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Amended Petition, Sept. 6, 1918.

(Filed July 19, 1918.)

In Chancery of New Jersey.

TO HIS HONOR EDWIN ROBERT WALKER,

CHANCELLOR OF THE STATE OF NEW JERSEY.

20

The petition of George D'Annunzio of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Bridget D'Annunzio, on the twenty-sixth day of December, 1914, by the Rev. Father Felix Di Persia of the City of Jersey City, County of Hudson and State of New Jersey.

2. Petitioner and defendant, Bridget D'Annunzio, did not cohabitate after their said marriage and about the sixth day of May, 1916, defendant deserted him absolutely refusing to live with 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 at Jersey City, in the County of Hudson, 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 at Jersey City, as aforesaid.

40

4. Your petitioner's maiden name was Bridget O'Connor and there was one child born of the marriage between your petitioner and defendant.

Amended Petition, Sept. 6, 1918.

10

5. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the causes 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.

ANTHONY BOTTL,
Solicitor for Petitioner.

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

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

GEORGE D'ANNUNZIO.

30 Sworn and subscribed to before me at Jersey City,
this 13th day of July, A. D., 1918.

Robert S. Hartgrove,
Master in Chancery,
of New Jersey.

40

Answer and Cross Petition on Petition for Divorce.

10

(Filed Nov. 27, 1918.)

IN CHANCERY OF NEW JERSEY.

Between

GEORGE D'ANNUNZIO,
Petitioner,

and

BRIDGET D'ANNUNZIO,
Defendant.

20

The answer of Bridget D'Annunzio, defendant, to the petition of George D'Annunzio.

1. The defendant admits it to be true that petitioner and defendant were married as in said petition alleged.

30

2. The defendant denies that she deserted the petitioner in the month of May, 1916, and she denies that ever since that time and for more than two years next proceeding she has wilfully, continuedly and obstinately deserted the petitioner, but, on the contrary, defendant says that the petitioner deserted the defendant in the manner formally stated in the second part of this answer which is in the form of a cross bill.

40

3. The defendant has no knowledge as to the third paragraph of the petitioner's petition, and has no knowledge as to the present residence of the petitioner.

4. Defendant admits it to be true that her maiden name was Bridget O'Connor, and that one child was born out of the marriage between the petitioner and the defendant.

10 *Answer and Cross Petition on Petition for Divorce.*

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

1. Defendant cohabitated with the petitioner until June, 1916, when the petitioner deserted the defendant and left her in Brooklyn, New York, and he, the petitioner, moved to Jersey City, and the petitioner has ever since, and for more than two years last past, wilfully, continuedly and obstinately deserted the said defendant.

20 2. Defendant further says that since the marriage between the petitioner and the defendant and up to April, 1917, the petitioner has never supported the defendant or her baby and only gave her \$10 since that time for the support of the defendant and her baby.

30 3. During the month of April, 1917, the petitioner was arraigned in the Domestic Relations Court in the Borough of Brooklyn, City of New York, and was ordered by the judge to pay \$4.00 a week for the support of his child, which money the petitioner has paid since April, 1917, for the support of the child.

4. Defendant further says that she has no money of her own, and is at the present time supported by her aunt, Miss Mary O'Sullivan, and that the defendant has absolutely no money or means of her own.

40 5. Defendant further says that during the month of January, 1917, at the occasion of the christening of the baby, Frances, the petitioner, because the defendant wanted to have the baby baptized, struck the defendant in the face over the left eye.

6. Defendant further says that after this incident the petitioner went away and did not return until the latter part of February, 1916.

7. Defendant further says that in the month of April the petitioner took hold of the defendant, pushed

Answer and Cross Petition on Petition for Divorce.

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her in the chair, took hold of her wrist and took off her wedding ring and threw the same into the kitchen fire.

8. Defendant further says that during the month of June, 1916, the petitioner called to see the defendant and that he struck her on the nose on the occasion of this visit.

9. Defendant further says that the petitioner called on her on or about August, 1916, and at the time told the defendant that she was going to meet a horrible death, and said he was not going to do it, but that he would get someone else to do it, and on the same occasion he struck the defendant in the face while she was standing in the vestibule of her home, 102 Hayward Street, Borough of Brooklyn, New York.

20

10. Defendant further says that the petitioner did not call to see her after she had him arraigned in the Domestic Relations Court in Brooklyn, April, 1917, until some time in July, 1918, when the petitioner called to see the defendant and told her that she had reported him to his local board, and that before she, the defendant, could get a cent from his allotment as a soldier, if he happened to become a soldier, that he, the petitioner, would kill the defendant.

30

11. Defendant further says that the child born of the marriage, Frances D'Annunzio, was born on January 7th, 1916, and is now with the defendant and that the only support she receives from the petitioner is the \$4.00 a week which is allowed by the Domestic Relations Court of Brooklyn.

40

Defendant prays that the petitioner be ordered and decreed to provide such suitable support and maintenance, to be paid and provided by him, or made out of his property, for this defendant and the child of the said marriage, and for such time as the nature of the case and the circumstances of the parties render

10

Answer and Cross Petition on Petition for Divorce.

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suitable and proper; and that the said petitioner be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this Court as provided by the statute; and in case the petitioner cannot be found in this state to be served with process, that his estate, property and effects in this state may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor, and the petitioner may be required to pay the defendant the proper amount for counsel fees, and that she, the defendant, be awarded the custody of the said child born of this marriage.

12. This defendant prays that the petition filed by her husband in this case be dismissed, and that she, the defendant, be divorced from the bed and board of her said husband, and that she may have such further relief as may be just.

30

BRIDGET D'ANNUNZIO.

State of New York, }
County of Kings, } ss:
City of New York, }

40

Bridget D'Annunzio, being duly sworn according to law, on her oath, deposes and says:

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

BRIDGET D'ANNUNZIO.

Sworn and subscribed to before me this

22d day of November, 1918.

William F. Troy

Notary Public,

Kings County #68.

Com. expires Nov. 30/1920.

**Answer to Cross Petition on Petition
for Divorce.**

10

(Filed December 10, 1918.)

IN CHANCERY OF NEW JERSEY.

Between

GEORGE D'ANNUNZIO,
Petitioner,

and

BRIDGET D'ANNUNZIO,
Defendant.

20

The answer of George D'Annunzio, petitioner to the cross petition of Bridget D'Annunzio, defendant.

1. Petitioner denies that defendant cohabitated with petitioner until June, 1916, excepting during the period of February 1st to February 20, 1915, and petitioner admits he moved to Jersey, but denies he deserted defendant as set forth in Paragraph one of the cross petition.

30

2. Petitioner denies Paragraph two of the cross-petition but on the contrary petitioner says he gave defendant various sums from time to time, before and after April, 1917.

3. Petitioner admits paying to defendant \$4.00 a week for the child since April, 1917, but denies he was arraigned and ordered to pay said sum weekly, but on the contrary, petitioner says that residing in New Jersey at that time, he voluntarily appeared in said court mentioned in Paragraph Three of the cross-petition and willingly consented to the payment thereof.

40

4. Petitioner denies Paragraph Four of the cross-petition, but on the contrary, petitioner says, that de-

10 *Answer to Cross Petition on Petition for Divorce.*

fendant has often admitted to petitioner that she, the defendant had \$2,000.00 in the Williamsburg Savings Bank and that a large sum of money had been left defendant by one Mrs. Vogel, a friend of the defendant, who had died, and petitioner says that defendant has often stated that she was absolutely independent financially from anybody.

20 5. Petitioner denies Paragraph Five of the cross-petition.

6. Petitioner denies the incident, but admits he visited defendant the latter part of February, 1916.

7. Petitioner denies Paragraph Seven of the cross-petition, but on the contrary says, that defendant threw the wedding ring to petitioner, saying she did not love him.

8. Petitioner denies Paragraph Eight of the cross-petition.

30 9. Petitioner admits seeing defendant in August, 1916, but denies the other allegation in Paragraph Nine of the cross-petition.

10. Petitioner admits calling to see defendant in July, 1918, but denies that he, petitioner, threatened to kill defendant rather than have defendant get a cent from his allotment as a soldier if he happened to become a soldier.

40 11. Petitioner admits all of Paragraph Eleven of the cross-petition, excepting that petitioner denies said amount was ordered by the Domestic Relations Court but that petitioner willingly consented to pay it.

12. Petitioner prays that the cross-petition, filed by his wife in this case be dismissed and that petitioner may have such further relief as may be just.

ANTHONY BOTTI,
Solicitor of Petitioner.

Order of Reference.

10

Order of reference signed and filed February 4th, 1919, in which Vice Chancellor Eugene Stevenson is appointed.

Designation.

Designation filed March 7, 1918, fixes Tuesday, October 21, 1919, at ten o'clock A. M., at Chancery Chambers, Jersey City, N. J., to hear testimony.

20

Opinion of Stevenson, Vice Chancellor.

(Decided November 28, 1919, filed January 9, 1920.)

Messrs. Anthony Botti and Robert Carey for petitioner.

30

Mr. Edward M. Salley for defendant.

STEVENSON, V. C.:

My conclusion of fact in the above stated cause is that the defendant has been guilty of wilful, continued and obstinate desertion as charged in the petitioner's petition, that the petitioner is entitled to a decree *nisi* and that the counter claim or cross-petition should be dismissed.

40

I followed the testimony closely and would have disposed of the case at the conclusion of the argument on October 21st, or at latest on October 25th, if counsel for defendant had not then (October 25th) offered in evidence a record of the proceedings against the petitioner based on a charge of abandonment in a

Opinion.

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magistrate's court in Brooklyn, New York, in April, 1917. Counsel for defendant urged that this record made it *res adjudicata* between the parties that the petitioner had abandoned the defendant and that whatever the effect of this record upon the defendant's cross action, it demonstrated that there cannot possibly have been a period of two years of wilful, continued and obstinate desertion of the petitioner by the defendant when the petition was filed on July 19th, 1918. In
20 other words, it was argued that the record from the magistrate's court showed that if the defendant at some time deserted the petitioner, this present suit was prematurely brought because there could not possibly have been two years of desertion.

30

For the purposes of the decision of the question of fact in this case it is not necessary that the testimony should be written out, but without the testimony to refer to at this late date it would be impossible to prepare a satisfactory opinion discussing the evidence.
As the case now stands in its present stage I shall not subject the parties, or either of them, to the expense of having the testimony written out merely in order that I may be able to prepare an opinion.

40

The question of law relating to the nature and effect of the proceedings before the Brooklyn Magistrate may be settled by a perusal of the sections of the charter of Greater New York as amended, which counsel have cited in their briefs. Counsel for the defendant probably correctly represents in his brief that "In the month of April 1917, the defendant made a complaint of abandonment against the petitioner in the Domestic Relations Court of Brooklyn under §685 of the Charter of Greater New York," which section he quotes at length. The complaint, however, does not recite or refer to this section. The brief then

Opinion.

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proceeds to assume that the record produced exhibited a conviction of abandonment or a conviction of the defendant "as a disorderly person" based upon abandonment. The error of counsel consists in ignoring the next section of the charter (§686). The New York law as finally amended pertaining to the proceedings under examination may be found in the Laws of New York of 1914, Chapter 463.

It is true that the defendant charged with abandonment under Section 685 may be convicted upon his confession or after trial. What the effect of such a conviction of the petitioner might have had in this case we need not inquire because the petitioner was not convicted. Section 686 provides for various proceedings where there is no conviction. One of such proceedings is described in §686 as follows:

20

"Further, upon the consent of the defendant the said magistrate may, before or after said conviction as aforesaid, place the defendant for a period aggregating not more than one year, under the oversight of a probation officer, and adjourn the said proceedings from time to time upon conditions and terms by him deemed proper and meet for the proper support of said wife and children, or either."

30

The record offered in evidence shows that this was the order made by the magistrate, and that it was made with the consent of the defendant, and the proof is ample that the petitioner was neither tried nor convicted. The order of the magistrate produced in evidence is made on a blank entitled "Probationary Oversight," referring also in print to "Section 686 as amended."

40

This proceeding in the magistrate's court, or rather "The Domestic Relations Court" in the Borough of Brooklyn manifestly was primarily intended to prevent an abandoned wife and child from becoming a

Decree.

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public charge. The law permits the defendant who is charged with abandonment to come into court and plead not guilty as the petitioner did in this case, but at the same time consent to an order requiring him to pay a specified sum for the support of his wife and children whom he is charged with having abandoned. This New York law permits the husband and father charged with abandonment to say in court: "I am not guilty of the charge of abandoning my wife and child. My wife has deserted me. This court cannot try the matrimonial litigation that is pending or will be soon commenced to determine the question of desertion or abandonment, and I recognize that apart from any such present or possible future litigation it is right that I should furnish support to my wife and child." An order providing for such support is then made with the written consent of the husband. The interests of the city are thus protected and the spouses are left to litigate or not in the divorce court as they may think fit.

20

30

I conclude, therefore that his order in the New York Domestic Relations Court has no effect upon the present matrimonial litigation in the Court of Chancery between these parties.

Decree Nisi.

40

(Filed December 15th, 1919.)

This cause coming on to be heard in the presence of Anthony Botti and Robert Carey, of counsel with the petitioner, and Edward M. Salley, of counsel with the defendant, on petition, answer, cross-petition, answer to cross-petition and oral proof taken in open court.

Decree.

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whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 25th day of December, 1914, and that the defendant has been guilty of wilful, continued and obstinate desertion of the petitioner for the term of two years as alleged in the said petition, and it further appearing satisfactorily to the chancellor that the cross-petition of the defendant was not sustained by the proofs and should be dismissed, and that at the time the cause of action for divorce for the said desertion arose, the petitioner was a bona fide resident of this state and that the said petitioner has continued to be so down to the time of the commencing of this action and that the said defendant resided in the City of Brooklyn, in the State of New York, when the said cause of action arose, and has resided in the said City of Brooklyn and State of New York up to the time of the commencing of this action; and it further appearing that the said defendant could not be served personally with process within this state, and that the petitioner being at the time of the commencing of this action a bona fide resident of this state, jurisdiction herein has been acquired by publication of notice to the defendant of this suit, followed by notice to the defendant without this state as service substituted for personal service within this state, pursuant to the orders heretofore made by the Court in this cause for the purpose, and as prescribed by the laws and rules of this court:

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It is thereupon, on this 15th day of December, 1919, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and de-

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Notice of Appeal.

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creed, and the said chancellor by virtue of the power and authority of this court and of the acts of the legislature in such case made and provided, does hereby order, adjudge and decree that the cross-petition of the defendant be and the same hereby is dismissed and that the said petitioner, George D'Annunzio the said defendant, Bridget D'Annunzio, be divorced from the bonds of matrimony for the cause aforesaid and the said parties and each of them be freed and discharged from the obligations thereof unless sufficient cause be shown to the court why this decree should not be made absolute within six months from the date hereof.

E. R. WALKER,
C.

Respectfully advised,
EUGENE STEVENSON,
V. C.

30

Notice of Appeal.

(Filed February 5, 1920.)

40

Bridget D'Annunzio, the above named defendant, hereby appeals from the decree *nisi* filed in this cause and dated November 28, 1919, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

EDWARD M. SALLEY,
Solicitor for and of counsel with defendant.
Dated Feb. 2, 1920.

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

EDWARD M. SALLEY,
of Counsel.

Petition of Appeal.

10

(Filed February 5, 1920.)

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

The petition of Bridget D'Annunzio, appellant, respectfully shows, that your petitioner finds himself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the twenty-eighth day of November, A. D., nineteen hundred and nineteen, in that the said decree recites and adjudges, that the defendant is guilty of willful, continued and obstinate desertion; and doth decree that the marriage existing between your petitioner and the respondent, George D'Annunzio, be dissolved for the cause of desertion. But on the contrary the said Bridget D'Annunzio contends that she should have been granted a divorce under the cross-petition filed by her in this cause, charging her husband George D'Annunzio with desertion.

Your petitioner therefore prays, that the said decree *nisi* may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

BRIDGET D'ANNUNZIO.

Answer to Petition of Appeal.

40

The answer of the above named appellee to the petition of appeal of the above named appellant.

This appellee not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits, that a decree was on the 15th day of December, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in

Transcript of Testimony.

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the said petition, as is therein stated, but as to the substance and form thereof, this appellee prays to refer thereto when the same shall be produced. And this appellee is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs, to be adjudged to this appellee.

ANTHONY BOTTI.

Solicitor and of Counsel with Appellee.

20

**Transcript of Testimony on Final
Hearing on Petition for Divorce.**

IN CHANCERY OF NEW JERSEY.

Between

30

GEORGE D'ANNUNZIO,
Petitioner,

and

BRIDGET D'ANNUNZIO,
Defendant.

40 Transcript of the testimony taken on final hearing in the above-stated cause, at the Chancery Chambers in Jersey City, on Tuesday, October 20, 1919, at 10 o'clock in the forenoon, before his Honor EUGENE STEVENSON, Vice Chancellor.

APPEARANCES:

ANTHONY BOTTI, ESQ., Solicitor, and ROBERT CAREY, ESQ., of Counsel, for the Petitioner.

EDWARD M. SALLEY, ESQ., for the Defendant.

George D'Annunzio—Direct.

10

GEORGE D'ANNUNZIO, sworn in his own behalf, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Where do you live? A. 15 Concord Street, Jersey City.

Q. How long have you lived in Jersey City? A. For the last three years.

Q. At the same place? A. Yes, sir.

Q. With whom do you live in Jersey City? A. 20
With my father and mother.

Q. Have you lived with them continuously since you took up your residence there? A. Yes, sir.

Q. What was the date, if you recollect, of your taking up your residence in Jersey City? A. It was in the month of June, 1916.

Q. How old are you? A. Thirty.

Q. You know the defendant, of course? She is your wife? A. Yes, sir.

Q. When did you marry her? A. I married her 30
December 26, 1914.

Q. Is she younger or older than you? A. Older.

MR. SALLEY: I object to that. I don't see how it is material.

THE COURT: It will be admitted.

Q. How much older? A. Eight or nine years older.

Q. Where did you meet your wife? A. I met her 40
at her aunt's and uncle's residence in 1906.

Q. At that time you were how old? A. Sixteen years old.

Q. Where were you living at that time? A. On the bottom floor of her uncle's home.

Q. Where? A. 102 Hayward Street, Brooklyn.

Q. What was her maiden name? A. Bridget O'Connor.

George D'Annunzio—Direct.

10

Q. You are Italian? A. Yes, sir.

Q. And she is Irish? A. Yes, sir.

MR. SALLEY: I don't see what that has to do with the issues here.

THE COURT: Oh, yes, all these things are material in a divorce case. We have to find out what these people are—their race or nationality.

20

Q. You were living, you say, at the same house at that time? A. That is, in 1906. We lived there for five years.

Q. In the same house where she lived? A. She didn't live there, but her aunt and uncle lived there.

Q. Did she visit there? A. Yes, sir.

Q. There is where you became acquainted with her? A. At her aunt's and uncle's, yes.

Q. And this continued how long before you were married? A. Easily ten years.

30

Q. And when were you married? A. December 26, 1914.

Q. Where? A. In Jersey City, in the Holy Rosary church.

Q. Who married you? A. Father Felix di Persia.

Q. Who was present at your marriage? A. I don't remember.

Q. (BY THE COURT.) How did you come to be married in Jersey City? A. Why, due to the fact that she didn't care to marry in her own parish.

40

Q. Where was the home parish? A. The home parish was in Brooklyn, on Marcy Avenue.

Q. Did you have relatives then living in Jersey City? A. No, sir; just friends.

Q. And never lived here before? A. No, sir; just had friends here.

Q. And she didn't want to get married in her own

George D'Annunzio—Direct.

10

parish and just took a notion to come over to Jersey City; is that it? A. Yes, due to the fact that she didn't want to let people know it.

Q. What reason had you? A. The only reason then was the condition she was in.

DIRECT-EXAMINATION RESUMED:

Q. She was in a family way at the time? A. Yes, sir.

Q. Now, after you were married in Jersey City where did you go to live? A. To my own home.

20

Q. Where did she go to live? A. To her aunt's home.

Q. How far was that from your home? A. The two houses was in back of one another, the same lot, only she was on Hayward Street and I was on Lynch Street.

Q. Your back yards joined? A. Yes.

Q. She continued to live there until a child was born, did you not? A. Yes, sir.

30

Q. When was that child born? A. February 20, 1915.

Q. How long after your marriage? A. Just two months.

Q. (BY THE COURT.) Were you living at the time of your marriage with your parents? A. Yes, sir.

Q. Was she living with her parents? A. She was living with her aunt and uncle. You see, her uncle died in 1904, I understand; I think that is what it is, and she was living with a lady by the name of Mrs. Vail at 255 Putnam Avenue. She was a housemaid there, and after her uncle's death she went to live with the aunt.

40

Q. What was her aunt's name? A. Mary O'Sullivan.

Q. After your marriage you say she continued to live with her aunt? A. Yes.

George D'Annunzio—Direct.

10

Q. And you continued to live with your father and mother? A. Yes, sir.

Q. And where was the child born? A. The child was born in her aunt's home, but she was in such bad condition she was taken to the Brooklyn Hospital.

Q. And did you see her at the Brooklyn Hospital? A. Yes, sir.

Q. And did you visit her there? A. Yes, sir.

20 Q. How long did that child live? A. Didn't live any length of time at all.

Q. Died at birth? A. Yes.

Q. (BY THE COURT.) Did your parents know of the marriage at the time? A. No, sir.

Q. How long after the marriage? A. Two days after.

Q. Did your wife's aunt know of the marriage at the time it took place? A. No.

Q. When did the aunt know of it? A. Two days after, at the same time.

30

DIRECT-EXAMINATION RESUMED:

Q. Now, after the birth of the child where did your wife continue to live? A. With her aunt Mrs. O'Sullivan.

Q. Where did you continue to live? A. At my own home.

Q. Now, did you live at all with your wife in Brooklyn? A. No, sir.

40 Q. Never lived with her? A. No, sir.

Q. Why not? A. She always absolutely refused to come to live where we had decided to make our home.

Q. Did you make any arrangements to provide a home? A. I certainly did; at the top floor of 71 Lynch Street. We had the top floor there.

Q. That is, you arranged to furnish an apartment? A. Yes, sir.

George D'Annunzio—Direct.

