

## INDEX

	Page
Notice of Appeal .....	1
Petition of Appeal .....	2
Answer to Petition of Appeal .....	3
Petition for Divorce .....	3
Amended Petition .....	5
Answer to Amended Petition and Cross-Peti- tion .....	7
Answer to Cross-Petition .....	9
Notice to Produce .....	10
Order Dismissing .....	11
Testimony .....	12
Remarks of Court .....	85

## TESTIMONY

### *Petitioner's:*

Edna Brown,	
Direct .....	12
Cross .....	27
Ella J. Killburn,	
Direct .....	43
Cross .....	45
Anna Schwarzwaldler,	
Direct .....	46
Cross .....	48

	Page
<i>Defendant's:</i>	
William Brown,	
Direct .....	50
Cross .....	69
Emma A. Brown,	
Direct .....	77
Cross .....	80
 <i>Petitioner's Rebuttal:</i>	
Edna Brown,	
Direct .....	82

EXHIBITS

<i>Petitioner's:</i>	Offered Page	Printed Page
P-1—Letter from Petitioner to Defendant, dated November 13, 1923 ....	26	87

NEW JERSEY

Court of Errors and Appeals

NOTICE OF APPEAL

(Filed, July 21, 1925)

10

Between EDNA BROWN, Petitioner-Appellant, and WILLIAM BROWN, Defendant-Respondent.	}	On Petition.
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The petitioner hereby appeals from so much of the final decree made in the above entitled cause as adjudicates that the petitioner is not entitled to the relief prayed for by her in her petition and as dismisses her petition and amended petition to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated, July 3, 1925.

EZRA NOLAN.      30  
Sol'r. of Petitioner-Appellant.  
Merritt Lane,  
Of Counsel.

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

MERRITT LANE,  
Of Counsel with Appellant.

40

**PETITION OF APPEAL**

(*Filed, August 15, 1925*)

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

10 The petition of Edna Brown, the appellant in  
the above stated cause, respectfully shows that your  
petitioner finds herself aggrieved by an order of  
dismissal made in the Court of Chancery, by His  
Honor, Edwin Robert Walker, Chancellor of the  
State of New Jersey, bearing date the 26th day of  
February, 1925 wherein the said Edna Brown was  
petitioner and the said William Brown was defend-  
ant, in this respect, to wit: That the said order  
of dismissal adjudges that the petitioner has failed  
by her proofs to sustain the allegations of her peti-  
tion and that the same should be dismissed. And  
20 your petitioner humbly appeals from that part of  
the order of dismissal of the Chancellor which ad-  
judges that the petitioner has failed by her proofs  
to sustain the allegations of her petition and that  
the same should be dismissed upon the ground that  
the same is erroneous for that the Chancellor  
should not have adjudged as aforesaid but should  
have adjudged that the petitioner is entitled to the  
relief prayed for by her; should have made a de-  
30 cree *nisi* for divorce against the defendant, William  
Brown; should have adjudged that the defendant  
deserted the petitioner on the 17th day of Decem-  
ber, 1921, ever since which time and for more than  
two years last past defendant had wilfully, contin-  
uedly and obstinately deserted your petitioner.

Your petitioner therefore prays that the said  
order of dismissal of the said Chancellor may be  
in the particulars aforesaid, reversed, set aside and  
for nothing holden, and that your petitioner may  
40 have such other relief in the premises as to this  
Honorable Court may seem meet.

EZRA NOLAN,  
Solr. of Appellant.  
MERRITT LANE,  
Of Counsel with Appellant.

**ANSWER TO PETITION OF APPEAL***(Filed, September 25, 1925)*

Formal answer.

10

**PETITION FOR DIVORCE***(Filed, March 17, 1924)*

## IN CHANCERY OF NEW JERSEY

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

20

The petition of Edna Brown, of the City of Jersey City, County of Hudson, and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, William Brown, the defendant in this suit, on the 3rd of September, 1921, at Jersey City, New Jersey.

2. Defendant deserted petitioner on the 17th day of December, 1921, ever since which time and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner. 30

3. Petitioner has been a bona fide resident of the State of New Jersey, continuedly since the 17th day of December, 1921, residing at Jersey City, New Jersey.

4. There were no children born of their marriage. 40

*Petition for Divorce*

5. Petitioner's maiden name was Edna Schwarzwaldler.

10 Your petitioner prays that the marriage between your petitioner and defendant may be dissolved for the cause aforesaid, according to the statute in a case made and provided and that she may be allowed to resume her maiden name, and that she may have such further relief as may be just.

And your petitioner will ever pray, etc.

EDNA BROWN,  
Petitioner.

Ezra L. Nolan,  
Solicitor of Petitioner.

20 State of New Jersey, County of Hudson, ss:

Edna Brown, being duly sworn according to law upon her oath deposes and says:

That she is the petitioner in the foregoing petition, and that as said petitioner, her petition is made without any collusion between her and the defendant, it being made in truth and good faith for the causes set forth in the petition.

EDNA BROWN.

30 Sworn and subscribed to before me this  
14th day of March, 1924.

Geo. P. Williamson,  
A notary public of New Jersey.

A true copy.  
Jesse R. Salmon,  
Clerk.

**AMENDED PETITION***(Filed, July 11, 1924)*

## IN CHANCERY OF NEW JERSEY

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

The petition of Edna Brown, of the City of Jersey City, County of Hudson, and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, William Brown, the defendant in this suit, on the 3rd day of September, 1921, at Jersey City, New Jersey. 20

2. Defendant deserted petitioner on the 17th day of December, 1921, ever since which time and for more than two years, last past, said defendant has wilfully, continuedly and obstinately deserted the petitioner.

3. Petitioner has been 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 30  
action, continued to be such resident.

4. There were no children born of their marriage. Petitioner's maiden name was Edna Schwarzwaldner.

Your petitioner prays that the marriage between your petitioner and defendant may be dissolved for the cause aforesaid, according to the statute in the case made and provided and that she may be allow-

*Amended Petition*

ed to resume her maiden name, and that she may have such further relief as may be just.

And your petitioner will ever pray, etc.

EDNA BROWN,  
Petitioner.

10 Ezra L. Nolan,  
Solicitor of Petitioner.

State of New Jersey, County of Hudson, ss :

Edna Brown, being duly sworn according to law upon her oath deposes and says :

That she is the petitioner in the foregoing petition named, and that her said petition is not made by any collusion between her and the defendant,  
20 but in truth and good faith for the causes, therein set forth.

EDNA BROWN.

Sworn to and subscribed before me this  
24th day of June, 1924.

Geo. P. Williamson,

(L.S.)

A notary public of New Jersey.

30 A true copy.  
Thomas Barber,  
Clerk.

**ANSWER TO AMENDED PETITION AND  
CROSS-PETITION**

*(Filed, August 29, 1924)*

IN CHANCERY OF NEW JERSEY

10

The answer of William Brown, defendant to the petition of Edna Brown, petitioner:

1. This defendant admits it to be true that petitioner and defendant were lawfully married as in paragraph one of said petition as alleged.

2. This defendant denies it to be true that on the 17th day of December, 1921, this defendant deserted the petitioner and for more than two years last\*past has wilfully, continuedly and obstinately deserted petitioner; but, on the contrary, defendant says that the petitioner deserted this defendant in a manner particularly stated in the succeeding part of this answer which is in the nature of a cross-petition. 20

3. Defendant has not sufficient information to form a belief as to the matters contained in paragraph three of said petition, and leaves petitioner to her proof thereof. 30

4. Defendant admits paragraph four of said petition.

This defendant prays to be hence dismissed with his reasonable costs and charges in his belief most wrongfully sustained.

\* \* \* \* \*

And this defendant, by way of cross-petition, exhibited against the petitioner says: 40

*Answer to Amended Petition and Cross-Petition*

1. Defendant, this cross-petitioner, was lawfully joined in the bonds of matrimony to his present wife, Edna Brown, on the 3rd day of September, 1921, by the Reverend Father E. Monteleone, at Jersey City, in the State of New Jersey.

10 2. Defendant, this cross-petitioner, and petitioner cohabited after their said marriage until the 17th day of December, 1921, when said petitioner deserted him: and for more than two years last past, said petitioner has wilfully, continuedly and obstinately deserted your defendant, this cross-petitioner.

3. Defendant, this cross-petitioner, was a bona fide resident of this State having his permanent home at Jersey City, in the County of Hudson, when  
20 this cause of action arose as aforesaid, and has ever since and for more than two years next preceding the commencement of this action continued to be such resident.

4. Defendant, this cross-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 he may have such further relief as may be  
30 just.

And defendant, this cross-petitioner, will ever pray, etc.

WILLIAM BROWN,

Defendant.

SCHUMANN & SCHUMANN,

Solicitors of Defendant-Cross-Petitioner.

*Answer to Cross-Petition*

State of New Jersey, County of Hudson, ss:

William Brown, being duly sworn according to law upon his oath, deposes and says that he is the cross-petitioner named in the foregoing cross-petition, and that his cross-petition is not made by any collusion between him and the defendant therein (petitioner in the original petition named), but in truth and in good faith for the causes set forth in said cross-petition. 10

WILLIAM BROWN.

Sworn to and subscribed before me, this  
28th day of August, 1924.

Katherine A. Tietsen,  
Notary Public of N. J.

20

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**ANSWER TO CROSS-PETITION**

*(Filed, September 12, 1924)*

**IN CHANCERY OF NEW JERSEY**

The petitioner, Edna Brown, who resides in Jersey City, Hudson County, New Jersey, answering the cross-petition heretofore filed in this cause says: 30

1. The petitioner admits it to be true, that the defendant and petitioner were married as in Paragraph One (1) of the said cross-petition.
2. The petitioner denies that on the 17th day of December, 1921, this petitioner deserted the defendant, and for more than two years last past, has wilfully, continually and obstinately, deserted the petitioner; but on the contrary the petitioner says, that the defendant deserted this petitioner, in the manner more particularly stated in the petition, which has been filed. 40

*Notice to Produce*

3. The petitioner has not sufficient information to form a belief as to the matter contained in Paragraph 3, of the said cross-petition, and leaves the defendant to his proof thereof.

10 This petitioner prays, that the cross-petition be dismissed, with her reasonable costs and charges in her belief most wrongfully sustained.

EZRA L. NOLAN,  
Sol'r. for Petitioner.

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**NOTICE TO PRODUCE**

20 IN CHANCERY OF NEW JERSEY

*To Carl Schumann, Esq., Attorney for Defendant  
and Cross-Petitioner:*

TAKE NOTICE, that at the trial of this cause, you are required to produce a letter addressed to Mr. Wm. Brown, 178 Claremont Ave., Jersey City, N. J., dated November 13th, 1923. In the event of your failure so to produce this letter, secondary  
30 evidence of its contents will be offered at the trial of this cause.

Yours, etc.,

EZRA L. NOLAN,  
Attorney for Petitioner.

**ORDER DISMISSING***(Filed, February 26th, 1925)*

## IN CHANCERY OF NEW JERSEY

This cause coming on to be heard in the presence 10  
of Ezra L. Nolan, solicitor for the petitioner, and of  
Emil W. A. Schumann, one of the solicitors for the  
defendant; on petition, answer, cross-petition and  
answer thereto, and upon oral proofs taken in open  
court, whereupon and upon duly considering the  
said pleadings and proofs, and hearing and consid-  
ering the arguments of the said solicitors, from all  
of which it appears to the Court that the petitioner  
has failed by her proofs to sustain the allegations  
of her petition and that the same should be dismiss- 20  
ed and that the defendant has failed by his proofs  
to sustain the allegations of his cross-petition and  
that the same should be dismissed,

It is on this 26th day of *February*, A. D., 1925,  
ORDERED, ADJUDGED AND DECREED, that the petition  
of the said petitioner and the cross-petition of the  
said defendant, be and the same are both hereby  
dismissed.

E. R. WALKER, 30

Respectfully advised,  
James F. Fielder,  
V. C.

C.

A true copy.  
Thomas Barber,  
Clerk.

**TESTIMONY**

## IN CHANCERY OF NEW JERSEY

	Between	} On Petition. for Divorce.
10	EDNA BROWN, Petitioner-Appellant, and	
	WILLIAM BROWN, Defendant-Respondent.	

Transcript of shorthand notes of testimony taken  
on final hearing in above stated cause, at Chancery  
Chambers, Jersey City, February 19, 1925, before  
20 His Honor, James F. Fielder, Vice-Chancellor.

## Appearances :

Ezra Nolan, Esq., for petitioner.  
Emil W. A. Schumann, for defendant.

## PETITIONER'S CASE

30 EDNA BROWN, the petitioner, sworn as a witness in her own behalf, testifies as follows :

Direct-examination by Mr. Nolan :

Q. You are the petitioner in this case? A. I am.

Q. Where do you live? A. 137 Arlington Avenue,  
Jersey City.

Q. Do you live with your mother? A. Yes.

Q. How long have you been living there with  
40 your mother? A. Since December 17, 1921.

*Petitioner's: Edna Brown—Direct*

Q. When were you married to the defendant, your present husband? A. September 3, 1921.

Q. After your marriage where did you go to live?

A. I lived at 182 Claremont Avenue, Jersey City.

Q. You were living there with your husband? A. Yes.

10

Q. How long did you continue to live at that last mentioned address? A. I lived there until December 17th.

Q. After your marriage and after you came to live at 182 Claremont Avenue and until the 17th day of December, 1921, was your married life a happy one? A. No, sir; it was not.

Q. What was the cause of your unhappiness? A. The way my husband conducted himself with me.

Q. Just what do you mean by "the way he conducted himself"? A. Almost from the very beginning—I was married about a week or two when he told me that he did not want to live with me any more, that he wanted to go back and live with his mother and sister, that he never should have gotten married, and that was where he wanted to live, and he wanted me to leave him; he didn't want to live with me any more.

20

Q. He didn't want to live with you any more? A. No, sir.

30

Q. And he told you to go? A. He told me to get out of the house.

Q. When was the first time that he told you that? A. I guess I was only married about two weeks.

Q. About two weeks? A. Yes.

Q. Did you go? A. No, sir.

Q. Why did he say that he didn't want to live with you? A. Why, he said that he wanted to go back to his mother; that she was the only one that counted in his life, and his sister, and he wanted

40

*Petitioner's: Edna Brown—Direct*

to give them the money he was giving me; he didn't want to support me; he said I should go back and live with my mother, and he was going to live with his mother, and that is where he was going to live, and that was all, and he told me I should get out.

10 Q. Did he tell you that the first week of your married life? A. He said it to me every day of the week, every time he was in my presence.

Q. Did you ever go to see his folks, his parents? A. I was in his house once or twice, I believe, but you see the trouble started in the very beginning—I was married on Saturday and Monday we were back from Atlantic City and my husband visited his people; when he came back he visited them. He said to me they forbade him to bring me into their house.

20 I said why. He said, "Well, they will never forgive me for marrying you," and he said: "I don't want to live with you; I want to go back to my mother." He said, "You cannot go into their house." I was reluctant to go when they forbade him to bring me there.

Q. Did you ever go there? A. Some time after I did, because I was demanded to go there.

30 Q. Who asked you to go there? A. My husband said that his mother and sister wanted to talk with me.

Q. You went to his house? A. Yes.

By the Court: Q. When was that? A. That was toward the end of October some time or early in November.

By Mr. Nolan: Q. What did they say to you? A. Why, they told me—they laid down the law to me—they told me I had to take boarders, and all the things I had to do.

40 Q. Did they have anything else to say? A. They said he never should have gotten married, that he

*Petitioner's: Edna Brown—Direct*

should have remained home with them, and that they had no use for me, and all remarks like that.

By Mr. Schumann: Q. May I ask who said that?

A. His sister and mother.

Q. Who said it? A. In their home.

Q. Who said it? A. They both said it. 10

By Mr. Nolan: Q. Did the mother say that? A. Yes, sir. The mother said he never should have gotten married, he should have stayed home with them.

Q. You left the house— A. We stayed there I should judge about an hour.

Q. Did they ask you to come back again? A. No; they did not.

Q. What was said? A. We just bade them good-night. That was all. They didn't ask me to return. 20

Q. After that visit, did your husband ever tell you to get out of the house again? A. Why, he told me every day in the week; in fact every time he was in my presence. He started, as I say, early; I was only married two or three days when he told me that his mother and sister would not forgive him for marrying me, and just a few weeks after that his mother made a will disinheriting him—

Q. How do you know? A. He told me. My husband went out one evening, and he accompanied 30 his mother and his sister to the attorney's office to make the will, and when he came back he said that they had disinherited him and that to get back to his mother's and sister's good graces, he would have to get rid of me, and he said he would use every means to get rid of me.

Q. This brings you up to November, you say? A. That was, I believe, some time in October when she made the will.

Q. You say that he continually requested you to 40

*Petitioner's: Edna Brown—Direct*

get out of the house? A. Why, every week I remained there he grew worse because he said he was not getting rid of me. He said he would get rid of me at any cost.

10 Q. Did he go out with you anywhere? A. Of course no one knew about it but myself, about the trouble I was in. There was no one to go to but my mother's. He accompanied me because my people didn't know.

20 Q. Did he ever take you to the theatre? A. No, sir. Once he took me to the movies and he upbraided me for coming home so late. I said it wasn't my fault that I didn't go to the early show, because he was in his mother's in the early part of the evening, and I didn't care to go any more, because of what happened that evening; I didn't want any repetition.

30 Q. Would he remain home with you in the evening? No, sir; he would not. He usually came in for dinner, a little after six. Well, dinner would take about half an hour, and he would probably go back to his mother's house every evening about seven o'clock, and on a few occasions—my brothers visited me occasionally—about once a week—and he would come in a little earlier than usual on those occasions. Other evenings, when there wasn't any one in the house, he would remain away until between nine and ten o'clock.

Q. When he came home what would he say? A. One night he came home and he said that his mother was keeping his room open for him. I asked him one time why his sister didn't take his room. He said that it was not necessary, that he was going back there to live in his own room with his mother.

40 Q. You say this would happen almost every

*Petitioner's: Edna Brown—Direct*

night? A. This happened every time he would come in my presence. He said he wanted me to go, that he didn't want to live with me.

Q. Would he take you out for a walk or anything? A. No, sir; he would not. One Sunday night, when I went to church, I asked him if he would be in time to meet me afterwards, because he was spending his evenings with his mother, and he would not even meet me after church. 10

Q. This happened, you say, almost every night? A. Absolutely.

Q. When was the last time he told you to go? A. The last time he told me to go was the evening before I left.

Q. What did he say? A. I wish to change that—the morning before I left. 20

By the Court: Q. The morning of the day you left? A. Yes; the morning of the day I left.

Q. That was December 16th? A. Yes.

By Mr. Nolan: Q. The evening of December 16th did he tell you to go? A. Oh, yes.

Q. To leave him? A. In fact—

Q. (Interrupting) Did he tell you to leave him? A. Yes.

Q. Will you explain to the Court just what conversation you had with him on the evening of December 16, 1921? A. My husband, as was usual, he told me every night in the week that he wanted me to get out, he didn't want to live with me any more— 30

By the Court: Q. Never mind about the usual part of it. The question is: What did he say to you on the evening of December 16th? A. He told me to get out, that that was the last opportunity he was going to give me to get out, and that he would be very glad to pay for a moving van to move my 40

*Petitioner's: Edna Brown—Direct*

things, and that he did not want to live with me any more; that he wanted to go back to his people, and that that was what he intended to do, and he would not live to me. He said that he wanted to give the money that he was giving to me to his mother, and  
 10 he said if I was not gone the next day, that he would do what he threatened to do.

By Mr. Nolan: Q. Had he ever threatened you?

A. Yes.

Q. What do you mean by what he threatened to do? A. You see, the longer I stayed the worse he became, and he told me he would get rid of me if he had to kill me.

Q. When did he say this? A. Why, as early as, I should say, starting in October.

20 Q. In October? A. Yes.

Q. And you say he threatened you on the evening of December 16, 1921? A. Yes. He told me that was my last opportunity to get out.

Q. When did he tell you to get out? A. The next day. He said he didn't want me to be there when he came home.

Q. And he said he would pay for the moving van? A. Yes, he said he would gladly pay the moving van, anything to get rid of me.

30 Q. Did he make any suggestion about the moving van, or anything of that kind? A. He told me to get my things out, and that was what he cared about—"my things"—not his things; that I should get out and go back to my mother or anybody else that I cared to live with.

Q. On that evening did he go to his mother's home? A. Yes, sir.

Q. And left you alone? A. Yes.

Q. Before he left did he have anything to say  
 40 to you?

*Petitioner's: Edna Brown—Direct*

The Court: She has told us what he said.

Q. Did you remain in the house when he went to his mother's? A. I cleared up the dishes and things, as I usually did, and then I went out and asked a man to come for my things the following day. 10

Q. When Mr. Brown came back to his mother's home, did he have anything to say to you then? A. Yes, sir.

Q. What did he say? A. He told me he wanted me to get the hell out of there and be sure about it.

Q. At the time that he told you to go, at any time, was there anybody else present in your house? A. Yes; the first time I remember well was October 9th, and my husband had invited a cousin—it was Sunday— 20

By the Court: Q. A cousin of his or of yours? A. My husband's cousin; to come and have tea with us on Sunday night, and she came to our home, and she was a very sweet girl and was very sympathetic with me and said how she liked my home.

