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TESTIMONY.

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Honore Collins Gaffney,	
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Notice of Appeal.

IN CHANCERY OF NEW JERSEY

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

On Petition
for Divorce.

10

The petitioner, Walter R. Gaffney, hereby appeals from so much of the final decree made in the above entitled cause made on May 14, 1929, by the Chancellor on the advice of Hon. Maja Leon Berry, Vice Chancellor, as orders, adjudges and decrees "that the petitioner is not entitled to the relief prayed for and the petition be and the same is hereby dismissed," to the Court of Errors and Appeals in the last Resort In All Causes.

20

Dated, August 14, 1929.

PIERSON, SCHROEDER & BRAND,
Solicitors of the Petitioner.

30

THOMAS L. HANSON,
of Counsel with Petitioner.

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

THOMAS L. HANSON,
of Counsel with Petitioner.

40

Petition of Appeal.
Filed Sept 9, 1929.
 NEW JERSEY COURT OF ERRORS AND
 APPEALS.

10	<p style="text-align: center;">WALTER R. GAFFNEY, Petitioner-Appellant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">HONORE COLLINS GAFFNEY, Defendant-Appellee.</p>	} On Appeal from the Court of Chancery.
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To the Honorable, The Court of Errors and Appeals in the Last Resort In All Causes:

20 The petition of Walter R. Gaffney, the appellant in the above entitled cause, respectfully shows that:

30 1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date May 14, 1929, in a certain cause in said Court of Chancery, wherein the said Walter R. Gaffney was petitioner and said

30 Honore Collins Gaffney was defendant, in this respect, to wit, that the said decree adjudges "that the petitioner is not entitled to the relief prayed for and the petition be and the same is hereby dismissed."

40 2. And petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that (a) the decree was against the weight of the evidence, (b) petitioner was entitled to a de-

Answer to Petition of Appeal.

eree in his favor, he having proved sufficient facts to constitute a cause of action, in that petitioner established the fact that defendant wilfully, obstinately and continuedly, deserted the petitioner for over two years prior to the time the action accrued; (c) petitioner proved all the necessary facts to warrant a decree for divorce in his favor whereas the court decreed the petition should be dismissed.

10

Petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

PIERSON, SCHROEDER & BRAND,
Solicitors for Appellant.

20

THOMAS L. HANSON,
of Counsel with Appellant.

Answer to Petition of Appeal.
Filed Sept. 16, 1929.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

WALTER R. GAFFNEY,
Petitioner-Appellant,

v.

HONORE COLLINS GAFFNEY,
Defendant-Appellee.

30

On Appeal
from the
Court of
Chancery.

The answer of Honore Collins Gaffney, the above named appellee to the petition of appeal of Walter R. Gaffney, the above named appellant.

40

*Consent Extending Time to Argue to
February 1930 Term.*

10 This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was on May 14th, 1929, made and entered in the Court of Chancery in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to law and equity, and she prays that the same may be affirmed with costs to be taxed in favor of this appellee.

20 THOMAS McNULTY,
Solicitor for and of Counsel with Appellee.

**Consent Extending Time to Argue to
February 1930 Term.**

Filed Oct 7, 1929.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

30 On Appeal
from the
Court of
Chancery.

<p style="text-align: center;">WALTER R. GAFFNEY, Petitioner-Appellant, and HONORE COLLINS GAFFNEY, Defendant-Appellee.</p>	}	
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40 It is hereby consented that the argument on the appeal of the above entitled cause, be and the same

Citation.

is hereby extended until the February 1930 term of the Court of Errors and Appeals and that the petitioner-appellant's time to file his case on appeal be postponed until Dec. 15, 1929.

PIERSON, SCHROEDER & BRAND,
Solicitors of Petitioner-Appellant. 10

THOMAS McNULTY,
Solicitor of Defendant-Appellee.

Citation.

NEW JERSEY, to wit: The State of New Jersey to
Honore Collins Gaffney, GREETING: 20

You are hereby cited to answer the petition of Walter R. Gaffney, a copy of which petition is herewith served upon you, by filing your answer in writing in the office of the Clerk of the Court of Chancery at Trenton, within twenty days after the 17th day of March, 1928; and in default of your so doing such order or decree will be made against you as the court shall think equitable and just.

WITNESS, his Honor Edwin Robert Walker, 30
Chancellor of our said State, at Trenton, the 7th day of March, 1928.

THOMAS BARBER,
Clerk.

PIERSON, SCHROEDER & BRAND,
Solicitors.

Petition,
Filed March 6, 1928
IN CHANCERY OF NEW JERSEY.

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

10 The petition of Walter R. Gaffney, of the Township of Lyndhurst, in the County of Bergen and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife Honore Collins Gaffney on the 23rd day of April, 1910, by Father Wallace, a Roman Catholic Priest of St. Peter's Church in the City of Jersey City, in the County of Hudson and State of New Jersey.

20 2. Petitioner and defendant cohabited after their said marriage until the month of December, 1925, when said defendant deserted him and 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 was a bona fide resident of this state, having his permanent home in the Township of Lyndhurst, in the County of Bergen and State of New Jersey, when 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 residing continuously in the said Township of Lyndhurst, in the County of Bergen and State of New Jersey.

4. No children were born of the marriage aforesaid.

40 Your petitioner prays that the marriage between your petitioner and the defendant may be dis-

Petition.

solved 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 just.

And your petitioner will ever pray etc.

PIERSON, SCHROEDER & BRAND,
Solicitors of Petitioner.

10

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

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

20

WALTER R. GAFFNEY.

Sworn and subscribed to before
me this 5th day of March, 1928.

HILMA E. PIERSON,
Notary Public of New Jersey.

30

I served this citation on the within named defendant by exhibiting the same to her and delivering to her personally a copy thereof, together with a certified copy of the petition therein mentioned.

JOHN J. COPPINGER,
Sheriff of Hudson County.
by THOMAS KINKEAD,
Special Deputy Sheriff.

Dated, March 10, 1928.

40

Affidavit of Isidor H. Brand.
IN CHANCERY OF NEW JERSEY.

	Between WALTER R. GAFFNEY, Petitioner, 10 and HONORE COLLINS GAFFNEY, Defendant.	}	On Petition for Divorce.
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State of New Jersey, } ss. :
County of Hudson, }

20 Isidor H. Brand, of full age, being duly sworn according to law on his oath deposes and says that he is one of the solicitors of the petitioner and the person actually entrusted with the conduct and management of this cause; that before delivery of process to the sheriff, he made diligent inquiry respecting defendant's age, residence and occupation; that such inquiry was made by him personally of Walter R. Gaffney, the petitioner, and that said petitioner informed deponent of the facts stated in the written description, a copy of which is hereto
30 delivered to the sheriff with the citation and certified copy of the petition.

ISIDOR H. BRAND.

Sworn and subscribed to before me
this 9th day of March, 1928.

HILMA E. PIERSON,
Notary Public of New Jersey.

A true copy.

40 FERD GARRETSON,
Clerk.

Affidavit of Walter R. Gaffney.

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

Walter R. Gaffney, of full age, being duly sworn according to law on his oath deposes and says:

I am the petitioner in the above entitled cause named; that before delivery of process to the sheriff I made diligent inquiry respecting defendant's age, residence and occupation, in fact I personally went to her home during the month of February, 1928, for the purpose of inducing her to return to me. I find that she is living at 146 Sussex Street, Jersey City, Hudson County, New Jersey and that she is keeping house. I conveyed the information to Isidor H. Brand, one of my solicitors, whose affidavit is hereto annexed.

WALTER R. GAFFNEY.

Sworn and subscribed to before me
 this 9th day of March, 1928.

HILMA E. PIERSON,
 Notary Public of New Jersey.

A true copy.

FERD GARRETSON,
 Clerk.

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Description.

Filed March 12, 1928
IN CHANCERY OF NEW JERSEY.

10	Between WALTER R. GAFFNEY, Petitioner, and HONORE COLLINS GAFFNEY, Defendant.	}	On Petition for Divorce.
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Sir:

20 With the citation and certified copy of petition
in the above entitled cause, I herewith deliver to
you the following description of Honore Collins
Gaffney the defendant upon whom service and pro-
cess is to be made:

Age: 44.

Residence: 146 Sussex St., Jersey City, N. J.

Occupation: Housekeeper.

Respectfully,

30 PIERSON, SCHROEDER & BRAND,
Solicitors of Petitioner.

Dated, March 9th, 1928.

A true copy.

FERD GARRETSON,
Clerk.

home drunk, charged that her family was running his home, insulted this defendant by telling her that her mother had not been married to her father and charged her with giving money to her deceased brother to induce him not to tell petitioner of her ante-nuptial conduct; upbraided, insulted, abused and otherwise found fault with defendant. None of the charges made by petitioner had for their support the slightest foundation in fact. Because of the petitioner's conduct toward her she was driven from their home at 152 Page Street, Lyndhurst, New Jersey. Subsequently and in or about April, 1925, petitioner requested defendant to return and assured her that if she would resume cohabitation with him he would treat her as a just man and husband. Thereupon defendant returned and resumed marital relations with the petitioner. In December, 1925, petitioner renewed the charges which he had theretofore made against her and her family, for about a week he became sullen and morose and refused to converse with the defendant except to abuse and ill-treat her.

By reason of which extreme cruelty and abuse, the defendant feared for her safety; her health became impaired and she was no longer able to discharge her duties as defendant's wife through such fear, anguish and discomfort, and therefore did, on or about the 22nd day of December, 1925, leave petitioner's house and take up her residence at 146 Sussex Street, Jersey City, New Jersey, where she has ever since lived apart from the petitioner who has never given defendant any assurance upon which she can rely that if defendant would resume cohabitation with petitioner he would treat defendant as a just man and husband, and has wholly failed to provide for her support.

THOMAS McNULTY,
Solicitor for Defendant.

Notice.

Filed June 25, 1928.
IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

On Petition
for Divorce.

10

To: Messrs. Pierson, Schroeder & Brand,
Solicitors of Petitioner.

Please Take Notice that on Monday, June 11th,
1928, at 10 o'clock in the forenoon (Daylight Sav-
ing Time), or as soon thereafter as counsel can
be heard, I shall apply to the Chancellor at the
Chancery Chambers in Jersey City, for an order
requiring the petitioner to pay his wife, Honore
Collins Gaffney, the above named defendant, proper
allowance for her support and maintenance pend-
ing this suit and also a reasonable sum for counsel
fees to enable her to defend the said suit. And
annexed hereto and served upon you herewith are
copies of the petition and affidavit upon which said
application will be made.

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Dated, June 5th, 1928.

THOMAS McNULTY,
Solicitor of Defendant.

40

Affidavit of Honore Collins Gaffney.

5. No children were born of said marriage.

6. Defendant is informed and believes that her husband is the owner of a one-family house consisting of six rooms and bath, known as 152 Page Avenue, Lyndhurst, New Jersey, worth upwards of \$7,000.00; and that the said property is unencumbered; that he is possessed of government bonds of \$2,000.00, and has on deposit to his credit in the Provident Institution for Savings the sum of \$5,000.00, and is in receipt of a salary of \$90.00 per week from the Chemical Specialties Company of Jersey City. And this petitioner says that her husband's means are amply sufficient for him to raise and pay such sums as may be necessary for the purposes aforesaid.

10

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

20

And your petitioner will ever pray, etc.

Solicitor of Defendant. 30

Affidavit of Honore Collins Gaffney.

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

Honore Collins Gaffney, the above named petitioner, being duly sworn according to law upon her oath deposes and says:

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Affidavit of Honore Collins Gaffney.

1. I have read the foregoing petition and know the contents thereof and the same is true.

10 2. In particular I say that the charge made by my husband against me in his petition filed in this cause is false and untrue. I specifically deny it to be true that I wilfully, continuedly and obstinately deserted the petitioner as alleged in the petition filed by my husband, Walter R. Gaffney, in this cause.

20 3. My husband and I were married April 23, 1910, and cohabited as husband and wife at various places in Jersey City. Petitioner treated me kindly and maintained and supported me. Several years ago petitioner purchased a house in Lyndhurst, No. 152 Page Avenue, where we took up our residence.

30 4. On Christmas Eve, of 1924, my husband came home drunk and began to insult and abuse me. He charged that my family was running his home; said that my mother and father had not been married and charged me with giving money to my deceased brother to induce him not to divulge my antenuptial incontinence, and otherwise upbraided, insulted, abused and found fault with me. None of the charges made by my husband against me had for their support the slightest foundation in fact. I was so deeply affected by this cruel and unjustifiable conduct that I was obliged to leave our home on Christmas Eve.

40 5. Subsequently and in or about April, 1925, my husband requested me to return and assured me that if I would resume cohabitation with him he would treat me as a just man and husband, and relying upon this promise I returned to him and resumed marital relations with him.

Affidavit of Honore Collins Gaffney.

6. In December, 1925, petitioner renewed the charges which he had made against me and my family, as aforesaid, and for about a week he became sullen and morose and refused to converse with me except to abuse and ill-treat me. I informed him that I could no longer withstand his conduct and that I must leave him. He said, "I know the law and I won't tell you to get out," and "I don't have to live with a barren woman." When I was leaving, three days before Christmas, I told him that the key would be under the door. He said, "All right." 10

7. Since December 22, 1925, I have continuously lived at 146 Sussex Street, Jersey City, New Jersey. My husband, the petitioner, during all of this time was and is employed by the Chemical Specialties Company, 207 Van Vorst Street, Jersey City, New Jersey, and during business hours my ingress and egress to and from said residence has been in full view of petitioner. During the month of March, 1926, at about 5 P. M. my husband passed me by without any word or sign of recognition, Shortly thereafter, and on Good Friday, 1926, at about 5 P. M. I again met my husband and he again passed me by with no word or sign of recognition. On this latter occasion I was accompanied by my sister-in-law, Delia Collins. Despite our proximity and the ease of communication, the petitioner has never sought me out or made any bona fide effort to induce me to return to him as I was at all times ready and willing to do if given assurance upon which I could rely that he would treat me as a just man and husband. However, on one occasion he appeared at my home with a stranger who he said he brought along for a witness and demanded that I return to him. 20
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Affidavit of Honore Collins Gaffney.

8. On February 20, 1928, just two weeks prior to the institution of this suit I received a letter from my husband in which he says, "You know what caused our trouble. You would liked to have brought up a family, but, unfortunately you could not do so and this fact you concealed from me at the time you were married." This indicated to me that my husband was not acting in good faith and did not care to resume marital relations with me as a just man and husband.

9. My husband is the owner of a one-family house consisting of six rooms and bath, known as No. 152 Page Avenue, Lyndhurst, New Jersey. He paid about \$6,200 for it, and has since made improvements. The general neighborhood has also greatly improved since its purchase and it is now worth upwards of \$7,000. The property is unencumbered. He is also possessed of Government bonds of \$2,000 and has on deposit to his credit in the Provident Institution for Savings upwards of \$5,000, and is in receipt of a salary from the Chemical Specialties Company, 207 Van Vorst Street, Jersey City, as I am informed and believe of \$90.00 per week. Since our separation in December, 1925, I understand that he has purchased a new automobile.

10. My husband's means are amply sufficient for him to raise and pay such sums as may be necessary for the purposes aforesaid.

Sworn and subscribed to before
me this 4th day of April, 1928.

40 Joseph P. Ferris
Notary Public of
New Jersey.

Mrs Nora Gaffney
Honore Collins Gaffney

Affidavit of George Garing.

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

George Garing, being duly sworn according to law upon his oath deposes and says:

1. I am nineteen years of age and a nephew of the petitioner and defendant. My brother John, 17 years of age, and I boarded with the petitioner and defendant at Jersey City and subsequently at Lyndhurst, in all a period of about seven years. We left the petitioner's home at 152 Page Avenue with our aunt on December 22, 1925, and we three now live together at 146 Sussex Street, Jersey City. 10

2. I have had no quarrels with the petitioner. I obeyed and respected him and so far as I know he never had any cause to complain about me or my brother. 20

3. On Christmas Eve, 1924, my uncle, Walter R. Gaffney the petitioner in this cause, came home drunk and upbraided his wife, claiming that her relatives were running his house. He made life so uncomfortable for her that she was obliged to leave him. My brother and I accompanied her. In April 1925 we returned with her to Lyndhurst. Things ran rather smoothly until December 1925, when about two weeks before Christmas my uncle became very sulky, and reiterated the things he said previously. He said that her relatives (referring to her brother and his wife and her mother, who is now dead) were running his house. The fact is, however, that her relatives rarely came to visit and my aunt was an industrious, home loving 30

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Affidavit of George Garing.

woman who did all the work of the house including the washing and seldom went out. I heard the petitioner say to his wife that her mother and father were never married.

10 4. When he persisted in abusing and insulting his wife, she told him that she could stand it no longer and would have to leave him. He said, "I know the law. I am not putting you out." He also said: "I don't have to live with a woman that can't have any children." On December 22, 1925, we packed and left. We went to live with my uncle and aunt, John and Delia Collins, at No. 146 Sussex Street, Jersey City. My father had rooms in the same house. We moved into his rooms and he boarded out. We have lived there ever since.

20 5. Petitioner, Walter R. Gaffney, is employed by the Chemical Specialties Company, 207 Van Vorst Street, Jersey City, just across the street from where we live, and we pass in and out of our house within his view. I have frequently met him at lunch time and on Saturday afternoons. We exchange hellos, but have had no further conversation.

30 6. I heard my uncle say on several occasions that the house at Lyndhurst, No. 152 Page Avenue, was worth \$6,300 or \$6,500 when he bought it. The neighborhood has since been built up, streets graded and macadamized, sewers laid. My uncle and aunt, my brother and I all worked for months removing sand from the lot and refilling it with dirt, and in setting hedges around the house. The general neighborhood, too, has since improved.

40 7. My aunt was a very thrifty woman and helped my uncle save considerable money. This I know of

Answering Affidavit of Walter R. Gaffney.

my own knowledge, for either my brother or myself would regularly make weekly deposits of the savings in the bank. During the period from April 1925 to December 1925, my uncle through the help of his wife deposited \$35.00 per week.

8. I have never seen the petitioner at our house at No. 146 Sussex Street, nor have I seen the petitioner and defendant together since we left Lyndhurst in December 1925.

10

GEORGE R. GARING.

Sworn and subscribed to before me
this 5th day of June, 1928.

IRENE WALSH,
Notary Public of New Jersey.

20

Answering Affidavit of Walter R. Gaffney.

Filed June 25, 1928.
IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

On Petition
for Divorce

On Petition
for Alimony
Pendente Lite.

30

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

Walter R. Gaffney, of full age, being duly sworn according to law upon his oath deposes and says that:

40

Answering Affidavit of Walter R. Gaffney.

1. I am the petitioner in the above suit.

2. It is true that I have filed a petition against my said wife Honore Collins Gaffney for divorce and that she has been served with process of citation and has answered denying the allegations of
10 the petition.

3. It is not true that the allegations contained in said petition are untrue. My wife has deserted me as set forth in my petition. It is not true that the defendant was forced to leave me December 22, 1925 or at any other time. I have not supported the petitioner since she deserted me but have always been willing to do so if she would live with me as my wife and accept my support, and I have
20 at all times since she left me maintained a suitable home for that purpose, being the premises known as No. 152 Page Avenue, Lyndhurst, New Jersey, referred to in her petition and affidavit. It is not true that my said wife is solely destitute of means of support but she has ample means of support and has had ever since she left me in December 1925.

4. The house at 152 Page Ave., Lyndhurst, New Jersey, referred to in the petition and affidavit of
30 my wife, is owned by us together. Ever since my wife left me I have kept it and furnished a home in it which was always open to her and to which I wished her to come and live with me.

5. It is true that I have some money as set forth in the petition and affidavits but it is not true that I am in receipt of a salary of \$90.00 per week. I am only getting \$65.00 a week from the Chemical
40 Specialties Company by which I am employed. I get no other income for my labor from that com-

Answering Affidavit of Walter R. Gaffney.

pany, I have no interest in it except as an employee.

6. It is not true that on Christmas Eve 1924, I came home drunk and insulted and abused my wife. I never charged her that her family was running the house or told her that her father and mother had never been married or made any accusations that she had given money to her deceased brother not to divulge any antenuptial incontinence. We did, however, at that time have some disagreement as I wished to take a little vacation as I had been working very hard and needed a rest. She objected to my taking a vacation. The discussion about this vacation began sometime before Christmas 1924 and on Christmas Day of that year she packed up her things and left the house. There was living in my home at that time two nephews of my wife, children of a deceased sister of hers. She took them with her. She then told me that she was going to her mother's house and was not coming back. She said "Don't come after me because I won't come back to you." About two months after that her mother died and I attended her mother's funeral and after the funeral I brought her back home. She stayed a week in the house and left again stating that she could not live without her nephews, she having returned without the children. After she had decided to leave me again she became quarrelsome, her conduct resulted in a quarrel after which she left again saying she was going back to her brother's house. She stayed away then for about a month and a half. I wrote her several times to come back and finally induced her to come back again telling her that if she wanted to come back and bring the boys she was welcome. She then came back with the boys and

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Answering Affidavit of Walter R. Gaffney.

remained until December 1925. During this time things went along very well.

10 7. In December 1925, my wife's conduct induced another quarrel and she told me in that month that she was going to leave and was going to take the boys with her and go back to live in her brother's house, that she could not stand me any longer and that I was not to go after her because she was through with me and the sooner she got through with me the better. Since then I have always maintained a home and have been always ready and willing to have my wife come back to live with me but she has refused to do so. I have passed her a number of times on the street but she would never permit me to talk to her.

20 8. About February 27th of this year in company with one Oscar Marino, who works with me I went to see my wife and in his presence I asked her to return to me as the house was still kept intact. She said she did not intend to return to me, she did not need me and that she would come back to me when she needed me.

