. Later on—

Q. I was only speaking about that day? A. Yes.

By Mr. Blumberg:

Q. Do you remember the Vice-Chancellor asking you why you wrote such a cold letter on January 14, 1925? A. I don't recall. He may have asked it. I have had so many questions asked me within two hours.

Q. Don't you remember stating you wrote the letter in that fashion because Mrs. McKee demanded these bonds rather coldly?

Mr. Walscheid: Why don't you give him the question?

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Vice-Chancellor: Why don't you object?

Mr. Walscheid: I do object.

Mr. Blumberg: I will withdraw the question.

Q. Did Mrs. McKee request the return of these bonds? A. I don't recall whether she did or not. I don't think she requested the return of them. They were not in her possession. They were merely in her name. I paid for them.

By the Vice-Chancellor:

Q. Why were you so willing to forward the bonds to her within a few days after she had left you? A. I think this was after the second or third time I telephoned.

Q. But it was the day following the day of her departure? A. Yes, but I telephoned several times.

Q. She didn't make any request that you send her these bonds and the next day after her departure you sent her the liberty bonds. You sent a letter speeding the departed guest? A. It looks like it was, but I think at the time—I don't know just what the communication was. It may have been due to some telephone conversation.

Q. You didn't have any telephone conversation? A. Not on the first day, but I may have at that time.

Q. You say you may, but did you? A. I did not on the 13th, but I certainly did on either the 14th or 15th.

By Mr. Blumberg:

Q. On February 27, 1927, you wrote a letter to your wife, Exhibit P 103? A. Yes, this is it.

Mr. Blumberg: I would like to read a portion of it without it going into the record.
(Counsel reads portion of letter.)

Q. Did you send your wife the furniture mentioned in that letter? A. I gave it to her and a question arose later as to whether she got it or I sent it, but I finally paid the bill.

Q. And do you recall receiving this letter of the 27th from your wife, which is P 104? A. It is misleading without finishing the sentence.

Vice-Chancellor: You must answer questions Mr. McKee. Your own counsel will take care of you.

Q. On February 27th Mrs. McKee wrote you a letter, Exhibit P 104? A. Yes.

Mr. Walscheid: It does seem a waste of time.

Vice-Chancellor: Take it up with counsel.

Q. You recall receiving that letter, do you not? A. Yes.

Q. Then you wrote this letter of March 5, 1927, Exhibit P 105, in which you refer to this letter of February 27th? A. Yes.

Q. Will you read that letter again? (Witness reads letter.)

Q. You state that you paid for this furniture? A. I did.

Vice-Chancellor: He so stated before. There is no use losing time on that.

Q. Where was this furniture purchased? A. It was purchased from Smith Brothers and I gave Mrs. McKee the money to pay for it.

Q. You gave Mrs. McKee the money to pay for it? A. Yes, she bought it. I gave her the money.

Q. Did you state in your direct examination you had a letter from Smith Brothers? A. I don't remember whether I did. I don't recall I had a letter. I did have a duplicate bill from them for the furniture.

Q. Have you that duplicate bill here? A. I think so (witness produces bill).

Q. Can you tell by looking at this bill when this furniture was purchased? A. No. In fact I know the date is given as October 20, 1920, but it was purchased distinctly before that. It was delivered on that date or possibly a little earlier.

Q. Earlier than October 20th? A. Yes. I am inclined to think it was delivered October 10th or maybe October 12th or 15th.

Q. Didn't you state that this furniture was paid for in four months?

Mr. Walscheid: I don't think he did.

Witness: I think I stated it was paid for in perhaps four to six months' time. I looked up this bill when I got it and found that a part of it, $125.00, extended over a longer time.

By the Vice-Chancellor:

Q. Then you were incorrect? A. Yes, as far as the $125.00.

By Mr. Blumberg:

Q. It took four years to pay off a loan? A. I was wrong so far as $125.00.

Q. You didn't purchase the furniture did you? A. No, she purchased it while I was in Europe.

Q. You never went over to Smith Brothers to pay the bills? A. No, she did.

Q. Your idea is you gave her the money to pay for it? A. Yes, but not all at once.

Q. You don't know anything about Mrs. McKee borrowing $800.00 to pay for the furniture? A. I don't know anything about it.

Q. Did she ever tell you anything about it? A. Not until she made a statement in the case as to that.

Q. Did she say anything about it in 1921 or 1922? A. No.

Mr. Blumberg: I ask it be marked for identification.

(Bill marked L. B. 4 for Identification.)

By the Vice-Chancellor:

Q. When did you get this copy or duplicate bill doctor, since the last hearing? A. Oh, no, I have had it in my files. I keep such bills for ten years before I destroy them.

By Mr. Blumberg:

Q. When you gave Mrs. McKee that last $125.00, that was specifically understood to be to pay Smith Brothers? A. I don't recall regarding that.

Q. Did you know how the items were paid regularly? A. No.

Q. Didn't know anything about it? A. No. I gave her money under the understanding it was to be paid on the bill for the furniture, but as to how it was paid I don't know.

Q. Did you give her $100.00 on August 27, 1920 to pay for furniture? A. I don't know whether I did or not as to the exact date.

Q. Were you in this country on August 27, 1920? A. What date?

Q. August 27, 1920? A. No, I was in Europe.

Q. Mrs. McKee paid $100.00 on account on that date?

Vice-Chancellor: How could he know it if he was in Europe?

Mr. Blumberg: He said he paid for it.

Mr. Walscheid: It wasn't delivered then.

Q. Were you in this country on October 25, 1920? A. Yes.

Q. You gave her $150.00 to pay for the furniture that date? A. I don't know the date. I did in a few months give her money to pay for the furniture.

Q. And did you give her $435.00 four days later on October 29th? A. I don't know what dates they were.

Q. Have you any checks here that show payment to Mrs. McKee in 1920? A. No, I do not have as far back as that.

Q. How far back have you your checks? A. The checks on the personal account in the Ridgefield Park Bank 1924, 1925, 1926, 1927 and 1928.

Q. You have no recollection of giving her two large items less than a week apart in October 1920? A. I know I gave her some large items, but I don't know the exact amounts nor the dates.

Q. And you don't recall giving her $125.00 on April 11, 1921, do you? A. No, I do not for certain know when it was.

Q. You don't remember that you wrote to these people after these goods had been paid for to you inquiring about the account? A. Yes, I think I did and the matter was completed and got this duplicate bill.

Q. After it had been paid? A. Yes.

Q. And yet you say you were the one that furnished the money to pay for it. Don't you know it was paid for? A. I don't think we had a receipted bill and I wrote to get a statement in order to show the completion of the payments.

Re-direct Examination by Mr. Walscheid:

Q. Your attention has been called to Exhibit P 103 and you were asked to read from it one sentence, part of a paragraph which you did. Will you now read the whole of that paragraph? A. (Witness reads)—"I hope the taking of the major part of the furniture will make matters more pleasant for you. Perhaps a little later you will be willing to join me and we can have all of it together".

Q. When this Exhibit P 95 was signed, at that time were you looking for an arrangement with your wife whereby she could live separate and apart from you?

Mr. Blumberg: I object to it, what he had in his mind.

Vice-Chancellor: What was meant was embodied in that agreement. I will let him go ahead.

Mr. Walscheid: These inquiries are direct in line with the cases.

Vice-Chancellor: Repeat the question.

Q. When this Exhibit P 95 was signed, at that time were you looking for an agreement with your wife whereby she could live separate and apart from you? A. No.

Q. Had you at anytime before that time and since she left you done anything towards aiding her in living separate and apart from you?

Vice-Chancellor: Doesn't that call for a conclusion?

Q. Had you at anytime prior to the signing of this agreement, Exhibit P 95, ever suggested to her that an agreement should be drawn under which she could live separate and apart? A. No, I had not.

Q. Had she prior to that time requested such an agreement? A. She had.

Q. And in response to those requests what did you say? A. I had refused, and even prepared to defend the suit where she had started to compel such.

Q. At the time when this Exhibit P 95 was signed she was living separate from you wasn't she? A. She was.

Q. And you were paying her at that time certain moneys? A. Yes.

Q. And you were paying her those moneys without any order from the court? A. That's correct.

Q. In other words prior to that time she had made an application for an allowance *pendente lite* in the New York Supreme Court that had been argued and application had been denied? A. That's correct.

Q. And even though that was so you had continued to pay her the moneys? A. That is correct —each month.

Q. Why did you thus continue to pay her the moneys?

Mr. Blumberg: I object to it.

Vice-Chancellor: I will permit it. You can argue the merits of it afterwards if you want to.

A. I felt I wanted to keep in her good graces and that one way to do it was to acquiesce in-

sofar as I could with her wishes and to take care of it by sending her money from month to month.

Q. And you did that to keep in her good graces and good will? A. Yes.

Q. And when you signed this Exhibit P 95 what was your real purpose so far as she was concerned in signing?

Mr. Blumberg: I don't think we ought to go into all this matter.

Vice-Chancellor: I don't think his purpose is material.

Mr. Walscheid: His purpose is material under the cases.

Vice-Chancellor: Under the Popovichs case I think I will allow it. In the Popovichs case it says actions speak louder than words.

Mr. Blumberg: I think when he starts in asking what his purpose was I shall ask Mrs. McKee what her purpose was.

A. It was in order that she might come back and live with me and it fact it was so stated at the time of signing.

By the Vice-Chancellor:

Q. What was stated? A. That my purpose in signing this agreement there might be a united family.

Q. If that is so then the lawyers present knew that to be so? A. They did.

Q. Who were the lawyers? A. Mr. Reass her attorney, and Mr. Kirby my attorney.

Mr. Walscheid:

Q. And why was this paragraph 3 inserted in that agreement? Read the paragraph there? A.

(Witness reads)—"That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks". The reason for that was to bring about—to make certain there would be possibilities of having conferences which would lead to a single family.

Q. You wanted to keep in contact with her for that purpose? A. Yes.

Q. And wanted to keep alive the discussion of her return? A. Yes.

Q. And outside of that thought of keeping in contact with her and keeping up a discussion for her return was there any other actuating reason which induced you to draw and sign this agreement? A. That was the primary thought in signing the agreement.

By the Vice-Chancellor:

Q. Did you make it known to your wife? A. And I made it known at the time I signed the agreement.

Q. And at the same time you made the other matter known with reference to paragraph 3? A. Yes.

Q. In the presence of the lawyers? A. Yes.

By Mr. Walscheid:

Q. At that time while you wanted these conferences to continue and wanted to remain in touch with her what is it she wanted at that time? What did she say she wanted at that time? A. She said she wanted at that time to live separately; that she wanted to avoid the notoriety of going on with the hearing of the suit and that she wanted more money.

By the Vice-Chancellor:

Q. Did she allege this cruelty which was referred to in her lawyer's letter and the inhumanity when she made that statement to you? A. Oh, no.

Q. Did you ever ask her what she considered to be her justification for wanting to live separate and apart from you? A. Yes.

Q. When and where? A. After that I think a number of times during conferences that we were having.

Q. Try and fix some time so she will be able to refer to it when she has an opportunity? A. At one meeting on the mezzanine floor in the Pennsylvania Hotel.

Q. What did you say to her in that respect? A. As to why she left me and what the reason was she would not come back and live with me.

Q. Tell me what she said? A. I can't give here the exact words but the essential end was that she didn't want to and she didn't like living with me and that I wasn't providing enough money for the family.

Q. Didn't you suggest to her it was strange she didn't desire to live with you when she had lived with you a number of years and brought children into the world? A. She insisted they were her children rather than mine and she was the one that bore the pain in bringing them into the world and as such they ought to be under her control.

Q. You had been living together how many years? A. Nearly twenty-two.

Q. Was it the first time she made known to you the cause of her leaving? I have been trying to find out what the cause of the separation was? A. Her note of January 13th.

Q. Aside from her note and aside from the letter

you received from her lawyers dated January 12th in which they charge you with inhumanity and some sort of cruelty and failure to provide, was there any other reason that you know of for leaving you? A. I think from my conferences with her that the primary reason was that she was simply tired of married life.

Q. What did she say or do that manifested that to you? A. For a year before she left she had been taking less interest in being a wife both in question of sexual intercourse and unwillingness to go out with me excepting with parties—something of that kind. I think they are the principal things.

By Mr. Walscheid:

Q. Would you have signed Exhibit P 95 if it did not carry the provision contained in paragraph 3 of the agreement? A. No.

By the Vice-Chancellor:

Q. Paragraph 3 was your own suggestion wasn't it? A. Yes.

By Mr. Walscheid:

Q. If that had been taken out would you have signed the agreement? A. No; it was the gist of the agreement.

Mr. Walscheid: What about the depositions which were offered? A. I don't know whether they were formally offered or not. I formally offer the depositions of Leslie Hand and Carl Becker of the 20th of November 1928.

Vice-Chancellor: That was after Gross & Gross were in this case?

Mr. McNulty: Yes.

Mr. Walscheid: There were cross interrogatories.

Vice-Chancellor: They need not be marked but you can refer to them. They are in the file Docket 66, page 162.

Mr. Walscheid: Now I offer the depositions of George P. Pegram and George W. Roberts.

Vice-Chancellor: They appear to be filed October 13, 1928.

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DEFENDANT'S CASE.

FRANCES GIBB, being sworn:

Direct Examination by Mr. Blumberg:

Q. Where do you live Mrs. Gibb? A. Carthage, Illinois.

Q. Do you hear well? A. Fairly so.

Q. You are a sister of Mrs. McKee? A. I am.

Q. An elder sister? A. Yes.

Q. You know her husband, Doctor McKee? A. Yes.

Q. Did you attend the wedding of Doctor McKee and Mrs. McKee? A. Yes.

Q. Did you visit Doctor McKee and Mrs. McKee for a number of years? A. Several times, yes, on and off.

Q. You came to New York did you not in October 1924? A. I did.

Q. What day did you come to New York? A. The first day of October.

Q. Where did you go? A. To my sister. Miss Noyes met me at the station and went direct to Mrs. McKee's.

Q. To Doctor McKee's house? A. Yes.

Q. Where was that? A. 39 Claremont Avenue.

Q. Did you meet Doctor McKee and Mrs. McKee? A. Yes, when he came in for dinner that evening.

Q. Had you informed Mrs. McKee you were coming to New York? A. I don't know whether she knew it. She had not asked me to come. The family were very much worried about—

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: Yes.

Q. Did you notify anybody you were coming to New York? A. My sister, Helen Noyes.

Q. Is Helen the one that took you up to Mrs. McKee's apartment? A. Yes.

Q. Were you welcomed by Mrs. McKee? A. I was.

Q. And you stayed at 39 Claremont Avenue during your stay in New York? A. I did.

Q. Did you occupy one of the bedrooms? A. Yes.

Q. Which bedroom did you occupy? A. I am confused as to directions now.

Q. Did you sleep in the same room with Mrs. McKee? A. I did.

Q. Throughout your whole stay in New York? A. Yes.

Q. When did you go back to Carthage? A. I don't remember the exact day, but it was right after the middle of December 1924.

Q. Did you see Doctor McKee in that apartment in 1924? A. I did.

Q. Did you see him in November 1924? A. I think the first day of November he left. After that I didn't see him.

Q. He left for Europe did he not? A. Yes.

Q. Did he speak to you while you were there? A. Yes.

Q. Did you speak to him? A. Yes.

Q. Did you see him every day at that apartment during October? A. Practically so; for some days he was away on business trips.

Q. And didn't come home that evening so far as you know? A. Which evening?

Q. The day you say he was away on a business trip? A. No. Some of the time he did in the evenings.

Q. Did he have his meals in the home at 39 Claremont Avenue? A. Yes, he did when he was in the house.

Q. Did you sit with Doctor McKee and Mrs. McKee at the dining table? A. I did.

Q. Did you overhear any conversations between Doctor McKee and his wife? A. I did.

Q. Did they talk often? A. Mrs. McKee tried to talk to Doctor McKee but either he did not care to answer or else he replied very rudely.

Mr. Walscheid: I ask to have that stricken out.

Vice-Chancellor: If you will tell us what he said we might determine whether he was rude.

Q. Do you recall the first day that Doctor McKee came into the house while you were there? A. I do.

Q. What time of the day was it? A. Just before dinner.

Q. Did he greet you? A. Yes. He brought a man home with him to help him fix his radio. He came into the kitchen where Mrs. McKee and I was and announced that the man would be there for dinner.

Q. Was the man there for dinner? A. Yes.

Q. Did he talk to you? A. He greeted me after he made the announcement.

Q. Did Mrs. McKee tell you about trouble she had been having with Doctor McKee? A. Yes.

Q. Did you ask Doctor McKee about that trouble? A. He spoke to me about it.

Vice-Chancellor: You must tell what you said to Doctor McKee. Don't assume there was trouble. Tell us the conversation.

Witness: On the second day I was there, in the evening after dinner, Doctor McKee asked me to listen to the radio. We listened to it for a short time and he shut off the radio and commenced to talk to me about Mrs. McKee. He asked me if Mrs. McKee had asked me to come, and I said no. He asked me if Mrs. McKee had told me why she did not occupy the same bedroom with him and in reply I asked him a question—why he did not try to make it pleasant in the home. I told him I had not heard him speak a pleasant word while he was in the house. Then he went on to say that if Mrs. McKee didn't want to live with him as his wife in Illinois he could get a divorce from her but here in New York he could only get a separation.

By the Vice-Chancellor:

Q. He told you that? A. He said he did not care for Mrs. McKee—"Mary" he called her.

Q. Was that the whole conversation? A. Oh, there were other things.

Q. Try and tell us everything concerning he and Mrs. McKee. He complained about different things while I was there and why she would not—

Q. I am speaking about the conversation that night. Was that the substance of it? A. That was the principal part of it about getting a divorce in New Jersey and Illinois.

Q. And you told him he ought to try and make it a little more pleasanter; that he had not said a pleasant word while you were there? A. I did.

Q. What did he say to that? A. I don't know whether he replied to that.

By Mr. Blumberg:

Q. Did he say anything else to you about Mrs. McKee at that time? A. I don't remember that particular time; other times he did.

Vice-Chancellor: Try to keep down to the occasions so they will know what they have to reply to.

Q. Did Doctor McKee come home the following night? A. I don't remember about that particular day. Sometimes he was away on business.

Q. Did you have breakfast with Doctor McKee in the mornings? A. Yes, part of the time, not always.

Q. Mrs. McKee have breakfast in the morning with Doctor McKee? A. Yes.

Q. Was Mrs. McKee ill at the time you visited her? A. She was.

Mr. Walscheid: I object.

Q. What was her condition as you observed?

Mr. Walscheid: I object to the question of her illness.

Vice-Chancellor: She can say and we will determine that. Tell us what you observed.

A. She was suffering very much with her back and hips.

By the Vice-Chancellor:

Q. Did she complain of it and in a way her husband heard it? Any talks that you had with Mrs. McKee in the absence of her husband you can't detail. A. Can I say what I advised her to do?

Q. No. You said she was suffering from something? A. I saw the bandages on.

By Mr. Blumberg:

Q. Did you see bandages? A. Yes.

Q. Where? A. Around her hips and back.

Q. Did Mrs. McKee tell you why she had those bandages on? A. Yes.

Q. When did you see those bandages? A. Just a day or two after I had been there.

By the Vice-Chancellor:

Q. Was she accustomed to lie in bed when Mr. McKee left for work? A. No.

Q. Would she be up in the morning before he left for work? A. Yes, and cooked his breakfast.

Q. Did you ever hear her complain to Mr. McKee of her alleged ill condition or did you ever hear her say anything in the hearing of Mr. Mc-

Kee about her illness? A. Yes, the second day I was there, after the conversation after the radio. Mrs. McKee had gone to bed after we finished the after dinner work because she was suffering from her back and hips. Mr. McKee was there at the time.

Mr. Walscheid: I ask that be stricken out that she was suffering from her back and hips.

Vice-Chancellor: I understood her to say she was suffering from her back and hips.

By Mr. Blumberg:

Q. Was Mr. McKee there at that time? A. He was.

Q. You don't recall the events of the following day do you? A. I advised her to go to a doctor.

Vice-Chancellor: Unless Mr. McKee heard you advise her don't tell that. You are only permitted to tell of conversations between Mr. and Mrs. McKee in your presence.

Mr. Blumberg: It is not what Mrs. McKee told her.

Vice-Chancellor: He didn't hear it. He wasn't a party to it. How can he answer it?

Mr. Blumberg: Answer what?

Vice-Chancellor: What she said to Mrs. McKee.

Mr. Blumberg: Can't she testify as to advice she gave?

Vice-Chancellor: No, it is immaterial. How can it affect the case so far as Mr. McKee is concerned?

Q. Do you recall any further conversations you had with Doctor McKee? A. I remember one evening I was talking with Doctor McKee and Mrs. McKee. He said to me—in some way it came up that Mrs. McKee did not live with him as his wife. I asked him if she had given any reason for it and he said she just don't want to, and Mrs. McKee said to him she had always done her part, would always live with him as his wife, but would not live with him as a hired thing he wanted to make of her.

Q. Did Mr. McKee say anything about that? A. "You say I don't pay high enough." She said "Ralph, you know I never said anything of the kind." The conversation was changed to his trip to Europe. That was just within ten days of the time he was sailing, and Mrs. McKee tried to ask him about it and she said he had promised the children for a long time he would take all of them when he went to Europe. He said to her if she had behaved herself she might have gone. She asked him what he meant and he said she had been misbehaving with a man in Rochester, New York. She said she did not know of anything special that had occurred there and he said one night when they had been there he had been to a smoker and had come in and gone to bed, and several hours she came in with a man. Mrs. McKee seemed to be—I am trying to think what she said and I don't remember her words, but words to the effect that if he had been to the smoker she must have been at the women's card party, and she asked him why he did not come for her as other men did their wives, and he replied "Evidently you did need looking after." There was no mistake in his meaning.

By the Vice-Chancellor:

Q. She didn't say there was no mistake in his meaning? A. No.

Vice-Chancellor: I will strike that out.

By Mr. Blumberg:

Q. Did the argument stop there? A. He went on to say she had wanted more money for clothes lately and she said she had not asked him for clothes. She said she had not had new clothes lately but she had not asked him for them.

Q. Did you ever see Doctor McKee strike Mrs. McKee while you were there? A. Not actually strike her but use force towards her.

Q. What do you mean by force? A. I remember one Sunday morning I was getting ready for church—

By Mr. Walscheid:

Q. When was that? A. October 1924. I was almost ready for church and Doctor McKee came to the door. I suppose he thought I had gone out. I asked him if he wanted anything and he said "Yes," and I said "Come on in." He came in and started to look around Mrs. McKee's and Margaret's things. Mrs. McKee came in and objected to his looking through her things. He tried to take some of her papers.

Q. What did she say? A. I don't remember, but the words were hers.

By the Vice-Chancellor:

Q. He tried to take some papers? A. He had some papers going through them. She wanted them and tried to take them and he forced her back on the bed and twisted her hand or back, and she said there was nothing of his.

By Mr. Blumberg:

Q. He gave the papers back to Mrs. McKee? A. After he was through with them.

Q. And pushed her on the bed?

Vice-Chancellor: She has already said that.

Q. When was the first time that Doctor McKee told you he was going to Europe?

Vice-Chancellor: Did he tell her?

Mr. Blumberg: She did testify to that.

Vice-Chancellor: I understood her to say they were sitting at a table and there was some talk about it.

By the Vice Chancellor:

Q. Had Doctor McKee told you personally he was going to Europe? A. The first time was perhaps eight or nine days.

Q. Did he tell you or mention it to you? A. I heard him telling Mrs. McKee.

By Mr. Blumberg:

Q. Where was Mrs. McKee when he told her he was going to Europe? A. Right after breakfast; I am not sure.

Q. And this other conversation about the trip to Europe took place a few days after? A. Possibly two days after.

Mr. Walscheid: I object to it as leading.

Vice-Chancellor: It is, but I will leave it stand.

Q. Do you recall any other conversations that were had between Doctor McKee and Mrs. McKee relative to their marital troubles? A. I remember one Saturday morning—I remember he gave her the usual three dollars—

By Mr. Walscheid:

Q. What period of time was this?

Vice-Chancellor: If you want to object to it. I suppose after she gets through he will fix the time. Try to bear in mind they are trying to find out the times.

A. They were all during the month of October.

By the Vice-Chancellor:

Q. This was one Saturday morning in the month of October? A. Yes. He gave her the three dollars, daily allowance, but nothing for Sunday. She had to get the supplies in for Sunday as well as Monday. She told him the laundry was coming in that afternoon. He said he would bring some supplies in the evening. I think in the evening—in the evening we had been out shopping some place and when we got back he had brought in some soup and cheese, and after dinner he asked Mrs. McKee if she was not willing to go out for the supplies for Sunday and she said no. She told him in the morning that she would not go out Saturday evening and get the supplies if she couldn't get the supplies in the morning.

Q. What did you mean by the usual three dollars? A. That was the daily amount that he gave her.

Q. Did you see him give her three dollars daily. A. Sometimes.

By Mr. Blumberg:

Q. Did you observe Doctor McKee's conduct toward his wife? A. I did.

Q. Will you describe that conduct? A. He wanted her to do things like a servant.

Vice-Chancellor: I will strike that out unless you tell us what he said.

Witness: He said you do this and get that. I don't know how to tell it otherwise.

Vice-Chancellor: Unless you don't recall you can't state your own words.

Mr. Blumberg: There is no other way that conduct can be described except by observation.

Vice-Chancellor: This and that don't mean anything. How could he meet anything like that? I will overrule it. I am striking out any statement this witness makes to the effect that Doctor McKee said you do this and that and get me this and that. He certainly didn't say get me this and that.

Q. Do you recall any particular articles Doctor McKee wanted? A. One morning at the breakfast table he wanted another slice of bread and he asked Mrs. McKee to get him another piece of bread and she got it merely making the remark that he usually ate two pieces and she only put on two pieces. He turned to me and said "Did you see the sneer on her face?", and I said "No, I did not," and I was looking at her.

Q. Do you recall the day Doctor McKee left for Europe? A. I do.

Q. Did he bid his wife good-bye in your presence? A. Just said "Good-bye, I will see you in December."

By the Vice-Chancellor:

Q. No fond embrace, just good-bye? A. No.

Q. How near to each other were they when that farewell was said? A. Possibly two or three feet; I don't remember.

By Mr. Blumberg:

Q. Was he in the same room? A. Yes, in the hall if I remember.

Q. He didn't kiss his wife good-bye? A. No.

Q. Did he say good-bye to you? A. That might have included both of us.

By the Vice-Chancellor:

Q. You mean he said good-bye; he didn't say "Good-bye Mary"? A. No—"Good-bye, I will see you in December."

By Mr. Blumberg:

Q. Did Mrs. McKee have a maid in the house at this time? A. No; she was not allowed to.

Vice-Chancellor: I will strike that out.

Q. Did you stay with Mrs. McKee all during November? A. Yes.

Vice-Chancellor: She stayed until the middle of December.

Q. You were not in New York when Doctor McKee returned from Europe? A. No, I left a few days before the return.

Q. Had any of the children come home from school before you left? A. Yes, Billy came home. He went on a trip with me to Philadelphia and met Margaret there and we took a trip by bus.

Q. Billy was home before you left? A. Yes, he was.

Q. What date did you leave, do you recall? A. I don't remember; it was the Friday before the twenty-first.

Q. Of December? A. Yes.

Q. What I want to know was Billy home at that time for his vacation? A. Yes.

Q. He didn't go back to Watertown did he? A. No, he was there for his vacation.

Cross Examination by Mr. Walscheid:

Q. Where do you live madam? A. Carthage, Illinois.

Q. In October 1924 you came to New York, did you? A. Yes.

Q. And your sister Mary didn't know you were coming? A. I don't know if she did.

Q. You testified before she didn't know. Did she or didn't she know?

Mr. Blumberg: How could she testify to that?

Vice-Chancellor: My recollection is her sister did know.

Q. You hadn't communicated with your sister Mary you were coming? A. No.

Q. And as a matter of fact you had communi-

cated with Helen you were coming? A. Yes, I think I did.

Q. What had you done sent her a telegram just before you left? A. Yes.

Q. And that's the only communication you sent? A. Oh, I suppose some one wrote.

Q. I am not concerned about your supposition. A. Whether there was some correspondence I positively don't remember.

Q. When you came on you didn't know where you were going to stay, did you? A. I expected to go to Mrs. McKee's, but I knew I could go to Miss Noyes.

Q. But you had made no arrangements? A. No.

Q. And how long was it since you had been in New York before? A. That was my first trip to New York.

Q. So you didn't know anything about this apartment at 39 Claremont Avenue, did you? A. No.

Q. And when you came you were met at the train by your sister Helen? A. Yes.

Q. And she brought you to your sister, Mrs. McKee? A. Yes.

Q. And brought your baggage? A. Yes.

Q. And you settled down in the room occupied by your sister, Mrs. McKee, did you? A. Yes.

Q. How long was it you hadn't seen Mr. McKee? A. I saw him in June; they were in Carthage, Illinois.

Q. You hadn't told him then you were contemplating a visit to them? A. No.

Q. And I suppose when you went into that apartment your sister showed you all over? A. I don't remember whether she did right at the minute.

Q. Well, shortly after you were in there? A. Yes.

Q. And complained about the smallness of it, didn't she? A. Yes.

Q. And complained about the absence of sufficient bedrooms, didn't she? A. Yes.

Q. And didn't you know before you came that the apartment would probably be too small to furnish you with a separate room? A. Not when the children were not home.

Q. So there was an additional room that you might have occupied while the children were not there? A. No, there was not an additional room. There was room when the children were away.

Q. When they were away there was an additional room, any empty sleeping room, you might have occupied? A. Only the maid's room.

Q. But it was an empty room? A. Yes.

By the Vice-Chancellor:

Q. If the children were there it would also be occupied? A. There was not sufficient bedrooms. They had not enough rooms as I understand it.

By Mr. Walscheid:

Q. And what room did you sleep in there? A. I slept with Mrs. McKee.

Q. From the moment that you arrived there and until the time you left, every night you slept there with Mrs. McKee? A. Yes.

Q. And during all that time you of your own knowledge knew that she slept separate and apart from her husband? A. Yes.

By the Vice-Chancellor:

Q. You knew that because you slept with her? A. Yes.

Q. Was there any complaint upon the part of Doctor McKee about your presence there? A. Yes. Not at first, but later on in this conversation at the dinner table that I was speaking about before, when we were talking about his trip to Europe, I asked him what Mary was going to do and he said he didn't know, and that made him angry and he asked me didn't I think it was time to go home.

By Mr. Walscheid:

Q. Did you think it was your business what Mary was going to do? A. Yes.

Q. Isn't it a fact that Doctor McKee immediately upon your arrival called your attention to the fact there wasn't enough room for you in the apartment? A. No.

Q. How soon after your arrival did he call your attention to it? How many days? A. Never in that way.

Q. In what way did he do it? A. Just as I said he became angry at my question and asked me when I was going home. That was several weeks after.

Q. When you asked him that question where did you think that Mrs. McKee was going to stay while he was in Europe? A. I didn't know.

Q. Didn't you think she was going to stay in her apartment where she was? A. I didn't know.

Q. Did you think she was going to leave that apartment? A. I didn't know whether the apartment would be kept or not.

Q. What prompted your question if you didn't know? A. I was interested in knowing where she was going to go.

Q. She wasn't going to Carthage again? A. No.

Q. And she hadn't complained to you where she was to stay other than in the apartment? A. She

said she did not know what provision would be made for her.

Q. She didn't know what arrangements would be made for her?

Vice-Chancellor: She didn't know what provision would be made for her.

Q. Did she say anything about the fact the lease would be cancelled and she wouldn't be allowed to live in the apartment with her children? A. She did say that.

Q. And that she thought she would be put out of the place? A. She did not know.

Q. Did she tell you her reason? A. Just from his general actions. She tried to talk to him about what provisions he would make for her and he said he would not discuss things with her unless she made a practice to occupy the same room with him three nights a week.

Q. Then he was angry with her because she would not cohabit with him as man and wife? A. I suppose.

Q. He made that known in that way? A. Yes.

Q. And at the same time he told you he did not like Mary? A. Not at that time, but another time he did.

Q. So that during your presence there he told you that he wanted her to occupy the same room with him and on another occasion he told you he did not like Mary? A. I don't know whether he said he wanted to occupy the same room. He asked her why she did not.

Q. Did he ask you to intercede? A. No, he was just complaining.

Q. Just complaining. Give me the language that he used in complaining? A. I don't remember his

exact words but he asked me if she had told me why she had not, and I asked him why he did not try to make things pleasant. I thought that was an answer.

Q. That's all the answer you gave him? A. I said I had not heard him speak a pleasant word to his wife since I had been there.

Q. And you thought it was unnatural for a man who had a wife in the house who was refusing to be a wife to be grouchy to her? A. I thought she had reasons for it.

Q. And what reasons had she given you? A. His extreme cruelty.

Q. No, tell us what were the facts? A. She gave me different times when he had abused her.

Q. What do you mean by abuse? A. Do you mean shall I tell what she told me?

Q. Yes, the facts I want? A. She told—long before that she had told me.

Q. No, I mean on this occasion. You had not seen her in several years before, had you? A. Oh, yes. I don't remember the last time.

By the Vice-Chancellor:

Q. Was she with her husband when they visited you in Carthage? A. No.

By Mr. Walscheid:

Q. So you had not seen her for several years, had you? A. I couldn't say it was for several years. It had been the last time she was in Carthage.

Q. You didn't see her the last time she was in Carthage? A. I don't remember. I was in Canada off and on.

Q. Getting back to what she said to you on your trip in October of 1924. What had she said to you

of specific abuses by her husband which you thought justified her in refusing to have intercourse? What are those specific things? A. She told me one time he had thrown her down and she fell against the door-sill and hurt her back and had to be assisted to bed. I think Doctor McKee was one of them and perhaps one of the children.

Q. And did she tell you when that had happened? A. It was a long time before that.

Q. Did she tell you how long a time before? A. Yes, but I don't remember.

Q. Was it five or six years before? A. Oh, no.

Q. Four or five? A. Perhaps several years; I don't remember.

By the Vice-Chancellor:

Q. That is one of the abuses she mentioned? A Yes.

By Mr. Walscheid:

Q. What other abuses did she complain of? A. One time he slapped her on one side of the face.

Q. How long before? A. I don't just remember.

By the Vice-Chancellor:

Q. These are two abuses she mentioned to you? A. Yes.

By Mr. Walscheid:

Q. What else did she tell you? A. I can't remember; there were so many times.

Q. If there are you ought to remember them? A. He struck her repeatedly.

Q. Before you recited only one instance when he

struck her? A. He struck her a number of times.

Q. Did she give you any other specific instances? A. Yes, I think so.

Q. Of other specific instances? What other specific instances of striking her? A. I don't remember all of them now.

Q. Were they very important to you? A. Yes.

Q. And you made memorandums of them? A. Those things did not happen while I was there.

Q. You made a memorandum of what occurred while you were there? A. Yes.

By the Vice-Chancellor:

Q. Did you make a memorandum of what she told you about the alleged abuses? A. No.

By Mr. Walscheid:

Q. Where are those memorandums? Did you give them to the lawyers? A. No, I have a copy with me, or a part of it.

Q. So that while you were in Mr. McKee's apartment as a guest you were making a memorandum as to his specific conduct? A. In my diary.

Q. And putting down the conversations you had with him? A. Not all of them.

Q. Not all of them? A. No.

Q. And putting down the talks you had with Mrs. McKee? A. Some of them.

Q. Mrs. McKee had told you at that time she had seen a lawyer?

Vice-Chancellor: At what time?

Mr. Walscheid: On the trip in October, 1924.

A. I don't remember before—

By the Vice-Chancellor:

Q. You were there between October and November. During any of that period had she told you she had been to a lawyer? A. Yes.

By Mr. Walscheid:

Q. She told you when you lived there she had been consulting a lawyer? A. I don't remember when I lived there.

Q. She told you about Mr. Reass? A. While I was there.

Q. And she told you about Mr. Newman? A. Yes.

Q. And about Mr. Hirsch? A. Yes.

Q. And told you she was consulting Mr. Hirsch, Mr. Newman and Mr. Reass about her marital affairs? A. Yes.

Q. And she told you she was going to leave her husband? A. She was thinking of it.

Q. And was consulting Hirsch, Newman & Reass about leaving him? A. Yes.

Q. You didn't tell Mr. McKee that, did you? A. No.

By the Vice-Chancellor:

Q. Why didn't you tell Mr. McKee, when you suggested to him that he did not say a pleasant word to her, that Mrs. McKee had told you about the abuses to which he subjected her? A. I asked him if he ever struck her and he said no. I asked him the second time if he ever struck her and he said no.

By Mr. Walscheid:

Q. What time of the day did you arrive at the McKee apartment? A. In the morning.

Q. What time in the morning? A. I don't remember just what train I came in on.

Q. Was it before ten o'clock? A. About that time.

Q. Mr. McKee had gone to his business? A. Yes.

Q. He didn't return until evening? A. No.

Q. And I suppose you and your sister had a long talk, didn't you? A. Yes.

Vice-Chancellor: We will now take a recess until two o'clock.

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Afternoon Session.

Cross Examination Continued by Mr. Walscheid:

Q. And Mr. McKee didn't return until six or seven that night, did he? A. Somewhere around that time.

Q. So that you and your sister had the whole day together? A. Yes.

Q. And during that time I suppose she told you of her married life? A. A number of things that I didn't know before.

Q. You hadn't seen her in some time had you? A. No, not for some time.

Q. Not fully ten years? A. Oh, yes.

Q. How many years before was it? A. I must have seen her in 1922 anyhow, if not later.

By the Vice-Chancellor:

Q. When was it your mother died? A. January, 1928.

By Mr. Walscheid:

Q. And you hadn't visited the house—the McKee house? A. No.

Vice-Chancellor: She had never been to New York before.

Q. What brought you to New York on this trip? Did you have any business here? A. I came because the family was very much worried about Mrs. McKee and thought some one of us should come.

Q. Had she sent for you? A. No.

Q. Had she told you to come? A. No.

Q. Had your sister Helen sent for you and told you to come? A. We had discussed it.

Q. But she thought it was better you should go? A. We all did together.

Q. I am not interested in all. I am interested in your sister Helen. She thought so? A. Yes.

Q. And she advised you to come? A. Yes.

Q. And it was because of this advice that you should come that you did come? A. Yes.

Q. And when you came there you at that time knew that Mrs. McKee had consulted lawyers about a separation, didn't you? A. I don't remember that I did at the time when I came.

Q. But you knew it as soon as you arrived? A. No, I don't think so.

Q. Didn't she tell you the first day? A. I don't know at that time.

Q. How soon after? A. I don't remember, but it seems to me it was after the middle of October, after the conversation at the dinner table when Mr. McKee had accused her of misbehaving.

Q. When you and she retired into your room then she told you that she had hired lawyers? A. I couldn't say that.

Q. What did she tell you about lawyers? A. After that accusation she did not know just what to do and she consulted some lawyers, not only for that but for so many things that had gone before, but that seemed to be the last straw.

Q. She told you she had consulted lawyers? A. While I was there, yes.

Q. And did she tell you she was acting under the advice of lawyers? Don't look at your sister! A. In what way?

Q. In any way? A. I don't know what act you mean.

Q. You know what advice means so far as lawyers are concerned? A. Yes.

Q. Did she tell you she was acting under the instructions of lawyers? A. I don't know; she did in so many words.

By the Vice-Chancellor:

Q. Did she tell you the lawyers told her not to have sexual intercourse with her husband? A. No.

Q. Did she tell you that the lawyers told her not to occupy the same bed with her husband? A. No.

By Mr. Walscheid:

Q. Didn't you go to the lawyers with her? A. No.

Q. Didn't you make a statement to the lawyers? A. No.

Q. Didn't you make any affidavit in the New York case? A. No.

Q. You never kept a diary before you came to New York? A. Yes, I did, occasionally.

Q. But not as a habit? A. Not all the time.

Q. And you started to keep this particular diary when you arrived in New York, didn't you? A. Yes.

Q. In connection with your visit? A. Yes.

Q. And you started to keep that diary immediately upon arriving in New York covering your whole visit? A. It is only a partial diary.

Q. It is what you wanted to remember? A. Not everything I wanted to remember.

Q. But the diary was kept by you at that time so you wouldn't forget the things you put down? A. Not for that reason.

Q. What reason? A. For the reason I wrote home often and I wanted to know what to tell them about how things went on.

Q. You didn't have to keep a diary for that, did you? A. I didn't, but I did.

Q. Weren't you receiving letters from home? A. Yes.

Q. And weren't you writing home just how things occurred? A. Yes, and it is a copy of what I wrote.

Q. And the things you put in your diary at the same time you were writing home? A. Yes, that is a copy of it.

Q. And isn't it the fact that you were keeping this diary so you could be a witness? A. No, I did not know I was going to be a witness.

Q. But you kept it so that your memory might be refreshed as to what happened? A. I kept it principally as I said to write home. They were very anxious and wanted to know exactly what was going on and I told them as nearly as I could.

Q. And why did they want to know at home what was going on? A. Because of things that Mrs. McKee had told us he had said and done.

Q. When had she told you? A. At different times when members of the family saw her.

Q. While you were visiting there did Mrs. McKee tell you she hadn't roomed with her husband? A. I don't know that she did say that.

Q. How did she say it? A. Something to that effect.

Q. Something to the effect she hadn't roomed with her husband; did not have sexual intercourse? A. Yes.

By the Vice-Chancellor:

Q. Did she say that? A. I can't remember the exact words.

Q. You know what sexual intercourse means? A. Yes, she said she had not.

By Mr. Walscheid:

Q. And she told you how long she had abstained from having sexual intercourse? A. I don't remember how long.

Q. Didn't she tell you it was over a year? A. I don't remember how long.

Q. Did she tell you anything about the period of time? A. I don't know exactly; it had been some time.

Q. Didn't she at that time say she felt she could never have sexual intercourse again? A. No; she said under the conditions he imposed.

Q. Under the conditions he imposed? A. Yes.

Q. What did she say about that? A. She said he had made it impossible.

Q. And he had made it impossible for her to have sexual intercourse with him? A. Yes.

Q. And she wouldn't have sexual intercourse with him any more? A. Under those conditions.

Q. She wouldn't have sexual intercourse any more under those conditions, she told you that? A. Yes.

Q. What were the conditions she said he had imposed? A. Well, for one thing she said that he required her before he would discuss any matter with her at all to sleep with him three times a week. To make that a practice otherwise he would not discuss anything.

Q. And she told you she had refused that? A. Yes.

Q. Any other conditions? A. She thought he should be kinder to her.

Q. I am talking about conditions? A. That is one of the conditions.

Q. What other conditions? A. I don't know.

Q. Don't know of any? A. No.

Q. Didn't put those conditions in your diary, did you? A. Yes, I think I did.

Q. All of them? A. No, not all of them.

Q. You had your diary? A. Yes.

Q. And you read it? A. Yes.

Q. And you read it today, didn't you? A. No, I haven't read it today.

Q. You have it with you, haven't you? A. Yes.

Q. And you had it last night and read it? A. Yes.

Q. So that you refreshed your recollection last night as to what you were going to testify to? A. Yes.

Q. And unless you refresh your recollection you can't remember any other conditions he imposed? A. I don't remember just now.

Q. Did you know when you were coming there on the first of October that Mrs. McKee would be alone with her husband beginning with the first of October? A. Yes, that the children had left.

Q. And your visit was timed so you might arrive when the children had left? A. It was.

Q. And you knew that Margaret, the daughter, was leaving on the day you arrived, didn't you? A. I don't remember whether it was the same day or not.

Q. Or whether it was the day previous? A. No.

Q. That's what you don't remember? A. No, I don't remember that.

Q. But you did know you were to remain in the house with Mrs. McKee and Mrs. McKee was alone with her husband? A. Yes.

Q. And that was one of the reasons why you came there? A. Yes.

Q. And you came in that fashion when he was alone with her so as to help her in her resolution not to have sexual intercourse with him? A. No, not for that reason.

By the Vice-Chancellor:

Q. Had she made known to you before you came here she did not have sexual intercourse with him? A. No.

By Mr. Walscheid:

Q. Had your sister Helen? A. No.

Q. But it had been made known to you that Margaret was leaving? A. Yes.

Q. And that it might be an opportune time for you to arrive? A. Because she was going to be alone with him and we were afraid of her safety.

Q. That is why you came? A. Yes.

By the Vice-Chancellor:

Q. Did your sister Mrs. McKee express any fear for her safety? A. She had told of his extreme cruel acts.

Q. You will have to tell me what those acts were? A. One of them I started to tell this morning, that was several weeks before I arrived. Mr. McKee had attacked her and injured her severely.

Q. You mean at the time he threw her over on the bed? A. No, another time before I came there.

Q. When was the time? A. He hurt her back and hips. That was the reason for the bandages.

Q. How? A. I understood from her that he jumped on her.

Q. Did she tell you why that event took place? A. No.

Q. Did you inquire? You knew it was an unusual thing for a man to jump on his wife. Didn't you inquire about it? A. He was in the habit of being cruel to her.

Q. She told you that? A. Yes, she told me that.

By Mr. Walscheid:

Q. And she used the expression he was in the habit of being cruel to me? A. She didn't use that expression.

Q. What expression did she use? A. She told us of different things he had done.

By the Vice-Chancellor:

Q. Did you make known any of those things to Mr. McKee that your sister complained of to you? A. I asked him and he said no.

Q. Did you ask him whether he jumped on her? A. No, I didn't like to ask him that.

Q. Why not, if you were there to look after her safety? A. I wasn't there to tell him about it.

Q. You were there just to see what was going on; to see whether what your sister had said to you and others might be confirmed? A. No, not exactly. I was there for fear of violence.

Q. If what your sister said to you was true that he jumped on her and as a result whereof these bandages were necessary, it was considered violence in your opinion? A. Yes.

Q. Did you ask him if he used such violence towards your sister? A. The bandages were not there when I first went there.

By Mr. Walscheid:

Q. So when you first went there she had no bandages on her back? A. No.

Q. And while you were there he hadn't jumped on her or injured her back, had he? A. No.

By the Vice-Chancellor:

Q. Did he do anything to Mrs. McKee while you were there which would accord with the alleged cruelty that you said your sister Mrs. McKee had been relating to you and others had been perpetrated upon her by her husband? A. The time he pushed her on the bed, and mental cruelty.

Q. I am speaking about anything, whether physical or mental. What had Mr. McKee done while you were there which you might have considered as cruelty? A. While I was there he did not want her to go and see the children, although he went at different times.

Q. You mean he said that to her? A. I remember one time when Mrs. McKee said to Mr. McKee she thought she would go to see Margaret. He did not reply and did not offer to give her money to go. He came in the next morning—the evening before he telephoned to Margaret, but he did not say what he said—and she told him she wanted to go to see Margaret and what he thought about going and he said, "No, don't you go."

By Mr. Walscheid:

Q. And Margaret had only just left then, hadn't she? A. No, that was several weeks after I was there.

Q. But Margaret had left on the last of September, hadn't she? A. Yes.

Q. And had been home for her vacation? A. Yes.

By the Vice-Chancellor:

Q. You were not there when she left? A. No.

By Mr. Walscheid:

Q. Now you say you had a conversation with Mr. McKee on the first day, did you? A. I talked to him.

Q. Mr. McKee? A. In the evening, yes.

Q. And while the visitor was there? A. I did not talk to him much the first evening, no; just at the dinner table.

Q. Did you talk to him after the visitor left that night? A. No, I was in bed before the visitor left.

Q. And was Mrs. McKee in bed also before the visitor left? A. I don't remember.

Q. Did ~~you~~ she stay up to entertain the visitor or did she go to bed with you? A. The visitor was to help fix the radio.

Q. He stayed for dinner didn't he? A. Yes.

Q. And he helped fix the radio? A. That's what he came for.

Q. And then you and Mrs. McKee withdrew to your room? A. I don't know about Mrs. McKee, but I did.

Q. When did you first have the conversation with Mr. McKee? A. The evening of the second day.

Q. That was at dinner? A. Yes, and after dinner, too.

Q. And was Mrs. McKee present during the conversation? A. Not after dinner.

Q. What happened at dinner? A. I don't remember anything more than just general conversation.

Q. And Mr. McKee talked to Mrs. McKee at dinner? A. Not very much.

Q. But he did? A. I believe so.

Q. And she talked to him? A. A little.

Q. In other words he did not talk very much neither did she? A. I think she did the most of it.

Q. Neither one of them talked very much did they? A. Not very much.

Q. And they talked in a cool manner, didn't they? A. I remember that Mrs. McKee didn't get satisfactory replies.

Q. She was very offish towards him? A. No.

Q. And after dinner you had a conversation with Mr. McKee? A. Yes.

Q. Were you alone with him then? A. I was.

Q. Tell us that conversation again? A. I don't know I can say it in the exact words, but he asked me if Mrs. McKee had told me why she did not occupy the same room with him.

Q. Yes. A. And I replied by asking another question.

Q. You didn't answer that question? A. By asking another question.

Q. You didn't answer his question? A. I considered it an answer.

Q. But you didn't answer his question? A. I don't know.

Q. She had told you hadn't she? You have told me she told you? A. Yes.

Q. And you didn't tell him did you? A. I asked him another question.

By the Vice-Chancellor:

Q. What was that other question? A. I asked him why he didn't try being a little more pleasant and making things pleasant.

Q. What did he say? A. He did not reply to that.

By Mr. Walscheid:

Q. What next was said between you? A. He said if Mrs. McKee would not live with him as a wife according to Illinois or New Jersey he could obtain a divorce for that, but it seemed in New York State he could only get a separation.

Q. What else? A. That's about all I remember. I don't think there was very much more; when he saw I didn't sympathize he ~~desisted~~. subsisted

Q. What do you mean by sympathize? A. Agreed to anything he said.

Q. He hadn't asked you to agree? A. Not in so many words.

Q. That was all the conversation that night between you and Mr. McKee? A. There must have been a little more; I don't remember the details.

Q. Is that written in your diary? A. Yes.

Q. That's all that is written in that diary as to that meeting? A. I don't remember whether it is or not.

By the Vice-Chancellor:

Q. It is written in your diary to the best of your knowledge? A. Yes.

By Mr. Walscheid:

Q. Practically word for word? A. I am trying to remember the conversation.

Q. And you are remembering it practically as it is in your diary? A. I put it down as nearly as was said.

Q. And you are now remembering it practically as it is in your diary? A. Yes.

Q. You have told us everything that happened on that occasion? A. Oh, no, I wouldn't say that. I don't remember.

Q. On that occasion. I am talking about the second night you were there and the first conversation with Mr. McKee alone. At that time he told you she wasn't having sexual intercourse with him? A. To that effect, yes.

Q. And he complained about that didn't he? A. Yes.

Q. And then you said to him something about treating Mrs. McKee more kindly?

Vice-Chancellor: Pleasant is the word.

A. Why he didn't make things pleasant.

Q. And he could get a divorce in New Jersey and Illinois for her refusal to cohabit with him? A. He said he could.

Q. Was it this same discussion that he said he did not care for Mary? A. Yes.

By the Vice-Chancellor:

Q. How did he come to say that? A. I don't know unless it was after I asked him why he wasn't more pleasant. He was speaking of being able to get a divorce for that reason. I believe I asked him whether he cared and he stated he did not.

By Mr. Walscheid:

Q. Is that in your diary? A. Something to that effect.

Q. You looked in your diary last night? A. Yes.

Q. That's not in your diary is it? A. I can see in a few minutes.

Q. Don't you know it is not in your diary? A. I believe it is practically the same.

Q. You testified you had breakfast with Doctor McKee? A. Yes. Not every morning; most mornings.

Q. And most mornings you had breakfast with Doctor McKee alone? A. No, I did not.

Q. Did Mrs. McKee sit at the table? A. When she wasn't waiting on the table.

By the Vice-Chancellor:

Q. You mean she made the breakfast? A. Yes.

By Mr. Walscheid:

Q. And you said he had not said a pleasant word to Mary in the morning? A. That's right.

Q. She hadn't said a pleasant word to him had she? A. Certainly she had.

Q. What did she say? A. I don't remember, but she had spoken to him.

Q. She had talked to him? A. In a pleasant way.

Q. And he had talked to her? A. Not pleasant.

Q. You think it was not pleasant? A. Yes.

Q. What was it he said to her that was not pleasant? A. It was the manner as much as anything else.

Q. Anything else excepting the manner? A. Oh, yes, there were other occasions.

Q. I am talking about the occasion when you say he was not pleasant. Anything else besides the manner? A. I thought that was sufficient. I don't remember anything else.

Q. When was the time that she first complained about her back, some two or three weeks after your arrival? A. The day I arrived.

Q. At that time you said there was no bandages on her back? A. No.

Q. When did you first see the bandages, two or

three weeks after? A. Within a few days. I advised her to go to a doctor.

Q. Did she tell you she was wearing those bandages because of anything Doctor McKee had done to her? A. Yes.

Q. Who put them on? A. The doctor put them on, Doctor McKaslin.

Q. You didn't say anything on your direct examination that she had said she had put those bandages on because of anything Doctor McKee had done to her? A. I did start to say it but some one stopped me.

Q. Who was it? A. There was an objection made.

Q. She did tell you that was because of something Doctor McKee had done to her? A. Yes.

Q. What did she say it was that Doctor McKee told her that caused her to put on those bandages? A. She said he had jumped up and down on her.

Q. On her back? A. I don't know whether on her back or not, but her back was hurt.

By the Vice-Chancellor:

Q. Did she say to you when he had jumped on her? A. It was several weeks before I had come there. I don't remember the exact date.

By Mr. Walscheid:

Q. Now you say that on one occasion you saw him push her on the bed? A. Yes.

Q. That happened in your bedroom, didn't it? A. Yes.

Q. And you were in the bedroom alone before this happened? A. Before he came in, yes.

Q. And at that time before he came in you were in the bedroom all alone? A. Yes.

Q. And then he came in? A. He did.

Q. And when he came in Mrs. McKee wasn't in the room with you two? A. No.

Q. She was still outside? A. Yes.

Q. And he started to look through her papers? A. Yes.

Q. Through papers which were on the bureau or table? A. Yes, and I told her.

Q. Never mind that. He started to look through the papers which were on the table? A. He did.

Q. What kind of papers? A. Personal papers, I don't know.

Q. Were they envelopes? A. I don't think so.

Q. Were they loose papers? A. I can't remember; perhaps some booklets and some newspapers.

Q. Were they numerous papers? A. Oh, I can't say how many there were.

Q. And he was engaged in the act of examining those papers was he? A. Yes.

Q. And what did you do? A. I told Mrs. McKee.

Q. Where was Mrs. McKee at that time, out in the kitchen? A. The kitchen or the hall.

Q. And did you call to Mrs. McKee that he was going through her things? A. No, I merely went out and told her.

Q. Why did you go out and tell her he was going through her things? A. I didn't think he had any right to do it.

Q. Didn't you think a husband had a right to examine papers in his wife's bedroom? A. Not always.

Q. You thought he was doing something wrong? A. Yes.

Q. And you went out and told her that? A. Yes.

Q. And she rushed in? A. She came in.

Q. Did he have any papers in his hand at that time? A. Yes.

Q. And did she demand them? A. She asked him for them.

Q. Isn't that a demand? A. Not always.

Q. To ask is not to demand? And then having asked her I suppose he refused to give them up? A. He did.

Q. And then she grabbed at them didn't she? A. She tried to get them.

Q. And she got hold of the papers and he had hold of the papers? A. Yes.

Q. And there was a scuffle for the papers? A. Yes.

Q. And during the scuffle the parties in the scuffle went off towards the bed in that room? A. Yes.

Q. And she fell on the bed or was pushed on the bed? A. She was pushed on the bed.

Q. And when she was on the bed he managed to secure the papers? A. He twisted them out of her hand.

Q. He got them and left the room? A. I think he stayed in the room.

Q. Looked at the papers and put them back on the table and walked out? A. Yes.

Q. That is the full occurrence? A. He remarked he wanted to find out whether there was anything of his things.

Q. And having remarked that he put them back again. Did he say any of his papers were there? A. We looked over them afterwards. We looked over the papers to see whether he really had gotten away with something.

Q. So after he went out you and Mrs. McKee checked up on the papers to see whether he had taken some of them? A. I don't remember.

Q. Didn't she say afterwards he had not taken any? A. She knew that none of his papers were there. He had remarked he might find something of his there.

Q. Why did you and Mrs. McKee check over those papers afterwards? A. I don't know whether we checked them. He did not find them because she did not keep them.

Q. After he left, you and Mrs. McKee went over the papers on the table? A. I believe we did.

Q. And you did that to ascertain whether or not he had taken any of them? A. Probably.

Q. Isn't that the fact? A. I think so.

Q. You said something about coming home with a man. Would you mind repeating that to me? A. It was at dinner table one evening and there was more before that. Mrs. McKee was asking him about his trip to Europe and he said she might have gone if she had behaved herself. She asked him what he meant and he said she had taken to misbehaving herself in Rochester when they were there together. She told him she did not remember anything special that had occurred in Rochester. She said that it was not until ten years after that he had begun to accuse her of misbehaving.

By the Vice-Chancellor:

Q. What did he say had occurred at Rochester? A. He said yes, she had misbehaved. In the evening he went to a smoker and had come home and gone to bed and she came in several hours later with a man. She asked him if he was accusing this man of misconduct and he didn't reply to that, and it seemed to me that he was accusing his wife.

Q. Are you detailing a conversation between him and his wife? A. She asked him if he was accusing her of doing something that she shouldn't, and he did not reply to that.

By Mr. Walscheid:

Q. He didn't reply to that? A. No.

Q. Is that the end of that conversation? A. On that particular point I think.

Q. What else was said that evening? A. That same evening he said—it was at the dinner table—he said to me that Mrs. McKee did not live with him as his wife. I asked him if she had given reasons for it and he said she did not want to.

Q. She had said to him she did not want to? A. Yes.

Q. And Mrs. McKee was sitting there while that was being said? A. Yes.

Q. Did Mrs. McKee deny it? A. She said that she had told him she would always live with him as a wife, but she would not live with him as the hired thing he wanted to make of her.

Q. And that was the objection? A. Yes.

Q. And that was the only objection you had ever heard her urge as the reason she didn't live with him? A. And because he did not treat her as a man should his wife in other ways.

Q. When you talk about a hired thing what do you mean by that. Was there any further expression than that? A. No.

Q. Just that expression? A. Yes.

Q. Going back to the incident about the struggle for the papers in the bedroom. When you went out to call Mrs. McKee did you remain out or did you go back again? A. I went back in.

Q. Immediately? A. Yes.

By the Vice-Chancellor:

Q. Did you accompany Mrs. McKee back to the room? A. We went in just about the same time. Whether she went in first I don't know.

By Mr. Walscheid:

Q. And when you found him examining these

papers you went out into the hall or where she was? A. Either in the hall or the kitchen.

Q. How far away from that room was she? A. Just the length of the hall.

Q. And you went out and brought her back? A. I simply told her.

Q. And went back with her? A. Yes.

Q. Did you take part in that struggle for the papers? A. I don't remember; no.

Q. What did you say? A. When he was using force I merely spoke his name.

Q. What did you say? A. I said "Ralph," that's all.

Q. That's all there was? A. That's all the part I took.

Q. Did the struggle stop when you said "Ralph"? A. I think it did. I think it was a warning.

Q. You think it was a warning that he took? You knew when Mr. McKee was coming back from Europe? A. Yes, I knew.

Q. And you knew it while you were there? A. Yes.

Q. And you knew it from Mrs. McKee? A. Yes.

Q. And you didn't stay there for his return, did you? A. No, not after one of the children got home.

Q. After one of the children got home you took that child off on a trip? A. Not after he was home.

Q. So you were gone a day or two before he arrived? A. Mr. McKee you mean?

Q. Yes. A. I was gone several days before he arrived.

Q. And when you went you took the children with you? A. No. Billy went with me one day.

Q. You went from Mrs. McKee's home to leave for Carthage, Illinois, didn't you? A. Yes.

Q. But you went by way of Philadelphia? A. Yes.

Q. And you went by way of Philadelphia so that you might visit Margaret, wasn't that your purpose? A. So that she could take a little day's trip with us.

Q. Who? A. Margaret.

Q. Who went on that trip? A. Billy and I and Margaret.

Q. So that you and Billy went to Philadelphia and met Margaret there? A. Yes.

Q. And from Philadelphia you went on a little trip? A. Just for the day.

Q. And during that day Mrs. McKee so far as you were concerned was alone in the apartment? A. Mr. McKee was not at the apartment then.

Q. He was expected the next day? A. No, not the next day.

Q. He was expected when? A. Several days after.

Re-direct Examination by Mr. Blumberg:

Q. You have been living in Carthage since 1920, have you not? A. Yes, that is my home. I have been away off and on.

Q. And did you see your sister in 1921 when she was in Carthage? A. If she was there in 1921 yes. I can't remember the year. I was there in 1921.

Q. And the folks in Carthage were discussing the troubles, were they not, that Mr. and Mrs. McKee were having? A. Yes. They had for some years before that separated.

Q. Who sent letters from New York prior to 1924? A. My sister, Helen Noyes. Mrs. McKee wrote some letters and Miss Noyes wrote some letters.

Q. And did Doctor McKee write letters to Carthage, too? A. Yes, several I think.

Q. He didn't write them to you did he? A. No.

Q. To whom? A. My mother.

Q. Did you see those letters? A. I don't remember that I did.

Q. It was due to a family conference in Carthage—

Mr. Walscheid: I object to the family conference.

Vice-Chancellor: She did say it was a family conference.

Mr. Walscheid: All right; it makes no difference.

Q. That you went to New York in 1924? A. Yes.

Q. Do you recall the date that Mrs. McKee first told you she had consulted an attorney? A. I don't remember the exact date, but I think it was during the later part of October.

Q. Do you recall whether Doctor McKee was in New York at that time or not? A. Yes.

Q. He was in New York? A. On October 20th, yes.

Q. Do you recall whether Doctor McKee was in New York when your sister first told you she had consulted an attorney? A. I don't know whether it was before or after he left for Europe.

Q. It was sometime after you arrived in New York? A. Yes.

Q. And do you recall exactly what she stated to you when she spoke about the attorney? A. I don't know just what you mean. I think the family knew.

Mr. Walscheid: I object to what the family knew.

Q. You ought to know what she stated to you about the attorney? A. On account of that accusation he had made she wanted to see what an attorney would say about it.

By the Vice-Chancellor:

Q. What accusation? A. Of her misconduct in Rochester.

By Mr. Blumberg:

Q. Did she say she had been to an attorney or was going to see an attorney?

Mr. Walscheid: I object to that question. She said within two weeks of her arrival her sister had told her she had seen the attorneys.

Witness: I don't think I said that.

Vice-Chancellor: She also made another statement. However he ought to find out what the fact was.

Q. What was the fact about consulting an attorney? A. She was beginning to think that she could not live longer with him.

By the Vice-Chancellor:

Q. When did she tell you that? When was it that you first ascertained that she had been to see an attorney? A. I can't remember the exact date.

Q. Did she tell you when you got there she had been to see attorneys before you got there? A. No.

Q. When did she tell you she had been to see attorneys while you were living there? A. It was sometime while I was living there she said she had seen attorneys.

By Mr. Blumberg:

Q. Did she ever tell you why she was going to see the attorneys? A. Yes.

Q. Were you ever in an attorney's office in New York?

Vice-Chancellor: She said no. She said she was never in the office.

Witness: That's correct.

Q. When Doctor McKee left for Europe he left some money with your sister, did he not? A. Yes, some.

Q. In your presence? A. I overheard conversations regarding it.

Q. What conversations did you overhear? A. Several days before he left he gave her $100.00 in money and she told him at that time that she had expenses to meet, that Billy's overcoat would be $25.00 and she had dry cleaning and storage charges to meet and one $10.00 for an X-Ray for her teeth. Then she read him an account of bills that she had to pay out of that money which left I think—the expenses amounted to almost $50.00, perhaps $3.00 less than $50.00—and she asked him if he would not pay for some of those things, but he refused. He said she had money enough. Then the morning he left he told her he had left some checks in his cash book. He left two checks for $100.00 each, one for $50.00 and one for $100.00 for emergency. She had asked him before that day if he would not make out the checks for the monthly bills which would be coming in the first of November for October bills. He said he would leave no signed checks and she asked him to make out the checks to the particular parties and she would fill in the amount. He refused to do that and the

morning that he left there were several bills that came in. She asked him to make out checks for those and he said she had money enough.

Q. Did Doctor McKee hand Mrs. McKee the checks? A. He left them in his check book.

Q. Did he give Mrs. McKee the check book? A. I think he left it in his room.

Q. You just stated what Doctor McKee said when Mrs. McKee asked Doctor McKee to leave checks with the names of the creditors filled in, is that right? A. For the bills that were coming in.

Q. With the amounts in blank? A. To go to the particular parties.

By the Vice-Chancellor:

Q. To leave the amount of the check in blank so she could fill it in? A. Yes.

By Mr. Blumberg:

Q. And Doctor McKee replied to that what? A. That she had money enough to pay them.

Q. Mrs. McKee didn't leave that apartment while you were there? A. No.

Vice-Chancellor: There is no question about that.

Mr. Blumberg: I want to show it was an opportune time to leave.

Vice-Chancellor: She didn't anyway.

Recross Examination by Mr. Walscheid:

Q. Speaking about the occasion of going to the lawyers is the accusation you are talking about the conversation at the dinner table that night? A. Yes.

By the Vice-Chancellor:

Q. About the man in Rochester? A. Yes.

By Mr. Walscheid:

Q. Ten years before that? A. She said it was not until ten years after they were in Rochester that he had commenced to say anything about it.

Q. So that that occurrence would be ten years old?

Vice-Chancellor: Her answer shows that.

Q. On account of that accusation she went to a lawyer? A. Among other things.

By Mr. Walscheid:

Q. There was some packing going on while you were there wasn't there? A. Just what do you mean?

Q. Mrs. McKee did some packing of things while you were there didn't she? A. You mean in the way of small articles?

Q. Yes. A. A few small things.

Q. She packed up all the silverware didn't she? A. I think not, unless it was her own personal—I do not remember.

Q. What about her own personal silverware? A. She had some silverware.

By the Vice-Chancellor:

Q. Did you see her pack anything? A. No.

By Mr. Walscheid:

Q. Didn't you a moment ago say only her per-

sonal silverware? A. If any it would be only her personal silverware.

Q. And was it her personal silverware she was packing while you were there? A. I don't know whether she did or not.

Q. Then why did you say if any it would be only her personal silverware? A. I know she would not take anything that did not belong to her.

Q. I didn't ask you that. Didn't she pack up blankets while you were there? A. Not to my knowledge.

Q. Sure of that? A. No, I am sure of it.

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JOHN G. JANSEN, being sworn.

Direct Examination by Mr. Blumberg:

Q. Where do you live, Mr. Jansen? A. I live at 344 West 72nd Street, New York City.

Q. What is your business? A. Superintendent of Buildings.

Q. You were at one time superintendent of the building at 21 Claremont Avenue, New York City? A. I was superintendent there from 1924 until 1928.

Q. And what were your duties as superintendent of that building?

Vice-Chancellor: How are we concerned with that?

Q. Do you know Doctor McKee? A. I do.

Q. How long have you known Doctor McKee? A. For about—not quite a year.

By the Vice-Chancellor:

Q. Did you know him at the time you were superintendent? A. I did.

By Mr. Blumberg:

Q. Do you know Mrs. McKee? A. No, I had never met Mrs. McKee.

By the Vice-Chancellor:

Q. You first became acquainted with Doctor McKee under what circumstances? A. When he took a room in that apartment in 1925.

Q. An apartment in that house that you just mentioned? A. Yes.

By Mr. Blumberg:

Q. Do you know what room he took? A. Apartment No. 72, Room 703.

Q. Did he rent the room from you? A. No.

Q. Did you collect the rent of that room? A. No.

Vice-Chancellor: I understood him to say he rented one room of an apartment.

Witness: Yes, Columbia University Dormitory.

By the Vice-Chancellor:

Q. Was it the Columbia University Dormitory at the time that he rented this room? A. Yes.

Q. Who did he rent it from? A. From Columbia.

By Mr. Blumberg:

Q. Did you see the furniture that was moved up to that room? A. I did.

Q. Do you remember what furniture was moved up? A. Yes; a couch, desk, a bed and a chair. I dont' know what else. An outfit for a regular bedroom.

Q. What hours were you at the apartment? A. I was there practically all the time.

Q. Did you sleep there too? A. Yes.

Q. You had an apartment yourself there? A. Yes.

Q. Did you see Doctor McKee in that apartment? A. Yes.

Q. When did you see him there? A. I saw him off and on; evenings when he came in, in the afternoons and in the mornings a little after eight o'clock when he went to the class room.

By the Vice-Chancellor:

Q. You mean when he left the building? You did not know where he was going? A. No.

By Mr. Blumberg:

Q. You saw him when he left the Dormitory? A. Yes.

Q. Did you see him at evening? A. Yes.

Q. Did you have occasion to go to his room? A. No. Once there was something wrong with the radiator.

Q. Did he have visitors in that room? A. That I couldn't say.

Q. Any students come up there? A. No.

Q Did the doctor get his mail there that you know of? A. There was mail coming to the doctor off and on.

Q. And you knew that the doctor had an apartment in New Jersey at that time. A. No, I did not.

Q. And you know how long he occupied that apartment—that room rather? A. He occupied the room from—he moved in the late summer and moved out the following year, 1922, I believe—August or September. I don't know exactly.

By the Vice-Chancellor:

Q. He was there about a year then? A. About that.

Q. You say he came there about mid-summer? A. Yes.

Q. And he remained up to the period that you mentioned? A. Yes.

By Mr. Blumberg:

Q. Do you know where his furniture was taken after he moved out? A. I don't know, but Columbia moved him out.

By the Vice-Chancellor:

Q. You mean somebody from there? A. Yes, they have their own trucks.

By Mr. Blumberg:

Q. Did you have charge of the basement too in that building, Mr. Jansen? A. I did.

Q. Was any of Doctor McKee's furniture stored in the basement? A. No.

Q. At anytime? A. Not that I knew of.

Q. You would know? A. I would probably know.

Q. But you don't know of any of his furniture being stored? A. To my knowledge nothing.

By the Vice-Chancellor:

Q. Did you try to keep posted as to what was kept in the basement? A. I did, yes.

By Mr. Blumberg:

Q. How large a room was that at 21 Claremont Avenue? A. A fair sized room.

Q. Did it have closets there? A. One closet.

Q. Did you look in that closet at anytime? A. Well, no, I never looked at the closet while the doctor lived there.

Q. Did you see any clothes around the room—Doctor McKee's clothes? A. Well, I couldn't tell you; I don't know.

Q. Did you take care of Doctor McKee's laundry? A. I didn't take care of it, the laundry man delivered it at the building to the doctor.

By the Vice-Chancellor:

Q. Was that laundry delivered there periodically or frequently? A. I think frequently; it was delivered in care of the elevator man.

Q. How often if you know? A. Twice a week.

Cross Examination by Mr. Walscheid:

Q. Are you the superintendent of the building now? A. At the present time, no.

Q. Are you doing anything now? A. Nothing at all.

Q. And you live at 344 West 72nd Street, New York City? A. Yes.

Q. Are you retired? A. No.

Q. Out of a job? A. Out of a job, that's right.

Q. How long have you been out of a job? A. About two months.

Q. And how did you come over here, under subpoena? A. I did not.

Q. Who requested you to come? A. Mrs. Mc-

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Kee somehow or other found my address and she asked me whether I was willing to come over.

Q. And she urged you did she? A. Yes.

Q. Then you did meet Mrs. McKee before today? A. Before today, yes.

Q. When did you first meet her? A. At that time.

Q. How long ago was that? A. About two weeks ago—it is three weeks ago.

Q. And did she come and talk to you about Mr. McKee living there at 21 Claremont Avenue? A. No, not at 21 Claremont Avenue.

Q. She didn't come to talk to you about his living at 21 Claremont Avenue? A. Yes, she did.

Q. What did she say to you? A. She just asked me whether I knowed Doctor McKee, and I said yes.

Q. Is that all? A. Well, she asked me whether he had a room there and I said yes, and how long, and I told her.

Q. You had no records at that time had you? A. Not exactly the dates.

Q. You mean you have no written records of what transpired back there at 21 Claremont Avenue? A. About what?

Q. About the things that transpired at 21 Claremont Avenue?

By the Vice-Chancellor:

Q. Did you refresh your recollection from records or were you depending upon your memory? A. No, upon my memory.

By Mr. Walscheid:

Q. And what you have testified here is dependent upon your memory? A. Yes.

Q. Did Mrs. McKee offer to reimburse you for your time in coming over here? A. No.

Q. Did she pay you anything to come over here? A. No.

Q. Did she promise you anything? A. She has not paid me anything and I have not taken it up with her.

Q. Do you expect to be compensated?

Vice-Chancellor: Suppose he did; would that make any difference?

By the Vice-Chancellor:

Q. You didn't take it up with her? A. No, not at all.

By Mr. Walscheid:

Q. How big a house is that 21 Claremont Avenue? A. A ten-story apartment house.

Q. And how many apartments in there? A. Forty.

Q. And how many rooms in the various apartments altogether? A. There are twenty eight-room apartments and twenty four-room apartments.

Q. 240 rooms? A. Yes.

Q. And these rooms were used almost exclusively as single rooms, weren't they? A. About half of the building.

Q. Does that mean the upper floors were used as single rooms? A. No, the floors that are not used as professors families.

Q. How many rooms were not rented to professors families at that time? A. At the time I came there were about one-half of them was Dormitory and half was families.

Q. And the rest of the rooms were used as dormitory rooms? A. Yes.

Q. And used by professors? A. Well, no. In 1925 they allowed professors to come in. We had boys at that time.

Q. Prior to that time you had boys? We are talking about 1925? A. Yes.

Q. And in 1925 professors came in? A. Yes.

Q. Did they occupy any particular floors? A. Just the rooms which were vacant for that purpose.

Q. Weren't particular floors at that time assigned to professors? A. They were not assigned to professors. They were dormitory for boys and professors who desired to live there.

Q. And a large number of professors at that time did have rooms in that apartment? A. A few of them.

Q. And they used those rooms as rest rooms, didn't they? A. They are rented out for the season.

Q. But professors use them for rest rooms? A. And for living rooms.

Q. But they were used both as rest rooms and living rooms? A. Yes.

By the Vice-Chancellor:

Q. Do you know whether any of those rooms were used merely as rest rooms so-called? A. I had not charge of that; I couldn't tell you. They are just rented out to the professors for the winter season.

Q. Could you tell whether the parties who rented them were renting them for rest rooms as just described or for living apartments? A. For living rooms.

By Mr. Walscheid:

Q. You couldn't tell that could you? A. I could tell that because they came there day and night.

Q. How do you know that? A. Because I saw them.

Q. You saw men in the morning and at night? A. Yes.

Q. But you don't know whether they remained in those rooms over night, do you? A. I couldn't tell.

Q. You can't tell us that can you? A. No, I am not in the rooms.

Q. It wasn't part of your business to go into those rooms in the mornings to make beds? A. No, only when I was called up for repairs.

Q. And that was always some time in the day? A. And in the mornings and nights too.

Q. And that meant you covered 240 rooms in that way? A. Yes.

Q. And you lived in the same buildings? A. Yes.

Q. Did you live in the same building? A. Yes.

Q. Where did you live, in the basement? A. In the basement.

Q. How many rooms did you occupy? A. I occupied five rooms.

Q. And you didn't live alone, did you? A. No, with my family.

Q. What does you family consisted of? A. A wife and grandchild.

Q. Then your wife helped you to take care of the place? A. No.

Q. She didn't take any part in it at all? A. Not at all.

Q. You don't know upon what date Doctor McKee took that room, do you? A. That I can't recall.

Q. And you don't know what date he gave up the room, do you? A. I don't know.

Q. And there was lots of laundry delivered there, wasn't there? A. Yes.

Q. And there was laundry delivered to the whole house? A. Yes.

Q. Did you have any other duties to perform excepting to make these repairs when called upon? A. That's all.

Q. Did you have to put out ash barrels? What were you doing? A. I had the superintendence of the building.

Q. You had nothing to do with the laundry, did you? A. No.

Q. And you had nothing to do except watching people coming in and out? A. No.

Q. And you can't tell us any particular night—any one particular night that Doctor McKee stayed over in that room, can you? A. No, I couldn't tell you.

Q. And you never had any occasion to inquire into that subject did you, whether he stayed there over night? It didn't concern you, did it? A. No.

Q. And you can't of your knowledge tell us of any particular day in which you saw Doctor McKee as early as eight o'clock in the morning in that building? A. I can't tell you the date but I saw the doctor coming down from his apartment and I spoke to him in the building.

Q. Once or twice? A. Often.

By the Vice-Chancellor:

Q. How many times during that year? A. At least fifteen or twenty times.

By Mr. Walscheid:

Q. During the daytime? A. In the afternoon.

Q. Did you see him come down in the evening? A. Going up in the evenings.

Q. Did you see him come down in the evening? A. No.

Q. You never took any laundry to Doctor McKee's apartment, did you? A. I did not.

Q. And you had nothing to do with the mail, did you? A. No.

Q. And you never took any mail to this room of Doctor McKee upstairs? A. No.

Q. And you had no occasion to know anything about Doctor McKee's laundry or mail? A. I had no occasion.

By the Vice-Chancellor:

Q. But you say you saw it? A. Yes.

By Mr. Walscheid:

Q. When did you see any? A. I saw it come in and took care of it.

Q. When? A. Saturday as a rule.

Q. Only on Saturday? A. That's when they dropped the laundry.

Q. Did you take care of the laundry? A. No, the elevator man.

Q. All the laundry came in there, didn't it? A. Yes.

Q. And it came in in big bundles? A. Yes.

Q. And the elevator man assorted those bundles and brought them to the various rooms? A. No, he puts them in the closet.

Q. You never took any part in it? A. No.

Q. How should you remember that any laundry went to Doctor McKee's room? A. Because he was my laundry man also.

Q. That doesn't indicate that he took laundry

to Doctor McKee's room? You never saw any laundry put in Doctor McKee's room. A. No.

By the Vice-Chancellor:

Q. How do you know some laundry came there for him A. It is marked and placed in the closet.

Q. Did you see any laundry there with Doctor McKee's name on it? A. Yes.

By Mr. Walscheid:

Q. How can you say that? A. Because I saw the man coming in with it.

Q. Isn't it the fact that you say that because the man brings all the laundry for all the tenants in that house? A. There is different laundry men.

Q. But you never had occasion to examine into the question of whether or not there was any laundry among that laundry for Doctor McKee? A. I saw his name marked on the bundles.

Q. How many bundles of laundry was delivered on Saturday? A. I don't know.

Q. Was there over a hundred bundles there? A. I don't know.

Q. You had 240 rooms? A. Yes, but the dormitories the college takes care of that. They don't send the laundry out.

Q. Who don't? A. The dormitories.

Q. How do you know?

By the Vice-Chancellor:

Q. What do you mean they take care of it? A. It is taken care of by the housekeeper.

By Mr. Walscheid:

Q. Don't they send out shirts and such things? A. That I couldn't tell you.

Q. That you don't know? A. I had nothing to do with it; it is up to the housekeeper.

Q. You didn't deliver any mail to Doctor McKee's room upstairs, did you? A. No.

Q. And you never actually saw anybody deliver any mail to Doctor McKee's room? A. No.

By the Vice-Chancellor:

Q. But you did see mail come in addressed to Doctor McKee? A. Yes.

By Mr. Walscheid:

Q. Where was that put? A. On the table.

Q. Downstairs? A. In the main hall.

Q. Downstairs? A. Yes.

Q. And on the table in the main hall was mail for everybody else? A. For everybody.

Q. Isn't it a fact that you are assuming that because Doctor McKee had a room in that house that necessarily he received mail there?

By the Vice-Chancellor:

Q. Are you assuming that? A. No, I seen mail there. I assorted mail sometimes. I helped out when they were very busy.

By Mr. Walscheid:

Q. How can you remember that at this time? You had never given that matter a thought since 1925? A. I have a good memory.

Q. That's your only reason? You hadn't given this matter any thought since 1925, had you? A. No.

Q. And since 1925 you had no occasion to think

that Doctor McKee had any laundry coming there? A. Since 1925 the laundry was coming in.

Vice-Chancellor: He said that the doctor lived there in 1925 and 1926.

Q. Since 1925, since he first started to come here up to about three weeks ago this subject of Doctor McKee living there was a dead topic with you, wasn't it?

Vice-Chancellor: Why do you say that when he lived there in 1926?

Mr. Walscheid: I will change the question.

Q. Since he left there you have not had anything to think of this matter until the time that Mrs. McKee came to you? A. No.

Q. You didn't think of it? A. No.

Q. You say that Doctor McKee moved in there in 1925? A. Yes.

Q. When? A. In the early fall.

Q. Didn't Mrs. McKee tell you that a couple of weeks ago? A. No.

Q. What did she tell you about that? A. She didn't tell me anything.

Q. Didn't she ask you whether you remembered whether he lived there in the fall of 1925? A. No, she did not ask me that; she asked me whether I knowed Doctor McKee and whether he lived there, and I said yes.

Q. And didn't she tell you he was supposed to live there in 1925? A. No.

Q. Do you know when he moved in in 1925? A. The early fall.

Q. That's all you can tell? A. Yes.

Q. And you don't know how long he kept that room? A. Until the next year 1926.

Q. Don't you know he was out of there during a part of the time? A. He moved out in 1926.

Q. When in 1926? A. After the winter season was over which was on June 15th.

Q. Did you keep any record of that? A. It is not necessary for me to keep a record of it.

Q. It is just your recollection again? A. Yes.

Q. And coming back to the mail. What mail was delivered to Doctor McKee at this place? A. I couldn't tell you what mail.

Q. Was it periodicals? A. I don't know.

Q. Any letters from Mrs. McKee? A. Not that I know of.

Q. Would you have known it?

By the Vice-Chancellor:

Q. Do you know what the character of mail was? A. No, I couldn't tell you.

By Mr. Walscheid:

Q. What other professors had rooms there? A. Professor Buckhardt.

Q. And he lived there? A. Yes.

Q. Stayed there over night? A. Yes.

Q. How do you pronounce that? A. Buckhardt.

Q. Did he receive his mail there? A. I couldn't tell you; I haven't been through the mail enough for that.

Q. You couldn't tell as to him? A. I know there was for the doctor. Yes, there was some for Professor Buckhardt too.

Q. Did he receive his laundry too? A. That I don't know. He was a married man; I don't know.

Q. You don't remember as to Doctor Buckhardt.

By the Vice-Chancellor:

Q. Did he live there with his family? A. Yes, he lived first with his family and he bought a house and he came back and lived in the dormitory in Room 70.

By Mr. Walscheid:

Q. Did he have a single room there in 1925? A. Yes.

Q. And how long did this Professor Buckhardt stay there from 1925 as a single roomer? A. I presume for the winter.

Q. Don't you know? Did you see him coming up and downstairs? A. Yes.

Q. Did you see him coming downstairs in the morning and going up at night? A. Yes.

Q. Who else lived there in 1925 and 1926 in single rooms—I mean professors? A. I don't know; I couldn't tell you.

Q. Don't know of any others? A. There were several others.

Q. Did you know them to be professors? A. I knew them by sight.

Q. Did you talk to them? A. Yes.

Q. And knew their names? A. Yes.

Q. And can't tell me any others? A. Professor Reeves.

Q. What room did Professor Reeves have? A. I don't know.

Q. What room did Professor Buckhardt have? A. 701.

Q. And what room did Professor McKee have? A. 703.

Q. Who had 702? A. I don't know.

Q. Professor Reeves was there too? A. Yes.

Q. You say there were only a few professors there? A. Also some boys.

Q. I don't care about the boys. Was Professor Reeves there in the fall of 1925? A. Yes.

Q. And in the spring of 1926? A. Yes.

Q. And you don't know his room? A. I can't recall his room.

Q. Did he stay there all night? A. Yes.

Q. Did he have his mail delivered there? A. I couldn't tell you.

Q. Did he have his laundry delivered there? A. I don't know.

Q. Why don't you know as to these men? A. I don't.

Q. Is there any difference between Doctor McKee and these men? A. Yes.

Q. What's the difference? A. I didn't know those men but I knew the doctor.

Q. But you knew Doctor Reeves? A. By sight. I talked to the doctor.

Q. You talked to Doctor Reeves too? A. Off and on.

Q. Is there any difference between your talking to Professor Reeves and Doctor McKee? A. I got more acquainted with him.

Q. When? A. When he was living there.

Q. What did you do with Doctor McKee that made you more acquainted with him? A. Because I was talking to him every other day. Doctor Reeves I met not so often.

Q. Whenever you met Doctor Reeves to talk to it was in the middle of the day? A. I spoke to him in the morning and in fact frequently to Doctor McKee.

Q. But during the part of the time that Doctor McKee was there any other professors there besides those you have mentioned? A. There was one time.

Q. Was Doctor Balk there? A. I don't know him. That is not under my jurisdiction. They had a housekeeper there.

Q. They had a housekeeper there? A. Yes.

By the Vice-Chancellor:

Q. You mean the professors who had their families there? A. Yes, but not the dormitory.

By Mr. Walscheid:

Q. Who was that housekeeper? A. Mrs. Hayes.

Q. Is she still there? A. I don't think she is there any more now.

Q. And she also had an assistant there? A. Yes.

Q. What was her name? A. Miss Edden.

Q. And it was Miss Edden and Mrs. Hayes that had direct charge of the room occupied by Professor McKee, wasn't it? Mrs. Hayes was the housekeeper and Miss Edden was the assistant? A. Yes.

Q. You don't know which of these women took care of rooms 701 to 708? A. They had a maid there by the name of Savage.

Q. Is she still there? A. I don't know; I am away from there a year.

Q. And it was the duty of this Savage girl to clean the rooms every day? A. Yes.

Q. And do that in the morning? A. Yes.

Q. Do you know how early they do that? A. Nine o'clock in the morning they come in.

Q. And Mrs. Hayes would be there in the morning? A. She came in too.

Q. Didn't she live there? A. No.

Q. Miss Edden there? A. Yes.

Q. Did she live there? A. No.

Q. She came there too? A. Yes.

Q. Doctor Sherman, you knew him pretty well, didn't you? A. I heard of him.

Q. Didn't he occupy one of those rooms? A. I don't know whether he did or not.

Q. Didn't he occupy Room 705 during the time that Doctor McKee had the room? A. I didn't take care of those rooms.

Q. You didn't take care of Doctor McKee's room either? A. Yes, but I knew Doctor McKee.

Q. But you didn't take care of his room? A. Only on repairs.

Q. And you had no occasion to make any repairs while he was there? A. What do you mean?

Q. While Doctor McKee was there? A. I went there during the day.

Q. On one or two occasions? A. Yes.

By the Vice-Chancellor:

Q. You said you were in that room while Doctor McKee was there? A. Yes.

By Mr. Walscheid:

Q. On one or two occasions during the day? A. And at night time.

Q. What do you mean, about six or seven? A. About that time.

Q. And that's the latest that you have seen Doctor McKee in that room, isn't it? A. Yes.

Q. And on those occasions when you went up there it was to make repairs? A. Yes.

Vice-Chancellor: I think he said repairs to the radiator.

Q. What repairs did you make? A. The radiator.

Q. Did you personally make the repairs? A. Absolutely.

Q. What was the matter with the radiator? A. It was leaking.

Q. Wasn't that in June, 1925? A. No, that was in the winter time.

Q. When in the winter time? A. I can't tell the date.

Q. What month in the winter time? A. They were leaking in December and January.

Q. Of what year? A. 1926.

Q. Can you say in Doctor McKee's room particularly they were leaking? At that time of the year the radiators generally leak? A. We go through all the rooms and repair them.

Q. I know that, but you say you went to Doctor McKee's room as late as six o'clock for the purpose of making radiator repairs? A. I even went there later.

Q. A minute ago I asked you whether it was the latest when you went in there? A. Yes, but not to make repairs.

Q. Were you in there later when you saw him? A. If it was necessary.

Q. You went in on occasions to make repairs and you made them later than six o'clock when he wasn't there? A. Yes.

Q. How often did you do that? A. Not very often.

Q. As a matter of fact you weren't in the room to make repairs very often? A. No.

Q. But on occasions when you went later than six o'clock to make the repairs you didn't find Doctor McKee there? A. No.

Q. You didn't have charge of the furniture, did you? A. No, sir.

Q. And there was furniture in the basement, wasn't there? A. No.

Q. There was furniture of other professors in the basement? A. The married professors.

Q. Stored down there? A. Yes.

Q. Where was that stored? A. In the storeroom.

Q. So you had a storeroom in the basement? A. Yes.

Q. And was that a furniture storeroom? A. No, a trunk room.

Q. How large was that trunk room? A. Pretty good size.

By the Vice-Chancellor:

Q. Who had charge of that room? A. I did.

By Mr. Walscheid:

Q. You were the only person who put furniture in and out of that room? A. No.

Q. You mean you were there when furniture was put in? A. There was only one other man who had a key.

Q. Who was that? A. The porter.

Q. The assistant porter? A. No, the porter. He was under my employ.

Q. Who was he? What's his name? A. I don't know; we had so many.

Q. Who was the one that was there at that time? A. Lipdeke his name was.

Q. Did any of the assistant porters have keys? A. Just the porter.

Q. Did they all have keys? A. Just the porter.

Q. But each one of these porters who assisted you had the key? A. When they left I took the key off them.

Q. Isn't it the fact the elevator boys had keys? A. No.

Q. Did you keep a record of the furniture that was in storage? A. Yes.

Q. An inventory? A. Yes.

Q. When? A. For professors' families that stored things.

Q. Was that inventory in existence when you left there? A. No.

Q. Did you take it with you? A. I destroyed that when I left. It is not necessary; the people know it is down there in the storeroom.

Q. How do they know it is down there? A. Because they come down and look before you move out.

By the Vice-Chancellor:

Q. You checked up before you left? A. Yes.

By Mr. Walscheid:

Q. Isn't it the fact that Doctor McKee gave up this room some time during the period that he had it? A. I have nothing to do with that part.

Q. Don't you know he was gone for some time? A. Doctor McKee didn't tell me he was going.

Q. Didn't you see he was gone? A. I went out after he had left.

By the Vice-Chancellor:

Q. When do you mean? A. 1926.

Q. You mean when he finally left? A. Yes.

Q. Counsel is trying to find out whether between the time he moved in in 1925 and the time he left in 1926, there was a part of the time when he was not living there? A. That I don't know.

By Mr. Walscheid:

Q. Don't you know that during the summer of 1926 he was not there at all? A. I couldn't tell.

By the Vice-Chancellor:

Q. I understood you to say he left there in June 1926? A. After the winter session.

Q. That is, you mean, he left after the school session of that period which ended June 15th? A. That ends on June 15th. I did not see Doctor McKee there after that.

By Mr. Walscheid:

Q. June 15, 1926 was the last time you saw Doctor McKee at 21 Claremont Avenue? A. Yes.

Q. And after that you never saw him again at 21 Claremont Avenue? A. No, I haven't seen him since.

Q. And you didn't see him move out did you, out of 21 Claremont Avenue? A. No.

Q. So that you did not see his furniture go out of 21 Claremont Avenue? A. No.

Q. And do you know that in the fall of 1925 he had a room at John Jay Hall? A. I don't know.

Q. Do you know where John Jay Hall is? A. I do.

Q. Is it some distance away? How far is it? A. A couple of blocks.

Q. Isn't it the fact that in the fall of 1926 Doctor McKee took his furniture out of 21 Claremont Avenue to John Jay Hall? A. I couldn't tell you.

Q. You can't tell whether he moved it out at that time? A. No.

Q. And you didn't see it go out in June? A. No.

Q. And you don't know whether it stood in the room upstairs all that summer, do you? A. I couldn't tell you.

Q. So you don't know it stood in that room 703 of that summer of 1926? A. I couldn't tell you.

Q. Isn't it possible that when he left in June of 1926 that furniture went downstairs and remained in storage until the fall of 1926? A. No.

Q. Was it impossible? A. Because I didn't store it for the doctor; nobody else could.

Q. Couldn't the porter store it? A. He had no authority; he would have to ask first the superintendent.

Q. That's the rule? A. Yes.

Q. Because he had no authority?

By the Vice-Chancellor:

Q. You said you kept an inventory of what went in there? A. Yes.

By Mr. Walscheid:

Q. You kept an inventory of what you put in there under authority? A. Yes.

Q. Was there anything from keeping that porter without your authority from taking anything and storing it? A. When he gets anything from the apartments he has to report it.

Q. Suppose he doesn't report it, you don't know about it? A. Yes, but he has no right to go into either one of the dormitories.

Q. Suppose he did do it? A. He is not allowed to; the housekeeper would stop him.

Q. So your reason for saying that Doctor McKee stored no furniture there in the summer of 1926 is because you didn't do it, and because nobody else had authority to do it and it wasn't reported to you, and the housekeeper wouldn't permit it? A. No.

Q. That's your reason. But you had no check-up on the furniture in storage in the summer of 1926 to see whether Doctor McKee's furniture was there or not? A. There was no furniture in there from the doctor.

Q. How do you know that? A. Because I know it; I didn't have to check up for the doctor.

Q. That's your reason and your only reason, isn't it? A. Yes.

By the Vice-Chancellor:

Q. When things were put in that room did the party who put them there get a receipt for them? A. No, they report to me and I put it in the book, the amount of trunks and furniture.

Q. What do the tenants who put trunks and furniture in that storage room get to satisfy them that they have those things stored there? A. The professor's family have a privte room; just one key they all have and that is given to the porters.

Q. But that did not apply to Professor McKee? A. No.

By Mr. Walscheid:

Q. Were there two store rooms? A. Yes.

Q. Before you told me—you didn't intend to mislead me, but you said there was one? A. One for dormitories and one for professors' families.

Q. For the family storage room you alone had the key, and for the other storage room you and the porter had a key? A. Yes.

Q. And is the dormitory storage room larger than the private family room? A. Yes.

Q. Now Doctor McKee didn't have much furniture in that room? A. He had big pieces.

Q. He had what you mentioned? A. Yes.

By the Vice-Chancellor:

Q. You say they were big pieces? A. Yes.

By Mr. Walscheid:

Q. You mean a bed of an ordinary size? A. But the others were big; a big couch, a desk and a chair.

Q. You mean by big they were bigger than the

ordinary furniture you saw in those rooms? A. Yes, a little heavier.

Q. Rooms 701, 702, 703, 704, 705, 706, 707 and 708 are all rooms in one apartment? A. Yes.

Q. Apartment No. 72? A. Yes.

Q. Isn't it a fact that apartment No. 72, meaning all of these rooms, was vacated about June 1, 1926, because it was then being arranged and repapered for single family use by one professor? A. The doctor's room, yes.

Q. So that the doctor's room was then vacated? A. We took the furniture from that room to room 704, and when the room was decorated we took the furniture over from 704 to 703.

Q. That was in the fall of 1925? A. Yes, when he moved in.

Q. I am talking about June of 1926? A. I don't know about that.

By the Vice-Chancellor:

Q. The question is whether in June, 1926, the rooms were given up by the occupants to be used by some professor who was to occupy them? A. I don't know that.

Q. Why couldn't you remember that if you say that Doctor McKee lived there until June 15th? A. Yes, but I didn't see any furniture going out.

By Mr. Walscheid:

Q. But you knew that the school term was over then? A. Yes.

Q. And you knew that Doctor McKee ordinarily would leave? A. He had a right to stay during the summer.

Q. He had a right to stay there as long as he paid rent. Just try and remember that those rooms

were all repapered? A. They was not papered to allow other people in the house.

Q. Will you say they were not repapered? A. Yes, in the doctor's room only.

Q. On June 1, 1926? A. 1925.

Q. I am talking about 1926. I am trying to refresh your recollection. You may not remember it but about June 1, 1926 Professor Buckhardt, Professor McKee, Professor Howe, Professor Sherman, Professor Reeves and Doctor Balk moved out of Rooms 701, 702, 703, 704, 705, 706, 707 and 708, because at that time those rooms were being done over as a family apartment for a professor with his family who was then coming in by the name of Campbell? A. Right, he moved in in the fall.

By the Vice-Chancellor:

Q. When do you say this took place? A. It didn't take place in June.

By Mr. Walscheid:

Q. You say it did not take place in June? A. No.

Q. When did it take place? A. In August.

Q. And at that time all these professors got out? A. At that time they had to get out.

Q. And at that time Professor McKee's furniture went out? A. I didn't see it.

Re-direct Examination by Mr. Blumberg:

Q. You stated that Doctor McKee wanted his room decorated when he moved in? A. Yes.

Q. How long after he moved in? A. As he moved in he wanted his room painted and the painter—I took the painter up to make arrangements, and

so finally the painter and I suggested to the doctor that the Columbia authorities would do it free of charge and we took the furniture out to 704, and when the job was finished we put the furniture back in 703.

Q. Did Doctor McKee live in 704 while Room 703 was being painted? A. No.

By the Vice-Chancellor:

Q. He wasn't in the building then? A. The furniture was there.

Re-cross Examination by Mr. Walscheid:

Q. When did he come there to live? A. When the room was finished.

By the Vice-Chancellor:

Q. When was that; what month? You said the late fall? A. Yes, but I don't know the month.

By Mr. Blumberg:

Q. Late summer or late fall? A. Late fall.

Q. You don't remember the date? A. No.

Q. No idea of the date? A. No.

Q. How many people worked for you in this apartment house? A. I had one porter; I had one fireman, and I had three elevator men, and there was one scrub woman and two switchboard operators.

Q. Did Joe Brandon work for you? A. Yes.

Q. What was his job? A. Elevator man.

Q. How many single rooms were being occupied by professors, do you know off-hand? A. The housekeeper took care of that.

Vice-Chancellor: He said about half and half.

Q. Half of the rooms were occupied by professors and their families and the other half occupied by students? A. Yes.

Q. How many professors were occupying those single rooms? A. Not so many.

Q. Who did you know best of these professors?

Mr. Walscheid: I object to it as leading.

Q. That was the only years 1925 and 1926 that professors lived in single rooms and dormitories? A. Yes.

Q. They never did that before, did they? Yes.

Q. They never did that after that? A. After that from time to time.

Q. There were professors after 1926? A. Yes.

Q. In different apartments? A. Yes.

Q. Did these dormitory rooms have Columbia furniture there? A. All Columbia University furniture.

By the Vice-Chancellor:

Q. Except Doctor McKee's room? A. Yes.

By Mr. Blumberg:

Q. And Doctor McKee was the only professor that had his own furniture? A. Yes.

By Mr. Walscheid:

Q. Did they take out the Columbia furniture to make room for him? A. Yes.

Q. He took that out and substituted his? A. We took that out.

JOE BRANDON, being sworn.

Direct Examination by Mr. Blumberg:

Q. You live in New York, Mr. Brandon? A. In New York, yes, sir.

Q. And do you work at 21 Claremont Avenue now? A. Yes.

Q. Still work there? A. I do.

Q. Did you work there in 1924? A. Yes.

Q. In 1925? A. Yes.

Q. In 1926? A. Yes.

Q. What do you do there? A. Elevator man.

Q. Did you work there day time or night time? A. Both.

Q. How long a shift did you have each day? A. Sometimes twelve hours and the next shift eight hours.

Q. Do you know Doctor McKee? A. I do.

Q. Did he live at 21 Claremont Avenue? A. For a short time as I know.

Q. For how long do you remember? A. I don't remember; no more than four or five months that I remember.

Q. Didn't he live there for a year? A. No; I really don't know.

By the Vice-Chancellor:

Q. What makes you say four or five months? How do you remember that? A. That was the longest I could recollect.

Q. How do you recollect that against any other period of time? A. It would be as much as I could remember.

Q. If you couldn't remember that, how do you remember it was four or five months? A. My memory would serve me.

Q. Do you remember when he left to live there? A. No.

By Mr. Blumberg:

Q. Did you see him every day?

Mr. Walscheid: I object to the form; it is leading.

Q. How often did you see him? A. Not more than once or twice a week.

By the Vice-Chancellor:

Q. Who did you see about this case? A. Mrs. McKee.

Q. When? A. About a month ago.

By Mr. Blumberg:

Q. Did you see Doctor McKee about the case? A. About three weeks.

Q. After when? A. After I saw Mrs. McKee. I seen him a month ago—that is two or three weeks I seen him.

By the Vice-Chancellor:

Q. They each had a talk with you? A. Yes.

By Mr. Blumberg:

Q. Did you tell Doctor McKee that Mrs. McKee had come to see you? A. Yes.

Q. Is that why Doctor McKee came to see you? A. I don't know.

Q. What did you tell Doctor McKee—that Mrs. McKee had been to see you? A. He was in the apartment that day.

Q. Did you tell him what Mrs. McKee asked you? A. Yes.

Q. When you did see Doctor McKee there did you see him there often? A. No, I didn't so often to tell you the truth, because I was on every other week.

Q. What do you mean every other week? A. One week nights and the other week days.

Q. Which week did you see Doctor McKee? A. I seen him occasionally sometimes in the day as well as in the night when I worked.

Q. You did see him at night when you worked? A. Yes, sometime coming around evening there. I couldn't tell what hour.

Q. You weren't the only elevator man there? A. No, I wasn't.

Q. Do you know what room the doctor occupied? A. Apartment 72.

Q. What room? A. I don't remember the number of the room, but one of the rooms.

Q. Were you ever in that room? A. I don't remember if I was.

Q. Do you remember taking furniture to that room? A. No, I wasn't the one to do that.

Q. Did you take the furniture out? A. No, I wasn't the one for that.

Q. Did you see a man decorating that room? A. No.

By the Vice-Chancellor:

Q. You would have no occasion to go to that room? A. No.

By Mr. Blumberg:

Q. Did you ever see the mail? A. I would have nothing to do with his mail; they have a girl for

that. It is supposed to be delivered by the house superintendent, that is, they have a girl attends—maybe I have got that mixed up. Yes, the mail that comes in I think had to do with it and take it and put it aside on the table.

Q. You can read, can't you? A. Yes.

Q. You can read addresses on letters? A. Yes.

Q. Did you see any letter addressed to Doctor McKee? A. I have seen a letter addressed to him.

Q. You have? A. I have.

Q. And you sort it out and put it aside? A. Yes, on the table.

Q. Were there boxes downstairs for professors' mail? A. Yes.

Q. Did you ever put any mail in Doctor McKee's box? A. I remember I put a letter there.

By the Vice-Chancellor:

Q. Only one? A. Only one or two; there wasn't much more than that.

Q. Was it a letter or a circular? A. It might be a circular; sometimes when you see a letter I don't pay much attention.

Q. A piece of mail you mean? A. Yes.

By Mr. Blumberg:

Q. U. S. postage stamp on it? A. Yes, there was a stamp on it.

Q. Did you have anything to do with taking laundry up to rooms? A. No, I never had anything to do with that.

By the Vice-Chancellor:

Q. Did you see any laundry come there for Doctor McKee? A. I saw one bundle come there for him.

By Mr. Blumberg:

Q. But you didn't take it up? A. Somebody must have left it on the stairs.

Q. Did you see Doctor McKee there at eight o'clock in the morning? A. I don't remember what hours. I go on at nine o'clock. Once in a while I might see him at half past nine or ten.

By the Vice-Chancellor:

Q. Going down on the elevator? A. Yes, and going outside.

Cross Examination by Mr. Walscheid:

Q. So that once or twice during the whole time you were there you saw him in the morning? A. Not more than that time.

Q. And you, of course, cannot say whether Doctor McKee slept in that room night after night? A. That I couldn't say, sir.

By the Vice-Chancellor:

Q. You didn't know he slept in the room? A. No.

By Mr. Walscheid:

Q. You never knew he slept in the room? A. No, I just take the people up.

Q. Isn't it the fact that the two times when you saw Doctor McKee was in the early afternoon? A. Yes.

Q. About two o'clock? A. About two o'clock; something like that.

Q. And isn't it the fact when you saw him on

these occasions he would leave again in an hour or so? A. Yes.

Q. And you would not see him any more that day? A. Very little of him I would say.

Q. He would come in and he would leave in an hour? A. Yes; I saw him in the evening and go out again.

Q. On one or two occasions you did see him at night? A. Yes, in the early part of the night. I go on at seven and remember having seen him in the evening too, but seen him go out again.

By the Vice-Chancellor:

Q. How do you know that? Is there only one elevator running? A. Yes, sir, only one elevator running.

Q. Only one elevator running after seven o'clock? A. There is only one elevator all the time.

By Mr. Walscheid:

Q. You say you saw one bundle of laundry so far as you can remember? A. Yes.

Q. Was it at the time he first came there? A. Yes.

Q. And was it a bundle of laundry that was sent over from 39 Claremont Avenue? A. It might have been.

Q. It was marked 39 Claremont Avenue, wasn't it? A. I couldn't say.

Q. And it followed Doctor McKee around to 21? A. I wouldn't make sure of the number, but it came to 21.

Q. You were in 21? A. I was.

Q. The bundle of laundry that you did see was marked from some other house, wasn't it? A. I am not quite sure, but it might have been.

Q. Who took care of the apartments 71 and 72 at 21 Claremont Avenue? A. The superintendent. dent.

Q. I mean the physical work? A. In that apartment a lady by name of Mrs. Hayes.

Q. What about Mrs. Savage and Miss Edden? A. They were the maids.

Q. They took charge of the rooms?

By the Vice-Chancellor:

Q. How would you know; you were the elevator operator? A. I took them to the different apartments.

Q. You knew they were employees and you took them up to the apartments and that's as far as you know? A. Yes.

Re-direct Examination by Mr. Blumberg:

Q. Did you take any students up to that room to see Doctor McKee? A. I remember taking one gentleman up. He asked for him but he wasn't there. He did go up to the apartment but I don't think he found him that day.

Q. Did Doctor McKee give you a written list of questions that were going to be asked you when you came here? A. No.

Q. Didn't give you any answers either? A. He didn't question me about anything whatever.

By the Vice-Chancellor:

Q. He didn't question you? A. He didn't ask me.

Q. He talked with you didn't he? A. Yes, if I saw Mrs. McKee, his wife; that's what he asked me.

Q. Is that all? A. As far as I can remember.

Q. You mean to say you and Doctor McKee didn't have a conversation about what you knew about his living there? A. Yes, he asked—I told him I knew him. He asked me if I remembered him, and I said yes. So he said, "You know I was living there?" and I said, "Yes," and he said, "Do you know the time," and I said, "No."

Q. Did he tell you the time he came there? What did he say to you about it? A. I don't remember. I said, "I don't know the time."

Q. Did Mrs. McKee tell you anything you can remember? A. No.

By Mr. Walscheid:

Q. By the time he came there you mean when he started to live? A. Yes.

By the Vice-Chancellor:

Q. What did he say to you about that? A. He asked me if I remember the day he came to live, and I said I didn't remember.

Q. What else did he say? A. He did begin to tell me the time he came but still I didn't remember the time.

Q. He undertook to tell you when he came there and you told him you didn't remember? A. Yes.

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CHARLES F. EYRE, being sworn.

Direct Examination by Mr. Blumberg:

Q. Where do you live? A. 39 Claremont Avenue.

Q. How long have you lived there? A. Why about fifteen years—going on sixteen.

Q. Are you the superintendent of that apartment? A. Yes, sir.

Q. Do you know Doctor McKee? A. I do.

Q. Know his wife? A. I do.

Q. They lived in that apartment? A. For about one year I believe.

Q. Do you recall the dates? A. I think they came in the fall of 1924 and went out in the fall of 1925.

Q. Do you know that Mrs. McKee was not living with Doctor McKee? Did you know that? A. I heard something about it afterwards.

Q. Do you know the date when Mrs. McKee left the apartment? A. No, I couldn't say.

Q. Do you know that Doctor McKee occupied that apartment with Mrs. McKee for a time? A. Yes.

Q. Do you know for how long a time? A. I couldn't say for sure.

Q. About how long would you say? A. I have no idea.

Q. Did Doctor McKee move his furniture from that place? A. I believe in August.

Q. 1925? A. Yes.

Q. And did Doctor McKee live there up until the time the furniture was moved out? A. I couldn't say for sure. I saw him in the hall once in a while.

