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Petition.

(Filed July 26, 1927.)

In Chancery of New Jersey

10

Between

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
Defendant.

On Petition for
Divorce.

20

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

The petition of Esther Ross, of Millington,
County of Morris, State of New Jersey, respectfully
shows:

1. Your petitioner was lawfully joined in the
bonds of matrimony to her husband, Charles Ross,
the defendant in this suit, on the 17th day of June,
1920, at the Church of Ascension, Fifth Avenue
and 10th Street, New York City.

30

2. Petitioner and defendant immediately after
their marriage made their home and lived together
as husband and wife at New York City, at which
place they resided for two years. At the expiration
of the two years immediately following the mar-
riage, petitioner and defendant made their home at
Millington, New Jersey, at which place they have
resided since the year 1922.

40

Petition.

3. From the date of the marriage and up and until the year 1924, the parties got along fairly well together in their married life. Defendant treated petitioner with some consideration during that period. During the month of January, 1924, defendant commenced a course of cruel and abusive treatment toward petitioner and did continue the same without provocation or just cause until petitioner was compelled to cease cohabitation with the defendant; that the defendant has been guilty of such extreme cruelty toward petitioner as to render it unsafe and improper for the petitioner to cohabit with the defendant since January 10, 1927.

That particularly specifying the defendant's acts of extreme cruelty petitioner says, that defendant began to show a marked dislike for petitioner during the summer of the year 1924 and expressed his dislike and contempt for the petitioner by words and actions; that a decided coolness sprang up in the defendant's attitude toward petitioner; that the contempt, the indifference, the utter disregard for the feelings of the petitioner, as shown and manifested by actions and words, gradually affected the petitioner to such an extent that petitioner suffered from a nervous breakdown in November, 1926, and was compelled to remain away at various periods from the defendant in an endeavor to recover her health. That when the petitioner endeavored to exhibit any love or affection for defendant, defendant inconsiderately rebuffed the petitioner in a contemptible manner.

During the Spring of the year 1926, petitioner was so broken down in health, both physically and mentally, as a result of the extreme cruel treatment accorded her by the defendant, that she was compelled to leave defendant in an endeavor to

Petition.

recover her health, for a period of about five months.

On various occasions since the summer of the year 1924 defendant without provocation picked quarrels with petitioner, swore at petitioner and called her such mean and vile names as "son of a bitch," "street walker" and "prostitute." That on various occasions defendant would sulk and refused to talk to the petitioner for a week at a time. This contemptible treatment toward petitioner affected petitioner's health and caused her much mental suffering and distress. 10

During the summer of the year 1925, in the presence of a girl friend of petitioner, defendant went into a violent rage, swore at petitioner and called her mean and contemptible names and greatly humiliated her before her friend. Defendant told petitioner in the presence of the friend that petitioner should get the hell out of the house forever. On numerous occasions from the year 1925, defendant told petitioner that he wished she would get out of his life and remain away from him because he had no love or affection for her. 20

Petitioner ceased cohabitation with defendant on January 10, 1927, because and by reason of the extreme cruelty accorded petitioner by defendant, it was wholly unsafe and improper for the petitioner to further cohabit with the defendant. Owing to the fact that petitioner had no means of her own and was wholly dependent upon defendant for her support, she was compelled to remain in the same house with the defendant from and after the date that cohabitation between the parties terminated. 30

That more particularly specifying defendant's misconduct petitioner says: defendant began to 40

Petition.

show a marked dislike for petitioner during the year 1924; that defendant expressed his dislike and contempt for petitioner by actions and words. That the contempt, the indifference, the utter disregard for the feelings of the petitioner as shown and manifested by actions and words, gradually affected petitioner to such an extent that petitioner suffered from nervous and physical breakdown. That the defendant's insufferable indifference, his coolness in manner, his contempt for the petitioner and for those things in which petitioner manifested an interest, and the unjustifiable nagging and the uncontrollable temper in unjustified fits of jealousy and the expressions of dislike and indifference toward petitioner, the coolness and quarreling, the humiliation and chagrin caused by the defendant's derogatory statements concerning the petitioner made to petitioner in the presence of friends, and the threats to do bodily injury to the petitioner, these together with the circumstances arising therefrom so affected and impaired the health of the petitioner and caused petitioner so much pain and physical and mental suffering and so affected the mind of petitioner that petitioner was unable to perform the duties of a wife and it was unsafe and improper for the petitioner to further cohabit with the defendant.

That the unjustified accusations made by defendant to petitioner in the presence of a mutual friend of the family, that petitioner had had sexual relations with other men, caused petitioner much humiliation. These unwarranted accusations of sexual infidelity constituted a systematic and persistent course of accusations and constituted such a grievous insult that petitioner's health became impaired and her future safety endangered. That

Petition.

she suffered as a result therefrom such an extreme discomfort and wretchedness as to incapacitate her discharging her duties as a wife.

That by reason of the extreme cruelty on the part of the defendant, which continued until January 10, 1927, at which time petitioner ceased cohabitation with the defendant, which extreme cruelty was exhibited by word, threat and action, petitioner feared for her personal safety and it became wholly improper, dangerous and unsafe for the petitioner to further cohabit with the defendant. Petitioner's health was so undermined by reason of this extreme cruelty that she became run down bodily and mentally to such an extent that she required and has constantly required medical attention in an endeavor to try to recover her health. 10
20

During all of the times hereinbefore enumerated the petitioner acted toward the defendant in a proper manner and tried in various ways to make the defendant change his conduct toward her. All of the foregoing acts of cruelty were committed without any provocation on the part of the petitioner.

4. That all the acts of cruelty complained of occurred and took place at a period six months prior to the commencement of this action. 30

5. Petitioner and defendant are bona fide residents of the State of New Jersey and have been bona fide residents of the State of New Jersey since May, 1922, and up and until the present time. That they were bona fide residents of this State when this cause of action arose and have ever since and for more than two years next preceding the commencement of this action, continued to be such 40

Petition.

residents. Petitioner and defendant reside at Millington, New Jersey, at the present time.

10 6. There was one child born of the marriage and she is now six years old and resides at the same place as petitioner.

7. Your petitioner is without funds for her support or for the support of the child.

20 8. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause of extreme cruelty on the part of the defendant as aforesaid and according to the statute in such case made and provided and that your petitioner may have such further relief as may be just.

And your petitioner as in duty bound will ever pray, &c.

EDWARD THOMAS MOORE,
Solicitor for Petitioner.

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

30 ESTHER ROSS, being duly sworn upon her oath, according to law deposes and says: that she is the petitioner in the foregoing petition, and that her said petition is not made by any collusion between her and the defendant, but in truth and good faith for the cause set forth in the petition.

ESTHER ROSS.

Sworn and subscribed to before me }
this 13th day of July, 1927. }

40 (Seal) LILLY J. BUTTON,
Notary Public.

Answer.

(Filed September 21, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
*Defendant.*On Petition for
Divorce.

10

The answer of Charles Ross, defendant, to the petition of Esther Ross, petitioner:

20

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

2. This defendant admits it to be true that petitioner and defendant resided in New York City immediately after thir marriage and that they afterward made their home at Millington, New Jersey, as in the second paragraph of said petition is alleged.

30

3. This defendant denies that he deserted the petitioner on January 10, 1927, and he denies that he committed any acts of cruelty toward petitioner at a period six months prior to the commencement of this action, and particularly he denies that during the month of January, 1924, defendant commenced a course of cruel and abusive treatment toward petitioner and did continue the same with-

40

Answer.

10 out provocation or just cause until petitioner was compelled to cease cohabitation with the defendant and he denies that he has been guilty of such extreme cruelty as to render it unsafe and improper for petitioner to cohabit with defendant since January 10, 1927. He denies that defendant began to show a marked dislike for petitioner during the summer of the year 1924 and expressed his dislike and contempt for the petitioner by words and actions. He denies that a decided coolness sprang up in the defendant's attitude toward the petitioner and he manifested such feelings by actions and words, and he denies that the petitioner suffered from nervous break down in November, 1926, or at any other time that caused her
20 to remain away from defendant at various periods with an endeavor to recover her health, and he denies that he ever rebuffed your petitioner if she endeavored to exhibit love or affection for him.

He denies that during the spring of 1926 petitioner was so broken down in health physically and mentally as a result of extreme cruel treatment accorded her by the defendant that she was compelled to leave defendant in an endeavor to recover her health for a period of about five
30 months, and this defendant says and expressly charges the truth to be that the petitioner left his home in the spring of 1926 voluntarily and for no cause created by this defendant and that she remained away for a period of several months and that during that time she wrote to this defendant and stated in her said letter that she no longer loved this defendant and that she had found a man whom she truly did love.

40 This defendant denies that on various occasions since the summer of 1926 defendant without provo-

Answer.

cation picked quarrels with petitioner, swore at petitioner and called her such mean and vile names as, "son of a bitch," "street walker" and "prostitute," and he denies that on various occasions defendant would sulk and refuse to talk to the petitioner for a week at a time, and he denies that the petitioner at any time was affected in health and caused mental suffering and distress by any cause created by this defendant. 101

This defendant denies that during the summer of 1925 in the presence of a girl friend of petitioner defendant went into a violent rage, swore at petitioner and called her mean and contemptible names and greatly humiliated her before her friend, and he denies that defendant told petitioner in the presence of her friend that petitioner should get the hell out of the house forever, and he denies that on numerous occasions from the year 1925 defendant told petitioner that he wished she would get out of his life and remain away from him because he had no love or affection for her, and this defendant expressly charges the truth to be that he has always been most affectionate and considerate of the petitioner and has supported her liberally within his means; that the petitioner and defendant have one child of whom both are very fond and for the sake of this child's happiness and home this defendant has always overlooked the shortcomings of the petitioner and has always tried to comfort her when she has been distressed and restless in her married life. 203 303

This defendant denies that petitioner ceased cohabitation with the defendant on January 10, 1927, by reason of the extreme cruel treatment accorded petitioner by defendant, and he denies that it was wholly unsafe and improper for the petitioner to 401

Answer.

10 further cohabit with the defendant, and this defendant expressly charges the truth to be that the petitioner was irritable and unreasonable and refused without cause to cohabit with this defendant after January 10, 1927, save once, and that this defendant used every reasonable inducement to induce petitioner to live with him normally as his wife and this she refused to do without any cause whatsoever.

20 This defendant denies that he began to show a marked dislike for petitioner during the year 1924; that he expressed his dislike for petitioner by acts and words; that the contempt, the indifference, the utter disregard for the feelings of the petitioner as shown and manifested by acts and words gradually affected petitioner to such an extent that petitioner suffered from nervous and physical breakdown; that the defendant's insufferable indifference, his coolness in manner, his contempt for the petitioner and for those things in which petitioner manifested an interest, and the unjust nagging and the uncontrollable temper in unjustified fits of jealousy, and the expressions of dislike and indifference toward petitioner, the cruelty and quarrelling, the humiliation and chagrin caused by
30 defendant's derogatory statements concerning the petitioner made to the petitioner in the presence of friends, and the threats to do bodily injury to the petitioner, these together with the circumstances arising therefrom, so affected and impaired the health of the petitioner and caused petitioner so much pain and physical and mental suffering and so affected the mind of petitioner that petitioner was unable to perform the duties of a wife, and it
40 was unsafe and improper for the petitioner to further cohabit with the defendant.

Answer.

This defendant denies that the unjustified accusations made by defendant to petitioner in the presence of the mutual friend of the family, that petitioner had had sexual relations with other men, caused petitioner much humiliation; that these unwarranted accusations of sexual infidelity constituted a systematic and persistent course of accusations and constituted such a grievous insult that petitioner's health became impaired and her future safety endangered; that she suffered as a result therefrom such an extreme discomfort and wretchedness as to incapacitate her discharging her duties as a wife. 10

This defendant denies that by reason of the extreme cruelty on the part of the defendant, which extreme cruelty was exhibited by word, threat and action, petitioner feared for her personal safety and it became wholly improper, dangerous and unsafe for the petitioner to further cohabit with the defendant; that petitioner's health was so undermined by reason of this extreme cruelty that she became rundown bodily and mentally to such an extent that she required and has constantly required medical attention in an endeavor to try to recover her health. 20

This defendant denies that during all of the times hereinbefore enumerated the petitioner acted toward the defendant in a proper manner and tried in various ways to make the defendant change his conduct toward her; that all the foregoing acts of cruelty were committed without any provocation on the part of the petitioner. 30

And generally this defendant denies each and every allegation, statement, insinuation and suggestion in paragraphs three and four of the petitioner's petition herein. 40

Answer.

Further answering paragraph three of the petitioner's petition, defendant says that there is great discrepancy in the ages of petitioner and defendant and at the time of their marriage petitioner was approximately twenty-one and this defendant
10 was approximately forty-one; that the mother of the petitioner objected to the marriage by reason of the difference in age of the petitioner and the defendant, and that then and at that time upon learning of such objection of petitioner's mother this defendant told the petitioner that if she felt any doubt for her happiness in contracting the marriage that he, this defendant, would release her from their engagement to marry. Notwith-
20 standing this defendant's willingness to release her the petitioner insisted that the marriage be consummated, and after the marriage petitioner and defendant lived happily for a long time and a child was born of the marriage to whom both parents were and are deeply attached, and were it not for the unfortunate intimacy of the petitioner with a young woman who is a nurse, and who endeavors to estrange the petitioner from this defendant, defendant and his wife the petitioner could easily
30 re-establish their home and live happily as they should do for the sake of the present and future happiness of the child of their marriage.

4. This defendant admits that petitioner and defendant are bona fide residents of the State of New Jersey and were bona fide residents of this state when this cause of action arose, and have ever since and for more than two years next preceding the commencement of this action continued to be such residents, and that they reside at Mill-
40 ington, New Jersey, at the present time.

5. Defendant admits that there was one child

Answer.

born of the marriage and that said child is now six years old and resides with the petitioner.

6. This defendant denies that petitioner is without funds for her support and for the support of the child, and expressly charges the truth to be that this defendant has made liberal allowance for petitioner and the child of the marriage during the pendency of this suit notwithstanding that the petitioner's petition herein has no prayer for maintenance and support for herself. 10

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

CHARLES M. ROSS, 20
 Defendant.

HOLMES V. M. DENNIS, JR.,
 Solicitor of Defendant.

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

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

I am the defendant in the foregoing answer named. The matters and things set forth and contained in said answer, so far as they relate to my own acts, are true, and so far as they relate to others, I believe them to be true. 30

CHARLES M. ROSS.

Subscribed and sworn to before me }
 this 20th day of September, 1927. }

ROSE H. MYERSON,
 Notary Public,
 Kings County. 40

Co. Clerk's No. 162, Reg. No.
 N. Y. Co. Clk's No. 436, Reg. No. 8361.
 Commission expires March 30, 1928.
 County Clerk's Certif. attached.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

10

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
Defendant.} On Petition for
Divorce.

Paterson, N. J., June 4th, 1928.

Before—HONORABLE VIVIAN M. LEWIS,

Vice-Chancellor.

20

APPEARANCES:

EDWARD THOMAS MOORE, Esq., Solicitor for
Petitioner.HARRY LANE, Esq., appearing for Holmes
V. M. Dennis, Jr., Esq., Solicitor for De-
fendant.

30

ESTHER ROSS, the petitioner in the above en-
titled cause, being first duly sworn according to
law, testified as follows:*Direct examination by Mr. Moore:*Q. Mrs. Ross, you are the petitioner in this case
for divorce, in which your husband is the defend-
ant? A. I am.Q. Where do you live? A. Millington, New
Jersey.Q. How long have you lived in New Jersey? A.
About five years.

40

Esther Ross, direct.

Q. Does the defendant live in New Jersey, too?

A. Yes, he does.

Q. Will you state to the Court how you got along with your husband—what your relations were, after your marriage? A. We got along fairly well at the beginning, but about in the beginning of January, 1924, then he started a course of cruel treatment. He began to beat me and accused me of going out with other men, and generally treated me in a very bad way. 10

Q. You say up until 1924, you got along fairly well? A. Yes, we did.

Q. Just explain then what he did? A. He started to abuse me, and call me bad names.

Q. Just explain. A. When he got angry he would call me a dirty bitch, and order me out of house, and said he didn't have any more love for me. 20

By the Court:

Q. When did he order you out of the house? A. He did that in 1924, and said he didn't have any use for me any more, and wished I would get out.

By Mr. Moore:

Q. What other accusations did he make against you? A. He didn't like me to have friends, and he showed jealousy in men that came to the house; he would show jealousy whenever any man was in the house. 30

Q. What were the other accusations? A. He said I had been living with other men.

Q. Can you state about when these accusations were made? A. I beg your pardon?

Q. Can you state about when these accusations were made? A. I went to England in May, 1926, 40

Esther Ross, direct.

and when I came back he then made those accusations against me.

10 Q. What were they? A. He said I had broken my marriage vows and dragged his name in the dirt, and said I had been having sexual relations with other men.

Q. Were these made alone, or in the presence of anybody? A. In the presence of a friend of mine.

Q. What was the name of the friend? A. Miss Brockelmann.

Q. What was your health up until 1924—when did you leave him—when did intercourse cease? A. January, 1927.

20 Q. What was your health in 1925? A. I wasn't very well; my nerves were in a bad state, and I was having medical treatment for it.

Q. Are you acquainted with Miss Capen? A. Yes, sir.

Q. Did she used to visit you? A. She used to visit quite frequently.

Q. Do you remember any conversation taking place between Miss Capen and your husband, and yourself? A. Yes, sir.

30 Q. What was that? A. She was there in 1925, and we went out for a walk in the evening, and she said she had noticed my health wasn't the same—that I looked run down.

Mr. Lane: I must object to it, if it wasn't in the presence of the defendant.

The Court: I will allow it.

Q. You say she made inquiries about your health? A. Yes.

40 Q. What did she say about it? A. She said: "I notice you are in a run-down condition, and you are nervous, and things don't seem to be right

Esther Ross, direct.

between you and your husband, and I have noticed it right along, and I would like to know what it is," and I didn't want to mention it, but she insisted.

Q. Just tell us what you told her. A. I told her that he called me bad names; that he called me a dirty bitch and had ordered me out of the house, and he had also called me a prostitute, in his rage, and he had neglected me many months at a time, and I couldn't understand what it was about, and I had tried to get along, but I couldn't please him, and it was just only fighting all the time, and, of course, she could see that herself, and the other things I told her about. 10

Q. I understand you made these replies because of her questioning you? A. Yes, sir.

Q. What was said to your husband, in your presence? A. The next morning, at the breakfast table, these things were brought up, and she listened to what he had to say. 20

Q. What did she say to him? A. She said she couldn't understand why he treated me in this manner.

Q. What manner? A. This rude and cruel manner.

Q. Did she say anything? A. She said that your wife told me that you had accused her of breaking her marriage vows, and she couldn't believe that it was so, and he said that when he got in a rage he didn't know what he was doing. 30

Q. Did she say anything about your health? A. She said I was broken in health, and if things didn't change, it would be bad for my health.

Q. When was this? A. July 3rd, 1925.

Q. Do you remember any other time when Miss Capen was present with your husband? A. Yes, on the 4th of October, she came out for a few days. 40

Esther Ross, direct.

Q. When was that? A. Her birthday was the sixth of October, of the same year.

Q. Was your husband present, too? A. Yes, and we also had another visitor.

10 Q. Were there any inquiries made of you about your health? A. She said she didn't notice that I was any better, and she asked me how things were, and I said things were no better.

Q. Was any reference made by you? A. I said he was just the same—making the same accusations.

Q. Just be specific about it. A. When he got angry he would accuse me of not being faithful.

Q. Was there any reason for this accusation? A. No; none at all.

20 Q. Did she talk with him about it? A. Yes; she did.

Q. In your presence? A. First with him and then in my presence.

30 Q. Just describe what was said at this time. A. First, he wouldn't talk for the longest time—we had been out and we got back a little late, and he was mad, and he wouldn't speak all through the meal, and the atmosphere was very strained, and after the meal—this lady was so unhappy about it that she got up and said she would have to leave, and I said that would make it very unpleasant for me, and I wanted my husband to apologize for it, but he didn't want to make any apology at all.

Q. Did she make any reference to your health? A. She said I appeared to be in a poor, run-down state of health, and she hadn't noticed any change in his treatment of me at all, and she thought I was in a very run-down state.

40 Q. Was there any accusation made by her, to

Esther Ross, direct.

him, at that time, of his treatment of you? A. Yes; she did.

Q. What did she say? A. She said: "You have no right to call your wife such terrible names."

Q. What names? A. As prostitute and street-walker. 10

Q. Any other occasions? A. And he had no grounds to say I was living with other men, because she knew I wouldn't do anything like that.

Q. What did he say? A. He said he didn't know why he made these accusations; he didn't believe I did, but he couldn't help it.

Q. Did he deny making the accusations? A. No; he didn't.

Q. Did she say anything about your health? A. Yes; she said she noticed my health was in a bad and strained condition, and she was afraid things would be very bad with us if he didn't mend his ways. 20

Q. That was the incident with Miss Capen; was she there again? A. Yes; she came out again when I went to England.

Q. What year was that? A. 1926.

Q. 1926? A. Yes.

Q. Before you had gone to England? A. Yes; and I was in such a bad state then, and I said I couldn't stand it any longer. 30

Q. What was your condition then? A. I was run down, and I had lost so much weight, and I couldn't take care of the house.

Q. What was the condition of your nerves? A. They were completely shattered.

Q. What was the evidence of it? A. I couldn't sleep, and lost weight, and couldn't digest my food, and was very nervous and upset. 40

Q. Did you speak to your husband about the

Esther Ross, direct.

cause of your condition in 1926? A. I spoke to him several times, and I couldn't stand it any longer.

10 Q. Will you describe his treatment of you at this time, when you were alone? A. On the first occasion he became so fierce that he took hold of my arm and twisted it and tore my coat.

Q. No charges ever made at any time? A. He said he wished I would get the hell out of the house—that he didn't care for me, he only cared for the child and he didn't wish to have anything more to do with me, and wished I would get out.

Q. You spoke of your health being poor; did you go to England as a result of your health? A. Yes; I did.

20 Q. Did you recover, somewhat? A. I was very much better when I came back; I weighed more than I ever did, during my married life.

Q. Did your husband meet you when you returned? A. Yes, and the night before, he told my friend that he was going to divorce me, and she said she didn't see how he could do that, because she had been a good wife to him, and he said he knew that I had been living with another man.

30 Q. Was there any cause for the accusation? A. No, sir.

Q. Did you go home, to his house, with him? A. Yes, sir.

Q. When was that? A. October, 1926.

Q. How long did you remain at the house with him? A. I remained until I left him the following July.

Q. In 1927? A. 1927.

40 Q. When did cohabitation between you and your husband cease? A. I think it was about January, 1927.

Esther Ross, direct.

Q. How long had you been home from England when cohabitation ceased? A. About two months.

Q. What was the conversation between you that caused the cohabitation to cease? A. I said he was too cruel and I couldn't go through it any longer.

Q. What was said? A. He told me I had broken my marriage vows and I was nothing but a street-walker and why didn't I get out, and if I did I would have to leave my child and I couldn't do that, and I said—I simply said I couldn't live with him as his wife. 10

Q. Any physical injuries at all? A. He did on one occasion twist my arm.

Q. How close was that to your termination of cohabitation, in January, 1927? A. Just a couple of days after it, or just at that time. 20

Q. After you ceased cohabitation, he was cruel to you still? A. He was cruel to me still.

Q. How badly did he abuse you then? A. He made black and blue marks on me and I was stiff.

Q. Anything else? A. He had a gun there and I was afraid of him.

Q. Any mention made about the gun? A. He actually didn't, but he raised his hand to me.

Q. After you ceased cohabitation? A. Yes, sir.

Q. Just describe it. A. He would go like this (indicating). 30

Q. And make any statements? A. Yes; he said, "By God, I could kill you."

Q. You remained with him from January, 1927, until about what date? A. About July, 1927.

Q. Why didn't you leave him at that last act of cruelty? A. For one reason I wanted to keep the home together for the sake of the child, if I could, but things got so bad and my health was broken down and I wasn't well enough to go out to work, 40

Esther Ross, cross.

and I hadn't any money, and my family couldn't support me.

Q. When was your suit started? A. July 2, 1927.

Mr. Lane: That is all a matter of record.

10 Mr. Moore: Yes; but I wanted to show that she stayed there until the suit was started.

By the Court:

Q. Your husband came home every night? A. Yes, sir.

By Mr. Moore:

20 Q. No intercourse took place between you then? A. No; not from January, 1927.

Q. And after that the cruelty took place? A. Yes, sir.

Q. The child is in your custody? A. Yes, sir.

Q. An application was made for counsel fee and alimony? A. Yes, sir.

Q. And you were allowed so much per week? A. Yes, sir.

30 Q. How is your health at the present time? A. Well, of course, I am not fully recovered because I have had a nervous strain, but I feel better and weigh more than I did before.

Q. Have you any means of your own? A. No, I haven't.

Mr. Moore: That is all.

Cross examination by Mr. Lane:

Q. Where have you been living? A. Since I left Millington?

40 Q. Yes. A. I have been living with my sister, in Readington, Pennsylvania.

Esther Ross, cross.

Q. All the time? A. Except when I would go to visit my mother.

Q. When did you leave the house? A. In July, 1927.

Q. What date did you say it was? A. The end of July. 10

Q. Do you know the date? A. I think it was the 31st of July, or 1st of August, but I think it was the 31st of July.

Q. Was it before or after you had filed the petition? A. After I had filed the petition.

Q. When you filed the petition, you were living in the house? A. I was.

Q. Your husband was living in the house? A. Yes; he was coming home every night.

Q. How long did you live there after you filed the petition, about a week? A. Yes; a few days. 20

Q. During that week you were talking together? A. No; he never spoke a word to me.

Q. From the time you filed your petition until you left, you never spoke to him? A. Except to ask him to pass something at the table, and he would never sit in the same room with me.

Q. On July 31st, if that was the date, what happened—what caused you to move that day? A. I knew if I left before I had my papers ready, I knew he would go out and I couldn't have him served, and he just wanted me there for what he wanted, and I wanted him served. 30

Q. You didn't leave because you wanted him served? A. I knew he was crafty enough to do that.

Q. He wouldn't do any bodily injury to you if you hadn't told him something about filing a petition? A. If I had, he would have. 40

Esther Ross, cross.

Q. During that week he didn't? A. He wasn't talking to me that whole week.

Q. Did he do any bodily injury to you during that week? A. I can't remember.

10 Q. As a matter of fact you can't remember his doing any bodily injury to you? A. Yes, I can.

Q. When? A. I can remember two occasions specifically.

Q. When was the last one? A. The last time was when he had a bad cold and he had been home for a few days.

Q. I want to know when it was? A. Two years ago.

20 Q. When was the other time? A. I remember two other times; one time when I returned from England and once before I went to England.

Q. You knew about that; why didn't you put it in your petition? A. I did put it in my second affidavit, and I gave out all that I could, and I didn't want my child to know that her father had struck her mother.

Q. But you didn't care if she knew that he had called you names?

Mr. Moore: I object to the question.

30 The Court: I will allow it.

Q. The day that you filed your petition, did you tell your husband that you had filed a petition? A. I left a note for him.

Q. And then you left? A. Then I left.

Q. Without telling him you were going to leave? A. Without telling him I was going to leave.

Q. You say on January 10th, 1927, you say cohabitation ceased? A. Yes.

Esther Ross, cross.

Q. And you lived with him until July, 1927? A. Yes, sir.

Q. You lived there with your child and your husband? A. Yes; I lived under the same roof.

Q. Since you have filed your petition, you have seen your husband on various occasions? A. Yes; he has come up to see the child. 10

Q. And you have gone out with him? A. No; I have never gone out with him, but I have met him in New York and talked the case over.

Q. What do you mean about talking it over? A. Because, I thought may be we could fix things up and go back to live together for the sake of the child, but he said I was selfish and couldn't patch things up.

Q. So you were willing to go back and live with him up until two or three weeks ago? A. Certainly not. 20

Q. Up until when? A. Christmas, of this last year.

Q. Around February? A. Yes, sir.

Q. What did you want him to do in order to have him to come back and live with you; what did you want him to do? A. I thought for a while we shouldn't live together as man and wife, because we had gone through so much— 30

Mr. Moore: I object to it.

The Court: I will allow it.

Q. And if he had agreed to it, you would have gone back again?

Mr. Moore: I object to the question; it is purely hypothetical.

The Court: I will allow it.

A. Yes. 40

Esther Ross, cross.

Q. And the only condition was that he should not cohabit with you for awhile? A. That was not the only condition; no.

10 Q. Prior to January, 1924, your life with your husband had been fairly happy? A. You might say fairly happy; we were never very happy together, because he was of a peculiar temperament.

Q. How old are you? A. My husband is twenty years older than I am.

Q. I asked you how old you were? A. I am thirty and he is fifty.

Q. And after you were married you lived in New York for awhile? A. We lived there for a number of years.

20 Q. And then you moved to Millington? A. We moved to the country; yes.

Q. And he bought the house? A. Yes.

Q. And then in 1926, he sent you to Europe? A. He didn't send me; I went to Europe.

Q. He paid your expenses? A. Yes; he did; but he said it would be better for him to send me to Europe than to pay sanitarium expenses.

Q. And you wrote to him? A. I wrote several times.

30 Q. And you referred to a man? A. I referred to different people.

Q. You said about one particular man? A. Yes; I said he had been very nice to me and the child.

Q. Didn't you say his face would always be between him and you? A. No, I didn't; that was his remark.

40 Q. Whatever happened before you went to Europe you were perfectly satisfied, irrespective of the treatment you had received, to go back and live with him? A. No, I wasn't willing; but I had a child.

Esther Ross, cross.

Q. Have you the letters that you wrote to him?

A. No; I haven't got it; I don't know where it is.

Q. Do you know where it is? A. No; I don't.

Q. Did you take it from the house when you left? A. I burned up a number of things and I might have burned that.

10

Q. You took all the letters and correspondence from you to him, and from him to you, when you left; didn't you? A. There were a lot of letters there in a drawer, and I tore them up, because I didn't want them lying around.

Q. He went to business, and you left? A. He went to business in the morning, and I left in the morning, too.

Q. You got back from Europe in October, 1926?
A. Yes, sir.

20

Q. And Miss Brockelmann was there? A. Yes, sir.

Q. And she had been in the house the night before? A. Yes, sir.

Q. Cleaning the house for your return? A. Yes, sir.

Q. Your husband doesn't drink, does he? A. Yes, he does drink, but he doesn't get dead drunk or anything like that.

Q. You made no claim of that? A. No.

30

Q. You didn't, because you didn't have it in your petition? A. No, sir.

Q. When you spoke about the conversation Miss Brockelmann had the night before, it was in reference to this one particular letter? A. At this time, yes.

Mr. Lane: By the way, I have given notice to produce; have you the letter, Mr. Moore?

40

Mr. Moore: No; I have not.

Esther Ross, cross.

Q. Do you recollect that in that letter you stated that you had met a man on the steamer and that you and he had become very much infatuated with each other? A. No; I didn't say that at all.

10 Q. You did state that you met a man? A. Yes; several men.

Q. And that after you had met this man, you would come and live in the house, but you wouldn't live with him as his wife, because the face of the other man would always come between him and you? A. No, sir; I did not.

Q. Will you just mention your version of it? A. I mentioned that I had met some people on the boat.

20 Q. What is your recollection as to what you said in the letter? A. I mentioned that I had met this man, and he had helped me out with the child; that she was very active, and he had sort of kept an eye on her for me.

Q. What else? A. And I said I had seen him two or three times in England, and he had come to see me at my brother's residence who is a clergyman in England.

30 Q. You lived with him from October until January? A. Yes, sir.

Q. Cohabiting with him? A. Yes, sir.

Q. And then, all of a sudden on January 10th, 1927, did anything particular happen that caused you to cease? A. Yes.

Q. What? A. He was so brutal and inhuman, and while he said he didn't have any love for me, I didn't see why I had to be any ordinary woman of the street for him for that purpose.

40 Q. So, after that time you lived as you did before, except that you refused to have cohabitation with him? A. Yes; absolutely.

Esther Ross, cross.

Q. Nothing particular occurred on July 31st, when you finally left, did there? A. He wouldn't say a sensible word to me; we weren't then talking together.

Q. On January 24th, 1928, you wrote him a letter in which you stated that you would be willing to go back to him, provided he went on a six months probation? A. Yes; I did. 10

Q. What did you mean by probation? A. First I agreed to go back without probation, and then he came up to my sister and denied it, and they thought it was peculiar that I should say it and he would deny it, and that put me in wrong with my family.

Q. So you thought it was better not to put yourself in wrong with your family, than to go back with him? A. I thought if he was really penitent and wanted me back he would have accepted those conditions. 20

Q. This letter of January 24th, 1928, is in your handwriting, isn't it? A. Yes, sir.

Mr. Lane: I would like to have it marked for identification.

The Court: All right.

(Letter marked D-1 for Identification, as of this date.) 30

Q. And also this letter of February 26, 1928; you wrote that to your husband also? A. Yes, sir.

Mr. Lane: I ask that this letter be marked for identification.

The Court: Let it be marked.

(Letter marked D-2 for Identification, as of this date.)

Q. So, to your mind, as late as February, 1928, 40

Esther Ross, cross.

his treatment of you had not been so bad or cruel as you call it, that you wouldn't go back and live with him? A. He knew I didn't want to go back and live with him, but for the child's sake I would go back, but he would have to change his treatment, because I couldn't go through it again and my family said they would watch him very closely, and if he started again, they would remove him from the house.

