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Complaint.

(Filed June 7, 1919.)

In Chancery of New Jersey.

TO HIS HONOR EDWIN ROBERT WALKER,

CHANCELLOR OF THE STATE OF NEW JERSEY.

Complaining, shows unto your Honor, your oratrix, Mary McDermott of Hoboken, County of Hudson and State of New Jersey.

1. On the 24th day of January, 1915, she was lawfully married to her present husband, Lynn M. McDermott, at Hoboken, in the State of New Jersey, by Father Kelly, a Minister of the Gospel.

2. Your oratrix and defendant cohabited at Hoboken and Jersey City, in the County of Hudson and State of New Jersey, with some interruptions as hereinafter stated from the date of their marriage until June 3rd, 1919, when she was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth.

3. There have been born to your oratrix and her said husband, as the fruit of their marriage, the following; Lynn William McDermott born on April 29, 1917, who since died on April 10th, 1918.

4. Defendant almost immediately after his marriage to your oratrix, commenced a course of harsh and cruel treatment and disagreements arose between them because of defendant's ungovernable temper and on frequent intervals from the date of said marriage until June 3rd, 1919, he used harsh and indecent language towards your oratrix without just cause. On October 8th, 1915, he struck and pushed her down the stairs. For

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awhile after that your oratrix and defendant lived together again, but owing to the fact that the defendant's temper was ungovernable it was almost impossible for your oratrix to live in peace with him and in many instances without any provocation at all the defendant threatened to kill your oratrix and throw her out of the house. In the month of October, 1915, without just cause the defendant called your oratrix a son of a bitch, and threatened to kill her with a large carving knife and stated at the time that if it were not for the law he would have done so. Conditions of home life were very disagreeable after that and defendant constantly treated your oratrix in a harsh manner and frequently abused her using vile and indecent language. In December 1917, defendant enlisted in the service of the United States although at that time, he was the sole support of your oratrix and her infant child mentioned above. At the time of his enlistment, defendant stated that he was doing so for the sole purpose of getting rid of your oratrix and to avoid supporting her. Your oratrix was then obliged to seek employment in order to support herself and was compelled to pay several debts which the defendant had incurred prior to his enlistment among which were fifty dollars for the Beneficial Loan Association and seventy-seven dollars funeral expenses for the burial of the child mentioned above. The defendant was discharged from the service of the United States in February 1919, and shortly thereafter made a home for your oratrix at No. 143 Palisade Avenue, West Hoboken, Hudson County, N. J. Almost immediatly after this defendant resumed his former cause of cruel treatment towards your oratrix and on May 11, 1919, he knocked her down on the floor and punched her in the face and called her a

son of a bitch. At this time he threatened to kill her. Your oratrix then stated that she would have him arrested for his cruel treatment towards her, but the defendant begged her not to do this and promised to behave himself in the future. The promises of the defendant, however, were of no avail and the following week he refused to give your oratrix any money with which to buy food and she was obliged to borrow the sum of five dollars from her mother in order to maintain herself. Almost every night after May 11th, 1919, when defendant returned from work, he would express surprise in finding your oratrix still in the house and always asked her why she was still hanging around and why she didn't get out. All during this time, defendant provided your oratrix with no money for her support and maintenance or provided for her in any other manner. On May 24th, 1919, defendant gave your oratrix, the sum of tweve dollars, but still continued to treat her in a harsh and indifferent manner frequently inquiring when she was going to leave and showing surprise in finding her there when he returned home from work. On May 31st, 1919, the defendant again refused to give your oratrix any money for her support and stated that he would give her no more money, threw her out of the bed, told her to sleep on the floor and to get out of the house and stay out. Defendant also stated that if your oratrix did not get out he would torment her so much that she finally would be obliged to leave. The cruel and harsh manner in which defendant has treated your oratrix has injured her health to such a degree that she is at the present time in a very nervous condition and is being treated by a physician. On the night of June 2nd, 1919, defendant again told your oratrix to get out of the house and stay out and that he would support her no longer.

5. Your oratrix shows and charges, that during the long course of abuse to which she was subjected, she became nervous and ill and is rendered unfit to properly discharge her duty as his wife, yet she continued to live with her husband trusting that she might regain his love and reclaim him to his sense of duty until June 3rd, 1919, when it appeared that further cohabitation with him may be attended with great danger of her life and being in great fear, anguish and discomfort, she left defendant's house on said day and fled to the home of her parents at Hoboken, N. J.

6. Your oratrix shows that from his past treatments of cruelty and abuse on her and his present hatred for her it would be improper and unsafe for her to return to him and live with him as his wife.

7. Your oratrix shows and charges that ever since the 24th day of May, 1919, at which time defendant paid you oratrix twelve dollars defendant has refused and neglected and still does refuse and neglect to maintain and provide for her.

8. Your oratrix shows that she is now dependent for the support of herself upon her own exertions.

9. Your oratrix charges that defendant is employed as a mechanic by the Fletcher Iron Works, in Hoboken, N. J. and that his salary or wages amount to about thirty-four dollars and fifty-two cents per week, and defendant is about twenty-three years of age and is able to earn the said sum by his personal attention to his trade and he is abundantly able to maintain and support your oratrix in a manner suitable to her position.

In tender consideration whereof, and forasmuch as your oratrix can be relieved only in this Court.

To the end, therefore, that the said Lynn M. McDermott, may answer the premises, but without

oath, and that he may 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 you oratrix and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may 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 honorable court, as provided by the statute; and in case the defendant 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 that the defendant may be required to pay to your oratrix a proper amount for counsel fees, and that she may have such further equity as to your honor shall seem meet.

May it please your honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Lynn M. McDermott, commanding him by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, etc.

ERIC H. JENTZ,
Solicitor of Complainant.

LEWIS G. HANSON,
of Counsel.

Answer to bill of Complaint.

(Filed June 20th, 1919.)

This answering, defendant shows that he resides in the City of Hoboken, County of Hudson, and State of New Jersey, and states:

1. He admits paragraph one of the complainant's complaint.

2. He admits paragraph two of the complainant's complaint, as to the first part, but denies that she was compelled to separate from him finally because of his extreme cruelty to her, she left as hereinafter set forth. He states the fact to be that she separated and deserted him without any just cause or excuse on his part, as will be hereafter stated.

3. He admits paragraph three of the complaint.

4. He denies paragraph four in that he commenced a course of harsh and cruel treatment and disagreements arose between them because of the ungovernable temper of the defendant, and denies that on frequent intervals from the date of said marriage until June 3rd, 1919, he used harsh and indecent language towards the complainant without just cause. He denies that on October 8th, 1915, he struck and pushed her down the stairs. He denies that without provocation he threatened to kill your oratrix and throw her out of the house. He says he never threatened to kill her and never threatened to throw her out of the house. He did not in October, 1915, or at any other time, call this complainant a vile and indecent name. He did not at that time or at any other time threaten to kill her with a large carving knife. While the conditions at home were disagreeable they were so because she made it so. He denies that he

frequently abused her, using vile and indecent language, he always treated her as a husband should treat his wife. He admits that in December, 1917, he enlisted and as he will describe further on, under the conditions he will describe further on. He denies that he did so to avoid supporting her or the child. He denies that the complainant was compelled to work and sent her to work, and says that she was getting her regular allotment from his soldier's pay, and he denies that she was compelled to pay his debts and funeral expenses. He admits that he was discharged from the service of the United States in February, 1919, and shortly thereafter made a home at 143 Palisade Avenue, West Hoboken, N. J. He denies that he almost immediately after this, resumed his former cruel treatment, and says he never treated her cruelly and never knocked her down on the floor and never punched her in the face and never called her a vile or indecent name, and did not at that time or any other time threaten to kill her. He paid her for food which will be hereinafter stated. He never told her to get out, particularly not around May 11th, 1919, in fact he says she always threatened to get out. He did not at the time stated, or at any other time throw her out of bed and told her to sleep on the floor, and to get out of the house and stay out. He denies that the complainant is in bad health or that he was the cause of this. Her conduct towards him, and his conduct towards her will be more particularly described in paragraph seven.

5 and 6. He denies paragraphs 5 and 6 and states in details in paragraph seven, and makes this a part of paragraph 5 and 6 and also paragraph 4.

7. He admits that he was married to her on January 24, 1915. He denies that soon after he showed a temper and that he used harsh and indecent language toward the complainant. He always spoke to her politely and used no harsh and indecent words. He denies that he struck and pushed her down the stairs as she swears to. He denies that he has an ungovernable temper, and while there was unhappiness in the family this complainant caused it. A number of quarrels happened by reason of the fact that this complainant did not take care of his money. He says that he first gave her all of his money but this complainant spent it on so many foolish things that he had to place this complainant on an allowance. This complainant says that he threatened to kill her and throw her out of the house. This the defendant denies. He says he never threatened to kill her or threatened to throw her out of the house. He says he never had such intentions. He denies that in the month of October, 1915, he called his wife a son of a bitch, and threatened to kill her with a carving knife. The truth is that she tried to kill him and she had the carving knife in her hands, and in order to save his life he had to wrest the knife from her. He succeeded in taking the knife from her, but she bit him and he still carries the marks on his arms to-day. He denies that he constantly treated his wife in a harsh manner and he denies using vile language. The fact is that she used bad words on and against him. She would continually try to hit and cuff him and kick him, and whenever she attempted to kick him she tried to kick him in his private parts. Had she succeeded, the defendant feels that he would have been crippled for life. He admits that he enlisted in December, 1917 in the service of the

United States. He did that not only because of patriotic grounds, but also because she often twitted and taunted the said defendant and this complainant called the said defendant a coward and said he was afraid, and she told him repeatedly to join the army and get out of her sight. Finally he took her word for it and did enlist in the United States army, but he did not do so in order to get rid of her and avoid supporting her or the child, in fact she got a substantial allotment from the Government. She got the sum of $40 a month while the defendant was away, and until his little boy, the only son, died, and then she got the sum of $30 per month. She has not saved a penny of all of this money. When defendant's son died this complainant had no money for the burial of the boy, and he was still in the service. Besides getting her allotment she went out to work while the defendant was in the service, and yet, had not a penny to show. This complainant was so extravagant that they had to take up a collection among her co-employees to defray the funeral bill, and this collection amounted to the sum of $40. She received $5. from his sister, Ethel McDermott, and she received the further sum of $5. from his aunt, Miss Yates, a retired school teacher. Her funeral bill amounted to about $77. She got the remainder of the funeral out of her first allotment. Her first allotment was $157. The complainant did not pay this funeral bill out of her own pocket. The complainant received her allotment until the day of defendant's discharge from the army. Defendant was discharged in February, 1919, having been in France about eleven months. A short time after this defendant started housekeeping again, but he did not resume his former cruel treatment toward

this complainant, for he never treated her cruelly. He furnished her with a fine home, which, however, she did not appreciate at all. Said complainant continually threatened to leave the defendant then. He certainly denies that on May 11, 1919, he struck her on the floor and punched her in the face, and called her a son of a bitch, or threatened to kill her. His treatment of her was always of a gentle and kind way as any decent husband should treat his wife. It is true that they had some quarrels in words only around this time, but they had happened through her fault. She would stay out late at nights, and she would come home often at one or two o'clock in the early morning, and then refuse to give an account of herself, and when defendant asked her where she had been she told him she would go and come as she pleased. She worked at that time and took all of her wages for her own use. Defendant did not wish her to work, but she told him she wanted to be independent and she refused defendant his matrimonial rights, and refused sexual cohabitation, and repeatedly told him that she would be his wife and live with him "in name only". Defendant denies that he would ask her why she was still hanging around and why she did not get out, and he denies that he refused and did not support her, for he always supported her. He has a good home and defendant is satisfied to receive her back in his home which is waiting there all furnished, and the number of which is 143 Palisade Avenue, West Hoboken, N. J., provided she conducts herstlf as a wife should conduct herself. At and around and before defendant's enlistment he gave her all of his wages, and yet at the end of the week she was always in debt and she was so extravagant and so improvident that

at times defendant was forced to borrow from his mother to make ends meet. When this would happen, defendant would reprove her in a gentle way. Defendant denies that he *only* gave her $12. on May 23, 1919, and acted in a harsh and indifferent way towards her. Defendant says he gave her $12. then and each week thereafter. He gave her $12. but this was for the table, and defendant paid in addition the rents separately and paid gas and electric bills sparately. This was practically all he could afford at that time. On May 31, 1919, defendant told her that he would refuse to give her any more money for she had told him she would not cook for him, and she had not cooked for him for a long time. He told her that if she would cook for him and treat him as a decent wife, he would give her money. Defendant denies that he threw her out of bed and told her to sleep on the floor. Defendant denies that he said he would torment her so as to oblige her to leave. Defendant treated her in a very decent way but she did not treat him in a right way. She would continually threaten to leave around this time, and called him vile and indecent names, would refuse to cook for him, and would not use the money for food which he gave her. Defendant states in addition that she would at times have fits of remorse and beg him to forgive her for the way she acted and carried on and stayed out all hours of the night, but these fits would last but a short time, and then she would carry on in the same old way. She forced defendant to cook his own meals, and often times he did not receive meals, and often he did not have time to cook them nor did he have the ability to do much cooking, and frequently he was forced to go to his mother's or

sister's house and eat there. At times when he would bring food home for her to cook she would throw good food into the garbage pail. Defendant denies that on the night of June 2, he told her to get out of the house and stay out. Complainant told him that she was independent, refused to cook for him and said she would go out at whatever hours of the night she pleased, and so defendant told her that he would not support her until she would mend her ways. She always threatened to leave, and she did leave his home without just cause or excuse on June 2, 1919, and has remained away ever since. As stated before, defendant had a good home. Defendant has paid the rent up to the month of July, and she is welcome to come back if she behaves herself and acts as a good wife should. Defendant has paid his rent which is $29. She is now working for the American Railway Express Company at 26th Street, between 7th and 8th Avenues, New York City. He inquired there but a few days ago and was told she was still there, and was told this by an employee of the place. Complainant, shortly before, said to him she had received a raise from first salary. Defendant knows her first salary was $11. a week. Defendant was also informed that complainant would soon receive another raise of salary or wages. Complainant is filing clerk there and files papers. She is now with her mother at 68 Washington Street, Hoboken, N. J. She has changed her addresses several times, for, a short time ago, Miss Yates, who met her was informed that she had applied for a better and new position, and she gave Miss Yates as a party who could give reference for her. She then gave her address as 807 Park Ave., Hoboken, N. J. He has been informed from sources which he believes are true

that complainant has been in the habit of going out with other men, and while defendant was in the army, complainant wrote him a letter that she had entertained two strange soldiers. Defendant says strange, for their names were strange to him. He felt restless and chafed when he heard this, for he knew the weak character and habits of his wife, and knew she was easily tempted, and defendant wrote her back that she had no right to harbor soldiers while he was in the United States Army, and these soldiers should seek entertainment elsewhere. Complainant wrote back that they were lonely and needed her, and that they were hungry. Defendant wrote back that the Government would feed them.

8. He denies paragraph eight, as stated in the last preceding paragraph, seven.

9. He denies paragraph nine, but states the facts to be as follows: His salary now is $31.96 and if a holiday comes in a week then for every day he does not work, or for each day or holiday he does not work, this will be deducted by $5.76. Defendant has no money in the bank except the sum of $5. Out of his wages he must pay to the Union $1 a month, each week defendant pays the sum of $10 for board. He is paying his furniture off on the installment plan and pays $3. each week. On the first of each month he must pay his rent for their mutual home, and which amounts to $29. per month, and in addition he is keeping his home open and is paying for electric light and gas which amounts to $1.50 to $2.00 a month. His incidental expenses such as clothes, car fare amount to $5. a week. If complainant is satisfied to return she may have a good home with defendant, and defendant stands ready and willing to do the best he can if she comes back. Complainant is still working. Com-

plainant is living with her mother and she is making from $12. to $15. a week. Complainant left against defendant's will, and before complainant left she threatened to leave defendant continually and took many of defendant's belongings and mutual things they had saved together.

10. He prays to be dismissed with his costs and charges, in this behalf most wrongfully sustained.

EDWARD STOVER,
Solicitor and of Counsel
with the Defendant.

Replication.

IN CHANCERY OF NEW JERSEY.

(Filed July 10th 1919.)

Between

MARY MCDERMOTT,

Complainant,

and

LYNN M. MCDERMOTT,

Defendant.

The complainant joins issue on the answer of the defendant.

ERIC H. JENTZ.
Solicitor of Complainant.

Order of Reference.

Order of Reference signed and filed August 11th, 1919, in which Vice Chancellor John Griffin is appointed.

Designation.

Designation filed September 3rd, 1919, fixes January 7th, 1920, at 10 o'clock A. M., at Chancery Chambers, Jersey City, N. J., to hear testimony.

Opinion of Griffin, Vice Chancellor.

Submitted, January 7, 1920; decided January 13, 1920.

For the Complainant, MR. JENTZ,
For the Defendant, MR. STOVER.

GRIFFIN, V. C.:

The bill in this cause is filed for maintenance based on extreme cruelty. The parties were married in January, 1915. A week before the first child was born, which, as I recall it, was the latter part of 1915, he threw a shoe at her, striking her in the stomach, apparently without reasonable provocation. On September 28th, 1915, he threw a pocket book at her, striking her in the face and bruising her. On July 15th, 1917, he threatened to kill her. All the foregoing acts of cruelty are corroborated, and I take them to be true, notwithstanding his sole denial.

The wife charges that on October 25th, 1915, he threw her downstairs. This is not corroborated. In October, 1915, she says he threw her down and had a carving knife in his hands, and, fearing that he would use it on her, she bit him in the arm. He says he now bears the scar from this.

His story is that she threatened him with the knife, and he took it out of her hands, and that

she bit him. Neither side is corroborated as to this.

On May 11th, 1919, she says he punched her in the jaw, raising a swelling, and struck her on the leg with a file, leaving a blue bruise. The existence of the swelling and the bruise is testified to by Mrs. Schofield, who says that on the same afternoon she asked the defendant what was the matter with them, and he said that "she got fresh and he hit her." I regard this, therefore, as, corroboration.

The wife also says that on June 2d, when about to retire, she, being in her menstrual period, he desired to have sexual intercourse, and she declined on account of her condition, and that he seized her by the hand, wrenched her wrist, forced her into bed and forced the intercourse, which resulted in a prolonged flowing, for which she afterwards sought a doctor. The doctor testified to his treating her, but said that while this flow could come from intercourse, during the menstrual period, yet it could also come from other causes. She left him on the 3rd of June, 1919, and filed her bill on June 7th, 1919. About a month after she left she called him on the 'phone and asked him to come to see her, and he told her to see his lawyer. She, also, had a lawyer at the time.

At the hearing neither party appeared willing to resume marital relations, he putting it on the ground that he wanted her to reform, namely, to stop nagging him; and she, on the ground that she was afraid of a continuation of his cruelty, and said that if she knew he would reform she would live with him.

I think the evidence clearly demonstrates that the defendant was guilty of extreme cruelty.

(*Close vs. Close,* 25 N. J. Eq., 526; 2 Biddle N. J. Div. Prac., p. 96). I am satisfied, from the character of the defendant as portrayed by the testimony that he has not repented of his misconduct, and there is no reasonable certainty that he will amend his ways; thus, the defendant, if she returned, could be reasonably apprehensive of a continuance of his past conduct.

The husband denies, *in toto,* the charges made against him, but I think it is perfectly plain that they are true, as least in so far as the corroboration extends.

As a counter charge against the wife (not, as I take it, in justification of his conduct) he asserts that his wife was a nagger, that she called him a "dope" and a "poor fish". I cannot bring myself to believe that, giving the greatest effect to these charges, they would justify the action of the husband. (*Duvale vs. Duvale,* 65 Eq., 771, affirming 34 A. R., 888, and the cases cited in the note to 2 Biddle, *supra,* p. 98). But I am satisfied from the appearance and demeanor of the complainant on the stand, that she was not a nagger. She may have had cause to complain against her husband for his inability to support her. But there was not the slightest indication in the personality of the complainant which would support the theory that she was anything other than of normal temperament. The witnesses in her behalf testify to her even temperament, and the only testimony to the contrary is that of the parent and the relatives of the defendant, all of whom as I perceived them on the stand, gave exaggerated opinions of the conduct of the complainant; but, giving all the weight that necessarily attaches to this testimony, I am not prepared to say that, in any one instance, the as-

saults made by the husband on the wife were based upon any provocation.

I will advise a decree for the complainant.

In view of the fact that the wife is now earning fifteen dollars a week, and the husband thirty-four, I will allow the wife, at the present time, five dollars a week, with leave to apply to change the allowance if the situation of the parties changes.

Counsel may come before me with a form of decree on Monday the 19th of January, 1920, at the Chancery Chambers at Jersey City.

Final Decree.

(Filed January 19th, 1920.)

This cause coming on to be heard in the presence of Eric H. Jentz, Solicitor for complainant and Edward W. Stover, Solicitor for defendant, and upon reading the pleadings in the cause and the proofs submitted by both the complainant and the defendant from all of which it now appears, to the satisfaction of the Chancellor, that the complainant, Mary McDermott and the defendant Lynn M. McDermott, were lawfully married on or about the 24th day of January, 1915, and that the defendant, without any justifiable cause, has been guilty of extreme cruelty towards the complainant so as to render it unsafe and improper under the existing circumstances for her to co-habit with him or be under his demand and control and that said complainant was justified in leaving the defendant on June 3rd, 1919; and the defendant, Lynn M. McDermott refuses and neglects to maintain and provide for her; and that the parties have their domicile in this State, and the defendant

was personally served with process in this State.

It is thereupon, on this nineteenth day of January, A. D., Nineteen hundred and Twenty, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the defendant, Lynn M. McDermott, do pay to the complainant, Mary McDermott, or to her solicitor, the sum of five dollars, for each and every week succeeding the date hereof until the further order of the Court to the contrary.

And it is further ordered, adjudged and decreed, that a copy of this decree be served forthwith upon the defendant, or his solicitor, and that within ten days after said service, the defendant do give bond to the said complainant in the sum of five hundred dollars, with sufficient surety or sureties, to be approved as to form and security by one of the Special Masters of this Court, for the punctual payments of the alimony and maintenance by this decree awarded to be paid, at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of his surety or sureties to pay the said sum or sums when the same shall fall due according to this decree, that the complainant be at liberty to apply to this Court to award and issue process of sequestration, or for such other process or order, as this Court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this Court.

And it is further ordered, adjudged and decreed, that the said defendant do further pay to the complainant, or her solicitor, the costs of

this suit to be taxed, and also the sum of fifty dollars, which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this Court.

And it is further ordered, adjudged and decreed, that this decree from the date hereof, shall be a lien upon the real and personal estate of the defendant within this State.

And it is further ordered, adjudged and decreed, that either party be at liberty to apply, upon a future change of circumstances of the parties, for a variance or modification of this decree, touching said alimony and maintenance, as shall be just and equitable.

Respectfully advised,

JOHN GRIFFIN,

V. C.

Notice of Appeal.

(Filed January 29th, 1920.)

To the above complainant or her solicitor:

The defendant hereby appeals from the final decree made in this Court in the above stated cause and particularly appeals from so much of the final decree as declares and adjudges "And that the defendant, without any justifiable cause has been guilty of extreme cruelty of the defendant, so as to render it unsafe and improper under the existing circumstances for her to cohabit with him or be under his demand and control and that said complainant was justified in leaving the defendant on June 3rd, 1919". And said defendant also appeals from that part of the

decree which adjudges that "Lynn M. McDermott refuses and neglects to maintain and provide for her". And he also appeals from that part of the decree which orders, adjudges and decrees "that the defendant Lynn M. McDermott do pay to the complainant Mary McDermott or to her solicitor the sum of five dollars for each and every week succeeding the date hereof", which said date was the date when the decree was signed, namely January 19, 1920. And he also appeals from that part of the decree which adjudges "that the defendant do give bond to the said complainant in the sum of $500. with sufficient surety or sureties to be approved as to form and security by one of the Special Masters of this Court for the punctual payments of the alimony and maintenance by this decree awarded to be paid at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of the surety or sureties to pay the said sum or sums when the same shall fall due according to this decree, that the complainant be at liberty to apply to this Court to award and issue process of sequestration or for such process or order as this Court may, under the circumstances deem equitable and just". And he also appeals from that part of the decree which orders and adjudges that defendant do further pay to the complainant or her solicitor the costs of this suit to be taxed, and also the sum of $50 as counsel fees, and that complainant have execution for said costs and counsel fee. And he appeals from such part of the decree where it says that it shall be a lien upon the real and personal estate of the defendant within this

State. He appeals to the Court of Errors and Appeals in the last resort in all causes.

EDWARD STOVER,
Solicitor and of Counsel
with Defendant.

Dated, January 28, 1920.

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

EDWARD STOVER,
Of Counsel with the Def't.

Petition of Appeal.

(Filed February 14th, 1920.)

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

The petition of Lynn M. McDermott, who appeals in the above cause respectfully shows that:

Your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 19th day of January, in the year 1920, wherein Mary McDermott was complainant and the said Lynn McDermott was defendant, in this respect:

That the said decree adjudges that, "And that the defendant (Lynn McDermott) without any justifiable cause has been guilty of extreme cruelty of the defendant, so as to render it unsafe and improper under the existing circumstances for her (Mary McDermott) to co-habit with him or be under his demand and control and that said complainant was justified in leaving the defendant on June 3rd, 1919", whereas in truth the judgment ought to have been that defendant has not been guilty as aforesaid, and

said complainant was not justified in leaving him. And said defendant also appeals from that part of the decree which adjudges that: "Lynn M. McDermott refuses and neglects to maintain and provide for her", whereas the truth is that he did not refuse and neglect to provide for her and so it ought to have been adjudged. And he also appeals from that part of the decree which orders, adjudges and decrees: "That the defendant Lynn M. McDermott do pay to the complainant Mary McDermott or to her solicitor the sum of five dollars for each and every week succeeding the date hereof", which said date was the date when the decree was signed, namely January 19, 1920, whereas the truth is and the jurgment should read that he should not pay as aforesaid. And he also appeals from that part of the decree which adjudges "That the defendant do give bond to the said complainant in the sum of $500. with sufficient surety or sureties to be approved as to form and security by one of the Special Masters of this Court for the punctual payments of the alimony and maintenance by this decree awarded to be paid, at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of the surety or sureties to pay the said sum or sums when the same shall fall due according to this decree; that the complainant be at liberty to apply to this Court to award the issue process of acquestration or for such process or order as this Court may, under the circumstances deem equitable and just"; whereas in truth he ought not give such bond in manner specified, and the said decree was erroneous. And he also appeals from that part of the decree which orders and adjudges "that defendant do further

pay to the complainant or her solicitor the cost of this suit to be taxed, and also the sum of $50. as counsel fees, and that complainant have execution for said costs and counsel fees"; whereas in truth he ought not pay said costs or counsel fee, and said decree is in that respect erroneous. And he appeals from such part of the decree where it says that it shall be a lien upon the real and personal estate of the defendant within this State; whereas in truth it should not be a lien, and the decree is erroneous in that respect.

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

EDWARD STOVER,
Solicitor of Appellant,
of Counsel with Appellant.

(Endorsed):
"Filed Feb. 14, 1920.
Thomas F. Martin,
Clerk."

Answer to Petition of Appeal.

The answer of the respondent to the petition of appeal of the appellant.

The respondent admits it to be true that a certain final decree was on the Nineteenth day of January, 1920, made and entered in the Court of Chancery as in the petition of appeal is stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agree-

able to law and equity and she prays that the same may be affirmed with costs to be adjudged to this respondent.