By the Vice-Chancellor:

Q. You mean by that that's where you would meet him? A. Yes.

By Mr. Blumberg:

Q. Did you hear of Mr. and Mrs. Martin? A. Yes.

Q. Who were they? A. I believe they had Doctor McKee's apartment for a time.

Q. Have you no records of it? A. No. In the summer time professors sub-letted their apartments.

Mr. Walscheid: I ask it be stricken out. His testimony is they sub-let it on the first of March.

Vice-Chancellor: I will strike out about the time.

By the Vice-Chancellor:

Q. You don't keep a record of sub-tenants? A. No, no record at all.

By Mr. Blumberg:

Q. Do you know whether Doctor McKee lived with the Martins or not? A. I couldn't say.

Q. Were you the gentleman who changed the lock in that apartment? A. No.

Q. You know the lock was changed? A. I found it out about September first. The cylinders and the tumblers were changed.

Q. Do you know whether it was necessary to change the lock at all? A. It wasn't the last time I was up to see.

Mr. Walscheid: I object to that question.

By the Vice-Chancellor:

Q. Do you know the circumstances under which it was changed? A. I know quite often people take the locks out.

Q. Was there any complaint made to you as

superintendent that the lock was not right? A. No.

Q. You never knew about it? A. No.

Q. How did you come to find out about it? A. I have a master's key and it was the first day of September—I am not sure it might have been the fifth or sixth—when I was asked to open the door—

Q. And your master's key would not fit the lock? A. Yes.

By Mr. Blumberg:

Q. Did Doctor McKee tell you where he was going? A. No, he didn't; he moved out while I was away.

Q. When were you away? A. From the 15th of August to the 1st of September. The furniture was taken out during that time.

Q. That's the time Doctor McKee moved away? A. Yes.

Q. Did the doctor move out and leave his furniture there? A. There were other people in the apartment for a while and of course I couldn't say whether the doctor went up and stayed there.

By the Vice-Chancellor:

Q. You can't keep tract of it all? A. No, there are forty-four families.

By Mr. Blumberg:

Q. If Doctor McKee was going he would have notified you? Did he tell you? A. No.

Q. Did he tell you he was moving to 21 Claremont Avenue? No, sir.

Q. Didn't he ask you to have his mail forwarded to 21 Claremont Avenue? A. I have nothing to do with it.

Q. Did you not tell Mrs. McKee that Doctor McKee had requested you to forward the mail to 21 Claremont Avenue? A. No, I did not.

Q. Who is Sam Green? A. He is an elevator man.

Q. Did you see Doctor McKee speak to Sam Green at any time? A. Do you mean lately within the last month or six weeks?

Q. During the last two years? A. I never saw him speak to him but Sam told me he called him up to be a witness.

Q. Did you see a typewritten sheet of testimony in Sam's hand? A. No.

Q. Did you tell Mrs. McKee? A. I saw the paper but I didn't read it.

Q. What was the paper? A. It was just a piece of paper.

Q. Did Sam tell you what the paper was? A. He said it is his past testimony. It is a set of typewritten papers. I didn't see it. In fact I heard the boy reading it over to himself.

Q. Did you see Doctor McKee within the past year or two? A. I saw him about four weeks after Sam had been over here.

Q. Was it after Mrs. McKee spoke to you? A. No, before.

Q. Then you mean that you saw Mrs. McKee within the past four weeks? A. It was a little before. I think the doctor was there one evening and I saw Mrs. McKee the next evening, or something like that.

Q. They both wanted you as a witness? A. The doctor didn't ask me; Mrs. McKee asked me.

By the Vice-Chancellor:

Q. What did the doctor ask you? A. He come to pay me for the time for the man that I had to

put in substitution for Sam Green when he was over here. I was obliged to hire somebody else for the elevator and he paid me for that.

By Mr. Blumberg:

Q. Are you positive that Doctor McKee didn't come to see you after Mrs. McKee had spoken to you? A. I only saw Doctor McKee once.

Cross Examination by Mr. Walscheid:

Q. By Doctor McKee's moving you mean his furniture went out between August 15th and September 1st? A. Yes.

Q. And sometime prior to that you know that there was a Mr. Martin living in his apartment? A. There was somebody up there stopping there.

Q. You don't know when they moved in? A. I do not.

Q. You don't know whether he leased the apartment from Doctor McKee with or without his furniture? A. No, I couldn't say.

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HELEN NOYES, being sworn.

Direct Examination by Mr. Blumberg:

Q. You are a sister of Mrs. McKee? A. I am.

Q. And where do you live? A. In Carthage, Illinois.

Q. And you lived in the City of New York for sometime did you not? A. Yes.

Q. When did you live in New York? A. I was here almost all of 1917, and then I came back early in 1918 and was here until 1928.

Q. You were employed in New York City weren't you? A. Yes.

Q. What position did you have? A. For the last nine years I was in the Harriman Research Laboratory.

Q. Did you visit your sister and brother-in-law while you were in New York? A. Very frequently.

Q. Where did you go? A. To every home they had in New York. Do you want me to enumerate the different places?

Q. Yes. A. Ridgefield Park, New Jersey, and to Spuyten Duyvil, and at 180th Street, and at 39 Claremont Avenue.

Q. Did you talk to Doctor McKee when you visited these places? A. Very frequently, yes.

Q. Did you observe Doctor McKee's conduct towards your sister? A. Yes.

Q. And did your sister talk to you about Doctor McKee's conduct? A. At times, yes.

Q. And particularly do you recall visiting the McKees in 1924? A. Many times in 1924, yes.

Q. And at 39 Claremont Avenue? A. Yes.

Q. Did you overhear—

Mr. Walscheid: I object. I think she should tell her story.

Vice-Chancellor: I will permit that question.

Q. Did you overhear any of the conversations that Doctor McKee had with his wife in 1924? A. Whenever I was there. I was present at meals and at different times I heard whatever went on.

By the Vice-Chancellor:

Q. No secrecy about the conversations? They were made in your presence; you heard what was said? A. Yes.

By Mr. Blumberg:

Q. Did you ever see Doctor McKee strike—

Mr. Walscheid: I object.

Vice-Chancellor: I will sustain that objection. Let her tell her story.

Q. Did you ever see Doctor McKee strike Mrs. McKee?

Vice-Chancellor: That is too leading. Let her tell us what she saw.

Q. What did you see in that house in 1924? A. Do you mean at 180th Street or Claremont Avenue?

Q. At both places.

Vice-Chancellor: Take one at a time.

Q. At 180th Street?

Vice-Chancellor: When?

Mr. Blumberg: 1924.

By the Vice-Chancellor:

Q. You visited there. Now tell us what you observed that you consider out of the ordinary? A. I think it was late in 1923 or 1922 I was there for the Christmas celebration and Mrs. McKee and the children and I were in the dining room and living room—it had an archway between it. We were discussing the Christmas celebration and Mrs. McKee was standing in this archway between the dining room and living room when Mr. McKee came in from the back of the apartment and with-

out any words whatever took his fingers and scratched her entire face from her forehead down to her chin. She was quite red and obviously was suffering from it. So far as I could see there was no provocation for it.

Vice-Chancellor: I will strike that out. Tell us what happened.

Witness: Mrs. McKee expressed some pain and Mr. McKee became angry.

Q. What did he do or say? A. As near as I remember he went and laid down on a couch and didn't talk at all for a while.

Q. You say on this occasion without any provocation he came out from this room and set upon her and scratched her face? A. As he passed this door he scratched her. She was standing in the archway.

Q. And walked by her and scratched her face in the way you indicated and said nothing to her? A. I don't recall whether he said anything.

Q. And she expressed pain? A. And apparently he was angry.

Q. Unless you tell us what he said? A. I don't think he said anything.

By Mr. Blumberg:

Q. Did you say anything to Doctor McKee at that time? A. No, I did not.

Q. Did you see the defendant, Doctor McKee, after that that same night? A. Oh, yes, he was there lying on the lounge.

Q. Did any conversation take place between Doctor McKee and his wife that you overheard? A. I can't remember any. I think it was the same night, I am not quite sure it was that night, that Billy

and Margaret were talking about the Christmas tree and Mr. McKee said they were entirely too old for it. So Billy and I went down on the street and bought a Christmas tree. I paid for it and brought it in and then we asked him to help set it up and he refused to. He laid there on the lounge and criticized what we were doing. I don't remember any conversation between Mr. and Mrs. McKee at that time.

Q. This incident of the Christmas tree took place—

Mr. Walscheid: I object to it.

Vice-Chancellor: I will overrule that question as far as it went.

Q. What was the next conduct out of the ordinary which you observed?

Mr. Walscheid: I object to that.

Vice-Chancellor: I will sustain that. You have no right to characterize conduct as out of the ordinary.

Q. Did you stay in that house over night? A. You mean at Christmas? Yes, as I remember it I stayed from Christmas Eve until sometime Christmas Day at 180th Street.

Q. And did you overhear any conversations the following day between Doctor McKee and his wife? A. I can't recall.

By the Vice-Chancellor:

Q. To what your attention is being directed is 1922 or 1923? A. I can't tell you what Christmas it was.

By Mr. Blumberg:

Q. Do you remember the next time you visited the McKees? A. No, I can't tell you.

Q. Can you tell me any other occasion when you saw Doctor McKee strike his wife? A. I did not see him strike her.

By the Vice-Chancellor:

Q. Can you tell us of any occasion when you saw or heard Doctor McKee do anything to Mrs. McKee which we might consider was out of the marriage relation? A. How far back can I go?

Mr. Walscheid: Was it all back of this occasion?

Vice-Chancellor: You mean from that time on?

Mr. Walscheid: Either way.

Vice-Chancellor: Condonation comes in possibly for a great deal of it. It would not come in if there was a course of misconduct away back in the early years and they lived together thereafter and the course of misconduct continued. Then the condonation could be coupled up with the subsequent acts.

By Mr. Blumberg:

Q. Did you see anything out of the ordinary in Ridgefield Park? A. I saw things that disturbed me very greatly.

Q. What things did you see that disturbed you greatly?

By the Vice-Chancellor:

Q. Did they live in Ridgefield Park before 180th Street or after? A. Before.

By Mr. Blumberg:

Q. Did you visit that house in Ridgefield Park? A. Yes.

Q. How many times did you visit there?

Vice-Chancellor: Are you going to show a continuous course of conduct from Ridgefield Park?

Mr. Blumberg: There are certain courses of conduct which corroborate in a way the main part of my case.

Vice-Chancellor: I don't want to shut out anything that you may regard as material, but you have to regard that condonation rule, and if things happened away back in 1918 that might be subject to criticism and which may have constituted a matrimonial offense and they lived together thereafter, those offenses would be condoned unless there was another course of conduct which would revive those offenses.

Mr. Blumberg: That's what we claim.

Vice-Chancellor: All right, ask your questions.

Q. How many times did you visit Mrs. McKee in Ridgefield Park? A. A great many times. I was out there for a number of months from early in 1917 until the fall.

Q. You mean you lived in that home in Ridgefield Park? A. I visited there.

Q. You were staying there for that period of time? A. Yes.

Q. Did you observe Doctor McKee's conduct towards his wife at that time? A. Yes.

Q. What did you see? A. I remember distinctly

one incident when my sister was in the kitchen ironing a dress for Margaret to wear to school the next morning. Mr. McKee came downstairs. I was sitting in the living room. He came down before nine o'clock and asked me where Mrs. McKee was and I said she was in the kitchen and he went on out in the kitchen. I heard a commotion.

By the Vice-Chancellor:

Q. You heard a commotion? A. Yes, and I went in and seen it.

Q. Tell us what you seen and heard? A. Mr. McKee was forcing my sister to go over to the stairway and she was trying to resist to go back to the kitchen to iron the dress. I was quite excited and said, "For heaven's sake stop." They did stop the scuffle then. Mr. McKee took her by the shoulders and pushed her upstairs.

By Mr. Blumberg:

Q. Did you hear what Doctor McKee said to his wife at that time? A. I can't remember.

Mr. Walscheid: She hasn't said anything he said.

Witness: He asked me where she was.

Q. When did this take place? A. It was in 1917. It was in the school year. I don't know whether it was in the presence of the children.

Q. When did the McKees move from Ridgefield Park? A. To Spuyten Duyvil.

Q. Do you know when they moved to Spuyten Duyvil?

By the Vice-Chancellor:

Q. Did you visit there frequently or occasionally? A. In Spuyten Duyvil?

Q. Yes. A. Frequently.

Q. What did you observe there? A. Many times I heard Mrs. McKee ask questions and heard Mr. McKee say to shut up that he was talking to the children and she should not interfere. That was a very constant thing. It was a constant occurrence.

Q. Anything else that you observed while you were at Spuyten Duyvil at which you think Mrs. McKee might feel aggrieved? A. I remember one time my mother had written a letter, some of it addressed to Mrs. McKee. I heard Mrs. McKee ask to be allowed to read the letter and he refused to let her see it at all.

Q. Anything else in Spuyten Duyvil? A. I remember my mother sent a tub of canned fruit and at the time it arrived my sister was ill in bed and I did not see the tub unpacked and she had not seen any of it, and Mr. McKee she said had taken it down to the cellar.

Mr. Walscheid: I object to it.

Vice-Chancellor: I can't see it will affect the case.

Witness (continuing): I heard the conversation. My sister objected to its having been unpacked without her knowledge. I can't remember what Mrs. McKee said but he simply—I can't remember.

Vice-Chancellor: Don't undertake to guess at it.

Q. Where did they move to from Spuyten Duyvil, to 180th Street? A. I think 180th Street.

Q. What did you see there? A. This occasion at Christmas time which I told you about was at this apartment.

Q. Just tell us what you saw and heard? A. At

the time they moved from that apartment from 180th Street to 39 Claremont Avenue I went out to help my sister to pack and get the things ready and I know from observation that she didn't have one minute to stop for relief or any rest whatever.

Mr. Walscheid: Is that material?

Vice-Chancellor: I can't see it, but counsel wants it in.

Mr. Blumberg: It is slight corroboration but I think it is valuable.

(Witness continuing) Mr. McKee that evening came out to the apartment and began to scold and berate my sister that things had not been completed.

Vice-Chancellor: Unless you can't remember what was said don't use the words scold and berate.

(Witness continuing) I can't remember his exact words. He asked why things weren't finished and he did not help in any way to get the things ready. He simply wanted her to get certain books ready and I remember certain of his things were left in the closet.

Mr. Walscheid: It is the same old story. I ask it be stricken out; it is not material.

Vice-Chancellor: I will leave it stand.

By Mr. Blumberg:

Q. Were you visiting your sister in the fall of 1924? A. Calling there; I was not staying at the house.

Q. Did your sister tell you about the trouble she was having?

Mr. Walscheid: I object to it. It is irrelevant, incompetent and immaterial.

Vice-Chancellor: I will sustain the objection. It is a conclusion she had trouble.

Q. Did you write to your sister Miss Bibb in Carthage, Illinois?

Mr. Walscheid: I object to that as immaterial.

Vice-Chancellor: I will sustain that objection.

Q. Did you ever lend your sister any money?

Mr. Walscheid: I object to that as leading.

Vice-Chancellor: I will sustain the objection.

Q. Do you know anything about the financial conditions—

Mr. Walscheid: I object to that.

Vice-Chancellor: I sustain that.

Q. Do you know anything about the purchase of furniture in 1920? A. Yes, I do.

Mr. Walscheid: I object to it.

Vice-Chancellor: I will allow the question.

Q. Did you go with your sister to purchase that furniture?

Mr. Walscheid: I object to the form of the question.

A. No, I had nothing to do with the purchase of the furniture.

Vice-Chancellor: The only thing about the furniture is the question of payment of it.

Mr. Walscheid: It makes no difference who paid for it as far as this case is concerned.

Q. Did your sister borrow money from you?

Mr. Walscheid: I object to it as immaterial.

Vice-Chancellor: What is the materiality of it?

Mr. Blumberg: I think one element is that he was not providing for his wife.

Vice-Chancellor: You can show if he is niggardly but how could the fact that his wife borrowed some money from this witness prove that? Suppose she did borrow it how is it material?

Mr. Blumberg: To show she was not provided with sufficient funds.

Q. Did you loan money to your sister?

Mr. Walscheid: The same objection.

Vice Chancellor: I will allow it.

By the Vice-Chancellor:

Q. How much money in all? A. I don't know the exact amount. I remember one time $175.00.

Q. How much in all do you remember having loaned her at all times? A. I can't answer that.

By Mr. Blumberg:

Q. Do you remember how many times you loaned her money? A. Very frequently.

Q. About how many times? A. It was quite continuous.

By the Vice-Chancellor:

Q. Were you paid back? A. Eventually.

Vice-Chancellor: What's the use of going into that.

Mr. Blumberg: I realize it is only minor but I think we have a right to show it.

Witness: I kept account of it.

Q. Have you it with you? A. No.

Cross Examination by Mr. Walscheid:

Q. I understand you are a chemist, are you? A. Yes.

Q. And you have worked here in New York? A. Yes.

Q. Where, at the Roosevelt Hospital? A. Yes, Harriman Laboratory. They have a building on the same grounds.

Q. It is all on the same purchase of grounds at 159th Street? A. Yes.

Q. And this occurrence at Christmas 1922 and 1923. You are not sure of that year? A. I am not sure which one of those years it was.

Q. You made some affidavits in this suit in New York? A. Yes.

Q. And you place this occurrence in 1922 or 1923? A. I say it was during the time they were in the 180th Street apartment.

Q. You made an affidavit in this case here in New Jersey? A. Not in New Jersey.

Q. If you did it is on file here.

Vice-Chancellor: Show it to her.

Q. Your memory is quite clear as to distinguishing between the two cases is it? A. I am ignorant about legal matters. I don't believe I made an affidavit in the New Jersey case; I think it was in the New York case.

By the Vice-Chancellor:

Q. Did you observe the manner of living as between Doctor McKee and his wife at anytime while they lived at 39 Claremont Avenue just shortly before the leaving? A. Yes, I did.

Q. You were visiting them there? A. No, I was right in the city and I often dropped into the apartment.

Q. Did you ever see anything that happened between Mr. and Mrs. McKee while you were in the apartment in the way of quarrels or anything else? A. Yes.

Q. What did you observe and when? A. Every time I was there practically.

Q. You have to fix some time? A. Well, in the summer of 1924 I was staying at Columbia and I can't tell you the dates, but after I would leave the laboratory there I would go over to the apartment at 39 Claremont Avenue late in the evening and was in the apartment when Mr. McKee came home many times. I think every time he came in if he said anything it was unpleasant.

Q. Don't characterize it as unpleasant; tell us what was said? A. My sister often asked him questions to which he refused to give any answer whatever.

Q. Was there anything that happened between them? A. I heard him tell her many times to shut up that she ought not to take part in the conversations with the children.

By Mr. Walscheid:

Q. That is the outstanding thing in your mind concerning the life at 39 Claremont Avenue? A. Constant friction.

Q. That is the outstanding thing in your mind? A. Yes.

By the Vice-Chancellor:

Q. And that kind of conduct you are alluding to as friction that he would criticise his wife about something and would not allow her to join in conversations in the home? A. He told her to shut up.

By Mr. Walscheid:

Q. Is that your signature? A. Yes.

Q. An affidavit taken in Illinois? A. Yes.

Q. You remember making that? A. That was about my mother's estate.

Vice-Chancellor: What is the date of the affidavit.

Mr. Walscheid: June 11, 1928.

Q. And in this affidavit you place this Christmas day occurrence as 1921 or 1922? A. I am not decided about the year.

Q. In the affidavit you said 1921 or 1922 and here you say 1922 or 1923? A. It was at the 180th Street apartment.

Q. So the fact it was at the 180th Street apartment does refresh your recollection. As to the date between 1921 and 1923 you don't know which year? A. No.

Q. It wasn't of sufficient importance to impress itself on your mind? A. Yes, it did.

Q. Did you make any memorandum of it at that time? A. No, I did not.

Q. And as a matter of fact they lived in this 180th Street apartment in 1920? A. I think it was in the fall of 1920 they lived there.

Q. So they lived there at Christmas of 1920? A. Yes.

Q. So it might have been Christmas of 1920? A. I don't believe so.

Q. But you have nothing to support your belief?

By the Vice-Chancellor:

Q. You don't know which Christmas it was? A. I couldn't swear to it but it was around one of the Christmas's in that apartment.

Q. You testified here it was Christmas of 1922 or 1923. They have called your attention to an affidavit you made in 1928 in which you say it was at Christmas of 1921 or 1922. Do you know when it was? A. I don't know which one of the years it was.

Q. There are three years you don't know which Christmas it was? A. No.

By Mr. Walscheid:

Q. Did you remain over that Christmas for any length of time. A. I think I left on Christmas Day. I usually do; I stay there Christmas Eve and leave on Christmas.

Q. Is that the only reason you say that? A. Yes.

By the Vice-Chancellor:

Q. You have no distinct recollection have you as to when you did leave? A. No.

By Mr. Walscheid:

Q. You have no distinct recollection as to how long you were there? A. I know when I am in New York at Christmas.

Q. So again you are relying entirely upon your habits? A. Yes.

Q. And not from any specific recollection? A. I am sure I did not stay there long.

Q. And that's all you can say as to that, you did not stay long? A. I don't know what hour I left.

Q. You are also sure that after the Christmas occurrence whenever it was there was no occasion to have any doctor call to see Mrs. McKee because of that happening? A. I don't remember.

Q. And if it had happened you certainly would have remembered it? A. Probably.

Q. Now Mrs. McKee was standing between the dining room and the bedroom? A. And the living room, yes.

Q. And what time of the day or night was it this occurrence took place? A. I can't tell you the hour.

Q. Was it in the morning? A. I can't tell you.

Q. Was it on Christmas Day? A. It may have been Christmas Eve. I rather think it was.

Q. Why do you think it was Christmas Eve? A. Just because we were discussing the Christmas decorations. It may be we were discussing some things to be put up. We were discussing some Christmas decorations to be put up.

Q. You don't know whether it was during the discussion of the Christmas decorations or not? A. Yes, it was. My sister and I and the children were discussing it.

Q. Where was Mrs. McKee while you were discussing the Christmas decorations? A. She was standing in the doorway.

Q. Mr. McKee had been home all day? A. I don't know. He had been in the back at that time. In that apartment all the bedrooms are in the back.

Q. And he put his hands to Mrs. McKee's face? A. One hand.

Q. And as he did that did she struggle away? A. She was standing in the archway.

Q. Did she try to get away from him? He didn't have hold of her did he? A. He simply took her hand and put his hand like that (indicating).

Q. As he passed by he touched her face with his hand? A. If you want to call it a touch.

Q. It left marks? A. It left marks that could be seen—red marks.

Q. And he said nothing? A. I can't remember if he said anything.

Q. But you can remember the fact he touched her face? A. Very decidedly.

Q. And after having touched her face he went to the couch or sofa and laid down and said nothing further? A. I think he refused to say anything.

Q. Did anybody say anything to him? A. Why, yes.

Q. Did you say anything to him? A. I did not.

Q. You testified Mrs. McKee said nothing to him? A. She complained about it.

Q. She complained to you? A. No, right then.

Q. How soon after did she complain about it? A. Immediately.

Q. Complain about pain in the face? A. I don't think she designated; it was obvious.

Q. It isn't obvious to us. Did she say where she felt pain? A. Every one could see it.

Q. And during that time he was on the couch? A. I believe she said it.

Q. He was on the couch; he didn't say anything further? A. I can't recall.

Q. And she didn't say anything further? A. There was no other conversation.

Q. The only conversation was an expression of pain. That's what you testified to? A. Well, what do you want me to say?

Q. I don't want you to say anything. I want the truth madam. I want to get a picture of it if I can. As I understood you said Mrs. McKee was standing in the archway between the two rooms? A. Yes.

Q. With her back against one of the arches? A. She was standing immediately under it.

Q. And he passed by? A. Yes.

Q. And as he passed by he touched her face with his hand, that's right? A. Well, I wouldn't use the word "touched."

Q. And you say that left a red mark on her face? A. Yes, several.

Vice-Chancellor: She said decided red marks.

Q. And without saying a single word he went over to the couch and settled on the couch, is that your recollection? A. I can't recall anything he said.

Q. You can't recall he said anything? A. No.

Q. And while he was going over there Mrs. McKee expressed pain? A. Yes.

Q. What did she say "That hurt" Ralph? A. Something of that nature.

Q. And then he got angry? A. Yes.

Q. He got angry when she expressed pain? A. Yes.

Q. In other words he acted as if he was angry because she expressed pain? A. Yes.

Q. If you eliminate from your whole story these

marks which you say you saw on Mrs. McKee's face you have nothing in the episode excepting a passing pat, a mark of affection? A. If that's affection I don't know what it means.

Q. And you are deeply interested in the case? A. Very much.

Q. And you are very anxious to see your sister succeed? A. Yes.

Q. And would do anything in the world within reason— A. Anything within my power, yes.

Q. Now going back to the incident at Ridgefield Park. That was back in 1917? A. About.

Q. And it was during the time of the war? A. Yes.

Q. And it was while Mr. McKee was engaged in war service? A. No, he was in charge of the laboratory of the Tennessee Copper Company out there.

Q. And they were engaged in war service? A. I don't know.

Q. And Mr. McKee was leaving his home daily at that time at five o'clock in the morning, or don't you know that? A. Oh, no, he was not.

Q. Was he leaving early? A. After breakfast.

Q. When did he have his breakfast? A. The same time as the rest of the family.

Q. How long were you there at that time? A. Sometime from the spring until sometime in December except a few weeks in the summer.

Q. And on that occasion Mr. McKee went into the kitchen? A. Yes.

Q. And he came out pushing Mrs. McKee ahead of him? A. I don't know whether she was ahead.

Q. He wanted her to go to bed didn't he? A. He forced her to go.

By the Vice-Chancellor:

Q. Is that what he wanted her to do to go upstairs to bed? A. Yes.

By Mr. Walscheid:

Q. He wanted all of you to go to bed? A. Yes.

Q. And she refused to go? A. Yes.

Q. And he was trying to get her to go to bed? A. Yes, she was ironing a dress for Margaret to go to school the next morning.

Q. And then you said, "For heaven's sake stop"? A. Yes.

Q. And then he did stop? A. Well, he subsisted somewhat.

Q. If you were to paint a picture of it you have nothing more or less than a husband trying to make an effort to have his wife go to the marriage bed? A. I don't tell anything except facts.

Re-direct Examination by Mr. Blumberg:

Q. You were at the McKee's at Christmas, 1924? A. Yes.

Q. Did you see the gifts that Mr. McKee gave his wife? A. I did.

Q. What did he give her? A. Some cheap jewelry.

By the Vice-Chancellor:

Q. There was some jewelry put in evidence; was that it? A. Yes.

By Mr. Blumberg:

Q. Any gloves? A. At the Christmas celebration that's all he gave her.

(Further hearing continued to April 23, 1929.)

(Continuation of hearing—April 23, 1929.)

RUTH F. HOOKER, being sworn.

Direct Examination by Mr. Blumberg:

Q. Where do you live, Mrs. Hooker? A. Corner Arlington Avenue and 230th Street, Spuyten Duyvil.

Q. Do you know Doctor McKee? A. I do.

Q. Mrs. McKee? A. Yes.

Q. How long have you known them? A. Since 1918.

Q. Where did you first meet Doctor McKee? A. When they moved into my sister's house in Spuyten Duyvil.

Q. What is her name? A. Mrs. Ralph H. McKelvey.

Q. Did you visit the McKees at this house in Spuyten Duyvil? A. Quite often.

Q. Was this house furnished? A. It was partly furnished—a piano, bedroom outfit and various chairs and maybe tables.

Q. But some of the furniture furnished by the McKees, is that right? A. Yes, some by the McKees.

Q. Did you observe whether the McKees had a maid or not? A. One maid.

Mr. Walscheid: I object. It is immaterial.

Witness: My sister had three maids, one laundress and a furnace-man for the same house.

Vice-Chancellor: I will let it stand.

Q. Do you recall when they moved out of this house? A. About two years after.

Q. And you saw Mrs. McKee again in Spuyten

Duyvil did you not? A. Yes, she moved back. I took her to the house she moved into.

Q. Whose house? A. Doctor Abel Leyman's house.

Q. Do you recall when that was, what year? A. 1925, I think, about March or April.

Q. Did you visit Mrs. McKee in the Leyman house? A. Yes. Doctor Leyman was in California and I had charge of the house.

Q. You are not sure whether it was 1925? A. I wouldn't want to swear to it definitely, but it can easily be found from the Union Theological Seminary records.

Q. Did you notice whether Doctor McKee lived there or not? A. He did not, but the two children lived there all summer.

Q. Which children? A. Billy and Margaret.

Q. Did any one else live there? A. Earlier in the spring before Margaret came home her sister lived with her.

Q. What is her name? A. I really don't know. I know her by sight but I am careless about names.

Q. When did you first learn that Mrs. McKee was not living with Doctor McKee? A. The second Tuesday in April.

Mr. Walscheid: I object to it.

Vice-Chancellor: I will allow it.

Witness: That is 1925, I think, the year they first separated, because I called up the apartment and Doctor McKee answered me.

Q. Doctor McKee answered you? A. Yes.

Q. What did you call up for? A. To invite Mrs. McKee to the annual meeting of the club. In April it was. That's the reason I can give you.

Q. What address did you call up? A. 39 Claremont Avenue. I think I called the telephone number and a Mrs. Martin answered and said—

Q. Don't tell us what she said. A. I called the second time and Professor McKee answered.

Q. What did you say to Professor McKee? A. I jollied him and said "Whose apartment is that?" I said "I thought you lived there", and he said "No". I said "Where is Mrs. McKee?" and he said "Visiting her sister", and he gave me the telephone number of her hotel down on West End Avenue—the Colonial.

Cross Examination by Mr. Walscheid:

Q. The first time you spoke to Doctor McKee he didn't tell you he had separated from his wife? A. Doctor McKee never told me.

Q. On that occasion he didn't tell you? A. No.

Q. He told you she was visiting her sister? A. No, I inferred that.

Q. You said he told you that. Now you want to change that, do you? A. It is all the same.

Q. Did he say she was visiting her sister? A. I would say not; I would say she was with her sister.

Q. As a matter of fact you don't know what he said? A. He said she is with her sister and he gave me the telephone number.

Q. You were in error before? A. A very slight error.

Q. Isn't it the fact that at that time he was trying to conceal from you the fact his wife had left him and therefore said she was visiting her sister? A. No.

Mr. Blumberg: I object to it.
Vice-Chancellor: She said no.

Q. You called up this apartment when? A. Second Tuesday in April.

Q. When did you decide to call up the second

Tuesday in April? A. On Monday, after I called up Mrs. Martin the day before.

Q. When did you first decide it was the second Tuesday in April, 1925? A. When I was asked to come here.

Q. When you were asked to come here. And how long was it since you were asked to come here? A. Months ago.

Q. How many months ago? Two months ago? A. More than that.

Q. Three months ago? A. More than that I should say. I had known about this case a much longer time. I had been asked to be a witness about two or three months ago.

Q. But you can't tell just how long ago it was? A. I can probably check it up.

Q. Did Mrs. McKee visit you? A. No.

Q. How did you happen to get in touch with her? A. I happened to meet her on a bus. She told me my name was put on the subpoena list by mistake.

Q. And prior to that time you had not paid any attention to it? A. I did because I had a great deal of sympathy for Mrs. McKee.

Q. And you would like her to be successful, wouldn't you? A. No. I think this is the most heartbreaking thing I have ever seen to have an educated man like Professor McKee bring his wife to this ignominy.

Q. Prior to the time Mrs. McKee met you on the bus had you had any occasion to determine the day and date of this telephone call? A. I couldn't have waited—

Q. Will you answer my question? A. Why certainly not. I never knew until we met that day. She broke down and cried. I remember the daffodils were out.

Q. Prior to the time Mrs. McKee met you on the

bus had you had any occasion to determine the day and date of this telephone call? A. I knew it; I didn't have to determine it.

Q. You had nothing to remember it by excepting your memory? A. Yes, I had; the daffodils and the meeting of the club.

Q. Isn't that your memory? A. Those are facts which helped my memory.

Q. What day of the month was it Mrs. McKee met you on the bus? A. About five or six o'clock in the evening. My daughter was with me and my husband.

Q. What date was it? A. I couldn't tell; there was nothing dramatic about it.

Q. But there was something very dramatic about your telephone call? A. No; what Mrs. McKee told me the next day. The telephone call was trivial.

Q. Did you call twice in one day? A. No, I called Monday and on Tuesday because Mrs. Martin answered.

Q. On the first occasion Mrs. Martin answered? A. Yes.

Q. Did you know Mrs. Martin? A. She told me she was Mrs. Martin.

Q. And she told you she was living there? A. She said Mr. McKee was living there.

Q. She told you she was living there? A. No.

Q. Did you ask her? A. I thought she was a maid.

Q. Did you ask her? A. Why certainly not.

Q. Then she didn't say anything about Doctor McKee? A. She said Mr. McKee will be here early in the morning or late at night.

Q. Did you ask her that? A. Certainly.

Q. Did you ask her whether Mr. McKee was living there? A. She volunteered that information.

Q. Why did she do that? A. That is her business. How can I read her mind?

Q. Just repeat what you said on the occasion you first called? A. I just repeated it; it was stricken out.

Q. Tell it again? A. I can't tell it again when I was not allowed to the first time.

By the Vice-Chancellor:

Q. You are asked to tell what conversation you had on the first occasion? A. I asked for Mrs. McKee.

By Mr. Walscheid:

Q. And a voice answered? A. Yes.

Q. And you didn't know who it was? A. I knew Mrs. McKee's voice.

Q. You had never met Mrs. Martin? A. No.

Q. You had never seen Mrs. Martin? A. No.

Q. Did you ever speak to this voice again? A. No.

Q. How do you know it was Mrs. Martin? A. She told me. I would have no way of knowing Mrs. Martin was in the McKee apartment if she didn't tell me.

Q. When you called up you asked for Mrs. McKee? A. Yes.

Q. And this voice answered and said "This is Mrs. Martin"? A. Yes.

Q. What else happened? A. I said "Is Professor McKee there?"

Q. You said is Professor McKee there? What time of the day was that? A. Oh, about ten or eleven in the morning.

Q. And she said, "No, he isn't there"? A. Yes.

Q. And then what next did you say? A. I said,

"How can I get in touch with Mr. McKee or Mrs. McKee?"

Q. What did she say? A. She said, "Call up early in the morning or evening."

Q. Then did you call up in the evening? A. No.

Q. Did you call up in the morning? A. Early in the morning.

Q. What time? A. I should say between eight and nine. The classes begin at nine at Columbia and I naturally would call before nine.

Q. Is that the reason you say you called up between eight and nine o'clock because classes begin at nine? A. She told me early in the morning or in the evening. That means with the Professor before nine o'clock.

Q. That's what you say? A. That is what most intelligent people would say.

Q. Then you had the conversation that you had with him you spoke about? A. Yes.

Q. Now speaking about this house? A. Which house?

Q. The first house that you spoke about. Whose house was that? A. My sister, Mrs. Ralph H. McKelvey.

Q. That's a large house? A. Very large, with four bedrooms. Mrs. McKee is a very, very frail woman and I never saw Mr. McKee lend a hand to help her.

Q. And your sister vacated that house for the summer, was that it? A. No, she had another house in the country and she rented it for an indefinite period.

Q. She rented what house? A. The Spuyten Duyvil house. She had another house.

Q. Isn't it the fact that Mrs. McKee moved into this large house and paid something like fifty dollars a month rent? A. No, that is not the fact.

Q. What rent did she pay? A. I couldn't tell you. Professor McKee paid the rent and can tell you.

Q. You didn't see him pay it? A. I don't think my sister gave it to her.

Q. You testified here as if you knew.

By the Vice-Chancellor:

Q. You are after saying Doctor McKee paid the rent? A. I assume he did.

By Mr. Walscheid:

Q. Your sister kept three maids? A. Three maids, a furnaceman and a laundress.

Q. Five servants? A. The one laundress isn't working there all the time.

Q. And Mrs. McKee only kept one? A. Just one.

Q. And she lived there with her two children? A. Yes.

Q. She certainly didn't occupy the whole house? A. She did.

Q. All the rooms, including the four bedrooms? A. I don't suppose she lived in all of them all the time.

Q. When did you last see Doctor McKee to speak to prior to today? A. He came to my house with his daughter Margaret.

Q. Where was that on 181st Street? That is the last time? A. I saw him on the subway.

By the Vice-Chancellor:

Q. Did you speak to him? A. No.

By Mr. Walscheid:

Q. So the last time you spoke to him was 181st Street? A. I think so.

Q. You hardly ever met Doctor McKee, isn't that so? A. Oh, quite often.

Q. To speak to? You mean you passed him casually on the street or on the highway but you never had any conversation with Doctor McKee had you? A. Why should I?

Q. Did you? A. Yes.

Q. When prior to this last time at 181st Street? A. I wouldn't want to answer that off-hand. I wouldn't say. I was talking over the telephone.

Re-direct Examination by Mr. Blumberg:

Q. The house which Mr. Walscheid is referring to you lived in in 1919 and 1920? A. Yes.

Q. And Doctor McKee lived there also? A. Yes.

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BERTHA TILDSLEY, being sworn.

Direct Examination by Mr. Blumberg:

Q. Do you live in New York City Mrs. Tildsley? A. Yes, I do.

Q. In Spuyten Duyvil? A. Yes.

Q. Your husband is a professor at Columbia University? A. No, he is the superintendent of the Board of Education.

Q. Superintendent of Schools in New York City? A. Yes, Superintendent of the Board of Education.

Q. Do you know Doctor McKee? A. Yes.

Q. And Mrs. McKee? A. Yes.

Q. How long have you know them? A. Over ten years.

Q. You knew the McKees at Spuyten Duyvil? A. Yes, their nearest neighbor.

Q. And I suppose you visited the McKees did you not? A. Very often.

Q. You attended with Mrs. McKee at the trial in New York in 1927, did you not? A. Yes.

Q. Did you go direct to the trial with Mrs. McKee? A. Yes.

Q. And do you recall what day of the month it was? A. No.

Q. What month it was? A. No.

Q. Who did you see in court that you knew that day? A. I saw Mr. McKee and Mrs. Martin and her husband and a former maid and another neighbor, Mr. Whaley, who afterwards took their house.

Q. Who were you with that morning? A. The first day I went down with Mrs. McKee and we went to lunch together and I was with her that day.

Q. Were you with her the entire day? A. Yes.

Q. Were you with her sister, too? A. Yes.

Q. Which sister? A. The eldest sister who had been ill.

Q. Did you see Doctor McKee that day? A. Only sitting in the court.

Q. Did Mrs. McKee leave you alone? A. Not that I remember.

Q. Would you say yes or no to that question? A. If I remember I was with her all the time.

By the Vice-Chancellor:

Q. Did she leave you at lunch time that day? A. No, we ate lunch together.

By Mr. Blumberg:

Q. Did Mrs. McKee leave you for a conference? A. Not that I remember.

Vice-Chancellor: Is this the day Mr. McKee said he had lunch with her?

Mr. Walscheid: No, it is not. These people were in the court room according to the records of this case for three or four days. The case was marked ready day after day.

Vice-Chancellor: I don't know what the records show. I want to find out whether counsel's question was being directed to the day when Mr. McKee said he had been to lunch with his wife.

Mr. Blumberg: The first day and it was adjourned to Monday.

Q. How many days were you in court? A. Two days.

Q. Do you recall what the second day was? A. Monday.

Q. You don't recall what the first day was? A. No.

Q. But you do recall being in court? A. Yes, after Sunday.

Q. Did you leave Spuyten Duyvil with Mrs. McKee that day? A. Yes.

Q. With her sister? A. We met her sister in New York at the court house.

Q. Do you recall going to Dean Pegram? A. Yes, that was Sunday morning, the second day before going to court. That's the reason I know the second day was Monday.

Q. Who went to Dean Pegram? A. I went with Mrs. McKee.

Q. Did you hear the entire conversation? A. Yes.

Q. What did Mrs. McKee say to Dean Pegram?

Mr. Walscheid: I object to that.

Vice-Chancellor: My recollection is that

Mrs. McKee was the one who interested Dean Pegram to try and bring—

Mr. Walscheid: What I object to is the hearsay testimony of this witness.

Vice-Chancellor: How is it material? How is hearsay testimony admissible if it is hearsay?

Mr. Blumberg: The question is whether it was hearsay.

Vice-Chancellor: My recollection is that this meeting with Dean Pegram on this Sunday was occasioned by some telephone conversation between Dean Pegram and Mrs. McKee.

Mr. Walscheid: You have Dean Pegram's testimony before you. He states that Mrs. McKee called upon him to induce him to get in touch with Mr. McKee.

Vice-Chancellor: If that is the case, how is it material?

Mr. Blumberg: That's the reason it is material to contradict the testimony of Dean Pegram. Doctor Pegram made statements.

Vice-Chancellor: I will sustain the objection.

Mr. Blumberg: There is no denial that Mrs. Tildsley was there. Dean Pegram admits that.

Vice-Chancellor: The situation is that this witness was there with Dean Pegram. How can any conversation between the three of them be binding upon Mr. McKee?

Mr. Blumberg: Dean Pegram says she would not live with Doctor McKee.

Vice-Chancellor: If this meeting was through the intercession of Doctor McKee I would admit it.

Q. Mrs. Tildsley, I will read you a question that was asked of Dean Pegram and his answer—"And in the course of that conference held at the University in the afternoon of the same day, I understand you say that you reported that Mrs. McKee had said in substance that she was unwilling to live with him as man and wife in the future?" "A. That was part of what I reported to Dr. McKee."

Mr. Walscheid: I object to it. There is no foundation for this witness being laid as when the depositions were taken.

Vice-Chancellor: If this witness was there when the statement was made she can be asked whether any such statement was made by Dean Pegram at that time.

Mr. Walscheid: Isn't it the rule of evidence in order to contradict a witness some foundation must be laid for it?

Vice-Chancellor: Yes, but she was present at the conference.

Mr. Walscheid: But it was called to the attention of the witness.

Vice-Chancellor: Disregarding that deposition if counsel wants to ask this witness a question whether or not Dean Pegram said thus and so surely he would have the right to ask that if she was present. I suppose counsel can frame his question without the deposition.

Mr. Walscheid: How would that be binding upon the defendant?

Vice-Chancellor: Was Dean Pegram's deposition taken in behalf of Doctor McKee?

Mr. Walscheid: Taken on behalf of Doctor McKee and he was cross examined. It was taken in open court before a commissioner.

Vice-Chancellor: If this witness was there and heard it she can tell whether any such statement was made on that occasion.

Mr. Walscheid: He is talking about a conversation with Dean Pegram and this is the question she is supposed to deal with—"And in the course of that conference held at the University in the afternoon of the same day, I understand you say that you reported that Mrs. McKee had said in substance that she was unwilling to live with him as man and wife in the future?" "A. That was part of what I reported to Dr. McKee." How can she testify to that?

Vice-Chancellor: I think I will receive it subject to your objection Mr. Walscheid. I have grave doubt about its admissibility.

Mr. Blumberg: Dean Pegram explained that Mrs. McKee told him she would not live with Doctor McKee.

Vice-Chancellor: How can you predicate it on any conversation between them at that time? If any such statement was made by Mrs. McKee to Dean Pegram it may have been made at some other time. I will admit it over Mr. Walscheid's objection.

Mr. Blumberg: I am coming back to my original question. I think the best way of bringing it out is to ask what took place that day.

Vice-Chancellor: I don't think so. It is only hearsay testimony.

Mr. Blumberg: Here is a deposition on file which tells exactly what Mrs. McKee said to Dean Pegram and what he did pursuant to her talk.

Vice-Chancellor: Was there only one talk with Dean Pegram?

Mr. Walscheid: No.

Vice-Chancellor: That is the difficulty I have. This witness can only testify as to the conversation between Dean Pegram and Mrs. McKee in her presence on that Sunday morning, but this refusal of Mrs. McKee to live with him might have been some other day. It might have been made on some other occasion.

Mr. Blumberg: The only thing to do is to read the deposition.

Vice-Chancellor: I will pass on questions as they are submitted to me.

Mr. Blumberg: I think I will read the deposition.

Vice-Chancellor: They are part of the record are they?

Mr. Walscheid: Yes.

(Mr. Blumberg reads deposition of George B. Pegram.)

Mr. Blumberg: Your honor will recollect the entire conversation, the main conversation, took place Sunday morning. He isn't sure whether the conversation took place Friday or not. Mrs. Tildsley was present at that conference. I think if the witness can testify as to when the conference took place there it would be material.

Vice-Chancellor: I think it would be hearsay. Doctor McKee was not present and was no party to it.

Q. Do you recall what time of the day you went to Dean Pegram's office? A. Sunday morning.

Q. Do you recall how long you were there? A. It was quite a long conference; I don't recall.

Vice-Chancellor: My recollection from the deposition it was Sunday, but there were two conferences.

Mr. Walscheid: One on Friday which lasted for about forty-five minutes.

Vice-Chancellor: Whatever it was there were two conferences with Mrs. McKee and Dean Pegram on Sunday. There is a lot of that testimony which is not very helpful but it is not necessary for me to consider it now.

Mr. Blumberg: The Dean is very frank in saying he didn't remember.

Vice-Chancellor: He said the impression he gained from the matter was she was unwilling to live with him. From the deposition as you read it you put a question to Dean Pegram as to whether it was a fact she had expressed her unwillingness. I presume I will have to read the whole thing in its entirety. Put your next question.

Q. Did Mrs. McKee say to Dean Pegram at that time anything from which Dean Pegram could consider that Mrs. McKee was unwilling to live with Doctor McKee?

Mr. Walscheid: I object to it.

Vice-Chancellor: The form of the question is objectionable.

Q. Did Mrs. McKee say anything to Dean Pegram with reference to her living with Doctor McKee?

Mr. Walscheid: I object to it. It is irrelevant, incompetent and immaterial and hearsay.

Vice-Chancellor: I will sustain the objection.

Q. What was the first thing that Mrs. McKee said when she entered the room?

Mr. Walscheid: I object to it as irrelevant, incompetent and immaterial.

Vice-Chancellor: How is it material Mr. Blumberg? Here are conversations between this witness, Mrs. McKee and Dean Pegram. How is it binding on Doctor McKee?

Mr. Blumberg: Can't I contradict Dean Pegram's testimony.

Vice-Chancellor: You could have at the hearing.

Mr. Blumberg: I am asking this witness what the first conversation was. I want to show that Dean Pegram made an error, an innocent error, as he frankly states in his testimony.

Vice-Chancellor: Why don't you put the question did Dean Pegram say at that time thus and so?

Q. Did Mrs. McKee state to Dean Pegram that she was unwilling to live with Doctor McKee?

Mr. Walscheid: I object to it for the same reason.

Vice-Chancellor: I will admit it and will overrule the objection.

By the Vice-Chancellor:

Q. That question relates to the conversation which was had between Dean Pegram and Mrs. McKee at which you were present? A. I never heard Mrs. McKee say it that morning or at any time.

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By Mr. Blumberg:

Q. Did you hear the whole conversation? A. I did.

Mr. Walscheid: I object to it as calling for a conclusion.

Vice-Chancellor: Mr. Blumberg you have asked the witness a question and she answered it. The mere fact she didn't hear it is one thing, if he did say it is another thing. Things may have been said which she didn't hear.

Q. Did Mrs. McKee state to Dean Pegram the purpose of the visit? A. Yes.

Mr. Walscheid: I object to it and ask it be struck out. It is calling for a conclusion.

Vice-Chancellor: It certainly is a very objectionable question. I will strike out the answer.

Q. Did Mrs. McKee tell Dean Pegram why she came to see him? A. Yes.

Mr. Walscheid: I object to that.

Vice-Chancellor: *Yes* won't hurt you.

Q. What did she say to Dean Pegram?

Mr. Walscheid: I object to it for the same reason.

Vice-Chancellor: I will sustain the objection. I am overruling the question upon the ground it is clearly in the nature of hearsay. Doctor McKee was not present and was not

a party to this conversation and it was not made in his hearing.

Q. Did you hear Mrs. McKee state to Dean Pegram the following: "That to bring out a suit of that kind in public could do no one any good, if it could be settled without being brought out in public court, and that she wanted to talk the matter over with me with a view to seeing whether I might help to bring her and her husband together and getting them to make such arrangments as would make it unnecessary to go forward with the court proceedings?" A. Yes.

Mr. Walscheid: I object to it.

Vice-Chancellor: I understand Mr. McKee was not present when this conversation was had and based on that I am overruling the question.

Q. Do you know when these parties separated Mrs. Tildsley? A. Not exactly.

Q. About when? A. I don't know the date.

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

Q. Do you recall a visit of Doctor McKee to you? A. Yes.

Q. Do you recall when that was? A. No; it was before the trial.

Q. After the separation? A. I don't know when the separation was.

Q. Where did Doctor McKee come? A. To our house in Spuyten Duyvil.

Q. Did he call to see you? A. He came to our house and my husband and I talked to him.

Q. What did Doctor McKee say to you at that time? A. He said he was allowing Mrs. McKee one hundred dollars a month and we said we didn't

think it enough for a woman of her position and his position to live on in New York, and he said if it were not enough in New York it would be sufficient in her mother's home in the west.

Q. Will you tell us the whole conversation from the time he got in and went out? A. I had been eager to see Mrs. McKee myself.

By the Vice-Chancellor:

Q. Your eagerness is not concerned here. You are only asked to tell what the conversation was between you and Doctor McKee and your husband? A. One thing I do remember was that I said to him that he should never have said such a thing to Mrs. McKee that he was calling in a policeman to prove that she had taken some money from him, and he said he had only told it in jest, and we said to him that was no way to jest with one's wife, and then we told him that regardless of whether he cared for her any more or not that in justice to the woman who had made a home for him during these years and had given her life in absolute devotion to her children, in justice she ought have sufficient money to live on and we did not consider one hundred dollars a month sufficient for a woman of her scale, and we felt very indignant that she had to leave our group and live as she was living she being his wife and the mother of his children all these years, and we pushed that point in no matter whether he cared for her or not it was only justice she should receive sufficient to live on as she had the right to as his wife and the mother of his children, and we couldn't make him see that.

Q. Tell us what he said. I will have to strike out about you couldn't get him to see that. Tell us what he said or did? A. He said that his ex-

penses in educating the children were heavy. He said there were always expenses in educating the children.

Q. You in your statement just now said to him if he didn't care for his wife any more or words to that effect. Can you tell us what he said in reply to that? A. I don't think he said anything in reply. His whole reply was on the financial side.

Q. Did Doctor McKee say anything to you about your using your influence to have the parties reconciled? A. I don't remember anything he said about that. His finances were his whole discussion.

Q. Did he say anything about Mrs. McKee going to Illinois? A. He said she could go there and live with her mother.

Q. You have already testified about that? A. Yes.

Q. And Doctor McKee finally left your house? A. Yes, I remember now she didn't want to live in the west; that she didn't want to be separated from the children.

Q. Doctor McKee finally left your house? A. Yes.

Q. What did he say when he left? A. He was still discussing finances when he left.

Q. Did he call to see you again with reference to the matter? A. No, but a man came last spring.

Q. But Doctor McKee himself never came? A. No.

Q. Did you see Doctor McKee since that time? A. I saw him in the court room on the two trials and I saw him over here.

Q. You can't fix the date as to this visit of Doctor McKee? A. No.

Q. It was before that trial in New York? A. Before the trial in New York.

Q. Do you recall a dinner in the Faculty Club in 1924? A. Yes.

Q. Will you state what occurred at that time?

By the Vice-Chancellor:

Q. Was Doctor McKee present? A. Yes.

Q. Tell us what took place at the Faculty Club?

A. Mr. McKee had invited us to see the new Faculty Club and we were to have an early dinner. I got to the Faculty Club first and then Doctor McKee came in and then presently my husband came in, and then Doctor McKee said let us go up to dinner. I said, "No, we must wait for Mrs. McKee," and he said, "No," and urged us to go upstairs and I felt it was very discourteous.

Vice-Chancellor: I can't let you express your thoughts.

(Witness continuing) He invited us to go upstairs to dinner and I said, "No, let us wait for Mrs. McKee," and he said, "No, we will not wait." We went up all three of us. We went in to dinner and while we were eating soup Mrs. McKee and the children came in.

By Mr. Blumberg:

Q. Did she say anything? A. She looked very much hurt.

Vice-Chancellor: You can't say that.
Witness: No, she said nothing.

Q. Did Dr. McKee say anything? A. No.

Q. Did you say anything? A. No.

Q. What happened? A. We went on with the dinner. I was very very embarrassed.

Vice-Chancellor: I will strike that out.

(Witness continuing) Then after dinner we went off to see the collection in Doctor McKee's laboratory in Columbia. Mrs. McKee took no part in the conversation. She was not asked to. The rest of us all took part in the conversation. Doctor McKee was very interesting and told us all about the collection.

Mr. Walscheid: How is that material?

Vice-Chancellor: I don't know what's coming out.

(Witness continuing) Mrs. McKee was not asked any questions and was not invited to take part.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will strike it out.

Q. Did any conversation take place between Doctor McKee and Mrs. McKee? A. No.

Q. None at all? A. At the end of it Mrs. McKee asked us to go over to her house. We didn't go at once; we stayed a while longer and then we did go.

By the Vice-Chancellor:

Q. Did Doctor McKee go with you? A. Yes.

Q. How did you get along at the house? Was everything serene over there? A. I said as I went down the elevator that I had never seen—

Q. Was Doctor McKee present? A. No.

Vice-Chancellor: What is the materiality of it?

Mr. Blumberg: I have been very fair. I let Doctor McKee talk as long as he liked.

Mr. Walscheid: I only want facts. What may move one person in one respect may not move another in the same respect.

By Mr. Blumberg:

Q. You said a man came to see you about this case? A. Yes.

Q. Do you know who the man was? A. He said he came from—

Q. Do you know who he was?

Mr. Walscheid: I object; it is immaterial.
Vice-Chancellor: I will permit it.

A. Not until he said who he was.

Q. You never seen him before? A. No.

Q. Ever see him since? A. No.

Q. Did he speak to you with reference to this case? A. Yes.

Mr. Walscheid: No cross examination.

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MARY N. McKEE, being sworn.

Direct Examination by Mr. Blumberg:

Q. You are the defendant in this suit Mrs. McKee? A. I am.

Q. Where do you live now? A. Spuyten Duyvil, New York.

Q. What is the exact address? A. 2727 Spuyten Duyvil Parkway.

Q. How long have you lived there? A. I have lived there since the first of March, 1927.

Q. You are the wife of Doctor Ralph H. McKee? A. I am.

Q. You were married in 1902? A. 1902.

Q. You have two children, Margaret and Billy? A. Yes.

Q. Did your sister Mrs. Gibb pay you a visit in 1924? A. She did. She came on the first day of October and stayed until the nineteenth of December.

Q. And she stayed in the house at 39 Claremont Avenue, as I understand it? A. She did.

Q. Did she sleep in the house at 39 Claremont Avenue? A. Yes, all the time.

Q. In what bedroom did she sleep? A. We had only two, and she slept in one of them.

By the Vice-Chancellor:

Q. Did she occupy the same bedroom with you? A. She did.

By Mr. Blumberg:

Q. Who else was in the house during October 1924? A. Mr. McKee.

Q. Were any of the children home that month? A. Margaret was home one afternoon I think.

Q. Did you have a maid at that time? A. No.

Q. Any one come to clean the house at that time? A. No.

Q. Doctor McKee went to Europe shortly after October 1, 1924, did he not? A. The first day of November.

Q. When did he first tell you he was going to Europe? A. He told me the Thursday morning of the week before he sailed.

Q. What did he say when he told you about his contemplated trip to Europe? A. I was sick in bed and he just came to the bed and said "I am going to take a short trip to Europe pretty soon," and went out.

Q. What did you say? A. I said nothing. I was too ill.

Q. And you say he went out then? A. Yes.

Q. When did you see him again? A. Saturday morning.

Q. Going back, what day was that Thursday morning? A. Thursday.

Q. Did you see him Friday? A. No, he said he was going out of town. He came back Friday night and I didn't see him until Saturday morning.

Q. Did you speak to him Saturday morning? A. Oh, yes, we had breakfast together.

Q. Did you ask him about his trip to Europe? A. Not Saturday morning, but I did on Saturday evening.

Q. What did you say to him on Saturday evening? A. I asked him when he was going to Europe and he said he didn't know exactly. My sister said "What is Mary going to do while you are gone?", and he said "I don't know; if she had behaved herself as she should she could have gone with me, but she has refused to sleep with me," and my sister said "What reason does she give?", and he said "She just doesn't want to, I guess." I said "You know I have told you that if you wished me to live with you as your wife I am perfectly willing to do so, but I will never be the hired thing that you tried to make out of me."

Q. Did Doctor McKee say anything to that? A. Yes, he said "No, you say I don't pay high enough."

Q. Anything else said? A. I said "No, I never said anything like that." He said "You want new clothes and you want other things."

Q. This was on Saturday night? A. Yes, and I said "I have had no money for clothes for almost a year, but I am not going to beg you for them." He didn't say anything more about clothes but he said

"You have been acting up ever since 1924 when we went to Rochester together." I asked him what he meant by that and he said "After I had gone to sleep you came in late at night in the hotel with a man." He gave the man's name.

By the Vice-Chancellor:

Q. Tell us the whole conversation? A. I can't mention the man's name.

Q. If he mentioned it you had better mention it? A. He is a perfectly innocent man.

Q. You are asked to tell the conversation? A. I said "How did I come to come in with him?", and he said he didn't know. He said "I had been asleep a couple of hours and you came in about one o'clock with this man."

Q. Did you gather from his talk at that time that he was imputing anything wrong with this man? A. Yes.

Q. If you did why do you say the man's name should not be disclosed? A. He never saw him. The only time he saw him during that week was two days later. He saw him at a public banquet. When I asked "Why did I come in with him?", Mr. McKee said "I had been to the smoker and had come home and had been asleep a couple of hours and you came in with him." I said "If you were asleep how did you know with whom I came in?", and he said "He told me about it the next day."

Q. Was that the entire conversation? A. I said "If you had been to the smoker I must have been to the women's card party, and why didn't you come after me as other women's husbands came after them?" He said "You evidently needed looking after."

Q. Did Doctor McKee say anything about this

occurrence of which you are relating before that time? A. No, he had not. I left this out of the conversation. I said "Nothing unusual had taken place in Rochester. If there had you would not have waited ten years to speak about it."

Q. Was this talk about this man your reason for not having sexual intercourse with your husband? A. He hadn't mentioned it at all. This was the first time he had said anything about it.

Q. You and your husband had not been living sexually together, had you? A. Not since June.

By Mr. Walscheid:

Q. Of what year? A. The same year, 1924.

By Mr. Blumberg:

Q. When did Doctor McKee tell you of the exact date he was going to Europe? A. On Wednesday he said he was. I asked him when he was going and he said he was sailing on Saturday.

Q. Did he tell you what ship he was sailing on? A. I think not.

Q. Did you go to the pier with him when he sailed? A. No, I didn't know when he was going.

By Mr. Walscheid:

Q. Why do you smile like that?

Vice-Chancellor: Mr. Walscheid should not have interrupted the examination.

By Mr. Blumberg:

Q. Did Mr. McKee leave any funds with you when he went to Europe? A. Several days before

he went he gave me one hundred dollars one morning on a Wednesday or Thursday. He gave me one hundred dollars and I said "What is that for?", and he said "anything you want to use it for", so I said "Will I pay these bills that are not paid?", and he said "Just as you think." I said "Well, I will have to pay for Billy's overcoat and fur storage and several things which had been waiting sometime." I did pay for these things. On Saturday morning I told him what I had paid for and gave him an itemized list showing him that there was about thirty-five or forty dollars left. I asked him to pay the current bills, that is, for milk, ice, telephone, electricity, gas, which were the only bills we ran at all. He said I could pay for them. I asked him to leave checks for them and he said he would leave no checks. I said to him "If he made out the checks to the firms to which they were due that no one else could get them. I could fill in the amounts." He said he would leave no checks. Then some bills came in the morning's mail and I asked him to leave checks for those and he said "No."

Q. Did he just give you one hundred dollars before he sailed to Europe? A. Several days before and there was perhaps thirty-five or forty dollars of that left. I showed him the itemized account of what I had spent the money for, so I had that thirty-five or forty dollars. He said "I left some checks in the check book," and I found that he had. The first check was dated November 15th, more than two weeks later. It was for one hundred dollars.

Q. To who was that payable to? A. It was payable either to me or to cash, I don't remember which. I think it was made out in my name. There was a second check dated December 15 for one

hundred dollars. There was another check dated December 15th for fifty dollars marked for Christmas cards and gifts. We send a great many Christmas cards. There was still another check for one hundred dollars marked for emergency—a later date.

By Mr. Walscheid:

Q. What date was that? A. I don't remember the exact date of that, but the latter part of December.

By Mr. Blumberg:

Q. Did you cash those checks? A. I cashed all the checks. There were three checks for one hundred dollars and one for fifty dollars.

Q. What did you do with the cash? A. I had only thirty-five or forty dollars in cash when he left.

Q. Did Doctor McKee write any letters to you while he was in Europe? A. He wrote me three letters.

Q. Did you write any to him? A. I wrote him two letters.

Q. Did he tell you when he was returning from Europe? A. Yes, on the 21st of December.

Q. Did he tell you on what boat he was returning? A. He did not.

Q. You weren't to the pier were you, when he returned? A. Well, I didn't know on what boat he was returning. We looked in the newspapers and found there were two boats coming in that morning.

Q. The doctor came to the house, 39 Claremont Avenue? A. Yes.

Q. December 21, 1924? A. Yes.

Q. Who was there when he came home? A. My two children, Margaret and Billy, a maid, and myself.

Q. Did he speak to you when he came in? A. The children and I were in the living room and we heard the door open. We all went out in the hall to meet him. He kissed each of the children; he didn't even speak to me. He said to the children "We will go in here and talk", and they went into his bedroom and I went in. I ignored all the unpleasantness we had.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: Just tell us what you did.

(Witness continuing) I went with them and we all sat down in Mr. McKee's room. It is the room occupied by Mr. McKee and Billy when Billy is at home.

Q. Did he have any gifts with him for you and the children? A. I think I had better tell about the conversation. He was talking and asking questions and I answered one of the questions and he said "Shut up; I am not speaking to you. I am trying to find out things from the children."

By the Vice-Chancellor:

Q. Why don't you tell us what the questions were? A. They were questions about the children and the schools. No particular questions.

By Mr. Blumberg:

Q. Did you say any more? A. There was no particular questions; it was just general conversation.

I tried to take part in it and that's what he said to me. So then I told Billy to ring the bell for the maid. She was a new maid and had been there only three days, and I told him I would go out myself and see if dinner was ready to serve, which I did.

Q. What time of the day was this? A. It was about two o'clock. We usually had dinner at one o'clock on Sunday.

Q. Was that a Sunday? A. Yes.

Q. Did Doctor McKee bring any gifts from Europe? A. He didn't mention any at that time. Christmas time he did. Shall I tell the rest of this day?

Vice-Chancellor: It is very important perhaps.

(Witness continuing) We had dinner together about two o'clock.

By Mr. Walscheid:

Q. Are you talking about Christmas? A. No, this Sunday when he came home.

By Mr. Blumberg:

Q. What took place at dinner of any importance? A. Nothing happened.

By the Vice-Chancellor:

Q. You said you wanted to tell something? A. After dinner Mr. McKee went out. I don't know where he went.

By Mr. Blumberg:

Q. Did he say where he was going? A. No.

Q. Did you inquire? A. No, I had been told that such things were none of my business.

By the Vice-Chancellor:

Q. By whom had you been told that? A. By Mr. McKee, I never asked him.

Q. Have you finished all you want to say about that day? A. That's all that day.

By Mr. Blumberg:

Q. Christmas was shortly after that? A. Yes, a few days. This was the twenty-first.

Q. Anything take place between that day and Christmas you would like to tell?

By the Vice-Chancellor:

Q. Tell us all the talks from the time he came back from Europe up until the time you left there.

By Mr. Blumberg:

Q. What gifts did doctor McKee bring you from Europe? A. The gifts had been already shown, a blanket, and a little trinklet, a pin, that's all.

Q. Was that the gift which had a notation on from Doctor McKee to Mrs. McKee? A. Yes.

Q. Did he bring you any gloves? A. No, he brought me nothing else. He gave me nothing for Christmas except those things.

Q. Did he have any gifts for the children? A. Oh, yes. For Christmas he gave to Margaret a set of dark red pearls, a necklace, and gave her her choice between a dark red set and a coral set and she chose the dark red set. He brought gloves for her and various other things. I don't recall what they were, but a number of gifts.

Q. Do you recall what Doctor McKee stated about the trinklet he brought you? A. He didn't say anything about them.

Q. I mean on the stand the other day? A. There was nothing to that.

Q. What did he say? A. As I recall I had bought a pin exactly like that from a man on the steps of the Cathedral in 1906.

Q. In what town? A. I don't know that he said where it was.

Q. In what country? A. I don't remember.

Q. Had you bought a trinklet from a man in 1906? A. No, I had not bought such a thing like that.

Q. It wouldn't match if you did buy it? A. Certainly not.

Q. Did you have Christmas dinner? A. Yes, my sister Helen was with us for Christmas dinner. There were other gifts that he brought to Billy I didn't mention. He brought a very fine set of mechanical drawings, tools or implements and various other gifts for him.

Q. Doctor McKee was there that Christmas dinner? A. Oh, yes, and my sister and myself.

Q. Did you have any conversation with Doctor McKee at the dinner? A. I don't recall any particular conversation.

Q. Do you know the Owens? A. Yes.

Q. Who are they? A. Mr. Owens has been a friend of my husband for a great many years, ever since they were boys, as I understand.

Q. Did you see them in New York in January 1925? A. Yes.

Q. When did you see them? A. They came to our house for dinner on Friday. That would be about the ninth of January, on a Friday.

Q. They had dinner at your house? A. Yes.

Q. Who was there? A. Mr. Owens and Mrs.

Owens, Mr. McKee and myself. He said he wanted a particularly nice dinner and we had it. It was difficult to serve but we had it because he wanted it. I suggested that we have one of the students come over to serve that dinner but he objected to that and said he didn't want to go to that expense. They came to dinner and after dinner we went to the theatre. I believe he had gotten tickets for whatever Al Jolson was playing in the Winter Garden or something like that. When we arrived we found that Al Jolson was ill and the theatre was closed, so we went to a couple of other places and they had no room, and then Mr. McKee went to a ticket office, a theatre ticket office. We all went with him and he got tickets for "Annie Dear." He paid six dollars and twenty-five cents apiece, making twenty-five dollars for the four tickets.

Q. Did you suggest that show? A. No, it was not a play that I would select. It was not my kind of a thing at all. I had nothing to say about it.

Q. Did you attend the show that night? A. Yes, we did.

Q. Did you see the Owens the following day? A. Yes. After the theatre we walked across to Fifth Avenue with them. They were going back to their hotel, at the Waldorf, and just before we left Mr. McKee said—either he had or thought he could arrange to go to see the special jewels at Tiffany's the next morning.

Q. Did you go to see the jewels the next morning? A. Yes.

Q. Who was there? A. Mr. McKee said he didn't know just what time it would be but he would call me up and tell me when to go. So he did call me up and said for me to go down to the Waldorf to meet them, that he was then at the university and was going across to meet Mr. Owens on East 68th Street and go with him down to the hotel and meet

Mrs. Owens and me there. I went immediately down on the express on subway to 34th Street and immediately across to the Waldorf Hotel, and they had already gone.

Q. Who had gone? A. There was no one there. So I went to Tiffany's myself. They were looking at the jewelry. They apparently had been there for some little time.

Q. So you looked at the jewelry too? A. Oh, yes. I remember one thing. Mr. Kunz showed us at that time a string of dark red pearls, and Mr. McKee said to Mr. Owens it was similar to the one he got for Margaret in Europe. Mr. Owens asked him what he paid for the one he got in Europe and he said he paid fifty dollars for that.

Q. Did you see the Owens on Sunday? A. No. After the visit to Tiffany's Mr. McKee said he and Mr. Owens were going downtown some place, and Mrs. Owens had a luncheon engagement and I went home and didn't see them again.

Q. Did you go out with Doctor McKee on Sunday? A. No. I spoke of having a maid but he had dismissed the maid and said we didn't need a maid. On the Sunday before he had dismissed the maid. I got up in the morning and there was neither maid nor Mr. McKee. I didn't say anything to him about that. I got the dinner myself and everything else that was to be done, so of course the next morning I went out to see if she had her wages and I found he had paid her two weeks in advance and had put her out.

Q. The Sunday following when the Owens went did Doctor McKee ask you to go out that day? A. I was preparing dinner when he said "If you can get ready in three minutes you can go for a walk with me."

Q. What did you say? A. I told him I couldn't

be ready in three minutes. The dinner was in such a state I couldn't leave.

Q. Did you go for a walk then? A. No, he went out himself.

Q. Did he come back for dinner? A. Yes, and went out in the evening. He didn't say where he was going and came back late at night. He came in late Saturday too.

Q. Did you see him Monday morning? A. Yes, I saw him Monday morning. I had been straightening up the apartment and I had gone into my own bedroom and straightened the rug there when he came in and he grabbed me tightly by the shoulders with one arm and held me like a vice and put his hand down on my breast and pinched me.

By the Vice-Chancellor:

Q. Where? A. In the breast—both breasts.

Q. Did you say anything to him about it? A. Yes, I did. That he wouldn't have an opportunity of doing that again.

By Mr. Blumberg:

Q. Did Doctor McKee say anything? A. He just laughed.

Q. Did you see him that night? A. Yes, he came in about twelve o'clock and he said that his overcoat needed repairing, and I said "It is half past twelve now," and he said "It don't make any difference what time it is, I said to mend that overcoat and you will have to do it."

Q. Did you mend the overcoat? A. I did.

Q. Did you take any clothes out that day Mrs. McKee? A. Yes. I had a maid that day helping me straightening up the apartment, and Mr. McKee telephoned around five or five-thirty that he wasn't coming home for dinner, so I told the maid I didn't

care for any dinner myself, that she could have anything that was there for her own dinner. She stayed with me until about half past eight, I don't remember the time exactly, and then I asked her to take a suit box down to my sister's.

Q. Where was your sister staying? A. At the Hotel Colonial—81st Street.

Q. What was in that box? A. My clothes and personal things. Then I had a steamer trunk and I called the hallboy—this Sam who was here in court—and asked him to take that down and call a taxi for me, which he did.

Q. What time was that? A. I don't recall exactly. It was after the maid left, either nine or half past nine.

Q. It wasn't after midnight, was it? A. No, because I took it down to my sister's and returned from there before Mr. McKee came home.

Q. Did you stay in the apartment that night? A. Yes.

Q. When did you leave the apartment? A. I didn't go to bed that night.

Q. You did not go to bed? A. No. I straightened up everything that was there. I left everything in perfect order. I presume it—it may have been about seven o'clock in the morning, I had a handbag and a hat box and an umbrella. The time was before nine o'clock because Sam was still on and hadn't changed.

Q. You left a note for Doctor McKee? A. Yes, I did, and Sam called a taxi and I went to my sister's.

Q. Is that the note which is mentioned in evidence and attached to the Master's depositions? A. Yes.

By the Vice-Chancellor:

Q. It is the note dated January 13, 1925? A. Yes.

Vice-Chancellor: It does not appear to be marked with an exhibit number but is annexed to the Master's report filed May 31, 1928.

Mr. Walscheid: It was read into the record.

By Mr. Blumberg:

Q. You had been in conference with lawyers? A. Yes, since October.

Q. What lawyers? A. The firm of Hirsch, Newman & Reass.

Q. And you stated in that letter of January 13th you were going to Helen? A. Yes, my sister.

Q. Where was she staying? A. At the Hotel Colonial.

Q. How long had she been at the Hotel Colonial? A. I think she went there that fall some time. I can't remember.

By the Vice-Chancellor:

Q. Had you told your husband you had been consulting with lawyers since October? A. I never told him I had been consulting with lawyers. My lawyers had written to inquire about attorneys for any purpose that was necessary.

By Mr. Blumberg:

Q. Did you tell Doctor McKee your sister Helen was living at the Hotel Colonial? A. He knew that.

Q. How did he know that? A. I think she came there in October. He knew where she was.

Q. You say you left on January 13th? A. Yes.

Q. 1925? A. Yes.

Q. When did you first hear from Doctor McKee

after you left on the 13th of January? A. He sent a couple of small bonds I had with a letter.

Q. Is that the letter Exhibit C 3 in which he sent the bonds? A. Yes.

Q. Had you asked for those bonds? A. I had not.

Q. Were they your bonds? A. They were.

By the Vice-Chancellor:

Q. When was it you first consulted an attorney? In October of what year? A. 1924, your Honor. It was after the conversation that I gave.

Q. You mean about the man? A. Yes.

By Mr. Blumberg:

Q. The next letter you received was this Exhibit D 2, if you recall, dated February 7th. Aside from these two letters did the Doctor telephone to you at all after January 13th? A. He did not telephone. My daughter came home for a few days, and I think it was the last Sunday in January—the 25th if I remember—my telephone rang and I answered it and the voice said "Is this Mrs. McKee?" and I said "Yes," and the voice said "Wait a moment." Then I heard Mr. McKee's voice and I understood him to say "Is this Mrs. McKee?" and I said "Yes," and he fairly roared "It is not either; it is Margaret I want to speak to."

Q. You only said one word "Yes?" A. That's all. Margaret answered the 'phone and talked to him. He wanted her to come up to see him.

Q. Did Mr. McKee 'phone to you at all after that? A. He 'phoned me on the 28th day of February and said that he would like to talk with me and I—

By the Vice-Chancellor:

Q. Is that what he said? A. Yes. I don't remember the exact conversation but we arranged to meet at the Public Library. There is no place to meet him at the hotel except a small room which was always crowded.

By Mr. Blumberg:

Q. That was the first telephone conversation since January 13th? A. Yes, except when I said "Yes" over the telephone.

Q. You also had a conference at Mr. Newman's office with the Doctor? A. Yes, on the eleventh of February I went down to the office.

Q. Who was present? A. I saw Mr. Reass first and he said that Mr. McKee wanted to talk with me alone. I asked him if he thought that was best and he said "Yes, talk with him." He took me into Mr. Newman's room. Mr. Newman was away at the time. Mr. McKee came into that room to talk with me. He had his brief case and he took his papers out of the brief case and read what purported to be the expenses for each of the children, and he said that he would send me seventy-five dollars a month, and of course I said seventy-five dollars a month was not a liberal amount at all. He told me I could go home and live with my mother, and I said I didn't wish to go home and live with my mother; that I wished to stay in New York, and he said "You are not going to live in New York. You can go home and live with your mother in Illinois, or you can live in Maine or Connecticut or New Jersey, but you are not going to live in New York." He put his papers back in his brief case and went out of the room. Mr. Reass came in and we went in with him in his room and we had a conference together.

Q. Who? A. Mr. McKee did, and I think Mr. Kirby, and Mr. Reass representing Mr. Newman, and myself.

Q. What was said at this conference? A. The same thing. He got out the same papers and went over what purported to be the expenses for the children. The same thing as when we were alone.

Q. The conference then ended? A. Yes.

Q. Did you go to the conference at the Public Library? A. Yes.

Q. At 42nd Street and Fifth Avenue? A. Yes.

Q. What was said? A. I was to meet him at a certain time. I went and he was sitting on a bench in the corridor on the third floor. His face was flushed and he looked very angry. I went up to him and he didn't even rise and he started "Mr. Reass said you want to talk to me. What have you got to say?" I said "I sent no message to Mr. Reass," and he said "You didn't tell him you wanted to talk to me?" and I said "No, I sent no message at all. You called me up this morning and said you wanted to talk to me and I came down to meet you." So he said "Well, I will give you seventy-five dollars a month," and I said to him he knew that no one could live on seventy-five dollars a month. I said "Of course you know that I have well earned a share in your income and I expect to have it." He replied and said "I would like to see you get it." I also told him—asked him about paying my daughter's bill, the college bill which the rules of the college said must be paid by the first of March or no classes can be attended. This bill had to be paid and I asked him if he would pay it, and he said "I will not; unless I am appointed her guardian I will pay no bills." Then he looked at me as though I was some woman who had accosted him.

Vice-Chancellor: You cannot say that.

(Witness continuing): He looked at me in a disagreeable way and left.

Q. Did he say anything about another conference? A. No.

Q. When did you meet him next? A. I went down to Mr. Newman's office and told him about this matter—about my meeting with Mr. McKee—and he called up Mr. McKee's attorney, Mr. Kirby, and told him—

Mr. Walscheid: I object to that.

By the Vice-Chancellor:

Q. As a result of that talk did you meet again? A. No; except that the bill was paid.

By Mr. Blumberg:

Q. Did you see Doctor McKee again? A. That was the same day I saw Doctor McKee.

Q. What day was that? A. Monday, the second of March. I met Mr. McKee at the Grand Central Station. My son had come on and Mr. McKee had met him and had gone to Brooklyn with him. I met them at the train when they came back from Brooklyn to take the train to school.

Q. Did you speak to Mr. McKee then? A. Yes. He said to Billy "Do you want to go to camp this summer?" and Billy hesitated and said "I guess so." Then Mr. McKee said "You want me to pay the bills at the Taft School, don't you?" and Billy said "Yes," and Mr. McKee said "Then you want me to be your guardian, don't you?" and Billy turned white and looked at me.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will leave it in.

(Witness continuing): I said "That is a matter for us to decide, and this is not the place." Mr. McKee went away and I waited with Billy for the train.

By Mr. Blumberg:

Q. This was March 2nd? A. Yes.

Q. Did you have a conference after that? A. Yes. Mr. Newman had returned. He had been away during this time. We had a conference on March 5th—Mr. McKee and his attorney, Mr. Kirby, and Mr. Newman and myself.

By the Vice-Chancellor:

Q. Where did you meet? A. In the library of Mr. Newman's suite of offices.

Q. How did that meeting come about? A. Mr. Newman told me that he had arranged a conference and for me to come at that time.

By Mr. Blumberg:

Q. He wasn't present at the other conferences? A. No, he was out of town.

Q. What was said at that conference? A. After a few preliminaries Mr. Newman said "You have been unbearably cruel to your wife both in private and in public," and Mr. Kirby said "Not in public," and Mr. Newman said "Yes, in public also." He didn't say anything and Mr. Newman said "I will assume that it is your desire to bring about a reconciliation with your wife." Mr. McKee

didn't answer, and Mr. Newman said "Is that your desire?" and Mr. McKee looked at Mr. Kirby and Mr. Kirby slightly bowed his head and then Mr. McKee slightly bowed his head.

By the Vice-Chancellor:

Q. What do you mean by that? Did they make any motions? A. They nodded yes very slightly.

Q. But nothing was said? A. No.

Q. What next was said? A. Mr. Newman said "What have you to suggest?" and Mr. McKee got out the same papers and said his expenses were so and so, and that he would send me seventy-five dollars a month, and Mr. Newman said that was not an amount to consider at all. Mr. McKee said that we had talked over the matter of Billy going to camp and we had all four decided that was the best thing for him to do.

Q. You mean Mr. McKee said that? A. Yes. He said we had decided he was to go to camp, and I said that all that had been said about that was when we met him there at the train at the Grand Central Station and he asked Billy casually if he wanted to go to camp that summer and Billy had said "I guess so."

By Mr. Blumberg:

Q. Is that all that was said? A. No, there were other things. I am trying to think just what was said. Oh, yes! He said that Billy had said in Mr. McKee's presence that he had wanted him to be his guardian, and I corrected that. Also that Billy had made no reply and I had answered and said we will discuss it elsewhere.

Q. Anything else discussed that you recall? A. I can't recall if there was anything else at that time.

Q. Any definite conclusion arrived at? A. No.

Q. The meeting adjourned, I suppose? A. Yes, oh, yes, Mr. Newman said if Mr. McKee was that sort of a man there was no use of having conferences with him.

By the Vice-Chancellor:

Q. What was said in reply to that? A. They went away.

By Mr. Walscheid:

Q. Was that in Mr. McKee's presence? A. Yes.

By Mr. Blumberg:

Q. Then you received the letter of March 10, 1925, Exhibit P 21 (showing witness letter)? A. Yes, I did. I took it down and showed it to Mr. Newman.

Q. I will read the last paragraph—"You had better change your mind and come and live with me a normal and right married life. Won't you?" Is that the first letter that you received from Doctor McKee containing any such phrase as that? A. Yes.

Q. Did Doctor McKee say anything about this idea to you in conversations he had with you? A. He never said anything to me about living together again.

By the Vice-Chancellor:

Q. Was anything said previously about a normal married life? A. No, nothing said.

Q. I am concerned about this normal married life phrase? A. No, this is the first time it was used.

Q. Had that any special significance to you at the time of the receipt of that letter—these words "normal and right married life?" A. They had never been used before, but I know my husband's idea.

Q. I do not want the idea. There was nothing said before? A. No.

By Mr. Blumberg:

Q. You showed that to Mr. Newman? A. I did, and he told me to answer the first part of the letter and he would answer the rest of it.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: All right.

Q. Did Doctor McKee in his conferences with you or in any of these letters tell you where he was living? A. He didn't say anything about where he was living until I think the last of May.

Q. He never said anything in these conferences and in these letters? A. No.

Q. And you also received the letter of March 23rd, Exhibit P 13 (showing witness letter)? A. Yes.

Q. I notice in that letter the same statement is made—"There is no reason as I see it why you and I should not resume our joint domicil and live a right and normal married life together?" A. I don't know about the first of that paragraph because that was what Mr. Kirby and Mr. Newman said.

Mr. Walscheid: I think that should be stricken out.

The Witness: I think it should be stricken out.

Vice-Chancellor: You mean what is contained in the letter?

The Witness: In the letter he sent to me.

Vice-Chancellor: This letter in its entirety is in evidence. They cannot strike out anything like that. His putting it in the letter does not make it so.

Q. You had a conference on March 5th at Mr. Newman's office? A. Yes.

Q. You saw Mr. McKee at the Grand Central on March 2nd? A. Yes.

Q. Did he telephone to you during March? A. Not until April.

Q. He first wrote to you on April 6, 1925? A. Yes.

Q. Exhibit P 14? A. Yes.

Q. Did you see Doctor McKee in April at all? A. Yes, on the 15th of April, I think it was. About the middle of April he telephoned and asked me to meet him, which I did.

Q. Where? A. On a bench in the park.

Q. What park? A. The park back of the Natural Museum.

Q. Central Park? A. I think it is.

Q. Did he say in his telephone call why he wanted to see you? A. He did not.

Q. Did you ask him? A. No.

Q. But you went to meet him on that day? A. Yes.

Q. What was the conversation with him? A. He got out his papers he had brought before—the expenses of the children, and he said he would send me seventy-five dollars a month, and he said if his income increased he might send me a little more.

By the Vice-Chancellor:

Q. What did you say to that? A. I told him it was a ridiculous amount for any one to live on.

Q. So he called you there that day and made the same proposition to you that he had previously made to you? A. Just the same.

By Mr. Blumberg:

Q. Did he say anything else to you? A. It seems to me there was some other conversation. I can't remember now just what it was.

Q. You can't remember any of the conversation? A. No.

Q. Have you any recollection of how long this conversation took? A. Not very long.

By the Vice-Chancellor:

Q. How did the meeting break up and what was said on the departure? A. He said he had to go and got up and went.

Q. What time of the day or night was that? A. I think just before noon. I don't remember the exact time.

By Mr. Blumberg:

Q. When did you see Doctor McKee after that date in April? A. I don't remember seeing him until the ninth of July.

Q. Did he call you on the telephone at all? A. I had written him.

Q. Did he call you on the telephone during April, May or June? A. Yes, he called me in regard to the children. I remember he called me once and asked me about the school—about Billy. Nothing personal at all.

Q. Did you have any conferences during April, May, June or July, 1925, at Mr. Newman's office? A. I don't think so.

Q. Were you getting a check from Doctor McKee at that time? A. One of his letters said that Mr.

Newman had asked him to send some money and he was sending a check.

Q. How much did he send you? A. I think $200.00,—and then another letter said that Mr. Newman had asked him to send me some money and he sent me I think a check for $100.00. He was told that was an insufficient amount and he continued to send $100.00 a month after that.

Q. Then you received this letter of May 10, 1925, Exhibit P 17 (showing witness letter)? A. Yes.

Q. Is that the first intimation you had that Doctor McKee lived in Leonia? A. Yes, the first that he had anything to do with Leonia.

Q. Doctor McKee says in this letter—"You will recall I have always liked Leonia and indeed spoke of moving out here in 1922 when my apartment lease expired but did not because neither you nor Margaret liked the idea." Had Doctor McKee ever expressed any liking for Leonia to you? A. No, I was the one that liked Leonia when we were living in Ridgefield Park after he became connected with Columbia University. He said it was too far to commute. I suggested Leonia which was a little more convenient than Ridgefield Park. He said he must be on the west side of the river so that he could go down to Columbia. After strenuous efforts I found this little locality of Spuyten Duyvil, which is really a country village in the City of New York, and we went there to live.

Q. You were the one who suggested that you move to Leonia? A. Yes. When we had to give up the house in Spuyten Duyvil in 1920 and were considering where we could live, he came home one day and said—

By the Vice-Chancellor:

Q. You are speaking of Doctor McKee? A. Yes, and he said Doctor Bushwell was leaving Leonia

and wanted to dispose of his house and I suggested that we take this house in Leonia, and he said it was too great a ride; he could not live in Leonia. He must live some place nearer than Spuyten Duyvil. That's the objection he had to Spuyten Duyvil. He wanted to be nearer the university. I told him it would take twenty minutes on the subway.

Q. Wouldn't it be further away than that? A. One has to take a car to the ferry and another car in Leonia. Nothing was said in 1922 about going to Leonia. Our lease did not expire at that time. We had to take a lease for three years in the apartment we were in in the fall of 1920.

By Mr. Blumberg:

Q. In the last paragraph of this letter the doctor said—"I wish you would do what I talked over with you at our last getting together—come and join your husband as a married woman should." When was the last time you saw him? A. In the middle of April. He had said nothing about living together.

By the Vice-Chancellor:

Q. Did he ever in any talks he had with you personally request you to live with him? A. He never did, never, and in fact when I offered to do so at the end of January, 1927, in Mr. Newman's office he refused to do so.

By Mr. Blumberg:

Q. You received another letter on May 23, 1925, Exhibit P 18, a typewritten letter (showing witness letter)? A. Yes.

Q. What does that letter refer to? A. The letter

says "Dear Mary, I have just received the enclosed card. You should cancel the circulation card you now have and take out one in your own name." That refers to the card I had in the public library. He objected to my using that name.

By the Vice-Chancellor:

Q. What does that statement mean when you say you offered to do so at the end of January, 1927? What offer had you made? A. After a conference that we had. Do you want me to tell it?

Q. You made an offer?

Mr. Blumberg: I will get to it later.

Vice-Chancellor: All right.

By Mr. Blumberg:

Q. You say Doctor McKee wanted you to have a circulation card in the name of Mrs. Mary McKee? A. He objected to my using the name Mrs. Ralph McKee.

Q. If you received a letter from Doctor McKee throughout the months of April and May, 1925, were those offered in evidence? A. Those are in there.

Q. I show you a letter dated June 9, 1925, Exhibit P 24, addressed to you? A. Yes.

Q. That letter refers to Margaret having gone to Carthage, Illinois? Yes.

Q. Who lived in Carthage? A. My mother and my sister.

Q. And your daughter went there? A. To her grandmother's. I couldn't afford to keep her in New York.

Q. Was she there the whole summer of 1925? A. She was there until about the 20th of Septem-

ber. I went out later and we all came home together. I started the 11th of July.

Q. You took your son with you? A. Yes.

Q. Did you see Doctor McKee before you left? A. On the 9th of July.

Q. What was the occasion of your conference with him? A. The question of dividing the furniture. He had written to me and I had written to him and he had telephoned for me to come up on the 9th of July at eight o'clock in the evening, which I did, and Billy accompanied me.

Q. That was at 39 Claremont Avenue? A. Yes.

By the Vice-Chancellor:

Q. Did Mr. McKee at any of those meetings that he had with you that you have alluded to show any mark of affection towards you? A. No, your honor, he has shown no affection towards me at any time.

By Mr. Blumberg:

Q. Doctor McKee spoke to you about dividing the furniture at 39 Claremont Avenue? A. Yes.

Q. And you went there on July 9, 1925? A. Yes.

Q. Who went with you? A. Billy went with me.

Q. Did you go up to the apartment at 39 Claremont Avenue? A. Yes, and he opened the door.

Q. Did he greet you? A. Yes, he objected to Billy coming.

Q. What did he say about Billy coming? A. I told him I wanted him to come with me and he came with me. We went down a long narrow hall to the living room. Mr. Martin was in the living room. I had known Mr. Martin. I had met him a few years before. We sat down there to talk, Mr. Martin and Billy, Mr. McKee and myself, and Mr.

McKee said "The first thing we want to know is what you ran away with?" and I said "You know I took only my personal belongings that belonged to me personally", and he said "What did you do with the field glasses and the best blanket?" and I said "The field glasses were mine; they belong to me, I bought them, and what you call the best blanket I cut that in two and Margaret took one to school and the other is here so far as I know." Then he said something along the same line he wanted to know about affairs, and I said to him we should discuss those things by ourselves, and he said "No, Mr. Martin is here and we will discuss it now", and I said I would not discuss it with the Martins; it was nothing that concerned them and I will not discuss it. He had asked me to come out and I refused to discuss anything with the Martins, and if he did not wish to do as I said that Billy and I would go home.

By the Vice-Chancellor:

Q. Your counsel asked you whether your husband greeted you and you said yes. What was the greeting? A. He opened the door and I think the first think he said was "What did you bring Billy with you for?"

By Mr. Blumberg:

Q. Was there any further discussion? A. So Billy and I started out of the living room to the long narrow hall to the outside door and we said good night to Mr. Martin. I think Mrs. Martin came in when we were leaving and I had never met her before. We were introduced. Billy knew her; he had been there over night.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will leave it stand.

(Witness continuing) So Mr. McKee went with us too and when we got to the end of this hall I said to him "If you wish to discuss these things with me I would be glad to do so." So we went into Mr. McKee's bedroom which was just as it had always been. His toilet articles and his books and photographs of his father and the children were on the dresser. We sat down there and talked. I had made out lists of the furniture and furnishings as I thought should be equally divided and I spoke of these lists and took them out of my handbag and gave them to Mr. McKee. He looked at them and said "You come here to steal the best things are here", and I said "I came because you asked me to come." He said "I think you are trying to steal the best things we have." Then he said I might look over the books that belonged to me. We went back into the hall and the bookcases were arranged along this long hall almost the length of the hall. We did go over the books and I would pick out a book and say it was my book. He would look at it carefully and would make piles on top of the bookcases of these books. Then we went down the hall again to my daughter's bedroom. She had her only private desk which was a Christmas gift in which she kept her books and particular papers. We looked over those books and then he asked me again about the blanket. I said one of the blankets must be here and we will look for it. We ordinarily kept it on a particular shelf in a certain closet and it wasn't there. I said I couldn't look in the closets that Mrs. Martin was using without asking her. So then, I never have been able to recall just

what Mr. McKee said, it was something unpleasant about my going. I know I was surprised and angry and I can't recall what he said, but I thought he had misrepresented me to the Martins and I was going to tell the Martins why it was necessary for me to take the stand that I had taken. I went back to where Mr. and Mrs. Martin were in the living room and I started to tell them—

By the Vice-Chancellor:

Q. Was Mr. McKee there? A. Yes, and I started to tell them of the conditions that made it necessary for me to do it, and Mr. McKee said I wasn't going to say anything and he grabbed me by the arm. He is extremely strong, and pushed me out of the room and I told him to let go of my arm which he did, and then he grabbed the arm again and insisted upon my leaving the room, which I did.

By Mr. Blumberg:

Q. Have you finished telling the conversation with Doctor McKee on July 9, 1925, at 39 Claremont Avenue? A. He dragged me out of the room by the arm. I said he was asking about the blankets and I would ask Mrs. Martin about them. I said I would ask Mrs. Martin if she knew about the blanket with the pink border and I said it might be on her bed. We did and it was the one, the blanket he had been asking about all the time. My hands had gotten very dirty with the books and I washed my hands and said good night to Mrs. Martin and apologized to her about the disturbance and Billy and I went home.

By the Vice-Chancellor:

Q. Where was Mr. McKee at that time? Did he

leave the apartment with you? A. No, I left him in the apartment.

By Mr. Blumberg:

Q. Did you tell Doctor McKee that you were going to Carthage on July 11th? A. I don't remember that I said anything about it. He knew we were going.

Q. Where were you living at that time Mrs. McKee? A. At 110 West 79th Street.

Q. When did you move from the Hotel Colonial? A. About the latter part of June. We were a few weeks at this place.

Q. Was the furniture divided up at that time? A. No, he wouldn't discuss the matter at all.

Q. The discussion ceased? A. Yes.

Q. Did you receive any letters while you were at Carthage? A. Yes.

Q. Did you receive any money from Doctor McKee while you were at Carthage? A. Once in August, yes.

Q. When did you come back to New York? A. I had received other letters from Mr. McKee. He wrote me about Billy coming back and going to camp. I had told him I did not approve of him going to camp, that he was going to stay with me in Carthage that summer. But he had written a letter to a friend asking him to give the money and Judge Baird asked him if he wanted to go to camp or remain and Judge Baird said he would remain. We all returned—I think we arrived in New York on the 21st day of September. It was a Monday at least.

Q. Did you see Doctor McKee when you returned to New York? A. Not immediately.

Q. When did you see him next? A. I think it was on the 3rd of November.

Q. Did Doctor McKee telephone to you at any time during September or October, 1925? A. He telephoned me just before that meeting.

By Mr. Walscheid:

Q. What meeting? A. On November 3rd. I don't just now think of any other conference after July. There was one in June.

By Mr. Blumberg:

Q. Did you have a conference in Mr. Newman's office of Mr. Kirby's? A. Never in Mr. Kirby's office. I don't think we had a conference in Mr. Newman's office. Not with Mr. McKee. I did myself.

Q. You met Mr. McKee in November, 1925? A. Yes.

Q. What day of the month was it? A. I am not sure. I think it was the 3rd of November. It was about that time at least. Some papers had been served on Mr. McKee in October.

Q. Your New York suit? A. Yes, and my attorney had asked for some one who knew Mr. McKee but was not a friend of either of us, a particular friend, and I thought of Mr. Whaley whose sister had bought the house where we lived in Spuyten Duyvil, and he went with the man to serve the papers. Afterwards he came to me and said that Mr. McKee—

Mr. Walscheid: I object to what he said.

Vice-Chancellor: I cannot permit you to tell that.

Q. Where was this conference held on November 3, 1925? A. At Mr. Whaley's home.

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TESTIMONY.

*For Petitioner:*


| | | |
|---|---|---|
| Arthur Hixon, | | |
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| | Cross | 46 |
| Clara E. Bennett, | | |
| | Direct | 49 |
| | Cross | 50 |
| Louise Wragge, | | |
| | Direct | 55 |
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*Defendant's Witnesses:*

Frances Gibb,
Direct ..... 433
Cross ..... 446
Re-direct ..... 475
Re-cross ..... 479
John G. Jansen,
Direct ..... 481
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EXHIBITS.

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| P-2—Photostatic Copy of 1926 Directory ..... | 91 | " " |
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| P-4—Photostatic Copy of 1928 & 29 Directory ..... | 91 | " " |
| P-5—Check, dated Oct. 6, 1926 ... | 96 | 1045 |
| P-6—Check, dated Oct. 17, 1926 ... | 97 | 1045 |
| P-7—Photostatic Copy of Certificate of County Board of Elections ..... | 100 | 1046 |
| P-8—Photostatic Copy of Envelope containing Income Tax Blank ..... | 100 | Not printed |

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| P-9—Letter from Columbia University addressed to 210 Christie Heights Street, Leonia, N. J. | 101 | Not printed |
| P-10—Letter from Columbia University, addressed to 607 Bergen Ave., Jersey City, N. J. | 101 | " " |
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| P-12—Note, dated Jan. 12, 1925 | 124 | Read in Rec. |
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| P-20—Letter, dated May 27, 1925 | 141 | " " |
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| P-23—Letter, dated June 8, 1923 | 150 | " " |
| P-23A—Letter Copy of Exhibit P-23 | 152 | Not printed |
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| P-28—Letter, dated July 23, 1925 | 156 | Read in Rec. |
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| P-30—Telegram, dated July 30, 1925 | 160 | Read in Rec. |

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| P-31—Letter, dated Aug. 12, 1925 | 161 | Read in Rec. |
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| P-32A—Letter—Copy of Exhibit P-32 | 163 | Not printed |
| P-33—Letter, dated Aug. 26, 1925 | 163 | Read in Rec. |
| P-34—Letter, dated Aug. 29, 1925 | 164 | " " |
| P-35—Letter, dated Sept. 4, 1925 | 164 | " " |
| P-35A—Letter—Copy of Exhibit P-35 | 165 | Not printed |
| P-36—Letter, dated Sept. 23, 1925 | 165 | Read in Rec. |
| P-36A—Letter—Copy of Exhibit P-36 | 166 | Not printed |
| P-37—Letter, dated Oct. 13, 1925 | 166 | Read in Rec. |
| P-38—Letter, dated Oct. 18, 1925 | 166 | " " |
| P-39—Letter, dated Oct. 20, 1925 | 168 | " " |
| P-39A—Letter—Copy of Exhibit P-39 | 169 | Not printed |
| P-40—Letter, dated Oct. 24, 1925 | 195 | Read in Rec. |
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| P-46A—Letter—Copy of Exhibit P-46 | 200 | Not printed |
| P-47—Letter dated Dec. 12, 1925 | 201 | Read in Rec. |
| P-48—Letter, dated Jan. 15, 1926 | 201 | " " |
| P-48A—Copy of Exhibit P-48 .... | 205 | Not printed |
| P-49—Letter dated Dec. 16, 1925 | 201 | Read in Rec. |
| P-49A—Copy of Exhibit P-49 .... | 203 | Not printed |
| P-50—Letter dated Dec. 24, 1925 | 203 | Read in Rec. |
| P-51—Letter, dated Jan. 14, 1926 | 204 | " " |
| P-52—Letter, dated Jan. 27, 1926 | 204 | " " |
| P-52A—Letter—Copy of Exhibit P-52 | 207 | Not printed |

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| P-53—Letter, dated Jan. 26, 1926 | 206 | Read in Rec. |
| P-54—Letter, dated Feb. 14, 1926 | 207 | " " |
| P-55—Letter, dated Feb. 17, 1926 | 208 | " " |
| P-56—Letter, dated Feb. 16, 1926 | 209 | " " |
| P-57—Letter, dated Feb. 19, 1926 | 210 | " " |
| P-57A—Copy of Exhibit P-57A ... | 211 | Not printed |
| P-58—Letter, dated Feb. 22, 1926 | 211 | Read in Rec. |
| P-59—Letter, dated Feb. 25, 1926 | 212 | " " |
| P-60—Letter, dated Mar. 5, 1926 | 213 | " " |
| P-60A—Letter—Copy of Exhibit P-60 ..... | 214 | Not printed |
| P-61—Letter, dated Mar. 12, 1926 | 214 | Read in Rec. |
| P-62—Letter, dated Mar. 14, 1926 | 216 | Read in Rec. |
| P-62A—Letter—Copy of Exhibit P-62 ..... | 217 | Not printed |
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| P-65—Letter, dated April 7, 1926 | 219 | Read in Rec. |
| P-66—Letter, dated April 14, 1926 | 219 | " " |
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| P-67—Letter, dated April 15, 1926 | 221 | Read in Rec. |
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| P-68A—Letter—Copy of Exhibit P-68 ..... | 222 | Not printed |
| P-69—Letter, dated April 18, 1926 | 222 | Read in Rec. |
| P-70—Letter, dated April 23, 1926 | 223 | " " |
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| P-72—Letter, dated May 10, 1926 | 224 | " " |
| P-73—Letter, dated June 9, 1926 | 225 | " " |
| P-74—Letter, dated June 10, 1926 | 226 | " " |
| P-74A—Letter—Copy of Exhibit P-74 ..... | 227 | Not printed |
| P-75—Letter, dated July 9, 1926 | 227 | Read in Rec. |

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| P-76—Letter, dated July 16, 1926 | 228 | Read in Rec. |
| P-76A—Letter—Copy of Exhibit P-76 | 223 | Not printed |
| P-77—Letter, dated July 21, 1926 | 233 | Read in Rec. |
| P-78—Letter, dated Aug. 13, 1926 | 235 | " " |
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| P-79A—Letter—Copy of Exhibit P-79 | 238 | Not printed |
| P-80—Letter, dated Aug. 19, 1926 | 242 | Read in Rec. |
| P-81—Letter, dated Aug. 21, 1926 | 245 | " " |
| P-82—Letter, dated Aug. 24, 1926 | 245 | " " |
| P-82A—Letter—Copy of Exhibit P-82 | 246 | Not printed |
| P-83—Letter, dated Sept. 8, 1926 | 246 | Read in Rec. |
| P-83A—Letter—Copy of Exhibit P-83 | 247 | Not printed |
| P-84—Letter, dated Sept. 11, 1926 | 248 | Read in Rec. |
| P-85—Letter, dated Oct. 6, 1926 | 248 | " " |
| P-86—Letter, dated Oct. 8, 1926 | 249 | " " |
| P-86A—Letter—Copy of Exhibit P-86 | 250 | Not printed |
| P-87—Letter, dated Oct. 11, 1926 | 251 | Read in Rec. |
| P-88—Letter, dated Oct. 16, 1926 | 252 | " " |
| P-89—Letter, dated Oct. 19, 1926 | 252 | " " |
| P-89A—Letter—Copy of Exhibit P-89 | 253 | Not printed |
| P-90—Letter, dated Nov. 7, 1926.. | 253 | Read in Rec. |
| P-91—Letter, dated Nov. 10, 1926 | 254 | " " |
| P-92—Letter, dated Nov. 17, 1926 | 254 | " " |
| P-93—Letter, dated Dec. 13, 1926 | 255 | " " |
| P-94—Letter, dated Jan. 24, 1927 | 257 | " " |
| P-95—Agreement, dated Jan. 24, 1927 | 265 | 1052 |
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| P-96A—Letter—Copy of Exhibit P-96 | 267 | Not printed |

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| P-100—Letter, dated Feb. 6, 1927 | 271 | Read in Rec. |
| P-101—Letter, dated Feb. 7, 1927 | 273 | " " |
| P-101A—Letter—Copy of Exhibit P-101 ..... | 273 | Not printed |
| P-102—Letter, dated Feb. 11, 1927 | 273 | Read in Rec. |
| P-102A—Letter—Copy of Exhibit P-102 ..... | 274 | Not printed |
| P-103—Letter, dated Feb. 27, 1927 | 274 | Read in Rec. |
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| P-104A—Letter—Copy of Exhibit P-104 ..... | 276 | Not printed |
| P-105—Letter, dated Mar. 6, 1927 | 281 | Read in Rec. |
| P-106—Letter, dated Mar. 7, 1927 | 282 | " " |
| P-106A—Letter—Copy of Exhibit P-106 ..... | 283 | Not printed |
| P-107—Letter, dated Mar. 13, 1927 | 284 | Read in Rec. |
| P-108—Letter, dated Mar. 17, 1927 | 285 | " " |
| P-108A—Letter—Copy of Exhibit P-108 ..... | 286 | Not printed |
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| P-114—Letter, dated June 7, 1927 | 296 | Read in Rec. |
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| P-117A—Letter—Copy of Exhibit P-117 | 299 | Not printed |
| P-118—Letter, dated July 9, 1927 | 299 | Read in Rec. |
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| P-120—Letter, dated July 20, 1927 | 301 | Read in Rec. |
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| P-130—Letter, dated Jan. 11, 1928 | 311 | Read in Rec. |
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| P-131A—Letter—Copy of Exhibit P-130 | 313 | Not printed |
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| P-141—Letter, dated Sept. 14, 1928 | 321 | " " |
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| P-154—Check of Ralph H. McKee | 716 | 1054 |
| P-155—Check of Ralph H. McKee | 716 | 1055 |
| P-156—Check of Ralph H. McKee | 717 | 1055 |
| P-157—Check of Ralph H. McKee | 730 | 1055 |
| P-158A—Letter, dated Nov. 10, 1924 | 742 | 1056 |
| P-159A—Letter, dated Nov. 20, 1924 | 743 | 1057 |
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| P-162—Check of Ralph H. McKee | 755 | 1059 |
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| P-164—Check of Ralph H. McKee | 756 | 1060 |
| P-165—Check of Ralph H. McKee | 756 | 1060 |
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| P-171—Check of Ralph H. McKee | 759 | 1063 |
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| P-176—Deposition by Dominick Angelotta | 920 | 1072 |
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| P-178—Deposition by Kate Savage | 920 | 1090 |
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| Deposition of George W. Roberts | | 1120 |
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| D-4—Letter of Harry L. Whaley to Mrs. McKee | 911 | Not printed |
| D-4A—Envelope | 912 | " " |

Q. In Spuyten Duyvil? A. Yes.

Q. You were at the house in Spuyten Duyvil? A. Yes.

Q. Was Doctor McKee? A. Yes. Mr. McKee called me on the telephone and asked me to meet him there. He spoke of Mr. Whaley having come to see him and he said—we had a conversation about things and he asked me to meet him some place and I suggested Mrs. Tildsley's home. He said he didn't want to go to Mrs. Tildsley's. He said Mr. Whaley has come to talk to you and why not meet at his house.

Q. Who said that? A. Mr. McKee said that. I said that was all right if he wished to make that arrangement. He called me up later and made known that Mr. Whaley said we might meet there.

Q. And you did meet there? A. We did.

Q. Was Doctor McKee there when you got to the house? A. Yes.

Q. Did he greet you or did you greet him when you arrived? A. I said "Good evening", and I think he said "Good evening" or something like that.

Q. Did you have a conference with him that day? A. That evening. It was in the evening. Mr. Whaley was there and Miss Whaley was there. Mr. Whaley said "You have come to talk over your own affairs and we will leave the room", and Mr. McKee said "No, you have gone to talk with Mrs. McKee and you have talked with me and I would rather you would stay." He did stay, and Miss Whaley left the room.

By the Vice-Chancellor:

Q. Did Mr. McKee say he had sent Mr. Whaley to see you in the telephone conversation? A. Yes.

Q. Did he say why he had sent him or what Mr. Whaley had said on his return? A. No.

By Mr. Blumberg:

Q. Did you have a conversation with Doctor McKee that night? A. Yes, he had his brief case and went over the same thing what he was spending for the children, and he said he would send me seventy-five dollars a month.

Q. You say Mr. Whaley was there listening to it? A. Yes, I said again that seventy-five dollars a month was not to be considered. So he got up to go then and he said "Now you remember I have asked you to come back and live with me and you have refused", and I said "You have never asked me to come back and live with you." He went into a perfect rage and just bolted out the door. Mr. Whaley said "I never saw anybody leave my house like that before." He went after him and Mr. McKee came back. Mr. McKee then said good night to Mr. Whaley, but not to me.

Q. Then you left I suppose? A. Mr. Whaley—I suppose I can't tell the conversation with Mr. Whaley. Mr. Whaley called a taxi and I went down to the subway station in the taxi and went home.

Q. Did you see your lawyers about this meeting at Mr. Whaley's house? A. Oh, yes, I reported to them.

Q. How do you fix this date as November 3, 1925? A. I think I had a letter from Mr. McKee dated November 3rd saying "This evening I talked with you", or something like that.