10 Q. You knew that he contended that he hadn't done anything that he should be penitent about?

A. He admitted it to my family, and denied it to me.

Q. Did he admit it to your family, in your presence? A. He did.

20 Q. In your presence? A. He certainly did.

Q. And then he denied it to you? A. Yes, and said he had to be humiliated and had to admit that he had done wrong.

Q. Your husband has always supported you as his means would allow? A. I have made no complaint about his support.

Q. And you are not? A. I am not making any complaint about the way I was supported, no.

30 Q. Now, Mrs. Ross, why was it you didn't go back and live with your husband? A. Because he wouldn't accept my conditions.

Q. And if he had— A. I would have given him a six months' probation chance; yes.

Q. Now, didn't you admit at a conference that you had taken all of these letters when you left— a conference at which Mr. Dennis was present?

40 A. I told Mr. Dennis—he asked me about the letters; I told him when I left I had done a general tidying up, and maybe I would have destroyed this letter, because I didn't want to leave it around.

Esther Ross, cross.

Q. Did anybody tell you to destroy the letters written between you? A. Absolutely no; I don't think there was anything in them; they were lying around.

Q. Friendly letters, were they not? A. Written on my travels.

10

Q. They were friendly letters, weren't they? A. Not very friendly; they were just statements of what I had been doing.

Q. Now, on January 27th, 1927, which was at the time that you say you insisted on ceasing cohabitation you were still very friendly with your husband? A. No, I wasn't; but I was hoping beyond hope that he would change his attitude toward me, because for the child's sake I thought we had to go on living together.

20

Q. Did you write this letter of January 27th, 1927? A. Yes; I did.

Mr. Lane: I ask that it be marked for identification.

The Court: Let it be marked.

(Letter marked D-3, for identification, as of this date.)

Mr. Moore: This is all after the last alleged act of cruelty.

30

The Court: They are not being offered in evidence—just marked for identification.

Q. I also show you another letter, that has no date, and is headed, "Wednesday evening," and ask you if you can recollect when it was that you wrote that letter to your husband? A. I think that was written in the beginning of January, 1927, as far as I can remember.

Q. And your feelings were such that you addressed him fondly as: "Dear Old Jelly Beans,"

40

Esther Ross, cross.

wasn't it? A. Yes; I did, but I didn't think he had any objections to that.

The Court: Never mind; the court will pass on that.

10 Mr. Lane: I ask that the letter be marked for identification.

The Court: Let it be marked.

(Letter marked D-4, for identification, as of this date.)

Q. I show you a letter dated July 29th, 1924, and ask you if that letter is written by you? A. Yes, it is; that is written by me.

Mr. Lane: I ask that the letter of July 29th, 1924, be marked for identification.

20

The Court: All right.

(Letter marked D-5, for identification, as of this date.)

Mr. Lane: Also a letter of July 31st, 1924.

(Letter marked D-6, for identification, as of this date.)

Mr. Lane: Also a letter bearing date July 31st, together with an envelope which is post-marked August 1st, 1924.

30

(Letter marked D-7, for identification, as of this date.)

Q. By the way, Mrs. Ross, what doctor took care of you when you were sick? A. Doctor James, of Basking Ridge, and another doctor in Summit, but I have forgotten his name, but I generally had Doctor James.

Q. When was the last time Doctor James treated you? A. In July, just before I left my husband.

Q. July, 1927? A. Yes.

40

Q. How often in July, 1927? A. I went up to see

Esther Ross, redirect.

him to get some medicine for my nerves and he examined me.

Q. That was once in July, 1927? A. Yes.

Q. When, before that? A. I can't remember, but I had seen him several times that year.

Q. Who paid the bills? A. I paid them some- 10
times and sometimes my husband; when I went if I could afford it I paid them myself.

Mr. Lane: That is all.

Redirect examination by Mr. Moore:

Q. Go back to the time that you left him on January 10th, 1927; what specific act had he done before you left him and what had he done after?

Mr. Lane: I object to the question; that is 20
not rebuttal.

The Court: No; that is your main case.

Mr. Moore: It is something that I forgot.

The Court: Then I will allow it.

A. He did exactly the same thing again.

Q. Just state to the court what he did? A. He accused me of unfaithfulness and once he hit me, and after that I told him I couldn't live with him any more as his wife. 30

Q. Then you ceased cohabitation? A. Yes.

Q. When, after the 10th, did any cruelty take place? A. I think it is cruelty when a man accuses his wife of unfaithfulness.

Q. What took place after that? A. He took me by the throat one night and said he would like to choke me.

Q. That was after you had ceased cohabitation?

A. Yes, after I had ceased cohabitation.

Mr. Moore: That is all. 40

Lorine S. Capen, direct.

Recross examination by Mr. Lane:

Q. For twelve months you didn't cohabit either, did you? A. No; he didn't come near me.

Q. At your request? A. No.

10 Q. When he had changed, and wanted to cohabit then you decided that you didn't want to cohabit? A. After the way he treated me I didn't feel that he had any right to cohabit with me.

Mr. Lane: That is all.

LORINE S. CAPEN, a witness produced on behalf of the petitioner, being first duly sworn according to law, testified as follows:

20 *Direct examination by Mr. Moore:*

Q. Mrs. Capen, you reside with your husband at New York City? A. Yes.

Q. You are acquainted with both the petitioner and the defendant in this action? A. I know them both very intimately; I have known Mr. Ross since 1913 and Mrs. Ross since they were married.

Q. You knew him before you did her? A. Yes, sir.

30 Q. He visited at your family? A. Yes, sir.

Q. And you knew them both before the marriage? A. No; Mrs. Ross, after the marriage.

Q. When did you visit them last? A. In February, 1926.

Q. That was before she went to Europe? A. Yes.

Q. Did you ever visit at the home after she returned from Europe? A. No.

Q. Did you ever see him after she returned from Europe? A. No.

40 Q. You never talked to him after she returned from Europe? A. No.

Lorine S. Capen, direct.

Q. During these visits, did you have an opportunity of observing his treatment of her at the home? A. Both me and my family had noticed her condition before she mentioned it to me.

Q. When was that? A. The 4th of July weekend, when I was out there. 10

Q. That was before she had gone to Europe? A. Yes, sir.

Q. What did you notice? A. She was such a pitiable looking little thing.

Q. What did you say to her? A. I pried it out of her.

Q. What did you say? A. We went out walking, and I pried it out of her knowing that their existence was incompatible. 20

Q. What did you say? A. I asked her how the situation stood between them, and then she began to speak very frankly with me—

Mr. Lane: I object to this on the ground that this testimony is not binding on the defendant, unless he was present.

The Court: All right; note the objection.

Q. So in answer to your inquiry as to the cause of her condition, she made certain statements to you at that time? A. Yes. 30

Q. What did she tell you? A. She said that the situation had been impossible for a very long time; that Mr. Ross had been extremely cruel to her; that he had called her very many vile names on occasions.

Q. Did she tell you the names? A. Yes; she did.

Q. Would you care to convey them to the Court? A. The same names—prostitute. 40

Lorine S. Capen, direct.

Q. Anything else? A. Streetwalker.

Q. She told you he had accused her of this; what did she say had been the effect on her? A. She said she had tried to make the best of it and she had confided to nobody, and she had tried to do her best, and when anybody came to the house she tried to hide any undercurrent between them, which is absolutely true.

Q. Did she go into it any more? A. She said they had had terrible fights at times, and she was worn out, and she was worn out—anybody could see it.

Q. What was her condition? A. It was pathetic.

By the Court:

20 Q. Are you friendly with the husband? A. I am a disinterested witness.

Q. Are you friendly with the husband? A. Not in his attitude and his actions.

The Court: Then you are not a disinterested witness.

By Mr. Moore:

30 Q. Did you speak about it again? A. We did; and I was placed in a very embarrassing position. They brought their complaint before me, and I was the high tribunal, and after considerable discussion Mr. Ross admitted that he was wrong, and I told him he ought to change his relations.

Q. Did she go quite into detail? A. She did.

Q. And the husband admitted everything? A. He did, and admitted that he was at fault.

Q. Did you see him at a subsequent date? A. I saw him in the following October.

40 Q. In 1925? A. Yes, sir.

Lorine S. Capen, direct.

Q. Before she went to Europe? A. Yes; and I was out there, and on that occasion Mr. Ross was extremely rude to me. He was annoyed with his wife that some summer afternoons she had come in a little late for dinner and he was so rude to me that I got out and left the house, and he came in and apologized to me and I said that things had become so between them that there was nothing else for them to do but get a divorce.

10

Q. Did you notice her health? A. She was going down-hill all the time.

Q. Did you talk about her health? A. She said that things were about the same.

Q. Did she repeat the same things? A. She repeated the same things that she had told me on the former occasion.

20

Q. Did she say anything about his calling her a prostitute? A. I can't say; it was hashed and re-hashed about the same.

Q. Did you talk to her and him both? A. I did talk to them both, but most of my conversation was with Mr. Ross.

Q. What was her condition; just describe it, so we have it on the record? A. She was extremely nervous, but she was trying to hold it in to prevent the child from hearing any family parleys, but she looked something terrible.

30

Q. Was anything said to him, by you, about her condition? A. I said that I thought the condition between them was terrible and I thought relations between them should be taken up and that a divorce was the only solution.

Q. Was anything said to him, by you, about his actions? A. I said that I thought his actions were terrible, and that he was dragging her down-hill.

40

Q. Did he make any reply to you? A. At that

Lorine S. Capen, cross.

time, he said he didn't know where he was; he said he wasn't conscious and that he thought he was out of his mind and he didn't want a divorce, because he didn't want his name besmirched.

10 Q. How was Mrs. Ross? A. She was fine; she tried to show a feeling of affection toward Mr. Ross, but he always rebuked her.

Q. You never went there after she returned from Europe? A. No.

Mr. Moore: That is all.

Cross examination by Mr. Lane:

Q. Mrs. Capen, you say you live in New York City? A. Yes, sir.

20 Q. After, your relations with Mr. Ross were friendly; after you had these talks, you were friendly, were you not? A. Yes.

Q. So much so, that while Mrs. Ross was in Europe, you and some friends went over and paid him a visit over the 4th of July? A. Yes; my sister and some friends.

Q. Out in the country? A. Yes, sir.

Q. You made an affidavit in this case, did you not? A. Yes.

30 Q. For Mr. Moore? A. Yes.

Q. In that affidavit you didn't say anything about infidelity, or accusations of infidelity? A. You mean about the 4th of July?

Q. No; in the affidavit, you didn't say anything about accusations of infidelity?

Mr. Moore: The affidavit is filed.

The Court: It is proper.

40 A. I said that Mr. Ross had said these various things.

Q. In your affidavit, you remember having your attention directed to July, 1925? A. Yes.

Lorine S. Capen, cross.

Q. And you said in your affidavit that the petitioner had complained to you pitifully about her discontent and unhappiness in her married life, because by the arrogant and indifferent treatment to her by the defendant in her married life; was that what was called to your attention at that time? 10

Mr. Moore: I object to it.

Mr. Lane: I will withdraw it.

Q. Now, you, in that affidavit were recounting what had happened on that occasion; you say now that you didn't put in everything? A. I said I hadn't detailed truly the whole conversation that went on between us at that time. As I remember the affidavit was over there and I just stated a few facts. 20

Q. You also said that the complaints made by the defendant were that he and his wife didn't get along together? A. For the specific reason that I have stated here.

Q. But, as far as you could see, the real trouble, to your mind, and what you could see of it, was Mr. Ross was a little arrogant? A. Nonsense; that was only one of them.

Q. And in this affidavit you also went on to state that Mr. Ross admitted that he was in the wrong—will you say what he did say—admitted to me in the presence of the petitioner that he was the one at fault, and he must change his attitude toward the petitioner? A. Yes, sir. 30

Q. That was his admission, that he was a little arrogant? A. No; that was of all the things we discussed, and I don't think I ever had such a complete discussion with any three people before.

Q. Now, I am talking about the affidavit of the first date? A. Yes, sir. 40

Lorine S. Capen, redirect.

Q. Now, you also said that Mr. Ross would sulk and act in a way so cold and indifferent, and would cause you embarrassment while you were there?

A. Cause me and my family great embarrassment.

10 Q. Why didn't you say that in your affidavit? A. I am sorry I didn't make a more full affidavit.

Q. I see. A. I am willing to make another affidavit if you want one.

Q. You advised Mrs. Ross to get a divorce, didn't you? A. I advised Mrs. Ross to get a divorce and Mr. Ross to get a divorce.

20 Q. And you are quite anxious that Mrs. Ross should get her divorce? A. I am most anxious that Mrs. Ross get a divorce, and I am only here on the instigation of my husband, who forced me to be a witness.

Mr. Lane: That is all.

Redirect examination by Mr. Moore:

Q. Did you, in your second affidavit, state—

Mr. Lane: I am just apprised that no other affidavit was ever served on us; I have never seen it.

Mr. Moore: I will withdraw it.

30 Q. In your affidavit, you made two affidavits, did you not? A. Yes, two.

Q. And in your second affidavit did you state that you are making this one specific with more formality, the things stated in your first affidavit? A. Yes.

40 Q. In your second affidavit did you state as follows: "The petitioner testified to me specifically the following facts: that the defendant had shown her no love or affection whatever; swore at her on

John Ritch, direct.

several occasions; had no love or affection for her and stayed with her for the child's sake; that defendant swore at her and called her vile names"? A. Yes.

A. Yes.

Q. Petitioner stated that statements of this character humiliated her so and caused her such suffering that she could not stand it? A. Yes. 10

Q. I talked to the petitioner and defendant, in the presence of each other and told the defendant what the petitioner had told me about his treatment of her and that she suffered humiliation as a result thereof, and that defendant admitted these things to be true and that he was at fault? A. Yes.

Q. You stated that at that time in your affidavit? A. Yes.

Q. And is that all true? A. Yes. 20

Q. Did you state in your first affidavit; that the only reason he tolerated the petitioner at all was because of the child? A. Yes.

Q. And if the petitioner left him he would of course, get the child, and that was the only person he was interested in? A. Yes.

Mr. Moore: That is all.

JOHN RITCH, a witness produced on behalf of the petitioner, being first duly sworn according to law, testified as follows: 30

Direct examination by Mr. Moore:

Q. Where do you live, Mr. Ritch? A. 3411 Walnut Street, Philadelphia.

Q. You are the brother of the petitioner in this action? A. Yes, sir.

Q. You stay in Philadelphia? A. Yes, sir. 40

John Ritch, direct.

Q. Did you ever visit the parties when they resided together at Millington? A. Very frequently.

Q. Were you present when your sister left for the boat? A. I was.

10 Q. Will you just describe the treatment? A. I would say that the house of the Rosses was about the most unpleasant to be into—

The Court: That is a conclusion; strike it out.

By the Court:

Q. What did you see and hear? A. When I was a younger person the atmosphere was so unpleasant—

20 The Court: Strike it out.

By Mr. Moore:

Q. From September, 1924, up to June, 1926? A. From September, 1924, I visited the Rosses and the husband was very surly to my sister and people who visited them; to me he was more pleasant than to my brothers and sisters.

30 Q. What was the condition of your sister at that time? A. My sister's health, after the marriage, was not good; it was a steady decline.

By the Court:

Q. Was it good before? A. Always good.

By Mr. Moore:

Q. Did she work before her marriage? A. She did, for a short time.

Q. Where? A. In the same office with her husband.

40 Q. What was it? A. Public accountant.

John Ritch, direct.

By the Court:

Q. How many times did you go there? A. I lived in the neighborhood and visited about every two months.

By Mr. Moore:

10

Q. Well, how did things get along; they had a child, didn't they? A. They had a child; the husband's attitude was—

Mr. Lane: I object to that.

The Court: Strike it out.

(Witness continuing.) At the meal table, Mr. Ross never was pleased with the things placed before him.

20

The Court: Strike that out.

By the Court:

Q. What did he say? A. He pounded on the table and he objected to the order of the courses and if food appeared on the table after the meat, rather than before the meat, and if there were dishes to wash up, he objected to so many dishes.

The Court: Never mind that.

30

Q. What did he say at the table? A. Nothing but the mere commonplace—pass me the bread or butter.

Q. Did he hold any conversation with his wife at all at the dinner table? A. No.

By Mr. Moore:

Q. Did he make any statements to her? A. Yes.

Q. Now, what were those statements? A. He would object to her being out in the garden, when he would want her in the house, and he would

40

John Ritch, direct.

say: "Why don't you come in when you are wanted; why are you out when you ought to be in, and in when you ought to be out?"

10 Q. Did he make any statements to you, in her presence, when he criticized her in any way? A. Yes; on one occasion he told me he had no use for his wife at all, and that he wouldn't be living in the house with his wife if it wasn't for the child.

Mr. Moore: I don't know whether the court heard the last remark.

The Witness: He said he wouldn't be living in the house if it wasn't for the paternity of the child, or for the child.

By the Court:

20 Q. Did you ever hear him swear at his wife? A. No.

Q. Or ever see him strike his wife? A. No.

Q. Did you ever hear him call her any names?

A. I have heard him call her worthless and lazy.

Q. Any names? A. No.

By Mr. Moore:

30 Q. Did you ever hear him accuse her of being intimate with other men? A. Before going to England, no.

Mr. Lane: I object to that, and ask that the answer be stricken out.

The Court: Strike it out.

The Witness (continuing): Then I can't say; I have heard him say his wife was unfaithful.

By the Court:

40 Q. When? A. In Reading, last October.

John Ritch, direct.

Q. Who was present? A. My brother-in-law and a sister, with whom the baby is now living.

By Mr. Moore:

Q. Come down to your sister's health; what was her health in 1926, just before she went to Europe? 10

A. She was run-down and anaemic and sickly.

Q. Did you discuss your sister's health before she left for Europe? A. I did.

Q. Just tell what you said to him and what he said to you? A. Just before her departure for Europe I went to Millington and discussed the whole matter—why she was going, and in the conversation I discussed it.

Q. And who did you discuss it with? A. Charles Ross. 20

Q. Was the wife present? A. She wasn't present, but she came over and joined us while the conversation was still going. He said she was going and I asked him what he was going to do, and he said he didn't know, but he could probably get along all right, because he had gotten along all right before he was married and he said his married life was not very important, and I said that was a peculiar thing to say, being he was the father of her child, and he said his wife was worthless. 30

Q. Did you notice anything about your sister? A. I noticed that my sister was very poor, and I asked her if she got enough to eat and her answers were very inactive at first, and finally when she saw she was going to England, and was getting away from the man, she admitted that the source of her ill-health was her husband, and the treatment she received from him.

Q. Did she allege the treatment she received from him? A. She said his sordidness and his lack 40

John Ritch, direct.

of gentility and his brutality was enough to drive her crazy.

10 Q. Did she say what they were? A. His refusing to speak to her for long intervals and no partnership in life at all, and his continual refusing to plan with her, or to work with her along any prescribed course, made life impossible for her.

Q. Was there anything said about any unjust accusations?

Mr. Lane: I object to the question.

Mr. Moore: I will withdraw it.

20 Q. Was there anything said as to the cause of her condition? A. I pointed out to Mr. Ross that the health of his wife was none too good and that I hoped that the trip to Europe would do her good, and he said he thought she was treated as well as she had ever been in her life.

Q. Did you discuss any confession that she made to you? A. That time she came in, and I told Mr. Ross, and I said: "Esther herself states that she is not happy by you; that you are not treating her fairly"; and I said: "Anybody could see it with their own eyes."

30 Q. Did you say anything to him about the cause of her condition? A. Yes; I said that she said that the cause of her health was caused by his treatment.

Q. How did you describe his treatment? A. As poor.

Q. What further did she tell you, as to the cause of her condition, if anything?

Mr. Lane: I object to the question.

The Court: The objection is sustained.

40 A. Mr. Ross resented my interfering at all; he

John Ritch, direct.

thought my attitude of being interested in my sister was unnecessary; he was her husband and he told me so. He said I didn't need to worry any more than his wife was worrying about it. I said I didn't think that was a fair statement and I said I thought Esther was anxious about him, and I said that he was welcome to come to our home at any time, and he said he didn't care to come to Norristown. 10

Q. Can you tell anything else that your sister told you? A. My sister didn't tell me anything very much, and what I have told you is what I saw myself. After she came from England she was more willing to talk, but there wasn't anything specifically told, except on that one occasion.

Q. What was told then? A. I saw her about a month after her arrival in this country, and she came to my home with her husband and I took her aside and I said: "How are things going?" and she said: "Rotten," and I said: "What is the matter?" and she said: "He is no better than he ever was," and she wasn't looking very good and I said: "You don't seem to be very much better than when you went away," and she said she was much better when she returned, but now he was calling her a prostitute and street-walker. 20 30

Mr. Lane: I object to that.

The Court: I am admitting this all over your objection.

Q. What was her appearance? A. My question: "How are things going?" didn't bring a very happy answer.

Q. What was her appearance? A. Not too good. I would say it was better than when she left for England, but not good at all. 40

Q. And then you made these inquiries? A. Then I made these inquiries.

John Ritch, direct.

Q. Did she make her answer reluctantly or otherwise? A. Not too freely.

10 Q. What did you say to him? A. I said: "Charley, I don't see why you can't get along with Esther; it seems that she is perfectly willing to get along with you."

By the Court:

Q. Did you tell him, at that time, this conversation? A. I said that she was willing to live with him under normal conditions.

By Mr. Moore:

20 Q. When you went down to see him, how did you open your conversation; did you say that you had just come from seeing your sister? A. No; I said: "It doesn't seem right—"

Q. When you went down, did you tell him you had been talking to your sister? A. No; I didn't go down stairs.

Q. After you had a talk—did you have a talk with your sister? A. Yes.

Q. Why didn't you say so? A. I told Charley Ross what she had said to me.

30 Q. What did you say? A. I said: "Charles Ross, my sister says you are not treating her fairly and you are not living up to the agreement," and he described to me—

Q. Did you state that all to him? A. Yes.

Q. State what you said to him. A. I said that Esther tells me that you are calling her a prostitute; that you are accusing her with infidelity with another man in England, and I said: "You know very well that is not true."

40 Q. What did he say? A. He said: "I am not so sure."

John Ritch, direct.

Q. Did he deny it? A. No.

Q. Did he admit it? A. He admitted that he had said it.

Q. After you had described that, what did he say? A. I said: "That is a pretty serious charge, and how can you prove it," and he said: "She told me so," and I said: "I don't believe it, and if it were true, she wouldn't admit it, and it wasn't likely, because she was living with you." I said: "She left for England for her health and she has only been back a month and she is going in decline again, and if you continue this treatment she will have to leave you for good," and he said: "That is all nonsense." 10

Q. Does that end that particular conversation? A. That ended that particular conversation. 20

Q. When did you talk to him again? A. The next time I saw him, or spoke to him, was in Reading, in the late fall of 1927.

Q. She had left in July? A. Yes; and I wrote to Mr. Ross and asked if we couldn't meet and talk it over and there was a car to be taken care of—winter was coming on and I wanted to know what to do with the car, and he came up and arrived on Saturday evening, and we kept away from the unpleasant subject until the following day and then we sat down to have a threshing over of all there was to it. 30

Q. What did you thresh out, her health? A. No; because she was not living with him at that time and the question was, whether they could live together again. I had been requested by my sister to go up and see if there could be any equitable arrangement, so they could live together again, and I told Charles Ross that, and he said he would like to live together again with his wife. 40

John Ritch, direct.

By the Court:

Q. Did he tell you he would like to live with her? A. Yes; he did.

By Mr. Moore:

10 Q. Did she authorize you to go up to see him?
A. Yes; she did.

Q. What were the conditions? A. She said she would go back to live with him again, not because she loved him, but for the sake of the child, and she didn't want to go back to Millington, because he had blackened her name, but she would live with him in New York City.

20 Q. What were the conditions? A. He should give her permission to get a job and with some outside acquaintances, and some friends, and entertain more freely in her home.

Q. Was anything said about as to how he was to treat her? A. Yes.

Q. How was he to treat her? A. He was to treat her more kindly and more courteously than before.

30 Q. Did he give his consent to go back? A. He denied his guilt, and he said he hadn't been cruel—it was all in her mind and I said: "Charles, where there is so much smoke, there must be some fire, and there must be some basis for her claim," and he said: "It is possible that I might have been a little rough," and he said: "I am jealous by nature," and I said: "And absurd," and he said: Positively, yes; I don't believe it or I wouldn't want to live with her again."

Q. They didn't go back? A. No.

40 Q. There were overtures, six months after the last act of cruelty alleged? A. This was in October, 1927.

John Ritch, cross.

Q. And the last act of cruelty was in January, 1927, and the petition was filed in July? A. Yes.

Mr. Moore: That is all.

Cross examination by Mr. Lane:

Q. How old are you? A. Twenty-six. 10

Q. What do you work at? A. I am a newspaper man.

Q. Reporter? A. Yes, sir.

Q. When was the last conversation with Mr. Ross? A. In January of 1927; I was saying October, and I want to correct it.

Q. Was your sister living at the same home where you had been living? A. No.

Q. Did you tell Mr. Ross, at any time, that you would be prepared to come and testify for your sister, and help her get her divorce? A. No. 20

Q. Why didn't you put all this in your affidavit which you made back in October, 1927? A. Why, it only—

Q. Why did you not put it in? A. Because, you will recall that it took place after this affidavit was filed.

Q. So you say Mr. Ross never admitted to you, in any of your talks, that he had called his wife a prostitute, until after the suit had been brought, and until after you had made this affidavit, in October, 1927? A. I think the record has it that Mr. Ross told me after my sister returned to this country, and that he had changed his attitude, therefore indicating that he had had another attitude. 30

Q. Didn't you state that he had denied everything up to a certain point? A. He did.

Q. Up until when? A. Up until that conversation following her return to this country. 40

John Ritch, cross.

Q. When was that? A. That was October, 1927.

Q. You know that she returned to this country in October, 1926, now, are you right or wrong? A. She returned in 1926?

Q. Yes. A. This was a month after her return.

10 Q. Where was it? A. In Norristown, Pennsylvania.

Q. Who else was present? A. Nobody.

Q. Was that when you came from Millington and Philadelphia, with Mr. Ross? A. No.

Q. When was that? A. That was a year following.

Q. You knew that your sister had written a letter, which Mr. Ross took some exception to, about some man that she had met over in England? A. Yes.

20

Q. As a matter of fact, wasn't all this reference to this letter, and at no other time, did Mr. Ross say anything about his wife, or her conduct, or anything at all? A. Yes.

Q. You knew that your sister, up to last February, was willing to come back and live with her husband, under certain conditions, didn't you? A. Yes.

30

Q. Don't you know that they met each other every week-end, or every other week-end; now, do you know? A. Yes.

By the Court:

Q. Where? A. In the home of my brother and sister-in-law.

By Mr. Lane:

Q. And you know that they met in New York to go out together to dinner? A. No; I don't.

40

Mr. Lane: That is all.

*John Ritch, redirect.**Redirect examination by Mr. Moore:*

Q. You say you made no admission of any brutal treatment of his wife before her return from England? A. Yes; he did.

Q. Then the only thing he accused her of was the infidelity; is that right; when you talked to him before the petitioner returned from Europe? A. No; before her departure for Europe. 10

Q. When you saw her condition, and she had confided to you the reasons for it, and you talked to him about it, what did he say? A. He said he thought it was his business and not mine; he said he thought the condition of his wife was his business and not mine.

Q. Did you say she had complained to you? A. Yes; I said she said she was not being treated right. 20

Q. What did he say? A. He said: "Maybe it is true."

Q. That was before she went to Europe? A. Yes.

Q. And after she came back from Europe you had another talk, and said she said her condition was due to his accusing her of infidelity? A. At first he said: "It isn't true; I am treating my wife right, and I am living up to every duty that is expected of me" and I pointed out certain things that his wife had accused him of—that he didn't speak to her and charging her with infidelity and he said: "Maybe I did." 30

Q. You don't live where he lives? A. No.

Q. And don't know whether they see each other every week? A. I don't know.

Q. Do you want to correct that? A. My sister has charge of the child, and Charles Ross has been seeing the child from time to time. 40

Charles Ross, direct.

Q. You don't know how many times? A. No.

Q. You don't know whether he sees her or not?

A. No.

Mr. Moore: That is all.

10

Petitioner Rests.

CHARLES ROSS, the defendant in the above entitled cause, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Ross, you are the defendant in this case?

A. I am.

20

Q. And you were married when? A. June, 1920.

Q. And after your marriage, where did you go to live? A. First, we lived on Eleventh Street, New York City, and then we moved to One hundred and twenty-second Street, New York City, and from there moved out to Millington.

Q. When was it you moved up to Millington?

A. May, 1922.

Q. When was your child born? A. The child was born in November of 1921.

30

Q. Did you buy a house out in Millington? A. I did.

Q. What took you out to Millington? A. The child's health.

Q. And perfectly satisfactory to your wife to move to Millington? A. Perfectly so.

Q. Now, after you moved out to Millington, how were things between your wife and yourself, up to 1924? A. Quite normal, so far as I am able to judge; I had no cause to complain.

40

Q. And you are a man who is accustomed to be at home or go out at night? A. I could go out at nights, but didn't; I spent my time entirely at home.

Charles Ross, direct.

Q. What is your business? A. Public accountant.

Q. With what concern? A. Dennis, of New York.

Q. How long have you been with them? A. Since 1917, with a break of two years, when I was serving during the war. 10

Q. What, if anything, happened in January, 1924? A. I don't know that anything happened in January, 1924.

Q. Things went along, so far as you are concerned as usual? A. Perfectly so.

Q. Did you buy a car for your wife to ride in? A. I did.

Q. When? A. In the fall of 1924.

Q. And you cannot drive the car? A. No; I cannot. 20

Q. She has the car today? A. No; she has not.

Q. She did have it? A. She took it away with her when she left.

Q. In 1926, Mrs. Ross said she went to Europe? A. Yes.

Q. Tell us why she went to Europe; was that because of your ill-treatment of her? A. No mention of ill-treatment was made; there had been a long talk about it; I have two maiden sisters over there who had not seen the wife and child; and she had relatives over there, and it was a mutual agreement that she was to go over there and show herself, and show the child. 30

Q. You were born in England? A. I was.

Q. And that was the only reason that she took the trip?

Mr. Moore: I object to the question on the ground that it is leading. 40

Charles Ross, direct.

The Court: Your objection will be noted and overruled.

A. Yes, sir.

Q. Who paid for the passage over? A. I did.

10 Q. Was there any disagreement between you as to whether she would go, and she said she had to go, or anything of that kind? A. The only disagreement was this: that after I had bought the car, she wanted to go to England in the summer of 1925, and I told her point blank that I could not afford it, but if nothing unforeseen happened she might go in 1926, and she sailed in 1926.

Q. Who paid her expenses while she was over there? A. I did.

20 Q. Did you go and see her off on the boat? A. I did.

Q. Did you write letters to her while she was over there? A. Yes.

Q. Did you receive letters from her, while she was over there? A. Yes.

Q. Do you remember receiving the letter that she mentioned here? A. I certainly do.

30 Q. From what you recollect, what did the letter state? A. As nearly as I can state, she said on the way over she had met a man to whom she had become very much attached and since she had left me she realized what a terrible mistake she had made in marrying me, and she didn't love me, and she never could be a wife to me again, and I mustn't ask her for intercourse again because she couldn't give it, and I must not ask her, but she would come back and be a housekeeper, but nothing more.

40 Q. She came back and did you meet her at the boat? A. I did.

Charles Ross, direct.

Q. With Miss Brockelmann? A. With Miss Brockelmann.

Q. And went home? A. Yes.

Q. And stayed there? A. Yes.

Q. Did you accuse her of any infidelity, or accuse her of being a prostitute? A. I did not. 10

Q. At no time? A. At no time.

Q. Did you admit to this young man who was on the stand, that you had called her a prostitute? A. I did not.

Q. Did you admit that you were wrong? A. I did not.

Q. As a matter of fact, did you have intercourse with her after she came back? A. I did.

Q. Up until when? A. Up until the middle of February and subsequently on one occasion in March. 20

Q. What year? A. 1927.

Q. And subsequently on one occasion? A. Yes, sir.

Q. Where? A. Where?

Q. Yes. A. In the house.

Q. That is the subsequent occasion? A. Yes.

Q. Do you recall about when that was? A. That was probably the latter part of March, 1927. 30

Q. Was anybody living there in the house with you, except the wife and child? A. Only when we had visitors.

Q. I am speaking about your ordinary household? A. No.

Q. And she lived with you right up until July, didn't she?

Mr. Moore: I object to the question.

Mr. Lane: I will withdraw the question. 40

Q. How long did your wife continue living in

Charles Ross, direct.

this house with you? A. Up until the day of August 2nd, 1927.

Q. And what happened on that date? A. She left—at least I found her gone when I got home.

10 Q. Just explain—where did you go in the morning? A. I went to business, in the ordinary course.

Q. Did you come home at night? A. I came home at the usual time.

Q. Arriving home at what time? A. The usual time—about seven o'clock.

Q. Arriving home, what did you find? A. I found the house locked up, and I opened the house with my own key, and passing through the dining room I found a note.