10

Q. And did you ask your wife to go there to live?

A. Continually.

Q. Did she give you any reason for not going there?

A. The reason was that she was satisfied to stay at her aunt's; she was contented there, and that was her home, and there she would remain.

Q. Now, at that time where were you working? A. Smith & Co., Brooklyn.

Q. And did you continue to work there? A. Yes.

Q. Until when? A. Up until 1917.

20

Q. How many years did you work there? A. I think I worked for that firm for fifteen years.

Q. What was your business? A. Cutter for the first eight years, and then I was promoted as foreman.

Q. Over the tailor shop? A. Over the department.

Q. (BY THE COURT.) Tailoring, was it? A. No, paper box manufacture.

DIRECT-EXAMINATION RESUMED:

30

Q. Now, while you were working there who supported your wife while she was living at her aunt's?

A. Well, I often gave her a little money, but she never used it for her support; she always used that for the care of the child and for different items she would take or buy silverware or cut glass, or things of that kind.

Q. Now, after the first child was born did you call on your wife at her aunt's? A. Yes, sir.

Q. How often? A. Not very often. I never gave up hopes and never could see why she couldn't live with me. After the first child was born we went for two weeks up in Monticello, New York. It was better, particularly for her.

40

Q. You slept there together? A. Yes, sir.

Q. And lived there as man and wife? A. Yes, sir.

Q. When you came back from Monticello where

George D'Annunzio—Direct.

10

did you go? A. We prepared our home, and after that we even went to a department store and got some furniture.

Q. Did she go with you? A. She came with me; she went to Bloomingdale's and we got a dining room set and book case and dresser.

Q. What did you do with those? A. They came to my residence, 71 Lynch Street.

Q. Were they to go in your apartment? A. They
20 were to go in my apartment.

Q. Did she ever occupy that apartment? A. No.

Q. Why not? A. She finally refused. She said, "I can't leave my home; I would be very unhappy if I do."

Q. (By THE COURT.) And was that where your parents lived? A. Yes, sir, top floor. You see, it was a big house, with three floors.

Q. For three families? A. It wasn't for three families, but it could easily be occupied for two families.
30 My parents occupied downstairs.

DIRECT-EXAMINATION RESUMED:

Q. Well, did she make any objections to your going to your parents? A. Any objection? I don't see why.

Q. Well, did she? A. No, she didn't; she said she wouldn't live there because she didn't want to leave her aunt.

Q. Did she tell you any reason why she wanted to stay with her aunt? A. For the reason that her aunt
40 was quite wealthy and there was a home left to her and if she left that home she would be cut out—she would be out the money.

Q. Did she tell you anything about her aunt's means? A. Oh, yes, very often.

Q. What did she say about that? A. She said she had a large sum of money and she didn't want anybody else to get it and inherit it.

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Q. Did she ever ask you to go to live with the aunt? A. She did.

Q. Did you tell her you would or wouldn't? A. I wouldn't.

Q. (BY THE COURT.) Why not? A. For the simple reason I thought at least I ought to have my say about finding a home, and besides, her aunt wanted something like \$22 for an apartment and I couldn't very well pay that sum of money, and due to the fact that I went through a lot of expense. I had some money saved and I thought we could save a little by occupying the top floor, for which I only gave my parents \$10 a month, and then later on we could find a better apartment.

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Q. And that continued how long before the second child was born? A. That continued up until the second child was born, which was January 6, 1916.

Q. Was your wife at any time, while she was living with her aunt, after her marriage, employed in any way? A. No, sir.

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Q. Did she take care of the house for the aunt? A. No, sir.

Q. I mean, was she housekeeper for the aunt? A. Yes, she was the housekeeper.

Q. Did she get any wages for it? A. Oh, yes, the aunt gave her spending money; something like \$12 a month.

DIRECT-EXAMINATION RESUMED:

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Q. You didn't get any of that, did you? A. No, sir.

Q. The second child was born in January, 1916? A. Yes, sir.

Q. Where was that child born? A. She was taken away on January 3rd or 4th—between that time it was taken to the Washington Heights Hospital. I took her there in a taxi.

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Q. You took her there? A. Yes, sir.

Q. Did you provide medical attendance for her there? A. All the way through, the same as I did the first medical attendance, for which I have the bills to show.

Q. You paid the medical bills for the first child?

A. Yes.

Q. Did you pay the medical bills when the second child was born? A. Yes, sir.

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Q. Did you attend the hospital? A. Yes.

Q. Every night? A. Every evening for the two weeks she was there, or ten days, something like that.

Q. After the second child was born where did she go to live then? A. She went right back to her aunt's.

Q. Was anything said between you and her then as to where she was going to live? A. There certainly was. The question came up, because I said I would like to have that child christened, and she says, "This is my child and here it will stay; I have all the say about this child"; and, of course, I said I would like to have that child christened under her father's home—under my roof. She says, "I have all the say about this child; you have nothing to say. You go to court and see what you will get."

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Q. At that time did you want to provide a home for her then? A. Always.

Q. What did she say then about coming to live with you? A. She absolutely refused. She said, "Now, that I have my child I have really no more use for you."

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Q. After that did you go to see her and the child?

A. I didn't go to see her for two weeks. After the first week that she returned from the hospital I went there two weeks continually; after she refused flatly and said that she had all the say about the child and she was going to have it christened in her own way,

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naturally I felt hurt and I didn't go there for two or three weeks afterwards.

Q. Were you present at the christening? A. No.

Q. Did you know about the christening? A. I did not.

Q. Did she tell you? A. No, sir.

Q. You weren't even invited to the christening? A. No, sir.

Q. After the child was christened did you see her?

A. I went to the church to find out if the child was really christened—at the parish where she didn't want to get married; she had the christening there—and I asked the pastor if there was a baby christened—

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Q. Never mind what you asked the pastor. Did you go to see your wife after that? A. I did; yes, sir.

Q. Did you talk with her then about living together? A. I did; I says, "You have certainly broke my heart to think that you christened this child without letting me know about it," and I says, "I will forgive you," and she says, "There is nothing to be forgiven; no harm done whatsoever," and then I asked her who she had for the best man and the godmother, and, "Did you have a good time at the christening."

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Q. Did you say anything to her then about living together? A. I certainly did; I says, "Now, don't you think it is about time, for the sake of the baby, to live together," and she said, "I could never leave this home and my aunt, and besides, I have more love for this home than you have, and I have my daughter."

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Q. Did she then say anything about wanting to live with you? A. She was too contented to be there with the aunt and the baby and didn't care what became of me, and she finally said, "I am going to stay here."

Q. Did she say anything then about her love for you? A. She admitted several times that she didn't

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care for me at all; she realized it was a mistake and her folks were very much against the Italian elements, due to the fact that she regretted the step she had taken.

Q. Did she tell you she regretted it? A. She certainly told me that right in her aunt's home.

Q. (BY THE COURT.) She was a Catholic, I understand? A. Yes.

20 Q. You were brought up a Catholic also? A. Yes, sir.

Q. Any trouble about religion? A. No trouble about religion whatsoever.

DIRECT-EXAMINATION RESUMED:

Q. What happened after that, when she told you she didn't want anything more to do with you? A. When I got the decided answer like that I felt so very bad that I took very sick, and I was in my bed for at least six weeks.

30 Q. That is, in the house right behind her? A. Yes, sir.

Q. During all that time did she come to see you? A. No, sir; only once.

Q. Once in six weeks? A. Yes, sir.

Q. Did you send for her? A. Yes, sir.

Q. When did she come to see you? A. Oh, after about four weeks.

40 Q. After you had been sick about four weeks? You were in bed all that time, were you? A. Four weeks, yes, sir; I was taken to my bed for at least about six weeks.

Q. What was the matter with you? A. I had pneumonia.

Q. At the end of the four weeks when she came to see you what did she say to you when she came in?

A. Oh, she said, "I thought I would find you dead."

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You certainly do look bad, I thought I would find you dead," in a joking way. I don't know whether she meant it or not.

Q. What did you say to her? A. I said, "I don't care to hear such talk; you don't realize how sick I was."

Q. What did she say then? A. "I am in a hurry; I am going to visit some friends downtown." She stayed only about fifteen minutes.

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Q. Where did she go then? A. She went out with the baby. She said she had some appointment with some friends downtown.

Q. Did she come to see you after that? A. No, sir.

Q. After you got well did you see her? A. Oh, yes. The first week that I was out on the street I couldn't resist going over to see the child.

Q. Did you see her? A. I did.

Q. Did you have a talk with her? A. Oh, yes.

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Q. What did she say to you then? A. She said, "You were very sick; I didn't realize you were as sick as you were"; and she says, "the baby is well and I am happy here," and talked like that, and it didn't amount to anything.

Q. (BY THE COURT.) How old was the child then? A. The child was four or five months old, I should judge.

DIRECT-EXAMINATION RESUMED:

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Q. Now, when you saw the child at that time was there anything said about your living together? A. Why, I was really too sick to discuss it at that time.

Q. You had medical attendance at that time? A. Yes, sir.

Q. Were you advised at that time to move away from Brooklyn? A. Yes, sir; the doctor advised me

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to change the climate and get away from Brooklyn, and the change would do me good.

Q. Did you move then? A. I was up out of bed about April and we didn't move until about June.

Q. Where did you move to? A. 15 Concord Street, Jersey City.

Q. And the entire family moved? A. Yes, sir.

Q. (BY THE COURT.) What did the family consist of? A. Father, mother and sister.

20 Q. Was your father employed in Brooklyn? A. No, sir.

Q. Was your mother employed? A. My mother, before I took sick—in fact, my mother went to Italy; it was just my sister and I working.

Q. Has your mother returned from Italy? A. She has.

Q. Your sister was working? A. Yes, sir.

Q. Where was she working? A. In the Brooklyn Hemstitching Co.

30 Q. When you moved to Jersey City did you retain your employment in Brooklyn? A. For a short period of time, until I found something nearer my home.

Q. How about your sister? A. My sister found employment in New York. It was very easy to find.

Q. What has been your employment since you quit your job in Brooklyn? A. The same line.

Q. Paper boxes? A. Yes, sir.

Q. Where? A. E. A. Waldeck Company.

40 Q. Where are they? A. Oakland Avenue, just about two blocks from my home.

Q. In Jersey City? A. Yes, sir.

DIRECT-EXAMINATION RESUMED:

Q. And you have been employed in Jersey City ever since? A. Yes, sir.

Q. Working continuously for that same concern? A. Yes, sir.

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Q. And your sister is employed in New York City?

A. In New York City.

Q. Now, before you came to Jersey City did you see your wife with anybody? A. Before I came to Jersey City? Yes, sir.

Q. Who did you see your wife with? A. The first Saturday we had off in May—I think it was in the month of May—

MR. SALLEY: What year is this?

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JUDGE CAREY: 1916.

A. (Continuing.) 1916, the man that stood up at our wedding.

Q. What is his name? A. Anthony Zeho.

Q. Is he here? A. Yes, sir. I had been talking to him about the baby and how well I cared for her and I was very proud to bring him up and show him the child; and we went up there and we were received very cold. We went there and I says, "I came to see the baby, and I want the man who stood up at our wedding to see the child," and she says, "There's the child; you can show it." I says, then, "Why don't you be reasonable; why don't you come to terms? Why do you make life a sacrifice," I said. (At this point the witness sobs.) I says, "I want to be reasonable. We can have our child and we can make life real happy, and I have been sick and I have to move—been advised by medical advisers to make a change and go somewhere where the air is a little fresher and a little dryer, and I really can't go off too far because I have to work and I can't go any great distance from the city, and we can make a living here and I can't make so much elsewhere"; and I told her, "We can make our home in Jersey and let us forget the past and let's start things new again." And she says, "No, I'm too happy; I have no more love for you; I don't

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care for you; I don't want any of your support; I am very contented with my aunt and I don't care if I ever see you again."

Q. Your best man was there at that time? A. Yes, sir.

Q. Did you see her after that? A. I saw her a few days before we moved.

Q. Where did you see her then? A. I went over to see her again.

20 Q. What did she say to you then? A. She says, "You have got your answer; here I am and here I will stay."

Q. Now, after you moved to Jersey did you see her? A. Not that I remember—oh, yes, I did see her.

Q. Where? A. I saw her one day on the Bridge Plaza.

Q. Did you talk with her? A. Yes, we talked together.

30 Q. What did you say then? A. Well, she simply said, "Are you happy now in Jersey?" I said, "Yes." I says, "I would be much happier if you were with me." She says, "I am happy here," and I also reminded her about the statement she had said. I didn't think she would talk to me like that in front of the man that stood up at the wedding, and she says, "I mean what I said."

Q. (BY THE COURT.) Did you tell her anything about where you were living in Jersey? A. Yes, sir.

40 Q. Where? A. I told her on the visit after May, in the month of June, and I told her then of the place where I was living, 15 Concord Street, and, "Here's the address." And she says, "I don't want to know the address."

Q. You gave her the address? A. I certainly did.

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Q. Did you write to her sometime after that, in the month of November? A. I did.

Q. You haven't got a copy of the letter, have you? A. No, sir.

JUDGE CAREY: Have you the letter wrote you on November 26, 1916?

MR. SALLEY: I haven't.

Q. Do you remember what you said in that letter? A. Why, I don't quite remember, but if I did say anything I wanted to see the child. 20

MR. SALLEY: Just wait; I object.

Q. Did you get this letter from your wife the next day? A. Yes, sir.

Q. Is this her handwriting? A. It is her handwriting.

Q. Where did that come to you? A. That came to my business address, where I was employed. 30

Q. In Jersey City or New York? A. At Brooklyn.

JUDGE CAREY: I offer this letter in evidence. (The same is marked Exhibit P1.)

THE COURT: Let it be read, unless there is some question about the authorship.

JUDGE CAREY: The letter is as follows:

"Dear Husband: Your letter received this afternoon. Well, about Tuesday evening you can see her, but I don't want no quarrel. You got your answer long ago; you know what that means. Frances is fine. 40

"Meet me at the same place 8 o'clock P. M. She is heavy for me to hold.

"BRIDGET."

Q. After receiving that letter did you go to see your wife? A. We met right near my business place. I

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was working late that night and I met her and the baby.

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Q. Did you go home with her? A. We first went to have an ice cream soda, and we began to talk things over again, and she seemed very happy; and I says, "Don't laugh sarcastically," and she laughed all the more. And then we walked to Bedford Avenue, and we got as far as the corner and she says, "I am home now; you needn't go any further," and she went home.

Q. At that time did you say anything to her about coming to live with you? A. I certainly did.

Q. In this letter she says, "You got your answer long ago, you know what that means"; do you know what she was laughing at? A. She laughed at the statement I must have said in that letter, that I wanted her and the baby to come with me. I was very unhappy to be without them; I was worrying about them and wanted them to be nearby.

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Q. Do you know what she referred to by this statement, "You got your answer long ago"? A. She referred to the fact that she didn't care to live with me.

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Q. After that when did you see your wife and baby again? A. Well, that was in November. I didn't see her again in that year, in 1916. That was Christmas and I sent the baby a bracelet by parcel post; then I didn't see her or see them until she had me up to the Domestic Relations Court.

Q. Where? A. In Brooklyn; that was in 1917, November.

Q. How did you come to go over there? A. Why, there was a gentleman came to my office down to Brooklyn, and he asked me who I was, and I says, "Yes, I am George D'Annunzio," and he says, "You are requested to come down to the Domestic Relations Court in the morning."

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Q. Did you go down there? A. I went down that morning. It was on a Tuesday. I went down and I appeared before the judge, and he says, "Come down Thursday," I think it was, that he would notify my wife and her lawyer; and I appeared again on Thursday.

Q. At that time what happened? A. Why, as far as I understand, the two lawyers got together and talked, and they agreed to have me pay \$4 a week.

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Q. For the child or what? A. I understood it was for the child, but afterwards it turned out to be for the wife and baby. It was agreeable to me.

Q. You didn't care anything about that? A. No, I was only too glad to give her my support.

Q. At that time did your wife make any suggestion about coming to live with you? A. No, sir.

Q. Did you talk with her? A. I didn't. I says before she left, "Let my father see the baby," and she walked away.

Q. Did you see the baby that day? A. Yes.

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Q. Did you see the baby afterwards? A. I didn't see the baby, no. I don't think I saw the baby until I made a few visits.

Q. Where? A. In 1917.

Q. Well, did you visit her house? A. I did.

Q. Did you see her on those occasions? A. Oh, yes.

Q. How did she meet you? A. Very cold.

Q. Did she kiss you or anything like that? A. No, sir.

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Q. How did she talk to you? A. Well, she talked to me in a manner that showed she was very contented and happy in being there, and she didn't care what became of me, and we spoke about New York. "Now," I says, "You didn't have to get me arrested like that"; and she says, "I did that for spite; I want to get you

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in bad. I didn't need that money, I only did that to get you in bad; I did it for spite."

Q. She showed that she had no love for you? A. She positively did.

Q. Now, by the way, when you were sick at that time, before you were taken down with pneumonia, did you talk to her about being sick? A. Yes, sir; I came home from business that day and I went over to her and says, "I feel very sick"; in fact, the baby
20 wasn't feeling well. She needed something and I went to the drug store for her and I got it, and I says, "I feel as though I am going to be very sick"; I was burning with fever. "Oh," she says, "You won't die so easy." "I don't expect to die," I says, "but I don't feel so well," and while she was sick I had the wedding ring with some things up to the jeweler's, and I says, "I don't know what is going to happen to me, but you had better go up to the jewelry store and get that." And later on she said she did that.

30 Q. What did she do with that wedding ring? A. Why, she kept it, I suppose.

Q. Now, while you were sick who attended to you? A. Well, my father partly and my married sister, too. She lived quite a ways from us, and she left her own children and came down and took care of me, and my sister had to go to business.

Q. Your mother was in Europe? A. Yes.

Q. And outside of your married sister, who had to come quite a distance, you had no one to take care of
40 you, did you? A. Nobody at all.

Q. Now, in January, 1918, do you remember the baby's birthday? A. I do; yes, sir.

Q. Did you go to see the baby that day? A. I did; yes, sir.

Q. Did you take the baby any presents? A. I did; yes, sir.

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Q. Did you see your wife? A. I did; yes, sir.

Q. What did you take that day to your baby? A. I took some candy and some flowers, being the baby was two years old.

Q. Did you have a talk with your wife that day? A. I did. I says, "It's a shame you are treating me like this; you are having all the happiness of the child." She says, "That is my child; nobody can say anything different by it," and there was a very beautiful table set as she expected some company for the child's birthday party. 20

Q. Were you at the birthday party? A. No, sir.

Q. You weren't invited, were you? A. No, sir.

Q. In April, 1918, did you send anybody over to see her? A. I did; yes, sir.

Q. Who? A. I sent my brother-in-law and sister.

Q. What for? A. Oh, for the same thing, to see if we could be reunited again.

Q. (By THE COURT.) What year was this? A. In April, 1918. 30

DIRECT-EXAMINATION RESUMED:

Q. Did you go over there again later than that? A. I didn't go over there, because I couldn't feel satisfied after I found out that she flatly refused to see my sister and brother-in-law, and I sent them over again a couple of months later.

Q. Well, after that did you go over? A. I did.

Q. That was the last time, was it? A. Yes. 40

Q. When was that? A. In the month of July, I think, right after the Elks' convention.

Q. Last year? A. 1918.

Q. That is a year ago last July? A. Yes, sir.

Q. Did you talk with her again? A. Oh, yes, I brought a few toys for the child—some souvenirs—and we talked things over again, and the question

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came up regarding my classification, which she had to find out that I was in Class 3 through my sister and brother-in-law, and she had been writing to the Board of Exemption, and I found what she said was a letter of complaint; and so she says, "Aren't you gone away?" I says, "No; I am ready whenever they want me, but so far as I know my statement is very clear." "Oh," she says, "you will have to go away because I am going to make you go away, because it would be a benefit to me." I says, "What would be the benefit to you?" "Oh," she says, "It is the \$10,000 I am after, the insurance."

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Q. Do you know whether or not she did write to the Classification Board? A. Oh, yes, sir, because Mr. Martin, the chairman of the Board, put me in Class 1. I says, "What's this all about?" "Why," he says, "Your wife has been writing here, stating that your father is a wealthy man and that you have made one statement in your questionnaire that is not true." I says, "If you find my questionnaire is not truthful you can put me in jail, but if you find that my statement is truthful I want you to recognize it."

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Q. And they investigated it? A. Yes; I was before Walter Dear, of the Jersey Journal, and the District Court, and after he had me in his office three hours he says, "I am satisfied your statement is very clear."

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Q. By the way, is your father a man of means? A. No, sir; he has no means.

Q. (BY THE COURT.) How old is he? A. My father is 67 years old.

Q. Has he been employed of late years? A. Why, only the late part of his years he spent a little time in the public schools of Brooklyn, doing a little tutoring, and I was very anxious to have him retire from that and he has not been doing it for the last six or seven years.

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DIRECT-EXAMINATION RESUMED:

Q. By the way, just one other matter and then I will be through: After your marriage to her and just before the birth of the first child, did you have a family banquet or wedding party? A. Yes, sir; we got married on the 26th of December and we had a little spread—a little celebration in my home on New Year's Day—

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MR. SALLEY: What year is this?

A. (Continuing.) I had all my family there and she was there herself. That was the New Year's of 1915.

Q. At that time was anything said publicly as to where you lived? A. Yes, we decided, as I told you, on the floor upstairs, which would be ready very soon and we would be there; she says, "I will after the birth of the child; I don't want to live over there now, being I am not very well prepared, and after everything is over"—

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Q. After the birth of the child? A. Yes, after the birth of the child, and the child was born two months afterwards.

EXAMINATION BY THE COURT:

Q. After your illness did you at any time have intercourse with your wife? A. No, sir.

Q. How long before that was the last occasion, about, if you can remember? A. Before?

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Q. Yes. A. Why, really right after the birth of the second child we never had any intercourse.

Q. You never had any intercourse after the birth of the second child—what is the date of the birth of the second child? A. January 6th, 1916, because that is where the business began to lapse; I wanted it to

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be christened in my home and she finally refused, and it was not very pleasant.

