

SUMMONS.

THE STATE OF NEW JERSEY, to Hannah Sweitzer.

You are summoned to answer the annexed complaint of Anna M. Butler in an action at law in the New Jersey Supreme Court, Burlington County; And take notice that unless you file your answer to the said complaint with the clerk of the New Jersey Supreme Court at Trenton, New Jersey, Within Twenty Days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the said suit and judgment may be entered against you. 10

Witness, HONORABLE SAMUEL KALISCH, Judge of the New Jersey Supreme Court, at Trenton, this tenth day of September, nineteen hundred and twenty-three.

EDWARD J. KELLEHER, 20  
*Clerk.*

ROBT. PEACOCK,  
*Attorney.*

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[ENDORSEMENT]

Duly served within summons and complaint, September 12th, 1923, personally on Hannah Sweitzer, at 5300 Atlantic Avenue, Atlantic City, Atlantic County, New Jersey. 30

Malcolm B. Woodruff, Sheriff, by  
James Cimino, Under Sheriff.  
Sheriff's fees \$5.22.

RECEIVED Sep. 12, 1923, SHERIFF.

## COMPLAINT.

(Filed Sept. 24, 1923.)

## NEW JERSEY SUPREME COURT.

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ANNA M. BUTLER, <i>Plaintiff,</i>	}	Action at Law. Complaint.
v.		
HANNAH SWEITZER, <i>Defendant.</i>		

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20 The plaintiff, Anna M. Butler, residing at Atlantic City, in the County of Atlantic, and State of New Jersey, says that:

1. On April 25, 1917, at Atlantic City, New Jersey, she became the wife of Martin J. Butler and that she and her husband lived happily thereafter as man and wife, at Atlantic City, New Jersey, aforesaid.

30 2. That soon after the marriage of the plaintiff and Butler, and while they were living happily together, the said defendant, Hannah Sweitzer, unlawfully contriving and intending to deprive said plaintiff of her comfort, society and aid of her husband did maliciously and by numerous conversations and letters attack, slur and run down the character, habits and behavior and actions of the plaintiff, with the intent to maliciously persuade the said Martin J. Butler that she was not a good, true and loving

wife to him, with the purpose of causing the said Martin J. Butler to abandon the plaintiff and with the malicious intent to destroy the affection existing between the plaintiff and said Martin J. Butler and to excite ill-will and hatred on his part toward her.

3. That thereupon the defendant, Hannah Sweitzerr, contriving and maliciously intending to aggrrieve and injure the plaintiff and to deprive her of the comfort, company and fellowship of her said husband, the said Martin J. Butler, then and now the husband of the plaintiff, and of her support from him and aid and assistance in domestic affairs and her character as a lawful wife, did shortly after his said marriage and during the year nineteen hundred and twenty-two, wrongfully, injuriously, maliciously and with intent as aforesaid, entice, instigate, persuade, aid and procure the said Martin J. Butler, husband of the plaintiff, unlawfully and against the will of the plaintiff, to desert her and depart, absent and separate himself from her and to continue to absent, separate and depart from her against her consent.

4. That by means of which malicious enticement, instigation, procurement, aid and action of the defendant, the said Martin J. Butler, husband of the plaintiff, afterwards on the day last aforesaid, at Atlantic City aforesaid, against plaintiff's consent and secretly deserted her, his said wife, the plaintiff, and the children of said marriage and has continued to absent, separate and be apart from her in some place fixed by the defendant.

5. That she, the plaintiff, has always been a good, true and loving wife to the said Martin J. Butler, as was known to the defendant, and the said defendant so conspiring with said intent, persuaded

the said Martin J. Butler to leave his wife and children and go and live with her, the said defendant.