20 Q. Have you the note? A. Yes; it is right there in the little envelope.

Q. Then what happened? A. I was considerably upset, and it took me some time to recover.

Q. Where was the car? A. The car was gone.

Q. Is this the note that you refer to? A. Yes, it is.

Mr. Lane : I offer the note in evidence.

The Court: Admit it.

(Note marked Exhibit D-1 as of this date.)

30 Mr. Moore: I don't see any date on it; when was this written; when did you receive it?

The Witness: August 2nd, left on the table in the dining room.

By the Court:

Q. What date was that? A. August 2nd.

Q. 1927? A. 1927.

40 *By Mr. Lane:*

Q. That is the letter that you found on the table?
A. Yes.

Charles Ross, direct.

Q. Now, after finding that letter, what did you do? A. Well, I—the first thing that came in my mind—

Q. I don't care what came in your mind; what did you do? A. I went to my bureau drawer to see if my letters were there that she wrote to me from Europe, and they were tied up in a package and they were gone. 10

Q. Have you seen them since? A. I have never seen them since.

Q. Are you still living in Millington? A. Yes, sir; I didn't stay there during the winter, because there was no one to take care of it.

Q. Is it still furnished? A. Yes, sir.

Q. Have you seen your wife since? A. Quite regularly. 20

Q. When was the last time? A. A week or two ago.

Q. Where? A. In Pennsylvania, at her sister's house.

Q. Why did you go there? A. Because I have been in the habit of going over there every week to see the child.

Q. Have you met your wife other places? A. Yes; I did. 30

Q. Where? A. In New York City.

Q. When? A. The last time was between Christmas and New Years, of 1927, as near as I can recollect.

Q. Where did you see her in New York? A. I invited her to come up and talk, to see if we couldn't get together, and I met her in Jersey City, and took her to the apartment where I am living and we discussed the matter.

Q. Did you ever have dinner with her? A. Yes; on several occasions. 40

Charles Ross, direct.

Q. Now, did you ever call your wife a son-of-a-bitch? A. No, sir.

Q. Or prostitute? A. No, sir.

Q. Or street-walker? A. No, sir.

Q. At any time? A. No, sir.

10 Q. Did you ever accuse her of infidelity, or being unfaithful to you? A. No, sir.

Q. At any time? A. No, sir.

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

Q. Hit her? A. No, sir.

Q. Did you ever have any idea that your wife was unfaithful to you?

Mr. Moore: I object to the question.

The Court: I will allow it.

20 A. Never entertained such an idea.

Q. These letters, that were offered for identification, were these letters received by you from your wife? A. Yes, sir.

Q. And produced by you? A. Yes, sir.

Mr. Lane: I offer all these letters in evidence.

(All letters marked for identification, by the defendant, are marked Exhibit D-2, as of this date.)

30

Q. Did you have a meeting with Mrs. Capen and your wife, in 1925? A. There was an occasion when she came out.

Q. What is your recollection of what took place, and what was the conversation at that time? A. As far as I can recollect my wife made complaints that I wasn't giving her the best of times.

40 Q. That doesn't mean anything? A. She simply said my wife was upset, and that I stuck too much to the home and worked too much in the garden,

Charles Ross, direct.

and I must take her further away, and I pointed out that I couldn't afford to; that because of the geographical conditions, and that I left home early in the morning and didn't get home until seven o'clock in the evening, and that I was in no condition to go flying around the country in the evening. 10

Q. How old are you? A. I am just past fifty.

Q. Go ahead? A. It is pretty hard to remember, but it was that Mrs. Capen wanted to know the cause of the trouble between us, and my reply was that the trouble came solely from many matters, and nothing else; that my wife was inclined to be very extravagant, and that she had no idea of what I had to go through to produce it, and Mrs. Capen admitted that she thought there was a good deal to be said by both sides, and that she hoped that this trip coming on—this trip to Europe, would have a beneficial effect on both of us, when she came back, and that was the sum and substance of it. 20

Q. Mrs. Capen spoke of two occasions—were there two occasions—or one occasion? A. To my knowledge there was only one occasion.

Q. Do you remember that you had accused Mrs. Ross of being unfaithful to her marriage vows? A. No, sir. 30

Q. Did you call her a street-walker or prostitute in the presence of Mrs. Capen? A. I did not.

Q. Or son-of-a-bitch? A. I did not.

Q. Did you have any talks with Mrs. Capen since she came back from Europe? A. I have not seen Mrs. Capen since my wife came back from Europe, except this occasion in court here.

Q. Didn't she come up to your place in July? A. Yes; while my wife was in Europe. 40

Q. And that was after you had had this conversation that you have spoken about? A. Yes, sir.

Charles Ross, direct.

Q. Did you meet this Mr. Ritch, your wife's brother? A. Yes, sir.

Q. Did you have any conversation with him about your marriage difficulties? A. I met him, at his own request.

10 Q. When? A. About the middle or toward the end of November, 1927.

Q. Did you have any talk with him in October, 1926, or November, 1926, after your wife had come back from Europe? A. As far as I can remember, I did not.

Q. Did you admit that you had accused her of infidelity? A. No, sir.

Q. Or called her names? A. No, sir.

20 Q. Going back to November, 1927, tell us what you can recollect that took place between you and Mr. Ritch, was anybody else present? A. I think the brother-in-law and sister-in-law were present; I am not sure.

Q. Was your wife in the house? A. No.

30 Q. Tell us what took place? A. As far as I can recollect, we opened the conversation—he was quite right; we did not speak about it the night previously, and we didn't speak about noon of the following day, and he said he didn't see where Esther could gain anything by a divorce, and he wanted to know if things couldn't be patched up, and I said I had made overtures to her within a month after she left, and she refused to come back, and I said it was up to her to make some suggestion as to what the terms of her reconciliation should be, and he did ask me about Esther's car and I said: "It isn't Esther's car, it is my car, as a matter of fact," and he said: "Why don't you give it to her, I can use it in my business," and I said: "I did not care to," and he said: "You can-

40

Charles Ross, cross.

not use it; you cannot drive it," and I said: "I might learn to drive it:" and then she brought it back and advised me she had brought it back and that is about all we talked about, and we all talked on the subject that was uppermost in both of our minds, and he criticized the action of some of his witnesses, and he said: "I am going to testify and I have seen Mr. Moore, and he says I can testify, but it is all hearsay, as far as I am concerned." 10

Q. Did you admit that you had accused your wife of infidelity? A. I have never accused my wife of infidelity.

Q. Did you admit it to anybody? A. No, sir.

Q. Or that you had called her a prostitute or street-walker? A. No, sir.

Q. You have at all times—have you been ready and willing to have your wife come back and live with you? A. I have. 20

Q. And that was your purpose of meeting her in January and February? A. Yes, sir; it ran over the period of the new year, until about the middle of February, when it was finally discontinued.

Mr. Lane: That is all.

Cross examination by Mr. Moore:

Q. What did you do at your home, after Mrs. Ross left you? A. I continued to live there. 30

Q. What act, showing your affection, took place the day after? A. I wrote her a note and said: "For God's sake, come back."

Q. Did you show your affection by blowing the two dogs with bullets? A. I did not.

Q. How did you kill them? A. I had a veterinarian kill them.

Q. You didn't get her consent? A. No, sir. 40

Charles Ross, cross.

By the Court:

Q. Why did you kill them? A. Because I was alone and couldn't look after them.

Q. What kind of dogs were they? A. One was a collie and the other was a mongrel.

10 Q. How soon did you have them killed? A. I had them killed on a Friday night.

Q. How old were the dogs? A. Maybe a couple of years—two or three years old.

Q. And you killed them? A. I didn't kill them myself.

Q. Who killed them? A. A veterinary surgeon. First, I asked him if he could find a home for them.

20 Q. And the only ground you gave him was because you couldn't take care of them? A. Couldn't take care of them.

Q. Who bought the dogs? A. They weren't bought; they were given to us.

By Mr. Moore:

Q. Who took care of the dogs while she was in England? A. They were both put out to farm.

30 Q. You knew those two dogs meant a great deal to her? A. I don't know that they meant any more to her than anyone else.

By the Court:

Q. Did you tell her when you wrote her: "For God's sake, come back," about the killing of the dogs? A. I hadn't killed them then, but I had spoken to her many times before about going away—"What are you going to do with the animals?"

Q. Weren't they any good? A. They were mongrels.

Charles Ross, cross.

By Mr. Moore:

Q. One was a very pretty dog, wasn't it? A. The collie was a fairly good looking dog.

Q. Your wife was very fond of the dogs? A. No more fond of the dogs than any other dogs.

Q. Did you tear down the fireplace in the house?
A. No, sir.

Q. You knew those dogs would be attractive to her when she returned? A. I had spoken about putting the dogs away before she left.

10

By the Court:

Q. Why didn't you send them away while she was home? A. I didn't know what to do; I was almost distraught with the situation.

Q. You came home every night, didn't you, while she was away? A. Not every night; I couldn't make arrangements for meals.

20

By Mr. Moore:

Q. Did your wife have a servant girl, after she returned from Europe? A. She did for a little while, but she wasn't satisfied.

Q. She was alone in the house with the child and the dogs? A. Yes, sir.

Q. Isn't it true that you only took your wife once in seven years to the theatre? A. It is true we didn't go very much; that is true.

30

Q. Is it so that you only took her once? A. It is true that we didn't go very often.

By the Court:

Q. How often in the seven years did you take her to any amusements? A. We went out in the car, but we couldn't go to the theatre, because there was no train home.

40

Charles Ross, cross.

By Mr. Moore:

Q. You said that you had relations with her how many times after January, 1927? A. One occasion.

10 Q. Your direct testimony was two occasions. A. No; it was one, since the alleged cohabitation ceased.

Q. Did you, at any time, hear the wife accuse you of abusing her, and making life unhappy? A. No, sir; I know she was not satisfied with conditions, and I took steps to ratify those.

Q. She never made accusations of ill-treatment? A. No, sir.

Q. You just said— A. It was her allegation that I stayed around the house too much.

20 Q. Didn't she say anything about your cruelty to her? A. No, sir.

Q. What was the occasion with Miss Capen? A. She came out during the week-end—during the week-end they came out.

Q. Did your wife make any accusations to her? A. I don't know that she made any accusations.

Q. Did she complain about your conduct? A. I don't think so.

30 Q. She made no complaint about your conduct to Mrs. Capen? A. Only that I didn't take her out.

Q. You were away all day? A. Yes, sir.

Q. Then why would she complain about your not taking her out? A. Because I didn't take her out nights and week-ends.

Q. Then your affidavit is not true when you say that not a word of complaint was made to you about your conduct toward her? A. That isn't a criticism of your conduct.

Q. That was the only thing? A. Yes, sir.

40 Q. Do you know Mrs. Capen? A. Yes, sir.

Charles Ross, cross.

Q. She is married? A. Yes, sir.

Q. And lives with her husband? A. I have never seen her husband.

Q. You knew her before you were married? A. Yes, sir.

Q. She visited you at your home? A. Yes, sir; 10
occasionally.

Q. Did you regard her as your friend, or your wife's friend? A. Mutual friend.

Q. You admitted her at your home, because you regarded her as a person of good repute? A. Yes, sir.

Q. You never accused her of being a liar? A. No, sir.

Q. Yet you heard her testify today? A. Yes, sir.

Q. About things you now deny? A. Yes, sir. 20

Q. And you say she is a person of good reputation? A. I don't.

By the Court:

Q. Do you know anything about her? A. She has very advanced ideas, as compared to mine.

By Mr. Moore:

Q. You say she is wrong? A. I don't say so.

Q. You remember this discussion with Mrs. Capen and your wife? A. Yes, sir. 30

Q. How long did it take place? A. About two hours—over breakfast.

Q. Did she say she had talked it over with your wife, before she spoke to you? A. No.

Q. Doesn't this recall the truth to you: "I noticed your wife's condition, and I see how run down she is, and when I noticed the condition she is in, I asked her the cause, and she reluctantly said that the condition was due to you, and that you had accused her of infidelity?" A. She didn't. 40

Charles Ross, cross.

Q. You heard her testify to that? A. I did, but it is not true.

Q. And you heard your wife testify to it? A. Yes, sir.

Q. Did you hear the boy testify to it? A. I did.

10 Q. And in spite of it all, you deny it? A. I do; most emphatically.

Q. Did you ever find her untruthful before? A. No; I never did.

Q. Would you invite her to come to your home now? A. Not since she took sides in this case, and I haven't a home in the sense to invite her to.

The Court: We will now take a recess until two o'clock.

20

 AFTER RECESS.

CHARLES ROSS, the defendant in the above entitled case, having already been called and sworn, is recalled and further testified as follows:

Cross examination (continued) by Mr. Moore:

Q. Are you acquainted with Miss Brockelmann?
A. Yes; I am.

30 Q. How long have you known her? A. Three years—probably more; I don't know exactly.

Q. You have a brother for a witness? A. I have.

Q. What is her reputation for chastity?

Mr. Lane: I object to it.

By the Court:

Q. Do you know anything about her reputation?
A. No.

40 *By Mr. Moore:*

Q. How long have you know her? A. About three or three and a half years.

Charles Ross, cross.

Mr. Lane: I object to it on the ground that it is not cross examination.

The Court: It is not.

Q. On the night preceding the return of Mrs. Ross from Europe did she come to your home? A. She did, at noon time. 10

Q. Did you show her some of the letters you had received from your wife? A. Yes, sir; I read them to her; she didn't have them in her hand.

Q. What was the object of that? A. Because she was our most intimate friend, and she came around and I asked her what to do in my dilemma.

Q. You regarded her as a very particular friend? A. I did.

Q. You spoke of a dilemma? A. Yes; receiving these letters from my wife. 20

Q. This particular letter that you spoke about today? A. There were two particular letters.

Q. What was your complaint? A. It wasn't a complaint; I said, "Elsie, I don't think I can go to the boat tomorrow; you meet my wife," and she said, "What is the matter?" and I said I had received two letters from my wife, in which she said she was enamored, or in love with another man, and I said, "What am I to do?" 30

Q. What did she say? A. She said, "My God, has it gone that far?"

Q. And she went with you to the boat, and met your wife the next day? A. Yes, sir.

Q. And then you had a consultation with her? A. I did.

Q. And then you showed her these letters from your wife? A. I didn't show them; I read from them. 40

Charles Ross, cross.

Q. Have you read the affidavit of Mrs. Brockelmann, filed in this proceeding? A. Yes, sir.

Q. Do you recall—

10 Mr. Lane: I object to reading from any affidavit. I am entitled to have the party here and cross examine.

The Court: Yes.

Q. Do you recollect in the affidavit filed herein, and which you answered by an answering affidavit—

Mr. Lane: I object to it.

The Court: Yes; you can't read from an affidavit.

20 Q. Did you accuse your wife of unchastity? A. I never did; I never had the slightest suspicion of it.

Q. What did you accuse her of in the presence of Mrs. Brockelmann, when you showed her these letters? A. I accused her of being unfaithful in her marriage vows, in giving her love to another man.

Q. You told this to Mrs. Brockelmann? A. Yes, sir.

30 Q. And then the next day you said the same thing? A. Yes, sir.

By the Court:

Q. You told Mrs. Brockelmann she was in love with another man? A. I did, and Mrs. Brockelmann said she knew it, because Mrs. Ross had written to her and told her the same thing.

By Mr. Moore:

40 Q. So this morning, when you testified that you never accused your wife with being unfaithful,

Charles Ross, cross.

you now say you did? A. No, sir; I said she had fallen in love with another man.

By the Court:

Q. You didn't mean to convey that she had been intimate with another man? A. No, sir; that she had given her love to another man. 10

By Mr. Moore:

Q. What else did you accuse her of? A. Nothing, except that she had been untrue to her marriage vow, in giving her love to another man; I divided those words; I specified in what way she had been untrue.

Q. Did you mean to convey the thought that she had been intimate with another man? A. No, sir. 20

Q. Why did you say "untrue to her marriage vows"? A. I don't know why, but I did use those words.

Q. And that was made in the presence of Mrs. Brockelmann? A. Yes, sir.

By the Court:

Q. Do you know where she had met this other man? A. I only had her letter admitting it. 30

By Mr. Moore:

Q. Where did she say she had met this man? A. She said she had met this man on the steamer, going over, and she had become very fond of him, and in love with him.

Q. Did you keep a copy of the letter? A. She sent me—no, sir.

Q. And you are quoting entirely from recollection? A. Yes, sir. 40

Charles Ross, cross.

Q. Did you present her with the letter, upon her arrival? A. No; I didn't.

Q. You didn't say, "Here is the letter where you admit you have been untrue to your marriage vows"? A. No, I didn't, so far as I recollect, because I wanted her to come back, and outside of this one occasion, I never mentioned it again.

Q. Do you remember saying that she had met this man and was coming back to you? A. Yes, sir.

Q. Did she say in her letter that she had been untrue to you? A. No, sir.

Q. Was there any intimation of infidelity in that letter? A. No, sir.

Q. And in the presence of Mrs. Brockelmann, based upon this letter, you said, "You have not been true to your marriage vows"? A. Yes, sir.

Q. You said also in your affidavit, as I called your attention to it this morning, that your wife had never accused you, this morning, in your conduct of her, of being unkind? A. Yes, sir.

Q. When she left you, and you found this letter, which you have offered in evidence this morning, was that the first intimation that you had that she was unhappy and discontented? A. No, sir.

Q. That she had ever said: "Your conduct to me is not perfect"? A. Oh, no; by no means.

Q. What do you mean by stating in your affidavit here, that at no time did she comment on your conduct toward her? A. She did comment on my conduct, that I spent too much time about the house, and didn't go out anywhere.

Q. You returned home about seven o'clock? A. Yes, sir.

Q. And once you took her to the theatre—once in seven years? A. She went more than once in seven years.

Charles Ross, cross.

Q. In the presence of Mrs. Capen, she made certain accusations toward you, and in her presence and your presence—you heard the story? A. Yes, sir.

Q. And you had never heard the accusations before? A. No, sir. 10

Q. Weren't you surprised when you returned home from business, that you found a letter of this character on your return? A. It was a tremendous surprise.

Q. There was no foundation for it; it was made out of the whole cloth? A. Yes, sir.

Q. Let me read this to you: "My health is completely broken down"; was it completely broken down? A. No; it wasn't good, but it was not completely broken down. 20

Q. In spite of the fact that you heard Mrs. Capen testify? A. Yes, sir.

Q. And her brother testify? A. Yes, sir.

Q. And isn't that the reason why she went to Europe? A. No, sir.

Q. Why, it was good, wasn't it, for her health? A. No, sir; she went for a visit.

Q. And weren't you the cause of her illness? A. I was not the cause of her illness, and she had no serious illness. 30

Q. What was her ill health? A. She had no ill health.

Q. Then this was her whole statement? A. It was.

Q. Do you recall what Mrs. Capen said this morning? A. I do.

Q. Do you remember this: "I don't want to bring up my child in this atmosphere"; had you discussed this before? A. We had. 40

Q. Her love? A. Not her love—the atmosphere.

Charles Ross, cross.

Q. Had she accused you of being brutal to her?
A. No, sir.

Q. She so longed for your company after seven o'clock at night, that it started over that? A. It didn't start over that.

10 *By the Court:*

Q. What did it start over? A. It started shortly after her return from Europe.

Q. After she told you she had fallen in love with another man? A. Yes, sir.

By Mr. Moore:

Q. She cohabited with you after she got back from Europe? A. She did for a short time.

20 Q. All you have is a statement in the letter that she met a man on the boat, and she had fallen in love with him? A. Yes, sir; and she would never feel any different toward me.

By the Court:

Q. Did she describe him to you? A. No, sir; except that he was an Englishman, and he had been over here on business.

30 Q. Did she describe his appearance? A. No, sir.
By Mr. Moore:

Q. Did you discuss it after that? A. No, sir; I wanted it to be a dead subject in the future.

Q. And this part of the letter: that she is too young now, and the parents having nothing to say to it either, and her mother is an invalid? A. The mother is not an invalid.

By the Court:

40 Q. How about the first statement? A. That only came about after she told me about this other man.

Charles Ross, cross.

By Mr. Moore:

Q. And her health broke down? A. She wasn't nervous and hysterical.

Q. Wasn't she nervous? A. Yes; she was.

Q. And that she took care of the child herself?

A. It isn't a child; she is six and a half years old.

10

Q. That she prepared dinner for you at night?

A. If you call it dinner.

Q. She prepared it for you? A. Yes, sir.

Q. And you provided it? A. Yes, sir.

Q. What was your reflection; did they not provide food? A. No, sir.

Q. What did you do after that; she bought, or you bought and paid for? A. After that she bought and I paid for.

20

Q. And you are holding it against her? A. I am not holding it against her.

Q. Was she a good cook? A. In the latter days she didn't cook; she was a good cook.

Q. Did she eat it? A. Occasionally.

Q. And did the child eat it? A. The child had particular food prepared for her.

Q. Did you and your wife clean up the table then, at night? A. Yes, sir.

Q. Then you were tired? A. I wasn't tired out over the week-ends.

30

Q. Why didn't you take her out more than once in seven years then?

Mr. Lane: I object to it.

The Court: I will allow it.

A. Well, the reason was this, that as I explained this morning, the last train out from New York is eight o'clock; we having a young child, and we didn't have a servant, except as a temporary matter, from time to time. I was trying to pay for

40

Charles Ross, cross.

10 the house, and I had no means, except as I earned, and it was agreed that we were to get the place cleared up, except the first mortgage, and when we got things cleaned up, we would go around, but I never objected to my wife going. I would stay at home and take care of the child, and she could go.

Q. Was she home each night? A. You mean during the night?

Q. Yes. A. Yes; except when it was agreed.

Q. But you expected her to be there and cook the meals? A. Yes.

Q. Still, you were surprised when you got this letter? A. I was surprised.

20 Q. "Please believe me, that I have only taken this drastic step only after weeks of careful thought." A. She had never threatened to leave me.

Q. How was her health? A. Her health was normal.

Q. Despite the statement of other witnesses? A. Yes, sir.

Q. "I am trying to regain my health, and you must leave me alone until I get stronger." Was that a surprise to you? A. Yes, sir.

30 Q. She didn't put proof in the letter; she thought you knew it? A. I knew she was not as well as she could be, but she was not broken down, or an invalid by any means.

Q. And she didn't tell you her health was broken down? A. I insist that she hadn't told me she was in poor health.

Q. You were in good spirits when you sat down to this meal? A. I say I was not very pleasant, after she told me she loved him.

40 Q. And there was silence? A. There was a great

Charles Ross, cross.

deal of silence, and she didn't speak to me, except to answer me in monosyllables.

Q. You made no attempt to speak to her? A. I did.

Q. What did you say? A. I tried to keep up conversation on general things, but she would be reading and answer "yes" or "no" without looking up. 10

Q. Did she give you any reason for leaving you? A. No, sir.

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

Q. What did she say? A. She didn't answer me.

Q. Did she say it was because you accused her of being untrue to her marriage vows, she never discussed? A. No, sir.

Q. Did you mistrust your wife? A. No, sir.

Q. Never did? A. No, sir. 20

Q. Then why did you accuse her of these accusations? A. Because she told me she had given her love to another man.

Q. What did Mrs. Brockelmann say when you told her that? A. She said: "My God, has it come to that?" and I said: "What do you mean by that, Elsie?" and she said Mrs. Ross had written her a few months before and said she was infatuated with another man, and she said she wrote to her and told her to cut that out, and she said she never referred to it again. 30

Q. And you believe Mrs. Brockelmann? A. Yes, sir.

Q. You believe she was a truthful woman? A. I believe so.

Q. Did Mrs. Brockelmann tell you that your wife was so run down and couldn't continue her home duties? A. No, sir.

Q. Did you read the affidavit of Mrs. Brockelmann? A. I saw it, but didn't read it carefully. 40

Charles Ross, cross.

Mr. Lane: When your Honor considers the case, I don't think you ought to consider the affidavit until I am able to cross examine her.

10 The Court: Oh, no. Are you examining him on her affidavit?

Mr. Moore: No, I am referring to his affidavit.

Q. Did Mrs. Brockelmann say to the wife, or you say to the wife, or you say to the wife, in the presence of Mrs. Brockelmann, that you mistrusted your wife? A. I didn't say I mistrusted her, but that she had been untrue to her marriage vows.

20 Q. Did you use that statement? A. I used that statement, but amplified it.

Q. Did Mrs. Brockelmann ever, in your presence, at your house, say that the woman would be in her grave before long, if you didn't change your attitude toward her? A. No, sir.

Q. She didn't? A. No, sir.

Q. And did you, at any other time, accuse your wife of unchastity, in the presence of anybody? A. No, sir; I never did.

30 Q. Now, when the wife left, how soon did you get this letter? A. As near as I can recollect, a week or two weeks after; it may be a little longer; I cannot remember exactly; I didn't keep any track of the date.

Q. You say that intercourse took place the middle of March, or toward the latter part of March? A. Yes, sir.

40 Q. Why, in your answer, do you say it took place but once after January 10th? A. It didn't cease on January 10th, it was perhaps a month after.

Charles Ross, cross.

Q. You state but once? A. A month after the ceasing of the general conditions.

Q. What was the occasion of that? A. I don't know, except that we occupied separate rooms, and she came of her own volition.

Q. Why did she say the tenth of January? A. I don't know. 10

Q. You didn't grab her by the throat? A. No, sir.

Q. You say it may have been the middle of February, or latter part of March? A. I don't know; I don't keep a diary of when I have intercourse with my wife.

Q. What was the incident? A. I remember February by a certain incident that occurred in February. 20

Q. What was the incident? A. The incident was the last time that we had friends at the house over the week-end.

Q. Do you remember who the friends were? A. Yes, I do; they were Mrs. Capen's two sisters.

Q. Why did it never take place after that? A. It took place once.

Q. Why didn't it take place after that? A. I don't know. 30

Q. Did you have any dispute that night? A. No, sir.

Q. No reason? A. No reason that I know of.

Q. It just stopped all of a sudden? A. It just stopped; yes, sir.

Q. Isn't it true that on January 10th, you assaulted your wife worse than you ever assaulted her before, and after that intercourse ceased, and you never had intercourse after that? A. No, sir; that is not true. 40

Q. And you don't know what was the cause? A.

Charles Ross, cross.

Only that she said that her feeling toward this man would never change.

10 Q. Was there anything said in the letter? A. She said that she couldn't have intercourse with me, because if she did, she would always see this man's face toward her.

Q. Did you have intercourse with her, after she came back? A. I did, for a short time.

Q. This letter meant a lot to you, didn't it? A. It did.

Q. Why didn't you put it away then? A. Because, I didn't want to refer to it; I simply put it in my drawer, where I put the other letters she sent while she was away.

20 Q. Now, this boy, her brother, was very friendly? A. Yes, sir.

Q. He came to see you about her coming back? A. No, sir; he didn't.

Q. You mean that you talked to the brother, and you didn't know what he was there for? A. I don't know, because he didn't state. In the letter he asked me to meet him.

Q. Didn't he say so? A. Yes, sir.

30 Q. He told you the things he had said was all hearsay? A. Yes, sir; he did.

Q. What did he tell you? A. He told me that speaking of certain witnesses, and that getting a number for his sister wouldn't make good, but he said he was going to testify because you told him he could, but he didn't know what he could testify to, because it was hearsay.

Q. Had you asked him what the evidence was? A. No, I hadn't.

40 Q. Didn't he say he could testify about the accusations you had admitted, about the chastity?

A. No, sir.

Q. Didn't you ask him that? A. No, sir; I did

Charles Ross, cross.

not; I did know that he had been a too seldom a visitor at our home to support his sister's affidavit.

Q. And that was your accusing her of unchastity in the presence of witnesses? A. Yes, sir.

Q. And a course of cruel treatment for two years? A. In the petition, yes. 10

Q. And yet when the brother told you he was going to testify, but it was only hearsay? A. That is what he said.

Q. Then he didn't tell you that his sister had told him about it? A. No, sir; he did not.

Q. Did he tell you what Mrs. Capen was going to testify to? A. No, sir.

Q. Or Mrs. Brockelmann? A. No, sir.

Q. But he did say your wife would return, if you would cease your cruel and inhuman treatment? A. No, sir. 20

Q. What did he say—just say that your wife wanted to come back to you? A. He said he didn't see what Esther was going to get out of it, and he thought she ought to come back.

Q. Didn't she say: "My life is so miserable and unhappy that I cannot live with you again"; didn't that stick out in the letter? A. Excuse me, sir; he didn't say she might come back; he wanted to know on what terms we might come together. 30

Q. Did you discuss terms? A. No, sir.

Q. What did you say—no terms whatsoever? A. No, I did not.

Q. The terms were not discussed? A. The terms were not discussed.

Q. An application for counsel fee and alimony was made? A. Yes, sir.

Q. And allowed by the court? A. Yes, sir. 40

Mr. Lane: I object to it; it is not material.

The Court: It is not material.

Herbert W. Brockelmann, direct.

Q. When was the motion, with reference to the boy coming to see you? A. The motion was in the early part of December, I think.

Q. Had he been to see you before that? A. Yes, sir.

10 Q. Or after? A. As far as I recollect, it was before.

Mr. Moore: That is all.

Redirect examination by Mr. Lane:

Q. The time you spoke to Mrs. Brockelmann, did Mrs. Brockelmann say she had received a letter? A. She did.

Q. The same purport as your letter? A. Yes, sir.

20 Q. During this course of seven years, did your wife go away once in a while? A. Very frequently; yes, sir.

Q. Down to her father's, in Norristown? A. Yes, sir; and frequently I went with her.

Q. Something was said about dogs being shot— A. There were no dogs shot.

Q. What happened to them? A. The veterinary surgeon put them out of the way with a needle.

Q. Gave them a hypodermic? A. Yes, sir.

30

Mr. Lane: That is all.

HERBERT W. BROCKELMANN, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

Q. Where do you live, Mr. Brockelmann? A. East Orange.

40

Q. And you know Mr. and Mrs. Ross? A. I do.

Herbert W. Brockelmann, direct.

Q. And you are a brother of Miss Brockelmann, that mention has been made of? A. Yes, sir.

Q. Did you ever visit the Rosses? A. Did I ever visit the Rosses?

Q. Yes. A. Yes; quite frequently.

Q. At their home in Millington? A. Yes. 10

Q. What did you observe of the way Mr. Ross treated his wife, while you were there? A. I didn't observe anything of cruelty at all.

By the Court:

Q. Did you observe anything at all? A. I observed that sometimes Mr. Ross was very quiet.

By Mr. Lane:

Q. You saw Mrs. Ross up at your sister's place, Turner, New York, did you not? A. I did. 20

Q. When was that, would you say? A. Labor Day week, last year.

Q. Did you talk with Mrs. Ross there? A. She spoke to me.

Q. Yes, and just tell us in your own words what was said. A. Well, there isn't anything to say, except that she came out of the garage at the time, and spoke to me, and said—started off with the fact that it may not all be Charley's fault, and outside of that I didn't pay any attention to it, because she started to cry, and had a touch of hysteria. 30

Q. What did she say was the reason she didn't live with her husband? A. I didn't say anything about it at all.

Q. Did she say anything about his accusing her of infidelity, at the time? A. Nothing, because I didn't take any notice of what she was saying, at the time. 40

Mr. Lane: That is all.

(No Cross Examination.)

George B. Keeler, direct.

GEORGE B. KEELER, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

10 Q. Mr. Keeler, you live in Morristown? A. Yes, sir.

Q. And you lived next door to Mr. Ross? A. Yes, sir.

Q. How long have you known him? A. Ever since he lived there, and, in fact, before that; they came to see us a couple of times.

Q. Did you see him occasionally? A. I was mowing the lawn—

20 *By the Court:*

Q. Did you ever visit them? A. I think I did, once.

Q. Do you know anything about the action in the house, at all? A. No, sir; I was surprised.

By Mr. Lane:

30 Q. You know about the veterinary killing the dogs; did you have some cats put away by the veterinary, at the same time?

Mr. Moore: I object to the question.

The Court: I will allow it.

A. Yes.

Mr. Lane: That is all.

(No Cross Examination.)

Mr. Lane: I would like to read the depositions, taken by consent.

40 Mr. Moore: I object at this time. While they were taken by consent, the testimony was objected to.

Esther Ross, direct.

The Court: You may read them, and the objections also.

(Mr. Lane reads the depositions.)

Mr. Lane: Your Honor has not heard the letters read.

The Court: You may leave them here, and I will read them. What is the pleasure of counsel; do you want to sum it up? 10

Mr. Moore: I want to put the petitioner back on the stand and contradict certain evidence.

The Court: All right.

ESTHER ROSS, the petitioner in the above entitled cause, having already been called and sworn, is recalled and testified as follows: 20

Direct examination by Mr. Moore:

Q. You have heard this testimony—the deposition read this afternoon? A. Yes; I have.

Q. Did you tell Mr. Dennis, at that time, the statement concerning the letter, incorporated in his deposition? A. I certainly did not.

Q. Did you ever tell him—

The Court: I think you had better call Mr. Dennis, because he is a member of the Bar, and an officer of the Court, and if his integrity is going to be attacked— 30

Mr. Moore: I will ask the question in a different way.

Q. Did you, in your letter written to your husband, state that you could not live with him, as his wife, because the other man's face would always come between you? A. No, I did not, be- 40

Esther Ross, direct.

cause I came right back and lived with him as his wife. I didn't say that; I just said I had met this man, and we had been good friends, and there was nothing more to it.

10 Q. And he was on board the boat? A. He was on the boat, and you know how it is; you get intimate with persons on the boat.