DIRECT-EXAMINATION RESUMED:

Q. You know Carlo Musso? A. I do.

Q. Did you ever go to ask him to see your wife?

A. I did, in the month of June.

Q. What year? A. 1916.

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Q. Why did you take Carlo Musso? A. Because I didn't care to go over there alone, and I hadn't seen the child for some time, and he happened to be over to our home and he says, "I will go over with you." I was going over there, being we had found rooms over there and we were all ready to move.

Q. (BY THE COURT.) Was that the occasion when you offered her the address in writing? A. Yes, sir.

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DIRECT-EXAMINATION RESUMED:

Q. Do you know Ferdinando Giancola? A. I do, yes, sir.

Q. Who is he? A. He is my brother-in-law; he married my sister.

Q. Did he ever go over with you? A. No, sir.

Q. He went afterwards, not with you? A. No, he met my wife in my home; he had known her for the last five or six years.

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CROSS-EXAMINATION BY MR. SALLEY:

Q. Who is Carlo Musso? He is your brother-in-law, too? A. Yes, sir.

Q. And he went over with you around March, 1918, didn't he? A. Why—(the witness pauses).

George D'Annunzio—Cross.

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Q. It wasn't the time you were trying to get out of the draft that he went over with you? A. No, sir; he wasn't over with me at all.

Q. Wasn't it in the year 1918, that he was over there with you? A. No, sir, he went over there with my sister. I wasn't trying to get out of the draft.

Q. Now, you are 30 years old, aren't you, D'Annunzio? A. Yes, sir.

Q. You started keeping company with this lady when you were 16 years old? A. I wouldn't call it "company"; I wouldn't say that.

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Q. Well, you started to associate with her? A. Associating in a way, that she was in and out of the same house. I didn't feel as if I was keeping company.

Q. You told Judge Carey you were 16 years old. A. When I first met her, yes.

Q. And then you called on her during that time off and on—called and saw her and took her out? A. Well, I would say yes.

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Q. And when you were 25 years old, nine years after you first started keeping company with her, you were then married to her? A. Yes, sir.

Q. You were 25 years of age when you got married? A. Twenty-five, yes.

Q. Now, after your marriage your wife continued to live with you? A. Yes.

Q. And you called there and had your meals there very often? A. I wouldn't say "meals very often"; only at times the table would be set and they would ask me.

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Q. I know, but did you eat there at all? A. I ate there, yes.

Q. About April 1st, 1915, didn't she ask you to live there with her at the home of her aunt Mary O'Sullivan? A. That was their suggestion.

George D'Annunzio—Cross.

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Q. And you did rent rooms there? A. No, sir.

Q. Didn't you take the apartment and then refuse to pay the rent for it? A. No, sir; I didn't take it at all; it only happened to be idle and—(the witness not finishing his answer).

Q. Now, in June, 1915, didn't you take your wife to a lawyer and ask her to sign a separation agreement with you, relieving you from any responsibility in supporting her? A. No, sir.

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Q. Did you hire any lawyer at all? A. No, sir.

Q. Sure about it? A. Positive.

Q. Now, in December, 1915, she was still living with you at 102 Hayward Street? A. Yes, sir.

Q. That was before the baby was born? A. Yes.

Q. And the second baby is the little girl? A. Yes, sir.

Q. And is now with the mother and the aunt? A. Yes, sir.

30

Q. And she lives now at the aunt's house? A. Yes, sir.

Q. You came to live with her at the aunt's house? A. No, sir.

Q. Didn't you come at all that day? A. No, sir.

Q. Did you come to see her there? A. I did.

Q. When was this child born? A. On January 6, 1916.

40

Q. And do you remember, at the time your wife was carrying this child, about two months before the birth of the child, your having an argument with her at the aunt's house, and striking her on the left eye? A. No, sir.

Q. You don't remember that? A. I never did.

Q. How much money did you give your wife from the time that you married her December 26, 1914, up to the time of the birth of this child in January, 1916? A. Why, I would give her \$4 a week or \$5 a good many weeks.

George D'Annunzio—Cross.

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Q. No regular amount? A. No, sir; because she was getting it in a way; we were preparing some day to go to housekeeping, and I would go and get a few things that would be useful for the house.

Q. You had never provided a home for her by setting up any bed or putting in any furniture, or anything for her? A. Yes, sir.

Q. Between that time? A. Yes, sir.

Q. Where did you buy the furniture? A. In Bloomingdales'. 20

Q. How much furniture did you buy? A. Well, she was there with me; I bought a dining room set.

Q. What did you do with that furniture? A. I still have it.

Q. You have it with your father and mother? A. I had to put it somewhere.

Q. All the time that your wife was living in your aunt's house you were living with your father and mother and sister and brother? A. Yes, sir.

Q. And you are still with your father and mother, are you? A. Yes, sir. 30

Q. Do you remember about 10 days after your wife returned from the hospital and she had the baby in your aunt's house, and she asked you to have the baby christened? Do you remember that incident? A. No, sir.

Q. Don't you remember about 10 days after the baby was born and she was in her aunt's house, and she said to you, "George, the baby is 12 days old and we are going to baptize it next Wednesday," and your saying, "I dare you" and she said it was the duty of the Irish to baptize children early, and you struck her over the left eye? A. No, sir; I wanted to have the child baptized in my own home where we decided to go, and it is absolutely untruthful to say that it was only the duty of the Irish to baptize their children so 40

George D'Annunzio—Cross.

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early, because I myself was baptized two weeks after I was born.

Q. Well, did you say that or not? A. No, sir.

Q. Do you remember seeing your wife about six weeks later, and your wife at that time saying to you, "All I want you to do is to furnish a home for me and take care of me and my baby"; do you remember that? A. No, sir.

20

Q. And you at that time struck her on the nose with your fist? A. No, sir.

Q. Do you remember in March, 1916, taking your wife, grabbing hold of your wife's hand and taking off the wedding ring in the presence of the aunt, and throwing the wedding ring in the fire and saying, "I don't want anything more to do with you"? A. No, sir; she took the wedding ring off and says, "I don't care for you" and I took the wedding ring and put it in my pocket.

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Q. (BY THE COURT.) Have you the ring now? A. No, sir; I have not. The last time I was over there, which was in the month of July, 1918, I said to her, "Now, what is your intention?" and she said, "I gave you the answer long ago; here I am and here I expect to stay. The only thing you can do for me is to give me back the ring that you got." I says, "I will do that," and I mailed the ring two days after. It was no use to me and I mailed the ring back.

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Q. Do you remember meeting your wife in the latter part of June, 1916, at the Bridge Plaza and saying to her, "I am passing as a single fellow; I go out with McLoughlan and his wife and sister-in-law, and if you were out of the way things would be all right," and that you didn't want anything more to do with her? A. To answer that I will say that Mr. McLoughlan was the neighbor next door, and I often remarked to her that they had a little girl and they

George D'Annunzio—Cross.

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have a happy home, and "just see what a nice thing it would be to have neighbors like that"; and so far as Mr. McLoughlin's sister-in-law is concerned, she was about fifty-five.

Q. And do you remember October, 1916, you and your wife going to Brighton Beach and your saying to her at that time, "You are going to meet a horrible death; I won't do it but I will get someone to do it," and your wife saying back, "If you will do it remember you will be done away with," and your saying back to your wife, "Well, there is one satisfaction and that is that my folks will get the baby"; do you remember that? A. No, sir. I do remember going to Brighton Beach, though.

20

Q. And your wife was living at 152 Hayward St.? A. Yes, sir.

Q. Didn't you, on your return, strike your wife in the face with your fist, when you reached the house? A. No, sir, I didn't even go anywhere near the house. When we returned from the trip it was six o'clock in the afternoon, and she got off at Franklin Avenue and Hayward Street.

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Q. (BY THE COURT.) When was this; what year? A. It was in 1917. I think it was in the year, 1917.

Q. You say it was six o'clock in the morning or evening? A. In the evening. I was on my vacation at that time and I went up there, I wanted to see the baby, and I was very anxious about her, and she met me there and we went to Brighton Beach, always with the intention of being reunited again, but she always persisted in saying "no, no."

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CROSS-EXAMINATION RESUMED:

Q. You said, in answer to Judge Carey's question, your father has no means; is that right? A. I wouldn't say means. We all know what he has.

George D'Annunzio—Cross.

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Q. That isn't the question? A. No.

Q. You signed an affidavit in this case, didn't you, at the preliminary hearing? A. I believe I did.

Q. Did you sign the affidavit saying that your father owned the premises on Concord Street where you live? A. Yes.

Q. Does he own it or you own it? A. My father owns it.

20 Q. (BY THE COURT.) I thought you said just now your father had no means; do you know what the meaning of that phrase is? A. By means I would use it in connection with a wealthy man.

Q. What property has your father? A. Just the house on Concord Street.

Q. Two-family house? A. Yes, sir.

CROSS-EXAMINATION RESUMED:

30 Q. What does it rent for? A. \$26 for the first floor and we live on the other floor.

Q. What is the mortgage on it? A. \$5,000 Building and Loan.

Q. How long ago did you get the mortgage? A. We pay \$25 to the Building & Loan.

Q. How long has the mortgage been on the house? A. Since we had it.

Q. When is that? A. It is three years old.

40 Q. Do you know where your father got the money to buy this house? A. Why, he had a few dollars saved and my sister had a few dollars saved.

Q. And you helped buy the house, too, didn't you? A. No, sir.

Q. Well, your father peddled candy outside the public school over in Brooklyn, didn't he? A. Yes, sir.

Q. And all this time the trouble has been going on

George D'Annunzio—Cross.

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with your wife you have been living with your father and mother, haven't you? A. Yes.

Q. Now, Mr. D'Annunzio, will you please tell us, if you are anxious to have your wife back to live with you and have your child back, why, when you were over to the Domestic Relations Court, you didn't tell the Judge the story you have been telling today, instead of pleading guilty?

JUDGE CAREY: He didn't plead guilty.

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A. I didn't plead guilty at all. It was only before the Judge.

JUDGE CAREY: Here is the record.

MR. SALLEY: It is offered in evidence by consent. It reads:

"On consent of the defendant in person, and through his counsel, the defendant is placed under probationary oversight, under Section 686 of the Greater New York charter, as amended, under the supervision of Probation Officer Frank L. Graves, and until further order of the Court and subject to revocation as hereinafter stated, not to exceed one year, conditioned to pay \$4 weekly for the support of his wife and minor child."

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JUDGE CAREY: And the plea is "not guilty."

MR. SALLEY: That was the original plea before the trial, and the case came to trial and he pleaded guilty.

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THE COURT: Where is there any statement in that record that he pleaded guilty? I understand first that he pleaded not guilty and then by consent this order was made. We all know how these orders are made. A man doesn't contest it and he says, "I will contribute so much money for the wife."

George D'Annunzio—Cross.

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Q. Now answer my question: Why, if you were anxious to have your wife and child come back, did you voluntarily pay \$4 a week instead of fighting this case? A. In the first place, her lawyer was an old neighbor of ours and he knew me well, and I think if he was any kind of a man he could send for me. He didn't have to send for me; he could have reasoned out the conditions; he could hear my sister; instead of that she had me arrested and gets me to court and

20 I had no way of defending myself. It shows you that her aunt was so brutal, I would say; she could act very different.

Q. Now, Mr. D'Annunzio, you were called in the draft, weren't you? A. I only answered my questionnaire.

Q. Well, didn't you go over to your wife in Brooklyn and ask her to sign an exemption claim for you so that you wouldn't be called in the draft? A. I didn't go over to my wife; I wrote to my wife, stating that it was down in the City Hall and I went down there and I didn't understand the questionnaire so well and I went down there to have it filled out; and the man says, "Are you a married man?" I says, "Yes, sir." "Well, go out and bring your wife here." Well, she has a cousin who is a lawyer here in Jersey City, that is, Mr. Robert Kinkead. I thought it would be very fine for her to come over there. I wrote to her, and I says, "Now, I have got my questionnaire; if you will come over to Mr. Robert Kinkead's office I will answer the proper questions and you will do likewise, so as to make a clear statement"; and I realize the fact that Mr. Kinkead would not let her sign any false statement or anything unless it was the truth. Instead of that she answered me that she had seen them and told them she would have nothing to do with it; that I was a slacker and that I ought to join the

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George D'Annunzio—Cross.

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army and all that, which wasn't necessary. I was no slacker at all; I was willing to defend my country as well as anybody else.

Q. Have you any record of the payments made to your wife from the time of your marriage up to the time you were in the Domestic Relations Court in Brooklyn? A. Well, the record that I have, so far as my memory goes—I oftentimes gave it to her—

Q. No regular amount at all? A. I would say that the amount would be about two or three hundred dollars.

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Q. From when? A. From the time it took place.

Q. From 1914 to 1918? A. Up to the time the second child was born.

Q. About \$50 a year? A. That is—understand me right—from the time we got married up until about 1916; and then when she had me to court I have been paying \$4 a week from that time, and from the \$8 which your Honor requested me to pay.

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Q. Now, where are you working? A. Waldeck & Company.

Q. What are you doing? A. Foreman.

Q. How long have you been there? A. I have been going up there 28 months.

Q. How many men have you got up there? A. Five.

Q. What is your salary? A. \$30.

Q. What do you get for overtime? A. Nothing.

Q. How much do the men under you get? A. One man is getting \$25, and another \$23.

40

Q. You mean to tell us you get only \$5 a week more than the men under you? A. That's all.

Q. (BY THE COURT.) Were you born in this country? A. No, sir.

Q. How old were you when you came here? A. I was 12 years old.

George D'Annunzio—Cross.

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Q. How did you come, with your parents? A. My father was here first and I followed.

Q. Were you naturalized? A. Yes, sir; through my father.

Q. Through your father's naturalization? A. Yes; I was under age when he became a citizen.

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JUDGE CAREY: I offer in evidence the record of the proceedings in the Magistrate's Court, which the other side read from.

MR. SALLEY: That was admitted by consent.

THE COURT: It seems to be already marked Exhibit D1, Jan. 6, 1919, with Mr. Knight's initials.

MR. SALLEY: It was offered at the preliminary hearing and was admitted by consent at that time.

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THE COURT: Was testimony taken at that hearing?

MR. SALLEY: Yes.

JUDGE CAREY: The testimony of Mr. D'Annunzio, his father, and one of his sisters, and Mrs. D'Annunzio, and the aunt; and it was understood that that would be a part of the testimony to be taken at the final hearing.

THE COURT: Has it been written out?

JUDGE CAREY: I don't know whether it has been written out or not.

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MR. SALLEY: It was confined to the question of his earnings and how much alimony he should pay.

THE COURT: How long ago was that?

JUDGE CAREY: Six or seven months ago. It was in January, 1919. As a matter of fact, we went practically into everything that we

Anthony Zeho—Direct.

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went into today—practically the same line of testimony.

THE COURT: If it was taken in January, 1919, it was taken by Mr. Knight, and I suppose there would be some difficulty in having it written out now. Do you know how long it took?

JUDGE CAREY: It took about an hour and half. 20

THE COURT: Oh, well, you may proceed with the case in the usual way apart from those depositions.

ANTHONY ZEHO, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY: 30

Q. Where do you live? A. I live at 2 Concord Street.

Q. Jersey City? A. Jersey City.

Q. How long have you lived in Jersey City? A. All my life.

Q. Born here? A. Yes, sir.

Q. What is your business? A. Paper cutter.

Q. How old are you? A. Thirty-one years old.

Q. Do you know the petitioner, D'Annunzio? A. Yes, sir. 40

Q. How long have you known him? A. About 10 years.

Q. And do you know the defendant, Mrs. D'Annunzio? A. Yes, sir.

Q. How long have you known her? A. Why, just the time that they were married; that was the first time I met her, and then a couple of times after that

Q. Where did you meet her when they were married? A. I met her in New York.

Q. Were you present at the wedding? A. Yes, sir.

Q. In what capacity? A. Best man.

Q. Now, after the marriage took place did you know that she was in a family way at the time they were married? A. No, sir.

Q. You didn't know that? A. No, sir.

Q. Did you know anything about the birth of the first child, shortly after that? A. Why, he told me that he had a baby; that's all I knew.

Q. You didn't know anything about the details? A. No, sir.

Q. Did you visit him after the marriage? A. Did I visit Mr. D'Annunzio after he was married? Why, yes, I have been to his home.

Q. Where? A. What is the name of the street?

Q. Was it in Brooklyn? A. Yes, sir.

Q. You knew he was living in Brooklyn when he was married? A. Yes, sir.

Q. Did you know where his wife was living? A. He told me that she lived across the street, and I passed the house once.

Q. You weren't particularly interested in it? A. No.

Q. Now, did you work with him? A. In Brooklyn, yes.

Q. Where do you work now? A. In Jersey City.

Q. How long have you been working in Jersey City? A. For the last three years.

Q. Prior to that you were working at the same place he worked in Brooklyn? A. Yes, sir.

Q. Where has he been living these past 28 months? A. In Jersey City.

Q. Do you know that? A. Yes, sir.

Q. You know where he lives now? A. Yes, sir.

Q. How long has he lived in Jersey City, about?

A. I should think about two years and half or three years.

Q. You don't remember the exact date? A. No.

Q. Do you remember the occasion of his coming from Brooklyn to live here? A. Yes, sir; I think it was—I don't remember the date.

Q. What year? Do you remember? A. I think it was in 1917. 20

Q. 1917 or 1916? A. 1916.

Q. Did you know anything about the birth of the second child? A. No, sir; I don't know anything about that.

Q. Do you know when he had pneumonia? A. Yes, sir.

Q. Was it shortly after he had pneumonia that he came over here? A. Yes, it was after he had pneumonia that he made up his mind to make the change. 30

Q. Now, up to that time did you visit his wife at all? A. I think it was on May 6th.

Q. Of what year? A. 1916—on a Saturday afternoon that he asked me to take a walk to see the baby.

Q. Where were you working when you took that walk? A. Worked together.

Q. That was the first Saturday afternoon in May? A. Yes, sir.

Q. Where did you go to? A. At her home, wherever the address was. 40

Q. (BY THE COURT.) Where were you working at that time? A. Smith & Company.

Q. In Brooklyn? A. Yes, sir.

DIRECT-EXAMINATION RESUMED:

Q. How far away from her home was that? A. About 15 minutes' walk.

Q. When you got to her home did you see the baby? A. Yes, sir.

Q. Did you see her? A. Yes, sir.

Q. Now, was there any talk there between her and her husband at that time? A. Why, yes; Mr. D'Annunzio said that he would take me there to see the baby, being that he hadn't seen the baby for a while
20 and I was the best man, and he told me to go and see the child and her; and he told me she was very cold, going up, and didn't seem to want him to come up at all, and of course we went and she showed me the baby.

Q. What happened then? A. Mr. D'Annunzio asked her how everybody was, if she was feeling well; and she didn't answer at all, and he told her that he had decided to make some change for the benefit of his health, to live somewhere else and get a change
30 of atmosphere; and she said she didn't care where he went to live at all.

Q. Did she say that? A. Yes, sir.

Q. Now, tell us again, giving her words as nearly as you can. A. She said that she had absolutely no love for him at all.

Q. Did you hear her say that? A. Yes, sir; that she didn't care where he is to live.

Q. You were present when she said that? A. I
40 certainly was.

Q. Did you express yourself? A. I expressed myself this way, by asking her why she wouldn't come with him and live together and she would be happy; she would make new friends and be away from her own people.

Q. What did she say? A. She emphatically refused.

Q. Did she say anything about why? A. She said she didn't care to live with him any more; that she had no love for him.

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Q. Did she say anything about her aunt? A. No.

Q. (BY THE COURT.) Was there anything said about where he was living? A. Yes, he told her he was going to live in Jersey City at the Heights.

DIRECT-EXAMINATION RESUMED:

Q. Did he tell her on what street? A. Concord Street. 20

Q. (BY THE COURT.) Did she say anything to that? A. No, sir; she said she didn't care where he went to.

DIRECT-EXAMINATION RESUMED:

Q. How long were you there? A. About a half an hour.

Q. Was there anything said at that time about the wedding at the church; did anybody mention about the wedding? A. No. 30

Q. That wasn't discussed at all? A. No.

Q. Did you notice anything that her husband did at that time to induce her to come? A. Why, he got on his knees to Mrs. O'Sullivan and tried to have her induce her to come.

Q. Who was Mrs. O'Sullivan? A. I think she is the wife's aunt. 40

Q. Was she there? A. Yes.

Q. He got on his knees at that time? A. Yes, sir.

Q. What did Mrs. O'Sullivan say? A. Mrs. O'Sullivan said she didn't have anything to do with it or didn't do anything to make any change. That is the only thing Mrs. O'Sullivan said, that she couldn't do anything for him.

Q. Was anything done by him with the baby when he left? A. He took the baby in his arms and started to rock her, and kissed her and played with the baby.

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Anthony Zeho—Cross.

Q. How long were you there? A. A half an hour.

Q. Were you there after that? A. No, sir.

Q. Ever see her after that? A. I believe I might have at one time at Rockaway Beach; I was with some friends of mine and I think I met them up there, too.

Q. Met whom? A. His wife and him together.

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

20 Q. (BY THE COURT.) Was it Rockaway Beach or Brighton? A. It was Rockaway Beach.

DIRECT-EXAMINATION RESUMED:

Q. Was the baby with them? A. No, sir.

Q. You don't remember when that was, do you?
A. Well, I know it was in July—about July 5th; about that date; I'm not sure.

Q. What year? A. 1915.

30 Q. That was before the time you went to the home?
A. Yes.

Q. I mean, have you seen her since then? A.
No, sir.

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

Q. Live with your family? A. Yes, sir.

Q. In Jersey City? A. Yes, sir.

40 Q. Now, this section where Concord Street is in Jersey City, is that a nice section of the city? A.
Oh, yes, right upon the Palisades hill.

CROSS-EXAMINATION BY MR. SALLEY:

Q. When Mr. D'Annunzio spoke of taking his wife to Concord Street he meant to the home of his father?
A. He meant to 15 Concord Street; it is a two-family house.

Q. That is where Mr. D'Annunzio's father lived and where his sister lived? Is that so? A. Yes.

Ferdinando Giancola—Direct.

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Q. And they were living there at that time? A. Yes.