6. That the said defendant, in endeavoring to gain the affection of the said Martin J. Butler and to get him to desert his wife and two children, purchased and gave to the said Martin J. Butler, clothes, jewelry, large sums of money and did take him in as a partner in the business, placed the business in his name, assists him in the business, goes under the name of Mrs. Butler; has gone on numerous trips, and did shower upon the said Martin J. Butler, affection, by loving him and in numerous other ways to gain the affection of the said Martin J. Butler, until sometime the latter part of the year, nineteen hundred and twenty-two, the said Martin J. Butler, in consequence of the said actions of defendant, becoming dissatisfied and *did* contended with his wife, the plaintiff, and in pursuance of the wishes of said defendant, suddenly and without warning abandoned his wife, the plaintiff in this cause, and went to live with the defendant, where she now resides.

7. The said plaintiff and Martin J. Butler have two children of the said marriage, to wit, Joseph, age 5 years and age three years, who are now in the custody of the plaintiff and who have lost the aid, comfort, affection and support of their said father, Martin J. Butler, because of the malicious actions of the defendant in this cause.

8. That by reason of the premises the plaintiff and her two children have been and still are wrongfully deprived by the defendant of the care, love, confidence, protection, help, support, comfort and society of their husband and father, Martin J. Butler, that by reason of said wrongful enticement and detention of her husband, plaintiff has been forced to go and live with strangers, has been deprived of her

home and of the social intercourse and confidence of her friends and is doubted by those who do not know her, and has suffered great trouble, mental pain and her reputation in the community and has been put to great trouble and expense, and has lost the company and fellowship of her said husband and his aid and assistance and support in her domestic affairs, which she and her children, during that time, ought and would have had and enjoyed with her said husband. And said plaintiff has been put to great trouble and expense in endeavoring to support and maintain herself and her children. 10

Plaintiff demands as damages, fifty thousand (\$50,000) dollars.

ROBT. PEACOCK,  
*Attorney for Plaintiff.*

Filed Sept. 24, 1923.

EDWARD J. KELLEHER,  
*Clerk.*

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ANSWER.

(Filed Sept. 27, 1923.)

NEW JERSEY SUPREME COURT.

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ANNA M. BUTLER,  
*Plaintiff,*  
v.  
HANNAH SWEITZER,  
*Defendant.*

Action at Law. 30  
Answer.

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The defendant, Hannah Sweitzer, residing at Atlantic City, in the County of Atlantic and State of New Jersey, says that:

1. She neither affirms nor denies paragraph one of the plaintiff's complaint, but as to the same, puts the plaintiff upon her proof.
2. She denies paragraph two of the plaintiff's complaint.
3. She denies paragraph three of the plaintiff's complaint.
- 10 4. She denies paragraph four of the plaintiff's complaint.
5. She has no information sufficient to form a belief whether the plaintiff has always been a good, true and loving wife to the said Martin J. Butler, as alleged in paragraph five of the plaintiff's complaint, but the defendant denies the rest of said paragraph.
- 20 6. She denies paragraph six of plaintiff's complaint except as admitted in the following statement; that the said Martin J. Butler was a partner of the said defendant in business with the full knowledge and consent and satisfaction of the said plaintiff.
7. She denies paragraph seven of the plaintiff's complaint except as admitted in the following statement: The plaintiff has two children, one of the age of five years and one of the age of three years, but as to the custody of the said children, the defendant has no knowledge sufficient to form a belief.
- 30 8. She denies paragraph eight of the plaintiff's complaint.

PARSONS & PARSONS,  
*Attorneys of Defendant.*

Filed Sept. 27, 1923.

EDWARD J. KELLEHER,  
*Clerk.*

REPLY.

(Filed Oct. 30, 1923.)

NEW JERSEY SUPREME COURT.

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BURLINGTON COUNTY.

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ANNA M. BUTLER,  
  *Plaintiff,* }  
  v.            } Action at Law.  
HANNAH SWEITZER,  
  *Defendant.* } Reply.

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Plaintiff, Anna M. Butler, denies every allegation  
in the answer.