Q. The question was: Was there anybody else present? A. Oh, yes.

Q. His cousin was there? A. Yes.

Q. What is the cousin's name? A. Her first name is Julia. I only met her once. 30

Q. Do you know her last name? A. No, sir; I do not. Julia is her first name.

By Mr. Nolan: Q. What was said in the presence of Mr. Brown's cousin? A. Why, of course I was appealing to her; she was—

By the Court: Q. What was said? A. I was trying to lead up to that.

By Mr. Nolan: Q. Tell us what was said? A. She said how lucky her cousin was to have a girl like I was; she said that was fine. Then I broke 40

*Petitioner's: Edna Brown—Direct*

down and cried. She asked me why I was crying. I said: "My husband does not seem to appreciate that fact and he is not treating me right and he is telling me to get out of the house, and that his mother comes first, and that I am nothing in his life."

10 Q. What did Mr. Brown say? A. Mr. Brown sat there. He agreed that he said all of those things, and she upbraided him and she told him what she thought about it.

Q. And any other time when Mr. Brown asked you to go, was anybody else present? A. Yes.

Q. Who was there? A. Miss Kilburn.

Q. And when was she at your house, do you remember about what date? A. She was at my house  
20 early in December; I believe it was December 4th, on a Sunday.

Q. What conversation took place at that time? A. Miss Kilburn usually brought me presents and different things, and she came to our house and I asked her to have dinner with us. She was not going to stay, and we had dinner and my husband, we talked on different topics, and then she asked me if I would like a piece of carpet for my kitchen. I said: "Well, I don't know whether I need it."

30 She said: "Why, what is the trouble?" I told her that he wanted to go back and live with his mother and that he didn't care to live with me and that he didn't want to remain with me, and all of those things.

Q. You say that Mr. Brown made visits to your mother's home? A. On a few occasions; yes, sir.

Q. When was the last time that he visited your mother's home? A. I would not want to give any specific date. I couldn't say. I know Thanksgiving  
40 Day. I guess that was the last day. I believe it was. That was the day I can well remember.

*Petitioner's: Edna Brown—Direct*

Q. Thanksgiving Day, what year? A. 1921.

By the Court: Q. Is Miss Kilburn in court? A. Yes, sir.

By Mr. Nolan: Q. What happened on Thanksgiving Day? A. Thanksgiving Day my mother had invited us down for tea and my husband was in his mother's house all afternoon, and about five-thirty he came in, and I was just getting ready, I was just finishing dressing to go to my mother's, and he came in, and he was in a terrible— 10

By the Court: Q. The question is: What happened at your mother's? A. Nothing happened at my mother's, because my mother didn't know about it. We just went down to my mother's.

By Mr. Nolan: Q. Before you went to your mother's you say you had a conversation with your husband? A. Yes, sir. 20

Q. About your going? A. He came in and he said to me: "What do you think where I have been this afternoon?" I said: "I suppose talking to your mother and sister." He said: "No. I have been lying in my old bed. That is where I want to be. When you go to your mother's tonight I want you to make arrangements to stay there." I said: "I don't want to return to my mother." He said: "I don't want ever to see your face again," and he told me I didn't need to come back with him that night. 30

Q. And you came back with him, did you not? A. I certainly did. My people didn't know nothing about it.

Q. After December 17, 1921, did your husband come to see you? A. No, sir.

The Court: Let us get at what took place. December 17th.

Q. On December 17th did you leave the house? A. Yes, sir. 40

*Petitioner's: Edna Brown—Direct*

By the Court: Q. You saw your husband that morning? A. Yes, sir. That morning he told me the same thing the night before.

Q. What time did he leave in the morning? A. He left to catch the seven something train.

10 Q. What time did he leave? A. I should judge somewhere around seven o'clock. About seven o'clock I should judge.

Q. He said something to you before he left? A. Yes; he told me to get out; that was my last opportunity that he was going to give me to get out. In fact, he said: "Get the hell out of here."

Q. You had taken your things or some of them the night before, had you not? A. No, sir; I took nothing the night before, because I didn't have very  
20 much to take.

By Mr. Nolan: Q. Did he threaten you? A. Yes, sir; he threatened me. He told me if I was not gone by the time he returned, I would know what would happen to me.

Q. Did that affect your health at all? A. Why, yes. I was—

Mr. Schumann: —I object, as it calls for a conclusion on the part of the witness which she is not competent to answer.

30 Q. You say he did threaten you? A. Yes.

Q. What did he say? A. Why, he told me on several occasions—

Q. On December 17th? I mean on December 17th. A. He told me that if I was not home when he returned, that he would do as he had threatened to do.

Q. And what had he threatened to do? A. Why, he had told me that he would get rid of me if he had to kill me.

40 Q. And after he left, you say a moving van came to the house? A. Yes, sir.

*Petitioner's: Edna Brown—Direct*

Q. At what time did the van come to the house?

A. About ten o'clock—ten or half-past ten.

Q. Was anybody else present with you? A. Yes, sir.

Q. Who was present with you? A. My mother.

Q. What things did you remove from the house? 10

A. I removed my spare bed-room set, my spare one that I had used before I was married, and my linens, and my own wedding presents, not any that were given to me by my husband's relatives, just my own friends, and my clothing. That was all.

Q. He said that he wanted you to take your things— A. He said to take my things.

Q. Did you take anything else besides your own?

A. No, sir; I did not.

Q. When did you bring these things that you 20 speak of? A. To my mother's home.

Q. And you went to live there, did you? A. Yes.

By the Court: Q. You locked the door of the house? A. Yes, sir.

Q. What were you occupying—an apartment or a house? A. A house.

Q. What did you do with the key? A. Why, I guess I left it under the mat. That is my best recollection of it.

By Mr. Nolan: Q. Is that what you always did? 30

A. No; I didn't usually leave the key under the mat.

Q. Did your husband have a key, that you knew of? A. No; he didn't. His people had a key—his mother—he used to leave it in his mother's home. He had a key, but it was in his mother's home.

Q. Did your husband come around to see you that evening? A. No, sir. You mean on December 17th?

Q. Yes. A. No, sir. 40

*Petitioner's: Edna Brown—Direct*

Q. Did he come around the next day to see you?

A. Why, he never came around.

Q. From December 17, 1921, the time you left your home, has your husband ever called to see you? A. No, sir.

10 Q. Has he ever met you at any place? A. Well—

By the Court: Q. Have you had any conversation with him since December 17, 1921? A. No, sir; no conversation whatever.

By Mr. Nolan: Q. Has he ever written to you? A. No, sir. I have never had any communication at all, telephone or written.

Q. He has never made any effort to ask you to come back to live with him? A. No, sir.

Q. Has he ever contributed to your support? A.  
20 Not one cent.

Q. Have you ever asked him to come back to you? A. Yes, sir; on several occasions.

Q. Where was that, or how was that? A. Why, I wrote him letters. I wouldn't dare venture to that home. I wrote him letters.

Q. What was that you said? You said you wouldn't— A. I said I wouldn't venture to that home. I wrote him letters.

By the Court: Q. When did you write the first  
30 letter? A. In June, 1922.

The Court: Have you got those letters, Mr. Schumann?

Mr. Schumann: I haven't the letter of June, 1922.

The Court: Have you any letters written by the petitioner?

Mr. Schumann: We have the letter of November 13, 1923, which they served notice to produce.

40 The Court: Have you any other letters?

*Petitioner's: Edna Brown—Direct*

Mr. Schumann: That is the only letter we have.

Q. Did you ever write any other letters since June, 1922? A. Yes, I wrote one in August of the same year.

Mr. Schumann: We have been served 10  
with a notice to produce a letter dated November 13, 1923. There has been no other demand for production of any letters. It does not seem to me that this testimony as to other letters is admissible. We are prepared to produce what we are asked to produce.

The Court: That does not prevent her from testifying that she wrote some other letters. 20

Q. After June, 1922, when you say you wrote the first letter, did you ever write any more? A. Yes, sir; I did.

Q. When was the next letter written? A. August of the same year.

Q. And when again? A. In the fall I should judge. It was the fall of the same year, October or November, 1922.

Q. And the next after that? A. Then the last one I wrote was— 30

By the Court: Q. After October or November, 1922, when did you write again? A. I didn't write until November, 13, 1923.

By Mr. Nolan: Q. Did you send these letters by registered mail? A. No, sir; I did not. That is why I sent the last one by registered mail, because I could not understand why I received no response; so I registered it to know whether he got it or not.

Q. I show you this letter. What is the paper that you have— 40

*Petitioner's: Edna Brown—Direct*

The Court: Mr. Schumann produced that letter. There is no reason why you should not mark it in evidence.

Marked Exhibit P-1.

Q. I show you this letter marked Exhibit P-1.

10 What is that letter? A. That is a letter I wrote November 13, 1923, to my husband.

By the Court: Q. Sent by registered mail? A. Yes, sir.

By Mr. Nolan: Q. You kept a copy of it, did you? A. Yes; that is the letter I kept a copy of.

By the Court: Q. Did you receive any reply to this letter? A. No, sir.

By Mr. Nolan: Q. What did you say in your letter that you wrote to him previous to this registered letter? A. I said practically the same thing. I asked him to take me back again. I said he had told me to get out of the house for no reason. I said I thought we should try it over again, away from his people. I told him I wanted to go back and live with him as his wife, and asked him if he would not provide a few rooms for me, and I would try to get along.

Q. You never received any reply to the other letters? A. No, sir.

30 Q. Has he ever supported you or contributed to your support since December 17, 1921? A. No, sir; I never have received any money or any communication of any kind.

Q. Were you able to get a position? A. Not right-away. I was home quite a while—almost a year.

Q. Who supported you during that time? A. Well, my mother. I was at my mother's home.

Q. Your mother supported you? A. Yes.

40 Q. And after you found out that he was not going to contribute to your support and that you

*Petitioner's: Edna Brown—Cross*

needed support, what did you do? A. Why, shortly after I went away from our home at 182 Claremont Avenue, I tried to procure maintenance from him because I was not able to get a position at that time.

By the Court: Q. You commenced a maintenance suit in this court, did you? A. Yes. 10

Q. Did you appear in court? A. Yes.

Q. And have a hearing? A. Yes.

Q. Did your husband appear? A. Yes, sir.

Q. Represented by counsel? A. Yes, sir.

Q. You both testified, did you? A. Yes, sir.

By Mr. Nolan: Q. Since December 17, 1921, have you continued to reside at 137 Arlington Avenue, Jersey City? A. Yes; I have lived there ever since then with my mother. 20

By the Court: Q. You commenced this suit about a week after your husband left—this maintenance suit? A. Yes; I went to my attorney a few days after I got home.

CROSS-EXAMINATION by Mr. Schumann:

Q. When did you first meet Mr. Brown?

Mr. Nolan: I object to that as immaterial.

It is admitted they were married.

The Court: Objection overruled. 30

A. About four years before I was married to him.

Q. Did you have a happy engagement, or was there any trouble between you and your husband before you were married? A. No, sir.

By the Court: Q. How long were you engaged? A. About a year and a month.

By Mr. Schumann: Q. You were engaged about a year and a month? A. Yes.

By the Court: Q. Did you visit his parents during that time? A. On a few occasions; yes, sir. 40

*Petitioner's: Edna Brown—Cross*

Q. Did they know you were engaged to be married? A. Surely. They said they would be glad when we were married.

Q. Were they present at your wedding? A. No, sir.

10 By Mr. Schumann: Q. You were married September 3rd? A. Yes, sir.

Q. Where did you go from the marriage ceremony? A. We went to the theater first, and then we came back to 182 Claremont Avenue.

Q. Straight from the theater? A. Yes.

Q. Then where did you go? Did you take a wedding trip? A. We just went for one day to Atlantic City.

Q. What day was that? A. Sunday.

20 Q. Were you and your husband happy on that day? A. My husband told me things then that surprised me.

Q. What did he say? A. Why, he told me that he had given all his worldly possessions to his mother. I said it didn't look as if he trusted me very much, but I said: "Money don't make happiness."

30 Q. What did he say he had given to his mother? A. Why, he had given his insurance and his bank accounts and everything that he possessed in the world I guess.

Q. What did you say in answer to that? A. I said that I was surprised. I told him it looked as if he didn't trust me. I said I didn't know of any reason why he would not trust me, and I said money didn't make happiness.

40 Q. He never had told you previous to that that he had conveyed this property to his mother? A. Not to his mother. Before I was married, about a week or two, he said he had conveyed his home to his sister.

*Petitioner's: Edna Brown—Cross*

Q. At the time of this trip to Atlantic City he told you he had transferred his insurance and bank account to his mother? A. Yes, sir.

Q. What was your answer to this? What did you say? You said you were disappointed? A. No, sir; I said I thought it looked as if he didn't trust me, and I said: "Money don't make happiness." That is what I said. 10

Q. Where did you go from Atlantic City? A. We came home to 182 Claremont Avenue.

Q. How far is that from Mr. Brown's mother? A. Two houses.

Q. You say that after you returned home there was constant wrangling between you and your husband? A. I would not call it wrangling. My husband told me I should get out. I didn't have anything to say. 20

Q. Now, do you recall the morning of the day of your marriage a conversation with your husband respecting the adjournment of the marriage ceremony? A. No, sir.

Q. There was nothing said on that subject? A. No; there was no talk about the adjournment of the marriage ceremony.

Q. What was said about the marriage ceremony, if anything? A. There was never anything said. 30 When it came to be married, I was ready for him and he came and we went to be married.

Q. Nothing said? A. No. He had postponed it once because his sister was ill.

Q. Do you know whether his mother was ill the morning of the ceremony? A. His mother had been ill for some time. That is why she didn't come to the wedding, as far as I know. I understand that is why.

Q. Did he ask you if you would consent to a 40

*Petitioner's: Edna Brown—Cross*

postponement? A. The morning of the marriage?

Q. Yes. A. No, sir.

Q. The day before? A. No, sir. The only time—I was to be married in June, and his sister had the flu—

10 Q. I mean the day before September 3d. A. No, sir.

Q. Was there any conversation about postponement on that day? A. No, sir.

Q. Did you consult with anybody about his treatment of you? Did you go to a lawyer? A. When do you mean?

Q. That is what I want to know. When did you first go to a lawyer? A. I went to a lawyer the day after Thanksgiving.

20 Q. Do you recall the date? A. Yes, sir; it was my brother's birthday; it was the twenty-fifth of November.

Q. Whom did you go to? A. To Mr. Nolan.

Q. The gentleman who is trying this case? A. Yes.

Q. You had never been to him prior to that time? A. No, sir.

30 Q. What did you tell Mr. Nolan? A. Why, I told him I was desperate. I said: "I am coming to you in desperation." I couldn't understand how anyone could marry a woman and act the way my husband was, and threatening me, and I asked him what I could do. I said I had not told my mother—

By the Court: Q. You told Mr. Nolan your troubles, did you? A. Yes, sir.

By Mr. Schumann: Q. Did you make another visit to Mr. Nolan's subsequently and before you left Mr. Brown? A. No, sir.

40 By the Court: Q. Did you see him again before

*Petitioner's: Edna Brown—Cross*

December 17th? A. Yes, sir. It was in my home. I want to answer that question properly.

Q. The question is: Did you see him again before December 17th? A. Mr. Nolan came to see my husband.

Q. Did you see him? A. Yes, sir. 10

By Mr. Schumann: Q. You did see him. Subsequent to the day after Thanksgiving, you saw him on other occasions? A. I asked him to come to my home and see my husband.

Q. Did he come? A. He came to the house to see my husband.

Q. Were you there when he came? A. Yes.

Q. When was that? A. That was the 28th of November.

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes stand and cross-examination continues.)

Q. Before noon recess you said that Mr. Nolan called at your home where you and your husband lived? A. Yes, sir.

Q. When was it? A. I believe it was Monday or Tuesday evening, which was about the twenty-eighth. Thanksgiving was the 24th.

Q. It was Monday or Tuesday? A. Monday or Tuesday evening. I believe it was Tuesday evening. 30

Q. Tuesday the 29th? A. I believe it was.

Q. And Mr. Nolan and your husband conversed? A. Yes.

Q. While you were there? A. Yes.

Q. What was said as near as you can remember? A. Mr. Nolan asked my husband why he was telling me to get out of the house, and the talk was along lines like that; and Mr. Nolan asked Mr. 40

*Petitioner's: Edna Brown—Cross*

Brown why he was asking me to leave, and he said, why, we had only been married a few months, and he came around to see if he could not talk with him and try to make him mend his ways.

10 Q. Was anything else said? A. That was the gist of the conversation.

Q. Was that the only topic—about his treating you better? A. Yes; as far as I remember.

Q. Mr. Nolan requested him to treat you better? A. He asked him why he was ordering me out of the house.

Q. Was there anything said about these transfers of property at that time, that you remember? A. Well, he might have said that I—

20 Q. Did he say anything? Did Mr. Nolan ask your husband about the transfer of property, why he had done it? A. (No answer.)

Q. You must remember that? A. I would not want to be positive on that. I wouldn't want to make an answer I could not be positive of.

Q. How long was Mr. Nolan there? A. He was there a very few minutes because Mr. Brown wanted to go out and he wouldn't hardly talk to Mr. Nolan.

30 Q. What did Mr. Brown say in answer to Mr. Nolan? A. He said he didn't want to live with me, that he wanted to go back and live with his mother and sister.

Q. He told that to Mr. Nolan? A. Yes.

Q. You heard him say that? A. Yes. I was there. He said he wanted to go back and live with his mother and sister.

By the Court: Q. Did he say why? A. He said he wanted to go back and live with his mother and sister, because he wanted to give them the money  
40 he was giving me.

*Petitioner's: Edna Brown—Cross*

Q. Did he say why? A. He said he didn't have anything against me personally. He never said that he had.

By Mr. Schumann: Q. What was said about the property that night? You must remember that. What was said? Something was said. What was it? A. Frankly, I cannot recall that anything was said about the property. 10

Q. You are sure of it? A. I would not say—

Q. Nothing said about the transfer of the house? A. I cannot recall that.

By the Court: Q. Had you told Mr. Nolan, when you consulted him, about the transfer of the property? A. I told him all the things that led up—

Q. Had you told Mr. Nolan about the transfer of the property? A. Yes, sir. 20

By Mr. Schumann: Q. Answer this question "Yes" or "No": Did Mr. Nolan ask him why he had transferred the property? A. As near as I can—

Q. "Yes" or "No".

Mr. Nolan: How can she answer "Yes" or "No."

A. I don't recollect.

Q. He might have asked him? A. He might have; yes, sir; but I cannot recollect, to be honest with you. 30

Q. Any other topics discussed that night? A. No, because there was very little discussed, because my husband would not remain in the house while Mr. Nolan was there.

Q. Who left first? A. I believe Mr. Brown left and Mr. Nolan went right out after that.

Q. You testified this morning that the real estate had been transferred before you were married and that you knew of it? A. Yes, sir.

Q. Did you also know that Mr. Brown had bor- 40

*Petitioner's: Edna Brown—Cross*

rowed some money from his sister before marriage?

A. Why, certainly not.

Q. You did not know that he had borrowed \$120 from his sister? He didn't tell you that? A. I cannot recall that he borrowed any money from his  
10 sister because he had plenty of his own.

Q. You say "he had plenty of his own." Did he tell you he had? A. Certainly he did.

Q. What did he tell you about that? A. He said he had insurance and building and loan and things like that.

Q. Did he tell you how much? A. No; no specified amount. I didn't imply.

Q. He implied to you that he had a lot of property? A. No, sir; not a lot of property, nor money  
20 either.

Q. He didn't say he had a lot? A. No, sir.

Q. When did he first tell you that he had transferred this property? A. That was a week or two before I was married, I believe.

Q. What did you say about it? A. Well, I was rather surprised. I said it wasn't a very nice thing to do; that it would cast a reflection on me. That was all I said. I said if he thought his sister should have the house, well and good. I certainly said:  
30 "I will marry you, whether you have your house or not."

Q. Did your feeling toward him become cool after that? A. No, sir.

Q. You didn't feel it was a personal insult? A. I thought it was rather a reflection on me, to a certain extent, but I didn't give it much thought.

Q. It didn't interfere with your love for him at all? A. No, sir.

Q. Did you ever consult your mother about your  
40 divorce? A. No, sir.

*Petitioner's: Edna Brown—Cross*

Q. You never have; you have never spoken to her about it? A. How do you mean?

Q. When did you first tell her that you were having trouble with your husband? A. The day after Thanksgiving, the twenty-fifth of November—No; I made a misstatement; I said the day after Thanks- 10  
giving; that is not true; it was the second day after Thanksgiving, Saturday, the twenty-sixth.

Q. What did she say? A. She was very much surprised, because I had said nothing previous.

Q. What did she advise you to do? A. She didn't give me any advice. She said she was going to see my husband and get his story.

Q. And did she come over to your house? A. Yes.

Q. Were you there? A. Yes.

Q. What took place then? A. First, she asked 20  
my husband what he had against me personally. She said what was the reason he was treating me the way he was.