30 9. My wife and I were living at one time in an engineer's department which was furnished by B. P. Ducas Company, 207 Van Vorst Street, Jersey City, where I was employed as engineer. I lived there eight years. My wife had taken in two children of a deceased sister, one was then seven and the other nine years of age respectively. I had to move from this place because the company would not have children there as they were afraid they would get hurt. I then took up an apartment at 136 Woodlawn Ave., Jersey City, and lived there
40 from September 1922 to June 1923 when I bought

Answering Affidavit of Walter R. Gaffney.

the house above referred to in Lyndhurst and we lived there except for the occasions when she had previously left me up to December 1925 when she finally left me.

10. After my wife left me she went to live with a brother and his wife John and Delia Collins at No. 146 Sussex Street, Jersey City. She has lived there with her two nephews ever since. She has kept house and the children are both working and she has had ample means provided for her support ever since she left me. 10

11. My wife has never made any request for support since she left me. She has no children and would be amply able to support herself if she were not keeping house and being supported by these nephews. 20

12. I kept and supported these nephews from the time they came to live with us until my wife finally left me with them, except for such periods of time she had been away with them before that.

13. Our trouble actually began after we were married when we attempted to cohabit. She evidently had some physical deformity which prevented her from having intercourse. After we lived together for a short space of time I asked her what the trouble was and she finally admitted that she could not have any children. I repeatedly requested her to consult a physician to ascertain whether there was a possibility of curing her condition as I was anxious to raise a family and her answer was that if it was God's will that she was to have no children she did not intend to change the situation. We never had contact and there never was any penetration. Although we have been mar- 30 40

Answering Affidavit of Walter R. Gaffney.

ried 18 years, no children have been born as the result of our marriage.

10 14. After we would quarrel my wife would become reticent and would not converse with me for months at a time. In the year 1924, I was earning \$60.00 a week and I gave her \$50.00 for the house. The quarrel which we had prior to Christmas of 1924, was regarding children and about my contemplated vacation and every time we quarreled it finally ended by reverting to the same question which arose immediately after our marriage and that is, of her not being able to bear children and not properly having intercourse and about her constant refusal to consult physicians regarding her condition and ascertain the reason why she could
20 not bear children, which she always refused to do.

15. Constant arguments with my wife were impairing my health and I had to consult a physician and was advised that if I did not stop worrying I would suffer a nervous break-down. During the month of December 1925, I consulted my physician who advised me to purchase an abdominal belt because of my nervous condition my stomach became affected and the doctor thought that might
30 relieve my pain. When I brought it home my wife commented on it as soon as she saw it intimating that it cost a lot of money. When I told her that I would have to have complete rest for a while she immediately became grouchy. I could not understand why she assumed such an attitude as I was giving her practically all the money I was earning and never questioned her about any of it but she seemed to have been lavishing her affection upon the boys and had evidently lost all affection
40 for me. She seemed to be living for the boys only.

Answering Affidavit of Walter R. Gaffney.

She never cared whether I desired to have intercourse or not, she knew she could not cohabit with me properly and she would never consult a physician and never cared whether I was satisfied or not. I do not know whether the incapability on the part of my wife to have sexual intercourse was the result of any malformation of the sexual organs but my repeated requests that she undergo a physical examination were refused by her. In fact two years prior to the time that she left me the first time in 1924, she had confided to my sister and told my sister that she knew before she was married that she could never bear children. 10

16. My wife can read very little, and it being my wish that the boys be sent to a parochial school they attended at St. Peter's School at Jersey City and I helped them with the study of catechism at home after I returned from my employment. 20

17. I did not attempt immediately to make overtures to my wife to return to me after she had left me in December 1925, because I thought it was a repetition of what she had done the previous year but after she had been away for about a month or two I began to correspond with her but never received any reply. The boys have never paid me a visit although I had been supporting them since they were 7 and 9 years respectively and it was through my efforts they were educated and able to secure good positions. 30

18. My wife has never at any time made any attempt to return to the house which I have kept intact ever since she has gone. It is difficult for me to maintain a house without any help.

19. I was never intoxicated and never insulted or abused my wife. Ever since the boys came into 40

the house to live with us the affection of my wife changed. She seems to be taken up with them and began to lose her affection for me. Not having children of her own she gave all her attention to these boys.

- 10 20. It is untrue that my wife, when she returned in April 1925 resumed marital relations with me as such was impossible as we could not have intercourse. I at no time told her that "I know the law and won't tell you to get out" and that "I don't have to live with a barren woman." What did happen was just before she left, she said she was glad that she did not have any children from me as I could never be the father of children as good as the two nephews who were living with her. What I did say in reply was "You could not have
- 20 any children any way because you are a barren woman." I never ill treated my wife and at no time committed any acts of cruelty. She had no cause whatsoever to leave the house.

21. I do not know the cause of my wife's desertion or her reasons for leaving. I have always supported her, maintained the house and given her practically all the money I earned. I never remonstrated with her regarding her bringing the boys
- 30 into the house and as I stated in previous paragraphs I helped the boys with their school lessons at night after I had returned from my work and was always willing to see that they would receive a good education. I never questioned my wife regarding any moneys she spent on the boys, in fact, I treated them as if they were my own children, but they were under the influence of my wife and on every occasion when she left she took them with her and they are living with her now.

- 40 22. I was at all times ready and willing to support my wife and have her return to my household

Answering Affidavit of Oscar Marino.

but although I have repeatedly written to her and personally induced her to return, she refused notwithstanding the fact that she could not bear any children and that we could not properly have intercourse.

23. I have been informed that both boys are bookkeepers and employed at the present time, the older boy earning \$25.00 a week and the younger one earning \$20.00 a week. They are both graduates of Eagan Business School of Hoboken. Both have good positions. 10

24. Annexed hereto is the affidavit of Oscar Marino who was present with me at my request when I paid a visit to my wife on February 27, 1928.

WALTER R. GAFFNEY. 20

Sworn and subscribed to before
me, this 8th day of June, 1928.

CHARLES L. VON DREELE,
Notary Public of New Jersey.

Answering Affidavit of Oscar Marino.

State of New Jersey, }
County of Hudson, } ss.: 30

Oscar Marino, being duly sworn according to law on his oath deposes and says:

I reside in the City of Union City, County of Hudson and State of New Jersey. I know the petitioner. I am employed by the Chemical Specialties Company of the City of Jersey City, the same concern where the petitioner is employed.

On February 27th of this year I was requested by Walter R. Gaffney, the petitioner in this cause 40

Answering Affidavit of Oscar Marino.

to accompany him to the home of his wife, the defendant in this suit. He told me that he was going to request his wife to return to him and wanted to have me present at the time. We went to her home at 146 Sussex Street, Jersey City, and petitioner rang the bell and the door was opened by a woman
10 who I was told was the defendant in this suit. We went inside and the petitioner then asked his wife in my presence whether she had decided to return to him and that the house was kept intact and it was open ready to receive her and nothing had been changed. The defendant wanted to know who I was and was told that I was a friend of the petitioner. We remained in there about 10 minutes in all. When the petitioner asked his wife to return to him to their home in Lyndhurst she
20 replied that she did not intend to return to him, that she did not need him, and that she would go back to him when she needed him. The petitioner began to plead with her and asked her why she had remained away and what the trouble was, that he could see no reason why she did not want to live in her own home but she refused to listen to any arguments and emphatically stated that she would not go back. She further told the petitioner in my presence that she received his letter in which the
30 petitioner asked her to come back and further stated that she knew she could not have any children in her present state and that if she were to have them she would have to be born all over again. Petitioner then turned to me and said it was useless to try to get her to return to him and we both walked out. I have not seen her since.

OSCAR MARINO.

Sworn and subscribed to before
40 me, this 8th day of June, 1928.

CHARLES L. VON DREELE,
Notary Public of New Jersey.

Replying Affidavit of Honore Collins Gaffney.

Filed June 25, 1928.

IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

On Petition 10
for Divorce.

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

Honore Collins Gaffney, of full age, being duly sworn according to law, upon her oath deposes and says: 20

1. I am the defendant in this suit and the wife of the petitioner, Walter R. Gaffney.

2. I have had read to me the affidavits of the petitioner and of Oscar Marino. The affidavit of the petitioner is a tissue of falsehoods as I shall hereafter point out.

3. The petitioner and I were married April 23rd, 1910. For about a year prior thereto my husband, the petitioner, boarded with my family at 33 Essex Street, Jersey City, N. J. When we were married we continued to live at my parents' home. The petitioner was then earning \$11.00 a week. I was working at the Fulton Bag Factory on Spring Street, New York City as an operator and earned about \$15.00 a week. I continued working for about a year and a half after our marriage, and 30
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Replying Affidavit of Honore Collins Gaffney.

about two and a half years after our marriage I resumed working again and continued for about seven or eight months. We lived at various places in Jersey City.

4. In 1918, while we were living in the Engineer's
10 Apartment furnished by the P. B. Ducas Com-
pany, 207 Van Vorst Street, Jersey City, where
my husband was employed, there came to board
with us two children of my deceased sister, Julia
Garing, one seven years, the other nine years of
age. It is untrue that the petitioner always or ever
supported the children at any time or provided for
their school education. The children have always
been supported by their father, who has paid me
regularly, every week at first, the sum of \$10.00,
20 which was later increased to \$12.00 and finally to
\$14.00 a week and in all the years that the children
were with me, I believe I can truthfully say that he
never missed a week in making the payments. The
petitioner and I moved to Lyndhurst in June, 1923
and lived there until December, 1925. During this
time the father of the boys, to save the journey to
Lyndhurst, was in the habit of leaving the board
of the children with the petitioner at his place of
business, 207 Van Vorst Street, Jersey City, and
30 he would deliver the money to me. When Mrs.
Julia Garing, mother of my two nephews died, she
left about \$70.00 in War Saving Stamps to the
children. From time to time their father gave them
money which I had them save and purchase more
stamps. In addition to this, between them they
earned about \$180.00 working as caddies at the
Yountakah Golf Links at Nutley, which was not
far from where we lived at Lyndhurst. It cost in
all about \$270.00 to send these boys through Ea-
40 gan's Business School at Hoboken. The fund to

Replying Affidavit of Honore Collins Gaffney.

which I have just referred was used for that purpose and the petitioner contributed not one cent toward the cost of their education. It is true that my husband helped the children with the study of their lessons at home.

5. It is wholly untrue that I lavished my affection upon these children to the exclusion of my husband. The boys are real boys, active and out of doors a great deal and were not home very much in the evening. After their meals they went out and would return about nine o'clock and then retire. They have always been mannerly and respectful in their attitude toward both the petitioner and myself and always were glad to run errands and to lend a hand around the house. 10

6. As a result largely of my industry and thrift, the petitioner has risen to a position of affluence and now desires to be rid of me. We lived in an Engineer's Apartment in the factory at 207 Van Vorst Street, Jersey City, for about eight years. Shortly before we left there the petitioner was earning \$30.00 a week. We lived at 136 Woodlawn Avenue in the Greenville section of Jersey City from about August, 1922 until June, 1923. While we were living there the petitioner's salary was increased to \$60.00 a week, and of that amount he gave me \$50.00. Of this sum I used \$15.00 a week to run the house and that included paying of the gas bill, insurance premiums and the purchase of some of petitioner's clothing, such as underwear, socks and shirts and the linens. In addition I put away \$15.00 each week toward the rent, which was \$60.00 a month. The balance of the moneys were deposited by me, with the knowledge of the petitioner, to his credit in the Provident Institution 20
30
40

Replying Affidavit of Honore Collins Gaffney.

10 for Savings. On some occasions he deposited the money in the bank himself. After we moved to Lyndhurst, in June, 1923, where he purchased a six room house, the petitioner continued to give me \$50.00 a week, and of this amount I used \$20.00 a week to run the house, to purchase clothes for the petitioner and myself and as well to purchase im-
plements and other things made necessary by the new surroundings, such as paint, ash-cans, ash sieve and a garden hose, rake, etc. There was now no rent to pay and the balance of the moneys were deposited to the credit of the petitioner in the bank.

20 7. As I stated in my previous affidavit, because of his conduct toward me, I was compelled to leave petitioner on Christmas Day, 1924, and my two nephews accompanied me. My mother was then dying at St. Francis Hospital in Jersey City and succumbed in February, 1925. The petitioner at-
tended the funeral with me. About a month there-
after I wrote a note to the petitioner and deposited it in the mail box at the place where he was work-
ing, in which I stated to him that I was willing to return to him. He sent me a note back, stating when and where he would meet me. I met him and returned with him to Lyndhurst. I remained at
30 Lyndhurst for about a week. Because of the grief which I felt over the loss of my mother and the absence of the children, I could not longer endure to remain in the house during the day alone. On the following Monday, the petitioner sent me another note. I met him again and he agreed to have the children return. Thereupon I returned with him to Lyndhurst and subsequently the children came again to live with us.

40 8. It is wholly false that we were obliged to move from the factory at 207 Van Vorst Street,

Replying Affidavit of Honore Collins Gaffney.

Jersey City, because the company would not have children there for fear that they would get hurt. The fact is that while we lived at the factory there were frequently demands upon my husband's time in connection with the factory and many times he was called in the evening when, for instance, by reason of breakdowns the company's trucks would be late in returning and in addition, he was called upon to attend to a machine. It was to avoid this extra work, which was irksome to the petitioner, that he desired to move away. After I was forced to leave the petitioner, three days before Christmas in 1925, by reason of his conduct, as related in my previous affidavit, I received but one letter from him, written two weeks before this suit was started, and he has come to see me but once, although I have met him on the street many times and I have been living just across the street from where he works. The occasion on which he came to see me was when he appeared with his witness, Oscar Marino, who, I believe, is the Oscar Marino who has made an affidavit on behalf of the petitioner. I deny that on that occasion I refused to return to the petitioner. I stated to him that I felt that I should be given an opportunity to think it over and I said this because I was upset at some of the statements contained in the letter which he wrote me about ten days before that. I have always been willing to return to the petitioner, if in good faith he desired me to and would treat me as a just man and husband should treat his wife. Other than those just mentioned I have never received any communication, either spoken or written, from the petitioner.

9. At the present time I am living with my nephews at 146 Sussex Street, Jersey City, where

Replying Affidavit of Honore Collins Gaffney.

- we have three rooms, for which we pay \$18.00 a month. These quarters are far below the station in life to which my husband's income and position entitle me. I am suffering from rheumatism and nervousness and am unable to work. After I was forced to leave the petitioner I went to work in the
- 10 National Bag Factory on Bay Street but after four or five days I was obliged to give it up. I have no money whatever and I am physically and financially unable to support myself but must depend upon help from others. I believe that my husband is worth considerably more money than that set forth in my previous affidavit. He has recently purchased a new Hupmobile automobile and am advised that he is living in luxury.
- 20 10. I deny that I ever objected to the petitioner's taking a vacation. Indeed, I would have been only too glad to have him take a vacation. The fact is that we had no discussion about vacation at the time mentioned, namely, Christmas Eve, 1924. I repeat that about 9:30 P. M. that day the petitioner came to the door in a taxicab and was intoxicated and had in his hand a bottle of liquor and then began his course of insulting and abusive conduct set forth in my previous affidavit which resulted
- 30 in forcing me to leave the home on Christmas day. As I have before related, my mother was in St. Francis Hospital at the time and it is untrue that I told the petitioner that I was going to her house and that I was not coming back, nor did I say to the petitioner, "Don't come after me because I won't come back to you." I said no such thing, neither in the words mentioned nor to that effect.
- 40 11. I deny that I was the cause of any quarrels with the petitioner. Whatever quarrels we had

Replying Affidavit of Honore Collins Gaffney.

were the result of the sulky and unpleasant disposition of the petitioner and of the insulting and abusive remarks which he made to me concerning me and my family.

12. It is untrue that in December, 1925, my conduct induced a quarrel. I did tell the petitioner that I was going to leave him but it was because he had renewed the insulting charges that he had previously made on Christmas Eve in 1924. I deny that I told him that he was not to come after me because I was through with him and that the sooner I got through with him the better. I made no such statement. I deny that the petitioner was always ready and willing to have me come back to live with him. His conduct has always led me to believe that he didn't want me back. It is true that the petitioner passed me a number of times on the street but he never at any time made any effort to speak to me but would turn his head and would not even recognize me.

13. The statements of the petitioner that our trouble began when we attempted to cohabit; that I had some physical deformity which prevented me from having intercourse, are absolutely false. I deny that I ever at any time admitted to the petitioner or to anyone else that I could not have any children, and I further deny that the petitioner ever requested me to consult a physician to ascertain why I did not have children. I was perfectly willing at all times to submit to any examination or to undergo an operation if necessary, and I so told the petitioner on more than one occasion, but on each such occasion he refused to entertain the thought. I deny that we never had contact and that there was never any penetration, and aver

Replying Affidavit of Honore Collins Gaffney.

10 that I am a normal woman sexually, and that we indulged in normal sexual intercourse four and five times a week throughout our married life. It is true that although we have been married for eighteen years we have had no children, and what the cause was I do not know, nor did I ever at any time state that I could not have children.

14. I never saw the abdominal belt to which the petitioner refers. He told me about it. I simply suggested that those things were expensive. I was not complaining, but the remark seemed unnecessarily to irritate the petitioner and he began to growl about it.

20 15. I deny that I ever told the petitioner's sister or anyone else that I knew before I was married that I could not bear children.

30 16. It was a usual thing for the petitioner to come home drunk around Christmas and New Years. I could easily forgive this, but the abuse and insults which he heaped upon my head at the times hereinbefore referred to were such as to impair my health; and to make matters worse he repeated the same insulting remarks when he was sober.

HONORE COLLINS GAFFNEY.

Subscribed and sworn to before
me, this 21st day of June, 1928.

CLARENCE F. MCGOVERN,
Attorney at Law,
State of New Jersey.

Replying Affidavit of Archer Nelson.

IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

On Petition
for Divorce. 10

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

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

1. I am a licensed physician with an office at No. 462 Jersey Avenue, Jersey City, N. J., and have practised my profession in this city for upwards of _____ years. 20

2. I have been the family physician of the Gaffneys for the past fifteen years, during which time I attended the petitioner Walter R. Gaffney, as well as the children, who I understand are nephews of Mrs. Nora Gaffney, the defendant.

3. On Saturday, June 16, 1928, I made an examination of the defendant at my office, which disclosed that she is a perfectly normal woman sexually. I can positively say that there has been penetration and that the defendant is capable of normal sexual intercourse. 30

A. NELSON, M. D.

Subscribed and sworn to before
me this 21st day of June, 1928.

CLARENCE F. MCGOVERN,
Attorney at Law
of New Jersey.

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Replying Affidavit of George J. Garing.

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

George J. Garing, of full age, being duly sworn, according to law, upon his oath deposes and says:

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1. I am the brother-in-law of the defendant, Honore Collins Gaffney, I having been married to her sister, who is now deceased. I reside at 327 Lemback Avenue, Jersey City, New Jersey, and for more than thirty years last past I have been employed in various capacities by the New York Edison Company.

20

2. My attention has been called to the statements made by the petitioner, Walter R. Gaffney, in his petition and affidavit in this cause dated June 8th, 1928. I am the father of two children, George, nineteen years of age and John, seventeen years of age, both of whom are now living with the defendant and formerly lived with the petitioner and defendant. In paragraph 9 of the petitioner's affidavit, he says that my two children went to live with him when they were seven and nine years of age, respectively. This was in 1918 and the petitioner was then living with the defendant in the Engineer's Apartment at 207 Van Vorst Street, Jersey City, New Jersey, where the petitioner was employed as an engineer. They lived there from 1918 to 1922, over four years. I frequently visited them at that place. The apartment referred to was isolated from the factory and there was no danger of the children being hurt. As a matter of fact I know that the apartment has since been occupied by families with children and is now occupied by children who can be seen from the street any day. I recall the time when the peti-

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Replying Affidavit of George J. Garing.

tioner moved to Woodlawn Avenue. Prior thereto he had repeatedly expressed, in my presence, a desire to move from his employer's building because while he was there they were always finding something for him to do.

3. I believe it is untrue that the petitioner supported my children at any time, because I paid to my sister-in-law, in the beginning, \$10.00 a week and increased it to \$12.00 and latterly to \$14.00 per week, and I made these payments regularly and every week to my sister-in-law for the support of my children, up until the boys went to work and were fully able to support themselves. When the petitioner moved to Lyndhurst I left the children's board, in an envelope, at the factory in which the petitioner was employed and he himself took it and delivered it to my sister-in-law.

10

20

4. I have met the petitioner regularly several times a week, almost every week, down through the years and up and until he and his wife parted in 1925. He is a man of peculiar disposition. He is frequently sullen and morose and gives one the impression that he does not care whether you are present or not. On the other hand, my sister-in-law, the defendant, is a woman of even temperament and of kindly disposition, always ready and willing to help anyone.

30

GEORGE J. GARING.

Subscribed and sworn to before
me, this 15th day of June, 1928.

DAISY E. BOTHWELL,
Notary Public,
Jersey City, N. J.

Expires 1933.

40

Replying Affidavit of George Garing.

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

George Garing, being duly sworn according to law, upon his oath deposes and says:

10 1. I am a nephew of the defendant and lived with the petitioner and defendant at various places in Jersey City, and latterly in Lyndhurst, until three days before Christmas, 1925. My attention has been called to a statement made by the petitioner that he supported my brother and me and that it was through his efforts that we were educated and able to secure good positions. The fact is that we were boarding with the petitioner and defendant and that during all of that time that my
 20 brother and I lived with them my father paid our board. I do not wish to convey the impression that we received no help in any way from the petitioner for it is true, as stated in his affidavit, that he helped us with our lessons while we were attending school but it is wholly untrue that he expended any money to enable us to secure an education.

30 2. When my mother died she left my brother and me about \$70.00 in War Saving Stamps. From time to time we received other moneys from my father which my aunt, the defendant, made us save. In addition my brother and I worked at the Yountakah Golf Course as caddies and earned together the sum of \$180.00. The cost of our tuition, etc., in Eagan's Business School was approximately \$270.00 and the funds which I referred to were used for that purpose.