By the Court:

Q. How old a man was he? A. Just about my age.

Q. About thirty? A. Yes.

Q. Was he married or single? A. Single.

Q. What was the color of his hair? A. I don't remember now.

20 Q. Have you seen him since you got back? A. No, sir.

Q. Had any letters from him? A. None at all.

By Mr. Moore:

Q. Did you meet other people on the boat? A. Oh, yes, and some I saw a great deal more, but if there was anything in it, I would never have written him and told him about it.

30 Q. How did it affect your health, when he told Miss Brockelmann you were untrue to your marriage vows? A. It was broken up, and I was being doctored for my nerves, and he weighed me, and I had gone down to ninety-seven pounds, and he asked me if there was anything wrong, and he wanted to know if I was happy with my husband, and I said that I didn't think it was any of his business and he said it was.

40 Q. Will you tell the Court just exactly when you had the last sexual intercourse with your husband? A. I don't like to talk about things of that kind, but

Esther Ross, direct.

this time he took me by the throat, and he said he was my husband, and I should obey him.

Q. Then what happened? A. He had relationship with me.

Q. Was it a forced relationship? A. It was a forced relationship, and I told him that if he ever did that again, I would never stay under his roof again. 10

Q. What was the occasion of it? A. I couldn't tell you.

By the Court:

Q. Was he a man who demanded frequent sexual intercourse? A. No; not at all.

Q. Why did he grab you this time? A. Because, I had always been an obedient wife. 20

Q. But he said you had told him about this other man's face coming between you? A. No; I didn't.

Q. You say he was always moderate in his demands? A. Yes; he was.

Q. This time he was so strong for it? A. Yes, sir.

By Mr. Moore:

Q. Had he ever used force before? A. Yes; but this time was the worst. 30

Q. So that makes it indelible on your mind? A. Yes.

Q. And you know January 10th, was the last time? A. Yes; I do, because I had been ill, and had just had the doctor.

Q. Did he know about your health? A. He did, because he knew I had been going to the doctor, and if he looks through his check books he can see that he paid doctor's bills nearly every month, and I paid some of them myself. 40

Esther Ross, direct.

Q. Was it money that you had earned while you were working? A. No; it was out of my house-keeping money; I thought I would like to pay for some of them myself.

10 Q. What did you lay it to? A. His accusing me of being unfaithful, and his calling me these names.

Q. Were you quite strong before your marriage? A. I was very strong before my marriage.

Q. Do you know what caused it? A. Just the mental strain I was going through at the time, and trying to do my end of it.

Q. Your husband has spoken about the meals; what kind of meals did you prepare for him? A. I am not the one to boast, but every one says my meals were very good, and I was a very good cook.

20 Q. And did he ever say anything about his meals? A. He told me that if I didn't complain, I didn't need to.

Q. Is it true that he ever took you to one theatre in seven years? A. Yes, sir.

By the Court:

Q. What was the name of the show? A. I don't know, but it was last year.

30 Q. That was after you had been separated? A. No, but we had ceased intercourse, and he made such a time of it, and said he had to go for a suit of clothes.

By Mr. Moore:

Q. How did you enjoy it? A. Not a bit, because I don't think he opened his mouth during all the time we were there.

40 Q. Did you make overtures, through your brother, to see if your husband would treat you decently, if you came back? A. I did tell my

Esther Ross, cross.

brother that I would like to have him talk it over with him, and I at first told him that if my husband would write to me, but he said he had told his lawyers, but I had never heard of it, and I asked my brother to speak to him, and I said I wouldn't go back, unless he changed his cruel conduct. 10

Q. That was the condition you offered to go back? A. Yes, sir.

Q. And did he offer to take you back? A. Not until after I was awarded alimony; then he started to make overtures, and I thought it was highly suspicious.

Q. You spoke of this one incident, when he grabbed you by the throat and held you down? A. Yes. 20

Q. Do you remember any other occasions? A. There were two other occasions, but they were slightly different.

Mr. Lane: I didn't know that we were going to retry this case.

The Court: If Mr. Moore wants to put it in, you can recall the defendant.

Mr. Moore: I will withdraw the question; I think I have covered it. That is all. 30

Cross examination by Mr. Lane:

Q. Why didn't you state in your petition that the reason you had ceased cohabitation was because your husband had choked you? A. I didn't want it to come out, if possible.

Q. Why didn't you testify to it this morning? A. I did.

Q. And that was the reason why? A. That was the reason why. 40

Esther Ross, cross.

Q. When you wrote a letter to him on January 24th, 1928, why didn't you mention that one of the conditions would be that he would not strike you?

A. I did tell him that in New York, in the conference we had in the matter.

10 Q. You made two affidavits on the application for alimony, and in neither one of them did you mention that he took you by the throat, when he wanted to have sexual intercourse with you? A. No; I didn't.

By the Court:

Q. You didn't mention it at all, before? A. I mentioned it this morning.

By Mr. Lane:

20 Q. You say you mentioned it this morning? A. Yes; it was one of the last things Major Moore asked me.

Q. Now, this letter you wrote January 24th, 1928, wrote direct to your husband, you recollect that in that letter that you were setting forth your grievances with this man, and telling what you would do, or insisted on his doing, in order to have you to go back and live with him? A. I don't understand the question.

30 Q. If he had done all these things, why were you willing to go back and live with him? A. I was not willing to go back and live with him, but I thought, on account of the child, and I wrote to Major Moore and told him I would go back, if he would behave himself, for the sake of the child.

By the Court:

40 Q. Why did you decide so soon after to air your differences here in court? A. Because, he wouldn't do it, and I started my action in 1927.

Esther Ross, cross.

By Mr. Lane:

Q. You said in your letter that you would go back? A. I did think he would agree to the six months' probation, and I thought, for the child's sake, I ought to make that provision.

Q. Why? A. Because, he wanted me to drop my suit, and I knew I wouldn't have any more money to start another suit, and I thought I ought to do it.

Q. We have a number of letters here, and will you tell me why, in any of these letters, you never referred to any cruelty, or his striking you, in the letters from 1924, right down to 1928? A. Why should I mention it when I was away only a day or two at a time?

Q. You did go away once in a while, didn't you? A. I went down to see my mother; yes.

Q. And he paid the expenses for it? A. There were no expenses to pay; I went in my car and I bought my own gasoline.

Q. You did mention this man to Miss Brockelmann? A. I may have mentioned him as one of the men I met on the boat.

Q. And you know that when you came off the boat the whole conversation revolved around the letters you wrote to this man? A. Not all. Mr. Ross was so jealous of his own witness sitting over there, that he told me that if I didn't tell him to keep his hands off of me, he would do it himself. That was before I went to Europe.

Q. What was said about your unfaithfulness, except as to this one man? A. At that time he was referring to that one man.

Q. And he said you were unfaithful to your marriage vows, because you had fallen in love with this man? A. One of the things he said is: "You

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Esther Ross, cross.

are unfaithful to your marriage vows; you have dragged my name in the ground and dirtied my reputation."

Q. Why didn't you testify to that this morning?

A. I did.

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Mr. Lane: That is all.

Mr. Lane: I would like to have an opportunity to further examine the defendant.

The Court: All right; I will give you a date later.

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Holmes V. M. Dennis, direct.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">ESTHER ROSS, <i>Petitioner,</i></p> <p style="text-align: center;"><i>against</i></p> <p style="text-align: center;">CHARLES ROSS, <i>Defendant.</i></p>	}	No. 65-21.	10
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No. 1 Exchange Place, Jersey City, N. J.,
Monday, May 7, 1928, 2 P. M.

Testimony of Holmes V. M. Dennis, taken before me, William S. Rurode, Esq., Master in Chancery of New Jersey, at my office, No. 1 Exchange Place, Jersey City, New Jersey, this 7th day of May, 1928, at 2 o'clock in the afternoon of that day, by stipulation and consent of counsel, and

In the Presence of:

EDWARD T. MOORE, Esq., Counsel for the
Petitioner.

DAVID F. EDWARDS, Esq., Solicitor for De-
fendant, appearing by Arthur B. King,
Esq., of the New York Bar, by consent
of Edward T. Moore, Esq., of Counsel. 30

WILLIAM S. RURODE,
Master in Chancery.

HOLMES V. M. DENNIS, a witness appearing on behalf of the defendant, having been first duly sworn by the Master in Chancery, testified as follows:

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Holmes V. M. Dennis, direct.

Direct examination by Mr. King:

Q. Where do you live, Mr. Dennis? A. 32 Union Street, New Brunswick, New Jersey.

10 Q. Mr. Dennis, you are a member of the bar of the State of New Jersey? A. I am.

Q. And were you the attorney of record in this case for the defendant, Mr. Ross? A. I was originally retained by Mr. Ross. I was attorney of record until, on account of bad health on my part, the case was turned over to Mr. Edwards, who I understand was substituted.

20 Q. At the time you were retained by Mr. Ross did you have a consultation with him in regard to his finances? A. Yes, sir, I first had a consultation with Mr. Ross about the finances and the facts in this case on August 4th at my office in New York City.

30 Q. Subsequent to that conference did you have a conference with Mr. Ross and Mr. Moore? A. Yes. In the meantime I had a conference with Mr. Moore at the Monmouth House at Spring Lake one Sunday, and we discussed the case and I suggested that I would like to bring Mr. Ross to Mr. Moore's office for Mr. Moore to interview him and form his impressions, with the idea which we both had at that time that if we could we would try to bring the parties together.

Q. And you subsequently did have a conference with Mr. Ross and Mr. Moore at Mr. Moore's office? A. Yes, sir.

40 Q. Was anything said at that conference about a conference between you and Mr. Ross, and, if so, who made the suggestion? A. Mr. Moore said that he thought that, perhaps, courtesy on his part necessitated a conference between himself and Mrs. Ross and me inasmuch as he had had a conference between himself and Mr. Ross.

Holmes V. M. Dennis, direct.

Q. And as a result of that suggestion was a conference held at Mr. Moore's office? A. Yes. I met Mr. Moore and Mrs. Ross and a brother-in-law of Mrs. Ross, an Englishman, whose name I have forgotten.

Q. State what date that was, please? A. (Continuing.) He was in this country for a short time. On about August 17, 1927, at Mr. Ross's office in the Bar Building, 36 West 44th Street, New York City. 10

Q. Will you please state just what was said at that conference by anybody who was present while Mrs. Ross was present? A. Do you want me to state my recollection of everything that was said?

Q. Did you have any conversation with Mrs. Ross in reference to the possibility of her returning to Mr. Ross? A. Why, yes,—the whole object of the conference was to find out if we could get a ground on which these parties could return. We had a long conference, Mr. Moore and Mrs. Ross and this brother-in-law and I were present all the time, and during the course of that conversation I asked Mrs. Ross— 20

Mr. Moore: I want to enter an objection to the introduction of any further testimony on the ground that it is hearsay, and incompetent and immaterial— 30

A. (Continued.) —whether or not she had written to her husband while she was in England in the summer of 1925, to the effect that she realized that her marriage had been a mistake and that she did not love her husband and could not live with him, and she said she had so written. I also asked her whether she had followed that letter by another letter in which she said in substance that she had 40

Holmes V. M. Dennis, direct.

met a man coming over on the steamer; that he and she had become very much infatuated, and that while she was willing to return to Mr. Ross and live in his house and maintain their home she would not live with him as his wife, and she could
10 not live with him as his wife because the other man's face would always be coming between them, and she said she had written such a letter.

Q. Were those letters addressed to Mr. Ross, if you recall? A. They were addressed to Mr. Ross, yes, and I asked her if she had taken those letters away when she left their home in Millington, New Jersey, in the summer of 1927, and she said she had taken them, and I asked her what she had done with them and she said she had destroyed them.

20 Q. What other or further conversation did you have with Mrs. Ross? A. She said that she had never had any improper or meretricious relations with this man, of whom she wrote, and I said that we did not charge her with having any such relations. I asked her to give me his name and she declined, and that was all there was to that portion of the interview.

30 Q. Was anything said about her returning to Mr. Ross? A. Yes. During our conference the suggestion was made I think by me that it might be advisable if she would go away for a month or so, to see if she could regain command of her nerves, and that Mr. Ross would pay her expenses, and according to my recollection the child was to be sent to a sister of hers in Harrisburg or Reading, Pennsylvania, and at the end of the month it was hoped that the parties might find a ground on which they could get together. As I recollect, Mr.
40 Moore also advised that the course of action she did pursue was that she did go away for a time,

Holmes V. M. Dennis, cross.

I think not quite a full month before she announced her decision, and then notified me, through Mr. Moore, that she had decided she could not live with her husband again.

Q. At the time of the conversation with Mrs. Ross, that you have testified about, was it your understanding that anything that might be said at that conference was to be regarded as confidential, and was not to be divulged or disclosed in connection with this action? A. No. It was my understanding that anything that was said at the conference between Mr. Moore and Mr. Ross and me or between Mr. Moore and Mrs. Ross and me was not confidential. 10

Q. And there never was any stipulation of any kind made either orally or in writing of what transpired at either of these conferences that you have testified to, was not to be repeated in the form of testimony or otherwise later on in the action? A. Not to the best of my recollection, no. 20

Mr. King: That is all.

Cross examination by Mr. Moore:

Q. Did you, at the time of this interview at my office with Mrs. Ross, make any record at that time of anything that she said? A. You mean any written memorandum? 30

Q. Yes. A. No. Not that I recall, unless I put it in a letter to you.

Q. Then, in your statement about it, you are relying entirely upon your recollection for the exact words that were used by her in her answer to your questions? A. Yes. On that, and the papers in the case which are in my office. 40

Q. Well, the papers in the case have no bearing whatsoever upon her statement about having be-

Holmes V. M. Dennis, cross.

come infatuated with another man and about her having written a letter to her husband relating to the same? A. Let me see these papers. (Counsel hands witness papers.) I think you are mistaken about that—I think that shortly after that, when
10 a motion was made for alimony and counsel fees—

Q. (Interrupting.) You see the question is, at that time did you make any memorandum? A. You mean immediately?

Q. The question was at that time? A. No, I did not. No.

Q. You were solicitor of record at the time of this interview with the petitioner? A. Yes.

Q. And the ostensible purpose of this interview was in an endeavor to cause a reconciliation between the parties? A. That was the real purpose,
20 as far as I was concerned.

Q. Yes, it was the real purpose? A. Yes.

Q. And the secondary purpose was to have the petitioner take a rest for a month or so in order that she might regain her health and possibly view the situation in a different light? A. Yes.

Q. Did she, pursuant to the suggestion made there, go away for a month? A. Well, she went away for a time, Mr. Moore, I don't recollect just
30 how long it was, I think she probably went away for a month. I think you notified me before the month had expired that she had decided that she could not live with her husband again.

Q. Had she notified you that she had seen her husband and talked with him, and after this conversation she decided she could not live with him? A. I haven't the letters before me. I really don't recall whether it was before or after the interview
40 with him. He told me that she had had some interviews with him, but just when they were I don't recollect.

Holmes V. M. Dennis, redirect.

Q. At the time that you interviewed the petitioner did she impress you as being nervous and quite eccentric? A. She certainly did.

Q. Did you state to me subsequently that you doubted very much whether she and the defendant would ever be able to live together with any degree of tractability? A. I think I did. And I certainly had it in mind anyway. 10

Mr. Moore: That is all.

Redirect examination by Mr. King:

Q. Mr. Moore asked you if you made any memorandum of your conversation with Mrs. Ross immediately after the interview, and you said no. Did you prepare the affidavit of Mr. Ross, verified November 30, 1927, which was submitted in opposition to the application for alimony and counsel fees? A. I did. 20

Q. And did you incorporate in that affidavit before it was signed by Mr. Ross the language contained in paragraph numbered 20 on page 10, namely, "That at an interview held at the office of the petitioner's attorney, at which Mr. Dennis was present, she admitted that she had purloined these letters and she admitted substantially the contents of them, claiming that she had destroyed them"? A. Yes, I did. 30

Q. Did you also incorporate in the affidavit the language contained in paragraph numbered 17, on page 8, with reference to the letters which you have previously stated Mrs. Ross admitted having written to Mr. Ross? A. Yes. I drafted that paragraph.

Q. And the language of paragraph 20, which refers to "these letters"—those words referred to the 40

Holmes V. M. Dennis, recross.

letters to which paragraph 17 relates? A. Yes, they did.

Q. That part of Mr. Ross's affidavit which you prepared on November 30, 1927, was prepared by you from your then independent recollection? A. Yes.

Mr. King: That is all.

Recross examination by Mr. Moore:

Q. How long after the interview at my office were the affidavits prepared? A. Why, as I recall, the interview at your office was about August 17th. I think I testified the exact date before, and the affidavit in question must have been prepared some time before November 30th—a matter of three months or thereabouts.

A. A matter of three months? A. Yes.

Q. Then at the time of the preparing of the affidavits you were relying entirely upon your memory of what had taken place at the conference? A. Absolutely.

Q. Was the brother-in-law of Mrs. Ross present at the office when you had this interview with Mrs. Ross? A. The brother-in-law was present. He was introduced to me as an Englishman on a visit to this country. I have forgotten his name.

Q. Do you know whether or not the door to the outside office from my office was left open at the time of the interview? A. That I don't recall at all.

Q. You don't recall that? A. No.

Mr. Moore: That is all.

IT IS STIPULATED by and between counsel for the respective parties that the signature of the witness to this testimony is waived.

Holmes V. M. Dennis, recross.

IT IS FURTHER STIPULATED and agreed between the Solicitor for the Petitioner and the Solicitor for the Defendant that the testimony of Mr. Holmes V. M. Dennis be taken before a Master in Chancery, William S. Rurode, Esquire, and is to have the same force and effect as if taken before the Vice-Chancellor, to whom this case has been referred. 10

Testimony Closed.

I certify that the foregoing testimony was taken by George P. Stacy, a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such testimony was taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that it accurately states the evidence given. 20

WILLIAM S. RURODE,
Master in Chancery.

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Deposition of Elsie Brockelmann.

IN CHANCERY OF NEW JERSEY.

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ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
Defendant.

No. 65-21.

No. 75 Montgomery St., Jersey City, N. J.
Monday, June 18th, 1928, 5 P. M.

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TESTIMONY OF ELSIE BROCKELMANN, taken before me, George P. Moser, Esq., Master in Chancery of New Jersey, at my office, No. 75 Montgomery Street, Jersey City, New Jersey, this 18th day of June, 1928, at 5 o'clock in the afternoon of that day, by stipulation and consent of counsel, and

In the presence of:

EDWARD T. MOORE, Esq.,
Counsel for the Petitioner.CAREY & LANE, Esqs.,
Counsel for the Defendant.

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HARRY LANE, appearing as attorney for
Defendant.GEORGE P. MOSER,
Master in Chancery.

ELSIE BROCKELMANN, a witness appearing on behalf of the petitioner, having been first duly sworn by the Master in Chancery, testified as follows:

Direct examination by Mr. Moore:

40

Q. Miss Brockelmann, you reside at Patterson, New York? A. Yes, sir.

Elsie Brockelmann, direct.

Q. You previously resided in Millington, N. J., prior to November 1st, 1926? A. Yes, sir.

Q. And during November, 1926, you left Millington, N. J., and made your home in Patterson, N. Y.? A. Yes, sir.

Q. You are acquainted with both the petitioner and the defendant? A. Yes, sir. 10

Q. When did you meet them? A. In Millington, N. J., around 1922—I think.

Q. How long had you been acquainted with them before you left to reside in Patterson, N. Y.? A. About five or six years.

Q. How far distant was your home from the home of the petitioner and defendant when you resided in Millington, N. J.? A. I lived just a short distance, probably a little over a mile. 20

Q. Did you have occasion to visit them very often? A. Yes, frequently.

Q. Did they visit you frequently too? A. Yes, but as often as we visited them.

Q. How often would you say you visited them during the year 1925? A. I don't know just how often; we were back and forth all the time.

Q. Was the husband present on these visits by you? A. Yes, he was.

Q. How do you describe the treatment of the petitioner by the defendant, during the year 1924 and up until 1926? 30

Mr. Lane: I object to that question on the ground that it calls for a conclusion.

Q. Did you have occasion to observe the treatment of the petitioner by the defendant? A. Yes, I did.

Q. Will you state what you heard him say to the petitioner, with particularly as regarding dates, 40

Elsie Brockelmann, direct.

etc.? A. During the years 1924 and 1925 he was very cruel and rude to her—

Mr. Lane: I desire to object to that question on the same grounds, that it is simply a conclusion.

10

Q. Did you observe what he said to her? A. Yes, I did.

Q. In what way did you observe any actions which you characterize as cruel? A. Well he called her names—and then wouldn't speak to her at all and then for no reason at all would fly into a terrible rage and make her feel greatly humiliated.

20

Mr. Lane: I move to strike out the last portion of that answer.

Q. What kind of language did he use in your presence? A. Well—I just don't remember, but I know on one occasion I heard him tell her to get to hell out of the house.

Q. Did he make any accusations in your presence concerning her? A. Yes, he did.

Q. Was she present when he made his accusations? A. Yes, it was before she went to Europe.

30

Q. What did he accuse her of? A. Being untrue to him and not being a good wife to him.

Q. Could you specify any particular time when these accusations were made? A. No, I could not; they were made sometime during the summer of 1925 previous to her going to Europe.

Q. That was the summer of 1925? A. Yes, sir.

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

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Q. How do you describe his condition at the time; was he excited or otherwise? A. Yes, he was in quite a bad temper.

Elsie Brockelmann, direct.

Q. What else did he say to her at that time? A. I really don't know anything else that he said.

Q. Did he say anything about her remaining or leaving? A. Only what I said before, that she could get to hell out and stay out of the house.

Q. During the summer of 1925? A. Yes, sir. 10

Q. Did he have any reason when he stated to her to get to hell out of the house? A. I don't remember that.

Q. Did you hear him say anything concerning his affection or love for her? A. He never had any affection or love for her.

Q. Why do you say that? A. He also stated that to her.

Q. Do you remember anything that happened during October, 1926? A. Yes, I do. I went to the house the day before she was to return from Europe. I hung the curtains all through the house and tried to fix the house up for her. While I was doing that, Mr. Ross came over to me and said he wanted to show me some letters which he has received from his wife. He read me some of them and asked me if I knew anything about the contents. I told him I did know something about it but didn't put any vital importance in any of it. Then he said she had broken her marriage vows and that he would get a divorce and that she would not be paid. I told him not to put any truth in anything like that, as I knew that Esther was not that kind of a girl. 20 30

Q. Did he say anything concerning what you and he were going to do the next day? A. Yes—go down to the boat to meet her.

Q. Did you meet the boat when it arrived? A. Yes, we did. 40

Elsie Brockelmann, direct.

Q. Was the husband present? A. Yes, he was.

Q. Just testify what statements were made, if any, in your presence by him to her? A. I was not allowed on the boat; I was just allowed on the pier.

10 Q. Did you stay that evening with the parties?
A. Yes, I did.

Q. How did both parties act? A. Both of them were in a very excitable condition. He then accused her of being untrue to him.

Q. Do you remember the exact language that he used in making this accusation? A. I cannot remember the exact language, no—but I know that that was the impression that was conveyed to—

20 Mr. Lane: I move to strike out what was conveyed to the witness.

Q. The discussion in your presence resulted after the making of this accusation? A. Yes, sir.

Q. Will you state as near as you can recollect, just what that discussion was; what did he say and what did she say? A. He said that she had been untrue to him and then he said that he would take her back just as she was.

30 Q. Do you know what was said to provoke this sort of a statement? A. He had accused her of evidently living with another man.

Mr. Lane: I move to strike out that answer on the ground that it is a conclusion.

Q. You put the word "evidently" in there and that makes a conclusion. Did he use the word "evidently"? A. No, he did not use that word—I simply used it myself.

40 Q. Just state what he said to her? A. He accused her of living with this other man.

Elsie Brockelmann, direct.

Q. When that statement was made by him to her, what did she say to this? A. She said that she would leave him then.

Q. And what did he then say? A. That he would take her back just as she was, regardless of anything.

10

Q. Did she deny it? A. Of course she did.

Q. When he made the accusation she denied it? A. Certainly.

Q. What effect, as you observed it, did this statement have upon her? A. It put her in a terrible nervous and hysterical condition. She had been under a strain and that made her a nervous wreck.

Mr. Lane: I move to strike that out on the ground that it is a conclusion.

20

Q. Are you engaged as a trained nurse? A. Yes, sir. Therefore I had good reason for observing her condition.

Q. Have you ever heard the statement made concerning dragging his name in the dirt? A. Yes, I have heard that statement often.

Q. Who made the statement? A. The defendant.

Q. Did you hear him say that? A. Yes, sir.

30

Q. When did you hear him say that? A. That very night we are speaking about, he said that, and then he said it on another occasion—the night before she came home when he was speaking to me.

Q. The night before he told you that he accused her of dragging his name in the dirt? A. Yes, sir.

Q. Did he explain to you what he meant by dragging his name in the dirt and what was his reason for saying that? A. By having presumably

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Elsie Brockelmann, direct.

lived with this other man. He didn't use the word "presumably"—but I mean by accusing her of living with this other man.

10 Q. Did you discuss the matter with him? A. Yes, we talked the matter over. I told him that there was nothing in it—nothing to give him any trouble or any reason for acting as he was.

Q. Do you recollect whether or not he stated he had any foundation for this accusation of her being untrue to him? A. The reason he gave was because of the letters which she had written him.

Q. What happened after the 26th day of October; did the parties continue living together? A. Yes, they did.

20 Q. Did you ever visit them after that? A. Yes, twice after that.

Q. Describe her condition after her return from Europe as far as you could observe? A. You mean after all this had happened?

Q. Yes. A. She was highly nervous and completely upset.

30 Q. Can you tell us his treatment of her after all this had happened, as far as you could observe? A. I can say this: his treatment of her was the same as before—rude and cruel. He wouldn't speak to her only when he couldn't help it, and she would do almost everything to please him—that she could.

Q. Did he show any love or affection for her? A. Never.

40 Q. Do you remember anything that took place around Christmas—or the day after, of the year 1926? A. Yes, he came into my room when I was in bed. He asked me if I had seen any change in her. I said that I thought she was trying to please him in every way and he said, "You must be crazy."

Elsie Brockelmann, direct.

Then he said he was going to get a divorce. I told this to Mrs. Ross—

Mr. Lane: I object to what she told Mrs. Ross.

Q. Did you hear what Mr. Ross said to her on this subject? A. No—I was not present. 10

Q. Did he accuse her of anything that night? A. No—not that night; he only said he was going to get a divorce.

Q. Did he ever make any other accusations against her in your presence? A. On two occasions he called her a prostitute in my presence—yes.

Q. And what other accusations did he make against her in your presence? A. That she had broken her marriage vows—that she was not a faithful wife to him and that she never tried to please him. 20

Q. What effect did all this have on her, as far as you observed? A. Why, she was a nervous wreck—that's all.

Q. Did you ever talk to him about her physical condition? A. I did once.

Q. Do you recollect what was said? A. I told him that he just must change his attitude towards her in order to keep her in good health—that she was failing constantly. 30

Q. Recollect ever seeing anything of a dress that was torn? A. I didn't see a dress—I saw a coat torn; he had torn it.

Mr. Lane: I move to strike out the last portion of that answer unless the witness was present when the alleged tearing occurred.

40

Elsie Brockelmann, direct.

Q. Remember when this was? A. I think about 1925 or 1926.

Q. Before she went to Europe or after? A. After.

10 Q. Was this coat torn in your presence? A. No, it was not.

Q. Ever speak to him about it? A. No, I did not.

Q. Ever see any blue marks on her body at all? A. Yes, I saw a blue mark on her wrist.

Q. She confided to you about her domestic troubles? A. Yes, she did.

Q. Did you inquire about her condition? A. Well—naturally I was very much interested in her physical condition.

20 Q. In answer to your inquiries what did she say was the cause of her condition?

Mr. Lane: I object to that question on the ground that it is incompetent, unless stated in the presence of the defendant.

Mr. Moore: Counsel cites the case of *Haskel v. Haskel*.

A. Her troubles at home—with her husband.

30 Q. How did you describe it? A. His treatment of her was making her a nervous wreck. One day I was called in and she was in a weak condition in bed—

Q. Was the defendant present? A. Yes—he was present.

Q. What did you observe then? A. I saw at that time that her condition was due to her nervousness, and her twitching in bed at that time, was very bad.

40 Q. Was she hysterical? A. Yes, she was hysterical very often.

Elsie Brockelmann, direct.

Q. On this occasion did you find that? A. Yes, sir.

Q. And you say her husband was present? A. Yes, he had not gone to work that morning.

Q. Recollect when that was? A. I don't remember—no. It may have been in 1924 because I was still in Millington and left there in 1925. After leaving I came back for a short time. 10

Q. Can you describe her condition as far as you observed before she went to Europe? A. She was quite run down—and a nervous wreck from everything.

Q. Were you ever present when the defendant was present and the matter of her going to Europe was discussed? A. Yes, I was on one occasion.

Q. When she came back from Europe how would you describe her health? A. She was a little rested, but as soon as she got back in the house she was the same way again. 20

Q. In your presence, how did the petitioner treat the defendant? A. She was always courteous to him in every way—tried to make the best of things. She would talk to him at the table and joke over little things and he wouldn't talk and then maybe would say that he didn't see anything to smile about, and in general ways would humiliate her in the presence of both my brother and myself very often. 30

Mr. Lane: I move to strike out the last part of that answer on the ground that it is a conclusion.

Q. By the word "humiliate" will you describe how you mean that? A. Yes, he was rude to her.

Q. By actions or words? A. By actions except at times he would call her names. 40

Elsie Brockelmann, cross.

Q. What did he call her? A. He would tell her to get to hell out of the house and things like that.

Q. Do you know when it was that she left her husband? A. August, 1927.

10 Q. You made another appearance in this case on behalf of the petitioner, did you not? A. Yes, I did.

Q. You specify two dates in your testimony, October 26th and December 26th, 1926. Are those the two dates you refer to? A. Yes, October 26th was the day she came back from Europe and December 26th was the other day when I was spending a few days there during the holiday.

20 *Cross examination by Mr. Lane:*

Q. You have talked over this matter with Mrs. Ross, have you not? A. Which matter?

Q. What you have testified to. A. That I was going to testify?

Q. Yes—as to what you were going to testify. A. No, I did not.

Q. You have been with Mrs. Ross all day, haven't you? A. Yes, sir.

30 Q. While you were with her, didn't you say what you were going to testify to? A. No, I didn't—only that I was going to tell the truth.

Q. Did you tell her that you were going to tell the truth? A. Yes, sir.

Q. How did you come to tell her you were going to tell the truth? A. I don't know just how it came about.

40 Q. You didn't mention anything at all to provoke this remark to her that you were going to tell the truth? A. I did say something to her concern-

Elsie Brockelmann, cross.

ing some of the statements in the affidavits I had made, that I didn't understand, and I asked her about them.

Q. When did you go over copies of these affidavits? A. The last time I was here—June 6th. I have not seen them since. 10

Q. You saw them a couple of weeks ago in Paterson, did you not? A. Not since June 6th.

Q. That was the day you came down here to testify? A. Yes, sir.

Q. You read them that day? A. Yes, sir.

Q. And there was something in them that you didn't quite understand? A. Some parts of them—yes.

Q. Did you understand them at the time you swore to the affidavits? A. I thought I did. 20

Q. Will you kindly point out just what parts of these affidavits you do not understand? A. Yes, sir.

Mr. Lane: I show you copy of affidavit sworn to on the 27th day of October, 1926.

A. I don't think it was in this one.

Mr. Lane: I show you copy of affidavit sworn to on December 16, 1927, and ask you to point out just what portions you don't understand. 30

A. I don't think this is the one—there must be some other.

Q. You said you were talking over what had happened on June 6th which was the last day that you had seen these affidavits? A. Yes, sir.

Q. Was it then that you told Mrs. Ross that you were going to tell the truth? A. Yes, sir. 40

Q. Can you give me any better answer as to what

Elsie Brockelmann, cross.

actually prompted you to say that? A. Because that time I hadn't any time to discuss anything with her,—I mean on June 6th.

Q. How long were you with her on June 6th?

A. I was with her when I came over from Paterson.

Q. How long were you with her? A. All day.

Q. You had ample opportunity then to discuss with her what was in the affidavits, did you not?

A. I don't think so; we shopped practically all day.

Q. You have been with Mrs. Ross all day today?

A. Yes, sir.

Q. Had ample time today to discuss with her the matters contained in the affidavits? A. Yes, I did.

Q. Where did you meet her the day the case was tried in Paterson? A. At the courthouse in Paterson, N. J.

Q. How long were you in the courthouse that day before the trial was had? A. From ten thirty to twelve.

Q. Did you meet Mrs. Ross there or go with her?

A. I met her.

Q. How long have you known Mrs. Ross? A. About five to six years.

Q. Go back to 1923? A. About 1922 that I first met her.

Q. When Mr. and Mrs. Ross lived in Millington?

A. Yes, sir.

Q. Did you live in Millington, N. J., then? A. Yes, sir.

Q. Where did you live? A. In a hotel there.

Q. With whom did you live? A. My brother.

Q. What is his name? A. Herbert Brockelmann.

Q. How often in 1924 would you say that you were in the Ross house? A. Frequently.

Elsie Brockelmann, cross.