ROBT. PEACOCK,  
*Attorney of Plaintiff.*

Filed Oct. 30, 1923.

EDWARD J. KELLEHER,  
*Clerk.*

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## TESTIMONY.

NEW JERSEY SUPREME COURT.

BURLINGTON COUNTY.

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ANNA M. BUTLER,  
*Plaintiff,* }  
v. } Action at Law.  
HANNAH SWEITZER,  
*Defendant.* }

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Mount Holly, N. J., June 13, 1924.

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TESTIMONY

Before HON. THEODORE W. SCHIMPF, Judge, and a jury.

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APPEARANCES:

For plaintiff, ROBERT PEACOCK and J. MERCER DAVIS, ESQs. 10

For defendant, MESSRS. PARSONS & PARSONS.

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ANNA BUTLER, sworn for plaintiff.

Direct examination.

By Mr. Peacock:

20

Q. You are the plaintiff in this case, Mrs. Butler?

A. Yes.

Q. When were you married?

A. In 1917.

Q. And where were you married?

A. In St. Nicholas Catholic Church.

Q. Where?

A. Pacific and Tennessee Avenues, Atlantic City.

Q. After your marriage, where did you go to live? 30

A. In Pennsgrove, first.

Q. How long did you live there?

A. Only about three months.

Q. Then where did you go to live?

A. Then we went to Atlantic City, because my husband liked Atlantic City.

- Q. Where was he employed in Pennsgrove?  
A. For the Government.
- Q. Then when you went to Atlantic City, at whose suggestion was it that you went there?  
A. My husband's.
- Q. Where did you go to Atlantic City?  
A. We went to my sister's house.
- Q. What is her name?  
A. Mrs. Miller.
- 10 Q. How long did you live there?  
A. We only lived there a few weeks.
- Q. Where was your husband employed during that time?  
A. He wasn't employed. He didn't find anything in Atlantic City. Then we went to Camden.
- Q. Where did you live in Camden?  
A. With my sister, Mrs. Miller.
- Q. How did you come to leave Atlantic City and go to Camden?  
20 A. Because my brother-in-law got a position for my husband in Camden.
- Q. Where was he employed there?  
A. For the Government there, a shipyard.
- Q. How long did you live at Camden?  
A. Why, we lived in Camden about three months, I think.
- Q. Then where did you go?  
A. He got a better position in another shipyard there at Philadelphia and we lived in Philadelphia.
- 30 Q. How long did you live there?  
A. I believe almost a year.
- Q. Then where did you move to?  
A. Back to Atlantic City.
- Q. Whose suggestion was it that you came back to Atlantic City, yours or your husband's?  
A. My husband's.

Q. And when you went back to Atlantic City where did you live?

A. We got a house on I think it was North Indiana Avenue.

Q. Where was he employed at that time?

A. He didn't have any work. He thought Atlantic City was better in the summer time. That is when he first went to work for Miss Sweitzer.

Q. And as soon as you moved to Atlantic City did he go to work for Miss Sweitzer?

10

A. Yes, I think in about two weeks.

Q. What did he do during the first two weeks he was there?

A. He didn't do anything.

Q. Now, did you know where he was working when he first went to Miss Sweitzer?

A. I knew he was working with a fruit store but I didn't know just where.

Q. How long was it before you found out where he was working?

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A. I think he was working there only about a few weeks when he told me about a girl working in the store. I knew where the store was located. I didn't know the people.

Q. Had you ever been there?

A. No, I hadn't.

Q. How long had he been working there before you had been there?

A. He had been working there over a year and been in the business before I was there.

30

Q. Did he tell you who he was working for?

A. Yes, he told me.

Q. Who did he say he was working for?

A. He told me he was working for Miss Sweitzer and her brother-in-law.

Q. Now, during all this time that you were married up until the time you have described, was your married life and home life happy?