Q. You fix it from the correspondence? A. Yes.

Q. When did you see Doctor McKee after that conversation at Spuyten Duyvil, in Mr. Whaley's

house? A. The next I remember was once in April, 1926. I don't recall any prior to that.

Q. Did you have Thanksgiving dinner with Mr. McKee? A. Yes I did, with Doctor McKee and Margaret at Lauber's in New York City.

Q. Did he telephone you to come? A. Yes, he telephoned me and asked me to have Thanksgiving dinner with him and Margaret. Margaret was with me at the time. He asked me to have Thanksgiving dinner with him and Margaret at Lauber's Restaurant.

By the Vice-Chancellor:

Q. What conversation passed between you, if any? A. He didn't say anything; he acted just like home. It was a very disagreeable occasion.

Q. You mean he invited you to dinner with Margaret and didn't say a word? A. No. He didn't expect I would accept the invitation.

Vice-Chancellor: I will strike that part out.

(Witness continuing) He did not take part in any conversation. Margaret and I tried to but he did not enter into the conversation.

Q. How long were you in the restaurant? A. About an hour and a half.

Q. When he left there did he accompany you? A. He and Margaret went to a theatre. He did not ask me to go to the theatre and I went home.

By Mr. Blumberg:

Q. Did he call you at all during December, 1925? A. I can't recall whether—I think he sent word with the children and asked me to meet him and

have dinner with both the children and with him and my sister.

By Mr. Walscheid:

Q. When was that? A. Christmas dinner.

By Mr. Blumberg:

Q. December, 1925? A. I think he sent word with the children.

Vice-Chancellor: Mr. Blumberg, if you made notes of dates it would save a lot of time.

Q. You received this letter dated December 12, 1925, Exhibit P 47 from Doctor McKee (showing witness letter)? A. Yes, I did. This is one of the letters he wrote telling me what the children were going to do, as though I didn't know it—when the children were coming to me. He said Margaret will be home on such a date and Billy will be home a little earlier. They were both coming to me. He knew they were coming to stay with me. He wrote that they were coming at a certain time when he knew they were coming to stay with me at the time.

Q. This letter of December 12th says—"We had all better plan to spend Christmas together. What say you?" Did you reply to that? A. I can't remember whether I wrote or sent word with the children.

By the Vice-Chancellor:

Q. But you did meet Christmas? A. No, the Thanksgiving occasion had been so unpleasant that I did not.

Q. Did you tell that to Doctor McKee? A. Yes.

Q. By what means was it? By letter or personal talk or telephone conversation? A. I can't recall whether I wrote or sent word with the children.

Q. Anyhow you sent word to him you would decline that invitation? A. Yes, and why.

By Mr. Blumberg:

Q. In the meantime there were no conferences in Mr. Newman's office? A. I think not.

Q. When was the next conference in Mr. Newman's office? A. I can't remember the dates. We had several conferences but he got out the same papers and went through the same thing, except on one occasion he said—oh, that was much later. That must have been about the latter part of December, 1926, and he had a paper drawn up and he said he would send me I forgot what amount—a small amount anyway, and I was to sign this paper, but he couldn't sign it because if he signed any papers it would seem to the university authorities that he was guilty.

By the Vice-Chancellor:

Q. Is that what he said to you? A. Yes.

By Mr. Blumberg:

Q. When did he say that? A. In this conference in Mr. Newmans' office the latter part of 1926. I had conferences with him before that—various conferences. Once or twice with Mr. Newman and several times with Mr. Kutz. He would tell them he wanted to have a conference and we would have a conference and he would go through the same papers and the same figures and nothing else. Of

course he was told that was not to be considered —to sign some agreement he wouldn't sign.

By the Vice-Chancellor:

Q. Who told him that? A. Mr. Kutz.

Q. Who is Mr. Kutz? A. I don't know his position. He was in the office of Hirsch, Newman & Reass.

By Mr. Blumberg:

Q. Is he a lawyer? A. Yes.

Q. I show you a letter which has been offered in evidence which you wrote on March 14, 1926, Exhibit P 62. You state in that letter you tried to find him at the office today but had not your other 'phone number. What 'phone number were you referring to? A. I was referring to his 'phone number at 21 Claremont Avenue where he was.

Q. You had a conference in April, 1926 in Mr. Newman's office. Do you remember that conference? A. Yes.

Q. What took place? A. It was brought about through Doctor Brophy which Mr. McKee mentioned in his testimony. Doctor Brophy sent word with my son and asked me to come and see him, which I did. He said he had called up Mr. McKee about the childrens' dental bill.

Mr. Walscheid: I object to it.

Vice-Chancellor: Just tell us your conversation with Mr. McKee.

Witness: Your Honor, he has talked to Doctor Brophy and he has misrepresented—

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will have to strike that out. You can testify only to conversations in the presence of Doctor McKee.

Q. Will you tell what took place on April 22, 1926 in Mr. Newman's office? Was Mr. Newman there at that time? A. No, Mr. Kutz was there. Mr. McKee came in and Mr. Kutz left us alone.

Q. Did Doctor McKee call you up about the conference at Mr. Newman's office? A. Yes.

By the Vice-Chancellor:

Q. As a result of that call you went to that office did you? A. Yes.

Q. Tell us what transpired at that office?

Mr. Walscheid: Which I understood was with him alone.

A. He objected to Mr. Kutz being there. Mr. Kutz said he did not intend to stay so we could have a talk alone. I was sitting at the table alone and Mr. McKee sat down at the end of the table with his hands behind his head and sat and said nothing whatever. I said nothing whatever. We sat I suppose twenty minutes that way and finally he said "It seems as though we ought to live together", and I said "How can we do that?"—No, I didn't reply to that. Then he sat a long time again and then he said again "It seems as though we ought to live together", and I said "How can we do that?", and he said "We can take a room in some inexpensive hotel now and discuss this matter later." He said "Are you willing to promise twelve times a month?", and I said "I always refused to put my life on any such basis." He said "If you are not willing to promise that there

is no use of discussing the matter", and he got up and went away.

By the Vice-Chancellor:

Q. Did you know what that twelve times meant? Did you know the significance of that remark? A. Yes, I did.

Q. How did you know? A. Because there had been a great deal of difficulty on that very point. He demanded it frequently and he would pay me to run the house.

Q. What are you talking about? A. I am talking about sexual intercourse.

By Mr. Blumberg:

Q. Just going back a little! On April 15, 1926, you received this letter marked P 67? A. Yes.

(Counsel reads letter.)

Q. Did you telephone to Doctor McKee when you received this letter? A. I think I waited for him to telephone me.

Q. Did he telephone you? A. Yes.

Q. And that's when he arranged the meeting at Mr. Newman's office? A. Yes.

Q. Were you the one that suggested Mr. Newman's office? A. Yes. Our meetings in public places had been too unpleasant and Mr. Newman advised me to have the meetings at his office.

Q. In reply to that letter you sent Doctor McKee a letter dated April 19th, did you not? A. I may have.

Q. And this is a copy of the letter you sent, Exhibit P 68A? A. Yes.

(Counsel reads letter.)

Q. This was the meeting you had of April 22nd? A. Yes.

Q. Did you and Doctor McKee speak to Mr. Kutz after the conference? A. I did, but Mr. McKee did not. He walked away.

Q. I call your attention to a letter dated June 9, 1926, Exhibit P 73. In that letter Doctor McKee says—'I am leaving Sunday for a ten day trip. Would that you were in a frame of mind to go along with me." Had you been on any trip with Doctor McKee since 1923, 4 or 5?

Mr. Walscheid: I object to it; what difference does it make. It is immaterial and the question is leading.

Vice-Chancellor: I will permit it over your objection.

A. No, I had not. The last trip with Doctor McKee was in 1913.

Q. That's the trip to Rochester? A. Yes.

Q. Had Doctor McKee been on many trips? A. Yes, many. He took his sister on some of them and the children. He objected to me going when the children wanted me to go with them. He said "No, we don't want her to come with us."

Q. He took the children? A. Sometimes.

Q. Did you ever ask to go with him? A. I suggested several times that I would go with him to meetings of the chemical society. I spoke one time of going to Pittsburg and he said "No, we can't afford it." I said "You very often take Inez to these meetings. If you can afford to take her I can't see why you can't afford to take me." He said "Well, you are not going anyhow."

Q. Who is Inez? A. His sister.

Q. On June 10, 1926 you wrote a letter to Doctor McKee. I show you a copy, Exhibit P 74A? A. Yes.

Q. In this letter you say—"I have postponed writing really because I have felt greatly indignant that you should so abuse the confidence of an acquaintance." Who were you referring to? A. Doctor Brophy.

Q. And Doctor Brophy was the doctor mentioned in the letter I read a few minutes ago? A. He was.

Q. In what manner did you think he had abused the confidence of Doctor Brophy? A. Because he had asked Doctor Brophy—Doctor Brophy had talked with him about the matter and said he would speak to me and he did, and asked me if there was any possibility of patching up the differences in our family, and I said it would all depend upon Mr. McKee.

Mr. Walscheid: I object to that.

Vice-Chancellor: It is in now.

Mr. Walscheid: Really it is part of the answer and I can't object to it. What I object to is what Doctor Brophy said to her. I will withdraw the objection.

(Witness continuing): Doctor Brophy agreed about that.

Vice-Chancellor: You have already testified about that.

Mr. Blumberg: He has withdrawn the objection.

Vice-Chancellor: Complete your answer.

(Witness continuing) If I could believe that he regretted the way he had acted and that his atti-

tude toward me would be different of course I would resume a home with him, and I saw Doctor Brophy a few days later and he said he had reported to Mr. McKee what I had said and Mr. McKee came to his house—

Mr. Walscheid: Wait a moment! I object now.

Vice-Chancellor: I will sustain the objection.

Q. "Please do not drag anyone else into our affairs." Who was you referring to? A. To Doctor Brophy.

Q. And you also say—"After using them to arrange a meeting with me, you say nothing and do nothing that will help to settle the matter. It is so patent that you do this only in order to make an opportunity of writing a letter in which the statements are quite contrary to the real interview and which you think you can later use as evidence." What did you have reference to? A. He was continually doing that same thing. He would have a meeting with me and then going over them—over the figures. Then he would write a letter in which he said he had spent hours trying to get me to go back to live with him when he had not said a word to me.

Q. This was what you wrote with reference to that feature of the case? A. Yes.

Q. Did you have any meeting with Doctor McKee after the meeting at Mr. Newman's office in April 1926? A. Yes, I had a meeting with him in June. I can't remember the exact date—the latter part of June I think in 1926, on the mezzanine floor of the Pennsylvania Hotel.

By the Vice-Chancellor:

Q. How did that come about? A. He had either

written or telephoned and asked me to meet him and I always met him when he asked me to.

By Mr. Blumberg:

Q. What did he say when you met him that time? A. Nothing but the same thing; he just went over the same thing.

Vice-Chancellor: He has testified differently as to what he said. Why not call her attention to it if you recall what was said? The doctor has specifically testified as to what he said on those occasions.

Q. Do you recall what was said to you Mrs. McKee? Can you state what the conversation was? A. I can't recall the conversation; I recall the end of it. He said "I have asked you to come back with me and remember I have, and you have refused to do it," and I said to him "But you have never asked me to come back and live with you," and he laughed and said "I will say it now"—"Will you come back and live with me?" and laughed and went away, before I had a chance to say nothing at all.

Q. Did you have a meeting in Mr. Newman's office in June 1926? A. That's the only meeting I recall. We had so many meetings I can't recall the dates. If the letters are there I might recall them.

Q. Coming down to January 1927— A. We had another meeting in August of 1926.

Q. In the Hotel Pennsylvania? A. Yes. On that occasion he said something about the property that we had in Wisconsin. It was very indefinite; I couldn't understand what it was he wanted. He wanted to know if I would sign some papers, so I told him to send me those papers. He wasn't definite enough for me to know whether he was think-

ing of selling it or what it was, but I told him to send me the papers.

By the Vice-Chancellor:

Q. Did he send them A. He did not.

Q. How did that meeting come about at the Hotel Pennsylvania? Was it at your request or his? A. None of the meetings were at my request; they were all at his.

Q. Where were you living at the time of the Hotel Pennsylvania meeting? A. I was living in Spuyten Duyvil.

Q. Where were you living on the other occasion on the mezzanine floor? A. The meeting in August 1926 and the meeting in June 1926 I was living in the Leyman House.

Q. Who was living there with you? A. My sister lived with me until my daughter came home from school in June.

Q. Did Doctor McKee ever come there to interview you? A. No. The children lived with me during the rest of the summer. We gave up the house on the first of September.

By Mr. Blumberg:

Q. After January 13th you first lived in the Hotel Colonial for several months? A. Yes.

Q. Until when? A. Until the latter part of June.

Q. And you went to where? A. 110 West 79th Street.

Q. Then you went to Carthage? A. Yes.

Q. When you came back from Carthage did you go to 110 West 79th Street? A. Yes; I lived there until the latter part of September, 1925.

By the Vice-Chancellor:

Q. Did Mr. McKee know you were living at that address? A. Oh, yes.

Q. Did he ever visit you there? A. No, he telephoned.

By Mr. Blumberg:

Q. You left 110 West 79th Street and moved to where? A. It was either 50 or 51 West 76th Street.

Q. How long did you live there? A. Until the first of April.

Q. Then you went to the Leyman house in Spuyten Duyvil? A. Yes.

Q. That is the house Mrs. Hooker testified to? A. Yes.

Q. What sort of a house was it? A. A very nice house, a stucco house—an eight room house. It was Doctor Leyman's; he had gone to California.

Q. What rent did you pay in that house? A. Fifty dollars a month. The rent was $140.00 but he had rented it to some people who had proved irresponsible.

Q. You paid fifty dollars a month? A. Yes.

Q. How long did you stay there? A. Until the first of September 1926.

Q. Where did you go from there? A. To a large apartment in the upper part of a bungalow in Spuyten Duyvil.

Q. How long did you live in this bungalow? A. Until the first of March 1927.

Q. Then you moved to where? A. To my present apartment.

Q. 2727 Spuyten Duyvil Parkway? A. Yes.

Q. The children knew of your address all the time? A. They were with me during their vacation.

Q. Did they visit Doctor McKee? A. Yes. During the summer of 1926 Margaret was preparing at Columbia and Billy was working in Bronx Park. They frequently had dinner with him at Columbia at the Faculty Club.

Q. Did Doctor McKee visit you at any of these houses? A. Yes. Once he and his brother came when we lived in the bungalow on Arlington Avenue.

Q. Spuyten Duyvil? A. Yes, in September 1926.

Q. What did Doctor McKee say when he came there that day? A. Billy went to the door. The entrance was through a sun porch, and Billy answered the knock on the door and then he came and told me it was his father and his uncle, his father's brother. He had seated them in the sun porch, so Margaret and I went out to see them and Mr. McKee didn't even speak to me and didn't get up. He didn't even speak, and his brother greeted me as he always did and took me in his arms and kissed me as he always did, and Mr. McKee didn't speak to me.

By the Vice-Chancellor:

Q. Was there any talk between you? A. His brother and I talked. Mr. McKee said something; I don't remember what. Oh, yes, Margaret had been quite ill and we talked about it.

Q. Who talked about it? A. All of us.

Q. I understood you to say Doctor McKee did not talk to you? A. Not to me, but in the conversation. He didn't greet me when he first came in. I can't remember that he said anything directly to me; he may have. Then later he suggested that we should all go to dinner some place but of course Margaret was too ill, and Billy went with his father and his uncle.

By Mr. Blumberg:

Q. How long were they in the house? A. Oh, they had been there an hour and a half or two hours.

By the Vice-Chancellor:

Q. Did Mr. McKee's brother do anything to try and bring you together? A. Nothing said about that.

Q. Nothing said about the differences between you and Mr. McKee? A. Nothing at all; there was nothing mentioned.

By Mr. Blumberg:

Q. Was there any other occasion that Doctor McKee met you at one of the houses in which you lived? A. Where I live now in the apartment at 2727 Spuyten Duyvil Parkway. He had been some place with my daughter and dropped her home and then he came upstairs. She asked him up. He had a newspaper which he gave me about the death of a friend of both of ours. He just came to the door of the apartment.

By the Vice-Chancellor:

Q. Did he speak to you? A. He had the newspaper with him and thought I would like to see it. He gave it to me and went away.

By Mr. Blumberg:

Q. When was this? Can you fix a time? A. It was Christmas Eve, 1927. They had been to a wedding.

Q, 1927? A. Yes.

Q. That is after the divorce suit was started? A. Yes.

Q. Did he say anything about having started the divorce suit? A. No. I had seen him earlier in December and he spoke about it then.

Q. Do you recall the day that you went to the Court House in New York in January 1927? A. Yes.

Vice-Chancellor: You mean the first day?
Mr. Blumberg: Yes.

(Witness continuing): The first day was Wednesday.

Q. With whom did you go to the Court House? A. I went with Mrs. Tildsley and we stopped for Mr. Whaley and we all three went together.

Q. Did you meet your sister in court? A. Yes.

Q. Which sister? A. Helen Noyes; she was already in the court room.

Q. And you went to the court too? A. Yes.

Q. Did you see Doctor McKee there? A. He was on the other side of the court room.

Q. Did he have his lawyer there, Mr. Kirby? A. Yes.

Q. Was your lawyer there? A. No, my lawyer wasn't there, and Mr. Conroy from his office was there. It was some time later when Mr. Reass came in.

Q. Did Doctor McKee speak to you in the court room? A. No.

Q. Did you speak to him? A. No.

By the Vice-Chancellor:

Q. Did he see you come in? A. I think that I saw him look at me once, yes.

By Mr. Blumberg:

Q. Was the case called that you noticed? A. We waited some time; there was another case being finished and they called the case and we all went forward, and Mr. McKee and Mr. Kirby and Mr. Con-

roy and Mr. Reass sat at the table, and we sat at the table and Mr. Reass and Mr. Kirby went up and spoke to the judge. They apparently whispered; we heard no voices.

By the Vice-Chancellor:

Q. They went up but you did not hear what was said? A. No; and Mr. Reass came back and said—

Mr. Walscheid: I object to it.

Q. Was Mr. McKee there? Was he listening to the conversation as to what the judge said which was told to you? A. I don't know; he was there.

Vice-Chancellor: Then I can't permit you to testify unless it was said within his hearing.

Witness: But your Honor he said himself what Mr. Reass said to me.

Mr. Blumberg: It isn't enough importance to bother.

By Mr. Blumberg:

Q. The case wasn't tried that day was it, that Wednesday morning? A. No.

Q. What time did you leave the court room? A. About twelve or a few minutes after.

Q. Did you have lunch that day? A. Yes, I had lunch with Mrs. Tildsley, Mr. Whaley, my sister and Rhoda Moore. We all left the court room together. We went across the street somewhere to some restaurant and we all had lunch together and we all came back together.

Q. Back to the court room? A. Yes.

Q. The case had not been called in the morning?

A. Yes, the case was called but nothing was done because it was adjourned for the lunch hour.

Q. You heard Doctor McKee testify that he had a conference with you that day?

Mr. Walscheid: I object; he has not said it was this day.

Witness: He said it was the first day.

By the Vice-Chancellor:

Q. Did you ever go to lunch on any of these days with Doctor McKee? A. On Monday, the last day. We were only in court two days.

By Mr. Blumberg:

Q. That is the first day you went to the court room? A. Yes.

Q. You had been there before? A. I had not.

Q. That was the first day you saw Doctor McKee in court? A. It was the first time I had been there.

Q. Where was this court? A. It was in New York City; City Hall Park.

Q. You had no conference with Doctor McKee the first day? A. I did not.

Q. It was on a Wednesday?

Mr. Walscheid: I object to the questioning; it was on the calendar all week.

Vice-Chancellor: What I am concerned about is whether she was to lunch with Doctor McKee.

Mr. Blumberg: Mr. Walscheid says the case was on a number of days. Mrs. McKee was not in court.

Q. The first day you went to court was Wednesday? A. Yes, on Wednesday.

Q. Did you speak to Doctor McKee that day? A. I did not.

Q. Did you have lunch with him? A. I did not.

Q. Did you have any conference with him that day? A. No.

Q. Did you have a conference with him the following day? A. In Mr. Newman's office, and Mr. Kirby was present.

By Mr. Walscheid:

Q. When was that? A. The Thursday following that Wednesday.

By Mr. Blumberg:

Q. Were you in the court room on Thursday? A. No.

Q. Were you there on Friday? A. No.

Q. Were you there on Saturday? A. No.

Q. But you were there on Monday? A. Yes.

Q. So you were in court two days? A. Yes.

Q. What happened on Wednesday afternoon? Was the case called when you came back from lunch? A. No, I met Mr. Newman and Mr. Reass in the corridor. I can't explain about that without explaining the previous conversation.

Q. Did you go home then or stay in the corridor? A. We all went home.

Q. The following day you had a conference in Mr. Newman's office? A. The conference was in the library of Mr. Newman's office; Mr. McKee, Mr. Kirby, Mr. Newman and I being present.

Q. What was said at that time? A. Mr. McKee had some typewritten papers of some kind. He didn't read them and we didn't read them, but he said he would send me forty dollars a week, and he said "This is what the papers say; he would send

me forty dollars a week and that I would agree to withdraw my case in New York City and that I would sign this agreement saying that I would withdraw this case, but that he could not sign the agreement because Columbia University would consider him guilty and dismiss him from the university."

By the Vice-Chancellor:

Q. That's the paper that your lawyer or you told him you should not be expected to sign if he did not sign it? A. This was the second time.

Q. Then there was another time when he made a similar proposition? A. Yes.

By Mr. Blumberg:

Q. Was anything else discussed at this conference? A. Not while they were present.

Q. Not while who were present? A. While Mr. McKee and Mr. Kirby were present. I talked to Mr. Newman after.

Q. Did Mr. Newman say anything about this forty dollars a week in the presence of Mr. McKee? A. He said we couldn't consider forty dollars a week or consider any agreement that he wouldn't sign. They shouldn't expect such a thing.

Q. Was there anything said at all about your living with Doctor McKee? A. No, nothing.

Q. Did you have another conference in Mr. Newman's office? A. Yes.

Q. When? A. On Saturday morning.

Q. Was that arranged when the conference on Thursday terminated? A. No.

Q. How was it arranged? A. Because Mr. Newman had made this suggestion to me, that it might

be possible to have a nominal home together. We would live in the same house.

Q. What was said with respect to that? A. This would save Mr. McKee's reputation because no one would know what our private arrangements were and that would give us each the privilege of having the children with us.

By the Vice-Chancellor:

Q. What did Mr. McKee say to that? A. Mr. McKee had gone; he said this to me.

Q. You are telling a conversation with Mr. Newman after he had gone? A. The question was if there was another conference and I am telling it all. I said I couldn't consider it.

By Mr. Walscheid:

Q. Are you talking about what you said to Mr. Newman? A. I am talking about why we had a second conference.

By the Vice-Chancellor:

Q. You could have told us about that with the rest of it? A. I couldn't consider that because I would be afraid, and Mr. Newman said—

Mr. Walscheid: One moment; I object.

Mr. Blumberg: Never mind that Mrs. McKee. We are trying to get the second conference.

By Mr. Blumberg:

Q. Did you have a conference on Saturday? A. Yes.

Q. Was this same question brought up?

By the Vice-Chancellor:

Q. What was said in Mr. Newman's office? A. This conference was between Mr. McKee and Mr. Kirby, and Mr. Newman and myself, and Mr. Newman said that he had suggested to me, and after consideration I had agreed, that he would present the matter to them, and Mr. Newman said the purpose was that it would save Mr. McKee's reputation which seemed to be his main consideration, and would give us each the opportunity of having the children with us if we had a nominal home together, each of us living our own lives, and Mr. Kirby broke in and said he wouldn't consider anything of the kind. Mr. Kirby said to me "Are you willing to live in New Jersey with Mr. McKee; that's his home?" I said "Where we live is a very minor consideration, but there is no reason for his living in New Jersey except that he thinks that is an easy place to get a divorce." Mr. Kirby said "You refuse to live in New Jersey with him?", and they both got up, and I said "No, I have not refused", but they both went out and that was the end of that.

Q. That was the Saturday before the Monday court proceedings? A. Yes.

Q. Then Sunday was the conversation you had at the home of Dean Pegram? A. Yes.

By Mr. Blumberg:

Q. Had you been to Dean Pegram's house on Friday? A. No, I had not seen or spoken to him for a long time.

By the Vice-Chancellor:

Q. You met Dean Pegram on Sunday morning? A. Yes.

Q. How did you come to meet him? A. I called him up on Saturday, and asked him if I might talk with him about my family affairs, and he was in conference all afternoon and all evening; he didn't know how late he would be but he would call me up when he found out how late he would be. He did call me up but it was too late to see me that afternoon but it was arranged to call the next morning.

Q. That was Sunday morning? A. Yes.

By Mr. Blumberg:

Q. And Mrs. Tildsley went with you? A. Yes.

Q. You only saw him once?

Mr. Walscheid: I object to it.

By the Vice-Chancellor:

Q. How many times did you see him on Sunday? A. Twice. I saw him that Sunday morning.

Q. And again what time? A. In the evening about eight o'clock; I don't recall.

Q. Were you alone on the first occasion? A. No, Mrs. Tildsley was with me.

Q. Were you alone on the second occasion? A. Yes; that was after he had the conference with Mr. McKee.

Q. It was after he talked to you he had the conference with him? A. Yes.

By Mr. Blumberg:

Q. What was stated at the first conference? A. I asked him to see Mr. McKee to ask him as to the advisability of having a conference in order to avoid publicity. I also told him of the proposition

of Mr. Newman and he thought it was the best way out under the circumstances.

Q. What proposition of Mr. Newman? A. About a nominal home. I did not discuss why these things had come about; I did not discuss the family troubles with him.

By the Vice-Chancellor:

Q. Did you state to Dean Pegram your unwillingness to live with your husband? A. No, your Honor.

Q. Did you say anything at all at that time about your willingness or unwillingness to live with your husband? A. No, your Honor.

Q. Was any such thing discussed? A. No.

By Mr. Blumberg:

Q. Did you say anything to Dean Pegram about a separation agreement? A. No, I did not. All I asked him was to see Mr. McKee about the advisability of having a reconciliation.

Q. Then you left that morning? A. Yes, Mrs. Tildsley and I went.

Q. Did Dean Pegram telephone to you? A. Yes, in the evening; I don't know what time it was, it was after dark in the evening.

By the Vice-Chancellor:

Q. Then you had three talks with him—two in his office and one on the telephone? A. Yes. He simply said he would see Mr. McKee and if I would come to see him. I didn't have three conversations, no.

Q. That was a conversation over the 'phone of only a very few words; something said by him and

by you in return? A. He asked if I would care to meet Mr. McKee.

By Mr. Blumberg:

Q. What did he tell you? A. He said Mr. McKee was favorable to the proposition. He didn't say what the proposition was. I understood it was a proposition about having a referee.

Mr. Walscheid: I object to it.

Vice-Chancellor: I will have to strike that out.

Q. Did Doctor McKee call you that day? A. No.

Q. Did any one arrange for a conference the following day? A. Dean Pegram. I said "Yes, I would see him before court; that I was not willing to have a postponement."

Q. Did you have Mrs. Tildsley go with you? A. No, I went myself.

By the Vice-Chancellor:

Q. Did you see her there? A. Not that morning; I saw her in the afternoon.

By Mr. Blumberg:

Q. What time did you get to court? A. About a quarter to ten.

Q. Was Doctor McKee there when you got there? A. Yes.

Q. Did he greet you that day? A. Yes. I saw Mr. Reass and Mr. Reass said we could go into a room that he showed us and talk things over. He said that the case had been postponed until the

afternoon. I said "Why did you do that? I told you Saturday not to do that."

Mr. Walscheid: I ask that be struck out.
Vice-Chancellor: I will strike it out.

(Witness continuing): We went into this little room that Mr. McKee and I talked alone.

Q. And you did talk it over with Mr. McKee alone? A. Yes.

Q. What did Mr. McKee say about the proposition? A. He said the proposition of Mr. Newman's was idiotic. I said that would be a way of avoiding any trouble at the university; no one would know what our private arrangements were; no one would know but we were living in harmony, and that it would give him the opportunity of having the children, too, and he said he didn't care anything about that. He said the only question is "Are you willing to promise eighteen times a month"?

By the Vice-Chancellor:

Q. It is eighteen times a month this time; it was twelve times a month before? A. Yes, your Honor.

By Mr. Blumberg:

Q. Go ahead with the conversation with Doctor McKee. A. I said if he was going back to that same thing there was no use of talking about it; if he wanted to do this thing that Mr. Newman suggested—my feeling toward him was only one of repulsion; it couldn't be anything else—but if he wanted to have a nominal home together and would treat me with the ordinary consideration

that one member of a family expected from the other, that I would try to overcome that feeling and then we could resume our living together.

Q. What did Doctor McKee say to that? A. He said that same thing about asking if I was willing to promise eighteen times a month and if I wasn't there would be no more said.

Q. Did you say you were going on with the case at all? A. No, I didn't say anything about it. Then he said—he took some papers out of his pocket and said he had written out—why there was no reason why we should not write out our own separation agreement, and I said I wasn't interested in any separation agreement that he would make; that I wanted it legally and finally.

Q. Did he show you the separation agreement? A. No.

Q. You didn't look at it? A. No.

Q. Did he ask you to look at it? A. No, he had it in his hand; I don't know whether he asked me to look at it.

Q. Did that terminate the conversation? A. He said he was going to lunch. I said we were to agree to have a referee or something like that and he said "I am going to lunch with you", and he did. We had lunch in a restaurant but there was no opportunity to say much; it was a very crowded restaurant.

Q. Then you went back to the court room? A. When we came from lunch he said he was going to see Mr. Kirby, and left me, I went back to the court room.

Q. What happened next? A. Mr. Reass told me that Mr. McKee wanted to talk with me again; he had talked with Mr. Reass and told him I didn't want to sign this agreement because Mr. McKee had never kept any promise he had made me.

Mr. Walscheid: I ask that be struck out.

Vice-Chancellor: I will strike it out; there is too much getting into the record.

Witness: I couldn't tell why I did certain things without telling it all.

Q. We have got to the point about the second conference that day? A. Yes, I had a second conference that day.

Q. Is this the agreement that Doctor McKee had (showing witness a paper)? A. Yes, it is.

Q. When did you finally read that agreement? A. I didn't read the agreement until I got home that night.

Q. When was it signed? A. It was signed the afternoon; I had never read it.

By the Vice-Chancellor:

Q. You mean you signed it before you read it? A. Yes.

Q. Why? A. Mr. McKee read it to me and we discussed part of it. He mentioned the amount that he would give a month which he had $166.66.

By Mr. Blumberg:

Q. Mr. McKee read the agreement to you? A. Yes.

By the Vice-Chancellor:

Q. Did he read it as it reads now? A. I am not sure your Honor; there are certain things about it that are different.

Q. What is about it that is different? A. This discussion of the amount. I said I couldn't live on $166.66 a month.

Q. It was changed to $200.00? A. Yes. We discussed the matter and he had made a proposition through a second party of $9,000.00 a year.

Mr. Walscheid: I ask that be stricken out.

Witness: How can I explain it? He discussed the matter of this amount and I told him we could not get along on that amount. He said his finances were in such a condition; that he had bills and various other things that he explained about, and he said if I could get along on $200.00 a month for the present that later he would make a reasonable settlement.

By the Vice-Chancellor:

Q. When was that pen writing put in the agreement, before you signed it? A. That's what I am going to speak about; if he sent me the furniture to furnish an apartment I could get along on $200.00 a month until my daughter came home from college and that would be in June 1928; that's when she finished college, and he said his finances would be in a better condition at that time and at that time he would make a reasonable settlement, and that is the reason this July 1, 1928, was put in.

Q. You are referring to paragraph 7 "This agreement shall have as its minimum duration July 1, 1928?" A. I would receive the money that they said I should receive of $200.00 a month, and then he would give me a reasonable amount.

By Mr. Blumberg:

Q. When did Doctor McKee read that to you? A. It was after lunch.

Q. Was your lawyer present when it was read to you? A. No.

Q. You went in the same room together? A. No, it was in the corridor.

Q. He took it out and read it to you? A. Yes.

Q. Did he say what it was—the purpose of it? A. He said it was a separation agreement that he had wrote out himself.

Q. What did you say about that? A. What did I say about it?

Q. Did you say you wanted a separation agreement or what did you say? A. I can't tell that unless I tell what Mr. Reass said to me.

Q. I am asking you what you said to Mr. McKee when he said here is a separation agreement I have drawn myself? A. I considered it then in the light of what had been said to me by my attorney.

Q. Did you tell Doctor McKee to read it to you? A. I don't remember if I did.

Q. How did he read it, paragraph by paragraph? A. How do you mean, did he read a paragraph and then discuss it?

Q. Yes. A. No.

Q. Did he read all the paragraphs to you? A. No.

Q. Do you remember what amount he had in the agreement he was to pay you a month? A. Yes.

Q. How much was that? A. $166.66.

Q. What did you say to that? A. I told him I couldn't get along on it. We discussed it a little while and I finally stated I would get along on $200.00 until my daughter came home from college.

Q. Did you read this paragraph 3—"That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks?" A. Yes.

Q. That's what you read the same night in the agreement? A. Yes.

Q. Did you make any comment about this paragraph?

Mr. Walscheid: I object to what she read at night.

A. You mean did I make any comment when I was in the court room? I said I was willing to meet him and discuss matters with him.

Q. Do you recall paragraph 4—"That the children of the two parties, Margaret Harper McKee and William Noyes McKee, shall spend half of their vacation time with each party, and each party will attempt to influence the children in accordance with the above, and not against the other party in this nor any other matter?" A. I heard Mr. McKee read that.

Q. Did you say anything about that paragraph? A. We didn't say anything about it, no.

Q. Do you recall Mr. McKee reading paragraph 6—"That on the starting of any legal suit between the parties to this agreement, except one to enforce the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease?" A. It was explained to me that—

Mr. Walscheid: You were asked whether it was read to you.

Witness: It was read with explanation.

Q. Who made the explanation? A. Mr. McKee and Mr. Reass.

Q. What explanation did Mr. McKee make? A. I don't know what he said; he didn't say very

much about it. It gave me the impression anyhow—I can't recall his exact words.

Vice-Chancellor: I can't permit you to state expressions.

(Witness continuing): He said I could take the case up again if I wanted to just where it was, if I wanted to. No mention of his bringing suit; he didn't discuss that at all.

Q. Doctor McKee stated in his direct examination he told you he could start suit within a week and the amount would be reduced to $100.00? A. He did not.

Q. Did you ask him about starting suit? A. No, there was nothing said about starting suit.

Q. Did you ask Doctor McKee about the possibility of his starting suit? A. Nothing, except he was to sign an agreement not to bring suit against me either in New Jersey or New York on the basis of our family affairs.

Q. Did he sign that agreement? A. Many weeks passed away and it was not signed.

Q. Did you speak to Doctor McKee about not signing that agreement? A. No, I spoke to my attorney.

Q. There was something inserted in this agreement—"This agreement shall have as its minimum duration July 1, 1928." That was not in there when Doctor McKee showed it to you? A. No. He said his finances would be in a better position at that time so that he could make a reasonable arrangement at that time, and paragraph 7 was inserted for that purpose.

By the Vice-Chancellor:

Q. The handwriting is Doctor McKee's? A. Yes.

By Mr. Blumberg:

Q. You finally signed it? A. Yes.

Q. Did you consult Mr. Reass before you signed it? A. Yes.

Q. Who was present? A. Mr. McKee and myself and Mr. Reass.

Q. Did you receive a copy of the agreement? A. Yes.

By the Vice-Chancellor:

Q. Where is that other agreement that you spoke of which you say was not signed? A. I have a copy of it your Honor.

Q. Was there a copy of it given to Mr. McKee at that time? A. I don't know.

By Mr. Blumberg:

Q. What was your understanding of this agreement Mrs. McKee?

Mr. Walscheid: I object.

Vice-Chancellor: I can't hear it because you asked her what her understanding was.

Mr. Blumberg: I would like to be heard on this.

Vice-Chancellor: I will sustain the form of the question.

Mr. Blumberg: Mr. Walscheid asked the same question of Doctor McKee and I objected.

Vice-Chancellor: There is no such rule that will permit any such question as this witness is being asked of what her understanding was.

Mr. Blumberg: Mr. Walscheid asked exactly the same question of his witness.

Vice-Chancellor: If you objected to it it would have been stricken out. There is a lot of immaterial matter and hearsay in already.

Q. Did you take this agreement with you when you went home? A. Yes.

Q. You did not go back to live with Doctor McKee, did you? A. No; nothing was said about going back to live with him.

Q. Did you receive a letter from Doctor McKee dated January 24, 1927, marked Exhibit P 94? Will you please look at it? A. Yes.

Q. In which Doctor McKee says—"I don't think you will have cause to regret the results of our conference yesterday afternoon?" A. Yes.

Q. The date of that letter is an error; it is not January 24th? A. It should be January 25th, if it says yesterday.

Q. The conference was held January 24th? A. Yes.

Q. Referring to paragraph 3 of the agreement which provides for a discussion of your family affairs and in particular the possibility of a united family at least once in each six weeks, did you perform your part of that agreement? A. I tried to; I wrote Mr. McKee a letter. I saw him on the 20th of February, 1927. The latter part of March I wrote him a letter that it would be six weeks—I think you have it—that I would be some place, I have forgotten where, on a Sunday afternoon.

Mr. Walscheid: The letter is in evidence.
Mr. Blumberg: Yes.

Q. That is the letter of March 31, 1927, Exhibit P 110, which is produced by Mr. McKee. A. Yes (witness reads letter).

Q. Did you have a conference after January 24th in which you discussed the possibilities of a united family? A. I had two conferences with him regarding the furniture; the first conference was at the Pennsylvania Station.

Q. When was that? A. I don't recall it now; yes, I remember it must have been early in February, 1927. We discussed his verbal agreement to send the furniture we had to me to furnish my apartment, and I had a second conference with him on the 20th of February when we went over the list of furniture item by item and checked up the things that he was to send me, which he agreed to send, and I took this apartment the first of March, and then the last of March I wrote him this letter that it would be six weeks and I would meet him. He called me up on the telephone and he said "I am going to do something else tomorrow afternoon and I don't care to see you. When I want to see you I will let you know," so I didn't see him.

Q. When did you finally see him? A. I think perhaps he wrote me a letter in that connection.

Q. When did you finally see him? A. I think the 2nd of June. He called me up the latter part of May, three months after I had seen him, and asked me to meet him and I agreed to do so. I think it was the day I was to meet him for lunch if I remember. Next he called me up the latter part of May. He wanted me to come down that day and it was too late; it was physically impossible to get there.

Q. This was in June? A. The last part of May. He said he would call me up again. It was June 2nd when he did call up and asked me to meet him for lunch that same day, and I told him I had certain things to do at that time. I asked him to call up later. He had said one o'clock and he said he

had an engagement at three o'clock. I told him I would try and get there at one o'clock. It was five minutes after twelve in the Pennsylvania Station when I reached the restaurant and he wasn't there. I waited until twenty minutes to two and I called his office and they said he had gone to lunch, and I waited sometime later and I went away.

By the Vice-Chancellor:

Q. Did you receive any letter which was offered in evidence about that appointment? A. Yes.

Q. What is the exhibit number of that letter?

Mr. Blumberg: 112.

By Mr. Blumberg:

Q. Did you have a conference in June, 1927? A. On the 8th of June.

By the Vice-Chancellor:

Q. Did your husband write you or send you word in any way in an endeavor to keep this every six weeks appointment that is contained in that agreement where you could discuss your affairs? A. No, I wrote him.

Q. Under the circumstances you detailed? A. Yes, and he called me up and said he didn't care to see me and when he did he would let me know, so he didn't keep the agreement of six weeks; it was three months when he called me up.

By Mr. Blumberg:

Q. After you wrote that letter of March 31, 1927, you received a reply dated April 10, 1927. Is this it, Exhibit 109? A. Yes, I did.

Q. That's April 10, 1927, subsequent to your letter of March 31st (witness reads letter)? A. Yes.

Q. That is ten days after you wrote this letter to him. Had Doctor McKee communicated with you from March 31st until April 10th? A. No. He may have called up the children at that time.

Q. Did he speak to you on the 'phone? A. He called up when the children were there. The children were at home for their vacation and he called up to ask for them. He didn't talk with me.

By the Vice-Chancellor:

Q. Is that the conversation you detailed before when you said it wasn't you, it was Margaret? A. No.

By Mr. Blumberg:

Q. He said he would get in touch with you next week? A. No.

Q. He stated—"In view of our numerous conversations over the phone all thru March and the arrangement made with you by telephone April 2 I presume this will be satisfactory to you? A. We had no such telephone conversation except that I called him up that the furniture he sent was not what we had agreed upon. That was early in March.

Q. And the arrangement made by you by telephone of April 2nd? A. Yes. He said he did not care to see me then; when he wanted to see me he would let me know. I called up on April 2nd in addition to my letter.

Q. Is that the arrangement he had reference to? A. Yes.

Q. He said—"I presume this will be satisfactory to you." Was it satisfactory to you? A. Except

that I wanted to keep the agreement I had signed and he refused to do so.

By the Vice-Chancellor:

Q. You made a statement about some misrepresentation in that letter. What were you alluding to? A. About our numerous conversations and such things like that, when we had none.

By Mr. Blumberg:

Q. You said you did meet him on June 8, 1927? A. Yes.

Q. That was the second conference was it in pursuance of this agreement? A. That was the third conference. There was one that I can't remember the date of. The second was the 20th of February, and the last one was the 8th of June.

Q. What was said at that conference on the 8th of June? A. We had arranged to have dinner in the lower restaurant at the Grand Central Station, which we did, and Mr. McKee as usual sat and said nothing. I told him about the children's schooling and whatever I could think of that might be of interest to him, and when we got through the dinner and left the restaurant, I was taking a train to Brooklyn, and he left me and said "There are certain other things I wanted to talk to you about," I said "Why didn't you talk about them?" and he said "You talked so much I didn't have a chance."

Q. After this conference of June 8th you received this letter dated June 13, 1927, Exhibit P 115? A. Yes.

Q. In that letter Doctor McKee says—"There were, as I said to you when you were leaving, several more things of importance which we should

talk over." Was there any other things of importance?

Mr. Walscheid: I object to it.

A. I don't know what he had in mind.

Q. How long were you with Doctor McKee that day? A. Possibly an hour. We had dinner in the lower restaurant of the Grand Central.

Q. Did he tell you when he left there were several more things of importance he should have gone over with you? A. I said "Why didn't he talk them over now?" and he said "I talked so much he didn't have a chance."

Vice-Chancellor: The witness said that before.

Q. Did you have another conference with Doctor McKee after that June conference? A. Yes.

Q. When was that? A. I can't recall. It seems to me it was in August.

Q. I show you a letter of August 12, 1927, Exhibit P 121? A. Yes.

Q. And in that letter Doctor McKee says—"I want to have a talk with you very soon. Will get in touch with you by phone and find a time that will be mutually convenient?" A. Yes, I think it was the 27th of August I saw him.

Q. Where did you see him that day? A. At the Campus Restaurant; I had lunch with him.

Q. What was the conversation you had that day? A. There wasn't much conversation; he wouldn't converse. He just sat silent most of the time. I remember asking him—when we were leaving the restaurant I said to him "May I ask you why you wanted me to come down to see you?" because he had insisted I should come because he had other en-

gagements. I said "I ask you why you wanted me to come?" because he had said nothing, and he did not reply to that. I said "If you write me a letter misrepresenting what took place at this conference as you have at other conferences, I shall have to refuse to see you again without a witness."

Q. This was in August, 1927? A. Yes.

Q. What was his response to that? A. He didn't say anything to that.

Q. Did you have any other conference after August 27th? A. Yes, the early part of October. That was at the Pennsylvania Hotel on the mezzanine floor, and he asked me to sign papers to put into a corporation, a corporation called McKee's Book Store, I don't know the legal forms or anything, but he wanted me to sign these papers putting the property in this corporation, and I said I couldn't see any reason for doing that. It was the house in which his sister lived. There was talk of selling it and I could see no reason for putting it into the corporation.

Q. Was anything else said that day? A. I can't now recall if anything else was said; I can't recall.

Q. This was in October, 1927? A. Yes.

Q. Did Doctor McKee say anything about his starting a divorce suit in New Jersey? A. No, he never mentioned it. The only time he mentioned it was in the presence of Mr. Newman at the conference in Mr. Newman's office January 22, 1927, when I said the only reason for his living in New Jersey was that he thought it was an easy place to get a divorce. That was the only mention of divorce proceedings.

By the Vice-Chancellor:

Q. What did he say to you on January 22, 1927? A. He didn't make any response. Mr. Kirby spoke

for him and said I had refused to live in New Jersey, and I said I had not refused to live in New Jersey.

(Further hearing continued to June 19, 1929.)

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June 19, 1929.

(Further hearing continued to September 11, 1929.)

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September 11, 1929.

Mr. Blumberg: Your honor will recall that I introduced in evidence the separation agreement, that is, the agreement Exhibit P 95. Towards the conclusion of the last hearing I asked Mrs. McKee what was the understanding of the agreement. There was considerable argument about it. Your honor finally excluded the question. I at the time said that Mr. Walscheid had asked the same question.

Vice-Chancellor: Why did I exclude it? Was it on the ground the paper was clear on its face?

Mr. Blumberg: I argued the same thing when Mr. Walscheid asked the question of Mr. McKee. He cited a case and your honor ruled on the question. I forget the name of the case.

Mr. Walscheid: Was it the Powers case?

Mr. Blumberg: Yes. I turn back to page 383 of the redirect examination of Mr. McKee and this is what took place— "Q. And

when you signed this Exhibit P 95 what was your real purpose so far as she was concerned in signing?" I said I didn't think we ought to go into that matter. Vice-Chancellor: "I don't think his purpose is material." Mr. Walscheid: His purpose is material under the cases. Vice-Chancellor: "Under the Popovichs case I think I will allow it. In the Popovichs case it says actions speak louder than words." I think if he starts in asking what his purpose was I can ask what her purpose was.

Vice-Chancellor: I will allow you to proceed subject to Mr. Walscheid's objection. I will deal with the whole matter when I have to. I can't particularly recall the significance of the questions relating to that agreement now. There has been a number of hearings and it has been going off but my recollection about that agreement it isn't the ordinary form of agreement that we run across. There is something in it that makes it a condition qualified on something to be done.

Mr. Blumberg: It is a very simple agreement.

Vice-Chancellor: I think there is some condition or qualification in it.

Mr. Blumberg: Here is the agreement.

Vice-Chancellor: Here is what I have in mind—"This agreement shall have as its minimum duration July 1, 1928." That's what I had in mind. Are you going to object Mr. Walscheid?

Mr. Walscheid: I don't remember the situation but I do object to it. The question here was what was your understanding of this agreement.

Vice-Chancellor: I can't permit her to state her understanding. If you want to show intention that is a different thing. Suppose you proceed with whatever examination you wish and I will deal with it as we go along.

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MARY N. McKEE, recalled.

Direct Examination Continued by Mr. Blumberg:

Q. Mrs. McKee when you signed the agreement of January 24, 1927, Exhibit P 95, what was your real purpose in signing it? A. My purpose in signing it my husband had just refused my offer of having a home together and my purpose in signing the agreement was to end the suit began in New York in a manner favorable to myself by his written acknowledgment that my action was justified by his written consent to our living separate and apart, and by my agreement to get along on the small sum of $200.00 a month for the next year and a half. To obtain his promise at the end of that time—

Mr. Walscheid: I object to that.

Vice-Chancellor: That is not in the agreement but she says she signed it because of his promise—

(Witness continuing) That he would at the end of this time make me an allowance sufficient to maintain myself and the children in a manner that was comfortable and suitable.

By the Vice-Chancellor:

Q. What was said between you and your husband which occasioned the writing in the agree-

ment of that clause about the minimum duration being some date? A. Because I said it would be impossible for me to get along on $200.00 a month after my daughter returned from college.

Q. My recollection is, I don't know I may be wrong, that this talk of which this insertion of the minimum duration was made in this paper, was had in some law office? A. No, at the Court House in New York City.

Q. In the presence of some lawyer or was you and your husband merely together at that time? A. We discussed it alone first and then in the presence of Mr. Kirby and Mr. Reass. That insertion was put in by Mr. McKee in the presence of Mr. Kirby and Mr. Reass.

Q. My recollection is that that insertion was written in longhand on a typewritten paper? A. Yes.

By Mr. Blumberg:

Q. You were about to state Mrs. McKee why the date was fixed as July 1, 1928? Will you state that again? A. I did state it. It was because it would be impossible for me to get along. The reason that I agreed to get along on the $200.00 a month for the next few months was because my husband represented to me that his investments were in such a condition that by that time they would be paying sufficiently so he could make a reasonable allowance. He spoke of patents and investments of different kinds.

Q. Now Mrs. McKee I read to you from page 94 of the direct examination of Mr. McKee. The question is—"Q. Between this letter which is marked Exhibit P 15 and Exhibit P 14, the preceding letter, had you more than one conference with her? A. I am quite certain that I had had. I can't say

I had more than one conference, but I think I had. Of course I had one and possibly two. Q. In this other conference, if there was such a conference preceding the one you have just mentioned, was there any talk about her coming back? A. Yes. In fact all the time there was in every conference practically until this divorce suit was filed talk about her coming back to me." What have you to say about the statement of Doctor McKee that at every conference he had with you there was talk about your coming back? A. That statement is absolutely false.

Q. Have you the letters Mrs. McKee? A. Yes.

Q. Will you turn to the letter of January 24, 1927, Exhibit P 94? You recall receiving that letter from Doctor McKee? A. Yes.

Q. When was that received by you? A. The 26th I think.

Q. The 26th of January? A. Yes.

Q. That letter refers to the agreement having been signed the day before does it not? A. Yes.

Q. And the agreement was signed on the 24th of January? A. Yes.

Q. And you have testified that date must have been an error. It must have been written on the 25th of January? A. It must have been written on the 25th because it says yesterday.

Q. You have with you Exhibit P 96 a letter addressed by you to Doctor McKee. Is that the next letter in the file? A. Yes.

Q. And I note in that letter you state you will be at the Pennsylvania Hotel on Wednesday afternoon at two o'clock. Do you see that there? A. Yes.

Q. "In order to arrange about the furniture according to the agreement of last Monday?" A. Yes.

Q. Do the words last Monday—

Mr. Walscheid: I object to the leading question.

Q. Do the words last Monday refer to the Monday the agreement was signed? A. Yes.

Mr. Walscheid: It is a leading question.
Vice-Chancellor: I will leave it stand. The letter itself will indicate it was the Monday preceding the writing of the letter.

Q. What agreement did you have on that Monday previous with regard to the furniture?

Mr. Walscheid: I object to the question.
Vice-Chancellor: Why?
Mr. Walscheid: You can't ask what agreement was had. What was said or done.

Q. What was said on January 24, 1927 with reference to the furniture? A. We were discussing the possibilities of my being able to get along on $200.00 a month and I said I could manage to get along on $200.00 a month—

Mr. Walscheid: I object to that.
Vice-Chancellor: She is asked about the furniture.
Mr. Walscheid: I would like to have the conversation.
Vice-Chancellor: They were incidentally talking about money. Repeat the question.

Q. What was said on January 24, 1927 with reference to the furniture? A. I said that it would be impossible for me to get along on $200.00 a month and rent a furnished apartment, but I would try to get along on $200.00 a month temporarily if

he would send our furniture to furnish an apartment for myself and the children.

By the Vice-Chancellor:

Q. What did he say about that in reply to you? A. He said that he would send it. That there was no reason why I shouldn't have any or all of the furniture if I wanted to.

Q. Was there anything said at that time about you and your husband resuming cohabitation or living together again? A. Only as I already related.

Q. At that time I am speaking about. That's the time there was something said? A. That is the time I offered to have this nominal home.

Q. Tell us again madam. I would like that whole conversation. A. I am trying to remember exactly your honor. Mr. McKee said first that suggestion of Mr. Newman's was idiotical.

Mr. Walscheid: That's already in the record.

Vice-Chancellor: The reason I asked her is because we had part of it.

Mr. Walscheid: May I refresh your honor's recollection. The conversation which Mrs. McKee is now telling is the conversation of which Exhibit P 95 was signed. That was signed at the Court House on the day when her separation was to have come up. The offer which she made at that time to live with him was an offer which her lawyer Mr. Newman had suggested to her and to which she had agreed and the offer was that they resume a nominal home together and that they do not cohabit as man and wife but live

in a state of separation under one roof. That was her offer to return.

Vice-Chancellor: That was her offer to return?

Mr. Walscheid: Yes.

Vice-Chancellor: She says that offer was idiotical.

Mr. Walscheid: And she says that Doctor McKee said that offer was idiotical and that is what this offer is what she claims.

Vice-Chancellor: Is it already in the record?

Mr. Blumberg: Yes.

Vice-Chancellor: I will withdraw my question whatever it was.

By Mr. Blumberg:

Q. Did you have a meeting with Doctor McKee on Wednesday afternoon at two o'clock referred to in that letter Exhibit P 96? A. Yes.

Q. Did you have a meeting on the mezzanine floor of the Pennsylvania Hotel on Wednesday afternoon? A. No.

Q. In response to that letter Exhibit P 96 you received a letter from Doctor McKee dated January 31, 1927, Exhibit P 97, did you not? A. Yes.

Q. Does he speak in that letter about the proposed Wednesday conference?

Vice-Chancellor: The letter will speak for itself.

Mr. Blumberg: I might state the letter says—"It happens—"

Vice-Chancellor: Call her attention to it. You can ask her in that letter it is stated so and so.

Q. Do you see in this letter a statement as follows—"It happens I am busy on Wednesday afternoon as it is the first day of the second semester and I have some people coming in here then"? A. Yes.

Q. You also see in this letter—"Your accusation about my maligning you is without basis. I have done nothing of the sort"? A. Yes, sir.

Q. Now what was the accusation about your husband maligning you? What did it have reference to? A. He referred to what I said in my letter of January 30th.

Mr. Walscheid: I ask it be stricken out as calling for a conclusion.

Mr. Blumberg: I ask it be stricken out as not responsive.

Q. I said what did you have reference to in the statement of your husband he had been maligning you? A. I said I thought he ought to stop doing it.

By the Vice-Chancellor:

Q. What you stated to him about maligning you was in the letter? A. I didn't specify what it was. I simply said he should stop it.

By Mr. Blumberg:

Q. You say your husband had been making remarks about you? A. Yes.

Q. Had you heard those remarks?

Mr. Walscheid: I object.

Vice-Chancellor: I will sustain the objection. If she did not make them known to her husband.

Witness: He knew them, your Honor.

Mr. Walscheid: I ask it be stricken from the record.

Vice-Chancellor: Yes.

Q. You also received a letter Exhibit P 98 dated February 3, 1927? A. Yes.

Q. In which your husband said—"I will see you at the waiting room of the Pennsylvania Station which is adjacent to the telephone booths on Friday afternoon at four o'clock. Will meet you near the door into the big room containing the ticket offices etc. This is probably the most convenient place for you as it is an express stop of your subway. I am sorry you did not like any of the three places I suggested over the telephone." Had your husband spoken to you over the telephone? A. He had spoken to me about meeting him but he had made no suggestions as to places. These three places I did not know at the time what he meant.

Q. He had suggested three places? A. No.

Q. Did you meet your husband on that Friday afternoon referred to in the letter Exhibit P 98? A. I did.

Q. Where? A. In the waiting room of the Pennsylvania Station.

Q. Did your husband tell you on the telephone why he wanted to see you?

Mr. Walscheid: I object. She has said he spoke to her.

A. Either in the letters or by telephone we had arranged this meeting in order to settle about the furniture—how it should be given to me.

Q. What was said if you recall at that meeting on that Friday afternoon referred to in the letter? A. He said I could have all the furniture I wanted.

By the Vice-Chancellor:

Q. You are reading from that letter? A. No, that was said at that conference. That was the discussion at that time. He said over the telephone—I asked him over the telephone to bring a list of the furniture that had been removed from our apartment and he said he would do so. Then at this conference he said that he didn't have lists of the furniture so we simply discussed it, this piece and that piece. I can't remember of course the names of the different pieces and then we left it that we would have another meeting when we would have the list before us and check off the pieces that I wanted.

Q. By some means there was a statement in writing made by Mr. McKee or in his behalf stating different pieces of furniture. Whether it was in a letter or not I do not know? A. At the next meeting the conference which we had on the 20th of February we did go over the lists of furniture and furnishings and checked by me the pieces I wanted.

Q. In whose handwriting was that list? A. The list was in my handwriting. He checked it.

Q. You mean that last place the time you had the talk with him at the Pennsylvania Station? A. No, I had this list that I made out in January or February 1925, so it was fresh in my mind what the furniture was. We went over this list and he checked it and I made a note of the pieces. He took with him the checked list. He said there was no reason why I shouldn't have all the furniture and the thing we discussed in particular was the china, a dinner set which was given to us as a wedding present.

Vice-Chancellor: How is this helpful to me in discussing about the china and the

like? The fact that something was discussed about the furniture is all right but going into it piece-meal isn't going to help me much.

By Mr. Blumberg:

Q. Was anything said about the agreement of January 24, 1927?

Vice-Chancellor: You mean at that meeting you alluded to?

Mr. Blumberg: Yes.

A. Nothing except the furniture. May I complete the answer? About this particular dinner set he said it was his because his friends had given it to him but he said there was no reason why you shouldn't be using it until I get ready to have my own—and then he stopped. He said my own and then he stopped. He said there is no reason why you shouldn't use it.

Q. On page 225 of Doctor McKee's testimony in response to the question—"Where, in the Pennsylvania Hotel? A. I think at the Pennsylvania Hotel; it may have been at the Pennsylvania Station. She lost her pocket-book and I lent her $10.00. Q. At that conference what was discussed? A. Some things regarding the furniture that were missing from there and also the question of my possibility of coming and seeing her and taking some souvenirs there and calling upon her. Q. You mean calling upon her for what purpose? A. Socially, and she said things weren't in shape for her to have me up yet. Q. You tried to invite yourself to visit her? A. I did. Q. At that conference did you also discuss the question of coming back? A. Yes, but

only briefly." Did Doctor McKee discuss with you the possibility of his coming and seeing you and taking some souvenirs up to your place? A. No, not in that form. He did say over the telephone that he wanted to come up and go through everything in the place and I said I objected to his going through all of my papers. He made no other suggestion of coming.

Q. I am talking about the conference at the Hotel Pennsylvania. Did he at that time or any time come up and visit you? A. What conversation is he talking about?

Vice-Chancellor: The conference at which he said he loaned you ten dollars.

Witness: No, I didn't move into the house until the first of March. There couldn't have been such a discussion. I hadn't had the furniture at that time.

Q. Did he at that conference discuss with you the question of being reunited? A. No.

Q. Not even possibly? A. Not at all. It wasn't mentioned.

By the Vice-Chancellor:

Q. The words social call are there. Was there anything said about making a social call? A. No. your honor. There was at the conference before the signing of that agreement.

By Mr. Blumberg:

Q. What conference do you refer to before the signing of the agreement? A. At the Court House on the 24th of January 1927.

Q. Something was said about social visits there?

A. Yes, in discussing it. He was representing to me that we might get together.

By the Vice-Chancellor:

Q. What did he say? His representation and understanding don't mean a thing. A. He said he didn't want to have a home together as I had suggested—as my attorney had suggested, but that he might come to see me. If we signed this agreement he could come to see me and we might bring about something in that way.

Q. You say bring about something? A. Yes, he said something. I remember I said to him I was perfectly willing to do that anytime if there was any possibility of our getting together again. I was willing to do anything that might bring that about. I remember particularly suggesting myself—

Q. What did you say? A. I said I might go up to the country club with him and the children, all of us together, and things might be smoothed out in that way.

By Mr. Blumberg:

Q. Did you around that time in the early part of February 1927 have dinner with your husband and Margaret? A. Yes.

Mr. Walscheid: She testified to that.

Vice-Chancellor: She said yes.

Witness: I think it was the 4th on Friday. This meeting which we had at the Pennsylvania Station, we waited until Margaret came in on the train.

Q. Will you turn to the letter Exhibit P 101 dated February 7, 1927? A. Yes.

Q. That letter was written after the conference of February?

Mr. Walscheid: I object to the form of the question. It is leading.

Vice-Chancellor: I will sustain the objection.

Q. Do you recall the exact date of that conference in February 1927? A. Friday, February 4th.

Q. This letter was written on February 7th?

Mr. Walscheid: I object to the form of the question.

Mr. Blumberg: I can't understand why he should object.

Vice-Chancellor: What letter are you referring to? Exhibit what?

Mr. Blumberg: P 101.

By the Vice-Chancellor:

Q. Does that bear a date, madam? A. Yes, February 7th.

By Mr. Blumberg:

Q. You also wrote a letter on February 11, 1927? A. I do not find the letter Exhibit 101. I find 101A.

Q. You also wrote a letter on February 11, 1927, Exhibit 102A? A. Yes.

Q. And did you in that letter return the loan of ten dollars which you received from Doctor McKee?

Vice-Chancellor: Don't the letter speak for itself?

Mr. Walscheid: Yes.

A. I had returned it through Margaret.

Q. When did you receive the next letter from Doctor McKee? A. The next letter in the file is dated February 27, 1927.

Q. Do you recall whether that was the last letter you received?

Mr. Walscheid: Can't we have exhibit numbers?

Mr. Blumberg: Exhibit P 103.

A. I do not recall any other letter.

Q. Are you looking at Exhibit P 104A? A. Yes.

Q. That is your reply is it to Exhibit P 103? A. Yes.

Q. Had you at that time received the furniture which Doctor McKee had promised to send you? A. No, I had not. I had received some furniture but the furniture he sent me was of no use and broken down. He kept the good things for himself. He didn't send them to me.

Q. Did you have any telephone conversation with Doctor McKee during that period? A. Yes, in regard to the time that he would send the furniture.

Q. Letters? Anything else? A. I don't recall anything else.

Q. Do you recall how many telephone conversations you had with him? A. No.

Q. Did you see him at all during the month of February 1927 other than February 4th? A. February 20th.

Q. Where? A. At the Campus Restaurant on Thirty-second Street.

Q. How was that appointment arranged? A. By telephone.

Q. Doctor McKee telephoned to you? A. I don't recall.

By the Vice-Chancellor:

Q. Were you accustomed to phoning him directly without his phoning to you? A. I did sometimes. It was necessary regarding the children and other things, yes.

By Mr. Blumberg:

Q. Was anything said at that conference of February 20th about your being reunited? A. No, it was never mentioned. Anything of that sort was never mentioned at all.

By the Vice-Chancellor:

Q. Excepting by the letters? A. After the signing of the agreement it was never mentioned at all.

By Mr. Blumberg:

Q. The Vice-Chancellor asked you whether Doctor McKee didn't state in his letters occasionally "Come back and live with me?"

Vice-Chancellor: I know I did. She said it was never mentioned.

A. Not in any conversations. It was never mentioned in any letter after the signing of the agreement.

Q. Will you look at 106A dated March 7, 1927? A. Yes.

Q. Had you seen Doctor McKee at anytime between February 20th and March 7, 1927? A. No.

Q. Had you spoken to him on the telephone? A. Yes.

Q. When had you spoken to him on the tele-

phone? A. I spoke to him several times regarding this furniture that he was not sending that he had agreed upon.

Q. Now turn to Exhibit 107, a letter from Doctor McKee to you dated March 13, 1927? A. Yes.

Q. In which he states that he had been trying to obtain your new telephone number. Did you have a new telephone exchange at that time? A. No, the telephone was taken out of the apartment in which I had been living and put in the new apartment immediately. It wasn't out one hour and I had the same number.

Q. And you wrote to Doctor McKee on March 17, 1927, did you not? Exhibit 108A? A. Yes.

Q. Did you see Doctor McKee during the month of March 1927? A. No.

Q. Have any conversation with him on the telephone? A. On the first of March—not after that.

Q. You wrote to him on March 31, 1927, Exhibit 110A? A. Yes.

Q. Will you please read that letter to the court? A. (Witness reads letter.)

Q. That letter was written by you to Doctor McKee? A. Yes.

Q. And that letter referred to the agreement of January 24, 1927, did it not? A. Yes.

Q. Is it a fact that you had not met Doctor McKee for six weeks? A. Yes, February 20th was the last meeting.

Q. Did you see Doctor McKee in response to that letter of March 31st? A. No, I did not see him. He called me on the telephone on Saturday afternoon, April 2nd.

Mr. Walscheid: This is all in the direct.

Vice-Chancellor: If it is in he ought not to be putting it in again.

Mr. Blumberg: About three pages of that towards the end of the last session we were rushed. The whole thing refers to three pages.

Vice-Chancellor: All right, go ahead.

(Witness continuing) He said that he wouldn't call to see me on Sunday afternoon. When he wanted to see me he would let me know. He said he had something else he wanted to do on Sunday afternoon.

Q. He then wrote you a letter Exhibit P 109, April 10, 1927? A. Yes.

Q. In which he says—"In view of our numerous conversations over the phone all through March and the arrangements made with you by telephone April 2 I presume this will be satisfactory to you." Had there been numerous conversations during March? A. There had been no numerous conversations since the first of March regarding furniture.

Q. Did you have conversations during March regarding anything else? A. No, that's all the conversation we had. The conversation we had over the telephone on the first of March regarding furniture.

Q. You had not heard from Doctor McKee since March 1st on the telephone up to April 2nd? A. No, I had not.

Q. Had you seen him at all? A. No.

Q. In that letter of April 10, 1927, Doctor McKee states—"On my return I will get in touch with you and arrange to meet you." Did Doctor McKee get in touch with you on his return? A. No, not until the last of May.

By the Vice-Chancellor:

Q. Did he then arrange to meet you? A. The last of May he called me on the telephone and

asked me to meet him at a certain time. I lived in Spuyten Duyvil and he wanted me to meet him downtown. It was impossible for me to get there.

Q. Did you tell him so? A. Yes, I told him so.

By Mr. Blumberg:

Q. I will read from page 242 of Doctor McKee's testimony referring to the meeting of March, 1927— "Q. Now the meetings which she refers to were agreed upon in pursuance of the terms of the agreement which was signed up at the time of the dismissal of the New York action? A. Yes. Q. And had you been having those meetings? A. Yes. Q. And at those meetings what did you discuss? A. We discussed the children and their work; we discussed the question of her coming back and living with me, and we had discussed some questions of furniture. Q. At all of these meetings did you discuss her coming back and living with you? A. I think at all of them; at least on five or six of these meetings. Q. Up to March 31, 1927? A. I think—so far as the ones which had occurred in January and February and March, or January and February, I knew we had talked of her coming back and living with me. Q. And had you in these meetings asked her to return and live with you? A. I did. Q. And what did she say in reply to those invitations? A. In general the reply was not a definite reply, that is, it was not a plain refusal, though sometimes it was almost a refusal so far as the present was concerned. Q. But she did indicate to you there might be a change of heart in relation to this matter? A. Yes, or at least she was willing to consider it." Now had your husband at anytime during January, February or March, 1927 asked you directly to come back and live with him? A. No.

Q. Or indirectly? A. No.

Q. Did he make any statements at all of your living with him? A. Only during the discussion that we had just prior to signing the agreement on January 24, 1927.

Q. I am talking about the conferences which Doctor McKee spoke about being held in January, February and March, 1927? A. There was not at anytime any mention.

By the Vice-Chancellor:

Q. There is a sharp conflict as between his testimony and your testimony as to March, 1927. He said he met you on numerous occasions. You say you only had one talk with him in March, 1927 regarding furniture? A. Regarding the furniture.

Q. And no other meetings or conversations between you and your husband in March, 1927? A. Except he would call up the children part of the time. He would call on the telephone and say, "Is Margaret at home or Billy at home," and I would say, "Yes" and call them to the telephone. I wouldn't call that a conversation.

Q. No conversations with you about your marital differences or being reunited with him? A. No.

By Mr. Blumberg:

Q. I see a letter of May 9, 1927, Exhibit P 111, written to you by Doctor McKee. A. Yes.

Q. Had you seen Doctor McKee since that last letter of April 10, 1927? A. No.

Q. Had he spoken to you on the telephone? A. No.

Q. When did you say that Doctor McKee asked you to meet him after that? A. It was the last of May. I do not remember the date because we did not meet.

Q. And I also read you a letter of June 2, 1927, Exhibit P 112, in which he said—"I was very sorry you did not keep your appointment with me for yesterday lunch. I waited until long after 1 o'clock for you but you did not show up." Is that the conference which he arranged over the telephone?

Mr. Walscheid: I object; it is leading. All this testimony is a set of leading questions. It is hardly fair to us.

By the Vice-Chancellor:

Q. Do I understand you to say that in the latter part of May or June you at that time lived in Spuyten Duyvil and he asked you to meet him downtown in New York and you told him you couldn't meet him? A. He called me on the telephone. I don't remember the exact hour. He asked me to meet him at one o'clock.

Q. You stated the time and place. This letter you referred to has that reference to that previous meeting? A. No.

Q. That is an entirely different matter? A. Yes, it is a different one.

By Mr. Blumberg:

Q. When you told him you couldn't meet him I suppose he called again? A. Yes, he called again.

Q. When? A. On the same day. I was leaving for lunch. I don't know whether it was the first or second of June and he asked me to meet him for lunch. I had a great deal of engagements—

By the Vice-Chancellor:

Q. You did talk with him? A. Yes, and I told him it would be hard for me. He said he was very

anxious to see me that day. I said I would cancel my engagements for that day and come down and meet him. He said one o'clock and I told him that that was a very short time for me to get there but I would try to do so, and I went down and—

Q. Did you meet him? A. No. I went down to the designated place and I arrived just about one o'clock. It may have been three or four minutes after one o'clock because the clock on the Pennsylvania Station said twelve o'clock as I crossed the street. It was only a half a block from that restaurant. Twelve o'clock standard time, one o'clock daylight saving time was the time we were to meet and he was not there.

Q. How long did you remain? A. I think twenty minutes or twenty-five minutes to two and I called up his office and they said he had gone out and had not heard from him. I waited I don't just recall how long, until two o'clock and went away.

By Mr. Blumberg:

Q. Did you get in touch with Doctor McKee by telephone? A. I didn't call him up that day. He wrote me a letter on June 2nd again misrepresenting things as they were.

Vice-Chancellor: I will strike that out. Don't characterize things as misrepresentations.

Witness: Shall I read the letter your honor?

Mr. Blumberg: No.

Q. Did you reply to that letter of June 2, 1927? A. While we are here can I speak about the radio?

Vice-Chancellor: Only answer questions.

Q. You did reply to that letter of June 2, 1927? A. Yes, I did.

Q. Is that the letter of June 6, 1927? A. Yes.

Q. Will you read that letter to the court?

Mr. Walscheid: I object to it.

Vice-Chancellor: It won't go into the record.

Mr. Walscheid: What is the exhibit number?

Mr. Blumberg: 113A.

(Witness reads letter.)

By the Vice-Chancellor:

Q. Did he let you know about meeting him? A. Yes, I met him on the 8th of June.

By Mr. Blumberg:

Q. Where did you meet him on the 8th of June? A. In the restaurant on the lower level of the Grand Central Station.

Q. Did you have dinner that night? A. Yes.

Q. At the Campus Restaurant? A. No.

Q. Where? A. In the restaurant on the lower level of the Grand Central Station.

Q. Is that the first conference you had with Doctor McKee since February, 1927? A. Yes.

Q. And none in March, April or May? A. No.

Q. What conversation did you have with Doctor McKee at that restaurant on June 8th? A. There was nothing of any moment at all. I filled in the time telling him about the children.

Mr. Walscheid: I object to that.

Vice-Chancellor: If you don't recall the conversation say so.

Witness: I told him things about the children and he didn't say anything of any importance to me.

Vice-Chancellor: I will strike that out.

(Witness continuing) He may have said yes and no.

Q. Did he tell you why he wanted to see you?

Mr. Walscheid: I object to the form of the question.

Vice-Chancellor: I will sustain that objection.

A. There was no conversation that can be quoted. There was nothing that could be remembered.

Q. Do you remember what was said or do you not? A. No. I can remember there was nothing said that I could remember.

Mr. Walscheid: I think that should be stricken out.

Vice-Chancellor: I will let it stand for what it is worth.

Witness: Your Honor I have already given my testimony.

Vice-Chancellor: You are only to say things in response to questions.

Q. Where did you go after you left that dinner at the Grand Central Station? A. I went to Brooklyn to my college alumnus anniversary.

Q. What did Doctor McKee say to you as you left the restaurant?

Mr. Walscheid: Objected to as leading.

Vice-Chancellor: I will let her answer it. She said before she couldn't remember it.

A. I cannot remember anything said at the dinner. As we were leaving and was out on the concourse Mr. McKee said that were some other matters he wanted to talk over. I said, "Why didn't you talk about them?" He said, "You talked so much I didn't get a chance."

By the Vice-Chancellor:

Q. Do you remember what it was when you were leaving the restaurant? A. That's all he said.

By Mr. Blumberg:

Q. In fact Doctor McKee wrote to you right after the conference did he not, Exhibit 115, June 13, 1927? A. Yes.

Q. Will you read that letter? (Witness reads letter.)

By the Vice-Chancellor:

Q. What was your response to that if anything madam? Did you phone him or write him in response to that letter because that letter says, "Why not be willing for us to live together? A. Your Honor—

Q. I am asking you whether you phoned him or wrote him? A. No, I didn't write him or phone him as far as I can remember.

Q. That was a request in a very cold blooded fashion. It says why not let us live together or words to that effect? A. He never asked me whether I was willing.

Q. He said in that letter why not let us live together? A. Why should he say that?

Q. Why didn't you write him and say you didn't understand and that he never made any overtures

or say "Yes, sure, I am willing to live with you"? If you were waiting for requests from your husband to live together there was one that you at least might have said something about? A. Your Honor I gave him every opportunity.

Mr. Walscheid: I ask that be stricken out.

Witness: I couldn't put the little things in letters.

Q. That is not a little thing, madam. You were waiting for some request from him? A. I was waiting for some expression of regret on his part for the way he was treating me and some intimation if we lived together he would treat me in a different manner.

Q. If married people are going to be peeved at little things very few of us would be living together. If you were willing to live away because you were peeved— A. I lived with him for twenty-two years under constant abuse.

Q. The fact you lived that long indicates it couldn't be very great and amounts to in law what we call condonation.

By Mr. Blumberg:

Q. Do you recall Doctor McKee asking you at the meeting of June 8, 1927 to live with him? A. No, he did not.

Vice-Chancellor: You are speaking of that letter just mentioned in which the request to live together was mentioned.

Q. Did Doctor McKee ask you that question? A. He did not ask me that question.

Q. In his testimony on page 251 Doctor McKee stated in response to a question as follows—"Q. When you refer to a few more things of importance which we should talk over, were these matters discussed at this Grand Central Station meeting or not? A. No, I think they were different things regarding the children and I also wanted to fix up the radio. Q. What do you mean by that? A. I wanted to go to her apartment and fix up the radio and have a chance to visit with her. Q. Did you tell her that? A. Not in this letter. Q. Did you personally? A. I don't think I did as to the additional things, but that's what I had in mind and did discuss them with her later at the next meeting." Does that refresh your recollection any Mrs. McKee as to what was said at the meeting of June 8, 1927? A. No, there was nothing said at that meeting.

By the Vice-Chancellor:

Q. There must have been something said. You didn't sit there dumb? A. Mr. McKee scarcely spoke at all.

Q. He stated in his direct examination what he did say to you. You are asked whether that refreshes your recollection as to that?

Mr. Walscheid: He has stated in the testimony what he did not discuss at that time.

Vice-Chancellor: She said she don't know what was discussed.

By Mr. Blumberg:

Q. The next letter in the file is June 27, 1927 is it not, Exhibit 116? A. Yes.

Q. Had you heard from Doctor McKee at all be-

tween June 8th and June 27h? A. His letter of June 13th.

Q. I mean between June 13th and June 27th? A. No, I did not.

Q. Did you reply to the letter of June 27, 1927? You wrote that letter of July 6, 1927, Exhibit P 117A. Did you get a response to that letter? A. Yes, July 9th.

Q. Exhibit P 118? A. Yes.

Q. Were there any telephone conversations in July, 1927 with Doctor McKee? A. No.

Q. None at all? A. None.

Q. None in June and none in July? A. No.

Q. Did you have any personal meetings with him in July? A. No.

Q. Any in June after June 8th? A. No.

Q. Did you have any meetings with him in August? A. No. Yes in August.

Q. What day in August? A. I think the 27th day of August. I am not absolutely sure of that day. I remember one around the 27th of August and it was the day previous to my birthday.

Q. Was it a telephone conversation or a personal meeting? A. I met him personally.

Q. Did he call you about it or did you call him? A. He called me.

Q. What did he say when he called you? A. He said he would like to have a meeting with me and said to come and have lunch with him. He may have written about it first.

Vice-Chancellor: Any correction in the testimony I wish you would have made before the case is presented to me.

Mr. Walscheid: I think it is a pretty good record.

Q. Will you turn to Exhibit 121 and read that

Mrs. McKee, dated August 12, 1927 to you from Doctor McKee? A. Yes.

Q. Will you read it Mrs. McKee? (Witness reads letter.)

Q. And you say that subsequent to that you did have a conference? A. Yes.

Q. In the latter part of August? A. Yes.

Q. Where was it? A. In the Campus Restaurant on Twenty-second Street.

Q. What did you discuss in that conversation? A. He didn't present any.

Mr. Walscheid: Won't you answer the question?

Vice-Chancellor: Tell us what he said if you remember.

Witness: I remember telling him he had not treated me fairly in regard to the furniture, that he had not kept his promise to send furniture suitable for furnishing the apartment.

Q. What did he say? A. He made no reply.

Q. You mean to say the two of you were sitting down at a table and he made no reply to that? A. I do.

Q. I will read the testimony of Doctor McKee on page 255. A. There were other conversations that took place at that meeting.

Q. I will read from his testimony page 255—"Q. That letter is dated August 12th. Did you have a talk with her thereafter, or didn't you? A. I did but I do not recall the exact date. Q. Do you remember where it was? A. I think that it was on the mezzanine floor of the Pennsylvania Hotel. Q. What did you discuss? A. The same things as we lately did, that is, the children and the ques-

tion of her coming back with me and living with me. Q. What did she say about coming back and living with you? A. She said she didn't care to do so and was even more positive than she had been previously. By the Vice-Chancellor: Q. Why do you say that? A. It was a question that 'I don't care to do so', that is, 'I don't care to live with you.' By Mr. Walscheid: Q. Sometimes she had been saying 'not now'? A. Early in the spring of 1927 it had been 'not now.' By the Vice-Chancellor: Q. On this occasion you say she said she did not care to live with you, is that right? A. Yes. Q. Did you say anything to her as to why she had made that statement to you when she had said all along she might later on? A. I don't think so, but I argued on the question about her coming back; it would be best for her and for me and the children. Q. What did she say to that? A. She said 'I don't care to come back and live with you.' Q. She did not say she would not come back and live with you? A. I so understood it. Q. You say that is what she said 'I don't care to go back and live with you?' A. Yes."

Q. Now, Mrs. McKee in this conference in August which you say took place in the Campus Restaurant and not at the Pennsylvania Hotel, did Doctor McKee discuss with you as he says in his testimony the question of your coming back with him? A. He did not.

By the Vice-Chancellor:

Q. Did you say you did not care to live with him? A. No, I did not. It was not spoken of at all.

By Mr. Blumberg:

Q. Did you speak about the children at all at that conference? A. I don't recall anything that was said about the children.

Q. You don't recall saying to Doctor McKee in response to his question "I don't care to live with you"? A. He never made such a statement.

By the Vice-Chancellor:

Q. Did you ever make such a statement? A. No, your Honor.

By Mr. Blumberg:

Q. Had you at any time previous to that said to Doctor McKee "I don't care to live with you now"? A. I never did.

Q. Did Doctor McKee as he states in his testimony argue with you on the question of your coming back and say it would be best for you and for the children? A. No, he did not mention the subject in any way.

Q. The first letter that he wrote after that conference is what date?

Mr. Walscheid: What conference?

Vice-Chancellor: At the Campus Restaurant.

A. September 15, 1927, Exhibit 122.

Q. Will you read it please? (Witness reads letter). He had just been on a long trip west and could not have any conference.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: Your lawyer can argue on that. I will strike it out.

Mr. Blumberg: That's what the letter says.

Vice-Chancellor: She made a comment after that.

Q. Were there any telephone conversations after the meeting of August, 1927 up to the time of this letter of September 15th? A. No.

Q. Was there any telephone conversations after September 15th, 1927? A. I don't recall any telephone conversation at all during that period.

Q. Did you meet Doctor McKee after September 15, 1927? A. I met him in November; I think the 7th of November.

Q. After that letter of September 15, 1927 he sent you a letter on September 28, 1927, is that so, Exhibit P 123? A. Yes.

Q. And is that the letter that deals about the dispute about Margaret's dress? A. That is one thing we did discuss at that meeting at the Campus Restaurant, in August.

Q. In that letter Doctor McKee says—"I tried to reach you by phone but apparently you were out." Do you see that Mrs. McKee? A. Yes, I see that but I don't know anything about that.

Q. You don't know anything about that? A. No.

Q. Did you reply to that letter of September 28, 1927? A. I don't think so.

Q. Then you received another letter of October 9, 1927, Exhibit P 124? A. Wait just a minute! This letter of September 28th about the dress I did not reply to that. I sent him word through Margaret that I would make the dress.

Q. You received a letter dated October 9, 1927, Exhibit P 124? A. Yes.

Q. That also deals with Margaret's dress does it not? A. Yes.

Q. Did you reply to that letter? A. Through Margaret—not directly.

Q. The next letter is also a letter from Doctor McKee is it not, Exhibit P 125, October 15, 1927? A. Yes.

Q. And had you received any telephone calls from Doctor McKee? A. I don't remember.

Q. After October 15, 1927? A. I don't recall any.

Q. How about September, 1927? A. I recall none in September.

Q. The next letter after October 15th was sent to you on November 3rd, is that so? A. Yes.

Q. Exhibit P 126? A. Yes.

Q. Will you please read that letter? (Witness reads letter.)

Q. Now you stated a few minutes ago you had a conference with Doctor McKee in November, 1927. Was it before or after? A. After.

Q. Where was it held? A. On the mezzanine floor in the Pennsylvania Hotel.

Q. Who requested that conference? A. Mr. McKee.

Q. On the telephone? A. Yes.

Q. When did he phone you? A. I don't recall.

Q. Do you recall the conversation you had with Doctor McKee at the November meeting? A. Yes.

Q. Can you give me the exact date of that conference? A. I think it was November 7th. I am not positive about that. It was between the 3rd and the 10th; I think it was the 7th.

Q. What was the conversation you had with Doctor McKee? A. He mentioned this dress for one thing and he said that Margaret said she was making the dress or something like that, and I told him that she was not.

Q. The next letter says he looked it up? A. I told him Margaret was not making the dress, that Margaret would have to try it on, but she done none of the sewing. That is one thing that was mentioned. Another thing that was mentioned he wanted me to sign papers transferring some prop-

erty at Clinton, Missouri, to a corporation called McKee's Book Store.

Q. Did he have the instrument with him—the deeds or whatever it was? A. No, he just spoke about it and I said I could see there was no reason for doing it. It was a house where his sister had lived for many years. He made no suggestion about selling it. It was where his sister lived.

Q. You told him you wouldn't sign it? A. I didn't tell him I wouldn't sign it. I said I saw no reason for signing it.

Q. Did he urge you to sign it? A. No.

Q. Was there anything said about the agreement of January 24, 1927?

Mr. Walscheid: I object to that as calling for a conclusion.

Vice-Chancellor: She can say yes or no.

A. No.

Q. Anything said about your living with Doctor McKee? A. No.

Q. Did he ask you at that time to come back and live with him? A. No.

Q. By the way had Doctor McKee at anytime in any of his conversations with you express any regret for the separation? A. No, he had not.

Q. Then you received a letter of November 10, 1927, Exhibit P 127, from Doctor McKee, is that so? A. Yes.

Q. You have that letter? A. Yes.

Q. And in that letter he wrote he stated—"Since seeing you have received the grades of Billy but presume you have received a copy also." Does that refer to the conversation you just outlined "Since seeing you"? A. No, I don't remember any conversation about Billy.

Q. He said—"Since seeing you." Does that refer to the time he met you a few days prior to that? A. Oh, yes.

Q. And he also states in that letter—"The more I think of it the more I dislike your digger's attitude as expressed in your statement to me of "What is there in it for me?" A. No, I simply said I could see no reason for transferring that property to the corporation. He didn't point out any reason either.

Q. Is that what he has reference to in letter when he said "I dislike your digger's attitude"?

By the Vice-Chancellor:

Q. Was there anything said about money? The word "digger" is there?

Mr. Walscheid: His testimony has been when he asked her to sign these papers "I won't sign them. What is in it for me?"

A. I think I can quote my exact words. I said "I don't think I should do that. I don't see any reason for doing it."

By Mr. Blumberg:

Q. On page 261 right after this letter was introduced in evidence the following questions and answers are noted: "Q. In the first part of the letter you refer to a contrary statement made by your daughter? What statement was that contrary to? Had you had any conversation with Mrs. McKee? A. Yes, I had quite a number of conferences and conversations—a number of telephone conversations." Had you had a number of conferences and conversations with Doctor McKee prior to November 10, 1927? A. No.

Q. Will you state again the last time that you spoke to Doctor McKee on the telephone prior to the time he called you in reference to an appointment in November, 1927? A. The last one I recall was just previous to our meeting in August.

Q. Did Doctor McKee say anything to you in November, 1927, about his intention of starting a divorce suit? A. No.

Q. Had he ever mentioned the institution of a divorce suit to you? A. No, he had not.

Q. When did you first learn he had started a suit for divorce in New Jersey? A. Well, the first day I heard of it at all was just before Thanksgiving I think, on the 22nd day of November. Mr. McNulty and Mr. Morse came to my home in Spuyten Duyvil and told me that Mr. McKee was instituting a suit for divorce and that the papers would be sent to me. I remember speaking to Mr. Morse about this and he had been at our house on the first day of October—

Mr. Walscheid: I object.

Vice-Chancellor: I think she should be permitted to state it. Mr. McNulty represents the petitioner.

Mr. Blumberg: She is stating what she told Mr. Morse.

Vice-Chancellor: She was starting to tell what she said to Mr. Morse and she interpolated that Mr. Morse had been in the house before. I will admit that about his being in the house.

(Witness continuing) I said to Mr. Morse when you came to our house the first of October you knew before that that Mr. McKee was going to bring a suit for divorce. He didn't answer.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will leave it in. She made that statement and he didn't answer.

(Witness continuing) I again asked him—I said "You knew before you came to our home?" and he said "Yes."

By the Vice-Chancellor:

Q. Had he been to your house in October of what year? A. 1924. I remember the date.

Q. Do you mean 1927 or 1924? A. 1924.

Q. When was the suit started? A. They said it had been started in New Jersey then.

Q. When was this suit started?

Mr. Blumberg: 1927.

By Mr. Blumberg:

Q. You have reference to a meeting with Mr. Morse in your house on October 1, 1924, three years before? A. Yes.

Q. Not October 1, 1927? A. No, 1924, when we lived on Claremont Avenue.

Q. Mr. Morse had come to your house? A. With Mr. McKee.

By the Vice-Chancellor:

Q. You mean to say Mr. Morse at that time when he called to your house on October 1, 1924, knew Mr. McKee intended to start suit for divorce? A. Yes. I also said to Mr. Morse that he had known—

Mr. Walscheid: I object.

Vice-Chancellor: Mr. McNulty is the agent.

Mr. Walscheid: They are in 1924.

(Witness continuing) No, this is a conversation of November 22, 1927.

Mr. Walscheid: There is no proof he was the agent.

Vice-Chancellor: Who?

Mr. Walscheid: Mr. McNulty.

Vice-Chancellor: I am going to assume Mr. McNulty who was the solicitor in this cause did not go there voluntarily as a social guest. I am assuming that in compliance with the law requiring a solicitor to make some inquiry before the suit is started it may be that Mr. McNulty went there for that purpose.

Mr. Blumberg: There is no need of going on with that kind of examination. Mr. Walscheid need not be worried about it.

Vice-Chancellor: My recollection is there are some affidavits in the file about that visit.

By Mr. Blumberg:

Q. You say that was shortly before Thanksgiving? A. Yes, I think the 22nd of November.

Q. Did you meet Doctor McKee Thanksgiving Day? Did you have dinner with him? A. No.

Q. Did you have dinner with him on that Christmas? A. No.

Q. Did he write to you that he was contemplating a divorce suit at all? A. I don't think he mentioned it in any of the letters.

By the Vice-Chancellor:

Q. Did he at any time after October, 1924, in any of the talks or conversations say to you that he contemplated instituting suit for divorce against you? A. Not until December, 1927, after he had instituted the divorce.

By Mr. Blumberg:

Q. Did you ever ask him whether he was going to institute suit for divorce? A. No.

Mr. Walscheid: I object.

Vice-Chancellor: I will sustain the objection. Why should she ask him that if she was anxious to live with him?

By the Vice-Chancellor:

Q. Was there ever any talk between you and your husband prior to the institution of this suit about a divorce between you and your husband? A. No, except on the 22nd day of January, 1924, at the office of Hirsch, Newman & Reass, Mr. McKee and myself being present, when I said—

Q. That is in the record? A. Yes.

By Mr. Blumberg:

Q. January, 1924? A. January 22, 1927.

Q. That was the Saturday before the agreement of January 24th was signed? A. Yes.

Q. Will you state again what was said on January 22, 1927, about this divorce proceeding? A. This was a conference between—

Vice-Chancellor: Is that what transpired in the lawyers' office? It is already in the record.

Q. Did you hear from Doctor McKee after November 10, 1927? Did he telephone to you? A. Yes, he telephoned me asking me to meet him at a conference we had in December.

Q. You had a conference in December? A. Yes.

Q. Where? A. At the Pennsylvania Hotel; on the mezzanine floor of the Pennsylvania Hotel.

Q. Do you remember the date? A. No, I don't recall the date; it was in December.

Q. Was it the early part of December? A. I can't recall when it was. I think it was in the early part of December. It was in the early part of December.

Q. Who arranged for that meeting? A. Mr. McKee arranged with me by telephone I think, at his request.

Q. And do you recall what was said at this meeting of December, 1927? A. Yes.

Q. What was said? A. That was the first time he had mentioned divorce. He said he was bringing a suit for divorce and I asked him on what grounds and he didn't say on what grounds at all. I asked when he was bringing it and he said that he had asked me to sign papers to transfer property and that I didn't want to do so, and I said "Ralph, there is nothing in that", and he said "Yes, there is too; that is perfectly good. That will hold. I have everything fixed up. I can get a divorce without any trouble and you can't do anything about it."

Q. Did he say anything in that conversation about this agreement of January 24, 1927? A. I don't think he said anything about it at all.

Q. Then he wrote to you on December 13, 1927, is that so, Exhibit P 128? A. Yes.

Q. Did he send you a hundred dollar check? A. Yes.

Q. In accordance as he states with the agreement? A. That's what he said.

Q. What else did he send you? A. Do you want me to read from the letter?

Q. Yes. (Witness reads letter.)

Q. He states in that letter he sends you one hundred dollars in accordance with the agreement. How much did he send you in November? A. $200.00.

Q. And in December he sent you $100.00? A. Yes.

Q. Did you call him up and say anything about the reduction from $200.00 to $100.00? A. I wrote him a letter on December 22nd. I didn't call him up.

Vice-Chancellor: What is the exhibit number?

Mr. Blumberg: 129A.

Q. Will you read that letter? (Witness reads letter.)

Q. Did you ever get the $200.00 check in December? A. No. Oh, yes, later. No, I didn't get all of it. According to our agreement, a verbal addition in the presence of Mr. Kirby and Mr. Reass—

Mr. Walscheid: I object to that as not responsive. The question is whether she received the check.

Vice-Chancellor: You are only asked did you receive it.

Witness: In February or March I received it. No, not for $200.00—for $100.00.

Q. How much did Doctor McKee send you after December, 1927, per month?

Mr. Walscheid: Is it material?
Vice-Chancellor: I will permit it.

A. In January he sent me two checks. He sent me three checks for $100.00 each stating that one of them was for any extra expenses.

By the Vice-Chancellor:

Q. Is that in letter form? A. Yes.

Mr. Blumberg: Exhibit 130, January 11, 1928.

By Mr. Blumberg:

Q. Did you have any conversation with Doctor McKee after December, 1927? A. No.

Q. Any telephone conversations? A. No.

Q. But he continued writing you did he not? A. He wrote me a letter in January.

Q. He wrote letters up to—What is the date of the last letter he sent to you? A. He sends me a letter every month saying enclosed find check for $200.00 for your use in January, or whatever it is.

Q. Did he send you such a letter this month? A. Yes.

Q. Is that all he said in the letter? A. That's all.

Q. You say you did not see him after December, 1927. You had no conference? A. No.

Q. You went to Carthage, Illinois, in January, 1928? A. Yes.

Mr. Walscheid: I object to it as immaterial.

Mr. Blumberg: I am following your testimony Mr. Walscheid.

Mr. Wascheid: All right, go ahead.

Q. Now Mrs. McKee, what did you do when you received a copy of the petition in this matter?

Mr. Walscheid: I object to that.

Vice-Chancellor: What is the significance of that? I will overrule the question just now. I presume she consulted counsel. I don't know what else you want to bring out. I think I will allow it because my recollection is there was a default decree in the matter and it was referred to Stanley Griffin. I will permit the question; it can't hurt you.

Q. What did you do after you received the petition in this case? A. When the papers were left at my house I was out in Illinois.

Vice-Chancellor: Are you trying to bring out about the divorce decree?

Mr. Blumberg: Yes.

Vice-Chancellor: What's the necessity of that?

Mr. Walscheid: There is no counterclaim. We must show a cause of action or our bill is out. What's the use of going beyond that?

Q. Mrs. McKee, did Doctor McKee ever visit any violence on you in 1924? A. Yes.

Q. Will you state to the court the exact dates when he did so?

Vice-Chancellor: Didn't she already testify about that?

Mr. Blumberg: No.

Vice-Chancellor: I know there is a lot of testimony.

Mr. Blumberg: On other matters.

Mr. Walscheid: I object to it. I think she ought to state what happened and the exact dates.

Vice-Chancellor: Tell us what you claim happened and the times.

Mr. Blumberg: I am asking dates first.

A. I can state one January 21st—I mean June 21, 1924, and the latter part of August. I can't remember the exact date of that. It was the last week in August, 1924.

Q. Will you describe to the court what Doctor McKee did to you on June 21, 1924? A. It was a Saturday evening. He had been away on a trip.

By the Vice-Chancellor:

Q. What did he do? A. He grasped me by the shoulders and shook me very severely for about five minutes.

Q. During which time he said what, if anything? A. During which time he laughed and said nothing.

Q. What immediately preceded this? Were there words between you? A. Yes, your Honor, that's what I started to tell. He had been away and had returned that evening. He had told me he would return on the 23rd and I was alone in the apartment. The children had gone to the country club so I was alone in the apartment on the evening of Saturday, June 21st. It was perhaps nine o'clock and I heard the door open and Mr. McKee came in. He came into the living room where I was. I was reading the newspaper. He told me about his trip and I told him something about the children.

Q. Then what happened? A. Then he said he wanted to go to the university and read over his

mail and I said I will go over with you, which I did. On the way over nothing was said at all but he just got angry and he kept getting more and more—

Q. How did he manifest his anger if nothing was said? A. His face; not his tone of voice.

Q. He did say something? A. Yes. We went over to the university and he just looked over his mail just a very few minutes and then we went back to the apartment.

Q. Go ahead. A. That was the last time we had any sexual intercourse between us.

Q. Tell us what happened? A. Then he commenced to storm about my allowing the children to go up to the country club without chaperoning them myself. I told him they had gone up under Mrs. Nelson's care. The Nelsons lived in the same house with us and they went to the same club, and he kept on storming about leaving the children run around alone.

Q. Was that before or after the sexual intercourse? A. After.

Q. Then what? A. Finally I said to him that I didn't go out and leave my family without any means of support; that I didn't go out and leave my family without sufficient food as he did so I had to borrow money to get along. Then he wanted to know from whom I borrowed the money. He spoke in a very loud voice and I told him I didn't care to discuss the matter any more that night, that I would tell him about it the next day. Then he rushed into that room and grabbed me by the shoulders.

Q. He was in the room wasn't he? A. No.

Q. You had indulged in sexual intercourse and had retired? A. The beds were near together. First you see the doors where there is an angle. He

was in his room next to the door. I was in the bed next to that door.

Q. Were you in your own bedrooms that night? A. Yes.

Q. Was he in his own bedroom? A. Yes.

Q. Did you each retire to your own bedrooms? A. Yes.

Q. Did you go to his bedroom or did he come to you to have sexual intercourse? A. He came to me.

Q. After you were through with that act he went on with this tirade? A. Then he went to his own room.

Q. You were each in your respective bedrooms? A. Yes.

Q. Then what happened? A. Then he came in and grasped me by the shoulders and shook me for at least five minutes very severely.

Q. Anything else? What was the result of his shaking? A. He went back to his own bed.

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

Q. What did you do after he released you if anything? A. I stayed in my own room.

Q. Were the children in the house at that time? A. No, they were at the country club. There was no one else in the apartment.

By Mr. Blumberg:

Q. Did you say anything to him that night after he had shaken you as you stated? A. I did not.

Q. Did you say anything the following morning? A. No, I never spoke of it at all.

By the Vice-Chancellor:

Q. What date was that he did the shaking? A. The 21st of June, 1924.

Q. What was the other occasion when he did something to you? A. It was in August.

Q. Tell us about that? A. The children were at home then and I was sleeping on the sofa in the living room, a sofa that was quite short—shorter than I am myself—and I looked up and Mr. McKee was standing over me, and I said "What do you want?" and he didn't reply at all and grasped me by the shoulder and violently forced my head back into the corner point of the sofa in a twisted position, and with his hands on my shoulders he jumped up and down on his knees.

Q. What do you mean? Was he trying to have intercourse with you? A. No, your Honor.

Q. Was he in a lying position on the sofa? A. Yes.

Q. He was lying on top of you? A. He had his hands on my shoulders to brace himself and was jumping up and down.

Q. Where were his knees, on the sofa? A. No, on me.

Q. You were lying there prostrate and he was on top of you and had hold of your shoulders and his knees on you? A. Yes.

Q. What part of your body was his knees on? A. On my abdomen. On my stomach and my hips.

Q. What was he saying? A. He didn't answer. I asked him what he wanted. Finally I said "Why are you doing that?" and he didn't answer. I said "If you don't stop doing that I will scream," and he said "Go on and scream." I didn't scream. He kept this up and I said "If you are trying to kill me you had better not do it; there are at least four people in the room who are expecting you to do that but you can't get away with it." Then he went away.

Q. Those are the two occasions when you say he used violence towards you? A. Yes.

Q. Were there any other occasions when he used any such conduct towards you that you can remember dates or times? A. I can't remember the exact dates.

Q. Fix them as near as you can? A. As nearly as I can remember it was in the spring of 1923 while we were living on 180th Street. It was his custom to lie on the sofa in the living room and sleep so that the children could occupy the bedrooms, and the children had returned. I was sewing in the sewing room and I went to see that the children were settled for the night, and I noticed that Mr. McKee was getting ready for bed and the light was still on in the living room and I mentioned it and I went back to the sewing room to sew. He said to come and put it out. I didn't answer but simply went back to the sewing room and went on with my sewing, and he came in and picked me up bodily and threw me against the door so I fell in the doorway with my spine against the door sill. I couldn't move at all. He called my son and he came out of his room.

Q. Your husband was there? A. Yes, and my son and my husband raised me and put me on the bed. I had to consult a physician about that.

Q. Did it incapacitate you in any way? A. For some days, yes.

Q. Did it make you bedridden so that you were not able to attend to your work? A. No, I wasn't bedridden. I had will power to get up under any circumstances.

Q. Who paid the physician? A. There was no charge. I consulted the university physician.

Q. What was his name? A. Doctor McKaslin.

Q. How many times did he see you or treat you for that? A. I don't know. I went to the office.

Q. Once, or more than once? A. More than once; several times.

Q. What treatment did he give you? A. He recommended hot water treatments mostly.

Q. Did you apply that treatment? A. Yes, sir.

Q. Alone or were you assisted? A. Alone.

Q. What part of the spine do you say was affected? The base of it or the middle or upper part? A. Below the waist.

By Mr. Blumberg:

Q. You say the last time you had sexual intercourse with your husband was on that day in June, 1924? A. Yes. In this connection may I add after August—after this assault I suffered considerably after that although I did not consult a physician.

By the Vice-Chancellor:

Q. In what way? A. With my back and my neck. I could scarcely move.

Q. Did you complain to your husband about it? A. No, I did not. I didn't mention it to him at all. I finally went to a physician. I didn't go to him earlier because I had to explain to him how I came by it.

Q. But you did explain to Doctor McKaslin how you came about the injury which you consulted him about? A. Yes.

By Mr. Blumberg:

Q. Did you tell your husband after June, 1924 there would be no more sexual intercourse between you? A. It was after that. I told him he would have to consider me as his wife otherwise there would not be—

By the Vice-Chancellor:

Q. Otherwise there would not be what? A. The words I used "Otherwise there would be no occa-

sion for his paying me." He contended that he was.

Q. I am not asking you that. I am asking you what was said? A. That he must consider me as his wife.

By Mr. Blumberg:

Q. When did he say that on June 21st?

Mr. Walscheid: I object.

By the Vice-Chancellor:

Q. When did you tell him? A. I can't remember. It was after that night. It may have been the next day. It probably was.

By Mr. Blumberg:

Q. Did Doctor McKee after that night of June 21st suggest that you and he have sexual intercourse at anytime? A. That's when I told him.

By the Vice-Chancellor:

Q. Did he endeavor to have sexual intercourse or make any overtures? A. I told him he must treat me as a wife.

Q. When did he make that overture? You said you think he made it the following day? A. Yes.

Q. If he did it might have been the following day he wanted sexual intercourse? A. It must have been the next day.

Vice-Chancellor: I will strike that out.

Witness: I will say it was the next day.

Mr. Walscheid: I ask it be stricken out.

Vice-Chancellor: I will let it stand.

By Mr. Blumberg:

Q. What did Doctor McKee say to that?

By the Vice-Chancellor:

Q. When you said that he would have to treat you as a wife should be treated what was his reply? A. He said I said he didn't pay high enough.

By Mr. Blumberg:

Q. Was there any further conversation about that? A. Yes, there were on several occasions when I would repeat the same thing to him that I was willing to live with him as his wife at anytime he was ready to consider me as his wife, but I would not live with him as a harlot which he insisted upon my doing saying it was my place to earn the money to run the household in that way.

Q. You say Doctor McKee told you that was the way you could earn the money?

Mr. Walscheid: I object.

Vice-Chancellor: She stated what it was.

Mr. Blumberg: I don't think it is clear yet.

Vice-Chancellor: I think it is clear to me.

Q. You say on several occasions after June 21, 1924 Doctor McKee suggested you and he have sexual intercourse?

Vice-Chancellor: She said he did and she plainly told him he would have to treat her as his wife and he made these replies to her.

Mr. Blumberg: And he acted cruel.

Mr. Walscheid: I object.

Vice-Chancellor: I will sustain the objection. You are characterizing it as cruel.

Q. Did Doctor McKee suggest to you to have sexual intercourse in September, 1924? A. I don't recall any particular time.

Vice-Chancellor: We will now take a recess until two o'clock.

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Afternoon Session.

MARY N. McKEE, recalled.

Direct Examination Continued by Mr. Blumberg:

Q. You had had sexual intercourse with your husband prior to June, 1924?

Vice-Chancellor: I don't think that is questioned. They had two children.

Mr. Blumberg: I don't think the record is clear.

Vice-Chancellor: They had two children.

Q. That is so isn't it? A. Yes.

Q. Will you state to the court upon what basis you had sexual intercourse prior to June, 1924?

Vice-Chancellor: On what basis? On the marital basis.

Mr. Blumberg: This lady's contention is it was upon a humiliating basis.

Vice-Chancellor: I don't see how it will affect the case. Ask your questions.

A. My husband insisted it should be on a financial basis.

By the Vice-Chancellor:

Q. When did that begin? A. In the spring of 1923.

Q. Up to 1923 there was no question of commercialism as to your relations? A. No.

Q. Then in the spring something happened between you? A. He had contended before that I should be earning money. He said women didn't make parasites of themselves any more and it was my place to earn money. Then in the spring of 1923 he said he had thought of a way for me to earn the money to run the house and that he would pay me for sexual intercourse and I would have that money to run the house.

Q. He had been providing moneys to run the house previously hadn't he? A. Not adequately.

Q. You don't mean that you put yourself on that plane even though he suggested it of commercializing your body? A. I told him I would not consider it so he would put five dollars on the bed or he would put it on the table and say that is for last night. At times when he would leave to go away I would say I had no money to provide for the table. He would say, "You didn't do your duty last night; you won't get any." He said that in the presence of the children and me.

By Mr. Blumberg:

Q. You say that started in the spring of 1923 and continued until June, 1924? A. Yes.

Q. What did you say to all that? A. I refused absolutely to put myself on any such basis. I would

refuse except when he would be away and return. I thought he would perhaps forget about it.

By the Vice-Chancellor:

Q. You mean after each intercourse he would leave money for that purpose? A. Yes, every time.

By Mr. Blumberg:

Q. Was there ever any discussion or protest? A. I told him it was impossible for me to live on any such basis.

By the Vice-Chancellor:

Q. But you did? A. I didn't your Honor except when he would be away for several weeks and I would start in again thinking he would forget it.
Q. Each time after the intercourse he would leave money behind him? A. Yes.

By Mr. Blumberg:

Q. Will you describe to the court his conduct towards you in 1924?

Mr. Walscheid: I object to it.
Vice-Chancellor: Hasn't she described it?

A. It was continuing always. He very often struck me continuously every day. If I would say anything while we were having meals he would raise his arm and threaten me and say shut up.

By the Vice-Chancellor:

Q. If it was at meal times there was somebody around to observe that? A. The children were there and the maid.

Vice-Chancellor: You had better get some corroboration.

Witness: The reason I can't is he sent detectives around.

Vice-Chancellor: I will strike that out.

Vice-Chancellor: If your children were present and saw that they should be brought in.

Witness: May I speak on that subject?

Vice-Chancellor: You can only answer questions madam.

Mr. Blumberg: Doctor McKee is bringing this suit.

Vice-Chancellor: Yes, but you are bringing out this testimony. Do you mean about the corroboration? She is asserting it. He has or will deny it. Between the two you leave me in a position whereby I have to judge who is telling the truth.

By Mr. Blumberg:

Q. You say he raised his arm towards you at meal times. At any other times did he do that? A. Yes, at other times. In a general conversation if I wanted to take part he would do that.

Q. He would not strike you? He would just raise his hand? A. Sometimes he would strike me. His threatening attitude was always.

By the Vice-Chancellor:

Q. I think I understood you to say in answer to questions up to the time he went away on that trip which preceded the separation you and he had gotten along fairly well together? A. I didn't mention it.

Vice-Chancellor: There is some testimony in here to that effect. I don't know whose it is.

By Mr. Blumberg:

Q. You say that Doctor McKee had threatened you. Will you state to the court what he said?

Mr. Walscheid: If we are to meet that—

A. He didn't threaten me in words; he threatened me in action. I have already related some of the occurrences.

Q. Will you relate the other occurrences to the court? A. Yes, there was another in the summer of 1924. I can't give you the exact date; it was in July or August. Mr. McKee was taking the children up to the country club and he left me at home alone. He rushed in with some white powder that he said was used for water bugs of which we had some, and he said put it generously around the kitchen in the refrigerator where there might be water bugs. Then he went up to the country club. When he came back on Monday—he didn't usually come to the house when he came back from week-ends with the children but he did come that day—and I saw him in the kitchen and I asked him what he wanted. He was looking around and he said "How about the iodinize I gave you, that powder, didn't you see it?" I said "Why do you want to know?" He said "Well, I don't see it around. I asked him why he was looking for it. What it was. He said it was sodium fluorine and was extremely poisonous. He was afraid it might get into the food. He hadn't told me that on Saturday. I told him I hadn't used it.