ERIC H. JENTZ,
Solicitor of Respondent.

LEWIS G. HANSEN,
of Counsel.

Testimony and Minutes of Final Hearing.

APPEARANCES:

ERIC H. JENTZ, ESQ.,
For the Complainant.
EDWARD STOVER, ESQ.,
For the Defendant.

Before:

HON. JOHN GRIFFIN,
Vice Chancellor.
Chancery Chambers, Jersey City.
January 7th, 1920.

The case for the Complainant.

MARY MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. What is your full name? A. Mary McDermott.

Q. Where do you live? A. 68 Washington Street, Hoboken.

Q. Is this your husband, Lynn McDermott—this gentleman here? A. Yes, sir.

Q. When were you married? A. On January 24, 1915.

Q. Where? A. In St. Mary's Church, Hoboken, N. J.

Q. By whom? A. By Father Kelly.

Q. Just tell the circumstances of your marriage—how you came to get married to Mr. McDermott? A. Well, I was keeping company with him——

MR. STOVER: I object; it is not relevant here. I do not see how that can apply to this case, and I object to the circumstances about her getting married. The whole gist of this action is framed after she was married.

THE VICE CHANCELLOR: I will sustain the objection. I am overruling the objection now because it may be premature. It may be, later on, if the evidence indicates a course of treatment by the husband of the wife subsequent to the marriage, that is denied, that, in order to find a motive for his subsequent treatment, his conduct before marriage, or the motive for the marriage may be inquired into.

MR. JENTZ: That is just the reason why I asked the question, your Honor.

THE VICE CHANCELLOR: Well, you can produce that later, if it is necessary.

Q. After you were married, where did you go to live? A. With my mother-in-law, Mr. McDermott's mother.

Q. Did you board with them? A Yes, sir.

Q. Did your husband work at that time? A. He did.

Q. Where did he work? A. W. & A. Fletcher Company—a machine shop. He was an apprentice.

Q. Do you know what his earnings were at that time A. $4.80 a week.

Q. And you lived with his mother? A. Yes, sir.

Q. During the time you lived with his mother,

what were the relations between you and your husband? A. Why, there was nothing of any account because I was only there until I was taken to the hospital with appendicitis; and after that we took up furnished rooms on Garden Street.

Q. How long were you at his mother's? A. Three months; maybe a little over.

Q. Then what happened after that? A. When I came out of the Hospital——

Q. (Interrupting.) How long were you in the Hospital? A. Two weeks.

Q. And after you came out of the Hospital, where did you go to live then? A. Why, there was some trouble because I had to go back to the Hospital to have my cut dressed, and I went to my mother's to get my mother to go with me, and a shower came up that day, and my husband came down for me to come home, and my mother would not let me go because I was in no condition to leave the house, and he raised the dickens, and told my mother she could go to hell and support me.

Q. Who was present on that occasion? A. My mother. I believe my father was there, too.

Q. (By the Vice Chancellor.) What time was this? A. This was ten o'clock at night. I had to go back to the Hospital, I had appendicitis.

Q. What month, day and year? A. In May.

Q. What year? A. 1917—no, 1915; pardon me.

Q. (By Mr. Jentz.) And after you were through in the Hospital, after you got out of the Hospital, where did you go to live then? A. As I say, I went back to his mother's, and then I had to go back to have my wound dressed, and it was raining that day, and he insisted upon my leaving the house in the pouring rain; and my mother said, "No, she is not in condition to go; if you stop in to-morrow, she will go home; and he came

back the next night and said his mother said I had to come back; and my mother said I was not able to go, because I was not able to walk. I came out of the hospital too soon.

Q. Where did you go to live then? A. Went up with my mother on Washington Street.

Q. Where did you go to live after this took place?

THE VICE CHANCELLOR: I want to find out how long you stayed at your mother's house that night?

THE WITNESS: Just the night, because it was raining.

THE VICE CHANCELLOR: You went back the next day?

THE WITNESS: The next day I met him coming from work, and I asked him if he wouldn't come and go by ourselves.

Q. Just what interfering was there in his house at the time you lived there?

MR. STOVER: I object to that.

THE VICE CHANCELLOR: Oh, it is a highly improper thing for the children to live with their parents, if they can live away from them.

BY THE VICE CHANCELLOR:

Q. Now, you objected to living with his parents? A. Yes, sir.

Q. You asked him to furnish a home? A. Yes, sir.

Q. Well, he could not under the salary he was earning, under the circumstances, when you were married.

BY MR. JENTZ:

Q. How long after that time did you still contin-

ue to live with his mother? A. I did not go back there, I just went up there and got my clothes, and we took a furnished room on Garden Street.

Q. Do you remember the number? A. It was between Sixth and Seventh, I believe it was 607; I am not positive of the number.

Q. In Hoboken? A. In Hoboken.

Q. How long did you live there? A. Well, we only were there a week because the conditions were so bad there we couldn't stay; then we moved to 61 Sixth Street, another furnished room house.

Q. Also in Hoboken? A. Yes, sir. We stayed there until September, when we went to housekeeping in 921 Clinton Street.

Q. (By the Vice Chancellor) In September of what year? A. 1915.

Q. (By Mr. Jentz) During the time you lived in these two furnished rooms what were the relations between you and your husband? A. Well, there was quarrels, between us, but the most quarrels happened when we took our own home.

Q. When was it you took your own home? A. In September, 1915.

Q. Where was that? A. 921 Clinton Street.

Q. And was your husband working at that time? A. He was.

Q. And how much was he earning, do you remember? A. I believe fifteen dollars a week.

Q. Do you remember where he was working? A. Why, he was working the D. L. & W. shops, and he was working in Clark's Machine Shop.

Q. And during the time you lived there in Clinton Street, did anything take place between you and your husband? A. Why, on October 8th there was a quarrel.

Q. What was the quarrel about? A. Well, I don't just remember the starting of the quarrel,

but I know I was going to tell his mother he had hit me; I was going around and tell his mother; he said "I will be damned if you go around and tell her"; and I went around with him, and in the hall he pushed me down and kicked me.

Q. In the hall where? A. In his mother's hall.

Q. Do you remember where that was? A. 261 Twelfth Street, Hoboken.

Q. What did he do? A. He kicked me downstairs, and said "I will be damned if you will tell her."

Q. What kind of stairs are they? A. It was a long flight of stairs, and I was half-way up the stairs when he pushed me and kicked me; and, in order to help myself, I pulled the belt off his coat.

Q. How far did you fall? A. At least five steps.

Q. Were you injured in any way? A. Nothing to speak of.

Q. What happened after that? A. Then I went home, and he started to say I was smart, and everything like that.

Q. You went back to where? A. To my own home.

Q. And your husband came in, and what did he say? A. He said I thought I was smart, and he started to abuse me and call me all sorts of names.

Q. What did he call you? A. Called me a "son of a bitch"—that was a pass-word of his.

Q. What else? A. He told me to go to hell, I could get out; and I tried to commit suicide with poison, but it was not poison in the bottle.

Q. Just relate that incident to us? A. Well, when I tried to take the bottle, he tried to get the bottle from me; but he didn't succeed, and he went around to his doctor, and he refused to come, and the doctor called St. Mary's ambulance, and I was taken to the Hospital, and he was arrested.

Q. Tell us further what happened? A. Then, the next morning Judge Carstens presided at the trial, and he asked us what it was all about, and I said that he threatened to leave me, and I wouldn't let him; and he asked me if I had home, and I said "Yes". He told me I should go home; and I told him, I said I was willing to go home; he said no, he wouldn't have anything to do with me; he said he was willing to support me, but he would not live with me.

Q. Well, after the incident in the Hoboken Police Court did you go back to live in Clinton Street at your home? A. No, sir; he would not live with me then.

Q. Where did you go? A. I went to my mother's at 318 Washington Street.

Q. How long did you stay at your mother's at that time? A. For one week. I got a position and went to work.

Q. During the time that you were at your mother's, did your husband call there? A. Why, he called on Monday night, and I was not there; and my mother went to the door, and she asked him what he wanted—

MR. STOVER: I object to that, if the Court please.

Q. You cannot tell what your mother said; just tell us what you know. A. Then I met him at the door, and he asked me to come back with him, and pleaded and begged with me to come back; I told him I would not go back if he was going to act as he did; and he told me he would not; and we went to live in a furnished room, because everything, in the meantime, had been taken to my mother's home; then we went into a furnished room in Bloomfield Street—1010 Bloomfield.

Q. What occurred there? A. Nothing, until

we went back to Clinton Street; then we moved to 903 Clinton Street.

Q. What occurred there? A. It was around July or August, I believe, the trouble started again; he threatened to kill me with a carving knife, and he had the carving knife over me, and had me on the floor—

Q. (By the Vice Chancellor) First, state the date? A. I don't know the exact date, but I know it was in July.

Q. What year? A. 1916; and it was because, I believed, I didn't have any money for him; he wasn't earning a very big salary at that time.

Q. (By Mr. Jentz) What was he earning? A. Fifteen dollars a week.

Q. Were you working? A. No, sir.

Q. Tell us how this quarrel started? A. He asked me for money, and I didn't have it to give to him, because it was on Friday, and tomorrow was his pay-day, and I didn't have it to give to him, and he started and called me a son-of-a-bitch, because he always called me that.

Q. Just go on and tell us what happened? A. He got angry, because he had a very nasty temper—

Mr. Stover: I object to that.

The Vice Chancellor: What did he say?

A. He took the carving knife, and he knocked me on the floor, and he kneeled with his knee on my stomach, and, in order to get the carving knife from him I bit him, and he is carrying the scar now where I bit him; anl the lady hollered on the next floor, because I screamed and hollered on the floor and she heard it.

Q. (By the Vice Chancellor.) Did this woman see it? A. No, she only heard it. I don't know where the woman is at present.

Q. (By Mr. Jentz.) (Showing the witness a knife.) I show you that, and ask you if you recognize that as the knife your husband attempted to use on you? A. Positively.

MR. JENTZ: I ask that that knife be marked in evidence (and the same is marked Exhibit C-1).

Q. What happened after that? A. Why, then, that was in July—

Q. Well, just a minute: After he attempted to attack you with this knife, and you bit him in the arm, how did the quarrel end—did he proceed further, or what was the result? A. No, he rushed out of the house, and I believe he went to the doctor; I am not sure, I believe he went to Dr. Zennick; I am not positive of that.

Q. When did he return? A. Well, when he came home from work that night.

Q. What was said then? A. Nothing; the thing was dropped entirely; there was nothing more said that night.

Q. How much money had he been paying you during that time? A. Well, he earned fifteen, and gave me thirteen.

Q. How long did you live there at this address? A. Until October, I believe, of 1917.

Q. Did he do anything else to you while he lived there? A. Well, he didn't do it while I was there, but I was at somebody else's house when he did do it.

Q. Tell us any incident where you say he mistreated you? A. Well, Mrs. Wilson was in confinement at the time.

Q. Who was Mrs. Wilson? A. At the time she lived at 201 Jackson Avenue, Jersey City.

Q. And you say that she was in confinement? A. Yes, sir; and I was taking care of her.

Q. (By the Vice Chancellor) State the date? A. On September 28th. Her child was born on the 27th.

Q. What year. A. 1916.

Q. (By Mr. Jentz) What were you doing in her house? A. I was taking care of her in her confinement.

Q. Acting in the capacity of a nurse. A. Yes, sir.

Q. And while you were there taking care of her, did your husband come there? A. Why, he was there; he wasn't working; he had quit his job on Friday before, at the Interborough Rapid Transit.

Q. Was he also staying at Mrs. Wilson's place? A. He was also there; yes, sir.

Q. What did he do to you at that house? A. He came in and asked me for money; he was not working. I said "I haven't got any", and the pocket-book was lying there and he grabbed it from me, and he opened it, and there was nothing in it, and he threw the pocket-book, and he hit me right on the side and if Mrs. Wilson was there she would have got it, but I got it right there (indicating the left cheek.)

Q. What sort of a pocket-book was it? A. It was a leather pocket-book, about that big (witness indicates a pocket-book about five inches in length).

Q. Did he throw it at you suddenly? A. Yes, sir; he did.

Q. Did he throw it at you with any force? A. Why, I had a black and blue mark on my face.

Q. How large was this black and blue mark that you had? A. Well, it was from about here to there (indicating)—about an inch mark, that was black and blue.

Q. How long did that mark remain on your

face? A. Well, for a couple of days. It turned yellow before it went away.

Q. Was anybody present at that time? A. Mrs. Wilson was in the bed at the time.

Q. (By the Vice Chancellor) She saw it? A. Yes, sir; she saw it.

Q. (By Mr. Jentz. And, after he did this, what happened then? A. Mr. Wilson came in and told him to get of his house, and not to come in again.

Q. Did he go out of the house then? A. He did, after he gave him a lot of abuse.

Q. Just tell us what your husband said—was it in your presence? A. No, he was outside of the door, talking to Mr. Wilson.

Mr. Stover: I object.

Q. What happened next? A. Then he went home, and I believe he went to work in Kennedy's. He worked two nights.

Q. Where? A. Kennedy's in New York. He worked two nights, and that was the only position he had for a while,

Q. For a period of how long? A. Well, for two nights—I think he worked all day and all night, and then he came back on Saturday.

Q. Come back where? A. To Mrs. Wilson's house.

Q. Did anything happen there? A. Well, I asked her—I pleaded with her to let that go by, I said, because I was there; and she let it go by, and he came there, and he was to have Sunday dinner there, but through some reason, I don't know what, he didn't come to his Sunday dinner; he went to his mother's.

Q. When next did anything happen? A. In December, 1917, he enlisted—

Q. Just a moment before you tell us that—did

you have a child as the result of this marriage? A. Yes, sir.

Q. When was the child born? A. April 29, 1917.

Q. Whereabouts? A. 200 Monroe Street, Hoboken.

Q. Were you and your husband living together at that time? A. Yes, sir.

Q. Just prior to the time the child was born did your husband do anything to you? A. Well, I was with my mother at that time, because I was not very well, and I stayed there, but my home was at 200 Monroe Street; and one morning he was getting ready for work; I said, "Hurry, you will be late", and he was so mad he took a shoe and hit me right in the stomach; it was a wonder the child wasn't marked when it was born.

Q. Was this just before the child was born? A. Just a week before.

Q. How long before? A. About a week.

Q. And when he hit you with this shoe was it one of his own shoes? A. One of his own shoes; he was putting his shoes on.

Q. What part of the body did he strike? A. My stomach.

Q. Did you feel any pain? A. Well, I was sick all day from it; I was upset over it.

Q. Did anybody see him do that? A. My father and mother.

Q. Did he call you any names at that time? A. Called me a son-of-a-bitch.

Q. (By the Vice Chancellor) Do you mean to say he did it in the presence of your father and mother? A. Yes, sir; he did.

Q. What did your father do? A. My father was getting dressed; he said "Don't hit her while I am here".

Q. Was that all he did? A. Well, he didn't want to cause any trouble for me. My mother

said never to do that for my sake; and he said "When I get her alone I will kill her." Then that passed over, and we went to our own home, and the week after, on the 29th, my baby was born.

Q. (By Mr. Jentz) What was his attitude towards the child? A. Well, I don't know whether he did think so, or not but several times he accused me of it not being his.

Q. Did he ever say that in the presence of anybody? A. No, he did not.

Q. Was he working at that time? A. Yes, sir.

Q. How much was he making at that time? A. $18.00.

Q. Do you remember where he was working? A. I believe in the D. L. & W. shop.

Q. When did he enlist in the Army—shortly after that? A. Why, he wasn't working from December 2nd until the 13th; and on the 12th he was to my mother's house—

Q. Of what year? A. 1917.

Q. How long was he out of work? A. From December and until the 12th; and then he went to my mother's house at night, and he said he was going down to get a place the next day; he went out, and said "If I don't get a position, I am going to enlist in the Army." I said, "Please don't enlist; think of the baby"; and he said, "If I don't get a job I am going to enlist." He went out, and came back about nine o'clock on the 13th of December, and said "I have enlisted." I said, "did you get a job?" He said "Yes, I have got a job at $4.50 a day" at some place in Lafayette; and he enlisted after he got the job.

Q. Did he tell you that? A. He told me that.

Q. At the time he enlisted did he go right away in the Army? A. Well, he went away on the 14th. That night I went with him up to his mother's

and aunt's and they had even asked him not to enlist—his mother asked him when he went to enlist.

Q. At the time he enlisted did you have any funds or money? A. No; I was living in Greenville, and the rent was $22. a month, and the rent had not been paid for the month of December. He left me there, and my mother had to borrow money to give to me to get my furniture and things out of there; and the rent, to this day is not paid.

Q. How old was your baby at this time? A. Seven months old.

Q. When, next, did you see your husband after that? A. Well, he came in from camp continually. The baby died in April, and I only had around $8.75 a week.

Q. Did you go to work after your husband left for the service? A. He left on the 14th of December, and on the 16th I went to work for the Wells-Fargo Express, which is now the American Railway Express.

Q. How much did you earn there? A. $8.75 a week.

Q. Where was the child during this time? A. With my mother.

Q. (By the Vice Chancellor.) Well, he went in the Army—when did he come out of it? A. He went away on December 14th, and he came back to Hoboken, or to America, rather, on February 1st, and he was discharged on February 10th, 1919, from the Army.

Q. Well, you got the allotment that was coming to a wife? A. Not until a month after my baby was dead.

Q. (By Mr. Jentz.) Tell us the circumstances —what you did to get this allotment?

THE VICE CHANCELLOR: Well, can you

show that the husband did anything directly to prevent his wife from getting the allotment?

MR. JENTZ: I think I can show, if the Court please, that this man enlisted in the Army as a single man.

THE VICE CHANCELLOR: I don't care about that.

MR. JENTZ: And, in order to get the allotment, his wife had to apply for it.

THE VICE CHANCELLOR: I don't care about that. You are here to prove extreme cruelty on the part of this husband, justifying the wife in abandoning him, and his subsequent failure to support her. The two things must concur—the proof of abandonment and the inhuman treatment. I do not care why she did not get the allotment. It will take a week to try out every little incident.

MR. JENTZ: I think it is necessary to show this man's attitude toward his wife, to prove the fact that he went into the service as a single man. He could have gone in as a married man, and his wife could have got the allotment from the beginning.

THE VICE CHANCELLOR: I overrule the offer.

Q. When did you first get any money? A. Six months after he was in the Army, on May 14, 1918, was the first money I got.

Q. (By the Vice Chancellor.) How much did you get then? A. $157 and some cents—eleven cents, I believe.

Q. (By Mr. Jentz.) Now, this is one hundred and fifty-seven dollars and some cents you speak of—what did you do with that money? A. Well, may I tell about the collection that was taken up in the office?

THE VICE CHANCELLOR: No; no. Mr. Jentz, we are trying a case simply as to the conduct of a husband whose cruelty to his wife, it is alleged, justified her in leaving him.

MR. JENTZ: I think that was one of the elements of the cruelty—the fact that he went into the Army.

THE VICE CHANCELLOR: I do not. I do not pay the sightest attention to it.

Q. During this time your husband was in the Army, did you have to support yourself? A. I did; I had to support myself and child.

MR. STOVER: I object to that, and ask that it be struck out.

THE VICE CHANCELLOR: I overrule the objection.

Q. When did your child die? A. On April 29, 1919.

Q. What year? A. 1918.

Q. And you paid the funeral expenses? A. I did; when I got the allotment.

Q. And did you, while your child was still alive, support yourself and the child, during that time? A. Yes, sir; I did.

Q. Your husband returned home from the Army when? A. On February 10th, 1919.

Q. Just tell us what happened after that—where you went to live? A. I went to live with his aunt, Miss Yates, for six weeks, at 262 Palisade Avenue, West Hoboken.

Q. What were your relations while you were living with Miss Yates? A. Well, there was quarrels because he had a habit of calling me "Red", and he didn't say anything before her; it was only when I was alone that any such things were said.

Q. Well, what were "any such things" he said? A. Well, if I didn't do just what he wanted me to do he called me a son-of-a-bitch, because that was his pass-word.

Q. Did you still continue working after he came back? A. Yes, I did, through Miss Yates' and Mrs. McDermott's suggestion.

Q. Just tell us how that came about?

THE VICE CHANCELLOR: You are simply wasting your time, Mr. Jentz.

MR. JENTZ: This is one of the elements of non-support.

THE VICE CHANCELLOR: Did he abandon her?

MR. JENTZ: Not at that time.

THE VICE CHANCELLOR: Well, the abandonment and the non-support must concur. One is not any good without the other.

MR. JENTZ: I am just coming down to that.

THE VICE CHANCELLOR: Well, come down to it.

Q. How long did you live with Miss Yates? A. Six weeks.

Q. And after you lived with her, where did you live? A. 143 Palisade Avenue, West Hoboken.

Q. Did you live there together with your husband? A. Yes, sir.

Q. What were your relations there? A. Well, things went along pretty good until May 11th.

Q. (By the Vice Chancellor.) 1919? A. 1919.

Q. (By Mr. Jentz.) And what happened on May 11th? A. He was fixing the electric light in the kitchen; I told him to be careful, or he would berak the bulb, and he told me to mind my own damn business, and get the hell out of the way. I told him "Well, don't break it, be-

cause you won't be able to fix it; so he slipped off the chair——

Q. Continue. A. Well, first, on May 11th, 1919, when he got up out of bed he wanted to take his bath, and his underdrawers were a little large, and he asked me to fix them—his underdrawers—and I said I would; I said "the water is not ready yet"; I was in the front room playing the piano; he said "When I want a thing done I want it done", and he took and pulled me out of the piano stool down on the floor, and I got up and said "Don't you think you are going to knock me around any more." He said "Oh, shut up; I will kill you", and he hit me in the face, right here (indicating) and my mouth bled.

Q. When did he hit you on the leg? A. That was later on in the day. Then I went up and started to get dressed, and told him I was going to have him arrested; he pleaded and begged me not to have him arrested, and said he wouldn't try it again. Later on he was fixing the electric light, and I told him to be careful, or he would break it, and he was mad because I hadn't done what he wanted before, and he slipped off the chair, and he said if I hadn't been watching him he wouldn't have fell; he had a file in his hand, and took and hit me right here across the leg, and my leg was black and blue.

Q. (By the Vice Chancellor.) What day was this? A. This was on May 11th—Sunday.

Q. All this happened on Sunday, the 11th? A. Yes.

Q. (By Mr. Jentz.) What happened after that —just continue right along? A. Shall I continue with who he invited up and things that went on?

Q. Everything that happened that day. A. He had invited Mr. Dirks and Miss Myer up that

Sunday; we were supposed to go to Greenville to a girl's house, but we didn't go; and in the afternoon about three o'clock Mr. Dirks came up, and he was in the front room sitting there, and I opened the door, and he seen my face, and when he came into the front room I said "What do you think about him hitting me?" He said to him "What did you hit her for?" He said "Well, I will do it again if she gets fresh"; he says "I hit her, and I will do it again if she gets fresh".

Q. What happened then? A. Well, that Sunday we went down to Mrs. Myer's house; I showed Miss Myers the marks on my leg and face.

Q. (By Mr. Stover.) Now, who do you mean by "we"? A. My husband, Mr. Dirks and myself.

Q. (By Mr. Jentz.) What happened next? A. Then I went to Miss Myer's house first off, and she went with us, and we went down to my mother's house, and I showed my mother my face and my leg; and then we went to a show that night, and he asked Mr. Dirks to go up on the hill with him again and have a cup of coffee; so I made the coffee, and we had coffee and cake; and I told him I wasn't going to talk to him from what he had done to me, because my leg and face hurt me.

Q. (By the Vice Chancellor.) This was on May 11th? A. Yes.

Q. (By Mr. Jentz.) When next did anything happen between you and him? A. Well, there was no more hitting, but on May 18th, he refused to give me any money.

Q. Did he give any reason for it? A. No; just because of the fight on the Sunday before he wouldn't give me any money, because I threatened to have him arrested; and I borrowed money from my mother, because I was only earning

eleven and a half dollars a week then, and I had to pay my expenses.

Q. What expenses did you have to pay? A. My carfare and lunch money; and I always brought butter and eggs home, and that I paid for out of my own money, always.

Q. During that time how did your husband treat you with regard to having sexual intercourse with him? A. Well, at the time I was unwell, and he didn't care whether I was or not; he said he married me and he could do as he pleased with me.

Q. What did he do to you? A. I refused him sexual intercourse for that reason, because I was unwell, and he just insisted on it, and he forced me to it. Well, he succeeded, and the following week I told him I had been flowing so I had to go to the Doctor's; and I asked him to go to the Doctor's with me, and he positively refused to go; he said "You are not sick, you are only faking it". and my mother went with me to Dr. Fink.

Q. Do you know what trouble you had? A. Dr. Fink said I was suffering from a hemorrhage, because I flooded for six weeks afterwards.

Q. What happened next after that? A. On the week of the 24th he gave me twelve dollars; I bought the food for him that week; and he didn't bother much about me; as soon as he got his supper he would go next door to his mother's or his sister's, as was his habit; but he always said to me, "Well, what are you here for? I didn't expect to find you here; I don't want you here tomorrow; when I come home to-morrew I will throw you the hell downstairs." Well, I was there; so the following week, the week of the 31st, he said, "I am not going to support you any more". He said, "I am done supporting you",

he said, "you will not get a cent out of me", and he gave me no money.

Q. Did he give any reason for this? A. No; the week before he had given me no money, and the sister came up for the milk bill money, and I told her I didn't have it, which was no lie, because he gave me no money——

MR. STOVER: I object to that.

THE VICE CHANCELLOR: Well, the witness has testified to it; it doesn't amount to very much.

Q. Just continue. A. And he had given me no money; and I told her I had no money to pay the milk bill.

Q. (By the Vice Chancellor.) Did you tell that to your husband? A. No; I told that to Mrs. Hines.

THE VICE CHANCELLOR: Then that will be stricken out. Do not tell anything that happened out of the presence of your husband, unless you told him about it afterwards.

Q. (By Mr. Jentz.) What happened on May 31st, in the house, between you and the husband? A. On May 31st, he went to his mother's for his dinner. He had given me no money which I could buy any food with. I had been home two days that week myself, and I did not have very much money. He went to his mother's to get his dinner. A little while after he came back with something for me to eat; and he didn't hand it to me, he threw it on the table; he said "there, you can eat that."

Q. Did you know how much he was earning? A. He was earning $34.06 a week.

Q. Did anything happen during that night, or evening? A. He went out, and I went down to my

mother's for dinner, and I came back around nine o'clock; and I believe he went to Singac that Sunday. He did not come home until very late, about two o'clock.

Q. (By the Vice Chancellor.) What date was this? A. The 31st.

Q. Was this on Sunday? A. On Sunday.

Q. (By Mr. Jentz.) Well, what happened after that? A. On Monday night when I came home from work (he always got home before me) he said "Well, are you here again? What are you hanging around for? I told you to get out." So I paid no attention to him; I said I wouldn't get out. So I went to work the next day, Tuesday; I came home and I went to my mother's for supper; I didn't go home because I knew there would be nothing there for me to eat; and when I came back there was a note on the table that said "Mrs. McDermott, there is something in the ice box for you to eat."

Q. (By the Vice Chancellor.) Have you got the note? A. I don't know. I gave it to my mother. And there was two meat balls there and some mashed potatoes. Well, I had ate my supper and I was not hungry, so I didn't eat them, and I believe he ate some of them in the morning when he went to work.