40 3. My attention has also been called to the statement of the petitioner denying that he came home

Replying Affidavit of George Garing.

drunk on Christmas Eve, 1924, and alleging that he was never intoxicated. This is untrue. I have seen him intoxicated three times, twice at Lyndhurst and once at the factory. One of the occasions at Lyndhurst was on Christmas Eve in 1924.

4. It is untrue that the defendant lavished her affection upon my brother and me. As a matter of fact we were home very little. After dinner we would leave the house at Lyndhurst and would return around nine o'clock and retire. 10

5. I was present when the defendant was obliged to leave the home at Lyndhurst three days before Christmas in 1925. It is untrue that the defendant said, just before she left, that she was glad she did not have any children as the petitioner could never be the father of children as good as her two nephews. She told him that his conduct was such that she would be obliged to leave him, to which he replied, "I know the law and won't tell you to get out," and further, "I don't have to live with a barren woman." 20

6. My attention has also been called to the petitioner's statement that the defendant was grouchy and disagreeable and was the cause of many quarrels in the house. This is untrue. It is the petitioner who has a nervous, sulky and disagreeable disposition. To illustrate, if we made any noise while eating soup or crunching apples it would greatly aggravate the petitioner. The defendant is an even tempered woman. 30

GEORGE R. GARING.

Subscribed and sworn to before me
this 22nd day of June, 1928.

JOHN RIDLY,
Master in Chancery
of New Jersey. 40

Order of Reference.
Filed Sept 4, 1928.
 IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
 Petitioner,

and

HONORE COLLINS GAFFNEY,
 Defendant.

} On Petition 10
 for Divorce.

This matter being opened to the court by Pier-
 son, Schroeder & Brand, solicitors of the peti-
 tioner, and upon due notice to the defendant;

It is on this thirtieth day of August, 1928,
 Ordered that the above stated cause be referred to
 the Honorable M. L. Berry, one of the Vice Chan- 20
 cellors of this court to hear the same for the Chan-
 cellor and to report thereon to him and advise what
 order or decree should be made therein.

E. R. WALKER,
 C.

I do hereby consent to the entry of the above 30
 order.

THOMAS McNULTY,
 Solicitor of the Defendant.

A true copy,

THOMAS BARBER,
 Clerk.

Order.

Filed April 8, 1929.
IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,
and
HONORE COLLINS GAFFNEY,
Defendant.

On Petition 10
for Divorce.

This matter being opened to the court by Pierson, Schroeder & Brand, solicitors for the petitioner, and the matter having been set down for hearing for the 19th day of March, 1929, and upon reading and filing the annexed consent of Thomas McNulty, solicitor for the defendant; 20

It is thereupon on this 4th day of April, 1929, ORDERED that the above cause be set down for hearing for Wednesday, April 24, 1929, next, at the Chancery Chambers at Newark, New Jersey, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard.

MAJA LEON BERRY,
V. C. 30

I consent to the entry of the above order.

THOMAS McNULTY,
Solicitor of the Defendant.

Notice to Produce.

IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

} On Petition
} for Divorce.

10

To HONORE COLLINS GAFFNEY, or
THOMAS McNULTY, solicitor:

PLEASE TAKE NOTICE that you are hereby
required to produce at the trial of the above en-
titled cause letter dated February 18, 1928, sent
by the petitioner to the defendant and any and all
correspondence that may have passed between the
parties to this suit and upon your failure to pro-
duce the same secondary evidence will be offered.

20

Dated, Hoboken, Apr. 23, 1929.

PIERSON, SCHROEDER & BRAND,
Solicitors of Petitioner.

30

40

Decree.
Filed May 14, 1929.
 IN CHANCERY OF NEW JERSEY.

	Between <div style="text-align: center;"> WALTER R. GAFFNEY, Petitioner, and HONORE COLLINS GAFFNEY, Defendant. </div>	}	On Petition for Divorce.
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20 This cause coming on to be heard in the presence of Pierson, Schroeder & Brand, solicitors of petitioner, and Thomas L. Hanson, Esq., of counsel with petitioner, and Thomas McNulty, of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs:

It is on this 14th day of May, A. D. nineteen hundred and twenty-nine, ORDERED, ADJUDGED and DECREED, that the petitioner is not entitled to the relief prayed for and the petition be and the same is hereby dismissed.

30 And it appearing to the court that there is due and owing to the defendant from the petitioner, for alimony and maintenance pendente lite under the order therefor previously made in this cause from April 20th, 1929, up to the making of this decree, the sum of Forty-eight Dollars (\$48.00);

40 It is therefore ORDERED, ADJUDGED and DECREED that the petitioner do forthwith pay to the defendant or to her solicitor the said sum of Forty-eight Dollars (\$48.00) arrears of alimony as aforesaid;

Testimony.

And it is further ORDERED that the said Walter R. Gaffney do pay to the said Honore Collins Gaffney or to her solicitor a counsel fee of \$100.00 and costs to be taxed.

E. R. WALKER,
C. 10

Respectfully advised.

MAJA LEON BERRY,
V. C.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

WALTER R. GAFFNEY,
Petitioner,

and

HONORE COLLINS GAFFNEY,
Defendant.

20

Transcript of testimony taken before Hon. Maja Leon Berry, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, April 23, 1929, at 10 A. M. 30

APPEARANCES :

THOMAS L. HANSON, Esq., and ISADORE BRAND,
Esq., for Petitioner.

THOMAS McNULTY, Esq., for Defendant. 40

WALTER R. GAFFNEY, petitioner, being duly sworn according to law on his oath, says:

Direct Examination by Mr. Hanson:

- 10 Q. Where do you reside at the present time? A. 152 Page Avenue, Lyndhurst.
- Q. Your wife is Honore Collins Gaffney? A. Yes.
- Q. When were you married? A. April 23, 1910.
- Q. Where? A. St. Patrick's Catholic Church in Jersey City.
- Q. Who was the priest that married you? A. Father Wallace.
- Q. Prior to the marriage, how long had you known your wife? A. I should judge about a year.
- 20 Q. Where did she reside at the time of the marriage? A. I don't remember. It was on Essex Street, Jersey City.
- Q. She resided there during the period that you knew her, prior to the marriage? A. Yes.
- Q. Was she employed during that time? A. Yes.
- Q. What was she doing? A. She worked for Fulton Bag & Cotton Mill, a bag concern in New York.
- 30 Q. Do you know in what capacity she was employed? A. A turner operator, I think I heard her say.
- Q. After your marriage where did your wife live? A. With her mother.
- Q. How long did you stay there? A. I think about a month.
- Q. Then where did you go? A. We went to board with a woman by the name of Mrs. Gaven.
- Q. In Jersey City? A. Yes.
- 40 Q. How far was that from your mother-in-law's home? A. About one block.

Q. What was the reason for your going to board with Mrs. Gaven? A. My wife and her mother had a quarrel and ordered us out.

Q. Your mother-in-law ordered you out? A. Yes.

Q. How long did you board at this place? A. I think a week or two.

Q. What happened then? A. Why, my wife's mother was going around to Mrs. Gaven's house and she was creating some disturbance and my wife asked me to come back again in order to keep her quiet and went back to her mother's house. 10

Q. Did you go back as a result of a request of your wife? A. Yes.

Q. How long did you remain at your mother's last home then? A. I cannot remember that, it was a short space of time.

Q. Then where did you go? A. I think we went back to Mrs. Gaven's to board. 20

Q. Do you recall how long you remained in Mrs. Gaven's? A. It wasn't very long, I cannot say the length of time just now.

Q. What happened then? A. My wife came to some agreement with the sister-in-law, that we were to live with them, and go halves on housekeeping.

Mr. McNulty: I move to strike that out. How did he know what agreement his wife made? 30

Court: Is it necessary to go back that far? There is no need of going into great detail as to what happened, because the charge is simply desertion, and the defense is cruelty, which began in 1924, so I assume that everything was lovely up to that time.

Q. You say you live in Lyndhurst now? A. Yes.

Q. How long have you resided there? A. I bought my house May 15th, 1923 and moved out there the latter part of June. 40

Q. You bought your home there? A. Yes, and my wife and I had it together.

Q. It is in your joint names? A. Yes, I put it in the joint names.

Q. How much did you pay for it? A. \$6,250.

10 Q. Is that property free and clear at the present time? A. Free and clear of all encumbrances.

Q. Has there ever been a mortgage on it? A. No, sir.

Q. Prior to your moving to Lyndhurst, you and your wife lived at various places in Jersey City? A. Yes.

Q. And where are you employed at the present time? A. Chemical Specialties Company.

Q. How long have you been employed by that Company? A. Sixteen years.

20 Q. Have you and your wife any children? A. No, sir.

Q. Have any children been living with you and your wife? A. Yes, two nephews of hers lived with me.

Q. Two nephews of whom? A. Her nephews, of my wife.

Q. They are children of whom? A. Of my wife's sister, children of George Gary.

Q. What are their names? A. George and John.

30 Q. How old were they when they came to live with you and your wife? A. I think seven and nine.

Q. Do you recall when they first came to live with you and your wife? A. Yes.

Q. When? A. In 1918.

Q. Did, or did not the boys live with you and your wife continuously since 1918 until the time of the separation? A. They lived up until 1924 continuously, then they was back and forth.

40 Q. When did you have your first trouble or dif-

ficulty, or when did the first trouble or difficulty take place between you and your wife? A. There was no real trouble, but after the children came to live with me, then it seemed she wasn't interested in me as much any more, it seemed that way to me, and as long as the children was with us, her interest seemed to be taken up with them more and more. 10

Q. Did you speak to her about this? A. At different times I did.

Q. What would her reply be to you?

Mr. McNulty: I would like to have the time fixed.

Q. When was the first time you noticed this coolness toward you? A. I cannot say on any particular date, it came on gradually. 20

Q. Can you state how long after the two boys came to live with you? A. I should say six months afterwards I began to notice it.

Q. Did you speak to her at that time? A. I don't know, right exactly six months afterwards, but sometime I spoke of it.

Q. When did the first trouble occur between you and your wife? A. That was on December 25, 1924, that she left me. 30

Q. What happened at that time? A. She left me and told me she was going to live in Jersey City.

Q. What led up to her leaving you? A. I came home one Christmas Eve and we had some words in regard to my not admitting the amount of money that—she claimed she had on good authority that I earned \$125. a week—I think it was \$125. a week. She brought the subject up different times. One time it was \$90.00, one time \$100.00, another time \$125.00, anyway, that I earned more money that I admitted to her that I earned. 40

Q. How much money were you earning at that time? A. It was either \$60.00 or \$65.00, I cannot say just exactly. I got a raise about that time. I don't know whether I got a raise or not at that time.

Q. Had you, at any time, prior to Christmas Eve, 1924, earned \$90.00 or \$100.00 or \$120.00 a week?

10 A. No, sir.

Q. Had you ever earned over \$60.00 or \$65.00 a week? A. I never earned over \$65.00.

Q. How much of that amount have you been in the habit of giving your wife? A. While I lived in Jersey City I was making \$60.00 a week, and I was giving her \$55.00. After I moved to Lyndhurst, I had to pay my own commutation, and I only give her \$50.00. Every week I gave her that much.

20 Q. Bringing you back to Christmas Eve, 1924, do you recall definitely what was said by your wife to you? A. The subject come up about, I wanted to take a vacation.

Q. Christmas, 1924, the first time I refer to? A. Yes, she spoke about money that I had let my sister have—

Mr. McNulty: I would like to have the time of the conversation.

30 Court: That is what he is trying to give you. Proceed. Try and give the exact language as near as you can. If you cannot give the exact language, give the substance.

Witness: I cannot give it word for word, it is four years ago.

Court: As near as you can.

40 Witness: She accused me of giving my money to my sister. She found fault about letting my sister have money to go home to my father's funeral. We got a telegram in the afternoon, and my sister couldn't get to the bank to get money and I let her have the

money to go to the funeral. She had to leave that night, and when we came back that night she sent the money to my house. She said my sister was a sneak for getting the money off me, and why I didn't tell her about it. I would have told her I had a telegram in the afternoon, but I had to get ready for the train and my sister told me her predicament and I let her have money. I wasn't keeping it secret, because the letter with the postoffice money order was mailed to the house, as soon as she returned. If I was keeping it a secret, I wouldn't have had it mailed there. That is what made her think I was earning more money than I told her. I admitted that I did earn extra money, beside my wages, that was my weekly wages, but extra work, I earned more money. 10 20

Court: How much more?

Witness: \$16.00—.

Court: Give the average.

Witness: You cannot put it on an average. I had a contract to do cement work for a firm across the street at night, and one figure of \$128, various amounts, \$50.00 at a time, and if I had extra hard work, the firm I worked for—this work that I did, this extra work across the street, my boss, the firm I worked for, had an interest in it. That is why I was allowed to go over there and do that. 30

Court: Mr. Hanson asked you a few moments ago, what your income was and you said \$60.00 to \$65.00 a week.

Witness: Weekly wages.

Court: Mr. Hanson wants to know and I want to know what your income was irrespec- 40

tive of whether you got it for salary, wages, or how. You worked overtime, and include the overtime in your estimate.

Witness: It amounted to \$15.00 or \$20.00 a week for a period up until our business got bad, and there was no more.

10 Court: So around 1923 there was no extra money outside of your salary—your straight salary.

Witness: Yes.

Court: For how long a period did this extra money come in?

Witness: I had been getting extra money from the start of the war.

Court: You mean 1917 until 1923?

Witness: Before that.

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Further Direct Examination by Mr. Hanson:

Q. This extra money you earned did or did you not let your wife know of it? A. She didn't know of it, except I used to give her extra money every once in a while. If she went on a vacation, I give her extra money. I was left a legacy of \$250.00. That money I used to pay her railroad fare, she went west on a visit to her aunts.

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Q. Coming back to this quarrel you had on Christmas Eve, 1924, as a result of that quarrel what, if anything, did your wife do? A. There was nothing done that night. I went to bed. Christmas morning I was sitting in the living room, she was in the kitchen. She come in and started more argument with me. I forget what it was about. I think she was accusing me of not liking her people. She said that I said something about her people or brothers, that I didn't like them, and she said that she wasn't going to spend the day with me, she was

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going down to Jersey City and she left, and when she was leaving, she warned me that she was going to her brother's house and that she didn't want me to come there, and knowing them people, that they didn't want to be annoyed—.

Q. Did or did not the two children go with her?

A. The boys went with her.

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Q. Did she come back that day? A. No, sir.

Q. How long did she remain away? A. It must have been a couple of months or so, until after her mother's death.

Q. When her mother died, what, if anything, did you do? A. I bought flowers and went to the funeral, because I had been warned to keep away from the house, but I wanted to show that respect for her mother, and I went to the funeral. Went up there. There was nothing said to me.

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Q. Did you meet your wife at her mother's funeral and have a conversation with her? A. Yes.

Q. What was the conversation with her? A. I am a little bit ahead. I did see her the night before I went up there. I met her on the street and I went there and offered my sympathy over her mother's death. I had on a new overcoat, and she began passing remarks about the overcoat, that it wasn't as good a coat as I bought when she was with me, and she seemed angry with me at that time and I went away, but nevertheless I ordered flowers and had them sent and went up to the wake, and stayed at the wake and left that night around one o'clock. I cannot say for certain, whether I went two nights to the wake, I think I did, and then I went to the funeral.

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Q. You said you had a conversation with your wife at the funeral? A. Yes.

Q. Or after the funeral. What was the conversation? A. I spoke to her about coming home and she said she was too upset, she couldn't.

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Q. When did you see her after that? A. It went on for a few days afterwards and I got a letter from her asking me to come home.

10 Q. And as a result of that letter did she come back to you? A. I answered the letter and told her to come home, and that I would meet her, and I did meet her that night and carried her grips and things home for her.

Q. How long did she remain at home that time? A. About a week or so.

Q. Then where did she go? A. She told me she was going back to live in Jersey City at her brother's house.

20 Q. Did she give any reason for wanting to go back and live in Jersey City at her brother's home? A. She said she couldn't stand me. I was sick at that time a good deal. To use her own remarks she said I was either an ass or an elbow or a bat, and she went back then, and I started writing to her and I got her to return again.

Q. How long did she remain away this second time? A. She remained away, I think it was over a week or so.

Q. When she came back the second time, did anyone come with her? A. No, sir.

30 Q. How long did she remain when she came back the second time? A. I think that was just about a week that she remained that time.

Q. And then where did she go? A. She went back to Jersey City, and said it was too lonesome, she couldn't stand it without the children.

Q. How long did she remain away then? A. I wrote her a letter right away and I think it was only a couple of days or two or three days she stayed away, then she came back.

Q. What did you say in the letter?

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Mr. McNulty: I object to that.

Court: Have you got the letter?

Witness: No.

Mr. McNulty: No.

Court: It was sent to your client.

Mr. McNulty: My client denies that she got any such letter.

Court: You may proceed. The objection 10
is overruled.

Q. What did you say in the letter? A. I told her to come back and bring the boys with her.

Q. Did she come back? A. Yes.

Q. Did the boys come with her? A. They didn't come right away. It might have been a day or so, that one boy came out, and I forgot what reason there was about the other boy's school, he didn't come for about a week after.

Q. He came back after the end of the week? A. Yes, there was some reason why he didn't come right away. 20

Q. Did they stay with you then? A. Yes.

Q. After your wife came back this time, were the relations alright? A. Yes, as well as they ever was.

Q. How long did that continue that way? A. It went on until about a week before she left. I was going to a doctor— 30

Q. When was this; can you give the month or year when she left? A. That was in 1925.

Court: When?

Witness: December.

Court: That is the date of the desertion that you allege, you mean, when she finally left you?

Witness: Yes.

Court: She stayed with you this time until she finally left you. 40

- Q. You say a month prior to her leaving you, you had some trouble? A. No, it wasn't a month. I come home, it was only a week, it was on a Saturday, the first that I noticed anything wrong, and she left a week from the following Monday. I was going to the doctor and had been to the doctor, and at that time he advised me to buy an abdominal belt, I had stomach trouble. I came home Saturday noon. She said, "I will bet that you paid a nice penny" or "big amount" something like that, for the belt. I said they didn't give them away and she seemed to take it serious and she said, "I know very well they don't." There was no real fight or trouble except that she didn't speak to me. If I spoke to her she would answer, but couldn't start no conversation, a friendly conversation. She seemed to be sore towards me, and within a couple of days she told me she was going to leave and was going down to Jersey City again. She passed remarks to the boys that I knew was intended to hurt me, but I paid no attention to that, because I thought that it might die out and she would forget it, but it went on, so Monday morning when I got up and had my breakfast, and she told me she was going. She told me that she was glad that she never had any children because I couldn't be the father of children as good as them two children was. At that time I said nothing to her, didn't antagonize her in any way, but with that remark I did get a little bit excited and I said, "You cannot have children anyway, because you are a barren woman," and she was going to hit me with a milk bottle, so I got my hat and started out to work. She followed me to the door and handed me—I didn't know what it was she handed me, until it was in my hand. She said, "There is your money." It was money that I had left the previous
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Saturday. I don't know where she got the other money from. It was about \$80.00. She put it in my hand and told me the key would be under the mat, when I returned.

Q. When you came home that evening was your wife there? A. No, sir.

Q. Has she ever been back since? A. No, sir. 10

Q. Where you live now, is that the same place where you and your wife were living at the time she left you? A. Yes.

Q. Have you maintained that home? A. Yes.

Q. What kind of a place is it? A. It is a six room, one family house, built on a lot 37 feet and a half by 150 feet deep.

Q. Is it furnished? A. Yes.

Q. Has it been furnished ever since she left? A. Yes. 20

Q. Since December, 1925, the time your wife left you, have you met her at any time? A. I met her on the street.

Q. Did you ever speak to her? A. She ignored me.

Q. Did you attempt to? A. Yes.

Q. How many times have you met her? A. I should judge four or five times.

Q. Can you state specifically any time, in particular, that you met her? A. No, I had no idea of keeping the dates. 30

Q. Have you, or have you not written to her? A. Yes, several times.

Q. When was the first time you wrote to your wife after she left you? A. In the spring of 1927 I wrote three or four letters to her, spring and summer.

Q. Did you receive any reply? A. No, sir.

Q. What were the contents of the letters?

Mr. McNulty: I renew the objection. 40

Court: Have you the letters.

Mr. McNulty: Only one letter and I have been asked to produce that and I have produced it. The defendant denies that there are any other letters.

10 Court: She may deny it when she goes on the stand. He says he sent her a letter. You say you didn't receive it. Place it in evidence. He says he sent her a letter, and you cannot produce it. I will permit him to testify to the contrary.

Q. Will you state the contents of this first letter, you wrote your wife? A. Yes.

20 Q. What did you say in it? A. I explained how it was hard to keep up the home alone, that I wanted her to come back. I explained to her that I was sick and had been, and I was feeling ill, but that was not my fault, that I was working just the same, I was doing the best I could to get along, and along that line I wrote to her in the letter.

Q. What did you state in the other letters that you wrote to her? A. The letters were all about the same nature, asking her to come back.

Q. Did you ever receive a reply from her? A. No, sir.

30 Q. Did she ever write any letters to you? A. When she was away—

Q. I mean since 1925? A. No, she never wrote any letter this time.

Q. Did she ever ask you for any money? A. No.

Q. Did you, or did you not ever meet her two nephews since that time? A. Yes, I met them on the street.

Q. Did you speak to them? A. Yes.

40 Q. Did you have any conversation with them?
A. No, sir, I said "Hello George" or "Hello John."

I continued that for three or four meetings and they hardly answered me. Sometimes I couldn't say whether it was a grunt or answer, and after I found they wouldn't speak, I discontinued speaking to them when I met them.

Q. Did you or did you not take care of those two boys while they lived with your wife and you? A. **10**
Yes.

Q. Did you ever have any quarrels with them?
A. No, sir, nothing serious.

Q. Did you ever complain to your wife about them being with you? A. I complained about trouble they made me when I lived in the factory in Jersey City.