Q. Do you recall any acts of cruelty in October 1924? That's the time your sister was in the house?

Vice-Chancellor: That has been testified to.

Mr. Walscheid: What she told the sister.

Q. There was no physical cruelty in October? A. He would call and ask me whether I was going to sleep with him or not. There was another occurrence too when he was looking through my personal papers in my room and I objected to his doing so, and he grasped me by the wrist and forced me back on the bed and twisted the papers out of my hand.

Q. When was that? A. In October 1924.

Vice-Chancellor: I am pretty sure that testimony is in.

Mr. Walscheid: Yes.

Q. In November 1924 Doctor McKee was in Europe? A. Yes.

Cross Examination by Mr. Walscheid:

Q. How old are you Mrs. McKee? A. Fifty-two.

Q. This occasion when you found him looking over your papers, when was that? A. It was on a Sunday in October 1924.

Q. What was he doing? A. He was looking through my personal papers.

Q. Where were your personal papers? A. In the desk in the room that I occupied as a bedroom.

Q. Who was in the room at that time? A. My sister.

Q. And you were out of the room? A. When he first began.

Q. Then what happened? Did your sister call to you? A. She came and told me. I was in the kitchen.

Q. And told you he was looking through your personal papers? A. Yes.

Q. Was there any personal papers he shouldn't see? A. Of course not. Persons don't like people looking through them.

Q. Were you concealing anything from him? A. Certainly not.

Q. Then you came into the room? A. Yes.

Q. And you upbraided him? A. No, I said he was not at liberty to look through my papers, if there was anything he wanted to tell me.

Q. Why didn't you let him look through the papers? A. Would you allow your wife to look through your papers?

Q. Yes. You objected to his looking through your personal papers? A. Yes.

Q. You objected to your husband? A. I certainly did.

Q. Although you were at that time living with him? A. Certainly.

Q. Then what did you do, say that to him? A. Say what?

Q. That you objected to his looking through your personal papers? A. Yes.

Q. Then what next happened? A. I took hold of the papers.

Q. He already had hold of them? A. No, they were at that time—the papers that I took hold of were on the desk.

Q. And he had hold of some other papers? A. I believe so.

Q. You were trying to prevent him from looking at the rest of the papers? A. Yes.

Q. And you didn't do that in a very friendly

way did you? A. Why I told him to cease doing that.

Q. You didn't do that in a friendly way? A. What do you mean by friendly way?

By the Vice-Chancellor:

Q. You weren't pleased with him going through your personal papers?

By Mr. Walscheid:

Q. You were a little bit excited about it? A. No.

Q. Not in the least? A. No.

By the Vice-Chancellor:

Q. I understood you to say you said to him something to the effect "What are you doing with my personal papers? If there is anything you want tell me and I will get it for you?" A. I didn't say it angrily.

By Mr. Walscheid:

Q. You had a scuffle over the papers? A. No, I wouldn't call it a scuffle.

Q. Did he have hold of the papers and you have hold of the papers? A. Yes. No, he had hold of my wrist.

Q. In other words as you went to take the papers from the desk in front of him he grabbed you by the wrist? A. No, I took the papers up and he grabbed me by the wrist.

Q. And then there was a scuffle for the papers? A. No, he pushed me back on the bed and twisted my wrist. It was so painful I had to let go of the papers.

Q. Then he had possession of the papers? A. Yes.

Q. What did he do with them? A. Looked through them.

Q. Put them back? A. Yes.

Q. No further conversation? A. No.

Q. Walked out of the room or stayed in? A. I dont remember any further conversation.

Q. You say that in the month of October there were no physical acts of cruelty? A. I would consider that one.

Q. But would call to you and ask you if you were going to sleep with him or not is that right? A. Yes, in a very loud voice.

Q. How often would he do that? A. I don't know. He wasn't there a great deal. He did it every night when he was there.

Q. He asked you how often to do that? A. Perhaps three or four times a week.

Q. Three or four times a week during October. And on all those occasions you said no? A. No, I didn't answer. He didn't expect an answer.

Vice-Chancellor: I will strike that out.

Q. You didn't answer at all? A. No. Wait a minute, I did answer sometimes too.

Q. Which was it? A. As I had explained many times before.

Q. What did you say? A. I said I was willing —if and when he wished to consider me as his wife I was willing to resume my duties towards him.

Q. You didn't go to bed with him did you? A. No, I did not.

Q. And you didn't cohabit with him after June? A. No, I did not.

Q. From June 24th? A. Yes.

Q. And prior to June 24th you hadn't cohabited with him in close to a year had you? A. Yes.

Q. Regularly? A. No.

Q. How often? A. When he would return from trips.

By the Vice-Chancellor:

Q. When was it? A. Your Honor he was away a great deal.

By Mr. Walscheid:

Q. The last cohabitation you had with him was on June 24, 1924? A. Yes.

Q. And he was away just preceding that? A. Yes.

Q. Are you sure he was away on June 21st? A. Positively.

Q. Positively? A. Yes.

Q. Very positive? A. I will tell you why.

Vice-Chancellor: You don't have to say why madam.

Q. When had he returned prior to June 21st? A. About nine o'clock on the night of June 21st.

Q. And how long had he been away? A. I think it was the 4th of June. I am not absolutely sure. It was the day of commencement at college.

Q. When he came in that day did you go up to him and greet him with a kiss? A. There had been nothing like that between us for many years.

Q. Did you or did you not? A. No, he was in the living room.

Q. Did you offer to do so?

Vice-Chancellor: She said there had been nothing like that between them for years.

Q. Did you? A. No.

Q. How long had he been away? A. I just answered that question to the best of my ability either the 4th or the 9th of June.

Q. Beginning with the 4th or the 9th of June and going backwards how long prior to this 9th of June or this 4th of June was it that you had sexual intercourse with him? A. I can't answer that question.

Q. Did you have sexual intercourse with him in May of 1924? A. I can't answer that. I don't know.

Q. Did you have sexual intercourse with him in any month prior to June, 1924 that you can point out?

Vice-Chancellor: You must mean within some limited time.

Mr. Walscheid: In the year 1924.

A. I am sure that I did but I can't give any dates.

Q. You at that time had reached the stage where you didn't care for sexual intercourse with your husband hadn't you?

Vice-Chancellor: At what time do you refer to?

Mr. Walscheid: The 4th of June in the year 1924 up to the last time June 21st.

A. He made it so utterly—

Q. You had reached the stage where you didn't care for sexual intercourse? A. I wouldn't put it that way.

Vice-Chancellor: Why don't you answer the question yes or no? A. It is a plain question.

Mr. Blumberg: I think that question calls for an involved answer.

Vice-Chancellor: I don't know whether it does or not.

Witness: It is impossible to say yes or no.

Q. I want you to answer it yes or no? A. I can't answer.

Q. I don't want your reasons. A. It would imply something else.

By the Vice-Chancellor:

Q. You can't answer it? A. No. If you put it in a different form I can answer it.

By Mr. Walscheid:

Q. Assuming that you had reasons I don't want your reasons. But assuming you had reasons for not having sexual intercourse, assuming that you had reached that mental attitude where you didn't care for sexual intercourse with your husband in the year 1924 and prior to June 24th? A. I had reached the mental attitude that it was absolutely repulsive to me.

Q. You mean sexual intercourse? A. Yes.

Q. When had you first reached that attitude? How long before; was it in 1923? A. It was when he put it on a commercial basis.

Q. When, looking forward? Was it in 1923? A. Yes, in 1923.

Q. When in 1923 was it that you reached the mental attitude that it was repulsive? A. I can't give an exact date.

Q. Give me the month? A. No, I can't give the month because it wasn't instantaneous.

Q. Can you give me the season of the year? A. Spring. No, perhaps the answer to the question would be the summer. He began in the spring.

Q. From the summer of 1923 all sexual intercourse with your husband was mentally repulsive to you, is that right? A. Yes. No, it was physically repulsive. I can't distinguish between mental and physical repulsion.

By the Vice-Chancellor:

Q. It was repulsive anyway? A. It was.

By Mr. Walscheid:

Q. You consulted the firm of Hirsch, Newman & Reass? A. Yes.

Q. When did you first consult them? A. The 30th of October, 1924.

Q. And you consulted them about your matrimonial difficulties didn't you? A. Yes.

Q. And you consulted them looking towards a separation didn't you? A. I don't know. No, I don't know that I did. I consulted them as to what was possible to do under the circumstances.

Q. And they advised you didn't they? A. What do you mean they advised me?

Q. Advised you?

By the Vice-Chancellor:

Q. Did they give you some advice? A. Yes.

By Mr. Walscheid:

Q. And from that time on you were under the advice of this law firm weren't you?

Vice-Chancellor: That calls for a conclusion.

Mr. Walscheid: Strike it out.

Q. And from that time forward you kept consulting this law firm up to at least January 24, 1927, didn't you? A. I think I saw them only once in December after January.

Q. I want you to understand my question. You mean after January, 1924 you only saw them once, is that right? A. January, 1925.

By the Vice-Chancellor:

Q. Between the first time you went to consult them up to the signing of this agreement in January, 1927 how many times did you consult these lawyers? A. I consulted them on the 30th of October, 1924 and some time in November or December, 1924. I called them on the telephone on January 12, 1925.

By Mr. Walscheid:

Q. 1925? A. Yes.

Q. That is the day before you left? A. Yes.

Q. Then after that you continuously consulted with them after you left at least up to the time of the signing of this so-called separation paper in January, 1927, didn't you A. Yes.

Vice-Chancellor: What do you mean by continuously consulted?

Mr. Walscheid: She answered it.

Q. How often did you consult with them? A. I can't answer.

Q. Did you consult with them every week? A. No.

Q. Every two weeks? A. From time to time.

Q. You consulted them about your conduct towards Mr. McKee didn't you? A. I asked them

whether I should meet him under the circumstances and they advised me no and afterwards they advised me yes.

Q. And when they advised you no you didn't meet him? A. He didn't ask me to meet him. I met him every time he asked me to meet him.

Q. And during all of those meetings that you had you still had this feeling of repulsion towards him?

Vice-Chancellor: She didn't say that. She said as to sexual intercourse.

Q. This feeling against sexual intercourse with him? A. I didn't have any feeling in regard to that. There was no question concerning it.

Q. But you so testified at the last hearing? A. No, I didn't.

Q. Didn't you up to the time of the signing of this paper have a feeling of repulsion towards your husband? A. No feeling that couldn't have been overcome.

Q. Will you answer me this? Did you have that feeling? A. No, I was not cognizant of that fact. If I did I didn't know it.

Q. Well, you had a conversation with your husband on a Saturday night on October 9, 1924 regarding a man in Rochester, didn't you? A. Not on a Saturday—Yes it was on a Saturday night.

Q. On that occasion you had a conversation about a man in Rochester, didn't you? A. Yes.

Q. With your husband? A. Yes.

Q. And you say concerning what Doctor McKee said—"He didn't say any more about clothes" but he said "You have been acting up ever since 1924 when we went to Rochester together"? A. 1913 when we went to Rochester.

Q. The record shows you said 1924. That is an error? A. That is an error.

Q. Now tell us again just what that conversation was? The conversation on that Saturday night? A. It began by my asking him when he was going to Europe, and my sister asked him what I should do while he was gone. He said that he didn't know; if she had behaved herself as she should she could have gone with him. I asked him what he meant by that and he said "You have been acting up ever since 1913 when we went to Rochester together." I asked him what he meant by that because he had not said anything about that before.

Q. What did he say he meant by that? A. He said that in Rochester I came in late at night with a man after he had gone to bed.

Q. And did you? A. No.

Q. Didn't you come in late at night? A. I came in after the card party. Not with any particular man.

Q. But some gentleman escorted you back to the hotel? A. Not alone. There were some parties with us.

Q. Some gentleman came into the hotel? A. I can't recall. It was thirteen years before. There was no gentleman with me alone.

Q. What was the rest of the conversation? A. The gentleman that he mentioned was not there at all so far as I knew. He would have no reason for coming there because his wife was not at the meeting.

Q. Where? A. At the card party where I was. It was a married women's party. There were no men there.

Q. But you did say when you came in about one o'clock, that is in this conversation, that you had

come in about one o'clock—"When I asked 'Why did I come in with him?', Mr. McKee said 'I had been to the smoker and had come home and had been asleep a couple of hours and you came in with him.' " A. That is what he said.

Q. But you said "Why did I come in with"? A. It come on me suddenly. I had no time to think it over.

Q. Do you now wish to withdraw the statement that you said "Why did I come in with him"? A. Why, no, I said that.

Q. Why did you ask the question "Why did I come in with him", if you didn't? A. As I said it was twelve years before. I couldn't think just at this minute what I did that night or where I had been.

Q. All right, tell us the rest of the conversation that night? A. I asked him if he was in bed asleep how he knew with whom I came in and he said this man told him the next day.

Vice-Chancellor: What is the relevancy of this?

Mr. Walscheid: It was put in in the direct testimony as the immediate act preceding the separation or the last act that preceded the separation.

Witness: No, it was not.

Mr. Walscheid: The court is asking me the question. The court asked that very question of Mrs. McKee.

Vice-Chancellor: Go ahead.

Q. That was on a Saturday night? A. Yes.

Q. And that was in October was it? A. Yes.

Q. Was that on October 25th a Saturday night? A. It was the last Saturday night in October.

Q. And that's the night that your sister asked your husband what you were going to do when he went to Europe you say? A. Yes.

Q. So that you knew prior to that date and your sister knew prior to that date that Doctor McKee was going to Europe in November, didn't you? A. He had told me the Thursday morning before.

Q. I suppose this Rochester matter came up during the course of the conversation, didn't it? A. In the way that I have already related.

Q. And when he told you that he was going to Europe he told you what steamer he was sailing on? A. No, he didn't.

Q. Did you ask him? A. I asked him. He said he didn't know.

Q. He said his plans weren't sufficiently matured? A. He didn't say that. He said he didn't know.

Q. Did you later ask him again what steamer he was sailing on? A. Yes, I think it was Thursday, that is, two days before he sailed. He said he was sailing on Saturday.

By the Vice-Chancellor:

Q. That's the first time you say he indicated he was sailing? A. No, the second Thursday your Honor. It was a week before he told me he was going and then two days before he sailed he told me.

By Mr. Walscheid:

Q. But madam you told us it was two days before he was sailing was the first time? A. No.

By the Vice-Chancellor:

Q. Counsel asked you when you first knew it

and you said the Thursday before? A. No, your Honor.

By Mr. Walscheid:

Q. Now I am reading from your testimony on page 4—"Q. Did he tell you what ship he was sailing on? A. I think not. Q. Did you go to the pier with him when he sailed? A. No, I didn't know when he was going." A. I didn't know when he was going to the pier.

Q. You knew when he was going to the steamer? A. No.

Q. Didn't you know what date he was sailing? A. I knew the date but not the hour.

Q. So you knew the date on October 25th? A. No.

Q. When did you first know the date? A. The Thursday preceding his sailing. The 30th of October. The morning of the 30th of October.

Q. Then you knew the date? A. Yes.

Q. Did you go over to the steamer with him? A. I had no opportunity.

Q. Did you go over to the steamer with him? A. No.

By the Vice-Chancellor:

Q. Did he ask you to go to the steamer? A. No.

Q. Did he ask you to meet him there? A. No, he didn't even tell me when he was going. He came in and grabbed his bags and went out. I thought he was going in the afternoon. He went in the morning.

By Mr. Walscheid:

Q. When did he make arrangements with you about financing you pending the time that he was

away? A. He gave me one hundred dollars on either Wednesday or Thursday. That would be either the 29th or 30th of October.

Q. What else did he give you for that period? A. Nothing else.

By the Vice-Chancellor:

Q. Did he give you some checks signed in blank? A. He told me he had left in the check book some checks.

By Mr. Walscheid:

Q. So he gave you one hundred dollars in cash on that occasion, Wednesday or Thursday before he sailed? A. Yes.

Q. One hundred dollars in cash? A. Yes.

Q. And he told you he had left checks in his check book? A. Yes.

Q. How much did those checks amount to? A. $100.00 dated November 15th; $100.00 dated December 15th; one for $50.00 of a later date—I don't remember the exact date; and another one for $100.00 for the end of December.

Q. Is this check under date of November 5th one of the checks that he left (showing witness check)? A. No, it was November 15th. This is November 5th.

Q. Is that your handwriting on it? A. It looks like mine but I can't tell.

Mr. Walscheid: I ask this check be marked in evidence.

Witness: Let me see it please. Let me see the next check.

Vice-Chancellor: Are you objecting to it?

Mr. Blumberg: He is offering it for identification.

New Jersey State Library

Mr. Walscheid: I am offering it in evidence.

Q. Is it or isn't it your signature? A. I don't know, because I had to borrow money from my sister for household expenses in the meantime.

Q. But you cashed it on November 7th didn't you? A. I don't know.

Q. Look at the endorsement? A. I would have sworn to the fact I didn't.

Q. Here is the November 15th check. I don't want to fool you. Is that your endorsement on it? A. It looks like it but I didn't have it.

By the Vice-Chancellor:

Q. Don't you know whether it is? A. Somebody else must have had it.

Vice-Chancellor: If she don't deny it mark it in evidence.

(Check marked Exhibit P 153 in evidence without objection.)

Q. Now on what date did Doctor McKee sail for Europe? A. November first. I don't know what that is there (indicating on check).

Vice-Chancellor: Just answer questions madam.

Q. You say you had to borrow money did you? A. Yes, I did.

Q. When did you have to borrow money? A. From my sister.

Q. When? A. Before I could cash the first check left in the check book.

Q. When Doctor McKee went away you say he

told you he left checks in the check book? A. Yes.

Q. And you had no trouble in finding the check book immediately after he left? A. No.

Q. And you had no trouble in finding checks in the book? A. No.

By the Vice-Chancellor:

Q. And he left you $100.00 in cash? A. No, your honor. He gave me $100.00 on Thursday. I had to pay the bills out of it. I had to use that for things for the children.

Q. Now you say you borrowed money from your sister before you cashed the first check? A. Yes.

By Mr. Walscheid:

Q. And if I remember it you said those bills amounted to $35.00? A. I said I had left about $35.00. I remember on the day he sailed I bought pajamas and other things and sent them to Billy. That came out of the $35.00 that was left and I also bought gloves for Billy.

Q. I want to show you another check dated December 15th for $100.00. Is that your signature on the back? A. Yes.

Q. That is your signature? A. Yes.

Q. And by looking at that check can you tell when you cashed it?

Vice-Chancellor: Does the check bear a statement showing when it was cashed?

Mr. Walscheid: Yes.

A. Yes, December 22nd.

Q. You had that check from the 15th of December and didn't cash it until the 22nd?

Vice-Chancellor: Did she cash it at the bank or through somebody else? She might

have given it to the grocer. The endorsement on it will show. If she cashed it at the bank then it ought to show the date of cashing.

Witness: That doesn't show who it is credited to.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 154 in evidence without objection.)

Q. I now show you another check and ask you whether that is your signature?

By the Vice-Chancellor:

Q. You say it doesn't show to whom it was credited? A. Credited to the account of.

Q. Did you have a check account in that bank? A. No. I didn't have that many checks.

Q. There are four checks there? A. Yes, they have other checks here.

By Mr. Walscheid:

Q. Is that your endorsement (showing witness a check)? A. I think so.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 155 in evidence without objection.)

Q. Will you look at that check? Is that your signature? A. They all look like my signature.

Q. Is it your signature? A. I won't say it is my signature.

Q. Why? A. Because I did not have that many checks.

By the Vice-Chancellor:

Q. You can tell whether it is your signature?

By Mr. Walscheid:

Q. Do you mean to say that signature was forged? A. I don't know. I would say it was my signature.

Q. You will not say it is? A. I will not.

By the Vice-Chancellor:

Q. Don't you know whether it is your signature? Take a look at it. Never mind looking at the front of it. Look at the back? A. Just wait a minute.

Q. Why do you have to compare it? You are just hurting your case by equivocating. You ought to know whether it is or not? A. I would say it is my handwriting.

Mr. Walscheid: I offer it in evidence.

Witness: Just wait a minute until I look at the first of the checks. Yes it is.

(Check marked Exhibit P 156 in evidence without objection.)

Vice-Chancellor: You don't think it would be hard for me by comparing your signature with the signature on that agreement to satisfy myself.

Mr. Blumberg: The only difference is the dates were different.

Witness: The amount as I understand is the same.

By Mr. Walscheid:

Q. You also testified that out of the $100.00 which he gave you in cash on Thursday before the

sailing that you bought Billy an overcoat? A. I paid the balance.

Q. How much was the balance? A. Twenty-five dollars.

Q. Where was the overcoat purchased? A. McCreery's.

Q. Don't you know it was purchased at Saks on Herald Square? A. That was Mr. McKee's own overcoat that was purchased at Saks before.

Q. All right, we will give you the benefit of that. When he left he told you he was going to return on the 21st of December, didn't he? A. I don't remember whether he said when he left what date he would return. He wrote me. I think he said in his letter he would return on the 20th.

Q. In response to your attorney's question you said this, page 6—"Did he tell you when he was returning from Europe? A. Yes, on the 21st of December." A. He told me in a letter.

Q. "Did you write any to him? A. I wrote him two letters. Did he tell you when he was returning from Europe? A. Yes, on the 21st of December." A. Yes.

Q. So you knew he was returning on the 21st? A. He said in his letter he would return on the 20th.

Q. So you were in error when you said he told you he was returning on the 21st? A. Yes, an error in the date.

Q. Did you ever make an effort to find out what steamer he was returning on? A. We looked it up in the newspapers.

Q. What boat did you find he might be returning on? A. The Leviathan.

Q. And he hadn't told you he was returning on the Leviathan? He didn't write you? A. I have the letters. May I put them in now?

Vice-Chancellor: You have a lawyer conducting your case madam.

Q. So that on the morning of the 21st you knew he was not or was coming in on the Leviathan? A. No, I didn't know he was coming in on the Leviathan. He said he was returning at that time.

Q. You looked in the newspapers? A. Yes. There were two boats returning from Italy at that time.

Q. What newspapers did you look at? A. Either the Tribune or the Herald Tribune.

Q. Did you look in the Times? A. I don't know. Whatever paper we were taking at that time.

Q. Don't you know that the Times reported that the only steamer in on Saturday, December 21st, was the Leviathan?

Vice-Chancellor: Maybe the ship was ahead of time.

A. We found in the papers that there were two ships to come in. We knew he might come in on either of them.

Q. Did you make any effort to go to either one? A. No.

Q. Did you try to find out from the company? A. No.

Q. When he came in did you offer to kiss him? A. I went to meet him, yes.

Q. From where? A. When we heard the door open the children and I all went to meet him at the door.

Q. Did you offer to kiss him? A. I had no opportunity to do so.

Q. But did you?

By the Vice-Chancellor:

Q. You say there had been none of that going on between you for a long time preceding? A. No.

By Mr. Walscheid:

Q. So if that is so you didn't really object to his not kissing you? A. How could I object to his not kissing me?

Q. You didn't, did you? A. I don't remember (laughing), whether he did object or not.

Q. When you went to Hirsch, Newman & Reass and consulted them in October, did you tell Mr. McKee that you were going there? A. No.

By the Vice-Chancellor:

Q. You went there the day you left that note. Is that the time you left the note on the table? A. No.

Q. That was while you were living together? A. Yes.

By Mr. Walscheid:

Q. You went there to see this law firm the day before he sailed for Europe? A. Two days before.

Q. And allowed him to sail for Europe without telling him you had consulted any lawyers? A. Yes.

Q. And did you write him while he was in Europe that you consulted lawyers? A. No.

Q. What relief were you seeking when you went to see that law firm? A. I was seeking relief from the intolerant condition under which I was living. I didn't know what could be done.

By the Vice-Chancellor:

Q. Were you seeking relief or advice? A. Advice as to what I could do.

By Mr. Walscheid:

Q. Weren't you also seeking relief? A. Yes, certainly.

Q. So you were seeking advice and relief.

By the Vice-Chancellor:

Q. Do you understand that? A. I don't know whether I do or not.

By Mr. Walscheid:

Q. You wanted relief from what?

By the Vice-Chancellor:

Q. What did you go to the lawyers for? A. I have already stated.

Q. What? A. To ask them what could be done under the circumstances.

By Mr. Walscheid:

Q. And they told you what could be done? A. Yes.

Q. What did they tell you could be done? A. They told me this was not Africa and was not Russia.

Q. No. What could be done? A. They said many things.

Q. What did they tell you? A. They told me I should be separated from him but the law wouldn't allow me to do that under the circumstances.

Q. Thats what they told you? A. Yes.

Q. What did you say to that? A. I said I didn't want to do that except as the last resort.

By the Vice-Chancellor:

Q. That was while you were living with your husband? A. Yes.

Q. Why didn't you tell your husband that, about the intolerable conduct? A. I tried to a number of times. I told him the conditions were intolerable. He just laughed.

Q. Did you tell him after you talked to your lawyers? A. Yes.

By Mr. Walscheid:

Q. When did you talk to him after you were to these lawyers? A. I don't remember. It was either Thursday evening or sometime on Friday.

Q. In October? A. Yes.

Q. Before he sailed? A. Yes.

By the Vice-Chancellor:

Q. You all sat at the table and ate together? A. When he was there.

Q. I am speaking before he went away? A. I don't recall.

Q. You and your sister were there? A. Yes.

Q. And the two children? A. No, the children were not there.

By Mr. Walscheid:

Q. Speaking about your sister, your sister came on from the west didn't she to visit you? A. Yes.

By the Vice-Chancellor:

Q. At your request because of complaints you made? A. She didn't come at my request. I

didn't ask her to come but I had written about the conditions. I had told them I was afraid of being alone with my husband.

By Mr. Walscheid:

Q. You told them you were afraid of being alone with your husband? A. Yes.

Q. And your children were going back to school on the first of October? A. Yes.

Q. And she came there on the first of October? A. Yes.

Q. So you had written to Carthage, Illinois, advising them I suppose you were afraid to stay alone with your husband? A. Yes.

Q. To whom had you written? A. To my mother.

Q. Had you written to any attorney there? A. No.

Q. Had you written to Judge Mack? A. No, my mother did.

Q. Your mother consulted Judge Mack? A. Yes.

Q. And as a result of that consultation they sent on your sister? A. No.

Q. Didn't they write you about what was done? A. Yes.

Q. Who wrote you? A. My mother wrote me and told me to whom I could go in New York.

Q. And Judge Mack recommended this law firm? A. No, Judge Mack recommended another firm that I found were corporation attorneys only.

Q. Why did your sister come on? A. Because I was afraid to be alone.

Q. You didn't advise your husband your sister was coming on? A. Yes.

Q. When? A. When I first knew she was coming.

Q. Did you know she kept a diary of events in your house? A. I think I did. I am not sure.

Q. You knew that? A. I think so.

Q. And did you keep a diary of events in the house? A. I didn't keep a diary in the form of a diary. I was accustomed to write my mother.

Q. Of the events in the house? A. Yes.

By the Vice-Chancellor:

Q. Did you keep a record of events? A. Yes.

By Mr. Walscheid:

Q. All that was occurring between you and your husband? A. Yes.

Q. When did you start to do that, in October? A. I think perhaps I started about the first of July 1902.

Q. Of occurrences between yourself and your husband? A. Of everything that occurred.

By the Vice-Chancellor:

Q. Everything? A. In general. I was accustomed to write about everything that went on.

Q. Where is that record? A. Which record? He is speaking of letters I wrote to my mother.

By Mr. Walscheid:

Q. You knew when your sister came along she kept a record of events in the house? A. I know it now, yes.

Q. Did you know it then? A. I don't know whether I did.

Q. Do you mean to say your sister didn't tell you she was keeping a record of events in the house? A. I don't remember.

By the Vice-Chancellor:

Q. You are asked whether you kept a diary of the events in your house between yourself and your husband? A. I wrote to my mother frequently.

Q. I am not speaking about your mother? A. No.

By Mr. Walscheid:

Q. Did you keep a diary of any kind of events in your house that had occurred between you and your husband? A. What do you mean?

Q. I mean for the purpose of refreshing and keeping your own memory fresh? A. No.

By the Vice-Chancellor:

Q. You know what a daily diary means? A. Yes.

Q. It is a record of daily events? A. Yes.

Q. He is trying to find out whether you used such a book? A. No, I did not.

By Mr. Walscheid:

Q. You left your home on January 13th didn't you, 1925? A. Yes.

Q. Early in the morning? A. Yes, about seven o'clock in the morning, or half past.

Q. And you did that under the advice of Hirsch, Newman & Reass, didn't you? A. I don't know whether I could call it their advice. Yes, I guess it would be their advice.

Q. And you did it to bring about a separation between yourself and your husband, didn't you? A. I can't say that no, because I hoped that he would make it possible to resume our relations.

Q. And you went without letting him know you were going before you went? A. Yes.

By the Vice-Chancellor:

Q. You wrote a letter or a memorandum and left it behind you? A. Yes.

By Mr. Walscheid:

Q. And when you went you carried out certain packages with you? A. Yes.

Q. What did you carry out? A. I think a hat box and an umbrella also. I may have had a bag or a sick box.

Q. That is all you carried out? A. Yes.

Q. So that the clothes and other things preceded them out? A. The night before. I sent a steamer trunk the night before and one box.

Q. What time of the night did you send them? A. I don't remember exactly; perhaps it was between half past eight and nine. Between nine and half past nine.

Q. You mean when Doctor McKee was in there you took them? A. Yes, when he was in there. He says in his testimony he was there.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will strike out what she said about it being in the testimony.

Q. From the time you first consulted Hirsch, Newman & Reass up to January 13, 1925, you did not tell Doctor McKee you intended to leave did you? A. I told him conditions were intolerable. I didn't tell him that, no.

Q. You had been telling him that for a long time

that conditions were intolerable? A. Yes, for several months.

By the Vice-Chancellor:

Q. He is trying to find out before you left there whether you informed Doctor McKee you were going to leave? A. No, I didn't tell him that. I told him the conditions were intolerable.

By Mr. Walscheid:

Q. You didn't tell him "Doctor, the conditions here are intolerable and unless they change I am going to leave?" A. No, I didn't tell him I was going to leave. I told him it was impossible going on living like that.

Q. When did you tell him that? A. During October several times.

Q. That is the first time you said it. A. I don't know whether it is or not. No, I think I said it before.

Q. And immediately after you left on January 13, 1925, you reported to Hirsch, Newman & Reass that you had left? A. Yes.

Q. And gave them your new address didn't you? A. I told them before where I was going to be on Monday.

Q. How long before you told them you were going to leave? A. When I first consulted them. We talked things over in November. I told them that I would not leave until Mr. McKee came back from Europe, until I saw whether his rest or change had changed him and if not I would.

Q. And you told them immediately after you left? A. I told them on Monday and they sent him a letter in that regard which is in evidence.

Q. After you did leave when did you have your

first conference with Doctor McKee? A. Sometime in February.

Q. When in February? A. It seems to me it was February 11th. I am not absolutely sure.

Q. Where was this conference? A. In the office of Hirsch, Newman & Reass with Mr. Reass. Mr. Newman was absent.

Q. Who was present in that office at that time? A. Mr. Reass, Mr. Kirby, Mr. McKee and myself.

Q. Tell us what happened on this February 11th? A. You mean after I went to the office.

Q. After you went down to Hirsch, Newman & Reass's office? A. Mr. Reass met me in the outer office and I found that Mr. McKee and Mr. Kirby had already had a conference with Mr. Reass. They were in his office. Mr. Reass said that Mr. McKee wanted to talk to me alone. I asked him whether I should do that and he said "Yes, see what he has to say." So I did. I went into Mr. Newman's office. Mr. McKee came in. He had a brief case and out of the brief case he took some papers. He said he had to pay—I can't give the amounts of course—but so much for Margaret's expenses and so much for Billy's expenses, and that he would send me seventy-five dollars a month. I told him that no one could live on seventy-five dollars a month. He put the papers back in his brief case and said "I will send you seventy-five dollars a month."

Q. What time of the day was the conference, in the afternoon? A. I think early in the afternoon.

Q. And at that time he said he would give you seventy-five dollars a week? A. A month.

Q. Hadn't you just prior to February 11th had a conference with Hirsch, Newman & Reass? A. Mr. Newman was away.

Q. With Mr. Reass then? A. No.

Q. Hadn't you been there on the 8th of Feb-

ruary? A. I can't recall a meeting on the 8th. I know that Mr. Newman went out of town and I know I never had a conference at anytime with Mr. Reass alone.

Q. Didn't you receive a check from Doctor McKee prior to February 11th? A. I received a check in answer to Mr. Newman's request. I don't remember when it was.

Q. Didn't you receive a check prior to February 11th from Doctor McKee? A. Yes, I recall—I think it was later in February for $200.00.

Q. And the first check you did receive was for $200.00 wasn't it? A. Yes.

Q. And the conference with Hirsch, Newman & Reass was in the afternoon of February 11th? A. I think it was in the afternoon. The conference was over before banking hours closed because Mr. Reass went with me to cash the check.

Q. On the 11th? A. If that was the date of the conference.

Q. So that on the day of this conference when you say Doctor McKee was there offering to give you $75.00, as a matter of fact he gave you $200.00, didn't he? A. No, not that day.

Q. Didn't he? A. No.

Q. Look at that check? A. February 7th.

Q. Did he give it to you on February 7th? A. He didn't give it to me at all. There is a letter in the files.

Q. What is the date of sending? A. I can't remember all these dates off-hand.

Q. You are not expected to. That check you turned over to Hirsch, Newman & Reass didn't you? A. Mr. Reass went with me to cash it.

Q. And that's his signature? A. I don't know.

By the Vice-Chancellor:

Q. Did you get the money on that check? A. Mr. Reass got the money and gave it to me.

Q. Will you look at the date when that check was paid? A. February 11th.

Mr. Walscheid: I offer the check.

(Check marked Exhibit P 157 in evidence without objection.)

Mr. Walscheid: I desire to call the court's attention to Exhibit P 157 referred to in letter D 2 sent in connection with that letter.

By Mr. Walscheid:

Q. Now I want to call your attention madam to your testimony on page 17—"Mr. McKee came into that room to talk to me. He had his brief case and he took his papers out of the brief case and read what purported to be the expenses for each of the children, and he said that he would send me seventy-five dollars a month." At that time he had already sent you $200.00 which you already had in your possession. That's true, isn't it? A. That's true.

Q. What's the next conference you had after February 11th? A. I think the next one was one I had had with Mr. McKee alone on the 28th day of February.

Q. Where was that? A. At the Public Library, the third floor, on a bench in the corridor.

Q. And on that occasion you went there as a result of a message you received from Mr. Reass? A. No, I went there as a result of a telephone message from my husband. He called me up on the telephone and asked me to meet him.

Q. And you met him pursuant to that telephone call? A. Yes.

Q. When you received that telephone call did you communicate with Hirsch, Newman & Reass

about it? Did you ask them whether you should go? A. I don't think so. No, I think not.

Q. Well, you went. What happened then? A. I have already related that. Mr. McKee was sitting on the bench in the corridor on the third floor of the Public Library on 42nd Street. When I came up to him he didn't even rise to greet me at all. I spoke to him and he spoke to me.

Q. What was said? A. He said "Mr. Reass said you said you wanted to talk to me. What have you got to say?"

Q. Sure those are the words? A. Yes.

Q. You have testified in this matter on April 23, 1929, didn't you, and you used the identical words? A. I think I did.

Q. What else was said? A. I said I had sent no message to Mr. Reass.

Q. What else was said? A. I can't remember his exact words. "Didn't you tell Mr. Reass?" or something like that.

Q. What else was said after you said "I sent no message by Mr. Reass?" A. He said "Then Mr. Reass said it on his own account," and I said "I sent no message through Mr. Reass."

Q. Go ahead. You said some more then?

Vice-Chancellor: Tell us what was the conversation with your husband at that time.

A. I don't recall now just what he said at that time. As he said at the meeting before he said "I will give you seventy-five dollars a month." I told him that was not an adequate amount at all and that he well knew that I had earned a substantial share in his income.

Q. And you said "I expect to have it?" A. Yes, I did, and he said "I would like to see you get it."

Q. What else was said at that conference? A. I said something about Margaret's college bills that were not paid that were required to be paid before the first of March, and he said he would not pay any bills for Margaret unless he was appointed her guardian.

Q. That's all that was said that conference. When was the next conference?

Vice-Chancellor: You made the statement that's all that was said.

Q. Was that all that was said? A. I don't recall anything else just now.

Q. When was the next conference? A. I saw Mr. McKee the following—I think a Monday. Perhaps the 2nd of March. I don't remember the exact date. I met him at the gate when my son was going back to school at the Grand Central Station; at the train gate at the Grand Central Station.

Q. Was that by his request or because the boy was going? A. Because the boy was going. The boy was over to the orthodontist.

Q. After you met him on March 2nd you had a conference shortly after that didn't you? A. Yes, I think we had a conference shortly after that.

Q. Who was present? A. Mr. Newman, Mr. Kirby, Mr. McKee and myself.

Q. That was in Mr. Newman's library? A. Yes.

Q. Were you all together at that conference or did the lawyers withdraw? A. We were all together.

By the Vice-Chancellor:

Q. There was a withdrawal for a time by some one? A. Not at that conference.

By Mr. Walscheid:

Q. They all remained during that conference? A. Yes.

Q. What happened at that conference? A. Mr. Newman—The first speech that I remember was Mr. Newman's to Mr. McKee.

Q. What did he say? A. Mr. Newman said "We shall assume it is your desire to bring about a reconciliation," and Mr. McKee didn't say anything to that, and Mr. Newman said "Is that your desire?" and Mr. McKee looked at his attorney, Mr. Kirby, and Mr. Kirby nodded his head yes very slightly, so Mr. McKee did too.

Q. They both nodded their heads? A. Mr. McKee after Mr. Kirby.

By the Vice-Chancellor:

Q. Indicating the affirmative? A. Yes.

By Mr. Walscheid:

Q. So you considered from that they were there for the purpose of a reconciliation? A. No, I considered that Mr. Kirby thought so and Mr. McKee didn't.

Q. At that time were you willing to go home and live with your husband as man and wife? A. Under suitable conditions. Not under the old conditions.

Q. Were you willing to go home at that time to live with your husband? A. Under suitable conditions.

Q. What do you mean? A. If I could be convinced that my husband regretted his actions and they would not be repeated I would go with him today.

By the Vice-Chancellor:

Q. And you wouldn't be subjected to the constant abuse that you spoke of? A. Yes.

By Mr. Walscheid:

Q. During all that time he had been denying the charges you made against him? A. I don't recall.

Q. He denied them to your sister? A. He did not.

Q. She so testified? A. He said "No, I don't think I struck her." When she asked him again he didn't say anything.

Q. If he had said "I am sorry; I won't do it again," you would have been willing to go home and live with him again? A. Yes.

Q. You think so? A. I know it.

Q. Sorry for what?

Vice-Chancellor: She has mentioned several matters that she felt aggrieved at.

By the Vice-Chancellor:

Q. Are those the matters you hoped he would express a sorrow for? A. Yes.

By Mr. Walscheid:

Q. And unless and until he expressed sorrow you would not go back? A. Exactly.

Q. What was the next conference?

Vice-Chancellor: What you have asked her and what she has answered brings it down pretty much to the crux of the thing.

Mr. Walscheid: No, we have some more witnesses on that topic.

Q. What next was said at this conference? A. Mr. McKee said something about Billy having said he wanted to go to camp and wanted to be his guardian or something like that, which was contrary to the fact. The things that took place when I met Mr. McKee and my son at the Grand Central Station Mr. McKee mis-quoted and I corrected him at the time. Mr. Newman then said "If he is going to act like that there is no use of having conferences with him."

Q. Did the conference then break up? A. Yes.

Q. It did? A. Yes.

Q. Are you sure of it? A. There may have been something else said. I can't remember the whole of the conversations at different times.

Q. Let me help you. Did Mr. Newman say during the course of that conference after they nodded their heads "What have you to suggest"? A. Yes.

Q. What was said next? A. Mr. McKee took out his papers and said he was willing to give seventy-five dollars a month, and Mr. Newman said that wasn't to be considered at all.

Q. Do you mean to say after they spoke about reconciliation and Mr. Newman said "What have you to suggest?", Mr. McKee took out his papers and said "I will give you seventy-five dollars a month?" A. Yes, exactly.

Q. And Mr. Kirby was there taking part in that? A. I don't recall whether he said anything or not.

Q. But he was there? A. Yes.

Q. I don't want to shut you off. Was there anything else discussed at that conference? A. I don't recall anything else just now. I wrote these conversations out in full at that time.

Q. You wrote them out at that time in full did you? A. Yes, I did.

Q. And showed them to your lawyers? A. My lawyers were there.

Q. What you wrote out at that time? A. No, I didn't show them to the lawyers.

Q. Who suggested to you they should be written out? A. I wrote them out to send them to my mother.

By the Vice-Chancellor:

Q. Did any one suggest that you do so? A. No, your honor.

By Mr. Walscheid:

Q. Did you tell your lawyers you were writing them out? A. I don't recall that I did.

By the Vice-Chancellor:

Q. Where are those papers? A. I have all the letters I wrote to my mother at that time.

By Mr. Walscheid:

Q. Why did you write them out? A. So my mother would know exactly what was taking place.

Q. Why did your mother have to know? A. She was interested in my welfare.

Q. Isn't it the fact at some future date you could refresh your recollection to testify? A. No.

Q. But you have used them now haven't you? A. Yes.

Q. And they came in very handy for that purpose? A. Yes.

Q. And you also kept copies of all the letters you wrote to Doctor McKee? A. Not the first ones. I copied those he read in court. The first I did not, but I was advised afterwards and I did.

Q. By your lawyers? A. Yes.

Q. And after that you kept copies of all letters you wrote to Mr. McKee? A. I was assured it didn't make any difference what he wrote. I shouldn't worry about that because it didn't make any difference.

(Further hearing continued to October 1, 1929.)

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(Hearing continued October 1, 1929—1:45 P. M.)

Mr. Walscheid: May I at this time interrupt the cross examination of Mrs. McKee for the purpose of putting on the County Clerk with reference to the registry?

Vice-Chancellor: Do you concede that?

Mr. Blumberg: I have no objection.

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GEORGE RYCARDO, being sworn.

Direct Examination by Mr. Walscheid:

Q. What's your name, sir? A. Rycardo—George.

Q. And are you connected with the office of the County Clerk of Bergen County? A. Yes, sir.

Q. In what capacity? A. Custodian of records.

Q. And are you here in response to a subpoena served upon the County Clerk? A. Yes, sir.

Q. You have been asked to produce the register of votes for the Borough of Leonia of the year 1926? A. Yes.

Q. Have you that with you? A. Yes, sir.

Q. What does that indicate? A. It indicates that Ralph McKee was registered #357—210 Christie Heights Street, Leonia.

Q. That is the address from which he was registered? A. Yes, sir.

Q. And the book which you have before you is the official registry of that borough? A. Yes, sir.

Q. On file in the office of the County Clerk? A. Yes, sir.

Q. And the book is the register of voters for the election of November 2, 1926 of the Second Ward, Second District of the Borough of Leonia? A. There is only one ward.

Q. Of the second District of the Borough of Leonia? A. Yes, sir.

By Mr. Blumberg:

Q. How long have you been connected with the County Clerk's office? A. I have been with Mr. Mercer for two and a half years and John R. Ransom for fourteen.

By Mr. Walscheid:

Q. That is you have been in the office over sixteen years? A. Yes.

By Mr. Blumberg:

Q. And this register of voters which you brought here this afternoon is that in the custody of the Board of Elections? A. That is in the custody of the County Clerk.

By the Vice-Chancellor:

Q. That book merely means it is a register of the voters eligible to vote. There is nothing to indi-

cate that name you referred to voted? A. It wasn't voted.

Q. It shows he did not vote? A. Yes.

By Mr. Blumberg:

Q. Will you turn to the page again? You have turned to a page entitled "Register of voters election of November 2, 1926." Is there anything here to indicate on what date the name Ralph McKee was put there? A. In the book?

Q. Yes? A. No. They go around from house to house—

Vice-Chancellor: You have answered the question.

Q. Is there anything in this book to indicate whether the name Ralph McKee was the man who voted? A. He didn't vote. That check mark shows he didn't vote.

By the Vice-Chancellor:

Q. Who put that there do you know? A. I don't know.

Vice-Chancellor: Is it conceded he did not vote?

Mr. Walscheid: I am trying to show he was registered to vote from that house. When the election came on he was in Kansas City.

Vice-Chancellor: The reason I ask it seems from this witness's statement that somebody must have had access to the book and put a check mark on it.

Witness: This signifies the number of men that voted and the number that did not vote.

By Mr. Blumberg:

Q. The number preceding the name? A. He voted.

Q. And if there is no number he did not vote? A. There would be a number of the ballot there if he had.

By the Vice-Chancellor:

Q. It has ballot numbers? A. Yes.

By Mr. Blumberg:

Q. Was this book sent by you to the Election District? A. No, this came from the County Clerk's office.

Q. Is it sent by the County Clerk to the Election District? A. Yes, we have all those books from every election district in the county.

Q. Do you know from your own knowledge who makes up the list of voters? A. They have a board of four men, the Board of Registration. It is a house to house canvas—15,000 house to house. They make up a list and these books show that list. This is the final record. These are filed with the County Clerk, the only one that is. There is the signature of the voters (indicating).

Q. You say a board of four. You mean for Leonia? A. Each election district has four men.

Q. Do you know how many districts there are in Leonia? A. No, I do not.

Q. But this is the Second District? A. Yes. There must be a first.

Q. And the board you refer to is for the Second District of Leonia? A. Yes.

By Mr. Walscheid:

Q. And the book is entitled "From April 12, Municipalities 15,000 or less, Register of Voters Gen-

eral Election November 2, 1926, State of New Jersey, County of Bergen, Borough of Leonia, Second District," is that right? A. Right.

Q. In a column entitled "Number Consecutively" in the Third Register do you find a number 357 opposite the name of McKee—Ralph? Is that right? A. Right.

Q. And then in a column immediately adjoining that entitled "Ballot Number" you find no number in that column but you do find a check mark? A. No number.

Q. But you find a check mark? A. Yes.

Q. Opposite the name of McKee—Ralph? A. Yes, sir.

Q. That check mark you say has no significance? A. None whatever.

Q. Then after those two columns beginning 357 in the first column and the second column check mark, you find the words "McKee—Ralph," and then in another column "Street Number 210," and in another column "Residence" Christie Heights Street? A. Yes.

Q. And that book is signed by the election board for that district? A. Yes, sir.

Q. George W. Lord. Can you read the names? A. George W. Lord, Steinbard, William B. Gourley and Aloysius Strickland.

Q. Do you know at what season of the year the canvass is made of the voters? A. Once a year.

Q. At what season? A. They go around in May, because they have the Primary in June.

Q. The computation was made in May 1926? A. Yes. Taken in May and voted in November.

MARY N. McKEE, recalled.

Cross Examination continued by Mr. Walscheid:

Q. Mrs. McKee you testified that while your husband was in Europe in November 1924 that he sent you letters from Europe. He did, didn't he? A. Three.

Q. And when you received those letters you had already consulted counsel, had you not? A. Yes.

Q. You were already a client of Hirsch, Newman & Reass?

Vice-Chancellor: The testimony shows she consulted counsel before he went away.

Q. You have those letters have you not? A. Which letters?

Q. The three letters you received from Europe? A. Yes.

Q. Will you produce them please?

Vice-Chancellor: Witness produces three envelopes with enclosures.

Q. Which is the first of the letters you received?

(Witness hands counsel letter.)

Q. That is the first? A. Yes.

Mr. Walscheid: I offer it in evidence.

Q. And this is the envelope it came in? A. Yes.

Mr. Walscheid: I offer the envelope.

(Envelope marked Exhibit P 158 in evidence. Letter marked Exhibit P 158A in evidence.)

Q. Which is the next letter? (Witness hands counsel letter.)

Q. And that is the envelope in which it came in? A. Yes.

Mr. Walscheid: I offer the envelope and letter in evidence.

(Envelope marked Exhibit P 159 in evidence. Letter marked Exhibit P 159A in evidence.)

Q. Mr. McKee says in this letter Exhibit P 159A—"Received my first letters—four from America today. None from the family. All business. Hope Billy is going well in school. Yours—Ralph." Up to that time you had not written had you? A. I don't recall the dates that I wrote.

Q. And this is the third letter you say you received? A. Yes.

Q. In this envelope? A. Yes.

Mr. Walscheid: I offer the envelope and letter in evidence.

(Envelope marked Exhibit P 160 in evidence. Letter marked Exhibit P 160A in evidence.

Q. Now that letter, Exhibit P 160A, is dated Paris, December 2nd and one of the paragraphs reads—"Have received no letter from you since I have been away." Had you up to that time written him any letters? A. Yes, I had.

Q. Where to? A. Paris.

Q. What address in Paris? A. I don't recall. I think the American Express Company.

Q. You don't know where you wrote? A. I don't recall. It was something like that.

Q. How many letters did you write him? A. I wrote him two letters.

Q. And where did the first one go to? A. They both went to Paris. That was the only address I had.

Q. When did you write the first one? A. I said I don't remember the dates. I think I have perhaps one of the dates at home, but I don't remember now.

Q. And the letters which you did write should certainly have been in Paris prior to December 2nd? A. If I remember one of them should have been there before.

Q. One of them should have been there before that date? A. Yes.

Q. There is another paragraph in here—"Got a ticket for New York today and will leave Paris on December 14th and will arrive in New York unless delayed on December 20th." So that you knew as a result of this letter the date of arrival of Doctor McKee, didn't you? A. Yes. He didn't say what boat he was coming on.

Q. Now you also received some post cards from Doctor McKee? A. I did not. That is everything I received from Mr. McKee while he was away. No cablegrams or postals.

Q. Are you absolutely certain you received no post cards from Doctor McKee? A. Yes, absolutely certain.

Q. So of course at the time when Doctor McKee wrote you those letters he did not know you had consulted counsel about living separate and apart? A. He did not.

Q. You testified on page 20 of your testimony that you had a conference with Doctor McKee on March 5th, 1925, is that so? A. Yes.

Q. How do you fix the date? A. From the letters I wrote to mother. I have them now.

Q. From the letters you wrote to your mother? A. Yes.

Q. So that immediately after that conference you wrote a letter to your mother? A. Yes.

Q. Reporting to her the results of that conference? A. Yes.

Q. For the purpose of submitting the letters to counsel? A. No, for her information.

Q. But you knew at that time that she would have the advice of counsel in Carthage, Illinois, insofar as your case was concerned? A. No, she did not.

Q. Did she see Judge Mack there? A. To ask for the name of a lawyer in town so if I needed one. That's as far as I know.

Q. How early had you made that arrangement with her?

Vice-Chancellor: She didn't say she did.

Q. Did you make that arrangement? A. No, mother did that on her own account. I was there in June.

Q. Of what year? A. 1924.

Q. So that immediately after June of 1924 she made that arrangement? A. No.

Q. How soon after June of 1924? A. I don't know. It was sometime in the summer.

Q. Would you say it was sometime in the summer during July or August of 1924? A. Or possibly September. There was considerable correspondence about the matter.

Q. And she communicated the fact to you she had consulted a lawyer for you? A. That she was asking him to look up the names of some attorneys in New York.

Q. Now this conference of March 5, 1925, took place where? A. In the library of Mr. Newman's office.

Q. Who was present? A. Mr. Newman, Mr. Kirby and Mr. McKee and myself.

Q. And you had met Doctor McKee on the Saturday preceding that hadn't you? A. Yes, the 28th of February.

Q. That was the Saturday preceding? A. Yes.

Q. And you had met him at the Grand Central Station on that occasion? A. No, I had not.

Q. Where had you met him? A. In the library on a bench in the corridor on 42nd Street.

Q. Will you tell us again what took place at that conference on March 5th? A. March 5th or February 28th?

Q. March 5th. A. I think Mr. Newman was the first to speak and he spoke—

Q. Didn't you speak to your husband? A. Oh, well, as far as the conference was concerned.

Q. You greeted him didn't you? A. I suppose so.

Q. He had greeted you? A. I don't know whether he did or not. He didn't usually.

Q. All right, go ahead. Mr. Newman was the first to speak at the conference? A. Yes, I remember Mr. Newman spoke first and he said—he spoke of the suit and it was all on account of Mr. McKee's cruelty.

Q. What did he say? A. In public and in private.

Q. What did he say? Can you tell us what Mr. Newman said? A. I don't remember just how he put it except that I remember that expression about cruelty brought in.

Q. But that you do not now remember his exact words? A. No, not that part of it. And Mr. Kirby said "Not in public?" and Mr. Newman said "Yes, in public also."

Q. What else was said at this conference? A.

And Mr. Newman said "We will assume it is your desire to bring about a reconciliation with your wife."

Q. Yes. A. And Mr. McKee didn't say anything, nor did Mr. Kirby. Then Mr. Newman said—"Is that your desire?" and Mr. McKee looked at Mr. Kirby and after Mr. Kirby nodded yes then Mr. McKee nodded yes.

Q. Have you read your testimony given in this case heretofore? A. Yes, and made a great many corrections.

Q. Have you read it? A. Yes.

Q. How often? A. Twice I think.

Q. Did you read it here this morning? A. No.

Q. Weren't you reading it on the bench this morning? A. No, I was not.

Q. Are these the exact words you are now telling? A. I am trying to give the exact words yes.

Q. And you remember that when last you testified you used identically the same language as you did now? A. I am trying to.

Q. Exactly the same language. And what else happened at this conference on March 5th after your husband bowed his head? A. Mr. Newman asked him what he had to suggest and he got out his papers he had at the first conference and said he paid so much for Margaret and so much for Billy and so on, and was willing to give me seventy-five dollars a month.

Q. What else? A. He said we had all talked the matter over, that is, Billy and himself and I, and he said Billy wanted to go to camp and we had talked the matter over and Billy said he wanted Mr. McKee to be his guardian. He used the personal pronoun. I corrected both of them.

Q. You corrected them? What do you mean? A. I told as the thing really happened at the Grand

Central Station. I said Mr. McKee asked Billy if he wanted to go to camp and Billy didn't say anything for awhile and then his father asked him again and he said "I guess so." Then his father said "You want me to be your guardian?", and Billy didn't answer and turned white and looked at me.

Q. Who turned white? A. Billy turned white and looked at me and I said that is a matter for us to discuss—for his father and me and it was not the proper place to discuss it.

Q. How old was Billy at that time? A. He was fourteen.

Q. And you say he turned white? A. He did.

Q. At the notion his father should be his guardian? A. I can't say.

Q. That is the only thing he had been asked?

Vice-Chancellor: How can she say that?

A. I had told him not to take sides at all, not to say what he wanted to do if his father asked him. That is why he turned white.

Q. Was anything else said? We are talking about the conference of March 5th? A. It seems to me there was something else but I can't recall what it was.

Q. Was the question of your returning to your husband and living with him discussed at that conference at all? A. No.

Q. Sure of that? A. Sure of it. It was not in any conference at anytime.

Q. Not at any conference at which Mr. Kirby was present? A. No. Except in January, 1924.

Q. In January, 1924? A. Yes. I mean January, 1927.

Q. At that time he did ask you to return to him? A. I offered to return to him and he refused.

Q. You offered on certain conditions? A. Yes.

Q. You offered to return on certain conditions? A. Yes.

Q. Now getting back to the conference of March 5th and in Mr. Kirby's and in Mr. Newman's presence, did Mr. Newman say that he understood that both parties wanted a separation? A. I don't recall that he did, no.

Q. And did Doctor McKee interrupt him and say "No, that is not correct. I invited Mrs. McKee to return to me at a conference last Saturday"?

By the Vice-Chancellor:

Q. Was there any such conversation at that conference? A. No, there was no such conversation.

By Mr. Walscheid:

Q. Did he not say that? A. No.

Q. And did you then say you did not understand it that way, or words to that effect? A. No.

Q. And did Doctor McKee then say "Mary, stop this business and return and live a natural married life with me"? Did he say that? A. He did not.

Q. And did you say "No"? A. I did not. There was no such question.

Q. No such conversation took place? A. No.

Q. Now you have testified last hearing upon cross-examination that if Doctor McKee had showed any signs of contrition (I am not trying to use your language) that you would have come back to him, didn't you? A. I don't recall saying that, but that has always been my thought.

Q. Was that your thought on March 23, 1925, or on March 24, 1925? A. I don't get the question.

Q. Was that your thought that you would go back to him if he would show signs of contrition? A. Yes.

Q. And on that day, March 23rd, or the day following, you received this letter did you not, Exhibit P 13? A. Yes. I didn't receive it on the 23rd I suppose.

Q. On the 23rd or 24th? A. Yes.

Q. And in it Doctor McKee says—"Dear Mary. Mr. Kirby wrote me that Mr. Newman had telephoned and stated that it was evident to him that you and I could not resume our joint domicil, from the statements you had made to him." Had you made any statements to Mr. Newman? A. No, and Mr. Newman said—

Mr. Walscheid: I ask that the answer be stricken out.

Witness: I will answer the questions as I see fit.

Vice-Chancellor: They must be responsive, madam.

Q. So if Mr. Newman made any such statement to Mr. Kirby it was without foundation so far as you are concerned? A. It certainly was. I never made any such statement.

Mr. Walscheid: I ask it be stricken out.

Vice-Chancellor: I will strike out that she didn't make any such statement.

Q. Continuing the letter he says—"I had a conference with Mr. Kirby on Saturday and talked the matter over with him. There is no reason as I can see it why you and I should not resume our joint domicil and live a right and normal married

life together. Are you willing to do this? Today I received another letter from Mr. Kirby stating 'Mr. Newman called me and stated that as Mrs. McKee hadn't received any money from you in several weeks, a contribution for her support would be welcome.' Though you are not treating me right in absenting yourself from our home I don't want you to suffer from lack of really needed money and am accordingly enclosing my check for $100.00 for your use. Ralph."

Vice-Chancellor: Did you read that letter in its entirety?

Mr. Walscheid: I read the letter in its entirety.

Q. When your husband in this letter said—"here is no reason as I can see it why you and I should not resume our joint domicil and live a right and normal married life together. Are you willing to do this?", did you see any reason why you should not resume a joint domicile? A. I certainly did.

Q. And that was because he had showed no signs of contrition? A. Exactly.

Q. And that was the only reason? A. If there was no assurance that things would be any different.

Q. Now at that time he was living in Leonia, wasn't he? A. If so I knew nothing of it.

Q. You knew he wasn't living at 39 Claremont Avenue? A. He answered the telephone there.

Q. Not to you? A. Yes to me.

Q. You didn't ring him up there? A. I certainly did.

Q. When did you call him up? A. I can't remember the dates. I called him up several times when he was there and several times when he was not there.

Q. During what month? A. Up until July when I left.

Q. And you were then calling him up during that time to find out whether he was staying there? A. No, I was not. There was scarlet fever in the children's schools and various times that was necessary to speak to him about.

Q. Haven't you heretofore testified in this case you never called him up? A. No, I had not. I said I had never asked for a conference.

Q. In other words you were never seeking any conferences? A. I was waiting for him.

Q. You were waiting for him to call the conferences? A. Yes.

Q. If that was the only reason why you couldn't live with your husband at that time why didn't you write him a letter and tell him so? A. I told him so many times before that.

Q. Why didn't you write him a letter telling him? A. Because that is a false letter and he knew it and I knew it and he knew I knew it.

Q. And when you received this letter under date of March 23rd, Exhibit P 13, you believed it was a false letter? A. I certainly did.

Q. And you believed he was creating evidence writing those letters for the purpose of using them at some future time against you? A. I thought that he thought that he could.

Q. And you thought that at some future time he would use them in some court proceeding against you? A. He would try to.

Q. For instance in the divorce suit which is now pending? A. Yes.

Q. So that when you received this letter, Exhibit P 13, you thought that letter was written for the purpose of creating material for a divorce suit? A. Yes. No, no, I don't know whether a

divorce suit, but for some purpose of that kind. The suit that I brought was already begun in New York.

Q. If you thought that he was doing that why didn't you under the circumstances take the sting out of the so-called notion of his by writing him a letter saying "I will return to you if you will apologize?" Why didn't you go on record? A. I did write him the only reason we couldn't live together was his attitude.

Q. Did you ever write him that you would come back to him if he would show signs of contrition or he would apologize to you? A. My attorney did.

Q. Did you? A. No.

Q. Your attorney advised you not to answer this letter didn't he, Exhibit P 13? A. I think that is the letter he said he would answer himself.

Q. He advised you not to answer? A. He didn't advise me not to answer but for him to answer.

Q. Did you agree to that? A. It was one letter. I don't know whether it was this letter or not.

Q. Did you agree to that? A. I don't know whether it was that letter or some other letter.

Q. All the other letters you received from Doctor McKee you submitted to your lawyer? A. I think that was the first one.

Q. All the letters you received from Doctor McKee you submitted to your attorney? A. No, not all of them.

Q. Which ones did you? A. I can't say. If I had the letters I could pick them out. All the first ones which had anything of this kind in.

Q. What do you mean by that—anything of this kind in? A. Saying you had better come back and live with me or things of that kind.

Q. I now call your attention to Exhibit P 15

under date of April 22, 1925, which reads as follows—"Dear Mary: I tried to get you on the phone both yesterday and today but failed. Mr. Taft writes me that Billy is again in trouble and that he has again had to write to him that he is in danger of being dismissed from school. A letter from Billy today says he will be here next Monday to see Dr. Gaugh. I suggest that I meet him and take him to Dr. Gaugh's as I did once before and that you meet us at the Grand Central as before. You have been with him in his last two visits to Dr. Gaugh. I hope you have considered matters as I talked them over with you a week ago. There is no real reason why we can not agree in these matters. I am enclosing check for $100.00 for your use. Better change your mind and come and live right with me again. Ralph McKee." I suppose you also considered that a self serving declaration? A. Yes, it was.

Q. And when he said "I hope you have considered matters as I talked them over with you a week ago. There is no real reason why we can not agree in these matters," you didn't believe him? A. If it was read between the lines, no. The matters which we discussed was the seventy-five dollars a month.

By the Vice-Chancellor:

Q. Were there matters about your returning to live with him? A. No.

By Mr. Walscheid:

Q. At that time he was already sending you $100.00 a month? A. Yes, he was. No, he wasn't sending me $100.00.

Q. When did he start to send you $100.00 a

month? A. There was no regularity about the times. In answer to Mr. Newman's request he would send me money.

Q. You had received on March 23, 1925, $100.00 hadn't you? A. Yes, about that time.

Mr. Walscheid: I offer the check in evidence.

(Check marked Exhibit P 161 in evidence without objection.)

Witness: There is a letter about that in the files.

Mr. Walscheid: I just read it to you.

Q. On April 22nd you received $100.00? A. That came in this letter.

Vice-Chancellor: Meaning Exhibit P 15?

Witness: Exhibit P 15 yes.

Q. So what you wish us now to understand is that after he had sent you the initial payment on March 23rd of $100.00, he was still discussing the question of arranging payments with you on a seventy-five dollar basis? A. As he was in the next fall and summer.

Q. And during all that time he was sending you $100.00 a month regularly? A. Not regularly, no. Almost every month.

Q. Just look them over. I don't want to put all these checks in evidence. Here is the April check, isn't it, April 22nd? A. Yes.

Vice-Chancellor: Let it be marked.

(Check marked Exhibit P 162 in evidence without objection.)

Q. And this is the May check, May 24, 1925, for $100.00? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 163 in evidence without objection.)

Q. And going back to the check of March 23rd, Exhibit P 161, you cashed that through the aid of Hirsch, Newman & Reass? A. I don't remember.

Q. Look at the endorsement? A. Yes, the endorsement is there.

Q. And the check of April 22nd, Exhibit P 163, you cashed through the aid of Hirsch, Newman & Reass? A. Yes.

Q. And the check of May 24th, Exhibit P 163, you cashed through the aid of Hirsch, Newman & Reass? A. Yes.

Q. There's the June check—June 22nd? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 164 in evidence without objection.)

Q. Cashed through the aid of Hirsch, Newman & Reass? A. No, the house where I roomed.

Q. Here's your July check under date of July 23rd, $100.00? A. I think I got that in Carthage, yes.

Q. He sent it to Carthage to you? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 165 in evidence without objection.)

Q. And when you went to Carthage you testified you didn't tell him you were going to Carthage? A. Oh, yes.

Q. You did tell him? A. I don't know whether I told him.

Q. You didn't tell him did you? A. Yes, I did.

Q. Where did you tell him you were going to Carthage? A. When we were talking about dividing the furniture. He wanted me to do it before I went.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: Tell us what he said.

Q. I asked you when and where you told him you were going to Carthage? A. I am not sure. I remember speaking about it when he called me on the telephone to make the appointment.

Q. Haven't you heretofore testified that you didn't tell him and that Billy told him? A. I mean I didn't recall that telephone conversation that we talked about.

Q. And he sent that check to Carthage? A. Yes.

Q. Here's the check of August—August 26, 1925? A. Yes.

Q. Endorsed by you. He sent that out to Carthage too, didn't he? A. Yes.

Vice-Chancellor: Let it be marked.

(Check marked Exhibit P 166 in evidence without objection.)

Q. Then there was a check lost in September? A. I received no check in September.

Q. But you received letters indicating it had been lost didn't you? A. Yes, later I did, claiming it had been lost.

Q. And you received under date of November 3rd a check for $100.00 to replace the check which he claimed had been lost? A. That was not written on it when I got it (indicating on check). I received two checks in November.

Q. And you received one check on the claim the

September check had been lost, didn't you? A. Yes. I didn't.

By the Vice-Chancellor:

Q. You say you received two checks in November? A. Yes.

Q. You had not received any in September? A. Right.

Q. Did you receive any in October? A. Yes.

Q. The two you received in November would be for September and November? A. Yes.

Mr. Walscheid: I wish at this time to offer the November 3rd check which we say was for September.

(Check marked Exhibit P 167 in evidence without objection.)

Q. Is that for $100.00 too? A. Yes.

By Mr. Walscheid:

Q. Then on October 18th you received another check for $100.00? A. Yes.

Mr. Walscheid: I offer that in evidence.

(Check marked Exhibit P 168 in evidence without objection.)

Q. And on November 12th you received a check for $100.00—1925? A. I received two in November.

Q. But you received them separately? The other one hasn't gone in evidence? A. Yes.

Mr. Walscheid: I ask that be marked.

(Check marked Exhibit P 169 in evidence without objection.)

Witness: I think that was the other way. There is a letter about that.

Q. And on December 11th you received a check for $125.00? A. No, $100.00.

Q. I beg your pardon.

Mr. Walscheid: I offer it in evidence.

(Check marked Exhibit P 170 in evidence without objection.)

Q. And on December 11, 1925, you received an additional check for $100.00, didn't you? A. Yes.

Mr. Walscheid: Which I offer in evidence.

(Check marked Exhibit P 171 in evidence without objection.)

Q. And that additional check for $100.00 was as a Christmas present to you, wasn't it? A. So he said.

Q. And he gave it to you as a Christmas present? A. Yes.

Q. And you took it? A. Certainly I took it.

Q. And he was acting in bad faith when he sent you that check? A. Yes.

Q. In other words he gave you that extra $100.00, that check which was a gift, for the purpose of using it in some court proceeding thereafter? A. It was the first Christmas present he gave me in years.

Mr. Walscheid: I ask it be stricken out.

Vice-Chancellor: I will let it stand.

Q. Hadn't he given you any Christmas present before? A. The three little trinkets he gave me.

Q. You say he never gave you any Christmas present? A. I said that.

Q. Didn't you think he gave you that check for $100.00 in an endeavor to soften you to return to him? A. No. If he did he would have said something.

Q. Said what? That he was trying to soften you? A. No, I don't know what he would have said.

Q. Do you remember the letter that accompanied it? Didn't he ask you in that letter to return to him? A. I don't recall the letter. He has written me so many letters.

Q. Now during all this time that he was sending you this $100.00 he was under no court order or compulsion to send you $100.00, was he? A. No, no court order.

By the Vice-Chancellor:

Q. You say he was under no court order? A. No.

By Mr. Walscheid:

Q. And yet just as soon as this September check failed to reach you you came back and instituted a proceeding against him, didn't you? A. No, not on that account.

Q. When did you institute your proceeding? In September, didn't you, the New York proceeding? A. I am very ignorant about the law.

Q. I don't know about that. I am asking you when you instituted your proceeding? A. I don't know what you mean.

Vice-Chancellor: We will say commenced.

Q. Just as soon as you did not get the September check you went to Hirsch, Newman & Reass

and commenced a suit against your husband? A. They didn't file anything until the next March.

Mr. Walscheid: Exhibit P 44 indicates that the complaint in that case—

Vice-Chancellor: That is the New York case?

Mr. Walscheid: Yes. Was sworn to October 10, 1925.

Vice-Chancellor: When was it served?

Mr. Walscheid: Doctor McKee has testified it was served on October 14, 1925.

Witness: Yes, October 14th at about 11:30 in the morning.

Q. You know that? A. I know it from hearsay.

By the Vice-Chancellor:

Q. Then you were wrong in saying it wasn't the March following? A. The papers were filed in the court on March.

By Mr. Walscheid:

Q. How do you know the papers were filed in the court in March? A. I saw a record in the papers and Mr. McKee called me up at that time and told me they were.

Q. Is there any connection with the non-appearance of the September check and the institution of your suit? A. Not at all.

Q. Just a coincidence. And when you started that suit in New York you didn't advise your husband that you were going to start it did you? A. I thought it was started in January, 1925.

Q. And you didn't advise him? A. My attorneys wrote him. Yes, there are letters in evidence.

New Jersey State Library

Q. You didn't advise him in October or November of 1925 that you were about to institute your suit did you? A. I didn't know about instituting the suit. I thought it was brought in January of the preceding year.

Mr. Walscheid: I ask it be stricken out as not responsive.

Vice-Chancellor: I will let it stand.

Q. Now you have testified that Exhibit P 17 advised you that your husband had moved to Leonia? A. He says so.

Q. He doesn't say so at all? A. I haven't read that.

Q. But you have testified in response to your own attorney's questions that that letter advised you—Oh, it is in the letter. A. Yes.

Vice-Chancellor: It is headed 210 Christie Heights Avenue, Leonia, N. J., May 10, 1925.

Witness: That's the first I knew.

Q. So that from that time on you knew he lived in Leonia? A. No, I did not.

Q. And you took that letter to your lawyers, Exhibit P 17? A. I don't recall positively. Yes, I think I did.

Q. And did you ask your attorney what effect that had upon your marital situation if your husband did move to Leonia? A. Yes, I did.

Q. And he told you? A. He told me what?

Q. What effect that had upon your marital situation? A. It wouldn't make any difference because the suit had been started in New York.

Q. Did he tell you anything else? A. He told me a good many things. What do you mean?

Q. What you say your lawyer told you. It wouldn't make any difference because suit had been started in New York. As a matter of fact no suit had been started in New York at that time had it? A. I believe it—I am not sure he said suit. I don't recall whether he used the word suit. He assured me the matter had been started in New York and it didn't make any difference whether he moved to Leonia or not.

Q. And you signed your affidavit in that suit on October 10th? A. Yes.

Q. What else did your lawyer tell you about Mr. McKee's moving from New York. What effect that would have upon your case? A. I don't recall.

Q. Didn't he tell you that Doctor McKee had undoubtedly moved to Leonia for the purpose of instituting suit in New Jersey? A. He said he couldn't do that.

Q. Then you did ask him didn't you? A. Yes.

Q. When did you first ask him? A. I don't know.

Q. Whether Doctor McKee by moving to Leonia could institute suit against you in New Jersey? A. I said that's what he probably wanted to do if he was living over there.

Q. When did you say that to him? A. It may have been right after that letter.

Q. Was it approximately at the time of the writing of that letter? A. It probably was.

Q. So that at the time when you received that letter you in your mind had further evidence that Doctor McKee was trying to manufacture evidence against you? A. Yes.

Q. When in this letter he says—"I wish you would do what I talked over with you at our last getting together—come and join your husband as a married woman should. Won't you? Ralph."

You didn't believe that did you? A. We hadn't talked over any such matter.

Q. He was extending an invitation to you? A. No, he was not extending an invitation.

By the Vice-Chancellor:

Q. Do you say it was not so that he had talked to you previously about coming and living with him? A. No, he had not at any time talked to me about coming to live with him.

Q. Counsel read—"I wish you would do what I talked over with you at our last getting together." Then he says—"Come and join your husband as a married woman should. Won't you?" A. He had not talked to me about that.

By Mr. Walscheid:

Q. But he was then and there extending an invitation to come? A. No, I couldn't think that letter was sincere under the circumstances.

Q. You didn't believe it did you? A. What?

Q. The sincerity of that letter? A. I did not.

Q. Why didn't you answer that letter and say it is not sincere and I will come to you if you will apologize to me? A. I had told him that dozens of times.

Q. But you never wrote him that? A. No.

By the Vice-Chancellor:

Q. You told him that in person? A. Before January.

Q. In person or by letter? A. No, personally, many times.

By Mr. Walscheid:

Q. And you never told that in letters? A. No. I

did say it was his fault. It was the only reason we couldn't live together.

Q. You didn't say all he would have to do was to apologize and you would live with him in any letter? A. No, not in thoses words, but it meant the same thing. An apology wouldn't be enough. It would have to be an assurance it would be different.

Q. What assurance did you want? A. I don't know.

Q. Did you ever know what assurance you wanted? A. No, I never did.

Q. Do I gather from the last answer, namely, that you wanted assurances of some kind, although you did not know just what assurances you did want, that even if he had apologized you still would not have gone back to him at the time of the writing of these letters? A. I would if I had assurance that he would live in a different way.

Q. You have at the last hearing distinctly testified that all that was necessary to bring you back to him was an apology? A. And by a different mode of living.

Q. By a different mode of living you mean what? That he would not have sexual intercourse with you? A. No, I do not mean that at all. I mean that he wouldn't strike me and not call me a fool. He told me I had no brains. That's what I mean, and that he do not try to make a hired companion out of me.

Q. I show you Exhibit P 22, a letter dated Leonia, N. J., May 29, 1925, and call your attention to the last recital in it—"Better change your mind about wanting these things and come and lead a right and normal married life with your husband and children. Won't you? With love—Ralph."

You didn't answer that letter did you? A. I don't know whether I answered it or not.

Q. And what you have heretofore said applies to that reference to return to you?

Vice-Chancellor: What do you mean by that question?

Q. What you have heretofore said that you would not return to him unless he apologized and gave you assurances of some kind that he would change his life, you would not return to him applies to this letter? A. I never told him. He told me I think that they told him.

Mr. Walscheid: I ask that be stricken out.

Q. Were you present when they told him? A. No.

Vice-Chancellor: Then I will have to strike it out.

Q. I show you Exhibit P 28, dated July 23, 1925—"Dear Mary. Enclosed find check for $100 for your use. Tell Billy I have in mind a nice birthday present for him but that he will have to wait until he is here next Friday to pick it out for himself. It is something he has expressed a wish for. See if he can guess what it is. I packed some of the books you picked out as those you wanted. They made me sorrowful, for to pack them seems to make definite your determination not to come back and live with me again. Better change your mind and come and live with me again. With love—Ralph." What you have heretofore said concerning your determination not to live with him unless he apologized or gave you assurances of different conduct applied to this

invitation too? A. That was no more sincere than the others.

Q. And this letter is written within twelve days after you and he had been at the Martin home sorting books, isn't it? A. Fourteen days.

Q. And the reference to the books which you picked out as those you wanted is what occurred at the Martin home on July 9, 1925? A. What part?

Q. The reference to the books? A. Part of what occurred?

Vice-Chancellor: This letter refers to some books he packed.

Mr. Walscheid: Yes. "I packed some of the books you picked out as those you wanted."

Q. You had a dentist by the name of Doctor Brophy? A. Yes.

Q. And before Doctor McKee went to Europe you undertook to have some work done by that dentist? A. Yes.

Q. And the cost of that work was $600.00? A. It was finally. It was estimated to be $550.00.

Q. When did you receive that estimate? A. In August.

Q. You didn't tell Doctor McKee anything about that estimate? A. Yes, we discussed the matter and he suggested the name of another dentist.

Mr. Walscheid: I ask it be stricken out.

Vice-Chancellor: I will let it stay. The question implies she didn't speak to her husband about it.

Witness: I don't know whether he suggested it but we had the name of another doctor.

Q. Isn't it the fact that you at the time when you received this estimate consulted your lawyers Hirsch, Newman & Reas about undertaking the work? A. Why, no, I never heard of them at that time.

Q. About undertaking it without the consent of your husband? A. No. What I asked—

Vice-Chancellor: You have answered no.

Q. Your various conferences with Doctor McKee, excepting those which took place at Mr. Newman's office, were always in public places were they? A. No. One was at the home of Miss Whaley in Spuyten Duyvil.

By the Vice-Chancellor:

Q. The places were designated by Doctor McKee? A. Yes.

By Mr. Walscheid:

Q. The bench in the park was designated by Doctor McKee? A. I met him at the Natural Museum and it is possible we went out into the park.

Q. Why did you meet him at the Natural Museum? A. Because it was near to the house where I lived with my sister.

Q. Why didn't you invite him into your apartment? A. We had no apartment. We had one room.

Q. Why didn't you invite him to come there? A. Because he had not been acting sincerely and I didn't know what he would do.

Q. That is the reason? A. Yes.

Q. And that is the reason why he never entered any room or apartment that you lived in after the

separation? A. Why, he did. He came to see me at my apartment in Spuyten Duyvil in the fall of 1926.

Q. With his brother? A. Yes.

Q. But never alone? A. He never offered to.

Q. Didn't he come there and try to get into your apartment? A. He never did.

Q. And didn't you forbid him? A. No.

Q. Didn't you refuse to receive him? A. No.

Q. Didn't he come there and attempt to set up a radio set for you? A. He did not.

Q. Did he offer to set up a radio set for you? A. No. I don't know whether you call it an offer or not. He said something about it in a letter.

Q. What did he say about setting up a radio set for you? A. I think he said "You refused to let me come and set up a radio set."

Q. When did you refuse to let him come and set up a radio set? A. I refused to let him come in and go through everything in the house.

Q. When did you refuse to let him come in? A. It was in the summer of 1927.

By the Vice-Chancellor:

Q. What brought about that refusal? A. He had sent some things that were in storage to me and he didn't send the china and so on, and I wrote him about a number of things he didn't send and among them the china, and he said that some of the things were packed at the time, and I suggested that if he send me these barrels that had the china that I would go through them or he could come and look over those barrels of china himself.

Q. What did you mean by saying you refused to allow him to come to your house and look over everything? A. He didn't send the china at all and

he said something in a letter about his wanting to come to see me and I wouldn't let him. What he said was—I am not sure he said it in a letter or over the telephone—that he wanted to come and go through everything in my apartment to see if anything of his was there and I refused to let him do that.

By Mr. Walscheid:

Q. You say he wanted to come and see you? A. No.

Q. You said he wrote you he wanted to come and see you, or spoke to you over the telephone? A. He said he wanted to go through everything in the house.

Q. Didn't he try to come and see you on various occasions? A. No.

Q. Didn't he come to the door on one occasion and as he was entering you closed the door on him? A. No, never.

Q. Where was it that Doctor McKee's brother visited you? Where were you living then? A. In Spuyten Duyvil.

Q. What address in Spuyten Duyvil? A. We don't have addresses in Spuyten Duyvil. It was on Arlington Avenue. I don't remember the number if it had a number.

Q. He came there with his brother? A. Yes.

Q. And he came unexpectedly? A. Yes.

Q. You didn't know he was coming? A. No.

Q. And when he came in he was asked into the sun-parlor wasn't he? A. By my son.

Q. They weren't invited into the house? Neither one of them were? A. I had nothing to do with that.

Q. You were out there? A. I was not out there when they came.

Q. You were not out there when they came? A. After they came.

Q. How long after they came? A. About two or three minutes.

Q. You didn't invite them into the house? You kept them in the sun-parlor? A. That was our sitting room. We lived out there.

Q. Isn't it the fact that that house, if it was a house, Doctor McKee visited during the winter-time and tried to see you? A. Not that I know of.

Q. And stood in front of this place for an hour in the snow and you saw him? A. No, he did not.

Q. And he rang the bell? A. There was no bell.

Q. How did he get in? A. I don't know whether he came or not. There was no bell in the house.

Q. He didn't attempt to get in so far as you know? A. I don't know anything about that.

Q. And didn't he call you up on the telephone and you said you never saw him, and he said he was outside? A. Yes.

Q. And that was in Spuyten Duyvil? A. Yes, at Spuyten Duyvil.

Q. When he called you up he said he was two blocks away? A. He didn't tell me where he was.

Q. He told you he wanted to come in and see you? A. No.

Q. And didn't he tell you why he had been standing out in front of your place?

By the Vice-Chancellor:

Q. Did he tell you he had been standing there? A. No.

Q. What did he say to you if you remember? A. He said "I am sorry you didn't keep the engagement we made." We didn't make any.

Mr. Walscheid: She has testified he was standing outside.

Witness: I did not say he had been standing outside. He said he had been there.

By Mr. Walscheid:

Q. Where? A. To my house.

By the Vice-Chancellor:

Q. What did he say? A. He said "I am sorry you didn't keep the engagement we made yesterday." We had made no engagement yesterday.

Q. What did you say to him in reply? A. I told him we had made no engagement. He called me up in the morning. None of us were up because I got up to answer the telephone.

Q. I am trying to find out what he said? A. "I am sorry that you did not keep the engagement which we made yesterday for me to come to see you." I said "We made no engagement."

Q. I am trying to find out if he was standing outside for an hour? A. No, he didn't.

Q. If he didn't try and tell me what he said? A. I can't recall anything else he said.

Q. In the telephone conversation did he then ask you if you would let him in if he came up to see you? A. He said nothing about coming back.

Q. Did he tell you where he then was? A. No, he didn't.

By Mr. Walscheid:

Q. When was that? What month and what year? A. It was during the Christmas vacation because both the children were there.

Q. What year? A. 1926.

Q. 1926 or 1927? A. 1926.

Q. When the doctor and his brother were there

Billy went to the theatre with them that night? A. He went to dinner. I don't recall.

Q. And you have testified you were invited to go but didn't go? A. My daughter was ill.

Q. Because your daughter was ill? A. Yes.

Q. Is that the reason why you didn't go? A. There was no question of my going. He simply said he wished we could have come. My daughter was too ill.

Q. Is that the reason why you didn't accept the invitation? A. There was no invitation.

By the Vice-Chancellor:

Q. Did he ask you to go with him? A. His brother suggested we all go to dinner.

Q. Was your child then sick? A. Yes.

Q. Did they know she was sick? A. Why, yes, her father knew it. She was ill with influenza.

Q. Was there any invitation for you to leave your daughter and go to dinner? A. His brother said something about it. There was no question about my going. I couldn't leave my daughter.

Q. If he made some suggestion about your going what did you say if anything. Did you give any reason why you didn't go? A. I think the remark was made to my daughter. Of course she couldn't get that far. She couldn't get out of the house.

Q. Had your daughter been asked to go? A. All of us, yes.

By Mr. Walscheid:

Q. Your daughter was up then wasn't she? A. Yes.

Q. And your daughter had let Doctor McKee and his brother into the house? A. No, my son. My daughter was in bed when they came. It was a few

minutes before we came out because I helped her to dress.

Q. Then your daughter got up to meet her father and uncle? A. Yes.

Q. And came out into the sun-parlor? A. Yes.

Q. How long did she stay there? A. All the time they remained.

Q. An hour and a half? A. I guess so.

Q. And took part in the conversation? A. I guess so.

Q. Have you at anytime ever offered to return to your husband? A. Not directly to him, no.

Vice-Chancellor: Do you think there was any duty cast upon her by the law requiring her to do so?

Mr. Walscheid: No, but it shows her state of mind.

Q. You are sure of that? A. That I never offered to come back?

Q. Yes. A. Not until the Saturday, that would be the 22nd of January, 1927.

Q. That was when the court proceedings were on? A. Yes.

Q. And your offer was to return to him upon conditions, wasn't it? A. Upon conditions, yes.

Q. What were those conditions? A. That we would not at first have a full life together. It would be only a home together, that is, in the same house with the proviso that if he treated me as a man should treat his wife then I could recover from the feeling I had and we could live our whole life together.

Q. Who was present when you made that offer? A. The offer was made first on Saturday. Mr. Newman made it. Mr. Kirby was present and Mr. McKee and myself.

Q. What was the offer made by Mr. Newman at that time? A. He didn't have a chance to state the full offer.

Q. What did he say? A. He said that the proposition was that we would have, I believe he said, a nominal home together—all of us. I don't know. Let me see! Yes, he said that would give us both a chance to have the children with us and it would save Mr. McKee's honor and his dignity he had been talking about, because no one would know what our private arrangements were.

By the Vice-Chancellor:

Q. Is that the whole of it? A. I believe that's all was said.

By Mr. Walscheid:

Q. Of course Mr. Newman had talked to you before he made that offer? A. Yes, he had.

Q. Upon what day of the week was that? A. A Saturday. Do you mean the conversation we had together?

Q. Yes. A. A Saturday, yes.

Q. And that was the day also you later called up Doctor Pegram? A. Yes.

Q. And you had agreed to what Mr. Newman was proposing? A. The whole proposal, yes.

Q. And that was the first agreement on your part to return to Doctor McKee? A. That was the first that was said about returning at all.

By the Vice-Chancellor:

Q. That was the oral statement. There were a lot of letters? A. Yes.

By Mr. Walscheid:

Q. On your part? A. On anybody's part.

Q. I am not interested in anybody else but you. That was the first oral statement of the terms and conditions on which you would return? A. I didn't make it. Mr. Newman made it.

By the Vice-Chancellor:

Q. Did Doctor McKee ever make an oral request for you to return to him? A. No, your Honor, he did not.

By Mr. Walscheid:

Q. Didn't he make an oral request for you to return on July 9th at the home of Mr. Martin? A. No, he did not.

Q. As I understand this proposition as evidenced by Mr. Newman, it was that you and the whole family, you and Doctor McKee and the whole family were to live together in one house or apartment? A. Yes.

Q. And that you were virtually to live there separate and apart from him? A. At first.

Vice-Chancellor: That has been said.

A. (Witness continuing) Mr. Newman didn't say that in so many words.

Q. Mr. Newman said it was to be a nominal getting together? A. Yes, something like that.

Vice-Chancellor: I don't know whether she said so but there is something in the record as to that. I don't know what she meant.

Q. Then you certainly at that time were willing to go back and live under the same roof with Doctor McKee, wasn't you? A. If he would treat me as he should.

Q. But that wasn't under discussion? A. Oh, yes, it was.

Q. Not in the offer made by Mr. Newman? A. It would have been if he had not been interrupted by his attorney. I am not sure but that he did say that, but that was the purpose.

Q. That was a further condition you say was mentioned? A. What was a further condition?

Q. What did you understand Mr. Newman to mean by this nominal living together? A. That we would have a home together.

Q. Not a home together?

Vice-Chancellor: You are asking her what she understood.

A. To live in one house or apartment with the children and see if we could get along—to see how he would treat me, and if he treated me in the way he should I could overcome this feeling which I had against him.

Q. Were you to remain under this arrangement separate and apart from him? A. It was not discussed.

Q. What was it you understood by that?

Vice-Chancellor: Am I concerned with what she understood? I am not concerned about the operation of their minds unless manifested by words or deeds. I will overrule the question.

Q. Did you ask Mr. Newman what he meant by nominally living together? A. We discussed it; I knew what he meant.

Q. What did he mean? A. I have stated it as nearly as I can.

Q. Did he mean that you were to occupy one

room and he another? A. Yes, that was my understanding.

By the Vice-Chancellor:

Q. Was that said in the discussion between you and Mr. Newman? A. No.

By Mr. Walscheid:

Q. Wasn't that said by Mr. Newman to you? A. It wasn't said, no. That's what I understood, but it wasn't said. I presume any one would think that was what was meant of course.

Q. Didn't you on your direct examination testify that that was what was said and that was what was meant? A. I said in talking with Mr. McKee we discussed that.

Q. Didn't you on your direct examination testify that was what was said? A. On Monday? I didn't say we would have separate rooms.

Q. Didn't you in your direct examination, speaking of the Monday following this Saturday, say you would agree to go back on this occasion if you could have a separate room from Doctor McKee and could live nominally together under one roof? A. No, I never said anything about that. So far as the separate room is concerned we never had the same room. It was Mr. McKee's own statement.

Q. Mr. Whaley came to see you, didn't he? A. Yes. You mean when?

Vice-Chancellor: At some time. He came at some time, didn't he?

Witness: Yes.

Q. And he came to you and told you he came from Doctor McKee? A. Yes.

Q. And he told you he came from Doctor McKee, and Doctor McKee wanted to know whether you and he couldn't get together for the purpose of patching up your differences? A. No, he did not.

By the Vice-Chancellor:

Q. Will you tell us when that was? A. He came to see me, I think, the last of October, 1925.

By Mr. Walscheid:

Q. And didn't he invite you to have a conference with Doctor McKee in his Whaley's house? A. No, he did not.

Q. Well, did Mr. Whaley tell you you might have the conference at his house?

Vice-Chancellor: What did he tell her?

Mr. Walscheid: I think on cross examination—

Vice-Chancellor: I will overrule the question in its present form.

Q. Did he when he came to your house tell you you might come to his house and have a conference with Doctor McKee? A. He said nothing about a conference at all.

Q. He didn't speak to you about a conference when he came to visit you? A. You mean when he was sent by my husband. He didn't come to visit me.

Q. You did have a conference with Doctor McKee in Mr. Whaley's house? A. Yes.

Q. And that was at the request of Doctor McKee? A. Yes.

Q. Conveyed to you through Mr. Whaley? A. No, by telephone directly.

By the Vice-Chancellor:

Q. Directly with who? A. With me. Mr. McKee telephoned me.

Q. And asked you to meet him at Mr. Whaley's house? A. He asked me to meet him in regard to the matter he asked Mr. Whaley to speak to me.

Q. Did he ask you to meet him in Mr. Whaley's house? A. Finally he did.

By Mr. Walscheid:

Q. With regard to what matter? A. Mr. Whaley asked me what amount I was willing to accept in settlement of the matter in court. I told him if it was to be settled outside of court I was willing to take $15,000 a year.

Q. Then the question of your returning to Mr. McKee wasn't discussed at all? A. Not a word.

Q. At the meeting in the Whaley house nothing was said about your returning to Mr. McKee? A. The question is too ambiguous to answer.

Q. Will you answer the question?

Vice-Chancellor: She says she can't answer.

Mr. Walscheid: I think I am entitled to have an answer.

Witness: I can answer it but not yes or no.

Mr. Walscheid: If your answer is no I have nothing more to say.

Q. While you were at Mr. Whaley's house was there any conversation between you and your husband about your returning to him? Please answer that question yes or no. A. I can't answer it yes or no.

Vice-Chancellor: Yes, you can. That calls for a yes or no answer.

Witness: There was no conversation about my returning home.

Q. Was there any conversation between you and Miss Whaley on that occasion about your returning to your husband if you know? A. Miss Whaley wasn't there.

Q. Will you answer the question? A. No. I will have to qualify that. There was not in Mr. McKee's presence. There was later in the afternoon when Mr. McKee left.

Mr. Walscheid: I ask that be stricken out.

Witness: Not at the conference, no.

Mr. Walscheid: I withdraw the question.

Q. On the occasion when you visited the Whaley home, the date of which you have fixed as November 3, 1925, was there any conversation between you and Miss Whaley about your returning to your husband, if you know? A. After Mr. McKee's departure.

Q. Yes or no? A. I will not answer it yes or no.

Vice-Chancellor: You had better answer it yes or no. You can't run this thing as you please.

(Witness continuing) During the evening, yes.

By the Vice-Chancellor:

Q. Did Miss Whaley say to you your husband has asked her to speak to you in his behalf A. Oh, no.

By Mr. Walscheid:

Q. Didn't Doctor McKee in Miss Whaley's presence ask you to return to him and live with him? A. No.

Q. And didn't you after Doctor McKee left have a conversation with Miss Whaley in which she asked you why you did not accept Doctor McKee's invitation to return home and live? Yes or no? A. She asked me that question, yes. It isn't fair to leave that there without the rest of it.

Vice-Chancellor: If it isn't your own lawyer is negligent. You are only to answer counsel's questions.

Q. Then I suppose you told Miss Whaley why you didn't accept his invitation? A. I said he had never asked me.

Q. That's what you said? A. That's what I said.

Q. And you say he did not ask you in the presence of Miss Whaley to return? A. He did not.

Q. And after this conference at the Whaley house and after the conversations at the Whaley house you went back and reported that to your lawyers? A. I suppose so. I don't recall a conference with them.

Q. You have testified that Doctor McKee invited you to dinner on Thanksgiving, 1925? A. Yes.

Q. And that you went? A. Yes.

Q. How did he invite you? A. I am not sure whether he invited me by telephone or whether he invited me through Margaret.

Q. What did he say in extending the invitation? A. I don't recall.

Q. Didn't you testify, "Yes, he telephoned me"? A. Perhaps I did.

Q. Did he telephone you? A. I said I am not certain now. If there is a letter it would refresh my memory.

Q. You went to dinner with him? A. Yes.

Q. How long a time did you spend there? A. I really don't know. It may have been an hour or an hour and a half.

Q. Didn't he at that time invite you to go home with him? A. No.

By the Vice-Chancellor:

Q. Who was present at that dinner party? A. My daughter and myself.

Q. How old is your daughter now? A. Twenty-one, now.

Q. Is she available? Does she live hereabout? A. She is with me. She lives with me.

By Mr. Walscheid:

Q. You said about that dinner invitation that he didn't expect you would accept the invitation. Why do you say that?

Mr. Blumberg: That was stricken out.

Vice-Chancellor: I suppose it ought to be stricken out. If there was something like that that would militate against your client you would be glad to have me strike it out.

Mr. Walscheid: Yes. I am here to protect my client.

Vice-Chancellor: Will you frame a new question or not?

Q. You testified in response to this question—"Did he call you at all during December, 1925? A. I can't recall whether—I think he sent word with

the children and asked me to meet him and have dinner with both the children and with him and my sister." Speaking about December, 1925. Is that your best recollection as to how that came about? A. Yes, he sent word with the children.

Q. Are you sure of that? A. I think he said that in a letter too.

Q. And invited your sister? A. I am not sure he said it in a letter, but I think so.

Q. I show you a letter under date of December 12, 1925, Exhibit P 47—"Dear Mary. I enclose check for $100.00 for your December needs. Also a second check for the same amount as you will want to get some Christmas presents for Billy and Margaret, the rest keep for yourself as your present. I saw Margaret on Thursday evening. Was with her from about five to eight. She seems better adjusted than last year tho not doing as well as she should even yet. Margaret will be back Thursday, Dec. 22 and Billy a couple of days earlier. We had all better plan to spend Christmas together. What say you?—Ralph H. McKee." Isn't that the invitation? A. Yes, it is part of the invitation.

Q. Isn't that the way you received it by means of this letter? A. Yes.

By the Vice-Chancellor:

Q. You say the children brought it?

Mr. Walscheid: The children were away and didn't come home until after the 22nd.

A. That's true.

By Mr. Walscheid:

Q. You had the invitation as of December 12th? A. If you call it an invitation. That says "We

had all better plan to spend Christmas together."

Q. Yes. And that's what you understood you were all to have Christmas dinner together? A. I didn't have any understanding from that letter as to what it meant.

Q. When did you think it was to take place? A. I didn't think he had any thought of its taking place. It was another letter to show.

Q. That was the letter in which he sent you the extra $100.00? A. Yes.

Q. Before you said he followed that out by giving you a personal invitation? A. No, through the children.

Q. Not to you? A. Through the children.

By the Vice-Chancellor:

Q. Did you all get together at that time? A. No.

Q. Any reason why you did not? A. Because the Thanksgiving dinner had not been pleasant and I did not care to go through that again.

Q. Did you make known that to your husband? A. Yes.

Q. How did you make it known? A. Through the children.

By Mr. Walscheid:

Q. So you declined to go to dinner with him? A. Of course I did.

Q. Because the Thanksgiving dinner had not been pleasant? A. Yes.

Q. What had you done during the course of that Thanksgiving dinner to make it pleasant? A. I tried to talk in the usual way.

Q. What did you say? A. I can't recall what I said. Just a general conversation. You couldn't recall what you said at dinner four years ago.

Q. I could if I had the record which you sent to your mother. A. I did not send a record of any conversation because there was no conversation.

Q. Is there anything else you can recall which you did to make that Thanksgiving dinner pleasant? A. There was nothing to do except to try and carry on a conversation.

Q. That's all you did? A. Yes.

Q. Did Mr. Newman or Mr. Reass or Mr. Kirby —not Mr. Kirby—or any of the other lawyers of the firm you had employed advise you to meet Mr. McKee at any of these conferences?

Vice-Chancellor: As indicated by the letters.

Mr. Walscheid: Yes, or by telephone.

A. Not each one individually.

Q. But collectively? A. Some of them. Part of the time they said don't see him at all except in our office, and part of the time they said see him if he asked you.

Q. Did it ever occur to you that you in seeing him in the manner in which you did were creating evidence for your case?

Vice-Chancellor: What do you mean by the manner in which you did?

Q. Under the advice of your counsel on the highways and by-ways and without having him in your rooms and home and without acceding to any of his requests that you come and live with him? A. He didn't make any.

Q. So you say? A. It wasn't a question of creating evidence. It was a question of the opportunity to see if he wanted to say anything about my com-

ing back or to express regret, he would be afforded an opportunity to do it.

Q. And that's what you mean to give him every opportunity? A. Yes.

Q. And you did that under the advice of your counsel? A. Sometimes without their advice.

Q. But sometimes upon their advice. You said so, so he might have that opportunity? A. Yes.

Q. Realizing if you saw him alone in the manner in which you did that it would be merely a question of veracity as between the two of you as to whether he or you were telling the truth as to whether overtures were made? A. No discussion of that at all.

Q. You didn't realize that did you? A. No. I should not have seen him if I had realized it.

Q. Now there was a conference on April 22, 1926, wasn't there? A. Yes.

Q. At this conference Doctor McKee spoke about your returning to him didn't he? A. He said it would seem as though we ought to live together.

Q. And you are sure of the identical words are you? A. Yes.

Q. Did you take it down at that time? A. Why no, I did not take it down at that time.

Q. What did he say? A. It would seem as though we ought to live together.

Q. What did you say to that? A. I didn't say anything the first time.

Q. He said it again? A. Yes, and I said "How can we do that?"

Q. Is that what you said? A. Yes.

Q. Why didn't you at that time say "No, we can't do that unless you apologize"? A. It was not my place to say so. It was his place if he wanted me to come back.

Q. But he was there at the time saying "We

ought to live together"? A. It would seem so. He never said he wanted to.

Q. You are emphasizing that word "seem". But still there was the opening for you to say it? A. I was not saying anything. I was waiting for him.

Q. You were very careful not to say anything? A. There was nothing for me to say.

Q. Why weren't you saying anything? A. I had said all I had to in previous years.

Q. By that you mean you had said all you wanted to say before you left him? A. Yes.

Q. And you were taking the attitude you were not going to say anything more? A. I was going to leave it to him.

Q. And you were not going to dictate to him in any manner in order to get you to come back? A. No. If he had shown any indications—

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: All right.

Q. If you are in error when you say "It seems as though we ought to live together", and if he said "We ought to live together, come and live together", that would put an entirely different light upon the testimony, wouldn't it? A. You have too many ifs in that.

Q. You can't answer it can you? A. No.

Vice-Chancellor: I don't think she ought to answer it. We are dealing with facts.

Mr. Walscheid: She is a very clever woman.

Q. Speaking about Doctor Brophy, Doctor Brophy asked you to take up your home with your husband again, didn't he? A. No. He asked me what I thought about it.

Q. He asked you what you thought about it? A. Yes.

Q. And he told you Doctor McKee had asked him to ask you what you thought about it? A. Yes.

Q. So Doctor McKee asked Doctor Brophy to ask you what you thought about again living with him? A. That's what I understood.

Q. And after Doctor McKee had requested Doctor Brophy to speak to you in the manner in which you have indicated he sent you this letter, Exhibit P 67, didn't he? A. He sent me a letter. I don't know what it was about.

Q. I will read it. (Counsel reads letter.) You didn't telephone him in response to that letter fixing an appointment? A. I didn't have a telephone.

Q. Is that the reason why you didn't telephone? A. No. I shouldn't have telephoned anyway.

Q. Did you have five cents? A. I didn't telephone him any way.

Q. You would wait until he telephoned you? A. Under those circumstances.

Q. Under the circumstances he was writing you a letter and asking you to dinner? A. Under all circumstances.

Q. You didn't telephone him? A. No.

Q. No evening was set? A. No.

Q. So you weren't a nice girl and didn't get together?

Vice-Chancellor: She might have been a nice girl and didn't get together.

Q. You didn't answer that letter until June 10th, did you? A. Yes, I wrote him a letter.

Q. But you didn't answer that letter? A. I had a conference on the 22nd.

Q. I am not asking you about that. A. Why should I write when I saw him.

Q. But you did answer this letter Exhibit P 67 by means of this letter Exhibit P 74? A. No, it isn't in answer.

Q. I will read the letter. (Counsel reads letter.) Did that refer to Doctor Brophy? A. Yes, Doctor Brophy and to Mr. Whaley also.

Q. Mr. Whaley was not there at that time? A. Yes, it was the November before.

Q. You are harping back at this time then to the November before? A. It relates particularly to Doctor Brophy.

Q. So at that time you particularly objected to his having engaged the services of Doctor Brophy to induce you to have a conference about your returning? A. Yes, about doing that and then making no such offer.

Q. Of what? A. Saying he wanted me to return.

Q. Didn't he write this letter after Doctor Brophy was there? A. Oh, yes, he wrote lots of letters.

Q. But you didn't want it in letter form? A. What do you mean?

Q. Were you objecting to it in letter form? A. I did when there was some other way.

Vice-Chancellor: That letter is pretty strong from her to him. It seems to me it would have been the time for him to make make personal overtures.

Mr. Walscheid: He does in the letters.

Q. Don't you know that you could have tested out this man's faith by going to dinner with him and taking up some means or manner of getting together? A. No. He would have written another letter the same as all other conferences.

Q. That is your conclusion? A. Yes.

Q. Again your testimony, page 44, concerning a meeting in the last part of April, 1926, on the mezzanine floor of the Pennsylvania Hotel—"Did you have any meeting with Doctor McKee after the meeting at Mr. Newman's office in April, 1926? A. Yes, I had a meeting with him in June. I can't remember the exact date—the latter part of June, I think in 1926, on the mezzanine floor of the Pennsylvania Hotel.

Q. Do you recall what was said to you, Mrs. McKee? Can you state what the conversation was? A. I can't recall the conversation; I recall the end of it. He said, "I have asked you to come back with me and remember I have, and you have refused to do it," and I said to him, "But you have never asked me to come back and live with you," and he laughed and said, "I will say it now—'Will you come back and live with me?', and laughed and went away, before I had a chance to say nothing at all."

Q. Now, he asked you to come back and live with him? A. No, he didn't give me a chance to reply.

Q. Didn't you reply? A. No, I had no chance. He said it as he was getting up and he went away before I could say anything whatever.

Q. If you eliminate that portion he went right away and didn't give you any chance to answer, he asked you that? A. We can't eliminate that.

Q. If that is not true then he has asked you? A. It is not true.

Q. Now in connection with the conferences of January, 1927, at that time when your case was pending, and particularly in connection with the conference with Dean Pegran, were you under instruction from your lawyers in that matter? A. No.

Q. Had you received any instructions as to the stand you were to take? A. What do you mean?

Q. In going to Dean Pegran? A. No, I hadn't spoken of it at all. It was Saturday afternoon when it first occurred to me. There was no way of communicating with them then.

Q. Isn't it the fact you had received instructions in writing upon a yellow sheet from your lawyers? A. No.

Q. I show you Exhibit J. E. W 2 for Identification, which was produced from your file. In whose writing is that? A. Mine.

Q. Your own writing? A. Yes.

Q. In whose office did you receive it? A. No one's office. It was copied from a letter which I found in Mr. Reass' brief case on Tuesday, January 25, 1924.

Q. You copied it from Mr. Reass' brief case? A. Yes.

Q. On Tuesday? A. Yes.

Q. (Counsel reads from yellow sheet.) A. It said either New York or New Jersey.

Q. Isn't that what your lawyer wanted you to obtain from Doctor McKee? A. That's what he said Doctor McKee would sign if I signed the other agreement.

By the Vice-Chancellor:

Q. But the other paper from which you copied it said either New York or New Jersey? A. Yes.

Mr. Walscheid: I offer it in evidence.

(Yellow sheet marked Exhibit P 172 in evidence without objection.)

(Further hearing continued to October 15, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
and
MARY N. McKEE,
Defendants.

On Petition for Divorce.

Continuation of Final Hearing before Hon. JOHN J. FALLON, Vice-Chancellor, at Chancery Chambers, Jersey City, N. J.—October 15, 1929.

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MARY N. McKEE, recalled.

Re-direct Examination by Mr. Blumberg:

Q. Mrs. McKee, on your cross examination when Mr. Walscheid read to you a letter, Exhibit P 18, which letter reads—"Dear Mary: I have just received the enclosed card. You should cancel the circulation card you now have and take out one in your own name." You received that letter did you not? A. Yes.

Q. Did you cancel the circulation card?

Mr. Walscheid: I object as being immaterial. It has been gone into on direct examination and cross.

Vice-Chancellor: Does it make any difference whether she did it as long as he told her?

Mr. Blumberg: This letter was written

in May 1925, yet he said he made a sincere effort to get her back.

Witness: I have the card.

Q. You have the card which Doctor McKee referred to? A. Yes; it is in the brief case I have there.

Q. Will you get it out please?

Vice-Chancellor: The card is produced.

Q. What is the name on that card? A. Mrs. Ralph McKee.

Mr. Blumberg: I offer the card.

Mr. Walscheid: We say it is not the card.

Vice-Chancellor: You are objecting to it? You say it is not the card?

Mr. Walscheid: Yes.

Vice-Chancellor: You will have to prove it Mr. Blumberg. Just show it to the witness and let her explain it if she can.

Q. Do you know what card Doctor McKee was referring to when he wrote that letter? A. He was referring to the circulation card I had in the public library.

By the Vice-Chancellor:

Q. Did you have any other card other than the circulation card which was issued in the name of Mrs. Ralph McKee? A. He refers to a renewal and it is just as it was before.

Q. You say that card is a renewal of a card issued in your name as Mrs. Ralph McKee? A. That is the only name I ever used in the Free Public Library.

Mr. Walscheid: The other card in 1925 bears an entirely different address.

Vice-Chancellor: He is not looking for the address.

Mr. Walscheid: That is the important feature in this case.

Vice-Chancellor: He is offering it to show the husband wrote to her to discontinue the use of that name. I will admit it over your objection. I don't know at this time the purpose of it.

Mr. Walscheid: I will have to cross examine her on it.

By Mr. Blumberg:

Q. Is it the only library card you had in the name of Mrs. Ralph McKee? A. That is the only name I ever used in the public library in New York City.

Q. Did you ever have a card in the name of Mr. Ralph McKee? A. I never had so far as I know.

Q. Did you change the name on that card to the name of Mrs. Ralph McKee?

Vice-Chancellor: I will overrule the question.

A. I would have to make a new application entirely.

Q. Did you ever call Doctor McKee with respect to meeting him anywhere? A. No, I never have. I never called him with the thought on my part to have a conference. I have never done that.