Q. (By Mr. Jentz.) Did anything happen that night? A. He pushed me out of bed and told me to get out, because I refused sexual intercourse, under the circumstances.

Q. (By the Vice Chancellor.) He kicked you out of bed? A. He kicked me out of bed; and I took a pillow and quilt and went into the next room, on the floor, and he said he would be damned if I slept anywhere else; he said "You will sleep where you belong."

Q. (By Mr. Jentz.) Were you unwell at that time? A. I was.

Q. Did you tell him so? A. I told him, and he knew it.

Q. What happened next? A. He said he didn't want to see me there to-morrow night when he came home. That was June 2nd. He said "If you are here, I will throw you down stairs".

Q. What happened then? A. I didn't go back then any more; I took my things and went to my mother's; because he told me if I was there he would throw me out of the house, he didn't want me there. He said if I would go out he would give me five dollars a week to stay away from him.

Q. Was there an incident in Montclair, that happened, that you have not related here? A. Well, when he was on strike in Fletcher's we were living with my mother there, and he was not working, and he had no money, and he wanted me to get money from my mother. I asked my mother and she said she couldn't afford it. He wanted money to go to Hoboken to his mother's; and my mother told me she didn't have it, so he jumped up from the table and started an argument, and was going to go to hit me——

Q. What did he say? A. He said I was a liar, I did have money; so he got up to hit me, and my father says "You won't hit her while I am here"; "Well", he says, "my father is a bigger man than I am, and I licked him, and I guess I can lick you, too."

Q. (By the Vice Chancellor.) Where was this? A. That was in Montclair, in 1917.

Q. What month? A. On July 5th, was the date—after the 4th of July.

Q. (By Mr. Jentz.) Was there any other incident that happened between you and your hus-

band, that you have not related here? A. Well, there was a time, down in Monroe Street, where he had got some money off a beneficial loan society, and there was an argument over the money, and he hit me on the jaw, and my sister-in-law, Miss McDermott, she remembers it, because I went to the Doctor. He almost fractured my jawbone.

Q. (By the Vice Chancellor.) When was that? A. That was in 1917, before my baby was born—around October 1, I judge.

Q. Were you carrying the child at that time? A. Yes, sir, I was.

Q. (By Mr. Jentz.) How frequently did your husband use any abusive language toward you? A. Well, he never could talk decent; if he had been decent and talked decent, things would not have been as they are to-day.

Q. What words did he use towards you? A. Must I tell them all?

Q. Yes.

THE VICE CHANCELLOR: Oh, no.

A. Some are very indecent; I don't like to use them.

Q. Did he often use those words to you? A. He did.

Q. In the presence of other people? A. No; he didn't; he was always a gentleman in front of others.

CROSS EXAMINATION BY MR. STOVER:

Q. Please state where you reside now? A. 68 Washington Street.

Q. How long have you resided there? A. The last time? Since June 3rd I went to my mother's.

Q. Who supported you until that time? A. Myself.

Q. You go out working, do you? A. I do; yes, sir.

Q. What salary do you earn?

Objected to as immaterial. Objection overruled.

O. Sixteen dollars a week.

Q. And before that, will you please state where you have lived, or where you resided before that? A. 143 Palisade Avenue.

THE VICE CHANCELLOR: If it comes to a question of alimony, of course, what the wife earns has got to be taken into consideration.

THE WITNESS: I have some things to pay out of the money, too.

Q. Where did you live before that—before you lived in Washington Street? A. 143 Palisade Avenue, with my husband.

Q. How long did you live in Washington Street, 68 Washington Street? A. Since June 3rd.

Q. How long was it? A. From June 3rd until the present date; I don't know just the exact days.

Q. Where did you live before that? A. 143 Palisade Avenue.

Q. Will you please state if you did not live in the house of Harry Dirks before that? A. No, sir; I did not.

Q. Have you ever lived in the house of Harry Dirks? A. No, sir.

THE VICE CHANCELLOR: What do you mean?

MR. STOVER: Well, we are bringing up the man, Harry Dirks, and we say that some of these quarrels resulted from her friendliness

with one Harry Dirks; I am simply laying the foundation.

Q. When did you leave your husband's home? A. June 3rd.

Q. 1919? A. Yes, sir.

Q. And have you gone to him since? A. To my house?

Q. Yes, to your husband? A. No, sir.

Q. Have you spoken to him since? A. I have, over the telephone.

Q. When was that? A. I don't remember the date, but I called him up in reference to his insurance, and I asked him if I could see him.

Q. What did you say? A. I told him I wanted to see him; he said I should see Mr. Stover, and that is all the conversation there was.

Q. What did you say about insurance to him? A. I didn't say anything, because he did not give me an opportunity.

Q. Will you please state if you wanted to go back to him at that time, or offered to go back to him? A. No, because I did not have it in mind, because I did not like his cruel treatment.

Q. You don't want to go back to him now, do you? A. He has no home to go back to.

Q. Will you please state if you want to go back to him, if he supplied a home? A. If he has a home I will think it over.

Q. What do you mean by "thinking it over"—what do you mean by that?

THE VICE CHANCELLOR: Well, Mr. Stover, you do not think, that if what this lady has stated is the truth, she is bound to go back to a man of this type, do you?

MR. STOVER: No; if it is the truth. We want to prove that she deserted him.

THE VICE CHANCELLOR: You can prove

that by your own witnesses. You can cross-examine this witness.

Q. Did you send him the key of the home? A. Yes, sir.

Q. When did you send him the key of the home? A. Why, in June, sometime; I don't remember the exact date.

Q. How did you send it to him? A. Through the mail.

Q. You enclosed it in an envelope, did you? A. Yes, sir.

Q. (Showing the witness an envelope.) Is this the envelope that I show to you? A. Well, my mother mailed it for me.

MR. JENTZ: I do not see the materiality of this, your Honor.

THE WITNESS: That is my mother's handwriting.

THE VICE CHANCELLOR: I will permit it.

Q. And you told her to send the key, to the home, to him? A. Yes, because I was working.

Q. Will you please state if she sent anything else, besides the key, in this envelope? A. Not to my knowledge.

Q. Now, did you tell her to write anything to your husband in this envlope? A. No, sir.

Q. Will you please tell me if she did write to your husband in this envelope, and enclose it in this envelope? A. Not to my knowledge.

Q. You mailed this? A. She mailed it herself; she had it registered.

(The envelope is marked for identification A-1.)

Q. Will you please state what was the date of the maling of this key to your husband, re-

freshing your mind from the envelope that you saw your mother mail, or told your mother to mail? A. It was June 14th, according to the envelope.

Q. And when was this 'phone talk? A. I could-
10 n't tell you, Mr. Stover; I don't remember the date.

Q. Was that before you mailed the key, or was that afterwards? A. No, that was after.

Q. And you did not say you would live with him again when you had this 'phone talk? A. I did not have that sort of a conversation; I just asked him to see me.

Q. Did you come to me when he told you to come to me? A. No, I did not.

Q. And you have not see nor spoken to him
20 since that time? A. No.

Q. And you never offered to go back to him? A. No, I have not.

Q. Are you sure about the exact date of your leaving the home, that it was the 3rd? A. I am positive.

Q. And what day was this, of the week? A. Well, Tuesday night.

Q. Was he there at the time when you left? A. Well, he ordered me out the night before.

Q. No, answer the question? A. He couldn't
30 be there when he was working.

Q. Oh, he was working, and he was not there when you left? A. No, but he had told me to get out. I think that was enough.

Q. I did not ask that. He was not there when you left, was he? A. No.

Q. And the night before he was there, and he told you to get out? A. Yes.

Q. What did you say to him when he told you to get out? A. I told him I would.

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Q. Now, you told him where you were going? A. No, I did not.

Q. Had he been supporting you at that time? A. No, sir; he had not.

Q. When did he give you money the last time before the week of your leaving? A. On May 24th was the last money he gave me.

Q. That was how many days ahead of your leaving—that was about seven days, wasn't it, before you left, or about ten days before you left. A. It was more than seven, it was over a week.

Q. Well, it was about a week, wasn't it? A. About a week.

Q. And what did he give you then that last time? A. Twelve dollars.

Q. What was he earning there? A. $34.56.

Q. Was that enough to support yourselves? A. Well, If I hadn't been working we would not have been able to pay twenty-nine dollars a month rent.

Q. You were sick, and working at the same time while you were sick—is that right? A. I was.

Q. You were working to-day, are you not? A. I am working, yes.

By the Vice-Chancellor:

Q. Did you pay the rent out of the twelve dollars a week? A. Out of what he gave me.

Q. Yes. A. No, he paid the rent, himself.

By Mr. Stover:

Q. Did he pay anything more than what he gave you? A. Well, he paid for his furniture.

Q. He paid for the furniture? A. Yes.

Q. And what did he pay for the furniture? A. $3. a week.

Q. And is that all cleared up now? A. That I don't know; that I couldn't tell you.

Q. Well, who has the furniture? A. Why, he has.

Q. Have you asked him for the furniture? A. No, I have not.

Q. He kept the house open after that, did he? A. I don't know.

Q. Now, don't you know that he kept the house open for about a month, or two, after you left? A. I don't know; I didn't see him; I don't know.

Q. And you left, and never went back again and never went to see whether he kept the house open? A. No.

Q. And you do not know how long he held the home open for you to return, do you? A. No, sir.

Q. You don't know that the home is open now, if you returned? A. Well, I have been told by the man that collects from him that it is not open.

Q. Well, has the man told you when it ceased to be open?

THE VICE CHANCELLOR: What is the use of going into all of that?

Q. Now, we will go back again, and cross examine as to this: You said you lived with his mother three months after you were married? A. I did.

Q. You said you lived with his mother three months after you were married? A. I did.

Q. And you agreed to do that, did you not? A. I did.

Q. And at the time you married him, of course you knew he was a poor young man, didn't you? A. Well, he had reasons for marrying me.

Q. Well, you knew that he did not earn much at the time you married him, did you not? A. I did.

Q. What did he earn at the time? A. $4.80.

Q. And he told you that? A. Yes, sir.

Q. And then he said he would have to go to his mother's with you, to live, did he not?

THE VICE CHANCELLOR: Why go into all of that? There is no dispute about any place they lived.

MR. STOVER: I would like to ask how much he gave her during those three months.

MR. JENTZ: We admit that he supported her during that time, to the best of his ability at the time.

Q. He supported you then, to the best of his ability? A. Well, I was working myself. I paid board to his mother.

THE VICE CHANCELLOR: I do not care about that. The question is was this man's conduct so brutal as to justify the wife in leaving him, thus constituting an abandonment on his part.

MR. STOVER: He is trying to prove non-support.

THE VICE CHANCELLOR: Well, that is the second part of the thing that constitutes abandonment, under the statute.

MR. STOVER: That I am going into now.

THE VICE CHANCELLOR: Well prove it.

Q. In the three months he supported you the best he could? A. I supported myself.

Q. Yes, but he supported you,too? A. Pardon me, he did not; he gave his mother three dollars, and I paid my own board.

THE VICE CHANCELLOR: That has nothing to do with it. The refusal to support must follow the abandonment. Now, was she justified in leaving him on June 3rd, 1919?

MR. STOVER: However, counsel has gone into the past history about the abuse.

THE VICE CHANCELLOR: Go ahead, and cross-examine her about the abuse.

Q. Will you please state if he hit you or abused you during those three months? A. No, not while we were there.

Q. He treated you nice and gentlemanly, did he not? A. Well, when he was alone he said things that were not very nice; but one night his father had to get out of bed to him; that is how nice he treated me.

Q. Well, you said he treated you all right, in your examination, in the three months? A. Well, this was the incident—I will tell you it: I came from work; I did my ironing because my mother was unable to do it; and he was lying on the bed which I didn't know, and I laid the clothes there, and he kicked them on the floor, and, naturally a girl ironing clothes, would feel like having her clothes kept ironed, and I picked them up; and I did not hit him, as he claimed; and he got up and went to go by me, and called me a son-of-a-bitch, and the father jumped out of bed and told him not to hit me, and the father took him out in the kitchen and talked to him.

Q. How did you lay the clothes down at that time? A. I laid them on the bed.

Q. Did you lay the clothes on top of him? A. I didn't know he was there, because he was asleep.

Q. I see; then you laid them on top of him, didn't you? A. I did.

Q. Didn't you try to smother him, kill him? A. I did not.

Q. Where did you lay the clothes? A. On his feet I laid them, partly over his body.

Q. Are you sure about that; are you sure you did not lay the clothes on his face? A. I am positive I did not.

THE VICE CHANCELLOR: Suppose she did—do you think a man like this defendant, by laying clothes across his face, is going to smother him, or that she could smother him by that?

MR. STOVER: Well, I don't think she could, but I think she tried.

THE VICE CHANCELLOR: It is perfectly absurd.

THE WITNESS: I had no reason to try to smother him.

THE VICE CHANCELLOR: That is enough.

Q. Where did you move to then, after the first three months? A. After I came out of the Hospital we went and took up furnished rooms on Garden Street.

Q. How long did you live on Garden Street? A. A week. Conditions were so bad there we had to leave there.

Q. What do you mean by that? A. Well, it was not a very good neighborhood, and there wasn't very nice people in the house.

Q. I see. Now, did he support you that week, all right? A. Why, yes.

Q. And he gave you all of his salary that he was making, did he not, that week? A. No, he never gave me all of his money; he always kept his own pocket money.

Q. Well he gave you nearly all his salary that week?

THE VICE CHANCELLOR: What difference does that make. There is no question about the fact that while they lived together he supported her, and there was no cause of action existing that was availed of. She says when he abandoned her the abandonment

took place on June 3rd, 1919, since which time he has not maintained her. Now, so far as the maintenance before that time is concerned, that is past history. The right to maintenance subsequent to June 3rd, arises from the fact that the husband abandoned his wife, (if he did), and then neglected and refused to support her. The two things, under the statute, must concur.

Q. When did you have your first quarrel, do you remember? A. Do you mean when I was first married?

Q. How soon after you were first married? A. Well, about nine months after, when we were living in Clinton street.

Q. You say he had to marry you? A. He did; yes, sir.

Q. What do you mean by that? A. Well, he got the best of me, and he was compelled to marry me; his own mother tried to give me medicine to prevent the birth of the child.

Q. Just a minute, I did not ask you that.

MR. JENTZ: I think she has a right to answer the question.

THE VICE CHANCELLOR: No, that is not an answer to the question.

Q. How was he forced to marry you? A. Well, he got me in trouble, and he told his mother about it, and she told him the best thing to do was to marry me.

Q. Had you had him in court? A. No, sir.

Q. Then he married you of his own free will, did he not? A. He did, yes, sir, when his mother told him to.

Q. I see. He was not forced to marry you,

then, was he? A. No, not through the court, or anything.

By The Vice Chancellor:

Q. Had you been keeping company with him before? A. Yes, sir; I had been keeping company with him before, and he got the best of me, and he told his mother about it, because I was in trouble.

Q. There was no child born then? A. No, because his mother gave me the medicine to prevent it.

By Mr. Stover:

Q. Have you ever called him any names? A. I have called him a "dope" and a "poor fish," I will tell you that, when he got me mad.

Q. When did you call him a "dope" and "poor fish"? A. I can't tell you that, Mr. Stover.

By the Vice Chancellor:

Q. Well, you called him that frequently didn't you? A. No, it was not a habit. He did so much tantalizing. He had a habit of calling me "Red" but I didn't happen to have red hair, as I am accused of.

Q. When he called you "Red," you called him a "dope" and a "poor fish"? A. Well, not both at the same time. I might say it to anybody, in talking.

By Mr. Stover:

Q. When did you call him a "dope" the first time? A. I don't remember.

Q. Was that continuous, or on an off? A. No.

Q. When did you first call him a "poor fish"? A. I don't know.

Q. Will you please state if you called him a "son-of-a-bitch"? A. Never; I never used those

words; I am not in the habit of talking that way.

Q. And please state how often you called him a "dope", if you remember? A. I don't remember.

THE VICE CHANCELLOR: Oh, well, what difference does that make?

Q. Why did you call him a "poor fish"? A. Perhaps because he was tantalizing me.

Q. Did you start to call him that first, or only when he began to call you names?

THE VICE CHANCELLOR: Oh, well, why not pass all over that? It will take a month to try this case, if you go in such details, that are immaterial. There is one thing that must be proven, and that is whether the conduct of this man towards this woman drove her from the house. If that is proven then his failure to support her constitutes abandonment and neglect to support, under the statute. The two things, as I have pointed out, must concur. Now, address yourself to the question of abandonment, because it is quite evident that since the wife left the husband he has not supported her and has not maintained her. Now, if the complainant proves the abandonment, that is, the husband's driving her from the house by his conduct, then she is entitled to a decree in her favor.

MR. STOVER: I might say that we accuse her of calling him a lot of names.

THE VICE CHANCELLOR: I don't care; prove that in your own case.

MR. STOVER: And she has accused us, and we want to show that that was brought

about—his calling her names—for the reason that she called him names first.

THE VICE CHANCELLOR: Well, suppose she did call him a "poor fish" and a "dope," does that justify him in treating her in this way? Go ahead.

Q. You say he used a knife on you? A. He did.

Q. Do you remember when that was? A. In July of 1916.

Q. Wasn't that in October of the last year? A. Well, I don't remember the exact date, Mr. Stover; I never put it down, with pencil and paper, because I never figured on a thing like this.

Q. In your affidavit you swore it was in October, a year before is not that so? A. That was the time I was trying to commit suicide; that was the time.

Q. In your affidavit you swore it was in October of the year before,—1915? A. Well, then, it was.

Q. Now, do you really know when it was—was it 1916 or 1915? A. I don't know the exact date, as I have told you before.

Q. Do you remember the exact month when it was that he wielded that knife on you? A. Have I got "October," Mr. Jentz?

MR. JENTZ: I believe you did say October. It might have been made through a mistake. You can change your testimony now.

MR. STOVER: I object to this statement that she might have made a mistake. I object to it.

THE VICE CHANCELLOR: Well, counsel need not make the statement, because it is a very common occurrence that counsel put in affidavits words and figures that are clearly

mistakes, and they have been corrected afterwards by the witness on the stand.

Q. Will you please state if you know when he struck you with the knife.

THE VICE CHANCELLOR: She did not say he struck her with the knife; she said that he got down on her, and had his knee on her stomach, and he had this knife and she bit him on the arm to save herself, and then he got up and went to the Doctor's for treatment.

Q. Do you know exactly when this was? A. Well, if I have October (referring to the affidavit) it must be October.

Q. Well, do you know now when it was? A. Mr. Stover, I told you I don't remember the exact date.

Q. Well, will you please state if you remember the year? A. Well, it was 1916, if I am not mistaken?

Q. Are you mistaken? A. Have I got "1916," Mr. Jentz?

MR. JENTZ: Just tell counsel, as you remember it now.

MR. STOVER: I object to counsel helping her.

A. Well, it was 1916.

Q. When you said "the year before" it was a mistake, was it? A. It may have been a mistake on Mr. Jentz's part in the typewriting; it must be a mistake if he has "1915," because there was one incident in 1915, and another in 1916.

Q. Do you remember the month when this was? A. Well it was October.

Q. Will you please state if you kicked and cuffed your husband, ever? A. Never.

Q. Who had the knife in their hands first? A. He did.

Q. Now, was that the knife there, that was offered in evidence (referring to Exhibit C-1)? A. That is the knife. It was his grandmother's knife, and he gave it to my mother, and then in Montclair, he took it from her; and it happened I took it with the things when I left there.

Q. Who was there at the time he tried to strike you with the knife? A. Nobody was there. The woman underneath knocked on the floor with a broom.

Q. And when she knocked he let up on you, did he? A. Yes, he did; he let up when I bit him, and he dropped the knife.

Q. Will you please state if he struck you or pierced you at all with the knife? A. No.

Q. You say there was another time there was a knife that he threatened you with? A. No, only once with a knife.

Q. Well, you say that happened twice? A. No, I didn't; I said there was one incident in October, at the time I left him in Clinton Street, or he left me, when I was in the Hospital.

Q. You spoke about his enlistment, and you said that was against your consent, is that correct? A. It certainly was.

Q. Is it not a fact that you had asked him to enlist, and called him unpatriotic? A. Never, never.

Q. You got the allowance for the whole time—the allowance from the Army—did you not? A. I did not get it until my baby was dead one month.

Q. That was how much in all—the allowance you got from the Army? A. $157.11.

Q. Did you write to him when he was in the Army, in France? A. Surely, I wrote to him.

Q. And he wrote to you, did he not? A. Yes.

Q. Did you write him about men while he was in France, and that you were keeping company with other men? A. No.

Q. Or having them in the house?

MR. JENTZ: I object to this.

THE VICE CHANCELLOR: I overrule the objection.

A. Oh, no; I was not allowed to have any company.

Q. Will you please state if you had other men as company there in your house while he was away in the Army- A. Never.

Q. Will you please state if other men wrote to you while he was in the Army? A. Never.

MR. JENTZ: I object to it, as immaterial.

THE VICE CHANCELLOR: I overrule the objection.

Q. Now, I show you a letter, and ask you if you had this letter here, in your possession—if you received the letter in your possession? Here is the letter, which has no date (exhibiting a paper to the witness)? A. May I read it?

Q. I show it to you and ask you to read it. A. May I read it aloud.

Q. Yes, I would like to have it read out loud, if the Court please.

MR. JENTZ: I would like to ask Mr. Stover's purpose in offering this letter at this time?

THE VICE CHANCELLOR: He is not offering it; he is calling the attention of the witness to it. (To the witness) Did you receive that letter?

A. Yes; it is from a friend of his; and this party who wrote this letter likes Miss Myer, and he wanted to meet Miss Myer at my house. That is the purpose of that letter. I wrote them another letter, and Mr. Renk wrote me asking me to get Miss Myer to my house—a young lady that is here now.

THE VICE CHANCELLOR: You received the letter; that is enough.

(The letter just identified by the witness is now marked for identification, A-2).

THE WITNESS: That letter was written at the time of a little sociable we had.

BY MR. STOVER:

Q. When did you have your sociable, or try to have your sociable? A. On Hallowe'en.

Q. Was your husband home at that time? A. No, he was not.

Q. Who did you invite to the sociable? A. Mostly girls, because I didn't have any men friends. Mr. Renk met us on Washington Street one night, and he told me he liked Miss Myer, and he asked me to have Miss Myer there; but this Mr. Renk is a personal friend of Mr. McDermott's.

Q. Did you ask him to have some friends there? A. No, I did not; but he writes and askes me that he would bring a couple of fellows, if I needed them at the party.

Q. And you answered it? A. I did not answer any of his letters.

Q. Will you kindly tell me what time he (your husband) was discharged and came back to you? A. On February 10th, 1919, he was discharged.

Q. What happened then—where did he go? A. He went to his aunt's, 262 Palisade Avenue.

Q. Who was there at that time? A. Miss Yates and I was there, and himself.

Q. What happened there—did you board there? A. Yes.

Q. And you boarded there how long? A. Six weeks.

Q. And he supported you all the time, all right, did he? A. Well, he paid for the food that was there for Miss Yates and himself and I; that was the board.

Q. How did he treat you at Miss Yates'? A. He had a habit of calling me "Red," as I have told you before.

Q. Will you say you called him any names? A. I admit I called him a "poor fish."

Q. How many times did you call him a "poor fish"? A. I don't know.

Q. How many times did you call him "dope" at Miss Yates' home? A. I don't know.

Q. Often? A. Not very often; no, sir.

Q. Who would start to use these names first? A. Well, he had a habit of tantalizing; he tantalized Miss Yates so one night that she jumped on the floor with nervousness.

Q. Where did you move from that place? A. Then we went to 143 Palisade Avenue.

Q. You lived there how long? A. We went there in March—March 15th.

Q. And you stayed there how long? A. Until June 3rd.

Q. And he paid the rent all the time, did he? A. He paid the rent.

Q. He gave you his wages? A. He gave me twelve dollars a week, when he gave it to me.

Q. Were you working at that time? A. I was.

Q. And how did he treat you there—did he beat you there, at this time? A. On May 11th, Yes, sir, he did.

Q. What brought that about? How did that occur? A. Well, he was getting ready to take his bath, and I was in the front room playing the piano, and he asked me to fix his underdrawers; I told him the water wasn't ready yet; he told me "When I want a thing, I want it," and he came in and pulled me off the stool, and punched me in the face, right here (indicating).

Q. Will you please state whether you called him a "dope" at that time? A. No, he called me a "son-of-a-bitch."

Q. Did you call him any names at that time? A. I called him a "dope" after he knocked me down and hit me.

Q. Did you call him a "son-of-a-bitch," or anything like that? A. Never; I never use those words.

Q. Never called him that in the presence of Miss Yates, or anyone else? A. Never. I never used those words. Later on, he was fixing the electric light, and I said, "Be careful, Lynn, you are going to break the wire." He told me to get the hell out of there, and if I wouldn't watch him he wouldn't break it, and he slipped and fell; and he said if I hadn't been watching him he wouldn't have fell. Then he struck me with the file across my leg. Then I told him I would have him arrested.

Q. Was that the only time he struck you there, when you lived in that place? A. Yes.

Q. And how long after he struck you did you leave there? A. Until June 3rd.

Q. His conduct had been all right, then? A. He wasn't there to eat his meals; he went to his mother's, and I didn't see very much of him, because I was working.

Q. He didn't talk to you, did he? A. No, he did not.

Q. Now, you say he told you continually to

leave, is that true? A. He told me to "get the hell out."

Q. Then he did talk to you? A. Well, when he told me to get out; but not in the way he should have talked to me, he didn't.

Q. How often did he say that to you? A. Every day of the week, until I got out.

Q. What did you say to him when he said that to you? A. I told him I would, then.

Q. Do you know Harry Dirks? A. I know him; I have known him since I was eleven years old.

Q. Has he gone out and taken you out to Coney Island—Dirks?

MR. JENTZ: I object to that, as improper cross examination.

THE VICE CHANCELLOR: I will allow it.

A. He did. I was with my aunt and her husband, and Mr. Dirks.

Q. Has he taken you out to Coney Island, ever? A. Once.

Q. Has he taken you out at all after that? A. No, sir; I may have met him on Washington Street and walked up Washington Street with him, but I have never been to any place with him.

Q. Have you ever gone to his home, to Harry Dirk's home? A. Yes.

Q. Have you lately gone to his home? A. Well, I was up there one day last week, to see his mother.

Q. How long were you up there in Harry Dirk's? A. Well, a couple of hours.

Q. How many times since your husband has left you, or since you have left your husband, have you gone to Harry Dirks' home? A. I don't know.

Q. Well, can you tell about? A. Well, I cannot tell the exact times, because his mother has

been sick, and I went up there when she was sick to help her out, because she was an elderly woman.

Q. And there is only one of them home besides Harry Dirks? A. She is the only one.

Q. Have you been there often, to Harry Dirks' home? A. I cannot say how many times I have been there.

Q. Have you been there quite often?

THE VICE CHANCELLOR: She has answered the question. I do not see how that is material.

Q. Have you done anything wrong with Harry Dirks? A. No, sir; positively no.

Q. Have you committed adultery with Harry Dirks?

MR. JENTZ: Objected to.

THE VICE CHANCELLOR: I will let her answer it.

A. I have not.

THE VICE CHANCELLOR: Now, you cannot offer evidence to dispute that.

MRS. MARY BARTHOLOMEY, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. Where do you live? A. I live at 68 Washington Street.

Q. And are you the mother of Mrs. McDermott? A. I am.

Q. Do you know anything about their relations? A. Well, I know when they lived with me it was not very pleasant; I came very near being dispossessed out of the house with his fighting, one time.