A. Yes, it was.

Q. Did you love your husband at that time?

A. Positively, yes.

Q. And at the present time?

A. Yes.

Q. Did he show affection for you?

A. He did until then.

Q. Now, you say he was employed there for about a year. What happened then?

10 A. Well, I hadn't been in the place. I knew about Miss Sweitzer long before I had been in the place.

Q. Then how did you come to go there?

A. Why, my husband told me when I went there that if I would go down there and be agreeable that he would get away from the place.

Q. Had you had any quarrels with him at that time, up to that time?

A. Yes, lots of quarrels.

Q. What about?

20 A. Well, the first time, the first quarrel we had, was the day he told me about Miss Sweitzer.

Q. What did he tell you?

A. I told my husband we would soon have another baby and he told me only for me he could marry somebody worth while and that her name—there was a girl in the store, her name was Hannah Sweitzer.

Q. What did he say about her?

30 A. He said she was crazy about him and she had lots of money.

Q. Were you pregnant at that time?

A. I was.

Q. And then what did he say concerning you being pregnant and this other woman?

A. He said that my being in that way he could never get away from me; that I must not have it.

- Q. Did he do anything?  
A. He bought me medicine.  
Q. And what did he do?  
A. He told me to take it.  
Q. For what purpose?  
A. So that I wouldn't have a baby.  
Q. Did you have a baby?  
A. Yes, I did.  
Q. You didn't do anything to get rid of the baby,  
but had the baby? 10

(Objected to.)

- Q. What did he tell you was his reason?  
A. That I was in his way; that he could marry  
somebody worth while if he wasn't married to me.  
Q. Did you ever talk with him about this woman,  
leaving her or not having anything to do with her?  
A. Yes, I asked him to leave her.  
Q. What did he say? 20  
A. At that time he told me he wouldn't; later on  
he told me he would.  
Q. Had your husband been staying home at nights  
and taking care of his family before he met this  
woman?  
A. Always.

Mr. Irving Parsons: I object. These questions  
are leading.

The Court: You will have to object to each ques- 30  
tion.

- A. Yes, he was.  
Q. What did he do then regarding being at home  
at night?  
A. Very often he didn't come home. When I

would ask him where he was he told me he was staying in the apartment where Miss Sweitzer was.

Q. Where was that apartment?

A. I don't remember where that apartment was. When he first started it was near the Boardwalk. He used to tell me how beautiful it was.

Q. Did they have a room at the store?

A. Yes, they had a room.

Q. How was that furnished?

10

(Objected to.)

The Court: Yes.

Q. Did Miss Sweitzer have a room at the store?

A. Yes.

Q. How was that furnished?

A. He had a cot in it and a table, some chairs and, I think, a stove.

Q. When did you find that out?

20

A. When I went to the store.

Q. How many times have you spoken to your husband about leaving this woman?

A. Lots of times; I don't remember how many.

Q. Tell the jury just at those times what was said by you and your husband. What took place? Proceed to tell the jury.

30

A. I told him we were pals before and we couldn't be then. And he told me that some day he would get away from her again; he knew that he had done what was wrong and he knew that I was right. And every time I would ask him about it he would tell me, "Well, I can't now, because as soon as I can sell my share of the business I will get away from her." But he never sold it, and every time I went away from him he would tell me if I would just live with him he would leave her again, and each time he didn't do it.

Q. How many times did your husband and you separate?

A. This is three.

Q. What happened the first separation?

A. The first separation we had a quarrel over Miss Sweitzer. He told me I could like it or do as I liked about it, that he was not going to bother; he was set now, he was going to stay set. And I took my babies and went to my mother's.

Q. Where is that?

10

A. In Camden—Philadelphia. Then he asked my sister to give him my address, that he still cared for me, and he promised my sister he would give her up. Then he came after me. I worked there in Camden with my mother and brother. He told me no matter, for he knew he had a good girl—

(Objected to.)

The Court: The difficulty is the husband is not 20  
the defendant.