Q. When was that? A. That was on December 10th.

Q. That was December 10th, 1921? A. Yes, sir. It was a Saturday evening.

Q. What did your husband say in reply to that? A. Well, he rushed out of the house and got his mother and sister, and then, in their presence, why, 30  
he said that he was going back to live with them.

Q. He said that he was going back to live with them? A. Yes; with his mother and sister.

Q. What did your mother say to that? A. My mother said didn't he remember I was his wife.

Q. Did she say anything else to him? A. She said: "Well, why don't you get along? If you don't like this house, if you think this house is too big, why, live in two rooms, anything to have peace and not wrangle with her all the time and threaten to 40

*Petitioner's: Edna Brown—Cross*

put her out and everything." She said she couldn't understand it.

Q. When did he first threaten to put you out?

A. Why, it was very early; I should judge at least it must have been the end of September or earlier  
10 than that even I guess. It was before his cousin visited us. I know that.

Q. Early in September? A. Yes.

Q. You were married on the third or fourth or when was it? A. I was married on the third.

Q. How long after that did he order you out?  
A. After the first or second week.

Q. About the first or second week? A. Yes.

Q. What led up to that? Were you quarreling?  
A. No, sir.

20 Q. Out of a clear sky, he ordered you out? A. He came in from his mother's, and whenever he came in from his mother's—

Q. I am asking you about this one occasion. A. He spent most of his time in his mother's and he came in and he told me he wanted to go back to live with his mother and sister.

Q. When was that? A. That was some time in the first or second or third week after I was married.

30 Q. Did you tell him not to go to his mother's? A. No, sir; never.

Q. You had no objection to his going there? A. No, sir.

Q. How much of the time in the evening did he spend with his mother? A. He went every evening to his mother's, but my brothers came about once a week to see me and play cards, and on those evenings he would return earlier than usual, the evenings that my brothers were in my home.

40 Q. What time did he come in when your brothers were there? A. Between nine and ten.

*Petitioner's: Edna Brown—Cross*

Q. He would go out about what time? A. Around seven.

Q. December 17th it was that you packed up and left? A. Yes, sir.

Q. Did you order the van? A. Yes.

Q. What time of the day did you leave? A. Why 10  
I should judge it was around half past eleven or something like that. It didn't take me long to get my things out—about half past eleven or twelve o'clock.

Q. Your mother was the only one there at that time? A. I believe my mother was the only one. Mrs. Collins, I believe, was along with her. I called my mother up that morning, Saturday morning, and asked her to please come over, I was coming back. 20

Q. To help you pack? A. No; not to help me pack. I said I was coming back home.

Q. That morning, December 17th, when your husband left, just before he left, he said he didn't want to see you again? A. Yes.

Q. What did you say? Did you say you were going? A. I didn't make any remark at all.

Q. You didn't tell him that you were going to go? A. It wasn't necessary. He had told me to get out. 30

Q. In fact, when he left that morning, you said to him: "Bring home some butter"? A. No, sir; I did not.

Q. You are sure? A. I am quite positive. He used to bring it home every week.

Q. Did you tell him not to bring it home that evening? A. No, sir; I did not.

Q. In your suit for separate maintenance in 1922, do you recall being asked by Mr. Nolan whether you left your home on December 17th? A. 40  
Surely.

*Petitioner's: Edna Brown—Cross*

Q. And you said "Yes"? A. I did.

Q. And do you also recall being asked by Vice Chancellor Griffin whether your husband ever hit you? A. Yes.

Q. And do you recall your answer? A. I said  
10 he never hit me.

Q. He never did? A. Sure.

The Court: What is the idea of this, Mr. Schumann?

Mr. Schumann: I want to show that this woman was not hit and that she left the home.

The Court: She has not said that she was hit. Do not let us examine about things not pertinent to this trial.

20 Q. Do you remember saying to Vice Chancellor Griffin that you had never returned to your husband, and do you recall the Vice Chancellor asking you: "Will you go back to him now?" and what was your answer to that? A. Would I go back to him now?

Q. Vice Chancellor Griffin said to you: "Will you go back to him now?" and what did you say? A. I don't recall that statement.

30 Q. Vice Chancellor Griffin—don't you recall him?—said to you: "Will you return to your husband now?" or words to that effect? A. He said something about my husband coming back to me, or something like that, but I don't recollect him saying: "Will you go back to him?"

Q. If he had asked you at that time—perhaps he did—you don't remember—if he had asked you at that time: "Will you go back to your husband now?" would you have done so?

40 The Court: That is an argumentative and supposititious question.

*Petitioner's: Edna Brown—Cross*

Q. Was the question asked by the Vice Chancellor? A. Not that I recall.

Q. Now, at the time that you left, did you leave any bed clothing in the house at all? A. I left everything that belonged to my husband.

Q. I asked you whether you left any bed clothing? A. I left pillows and things like that. 10

Q. What? A. I left pillows and things that were on the beds.

Q. What were they? A. I said pillows and things in the bed room.

By the Court: Q. What things—sheets and blankets? A. The sheets and blankets were mine. I took those with me.

Q. What else was on the bed? A. Nothing else, except the mattress. 20

By Mr. Schumann: Q. Did you take the cooking utensils? A. I took a few that were mine.

Q. Did you leave him any coffee pot? A. I couldn't say that. Most of the cooking utensils that I left, I wouldn't know exactly—

Q. Did you leave a coffee pot? A. I left the utensils—

By the Court: Q. Can't you say whether you left a coffee pot? A. I don't believe I did. I don't think we had one. I think I made the coffee and tea in a small utensil. 30

By Mr. Schumann: Q. Now, you don't remember that question by Vice Chancellor Griffin?

The Court: That is repetition. She said three times that she did not.

Q. This letter that you wrote to Mr. Brown November 13, 1923—how many letters did you write prior to that time? A. At least three.

Q. Where did you address them? A. To his home, 182 Claremont avenue, Jersey City. 40

*Petitioner's: Edna Brown—Cross*

Q. Where were those letters written—at your home? A. Yes, sir.

Q. And this letter of November 13, 1923, where was that written? A. In my home.

Q. At your home? A. Surely.

10 Q. Your suit for separate maintenance, you did not prevail in that action, did you? You lost that action? A. Yes, sir.

Q. Did you consult with Mr. Nolan as to why or what the reason was? A. No; I just let the matter drop.

Q. What? A. I just let the matter drop.

Q. You never asked him why? A. I just let the matter rest. I didn't win the case and that was all in so far as I was concerned.

20 Q. Who suggested that you write this letter? A. Nobody suggested it. I had written several letters before that. My own conscience suggested it.

Q. You wanted to come back? A. I wanted to try and make every effort and remember my marriage vows, and after I thought the matter over, I wrote the letter, my first letter, at least, in June, and asked him practically the same thing I asked him in every one; I wanted to try over again, if he would give me the opportunity; and since he didn't  
30 answer the letters, I thought I would doubly make sure if he got the letter and I registered the last one.

Q. You had not registered the others? A. No, sir; I had not.

Q. Did you tell Mr. Nolan that you had written other letters, other than this one? A. Yes, sir.

Q. You told Mr. Nolan that you had written your husband other letters? A. Surely I told him.

Q. You told him that. You are quite sure this  
40 letter was not dictated by him? A. Certainly.

*Petitioner's: Edna Brown—Cross*

Q. It was not suggested to you in any way? A. No, sir; I wrote it myself.

Q. Would you take your husband back today?

The Court: She doesn't have to, if she has a good cause of action.

Q. After Mr. Nolan's visit, Mrs. Brown, did you 10  
have any conversation with your husband about it?

A. About Mr. Nolan's visit?

Q. Yes; in respect to it? A. Yes. He said it was a terrible thing to think that I had a lawyer come there to see him.

Q. Was there any talk as to how you were going to settle your difficulties? A. No, sir.

Q. Nothing said about it, whether you would leave him or he would leave him, or whether you would—A. He told me to get out, yes, that was 20  
what he wanted.

Q. After Mr. Nolan was there? A. After Mr. Nolan was there, when he came in, every night, he said he would only ask me "Yes" or "No", because he said he was afraid I would have somebody waiting around for him, or something.

Q. Did he ever offer you any money to leave? A. No, sir.

Q. Did you offer to leave for any money? A. No, 30  
sir.

Q. Would you have left, had he offered you any money?

Mr. Nolan: Objected to.

The Court: Objection sustained.

Q. Mrs. Brown, you said that you went into your mother in law's house at her request one time? A. Yes.

Q. What was the conversation there? A. Well, the conversation, my mother in law, sister in law and husband were there, and my mother in law and 40  
sister in law said that I had to rent rooms—

*Petitioner's: Edna Brown—Cross*

Q. That you had to what? A. They really talked to me—I didn't have much part in the conversation; they told me what I was to do.

By the Court: Q. Won't you tell us what they said? A. They told me I had to rent rooms.

10 Q. That is, you had to take in roomers? A. Yes, sir. That was the mainstay. They said there was interest—not interest at least—but there was taxes to be paid on the property, and I was to rent rooms so as to pay the taxes.

Q. They said you had to do that? A. Yes.

By Mr. Schumann: Q. What did you say? A. I said I would do anything to co-operate, if I would only have peace in the house.

Q. Did you take roomers? A. No; I did not.

20 Q. Why not? A. Because my husband was threatening me so much and telling me to get out that I wasn't in any condition to do my housework let alone take care of roomers.

By the Court: Q. Was this house in which you lived with your husband the house that he transferred to his sister? A. Yes; just prior to my marriage a few weeks.

By Mr. Nolan: Q. Mrs. Brown, after you were married and after you came back from Atlantic  
30 City, did your husband bring his clothes to your house; did he bring his clothes over to your house where you and he were living? A. He only brought a very few. He said he wouldn't remain with me very long, and he said he was going back to his mother and sister. He said he would only bring what was necessary.

Q. Did he ever bring all his clothes? A. No, sir, he didn't bring all his clothing.

Q. When Mr. Brown told you to get out of his  
40 home did he also tell you to take your things with

*Petitioner's: Ella J. Killburn—Direct*

you? A. Yes; he told me to take my belongings. In fact, he said if I didn't take them out, he would throw them out.

Q. Did you take anything from the house that didn't belong to you?

The Court: She has already testified that 10  
she did not.

By Mr. Schumann: Q. You said that your husband didn't bring all of his clothing. What did he leave? A. I couldn't tell you what he left. He said to me: "I won't bring my things over here because I am not going to stay with you."

Q. You don't know what he left there? A. I don't know—only his own words.

20

ELLA J. KILLBURN, sworn as a witness on the part of the petitioner, testifies as follows:

Direct-examination by Mr. Nolan:

Q. Do you know Mr. Brown and Mrs. Brown, the parties to this suit? A. I do.

Q. How long have you known Mr. and Mrs. Brown? A. I have known Mrs. Brown about fourteen or sixteen years and Mr. Brown about, or 30  
around about, five years; I couldn't say exactly.

Q. You knew both of them before they were married? A. Yes, sir.

Q. After they were married, did you ever have occasion to visit their home? A. I used to visit their home quite often; yes, sir.

Q. When was the last time that you visited their home? A. Fourth of December, 1921.

Q. Fourth of December, 1921? A. Yes.

Q. Did you have any conversation with Mr. and 40

*Petitioner's: Ella J. Killburn—Direct*

Mrs. Brown on that day? A. Yes, sir. I went in there and I was asked to stay to dinner, and I did, and during the course of the meal I asked Mrs. Brown if she would like a piece of carpet which I had. I thought perhaps she might make use of it in her kitchen; and Mrs. Brown said that she didn't know whether she could use it or not, because—

10 I looked at her and I said: "Perhaps it is not good enough." She said: "Oh, no; that's not it." She says: "To tell you the truth"—she broke forth in tears—"My husband is not treating me right. He is ordering me out all the time," and I turned to Mr. Brown and I said: "No?" and he said: "Yes," that he wanted her to get out, and that he was going back to his mother and sister where he be-

20 longed, and he had left his clothes, the biggest part of his clothes, there, and that is where he belonged, and he was going back there, and he wanted her to get out, and he was going over to his mother and sister's, and that his mother and his sister came first, and that Mrs. Brown was nothing.

Q. Did Mrs. Brown say anything then? A. Why, yes—I did—

Q. Did Mrs. Brown say anything? A. When he said he was going back to his mother's and sister's,

30 she said: "Well, what will I do?" He says: "You can get out or do what you like, go to your mother's or go where you like." He says: "I am going back to my mother's and sister's. That is where I want to go."

Q. You have always been friendly to both Mr. and Mrs. Brown, have you? A. I certainly was friendly to them until this occurred. Of course, I have not seen Mr. Brown since. I have seen Mrs. Brown.

40 Q. Was that the last time you had ever seen Mr. Brown? A. Yes, sir.

*Petitioner's: Ella J. Killburn—Cross*

CROSS-EXAMINATION by Mr. Schumann :

Q. You saw Mr. Brown at the suit for separate maintenance, didn't you? A. Oh, yes; I did. I forgot about that time. I saw him then; yes.

Q. When did this conversation take place? On what date did this conversation take place at the dinner table? A. The fourth of December, 1921. 10

Q. Was there anyone present other than Mr. and Mrs. Brown and yourself? A. No, sir.

Q. And when did you meet Mr. Brown, what date, do you recall?

The Court: You mean their first meeting?

Mr. Schumann: Yes.

A. Around about five years altogether.

By the Court: Q. When did you first meet him?

A. Well, I couldn't just recollect. I suppose it was a couple of years, around about two years, maybe a year and a half or two years. 20

By Mr. Schumann: Q. Before they were married?

A. To the best of my recollection. I could not say exactly.

Q. They were married in 1921. Will that help you any? That is four years ago. A. I believe it was a year or a year and a half before. I gave Mrs. Brown a shower in April, I believe, before they were married; I gave her a shower at my home. 30

Q. Were you subpoenaed to come here? A. No; I was asked to come.

Q. You came of your own will? A. I was asked to come.

Q. Who asked you to come? A. I was asked to come and tell what I knew.

Q. Who asked you? A. Mrs. Brown asked me.

Q. Have you visited Mrs. Brown and her mother since 1921? A. Certainly.

Q. Quite frequently? A. Occasionally; the same 40

*Petitioner's: Anna Schwarzwaldler—Direct*

as I used to run in Mrs. Brown's home occasionally after she was married.

Q. Your friendship is very intimate with them, is it not; you go there very often?

The Court: With whom?

10 Mr. Schumann: Mrs. Brown and her mother.

A. I am friendly with everybody I know.

ANNA SCHWARZWALDER, sworn as a witness on the part of the petitioner, testifies as follows:

20 Direct-examination by Mr. Nolan:

Q. Where do you live? A. 137 Arlington Avenue.

Q. You are the mother of Mrs. Brown, the petitioner in this case? A. I am.

Q. You know the defendant, of course, William Brown? A. I do.

30 Q. Will you tell the Court, Mrs. Schwarzwaldler, the first time that you heard of any marriage difficulties existing between your daughter and her husband? A. The first time the 26th of November, 1921, and I was so amazed—

Q. How did you come to know of those difficulties? A. Well, my daughter told me.

Q. What did she say? A. She simply said that her husband had told her to get out, and I couldn't realize it—

Q. What did you do after she told you that? A. I asked her the cause, but that is all she said, that he told her to get out.

40 By the Court: Q. What did you do about it? A. Nothing at all. I simply waited and—

*Petitioner's: Anna Schwarzwaldler—Direct*

Q. You saw him, didn't you? A. I saw him. I went to see him.

By Mr. Nolan: Q. When, after the 26th of November, did you see him? A. The 10th of December.

Q. Did you have any conversation with Mr. Brown and Mrs. Brown? A. I simply went to him and asked him what was his idea of treating my daughter so and what was the reason; I couldn't see any reason; and he simply answered me that he was going to live with his mother and sister; he gave me no reason. I asked him wasn't she a good girl, was there anything he had to say against her. He said she was a good girl in every sense of the word and that was as far as he went. He simply said that he was not going to live with her and he was going back to his mother and sister and give them the money he was giving her. I said: "She is your wife. Why not go somewhere else?" He said he was going back home to his mother where he belonged, and that was all his excuse. 10 20

Q. Did he say he was going to take his wife with him? A. Oh, no.

Q. What did he say about his wife? A. He said she could do as she wanted, go home with me, or do as she wanted.

Q. Who was present that time? A. My friend, Mrs. Collins. We were marketing, and I thought that was a good time to step in; I wanted to hear his side of it. I couldn't understand it— 30

Q. Who was present besides Mrs. Collins? A. His mother and sister, because when I went to speak to him as he came in—he had been over to his mother and sister—and when he came in—I waited for him, and I just said to him: "I want to ask you a few questions," when he rushed to the door and he ran out; he said: "Just a minute," and he went back and got his sister and mother. 40

*Petitioner's: Anna Schwarzwaldler—Cross*

Q. Was anybody else present? A. Mrs. Collins and myself, his sister and mother and himself and Mrs. Brown.

Q. That is all the conversation that took place?  
A. Yes. He said numerous things about his family  
10 affairs, and his sister had something to say, and his mother had something to say, but nothing in regard to what affected the case.

Q. Just what did they say? A. Well, will I have to go into details.

By the Court: Q. If they said anything about separation. A. No; except that he was going back. That was his meaning—

Q. The question is what they said. A. Simply they said that he was coming back; he was going  
20 back to live with them and his sister, in fact, put forth that she owned the property, and if she didn't get out, she would put her out.

Q. Was that all that was said? A. Yes, sir; bearing on this case.

## CROSS-EXAMINATION by Mr. Schumann:

Q. Is Mrs. Collins here? A. Mrs. Collins was there all the time.

Q. Is she in court today? A. No. Mrs. Collins  
30 is a very old lady, and she couldn't testify; she is in very poor health.

Q. Was there anything said about the transfer of the real estate to Mr. Brown's sister that night?  
A. No; not that I recollect.

Q. You didn't ask him anything about that? A. No. When his mother spoke about him having no money, I laughed because it was ridiculous to me, because he had talked about his finances. At the same time that had no bearing on the case; I  
40 couldn't see where he wanted to leave his wife. That

*Petitioner's: Anna Schwarzwaldler—Cross*

is the main point—why he told her to get out. I couldn't see that.

Q. All I asked you was whether there was anything said about this transfer of real estate from him to his sister, prior to his marriage. A. Nothing, but I knew about it.

Q. Did you know that that had been done? A. Why, it was in the paper. Surely. 10

Q. You knew that before they were married? A. Yes; a week before he was married.

Q. That was not discussed that night? A. No, sir.

Q. Was the transfer of insurance by Mr. Brown to his mother discussed that night? A. No.

Q. Nothing was said about that? A. No, sir.

Q. Is your husband living? A. No, sir.

Q. Were you divorced from him? 20

Mr. Nolan: Objected to.

The Court: Objection sustained.

Mr. Schumann: My intention is to test the credibility of the witness.

The Court: The objection is still sustained.

Q. How long have you known Mrs. Collins? A. Years and years.

By Mr. Nolan: Q. How old is Mrs. Collins, about? A. 74 or 75. 30

Q. You say she is in poor health? A. Yes, Mrs. Collins is in poor health. She has heart trouble.

Petitioner rests.

*Defendant's: William Brown—Direct*

DEFENDANT'S CASE

WILLIAM BROWN, the defendant, sworn as a witness in his own behalf, testifies as follows:

10 Direct-examination by Mr. Schumann:

Q. Where do you live? A. 178 Claremont Avenue, Jersey City, New Jersey.

Q. Your wife has testified that you were married September 3, 1921. A. That is right.

Q. Who married you? A. Rev. Father Monteleone.

Q. Jersey City? A. Jersey City, Claremont Avenue; Our Lady of Sorrows Church.

20 Q. Mr. Brown, when was the first discussion with your wife regarding the conveyance of this property and what gave rise to it? A. May 21, 1921, on account of the condition of my sister.

Q. What was the conversation at that time? A. I said: "Edna, my mother is sick—"

By the Court: Q. Who is Edna? A. My wife.

30 By Mr. Schumann: Q. Continue. A. I said: "Edna, my mother is sick. My sister has the flu since January or February, and she is in danger of going into consumption. She is in no condition to work, and I will turn this piece of property over to my sister, so she and my mother will have something to live on."

Q. What did your wife say to that? A. She said: "All right."

Q. The day of your marriage, September 3, 1921, did you have any conversation with your wife prior to the ceremony? A. I certainly did.

40 Q. What was that conversation? A. I arrived at their house and told my wife that my mother was lying at home in an unconscious condition and that

*Defendant's: William Brown—Direct*

I would like to have the marriage ceremony postponed. She said to me: "You have got to marry me today," if she lives with me one week. That is what she said.

Q. The ceremony was held? A. Yes.

Q. Where did you go after the ceremony? A. 10  
We went to New York to see a show. Then we had our evening meal and went to a movie. Then we went to our home, 182 Claremont Avenue.

Q. Was there any conversation after your marriage? A. There was a little later. She told me that marriage was a different thing than she had pictured it and that she was going back home to her mother.