MR. STOVER: Objected to.

Q. Just tell us when that was, Mrs. Bartholomey—what Mr. McDermott did at that time—when it was, and what he did? A. Why, he was always fighting; he got the habit of fighting and calling us vile names. Do you think it was very nice for me?

THE VICE CHANCELLOR: That means nothing. Contain yourself, madam. Tell, in an easy manner, if you saw him strike your daughter, and abuse her, and what he said and did.

A. I did. He hit her with a shoe right in the stomach, one week before the child was born. The child was born on the 29th of April.

Q. Tell us what happened? A. They came to my house for me to take care of her, and then this fight came, and he was fighting continually there; I couldn't stand it; they had to go home. Then I went and took care of her when the child was born, and I was never paid for it; I was promised to be paid, but I was never paid—

MR. STOVER: I object.

BY THE VICE CHANCELLOR:

Q. You started in to tell of the scene when he struck her in the stomach with the shoe; just confine yourself to that. A. Well, he hit her with the shoe; he was getting ready for work, and she told him to hurry, she said, "Lynn, hurry, or you will be late," and I don't know just what he said, but he picked up the shoe and fired it at her and hit her in the stomach.

Q. You saw it? A. I saw it; I was right there.

BY MR. JENTZ:

Q. Do you know of any other incident when he

either hit or attempted to hit her? A. Yes; when we were living in Montclair; it was the 5th of July, it was dinner time, in 1917.

Q. Go on. A. He was on strike in Fletcher's, and he had been in to Hoboken the day before this day; he was going in again, and he wanted money, and she hadn't any, he hadn't been working; so she wanted money out of me, and my husband wasn't earning a great deal of money, and I was keeping them until he got to work again—

Q. (By The Vice Chancellor): That is enough; you didn't give her the money? A. No. Then he fought with her, and was going to hit her.

Q. (By Mr. Jentz): What did he do? A. He called her a son-of-a-bitch. He told me to go to hell, at the same time.

Q. You heard it? A. Yes.

Q. What did you say then? A. I told him to go; and he went up and packed his clothes, and he said when he got her alone he would kill her; so that afternoon he got the 1 or 2 o'clock train, and went into Hoboken to his mother.

Q. You did not see him strike her that day? A. He ran after her upstairs, but he did not hit her, because her father and I were there.

Q. Do you know of any other incidents? A. Another time I saw her face, when he hit her in the face, but I did not see him hit her.

Q. When did you see him hit her? A. Well, right the next day, or the day after, I couldn't say which.

Q. When did you see Mrs. McDermott's face with the bruises on it? A. On May 11th, when she came to my house.

Q. In what year? A. In 1919.

Q. Just describe the bruises? A. She had a bruise here on the lip (indicating), and her leg was all black and blue.

Q. How large was the black and blue mark on the leg? A. Well, it was the length of your finger, anyhow, across the top of the leg here.

CROSS EXAMINATION BY MR. STOVER:

Q. When was this bruise—1918 or 1919? A. 1919.

Q. Are you sure about the date? A. Yes, I am sure about the date.

Q. Are you sure it was not the year before? A. No, it was not the year before.

Q. You have testified it was 1918, just before, the first time you told it? A. Well, I might have made a mistake; it was 1919.

Q. Have you made a mistake now? A. No, I haven't made any mistake.

Q. What makes it so fresh to your memory now, that it was 1919? A. Well, why wouldn't it be fresh in my memory?

THE VICE CHANCELLOR: Do not answer with a question. He asked you the question.

Q. Well, what makes it so fresh in your memory that it was 1919, when you said before it was 1918?

THE VICE CHANCELLOR: Well, did she say so before?

MR. STOVER: Yes, sir; I think so.

THE VICE CHANCELLOR: Well, did she say 1918?

MR. STOVER: She first said 1918, in her direct examination.

THE VICE CHANCELLOR: To-day?

MR. STOVER: Yes.

THE VICE CHANCELLOR: Oh, no; she said 1919. The man was in the Army in 1918.

Q. Was it 1918, now, or was it not? A. It was 1919.

Q. Then you are sure about that? A. I certainly am.

Q. Are you sure about the month? A. Why, certainly I am sure about the month.

Q. What makes you so sure about the month? A. Why, because I know.

Q. Have you spoken over this here case with your daughter? A. No, I have not.

Q. Now, are you sure about the day when it happened? A. It was Sunday afternoon.

Q. Was that on the 11th or 12th? A. It was on the 11th, as far as I can remember.

Q. Do you know whether it was on the 11th, or not? A. Well, I didn't look in the calendar, but I believe it was Mother's day or something.

Q. Why did you say it was May 11th, 1919?

THE VICE CHANCELLOR: She has told you several times. What is the use of beating around the bush? You have got all out of her that you can get out of her.

BY THE VICE CHANCELLOR:

Q. Do you know what day of the week it was? A. It was on Sunday afternoon.

BY MR. STOVER:

Q. When was this happening in Montclair? A. That was in July, 1917.

Q. You are sure about that year, are you? A. I certainly am; yes.

Q. Do you know the day of the month? A. It was the 5th of July.

Q. Are you sure about that? A. Yes, I am sure of it.

Q. And what makes you so sure about that—anything to refresh your memory? A. Yes; we

had only moved into the house, and it was the day after the 4th of July.

Q. Who was there at the time that happened? A. My husband was there.

Q. And who else, beside your husband? A. And my daughter, and two little girls, and an infant child.

Q. How old are those children? A. My boy is nine years old; my little girl is seven, now; but they were not at this time; that is two years ago.

Q. Lynn was there at the time, too? A. Yes, he was there; he certainly was.

Q. You say he called her names? A. Yes.

Q. What did she call him—a "dope" and a "poor fish," at that time? A. I did not hear her call them to him.

Q. Well, you say she did not call him any names on that day? A. I wouldn't say she did or did not, because I don't remember.

Q. Did you ever hear her call him any? A. She called him a dope.

Q. When? A. Many a time he would be asleep in the chair; we have left him and come back and he would be asleep, and the baby would fall out of his arms.

Q. And that is when she called him a "dope"? A. Yes.

Q. Was there many times she called him that? A. I don't know.

Q. Will you please state whether you have ever heard her call him a "poor fish"? A. I have, yes, heard her call him a "poor fish."

Q. How many times was that? A. I don't know.

Q. Was it many times? A. I could not tell you.

Q. What started her to calling him a "poor fish," do you know? A. Well, when he would call her out of her name. Do you think it would be

pleasant to me, her mother, having him call her a son-of-a-bitch all the time?

Q. Please just answer my questions. Did she call him any other names? A. No, she did not.

Q. Now, at that time you say that she ran upstairs? A. Yes, she ran upstairs.

Q. Did he have a knife in his hands then? A. No, he had no knife.

Q. And she had been calling him a "dope" and "poor fish," and he called her a "bitch," is that it? A. I think he started it first; he started it because he wanted money, and she had no money to give him.

Q. What did he want the money for? A. He wanted it to go to his mother's in Hoboken; he had a position, and he didn't have to have any money to go.

Q. Where was he supposed to get money from? A. Well, I was keeping him and feeding him until he went to work again.

Q. Now, then, he knew that she had money of her own was that the idea? A. Where would she get money of her own from when he didn't have any to give to her; he couldn't give it to her, could he?

Q. How long had he been out of work at that time? A. I don't know; I don't know how long the strike lasted; I didn't put down the dates of the strike.

Q. Why don't you remember that date when you remember the other dates so well?

THE VICE CHANCELLOR: Mr. Stover, this a sheer waste of time.

Q. Now, about the first period which you have testified to—when did that happen, when he threw the shoe at her? A. That happened one week before her child was born in April.

Q. There was a quarrel there before that, between the two? A. Yes.

Q. She called him names, and he called her names was that the idea? A. That was a common occurrence.

Q. For her to call him names? A. No, for him to call her names.

Q. Did she call him names on that day of the shoe episode? A. No, because she was not able to, she was not in condition to call any names.

Q. Well, had they quarrelled previously? A. There was no quarrel before that, no, until she told him to hurry up or he would be late.

Q. That is the only reason he fired the shoe at her? A. She told him to hurry up, or he would be late.

Q. Who was there at that time? A. My husband and I was there.

Q. Did he support her all right at that time? A. Well, I suppose he did.

Q. Well, did he, or did he not?

THE VICE CHANCELLOR: I will exclude the question. There is absolutely no question of support down to the time when the abandonment took place, if it took place.

FREDERICK BARTHOLOMEY, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. You are the father of Mrs. McDermott? A. Yes, sir.

THE VICE CHANCELLOR: The mother has not testified to any scene occurring on May 31 to June 2nd.

MR. JENTZ: The mother was not there; no sir.

Q. Were you ever present at any time when there was any trouble between your daughter and her husband? A. Yes, at 318 Washington Street.

Q. When was that? A. Well, I don't remember the year or date.

Q. Was your daughter about to have a child at that time? A. Yes, sir; a week before the child was born.

Q. Just tell us what happened. A. I was eating breakfast, and May was lying on the couch, and he was sitting on the foot of the couch putting on his shoes; and she said "Hurry up, Lynn, you will be late to work." He picks up a shoe and throws it at her, and hits her in the stomach. I said "You shouldn't do that; cut it out." He said if it wasn't for the law he would kill her.

Q. What did he do then—did he go out? A. He ate his breakfast, and went to work.

Q. Do you know of any other incident, personally? A. Up in Montclair; yes, sir.

MR. STOVER: When?

A. Why, I came in from work at dinner-time, and they was wrangling and fighting, and I sat down to the table to eat, and he was on the opposite side of me, and I said something to him, and he got up to hit her; I said "Cut it out, Lynn, you won't hit her while I am here." He jumped up and said, "I know my father is a bigger man than you are, and I licked him." And he wanted money, and she had no money to give him, and my wife would not give him any.

Q. Was he out of work at that time? A. Yes, sir.

Q. (BY THE VICE CHANCELLOR): What time was this, in Montclair? A. This was in July.

Q. What year? A. 1917, I think it was.

Q. (BY MR. JENTZ): That is all.

CROSS EXAMINATION BY MR. STOVER:

Q. What was the day of the week, of this time in Montclair? A. July 5th.

Q. What day was that, do you remember, the particular week-day? A. No, sir; I do not.

Q. And you are sure it was July 5th, 1917? A. Yes, sir.

Q. And what has made you so sure of that date, if you don't remember the day of the week? A. Why, we had just happened to move in there, and we were setting things to rights on the 4th of July.

Q. You say they were wrangling. A. Yes.

Q. You mean she was wrangling with him, and he with her, is that it? A. They were both wrangling together; yes.

Q. How was she wrangling—did she call him names? A. No, sir; I did not hear her call him any names, no.

Q. You say they were both wrangling together, what did you mean by that? A. Why, they was fighting—not with their fists, but just giving each other a tongue-lashing.

Q. Do you remember what she was giving him a tongue lashing for? A. Well, I don't remember about that.

Q. Well, you remember about the "killing," why don't you know who was wrangling? A. Why, it was May and Lynn.

Q. And she was sassing him, and he was sassing her, is not that it? A. Well, I didn't hear her do any sassing, because she was upstairs in another room, or something.

Q. You say they were wrangling; what was she doing when she took part in the wrangling? A. Why, they was both arguing together.

Q. Do you know what she was arguing about? A. About money, it was.

Q. What did she say to him about money? A. She had no money.

Q. Was that the only thing she was saying, about money?

THE VICE CHANCELLOR: You mistake it. He wanted money, and the wife said she had no money, and the talk was about money matters; (to the witness) that is right, is it not?

A. Yes, sir.

Q. Did she call him a "dope" and "poor fish" at that time? A. I did not hear her, because I had just come in from work.

Q. Then you did not hear what all happened, did you? A. No, not all.

Q. Then you don't know what all happened, do you? A. Yes, sir; he was begging her for money.

Q. Well, you say you did not hear what she was saying? A. I say I did not hear *all.*

Q. When you heard her talking, will you please state whether you heard her use abusive names toward him? A. No, sir; I did not.

Q. Did he use any abusive names toward her? A. Not while I was there, he didn't.

Q. Did he have all his folks there at that time? A. His folks?

Q. Yes, his folks? A. No, sir.

Q. And the folks were all hers, that were present at that table? A. Yes, sir.

Q. And he said he would kill her, if the law did not stop him, too? A. Yes.

Q. Will you please state if he tried to kill her? A. Not in my presence, no.

Q. And there were knives there, carving knives, and cups and saucers? A. Yes, sir.

Q. He did not take hold of any of them, did he? A. Not as I seen, no.

Q. He did not threaten her, did he? A. No.

Q. Now, then, you have testified about another incident, about those shoes, is that right? A. At 318 Washington Street; yes, sir.

Q. Do you know anything about that? A. Yes, sir; he throwed a shoe at her.

Q. And did the shoe hit her? A. Hit her in the stomach.

Q. Whose shoe was it? A. His own shoe.

Q. Was it a slipper, or heavy shoe? A. It was a shoe.

Q. Did he have any shoes on himself, at that time? A. He had one shoe on.

Q. And he did that in front of you, too? A. Yes, sir; I was sitting at the table, eating breakfast.

Q. What did you say when you saw him strike your daughter? A. I said, "Cut it out, Lynn."

Q. And what did you try to do at that time—did you grab him and try to hit him? A. No, sir; I did not.

Q. Well, the whole time you were passive, and did nothing, when he had thrown the shoe? A. No, sir; I did not; no, sir.

Q. Well, did he stop throwing shoes, or doing anything, when you told him to cut it out? A. Yes, sir; he stopped.

Q. He started out then, did he not? A. I believe so, and went to work.

Q. The throwing of the shoe was done through wrangling, too, wasn't it? A. No, sir; May was lying on the couch, and all she said to him was "Hurry, up, Lynn, you will be late for work," and he picks up the shoe and throws it, and hits her in the stomach.

Q. Have you seen anything else besides these two incidents that you testified to? A. No; I have not been at their quarrels; no, sir.

Q. Have you ever heard your daughter call him a "poor fish" or a "dope"? A. Yes, I have.

Q. Where was this, when you heard that? A. Sometimes he would be at my house; he would be asleep, and she would say "Come on, you poor dope" or "poor fish," come on home."

Q. She said that? A. Yes.

Q. And had he abused her before that, or did she say it for the first time? A. Just for fun, I suppose. They wasn't wrangling when she called him a "poor fish."

Q. (By The Vice Chancellor): Did you see anything else up in Montclair, on July 5, 1917, outside of what you testified to? A. No, sir; I was to work.

Q. Now, at the dinner table, after this discussion about the money, did you see your daughter leave the table? A. No, sir.

Mrs. Elizabeth Watson, sworn.

Direct Examination By Mr. Jentz:

Q. Where do you live? A. 217 Virginia Avenue.

Q. In Jersey City? A. Jersey City.

Q. Are you acquainted with Mrs. McDermott and Mr. McDermott? A. I am.

Q. Do you recall an incident when they were at your home and there was some trouble? A. I do.

Q. Just state what you know about it? A. Well, I was living at 201 Jackson Avenue, and I was about to become a mother; Mrs. McDermott came over on Friday, and she stayed with me; and on Sunday night her husband came, and he was there, and he was the one that went for the doctor while I was confined. He also stayed the following week, as he was out of work; and the day after my baby was born he came in—he had been out—and he asked May for money; she said, "I haven't got any, Lynn," and he said, "May, you are lying"; she said, "I haven't," and kind of

smiled; so she picked the pocketbook up (it was a black leather one about that long (indicating) off my dresser; she said "Don't you believe me, Lynn?" He said "No." She said, "Here, look yourself," and he opened the pocketbook; she was sitting alongside of me at the head of the bed; he opened the pocketbook, and he went white with rage, and he threw the pocketbook at May, and hit her on the cheek; and hadn't I moved my head, as I did, I would have had the blow instead of her.

Q. Was there any mark on her cheek that you noticed? A. Yes, there was a purple mark.

Q. What happened after that? A. Well, when my husband came home from work I explained to him, and told him what had happened, and I was in a very nervous state. He said, "Lynn—

MR. STOVER: I object.

THE VICE CHANCELLOR: The objection will be overruled.

(Resuming) —he said "Lynn, you cannot do that"; he said, "if you want to stay here, you have got to stay here in peace," so he got out, and Mrs. McDermott stayed for fully two weeks, and Lynn came back a couple of days after and had his meal, because he was not working and he had no money to give her, so how could she give him money, when she didn't have it? We were keeping them, and kept them for three weeks.

CROSS EXAMINATION BY MR. STOVER:

Q. When was this, Mrs. Wilson? A. That was in September, the 27th, 1917.

Q. I see; had you a nurse at that time to attend to you, or a midwife? A. I had not.

Q. Who attended to you? A. Dr. Decker.

Q. Well, I mean, did this (Mr. McDermott's)

wife attend to you at that time? A. She attended me, and she was there at the time.

Q. And she did it free of charge? A. She did it free of charge, of course, for I kept them.

Q. Didn't he object to that, and say she should not do it free of charge? A. No, sir; he did not.

Q. You and his wife are quite good friends together, are you not? A. We were, of course.

Q. And you still are? A. We still are.

Q. Has not he objected to her going to your home? A. Not to my knowledge.

Q. Now, at the time you testify about who was present? A. What do you mean?

Q. Who was present at the time when they had the argument about the pocketbook? A. Nobody but herself, myself and her husband.

Q. Was Harry Dirks there? A. I never knew the man.

Q. He never went there while she was there? A. I never knew the man.

Q. Did she call him (referring to the defendant) a "poor fish," or any names, at that time? A. Nothing like that, whatever, no.

Q. What did she call him, if anything? A. Well, she couldn't call him anything very much then, because they hadn't been married very long before, but "Dearie," and all like that.

Q. Had she called him any names, to your knowledge? A. Not in my presence; no sir.

Q. Has she spoken to you about her husband, Lynn, when she and you were alone? A. No, sir.

Q. Was Lynn on strike at that time, do you know? A. He was not working; he had given up his position, I believe.

Q. And he was not working for how long, do you know? A. I couldn't tell you; I don't know.

Q. Wasn't it only for about two or three days

he was not working? A. No, sir; he was at my house about two weeks.

THE VICE CHANCELLOR: Oh, what difference does it make. The point of her testimony is that he threw a pocketbook and struck her in the face; that is all there was to it.

Q. What kind of a pocketbook was it—how was it made? A. It was a thick flat pocketbook, with a strap you hold in your hands.

Q. (BY THE VICE CHANCELLOR): Oh, it was a hand purse? A. A hand purse, a long black one, about so long (indicating).

Q. Well, it was more than a pocketbook. A. Yes, we call it a pocketbook.

Q. Well, it was a lady's small hand-satchel? A. No, it has a strap that you hold in your hands, just like a purse; it is not a bag.

Q. Can you carry a handkerchief, and all that, in it? A. No, not a handkerchief, just money.

Q. Five or six inches long? A. Yes, sir.

Q. And did it have any steel or iron on it? A. Well, just around the top.

Q. A band of steel? A. Yes, sir.

MRS. HELEN SCHOFIELD, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. Where do you live now? A. I live with my mother just at present, but my home is not here any more.

Q. (BY THE VICE CHANCELLOR): Where is that? A. 811 Park Avenue.

Q. (BY MR. JENTZ): Do you know Mr. and Mrs. McDermott? A. Yes, sir.

Q. Do you remember May 11, 1919? A. Yes, sir.

Q. Do you recall that date? A. Yes, sir.

Q. Do you remember seeing Mrs. McDermott at that time? A. Yes, sir.

Q. Did you notice whether there was anything out of the ordinary with the condition of her body? A. Why, Mr. and Mrs. McDermott and Mr. Dirks came to my house, and they was very quiet, and I was supposed to have gone up to their house that day, but my mother wouldn't allow me to go out; so they came to my house; and they was very quiet and I asked them what was the matter and Mrs. McDermott told me she had a quarrel with her husband.

THE VICE CHANCELLOR: That was what day?

MR. STOVER: May 11th, she testified it was.

THE WITNESS: Yes, sir.

THE VICE CHANCELLOR: 1917?

THE WITNESS: No, sir; 1919.

Q. Did you see any mark on Mrs. McDermott's face? A. Yes, sir; well—not any mark, but her face was swollen.

Q. Did she show you any mark on her leg? A. Yes, sir.

Q. What kind of a mark was that? A. A bruise.

Q. (BY THE VICE CHANCELLOR): What was the shape of it? A. Well, it was about an inch and a half long.

Q. And how thick? A. It wasn't thick; it was just bruised, blue.

Q. Such a mark as might be made with a cane? A. Why, you could make it with anything, I believe—if you bumped yourself, or anything.

Q. (BY MR. JENTZ): Did you have any con-

versation with Mr. McDermott regarding him striking his wife on that day? A. Yes, sir.

Q. Just what did you say, and what did he say? A. In the afternoon we went out, down to Mrs. McDermott's mother's house, and I spoke to her husband and asked him what was the matter, and he said that "May was fresh, and he hit her."

CROSS EXAMINATION BY MR. STOVER:

Q. Will you please state how long you have known this couple, the McDermott couple, Mrs. Schofield? A. Why, I couldn't exactly say, but I have known Mrs. McDermott about eight years; but wouldn't say exactly.

Q. And, then, during those eight years you and she have been quite good friends together, have you not? A. Yes, sir.

Q. And how long have you known the husband, Lynn McDermott? A. Why, since they were married.

Q. And that is since what year, do you know? A. I don't know.

Q. About four or five years?

THE VICE CHANCELLOR: Well, whatever it may be.

Q. And during that time you have seen this couple quite often, have you not? A. Yes, sir.

Q. Outside of these times you have spoken about, how did he treat his wife—all right, to your knowledge? A. Well, he was very nice to her when out with company.

Q. How do you mean "nice to her," what causes you to say "very nice"? A. Well, he always treated her all right, and spoke to her all right, as far as we know about it, or I know.

Q. And you saw him with his wife out quite often, did you not? A. Yes.

Q. And at all of those times he treated her very nice, did he not, as far as you could see? A. Yes.

Q. He spoke affectionately to her? A. Well such as a couple would, I suppose after they were married so many years.

Q. Did he call her "Dearie," to your knowledge? A. Yes.

Q. When was that? A. Well, I couldn't say the date.

Q. Now, that was quite often, was it not, that he called her "Dearie"? A. Oh, yes; quite often.

THE VICE CHANCELLOR: That is a mere figure of speech; that doesn't mean anything.

MR. STOVER: Well, it simply shows the treatment.

THE VICE CHANCELLOR: No, when a man strikes his wife in the face he does not show very much affection. The crux of his witness's testimony is that he admitted that he struck her in the face because she was fresh.

Q. Didn't he take her out, at times, to theatres? A. Yes, sir.

Q. He took her out quite often to theatres and entertainments, didn't he? A. Yes, sir.

Q. He paid the way, did he? A. Well, I don't know about that; I know, several times, Mrs. McDermott told me that she paid her own way.

Q. And he was a hard and steady worker, as far as you know? A. As far as I know about it, yes.

Q. Outside of these times that you speak about, as far as you have seen, he treated her all right, as a husband should—that is right? A. Yes, sir.

Q. And you are still friends with the wife? A. Yes.

Q. You are very good friends with the wife, are you not? A. Yes.

Q. And, in fact, you and she worked in the same place? A. We did work in the same place; Yes, sir.

Q. Where was that, when you and she worked together?

MR. JENTZ: I object to that as immaterial.

THE VICE CHANCELLOR: I will sustain the objection.

Q. Now, that day that you saw her, her face was swollen? A. Yes, sir.

Q. Do you remember when that was? A. It was on May 11th, which was on Sunday.

Q. Had she been sick that day, or had the toothache, do you know? A. Why, she was complaining about the toothache.

Q. And where was the tooth which she complained about, in what part of the mouth? A. Well, it was not in the front part of her mouth?

Q. Well, what part of the mouth was it?

THE VICE CHANCELLOR: What has this got to do with it?

MR. STOVER: It all explains it, your Honor.

THE VICE CHANCELLOR: It doesn't explain anything; it is not the swollen jaw that makes the offense, it is the fact that the husband struck the wife on the jaw that makes the offense.

MR. STOVER: Well, our case is that he has not done it.

THE VICE CHANCELLOR: Well, prove that he has not done so, but what is the use of going into all of these questions.

MR. STOVER: Well, we explain it partly by showing it was the swollen tooth which caused it.

THE VICE CHANCELLOR: Well, if that is

the case, prove it. You cannot do it by this witness. She says he admitted to her that he had smashed her in the jaw because she was too fresh; now, that is the evidence, not the swollen jaw, or tooth, or anything else.

Q. Did you and he speak together about this swollen face? A. Yes.

Q. Who spoke about that first, you or he? A. Why, I asked him what was the matter, that they couldn't get along right; he said, "Well, May has got too fresh a mouth, and I hit her."

Q. Will you please state if he said how May got fresh—what she had said? A. No, sir; I don't know anything about it.

Q. And that is the only time you know of anything wrong between the husband and wife—is that it? A. Well, the only time I can really recall.

Q. And all of this time, in all of these years, you have not seen anything of the way, except that? A. Oh, yes; I have—not that I have seen, but that I have heard of.

Q. Well, I don't want that unless he was present—was he present at the time you heard it? A. No, sir.

HARRY DIRKS, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. Where do you live? A. 815 Willow Avenue.

Q. Hoboken? A. Yes, sir.

Q. Do you know Mrs. McDermott and Mr. McDermott? A. Yes.

Q. Do you recall May 11th, 1919? A. Yes, sir.

Q. Do you know what happened on that day between these two people that you know about? A. I was to go with them to a party, out to Green-

ville, and coming up to 143 Palisade Avenue, I rang the bell and went upstairs, and Mrs. McDermott opened the door; and, on going in, she took my hat and coat from me. Well, I walked into the front room or the parlor, rather, and there sat Mr. McDermott, asleep; so I kicked him on the foot, and said to him, "Come on, Lynn, what are you going to do, sleep all day?" He said, "Oh, no, I just feel a little tired." So Mrs. McDermott came in from the front then, and I noticed her face was swollen; I asked her what was the matter. She said, "What do you think of him hitting me?" and he said, "Yes, and if you get fresh, I will hit you again."

Q. That was in your presence? A. Yes, sir.

CROSS EXAMINATION BY MR. STOVER:

Q. Mr. Dirks, are you sure that this was on May 11th, 1919? A. Yes, sir.

Q. Do you know what day of the week this was? A. On Sunday; I got there Sunday afternoon.

Q. And whose home was this? A. Mr. and Mrs. McDermott's.

Q. And what brought you there at that time; had the wife invited you? A. No, sir; we had been to Washington, D. C. the Sunday before—

Q. Who had been there? A. Miss Myer, myself and Mr. and Mrs. McDermott; and on leaving, at the parting, as we reached Hoboken, Mr. McDermott says "Don't forget, next Sunday we are going to Greenville; we will be up, and all go together."

Q. Then, on his invitation you went there? A. Yes, sir.

Q. And you went there that night? A. Not night, afternoon.

Q. What happened first, when you went there? A. What do you mean what happened first?

Q. Well, who started to scold first?

THE VICE CHANCELLOR: Where?

A. There was no scolding when I got there.

THE VICE CHANCELLOR: He has not said a word about "scolding," he said when he went in the room he noticed she had a swollen face, and spoke about it, and the wife said "Why, my husband struck me."

MR. STOVER: I see.