Q. What was that due to? A. Well, when I went to leave—it was an engineer's department and when I went to live there I signed a contract that I would have no one living with me but the uncle and the children was brought in just the same, and my boss used to find fault with me when the children would go on the platform of our building. He explained to me—we are a chemical concern, we handle acids, sulphuric acids, if those children were burned, we would be liable. The boys used to go on the platform for drinking water mostly. **20**

Q. As a result of the complaint you received what, if anything, did you do? A. I stood it as long as I could and I had to give up living there and I moved away. **30**

Q. During the time that you and your wife and boys were living together, did they attend school?
A. Yes.

Q. Where did they go? A. St. Peter's Parochial School, Jersey City.

Q. Who was instrumental in sending them to St. Peter's? A. I was.

Q. What supervision, if any, did you exercise **40**

over them as to their studies? A. I helped them with their home studies, and their Sunday School lessons.

Q. When was the last time you saw your wife?
A. Today.

10 Q. When was the last time you saw your wife prior to the institution of this suit? A. You mean to pass her on the street, to see her on the street?

Q. To see or talk to her or anything. A. I have seen her most every other day perhaps, come out on the porch. I could see her house. It is only about 150 feet from my window where I work.

Q. When was the last time you had a conversation with her? A. That was some time in February, 1928.

20 Q. Where did this conversation take place? A. 146 Essex Street.

Q. Is that her home? A. That is where she was living.

30 Q. Will you relate to the court just what took place at that time? A. I went to the door and rapped, and she came to the door and I asked her, I said, "I came to ask you to come home with me," and she said, "No." She then asked me to come into the house. I repeated the question again and she said, "Come in the house" and that was only a few moments. I repeated the question to her several times, until at last I got some answer that she couldn't decide or she wouldn't go. She said she would come back to me when she needed me, but she didn't need me now, and I give it up after, as useless.

Q. Do you recall any other remarks that your wife made at that time? A. She spoke about getting a letter from me.

40 Q. Had you written to her prior to this visit?
A. Yes.

Q. Did you, or did you not keep a copy of that letter? A. Yes.

Q. Did you keep copies of any other letters? A. No, sir.

Mr. Hanson: Demand has been made for the production of this letter.

Mr. McNulty: I produce letter dated February 18, 1928.

Mr. Hanson: I offer it in evidence.
(Marked Exhibit P-2.)

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Q. Was anyone with you at that time? A. Yes, Mr. Marino.

Q. When you called at the house? A. Yes.

Q. Is he in court? A. Yes.

Cross Examination by Mr. McNulty:

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Q. And that is the letter to which you referred (showing him Exhibit P-2)? A. Yes.

Q. How long after you wrote this letter did you see Mrs. Gaffney? A. I should judge nine or ten ~~times~~ ^{days} I know certainly about that.

Q. And how long after that was it that this suit was instituted? A. I don't just remember how long that was.

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Court: The petition was filed March 6, 1928.

Q. That was the only time that you had had a conversation with your wife after she left you on Christmas or shortly before Christmas, 1925, isn't that so? A. Yes.

Q. That is the only time? A. Yes.

Q. In this letter you say "It is now over two years since you lived in the home." How often did you say you saw Mrs. Gaffney between the time

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she left and the time when you saw her on this occasion at this house where she was living? A. I would see her over there, every day I would see her when she came out sweeping the steps or something like that. She would run out to put garbage in the can and go back again.

10 Q. How often did you talk to her? A. I didn't talk to her.

Q. You didn't talk to her? A. No.

Q. She lived directly across the street from where you worked? A. Two hundred feet I should judge.

Q. You saw her coming in and out? A. Yes.

Q. Every day or almost every day? A. I saw her go into the house.

Q. On none of those occasions did you have any conversation with her? A. No.

20 Q. You didn't try to have any either? A. Yes.

Q. What efforts did you make to converse with her? A. I tried to meet her on the street.

Q. Did you ever go to the home? A. No, sir, she warned me to stay away.

Q. She told you that before she left? A. Yes.

Q. But she didn't want you to come there and that is why you never went there? A. I was afraid to go there.

30 Q. What were you afraid of? A. I didn't know but what they might claim that I offended her; that would give her reason to start trouble for me.

Q. But your fears were allayed somewhat by the time it became February 1928, you were not afraid then? A. Yes.

Q. You were still afraid? A. Yes.

Q. You went nevertheless? A. Yes.

40 Q. You say in the next sentence "I have watched and tried to meet you on the street, but it seems you never pass, where there is any chance of my meeting you." What did you mean by that? A.

Where she first lived I passed her a few times and she ignored me, and it seemed to me that she used to go the other direction. She didn't come up there, and I never saw her the time I would be going out from work.

Q. You say "I have watched and tried to meet you on the street, but it seems that you never pass where there is any chance of my meeting you." A. Yes. 10

Q. "It is now over two years since you left me in the home, and I have spent—" and by that you mean the two years? A. Yes.

Q. "I have been in the hopes that you would come back. I have watched and tried to meet you on the street but it seems you never pass where there is any chance of my meeting you." A. Yes.

Q. And therefore you didn't see her during those two years to talk to? A. I did, I met her on the street. 20

Q. What do you mean, on the same side of the street as she was, or were you across the street when she was on the other side? A. I met her on the same side and the opposite side.

Q. Didn't you meet her on a number of occasions, and you were the one that refused to recognize your wife? A. No.

Q. Do you know Mrs. Collins? A. Yes. 30

Q. Did you ever see your wife, when your wife was in her company, Good Friday, 1926? A. I don't know about that time, but I saw her with Mrs. Collins once.

Q. Was that one of the times you attempted to talk to her? A. No.

Q. You say "You know the home has always been open there and I have been ready to receive you the same as on the different occasions before when you left and came back. You know what caused our 40

trouble; you would like to have brought up a family, but evidently you could not do so and this fact you concealed from me at the time we were married." Is that a fact? A. Yes.

Q. She concealed those facts from you at the time you were married? A. Yes.

10 Q. Isn't it a fact that the quarrels that you were having with this woman before she left you in December 1925 were caused by these charges that you were making against her, that she concealed from you, before she was married, the fact that she couldn't have any children? A. No, sir.

Q. And on the other occasions when you spoke to her, did you again bring up this subject, the fact that she couldn't have any children? A. No.

20 Q. When you said she concealed it from you before you were married, what do you mean by that? A. She knew that she couldn't have children when she married me and she never told me anything about it.

Q. How did you find that out? A. She admitted herself that she couldn't have children.

Q. She admitted to you that she knew before she was married that she couldn't have any children? A. Yes.

30 Q. Aside from that one time you went there and conversed with her, that is the only time that you spent any time with her at all after she left? A. Yes.

Q. She left you December, 1925. You didn't fix the date. Can you fix it? A. December 22nd. I ain't positive, but I think it was that day. I could verify it by looking at a calendar. It was the Monday previous to Christmas.

40 Q. What did you do after she left you? Did you attempt to persuade her not to go? A. I asked her what I had done or what I could do to please her.

Q. When did you ask her this? A. During the interval of a week previous. I met her on Saturday, while she wasn't on speaking terms.

Q. You mean before she left? A. Yes.

Q. You wanted to know what you could do? A. Yes.

Q. But after she left, you had no conversation with her at all, except this incident in February, 1928, February or March? A. Yes. 10

Q. These two children of the defendant—Mrs. Gaffney, of her deceased sister, they were boarding with you, were they not? A. They were living with me.

Q. You were not supporting them. You seemed to convey the impression on your direct examination that you were keeping them. Their father was paying board for them, wasn't he? A. So, the wife claimed. 20

Q. Don't you know it to be a fact? A. I cannot say it is a fact.

Q. Didn't Mr. Gary, the father of these children, give you the board money from time to time and didn't you deliver it to Mrs. Gaffney? A. No, sir. He used to leave a letter in my mail box and I used to deliver that letter to my wife, but it was never opened.

Q. When did you get the letter usually? A. 30
During the week sometime, it would be in my mail box.

Q. You got it regularly from week to week? A. Yes.

Q. On Christmas Eve, 1924, you came home drunk, didn't you? A. I wouldn't say I was drunk.

Q. You had something to drink? A. Yes.

Q. And had a bottle with you? A. Yes.

Q. And came home in a taxi-cab? A. I came from the station in a taxi-cab. 40

Q. You came to your home in a taxi-cab? A. Yes.

Q. Did you have a quarrel with your wife then? A. There were some words that night.

Q. Didn't you tell her that her mother and father had never been married? A. No.

10 Q. You never said that? A. No.

Q. Or anything like that? A. She accused me, that I had said that. I simply reminded her that it was her, herself, that told me that. When she accused me of saying it I said that it was her that had told me herself. You say that I accused her of their never having been married.

20 Court: The question was whether you told her that her father and mother had never been married.

Witness: No, sir, I never told her that, that her mother wasn't married.

Q. When she was leaving didn't you say to her "I am not putting you out and I know the law." A. No, sir, I didn't tell her that I knew the law. I told her I wasn't putting her out, that I was giving her no reason to go.

30 Q. Didn't you say to her "I don't have to live with a barren woman." A. No, sir, I told her she was a barren woman, but I didn't say I didn't have to live with her.

Q. You never had any trouble with these children did you? A. No, sir.

Q. They always obeyed and respected you and acted toward you like a father? A. Those children were very good.

Q. And they were active boys? A. Yes.

40 Q. You didn't have any trouble with them? A. No more than has been stated.

Q. They went out and played after school? A. Yes.

Q. They were not home very often in the evening? A. During school, every night they were home doing their home-work.

Q. During what period was that? A. As a general rule between seven to nine. 10

Q. During what period of years? A. Right after they come up until—

Q. Were they going to school in 1925? A. They were going to school but I wasn't helping them then, they could help me.

Q. During the summer they worked on the golf course? A. Yes.

Q. After school hours on Saturday? A. Yes.

Q. I show you an affidavit made in this case, is that your signature? A. Yes. 20

Q. You signed and swore to that? A. Yes.

Q. Did you also, on the occasion of this Christmas Eve, 1924, charge the defendant with having given her brother money, not to disclose to you her conduct prior to her marriage to you? A. No, sir.

Court: Whose conduct?

Mr. McNulty: The defendant's conduct prior to the marriage. 30

Court: I hadn't heard any question concerning her conduct before.

Mr. McNulty: He has testified to the conversation that took place prior to her leaving Christmas, 1924. These matters are all in the affidavit.

Court: I don't know, only what he said this morning. The affidavits are not in evidence. I haven't heard him say that he accused his wife of anything. Was the 40

question asked whether he did accuse his wife of any misconduct.

- 10 Q. These matters that you have related on your direct examination, quarrels, for instance, about your taking a vacation, is that one of the incidents that you have related? A. There was some dissatisfaction about it.
- Q. The fact that you bought an abdominal belt, and passed some remark about it, it was an expensive thing, and asked how much you paid for it? A. Yes.
- Q. Were there any quarrels that you had with her? Was that the full quarrel that you related, just before she left in 1925? A. Yes.
- 20 Q. After she left in 1924, she came back? A. Yes.
- Q. At the time she left in December, 1924, she left on Christmas Day? A. Yes.
- Q. And she prepared a Christmas dinner? A. No.
- Q. Had she been to church that day? A. Yes.
- Q. With the children? A. Yes.
- Q. Did you go to church? A. No, sir. I was going to a later Mass after she left. I didn't feel in the humor of going to church.
- 30 Q. Then she came back again in February? A. I cannot set the date.
- Q. At the time she left you, on Christmas Day, was her mother seriously ill in St. Francis' Hospital? A. At that time when she left me?
- Q. Yes? A. I never heard that she was. I thought her mother was taken sick suddenly.
- Q. And she subsequently died in February 1925? A. That is always the impression that I was under.
- Q. You attended the funeral with her? A. Yes.
- 40 I attended the funeral.

Q. How did you go to the funeral? A. In a carriage.

Q. Who was in the carriage? A. My wife and myself. I don't remember who was in it.

Q. There was only one carriage? A. Yes.

Q. And you were all in the one? A. Yes.

Q. You didn't say a word to your wife on that occasion? A. In the carriage, no, sir. 10

Q. You rode to the funeral and rode back, but didn't say anything? A. We must have spoken. I don't remember just what was said.

Q. And after the funeral, did she invite you over to have lunch with her? A. Not to her house. She wanted me to come up to her brother's house.

Q. You didn't accept the invitation? A. I couldn't.

Court: Why not? 20

Witness: I was in a hurry to get back to my place to work. I had orders at that time that I had to get out on the noon truck, which was leaving for New York.

Q. Subsequently she went back to live with you? A. Yes.

Q. And after she got back there, lived alone, without the children, after having lost her mother, she told you she was lonesome in this house, isn't that a fact? You testified she was lonesome on your direct examination. A. Yes. 30

Q. And then she went away and she was away about a week and went back again to live with you and you told her to bring the children with her and she brought one of the children with her, and went back to live with her? A. That was the second time you are speaking of?

Q. Yes. A. She didn't bring them the second time. 40

Q. Did she bring one? A. No.

Q. I am referring to the third time. A. She brought the children with her, stayed until December, 1925, I said in my testimony that the children come a day or two after, one a week or so afterwards.

10 Q. They came back after she did, whether a few days or more is immaterial, and stayed there until December 1925? A. Yes.

Q. And then three days before Christmas, 1925 she left again? A. Yes.

Q. You understand, when this woman left you in December, Christmas, 1924, that you had some little quarrel about some insignificant matter, and this woman left her home on Christmas Day to go to someone else's home? A. Yes.

20 Q. And again just before Christmas, 1925 she repeated the same thing, without any cause? A. No more than what she stated.

Further Direct Examination by Mr. Hanson:

Q. These times that you stated you saw your wife come out on the porch, where were you at that time? A. In the laboratory.

30 Q. Where? Were you at your place of business? A. Yes.

Q. During working hours? A. Yes.

Q. I call your attention to Good Friday, 1926. You testified on cross examination that you saw your wife with her sister, Mrs. Collins. Where did you see them on that day? A. Right in front of St. Patrick's Church, or in the vicinity.

Q. Where were you? A. On the opposite side of the street.

40 Q. Why didn't you talk to your wife on that occasion? A. There were a great many people com-

ing in and out of the church, and I was afraid of a scene. I did intend to go across and speak to her and then I changed my mind.

Q. This letter that you received from the boys' father, at regular intervals, which he left in the mail box, what did you do with that? A. I would go home and lay it on the shelf, the same as I laid my money. 10

Q. Did you ever open it? A. No.

Q. Were any of them opened in your presence? A. No, sir.

Q. Did your wife ever show you any money which she stated was sent by the boys' father? A. She never showed me any money. She claimed she got money from her father.

Q. Did you ever tell your wife to leave the children; did you ever tell your wife to come back without the children? A. No, I never stated for her to come back without them. 20

Further Cross Examination by Mr. McNulty:

Q. It was after you wrote your wife this letter of February 28, 1928, that you went to see her?

Court: He said so.

Q. When you went to see her at that time, as a matter of fact, she didn't refuse to come back and live with you, but she said she would like some time to think it over, and she was upset because of this letter that she had received and she told you that, didn't she? A. No, sir, she said—she told me she couldn't decide that she wouldn't come back, and that she didn't need me and when she did, that she would come home. 30

Q. She said she hadn't decided that she wouldn't come home, she did say that? A. Yes. 40

ANDREW DE YOUNG, a witness called on behalf of petitioner, being duly sworn according to law on his oath, says:

Direct Examination by Mr. Hanson:

10 Q. Where do you live? A. 112 Page Avenue, Lyndhurst.

Q. Do you know Mr. Walter Gaffney? A. I do.

Q. How far from his residence do you live? A. I will say four houses.

Q. How long have you known Mr. Gaffney? A. I moved into my present residence, April 24, five years ago.

20 Q. Have you known him during all that time? A. I have seen Mr. Gaffney going back and forth during all that time. I would probably say that I knew him personally for more than three years.

Q. Do you know, of your own knowledge where he has been living during the three years? A. I do.

Q. Where? A. At his present house, I think the number is 152 Page Avenue.

Q. How often did you see him? A. I saw him every day.

Q. Does Mr. Gaffney keep his automobile in your garage? A. Yes, he does.

30 Q. For how long has he done so? A. Ever since he has had it, more than a year.

No cross examination.

OSCAR MARINO, a witness called on behalf of petitioner, being duly sworn according to law on his oath, says:

Direct Examination by Mr. Hanson:

40 Q. Where do you live? A. 513 Tenth Street, Union City, New Jersey.

Q. Where are you employed? A. By the Chemical Specialties Company, Jersey City.

Q. How long have you been employed there? A. About four and a half years.

Q. Do you know Walter R. Gaffney, the petitioner? A. Yes.

Q. Did you not accompany Mr. Gaffney to a place on Essex Street, Jersey City? A. Yes. 10

Q. Do you know when that was? A. February 27, 1928.

Q. And did you meet anyone there? A. Mr. Gaffney and I went to the door and a woman answered the bell and he told me it was his wife.

Q. Will you state to the court just what took place at that time and what conversation took place between Mr. and Mrs. Gaffney in your presence? A. Yes. Mr. Gaffney and I went over to 146 Essex Street and Mr. Gaffney rang the door bell and a certain woman answered the bell and Mr. Gaffney notified me that it was his wife. She asked us inside of the house, in the kitchen and the first thing Mr. Gaffney said "Nora, will you come back home with me?" and she said she couldn't decide. Then she told Mr. Gaffney that she received his letter. Mr. Gaffney repeated again about her coming back home with him. Still she said she couldn't decide and then she mentioned that she couldn't have any children, and if she were to have children she would have to be a woman born over again, and Mr. Gaffney asked her again about coming home with him, coming back, and she answered that she didn't need him and she would come back when she did need him and he asked her three or four times about coming back, and she couldn't decide and she wouldn't give any satisfactory answer. 20 30

Q. How long did you remain there altogether? A. About ten minutes, and Mr. Gaffney said, by 40

asking her the last time, that if she wouldn't give a satisfactory answer about coming back, it was useless arguing; she wouldn't listen to any argument, and turned to me and said "Oscar, we had better go."

10 Cross Examination by Mr. McNulty:

Q. Mr. Gaffney is your superintendent? A. Yes.

Q. He is your superior? A. Yes.

Q. You had a conversation with Mr. Gaffney before you went up there? A. No, sir.

Q. He said "Come along"? A. Asked me to come along.

Q. No conversation with him before that, whatever? A. No.

20 Q. When you went into this house, what kind of a place was it? A. Ordinary house.

Q. What kind of rooms, where did you go? A. Into the kitchen.

Q. Did you sit down? A. No, sir.

Q. You stood up? A. Yes.

Q. Did you take your hat off? A. Yes.

Q. Take your coat off? A. I don't remember if I had a coat on that day or not.

Q. You were standing all the time you were there? A. Yes.

30 Q. And was she standing too? A. Yes.

Q. And where was she standing, with respect to you and Mr. Gaffney? A. She was standing toward the window in the kitchen, opposite the door.

Q. How far away from Mr. Gaffney? A. The same distance between this person and I (indicating).

Q. And that was all the conversation that was had, you related the whole thing? A. What I stated before.

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Petitioner rests.

Honore Collins Gaffney—Direct Examination.

MRS. HONORE COLLINS GAFFNEY, defendant, being duly sworn according to law on her oath, says:

Direct Examination by Mr. McNulty:

Q. You are the wife of Walter R. Gaffney? A. Yes. 10

Q. You testified here today? A. Yes.

Q. You were married on April 23, 1910? A. Yes.

Q. By Father Wallace? A. Yes.

Q. Of St. Peters Church in Jersey City? A. Yes.

Q. After your marriage, where did you live? A. With my mother.

Q. At what address? A. 37 Essex Street.

Q. When you were married were you working? A. Yes. 20

Q. After you were married, did you continue to work? A. Yes, I went back to work for a while.

Q. For how long? A. For three or four months.

Q. And then you stopped working for a time? A. Yes.

Q. How long? A. I went back and forth to work for about two years.

Q. After you lived with your mother, where did you go to live? A. With a lady by the name of Mrs. Gaven. 30

Q. And lived with her how long? A. No longer than a week.

Q. Then where did you go? A. We took two rooms for ourselves.

Q. Had your own place? A. Yes.

Q. By that time did you cease to work? A. I went back to work too.

Q. You resided at various places in Jersey City? A. Yes.

Q. And at one time you resided at the P. T. 40

Douglass Engineering Department place? A. Yes, from the two rooms we went to Van Vorst Street where my husband worked.

Q. When did the children come to live with you?
A. They were with me nine years.

10 Q. Nine years from now? A. No, I made a mistake. They are with me eleven years this October.

Q. Were they living with you in the apartment in this building? A. Yes, that is where my sister died, when I lived there.

20 Q. What was the reason that you moved out of that apartment? A. Mr. Gaffney wasn't satisfied, he even had me go out west to look at a farm. I have an aunt out there and he took me—he had me go out there. I never spoke to my aunt from the time she got married for twenty years, but she had been corresponding with a sister of hers and through her I got the address, and Mr. Gaffney always had it in his head to get a farm. He asked me was I satisfied and I said I was satisfied with anything he was satisfied with, and he even bought my ticket two weeks ahead, and I went out west, and when I went there he wanted a dairy farm, and the kind of a farm he wanted you couldn't touch for the money that he had. The farms out there are all grain farms.

30 Court: What has this to do with the case?

Mr. McNulty: It has been opened up on direct. I didn't expect to go into any extended discussion. It is not material.

Q. What was the reason for you moving from that apartment? A. That was the reason. Mr. Gaffney wasn't satisfied, he said. When he was working there he was only getting \$35.00 a week or \$30.00.

40 Q. Was it because of the children that you were

obliged to move? A. No, the children moved in right after I moved out, and seven or eight children there now—maybe six or seven.