Q. Did you always agree on an appointment when Doctor McKee suggested it? A. Always.

Mr. Walscheid: I object to it. It is not proper direct. That is already in the record.

Vice-Chancellor: I don't know whether it is or not. It has not been furnished to me. I will permit it subject to your objection.

(Witness continuing) Yes, I always met him except on one occasion when there wasn't time enough for me to get there.

Mr. Walscheid: We have been through all that.

Vice-Chancellor: She said before she waited on one occasion.

Q. With respect to Doctor Brophy's estimate, did you speak to your husband about that estimate?

Vice-Chancellor: Estimate of what?

Mr. Blumberg: There was some examination about the estimate of Doctor Brophy.

Vice-Chancellor: There was some question whether Doctor Brophy's bill was paid by Doctor McKee.

Mr. Walscheid: That merely came in incidentally because Doctor McKee asked Doctor Brophy to intercede.

A. Yes, he did. I can go into it fully.

By the Vice-Chancellor:

Q. Have you went into it before? A. No.

Mr. Blumberg: Mr. McKee stated he didn't know anything about the work being done. Mrs. McKee went to the dotcor and had it done and he submitted a bill.

(Witness continuing) I had a great deal of trouble for about two years—

Q. What did you say to your husband about it? A. That is what I was trying to explain.

Q. Tell us what you said to your husband. You are asked now what you said to your husband if anything about this estimate? A. I couldn't remember the other day when I had the radiographs—

Q. You are merely asked what talk you had with your husband? A. Doctor Brophy's estimate was final.

Vice-Chancellor: I will strike that out.

Q. Tell us what talk you had with your husband? A. I told him Doctor Brophy's estimate was $500.00. I told Doctor McKee Doctor Brophy's estimate was $500.00. He said it was a lot of money and I said it was. It was a major operation, and we talked about it after the first radiographs were taken in June 1924. After Doctor Brophy gave the estimate and we discussed it, my husband and I, my husband suggested that I go to another dentist and see what he thought about it.

Q. Did you go? A. Yes.

Q. You testified to that before? A. Yes, and his estimate was less, and we decided—

Vice-Chancellor: I will strike that out.

(Witness continuing): I said to Doctor McKee since this was a major operation I would prefer to go to a dentist to whom I had gone before and in whom I had confidence.

Q. What did he say? A. He said in anything of such importance I wouldn't want a new man, and also we discussed—

Q. Tell us what was said? A. I said to Doctor McKee that Doctor Brophy said there was four abscesses and when he began the operation I might be very ill because the abscesses would start up again, and I said to him I thought it would be better to wait until the children got off to school before I began that work. I went to the dentist twice after his return from Europe, on December 31st and Decembr 24th, I think it was. The bill came on January 1st and it was for $600.00 instead of $500.00 and he made no objection to it except he wanted to know what the extra $100.00 was for.

By Mr. Blumberg:

Q. Do you recall the incident Mrs. McKee of your husband standing outside of your house Christmas night 1926? A. I remember Mr. Walscheid said that the other day.

Q. Did your husband stand outside of your home in 1926? A. Not that I know of.

By the Vice-Chancellor:

Q. The testimony was you let him stand outside for an hour and a half and didn't bid him in. Do you know he stood outside? A. No. All I know he telephoned me and said he had been to my house and also said "Why didn't you keep the engagement which I had with you yesterday?" I said, "I didn't have any engagement."

Q. You told us the telephone conversation at the time he called you up about standing outside of the house? A. Yes.

By Mr. Blumberg:

Q. Do you know when you had the telephone conversation? A. Perhaps the middle of the morning.

Q. Do you know what day it was in December 1926? A. No, I don't know. I know the children had been out late the night before and we were all sleeping late.

Q. Have you told what your husband said on the 'phone to you that day? A. He said he had been to my house and he said "I am sorry you didn't keep the engagement I had with you yesterday."

By the Vice-Chancellor:

Q. What did you say to that? A. I said, "You didn't say you were coming to see me. You said you would call me up on the telephone."

Q. What was the rest of the conversation on the telephone? A. I think he said, "I am sorry you didn't keep the engagement with me."

Q. Did he tell you you had kept him standing outside? A. No, he didn't say anything about that. He didn't say where he was.

By Mr. Blumberg:

Q. Did he say he had been up to the house? A. He must have said that because he said he was sorry I didn't keep the engagement.

Q. Did you ask him whether he had knocked at the door?

Mr. Walscheid: I object to the form of the question.

A. No, I didn't.

Q. Did he say he was standing outside the door half an hour? A. He did not make any such statement.

Mr. Walscheid: I object to it.

Vice-Chancellor: It has been said a couple of times and it won't hurt you Mr. Walscheid.

Q. You say you didn't see him? A. He was telephoning me and I didn't know where he was telephoning from.

Q. Had Doctor McKee been up to your home at anytime after January 14, 1925, except the one occasion he came with his brother?

Mr. Walscheid: I object to that.

A. That was the only time.

Vice-Chancellor: I take that question to mean was he in the home.

Q. To discuss matters with you? A. That was the only time I ever knew he came there or any other home.

Q. And on that occasion he came with his brother he didn't speak about reconciliation? A. No; nothing was said about that at all.

Q. Do you recall the conference with Doctor McKee at the Whaley home? A. Yes.

Q. When was that conference?

Mr. Walscheid: We have went over all that.

Vice-Chancellor: My recollection is she testified to that.

Mr. Blumberg: At the last examination Mr. Walscheid asked this lady some questions and your Honor said I should ask her some questions on it.

Q. When was that conference?

Mr. Walscheid: I object to it.

By the Vice-Chancellor:

Q. Do you recall that conference? A. Yes.

By Mr. Blumberg:

Q. Who suggested the meeting at the Whaley home?

Mr. Walscheid: I object to it. She testified to that.

Vice-Chancellor: If you have this witness on rebuttal it is not a proper question.

Mr. Blumberg: I want to lead up to the conversation.

Vice-Chancellor: It is going to lead up to a whole army of questions. The only thing you should bring out are matters to be controverted on cross examination. If I remember there are a lot of things that might be inquired into.

Mr. Blumberg: I think it is proper to ask this lady just what happened?

Vice-Chancellor: Not on rebuttal. We will now take a recess until two o'clock.

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Afternoon Session.

MARY N. McKEE recalled.

Re-direct Examination continued by Mr. Blumberg:

Q. I will read to you Mrs. McKee from page 222, a question by Mr. Walscheid— "Q. Didn't Doctor McKee in Miss Whaley's presence ask you to return to him and live with him? A. No. Q. And didn't you after Doctor McKee left have a conversation

with Miss Whaley in which she asked you to return home and live? Yes or no? A. She asked me that question, yes. It isn't fair to leave that there without the rest of it. Vice-Chancellor: If it isn't your own lawyer is negligent."

Mr. Walscheid: She certainly isn't going to be allowed to testify as to a conversation between her and Miss Whaley?

Vice-Chancellor: My comment was to indicate if her own lawyer didn't bring it out her lawyer would be negligent.

Q. Did you have a conversation with Miss Whaley after Doctor McKee left? A. Yes.

Vice-Chancellor: Wasn't it detailed in the testimony before?

Mr. Walscheid: In the direct testimony she told everything that happened.

Vice-Chancellor: He has asked her whether Miss Whaley didn't say something to her.

Vice-Chancellor: Yes. He certainly under any rule of evidence cannot get in evidence any conversation she had with Miss Whaley.

Vice-Chancellor: Yes, but you opened the door. You asked her a question whether she had a talk with Miss Whaley and you confined her to a yes or no answer.

Mr. Walscheid: That's all.

Mr. Blumberg: I asked her a particular question.

Vice-Chancellor: I will permit you to bring out the conversation.

Q. Did Miss Whaley ask you in that conversation after Doctor McKee had left why you didn't accept Doctor McKee's invitation to return? A. Yes.

Mr. Walscheid: I object to it.

Vice-Chancellor: She said yes.

Q. Do you remember the day? A. Yes.

Q. What did you tell her? A. "Because he hadn't asked me to do so." She was just coming into the room. She said "I know I heard him ask you if you would come back and live with him." I said "No; what he said was I have asked you to come back and live with me. I have asked you to come back and live with me but you refused to do so." I said to Mr. McKee "You have never asked me to come back and live with you." Then he got angry and went away. She was just coming into the room and didn't understand. She said—

Vice-Chancellor: You have said enough. The difficulty is I have allowed it. There is nothing to indicate to the court that Miss Whaley was the agent of Mr. McKee.

Mr. Walscheid: Mr. McKee was not then present.

Mr. Blumberg: He objected to the questions.

Vice-Chancellor: I will permit it. Miss Whaley can come in and controvert it if she wants to.

(Witness continuing): Miss Whaley said "Of course if he didn't ask you you couldn't accept his offer", and I said, "What other offer?", and she said "Why didn't you accept the nine thousand dollars?".

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I think, Mr. Blumberg, you have got in all I will allow. She stated that Miss Whaley did ask her that question

and she stated what she said to Miss Whaley in reply. In other words that Doctor McKee had never asked her. Why isn't that sufficient?

Mr. Walscheid: I ask that that other matter, the offer of nine thousand dollars, be stricken from the record.

Vice-Chancellor: I will strike out everything except the response she made to Miss Whaley, where she says she replied to Miss Whaley that Doctor McKee had never asked her to return.

Mr. Blumberg: What is stricken out?

Vice-Chancellor: She is permitted to testify to what she said to this woman in answer to the "Yes" she heretofore stated.

(Witness continuing): I said "Because he didn't ask me to do so. What he said was "I have asked you to come back and live with me and you wouldn't do it", and I said "You have never asked me to come back and live with you", and that was when he got angry and went away.

Mr. Walscheid: I ask that be stricken out.

Vice-Chancellor: I will strike that out. The other part indicates the softening up of that yes or no answer.

Mr. Walscheid: She went on before and testified Miss Whaley said "When I came in I heard him ask you—

Vice-Chancellor: That is not in now.

Mr. Walscheid: The thing that I objected to was the other topic relating to a supposed offer of nine thousand dollars.

Vice-Chancellor: I am not going to confine you to what it is. Heretofore you had

her say by yes or no answer that Miss Whaley did say to her "Why didn't you answer your husband's invitation to live with him?" She has now been permitted to say what she said to Miss Whaley at that time: "Because he never asked me", and what follows.

Mr. Blumberg: I didn't have a chance to read the previous testimony. I would like to read the testimony.

Vice-Chancellor: I can't permit that, Mr. Blumberg. I can't stop the trial and let counsel see what questions to ask.

Mr. Blumberg: I didn't get the testimony until this morning.

Vice-Chancellor: You should have made notes of the examination. I can't stop the trial in order to let counsel read the testimony of previous days and form questions.

Re-cross Examination by Mr. Walscheid:

Q. Did Miss Whaley say to you at the time she said she heard Doctor McKee—

Vice-Chancellor: If you are going to ask her that question I am going to open up the whole thing because you think it favors you. You are willing to pick out that which favors you.

Mr. Walscheid: Because she says so.

Vice-Chancellor: I will overrule your question. I will permit it upon her being permitted to tell the entire story.

Mr. Walscheid: Then I again at this time request that this whole colloquy between Miss Whaley and this witness in the absence of Doctor McKee be stricken from the record.

Vice-Chancellor: If your client was not there then the question you asked her—

Q. Doctor McKee was not present when you had this conversation? A. He was present just as much as the first—

Q. Answer my question! A. He was not present during any part.

By the Vice-Chancellor:

Q. Was he there when Miss Whaley asked you that question? A. No.

Q. That meeting as I recall it was a meeting which you say had been arranged by your husband to go and visit Mr. Whaley so that he could act as a friend—to act as a sort of arbitrator between you and your husband? A. He only asked me to meet him at a private house so we wouldn't be interrupted in the conversation.

Q. And this Whaley house was selected? A. Yes, and after we got there he asked Mr. Whaley to stay during the conversation.

By Mr. Walscheid:

Q. You have produced a library card here? A. Yes.

Mr. Walscheid: I ask it be marked.

(Card marked Exhibit P 173 in evidence.)

Q. This card P 173 is made out to your address in Spuyten Duyvil, New York? A. Yes.

Q. And that was your address at that time? A. In 1919 when I first had the card changed from Ridgefield Park, New Jersey.

Q. But this card shows returns only for the year 1928 and 1929? A. This is only a renewal.

Q. At the time when you received this letter Exhibit 18 advising you to change the card you lived on 71st Street, didn't you? A. I didn't have the card changed.

Q. You lived on 71st Street? A. I did.

Q. And you did not at that time live at 39 Claremont Avenue? A. No.

Q. And this letter came to you shortly after you left your husband and while the lease for Claremont Avenue was still extent? A. I don't recall. I didn't live there very long.

Q. Not after January, 1925? A. For several months.

Q. In the spring of 1925 were you there? A. I believe so.

Q. And the other card read for 39 Claremont Avenue? A. I don't recall.

Vice-Chancellor: The original card?

Q. I am not talking about the original card. The card which you had at the time when you received this letter Exhibit P 18 showed your address as 39 Claremont Avenue, did it not? A. I don't know; it may have.

Q. You had been living at Claremont Avenue for a considerable period of time? A. Yes. I had the address changed several times.

Q. And you had it changed to 39 Claremont Avenue? A. I may have; I don't recall.

Q. And you received the notices at 39 Claremont Avenue? A. I don't know.

Q. You spoke to Doctor McKee about Doctor Brophy's estimate as early as June, 1924? A. Not the estimate; about the necessity of the work.

Q. You then had a preliminary estimate? A. The latter part of June, yes.

Q. And that preliminary estimate from Doctor Brophy was $500.00? A. Yes.

Q. And there was another doctor who was willing to do the same work for $350.00? A. I don't remember his figures.

Q. You mentioned $350.00? A. No, I did not mention any sum.

Q. It was less than Doctor Brophy's? A. Yes, it was less.

Q. And you and your husband discussed the seriousness of the work? A. Yes.

Q. And your husband agreed with you under such circumstances it was better to have Doctor Brophy do the work for $500.00? A. Yes.

Q. That was in June, 1924? A. No, the radiograph was taken the first of June.

Q. I am not talking about that! A. I don't remember when it was said. Two or three or four weeks after the first of June.

Q. Who was the other doctor? A. I think his name was Cole—I am not sure.

Q. So that Doctor McKee at that time had sufficient interest in your welfare to have the work done by the more expensive dentist, isn't that so? A. I don't think I can answer that question.

Q. He agreed to it?

Vice-Chancellor: It is different the way you put that question.

Q. On another occasion you say he telephoned you and told you—and asked you why you had not kept your appointment with him and you didn't know where he was telephoning from? A. That's true.

Q. When was that? A. I don't remember the date. It was during the Christmas vacation.

Q. Of what year? A. Of 1926-1927.

Q. Where did you then live? A. In a bungalow on Arlington Avenue.

Q. Arlington Avenue where? A. Spuyten Duyvil.

Q. What did he tell you at that time over the telephone? A. He said, "I am sorry you didn't keep the engagement I made with you yesterday." I think those are the words he used.

Q. What else? A. I said he had made no engagement. He said he would call me up on the telephone, and he said again "I am sorry you didn't keep the engagement."

Q. What else? A. I repeated the same thing I hadn't made any engagement for him to come up at all. He said he had just come from my house.

Q. He said he had just come from your house? A. Yes.

Q. And he came there for the purpose of visiting you? A. I didn't know what for.

Q. Didn't he say he just came from your house and was sorry you didn't keep the engagement with him? A. We didn't make any engagement.

Q. Didn't he say that? A. Yes.

Q. And on that occasion he said to you that you had made an engagement with him the day before and he had just come from your house and he was sorry you hadn't kept the engagement with him? A. He said that.

Q. You wish us to understand at that time he had not made an engagement? A. He had not.

Q. He just drew it from the air? A. He may have drawn it up from the law.

PETITIONER'S REBUTTAL CASE.

JAMES W. MARTIN, JR., being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live sir? A. 103 Manhattan Avenue, Cresswood. It is part of Yonkers.

Mr. Blumberg: Do I understand this is rebuttal?

Vice-Chancellor: I don't know what it is yet.

Q. The City of Yonkers? A. Yes, the City of Yonkers.

Q. What is your business or profession? A. Refrigeration engineer of New York.

By the Vice-Chancellor:

Q. You don't mean of the City of New York? You are located in New York City? A. Yes, my office is located there.

By Mr. Walscheid:

Q. Are you the husband of Martha Carroll Martin? A. I am.

Q. And do you know Doctor and Mrs. McKee? A. Yes.

Q. Since when? A. Since 1916.

Q. In January of 1925 do you know where Doctor McKee lived? A. At 39 Claremont Avenue.

Q. In the City of New York? A. Yes.

Q. Did you visit him there? A. I did.

Q. And about when did you first visit him there? A. In January. I am sorry I can't remember the exact time. It was the latter part of January.

Q. And did you remain with him for any length of time? A. I visited him for several weeks.

Q. Running into February? A. Running into February, yes.

By the Vice-Chancellor:

Q. You mean you remained in the apartment? A. Yes.

By Mr. Walscheid:

Q. Was he living there alone at that time? A. He was.

Q. Did you while you were living there or in the month of February of 1925 make any arrangement with Doctor McKee to sub-let his apartment at 39 Claremont Avenue?

Vice-Chancellor: How is that admissible against Mrs. McKee?

Mr. Walscheid: It is very important. She has testified that Doctor McKee continued to live in that apartment.

Vice-Chancellor: All right.

A. I did.

Q. About when did you make that arrangement with him? A. It was the latter part of February.

Q. 1925? A. 1925, yes.

Q. What was the arrangement? A. The arrangement was that I would bring my wife up to New York. That was just mentioned to remain and live in his apartment temporarily. We made a month to month lease because Doctor McKee wasn't there.

Mr. Blumberg: I object. I want to know what was said.

Q. I want you to tell us what was said between you at that time? A. In a conversation leading up to this lease which was a month to month lease, the reason was given by Doctor McKee—

Q. What did he say? A. I should have said Doctor McKee stated that his reason was that he was uncertain how long—

Mr. Blumberg: I object to that if your Honor please. We are simply concerned with the facts. We are not bound by any self-serving declarations by Doctor McKee.

Vice-Chancellor: Why isn't that so?

Mr. Walscheid: There was no complete separation.

Vice-Chancellor: I will permit it subject to your objection, Mr. Blumberg. I have in my own mind it is a self-serving declaration but we will have to determine that later.

Q. Try to tell us what he said. Not your conclusions from what he said? A. Doctor McKee said that he was uncertain how long we could have possession of the apartment house because he was uncertain as to when Mrs. McKee would return.

I told Doctor McKee if he would give me time enough to find another place to rent that such an arrangement would be satisfactory. For that reason we came to this agreement for a temporary lease.

Mr. Blumberg: I ask that be stricken out.

Vice-Chancellor: I will permit it to stand. I can see why Mr. Walscheid wants it in; that Doctor McKee was keeping the home open waiting for Mrs. McKee to return.

Q. As a result of that conversation tell us exactly what arrangements for tenancy you made with him? A. We made arrangements that we would move into the apartment as a furnished apartment.

Q. When? A. It started the first of March.

Q. And remain on a monthly tenancy? A. On a monthly basis until September.

Q. Was that the termination of his lease? A. That I understood was the termination of his lease from the university. I believe it was.

Q. Who was to move in under that arrangement? A. My wife, my son and myself.

Q. And how much rental were you to pay? A. $100.00 a month.

Q. Did you move in under that arrangement? A. I did.

Q. On March first? A. About that time. I wouldn't be certain of the date. I think it was within five days of March first.

Q. With your family? A. Yes.

Q. How long did you continue in possession of that apartment as tenant? A. Until the latter part of August. I am not certain of that.

Q. Living there with your family? A. Yes.

Q. Paying $100.00 a month? A. Yes.

Q. How was that apartment furnished when you took it? A. There was three bedrooms. Do you wish the details?

Q. Yes. A. There was three bedrooms. In one bedroom used by my wife and myself there was a double bed. In the next bedroom there were two three-quarter beds. There was a small room used by my son in which there was a single bed. The next room was the kitchen with the normal paraphernalia. The dining room was completely furnished with table, chairs, a buffet, and I believe a cabinet. I am not certain of that. The front room

with the couch and chairs and a desk, and then a little alcove off the front room in which there was a couch, a radio and two easy chairs.

Q. Did you entertain guests there over night? A. We did.

Q. During the time that you were a tenant of this apartment from March 1, 1925, until the latter part of August, 1925, was Doctor McKee a tenant with you of that apartment? A. No, he was never a tenant.

Q. Did he during that period ever visit you? A. Yes, he did.

Q. Would he on those occasions stay over night? A. He did on a few occasions.

Q. How many times would you say he stayed over night? A. I would say two or three. Certainly not much over that. Not over a half a dozen times during that period.

Q. Did you have his home address at that time from him? A. Yes, I had his home address.

Q. What was his home address at that time? A. It was in Leonia. I don't remember the street number.

Q. You don't remember the street number? A. I think I had only his 'phone number.

By the Vice-Chancellor:

Q. How did you have that; did he give it to you? A. Yes, he gave it to me.

Q. You never visited Leonia while he lived there? A. No, I did not.

By Mr. Walscheid:

Q. Do you know whether or not he had any other 'phone number except the Leonia number? A. I had his university number.

Q. His office number you had that also? A. Yes.

Q. Did you ever see Mrs. McKee in that apartment while you were a tenant there? A. Yes.

Q. On what occasion or when? A. It was in July, the first part of July I think, subsequent to the fourth and before the tenth. Doctor McKee came over in the afternoon. Do you wish the details at that time?

Vice-Chancellor: But don't tell the conversation with the doctor.

A. He told us that Mrs. McKee was to visit us that evening. Mrs. McKee and Billy, their son, arrived after supper. Doctor McKee met them at the door and brought them back to the front room where my wife and I were sitting and introduced us.

Q. You hadn't met her before? A. Yes, I had met Mrs. McKee in 1916 in her home—in their home at that time.

Q. And did you see her greet him at the door of the apartment? A. No, I did not see him.

Q. What happened after they came into the room in which you and your wife were? A. He introduced Mrs. McKee to my wife and then they went, as near as I can remember, out into the hall. The hall was a long hall running the length of the apartment in which there was book shelves. Yes, I remember they went out into this hall.

Q. Could you see what they were doing? A. In the hall, yes.

By the Vice-Chancellor:

Q. How could you see them from the room in which you were? A. The room in which we were sitting was at the end of this hall. It would have

been a hall bedroom if it was that type of an apartment. It opened off facing down the hall.

By Mr. Walscheid:

Q. Tell us as nearly as you can what happened after that? A. They started segregating the books, those that Mrs. McKee wanted, and those that Doctor McKee wanted.

By the Vice-Chancellor:

Q. How did you know that? Did you hear the conversation? A. Yes.

Q. Tell us the conversation? A. I will have to give you the gist of the conversation.

By Mr. Walscheid:

Q. Give it as nearly as possible. We don't expect you to remember the exact language. A. Mrs. McKee had said she came that night to separate—to get some of her things or take her things with her or to have them segregated so she could send for them. They went out into the hall and Doctor McKee said, "Why go through all of this now this evening? Why not put this separation of these books off?" Mrs. McKee said no, she wanted to go through with it at that time. Doctor McKee said that he wished she wouldn't—that it seemed to make it more serious. That probably if they didn't do it there wouldn't be any necessity for the separation of the books. Mrs. McKee stated no, she wished to separate the books and take the things with her to her home.

Q. Then what? I would like you to tell us in your own way what happened and give us as complete a picture as you can. A. I would say that

conversation carrying that thought in it was repeated several times during the course of the evening because the separation of the books and the conversation lasted until eleven o'clock at least. I think it was after eleven.

By the Vice-Chancellor:

Q. Was Mr. McKee assisting Mrs. McKee in separating the books? A. Yes, ~~she~~ he said, "I will get those down from the top shelf and place them on the floor."

Q. So for several hours while they were doing that Doctor McKee kept repeating, "Why do you persist in going through this tonight," or something to that effect? A. He did on several occasions. "Why do it at this time? It makes the thing looks so definite."

Q. But nevertheless he kept assisting her? A. Yes, and Billie, the son, placed the books Mrs. McKee indicated—she said, "These books are mine" and she would take some of the books down and place them down and Billy and Doctor McKee would take them and place them in piles.

By Mr. Walscheid:

Q. Was there anything else that happened at that time either by word or deed? A. Yes, there is a point that stood out. While there one time Doctor McKee and Mrs. McKee had gone to the back of the apartment, back toward the bedrooms of the apartment, and they came back into the front room. My wife and I were sitting there and Mrs. McKee came in and said that she—she seemed to be very perturbed—and she said she wished to tell us what kind of a man Doctor McKee was, and Doctor McKee said, "No, don't let's go over

that here before the Martins." Mrs. McKee then started talking but she seemed to be very much upset and I didn't understand what it was she said. Doctor McKee took her by the arm—they were standing as I remember it—he took her with his left hand by her right arm and turned her around and said, "Come on out. Let's go back and discuss that among ourselves." Mrs. McKee broke away and said she wanted to tell the Martins what kind of a man Doctor McKee was, and Doctor McKee then said, "No, let's go back and discuss that ourselves."

By the Vice-Chancellor:

Q. What was his tone of voice when he was talking? Was he perturbed? A. The tone of voice of a very embarrassed man.

Q. What was her voice? A. Her voice was raised and she was talking repeatedly.

Q. Go on? A. Finally, they both went out and to the back of the house without any further discussion before us. That happened before—well, certainly before the finishing of the separation of the books, because it was during the first part of the evening.

Q. There was a time when they stopped the separation of the books and she undertook to impress on you and your wife what kind of a man he was? A. Yes.

Q. And they resumed the separation of the books? A. Yes. They were actually separating the books until after eleven o'clock. This must have occurred around eight o'clock.

By Mr. Walscheid:

Q. Mrs. McKee in her testimony given in this case at page 29 of her testimony said that after

she had greeted Mrs. Martin, they (quoted from Mrs. McKee's testimony), "We sat down there to talk, Mr. Martin and Billy, Mr. McKee and myself, and Mr. McKee said, 'The first thing we want to know is what you ran away with?'," and I said (that is Mrs. McKee speaking), "You know I took only my personal belongings that belonged to me personally," and he, Mr. McKee said, "What did you do with the field glasses and the best blanket?", and I said (Mrs. McKee speaking), "The field glasses were mine; they belong to me, I bought them, and what you call the best blanket I cut that in two and Margaret took one to school and the other is here so far as I know." Did any such conversation take place? A. No.

By the Vice-Chancellor:

Q. Do you deny it took place or you do not recall? A. I feel—

Q. I want the fact if you know what the fact was. I don't want you to guess at it. You are undertaking to make a direct refutation of a statement as indicated by this woman. If you heard it I will let you tell it. If you are only guessing at it and don't recall I would like to hear that? A. I would say no.

Q. Do you remember the incident? A. Yes.

Q. You told us all that was said while you were all sitting together? A. I don't recall anything except the greetings were said because there was no sitting down and general conversation in the front room.

Q. Anything said about the blanket being cut in half? A. No.

Q. Are you sure of that? A. Yes.

Q. Did you have in the apartment a half of a

blanket on the bed? A. I wouldn't know that for certain.

By Mr. Walscheid:

Q. On page 29 of Mrs. McKee's testimony Mrs. McKee then says, quoting—"Then he (meaning Mr. McKee) said something along the same line he wanted to know about affairs, and I said to him (meaning Mrs. McKee said to him) 'We should discuss those things by ourselves,' and he (meaning Mr. McKee) said 'No, Mr. Martin is here and we will discuss it now', and I said (Mrs. McKee speaking) 'I would not discuss it with the Martins; it was nothing that concerned them and I will not discuss it. He had asked me to come out and I refused to discuss anything with the Martins, and if he did not wish to do as I said that Billy and I would go home.' " This in continuation of the conversation alleged to have taken place and which I have just referred to in the previous conversation. Did anythink like that occur? A. No.

By the Vice-Chancellor:

Q. You say that instead of Mrs. McKee expressing her disinclination to talk about her troubles with the doctor in your presence, that Mr. McKee was the one who expressed his disinclination to talk? A. Yes.

By Mr. Walscheid:

Q. That was later on you say? A. Yes.

Q. The same evening? A. Yes.

Q. But it has reference to the blankets conversation? A. Yes.

Q. Did you read this testimony over here today? A. No.

Q. Did somebody tell you what had been testified to by Mrs. McKee today? A. No, I was over when my wife testified prior to this.

Q. You have been in court here for several days too? A. Yes.

Q. At the bottom of page 29 of Mrs. McKee's testimony this question was asked: "Was there any further discussion? A. So Billy and I started out of the living room to the long narrow hall to the outside door and we said good night to Mr. Martin. I think Mrs. Martin came in when we were leaving and I had never met her before. We were introduced. Billy knew her; he had been there over night. So Mr. McKee went with us too and when we got to the end of this hall I said to him "If you wish to discuss these things with me I would be glad to do so.' So we went into Mr. McKee's bedroom which was just as it had always been. His toilet articles and his books and photographs of his father and the children were on the dresser. We sat down there and talked." Did Mrs. McKee and Mr. McKee on this visit leave the hall and go into any of the bedrooms? A. That I don't remember.

Q. Now after this talk to which I have just referred and after she is supposed to have been in the bedroom with Mr. McKee, on page 31 of Mrs. McKee's testimony she states that she went back to the living room where Mr. and Mrs. Martin were and—"I (meaning Mrs. McKee) started to tell them of the conditions that made it necessary for me to do it, namely, to leave Mr. McKee, and Mr. McKee said I wasn't going to say anything and he grabbed me by the arm. He is extremely strong, and pushed me out of the room and I told him to let go of my arm which he did, and then he grabbed

the arm again and insisted upon my leaving the room, which I did. He dragged me out of the room by the arm." Did any such incident occur? A. It occurred in the way that I described it before. I am sorry I can't answer yes or no to that question because Doctor McKee did come into the room and Mrs. McKee stated she wished to tell my wife and I what kind of a man Doctor McKee was. Doctor McKee did take her by the arm—not harshly—but more it seemed to me to get her attention.

Mr. Blumberg: I ask that be stricken out.

Vice-Chancellor: I will let him state it. I have something in my own mind I wish to ask him.

Witness: Mrs. McKee started again to talk and Doctor McKee again said "Come, let's discuss that by ourselves" and they both went out of the room. There was no threats; there was no harshness displayed.

By the Vice-Chancellor:

Q. You have testified heretofore she was a very much perturbed woman and she spoke in a high tone of voice? A. Yes.

Q. You say that Doctor McKee took her by the arm and she pushed him away and he again took her arm. Was that done mildly as you have indicated? A. Yes.

Q. She was persisting in wanting to tell you and your wife what she had in her mind about her troubles with Doctor McKee and he was trying to stop her from doing it? A. Yes.

Q. And you say he took her very mildly by the arm and tried to persuade her to go out? A. Yes.

Q. There was no forcing? A. There was no forcing.

Q. She pulled her arm away, did she? A. Yes.

Q. And notwithstanding he again took hold of her? A. He said: "Come, let's go and discuss this ourselves." I have a very clear picture of that because of the unusualness of the circumstances— the intense embarrassment—

Q. Where is your wife today?

Mr. Walscheid: She has testified. We took depositions in New York your honor.

By Mr. Walscheid:

Q. At that time did he push her out of the room? A. No, sir.

Q. At that time did he drag her out of the room by the arm? A. No.

Q. On page 31 of her testimony Mrs. McKee says —"I said I would ask Mrs. Martin if she knew about the blanket with the pink border and she said it might be on her bed. We did look and Mrs. Martin turned down the spread and it was the one, the blanket he had been asking about all the time." Mr. Martin did any such conversation take place in your presence? A. No such conversation took place in my presence.

By the Vice-Chancellor:

Q. Have you got your mind pretty much turned back to this occurrence of 1925 so you are prepared to say no such conversation took place in your presence? The reason I ask is that this woman has sworn to these things as testified here today. Either she is a deliberate prevaricator or else you may not have overheard it. It is either one of the

two. A. Your honor this occurred back in 1925 which is a long time to remember back. During then I have had to refresh my mind because of an affidavit I signed a year after the happening, but the main thing that fixes it in my mind is that if such an occurrence had happened it would have stood out in my mind.

Q. You have known this woman from 1916? A. Yes, I met her in 1916.

Q. How many times did you meet her before this time you say you lived there? A. Only once, if I remember.

Q. You never knew her to be anything but a truthful woman did you? A. No, sir.

By Mr. Walscheid:

Q. Mr. Martin, Mrs. Tildsley at page 504 of the testimony testified that you and Mrs. Martin were at the trial in New York in 1927, is that true? A. No.

By the Vice-Chancellor:

Q. Were you present at any of the conferences between the McKees and any one interested in their troubles? A. No, sir.

Q. Not at anytime? A. No, sir.

Q. Do you know Mrs. Tildsley? A. No, sir, not at all.

Vice-Chancellor: Does that tell who Mrs. Tildsley is?

Mr. Walscheid: She is the wife of the City Superintendent of Schools of New York City.

Q. Did you know that lady? A. A. I never heard her name called before.

By Mr. Walscheid:

Q. But you weren't at that trial? A. I know the only trial my wife and I attended was the trial in New York City before—when we gave testimony.

Q. Before Mr. Brosnam? A. Yes.

Q. That's the only occasion? A. Yes. Prior to that my only connection had been the signing of an affidavit which I believe was signed either at my office or my home.

Q. And you have been here in this court for the purpose of testifying? A. Yes, I have been here several times.

Q. But didn't get the opportunity of doing so? A. No.

Mr. Walscheid: Would you object to Judge Tennant testifying before you cross examine this witness?

Mr. Blumberg: No.

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GEORGE G. TENNANT, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live Mr. Tennant? A. 613 Bergen Avenue, Jersey City.

Q. What is your profession? A. I am a lawyer of Jersey City, N. J.

Q. Practicing in the State of New Jersey how long? A. Over thirty years. I have lived in that house for thirty-two years.

Q. And you have been Judge of the Common Pleas of the County of Hudson? A. Yes.

Q. Do you know Doctor McKee the petitioner in this case? A. I do, yes.

Q. How long have you known him? A. I cannot say with accuracy, but it is as far as my recollection goes fully three summers that I have seen him in and around the house. He lives immediately next door to my residence.

Q. In what street number do you know? A. I don't know the number. There is a lot I own in between. It is about 609 I think, but I am not sure. It is immediately south of my residence.

By the Vice-Chancellor:

Q. Who lives in the house there with him if you know? A. Well the lady's name is—I know she has a couple of small children going to high school.

By Mr. Walscheid:

Q. Winter? A. Yes. Winter. My wife calls on her but I am not very sociable.

Q. Do you know any members of Doctor McKee's immediate family? A. I know his son and his daughter. They have been to my house to dinner.

Q. With whom? A. With Doctor McKee. My son and my unmarried daughter have met them there and they have called when I was not at home besides. I know they have been there on Sunday to supper I think it was. It was a year or more ago.

Q. Are you connected with the First Presbyterian Church of Jersey City? A. I am.

Q. Do you know whether or not Doctor McKee during the period of time you have known him has been in attendance upon that church?

Mr. Blumberg: I object if your honor please. I think the whole line is not proper.

Vice-Chancellor: I suppose it goes to building up his residence in Jersey City.

Mr. Blumberg: He had an opportunity of doing that three months ago.

Vice-Chancellor: I will permit it.

A. Yes, I have seen Doctor McKee there throughout at least two or more years, I should say quite regularly every Sunday morning. I have to be there because I am an officer of the church and I know he has contributed to the beneficence of the church with regularity. I know that because of my official connection with the church.

Q. Do you know whether he occupies one particular seat? A. Yes, he has sat in that same seat I should say— My recollection would be without attempting to be accurate I should say for two years last past. In the middle isle left as to go towards the pulpit about five or six seats from the front.

By the Vice-Chancellor:

Q. Is it a reserved seat he has or is it he just happens to occupy it? A. I don't know whether he has what we call a sitting there, but he sits in the same pew every Sunday I have seen him.

By Mr. Walscheid:

Q. You are a member of the Cosmos Club are you not? A. Yes, I am.

By the Vice-Chancellor:

Q. What is the Cosmos Club please? A. It is an organization I should say thirty-five years old. It was organized by a number of prominent men of

Jersey City, somewhat literary in its character. It has met throughout those years. I have been the president of it I think for the last five or more years. It formerly met at the houses of its members, sometimes with their wives and sometimes only the men discussing—

Q. Cosmos? A. Yes, that's the scheme—cosmos.

By Mr. Walscheid:

Q. You are an officer of that club? A. I am now. I have been president for at least five years back. It is my duty with the committee to make up the program for each year. I suppose that is what you are directing my attention to?

Q. Yes. Did you make up the program for 1930? A. Yes, for the season of 1929 and 1930. Early last spring that program was made up and I arranged for Doctor McKee to be one of the speakers during the year 1930.

Q. During 1930? A. Yes.

By the Vice-Chancellor:

Q. A prospective speaker? A. Yes.

Mr. Blumberg: Will that help any your Honor?

Vice-Chancellor: It is interesting.

Witness: He is to speak on February 3, 1930.

Q. If he keeps his appointment? A. Yes. No doubt he will if he is alive.

Cross Examination by Mr. Blumberg:

Q. You say you know Doctor McKee since the summer of 1927? A. I didn't say 1927. My recol-

lection is I have seen him going in that house throughout the year. In the summer when my family was away I sat on my front porch and he talked to me.

Q. That would take us back to 1927? A. I would calculate three summers.

By the Vice-Chancellor:

Q. That would be three years? A. I wouldn't say with accuracy. I know for the last two summers.

Q. You know it was last summer? A. Yes, and the summer before. I was under the impression it was the previous summer but it would be foolish for me to say because I don't know. I have seen him in that house going back and forth for over two years.

By Mr. Blumberg:

Q. You said Doctor McKee was in your house for dinner? A. Yes, I think it was supper.

Q. You say Doctor McKee contributed to your check? A. Yes.

Q. And you were the one that received the money for the church? A. Well, I wouldn't say that. As an officer of the church I have some general knowledge of those who contribute. Those matters are naturally secret. I wouldn't tell what Doctor McKee gave any more than I would expect you to tell what I gave to charity or the church.

Q. You won't tell me how much Doctor McKee contributes? A. No, I don't know what amount. I know he is a regular contributor to the church with regularity.

Q. How often has he contributed to the church? A. We have what we call a weekly system of donation and I know he has contributed in that way.

Q. He has contributed every week to the church? A. With regularity. If you ask me to say whether a man has put money on the plate every Sunday I would say I couldn't tell.

Q. The contribution that you speak about refers to the putting of money on the plate, is that what I understand? A. He has contributed there and also to the Men's Club of the church of which he is a member and has attended the meetings of the Men's Club. I have seen him there with the other men on several occasions.

Q. Have you any idea how much Doctor McKee contributed in 1928? A. No, I have not.

Q. No idea at all? A. No. I wouldn't tell if I knew.

Q. It is the fact you don't know? A. It is the fact I don't know.

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JAMES W. MARTIN, JR., recalled.

Cross Examination by Mr. Blumberg:

Q. You say you first met Doctor McKee in 1916? A. No, I didn't say that. That is when I first met Mrs. McKee.

Q. When did you first meet Doctor McKee? A. It was either 1915 or 1916. It was prior to the time of my meeting him with Mrs. McKee.

Q. Where did you meet Doctor McKee? A. Down in Tennessee.

By the Vice-Chancellor:

Q. Did you meet him socially or in a business way? A. In a business way we first meet. I am sorry I can't give the exact time.

By Mr. Blumberg:

Q. It was in Tennessee? A. Yes. We were both working for the Tennessee Copper Company at that time.

Q. You were employed by the Tennessee Copper Company as well as Doctor McKee? A. Yes.

Q. Are you still employed by the Tennessee Copper Company? A. No, I am not.

Q. When did you leave the Tennessee Copper Company? A. It was prior to the war. It was about the year 1915 or 1916.

By the Vice-Chancellor:

Q. Was that the time you came up to New York? A. No.

Q. When did you come up to New York? A. In 1925.

By Mr. Blumberg:

Q. Did Doctor McKee give you his address in New York City in 1916? A. No.

Q. Did you meet him again in 1916? A. I think you want to know where I met Doctor and Mrs. McKee.

Q. Yes. A. It was in Ridgefield Park. Doctor McKee was consulting chemist for the Tennessee Copper Company. I was connected with the phenol plant. Doctor and Mrs. McKee were living—I would be guessing—but they were living in Ridgefield Park. Whether they were living there or boarding at that time I don't know.

Q. You were boarding in Ridgefield Park at that time? A. Yes.

Q. And when you came from Tennessee you met Doctor McKee in Ridgefield Park? A. Yes.

Q. Did you meet him personally in Ridgefield Park? A. Yes, he was in the plant almost every day.

Q. And he became friendly with you did he not? A. Yes.

Q. When you left Ridgefield Park where did you go? A. I went from Ridgfield Park back to Tennessee to build a nitro-glycerine plant.

Q. Did you visit Doctor McKee at his home in Ridgefield Park? A. My memory is hazy on that. I met Doctor and Mrs. McKee while there and my recollection of it is I met them either at their house or where they were visiting or staying.

Q. Can you tell how many times you went to their house in Ridgefield Park? A. Only once I remember.

Q. Possibly you didn't go to their home at all but met them somewhere else? A. It certainly was not at the plant. It was in the Town of Ridgefield Park. I know it was at a place where they were staying.

Q. You lived in a boarding house with Doctor McKee in Ridgefield Park did you not? A. No, Doctor McKee did not live in the same place we did.

Q. Sure about that? A. No, he didn't live there because Doctor McKee—I would say I am not sure.

Q. You don't remember whether you and Doctor McKee lived in the same boarding house? A. He could have done it and I would not know it, but I can't say I would forget such a thing.

Q. What would you say he didn't live there or you don't remember? A. I don't remember.

Q. Do you remember when you met Doctor McKee again after the year 1916? A. I went into the army in 1917. I did not see Doctor McKee again to my knowledge until 1919.

By the Vice-Chancellor:

Q. When did you go to Tennessee to build the nitro-glycerine plant? A. It was prior to my entrance in the army. I went in the army in 1917.

Q. You said in 1916 you went to Tennessee to build a nitro-glycerine plant? A. Yes, I was there about six months. I may be confused as to my dates. If it would be of any assistance to you I would say I knew Doctor McKee prior to the war; that prior to the war I had met Mrs. McKee at one time.

By Mr. Blumberg:

Q. Can you tell us how long you lived in Ridgefield Park with Doctor McKee?

Mr. Walscheid: He didn't say he lived there with Doctor McKee.

By the Vice-Chancellor:

Q. How long did you live in Ridgefield Park—weeks or months? A. I believe four or five months.

By Mr. Blumberg:

Q. And that was the time you saw Doctor McKee there? A. Yes.

Q. Almost every day? A. Yes.

By the Vice-Chancellor:

Q. He was a chemist in the plant? A. He was doing research work at the plant.

By Mr. Blumberg:

Q. And you saw him in 1919? A. Yes, when I came to New York.

Q. Could you tell us how many times you saw him? A. I couldn't tell you.

Q. More than once? A. No, I couldn't tell. I went to Cleveland.

Q. It wasn't on business? A. No, I was passing through town and thought I would like to see him.

Q. When did you see him again the next time? A. It was probably in 19—. The next time I remember—there must have been some times between that. I came to New York between that time and saw him at the Chemists' Club, but I can't remember any other time until 1924.

Q. At anytime you came to New York you went to see Doctor McKee didn't you? A. No, I didn't say that. I did if I had the opportunity.

Q. Did you have any occasion to write to him? A. Oh, yes, I think I did.

Q. Have written to him and corresponded with him? A. I think so.

Q. You say you met him in 1924? A. Yes.

Q. What month? A. November I think it was.

Q. Had your family come to New York then? A. No, they were still in Virginia.

By the Vice-Chancellor:

Q. How did you come to get in touch with Doctor McKee prior to the time you took the lease? A. I had come to New York to take a position as chief engineer with the Dry Ice Corporation. I was staying with friends in Brooklyn and I came over to see Doctor McKee and renew our acquaintance. It was natural for me to drop in to see him and I asked him whether there was available around Columbia, that the journey over from Brooklyn was a bit irksome and I wanted to rent a small apartment, and I asked him whether he

knew of any small rooms or apartment near Columbia. He said "Come on and stay with me, I am living by myself at this time."

Q. That is how that came about? A. Yes.

By Mr. Blumberg:

Q. Do you remember what month that took place which you just stated to the Vice-Chancellor? A. That took place in January 1925.

Q. You said to Doctor McKee you wanted a small room or apartment. Was that for yourself or your family? A. My immediate need was for myself and a place to bring my family to.

Q. You wanted a small place for your family? A. Yes, an apartment within my means.

Q. And you say in January 1925 you lived with Doctor McKee in the apartment at 39 Claremont Avenue? A. It was the latter part of January. Whether I actually moved any of my things over during January I wouldn't say.

Q. You didn't pay rent for January 1925? A. No, I did not. It was not a business relation at that time. He merely said "Come over and stay with me; I am by myself."

Q. You didn't see Mrs. McKee there did you? A. No, I did not.

Q. And Doctor McKee lived in that apartment in January 1925, while you were there? A. Yes. I wouldn't say in January, but in February Doctor McKee was there on several occasions when I was there. I can say that much.

By the Vice-Chancellor:

Q. What time did you move in in 1925? A. Around the first of March.

By Mr. Walscheid:

Q. You mean with your family? A. Yes.

By the Vice-Chancellor:

Q. What time did you leave there when you were stopping by yourself? A. Just at that time I think I had to make some business trips out of town and if I remember right I went back and got my wife and child. So in all probability I was there as long as two weeks in February.

Q. How many weeks were you there altogether? A. In January, the latter part, I had the conversation. I still had my things over in Brooklyn.

Q. Do you say you only stayed there two weeks prior to taking the apartment? I thought you said a longer period before? A. I can say it was the latter part of January we had the conversation—that is when I came to New York. It was in February I stayed there for at least two weeks.

Q. It was February when you brought your things over from Brooklyn? A. Yes, and it was around the first of March I brought my wife up.

Q. Would you say you were living there with Doctor McKee up until the 14th or 15th of February 1925? A. No, I couldn't.

Q. If you were there two weeks and went there the first of February that would be so? A. Yes. You see during that period I was out on business trips.

Q. When you were not on business trips you were staying there? A. Yes, up in Doctor McKee's apartment, part of the time bunking there by myself and taking my meals out and part of the time Doctor McKee stayed in the apartment with me.

By Mr. Blumberg:

Q. You had a key for the apartment did you not? A. Yes, I must have.

Q. And you went to Virginia and brought Mrs. Martin up? A. Yes.

Q. And you stopped at the apartment 39 Claremont Avenue? A. Yes.

Q. And you met Doctor McKee there? A. Yes.

Q. Is that the time you made the arrangements for $100.00 a month? A. No, it was before that time. I must have made it prior to the time I brought my wife there.

By the Vice-Chancellor:

Q. You made the arrangements while you were living there yourself? A. Yes, it must have been prior to the time my wife came up.

By Mr. Blumberg:

Q. So your wife had nothing to do with making the arrangements? A. No.

Q. And when you brought your wife to New York did you introduce her to Doctor McKee? A. I think so. I don't think my wife had met Doctor McKee before that but I wouldn't want to say.

Q. You came to the apartment at 39 Claremont Avenue and met Doctor McKee there? A. Yes, we met him in the apartment.

Q. He was living there then? A. No, I don't know. There was no evidence he was. He met us at the door and showed us over the apartment.

Q. This was March 1, 1925? A. Yes.

Q. And did Doctor McKee know you were coming that day? A. He must have, yes.

Q. And he met you there when you arrived? A. I don't remember that. I can't remember the dates or times. I think he did to the best of my memory.

By the Vice-Chancellor:

Q. You and your wife and boy came there to live on the first? A. Yes.

By Mr. Blumberg:

Q. Was that the day Doctor McKee moved out when you came? A. He was there after we came there. I couldn't say when he moved his things. They were gone when we moved there.

Q. Did Doctor McKee tell you where he was living? A. Yes, where he was living, and told us where we could get in touch with him. He gave us his telephone number.

Q. In Leonia? A. Yes.

Q. You say you paid $100.00 a month? A. Yes.

Q. How many rooms there? A. Six rooms.

Q. You say you paid $100.00 a month rent? A. Yes.

Q. In cash? A. No, I paid by check I imagine.

Q. Have you those checks? A. I don't know—that was 1925.

Vice-Chancellor: Do you dispute he paid rent Mr. Blumberg?

Mr. Blumberg: Yes.

Q. What you wanted was a small apartment? A. I would like to have had as big a one as I could get for the money.

Q. Did you bring any furniture into the house? A. No.

Q. Was there a full sized bed in the house? A.

The one used by my wife and myself was to my knowledge.

Vice-Chancellor: He described it as a double bed. I am not going to decide this case on whether it was a double bed or a three-quarter bed.

Q. How many times did Doctor McKee visit you in that apartment? A. I can remember about three times. I would say it was no more than six.

Q. When he came there he had his own room? A. He had the room we reserved for guests. My wife and I occupied one room. Our son occupied the front room. The other room was left empty for guests.

Q. Did he have any clothes or books there or papers? A. I imagine there were books in every room in the house.

By the Vice-Chancellor:

Q. How about his clothes and papers? A. There was a box there; it might have contained papers.

Q. It was testified some of his toilet articles were on the dresser, is that so? A. I don't know; I wouldn't remember.

By Mr. Blumberg:

Q. You say on this occasion on July 9, 1925 that Mrs. McKee came there Billy came with her? A. Yes.

Q. Billy is Mrs. McKee's son? A. Yes.

Q. You had seen him before? A. He had stayed over night I believe.

Q. And Mrs. McKee was introduced to Mrs. Martin? A. Yes.

Q. Did they have any conversation in the room before they went out? A. I remember no conversation except the greetings and something was said —Mrs. McKee wished to separate her effects. We remained in the front room and they went back into the hall.

Q. You were in New York in July last were you not? A. Yes.

Q. And your wife was there too? A. You asked me whether I was in New York.

Q. Were you in Mrs. Brosnam's office? A. Yes.

Q. In July last? A. Yes.

Q. Your wife was there too? A. Yes.

.Q And your wife testified? A. Yes.

Q. You wasn't required to testify? A. No.

Q. You sat in the same room and heard your wife testify? A. Yes.

Q. Did you hear her whole testimony? A. No, I did not. There was an electric fan going right alongside of my head. There was no objection to my hearing it.

Q. Did you hear it? A. No.

Q. Did Doctor McKee give you a written set of questions in this case? A. No.

Q. Did he give your wife a written set of questions?

Mr. Walscheid: I object to it.

Vice-Chancellor: I will let him answer it.

A. Yes there was. Since I am asked—

Vice-Chancellor: You are merely asked whether she received a set of questions and you said yes.

Mr. Blumberg: He also received a set of questions from Doctor McKee.

(Witness continuing) There was an affidavit which my wife had previously signed made up in a question and answer form.

Q. And you received the same thing? A. No, I did not.

By the Vice-Chancellor:

Q. You relied upon your memory better? A. Yes.

By Mr. Blumberg:

Q. You never saw the questions which were propounded here before have you? A. No, I never saw them before.

Q. Have you ever discussed this case with Doctor McKee before today? A. Yes, I certainly have.

Q. Did he tell you what he wanted you to say? A. I told him what I knew about the various things and I told him what I could remember and I imagine the questions are pretty much based on what I could remember.

By the Vice-Chancellor:

Q. I suppose he jogged your memory on some things? A. I could remember such a conversation at this state, I guess.

By Mr. Blumberg:

Q. Did he show you Mrs. McKee's testimony taken in April, 1929? A. What testimony do you refer to? There was no testimony shown me.

By the Vice-Chancellor:

Q. Did he tell you what Mrs. McKee had testified to? A. Yes.

Q. What did he say to you? A. He said Mrs. McKee had testified to this conversation in regard to a blanket and asked me whether I overheard any such conversation, and I told him no.

By Mr. Blumberg:

Q. This was only asked about four or five months ago? A. No, the questions that were asked me now were asked me recently.

By the Vice-Chancellor:

Q. Within the last week or two? A. Yes.

By Mr. Blumberg:

Q. And you told him you didn't remember. What did you tell him? A. Doctor McKee asked me whether I remember any conversation in regard to blankets that Mrs. McKee had testified was still in our bedroom or on the bed. I told Doctor McKee I hadn't remembered any conversation about the blanket; that it would have stuck in my mind if I had heard it because it was an unusual sort of thing to ask.

Q. You told him you didn't remember it? A. Yes, I told him I remember no such conversation.

Q. And did he ask you whether you recalled a conversation that took place when Mrs. McKee entered the room and started to discuss her affairs with you? A. Yes.

Q. What did you say to that?

By the Vice-Chancellor:

Q. What did he say to you about that? A. He asked me what do you remember about—I testi-

fied to it in a previous affidavit. He said reconstruct what happened. I repeated virtually what I have testified to today.

Q. Tell us what you said? A. I told him that Mrs. McKee came into the room and said she was going to tell us what kind of a man Doctor McKee was. Doctor McKee took her by the arm, and the picture that is in my mind is, my wife and I were sitting in the alcove room and she came in from the dining room and stood facing us and Doctor McKee was standing to her right and Doctor McKee took her, when she said she wanted to talk, by the arm with his left hand and said "Don't let us discuss that here." She said "No, I want to tell them what kind of a man you are." He said, this is the gist of it, "No, don't let's go over that in front of the Martins." He again took her by the arm and went out of the room. They went outside of the room and started separating the books.

By Mr. Blumberg:

Q. Did Mrs. McKee say she wanted to tell you what sort of a man Doctor McKee was? A. I was giving the gist of the conversation. I can't give you the exact quotations.

Q: Didn't she say "I want to tell you the conditions which made it necessary for us to separate?" Isn't that the phrase she used? A. No, there was no conversation about the condition.

Q. That was her introductory remark when she entered the room "The conditions which made it necessary for me to leave"? A. I don't remember.

Q. You don't remember it? A. What I remember is she said "I want you to know what kind of a man Doctor McKee is."

Q. Was she perturbed when she said it? A. Yes, in my judgment.

Q. In a loud tone of voice? A. Yes.

Q. And Doctor McKee took her by the arm and said "No, don't discuss it here"? A. Yes.

Q. In a loud tone of voice? A. Well, it wasn't a raised tone of voice and it wasn't a whisper. It was a mild tone of voice. If you want me to give my recollection of it which I don't know is permissible, was to calm her.

Q. Did he calm her? A. On the second attempt they both went outside the door and started to separate the books.

By the Vice-Chancellor:

Q. Did she go out still talking in the loud tone of voice? A. No, she ceased to talk.

By Mr. Blumberg:

Q. Did you notice Doctor McKee seize her by the arm? A. He couldn't stop the words. He took her by the arm.

Q. Did you say that Mrs. McKee drew her arm back? A. She pulled away at first and said "I am going to tell" or words to that effect.

Q. And he said "No, you are not going to tell"? A. No, he didn't say that. It was a conversational tone. What he said amounted to "Come, or let us go out and not discuss it before the Martins."

By the Vice-Chancellor:

Q. She wanted to wash the dirty linen; is that what you have in your mind? A. Yes. He was a very embarrassed man.

By Mr. Blumberg:

Q. Do you remember making an affidavit—"She continued to make recitals to Doctor McKee"? A. My idea of what she said was unintelligible.

Vice-Chancellor: You are asked about your affidavit. Direct his attention to it.

Q. "He then took her arm and urged her to leave the room with him as she continued to recite these incidents referring to Doctor McKee"?

By the Vice-Chancellor:

Q. Do you remember making that affidavit? A. Yes.

By Mr. Blumberg:

Q. "Mrs. McKee pulled away from Doctor McKee's grasp and said 'Let my arm alone'."

By the Vice-Chancellor:

Q. Do you remember making that statement in the affidavit? Does that refresh your recollection as to what actually occurred? A. It could have been said in the picture which is in my mind.

Q. You undertook to make a truthful statement? A. Yes. That was prior to today.

By Mr. Blumberg:

Q. There was no evidence in Mrs. McKee's attitude or in her tone of voice that she felt any pain from the grasp of the arm at that time? A. Yes.

Q. And it did not occur to me that there was any roughness displayed by Doctor McKee on this occasion?

By the Vice-Chancellor:

Q. Do you remember that? A. I didn't make that affidavit for a year or so after. Yes, that is the gist of it.

By Mr. Blumberg:

Q. You say you heard the conversations between Doctor McKee and Mrs. McKee and Billy while you were in the adjoining room? A. Yes.

Q. Did you hear all the conversation or just passing remarks? A. I would say I could have heard it all. They were fixing the books just outside of this alcove door.

Q. How far away were they from you? A. I would say between ten and twelve feet.

By the Vice-Chancellor:

Q. You had a clear view you say? A. Yes.

By Mr. Blumberg:

Q. They were taking down books from the shelves? A. Yes.

Q. As I understand it Doctor McKee would take a book down and say this is yours or mine? A. My recollection is that Mrs. McKee was saying what books were hers and Doctor McKee was placing them one side. Each one of them were taking books. That was over a long period of time.

Q. How long a time was it? A. The whole visit lasted from eight to eleven.

Q. How long was it before Mrs. McKee came back in the living room and detailed the conversation you described? A. Within the first hour.

Q. And you and Mrs. Martin were sitting in the living room? A. Yes.

Q. Will you state again what you heard Mr. and Mrs. McKee talking about? A. You mean when she came in?

Q. While they were sorting out the books? A. Oh, I can only give you the gist of the conversation. This was in 1925.

Q. You don't remember exactly what was said? A. I can remember the gist of it.

By the Vice-Chancellor:

Q. If you don't remember what it was how can you give the gist of it? A. The gist of the conversation was, "Why separate these books at the present time? Why not wait until some other time?" Mrs. McKee said, "No, I want to take my things—I want to do it right now. I want to do it tonight." Doctor McKee said, "To separate the things now seems to make this difficulty between us more definite." Of course, I knew he was referring to the separation.

Q. Don't tell us that. Tell us what was said? A. That conversation was repeated more than once, several times in the evening. The other conversation regarding the books was as to whether they were of any value or whether they were hers and had been given to her by so and so, and there were books which Doctor McKee purchased.

By Mr. Blumberg:

Q. You think that was the gist of the conversation? A. Yes.

Q. Did you make any effort to hear what was going on in the adjoining hall?

By the Vice-Chancellor:

Q. You were talking with your wife about other matters? A. Yes. Will you let me explain?

By Mr. Blumberg:

Q. I ask you were you paying any particular attention to these parties? A. No.

Q. You weren't eavesdropping were you? A. No, I was not.

Q. And what you saw were these people sorting out the books? A. Yes.

Q. Were you staring at them? A. I was looking at them from time to time.

Q. Did you have any business of your own to attend to at that time? A. Unfortunately, I did not. We were there in the house; Doctor McKee and his wife had called. It was an embarrassing episode we had to go through.

By the Vice-Chancellor:

Q. You and your wife were sitting in the alcove? A. Yes.

Q. You were talking to one another? A. Yes, talking to one another or looking at the paper.

By Mr. Blumberg:

Q. You were sitting in the alcove? A. Yes.

Q. Did you hear Billy say anything while they were sorting the books? A. He only said something about the books interesting him. The boy was leaning back against the wall reading books or looking through books. He had very little to say at all.

Q. After they concluded sorting out the books did they come and say good-bye to you? A. They were still in the hall sorting books. Remember these book cases extended up a distance up the hall. My wife and I went back to our room. It was near eleven o'clock. It was after we had come back

and were sitting in our bedroom that Doctor McKee and Mrs. McKee came to the door and Mrs. McKee told my wife good-bye at that time.

Q. And you moved out in August, 1925? A. Yes, I think the latter part of August. I moved out to Cresswood in September. We didn't move to that house, but to another house.

Q. Did you move out any furniture from the apartment 39 Claremont Avenue? A. I did not.

Q. Have you in your present home any articles of furniture which were formerly in Doctor McKee's apartment at 39 Claremont Avenue? A. No, I have not.

Q. Sure about that? A. Yes.

A. If anything was taken out you would know it? A. Yes. The reason I am sure about it we took a taxi from the house with our hand bags. Certainly no articles of furniture could be moved.

Q. You mean you didn't take any out at that time? A. We did not take any. Just as emphatically as could be we took no furniture out of the house.

Q. Did Doctor McKee send any up to you? A. No.

Q. No rugs? A. No.

Q. No china? A. No.

Q. No furniture at all? A. No. We brought none of our furnishings into the house and we took none out. Of that I can be positive. I beg your pardon! You asked me and I said at no time. It was later on after Doctor McKee's lease had expired we purchased some wooden book cases. They were painted wooden book cases which had been in the hall.

Q. Anything else purchased from Doctor McKee? A. Let me go back—

Vice-Chancellor: How is that going to help me decide this case?

Mr. Blumberg: I would like to show this witness was friendly with Doctor McKee.

Mr. Walscheid: He has admitted that.

(Witness continuing): I can remember no other articles of furniture or furnishings of any kind except the book cases. That I can remember buying and paying for at the time that Doctor McKee moved.

By the Vice-Chancellor:

Q. Did you ever visit Doctor McKee at the place he moved to after he sub-let to you? A. No, I never did.

By Mr. Blumberg:

Q. You say you purchased it when he moved from the apartment? A. It was subsequent to our moving out to Cresswood. In relation to Doctor McKee's moving I don't know.

By the Vice-Chancellor:

Q. You left there in August, 1925? A. Yes; and subsequent to that we purchased the book shelves.

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EARL H. MORSE, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mr. Morse, where do you live? A. 5 Enclosure, Nutley, New Jersey.

By the Vice-Chancellor:

Q. Is that a street or an avenue? A. It is really a park.

By Mr. Walscheid:

Q. What is your business or occupation? A. I am a chemical engineer.

Q. Do you know Doctor McKee? A. I do.

Q. How long have you known him? A. Since the early part of 1913.

Q. Do you know Mrs. McKee? A. Yes.

Q. How long? A. Since May or June, 1915, I believe.

Q. Did you visit the apartment of Doctor McKee at 39 Claremont Avenue in the fall of 1924, and if so for what purpose? A. I did. Doctor McKee had a radio over there and he asked me to look at it. It wasn't working right.

Q. What was the date of that visit? A. I couldn't place it definitely. It was the latter part of September or the early part of October.

Q. In 1924? A. Yes.

Q. Did you meet anybody else there that day besides Mr. and Mrs. McKee? A. Mrs. McKee's sister was there.

Q. Which sister, Mrs. Gibbs? A. I am not sure. I don't recall.

Q. How many sisters do you know, just one or two? A. I think I know only one and I am not sure which one.

Q. Do you know whether or not she had come for a stay at that time? A. I noticed there was a trunk there in the hall. I understood she had come to stay for some little time.

Q. You say that was the day upon which she arrived? A. I understood she arrived that day.

Q. Did you stay for dinner? A. I did.

Q. Who took part in the dinner? A. Doctor McKee, Mrs. McKee, Mrs. McKee's sister and myself.

Q. Do you know Thomas McNulty? A. Yes.

Q. In November of 1927 did you go to Mrs. McKee's apartment in Spuyten Duyvil? A. I did.

Q. For what purpose did you go? A. Doctor McKee wanted some one who knew Mrs. McKee to introduce Mr. McNulty to her and I went for that purpose.

Q. On her direct examination in this case on September 11th Mrs. McKee stated when you visited or called at her place with Mr. McNulty—"I said to Mr. Morse when you came to our house the first of October you knew before that that Mr. McKee was going to bring a suit for divorce. He didn't answer (meaning you). I again asked him—I said "You knew before you came to our home?" (meaning that Doctor McKee was going to start suit for divorce), and he said, "Yes." Did any such conversation take place at that time? A. It did not.

Q. When you were in the McKee apartment in 1924 did you have any knowledge that any divorce or separation proceedings were likely to be begun? A. I did not— None whatever.

Q. When prior to October 1924 had you last been in the McKee house? A. The latter part of 1917 in Ridgefield Park.

Q. In this conversation that you had with Mrs. McKee when Mr. McNulty was there can you tell us what was said, or any part of it? A. I can give you what was said but not the exact words. The visit isn't very clear so far as what was actually said. As to the gist of what was said—

Vice-Chancellor: Don't tell us the gist of it. Tell us what was said.

(Witness continuing) I went there with Mr. McNulty and Mrs. Fink called Mrs. McKee. Mrs. McKee was evidently upstairs. Mrs. McKee came out on the porch. She recognized me and called me by name. I introduced Mr. McNulty to her. Mr. McNulty said he had a few words to say to her where we might talk and we followed her upstairs. Mr. McNulty stated he had come to advise her that her husband, Doctor Ralph H. McKee, had instituted suit for divorce and this was a preliminary notice of that fact to give her all the time possible to prepare any answer she might wish to file. Mrs. McKee was rather, I think, surprised at that.

Vice-Chancellor: Tell us what was said not what she seemed to be.

(Witness continuing) Mrs. McKee said she had expected that but perhaps not so soon. She asked Mr. McNulty what she had to do and he stated that there would be filed—or that she would be served later with papers in the matter and then she should take the matter up with her attorneys if she cared to oppose the case. Mrs. McKee stated that she would oppose the case. There was a pause there a few minutes and then she turned to me and asked me what I knew—or rather what I was doing in the case, and stated she was surprised that I would have any part in it. I stated I was there only to introduce Mr. McNulty, and she again asked Mr. McNulty I think the second time whether there was anything further to be done. I gather she was trying—

Vice-Chancellor: Don't tell us what she was trying.

(Witness continuing) She asked the second time if there was anything further she had to do—

anything to be done at that time, and Mr. McNulty stated that until the papers were served upon her there was nothing further for her to do unless she wished to get in touch with her attorneys at that time. I think that is all that was said.

Q. That is all the conversation? A. Yes.

Q. And you and Mr. McNulty went away? A. Right.

Cross Examination by Mr. Blumberg:

Mr. Blumberg: If I had the written questions I think I could examine him much better.

Vice-Chancellor: You won't find your adversary willing to give you the list of questions.

Q. You were employed by Doctor McKee were you not Mr. Morse? A. Not for some years.

Q. But you were? A. Yes, three times.

Q. When was the first time you were employed by Doctor McKee? A. The first time I was employed? By employed do you mean working under his direction or paid by him? It makes a difference. I have been working under Doctor McKee during the last ten years.

By the Vice-Chancellor:

Q. Were you ever employed by him when he paid you? A. I think for a short time in 1917 and again for a short period of time in 1922 and 1923.

By Mr. Blumberg:

Q. What are you doing now? What's your position now? A. I am a chemical engineer. I am

working at Columbia University in one of Doctor McKee's laboratories on a problem in which Doctor McKee is acting as consulting engineer.

Q. You are working under Doctor McKee at the present time? A. That is hard to state whether I am working under him or with him.

By the Vice-Chancellor:

Q. You are associated with him? A. Yes.

Q. Are you employed by him? A. No, I am employed by a man named Jones.

By Mr. Blumberg:

Q. Who are you employed by? A. A man by name of Jones.

Q. Who is he? A. A man that is financing this particular piece of research.

By the Vice-Chancellor:

Q. Where does he live and how long do you know him? A. I have known him since the early part of May of this year when he came to Columbia University at a time when I happened to be there with Doctor McKee, in his office. He had a problem on some matter of which I had some previous knowledge and Doctor McKee asked me to remain while he talked to Mr. Jones. As a result of that conference within a month we made an agreement to develop the research.

Q. You and Doctor McKee are engaged now in making some research for Mr. Jones? A. Yes.

By Mr. Blumberg:

Q. You happened to be in the office when Mr. Jones came in to see Doctor McKee? A. Yes.

Q. You were both employed at the same time? A. Yes.

Q. What else have you been doing?

Vice-Chancellor: Since when?

Q. For the past five years?

Vice-Chancellor: He has been employed during the last ten years.

Q. You visited the McKees prior to 1924? A. 1917, prior to 1924.

By the Vice-Chancellor:

Q. How long have you known Mrs. McKee? A. Since 1913.

Q. Between 1913 and 1917 how often did you visit the McKee home? A. It is rather difficult to answer because between 1915 and 1917 Doctor McKee was a professor in ~~Maine~~ Delaware and I was a student.

Q. Did you visit them frequently or occasionally? A. Occasionally.

Q. About how many times a year? A. Perhaps half a dozen.

Q. You came in contact with Mrs. McKee perhaps a half a dozen times a year between 1915 and 1917. Did you ever find Mrs. McKee to be untruthful in any way?

Mr. Walscheid: I object.

Vice-Chancellor: Your objection is noted, Mr. Walscheid.

A. I have no knowledge to that effect.

Q. You have been frequently in her company. Do you know anything of her reputation for veracity? A. No.

Q. Have you ever heard it questioned? A. No.

Q. You have heard her testimony about the conversation with you and Mr. McNulty when you went to see her. You say that did not take place? A. No, it did not.

Q. Tell me what talk you had with Mrs. McKee. Not McNulty's talk, but your talk? A. Mrs. McKee turned to me and said she was surprised I had any part in it. I said I had no part in it but I came simply to introduce Mr. McNulty to her.

Q. Mrs. McKee was just as friendly as Doctor McKee except the business relations? A. Yes.

Q. Why did you offer to go there with Mr. McNulty? A. I didn't offer.

Q. Who asked you to go there? A. Mr. McKee.

Q. Why were you so willing to go? A. I am friendly with Doctor McKee.

Q. And you are friendly with Mrs. McKee? A. Yes.

Q. Did you want to see them parted? A. No.

Q. As a friend of the family didn't you want to see them together? A. Yes.

Q. Yet you went to the McKee home for the purpose of introducing Mr. McNulty to her, whereby Mr. McNulty could make inquiry of her, whereby a divorce proceeding was instituted? A. Yes.

Q. Will you say that the conversation which Mrs. McKee stated did not pass between you and her? A. Yes.

Q. She swears it did occur and you swear it did not? A. Yes.

By Mr. Blumberg:

Q. What did Mrs. McKee say did occur?

Vice-Chancellor: He testified to that.

Mr. Blumberg: I want to know whether he knew what Mrs. McKee testified to.

Witness: It was read to me.

Q. Do you know other than that? A. Mrs. McKee testified, if I remember the question, to the fact she asked me when I was there in Spuyten Duyvil if I knew at that time I visited them in 1924 that Doctor McKee had contemplated divorce proceedings against her.

By the Vice-Chancellor:

Q. And you denied it. Do you remember whether there was any such conversation at that time? A. I am sure there was not.

Q. You are saying that under oath? I positively cannot answer it affirmatively.

Q. When did you first hear from Doctor McKee that he was contemplating divorce? A. About three or four days before I went to Spuyten Duyvil with Mr. McNulty.

Q. When did you go there? A. It was shortly before Thanksgiving Day.

Q. Of what year? A. 1927.

Q. Are you a married man? A. Yes.

Q. Live with your wife and family? A. Yes.

Q. Where? A. Nutley.

Q. What does your family consist of? A. I have two girls and two boys.

Q. How old are you? A. Thirty-four.

Q. Are you a graduate of Columbia University? A. No.

Q. When did you first become acquainted with Doctor McKee? A. The early part of 1913.

Q. Where, under what circumstances? A. At the high school in Auburn, Maine.

By Mr. Blumberg:

Q. How long a visit did you have with Mrs. McKee at her home in Spuyten Duyvil in 1927? A. The entire conversation didn't take more than ten minutes.

Q. There was quite a conversation between the two of you? A. There was very little.

Q. You have testified to quite a bit? A. It didn't take ten minutes.

By the Vice-Chancellor:

Q. You have been sitting in the court room several days listening to what was going on? A. One day prior to this.

By Mr. Walscheid:

Q. On that other day you came over to testify? A. Yes.

Q. At the time when you were in Mrs. McKee's home with Mr. McNulty were you and Mr. McNulty always together? A. Yes.

By the Vice-Chancellor:

Q. Mr. McNulty was present during all the conversation she had with you? A. I doubt that three feet separated us from the time we stepped on the porch until the time we stepped off.

(Further hearing continued to October 16, 1929.)

October, 16, 1929.

JOHN J. KIRBY, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Kirby? A. 65 West 89th Street, Manhattan, New York City.

Q. And you are a member of the Bar of the State of New York? A. I am.

Q. How long have you been a member of the Bar? A. Since March, 1901.

Q. Practicing where? A. With my office at present at 55 Liberty Street, Manhattan, New York City, and with an office always in the Borough of Manhattan since my admission to the Bar.

Q. Do you know Doctor McKee? A. I do.

Q. Do you know Mrs. McKee? A. I met her after the troubles began.

Q. And you represented Doctor McKee in some New York separation suit? A. I did; I was his attorney of record.

Q. When did Doctor McKee first come to you in relation to that matter? A. Sometime in the month of January, 1925, within two or three days after he informed me his wife had left him.

Q. And after that did you come in contact with Mrs. McKee? A. I did.

Q. Where did you first come in contact with her? A. In the office of her counsel who were afterwards her attorneys in the separation suit, Hirsch, Newman & Reass, some number on Broadway, in the Borough of Manhattan, City of New York.

Q. Can you tell upon what dates you met Mrs. McKee? A. I met her first, as I recall it, about the 6th of February, 1925, at this office, and subsequently and in that year on the 9th day of February and the 5th day of March. Subsequently in the

year 1927 on the 20th day of January and the 22nd day of January and the 24th day of January, and finally at the Court House in the Borough of Manhattan on the 24th day of January.

By the Vice-Chancellor:

Q. How do you recall those dates? A. I have refreshed my recollection from registry evidence which I have in my office.

By Mr. Walscheid:

Q. I think you said you had a conference on March 5th? A. Yes, sir.

Q. Of 1925? A. Yes.

Q. In Mr. Newman's office? A. Yes.

Q. Who was present at that conference? A. At the conference of March 5th, Mrs. McKee and Mr. Newman of that firm, I believe, and Doctor McKee and I.

Q. Can you tell us what transpired at that conference? A. They discussed the amount of money which Doctor McKee should contribute to her support during the period which she was away from him as they had discussed the same matter at the previous two conferences. In the course of that conference Mr. Newman said he understood there was no possibility of the parties getting together.

By the Vice-Chancellor:

Q. Was Mrs. McKee then present? A. She, ~~Mrs. McKee~~, was then present. And Doctor McKee said that isn't so, I invited Mrs. McKee last Saturday to return and live with me, and Mrs. McKee said "No, you did not", and Doctor McKee said "Mary,

quit this foolishness and come back and live with me now", and she said "I will not".

Q. Were there any other conferences which you attended at which the return of Mrs. McKee to Doctor McKee was discussed? A. Yes, there were two other conferences, one on the 22nd of January, 1927, in the course of which Doctor McKee said to his wife that he would like to have her return and live with him, and she said she would not do so.

Q. Just how did he say that? A. He said "Mary, why don't you come back and live with me?"

Q. What did she say? A. She said "I will not".

Q. Is that what she said? A. That's all on that subject. Again on the 24th of January her attorney, Mr. Newman, made the suggestion at the conference—

By Mr. Walscheid:

Q. Was Mrs. McKee present? A. Yes, Mrs. McKee was present at all the conferences.

Q. Who was it—Mr. Reass? A. Mr. Newman. That the parties should live together in one house, never see each other, and never meet—just for appearance sake—and asked me whether Doctor McKee would do that, and I said I wouldn't even suggest such a proposition to Doctor McKee. I then said to Mrs. McKee: "Are you willing to return to the house in New Jersey where Doctor McKee is now living?", and she said 'No".

By the Vice-Chancellor:

Q. Were you ever present when Doctor McKee wrote letters to her? Did you advise him? A. No.

Q. Did he show you the form of letters? A. He did not.

Q. Were you aware he was keeping copies of these letters? A. No, sir.

Mr. Walscheid: We have copies of those letters, if your Honor please. The record shows there are copies of three typewritten letters at the beginning of this controversy.

Vice-Chancellor: There are copies of letters.

Mr. Walscheid: But not copies of the letters which your Honor is talking about.

Vice-Chancellor: I am inquiring about copies of letters from Mr. McKee to Mrs. McKee in which he invited her to return to live.

Mr. Walscheid: There are no copies.

Vice-Chancellor: This case has been going off from time to time. I know there are copies of letters. You say there are no copies of letters written by Mr. McKee?

Mr. Walscheid: The testimony is there are three or four typewritten copies of letters at the beginning which particularly deal with some bonds. As to the letters containing the invitations they were all obtained by me by calling upon the other side to produce them. The originals of those letters were produced and put in evidence. But on the other hand the other letters of the other side both the original and copies were produced.

Vice-Chancellor: I recall that.

Mr. Blumberg: Mr. McKee kept all of the letters Mrs. McKee sent.

Vice-Chancellor: That's all right; I am not objecting to that. I just had in mind something and wanted to inquire.

By Mr. Walscheid:

Q. The last conference related to what date? A. January 22nd—Saturday the 22nd.

Q. In 192—? A. 1927.

Q. That was the day Mr. Newman made the suggestions? A. Yes, sir.

Q. Anything else discussed at that time? A. No, that was a very short conference. At the end of that when I put the query to her I said there was nothing further to be said or done and we stood up and left.

Q. At that time had any proposed written agreement been submitted to or offered by anybody? A. None.

Q. After that date you said there was another conference at which the question of getting together was discussed? A. The next conference was that day in court when the case was finally on the calendar—the 24th.

Q. Will you give us in your own way a complete story of what happened at that conference? A. This case was on the calendar on Monday, the 24th, at ten o'clock. I answered it ready for the defendant. Mr. Reass, the trial counsel of the firm of Mrs. McKee, answered ready for the plaintiff. It was found that the case could not be reached because we were far down on the calendar and it was adjourned by the court until 2 past, as we call it—at 2 o'clock. When we left the court room that day Doctor McKee told me he had prepared a paper himself which he showed me. He told me he had prepared it because of some conference which the Dean of his department at Columbia University had had with him in which an effort was made to bring about a settlement of the difficulties in which they then were. He at that time either showed a copy

or gave a copy of the paper to Mrs. McKee. I was some distance away and they conferred for some time. I left the court house and went back to my office. I returned again at 2 o'clock and when the case was called Judge Tierney, who was the presiding judge, called Mr. Reass and me to the table and said: "Is there any possibility of settling the case?". He said he had spoken to us similarly when it was on the calendar the previous week. We both said we didn't think there was. He said: "I will adjourn my court at 3 o'clock and I will meet the parties and their counsel in my chambers to see if a further effort can be made to settle". We then went out into the corridor and Doctor McKee conferred with Mrs. McKee at some distance apart and I spoke to Mr. Reass. In a few minutes the four of us got together and, with each of them holding a copy of this agreement, Mrs. McKee said the amount provided in the agreement was not enough. I don't recall the amount—I think it was $166.00. She wanted more. Finally Doctor McKee agreed to give her a certain amount—I think it was $200.00. Then Mr. Reass suggested there ought to be some time up to which the agreement should run so far as the payments were concerned, and some one suggested, I think Doctor McKee, that the elder of the two children would be graduated from Bryn Mawr in June, 1928—the year of June, 1928. Then some one suggested, either Doctor McKee or Mr. Reass, that the date July 1, 1928, be inserted in the agreement, and that was done. Then Mrs. McKee said "If I sign the agreement (addressing her remarks to Doctor McKee) you may begin a suit against me next week", and Doctor McKee said "Yes; either of us may begin a suit if either of us signs this agreement, and it is discontinued at that time". Thereupon she said "All right, I am ready

to sign the agreement". They each signed the agreement in duplicate in the presence of each other and Mr. Reass and myself. As I recall it they each initialed the changes that were made in the agreement, then Doctor McKee said before we separated "My only purpose in signing the agreement is the hope that it will bring Mrs. McKee and me together again". Mr. Reass said something to the effect that would be a good consummation or something like that, and we parted. I may say we went back before the judge and stated to him the case had been settled and he marked it discontinued on the calendar, and I think the next day or two after that I entered the usual order of discontinuance.

By the Vice-Chancellor:

Q. Had you seen that agreement since 1927 until today? Had you refreshed your recollection by looking at it? A. Not for some time, but I have seen it since then, Judge.

By Mr. Walscheid:

Q. You were in another proceeding subsequent to that time of which that agreement was made a part? A. In an action brought by Mrs. McKee against Doctor McKee in the Supreme Court of New York County for a judgment restraining the prosecuting of this action which he had brought prior to the beginning of the injunction action in the court.

By the Vice-Chancellor:

Q. She claimed that he was a resident of New York? A. Yes, sir; and that his adopted residence

in New Jersey was a fraud upon this court and the New York court.

Q. You have a case of Greenberg v. Greenberg over there? A. Yes, that is the main case and it applied to a certain extent.

By Mr. Walscheid:

Q. During that conference while this agreement was under discussion do you remember whether or not the import of the different sections of the agreement were discussed between the parties in your presence? A. I don't remember that.

Q. Do you recall whether or not in that discussion any reference was made by Doctor McKee to the paragraph in the agreement which reads—"3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks"? A. Only so far as I testified that his main purpose in signing the agreement was to bring about a united family or words to that effect.

Q. On page 20 of Mrs. McKee's testimony she stated that at the conference of March 5th to which you have referred—"After a few preliminaries Mr. Newman said 'You have been unbearably cruel to your wife both in private and in public', and Mr. Kirby said 'Not in public', and Mr. Newman said 'Yes, in public also.' That's the end of that particular quotation, and 'He didn't say anything' and Mr. Newman said 'I will assume that it is your desire to bring about a reconciliation with your wife.' Mr. McKee didn't answer, and Mr. Newman said 'Is that your desire?', and Mr. McKee looked at Mr. Kirby and Mr. Kirby slightly bowed his head and then Mr. McKee slightly bowed his

head" (meaning yes). Did any conversation occur? A. No.

Q. Did any such performance occur? A. You mean the bowing of the heads?

Q. Yes. A. No.

By the Vice-Chancellor:

Q. Is Mr. Newman alive? A. Yes, he is a member of the character committee, second department, in New York City.

By Mr. Walscheid:

Q. On page 20A of Mrs. McKee's testimony she states that at the conference Mr. Newman said—"What have you to suggest?", and Mr. McKee got out the same papers and said his expenses were so and so and that he would send me seventy-five dollars a month, and Mr. Newman said that was not an amount to consider at all." Did the above occur at this conference—the March 5th conference? A. I believe in substance that did occur. They did discuss figures at that time and I believe the amount of $75.00 was mentioned by Doctor McKee as the amount he thought under the circumstances he should contribute.

Q. Again speaking of this conference of March 5th, and in reference to Mr. McKee's conduct, Mrs. McKee on page 21 states that at this conference Mr. Newman said "If Mr. McKee was that sort of a man there was no use of having conferences with him." Was such a statement made at this conference? A. No.

Q. On page 38 of Mrs. McKee's testimony, Mrs. McKee states, relative to a conference in Mr. Newman's office on March 5th, at which you were present, "He (Doctor McKee) had a paper drawn

up and he said he would send me I forgot what amount—a small amount anyway, and I was to sign this paper, but he couldn't sign it because if he signed any papers it would seem to the university authorities that he was guilty." Was there any such discussion in your presence or was there any such paper in your presence? A. No such discussion and no such paper was ever produced in my presence or mentioned.

Q. My attention was called to the fact I was in error. It wasn't at a conference of March 5th but was supposed to occur in one of the conferences at which you were present? A. My answer is that it never occurred at any conference.

Q. On pages 53 and 54 of Mrs. McKee's testimony she states, relative to the conference of January 20, 1927—"Mr. McKee had some typewritten papers of some kind. He didn't read them and we didn't read them, but he said he would send me forty dollars a week, and he said 'This is what the papers say; he could send me forty dollars a week and that I would agree to withdraw my case in New York City and that I would sign this agreement saying that I would withdraw this case, but that he could not sign the agreement because Columbia University would consider him guilty and dismiss him from the university.' " Did any such event occur in your presence? A. No, sir.

Q. On page 63 of her testimony Mrs. McKee states that he, Mr. McKee, said "He said it was a separation agreement that he had wrote out himself." Did Mr. McKee make such a statement? A. Not in my hearing.

By the Vice-Chancellor:

Q. I understood you to say at the Court House meeting he did say he had prepared it himself?

A. He told me he had prepared the paper which he showed me, but I understood this—

By Mr. Walscheid:

Q. Did he call it a separation paper? A. I don't recall. What he said to me in that respect wasn't in the hearing of Mrs. McKee.

Q. Did he in your presence and in the presence of Mrs. McKee call that paper a separation agreement? A. He did not.

Q. On page 67 of Mrs. McKee's testimony the following questions and answers appear—"Q. Did you ask Doctor McKee about the possibility of his starting suit? A. Nothing, except he was to sign an agreement not to bring suit against me either in New Jersey or New York on the basis of our family affairs. Q. Did he sign that agreement? A. Many weeks passed away and it was not signed." Was there any such agreement proposed or discussed at the conference in your presence? A. No, no agreement was signed or discussed in my presence, except the agreement of January 24th which I first saw on the morning of that day.

Q. At the first conference that you had at which Mrs. McKee was present was there any discussion of a dentist's bill? A. Yes. Doctor McKee had said at the conference that Mrs. McKee had ran up a bill of some six hundred dollars for dental service, and as I recall she said she had done that after consulting with her attorney, Mr. Newman.

Q. Did she state how early in the preceding year she had consulted her attorney? A. No, the time didn't come up at all.

Q. In one of Doctor McKee's letters found on page 92 of the testimony of Mr. McKee is an ex-

hibit letter which reads as follows (counsel reads letter). Did Mr. Newman telephone to you to the effect stated in that letter? A. He did.

Q. And did you thereafter have a conference with Mr. McKee and inform him of what Mr. Newman had said? A. Mr. Newman did telephone me to the effect that there seemed to be no prospect of their getting together and I did so inform Doctor McKee, whether by letter or by telephone conference I do not recall.

Cross Examination by Mr. Blumberg:

Q. Does your registry contain an entry of all the dates of the conferences you had with Mrs. McKee? A. Yes, sir.

Q. And the dates you have given are the only dates, is that so? A. There were six—the dates which I gave.

Q. The dates which you gave are in 1925 and 1926? A. The dates given are the only conferences between the parties here and the attorneys.

Q. I will repeat them—February 6, 1925? A. That's correct.

Q. February 9, 1925? A. That's correct.

Q. March 5, 1925? A. That's correct.

Q. January 20, 1927? A. That's correct.

Q. January 22, 1927? A. That's correct.

Q. January 24, 1927? A. That's correct. The latter conference being at the Court House.

Q. And these dates are all correct? A. Yes, sir.

Q. There is no possibility of a date or two being wrong? A. There is always a possibility of that. I believe they are correct.

Q. There were no conferences in your office was there? A. Not with Mrs. McKee. There were several conferences with Doctor McKee.

Q. There were no conferences with Mrs. McKee or Mr. Newman in your office? A. That's correct.

Q. Did you make notes of what took place at each of the meetings? A. I believe I made notes of what occurred at the first two or possibly the first three, but not of those that occurred in 1927.

Q. Did you make any note of what occurred on March 5, 1925, the third meeting? A. I think I did.

Q. Did you refresh your memory by looking at the notes? A. I refreshed my memory from the register I had and I recall it distinctly because it was the last conference prior to the suit.

Q. And that conference took place two months after Mrs. McKee left Doctor McKee? A. I think so. I think the separation was January 16th—I am not sure. I think it was two months.

Q. And there was no conference at anytime after March 5, 1925 until the case was called at the Court House on January 24, 1927?

By the Vice-Chancellor:

Q. Haven't you mentioned January 20th? A. The attorney for Mrs. McKee is correct. There was a conference on January 20th and the 22nd and a conference at the Court House on the 24th.

By Mr. Blumberg:

Q. There were no conferences after March 5, 1925? A. Of course I conferred with Doctor McKee.

Q. Of course. And none in 1926? A. None at all in 1926.

Q. And the first conference took place February 6, 1925, at Mr. Newman's office? A. That's correct.

Q. Who was present? A. Mr. Reass, Mrs. McKee, Doctor McKee and I.

Q. And you stated you made notes of what took place at the conference of February 6th? A. I believe I took notes.

Q. You said you were sure about the first two? A. I am sure about the first two.

Q. Will you tell the court what exactly took place at the conference of February 6, 1925? A. The conference was really a question of Doctor McKee's finances. Mr. Reass opened the conference by stating of course the parties were separated and Doctor McKee should support his wife in accordance with his means, and he said he was informed by Mrs. McKee that Doctor McKee had an income of $50,000 a year. Doctor McKee said there was nothing to that; that his income over a period of six or seven years as I recall it averaged about six or seven thousand a year. That he was spending seven thousand dollars in the education of his two children, one of whom was then at Bryn Mawr and the other in the Taft School, and in order to support himself and his wife he was dipping into the small principal which he had. The discussion at this conference was largely a discussion of finances of the two parties along the lines I have just mentioned.

Q. You said Mr. Newman was not there? A. No, sir. I never met Mr. Newman until the third conference.

Q. Was anything said about a reconciliation at that conference? A. Nothing that I recall.

Q. Nothing at all? A. No, sir.

Q. You were there and would recall? You were present during the whole conference? A. Yes.

Q. And the entire conference dealt with the

financial arrangements between the parties? A. That's correct.

Q. And nothing came of that conference? A. What do you mean by that?

Q. There was no settlement? A. They didn't get together and no conclusion was reached as to how much he should pay, if that is what you mean.

Q. Mr. McKee at that time didn't offer any evidence of desiring a reconciliation, did he?

Vice-Chancellor: The question is improper. Ask what was said. I will overrule the question.

Q. Did Mr. McKee say anything about reconciliation at that time? A. Nothing.

Q. Nothing at all? A. Nothing.

Q. Now didn't the conference of February 6th have to deal with the making of a separation agreement? A. Nothing was said about a separation agreement that I recall at that conference.

Q. Do you know about the letters that Doctor McKee wrote to his wife? Do you know anything about them? A. No, I do not.

Q. Did you ever see this letter dated February 7, 1925, in which Doctor McKee speaks about the separation agreement conference which he had the previous day? A. I never saw that.

Q. You never ~~saw~~ that? A. No, sir; or a copy of it either.

Q. You still say nothing was discussed there about the drawing of any agreement? A. Absolutely not.

Q. The parties however did discuss their separation did they not? A. They discussed the fact they were separated and how much Doctor McKee

should contribute towards Mrs. McKee's support during the period she was away from him.

Q. Do I understand you had another conference a few days later? A. Yes, sir.

Q. At Mr. Newman's office? A. Yes.

Q. Mr. Newman was not there? A. No, sir.

Q. Mr. Reass was there? A. He was.

Q. You have a record of what took place at that conference? A. Yes.

Q. Can you tell the court now what took place at that conference? A. At the outset of that conference Mr. Reass suggested that perhaps if Mrs. McKee and Mr. McKee could see each other in private they might come to some arrangement, and they withdrew to another office which they did. They were gone about fifteen minutes and Doctor McKee came out and said he wasn't able to make any headway, at which we resumed the same character of conference we had at the previous conference at which Doctor McKee as I recall had a list of the sources of his income, so much from Columbia University and so much from this source and that source. There were five or six sources. There was some talk back and forth as to whether he didn't receive considerably more from some of these sources and he stated that he did not. That was about the substance of that conference. It was largely finances and the question of how much he was receiving by way of income, and because of the receipt of that amount whatever it was, how much he should contribute to the support of his wife. There was also mentioned at this conference by her as I recall it the suggestion that she should have all the amount necessary to educate the two children and she should have the spending of that amount. Mr. Reass suggested that the children should be brought back to New York and live with

their mother. Doctor McKee thought that he ought to have the children for one-half of the time and they said they didn't think so; that he would have the right of visitation at which he showed he was very much displeased.

Vice-Chancellor: I will have to strike that part out.

(Witness continuing) He said he wasn't satisfied. Furthermore he said he was paying the amount for their education and he should hold the purse strings.

Q. Instead of discussing a reconciliation they discussed the living apart and the right of visitation of the children?

By the Vice-Chancellor:

Q. You stated what occurred? A. Yes.

By Mr. Blumberg:

Q. Nothing was said at the conference about a reconciliation at all was there? A. Nothing.

Q. Doctor McKee didn't offer that Mrs. McKee came back and live with him? A. No, sir.

Q. And did Doctor McKee offer to provide her with a home? A. Not at that conference.

Q. There was nothing said about his conduct was there? A. The question of his conduct never came up.

Q. When was the next conference at Mr. Newman's office. A. March 5th.

Q. How was that conference arranged by 'phone? A. Every conference was arranged by telephone on the part of Mrs. McKee's attorneys suggesting we

meet at their office, and we always responded to the calls immediately.

Q. You went down in response to a call and you went up to Mr. Newman's office? A. Yes, sir.

Q. And Mrs. McKee was there? A. Yes, sir.

Q. And Doctor McKee? A. Yes, sir.

Q. And were finances discussed at that conference also? A. Yes, during that conference finances were also discussed.

Q. How did the question of reconciliation come up? A. Why, Doctor McKee said he had met Mrs. McKee on the previous Saturday as I recall it, and had spoken to her that she come back and live with him and she said "You didn't suggest that to me", and he said "I did." She then said, "You didn't", and then he said "Why, Mary, stop this foolishness and come back and live with me", and she said "I will not."

Q. When did this take place after the conference had terminated or at the beginning of the conference? A. It was at the outset of the conference as I recall it.

Q. And you went on and talked about finances? A. Yes, sir.

By the Vice-Chancellor:

Q. Were they calm and collected or excited? A. They were calm and collected at every conference I was at.

Q. During the colloquy between them "I did, and you didn't?" A. In a perfectly calm way.

By Mr. Blumberg:

Q. You didn't do any talking about any reconciliation? A. No.

Q. All the talking was done by Doctor McKee? A. Yes, and his wife.

Q. And as I understand it he said "I spoke to you last Saturday about living with me"?

Vice-Chancellor: He didn't say that.

Q. What did he say when he came in?

Mr. Walscheid: When he came into the conference?

Mr. Blumberg: Yes.

A. He said it during the course of the conference and at the beginning of it. There were some preliminaries.

Q. You said there were some preliminaries and Doctor McKee made a statement? A. That's my recollection.

Q. Will you state again what it was? A. He said the previous Saturday as I recall it he had met Mrs. McKee and suggested to her she return to live with him. She replied "You did not make any such a suggestion", and he said "I did", and she said "You didn't".

By the Vice-Chancellor:

Q. To whom were the remarks made? A. Each to the other.

By Mr. Blumberg:

Q. In other words when the question came up Mrs. McKee denied she had made any statement—or that Doctor McKee had made any statement the previous Saturday about living with him? A. Yes.

Q. According to your recollection she denied it twice?

Vice-Chancellor: It is on the record. He is telling what occurred.

Q. In effect Mrs. McKee said "I did not" twice. Then what did Doctor McKee say? A. He said "Quit this foolishness Mary and come back and live with me."

Q. Is that all he said? A. That's all on that subject.

Q. Just those few words "Quit this foolishness", and she said "I will not"? A. He didn't say he was sorry for what he did?

Vice-Chancellor: He has repeated it several times.

Mr. Blumberg: I want to bring out the omissions. The only thing that was said here was five or six words.

Vice-Chancellor: Ask it again! I understood there was nothing said about reconciliation in his presence except what was stated between the two parties.

Witness: That is correct.

Q. The words he used were "Quit this foolishness Mary and come back and live with me", and she said "I will not"? A. Yes.

Q. That's all was said? A. Yes.

Q. On that subject? A. Yes.

Vice-Chancellor: The witness testified as best he recalled it. You can't pin him down to the exact words.

Q. This took place in 1925 did it not? A. Yes.

Q. Four years ago? A. Yes, four years ago.

Q. And you recall exactly what took place at that conference? A. To the extent that I have testified.

Q. Are you giving me the exact words that Doctor McKee used? A. No, I wouldn't say that. I am giving you the substance of it.

Q. What we term just the gist of it?

Mr. Walscheid: I object to that.

Q. After Mrs. McKee said "I will not", do you recall what happened then? A. They continued to discuss largely the question of finances again.

Q. And you recall Mr. McKee suggesting an amount of $75.00 a month as being sufficient? A. Yes.

Q. And you didn't see Mrs. McKee after March 5, 1925, until January 20, 1927? A. Oh, yes, I saw her a couple of times in court. She was in court when the case was on the calendar in January.

By the Vice-Chancellor:

Q. But not to talk to? A. No, sir.

By Mr. Blumberg:

Q. Did you see her January 20, 1927 in Mr. Newman's office? A. Yes.

Q. And had a conference there? A. Yes.

Q. What was discussed at that conference? A. Why, largely the question of the imminence of the action and the possibility of the case being settled in some way that was satisfactory to both sides.

Q. Was there any settlement discussed? A. I don't recall.

Q. Do you recall the words of that conference? A. No, only in a general way, and at the end of the conference Doctor McKee invited Mrs. McKee to come back and live with him.

Q. What did he say? A. He said "Mary, come back and live with me."

Q. Practically the same words he used before?

Vice-Chancellor: That's not so.

Mr. Blumberg: He said it here before.

Vice-Chancellor: The record shows it.

Q. He said, "Mary, come back and live with me?" A. Yes.

Q. What did she say? A. "No, I will not."

Q. Anything else said about a reconciliation? A. That was all.

Q. Just those words? A. Yes, sir.

Q. And the last conference was on January 22, 1927, in Mr. Newman's office? A. Yes, a Saturday morning.

Q. What was discussed then? A. Well, that was a very short conference, at the outset of which Mr. Newman made the suggestion which I have stated to you in an introductory way, would Doctor McKee be willing to take up his residence with Mrs. McKee living together in the same rooms without meeting each other and seeing each other at all for appearance sake. I said it was not a proposition which I would think of putting to Doctor McKee, and I wouldn't do it. Thereupon I said, turning to Mrs. McKee, "Are you willing to go to New Jersey where your husband is living and live with him"? and she said, "No," and we stood up and left the office.

Q. This took place on the Saturday before the case was tried? A. Yes, on the 22nd of January.

Q. You said, "This isn't a proposition which I should put to Doctor McKee"? A. Or words to that effect. I said it was a proposition I wouldn't put to him.

Q. Was Doctor McKee there? A. Yes.

Q. Did he say anything about it? A. No.

Q. He didn't say anything at that conference about Mrs. McKee coming back and living with him? A. No.

Q. He made no statement at that time? A. No.

Q. You talked about it? A. I did.

Q. Was there any conclusion arrived at at that conference about a settlement of the case? A. Nothing was arrived at and we walked out after she said, "No."

Q. And the next time you saw her was in court on Monday? A. Monday morning.

Q. And all of the conversation which you have given us in your direct examination, statements of Doctor McKee, were made in Mrs. McKee's presence, as I understand? A. All of the conversations which I gave were in Mrs. McKee's presence. I don't recall whether I mentioned any of it out of her presence.

Vice-Chancellor: Yes, he did. He said something about a paper.

Witness: That is correct.

Q. When you got to the court room did you see the paper which Doctor McKee had in his hands? A. I saw it outside of the court room after the calendar was answered and the case passed until two o'clock.

Q. And you saw Mr. and Mrs. McKee go off into the corridor and speak about the paper? A. In one part of the corridor near the court room.

Q. How long were they talking? A. They were talking when I left.

Q. How long a period was that? A. I remained three or four minutes.

Q. They were still there talking? A. Yes.

Q. You didn't hear any part of the conversation?

Vice-Chancellor: Wasn't that the time when they went out to lunch together?

Mr. Blumberg: They went to lunch but the testimony is they didn't say anything because there was too many people there. There is no doubt they had this conference between them. Both parties admit that.

Q. When did you come back to the Court House? A. Two o'clock.

Q. Did you see Doctor McKee and Mrs. McKee? A. They were in the court room sitting down.

Q. Were they talking to each other? A. They were not. As I recall it they were on opposite sides of the court room.

By the Vice-Chancellor:

Q. Did the parties go in to see the judge? A. They did not. Before three o'clock had come they solved their difficulties—during the interim between two and three o'clock.

By Mr. Blumberg:

Q. In the interim between two and three Doctor McKee and Mrs. McKee had another conference which you saw but did not hear? A. Yes, they conferred for a while before the four of us got together.

Q. You did not overhear that conversation? A. No.

Q. Will you state exactly what Doctor McKee said when he came back from the conference, in Mrs. McKee's presence? A. Why, he in response to her suggestion, that is, she said as I recall, it was not enough. He finally said he was willing to pay I think $200.00 a month. I haven't seen this agreement for sometime to refresh my recollection as to the figures I stated. She said she was content to receive that. Mr. Reass said, and if you ask me what Doctor McKee said I will have to see what somebody else said before he spoke, Mr. Reass suggested there ought to be a time limit put to the agreement, and Doctor McKee said his daughter would be graduated from Bryn Mawr at the end of June, 1928, and that he was willing to put in the date as I recall it July 1, 1928, and that was written in as I recall it by him. Then Mrs. McKee said, "If I sign the agreement and discontinue this action you may bring a suit against me next week," and Doctor McKee said, "Yes, either side is at liberty when this agreement is signed to begin a suit." The next I think may have been said by Doctor McKee or she may have said, "You may bring a suit against me," as I recall, and the other party said, "Yes, either party may bring it next week." Then she said, yes, she was satisfied and signed the agreement.

Q. Both parties were satisfied? A. I presume he was satisfied but he did not say he was satisfied. It is only a conclusion.

Q. How about Mrs. McKee? A. She said she was ready to sign.

Q. Ready to sign or was satisfied? A. Either way.

By the Vice-Chancellor:

Q. You testified she said she was satisfied and she signed it? A. Yes.

Q. Did she say she was satisfied or she just signed it? A. I think she said she was satisfied, yes.

By Mr. Blumberg:

Q. Did you say that Doctor McKee told you in Mrs. McKee's presence that his main purpose in signing it was to see if the parties would get together and live again? A. It was in the hope it would bring them together again.

Q. Despite the fact he had told her a few minutes before he could on that agreement within a week? A. He didn't say that—not on that agreement. He said either party could bring suit against the other party on any rights they had on account of their separation is what he meant, although he did not say that.

Q. He made both statements, one that he hoped by this agreement to effect a reconciliation, and the other is that either party at the end of a week could start suit? A. He said in substance which I have said, but he made them at different times. What he said with respect to either party being at liberty to start a suit next week he said in response to her suggestion that if the agreement was signed he could start his suit against her, but what he said about it being his main purpose to bring the parties together was after the agreement was signed and after we separated.

Q. Did he use the word *main?* A. I don't understand whether he used the word *main.*

Vice-Chancellor: He is trying to give you his best recollecion of the conversation.

Q. What did Mrs. McKee say to that remark? A. Nothing.

Q. Did she tell what her purpose was in signing it? A. Not a word.

Q. Did she say she hoped a reconciliation would be effected? A. No.

Q. She said nothing about it? A. Nothing.

Q. And that was the last conference which you attended between Mr. and Mrs. McKee? A. Yes.

Q. You spoke to Mrs. McKee in Doctor McKee's presence that afternoon—January 24th? A. While the conversation was general I don't recall that I addressed any particular remark to Mrs. McKee.

Q. Didn't you use your efforts to effect a reconciliation? A. I didn't use any special efforts.

Vice-Chancellor: Direct his attention to what you have in mind.

Q. Didn't you say to Mrs. McKee that Doctor McKee's conduct was not utterly unforgivable and some effort should be made at a reconciliation? A. I never said it at that time or any other time.

Q. What? A. That his conduct was unforgivable. I never criticized his conduct at anytime.

Q. Did you ever suggest the parties should be reconciled at anytime? A. I don't believe I did. Her attorney made a statement to me after the conference was over, but it wasn't in her presence and it wouldn't be proper for me to bring it out.

Q. But you have brought out the statement Mr. Newman made?

Vice-Chancellor: He has told you what went on.

Q. Didn't you tell Mrs. McKee that Doctor McKee's conduct was not utterly unforgivable as though he had been unfaithful to her? A. Never! Never in words or in substance.

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HARRY L. WHALEY, being sworn.

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Whaley? A. 522 West 230th Street, in the Bronx.

Q. How old are you? A. Fifty-four—fifty-five.

By the Vice-Chancellor:

Q. Have you been ill? A. I haven't been very well recently.

Q. What year were you born in? A. 52.

Q. 1851? A. 1851 or 1852.

Q. What month is your birthday? A. In April.

Q. What date? A. April first.

Q. April first. And you think it was 1852? A. Yes.

Q. Where were you born? A. Edisto Inlet, South Carolina.

Q. Do you know what your age is? A. Yes, sir.

Q. How old? A. I am fifty-four years old.

Q. Aren't you mistaken about that? A. I don't think so.

Q. Fifty-four. You don't mean seventy-seven? A. No.

Q. Or sixty-seven? A. No, sir.

Q. You are sure you are not sixty-seven years of age? A. Yes, sir.

By Mr. Walscheid:

Q. Are you sure of the year of your birth? A. I am pretty sure.

Q. What is the year of your birth? A. I was born 185—.

By the Vice-Chancellor:

Q. Have you been married? A. No, sir.

Q. How long have you lived in New York. I understand you live there? A. About forty years.

Q. How old were you when you came to New York to live? A. I think I was twelve or something like that.

By Mr. Walscheid:

Q. Were you in the south during the war between the south and the north? A. No, sir.

By the Vice-Chancellor:

Q. Were you alive during the civil war? A. Yes, sir.

Q. Apparently there is some mistake here. You certainly must be more than fifty-four or fifty-five years of age. What makes you say you are fifty-four? A. I understand I am. I spoke to my sister and she said, "You are fifty-four or fifty-five years old."

Q. What business have you been engaged in for the last forty years? A. I am in the marble business—granite business.

Q. How long were you in that business? A. About forty years.

Q. Were you in any business in the south? A. In the railroad business.

Q. What was your business there? You told me you were only twelve years of age when you came to New York. A. I went back. I said when I first came here.

Vice-Chancellor: I am convinced there is something wrong here.

By Mr. Walscheid:

Q. Whom do you live with? A. My sister.
Q. What's her name? A. Mary J. Whaley.
Q. Is she older than you are? A. Yes, sir.
Q. What year was she born in? A. I don't know.

By the Vice-Chancellor:

Q. How much older is she than you? A. About ten years older.

By Mr. Walscheid:

Q. Do you know Doctor McKee? A. I do.
Q. Do you know Mrs. McKee? A. Yes, sir.
Q. When did you first meet them? A. In 1920.
Q. Where did you first meet them? A. At 522 West 230th Street.
Q. Where you now live? A. Yes, sir.
Q. Your sister at that time bought the house is that it? A. Yes, sir.
Q. Do you remember what month that was in 1920? A. I think in September.
Q. Now after that getting down to 1925 did you see Mrs. McKee in 1925? A. I did.
Q. How did you come to see her in 1925? A. She came to the house.

Q. What did she say? A. She said she had left the doctor, that is, Doctor McKee.

By the Vice-Chancellor:

Q. How many years ago do you say she came to your house? A. About five years ago.

Q. What year are we in now? A. We are in 1929.

By Mr. Walscheid:

Q. She said she had left the doctor. Did she say anything else at that time? A. That's all.

Q. She visited you at that time with your sister? A. Yes.

Q. Subsequent to that meeting when she said she left the doctor did you see her again? A. I met her several times.

Q. In 1925? A. Yes.

By the Vice-Chancellor:

Q. How do you know you met her in 1925 several times? A. Well, I saw her on the street.

Q. How do you know it was 1925 you met her on the street? A. Well, because that was the date she was there.

Q. You have not told us the date she was there. You said you met her other dates in 1925? A. She came down several times. She belonged to some club and she came down after the club was over to see the sister.

Q. So you met her in the house and not the street? A. I met her on the street too.

Q. How do you fix 1925? A. That was the date she came there and said she left the doctor.

Q. That was on one occasion. Had she visited your sister's house before that occasion when she came there and said she left the doctor? A. Oh, yes.