Mr. Peacock: It is to show the justification for this woman leaving her husband and the cause of it, which we can show by the acts of the defendant.

Mr. Davis: It is not, if your Honor please—I perceive the difficulty in the situation, namely, that this might be objectionable on the ground of hearsay. I apprehend that that is counsel's objection. 30

Mr. Parsons: Yes.

Mr. Peacock: But isn't this a part of the *res gestae*? I must confess that I haven't had an opportunity to look up the decisions on the question, but isn't the controversy between this lady and her hus-

band the res gestae of this action? And if it is the res gestae of the action isn't it admissible on that theory?

The Court: It seems to me if it is admissible at all it would be admissible that there was some proof of the delinquency of the defendant.

Mr. Davis: Well, we can establish that fact, if  
10 your Honor will permit us.

The Court: Yes, I think that this proof presently, without any positive proof of the acts complained of in the complaint, is likely to be very prejudicial, if, as I say, the delinquency of the defendant is not established by positive proof, is it? This is after rather than before.

Q. Now, after you had had these quarrels with  
20 your husband over Miss Sweitzer, did you ever go to see this woman, the defendant?

A. Yes, I did.

Q. What did you ask her to do, if anything?

A. I told Miss Sweitzer that I believed she was the cause of all the trouble between my husband and I and that we were pals before he met her. She says, "Well, you can't cook for him." I said, "You haven't given me an opportunity to. He hasn't eaten home ever since he has met you, only a few meals."  
30 And she says, "Well, you don't want him." I said, "Yes, I do, but I want him home, I don't want all this. I want my husband to be a father to my babies right. I don't want him to live here." I was standing at the door when I was talking to her and she pushed me and that left me outside. And she shut the door and put her hands on her hips and laughed at me.

Q. When was that?

A. That was two years ago.

Q. What time of the year?

A. I think it was in the fall.

Q. And where was it?

A. In Atlantic City, in Miss Sweitzer's place of business now.

Q. Where was your husband at that time?

A. In the store at the time.

Q. Right where you two were?

A. Yes.

10

Q. He heard the conversation?

A. Yes, he did.

Q. What did he say at that time when you had this conversation?

A. He told me not to dare talk to her like that.

Q. And then what did you do?

A. I couldn't do anything. I was outside. I went home.

Q. Did you ever go to see her any other time?

A. No, I spoke to her about it when she was in 20 my house.

Q. And when was that?

A. That was earlier, I believe, a year before.

Q. How did she come to come to your house?

A. The first time she came to my house I hadn't met her before. It was evening.

Q. Proceed to tell what happened when he brought her to your house.

A. He brought her in my house. He had her trunk, I think, a suitcase, but it was all her clothes. 30 He said, "I want you to make this little girl comfortable. We were put out of a room."

Q. He said what?

A. He said out of a room; "A narrow-minded Mrs. MacDonald, that she roomed with, said we were no good because I was in her bedroom."

(Objected to.)

Q. Was she present at that time?

A. Yes.

The Court: If Mrs. Sweitzer was with him at that time I think it is proper.

Q. Were these statements made by your husband?  
10 in Miss Sweitzer's presence?

A. Yes.

Q. Your husband told you he was in Miss Sweitzer's bedroom?

A. Yes.

Q. And that he had been put out?

A. Yes.

Q. Did she make any reply to that when he said that?

A. She told me it was the truth.

20 Q. Go ahead and tell what else was said there by either he or Miss Sweitzer.

A. She told me that she was sick and he went in her bedroom and was sitting on the bed feeding her oysters when Mrs. MacDonald came in and put them out.

Q. Who was Mrs. MacDonald?

A. The lady she was rooming with.

Q. What else did he say there?

A. That is all he said.

30 Q. Where were you at that time?

A. In my home.

Q. Did you say anything about him leaving her there?

A. I told him I didn't think it was nice to bring her there. He told me to make her comfortable.

Q. What other objection did you make to her coming or staying there?

A. I told him I didn't want her there because she was the cause of all my trouble.

Q. Was she there at that time?

A. She was there at that time. I don't know if she heard that part of it or not. I spoke to her later on the subject.

Q. What did you say to her?

A. I told her about her having run with my husband and people were talking, and while I wanted to be broad-minded about it, I didn't like it.