Q. And D'Annunzio was living there with them?
A. Living with his father and mother.

Q. This child you spoke about is this little child here? A. It is so long since I have seen it—

Q. What do you do? A. Paper cutter.

Q. At the same place where D'Annunzio works?
A. Yes.

20

Q. You are a friend of his? A. Yes, sure I am.

Q. What does he earn a week? A. I couldn't tell you.

Q. Do you know what the foremen of that particular trade are earning? A. I couldn't say what they earn.

Q. You are familiar with the trade conditions, aren't you? A. I am familiar with my own.

Q. Are you a foreman, too? A. No, sir.

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Q. What are you? A. Paper cutter.

Q. And how much do you earn? A. \$30 a week.

Q. Isn't it true that the foreman earns more than the men under him? A. I don't know about that.

Q. This time that you spoke about in Brooklyn, didn't Mrs. D'Annunzio say to Mr. D'Annunzio, "I am willing to live with you anywheres but I will not live in your father's house"? A. No, sir, she didn't say that while I was there.

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FERDINANDO GIANCOLA, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Where do you live? A. I live at 31 Carlton Avenue, Brooklyn.

Q. How old are you? A. 37.

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

Q. And live with your family? A. Yes, sir.

Q. What is your business? A. Kid glove making.

Q. Do you know Mr. D'Annunzio, the petitioner?

A. Well, he is my brother-in-law.

Q. You married his sister? A. Yes, sir.

20 Q. Do you know Mrs. D'Annunzio, the defendant?

A. Yes.

Q. Did you know her before they were married?

A. Yes, I know them about 13 years.

Q. You remember when they were married? A. Yes, I do; she was married on the 26th of December, 1914.

Q. And did they have a celebration after that? A. The first time after the marriage, the first of January, 1915.

30 Q. And where did you see her then? A. At my father-in-law's house.

Q. Seventy-one Lynch Street, Brooklyn? A. Yes, sir.

Q. Did you have any talk with her on that day? A. Yes, we talked with everybody, and I asked her if she wants to come to live with him at the house and she said that she would not live with her husband.

40 Q. Did they live together in Brooklyn after that? A. No, never lived together.

Q. Never lived together? A. No.

Q. Where did your brother-in-law live? A. My brother-in-law lived in Brooklyn, 1 Lynch Street.

Q. Where did she live? A. I don't remember the number of the house, but across the street, anyhow.

Q. Do you remember when your brother-in-law came to New Jersey to live? A. Yes.

Carlo Musso—Direct.

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Q. When? A. He came—I don't remember just when; June or July, 1916.

Q. You don't know the date? A. I don't remember positively.

Q. Did his mother and father come over at the same time? A. The mother wasn't in this country.

Q. The mother was in Italy at that time? A. Yes.

Q. Do you know where they moved to in Jersey City? A. 15 Concord Street. 20

Q. What kind of a house is it? A. A beautiful house, two-family house.

Q. Have they lived there ever since? A. All the time they have lived there.

Q. Where does your brother-in-law work now? A. In Jersey City, I don't know the shop.

Q. He formerly worked in Brooklyn; you know that? A. Yes.

Q. Now, after your brother-in-law came to Jersey City did you ever go to see his wife? A. Never. 30

Q. You have never seen her since? A. No, sir.

Q. Never talked with her? A. No, sir.

No cross-examination.

CARLO MUSSO, sworn on behalf of the petitioner testified as follows:

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DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Where do you live? A. Howard Avenue, Brownsville.

Q. How old are you? A. 49.

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

Q. Live with your family? A. Got five children, yes.

Q. Wife living? A. Yes, sir.

Q. Is she here? A. She is here.

Q. Now, were you living in Brownsville at the time of your brother-in-law's marriage? A. Yes, sir.

Q. How far from his house was that? A. It is about a half an hour by car.

Q. Half an hour by trolley car? A. Yes, sir.

20 Q. Now, what business are you in? A. Barber.

Q. Do you remember when your brother-in-law got married? A. Yes.

Q. The petitioner is your brother-in-law? A. He is my brother-in-law, sure.

Q. You married his sister? A. Yes.

Q. Do you know his wife, Mrs. D'Annunzio? A. Sure.

30 Q. Where did you first meet her? A. Well, at his house—my brother-in-law's house and my father-in-law's house.

Q. That was before they got married? A. Yes, sir.

Q. Now, were you present at the banquet or reception after they got married January 1st? A. What do you mean?

Q. Were you at the little dinner party after the marriage? A. No, sir, I didn't get there.

40 Q. Now, after your brother-in-law's marriage where did he live? A. After the marriage in my father-in-law's house.

Q. And where did his wife live? A. In his aunt's house.

Q. Do you remember when your brother-in-law was sick with pneumonia? A. Yes, sir.

Q. How long was he sick? A. He was sick about six or seven weeks.

Q. Did your wife go down to the house? A. She

left all the children in the house and I attended to the children myself.

Q. You had five children at that time? A. Yes, five children.

Q. Where was his mother then? A. His mother was in the other country.

Q. That was in Italy? A. Yes, sir.

Q. Did you go down to see your brother-in-law when he was sick? A. At the nighttime. 20

Q. When you went down there did you see his wife there when he was sick? A. Never.

Q. Never saw her there at all? A. No, sir; never.

Q. Now, do you remember when he got well and was moving to New Jersey? A. Yes, sir.

Q. Do you remember that? A. I remember, sure.

Q. Well, when was that? A. That was in 1916.

Q. June? A. June; yes, sir.

Q. And have you called on them over at the home in New Jersey—visit them? A. Oh, sure. 30

Q. You know he lives there? A. Yes.

Q. Has his wife been living over there? A. His wife is living in Brooklyn.

Q. Been living in Brooklyn all the time? A. Yes.

Q. Did you see him about the time he moved to New Jersey? A. Yes, because I was over to my brother-in-law's house and he says, "I am going to see my wife and child," and he asked me, "Do you want to come over with me," and I says, "Yes," and I had my big boy with me, too, and me and my brother-in-law came all together to go over to Mrs. D'Annunzio's house. 40

Q. Is your boy here? A. Yes.

Q. Which is your boy? A. Sitting down there.

Q. How old is he? A. 14 the first of June.

Q. Now, when you went over there what happened?

MR. SALLEY: When was this time?

Q. When was this? A. This was June, 1916.

Q. Now, what happened? A. Well, what happened was he told me, "Now, I am going to move to New Jersey. If you want to come with me then I have got a room—got a nice floor—if you want to come and live where I am all the time I have got a place for you"; and she says, "No, no, I want to stay; I don't
20 want to come with you. I got a home here, that is my home"; and after he talked with her a little while he says, "Well, I still love you and I give you my address where I live, 15 Concord Street, in Jersey City, and if you want to come let me know and I will come over and take you," and she says, "No, I don't want to know the number at all; I don't want to know where you live, because I don't want to come with you at all."

Q. Did she say anything at that time about living with him? A. He asked her a couple of times if she
30 wants to live with him and she says no all the time; that's all.

Q. Before that did you go to see her? A. Before that? No, sir.

Q. With your wife? A. No, sir; after that.

Q. Where did you go with your wife after that? A. We go April, 1918; this was the second time we go there. First, I go all alone with my brother-in-law
40 and my boy.

Q. Your wife was with you in April, 1918? A. Yes, sir.

Q. What did you go there for? A. My brother-in-law says, "You go there and see if you can do anything good for us, if she wants to live together," and we go there and tell them, "Well, now, you have got a child and it is better to live together," you understand; and she says, "No, no, I won't hear nothing

about that"; and she talked to my wife and my wife talked to the aunt.

Q. The aunt is Mrs. O'Sullivan? A. Yes. She said it before Mrs. O'Sullivan, and I started to talk with Mrs. O'Sullivan before I talked to her, and she says, "No, she don't want to go there at all."

BY THE COURT:

Q. Who said that? A. The aunt, and after that Mrs. D'Annunzio talked to me and talked to my wife, and the aunt says, "She don't want to come; she don't want to leave there."

20

DIRECT-EXAMINATION RESUMED:

Q. Was she present while you were talking to the aunt? A. She was kind of angry.

Q. Mad? A. Yes.

Q. Was she through talking when you were talking to the aunt, or were they both talking together there? A. Yes, they were sitting right together.

30

Q. In October you went over to her house when the papers in this case were served on her? A. Yes, I bring the papers.

Q. The notice of the suit? A. Yes, the notice of the suit.

Q. Did you talk with her again? A. Before giving her the papers I talked about a half an hour the same thing as I talked before. I say nothing about the papers first; I say, "What do you say now," when I go there in October, 1918, see? And I told her before I give her the papers if she wants to live at the hospital, and she says, "No."

40

BY THE COURT:

Q. When was this? A. This was in 1918.

Q. Was he in the hospital? A. No, she was in the house.

10

Carlo Musso—Cross.

Q. Did you say something about the hospital? A. I say something about the husband.

Q. Now, say it again; what was it you said to her? A. When I gave her the papers—

Q. What papers? A. What do you call that when they sue in the court?

DIRECT-EXAMINATION RESUMED:

20

Q. The papers in this case, substituted service? A. Yes, before giving her the paper I asked her the question if she wants to go to her husband and she says "No."

CROSS-EXAMINATION BY MR. SALLEY:

Q. You say you brought her the papers; what papers did you bring her? A. To call her in court. I don't know what you call the papers.

30

Q. What papers? Don't you know that you brought her over a paper in reference to army service, a questionnaire? A. For the soldiers; for the case.

Q. For the soldiers, wasn't it? A. For the divorce case.

Q. This was in April, 1918, or when was it? A. In October, 1918.

BY THE COURT:

40

Q. Just one moment; what is your full name? A. My full name is Carlo Musso.

Q. Do you remember signing the affidavit which I show you, being in the files in this cause and marked "Filed January 24, 1919"? A. Yes, that is my name; I signed it.

Q. You signed that? A. Yes.

Q. Then you testified in the affidavit that you served a copy of this notice, which is annexed upon Mrs. D'Annunzio—do you understand me? Here is your

affidavit, and you say that you served a copy of this notice on Mrs. D'Annunzio? A. Yes.

Q. Now, do you recollect serving that paper? A. Oh, yes.

Q. Is that the paper you are talking about? A. Oh, yes.

Q. That you served some time in the fall of 1918? A. Yes.

20

Q. Do you know what month it was? A. I remember that is the time I took that paper.

CROSS-EXAMINATION RESUMED:

Q. You were there in June, 1916, you say? A. Yes, sir.

Q. And where was Mr. D'Annunzio living then? A. He lived 71 Lynch Street, Brooklyn.

Q. And you went there with your boy, and he was 7 years old then, wasn't he? A. Well, about that.

30

Q. And was this in the daytime or nighttime? A. In the daytime.

Q. What time, about? A. Well, one or two o'clock.

Q. You have got a barber shop down in Brownsville? A. Yes.

Q. Do you have the barber shop yet? A. Yes.

Q. And your boy was 7 years old and he was going to school, wasn't he? A. Yes.

Q. Please tell us how it was on this day in June that you were out of your barber shop in the middle of the afternoon with your little boy out of school that you went over to see Mrs. D'Annunzio? A. Because I wanted to take along my boy, that's all.

40

Q. Why was it you took your boy? A. Because I have got two working men all the time in the barber-shop.

Q. And you left your business and took your boy out of school for that purpose?

JUDGE CAREY: How old was your boy in 1916?

A. He is 14 now; 11 years old then.

Q. Now, have you talked over with anybody before you came in court this morning what you were going to say upon the stand? A. What?

20 Q. Have you talked over with anybody this morning or yesterday at any time what you were going to say when you got upon the stand? A. No, sir.

Q. Didn't you talk it over with Mr. D'Annunzio? A. If I meet him I say, "Good morning."

Q. Didn't you talk over with Mr. D'Annunzio what you were going to say on the stand? A. No.

Q. Don't you know that you were never there and your boy wasn't there at Mrs. D'Annunzio's, in 1916?

A. Yes, he was with me.

30 Q. Now, you were over there to see Mr. D'Annunzio in March, 1918, weren't you? A. No, sir.

Q. How many times were you there all together? A. Three times.

Q. When was the first time? A. No, I was there four times.

Q. When was the second time? A. April.

Q. April when? A. 1918.

40 Q. And who was there when you went there in April, 1918? A. The old lady and Mrs. D'Annunzio.

Q. You went there all by yourself? A. I go with my wife the second time.

Q. Who asked you to go there? A. Mr. D'Annunzio.

Q. Didn't he ask you to go there so that his wife would sign the claim for exemption, or so that he could be exempt from going in the draft? A. No, I seen nothing about that. She wants them to go and live all together.

Carl Musso—Re-cross.

10

Q. And you took your wife along at that time? A. Yes.

Q. That was in the daytime again? A. Yes.

Q. You left your barber shop again? A. Yes.

Q. Did you have your little boy with you? A. No, sir.

Q. Was there anything said about Mr. D'Annunzio going in the draft and didn't you ask her to sign the paper? A. She asked me how he make out about the army, and I says he was put in the third class.

20

Q. How did you know; you lived in Brooklyn and he lived in Jersey City? A. Don't you think I go there and visit my father-in-law.

Q. Is that the way you found it out? A. That's the way I found it out.

Q. What did Mr. D'Annunzio say to you about going to see his wife about the draft exemption? Did he say anything to you? A. No, he didn't say anything to me. I went there and she asked me how he is making out for the army, and I told her he is in the third class.

30

RE-DIRECT EXAMINATION BY JUDGE CAREY:

Q. Do you remember when they were living at Lynch Street whether he furnished a home there for his wife? A. Yes, sir; top floor.

Q. Do you remember new furniture being taken in there? A. Yes.

40

Q. What was it? A. Yes, what you call—I don't know what you call it.

Q. Well, if you don't know I don't know. A. I saw furniture there, a bed and everything.

RE-CROSS EXAMINATION BY MR. SALLEY:

Q. That furniture is there yet with the father? A. Before that his father got good furniture and got a good home.

10

Mrs. Linta Musso—Direct.

Q. The father has that furniture? A. No, he buy it separate.

Q. But isn't it in his father's home where he lives? Please answer yes or no, is it or is it not there? A. It is there.

20

(MRS.) LINTA MUSSO, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Where do you live? A. I live in Brownsville.

Q. You are Italian? A. Yes, sir.

Q. You are the sister of Mr. D'Annunzio, the petitioner, aren't you? A. Yes, sir.

30 Q. How long have you lived in this country? A. Oh, I think 18 years; 18 years in March. I have been in this country 18 years.

Q. Have you got any children? A. Yes, sir.

Q. How many? A. Five.

Q. You know Mrs. D'Annunzio, don't you? A. Yes, sir.

Q. Very well? A. Yes.

Q. How long have you known her? A. 10 years.

40 Q. And did she used to visit you at your father's house? A. Yes.

Q. Did you see her there? A. Yes.

Q. Do you remember when she married your brother? A. Yes, sir.

Q. Is she older than your brother or younger? A. She is older.

Q. How much older? A. 25 years old my brother is.

Q. How old is she? A. I don't know.

Mrs. Linta Musso—Direct.

10

Q. She is older than your brother, but you don't know how much? A. No.

Q. Did they live together after they were married? A. No, sir.

Q. Did she ever live with your brother that you know of? A. No.

Q. Do you remember when they went to a place called Monticello? A. What do you say?

20

Q. Do you remember when they went to a place called Monticello? (The witness pauses.)

Q. You don't know that? Do you know where she lived in Brooklyn? A. My brother lived on Lynch Street and she lived on the other street; I don't know what you call it.

Q. Her back yard and his back yard came together? A. Yes.

Q. Whom does she live with? A. The aunt.

30

Q. Mrs. O'Sullivan? A. Yes, sir.

Q. Now, you remember when your brother was sick? A. Oh, sure.

Q. With pneumonia? A. Yes.

Q. When was that? A. It was in 1915.

Q. 1915 or 1916? A. I don't know which.

Q. Two or three years ago? A. Yes.

Q. How many times has your brother had pneumonia? A. One week in bed and four weeks home. Four or five weeks; I don't remember for sure.

40

Q. Who attended him? A. I did myself.

Q. What did you do, go down to see him every day? A. Every day I was there. I attended to him.

Q. Every day you saw him? A. Yes.

Q. Was his wife there? A. No, sir.

Q. Did you go in to see her when you went there to attend your brother? A. Yes.

Q. Did you say anything to her? A. Yes, I told her, "I live in Brownsville and I leave my home and

my children to come here, and I come here every day, and you live here and you don't go to see him; ain't you ashamed not to go to see him," and she says, "You come for that? No use to come here."

Q. After that did she go with you? A. No, sir.

Q. She didn't go at all? A. No, sir.

Q. Did you tell her how sick your brother was?

20 A. Oh, yes.

Q. Now, do you remember when your brother came to New Jersey? A. Yes, sir.

Q. When? A. My brother was sick in 1915 and he go to New Jersey in June.

Q. 1915 or 1916? A. 1915 or 1916, I don't remember for sure. It is three years ago.

Q. Where did they move to in New Jersey? A. 15 Concord Street.

30 Q. After they moved to New Jersey did you see his wife? A. Yes, sir.

Q. Did you ever see her in New Jersey? A. Yes, sir.

Q. You are sure you saw her in New Jersey? A. Yes, sir, sure. Who, she?

Q. Yes. A. No.

Q. Where did you see her? A. In her house.

Q. When? How long ago? A. In April, 1916.

40 Q. Well, have you seen her since that time, since April, 1916? A. I don't know; tell me again.

Q. When was the last time you saw her? A. Oh, two years ago now.

Q. What part of the year, summer, winter, spring or fall? A. It was in the spring.

Q. Where? A. One time in June or one time in July.

Q. One time in April and one time in July? A. June or July.

Q. Now, this time you saw her in June or July, who was with you? A. My husband.

Q. What did you go over there for, this last time?

A. To talk a little while and bring a box of candy for the baby, and I says, "I come here; my brother sent me here; he wants to live with you and his child; what do you say, do you want to live all together," and she say she doesn't want to live together, no, no, no; "I'm not going to live together," and she was talking to my husband.

20

CROSS-EXAMINATION BY MR. SALLEY:

Q. This was in April, 1918, wasn't it? A. Yes.

Q. That was the time your brother was in the draft for the war, wasn't it? A. Yes, sir.

Q. And you and your husband went there to have your sister-in-law sign a paper so that he wouldn't have to go to war; isn't that so? A. Sign a paper?

Q. Don't you remember you and your husband went there to get his wife to sign a paper so that he wouldn't have to go to war? A. No.

30

Q. How is it you hadn't seen your sister-in-law for two years, since 1916, and then when your brother was in the draft you and your husband go over to see her? A. Listen. My father was saved and my brother was saved; I saved him myself, and my sister-in-law says I don't believe much; my brother must go; everybody must go.

Q. What did you say you told her, that you saved your brother? A. Yes.

40

Q. How did you save your brother? A. My brother's wife says, "You must go; everybody must go."

BY THE COURT:

Q. Who said that? A. Mrs. D'Annunzio, my sister-in-law.

CROSS-EXAMINATION RESUMED:

Q. This time in 1916 at the time you told Judge Carey about your brother being sick, he was at your father's house? A. Yes.

Q. And his wife was at the aunt's house, living there? A. Yes.

20 Q. Didn't she tell you the reason she wasn't taking care of your brother, because he wouldn't give her any money for support; didn't she tell you that? A. No.

Q. Didn't Mrs. D'Annunzio tell you when you went there to see her that she wasn't living with your brother and taking care of him, because he wouldn't support her? A. No.

30

WILLIE MUSSO, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Willie, how old are you? A. 14.

Q. Where do you live? A. 452 Howard Ave.

Q. Go to school? A. Yes, sir.

Q. Do you know Mr. D'Annunzio? A. Yes, he is my uncle.

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

Q. Did you go to his wife's home? A. Yes, sir.

Q. One minute—with your father and Mr. D'Annunzio one day? A. Yes, sir, June, 1916.

Q. You remember going there? A. Yes, sir.

Q. Anybody else with you at the time? A. My uncle and my father; that's all.

Q. Did you see the baby? A. Yes, sir.

CROSS-EXAMINATION BY MR. SALLEY:

Q. What day of the week was it; do you know?

A. I don't remember the day, but I know the month.

Q. It is now pretty nearly three years ago; how is it that you can remember the month and cannot remember the day of the month? A. Why should I remember it?

Q. Will you please tell us? It wasn't the 19th? 20

A. No, I said June, 1916.

Q. Have you talked this over, what you were going to say on the stand, with anybody? A. No, sir.

Q. You mean to say you are going on the stand without talking it over with anybody? A. No, sir.

Q. Did you talk it over with Mr. D'Annunzio? A. No, sir.

Q. How old were you in 1916? A. I don't remember. 30

Q. You know how old you are now? A. Sure.

Q. How old were you then? A. I am 14 now, and in 1916 I was 11 years old.

Q. How was it you weren't in school that day?

A. Because my father talked of paying this visit and we went over there.

Q. Had you been in school that morning? A. No.

Q. Did your father tell you that he was going over there to talk it over? A. No, sir.

Q. And then you went over to visit Mrs. D'Annunzio? A. Yes, because my uncle was going over. 40

Q. What did your uncle say to you when he took you over? A. Nothing.

Q. Did he ask you to go with him? A. No, he asked my father and my father asked me.

Q. And then you all went over to your aunt's house? A. Yes.

ENNIO CELLI, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Where do you live? A. 97 Woodbine Street. Brooklyn.

Q. How long have you lived in Brooklyn? A.
20 Since I came out of the army—since the last of March.

Q. Where did you live before you went in the army? A. Just when I came in I was in Brooklyn seven months, and then I moved to Schenectady, New York.

Q. How old are you? A. 21.

Q. You have lived in this country how many years?
A. Eight, and one year in France.

Q. You were in the American army? A. Yes.
30

Q. And served in France? A. Yes.

Q. And you came back March 4, 1919? A. Yes.

Q. And you were wounded in the army? A. Yes,
sir.

Q. Do you know D'Annunzio, the defendant? A.
Yes, I know him.

Q. How long have you known him? A. For seven
months I used to board with my uncle in Brooklyn,
and I went to Schenectady the last part of April,
40 1912.