Q. Now then, what happened any time after Christmas, 1924? A. Christmas Eve, the night before Christmas, Mr. Gaffney and I sat at the table. We had lunch and the children and the first thing that happened that night, their father came to see the children, and there wasn't a word, we never had a quarrel, we never fought back and forth with one another. We went to bed that night, Christmas Eve. The next morning he kissed me and said he would be back in time to go to confession, which we all could receive on Christmas day. Christmas Eve, everything in the house was clean, I had everything prepared for Christmas, had a turkey and everything in the house, had a cake baked, and everything, and he come home Christmas night around nine o'clock drunk in a taxi. Something was coming out of the side of his mouth, and the moment he come in, he started at me and said I was no good, my family were nothing but bastards; he said my sister was no good, that she was a murderer, she did away with children and he kept that going on. I went on my knees and I said "Walter, we are only living a short while here. I don't want people to hear you. Be quiet." The children had been out to the movies and when they came back, the war was on. They went right up to bed, and he gets one of those crying skates on. I couldn't talk to him. He got up and started to drink whiskey which he had left on the table. He came with it. We always had some in case of sickness, and I had it in the buffet and the key of the buffet, used to open it. I hid the key. So Christmas morning while we went to church he was drinking. When we came back he was a raving maniac. I made the coffee.

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The three of us received confession. We couldn't have breakfast until after I come back and I asked was he going to church. He couldn't get up and stand on his feet. I made coffee and we had crullers. We were not going to have very much for breakfast, because of early dinner. He was alright for a while. He sat down and had coffee and he was coming in there and getting whisky. I didn't know it because I was going around the house. When he sat down he started in again and he said he was sick of me. He said "I am sick and disgusted with you." I said "I am not spending any money." I said "Since we came here I have saved \$20.00 of your money," and I was getting \$14.00 a week from this man, off Mr. Gary. Every week that man gave me money, and a couple of times Mr. Gaffney said he wouldn't take the money off George. I said "They are his children and he has to support them."

Q. Your husband has testified that out of the \$60.00 a week that he earned, he gave you \$50.00, before he moved to Lyndhurst, or \$55.00, and after that he gave you \$50.00. Will you tell the court what you did with the money? A. Mr. Gaffney couldn't give me \$50.00 until we moved to Greenville. When we moved to Greenville he got double wages, around \$50.00 or \$55.00. Before long he got \$60.00 and out of that he either gave me \$50.00 or \$55.00. Then I never spent any more of his money than \$10.00.

Q. What did you do with the balance? A. In the bank, in both our names.

Q. After you moved to Lyndhurst? A. After we moved to Lyndhurst. Then he had to have his train ticket and he kept \$10.00. He was getting \$60.00 he told me, and he used to give me \$50.00, and we needed a lot of new things for the house, and I took \$20.00 of his money. The next year I

Honore Collins Gaffney—Direct Examination.

was going to put \$5.00 of his money back, and we had to have paint and varnish and everything for the house.

Q. Was he satisfied with the way you managed the house? A. He never said a word, but he always watched the bank book. The children did pay one week when we moved to Greenville. Mr. Gaffney had to fix it with their father. He would leave the money with the man that lives there, and I ain't sure whether Mr. Gary gave the money to the man or left it in the letter-box. I don't think he would leave it in the letter-box, but Mr. Gaffney carried it one week and the next week the father was out with the money. 10

Q. Did the father come to see the children? A. Every other week, when we moved a distance away.

Q. And what with? A. The children were right around him. They were very good to him. 20

Q. What happened as a result of what took place on Christmas Eve 1924 and on Christmas Day, 1924? A. He went to bed. He was drunk that night, and Christmas Day I wanted to get the dinner fixed. He was smashing all the chairs around, pushing me around and telling me every thing bad, everybody belonging to me. He said we were nothing but bastards, and "many a time you gave your brother, Edward, money to keep his mouth shut, not to tell what you were." I asked Mr. Gaffney that, in his sober senses, and he said, "Yes, you are." 30

Q. What else happened? A. He told me he was sick and tired of me and my whole family; and that was one thing, no one ever bothered me. Mr. Gaffney was very cranky and he didn't want them, and my mother spent two weeks before that time in St. Francis' Hospital.

Q. Did he know that? A. Yes, he knew that. 40

He came and told me that my sister-in-law went over to him the night before and told him that they would have to send her there.

Q. Have you related all of it? A. He said, "Come on out, they have two bastards."

10 Q. He told you that? A. Yes. I said, "They are not bastards, they have a decent father and mother."

Q. Did he say anything to your father or mother?

A. We were at the table about a week before that, and my sister had to get money. She was getting \$17.00 every two weeks for compensation money, and I said, "Do you think Mama was married twenty-five years"—that was my step-father he was speaking about, "Would you think he was married twenty-five years to my mother?" He said, 20 "I thought your mother wasn't married to him." I said, "Do you think my brother would live in that house with a woman who wasn't married?"

Q. Did you ever say that? A. No, I even know the date she got married." I remember the date.

Court: How did you remember it?

30 Witness: I was lying in bed and she said to me, "I am going out." I said, "I know it," because she was going with a man. I said, "I know what you are going to do. You are going to get married." She said, "Don't say anything to John," that was my older brother.

Q. Was your mother married twice? A. Yes.

Q. As a result of this what did you do? A. On Christmas Day 1924?

40 Q. Yes. A. Mr. Gaffney got so I couldn't stand him. I said, "I will have to get out." He said "Get the Hell out, I am sick of you."

Q. And you left? A. I went out, and I wasn't out very long, until he called in the man next door, and he told him I was too—

Court: You didn't hear it?

Witness: No.

Court: Don't tell us anything you didn't hear. 10

Q. Then you left; where did you go? A. I went to my brother's, that was the only place I had. I said I didn't want to go on Christmas Day to upset other people. As long as he saw me go around the house, he started in hollering and cursing.

Q. Had you prepared the Christmas dinner? A. I couldn't. He told me he was going down to blow their brains out, if I didn't go out. 20

Q. You left there on Christmas morning? A. Yes, Christmas afternoon around two o'clock. I had to go to my brother's, the only place I had to go.

Q. What is his name? A. John Collins.

Q. Is he married? A. Yes.

Q. What is his wife's name? A. Violet.

Q. How long did you live there? A. I remained there until February or the next month, March, and I went around to Mr. Gaffney, to my husband, I lived in a lonesome place, I didn't have the children with me, it was terrible, and Mr. Gaffney was very independent, he said "He got along very well without me, he was going for himself, and how nice he kept the house and if I wanted to come I could satisfy myself and come back, that there were no ropes on me. 30

Q. Then you did leave? A. Yes, I left on Friday night, I think it was.

Q. How long did you remain away? A. I was 40

- away about a week and Mr. Gaffney wrote me a note and sent it over with a little girl, asking me to come back. He just said "Will you please live with me, because—", he told me that he would give me \$10.00 a week. I said "I cannot live on nothing." He said "I will give you \$20.00 a week."
- 10 That was on Friday, and on Monday he sent the girl who lives in the building, with a note, and said "Now, about the money, we will have to fix that up. Will you please live with me." At five o'clock I waited for him to come out of his place of business to meet me. I said "What do you say about living together." He started talking about the money. I said "Never mind about money," and he said "Sure I will get along on that," and I went with him. He decided for me to bring back those two children.
- 20 One boy came back the day after and the other boy didn't come back until after June until he had finished St. Peters School where he graduated from.
- Q. Then did he go away again? A. Yes. I went back and lived with him for eight months, and if anyone could do more for him—we painted the outside fence and did everything. I varnished the six rooms for him, doors, windows and everything, floors and all, Mr. Gaffney has a very independent
- 30 way about him. He would sit for hours and wouldn't speak to you.
- Q. How long after you went back—? A. For about two or three months everything was alright. He was nice to the children and then he started. If I cooked the smallest lamb chops he would take one and that wasn't Mr. Gaffney's appetite. He wanted to show me he didn't care what I put in front of him.
- Q. What was his conduct toward you? A. He
- 40 wouldn't speak. I said "You have got me a nervous wreck, so that I cannot stand it."

Q. And then did you have another quarrel with him, shortly before you left? A. He told me he didn't have to live with me, because I was a barren woman. He told me that more times than I have fingers and toes.

Q. Do you remember the occasion when you left—just before you left, did you have some conversation with him then? A. On Sunday he wouldn't speak, and he hardly ate any dinner. He even wouldn't have his family coming to the house. His sister corresponded with them, and he wouldn't even have a meal; they never came to the house in the whole eight months I was there. 10

Q. Did he speak about his sister writing to him, just before you left in December, 1925. Didn't you have some conversation with him then? A. He said "I don't have to live with you if I don't want to. I don't have to live with you, remember." He said "I understand the law." He said "I know how long you will have to be away from me." I said "Walter, if you keep on, I will either commit suicide or something will happen." He said "If you turn the gas on, you would be a fool to shut it off." 20

Q. Did the oldest boy who lived with you—? A. He was getting ready to go to work and heard what he said.

Q. You testified, Mrs. Gaffney, did you not, that the balance of money other than you used for household expenses, was deposited by you in a banking account in your joint names? A. Yes. 30

Q. Did you ever draw any money out of that account? A. No, sir.

Q. What happened to the bank books? A. Mr. Gaffney took them on Christmas Eve, 1924.

Q. Did you say to your husband that you had learned that he was making more money than he represented to you? A. No, sir. 40

Honore Collins Gaffney—Direct Examination.

Q. Was there any conversation about his earnings at all? A. No, sir.

Q. And Christmas Eve, 1924, or prior thereto, did you have a conversation with Mr. Gaffney with respect to his taking a vacation? A. No, sir, I was only too glad. Mr. Gaffney never got a vacation, and nearly all holidays he had to work. He never was home.

Q. He said that you objected to his taking a vacation. A. No, I was only too glad for him to get a vacation.

Q. And that, or around that time, Christmas Eve, 1924, did you have a conversation with the petitioner, Mr. Gaffney, in which you complained about his letting his sister have some money to attend the funeral with? A. The only thing about that, he loaned his sister some money. I don't know whether it was \$150 or \$200, both of us—four of us together heard my husband. The four of us was together and I don't know nothing about the money, and when she returned him the money, she returned it to the factory where my husband worked. When he came home at night he spoke about it, and I said, "I don't know nothing about that money that you loaned Grace." He said, "Yes, I loaned her, but she sent too much of it back." I said, "She did that in a kind of sneaking way." That is all I said.

Q. Did you refer to her as a sneak? A. No. I said, "She did that very sneaky," that is all I said, because I had been out with her selecting the clothes and she never mentioned getting the money from Mr. Gaffney.

Q. After the two children came to live with you, did your attitude change to your husband? A. No, he came first, and I had the children brought up to respect him.

Q. Was there any trouble, so far as you know, between your husband and the children? A. Never, the children never caused me any trouble of any kind, school or any place.

Q. Did your husband have a quarrel with you about having the children with you? A. No, never said anything about having them with me. 10

Q. Did you ever hear him say anything to the boys? A. No. He never had to chastise the children.

Q. Or to their father? A. No.

Q. And during all of the period in which they lived with you, the father paid their board? A. Yes, he gave me \$10.00; a year or so after he gave me \$12.00, and maybe it was another year or two years, he then continued giving me the \$14.00 right along, and gave it up until the oldest boy went to work and then he gave me \$10.00 for the one. 20

Q. And did your husband bring you this money? A. Every other week when we lived in Lyndhurst, Mr. Gaffney carried that money to me. He knew the money was in there, because he always said, "He left the envelope—George left the envelope."

Q. Prior to Christmas Eve of 1924, did you accuse him of writing to your people? A. No, my people lived right around me and it wasn't necessary to write to any of them. He had no use for them, he just didn't want them. 30

Q. And when you were leaving at Christmas, 1924, did you warn him not to go to your family and not to annoy them? A. I had no other place to go, only to go there.

Q. Did you say any such thing? A. No, I didn't say anything to him.

Q. He has also testified that after you left, you met him on the street on one occasion; he had a new overcoat. What was there about that incident, 40

if you remember. A. The time he had the overcoat, he had a satchel with him. I said, "What have you in the satchel?" I think he told me it was his old overcoat. He said he was just after buying an overcoat, and my mother was dead and I was after coming back from buying a black hat and he said to me, "I think you are a nice one, the way you treat me." He said, "Yes, you made a God damn bum out of me, and you are not going to make a bum out of me any longer," and he hollered it out, that even the people passing could hear. I felt mortified, and walked away, so that night he came to the house around eight or nine o'clock. I wouldn't talk, and he stayed there until half-past ten.

10 Q. After you left him in December, 1925, you were accompanied by the two children when you left? A. The one boy was going to Eagan School, and I waited until he came home at five o'clock, when I left the house. I cleaned the house. I didn't do a wrong thing in the home. I left everything. I even washed up the dish towels. There were sheets and things to be washed, I couldn't wash them. I just washed the small things out and hung them in the cellar and Mr. Gaffney had to take them down.

20 Q. When you were leaving he testified that you gave him some money and told him where the key was. A. The money was for two weeks. When I went back for the eight months I only had \$15.00 a week for use in the house, and I put the rest, \$35.00 a week in the bank. He had over \$1,100 when I left. It was in that account, check account, because the other bank book I never saw for the eight months I went back. It was in the Lyndhurst Trust Company.

30 Q. What about the key? A. Of course when he
40 said he didn't have to live with me and told me

about not having children I said, "Well, alright, here is \$85.00 of your money." The week before that I hadn't put the money in the bank and he gave me \$50.00, and I had \$35.00 from the week before and his \$50.00 he had given me on Saturday, that left \$85.00 and I gave it to him. He never even said "Here is your car-fare." 10

Q. What did you say to him about the key? A. I said, "Alright, since you don't have to live with me, I will leave the key under the mat."

Q. What did he say? A. He said, "The key don't amount to anything, leave it there."

Q. Did he tell you not to go or persuade you not to go? A. No, he never told me not to go.

Q. When you left there, you went where to live? A. With my brother.

Q. John Collins? A. Yes, 14 Essex Street where I live now. 20

Q. With his wife too? A. I was living upstairs in my brother's house, and the children slept downstairs, where their father had some things stored. He didn't live there but he had some furniture stored there, where he had kept house for himself.

Q. Since you left, did you ever receive any letters from your husband? A. I never received a letter, only the letter—

Q. I show you Exhibit P-2 and ask you if there were any other letters besides? A. No other letters but this letter. 30

Q. Did you receive other mail at that address? A. From other people.

Q. You did? A. Yes. I received other mail.

Q. How frequently did you see your husband in December, 1925, after you left? A. In the street I met him about four times and I was on one side of the street and he was on the other, and the street was clear, and I looked over and he turned 40

his face towards the fire house. He wouldn't look at me.

10 Q. Can you fix the times when you met him and he didn't recognize you, as you testify? A. About a month after I left in December and in January I met him. Then another time, he was right after coming from the first vacation he had taken and I thought to myself, "Maybe he is in better humor," and he was on his way going home, and when he got near me he turned his head. That was in August, I think. He took the vacation the last of July.

20 Q. Did you meet him again before 1926? A. I met him with Mrs. Collins on Good Friday, and both of us went on the Avenue, and we came back from the Avenue; it was five o'clock. Mr. Gaffney was going home and Mrs. Collins was with me. I said, "Don't you look over; I will look at Mr. Gaffney and see if he looks over." He never looked. He put his head down to the ground.

Q. After you received this letter in February, 1928, marked Exhibit P-2, did Mr. Gaffney come to see you? A. Yes, he came to see me, I think it was two weeks after, and he was accompanied by the other young man that you saw here.

30 Q. Mr. Marino? A. Yes, he had that man with him.

Q. Will you tell us what happened on that occasion? A. He rapped on the door and at the time I had a very bad cold, it was winter time, and when I opened the door he said, "Nora, I have come over to ask you if you are coming home." I said, "Come inside, I cannot talk to you out here. I have a cold." He didn't want to come in. I said, "Well, if you don't want to come in, I cannot stand here," and I walked ahead and he walked in. I went in
40 the kitchen and walked around to the table, and he

said he wouldn't come in any further. They didn't even shut the kitchen door. We sat down, and the boy stood by the door, and Mr. Gaffney just stood in about three feet, and he just said, "I am asking you are you going to come home." I said, "Well, listen, I will have to think it over, and I will let you know," and that is all that was said, and I said about the letter, I said, "You know what you said in the letter," so I said, "That remark is enough for anybody." 10

Q. Did you at that time refuse to come back to him? A. No, I didn't refuse, I told him I would think it over.

Q. Were you willing and prepared to live with him in December, 1925? A. If he had asked me to do so, I was willing to come back.

Q. If he would treat you as a just man and husband? A. Yes. 20

Q. Would you have gone back if he said he didn't want the children? A. I would have gone back.

Q. On any of these occasions when you met Mr. Gaffney, did he ever stop and talk to you? A. He never even made a stop.

Q. Mr. Gaffney referred to an abdominal belt. What have you to say about that? A. He came on Saturday before that; a night or so before that, he said he wouldn't be home in time for his lunch and I would have to wait. I said, "Allright." I held back his lunch and when he came in, I had it all ready. When he came downstairs—he always goes up and changes his clothes—and he came down and said, "I got it on." I said, "Yes, they cost pretty well." He hollered at me so that I had to go down to the cellar; it choked me and I didn't want to let him see me crying. He said, "You don't get anything for nothing." He said, "Everything costs." That didn't have anything to do with me. 30 40

Honore Collins Gaffney—Cross Examination.

Q. You were not finding fault with him? A. I found no fault.

Q. Did you ever say at the time you were living with Mr. Gaffney, that Mr. Gaffney could not be the father of children as good as good as those two? A. No.

10 Q. Did you say it at any time? A. I never said it.

Cross Examination by Mr. Hanson:

Q. Mrs. Gaffney, you were married in 1910? A. Yes.

Q. And the children came to live with you in 1918? A. Yes.

20 Q. During that time you and Mr. Gaffney got along very well? A. Yes.

Q. Always treated you very kindly? A. Until Mr. Gaffney came in with drink in him.

Q. Did he do any drinking between 1910 and 1918? A. Every once in a while he would get a skate on and he would start talking about my people.

Q. Even during that time? A. Yes.

30 Q. When your sister died, he was perfectly willing to have your two nephews come and live with you? A. He never said anything against them.

Q. He was satisfied to have them come? A. Yes.

Q. You spoke to him did you not about bringing the two boys to live with him? A. Yes, because that was my sister's dying wish.

Q. And he respected your sister's dying wish, did he not? A. Yes.

Q. You spoke to him about the two boys coming? A. He knew they were coming.

Q. That was agreeable to him? A. Yes.

40 Q. He was always kind to the boys, wasn't he? A. Yes.

Honore Collins Gaffney—Cross Examination.

- Q. They were good boys? A. Yes.
- Q. Wanted to go to school? A. Yes.
- Q. And Mr. Gaffney helped them with their home work, did he not? A. Yes.
- Q. He treated these two boys as a father? A. Yes, he was very good to them.
- Q. And never complained to you about them? **10**
- A. No.
- Q. And the boys looked to him as a father? A. I told them to respect him.
- Q. The boys had a great deal of affection for him? A. Yes.
- Q. How often, during this period from 1918 to 1924 would he come home intoxicated? A. Around Christmas time. Mr. Gaffney on New Years, always got a skate on, and every once in a while—
- Q. You mean that was a habit of his to come home Christmas Eve intoxicated? A. It seems that in the office, they must have had it there, because even when we lived in the building, he would go up and have a drink. **20**
- Q. What other times, outside of Christmas, would he come home in an intoxicated condition?
- A. Sometimes in the summer, every six months or so.
- Q. And this went on from the time you were married, did it not? A. Yes. **30**
- Q. And when he would come home in this intoxicated condition would he abuse you? A. He would curse and talk all about my people.
- Q. The first time he came home intoxicated, did he do it? A. Yes.
- Q. And every time after that? A. Yes.
- Q. And would he use this same language that you have testified to? A. Yes, the same language.
- Q. Why is it you didn't leave him any time between 1910 and 1924, when he came home in this condition? A. I had no place to go. **40**

Honore Collins Gaffney—Cross Examination.

Q. Your brother was alive, was he not? A. Yes.

Q. Your sister was alive until 1918? A. Yes.

Q. Your mother was alive until 1925, was she not? A. Yes.

10 Q. And yet you say that from 1910 to 1925, you had no place to go? A. They all had enough to do for themselves.

Q. What took place in your brother's affairs in 1924, that you did have a place to go to? A. There was no change, but I couldn't stand it any longer, and I told Mr. Gaffney, "If I have to take to the street I will have to do it."

Q. After you left this first time, you went to your brother's on Christmas Day? A. Yes, my brother, John.

20 Q. You stayed there until you met Mr. Gaffney, which was the time your mother died? A. Yes.

Q. He came to your mother's home, or to your home? A. It was my brother's home. My mother was living with my brother at the time. She had broken up her home.

Q. He came to your brother's home when your mother died? A. Yes.

Q. Went to the funeral with you? A. Yes.

30 Q. And asked you to return? A. Mr. Gaffney never asked me to return. When we came out of the car, Mr. Gaffney was getting ready to go over to the factory. I said "Come on in, we will have to have some lunch." He said "No, it is waiting for me at the factory."

Q. How did you come to go back the first time? A. I wrote a note to him. I got lonesome, and if I didn't love him I wouldn't have done it. I wrote a note to him and asked him, did he want me to come back.

40 Q. He told you "yes"? A. He put a whole lot of stuff in it. I just cannot think now, and the

same thing about my not having children, so then I wrote another note, and he said to come and see him and he would meet me.

Q. I understand that he wrote to you in reply to your letter, did he? A. In 1924, a note. No letter. It was just a note.

Q. He answered your letter anyway? A. Yes. 10
1924.

Q. Did you keep that? A. No.

Q. What did you do with it? A. I tore it up.

Q. How long did you stay there? A. I stayed there one week.

Q. How did he treat you during that week? A. The first few days was alright, and then after he got very independent. He told me that he didn't care. He was telling me how he got along in the house and how he cooked for himself, but was very 20
lonesome for me.