Q. How many times? Occasionally or frequently? A. Occasionally.

Q. Did she call at that house after she made that statement? A. Yes, sir.

By Mr. Walscheid:

Q. After she made the statement did you have occasion to visit her at any home that she was living in? A. I did.

Q. Where did you visit her? A. On West 71st Street.

Q. Was she living there alone? A. I presume so.

By the Vice-Chancellor:

Q. Who did you find there if anybody? A. Nobody.

By Mr. Walscheid:

Q. How did you happen to go there? A. She 'phoned me to go down there.

By the Vice-Chancellor:

Q. What did she say to you over the 'phone? A. "Won't you please come down; I want to see you."

Q. Did you ask her what it was she wanted to see you about? A. No, sir.

Q. She didn't tell you? A. Not over the 'phone.

By Mr. Walscheid:

Q. And you went down. Can you tell me about when that was, in what year? A. I think it was in 1926.

By the Vice-Chancellor:

Q. What makes you think it was in 1926? A. It was afterwards.

Q. 1927 is afterwards too? A. I presume it was. It wasn't long after.

By Mr. Walscheid:

Q. Long after what? A. After she had been in the house and left the doctor.

By the Vice-Chancellor:

Q. That you say was Sepember, 1925? A. Yes.

Q. If it wasn't long afterwards was it during the months of November or December, 1925? A. Yes, it wasn't long after that.

By Mr. Walscheid:

Q. When you went to see her on 71st Street did she then tell you what she wanted? A. It was in regard to meeting the doctor.

Q. What did she say to you? A. She said that she wanted the doctor to give her so much money.

Q. How much money? A. She said he was making $100,000 and she wanted at least ten or twelve thousand dollars a year.

Q. What else did she say? A. That was about all. I said, "Here, why don't you meet the doctor

and settle it and get through with it?" and she said she would.

Q. Did she ask you at the meeting? A. She asked me to see the doctor and see if he wouldn't come there. I said, "Certainly."

Q. Where? A. At Columbia College to go home. I saw the doctor and he said he would.

By the Vice-Chancellor:

Q. You say you went over there and she asked you if you would see the doctor for her? A. Yes.

By Mr. Walscheid:

Q. About what? A. About a settlement and to stop the suit.

Q. Will you try and tell us as best you can what the conversation was between you and Mrs. McKee? A. She said Doctor McKee had so much money and she wanted half of it.

By the Vice-Chancellor:

Q. You said a moment ago he earned $100,000 a year and she wanted $10,000? A. She wanted $10,000 for her support.

Q. Now you said he had a lot of money and she wanted half of that? A. She said that also.

By Mr. Walscheid:

Q. Then she said she wanted you to see the doctor? A. To arrange a meeting.

Q. About what? A. About a settlement.

Q. A settlement of what?

By the Vice-Chancellor:

Q. Do you remember what she said? A. She wanted to make some arrangement about money matters—maintenance.

By Mr. Walscheid:

Q. Maintenance or money matters? A. Yes.
Q. Did you go and see the doctor? A. I did.
Q. What did you say to the doctor? A. I told him what she said. He said he would be glad to have a meeting.

By the Vice-Chancellor:

Q. Did you report back to Mrs. McKee? A. Yes.
Q. What did you say to her? A. I told her he said he would be there. I forget what date but I think it was Sunday.

By Mr. Walscheid:

Q. What if anything did she say to that? A. She said "All right."
Q. That's all that happened at that conference on the second trip back? A. Yes, sir.
Q. On the second time when you went back to her where did you go? Where was she then living? A. I didn't go back; I 'phoned her.
Q. Oh, you 'phoned her! That is my error. You 'phoned her the result of your conference. And after that this first visit to West 71st Street did you go again to Mrs. McKee's place of residence? A. No, sir; I 'phoned her I told you.
Q. But you didn't go back there again? A. No, sir.

Q. Was there ever any occasion when Mrs. McKee and Doctor McKee met at your house at 520 West 230th Street? A. That's the only time they met there.

By the Vice-Chancellor:

Q. Do you remember an occasion when they met there? A. Yes, sir.

By Mr. Walscheid:

Q. Do you remember when that was; what year and what month? A. That was the last of 1925.

Q. You think that was the last of 1925? A. Yes, sir.

By the Vice-Chancellor:

Q. What occurred there? A. The conversation?

Q. Yes. Who was present? A. My sister, Doctor McKee and Mrs. McKee and myself.

Q. Tell us the conversation? A. She was there and he came in and said "How do you do Mary," and she spoke to him. Then he spoke to her and said "Why not come up to live together? I have a home over in New Jersey and we can live there." She says "I won't do it." Then she talked about finances and one thing another, I don't remember all the conversation, and the doctor seemed to be put out about it.

Q. Tell us what he said? A. He left and I met him outside and I said "Doctor, that ain't the right way to leave us," and he said "I am so upset; excuse me." Then he came back and the sister said to Mrs. McKee "Why don't you do as the doctor said?", and she said "I won't do it; I don't believe a word he says."

Q. Was your sister there when the doctor asked Mrs. McKee to come and live with him? A. She was.

Cross Examination by Mr. Blumberg:

Q. When did you see Doctor McKee last? A. I saw him the last time—

Vice-Chancellor: Before today.

(Witness continuing) I saw him the other day—a couple of days ago when he asked me to come over here. He asked me if I would come here and I said I would be glad to.

Q. Was Doctor McKee up to your house? A. Yes. I didn't see him at the house.

By the Vice-Chancellor:

Q. Where did you see him to have him ask you come over here? A. I saw him in think—

Q. You seem to be thinking pretty hard. It is only a few days ago. Can't you tell us where you saw him? A. I saw him at Columbia College.

Q. Why did it take you all that time? A. I want to be exact.

Q. Why did you go to Columbia College? Did he send for you? A. My sister says the doctor wants to see me and I went down.

Q. This is Wednesday. Can you tell me what date it was? A. I think Monday of this week.

Q. Just two days ago? A. Yes.

Q. What time of the day did you see him? A. Between eleven and twelve o'clock.

By Mr. Blumberg:

Q. It took you that long to remember it was Monday? A. Oh, no.

Mr. Walscheid: I object to that.
Vice-Chancellor: Go ahead.

Q. It took you that long—

Vice-Chancellor: There is nothing on the record to show how long it was.
Mr. Blumberg: I will withdraw that.

Q. You went down to Columbia University and saw Doctor McKee? A. To see what he wanted.
Q. What did he want? A. He wanted to know if I would come over here yesterday and I said I would.

By the Vice-Chancellor:

Q. Did he tell you what he wanted you to come here for? A. As a witness.
Q. Did you talk matters over? A. No, sir.
Q. What did he say? A. He said "Will you come over Mr. Whaley?" and I said "I will be glad to."
Q. He didn't tell you what you were expected to testify to? A. No.
Q. You didn't know when you came here what you were expected to testify to? A. No.
Q. Have you been working lately? A. I work all the time.
Q. Where is your place of business? A. 522 West 230th Street.

By Mr. Blumberg:

Q. That is where your business is? A. Yes.
Q. What is your business? A. Granite—marble contractor.

By the Vice-Chancellor:

Q. Do you do business there? A. Yes.

Q. Have people come there to see you? A. I do.

Q. Have you been an active business man lately? A. Yes, sir.

Q. What contracts if any have you now in operation? A. I have no contracts. I am now connected with an apartment house that I am looking after for the firm of Knox & Degnan.

Q. What do you do there? A. I look after the property and collect the rents.

Q. So you are not doing any business in the granite line? A. It is not the season for it.

Q. How long ago did you have any dealings in the granite business? A. About a year and a half ago.

Q. How long have you been in charge of this apartment house? A. Since May.

Q. Before that what did you do? A. I had another apartment house for another attorney.

Q. You are what is called a superintendent? A. No, I am the agent. I employ a superintendent.

Q. You employ a superintendent? A. Yes.

By Mr. Blumberg:

Q. Who are you agent for? A. I just told you —Knox & Degnan.

Q. You say Doctor McKee didn't tell you what he wanted you to testify to today? A. He asked me to come over here as a witness and tell what the conversation was in the house.

By the Vice-Chancellor:

Q. He didn't ask you if you remembered the conversation? A. He did not.

Q. Did he ask you if you remember who was present at that conference? A. He did not. He knew my sister was there.

Q. Did he tell you he knew your sister was there? A. He did not.

By Mr. Blumberg:

Q. Did he give you the address of the court room? A. Yes; I was over here before.

By the Vice-Chancellor:

Q. During one of these days when the case was on? A. Yes.

By Mr. Blumberg:

Q. Did he tell you when you were here before what you were to testify to? A. No.

Q. He never told you what you were to testify to? A. No.

Q. Did you ever give Doctor McKee a statement? A. I did not.

Q. Did you ever give a statement for him? A. I did not.

Q. Did you ever sign an affidavit for him? A. I did not.

Q. You never signed an affidavit for him? A. I did not.

By the Vice-Chancellor:

Q. In any of the troubles between them did you sign an affidavit? A. Not for Doctor McKee.

Q. At anytime? A. In the separation suit in New York I signed an affidavit.

By Mr. Blumberg:

Q. You did sign an affidavit in the separation suit in New York? A. Yes.

Q. You signed it for Mrs. McKee? A. Yes.

Q. Did you sign it before the conversation in the house in 1925 or afterwards? A. That was before.

Q. It was before the conference of 1925? A. I think so, yes.

Q. Do you know? A. I am not positive whether I did or not.

Q. You are not positive about the date? A. No, sir.

Q. Are you positive about the date in November, 1925?

Mr. Walscheid: He hasn't set a date.

Mr. Blumberg: I will withdraw.

Q. Do you know the date the conference took place at your home? A. 1925.

By the Vice-Chancellor:

Q. What month? A. I think it was in the fall. I am not positive.

Q. You did mention September. What did that relate to? A. It was about September so far as I can remember.

By Mr. Blumberg:

Q. September 1925 so far as you can remember? A. I just told you that.

Q. You say that you went to Mrs. McKee's house when she telephoned you to come down? A. To the apartment where she lived.

Q. Is that what you testified to?

Vice-Chancellor: Don't ask him that.

Q. Isn't it the fact you went down to Mrs. McKee's apartment at her request? A. Yes.

Q. Are you sure it was at her request? A. How would I know she lived there or anything about it if she didn't ask me?

Q. Didn't Doctor McKee ask you to go down there? A. He did not.

Q. Mrs. McKee telephoned to you and said my address is so and so and I want you to come down here and see me? A. Yes, she did.

Q. Had you seen her before that time? A. Why, yes, she had been up to the house before that time.

Q. Did she give you her address when she came up to your house? A. She did not.

Q. She never gave you any address? A. I tell you she gave it to me over the 'phone.

Q. And you went down to Mrs. McKee's house and she said "I want ten thousand dollars", is that it?

Mr. Walscheid: I object. He didn't say that.

A. She didn't come out and say "I want ten thousand dollars."

Q. What was the conversation? A. She said she would be glad to meet Doctor McKee. I said "All right, I can arrange it and you can come to the house at anytime. You are welcome to come." She said the doctor made so much money and she wanted ten or twelve thousand a year to live on.

By the Vice-Chancellor:

Q. How much did she say he earned? A. From fifty to one hundred thousand dollars.

Q. And she told you she wanted ten or twelve thousand a year to live on? A. For living expenses. I said "My gracious, he pays all the children's schooling and I don't see how you can get all that. It must cost him five or six thousand to send the girl to Bryn Mawr."

Q. What else was said? A. She said she wanted that much money and she wanted to handle the money. I said he pays the bills and he ought to be the one to handle that money.

Q. What else was said? A. I don't remember any other conversation except that I was trying to see the doctor and arrange a meeting at anytime that was agreeable.

Q. Was anything said at that conference about her wanting one-half of the doctor's earnings or income? A. She said she wanted half of what he made.

Q. Then she made both statements. She wanted ten or twelve thousand and half of the fifty or one hundred thousand he earned? A. She said she was entitled to one-half of what he made and she proposed to have it.

By Mr. Blumberg:

Q. How much is one-half of fifty thousand dollars? A. One-half of fifty thousand is twenty-five, isn't it?

Q. Didn't she say she wanted ten or twelve thousand dollars? A. I told you she wanted that for living expenses.

By the Vice-Chancellor:

Q. Do you still say you are 54 years of age? A. I am 54 or 55.

Q. And you are not 77? A. No, sir.

Q. And yet you say you were born in 1852? A. You can figure—I don't know exactly.

Q. But you said so. Is it the fact or is it not? A. You can change it.

Q. You stated here you were born in 1852? A. I was born prior to that.

Q. How much prior to 1852? A. I can figure it.

Q. Your sister told you you were 54 or 55? A. Yes.

Q. But you testified you were born in 1852, you remember that? A. Yes.

Q. You said you were born before the civil war? A. The civil war was going on.

Q. You said you remember it? A. I do remember it.

Q. How old were you during the time the civil war was going on? A. I was a baby.

Q. About how old? A. Four or five years.

By Mr. Blumberg:

Q. Where were you living during the civil war? A. I lived in Philadelphia.

By the Vice-Chancellor:

Q. You were born in the south? A. Yes.

Q. When did you first leave the south to come anywheres north? How old were you? A. Two or three years.

Q. You were living down in the south during the civil war? A. No, I wasn't.

Q. Where were you living? A. I was living in Greeley Park on 21st Street.

Q. You were living in Greeley Park on 21st Street during the civil war? A. Yes.

Q. How old were you then? A. Four or five years.

Q. How long did you live in Greeley Park, New York City, at that time. In other words when did you go to Philadelphia? A. I went to Philadelphia from the south.

Q. You went to Philadelphia from the south? A. Yes.

Q. And from Philadelphia you went to Greeley Park, New York? A. Yes.

By Mr. Blumberg:

Q. Your sister told you you were 55 years old? A. She did! She did!

Q. When did she tell you that? A. Sometime ago.

By the Vice-Chancellor:

Q. How many years ago did she tell you that? A. About two or three months ago.

Q. How did she come to tell you that? Was there any dispute about your age? A. No, we were talking about property—a personal matter.

By Mr. Blumberg:

Q. She didn't tell you you were 65 did she? A. No.

By the Vice-Chancellor:

Q. Mr. Whaley if you were born in 1852— A. 1862. I have forgotten.

Q. If you were born in 1852 you would be 77 years of age. If you were born in 1862 you would be 67 years of age, and if you were living during

the civil war you would be more than 54 years old. Does that refresh your recollection as to how old you were? A. I remember I was a youngster when the civil war closed. It is possibly 1860 or 1862 I was born.

Q. It was possibly 1860 or 1862 you were born? A. Yes.

By Mr. Blumberg:

Q. Did you say you saw Doctor McKee after you had spoken to Mrs. McKee? A. I did.

Q. What did you tell him? A. I told him Mrs. McKee would be glad to meet him at the house.

By the Vice-Chancellor:

Q. What did you tell him? A. What she said.

Q. Tell us what you told him? A. That's about all.

Q. But what was it? A. I went down there and said Mrs. McKee would come to the house anytime.

Q. Her house? A. No, my house.

Q. What did Mr. McKee say? A. He said "All right, I will be there Sunday."

Q. Then you telephoned to Mrs. McKee and told her he would be there? A. Yes.

Q. Did they meet that Sunday? A. I don't remember whether it was Sunday or not.

By Mr. Blumberg:

Q. You say Doctor McKee and told him Mrs. McKee said he was earning fifty to one hundred thousand a year? A. Yes.

Q. What did he say? A. He laughed at it.

Q. Did he say how much he was earning? A. He

did not. He said he was not making any such money as that.

Q. Did you say she wanted ten or twelve thousand a year? A. Yes, I did.

Q. What did he say to that? A. He said he wasn't making it. He said she had as much money as he did.

Q. Did he tell you he was willing to pay her $9,000 a year? A. Yes.

By the Vice-Chancellor:

Q. When did he tell you that? A. During that conversation he said he would give her $9,000. I told her that and she said "No, I wouldn't take $9,000."

By Mr. Blumberg:

Q. Did Mr. McKee tell you about any of his property? A. He did not.

Q. Did he tell you he had any government bonds? A. He did not.

Q. Did he tell you he had $20,000 in government bonds? A. He did not tell me he had $20,000 in government bonds.

Q. Didn't you make an affidavit to that effect? A. He said he had property he couldn't dispose of.

By the ViceChancellor:

Q. Didn't you make an affidavit in which you said he had $20,000 in government bonds? He said he had $10,000 and $20,000.

Q. Did you ever—

Mr. Walscheid: I object to *did he ever.*

Vice-Chancellor: Call his attention to the affidavit.

Mr. Blumberg: Why can't I read a portion of it?

Vice-Chancellor: Read it to him.

Q. Did you ever make a statement to this effect: "I just recall a statement made to me by Doctor McKee a short time ago to the effect he had $20,000 in government bonds and that he had it fixed so she, referring to Mrs. McKee wouldn't get them?"

Mr. Walscheid: I object.

Vice-Chancellor: I will overrule the objection.

A. Mrs. McKee said he had that.

By the Vice-Chancellor:

Q. Your attention is called to a statement made by you and you are asked whether you ever made that statement? A. I don't recall.

Vice-Chancellor: Suppose you show it to him. Counsel is now showing you what purports to be a copy of an affidavit made by you. Look at it and see if that refreshes your recollection.

(Witness continuing): That is what Mrs. McKee said. She told me he had that.

Q. You swore to that paper your attention is being called to? A. I did.

Q. You can read and you read that before you signed it? A. No, I never read that affidavit. It was read to me.

Q. Who was the man that read it to you, or woman? A. Some man in the attorney's office.

Q. Whose office? What attorney? A. Reass I think; her attorney.

Q. You say you signed that in the office of a man named Reass? A. Yes.

By Mr. Blumberg:

Q. You say it was read to you before you signed it? A. He read it.

Vice-Chancellor: If you can prove it was made in some cause offer it in evidence.

Mr. Blumberg: I can't prove it now.

Vice-Chancellor: They may concede it was made.

Mr. Walscheid: No objection.

Vice-Chancellor: Read it into the record.

Mr. Blumberg: "Supreme Court of the State of New York, County of New York. Mary N. McKee plaintiff against Ralph H. McKee defendant. State, City, County of New York, ss.: Harry L. Whaley being duly sworn deposes and says: I live at 520 West 230th Street, Borough of Bronx, New York City, and have lived at that address since September, 1920. At the time when my sister and myself moved in to the above address the parties of this action and their children were living there. They were tenants of the previous owner we having moved into the house after buying it from the landlord. The parties to this action continued to remain on the premises for two weeks after we moved in both families living on the premises for that period. During that time I had ample opportunity to observe the manner of Doctor McKee's conduct towards Mrs. McKee and the way in which he treated

her. I recall distinctly that he compelled her to do all the work herself involved in the packing of furniture and effects of the household and never assisted her in any way nor permitted the children to assist her. I also clearly recall that Doctor McKee did not treat his wife in a considerate manner and that on the contrary I observed he took no notice of her whatsoever. That he treated her like a servant rather than his wife. In fact I distinctly recall an occasion when I observed Doctor McKee strike Mrs. McKee. At that time I was sitting in the living room adjoining the dining room where Doctor and Mrs. McKee were standing and talking near the dining room table about fifteen feet distant from me. I did not hear the subject of their conversation but I observed Doctor McKee slap Mrs. McKee and push her with a blow of considerable force. Mrs. McKee then became very pale. Mrs. McKee then left the room. I just recall a statement made to me by Doctor McKee a short time ago to the effect he had $20,000 in government bonds and that he had it fixed so that she, referring to Mrs. McKee, won't get them. Sworn to before me this 24th day of April, 1926. Harry L. Whaley. Harry Kutz, Notary Public, New York County. County Clerk's No. 274. Registered No. 8955. Certificate filed in Kings County, Kings County Records No. 116. Reg. No. 800. Commission expires March 30, 1928."

Q. You made this affidavit which I have just read for Mrs. McKee, did you not? A. What did you say?

Q. You made this affidavit which I have just read for Mrs. McKee, did you not? A. I did.

Q. Were you paid for making that affidavit? A. I was not.

Q. You were not paid for making that affidavit? A. No, sir.

Vice-Chancellor: Would you expect him to be paid? Did she pay him?

Mr. Blumberg: I don't know.

Q. You said you didn't recall a statement that Doctor McKee made to you he had $20,000 in government bonds? A. When I went to the attorney's office he read this paper over. I was only there a few minutes and I said "Cut that striking portion out." He says "I'll do that", and he says "Anyhow it don't amount to anything. You can refute it anytime."

By the Vice-Chancellor:

Q. You realized you were swearing to that paper? A. I thought he was cutting it out. He said he was.

Q. Why didn't you insist upon him cutting it out? A. I wish I had.

Q. Did you ask him to cut the $20,000 government bonds out? A. No.

Q. It that statement true he had $20,000 in government bonds? A. He said he had around $20,000.

Q. Did he say he had it so fixed that Mrs. McKee couldn't get it? A. I don't know. I don't remember that.

Q. Do you recall the affidavit just read to you? A. I do.

By Mr. Blumberg:

Q. Who told you to come down to the office and sign this affidavit? A. Mrs. McKee.

Q. Did you give her a statement before you signed the affidavit? A. I did not.

Vice-Chancellor: What's the difference? Let the other side refute it if they can. If you want to minimize the effect of it go ahead.

Mr. Blumberg: He said he asked the attorney to strike it out. If he did there would be nothing left only a half a page.

Vice-Chancellor: When a person can read and will not read and when he sees a matter of that kind in the affidavit and he sees it is not proper and he does not require it to be stricken out I am going to take cognizance of it.

Q. You also went to court did you not, the Court House in 1927? A. Why, yes, I was there. I was subpoaened there.

Q. Who subpoaened you Mr. or Mrs. McKee? A. It came from her attorneys.

Q. And you went down to the Court House? A. Yes.

Q. Did you write a letter to Mrs. McKee after the case was settled in court? A. I don't think so. I have no recollection of it.

Vice-Chancellor: If you have a letter show it to him.

Q. Is this your letter Mr. Whaley? A. Yes, sir.

Q. This is the letter in which you told her—

Vice-Chancellor: Why not offer the letter.

Mr. Blumberg: I offer the letter.

Mr. Walscheid: No objection.

(Letter marked Exhibit D 4 in evidence.)

Mr. Walscheid: How about the envelope?

Q. This is in your handwriting? A. Yes.
Q. This is the envelope? A. Yes.

Mr. Blumberg: I offer the envelope.
(Envelope marked Exhibit D 4A in evidence.)
Mr. Blumberg: I will read the letter.
(Counsel reads letter.)

Q. Mrs. McKee came to your house in 1925 did she not? A. Yes, sir.
Q. Doctor McKee was there? A. Yes.
Q. Who came first? A. Mrs. McKee was there first.
Q. And Doctor McKee came later? A. Yes.
Q. Do you recall a conversation that took place that day? A. I do.
Q. Have you refreshed your memory any about it? A. I related just exactly what I related before. He said "How do you do Mary", when he came in.

By the Vice-Chancellor:

Q. Tell the rest of it? A. He said to her—
Q. What did she say? A. She acknowledged it and said "How do you do." They talked about general things and finally he said to her "Mary, why don't you come back and live with me? I have a home over in New Jersey", and she said "I won't do it."
Q. Anything else that you remember occurred there that day? A. Nothing of any interest. They talked about money matter and he went out.

By Mr. Blumberg:

Q. You say he went out? A. He left.
Q. You stated before how he left? A. He picked

up his suitcase—No, not the suitcase but brief case and left hurriedly. I want after him and said "That is not the way to leave Doctor." When I came back my sister said "Why don't you do what Doctor McKee wanted you to do"?, and she said, "No, I won't do it. I don't believe a word he said."

Q. Did Doctor McKee say to Mrs. McKee "I have asked you to come back and live with me"? A. He didn't say that.

Q. What was he talking about before he asked her to come back and live with him? A. How the children were or something like that. I don't just remember that.

Q. But you remember that part of it? A. Yes, I remember that part of it distinctly.

Q. And you remember the words "Mary, come back and live with me"? A. Yes.

Q. Did he speak about his home in New Jersey? A. He said he had a home over in New Jersey and he said to come over to New Jersey.

Q. He said he had a home in New Jersey in 1925?

Vice-Chancellor: He said that.

Q. Did he tell you he had a one room apartment in New Jersey? A. He did not.

Q. Did he tell you how big an apartment he had in New Jersey? A. No.

By the Vice-Chancellor:

Q. Did he tell you where he was living in New Jersey? A. He did not. He was talking to her.

Q. Tell us what he said about her coming to live with him? A. He said "Mary, won't you come back and live with me?" He said, "I have a home in New Jersey," and she said, "No, I will not."

Q. Anything else said? A. "No, I will not."

By Mr. Blumberg:

Q. Was that when Doctor McKee walked out? A. Why, yes.

Q. Was that the moment he walked out? A. No; he stayed there a little while.

By the Vice-Chancellor:

Q. You testified before when you went out after him and said that is not a nice way to leave us he said something about being upset? A. He was upset, I presume.

Q. That's what he told you? A. Yes.

By Mr. Blumberg:

Q. He didn't come back to the house, did he? A. No.

By the Vice-Chancellor:

Q. How long did Mrs. McKee remain in the house after he left? A. About a half an hour.

By Mr. Blumberg:

Q. Didn't you hear Mrs. McKee say, "You have never asked me to come back"? A. No.

Q. You didn't hear that? A. No.

Q. Did you hear him say anything about money? A. He said he spent money on the children.

Q. Did you hear him say he spent $9,000 a year on Mrs. McKee? A. No, he didn't say anything about spending anything on Mrs. McKee.

Q. But you heard the whole conversation? A. I did. I heard the whole conversation.

Q. Were you there? A. I offered to leave the room and they said, "No, stay."

Q. You came to see Mrs. McKee after that, did you not?

Mr. Walscheid: After what?

Mr. Blumberg: After the conference of September, 1925.

A. Where?

Q. At her home? A. Where?

Q. Did you ever go to see Mrs. McKee at her home? A. My sister went down there.

Q. Did you ever go down there? A. No.

Q. You never went to see Mrs. McKee on 71st Street? A. I saw her at Spuyten Duyvil Parkway.

Q. Didn't you visit Mrs. McKee in June, 1928, at Spuyten Duyvil? A. Yes.

Q. You did go there? A. I did.

Q. You didn't say that before? A. I didn't know where you meant whether 71st Street or where. Why didn't you tell me where?

Q. Did you go to her house in Spuyten Duyvil in June of 1928? A. Yes.

Q. Did you speak to her? A. Yes.

Q. What did you tell her? A. I told her there was a man at our house who wanted to know her address.

Q. What did she say? A. She said she didn't know what it could be. I said, "He came there and asked my sister."

By the Vice-Chancellor:

Q. Had you been asked to go there by Doctor McKee? A. No.

Q. How old is your sister do you know? A. A. About ten years older.

Q. How old is she? A. She is seventy odd.

By Mr. Blumberg:

Q. You went to Mrs. McKee's house in June 1928, and you spoke to her? A. Yes.

Q. Didn't Mrs. McKee discuss with you in the presence of her daughter the conversations which you had with her in 1925? A. She did not.

Q. She did not discuss those conversations? A. No, but subsequently she had. She had somebody listening outside to the conversation and knew every word we said there.

Q. When did she tell you that? A. She told me this later in the house.

Q. How much later? A. Well, it is here last September when she cade down there and made these threats.

By the Vice-Chancellor:

Q. What threats? A. She said she would make it hot for me.

Q. Why did she say that? A. I don't know.

Q. What did she say at the time you say she made threats? A. She said the doctor never asked me to come back. I related the conversation as I heard it. She says, "The doctor never asked me to come back," and I said, "He certainly did," and she said, "If you testify to that I will make it hot for you."

Q. Was it after that you went to Spuyten Duyvil? A. No, that was prior to that. This conversation happened here last month in September.

By Mr. Blumberg:

Q. Didn't you discuss in Mrs. McKee's house in June, 1928, the conversation which you had with Mrs. McKee in 1925 in your house? A. I don't

have any recollection of that at all. I told her there was a man who came to the house and wanted to know her address.

By the Vice-Chancellor:

Q. Why didn't you telephone to her? A. I didn't know her 'phone number.

Q. You could have written to her? A. I don't know why I didn't.

Q. How far away from your house was it she was living at that time? A. About four or five blocks.

Q. Spuyten Duyvil you say she lived? A. Yes.

Q. Where did you live at that time? A. 520 West 230th Street. That's all Spuyten Duyvil up there.

By Mr. Blumberg:

Q. And the only thing you recall then about the conversations of 1925 is what you have related? A. Oh, general conversation about the children—how they were getting along at college. How Billy was doing or Margaret.

Q. Are you being paid for coming here today? A. No, sir.

Q. Not being paid for your time? A. I haven't been paid my car fare over here and I don't expect any money for coming over here.

Q. You came over here alone? A. Came alone?

Q. Yes. A. Why, yes. I didn't bring anybody with me.

By the Vice-Chancellor:

Q. Did you come over in the tubes or automobiles or how? A. By the tubes.

Re-direct Examination by Mr. Walscheid:

Q. This affidavit which you signed and which has been read in evidence without exhibit number appears to be dated the 24th day of April, 1926. The conference at which you were present when Mrs. McKee and Doctor McKee met at your house on a Sunday was that before you signed this affidavit or afterwards? A. This was afterwards.

Q. Which was afterwards? A. I signed that. No, that was prior to that.

Q. What was prior? A. The conference.

Q. The conference was prior to the affidavit? A. No, the affidavit was after the conference.

Q. That is your impression of it? A. Yes.

Q. Your sister—is she well? A. She is not.

Q. Has she suffered any physical misfortune recently? A. Yes.

Q, What is it? A. She had a stroke.

Q. Is she laid up in bed? A. No.

Q. How many strokes has she had? A. She had two.

Re-cross Examination by Mr. Blumberg:

Q. When you came to Mrs. McKee's house in June, 1928, didn't you tell her that a man had been up to your house requesting you to sign some papers? A. No; I didn't see the man.

Q. Didn't you tell her you had a conversation with the man? A. No.

Q. Didn't you tell her that a man came up to you and wanted you to be a witness in the case? A. No, sir.

Q. And didn't you tell her that this man wanted you to say that Doctor McKee said, "Come back and live with me?" A. I didn't see the man.

Q. Isn't that what you told Mrs. McKee? A. No.

Q. All you went up there was to tell her what? A. That some one was up there and wanted her address.

Q. Who told you that? A. My sister said that's what the man said that came there.

Q. Didn't the man tell your sister—

Vice-Chancellor: How would he know that?

Q. Didn't your sister say the man wanted to see you? A. No.

Q. Nobody ever came up to see you? A. No.

Q. Except Doctor McKee? A. He didn't come up to see me about the case.

Q. Did you ever meet any man about this case other than Doctor McKee? A. No.

By the Vice-Chancellor:

Q. You went to Mr. Reass' office once or twice? A. Yes.

Q. And you say the man who was there spoke to your sister? A. Yes.

Q. And that was about the case? A. I suppose he was talking about the case.

Mr. Walscheid: I now desire to offer in evidence depositions pursuant to order in New York on July 10, 1929, before Lorenz Brosnam as Commissioner, together with a colloquy between the Commissioner and Mr. Blumberg preceding the examination of the witnesses.

Vice-Chancellor: How can the colloquy be admitted? What is it about?

Mr. Walscheid: About excluding witnesses from the room.

Vice-Chancellor: You have copies of it, Mr. Blumberg?

Mr. Blumberg: I thought at the time the Commissioner shouldn't leave everybody in the room. They heard each other's testimony.

Vice-Chancellor: I don't know whether it is evidential.

Mr. Walscheid: I just offered it because it is part of the proceeding and if I didn't Mr. Blumberg would say why didn't you offer it. I offer it as the first exhibit number—that is the colloquy.

(Marked Exhibit P 174 in evidence.)

Mr. Walscheid: I now offer the deposition of John Roach.

(Marked Exhibit P 175 in evidence.)

Mr. Walscheid: I now offer in evidence the deposition of Dominick Angelotta.

(Marked Exhibit P 176 in evidence.)

Mr. Walscheid: I now offer the deposition of Rose Flynn.

(Marked Exhibit P 177 in evidence.)

Mr. Walscheid: I now offer the deposition of Kate Savage.

(Marked Exhibit P 178 in evidence.)

Mr. Walscheid: I now offer the deposition of Martha Carroll Martin.

(Marked Exhibit P 179 in evidence.)

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RALPH H. McKEE, recalled.

Direct Examination by Mr. Walscheid:

Q. Doctor, on pages 390 and 391 of Mrs. Gibb's testimony, the following questions and answers ap-

pear: "Q. Did you ask Doctor McKee about that trouble? A. He spoke to me about it. Vice-Chancellor: You must tell what you said to Doctor McKee. Don't assume there was trouble. Tell us the conversation. (Witness): A. On the second day I was there, in the evening after dinner, Doctor McKee asked me to listen to the radio. We listened to it for a short time and he shut off the radio and commenced to talk to me about Mrs. McKee. He asked me if Mrs. McKee had asked me to come, and I said no. He asked me if Mrs. McKee had told me why she did not occupy the same bedroom with him and in reply I asked him a question why he did not try to make it pleasant in the home. I told him I had not heard him speak a pleasant word while he was in the house. Then he went on to say that if Mrs. McKee didn't want to live with him as his wife in Illinois he could get a divorce from her, but here in New York he could only get a separation. By the Vice-Chancellor: He told you that? A. He said he did not care for Mrs. McKee—'Mary' he called her. Q. Was that the whole conversation? A. Oh, there were other things." Did you make the above statements to Mrs. Gibbs regarding your getting a divorce or not in Illinois and not in New York? A. I did not.

Q. Did this conversation which I have related to you occur? A. It did not.

Q. Did you at that time or at anytime say to Mrs. Gibb that you did not care for Mary? A. I did not. I had never said such and that was not the truth.

Vice-Chancellor: I will strike out the last part.

Q. On page 398 of Mrs. Gibb's testimony the following questions and answers appear: "Q. What

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did you mean by the usual three dollars? A. That was the daily amount that he gave her. Q. Did you see him give her three dollars daily? A. Sometimes." Did you give Mrs. McKee three dollars daily? A. No, I ordinarily gave her forty or fifty dollars at the beginning of the week, Sunday or Monday morning, and occasionally gave her additional money when she asked for it. Sometimes she asked for one, two or three dollars when she wanted to send the children or a maid for the purchase of something. In that case I would give her what she asked.

Q. On page 404 of Mrs. Gibb's testimony the following questions and answers appear: "Q. And at the same time he told you he did not like Mary? A. Not at that time, but another time he did. Q. So that during your presence there he told you that he wanted her to occupy the same room with him and on another occasion he told you he did not like Mary? A. I don't know whether he said he wanted to occupy the same room. He asked her why she did not." Did you state at any time to Mrs. Gibb that you did not like your wife? A. I did not.

Q. On pages 405-406 of Mrs. Gibb's testimony the following questions and answers appear: "Q. Getting back to what she said to you on your trip in October of 1924. What had she said to you of specific abuses by her husband which you thought justified her in refusing to have intercourse? What are those specific things? A. She told me one time he had thrown her down and she fell against the door-sill and hurt her back and had to be assisted to bed. I think Doctor McKee was one of them and perhaps one of the children. Q. Did she tell you when that had happened? A. It was a long time before that." Is it true, doctor, you had thrown Mrs. McKee down and she fell against

a door-sill and had to be assisted to bed? A. No, it is not true. I never threw her down.

Vice-Chancellor: I will strike the last part out.

Q. Did you ever throw her down? A. I never did.

Q. On page 406 of Mrs. Gibb's testimony the following questions and answers occur: "Q. What other abuses did she complain of? A. One time he slapped her on one side of the face. Q. How long before? A. I just don't remember. By the Vice-Chancellor: Q. These are two abuses she mentioned to you? A. Yes. By Mr. Walscheid: Q. What else did she tell you? A. I can't remember; there were so many times. Q. If there are you ought to remember them? A. He struck her repeatedly." Is it true that at one time you slapped Mrs. McKee on one side of the face? A. No, it is not true.

Q. Did you ever strike her? A. I did not.

Vice-Chancellor: Suppose we take a recess until two o'clock?

Mr. Walscheid: I would like to put Mr. McNulty on before we adjourn for recess.

Vice-Chancellor: All right.

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THOMAS McNULTY, being sworn.

Direct Examination by Mr. Walscheid:

Q. Mr. McNulty, where do you live? A. I live at 500 Garfield Avenue, Jersey City.

Q. And you are by profession an attorney and counsellor at law? A. I am.

Q. Practicing as a member of the Bar in the State of New Jersey? A. Yes, sir.

Q. And you are now solicitor of record in this case? A. I am.

By the Vice-Chancellor:

Q. Whom did you succeed as solicitor? A. I succeeded Mr. John Milton.

By Mr. Walscheid:

Q. When did you succeed—the approximate date? A. I couldn't say.

Q. In November, 1927, did you accompany Mr. Morse on a visit to Mrs. McKee's apartment in Spuyten Duyvil? A. I did.

Q. At that time you were not the solicitor of record in this case? A. I was not.

By the Vice-Chancellor:

Q. But you were associated with Mr. Milton? A. Yes, I was associated with Mr. John Milton and went there representing him.

By Mr. Walscheid:

Q. For what purpose did you go at that time? A. In order to comply with the rules governing proof of inquiry as to the defendant. I had talked to Doctor McKee and ascertained from him that he had no personal knowledge of the residence of his wife. I then asked him if he could secure somebody who knew Mrs. McKee and who knew him and who could personally identify Mrs. McKee. I said I wanted that man to introduce me to Mrs. McKee so I could give her notice of the pendency of the suit.

Q. And as a result of the conversation you met Mr. Morse? A. Correct.

Q. And as a result of that you and Mr. Morse went to Mrs. McKee's apartment and met her there? A. Yes.

Q. During the time that you were there with Mr. Morse was there anytime when Mrs. McKee and Mr. Morse were out of your sight together? A. No, sir.

Q. During that conversation did Mrs. McKee say to Mr. Morse "When you came to our house the first of October you knew before that that Mr. McKee was going to bring a suit for divorce? He did not answer. I, Mrs. McKee speaking, again asked him if he knew when he was at our house before whether Doctor McKee was going to start suit for divorce and he said yes." Did any such conversation take place between them? A. She referred during the course of the conversation to a visit that Mr. Morse made sometime before, as I remember in October 1924, but she said nothing whatever with reference to any divorce or as to whether or not there would be a divorce. What she did say if I recall it with reference to October 1924 was that "When you visited us in 1924 Doctor McKee had invited you to dinner without telling me anything about it and when you came there the cupboard was bare. We didn't have anything to eat in the house." Morse then expressed his embarrassment at being there.

By the Vice-Chancellor:

Q. What did he say? A. He said "It is very embarrassing for me to come here on an occasion like this, but my purpose in coming here is simply to introduce Mr. McNulty to you," and he said he didn't care to be involved in the controversy.

Q. What about the rest of the conversation? A. Perhaps I ought to relate it in my own way.

By Mr. Walscheid:

Q. I am asking you to tell me whether or not the conversation which I have related to you and which Mrs. McKee has related on the stand did occur? A. It did not.

Q. Mrs. McKee said: "I again asked him, Morse, whether he knew when he was at our house before whether Doctor McKee was going to start suit for divorce and he said yes." Did any such conversation occur? A. It did not.

Cross Examination by Mr. Blumberg:

Q. You say that Doctor McKee told you he had no personal knowledge of Mrs. McKee's address? A. He did.

Q. Did he tell you that he thought Mrs. McKee lived in Spuyten Duyvil? A. He told me he knew where she lived but from my examination of him I got the impression he had never been there personally.

By the Vice-Chancellor:

Q. You testified he had no personal knowledge? A. I think it is a conclusion on my part when I asked him. I mean by that he didnt 'know as a fact.

By Mr. Blumberg:

Q. Did he tell you he had written to that address in Spuyten Duyvil? A. I didn't ask him.

Q. Did he give you any address in Spuyten Duyvil? A. Yes.

By the Vice-Chancellor:

Q. How did he come to give you that address? A. In response to my inquiry.

Q. You said in response to your inquiry he told you he had no personal knowledge? A. I meant by that he had never seen Mrs. McKee there. I asked him whether he had ever seen Mrs. McKee at that address in Spuyten Duyvil and as I recall it he said no.

Q. Did he tell you he had communicated with Mrs. McKee by 'phone at that address? A. I don't recall.

Q. Did you ever ask him whether he wrote a letter addressed to her at that address? A. I don't recall.

By Mr. Blumberg:

Q. Did you ask him whether he had spoken to her at all the previous month? A. No, not at that time. My attention was simply directed to find out whether he had ever seen Mrs. McKee there at that address. He told me he hadn't.

Q. Did he tell you Mrs. McKee told him it was the address? A. He told me what the address was. How he ascertained it I don't know.

By the Vice-Chancellor:

Q. Isn't it the fact you asked him "Do you know the whereabouts or place of residence of your wife"? Did you ask him that question? A. He had told me where she lived 2727 Spuyten Duyvil Parkway, I think that is the number. My question was "Have you ever seen Mrs. McKee at that address?", and he said "No, I have never been there," or at least had never seen her there.

Q. What was it he had never been there or had never seen her there? A. He had never seen her there.

By Mr. Blumberg:

Q. Did you have any papers to serve on Mrs. McKee when you called there? A. I don't believe I did. I said the purpose of my visit was to give her notice of the pendency of the suit. She asked me who represented Mr. McKee and I told her Mr. John Milton a lawyer at No. 1 Exchange Place, Jersey City. She asked me what she should do about the matter and I told her she should take it up with her lawyer. She said she had not been served with any papers and I said "You will be in due time." She asked me again what she should do and I said to advise your lawyers there has been a suit started in New Jersey.

Q. The only notice you had given her at that time was a verbal one? A. Thats' all.

Q. A gratuitous notice upon your part? A. No.

Vice-Chancellor: I don't know what that word gratuitous means. The rules require the solicitor having a divorce case in charge where it is said the address of a person is not definitely known to make some inquiry and make an affidavit of what inquiry was made.

Mr. Blumberg: Therefore I said the giving of the notice was gratuitous. All he went there was to say what was told.

Witness: In addition I inquired of her as to her age, residence and occupation.

By the Vice-Chancellor:

Q. What did she tell you was her age? A. If I remember fifty-three.

Q. What did she tell you was her occupation? A. Housewife—Had no business.

Q. She had no hesitancy in telling her age at all? A. I don't recall she did.

Q. Are you sure she told her age or Doctor McKee? A. I am quite sure she told me. I think I may have known it from Doctor McKee.

Q. And in addition she told you? A. I am sure.

Q. You testified you asked her for her age, residence and occupation and she told you? A. Yes.

Q. It is quite uncommon for women to be so free in telling their age. I am asking you whether she told you or you got it from Doctor McKee? A. I don't recall there was any reluctancy.

Q. Are you sure she gave you her age? A. I am sure she did, her age, residence and occupation. That was the purpose of my visit.

By Mr. Blumberg:

Q. Did she tell you her age was 53? A. I may be mistaken about that. The thing happened two years ago. My life in the meantime has been pretty busy.

Q. Did she say she was 49? A. I gave you my best recollection.

Q. How long a time were you up there? A. Not very long.

Q. About fifteen minutes? A. Yes. I left the taxi-cab standing outside. All told perhaps ten minutes.

Q. There is no doubt Mrs. McKee and Mr. Morse had a long conversation about the October visit? A. It wasn't a long conversation. Mr. Morse rang the bell and some other woman came to the door. She apparently lived on the ground floor. Mr. Morse told her we would like to see Mrs. McKee

and she called upstairs for Mrs. McKee. Mrs. McKee came down and Mr. Morse introduced me to her on the porch or on the lower floor. We asked whether we could see her privately and we went upstairs. We went into a front room as I remember it and Mrs. McKee stood up facing the two of us. He was over to my left maybe two or three feet away. After I had concluded my inquiry then she began to speak to Mr. Morse in my presence. That is when the rest of the conversation took place.

Q. You say Mrs. McKee came down and opened the door? A. No.

Q. Some other lady opened the door. A. Yes; some other lady opened the door.

Vice-Chancellor: We will now take a recess until two o'clock.

Mr. Walscheid: I wish to state to your honor that I have another engagement for this afternoon and Mr. McNulty will continue the examination of Doctor McKee.

Vice-Chancellor: All right.

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AFTERNOON SESSION

RALPH H. McKEE, Recalled.

Direct Examination Continued by Mr. McNulty:

Q. On page 416 of Mrs. Gibb's testimony the following questions and answers occur: "Q. When was the time? A. He hurt her back and hips. That the reason for the bandages. Q. How? A. I understood from her that he jumped on her. Q. Did she tell you why that event took place? A. No." Now Doctor McKee did you hurt the back and hips of Mrs. McKee? A. I did not.

Q. At anytime? A. I did not at anytime.

Q. Did you jump on Mrs. McKee? A. I did not.

Q. At anytime? A. At no time.

Q. On page 417 of Mrs. Gibb's testimony the following questions and answers occur: "Q. I am speaking about anything, whether physical or mental. What had Mr. McKee done while you were there which you might have considered as cruelty? A. While I was there he did not want her to go and see the children although he went at different times." Were you unwilling to have Mrs. McKee visit the children? A. I was not.

Q. On the occasion of Mrs. Gibb's visit? A. I was not.

Q. Or at anytime? A. Or at any other time. In fact the children came to visit us during Mrs. Gibb's visit.

Q. On page 420 Mrs. Gibb's testimony the following questions and answers occur: "Q. What next was said between you? A. He said if Mrs. McKee would not live with him as a wife according to Illinois or New Jersey he could obtain a divorce for that, but it seemed in New York State he could only get a separation. Q. What else? A. That's about all I remember. I don't think there was very much more; when he saw I didn't sympathize he subsisted." Did you have any such conversation with Mrs. Gibbs? A. I did not.

On page 477 of the testimony of Helen Noyes the following questions and answers appear relative to Christmas 1922 and 1923: "Q. You say on this occasion without any provocation he came out from this room and set upon her and scratched her face? A. As he passed this door he scratched her. She was standing in the archway. Q. And walked by her and scratched her face in the way you indicated and said nothing to her? A. I don't recall

whether he said anything." Did you scratch Mrs. McKee on the face? A. I did not.

Q. At the time indicated or at any other time? A. Not at any time.

Q. On page 481 of the testimony of Helen Noyes the following questions and answers appear: "Q. What did you observe there? A. Many times I heard Mrs. McKee ask questions and heard Mr. McKee say to shut up that he was talking to the children and she should not interfere. That was a very constant thing. It was a constant occurrence. Q. Anything else that you observed while you were at Spuyten Duyvil at which you think Mrs. McKee might feel aggrieved? A. I remember one time my mother had written a letter, some of it addressed to Mrs. McKee. I heard Mrs. McKee ask to be allowed to read the letter and he refused to let her see it at all." Were you in the habit of telling Mrs. McKee to shut up when you were talking with the children? A. I was not.

Q. And she should not interfere? A. I did not make any such statements.

Q. Did Mrs. McKee ask to be allowed to read a letter from her mother and did you refuse to let her see it? A. No such occurrence took place. As a matter of fact her mother wrote to her.

Mr. Blumberg: I object.

Vice-Chancellor: He has answered it. I will strike the last part out about the matter of fact.

Q. On pages 496 and 497 of Mrs. Hooker's testimony I call your attention to the following questions and answers: "Q. What address did you call up? A. 39 Claremont Avenue. I think I called the telephone number and a Mrs. Martin answered and said— Q. Don't tell us what she said. A. I called

the second time and Professor McKee answered. Q. What did you say to Professor McKee? A. I jollied him and said 'Whose apartment is that?' I said 'I thought you lived there', and he said 'No.' I said 'Where is Mrs. McKee?', and he said 'Visiting her sister', and he gave me the telephone number of her hotel down on West End Avenue—the Colonial. By Mr. Walscheid: Q. The first time you spoke to Doctor McKee he didn't tell you he had separated from his wife? A. Doctor McKee never told me. Q. On that occasion he didn't tell you? A. No. Q. He told you she was visiting her sister? A. No, I inferred that. Q. You said he told you that. Now you want to change that, do you? A. It is all the same. Q. Did he say she was visiting her sister? A. I would say not; I would say she was with her sister." Did you, Doctor, talk to Mrs. Hooker over the telephone from the apartment 39 Claremont Avenue? A. I did not from the apartment 39 Claremont Avenue. I did from my office in the spring of 1925.

Q. Where was your office at that time? A. At Columbia University.

Q. Pages 515 and 516 Mrs. Tildsley was asked and testified as follows: "Q. Tell us what took place at the Faculty Club? A. Mr. McKee had invited us to see the new Faculty Club and we were to have an early dinner. I got to the Faculty Club first and then Doctor McKee came in and then presently my husband came in, and then Doctor McKee said 'Let us go to dinner.' I said 'No, we must wait for Mrs. McKee', and he said 'No', and urged us to go upstairs and I felt it was very discourteous. Vice-Chancellor: I can't let you express your thoughts. (Witness continuing): He invited us to go upstairs to dinner and I said 'No, let us wait for Mrs. McKee,' and he said 'No, we will not wait.' We went

up, all three of us. We went in to dinner and while we were eating soup Mrs. McKee and the children came in." What have you to say with respect to that testimony, Doctor? A. Mr. and Mrs. Tildsley had been invited to have dinner with Mrs. McKee and myself and Margaret—Billy, I think, was away—
10 at the Faculty Club. My recollection is that I was there first and waited perhaps twenty minutes or half an hour before the Tildsleys came. Then it was by that time well after 7 o'clock. We waited for a few minutes, and at approximately or just before 7:30 I insisted we go upstairs and take our seats and start the service because otherwise we would not be permitted to get service to eat dinner at the Faculty Club, the hour of closing for dinner being 7:30, and meals would not be served after
20 that hour. We sat down and had soup and then waited for Mrs. McKee and Margaret to come. They came shortly thereafter.

Q. I show you a card and ask you to tell us what that card is? A. This is a card giving the house rules for members of the Faculty Club, which rules were in effect in July, 1924, and which states that dinner is served from 6 to 7:30.

Mr. McNulty: I offer that, if your Honor
30 please.

(Card marked Exhibit P 180 in evidence without objection.)

By the Vice-Chancellor:

Q. What was that portion you were reading? A. Meals will not be served except at these hours.

By Mr. McNulty:

Q. On page 1 of the testimony of Mrs. McKee
40 she was asked and testified as follows with reference

to her sister: "Q. In what bedroom did she sleep? A. We had only two, and she slept in one of them." Is that stated correctly?

Vice-Chancellor: I cannot permit you to put the question in that way.

Mr. McNulty: I will withdraw it.

Q. Did you have only two bedrooms? A. No, we had four bedrooms, three of which were fitted up with a total of four beds each capable of holding two persons or take care of two persons. The bedroom furniture for the fourth room was not used but instead was sent to the Teachers College Country Club.

Q. On page 2 of Mrs. McKee's testimony in which she refers to the trip to Europe she was asked and testified as follows: "Q. What did he say when he told you about his contemplated trip to Europe? A. I was sick in bed and he just came to the bed and said 'I am going to take a short trip to Europe pretty soon', and went out. Q. What did you say? A. I said nothing. I was too ill." Was Mrs. McKee sick in bed when you departed on your trip to Europe? A. She was not at that time nor at any time in October, 1924.

Q. And did you go to her bed and say "I am going to take a short trip to Europe pretty soon"? A. I did not. I told her at the meal table.

Q. On page 2 of Mrs. McKee's testimony she was asked and testified as follows: "Q. What did you say to him on Saturday evening? A. I asked him when he was going to Europe and he said he didn't know exactly. My sister said 'What is Mary going to do while you are gone?', and he said 'I don't know; if she had behaved herself as she should she could have gone with me, but she has refused to sleep with me', and my sister said 'What reason

does she give?', and he said 'She just doesn't want to, I guess. I said 'You know I have told you that if you wished me to live with you as your wife I am perfectly willing to do so, but I will never be the hired thing that you try to make out of me.' Q. Did Doctor McKee say anything to that? A. Yes, he said 'No, you say I don't pay high enough'." Did that conversation occur between you and Mrs. McKee? A. It did not. There was no such conversation.

Q. Did Mrs. McKee's sister say to you "What is Mary going to do while you are gone"? A. No.

Q. And did you say "I don't know; if she had behaved herself as she should she could have gone with me, but she has refused to sleep with me."? A. No, I did not say that to her.

Q. And did Mrs. McKee's sister say to you "What reason does she give"? A. No.

Q. And did you say "She just doesn't want to, I guess."? A. No.

Q. Did Mrs. McKee say to you "You know I have told you that if you wished me to live with you as your wife I am perfectly willing to do so, but I will never be the hired thing that you try to make out of me."? A. She did not say that.

Q. And did you say to her "No, you say I don't pay high enough."? A. I did not.

Q. On page 3 of Mrs. McKee's testimony she was asked and testified as follows: "Q. This was on Saturday night? A. Yes, and I said 'I have had no money for clothes for almost a year, but I am not going to beg you for them.' He didn't say anything more about clothes but he said 'You have been acting up ever since 1914 when we went to Rochester together.' I asked him what he meant by that and he said 'After I had gone to sleep you came in late at night in the hotel with a man.' He gave the

man's name.'" Did you have a conversation with Mrs. McKee in which she said that she had had no money for clothes for almost a year, but she was not going to beg you for them? A. No, I did not. I provided well for the family.

Vice-Chancellor: I will strike that last part out.

Q. Did you say to Mrs. McKee "You have been acting up ever since 1924 when we went to Rochester together."? A. No, the Rochester incident had been forgotten long years before.

Vice-Chancellor: You are merely asked whether you had the conversation. I will strike out the last part.

Mr. Blumberg: The date is wrong; it is 1914.

Witness: Actually it is 1913. There was no chemical meeting in 1914.

Q. Did she ask you what you meant by that statement and did you say "After I had gone to sleep you came in late at night in the hotel with a man.", giving the man's name? A. There was no such conversation in October, 1924.

By the Vice-Chancellor:

Q. Was there any such conversation about the Rochester incident? A. There was at the time we were in Rochester, but not for years afterwards.

By Mr. McNulty:

Q. On page 3 of Mrs. McKee's testimony referring to this Rochester incident she says: "Q. You are asked to tell the conversation? A. I said 'How did I come to come in with him'?, and he said he

didn't know. He said 'I had been asleep a couple of hours and you came in about one o'clock with this man.' Q. Did you gather from his talk at that time that he was imputing anything wrong with this man? A. Yes. Q. If you did why did you say the man's name should not be disclosed? A. I never saw him. The only time I saw him during that week was two days later. I saw him at a public banquet. When I asked 'Why did I come in with him?', Mr. McKee said 'I had been to the smoker and had come home and had been asleep a couple of hours and you came in with him.' I said 'If you were asleep how did you know with whom I came in?', and he said 'He told me about it the next day.' " Did that conversation take place? A. No.

Q. Did you have a conversation with Mrs. McKee about the Rochester incident at the time to which she is referring? A. No.

Q. I presume that was shortly before you went to Europe? A. That's my understanding, in the fall of 1924.

Q. Did you ever accuse Mrs. McKee of any wrong conduct with any man that she met in Rochester? A. No, not an accusation.

By the Vice-Chancellor:

Q. You may not think it was an accusation. What did you refer to? I judge from the way you said that you have something in your mind? A. At the time the incident occurred I told her it wasn't a discreet thing for her to do.

Q. There was a talk about some man other than yourself? A. In Rochester.

By Mr. McNulty:

Q. When did that occur? A. Ten years previous to the time just mentioned.

By the Vice-Chancellor:

Q. It occurred in Rochester? A. Yes.

By Mr. McNulty:

Q. April, 1913? A. April, 1913.

Q. On page 4 of Mrs. McKee's testimony she was asked and testified as follows: "Q. You and your husband had not been living sexually together, had you? A. Not since June." Had you had sexual relations with Mrs. McKee in June? A. No.

Q. When had you last had sexual relations with Mrs. McKee? A. While we were living in the apartment on 180th Street, which time ceased in March, 1920. It was either January or February—

Q. Of what year? A. 1924—in which I had sexual intercourse with her.

Q. On page 4 of Mrs. McKee's testimony she was asked and testified as follows: "Q. Did he tell you what ship he was sailing on? A. I think not. Q. Did you go to the pier with him when he sailed? A. No, I didn't know when he was going." Did you tell Mrs. McKee on what ship you were sailing? A. Yes, I did, as soon as I learned of it.

By the Vice-Chancellor:

Q. How did you tell her, by letter or orally? A. Oh, no; I told her after I came home just as soon as I obtained my ticket. That same evening the moment I came home or at least at the dinner table. That was perhaps over some days before I sailed—perhaps in the last week in October. I gave her both the name of the ship and the time of sailing as well.

By Mr. McNulty:

Q. On page 5 of Mrs. McKee's testimony she was asked and testified as follows: "Q. Did Mr. McKee

leave any funds with you when he went to Europe? A. Several days before he went he gave me one hundred dollars one morning on a Wednesday or Thursday. He gave me one hundred dollars and I said 'What is that for?', and he said 'Anything you want to use it for.', so I said 'Will I pay these bills that are not paid?', and he said 'Just as you think.' I said (meaning Mrs. McKee) 'Well, I will have to pay for Billys' overcoat and fur storage and several things which had been waiting some time.' I did pay for these things. On Saturday morning I told him what I had paid for and gave him an itemized list showing him that there was about thirty-five or forty dollars left. I asked him to pay the current bills, that is, for milk, ice, telephone, electricity, gas, which were the only bills we ran at all. He said I could pay for them. I asked him to leave checks for them and he said he would leave no checks. I said to him 'If he made out the checks to the firms to which they were due that no one else could get them. I could fill in the amounts.' He said he would leave no checks. Then some bills came in the morning's mail and I asked him to leave checks for those and he said 'No'." Did you have a conversation such as Mrs. McKee has related in her testimony?

Mr. Blumberg: I think this has all been gone into on direct.

Vice-Chancellor: He perhaps has some doubt after it and is bringing it up.

Witness: I had no such conversation with her. As a matter of fact—

Vice-Chancellor: Only answer the question.

Q. Were the bills for milk, ice, telephone, electricity and gas to which Mrs. McKee refers the

only bills that you ran at all? Were those bills paid? A. Those bills had been paid and I have checks here which were used in paying them.

By the Vice-Chancellor:

Q. How would you know from those checks what they were used in payment of? A. Because I know the Riverside Ice Company—

Q. The checks were not made payable to the Riverside Ice Company, were they? A. They were.

By Mr. McNulty:

Q. Will you produce them doctor? A. I will.

Q. I show you a check doctor and I ask you what that is for? A. This check is for a newspaper which I subscribed to.

By the Vice-Chancellor:

Q. Do you say doctor these checks in payment of bills were sent directly? A. Sent directly in October for the payment of the September bills. There were no current bills outstanding on the first of November.

By Mr. McNulty:

Q. Did Mrs. McKee ask you to leave checks for the payment of current bills? A. No, I left her cash to pay current bills besides checks.

Q. Did she say "If he made out the checks to the firms to which they were due that no one else could get them. I could fill in the amounts." Did she say that? A. No.

Q. Did you say you would leave no checks? A. No. As a matter of fact I did leave four checks amounting to $250.00 payable to her or to cash.

By the Vice-Chancellor:

Q. But you did not leave checks in payment of the current bills such as telephone and what they are talking about? A. There was no such conversation.

By Mr. McNulty:

Q. Then she further says—"Some bills came in the morning's mail and I asked him to leave checks for those and he said "No". Did she ask you for those and did you say no? A. I had no knowledge of bills coming in the morning's mail.

Vice-Chancellor: It was testified he left some checks for what purpose she thought proper.

Q. At the bottom of page 5 and the top of page 6 Mrs. McKee testified as follows—"Q. Did he just give you one hundred dollars before he sailed to Europe? A. Several days before and there was perhaps thirty-five or forty dollars of that left. I showed him the itemized account of which I had spent the money for, so I had that thirty-five or forty dollars. He said 'I left some checks in the check book', and I found that he had. The first check was dated November 15th more than two weeks later. It was for one hundred dollars. Q. To who was that payable to? A. It was payable either to me or to cash, I don't remember which. I think it was made out in my name. There was a second check dated December 15th for one hundred dollars. There was another check dated December 15th for fifty dollars for Christmas cards and gifts. We sent a great many Christmas cards. There was still another check for one hundred

dollars marked for emergency—a later date." What were the dates of the checks doctor?

Vice-Chancellor: My recollection is Doctor McKee has testified to the transactions and the checks were offered in evidence. Wasn't that the fact doctor?

Witness: They were offered in evidence.

Vice-Chancellor: She testified about it and Mr. Walscheid I think had her testify to the checks.

Q. Page 6 of Mrs. McKee's testimony she was asked and testified "Q. Did Doctor McKee write any letters to you while he was in Europe? A. He wrote me three letters. Q. Did you write any to him? A. I wrote him two letters. Q. Did he tell you when he was returning from Europe? A. Yes, on the 21st of December. Q. Did he tell you on what boat he was returning? A. He did not." How many letters did you write to Mrs. McKee, Doctor? A. Six letters and some postal cards.

Q. Three of them have been produced? A. Only three have been produced.

Q. Did you receive any letters from her? A. I received none from her though I did from the children.

Q. Did you tell her when you were returning from Europe? A. I did. I told her at the time I left the boat I expected to take in coming back. I did take that boat and I informed her by letter which is an exhibit here; the boat arriving on December 20th—the Leviathan.

Q. On page 7 of Mrs. McKee's testimony she was asked and testified as follows after your return from Europe—"Q. Did he speak to you when he came in? A. The children and I were in the living room and we heard the door open. We all went out

in the hall to meet him. He kissed each of the children; he didn't even speak to me. He said to the children 'We will go in here and talk', and they went into his bedroom and I went in. I ignored all the unpleasantness we had. I went with them and we all sat down in Mr. McKee's room. It is the room occupied by Mr. McKee and Billy when Billy is at home. Q. Did he have any gifts with him for you and the children? A. I think I had better tell about the conversation. He was talking and asking questions and I answered one of the questions and he said 'Shut up; I am not speaking to you. I am trying to find out things from the children.'" Did you say when you came home to the children "We will go in here and talk?" A. I have no recollection at all of speaking separately to the children from Mrs. McKee.

By the Vice-Chancellor:

Q. What do you say as to her statement you kissed the children and did not kiss her? A. I kissed all of them. As a matter of fact there is a question in my mind whether one of the children was there before or not.

Mr. Blumberg: It has all been testified to before.

Vice-Chancellor: I know that.

By Mr. McNulty:

Q. Did you tell Mrs. McKee on the occasion of your return from Europe to shut up you were not speaking to her? A. No, I did not.

By the Vice-Chancellor:

Q. In what manner did you greet your wife at that time? A. I came in and as I recall I simply

unlocked the door and went on in without telephoning up. Just as soon as I got away from the pier after finding they were not there I went on up to the apartment. I went in and called down the hall hello and they came out. I took each one in succession—that is Mrs. McKee and one of the youngsters in my arms and kissed them.

Q. Any conversation? A. Undoubtedly there was—"How are you?"

Q. You don't know what it was? A. I don't recall the details of the convention. I do know we spent the afternoon discussing things.

Q. In what room did you discuss them? A. All over—the dining table. They had waited for dinner for me.

Q. What about the statement of your wife you went into the room that has been spoken of you and the two children and yourself? A. I do not think that is correct unless it was I simply went in there to take my grips in there. We spoke most of the time out in the front room, the parlor, sometimes spoken of as the living room.

By Mr. McNulty:

Q. On page 8 she was asked and testified as follows—"Q. You said you wanted to tell something? A. After dinner Mr. McKee went out. I don't know where he went." Do you know to what occasion this refers? A. As I recall that refers to the day on which I arrived on a Sunday. As a matter of fact that was a Sunday and I spent Sunday at home as I customarily did.

By the Vice-Chancellor:

Q. Then you didn't go out that day? A. No. I remember distinctly I didn't go to my office until the next morning.

By Mr. McNulty:

Q. On pages 12 and 13 Mrs. McKee was asked and testified—"Q. Did you go out with Doctor McKee on Sunday? A. No. I spoke of having a maid but he had dismissed the maid and said we didn't need a maid. On Sunday before he had dismissed the maid. I got up in the morning and there was neither maid nor Mr. McKee. I didn't say anything to him about that. I got the dinner myself and everything else that was to be done, so of course the next morning I went to see if she had her wages and I found he had paid her two weeks in advance and had put her out. Q. The Sunday following when the Owens went did Doctor McKee ask you to go out that day? A. I was preparing dinner when he said "If you can get ready in three minutes you can go for a walk with me." A. Did you dismiss the maid? A. I did not.

By the Vice-Chancellor:

Q. Pay her two weeks in advance? A. No, I did not.

Q. How about the Owen incident? A. I invited her to go out with me on the Sunday following the Owens visit which was the Sunday preceding the Tuesday of her desertion. In fact I invited her three different times, two of which were invitations to go walking.

Q. You mean on that day? A. Yes.

Q. She said you told her to get ready in three minutes? A. I did not say that. I asked her if she didn't want to go for a walk in Riverside Park and she said "No, I don't want to."

By Mr. McNulty:

Q. On page 13 of Mrs. McKee's testimony she was asked and testified as follows: "Q. Did you

see him Monday morning? A. Yes, I saw him Monday morning. I had been straightening up the apartment and I had gone into my own bedroom and straightened the rug there when he came in and he grabbed me tightly by the shoulders with one arm and held me like a vise and put his hand down inside my dress and pinched me." Did you go into Mrs. McKee's bedroom and grab her tightly by the shoulders with one arm? A. I went into Mrs. McKee's bedroom and put my arm around her and hugged her and said something to her "Don't be so offish," but I did not pinch her and I did not handle her unkindly.

Q. On page 13 of Mrs. McKee's testimony she was asked and testified as follows: "Q. Did you see him that night? A. Yes, he came in about twelve o'clock and he said that his overcoat needed repairing, and I said "It is half past twelve now," and he said "It don't make any difference what time it is, I said to mend that overcoat and you will have to do it." Did you return at twelve o'clock or half past twelve? A. No. I had been out late the night before with the Owens and I came home and went to bed as I customarily did about half past nine or ten o'clock.

By the Vice-Chancellor:

Q. What about repairing the overcoat? A. There was no conversation about repairing the overcoat.

By Mr. McNulty:

Q. On page 15 Mrs. McKee was asked and testified as follows: "Q. You had been in conference with lawyers? A. Yes, since October. Q. What

lawyers? A. The firm of Hirsch, Newman & Reass." Did Mrs. McKee tell you she had consulted Hirsch, Newman & Reass?

Vice-Chancellor: She has said she did from what you just read there. There is no rebuttal about that.

Mr. McNulty: I will withdraw it.

Q. On page 16 Mrs. McKee was asked and testified: "Q. The next letter you received was this Exhibit D 2, if you recall, dated February 7th. Aside from these two letters did the Doctor telephone to you at all after January 13th? A. He did not telephone. My daughter came home for a few days, and I think it was the last Sunday in January—the 25th if I remember—my telephone rang and I answered it and the voice said "Is this Mrs. McKee?", and I said "Yes", and the voice said "Wait a moment." Then I heard Mr. McKee's voice and I understood him to say "Is this Mrs. McKee?", and I said "Yes", and he fairly roared "It is not either; it is Margaret I want to speak to." Did you call Mrs. McKee on the telephone at the time indicated? A. I called her several times.

By the Vice-Chancellor:

Q. How about that occasion she relates there? A. The conversation she states there is not correct. I did call Mrs. McKee on the telephone along about that time in fact almost every few days preceding and subsequent to that.

Mr. Blumberg: I ask that be stricken out.

Vice-Chancellor: I will have to strike it out. It has nothing to do with the question.

By Mr. McNulty:

Q. Did you on February 7th call Mrs. McKee on the telephone and did you inquire for Mrs. McKee? Suppose you answer as I go along. Did you call her on the telephone on February 7th and did you say is this Mrs. McKee? A. There was no such conversation as this last. I might have called her.

Q. On page 17 Mrs. McKee was asked and testified: "Q. Did Mr. McKee 'phone to you at all after that? A. He 'phoned me on the 28th day of February and said that he would like to talk with me and I— Q. That was the first telephone conversation since January 13th? A. Yes, except when I said "Yes" over the telephone." Was that the first conversation you had with her since January 13th? A. No, indeed. I have had numerous conversations with her over the telephone and as result of one or two, or one I think, I had sent her some bonds. There were still other telephone conversations.

Q. On pages 18 and 19 of Mrs. McKee's testimony she was asked and testified as follows, relative to a conference of February 28, 1925: "Q. What was said? A. I was to meet him at a certain time. I went and he was sitting on a bench in the corridor on the third floor. His face was flushed and he looked very angry. I went up to him and he didn't even rise and he started "Mr. Reass said you want to talk to me. What have you got to say?" I said "I sent no message by Mr. Reass," and he said "You didn't tell him you wanted to talk to me?", and I said "No, I sent no message at all. You called me up this morning and said you wanted to talk to me and I came down to meet you." So he said "Well, I will give you seventy-five dollars a month", and I said to him he

knew that no one could live on seventy-five dollars a month. I said "Of course you know that I have well earned a share in your income and I expect to have it." I also told him—asked him about paying my daughter's bill, the college bill which the rules of the college said must be paid by the first of March or no classes can be attended. This bill had to be paid and I asked him if he would pay it, and he said "I will not; unless I am appointed her guardian I will pay no bills." Then he looked at me as though I was some woman who had accosted him. Vice-Chancellor: You cannot say that. (Witness continuing): He looked at me in a disagreeable way and left. Q. Did he say anything about another conference? A. No. Q. When did you meet him next? A. I went down to Mr. Newman's office * * * ." Referring to the conference of February 28, 1925 did you at that time say to Mrs. McKee that Mr. Reass said "You want to talk to me. What have you got to say"? A. I don't recall that was at all the subject of conversation. I do recall other days they were the subject of conversation.

Vice-Chancellor: You are merely asked that question.

Witness: I don't recall.

Q. Did you say to her at that time you would give her $75.00 a month and did she say "Of course you know that I have well earned a share in your income and I expect to have it"? A. No. At that time—

Vice-Chancellor: You said *no*.

Q. Did you say to her "I would like to see you get it?" A. I did not.

Q. And did she ask you about Margaret's college bill? A. Yes; and I had told her I had paid it the previous day.

Q. Did she tell you the bill had to be paid and asked you to pay it and you said unless you were appointed her guardian you would pay no bills? A. No. I had already paid it.

By the Vice-Chancellor:

Q. The previous day. A. Yes; and I have checks showing it.

Q. What is the date of the check? A. February 27th.

Q. What year? A. 1925.

Q. That check is payable to the order of who? A. Bryn Mawr College—$220.22.

By Mr. McNulty:

Q. Page 28 Mrs. McKee was asked and testified: "Q. What was the occasion of your conference with him? A. The question of dividing the furniture. He had written to me and I had written to him and he had telephoned for me to come up on the 9th of July at eight o'clock in the evening, which I did, and Billy accompanied me. Q. That was at 39 Claremont Avenue? A. Yes. By the Vice-Chancellor: Q. Did Mr. McKee at any of those meetings that he had with you that you have alluded to show any mark of affection towards you? A. No, your honor; he has shown no affection towards me at anytime." Do you recall the conference to which she refers—July 9th? A. July 9th—yes.

Q. Did you have a conference with Mrs. McKee with respect to the division of the furniture at that time? A. Yes.

Q. Did you show any affection towards Mrs. McKee on that occasion? A. Yes.

By the Vice-Chancellor:

Q. What was the manifestation of it? A. In expressing the hope—

Q. What you said or did? A. I asked her to return to me. I remember the question about the division of the furniture was an unfortunate thing because it would make our separation permanent and I didn't want that to occur, and that was discussed and I argued with her to leave the things there and later she might changes her mind and come and live with me there or elsewhere.

Q. Is that what you mean by showing her a mark of affection? A. Yes.

Q. That's your explanation of it? A. Yes.

By Mr. McNulty:

Q. Did you object to Billy going along with her at that time? A. I did not.

Vice-Chancellor: Mr. McNulty, you or Mr. Walscheid ought to have prepared a set of questions which you wanted to ask this witness on rebuttal collated from the testimony. It is unfair to ask me to sit here while you are reading that testimony through and excerpt from it and read from it what the question should be. I do not think you ought to do it. I somewhat reproached Mr. Blumberg for attempting to do likewise.

Mr. Blumberg: Mine was excusable. I was trying to take it from my notes.

Mr. McNulty: We have all the questions written out. Sometimes he answers more than you ask.

Vice-Chancellor: You are excerpting from the testimony a lot of Mrs. McKee's testimony and you are reading it and when you get through reading it you ask him questions, and some of the matter contained in her testimony as you see has nothing to do with the question you put to the witness which you expect him to answer. Aside from the delay that is being consumed the record is going to be tremendous.

Q. On page 29 Mrs. McKee was asked and testified, after she greeted Mr. Martin, as follows—"We sat down there to talk, Mr. Martin and Billy, Mr. McKee and myself, and Mr. McKee said, 'The first thing we want to know it what you ran away with.'" Did you say that to Mrs. McKee? A. I did not.

Q. "And I said, 'You know I took only my personal belongings that belonged to me personally,' and he said, 'What did you do with the field glasses and the best blanket?'" Did you say that to Mrs. McKee at that time? A. No.

Q. Did you say the field glasses were yours and belonged to you and you bought them? A. No.

Q. Did that play any part in the conversation with the Martins? A. It was not mentioned in front of the Martins. They were mentioned in a letter.

Q. On page 29 Mrs. McKee testified as follows—"Then he said something along the same line, he wanted to know about affairs, and I said to him we should discuss those things by ourselves, and he said, 'No, Mr. Martin is here and we will discuss it now?'" Did you say that? A. I did not.

Q. And then Mrs. McKee said she would not discuss it with the Martins; it has nothing to do with them? A. That conversation did not occur.

Q. Page 30, Mrs. McKee says—"So we went into Mr. McKee's bedroom which was just as it had always been. His toilet articles and his books and photographs of his father and the children were on the dresser." Did you and Mrs. McKee go into your bedroom? A. We did not.

Q. Page 30, Mrs. McKee testified she said to you—"If you wish to discuss these things with me I would be glad to do so." Did she say that to you? A. She did not.

Q. Did you go into Mr. McKee's bedroom? A. We did not.

Q. And was the bedroom just as it always had been? A. I don't know.

Q. Were your toilet articles and books and photographs of your father and the children on the dresser? A. I don't know. I do know that part of those were not there because they were out in Leonia. I didn't go into the room so couldn't say what was in the room.

Q. You did not go into the room? A. No.

Q. She further testified that you said, "You came here to steal the best things that are here." Did you say that to Mrs. McKee? A. I did not.

Q. And she said—"I came because you asked me to come." Did you have any such conversation? A. No. As a matter of fact she in her letter of May had instigated the question of going over the furniture and furnishings in the Martin apartment.

Q. Had she made out a list of furniture and things she wanted before she came? A. Yes.

Vice-Chancellor: That's all been gone into.

Mr. McNulty: I will withdraw it.

Q. Page 31, Mrs. McKee testified as follows—"I started to tell them (meaning the Martins) of the

conditions that made it necessary for me to do it (namely, to leave Doctor McKee), and Mr. McKee said I wasn't going to say anything and he grabbed me by the arm. He is extremely strong, and pushed me out of the room and I told him to let go of my arm which he did, and then he grabbed the arm again and insisted upon my leaving the room." Did you take hold of Mrs. McKee by the arm? A. Yes, in a gentle way.

Q. Did you grab her by the arm? A. I could not because my left hand, which hand I used, is a crippled hand. It is still in worse condition than the other. It would be impossible for me to do as she says. That was the hand I grabbed her arm to attract her attention with.

Q. Did you drag her by the arm out of the room? A. No.

By the Vice-Chancellor:

Q. She did try to talk to the Martins and you remonstrated? A. Yes.

Q. And in your remonstration you did take hold of her, but not as she says harshly, but you say gently? A. Yes, with my crippled hand.

By Mr. McNulty:

Q. She further testified: "I said I would ask Mrs. Martin if she knew about the blanket with the pink border and she said it might be on her bed. We looked and Mrs. Martin turned down the spread and it was the one, the blanket he had been asking about all the time." When you were there at this conference was anything about blankets discussed? A. That was not discussed.

Q. Page 37, after the Thanksgiving dinner, she testified as follows: "Q. When he left there did he

accompany you? A. He and Margaret went to a theatre. He did not ask me to go to the theatre and I went home." Did you ask Mrs. McKee to go to the theatre with you and Margaret? A. Yes, both by telephone and on the previous day when I had met Margaret and Mrs. McKee when Margaret came in from college. At the time of the dinner itself I expressed regret and asked her if she wouldn't change her mind and go with us to the theatre.

By the Vice-Chancellor:

Q. What explanation did she give for not going? A. That she didn't want to go. As a matter of fact she very rarely went to the movies or the theatre.

By Mr. McNulty:

Q. On page 38, with reference to a conference in Mr. Newman's office, she testified as follows: "I can't remember the dates. We had several conferences but he got out the same papers and went through the same thing, except on one occasion he said—oh, that was much later. That must have been about the latter part of December, 1926, and he had a paper drawn up and he said he would send me I forgot what amount—a small amount anyway, and I was to sign this paper, but he couldn't sign it because if he signed any papers it would seem to the university authorities that he was guilty." Did you have a paper which you wanted Mrs. McKee to sign the latter part of December, 1926, that you wouldn't sign? A. No—never.

Q. Did you have one at any other time? A. No.

Q. Did you discuss it with her? A. The first discussion of such paper that occurred occurred in the testimony given here.

By the Vice-Chancellor:

Q. Given by her? A. By Mrs. McKee—the first I ever heard of it.

By Mr. McNulty:

Q. Page 38 and 39 she testified: "Q. When did he say that? A. In this conference in Mr. Newman's office the latter part of 1926. I had conferences with him before that—various conferences. Once or twice with Mr. Newman and several times with Mr. Kutz. He would tell them he wanted to have a conference and we would have a conference and he would go through the same papers and the same figures and nothing else. Of course he was told that was not to be considered for me to sign some agreement he wouldn't sign." Did you have any conversation at any of these conferences with these lawyers in which there was any discussion about signing an agreement such as she referred to? A. No, not such an agreement as she referred to.

Q. On pages 40 and 41 Mrs. McKee testified: "He objected to Mr. Kutz being there. Mr. Kutz said he did not intend to stay so we could have a talk alone." Did you object to Mr. Kutz being there? A. Yes; and I insisted upon his leaving and leave Mrs. McKee and myself to have a conference by ourselves.

Q. She further testified: "I was sitting at the table alone and Mr. McKee sat down at the end of the table with his hands behind his head and sat and said nothing whatever." Did you sit there and say nothing at that time? A. No; I argued with her and talked with her for a whole hour or so of time.

Q. "We sat I suppose twenty minutes that way

and finally he said, 'It seems as though we ought to live together,' and I said, 'How can we do that?' —No, I didn't reply to that. Then he sat a long time again and then he said again, 'It seems as though we ought to live together,' and I said "How can we do that?' and he said, 'We can take a room in some inexpensive hotel now and discuss this matter later.' " Did you have such a conversation? A. No, there was no discussion regarding a hotel at that time, but only a discussion about her coming back. There was at another time a discussion about a hotel, but not an inexpensive hotel.

By the Vice-Chancellor:

Q. At the time mention was made of the inexpensive hotel was it such as she mentioned there? A. There was no mention of an inexpensive hotel. There was mentioned in front of Mr. Newman if she didn't want to live in an apartment I would go to a hotel and live there while the children were away.

By Mr. McNulty:

Q. Did you say to her, "Are you willing to promise twelve times a month"? A. I did not.

Q. Did she say, "I always refused to put my life on any such basis?" A. There was no such discussion.

Q. And did you say, "If you are not willing to promise that there is no use of discussing the matter?" A. No.

Q. And did you get up and go away after saying that? A. I did not say that so I could not get up after saying that. I did after we had been there an hour or so.

Q. In the middle of page 42 Mrs. McKee testified

as follows: "The last trip with Doctor McKee was in 1913." Did you invite Mrs. McKee to go on trips with you at anytime? A. Yes; and she did go with me on a trip by boat from Milwaukee to Chicago and another trip in 1921, and another trip from Chicago to New York, and in the summer of 1924 I invited her to go to New Foundland and made boat arrangements and the last minute she begged off and would not go. I also invited her to go with me on trips which I made, but she would not go except the trip was of a day or so.

Q. On page 42 she was asked and testified: "Q. Did you ever ask to go with him? A. I suggested several times that I would go with him to meetings of the chemical society. I spoke one time of going to Pittsburgh and he said 'No, we can't afford it.' I said 'You very often take Inez to these meetings. If you can afford to take her I can't see why you can't afford to take me.'" Did you have any such conversation? A. No, there was no such conversation.

By the Vice-Chancellor:

Q. Did she ask you to take her to the Pittsburgh Chemical Convention? A. No.

By Mr. McNulty:

Q. She did not? A. No.

Q. Who is Inez she refers to? A. My sister. My sister did go to some chemical meetings at her own expense where my brother also attended.

Q. Did you on your part invite Mrs. McKee to go with you? A. Yes.

By the Vice-Chancellor:

Q. Did you invite her to go to the Pittsburgh Chemical Convention at the time she mentioned?

A. I did, if I went; but I do not recall whether I attended the Pittsburgh Chemical Society meeting.

By Mr. McNulty:

Q. On page 45 Mrs. McKee was asked and testified: "Q. In the Hotel Pennsylvania? A. Yes. On that occasion he said something about the property that we had in Wisconsin. It was very indefinite; I couldn't understand what it was he wanted. He wanted to know if I would sign some papers, so I told him to send me those papers." Did you confer with Mrs. McKee about signing some papers about your property? A. No. In fact, I hadn't it. I had sold the Wisconsin property fourteen months earlier and I have here a duplicate deed if you want to see it.

Q. You did not have any such conversation? A. I did not.

Q. Page 46 Mrs. McKee was asked and testified: "Q. Did Doctor McKee ever come there to interview you? A. No. The children lived with me during the rest of the summer. We gave up the house on the first of September. Did you go to Mrs. McKee at various residences to interview her? A. Repeat the question.

Q. She testified in answer to a question did you ever go and visit her, "No. The children lived with me during the rest of the summer." Did you go to visit Mrs. McKee at any of her residences? A. I tried to and I did go to visit her at some of her residences. I tried to do so but she would not let me.

By the Vice-Chancellor:

Q. What trial did you make? A. I telephoned and asked to go.

Q. Why didn't you go without telephoning? A. I did to the Arlington Avenue address and she would not let me in.

Q. That was the time you testified you stood out in the snow for an hour? A. Yes.

Q. Why didn't you go to the other places? A. I did go to the present address 2727 Spuyten Duyvil Parkway and went upstairs and knocked at the door and when it opened I put my foot in and she held the door and would not let me through any further. I talked to her through the open door which was opened perhaps six inches and gave her a newspaper clipping, but she would not let me come in.

Q. Was that the newspaper clipping of some ones death? A. Yes.

Q. When was that? A. In 1927.

Q. What conversation did you have with her at that time? What was the purpose in going there and what did you say to her? A. I wanted to get more acquainted with her.

Q. Isn't it the fact you went there because of that newspaper clipping and wanted to know whether she would accompany you to the funeral. A. No; a man who died in Ohio—a mutual friend —and I made that an excuse to go over.

Q. Tell us the conversation that passed between you? A. I said I would like to come in and she said "No". Then I said "Here's a newspaper clipping regarding Doctor Osterholm who has died; maybe you would like to see this." I talked about that.

Q. What did you say? A. I told her that it was a death notice and gave a history of his life and possibly she would be interested in reading it. She accepted it and said she would like to read it. I asked her to send it back when she was through with it.

Q. And all this time you had your foot in the door? A. Yes, and she was pushing all the time.

Q. That is the extent of the conversation you had at that time? A. No, there was a lot more.

Q. Did you say you would like to be reconciled to her? A. Not at that time; I had already started the divorce suit at that time.

Q. If you had started the divorce suit at that time what was your real purpose of going there? A. I went with Margaret, and I wanted to find out what Mrs. McKee's attitude in general was toward me. I went up after her. Margaret had gone up to get a wrap or something.

Q. You don't mean at the time of the newspaper? A. Yes.

Q. Was Margaret there too? A. Margaret told me to stay down that her mother didn't want me to go up. I said all right. When she had gone up I followed up a minute or two after and knocked on the door and the door was opened and I put my foot in and had this conversation. At the previous time I had not been able to get the door opened. I tried earlier to go to this same residence and take a radio set and visit her and had been refused.

Q. Refused in what way? A. Saying she did not want me to come up. She told me this over the telephone.

Q. If it was over the telephone nobody could hear that? A. No.

By Mr. McNulty:

Q. You went to visit her on another occasion with your brother? A. Yes, and we went on that occasion unannounced as well.

By the Vice-Chancellor:

Q. There is testimony as to that. Your brother and one of the children went to a theatre? A. I

took my brother and one of the children to go to a theaatre. She declined to go with us.

By Mr. McNulty:

Q. Page 48 Mrs. McKee testified as follows—"Q. I understood you to say Doctor McKee did not talk to you? A. Not to me, but in the conversation. He didn't greet me when he first came in. I can't remember that he said anything directly to me; he may have. Then later he suggested that we should all go to dinner some place but of course Margaret was too ill, and Billy went with his father and his uncle." Did you greet Mrs. McKee when she came into the sun parlor? A. I had been there for three-quarters of an hour with Billy and Margaret and my brother. When she came in I greeted her.

By the Vice-Chancellor:

Q. In what way? A. "Hello Mary, I was afraid you weren't coming out." She sat down with her back partially to me. She didn't reply to my greeting.

Q. Is this before the divorce suit was started? A. Oh, yes, .

Q. Why didn't you schmooze up to her and try to make yourself at home? Why did you sit distant? A. I didn't sit distant. She came in and turned her back to me and didn't answer my greeting or did not answer the questions or the conversation in which we entered.

Q. You merely said "Hello Mary", and you sat down and she sat down when she came in? A. I said "Hello Mary, I'm glad to see you; I was afraid you were not coming out."

Q. You didn't say that before. What is the fact? A. The last is the fact. She didn't reply to me at all.

By Mr. McNulty:

Q. Pages 53 and 54 Mrs. McKee testified as follows—"Q. What was said at that time? A. Mr. McKee had some typewritten papers of some kind. He didn't read them and we didn't read them, but he said he would send me forty dollars a week, and he said 'This is what the papers say; he would send me forty dollars a week and that I would agree to withdraw my case in New York City and that I would sign this agreement saying that I would withdraw this case, but that he could not sign the agreement because Columbia University would consider him guilty and dismiss him from the university.'" Did you have such a conversation? A. No such conversation ever occurred.

Q. Did you have any typewritten papers which you wanted her to sign? A. Nothing except at the very last which was the united family agreement of January, 1927.

By the Vice-Chancellor:

Q. That was a separation agreement was it? A. That was not a separation agreement. It was the very reverse of a separation agreement; it was an agreement to get together.

Q. Was that the one that was signed at the Court House?

Mr. McNulty: That was January 24, 1927.

Q. Was that the agreement that Mr. Kirby referred to? A. Yes.

Vice-Chancellor: Is there anything in that about a united family?

Mr. McNulty: Yes paragraph 3.

By Mr. McNulty:

Q. Did you make any proposition to pay Mrs. McKee $40.00 a week at that time? A. I did not.

Q. Pages 55 and 56 to which she refers to a conference of January, 1927 she was asked— "Q. What was said in Mr. Newman's office? A. This conference was between Mr. McKee and Mr. Kirby, and Mr. Newman and myself, and Mr. Newman said that he had suggested to me, and after consideration I had agreed, that he would present the matter to them, and Mr. Newman said the proposition was that it would save Mr. McKee's reputation which seemed to be his main consideration, and would give us each the opportunity of having the children with us if we had a nominal home together, each of us living our own lives, and Mr. Kirby broke in and said he wouldn't consider anything of the kind. Mr. Kirby said to me 'Are you willing to live in New Jersey with Mr. McKee; that's his home?' I said 'Where we live is a very minor consideration, but there is no reason for his living in New Jersey except that he thinks that is an easy place to get a divorce'." Did Mrs. McKee make that statement? A. She did not.

Q. "Mr. Kirby said 'You refuse to live in New Jersey with him?', and they both got up, and I said 'No, I have not refused, and they both went out and that was the end of that'." Did Mr. Kirby say "You refuse to live in New Jersey with him?" A. No.

Q. And did Mrs. McKee say "No, I have not refused"? A. No; she did refuse the first offer of Mr. Kirby.

Q. On pages 57 and 58—"Q. What was stated at the first conference? A. I asked him to see Mr. McKee to ask him as to the advisability of having a

referee in order to avoid publicity. I also told him of the proposition of Mr. Newman and he thought it was the best way out under the circumstances. Q. What proposition of Mr. Newman? A. About a nominal home. I did not discuss why these things had come about; I did not discuss the family troubles with him." Did Dean Pegram discuss with you the question of a nominal home? A. It was never mentioned.

Q. On page 58 Mrs. McKee testified—"Q. Did you say anything to Dean Pegram about a separation agreement? A. No, I did not. All I asked him was to see Mr. McKee about the advisability of having a reconciliation." Did Dean Pegram when he spoke to you say anything about a reconciliation with Mrs. McKee? A. No; just the reverse.

Q. What did Dean Pegram say? A. He said that Mrs. McKee was not willing to live with me but wished to arrange for some sort of a separate living apart.

By the Vice-Chancellor:

Q. Is he alive or dead? A. He is alive and testified in New York.

Mr. McNulty: He made a deposition in this court.

By Mr. McNulty:

Q. Mrs. McKee, bottom of page 59 and top of page 60, relative to the conference of January 24th "Q. What did Mr. McKee say about the proposition? A. He said the proposition of Mr. Newman's was idiotic. I said that would be a way of avoiding any trouble at the university; no one would know what our private arrangements were; no one

would know but we were living in harmony, and that it would give him the opportunity of having the children too, and he said he didn't care anything about that. He said the only question is 'Are you willing to promise eighteen times a month'?" Did you have such a conversation and did you say to Mrs. McKee "Will you promise eighteen times a month"? A. I did not.

Q. Pages 60 and 61—"Q. Did you say you were going on with the case at all? A. No, I didn't say anything about it. Then he said—he took some papers out of his pocket and said he had written out—why there was no reason why he should not write out our own separation agreement, and I said I wasn't interested in any separation agreement that he would make; that I wanted it legally and finally." Did you have any such conversation? A. No, I never spoke of anything as a separation agreement because that was the reverse of what I wanted. There was conversation about the question of this January, 1927, united family agreement.

Q. Did you say to her you should write out your own separation agreement? A. I did not.

Q. Did she say to you she was not interested in any separation agreement you would make? A. No.

By the Vice-Chancellor:

Q. She did want one that was legal and final? A. No, there was no complaint as to this agreement.

Q. What agreement do you refer to? To the one you prepared yourself? A. Yes. There was no question about it only the question of the financial side. There wasn't enough money.

Q. I am again very much concerned to know why you interpolated those words in the agreement wherein you say, paragraph 7—"This agreement

shall have as its minimum duration July 1, 1928"? A. This was made at the suggestion of her attorney. Her attorney at the time stated that there ought to be a limit to the agreement and it ought to be at the time that Margaret should graduate. I suggested a definite time rather than the time when Margaret might graduate—something might happen and she might not graduate.

Q. There was something said, and Mrs. McKee testified and so did Mr. Kirby, that no matter what they entered into it could be broken by either party? A. Yes.

Q. Why did you put that in there—the minimum duration July 1, 1928? It must remain in effect at least a year and a half after its making. It bears date January 24th and you provided in there it should have as its minimum duration July 1, 1928. That is practically a year and a half. According to this language this agreement was intended to have a positive duration even though minimum. It might last longer but that must be its minimum duration? A. That was put in at the suggestion of Mr. Reass when he suggested that Margaret—that the agreement should hold until Margaret graduated.

Q. If you were looking for a united family I would like to know why you were postponing it for a year and a half? A. It wasn't postponed. I tried to get together with her within a few days.

Q. I refer now to paragraph 3 in which it says "The second party (which means Mrs. McKee), agrees to discuss with first part their family affairs and in particular the possibility of the united family at least once in each six weeks." If that was your sincere purpose that you and she were to have a discussion as to a united family at least once in six weeks, why did you add in the agree-

ment the separate clause that it should continue in force for a year and a half? A. It was not the separation that was continued. I didn't add that —it was Mr. Reass and I consented to it. It was my writing but it was at his dictation.

Mr. Blumberg: The explanation which Doctor McKee gave on direct examination was different.

Vice-Chancellor: It is in the record.

By Mr. McNulty:

Q. What does that minimum duration clause stand for if you know? A. Because Margaret was not expected to graduate until then.

Q. What was the reason for it? A. At that time we had not——

By the Vice-Chancellor:

Q. Tell us what was said at that time by the parties? A. What was said was this. This was prepared and we discussed the financial end of it and everything else agreeable and then Mr. Reass suggested this ought to have a minimum duration and I would suggest that it ought to be until Margaret would graduate from college.

Q. You realized that was to be a year and a half after you signed the paper what he was suggesting? A. Yes.

Q. Why were you so willing to have that situation as it existed continue in that way for a year and a half? A. What situation?

Q. The situation which you had in hand which referred to your living separate and apart? A. It was the intention to get together and this putting into it this clause did not change this agreement at all. It was so stated there at that time.

Q. Where did you get the technical language as I read it in the 6th clause—"That on the starting of any legal suit between the parties to this agreement except one to enforce the terms of this agreement"? That language—who put that into your head? A. It is the customary language on the licensing of patents. I have had a number of contracts on the licensing of patents and that is a common phrase stated in such cases.

By Mr. McNulty:

Q. At any rate you didn't refer to a separation agreement at the conference of January 24, 1927? A. There was no separation agreement discussed at that conference.

Q. Page 62, Mrs. McKee testified—"Q. It was changed to $200.00? A. Yes. We discussed the matter and he made a proposition through a second party of $9,000 a year." Did you ever make a proposition to anybody to pay her $9,000 a year? A. No. This I say in spite of what Mr. Whaley mentioned this morning. I did speak to Mr. Whaley that my expenses—

Vice-Chancellor: You have answered it. I will strike the last of it out.

Q. On page 63 Mrs. McKee testified: "Q. When was the pen writing put in the agreement, before you signed it? A. That's what I am going to speak about; if he sent me the furniture to furnish an apartment I could get along on $200.00 a month until my daughter came home from college and that would be in June, 1928; that's when she finished college, and he said his finances would be in a better condition at that time and at that time he would make a reasonable settlement, and that is

Q. At the Court House? A. Yes. The second time I was with her and her attorney.

Q. Likewise in the Court Room? A. Yes.

Q. The first was in the morning and the second was after two o'clock. A. Yes, about two o'clock.

By Mr. McNulty:

Q. She was further asked and testimony: "Q. Did he say what it was—the purpose of it? A. He said it was a separation agreement that he had wrote out himself." Did you say the writing referred to was a separation agreement? A. No; never.

Q. Page 66 Mrs. McKee testified: "He said I could take the case up again if I wanted to just where it was, if I wanted to. No mention of his bringing suit; he didn't discuss that at all." Did you say that Mrs. McKee could take up the suit if she wanted to? A. Yes.

Q. Was there any mention of your bringing suit? A. Yes.

By the Vice-Chancellor:

Q. Either party might start suit? A. That's correct.

By Mr. McNulty:

Q. Page 70 Mrs. McKee testified: "Q. When did you finally see him? A. I think the 2nd of June. He called me up the latter part of May." Did you call her up the latter part of May? A. Yes, I called her up possibly once or twice every week in May, April and March.

Q. Did you see her in June? A. Yes, I recall it I saw her in June.

Q. That was as a result of an invitation of yours to meet her? A. It was. I had tried earlier to meet her but she refused.

Vice-Chancellor: You are not asked that.

Q. Is it a fact it was three months since you saw her, since that last meeting? A. No, I had seen her at least once in between.

Q. Can you fix a date? A. I cannot fix a date but it was a time when I asked her if she wanted a radio set and she said she did, and in consequence of that I sent up to her by Billy when he was home on a spring vacation part of a radio set and tried to take the rest of the parts myself and she refused to let me come up to the apartment.

By the Vice-Chancellor:

Q. How did she refuse? A. I telephoned to her and said I would like to come up and bring the rest of the radio set and put it together and she said "No, don't come now." I telephoned a couple of days later and she said "No, I am going out." I telephoned a few days later and she said "No, I don't want you to come; I won't have you here."

Q. Did you take that to mean she didn't want you to come at all? A. Yes.

By Mr. McNulty:

Q. Page 74, referring to the meeting in the Campus Restaurant for lunch, she testified as follows—"Q. What was the conversation you had that day? A. There wasn't much conversation; he wouldn't converse. He just sat silent most of the time." At that meeting did you refuse to have a conversation? A. I don't remember which one of the meetings at the Campus Restaurant it was.

the reason this July 1, 1928, was put in." Did you state at that time that your finances in June, 1928, would be in a better condition? A. I did not. I could not know that.

Q. Or that you would make a reasonable settlement? A. I made no other promises of settlement. I expected to have Mrs. McKee back before that.

By the Vice-Chancellor:

Q. If you thought so I refer you to the agreement again. Paragraph 2 says: "The party of the first part agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month." Paragraph 7 says: "This agreement shall have as its minimum duration July 1, 1928." Doesn't that indicate that the agreement was to run for a year and a half? A. No, because I knew the other parts of the agreement on that.

By Mr. McNulty:

Q. Page 63: "Q. When did Doctor McKee read that to you (referring to this agreement P 95)? A. It was after lunch. Q. Was your lawyer present when it was read to you? A. No." Was her lawyer present when you read it? A. Her lawyer was not present when we first went over it. Her lawyer was present when we went over it the second time.

By the Vice-Chancellor:

Q. You mean before it was signed? A. We went over it before it was signed item for item when I was with her alone.

Q. How many times did you go to the Campus Restaurant with her for lunch? A. Two or three times. Once I remember a Sunday dinner we were there from 1 until 3:45.

Q. You say there were always conversations? A. What I mean there was no sitting and no lack of conversation.

Q. Tell me the conversation you had when you left the Court House on January 24th? A. It was not at the Campus Restaurant.

Q. At any of the meetings at the Campus Restaurant did you sit there mute or refuse to take any part in the conversation? A. No, never did.

Q. Did you converse with her? A. I did, and each of those occasions I spoke of her returning and asked her to return to me.

Q. She says—"I remember asking him—when we were leaving the restaurant I said to him "May I ask you why you wanted me to come down to see you?" because he had insisted I should come because he had other engagements. I said "I ask you why you wanted me to come?" because he had said nothing, and he did not reply to that." Did she propound any such question to you? A. No; such question was never propounded.

Q. Did she say—"If you write me a letter misrepresenting what took place at this conference as you have at other conferences, I shall have to refuse to see you again without a witness." Did she make any such statement at any of the meetings at the Campus Restaurant or at any other time? A. There was no such statement made.

By the Vice-Chancellor:

Q. Did she call your attention about writing letters to her and asking what your purpose was? A.

Nothing, excepting one time there was a reference in a letter.

Q. I mean about the personal talks you had? A. No.

By Mr. McNulty:

Q. Pages 74 and 75 she testified with reference to conference after August 27th—"A. Yes, the early part of October. That was at the Pennsylvania Hotel on the mezzanine floor, and he asked me to sign papers to put into a corporation, a corporation called McKee's Book Store, I don't know the legal forms or anything, but he wanted to me sign these papers putting the property in this corporation." Did you ask her to sign some papers and transfer some property to the McKee Book Store? A. We had an opportunity to sell it.

Vice-Chancellor: He is directing your attention to that testimony and asking you whether you affirm or deny it.

Q. Did you ask her to sign a deed or some conveyance and she refused? A. Yes.

Vice-Chancellor: There is a lot of testimony about that here.

Q. Page 78—"Q. Mrs. McKee when you signed the agreement of January 24th, 1927, Exhibit P 95, what was your real purpose in signing it? A. My purpose in signing it my husband had just refused my offer of having a home together." Had you refused to have a home together? A. No, she never made any offer to have a home together. Mr. Newman had—

Vice-Chancellor: You have answered it. She says she made an offer or whatever the language was and you say she didn't.

Mr. McNulty: Then I want to have it all stricken out.

Vice-Chancellor: Go ahead and add to it.

(Witness continuing): Mr. Newman had stated to Mr. Kirby in my presence a question of having an illegal nominal home together, and Mr. Kirby had declared—

By the Vice-Chancellor:

Q. You don't mean an illegal nominal home together? A. That's what my understanding is.

Q. That's the first time I heard of that in this case? A. I heard Mr. Kirby testify to it. I understood you were quoting a conversation? A. I am not.

Q. You mean you are characterizing it that way? A. I am.

(Further hearing continued to October 17, 1929.)

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(Continuation of hearing October 17, 1929.)

RALPH H. McKEE, recalled.

Direct Examination continued by Mr. McNulty:

Q. Mr. McKee, on page 88 of Mrs. McKee's testimony she said—

Mr. Blumberg: I have some witnesses and I would like to call them now.

Vice-Chancellor: I cannot let you call them now.

Mr. Blumberg: It will take about an hour to take it. I think your Honor ought to permit me to put them on the stand.

Vice-Chancellor: Subject to Mr. Walscheid's examination. It may be that Mr. McNulty can take charge of it.

Q. On page 88 of Mrs. McKee's testimony she testified as follows: "About this particular dinner set he said it was his because his friends had given it to him, but he said there was no reason why you shouldn't be using it until I get ready to have my own—and then he stopped." Did you say she could use your dinner set until you got ready to have your own? A. No such conversation occurred.

Q. Pages 89 and 90 of Mrs. McKee's testimony, referring to the conference of January 24, 1927, at the Court House, she testified as follows: "He said he didn't want to have a home together as I had suggested—as my attorney had suggested—but that he might come to see me. If we signed this agreement he could come to see me and we might bring about something in that way. Q. You say bring about something? A. Yes, he said something. I remember I said to him I was perfectly willing to do that any time if there was any possibility of our getting together again. I was willing to do anything that might bring that about. I remember particularly suggesting myself— Q. What did you say? A. I said I might go up to the country club with him and the children, all of us together, and things might be smoothed out in that way." Did you say at the Court House on January 24, 1927, that you didn't want a home together as she or her attorney had suggested? A. No, I did not.

By the Vice-Chancellor:

Q. Didn't you previously testify you did not?

Mr. McNulty: I am referring to the Court House on January 24th.

Vice-Chancellor: You are referring to the alleged statement of January 24th?

Mr. McNulty: Yes. She says he said that on that day.

Q. Did you say on January 24, 1927, that you would not live with Mrs. McKee in a home such as she or her attorney had suggested? A. That was not under discussion and I did not so state. There was no such conversation on January 24th.

Q. Did you say that if the agreement was signed that you could come to see her? A. Yes.

Q. And bring about something in that way? A. Yes, and I hoped to.

Q. Did Mrs. McKee say that she might go up to the country club with you and the children, all of you together, and things might be smoothed out in that way? A. No. It was my suggestion we go up to the country club together. I as host wanted her to come.

Q. On page 97 Mrs. McKee was asked and testified as follows: "Q. And no other meetings or conversations between you and your husband in March, 1927? A. Except he would call up the children part of the time. He would call on the telephone and say 'Is Margaret at home or Billy at home', and I would say 'Yes' and call them to the telephone. I wouldn't call that a conversation. Q. No conversations with you about your marital differences or being reunited with him? A. No." Did you have conferences with her as to your marital

affairs during January, February and March, 1927? A. Yes; each of those months.

By the Vice-Chancellor:

Q. Did you or just write letters? A. No, I had conferences.

Q. Tell us where the conferences were about your marital affairs? A. There was one on January 20th at Mr. Newman's office; one on January 24th at the Court House.

Q. You have heretofore detailed what took place on those occasions? A. Yes, and so has Mr. Kirby. There was at least two in February and one early in March. I think it was perhaps the 2nd, 3rd or 4th of March. Maybe the 1st of March.

Q. You have testified heretofore as to these occurrences have you not? A. I think so, yes.

By Mr. McNulty:

Q. On page 100 of Mrs. McKee's testimony she was asked and testified as follows—"Q. Where did you meet him on the 8th of June? A. In the restaurant on the lower level of the Grand Central Station. Q. Did you have dinner that night? A. Yes. Q. At the Campus Restaurant? A. No. Q. Where? A. In the restaurant on the lower level of the Grand Central Station. Q. Is that the first conference you had with Doctor McKee since February, 1927? A. Yes." Is that the first conference you had had with her since February, 1927? A. No, there was some early in March; the first few days of March. Then there was one in April. I tried to make an engagement in May particularly to go to her house and bring the radio set and discuss matters with her.

By the Vice-Chancellor:

Q. What you mean you asked? A. I tried to get her to have a conference and particularly at her house and join up the radio set and set up the rest of it.

Q. You have already testified to that? A. Yes. And then this one in June.

By Mr. McNulty:

Q. She further testified on said page: "Q. "What conversation did you have with Doctor McKee at that restaurant on June 8th? A. There was nothing of any moment at all. I filled in the time telling him about the children." Is it true Doctor McKee there was nothing of moment discussed at this conference of June 8th at the Grand Central restaurant? A. No. We did talk about the children, but we also talked about her coming back and living with me and she said she didn't want to do that and didn't care to discuss that. I talked to her and insisted but we did not get anywhere on the subject.

Q. You have testified you did ask her to come back and live with you at the June 8th meeting? A. Yes.

Q. On the top of page 108 Mrs. McKee was asked and testified as follows: "Q. Now Mrs. McKee in this conference in August which you say took place in the Campus Restaurant and not at the Pennsylvania Hotel, did Doctor McKee discuss with you as he says in his testimony the question of your coming back with him? A. He did not." Was there a conference at the Campus Restaurant? A. Yes. and one at the Pennsylvania Hotel as well.

Q. There were two conferences? A. Yes.

Vice-Chancellor: I will strike the last out. You are only asked about one.

Mr. McNulty: She has denied it.

Vice-Chancellor: You just asked whether there was a conference in that restaurant you mentioned and he said yes, and there was another one at the Pennsylvania Hotel. That is additional matter.

Mr. McNulty: She said it was at the Campus Restaurant and not at the Pennsylvania Hotel. He said there were two conences.

Vice-Chancellor: I will let it stand.

Witness: Two different times; one possibly around the 10th and the other the 25th or 30th—the last few days.

Q. Did you discuss at both of these conferences the question of your marital relations? A. We did.

Mr. Blumberg: That has been gone into on direct. I can put my witness back on the stand and she will say she did not.

Vice-Chancellor: There will not be much more of it.

Q. On page 118 of Mrs. McKee's testimony she was asked and testified as follows: "Q. What was said? A. That was the first time he had mentioned divorce. He said he was bringing a suit for divorce and I asked him on what grounds and he didn't say on what grounds at all. I asked him when he was bringing it and he said that he had asked me to sign papers to transfer property and that I didn't want to do so, and I said 'Ralph, there is nothing in that', and he said 'Yes, there is too; that is perfectly good. That will hold. I have

everything fixed up. I can get a divorce without any trouble and you can't do anything about it.'" Did you have such a conversation with Mrs. McKee? A. No. That conversation as read did not occur.

Q. Did you advise her at a conference that you contemplated seeking a divorce? A. I advised her—

Vice-Chancellor: I will strike that out. You are just asked a plain question yes or no.

Witness: Your Honor I cannot answer that quite yes or no.

Vice-Chancellor: Yes you can.

Witness: I had already started—it was contemplated, that's my answer.