BY THE COURT:

Q. Who is your uncle? A. Frank D'Annunzio.

Q. He is your uncle? A. Yes.

Q. You are a cousin of the petitioner? A. Yes.

DIRECT-EXAMINATION RESUMED:

Q. Now, did you have any talk with him at any
time? A. Well, during the old days he used to come

over to New York and often in the old days; and in 1916 he came over on the Heights here. I know he was sick; he wrote me about it, and I took more interest to come over and see him on that account.

Q. That was after he was sick? A. Yes, but I found him up.

Q. He wasn't in bed when you came? A. No, he was out of bed when I came in.

20

Q. Was he in his home? A. Yes, he was getting better; he was out of bed, and he told me he wanted to ask me to see his baby, and so we went over, and I saw the baby. It was standing there talking to Mrs. D'Annunzio and I remarked that George wanted to have her come and live with him and have a house for themselves and be nice, and she flatly refused it. She said she had told him her answer long ago.

BY THE COURT:

30

Q. When was that? A. In 1916, sir.

Q. After he recovered—after your cousin had got well? A. Yes.

Q. Are you telling what was said in her house? A. Yes, in her house.

Q. And who was present? A. Myself and Mr. D'Annunzio and her.

Q. Now, very good; go right on. A. She flatly refused, telling him he got his answer long ago; that she was contented to remain where she was, and so on. I noticed that George—D'Annunzio—felt pretty bad when we went out. That's all.

40

Q. He felt pretty bad? A. Yes.

CROSS-EXAMINATION BY MR. SALLEY:

Q. Don't you know you never saw this lady at all and what you are saying now is untrue? A. I swore to tell the truth.

10

Frank D'Annunzio—Direct.

Q. In which house, in his father's house? A. No, sir; in her house.

Q. Now, you were a boarder in D'Annunzio's father's house? A. Yes.

Q. D'Annunzio's father is your uncle? A. Yes, and George is my first cousin.

Q. Where are you living now? A. 97 Woodbine Street, Brooklyn.

Q. How is it you are over here this morning? Did D'Annunzio ask you to come over? A. No, I know the lawyer.

Q. Who asked you to come over here this morning? A. Why, I knew there was a case.

Q. How did you know there was a case? A. The lawyer told me.

RE-DIRECT EXAMINATION BY JUDGE CAREY:

30 Q. Mr. Botti sent for you, didn't he? A. Yes.

Q. You know Mr. Botti, the lawyer? A. Yes, sir.

FRANK D'ANNUNZIO, sworn on behalf of the petitioner, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

40 Q. You are the father of the petitioner? A. Yes, sir.

Q. He is your son? A. Yes, sir; my son.

Q. How old are you? A. 65 years old.

Q. When did you come to this country? A. 22 or 23 years ago.

Q. And when you came to this country where did you live, in Brooklyn? A. Brooklyn, yes.

Q. Where do you live now? A. 71 Concord Street.

Frank D'Annunzio—Direct.

10

Q. Jersey City? A. Yes, sir; Jersey City.

Q. How long have you lived in Jersey City? A. Oh, I don't know; three years, or something like that.

Q. You don't know the exact month when you came here, do you? A. No.

Q. Now, when you came to Jersey City, did your son come to live with you? A. Yes, my son come with me. 20

Q. Do you remember when your son got married? A. Yes.

Q. Whom did he marry? A. (The witness does not answer.)

Q. You know his wife, don't you? A. Yes.

Q. Do you remember when they got married? A. Sure, the 26th of December, 1914.

Q. Did they ever live together? A. Oh, yes, sure.

Q. Do you understand me? A. Yes, I understand. 30

Q. Where did your son live after he got married? A. Two or three years.

MR. SALLEY: I will consent that Mr. Botti interpret it.

Q. Where did your son live after he got married? A. 71 Lynch Street, in my house.

Q. Where did his wife live after they got married? A. Opposite, in her house.

Q. Did she live at any time in your house? A. No, no, no; she came to eat only the first of the year. 40

Q. Did your son make any effort to furnish an apartment in your house for her? A. My son got some furniture.

Q. Do you remember when your son was sick? A. Yes.

Q. Did you see your daughter-in-law in your house

10

Mrs. Bridget D'Annunzio—Direct.

during that time when your son was sick? A. Yes, 10 minutes.

Q. Only once? A. Yes, once.

No cross-examination.

JUDGE CAREY: Petitioner rests.

20

THE DEFENSE.

MRS. BRIDGET D'ANNUNZIO, sworn in her own behalf, testified as follows:

DIRECT-EXAMINATION BY MR. SALLEY:

Q. Mrs. D'Annunzio, you married Mr. D'Annunzio in Jersey City on December 26, 1914, did you? A. Yes.

30

Q. Now, after you got married where did you go to live? A. To my aunt's house.

Q. Where was that? A. 102 Hayward Street.

Q. Brooklyn? A. Yes.

Q. Where did your husband go to live? A. He went home to his house.

Q. Now, after you got married did you have any conversation with him about his providing a home for you? A. Yes.

40

Q. What did you say to him? A. Well, I wanted to make a home for myself and he would only go in his father's home. I wanted a home for myself and he wouldn't do it; he said the home in his father's home was the same in Italy.

Q. What did you say to that? A. I said no, I couldn't live in his father's home, but I was willing to go any place else.

Q. Who lived at his father's home? A. His mother and a single sister, and himself.

Mrs. Bridget D'Annunzio—Direct.

10

Q. Any boarders there? A. Well, one time they had a boarder there.

Q. This nephew that was on the stand, was he a boarder there? A. Yes.

Q. What sort of a house was it? A. It was a private house.

Q. How many rooms, do you know? A. Well, there were two bedrooms or three—yes, three bedrooms, I think, and a parlor, and dining room, and kitchen, and a bathroom. 20

Q. Now, during the month of April, 1915, did he make any arrangements with your aunt, Mrs. O'Sullivan, to rent a part of her house? A. On the top floor was idle and he said he would like to have the rooms, and he told my aunt he would get things straightened out about the first of September and to keep the rooms for us, and that is all we heard.

Q. Did he ever provide a home for you there? A. No, sir. 30

Q. In 1915, in the month of June, did you see him there at your aunt's house? A. Yes.

Q. Did you have any conversation with him about going to a lawyer? A. Yes, he wanted me to go to a lawyer and sign a paper; and I wanted to know what the paper was, and he said, "Oh, never mind"; and I says, "Tell me, and I will see my lawyer and will ask him about it, and if it is all right I will do it," and he says, "No, I can't," and I finally got it out of him and it was to assign the property over to him in my aunt's house; and I told him no, I wouldn't do that. 40

Q. Was that before this baby was born? It was born in January, 1916, wasn't it? A. Yes.

Q. And you were at that time living at 102 Hayward Street with your aunt? A. Yes.

Q. And about two months before the baby was born

10

Mrs. Bridget D'Annunzio—Direct.

did Mr. D'Annunzio come to your house, 102 Hayward Street, Brooklyn? A. Yes.

Q. And did he have any words with you or any dispute with you then? A. Yes, he did.

Q. What did he say? A. He wanted me to go to live with his parents again, and I told him no I wouldn't go there to live, and he up with his fist and
20 struck me in the eye.

Q. Which eye? A. Left eye.

Q. And at that time you were pregnant with a baby? A. Yes; right in front of the table.

Q. Did he borrow any money from you at that time? A. Well, I gave him \$10 at one time.

Q. Was that when you were pregnant with the baby? A. Yes.

Q. Did he ever give this money back to you? A. No, he never gave the money back to me.
30

Q. Now from the time that you were married in December, 1914, until the time the baby was born, how much money did he give you for your support and the support of the child? A. \$10.

Q. Is that the \$10 he borrowed from you again A. Yes, sir.

Q. Now, after the baby was born and you left the hospital where did you go, back to your aunt's house?

A. Back to my aunt's house.

40 Q. Did your husband call to see you there at that time? A. No. He took me home with the baby that night and he put the baby on the bed and he went away that night.

Q. He left you that time, and then what happened? A. Then I didn't see him again until Friday night.

Q. Have any words with him then, or any dispute? A. He came over, and he sat down for a little while, and he said he had been treated like a dog here, and

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got up and put on his coat. It was a very cold night, and I went to get the baby where she was lying down, to nurse her, and I had to go through the dining room where it was very cold to the kitchen stove and I had to take the baby on one arm and the rocking chair in the other, and he never helped me, and while I was nursing the baby he said, "I am going away and I am not coming back." I says, "George, the baby is 12 days old" and I says, "I am going to have the child baptized," and he says, "I dare you" and he hit me right in the eye.

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Q. Did you have the baby in your arms? A. I was nursing the baby, and then he grabbed me by the throat.

Q. And then after that when did he come back again? A. Well, he didn't come back for about—I think it was Washington's Birthday.

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Q. Did you have any conversation with him then? A. Yes.

Q. What did he say to you and what did you say to him? A. He wanted to see the baby, and I let him see the baby, and he talked and said he was going to provide for the baby.

Q. What did you say? A. I said, "All I want is a home for myself and the baby," but I didn't want any help. I didn't think I could get along with Italian people.

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Q. That night when he called there did you have any argument or dispute with him? A. Yes, he got violent.

Q. Did he hit you that night? A. He struck me, yes.

Q. Where? A. Right in the face.

Q. Now, when was the next time you saw him? A. Well, I think in March I saw him, of that year.

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Q. What happened then? A. Well, he came in and wanted to see the baby, and I let him see the baby, and he started to abuse me and call me names, and he said he was going to take the baby away from me; that he had the same right to the baby that I had, and I told him no, and he struck me and threw me back into the rocking chair and twisted my wrist, and my aunt was
20 present. I was very weak. It was only about a couple of months after my baby was born and I was very weak, and the doctor said I ought to be in bed.

Q. At any time that he called on you did he tear off your wedding ring? A. The day when he did that my aunt was present.

Q. What happened? A. He twisted my wrist like this (illustrating). My aunt took the baby, because she thought he was going to kill us all, and she took
30 the baby and he threw me down and tore the wedding ring off my finger.

Q. What did he do with it? A. He went to the kitchen stove he said he would burn it up, and he took the lid off the stove. I couldn't swear that I saw him throw it in. My aunt saw him do it.

Q. Have you got the wedding ring now? A. No; before he sued me for this divorce he sent me a wedding ring by mail, but it was not my wedding ring.

Q. The wedding ring that you had originally you haven't got yet? A. No, not my wedding ring.
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Q. (BY THE COURT.) How can you tell the difference? A. Well, it was a larger ring. It didn't look like my own.

Q. Did it fit you? A. No, it didn't fit me very well.

Q. Have you it in your possession now? A. I have got it home.

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DIRECT-EXAMINATION RESUMED:

Q. At the time Mr. D'Annunzio was sick did you go around to see him there at his father's house? A. Yes, sir.

Q. Did you have conversation with him then about his providing a home for you? A. Yes; he said—you mean in his father's home?

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Q. Yes. A. No, he was taken sick and I went around to see him, but I was hardly able to take care of anybody and I had to run away around and I was afraid of his sister. A few days before that his sister ran after me and spit on me in the street, and I was afraid to go around there.

Q. (BY THE COURT.) What sister was this? A. His sister. She took care of him when he was sick.

DIRECT-EXAMINATION RESUMED:

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Q. Did she say anything about providing a home for you? A. She didn't say anything about his providing a home for me, no. He provided no home only with his parents. That was the only home.

Q. When did you see him again? Did you see him in June, 1916, at the Bridge Plaza? A. He came over one day with his brother-in-law—

Q. Which brother-in-law is that? A. He is sitting down there, Mr. Musso.

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Q. What happened then? A. He said he was going to move to Jersey and he said, "You know where I am" and that's all. He says, "When are you going to come?" and I says, "Whenever you have a home for me I will come."

Q. Would you have been willing to come to Jersey if he had a home for you apart from his father? A. Yes.

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Q. When was the next time he saw you? A. He came one day with—I don't know his last name; they call him Tony.

Q. That man Mr. Zeho? A. Yes.

Q. What happened then? A. He said he was going to move to Jersey and said, "I want you to come." I said, "Where is the home?" He says, "I got it." I says, "You get the home and take me to see it and I will come, because I want a home to myself."

Q. Were you perfectly willing to go if you could have a home of your own? A. Yes, I was perfectly willing to go under those circumstances.

Q. When was the next time you saw him? A. Well, my people and everybody was at me for the sake of the child to go to live with him, and one day I called him up at his place of business.

Q. Where is that, in Brooklyn? A. Yes. I asked him where was the home, and he says, "We are not going to take that." I says, "When you come to the house I will talk with you." He wouldn't come to the house, and I said, "Meet me at the bridge," and he did. I says, "Where is the home," and he says, "I have got no home for you only with my parents; if you don't like that you know what you can do. Anyway, I pass for a single man in New Jersey, I go out with Mr. McLoughlan and his wife's sister, and if you were out of the way things would be very good."

Q. Did he see you in August, 1916? A. Yes; he telephone me and wanted to see the baby, and he took me down to Brighton Beach.

Q. What happened then? A. Well, he brought me back home.

Q. When he took you to Brighton Beach did he strike you or make any threats against you? A. No, that was in the afternoon.

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Q. Well, did you ever meet him at Bedford Avenue and Division Avenue, Brooklyn, at the fountain? A. Yes.

Q. When was that? A. The Thanksgiving before he moved to New Jersey, in 1916.

Q. Did he make any threats against you? A. He said I was to meet a horrible death; he wasn't going to do it himself, but he would get some person to do it. I said, "If you do away with me you will be done away with," and he said, "One consolation you won't have the child."

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Q. Did anything happen then? A. He brought me back and in the vestibule he spit on me.

Q. Do you remember in March, 1918, Mr. Musso, Mr. D'Annunzio's brother-in-law, coming to see you? A. Yes.

Q. Who came with Mr. Musso? A. Mr. and Mrs. Musso, his sister and brother-in-law.

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Q. What did they say to you when they came? A. They said that he was drafted in the draft, and it was up to me to get him out of it, and if I went housekeeping that he would get out of the draft, and so on that account I didn't say anything to him.

Q. Did they have any papers there for you to sign? A. No, but they didn't like it.

Q. Was he there again in April, 1916, and did this little boy come with the father then? A. Yes, the brother-in-law came again.

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Q. In March, 1918, did Mr. and Mrs. Musso want you to sign a paper about your husband supporting you? A. When Mr. and Mrs. Musso didn't say anything about that.

Q. What did they say? A. He said he was in the draft and it was up to me to keep him out of it.

Q. And if you went to housekeeping it would keep

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him out of it? A. Yes; and I would go to housekeeping if I was sure of having a home.

Q. But if he had provided a home at that time separate and apart from his father's house, would you go? A. No; I am afraid of him, for he had threatened my life.

Q. Had you consulted a lawyer before this time, in
20 March, 1918? A. One of the times I asked him for support for the baby; I had a couple of hundred dollars in the bank myself, and I was getting \$10 a month from my aunt, and I asked him for a little support for the baby only, and he said he would go to July 1st.

Q. Had you consulted counsel before that? A. Then I consulted my lawyer and I had him arrested, and he was brought to the Court of Domestic Relations in Brooklyn and ordered to pay \$4 a week for the
30 baby.

Q. At the time he was arrested was he working in Jersey City or Brooklyn? A. In Brooklyn.

Q. From the time of your marriage up to the time that he started to pay you \$4 a week under an order of the Domestic Relations Court in Brooklyn, which was in 1917, how much money did he give you? A. Well, he didn't give me any money, only the \$10 I mentioned and the \$4 he was ordered to pay.

Q. I mean, before he was ordered to pay the \$4 a
40 week did he pay you anything? A. Only the \$10.

Q. That was the \$10 that he gave you back? A. Yes, he borrowed it.

CROSS-EXAMINATION BY JUDGE CAREY:

Q. When did you first meet your husband? A. Oh, quite a while—some years ago.

Q. You were living with your aunt at that time? A. Yes.

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Q. Mrs. O'Sullivan? A. Yes.

Q. And you met him at his father's; is that right?

A. Well, when I first knew them they lived down in the same building.

Q. You are about 10 years older than he, aren't you? A. No.

Q. How much older? A. He says he is 30; I will be 35 in February.

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Q. Now, when you first met him he was 16 years old, wasn't he? A. Oh, when I first met him? No. My aunt knows how old he was. When he came to live at our house he was about 19, I think.

Q. When did you begin to have very friendly relations with him? A. Well, I went with him for about five or six years—five years.

Q. You say you were seven months in trouble before you married him and that your family didn't know anything about it? A. Yes.

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Q. Before you married him? A. Oh, no.

Q. He was the one that begged you to marry him, wasn't he? A. No.

Q. Did you beg him to marry you? A. I thought it was best, under the circumstances.

Q. And you came over to Jersey to get married? A. Yes.

Q. Why? A. Why he thought we might as well come over to Jersey to be married.

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Q. You didn't want to get married in the parish? A. I didn't care where as long as I got married.

Q. You didn't want anybody to know about the trouble? A. I didn't think of that.

Q. And then you got married and you went back to New York to live? A. Yes.

Q. Did you intend to live together? A. Yes.

Q. Did you want to live together? A. Yes.

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Q. Did you love him at that time? A. I certainly did.

Q. And then the baby was born two months afterwards? A. Yes, sir.

Q. Didn't you, while at his house, on New Year's Day, right after the wedding, tell them all that you were going to live with him at this house right after the baby was born, but that you wanted to stay with your aunt until the baby was born? A. I never said any such thing. I refused to live with his parents in that house at any time.

Q. Did he suggest at that time that you live with his parents? A. No, but he was all the time promising me he would make a home for me.

Q. Did he promise that before the first baby was born? A. Yes.

Q. And then the baby was born and the baby died? A. Yes.

Q. And then he went away to Monticello with you, didn't he? A. Yes.

Q. And you spent two weeks there together? A. Yes.

Q. It was the result of what happened in those two weeks that the second baby was born, wasn't it? A. Yes.

Q. Between the time the first and second baby was born did you look around anywheres to find a place in which to live? A. No.

Q. Why not? A. Between the time the first was born and the second one?

O. Yes. A. Did we look around?

Q. Yes. A. No; he said he was going to take rooms.

Q. Did you ask him to look around? A. I always asked him to make a home for me and the baby, and

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he objected and said he would make a home with his parents.

Q. All right; before the second baby was born did you go around to find a place? A. No.

Q. Did he pick out furniture for that? A. Yes, for my aunt's house. My aunt is there and she will tell you about it.

Q. Didn't you go and buy furniture and wasn't it to be put on the top floor in the house where his father was? A. No. It was ordered at Bloomingdale's, to be delivered at 102 Hayward Street. 20

Q. Was it delivered? A. No; he changed his mind. He wouldn't sign a paper for it, and he wanted me to sign a paper and I wouldn't.

Q. What was it he wanted you to sign? A. When my aunt dies I get the house she lives in. That is another paper and it has nothing to do with the furniture. He refused then to make a home for me any place except with his father's family. 30

Q. This property was left to you? A. No, left to my aunt.

Q. But you were to get it after your aunt died? A. Yes.

Q. Your aunt had a lot of money left to her, didn't she? A. Very little.

Q. Several thousand dollars? A. Oh, no.

Q. And you were to get that if you stayed and lived with her? A. Oh no, no, no, no. 40

Q. Did your aunt have any income besides that property? A. That I don't know.

Q. You lived with her right along, didn't you? A. Yes, I did housework for her.

Q. You got \$10 or \$12 or \$15 a month? A. No, \$10 a month.

Q. And you liked your aunt, didn't you? A. Well, she is very good to me.

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Q. And she and the rest of your family were very much opposed to your marrying Italians? A. They didn't care whom I married; they don't interfere with me at all.

Q. Didn't you tell D'Annunzio that your family were very much disgusted because you had married a wop? A. I never said that.

20 Q. You called him a wop? A. I never mentioned the word; never.

Q. Didn't you tell him that your family objected if you married anybody but the Irish? A. No, we are all married to different nationalities than our own.

Q. The only one that married an Italian was you? A. Yes.

Q. Your aunt didn't get along very well with Italian families? A. She gets along with everybody.

30 Q. You didn't get along very well with his family, which is an Italian family? A. I got along all right with them.

Q. Then why didn't you want a floor in their house? A. There was no floor to be had in their house.

Q. I thought you said there was a floor? A. In Lynch Street? No, it was a private house.

Q. It was a private house with three floors? A. Oh, no.

40 Q. How many floors? A. Three bedrooms upstairs, or two bedrooms upstairs and a parlor downstairs off, and a kitchen.

Q. Three story house? A. Private house.

Q. Three story house, wasn't it? A. No, two story and basement.

Q. Now then, after your baby was born you went on living with your aunt, didn't you? A. Yes.

Q. You remember shortly after your baby was born your husband being taken sick—you remember that? A. Yes.

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Q. He was very sick? A. Yes, he was pretty sick.

Q. You never went near him except once? A. I wasn't even able to take care of my baby.

Q. You were right next door, weren't you? A. I had a sore finger and I couldn't take care of my baby with it—had a runaround and I couldn't take care of anybody.

Q. You had a felon or runaround on your finger; did you have a doctor for it? A. The doctor was in that day before, and he said I ought to be in bed. 20

Q. But you weren't in bed? A. No, because I had to take care of my baby.

Q. Then you did take care of the baby? A. Yes.

Q. And this sore finger made you so sick that you couldn't go in and see your husband? A. I went to see him once.

Q. Why did you go only once? A. I will tell you why; I was afraid of his sister. She ran at me a couple of days before that and spit on me, and I watched my chance to go out when she did go out. 30

Q. Did the sister work? A. Yes.

Q. She worked every day? A. No, she stayed home in the morning and went away in the afternoon.

Q. She was away in the afternoon, then, so that you had no fear of going there then? A. I wasn't to go out.

Q. I know, but you went out every day, didn't you? A. Oh, no. 40

Q. Didn't you go out every day? A. Oh, no.

Q. Was your finger so sore you couldn't go out? A. You must know that I had to take care of an infant baby about six weeks old.

Q. Didn't you got out whenever you wanted to? A. I wasn't outside of the door only the once I was over there.

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Q. If you weren't outside of the door how did his sister spit on you? A. That was before that.