Q. Will you please state who spoke about the swollen face first? A. Why, I noticed it, myself.

Q. Then you spoke about it first, and asked her what that was? A. Yes.

Q. Who did you ask? A. Mrs. McDermott.

Q. Then she told you this here what you have just testified to, is that it? A. Yes.

Q. What did he say then—Mr. McDermott? A. Why, when she said, "What do you think of him striking me," he said, "I will hit you again if you get fresh."

Q. Did he strike her in your presence? A. No, sir.

Q. Did he throw anything at her in your presence?

THE VICE CHANCELLOR: Oh, he did not say so.

Q. You and the wife are friendly together, aren't you—quite good friends? A. With the wife and Mr. McDermott, both.

Q. Have you taken the wife out alone, to Coney Island, or to picnics, or parties? A. No, sir; only when she stated before, when I was out with the aunt and uncle, Mr. Austin, of Trenton, N. J.

Q. When was that? A. Around September.

Q. Did you take her out August 14th, 1919, alone? A. No, sir; not that I know of.

Q. Did you meet her August 14th, 1919?

THE VICE CHANCELLOR: What has this got to do with the case?

MR. STOVER: We simply want to show that these quarrels happened through this man.

THE WITNESS: How could they happen through me?

THE VICE CHANCELLOR: Well, go ahead.

Q. Will you please state whether you met the wife August 18th, 1919—was she at your home? A. I don't remember.

Q. Will you say that she was not at your home on that day? A. I told you I don't remember.

Q. She called at your home quite often, has she not, since she has been away from her husband? A. No, sir; she comes up to see my mother once a week, maybe; not even once a week.

THE VICE CHANCELLOR: (to Mr. Stover) Bear in mind that you are asking questions now of a witness who is disinterested in this case, and you may have to be bound by his answers.

MR. STOVER: All right, I will waive any further examination, and produce my own proof, or, at least, try to produce it.

DR. CHARLES H. FINK, sworn.

DIRECT EXAMINATION BY MR. JENTZ:

Q. You are a practicing physician and surgeon in this County? A. Yes, sir.

Q. How long have you been such? A. Twenty years.

Q. Did you treat Mrs. McDermott, this lady here? A. I did.

Q. Do you remember when you treated her? A. May 27th, 1919.

Q. Do you remember what you treated her for? A. Treated her for menerrhagia—profuse menstruation.

Q. What is that? A. Well, simply a profuse menstruation at the time of the periods—more than natural.

Q. Do you know how long it lasted in her case? A. I think she came there until around June 2nd, 1919.

Q. What was the cause of that disease? A. Well, it comes from obvious causes.

Q. Could it come from having sexual intercourse at a time when it should not be had? A. Yes, sir; it can come from that.

Q. Would it be wise for a woman in that condition to have sexual intercourse at that time? A. No, not at that time.

Q. How many times, in all, did you treat her? A. I don't remember.

Q. (By The Vice Chancellor): Doctor, this profuse menstruation is something that is common among women, is it not? A. Yes.

Q. And it comes from no known cause, does it? A. Well, it comes from different causes; it comes from nervousness; it comes from excitement; it can come from tumors—changes in the lining of the uterus.

Q. And how long a period does it last? A. In her case, I think she came May 27th, and the treatment ended about June 2nd. I don't know whether she is well yet, or not; I have not followed the case.

No cross examination.

Complainant Rests.

MR. STOVER: Of course I do not think the complainant has made out a full case.

THE VICE CHANCELLOR: Well, do you rest?

MR. STOVER: No, I do not rest. I would like, of course, to have the right to put my witnesses on the stand.

THE VICE CHANCELLOR: Well, there is no motion for a non-suit in equity.

MR. STOVER: Well, I would like to put my people on the stand. However, I want to make that motion right now.

THE VICE CHANCELLOR: What motion? There is no motion for a non-suit in this Court.

MR. STOVER: I will put Mr. Lynn McDermott on the stand.

THE CASE FOR THE DEFENDANT.

LYNN M. MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Where do you reside? A. I reside now at my mother's home, 147 Palisade Avenue.

Q. How long have you last resided there? A. Well, I lived there until close on to September, when I lived with my sister, while my mother's home was not available for me to live in.

Q. Where did you reside with your wife the last time you resided together? A. Around June 2nd, 1919.

Q. That was when, but I asked you where? A. 143 Palisade Avenue.

Q. When did your wife leave you, if she left you at all? A. My wife deserted me on the night of June 2nd or 3rd. She hadn't been home for three nights then; I couldn't say exactly what night she deserted me.

Q. That was in the year 1919, as I understand it? A. 1919.

Q. Will you state if you kept the home open after that? A. I kept the home open until the 1st of August, 1919, fully open for her to come back.

Q. How long was that? A. That was through June, July and August.

Q. You paid the rent regularly? A. I paid the rent; yes, sir.

Q. Then you broke up the home, was that right? A. I broke up the home; yes, sir.

Q. She did not come back to you during that time, did she? A. I broke up home after she returned the keys.

Q. Now, when did she return the keys? Did she send you a letter by the way? A. Yes, she sent me a letter; I received it, not knowing who it was from; the handwriting was not the same as my wife's.

Q. Well, whose writing was it? A. I didn't know; I only know from what the case says here, that it was the mother's handwriting.

Q. Is that the envelope you received (showing witness Exhibit A-1 for identification)? A. Yes, sir; that is the envelope.

MR. STOVER: I offer it now.

MR. JENTZ: I would like to ask for what purpose the offer is made at this time?

MR. STOVER: Well, I don't know that I have to say that. Do I have to say, your Honor?

THE VICE CHANCELLOR: Oh, no, you may offer it.

(The envelope was thereupon admitted and marked Exhibit D-1.)

Q. What happened at that time? A. The keys was wrapped up in tissue paper.

Q. Was there anything else in the envelope? A. No, sir; just the plain envelope, with the keys wrapped up in tissue paper and sealed.

Q. When you got that you understood she was not coming back? A. I understood that she would not come back to my home.

Q. Would you have taken her back if she had come back, after she first left? A. Yes, sir; I would have taken her back at that time.

Q. Now, then, she says that she called you up on the 'phone after she left you, is that true? A. Yes, sir; she called me up on the 'phone, exactly.

Q. And where was that, and when was it? A. Well, I cannot recall the date, but that was in the house at 147—the owner of the house I lived in.

Q. Was that after she left you, or before? A. After she left me.

Q. And could you tell us how long after? A. Well, I should say it was about a month after, anyway.

Q. What did she say to you? A. Well, she said that she wished to see me, and I told her that I had secured a legal adviser, and she should see Mr. Stover. She pleaded with me, telling me to remember our boy, and wanted me to come and see her. I told her I would not, under the circumstances now, see her at all.

Q. Had she a lawyer at that time? A. Yes, I had you in my service.

Q. I say had *she* a lawyer at that time? A. Yes, sir; she had a lawyer at that time.

Q. And her lawyer was the same gentleman that she has now? A. Yes, sir.

Q. And she offered to come back at that time? A. She didn't say nothing about returning to my home, she just pleaded with me to come and see her.

Q. She did not say she would come back, though, did she? A. No, sir; she did not.

Q. She spoke in a pleasant way to you? A. Yes, she spoke in a very pleasant way.

Q. And did you speak in a pleasant way with her? A. Yes, sir; I did.

Q. Now, going back: She said shortly after her marriage you began to use these vile words—did you ever use vile words, and call her a son-of-a-bitch, or any of the names she mentioned? A. No, sir.

THE VICE CHANCELLOR: Just put the question in the precise words.

Q. Well, she has testified about you using nasty language—

THE VICE CHANCELLOR (To the witness): Oh, did you ever call her a son-of-a-bitch?

A. Well, I might have called it in our quarrels once, sir; that is, to my knowledge.

Q. Have you ever called her that more than once? A. No, sir; once, to my knowledge, in her married life.

Q. And you supported her as best you could? A. Yes, sir, fully supported her, and supplied the furniture.

Q. Has she ever called you any names? A. Well, she called me a "dope" and "poor fish", as she has said.

Q. And did she call you those names in a sort of joke, or pleasantry?

MR. JENTZ: I object; it calls for a conclusion.

THE VICE CHANCELLOR: Objection overruled.

A. Well, I didn't know, from her manner, whether she was meaning it at all, or joking.

Q. Now, she testified that you chased her up the stairs? A. No, sir; I did not chase her up the stairs.

MR. JENTZ: Fix the time, please.

Q. Well, I don't remember the time; however, have you ever chased her up the stairs—I will put it in that way? A. No, sir; I never chased her up the stairs.

Q. Have you ever struck her? A. Only in self-defense, sir.

Q. Tell us about that? A. Why, several times she fired glasses and cups at me, and, in one instance, she had struck me with a clock.

Q. When was that? A. That was at my home at 200 Monroe Street.

Q. When was that? A. Well, that was before my boy was born.

Q. And what brought that about? A. Quarrels over the money situation.

Q. What were the quarrels about the money situation? A. Well, quarrels, more or less, over extravagance; I couldn't see how she got rid of it; there was nothing to show for it.

Q. Who started those quarrels? A. Why, I merely asked her what she had done with her money, and she would get up in a rage and say that she spent it, and that is all there was to it.

Q. That was a long time ago, you say—right after your marriage? A. Well, that happened all through my married life, until a little while after I came back home, and then it started all over again.

Q. Where did you live right after your marriage? A. I lived at my mother's home.

Q. And you lived there three months? A. I lived there for three months.

Q. Was she satisfied to live at your mother's home? A. She was satisfied, yes, sir.

Q. And then you started housekeeping where? A. I did not start housekeeping. What she said there is the truth, that we went into a furnished room.

Q. Where was that? A. There was one on Garden Street, and one on Sixth Street.

Q. This was what year and what month—the first furnished room place? A. The first furnished room was in 1915.

THE VICE CHANCELLOR: Does he dispute that the wife has told the truth as to where they lived?

THE WITNESS: Yes, sir, that is the truth, where we lived.

THE VICE CHANCELLOR: She has told the truth as to that?

THE WITNESS: Yes, sir, as to where we lived.

THE VICE CHANCELLOR (to Mr. Stover): Go to something else.

Q. What happened in the first furnished room that you moved to? A. Why, there was no quarrel, to my knowledge, that happened.

Q. She has said that you threatened to kill her with a carving knife? A. I never threatened to kill my wife with a carving knife, never at all.

Q. How did she treat you there in the first furnished room? A. She treated me in a respectful manner.

Q. And then you moved into this second furnished room? A. Yes.

Q. How did you treat her in this first and second furnished room? A. In the same manner.

Q. How did she treat you in the second furnished room? A. Well, we had frequent quarrels over money matters, that is all; and there was one

quarrel that she fired a glass at me once; naturally I was quick, and I ducked it.

Q. Was this in the second furnished room? A. In the second furnished room.

Q. (By the Vice Chancellor): How long did you live in this first furnished room? A. Well, I only lived there, as she says, a week, and I lived in 61 Sixth Street a week after we left there.

Q. (By Mr. Stover): Was there anyone there at the time she threw the glass at you? A. No, sir; we were both alone.

Q. Did she call you any names then? A. Well, she didn't call me any vile names, no, sir, only what she said on the stand—"dope" and "poor fish".

Q. From the second furnished room where did you move to? A. 921 Clinton Street.

Q. You took up housekeeping there? A. Yes.

Q. How long did you live at 921 Clinton Street? A. I lived about two or three months there.

Q. How did you treat her there? A. I treated her in a respectful manner.

Q. Did you hand over all your wages to her? A. Yes, sir, all except two or three dollars I kept for my pocket money.

Q. What were your wages at that time? A. It was exactly twenty-one dollars a week—at 921.

Q. How did she treat you there, in this place? A. Well, she treated me all right until I asked her questions as to why she hadn't nothing to show for the money I gave her.

Q. Then what would she say, and how would she treat you? A. Well, as she has said, she would call me "dope" and "poor fish", and tell me she had spent the money, and that was all there was to it. I got no satisfaction as to where she spent the money.

Q. Where did you move to from this place? A. To 903 Clinton Street.

Q. Did she move with you? A. Yes.

Q. How long were you at 903 Clinton Street? A. I was quite some considerable time in 903 Clinton.

Q. Could you fix the month and year when you moved to 903 Clinton Street? A. Yes, if I can recall it to my memory.

Q. About? A. I would not say the exact date, because I cannot recall it to my memory.

Q. (By the Vice Chancellor): Your wife has stated the time? A. She has stated it with truth.

Q. (By Mr. Stover): You say you lived there how long, with your wife? A. I did not state any time, how long I lived there.

Q. All right, state it now. A. Well, I don't know exactly the length of time; what my wife stated as to the length of time of living there is the truth.

Q. How did you treat your wife there? A. In a respectful manner.

Q. Did you give her all your wages excepting the two or three dollars? A. Yes, sir; I gave her all my wages.

Q. What were you making then? A. Then I was making about seventy or seventy-five dollars a month. I was working for the D. L. & W. R. R.

Q. How did your wife treat you there at 903 Clinton Street? A. As I said before, she treated me in a respectful manner until we had quarrels over money questions.

Q. They were the same questions you asked her—what she did with all of this money? A. Yes.

Q. Who paid the rent while you were there? A.

She paid the rent out of the money I gave her.

Q. Did she give you any allowance out of the money you gave her—anything for cigars, or anything like that? A. No, sir; I bought them all myself.

Q. She says you asked her for money—is that true? A. At what time was this?

Q. Well, at 903 Clinton Street—did you ever ask her for money there? A. No, sir; I might have asked her for money if I was short of my own, and she would give me a few cents. Oftentimes she would not have the money, and then a quarrel would start; I would ask her what she done with the money.

Q. You then meant of what you had given her, is that it? A. Yes, sir; I wanted to know what she had done with the money.

Q. (By the Vice Chancellor): As a matter of fact, you never had quarrels about money until you used your money, and asked her for some, and she did not have it? A. Yes, sir; I would ask her at the end of the week, and she hadn't any.

Q. You never did quarrel until you wanted money, and asked her to give you some? A. Yes, sir; I wanted some tobacco or cigars.

Q. Then you had your quarrels because you wanted to know what became of it? A. Yes, sir.

Q. And that thing never happened unless you wanted to borrow money from her? A. That is the only quarrels we had.

Q. (By Mr. Stover): Did she ever kick you while you were in 903 Clinton Street? A. Yes, sir; she often tried to kick me.

Q. Describe about that, without my asking you so many questions—tell us. A. She kicked me—she has often attempted, many a time, to kick me in my person.

THE VICE CHANCELLOR: Is this witness suing for any relief?

MR. STOVER: No, sir, he is not suing under any cross bill, except that he alleges that in his answer—that she kicked him.

Q. Where did she kick you? A. Well, oftentimes, if I didn't get it where she attempted to I got it in the knees and shins.

Q. Did she ever kick you in your private parts? A. No, sir; not as yet. She attempted it many times.

Q. Did she speak to you at the time she kicked, or tried to kick you, as to what she would do? A. Oh, she frequently called me "dope", a word she always called me.

Q. She said you enlisted in 1917, in December? A. Yes, I enlisted.

Q. How did you come to enlist? A. I enlisted not only in a patriotic manner, but through her frequently calling me a coward, and telling me to go, and get out of her sight.

Q. She said you enlisted against her will? A. No, sir, I enlisted partly by her will.

Q. How did you come to enlist, as far as her actions were concerned? A. She would call me a coward, and tell me I was afraid.

Q. She did that many times? A. Often and often she has done that; and when the time came to enlist she brought a paper in front of my face, and she showed me where I could enlist at $57 a month, and she could get half of my pay. I took that, and I enlisted, and could only get Thirty dollars a month.

Q. Where did that paper come from? A. That was a newspaper, bought by herself.

Q. What was the name of the paper?

MR. JENTZ: Objected to.

THE VICE CHANCELLOR: Objection over-

ruled. You can find out from the paper whether the witness is telling the truth.

A. If I am not mistaken, it was the World and Journal; both of those papers had big pieces in them. One enlistment was in New York, somewhere, I think, at 60 or 260 Broadway, and one was in Jersey City. I enlisted in Broadway, New York.

Q. She said you enlisted as a single man? A. No, sir; I enlisted as a married man, fully enlisted, and signed the allotment paper. If I had not enlisted as a married man I would have been serving time at Fort Leavenworth now.

Q. (By the Vice Chancellor): You enlisted as a married man? A. Yes.

Q. And made your allotment? A. Yes, sir; for half my pay.

Q. And gave your wife's address and name? A. Yes, sir, and that my baby was living then, and they allowed her Forty Dollars a month until the death of the baby.

Q. (By Mr. Stover): Were you in France? A. Yes, sir; from June until February 1st.

Q. Will you please state whether she wrote you while you were in France? A. Yes, sir, she wrote me often, or frequently.

Q. What did she say? A. Oftentimes she wrote pleasantly, and oftentimes she used to call me down—oftentimes.

Q. (By the Vice Chancellor): Well, you have the letters? A. Have I got the letters? No, sir; I have the letters at home.

The Vice Chancellor: You cannot go into anything she wrote to you. The letters speak for themselves.

Q. (By Mr. Stover): Did you write her let-

ters? A. Yes, sir; I wrote her letters as oftentimes as duty would allow me to.

Q. What was the tenor of your letters—the character? A. The tenor of the letters was in answer to her letters.

THE VICE CHANCELLOR: I will not permit that; the letters speak for themselves.

MR. STOVER (To Mr. Jentz): Have you got the letters here?

MR. JENTZ: No, sir; I have not.

MR. STOVER: Where are they?

MR. JENTZ: I don't know.

MR. STOVER: Then I can go into secondary evidence?

THE VICE CHANCELLOR: I do not think you can, until you have given notice to produce them.

MR. JENTZ: We have not been given any notice to produce. We have letters here that they can look at, if they want to.

Q. Were you out of the Army at the time your little boy died? A. No, sir, I was in service; I was stationed at Fort Hancock, Sandy Hook.

Q. When did you first hear about that? A. I first heard the boy was sick through a letter from my wife, then I secured a telegram of his death.

Q. You stayed away, as I am told, about eleven months, is that right—eleven months in the Army, or in France? A. No, sir, from June until February—June 1918 until February, 1919.

Q. Then were you honorably discharged? A. I was honorably discharged on the 10th day of February, 1919.

Q. What did you do then, when you were discharged? A. I immediately returned home. I secured a position in W. & Fletcher Co. on the 13th of February.

Q. What did you earn there? A. I earned, as my wife says, $34.56 a week.

Q. What did you give to your wife out of that? A. I gave to my wife the sum of twelve dollars for table allowance, alone. I paid the rent, gas, and all necessary debts in the home. All she had to take care of was the table.

Q. Why did you do that to your wife—why didn't you give the wife the whole amount, as you gave her previously, excepting two dollars, or so? A. Well, previous, before the war, I earned my money, and it seemed I could not save no money; so I thought it would be best for myself to take care of my money, and, out of the money, to take care of the home and save the sum of ten dollars a week, which paid for the rent, and have a little money left in the bank, and hold the bank book.

Q. You do not answer the question—why did you put her on an allowance? A. As I said before, that she was too extravagant with her money, and I didn't have no means of saving it after giving her the money; so I took that on my own shoulders.

Q. Then you paid her twelve dollars for board? A. I allowed her twelve dollars for food.

Q. And you paid for the gas, light, rent, and everything else? A. Yes, sir, for everything else, only for food, I paid.

Q. How did she get along with the twelve dollars? A. She got along real nicely.

Q. Where did you move to after you came out of the Army? A. I moved to 143 Palisade Avenue.

Q. And she came with you? A. Yes, sir.

Q. And you supplied a good home for her? A. Yes, sir—four rooms and a bath, steam heated, hot water, and electric light supplied.

Q. What did you pay rent? A. I paid $27.

when I moved in. My rent was raised the month after to $29. a month.

Q. Was it raised any more than that? A. No, sir; $29. was the last sum I paid.

Q. How long were you living with your wife at this place? A. I lived with her until June 2nd, when she left me.

Q. How did you treat her while there—while you lived at this place? A. I treated her in a respectful manner, as I stated before. Oftentimes we had little quarrels. She would refuse to pay such as milk bills, and I would have to pay them for myself; and I asked her why she did not pay it, I gave her enough money. She wanted to go to work. I said, "You stay home, and I will give you twenty dolars a week; and she refused that, and told me she would work and be independent.

Q. What did you say to that, when she told you that? A. I said, "Suit yourself about that".

Q. How did you treat her in a sexual way? A. I treated her in a good sexual way, in a respectful way.

Q. Was she ever sick? A. To my knowledge, she was sick at the time when she left me; and through the month of May she refused me sexual intercourse.

Q. For a whole month? A. For the whole month of May, yes, sir.

Q. Was she sick at that time, in the month of May? A. No, sir.

Q. And the month before that, did she refuse you at all any sexual intercourse? A. No, before that she did not.

Q. Did she complain about being ill to you in the month of May, 1919? A. Towards the latter part of May she said she was ill, and she said she went to Dr. Finck; but she went of her own accord, not of my applying; in fact, I did not know

that she went to Dr. Finck until she came home and told me.

Q. Did you ever try to have sexual intercourse with her when she said that she was sick, in the latter part of May? A. No, sir; I did not.

Q. And before that she did not complain to you at all? A. No, sir; she did not.

Q. And yet she refused? A. Yes, sir.

Q. What was the reason of her refusal—did she say anything to you? A. No, she never said nothing to me.

Q. Did she ever call you names, or call you a "bitch", or anything like that? A. No; I do not know of my wife calling me a "bitch" at any time.

Q. Did she ever say she would be your wife only in name, or in name only? A. Yes, she had told me that lots of times, and even asked me to secure a divorce from her.

A. Well, it was frequently, even since I came from France.

Q. And what did she say, can you tell us the words? A. Well, she would often ask me to get a divorce from her if she deserted me.

Q. What did you say about that? A. Well, I told her if she left my home she would leave it of her own accord, not with my desire.

Q. Did she speak to you after that about a divorce? A. Yes, sir; she often spoke to me about it, at the supper table, and even tried to persuade me to try and secure evidence to get a divorce.

Q. Tell me what she said about that?

MR. JENTZ: I object.

THE VICE CHANCELLOR: I will overrule the whole thing. The question is one of extreme cruelty. Now, the witness has not denied about the striking of his wife with the

shoe, or striking her with his fist on the jaw. Why don't you negative what the complainant said, if you can?

Q. Have you hit her with a shoe, ever? A. No, sir; I never threw shoe at the wife, at all.

Q. (By the Vice Chancellor): She testified here that one week before your child was born, your wife was lying on the lounge, and that you were sitting there putting on your shoe, and she said "Lynn, you had better hurry up, you will be late to work", and thereupon you threw the shoe at her and struck her in the stomach? A. No, sir; I did not.

Q. Did that thing transpire? A. No, sir; it did not.

Q. You did not strike her at that time, or at any time, with a shoe, in the stomach? A. No, sir; I did not.

Q. (By Mr. Stover.) Have you ever thrown a pocket-book at her, and hit her in the jaw? A. No, sir; I never threw any pocket-book at her.

Q. Have you ever hit her in any way? A. As I said before, only in self defense; I only slapped her in the face.

Q. When was that? A. Well, I do not recall the dates.

Q. (By the Vice Chancellor): Well, on May 11th, 1919, it is testified, as I recall it, that you struck her on the jaw with your fist? A. No, sir; I did not.

The Vice Chancellor: (To counsel): Is that right?

Mr. Jentz: Yes, sir; on May 11th, 1919; he hit her twice on the same day.

Q. Did you strike her with your fist on that day? A. No, sir; I did not.

Q. Did you attend at the house of Mrs. Wilson

while Mrs. Wilson was being delivered, or about that time, and take a pocket-book and hurl it at your wife and strike her in the face? A. No, sir.

Q. Did you throw your wife on the floor, or have her on the floor, with this knife (Exhibit C-1) in your hand? A. No, sir; I did not. That recalls the date that my wife had the knife in her own hand, and I wrested it from her, and she bit me right here on the right arm.

Q. You recall her story of your getting her down, and she biting you in the arm? A. Yes, sir; but the knife was in her hand, and not in mine.

Q. (By Mr. Stover): Is that the knife she had in her hand (referring to Exhibit C-1)? A. No, sir; that is not the knife; it is a back-handled knife I had when I was married.

Q. Where is that knife now, do you know? A. Well, as I recall, I think that knife I disposed of with other things.

Q. Have you ever tried or threatened to kill her? A. No, sir; I never threatened to kill her, at all.

Q. Did you find anything on her person, ever—a letter; or find in her possession any letter? A. From letters that I received from her while I was in France, she entertained two American soldiers—

Mr. Jentz: I object.

Q. (By the Vice Chancellor): Where is the letter? A. I did not bring the letter.

Q. Where is it? A. That is at my home.

Q. (By Mr. Stover): Well, here is a letter which I show you, and ask you if you ever saw this letter, which is marked for identification, A-2? Answer that question, whether you ever saw that, and where did you see it, and where did you get

it? A. Yes, sir, I did receive that letter; I secured that letter amongst a pile of letters she left in the house, and which I had met this man myself on the car, and he acknowledged that he sent this letter.

MR. JENTZ: I ask that that be stricken out.

MR. STOVER: Well, I offer the letter in evidence.

MR. JENTZ: I object to it on the ground that it is immaterial.

THE VICE CHANCELLOR: I will admit it in evidence, but I do not see how it affects the case, at all.

(The letter was thereupon marked Exhibit D-2.)

Q. Have you ever spoken about the other man to her? A. No, sir; I have not spoken about any other man, only as my letters in France, but the letters are not here.

Q. Has she ever been in company with other men, that you know of?

MR. JENTZ: I object to it, on the ground that it is not within the scope of the case.

THE VICE CHANCELLOR: I will let the testimony go in.

A. I have seen her on the night of the 26th of December, 1919, with my sister-in-law, my brother's wife—seen my wife and this Harry Dirks, arm-in-arm, on Washington Street.

Q. (BY MR. JENTZ): Did you say you saw it? A. I seen them, and my sister-in-law was a witness to the fact.

Q. (BY MR. STOVER): What is the name of the sister-in-law? A. Mrs. Rose McDermott.

Q. You have brought her here to court to testify? A. Yes, sir.

Q. Have you seen her elsewhere with Harry Dirks? A. That is the only time I have seen them.

CROSS EXAMINATION BY MR. JENTZ:

Q. You deny all these statements of these witnesses that testified as to what you did to your wife? A. I deny every one of those witnesses.

Q Out of this money that you gave your wife you say you amply supplied her with money—what did she have to pay out of that? A. Well, at what time, before the war, or after the war?

Q. After the war? A. After the war she had only to pay for the table, the food, that is all.

Q. Did she pay for the furniture? A. I paid for that, out of my own money.

Q. And insurance? A. I paid that with my own salary.

Q. Did your wife, about May, 1919, tell you that she had to go to the Doctor, that she had some trouble? A. No, my wife never told me she went to the Doctor; she told me after she came back, that is all.

Q. Did she refuse you sexual intercourse during that time? A. During the month of May; yes, sir.

Q. (BY THE VICE CHANCELLOR): Did she refuse you during April? A. No, sir; she did not—only in the month of May.

Q. What excuse did she give in the month of May? A. She gave me no excuse whatever.

Q. Did you ask her why? A. I asked her why.

Q. What did she say? A. She told me she would make no apology—it my none of my business, in other words.

Q. (BY MR. JENTZ): Did she say it "was none of your business"? A. She only replied that she would make no apologies.

Q. You knew though, that she was sick, didn't you, and it was not wise for you to do anything like that? A. At the end of the month I knew it; yes, sir.