Q. That was September 3d? A. That was the night of our marriage. 20

Q. What did you say to that? A. I said: "You cannot go back to your mother now." I said: "You and I belong to one another."

Q. Was there any further conversation that night? A. Not that night; no.

Q. The next day you went to Atlantic City? A. Went to Atlantic City.

Q. Did you have any conversation with your wife continuing that dispute? A. Not continuing that dispute, but I had another conversation with her. 30

Q. What was said then? A. Why, after seeing the sights in Atlantic City, we walked along the boardwalk to where the aviation flying machine is. We sat down on a bench—

Q. What was said? A. She said: "Billy, what have you got?" I said: "I have my furniture." She said: "I couldn't make my living off bare boards. What else have you got?" I said: "I have my building and loan book and my life insurance policy." She said: "That wouldn't bury you. What 40

*Defendant's: William Brown—Direct*

else have you got?" "Oh," I said, "don't bother me. Leave me alone. I have troubles enough of my own." With that she turned on me and called me a rotter and a skunk, and the lowest of the vile, and she God damned me, and after a while, after pouring a lot of abuse, she broke down and she said:

10 "What difference does it make? I will be home with my mother on Thanksgiving Day."

Q. Going back beyond that day, prior to your marriage was there any discussion regarding property other than the real estate? A. Not that I can recollect.

Q. Nothing was said about insurance or anything else at that time? A. Why, she knew I had life insurance policies, and she knew I had my

20 building and loan book, and that is all I practically had. She knew I borrowed \$120\* from my sister before I was married.

Q. How did she know that? A. I had told her.

Q. Did she comment on that? A. Why, she said that was all right. She knew I had very large expenditures on this house before I was married. That house was in a very, very run-down condition. I spent a very large sum of money to have it re-decorated, floors were broken through—

30 Q. In other words, you— A. I re-built the whole house and spent what money I had up to that time that I was to be married, and had my building and loan and life insurance left over.

Q. How long were you at Atlantic City? A. One day.

Q. That was September 4th? A. Yes.

Q. Where did you go then? A. We went home.

Q. That is— A. 182 Claremont Avenue.

Q. When did you get home—that Sunday night?

40 A. Late Sunday night. On the way home—we were

*Defendant's: William Brown—Direct*

around Hammondtown I should judge—she had been sleeping; I was sitting down in the seat in a sort of crouching position; she woke up with a start and she looked at me and she started to lace it into me again. She called me a rotter and a skunk, lowest of the vile, and she went on at that stage. I said: 10  
 “What can I do? I cannot sit straight all the time.” Other people were reclining at the same time.

Q. Then you returned to Claremont Avenue? A. 182 Claremont Avenue.

Q. Will you state generally if you lived happily from that time on? A. For the first few days I lived happily, until around September 8th. Then she put a question to me. She says to me: “Billy, don’t you want to go home to your people?” I said: “Edna, 20  
 I am going to my mother’s every night and every morning. You can go to your mother any part of the day or night, if you want, provided you are home for meal time.” At other times I said to her: “Have you been down to your mother’s today?” She said: “No.” I said: “By all means, go, as it is very lonesome here and you will need your mother’s companionship in various way.”

Q. You visited your mother every day? A. I visited my mother every night and every morning. 30

Q. In the morning you visited her? A. Also in the morning.

Q. How long were you there in the morning? A. I didn’t stay over two minutes in the morning.

Q. Then you went over again in the evening? A. I went over in the evening to look in and take care of her fire.

Q. In the evening you went over— A. I went over to take care of her fire. In the early part of the fall I went over from seven to eight, and when the 40

*Defendant's: William Brown—Direct*

weather got colder I went over from eight to nine to fix her fire; I chopped wood and did various things for both houses, in both houses.

Q. Your wife has testified that you didn't bring all your personal belongings with you from your  
10 mother's home after you were married? A. I brought all my clothing over. There might have been a few tools that I did not bring.

Q. Was there anything said by your wife to you about your making these visits to your mother; did she protest against it? A. Well, at first she didn't say anything, and afterwards she would say: "Where are you going to—to your God damned family again?" So I went. She did that almost continuously—every night.

20 Q. Are you quoting her when you say that she said "to your God damned family again"? A. Yes; those were her words. She can curse like a trooper. Some time in October I told my people, my sister, about it, and I told her to come with me and she came with me, and my sister questioned her about that and she admitted that she had God damned my mother and my family and used these curse words and she said she wouldn't do it any more. When I got home that night I got another dose of  
30 the same thing.

Q. On that visit to your mother and sister, you have testified that she admitted having God damned your family? A. She certainly did admit cursing.

Q. Who took part in that conversation; who was there? A. My mother and my sister and my wife and I.

Q. What is your sister's name? A. Emma A. Brown.

Q. What was said in that conversation? A. My  
40 sister said: "See here, Edna, I want you to leave

*Defendant's: William Brown—Direct*

us out of your trouble." She said: "If you think that we are the cause of your trouble, we want Billy to stay out of here," and my wife said: "No." She said: "I would rather have him come here than have him go some place else."

Q. Subsequent to that occasion when she God 10  
damned your family, which resulted in this visit, when was the next time you had any trouble, if any? A. I had trouble continuously. Many nights when I would come home after being at my mother's house, she would say: "You needn't come in here with a smiling face, God damn you. When I get through with you, I'll put hell in you."

Q. When did she first say that? A. Some time in October; the exact date I do not know.

Q. You say in October. She has testified that on 20  
Thanksgiving Day, I believe it was, that there was further trouble. Do you recollect that day? A. I certainly do. Thanksgiving Day everything was nice. We had a duck for dinner. Right after we had dinner she said: "Now, see here, Billy, you get out of here. Get out, because I want to lie down and have a sleep. You know I don't want the wrinkles to show in my face." I said to her: "What time shall I come back?" She said: "Five o'clock. I am going to go down to my mother's." This talk 30  
about—

Q. Did you go out? A. I went out.

Q. Where did you go? A. I went over to my mother's house and chopped wood. At three o'clock I had a headache, and I said to my mother: "I don't want to go back to the house now because she is sleeping. I am going to lie down on my bed." So I did. So at five o'clock I went over and I rang the bell, because it was impossible for me to get into my own home, because the door was always bolted 40

*Defendant's: William Brown—Direct*

against me. She came downstairs in a bath robe, and she said: "Where were you?" I said: "Why, to my mother's house." "What were you doing?" I said: "I lay down on my old bed." She says: "God damn you, isn't this bed good enough for  
10 you?" I didn't answer. She went on abusing me like that while we went upstairs. We got dressed and went out and all the way down Claremont Avenue she abused me, calling me all the names she could possibly think of. When we got down to Center Street and Claremont Avenue, she said to me: "We will go around the block, because I don't want my mother to know I was quarreling with you. She knows I lost every fellow I ever had through my vile temper." We went down around  
20 the block and arrived at the house. Her mother was in the kitchen and she went in the back and talked to her mother, the same as she always did.

Q. Did you spend Thanksgiving evening there?

A. Yes; and after we came out, something I had said didn't please her, in relation to her oldest brother. He was a sort of a tin god in the family and he was my model that I should pattern after, and something I said didn't please her in relation to him, and all that Thanksgiving night she laced  
30 it into me, and the next morning she started in again, but before I left for my employment she was all right and I kissed her "Good bye."

Q. That was the day after Thanksgiving? A. That was the day after Thanksgiving—Thanksgiving night and the day after—the 25th of November, 1921.

Q. How was she that night when you came back from your employment? A. Just as sweet as she could possibly be.

40 Q. That was the night of— A. That was Friday night, November 25th.

*Defendant's: William Brown—Direct*

Q. When was the next time after Thanksgiving that you had any trouble? A. There was no trouble until the night of Mr. Nolan's visit on November 29, 1921, at 8 p. m.

Q. Your wife has testified that Mr. Nolan called that night and asked you why you were maltreating your wife. Will you, as nearly as you can recollect, tell us the conversation which took place that night? A. I certainly will. The door bell rang. We were expecting her oldest brother that night, provided he was not working, and she came from the dining room into the parlor. I said: "Where are you going, Girlie?" She says: "I am going upstairs to the bath room, and when I come down I am going to play the Victrola." I said: "All right." So she went upstairs, and while she was upstairs the door bell rang and she came down and she said she would go to the door, and in came this strange man, Mr. Nolan. So she came to me and she said: "Billy, this is my attorney, Mr. Nolan." I said: "Mr. Nolan, what is it you wish?" He says: "I understand there is trouble here." I said: "There is no trouble here." So I says: "I refuse to talk to you. I have nothing to say to you." So he kept on talking. Then I—

Q. What did he say? A. He said: "Your wife came to my office Friday morning, the 25th of November, in an hysterical condition, and she had to be calmed down by my stenographer on the outside." I said: "Mr. Nolan, if my wife came to your office in such a condition, it was through no fault of mine." I said: "Mr. Nolan, you want me to talk. You want to get something on me, don't you?" He didn't say anything for a minute. I said: "Very well. I will talk." I said: "I want to tell you how my wife is treating me. I want

*Defendant's: William Brown—Direct*

to tell you. I want to tell you how she is cursing me, how she is God damning me and calling me a rotter and a skunk, how she wants to leave me," and I said to him, "Now, see here—" I won't say that he was any way fair at all—

10 Q. Never mind that. Go on. A. I told him—I said: "On Sunday night she pulled the shirt out of my hand and the cuff buttons flew against my hand." I told him that in view of the continued abuse my wife was giving me and the cursing and swearing and being called a rotter and a skunk, there was nothing for him to talk to me about.

Q. What did he say? A. He said: "Mr. Brown, I understand that you transferred this property for a large sum of money over to your sister." I  
20 said: "Mr. Nolan, anything I did before I was married concerns nobody but myself." He called me "Mr. Brownie" and a few other names; he didn't have my name right. I said: "My name is not Mr. Brownie."

Q. Was there anything further said about the transfer of the property at that conversation? A. He wanted to know what I did with the money that I got from the property. I told him it was none of his business, that anything I did before I was  
30 married was my business.

Q. Was there any further conversation? A. I said: "Mr. Nolan, it is time for me to go over and visit my mother." I said: "Do you wish to stay here; do you wish to talk with Mrs. Brown or come out with me?" He went out with me and he went down to the door first, but at the door my wife whispered to him and he whispered a lot, and I passed them on the way going out.

Q. Was anything said further than what you  
40 have told us? A. I said to Mr. Nolan, I said: "Are

*Defendant's: William Brown—Direct*

you a Catholic gentleman?" in the conversation. He said: "I am." I said: "Do you know what the Catholic Church teaches, that whomever God hath joined together, let no man put asunder?" He said: "I do."

Q. What was his reply? A. Nothing. He just 10  
simply laughed.

Q. Are you a Catholic? A. I am.

Q. Did you tell him so? A. I told him I was.  
Then I asked him—

Q. Did you tell him that you were a Catholic?  
A. Yes; I told him that I was a Catholic.

Q. What did you say? A. I told him I was a  
Catholic and I thought in that respect I might get  
a certain amount of sympathy.

By the Court: Q. Did Mr. Nolan ask you if you 20  
had told your wife to get out of the house and to  
leave him? A. He did and I denied it.

By Mr. Schumann: Q. Did you ever tell your  
wife to get out of the house? A. Never.

Q. You have heard her say in several different  
ways that you told her to get out and that you  
didn't want to see her again as long as she lived?  
A. That is a mere fabrication.

Q. You never told her that? A. I never told her  
that. 30

Q. Did she ever threaten to leave you? A. On  
very numerous occasions, almost continuous.

Q. When was the first occasion? A. The first  
night she was married she told me she was going  
back to her people.

Q. You have testified that on the night of Sep-  
tember 3d she said she was not— A. She said  
marriage was a different proposition than what she  
had figured it to be and she was going back to her  
people. 40

*Defendant's: William Brown—Direct*

Q. When was the first time that she said she was going back to her people? A. Some time I believe in October.

Q. What did she say then? A. Why, she said that she was going back to her people, that she  
10 had no use for me, that she hated me and despised me.

Q. Your wife left you December 17, 1921, according to her testimony; is that right? A. That is right.

Q. The evening of December 16th did you tell her that she must not leave you that night? A. I did.

Q. Did she say she was going to leave you the next day? A. She did not.

20 Q. Did you have any intimation that she was going to leave you the next morning? A. I had no intimation.

Q. Did you, on the morning of December 17, 1921, tell her to get out? A. I did not.

Q. Did you ever threaten to kill her? A. No, sir.

Q. Did you ever strike her? A. No.

Q. Mrs. Brown, your wife, has testified that she made a visit to your mother; were you present at that visit? A. I was.

30 Q. Your wife testified that your sister or your mother said that she would have to take boarders. A. That is not so.

Q. Did your family urge her at that time to leave you? A. No.

Q. Did they ever urge her to leave you? A. No.

Q. Did you ever tell her that your family had disinherited you on account of your marriage to her? A. No.

40 Q. Did you ever tell her that they had disinherited you and that in order to get back in their

*Defendant's: William Brown—Direct*

good graces, she would have to leave you? A. No.

Q. Were you working at that time, during these three months of your married life? A. I was.

Q. What were you making? A. Thirty-five dollars a week.

Q. How much did you give your wife? A. Twenty 10  
dollars a week.

Q. Is that all you gave her? A. That is not all the expenditure there was out of the thirty-five dollars.

Q. She has testified that on one occasion she told you she was going to church and asked you to meet her. Do you recall that occasion? A. I do.

Q. She also testified that you refused to go and meet her. A. I refused to meet her that night because I was sick.

Q. When was that? A. I don't know exactly. It was some Sunday evening in October or early November, but I couldn't say exactly.

Q. What did she say that evening? A. She came back from church after it was over, and she said: "Billy, I listened to a very, very good sermon this evening—"

Q. Prior to going to church? A. She asked me if I would meet her on the way coming back. I told her I was sick and I could not. I remained 30  
home, in our home, 182 Claremont Avenue, all that evening.

Q. She has also said that on October 29, 1921, a cousin of yours whom she designated as Julia, called on you? A. She did. We had a very pleasant evening.

Q. Did you, on that occasion, voice yourself as disappointed with Mrs. Brown? A. No.

Q. In other words, Mrs. Brown has testified that before your cousin Julia, she said that life was not 40

*Defendant's: William Brown—Direct*

happy with you and you agreed it was not and that you would like to get rid of her. A. I said nothing of the kind.

Q. Miss Killburn—do you remember her? A. Yes.

10 Q. She testified that she called early in December— A. She called once in September while I was home, and then she called on December 4, 1921, and then she called later on that same week.

Q. Has your wife stated accurately the conversation that took place before Miss Kilburn? A. She has not stated anywhere near the truth in the matter at all.

Q. What was said that night? A. On December 4th do you wish?

20 Q. What conversation was that that Miss Killburn testified to? A. December 4th. On December 4th, Sunday morning, I went out and bought a newspaper and on the way back I saw that there was somebody at the house. On ringing the bell, my wife came to the door and she said: "Billy, here is Ella." I said: "I am very glad that Ella has come." I liked Miss Killburn. I went in. Miss Killburn was in the kitchen and with my wife got the dinner ready. We had—

30 By the Court: Q. Won't you tell us the conversation? Don't let us have so many words of description. A. At two o'clock, as Miss Killburn said, about the carpets, my wife burst out crying and she said: "Ella, I don't know whether I can stand this man any longer. He is not treating me right." She turned around and said: "Do you deny the things I have said?" Miss Killburn asked me whether it was so and I said it was not so, and I broke down and cried, and I said: "Ella, I have

40 nothing further to say." After this everything—

*Defendant's: William Brown—Direct*

Q. Was there any further conversation? A. There was no further conversation in relation to any trouble and Miss Killburn stayed that entire night.

By the Court: Q. Let me get that conversation. Miss Killburn said that your wife said on that occasion that you had ordered her out? A. That is not so. 10

Q. Your wife didn't say that to Miss Killburn? A. My wife might have said that.

Q. I am asking you whether she did. A. I don't recollect.

Q. Miss Killburn testified that you said "Yes," that you wanted her to get out? A. I denied my wife's charges.

Q. I am not asking you that. I am asking you about what Miss Killburn testified. Miss Killburn testified that you said that you wanted her to get out? A. I didn't so testify. 20

Q. You mean that you didn't say so to Miss Killburn? A. I didn't say it.

Q. Miss Killburn also says that you said that you wanted to go to your mother and sister where you belonged, that you had left most of your clothing there? A. That is not so.

Q. She says that you also said on that occasion that your mother and sister came before your wife and that your wife was nothing? A. That is not so. 30

Q. That your wife asked you what she was going to do, and that you said that she could do what she liked, that you were going to go to your mother's? A. That is entirely untrue.

Q. That your wife had said to Miss Killburn that she did not think she could live with you any longer, that you didn't treat her right. Did Miss Killburn ask you if that was so? A. Yes. 40

*Defendant's: William Brown—Direct*

Q. What did you say? A. I said it wasn't so and I broke down and cried. May I say what I said to Miss Killburn?

Q. Yes. A. I said: "Ella, you seem to be an angel sent from God to straighten out this family. My  
10 wife has it into her head to leave me no matter what I do. She will not stay. She always wants to leave me." That is what I said to Miss Killburn.

By Mr. Schumann: Q. Now, I believe, the next conversation referred to by your wife was a conversation in which your mother in law, Mrs. Schwarzwelder, and your mother and sister were present? A. That is not quite right. There was another conversation later on in the week with Miss Killburn. Miss Killburn came down again—

20 Q. Give us that conversation and the date of it? A. Miss Killburn said: "Well, Billy, have you and Edna made up?" I said: "Well, as far as I am concerned there is no trouble." That is what was said.

Q. Is that all that was said? A. That is practically all I can recollect.

Q. The next conversation, the one with Mrs. Schwarzwelder, the one to which I have just referred. When was that? A. On December 10, 1921.

30 Q. You have heard Mrs. Schwarzwelder testify to that conversation, and your wife? A. Yes.

Q. If that conversation is not correct, according to your mind, I wish you would give us the conversation. A. The conversation is entirely incorrect.

Q. Will you give it to us briefly? A. I came back home at four o'clock and Mrs. Schwarzwelder and Mrs. Collins were there—

Q. What was said? A. Mrs. Schwarzwelder said: "Hello, Billy." I said: "Hello, Mrs. Schwarzwelder." I had information that Mrs. Collins—

40 Q. Tell us what was said? A. Mrs. Schwarz-

*Defendant's: William Brown—Direct*

welder said to me, she said: "Billy, I want to talk to you about Edna." I said: "One minute, I want a witness here, too." Well, then, I went over to the house and told my sister to come over.

Q. Was this a precautionary measure? A. Because I knew that Mrs. Collins had been used on the papers that fixed Mr. Schwarzwelder. That would be a few years back. After I had my sister there, she said— 10

Q. (Interrupting) Your mother was there, too?  
A. My mother was there, too, but my mother came a few minutes later. Mrs. Schwarzwelder said: "I want to speak to you about Edna." I says: "Well, what is it?" She says: "You are not supporting my daughter." I said: "I am supporting your daughter. I am giving her the major portion of my salary; I am giving her \$20 out of \$35." I said: "Your daughter has it into her head to leave me. No matter what I do, she wants to go away." I recited to Mrs. Schwarzwelder the continued abuse that her daughter was giving to me, and she stopped me and said: "If it was me, I would have given you a whole lot more." I also spoke about my wife having promised to help out by letting out two rooms upstairs. She said: "She will not do it. She has enough work to do. My father lived one step better than my grandfather and I am one step better than my father and I want my children to live one step better than I. What about your fishy transaction of August 24th, 1921?" I said: "Mrs. Schwarzwelder, I know of no fishy transactions." 20 30

Q. What was she referring to? A. The transfer of the house to my sister. I said: "How about your fishy transaction of September 7, 1920, the house that you lived in?"

The Court: Let us get down to something about this case. 40

*Defendant's: William Brown—Direct*

Q. What further conversation was there? A. Well, she called my sister a brazen thing and she called me all kinds of names.

By the Court: Q. Who did this? A. My wife.

Q. In the presence of her mother and your mother  
10 and sister? A. Certainly.

Q. She did? A. Yes, sir.

By Mr. Schumann: Q. When did you first know that your wife had left you? A. When I got home about two o'clock on Saturday, December 17, 1921.

Q. You didn't know that she was going to go? A. I did not.

Q. When you got home was she there? A. She was not.

Q. What was the condition of the house? A. Well,  
20 the house was a wreck.

Q. In what respect? A. She had stripped it of most everything that was in the house.

Q. What did she strip it of, as near as you can recall? A. Well, she had taken all of the clothing, all of the pots and pans and the knives and forks and the dishes.

Q. When you got home and she was gone, where did you think she was? Did you think she had just gone shopping? A. Not from the state of the  
30 house I did not.

Q. Where did you think she had gone? A. I didn't know where she had gone.

Q. Have you seen your wife since December 17th? A. Once at the court and—

By the Court: Q. To speak to? A. No, sir.

By Mr. Schumann: Q. Were you present at the maintenance suit? A. I was.