Q. What do you mean by frequently? A. Very often.

Q. How many times a week? A. About three time a week.

Q. While Mr. Ross was there? A. Very often he was there—yes.

10

Q. How often would you say you visited them in 1925? A. More frequent because my brother had become acquainted with them and we used to go over often.

Q. Just a social call? A. We played bridge.

Q. Mr. and Mrs. Ross and your brother and yourself? A. Yes, sir.

Q. Of course you would not have gone over there quite so much if things had been unpleasant? A. Yes, I would have.

20

Q. Irrespective of his being a brute and cruel to his wife, you would have continued to go over very often and play bridge with them? A. Yes, because I imagined I could give him an outside interest in things.

Q. How often during 1926 would you say you visited them? A. I don't know about then—because that was when she was going to Europe and I was leaving Millington.

Q. Recollect about when she went to Europe? A. May 8th, 1926—I believe.

30

Q. You had gone away prior to her leaving for Europe? A. Yes—two or three days before.

Q. You did not go to Europe by any chance? A. No, sir.

Q. Prior to that you still continued to visit the house? A. Yes, sir.

Q. Prior to going to Europe, you never heard Mr. Ross accuse his wife of anything out of the way, did you? A. I never heard him—no.

40

Elsie Brockelmann, cross.

Q. You say that the night before Mrs. Ross was coming home that you went up to the house to help fix it up for her? A. Yes, sir.

Q. You helped fix up the home? A. Both Mr. Ross and myself did.

10 Q. As a matter of fact Mr. Ross was a very handy man around the house, was he not? Washed dishes and took care of the baby occasionally? A. Yes, he was.

Q. He was not a man to go out in the evenings, but would stay home, so far as you observed? A. That's right.

Q. While you were fixing things up, Mr. Ross spoke to you about some letters which he had received? A. Yes, sir.

20 Q. Prior to that time, you never heard any suggestion that his wife was living with any other man, had you? A. No, sir.

Q. He let you read these letters, or did he read them and just tell you about them? A. I read them with him.

Q. You said you knew something about them? A. Yes, something.

Q. Did you tell him that? A. Yes, I did.

30 Q. What did he say? A. He said that she had broken her marriage vows.

Q. Did he ask you what you knew about it? A. Yes—and I said I had heard something about it but hadn't put any vital importance to it.

Q. You knew that in her letters to Mr. Ross she had stated that some man had come between them, did you not? A. I don't remember what she said in her letters, no.

Q. Do you remember anything that was in those letters? A. No, sir—I do not.

40 Q. By the way have you still got those letters

Elsie Brockelmann, cross.

in your possession which Mrs. Ross wrote you? A. No, I destroyed them.

Q. Had you destroyed the letters when you spoke to Mr. Ross? A. Yes, I destroy letters as soon as I answer them.

Q. You and he talked the matter over? A. Yes, 10
sir.

Q. He was quite excited? A. Yes, he was.

Q. When did you again see those letters that Mrs. Ross had written to Mr. Ross? A. I never saw them again.

Q. Were you there when Mrs. Ross left home? A. No, sir.

Q. Did you know she was going to leave? A. Yes, sir.

Q. As a matter of fact didn't you advise her to 20
go? A. No, I told her not to leave.

Q. Didn't you sign an affidavit in which you said you advised her to leave? A. Not to leave.

Q. Why did you advise her not to leave knowing how conditions were? A. Well, I simply advised her to be careful, but I was considering Peggy.

Q. Did you change your mind afterwards as to whether it would be proper for her to continue living in the same house with her husband? A. Yes, I did. 30

Q. And why did you first advise her not to leave? A. Because of Peggy.

Q. Evidently you were not thinking of Peggy in 1926 when you advised her to leave? A. I was always thinking of Peggy.

Q. Going back to this night when you and Mr. Ross discussed the matter in the house—did he say to you that he did not believe that she had been untrue to him or did not believe that she was living with some other man? A. He only said that peti- 40

Elsie Brockelmann, cross.

tioner had been untrue to him through what the letters showed.

Q. Do you remember anything that was said in the letters? A. I don't remember anything that was said in the letters; so many things have come up since then that I can't remember.

Q. Do you remember Mrs. Ross saying anything in the letters to the effect that she could not live with Mr. Ross as his wife again because the other man's face would always be coming between them? A. No, I don't remember that.

Q. And you can't remember a thing that was in the letters? A. No, I can't remember.

Q. Why on this evening in question, did you tell Mr. Ross not to mind anything in the letters—that it was of no vital importance? A. Because he was a man who would get excited and I didn't believe what he was reading anyhow.

Q. He wasn't so excited that you were afraid to remain in the house over night? A. I didn't have any fear—no.

Q. Got up the next morning—who got breakfast? A. We both got it together.

Q. He was a very handy man around the house, wasn't he? A. Yes, he was.

Q. He didn't object to going to the boat to meet his wife? A. No, he didn't.

Q. You couldn't get on the boat? A. No, sir.

Q. You waited on the pier? A. Yes, sir.

Q. He came out with Mrs. Ross carrying her luggage? A. Yes, sir.

Q. Then where did you go? A. We went to Summit for dinner.

Q. How long did it take you to get out there? A. About a couple of hours, we got out there between one-thirty and two o'clock.

Elsie Brockelmann, cross.

Q. Two or three of you together? A. With Peggy.

Q. Oh—the child went with her to Europe? A. Yes, sir.

Q. Mr. Ross paid for the dinner, of course? A. Yes, sir. 10

Q. Was he talking to Mrs. Ross on this occasion? A. He was talking all the time—yes.

Q. You knew, of course, that he received these letters? A. Yes, sir.

Q. He sat in front with Mrs. Ross? A. No, he sat in back with Peggy.

Q. Did he say anything about the letters while you were at dinner? A. No, sir.

Q. From there, did you go home with them? A. Yes, sir. 20

Q. Did he say anything about the letters when you got home? A. Late in the evening.

Q. Did you stay there that evening? A. Yes, sir.

Q. Slept there that night? A. Yes, sir.

Q. Was anything said that night about the letters to the petitioner? A. Yes, sir.

Q. What was said? A. Why the fact that she had been living with this other man and then a general discussion came up and quarreling and Mr. Ross told the petitioner she was a prostitute and that she had broken her marriage vows and dragged his name in the dirt. 30

Q. He called her a prostitute on this occasion? A. Yes, sir.

Q. Why didn't you testify on your direct examination that he called her a prostitute? A. I said he called her names on two occasions—this was one of them.

Q. Why didn't you testify that he had called her that on this particular night? A. I thought I did. 40

Elsie Brockelmann, cross.

Q. What did she have to say about this other man? A. That it was only a passing acquaintance and I believe it from what I know.

Q. What did you know? A. What she had written to me.

10 Q. What was that? A. Nothing but that she had met a man on the boat was friendly to she and Peggy.

Q. Did she tell you she had met him again in England? A. Yes, she had met him at her brother's.

Q. Did she tell you that in her letter? A. Yes, in her letter to me she stated that.

Q. Do you know whether that was in the letter she wrote to Mr. Ross? A. I don't remember.

20 Q. Did Mr. Ross admit to you that he had no ground for accusing his wife, didn't he? A. I don't remember that he admitted it.

Q. Did he state to you before that he believed his wife was going out with another man? A. He accused her during this episode.

30 Q. Outside of this one man that we are referring to as mentioned in the letters, did Mr. Ross ever accuse his wife of going around with any other man? A. I do remember him passing a remark about my own brother.

Q. You never said anything about this in any of your previous affidavits, did you? A. I didn't remember it until you asked me about any other man.

Q. Before or after she went to Europe? A. Before.

40 Q. Do you recollect in your affidavit of October 27th, 1927, copy of which I showed you before and which I now read from page two, which states, "Defendant admitted to me that he had no just

Elsie Brockelmann, cross.

grounds for so accusing his wife"? Is that correct?

A. It must have been clear in my mind at the time, but it is not now.

Q. What must have been clear in your mind?
A. If I said that, I certainly must have meant it.

Q. You would say that on October 27th when
you made this affidavit that that was the correct
statement? A. Yes, I would. 10

Q. You say that he was told by you on several
occasions that there was no justification in his ac-
cusations against his wife? A. Yes, I did.

Q. Regardless of whatever may have been ad-
mitted or said that night, Mrs. Ross still continued
to live with Mr. Ross? A. Yes, sir.

Q. You continued to visit with them? A. I was
only there one time after that; I was in Paterson. 20

Q. Were you only there once after that? A. No
—I was there again in the spring, if I remember
rightly.

Q. When did you go to Paterson? A. Do you
mean permanently?

Q. You say you went to Paterson? A. Novem-
ber, 1926, to live.

Q. Where were you living when this talk came
up—on October 26th? A. I was living in East
Orange then. 30

Q. Between October 26th and December 26th,
did you go to the house at all? A. No, I did not.

Q. Not once? A. No, sir.

Q. You say you stayed over on this night of Oc-
tober 26th? A. Yes, sir.

Q. Did you see Mr. Ross the next morning? A.
No, I don't think so.

Q. Had he left the house? A. I think he must
have left the house. I don't remember seeing him. 40

Elsie Brockelmann, cross.

Q. Now, have you stated to us everything as near as you can recollect as to the conversation between Mr. and Mrs. Ross on the evening of October 26th, 1926? A. As near as I can remember, yes.

10 Q. Do you recollect that Mrs. Ross stated to Mr. Ross that if he attempted to find out the man's name that she would commit suicide? A. No, never—I don't remember ever hearing that.

Q. Did she tell Mr. Ross who the man was that night? A. No, she did not.

Q. What was said about that by her? A. She just said that she would never tell the name of the man.

Q. How did she come to tell him that? A. Because he asked her to give him the name.

20 Q. What reason did she give for not telling the name of the man? A. I don't remember that she gave any reason.

Q. Did she say anything about committing suicide if he attempted to find out the name, in your presence? A. I don't remember.

Q. Mrs. Ross had written to you some time previous to her return from Europe, hadn't she? A. Yes, sir.

30 Q. Told you about meeting this man? A. Yes, but I didn't put any importance in it.

Q. Some time before she wrote to her husband about him? A. Yes, sir.

Q. Did she tell you she was going to write to her husband? A. No, sir.

Q. Has she ever told you why she wrote those letters to her husband? A. No, I have never discussed it with her.

40 Q. You have discussed this thing pro and con very often with Mrs. Ross, haven't you? A. Yes, but I have never discussed that point with her.

Elsie Brockelmann, cross.

Q. You have never said in any of your discussions with her, "why did you wrote those letters to Mr. Ross"? A. I may have, but if I did, she never gave me any definite reason.

Q. She never gave you any satisfactory reply?
A. No, I don't remember if she did. 10

Q. Didn't you discuss this matter on the question as to whether Mrs. Ross thought more of this man than she did of Mr. Ross? A. I don't believe we did.

Q. Didn't Mrs. Ross tell you that he was a much younger man than Mr. Ross? A. I believe he was —yes.

Q. Know his age? A. About her own age.

Q. Did she tell you all this in the letter? A. I don't think she did. 20

Q. How did she come to tell you that? A. Just a general description of the man.

Q. Did she ever state to you that Mr. Ross being a much older man than she was, she was sort of tired of being married to him? A. No, sir.

Q. You did not think it was safe for Mrs. Ross to live with her husband in 1927? A. Yes, after that night I didn't think it was safe for her.

Q. In the summer of 1927 you advised her to stay with her husband, didn't you? A. Yes, because she had said she would leave him and I didn't know where she was going and I was worried. 30

Q. Did you write and ask her where she was going? A. No, sir.

Q. Did she tell you where she was going? A. Yes, sir.

Q. Yet you just said you didn't know where she was going. A. I meant definitely. 40

Elsie Brockelmann, cross.

Q. You knew where she was going after she left her husband? A. Yes, I knew.

10 Q. And yet you advised her not to leave her husband because you didn't know where she was going? A. That was what I meant—I didn't know where she intended to go definitely.

Q. Where was she going? A. She was coming up to me at Paterson, N. J.

Q. It was all right for her to come up there? A. No—it was not.

Q. Didn't you want her to come up there? A. No, sir.

Q. Did you write and tell her that? A. Yes, sir.

Q. How long was she to stay? A. Five or six days.

20 Q. Bringing the child with her? A. Yes, sir.

Q. Then why were you so fearful when you got her letter saying she was going to leave her husband? A. Because I didn't know where she was going definitely.

Q. Did she show you these letters? A. No, I didn't see them.

Q. Did she tell you she had destroyed them? A. No, sir.

30 Q. Never mentioned them at all? A. No, sir.

Q. Never spoke a word about these letters going to her husband? A. I don't remember her saying anything.

Q. You would have remembered had she spoken to you about the letters, wouldn't you?

Mr. Moore: I object on the ground that it is a conclusion.

40 A. I don't remember. There was so much happening at that time that I don't remember.

Q. You don't think that Mr. and Mrs. Ross could

Elsie Brockelmann, cross.

live happily together? A. They never have been happy together.

Q. Why do you say that? A. I never saw Mr. Ross display any affection for her all during their married life.

Q. Do you mean to say you never thought they were happy together? A. I never thought so, no. 10

Q. I show you a letter marked Exhibit D-3 for Identification and going in under some other mark, bearing date January 27th, 1927, which was a month approximately after this last occasion that you spoke of. I ask you if, looking at that letter, you still say you never thought that Mr. and Mrs. Ross were ever happy together?

Mr. Moore: I object to the word "thought." It is as to whether the witness ever saw any affection displayed by the defendant. 20

A. No, I never thought they were happy together.

Q. I show you Exhibit D-4 marked for identification and ask you if, after reading that letter you still say they were never happy together?

Mr. Moore: I object to the introduction of the letters and testimony concerning them. 30

A. I still think they were never happy. This was just her way of doing things in trying to make things more pleasant.

Q. Back in 1924 you did not think they were happy? A. No, I did not.

Q. In 1922 you did not think they were happy? A. I didn't see them so often during 1922 and I couldn't judge their feelings then. 40

Elsie Brockelmann, cross.

Q. You met them in 1922? A. Yes, I did, but I didn't see them so often. I even think I could say they weren't happy then.

10 Q. I call you a letter Exhibit D-6 for Identification under date of July 31st, 1924, and call your particular attention to a statement. "I am thinking a lot about you and do hope you will take care of yourself." I ask you if, after reading that statement, you still feel or think the same? A. I still think that.

Q. In 1924? A. Yes, I still thought that in 1924. They were never really happy and I knew it.

Q. Prior to her coming home from Europe, what did he do so far as the house was concerned? A. I don't know what he did.

20 Q. What did he do in the house? A. Well, he painted the kitchen and did a few odd things like that.

Q. You noticed that when you went there? A. I think I did—yes.

Q. How often did you visit there, did you say, after the conversation concerning the letters? A. Only that night after Christmas—or during the Christmas holidays.

30 Q. How about the time in the spring? Didn't you visit there once in the spring? A. Yes, that's right, I did—once in the spring.

Q. Mr. Ross was there? A. Yes, sir.

Q. How did things appear then? A. Very strained.

Q. Were they speaking to each other? A. Just barely. Things were so uncomfortable that I didn't care to go again.

Q. How long did you stay? A. Two or three days.

40 Q. Things weren't so uncomfortable that you

Elsie Brockelmann, redirect.

would not stay over night? A. No, because I had such a distance to go.

Q. Where were you living then? A. Paterson, N. J.

Q. And you call that a far distance? A. I do. I had left some things with Mrs. Ross when I moved to Paterson and that is why I went back for them. 10

Q. When did you see this blue mark on Mrs. Ross's wrist? A. In 1925.

Q. You had no idea as to what had caused it? A. Mr. Ross had been cruel to her.

Q. You had been told that by Mrs. Ross? A. Yes, sir.

Q. You had no idea as to what had happened except as to what you were told? A. Yes, sir.

Q. On other occasions were there any signs of violence there? A. No, sir. 20

Q. You came down to testify voluntarily for Mrs. Ross this time? A. Yes, sir.

Q. You came down two weeks ago and testified also? A. Yes, sir.

Q. You made these voluntary statements at her request? A. Yes, sir.

Q. Irrespective of the fact that Mr. Ross did nothing except as you have stated in regard to his questioning his wife on the subject of these letters, and defending this suit, are you still of the opinion that Mrs. Ross should get a divorce? 30

Mr. Moore: I object to the question, as it is not essential as to what the witness thinks.

A. Yes, I think she should have it.

Redirect examination by Mr. Moore:

Q. Do you think it is safe for the petitioner to cohabit with the defendant? 40

Elsie Brockelmann, redirect.

Mr. Lane: I object to the question on the ground that it is irrelevant.

A. No, I do not.

10 Q. Will you state as to what she claimed caused this black and blue mark on her wrist? A. They had quarrelled about something and he had taken hold of her and caused this mark on her wrist.

Q. Your brother knows about this case? A. I believe he does.

Q. What is his name? A. Herbert W. Brockelmann.

20 Q. What accusation did you refer to in your cross examination made by the defendant to the petitioner regarding her association with your brother?

Mr. Lane: I desire to object to the question on the ground that it is not included in the alleged acts of cruelty.

A. He said he did not want the petitioner handling him. My brother and Mrs. Ross would fool and she would push him and that was what he objected to.

30 Q. What did your brother say to this accusation? A. He was never told about it.

Q. Did the petitioner resent it? A. Of course she resented it.

Q. What explanation did she give about the letters when the defendant accused her of breaking her marriage vows? A. I don't remember just what she said about it.

Q. You heard the letters discussed that night? A. I did.

40 Q. What did she say about it to the defendant? A. There was no truth in it. I believed her.

Elsie Brockelmann, recross.

Q. Did she tell him why she had written the letters to him? A. Not that I can remember.

Q. Did she say she had written other letters to him? A. I don't remember.

Q. On your cross examination you stated that he had accused her of going out with other men before May, 1926. Did you actually hear this? A. Yes, I did. And he called her names on this occasion, too. 10

Q. What names? A. Son-of-bitch. He was in a terrible rage.

Q. Are your feelings kindly towards the defendant? A. Yes, they are in a way.

Q. Your purpose in testifying in this way, is what? A. Because I believe Mrs. Ross is entitled to her divorce. 20

Q. You have no ulterior motive in so testifying? A. No, except to see that Mrs. Ross gets her divorce.

Recross examination by Mr. Lane:

Q. Do you know the name of this man? A. Yes, sir.

Q. How did you find it out? A. She told me.

Q. When? A. When she came back from Europe.

Q. Do you think it would have affected the above suit had Mrs. Ross told the name of the man to Mr. Ross? 30

Mr. Moore: I object to the question.

A. No, I don't think it would have mattered at all.

Q. Did you tell Mr. Ross that you knew the name of the man? A. No, sir.

Q. Did you suggest to the petitioner that it were better if she would tell the defendant the name of the man in question? A. I never said that—no. 40

*Deposition of Charles Ross.**By Mr. Moore:*

Q. You discussed this meeting with this man, didn't you? A. Yes, sir.

10 Q. How did she explain to you this meeting with this man? A. Nothing in it. Nothing important in it at all.

Q. How did she describe her meeting with this man? A. It was perfectly all right—it was just a passing acquaintance.

Q. Was that all she said about it? A. She didn't say anything about it.

20 I Certify that the foregoing testimony was taken by Alma L. Hermanns, a stenographer duly selected by me and by me duly sworn faithfully and truthfully to take stenographically and reproduce in typewriting the testimony given, and I believe that it accurately states the evidence given.

GEORGE P. MOSER,
Master in Chancery of New Jersey.

Deposition of Charles Ross.

IN CHANCERY OF NEW JERSEY.

30

Between

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
*Defendant.*On Petition for
Divorce.

40

Deposition and examination of Charles Ross, the

Charles Ross, direct.

defendant in the above-entitled cause, taken before me, William N. Berdan, a Supreme Court Examiner of the State of New Jersey, on Monday, the sixteenth day of July, nineteen hundred and twenty-eight, by consent of counsel herein, and in the presence of Edward Thomas Moore, Esquire, Solicitor for the Petitioner, and Harry Lane, Esquire, appearing for Holmes V. M. Dennis, Jr., Esquire, Solicitor for the Defendant. 10

WILLIAM N. BERDAN,
Supreme Court Examiner of the
State of New Jersey.

CHARLES ROSS, the defendant in the above entitled cause, having already been called and sworn, is recalled and testified as follows: 20

Direct examination by Mr. Lane:

Q. Mr. Ross, the questions I am going to put to you—I am confining them to the testimony of Elsie Brockelmann, who was examined by consent, before a Master, at which examination you were present. Miss Brockelmann stated, on page 3, that you called Mrs. Ross names, and then you wouldn't speak to her at all, and then, for no reason at all, would fly into a terrible rage and make her feel greatly humiliated, is or is that not true? A. That is not true. 30

Q. Did you tell your wife to get to hell out of the house, in the presence of Miss Brockelmann?
A. No, I did not.

Q. Did you, in the presence of Miss Brockelmann, before your wife went to Europe, accuse your wife of being untrue to you, and not being a good wife to you? A. No, I did not. 40

Q. Did you, in the presence of Miss Brockel-

Charles Ross, direct.

mann, or at any other time, tell your wife that you never had any affection or love for her? A. Certainly not.

10 Q. Did you tell Miss Brockelmann, on the evening before Mrs. Ross returned from Europe, that your wife had broken her marriage vows, and you would get a divorce, and that your wife would not be paid? A. No, I didn't. I did say that she had broken her marriage vows, because she had given her love to another man, but as to divorce, I didn't say anything about that, and as to paying, I don't know what that refers to at all.

20 Q. Now, when you make the statement about breaking her marriage vows, those are the statements you testified to in court, before the Vice Chancellor? A. It is.

Q. And that was the time that you were discussing this letter with Miss Brockelmann? A. It was.

Q. Now, on the evening that your wife returned from Europe, Miss Brockelmann stayed at the house? A. She did.

Q. Did you, at that time, in the presence of Miss Brockelmann, accuse your wife of being untrue to you? A. No, I did not.

30 Q. Did you, at that time, say to your wife, in Miss Brockelmann's presence, that your wife had been untrue to you, but that you would take her back, just as she was? A. I said that she had been untrue to me, adding the words that she had been untrue to her marriage vows, but I said nothing about taking her back, because I had written to her, asking her to come back, and let bygones be bygones.

40 Q. Did you, at this time, accuse your wife of living with this other man? A. No, I did not.

Q. And did your wife say, at that time, that she

Charles Ross, direct.

would leave you, right then and there? A. No, she did not.

Q. And did you say that you would take her back, regardless of everything; is that true? A. No, that is not true at all.

Q. Did you, at any time, state to your wife, in the presence of Miss Brockelmann, that she had dragged your name in the dirt, or anything to that effect? A. No, I did not. 10

Q. And did you, at that time, in reference to dragging your name in the dirt, say that she had dragged your name in the dirt, because she had lived with this other man? A. No; I certainly did not.

Q. Now, after your wife returned from Europe, was your conduct toward her rude and cruel? A. No; it was not. 20

Q. And is it true that you wouldn't speak to her, only when you couldn't help it? A. Certainly not; 't wasn't true.

Q. Do you recollect around Christmas, 1926, at a time when Miss Brockelmann was at the home, and that you went in to Miss Brockelmann's room, and she was in bed? A. I certainly did not go in her room, when she was in bed. 30

Q. And at that time ask her if she had seen any change in your wife, and she said that she thought your wife was trying to please you in every way, and you said to her that she must be crazy, and you would get a divorce? A. I certainly did not.

Q. You deny that? A. I do.

Q. Did you, on two occasions, in the presence of Miss Brockelmann, call your wife a prostitute? A. Certainly not.

Q. Did you ever call your wife a prostitute? A. Never. 40

Charles Ross, direct.

Q. Did you, at any time, make any black and blue marks on your wife's arm, that you know of?

A. No, sir.

Q. Or tear her coat? A. I did, accidentally, tear her coat, slightly.

10 Q. Will you tell how that happened? A. I don't remember the date—

Q. Before or after she went to Europe? A. Before she went to Europe. She was very much annoyed with me for something; I don't remember what it was, and she made an attempt to get out of the house, and she got her coat, and got the child dressed, and I held the coat, so she wouldn't take the coat, and in that way it was slightly torn.

20 Q. Did you observe her condition in any way, that she was so nervous that she would twitch; did you ever observe anything of that kind? A. No, I didn't.

Q. Or that she was run down and a nervous wreck? A. She was not a nervous wreck, or run down.

30 Q. Now, your conduct at the table; do you recollect that you would refuse to talk to her, and that your wife would joke with you, and try to get you to talk to her, both in the presence of Miss Brockelmann and her brother? A. No, sir; that is not true; if I recollect, it certainly was not customary, or anything of that sort.

Q. Was it customary for you to tell your wife to get to hell out of the house, in the presence of Miss Brockelmann, or her brother? A. No, sir; it was not.

40 Q. Do you remember, in the presence of Miss Brockelmann, calling your wife a son-of-a-bitch? A. Certainly not.

Charles Ross, direct.

Q. Now, Mr. Ross, since your wife left you, in August, 1927— A. Yes, sir.

Q. Where has your child been taken?

Mr. Moore: I object to all this testimony; that it is not confined, or in any way relates to the testimony of Miss Brockelmann. 10

Mr. Lane: I consent that that objection go to all the testimony.

A. She has been down to Reading, Pennsylvania.

Q. Living with whom? A. An aunt and uncle.

Q. Are they related to your wife? A. The aunt is my wife's sister, and the uncle is the brother-in-law.

Q. The uncle is your wife's sister's husband? A. Yes, sir. 20

Q. They are married? A. They are married.

Q. Have you been accustomed to visting your daughter? A. Yes, sir.

Q. On what occasions? A. Almost without exception, every second week-end.

Q. And do you know whether your daughter is still at that place—at that same place in Reading?

A. I was informed yesterday, by my brother-in-law, that she was not there.

Q. What happened, so far as your brother-in-law was concerned? 30

Mr. Moore: I object to what he told you.

A. He informed me that my wife had gone with her daughter, and all her bag and baggage.

Q. When would your next week-end have been?

A. Next week-end.

Q. Were you down there the last week-end? A. Not this one just gone, but the one immediately preceding that. 40

Charles Ross, direct.

Q. Did you receive any information as to your wife's endeavoring to have you refused seeing the child? A. Yes; I did.

Q. From whom? A. My brother-in-law and sister-in-law.

10 Q. And when? A. At my last visit down there, a week ago.

Q. You don't know where the child is now? A. I don't, definitely, no.

Q. And your wife has not definitely notified you where the child is?

Mr. Moore: I object to the question.

A. No, sir.

20 Mr. Lane: I will withdraw the last question.

Q. Has your wife notified you that she has taken the child away from Reading, Pennsylvania? A. No; she has not.

Q. Has she notified you where she has taken the child? A. No, she did not.

Q. Do you know where she has taken the child? A. I was informed by my brother-in-law, over the 'phone, that he believed they had gone to New York.

30

Q. Do you know whether your wife's brother-in-law, or her sister, were willing to take care of this child? A. They were perfectly willing, indefinitely.

Q. And what have you to say of the manner—of the way they have taken care of the child, and the way they have treated her? A. I believe they have taken care of her as if it had been her own born.

40 Q. And you know that from the child's condition? A. Yes, sir.

Charles Ross, cross.

Q. I show you a copy of a letter, purporting to be written to Mrs. Ross, and ask you from whom you received that letter? A. I received it from my brother-in-law, Hanus Gramm.

Q. And that is the brother-in-law with whom the child has been living? A. It is.

10

Mr. Moore: I object to the letter, and from whom the letter was from.

Q. And was there any statement made as to why that letter had been written to anybody? A. It was stated as having been sent to my wife, Mrs. Ross.

Mr. Lane: I offer the letter in evidence.

Mr. Moore: I object to the letter, on the grounds above stated.

20

(Letter marked Exhibit D-1, as of this date.)

Mr. Lane: That is all.

Cross examination by Mr. Moore:

Q. Mr. Ross, do you know that your sister-in-law wrote a letter to Mrs. Ross, saying that if the child remained at the house, she would no longer be permitted to visit the child at the house? A. No, I didn't.

30

Q. Do you know of any trouble that was made there at the house? A. No; they never complained to me of any trouble.

Q. The only information you have today about the child is not at the house, is the information from the brother-in-law, stating that the child is not at the house? A. Yes, sir.

Q. Your relationship with Miss Brockelmann were very friendly, were they not? A. Yes, sir.

40

Q. Do you remember a night when she stayed at

Charles Ross, cross.

the house, when you were the only person in the house? A. Yes, I do.

Q. Do you remember when that was? A. That was the night before my wife returned from Europe.

10 Q. What had been your relationship with Miss Brockelmann? A. Very friendly.

Q. Miss Brockelmann introduced your wife to you? A. No; my wife—

Q. Do you remember Miss Brockelmann saying that she had met you before she met your wife? A. That is not true.

Q. Are you a friend of her brother's? A. Yes.

Q. Was he a witness at the hearing for you? A. He was.

20 Q. Did he ever come over to the house with Miss Brockelmann? A. Very frequently.

Q. How many years would you say you had known Miss Brockelmann, up to the time this suit was commenced? A. Four or five.

Q. Do you remember, roughly speaking, how many times she called at your house? A. When I was home I would say probably twice a week—certainly once.

Q. Play bridge with her? A. Yes.

30 Q. During all this time, up to the time this suit was commenced, did you have any reason for suspecting that she was untruthful? A. Miss Brockelmann was?

Q. Yes. A. I knew that she had a way of turning things, and that she was very high up, or deep down in her movements, and that she had hallucinations, frequently.

Q. That is your answer? A. Yes, sir.

40 Q. Did you have a deep feeling for her? A. Yes, but no affection.

Charles Ross, cross.

Q. You had a high regard for her? A. I did, or I would object to having her at the house.

Q. Did you object to her staying at the house, when you were alone with her? A. I did, for her sake; I suggested that she go to a neighbor to stay.

Q. And you went with her to meet your wife? 10
A. I did.

Q. And you were quite friendly with her the night before? A. I went to her and asked her what I should do, because I considered her the nearest friend.

Q. And in doing that, you confided in her? A. Yes; I did.

Q. In your direct examination you stated that your wife was not nervous, and she was in good health, and that she didn't twitch in bed, or suffer 20
from hysteria. Do you remember how much your wife weighed in November, 1926? A. No; I don't know exactly; I can guess, if you want me to guess.

Q. How near would you say? A. I would say it was probably 112 or 115.

Q. Would it surprise you if she weighed 119 pounds during November, 1926? A. No; it wouldn't surprise me.

Q. Do you know how much she weighed in January, 1927? A. I do not. 30

Q. Would it surprise you to know that she weighed 97 pounds, during January, 1927? A. It would surprise me considerably.

Q. You wouldn't deny it? A. I couldn't deny it.

Q. It was alleged in her affidavit? A. Yes, but it was not supported.

Q. You didn't deny it? A. I don't deny it.

Q. Do you contribute this loss in weight to the fact that she was in good health? 40

Charles Ross, cross.

Mr. Lane: I object to the question on the ground that there was nothing to support it, and he does not admit that there was any such loss of weight.

10 Q. You deny that there was this loss of weight?
A. I don't know the loss of weight existed; I cannot deny it or affirm it.

Q. You saw her every day? A. I did.

Q. And you didn't notice this, so far as the loss of weight was concerned? A. No; I did not.

Q. That would be about twenty-five pounds, wouldn't it?

Mr. Lane: I object to the question.

Mr. Moore: I withdraw the question.

20 Q. Do you know that she lost twenty-five pounds, from December, 1926, up until January, 1927? A. I do not; this is the first suggestion I have had.

Q. Didn't you read it in the affidavit? A. I don't remember it now.

Q. Do you remember in the affidavit it was one hundred and nineteen pounds, and then went down to ninety-seven and a half pounds, do you not? A. I don't recollect if that was in the affidavit.

30 Q. Do you recollect anything else that was in the affidavit? A. Yes; I do.

Q. I call your attention to page 3 of the affidavit, made by the petitioner on the second day of December, 1927, wherein she states that the defendant kept me in constant apprehension of injury to my health; I lost weight from one hundred and eighteen pounds to ninety-seven pounds, from November to January, 1927. That causes you to recollect that it was in the affidavit? A. It was
40 either in the affidavit or the testimony; I have heard some reference to it, yes.

Mr. Moore: That is all.

Charles Ross, redirect.

Redirect examination by Mr. Lane:

Q. I show you what purports to be a copy of the letter written by your wife to Florena; who is Florena? A. My sister-in-law; my wife's sister.

Q. Who did you receive it from? A. I made this copy myself, from the original letter. 10

Q. Did you make that copy from the original letter, written by your wife to your sister-in-law, Florena? A. I did.

Q. Did you see the original letter? A. I did.

Q. Where did you make that copy? A. Down at Reading.

Q. Who was present? A. My brother-in-law and sister-in-law.

Q. And did you recognize the handwriting of your wife? A. I did. 20

Q. And did you see it? A. I did.

Q. And do you know it? A. I do.

Mr. Lane: I offer it in evidence.

Mr. Moore: I object to it, on the ground that it is a self-serving declaration, and is incompetent testimony.

(The above mentioned letter is marked Exhibit "B" 2, for Identification.)

Q. I now show you, Mr. Ross, what purports to be a copy of a letter by you to your wife, under date of July 9th, 1928, in which letter you refer to letter "B-2" for Identification, and ask you what that is a copy of? 30

Mr. Moore: I object to any testimony of any letters or conduct of the parties during the period since six months prior to the date of filing the petition.