Q. And you still persisted in your efforts, didn't you? A. No, I did not persist in my efforts after I knew she was not in condition.

HARRY HEIN, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Where do you live? A. 145 Palisade Avenue, West Hoboken, N. J.

Q. What is your business? A. Chauffeur.

Q. Will you please state if you know this couple here, the McDermott couple? A. I knew them before they were married.

Q. And were you there at the time they got the license? A. I went with them to get the license.

Q. And on the date—

MR. JENTZ: Well, we admit the marriage.

MR. STOVER: Well, I am not going into the marriage, at all; it is just about the treatment at the time when they went for the license.

THE VICE CHANCELLOR: I will not allow you to go into it. They did get married; the question is whether he beat, abused and struck her since.

Q. You have known the couple all of the time since they were married, have you not? A. Yes, sir.

Q. You have seen them quite often, have you not? A. Yes, sir.

Q. How did he treat her—how did Mr. McDermott treat her? A. He treated her as any decent man would treat his wife.

Q. How did she treat him? A. She was nagging at him all the time.

Q. What was she nagging about? A. She would nag at anything.

Q. Will you please state if you saw him ever strike her?

MR. JENTZ: I would like to have the time fixed.

(Question allowed.)

A. No, sir.

Q. Did you ever see him strike her? A. No, sir.

Q. Did you ever see her strike him? A. No, sir.

Q. Now, did you ever see signs of mistreatment on his arm or in his body—any marks? A. I know she bit him, one time, on the arm.

Q. Well, fix the time, and tell us how you know?

THE VICE CHANCELLOR: No, you need not bother with it. It has been admitted. The wife has made a statement of it.

Q. What did you see about her treatment towards him? A. Well, she would nag at him for nothing, all the time—picking at him.

Q. Will you please state whether she was in the habit of staying out at night? A. Well, I will tell, you—when I came home in the evenings I used to find Lynn in my house, in the latter part of May; I used to ask him "What is the matter with your wife?" He would say "Well, she is not home, and I ain't had any supper."

Q. Do you remember the month that that was? A. Maybe that latter part of May. It was so pretty often.

Q. Do you know who did the cooking for the

family? Did she cook the meals—the wife? A. Well, she wouldn't cook him anything.

Q. Well, how do you know that? A. He told me.

THE VICE CHANCELLOR: Well, that may be stricken out.

Q. Will you please state if she told you that? A. No, I didn't talk to her any more; I didn't want my wife to bother with her.

Q. Where did you live at the time of him coming over to your house? A. 145—right next door.

Q. Where was that—what city? A. West Hoboken.

Q. Did you see anything more about her treatment of him, or his treatment of her, that you can testify about? A. No, only that he told me how much money——

MR. JENTZ: I object.

Q. No; just what you saw her do? A. Well, I didn't see her do anything, only that he told me she did not cook any meals——

THE VICE CHANCELLOR: That is enough; do not tell that.

Q. Will you tell me if you heard how she spoke to him? A. Well, I know she used to nag at him for nothing, because I have been out in their company.

Q. Well, what did she say? A. Well, she started little arguments over nothing—really uncalled for arguments.

Q. How did he treat her at those times? A. He was quiet about it.

Q. What is her nature, her temperament, do you know?

MR. JENTZ: I object to that, as calling for a conclusion.

THE VICE CHANCELLOR: Objection sustained.

CROSS EXAMINATION BY MR. JENTZ:

Q. All you know about this is what Mr. McDermott told you, is it not? A. Well, what I know about the meal part, yes; but I know she was very naggy at him.

Q. How many times did you see her in the past year, in the presence of Mr. McDermott? A. Well, I couldn't just say how many times.

Q. When did you see her nagging him? A. I seen her nag him right in my own home.

Q. How many times were they in your home together? A. Well, latterly they haven't been in there at all; it was before they broke up housekeeping; because I forbade her in my home.

Q. When did you forbid her in your home? A. I forbid her in my house on several occasions; but she came there when I was not home.

Q. When was the time you forbade her from coming in your home? A. Well, let me see—in March.

Q. Of this present year? A. Of the present year.

Q. And the reason was because she nagged, was that right?

THE VICE CHANCELLOR: March of the present year has not arrived yet.

THE WITNESS: Well, I mean March of last year.

Q. She was a nagger, was that right? A. She was a trouble maker; she tried to make trouble for myself and my wife at the same time, a few years ago.

Q. What did she try to do? A. She tried to

tell me that my wife was out with somebody else.

Q. Where did she tell you that? A. Well, that don't concern you, I think, where she told me.

THE VICE CHANCELLOR: You need not go any further with it.

MR. JENTZ: I will withdraw it.

Q. (By the Vice Chancellor.) You say she was a nagger—what do you mean by that? A. Well, picking at him, finding fault over nothing.

Q. I don't care about that; what did she say—give me the language she used? A. Well, she never used vulgar language, or cursing language.

Q. I did not ask you what she did not use, I am asking you what she did use? A. Well, she would pick at him for nothing; if he done little things she would call him a "dope", and so forth, and start a little argument.

Q. That is all you ever heard him called, a "dope", it is; and that is what you call "picking and nagging"? A. Well, when a woman picks at a man for falling asleep who works all day——

Q. Do not undertake to instruct the Court. Do you mean by "picking and nagging" that she called him a "dope"? A. Finding fault with the man when he fell asleep; that is the "picking".

Q. That is what you mean? A. Yes.

Q. What else did she call him, besides a "dope"? A. That is what I heard her call him—"dope".

Q. And that is the extent of the language she used in picking and nagging, is that it? A. That is it.

Recess until 2 o'clock, P. M.

Afternoon Session.

Hearing of the cause resumed at 2 o'clock, P. M.

MISS YATES, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Where do you live? A. 262 Palisade Avenue West Hoboken.

Q. You have been a school teacher? A. Yes.

Q. How long? A. Thirty-seven years.

Q. Do you know the couple here that are suing each other? A. I certainly do.

Q. Do you remember, in 1919, when Lynn was discharged from the Army, in February? A. Yes, he came home the night of February 10th, and he asked me if he might come and stay with me at night, and so I told him "Yes" and then they thought it was only he that I would take; then he said something about May; I said. "Why certainly, that goes without saying, that May comes with you; then May thonked me for taking her; so they came to me then and were with me for six weeks.

Q. What did you notice during those six weeks—what did you hear and what did you see, between this couple? A. Well, as has been stated before, that she was constantly nagging at him, and all that sort of thing, and calling him a "fish" and—

THE VICE CHANCELLOR: "Dope"?

A. —"dope". And she always stated that I wouldn't take anything from Lynn; but you know there is a difference—a man and wife are on an equality; I am old enough to be Lynn's mother; and, of course, his mother would not allow him to say anything to me that she should not say; but, at the same time, she thought, because I would not take this and that, don't you know—

Q. What do you mean by "this and that"? A.

A. If he said anything that he should not say to me, why, then, she thought that it was the same way with her, that he ought not to say this to her. Well, I say, a man and wife are on an equality. My mother brought us up to say that there was no such thing as contradicting children, don't you know, brothers and sisters, that each one had a right to their opinion. Well, now, she seemed to think, because I would not take anything of the kind from Lynn, why, she shouldn't; and did not think or seem to think that they were on an equality.

Q. Then, Lynn said things to you that you resented? A. Well, for instance, one morning he was late, and I didn't know the time—I thought the time was late—and he came and asked me to look at his watch, you know; I said, "Now, I haven't my glasses on, I can't see it". I said, "You tell me the time, and all that kind of thing—something like that—but he did not call me names, or anything of the kind, he did not really abuse me, or anything; and one statement that she made that he got me mad, or something of the kind, or nervous, and that I danced up and down the floor, or something to that effect, why, it was she that started the thing, not he, at all.

Q. (By the Vice Chancellor): Just explain what you mean. What did she say, and what did he say, or what did they do, that struck you? A. Well, in the first place, they had their dinner, and she commenced with that he should not say so-and-so to her; and so then I said "Well, what is it?"—I made him tell me what it was, you know—and the whole amount of it was that they had asked me to go down to the Strand with them, and she had asked me to go twice while they were with me—they asked me to go out to the movies, or something—and once we went, and

this other time I did not go, because the cars were not running, there was a strike, and I would have had to walk down, and I wouldn't have minded that, but I wasn't going to walk down with them quarrelling; and she only picked the quarrel because he had asked me to go, that was all.

Q. (By Mr. Stover): What did she say? A. Well, she told him that he must not insult her; and I don't know that he had said one word, you see, he hadn't said one word. She would go in the kitchen for something, and then he would ask her to bring him a drink of water, and she wouldn't do it, and ask him if he was paralyzed, or something of that kind. And then, another time, he was not home a week when she commenced. They had slept together that night, and he had gone and said "Goodbye" to her in the morning; they had come home and had their dinner, and there was nothing of the kind; then Miss Helen Myer came up to the house, and after Helen got there she commenced on Lynn; and Lynn was playing—I have a player piano—and he was playing the national airs, and it always enraged her when she heard the national airs being played. Of course he played them right, and they had pep in them, and all that; and so she commenced with saying, "After tomorrow she wouldn't be here". She told me that. I said, "Well, what has he done?" (I couldn't see anything.) I said, "What has he done? I don't see that he has done anything to you, at all. Tell me what it is", and "oh, well", she says, "you wouldn't take anything from him", and all that sort of thing. So, then, finally, I said, "Lynn, what have you done to her?" and he said, "Why, she told you". I said, "She has not told me". So, then, finally she told me that he had said "Red" to her, he called her "Red", and I asked him, of course, "When did

you call her 'Red'?" He says, the night before, before they went to bed, or something of the kind, he had said, "Hello, Red!" to her, just as you would say, "Hello, dear", or anything like that, and she kept it all that time, until Helen Myer was there. And after dinner, at night, she commenced with this harangue that he had gone and left her child to die and left her alone, and left the child to die. The child was hers, and never his, according to her tell.

Q. (By the Vice Chancellor): I do not understand you by that. What did she say? A. She always claimed that he left *her* child to die. Why didn't she say, "You left *our* child to die"?

Q. Did she say he was not the father of her child? A. Oh, no, I don't say that, but she said it as if the child was hers, and not his; I think she should say it was "our child", and not "her child". Well, then, I said, when I found out what it was, Well, I knew a young man who asked his mother "What is the most valuable hair?"—I thought this would pacify her, you know,—and they said, "Lighthair", you know, or something of the kind, and he says, "No, red hair". So I thought she would be a little pacified by that. She said her hair is not red, but her hair was red. And he had always been good to her for the six weeks while they lived with me, but she was at him all the time, as I said. She said that he paid me for the food. I did not ask him for it; I thought he had just come home, and they wanted to get their house together again, and I would keep them for as little as possible, just let them pay for the food.

Q. (By Mr. Stover): Who paid for the food, by the way? A. Lynn paid for it, every time.

Q. Who paid for the rent of the apartment? A. Why, I paid for the apartment.

Q. Well, did he pay you? A. He paid me nothing; he paid me just what I asked him.

Q. Well, what did you ask him? A. I asked him to pay for his food, that was all.

Q. And did he pay for that? A. He paid that; and the first week it was about five days, and she was satisfied with the prices, but the next time she said, "Oh, well, can't you live for less next week?" It was something over ten dollars, a little over ten dollars—

Q. For the two? A. For three; they was paying for all the food—no, not all the food, because I got three bottles of milk and I paid for two, myself; they paid for one. But they didn't pay over ten dollars a week. And then she would borrow money, and then, when I put that down, she wanted to know if I could not live for less. So I said, "Well, if you don't like it, you can go and board somewhere". So when Lynn came home he said, "Well, what is it, Auntie?" and I said, "Well, Lynn, I have had it out with May; now I will have it out with you", and, of course, he wouldn't think of such a thing; he said, "Oh, May didn't mean it", he said "she is sorry", and everything of that kind; that he would do everything he could; he didn't want her to feel hard towards him, or anything. Then she went down to her mother-in-law and said she was sorry, and all that. She has said also in her affidavit that I did not do any shopping for her. I went to New York twice and bought things for her; and once she gave me five dollars of her own money and the things cost more than five dollars, and I paid the excess, and put it down on the bill, and Lynn paid it. Then the next time, it was just before the 1st of May, a week or so before the 1st of May, or about the 15th or 17th, she gave me $5.00 out of the money he had given her. Then I went

with her to the bank. She drew forty dollars to go pay the rent—or, not the rent, Lynn had paid the rent—to pay for the moving, and all that; and so then I went over to New York, and there was an excess then, it was more than the time before, and I put that down.

Q. (By the Vice Chancellor): Did she ever tell you that her husband had beaten her and struck her, or abused her? A. No, she never told me anything of the kind.

Q. Now, during the period she lived in your house there, did you observe the kind of a treatment he gave her? A. He was very kind to her.

Q. Did you ever hear him say anything sharp to her? A. No, I don't think I did.

Q. Are you related to him? A. Yes, I am his mother's sister. And he was kind to her.

Q. Well, if she was with you six weeks, she must have left you about the 1st of April—in that neighborhood? A. No, the 1st of April came on—she left me on Satuday before the 1st of April, I think; the 1st of April was her birthday.

Q. From your house, where did they go? A. They went to 143 Palisade Avenue.

Q. Did you visit them there? A. Yes, sir.

Q. How frequently? A. Well, one day I was there, the Sunday after; they insisted on my coming; I lived alone, and they insisted that I should come to dinner, from church, the first Sunday. They left me on Saturday night, and I went down with them, and made them a loaf of brown bread.

Q. Well, you had dinner with them the next day, or a week from that? A. The next day. And Mr. Harry Dirks came that afternoon, then, as I say, one time—

Q. Confine yourself to these visits after this six weeks that they were at your house. A. Yes; well, I am going to say that I went in there—

Q. Where? A. One evening. She was going on to work—and she says that I and his mother wanted her to work; we had nothing to say about it; I had nothing to say about her keeping on working; if she wanted to keep on working, she could do so, but I never insisted on her working at all.

Q. Did you ever hear, from any source, that he had beaten, struck, or otherwise maltreated her? A. No, sir. Only in these affidavits that she gave —

Q. No, no; I don't mean that; did you know, before this case started—that is, when I say, "did you know" I do not mean did you know of your own knowledge—but did you ever know or hear that he had beaten her, struck her, or treated her unkindly, in any manner? A. No.

Q. Never heard of it? A. No.

Q. Now, then, right after the Sunday you spoke of, you went to dinner again? A. I did.

Q. Did you visit them after that? A. Yes, I visted them, of course; and one evening I went in there, and Lynn said—oh, it was about some hat I had, a hat that she wanted, and I told him to tell her where she could get the braid, or something of the kind; and so he says, "Wait, May will be here in a few minutes."

Q. May who? A. His wife. The dumb-waiter whistle blew, and he went to take the ice off, and, of course, he couldn't go and open the door while he was at the dumb-waiter taking the ice off, and she rang the bell, and he pushed the button so the door would open down stairs. Well, she had a key to get in, if she wanted to, I suppose—

Q. Do not state what you suppose, state what happened. A. Well, then, she knocked at the door, and I went and opened the door. She said, "Where is Lynn?" just in that manner. I said, "He is back, taking the ice off the dumb-waiter."

She said "Why didn't he come and open the door?" Now, that was the tone in which she would talk. And so, of course Lynn wanted me to stay to tea; I wouldn't stay to tea; I said "No, I am going next door; I am going to my sister's."

Q. That was how long after she left you? A. Oh, maybe a week, two weeks; something like that; maybe three weeks; I couldn't say, really, how long.

Q. Now, after that date, what transpired, that you know, of your own knowledge? A. Well, let me see—I went away in May; I went away about the 15th of May, and I was gone until after I came back in June, when she had left him.

Q. (By Mr. Stover): Were you ever in a car when she was, also, around 1919, on March 23rd? A. Yes.

Q. Will you describe her conduct in that car? A. Well, as I told you—

Mr. Jentz: I object to that.

The Vice Chancellor: Was the defendant there?

Mr. Stover: He was there; yes, sir.

Q. Was the defendant there? A. Yes, he was there.

Q. All right, go ahead. A. Mr. Dirks was sitting back here (indicating); Lynn was sitting there, and May was sitting there. She made Lynn get up and give her his seat, and then she turned her back on Lynn, and talked to Mr. Dirks all the time; and, as I said, I did not think it was a nice thing for her to ask Mr. Dirks to the house—

The Vice Chancellor: Oh, well, that is childish.

Q. Now, did you ever talk, while he was in the army, with his wife—Lynn's wife? A. Why, she came up to me several times.

Q. Did she pass any remarks; or tell us what she said. A. Yes.

Q. What did she say? A. Well, she told me she went to board with somebody—she had left her mother, and she was leaving her mother every little while and going to board somewhere else—she said she had left her mother and was boarding with somebody—I think her first or given name was Frieda, I don't know her name at all—and she told me that she slept in the dining room on a couch, and that one Sunday morning some of the men came through, and they pulled the clothes off the bed; and I said, "Oh, May, that was terrible!"

Q. How did she act at the time she said that—did she say it in a serious or joking way? A. No; she didn't seem to think it was anything.

Q. Did she say she was dressed, or not, at that time?

MR. JENTZ: I object; this has gone far enough, I think, your Honor.

THE VICE CHANCELLOR: What is the materiality of it?

MR. STOVER: It shows her character, your Honor.

THE VICE CHANCELLOR: It does not prove anything. You seem to forget what the issue is in this case. The real issue is this,—was the conduct of this husband toward the wife such that it is not safe for her to live with him; and, by reason of its not being safe for her to live with him, under the doctrine of CLOSE VS. CLOSE, was she justified in abandoning him and converting her leaving into a constructive desertion on his part. Now, this thing I do not see anything in, beyond what this lady says as to her conduct and treatment of her husband, which might tend to en-

rage him. Naturally, with a normal man, it might do to, and result in his doing things he should not do. But the wife always holds her own comfort in her own hands by treating her husband right, and acting right and properly toward him. The law does not regard things done in excess of temper by a husband as justifying a decree of separation, nor a decree of separate maintenance, when, if the wife conducts herself properly she will receive proper treatment from the husband.

Q. How did he conduct himself?

THE VICE CHANCELLOR: Oh, she has testified to that.

THE WITNESS: She asked me if I would keep the money for them; and I said, "No," because I knew well enough how handy it is, if you have money in the house—

THE VICE CHANCELLOR: Oh, no; never mind that.

No cross examination.

MRS. CATHERINE SHEA, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. You are a married lady, are you not? A. Yes.

Q. Where do you live? A. 327 Union Street, West Hoboken.

Q. You know this couple—the McDermott couple? A. Yes, sir.

Q. For some time? A. Yes, sir.

Q. Are you a relation of them—related to them in any way? A. No, sir.

Q. You are friends of both sides, are you? A. Yes, sir.

Q. And you have known the wife a long time? A. Well, I have known her as long as she has been married.

Q. What can you say about her temperament—her disposition? A. Well, I have worked with the girl, and she has always been quick in disposition and temper—that is, with the girls that we have worked with.

Q. (By The Vice Chancellor): That is, with the girls she worked with she was quick-tempered. A. Yes, very quick-tempered.

Q. Well, after she got through with her temper it was all over with? A. It was all over, yes.

Q. Did she seem to cherish any malice toward anyone? A. No; not as I know—just a flash of temper.

Q. Then it was all over? A. Yes.

Q. (By Mr. Stover): Have you seen the couple at their home in West Hoboken on Palisade Avenue? A. Yes, sir.

Q. When was this, about? A. This was in May, 1919.

Q. Did you speak to her there? A. Yes.

Q. Was Mr. McDermott, the defendant, there at the time? A. He was present at the time.

Q. Tell us what the conversation was? A. I went in to his sister, Mrs. Hein, and she brought me in to see her brother's home and May's; so when I went up I said, "Oh, May, what a nice home you have got; you should be proud of it"; and so she says, "Oh, I am tired of home"; so Lynn says, "Yes, Katie, she don't appreciate it." I said, "May, you ought to be ashamed of yourself that you don't appreciate it." I said, "Lynn, you know what you ought to do? You ought to give her a good spanking." She said, "Well, it would take more than him to do that."

Q. Were you there on any other occasion, at

this home? A. A few weeks after I went there with my mother-in-law and baby to buy a baby carriage Mrs. McDermott had to sell.

Q. (By The Vice Chancellor): When was this? A. A few weeks after.

Q. What month? A. This was in May of 1919; and I saw, when my mother-in-law and I got to the house that they had already been quarrelling, by the way they were acting. So May came over to me and whispered to me (she had taken the baby's picture down off the wall) she says, "There will be hell when Lynn finds it out." I said, "Come, play us a tune," and she sat down and said, "If my husband will allow me?" So he sat in a chair alongside of his wife, with my baby in his arms, and she was playing, and I happened to glance at Lynn, and he cried, and got up and walked out of the room until she got through playing.

Cross Examination By Mr. Jentz:

Q. When did you say this was? A. In May, 1919.

Q. Do you remember the date? A. That I don't remember.

Mrs. Emma Hein, sworn.

Direct Examination By Mr. Stover:

Q. You are a sister of Mr McDermott? A. I am.

Q. Where do you live? A. I live now at 100 Palisade Avenue.

Q. You have known this couple for quite some time have you not? A. Oh, yes.

Q. What do you know about this couple in October, 1915? A. Well, I don't just recall any incident.

Q. (By The Vice Chancellor): Well, did you visit their house? A. Why, not at first, I didn't visit their house, because they did not have a home, they lived with my mother.

Q. Well, you lived at home? A. I lived at my home.

Q. Well, were you married at that time? A. Yes; she came to my home; she used to come there quite often for supper, because I recommended her to the place where Mrs. Shea, a friend of mine, was working, and I got her a position there, and she used to come to my house quite often for supper, and I always found her very, very quarrelsome, ready to begin an argument at anything Lynn would say. So, if they had been out to a party, or outing, or something, and Lynn wanted to state some occurrence that occurred—

Mr. Jentz: I do not like to interrupt, but I think she ought to state when these different things happened.

A. This was in 1915, right shortly after they were married, after they started housekeeping.

Q. All right. A. And he would want to state about some occurrence that happened during their outing, and she would say, "Oh, you shut up, you old dope; you don't know how to say anything; you don't know how to tell it; let me tell it," and she would shut him right up, and wouldn't let him say a word; and, of course, naturally, a man would be aggravated when one would call him an "old dope," and tell them they didn't know how to talk, or anything else, naturally, there would be an argument.

Q. (By Mr. Stover): Will you say if he showed you any marks on his body? A. He did; he showed me a bite mark on his arm.

THE VICE CHANCELLOR: That is not disputed.

Q. Did he ever complain to you about any knife?

THE VICE CHANCELLOR: That is hearsay.

MR. STOVER: If we can prove that it happened at the time it occurred? She did not see anything there, but, at the time it occurred, he went down directly to her and complained about the knife wound. That would be evidential, as part of the res gestae.

THE VICE CHANCELLOR: Oh, no, no.

Q. When did you see them, after that—the next after that? A. No time, in particular.

Q. Well, I will ask you in this way: When did they first start housekeeping? A. Well, as I said —

Q. No, you state what you saw? A. About three months after they were married.

Q. And where was that? A. On Clinton Avenue, or Clinton Street, at least, Hoboken.

Q. Did you visit them there? A. Oh, yes.

Q. And did you visit them frequently? A. Yes, quite often.

Q. How did he treat her while you were there? A. Very nice, according to my estimation.

Q. How did she treat him while you were there? A. As I said before, very quarrelsome; always picking at him about something he did, or was going to do.

Q. What did she say to him in the way of names—did she call him any names? A. Always "an old dope," or "poor fish," or something to that effect.

Q. Did she call him any other names beside that? A. Not to my knowledge.

Q. Where did they move to from that place? A. To a house a couple of doors from there.

Q. Did you see them there? A. Yes, I did.

Q. And did you hear how she would speak to him? A. Always in the same manner.

Q. (By The Vice Chancellor): Do you mean to say that you never saw them both in a pleasant mood? A. Why, she didn't seem ever to be in a very pleasant mood; she always would be ready to quarrel with him for something, or other that was going on. It seemed to be always money matters.

Q. Did you ever see them, in the presence of company, quarreling? A. Yes, even in the presence of company she tried to belittle him about something he was going to state, or something he was going to tell.

Q. (By Mr. Stover): Do you remember the time he joined the army? A. Yes.

Q. Did she speak to him about joining the army? A. Well, that I could not say, because I did not hear that. I only heard my younger brother tell me what she called him.

Q. Have you ever heard her say anything to him about he ought to join the army, or about his character, or about staying home or anything like that? A. No, I never heard that.

Q. When did he go to France, do you remember that? A. I don't remember when he went to France, but I remember when he joined the army, and I remember his going away.

Q. You know she got his allotment regularly, don't you?

Mr. Jentz: I object to that.

The Vice Chancellor: How does she know?

A. Why, she came to me and told me she got the first allotment.

The Vice Chancellor: There is no question about that.

MR. JENTZ: We admit we got the allotment of $157.11.

THE WITNESS: No, but she never told me that he enlisted as a single man; she never told anybody that; that is new to me.

Q. Do you remember when he came home? A. Yes.

Q. And started his home in West Hoboken at 143 Palisade Avenue? A. Yes; right next door to me.

Q. You saw them quite often there, did you not —you visted them? A. Oh, yes.

Q. How did he treat her there? A. Always in a gentle manner.

Q. Did he ever beat or abuse her, in your presence? A. No, sir.

Q. Did he ever call her a "bitch," or vile, filthy names? A. I never heard him use that word.

Q. How did she treat him when he came out of the army? A. As I said before.

Q. The same treatment? A. The very same.

Q. Was she working at that time? A. She was working when he came home.

Q. Did she tell you how much she was earning?

MR. JENTZ: I object to that.

THE VICE CHANCELLOR: That is not necessary; she says herself that she is making $15.00 a week.

Q. Do you remember May, 1919, when someone called you from your apartment on the top floor? A. Called me from my apartment.

Q. Or where she spoke from the top floor? A. Yes.

Q. All right; what did you hear there; what was said? A. Why, I was in the doorway, and it seemed that they had been quarrelling, and she

called out the window, "Is Lynn there?" and I said "No, he isn't here," and he had been home and he had been to my house and said that May wasn't home yet and he was waiting for her; but he was not there at the time.

Q. Did she say anything more at that time? A. No; she just asked me if Lynn was there.

Q. At this time who would do the cooking—who cooked Lynn's meals?

MR. JENTZ: I object to that.

THE VICE CHANCELLOR: I will permit it.

A. He told me that—

THE VICE CHANCELLOR: No, not what he told you.

A. Why, it was understood that he would come home and put the potatoes on, and have the—

THE VICE CHANCELLOR: Oh, no no. Did you hear them agree to that?

A. Why, yes; they came to my house quite often, at least I used to see them up to my mother's house, and I often heard him say "Well, I had the potatoes on."

THE VICE CHANCELLOR: There is nothing in that; it don't amount to anything.

MR. STOVER: No, it is not important, I must say.

Q. Have you ever heard her say anything about her leaving him? A. Why, she often threatened to leave him, in my presence.

Q. What did she say? A. Why, that she was tired of him.

Q. Can you remember her exact words? A. Not exactly, no; only just that she was sick of him—"sick of the poor fish."

Q. She said that how often? A. Very frequently.

Q. Do you remember June, 1919, June 2nd? A. I do not recall any specific occasion.

Q. (By The Vice Chancellor): Well, just about the time she left? A. Just about the time she left, yes.

Q. (By Mr. Stover): Do you know anything that transpired then? A. Yes, my brother used to come down to me night after night.