Q. That was sometime before the baby was born? A. No, afterwards.

Q. When was the baby born? A. In January.

Q. When was he taken sick? A. In March.

Q. So between January and March she spit at you in the street? A. Yes, the first day I took the baby out. I took the baby as far as the corner—

Q. I don't care anything about that; I just want to get the date she spit at you. A. The early part of March.

Q. Then you didn't see him until when? When did you see him after that? A. After he was taken sick?

Q. Yes. A. He came in one morning.

30 Q. Who did? A. He came over to my house.

Q. That was after he got well? A. Yes.

Q. The day before he was taken sick he was in your house, wasn't he? A. I can't remember.

Q. Didn't he say he wasn't at work and didn't he tell you he had a fever and he was sick, and didn't his married sister come into your house and tell you that she had to leave her five children to take care of him? A. No, she never came into my home to tell me that; never.

40 Q. Did you hear her testify this morning? A. I did; I did.

Q. You know which married sister I mean? A. She came in when he was up and around one day.

Q. What did she say to you? A. All right; he was up and around. Yes, she came in and said he was up and around.

Q. What else did she say to you? A. She said nothing else to me.

Q. What did she come in for? A. I don't know. She came in, I suppose, to see the baby.

Q. Now, when she came in what did she say to you? A. I asked how George was and she said, "All right; he was up and around" and getting along nicely.

Q. Is that all you asked her? A. All I think of.

Q. Was that before you called? A. That was 20 after.

Q. You say you had been in to see him; how many days before that had you been in to see him? A. Just a couple of weeks.

Q. How long was he sick, all together? A. I guess he was four weeks in the house altogether.

Q. Now, you remember after he got well his coming in to see you and the baby, don't you? A. Yes.

Q. He came in and asked you if you were going 30 to make a home with him, didn't he? A. No.

Q. He didn't mention it, did he? A. No. He mentioned a home, and I said where, and he said with his people and nobody else. That was the custom of the Italian people, that the wife should live with his people, the only son, and that he wasn't going to break that rule.

Q. Did he tell you that after he was sick? A. Yes.

Q. And before he was sick? A. All the time. 40

Q. Did he tell you that he had to move to New Jersey, or was going to move to New Jersey? A. He said he was going to move to Jersey.

Q. Did he ask you if you would go to New Jersey? A. He did.

Q. Did you say you wouldn't do it? A. No, I said, "George, when you get a home, you show me a home, and I will go with you; but I want that home for myself and the baby."

Q. Don't you know you wouldn't leave your aunt for anything? A. No; my aunt was there; she was listening.

Q. You remember Mr. Zeho, the gentleman who was at the wedding? A. Yes.

Q. And do you remember he was at the house? A. Yes.

20 Q. And do you remember the husband saying in his presence he wanted you to live with him and your saying that you didn't love him? A. No, I never said it.

Q. Did you love your husband then? A. No.

Q. Do you love him now? A. Well, he threatened my life. Yes, I love my husband.

Q. Do you love your husband now? A. Yes, I like him.

30 Q. Do you love him? A. I love him, yes.

Q. What do you mean by saying before that you didn't love him after he threatened your life? A. What's that?

Q. You said in answer to my question that you wouldn't have anything to do with him after he threatened your life? A. I meant that I wouldn't live with him; I am afraid of him.

Q. What are you afraid of? A. He threatened my life.

40 Q. When? The year he moved to New Jersey, before Thanksgiving? A. When I met him on Bedford Avenue, before he started he said a lady called him up on the 'phone in the afternoon and said it was his wife; he said, "Did you call me up?" And I said, "No." He said, "A lady called me up and said it was my wife." I said, "I didn't call you up; you must be dreaming." It was about 8 o'clock in the evening. He says, "Can I see the baby?" I says, "I can't go now." He said, "Tomorrow night can I see her?" I

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says, "Come around," and he did come around and took me out.

Q. And he was pleased with the baby? A. Yes.

Q. He kissed the baby, didn't he? A. Yes.

Q. He was very fond of the baby, wasn't he? A. Yes.

Q. And he seemed that way every time he saw the baby? A. Yes, but he doesn't come to see me.

20

Q. Every time he saw the baby he seemed very fond of it? A. Yes.

Q. And he told you he wanted you and the baby to come and live with him? A. No.

Q. Now, you remember the uncle coming to see you?

THE COURT: One moment.

BY THE COURT:

Q. Was this occasion when he threatened you the time when you had the interview at the telephone? A. Yes.

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Q. What did he say? A. He said, "Well, I did everything to disgrace you; I have told everybody about you now." He said, "One of those nice days you will meet a horrible death. I won't do it, but I can get a party to do it for me."

CROSS-EXAMINATION RESUMED:

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Q. You opened up the conversation of "doing everything to disgrace me"? A. No, I didn't. I always respected my husband and will live with him any place he will give me a home.

Q. What were you going to do with your aunt? A. She had her own people to take care of her.

Q. And you have lived with your aunt how many years? A. Since my uncle died, nine years.

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Q. Didn't you tell him that you wouldn't leave your aunt for anybody? A. No, my aunt wouldn't stand in my way.

BY THE COURT:

Q. Are your parents living? A. No, your Honor.

Q. Have you brothers and sisters? A. No; all married.
20

CROSS-EXAMINATION RESUMED:

Q. None of them living in New Jersey? A. No.

Q. Where are they living? A. In Brooklyn.

Q. Didn't your husband write you a letter on the 26th day of November, 1916, asking you to make up with him and establish a home with him? A. I don't remember anything about a home.

Q. Didn't you write him this letter (showing witness P1)? A. Yes, I wrote that letter.
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Q. Now, you say in that letter, "Your letter received this afternoon. Well, about Tuesday evening you can see her." That was the baby, wasn't it? A. Yes.

Q. Was that the time you had the baby at the fountain? A. Tuesday, did I say?

Q. Yes, Tuesday evening, and he saw the baby? A. Yes, he could see the baby at the fountain.

Q. "Well, about Tuesday evening you could see her," you say? A. Yes.
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Q. Do you remember that Tuesday evening taking the baby to him to see? A. Yes.

Q. Where was that, at Bedford Avenue at the fountain? A. Bedford Avenue.

Q. You added this to your letter: "You got your answer long ago, you know what that means." What did you mean by that? A. I meant that he wrote to me and told me that he had a home in Jersey City and that he wanted me to come and live with him in live

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rooms and a bath or six rooms on the top floor, and that they had the first floor let downstairs, and I wrote and told him that I wouldn't do it.

Q. Is that what you meant by that, 'You got your answer long ago; you know what that means'?

(The witness pauses.)

THE COURT: What do you say to that, Madam?

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THE WITNESS: Yes, sir; that must be it. He wrote me that he had the floor with his parents.

Q. Didn't you mean by that that you didn't want to live with him and wouldn't under any circumstances, and you told him so? A. No, I am willing to live with him any place but with his parents.

Q. Didn't you tell him that you had the baby and that is all you wanted? A. Well, I was very happy with my baby.

Q. And you didn't want to try to be happy with him? A. Oh, yes, if he had a home; if he had a home.

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Q. He didn't support you, did he? A. He wanted me with his parents.

Q. He didn't support you? A. He gave me no support.

Q. You didn't want any, did you? A. Oh, yes, I did.

Q. Didn't you tell him that you were independent and didn't need any support? A. Oh, no, where would I get the money?

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Q. Well, you can tell us better than I can tell you. You never wrote him and asked him to give you money, did you? A. I wrote you; have you got those letters?

Q. I asked you if you ever wrote him asking him to give you money? A. I did.

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Q. When? A. I asked him. I didn't write him, no: I never wrote him.

Q. Why didn't you? A. Because I didn't.

Q. Why didn't you write him? A. Why didn't I write him?

Q. Yes? A. I don't know why I didn't. I called him up one day. My people were always saying, "You have a right, for the sake of the baby, to go and live with your husband, "and so I called him up one day and told him that I wanted to see him after he moved to Jersey, and he told me he couldn't come but he would meet me at the Plaza in the Eastern District. I met him, and I says, "George, where is the home?" He says, "I got no home but with my parents; if you don't like that." He says, "I have good times; I go out with the McLoughlins and his wife's sister and if you were out of the way it would be all right."

30 Q. That is, the fifty-five-year old lady spoken of? A. He didn't mean that sister-in-law. I don't know, I'm not saying anything about the girl; it didn't bother me.

Q. Isn't the only time he talked to you about the McLoughlins was that they were a happy couple and had a baby about as old as yours, and that you could be made as happy? A. Never about that. He told me about the little girl.

40 Q. Did he tell you that they were happy? A. I don't remember about that.

Q. You got the wedding ring, didn't you? A. I got a wedding ring, but I don't think it is mine. It don't look like mine.

Q. Why do you think it isn't yours? A. It doesn't fit me and it isn't my wedding ring. My wedding ring was much wider. He tore that wedding ring off my finger and he went to the kitchen stove and said he was going to burn it.

Mrs. Bridget D'Annunzio—Cross.

10

Q. Did he burn it? A. My aunt said she saw it going in.

Q. You say you didn't see him put it in the fire? A. No.

Q. You made an affidavit in which you said he did burn it, didn't you? A. He told me he was going to burn the ring and he went to the kitchen stove, and so I thought he burnt it. He said he burnt it.

20

Q. But you got the ring back from him? A. It is not my ring.

Q. On the 3rd day of August, 1918? A. Yes, the month before he served me with divorce papers.

Q. Didn't you write him a letter, saying that you received the ring and the check that day? A. Oh, yes, I wanted to let him know that I got it; that's all.

Q. You have never told anybody until today that that isn't the ring? A. Oh, yes, my aunt knows it.

30

Q. You didn't tell him so? A. Oh, no. I didn't see him to tell him.

Q. (BY THE COURT.) Do I understand that you wrote him a letter, acknowledging that you received the ring? A. Yes.

CROSS-EXAMINATION RESUMED:

Q. You know the gentleman who called and served the papers on you, don't you? A. Yes.

40

Q. Do you remember when he called he talked to you for sometime about trying to get you and your husband together, didn't he? A. No.

Q. What did he talk about that day? A. He said he wondered why we don't have a private settlement—why can't we have a private settlement and not have any law about it, and "you will both be free," he said.

Q. What did you say? A. I says, "No, I will take these papers to my lawyer."

10

Mrs. Bridget D'Annunzio—Cross.

Q. Now, you remember when your husband was brought to the police court in Brooklyn? You remember that, don't you? A. Yes.

Q. Where was he living then? A. In Jersey City.

Q. And how long after he had left Brooklyn was that? A. Well, that was in 1917.

Q. Was it 1917? A. Yes.

20 Q. Did you write to him before you had him brought to the police court? A. No, I didn't.

Q. You knew where he was, didn't you? A. Yes, I knew where he was.

Q. Knew where he was all the time? A. Yes.

Q. He told you where he was going? A. Yes, he told me.

Q. By the way, the ring that you have got has got your initials inside of it, hasn't it, with the words, "with love"? A. Yes.

30 Q. Those were the words and initials that were in the ring originally? A. No, there was nothing in the ring.

Q. Wasn't the ring taken to the jewelers at just about the time your husband was taken sick to have the engraving put in, and didn't he tell you the day before he was taken sick for you to get the ring if he was sick? A. The ring came in after the baby and I said I wanted the baby baptized. He took the ring

40 that night and I don't know where he took it to.

Q. Didn't he tell you the night before or the day before he was taken sick that you could get the ring at the jeweler's? A. I got the ring, but I can't see what is in it.

Q. You have had the ring an awful long while? A. But that ring is not my ring. There is something in it, but I can't see what is in it.

Q. (BY THE COURT.) Did he tell you to go to the jeweler's and get the ring? A. I don't know what he

Mrs. Bridget D'Annunzio—Cross.

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did with my jewelry. He took a bracelet that he gave me—took that away with him when he was angry, and he told me, "Your wedding ring is up in the jeweller's" in such a place in Broadway and to go for it; I am putting something on it and I want you to get it."

Q. And you got it? A. I got the ring.

Q. What was in it? A. I looked and I can't make out what is in it.

20

Q. Is the same thing in the ring that you have got now? A. I don't know; I can't tell what is on it; I don't know what is in it.

Q. There is no trouble to look at it and see? A. I told you I can't see it. There are some initials, but I think it is his own initials. There was a G in it: I don't know what else is on it.

Q. Now, when the Draft Board call came in did you notify the Draft Board to try to get your husband in some different classification? A. No, I had him up before the Domestic Relations Court, and I went down to see the probation officer about it and he asked me what class he was in and I says, "I don't know," and he wrote to find out what class he belonged to and he wrote over to you, I suppose, to find out about it. I think the board wrote to me for information and I went over.

30

Q. You went over to see the board? A. Yes.

Q. Didn't you tell his brother-in-law afterwards that you wanted him in so that you could get the \$10,000 insurance? A. No, never.

40

Q. You wouldn't say anything like that? A. No, I never said it; never.

Q. Now, you have testified that he struck you two or three times? A. Yes.

Q. And on one occasion you had the baby in your arms? A. I was nursing the baby.

Q. He struck you with his fist in the eye and grabbed you by the throat? A. Yes.

Q. Did he hurt you? A. I should say he did—twelve days after my baby was born. Did he hurt me? I should say he did.

Q. Did you have a black eye? A. I did. There was a mark on my face, too.

20 Q. Was it on your face or your eye? A. He struck me like that (witness illustrating).

Q. With his fist? A. Yes.

Q. Right on your eye? Did it hurt? A. We'll, it hurt me, yes.

Q. He grabbed your throat? A. Yes, he did.

Q. Squeeze you hard? A. Quite hard; he gave me a good squeeze.

Q. And he knocked you down? A. I was nursing the baby in the rocking chair.

30 Q. The next time he knocked you down over the rocking chair? A. He did.

Q. Did you get hurt that time? A. He twisted my wrist and it was very sore.

Q. Did you go to the doctor? A. My no.

Q. Anybody see it besides your aunt? A. No.

Q. There were other people around the house? A. No, we have nobody but the baby.

40 Q. Your brothers and sisters live around there? A. Oh, no, they live far away on Kingston Avenue. They don't bother us. One lives on Kingston Avenue, and another one lives in South Brooklyn; and another brother lives up the state in New York, and a brother lives in Flatbush.

Q. It was after that that you met him and he talked about killing you? A. Yes.

Q. You went to Brighton Beach or Rockaway after that? A. He asked me if he could see the baby and I let him see her.

William F. Troy—Direct.

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Q. Well, there was no reason why you should let him see the baby, was there? A. No, there was no reason why I shouldn't let him see the baby. Very often he begged to let him see the baby and once more I let him do it.

Q. Do you remember that he got down on his knees and begged of Mrs. O'Sullivan to help you to live with her? A. Oh, no, he begged to be excused for calling her a bad name.

Q. Do you remember his getting down on his knees? A. I remember his getting down on his knees.

20

Q. What did he call her? A. He said it was her fault, and he called her names.

Q. (BY THE COURT.) What did he say was her fault? A. I suppose he thought it was her fault; I don't know any other reason. My aunt didn't stand in my way; nobody stood in my way.

30

WILLIAM F. TROY, sworn on behalf of the defendant, testified as follows:

DIRECT-EXAMINATION BY MR. SALLEY:

Q. Mr. Troy, you are a member of the New York Bar? A. Yes, sir.

Q. When were you admitted in New York? A. In February, 1910.

Q. And you have an office in New York City? A. Yes, sir.

40

Q. Where? A. 5 Beekman Street, Borough of Manhattan, New York City.

Q. You were attorney for Mrs. D'Annunzio? A. Yes, sir.

Q. And were you attorney at the time she had her husband in the Domestic Relations Court in Brooklyn? A. Yes, sir.

William F. Troy—Direct.

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Q. And you are familiar with the practice of that court, are you? A. Yes, sir; I attended to this case myself.

Q. Now, I call your attention, Mr. Troy, to this record here, the Probation Oversight, and where it says: "On consent of the defendant in person the defendant is placed under probationary oversight under Section 686 of the Greater New York Charter as amended, under the supervision of the probation officer Frank L. Graves," and ask you as a lawyer and member of the New York Bar the legal effect of that order.

JUDGE CAREY: Just a minute; I object.

MR. SALLEY: I think he can testify as an expert of the New York law as to the legal effect of that order.

30

The Court: We don't require an expert for that. The document is clearly expressed: "With his consent he is placed with the custody of the Probation Officer." You can't make that any plainer by asking an expert as to the meaning of the language used. There is a function, however, for an expert perhaps—I say "expert"; the statute book would be the best evidence. But we might get some help if we had the New York law produced that is referred to in this paper. If it were important to show exactly what the status of this defendant was—to show more than appears in this perfectly plain order, why this Section 686 of the Greater New York Charter, as amended, might be offered. That would complete the evidence as to the exact status of the defendant under that order.

40

MR. SALLEY: All right; I won't press that.

William F. Troy—Direct.

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Q. Mr. Troy, under the law of the State of New York—have you examined the law of the State of New York as to abandonment? A. Yes, sir.

Q. Have you examined the law of the State of New York as to the duty of a wife to live with the husband at the domicile of the husband's parents?

JUDGE CAREY: I object to that.

THE COURT: Well, I suppose this gentleman may be deemed an expert in New York law. But I think the better way would be to produce the regularly recognized volume of public laws.

20

MR. SALLEY: All I want to ask him now is whether he has examined the law.

Q. Have you any reports here on that subject—any leading cases? A. Yes, sir.

Q. Are these the cases?

THE COURT: Any objection to his producing here any volume of the New York laws?

30

JUDGE CAREY: Not at all. I will agree that they may be considered in evidence.

THE COURT: The Court will examine them to determine whether they are the genuine publications referred to in the statute.

MR. SALLEY: I offer that one especially; that is the case I rely on.

THE COURT: I don't know what the pertinency of this is exactly.

MR. SALLEY: Well, I won't press that; it isn't very important.

40

Q. Did you write to Mr. D'Annunzio in reference to his draft classification? A. Yes.

Q. When did you write him, do you know, Mr. Troy? A. I think it was in December, 1917, that Mrs. D'Annunzio came to my office with some letters she

William F. Troy—Direct.

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had received from her husband and gave them to me, and in a letter he asked her to sign some affidavit in regard to obtaining an exemption from the Draft Board in Jersey City, and I wrote a letter in her behalf in reply.

Q. Is that a carbon copy (handing the witness a paper)? A. That is a carbon copy.

20 MR. SALLEY: I offer it in evidence. Any objection?

JUDGE CAREY: No.

(The same is marked Exhibit D1.)

THE COURT: Read it.

(Mr. Salley reads the letter as follows):

"December 27, 1917.

Mr. George D'Annunzio,
15 Concord St.,
Jersey City.

30 Dear Sir:

Your wife, Mrs. Bridget D'Annunzio, called to see me today in regard to the affidavit which you wish her to sign, as stated in your letter of the 24th inst. She has also handed me your letter of the 26th inst.

40 In reply I wish to say that I had a talk with Mr. Robert V. Kinkead of Jersey City today in regard to this matter. Mr. Kinkead informed me that he did not advise you in the matter at all, but sent you to the City Hall to obtain whatever information you wanted in regard to the questionnaire. He said he had promised, however, to help you answer the questions if you needed such help. Mr. Kinkead was surprised that you did not send your wife the questionnaire, so that she could read the answers thoroughly which you made to the questions therein, as she is compelled to

Miss Mary Ann O'Sullivan—Direct.

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do before she can make an affidavit swearing that your answers to the questionnaire are true.

Kindly send the questionnaire to me by return mail and I will go over the matter with your wife, and if she can truthfully swear to an affidavit stating that your answers to the questions in the questionnaire are true she will do so. Of course, you must understand she cannot swear that you are supporting her, as this is untruthful, as you yourself well know. She can, if she desires, swear that you are contributing \$4 a week for the support of your child under order of the Domestic Relations Court of the Borough of Brooklyn in the City of New York.

20

Mr. Kinkead wishes me to inform you that he will not have anything to do with this matter if you do not answer the questions honestly.

If you will send me the questionnaire as above stated I will take up this matter at once for you with your wife.

Yours very truly,"

30

MR. SALLEY: In this case that I referred to, Mosher v. Mosher, 123 Appellate Division, page 400, the wife was suing for judicial separation, which alleges that the complainant showed that the defendant refused to give her money, etc. (counsel making a statement regarding the case).

40

MISS MARY ANN O'SULLIVAN, sworn on behalf of the defendant, testified as follows:

DIRECT-EXAMINATION BY MR. SALLEY:

Q. Miss O'Sullivan, where do you live? A. 102 Hayward Street, Brooklyn.

Miss Mary Ann O'Sullivan—Direct.

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Q. You live there with your niece, Mrs. D'Annunzio, and the little baby? A. Yes.

Q. Do you know George D'Annunzio, the defendant in this proceeding? A. I do.

Q. Did you, during the year 1915, see George D'Annunzio call at your house, at 102 Hayward Street, Brooklyn? A. I guess he did. He comes so many times I don't know how many.

20 Q. Did he ever call during 1915 and speak about renting one of the floors in your house? A. Oh, yes.

Q. What happened then? A. Why, he didn't come and he didn't pay the rent.

Q. (By THE COURT.) What was the rent? A. 20 a month.

DIRECT-EXAMINATION RESUMED:

Q. Did you keep this place for him, then, after that? A. Yes, sir.

30 Q. How long did you keep the place open for them? A. I kept it open three months and at the end of three months he said he would settle and he would come, but he didn't come or didn't keep his promise.

Q. During 1915 did Mr. D'Annunzio have any meals at your house—any food? A. (The witness pauses.)

Q. Did he come there at your house and eat? A. I am kind o' hard of hearing.

40 Q. Did Mr. D'Annunzio, during 1915, come to your house and have any meals there? A. Oh, yes; so many times I couldn't tell you.

Q. Did he pay you anything for the meals? A. Never one cent.

Q. While your niece was living there do you know whether he gave any money for her support or for the support of the child, from the time of the mar-

Miss Mary Ann O'Sullivan—Direct.

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riage up to the time they were in court together?

A. I never seen him give her any money.

Q. Did you give her any money? A. I never seen him give her a cent.

Q. Did you pay her anything? A. I paid her her wages.

Q. How much? A. \$10 a month. A few months I gave her \$12. Won't you please come where I can hear you?

Q. While your niece lived with you did you ever see her husband strike her? A. Yes.

20

Q. When was that? A. Now, I couldn't tell you; now I can't.

Q. How long after she was married was it that he struck her? A. Oh, I couldn't tell you; two or three years—two years, anyhow.