A. I identify this as a copy of the letter I sent to my wife. 40

Charles Ross, redirect.

Q. And did you make that copy? A. I did.

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

Q. Did the letter come back to you? A. No.

10 Mr. Lane: I ask that the letter be marked for identification.

Mr. Moore: I object on the same grounds as stated above.

(Letter marked "B-3" for Identification, as of this date.)

Q. Mr. Ross, what have you to say as to the propriety of having your daughter living in the city or country, at this period of time?

20 Mr. Moore: I object to the question on the ground that it calls for a conclusion.

A. I think it would be detrimental to her health, because she has never lived in the city before.

Q. And has she lately been sick? A. Yes, she has.

Q. When? A. Within the last three weeks. I don't know the exact date that she was sick, but the quarantine sign was on the house when I went down a week ago last Sunday.

Q. Sick with what? A. German measles.

30 Q. When was the last time that you met your wife, down at Reading, Pennsylvania—how long ago? A. I believe it was the second or third of June.

Q. And on your visits since that time, you have not met her there? A. No.

40 Q. Were you advised as to how often your wife had been down to see your child? A. I was advised that I was down more frequently than my wife.

Mr. Moore: I object to it on the ground that it is immaterial.

Exhibits.

Q. How about recently? A. Between June 17th, and last Monday, she had not been down at all, during the period that the child was sick.

Mr. Moore: I object to it on the ground that it is hearsay.

Mr. Lane: That is all.

Mr. Moore: No more questions.

10

I, WILLIAM N. BERDAN, do hereby certify that the foregoing deposition was by me taken stenographically, and by me reduced to typewriting, and that I verily believe the above is a true transcript of the testimony given by the said deponent.

WILLIAM N. BERDAN,
Supreme Court Examiner of New Jersey.

20

EXHIBITS.**Exhibit D-1 (Page 58).**

“My life with you is so impossible that I have had to leave you. My health is completely broken-down, and this is the only course left to me. I am sorry that you have made it necessary for me to go like this, but you have refused to look at the matter from any other standpoint than your own warped, biased one. The fact that others than myself have tried to show you that you were in the wrong has made not a particle of difference. You would not swerve one iota from your narrow-minded selfish ideas. I am going to sue for divorce, and whatever happens, I am never going to live with you again. My life has been too bitterly hard and unhappy, and I am not going to bring my child up in such an unhealthy atmosphere. She is still too young to realize how things are, but what sort of future is it for her, to be brought

30

40

Exhibits.

up in a household where the parents haven't a word to say to one another, and the mother is a permanent invalid? Now is the time for the change to be made, and there is absolutely no reason why the child should be dragged into it. I
10 will not have her future blighted, so I am asking you to leave me entirely alone. If her welfare means anything to you, you must admit that only by keeping entirely away, can the knowledge be kept from her.

Please believe me when I say that I have only taken this drastic step after a great many weeks of thought, and finally legal advice. My lawyer is Edward T. Moore, Suite 915, 37 West 43rd Street, N. Y. C| and anything you have to arrange *must*
20 go through his hands. I won't answer your letters, so it is no good writing. Until the case is settled I must try and regain some of my health and unless you agree to let me alone, it will be impossible, for me to get stronger. I haven't said anything about this to anyone here, so you can give out any story you like. There is no need for anyone to know I have gone away for any other reasons than health, as the divorce proceedings will be absolutely private.

30 Please see that this is absolutely final, and allow the case to go through as quickly as possible. After it is settled I hope you will allow me to have access to the house so that I can get the remainder of my personal belongings, so don't dispose of anything until I have had opportunity of getting my things. There are a number of things I could have added, but I can't write any more. Please do the only decent thing, leave me alone and give me my
40 freedom.

Please forward my mail to 624 Crown St. Morrisville, Pa."

*Exhibits.***Exhibit D-2.**

NOTE.

D-1, 2, 3, 4, 5, 6 and 7 for Identification were admitted in evidence as one exhibit as "D-2" (see p. 60).

10

Exhibit D-3, Identification.

Millington, N. J.
January 27th, 1927.

Charlie Dear

Many thanks for your Washington letter. Peggy and I may take a walk down to the village this afternoon, in which case I will mail this, and you will probably get it before you leave.

20

Don't worry about us we are going along swimmingly and I haven't felt the least bit nervous.

Peggy is all right again, and is playing about outside. It is milder today and the wind has dropped. The house is very comfortable this morning.

There is nothing now since I wrote last night. Only one other letter besides yours today, and that was a tiny note from Elsie, enclosing the ticket.

30

Cheerio, and take care of yourself. There will be "welcome" on the mat on your return.

Love from

Betty and Peggy

40

*Exhibits.***Exhibit D-4, Identification.**

Wednesday Evening

Dear old Chilly Beans,

10 It has been a bitterly cold day and the thermometer stands at 6° above just at present. I am writing this on my knee in front of the fire, so you must make allowances for my bad writing.

I received your note giving me your address this morning. Besides yours also heard from Elsie, Rene Slader and Mrs. Brown, and yesterday there was a letter from Mary.

20 I hope you are having mild weather in Washington, and that you have a comfortable room. Have you any idea as to when you'll be back?

Peggy is much better. She slept with me last night and didn't cough once. I am giving her the drops Dr. Krauss gave me, also that cough mixture we bought in Bernardsville. She's been as merry as a grig all day.

30 I woke at 7 o'clock this morning and the house was as warm as toast—more good luck than good management I suppose, but the radiators were all hot! I had to light the dining-room stove this afternoon as it became so much colder.

How are your ears? I do hope they are better.

I shall be interested to hear whether your help has been needed on the case, or whether you are just hanging around!

This seems to be all the news so will bid you a tender adieu.

Love from

Betty

*Exhibits.***Exhibit D-5, Identification.**

Norrisville, Pa.

July 29th, 1924

Dear old Charlie:

We arrived here quite safely, after a fairly comfortable journey. Peggy slept from New York to Trenton which suited me admirably. The suitcase had been sent to the on hand dept. at Warren Street Station, so we took a taxi there, and from there here. Alice and Mother were on hand to welcome us, and we are having a very enjoyable time.

10

Jo and Lawrence drove down from Phila last night and stayed a while, then drove back.

Mother seems much stronger than I expected and in very good spirits. She has some lovely linens, and has given me a tablecloth with one dozen napkins, other napkins with monogram on, a pair of pillow-cases, one dozen hankies, and six for you. Also a hand-knitted centrepiece. Isn't that dear of her? She has made some beautiful embroidery while she was abroad.

20

Alice goes to Baltimore to-day and stays until the end of the week, so we shall be all alone.

Father is going to mail this in Trenton on his way to Phila., so must close now with much love from us all, and a special hug and kiss from Peggy and myself.

30

Your loving Betty

Do take good care of yourself.

40

*Exhibits.***Exhibit D-6, Identification.**

Norrisville, Pa
July 31st, 1924.

Dear Old Charlie,

10

I hope you got my letter which I wrote yesterday announcing our safe arrival.

I am thinking a lot about you, and do hope you are taking good care of yourself.

20

Yesterday morning Mother and I went to Trenton to do some shopping, leaving Alice to take care of Peggy. Alice then went to Baltimore in the afternoon. Peggy just said "Are you writing to my daddy?" I asked her whether she wanted to send a message, and she said "I've got a wind-mill."

30

Mother bought her a wind-mill and a celluloid doll, and I got her a ball. She is behaving herself pretty well, but finds she doesn't know what to do with herself. It has been dreadfully hot and she hasn't been able to be out much. They all think she is a darling child. They are very anxious to have us stay until Monday, but I haven't decided because I am longing to see you already, although they are all lovely to me, and Mother tries to have me rest as much as possible. I have been feeling better I'm glad to say.

40

We are practically camping here, because there are no electric lights or 'phone and Mother hasn't the rugs down. She made several very pretty rag rugs last year which she has down, and they are beautifully made. She is also starting on hooked rugs. Peggy is eating quite well, and Mother is setting a liberal table. She sends love, and we do hope you are not too lonely.

Exhibits.

How is Scott? I do hope he is not causing your trouble. I have been wondering about him. Has there been any mail?

I am going to buy Mother a dust-mop for her floors as she hasn't one, and would find one such a help.

10

I want to try and get up and see Etta Moore while I am here. Father and Mother went to Trenton meeting on Sunday so the people here don't know I'm staying here.

Peggy was so funny with her grandfather. She said "I don't like him, I want to go home." But now she's very friendly and plays wild beast, and other games with him.

Now I must close. I hope I'll hear from you before I come home, just to know you're all right.

20

Much love Chilly dear from your loving wife

BETTY

Exhibit D-7, Identification.

Norrisville, Pa.

July 31st.

My dear Charlie,

Ever so many thanks for your letter which I received this morning. I am glad you are going along all right.

30

Mother has asked me, as a special favour, whether I'd stay until Monday. Alice comes back then and Father may go to Atlantic City this weekend and she doesn't like to be left alone. I am ready to come home now, but I don't like to disappoint her, and she has been sweet to me. She isn't feeling very well, but she keeps going and

40

Decree Nisi.

wants me to rest. Last night we had dinner with friends in Trenton. I hated to take Peggy, but she napped until 5:30 and was an angel the whole time; and is none the worse for the adventure. To-day she and I went to see Etta Moon, and had
 10 a very nice visit. She seemed delighted to see me.

It was very hot here, yesterday it was 93°! I hope you haven't melted away. I miss our hilltop breezes.

How are your teeth? I hope they are more comfortable. Have you seen the dentist?

Now dear Charlie I hope it suits you to have me stay until Monday. I will leave M. Morning so as to arrive home in good time and will get the suitcase off in time.

20 Much love, and take care of yourself

Your loving

BETTY

Decree Nisi.

(Filed January 28, 1929.)

IN CHANCERY OF NEW JERSEY.

30

Between

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
Defendant.

65-21.

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This cause coming on to be heard in the pres-

Decree Nisi.

ence of Edward Thomas Moore, of counsel with the petitioner and Harry Lane, of counsel with the defendant, upon petition, and answer, and oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel; 10
 from all of which it now appears satisfactorily to the Chancellor that the petitioner and the defendant were lawfully joined in the bonds of matrimony on the 17th day of June, 1920, and that the defendant has been guilty of extreme cruelty toward the petitioner as alleged in said petition and that the petition for divorce was filed after six months from the date of the last act of cruelty complained of, and that at the time the cause of 20
 action arose the petitioner and defendant were *bona fide* residents of this State and have continued so to be down to the time of the commencement of this action; and that the petitioner and defendant have been for two years next preceding the commencement of this action, *bona fide* residents of this State; and it further appearing that jurisdiction herein has been acquired by the personal service of process upon the defendant within this State, pursuant to the law and the rules of 30
 this Court, as well as by the appearance and answer of the defendant:

It is thereupon on this 28th day of January, 1929, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, hereby ordered, adjudged and decreed, and the said Chancellor, by virtue of power and authority of this Court, and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the 40
 said petitioner, Esther Ross and the said defendant Charles Ross, be divorced from the bond of matrimony for the cause aforesaid, as charged in the

Decree Nisi.

petition of the said Esther Ross, and that the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the court why this decree should not be made absolute within three months from the date hereof.

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And it is further ordered, adjudged and decreed that the control, possession and custody of Margaret, infant child of the said petitioner and defendant, be given and committed to the said petitioner, subject nevertheless to the right of the defendant to see said child at such times and places as may be reasonable.

20

And it is further ordered, adjudged and decreed that the said defendant Charles Ross do pay to the petitioner Esther Ross, during her natural life or until the further order of this court to the contrary, the annual sum of \$2,548.00 payable in fifty-two equal weekly installments, each payable on the 2nd day of each week, the first of such payments to be made on the 28th day of January, 1929, the same being considered and deemed a suitable allowance, having regard to the circumstances of the parties respectively for the support and maintenance of the said petitioner, and that of the infant child of the marriage.

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And it is further ordered, adjudged and decreed that the said allowance is made in stead and in place of the alimony *pendente lite* heretofore ordered in this case, which is continued until said 21st day of January, 1929.

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And it is further ordered, adjudged and decreed that the said defendant do pay to the said petitioner or her counsel, her costs of this suit, incurred and to be incurred, including costs of stenographer's minutes to be taxed, and also the

Notice to Vacate Decree.

sum of four hundred dollars which is hereby adjudged and decreed to be the reasonable counsel fee of and for the counsel of said petitioner, and that the said petitioner do have execution therefor, according to the practice of this Court.

E. W. WALKER,

10

C.

Respectfully advised,

VIVIAN M. LEWIS.

Notice to Vacate Decree.

IN CHANCERY OF NEW JERSEY.

Between

ESTHER ROSS,
Petitioner,

and

CHARLES ROSS,
Defendant.

20

65-21.

On Petition, etc.

To EDWARD T. MOORE, Esq.,
Solicitor for Petitioner.

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SIR:

PLEASE TAKE NOTICE that on Monday the 25th day of February, 1929, at Chancery Chambers, in the city of Jersey City, at ten o'clock in the forenoon or as soon thereafter as the matter can be heard, we shall apply to the Honorable Vivian M. Lewis, the Vice Chancellor to whom the above entitled cause has been referred, for a reargument of the above case, and for an order vacating the decree *nisi* entered in the above entitled cause, upon the

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Order Denying Motion to Vacate Decree.

ground that the same was entered without any notice to the solicitors for the defendant, and upon the further ground that the defendant has not been heard upon the question of alimony or counsel fees, and for such other reasons as may be properly urged at such time.

CAREY & LANE
Solicitors for Defendant.

(Service duly acknowledged.)

Order Denying Motion to Vacate Decree.

IN CHANCERY OF NEW JERSEY.

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Between

ESTHER ROSS,
Petitioner

and

CHARLES ROSS,
Defendant.

#65-21.

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This cause coming on to be heard in the presence of Edward Thomas Moore, Esq., solicitor and of counsel for the petitioner, and Harry Lane, Esq., solicitor and of counsel for the defendant, upon motion for reargument made by defendant in the above case and for an order vacating the decree *nisi* entered in the above case, upon the ground that the same was entered without notice to the solicitors for the defendant, and upon the further ground that the defendant has not been heard on

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the question of alimony or counsel fees, and for

Memorandum Opinion.

such other reasons as may be properly urged at the time of the hearing on the motion; and after having heard and considered the arguments of the respective counsel and it appearing to the court that the defendant is not entitled to the relief sought and prayed for by him in said motion; 10

It is thereupon on this 15th day of April, 1929, Ordered, Adjudged and Decreed that the relief prayed for in said motion be denied and that the decree filed herein on January 18, 1929, in all respects be and the same is hereby affirmed.

EDWARD R. WALKER
C.

Respectfully advised
VIVIAN M. LEWIS 20
V. C.

Memorandum Opinion.

(Filed July 30, 1929.)

EDWARD T. MOORE, Esq., Solicitor of Petitioner.

CAREY & LANE, Esqs., Solicitors of Defendant. 30

LEWIS, V. C.:

This is a suit brought on the ground of extreme cruelty under the 1922 Supplement of the Divorce Act, Pamphlet Law, 1923, page 424.

The petition was filed July 26, 1927.

The acts of cruelty complained of in said petition took place six months prior to the date of the filing of the petition. 40

The defendant filed an answer on September 21, 1927.

Memorandum Opinion.

The parties cohabited together from June, 1920, and up and until January 10, 1927, at which time the petitioner ceased cohabitation with the defendant because of defendant's extreme cruelty. Owing to the fact that petitioner had no means of her own and was wholly dependent upon defendant for support she remained in the same house with the defendant up and until August 2, 1927, since which date the parties have lived separate and apart.

It is abundantly established that there was considerable discord in the family life from the year 1924 and up and until the petitioner ceased cohabitation with the defendant on January 10, 1927.

The husband's ill temper spent itself in a number of acts of extreme cruelty according to his wife which caused her extreme pain, both physically and mentally. The defendant exhibited contempt for the petitioner and accused her of infidelity in the presence of witnesses and showed indifference and utter disregard for the feelings of the petitioner. On various occasions the defendant without provocation picked quarrels with the petitioner, swore at her and called her vile and contemptible names. In October and December, 1926, defendant in the presence of friends of both parties, made accusations against the petitioner to the effect that she had been untrue to her marriage vows. As a result of these unjust accusations petitioner suffered from mental pain and experienced a nervous breakdown.

Petitioner testified in considerable detail as to the extreme cruel treatment and as to the physical injury inflicted upon her on several occasions and as to the fact that the defendant made threats to do further physical injury to her and to the

Memorandum Opinion.

fact that he had called her prostitute and told her to "get the hell out of the house."

The defendant denies the assaults but admits that he had accused his wife of not being true to him and that she had broken her marriage vows. He offers no credible testimony as to his justification for these accusations. 10

The petitioner is corroborated in her testimony by various witnesses as to certain of the acts of extreme cruelty and as to her rundown physical and mental condition.

I am satisfied that their testimony is worthy of belief.

It was claimed that all the acts of cruelty on his part testified to were condoned. The only testimony indicating any such condonation was that of the defendant and his statements are not convincing. 20

I will advise a decree for divorce for the petitioner.

See *Hanenstein v. Hanenstein*, 95 N. J. Eq. 34;

Hill v. Hill, 97 N. J. Eq. 237;

Wines v. Wines, 97 N. J. Eq. 55;

Coe v. Coe, 97 N. J. Eq. 59; 30

Foote v. Foote, 71 N. J. Eq. 273;

Cavileer v. Cavileer, 94 N. J. Eq. 160.

Stipulation as to Counsel Fees.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

ESTHER ROSS,
Petitioner-Respondent,

and

CHARLES ROSS,
Defendant-Appellant.

} Stipulation.

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IT IS STIPULATED that in pursuance with an order of the Court of Chancery, a temporary counsel fee of Two Hundred and Fifty Dollars (\$250.00) was paid by the defendant to counsel for the petitioner and that prior thereto in 1927 there had been paid by the defendant's solicitor to counsel for the petitioner, a counsel fee of One Hundred Dollars (\$100.00).

This stipulation may be printed in the state of case.

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EDWARD THOMAS MOORE,
Solicitor for Petitioner-Respondent.

CAREY & LANE,
Solicitors for Defendant-Appellant.

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Notice of Appeal.

(Filed April 23, 1929.)

IN CHANCERY OF NEW JERSEY.

Between ESTHER ROSS, <i>Petitioner,</i> and CHARLES ROSS, <i>Defendant.</i>	}	65-21. On Petition, etc.	10
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Charles Ross, the above named defendant, here-
 by appeals from the decree *nisi* filed in this cause
 and dated January 28th, 1929, and from every part
 thereof, to the Court of Errors and Appeals, in the
 last resort in all causes.

CAREY & LANE
 Solicitors for and of Counsel
 with defendant.

Dated April 18th, 1929.

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

HARRY LANE,
 Of Counsel with Defendant.

Petition of Appeal.

(Filed May 11, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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Between

ESTHER ROSS,
Petitioner-below,
*Respondent,**v.*CHARLES ROSS,
Defendant-below,
*Appellant.*On Appeal from
Chancery.

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To the Honorable the Court of Errors and Appeals,
in the Last Resort in All Causes:

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The petition of Charles Ross, appellant, respectfully shows; that your petitioner finds himself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 28th day of January, 1929, in that the said decree recites that the defendant had been guilty of extreme cruelty towards the petitioner as alleged in said petition, and that the petition for divorce was filed over six months after the date of the last act of cruelty complained of; and that the said decree further recites and orders, adjudges and decrees that the said petitioner, Esther Ross and the said defendant, Charles Ross, be divorced from the bonds of matrimony for the cause aforesaid, as shown in the petition of the said Esther Ross, and

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Petition of Appeal.

that the said parties and each of them be freed and discharged from the obligations thereof, unless sufficient cause be shown to the court why said decree should not be made absolute within three months from date thereof. And your petitioner appeals from the said decree and from every part thereof, on the ground that the same is erroneous, for that the said Chancellor should have recited and adjudged that your petitioner was not guilty of extreme cruelty towards the respondent, and that the said respondent was not entitled to be divorced from the bonds of matrimony with your petitioner for the cause aforesaid, as shown in the petition of the said Esther Ross, and that the said Chancellor should have dismissed the petition of the respondent.

And your petitioner finds himself further aggrieved by said decree *nisi* bearing date January 28th, 1929, in that the said decree recites and orders, adjudges and decrees that the control, possession and custody of Margaret, infant child of said petitioner and defendant, be given and committed to the petitioner, subject nevertheless to the right of the defendant to see said child at such time and place as may be reasonable. And your petitioner appeals from the said decree and from every part thereof, on the ground that the same is erroneous, for that the said Chancellor should have recited and adjudged that the respondent was not entitled to the control, possession and custody of the said infant child of the said petitioner and defendant, and should have dismissed the petition of the respondent.

And your petitioner finds himself further aggrieved by said decree *nisi* bearing date January

Petition of Appeal.

28th, 1929, in that the said decree recites and orders, adjudges and decrees that the said defendant, Charles Ross, should pay to the petitioner, Esther Ross, during her natural life, or until the further order of said Court to the contrary, the annual sum of \$2,548.00, payable in fifty-two equal weekly installments, the same being considered and deemed a suitable allowance, having regard to the circumstances of the parties respectively for the support and maintenance of the said petitioner and that of the infant child of the marriage. And your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous, for that the said Chancellor should have recited and adjudged that the said respondent was not entitled to be paid any sum for the support and maintenance of herself and the infant child of the marriage and should have dismissed the petition of the respondent, and upon the further ground that in the event that it be determined that the said respondent was entitled to be paid an annual or weekly sum for the support of herself and the infant child of the marriage, that the amount so fixed in said decree is exorbitant and excessive and is not a suitable allowance for the support and maintenance of the said petitioner and of the infant child of the marriage, in view of the financial status of your petitioner, and upon the further ground that the said allowance of alimony was made without notice to the defendant or his solicitor, and without the defendant being heard in respect thereto.

And your petitioner finds himself further aggrieved by said decree *nisi* bearing date January 28th, 1929, in that the said decree recites and or-

Petition of Appeal.

ders, adjudges and decrees that the said defendant do pay to the said petitioner or her counsel, her costs of this suit, incurred and to be incurred, including costs of stenographer's minutes to be taxed, and also the sum of \$400.00, which is hereby adjudged and decreed to be a reasonable counsel fee of and for the counsel of the said petitioner, and the said petitioner should have execution therefor according to the practice of this Court. And your petitioner appeals from the said decree and from every part thereof, on the ground that the same is erroneous in that the said Chancellor should have recited and adjudged that the respondent, or her counsel was not entitled to be paid any counsel fee or costs and that her petition should be dismissed, and further upon the ground that the said counsel fee of \$400.00 is exorbitant and excessive, having in mind the financial status of your petitioner and the amount which had already been paid by your petitioner to the respondent or her counsel, for counsel fees in said suit, and upon the further ground that your petitioner or his solicitor had no notice of the application for the allowance of said counsel fees and were not heard upon said application.

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

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CAREY & LANE,

Solicitors for and of Counsel with Appellant.

(Service duly acknowledged.)

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Answer to Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

 ESTHER ROSS,
 Petitioner-below,
 Respondent,

v.

 CHARLES ROSS,
 Defendant-below,
 Appellant.

 } On Appeal from
 } Chancery.

20 To the Honorable the Court of Errors and Appeals,
 in the Last Resort in All Causes:

 The answer of the Respondent to the petition of
 appeal of the Appellant.

 The Respondent admits it to be true that a cer-
 tain decree *nisi* was, on the 28th day of January,
 1929, 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
30 to refer thereto when the same shall be produced.
 And this Respondent is advised and believes that
 said decree is agreeable to law and equity, and she
 prays that the same may be affirmed, with costs to
 be adjudged to this Respondent.

 EDWARD THOMAS MOORE,
 Solicitor and of Counsel with Respondent.

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New Jersey Court of Errors and Appeals

Between

ESTHER ROSS,
Petitioner-below,
Respondent,

and

CHARLES ROSS,
Defendant-below,
Appellant.

On Petition for
Divorce.

On Appeal from
Chancery.

BRIEF OF APPELLANT.

Statement of Case.

This case comes up on appeal from a decree of the Court of Chancery granting a divorce to the petitioner on the grounds of extreme cruelty (p. 150). The petitioner and defendant were married in June, 1920. They lived in the same house until August 2, 1927. The petition sets forth that the petitioner ceased cohabitation with defendant on January 10, 1927. They lived under the same roof, and the defendant testified that they last cohabited together in March, 1927. This is important for the reason that if they cohabited in March, 1927, that the six months' period had not terminated when the petition was filed. The affidavit to the petition was taken on the 13th day of July, 1927, and the petition was filed July 26, 1927 (p. 1). In addition to the presumption that husband and wife living under the same roof cohabit together, the defendant is further corroborated by the fact that after

January 10, 1927, the petitioner wrote very endearing letters to the defendant (see Exhibits D3 and D4, p. 145-146). Also by the further fact that although the petitioner testified when recalled to the stand in rebuttal that the last time she had intercourse with the defendant was on January 10, 1927, when he took her by the throat and forced her to have intercourse (see p. 87). *She did not include any such allegation in her petition or in her affidavits on her application for alimony pendente lite.*

This is very important for there is absolutely *no corroboration* of any striking of the petitioner by the defendant, and he absolutely denies that he ever struck her.

Briefly, the important facts in this case are as follows:

The petitioner and defendant were married in 1920. The defendant is approximately twenty years older than the petitioner. The petitioner is now thirty years of age and the defendant is fifty years of age. There was one child born of the marriage, a daughter, now approximately seven years of age. Shortly after the marriage, the defendant purchased a home in Millington, N. J. The petitioner and defendant lived in this home until August 2, 1927, when the petitioner left the home when the defendant was away to business, without any notice and the first that he knew about it was when he returned home at night and found a note that she had left. The petitioner testified that she found no fault with the manner in which the defendant supported her. The uncontradicted evidence showed that he is what might be termed a home man; he never went out at night except with the petitioner; he helped her work around the house and take care of the child. The petitioner testified that she had no cause to complain

of his drinking, and in fact, except for one incident, there is nothing in the case to show any extreme cruelty on the part of the defendant. In May, 1926, the petitioner went to England with her child, defendant paying all her expenses. While she was in Europe she met a man of her own age about whom she wrote to her husband. The husband testified that she wrote him that on the way over she met a man to whom she had become very much attached, and since she had left him she realized what a terrible mistake she had made in marrying him and she did not love him and she could never be a wife to him again, and he mustn't ask her for intercourse again because she couldn't give it, and he must not ask her, but that she would come back and be a housekeeper but nothing more (p. 56). The petitioner denied this language, but admitted writing to her husband about this man. Also, one of her witnesses, Miss Brockelman, testified that the petitioner had written to her about this man. The petitioner also testified that she had seen this man several times in England and that he had called to see her where she was staying. Both the defendant and Miss Brockelman testified that the petitioner refused to tell the defendant the name and address of the man. The defendant testified that he spoke to her about the matter when she came home from Europe in October, 1926, *but that he had never mentioned it again.*

However, the petitioner continued to live and cohabit with the defendant after that time and at least to live under the same roof up until August 2, 1927, when the petitioner left as stated above. There is absolutely no allegation or any evidence that anything occurred on August 2, 1927, to cause the petitioner to leave at that particular time, or, as a matter of fact, that anything occurred between January 10, 1927, and August 2, 1927, except that they were living happily together. The letters

written in January, 1927, referred to above, would certainly indicate that they were living happily together in the latter part of January, 1927, and would not be the kind of letters that a wife would write to a cruel and inhuman husband.

The Vice-Chancellor, however, decided to grant a decree for divorce on the grounds of extreme cruelty. His opinion is found on page 155 of the record. In passing, it must be remembered that Miss Brockelman did not testify before the Vice-Chancellor, but that her deposition was submitted in evidence, and *that the Vice-Chancellor, therefore, did not have personal observation of this witness while testifying.*

The decree was signed without any notice to or without counsel for the defendant being present. Application was made for a reargument and for an order vacating the decree upon the ground that the same was entered without any notice, and the further ground that the defendant had not been heard upon the question of alimony and counsel fee, which application was denied (see pp. 153-154).

There is no evidence in the record as to the financial status of the defendant upon which to base the order for alimony and for counsel fee contained in the decree.

From the decree *nisi* this appeal is taken.

Grounds of Appeal.

The grounds of appeal are found in the petition of appeal filed herein, upon all of which defendant relies (p. 160).

Briefly, they are as follows:

1. That the decree granting the divorce was erroneous and that the Chancellor should have decreed that the defendant was not guilty of ex-

treme cruelty toward the petitioner, and that the petitioner was not entitled to be divorced from the bonds of matrimony, and the petition should have been dismissed.

2. That the Court below decreed that the defendant should pay to the petitioner the annual sum of \$2,548, the same being considered and deemed a suitable allowance having regard to the circumstances of the parties respectively for the support and maintenance of the said petitioner, and that of the infant child of the marriage, whereas it should have been adjudged that the petitioner was not entitled to alimony and that the alimony allowed was excessive and that the defendant had not been heard in respect thereto.

3. That the allowance of counsel fee was exorbitant and excessive and that the defendant had no notice of the application for the allowance of the counsel fee and was not heard upon said application.

4. The evidence did not justify the decree for divorce and there was no evidence upon which to base the allowance of alimony and counsel fee.

BRIEF OF THE ARGUMENT.

POINT I.

Under the evidence, the petitioner was not entitled to a decree for divorce upon the ground of extreme cruelty and her petition should have been dismissed.

This suit was brought on the ground of extreme cruelty under the 1923 Supplement of the Divorce Act; the petition was dated July 13, 1927, and was not filed until July 26, 1927. At the time the peti-

tion was signed and filed, the petitioner and the defendant were living under the same roof. The petitioner did not leave the home until August 2, 1927. *A very important fact is that irrespective of the contention of the petitioner that she was obliged to leave the defendant because of the detriment to her health caused by the alleged cruelty of the defendant, nevertheless she remained living with the defendant up until August 2, 1927, and as a matter of fact, for several days after her petition was signed and filed, and yet there is not one word of testimony or any allegation by her that during this time he treated her cruelly or that on August 2, 1927, or about that time, he did anything that caused her to fear for her safety. Also the further fact that as late as February, 1928, she was willing to return to live with her husband if he would agree to go on what she calls "six months' probation," that is, not cohabit with her during that period.*

The petition in brief alleges that during the month of January, 1924, defendant commenced a course of cruel and abusive treatment toward petitioner and did continue the same without provocation or just cause until petitioner was compelled to cease cohabitation with the defendant (p. 24). *There is not one word of testimony to substantiate this allegation.*

Further down on page two, that defendant began to show a marked dislike for petitioner during the summer of 1924, and that a decided coolness sprang up in the defendant's attitude toward petitioner, and that the contempt, indifference and utter disregard for her feelings greatly affected the petitioner to such an extent that she suffered from a nervous breakdown in November, 1926, and was compelled to remain away at various times in an endeavor to recover her health.

A further fact that is very important is that although she alleged that she had medical treatment for her condition, there is no definiteness as to her medical treatment, and there was no medical testimony.

And on page two, that in the spring of 1926 she was compelled to leave defendant in an endeavor to recover her health for a period of about five months. The testimony conclusively shows that this was the time when she went on a *pleasure trip* with her child to Europe.

On page three, that he called her vile names since the summer of the year 1924. The proof in respect to this is very unsatisfactory and mostly uncorroborated. It would appear from a reading of the entire testimony that the only time he called the petitioner to account was in relation to the man she had written him about whom she had met on the way over to Europe on the boat, and whom she had seen and who had called on her in England while she was there. On page three, an allegation in respect to the defendant calling her mean and contemptible names in the summer of 1925 and telling her to "get the hell out of the house." *This was two years before she finally got out.* On page four, she restates practically the same allegations in a general way.

At the foot of page four she alleges that the defendant made unjustified accusations in the presence of a *mutual friend* that petitioner had sexual relations with other men. There is absolutely no corroborated testimony to substantiate this. The most that the petitioner's testimony goes to the effect that the defendant was very jealous and further, that he accused her of being unfaithful to him when she acknowledged her love for this man whom she met on the way to and in England. *The mutual friend*, Miss Brockelman, testified that the

defendant stated to her that he did not believe that she had been intimate with another man.

A further very significant fact is that in her petition there is absolutely no allegation that either on January 10, 1927, or at any other time did the defendant choke her.

A further important fact is that there is nowhere in the petition any allegation that at any time the defendant struck her.

The defendant in his answer (p. 7) denies all of the allegations of cruelty as he also did in his testimony.

Brief Résumé of Testimony.

Esther Ross, Petitioner:

The petitioner's testimony is found on pages 14 to 34, and 85 to 89.

On direct examination she testified that up until 1924 they got along fairly well, when the defendant started to abuse her and call her bad names. When he got angry he would call her a dirty bitch, ordered her out of the house and said he didn't have any more love for her. She was asked by the Court when he ordered her out of the house, and she testified that he did that in 1924 (*three years before she left*); that he didn't like her to have friends and he would show jealousy whenever any man was in the house. That he said that she had been living with other men. She was asked when these accusations were made and said that she went to England in May, 1926, and when she came back he then made those accusations against her (pp. 15-16). She was then asked this question:

“Q. What were they? A. He said I had broken my marriage vows and dragged his name in the dirt, and said I had been having sexual relations with other men” (p. 16).