Q. Was that more than once? A. There was temporary alimony.

40 Q. Have you appeared in court at the instance of your wife more than once? A. Yes.

*Defendant's: William Brown—Direct*

Q. Twice? A. Three times in January, 1922, and twice in April, 1922.

By the Court: Q. Where were you in April, 1922?

A. In this building here.

Q. The case being tried? A. By the Vice-Chancellor.

10

By Mr. Schumann: Q. At that trial, or hearing, rather, did your wife testify as to whether—at the first trial, that is, for maintenance *pendente lite*, did your wife testify before Vice-Chancellor Griffin as to whether or not she would come back to you?

Mr. Nolan: Objected to.

Q. Have you cler made any attempt to get Mrs. Brown to come back to you? A. No.

Q. Why not? A. Because she said on the stand that under no condition would she come back to me. 20

Mr. Nolan: I move to strike that out.

The Court: Strike it out.

By the Court: Q. Why didn't you go to see your wife after she left you in December? A. After the rough deal I got—

Q. I asked you why you didn't go to see your wife after she left you December 17th? A. Because I was served with a summons to appear in court.

Q. On December 17th? A. On December 27th.

Q. I asked you why you didn't go to see your wife after December 17th, when you came home and found she was gone? A. I cannot answer that question. I don't know. 30

Q. You knew where her mother lived and you could have gone there? A. I didn't want to go down to her house where they could have put things up against me.

Q. You could have tried to meet your wife somewhere? A. Yes.

Q. Why didn't you do that? A. I cannot answer that. A. I don't know. 40

*Defendant's: William Brown—Direct*

By Mr. Schumann: Q. Your wife has testified that she wrote you, I think, five letters. Did you receive all of those letters? A. I only received one.

Q. Which one was that? A. November 13, 1923.

Q. If those other letters had been addressed to  
10 you at the address which she has stated, is there any reason why you should not have received them? A. Absolutely not.

Q. You received mail at that address during that period of time? A. Certainly.

Mr. Schumann: There is one matter that I would like to bring before the Court. It is absolutely important that he should show justification for not attempting to bring his wife back. The justification was her own  
20 testimony given in court. In other words, that is the time when my client found that it would be futile to attempt to bring her back. That is the sum and substance of our case. Why will not the Court entertain testimony as to a conversation which took place in the presence of both lawyers?

The Court: If you are trying to prove testimony that was given in court, the stenographer's record is the best evidence, not what  
30 you recall or what Mr. Nolan recalls or what the witness says.

Q. You have been asked—I will ask you again—why didn't you attempt to bring your wife back? You can testify to what she said. A. She said to me so often that she hated and despised me and told me how little she thought of me, that I thought it was futile to go anywhere near her.

Q. In fact, I think you have testified that she said that repeatedly? A. She had told me that re-  
40 peatedly.

*Defendant's: William Brown—Cross*

Q. And never wanted to see you? A. Never wanted to see me and didn't want to look at me again.

CROSS-EXAMINATION by Mr. Nolan:

Q. You testified that I came to your house, did 10  
you not? A. I did.

Q. You also testified that you came and greeted me, did you not? A. I spoke to you.

Q. What was the conversation that took place between you and me that evening?

The Court: Do you want him to repeat the whole conversation over again? He has already given his version of it.

Q. I asked you was there not some way of clearing up the disagreement that had arisen between 20  
you and your wife? A. I do not remember anything like that at all.

Q. And I also asked you why it was that you could not get along together, didn't I? A. I don't remember any such question.

Q. Didn't I say to you that you were only married a few months, and you are a Catholic, and you ought to try to get along together? A. Not to my knowledge.

Q. You are sure about that? A. Positively. 30

Q. Didn't you say to me that you had tried it long enough and that you did not want to live with your wife any longer? A. I did not. I did not.

Q. That your place was in your mother's home?  
A. I said nothing of the kind and you know better than that.

The Court: I am going to tell you that you ought to know better than to answer counsel that way.

Q. Before you were married—you say that be 40

*Defendant's: William Brown—Cross*

fore you were married, the day before you were married, you came to Mrs. Schwarzwelder and wanted to make arrangements to adjourn the marriage ceremony? A. I did not. I said the day of the marriage.

10 Q. The day of the marriage? A. Yes, sir. I told her that because my mother was ill at home and unconscious, I wanted to postpone it.

Q. You didn't have to get married, did you? A. Practically so.

Q. In other words, you were very easily led? A. I was easily led in that marriage, believe me.

Q. You didn't have any trouble with Mrs. Schwarzwelder up until the time of your visit, did you? A. Mrs. Schwarzwelder?

20 Q. Your wife's mother? A. I had no trouble with her.

Q. You did not have any trouble with her; you were always friendly with her? A. Always; always greeted her.

Q. Why is it that you had so much trouble on this day that she came to call on you in December? A. That was the way the conversation took place; that is how it began and the way it took place, as I have told you.

30 Q. Was there any cursing or swearing done by Mrs. Brown in the presence of her mother on that day? A. Not at that time; no.

Q. Was there any cursing or swearing done by Mrs. Brown in the presence of Miss Killburn? A. No.

Q. When did all this cursing take place? A. When we were talking alone.

40 Q. When you were talking alone? A. Yes, sir; and she told me she admitted it in front of my mother and sister.

*Defendant's: William Brown—Cross*

Q. In front of your mother and sister? A. She admitted that she cursed.

Q. But she didn't do the cursing in front of your mother and sister? A. No.

Q. Your wife always cooked the meals, didn't she? A. First she did. The last they were half 10  
cooked.

Q. She attempted to cook the meals, didn't she? A. Yes.

Q. They were very pleasing at the beginning, were they not? A. Yes.

Q. She always cleaned your house, didn't she? A. Not always.

Q. That was the trouble? A. The state of her house upstairs was something terrible. Her glass doors were something terrible. 20

Q. Downstairs was anything wrong? A. She told me her mother often told her it was—

Q. How about downstairs? Was everything downstairs all right? A. Not always.

Q. Outside of the glass—what was it, glass doors? A. Glass doors, parlor and windows.

Q. Outside of that, was everything all right? A. No; everything was not all right.

Q. Mrs. Brown, your wife, was sick during that period, was she not? A. She was not sick. 30

Q. She was not sick? A. No; she was not sick.

Q. Didn't you tell Mrs. Brown to go to the doctor? A. I told Mrs. Brown I would furnish a doctor if she was sick.

Q. Didn't you tell her to go to a doctor, that she was not looking well? A. I told her to go to a doctor. She told me she would not go to my doctor; she would go to her doctor; her mother was furnishing the doctor, but she would not go to my doctor.

Q. To your knowledge, did she go to a doctor? A. 40  
Certainly.

*Defendant's: William Brown—Cross*

Q. In other words, she was not feeling well during the latter part, just prior to the time she was forced to leave you? A. She was not forced to leave me.

Q. She was not really right up to the time that  
10 she did leave you? A. She was shamming.

Q. Shamming? A. She was shamming. That is what she was doing. She was playing a game.

Q. What do you mean by "playing a game"? A. Playing a game. Why, she made out she was sick, and when she thought a person was not watching her she would run upstairs as if she was a young girl of ten or twelve years.

Q. Did you offer to do anything for her? A. I certainly did.

20 Q. What did you do? A. I asked her if I could do anything for her.

Q. Did you do anything for her? A. I offered to.

Q. You told us that you took your wife out for a walk with you? A. I did.

Q. How often? A. Once a week.

Q. Once a week? A. Yes.

Q. When would that be? A. In the evening around eight o'clock, half-past eight, maybe nine  
30 o'clock.

Q. You testified that you went over to your mother and sister every night? A. I certainly did.

Q. When would you come back from there? A. One hour after I would go.

Q. About an hour? A. I would stay one hour at my mother's every night.

Q. What time would you leave to go to your mother's? A. In the fall I went at seven o'clock and left at eight o'clock. When it got colder I went  
40 at eight o'clock and left there at nine.

*Defendant's: William Brown—Cross*

Q. Did you ever stay any later than that? A. No, sir; absolutely not. I had an alarm clock stuck on the table so I would not be any longer.

Q. In other words, you were very anxious to get back to your wife? A. I certainly was. I asked my wife to accompany me on the visit to my mother. 10  
I said I was very sorry to leave the girl alone for that hour.

Q. You hated to see your wife go away? A. Yes; I did.

Q. If you hated to see her go, why didn't you go after her and try to bring her back? A. I believe that any woman that runs away once, wants to suit herself.

Q. You didn't care whether she came back or not? A. I thought the proper place to answer that question would be in court before competent witnesses; so I was willing to take her back and have been ever since. 20

Q. You didn't go to her; you didn't make any offer to her? A. I didn't go to her; no.

Q. You didn't care whether she lived or died, did you? A. I cared whether she lived or died, certainly.

Q. How much money have you sent her since December 17, 1921? A. Not a cent. 30

Q. How did you expect your wife to get along and live, if you didn't send her any money? A. She wanted to leave me and went freely. It was up to herself how she supported herself.

Q. You never asked her to come back? A. I never did.

Q. You didn't care how she supported herself? A. She could support herself. If she wanted me to support her, she could come back.

Q. You always found your meals ready for you 40

*Defendant's: William Brown—Cross*

when you came home? A. Not at all times; most of the time, yes.

Q. Except when she might be ill they might not be ready; is that it? A. My meals were very irregular and were half done.

10 Q. When was my visit, do you remember? A. November 29, 1921, at eight p. m.

Q. Why did you transfer your property before you were married?

Mr. Schumann: Objected to as immaterial.

The Court: Objection overruled.

A. My mother has been sickly for thirty years. My sister was sick from February or January of that year. Neither one was in a position to work.

20 My sister was the main support then of my mother when I left home; so I gave that piece of property to my sister. My wife agreed with me to live there; we were to live there six months, to save her face as we said; we were to live three months for nothing so that I could get on my feet and the fourth month we were to start paying \$40 a month rent.

Q. Where does your mother live? A. 178 Claremont Avenue.

Q. She owns that property? A. She does.

30 Q. She owned it before you were married? A. She did.

Q. She owned it at the time you transferred this piece of property to your sister? A. She did.

Q. Your sister was working, was she not? A. Not at that time.

Q. Didn't you know that you had to have a place to live in? A. I made provision for a place to live in.

40 Q. I say: Didn't you know that you had to have a place to live in? A. Certainly I did.

*Defendant's: William Brown—Cross*

Q. You knew that you were only making \$35 a week? A. Yes, sir.

Q. Regardless of that, you transferred your property to your sister? A. I spoke to my wife or my intended wife about it and it was agreeable to her.

Q. You are sure you spoke to her about it? A. 10  
I certainly did.

Q. Is it not a fact that your wife never knew anything about this conveyance until about five days before you were married? A. No, sir; that is not so.

Q. Who was present when you told her about it? A. No one.

Q. You gave your sister a chattel mortgage? A. Yes.

Q. Why did you give her a chattel mortgage? A. 20  
I borrowed \$120 from my sister and I gave her a mortgage on my furniture that it would be paid in a year.

Q. Wouldn't your sister take a note; did she insist on a chattel mortgage on your furniture? A. That would be a mere matter of form to secure the \$120; I had to pay it back in a year.

Q. Is it not a fact that when you put this chattel mortgage on your furniture, you wanted to put it so that your wife could not possibly get anything? 30  
A. No; absolutely not; I never had any such idea in my head.

By the Court: Q. What did you do with your building and loan books? A. I always had them.

Q. Always kept them in your own name? A. Yes; and my insurance is in my own name.

Q. That is, to whom is the insurance payable or to whom was it payable at the time of your marriage? A. The insurance was taken out about nine years and it was never transferred, for the 40

*Defendant's: William Brown—Cross*

simple reason that the marriage was of such short duration that I had no time to change it.

Q. What was the amount of the policy? A. \$1000.

By Mr. Nolan: Q. you are sure that everything that you testified to as the conversation between  
10 you and myself at your home is true; is that right?  
A. As far as I can remember; yes, sir.

By Mr. Schumann: Q. Did you ever discuss with your wife the question of supporting her, before your separation? A. My wife spoke to me about it.

Q. What did she say? A. She said to me: "Billy, I want to leave you." She said: "I want \$500 to clear out of this house." I said: "What do you want \$500 for?" She says: "I am tired of living with you," and she says: "I want to go back to my  
20 people," and she says: "The \$500 will pay me for the linen and blankets which I have put into this house". I says: "Girlie, I haven't got \$500." She said: "Go out and borrow it." I said: "I cannot go out and borrow it without security." She says: "Give me \$10 a week for fifty-two weeks." I said: "See here, I cannot do that." I said: "I cannot do that, because—" I mentioned about Christmas. She said: "If you promise that you will make a settlement with me, I will stay until after Christmas."  
30 I said: "See here, little girl, there isn't going to be any settlement. I am going to give you \$20 every week as long as you stay here." I says: "You have got it into your head to go and when you go I won't give you a cent."

Q. You were making \$35 a week at that time?

A. Yes.

Q. Subsequent to that time what were you making? Has your salary changed between that time and now? A. No; it is \$35.

40 Q. As to your residence, have you lived in Jersey

*Defendant's: Emma A. Brown—Direct*

City ever since your separation from your wife?

A. I have.

Q. Continuously? A. Yes.

Q. You have never moved out of the state? A. I have never moved.

By the Court: Q. Why didn't you reply to this letter of November 13, 1923? A. Because there was too many inaccuracies in it. She accused me that I was the one that ordered her from the place. To me the letter was a tissue of lies prepared by some able mind to entangle me in some way; so I simply didn't answer it, but if she wanted to talk to me about coming back, I was open at all times; she knew where to find me. If she wanted to come back, she could come back.

Q. Why didn't you tell her that in reply to that letter? A. I might have written something which my friend Mr. Nolan might have used in court.

Q. I want to know what explanation you can give for not writing your wife a letter in reply to hers of November, 1923, telling her that she could come back? A. I didn't think she was sincere.

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EMMA A. BROWN, sworn as a witness on the part of the defendant, testifies as follows:

Direct-examination by Mr. Schumann.

Q. Where do you live? A. 178 Claremont avenue, Jersey City.

Q. You are a sister of Mr. Brown, the defendant? A. Yes.

Q. You heard the testimony regarding his bringing his wife to your house? A. Yes; I did.

Q. And the conversation you had with Mrs. Brown and Mr. Brown at that time? A. Yes.

*Defendant's: Emma A. Brown—Direct*

Q. Do you recall the date approximately? A. It was in October. I don't remember just the date.

Q. October, 1921? A. Yes.

Q. Will you tell us, as near as you can recall, the exact conversation which took place? A. Well,  
 10 I had heard that she was God damning my mother and God damning me, and I said to my brother: "Please bring your wife over here—"

By the Court: Q. What was the conversation that took place between you and Mrs. Brown? A. I said to her: "Is it true that you God damned my mother and God damned me?" She said: "Yes; I did." I said: "There is no cause for that," I said: "If you think we have anything to do with Billy, keep Billy out of here." She says: "No; I want  
 20 Billy to come over here more than any other place."

By Mr. Schumann: Q. Mrs. Brown has testified that you or your mother, or both of you—she did not recall which—were you present with your mother? A. Yes.

Q. Did you at that time tell Mrs. Brown it would be better if she left her husband? A. No.

Q. Or cleared out, or anything of that nature? A. No; we did not.

Q. Did you have a subsequent conversation with  
 30 Mrs. Brown along the same lines? A. No.

Q. Do you recall the conversation at which Mrs. Schwarzwelder was present? A. Yes; I do.

Q. You have heard what Mrs. Schwarzwelder testified as to that conversation. Will you tell us that conversation so far as you remember? A. Well, around nine o'clock my brother came for me and I went over and there was Mrs. Schwarzwelder and Mrs. Collins. Mrs. Schwarzwelder said: "What are you going to do about Edna?" My  
 40 brother says: "I am going to give her \$20 a week to

*Defendant's: Emma A. Brown—Direct*

run my house the way I see fit." Mrs. Schwarzwelder said: "You are not supporting my daughter." He says: "I am giving her \$20 out of my \$35." My brother told her his wife had promised, before and after her marriage, that she would rent out two rooms, which she had not done, and she had not done anything to help. Mrs. Schwarzwelder said she would be a fool, that she had work enough. My brother told Mrs. Schwarzwelder different things, how much his wife abused him, and with that Mrs. Schwarzwelder said: "I would have given you more." My brother told Mrs. Schwarzwelder about Mrs. Collins coming to our house and saying what a violent temper his wife had. Mrs. Collins said she didn't say it that time, but she said it at another time. My brother told it in front of Mrs. Collins and Mrs. Schwarzwelder, and Mrs. Collins said that at no time she had told my mother of the violent temper Mrs. Brown had. 10 20

By the Court: Q. When Mrs. Schwarzwelder was present on this occasion did your brother say that he was going to leave her and live with you and your mother? A. No; he did not.

Q. Did he say that he belonged to you and your mother and that is where he was going to live? A. No; he did not. 30

By Mr. Schumann: Q. Your brother has testified, and his wife, too, that he went over every night to your home? A. He did, for one hour.

Q. What time of the evening was he there? A. In the summer and early fall, it was from seven to eight and when it got colder it was from eight to nine.

Q. Was he there any longer than an hour? A. No longer, because the clock I put on the table.

Q. Did he at any time bring his wife? A. Yes; 40 we always asked—

*Defendant's: Emma A. Brown—Cross*

Q. Did he bring her with him? A. Yes.

Q. How often? A. Two or three times.

Q. Were your visits with her pleasant at that time? A. Very pleasant.

Q. Did you ever tell her not to come? A. No.

10 Q. Or say anything to her that might make her feel she ought not to come? A. No.

CROSS-EXAMINATION by Mr. Nolan :

Q. You have never been very friendly to Mrs. Brown, have you? A. Always.

Q. Always very friendly? A. Always.

Q. Didn't you object to your brother getting married to her? A. No; I did not.

20 Q. Did your brother give you a chattel mortgage on his furniture? A. Yes; he did.

Q. Why did he give you the chattel mortgage? A. Because I lent him \$120.

Q. You insisted on getting a chattel mortgage? A. Yes.

Q. Why did you insist on that? A. Because I thought if I was out of work, or greatly in need of money, in case it was not paid back.

30 Q. You were afraid to trust him? A. I was not afraid to trust him, but I did not know what would happen.

Q. You thought that you would take the furniture? A. No; I never thought of taking the furniture.

Q. What was your idea in insisting on a chattel mortgage? A. The money was what I wanted. I didn't want the furniture.

40 Q. You had given him the money. Why did you insist on a chattel mortgage on his furniture? Was it not because you and Mrs. Brown did not get along very well? A. No.

*Defendant's: Emma A. Brown—Cross*

Q. Did you expect that something might happen between them? A. No; I did not.

Q. And if it did happen, you could claim the furniture? A. No; I never thought of that. I thought they got along good together.

Q. Now you say your brother used to come over 10 to your house? A. Yes; every night.

Q. And you put the alarm clock on the table? A. I would put the alarm clock on the table to let him see the time.

Q. And when the clock would go off—A. (Interrupting) It didn't go off.

Q. Did he come to your house on Sunday? A. Sometimes.

Q. It was mostly all the time? A. No; it was not. He would always regulate my mother's furn- 20  
ace.

Q. How long would he stay? A. He would stay about two hours the whole time, once in the morning and once in the evening.

Q. Two hours each time? A. Yes; on Sunday.

Q. Holidays the same way? A. Sometimes.

Q. Was it not all day? A. No; he would not stay all day. He never had a meal in our house.

Q. Are you sure about the conversation that took place at your brother's home? You are sure that 30 what you testified is true regarding the conversation with Mrs. Schwarzwelder and Mrs. Collins? A. I certainly am.

Q. And you testified that you did not hear anything said about your brother going back to his mother? A. No; there was not one word said about leaving.

Q. You had never heard Mrs. Brown swearing or cursing at Mr. Brown, did you? A. I did not, but she told me— 40

*Petitioner's: Edna Brown—Direct*

Q. I asked you: Did you hear her say that she had? A. No; I did not.

Mr. Schumann: That is our case. I should like very much to procure the testimony on the separate maintenance hearing.

10

The Court: I will dispose of the case today, if the case is finished today.

Mr. Schumann: I have here a carbon copy of the letter giving the Vice Chancellor's opinion at that time. The original was written to my uncle and has been mislaid. I would like very much to have it go in evidence. I could testify that the original is lost and that this is a true copy and also that a copy was mailed to Mr. Nolan.

20

The Court: You mean it is a copy made in your office of a letter written by Vice Chancellor Griffin?

Mr. Schumann: Yes.

The Court: I suppose Vice Chancellor Griffin's records would show that.

Mr. Schumann: I should like an opportunity to procure that.

The Court: I will go on with the case today.

30

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 REBUTTAL.

EDNA BROWN, the petitioner, recalled and further examined as follows:

DIRECT-EXAMINATION by Mr. Nolan:

40 Q. Do you ever remember calling Mr. Brown, your husband, any vile names such as he has mentioned here? A. No, sir.

*Petitioner's: Edna Brown—Direct*

Q. You heard them, did you? A. Yes.

Q. Did you ever curse or swear at him? A. No, sir.

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

By the Court: Q. On your trip to Atlantic City or on your return trip, did you call him a rotter or skunk or any vile thing? A. No, sir. 10

By Mr. Nolan: Q. Did he ask you to adjourn your marriage on your wedding day? A. No, sir.