10

Q. What did she say?

A. She said, "There is nothing to it. What do you care if you get the money?"

Q. How many times after that did you ask your husband to take her away from there?

A. About four.

Q. In her presence?

A. About four.

Q. Did he do it?

A. No, sir.

20

Q. What did he say?

A. He told me the same thing every time, keep still, keep my mouth shut.

Q. Did you talk to him any other times except those four times you have just described about leaving her?

A. I talked to her about six individual times.

Q. What did she say?

A. She told me there wasn't anything to it; that I shouldn't object.

30

Q. What did you tell her?

A. I told her I did object.

Q. Did you say anything to her about leaving?

A. Yes, I told her in the beginning I had no room and I didn't want her there.

Q. What did she say?

A. She told me she would get a place as soon as she could.

Q. How long did she stay there?

A. I think about a month or six weeks.

Q. And where was she during that time?

A. You mean where did she stay?

Q. Yes.

A. She just, when she came home at night, she went in my mother's room and I put her to sleep  
10 with my mother.

Q. What did your husband do towards her while she was in the house?

A. Tell everything that he did and said?

Q. Well, at different times.

A. On one occasion he bathed her feet in front of me; and he would always say things, tell her things about me in front of me, making me feel little, making me feel small.

Q. What did he say?

20 A. He would tell me that I couldn't cook like her and that she did his cooking in the daytime and I must feed them at night, and they would leave for supper sometimes. That is about all I know of. They were never home much.

Q. Did he ever abuse you and curse you in her presence?

(Objected to.)

30 The Court: The question is leading.

Q. What did he do with regard to cursing you, if anything?

Mr. Parsons: I object again.

The Court: Well, I suppose the question may be

asked whether he did or did not use language to her of that nature.

Q. Did he use abusive language to you in her presence?

A. Yes, he did.

(Objected to. Objection overruled.)

Mr. Parsons: I ask that it be stricken out. 10

The Court: No, I will admit it.

(Objection noted for defendant as ground of appeal.)

Q. What did he say?

A. He would say I was no good.

Q. What else?

A. And I couldn't housekeep and I never was any good, anyway. He used to call me all kinds of names in front of her. 20

Q. What would she do or say at those times?

A. She wouldn't say anything.

Q. Who was present during those times in your house when these things took place that you have just described?

A. My mother.

Q. Was she present there all the time?

A. Most of the time.

Q. Now, during the time that you had her at your house was he home at night? 30

A. Yes, always home at nights.

Q. When she left there where did she go?

A. To the room in back of the store.

Q. What was his attitude towards you after that?

A. It was terrible. He treated me mean.

Q. Did you go to the store any other time after that?

A. Yes.

Q. When?

A. He had been gone all night and in the morning—my baby was very young—I went to get him because I had no milk, and I asked my sister to go with me.

Q. Not what you asked. Who went with you?

10 A. My sister went with me.

Q. What is her name?

A. Mrs. Miller.

Q. Where did you go to?

A. I went to the store, and we knocked on the front and we didn't get any answer. The truck was outside. I went around the back way and knocked I think, about twenty minutes, and then when she opened the door to let us in, the front door opened, and the whole thing is glass; we seen the truck start  
20 out and a man got in it.

Q. Who was the man?

A. My husband.

Q. Where did he leave?

A. He left right from the front of the store.

Q. Did you see him in the place when you went in there?

A. We seen him going out the door.

Q. Was Miss Sweitzer there?

A. Yes, she was.

30 Q. Tell just what you found there.

A. Miss Sweitzer had her nightgown on and she had her shoes unlaced. Her hair was down her back. She told me that my husband had been there all night but she just came in. My sister asked her—she said she was making coffee for him—she says, “Do you make coffee for him in that condition?” She says, “I mean I was going to make it.” My

sister says, "No wonder he will stay here from his wife if you make coffee for him in that condition."