Defendant denied the latter part, but admitted that in talking with her about this man in England he had said that if she loved another man she had broken her marriage vows. On page 17 she testified again that he called her a dirty bitch and ordered her out of the house and also that he called her a prostitute in his rage and neglected her for many months at a time. This was all general and evidently referred back to the year 1924. On page 19 she testified as follows:

“Q. What did he say? A. *He said he didn't know why he made these accusations; he didn't believe I did, but he couldn't help it.*”

On page 20, line 38, she was asked this question:

“Q. When did cohabitation between you and your husband cease? A. *I think it was about January, 1927.*”

This is *very important* in view of the fact that *the defendant testified that they cohabited together until March, 1927.* On page 21 she was asked about the ceasing of cohabitation and about any physical injuries, and her answer is important. She said *“he did on one occasion twist my arm.”* Also she said that he had a gun there.

“Q. Any mention made about the gun? A. He actually didn't but he raised his hand to me.”

This is very important in view of the fact that in her subsequent testimony upon being recalled in rebuttal, she testified that at this time he had threatened to choke her, *although on her direct examination she made no mention of this and neither did she in her petition.*

On cross examination she testified that she stayed in the house after she had filed her petition but that she only remained there until he was served.

On page 24 she was asked about any physical cruelty and even then *did not mention about his threatening to choke her in January, 1927*. On page 24 she was asked why she did not put these allegations of physical cruelty in her petition.

On page 25, line 24, she admitted *that around February, 1928, she had been willing to go back and live with him*. Certainly at that date she did not fear for her personal safety. On page 26 she admitted that he paid her expenses to Europe. She was asked this question in relation to the man she wrote him about:

“Q. Didn’t you say his face would always be between him and you? A. No, I didn’t; that was his remark.”

A further very important fact is that before she left in August, 1927, *she burned up all letters that she could find including the letter she had written from Europe*. On page 27 she was asked about this letter and said, “I burned up a number of things and I might have burned that.” *Why did she burn this letter up?*

Right here Mr. Holmes M. V. Dennis, whose testimony was taken by deposition, testified that she admitted to him that the letter was substantially as Mr. Ross stated and that she had destroyed it (p. 99, line 30). On page 28 she admitted that she had written to her husband that she had seen this man on the boat and that she had seen him two or three times in England and that he had come to see her at her brother’s residence. On page 30 she testified that she had no complaint about support.

On page 31 she testified that she was not friendly with her husband in January, 1927, yet she wrote two letters at that time to her husband, in one of which she addressed him as “*Dear Old Chilly*”

Beans." The letters were admitted in evidence and are printed as Exhibits D-1 and D-2 on pages 144 and 146. *These letters are documentary evidence.* Could it be possible that if Mr. Ross had treated her in the manner she stated that she would have written *such endearing letters?*

At the foot of page 33 on redirect examination she testified that the defendant took her by the throat one night and said he would like to choke her?

The petitioner was recalled in rebuttal and on page 86 testified that the man she met on the boat was *just about her age and was single.* She then testified on page 87 as to the last time when she had intercourse with her husband and *this belated testimony was so startling* that she was examined as follows by the Court:

"Q. Was he a man who demanded frequent sexual intercourse? A. No; not at all.

"Q. Why did he grab you this time? A. Because, I had always been an obedient wife.

"Q. But he said you had told him about this other man's face coming between you? A. No; I didn't.

"Q. You say he was always moderate in his demands? A. Yes; he was.

"Q. This time he was so strong for it? A. Yes, sir."

On cross examination at the foot of page 89 as to why she did not put it in her petition and why she did not testify to it in her direct examination, the further fact was brought out that she did not mention it in two affidavits that she had filed on the application for alimony, *pendente lite.* Also on page 91 she was asked why in the number of letters that she wrote to her husband that she never made any reference to any cruelty.

Lorine S. Capen:

Mrs. Capen's testimony is found on pages 34 and 41. Her testimony is unimportant except she testified to certain things that the petitioner told her. The Court on page 36 brought out that she was not a disinterested witness. The most that she could directly testify to was that the defendant told her that he did not want a divorce. On cross examination she was asked in relation to the affidavit that she filed. However, there is nothing in her testimony that would justify or corroborate any allegations of cruelty.

Mrs. Capen was asked if she had advised Mrs. Ross to get a divorce and she answered "I advised Mrs. Ross to get a divorce *and Mr. Ross to get a divorce*" (p. 40, line 15).

John Ritch:

The testimony of John Ritch, brother of the petitioner, is found on pages 41-54.

The most that Mr. Ritch testified to was that the defendant objected to the order of the courses at table and if there were dishes to wash up, he objected to so many dishes. Also to her being out in the garden when he would want her in the house. On page 44 he was asked by the Court as to whether he had ever seen the defendant strike his wife or call her any names and he said no. On cross examination he admitted that up until February, 1928, his sister, the petitioner, was willing to go back and live with her husband under certain conditions (p. 52).

Defendant's Case.*Charles Ross, the defendant:*

Mr. Ross's testimony is found on pages 54-81 and 131-143.

He testified that he bought a house in Millington, N. J., in 1922 and they moved to Millington. That he spent his time entirely at home; that he was a public accountant and had worked with H. Dennis in New York since 1917 with a break of two years when he was serving during the war. That he bought a car for his wife in fall of 1924; that he cannot drive a car; that no mention was made of ill treatment when his wife went to Europe in 1926. That he had two maiden sisters over there who had not seen his wife and child and she had relatives over there, and it was a mutual agreement that she was to go over there and show herself and the child; that she wanted to go in 1925 but that he told her after he bought a car he could not afford it, but, that if nothing unforeseen happened, she might go in 1926 (p. 56). *There is absolutely no denial of this, so there unquestionably was no special reason for petitioner taking the trip to Europe in 1926 rather than in 1925, other than that given by defendant.* On page 57 he denied calling her a prostitute; *that he had intercourse with her up until March, 1927*; that his wife lived with him right up until August 2, 1927; that he did not know about her leaving, but when he returned home after she left, he found a note; that he looked in his bureau drawer to see if his letters were there that his wife had written him from Europe; that they were tied up in a package *and they were gone* (p. 59, line 10). That he has met his wife off and on right up until a couple of weeks before the trial, having dinner with her on several occasions. On page 60 he denied that he called his wife any vile names or accused her of infidelity or being unfaithful to him. He testified that he never entertained any idea that she was unfaithful. *In this he is corroborated both by petitioner and Miss Brockelman.* At the foot of page 60 he

spoke about the meeting of Mrs. Capen and his wife in 1925, and that the trouble was that his wife made complaints that he wasn't giving her the best of times and that he stuck too much to the home and worked too much in the garden.

On cross examination, on page 63, he testified that he had written to his wife after she left, "for God's sake come back."

On page 69 he testified that the night before his wife was to return from Europe, his wife's friend, Miss Brockelman, was at the house and that he said to her that he had received two letters from his wife in which she said she was enamoured or in love with another man. On page 70 he was asked if he accused his wife of unchastity, and he said:

"I never did; I never had the slightest suspicion of it. I accused her of being unfaithful to her marriage vows in giving her love to another man.

"By the Court:

"Q. You told Miss Brockelman she was in love with another man? A. I did, and Miss Brockelman said she knew it, because Mrs. Ross had written to her and told her the same thing (p. 71).

"Q. You did not mean to convey that she had been intimate with another man? A. No, sir; that she had given her love to another man."

At the top of page 72 he testified that after the one time when his wife returned, he never mentioned the subject again to her.

On page 77 he testified that Miss Brockelman told him that Mrs. Ross had written to her and said that she was infatuated with another man and that she wrote Mrs. Ross and told her to cut it out. On page 79 he denied that he ever grabbed

his wife by the throat, *and there is absolutely no corroboration of this.* At the top of page 80 he testified that in her letter from Europe Mrs. Ross said that she could not have intercourse with him because if she did she would always see this man's face between them.

Herbert W. Brockelman:

Mr. Brockelman is a brother of Miss Brockelman and was called on behalf of the defendant. He testified that he visited the Ross home quite frequently and that he did not observe any cruelty at all.

"By the Court:

"Q. Did you observe anything at all? A. I observed that sometimes Mr. Ross was very quiet."

He further testified that in Labor Day week, 1927, Mrs. Ross was up to his sister's place and she spoke to him:

"Q. Yes, and just tell us in your own words what was said. A. Well, there isn't anything to say, except that she came out of the garage at the time and spoke to me, and said—started off with the fact *that it may not all be Charley's fault*, and outside of that I didn't pay any attention to it, because she started to cry, and had a touch of hysteria."

This testimony is very important in view of the fact that he is a brother of Miss Brockelman whose deposition was taken.

George B. Keeler:

Mr. Keeler was called on behalf of the defendant. He lived next door to the Rosses and visited them occasionally.

Holmes M. V. Dennis:

The deposition of Holmes M. V. Dennis, a member of the bar, was taken and admitted in evidence (p. 93).

Mr. Dennis represented Mr. Ross at a conference with Mr. Moore and Mrs. Ross and a brother-in-law of Mrs. Ross. His testimony is very important in view of the statement that Mrs. Ross admitted the contents of the letter which she had written to her husband from Europe. He testified that Mrs. Ross said that *she had written to her husband to the effect that she realized her marriage was a terrible mistake and that she did not love her husband and could not live with him, and also another letter stating that she had met a man coming over on the steamer; that he and she had become very much infatuated and that while she was willing to return to Mr. Ross and live in his house and maintain their home, she would not live with him as his wife, and she could not live with him as his wife because the other man's face would be coming between them. Also she admitted that when she left the home in the summer of 1927 she had taken the letters and destroyed them* (p. 96):

“Q. What other or further conversation did you have with Mrs. Ross? A. She said that she had never had any improper or meretricious relations with this man, of whom she wrote, and I said that we did not charge her with having any such relations. *I asked her to give me his name and she declined*, and that was all there was to that portion of the interview.”

Elsie Brockelman:

The deposition of Elsie Brockelman, a witness produced on behalf of the defendant, was taken outside of the presence of the Court, by consent. It is found on pages 102-130.

A reading of Miss Brockelman's testimony shows that she was a very personal friend of the petitioner and was *prejudiced* in her favor. She testified that she resided in Millington with her brother prior to November 1, 1926, when she left Millington and went to live in Paterson, N. Y.; that she met the petitioner and defendant around 1922; she lived about a mile from the home of petitioner and defendant, and visited them frequently, and petitioner and defendant visited at Miss Brockelman's home frequently (p. 103). That during the years 1924 and 1925, the defendant was very cruel and rude to the defendant; that he called her names, and then would not speak to her at all, and then for no reason at all would fly into a terrible rage and make her feel greatly humiliated; that on one occasion she heard him tell her to "get the hell out of the house." That before the petitioner went to Europe in May, 1926, she heard him accuse the petitioner of being untrue to him and not being a good wife to him, although she could not specify any particular time when these accusations were made, but that they were made some time during the summer of 1925 (p. 104).

In October, 1926, the day before the petitioner was to return from Europe, she went to the petitioner's home and helped to fix up the house for her. That Mr. Ross came over to her and said he wanted to show her some letters which he had received from his wife. *She corroborates the defendant in the fact that when he asked her if she knew anything about the contents that she told him that she did know something about it but she did not put any vital importance in any of it.* Also as to the fact that he made the statement that she had *broken her marriage vows.* (*Nothing about calling her a prostitute.*) That they both went to meet the boat his wife came back on; that the defendant accused the petitioner of being untrue to

him (p. 106). *When asked if she remembered the exact language she said she could not recall:*

“Q. Will you state as near as you can recollect just what that discussion was; what did he say and what did she say? A. He said that she had been untrue to him and then he said that he would take her back just as she was.

“Q. Do you know what was said to provoke this sort of a statement? A. He had accused her of *evidently* living with another man” (p. 106).

On page 109, line 15, she testified that defendant called petitioner a prostitute in her presence *but does not state any time:*

“Q. And what other accusations did he make against her in your presence? A. That she had broken her marriage vows—that she was not a faithful wife to him and that she never tried to please him” (p. 109, line 20).

Cross examination:

Under cross examination, Miss Brockelman was questioned about certain affidavits but evaded by stating that there were some parts that she did not quite understand (p. 113, line 1). It was brought out that irrespective of the alleged cruel treatment, she and her brother and the petitioner and defendant continued making social calls and playing bridge together.

At the foot of page 115, Miss Brockelman on cross examination stated that *prior to going to Europe, she had never heard the defendant accuse his wife of anything out of the way*, which is in *direct contradiction* to her statement on page 104 on direct examination:

“Q. Prior to going to Europe, you never heard Mr. Ross accuse his wife of anything out of the way, did you? A. I never heard him—no.”

She testified that Mr. Ross was a very handy man around the house, washed dishes and took care of the baby, and was not a man to go out in the evenings.

Again, on page 116, line 20:

“Q. Prior to that time” (the day before petitioner returned from Europe in October, 1926) “you never heard any suggestion that his wife was living with any other man, had you? A. No, sir.

“Q. He let you read those letters, or did he read them and just tell you about them? A. I read them with him.

“Q. You said you knew something about them? A. Yes, something.

“Q. Did you tell him that? A. Yes, I did.

“Q. What did he say? A. *He said that she had broken her marriage vows.*

“Q. Did he ask you what you knew about it? A. Yes, and I said I had heard something about it, but had not put any vital importance to it.”

She then testified that she did not remember what was in the letters and that she had destroyed the letters which Mrs. Ross had sent to her.

Again, at the bottom of page 117:

“A. He only said that petitioner had been untrue to him through what the letters showed.”

It is important to note that the testimony of Miss Brockelman as to what the defendant said in relation to the letters in the above instances *coincides exactly with the testimony of the defendant*. That after meeting his wife at the boat that they all went to Summit for dinner and that Miss Brockelman stayed at the home all night:

“Q. Was anything said that night about the letters to the petitioner? A. Yes, sir.

“Q. What was said? A. Why the fact that she had been living with this other man and

then a general discussion came up and quarreling and Mr. Ross told the petitioner she was a prostitute and that she had broken her marriage vows and dragged his name in the dirt. [She did not testify to this on her direct examination.]

“Q. He called her a prostitute on this occasion? A. Yes, sir.

“Q. *Why didn't you testify on your direct examination that he called her a prostitute?*

A. I said he called her names on two occasions—this was one of them.

“Q. Why didn't you testify that he had called her that on this particular night? A. I thought I did” (p. 119).

At the foot of page 120 when her attention was called to her affidavit to the effect that the defendant admitted to her that he had no just grounds for accusing his wife. This certainly corroborates his testimony that he never had any idea that his wife had been intimate or had improper relations with any other man.

It is important also that Miss Brockelman corroborates the defendant and Mr. Dennis that Mrs. Ross told Mr. Ross *that she would never tell him the name of the man when he asked her to* (p. 122, line 15). This would certainly be sufficient to arouse jealousy in a man of Mr. Ross' temperament. She was asked if the petitioner said anything about committing suicide if Mr. Ross attempted to find out the name of the man, but her answer was that she *could not remember*. Although she attempted in her testimony to indicate that she did not believe it was safe for Mrs. Ross to live with her husband in 1927, yet on page 123, line 30, she admitted that she advised Mrs. Ross in the summer of 1927 *to stay with her husband*. Mrs. Ross, when she left her husband, went up to Paterson to Miss Brockelman's home (p. 124). On page 127 she admitted *that she never saw any violence*

and never knew anything about any violence except what the petitioner told her (p. 127).

Charles Ross:

By consent, the deposition of Charles Ross was taken before the Vice-Chancellor's stenographer and appears on pages 130-143. In this deposition Mr. Ross denies the statement of Miss Brockelman that he told his wife to get the hell out of the house or that he treated her cruelly or that he accused his wife of being untrue to him, or that he never had any love or affection for her.

On page 132 he admitted that he did say that the petitioner had broken her marriage vows because she had given her love to another man, but denied saying anything about divorce. He also denied that he accused his wife of living with another man.

Also, at the foot of page 133, that he never called his wife a prostitute. The rest of his direct testimony was in reference to his difficulty about visitation to his child and in the suit and the fact that his wife had brought the child to New York without any notice to him.

It can be readily seen that there is very little, if any, direct corroboration of any alleged extreme cruelty except perhaps the statement of Miss Brockelman that on two occasions the defendant called his wife a prostitute. This is directly denied by the defendant and also the statement of Miss Brockelman, when she was asked on cross examination to state what was said, was really in corroboration of Mr. Ross' statement that upon the return of his wife from Europe he accused her of breaking her marriage vows because she had written that she had fallen in love with this other man who was about 30 years of age.

There is absolutely no corroboration of any physical striking of the wife. Even Mrs. Ross herself

gave *very little testimony* as to any striking. She did mention one occasion when her coat was torn and another occasion in January, 1927, when she stated that Mr. Ross took hold of her throat and threatened to choke her. She did not even state that he did choke her and her testimony must certainly be viewed with great suspicion when it is considered that she did not state this very important fact *in either her petition or her affidavits or in her direct testimony and only did upon being recalled to the stand in rebuttal*. Her testimony to this fact upon being recalled to the stand was so *startling* that the Vice-Chancellor questioned her about it and the apparent view of the Court at that time was that it was entirely against all of the testimony as to Mr. Ross' general make-up and his attitude on the stand for him to be the ferocious individual that Mrs. Ross in this late testimony attempted to paint him. *Further, as stated before there is absolutely no corroboration of this incident*. According to Mrs. Ross on rebuttal, this was the incident that caused her to refuse to further cohabit with Mr. Ross and was the last and most important act of cruelty complained of and certainly should have been the act of cruelty (*if it occurred at all*) which would have been uppermost in her mind. *Yet she did not put it in her petition, nor in her affidavits, nor when she was first on the stand on her direct examination*.

Counsel in the argument in the Court below cited the case of *Wines v. Wines* (97 N. J. Eq. 55), for authority that if certain acts of cruelty are corroborated, it is fair to assume that testimony of petitioner of other acts of cruelty for which corroboration is lacking is true. The case at bar is distinguishable from the *Wines* case in that in the case at bar there is absolutely no corroboration of any physical assault of the petitioner by the de-

fendant *which according to the last paragraph of the opinion of Vice-Chancellor BACKES in the Wines case is necessary.*

Furthermore, Vice-Chancellor BACKES says on page 57:

“The rule of corroboration only requires that belief in its truthfulness may find support in the testimony of others or other surrounding corroborative circumstances.”

As stated above, there is no testimony of witnesses other than the petitioner, which corroborates in any particular any alleged physical cruelty. As to the surrounding circumstances, the testimony is *conclusively against the contention of the petitioner* that Mr. Ross was physically cruel to her. The petitioner alleges that from 1924 up until January 10, 1927, that there was considerable discord in the married life and that the husband was guilty of extreme cruelty. The Courts hold that one of the most important elements in determining the contradictory testimony of the wife and the husband in a case of this kind, is the attitude of the parties toward each other. We are fortunate in this case in having the attitude of the petitioner toward her husband fully expressed at different times throughout the entire period *through letters* which she wrote to her husband. (It is fortunate indeed that defendant did not have these letters in the house with the letters from Europe or his wife would have undoubtedly destroyed them when she left the home as she destroyed the letters she wrote from Europe.) These letters referred to, were offered in evidence and are printed on pages 145-150 of the record. They are in the *most endearing terms* and no one could read these letters and believe that they could be written at a time when Mr. Ross was treating his wife as she would have the Court believe he treated her, and

was treating her with such extreme cruelty that she was obliged to refuse to cohabit with him. A further very important fact is that there is absolutely no evidence that after October, 1926, the defendant accused his wife of being untrue to him, *and the petitioner and defendant cohabited together long after that time.*

In the latter part of January, 1927, when her husband was on a business trip to Washington, Mrs. Ross wrote to her husband the two letters which are printed on pages 145-146. In the letter, Exhibit D-3, she addresses her husband as "*Charlie Dear*"; thanks him for his letter; tells about what she and the child had been doing—requests him not to worry as she hasn't felt the least bit nervous—refers to the fact that she had written him the night before and ends her letter as follows: "*Cheerio, and take care of yourself. There will be welcome on the mat on your return, Love from Betty and Peggy.*"

In the letter printed on page 146 she addresses her husband as "*Dear Old Chilly Beans*"; refers to receiving his letter that morning—speaks about the condition of her child—speaks about her husband's condition and ends her letter as follows: "*This seems to be all the news so will bid you a tender adieu. Love from Betty.*"

Could anyone read these letters written in January, 1927, and give any credence whatever to the *belated* testimony of the petitioner of the threat to choke her on January 10, 1927, and that the petitioner had withdrawn herself from cohabitation with the defendant. *They are letters written from a happy wife to her husband.*

Likewise in the summer of 1924, when she was on a visit to her mother in Norrisville, Pa., she wrote the letters D-5, D-6 and D-7, written on July 29th and 31st, two of them on one day (see pp.

147-150). In her letter of July 29th, 1924, she addresses her husband: "*Dear Old Charlie.*" Speaks about general matters and ends her letter as follows: "So must close now *with much love from us all and a special hug and kiss from Peggy and myself, your loving Betty. Do take good care of yourself*" (p. 147).

In one letter July 31st, 1924, she addresses her husband "*Dear Old Charlie*"—hopes he received the letter which she wrote yesterday—states that she is thinking a lot about him and hopes he is taking good care of himself—and ends her letter: "*Much love Charlie dear, from your loving wife, Betty*" (p. 148). In her other letter of July 31st she addresses her husband "*My dear Charlie*";—and ends her letter "*Much love and take care of yourself, your loving Betty*" (p. 149).

Further proof that Mrs. Ross was not in fear of her safety is the fact that she remained living with her husband for six months after the last alleged act of cruelty. Counsel in his argument below said that petitioner had no other alternative but to remain with her husband in order to secure support for herself and her child. This is not so, for if her statement is true that she could not live with her husband because of fear of her safety, then she could have left him immediately and instituted a suit for support under the maintenance statute and apply for alimony *pendente lite*; the same as she did when she left the home after filing her petition for divorce. She had no more assurance when she left him in August, 1927, that she would be allowed alimony *pendente lite* than she would have had if she had left at the time of the alleged last act of cruelty and instituted her suit for separate maintenance. A further significant fact is that from January 10, 1927, right down to August, when Mrs. Ross left, they apparently lived happily together. Nothing occurred in August, 1927, which

caused her to leave. The testimony is uncontradicted that the first intimation that Mr. Ross had that his wife was going to leave him was when he came home at night and found that she had gone and left a note for him.

It is also most important to note that Mrs. Ross took away with her when she left a number of letters which she had written to her husband, *and particularly the letters which she had written to him from Europe referring to the man whom she had met on the boat.* She denied that the contents of the letters were as Mr. Ross testified. However, the testimony of Mr. Dennis is to the effect that *she admitted that the contents of the letters were substantially as Mr. Ross testified to, and also that she had destroyed them.* Furthermore, Miss Brockelman when questioned about the contents of these letters admitted that they referred to this man, but said that she could not remember what they said:

“Q. Do you remember anything that was in these letters? A. No, sir—I do not” (p. 116).

Why then was Mrs. Ross so careful as to take these letters out of Mr. Ross' drawer where they were tied up in a package and destroy them? Could there be any doubt in view of the testimony of the defendant and the testimony of Mr. Dennis as to her admissions to him and all of the circumstances, that Mrs. Ross destroyed these letters because she was fearful of the effect that they might have upon her suit for divorce, which it must be remembered she had already instituted prior to leaving the home and destroying the letters?

The only serious discussion that the evidence seems to reveal that occurred between the petitioner and the defendant was the discussion respecting this man; and the testimony of both the petitioner and defendant, and of the petitioner's

witness, Miss Brockelman, are all corroborative of the fact that Mrs. Ross *did meet* this man on the boat, and in Europe, and that she *did write* to her husband about it and not only that, but she *had also written to Miss Brockelman about this man also*. And further, Miss Brockelman's testimony corroborated the defendant that when the petitioner returned from Europe and her husband asked her about this matter, that she *absolutely refused to tell him who the man was, and where he lived*. *This in itself would be to any man a most suspicious circumstance*. If there was not anything in the letters which she had written to her husband, why was it that Mrs. Ross was so particular to destroy the letters when she left in August, 1927, and particularly when she knew that her husband had kept the letters and put them away?

The Vice-Chancellor, in his opinion on page 156, refers to the fact that in October and December, 1926, defendant made accusations against the petitioner to the effect that she had been untrue to her marriage vows. Mr. Ross explains what he said and, as a matter of fact, testified *that he never at any time believed that his wife had actually had improper relations with this man, and in this he is corroborated by Miss Brockelman, who testified that Mr. Ross had admitted to her that he did not believe that she had actually committed adultery with this man*. Mr. Ross testified that what he said was that if it was true, as Mrs. Ross had written to him, that she had met this man in Europe and that his face would always be between her and the defendant, and also that she could not be a wife to him, that he did say that then she was untrue to her marriage vows. *He was justified in stating this* for the reason that if Mrs. Ross had written him any such letter and had entertained

any such opinion, and, because of this man, had stated that she could not be a wife to Mr. Ross, then his statement that she was untrue to her marriage vows was both *literally true and true in spirit*. Mr. Ross was particularly justified by the further fact that upon being questioned in the presence of Miss Brockelman upon her return from Europe, Mrs. Ross absolutely refused to talk about it or *tell him who the man was*. Perhaps *Mr. Ross was unhappy in the choice of his words* when he said that his wife was unfaithful to her marriage vows, but *Mr. Ross testified that he did not mean by that to accuse his wife of unchastity*, but that she was untrue to her marriage vows if she had met a man and liked him so much that his face would be between her and the defendant. Mr. Ross said that he never at any time believed that his wife had been unchaste and this is corroborated by Miss Brockelman, who testified that Mr. Ross admitted to her that he did not accuse his wife of any unchastity.

There is nothing in this case except the controversy over this happening, which the testimony shows was caused entirely by Mrs. Ross writing the letters to her husband from Europe about this man. That she must have had this man on her mind is also demonstrated from the fact that she also wrote to Miss Brockelman about him. *Outside of this one incident, where is there any evidence of any cruelty which would justify the separating of these two people?* In considering cases of this kind it is important to consider the circumstances of the case. The circumstances of the case show that the main trouble unquestionably is that after having met this man, who was about the same age of the petitioner, *she became dissatisfied with the fact that her husband was so much older than she and that it was not until then that she began to plan to get a divorce from him.*

A Clear Case of May and December.

A consideration of the entire testimony shows that the main trouble with the petitioner was that she had gradually become discontented with living the simple, quiet life with her husband, *twenty years older than herself*. Most of the testimony of the witnesses for the petitioner clearly indicate that the main fault that they found was that this man, who at the time of his marriage was almost twice the age of his wife, *was too quiet, didn't like to go around, wanted his wife home, took his main interest in the garden, and did not splurge to any extent*. Yet he bought his wife an automobile. This feeling on the part of the wife is reflected way back in 1924 by the letters which she wrote. In her letters back in 1924 (pp. 147-148) she called him "Dear Old Charlie" and also "*Chilly Dear*." Also, in one of her letters in January, 1927 (p. 146), she addressed him "Dear Old *Chilly Beans*." These letters, of course, standing by themselves would not be sufficient, but when taken into consideration with all of the testimony there is no doubt but that Mrs. Ross gradually tired of being tied up to this man, twenty years older than she. This was further brought home to her and made her more determined to terminate the relationship when she met this man on her trip to Europe, *about her age*, and he undoubtedly was interested more in things that she was interested in than her husband was.

There was some testimony by the petitioner to the fact that Mr. Ross said that he was going to get a divorce from the petitioner. Outside of this statement, all of the circumstances show that Mr. Ross at no time had any desire to get any divorce from his wife. As a matter of fact, when she left he wrote her "*come back for God's sake*." Further, he had a daughter of whom, according to all

of the testimony, he was very fond. There is no allegation or suggestion that he was not a good father.

Risking the fault of reiteration, I desire again to comment upon the fact that there is no corroborative testimony of any physical cruelty. There is Mrs. Ross' uncorroborated testimony of the alleged happening in January, 1927, and even there she simply says that her husband took hold of her neck and threatened to choke her—*not that he did choke her*. This testimony must be taken with a *grain of salt* when taking into consideration the fact that she did not allege this in her petition, and, as a matter of fact, alleged no physical cruelty, nor did she in either of the affidavits filed by her on her application for alimony *pendente lite*, nor did she in her testimony until called in rebuttal after the defendant's case was in. Against this *single uncorroborated testimony* of the petitioner there is the positive denial of Mr. Ross, and further the improbability of it having occurred when taking into consideration the conduct of the defendant throughout the entire married life (*Mrs. Ross testified in response to the Court's question, that he was not a man sexually inclined*), and this testimony is absolutely refuted by the endearing tone of the two letters written to Mr. Ross when he was in Washington, within a couple of weeks of January 10, 1927. Of course, I recognize the doctrine that there is no hard and fast rule as to what is necessary to constitute extreme cruelty, but that generally speaking, the determination of each case depends upon the particular facts and circumstances. The cases, however, are to the effect that the proof of extreme cruelty must be clear and convincing, and must be corroborated by either positive testimony or circumstances which bear the test of persuasive corroboration of the charges

made. There was no positive corroboration by either of the witnesses of any act of physical cruelty, nor was there any convincing corroboration of any acts of extreme cruelty without physical violation.

In the case of *McElnea v. McElnea*, 143 Atl. Rep. 324 (not officially reported as yet), which was a case decided by Vice-Chancellor LEWIS who granted the decree below in this case. In that case the Vice-Chancellor held that irrespective of the fact that the defendant may have administered some physical violence that, nevertheless, the conduct of the wife was such that the defendant would hardly be a normal man if he had not physically resented her actions. *And further that the petitioner received the treatment she deserved.* On page 325, the Court said, speaking of the wife:

“She was constantly wounding his *amour propre*, and I have no doubt that at times he did give her a shaking.”

And further down on page 325:

“It appears that the petitioner received the treatment she deserved. *Barton v. Barton*, 97 N. J. Eq., 404, 128 A. 798; *Hart v. Hart*, 99 N. J. Eq. 373, 131 A. 903; *Smith v. Smith*, 40 N. J. Eq. 566, 5 A. 109; *Wood v. Wood*, 97 N. J. Eq. 1, 128 A. 418; *Hauenstein v. Hauenstein*, 95 N. J. Eq. 34, 122 A. 241.”

In his memorandum, Vice-Chancellor LEWIS refers to several cases (p. 157). The case of *Wines v. Wines*, 97 N. J. Eq. 55, I have already referred to and distinguished from the case at bar. In that case Vice-Chancellor BACKES granted a decree for divorce. He states on page 57 that there was, in addition to the testimony of the petitioner, the testimony of two other witnesses as to specific instances of assaults by the defendant on his wife.

Likewise in the case of *Coe v. Coe*, 97 N. J. Eq. 59, an opinion by Vice-Chancellor BACKES, it appears that there was corroboration of the defendant's assaults and also that the defendant admitted that he struck his wife in the face in one of the scenes. Also it would appear from a reading of that case that the petitioner left her husband at the time of the last assault. In this case the petitioner continued to live and cohabit with her husband right up until she testified January, 1929, and as the defendant testifies, she cohabited with him up to March, 1927. There was no evidence of any acts of cruelty after January 10, 1927, and this alleged act of cruelty was not corroborated. Vice-Chancellor BACKES says that in the *Coe* case "condonation rests exclusively with the offending party." It is uncontradicted that after all of the alleged allegations of happenings prior to January 10, 1927, that the petitioner lived with and cohabited with her husband. Unless it be held that cohabitation is not condonation as it is in an adultery case then all of the prior acts must be held to have been condoned.

The case of *Hill v. Hill*, 97 N. J. Eq. 237, is an opinion by Vice-Chancellor BENTLEY.

Vice-Chancellor BENTLEY while holding that he was in great doubt as to what decree to make and that it was his first impression that extreme cruelty had not been proved, he, nevertheless, granted a decree for divorce from bed and board upon the ground that it was fully corroborated that the defendant both in the presence of his daughter and other witnesses continued a course of systematic and continued charging of adultery; a system of spying upon her, charging her publicly with alleged iniquities of which she was innocent, going to the extent of directing the post office not to deliver mail to his house so that he could get it and intercept any letters to his wife.

The Vice-Chancellor points out on page 242 that:

“This systematic and continued torture was not an occasional word of *innuendo* thrown out in the heat of anger under strong provocation, but an advised and cold-blooded effort to hurt and humiliate the wife.”

At the foot of page 241 he also points out that no decree should be advised *unless a court was absolutely sure and completely convinced* that the petitioner had suffered the insults alleged and further that she had succeeded by clear and convincing proofs in substantiating her charge.

Hauenstein v. Hauenstein, 95 N. J. Eq. 34, opinion by the Chancellor. This case is not at all in parity with the case at bar. The syllabus is as follows:

“If a husband drives his wife from his house, and if she is allowed to stay away for two years without solicitation to return and proper assurances of better treatment on his part, it is a constructive desertion by the husband for which the wife is entitled to a divorce.”

Cavileer v. Cavileer, 94 N. J. Eq. 166. In that case the husband had left the home because of an alleged assault on him and he never made any overtures for a reconciliation. “When his wife approached him as he admits in a very nice way, for the purpose of reconciliation, he refused to speak with her.” This Court also said on page 166:

“This and other circumstances in evidence indicate that the husband separated himself from her, not because he apprehended any personal injury from a continuance of cohabitation, but rather because he desired to free himself from her with or without legal cause.”