Q. The day you were married, did you tell your husband that marriage was different than what you had pictured it? A. No; I never said anything about that at all.

Q. Did you ever call him a rotter and skunk? A. No, sir. In fact, I asked him, I appealed to him in every way that I thought possible; I asked him if he would not remember his marriage vows, and I tried to appeal to him so far as religion. I didn't call him any names. I tried to appeal to his better nature. 20

Q. Did you ever tell your husband that you wanted \$500 to get out, to pay for your linens and things that you had in the house? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Did you ever tell him that if he would give you \$10 a week for fifty-two weeks, that you would get out? A. No, sir; I never made such a statement. 30

Q. And did you request him to make a settlement with you so that you could get out and leave him? A. No, sir. I did not want to leave him. I tried in every way, to get him to do what was right and treat me properly, but all he did was put me out, and his sister and his whole family in fact.

Q. Did you ever say to Miss Emma A. Brown, Mr. Brown's sister, that you had cursed his family? A. No, sir; I did not. 40

*Petitioner's: Edna Brown—Direct*

Q. You testified that you visited his people three times? A. Yes, sir; three times, but once his mother was there alone, I believe.

Q. Were you invited to come again? A. No.

The Court: She has already testified as to that.

10 Q. On holidays did your husband go to see his mother? A. Yes.

Q. On Sundays did your husband go to see his mother? A. We went to six o'clock mass. We got up pretty early and went to six o'clock mass. Then we returned and had breakfast about eight or half-past eight and about nine o'clock he would go in there and stay until twelve or twelve-thirty and come back for his dinner and after he would go  
20 back and spend the afternoon there and would come back home about five or five-thirty for supper, and after supper he would go over there again the same as he did every other evening.

Q. Was he ever at home—did he ever spend any Sunday night during the time that you were married, with you at home?

The Court: This is not rebuttal.

No cross-examination.

30 Mr. Nolan: I don't suppose it would be proper for me to take the stand to rebut the testimony given by Mr. Brown as to the conversation he had with me.

The Court: You knew that you had been to see Mr. Brown and you knew what your recollection was of what he had said on that occasion, and if there was anything in that conversation that was material to Mr.  
40 Brown's case, of course you must have known that you might be an important wit-

*Remarks of the Court*

ness, and you should have made arrangements to have somebody else try the case. I do not think you ought to testify. I do not think it is ethical.

Case closed.

10

(Argument of counsel.)

The Court (orally at close of argument) :

Many of these divorce cases are difficult to decide, because it is so hard to tell where the truth lies. The petitioner and her witnesses testify to a set of facts which are flatly contradicted by the defendant and his witnesses and the defendant and his witnesses set up other facts which are flatly contradicted by the petitioner and her witnesses. In this case we have a situation in which the testimony on both sides is about equal. It is necessary in a divorce suit that the petitioner should establish her cause of action by a preponderance of proof and that her own testimony should be fully corroborated. 20

Even if the defendant's story is wholly true and discloses the true picture of the life of these people for the three months they lived together, he is not without fault in the law and if his wife separated from him for a reason which is not sufficient in the law, the reason being as he testifies, I would say it was his duty to make some attempt at reconciliation and to induce her to return; but that situation, which is the general rule, does not obtain here because the separation occurred on the 17th of December and she commenced suit on the 23d day of December; six days after the separation she commenced a maintenance suit. When a sep- 40

*Remarks of the Court*

aration occurs between husband and wife, there is naturally hard feeling and a display of temper and anger on both sides, regardless of who is at fault. Whether Mr. Brown was right or wrong; whether or not he had a just grievance against his wife, he should have been given time in which to let his grievance subside and bring himself to a state of mind where he could realize that he ought to do something to effect a reconciliation; but before he had time to find himself, before he had time to get his bearings, this suit for maintenance was commenced and the wife expressed a desire to litigate their differences, instead of trying to invite an amicable adjustment of the matrimonial troubles. She wrote no letters to her husband until after the maintenance suit was terminated. The decree dismissing the maintenance suit was entered in May, 1922, and I think her testimony is that the first letter she wrote her husband was in June, 1922. She displayed no willingness to go back to her husband pending the suit and she waited until the suit was decided against her before she wrote the letters which the husband says he never received. He says that the only letter he got from her was written in November, 1923; so that the only proof here of willingness on her part to effect a reconciliation was almost two years after the desertion took place. But, as I said at the outset, this court requires the petitioner to establish her cause of action by a preponderance of proof, duly corroborated. I cannot find that the petitioner has met the rule and I do not see that I have any course but to dismiss the petition. I will also dismiss the cross petition. Certainly, upon the cross petition, the defendant is bound to show either efforts to effect a reconciliation, or that such efforts would have been of no avail, and in this he has failed.

**EXHIBIT P-1**

My dear Husband :

I have written to you on numerous occasions requesting you to provide a home for me that we may live together again as man and wife. As I have never heard from you since you ordered me to leave your home, or received any reply to my letters, I am writing you again, and am sending this letter by registered mail so that I will know whether or not you have received it. 10

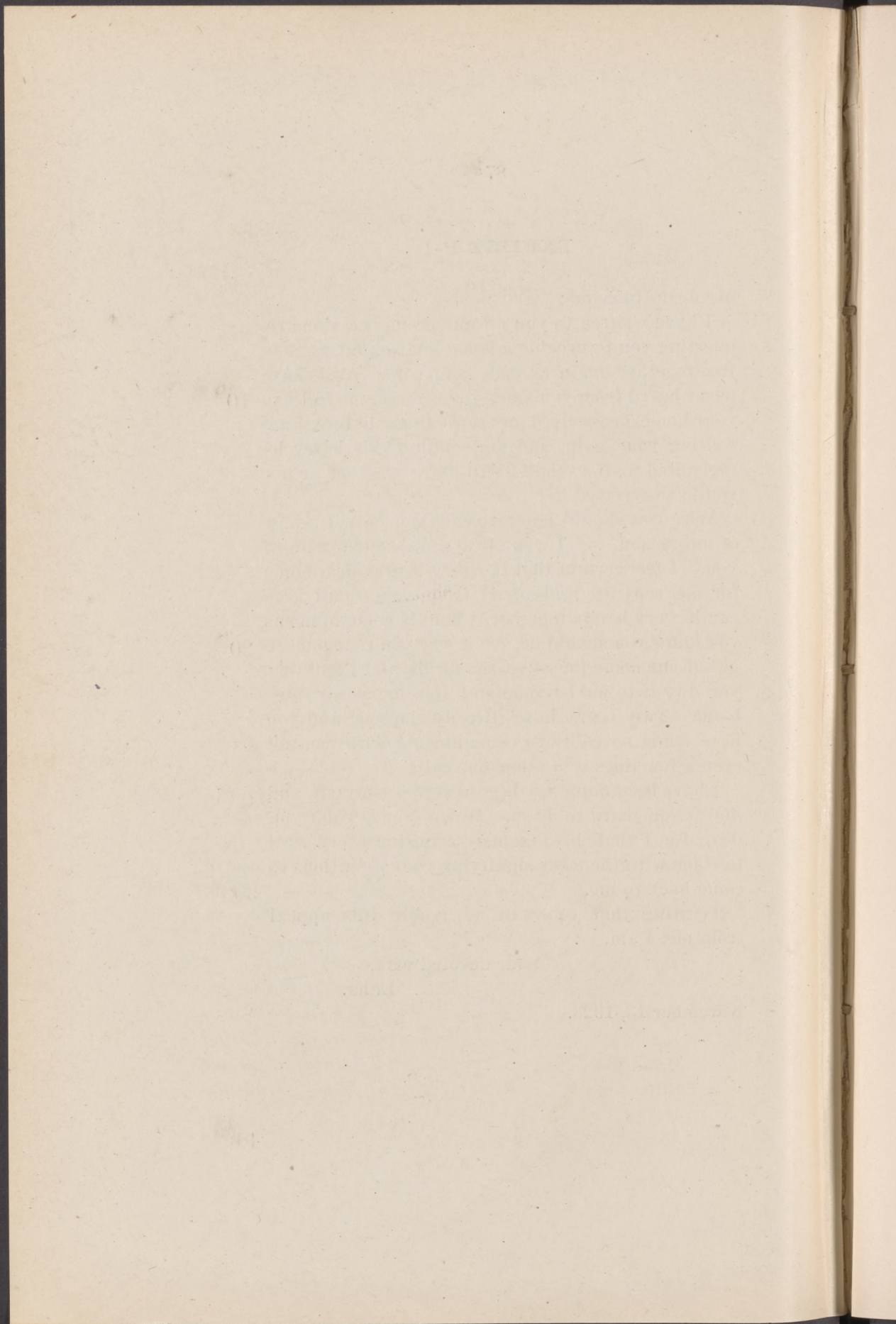
Why you should ignore me as you have I know of no reason, for I was always a devoted wife to you. I feel certain that if you will provide a home for me, separate and apart from your family, we can be very happy together. Kindly come to me as you know you should do, for it was you that put me out of our home for no reason at all, and I feel that you owe it to me to come and join me as my husband. Two years have already elapsed, and you have made no effort to communicate with me, not even a few lines or a telephone call. 20

I have been doing my best to support myself, and find it very hard to do so. Write to me, won't you dear, for I shall be anxiously awaiting every mail to come with the news signifying your intentions to come back to me. 30

Trusting that you will not ignore this appeal from me, I am,

Your devoted wife,  
Edna.

November 13, 1923.



## New Jersey Court of Errors and Appeals

EDNA BROWN,  
Petitioner-Appellant,  
  
and  
  
WILLIAM BROWN,  
Defendant-Respondent.

On Petition and  
Cross-petition for  
Divorce.  
Appeal by Peti-  
tioner from De-  
cree Denying  
Relief.

### BRIEF FOR RESPONDENT.

#### Statement of the Facts.

The undisputed facts in this case are as follows:

The petitioner was married to the defendant September 3rd, 1921. She left him December 17th, 1921, and commenced a separate maintenance suit December 23rd, 1921. The decree dismissing the separate maintenance suit was entered in May, 1922. On November 13th, 1923, she wrote him requesting his return to her and on August 15th, 1925, she filed her petition for divorce. Issue was joined—the case heard and her petition dismissed. The testimony is in sharp conflict as to whether the petitioner left her husband of her own will or was forced to leave him by his acts or words. Both parties are supported by the testimony of other witnesses in their respective versions of the incident which has terminated in this action.

The sole issue raised by the brief for the appellant is whether or not the petitioner established her cause of action for divorce on the grounds of desertion by a preponderance of proof, duly corroborated. The learned Vice-Chancellor found that she did not, saying:

“this court requires the petitioner to establish her cause of action by a preponderance of proof, duly corroborated. I cannot find that the petitioner has met the rule and I do not see that I have any course but to dismiss the petition” (Case, p. 86).

### ARGUMENT.

#### POINT I.

**The weight of and the credit to be given the testimony in this case is for the Trial Court.**

It is a well established rule of this Court that where there is a conflict of testimony and honest men may differ as to where the truth lies, the weight, sufficiency and credibility of such testimony is for the Trial Court.

Chief Justice Magee in the case of *Riddle v. Clavy*, 59 N. J. Eq., 573, 583, states that rule as follows:

“I deem it unnecessary to pronounce upon the correctness of this view (speaking of the view arrived at by the Vice-Chancellor below)—for, assuming it to be correct, the parole evidence adduced was held by the Vice-Chancellor to be insufficient to make out such an agreement, and *as the evidence was extremely contradictory, and as the decision thereon must have depended upon the credit given to the witnesses,—I feel unable to say that the Vice-Chancellor who saw and heard the witnesses was wrong in his conclusion.*”

The position taken by the Vice-Chancellor is well supported by the cases in this State.

*Loux v. Loux*, 57 N. J. Eq., 561, 564.

“But the husband, in order to get the relief which he seeks in this court, must estab-

lish by the *preponderance of proof*, not only that this desertion was willful at its beginning, but also that it was obstinate and continued during the period of two years. The burden is upon the husband who asks this relief to show this, and if the evidence is not sufficient to lead the court to that conclusion, he must fail of the relief which he seeks."

*Williams v. Williams*, 81 N. J. Eq., 17, 18.

"It is an inflexible rule in our state that *a divorce will not be granted upon the uncorroborated testimony of a party to the suit; and this applies not only to the cause for divorce, but to every necessary element in the proof.*"

Where the evidence on an issue of fact is in equipoise or there is any doubt on which side the evidence preponderates the party having the burden of proof fails upon that issue. That is to say, if the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail.

(23 Corpus Juris, 11, Section 1744, citing *Galagher v. MacBride*, 62 N. J. L., 422; *Swain v. Edmunds*, 53 N. J. Eq., 142.)

The Vice-Chancellor's words, hereinabove quoted, meant just that; no more, no less. We submit that he was correct in finding that the petitioner failed to come within these rules of evidence.

The necessity for such a stringent rule is obvious, for if such a rule were not adopted almost every difficulty or petty grievance between husband and wife could be twisted into a cause for divorce. The husband's home is the wife's home, and he has the right to choose the place of residence of his family, and the wife's refusal to live

with her husband at that place, without a just cause, is a simple desertion.

The petitioning wife's case is one of constructive desertion in the case at bar. It is admitted that the wife left the home provided for her by the husband. From this point on in the narration of the relation of these parties, their statements are contradictory. The petitioner alleges that the husband "drove" her from their home. This is denied by him, and he says that she left in accordance with a fixed purpose designed by her on her wedding day.

The petitioner's first duty is to justify her leaving her husband and to show that she did not acquiesce in the original separation. Failing in this, she must show that after wilfully leaving him she repented, attempted a reconciliation and was wrongly refused. In short, she must prove wilfulness on the part of the husband.

Succeeding in either of the above first elements in her proof, she must then proceed and show that her husband's original act of desertion was continued and obstinate for a term of two years.

## POINT II.

### **The element of wilfulness is not proved.**

It is undisputed that the wife left the husband December 17, 1921, three and one-half months after her marriage; also that the husband, after her leaving, made no effort to communicate with her to urge her return.

At the outset we respectfully urge that the husband's conveyance of his real estate prior to his marriage is immaterial in the determination of this issue, first, because the transfer was made prior to his marriage to petitioner *with her knowledge*, and secondly, because she consented to it.

(Case, p. 28): "Why, he told me that he had given all his worldly possessions to his mother. I said it didn't look as if he trusted me very much, but I said, 'money don't make happiness.'" "

The petitioner's proof of her justification in leaving her husband is best stated in her own words (Case, p. 13):

"Almost from the very beginning—I was married about a week or two when he told me he did not want to live with me any more, that he wanted to go back and live with his mother and sister, that he never should have gotten married, that was where he wanted to live, that he wanted me to leave him; he didn't want to live with me any more."

This testimony is denied by the husband (Case, p. 51):

"She told me that marriage was a different thing than she had pictured it and that she was going back home to her mother. \* \* \* You cannot go back to your mother now. I said: 'You and I belong to one another.'" ..

To prove the truth of her assertion that her husband forced her to leave him, the petitioner further testified, first, that her husband asked that the marriage ceremony be postponed; secondly, that he made frequent and long visits to his mother's home; thirdly, that he frequently professed extreme devotion for his mother and his old home with her; fourth, interference in her own personal affairs by her mother-in-law and sister-in-law; fifth, that he frequently expressed the desire to return to his mother and sister.

The husband admits he requested a postponement of the marriage ceremony because his mother was ill at home and "lay unconscious" on the date set for the marriage. It is not denied that

his mother was in the condition he alleges, and it strikes a fair appeal to the average mind that a man would not want to be married and "go on his way rejoicing" while his mother lay in such a condition; and further, that he would desire his own mother present at the ceremony.

There was a sharp dispute in the testimony as to the length of the husband's visits to his mother's home. In this the husband is corroborated by his sister. The petitioner offers no corroboration as to the length of these visits, and we submit that inasmuch as her chief complaint of inattention was the amount of time her husband spent at his mother's, this testimony was vital and should have been corroborated.

The petitioner testified that he went morning and evening and would spend from two to three hours there (Case, p. 16). The husband, on the other hand (Case, p. 53), states that his visits in the morning lasted but a few minutes and never more than an hour in the evening. He states that the purpose of his evening visits was to attend to the fire, chop wood, and do the odd jobs of a man about the house. His sister corroborated this (Case, p. 79). Taking the husband's testimony in this regard to be the fact, and we must take it to be the fact, in that it is corroborated and its denial uncorroborated, his wife's objection to his visiting his mother one hour in twenty-four in itself was the kind of a petty grievance which is not a cause for divorce.

The husband's sister, Emma A. Brown, testified (Case, p. 78), referring to a conversation at her home at which the petitioner, the husband, the husband's mother and herself were present, and in reply to the admission of the wife that she had condemned her husband's family in no uncertain terms:

"There is no cause for that. If you think we have anything to do with Billy keep Billy out of here," and to which the wife replied, "No; I want Billy to come over here more than any other place."

This testimony is also undenied.

The appellant's attempt to bring this case within the line of cases which counsel refers to as the "mother-in-law" cases must fail for lack of proof. This alleged parental interference seems to be the substance of the petitioner's complaint of her unhappiness, and is further given as the motive for the husband's alleged order that she leave him. It is vital to the petitioner's case that she establish these facts in corroboration of her own belief in this regard and we submit that she did not.

This brings us to the question of whether the husband actually ordered his wife to leave their home, regardless of his motive. His motive becomes inconsequential if he actually ordered her to leave. The motive is only of consequence in corroboration of the allegation that he did. As to this fact we have the testimony of the petitioner, her mother and one Ella J. Killburn, on the one hand, and of the defendant and his sister on the other. Before going into the testimony of the parties to this suit, we shall consider the corroborative testimony. Unfortunately, the Vice-Chancellor's opinion is very brief. He states merely his conclusions and does not comment on the credibility of the witnesses, nor of the impression made by them, and we stand uninformed in this regard.

Ella J. Killburn, a witness sworn on behalf of petitioner (Case, pp. 43-46), was the only witness called by either party who was not related to them by ties of blood. She was the one witness who, presuming the testimony of the interested parties supported by their relatives to be in equipoise, could have tipped the scale of evidence in favor of the

petitioner. She was the one party to whom the Vice-Chancellor might look for a decision. She testified that she knew the petitioner for about fifteen years and the defendant five years (Case, p. 43). This latter acquaintance, she later explained, meant one and one-half years (Case, p. 45). She testified that she had visited the petitioner and her mother occasionally prior to 1921, and as often subsequent thereto. To quote her (Case, p. 45): "Occasionally, the same as I used to run in Mrs. Brown's occasionally after she was married." In short, she was a friend of petitioner and petitioner's family before her marriage, and this friendship has never ceased. To this extent we submit she was not an unbiased witness. Her testimony was brief and the part which should have proved most damaging to the defendant was as follows:

"Yes, that he wanted her to get out, that he was going back to his mother and sister where he belonged and he left his clothes, the biggest part of his clothes there, but he wanted to be back, that he was going back and that he wanted her to get out, that he was going to his mother and sister and that they came first and Mrs. Brown was nothing."

All of these facts and more (Case, pp. 43 and 44) were adduced from this witness by the simple question of counsel: "Did you have any conversation with Mr. and Mrs. Brown on that day?" That was the only question asked this witness, and yet the whole of petitioner's case is summed up in her answer. Would it be wise for the cross-examiner to press such a witness further?

This conversation took place December 4, 1921 (Case, p. 43). It was but a few days after the conversations of the husband with the solicitor and mother of the petitioner, referred to in appellant's brief. The petitioner states that her husband refused to talk to Mr. Nolan at that time, saying that

her husband did not remain in the house when Mr. Nolan was there (Case, p. 43). She further states that he refused to answer any question of petitioner's mother except in the presence of his own mother and sister. Is it likely that he would suddenly lapse in "caution" within two weeks? We submit that he would not and that this witness' testimony is not to be given the weight which the appellant argues it should be given. It is very significant that the Vice-Chancellor was not swayed in the petitioner's favor by this testimony, for it was the one bit of corroborative testimony which came from an "outsider." We must assume that having this witness before him the Vice-Chancellor either disregarded her testimony as unimpressive or that he did not believe her.

We feel that it is unnecessary to touch in detail the testimony of Anna Schwarzwald, the mother of the petitioner, and Emma A. Brown, the sister of the husband. They corroborated the petitioner and the husband respectively, and for the purposes of this record stand unimpeached except insofar as their relation to the parties may have prejudiced them. Their testimony will stand or fall with the testimony of the petitioner and the defendant.

These parties were married September 3, 1921. The wife left their home December 17th of the same year. Whatever the grievance, it arose but a few days after their marriage, and the husband was not given a real opportunity to transfer his insurance to his wife. He never refused to do so.