Vice-Chancellor: Then your answer would be "No, because you had already started it?"

Witness: Yes.

Q. Did you have a conference with her in which you told her you had started the suit for divorce? A. I did.

Q. Where did that conference take place and when? A. That was in December, 192— Early in December, 1927, and took place at the I think in the Pennsylvania Hotel—the mezzanine floor.

By the Vice-Chancellor:

Q. Why did you tell her you had started a divorce. Didn't you think she knew it if she had been served with papers? A. She had not been formally served with the papers. She knew it because of the visit of Mr. McNulty and Mr. Morse.

Q. How do you know that? A. They came back and told me they had been there and I saw the affi-

davit which each of them made to be filed in the case.

Q. Did you talk with her then about Mr. Morse and Mr. McNulty being to see her about the divorce or preparatory to it? A. I mentioned she had received notification some weeks previous.

Q. That notification was of an impending divorce, not of a divorce already started?

Mr. McNulty: The petition had been filed.

Vice-Chancellor: At the time of this conference the petition had been filed?

Mr. McNulty: Yes, sir.

Vice-Chancellor: You mean to tell me the petition was filed previous to the making of the inquiry?

Mr. McNulty: Yes, sir; the petition was filed, and before the citation was delivered to the Sheriff we made the inquiry.

Vice-Chancellor: Your petition had been filed sometime before the citation issued?

Mr. McNulty: Sometime in November.

By Mr. McNulty:

Q. Have you testified to what the conversation was at the Pennsylvania conference in December, 1927, Doctor? A. I do not recall whether I have or not.

Q. Will you tell us now? A. I arrived first and a little later Mrs. McKee came in. I greeted her saying—I greeted her and she greeted me. I arranged seats and we sat down there on the north side of the mezzanine floor of the Pennsylvania Hotel and I asked her how about doing what I had talked about—talked to her about at the time of our last conference. She said "I am not ready to live with you." I said it would be a good deal

better for me and it would be better for you—we could be happier and could have the children together. She said "No, I don't want to"—then stopped a moment—"Margaret is not looking well, I think maybe she needs a tonic." I remarked that probably what she needed was more fresh air and sunlight and rest in the way of early hours. We had a further discussion about her going to see Doctor McKaslin, and then we discussed Billy and his prospects in his school work for the year which was soon to begin. I then said again to her that she had better reconsider and come back and live with me and that I could arrange a nice home for her or we could have either a separate place or an apartment. "No, I won't do it; I don't want to discuss it. You ought to give me for my home and to take care of the children much more than you are giving me. You are only giving me $200 a month, and I ought to have for myself half of your income." I said "I can't do that; it has cost too much for the children. I am paying out now more than I can afford." She said "You are not; you are making a lot of money and I ought to have half of it in order to live as one in my social position should." There was something which came up in which she spoke of money—Oh, yes, "What you say about not making money enough is not true. You are a perfect fool if you think I can be made to think that is so." I then got up and left.

Q. On page 122 Doctor I direct your attention to Mrs. McKee's testimony where she was asked and testified—"Q. Will you describe to the court what Doctor McKee did to you on June 21, 1924? A. It was a Saturday evening. He had been away on a trip. By the Vice-Chancellor: Q. What did he do? A. He grasped me by the shoulders and shook me very severely for about five minutes. Q. During

which time he said what, if anything? A. During which time he laughed and said nothing." Did you on June 21, 1924, grasp Mrs. McKee by the shoulders and shake her? A. I did not.

Q. Where were you on June 21, 1924? A. I was west of the Mississippi. On the previous day I had a birthday party given to me by my sister on June 20th at Clinton, Missouri, and I left the next day to come to New York, so I did not arrive here until after the 21st.

Q. Did you shake her by the shoulders at anytime? A. No, I did not shake her.

By the Vice-Chancellor:

Q. But you did take hold of her by her shoulders at sometime? A. Undoubtedly I did when I was hugging her for instance.

Q. There is some testimony in the case you took hold of her shoulders? A. I am using shaking in the way of an unpleasant sense.

By Mr. McNulty:

Q. The testimony is "He grasped me by the shoulders and shook me very severely for about five minutes"? A. That incident never occurred at anytime.

Q. On page 125 she testified as follows—"Q. What was the other occasion when he did something to you? A. It was in August. Q. Tell us about that? A. The children were at home then and I was sleeping on the sofa in the living room, a sofa that was quite short—shorter than I am myself—and I looked up and Mr. McKee was standing over me, and I said 'What do you want?' and he didn't reply at all and grasped me by the shoulder and violently forced my head back into the

corner point of the sofa in a twisted position, and with his hands on my shoulders he jumped up and down on his knees." Did that incident occur Doctor in August, 1924? A. No; nor at any other time.

Q. Pages 126 and 127 Mrs. McKee was asked and testified as follows—"Q. Fix them as near as you can? A. As nearly as I can remember it was in the spring of 1923 while we were living on 180th Street. It was his custom to lie on the sofa in the living room and sleep so that the children could occupy the bedroom, and the children had returned. I was sewing in the sewing room and I went to see that the children were settled for the night, and I noticed that Mr. McKee was getting ready for bed and the light was still on in the living room and I mentioned it and I went back to the sewing room to sew. He said to come and put it out. I didn't answer but simply went back to the sewing room and went on with my sewing, and he came in and picked me up bodily and threw me against the door so I fell in the doorway with my spine against the door sill." Did any such incident occur? A. No.

Q. At that time or at anytime? A. Never.

Q. On page 130 of Mrs. McKee's testimony she was asked—"By the Vice-Chancellor: Q. When you said that he would have to treat you as a wife should be treated what was his reply? A. He said I said he didn't pay high enough." Did Mrs. McKee say to you anything about your treating her as a wife should be treated. Did you have any such conversation in which she said you would have to treat her as a wife should be treated? A. I do not recall any such conversation at anytime.

Q. And did you say that Mrs. McKee said that you didn't pay high enough? A. I never said such a thing. I never said she said such a thing.

Q. "Q. Was there any further conversation about

that? A. Yes, there were on several occasions when I would repeat the same thing to him that I was willing to live with him as his wife at anytime he was ready to consider me as his wife, but I would not live with him as a harlot which he insisted upon my doing saying it was my place to earn the money to run the household in that way." Did she on a number of occasions or on any occasion say to you that she was willing to live with you as your wife at any time that you were ready to consider her as your wife? A. There was no such conversation.

Q. Did she say to you she would not live with you as a harlot which you insisted upon her doing saying it was her place to earn the money to run the household in that way? A. There was no such conversation.

Q. On pages 135 and 136 of Mrs. McKee's testimony she was asked and testified—"Q. You say that Doctor McKee had threatened you. Will you state to the court what he said? A. He didn't threaten me in words; he threatened me in action. I have already related some of the occurrences." Did you ever threaten Mrs. McKee in words or actions? A. No.

Q. "Q. Will you relate the other occurrences to the court? A. Yes, there was another in the summer of 1924. I can't give you the exact date; it was in July or August. Mr. McKee was taking the children up to the country club and he left me at home alone. He rushed in with some white powder that he said was used for water bugs of which we had some, and he said put it generously around the kitchen in the refrigerator where there might be water bugs. Then he went up to the country club. When he came back on Monday—he didn't usually come to the house when he came back from week ends with the children but he did come that day—

and I saw him in the kitchen and I asked him what he wanted. He was looking around and he said 'How about that insecticide I gave you, that powder, didn't you use it?' I said 'Why do you want to know?' He said 'Well, I don't see it around.' I asked him why he was looking for it. What it was. He said it was sodium fluorine and was extremely poisonous. He was afraid it might get into the food. He hadn't told me that on Saturday. I told him I hadn't used it." Did you give her the substance to which she refers and did anything like that occur?

Vice-Chancellor: He testified to that. He told the purpose for which he gave it.

Witness: I don't recall.

By the Vice-Chancellor:

Q. Did you bring home some insecticides and ask her to spread it around? A. Not at that time. At another time I brought home some borax.

Q. Your answer is you didn't do it? A. I didn't.

By Mr. McNulty:

Q. The reference is from the testimony you was trying to poison her? A. Sodium fluorine is not poisonous to human beings.

Q. On page 45 of Mrs. McKee's testimony she refers to the conference of June, 1926, and testifies as follows—"Q. Do you recall what was said to you Mrs. McKee? Can you state what the conversation was? A. I can't recall the conversation; I recall the end of it. He said 'I have asked you to come back with me and remember I have, and you have refused to do it', and I said to him 'But you have never asked me to come back and live with you,'

and he laughed and said 'I will say it now—"Will you come back and live with me?"' and laughed and went away before I had a chance to say nothing at all." Do you recall the conference of June, 1926? A. I think that was another one on the mezzanine floor of the Pennsylvania Hotel.

By the Vice-Chancellor:

Q. What do you say as to that alleged occurrence? A. The conversation as occurred there is not correct. I did ask her and argue with her and she refused. She would not come back.

Vice-Chancellor: I will strike that out. He is calling your attention to some statement made by your wife.

By Mr. McNulty:

Q. She says she could not recall the conversation but she recalled the end of it. You said "I have asked you to come back with me and remember I have, and you have refused to do it." Did you ask her to come back to you in that language or did you make that statement to her at the end of the conference? A. Not in that language.

By the Vice-Chancellor:

Q. Did that conversation take place in the way she stated? A. The incident did not take place in that way. I asked her to come back that is true, but I did not tell her to remember I asked her to come back and run away.

By Mr. McNulty:

Q. Did you ask her at the end of the conversation to come back and live with you? A. Oh, yes.

By the Vice-Chancellor:

Q. She said you left abruptly before she had a chance to answer? A. That is not correct.

By Mr. McNulty:

Q. Did she say "But you have never asked me to come back and live with you"? A. She never said that to me.

Q. Page 161 of Mrs. McKee's testimony she was asked and testified as follows—"Q. You didn't advise your husband your sister was coming on? A. Yes. Q. When? A. When I first knew she was coming." Did Mrs. McKee advise you of the coming of her sister on the occasion of that visit in October, 1924? A. No.

Q. On page 171 Mrs. McKee was asked and testified as follows—with reference to the conference of March, 1925—"Q. What happened at that conference? A. Mr. Newman—The first speech that I remember was Mr. Newman's to Mr. McKee. Q. What did he say? A. Mr. Newman said 'We shall assume it is your desire to bring about a reconciliation', and Mr. McKee didn't say anything to that, and Mr. Newman said 'Is that your desire?', and Mr. McKee looked at his attorney, Mr. Kirby, and Mr. Kirby nodded his head yes very slightly, so Mr. McKee did too. Q. They both nodded their heads? A. Mr. McKee after Mr. Kirby." Did Mr. Newman make any such statement as quoted "We shall assume it is your desire to bring about a reconciliation"? A. Mr. Newman made no such statement.

By the Vice-Chancellor:

Q. Mr. Kirby testified he did? A. No, Mr. Kirby testified he did not.

By Mr. McNulty:

Q. Were there any such actions as she speaks of that Mr. Kirby nodded his head and you nodded your head? A. No.

Q. On pages 173 and 174 Mrs. McKee was asked and testified as follows—"Q. Let me help you. Did Mr. Newman say during the court of that conference after they nodded their heads 'What have you to suggest'? A. Yes. Q. What was said next? A. Mr. McKee took out his papers and said he was willing to give seventy-five dollars a month, and Mr. Newman said that wasn't to be considered at all. Q. Do you mean to say after they spoke about reconciliation and Mr. Newman said 'What have you to suggest?', Mr. McKee took out his papers and said 'I will give you seventy-five dollars a month'? A. Yes, exactly." Did Mr. Newman speak of reconciliation? A. Not on the March 5th meeting. It was I that spoke about reconciliation.

Vice-Chancellor: I will strike that out. You are injecting that too often.

Q. Mr. Kirby testified that you said to her you had spoken about reconciliation on the previous Saturday. Had you spoken to her on the previous Saturday? A. Yes.

Q. And had you invited her back at that time? A. I did.

By the Vice-Chancellor:

Q. What kind of an invitation was it? I am anxious to hear that. This is news to me. A. I had met her on the previous Saturday.

Q. I don't care about that; you are relating to the time at the Court House.

Mr. McNulty: No, your honor. Mr. Kirby testified to that yesterday. That was at Mr. Newman's office.

Q. I am concerned when that Saturday was you spoke of. A. It would be about February 28th. It would be February 28th.

Q. When and where did you meet on that occasion? What time of the day or night? A. In the afternoon.

Q. Where? A. That was a meeting on the corridor of the Public Library in New York City on the second floor on a bench.

Q. You have detailed in your testimony what took place before? A. Yes.

Q. That is the Saturday you are referring to? A. Yes.

Vice-Chancellor: Then we won't hear any more.

Mr. McNulty: I just wanted to tie it up.

By Mr. McNulty:

Q. Page 185 of Mrs. McKee's testimony she was asked and testified as follows with reference to the March 5th conference—"Q. All right, go ahead. Mr. Newman was the first to speak at the conference? A. Yes, I remember Mr. Newman spoke first and he said—He spoke of the suit and it was all on account of Mr. McKee's cruelty. Q. What did he say? A. In public and in private. Q. What did he say? Can you tell us what Mr. Newman said? A. I don't remember just how he put it except that I remember that expression about cruelty brought in. Q. But that you do not now remember his exact words? A. No, not that part of it. And Mr. Kirby said 'Not in public?', and Mr. Newman said 'Yes,

in public also.' Did Mr. Newman say anything about cruelty either in public or private at that conference of March 5th? A. There was no such discussion.

Q. "Q. What else was said at this conference? A. And Mr. Newman said 'We will assume it is your desire to bring about a reconciliation with your wife.' Q. Yes. A. And Mr. McKee didn't say anything, nor did Mr. Kirby. Then Mr. Newman said—'Is that your desire?', and Mr McKee looked at Mr. Kirby and after Mr. Kirby nodded yes then Mr. McKee nodded yes." You have denied that? A. Yes.

Q. On pages 190 and 191 Mrs. McKee was asked and testified as follows—"Q. Now at that time he was living in Leonia wasn't he? A. If so I knew nothing of it. Q. You knew he wasn't living at 39 Claremont Avenue? A. He answered the telephone there. Q. Not to you. A. Yes, to me. Q. You didn't ring him up there? A. I certainly did. Q. When did you call him up? A. I can't remember the dates. I called him up several times when he was there and several times when he was not there. Q. During what month? A. Up until July when I left." Did Mrs. McKee get you on the telephone at 39 Claremont Avenue after February, 1925? A. No.

Q. Did you ever strike Mrs. McKee? A. No.

Q. Or hit her? A. No.

Q. Or call her a fool? A. No.

Q. Tell her she had no brains? A. No.

Q. Or tried to make a hired companion of her? A. No.

Q. Doctor McKee you wrote Mrs. McKee suggesting that she change the name of her library card? A. Yes, I wrote her to change the name and address.

Q. In whose name was the card at that time?

A. It was either in my name or in hers with address of 39 Claremont Avenue.

By the Vice-Chancellor:

Q. Why were you anxious to have her change that card so as to get the address 39 Claremont Avenue off, if that was the purpose? A. It was my purpose because notices were being sent to 39 Claremont Avenue. They would follow me to Columbia and would follow her to Spuyten Duyvil and the correspondence would accumulate and the card would likely be cancelled and a fine on account of not prompt attention to it, and it was for that reason I wanted her to change it so she could continue to use the public library.

Q. You were not concerned with the fines because you were not paying them? A. Indirectly I was. I was furnishing money to live on.

Q. And she was using it for purposes she thought proper. My recollection of it it was more of a command than a suggestion? A. It was a business letter only a sentence enclosing the notice in which the library was complaining and suggesting she make a change. I do not remember the words of the letter.

By Mr. McNulty:

Q. Had you spoken to Mrs. McKee about this library card situation? A. Once before when I received a notice I had talked to her regarding it.

By the Vice-Chancellor:

Q. This letter which I have before me Exhibit 18 reads rather abruptly—"I have just received the enclosed card. You should cancel the circulation

card you now have and take out one in your own name." Do you think that is the kind of a letter you ought to write to one you wanted to become reconciled with? A. It was simply a business letter. There was no attempt to invite her to return at the time. It was simply a business type of letter.

Q. Did you consider it proper to send a business type of letter to one who was dear to you as your wife—one who had borne two children to you? A. On such a subject, yes. It was just a brief note.

Q. The reason I ask is I have in mind that such a thing may have some particular significance as to the sincerity of your alleged desire to become reconciled? A. Personal letters I wrote by hand, but this was—perhaps because it was typewritten I wrote it in a business way and not a family letter.

Q. It is not a proper thing to send a typewritten letter to your own wife—such as it is? A. Normally I wouldn't do that. I think there are only one or two other letters relative to the bonds which were typewritten.

Q. Were those letters typewritten by yourself or dictated to somebody and typewritten? A. I can't tell. That I think was dictated to somebody else because it is on one of the two machines which has type of that kind.

Q. To whom was it dictated if you recall? A. A stenographer. I don't know, but from that type I would say it was dictated to Margaret Stone who was my stenographer at that time.

By Mr. McNulty:

Q. Was there a conference, doctor, between you and Mrs. McKee at Mr. Whaley's home? A. There was.

Q. Who was present at that conference? A. Mrs. McKee, Miss Whaley, Mr. Whaley and myself.

Q. Was Miss Whaley there throughout the conference? A. She was there at the beginning and she came down and was there at the latter part of the conference.

Q. What time did this conference take place? A. About the first of November, 1925, on I think a Sunday evening. I am quite certain it was Sunday evening.

Q. At whose request was the conference called? A. At my request.

By the Vice-Chancellor:

Q. At your request? A. Yes.

Q. Mr. Whaley testified it was at your wife's request. He talked to you and arranged the conference? A. He had a talk with me and I knew nothing of his arranging it. I telephoned Mrs. McKee saying I had a talk with Whaley and asked her to meet me on Sunday evening. I heard Mr. Whaley give that testimony.

By Mr. McNulty:

Q. How was it brought about? A. I had just had a talk with Mr. Whaley and I telephoned to Mrs. McKee and asked her if she would meet me to discuss our marital affairs at Mr. Whaley's house on Sunday evening and she replied that she would meet me there.

Q. What happened at the conference? A. When I got there Mr. Whaley, Miss Whaley and Mrs. McKee were there. I greeted each of them.

Q. What time was that conference? What hour? A. It was early, perhaps 7 or 7:30 on Sunday night.

By the Vice-Chancellor:

Q. You got to the part where you said you

greeted each of them. How did you greet your wife? A. "I am glad to see you Mary."

Q. After that? A. We talked about the children and their work at school first, then I said to Mrs. McKee to quit her—to change her attitude and consider coming back to me. "I have asked you a number of times to come back to me and you don't seem to be willing. Change your mind and come on back and live with me. We can have a home for the children—a nice home—and then you and I can be happy and be much better than living this separate existence." She said, "I don't want to consider that; I won't do it. I want you to provide for me separately and give me enough money to take care of myself well and of the children. You are making at least $20,000 a year or maybe $50,000, and you ought to give me about $12,000." I told her I wasn't making any such money and that I was only making about $10,000—in fact a little less than that, and at that time I was spending at the rate of approximately $9,000 for herself and the children and that was all that I could afford to do.

Q. Is that the whole conference as you remember it? A. No, that wasn't the whole conference. "We can live much cheaper if we live together, so that the $9,000 which I am now spending on you and the children can go much further, and with what I spend on myself we can have a nice home. Better change your mind and come and live with me." She said "I don't care to do that; I won't do that. I want to live separate." I was excited and got up and left and Mr. Whaley came to me just outside the door and said "You mustn't do that; you mustn't go off and leave us that way," or words to that effect. I told him I was much excited and I oughtn't to do that, and I came back and said good night to each of the three who were there.

Q. Is that your recollection of what transpired? A. Yes; I haven't gone into details.

Q. Where were you then living? A. I was living in Leonia, New Jersey.

Q. Then it isn't true as Mr. Whaley said you asked her to return to Leonia, New Jersey? You recall he so testified? A. It is quite possible there was more conversation and I don't recall the use of the word Leonia, but I suppose it is true.

Q. You didn't mention it in your testimony here? A. I didn't mention it but it was where I was living.

Q. Mr. Whaley is a friend of yours of years' standing isn't he? A. No, he is not. I met him in 1920 after we had—after the house was sold and we arranged to move to 180th Street. I didn't see him again until Mrs. McKee and I called upon them once when we were up in the Spuyten Duyvil section, and I saw him once or twice on the subway or ran across one another. I didn't see him again for a couple of years until 1925.

Q. He came here to court at your personal solicitation as your witness and without pay or reward or expectation thereof as he said. A. That is true. I asked him and he said he was willing to state the facts. I asked him to come and state the facts as to that conference because they were misrepresented.

Vice-Chancellor: I will strike that out unless it was said in the presence of your wife.

By Mr. McNulty:

Q. Did you at anytime say to Mr. Whaley you were willing to give Mrs. McKee $9,000 a year? A. No. I said I was spending that much on her

and the children and perhaps he confused the talk. It was a fact I was spending that much.

Q. Prior to that occasion which you have just testified to had Mr. Whaley ever spoken to you before that time about Mrs. McKee? A. In the spring of—

Mr. Blumberg: I object.

Vice-Chancellor: I would be glad to have him state it.

(Witness continuing) In the spring of 1925.

Mr. Blumberg: Are we bound by what Mr. Whaley said?

Vice-Chancellor: I am going to hear it.

Witness: In the spring of 1925.

By the Vice-Chancellor:

Q. You are speaking about Whaley now? A. Yes, about Whaley. He called at my office and said he understood that Mrs. McKee had left me.

By Mr. McNulty:

Q. You say in the spring of 1925. How long was it after Mrs. McKee's leaving you if you know? A. Perhaps two months or six weeks—something like that. He said at that time that—

Vice-Chancellor: I am receiving this subject to your objection Mr. Blumberg.

(Witness continuing) He was very sorry to hear that and particularly on account of the children and wanted to know if there was anything he could do in the matter. I told him at that time

there was nothing for him to do, although if he had an opportunity to discuss the matter with Mrs. McKee—

By the Vice-Chancellor:

Q. Did Mr. Whaley go to her house prior to this time and have a talk with your wife and your wife wanted $12,000 a year, if you know? A. He did in the fall of 1925.

Q. I am speaking before this meeting at the house? A. Yes.

Q. And didn't he say that your wife said you were earning $100,000 a year? A. My recollection is he said my wife told him I was earning $50,000 a year. I thought that was a compliment.

Q. Did you mention to him that you had $20,000 in Liberty Bonds and you had it so fixed your wife couldn't touch it? A. No, I said I had $20,000 of assets.

Q. You heard him testify to that here that you had $20,000 in Liberty Bonds? A. I heard the affidavit read.

Q. You heard him interrogated about it and you heard him say that? A. He is mistaken about that.

By Mr. McNulty:

Q. The conversation to which the Vice-Chancellor has called your attention which you had with Mr. Whaley, what did Mr. Whaley say to you when he first came to you about that conference?

Mr. Blumberg: I object to it.

Vice-Chancellor: I think it is permissible because Mr. Whaley said Mrs. McKee called him up on the 'phone and talked to him and

asked him to see her husband. Whether she did or not remains to be seen. He talked with the husband and told the husband the wife would like to see him and the arrangement was made to meet at his house. There is a lot of contradiction to that testimony.

Q. When Mr. Whaley came to see you did he say it was as a result of a telephone conversation from Mrs. McKee? A. No, he came to see if there was a possibility of getting the family together.

By the Vice-Chancellor:

Q. Why would you consider he, a rank outsider, would intercede in your family affairs if your wife hadn't asked him to intercede and it wasn't reported to you? A. He was interested in seeing if he couldn't help in the matter, particularly because he was an admirer of the children. At that time I simply felt he was using his good offices as some of the other friends did, although the offers were not used, and I did not appreciate he had had a telephone conversation with Mrs. McKee. I thought it was simply he was discussing matters as a whole there. I did know that he had talked to Mrs. McKee because he told me, I think it was at that time, that Mrs. McKee had not received the September check that I had sent to her in Carthage, Illinois, but I did not know he had suggested any question of conference. I suggested to him I would like to have a conference and whether we could have it at his house and he said yes, he would be glad to. I learned perhaps that same day or the next he reported to Mrs. McKee and made arrangements to meet her there, saying I had a talk with Mr. Whaley.

Q. You are after telling me that he asked if you and your wife separated. Whaley came to you and offered his services, whatever the language was that was used, and asked you whether there was anything he could do and you said no, you didn't think there was. Why didn't you accept his invitation and use him as an intermediary to be reconciled to your wife? A. At the time I didn't think it could be done and I was going ahead on my own hook thinking things were going well.

Q. What progress do you think you had made during that six weeks? A. Because we had a meeting there and this was shortly after or about the time of February 28th, and on March 5th I had a discussion with Mrs. McKee about coming back.

Q. Which she refused? A. Yes, but not permanently, saying "I don't want to consider it now", and I thought I was making good progress and to have anybody else to lend a hand I thought would be a hindrance rather than help matters. I had two meetings within the two dates.

By Mr. McNulty:

Q. In the affidavit which was offered her he said you struck and slapped Mrs. McKee in 1920 while living in the same house with her. Did that occur? A. It did not occur.

Q. Mr. Whaley in his affidavit said you had $20,000 in government bonds and you had it fixed up so Mrs. McKee could not get at it. Did you tell Mr. Whaley that? A. I did not.

Q. How did you come to meet Mr. Whaley, Doctor McKee? A. At what time?

Q. Originally how did you come to know him? A. We were living at 521 West 130th Street and our lease was up, but we were living on a month-to-month basis and the house was sold to Miss Whaley,

that is, Mr. Whaley's sister. She came there on September first. Mrs. McKee had in my absence while I was in Europe rented an apartment at 854 West 180th Street, but the tenant in that apartment did not get out until September 12th or 14th or 15th, and in that period between September 1st and September 15th we continued to reside in the Whaley house. About a week after Miss Whaley came there her brother came and lived there for the continuing weeks from the second week of September while we were there, and as far as I know continued to live there until this day.

Q. So that he lived in the same house with you? A. For the second week in September, and I may add that we took our dinners together in the local hotel on the hill in Spuyten Duyvil I think at the same table, the four of us together—the six of us rather.

Q. Let me call your attention to Mr. Whaley's testimony about the time that Mrs. McKee was living in the Hotel Colonial on 71st Street. He testified in response to a telephone call from Mrs. McKee he went to see her and then went to see you. I think he related to you what Mrs. McKee wanted. What did Mr. Whaley say to you when he came to see you on that occasion? What was the purpose of his visit? A. He told me he had seen Mrs. McKee—I did not now anything of the telephone conversation—and she wanted more money, and in fact she wanted, I think it was, at the time $12,000 a year and complete control of the children, saying I was making as I recall it $50,000. I told him I was not making that and in fact I was not making $12,000 and that I couldn't consider attempting to supply that because if I did it would eat the principal of what I owned in a few years and that was not to be considered. I did suggest to him that per-

haps if we could get together say at his house or a friendly place instead of public places or lawyers' offices where we had been meeting that might possibly bring about a reconciliation and bring her back to me, a thing for which I was anxious. I asked him if we could use his house and he said yes, and I asked him about next Sunday and he said all right and I said all right arrange for a meeting there next Sunday.

By the Vice-Chancellor:

Q. When was this meeting you had with Mr. Whaley? A. Early in the week preceding the Sunday which we met, and that meeting, I think, was the 1st, 2nd or 3rd of March, 1925.

By Mr. McNulty:

Q. Now this conference to which I directed your attention at the Whaley home, when was that held with respect to the institution of the suit by Mrs. McKee against you in New York? A. About two weeks later—two weeks and a half later.

By the Vice-Chancellor:

Q. You mean the meeting was after the suit? A. After I had been served with the summons and complaint—about two weeks after.

Cross Examination by Mr. Blumberg:

Q. You have stated several times, doctor, that you did not strike Mrs. McKee. Do you mean you never struck her? A. I never struck her in an unfriendly way. I mean by that that I have never struck her excepting as we met a pat, but I have never struck her.

Q. But you did strike her in a friendly way, is that what I understand? A. I have patted her. The pats was one of the few methods of caressing her I had.

Q. How many times would you say you patted her? A. Several hundred times.

Q. Where did you pat her? On what part of the body? A. Shoulder and cheeks and chin.

Q. And you also stated you never slapped your wife? A. That is correct.

Q. Never slapped her? A. No.

Q. Not even once? A. No.

Q. Never slapped her in the face once during your married life? A. I don't think I did.

Q. You don't think you did or you are not certain? A. I am certain I did not.

By the Vice-Chancellor:

Q. Wouldn't you be able to say whether you did or not slap her in the face? A. I did not.

Q. You said you were not certain? A. I am positively certain.

By Mr. Blumberg:

Q. Did you ever pat your wife in the face? A. Yes, many times.

Q. A gentle pat in the face? A. Yes.

Q. You were not at all angry when you did that were you? A. No.

Q. It was said that you never told your wife to shut up? A. Yes.

Q. You still say not even once in your married life did you tell your wife to shut up? A. I have not.

Q. You have not said that? A. No.

Q. And do you deny that in June, 1923, you

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threw your wife forcibly on to a door-sill? A. I do.

Q. You know that your son and your daughter were home at that time, do you not? A. The incident never occurred.

Q. You have no recollection of the incident? A. No.

Vice-Chancellor: He denies any such incident.

Q. Now regarding this typewritten letter, Exhibit P 18, about the library card, wasn't it the fact the card was in the name of Mrs. Ralph McKee? A. I don't know. I think it was either Mrs. Ralph H. McKee or Ralph McKee but it had the address of 39 Claremont Avenue, and that was the occasion for getting a new card in her own name.

Q. You stated in the letter she should take a card out in her own name. A. Yes. I think it was in the name of Mrs. Ralph H. McKee.

Q. You had objected to your wife having a library card in the name of Mrs. Ralph H. McKee? A. No, excepting to the degree she should receive notices promptly from the library.

Q. So the occasion of your wife having a library card either in the name of Ralph McKee or Mrs. Ralph H. McKee caused you to write her this letter? A. No, it was the occasion of having the address at 39 Claremont Avenue.

By the Vice-Chancellor:

Q. You didn't make any mention of that in your letter? A. I appreciate I didn't.

By Mr. Blumberg:

Q. I will take you to the Thanksgiving dinner of

1925. You had dinner with your daughter and Mrs. McKee isn't that so? A. Yes.

Q. And you say at the dinner you invited Mrs. McKee to go to the theatre with you? A. I had invited her at the time of arranging for the dinner. I do not think I invited her during the dinner, but I invited her afterwards, after the dinner to go.

By the Vice-Chancellor:

Q. My recollection is that you testified to that.

Mr. McNulty: I think he has already referred to that.

By Mr. Blumberg:

Q. Did you tell Mr. Whaley you were willing to give your wife $9,000 a year? A. I did not.

Q. You heard Mr. Whaley testify to that yesterday didn't you? A. Yes; he confused it.

Q. He was your witness wasn't he?

Vice-Chancellor: He brought him here.

Q. Did he send a letter in which you offered her $900.00 a year? A. I saw it offered here but I do not think I wrote the letter.

DEFENDANT'S REBUTTAL CASE.

MARGARET McKEE, being sworn.

Direct Examination by Mr. Blumberg:

Q. Your name is Margaret McKee? A. Yes.

Q. You are the daughter of Mr. and Mrs. McKee? A. Yes.

Q. The parties in this suit? A. Yes.

Q. You go to school do you? A. Yes.

Q. What school? A. College of Physicians & Surgeons.

Q. Columbia University? A. Yes.

Q. You are a graduate of Bryn Mawr College, is that right? A. Yes.

Q. Do you know the occasion when your mother and father separated—I mean the date? A. I don't remember the exact date.

Q. You don't remember the exact date? A. It was in the middle of January 1925.

Q. You were at school at that time? A. Yes.

Q. Have you seen your father since that time? A. Quite often.

Q. How often would you say you saw him? A. At least twice a week—sometimes I was away at college. I guess there were weeks when I haven't. On the whole twice a week.

Q. Have you seen him lately? A. Yes.

Q. When did you see him last? A. I saw him Sunday night and Monday morning.

Q. Did you ever visit your father in New Jersey? A. Yes.

Q. What place or places? A. At 607 Bergen Avenue.

Q. Did you visit him at any other place in New Jersey? A. No.

Q. Never did? A. No.

Q. How about the year 1926? Where did you see him in that year if you can recall that? A. 1926 I had dinner with him often in New York.

Q. Did you come to New Jersey in 1926? A. No.

Vice-Chancellor: Why don't you direct her attention to what you are alluding to?

Mr. Blumberg: I want to show there were numerous visits in which there was nothing said about reconciliation.

Vice-Chancellor: Put your questions.

Q. When did you first see your father in Jersey City? A. It was in the late spring of 1927—in May I think.

Q. At 607 Bergen Avenue? A. Yes.

By the Vice-Chancellor:

Q. Where had you visited him before? A. I never visited him before that. He had dinner with me in New York.

Q. Do you know where he lived previous to the time you visited him on Bergen Avenue? A. He wrote me he lived in Leonia.

Q. Did you ever visit him there? A. No. I was there in 1919, but I have not been there since.

By Mr. Blumberg:

Q. You spoke to your father I suppose when you saw him? A. Yes.

By the Vice-Chancellor:

Q. Had you had correspondence with your father shortly preceding the time you visited him in Jer-

sey City? A. Oh, yes; I wrote to him regularly and he wrote to me.

Q. Have you any letters shortly prior to that date that would indicate he lived elsewhere than in Jersey City? I mean do the letters indicate where he was living? A. They were headed Jersey City and the date.

Q. Before you actually visited him? A. At least one before. I don't know how long before.

By Mr. Blumberg:

Q. Do you know Mr. Whaley? A. Yes.

Q. Miss Whaley? A. Yes.

Q. Did you see Mr. Whaley at your mother's house in 1928? A. Yes, he was there once I think, the first of June. At least about that time.

Q. 1928? A. Yes.

Q. And did Mr. Whaley see you? A. I don't think so.

Q. Where were you? A. I was in the next room. There was a connecting door that doesn't fit very well.

Q. Did you hear the conversation that your mother had with Mr. Whaley at that time? A. Yes.

Q. Do you recall that conversation? A. Yes.

By the Vice-Chancellor:

Q. Who was present at that time? A. My mother and Mr. Whaley.

By Mr. Blumberg:

Q. Will you state to the court the conversation that Mr. Whaley and your mother had at that time as best you can recall it? A. When Mr. Whaley

came in mother greeted him and said good evening and asked how he was and how his sister was. I don't know whether they talked about weather, but it was very casual. Then Mr. Whaley said that at some previous time a man had come to see him and he wasn't home and he said he was from my father. He made arrangements to meet the man downtown and when he met him the man said he knew Mr. Whaley was a friend of father's and he wanted Mr. Whaley to sign a paper that at a conference at his house father asked mother to come back and live with him. Mr. Whaley said he couldn't do that because he did not hear father say that. He said he didn't tell the man that right away. He said he wanted to hear what the man had to say. The man said of course father was a nice man and had a great deal of money and had certain patents—

By the Vice-Chancellor:

Q. You mean the man said that to Mr. Whaley? A. Yes; and he thought he ought to sign the paper. Of course Mr. Whaley said he couldn't. Before the conference father had told him he was going to give mother an allowance of $9,000 and so father made arrangements for this conference at Mr. Whaley's house and at the conference he had done nothing except discuss his income. When he said "I asked you to come back and you refused," and mother said "You never asked me," Mr. Whaley said father got mad and went out without saying anything more.

By Mr. Blumberg:

Q. Did your mother say anything to Mr. Whaley at that time? A. She said "Yes, that is the way it happened," or something like that.

Q. Did she say anything to Mr. Whaley about testifying in the case? A. I don't remember anything about it. I don't think she did.

Q. At your conversations with your mother did he discuss with you his difficulties at home? A. Sometimes, but not often.

Q. What did he say to you when he discussed those difficulties? A. That is a difficult question to answer; there are so many times.

Q. Did your mother ever ask you to see your father about her marital difficulties? A. Yes, she asked me to see if there was ever any possibility of their living together again.

By the Vice-Chancellor:

Q. Did you tell your father your mother had asked you to inquire about it? Did you talk to your father about it? A. Yes, but I don't know whether mother told me to say she asked. I asked him about it—about the chances of living together.

Q. What did he say? A. He said he thought so too but it would have to be different than it was before. Mother would have to act different.

Q. Did your father ever ask while in your company to try and reconcile he and your mother? A. No, he never did.

Q. Did your father ever speak to your mother in your presence to see if the family could be reunited? A. No.

Q. Did your father ever say in his talks with you or in any correspondence he had with you that he had ever asked your mother to return again to live with him and she had refused? A. I think he did.

Q. In what respect? Tell us when and under what circumstances? A. I am not sure of it.

Q. If you are going to guess at it I don't want it. If you have a fair recollection of it I would be glad to hear it. A. I am pretty sure once he told me in a conversation he had asked mother to come back and live with him and she had refused.

Q. Did you tell your mother that? A. Yes.

Q. What did she say? A. That he had not said that.

Q. Did you report that back to your father when you saw him thereafter? A. I don't think I did.

Mr. McNulty: If your honor please, she has referred to one specific instance. I would like to have the time fixed when her mother spoke to her about speaking to the father.

Vice-Chancellor: She does not know it was definitely said.

Witness: That my mother asked me to speak to my father?

Vice-Chancellor: Yes.

Witness: She did it several times.

Q. Tell we when that was? A. It was once just after she started the suit and I know several times before that.

Q. And having in mind what she asked you to speak to him about you did speak to your father? A. Yes.

Q. As you have indicated, and your best recollection is you did not tell him she asked you to speak to him? A. I don't think I had told him she asked me to.

Q. You were anxious of course to have your father and mother reunited, were you not? A. I wanted to if mother thought it was best.

Q. I mean if the family could live happily that would be your thought, would it not? A. Yes.

By Mr. Blumberg:

Q. You lived at home prior to 1923 did you not? A. Yes, I lived at home until the fall of 1924.

Q. And you went to college in the fall of 1924? A. Yes.

Q. You saw your father and mother daily did you not? A. Yes.

Q. Did you observe your father's conduct toward your mother? A. Yes.

Q. Did you ever see your father strike your mother? A. Yes.

Q. He did? A. Yes.

Q. Will you state some occasions on which your father struck your mother? A. Well, I remember once—there were several times when he slapped her.

By the Vice-Chancellor:

Q. Where? On her face or her body? A. In the face.

Q. Try and keep your thoughts together as well as you can and give us your best recollection of times and circumstances and of the occasions. What is this once instance which you have in mind when you saw your father strike her? A. It was once when I saw him stand her in the corner and hit her with his fist all over the body.

Q. More than one strike? A. Yes—many.

Q. Do you know what occasioned that? Had there been a quarrel between them or what led up to it? A. I don't know; I came in while he was doing it.

Q. What room of the house and what part of it was your mother when the beating was taking place? A. In the hall between the door of her bedroom and the entrance of the hall.

Q. Can you give me any idea when that was? How long before your father and mother separated? A. I think in 1922 or 3. I think we were living on 180th Street.

Q. And when you came into the house you stated you saw him beating her? A. I was in the house. I came into this part of the house.

Q. You saw him beat her in the way you described? A. Yes.

Q. What did you do while that was going on? A. I said he shouldn't do it; it wasn't right. And I tried to hold his hand.

Q. What did he do to you when you tried to hold his hand? A. He threw me off.

Q. After he threw you off did he continue beating her or did he stop? A. Yes, for a while; and then he stopped.

Q. What was the condition of your mother's face after this alleged beating? A. I don't remember.

Q. Did your mother ever show you her body after that? A. She never showed me or told me any of the things he did until after they separated. It was just what I saw.

Q. You have detailed that one instance. Will you tell us some other time when you saw your father slap or strike your mother? A. I know whenever we were talking, father and I, and mother would want to say something he would say "Shut up," and slap her.

Q. How frequently did that occur? A. I don't remember how frequently, but it was not unusual at all.

Q. Do you recall any other incidents about slapping or beating? A. I don't recall any other particular incidents—many different times.

Q. Do you know that he slapped her at any other times that you cannot state the particular instance?

A. Oh, yes. When he went by her he would strike her just for no reason.

Q. Strike her in what way? Just give me an idea. A. He would shove her against the wall with his elbow or something of that sort.

Q. Then the household at times was not very harmonious was it? A. No.

By Mr. Blumberg:

Q. Do you know whether your father was angry when he did that or was he cool and collected? A. He was angry most of the time anyhow.

By the Vice-Chancellor:

Q. Not very pleasant at home? A. No.

By Mr. Blumberg:

Q. Would he tap your mother gently or strike her violently? A. He struck her hard enough to throw her against the wall.

By the Vice-Chancellor:

Q. And kept beating her when you asked him to desist and he threw you off, too? A. Yes.

By Mr. Blumberg:

Q. Do you recall an occasion when your mother was lying across the entrance of the door? A. Yes; there was once when I saw her lying across the entrance to the sewing room and she was badly hurt, and my father and brother had to lift her and put her to bed.

By the Vice-Chancellor:

Q. What occasioned the hurt? A. Of course I

didn't see it and she said she would rather not tell me. But since she has.

Q. Was your father present when she told you? A. Yes.

Q. Did your father offer any explanation as to how your mother received the injury? A. No.

Q. What was the hurt at that time? A. I didn't see; but I know her back was injured. I got a hot water bottle. I wanted to call the doctor but I didn't.

Q. Was your father there when you wanted to call the doctor? A. Yes.

Q. Was he there when you brought the hot water bottle? A. Yes.

Q. Did your father make any comment as to whether or not you should lend any assistance to your mother? A. No.

Q. Did your father inquire as to how your mother was getting along after you brought the hot water bottle? A. No.

Q. Did you give any assistance or treatment to your mother after you brought the hot water bottle? A. She said to leave her alone, and I put it in bed with her.

Q. Where was your father while you did that? A. He was in the room.

Q. Did he make any comment or explanation or statement? A. No.

Q. You didn't make any comment? A. I didn't see much use in it.

Q. But you did not? A. No.

Q. And your mother said she would rather not make any statement to you as to what happened? A. Yes.

Q. Can you fix the date? A. I know it was while we lived on 180th Street. I can't fix the date.

By Mr. Blumberg:

Q. Was it 1922 or 3? A. It would be 1922 or 3 we lived there.

Q. Did you speak to your father about testifying in this case? A. He spoke to me about it.

By the Vice-Chancellor:

Q. When? How long ago? A. I think it was last spring sometime.

By Mr. Blumberg:

Q. What did he say to you? A. He said it would be greatly to my disadvantage if I testified.

By the Vice-Chancellor:

Q. Did he tell you how it would be disadvantageous? A. No. He said another time—it was about the same time—if I took sides in the case I would have to stay on that side and take the penalty for it.

Q. Did your father in asking you about whether you would be a witness or not say anything as to whether you observed anything from time to time or whether you would say you observed anything? A. No.

Q. Your father has testified he never struck your mother and never slapped her or beat her. What I am concerned about now in view of what you have testified to is whether your father by word to you undertook to induce you to keep away from court and not to tell just what you told? A. All he said to me is what I said.

By Mr. Blumberg:

Q. When did you know you were to be a witness in this case, Miss McKee? A. The night before

last. My mother asked me before if I would be willing and I said yes, if it would be necessary.

By the Vice-Chancellor:

Q. Of course you then had in mind what your father said? A. I didn't think it was right to take sides between father and mother unless it was necessary.

By Mr. Blumberg:

Q. And your mother asked you the night before last to come to court? A. Yes.

Q. And you saw me yesterday? A. Yes.

Q. Did you ever see your father kiss your mother? A. On one occasion.

Q. What occasion was that? A. When he came back from Europe in 1920 when we were still living in Spuyten Duyvil.

By the Vice-Chancellor:

Q. How did he greet you and your brother and mother at that time? A. I don't remember except he kissed us all. That was the only time he ever kissed mother, and that's the reason I remember it.

Q. It is the only time you observed him kissing your mother? A. Yes.

By Mr. Blumberg:

Q. Do you remember your father's visit in 1924 to Europe? A. I remember when he left.

Q. Do you remember when he returned? A. Yes.

Q. Were you in the house at that time? A. Yes.

By the Vice-Chancellor:

Q. How did he greet you at that time? A. I suppose he kissed me; I don't know.

Q. Did he kiss your mother at that time? A. No. He never spoke to her.

Q. He testified he kissed you and your mother and your brother—I don't recall about your brother—but he kissed you and your mother and hugged you separately. Do you remember that? A. No.

Q. And after greeting you you all sat in the bedroom and talked together? A. We were in the bedroom. I don't know whether we sat down, but we talked in there.

Q. Did he talk to your mother at all? A. No.

Q. Did your mother try to talk to him at all? A. Yes.

Q. What was the response from him to your mother? A. Just didn't pay any attention.

Q. How old are you now? A. Twenty-one.

Q. How far have you gone in the College of Physicians & Surgeons? A. This is my second year.

Q. And of course your father is paying your tuition? A. He doesn't have to pay tuition there.

Q. Whatever schooling you had he was generous in helping you in that regard he so testified? A. Yes.

Q. You have no other means of paying for your schooling? A. No.

By Mr. Blumberg:

Q. Do you recall a visit that your father and uncle made in Spuyten Duyvil? A. Yes.

Q. Can you fix the date of this visit? A. It was in the fall of 1926. It must have been in the latter part of September.

By the Vice-Chancellor:

Q. Will you describe what happened at that time? A. My brother went to the door and he came back and said it was my uncle Rodney and father. So mother asked him to go in and speak to them until we came in. I had been ill and mother was helping to dress me. After I got dressed we came out into the living room and I don't remember what we talked about—it was a general conversation. Then when they left my uncle said he was sorry I couldn't go to dinner but I was ill and wasn't able to. So my brother went to dinner with them.

Q. Was your mother asked to go? A. I think my uncle said he was sorry my mother and I couldn't go or something like that.

By Mr. Blumberg:

Q. Do you remember an occasion in December 1928 when your father came to the house in Spuyten Duyvil—or in 1927? A. Yes, he brought me home.

Q. You were out with him that night? A. Yes, I had gone to a wedding with him or dinner or something, and he brought me home, and I think we were making arrangements for the next time I was to see him. I was going upstairs for something and was going to come back and talk to him some more before he left. So I went upstairs and I went to my room and then I heard him at the front door and he had followed me upstairs and was there too. I didn't know whether he should be coming up or not and I told him he couldn't come but mother said never mind and so I stopped telling him he couldn't come and he came in. My

mother went out to the hall too and he gave mother a paper. He said it was about the death of some friend and my mother thanked him and he went away.

By the Vice-Chancellor:

Q. Did your father have his foot in the door to prevent her from closing the door? A. My mother wasn't there.

Q. What was the paper? Do you remember what it was the paper you are speaking about? A. It was a college paper of some kind. I don't know whether it was the University of Maine or Lake Forrest. It was something about a death.

Q. Did your mother talk to him freely or did she prevent him from seeing her? A. No, she came out into the hall.

Q. Aside from the presentation by him to her of this paper do you recall anything that was said? A. Nothing was said except mother thanked him for it.

By Mr. Blumberg:

Q. Did your father have his foot in the door at that time? A. I tried to shut it because I didn't knew whether he should come in or not.

By the Vice-Chancellor:

Q. I understood your father to testify that he on that occasion when the door opened put his foot in the door so it couldn't be closed and your mother tried forcibly to close the door, and he talked to her considerably and showed her this paper. What I am concerned about now is whether it is true as he stated he had his foot in that door and your mother tried to keep him out? A. She didn't come

out in the hall until he was right in the hall. I tried to keep him out because I didn't know what technical thing would be violated.

Q. At the time you tried to keep him out did he have his foot in the door? A. I don't know whether he had his foot or what, but I couldn't close it.

Q. So you were the one that tried to close the door and not your mother? A. No, she was in the living room. She wasn't in the hall at all.

By Mr. Blumberg:

Q. This was the door of your room that you were trying to shut? A. No, the door to the apartment.

Q. Did your father get into the apartment then? A. Yes, he came into the hall.

Q. You were not able to keep him out? A. No. Mother said never mind, and I stopped.

Q. He came in and talked to your mother? A. Yes.

Q. What did he say? A. I don't remember exactly but he gave her this paper and said "I thought you would like to see this article" or something of that sort.

Q. And she said "Thank you"? A. Yes.

Q. Did he say anything else to her? A. He may have said good night, but that was all.

Q. Did he speak to you that night? A. I think I went down to the door with him and continued making the arrangements for meeting again, but I am not sure about that.

Q. You are positive nothing else was said that night between he and your mother? A. Yes.

By the Vice-Chancellor:

Q. Excepting about the paper? A. Yes, just about the paper.

By Mr. Blumberg:

Q. You went to dinner in 1925 with your mother and your father?

Mr. McNulty: I object to it.

Vice-Chancellor: He is directing her attion to a time. I will permit it because it was brought out she was at that dinner.

Q. Do you recall the Thanksgiving dinner of 1925? A. Yes.

Q. At which you and your mother attended with your father after your mother and father had separated? A. Yes.

By the Vice-Chancellor:

Q. Can you tell me if you will how the arrangements were made for you to attend that dinner? Was it made by your father with you or who? A. I don't remember.

By Mr. Blumberg:

Q. Where did you have that dinner, do you remember that? A. I think it was at Laubers, but I am not sure. At least it was at some restaurant downtown in that vicinity.

Q. Did you go there with your mother? A. Yes, I think so.

Q. And met your father at the restaurant? A. I think we did.

By the Vice-Chancellor:

Q. You were all there together? A. Yes.

By Mr. Blumberg:

Q. And you overheard the conversation your father had with your mother didn't you? A. What there was.

Q. What was that if you remember? A. I don't know if it could be called a conversation between my father and mother. They both talked to me but whenever mother made any general remarks or addressed my father he wouldn't answer and said yes or no.

By the Vice-Chancellor:

Q. There was some talk exchanged between your father and your mother? A. I don't remember. If there was it was at least very unimportant.

Q. You mean unimportant because you don't recall? A. It must have been about the weather or something like that.

Q. What was the occasion for getting together? Did he tell you why it was arranged? A. He said it would be a good idea for us all to have dinner together.

Q. At that time did your father make any overtures to your mother to induce her to return to him and take up a home? A. No.

Q. Was there any such thing said at that time? A. No.

By Mr. Blumberg:

Q. Did you go out with your father that night? A. I don't remember.

By the Vice-Chancellor:

Q. After the party broke up did your mother go off alone and did you and your father go off together? A. I don't remember.

By Mr. Blumberg:

Q. This dinner took place at noon? A. Yes.

Q. Did you go any place that afternoon? A. I don't remember.

Q. Do you know whether your mother and father went out together prior to 1924?

Vice-Chancellor: You mean at times?

Q. Do you know of any occasion when they went out together prior to 1924? A. I don't remember any occasion.

By the Vice-Chancellor:

Q. Were they accustomed to go out together? A. No, they were not.

By Mr. Blumberg:

Q. Was your father often on trips? A. He asked me to go.

By the Vice-Chancellor:

Q. Did you ever hear him ask your mother to go? A. No.

By Mr. Blumberg:

Q. Did you ever hear him ask your mother to go along? A. No.

Q. Your father went to Europe in 1920? A. Yes.

Q. Did he go alone or with the family? A. Alone.

Mr. Blumberg: That's all.

Mr. McNulty: I think Mr. Walscheid would like to cross examine her.

Vice-Chancellor: I told that to Mr. Walscheid but I don't think I ought to do that with this witness. It will take her away from her studies. You read the testimony and I noticed you taking notes.

Mr. McNulty: He is trying this case.

Vice-Chancellor: But you are the solicitor of record. I am going to require you to conduct the examination. I am not going to take her from her studies any more.

Vice-Chancellor (to witness): You don't want to lose any more time young lady do you?

Witness: No, I don't.

Vice-Chancellor (to Mr. McNulty): If this was a strange witness that was brought here I certainly would give Mr. Walscheid an opportunity to examine her. I am frank to say I do not believe you or Mr. Walscheid would think that either one of the children would come in here and testify falsely.

Mr. McNulty: I have been under the impression when I came here Mr. Walscheid was conducting the case and had all the testimony. I did not have access to the testimony and I am not as familiar with it as Mr. Walscheid.

Vice-Chancellor: You have been making stenographic notes.

Mr. McNulty: Yes, but it gets away from me.

Vice-Chancellor: I am going to give you lots of time to get it back to you. We will now take a recess until half past one to enable you to get it together.

Afternoon Session.

Mr. McNulty: If your honor please I would like to have it noted on the record that Mr. Walscheid was engaged to try this case and it has now proceeded perhaps nine days or ten days. Mr. Walscheid has participated at the trial and has examined all the witnesses and has studied the testimony and I have had no occasion to make a complete study of the testimony in the case, and I feel it is unfair to me to be compelled to in Mr. Walscheid's absence to cross examine this witness and especially in view of the fact it was understood at the opening of this hearing today that I would not be called upon to cross examine any witness—that Mr. Walscheid would be afforded the opportunity to do so.

Vice-Chancellor: What you have stated now is noted on the record and I deny your request for a continuance of the matter and will require you to cross examine the witness.

Mr. McNulty: It is unfair to the petitioner.

Vice-Chancellor: Why is it unfair? You are a lawyer duly commissioned by the Supreme Court of the State of New Jersey; you have been sitting here listening to the case; you are a stenographer and know what has been said. Mr. Walscheid knew no more about what this witness was going to testify to than you did. You are just as capable of examining the witness, having made notes of the testimony, as any other lawyer. You are also solicitor of record. I want to dis-

tinctly say that I informed Mr. Walscheid before this case was called this morning if further testimony was adduced I would afford him an opportunity to examine the record, but I now qualify it by saying that because the testimony which was offered was by the daughter of these parties to the suit I see no reason for trusting the cross examination to one other than the solicitor of record. I suppose you think Mr. Walscheid will give her a more grilling examination than you would. I am convinced from observing her while testifying that she would not help one parent more than the other, but that she is going to tell the truth. She has sworn to do that.

---

MARGARET McKEE, recalled.

Cross Examination by Mr. McNulty:

Q. Now Miss McKee, you have testified that you did not want to take sides in this case? A. I testified I did not want to take sides in this case unless it was necessary.

Q. You have discussed it with your mother from time to time? A. Yes, and I did with my father from time to time.

Q. Did you know your mother was going to leave your father in January 1925? A. Yes.

Q. How long before she left had you known it? A. I knew it in the fall—in September before she left.

Q. You knew at that time she had been consulting lawyers? A. Yes.

By the Vice-Chancellor:

Q. You knew from what she told you? A. Yes, from what she told me.

By Mr. McNulty:

Q. You never told your father between September and the time she left she was going to leave? A. It wouldn't be fair to if she didn't wish to tell it.

Q. She didn't wish to tell it?

Vice-Chancellor: She said it wouldn't be fair unless she wished to tell it.

Q. Did your mother wish your father to know she was going to leave him?

Vice-Chancellor: I will overrule that question. I don't mind your asking some other question to bring that out.

Q. What did your mother say to you when she told you she was going to leave your father in September? A. I don't remember exactly what she told me except she asked what I thought about it, and I agreed with her that things were unendurable as they then were.

Q. Had you told your father that? A. I had told him I didn't think it was right for him to do the things he was doing.

Q. When did you tell him that? A. I don't remember when it was, but I told him that many times.

Q. Are you sure that Mrs. McKee didn't tell you earlier than September of 1924 she was going to leave your father? A. I don't think she did.

By the Vice-Chancellor:

Q. Did she tell you she was going to leave your father or what did she say? A. She asked what I thought about it.

Q. About what? A. About leaving him, and said she had been considering it and we discussed it, and we decided that since he was going abroad we would wait until he got back and see if it was different; to see if the rest would make him see things in a different light.

By Mr. McNulty:

Q. When did she first tell you she had been consulting lawyers? Was it at that time? A. I don't remember whether it was at that time or later.

Q. Now your mother left in January of 1925? A. Yes.

Q. And did you visit your father from January 1925 until January 1927? A. I had dinner with him in New York but didn't visit him.

Q. He asked you to didn't he? A. Once.

Q. Only once? A. I think only once. He asked me to visit him at Leonia once. Oh, no; it was another time. I think. I made a mistake. I think I did visit him at Ossining.

Q. You didn't visit him at Leonia? A. No, I visited him at the Country Club.

Q. You say he invited you many times to visit him in Leonia? A. No, he only invited me once to visit him in Leonia.

Q. Sure about that? A. Yes.

Q. At a time when your aunt was there? A. No, he said Mrs. Martin was to be away from the apartment and we could have the apartment 39 Claremont Avenue for ourselves.

Q. You knew that Billy had visited him in Leonia? A. Yes.

By the Vice-Chancellor:

Q. How would you know that, from what Billy told you? A. Yes, and my father.

By Mr. McNulty:

Q. He was invited there more than once? A. Yes.

By the Vice-Chancellor:

Q. How do you know that? You don't know how many times he was invited? A. I know he wouldn't go if he wasn't invited.

By Mr. McNulty:

Q. You testified Miss McKee of the Whaley conversation which you say you overheard. Did you listen to it? A. Well, the door didn't fit between the room. I couldn't help it.

By the Vice-Chancellor:

Q. Were you eavesdropping or did you just happen to hear it? A. I heard when I was in the room and I listened.

By Mr. McNulty:

Q. You listened because you wanted to listen? A. Yes.

Q. Did your mother ask you to listen? A. No.

Q. You say Mr. Whaley referred to a man. Did he name the man? A. No.

Q. Did he say when he came to see him? A. I think he said it was a short time before he came to see mother—perhaps a week or something of that sort.

Q. Did you hear your mother ask him who the man was? A. No.

Q. Did you discuss with your mother before you testified in this case the Whaley conversation? A. Why certainly.

Q. You did. A. Yes, I wrote it down shortly after and I told her about it. I wrote it down to be sure I would remember it.

Q. Did your mother suggest you write it down? A. Yes.

Q. Didn't Mr. Whaley say to your mother that his sister had told him a man had come when he was not at home? Isn't that what Mr. Whaley said? A. I don't remember whether he said his sister had said it. He said a man had come when he wasn't home. His sister may have said it.

Q. And he said the man wanted to get your mother's address? A. Not that I remember.

Q. And that was the purpose of his visit? A. No, it was not the purpose of his visit from what Mr. Whaley said.

Q. You didn't want to make any efforts to reconcile your father and mother in this case unless you thought your mother wanted you to do it? A. Do I have to answer that?

Vice-Chancellor: I am not concerned with what this witness wanted to do. It seems to me either parent asked her to do it one time, but what she wanted to do would not affect either party.

Mr. McNulty: I am dealing with her direct examination.

Vice-Chancellor: I will overrule the question as to what this witness wanted to do to effect a reconciliation of her parents.

Mr. McNulty: If your honor please it goes to the credibility of the witness.

Vice-Chancellor: I will overrule that question. You can put another one if you wish to.

Q. You made no efforts to reconcile your father and mother? A. I had told my father I thought the family ought to live together if they could and I asked him what he thought about it.

Q. And you said that at your mother's suggestion didn't you? A. Yes.

Q. Go on. A. And he said he thought so too and I said "Well, what about doing it", or "What about our case" or something of that sort, and he said mother would have to act differently.

By the Vice-Chancellor:

Q. Did he tell you in what respect your mother would have to act differently? Did he mention any more than what you are telling us now? A. He said she would have to be more pleasant.

By Mr. McNulty:

Q. You said that to him because your mother asked you to? A. Yes.

Q. You didn't tell him your mother had asked you to speak to him? A. I don't think I did.

Q. Did your mother tell you not to tell him that she told you? A. No.

Q. Did you of your own volition or on your own behalf speak to your father about going back to live with your mother? A. No.

Q. Did you ever speak to your mother about going back to live with your father? A. No.

Q. Why didn't you go to see your father between January 1925 and January 1927? A. Because I didn't want to. And moreover I wasn't invited except once.

Q. When you were invited? A. I didn't want to.

Q. You didn't want to go? A. No.

Q. Why didn't you want to go?

Vice-Chancellor: Now you can tell what it was that prevented you from going. The door is open now. I would have asked it only I didn't think it was fair to counsel.

Witness: I didn't want to go because I thought my father had been unfair to my mother and I did not feel very kindly towards him.

Q. You have visited him since, haven't you? A. Yes.

Q. And notwithstanding your view he had been unfair to your mother? A. Yes.

Q. And he was always pleasant to you, wasn't he? A. Almost always.

Q. Now during that period January 1925 until January 1927 your mother's suit was pending in New York, wasn't it?

By the Vice-Chancellor:

Q. Do you know anything about that? A. I knew there was a suit.

Q. How did you know? A. My mother told me.

By Mr. McNulty:

Q. Your mother told you there was a suit? A. Yes, sir. My father had told me too.

Q. You discussed it with your mother? A. Yes.

Q. And you spoke to your father about the New York suit? A. I think so.

Q. At your mother's suggestion? A. Either at my mother's suggestion or because my father brought up the subject.

Q. Didn't you request your father at your mother's insistence to endeavor to bring about some change in the procedure in the New York trial, that is, to get a referee? A. Yes, so there would be so much publicity.

Q. You remember that don't you? A. Yes.

By the Vice-Chancellor:

Q. Did you do it at the request of your parents or was it on your own account? A. My mother suggested the possibility to me. I saw it myself as well as her suggestion it would be much more pleasant for every one.

By Mr. McNulty:

Q. Your father has usually been very pleasant to you, hasn't he? A. Yes.

Q. And not only at the present time but back at the time when you lived on 180th Street? A. Yes, usually.

Q. What was your mother's attitude towards your father?

Vice-Chancellor: I can't let her express that. You can find out what she said or did.

Q. How did your mother act towards your father prior to January 1925? A. I think the best word to use would be submissive.

Mr. McNulty: I think that is a conclusion. I would like to have it stricken out.

Vice-Chancellor: I suppose it is. You can find out what she means by submissive.

Mr. Blumberg: It is in answer to his question.

Vice-Chancellor: I will leave it stand.

By the Vice-Chancellor:

Q. I will ask if counsel won't. What do you mean by submissive? A. I mean that when he demanded something she would do it, and when he wanted something she would get it. When he fussed about dinner not being ready she would hurry as much as possible, and all that sort of thing.

Q. By submissive you mean she would follow his dictates. Is that what you mean? A. I guess so.

Q. She did whatever he commanded or requested of her. Is that what you are trying to say? A. Yes, insofar as it was compatible to her.

By Mr. McNulty:

Q. Did your mother quarrel with your father? A. She got very angry sometimes when she was very upset.

Q. She did quarrel with him? A. I wouldn't say quarrel.

Q. She got angry? A. Yes, but on rare occasions.

Q. Now your father invited you and your brother and your mother to the movies from time to time? A. You mean before they separated?

Q. Yes. A. No, he never invited my mother.

Q. Never invited your mother? A. No.

Q. Sure about that? A. Yes.

Q. Isn't it the fact your mother would decline to go when your father invited her? A. How could she decline when he didn't invite her?

Q. He invited you and your brother? A. Yes.

Q. And he didn't invite your mother? A. I would say "Invite mother too", and he would say "No, I don't want to." I would ask if mother could go and he would say "No, we don't want her."

Q. And despite the fact that your father would ask you and your brother to go with him to the movies when you suggested to your father that he ask your mother to go along nevertheless you and your brother went with him? A. Not often, but sometimes we did.

Q. Despite that fact? A. Yes, because usually mother said we ought to go.

Q. Your father didn't ask you to take sides with him in this case or in any other litigation? A. No.

Q. When you were living on 180th Street were there any occasions when you and your brother and your mother and father went to dinner together around there in restaurants? A. There were some—not many.

By the Vice-Chancellor:

Q. That was while you were living with the Martins? A. We were never living with the Martins.

Q. I mean the Whaleys. A. That was in Spuyten Duyvil.

Q. Your father said for a time while you were living in the same house with the Whaleys the six of you went out and had dinner at some restaurant all together? A. I don't ever remember going with the Whaleys to eat. We may have done so sometimes, but I don't remember it.

By Mr. McNulty:

Q. How old were you then in 1920? A. I was twelve.

Vice-Chancellor: At the time of what incident?

Mr. McNulty: Going with the Whaleys in 1920.

By the Vice-Chancellor:

Q. Counsel is referring I think to the time when your parents lived for a short time with the Whaleys. Have you that time in mind? Was there a week or two you lived in the same house with the Whaleys? Is that the time you are alluding to when you said you twelve? A. He asked my age in 1920, and I was twelve in 1920.

By Mr. McNulty:

Q. In 1922 and 1923 you were fourteen or fifteen? A. Yes.

Q. And it was during 1922 and 1923 that you referred to the two incidents when your father struck your mother? A. Yes.

Q. And you didn't see any signs of injury on your mother? A. I noticed she was very ill and still suffers from her back ever since that time when I saw her across the doorway.

Q. You know that because she told you that? A. She never told me that until they separated.

Q. You never saw any signs? A. I saw her face with handmarks on it after my father had slapped her.

Q. I am referring to these two occasions in 1922 and 1923 which you detailed this morning. A. Yes.

Q. You saw no signs of injury on your mother at that time? A. No, not at that time that I remember, except I don't know what you mean by signs of injury. I said this morning I got my mother a hot water bottle and she was suffering greatly obviously, and I wanted to get the doctor.

By the Vice-Chancellor:

Q. When you said your father was there present? A. Yes.

Mr. McNulty: I think that is a conclusion. She says she brought a hot water bottle. That part of it stands.

Vice-Chancellor: I will leave it stand because coupled up with her previous testimony it clearly manifests that as a result of that happening her mother went to bed and this girl brought a hot water bottle and her father stood there when that happened and no comment was made by her father at that time.

Q. Do you remember an occasion when your aunt was there from Carthage, Illinois? Do you remember an occasion when your aunt from Carthage, Illinois was stopping at your house for several weeks? You were at school and came home? A. I think it refers to the time my aunt Frances was there. My mother has two sisters.

Q. She came there in response to some letter that was sent? A. I don't recall that.

Q. Do you recall anything that happened between your father and your mother at the time she was there? A. I was not home then. I think I was in school.

MARY N. McKEE, recalled.

Direct Examination by Mr. Blumberg:

Q. Mrs. McKee do you recall Mr. McNulty coming to your house in November 1927? A. Yes.

Q. Did you at that time tell Mr. McNulty you were 53 years old? A. He asked me nothing about my age.

Q. Did you tell him you were 53? A. No.

Q. Did you tell him you were 50 years old as he has in the affidavit? A. No, I told him nothing about it.

By the Vice-Chancellor:

Q. He didn't ask you? A. No.

By Mr. Blumberg:

Q. Did you tell him what your occupation was? A. No.

Q. You didn't tell him your occupation was housekeeper? A. No.

Q. You didn't tell him your occupation was a housekeeper as in the affidavit? A. I never spoke about it.

Q. Do you recall Mr. Whaley coming to your house in 1928? A. Yes.

Q. What month was it? A. The first day of June 1928.

Q. How did he happen to come to your house? A. He called me up on Thursday evening and told me he had heard something that would interest me and he would come up and tell me about it. I told him I had an engagement and asked him whether it was urgent and I told him to come the next evening. He did; he came about 7 o'clock in the evening,

and he said he heard something I would like to hear about and he said that one afternoon he had been away from home and his sister had told him a man had come to see him and wanted an address from him—to call him up. So he did call him up and made an appointment to see him downtown at some bank—I have forgotten what bank.

Q. Did he give you the man's name? A. Yes, he said the name was Buchanan. He said as soon as he saw him he recognized him as a detective. That's what Mr. Whaley said. This man said to him "You are a friend of Doctor McKee's", and I think he said "Not particularly", or something, and this man said "Well, what we want to know is would you be willing to sign an affidavit saying that at a conference at your house that you heard Mr. McKee ask Mrs. McKee to come back and live with him?", and Mr. Whaley "I wonder if the darn fool thought he could buy me." I told him that Mr. McKee knew me and if he wanted anything from me he could come and tell me. Then he said "If we can catch Mr. McKee trying to buy testimony that will fix things for you." He said "I called up Mr. McKee and made an appointment to see him and I couldn't see him today but I made an appointment to see him tomorrow, and I will come back on Sunday afternoon and tell you what he said." So he didn't come back on Sunday afternoon so I called him up and he wouldn't come to the 'phone. I went down to the house and I couldn't see him. Then I told my daughter. I went down to the commencement the next week—

Vice-Chancellor: Don't tell what you told your daughter.

Q. Did you ever threaten Mr. Whaley at all if he testified? A. No.

Q. What did you tell him? A. I went down to the Whaley house—

Mr. McNulty: I don't think it ought to be put in the form of rebuttal. Mr. Whaley is gone.

Vice-Chancellor: You can get him back again.

Mr. McNulty: I don't think it is proper rebuttal.

Mr. Blumberg: I asked Mr. Whaley the same question I am asking her.

Vice-Chancellor: Go on.

Q. You said you didn't make any threats to Mr. Whaley?

Vice-Chancellor: I shouldn't let her say that.

Mr. Blumberg: He said she threatened him. Does your honor recall that?

Vice-Chancellor: If you say it is so all right I will let it stand. I will disregard it if I find it varies from the facts.

Q. Did you threaten Mr. Whaley at all? A. No.

Q. What was said with reference to threats?

Vice-Chancellor: That is what counsel is objecting to. It is not properly framed for rebuttal.

Q. Mrs. McKee somewhere in the testimony Mr. McKee testified you called him a dog. Did you ever call Mr. McKee a dog? A. No, I didn't.

Vice-Chancellor: Has it been brought out by this witness what transpired at the

Whaley home? That is in the record, isn't it?

Mr. Blumberg: Yes. I think that's all.

Vice-Chancellor: Is that your case Mr. Blumberg?

Mr. Blumberg: Yes.

Vice-Chancellor: Are you closing too, Mr. McNulty?

Mr. McNulty: So far as I know the case is closed.

Vice-Chancellor: You don't want an opportunity of recalling your client?

Mr. McNulty: I want to but that is up to Mr. Walscheid.

Vice-Chancellor: If the case is closed I want to know it. If the case isn't closed I am going to suggest to Mr. Blumberg to bring this man Mr. Newman over here. Newman is the lawyer Mr. Kirby was addressing his remarks to.

Mr. Blumberg: He is chairman of the Ethics Committee in New York.

Vice-Chancellor: If he don't want to come over here you can take his testimony in New York by deposition. I am anxious to get his testimony if I can get it. It will clear up a lot of contradictions in the testimony. There is a frank contradiction between Mr. and Mrs. McKee as to what transpired at Newman's office. Mr. Kirby has said what transpired there.

Mr. Blumberg: I will try to get him.

Vice-Chancellor: I will continue it definitely or I will close.

Mr. McNulty: I have talked to Mr. McKee and he said he is willing to close the case.

Vice-Chancellor: I will take it for granted you are not going to put in any more testimony and I will consider the case is closed on both sides. I believe it was suggested by both sides it would be more advisable to submit it on briefs.

Mr. McNulty: And to argue it.

Vice-Chancellor: I may not want your argument after I get your briefs.

(At the close of hearing it was agreed between counsel that briefs were to be submitted within fifteen days.)

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**Exhibit P-5.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Oct. 6, 1926.

Pay to the order of Mrs. Margaret O'Brein $15 no/100 Fifteen no/100 Dollars.
No. 198

RALPH H. McKEE.

Endorsement: Mrs. Margaret O'Brien.

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**Exhibit P-6.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Oct. 17, 1926.

Pay to the order of Mrs. Margaret O'Brien $10 no/100 Ten no/100 Dollars.
No. 209

RALPH H. McKEE.

Endorsement: Mrs. Margaret O'Brien.

## Exhibit P-7.

HUDSON COUNTY BOARD OF ELECTIONS
COURT HOUSE

Jersey City, N. J. Feb. 16th, 1928.

To whom it may concern:

This is to certify that Ralph H. McKee voted in the 17th District of the 9th Ward of Jersey City, N. J. at the General Election, held November 8th, 1927.

Ballot cast #9.

CHARLES F. STOEBLING,
Clerk.

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## Exhibit P-11.

Envelope marked:

"Ralph."

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## Exhibit P-44.

SUPREME COURT OF THE STATE OF NEW YORK.

| | |
|---|---|
| MARY N. McKEE, Plaintiff, against RALPH H. McKEE, Defendant. | SUMMONS. Trial desired in New York County. Action for Separation. |

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your

answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, October 13th, 1925.

HIRSH, NEWMAN & REASS,
Attorneys for Plaintiff,
Office & P. O. Address,
No. 100 Broadway,
New York City.

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SUPREME COURT OF THE STATE OF NEW YORK,
NEW YORK COUNTY.

MARY N. McKEE,
Plaintiff,

against

RALPH H. McKEE,
Defendant.

Plaintiff complaining of the defendant, by Hirsh, Newman & Reass, her attorneys, respectfully alleges:

I. That plaintiff and defendant were married at Carthage in the State of Illinois on or about June 26th, 1902, and that there are two children, issue

of said marriage, namely, Margaret Harper McKee, born June 13th, 1908, and W. Noyes McKee, born July 26th, 1910.

II. That both parties hereto were residents of this State at the time of the commencement of this action and have been residents of this state continuously and without interruption since the year 1918.

III. That defendant has treated plaintiff in a cruel and inhuman manner and has repeatedly committed acts of cruelty and violence upon the plaintiff; that defendant has failed and refused to show towards plaintiff the affection, consideration and respect due her as his wife, but, on the contrary, his attitude towards her, when alone with her and in the presence of others, both in action and word, has been violent, brutal and insulting; that defendant has repeatedly asserted that a wife is her husband's inferior and that plaintiff, in particular, was his inferior, and defendant's actions and attitude towards plaintiff have habitually been based upon this principle; that defendant has refused to recognize, or even consider, plaintiff's judgment or desires in matters of interest common to the parties and their children; that he has habitually ignored questions and remarks put and made by her to him concerning such matters and privately, as well as before members of their family, has summarily and without cause, moved merely by the whim of the moment, ordered her to be silent; that defendant has compelled plaintiff to overtax her physical strength at housework, although well able to employ servants to relieve her; that defendant has frequently abused plaintiff, calling her insulting and offensive

names and epithets; that on numerous occasions, defendant has physically assaulted plaintiff, slapping her, striking and bruising her; that in 1917, in the presence of one of plaintiff's sisters, defendant forcibly pushed plaintiff out of the room and forcibly compelled her to retire; that in 1919 and 1920, in the presence of a domestic servant defendant violently shook plaintiff; that in the presence of the aforesaid sister and of the children of the parties, without provocation, defendant scratched plaintiff's face with his fingers from forehead to chin, causing plaintiff's face to become red and swollen; that in 1922, defendant struck and knocked down plaintiff; that in the latter part of 1922 or in the early part of 1923, defendant threw plaintiff on the floor and hurt her back; that about June 21st, 1924, defendant seized plaintiff by the shoulders and shook her for five minutes continuously; that on or about August 21st, 1924, while plaintiff was ill with asthma, defendant again assaulted her with resulting injuries to her back; that early in July, 1925, defendant again assaulted plaintiff severely, shaking her and bruising one of her arms; that, under the circumstances, it has become entirely unsafe for plaintiff to live and cohabit with defendant.

IV. That plaintiff has always conducted herself towards defendant as a faithful and obedient wife but that defendant has disregarded his duties and obligations as a husband and father and has failed and refused properly to provide for plaintiff and for the children of the marriage, although well able to do so.

WHEREFORE, plaintiff demands a separation from the bed and board of defendant; that a rea-

sonable provision be made for her support and maintenance and for the support, education and maintenance of the two children of the parties and that the custody of both of the aforesaid children be awarded to the plaintiff and for such other and further relief as may be just and proper, together with the costs and disbursements of this action.

HIRSH, NEWMAN & REASS,
Attorneys for Plaintiff,
No. 100 Broadway,
New York City.

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State and City of New York,
Borough of Manhattan,
County of New York, } ss.:

MARY N. MCKEE, being duly sworn, deposes and says that she is the plaintiff in the above entitled action, that she has read the foregoing complaint and knows the contents thereof, and that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

MARY N. MCKEE.

Sworn to before me, this
10th day of October, 1925.

ALBERT ADAMS,
Notary Public,
Bronx County.
Bronx Co. Clk's No. 60, Reg. No.
New York Co. Clk's No. 296, Reg. No.
Kings Co. Clk's No. 70, Reg. No. 6160.
Com. expires March 30, 1928.

## Exhibit P-45.

SUPREME COURT,
NEW YORK COUNTY.

| | |
|---|---|
| MARY N. McKEE, Plaintiff, against RALPH H. McKEE, Defendant. | Answer to Complaint. Nov. 2, 1925. |

The defendant above named answering the complaint of the plaintiff herein, respectfully shows to the Court:

FIRST: He admits the allegations contained in paragraph of said complaint numbered "I."

SECOND: He denies so much of the allegations set forth in paragraph of said complaint numbered "II" as alleges that he was a resident of this State at the time of the commencement of this action and has been a resident of this State continuously and without interruption since the year 1918.

THIRD: He denies each and every allegation contained in paragraphs of said complaint numbered "III" and "IV."

WHEREFORE defendant demands judgment dismissing the complaint with costs.

JOHN J. KIRBY,
Attorney for Defendant,
No. 55 Liberty Street,
Manhattan,
New York City.

State of New York,
County of New York, } ss.:

RALPH H. MCKEE, being duly sworn, deposes and says that he is the defendant in the within action, that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

RALPH H. MCKEE.

Sworn to before me, this
2 day of Nov. 1925.

ANNA FAIANS,
Notary Public,
(Seal) Bronx or N. Y. Co.
Bronx Co. Clks. No. 83, Reg. No. 2735.
N. Y. Co. Clks. No. 203, Reg. No. 198.
Term Expires March 30, 1927.

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## Exhibit P-95.

AGREEMENT.

Memorandum of Agreement between Ralph H. McKee, whose residence is 607 Bergen Avenue, Jersey City, N. J. first party, and Mary Noyes McKee (Mrs. Ralph H. McKee) second party.

It is agreed as follows:

1. That the present suit between the two parties to this agreement is to be discontinued by second

party (plaintiff) within two days of signing of this agreement.

2. That the first party agrees to pay the second party $200.00 a month during the life of this agreement, payment to be made before the 15th of each month for that month.

3. That the second party agrees to discuss with first party their family affairs and in particular the possibility of a united family at least once in each six weeks.

4. That the children of the two parties, Margaret Harper McKee, and William Noyes McKee, shall spend half of their vacation time with each party and each party will attempt to influence the children in accordance with the above and not against the other party in this nor any other matter.

5. That the two children shall be continued in the schools they are now in (Bryn Mawr and Taft), or in schools of equal grade, at the expense of the first party under the same general conditions as they are at present.

6. That on the starting of any legal suit between the parties to this agreement, except one to enforce the terms of this agreement, the amount payable under paragraph No. 2 shall at once decrease to $100.00 a month and the other terms of this agreement cease.

7. This agreement shall have as its minimum duration July 1, 1928.

8. That this agreement is in duplicate and shall

become active and enforceable on the two copies being signed by the two parties concerned.

Signed this 24th day of January, 1927 in New York City, N. Y.

First party RALPH H. McKEE.

Second party MARY N. McKEE.

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**Exhibit P-153.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Nov. 5, 1924.

Pay to the order of Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 655

RALPH H. McKEE.

Endorsement: Mary N. McKee.

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**Exhibit P-154.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Nov. 15, 1924.

Pay to the order of Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 659

RALPH H. McKEE.

Endorsement: Mary N. McKee.

## Exhibit P-155.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Dec. 1, 1924.

Pay to the order of Mary N. McKee $100 no/100
One hundred no/100 Dollars.

No. 656

RALPH H. McKEE.

Endorsement: Mary N. McKee.

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## Exhibit P-156.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Dec. 10, 1924.

Pay to the order of Mary N. McKee $50 no/100
Fifty no/100 Dollars.

No. 657

RALPH H. McKEE.

Endorsement: Mary N. McKee.

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## Exhibit P-157.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Feb. 7, 1925.

Pay to the order of Mrs. Mary N. McKee
$200 no/100 Two hundred no/100 Dollars.

No.

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee
Please pay bearer

Hirsh Newman & Reass

## Exhibit P-158-A.

Nov. 10, 1924
at sea

Dear Mary:

We are due in Naples tomorrow morning, just what time it is hard to say as the ship officials are generally over optimistic.

The passage has been a fairly quiet one and I have been one of the fortunate ones to escape sea-sickness.

I have wired my business friend, or rather I should say wirelessed him, and I half expect him at the pier tomorrow to meet me.

Sunday night we came thru Gilbraltar straits after midnight but with the nearly full moon we could see the rock of Gilbraltar and the hills of Africa quite plainly. Slept the next day until 11.

Will be in Naples for about a week and then go to north Italy for two days and then to Switzerland and Poland etc.

Possibly I may receive some words from U. S. A. in the course of four days or five days—two weeks seems a long time. On board ship we know that *Coolige* had a great victory but we don't know whether Smith or Roosevelt carried New York State.

This ship is a most gorgeously decorated one. Italian gilt and color all over it.

Yours,

RALPH.

## Exhibit P-159-A.

Nov. 20th, 1924
Winterthur, Switzerland

Dear Mary:

I am staying over night at a small manufacturing city and in a hotel of the type run for the citizens of this community and not for tourists. The party I want to see was away and will not be back until tomorrow.

This room is unheated except for a brick flue from the kitchen two floors below and with snow on the ground this flue doesn't do much good. Feather beds under and over like the ones we had 18 years ago in Switzerland. They furnish me with a night shirt this time! Room is 5 francs, good dinner tonight was 4 francs. Meals however were lower in Italy. Had a three course lunch about 5 dishes in Rome for 26¢. How is that for the limit. However it was at a place where they did not talk English and I had to take what they set before me or make signed.

Came from Rome to Milan on the sleeping car with a real Count, Count Gulio Senni, as my compartment fellow. I had happened to know of him as he is a son-in-law of Gano Dunn or rather of Gano Dunn's wife and a brother in law of Mr. Milliker. The two married sisters. Count Senni is heavily interested in a cotton weaving plant at Naples but apparently doesn't know the first thing about the business. He is a queer but pleasant man.

Received my first letters—four—from America today. None from the family, all business. Hope Billy is doing better at school.

Yours,

RALPH.

## Exhibit P-160-A.

Paris, December 2.

Dear Mary:

I arrived in Paris this morning in the rain and it has been raining all day.

Got a ticket for New York today and will leave Cherbourg France on December 14 and arrive in New York, unless delayed, on Dec. 20th.

Today took a rubber-neck wagon trip about the part of Paris known as the West part, Napoleon's Tomb, Hotel des Invalides, Elysie D. C. A good trip even if poor weather.

Have received no letters from you since I have been away.

Leave tomorrow evening for Deventer, Holland and from there to Berlin.

Yours,

RALPH.

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## Exhibit P-161.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. March 23, 1925.

Pay to the order of Mrs. Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 830

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee
Pay to bearer,
Hirsh Newman & Reass

## Exhibit P-162.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J., April 22, 1925.

Pay to the order of Mrs. Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 847

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee
Hirsh Newman & Reass

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## Exhibit P-163.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. May 24, 1925.

Pay to the order of Mary N. McKee $100 no/100 One Hundred no/100 Dollars.

No. 870

RALPH H. McKEE.

Endorsement: Mary N. McKee
Hirsh Newman & Reass

## Exhibit P-164.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. June 22, 1925.

Pay to the order of Mrs. Mary N. McKee
$100 no/100 One hundred no/100 Dollars.

No. 886

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee
Noiree Co.
Maud A. Reinhart

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## Exhibit P-165.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. July 23, 1925.

Pay to the order of Mrs. Mary N. McKee
$100 no/100 One hundred no/100 Dollars.

No. 906

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee

## Exhibit P-166.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J., Aug. 26, 1925.

Pay to the order of Mrs. Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 928

RALPH H. McKEE.

Endorsement: Mrs. Mary N. McKee

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## Exhibit P-167.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J., Nov. 3, 1925.

Pay to the order of Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 992

RALPH H. McKEE.

Endorsements: Mary N. McKee
Noiree Co.
Maud A. Reinhart

## Exhibit P-168.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Oct. 18, 1925.

Pay to the order of Mrs. Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 982

RALPH H. McKEE.

Endorsements: Mrs. Mary N. McKee
Noiree Co.
Maud A. Reinhart

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## Exhibit P-169.

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J., Nov. 12, 1925.

Pay to the order of Mary N. McKee $100 no/100 One hundred no/100 Dollars.

No. 998

RALPH H. McKEE.

Endorsements: Mary N. McKee
Noiree Co.
Maud A. Reinhart

**Exhibit P-170.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Dec. 11, 1925.

Pay to the order of Mary N. McKee $100 no/100
One hundred no/100 Dollars.

No. 19

RALPH H. McKEE.

Endorsements: Mary N. McKee
Noiree Co.
Maud A. Reinhart

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**Exhibit P-171.**

RIDGEFIELD PARK TRUST CO.

Ridgefield Park, N. J. Dec. 11, 1925.

Pay to the order of Mary N. McKee $100 no/100
One hundred no/100 Dollars.

No. 20

RALPH H. McKEE.

Endorsements: Mary N. McKee
Noiree Co.
Maud A. Reinhart

## Exhibit P-172.

In consideration of my wife's adjourning the trial of the action commenced by her against me for separation in the Supreme Court of the State of New York, County of New York, I, Ralph H. McKee, do hereby waive any right or cause of action which I may claim to have against my said wife, Mary N. McKee, in force in the State of New York, and covenant and agree that I will begin no action against her affecting our marital status in the State of New Jersey.

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## Exhibit P-174.

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,
and
MARY N. McKEE,
Defendant.

Before Hon. LORENZ BROSNAN, Commissioner.

New York, July 10th, 1929.

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APPEARANCES:

J. EMIL WALSCHEID, Attorney for Petitioner.
GROSS & GROSS, Attorneys for Defendant, by Leo Blumberg, of Counsel.

Mr. Blumberg: I move that the procedure be in this manner: That the witnesses be asked to sit in another room, and that as each witness be needed, he be called in. I do not think it necessary and proper in depositions of this nature that the witnesses be in the room.

The Commissioner: Well, I think you can come to some agreement on that.

Mr. Walscheid: I do not think that there is anything in the nature of these depositions that shall require an exclusion of the witnesses.

The Commissioner: It seem to me Mr. Blumberg that I ought not to exclude them from the room. Suppose this was in open Court, I doubt except in a murder case if they could be excluded.

Mr. Blumberg: There is some rule that requires that deposition be taken without the witnesses in the room together.

The Commissioner: I do not know of any such rule. If there is one, I have never heard of it. In fact, I see no reason why they should not be in the room.

Mr. Blumberg: Of course, I realize it is in the dscretion of the Judge to have witnesses excluded.

The Commissioner: We are taking the depositions here as a matter of convenience to ourselves. We could take them in the Special Term of the Court, where orinarily they would not be excluded from the room.

Mr. Blumberg: I remember recently in the Circuit Court the Judge excluded the witnesses upon my application and very fortunately to, as the witnesses contradicted each other in practically every detail.

The Commissioner: Well, you can put that on the record.

Mr. Blumberg: I want my objection noted.

## Exhibit P-175.

WILLIAM ROACH, witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. What is your full name, Mr. Roach? A. William Hugh Roach.

Q. And where do you live? A. No. 570 West 204th Street, New York City.

Q. You, of course, know John Jay Hall? A. Yes.

Q. Dormitory of Columbia University? A. Yes.

Q. And are you connected with that dormitory in any way? A. I am.

Q. What capacity? A. Night manager.

Q. How long have you been night manager? A. Since January 1st, 1927.

Q. Up to the present time? A. Yes.

Q. When do you come on duty? A. 5 P. M.

Q. And when is your shift over? A. Sometime between 1 and 3 in the morning, usually about half past one.

Q. And while you are on duty there, what do you do? A. Well, I attend to any complaints and if people come in for rooms I rent rooms to people in the evening sometimes.

Q. Attend to the mail in the evening? A. Attend to any mail that comes, we only have special delivery or telegrams in the evening.

Q. In other words, you do not give out any mail that comes in in the day time? A. No. I don't.

Q. Are you in the main hall or the main floor of the John Jay Hall? A. The Main hall.

Q. That is where you are stationed? A. Yes.

Q. Right at the foot of the elevators? A. Right at the foot of the elevators, yes.

Q. And in order to get to room 1331, it is necessary to take these elevators? A. It is, unless you want to walk. You can go up the back way, but you would have to walk.

Q. Up how many stories? A. Thirteen.

Q. Now during the time that you were at work there and after January 1st, 1927, did you ever see Dr. McKee in John Jay Hall in the evening? A. No, I did not.

Q. Did you during that time ever have any people coming there in the evening making inquiries concerning him? A. I don't remember anybody coming.

Q. Don't remember anybody coming? A. No.

Q. Did you know Dr. McKee after January 1st, 1927, and during 1927? A. No, I didn't.

Q. When did you first meet him? A. This spring, I think it was about February or March of this year.

Q. First time you ever saw him? A. First time I remember seeing him.

Q. Did you know whether or not he occupied, or had the right to occupy room 1331 in that building? A. No, I did not.

Q. If Dr. McKee had the right to occupy that room 1331 in that building subsequent to January 1st, 1927, and was in the habit of going to that room in the evening, he would have to pass the place where you were stationed, would he not? A. Yes, that is if he went on the elevator.

Q. If he went on the elevator, of course. If he came in as one ordinarily would into that building, and went to that room, you would see him, wouldn't you? A. Yes.

Q. And you did not meet Dr. McKee until this year? A. No, I did not.

Q. You didn't know of his existence until this year? A. No, I did not.

Cross Examination by Mr. Blumberg:

Q. When did you come to John Jay Hall? A. January 1st, 1927.

Q. Did anybody have to register in a book that came in late at night? A. No.

Q. Didn't have to do that? A. No book, come and go as they liked.

Q. You leave about 1:30. A. Generally, if there is a dance or anything on there I stay until the place is closed up, sometimes 2 and sometimes 3 o'clock.

Q. And people entered after you left, I presume? A. Of course, elevator service all night, twenty-four hour elevator service.

Q. You didn't run the elevator did you? A. No, I did not.

Q. What were your duties there? A. Manager of the three residential halls, Livingston, Hartley and John Jay Hall. Night Manager. My office is in John Jay Hall.

Q. And do you make arounds of inspection of the various halls every night? A. No, I don't make any rounds, the watchmen do that.

Q. You sit in your office? A. Yes, or walk around inside.

Q. Where do you walk around? A. The lobbies, the social room, perhaps up to the fourth floor to the office.

Q. Do you walk to the other halls? A. Sometimes I go there and see if the elevator man and clerk are on duty.

Q. You would not notice everybody who came in? A. No.

Q. You could not? A. No.

Q. You don't know who was coming in around 8:30 in John Jay Hall? A. No.

Q. In fact loads of people were coming in around 8:30? A. Not loads of people, some people coming and going all the time, twenty-four hours there are people coming and going.

Q. How many occupants of rooms are there? A. There are 476 rooms for students.

Q. And how many for professors? A. There is no distinction between students and professors.

Q. There are 476 rooms? A. Yes.

Q. All of them occupied? A. Sometimes.

Q. Any occupied by more than one student? A. No.

Q. Only single rooms? A. There are two suites at each end of the hall. There are two separate rooms, one door on the outside, two rooms inside.

Q. How many students occupy rooms in the other halls that you mention? A. How many? I think there are 310 rooms in each hall.

Q. What were the names of those Halls again? A. Livingston and Hartley.

Q. And where is your office located? A. John Jay Hall.

Q. What part of John Jay Hall? A. The main entrance, right in front of the elevators.

Q. How many entrances are there? A. There are four doors coming in from the campus.

Q. Four different doors? A. There are three doors and one door coming in near the office, they all lead into the same place.

Q. And your office is right at the main entrance? A. Right at the main entrance.

Q. You have a desk there? A. Yes.

Q. And people work under you? A. Yes.

Q. How many? A. A clerk in John Jay Hall.

Q. The elevator men? A. Two elevator men.

Q. All report to you? A. Yes

Q And how many others were there, of those

who worked for you? A. Two watchmen for the three buildings.

Q. And how many elevator men? A. In the three buildings?

Q. Yes? A. There are four elevator men at night in the three buildings.

Q. What did you do in your office, write out things, or what? A. Well, I look after telegrams or special delivery mail and professors and students sometimes come in for rooms at night, and if their credentials are all right I rent them rooms.

Q. You rent them rooms? A. Yes.

Q. You had charge of renting rooms? A. If a transient came in from an outside college, or if a student came in who wanted to stay in town I rented rooms.

Q. You had transient rooms there? A. Yes.

Q. If somebody rented a room, would you take him up? A. No, I would not, I would give him a key and let him take himself up.

Q. And you still have the same job? A. Same job.

Q. You state no one came in to inquire for Dr. McKee? A. Not that I remember.

Q. They didn't have to go to you to inquire for Dr. McKee? A. No.

Q. The elevator men would know if he was in or not? A. No, the elevator men cannot keep track of 476 men.

Q. That is what you think? A. No, I am sure of that. The elevator men don't give any information, it is all done from the office.

Q. They have no list of rooms occupied? A. We have a list in the office.

Q. Just in the office? A. Yes, we know where every man is.

Q. You do not think that Dominick Angelotta knew what room he occupied? A. I do not know what Dominick knew or did not know.

Q. He was in the office? A. He was a day clerk there.

Q. Was Dr. McKee occupying that apartment in 1928? A. I cannot tell you.

Q. You don't know anything about that? A. I do not.

Q. Did anybody inquire of you for Dr. McKee? A. Not that I remember.

Q. Didn't somebody go to you and ask for Dr. McKee? A. No, not that I can remember.

Q. Didn't Mrs. McKee go in to see you? A. I never saw Mrs. McKee, never spoke to Mrs. McKee.

Q. You are sure? A. I don't remember ever seeing Mrs. McKee.

Q. Didn't you show her a record book showing her that Dr. McKee had a room there? A. No.

Q. You are not there in the day time? A. No, I am not.

Q. Somebody else there in the day time? A. Two clerks and a day manager. The day manager's office is in Livingston Hall.

Q. Who keeps the records of rentals, if you know? A. That is all kept at Earl Hall, Mr. Howe's office, they go there and they pay and they get their slip for their rooms and they give in their slips. We do not take any money at all.

Q. You never saw Dr. McKee in the evening? A. No.

Q. Never knew who occupied 1331? A. No.

Q. You had a list? A. I dare say.

Q. With his name on it? A. I expect so.

Q. You were there every night? A. Every night.

Q. No night off at all? A. I work seven nights

a week, except two weeks holidays every summer. Last summer I had a month's holidays.

Q. You were never ill during that time, were you? A. No.

Q. Wouldn't there be a book in your office at John Jay Hall which showed when the tenant vacated? A. There would be, yes.

Q. You would have that book? A. No, I would not have it, it would be there for anybody to use. The book is kept at John Jay Hall.

Q. You don't recall showing somebody that book which indicated just the exact date when Dr. McKee vacated? A. I never showed anybody the book in reference to Dr. McKee. Nobody ever asked me.

Q. Well, a number of inquiries were made to you, were there not, about the tenants? A. Yes, sometimes people came in looking for people. We get inquiries all day and night.

Q. You state positively that nobody asked when Dr. McKee vacated? A. Not to me, no.

Q. You don't say that is your best recollection, but you are positive about it? A. Yes.

Mr. Blumberg: That is all.
Mr. Walscheid: That is all.

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## Exhibit P-176.

DOMINICK ANGELOTTA, witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Walscheid: :

Q. Where do you live, Mr. Angelotta? A. No. 325 West 69th Street.

Q. Where are you employed? A. I am not employed right at present.

Q. Not at present? A. No.

Q. Do you know where John Jay Hall is? A. I do.

Q. Where? A. 114th Street and Amsterdam Avenue, New York City.

Q. Where you ever employed there? A. I was.

Q. From when to when, about? A. From about 1926 to 1928.

Q. 1926 to 1928? A. Yes, sir.

Q. What were your working hours there? A. 8 A. M. to 6 P. M.

Q. And what did you do? I was in charge of the building, I took care of keys, mail boxes, rooms, etc.

Q. Who would relieve you? A. Mr. Roach, at about 5 P. M.

Q. 5 P. M. A. Yes, sir.

Q. Now, what were you in charge of? A. I took care of keys, 'phone calls went through me, mail, visitors who came to see some one would inquire at my office.

Q. What were the keys for? A. For the rooms and mail boxes.

Q. Keys for the rooms and mail boxes? A. Yes, sir.

Q. In that building was there a room known as 1331? A. Yes, sir.

Q. Do you know Dr. McKee who is sitting alongside of me here? A. Yes, sir.

Q. About when did you first see him? A. Well, I would say somewhere about the beginning of Fall 1926.

Q. 1926? A. Yes.

Q. And did he have a room in John Jay Hall? A. Yes, sir.

Q. What room did he have? A. 1331.

Q. Until about when did he have it? A. Somewheres in 1927.

Q. Do you remember the month? A. I just don't remember the month.

Q. Did you ever see Dr. McKee in and about John Jay Hall? A. Yes, sir.

Q. While he had a room there? A. Yes, sir.

Q. During what part of the day would you see him there? A. The early part of the afternoon.

Q. Can't you approximate the time in the early afternoon? A. It was somewheres about 2 or three o'clock.

Q. Did you ever see him there early in the morning? A. Never.

Q. Ever see him there in the late afternoon? A. No, sir.

Q. Or in the evening? A. I did not, I was never around in the evenings to see him.

Q. Up to what time were you there? A. Until 6 o'clock.

Q. In other words, you saw him in the early afternoon? A. Yes.

Q. Now, you say you had charge of the mail boxes? A. Yes.

Q. And you were the person who gave out the mail box keys? A. Yes.

Q. Did you ever give to Dr. McKee a mail box key? A. Never.

Q. Did he ever have one? A. Never.

Q. You also had charge of the mail there? A. I did.

Q. Did Dr. McKee receive any mail there? A. Never anything except one time he received his bill for his room rent.

Q. And what happened to that room rent bill? A. Why I laid it in his box, each room has a box

designated to it. I put it in the box and it laid there for a couple of weeks, so I took it out and I slipped it underneath his door.

Q. So you took it out of the box? A. Took it out and slipped it under the door.

Q. While you were there, did Dr. McKee ever have any visitors at John Jay Hall? A. Never.

Q. Did he have any visitors inquire for him at John Jay Hall? A. Never.

Cross Examination by Mr. Blumberg:

Q. Are you here under subpoena? A. Pardon me?

Q. Are you here under subpoena? A. No, sir.

Q. You are not here under subpoena? A. No, sir.

Q. Who told you to come down here? A. Mr. McKee just asked me to come down.

Q. When did he ask you to come down? A. He asked me to come down, I don't know, sometime in January, I think it was.

Q. He asked you last January to come down here? A. First to go to Jersey City.

Q. You did go to Jersey City, did you not? A. I did.

Q. And when was that? A. February, I think it was.

Q. Were you working at that time? A. I was.

Q. Were were you working then? A. At the Sidney Garage.

Q. Did Dr. McKee pay you? A. He did not.

Q. He didn't pay you anything at all? He did not, just paid my carfare and lunch money.

Q. Just your carfare and lunch money? A. Yes.

Q. Did he pay you for the day you lost on the job? A. He did not.

Q. How much did he pay you for your lunch money and carfare? A. I think it was a dollar he gave me.

Q. He gave you one dollar for your carfare and lunch money? A. I think so.

Q. When did he tell you to come down to Mr. Brosnan's office, No. 15 Park Place? A. Monday evening.

Q. Did he come up to your house and tell you that? A. Yes, sir.

Q. Personally? A. Yes. He tried to get in touch with me by mail, but I had moved, and he didn't have my forwarding address.

Q. He came up to your house on West 69th Street on Monday night? A. He did.

Q. And told you to come down here this morning? A. He did.

Q. Did he tell you what to testify to? A. He did not.

Q. He didn't say anything about that? A. He didn't have to tell me anything about it.

Q. Didn't he give you any idea as to what you were to testify to? A. I knew what it was about.

Q. Didn't he tell you explicitly to say that he did not have any mail box at John Jay Hall? A. No, sir.

Q. Didin't he tell you that at all? A. No, sir.

Q. Didn't he tell you to say that he didn't receive any mail there? A. He did not.

Q. Did not? A. He did not.

Q. Who lives at John Jay Hall? A. Why, students, graduates, professors, anyone who has anything to do with Columbia University.

Q. Would you say that most of the residents were students?

Mr. Walscheid: : I object to that as immaterial.

A. No, they were not all students.

Q. What percentage are students in John Jay Hall?

Mr. Walscheid: I object to that as immaterial.

A. Why it just has floors for students, and these floors were from the 5th to the 13th, and from the 13th to 15th for professors.

Q. How about the floors below the 5th? A. Why they were just meeting rooms and things like that.

Q. The floors 13th, 14th and 15th were for professors? A. Yes.

Q. And were the mail boxes for professors as well as students? A. For every one, for every one who had a room in the building.

Q. Every one in the building had a mail box? A. Each room had a mail box.

Q. And Dr. McKee had a mail box? A. He had a mail box.

Q. And what was the number of his mail box? A. I just don't remember it.

Q. Wasn't it the same number as the room? A. No, it was not.

Q. Different number? A. Yes.

Q. You say the mail came through you? A. I sorted it and put it in the mail boxes.

Q. And you recall definitely that Dr. McKee did not receive any mail? A. Yes.

Q. Didn't receive any mail at all? A. Except that bill.

Q. Except one bill? A. Yes.

Q. And that is your recollection at this time? A. Yes.

Q. What hours were you working? A. From 8 A. M. to 6 P. M.

Q. Every day? A. Every day except Sunday.

Q. Six days a week? A. Yes.

Q. You never worked there at night, did you? A. No, sir.

Q. And you would not know if Dr. McKee was in or not? A. Until six o'clock I would.

Q. But you would not know whether Dr. McKee came in at 9 or 10 o'clock, would you? A. I would not.

Q. And you would not know if he left at 7 o'clock in the morning, would you? A. I would not.

Q. You cannot testify that he was not there? A. No, except that I know that he never used his room to sleep in.

Q. How did you know that? A. The maid told me that the bed was not used, he simply laid down on it in a comfortable position to read on it.

Q. Who was the maid? A. Mrs. Flynn, I think.

Q. Mrs. Flynn, and she is here today, is she? A. Yes.

Q. And she told you that somebody laid on the bed at night, but did not sleep in it. A. Not at all. Not at night. She would say that some one used the room, the towel might be soiled, or a chair might have been moved from where she put it.

Q. When did she tell you this? A. She would tell me this after she went in to make up the room. She looked things over.

Q. Did she tell you about the other professors, or just about Dr. McKee? A. Everyone.

Q. And she told you whether the professors slept there at night or not? A. She would just say, "This room was used, do you know who used it" and I would let her know what was supposed to be done. If it as a person who slept there for only a night, we would put on clean linen. Many of the

professors used the room just to study in or to lay down and take a little nap.

Q. Now, he had room 1331? A. Yes, sir.

Q. How long did he have that room? A. I think it was about nine months, I just don't remember.

Q. And he had a key for the room? A. He did.

Q. No one could get into that room? A. No one except the maid and myself.

Q. So that if anybody occupied the room the maid would know it? A. The maid would know that the room was occupied.

Q. And she didn't have to ask you who occupied it? A. She didn't know it was Dr. McKee, but she would know that somebody was in it.

Q. Did Dr. McKee ever tell you where he lived? A. No, sir.

Q. Never said a word about that? A. No.

Q. Do you know Mrs. McKee? A. No, sir.

Q. Did you ever see Dr. McKee's children? A. Never.

Q. Any students visit him at John Jay Hall? A. No, sir.

Q. You know what rent he paid? A. No, I don't.

Q. Didn't know that? A. No.

Q. When were you working at John Jay Hall? A. 1926 to 1928.

Q. Did you know that this is a divorce case that you are testifying in? A. He told me he was having some trouble with his wife.

Q. What did he tell you exactly? A. I just don't remember, it was back in February. He told me he was having some trouble.

Q. You were not in Jersey City, were you? A. I was.

Q. How long were you there? A. I was there from 10 in the morning, until about 2 in the afternoon.

Q. Did you hear any testimony that was given in the case? A. I did.

Q. And you saw some witnesses on the stand? A. I did.

Q. You knew it was a divorce case? A. It seemed that way, I didn't know just whether it was a divorce case or not.

Q. And didn't Dr. McKee say it was important that you should help him in this case? A. He told me he needed my help, he didn't tell me how important it was.

Q. And didn't he tell you he would pay you for your time and trouble? A. He did not.

Q. Has he paid you yet? A. No, sir.

Q. Didn't mention any specific amount? A. He didn't.

Q. He didn't mention any amount at all? A. No.

Q. Did he give you any money today? A. No.

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It is hereby stipulated that the signature of Domonick Angelotta is waived.

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## Exhibit P-177.

ROSE FLYNN, witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. What is your full name? A. Rose Flynn.

Q. F-l-y-n-n? A. Yes.

Q. Where do you live? A. No. 467 West 164th Street.

Q. Do you know the dormitory known as John Jay Hall? A. Yes, sir.

Q. Are you now connected with that dormitory? A. Yes.

Q. In what capacity? A. Housekeeper.

Q. Housekeeper? A. Yes.

Q. Are you in charge of all of the rooms in that building? A. Yes, sir.

Q. How long have you been housekeeper? A. Since last November 28, 1928.

Q. And prior to that time were you connected? A. Yes, assistant housekeeper.

Q. And how long were you assistant housekeeper? A. I was assistant housekeeper since January, 1927.

Q. And prior to that time what connection did you have in the place? A. Well, I was maid. You see the building was not quite complete, it was only a new building.

Q. Do you remember when the building was practically completed? A. I think about the 26th of September, well it was sometime in October before it was complete.

Q. In what year? A. '26.

Q. And at that time you came in there as maid? A. Yes, sir.

Q. You know Dr. McKee, do you? A. Yes, sir.

Q. Did you meet him when he came to John Jay Hall? A. No, sir.

Q. Did you know him before that? A. No, sir.

Q. Do you remember that Dr. McKee had a room in John Jay Hall? A. Well, I knew somebody had a room there, room 1331, but I didn't know just who it was, but I knew Professor McKee had the room from the card on the door.

Q. But you didn't know him at that time? A. No, sir.

Q. And from when on did he have that room, so far as the card goes? A. It was some time in October, I cannot exactly say.

Q. And how long? A. I cannot tell that, I was there until about the last of December, when I gave up taking care of it.

Q. And from that time, from October 1926 to January, 1927, you had charge of this room 1331? A. Yes, sir.

Q. What was your duties in connection with 1331? A. Well to see that it was kept in order, to make up the bed, see that it was in order and see that the room was kept in a sanitary condition.

Q. That took you in that room every day, including Sunday? A. Yes, but I didn't always go in on Sunday, you see they had another maid that came in for two hours on Sunday mornings.

Q. But it took you in there six days of the week? A. Yes, sir.

Q. And if you were not in it, it was on a Sunday that you weren't in? A. Yes, sir.

Q. Now, during that period of time was that room, so far as your observation of the room went, from observation of the bed, and the towels and the use of the room, occupied at night? A. No, sir, it wasn't occupied at night only once in a great while. I cannot say how often it was, it was not slept in often, but I cannot say how often it was.

Q. And during the day was it occupied that you could see? A. Well, once in a while somebody would lay on it, the pillow would look as if somebody had laid on it. We never had to make the bed, just smooth it out.

Q. The pillow indicated that somebody had been on the bed without taking the covers down? A. Yes, but once in a while somebody slept in it.

Q. Once in a while? A. Yes.

Q. During that period of time that you were in charge of the room could you say appproximately how many times it had been slept in? A. I really cannot, very well. It was so seldom that I cannot remember.