Q. And so you left him? A. Yes.

Q. And went back to your brother's home again?
A. I had no other place to go.

Q. The children were there, your two nephews were there? A. They were there.

Q. How did you come to go back the second time?
A. I just walked back. I never said anything, I just walked back.

Q. You just came back? A. Yes. 30

Q. Where was Mr. Gaffney when you went back?
A. Sitting in the house.

Q. What time was it? A. In the night, around eight o'clock.

Q. Did you go back alone? A. Yes.

Q. What did you tell him? A. I didn't say nothing to him; just walked in.

Q. What did he say to you? A. Just started to talk about different things. I don't know what it was now; just to bring up some conversation. 40

Honore Collins Gaffney—Cross Examination.

Q. You don't recall what it was? A. Just about the factory, the works.

Q. Nothing about your family? A. Nothing. He didn't speak then about my family.

Q. Nothing about your going away from him? A. No.

10 Q. Did he say he was glad to see you? A. Mr. Gaffney is very independent. He did not, no.

Q. You spoke to him about being lonesome there, did you not? A. Yes.

Q. Did he tell you to bring the boys? A. He told me to bring the children back.

Q. And you did? A. Yes.

Q. That was in March or April, 1925? A. I think it was in the last of March or the first of April.

20 Q. And then you stayed with him until just a few days before Christmas of that year? A. Yes.

Q. During those eight or nine months, how did he treat you? A. The first three or four months, everything was alright. After that he was just showing me that he didn't care whether I went or not. As I spoke before, when I cooked the meals, very often he wouldn't eat, he would leave them there.

Q. How did he act toward the children? A. In front of the children he never said anything, but to me, he did.

30 Q. What did he say to you? A. He said, what right he had to keep them two children. I told him he wasn't keeping them.

Q. You told him that? A. Yes.

Q. That he wasn't keeping them? A. Yes.

40 Q. What would he say to that? A. He said he didn't want them in his house. I said "You tell them and then they will go", and one night when both of them were alone, and Mr. Gaffney, the four of us in the house, I said "Tell the children, if you don't want them." He said "What, are you starting something," and so then I let it drop.

Honore Collins Gaffney—Cross Examination.

Q. You never told the children that Mr. Gaffney didn't want them there? A. No, I never said anything about it.

Q. Why didn't you tell Mr. Gaffney when he called at the house in February 1928 that you were willing to go back with him? A. In two years Mr. Gaffney never asked me if I wanted five cents. 10

Q. And I asked you why didn't you tell him you were willing to come back? A. I thought I would have time to think it over.

Q. You were willing to come back? A. I was.

Q. Why didn't you tell him that? A. I told him I would think it over, and for him to come back and I would let him know.

Q. Did you think it over? A. It wasn't long until I got the papers for a divorce.

Q. Did you think it over during that time? A. Yes. 20

Q. What decision did you arrive at? A. I said to my sister-in-law "I will go back."

Q. Why didn't you tell Mr. Gaffney that? A. I thought that after he let me go for two years, that he didn't want me, and he showed that in the house.

Q. Mr. Gaffney came to you after you had been away from him for two years and asked you to come back to him, and you told him that you would think it over. Then you say now that you did think it over and that you were satisfied to go back. I ask you why you didn't tell Mr. Gaffney that you were willing to go back? A. Because he didn't come back. 30

Q. You wanted him to come back to you? A. Yes.

Q. Did he say he was coming back? A. No.

Q. Did your family ever visit you? A. Very seldom.

Q. About how often? A. I think my mother was 40

there twice. She came around twelve in the forenoon and got the four o'clock train. Then after her husband died I invited her to Thanksgiving dinner.

10 Q. Did she come? A. She came, and at the time we were having our kitchen painted, and she wanted to go right home the next day, and I couldn't bring her home; because she couldn't go home alone, she had to wait until the painter was done, so I think she stayed five days with us.

Q. How did Mr. Gaffney act toward her? A. Mr. Gaffney, he didn't let on he seen her, he didn't bother with her.

Q. Did your mother complain to you? A. No, my mother said that it was very clear, but she didn't want to make any trouble. She didn't mind it.

20 Q. You signed an affidavit did you not, Mrs. Gaffney, in this matter? A. Yes.

Q. That is your signature is it to that affidavit? A. Yes.

Q. Referring to your affidavit in the petition for alimony, you state in this affidavit "The petitioner treated me kindly and maintained and supported me" is that correct? A. No answer.

30 Q. Then in paragraph 4 you say "Christmas Eve 1924 my husband came home drunk and began to assault and abuse me." A. Yes.

Q. You say that is the only instance of his coming home in an intoxicated condition. Did you say that in this affidavit? Why is it that you did not mention these other times that he came home intoxicated?

Mr. McNulty: I object.

Court: The objection is overruled.

40 A. What do you mean.

Q. Why is it that in your affidavit, you only mentioned this one time that he came home in an intoxicated condition, while now you have testified that it was his habit to do so at periodic intervals?

A. Because I didn't mention that.

Q. Isn't it a fact that that is the only time he came home drunk? A. No, he has been drinking, 10
as I told you, every once in a while.

GEORGE GARY, a witness called on behalf of defendant, being duly sworn according to law on his oath, says:

Direct Examination by Mr. McNulty:

Q. Where do you reside? A. 146 Sussex Street, 20
Jersey City.

Q. You lived with the defendant, Mrs. Gaffney?
A. Yes.

Q. And previous to living at 146 Sussex Street, you lived with her at 152 Page Avenue? A. Yes.

Q. With the petitioner and defendant in this case? A. Yes.

Q. You were living there at Christmas, prior to Christmas, 1924? A. Yes.

Q. Were you there when Mrs. Gaffney left 30
Christmas Day, 1924? A. Yes.

Q. Were you present the evening before, when Mr. Gaffney came home? A. I was, yes.

Q. Will you tell us, in your own words what happened? A. I didn't see the car. I saw it pull up to the door. I didn't notice the car, just what it was, and Mr. Gaffney come in, and he had a bottle in his hand and he was intoxicated, and went upstairs. He was drunk and drinking continually. 40
He started to cry and so he went upstairs to bed.

The next morning we all went to church except him. We come back from church and he was pretty well intoxicated then too.

Q. Did he say anything during this time? A. No, sir, not until after we got home from church.

10 Q. You didn't hear any of the conversation? A. After church I did.

Q. What did you hear then? A. I was upstairs when it first started, and he was raving pretty bad.

Q. Tell us what he said. A. He started in complaining how we were living on him and our family was nothing but a bunch of bums and was going down to see my uncle and called my aunt names, and said she was a barren woman, and he didn't have to live with her.

20 Q. Was there anything else, what did she say? A. She was taken by surprise, and he mentioned to her that her mother married the second time—but was not married.

Q. Then did she leave? A. No, we had to go upstairs and pack up. We left some time in the afternoon around two or three o'clock.

Q. Did you accompany the defendant? A. Yes.

Q. Where did you go from there? A. Down to our uncle's house 146 Sussex Street.

30 Q. Did you go back again to 152? A. We went back the latter part of February.

Q. How long did you remain? A. 1925, three days before Christmas.

Q. Did you observe Mr. Gaffney's conduct towards his wife during that period? A. Yes, he acted very cool.

40 Q. When did the change take place, if there was a change? A. We come back and the first two or three months the conversation was alright. The latter part or the beginning of the summer he started in.

Q. How did the change manifest itself; what did you observe? A. He become very cool and uninterested in anything that we had to do and never said anything, played cards and never mentioned anything. He beat us nine out of ten games.

Q. Would he sit there? A. Yes, and never say anything. **10**

Q. And then after that what happened, just before he left? A. In 1925?

Q. Yes. A. That was the Monday morning. We got up and had breakfast and for some reason or other an argument started, and he brought up the family subject again, saying that we were living on him and were nothing but street cleaners or something of that sort, and my aunt couldn't have children, and that she was the cause of all his trouble, and we were the cause of all his trouble. He said she was barren, that she couldn't have any children, and he didn't have to live with her. **20**

Q. And then what happened? A. We had to go to work, and Mr. Gaffney, I remember the time when my aunt wanted to give the money, when he was at the door, and the key, and he went out first, and something was said that she was going to be down to her brother's house and she would leave the key to the door there.

Q. What did he say? A. I don't recall. **30**

Q. Did you and your brother get along alright with the petitioner? A. Very well.

Q. You didn't have any trouble with him? A. No.

Q. Did he ever complain about you? A. Never said a word.

Q. Did you know that he didn't want you in his home? A. From the circumstances going around we knew it, but we were never told.

Q. If you thought that you were not wanted in **40**

the home, would you have left? A. I would certainly have.

Q. Would you have endeavored to persuade his wife not to return if you knew she wanted to go back? A. No, sir, never mentioned a word.

10 Q. Did you see Mr. Gaffney at any time after you left, in the summer of 1925? A. Yes.

Q. Will you tell us under what circumstances and when, if you recall? A. They met him, I should say, ten or twelve times on the street. I go home for lunch. Three days a week I go home between twelve and one and the other three between one and two, and occasionally I would meet him. The only time I would meet him would be on Saturday afternoon. I would be going home for lunch about twelve, and he would be just going home. I would be on one side of the street and he on the other. As we passed I gave him occasionally a wave or said "Hello," and two or three times going down the street I presume he saw me but he wouldn't let on and passed me without saying "Hello". I was on one side of the street and he on the other.

20

Q. You haven't had any conversation with him?

A. No.

30 Q. Did you ever see him at the home 146 Sussex Street? A. No, sir.

Q. Did you spend time around the house in the evening? A. Very little.

Q. What did you do with your time when you were not in school or were not at work?

Court: Why waste time on this?

Cross Examination by Mr. Hanson:

Q. How old are you? A. Twenty.

40 Q. How long have you been working? A. Since February, 1925.

Q. You went to work before your mother left Mr. Gaffney the last time? A. My aunt.

Q. You were working at that time? A. Yes, before she left.

Q. Were you working every day? A. No, not every day.

Q. What time would you go to work? A. I left 10
to work at eight o'clock in the morning.

Q. What time did you come back? A. I usually got the 5:33 train from Hoboken to Lyndhurst.

Q. You got up there after six? A. Yes.

Q. Mr. Gaffney usually got the same train? A. Yes.

Q. Go up together? A. Yes, most of the time we went together.

Q. Calling your attention to this last time in December, 1925, were you there when Mr. Gaffney 20
went to work that morning? A. Yes.

Q. What time would he go? A. I just cannot recall the time, but I imagine it was between a quarter of eight and eight o'clock.

Q. What time would you leave? A. I usually left before him.

Q. You didn't this morning? A. No.

Q. What time did you leave for work that morning? A. It was after he left.

Q. Did you know when you left with your 30
mother you were not to come back to Lyndhurst? A. Yes, I was told that.

Q. Do I understand you to say that if you had known Mr. Gaffney had not wanted you there, you would have left; you and your brother? A. Yes.

Q. You did not observe anything in Mr. Gaffney's conduct toward you or your brother all the time that both of you were living at his home, that would indicate to either of you that he didn't want you? A. No, sir. 40

Q. He always treated you with a great deal of feeling? A. Yes.

Q. Calling your attention to Christmas Eve, 1924, were you there when Mr. Gaffney came home? A. Yes.

10 Q. Do you recall what time it was? A. I imagine around 8:30 or 9 o'clock, between that.

Q. What did he say when he came in? A. I don't recall what he said when he came in the door.

Q. You recall the incident very well, don't you? A. Yes.

Q. Do you recall any words that he used or anything he said to either you or your brother, or your aunt that evening when he came home? A. It was all between himself and his wife.

20 Q. Wasn't that in front of you and your brother? A. I don't know whether my brother was there or not, but I was there.

Q. It was in front of you what was said? A. He would come in; he went upstairs, and he had the bottle and he left it in the dining room, and he come out in the kitchen and he was crying.

30 Q. I am talking about the evening; what he said that evening. Do you recall anything he said in particular that evening? A. No sir, not in the evening.

Q. Then he didn't say anything that evening, is that right? A. No sir, he came home with a bottle.

Q. And intoxicated? A. Yes.

Q. And he was crying? A. Yes.

Q. Then he went upstairs and went to bed? A. Yes.

Q. You didn't see him again until you and your brother and your aunt came back from church the following morning? A. Yes.

40 Q. He didn't come downstairs while you were there before you went to church? A. No, sir.

Q. You didn't hear him say anything after you came back from church? A. No, sir.

Q. Just what did he say that morning? A. We come back from church and was just about getting ready for breakfast and he was intoxicated very much, and he brought up the subject of our family, saying that we never paid board and we were all a bunch of bums, the whole family. 10

Q. Were those remarks directed to you and your brother or to everybody? A. About everyone.

Q. Just what remarks did he direct at your aunt, as his wife? A. He said that she was a barren woman and that she couldn't have any children and she knew it before she was married.

Q. How long did you stay after he said those things? A. Around an hour or an hour and a half after he said it. 20

Q. After you came back with your aunt, how did Mr. Gaffney treat you in 1924? A. Fairly well.

Q. He treated you fairly well? A. Yes.

Q. Did he show the same interest in you that he had before? A. Yes.

Q. Your brother was going to school at that time? A. Yes.

Q. Mr. Gaffney helped him with his school work? A. Not when he was going to Egan School; when he went through the parochial school, he helped him. 30

Q. You mentioned the fact that he would sit there and play cards? A. Yes.

Q. With whom? A. When we were home he played with us, very seldom, once a year he played cards with us.

Q. You mentioned that he would sit there and play cards. A. Yes.

Q. How often would he do that? A. Very seldom, once or twice a year he would play cards with us. 40

Honore Collins Gaffney—Recalled, direct.

Q. Would he play with anyone else? A. No, just the three of us.

Q. How did you observe Mr. Gaffney intoxicated while you were living at his house? A. Once in the factory I saw him intoxicated.

10 Q. And in 1924, Christmas, they are the only two times you observed him intoxicated? A. Once or twice he come home, but he wasn't intoxicated. He was drinking liquor but not intoxicated.

Q. Did he have any argument at that time? A. No, sir.

MRS. HONORE COLLINS GAFFNEY, recalled for further

20 Direct Examination by Mr. McNulty:

Q. Did you ever tell your husband at any time that you knew before you were married that you could not have any children? A. No, that I didn't know, and I never told him. I had no occasion to know I couldn't.

Mr. McNulty: I rest.

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WALTER R. GAFFNEY, petitioner recalled in rebuttal.

Direct Examination by Mr. Hanson:

Q. Mr. Gaffney did you come home intoxicated Christmas Eve, 1924? A. I had some drinks. I had a few drinks but I wasn't intoxicated.

40 Q. Did you come home with a bottle of whisky?
A. Yes.

Q. Did you tell your wife that you were sick and disgusted with her? A. No, sir.

Q. Did you ever say to her or use the term "those two bastards" referring to her two nephews? A. No, sir.

Q. Did you ever say "Go to Hell." A. No, sir.

Q. Did you ever threaten to blow her brains out? 10
A. No, sir.

Q. Did you ever make any threats against her or against them? A. No, sir, I did not.

Q. Did you say to her when she returned that you got along very well without her and that she could go back if she wanted to? A. No, sir, I did not. I used to talk about how I got along and what I had to do, but I never bragged about my ability to get along.

Q. Were you ever sullen and wouldn't talk to her for a week? A. No, sir. 20

Q. Did you refuse to permit her mother to come to your home? A. No, sir, I did not.

Q. Did you ever say to her "I understand the law; I don't have to live with a barren woman." A. No, sir.

Q. Did you ever say "You made a God damn bum out of me." A. No, sir.

Q. In any sense or in any form? A. No, sir.

Q. Did you ever tell her that you didn't want 30
the children there? A. No, sir.

Q. How often did you mention to her that she was a barren woman? A. Never but once in my life.

Q. When was that? A. The morning she left, when she told me I couldn't be father of children as good as they.

Q. But you did refer to it in this letter, Exhibit P-2. You said she knew when she was married, the fact that she couldn't have any children, you said 40
that in the letter? A. Yes.

The Court: This is a suit for divorce on the ground of desertion by the husband against the wife. The parties were married in 1919 and lived together until Christmas 1925. No children were ever born of the marriage. Their life apparently has been the ordinary happy one except for the last

10 year or so of their married life together. During that period the wife had left the husband on two or three occasions and had returned to him at his request, the last occasion, December 25th, she left and went to the home of her brother and has remained there ever since. It would be idle for me to repeat the testimony with respect to the circumstances under which she left. It is sufficient for me to say that she was not justified in leaving when she did leave. She sets up in her answer that she

20 was justified in leaving because of extreme cruelty of the husband against her, the cruelty consisting entirely of the ravings of a drunken man. The extent of his drunkenness, according to defendant's testimony, was periodical about every six months, but her testimony on that score is hardly borne out by the testimony of the other witnesses. The nephew who resided with them and who has taken the stand, recalls only once during the nine years

30 that he lived with them, when the petitioner was intoxicated and that was in December, 1924. Of course when "rum is in, wit is out." Intoxication isn't a cause for divorce, nor standing alone, is it an excuse for the abandonment of one spouse by the other. There is nothing, in my mind, which would justify the wife leaving the husband when she did.

His right to a divorce, however, does not depend entirely on that circumstance. The separation or the desertion must have been against his will and

40 must have been a continued opposition against his

will for a period of ^{two}~~three~~ years. After the separation in the present instance, the husband testified that he wrote his wife numerous letters after the separation, and the final letter on the 18th of February, 1928, requesting her to return to him to their home. With the exception of the February letter, to which I have referred, the wife denies receiving any such letters. The testimony of the petitioner is uncorroborated with respect to all of the letters, except that of February 18th. The parties during all this state of separation were almost every day within a stone's throw of each other. If either of them had a desire to resume their marital life, it would have been the easiest thing in the world for one to have sought out the other and made the necessary overtures to effect a reconciliation. It is not, under our law, the duty of the wife to do it, but it was the duty of the husband. Even when they met on the street the extent of their communication was a nod or a word. The only question, therefore, for me to dispose of is the sufficiency of the letter of February 18th, 1928, and the visit of the husband which I believe took place according to his testimony, nine or ten days thereafter, in the company of one of the witnesses, an employee of the firm for which the petitioner worked. Assuming, as I must assume, that there had been no communication between these two for a period of over two years, practically two years and two months after the separation, I am not inclined to believe that this letter satisfies the rule which requires the husband to make not only reasonable but a sincere effort to affect a reconciliation after the parties separated, and this rule prevails irrespective of whose fault it was at the time of the separation. The main bone of contention between these two for a year or so prior to the sep-

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- aration, according to the defendant's testimony, was what has been referred to as her barrenness. The husband, desiring to approach his wife, in a conciliatory manner, certainly ought not, in his first communication with her, to broach the very subject which has been a source of trouble between them. And in this letter, the language which he uses is as follows: "You know what caused our trouble. You would like to have brought up a family, but unfortunately you could not do so, and this fact you concealed from me at the time we were married." When we try to calm the enraged bull, we don't usually wave a red flag in front of him and I think that was the effect of this letter. It is not surprising that he received no reply to the letter, but he called on her a few days later. Obviously the call a few days later, taking with him the young man in the employ of the firm for which he worked, was made for the purpose of furnishing evidence in a divorce suit which he began within a week after he called on his wife at the home of her brother. I don't think any court would be justified in holding that such advances as are shown by this letter and the call he made on his wife in the company of the young man who testified, satisfies the rule requiring a sincere effort at a reconciliation by the husband toward his wife, consequently his petition will have to be dismissed.

Exhibit.

Jersey City, N. J.
February 18, 1928.

Dear Wife:

It is now over two years since you left me and
the home. 10

I have spent this time in hopes that you would
come back. I have watched and tryed to meet you
on the street, but, it seems that you never pass
where there is any chance of me meeting you.
You know the home has always been there and I
have been ready to receive you the same as on the
different occasions before when you left and come
back. You know what caused our trouble. You
would liked to have brought up a family, but, un-
fortunately you could not do so and this fact you 20
concealed from me at the time we were married. I
am still willing to have you return and I repeat
again that I have kept the home together. I ask
you to please answer this letter.

From,
Your husband,

WALTER R. GAFFNEY. 30

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WALTER R. GILBERT

[Index]

New Jersey Court of Errors and Appeals

Between

WALTER R. GAFFNEY,
Petitioner-Appellant,

and

HONORE COLLINS GAFFNEY,
Defendant-Respondent.

On Appeal from
the Court of
Chancery.

Sat Below:
Hon. Edwin
Robert Walker,
Chancellor.

Hon. Maja Leon
Berry,
Vice-Chancellor.

BRIEF OF PETITIONER-APPELLANT.

Statement of Facts.

This is an appeal from a final decree made on May 14th, 1929, by the Honorable Chancellor, Edwin Robert Walker, on the advice of the Honorable Vice-Chancellor, Maja Leon Berry, in a certain cause in the Court of Chancery, wherein the said Walter R. Gaffney was the petitioner, and the said Honore Collins Gaffney was the defendant. The said decree "ORDERED, ADJUDGED and DECREED, that the petitioner is not entitled to the relief prayed for and the petition be and the same is hereby dismissed."

The matter came on to be heard in the Court of Chancery on a petition praying that the said marriage between the said petitioner and the defendant, might be dissolved, because the defendant deserted the petitioner, and ever since said desertion and for more than two years, thereafter, the defendant had wilfully, continuedly and obstinately deserted the said petitioner, according to

the statute in such case made and provided. The matter was heard on petition, answer and oral proofs taken in open Court.