The husband's remark, "I was easily led into that marriage, believe me," was made at the trial and is no indication of what his attitude toward his wife was prior to and during their short married life together. These remarks were the natural resentment of the conclusion of his married life evinced in separation. This remark indicated his feeling not toward his marriage but toward his separation.

There is no denial that the husband visited his mother. It is the length of these visits that is disputed. The visits to his mother were not *per se* a necessary forerunner to a breach of domestic harmony, and there is nothing in the wife's testimony to indicate that she ever objected to these visits until two years after separation. Her objection is registered in the prosecution of this case and the only indication that she ever objected to his visits is evinced in the letter marked Exhibit P-1, dated November 13, 1923, over two years after she left and the legal effect of which we shall discuss later.

Appellant's brief makes special reference to the testimony of the husband (Case, pp. 55 and 56) as affecting the credit to be given it, because in one breath he stated that his wife bade him go to his mother's home, and a few lines later condemned him for just that. It rather indicates the temper of the wife who requested his going to his mother's home so that she might rest undisturbed, and less than two hours later condemned him for heeding her request.

### POINT III.

**The alleged desertion was not obstinate because the separation was acquiesced in by petitioner.**

The fact that the husband never sought his wife's return after she left him is indicative of his alleged intention to separate himself from his wife, if and only if the facts which this is said to corroborate are established and show that he desired her to leave him prior to the time when she did. Unless the wife is able to show that the husband by word or act forced her to leave his home, his failure to pursue her is of no materiality at all. Neither is

this fact material if she acquiesced in the separation. (*Hankinson v. Hankinson*, 33 N. J. Eq., 66.) He states that he did everything to prevent her leaving, that she "hated and despised him" and had vowed on her wedding day that she would be back in her mother's home before Thanksgiving Day. His had been a continuous struggle from the day of his marriage to prevent her so doing. He had striven for three and one-half months to convince her that she should remain. In spite of all his entreaties she left him, and his testimony, "I believe that any woman that runs away once wants to suit herself" (Case, p. 73), is indicative of his conviction that after all his efforts to prevent her going it would be futile to pursue her and urge her return. He makes a similar answer to the Court's question as to why he did not answer petitioner's letter, Exhibit P-1. He said (Case, p. 77): "I did not think she was sincere." In answer to the question "When did you first know that your wife had left you?" he answered, "When I got home at 2 o'clock on Saturday, December 17, 1921," the day she left.

The petitioner corroborates the contention of the defendant husband that it was her designed purpose to leave him from the very day of her marriage. It is not customary for people who cherish the marriage vows to invoke the aid of a third party, least of all a lawyer who is a stranger to her, to mend marital differences, yet the wife did this very thing. She brought Mr. Nolan, the gentleman who tried this case, to her home for the professed purpose of making legal demands on the husband. We submit that this was a poor way to cure domestic grievances. Mr. Nolan's visit may have been a friendly one made in the interest of preserving marital harmony, but the good intentions of such a move on the part of the wife are dispelled in this regard when we find that that same lawyer

later filed her petition for divorce to absolutely sever the bond which he had endeavored to preserve.

The attitude of the wife is further reflected in the fact that six days after the separation she commenced a separate maintenance suit. The commencement of this suit was virtually the removal of the last possibility of a reconciliation between them and rather clear evidence of an intent to acquiesce and confirm the separation. It is true that a separate maintenance suit is a remedy given a woman, who has been cast aside by her husband, for support during the separation. But the defendant in this case never refused to support his wife, and after she left him she gave him no opportunity to show what his intentions were in this regard. Six days is the usual wage earning week. It does not appear from the proof, but it is reasonable to assume, that his week's salary for that period had not accrued prior to her filing the bill for separate maintenance. The petitioner barred whatever advance of this kind the husband might have made. To the lay mind a separate maintenance suit means *separation* and not an opportunity to heal past sores. The probable reaction on the husband of the service of such papers was that his wife had determined her course and that there was no way of stopping such proceedings short of a legal conclusion; that she preferred to allow the law to take its course and that he could not thereafter approach her.

#### POINT IV.

##### **The alleged desertion was not continuous.**

This Court cannot consider the petitioner's testimony that she wrote any letters prior to the letter of November 13, 1923, for she offers no corroboration that such letters were written.

*Currier v. Currier*, 68 N. J. Eq., 7.

These letters, if written, were very vital to the petitioner's case, for they may have marked the commencement of a desertion period. The only proof in this case of a willingness on the part of the petitioner to effect a reconciliation after she left is a letter written more than two years after leaving her husband (Exhibit P-1). She displayed in no other way any willingness to go back to her husband pending the suit, and she waited until the separate maintenance action was decided against her before she wrote that letter.

The appellant recites in her brief the case of *Foote v. Foote*, 71 N. J. Eq., 273, and two other cases holding to the same law. These cases merely define the nature of corroborative testimony. The second of these cases is *Hague v. Hague*, 85 N. J. Eq., 537. This case holds, among other things, that where the separation is shown or may be inferred to have originated with the wife's consent, it will become desertion from the time the complaining party makes sincere overtures to terminate it.

See also *Hankinson v. Hankinson*, 33 N. J. Eq., 66.

We submit that in this case the wife consented to the separation. No matter who was originally at fault the evidence of her acquiescence lies in the fact that she commenced her separate maintenance action and wrote no letter to her husband until two years had elapsed and she had failed in her separate maintenance action. The first evidence of an effort on her part to terminate this separation was her letter of November 13, 1923. The defendant-respondent in no way admits that this letter marked the commencement of a desertion period on his part, for he questions the good faith in which it was written and denies that he was the deserter, but we do urge on his behalf that it is the only

scintilla of proof in this case as to when a desertion period could have commenced—November 13, 1923. The petition for divorce was filed July 21, 1925, and we submit that at the time of the filing of this petition, July 21, 1925, no cause of action for divorce on the ground of desertion had arisen to this petitioner, and no such cause of action could arise in her favor until November 13, 1925. Even assuming that the petitioner may have established all the other facts, she has failed to establish a cause of action for divorce on the grounds of desertion as to the requirement of continuance for the statutory period.

**CONCLUSION.**

**The order dismissing the petition should be affirmed.**

Respectfully submitted,

SCHUMANN & SCHUMANN,  
Attorneys for Defendant.

EDWARD J. O'MARA,  
Of Counsel.

n

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

# New Jersey Court of Errors and Appeals

EDNA BROWN,  
*Petitioner-Appellant,*

and

WILLIAM BROWN,  
*Defendant-Respondent.*

*On Petition  
and Cross-  
Petition for  
Divorce.*

*Appeal by  
Petitioner  
from*

*Decree Deny-  
ing Relief.*

*Heard Below  
Before*

*FIELDER, V.-C.*

## BRIEF FOR APPELLANT.

### Statement of the Case.

Petitioner, the wife, filed her petition for divorce for desertion, alleged to have commenced December 17, 1921 (p. 3). There was an amended petition (p. 5), having reference only to the allegations of residence. The husband answered with a denial and filed a cross-petition alleging desertion by the wife upon the 17th day of December, 1921 (p. 7). Petitioner answered the cross-petition with a denial (p. 9). The case was tried before Vice-Chancellor Fielder and at its conclusion he orally held that the testimony on both sides, with respect to the original separation, being about equal he was unable to say that petitioner had sustained the burden of proof and that, therefore, her petition for divorce could not be granted and that with respect to the husband's cross-petition, even if the original separation was the fault of the wife, the husband had not taken such steps as the law required

to terminate it and, therefore, his cross-petition should be dismissed.

From so much of the decree entered on February 26, 1925, as dismissed the petition of the wife (p. 11) this appeal was taken by the wife (Petition of Appeal, p. 2).

The parties were married on September 3, 1921 (p. 13). The wife left the husband December 17, 1921. After the leaving of the wife the husband at no time communicated with her. She wrote him, concededly, one letter (Ex. P. 1, p. 87), to which he made no reply. She says that she wrote him several letters prior to Exhibit P. 1, to which there were no replies, and she refers to these other letters in Exhibit P. 1.

Whether, notwithstanding the fact that the wife left, the husband is a deserter is, under the circumstances of this case, a matter of intent.

*Foote v. Foote*, 71 N. J. E. 273, at page 279;

*Hague v. Hague*, 85 N. J. E. 537;

*Kelly v. Kelly*, 95 N. J. Eq. 246.

The facts bring the case within *Thomas v. Thomas*, 74 Atl. 125, in which the present Chancellor said:

“What subsequently occurred makes the defendant, in my judgment, an absolute deserter of his wife, and his desertion for more than the statutory period has been willful, continued and obstinate. The facts are these: The husband was entirely indifferent toward his wife and cared not if she left him. After she had gone he went to Mrs. Johnson’s house next door and informed her that his wife had gone and he said ‘leave her go,’ and seemed to be pleased that she had gone. About a week after the wife left home the defendant came with a man and moved their goods from the house. \* \* \* It was

his duty to go to re-establish a home for her, and to support her and their child. He did neither. He has been recreant to every duty of a husband and father."

I submit that the Vice-Chancellor has held petitioner to a much too rigid rule with respect to corroboration. He says that the testimony of petitioner must be *fully corroborated*. He apparently places the burden upon her of corroborating each item of her story by the testimony of independent witnesses. This is not the law.

*Foote v. Foote*, 71 N. J. E. 273;

*Rogers v. Rogers*, 89 N. J. E. 1;

*Orens v. Orens*, 88 N. J. E. 29;

*Robinson v. Robinson*, 83 N. J. E. 150;

*Meek v. Meek*, 92 N. J. E. 23;

*Young v. Young*, 94 N. J. E. 155;

*Wood v. Wood*, 3 N. J. Advance Reports, at page 759;

*Coe v. Coe*, 3 N. J. Advance Reports 1.

in which latter case Vice-Chancellor Backes said:

"It is contended that, though the petitioner be believed, a decree should be denied because the testimony is not corroborated in accordance with the rule in divorce cases. That rule requires that the truthfulness of petitioner's testimony be verified by other witnesses to the occurrences, or by the surrounding established circumstances. If they bear witness to *some* (Italics mine) of the material things sufficient to satisfy the conscience of the court that the petitioner's testimony as a whole is credible and worthy of belief, that is enough. *Lasker v. Lasker*, 91 N. J. E. 352; *Meek v. Meek*, 92 N. J. E. 23; *Orcutt v. Orcutt*, 94 N. J. E. 303, 119 Atl. 377, and *Smith v. Smith*, 124 Atl. 77 (N. J. Chanc.). Such corroboration is found in the testimony of the two daughters who, as already remarked, witnessed their father's conduct at home, and saw one of the assaults made on their mother. (Italics mine.)

And the Vice-Chancellor has, I submit, ignored the corroboration of petitioner's story which is found in the testimony of defendant himself and likewise, as bearing upon the truth of the respective stories, the probabilities, in view of circumstances admitted by defendant.

#### The Facts.

The wife knew the husband for four years prior to marriage. They were engaged for a year and a month (p. 27). Up until May 21, 1921, the husband owned the property, 182 Claremont avenue, Jersey City (p. 50). The sister and mother of the husband lived two houses away at 178 Claremont avenue, in a house owned by the mother (p. 29). On May 21, 1921, the husband conveyed the property, 182 Claremont avenue, to his sister. He says (p. 50) that, prior to the marriage, he spoke to his prospective wife and told her that his mother was sick; that his sister had had the "Flu" since January or February and was in danger of going into consumption and in no condition to work; that he would turn the property over to the sister so that she and the mother would have something to live on. He says that the prospective wife replied "all right" (p. 50). Petitioner says that about a week before the marriage the husband told her he *had* conveyed his home to his sister (p. 28). Before the marriage the husband gave a chattel mortgage on his furniture in 182 Claremont avenue to his sister to secure, as he says, a loan of \$120 (p. 75). He had an insurance policy which was never transferred to his wife (pp. 75, 76). He was employed, making \$35 a week (p. 76). The sister was working (p. 80) and she says that when she loaned the \$120 to the husband she in-

sisted on getting a chattel mortgage on the furniture (p. 80).

The marriage was once postponed, having been fixed for June, because the husband said his sister was ill (p. 29).

The husband testified that he wanted to postpone it at the time it actually took place, and he said that on September 3, 1921, he saw petitioner and her mother and

“I arrived at their house and told my wife that my mother was lying at home in an unconscious condition and that I would like to have the marriage ceremony postponed. She said to me ‘You have got to marry me today; if she lives with me one week.’ That is what she said” (p. 50).

Note the fact that they were to be married in June and that the husband made the transfer of the only property he had to the sister on May twenty-first.

The attitude of the husband toward the marriage is well expressed by him on pages 69, 70:

“Q Before you were married—you say that before you were married, the day before you were married, you came to Mrs. Schwarzwelder and wanted to make arrangements to adjourn the marriage ceremony? A I did not. I said the day of the marriage.

Q The day of the marriage? A Yes, sir. I told her that because my mother was ill at home and unconscious, I wanted to postpone it.

Q You didn’t have to get married, did you? A Practically so.

Q In other words, you were very easily led? A *I was easily led in that marriage, believe me.*”

After the marriage, the husband admits that every single morning and night he went to his mother’s house, staying, as he says, a very short

time in the morning and in the evening, in the early part of the fall, from seven to eight, and when the weather got colder from eight to nine (pp. 53, 54).

He also went to his mother's house on holidays. His story of Thanksgiving is told on page 55—

“A I went over to my mother's house and chopped wood. At three o'clock I had a headache, and I said to my mother: 'I don't want to go back to the house now because she is sleeping. So at five o'clock I went over and rang the bell, because it was impossible for me to get into my own home, because the door was always bolted against me. She came downstairs in a bath robe, and she said, 'Where were you?' I said: 'Why, to my mother's house.' 'What were you doing?' I said: '*I lay down on my old bed.*' She says, 'God damn you, isn't this bed good enough for you?' ”

The credit to be given any statements made by the husband is indicated by this piece of testimony. On page 55 he would have the Court believe that he went to his mother's house because his wife told him to go there, and yet, on page 56, not fifty words later, he would have the Court believe that when he returned from his mother's house his wife wanted to know where he had been.

His wife's story of the episode on Thanksgiving is found on page 21:

“A He came in and he said to me: 'What do you think where I have been this afternoon?' I said, 'I suppose talking to your mother and sister.' He said, 'No, I have been lying in my old bed. That is where I want to be. When you go to your mother's tonight I want you to make arrangements to stay there.' I said, 'I don't want to return to my mother.' He said, 'I don't want ever to see your face

again,' and he told me I didn't need to come back with him that night."

The husband's sister's story (pp. 80, 81) is that the husband came to the house every night and also on Sundays and holidays and that on Sundays he would stay two hours (p. 81).

The sister tells a story of having an alarm clock so placed as that the husband could see it and know how long he was staying (pp. 81, 82). The husband's attitude toward his wife is disclosed by his testimony on pages 71, 72:

"Q Mrs. Brown, your wife, was sick during that period, was she not? A She was not sick.

Q She was not sick? A No; she was not sick.

Q Didn't you tell Mrs. Brown to go to the doctor? A I told Mrs. Brown I would furnish a doctor if she was sick.

Q Didn't you tell her to go to a doctor, that she was not looking well? A I told her to go to a doctor. She told me she would not go to my doctor; she would go to her doctor; her mother was furnishing the doctor, but she would not go to my doctor.

Q To your knowledge, did she go to a doctor? A Certainly.

Q In other words, she was not feeling well during the latter period, just prior to the time she was forced to leave you? A She was not forced to leave me.

Q She was not really right up to the time that she did leave you? A She was shamming.

Q Shamming? A She was shamming. That is what she was doing. She was playing a game."

His attitude subsequent to the leaving is of importance. On page 73 he testified:

"Q You hated to see your wife go away?  
A Yes; I did.

Q If you hated to see her go, why didn't you go after her and try to bring her back?

A I believe that any woman that runs away once, wants to suit herself.

Q You didn't care whether she came back or not? A I thought the proper place to answer that question would be in court before competent witnesses; so I was willing to take her back and have been ever since.

Q You didn't go to her; you didn't make any offer to her? A I didn't go to her; no.

Q You didn't care whether she lived or died, did you? A I cared whether she lived or died, certainly.

Q How much money have you sent her since December 17, 1921? A Not a cent.

Q How did you expect your wife to get along and live, if you didn't send her any money? A She wanted to leave me and went freely. It was up to herself how she supported herself.

Q You never asked her to come back? A I never did."

Under examination by the Court, the husband said (p. 77):

*"By the Court.*

Q Why didn't you reply to this letter of November 13, 1923? A Because there was too many inaccuracies in it. She accused me that I was the one that ordered her from the place. To me the letter was a tissue of lies prepared by some able mind to entangle me in some way; so I simply didn't answer it, but if she wanted to talk to me about coming back, I was open at all times; she knew where to find me. If she wanted to come back, she could come back.

Q Why didn't you tell her that in reply to that letter? A I might have written something which my friend Mr. Nolan (solicitor for petitioner) might have used in court.

Q I want to know what explanation you can give for not writing your wife a letter

in reply to hers of November, 1923, telling her that she could come back? A I didn't think she was sincere."

The wife's story with respect to the length of time that the husband stayed at his mother's house is quite different from that of the husband. She said (p. 84):

"Q On Sundays did your husband go to see his mother? A We went to six o'clock mass. We got up pretty early and went to six o'clock mass. Then we returned and had breakfast about eight or half-past eight and about nine o'clock he would go in there and stay until twelve or twelve-thirty and come back for his dinner and after he would go back and spend the afternoon there and would come back home about five or five-thirty for supper, and after supper he would go over there again the same as he did every other evening."

And her story with respect to the family life other evenings is found on page 16:

"Q Would he remain home with you in the evening? A No, sir; he would not. He usually came in for dinner, a little after six. Well, dinner would take about half an hour, and he would probably go back to his mother's house every evening about seven o'clock, and on a few occasions—my brothers visited me occasionally—about once a week—and he would come in a little earlier than usual on those occasions. Other evenings, when there wasn't any one in the house, he would remain away until between nine and ten o'clock."

It is in the light of this admitted attitude of the husband toward the marriage and his respective obligations to his wife and to his mother and sister and his admitted conduct both before and subsequent to the separation, that the testimony of the parties as to what took place during the brief living together is to be considered.

After the marriage, on September 3, 1921, they went to Atlantic City and there remained one day, returning on September fourth to 182 Claremont avenue, Jersey City, the home which the husband had transferred to his sister (p. 52). The wife says that within a week or two after the marriage (p. 13) her husband began to tell her that he did not want to live with her any longer; that he wanted to go back to live with his mother and sister; that he should never have gotten married; that she should get out of the house (p. 13); that the mother and sister were the only ones who counted in his life and he wanted to give them the money he was giving his wife and did not want to support her; that she should go back and live with her mother; that his mother and sister would never forgive him for marrying her. He never took her to see his mother and sister, although they lived but two houses removed, until the end of October or early part of November (p. 14), and at that visit they told her that the husband should never have gotten married; that he should have remained home with them, and that she, the wife, should take in boarders (p. 15). The husband went out one evening and when he returned he told his wife that his mother and sister had disinherited him and to get back in their good graces he would have to get rid of her. He went to see his mother and sister every day and spent practically all of his leisure time there; would not even meet his wife after church (p. 17). On the evening of December 16th he told her that it was the last opportunity he was going to give her to get out and that if she stayed he would get rid of her in some way or another (p. 18); that he did not want her to be there when he came in and that he would gladly pay for the moving van. After this conversation he left her alone on that eve-

ning and went to his mother's and when he returned (p. 19) again told her that he wanted her to get out and to be quick about it.

She relates an incident when he talked to her in this manner on October 9th when his cousin was present and tells how she broke down and cried (p. 20).

She relates another incident on December 4th, on a Sunday, when a Miss Killburn was present, and tells how she broke down and told Miss Killburn about her troubles.

When he left on the morning of December 17th he again told her to get out. On December 17th she packed up and went home to her mother's (pp. 22, 23).

During the time that they lived together the husband's key to the house in which they resided, was left by him with his mother (p. 23). This is not denied.

The wife says (p. 24) that she commenced to write him in June, 1922, and received no replies. The husband denies the receipt of these letters, but admits that of the letter of November 13, 1923 (p. 87) (Exhibit P. 1). The wife kept no copies of the letters. She neither saw nor heard from her husband from the time she left except when she saw him in court. She says that her other letters were similar in purport to Exhibit P. 1 and that she wrote him to make *a home for her away from his people* (p. 36).

On page 32 the wife testifies to an occasion when Mr. Nolan, her attorney, came to the house in order to attempt to straighten the matter out, and she says that Brown upon that occasion told Mr. Nolan that he did not want to live with her and that he wanted to go back and live with his

mother and sister, and it is highly significant that Brown terminated the interview with Mr. Nolan, according to his own testimony, by stating, "Mr. Nolan, it is time for me to go over and visit my mother."

The wife relates an incident which took place on December 10th when her mother came to see Brown and she says that before he would talk to her mother he went out and got his mother and sister to come to the house, and then, in the presence of all of them, stated that he was going back to live with his mother (p. 35).