Q. Once in a month? A. Maybe once in two weeks, maybe seldomer, maybe more, I cannot really exactly tell you how often.

Q. Were there any extended periods of time during which the room wasn't used at all? A. Yes, sir, there was.

Q. When you would go in there day after day and find the room just as it was? A. Yes, just the same as I had left it.

Q. Now, did you ever meet Mrs. McKee? A. Yes, sir.

Q. And when did you meet her? A. It was about January—in the stormy weather.

Q. January or February of this year? A. I know it was in the stormy weather.

Q. Where did you meet her? A. She came to Mr. Nubling's office and Mr. Nubling called me on the wire and I went down and she came up with me to my office.

Q. To your office? A. Yes.

Q. And did she ask you about Mr. McKee? A. She wanted to know how often Dr. McKee slept there in his room and I told her I could not tell just how often he did sleep there, and she said to me why I cannot understand why you cannot tell me how often he slept here or why you don't keep a record of how often the students sleep in, and I said it was impossible to keep a record of 476 students if they slept in every night, and that wasn't up to me any how.

Q. That wasn't up to you? A. No.

Q. When did you first meet Dr. McKee, after that? A. Of yes, I never saw Mr. McKee while he occupied the room except one afternoon I was on the floor I saw the gentleman pass on his way to the elevators.

Q. That is the only time? A. That is the only time.

Q. Then he didn't know you to speak to? A. No, sir.

Q. And when did you first meet Mr. McKee? A. After Mrs. McKee called Dr. McKee came to see me.

Q. How long after that? A. A few weeks, I should judge.

Q. And that is when you first met Mr. McKee? A. Yes, sir, that is when I first met him.

Cross Examination by Mr. Blumberg:

Q. How long did you work at John Jay Hall? A. I am working there since September, 1926.

Q. And you are still working there? A. Yes.

Q. You are housekeeper now? A. Yes.

Q. And when you first went there you were chambermaid? A. Yes.

Q. From September, 1926 until the end of 1926 you were chambermaid? A. Yes.

Q. And you had charge of room 1331. A. Yes, sir.

Q. Didn't you tell Mrs. McKee that you did not know anything about it because you didn't have charge of that room? A. I had charge up to December, that is all.

Q. I didn't ask that. Didn't you tell Mrs. McKee that you didn't know anything about Mr. McKee because you didn't have charge of it? A. I did not.

Q. You didn't tell her that? A. Absolutely not.

Q. What did you say to her? A. I told her I could not give her any answer as to how often Mr. McKee slept there because he slept there so seldom I could not tell. I could not judge at all.

Q. You told her you didn't know anything about it? A. I didn't say that.

Q. You simply said you didn't have charge of it? A. Oh, yes I did. I told her right in the office, sitting on a bench, and then you came up to the office with me.

Q. I came up?

Mr. Walscheid: No, she is talking to Mrs. McKee.

Q. Do you know when Mr. McKee moved into that apartment, 1331? A. Well I remember that the furniture came in, when I just don't remember, but it must have been in October, 1926.

Q. It may have been November? A. Yes, I cannot exactly say.

Q. How about September? A. By no means in September, and I don't know about October, either.

Q. It may have been November? A. Maybe, I cannot tell.

Q. Can you tell me how many times the bed was occupied over night? A. No, sir.

Q. Can you estimate that at all? A. No.

Q. Cannot say two or three times? A. That I cannot say.

Q. When you were chambermaid? A. I cannot say.

Q. More than five? A. I cannot tell that.

Q. Can't say more than five? A. No.

Q. Less than five? A. I can't tell.

Q. You have no idea at all? A. I know it was very seldom, and I do recall that the maid that

took charge of that room after me said that she had very little to do in that room because the gentleman wasn't in.

Mr. Blumberg: I move that it be stricken out.

Q. I haven't asked you what the maid said to you. I understand you to say that you did see the bed occupied once in a great while? A. Once in a great while.

Q. What do you call once in a great while? A. May be once in two weeks.

Q. Well you were only chambermaid there about two months, as I understand it? A. Yes, about that.

Q. And during those two months you were engaged as maid you know that there was the Christmas holiday. Did you work then? A. No.

Q. Or on Thanksgiving? A. No.

Q. Or on Sundays? A. No.

Q. So that would reduce it to about five or six weeks? A. Yes.

Q. And yet during these five or six weeks you think that the occupant had occupied it the night before on rare occasions? A. The night before what?

Q. When you came to clean the room in the morning you would know whether it had not, would you not? A. I would know. Yes, of course, I would know if the bed was arranged or disturbed.

Q. But there were some occasions that you would know that the bed had been occupied the night before? A. Once in a great while.

Q. Well would you say five times in about five weeks? A. Five times from the first of January back to the time the furniture went in?

Q. Yes. A. I cannot tell how many times he slept in it.

Q. What time do you start? A. 1 o'clock.

Q. What time did you leave? A. 3 o'clock.

Q. You weren't there in the evening either? A. No.

Q. After 3 o'clock? A. Never.

Q. You didn't work Sundays? A. Very seldom on Sunday.

Q. You know Dominick Angelotta? A. Yes.

Q. Did you speak to him about Dr. McKee occupying the room? A. One of my duties is to call when the room was not occupied. It was up to him to see about it.

Q. Did you do this for everybody? A. For everybody. I did not know who occupied the room except that I saw the card on the door.

Q. If the professor's room is not occupied you call down stairs? A. Yes.

Q. And you called every day? A. No, sir, I wasn't supposed to. I only called once and then it is up to them to find out why he does not sleep there.

Q. But each morning that you saw the room had not been occupied the night before you called the boy downstairs? A. No, sir. I didn't. If I called once, that was all.

Q. Once, and that is all? A. Yes.

Q. You only spoke to Dominick once? A. I don't recall speaking at all to him, but I do know that as a rule I always call down if I find out the room was not occupied.

Q. You don't recall speaking to Dominick? A. I don't recall it.

Q. You do know that you call downstairs? A. I do, that is one of my duties to call down.

Q. When did you see Dr. McKee? A. I saw him yesterday.

Q. Did he have a typewritten set of questions for you too? A. He had just a paper.

Q. With questions on it? A. Yes.

Q. Did you see it? A. Yes, I did.

Q. Answers on it? A. No answers.

Q. Just questions. Did he read the questions to you? A. No, he handed me the paper.

Q. And you read the questions? A. Yes.

Q. Did he leave the paper with you? A. I haven't it.

Q. Where is the paper? A. It is at my office.

Q. You didn't bring it down today? A. No, sir, there was nothing much on it.

Q. Just questions? A. There was nothing on the paper except, Do you know how often I slept in the room.

Q. The same questions, the same identical questions you have been asked today? A. About the same.

Mr. Walscheid: Impossible, I haven't such a paper.

Mr. Blumberg: You may have a copy.

Mr. Walscheid: I have not.

Q. Well the same questions that were asked you today?

Mr. Walscheid: Well the witness says about the same. It seems such an impossible situation, such impossible questions, such impossible answers.

Mr. Blumberg: I do not see what fault you have to find with me, I am not answering the questions.

Q. You were handed a set of questions, were you not, there is no doubt about that, that is so? A. It was a notice on a paper I tell you. I cannot exactly tell you what was on the paper, and I am on my oath. I cannot really tell you.

Q. Didn't you tell me a minute or two ago before Mr. Walscheid interrupted that you were handed a set of questions? A. He handed me a paper, just like this, with writing on it, asking me if I knew how often he slept in that room.

Q. Was it pencil or typewritten? A. Typewritten.

Q. Were the questions numbered? A. I cannot tell you that.

Q. You don't recall it? A. No.

Q. Did you read the question? A. I did, I read it down once.

Q. Were they the same questions? A. About the same, just the same, exactly about the same. I am answering about the same questions.

Q. That is what I wanted to know. Did you come here under subpoena? A. No, sir.

Q. He just gave you the address of Mr. Brosnan's office? A. Yes.

Q. No. 15 Park Place? A. Yes.

Q. Did he pay you for coming down? A. No.

Q. Has he stated he will pay you for coming down? A. It was not discussed at all.

Q. You paid your own carfare? A. Yes.

Q. Everything your own? A. Yes, sir.

Q. Have you ever been in Jersey City? A. Yes.

Q. 1 Exchange Place, Jersey City? A. Yes.

Q. Did Dr. McKee pay you at that time? A. No.

Q. Pay your carfare? A. No.

Q. Lunch? A. No.

Q. Did anybody pay your carfare or lunch? A. No. I had my lunch before I left.

Q. Nobody paid your fare, you just came voluntarily? A. Yes.

Mr. Blumberg: That is all.
Mr. Walscheid: That is all.

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Sworn to before me this
day of July, 1929.

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## Exhibit P-178.

KATE SAVAGE, witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. What is your full name, Mrs. Savage? A. Kate Savage.

Q. Where do you live? A. No. 3044 Kingsbridge Avenue.

Q. Do you know Dr. McKee? A. Yes.

Q. When did you first meet Dr. McKee? A. Well, in 1925, I think around the month of November, sometime around Thanksgiving. He came to occupy his room.

Q. Was it 1925 or 1926? A. 1925.

Q. Where did you then meet him? A. Well, I didn't meet him really, for the first time I didn't meet him.

Q. You mean you saw him? A. That is the first time I saw him.

Q. In November, 1925. A. Yes.

Q. And where was it you first saw him? A. In his room.

Q. And where was his room? A. His room was 701 at 21 Claremont Avenue.

Q. And is that room in apartment 72 at 21 Claremont Avenue? A. Yes.

Q. Do you remember any furniture going to that room? A. Yes.

Q. And about when did that furniture come? A. Well his furniture was in 704 until his own room was all painted and the floors were all done, and the furniture was then moved from 704 to 703.

Q. And did Mr. McKee occupy 704? A. No.

Q. Just his furniture was there? A. Yes his furniture was there until his room was ready.

Q. And can you tell me when that furniture came into 704, was it in the summer or fall? A. Well, to the best of my belief, it was in the late end of September or October.

Q. Cannot tell the exact date? A. I cannot tell you the exact date.

Q. Can you tell me about when the walls of 703 were finished, so that the furniture could be put in? A. That was all done about the end of October.

Q. And do you know how long after that Dr. McKee had his room 703? A. Well he had it until the end of the term, until 1926.

Q. What do you mean by the end of the term? A. Well, that is what they call it.

Q. From when to when, I don't know how many terms there are at Columbia? A. Well, the whole winter.

Q. You mean up to the summer vacation? A. Up to the summer vacation.

Q. Sometime in June? A. The 10th of June, really.

Q. What work, if any, did you do, in connection with this Room 703 while Dr. McKee had it? A. Chamber work.

Q. And you were in there daily? A. Daily.

Q. That includes Sunday? A. Well, every other Sunday.

Q. Every other Sunday you were off? A. Yes.

Q. And outside of that you were in there daily? A. Daily.

Q. And your chamber work consisted of cleaning the room? A. Cleaning the room.

Q. And doing other things, such as putting in towels? A. Yes, bringing in towels, making the bed, emptying the waste paper basket and putting the room in order.

Q. And from your inspection of that room, and from your being in it, can you say what use Dr. McKee made of it? A. Well, Dr. McKee made but little use of that room, for I know that when I went to take charge of that room at first I told the housekeeper that the man that is in Room 703 does not use that room often, his towels are never used, and she said.

Q. Never mind what she said. You said his towels were never used? A. No.

Q. Was his bed used? A. No his bed would only be used once in a while.

Q. Was his bed used at all? A. Well he use to lay on the bed, and I have seen him lay on it, on the outside of the bed.

Q. In the afternoon? A. In the afternoon.

Q. Did you go in there in the afternoon to fix up his room? A. No.

Q. Only in the morning? A. Yes.

Q. So that if he laid down on his bed of an afternoon, you would not fix it up until the next morning? A. No, I wasn't supposed to.

Q. And this carried on while Dr. McKee had this room, from sometime in October or November, 1925, until June, 1926? A. Yes.

Q. Can you tell approximately how many times the covers of bed were turned down during the period that Dr. McKee had the room, and the towels were used? In other words, how many times the room indicated to you that it had been slept in during the night. A. Well, I would certainly say it could not be more than seven or eight times, to the best of my belief I could say that.

Q. Now, did you meet Mrs. McKee? Yes, she called on me.

Q. When did you meet Mrs. McKee? A. Pardon me?

Q. When did you meet Mrs. McKee? A. Well, just around, I think it was in February or March of this year, I cannot tell you the date.

Q. And did she want you to testify? A. Well she was asking me questions about it, and whether I knew if Mr. McKee slept in the room, and I said I would not say anything about Columbia until I spoke to my superior in Columbia, as I did not know what it was about, and that she could come back again, and then I told her plainly what I am telling you today.

Q. Did she try to induce you to change your story? A. No, she did not.

Cross Examination by Mr. Blumberg:

Q. How long have you worked at that place? A. Six years.

Q. Still work there? A. No I resigned last November.

Q. Last November you resigned? A. I resigned last November.

Q. What were your duties at this apartment, 21 Claremont Avenue? A. Chamber work.

Q. Chambermaid? A. Chambermaid.

Q. You worked for Columbia University? A. Yes.

Q. What were your hours? A. From 9 to 3.

Q. You were never there in the evening? A. No, except when there was a lot of mail in the office.

Q. But you never stayed after 6 o'clock? A. No, never.

Q. Did you know Dr. McKee while he occupied the apartment? A. Yes, I did.

Q. You saw him there? A. Yes, and I told you the remark I passed to the housekeeper.

Q. Dr. McKee had his own furniture in that room, did he not? A. Yes, he has his own furniture.

Q. What did he have there? A. He had a rocking chair, a settee of his own, curtains, rugs, his own dresser.

Q. Did he have a sofa there? A. Well I call that a settee.

Q. Did he ever lay on the sofa? A. No, I didn't see him lying on the sofa.

Q. You saw him on the bed? A. I saw him on the bed.

Q. Just on the bed? A. Yes, but it didn't make any difference whether he slept in it or not, I had to change the linen every week.

Q. Any blankets there? A. One blanket.

Q. And these blankets belonged to Dr. McKee? A. Yes, only one blanket.

Q. Well, you only saw one, you are not sure whether they may have been three or four? A. No. There was a kind of a rug that he threw at the foot of the bed, I do not call that a blanket.

Q. Was there a dresser there? A. Yes.

Q. A clothes closet? A. Yes.

Q. Did Dr. McKee have his clothes in that closet? A. Yes.

Q. Did he have shirts and things in the dresser? A. Well, I cannot tell you what he had in the dresser.

Q. But you know about the clothes closet? A. Yes.

Q. He had suits in it? A. Yes.

Q. Overcoat, hat, shoes? A. I cannot tell you that. I seen new shoes there once, I kind of remember that.

Q. Slippers? A. Yes, there were slippers there.

Q. And you state that from your examination of the room you recall that Dr. McKee only slept there seven or eight times? A. That is just about all, to the best of my belief. Maids do be glad when they go to the room and find the bed made.

Q. You didn't have to make it again? A. No.

Q. How about the pillow, did it look as if somebody slept on it. A. Dr. McKee never laid on a pillow.

Q. He didn't turn the blankets down? A. He didn't turn the blanket down and he never laid on his pillow.

Q. What was the condition every day? A. The pillow would be right over on the couch, and when I would go in in the morning, I would place the pillow back on the bed.

Q. So it looked as if he didn't sleep on a pillow? A. Well he always slept without the pillow. I never saw the pillow used, and I do not know really whether he slept or not. Manys the time I seen him lying on the bed. He came in about 1 or half past.

Q. He laid the pillow on the settee, and laid on the bed? A. Yes.

Q. How long did he live at No. 21 Claremont Avenue? A. Dr. McKee?

Q. Yes. A. From some time around November,

to the best of my belief, I would say around Thanksgiving, until about June.

Q. To the end of the term, June, 1926? A. Yes.

Q. Was he there during the summer of 1926, during July and August? A. I cannot really tell you, we had the summer school then. I know his furniture was there during that time.

Q. When did they move the furniture in that room? A. Into the room?

Q. From the room. A. Just when the session was commenced.

Q. You were in Jersey City several times? A. No. I very seldom go to Jersey City.

Q. Didn't I see you there? A. Yes, you saw me there once, that is not several times.

Q. Just once, I thought it was more. Did you receive any money to testify in this case? A. No, sir.

Q. Never did? A. No.

Q. You just came because Dr. McKee asked you to? A. Yes, and I would have come for Mrs. McKee in the same way.

Q. If Mrs. McKee asked you? A. I certainly would, if it was the same way.

Q. What do you mean? A. Well if I had everything good to tell for Mrs. McKee I would tell it.

Q. How did you know that it was not good for Mrs. McKee? A. She didn't ask me to come.

Q. You think it was not good for Mrs. McKee because she didn't ask you to come? A. Well, I told you if I had anything to tell for Mrs. McKee I would tell it.

Q. Didn't she ask you to come? A. No.

Q. Did Dr. McKee pay your carefare to Jersey City? A. He did.

Q. Well, didn't you tell me that you didn't receive any money? A. Well, I thought you meant

did he give me any money for testifying. He gave me a dollar to pay my fare over there and he paid for my lunch, and this time I was in Saugerties and he paid my railroad fare, $7.00 and $3.00 for my expenses.

Q. So he gave you $10? A. He gave me $10 for coming here.

Q. From Saugerties, New York? A. Yes, New York.

Q. You came down by train? A. Yes.

Q. Are you going back today? A. Well, if I can get the train.

Q. Last time what did he give you for carefare? A. $1.00, and he gave the money to the two boys to pay for the lunch.

Q. The two boys, who were the two boys? A. I don't know, the boys who were here today.

Q. You all went to lunch in Jersey City? A. Yes.

Q. Were you subpoenaed here? A. No.

Q. You were never subpoenaed? A. Never.

Q. Did Dr. McKee give you a list of question? A. Yes.

Q. Were these questions typewritten? A. Yes.

Q. Were there any answers to the questions? A. No answers.

Q. No answers at all? A. No answers.

Q. Were the questions numbered? A. No.

Q. Have you that paper with you? A. No, I have not, I left it home. I didn't think I would have any occasion to bring that here.

Q. Did you do any mending for Dr. McKee? A. No, sir.

Q. Never did any mending? A. No.

Q. For any of the other people in the house? A. No.

Q. Didn't you tell Mrs. McKee that you did his mending? A. Mrs. McKee asked me didn't I do Dr.

McKee's mending and other things, and I told her no, I never did any mending or washing for Dr. McKee, and she said she thought I was very well paid for it, and I told her that I never saw five cents of Dr. McKee's money.

Q. Well, didn't you tell her you did the mending? A. No, I couldn't tell her that.

Q. Who did his laundry? A. I don't know anything about his laundry, I never saw any laundry.

Q. Well you saw his socks and collars in the box? A. No.

Q. Didn't you tell Mrs. McKee that you saw them? A. Once in a while I would see a pair of socks in the basket.

Q. And you threw them away? A. I suppose I did.

Q. You mean he threw them in to be thrown away? A. It was about time he threw them away

Q. They were worn out? A. Yes.

Q. Did you know where Dr. McKee lived A. No.

Q. Didn't you know he lived in New Jersey? A. Well, I wanted to explain to you that when I spoke to the housekeeper I told the housekeeper that he didn't occupy the room, and she told me that he lived with his family, and that he had that room only for convenience to stay in it on a wet night or a bad night, that was the answer the housekeeper give me.

Q. The housekeeper said he lived with his family? A. Yes.

Q. Who was the housekeeper? A. Mrs. Hayes.

Q. That Dr. McKee lived with his wife and children? A. She told me he lived with his family, that he has his own home, now that is the answer she gave me.

Q. Didn't the housekeeper tell you he had trouble with his wife? A. No.

Q. Never told you that? A. Never. I was really surprised when I heard it.

Q. Didn't she tell you that Dr. McKee lived in New Jersey? A. No, sir.

Q. She didn't tell you that he lived in Leonia? A. No, sir.

Q. Or Jersey City? A. No, she never did, only that he lived with his family.

Q. That he lived with his family? A. And that he only stayed there when it was a bad night.

Q. What did you say the housekeeper's name is? A. Mrs. Hayes.

Q. Is she the housekeeper now? A. No.

Q. You have another housekeeper? A. They have another housekeeper.

Q. You never knew where he lived? A. I never asked when the housekeeper told me that, because that was none of my business, I was just to go in and take care of his room.

Q. Was that the only apartment, 72, and did students live in the apartment? A. 71 and 72. Students lived in both of them.

Re-direct Examination by Mr. Walscheid:

Q. Mrs. Savage, did I understand you to say that it was your duty to go back into the room every afternoon about 2 o'clock? A. Yes, when we are leaving our floors we have to see that everything is in order, that there is nothing wanted, that everything is O. K.

Q. And that was the occasion and reason for your finding Dr. McKee in the room at that time of the day. A. Yes.

It is hereby stipulated that the signature of Kate Savage is waived.

## Exhibit P-179.

Mr. Blumberg: On the record I object to Mr. Martin being in the room at this time, and I ask that he be excluded while Mrs. Martin is testifying. I make that a motion.

The Commissioner: I will deny it.

Mr. Blumberg: I except.

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MARTHA CARROL MARTIN, witness produced on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. What is your full name? A. Martha Carroll Martin.

Q. And you are married? A. Yes.

Q. And your husband's name is what? A. James Wellford Martin.

Q. Where do you now live? A. No. 130 Manhattan Avenue, Crestwood, New York.

Q. Do you know Dr. McKee? A. I do.

Q. Have you ever met his wife? A. Once.

Q. Did you ever live at No. 39 Claremont Avenue, New York City. A. I did.

Q. With your husband? A. Yes, and my little boy.

Q. Your family consisted of three at that time? A. At that time it did.

Q. And from when to when did you live at 39 Claremont Avenue, New York City? A. From the 1st of March until the 20th of August.

Q. Of what year? A. Four years ago, that would be 1925.

Q. And from whom did you hire the apartment in which you lived. A. My husband rented it from Dr. McKee.

Q. You sublet at that time Dr. McKee's apartment? A. Yes.

Q. And was that apartment a furnished apartment? A. Yes.

Q. And was it a well furnished apartment? A. It was.

Q. Was the kitchen properly furnished? A. It was; we used it just as we found it.

Q. Just as you found it? A. Yes.

Q. How many bedrooms were in the apartment available for your use? A. Three.

Q. And how many beds? A. There was one full sized bed and three a bit narrower, but Mr. Martin and I used one of the narrow ones together quite comfortably.

Q. During the time that you occupied this apartment under sublease, did Dr. McKee have a room reserved for himself at your apartment? A. No.

Q. Was he during any period of that time living in your family in this apartment? A. No.

Q. Was he at any time an overnight guest in the apartment? A. He was.

Q. I am talking now during this period from March 1st, 1925 to August 20th. A. Yes.

Q. During that period of time how many times was he an over night guest? A. Well, let me think. He was there once with his son, Billy, and I remember one occasion when I had two other guests, and probably three or four other times, no more.

Q. And that would be the limit of the number of times that he spent in your apartment? A. It would, quite the limit.

Q. Now during that period were you visited by Dr. McKee and Mrs. McKee on any one occasion? A. Well Dr. McKee came one evening and shortly after Mrs. McKee and Billy came, that is the only time.

Q. You remember the time of that visit? A. It was some time in July, the early part of July, I think.

Q. Sometime in July, 1925? A. Yes.

Q. Did Dr. McKee and his wife and Billy come together? A. Dr. McKee came first and they came shortly after.

Q. Mrs. McKee and Billy came shortly after? A. Yes.

Q. Mrs. McKee and Billy came together? A. Yes.

Q. When Mrs. McKee and Billy arrived, who admitted them to the apartment? A. Dr. McKee.

Q. Were you present there? A. I was at the other end of the hall. I was in the living room at the other end of the hall.

Q. You were within seeing and hearing distance? A. I was within hearing distance.

Q. Did you hear the greetings between them? A. I don't know that I recall just what was said, nothing out of the ordinary, or I would have remembered it.

Q. You know that there is a divorce suit pending between Mr. and Mrs. McKee? A. Yes, I do.

Q. Mrs. McKee has testified, on page 28 and 29 of her testimony, that Dr. McKee greeted her as she came in and objected to Billy coming, did any such occurrence take place? A. I remember no such occurrence.

Q. No such occurrence? A. No.

Q. You were within hearing distance? A. Yes, I would have heard it.

Q. In other words, there was no objection of any such kind as you remember it? A. No objection.

Q. Mrs. McKee in her testimony given in this case on page 29 of the testimony said that after she had greeted you, Mrs. Martin, she then continued her testimony and said "We sat down and

talked, Mr. Martin, Mrs. Martin, Billy, Mr. McKee and myself, and Mr. McKee said 'the first thing we want to know is what you ran away with, and I said (Mrs. McKee speaking) you know I took only my personal belongings that belonged to me personally,' and he said (Mr. McKee) what did you do with the field glasses and the best blanket, and I said (Mrs. McKee) the field glasses were mine, they belonged to me, I bought them, and what you call the best blanket I cut that in two and Margaret took half to school and the other is here as far as I know". Did any such conversation take place in your presence? A. No. I do not know of any such conversation in my presence.

Q. On page 29 of Mrs. McKee's testimony Mrs. McKee then says "Then he (meaning Mr. McKee) said something along the same line. He wanted to know about affairs, and I (meaning Mrs. McKee) said to him, 'We should discuss those things by ourselves,' and he said No, Mr. Martin is here and we will discuss it now, and I said (Mrs. McKee) I will not discuss it with the Martins, it was nothing that concerned them and I will not discuss it. He had asked me to go out and I refused to discuss anything with the Martins, and if he didn't wish to do as I said, that Billy and I would go home." Did any such conversation take place between Dr. and Mrs. McKee in your presence? A. No, I recall no such conversation.

Q. Would you recall it? A. It seems that I would.

Q. Was there anything abnormal in the conversation between the two of them at that time?

Mr. Blumberg: I object to the question, that calls for a conclusion, the witness cannot describe the normality or abnormality of the conversation, because it does not por-

tray anything to the court, the witness can only testify to what she heard and what she saw.

Mr. Walscheid: Well, will you now please answer the question.

A. I recall nothing abnormal at that time.

Q. On page 30 Mrs. McKee in her testimony states that "When we got to the end of this hall I said to him if you wish to discuss these things with me I would be glad to do so. So we went into Mr. McKee's bedroom, which was just as it has always been." Did they go down the hall in your apartment at that time? A. I don't recall seeing them going to the bedroom.

Q. Did they go down the hall on that occasion? A. After that conversation?

Q. No before that conversation? A. No, I don't remember that they did.

Q. Well, where were the bookcases? A. They were in the hall, they went into the hall to pack the books.

Q. And when they went into the hall to pack the books, where were you? A. I was sitting in the room at the end of the hall.

Q. So that you could look down the hall? A. Yes.

Q. Now, repeating to you the testimony of Mrs. McKee at page 30 of her testimony she says that "When we got to the end of this hall I said to him if you wish to discuss these things with me, I would be glad to do so, so we went into Mr. McKee's bedroom which was just as it had always been." Did they on that occasion or on any occasion during that visit go into the bedroom? A. I am sorry, I don't remember that.

Q. You don't remember that? A. No.

Q. Did you see them leave the hall and go into

any room? A. No, I don't remember them leaving the hall and going into any room.

Q. Did you see Dr. McKee and Mrs. McKee going over the books in the hall? A. Yes.

Q. What was Mrs. McKee doing in connection with the examination of the books? A. Well, she was picking them out and piling them, the ones that she wanted.

Q. Pardon? A. She was selecting the books and piling them, and putting them in piles.

Q. Now they spent some time doing that? A. Oh, several hours.

Q. And then did they come back to the living room where you were? A. You mean when she was getting ready to go?

Q. During the course of the evening, about the middle of the evening. A. They came in once, yes. I don't recall at just what time.

Q. On page 31 of Mrs. McKee's testimony she states that she went back to the living room where Mr. and Mrs. Martin were and "I, (meaning Mrs. McKee) started to tell them (the Martins) of the conditions that made it necessary for me (Mrs. McKee) to do it, (namely to leave Dr. McKee), and Mr. McKee said I wasn't going to say anything, and he grabbed me by the arm. He is extremely strong, and pushed me out of the room, and I told him to let go of my arm, which he did, and then he grabbed the arm again and insisted upon my leaving the room, which I did. He dragged me out of the room by the arm." Did any such ever occur in your presence? A. That did not occur. I remember Mrs. McKee came in, and I remember Mrs. McKee starting to say something which I did not understand, so of course I don't remember, and Dr. McKee took her gently by the arm to attract her attention, and I do not remember his pushing her out of the room.

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Q. Did he drag her from the room by the arm? A. No.

Q. Was there any altercation at that time? A. No.

Q. Any loud language? A. No.

Q. Was he at all rough with her? A. No.

Q. With which hand did he take her by the arm? A. His left hand.

Q. On page 31 of Mrs. McKee's testimony she states: "I said he was asking about the blankets and I would ask Mrs. Martin about them. I said I would ask Mrs. Martin if she knew about the blanket with the pink border and I said it might be on her bed. We did and it was the one, the blanket he had been asking about all the time." Mrs. Martin did Mrs. McKee ask you about the blanket with the pink border on that occasion? A. I have no recollection of it.

Q. Did she ask you about any blankets that night? A. I didn't think she did.

Q. Did you go with her to look for the blanket on your bed? A. No.

Q. Was there any discussion about a blanket in your presence? A. I do not think so, I remember no such discussion.

Cross Examination by Mr. Blumberg:

Q. Are you here under subpoena, Mrs. Martin? A. No.

Q. Have you seen Dr. McKee recently? A. Yes.

Q. When did you see him? A. On Sunday evening.

Q. Was he up to your house? A. He was.

Q. And where do you live? A. No. 130 Manhattan Avenue, Crestwood, New York.

Q. Crestwood, New York? Yes.

Q. And did he have a typewritten set of questions with him? A. He had my affidavit in question and answer form.

Q. I asked you whether he had a typewritten set of questions with him, you haven't answered that question. A. Yes, he did.

Q. He had a typewritten set of questions? A. Yes.

Q. Did he show you that typewritten set of questions? A. No.

Q. He didn't show it to you? A. No.

Q. He read the questions to you? A. Yes.

Q. Each question? A. I don't recall whether he read each question, maybe he did.

Q. Did he have the answers typewritten too? A. Yes, suggested answers, but simply my affidavit in question and answer form.

Q. I don't get that? A. My affidavit in question and answer form. There was nothing that I was to answer, simply what I had already said.

Q. Do I understand you to say that he left with you an affidavit in question and answer form? A. No. I have a copy of the affidavit that I signed.

Q. When did you sign an affidavit? A. I signed two affidavits.

Q. Do you recall when you signed these affidavits? A. Well, it must be once about two years ago, and one I think about a year ago last Spring, I don't recall.

Q. You say these affidavits were in question and answer form? A. More or less what I would say.

Mr. Walscheid: No, she said that the statement that Dr. McKee had was her affidavit in question and answer form.

Mr. Blumberg: Well, let the witness explain, if I do not understand, we will get it.

Q. Dr. McKee came to your house with a set of typewritten answers and questions, that is so, is it not? A. Yes, sir, but he certainly didn't tell me how to answer the questions.

Q. Well, I don't quite understand what you say? He came to your house? A. He did.

Q. And he read you these questions and answers, did he? A. He read me the questions, but he didn't have to read any answers, in fact I didn't see the paper, so I am not sure he had answers.

Q. You are not sure that he had answers? A. No.

Q. Why did you say there were? A. Because once before I saw a paper with questions and suggested answers.

Q. And when was that? A. It was in June, I think.

Q. You mean last month? A. Yes.

Q. Were you supposed to go to New Jersey? A. I think it was Jersey City.

Q. And at that time you had a typewritten set of questions and answers? A. Simply suggested what might be asked me.

Q. And you were not to give those answers unless they were correct? A. Absolutely.

Q. Anyways, you did have a set of questions and answers prepared by Dr. McKee? A. I did.

Q. They were handed to you by Dr. McKee? A. Yes.

Q. Have you still got that paper? A. No, I don't have it with me.

Q. You say you haven't it with you, do you have it at home? A. I don't know where it is.

Q. Didn't you study out the questions and answers? A. No, I didn't have to study them.

Q. But you read them, didn't you? A. Yes, I did.

Q. When did you move into the apartment on Claremont Avenue? A. My husband rented it from the 1st of March, as I remember it, and I think I arrived on the 6th of March from Virginia.

Q. You arrived from Virginia, what town? A. My home is in Charlottesville. I arrived from Lynchburg at that time.

Q. And you moved in on the 6th of March. A. My husband took it on the first and I think it was on the 6th that I moved in.

Q. And this was a furnished apartment? A. It was.

Q. And how long did you occupy that apartment? A. Until about the 20th of August.

Q. And did Dr. McKee occupy that apartment during March, 1926? A. No.

Q. Did he occupy it prior to the time you arrived there, do you know?

Mr. Walscheid: I object, how would she know that prior to the time that she moved in.

A. Well, I know he had it some time, I don't know how close to the time that I came.

Q. Do you know where Dr. McKee lived in October, 1926? A. I know he lived in Leonia.

Q. Leonia, New Jersey? A. Yes.

Q. Did Dr. McKee tell you that he lived in Leonia? A. Yes.

Q. Did he give you his address? A. I don't recall.

Q. Did he tell you why he lived in Leonia?

Mr. Walscheid: I object to that as immaterial.

Q. Did he tell you why he lived in Leonia, New Jersey? A. I don't know what you mean. Tell me, what do you mean?

Q. Did he ever give any explanation as to why he lived in Leonia? A. Well, I know he said that several of the people from Columbia lived there, and that he didn't wish to keep up an establishment.

Q. Did he tell you it was better for his health in Leonia? A. I don't recall that.

Q. He didn't tell you that? A. I don't recall.

Q. Did he tell you anything about his marital troubles in March, 1925? A. I know there was some trouble, I didn't know how permanent.

Q. Who told you about that? A. Either Dr. McKee or my husband, I just don't recall.

Q. Did Dr. McKee visit you and your husband at this apartment? A. Yes.

Q. Was a guest at your house quite often, was he not? A. Well, I would not say often.

Q. Well, how many times would you say he was a guest, approximately? A. I don't remember how many times he had dinner with us, but I wouldn't say in all more than five or six times, but I know he was an overnight guest in our house less than that even.

Q. He was an overnight guest more than five or six times? A. No.

Q. Perhaps less than five or six times? A. Maybe.

Q. And you only saw Mrs. McKee at that apartment one time? A. Yes.

Q. Do you recall the date? A. It was early in July, July 9th, I think.

Q. 1925? A. Yes.

Q. And you knew that Mrs. McKee was coming, did you not? A. Yes.

Q. Dr. McKee told you that? A. Yes.

Q. And Dr. McKee arrived first, as I understand it? A. Yes.

Q. Did you hear the bell ring before Mrs. McKee came in? A. I suppose I did.

Q. The bell rang and Mrs. McKee came in? A. Dr. McKee answered the door, so it must have rung.

Q. Answered the door? A. Yes.

Q. Did you see Mrs. McKee enter the apartment? A. I saw her just after she entered, I could not see the door, but as you go through the hall, the door is just a little distance away.

Q. You could not see the door from the room in which you were sitting? A. No.

Q. You didn't hear the greetings that interchanged between Dr. and Mrs. McKee? A. Well, I could hear what they said.

Q. How did he greet her? A. I don't recall, but if it had been anything unusual, I think I would have remembered it.

Q. What do you consider unusual? A. Anything other than the ordinary greeting.

Q. You don't recall the exact conversation that took place at all? A. I do not.

Q. And you cannot testify as to what they said? A. I didn't try to.

Q. And you wouldn't try to? A. No, but I do testify that if it had been anything unusual, I would have remembered it.

Q. What would you consider unusual? A. I said, anything other than the ordinary greeting.

Q. Well, if Dr. McKee had said, "Why did you bring Billy along," you think you would recall that? A. Yes, but I don't recall that he did.

Q. You would not say that he didn't say that? A. No, I certainly would not.

Q. When they entered the apartment, did they come to the room in which you were sitting with your husband? A. Yes.

Q. You are sure about that? A. Yes.

Q. And the conversation took place in that room? A. What conversation?

Q. The conversation between Dr. and Mrs. McKee. A. He came in and introduced her to us, and any conversation that took place between us was there.

Q. What conversation? A. I don't recall what was said.

Q. In other words, as I get it, you don't remember any conversation that took place that day. A. I don't remember just what was said.

Q. How long were Dr. McKee and Mrs. McKee in the living room with you at your house? A. Well, I don't think it was long.

Q. A few minutes? A. That is what I would say, I can't say how many minutes.

Q. And then they left the living room and went into the hall? A. Went to see the books.

Q. Could you see the book cases there? A. Yes, they were a long row of book cases, almost the length of the hall.

Q. Were they shelves or glass book cases? A. Shelves, but it seems to me there was one with glass but it seems the others were all open, maybe there weren't any with glass, I don't quite remember.

Q. Could you see these book cases from the living room? A. From the place where I was, yes.

Q. Could you hear the conversation that took place between the Dr. and Mrs. McKee? A. Well, I could.

Q. Did you hear it? A. Yes.

Q. Can you state what conversation took place between Dr. and Mrs. McKee? A. No.

Q. You don't remember that? A. No, I just remember her packing the books, and no unusual conversation.

Q. Well, unusual to you, what do you consider unusual? A. That is a rather vague question, isn't it?

Q. Well, your answer was vague, how would you define unusual? A. I am sorry, I don't know how to explain it, but I didn't hear any conversation that was out of the way.

Q. What were they talking about? A. I don't remember.

Q. You can't testify to a single item of conversation between Dr. and Mrs. McKee while present at your house that night? A. I remember he came in and introduced us. I remember sitting talking for a few minutes, what we said I don't remember, but I do remember Mrs. McKee coming in and saying that she wanted to explain something, I don't know what she said, I didn't understand at the time so I certainly cannot understand it now, and I know that Dr. McKee suggested not going into that, and taking her arm just to attract her attention, but as to the real conversation, I am sorry, I don't remember.

Q. Had Dr. McKee explained to you the trouble that he was having with his wife? A. At what time?

Q. Well not that night, but prior to that night? A. Well, I knew that they were having some trouble, but as I said, I didn't know how permanent it was going to be.

Q. Had Dr. McKee ever stated any justification for his absence from his wife to you?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

Mr. Blumberg: Well, this is leading up to the entry of Mrs. McKee into the room.

A. Dr. McKee never told us anything. He spoke of it and said little things, but as to any real issues, I never heard any of them.

Q. Never told you anything about it? A. No.

Q. To get the sequence straight, they went into the hall and started to sort the books, as I understand it? A. Yes, and they were engaged in that all evening. I think Mrs. McKee and Billy did more of the sorting than Dr. McKee.

Q. How long were they engaged in sorting out the books? A. Well, I should say about three hours.

Q. And you sat in the living room for three hours and watched them. A. No, the latter part of the evening I went back into my bedroom.

Q. What time did they start sorting out books? A. I should say eight o'clock. I think they came a little before eight, and I don't think it was long before they started.

Q. Well three hours would take it up to eleven o'clock. Did Mrs. McKee leave then? A. Mrs. McKee didn't leave just when I went back into my bedroom, I think she was there until about 11:30.

Q. When did Mrs. McKee come into the living room and try to tell you something, which you say you didn't understand, when was this? A. Well, that I can't just remember what time it was. It may have been about 9 o'clock, I don't remember.

Q. It was about an hour after they started to sort the books. A. I don't know.

Q. Well, it was before you went to retire? A. Yes, it was, it seemed to me quite a while.

Q. And Mrs. McKee simply entered the room and started to say something? A. As I recall it.

Q. That you recall? A. Yes.

Q. And Dr. McKee followed her into the room? A. Yes.

Q. And took Mrs. McKee by the arm? A. Yes, he took her by the arm.

Q. There is no doubt about that? A. No.

Q. And told her to get out of the room? A. No, as I recall it, he said "Let's not go into that."

Q. And he ushered Mrs. McKee out of the room? A. No, I think he dropped her arm before they went out of the room. I didn't have at that time, or later when she was packing the books any idea that he had been rough with her.

Q. Well, let us get it straight. Mrs. McKee entered the room, started to say something, and Dr. McKee took her by the arm and they both left. A. As I saw it, he took her by the arm merely to attract her attention.

Q. What did he say? A. I think he said "Let's not go into that", or "We have been over that."

Q. That you recall? A. Yes.

Q. That was unusual? A. Yes.

Q. Her coming in was unusual? A. Yes, her coming in was unusual.

Q. And immediately after they left the room? A. Yes.

Q. And that is all there was to it? A. Yes.

Q. You didn't see Mrs. McKee after that? A. Yes, she came in and said good-night to me.

Q. She came and said good-night to you? A. Yes.

Q. Did you see Mrs. McKee after she left the room after that incident? A. I saw her packing the books, sorting them for quite a while.

Q. You saw her doing that? A. Yes. I don't believe I sat and stared down the hall at them. I was in the living room where I could see them, and I didn't see them whenever I didn't look down there.

Q. Were you paying any particular attention to them at the time, were you making any efforts to hear what they said? A. No, I wasn't trying to hear what they said.

Q. You were not eavesdropping? A. I was not. If I did hear I would not be eavesdropping.

Q. And you saw the operation of sorting out the books until you retired? A. Yes, but we didn't retire before Mrs. McKee left, we simply went back to our room.

Q. Do you recall making an affidavit in the Court in New York in which you said that you observed her very closely? A. Well, I certainly did. As I said, she came in the room, and when she was in the room she started to say something which I didn't understand, and then Dr. McKee took her by the arm, simply to attract her attention. I cannot say that he was in the least rough or discourteous.

Q. Well didn't you think it was discourteous for Dr. McKee to follow her into the room and prevent her from making some statement? A. I did not.

Q. You didn't think that was discourteous? A. No, I didn't.

Q. It seemed unusual to you, though? A. I didn't think it was but what you would expect him to do.

Q. Did it seem unusual to you that Mrs. McKee should suddenly come into the room and endeavor to tell you something? A. Yes, it did.

Q. Didn't it seem unusual that Dr. McKee should stop her in that way? A. No.

Q. That didn't seem unusual? A. No.

Q. And this whole incident, as I gather it, took about a half a minute and it was over and they went out of the room, and nothing was said to you? A. Very little, it was a very short period of time, it was more than half a minute, but not very long.

Q. And that was all? A. That is the particular part that I can remember.

Q. Are you sure that Mrs. McKee was handling these books herself? A. Yes.

Q. Positive about that? A. I feel confident about it.

Q. Is it likely that you are mistaken about that? A. Well, I don't think so.

Q. Is it not a fact that Dr. McKee himself handled each book and Mrs. McKee looked at it, and Dr. McKee put it on the floor? A. I don't think he handled all the books that she was handling.

Q. Well, is it not a fact that both of them went over each book that was sorted out? A. Well, I don't know if that is a fact. He probably looked at them, but I don't think he handled them.

Q. Well, perhaps I don't understand what you said. A. Well, I simply said they sorted out the books and piled them, making separate piles of them on the top of the book cases and some along the end of the hall by the book cases.

Q. Who was taking the books out of the shelves? A. Well, I think Mrs. McKee, Billy and Mr. McKee were all taking books out, but I really don't think Dr. McKee was handling the books as much as Mrs. McKee and Billy.

Q. There must have been some discussion of the books that they were sorting out. A. I don't recall.

Q. You don't recall. Surely it would not take three hours to take books out of shelves without discussion?

Mr. Walscheid: I object to that as calling for a conclusion.

A. I don't mean that they didn't mention books, but I don't recall what they said about them.

Q. But as Dr. McKee took out a book, Mrs. McKee would say, "This book is mine", and didn't he say, "No, that is mine, I paid for it, I own it"? A. I have no recollection of that.

Q. No recollection of that at all? A. No.

Q. And you have no recollection of Mrs. McKee going in to the living room and asking you about the blanket? A. No, I certainly have not.

Q. Don't remember that? A. No.

Q. You would say positively that no such conversation took place? A. Well I certainly will say that I don't remember it, but it seems that I would remember it.

Q. Would you say it didn't take place? A. I would.

Q. And these various conversations that Mrs. McKee testified to, and which counsel read to you on direct examination you say you have no recollection of? A. I have not.

Q. That is in line with your testimony that you recall nothing of the conversation that took place that night? A. I admit that.

Q. That is in line with that? A. Yes, except the few things which I have told you.

Q. Was the child in the room when Mrs. McKee arrived that night? A. My little boy?

Q. Your little boy. A. I don't think so, I think he was in his own room.

Q. How old was he at the time? A. Four.

Q. Is it likely that you were putting him to bed at that time? A. I think not. I think I did go into his room while Mrs. McKee was there.

Q. While she was in the living room? A. I don't remember if it was then or when she was packing the books, but I am sure I went in there one time.

Q. Well Mrs. McKee states to me that you were putting the child to bed when she arrived. A. Maybe that is right. I say I was in the living room when she arrived, but he wasn't asleep, and I went in to see him later.

Q. The fact is that all this took place almost four years ago, almost four years ago to the day,

and the fact further is that your recollection of the whole transaction is very dim, is that so? A. Well as far as individual conversation is concerned, it is, but I do remember what I told you about.

Q. Did you take Mrs. McKee to your bedroom at all when she was there? A. I remember Mrs. McKee coming to the bedroom, and saying good-night to me.

Q. Were you in bed at the time? A. No, we didn't go to bed until after she left, but we were in the room.

Q. You still don't remember anything about the blanket in your room? A. No.

Q. Your showing it to her? A. No, I don't recall that.

Q. Well, when you rented the apartment, the blankets came with it? A. Everything, yes.

Q. You didn't furnish anything of your own? A. Nothing of my own at all.

Mr. Blumberg: That is all.
Mr. Walscheid: That is all.

.....

Sworn to before me this
day of July, 1929.

....., 

## Deposition of George W. Roberts—Filed October 23, 1928.

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,

and

MARY N. McKEE,
Defendant.

Deposition of George W. Roberts produced, sworn and examined this 19th day of October, 1928 at No. 15 Park Place, in the County of New York and State of New York, under and by virtue of an order dated October 1st, 1928, issued out of the Court of Chancery of New Jersey, in a matter wherein Ralph H. McKee is petitioner and Mary N. McKee is defendant.

APPEARANCES:

For the petitioner JOHN J. KIRBY, Esq.

For the defendant GROSS & GROSS, by Leo Blumberg, Esq.

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The Commissioner having first taken the oath and the stenographer, Beatrice Schuman having taken and sworn to the oath before Lorenz J. Brosnan as Commissioner.

*Deposition of George W. Roberts—Filed October 23, 1928.*

GEORGE W. ROBERTS of the City of Yonkers, County of Westchester and State of New York, a witness produced on the part of the petitioner, being duly sworn deposes and says:

Direct Examination by Mr. Kirby:

Q. Where do you reside? A. I reside at No. 60 Franklin Avenue, Yonkers.

Q. And where is your place of business? A. The office is at No. 499 West 124th Street, New York City.

Q. What kind of business are you engaged in? A. Storage and warehouse and moving business known as the Manhattanville Express Moving & Warehouse Company.

Q. Are you the owner or part owner of that company? A. I am the owner and sole owner of that company.

Q. And have you been such since about 1910? A. No, sir. I was part owner up until 1921, since that time I have been sole owner.

Q. Do you know Ralph H. McKee, the petitioner in this action? A. I do.

Q. And do you know Mrs. McKee, the defendant in the action? A. I do.

Q. Do you recall removing any belongings of Dr. McKee from any apartment in the year 1925? A. On August 29, 1925 I removed from 39 Claremont Avenue, New York City to my warehouse at 58 Old Broadway, the contents of an apartment and was ordered to do so by Professor McKee on August 20, 1925.

Q. When you say Professor McKee, you mean Ralph H. McKee, who is the petitioner in this action? A. Yes.

Q. Where did you remove these belongings? A. I removed them to my warehouse at 58 Old Broadway.

Q. Did you or your company take any of his belongings at that time to 21 Claremont Avenue, in the Borough of Manhattan, City of New York? A. We did not.

Q. So far as you know, did Ralph H. McKee, the petitioner in this action, take an apartment at 21 Claremont Avenue at that time or at any other time? A. I do not recall that he took an apartment at that time or at any other time. I do know that there were several book shelves at a later date, the date I cannot specify now, which were left in the basement at 21 Claremont Avenue for storage purposes only. I cannot recall just where they came from, but I understand they were the property of Dr. McKee.

Q. Did you ever state to Mary N. McKee, the defendant in this action, in words or substance that when Ralph H. McKee relinquished his apartment at 39 Claremont Avenue, he took an apartment at 21 Claremont Avenue and had all his belongings removed to the latter address and continued to maintain said apartment at 21 Claremont Avenue until in or about August, 1925?

Mr. Blumberg: I object to the question as being incompetent, irrelevant and immaterial.

A. No.

Q. I want to change the question to read in or about August, 1926. I will repeat the question to you. Did you ever state to Mary N. McKee, the defendant in this action, that when Ralph H. Mc-

Kee relinquished his apartment at 39 Claremont Avenue he took an apartment at 21 Claremont Avenue, in the Borough of Manhattan, City of New York, and had all his belongings removed to said address and continued to maintain said apartment at 21 Claremont Avenue until in or about August, 1926? A. No, but I did say that I had removed some book shelves, bookcases to 21 Claremont Avenue and so far as I knew he had no residence at 21 Claremont Avenue.

Q. Is the balance of his belongings still at your warehouse? A. The balance? No, of the original goods put into our warehouse there is now left about eight or nine pieces of the original lot. The balance was removed to Mrs. McKee's residence at Spuyten Duyvil Parkway, Spuyten Duyvil, New York.

Q. You were here in response to a subpoena that was served upon you, are you not? A. I am.

Q. That is all.

Cross Examination by Mr. Blumberg:

Q. Did you make any affidavit in any case between Mrs. McKee and Dr. McKee? A. None at all.

Q. And did you discuss your testimony today with Mr. Kirby? A. I have never seen Mr. Kirby until this very day.

Q. Did you discuss this case at any time with Mr. Kirby or Dr. McKee in the past week? A. No, sir.

Q. When did you see Dr. McKee last? A. I think about five or six weeks ago. He told me that such a thing was coming up. Maybe it was a month ago. I have been so busy I can't remember, or maybe five weeks ago. He spoke to me and asked

me whether I would come down and I told him yes.

Q. Did he ask you if you were willing to come to New Jersey to testify in a case? A. I said I would rather not go to New Jersey, but that I would give any testimony here in New York City.

Q. How long have you known Dr. McKee? A. About ten years.

Q. Did you ever do work for him before? A. Yes, numbers of times. I could not designate just now how many times.

Q. What business are you in? A. I am in the express moving and warehouse business.

Q. And the business that you did for Dr. McKee was in that line, was it not? A. Yes.

Q. Your direct testimony deals with the moving of furniture from 39 Claremont Avenue to storage and part of it to another apartment at 21 Claremont Avenue? A. No, sir. My statement was that the goods removed from 39 Claremont Avenue were removed to my warehouse at 58 Old Broadway on August 29, 1925. At a later date there were some book shelves taken to 21 Claremont Avenue, wherefrom I cannot tell you because I have not looked up my books to see. But I do recall that there were book shelves left in the basement for storage purposes.

Q. Are you testifying from certain records that you have in your hand? A. I am testifying from the records with reference to the date of moving of goods from 39 Claremont Avenue.

Q. May I look at it? A. Certainly. (Hands paper to Mr. Blumberg.)

Q. This record which you just handed me is the record kept in your office? A. Yes, sir.

Q. It indicates the removal of furniture on the

29th of August, 1925 to be stored in a building at 58 Old Broadway, does it not? A. Yes.

Q. You are sure of the date, August 29th? A. Absolutely.

Q. You are sure of it because your record shows it? A. Yes and I was there personally with Dr. McKee.

Q. And all the merchandise and chattels in this record were stored at 58 Old Broadway? A. Yes.

Q. Who was living at this house at 39 Claremont Avenue? A. I do not know.

Q. Do you know whether Dr. McKee was living there? A. I do not.

Q. Did you go there to get this merchandise? A. Yes.

Q. Did you see anybody there? A. Dr. McKee came there or was there when I arrived.

Q. Was anyone else there? A. No one.

Q. Did he have a key to the place? A. I don't know.

Q. How did you get in? A. He was there.

Q. Was all this stuff put on the trucks? A. Yes, sir.

Q. Did Dr. McKee stay there or leave with you? A. I don't recall. I think he left when we did.

Q. Did Dr. McKee tell you that his residence is 39 Claremont Avenue? A. He did not.

Q. He didn't mention it? A. No.

Q. He told you that that was his stuff, did he not? A. Yes.

Q. Did he give you his permanent address? A. Columbia University. This was a business transaction and I took his business address.

Q. You say at a later date he asked you to take a portion of these goods over to 21 Claremont Avenue? A. No, sir.

Q. He did not? But you did take some of this merchandise to 21 Claremont Avenue. A. I did not and neither did I say I did.

Q. Didn't you say that you took some book cases to 21 Claremont Avenue? A. I did and from where I do not recall unless I look up my books.

Q. Your books would indicate where they were taken from? A. Yes.

Q. It may have been taken from these items and from your warehouse at 58 Old Broadway? A. No.

Q. It could not have been? A. No.

Q. Where are your other records? A. In my office.

Q. Didn't you think it important to bring them with these? A. I just happened to put this in my pocket.

Q. Did Dr. McKee ask you to bring this up? A. He did not.

Q. Did he tell you what he wanted you to testify? A. Yes. He said there was a deposition made that claimed that his residence was 21 Claremont Avenue.

Q. Who requested you to put these bookcases in 21 Claremont Avenue? A. I do not know whether Dr. McKee or his secretary called up.

Q. You recall what time of the year it was, or the month? A. I do not.

Q. It was long after August 1925? A. It was.

Q. You had another record with you, may I look at that? A. Certainly (hands paper to Mr. Blumberg). It is a letter from Dr. McKee asking me to come with reference to putting his goods in storage on August 20th.

Q. Did you move any goods before that time for Dr. McKee? A. Where, from and to?

Q. Anywheres. A. I do moving for Dr. McKee

lots of times, some for him and some for the University. This question I cannot answer.

Q. Where is the merchandise that you testified about? A. I testified a while ago that part of it was taken to Mrs. McKee's residence and there is still remaining a few pieces.

Q. Did you in September 1926 move furniture for Dr. McKee from an apartment at 21 Claremont Avenue to a new apartment at 1331 John Jay Hall, Amsterdam Avenue and 114th Street, New York City? A. I do not recall moving any goods from 21 Claremont Avenue to that address.

Q. You would not say you did not, would you, Mr. Roberts? A. From 21 Claremont Avenue?

Q. Yes. A. I did not.

Q. You did not remove any? A. I did not.

Q. Did you not tell Mrs. McKee that you removed furniture from 21 Claremont Avenue to John Jay Hall? A. I did not.

Q. Do you recall doing any moving work to John Jay Hall on Amsterdam Avenue for Dr. McKee? A. I did some moving work from John Jay Hall, but where to I cannot say just now. I do not recall where to.

Q. You have not brought any records with you? A. No, if I had known I would have brought receipts in connection with it.

Q. Will you show Mrs. McKee your records if she calls at your place to look at them? A. In the presence of Dr. McKee or some one interested.

Q. Why do you qualify that way? A. I do not see why I should show them to one without the other.

Q. You showed these receipts to Dr. McKee without Mrs. McKee being present, did you not? A. These are duplicates of Dr. McKee's receipts, why should I not show them to him?

Q. I understand that you are not willing to have Mrs. McKee go to your premises? A. Mrs. McKee can have access in the presence of Dr. McKee or some one he would suggest to be with her and not otherwise. It is not fair to either side.

Q. Did you take from the basement at 21 Claremont Avenue a badly worn sofa which Dr. McKee had left there and put it in storage? A. I do not recall.

Q. You would not say you did not? A. I would not say I did or did not.

Q. In March, 1927, did you not take several chairs, books and other things from Dr. McKee's apartment at John Jay Hall on Amsterdam Avenue and deliver them to Mrs. McKee's apartment?

Mr. Kirby: I object to that question, when you say Dr. McKee's apartment. There are no apartments as I understand it, in John Jay Hall. The question should be preceded by the question whether or not there was such an apartment in John Jay Hall.

A. I did not. Where was Mrs. McKee's apartment in March, 1927?

Q. Spuyten Duyvil in the Bronx, New York City. A. I removed goods from the warehouse to Mrs. McKee in Spuyten Duyvil, but what date I don't recall. I have records though and receipts for the date in reference to goods removed from John Jay Hall, a room at John Jay Hall, not an apartment as there are no apartments in John Jay Hall. I am transportation agent at Columbia University and know the place very well and know there are no apartments in John Jay Hall. What goods was removed from John Jay Hall, I cannot state ac-

curately now, whether they went to Mrs. McKee or not.

Q. You recall being in Mrs. McKee's apartment in Spuyten Duyvil? A. I do.

Q. Deliver merchandise there? A. I did.

Q. And removing from that place? A. Just delivering to that place, the dates I cannot say.

Q. It was about a year ago? A. I do not know.

Q. Have you done any moving work for Dr. McKee since you took these things from John Jay Hall in 1927? A. Yes.

Q. You have? A. Yes.

Q. How long ago? A. Last week.

Q. What did you do for him? A. Crated some merchandise and materials to be used in laboratories. I think, brother, the question you want to ask me is whether I moved any furniture. I am constantly moving things for Dr. McKee in his line of business, but in reference to furniture none has been removed by me for Dr. McKee since the removal of the goods from John Jay Hall, the date I cannot give you now.

Q. Did Mrs. McKee call at your warehouse in February, 1928, inquiring for certain barrels of china? A. No, she called up, the date I cannot remember, inquiring about barrels of china which I knew nothing about.

Q. What date do you think it was? A. I do not know.

Q. Was it 1927 or 1928? A. I cannot tell you, I do not know.

Q. Was it more than two months ago? A. Oh, surely that.

Q. Didn't you tell Mrs. McKee in response to her question that there was only one barrel left in storage there, do you recall that? A. I do not recall.

Q. Is that the fact, that there was only one barrel left in storage?

Mr. Kirby: When?

Q. Now. A. I think there is still one barrel left in the warehouse, the record of which I shall have to look up to be certain, but I believe there is.

Q. Did Mrs. McKee ask you if any barrels of china had been left in the apartment at 39 Claremont Avenue? A. Yes.

Q. What did you tell her? A. Not to my knowledge.

Q. Is this what you said: "No, there was nothing whatever left in the apartment. Mr. McKee gathered up every old bag and rag in the place and put them in a box"? A. I said everything was taken out of the apartment. I did not say anything about rags as far as I remember.

Q. You also moved this furniture, did you not, when Mr. and Mrs. McKee moved into the apartment at 39 Claremont Avenue? A. I did.

Q. Did Mrs. McKee seem pleased at this change of apartment?

Mr. Kirby: I object to that as improper and calling for the conclusion of the witness.

A. I recall nothing said about change of apartment.

Q. Did you hear Mrs. McKee say that having only two family bedrooms in the apartment was not suitable for their family? A. I did not.

Q. When you moved the furniture to 39 Claremont Avenue, you took part of the furniture down Saturday evening and unloaded that night, so that it was quite late when you finished, was it not? A. It was quite late.

Q. Between 11 and 12, was it not? A. I cannot say, it was late.

Q. Do you recall whether Dr. McKee was there at that time? A. I think so.

Q. You would not say positively that he was? A. My recollection is he was there. He was there around that day.

Q. Did you ask Mrs. McKee if anyone would be at the new apartment to put the furniture? A. That is a question we always ask. I presume I asked her that.

Q. And didn't Mrs. McKee reply that Mr. McKee would be there and would not know where anything would go? A. I don't recall that answer.

Q. And didn't you suggest to Mrs. McKee that she go to the new apartment and stay there until you finished your work? A. I don't recall, but that is usually the statement we ask the woman, to be there as she knows best where things go. That is the procedure.

Q. Was Mr. McKee there at any time at all, may I ask you that again? A. I don't recall. I think he was.

Q. But you do not recall definitely whether he was there or not? A. I am not definite.

Q. You would not say he was and you would not say he was not? A. No.

By Mr. Kirby:

Q. When you met Dr. McKee at the Claremont Avenue address for the purpose of removing his furniture and so on to your warehouse, you met him there pursuant to an appointment that was made with you? A. I did.

Q. When you speak of moving for Dr. McKee, is a great deal of moving done in connection with his

business at Columbia University? A. His department, not his business.

Q. His department of chemical engineering? A. Yes.

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IT IS STIPULATED on the record that the testimony of George W. Roberts need not be signed by him, nor sworn to before the Commissioner, and his signature and such swearing is expressly waived by the parties hereto.

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**Deposition of George B. Pegram, Filed October 23, 1928.**

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>RALPH H. McKEE,<br>Petitioner,<br>and<br>MARY N. McKEE,<br>Defendant. | On Petition for Divorce. |

Deposition of George B. Pegram, produced, sworn and examined this 19th day of October, 1928, at No. 15 Park Place, in the County of New York and State of New York, under and by virtue of an order dated October 1st, 1928, issued out of the Court of Chancery of New Jersey, in a matter wherein Ralph H. McKee is petitioner and Mary N. McKee is defendant.

*Deposition of George B. Pegram,*
*Filed October 23, 1928.*

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APPEARANCES:

For the Petitioner—JOHN J. KIRBY, Esq.

For the Defendant—GROSS & GROSS, by Leo Blumberg, Esq.

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The Commissioner having first taken the oath and the stenographer, Beatrice Schuman having taken and sworn to the oath before Lorenz J. Brosnan as Commissioner.

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GEORGE G. PEGRAM, of the City of New York, in the County of New York and State of New York, a witness produced on the part of the petitioner, being duly sworn, deposes and says:

Direct Examination by Mr. Kirby:

Q. What is your occupation? A. I am Dean of the School of Engineering at Columbia University.

Q. Where do you reside? A. No. 4513 Livingston Avenue, New York City.

Q. Do you know Dr. Ralph H. McKee, the petitioner in this action? A. Yes.

Q. And do you know Mary N. McKee, his wife, the defendant in the action? A. Yes.

Q. Have you been subpoenaed to attend at this hearing today? A. Yes.

Q. How long have you known Dr. McKee and Mrs. McKee? A. About ten to twelve years.

Q. Did you have a conversation with Mrs. McKee some time last year with reference to the marital trouble between her and her husband? A. Yes.

Q. When was that, as near as you can remember, Mr. Pegram? A. I looked in my diary and found

no note of it, but my recollection is that it was about the end of January, 1927.

Q. And how did that conference come about? A. It came about by request of Mrs. McKee.

Q. Was that request to you by telephone or by letter? A. I do not recollect.

Q. Was the conference held on the same day that the request was made or on the following day? A. My recollection is that we had a talk one evening, probably on Friday evening and again on Sunday morning.

Q. And where was that conference held? A. At my house.

Q. Did you then live where you now live? A. Yes, 4513 Livingston Avenue.

Q. Was that conference generally with reference to the marital controversy that then existed between her and her husband? A. Yes.

Q. And at the end of that conference did she ask you to see her husband with reference to certain demands that were made by her? A. My understanding of the purport of the conference was that I might possibly act as a go-between to bring about a satisfactory arrangement.

Q. Did she mention to you at that conference anything about the imminence of the trial of the matrimonial action then pending? A. She did.

Q. Did she tell you that it was on for trial on the following Monday? A. Yes.

Q. Did you report to Dr. McKee subsequently what she had stated at that conference at her request, in substance? A. In substance, yes.

Q. Now, at that conference did she say anything about her returning to Dr. McKee to live with him as man and wife? A. I got the impression from what was said that she was quite unwilling to re-

turn and live with him in full marital relationship.

Q. Did you so report to Dr. McKee at the conference which followed the conference had with her at her request? A. I think I did.

Q. When was that subsequent conference with Dr. McKee held? A. In the afternoon of the Sunday on which Mrs. McKee and I talked together.

Q. And how did the conference come about? Did you call Dr. McKee and request him to come and see you? A. Yes, I felt that I might be of some assistance by talking with Dr. McKee and I telephoned him and arranged with him that he should come to my office at the University at some hour in the afternoon, which he did.

Q. And in the course of that conference held at the University in the afternoon of the same day, I understand you say that you reported that Mrs. McKee had said in substance that she was unwilling to live with him as man and wife in the future? A. That was part of what I reported to Dr. McKee.

Q. What else did she discuss with you at this conference that was held prior to your subsequent conference with Dr. McKee? A. She discussed the question of a suitable allowance.

Q. Did she say how much money Dr. McKee was then allowing her? A. I think she did, but my memory is not to be relied on.

Q. May I refresh your recollection that she said that she was then being allowed for her individual support $100 a month? A. My recollection that it was of that order.

Q. Did she ask you to see Dr. McKee and ask him that that allowance be increased? A. No.

Q. She didn't say that? A. She did not ask me to ask Dr. McKee to increase the allowance.

Q. What did she say to you with reference to the allowance, Mr. Pegram? A. She felt that the al-

lowance was not a suitable fraction of Dr. McKee's income for him to allow his wife under the circumstances.

Q. She explained to you, did she not, that Dr. McKee was then paying the expenses of tuition and board of the daughter and son of the marriage? A. That was certainly understood. I don't recollect any specific explanation of that fact.

Q. And you knew, did you not, either from her conversation with you or from previous acquaintance, that the daughter of the marriage was then in attendance at Bryn Mawr College and that the son was in attendance at the Taft School in Connecticut? A. Yes.

Q. Did she say anything to you in that conversation about her desire to avoid publicity that a trial of the action on the following day would entail? A. She did.

Q. Did she say anything to you with reference to a continuance of the schooling of the children in the respective schools in which they were then? A. So far as my recollection goes there was no discussion of the daughter continuing at Bryn Mawr. Mrs. McKee had some fear that Dr. McKee might wish to withdraw the son from the school where he then was and my recollection is that she was strongly desirous of having the son continue at the school where he then was.

Q. At your subsequent conference with Dr. McKee, did you report to him what she had said to you with reference to these matters? A. With reference to the question of the schools in which the children were to be placed?

Q. Yes. A. I did.

Q. And also with reference to her feeling that the amount which he was allowing her for her individual support was not sufficient? A. I did.

Q. And what did he say with reference to these two matters in response to your statement to him of her desires?

Mr. Blumberg: I object to any statements made by Dr. McKee.

A. My recollection with respect to the question of the schooling of the children is that he stated in general that of course he was just as anxious to have the children enjoy the best schools as Mrs. McKee could be, and that he was quite willing to continue any reasonable expense such I take it as the expense involved in the schools where the children then were, and that that could hardly be a serious question of contention between him and Mrs. McKee.

Q. What did he say in response to your expression to him of Mrs. McKee's feeling that the amount which he was then allowing her was not sufficient for her support?

Mr. Blumberg: Same objection.

A. So far as my recollection goes the impression that I got from the conference was that he felt that that was a subject open for discussion.

Q. Did you say to Dr. McKee at the end of that conference that you would confer with Mrs. McKee later in the evening? A. I did.

Q. What did Dr. McKee say in response to your statement to him that Mrs. McKee had stated that she was not willing to resume marital relations with him?

Mr. Blumberg: Same objection. I object on the ground that it is irrelevant, incompetent and immaterial.

A. My recollection is that Dr. McKee expressed himself as regretting that the situation had come to such a pass as that.

Mr. Kirby: That is all.

Cross Examination by Mr. Blumberg:

Q. You say you are under subpoena? A. I am.

Q. And have you discussed this case in the past week with Mr. Kirby or Dr. McKee? A. Yes.

Q. You have discussed it with them? A. Yes.

Q. They asked you to attend at a trial in New Jersey next week? A. No.

Q. They didn't ask you? A. No.

Q. Whom did you talk with about this case during the past week, Dr. McKee or Mr. Kirby? A. Both.

Q. And was your testimony that you are giving today discussed at that time? A. The general line or what would be asked was discussed.

Q. Did you give any written statement of what you were going to testify to? A. No.

Q. Did you make any affidavit in any case in which the McKees were parties? A. No.

Q. You made no affidavit? A. No.

Q. You are Dean of the Department of Chemistry of Columbia University. A. It is in the record.

Q. Are you the Dean of the Chemistry Department? A. There is no such officer.

Q. What is your office? A. I am Dean of the Faculty of Science in charge of the Schools of Mines, Engineering and Chemistry.

Q. I understand that you testified that you have known Dr. McKee and Mrs. McKee for twelve years, is that so? A. I believe my answer was from ten to twelve years.

Q. Your testimony just given deals with a date in January 1927? A. Yes.

Q. I understand that your recollection of that occurrence is not very distinct? A. My recollection of the date is not distinct.

Q. Is your recollection of what transpired at that time distinct? A. Yes.

Q. I notice from some of your statements that you testified as to impressions you had rather than to statements which were made. I ask you now whether most of your testimony is not based upon your impressions of what took place rather than an exact recollection of the statements that were made? A. That question I cannot answer satisfactorily by yes or no.

Q. You do not recall the exact contents of the statements that were made in January 1927 at those conferences, do you? A. Certainly not.

Q. And the fact then is that most of your testimony is based upon your impressions of what took place at those occurrences? A. My testimony is based upon my general recollection of what was said at those conferences and the action which I took from the basis of what was said.

Q. Will you state again just how Mrs. McKee happened to call at your house that day in January? A. My recollection is that we had a conference by request of Mrs. McKee in the evening, but just what evening that was I do not recall, but I think it was probably the Friday before the Sunday on which we had a longer conference at which Mrs. Tilsley was present.

Q. Did you request this conference with Mrs. McKee or did she request a conference with you? A. Mrs. McKee requested a conference with me.

Q. She telephoned to you? A. She telephoned to

me or to my house and I got word of it or she might have written to me. As testified before I don't recollect what the method of communication was or the first conference that we had.

Q. You knew, did you not, that Dr. McKee and Mrs. McKee were living separate and apart? A. Yes.

Q. And you knew that a matrimonial suit was pending in New York City at that time between these parties? A. I knew of it first, so far as I can recollect, through the statement of Mrs. McKee when these conferences were being arranged.

Q. And you did not know before that time that a matrimonial suit was pending in New York State? A. I think not.

Q. Now then, coming back to the request of Mrs. McKee to see you, do you recall when that conference took place, what day of the week it was? A. Which conference?

Q. The first conference you had with Mrs. McKee. A. The date of that I am uncertain about. I think it was on Friday evening, but I should not like to state that as any definite recollection.

Q. Do you recall then the conference and consultation that you had with Mrs. McKee? A. I recall more distinctly the circumstances of the conference had at my house on Sunday.

Q. Can you also recall the statements that were made by Mrs. McKee at that first conference on what you say was Friday night? A. The whole subject was so much more thoroughly discussed at the conference on Sunday, that I think I should hardly be able to recall separately what was said at the other conference.

Q. Mrs. McKee told you why she wanted to consult with you, did she not when she first arrived?

Didn't she tell you what her object in calling you was? A. Certainly.

Q. What did she say at that time? A. She told me that some suit was to come up in court on the following Monday morning. That to bring out a suit of that kind in public could do no one any good, if it could be settled without being brought out in a public court, and that she wanted to talk the matter over with me with a view to seeing whether I might help to bring her and her husband together and getting them to make such arrangements as would make it unnecessary to go forward with the court proceedings.

Q. Did Mrs. McKee tell you the reason why she was living separate and apart from her husband, at that meeting?

Mr. Kirby: I want to enter an objection to that on the ground that it is incompetent, irrelevant and immaterial and if made probably includes a self-serving declaration and made not in the presence of Dr. McKee.

A. I cannot recollect that she did.

Q. I notice that you hesitated about a minute and half before answering that question.

Mr. Kirby: I object to that as incompetent, irrelevant and immaterial and not stating the facts. The witness did not hesitate a minute and a half, but a very small fraction of that time.

Q. I notice you hesitated about answering that question, Dr. Pegram. Could you not say immediately that you have not been told by Mrs. McKee the reason of living separate and apart?

Mr. Kirby: I object to that question as wholly improper.

A. I took time to think about the question because before giving a negative answer, I desired to see whether I could recollect any statement on that point.

Q. What did you say to Mrs. McKee when she suggested that you use your influence in seeing if some arrangement could be brought about with her husband, did you say anything to her at that time? A. I must have said in substance that I should be glad to do whatever I could to help then smooth matters out.

Q. Did Mrs. McKee explain to you the nature of the suit which she had brought against her husband in New York City? A. I think it quite likely that Mrs. McKee did make some statement as to the nature of the suit, but I cannot now recollect the exact form of such statement, nor can I recollect what the suit was.

Q. Can you recollect how long those conversations with Mrs. McKee took? A. I should estimate that the first conversation might have been from twenty to forty minutes.

Q. What did you do subsequent to that conversation with Mrs. McKee?

Mr. Kirby: What do you mean, what did he do, I don't understand that. Do you understand the question?

A. I went about my daily business.

Q. Didn't I understand you to say on your direct examination that you telephoned Dr. McKee with reference to that conference with Mrs. McKee? A. If the direct examination did not make clear that

my telephoning to Dr. McKee was on Sunday, then the direct examination was not complete enough.

Q. Then the first conference with Mrs. McKee took place on Friday night, and did you have a second conference with Mrs. McKee before you telephoned Dr. McKee? A. I telephoned to Dr. McKee after the conference on Sunday with Mrs. McKee.

Q. Then before you telephoned Dr. McKee, you had a second conference with Mrs. McKee, is that right? A. As I have stated before, my recollection as to the time of the first conference with Dr. McKee is not distinct. After the conversation which I had with Mrs. McKee on Sunday I telephoned to Dr. McKee.

Q. What I am trying to get at is this, were there two conferences with Mrs. McKee or just one with her? A. There were two.

Q. And did you ask Mrs. McKee to see you again before you would call Dr. McKee? A. I don't recollect that I asked Mrs. McKee to see me again, but it is not unlikely after the first conference I might have said if I can do anything let us know and I will get in touch with Dr. McKee.

Q. Was anyone else present with Mrs. McKee?

Mr. Kirby: Which do you refer to?
Mr. Blumberg: Either conference.

A. My recollection is that my first conference with Mrs. McKee was with her alone. At the longer conference on Sunday Mrs. Tilsley was present.

Q. Then it was subsequent to this conference on Sunday that you called Dr. McKee on the telephone? A. Yes.

Q. And both of these conferences that you testified to occurred in your home? A. Yes.

Q. Subsequent to your conversation with Dr. McKee, did you have another conference with Mrs. McKee? A. I telephoned to Mrs. McKee subsequent to my conference on Sunday afternoon with Dr. McKee.

Q. You telephoned to Mrs. McKee? A. I did.

Q. What did you state to her at that time? A. I stated in substance that the result of my conference with Dr. McKee was that he would be glad to confer with Mrs. McKee before the time set for the opening of the court proceedings on the next day.

Q. And did you attend that court the following morning? A. No.

Q. You did not? A. No.

Q. Did you attend at any conference between Mr. McKee and Mrs. McKee? A. No.

Q. Did you confer with Dr. McKee that Sunday afternoon in reference to this litigation in New York? A. Only insofar as my efforts were directed toward bringing Mrs. McKee and Dr. McKee together for a discussion of the situation before the court procedure should go forward.

Q. Dr. McKee told you that he was living separate and apart from his wife, did he not? A. Probably so. It was a matter of common knowledge to all their friends.

Q. And did you discuss with him the drawing of any agreement between these parties as to living separate and apart? A. A written agreement?

Q. Yes. A. No.

Q. You didn't discuss that with him? A. No.

Q. Did you know that a written agreement was drawn between these parties the following day?

Mr. Kirby: Do you mean did he know subsequently?

Mr. Blumberg: Yes.

A. I don't recollect that I was ever informed of the existence of such an agreement.

Q. And you did not know the circumstances, I gather, under which it was drawn? A. Certainly not.

Q. You stated in your direct examination that Mrs. McKee told you that she was unwilling to live with Dr. McKee. Didn't Mrs. McKee tell you why she was unwilling to live with Dr. McKee? A. Mrs. McKee told me that she was quite unwilling to have full marital relationships with Dr. McKee, and from what she said I understood that she had developed an antipathy towards him to such an extent that she was unwilling to live with him as his wife.

Q. Did she explain to you the basis for her antipathy? A. No, she gave no details.

Q. Did you ask for any details? A. I did not.

Q. Did she give any justification for her conduct for not living with him to you? A. I don't recollect that the question of justification was discussed at all in that conversation. I simply accepted the situation as it was and made no inquiry as to justification.

Q. Was Dr. McKee in the Department of Applied Sciences? A. He is in the Department of Chemical Engineering which is part of the school of mines and chemistry.

Q. That is your department, is it not?

Mr. Kirby: What do you mean? Is that the department of which he is dean?

A. I would have to explain a little of the University because the terms are being used so loosely.

The Commissioner: Do you mean whether he was under his jurisdiction?

A. Dr. McKee is one of the Professors of chemical engineering in Columbia University attached to the department of chemical engineering. This department teaches and conducts research both for the school of mines, engineering and chemistry and for the school of pure science in Columbia University. A department in the University is an administrative division pertaining to the subject, the schools pertain to the classification of students. As to Dr. McKee's work his connection is with the schools of mines, engineering and chemistry. It comes under the supervision of myself as Dean of the Schools of Mines, Engineering and Chemistry.

Q. Your position as Dean is an administrative position, is it not? A. Yes.

Q. And you would know what salary Dr. McKee receives as Professor at Columbia? A. Certainly.

Q. What salary does he receive at the present time? A. $7,500.

Q. And did he receive the same salary for the past three or four years? A. No.

Q. What did he receive last year? A. $6,000.

Q. And the year before? A. $6,000, and for several years previous.

Q. And in addition to his salary, does the University provide Dr. McKee with laboratories for his research and consulting work? A. The University permits the Professors to make certain use of laboratories for their own consulting.

Q. Does the University provide Dr. McKee as a Professor any assistants paid by the University? A. I should have to look up the records on that. The University provides in certain cases clerical assistants, but that does not come under the administration of the Dean's office at all.

Q. When Mrs. McKee was talking with you at

your office, did you make a statement to her that Dr. McKee had told you that his income for one year was $16,000? A. Yes, I did.

Q. And the fact is that Dr. McKee had told you that his income for one year was $16,000? A. Yes.

Q. Do you recall what year that was? A. My recollection is that it was just after the war, but I cannot say the exact year.

Q. In this conversation, do you also recall that Mrs. McKee said to you: "Dr. McKee is sometimes very hard to get along with." Do you recall your reply: "Yes, we have found Dr. McKee exceedingly trying ourselves at times"?

Mr. Kirby: I object to that as incompetent, irrelevant and immaterial and not binding upon Dr. McKee unless made in his presence and a self-serving declaration on the part of the defendant if made at all.

A. My own recollection of the substance of what was said in this connection was that Mrs. McKee in referring to her difficulty in getting along with Dr. McKee, referred to him as irritable, to which I may have replied in substance that I realize that he could be irritable at times, that he had shown evidence of being under strain. I did not recall the exact form of my reply.

Q. In the conversation at your house the first time with Mrs. McKee, didn't Mrs. McKee tell you that Dr. McKee had said that he would lose his position at Columbia and consequently much of his consulting work if this New York trial took place?

Mr. Kirby: I object to that as incompetent, irrelevant and immaterial and not binding on the petitioner unless he was

present at the conversation and a self-serving declaration on the part of the defendant if stated.

A. I don't recollect that Mrs. McKee stated to me that Dr. McKee had made such a statement to her.

Q. You gathered, did you not, Dr. Pegram, that Mrs. McKee came to see you in order that you might use your influence with Dr. McKee to having a referee appointed in the case in New York in order to avoid the publicity which would follow a public hearing? A. I don't recollect any reference to the question of a referee, because I knew nothing whatever of the suit that was in progress. My only efforts were devoted to bringing Mrs. McKee and Dr. McKee together in such a way that they might discuss their difficulties with a view to keeping them out of the courts.

Q. You did not gather from the conferences with Mrs. McKee that she was looking for an excuse to withdraw the suit in New York? A. No.

Q. That is all.

Re-direct Examination by Mr. Kirby:

Q. Just one question. From the salaries as you have stated them of Dr. McKee, $7,500 in the past year and $6,000 in previous years, there is taken out, is there not, 5% of the amount of salary for the retiring allowance? A. There is in the case of the Professors appointed, I believe, since 1917, but as to that my memory is not certain.

Q. The $7,500 salary which Dr. McKee is now receiving began as of July 1st of this year, did it not? A. His salary was increased from $6,000 to

$7,500 as part of the general increase of salaries which Columbia University put in effect on July 1st, 1928.

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IT IS STIPULATED on the record that the testimony of George B. Pegram need not be signed by him, nor sworn to before the Commissioner, and his signature and such swearing is expressly waived by the parties hereto.

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**Depositions of Leslie Hand and Carl Becker.**

State of Michigan, }
County of Wayne, } ss.:

I, Charles Duffy, do swear that I will faithfully, fairly and impartially execute the annexed commission to the best of my skill and knowledge.

CHARLES E. DUFFY.

Subscribed and sworn to before me,
a Notary Public for said County,
this 3rd day of December, 1928.

HERBERT C. VOLKMAN,
Notary Public in and for said
County of Wayne, in the
State of Michigan.
My commission expires Nov. 5, 1929.

IN CHANCERY OF NEW JERSEY.

Between

RALPH H. McKEE,
Petitioner,

and

MARY N. McKEE,
Defendant.

Depositions of witnesses, sworn and examined the third day of December, 1928, at Detroit, in the County of Wayne and State of Michigan, under and by virtue of a commission issued out of the Court of Chancery of New Jersey, in a matter wherein Ralph H. McKee is complainant and Mary N. McKee is defendant:

LESLIE HAND, of the City of Detroit, in the County of Wayne and State of Michigan, a witness produced on the part of the Petitioner, being duly sworn, deposes and says:

1st Interrogatory: Where do you now reside?

A. I reside part of the time at 8791 Lafayette Boulevard, Detroit, and part of the time at 268 Hall Avenue, Windsor, Ontario.

2nd Interrogatory: What is your occupation and where are you employed?

A. I am follow-up clerk in the Chrysler Corporation.

3rd Interrogatory: During the period from October 1st, 1926, to approximately March 1st, 1928, did you reside at 607 Bergen Avenue, Jersey City, New Jersay?

A. Yes, I did.

4th Interrogatory: During said period, what was your occupation and where were you employed?

A. My occupation was check clerk in the Chase National Bank, New York City.

5th Interrogatory: Do you know Dr. Ralph H. McKee?

A. Yes, very well indeed.

6th Interrogatory: When and where did you meet him?

A. I met Dr. McKee at 607 Bergen Avenue, Jersey City, about October 15, 1926.

7th Interrogatory: Did he reside at the same address during the period from October, 1926, to the time when you removed from 607 Bergen Avenue, Jersey City, New Jersey?

A. He did.

8th Interrogatory: What kind of a place is 607 Bergen Avenue, Jersey City, New Jersey?

A. It is a very high class rooming house.

9th Interrogatory: What portion of the house did you occupy when you lived there?

A. We started with the room at the back on the second floor, and we lived there for about nearly a year, and then we moved upstairs to the third floor in the front.

10th Interrogatory: With whom did you room?

A. Carl W. Becker.

11th Interrogatory: What part of this house was occupied by Dr. McKee, to your knowledge, during the period of your residence there?

A. He occupied the room in the front of the second floor.

12th Interrogatory: How often did you see Dr. McKee at 607 Bergen Avenue, Jersey City, during the period of your residence there?

A. Practically every night except when he was away on business trips.

13th Interrogatory: Were you in Dr. McKee's company while you were residing there?

A. Yes, several times.

14th Interrogatory: Do you know any of the members of his family? If so, will you state their names?

A. Yes, I do; I know Margaret McKee, and William McKee.

15th Interrogatory: Where did you meet them?

A. I met them at 607 Bergen Avenue, Jersey City.

16th Interrogatory: Do you know Mrs. Mary N. McKee, the wife of Dr. McKee?

A. No.

17th Interrogatory: Did you ever see her at 607 Bergen Avenue, Jersey City, New Jersey, or anywhere else, to your knowledge?

A. No, I did not.

18th Interrogatory: Did Mrs. Stebie Morehous reside at 607 Bergen Avenue, Jersey City, New Jersey, during the period of your residence there?

A. Yes, she did.

19th Interrogatory: Do you know Mr. and Mrs. Eugene Markush?

A. Yes, I do.

20th Interrogatory: Did you see them visiting Dr. McKee at 607 Bergen Avenue?

A. Yes, I did, on several occasions.

21st Interrogatory: Who had charge of and ran the house at 607 Bergen Avenue, Jersey City, New Jersey?

A. Mrs. E. W. Winter.

22nd Interrogatory: How frequently did you visit Dr. McKee's quarters at 607 Bergen Avenue, Jersey City, during the period of your residence there?

A. About three or four times a week.

23rd Interrogatory: Will you state approximately the size of his quarters there?

A. Yes, I would say his room is 15 by 15.

24th Interrogatory: Will you describe how Dr. McKee's quarters were furnished?

A. He had a table and half a dozen chairs, a bed, dresser, bookcase, radio; and he had a health machine in there. The furniture was of very high quality. There was a nice rug on the floor. He had a clothes closet in there.

25th Interrogatory: Was Dr. McKee's residence at 607 Bergen Avenue, during the period from October, 1926, to the time of your removal from there, continuous?

A. Yes, it was, except for the few trips that he made on business, and the time that he took on vacation with his son and daughter.

26th Interrogatory: Have you been in the company of Dr. McKee's children?

A. Yes, I have.

27th Interrogatory: Upon what occasions?

A. On the occasion that they were home from college; we went to shows, and when they entertained their guests, at 607 Avenue, Jersey City.

28th Interrogatory: Did Dr. McKee's children ever stay at 607 Bergen Avenue, Jersey City, New Jersey, to your knowledge?

A. Yes, they did.

29th Interrogatory: Did his children have any guests at that address to your knowledge?

A. Yes, they did, and I met them when they were entertained.

30th Interrogatory: Did you meet their guests?

A. Yes, I did.

31st Interrogatory: Do you recall hearing the children of Dr. McKee speak of the residence 607 Bergen Avenue, Jersey City, New Jersey?

A. Yes, they spoke of it several times.

32nd Interrogatory: What did they say about it?

A. They said it was a very nice place. On different occasions I have heard them talk of it as "home".

33rd Interrogatory: Was Dr. McKee residing at 607 Bergen Avenue, Jersey City, New Jersey, when you removed from that place?

A. Yes, he was.

34th Interrogatory: Do you know whether Dr. McKee attended any church? If so, what church?

A. Yes, he attended church; I believe it was the Presbyterian Church, the First Presbyterian Church.

LESLIE HAND.

This examination taken, reduced to writing and sworn to this Third day of December, 1928, before me.

CHARLES E. DUFFY,
Commissioner.

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ANSWERS TO CROSS-INTERROGATORIES.

1st Cross-Interrogatory: How old are you, giving the date of your birth?

A. 21 years old; I was born June 27, 1907.

2nd Cross-Interrogatory: Are you now living with your parents in the City of Detroit?

A. Yes, I am living with my parents, but they are not in the City of Detroit.

3rd Cross-Interrogatory: What prompted you to return to the City of Detroit?

A. The thing that prompted us was, more or less, homesickness, and we wanted to see our folks for a while.

4th Cross-Interrogatory: Did you ever testify for Dr. McKee in any suit before?

A. No, I did not.

5th Cross-Interrogatory: If your answer to the preceding question is yes, state the occasions on which you testified for Dr. McKee.

(No response.)

6th Interrogatory: Did Dr. McKee ever give you any money other compensation for your assistance to him in this divorce suit?

A. No, he did not, nothing outside of expenses.

7th Cross-Interrogatory: Did you attend at the chancery chambers in Jersey City on the 25th day of October, 1928?

A. No.

8th Cross-Interrogatory: If your answer to the preceding question is yes, did Dr. McKee pay you any money or other compensation for your trip from Detroit to Jersey City?

(No response.)

9th Cross-Interrogatory: Did you make any trips to Jersey City since March 1st, 1928 from Detroit?

A. Yes, I did.

10th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, did Dr. McKee pay your expenses on that trip?

A. Yes, he did.

11th Cross-Interrogatory: Did Dr. McKee make any promises to you in reference to paying you or otherwise compensating you for your assistance in this divorce suit?

A. No, he did not.

12th Cross-Interrogatory: Did you ever discuss the testimony that you have already given or are about to give in this suit with Dr. McKee or his attorneys?

A. No.

13th Cross-Interrogatory: If your answer to the preceding question is yes, state the occasions on which you discussed your testimony herein and with whom the conversation was had.

(No response.)

14th Cross-Interrogatory: Is the house at 607 Bergen Avenue, Jersey City, New Jersey, a rooming house?

A. Yes, it is.

15th Cross-Interrogatory: From whom did you rent the room which you occupied at 607 Bergen Avenue, Jersey City, N. J.?

A. Mrs. E. W. Winter.

16th Cross-Interrogatory: How many roomers were there in the premises 607 Bergen Avenue, New Jersey, N. J., at the time you occupied said premises?

A. At the time I occupied it, there were quite a few. They came and they went.

17th Cross-Interrogatory: On how many occasions were you in the house of Dr. McKee's children?

A. I would say 25 or 30 times.

18th Cross-Interrogatory: When was the first time you met Margaret McKee, the daughter of Dr. McKee?

A. It was in May, 1927, when she was home on a vacation from college.

19th Cross-Interrogatory: When was the first time that you met William McKee, the son of Dr. McKee?

A. I couldn't say exactly, but it was quite soon after I met Margaret; I would say in August, 1927.

20th Cross-Interrogatory:: Did you attend church with Dr. McKee personally?

A. No, I did not.

21st Cross-Interrogatory: If your answer to the

preceding cross-interrogatory is yes, state on how many occasions you attended church personally with Dr. McKee?

(No response.)

22nd Cross-Interrogatory: Who is Mrs. Stebie Morehouse referred to in the interrogatories propounded by the Petitioner herein?

A. She is a lady who is engaged in theatrical work in Jersey City for the various lodges and encampments that they have there.

23rd Cross-Interrogatory: What was the exact date when you moved from 607 Bergen Avenue, Jersey City, N. J.?

A. March 1st, 1928.

24th Cross-Interrogatory: When you did move from 607 Bergen Avenue, where did you move to?

A. Detroit.

25th Cross-Interrogatory: On what date did you move to Detroit?

A. March 1st, 1928.

26th Cross-Interrogatory: Did you ever meet Dr. McKee before Dr. McKee's alleged moving to 607 Bergen Avenue, Jersey City, N. J.?

A. No, I did not.

27th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, when did you first meet Dr. McKee?

A. (No response.)

28th Cross-Interrogatory: Is it not a fact that on numerous occasions, Dr. McKee absented himself from the room at 607 Bergen Avenue, Jersey City, N. J.?

A. Yes, he was absent when he was on his business trips, and when he was on his vacation.

29th Cross-Interrogatory: Is it not a fact that Dr. McKee did not spend every single night at the room at 607 Bergen Avenue, Jersey City, N. J.?

A. Yes, it is.

30th Cross-Interrogatory: Will you state the names of the roomers occupying 607 Bergen Avenue, Jersey City, N. J., during your occupancy of same, and state also whether your answer to this cross-interrogatory includes all of the roomers?

A. There was Mr. Dressing, Mr. and Mrs. Messenages, Miss Burke, Miss Cummings, Mr. and Mrs. Moulton, Mr. Darrow, Margaret McKee, Bille McKee, Carl Becker. There were numerous others, I have forgotten their names just at present.

31st Cross-Interrogatory: Under what circumstances did you become acquainted with Mrs. Winter and the apartment at 607 Bergen Avenue, Jersey City, N. J.?

A. We went to the Jersey City Y. M. C. A., and they recommended us to Mrs. Winter at 607 Bergen Avenue, Jersey City.

32nd Cross-Interrogatory: Did anyone recommend the room at 607 Bergen Avenue to you, and if so, who?

A. Yes, the Jersey City Y. M. C. A.

33rd Cross-Interrogatory: Did Dr. McKee recommend the room at 607 Bergen Avenue, Jersey City, N. J. to you?

A. No, sir.

34th Cross-Interrogatory:: Have you received any instructions or advices as to the method in which the interrogatories served upon you herein by the petitioner, Ralph H. McKee, shall be answered?

A. No.

35th Cross-Interrogatory: Are you using any notes, papers, memoranda or other writings to assist you in making your answers to the interrogatories herein?

A. No.

36th Cross-Interrogatory: Did Dr. Ralph H.

McKee, his solicitors or any person acting for him send you any instructions of any nature as to the answers to be given by you to either the interrogatories or cross-interrogatories herein?

A. No.

37th Cross-Interrogatory: Has a copy of the interrogatories and a copy of the cross-interrogatories been forwarded to you by any person whatsoever, or have you seen the said interrogatories or cross-interrogatories before your appearance before Commissioner Charles Duffy?

A. No, I have not.

38th Cross-Interrogatory: Where are the interrogatories and cross-interrogatories herein being propounded to you?

A. 1615 Ford Building, Detroit, Michigan.

39th Cross-Interrogatory: Have your answers to the interrogatories all been given at the same time and place?

A. Yes, they have.

40th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state the time it took you to answer the interrogatories and cross-interrogatories.

A. About 12 or 13 minutes.

41st Cross-Interrogatory: If your answer to the 39th cross-interrogatory is no, state the different places and times in which your answers to the interrogatories and cross-interrogatories herein have been furnished?

(No response.)

42nd Cross-Interrogatory: Was any attorney, solicitor, or representative in behalf of Petitioner, Ralph H. McKee, present before the Commissioner while your answers to the interrogatories and cross-interrogatories have been given, and if your answer is yes, state who was present?

A. No.

43rd Cross-Interrogatory: Is the Commissioner, Charles Duffy, or any person acting for him, giving you any information or assistance as to the manner, method or substance or form of your answers to the interrogatories or the cross-interrogatories?

A. No.

44th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state in detail what assistance is being given you by the said Commissioner, Charles Duffy, or any one acting in his behalf?

(No response.)

45th Cross-Interrogatory: Did you receive any communication from Ralph H. McKee, his solicitors, or any one acting in behalf of him or them, since the 25th day of October, 1928?

A. Yes, I did.

46th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state the occasions on which such communications were received, and the contents of same.

A. I received a letter on Thursday, the 29th of November; it was a purely personal letter, and it stated also in there that the papers had been forwarded to Mr. Duffy, and that I would most probably receive a formal notice from him to appear.

LESLIE HAND.

This examination taken reduced to writing and sworn to this third day of December, 1928, before me.

CHARLES E. DUFFY,
Commissioner.

CARL W. BECKER, of the City of Detroit, in the County of Wayne and State of Michigan, a witness produced on the part of the Petitioner, being duly sworn, deposes and says:

1st Interrogatory: Where do you now reside?

A. 8791 Lafayette Boulevard, Detroit, Michigan.

2nd Interrogatory: What is your occupation, and where are you employed?

A. I am now employed at the Detroit Packing Company, as a scaler.

3rd Interrogatory: During the period from October 1st, 1926, to approximately March 1st, 1928, did you reside at 607 Bergen Avenue, Jersey City, New Jersey?

A. Yes.

4th Interrogatory: During said period, what was your occupation and where were you employed?

A. I was employed at the Chase National Bank, New York City; my occupation was check clerk.

5th Interrogatory: Do you know Dr. Ralph H. McKee?

A. I do, very well.

6th Interrogatory: When and where did you meet him?

A. I met him at 607 Bergen Avenue, Jersey City, N. J.

7th Interrogatory: Did he reside at the same address during the period from October, 1926, to the time when you removed from 607 Bergen Avenue, Jersey City, New Jersey?

A. He did.

8th Interrogatory: What kind of a place is this 607 Bergen Avenue, Jersey City, N. J.?

A. It is a rooming house of very high standing.

9th Interrogatory: What portion of the house did you occupy when you lived there?

A. I occupied the last room on the second floor.

10th Interrogatory: With whom did you room?

A. Leslie H. Hand.

11th Interrogatory: What part of this house was occupied by Dr. McKee, to your knowledge, during the period of your residence there?

A. He occupied the living room and alcove-bedroom in the front part of the house.

12th Interrogatory: How often did you see Dr. McKee at 607 Bergen Avenue, Jersey City, during the period of your residence there?

A. Several times a week.

13th Interrogatory: Were you in Dr. McKee's company while you were residing there?

A. Yes, I was very intimate with him.

14th Interrogatory: Do you know any of the members of his family? If so, will you state their names?

A. I know the son and daughter, Miss Margaret McKee, and Mr. William McKee.

15th Interrogatory: Where did you meet them?

A. At 607 Bergen Avenue, Jersey City.

16th Interrogatory: Do you know Mrs. Mary N. McKee, the wife of Dr. McKee?

A. I do not.

17th Interrogatory: Did you ever see her at 607 Bergen Avenue, Jersey City, New Jersey, or anywhere else, to your knowledge?

A. No, I did not.

18th Interrogatory: Did Mrs. Stebie Morehous reside at 607 Bergen Avenue, Jersey City, New Jersey, during the period of your residence there?

A. Yes, she did.

19th Interrogatory: Do you know Mr. and Mrs. Eugene Markush?

A. Yes, I do very well.

20th Interrogatory: Did you see them visiting Dr. McKee at 607 Bergen Avenue?

A. Yes, I did.

21st Interrogatory: Who had charge of and ran the house at 607 Bergen Avenue, Jersey City, New Jersey?

A. Mrs. M. E. Winter.

22nd Interrogatory: How frequently did you visit Dr. McKee's quarters at 607 Bergen Avenue, Jersey City, during the period of your residence there?

A. We would go into his room. We were allowed in his room any time we wanted to, to listen to the radio, and we were in there probably four nights a week.

23rd Interrogatory: Will you state approximately the size of his quarters there?

A. His living room was about 15 by 15, and he had an alcove-bedroom that was about 6 by 9.

24th Interrogatory: Will you describe how Dr. McKee's quarters were furnished?

A. Well, he had furniture in there that was partly new,—a table, dresser, bed, that is a double bed, five or six chairs, a radio, clothes press, bureau.

25th Interrogatory: Was Dr. McKee's residence at 607 Bergen Avenue, during the period from October, 1926, to the time of your removal from there, continuous?

A. It was, with the exception of a business trip about once a month.

26th Interrogatory: Have you been in the company of Dr. McKee's children?

A. Yes.

27th Interrogatory: Upon what occasions?

A. On the occasion of them coming home from college to spend the holidays with their father, and several times I was with them to the theatre.

28th Interrogatory: Did Dr. McKee's children ever stay at 607 Bergen Avenue, Jersey City, New Jersey, to your knowledge?

A. Yes, they did.

29th Interrogatory: Did his children have any guests at that address to your knowledge?

A. His daughter, Miss Margaret McKee, had two girl friends from college to spend a few days with her at 607 Bergen Avenue, Jersey City.

30th Interrogatory: Did you meet their guests?

A. I did.

31st Interrogatory: Do you recall hearing the children of Dr. McKee speak of the residence, 607 Bergen Avenue, Jersey City, New Jersey?

A. Yes. They always spoke of 607 Bergen Avenue as "home", in our company, and we understood that was the only home they had.

32nd Interrogatory: What did they say about it?

A. They always said it was the only home they had.

33rd Interrogatory: Was Dr. McKee residing at 607 Bergen Avenue, Jersey City, New Jersey, when you removed from that place?

A. Yes, he was.

34th Interrogatory: Do you know whether Dr. McKee attended any church? If so, what church?

A. Yes, he attended the First Presbyterian Church of Jersey City.

CARL W. BECKER.

Examination taken, reduced to writing and sworn to this Third day of December, 1928, before me.

CHARLES E. DUFFY,
Commissioner.

ANSWERS TO CROSS-INTERROGATORIES.

1st Cross-Interrogatory: How old are you, giving the date of your birth?

A. 20 years old; birth, October 2, 1908.

2nd Cross-Interrogatory: Are you now living with your parents in the City of Detroit?

A. I am.

3rd Cross-Interrogatory: What prompted you to return to the City of Detroit?

A. Just to pay my parents a visit, and I had a job down here promised me, and I liked it, and I stayed.

4th Cross-Interrogatory: Did you ever testify for Dr. McKee in any suit before?

A. No, I did not.

5th Cross-Interrogatory: If your answer to the preceding question is yes, state the occasion on which you testified for Dr. McKee.

(No response.)

6th Cross-Interrogatory: Did Dr. McKee ever give you any money or other compensation for your assistance to him in this divorce suit?

A. No, he did not.

7th Cross-Interrogatory: Did you attend at the chancery chambers in Jersey City on the 25th day of October, 1928?

A. We were in Jersey City, but we did not attend the court chambers. There was a phone call came to us and told us it was postponed, so that we did not go down.

8th Cross-Interrogatory: If your answer to the preceding question is yes, did Dr. McKee, pay you any money or other compensation for your trip from Detroit to Jersey City?

A. Just expenses.

9th Cross-Interrogatory: Did you make any

trips to Jersey City since March 1st, 1928, from Detroit?

A. I made one in May, May 10, 1928, and one October 25, 1928.

10th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, did Dr. McKee pay your expenses on that trip?

A. Just expenses.

11th Cross-Interrogatory: Did Dr. McKee make any promises to you in reference to paying you or otherwise compensating you for your assistance in this divorce case?

A. No, he did not.

12th Cross-Interrogatory: Did you ever discuss the testimony that you have already given, or are about to give in this suit, with Dr. McKee or his attorneys?

A. We saw his lawyer on May 10th. His lawyers just asked us personal questions about where we were from, and things like that; he didn't talk about the case at any time.

13th Cross-Interrogatory: If your answer to the preceding question is yes, state the occasions on which you discussed your testimony herein, and with whom the conversation was had.

A. That was the only time I had met his lawyer, and that is all I had to do with it at all.

14th Cross-Interrogatory: Is the house at 607 Bergen Avenue, Jersey City, N. J., a rooming house?

A. It is.

15th Cross-Interrogatory: From whom did you rent the room which you occupied at 607 Bergen Avenue, Jersey City, New Jersey?

A. Mrs. M. E. Winter.

16th Cross-Interrogatory: How many roomers were there in the premises 607 Bergen Avenue,

Jersey City, N. J. at the time you occupied said premises?

A. About 15.

17th Cross-Interrogatory: On how many occasions were you in the company of Dr. McKee's children?

A. I was with his son William McKee about 15 or 20 times, and with his daughter, Margaret McKee about 12 times.

18th Cross-Interrogatory: When was the first time you met Margaret McKee, the daughter of Dr. McKee?

A. About the last part of May, 1927.

19th Cross-Interrogatory: When was the first time that you met William McKee, the son of Dr. McKee?

A. In the fall of the year, about October 1926.

20th Cross-Interrogatory: Did you attend church with Dr. McKee personally?

A. No, I did not.

21st Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state on how many occasions you attended church personally with Dr. McKee?

(No response.)

22nd Cross-Interrogatory: Who is Mrs. Stebie Morehous, referred to in the interrogatories propounded by the petitioner herein?

A. She was a lady who stayed at 607 Bergen Avenue for about three months, to do some theatrical business in Jersey City.

23rd Cross-Interrogatory: What was the exact date when you moved from 607 Bergen Avenue, Jersey City, N. J.?

A. March 1st, 1928.

24th Cross-Interrogatory: When you did move from 607 Bergen Avenue, where did you move to?

A. To my home in Detroit.

25th Cross-Interrogatory: On what date did you move to Detroit?

A. March 1st, 1928.

26th Cross-Interrogatory: Did you ever meet Dr. McKee before Dr. McKee's alleged moving to 607 Bergen Avenue, Jersey City, N. J.?

A. No, I did not.

27th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, when did you first meet Dr. McKee?

(No response.)

28th Cross-Interrogatory: Is it not a fact that on numerous occasions Dr. McKee absented himself from the room at 607 Bergen Avenue, Jersey City, N. J.?

A. Yes, he did. On business or vacation.

29th Cross-Interrogatory: Is it not a fact that Dr. McKee did not spend every single night at the room at 607 Bergen Avenue, Jersey City, N. J.?

A. He spent every night at 607 Bergen Avenue, unless he was away on a business trip, or vacation with his children.

30th Cross-Interrogatory: Will you state the names of the roomers occupying 607 Bergen Avenue, Jersey City, N. J., during your occupancy of same, and state also whether your answer to this cross-interrogatory includes all of the roomers.

A. There were quite a number of them. There was Mrs. Morehous, Mrs. Moulton, Mr. and Mrs. Knapp, Mr. and Mrs. Udell, Miss Burke, Miss Cummings, Margaret McKee, William McKee, Mr. Darrow, Mr. Dressing, Mr. Manning, Mr. and Mrs. Messenages, Mr. Hand. That is all I can think of. The others I do not recall; there were quite a few.

31st Cross-Interrogatory: Under what circumstances did you become acquainted with Mrs. Winter and the apartment at 607 Bergen Avenue, Jersey City, N. J.?

A. Through the courtesy of the Jersey City Y. M. C. A.

32nd Cross-Interrogatory: Did any one recommend the room at 607 Bergen Avenue to you, and if so, who?

A. Yes, the Y. M. C. A. in Jersey City.

33rd Cross-Interrogatory: Did Dr. McKee recommend the room at 607 Bergen Avenue, Jersey City, N. J., to you?

A. No, he did not.

34th Cross-Interrogatory: Have you received any instructions or advices as to the method in which the interrogatories served upon you herein by the petitioner, Ralph H. McKee, shall be answered?

A. No, I have not.

35th Cross-Interrogatory: Are you using any notes, papers, memoranda, or other writings to assist you in making your answers to the interrogatories herein?

A. No, I am not.

36th Cross-Interrogatory: Did Dr. Ralph H. McKee, his solicitors, or any person acting for him, send you any instructions of any nature as to the answers to be given by you to either the interrogatories or cross-interrogatories herein?

A. No, they did not.

37th Cross-Interrogatory: Has a copy of the interrogatories and a copy of the cross-interrogatories been forwarded to you by any person whatsoever, or have you seen the said interrogatories or cross-interrogatories before your appearance before Commissioner Charles Duffy?

A. No.

38th Cross-Interrogatory: Where are the interrogatories and cross-interrogatories herein being propounded to you?

A. 1615 Ford Building, Detroit, Michigan.

39th Cross-Interrogatory: Have your answers to the interrogatories all been given at the same time and place?

A. Yes, they have.

40th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state the time it took you to answer the interrogatories and cross-interrogatories.

A. About 15 minutes.

41st Cross-Interrogatory: If your answer to the 39th Cross-Interrogatory is no, state the different places and times in which your answers to the interrogatories and cross-interrogatories herein have been furnished.

(No response.)

42nd Cross-Interrogatory: Was any attorney, solicitor, or representative in behalf of petitioner, Ralph H. McKee, present before the Commissioner while your answers to the interrogatories and cross-interrogatories have been given, and if your answer is yes, state who was present?

A. No.

43rd Cross-Interrogatory: Is the Commissioner, Charles Duffy, or any person acting for him, giving you any information or assistance as to the manner, method, substance or form of your answers to the interrogatories or the cross-interrogatories?

A. No.

44th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state in detail what assistance is being given to you by the said Commissioner, Charles Duffy, or any one acting in his behalf?

(No response.)

45th Cross-Interrogatory: Did you receive any communication from Ralph H. McKee, his solicitors or any one acting in behalf of him or them, since the 25th day of October, 1928?

A. Just a letter, telling me that there woud be a formal notice sent to me, to let me know just when to testify before Mr. Duffy.

46th Cross-Interrogatory: If your answer to the preceding cross-interrogatory is yes, state the occasions on which such communications were received, and the contents of same.

A. About the 27th of November, there was a letter which said that there would be a formal notice sent to me from Charles Duffy, to let me know when to appear and testify before him.

CARL W. BECKER.

Examination taken, reduced to writing and sworn to this Third day of December, 1928, before me.

CHARLES E. DUFFY,
Commissioner.