The Court also held that a single act of personal violence upon the part of a wife against her husband is not extreme cruelty justifying abandonment of, and refusal to support, the wife, where the injury was slight, and the act was committed under circumstances which do not furnish any reasonable apprehension that the continuance of cohabitation would be attended with further personal injury.

In the case of *McLean v. McLean*, 144 Atl. Rep. 583, this Court, opinion by KAYS, J., granted a decree for separate maintenance on the ground that he had deserted her. The husband defended on the ground of extreme cruelty. In dealing with this subject this Court held that:

“Where the husband sets up the defense of extreme cruelty by the wife to an action for separation and maintenance brought by the wife, he must justify a separation by him from his wife by proving such extreme cruelty on her part as he would be compelled to prove if he were suing for divorce from bed and board upon the grounds of extreme cruelty.”

And further:

“A single act of extreme cruelty is not sufficient to justify desertion, where such an act was provoked by the behavior of the other party.”

It is respectfully submitted that the petitioner did not prove a case of extreme cruelty and that the evidence is not sufficient to sustain the decree below and should be reversed.

POINT II.

There is no evidence upon which to base the decree for alimony at the annual sum of \$2,548.

There being no evidence in the case of the financial status of the defendant, and there being no evidence to sustain the allowance of permanent alimony, the decree in this respect should be reversed.

As stated before, the decree *nisi* was advised and permanent alimony fixed therein without any notice to and without the defendant or his solicitors being present. Application was made on notice to vacate the decree upon these grounds, and for a reargument upon the ground that the decree was entered without any notice to the solicitors for the defendant and upon the further ground that the defendant had not been heard upon the question of alimony or counsel fees (p. 153). This application was denied (see Order, p. 154).

The memorandum of the Vice Chancellor does not refer in any way to the amount of alimony or counsel fees allowed.

It may be contended that there were before the Court affidavits on both sides which were filed on the application for alimony *pendente lite*, and counsel fees. It is respectfully submitted that an allowance of permanent alimony cannot be based upon *ex parte* affidavits of this nature and can only be based upon evidence taken at the trial.

POINT III.

There is no evidence upon which to base the decree for counsel fees.

The counsel fee of \$400, fixed in the decree *nisi* was so fixed without notice to the defendant or his solicitors. What has been said in Point II applies with equal force to the allowance of counsel fees.

In addition to the \$400 counsel fees allowed in the decree *nisi*, the solicitor for the petitioner had already received a temporary counsel fee of \$250 and that prior to this allowance there had been paid to counsel for the petitioner a counsel fee of \$100 (see Stipulation, p. 158), making in all, if the solicitor for petitioner is paid the \$400 allowed in the decree *nisi*, the sum of \$750.

It is respectfully submitted that this counsel fee, fixed without notice and without any evidence in the record, for this *ordinary divorce case*, is excessive. Also as there is no evidence in the record upon which to base this amount it should be reversed.

CONCLUSION.

In conclusion it is respectfully submitted that the evidence does not justify the decree below granting to the petitioner a divorce upon the ground of extreme cruelty. Under all of the cases in this State, the Court is most cautious in granting decrees for extreme cruelty and require the most satisfactory proof. In this case it is uncontradicted that the petitioner and defendant lived together for many years. They have a daughter of whom both were very fond. The uncontradicted evidence

shows that the defendant was a home man. He did not drink, and petitioner was perfectly frank in saying that she had no cause to complain on this ground. The petitioner's own story, when boiled down, would not in our opinion justify a decree in her favor. The petitioner admitted that she had no cause to complain against defendant because of the support afforded her by him. That she did not fear for her personal safety or had any fear of bodily harm from her husband is fully indicated by the fact that she remained living under the same room with her husband until after her petition was filed.

The only tangible evidence that is in anywise attempted to be corroborated is the fact that the defendant called his wife a prostitute on a couple of isolated occasions. As stated before, this man was twenty years older than his wife. The testimony cannot be read by any disinterested person and any other conclusion drawn than that the real trouble in this case was that the wife had become tired with living with a man twenty years older than herself and a man whose desires were of the most quiet nature, and he was what we might term essentially a home man. This was augmented by the fact that when she took the trip to England in May, 1926, she acquired more freedom and met this particular man of her own age on the boat, and became enamoured with him, or rather, with the life which she could live if she were married to a man of this type.

I desire to advert to one other fact. So far as the testimony goes these parties lived together normally from January 10th, 1927, up until August when the petitioner left the home. The petitioner said that she did not have intercourse with her husband after January 10th, 1927. This the defendant denies and says that it was not until some

time in March that intercourse between himself and his wife stopped. There is no testimony that they slept in separate beds or anything of that nature. The presumption of law is that where husband and wife live under the same roof that they are presumed to have intercourse together. Of course, the burden of proof is on the wife and unless she can sustain that burden that there was no intercourse within six months prior to the filing of the petition, there can be no divorce granted.

Vice-Chancellor FALLON, in the case of *Keller v. Linsenmyer*, 101 N. J. Eq. 664, in dealing with this question of presumption of cohabitation where the parties are living together under the same roof as husband and wife, following an opinion of Vice-Chancellor BENTLEY, said on page 671:

“The petitioner says he had no sexual intercourse with the defendant after the time of a knife incident which he testified to—and which appears, from the testimony and a letter referred to, to have occurred prior to January 9th, 1926—yet he testified he had sexual intercourse with her until ‘the last part of January, 1926.’ The presumption is that while the parties resided together as husband and wife, sexual intercourse was indulged in. In *Woodward v. Heichelbech*, 97 N. J. Eq. 253 (at p. 255), Vice-Chancellor BENTLEY says: ‘So long as human nature remains as it is and always has been, no court should be asked to find that there has been no sexual congress between a man and his wife except upon proof of the most satisfactory and convincing kind.’”

Again I urge the Court to read the letters written by Mrs. Ross to her husband, which are in evidence and feel convinced that these letters written under normal conditions when the entire testimony is considered, demonstrate that there was no extreme cruelty in this case.

It is respectfully submitted that the decree below should be reversed and the cause remitted to the Court of Chancery with directions to enter a decree dismissing the petition for divorce.

Respectfully submitted,

HARRY LANE,
Of Counsel with Appellant.

CAREY & LANE,
Solicitors.

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New Jersey Court of Errors and Appeals.

BETWEEN

ESTHER ROSS,
Petitioner-below,
Respondent,

and

CHARLES ROSS,
Defendant-below,
Appellant.

On Petition for
Divorce.

On Appeal from
Chancery.

BRIEF OF RESPONDENT.

Statement of Case.

This is an appeal from a decree granting a divorce to the respondent on the ground of extreme cruelty.

The action was contested and was tried before a Vice-Chancellor. Both petitioner and defendant testified as did other witnesses for each of the parties.

The Vice-Chancellor who tried the case filed a memorandum opinion which appears in the State of Case at page 155. In its opinion the Court enumerates various acts of cruelty, discusses the testimony of both parties and states that the petitioner is corroborated in her testimony and that in the opinion of the Court the testimony of the defendant is not convincing.

In substance, therefore, the decree in favor

of the petitioner was entered because the Vice-Chancellor was convinced that the testimony of the petitioner and her witnesses was credible, whereas the testimony of the defendant was not credible or convincing.

Four grounds of appeal are relied on by the appellant (Appellant's Brief, p. 4). Briefly these grounds are that the Vice-Chancellor erred in finding that defendant was guilty of extreme cruelty and that the evidence did not justify the decree and on the further ground that the allowance to the petitioner of alimony and to her counsel of counsel fee was not justified.

If the petitioner presented evidence making out a case of extreme cruelty and there was corroboration of this evidence she was entitled to the decree for the divorce irrespective of whether defendant denied the acts of cruelty or not.

To reverse the findings of the Vice-Chancellor on this issue there must be an absence of credible testimony constituting cruelty or an absence of sufficient corroboration. If the testimony was sufficient the Vice-Chancellor, who is the judge of the credibility of the witnesses, is entitled to believe the petitioner and her witnesses and to disbelieve the defendant and his witnesses.

As a matter of fact the Court decided this issue for credibility in favor of the petitioner and so states in the Court's opinion (p. 155).

Accordingly the decree can be reversed only if there is a failure of competent testimony to support the Court's findings.

As will be shown herein, there is an abundance of competent testimony showing acts of extreme cruelty and an abundance of convincing testimony in corroboration thereof.

As to the other grounds of appeal relating to alimony and counsel fee, the decision of the Court rests on other considerations which will be taken up under Point V.

POINT I.

The law is well settled that the acts proven by petitioner constitute extreme cruelty so as to justify a decree of divorce.

It is unnecessary to cite any cases to the effect that cruel treatment combined with actual physical violence, which in fact break down the health of the petitioner constitute cruelty.

Apart from actual physical violence, it is well settled that a false accusation of sexual infidelity is itself sufficient to justify a divorce.

Hill v. Hill, 127 Atl. 584.

The Court says:

“To a refined and virtuous woman, an accusation of adultery would be far more cruel than a blow. It is common knowledge that in defense of her honor, she will sacrifice her life. Hence, to be charged with the crime that makes her a social outcast, by the man who should of all the world believe in her, is the most torturing treatment to which she can be subjected.”

Hauenstein v. Hauenstein, 95 N. J. Eq. 34.

Here Chancellor Walker says:

“A false charge of adultery doubtless would be extreme cruelty.”

“So thought Chancellor Van Fleet in *Black v. Black*, 30 N. J. Eq. 215, at page 221; “And I concur.”

This is the case that appellant, by quoting the head note only, claims has no bearing on the present action. But the quotation from Vice-Chancellor Walker’s opinion clearly demonstrates the contrary.

The fact that petitioner remained under the same roof with defendant until she brought her action does not affect her rights.

Hart v. Hart, 99 N. J. Eq. 373.

The Court says:

“It is to be observed that there is nothing in the act which precludes the offended party from obtaining a divorce because he or she may be living under the same roof; the only limitation that the statute imposes is that no petition for divorce shall be filed until after six months from the date of the last act of cruelty * * * it is left entirely to the free determination of the injured party whether or not to submit to the continuation of the domestic relation or to sever it.

The right to a divorce, however, is complete and fixed at the time of the last act of cruelty.”

As a matter of law, the corroboration of petitioner by her witnesses was ample.

There need be no corroboration of each particular act of cruelty complained of, but only such corroboration as to facts and circumstances which gives the Court reason to believe in the truthfulness of the petitioner. If corroboration exists in one instance, the Court has a right to

assume that petitioner's statement as to other instances are true.

Coe v. Coe, 97 N. J. Eq. 57.

The Court says:

"It is contended that, though the petitioner be believed, a decree should be denied because her testimony is not corroborated in accordance with the rule in divorce cases. That rule requires that the truthfulness of petitioner's testimony be verified by other witnesses to the occurrences or by the surrounding established circumstances. If they bear witness to some of the material things sufficient to satisfy the conscience of the court that the petitioner's testimony as a whole is credible and worthy of belief, that is enough. *Lasker v. Lasker*, 91 N. J. Eq. 352; *Meek v. Meek*, 92 N. J. Eq. 23; *Orcutt v. Orcutt*, 94 N. J. Eq. 303; and *Smith v. Smith*, 96 N. J. Eq. 59, 2 N. J. Adv. Rep. 1188."

In a case just decided on September 30th, 1929, a similar rule was laid down.

Swartz v. Swartz, 105 N. J. Eq. 169,
Adv. Rep. for October 12th, 1929,
Vol. 7, No. 41.

The Court says:

"The surrounding circumstances, adequately established, may be of a nature to fully supply the office of corroboration which the law requires in matrimonial cases."

Robinson v. Robinson, 83 N. J. Eq. 150,
affd. 84 N. J. Eq. 201.

The testimony of both Mrs. Capen and Miss Brockelmann as to statements as to the cause of petitioner's wretched health, which in each instance were brought out by the questioning by the witness of the petitioner, are admissible under the case of

Haskel v. Haskel, 99 N. J. Eq. 399.

Petitioner's rights are in no wise affected by the fact that she continued to live in the house and tried to keep on as friendly terms as possible with defendant. This was substantially forced on her by her penniless condition and by reason of the fact that she wished to do what she could to protect the child.

Even a friendly attitude towards defendant does not bar her right of action for cruelty unless it goes to the extent of actual condonation.

This is well set forth in the recent case of

Klein v. Klein, 140 Atl. Rep. 233.

Here Vice-Chancellor Backes says:

"What she did afterwards may reflect the conduct of the parties and her state of mind during cohabitation; but it is not a bar to her right to relief, if the right of action existed and she did not forfeit it by condoning the offense."

"A wife, continuing after brutal conduct on the part of the husband, does so in most cases, not in a spirit of forgiveness, but in the hope that he may mend his ways, or that she is constrained to do so because of children or her own necessities."

POINT II.

There was ample evidence of extreme cruelty to justify the decree.

The extreme cruelty proved by the petitioner and her witnesses consisted of the following acts:

From about the 1st of January, 1924, he ceased to show petitioner any love or affection, was rough and brutal to her, occasionally beat her, called her "a dirty bitch", ordered her out of the house and said he no longer had any more love for her. In the presence of a friend he unjustly accused her of living with other men and with having sexual intercourse with other men.

He generally treated her in a cold, indifferent and cruel and brutal manner and during the entire period of their married life took her to but one show.

By the Spring of 1926, petitioner's nerves and general health had been so broken down by defendant's cruelty that she went abroad on a steamer, and upon her return in the Autumn of 1926, defendant resumed his cruel treatment and repeated his unjust allegations of sexual misbehavior on her part.

He called her a prostitute on several occasions in the presence of a third party.

In January, 1927, the last act of intercourse between the parties took place; this was accomplished by physical violence of defendant upon petitioner.

Before 1924, petitioner was strong and well. In the Spring of 1927, she was a physical and nervous wreck and has been in a very serious physical condition because of defendant's frequent acts of extreme cruelty.

PETITIONER'S TESTIMONY.

They got along fairly well at the beginning of their married life, but around the beginning of January, 1924, defendant started a course of cruel treatment. He began to beat her and accused her of going out with other men and generally treated her in a very bad way (p. 15, l. 9). When he got angry he called her a "dirty bitch" and ordered her out of the house and said he did not have any more love for her (p. 15, l. 19). He showed jealousy whenever any man was in the house (p. 15, l. 36). After her return from England in 1926, he said to her that she had broken her marriage vows, had dragged his name in the dirt and said she had been having sexual relations with other men (p. 16, l. 3). These accusations were made in the presence of Miss Brockelmann (p. 16, l. 14). There was no reason for these accusations (p. 18, l. 8).

These accusations were brought up in the presence of petitioner, Miss Brockelmann and defendant (p. 17, l. 20). These same accusations were brought up in the presence of petitioner, defendant and Mrs. Capen (pp. 18 and 19).

On another occasion defendant seized petitioner by the arm, twisted it and tore her coat, told her that he wished she would get the hell out of the house, that he didn't care for her, that he only cared for the child and didn't wish to have anything more to do with her (p. 20, l. 10). About the 1st of January, 1927, cohabitation between the parties ceased (p. 20, l. 40). On this occasion defendant told petitioner she had broken her marriage vows, was nothing but a street walker and told her to get out (p. 21, l. 10).

After cohabitation ceased defendant was still

cruel to her. He made black and blue marks on her (p. 21, l. 21). He raised his hand to her and said, "By God, I could kill you" (p. 21, ll. 28 to 33).

She left him about July, 1927 (p. 21, l. 35). She stayed in the house until that time because she wished to keep the home together for the sake of the child and she was broken down in health, had no money and her family could not support her. She stayed in the house until the time of the institution of the suit (p. 21, l. 37; p. 22, l. 8).

CORROBORATION.

The testimony of the petitioner is corroborated in almost all its details by her witnesses.

Mrs. Capen testified as follows:

She knows both parties intimately (p. 34, l. 25) and visited them the last time in February, 1926, before petitioner went to Europe (p. 34, l. 34). She noticed that petitioner was a pitiable looking little thing (p. 35, l. 14). She pried out of petitioner the cause of her condition (p. 35, l. 16). In response to her questions to petitioner as to the cause of her sick condition, petitioner told her as to the cruel treatment of defendant, that he had called her vile names, *including prostitute and street walker* (p. 35, ll. 30 to 40; p. 36, l. 4). These complaints were taken up between petitioner and defendant in the presence of Mrs. Capen. *Petitioner went into detail as to the things she had previously told the witness and her husband admitted everything, he admitted that it was his fault* (p. 36, ll. 31-40). Petitioner tried to show a feeling of affection towards defendant but he always rebuked her (p. 38, l. 10).

John Rich, a brother of petitioner, testified as follows:

From September, 1924, defendant was very surly to petitioner (p. 42, l. 24). The petitioner's health was good before the marriage, but after the marriage it was a steady decline (p. 42, l. 30). Defendant was disagreeable, refused to engage in conversation with petitioner (p. 43). On one occasion, in the presence of petitioner, defendant told the witness that he had no use for his wife at all; that he would not be living in the house with his wife if it wasn't for the child (p. 44, l. 10). Witness heard defendant say petitioner was unfaithful (p. 44, l. 36). On another occasion, defendant said his married life was not very important and that his wife was worthless (p. 45, l. 28). On another occasion, witness told defendant that petitioner had told the witness that defendant called petitioner a prostitute. Witness said to defendant, "You know very well that is not true". Whereupon defendant said, "I am not so sure" (p. 48, ll. ~~35-35~~). Defendant did not deny that he had accused petitioner, but admitted that he had said it (p. 49, l. 6).

35-40

Miss Brockelmann testified by deposition as follows:

She had been acquainted with the parties for several years (p. 103, l. 15), and visits were frequent between the witness and the parties (p. 103, l. 25).

Defendant had a habit of calling petitioner names and wouldn't speak to her at all and then for no reason at all would fly into a terrible rage (p. 104, l. 15). On one occasion, witness heard

defendant tell petitioner to get the hell out of the house (p. 104, l. 25). In the presence of witness and petitioner, before she went to Europe (she went to Europe in Spring of 1926), defendant made accusations concerning the petitioner. *He accused her of being untrue to him* and not being a good wife to him (p. 104, l. 30). This was in the Summer of 1925 (p. 104, l. 34). Defendant *never* had any affection or love for petitioner and so stated to petitioner (p. 105, l. 16). *On the return of petitioner from Europe, defendant accused petitioner, in presence of a friend, of living with another man* (p. 106, l. 40). She denied this accusation (p. 107, l. 11). This accusation put petitioner in a terribly nervous and hysterical condition. P 107, 15.

Witness often heard the statement made by defendant that petitioner had dragged his name in the dirt (p. 107, ll. 27 to 35). Defendant never showed any love or affection for petitioner (p. 108, l. 35). On two occasions *defendant called petitioner a prostitute in the presence of the witness* (p. 109, l. 17).

Witness saw a torn coat on one occasion and on another occasion saw a blue mark on the wrist of petitioner (p. 109, l. 34; p. 110, l. 15).

Petitioner was always courteous to defendant and tried to make the best of things (p. 111, l. 25). On an occasion before May, 1926, when defendant accused petitioner of going out with other men, he called her names, including son of a bitch (p. 129, l. 10).

POINT III.**Defendant's testimony is wholly unconvincing.**

Defendant denies all the material acts of cruelty charged against him, but his denials are far from convincing.

The most serious charge against defendant and the one that is most fully corroborated is that he falsely accused his wife of adultery. It is respectfully contended that defendant in his testimony admits the charge, which itself constitutes extreme cruelty.

He admits that he had used the words accusing her of being "untrue to her marriage vows", and that this statement was made in the presence of Miss Brockelmann (p. 71, l. 22).

Defendant says (although no explanation was so given to petitioner) that he only meant this expression, "untrue to her marriage vows," not in the sense of meaning adultery but in the sense of having given her love to another man. He says (p. 70, l. 25):

"I accused her of being unfaithful in her marriage vows, in giving her love to another man."

And again on page 71, line 9:

"Q. You didn't mean to convey that she had been intimate with another man? A. No, sir; that she had given her love to another man."

It will be seen from the foregoing that the defendant is trying to squirm out of the consequences of the statements which he certainly made and

which were abundantly proved by other witnesses, by giving a somewhat more innocent turn to his words.

How much credence is to be given to his lame and unconvincing explanation may be determined by the testimony of other witnesses; that he called her a "son of a bitch", a "street walker" and a "prostitute".

John Rich testified (p. 48, l. 35, and p. 49, l. 6) that defendant had admitted that he called his wife a "prostitute" and had accused her of infidelity and that defendant then went on to say that he was not so sure that she was innocent.

Miss Brockelmann testified (p. 104, l. 30) that he accused petitioner of being untrue to him; on page 105, line 30, that she had broken her marriage vows; on page 106, line 39, that *he accused her of living with this other man*; and on page 109, line 17, on two occasions he called her a "prostitute".

The Vice-Chancellor says, on this point:

"Petitioner testified in considerable detail as to the extreme cruel treatment and as to the physical injury inflicted upon her on several occasions and as to the fact that the defendant made threats to do further physical injury to her and to the fact that he had called her prostitute and told her to 'get the hell out of the house'.

"The defendant denies the assaults but admits that he had accused his wife of not being true to him and that she had broken her marriage vows. He offered no credible testimony as to his justification for these accusations."

Appellant makes the claim that the parties last cohabited together in March, 1927, and accord-

ingly within six months from the beginning of the action.

On this point the Vice-Chancellor in his opinion says:

“The only testimony indicating any such condonation was that of the defendant and his statements are not convincing.”

The testimony of the defendant as to the alleged intercourse in March, 1927, are substantially contradicted by his own testimony and are preposterous in view of the circumstances of the parties at that time.

The testimony of the defendant is as follows (p. 57, l. 17). He says:

“I had intercourse up and until the middle of February and subsequently on one occasion in March, 1927. ~~XX~~ That was probably the latter part of March, 1927.”

On page 66, line 6, he reduces this to the statement that he had relations with petitioner on one occasion after January, 1927.

On page 74, line 18, he says petitioner cohabited with him for a short time after she got back from Europe. (She arrived in October, 1926.)

On page 79, line 15, he says:

“I don't know. I don't keep a diary of when I have intercourse with my wife.

Q. What was the incident? A. I remember February by a certain incident that occurred in February.”

On the same page, line 27:

“It took place once after that. I don't know why it didn't take place after that.

I had no dispute that night. There was no reason that I know of. I just stopped all of a sudden."

His own statements show how unsatisfactory and unconvincing the testimony of defendant is. In fact, intercourse had ceased long before March and as petitioner testified, on the 10th day of January.

Defendant tried to create the impression that he was a good and kind husband. Some light on this may be shed by his admission in respect to a question by the Vice-Chancellor (p. 65, l. 28), that in seven years he never but once took her to the theatre and that as soon as his wife had left him he killed her two dogs. 38

Defendant's counsel seemed to lay much stress on a letter, no longer in existence, written by petitioner to defendant, while she was in Europe in 1926.

Mr. Dennis, who was at the time an attorney for defendant, testified over objection of counsel as to his *recollection* of the contents of this letter. This is discussed by appellant in the brief, page 16.

Petitioner's statement as to the contents of this letter is as follows: She wrote defendant several times and referred to different people (p. 26, l. 28). She said about one particular man that he had been very nice to petitioner and the child (p. 26, l. 32). She did not say that she had become very much infatuated with this man (p. 28, l. 7). She mentioned in this letter that she had met the man and that he had helped her out with the child; that the child was very active and had sort of kept an eye on the child for petitioner (p. 28, l. 20). 28

In view of the fact that upon petitioner's re-

turn from Europe in the Fall of 1926, she resumed cohabitation with him and lived with him as his wife until January 10th, 1927, it is highly improbable that these letters contained any admission that she was infatuated with another man and that she would never live with defendant again as his wife. It is a contradiction in itself. The testimony of both parties is that they had lived together as husband and wife after her return from the trip on which the letters were written.

Defendant testified (p. 30, l. 38) that when she left defendant, she had done a general tidying up and maybe she had destroyed the letters because she didn't want to leave them around. Nobody told her to destroy the letters. She doesn't think there was anything in them; they were lying around; they were just statements of what she had been doing.

DEFENDANT'S WITNESSES.

Besides Mr. Dennis, one of defendant's attorneys, who testified as to an attempted reconciliation, defendant produced two witnesses. *Herbert Brockelmann* testified (p. 83) only that he personally did not observe anything of cruelty, and apparently that petitioner started to tell him about defendant's acts of cruelty to which he paid no attention and took no notice.

The only other witness was *George B. Keeler*, who testified only that he had some cats put away at the time defendant had petitioner's dogs killed.

POINT IV.

The appellant's brief in discussing the testimony does not fairly and accurately set it forth.

Defendant's brief is mostly taken up with the discussion of defendant's denials.

Since the Vice-Chancellor was the judge of the credibility of the witnesses and expressly states in his opinion that he doesn't believe the defendant, the mere fact that defendant denied the accusations of cruelty clearly proved against him is scarcely convincing.

As to appellant's alleged résumé of petitioner's testimony a comparison of defendant's version set forth in the brief and the actual testimony as it appears in the State of the Case and as abstracted herein under Point II shows that appellant has omitted almost all the testimony damaging to defendant.

As an example of the distortion of the testimony made by the appellant's brief, on page 7 it says:

"At the foot of page 4 she alleges that the defendant made unjustified accusations in the presence of a mutual friend that petitioner had sexual relations with other men. There is absolutely no corroborated testimony to substantiate this. The most that the petitioner's testimony goes to the fact that defendant was very jealous and further that he accused her of being unfaithful to him when she acknowledged her love for this man whom she had met on her way to and in England. The mutual friend testified that the defendant stated to her that he didn't believe that she had been intimate with another man."

In fact Miss Brockelmann testified that defendant accused petitioner of being untrue to him and on two occasions defendant called petitioner a prostitute.

The exact testimony of Miss Brockelmann is as follows (p. 104, line 30) :

“Q. What did he accuse her of? A. *Being untrue to him and not being a good wife to him.*”

(P. 106, l. 39) :

“Q. Just state what he said to her? A. *He accused her of living with this other man.*”

(P. 109, l. 16) :

“Q. Did he ever make any other accusations against her in your presence? A. *On two occasions he called her a prostitute in my presence, yes.*

Q. And what other accusations did he make against her in your presence? A. *That she had broken her marriage vows, that she was not a faithful wife to him and that she never tried to please him.*”

On pages 35 and 36, *Mrs. Capen* testified that petitioner told her that defendant had been very cruel to her and had called her many vile names such as prostitute and street walker. At the bottom of page 36 she testified that these accusations were brought up before defendant, that petitioner went into detail as to defendant's treatment of her and his unjust accusations, and defendant admitted everything and said he was at fault.

John Rich testified on page 44, line 37, that defendant accused his wife of being unfaithful, and on page 48, bottom of page and top of page 49,

that defendant admitted that he had accused her of infidelity.

Under the circumstances it is rather extraordinary for defendant's counsel to assert "there is absolutely no corroborated testimony to substantiate" the "unjustified accusations * * * that petitioner had sexual relations with other men." As a matter of fact, every one of petitioner's witnesses corroborated her on this point.

POINT V.

The allowances of alimony and counsel fee were proper.

Appellant lays stress on the fact that the State of the Case herein does not contain the evidence upon which the alimony and counsel fee were based and that the allowance of \$400 in the decree *nisi* is excessive.

It is true that the facts as to the basis of allowance of alimony and counsel fee do not appear in the State of the Case.

It is also true that in a divorce action the amounts of alimony and counsel fee are often determined by a Vice-Chancellor on facts not recited in the printed testimony, but upon facts brought out on argument of counsel, admissions and briefs. Facts known to the Court by reason of the arguments of counsel, affidavits and admissions of counsel at the preliminary hearing, and also upon admissions, and facts as to the abilities of the husband and needs of the wife presented upon application for permanent alimony and counsel fee at the end of the trial sufficiently acquainted the

Court with these matters upon which to predicate an allowance.

The fact in this case is that an application for alimony and counsel fee was twice argued on a motion for alimony and counsel fee *pendente lite* and defendant's assets were then disclosed. The Vice-Chancellor accordingly was in a position to know what the faculties of the defendant were.

At the conclusion of the trial respective counsel gave oral argument as to the facts testified to and as to the application for permanent alimony and counsel fee. Petitioner submitted a brief in which these assets were set forth and this brief was submitted at the hearing. Solicitor for petitioner was directed by the Court to give copy to defendant's counsel who was then given an opportunity to reply thereto. After submission of defendant's brief and additional memorandum the Court announced its decision.

Not only that but after the decree *nisi* had been signed, defendant made a motion for a re-argument which was granted, and on this motion for a re-argument, *not only were all the merits of the case gone into but also the application for alimony and counsel fee was re-argued at length.*

In fact, the Vice-Chancellor after this re-argument, wrote to the respective counsel as follows:

“Upon further reflection and consideration of the proofs in the case of *Ross v. Ross*, I think that Mr. Moore's client is entitled to a decree and counsel fee.

Yours very truly,

VIVIAN M. LEWIS.”

The State of the Case does not set forth the facts as to the re-argument and to remedy this, the respective counsel have entered into a stipulation as follows:

“NEW JERSEY COURT OF ERRORS
AND APPEALS.

BETWEEN

ESTHER ROSS,
Petitioner-below,
Respondent,

and

CHARLES ROSS,
Defendant-below,
Appellant.

It is stipulated as follows:

‘That the application on notice (p. 153) for a re-argument of the above case, and for an order vacating the decree *nisi* entered in the above entitled cause, and upon the ground that the same was entered without any notice to the solicitors for the defendant, and upon the further ground that the defendant has not been heard upon the question of alimony or counsel fee was argued before Vice-Chancellor Lewis by counsel for the petitioner and defendant, and that upon said argument counsel for the defendant argued the matters set forth in the notice and in addition suggested that the testimony be written up at the expense of the defendant and a re-argument of the entire cause on the merits be held and that the Court after reserving the decision sent a letter to respective counsel reading as follows:

‘Upon further reflection and considera-

tion of proofs in the case of Ross and Ross, I think that Mr. Moore's client is entitled to a decree and counsel fee.

Yours very truly,

VIVIAN M. LEWIS.'

The testimony had not been transcribed.

It is further stipulated the foregoing stipulation shall be considered as an addition to the State of the Case and as a part thereof and that the solicitor for the respondent shall print a copy of this stipulation in his brief to be submitted herein.

Dated, October 15, 1929.

EDWARD THOMAS MOORE,
Solicitor for Petitioner-Respondent.

CAREY & LANE,
Solicitors for Defendant-Appellant."

It is sufficiently obvious that the Vice-Chancellor did not fix the amount of alimony and counsel fee until sufficiently acquainted with the facts upon which to predicate a reasonable allowance. That basis in part actually was the disclosure of the defendant's assets by the affidavits on the motions for temporary alimony; the admissions therein contained and the admissions made by his counsel on the applications and undisputed facts presented by solicitor's solicitor. The fact that defendant in this very action has been represented by four or five eminent counsellors of the State of New Jersey, was undoubtedly a factor in the determination of his faculties. Among the array of counsellors referred to are

Holmes V. M. Dennis, Esq., David I. Edwards, Esq., Edward M. Salley, Esq., Harry Lane, Esq., and Woodward, Dennis and Buhler, counsellors at law.

The memorandum of the petitioner submitted to the Court, both at the end of the case and also upon the rehearing, recited specifically certain admitted assets of the defendant which were of course less than those claimed by petitioner. They were as follows:

Assets, Real Estate	\$7,500 \$5,000.
Bond Public Utility	500
Cash	800
Salary	6,000

It is a recognized practice for the determination of alimony and counsel fee to be more or less informal at the conclusion of the trial and without a stenographer taking down the arguments, statements and admissions of the respective parties. The Vice-Chancellor simply followed the usual practice in this regard.

As to the claim that the allowance to petitioner's counsel is excessive, little need be said. Defendant was represented by several of the prominent members of the New Jersey Bar. The action was hard fought from start to finish as is shown by the voluminous record which includes the taking of depositions out of court; 130 folios of affidavits, seven hearings on motions and three hearings on the merits and over sixty letters exchanged by counsel. If defendant has been able to retain these well known attorneys the counsel for his wife would seem certainly to be entitled to a reasonable compensation for his services.

POINT VI.

Counsel for respondent asks for a reasonable allowance of counsel fee for his services rendered in the proceedings on appeal.

Appellant has filed a brief herein, going into great detail into most of the testimony in the action, taking up every point in the action, and this has necessitated a long and careful examination of the State of the Case and the careful preparation of a rather voluminous brief both on the law and on the facts in this action.

CONCLUSION.

It will be seen from the foregoing that the appellant has not shown any ground for reversal and has not sustained any of the grounds of appeal cited in his brief.

1. The respondent was entitled to be divorced from the bonds of matrimony.

2. The petitioner was entitled to alimony and the alimony allowed was not excessive and the defendant was heard in respect thereto.

3. The allowance of counsel fee was not exorbitant or excessive but in fact was very reasonable under the circumstances and for the services rendered. The defendant not only had notice of the application for the allowance of counsel fee and was heard upon the application but as a matter of fact was heard upon a reargument of this application.

4. The evidence justified the decree for divorce and the Vice-Chancellor had ample information upon which to base the allowance of alimony and counsel fee.

Respectfully submitted,

EDWARD THOMAS MOORE,
Solicitor and of Counsel for Respondent.

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