The parties were married April 23, 1910, in the city of Jersey City, State of New Jersey, where they both resided (See p. 52 of the State of Case) and have continued to reside together at various places in said city continuously up until May 15, 1923 (See pp. 16 and 54 of the State of Case). On the latter date the petitioner bought a home in Lyndhurst, New Jersey, taking title in the name of the defendant and himself (See pp. 53-54 of the State of Case). Thereafter they took up their residence at the said home and continued to reside there together up until the separation hereinafter mentioned. The petitioner, however, continued to reside there continuously up to and after the commencement of the said suit.

The petitioner from a time shortly after his marriage to the defendant was continuously employed and is still employed by the same firm (See p. 54 of the State of Case), and has been engaged in said employment in various capacities advancing himself gradually from Eleven (\$11.) Dollars a week, which he was earning at the time of his marriage (see p. 31 of the State of Case), up until at the time of the desertion hereinafter mentioned he was earning Sixty-five (\$65.) Dollars a week. When the petitioner's salary amounted to Sixty (\$60.) Dollars a week, he gave the defendant Fifty-five (\$55.) Dollars thereof before moving to Lyndhurst and thereafter he gave her Fifty (\$50.) Dollars, the additional Five (\$5.) Dollars being necessary for transportation expenses to Jersey City (See pp. 26, 56 and 84 of the State of Case), the defendant stating that the sum given to her was used to defray all household expenses and the cost of wearing apparel for both parties, and the balance thereof was deposited by her or the

petitioner in a joint bank account standing in both of their names (See pp. 33, 84 and 89 of the State of Case).

No children were born of the marriage (See p. 54 of the State of Case). In October, 1918, John and George Gary, children of a deceased sister of the defendant, who were then 7 and 9 years of age, respectively, came to live with the petitioner and the defendant, and continued to live with them during the entire period that the parties resided together (See p. 54 of the State of Case).

The defendant admits that the petitioner, at all times prior to the separation hereinafter mentioned, treated her kindly, and properly maintained and supported her (See p. 16 of the State of Case), and the Honorable Vice-Chancellor found that "their life apparently has been the ordinary happy one except for the last year or so of their married life together" (See p. 112 of the State of Case). The defendant admitted that the petitioner at all times treated her nephews very kindly and as a father (See pp. 96 and 97 of the State of Case).

The petitioner testified that although no real trouble came between the defendant and himself until Christmas Eve of 1924, that nevertheless, within six months after her nephews came to live with them, the defendant's interest seemed to be taken up more with them than with him, and that she was not as much interested in him as she had been previously (See p. 55 of the State of Case), although she denied this (See p. 90 of the State of Case).

The marital difficulties between the parties first began at the end of December, 1924, when the defendant left the petitioner's home with her said nephews on December 25, 1924 (See p. 55 of the State of Case). The reason which the defendant assigns for leaving, is that on Christmas Eve of

1924 at about 9 P. M. the petitioner came home in a taxi cab in an intoxicated condition and began a course of insulting and abusive conduct; that he charged that her family was running his home; that he said that her mother had not been married to her second husband (the defendant being a child by her mother's prior marriage); that he charged the defendant with giving money to her brother to induce him not to divulge her antenuptial incontinence, and that he otherwise upbraided, insulted, abused and found fault with her (See pp. 16, 36, and 83-85 of the State of Case). She states that she told the petitioner that she couldn't stand him and that she would have to get out and that he said, "Get the Hell out, I am sick of you", and that she left the petitioner's home on Christmas Day of 1924 and went to live with her brother, John Collins (See pp. 86 and 87 of the State of Case).

The petitioner denied the defendant's statement of the circumstances under which she left (See p. 22 of the State of Case) and testified that the trouble between them arose on account of the defendant's statement to him on Christmas Eve, that she had heard on good authority that he was making One Hundred Twenty-Five (\$125.) Dollars a week and that he earned more money than he admitted to her. He further testified that this subject was brought up by her on numerous previous occasions (See p. 55 of the State of Case), and that she accused him of, and found fault with, his giving money to his sister and stated to him that his sister was a sneak for getting the money from him (See pp. 56, 57 and 90 of the State of Case). He further testified that on Christmas morning the defendant renewed the argument by accusing him of not liking her people and of having made statements concerning them, and she further stated that she was going to live with her

brother and warned the petitioner not to come there (See pp. 23, 58 and 59 of the State of Case).

The defendant remained away at her brother's home until February or March of 1925 (See pp. 59 and 87 of the State of Case). The defendant's mother died some time during the end of February, 1925. Two nights before the funeral the petitioner went to see the defendant for the purpose of offering his sympathy because of her mother's death and testified that at that time she appeared to be angry with him; nevertheless, he ordered flowers and had them sent to the house of the defendant's mother and stayed at the wake for two nights until 1 o'clock in the morning (See p. 59 of the State of Case). The petitioner attended the funeral and rode home in the same carriage with the defendant (See pp. 74 and 75 of the State of Case), and during the course of the journey, the petitioner asked the defendant to return home and live with him and she stated that she was too upset and could not. A few days thereafter the defendant sent a letter to the petitioner stating that she was ready to return to him, and the petitioner answered this letter telling her to come home and stated that he would meet her and take her home. He did meet her that night and carried her grips and things home for her (See p. 60 of the State of Case).

After her return to the petitioner's home the defendant remained there for about a week or so (See p. 60 of the State of Case), when she told the petitioner that she was going back to live in Jersey City at her brother's home, giving as her reason for leaving, that she couldn't stand the petitioner. The petitioner at that time was suffering a great deal with illness. The petitioner again wrote to the defendant requesting her to return home, and she finally did return to live with him

once more. However, upon the second return she remained with him for about a week and then left again giving as her reason the fact that it was too lonesome to live with him without her nephews. The petitioner immediately dispatched a letter to the defendant requesting her to return to live with him and stating that she should bring her nephews along with her. Within two or three days thereafter, the defendant and her nephews returned to live with the petitioner (See pp. 23, 60, 87 and 88 of the State of Case).

After her return the defendant continued to live with the petitioner for about eight months (See p. 88 of the State of Case). The defendant further testified that on the Sunday preceding Christmas day of 1925, the petitioner stated to her, "I don't have to live with you if I don't want to. I don't have to live with you, remember * * *. I understand the law * * *. I know how long you will have to be away from me" (See p. 89 of the State of Case); and that she replied, "allright, since you don't have to live with me, I will leave the key under the mat", and that he had not even made an attempt to persuade her not to go. The defendant then went to live with her brother, John Collins, in the City of Jersey City (See p. 93 of the State of Case).

The petitioner testified that the circumstances under which the defendant left his home on Christmas Day of 1925 were as follows: that two Saturdays previous to her leaving he returned home from the doctor's office with an abdominal support belt which his physician advised him to wear, and that as a result of certain remarks passed by her with regard to the cost of the belt, a dispute ensued between them resulting in her refusal to engage in any friendly conversation with him and that within a couple of days thereafter, she told

the petitioner that she was glad that she never had any children because the petitioner couldn't be the father of children as good as her nephews, and that in his excitement he stated to her, "you can't have any children any way, because you are a barren woman", and that immediately thereafter she became angry and on the following Christmas day she and her nephews left his home (See p. 62 of the State of Case).

The petitioner testified that after her leaving him this last time, he had written her a number of letters, entreating her to return to live with him, stating therein that it was hard for him to keep up the home alone, that he was and had been ill, and that he wanted her to come back. He further testified that she didn't reply to any of these letters (See p. 64 of the State of Case). The defendant denied the receipt of any of the said letters except the letter of February 18, 1928, which was marked as an exhibit in the Court of Chancery (See p. 115 of the State of Case for this exhibit), which she admitted was received and she further admitted that two weeks thereafter, the petitioner came to see her at her brother's home and requested her to return to live with him and that she then stated to him that she would have to think it over and let him know (See pp. 94 and 95 of the State of Case).

The petitioner and the witness, Oscar Marino, testified that upon the occasion when the petitioner visited the defendant for the purpose of requesting her to return to him, she stated that she couldn't then decide whether to return to him and she further stated that she didn't need him and that she would come back to him when she would need him (See pp. 79 and 80 of the State of Case).

The learned Vice-Chancellor having heard the cause on the petition, answer and oral proofs

taken in open court, and having duly considered the pleadings and proofs, made the decree of May 14, 1929, above mentioned, ordering that the petition be dismissed.

Argument.

The learned Vice-Chancellor rendered an oral opinion from the Bench, in which he stated the reasons upon which he based his said decision (See pp. 112-114, inclusive, of the State of Case). He stated among other things, in referring to the last separation on Christmas Day of 1925, "It is sufficient for me to say that she (the defendant) was not justified in leaving when she did leave. She sets up in her answer that she was justified in leaving because of extreme cruelty of the husband against her, the cruelty consisting entirely of the ravings of a drunken man. The extent of his drunkenness, according to defendant's testimony, was periodical about every six months, but her testimony on that score is hardly borne out by the testimony of the other witnesses. The nephew who resided with them and who has taken the stand, recalls only once during the nine years that he lived with them, when the petitioner was intoxicated, and that was in December, 1924. . . . Intoxication isn't a cause for divorce, nor standing alone, is it an excuse for the abandonment of one spouse by the other. There is nothing, in my mind, which would justify the wife leaving the husband when she did.

"His right to a divorce, however, does not depend entirely on that circumstance. The separation or the desertion must have been against his will and must have been a continued opposition against his will for a period of three years, (this is a misprint in the State of Case, the statutory period being two

years). After the separation in the present instance, the husband testified that he wrote his wife numerous letters after the separation, and the final letter on the 18th of February, 1928, requesting her to return to him to their home. . . . The testimony of the petitioner is uncorroborated with respect to all of the letters, except that of February 18th. The parties during all this state of separation were almost every day within a stone's throw of each other. If either of them had a desire to resume their marital life, it would have been the easiest thing in the world for one to have sought out the other and made the necessary overtures to effect a reconciliation. It is not, under our law, the duty of the wife to do it, but it was the duty of the husband. . . . *The only question, therefore, for me to dispose of is the sufficiency of the letter of February 18th, 1928, and the visit of the husband which I believe took place according to his testimony, nine or ten days thereafter, in the company of one of the witnesses, an employee of the firm for which the petitioner worked. Assuming, as I must assume, that there had been no communication between these two for a period of over two years, practically two years and two months after the separation, I am not inclined to believe that this letter satisfies the rule which requires the husband to make not only reasonable but a sincere effort to effect a reconciliation after the parties separated, and this rule prevails irrespective of whose fault it was at the time of the separation. . . .*" (Italics ours; see pp. 112 and 113 of the State of Case.)

The sole question presented by this appeal is as to the propriety of the action of the Court below in making the said Order and whether the petitioner is entitled to a decree severing the bonds of matrimony between himself and the defendant for the cause that the defendant deserted the petitioner, and ever since said desertion and for more than two years thereafter, the defendant had wil-

fully, continuedly and obstinately deserted the said petitioner.

We contend and respectfully submit that the Decree made by the Chancellor was against the weight of the evidence; that the petitioner is entitled to a decree in his favor, he having proved sufficient facts to constitute a cause of action, in that the petitioner established the fact that the defendant wilfully, obstinately and continuedly deserted the petitioner for more than two years, last past since the commencement of the said suit; and that the petitioner proved all the necessary facts to warrant a decree for divorce in his favor.

POINT I.

While a demand for the return of the wife is, in general, required to be made, it is not essential where the circumstances proved justify the inference that such a demand would be wholly ineffective.

The action of the Vice-Chancellor was rested upon the ground that the well settled rule in this state, where the suit for divorce is brought by the husband against his wife for desertion, requires the husband to make reasonable efforts to induce her to return to him and if he fails to make reasonable overtures to that end, the requisite statutory element of obstinate desertion is not established.

As was very aptly observed by the late Justice Kalisch in *Smith v. Smith*, 95 N. J. Eq. 657 (Court of Errors and Appeals), at page 658:

“This is undoubtedly the general legal rule; but, nevertheless, in its application it is not unbending and, like every other general rule, is subject to exceptions, and, therefore, it is quite obvious that the applicability of the

rule, in its full rigidity, must depend upon and be governed by the circumstances of each individual case. . . .

“. . . It is plain that the rule was not designed to extend to a case where the conduct of the wife was such as to make it clear that any reasonable effort on the part of the husband to induce his wife to return would prove unavailing or where her conduct was *contra bonos mores*.”

We respectfully submit that the court below erred in founding his decision solely upon the fact that the petitioner had not in his opinion made proper overtures or efforts to induce the defendant to return to him, after her deserting him on December 22, 1925. It is our contention that in view of the fact that the defendant had left the petitioner on at least three previous occasions (the learned Vice-Chancellor having found that during the last year or so of their married life together “the wife had left the husband on two or three occasions and had returned to him at his request”, See p. 112 of the State of Case) without just cause or excuse and returned each time after the petitioner had solicited her to return, it thus became apparent that the defendant was nothing less than a chronic deserter and that any efforts on the part of the petitioner to bring about her return to his home, even if successful in bringing the desertion to an end, would be only temporary, and certainly under these circumstances the law ought not and does not require the husband to go through the futile formalities of soliciting the wife to resume living with him. Any contrary doctrine would work injustice to a husband and in fact deprive him of the right to procure a divorce on the ground of the wife's desertion.

An examination of the testimony in the case at bar, clearly shows that when the defendant left her

husband upon the last occasion (Christmas, 1925) she did so with a fixed determination not to return to him, and that any effort on his part to induce her to return would have been unavailing, or if successful, would have resulted in a return which would be of but a temporary nature, as had been her practice theretofore. Her testimony is replete with statements of her willingness at all times to live with the petitioner. However, her conduct belies her professed state of mind. On the occasion of the last visit of the petitioner to the home of the defendant for the purpose of entreating her to return to live with him, the defendant refused to indicate whether or not she would return to live with the petitioner, and according to the testimony of Oscar Marino, who was present when the petitioner called upon the defendant, she stated that she couldn't decide and further stated that she didn't need the petitioner, but that she would come back when she did need him (See p. 79 of the State of Case). She did not disclose or make manifest to the petitioner or give him any reason to believe that he could overcome her original fixed determination not to live with him, but rather made it apparent to him that any renewal of his former efforts would prove futile and unavailing. The defendant herself testified that upon that occasion she replied to her husband that she would have to think the matter over and that she would let him know whether she would return to live with him (See p. 95 of the State of Case). However, up until the time that this suit was instituted, which was over a week after the said visit, the defendant did not indicate to the petitioner whether or not she intended to return to him, and this, despite the fact that she testified that she was always ready and willing to live with him and despite her further testimony that she had told her sister-in-law, the wife of her brother, John

Collins, even before the occasion of the petitioner's last visit, that she had made up her mind and that she was going back to live with the petitioner (See p. 101 of the State of Case). When cross-examined on this matter by counsel for the petitioner, she testified at p. 101 of the State of Case as follows:

“Q. Why didn't you tell Mr. Gaffney when he called at the house in February, 1928, that you were willing to go back with him? A. In two years Mr. Gaffney never asked me if I wanted five cents.

Q. And I asked you why didn't you tell him you were willing to come back? A. I thought I would have time to think it over.

Q. You were willing to come back? A. I was.

Q. Why didn't you tell him that? A. I told him I would think it over, and for him to come back and I would let him know.

Q. Did you think it over? A. It wasn't long until I got the papers for a divorce.

Q. Did you think it over during that time? A. Yes.

Q. What decision did you arrive at? A. I said to my sister-in-law 'I will go back.' ”

An analysis of her testimony would seem to indicate a studied effort on the part of the defendant to avoid appearing to be an obstinate deserter and yet at the same time to avoid the necessity of returning to live with the petitioner. Throughout her testimony when professing her continued willingness to return to live with the petitioner, she always qualified the same with the technical term which is mentioned in all our decisions on this subject which lay down the duty of a husband seeking the return of his wife, namely, provided that he would treat her as a just man and husband. In at least five places in the said State of Case it will be found that she has used this term (See pp. 12, 16, 17, 18 and 35 of the State of Case).

The law is well settled to the effect that the demand for the return of the wife is not essential where the circumstances proved, justify the inference that such a demand would be wholly ineffective.

In the leading case of *Hall v. Hall*, 60 N. J. Eq. 469, the present Chief Justice speaking for the Court of Errors and Appeals, on page 470 said:

“That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded is declared by all our cases; and, ordinarily, when the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him. *Cornish v. Cornish*, 8 C. E. Gr. 218; *Bowlby v. Bowlby*, 10 C. E. Gr. 406; S. S. on error, 10 C. E. Gr. 570; *Rittenhouse v. Rittenhouse*, 2 Stew. Eq. 274 *Herold v. Herold*, 2 Dick. Ch. Rep. 210.

“But the law does not impose this duty upon the husband in every case arbitrarily and without regard to the facts and circumstances by which it is surrounded. The husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife’s desertion. Where it is manifest from the circumstances under which the desertion took place, or from her temper and disposition, or from any other fact in the case, that honest effort on the husband’s part to terminate the separation would be unavailing; or, if successful in bringing the desertion to an end, would be so only temporarily, the duty of making it does not exist. *Trall v. Trall*, 5 Stew. Eq. 231; *Lammertz v. Lammertz*, 45 Atl. Rep. 271.”

So also in the case of *Lammertz v. Lammertz*, 59 N. J. Eq. 649, which is a decision of Vice-Chan-

cellor Reed, affirmed *per curiam* by the Court of Errors and Appeals without an opinion by the upper court, the learned Vice-Chancellor, at page 650 said:

“* * * The only point upon which there is a color of defence is the conduct of the husband after she left him the second time, in his failure to seek her and urge her to return. But the manner in which she left, following her prolonged preparation for leaving, left little hope that she would return, or that if she should return it would be more than a temporary matter * * *”

And so in *Sterling v. Sterling*, 71 N. J. Eq. 59, Chancellor Magie speaking for the Court, at page 60 said:

“... It is the result of our cases that while a demand for the return of the wife is, in general, required to be made, it is not essential where the circumstances proved justify the inference that such a demand would be wholly ineffective.”

The same rule is laid down in the case of *Danielly v. Danielly*, 93 N. J. Eq. 556, in which Chancellor Walker speaking for the Court, at page 558 said:

“It is held that where a wife leaves her husband with his actual or presumed consent, he is obliged to make such advances as a reasonable man would to induce her to return, and thus terminate the separation. But our law, Vice-Chancellor Stevenson observed, in *Rogers v. Rogers*, 81 N. J. Eq. 311, 313, has refrained from laying down any hard and fast rule in regard to the duty thus imposed upon a husband of inviting the return of a wife who has separated herself from him, where she is to blame; that when the question comes before the court the only test of any practical value in a large number of

cases is, taking all the conditions and circumstances into consideration, Has the man acted like a just man? . . .”

And so also in the case of *Norcross v. Norcross*, 82 N. J. Eq. 195, Vice-Chancellor Backes in rendering the opinion of the Court, at page 196 said:

“Although a wife may, without cause or justification, abandon her husband, yet the law imposes upon him a duty to use active efforts to terminate the separation, by making such advances or concessions as might reasonably be expected to induce her to return to him. *Bowlby v. Bowlby*, 25 N. J. Eq. (10 C. E. Gr.) 406. And he is excused from discharging this obligation only when it is manifest from the facts in the case that to do so would be unavailing. *Hall v. Hall*, 65 N. J. Eq. (20 Dick.) 709.”

The same rule is set forth generally in *Child on Divorce*, page 122, *et seq.* as follows:

“The law of this State as construed by the courts has imposed upon a deserted husband the duty to endeavor in good faith to induce his wife to return, and until this duty is performed, or a good cause shown for its non-performance, the desertion is not obstinate. Our law has not laid down any set rule in regard to the duty imposed upon a husband of inviting the return of a wife, who has separated herself from him, where she is to blame for the separation. When this question comes before the court, it is said that the only test of any practical value in a large number of cases, is taking all the conditions and circumstances into consideration—‘Has the man acted like a just man? . . .’

“Also, if it appears from the facts that if the husband made such effort that it would be unavailing or if successful in bringing the desertion to an end, it would be only temporary, the duty to make such effort does not exist. . . .

“Where there have been repeated desertions by the wife, followed by her return at the husband’s request, it would appear from the decisions that the husband is under no duty to make further advances to induce his wife to return and that her return should be with the bona fide intention of living with the petitioner. . . .”

The following cases are in accord: *Kip v. Kip* (Court of Chancery opinion being reported unofficially in 78 Atl. 682 and which was affirmed without opinion by the Court of Errors and Appeals in 77 N. J. Eq. 585); *Hall v. Hall*, 65 N. J. Eq. 709 (Court of Errors and Appeals); and *O’Brien v. O’Brien*, 142 Atl. 898 (not yet officially reported) affirmed in 147 Atl. 911.

Throughout the course of her testimony and in her affidavits the defendant has attempted to justify her separation from the petitioner upon the pretext that the petitioner very often become intoxicated and was guilty of cruel conduct toward her and indulged in abusive language, yet on the witness stand she testified that not once during the period from 1910 to 1924, did she leave the marital domicile, and when pressed by counsel for the petitioner for her reason for not leaving the petitioner as she had done on at least four occasions from and after Christmas, 1924, she naively testified (See pp. 97 and 98 of the State of Case) as follows:

“Q. And this went on from the time you were married, did it not? A. Yes.

Q. And when he would come home in this intoxicated condition would he abuse you?

A. He would curse and talk all about my people.

Q. The first time he came home intoxicated, did he do it? A. Yes.

Q. And every time after that? A. Yes.

Q. And would he use this same language that you have testified to? A. Yes, the same language.

Q. Why is it you didn't leave him any time before 1910 and 1924, when he came home in this condition? A. I had no place to go.

Q. Your brother was alive, was he not? A. Yes.

Q. Your sister was alive until 1918? A. Yes.

Q. Your mother was alive until 1925, was she not? A. Yes.

Q. And yet you say that from 1910 to 1925, you had no place to go? A. They all had enough to do for themselves.

Q. What took place in your brother's affairs in 1924, that you did have a place to go to? A. There was no change, but I couldn't stand it any longer, and I told Mr. Gaffney, 'If I have to take to the street, I will have to do it'."