Q. What else happened there?

A. That is all then.

Q. Did you say anything to her then about your husband?

A. Yes.

Q. What did you say to her?

A. She told me she was only going to be with my husband until the summer was over, then she was going to keep away from him. 10

Q. What did you say?

A. I told her I wished she would keep away from him; my life was very unhappy now.

Q. Have you seen them together at any other places?

A. I have seen them together going to moving pictures.

Q. How many different times?

A. About four times, I think. 20

Q. Have you seen them together any other places?

A. No.

Q. Have you ever seen them in an automobile together?

A. Yes.

Q. How many other times have you been to see her about your husband?

A. That is all.

Q. And the last time you say she told you she would leave him alone or let go of him after the summer? 30

A. No, it was before that. The last time she just laughed at me.

Q. The last time she just laughed at you?

A. Yes.

Q. When was that, approximately, Mrs. Butler?

A. The last time?

Q. Yes.

A. It was in the fall about two years ago. I think it was 1922.

Q. Now, you say that you have been separated three times?

A. Yes.

Q. This is the third time?

A. Yes.

Q. What conversation did you have with your husband on each of these occasions that he left you? What did he say to you?

A. All the time he tries—I went back with my husband two times; he told me that he was trying to get away from Miss Schweitzer and as soon as he could sell his share of the business he would leave her. Then the last time he told me he would not leave her and he left me.

Q. Where did he go when he left you the last time?

20 A. Well, I don't know where he went the last time.

Q. Where was he employed?

A. In the same place.

Q. He is still with her today?

A. He is employed by her. At that time he was in the business with her.

Q. Now, when you went to Atlantic City did you have any money?

A. No.

30 Q. Did he have money to buy a business?

A. No, he didn't.

Q. Do you know whether he ever had any gifts from Miss Sweitzer?

A. Yes.

Q. What?

A. Christmas she gave him an ivory case with a gold safety razor set in it. On another occasion she

gave him a revolver and she bought him shoes and gloves and silk shirts and two sweaters that she made herself.

Q. On how many different occasions was that that she gave him presents?

A. Well, I don't just remember how many but he would come home and show them to me and tell me why didn't I love him that much. I would tell him I did, but he didn't want those things from me the same.

10

Q. During the time that he was living with you did he support you, give you money?

A. Yes, he supported me very well. We both worked together and got along lovely. But after he went to Mrs. Sweitzer he didn't support me very well.