Q. Did his wife come with him? A. Why, no; he would come down and say "Got anything to eat, kid?"

Q. No, don't state anything that was not said in the presence of his wife. A. Well, he would come down and get his supper with me, and I asked him where his wife was—

The Vice Chancellor: Strike out; it is not evidence.

Q. Did you have, just about the time the separation took place, any conversation with his wife? A. I did, yes.

Q. When? A. The week that he gave her money; he was going to try her again.

Q. When was this? A. This was just a couple of weeks before she left him; and I said "The milkman had called, Lynn," and I said—

Q. No, what did you say to her? A. Well, I am going to tell you, if you will allow me to.

Q. Well, go ahead. A. And I said "I want the money for the milk; I laid it out for you, because you and your wife are never home." He said "All right; you go up and ask May; I gave May the money." So I went up, and she treated me very coolly. I said, "May, I would like to have the money for the milk." She said, "I can't give it to you." I said, "Why?" "Well," she says, "I have

got to keep this money; I don't know when I will ever get any again." "Well," I said, "I paid the milk out for you, and I am quite sure I am entitled to what is coming to me; I am not supposed to pay your milk bill." She said "Well, let him pay it." I said, "Oh, very well; but I am sure I will never pay for the milk for you again. I thought I was doing you a favor." She said, "Well, let him pay it." She said, "I haven't got it; I ain't going to give it to you."

Q. Was that the last conversation you had with her? A. That was the last conversation I had with her.

CROSS EXAMINATION BY MR. JENTZ:

Q. When was that? A. About two weeks before she left.

Q. All you know, then, is that Mrs. McDermott, in your opinion, was of a quarrelsome disposition, is that right? A. Yes.

Q. And she frequently called her husband a "dope" and a "poor fish," is that right? A. Yes.

Q. He never did anything to cause anything like that—he always acted in a very kindly manner? A. He always acted in a very gentlemanly manner.

Q. And never did anything to provoke his wife to become quarrelsome? A. No.

Q. He was a model husband in every way, as far as you saw? A. I do not say he was a model husband, but I say he was a very good husband.

JEREMIAH MCCARTHY, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Where do you live? A. 69 Bloomfield Street.

Q. Do you know the wife here, the petitioner? A. Yes, sir.

Q. Have you seen her in the month of August, 1919? A. Yes.

Q. What did you see her do? Have you made reports and notes of what you saw her do?

Q. (By The Vice Chancellor): What is your business? A. Captain of a boat.

Q. What boat? A. "Edith."

Q. What kind of a boat? A. A covered barge.

Q. That is your regular employment, is it? A. Yes, sir; I have been a hoisting engineer.

Q. (By Mr. Stover): Have you made notes of what you saw her do? A. Well, I didn't make notes of everything.

Q. But some of the things? A. Yes.

The Vice Chancellor: What are you trying to prove?

Mr. Stover: The complainant has stated that she did not go with Harry Dirks, and did not live with Harry Dirks, here.

The Vice Chancellor: I will exclude that evidence.

Mr. Stover: There is something else, if the Court please.

The Vice Chancellor: Well, if there is something else, all right; but I am not going to let in evidence here which tends to show that this lady lived with some man, or walked out with someone else—

Mr. Stover: Well, I want to show that he took her out to amusements—that is, Harry Dirks—to show the motive of her leaving her husband.

The Vice Chancellor: I won't listen to testimony of that kind. It will take a whole week to go into all these details that have no

bearing on the case whatever. I am excluding this, to a great extent, Mr. Stover, because I do not want to have any evidence go against this lady that may or may not be true, and, if true, may cast a reflection upon her without evidencing any wrongdoing whatever; because, as I see it at the present time, there is no earthly reason why these people should not live together and control themselves.

(The witness thereupon stood aside).

MRS. ROSE MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Will you state where you reside? A. 200 Monroe Street, Hoboken.

Q. How long have you known this couple? A. I have known Lynn McDermott since he was eight years old.

Q. How long have you known the wife? A. About three or four weeks before she married Mr. Lynn McDermott.

Q. Where did they start to keep a home, do you remember? A. Certainly; they boarded with his mother.

Q. They boarded there how long, do you know? A. Until in April. This was in January, and in April she was taking sick.

Q. You saw them there frequently, didn't you? A. Yes, sir.

Q. How did he treat her there? A. Well, naturally they was getting along well together, of course at that time.

Q. (BY THE VICE CHANCELLOR): That was right after their marriage? A. Yes.

Q. (BY MR. STOVER): And where did they move to, then, do you remember?

THE VICE CHANCELLOR: What do you want to show by this witness?

MR. STOVER: We want to show his treatment of her, that it was all right; and we want to show her treatment of him.

BY THE VICE CHANCELLOR:

Q. How frequently did you visit them? A. Well, I visited them quite a little; in fact, at one time, they lived in the same house I did.

Q. What time was that? A. That was right before her baby was born, in 1915 and 1916.

Q. And before that did he treat her kindly? A. Yes, he always treated her that way.

Q. Did you ever see him say or do anything sharp to her? A. He may have said something sharp to her, but she was always the one that provoked the quarrel, always.

Q. Now, coming down to this course of conversation with her—what was his course of conversation with her, when you were present, and what was hers to him? Just describe it. A. Well, there would never be any understanding; he could never suggest anything—if he wanted to go anywheres, or anything of the kind, she was always against it, no matter what it was; if he suggested anything, to go anywheres, or anything else, she would say "Well, we can't afford it," or something like that, "and you know it," and so on.

Q. Did you ever hear of his striking her? A. Never.

Q. You heard it testified to here today? A. She testified here that I knew of him striking her, when she lived in the same house with me, at 200 Monroe Street; I never knew anything about it.

Q. Did you ever know, from any source, that he struck, beat or abused her, until the testimony was heard in court today? A. No.

Q. Now, in his intercourse with his wife publicly, how did he treat her? A. Very good; he is a fellow that hasn't very much to say and Mrs. McDermott always had faults to pick.

Q. (By Mr. Stover): Will you please state if you saw her, in December, 1919, on the street? A. Yes.

The Vice Chancellor: What is the object of this?

Mr. Stover: She was on the street in company with somebody else.

The Vice Chancellor: I won't allow that; I will exclude that, the same as I did the other.

Cross Examination By Mr. Jentz:

Q. How many times did you visit them, about? A. Very often.

Q. What do you mean by "very often"—once a week, or once a month? A. Well, at one time I visited her once a week, yes.

Q. What did you say the condition was of the treatment toward one another? A. Why, he was a very quiet fellow; he would certainly never say anything to her if she did not say something to him.

Q. But he spoke sharp to her, didn't he? A. Very little, to amount to anything, I am sure.

Q. Do you remember what was said? A. No, I don't remember any incident, in particular.

The Vice Chancellor: Before going further in this case, are these parties willing to live together?

Mrs. Emma McDermott—Direct.
Lynn M. McDermott—Direct.

MRS. EMMA MCDERMOTT, called.

MR. STOVER: I don't know what my man thinks about that.

MR. JENTZ: I believe he said on the stand this morning he was not.

THE VICE CHANCELLOR: (To the witness) Just step down, madam. (To Mr. Stover) Put your client on the stand. I do not want these parties saying such things in court that will make it more difficult for them to come together.

LYNN M. MCDERMOTT, recalled.

EXAMINED BY THE VICE CHANCELLOR:

Q. Are you willing to live with your wife? A. I am willing to live with this woman if she conducts herself as a decent woman; but these things have gone on five years; she is a quarrelsome woman, and forever picking quarrels.

Q. You are not willing to try again with her? A. I don't think so; I think she would do as she did before; she would do the same thing.

Q. Then you refuse to live with her? A. I do, sir.

Q. Has that been your attitude of mind ever since she left you? A. No, sir; as I said, if she would conduct herself as a wife should, it was all well and good.

MRS. MARY MCDERMOTT, recalled.

EXAMINED BY THE VICE CHANCELLOR:

Q. Are you willing to live with your husband now? A. Well, if he acted as a gentleman should, but he does not seem to want to.

THE VICE CHANCELLOR: I see. Then, neither one of you desires to live together.

MRS. EMMA MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Will you please state where you reside? A. 147 Palisade Avenue.

Q. And you are the mother of the defendant? A. Of Lynn McDermott; yes, sir.

Q. How old are you? A. Sixty-one.

Q. How long have you known Lynn's wife, Mrs. McDermott? A. Well, I think they was keeping company about five or six years.

Q. She testified about you wanting to make an abortion on her, or wanting to commit an abortion? A. Well, it is very false, and very wicked.

MR. JENTZ: I do not understand that it was for an abortion. I object.

THE VICE CHANCELLOR: I understood it, very thoroughly.

MR. JENTZ: If that was the understanding, I withdraw any objection.

THE VICE CHANCELLOR: That is what she said. She not only said that, but she said she took the medicine to accomplish it.

THE WITNESS: It was very false.

Q. What have you got to say about that? A. In the first place, I never advised them to get

married. They came to me and said they were going to get married. I said, "Oh, Lynn, you are too young; you are not out of your time yet; can't you wait until you are out of your time?" Then he told me the reason why she wanted to get married. She said the reason the thing had to be done was because she could not stand her home, she was so badly used in her home.

Q. Well, she was there at the time, then? A. Yes, she was there. And he said the only way it could be accomplished was by doing what he done.

Q. (By The Vice Chancellor): What do you mean by "doing what he done?" A. What she said herself.

Q. Do you mean to say that the only way that she could get married and leave her home was to put her with a child? A. That was the only way he could marry her; because he was only eighteen at the time.

Q. Let me understand you: I don't want any doubt about it. Do I understand that she said that the only way— A. (Interrupting) No, he said.

Q. Then, as I understand you, he said, in the presence of his present wife, that the only way he could marry her was that he should first put her with a child? A. Yes.

By Mr. Stover:

Q. Now, you say "they told you"—who do you mean?

The Vice Chancellor: No, she said he said it, in the presence of his wife.

Q. Is that right—did he say that in the presence of his wife? A. He said that in the presence of his wife.

Q. Was there any talk about abortion? A. And when he said that she was this way, I said—

Q. (Interrupting) did she tell you that she was in the family way? A. They told me they were going to be married, and that was the reason they wanted to be married; and I said, "Now, May, you know you go awfully bare," and when she came to me before they were married her feet was wet, she had small shoes on her feet, and I made her put my rubbers on, because I was afraid she would get cold. I said, "You may only have cold now"; I says, "I have some medicine that, if it is only cold, will make things right, but," I said, "It would never bring on a miss"; and so she pretended to take this medicine, but she went to the bathroom, and she tasted it, and she threw it in the toilet, and came back, and said "Oh, that's awful." I said, "May, you didn't drink that; I heard you; you threw it down the toilet," and she laughed. She says I gave her medicine to bring on an abortion, and she didn't even take it; and I told her distinctly that it would not even bring on a miscarriage. I think it is wicked for a young woman to say that of an old woman.

Q. (By The Vice Chancellor): What was the medicine you gave her? A. Gin and pickery.

Q. Is not that also used for the purpose of bringing on the menstrual flow? A. Well, if you have got a cold, it won't do any damage if it doesn't. If nature is the cause of the stop, it will never bring it on.

Q. Is not pickery and gin used by women during the menstrual period to bring on the flows? A. If they have got a cold.

Q. Even if they haven't cold? A. No.

Q. Don't they take it for an obstruction of the menses? A. No, I never heard of such a thing.

Q. (By Mr. Stover): Will you please state if she spoke to you about any abortion? A. No, she did not.

Q. Never did? A. She never did. I did not give her anything for that, because I told her so.

Q. Was there any talk on her part of having her commit an abortion? A. Why, no.

MR. JENTZ: She has answered that.

THE VICE CHANCELLOR: She has not answered it, as far as I know.

THE WITNESS: I said "No," each time.

Q. (BY THE VICE CHANCELLOR): Was there any discussion between you as to an abortion? A. Why, no.

Q. How soon after you gave her this pickery and gin did she have the miscarriage? A. She did not have any; she never was right for any child.

Q. That is, she never was with child? A. She never was until she had her boy.

Q. (BY MR. STOVER:) When did they start a home first, do you remember? A. Oh, I don't know the date; but I know that they were with me for three months.

Q. How did he treat her during those three months? A. I never knew him to treat her any other way but kindly.

Q. Did he ever hit her, in your presence, or beat her? A. No, he did not.

Q. Will you please state if she complained about being beaten by him? A. No, she did not.

Q. How did she treat him during those three months? A. Well, as has been stated before, she was always a quarrelsome girl; it was not only with him she quarreled, she quarreled with all the girls she worked with.

Q. (BY THE VICE CHANCELLOR): You do not know that? A. I do.

Q. How do you know it? A. I heard them telling it.

THE VICE CHANCELLOR: Well, that is not evidence; strike it out.

THE WITNESS: Well, my daughter was there.

THE VICE CHANCELLOR: Well, that is enough, madam; just answer the questions; and do not tell what you think, or what you heard.

Q. (BY MR. STOVER): Were you there when he was sleeping; and she treated him in a certain way while he was sleeping? A. I certainly was.

Q. When was that? A. That was during the period that they were with me.

Q. What happened there? A. She carried her clothes into the bedroom, and we told her not to light the gas, because Mr. McDermott was asleep, and we didn't want to wake him up—

Q. (BY THE VICE CHANCELLOR): That is your husband, or your son? A. My husband. She lit the gas and threw the clothes so the strings of the clothes and things came across his face—

Q. That is, your husband's face? A. My son's face. She said she didn't know he was in the bed, but she did know, because she wanted him to stay up, and she said, "Don't go to bed, but just lie across the bed"; and she went in there and threw the things so they went across his face. He pushed them off his face. She said they went on the floor—she pushed them off and then she slapped him in the face; I heard the slap; I wasn't in the room and saw it, but I heard it. And, of course, he jumped up, and I suppose, hit her back; I didn't know anything then, because she screamed, and, of course, my husband jumped up, and in the minute of passion, when he woke up, he would have fired his son out of the window if we hadn't got hold of him and talked to him, and told him

what she had done. Then, when he found out what she had done, he has never had any use for her since.

Q. (By Mr. Stover): How did she address him while they were living there—how did she address her husband? A. Well, if she felt inclined to say so, it was "Dearie," but if she did not feel inclined to say so, it was "You bonehead."

Q. Did she ever call him "dope" and a "poor fish"? A. Oh, yes, that was her common names always for him.

Q. When did they move from your home, do you know? A. Well, she was taken sick with appendicitis, and she went to the hospital; and when she came home from the hospital she came from there before she ought to have, because she quarrelled with the nurses and doctors and everybody.

Mr. Jentz: I ask that that be stricken out.

Q. (By The Vice Chancellor): How do you know that? A. I heard it.

Q. (By Mr. Stover) Did she tell you this? A. Why, I was down there, and none of them would have anything to do with her.

Q. (By The Vice Chancellor) How do you know that is so? A. Because I was with her.

Q. You were with her? A. Yes, I was at her bedside when she argued with the nurses there.

Q. (By Mr. Stover) What did she say about nurse there?

Mr. Jentz: I object to that. If the woman was sick she might quarrel with anybody.

Q. When she came home, where did they reside? A. She came to my house first, and I advised her not to go out, because my son and his

brother (my two sons) carried her up the stairs; and they no sooner had her up the stairs when she wanted to come down; and I advised her not to come, for he wound was not healed and she would not listen to me, and she went down and went down to her mother's; of course it was not fit for her to go home that night, for it was raining, and of course, the young husband was all worked up, he thought she ought to be home; but that was the last she lived in the home.

Q. When he came back from the Army, will you please state where they moved? A. Why, they went with my sister.

Q. Where was that? A. 262 Palisade Avenue.

Q. Did you see them there—did you see the couple with your sister? A. Yes.

Q. And how did he treat her there? A. Always the same.

Q. What do you mean—always good treatment? A. Always with courtesy and kindness, I never saw him treat her any other way.

Q. Did she ever complain to you that he struck her? A. No, I never heard of him striking her.

Q. Has she ever complained to you about his firing a shoe at her? A. No.

Q. Or complain to you about a knife, or an incident in which a knife figured? A. No, she never told me any of those things.

Q. You have seen her often, have you? A. Certainly.

Q. What was her treatment of him while the couple were at your sister's house? A. That I don't know anything about, because I was not there. When I was there, everything was all right. I was only there a couple of times while he was at my sister's house.

Q. Were you there when they moved away and

occupied another home? A. Well, then they took a floor two doors from me.

Q. Where was that? A. 143 Palisade Avenue.

Q. And do you remember when this was? A. Why, yes, it was 1919.

Q. And what month, about? A. Well, I don't remember the month.

Q. Well, was this the last place where they lived? A. That was the last place they lived.

Q. Can you tell us anything about his treatment of her there, or her treatment of him there at this last place? A. No, I know very little of it, because whenever I went into their house there was always a harangue about something, and, of course, that didn't sit well on me, because I did not think the boy deserved it.

Q. Who did the haranguing? A. His wife.

Q. And what did she say, at this last place of abode, when she harangued? A. Why, it was that he always did something that did not please her; he didn't move this way right, or he didn't move that way right; he always seemed to offend her, every move that he made.

Q. Will you please state whether she said he would hit her, at this last place of abode?

MR. JENTZ: I object to his leading.

THE VICE CHANCELLOR: It is leading.

A. I did not hear it.

Q. Has she called him any names at this place? A. Well, as she always did; she never let up in that "bonehead"; that has always been her way during her married life.

Q. Did you notice her treatment of her brother, in this Palisade Avenue house?

MR. JENTZ: I ask that any testimony to the treatment of the brother be stricken out.

MR. STOVER: In the petitioner's house, I mean. What we are trying to show is that she was cross with her own brother, in the same manner.

THE VICE CHANCELLOR: I do not care about that; I will sustain the objection.

Q. Did you speak to her when you saw her nagging, or rather, heard her nagging her husband? A. No, I never interfered with them; I simply, when I couldn't stand it, got out.

Q. What did he say to her when she would begin to nag him? A. I couldn't understand how he was so mild about it. I have often said to the different members of the family, "I don't see how it is that Lynn is without a bit of spunk about it", because of the abuse she gave him. Of course, it was not such terrible abuse.

NO CROSS EXAMINATION.

ETHEL MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Will you please state where you live, Miss McDermott? A. 147 Palisade Avenue, West Hoboken.

Q. You are a working girl, are you? A. I am partly in partnership in business.

Q. What business are you engaged in? A. I am employed as a bookkeeper in the New Jersey Express Company.

Q. Lynn McDermott is your brother, and this lady is his wife, is that right? A. Yes; I am a witness to their marriage.

Q. Were you there at the time that she spoke about the medicine? A. Oh, no; as I am a single girl, I suppose they never entered me into it, of

course; but I know what my mother has is nothing but for a single girl; if I wanted to take it, I would take it; it is simply medicine for a woman to take.

Q. I see. You have taken it yourself, that gin and other stuff? A. I have taken it in years gone by, yes; at the present time I am in very good health.

THE VICE CHANCELLOR: Do you want to show what treatment her brother gave to his wife, or *vice versa?*

MR. STOVER: No, I would like to show that this stuff is harmless, and used for colds.

THE VICE CHANCELLOR: Oh, she cannot prove or testify to that. I do not think the witness is competent to testify to that.

Q. Will you please state where they first took up home after their marriage? A. Well, they both stayed with us, both right in the same place They agreed to come and live at our house.
she would put him down. That is when I would
going over that.

B THE VICE CHANCELLOR:

Q. How frequently did you visit your brother and his wife? A. When they were first married they lived at my father's home, where I resided; and my brother treated her as any man would treat a woman. I often told her I wished I was in her place.

Q. How did she treat him? A. Quarrelsome, at times; and I know positively, at the time which they have all spoken of, it was myself that told her to be careful, "don't awaken Lynn, and don't make any disturbance".

THE VICE CHANCELLOR: Don't bother about that.

Q. (BY MR. STOVER): How did she treat him, in a general way? A. Well, that is what I am trying to tell you.

Q. (BY THE VICE CHANCELLOR): How did she treat him? A. When she wanted to waken him, if he was asleep, instead of calling him she would slap him in the face. I myself showed her how to awaken him.

Q. Did you see her slap him in the face? A. Yes, sir.

Q. How many times? A. Several times, three or four times. At different times I showed her myself how to awaken him, and he would say, "Oh, Dearie, is it you?" I would push her in there, and I would say, "See, May, if you would only kiss him you would not find him cross".

Q. (BY MR. STOVER): Where did they move to then? A. Just where it was they moved to—

Q. (BY THE VICE CHANCELLOR): Just answer the questions. How did he treat her during the period of their marriage, as far as you know. A. As far as I know, when I visited the different places where they lived, things would be all right, apparently, and she would always wrangle and jangle. He would want to talk of something, and she would put him down. That is when I would be there present.

Q Did that thing continue throughout the married life? A All the time; I never wished to visit them because it was that way.

CROSS EXAMINATION BY MR. JENTZ:

Q. You are not at home much, are you? A. Well, I am home when it requires me to be home.

Q. I mean your work keeps you away until late at night, doesn't it? A. Late at night, yes, sir.

Q. Therefore, your visits, on the occasions that you saw this treatment——A. (Interrupting) But at that time it did not keep me late at night.

MR. JENTZ: Well I won't press it.

RALPH MCDERMOTT, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Where do you live? A. 147 Palisade Avenue, West Hoboken.

Q. You are a brother of Lynn McDermott? A. I am.

Q. Did you see his wife in September, 1919? A. I did.

Q. Where did you see his wife? A. At Coney Island, with another man.

MR. JENTZ: I object to that.

THE VICE CHANCELLOR: I will strike it out.

MR. STOVER: We simply offer it to show the motive of leaving the husband.

THE VICE CHANCELLOR: I do not care for her motive. She left him. What I want to do is to get the conduct of the parties, to see who is in the wrong.

MR. STOVER: All right; no more questions.

THE DEFENDANT RESTS—BOTH SIDES CLOSE.

THE VICE CHANCELLOR: I will hear counsel on three points: The first is whether the wife is entitled to maintenance in this case, that is, first, apart from the amount. She is making fifteen dollars a week now; and if I should conclude that she was in the right, why should the Court allow her more? Particularly as she says she will not return to to her husband——

MR. JENTZ: And he says the same thing. he won't take her. I think she qualified that, and said "if he treats her right".

THE VICE CHANCELLOR: He said the same thing. Now, is it not perfectly plain that this man did strike his wife; is it not perfectly plain that this woman is a nagger, who continually irritated him?

MR. JENTZ: I don't think it is.

THE VICE CHANCELLOR: Well, I find as a matter of fact, that that is so well settled that now it looks to me very much like this—that under *Close v. Close*, if the conduct of the husband was such that it would be unsafe for the wife to return to him, then the Court would decree separate maintenance on the ground of cruelty, just the same as it would grant a divorce on the ground of constructive desertion; but there is another rule controlling, as well, that where the action of the husband is produced largely by the conduct of the wife, as the wife holds the key of her happiness in her own hands and she refuses to use it, but is continually nagging her husband and arousing him, so that he loses his temper, then she must bear the burden that she creates, and lie in the bed she makes for herself. That is precisely what this case is. I never saw a more childish case presented to me since I have been on the bench as this—two young people quarrelling about petty little things, when they ought to live together. I would like counsel to explain away the theories of this case that I have outlined. One question is, if the husband is not willing to live with the wife, and the wife is not willing to live with the husband, how there can be an abandonment, under the statute? Each says

that if the other reforms and acts differently, they are willing to go together. Now, there is nothing in the situation, as I see it at present, that justified an inference either way, except the one thing that the wife is a nagger, and the husband was not justified in striking her. It is proven that, within a short time before this child was born, he did throw a shoe at her. Now, if this was done as the result of a state of temper that she aroused in him by her own display of temper, I don't know.

MR. JENTZ: There is no evidence of that kind.

THE VICE CHANCELLOR: No, but you cannot produce a photograph of every scene in a household. It is a matter of common experience that the meanest kind of a wife a man can have is one that is continuously nagging and nagging until she drives the man almost crazy; and I think that may be largely the situation here. Now, I would like to know, under the circumstances of this case, if the wife will not live with the husband, or the husband with the wife, whether, as a principle of law, she is entitled to maintain her bill on the ground of abandonment and refusal to support—especially when she refuses to accept support, and he refuses to give it?

MR. JENTZ: She has not refused to accept it.

THE VICE CHANCELLOR: She refuses to go back to him.

MR. JENTZ: On the ground of extreme cruelty.

THE VICE CHANCELLOR: Oh, there is no extreme cruelty here, that I can see.

MR. JENTZ: I would like to be heard on that, your Honor.

THE VICE CHANCELLOR: Oh, well, of course.

(Mr. Jentz thereupon argued the case to the Court, and the complainant and defendant were recalled to the stand for further examination.)

LYNN M. MCDERMOTT, recalled.

FURTHER CROSS-EXAMINATION BY MR. JENTZ:

Q. That night, what did you do—the night before she left? A. Now, to recall that night before she left, I did not see my wife for three nights before she left; she stayed out all night.

Q. The last three nights? A. The two nights before she left me she stayed out all night.

Q. And you did not have any argument with her before she left—is that right? A. We had a quarrel, and we had made up.

Q. Then she had not been away for three days, and that is the last you saw of her? A. She had been absent from my bed and board three nights straight, and when I asked her where she had been, she would tell me she would make no apologies to anyone.

Q. When was the last time you saw her before she left? A. I saw her the last day of May, or the first day of June; that is the last I saw of her.

Q. Where was she when you saw her last? A. At my own home.

Q. Did you have any argument with her? A. I had merely asked her where she was; she came home about two o'clock in the morning, and I asked her where she was, and she said, "It is none of your business; I will make no apology to anybody", and just turned and went off to sleep.

Q. You hadn't given her any money that week, had you? A. I hadn't, because she refused to cook for me. What am I going to do when I buy food and it stays there rotting?

Q. When did she refuse to cook for you? A. She refused for a week before she left me, and when I left enough there for her to cook, when I came home the next morning it was in the garbage can.

Q. Is it not a fact that you refused to give her any money because you said she was so extravagant? A. I did not refuse to give her money, at all; I told her if she would do as a wife should I would give her money; and when I would give her money I would get no results from it.

Q. What do you mean by "no results"? A. When I came home there would be nothing for me to eat. Instead of being home for supper, she would never turn up until two o'clock in the morning, at all hours.

Q. You deny that you put her out of the bed—is that right? A. I did not put her out of the bed.

Q. (By the Vice Chancellor): Did you kick her out of bed or push her out? A. No, sir; I did not.

Q. Did you have trouble with her about sexual intercourse at that time? A. I asked her why she would not give me any sexual intercourse. She said she was under the doctor's care, and I left the woman alone. It was then that I knew she was at the doctor's; I didn't know it before.

Q. And you did not kick or throw her out of the bed at that time? A. No, sir; I did not.

Q. And you did not tell her to get out of the house? A. I did not order my wife out of the house.

Q. Well, you was somewhat surprised when you came home and found her there? A. I was not surprised to see her there; I know she would be home, naturally.

MRS. MARY MCDERMOTT, recalled.