On page 41 she again says that the mother-in-law and sister-in-law upon the occasion when she was at the mother-in-law's house said that she, the wife, had to rent rooms (p. 41). She says on page 42 that her husband never brought all of his things to 182 Claremont avenue but left part of his clothing with his mother.

Petitioner is corroborated by Miss Killburn who testifies; that on the 4th of December she was present at the Brown house and was asked to stay to dinner and that she offered Mrs. Brown a piece of carpet which she had, whereupon Mrs. Brown broke down and told Miss Killburn that her husband was not treating her right; that she, Miss Killburn, turned to Brown and made some inquiry, whereupon he told her that he wanted his wife to get out and that he was going back to his mother and sister where he belonged and that he had left his clothes, or part of his clothes, there and that there was where he belonged; that in the course of the talk Mrs. Brown asked Brown where she would go and he replied that she could get out and do what she liked, go to her mother's or go where she liked.

Brown has a different version of what he said in the presence of Miss Killburn. He admits the occurrence; admits the talk about carpets and then he says (p. 62):

“At two o'clock, as Miss Killburn said about the carpets, my wife burst out crying and she said: ‘Ella, I don't know whether I can stand this man any longer. He is not treating me right.’ She turned around and said, ‘Do you deny the things I have said?’ Miss Killburn asked me whether it was so and I said it was not so, and I broke down and cried, and I said, ‘Ella, I have nothing further to say.’”

He testifies (p. 84) that he said:

“‘Ella, you seem to be an angel sent from God to straighten out this family. My wife has it into her head to leave me no matter what I do. She will not stay. She always wants to leave me.’ That is what I said to Miss Killburn.”

This testimony is highly improbable. It is conceded by the husband that it was the *wife* who burst out crying. Why? It is conceded by the husband that the wife said that her husband was not treating her right. Why? The husband's testimony that he broke down and cried and that he said, “Ella, I have nothing further to say” is not consistent. His apparent solicitude that this wife should remain with him, as expressed to Miss Killburn, is not consistent with his attitude of neglect during the time that they were living together or with his conduct after the separation. His denial that he told Miss Killburn that he wanted his wife to get out and that he was going home to live with his mother is in general terms (p. 63).

There is no interest shown in Miss Killburn and nothing to effect her credibility and no reason why she should deliberately falsely testify,

and Brown himself says he liked her (p. 62), and what Miss Killburn testified to is in harmony with what one would expect from the admitted circumstances.

Mrs. Brown is further corroborated by her mother who says that on December 10th she had a talk with Brown, having been told of the difficulties between the husband the wife by Mrs. Brown, and she testifies that before Brown would talk to her he went out and got his mother and sister. When the mother of Mrs. Brown got to the house Brown was at his mother's and when he returned and saw Mrs. Schwarzwaldler he went back and got his mother and sister in order to have them present at the interview. Mrs. Schwarzwaldler asked Brown what the trouble was and he said that he was going to live with his mother and sister. She asked him whether Mrs. Brown was not a good girl and he said that she *was* in every sense of the word. Mrs. Schwarzwaldler suggested that they live somewhere else and Brown replied that he was going back to his mother where he belonged (p. 47). Brown admits that there was such a talk but puts a different version upon what took place (p. 65). He says that the mother stated that he was not supporting the daughter and that he replied that the daughter had gotten into her head to leave him. He recited the continued abuse that the daughter was giving him. The mother stopped him and said:

"If it was me, I would have given you a whole lot more."

He also says that he spoke about his wife having promised to help out by letting out two rooms upstairs, to which the mother replied, "She will not do it. She has enough work to do" (pp. 65, 66).

The falsity of Brown's statement as to what took place is indicated by the statement which he puts in the mouth of the mother-in-law, "If it was me, I would have given you a whole lot more."

If this statement was made to what did it refer? Brown does not tell us. He does not give us any reason why Mrs. Brown should have broken down and cried when Miss Killburn was present nor does he give us any explanation of what would induce the mother to say that if she was the person involved she would have treated Brown more harshly than her daughter had. Something must have caused this. In the absence of any explanation from Brown we are forced to accept the explanation given by Mrs. Brown, Miss Killburn and Mrs. Brown's mother, which is that from the beginning of the marriage there was neglect upon the part of Brown, and he expressed the desire that the wife should get out and the intent upon his part to go back to his mother and sister. No other explanation is offered.

While Mrs. Schwarzwaldler is interested because she is the mother of petitioner, Brown says that he had never had any trouble with her (p. 70).

Brown's story is that immediately after the marriage petitioner told him that marriage was a different thing than she had pictured it and that she was going home to her mother; that this statement was made upon the night of the marriage (p. 51). Is it more likely that the wife, who, according to the husband, was *insistent upon the marriage*, should have made *this* statement or that the husband, *who was opposed to the marriage*, as he himself admits he wanted it postponed,

should have made the statement, as is alleged, that he was sorry he was married and wanted to go back and live with his mother and sister?

He then says that his wife called him names, presumably because he had given his property away (pp. 51, 52) although, in the same breath, he says that he had told his wife that he was going to deed the property to his mother and sister and that she had consented (p. 50). He says that after they came home they lived happily until on or about September 8th when he testifies that she said to him:

“ ‘Billy, don't you want to go home to your people?’ I said, ‘Edna, I am going to my mother's every night and every morning. You can go to your mother any part of the day or night, if you want, provided you are home for meal time.’ At other times I said to her: ‘Have you been down to your mother's today?’ She said: ‘No.’ I said, ‘By all means, go, as it is very lonesome here and you will need your mother's companionship in various ways.’ ”

So that, notwithstanding the fact that she wanted to leave him the first night of the marriage, they lived happily for five days and then *she* was the one who suggested that he should go and spend all his leisure time at his mother's. This is simply absurd. The story taken as a whole shows its absurdity. She is urging him to go to his mother's and he is urging her to go to her mother's because otherwise it would be very lonesome for her, and a few sentences later he puts in her mouth, when he is going to his mother's, the words: “Where are you going to—to your God damned family again?” This notwithstanding the fact that she had urged him to go to his mother's.

He admits (p. 54) that in October he took his wife down to his mother's, having told his mother and sister that his wife had attacked them, and that his sister questioned her and then he says she admitted that she had "God damned my mother and my family and used these curse words and she said she wouldn't do it any more," and that the sister said:

" 'See here, Edna, I want you to leave us out of your trouble.' She said, 'If you think that we are the cause of your trouble, we want Billy to stay out of here,' and my wife said, 'No.' She said, 'I would rather have him come here than have him go to some place else.' "

The husband has no hesitancy in one minute placing the wife in the position of urging his spending all his leisure time with his mother and sister, and the next minute placing her in the position of, to use his own language, "God damning his mother and sister." He pays no attention to the inconsistency of the position taken by him.

His story as to what took place on Thanksgiving Day corroborates the wife (pp. 55, 56). She had said that he went to his mother's house and spent the afternoon and when he returned he told her that *he had been lying in his old bed* and that when she went to her mother's that night he wanted her to make arrangements to stay there (p. 21). He admits that when he came home that afternoon he told her that he had been lying on his old bed. He tells an impossible story (p. 55) to account for his neglect of his wife on this holiday. He again says that the wife urged him to go, a position wholly inconsistent with what he says was the attitude of his wife towards his family.

He admits the visit by Mr. Nolan on November 29th (p. 57), and says that he first would not talk to Nolan, but finally told him, "I told him that in view of the continued abuse my wife was giving me and the cursing and swearing and being called a rotter and a skunk, there was nothing for him to talk to me about." And he says that the interview terminated by his assertion "Mr. Nolan, *it is time for me to go over and visit my mother*" (p. 58). Why did Mr. Nolan call upon him? Why did his mother-in-law call upon him? There is no explanation given.

He tells us (p. 59) that his wife from the very beginning threatened to leave and that this was almost continuous; that she said marriage was a different proposition than what she had figured it and that she was going back to her people. But if this were so all she had to do was to leave him. If she did not want to stay it was not necessary for her to have Mr. Nolan and her mother see Brown. On page 60 Brown testifies:

"Q When was the first time that she said she was going back to her people? A Some time I believe in October."

But, on page 51, he had testified:

"Q Was there any conversation after your marriage? A There was a little later. She told me that marriage was a different thing than she had pictured it and that she was going back home to her mother.

Q That was September 3rd? A That was the night of our marriage."

To say the least he is a careless swearer. On page 60 Brown testifies:

"Q Your wife testified that your sister or your mother said that she would have to take boarders? A That is not so."

But, on page 65, he testified as to the occasion when he talked with his mother-in-law:

“I also spoke about my wife having promised to help out by letting out two rooms upstairs.”

He denies that he told his wife to get out on December 16th and 17th but gives no explanation why she should have gone at that time (p. 66).

On page 67 he testifies:

“Q I asked you why you didn't go to see your wife after December 17th, when you came home and found she was gone? A I cannot answer that question. I don't know.”

The only explanation is, of course, that he wanted his wife to go and that her story as to his having ordered her to do so is correct.

He followed it up (p. 67):

“Q You could have tried to meet your wife somewhere? A Yes.

Q Why didn't you do that? A I cannot answer that. I don't know.”

He finally says, under examination by his counsel (pp. 68, 69), that the reason why he did not follow his wife up was because she told him that she hated and despised him.

He had, in the meantime, had time to think. His final explanation is that he did not go after her because he believed that any woman that runs away once, wants to suit herself, and he thought that the proper place to answer the question would be in court before competent witnesses.

His explanation for his failure to answer the letter of November 13th was that the letter was a tissue of lies and he therefore did not answer it. But there is a presumption that, when a letter of this kind is written to a person and he retains it without answering it, he acquiesces in what the letter contains.

His failure to answer the letter of November 13th and the absurd reason he gives for his failure is a clear indication as to what his attitude of mind was.

The manner in which he regarded his wife is also indicated by his testimony (p. 74):

“A My sister was the main support then of my mother when I left home; so I gave that piece of property to my sister. My wife agreed with me to live there; we were to live there six months, *to save her face* as we said; we were to live three months for nothing so that I could get on my feet and the fourth month we were to start paying \$40 a month rent.”

The sister corroborated Brown. She testified (p. 78) to having heard that Mrs. Brown was “God damning my mother and God damning me”; that she told her brother to bring his wife over; that Brown brought his wife over and the following took place:

“A I said to her: ‘Is it true that you God damned my mother and God damned me?’ She said, ‘Yes; I did.’ I said, ‘There is no cause for that.’ I said, ‘If you think we have anything to do with Billy, keep Billy out of here.’ She says, ‘No; I want Billy to come over here more than any other place.’”

That any such conversation took place with this woman of the temper as depicted by her husband it is impossible to conceive.

She testifies to the conversation between the mother of Mrs. Brown and Brown at which she and her mother were present. And her testimony is almost in *hac verba* with that of Brown. Notwithstanding her testimony as to Mrs. Brown’s God damning her, she insists (p. 80) that she has always been friendly with Mrs. Brown.

No other witnesses were produced. The wife (pp. 82, 83) denied that she had ever called her husband names or used the language attributed to her with respect to his mother and sister, but she says (p. 83):

“In fact, I asked him, I appealed to him in every way I thought possible; I asked him if he would not remember his marriage vows, and I tried to appeal to him so far as religion. I didn’t call him any names. I tried to appeal to his better nature.”

\* \* \* \* \*

“Q And did you request him to make a settlement with you so that you could get out and leave him? A No, sir. I did not want to leave him. I tried in every way, to get him to do what was right and treat me properly, but all he did was to put me out, and his sister and his whole family in fact.”

Mr. Nolan did not take the stand because the Vice-Chancellor did not think it ethical (p. 85).

The Vice-Chancellor held that if the wife separated from the husband for the reason which he gives (I can discover in the testimony no reason given by him) it was the duty of the husband to make some attempts at reconciliation and to attempt to induce her return but that such situation does not apply here because the wife commenced a suit for separate maintenance, and the Vice-Chancellor says:

“When a separation occurs between husband and wife, there is naturally hard feeling and a display of temper and anger on both sides, regardless of who is at fault. Whether Mr. Brown was right or wrong; whether or not he had a just grievance against his wife, he should have been given time in which to let his grievance subside and bring himself to a state of mind where he could realize that he ought to do something to effect a reconciliation; but before he had time to find himself, before he had time

to get his bearings, this suit for maintenance was commenced and the wife expressed a desire to litigate their differences, instead of trying to invite an amicable adjustment of the matrimonial troubles."

But this woman had been trying to adjust the differences during the entire time they were living together, the differences having started the night of the marriage, according to both participants, and, in an attempt to adjust the matter, Miss Killburn had intervened, she being described by Brown as an angel from Heaven; her mother and her lawyer had been brought in. If her story is correct, from the very beginning the husband expressed a desire to have nothing to do with her and to go back to his mother's and he had continuously ordered her out. The suit for maintenance was brought to enforce the obligations of the matrimonial relationship, not to sever them.

*Pinkinson v. Pinkinson*, 92 N. J. Eq. 669 at 672.

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The bringing of the suit interposed no obstacle whatever to the husband attempting to become reconciled, rather it afforded an immediate opportunity.

But be that as it may be, after that suit was determined, the husband made no attempt to become reconciled and his subsequent conduct indicates that he wanted nothing whatever to do with his wife.

Which story is the more probable? It was the husband who had once postponed the marriage and desired to postpone it again, and who said (p. 70) that he was practically forced into the marriage, not the wife. It was the husband who, in anticipation of the marriage, had transferred

the only piece of property he owned to his sister, and who, in anticipation of the marriage, had given a chattel mortgage for \$120 on his furniture to his sister. It was the husband whose mother and sister lived two doors removed, in a house owned by the mother, and who, after the marriage, every single evening spent all of his leisure time at the mother's home, and likewise, according to his own testimony, some part of every Sunday and holiday, and, again, according to his own testimony, on Thanksgiving all of the afternoon, up until 5 o'clock. It was the husband who, on Thanksgiving, returned from his mother's home and told his wife that he had been lying on his old bed. Is it likely that it was the wife who, on the night of the wedding, said that marriage was not what she anticipated and that she wanted to go home to her mother? It was the wife who broke down crying before Miss Killburn and who brought in her mother and her lawyer, Nolan, to interview the husband to attempt to get matters straightened out. The husband brought no one in. It was the wife who communicated with the husband after the separation. The husband did not reply. Is it likely that it was the wife, and not the husband, who desired to leave?

When we turn to the testimony we find that the wife tells a story consistent with probabilities and is corroborated by Miss Killburn, who is not interested, and whose credit is not affected, and whom the husband likes, and by the wife's mother, with whom the husband says he has never had any difficulty.

The husband tells a story not at all in accord with probabilities, inconsistent and contradictory in itself, and is corroborated with respect to two details only by his sister who, with her mother,

concededly, is the cause of a great deal of this difficulty but who, notwithstanding this, testifies that she has always been friendly with the wife.

I submit that this is far from being a case, as stated by the Vice-Chancellor, "in which the testimony on both sides is about equal."

### THE LAW AND ARGUMENT.

I have already referred to those cases holding that whether a defendant is a deserter is a matter of intent and this notwithstanding the fact that the original separation may have been by acquiescence of the petitioner and that the petitioner may have been the one who actually left.

*Footo v. Footo*, 71 N. J. E. 273, at page 279;

*Hague v. Hague*, 85 N. J. E. 537;

*Kelly v. Kelly*, 95 N. J. E. 246.

And I have also referred to the case of *Thomas v. Thomas*, 74 Atl. 125. In that case the wife left the husband for a cause which did not justify her in law. The present Chancellor, then Vice-Chancellor, held that the subsequent conduct of the defendant made him an absolute deserter of his wife. He based his conclusion upon the fact that after the wife had gone, the husband stated "leave her go" and seemed to be pleased after she had gone. The husband never visited the wife and child of the marriage nor sent them any word nor any money.

The Vice-Chancellor, quoting from the opinion of this Court in *Footo v. Footo*, 71 N. J. E. 273, said, at page 128:

"This conduct (conduct subsequent to the separation) is what constitutes the actual desertion of the complainant on the part of the defendant. When the intention to desert

became fixed in the mind of the defendant, the complainant has been unable to say; but his actions, and the corroborative circumstances under which this action took place, can leave no doubt that such a determination was reached long prior to the two years before the filing of the bill in this cause. Now, I have no difficulty in finding that when the defendant went to his house and removed his goods after his wife had left, that he then intended, if he had not done so before, to live separate and apart from his wife, to never resume marital relations with her, or support her or the child about to be born to him—in other words, to desert her.”

The case at bar is, in its facts, much stronger than *Thomas v. Thomas* for in this case the testimony is conclusive that the husband ordered the wife out of the house. He made it so uncomfortable for her, neglected her in so many ways, as that there was nothing for her to do but leave. She was the person who left but she was not the deserter. *The deserting mind was that of the husband and his subsequent conduct shows it.* And that this conduct and the probabilities of the case may be considered as corroboration was expressly stated by this Court in *Foote v. Foote*, 71 N. J. E. 273, at page 280:

“This confirms the view that it is not the testimony of other witnesses that is requisite as corroborative evidence. If the circumstances of the case, as shown by the expressions and conduct of the defendant, together with letters of the parties, all corroborate the testimony of the complainant, the case is complete.”

This case is analogous to the mother-in-law cases. As a matter of fact, during the whole of the short living together of the parties, from September 3rd to December 17th, the husband was a deserter.

As Vice-Chancellor Garrison said in *Rector v. Rector*, 78 N. J. E. 386, at page 405, it has been held in this State that a man is a deserter even if he provide his wife with all the necessities of life.

In this case, it appears that every minute of the leisure time of defendant was spent with his mother and sister. He placed his obligations to his mother and sister above any duty he owed to his wife. While he did not compel his wife to live in the same house with his mother and sister what he did do makes the "mother-in-law" cases applicable. He took her to live within two doors of her mother-in-law and sister-in-law. The house in which she lived was owned by the sister, transferred to her in anticipation of the marriage; the key to the house was possessed by the mother-in-law. The very furniture used by the husband and wife was subject to a chattel mortgage for \$120 held by the sister-in-law. The husband had left a large part of his clothes at his mother's. He came home after spending the entire afternoon of a holiday (Thanksgiving) at his mother's and told his wife that he *had been lying on his old bed*. The wife is brought down to her mother-in-law's house and put "upon the carpet" for some remarks it is alleged by the husband she made with respect to his mother and sister. It is suggested by the mother and sister of defendant that the wife take boarders or rent rooms. It is no wonder that the wife wrote in Exhibit P. 1 (p. 87):

"I feel certain that if you will provide a home for me, *separate and apart from your family*, we can be very happy together."

The "mother-in-law" cases are illustrated by:

*Fraser v. Fraser*, 87 N. J. E. 633;

*Horwarth v. Horwarth*, 91 Eq. 435;

*Kennedy v. Kennedy*, 112 Atl. 492 (not officially reported);

*Hahn v. Hahn*, 93 N. J. Eq. 296.

In all of these cases the wife left the home because of difficulty with a mother-in-law and it was held that the desertion was that of the husband.

As Vice-Chancellor Buchanan said in *Horwarth v. Horwarth*, 91 N. J. E. 435, at page 439;

“I am entirely convinced therefore that the father and mother were continuously and actively hostile to petitioner; that the son was influenced in the same behalf by his parents. \* \* \*”

The wife having left the home the Vice-Chancellor held it to be actual desertion by the husband.

In *Kennedy v. Kennedy*, 112 Atl. 492 (not officially reported), Vice-Chancellor Leaming, in speaking of a duty of a husband whose wife has left the home where the mother-in-law resided, said:

“Mr. Kennedy’s legal duty was to seek out his wife if it required searching night and day, which it did not. He could have found her if he had wanted to; unquestionably he could. It was his duty to seek her out and say to her: ‘We can get along happily together, I know, if we live by ourselves. Now, we never have had a chance to try. Come with me, I will get you the best home that I can provide; I will do everything that my finances will permit in the way of making you happy in that home. Come with me and I will make you happy.’”

While this wife was not obliged to live with the mother-in-law she was obliged to live under such circumstances as that she might just as well have been so living, and if the mother-in-law had

been living in the same house, the wife would have had the advantage, which she did not enjoy in the case at bar, of at least having her husband be with her during some part of his leisure time.

Notwithstanding the fact that there was no obligation whatever upon the wife to attempt to terminate the separation.

*Hahn v. Hahn*, 93 N. J. E. 296;

*Osborne v. Osborne*, 44 N. J. E. 257-263;

*Sergent v. Sergent*, 36 N. J. E. 644;

*Blatt v. Blatt*, 2 N. J. Misc. 765;

*Kelly v. Kelly*, 95 N. J. E. 246.

the wife did make attempts to do so, writing letters as early as June, 1922, one of which is in evidence, Exhibit P. 1, written November 13, 1923 (p. 87), and met nothing but silence upon the part of her husband.

Such conduct upon his part is corroborative of his intent at the time she left on December 17, 1921, to desert her.

It is respectfully submitted that the decree should be reversed and the record remitted with directions to enter a decree for divorce in favor of the petitioner upon her petition.

Respectfully submitted,

MERRITT LANE,  
Of Counsel with Appellant.

EZRA L. NOLAN,  
Solicitor for Appellant.