Q. What did you see him do? A. Well, she had the baby in her arms and he came up and he took her by one arm and he gave her a swing into the rocking chair, or some chair, and then he gave her a blow on the side of her face and left his prints on her wrist and on her face. That I can prove.

30

Q. Did you ever see him snatching the wedding ring off from her hand? A. I did.

Q. When was that? A. I couldn't tell you.

Q. What happened then? Just tell us what you saw. A. Well, I will tell you what I saw. He came there and he asked her for the ring, and I saw him carry the ring over to the fire, and he held the stove cover in his hand, but I didn't see the ring go into the fire.

40

Q. Did Mr. D'Annunzio ever come to you and get on his knees and beg you to let his wife come to live with him? A. No, not me.

Q. Did you see him on his knees there? A. Well, a few times to myself.

Miss Mary Ann O'Sullivan—Cross.

10

Q. What did he say to you then? A. Well, I couldn't tell you now. That was between ourselves.

Q. During the time that your niece lived with you did Mr. D'Annunzio ever come there and say to her: "I have got a home for you; I want to provide for you; I want to support you," or anything like that? A. Never; never.

CROSS-EXAMINATION BY JUDGE CAREY:

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Q. How many times did you ever see your nephew strike your niece? A. I will answer you every word the truth.

Q. How many times did you see your nephew strike your niece? A. Once.

Q. Once only? A. Once only.

Q. Was that the same time he took the wedding ring? A. No, I don't think it was. I can't be positive.

30 Q. You can't be positive about that? A. What I am telling you is the truth, if I was dying this minute.

Q. But you are not dying now. A. No, I don't want to die now; I want to see this out.

Q. What do you mean by "wanting to see this out," Miss O'Sullivan? A. I saw him open the cover of the stove with the stove lifter and I saw him take the ring from her, but I didn't see him drop it in. That

40 is the truth.

Q. Was that the same time that he had the little fight with her? A. Oh, I thought he was going to kill us all.

Q. You thought he was going to kill all of you? A. Yes, the three of us—his wife, and me, and the little baby.

Miss Mary Ann O'Sullivan—Cross.

10

Q. Did he try to strike you? A. No, but he called me worse than if he struck me.

Q. Is that the time he got down on his knees to you? A. No. He told me he was waiting for the policeman to come in, and I told him he would stay there a long time; I didn't want a policeman to come into my house, oh, no.

Q. Do you remember the time that he got down on his knees? A. No, he never got down on his knees to me.

20

Q. Didn't you hear what your niece said about his getting down on his knees to apologize to you? Did he get on his knees to you? A. He did.

Q. What did you mean a minute ago when you said he never got on his knees to you? A. He got on his knees to me; he got down on his knees to tell me something. I don't know what he meant by it.

Q. Was he apologizing to you or begging you to let your niece come back to live with him? A. No, sir; he was apologizing.

30

Q. For what? A. For something he said.

Q. Did he ask you to let your niece come and live with him? A. He did not. He didn't say that, no, no, no. He said I was to blame for everything.

Q. For what? A. Told me I had his wife and every trouble he had I was to blame for it.

Q. Did he tell you what he meant by that when he said that? A. I don't understand you.

Q. I will withdraw the question. What troubles with his wife was he talking to you about? A. I don't know what he was talking about, for I never listened to him. I told him to go away when he and his wife was talking. I know only what I seen him do once.

40

Q. Did they have trouble every time they got together? A. From what I understand, they did.

Miss Mary Ann O'Sullivan—Cross.

10

Q. For a long time? A. He never was kind to her.

Q. Was she kind to him? A. She done everything for him; that I know.

Q. Was she kind to him? A. I don't know what way she was to him. Sure she was kind.

Q. Do you remember when he was sick—very sick? A. I do.

Q. She didn't go to see him, did she? A. She went once and she was afraid of his sister. She was afraid to go.

Q. You didn't like him, did you? A. I liked him very much until I seen that he wasn't kind to his wife.

Q. Then you didn't like him? A. No.

Q. When did you first notice that he wasn't kind to her? A. Soon after they were married. I don't know, she wouldn't go housekeeping into the house with his father and mother and sisters.

30 Q. You didn't want her to do that? A. I didn't say whether she was to go or not. I had no claim over her; I had no claim, only I thought she was a good girl.

Q. And you wanted to keep her? A. Yes, I did.

Q. And she wanted to stay with you, didn't she? A. She did and, of course, she was good and kind to me, and when I was sick she was very, very kind to me.

40 Q. You and she loved each other very much? A. I do.

Q. And she loves you? A. I guess she does.

Q. And she didn't want to leave you? A. I guess she didn't.

Q. And she said so? A. Yes.

Q. And she wasn't going to leave you and go with

George D'Annunzio—Direct.

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her husband? A. She would go with her husband if he gave her a home.

Q. And she told you she was going to stick to you?

A. Yes.

MR. SALLEY: That is our case.

Petitioner's Rebuttal.

20

GEORGE D'ANNUNZIO, recalled in his own behalf, in rebuttal, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

Q. Mr. D'Annunzio, did you ever ask your wife to sign any papers in relation to her property? A. Nothing whatsoever.

Q. Did you ever know of any separation agreement, as has been suggested? A. No, sir. 30

Q. Did you ever suggest any such agreement? A. No, sir; only she did; she said, "I think we would be better off if separated."

Q. I mean, did you ever ask her to sign any agreement? A. No, sir.

Q. She said on one occasion you grabbed her when she had the baby nursing and struck her with your fist in the eye and grabbed her by the throat; is that true or not? A. No, sir; I hope it is not true.

Q. She says that on another occasion you wrung her hand so badly that it gave her considerable pain; is that true? A. No, sir. 40

Q. She says that you told her after the baby was born that she would have to come and live with you; that that was the Italian custom, and if she didn't come she could do as she pleased? A. No, sir; my folks didn't interfere in any way whatsoever.

George D'Annunzio—Cross.

10

Q. She says that at the time you were on your knees to her aunt it was to apologize to the aunt for names you called her; is that true? A. No, sir.

Q. What did you get on your knees for? A. To have her talk to my wife, because she would listen to her better than she would to me.

Q. You heard what your wife said about the words or threat that you are alleged to have made at the fountain; did you make any such threat? A. No, sir; I never was a "gangster."

Q. Did you ever know before that any sister of hers had spat on her? A. Not that I know of.

Q. Did you ever hear of it before? A. I never did.

Q. Is that sister here in court? A. Yes, sir.

Q. Is that the only sister you have? A. Well, I have another sister.

CROSS-EXAMINATION BY MR. SALLEY:

30

Q. Did you snatch the ring off her hand? A. No.

Q. How is it you came to have possession of the ring? A. I reminded her when she took that ring and testified in the Holy Rosary Church that she would follow those vows to obey and love and be at her husband's side, and she says "I don't either love you or the ring," and she took the ring off from her finger and threw it at me, and I picked it up.

40

BY THE COURT:

Q. Did you take the ring to the jewellers to be engraved? A. No, sir; the ring, your Honor, was taken to the jewelers before I took sick, and before I left I says, "Now go for the ring to the jewelers. I had the initials put on and the words "with love" engraved.

George D'Annunzio—Cross.

10

Q. When was this? A. This was in 1916, right after the second child's birth.

Q. And was that the same ring that was given her at the marriage? A. The same ring.

Q. And you had this engraving done inside? A. Yes, after the marriage—one year after.

Q. How long after your wife got it was it she threw it at you, as you say? A. It was after I took sick. You see, while I was sick she had gone to the jeweler's after the ring, and she paid something like 40 cents for the job he did, and she told me of it, and when I came back after a discussion we had I told her, after she had refused completely, of the words I remembered that our pastor said when he put that ring on her finger, to love and obey, and she said, "I don't either love you or the ring," and she snatched the ring from her finger and threw it at me.

20

Q. Was her aunt, Miss O'Sullivan, there? A. I was then, between the kitchen and the dining room, and she was sitting at the window.

30

Q. Did you take the ring over to the fire? A. I did not; I was between the kitchen and the dining room.

Q. Did you put it in the fire, or pretend to put it in the fire? A. I didn't go anywheres near the fire.

Q. You didn't lift the lid off? A. I did not, no.

CROSS-EXAMINATION RESUMED:

40

Q. Will you then explain, Mr. D'Annunzio, why it was you kept this ring from 1916 and you never returned it until August, 1918, just on the eve of starting this divorce proceeding? A. I will tell you: For the simple reason that she had stated that she didn't care for her vow, and I thought I would save the ring, and when I went over there in July or August,

George D'Annunzio—Cross.

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after coming back from the Elk's convention I bought a few things for the baby and we went over the situation, and I said, "You still insist on your attitude and want to live apart," and she says, "I certainly do; I am very happy with my baby and I will stay here," and I says, "I can't wear the ring and the only thing I can do is to return the ring to you," and so I mailed the ring back to her, and it is the same ring that was placed on her finger in the Holy Rosary Church.

20

BY THE COURT:

Q. When was it you sent the ring back? A. After my visit, I being there in August.

Q. In August of what year? A. 1918.

Q. Was that before or after you brought the suit? A. Before.

30

Q. Mr. D'Annunzio, this petition was filed on July 19, 1918; if you returned the ring in August you certainly didn't return it before the suit was commenced. A. Well, I don't know about the suit; I returned the ring at that time, I know.

Q. I noticed Mrs. D'Annunzio gave the same time, in August. A. Oh, yes, it was about August.

JUDGE CAREY: August 3, 1918.

MR. SALLEY: After he swore to the bill of complaint, after the suit was started.

THE COURT: And after the service of the notice, I think.

40

JUDGE CAREY: No, the notice was served in October. October 10th was the date of the visit by the uncle when he served the notice.

Q. Mr. D'Annunzio, I perhaps didn't understand your testimony this morning on one point. I understood you to say you were about 16 years old when you first became acquainted with your wife; 16 years.

George D'Annunzio—Cross.

10

old when you first moved in your home; is that the same house where your wife is now staying with her aunt? A. The same house.

Q. The lady, then, wasn't married? A. She is not a "Mrs."; she has never been married.

Q. Well, was that the house you referred to? A. Yes.

Q. And it was occupied by whom? A. We lived in the middle floor.

Q. Who do you mean? A. When we first moved there.

20

Q. I want to identify the house. The house is the same that your wife and her aunt occupy now? A. The same thing.

Q. And were you living in there? A. We moved in in 1916, on Washington's birthday.

Q. And when you say "we moved in" you mean your father and mother? A. My mother wasn't here in this country at that time.

Q. When did your mother return to this country? A. She came here in the same year, about September, I think.

30

Q. Did she then join you in this house? A. In the same house, yes.

Q. How long did you live there in that house? A. We lived up to five years afterwards.

Q. And which floor did you occupy? A. Bottom floor—first floor.

Q. Who occupied the floor above? A. Miss O'Sullivan and Mr. O'Connor.

40

Q. Who was Mr. O'Connor? A. My wife's uncle, now dead.

Q. What relation was he to Miss O'Sullivan? A. He had married her sister and when she died she kept house for him.

Q. And while you were living there that period of

George D'Annunzio—Cross.

10

five years Miss O'Sullivan and the lady who became your wife, her niece, lived downstairs? A. No, sir.

Q. I mean upstairs? A. My wife didn't live there at that time; she was a regular visitor, coming and going. She was living out on Putnam Avenue, and she became a permanent resident after Mr. O'Connor died.

Q. Can you tell us when he died? A. That was in March, 1904, if I'm not mistaken.

20

Q. From 1904, then, and for some time, your parents, and you and your sister lived upstairs, and Miss O'Sullivan and this lady whom you married lived downstairs? A. No, sir; we had moved out at that time from this house in back on 71 Lynch Street.

Q. When did you move out of the house? A. I believe in 1903 or 1904.

Q. But you had lived there for five years? A. Oh, yes.

Q. Did you move out before Mr. O'Connor's death?

30

A. Yes, sir; in fact, we were so friendly that we went to Mr. O'Connor's funeral.

Q. Was there any trouble between your family and Mr. O'Connor? A. Nothing whatsoever. I was very attentive to him, and I was a sort of interpreter when father and mother wanted to talk to them; and whenever they had any parties I was asked upstairs and they often came downstairs.

40

CASE CLOSED.

(Thereupon the Court heard the arguments, and the Court suggested that it would be well to have a record from Bloomingdale Brothers as to what furniture the petitioner bought. The case was opened and on Saturday, October 25, 1919, at Jersey City, at 10 o'clock

in the forenoon, a further hearing was had,
and the following is a verbatim shorthand re-
port of the essential part of the proceedings.)

10

Saturday, October 25, 1919, 10 A. M.

Chancery Chambers, Jersey City.

All counsel present as before.

MR. SALLEY: Your Honor told us at the
last hearing that you wanted a record from
Bloomingdales'. I have been there and find
no record previous to January, 1917. You
told us to produce any correspondence we had,
or any letters, or anything of that sort, and
we have a letter to Mr. D'Annunzio, and the
letter is as follows:

20

THE COURT: Mr. George D'Annunzio?

MR. SALLEY: Yes, addressed to him.

THE COURT: That is the petitioner?

30

MR. SALLEY: Yes.

THE COURT: How do you come to have
it?

MR. SALLEY: The letter was brought over
by his sister, and the sister thought it might
have been sent by Mrs. D'Annunzio.

THE COURT: It is a letter to him?

MR. SALLEY: Yes, not from Mrs. D'An-
nunzio but from another woman.

THE COURT: Is it a letter to or from the
petitioner?

40

MR. SALLEY: To the petitioner.

THE COURT: How did it come to be sent
to the house of the defendant?

MR. SALLEY: It was sent to the house of
the petitioner and was brought by his sister
from his house over to his wife's house and

10 showed to his wife, and then they afterwards destroyed it and it was fastened together. It is dated May 2nd, 1916, that is, two months after the birth of this child.

THE COURT: Is that letter recognized and admitted?

JUDGE CAREY: We have never heard of the woman and don't know anything about her.

THE COURT: How is it competent?

20 MR. SALLEY: I don't know that it has very much value; if you won't let it in, Judge, I will withdraw the offer.

THE COURT: Oh, no, it cannot go in.

30 MR. SALLEY: We also have a bill from the doctor—Dr. Anderson—who attended Mrs. D'Annunzio at the time of the birth of this child. It is a bill of \$50 which has never been paid. We think that that ought to be brought to the attention of the Court as showing his neglect. Judge Carey has produced bills here showing that he paid room rent where she was, but the bill for professional services for bringing this little girl into the world has never been paid.

THE COURT: Well, we might be trying questions of that kind all day, whether such bills have been paid or not. Mr. D'Annunzio might say that he wasn't liable.

40 JUDGE CAREY: We can go further and show that we paid all the sanitarium bills, and when this bill came we went to this doctor and thought it was too much. We offered him a certain amount of money and he said no, he wouldn't take it.

THE COURT: This is a sort of addendum to the testimony.

MR. SALLEY: I think at this time, your Honor, I would like to ask permission to

amend the third paragraph of my cross bill, where I allege that the petitioner was arraigned in the Domestic Relations Court in Brooklyn, in 1917, and was ordered to pay \$4 a week for the child, which money was paid to the petitioner for the support of the child. I would like to amend so as to include in the cross bill the record itself.

10

JUDGE CAREY: There is no objection.

THE COURT: Why do you want to encumber the record. You have offered the record in evidence.

20

MR. SALLEY: I thought, in order to keep the record straight I would do that, inasmuch as I am alleging in my argument that the defendant in the trial in Brooklyn, by his own admission, had deserted this woman, I should plead it in the bill. I called your Honor's attention to 71 N. J. Equity, which was afterwards affirmed by the Court of Errors and Appeals in 12 Equity. That was a case where a woman went to the City Court in New York and brought her husband in there and got separate support. She afterwards came over to the State of New Jersey and started a divorce proceeding and she tried in that action to recover the amount of alimony that she got in New York and also asked for alimony over here, and the Court said, "You cannot take both"; but it said, "We will give full faith and credit to the judgment obtained in the State of New York on the question of desertion. That is one of the leading cases in the state.

30

40

THE COURT: We are now dealing with the necessity of your amending your answer so as to set forth at length the record of the proceeding in New York. It is against the rules of this court.

10 MR. SALLEY: It is a matter of discretion, as I understand.

THE COURT: You have full benefit of that. The record is in evidence. It is undisputed and full faith and credit is given to that record. I will say this: Sometimes, in cases of this kind, the decree or order is attached to the pleadings—the bill or answer, as the case may be—but not the record of the proceedings.

20 JUDGE CAREY: There is no judgment here at all.

THE COURT: There is no order; it is by consent. He pleaded not guilty and then a consent order was made. Does that relate to the merits of the amendment?

MR. SALLEY: No.

THE COURT: Then I will hear you a little later.

MR. SALLEY: Your Honor also told me to produce the New York City Charter and I have it here.

30 THE COURT: Any objection to that book?

JUDGE CAREY: No, not the least.

MR. SALLEY: Shall I read it?

THE COURT: Yes.

(Mr. Salley reads Section 685.)

THE COURT: Is the section that you have read referred to in the record?

MR. SALLEY: Yes, sir.

JUDGE CAREY: No objection to that at all.

40 THE COURT: Then state what it is.

MR. SALLEY: 685 of the Greater New York Charter, with appendices, 3d edition Ash.

THE COURT: This record will be received in evidence.

JUDGE CAREY: Is that all, Mr. Salley?

MR. SALLEY: Yes.

JUDGE CAREY: If there is any doubt in the Court's mind as to where that furniture was shipped, I would like to put Mr. D'Annunzio

George D'Annunzio—Cross.

10

on the stand. There was some doubt whether he was asked that question, and I want to ask him that one question.

GEORGE D'ANNUNZIO, recalled in his own behalf, testified as follows:

DIRECT-EXAMINATION BY JUDGE CAREY:

20

Q. You remember when the furniture was bought at that store in New York? A. Yes, sir.

Q. Where was that sent, or ordered sent? A. 71 Lynch Street, Brooklyn.

Q. Was it originally ordered sent to another address? A. No, sir.

Q. Was there any change of address or anything of that sort? A. No, sir; nothing of the sort.

CROSS-EXAMINATION BY MR. SALLEY:

30

Q. Don't you know it was sent to 102 Hayward Street? A. No, sir.

MR. SALLEY: Of course, Mrs. D'Annunzio says just the other way.

THE COURT: She has testified on that subject.

MR. SALLEY: That is all.

JUDGE CAREY: That is the case.

40

(After the argument Judge Carey offered in evidence a letter, dated Aug. 3, 1919, from the defendant to the petitioner, which was marked Exhibit P2.)

10 **Defendant's Exhibit, Domestic Relations Court Record.**

CITY MAGISTRATES' COURT IN THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

In the Borough of Brooklyn.

20 THE PEOPLE OF THE STATE OF
NEW YORK, on complaint of
Bridget D'Annunzio

vs.

GEORGE D'ANNUNZIO,
Defendant.

Certificate of
True Copy.

30 I, Paul J. Donnerly, Clerk of the Domestic Relations Court in the Borough of Brooklyn, City of New York, do hereby certify that I have compared the within requisition, affidavit, warrant of arrest, order and consent with the original requisition, affidavit, warrant of arrest, order and consent on file in this Court in the within entitled proceeding and that the same is a true and correct copy of said original papers, and the proceeding had herein, and the whole thereof.

Dated, Borough of 3rd City of New York, January, 1919.

40

PAUL J. DONNERLY,
Clerk.

City of New York,
Boroughs of Brooklyn and Queens, } ss:

To the Presiding Magistrate, Domestic Relations
Court:

*Defendant's Exhibit, Domestic Relations Court
Record.*

10

Bridget (wife) Frances, 15 mos., having been abandoned by her husband and father, George D'Annunzio, and left a burden upon the public in the Borough of Brooklyn, New York City, or likely to become such, and he having neglected to provide for her, or them, in accordance with his means, the undersigned, the Commissioner of Public Charities for the City of New York, hereby makes application to you to issue a warrant against the said City of New York, hereby makes application to you to issue a warrant against the said George D'Annunzio upon a complaint being made upon oath to you, pursuant to the Statutes in such cases made and provided.

20

WILLIAM J. DOHERTY,
Second Deputy Commissioner of Public
Charities of the City of New York.

4-9-17.

30

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

City and State of New York, }
County of Kings, } ss:

40

Bridget D'Annunzio, being duly sworn, says: I am 32 years of age, reside at 102 Hayward Street, Borough of Brooklyn, and am by occupation a housewife. That George D'Annunzio is a disorderly person in said county, in that he has actually abandoned his

10 *Defendant's Exhibit, Domestic Relations Court
Record.*

wife, this complainant, and his child, Frances, 15 months of age, and in that he has failed to provide for them and leaves them without adequate support and in danger of becoming a burden on the public.

Wherefore, deponent prays that said defendant may be apprehended and dealt with according to law.

BRIDGET D'ANNUNZIO.

20 Sworn to before me, this
9 day of April, 1917.

Grant Esterbrook,

City Magistrate,

City of New York,

Now presiding in the Domestic Relations Court, Borough of Brooklyn.

30 CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

City and State of New York, } ss:
County of Kings,

40 IN THE NAME OF THE PEOPLE OF THE
STATE OF NEW YORK.

TO ANY PEACE OFFICER IN THE COUNTY OF KINGS:

Information, upon oath of Bridget D'Annunzio having been this day laid before me, that George D'Annunzio is a DISORDERLY PERSON, in that he has

*Defendant's Exhibit, Domestic Relations Court
Record.*

10

actually abandoned his wife, Bridget and his child, Frances, in that he has failed to provide for and leaves them, without adequate support and in danger of becoming a burden on the public.

You are, therefore, commanded forthwith to arrest the above-named defendant and bring him before me, at the Domestic Relations Court, at No. 402 Myrtle Avenue, in said Borough. If, for any reason, the person charged cannot be arraigned before the Magistrate presiding in said Domestic Relations Court, then said arraignment may be made before the most accessible Magistrate.

20

Dated at the City of New York, this 9 day of April, 1917.

O. GRANT ESTERBROOK,
City Magistrate,
City of New York,
Now Presiding in the Domestic Relations
Court, Borough of Brooklyn.