The learned Vice-Chancellor also stated:

"It is sufficient for me to say that she was not justified in leaving when she did leave. She sets up in her answer that she was justified in leaving because of extreme cruelty of the husband against her, the cruelty consisting entirely of the ravings of a drunken man. The extent of his drunkenness, according to defendant's testimony, was periodical about every six months, but her testimony on that score is hardly borne out by the testimony of the other witnesses. The nephew who resided with them and who has taken the stand, recalls only once during the nine years that he lived with them, when the petitioner was intoxicated and that was in December, 1924" (see p. 112 of the State of Case).

The defendant's entire testimony has the same ring as her statements on the witness stand with regard to the alleged abusive conduct and intoxication of the petitioner and is not entitled to much more belief.

The examination of the testimony clearly indicates that the real difficulty between herself and

the petitioner arose through the devotion of her attention to the nephews to the exclusion of the petitioner in what she religiously conceived to be her duty in carrying out the dying wish of her deceased sister, to take care of these nephews as though they were her own children. In fact, the defendant herself admits that she left the petitioner upon the second occasion by reason of the fact that she found it too lonesome to live with him without her nephews (see p. 87 of the State of Case). She also admitted that at all times the petitioner treated her nephews very kindly and treated them more as a father than as a mere uncle by marriage. This statement of hers is further corroborated by similar testimony of the nephews.

The evidence will also disclose that the friction between the petitioner and the defendant which led up to her desertion was her growing suspicions that the petitioner was not disclosing to her the full amount of his earnings and that instead of turning them all over to her, each week, that he was delivering a large part thereof to his sister. This charge of the petitioner (see pp. 55-57 inclusive, of the State of Case) is borne out by the defendant's own testimony (see p. 90 of the State of Case), and by her charge in her affidavits (see pp. 15 and 18 of the State of Case) to the effect that she verily believes that the petitioner is in receipt of a salary of Ninety (\$90.) Dollars per week, from his employer, the Chemical Specialties Company, in Jersey City, despite the fact that he testified that his salary from his employer never exceeded Sixty-five (\$65.) Dollars a week, which statement of his the defendant didn't attempt to dispute or disprove by the testimony of his employers.

It is apparent that the defendant for some time, desired to live with her nephews separate and

apart from her husband without, however, suffering the loss of his support. She, therefore, bided her time until her nephews became old enough to care for themselves, both financially and otherwise. Now that these nephews were, at the time of the trial earning Twenty (\$20.) Dollars and Twenty-five (\$25.) Dollars respectively (see p. 29 of the State of Case), the defendant felt herself sufficiently secure, financially, to establish a home for the nephews and herself, and this she finally did (see pp. 35 and 40 of the State of Case).

Her entire testimony runs in the same strain and is entitled to as much credibility as her statements with respect to his cruelty and his alleged habits of drunkenness. Through certain parts of her testimony she attempted to inject a charge of his failure and unwillingness to give her sufficient support (See p. 88 of the State of Case), despite the fact that she had already testified that the petitioner turned over to her all of his earnings, except train fare and Five (\$5.) Dollars each week, and despite the further fact that upon saving together sufficient money, he bought a comfortable one family house in the suburbs, free of all encumbrances, taking title in the names of both himself and his wife (See pp. 22 and 54 of the State of Case), and despite her further admission that he always supported her (See pp. 11 and 16 of the State of Case), and finally her own testimony of the bank account in which were deposited all his earnings over and above the necessary expenditures of the family, in their joint names (See pp. 33, 84 and 89).

The conduct of the defendant from the time of her last leaving the petitioner indicates clearly that she was acting under legal advice and did not at any time desire to return to live with him and merely held the letter of February 18, 1928 (See p. 115 of the State of Case), sent to her by the

petitioner as a pretext in continuing the separation and seized upon it as a basis for laying a charge that the petitioner had failed to seek her out to return to him. This statement is borne out by her attitude upon the occasion of the last visit of the petitioner to the home of the defendant for the purpose of entreating her to return to him, as related above.

POINT II.

Because of the changed status of the married woman at present existing, the duty of the husband to seek out the wife after her desertion, should be no greater than the duty now resting upon the wife where the husband is the deserter.

We respectfully submit that the foundation of the rule requiring the husband, who is petitioning for a divorce, to seek out the deserting wife for the purpose of inducing her to return to live with him, as a prerequisite to his bringing an action for divorce based upon her desertion, is no longer applicable in view of the changed condition of the status of the married woman. At the time that the rule was first formulated the husband and wife were considered as one person in law, the husband being considered as the one person, and the wife became subjected to a great variety of legal disabilities. Since that time, however, her status has undergone very many revolutionary changes, until at the present time she not only enjoys the same privileges as her husband, as for example, the right to own and manage her property, the right of suffrage, the right to sue for torts committed against her, but she also is subject to the same liabilities and burdens, as for example, she is held alone liable for all torts com-

mitted by her (P. L. 1929, p. 205) and she is given the right to bind herself by contract to the same extent as though she were unmarried, which contracts are legal and obligatory and may be enforced at law or in equity, by or against her, in her name apart from her husband (P. L. 1929, p. 109). And there is also to be taken into consideration the great economic changes which have taken place, particularly since the World War, which have resulted in placing the married woman very closely upon a par with her husband.

We, therefore, respectfully submit that a case, such as that at bar, where the wife has deserted the petitioner-husband without legal justification, the petitioning husband should be no more under the duty to seek the return of his wife than she would be under as a petitioner if the circumstances were reversed.

It is respectfully submitted that the said decree of the Chancellor should be in the particulars aforesaid reversed and set aside and for nothing holden, and that the petitioner may have such other relief in the premises as this Honorable Court shall deem proper.

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THOMAS L. HANSON,
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WILLIAM BOORSTEIN,
On the Brief.

New Jersey Court of Errors and Appeals

WALTER R. GAFFNEY,
Petitioner-Appellant,

vs.

HONORE COLLINS GAFFNEY,
Defendant-Respondent.

On Appeal from
the Court of
Chancery.

BRIEF OF RESPONDENT.

The Court below dismissed the husband's petition for divorce. The petition charges a simple desertion as of December, 1925 (p. 6). The defendant denies the desertion and justified her leaving because of her husband's cruelty (p. 11). She sought no affirmative relief.

The parties cohabited as man and wife continuously for over fourteen years. Christmas Day, 1924, while they resided at Lyndhurst, New Jersey, defendant left her husband and went to live with her brother in Jersey City. In March, 1925, after the death of her mother, she returned and after two brief absences thereafter of about a week each she continued to live with the petitioner for about eight months until December 22nd, 1925, when she left him and went again to live at Jersey City. During the interval between December 22nd, 1925, and February 18th, 1928, a period of two years and two months, the defendant wife lived directly across the street from the place where her husband was employed in Jersey City. He saw her every day or almost every day, entering and leaving her home. He passed her a

number of times on the street but at no time during this entire period did he have any conversation with her; nor did he at any time during all of this period pay her a single visit; nor did he provide anything for her support (pp. 67, 68, 69, 70, 71).

Under date of February 18th, 1928, petitioner wrote defendant a letter (p. 115) produced by her at the trial, in which he says he is willing to have her return, but the letter contained this statement: "You know what caused our trouble. You would liked to have brought up a family, but, unfortunately you couldn't do so and this fact you concealed from me at the time we were married."

February 27th or 28th (nine or ten days after the letter was written) petitioner, accompanied by the witness Marino, who worked under him, visited the defendant at her home and had a conversation with her, lasting about ten minutes, in which he asked her to come home with him and referred to the letter. She complained about the subject-matter of the letter above quoted and replied that she could not decide whether she would return to him and wanted time to think it over. This was the only conversation that he had with her from the time she left him in December, 1925, until the suit was instituted. On March 5th, 1928, less than a week later, he verified his petition for divorce and it was filed on March 6th, 1928.

The petitioner testified that he wrote several other letters to the defendant, and the petitioner, over objection, was permitted to testify to their contents. Defendant denied receiving any letters other than that of February 18th, 1928. However, the testimony of the petitioner with respect to these letters was finally rejected by the court, because it was wholly uncorroborated.

The circumstances under which defendant left petitioner on Christmas Day, 1924, and the conduct of the parties from that time until December, 1925, and the circumstances surrounding her leaving the petitioner again three days prior to Christmas in 1925, are in dispute. His testimony is categorically denied by the defendant, and she fully and explicitly detailed the circumstances surrounding her leaving the petitioner and she is corroborated by her nephew George Gary. The petitioner's testimony with respect to all of these matters is wholly uncorroborated.

Two witnesses testified on behalf of the petitioner, deYoung, whose testimony went solely to the question of residence, and Marino, whose testimony was confined to the visit of February 27th or 28th, 1928, above referred to. On behalf of the defendant, her nephew, George Gary, was called. The parties, of course, testified in their own behalf.

The petitioner testified that after her nephews came to live with them, it seemed his wife was not interested in him as much any more (p. 55), although he does not state in what way this change manifested itself. She denied her attitude underwent any change: he came first and she brought the children up to respect him as a father (p. 90). Petitioner admits he never had any trouble with them, they obeyed and respected him as a father, were active boys, went out and played after school, worked on the golf course nearby during the summer, after school and on Saturdays (p. 72). When counsel for defendant began to question the nephew on this subject, the Vice Chancellor who had heard the testimony of the parties said, "Why waste time on this?" (p. 106).

With respect to the events that led up to the defendant's leaving the petitioner on Christmas Day of 1924, defendant denied that there was any

conversation on Christmas Eve, 1924, about petitioner's earnings, or about his desire to take a vacation, or that she said his sister was a sneak. She testified that on the morning of Christmas Eve he kissed her and said he would be back in time to go to confession with defendant and her nephews. She had placed the house in order and had everything prepared for Christmas. Petitioner came home that night about 9 o'clock in a taxicab, drunk; and began to upbraid her, saying she was no good, her family were nothing but bastards, her sister was no good, was a murderer, did away with children; that he continued to consume the contents of a bottle he brought home with him and finally went to bed (p. 83). On Christmas morning she and the nephews went to Mass and received communion; when she returned home he started in again, smashing all the chairs around and pushing her around and telling her he was sick and disgusted with her, and "Many a time you gave your brother Edward money to keep his mouth shut not to tell what you were" (pp. 84, 85), that her mother, who petitioner knew was then in St. Francis Hospital suffering from an illness from which she died the following February, was not married to the man with whom she lived as man and wife (pp. 84, 85, 86). She told the petitioner she could stand this treatment no longer and would have to leave him and he told her, "Get the hell out. I am sick of you." Petitioner, on the other hand, testified with respect to what happened Christmas morning, "I forget what it was about. I think she was accusing me of not liking her people," and when she was leaving warned him not to come after her (pp. 58, 59). She contradicts him (p. 91) and she is corroborated in her testimony by the nephew George Gary (pp. 103-105).

The petitioner attended the funeral of the defendant's mother and on cross examination admitted that there was only one carriage and that all of the people attending the funeral occupied that one carriage, including himself and his wife, that he didn't say a word to his wife on that occasion although he rode to the cemetery and rode back, except that when pressed, he sought to qualify the answer by saying that they must have spoken but he couldn't remember what they said (p. 75).

Defendant lived with her brother until February or March, 1925, when she went to petitioner, told him she lived in a lonesome place, not having the children with her and that it was terrible; that the petitioner was very independent, said he got along very well without her, he was going for himself, how nice he kept the house and that if she wanted to come back she could satisfy herself and come back, that there were no ropes on her (p. 87). She went back and because of petitioner's conduct toward her, she left again (pp. 87, 88). Petitioner wrote her a note, asking her to come back, in which he said something about money. She waited for him to come out of his place of business and went home with him. He was willing to have the two nephews return and they did return a little later and she continued to live with him for eight months until three days before Christmas, 1925 (p. 88). She testified that during these eight months, she did everything she could for him, painted the fence, varnished the six rooms; doors, windows, floors and all; that petitioner during this time would sit for hours and would not speak to her, that if she cooked the smallest lamb chops he would eat one and that that was not his appetite, he wanted to show her he didn't care what she put in front of him (p. 88).

Defendant denied saying to petitioner that she was glad she never had any children because he couldn't be the father of children as good as her nephews but defendant testified that during the eight months from March, 1925, to December, 1925, petitioner would not have his family come to the house, that during the week previous to her leaving on December 22nd, 1925, he was sullen and would not speak to her and told her more times than she had fingers and toes that he didn't have to live with her because she was a barren woman; that he wouldn't speak to her and he hardly ate any dinner, that he said to her, "I don't have to live with you if I don't want to" and "I don't have to live with you, remember," and "I understand the law" and "I know how long you will have to be away from me." That she gave him all the money that she had, \$85.00, and said, "Since you don't have to live with me I'll leave the key under the mat," and he said the key didn't amount to anything, leave it there. That at no time did he tell her not to go; that she waited until five o'clock until after one of her nephews came home from school before leaving, that she cleaned the house and didn't do a wrong thing in the home, she left everything, she even washed up the dish towels (p. 92). The testimony of the defendant is corroborated by that of her nephew George Gary who testified that on the morning of December 22nd, 1925, the petitioner told the defendant that she was a barren woman, that she couldn't have any children and he didn't have to live with her (p. 105).

The defendant testified that she was prepared to live with him at any time between December, 1925, and the date when the petition was filed if he had made a request for her to return in good faith (p. 95).

The petitioner testified on cross examination that the defendant concealed from him before they were married the fact that she couldn't have any children and that she admitted to him that she knew she couldn't have any children at the time she married him (p. 70). This defendant denied.

The petitioner testified that while he was living in Jersey City he was making \$60.00 a week and was giving her \$55.00 a week until they moved to Greenville and that thereafter he gave her \$50.00 or \$55.00 per week, but that then she never spent more than \$10.00 of his money except that when she first moved to Lyndhurst because of the new surroundings they required paint and varnish, ash barrels and other new equipment, and then she used \$20.00 of the money. In addition to providing for the household this \$10.00 and \$20.00, respectively, also included the purchase of the defendant's clothing, and that of her husband (pp. 84, 85) and the balance of the money was deposited by her up until Christmas, 1924, in a bank account in their joint names; that she turned the bank books over to the petitioner Christmas Day, 1924, and that at no time did she ever draw a penny out of the accounts (p. 89); that after she returned to the petitioner in March, 1925, and for the succeeding eight months until she left again on December 22nd, 1925, that he gave her \$50.00 a week; that she ran the household, purchased the petitioner's clothes as well as her own on \$15.00 a week and regularly every week deposited the balance of \$35.00 in the bank in his name, that she had saved during that period over \$1,100.00 (p. 92). She testified that he never said a word about the way she managed the house but he always watched the bank book (p. 85).

ARGUMENT.

POINT I.

Appellant failed to establish a wilful and obstinate desertion.

Departure is not the test of desertion. The desertion contemplated by the third section of our Divorce Act (2 Comp. Stat. 1910, p. 2028) is not the physical absence of one of the married couple from the other, but such absence in a prescribed condition of mind—a wilful and obstinate desertion.

Hahn v. Hahn, 93 N. J. Eq. 296.

To satisfy the requirements of the statute it was incumbent upon the appellant to prove that the separation was wilful, *i. e.*, that the defendant intended permanently not to cohabit with him again; and that the desertion was obstinate, *i. e.*, that the intent to desert was persisted in against his will for the statutory period.

The commencement of the desertion, if the deserter be the wife, ordinarily does not begin until the date when the husband makes a *bona fide* effort to induce his wife to return.

Hooper v. Hooper, 34 N. J. Eq., 93 (at p. 98);

Gates v. Gates, 59 N. J. Eq., 100 (at p. 108); Affirmed 60 N. J. Eq., 486.

The intent to desert must be proved by facts showing it or from which it may be inferred. The whole course of conduct of the parties repels the idea that the defendant intended to desert the petitioner, and definitely establishes an intention

on his part to drive her away. It is inconceivable that the defendant, who had lived continuously and harmoniously with her husband for close to fifteen years, had been to church and went to confession on Christmas Eve, and attended church again on Christmas Day and received communion, who had made all preparations for Christmas that a devoted and home-loving woman would make, should suddenly forsake her home on Christmas Day because of a quarrel with her husband about some insignificant matters, such as, his not admitting the full amount of his earnings, or his desire to take a vacation. And that again, three days before Christmas of the following year, she should again leave her home because of some remark concerning an abdominal belt. We think that an analysis of the testimony is far more persuasive of a desire on his part to be rid of her, and that he selected the Christmas season in each year for the climax of a course of conduct which had for its object the accomplishment of his purpose to drive her away. By her industry and frugality, they had saved a tidy sum of money. When they married he earned but eleven dollars a week. She was working and continued to work as an operator in a bag factory off and on for several years. As time went on he advanced at his employment. She managed the household with such economy that they were able to buy a home. It is uncontradicted that during the eight months prior to her alleged desertion of the petitioner she saved \$35.00 each week out of \$50.00 given to her by petitioner, and regularly deposited the \$35.00 to his credit in the bank, saving over eleven hundred dollars during that short period; that on the sum of \$15.00 she managed the household, bought her own clothes and that of her husband. That prior to Christmas, 1924, they had a joint bank account; that she never drew a cent out of the account;

that upon her return in March, 1925, the moneys were deposited in his account. That during the period of their separation he has contributed nothing to her support, passed her by on the street and completely ignored her, and made no effort to have any conversation with her whatever until two weeks before this suit was instituted, and then in the company of a witness; although he saw her every day.

As a result of his wife's industry and saving habit, the appellant found himself in a state of affluence, and as he regarded the woman who had made all this possible, the woman who had given him the best years of her life, she was now no longer desirable. He desired to be rid of her. We find his state of mind recorded in his affidavit (p. 25) where he complains about his not having proper sexual relations with defendant and says (p. 26) "every time we quarreled it finally ended by reverting to the same question which arose immediately after our marriage and that is, of her not being able to bear children and not properly having intercourse * * *". More of this on page 27. But after being confronted with the affidavit of Dr. Nelson (p. 39), for fifteen years their family physician, we find that at the hearing he completely abandons this attack, and swears (p. 70) that these matters were not the subject-matter of the quarrels.

The industry of the defendant during the eight months prior to her leaving: painting fences, varnishing doors, windows, floors and all, throughout the entire house; the fact that when she was leaving, she put her house in order—and on these matters her testimony is uncontradicted—all tend strongly to rebut the idea that she voluntarily deserted her home. Contrast this with the conduct of the petitioner as related by his wife, and not denied by him, that he would not eat the meals

she prepared, talked about how well he got along without her, and would not have his family visit them, and her testimony, corroborated by that of her nephew and by all the circumstances of the case that he told her repeatedly that he did not have to live with her because she was a barren woman.

These circumstances considered with his admissions that although he and his wife were within a stone's throw of one another during the entire period of their separation, although he saw her entering and leaving her residence daily, although he passed her a number of times on the street, he had no conversation with her whatever, except that of February 27, 1928, palpably had for the purpose of furnishing evidence in this suit, all establish a design on his part, as we think, to get rid of her.

The offense of desertion is described by the statute as "wilful and obstinate desertion" and it is not only essential that the party complained of left voluntarily and against the will of the petitioner, but that she remained away when it was her duty to return;

Cole v. Cole, 93 Atlantic Rep. 708 (not officially reported);

Wood v. Wood, 63 N. J. Eq. 688;

and desertion may be wilful but not obstinate where there is no effort at reconciliation on the part of the husband deserted.

Fraser v. Fraser, 87 N. J. Eq. 633 (Ct. of Errors and Ap.);

Davenport v. Davenport, 97 N. J. Eq. 14.

POINT II.

The desertion was constructively that of appellant; or, the separation was with his acquiescence.

We repeat the argument urged under Point I, that the husband's conduct was designed to drive his wife from the home.

MacPherson v. MacPherson, 100 N. J. Eq. 91;

Mountford v. Mountford, 94 N. J. Eq. 627.

Defendant testified that petitioner told her just before she left that she was a barren woman and he did not have to live with her. In this she is corroborated by the witness George Gary. She then said, and it is not denied by the appellant, "Since you don't have to live with me, I am leaving the key under the mat", and he told her to leave it there. He paid no attention to her going, nor did he say a word of protest or request her to remain. The only inference that can be drawn from this testimony is that he was satisfied to have her go. And this inference is fully confirmed by his subsequent conduct in absolutely ignoring her thereafter, until he determined to secure a divorce.

POINT III.

Appellant wholly failed to make the bona fide effort to effect a reconciliation which the law puts upon him.

Appellant wrote his wife one letter dated February 18th, 1928, two years and two months after the alleged desertion in December, 1925, and two weeks before this suit was instituted. It contains no word of affection, no invitation to return. The following language contained in it stamps it as wholly insincere, in view of the repeated statements that caused their differences that she was a barren woman and he did not have to live with her:

“You know what caused our trouble. You would liked to have brought up a family, but, unfortunately you could not do so and this fact you concealed from me at the time we were married.”

He retained a copy of the letter. And nine or ten days later, with a young man in his employ, he pays her a visit for the purpose of furnishing evidence in a divorce suit, which begun within a week later. When asked why during all of this long period he didn't go across the street and pay his wife a visit and ask her to return, his answer is, that before she left him she warned him not to come after her, and he was afraid; that he was still afraid when he went there on February 27, 1928. That the appellant's conduct is characterized by an entire absence of good faith is too plain to require further argument.

Fraser v. Fraser, 87 N. J. Eq. 633;
Davenport v. Davenport, 97 N. J. Eq. 14.

POINT IV.

The decree of the Court of Chancery should be affirmed upon the grounds that appellant failed to establish a wilful and obstinate desertion; that the desertion was constructively his; and that he failed to make the sincere effort to induce his wife to return that the law puts upon him.

THOMAS McNULTY,
Solicitor for and of Counsel with
Respondent.