DIRECT EXAMINATION BY MR. JENTZ:

Q. Will you just tell us what happened the night before you left your husband's house? A. Why, on Saturday was the 31st, and when we came home (my mother was there, because he owed my mother some money and she came up to collect it, because he wouldn't go down with it) he was surprised to see her there; and she asked him for the money; he went outside with me and said, "I haven't got any money". I said, "You had better give it to her, because she needs it". So he gave her ten dollars. And a peddler came, and he got strawberries and potatoes off the peddler. I asked him to give the balance of the money to me. He said, "No, I told you I would not support you any more, and I won't"; and on Sunday he went to his mother and sister for dinner, and brought in food from his mother's house for me to eat, and I didn't eat it. He did not hand it to me, he threw it on the table, and said, "There is something for you to eat", as though I was a dog. And on that Sunday night he was the one that was out until 2 o'clock, because he went to Singac with his mother and sister; and I asked him where he was, and he said, "it was none of my God-damned business where he was". Then, on Monday night when I came home, he was not there, he was in to his mother's; and when I seen he was not there I went down to my mother's and got something for my supper, and came home at nine o'clock. He says, "Are

you here again?" and I didn't answer him, I went to bed; as I told you before, I was in no condition to have any intercourse with him, and he insisted I was his wife, and he would do as he pleased with me, and he did insist on it, on having sexual intercourse; and he says, the next day, "If you are here, I am going to throw you down the stairs in your nightgown".

Q. Was there anything else that happened then that you did not tell us before? A. When I refused his sexual intercourse, he took me by the wrist and twisted my wrist, and said, "It is your place to be here, and you will stay here", and, I told you, he succeeded in having sexual intercourse. That was Monday night; and on Tuesday he said to me, "I don't want to find you here when I come home to-night". That was the 2nd of June. Then I went to my mother's—packed up my things. He told me he did not want to see me there again. Everything I told is the truth. (No cross examination.)

THE VICE CHANCELLOR (After further argument by counsel): I will consider the case. There are only two things in my mind here, and those are the questions whether separate alimony should be allowed her, in view of her present earning capacity; and the second is whether, upon consideration of the whole case, the wife's nagging was the cause of those assaults. The testimony on the part of the defendant is more or less unanimous as to the temperament of the wife. Naturally it looks as if the testimony was against her upon a consideration of the evidence of the parent, brother and sisters and relatives of the husband. On the other hand, there is equally strong testimony tending to show

that the woman was of a normal temperament. I pointed out strenuously to counsel for the complainant, in order to invoke his argument, the proof that the disposition of the wife was that of a nagger. This has been thoroughly and ably argued. The question that I have got to determine now is whether the evidence of nagging is proven, and whether that nagging was sufficient to justify the husband in committing the excesses that are charged against him. If I find that he had no reasonable excuse for it, then he must be in the wrong, and, naturally, the decree would be for the complainant.

CASE CLOSED.

23 JUN.T. 1920

In Chancery of New Jersey.

Between

MARY McDERMOTT,
Respondent,

—and—

LYNN M. McDERMOTT,
Appellant.

Brief for Respondent.

FACTS.

The Respondent filed a bill in the Court of Chancery for separate maintenance under the 26th Section of the Divorce Act alleging that she was obliged to leave her husband because of the cruel treatment received by her from him and by reason of the fact that he refused to maintain her. The case was tried and Respondent proved the following acts of cruelty:

1. He threw a shoe at her striking her in the stomach.

2. He threw a pocket-book at her striking her in the face and her shoulder.

3. He threatened to kill her.

4. He threw her down stairs.

5. He tried to kill her with carving knife.

6. He beat her.

7. He punched her in the jaw.

The Court found as a fact that the statements made by the Respondent and her witnesses were true. At the trial the Appellant then attempted to set up in his behalf that his wife had provoked the assaults which he made upon her by calling him "a dope and a poor fish." He is borne out in his statements by the testimony of several of his relatives who stated that they heard the wife call him these names but there was nothing in his testimony to show that the calling of these names provoked the assaults which the Court found that he made upon his wife.

ARGUMENT OF LAW.

In view of the facts found by the Court the wife was justified in leaving her husband, and his subsequent failure to support her entitled her to a decree for separate maintenance.

Close v. Close, 25 Equity 526.

Counsel for the Appellant has made much in his brief of the different remarks made by the Vice Chancellor during the trial of the case. These remarks are of no great value because the case was not tried before a jury and they were made before all the evidence was in. It may be seen from the decision of the Vice Chancellor that when the case was completed and all the evidence submitted that he thought differently than he had at various times during the trial. It is his final decision which is being appealed from here and not any of

the remarks which he made during the hearing.

The Appellant's counsel bases many of his points for reversal of the decree on the ground that he was prohibited from introducing evidence which he thought was material.

The Respondent herewith sets forth her reply to the points in the Appellant's brief.

REPLY TO POINT ONE.

Counsel for the Appellant says that the Trial Court was in error in refusing to allow the Respondent (complainant below) to be contradicted as to whether or not she committed adultery. The Complainant being asked whether or not she had committed adultery denied so doing. The Court thereupon refused to allow the Defendant to introduce any evidence to contradict her denial. The issue in the case was clear. The only fact for the Court to decide was did the husband treat his wife in such a cruel manner as to cause her to be obliged to leave him for her own safety, and did he fail to support her. The question of the wife's adultery was therefore collateral, it had not been pleaded by the husband in his answer.

It is well understood in this State that where a person is asked regarding the commission of a crime the same not being an issue in the case and the witness denies committing said crime that no evidence in contradiction of this denial can be introduced. The leading case in this State on this point is

Pullen v. Pullen, 43 Equity 136.

See also Stevenson Digest on the Law of Evidence, page 324.

REPLY TO POINT TWO.

The Appellant contends in his brief that the cruelty of the husband was not sufficiently proven. There were many acts of cruelty proven and the Court held and found as a fact that they were true. There was no denial as to any of the acts of cruelty except by the husband alone. The Appellant also contends that some of the acts of cruelty were too remote to be considered by the Court. In the case of

Cook v. Cook cited in Biddle on Divorce (1912), page 97,

it was held that all acts of cruelty may be considered by the Court to determine the guilt of the husband. The point made in the Appellant's brief that his wife was of a nagging nature is not sustained because the only evidence of any nagging is the fact that at times she used the words "dope and poor fish." It does not seem to the Respondent that this would be sufficient justification for the husband to commit the offenses against his wife which the Court found that he had committed.

REPLY TO POINT THREE.

The Appellant attempts to set up that there was no desertion. The wife states that she was obliged to leave her husband's home because of his cruel treatment. The desertion is therefore a constructive one which is well recognized by law and under the decision of the case of Close v. Close cited above she was not obliged to return if she had

good reason to believe that this cruel treatment would be continued. The Trial Court therefore held that the Complainant was justified in leaving her husband's home and that he was obliged to support her.

REPLY TO POINT FOUR.

The Trial Court held as a matter of fact that the neglect to support and the abandonment concurred. The Defendant made no effort to have his wife live with him again, made no promise as to changing his cruel treatment and gave her no support after she left or for several weeks prior to the time she left.

REPLY TO POINT FIVE.

The Appellant contends that the statements made by the husband to others and to what his wife had done should have been admitted in evidence. These statements were rightfully ruled out by the Court, for they were purely hearsay and not admissible.

REPLY TO POINT SIX.

The Appellant contends that the Court erred when it refused to allow the Respondent to answer the following question: "Did she speak to him about a divorce?" This question was objected to on the ground that he was immaterial. The issue being whether the husband was guilty of extreme cruelty.

REPLY TO POINT SEVEN.

The Appellant contends that he should have

been entitled to an answer to a question which he asked calling for a conclusion. This question was clearly improper. The witness could have testified as to what was said and what was done and then it was for the Court to draw its conclusion from the testimony produced.

REPLY TO POINT EIGHT.

The entire testimony of Miss Yates was improper it being immaterial because it was based on hearsay and was not within the issues of the case.

REPLY TO POINT NINE.

The Appellant again ~~admits to insert~~ asserts his right to put in evidence showing that the wife had been guilty of adultery this being a purely collateral matter it is submitted that the Court rightly refused to admit such evidence following the case of Pullen v. Pullen cited above.

RESUME.

. . The proof in this case is very clear and the Court rightly found that the husband was guilty of extreme cruelty toward his wife and that he had failed to support her and that she had a right to leave him. The wife showed a course of brutal and harsh treatment by her husband and the only denial being made by the husband. He admits to justify his actions by saying his wife was a nagger. The Court found as a fact that she was not a nagger. It is therefore contended that the decree of the Court of Chancery be affirmed in

every particular for the reasons above set forth.

Respectfully submitted,

ERIC H. JENTZ,
Attorney for Respondent.

LEWIS G. HANSEN,
Of Counsel.

New Jersey Court of Errors and Appeals

BETWEEN:
MARY MCDERMOTT,
Complainant-Respt.,
and
LYNN M. MCDERMOTT,
Defendant-Applt.

Brief of

Edward Stover.

FACTS.

This is a case from Chancery, where the bill was filed for maintenance by the wife based on abandonment (the wife leaving the husband by reason of his alleged cruelty) and non-support. The Vice Chancellor ordered the husband to pay $5.00 a week, a counsel fee and to file a bond, altho the wife was earning $15.00 a week her own self; there were no children. The decree is appealed from. One of the reasons for the appeal is that the decree is against the weight of evidence and that complainant has not proved her case by a preponderance of evidence. Provocation also enters into the case.

The colloquy of the Vice Chancellor on page 154 of the case bears out this point and states some of the salient facts, and reading it as we do, we are surprised at the opinion. He says: "The Vice Chancellor: He said the same thing. Now, is it not perfectly plain that this man did strike his wife; is it not perfectly plain that this woman is a nagger, who continually irritated him

Mr. Jentz: I don't think it is.

The Vice Chancellor: Well, I find as a matter of fact, that that is so well settled now it looks to me very much like this—that under Close vs. Close, if the conduct of the husband was such that it would be unsafe for the wife to return to him, then the Court would decree separate maintenance on the ground of cruelty . . . . . but there is another rule controlling, as well, that where the action of the husband is produced largely by the conduct of the wife, as the wife holds the key of her happiness in

her own hands and she refuses to use it, but is continually nagging her husband and arousing him, so that he loses his temper, then she must bear the burden that she creates, and lie in the bed she makes for herself. *That is precisely what this case is.* I never saw a more childish case presented to me since I have been on the bench as this—two young people quarreling about petty little things, when they ought to live together. I would like counsel to explain away the theories of this case that I have outlined. One question is, if the husband is not willing to live with his wife, and the wife is not willing to live with the husband, how there can be an abandonment, under the statute? Each says that if the other reforms and acts differently, they are willing to go together. Now there is nothing in the situation, as I see it at present, that justified an inference either way, except the one thing, that the wife is a nagger, and the husband was not justified in striking her. It is proven that, within a short time before this child was born, (which since died), he did throw a shoe at her. Now, if this was done as the result of a state of temper that she aroused in him by her own display of temper; I don't know.

Mr. Jentz: There is no evidence of that kind.

The Vice Chancellor: No, but you cannot produce a photograph of every scene in a household.

It is a matter of common experience that the meanest kind of a wife a man can have is one that is continually nagging and nagging until she drives the man almost crazy; and I think that may be largely the situation here. Now, I would like to know, under the circumstances of this case, if the wife will not live with the husband, or the husband with the wife, whether, as a principle of law, she is entitled to maintain her bill on the ground of abandonment and refusal to support—especially when she refuses to accept support, and he refuses to give it?

Mr. Jentz: She has not refused to accept it.

The Vice Chancellor: She refuses to go back to him.

Mr. Jentz: On the ground of extreme cruelty.

The Vice Chancellor: Oh, there is no extreme cruelty here, that I can see."

The Vice Chancellor again says on page 159. (After further argument by counsel): I will consider the case. There are only two things in my mind here, and those are the questions whether separate alimony should be allowed her, in view of her present earning capacity; and the second is whether, upon consideration of the whole case, the wife's nagging was the cause of those assaults. The testimony on the part of the defendant is more or less unanimous as to the temperament of the wife. Naturally it looks as if the testimony was against her upon a consideration of the evidence of the parent, brother and sisters and relatives of the husband. On the other hand, there is equally strong testimony tending to show that the woman was of a normal temperament. I pointed out strenuously to counsel for the complainant, in order to invoke his argument, the proof that the disposition of the wife was that of a nagger. This has been thoroughly and ably argued. The question that I have got to determine now is whether the evidence of nagging is proven, and whether that nagging was sufficient to justify the husband in committing the excesses that are charged against him. If I find that he had no reasonable excuse for it, then he must be in the wrong, and, naturally, the decree would be for the complainant."

The lower Court also allowed in certain evidence, and disallowed other evidence, which defendant alleges to be erroneous and harmful to his side.

THE LAW.

POINT ONE.

The Court refused to consider or allow in evidence of provocation, adultery, complainant's association with other men, etc.

The defendant alleges in his answer on pages 12 and 13 of Case:

"He has been informed from sources which he believes are true that complainant has been in the habit of going out with other men, and while defendant was

in the army, complainant wrote him a letter that she had entertained two strange soldiers. Defendant says strange, for their names were strange to him. He felt restless and chafed when he heard this, for he knew the weak character and habits of his wife, and knew she was easily tempted, and defendant wrote her back that she had no right to harbor soldiers while he was in the United States Army, and these soldiers should seek entertainment elsewhere. Complainant wrote back that they were lonely and needed her, and that they were hungry. Defendant wrote back that the Government would feed them."

Now on page 69 he bars counsel from producing evidence as to adultery.

"Q. Have you committed adultery with Harry Dirks?

Mr. Jentz: Objected to.

The Vice Chancellor: I will let her answer it.

A. I have not.

The Vice Chancellor: Now, you cannot offer evidence to dispute that."

Then on page 137 and 138 the Court refused to allow evidence which would go to prove aforesaid allegations in answer, show provocation and tend to affect the credibility of the complainant witness as follows:

"Mr. Stover: The complainant has stated that she did not go with Harry Dirks, and did not live with Harry Dirks here.

The Vice Chancellor: I will exclude that evidence.

Mr. Stover: There is something else, if the Court please.

The Vice Chancellor: Well, if there is something else, all right; but I am not going to let in evidence here which tends to show that this lady lived with some man, or walked out with someone else—

Mr. Stover: Well, I want to show that he took her out to amusements—that is, Harry Dirks—to show the motive of her leaving her husband.

The Vice Chancellor: I won't listen to testimony

of that kind. It will take a whole week to go into all these details that have no bearing on the case whatever. I am excluding this, to a great extent, Mr. Stover, because I do not want to have any evidence go against this lady that may or may not be true, and, if true, may cast a reflection upon her without evidencing any wrongdoing whatever; because, as I see it at the present time, there is no earthly reason why these people should not live together and control themselves."

(The witness thereupon stood aside).

Then another attempt was made on page 140 to prove her undue familiarity with other men.

Q. (By Mr. Stover): Will you please state if you saw her, in December, 1919, on the street?

A. Yes.

The Vice Chancellor: What is the object of this?

Mr. Stover: She was on the street in company with somebody else.

The Vice Chancellor: I won't allow that; I will exclude that, the same as I did the other."

The attempt was thwarted by the Vice Chancellor.

Another attempt was made on page 153 not only to prove truth of allegations in answer, to contradict witness and affect her credibility, but to show her real motive in leaving defendant—in short to show she sought the society of other men, that she did not come into Court with clean hands.

"Q. Did you see his wife in September, 1919?

A. I did.

Q. Where did you see his wife? A. At Coney Island, with another man.

Mr. Jentz: I object to that.

The Vice Chancellor: I will strike it out.

Mr. Stover: We simply offer it to show the motive of leaving the husband.

The Vice Chancellor: I do not care for her motive. She left him. What I want to do is to get the conduct of the parties, to see who is in the wrong.

Mr. Stover: All right; no more questions."

When Mr. Stover said "all right," he (I) did not mean that the Vice Chancellor was correct, but I bowed my head in respect and submission to his will, although I still maintained I was right.

The law says:

The Court in Thomas vs. Thomas in 87 N. J. E. p 670. This was a similar case. Court 3rd paragraph says:

"The defendants' conduct whatever may have been the provocation, in striking his wife or in calling her names, which he admits, is reprehensible, and does not entitle him to any consideration. He has been guilty of using vile language and actual violence towards the wife——. His conduct is not excused by the fact that he was angry or that the conduct of his wife provoked him to these extremes. On the other hand, the petitioner herself is not guiltless. In a measure she provoked these outbursts on the part of her husband . . . . . On the other hand she has neglected them (children) whether from her own dislike of them or to tantalize her husband does not appear, but the fact does appear that in this respect she made her husband angry and to call down upon herself the treatment of which she complains.

Black vs. Black 30 N. J. E. p 226.

Court refused to aid wife on account of her conduct on the principle, that he who comes into equity must come in with clean hands. That is why question ought to have been asked and answered by McCarthy and Ralph, etc.

Duvale vs. Duvale 65 N. J. E. p 771.

(1) If a wife by words and blows, provoked her husband to counter verbal and physical abuse, which abuse was not disproportionate to the provocation, she cannot get a divorce on the ground of his extreme cruelty.

POINT TWO.

The cruelty of husband was not sufficiently proved, and if proved was provoked by wife's cruelty and conduct.

The only cruelty attempted to be proved and corroborated is as stated in the opinion on page 15

of case. Most of the acts are too remote and far between. They ought not be considered.

In 1915 he threw a shoe, striking her.

September 28, 1915, he threw a pocket book at her, striking her.

In July, 1917, he threatened to kill her.

In May, 1919, he punched her. He denied all this and his witnesses said he treated her right, but admitting this to be true, for the sake of argument, that is not sufficient to constitute extreme cruelty to abandon.

The Court in Thomas vs. Thomas in 87 N. J. E. p 670.

This was a similar case. Court 3rd paragraph says:

"The defendants' conduct, whatever may have been the provocation in striking his wife or in calling her names, which he admits, is reprehensible, and does not entitle him to any consideration. He has been guilty of using vile language and actual violence towards the wife . . . . . His conduct is not excused by the fact that he was angry or that the conduct of his wife provoked him to these extremes. On the other hand, the petitioner herself is not guiltless. In a measure she provoked these outbursts on the part of her husband . . . . . On the other hand she has neglected them (children) whether from her own dislike of them or to tantalize her husband does not appear, but the fact does appear that in this respect she made her husband angry and to call down upon herself the treatment of which she complains.

Page 671 Thomas vs. Thomas (Court of Errors and Appeals Case) 87 N. J. E. 4th par., says:

Our courts have never held that coarse and profane language, actual violence or lack of proper food and medicine, are of themselves sufficient grounds for divorce from bed and board. They go a step farther and say that if any of these acts of the husband will endanger the safety or health of the wife

or that there is reasonable ground to apprehend that they will render her life one of such wretchedness as to incapacitate her towards the discharge of her duties. In that case only will a decree be granted.

Taylor vs. Taylor 73 N. J. E. p 745.

(2) When a wife separates herself from her husband and claims alimony she must justify the separation by proof of extreme cruelty on the part of the husband to the same extent as though she were suing for divorce a mensa et thoro on the ground of extreme cruelty.

In Thomas vs. Thomas 87 N. J. E. p 669, middle of 2nd paragraph.

"The fact that the petitioner did come back in 1909 and continued to live with her husband, and the further fact appearing that no trouble existed between the two until the summer of 1911—is sufficeint to eliminate all consideration of all acts to this date (consideration of cruelty occurring in 1908 is excluded in this case).

On page 31 and 32. She testified as to a hiatus of cruelty for a year. Line 40

His treatment of her.

Page 31 she admits he wanted to support her and then he took her back afterward when she left him.

When he joined the army he visited her frequently before he went to France and she got allotment—see p 37, 38 and 39 of case. While she tries to call that cruel treatment Vice Chancellor says it is not. See page 40, line 13. He says she nagged him and forced him to enlist, although she says he enlisted against her will.

On page 41 Mr. Jentz admits he did not abandon her *at that time.*

She admits on page 41, line 32, "Well, things went along pretty good until May 11, 1919."

She says on page 44, he said (line 40) I am done supporting you, but admits on page 45 he brought her food, and left it in the ice box, on page 46. All the time she was working. On page 48 (line 30) "He was always a gentleman in front of others," she says page 49. She admits (line 10) she is earn-

ing $16.00 a week. Throughout the case there is no evidence to show it is insufficient for her support.

Page 53. He gave her $12 the week before she left him (line 20, line 30 to 40) and he paid for the furniture and rent extra. This does not look like non-support.

Page 76 (line 26) V. C. says: "There is absolutely no question of support down to the time when the abondonment took place, if it took place.

Page 55. She admits in early married life he supported her to best of his ability.

The cross-examination of Helen Schofield says on page 87, he was affectionate and called her Dearie and took her to theatres.

Page 57. V. C. says at bottom he supported her while they lived together.

Page 93. Dr. Fink does not know if flow came from excessive sexual cohabitation.

Throughout the testimony, defendant, Harry Hein, Miss Yates, Catherine Shea, Emma Hein, Rose McDermott, Emma McDermott and Ethel McDermott testify about defendant's good treatment of his wife.

Her treatment of him.

Now her treatment of him was of a nagging, provoking, quarrelsome kind. The following are instances:

Page 5 9of case. Admits she called husband a dope and "poor fish."

Page 74. Her mother, Mary Bartholomey, admits she called him dope and poor fish. Pages 100 also confirms that.

Pages 102 to 103. She often kicked or tried to kick him, called him dope, and coward.

Page 108. She often asked for a divorce, bit him. Pages 114-115.

Pages 117 and 118. Speaks of names called, was more affectionate to Harry Dirks.

Page 125, Page 130. Was continually nagging.

Page 146 and 152 corroborated. She tried to

choke him, and slapped him.

On page 147 she called him a bonehead.

Even her own father on page 80, bottom and top of 81 of Case, admits the words dope and poor fish were spoken.

POINT THREE.

There was no desertion.

Desertion must be without justifiable Cause, he must have neglected to maintain her, etc. I cite several cases which bear on this proposition.

Taylor vs. Taylor, 73 N. J. E., p. 745.

(1) To entitle a wife to alimony on the ground of desertion by the husband the desertion must have been *without justifiable cause,* and the husband must have *refused* and neglected to *maintain* and *provide* for the wife.

Taylor vs. Taylor, 73 N. J. E., p. 751, middle:

"The second element necessary in the procurement of alimony is the disposition upon the part of the wife, if the husband's conduct is such as to permit her to live with the husband, to resume the relations of husband and wife. I do not find that Mrs. Taylor has ever exhibited any desire to resume marital relations with her husband, I am not prepared to say that if the husband had shown any disposition upon his part towards a reconciliation that Mrs. Taylor would not have met him half way . . .

In Spence vs. Spence, 74 N. J. E., p. 787, last paragraph, rule stated to be

"The rule is that . . . (it is) not granted by way of punishment for past offences, but as a preventive measure, to protect the health or life of the wife from threatened danger in the future.

Now let us see the facts.

Page 50 she admits she left husband's home June 3, 1919, and never went back to him. She admits she phoned him afterwards, but not to get back—about insurance.

Page 50, "Q. Will you please state if you wanted

to go back to him at that time, or offered to go back to him? No, because I did not have it in mind, because I did not like his cruel treatment.

Q. Will you please state if you want to go back to him, if he supplied a home? A. If he has a home I will think it over."

This shows she is cleverly trying to keep away from him and at the same time leave the way open for alimony.

Page 51. She mailed or caused to be mailed him the keys to her home. This was done June 14 (see page 52). On same page, did not see Lynn's lawyer, never spoke of going back. He was not present when she left home.

Q. Page 52, bottom lines, "What did you say to him when he told you to get out?

A. I told him I would." (If this is true, is this not consent or agreement?)

It is not contradicted (Page 95) that he kept his home open to Aug., 1919, about three months after she left, paid rent, and only broke up when he became convinced she refused to come back. On page 96 he would have taken her back. She was evidently not afraid of him for she spoke to him in a pleasant way, on page 97.

On Page 108 she asked him to divorce her.

Mrs. Shea, a disinterested witness, on page 128 said, wife told her she was tired of her home.

On bottom of page 134 she said to Emma Hein she would leave, was sick of the poor fish.

Page 135, she often said that.

POINT FOUR.

Neither neglect to support and abandonment concurred. See Points 1, 2, 3.

The Rule in such cases as this is stated by the Statute. There must be abandonment, and neglect to support, and they must both concur.

POINT FIVE.

The Vice Chancellor erred when he did not allow testimony as to certain complaints made.

Black vs. Black, 30 N. J. E., p. 222.

A family physician was allowed to testify as to complaint of abusive language and cruelty made by the wife to him after the acts were done. See Garcin vs. Garcin, 62 N. J. E., p. 203, where Court in second sentence, last par., looks into fact if a complaint was made to another, and impliedly says this is evidence.

On page 131. An effort was made to prove that Lynn McDermott made a complaint to his sister about being attacked with a knife right after it occurred, as part of the res gestae. The Court refused this.

POINT SIX.

The Court erred when it refused to allow in evidence about her talk about a divorce on Page 108 (line 30).

"Q. Did she speak to you about a divorce?

A. Yes, sir. She often spoke to me about it, at the supper table, and even tried to persuade me to try and secure evidence to get a divorce.

Q. Tell me what she said about that?

Mr. Jentz: I object.

The Vice Chancellor: I will overrule the whole thing. The question is one of extreme cruelty."

I maintain, that it was cruelty on the part of the wife against the husband to ask for a divorce, it was a form of abuse or nagging, which would add to his provocation, it would tend to show why she left him —her motive.

POINT SEVEN.

The Vice Chancellor erred when he refused on page 115 to allow an answer.

"Q. What is her nature, her temperament, do you know?

Mr. Jentz: I object to that, as calling for a conclusion.

The Vice Chancellor (Page 116). Objection sustained."

While it called for a conclusion, these very things can only be proved that way. A witness may testify to certain conclusions, as "A" was sick or excited, or drunk. The answer might have shown the wife was of a nervous, quarrelsome, nagging temperament, and exaggerated and imagined her wrongs. It would have thrown much light on the whole case.

A similar objection is made as to ruling, top of page 150 of case.

POINT EIGHT.

The Vice Chancellor erred on page 126 of the case when he refused to allow an admission of complainant made to Miss Yates. She had told Miss Yates, men had come into the place where she was boarding, had pulled the clothes off the bed where she was laying, and complainant thought this was a good joke.

"Q. Did she say she was dressed or not, at that time?

Objection was sustained."

It is respectfully submitted that this would show the disposition, nature and character of the complainant and would tend to weaken her testimony, and that she did not come into court with clean hands.

POINT NINE.

On Page 153 Ralph McDermott is refused permission by the Court to testify about complainant going to Coney Island shortly after the desertion, with another man. This certainly, in connection with other things, would show her motive. The next question would have been, did she kiss or hug him, or do any wrong, but the Court closed the door to that. The charge is made in the answer that she associated with other men. It might also show that knowledge was brought home to defendant who then gave up any idea he had of taking her back. It would also show that complainant had no equity and could not implore the help of Chancery "For he who comes into equity must come in with clean hands."

The lower Court erred when on page 88 of Case the Court refused to allow a question that Mrs. Sco-

field and complainant worked together in the same place (top of page).

This would show interest and bias of witness.

10.

The Court erred when on the bottom of page 50 and on top of 51 it refused to allow cross-examination of the complainant as to her desertion. She had testified she had left home on account of his brutal treatment (his constructive desertion). She had made a vague expression which defendant's counsel wished to explain.

It is respectfully submitted that the decree of the Court below should be set aside and reversed, that a judgment or decree should be given in favor of defendant, or a new trial or such other relief, as may be just.

EDWARD STOVER,
Solicitor of Defendant-Appellant.