30

40

10 Defendant's Exhibit, Domestic Relations Court
Record.

(Endorsed.)

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

20 Borough of Brooklyn.

Before:

City Magistrate.

THE PEOPLE OF THE STATE OF
NEW YORK, on Complaint of

30 against

I have arrested the within-named defendant and
have him here in my custody as within commanded.
Dated, April 13, 1917.

DRUM,
Officer.

40

Probationary Oversight.

10

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

THE PEOPLE OF THE STATE OF
NEW YORK, on Complaint of
Bridget D'Annunzio

20

against

GEORGE D'ANNUNZIO,
Defendant.

On consent of the defendant in person, and through
his counsel the defendant
is placed under probationary oversight under Section
686 of the Greater New York Charter as amended,
under the supervision of Probation Officer Frank L.
Graves and until further order of the Court and
subject to revocation as hereinafter stated not to ex-
ceed one year, conditioned to pay \$4.00 weekly for
the support of his wife and minor child Frances.

30

EDWARD J. DOOLEY,

City Magistrate,

Second Division,

City of New York,

40

Now Presiding in the Domestic Re-
lations Court, Borough of Brook-
lyn.

Consent and Order for Probationary Oversight.

10

Proceeding adjourned to April 15, 1918.

The above is hereby consented to subject to revocation without notice by Presiding Magistrate of the said Domestic Relations Court at his discretion.

GEORGE D'ANNUNZIO.

Dated, April 16, 1917.

20 **Consent and Order for Probationary Oversight.**

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

30 Before:

City Magistrate.

THE PEOPLE OF THE STATE OF
NEW YORK, on Complaint of

against

40

Defendant.

Consent and Order for Probationary Oversight.

10

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

THE PEOPLE OF THE STATE OF
NEW YORK

against

GEORGE D'ANNUNZIO.

20

Before: Hon. O. Grant Esterbrook, Presiding Magistrate.

Defendant arraigned April 13, 1917.

The defendant, immediately on being brought before the Magistrate, was informed by said Magistrate, as follows:

30

You are charged with violation of the provisions of Chapter 466 of the Laws of 1901 and any amendments thereto, as set forth by No. herein-after set forth.

1. Actually abandon your wife and child in the City of New York, Borough of Brooklyn, and County of Kings, without adequate support.

2. Leave your wife and child in danger of becoming a burden on the public.

40

3. Neglect to provide according to your means for your wife and child.

4. Threaten to run away and leave your wife and child a burden on the public.

Consent and Order for Probationary Oversight.

5. Neglect to relieve and maintain a poor relative in the manner approved by the Commissioner of Public Charities.

You have the right to the aid of counsel in every stage of the proceeding, and before any further proceedings are had.

Q. Do you require counsel? If you do, you will be allowed a reasonable time to send for him, and the examination will be adjourned for that purpose. You are also informed of your right to communicate with your relatives and friends, by letter, message or telephone.

A. So informed.

Mr. _____ appeared as counsel for complainant.

Mr. _____ appeared as counsel for defendant.

The defendant was required to plead and did plead not guilty.

The defendant was admitted to bail in the sum of \$ pending examination.

The defendant was committed to the warden of the City Prison, City of New York, in default of \$ pending examination.

Consent and Order for Probationary Oversight.

10

ENDORSED.

CITY MAGISTRATES' COURT OF THE CITY
OF NEW YORK,

DOMESTIC RELATIONS COURT,

Borough of Brooklyn.

Before: Hon. O. Grant Esterbrook, Presiding
Magistrate.

20

THE PEOPLE OF THE STATE OF
NEW YORK

against

GEORGE D'ANNUNZIO.

30

Defendant arraigned April 13, 1917.

Adj. to April 16, 1917.

40

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The first and only book published by the
author.

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The first and only book published by the
author.

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The first and only book published by the
author.

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The first and only book published by the
author.

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The first and only book published by the
author.

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ANTHONY BOTTI,
576 Newark Ave.,
Jersey City.

New Jersey Court of Errors and Appeals

Between	}	On Appeal from Court of Chancery.
GEORGE D'ANNUNZIO, Petitioner-Respondent,		
and		
BRIDGET D'ANNUNZIO, Defendant-Appellant.		

**BRIEF ON BEHALF OF PETITIONER-
RESPONDENT.**

The petitioner, George D'Annunzio, and defendant, Bridget D'Annunzio, were married on the 26th day of December, 1914, in Jersey City, Hudson County, State of New Jersey; at that time they were residing in Brooklyn, New York.

They never lived together after the marriage through the fault of the defendant. The petitioner repeatedly asked her to live with him and fitted a home for that purpose, and although she promised to do so defendant never did, and finally on May 6, 1916, defendant absolutely refused ever to live with petitioner, stating she did not love

him any more and would never live with him, which statement is corroborated at the trial by the witness Anthony Zeho.

Two children were born of the marriage, one in February, 1915, who subsequently died, and the other in January, 1916, now living with defendant.

In June, 1916, petitioner moved to Jersey City, being advised by the Doctor to live there, and during the period of separation, petitioner at different times sent various sums to defendant and child and visited them often at which times he would give gifts to the child, and continued to ask defendant to go live with him, she refusing.

In April, 1917, petitioner was subpoenaed, he working in Brooklyn at the time, to appear in the Magistrate's Court in Brooklyn on a charge of abandonment and petitioner appearing in answer thereto without trial of the merits of the case, or hearing through counsel consented to pay to the child \$4.00 per week which he has paid up to the filing of the petition herein.

The petitioner started this suit on the 18th day of July, 1918, two years and about two months after the 6th day of May, 1916, the date of the beginning of the desertion.

The Court advised a decree granting a divorce to petitioner on the ground of desertion.

POINT I.

The record of the Magistrate's Court in Brooklyn is not res adjudicata and has no effect in present suit.

The question of law relating to the nature and effect of the proceedings before the Brooklyn Magistrate may be settled by a perusal of the sections of the charter of Greater New York as amended.

It is true the charge was made under Section 685 of the Charter of Greater New York but the complaint does not recite or refer to this section. The next section of said Charter, however, number 686, is ignored by counsel for appellant, and the New York Law as finally amended pertaining to this case may be found in the Laws of New York of 1914, Chapter 463, which reads as follows:

"Where a complaint has been made against a husband for non-support of his wife and children if the person charged is tried and convicted, a judgment of conviction shall be entered and filed in the Office of the Clerk of the County in which such conviction is had; that the person charged is convicted of being a disorderly person. The conviction shall specify also the nature and circumstances of the offense and the name of the witnesses by whom it has been established."

"Further, upon the consent of the defendant the said Magistrate may, before or after said conviction as aforesaid, place the defendant for a period aggregating not more than one year, under the oversight of a probation officer and adjourn said proceedings from time to time upon conditions and terms by him deemed proper and meet from the proper support of said wife and children or either."

The record offered in evidence shows that this was the order made by the magistrate, and that it was made with the consent of the defendant, and the proof is ample that the petitioner was neither tried nor convicted. The order of the magistrate produced in evidence is made on a blank entitled "Probationary Oversight," referring also in print to "Section 686 as amended."

Under the case of *Freund vs. Freund*, 71 Eq., 524-528, the conditions and terms in the order being subject to modification at any time during the year at the discretion of the court it does not constitute a final judgment.

These proceedings in the magistrate's court, or rather "The Domestic Relations Court," in the Borough of Brooklyn, manifestly were primarily intended to prevent an abandoned wife and child from becoming a public charge. The law permits the defendant who is charged with abandonment to come into court and plead not guilty as the petitioner did in this case, but at the same time consent to an order requiring him to pay a specified sum for the support of his wife and children whom he is charged with having abandoned. This New York law permits the husband and father charged with abandonment to say in court: "I am not guilty of the charge of abandoning my wife and child. My wife has deserted me. This court cannot try the matrimonial litigation that is pending or will be soon commenced to determine the question of desertion or abandonment, and I recognize that apart from any such present or possible future litigation it is right that I should furnish support to my wife and child." An order providing for such support is then made with the written consent of the husband.

The interests of the city are thus protected and the spouses are left to litigate or not in the divorce court as they may think fit.

The Court will note that the judgment record endorsed on the back of the court record in this case, wherein the court's determination is provided for, *is left blank*; in other words, in this particular case there never was a trial or a conviction, *and if there was no trial or conviction there could not have been an adjudication.*

The consent given in the case was not a consent that the defendant be adjudicated guilty, but it was a consent that he would make provision for the support of the child.

Therefore, in any view of this particular phase of the evidence, it cannot operate as an estoppel to the petitioner in this cause, and cannot be considered evidential of any fact other than the fact that it corroborates the witnesses, who testified that certain phases of the case were ventilated in the Police Magistrate's Court.

In this connection we further draw the Court's attention to the fact that the petitioner himself explained this whole proceeding before the Magistrate. He stated that he did not know just what had happened except that counsel for both sides agreed that some provision should be made for the child's support, and four dollars a week was agreed upon to meet this situation.

POINT II.

There is not complete identity of subject matter in this suit and that in the Magistrate's Court, and even if it were res adjudicata it was not pleaded by defendant.

Even could it be determined that the record produced from the City Magistrate's Court of Brooklyn would be an adjudication of the issue, it could not be considered as *res adjudicata* in this case.

See

11 L. R. A. (N. S.), 656; notes to the case of *Micks v. Mason*, and numerous cases there cited.

The case of *Carey v. Carey*, 25 Pa. Sp. Ct., 223, there cited is right in point.

Even could the record produced on behalf of the defendant be considered to be a judgment, it would have to be pleaded by the defendant if it was to be considered conclusive upon the parties so far as their rights in this action are concerned.

Freund v. Freund, 71 N. J. Eq., 524, at 529, 530.

I have examined the case of *Kile v. Kile*, 52 N. J. Eq., 710, and am satisfied that it has no bearing upon this case. The New York proceedings discussed in that case were of an entirely different character. They were a matrimonial action under the New York statute, and the record produced showed a judicial determination of such matrimonial action.

I have also examined the case of *Lake v. Lake*, 80 N. J. Eq., 350, and have reached the same conclusion as to that case. It is not in point.

In the *Lake* and *Kile* cases the Court pointed out that the New York proceedings involved a

complete identity of persons and *subject matter*. What was the subject matter passed upon by the Court in the record now produced for the Court's consideration?

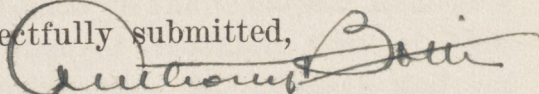
I refer the Court to the case of *Bolton v. Bolton*, 86 N. J. L., 69. This is not exactly in point, but the inference to be drawn from its reasoning is clear that the record introduced in the case now under discussion is not such a judgment as can be deemed to be an adjudication of any fact in controversy.

The case of *Harding v. Harding*, 198 U. S., 317 (49 L. Ed., 1066), discusses the whole subject matter. There the Court held *that a decree entered by consent has the same effect as a judgment otherwise entered*; but the Court places emphasis upon the fact that an actual final decree was entered. In the proceedings before the Police Magistrate in Brooklyn, no decree of any sort was entered, no conviction was found, and all that was done was that the Court made an order peculiarly provided for by the statute quoted.

A reading of the New York Charter provisions, Sections 685, 686, clearly demonstrates further that the Magistrate's Court in Brooklyn was not even constituted to settle a matrimonial controversy. It practically simply creates an agency for the State to save the public from private burdens pending matrimonial differences which may be in course of solution in some other tribunal.

It is respectfully submitted that the decree entered in favor of the Petitioner be affirmed with costs in this Court and in the Court below.

Respectfully submitted,



Solicitor and of Counsel with
Petitioner-Respondent.

New Jersey Court of Errors and Appeals

Between—

GEORGE D'ANNUNZIO, Petitioner-Respondent, and BRIDGET D'ANNUNZIO, Defendant-Appellant.	}
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BRIEF OF DEFENDANT-APPELLANT.

The parties in this cause were married in Jersey City on December 26, 1914. After the marriage the husband, George D'Annunzio, went to the home of his people in Brooklyn, New York, and the wife, Bridget D'Annunzio, went to live with her aunt, Miss Mary O'Sullivan, at 102 Heyward Street, Brooklyn, N. Y. At the time of the marriage the defendant, Bridget D'Annunzio was pregnant and a few months after the marriage a child was born which died at childbirth. From the time of the marriage with the possible exception of a few weeks, the petitioner lived with his people in Brooklyn and the defendant lived with her aunt at 102 Heyward Street, Brooklyn, N. Y. From the date of the marriage, December 6, 1914, up to April, 1917, the only money that was paid by the petitioner to the defendant for her support was the sum of ten dollars.

On April 9th, 1917, a warrant was issued for the defendant to appear in the Domestic Relations Court in the Borough of Brooklyn, City of New York and was represented by counsel and on

April 16, 1917, the defendant was placed under probation oversight under section 686 of the Greater New York Charter as amended to pay four dollars per week for the support of his wife and his minor child, Frances D'Annunzio. The baby Frances was the second child born of the marriage, being born January 7, 1916, and is still alive. In the latter part of June, 1916, the petitioner moved to Jersey City where he has since resided with his folks. On July 19, 1918, he filed his petition for divorce against the defendant on the grounds of willful, continued and obstinate desertion for a period of two years, and on September 6, 1918, the petitioner filed an amended petition asking for a divorce on the same grounds, which petition is almost identical with the original petition except that it corrects typographical errors in the original petition by adding the words "ever since which time to the original petition in the second paragraph of the petition. Both the original and amended petitions allege desertion by the defendant on the 6th day of May, 1916, and the petitioner's cause of action is based on the desertion which took place on or about the 6th day of May, 1916.

On November 27, 1918, the defendant filed an answer and cross petition in which she denies that she deserted the petitioner on May 6, 1916, and further alleges that the petitioner from the date of the marriage to April 16, 1917, never provided her with a home and was cruel to her and only gave her ten dollars to support herself and her baby from the date of the marriage to April, 1917.

On April 16, 1917, he was ordered to pay four dollars a week by the Domestic Relations Court of the Borough of Brooklyn, and she asked in her answer and in her cross bill a divorce from the

bed and board of the petitioner. The case was referred to Vice-Chancellor Stevenson and after hearing the testimony on October 20, 1919, he advised a decree *nisi* in favor of the petitioner and dismissed the cross bill filed by the defendant and from this decree *nisi* this appeal was taken.

POINT ONE.

The petitioner has not proved a case of willful, continued and obstinate desertion.

The petitioner filed his petition for divorce on the grounds of desertion on July 19, 1918. In both the original and amended petition he alleges desertion on May 6, 1916, for a period of two years.

In the month of April, 1917, the defendant made a sworn complaint of abandonment against the petitioner in the Domestic Relations Court under section 685 of the Charter of Greater New York.

(See Deft.'s Exhibit, pages 123-124.)

In the complaint she alleges that George D'Annunzio is a disorderly person in said county and that he actually abandoned his wife and child Frances, fifteen months of age, and that he left them without adequate support and a burden on the public.

The petitioner was served with process in the action and appeared in the Domestic Relations Court of Brooklyn on April 16, 1917, and was represented by counsel. He did not contest the action and a consent decree was entered by which the petitioner was ordered to pay four dollars per week for the support of his wife and their

infant child and the matter was adjourned until April 15, 1918.

(See Deft.'s Exhibit, pages 127-128.)

The petitioner appeared, but instead of denying the desertion and abandonment and the matters alleged in the complaint and demanding a trial, although represented by counsel, submitted voluntarily to the entry of an order whereby he was compelled to pay to the defendant the sum of four dollars per week for her support and for the support of the child born of the marriage. From the testimony of George D'Annunzio given at the hearing there is nothing to show at the time, April, 1917, when he was in the Domestic Relations Court of Brooklyn that he made any overtures to his wife to return, but on the contrary by his conduct in the Domestic Relations Court on April, 1917, he showed that he acquiesced in the separation and that the same was agreeable to him.

Page 46.

"Q. Now answer my question: Why if you were anxious to have your wife and child come back, did you voluntarily pay four dollars per week instead of fighting this case?

A. In the first place, her lawyer was an old neighbor of ours and he knew me well, and I think if he was any kind of a man he could send for me. He didn't have to send for me; he could have reasoned out the conditions; he could hear my sister; instead of that she had me arrested and gets me to court and I had no way of defending myself. It shows you that her aunt was so brutal, I would say she could act very different."

Inasmuch as at the time the petitioner was in the Domestic Relations Court in April, 1917, he made no effort to get his wife to live with him, made no effort to have her return but let the

consent decree be entered against him by his consent, and being represented by counsel he has placed himself in the position of acquiescing in the separation and the same being agreeable to him it cannot be considered obstinate desertion under our Statute.

McGean vs. McGean, 66 N. J. Eq. 285,
and cases there cited.

While this decree might not be regarded as a judgment so as to be given full faith and credit even a consent decree is entitled to full faith and credit under the Federal Constitution.

Harding vs. Harding, 198 U. S. 317.

This judgment in the Domestic Relations Court in Brooklyn while it might not be such a judgment as to be entitled to full faith and credit under the Constitution, it was an order entered by a court having competent jurisdiction in the cause in a case where the defendant appeared and the decree is conclusive evidence of the abandonment of the defendant by the petitioner as the time therein fixed April, 1917, and sufficiently proves the cause of abandonment then commencing.

Freund vs. Freund, 71 N. J. Eq. 524, aff.
72 N. J. Eq. 943.

Smith vs. Smith, 57 N. J. Eq. 222.

Lake vs. Lake, 89 Atl. Rep. 534.

The general principle recognized by the courts is that independent of the full faith and credit clause in a subsequent proceeding between the same parties as plaintiff and defendant involving the same issues as those of a former action the judgment in the former suit whether in Domestic

or foreign court is an estoppel as to the issues actually litigated and determined in the first action.

Freund vs. Freund, 71 N. J. Eq. 524.

Cromwell vs. Sac, 94 U. S. 351, Black Judg. 610.

Lazier vs. Wescott, 26 N. Y. 146-151.

The petitioner in this case could have prevented this defendant from invoking the doctrine of estoppel against him if at the time he was in the Domestic Relations Court in Brooklyn he had said: "I am willing to take back my wife and am willing to support her and my child, or if he made some effort to get her to return to him, but the testimony shows that although he was represented by counsel he did absolutely nothing but consent to pay four dollars per week and made no effort to have his wife return to him.

POINT TWO.

This action is prematurely brought and a willful, continued and obstinate desertion has not been proved.

If there was desertion in this case by the defendant on May, 1916, this desertion was interrupted by her making a sworn complaint against her husband for his desertion and the complaint and the proceedings in the Domestic Relations Court of Brooklyn at that time stopped any willful, continued or obstinate desertion on her part. How can it be said that the defendant deserted her husband for two years from May 6, 1916, when on April, 1917, she made a sworn complaint against him which was a solemn protest of his

desertion and he comes into court and gives no explanation of his actions but simply consents to pay her four dollars per week.

His testimony in the case shows that after April, 1917, plaintiff sent some people to the defendant for the purpose of having her return to the petitioner, but this is denied by the defendant and her witness, but in any event there could not have been a period of two years of willful, continued and obstinate desertion of the petitions by the defendant from May 6, 1916. The original petition was filed on July 19, 1918, and the amended petition September 6, 1918. If there was a desertion in the case it must have taken place after April, 1917, when the parties were in the Domestic Relations Court of Brooklyn and therefore this action is prematurely brought, could not be properly brought before some time in April, 1919.

Whatever breaks the continuity of the desertion extinguishes forever the antecedent period as the cause of desertion. The continuity of desertion in this case was broken on April 16, 1917, by the proceedings in the Domestic Relations Court in Brooklyn.

The marriage in this case between the petitioner and the defendant was practically a forced marriage. At the time of the marriage the defendant was pregnant, and in two or three months after the marriage a child was born.

From the time of the marriage, which was on December 26, 1914, up to April 16, 1917, when the petitioner was arraigned in the Domestic Relations Court in Brooklyn, he only gave ten dollars to the defendant for her and her child's support, and he even afterwards borrowed this ten dollars back from the defendant.

The best evidence of the petitioner's intentions and feelings toward his wife and child was shown in the proceedings in the Domestic Relations Court in Brooklyn when a sworn complaint of abandonment was made against him by his wife, and a warrant was issued against him. He engaged a lawyer and came into court and allowed a consent decree to be entered against him.

How can the petitioner deny the fact that he was the guilty and deserting party, when in April, 1917, he practically pleaded non-vult to the charge in the Domestic Relations Court in Brooklyn.

If the defendant had deserted him in May, 1916, why did he not on April 16, 1917, in the Domestic Relations Court, make some effort or overture to his wife to return to him instead of remaining silent.

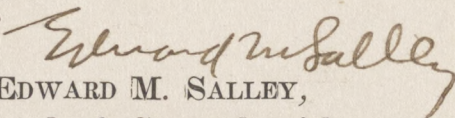
How can it be said that the defendant *wilfully, continuedly and obstinately deserted the petitioner for a period of two years from May 6, 1916, to the time of the filing of the petition which was in July, 1918, when on April, 1917, she protested against the desertion and abandonment by the petitioner in the most solemn protest known to the law a sworn complaint.*

The petitioner by his actions in view of the protest by his wife of his desertion as is shown by the proceedings in the Domestic Relations Court is estopped to deny that he is the deserting party and not his wife.

It is respectfully submitted that the petitioner has not proved a case of willful, continued and obstinate desertion under the Statute but on the contrary the proofs in the case show that the petitioner was guilty of such desertion as is unquestionably shown by the proceedings in the Domestic Relations Court of Brooklyn in addition to the oral testimony given at the hearing.

It is also submitted that the petitioner has been guilty of constructive desertion by his cruel and abusive treatment of the defendant as testified to by her and corroborated by her aunt, Miss Mary O'Sullivan. Under the doctrine of *Freund* vs. *Freund*, 71 N. J. Eq. 524, 63 A. R., page 756, the decree of the Domestic Relations Court should be regarded as strong corroborative evidence of the desertion by the petitioner of the defendant.

The policy of the law is to favor marriage as against divorce, and it is respectfully submitted that the decree *nisi* made by the Court of Chancery should be set aside and a divorce from the bed and board be granted to the defendant together with separate maintenance under the cross bill and answer filed by her.


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