Q. Did you go to work?

A. I did.

Q. Where did you go to work?

A. I went to work in a laundry until after my baby 20 was about two weeks old.

Q. At whose suggestion did you go to work?

A. My husband told me I had better get work.

Q. Was your mother living with you at that time?

A. She came to me when my husband sent for her, so she could mind the babies while I worked.

Q. Where was your mother at that time?

A. My mother was living with my brother-in-law.

Q. And who went after your mother?

A. My husband wrote the letter after my mother. 30

Q. And at whose invitation was it that your mother came to your house?

A. At my husband's.

Q. And why did she come to live with you?

A. To mind my babies while I worked.

Q. And how old was your baby when you started to work?

A. My baby was two weeks old when I started to work.

Q. Where did you go to work?

A. I went to work in a laundry.

Q. And how long did you work there?

A. I worked there a few weeks until I got in the telephone office.

Q. Why did you go to work, Mrs. Butler?

A. To help support my baby, because my husband  
10 only gave me from \$6 to \$10 a week.

Q. And he was a partner in this business at that time?

A. Yes, he was.

Q. How long did you work?

A. I worked until, I think, May of the year before—I think 1921.

Q. Did you have to work before this man met Miss Sweitzer?

A. I didn't have to but we worked—on several oc-  
20 casions I did work in order to make our home better.

Q. And you worked up until what year?

A. Up until 1921.

Q. And when did he leave you the last time?

A. 1922.

Q. And has he supported you since that time?

A. Not me, no.

Q. Have you worked ever since?

A. Yes.

Q. Did he ever bring any money home to you?

30 A. No.

Q. During the time that he was with Miss Sweitzer?

A. No, he didn't. He brought \$500 home.

Q. And what did he say that was for?

A. He told me that was his share of the business. I was very much surprised because I didn't think he would have any share at that time.

Q. And how long had he been working there when he brought the \$500 home?

A. I think about two years. I may not be right; I am not sure.

Q. During that time had he been drawing a weekly wage?

A. Yes, he had.

Q. Now, when he brought \$500 home, what did he say?

A. He told me that that was his share of the business and I should be careful of it and I told him I would; I would put it away. And he decided we would have some furniture. Then he decided to buy a suit. I never knew until the \$500 was spent that Miss Sweitzer gave it to him. 10

(Objected to.)

The Court: Yes, that will be stricken out.

20

Mr. Davis: Only the latter sentence?

The Court: Yes, the latter sentence.

Q. What did he say?

A. He told me that Mrs. Sweitzer gave him that money if he would divorce me.

Q. What did he say that she said it was for?

(Objected to.)

30

The Court: That seems to be hearsay testimony.

Q. Did you ever have any conversation with Miss Sweitzer concerning divorce?

A. On one occasion Miss Sweitzer asked me if I believed in divorces; I told her no. She asked me

if I would ever divorce my husband and I told her no.

Q. Then later, was it, that you got the \$500?

A. It was after that, I think.

Mr. Irving Parsons: I still object to this line of testimony.

10 The Court: Well, of course, it is perfectly proper to show that her husband gave her \$500, but I don't think it is proper to show the statement of the husband as to what purpose, that is, with respect to this defendant. This defendant's culpability depends upon legal proof of what she has done and said. It is also proper, when that proof is in, to show how the husband treated his wife, as to showing a change in his affections. I don't think the defendant's culpability should be proved by hearsay testimony.

20 Mr. Davis: We will not press it, your Honor.

Mr. Parsons: I move it be stricken out.

Mr. Davis: I think it is too late when counsel allows a question to be asked and answered without objection; it certainly is too late to strike it out.

30 The Court: Well, I won't strike out anything except what I have already ordered stricken out, and I am now ruling on this motion.

Q. Mrs. Butler, we will come back to the time that he brought this lady to your house. Did you go out at nights any time?

A. I sometimes took my babies for a walk.

Q. When you came back with your babies what did you find there?

A. On one occasion I found them both lying asleep on the cot.

Q. On other occasions what did you find?

A. He was always taking good care of her, either covering her up with his coat, or bathing her feet or something in that connection.

Q. What did he say to you on that occasion?

A. Told me to mind my business; told me that if he wanted to be nice to her it was his affair.

Mr. Parsons: I object to that question and object to any questions upon anything that might have been said by the husband to the wife. I don't see how that can bind the defendant.

10

The Court: In the presence of the defendant, not anything out of her presence. I understood an inference, at least, that it was in her presence.

Q. Miss Sweitzer was there on these occasions?

20

A. Yes.

Q. What else did he say to you?

A. That is all he said to me.

Q. Did you ever go to the store to work?

A. On different occasions.

Q. How did you come to go there?

A. When they would be busy my husband asked me to come down. He said if I would be useful to him and be lenient with him it would give him a chance to get wider business.

Q. How many times did you go there?

30

A. I don't remember how many times I went there.

Q. You didn't work there steady?

A. No.

Q. You went there different days to help him out; is that right?

A. Yes, sir.

(Objected to.)

The Court: I suppose it is leading, but it will get at it quicker.

Q. While you were there helping your husband was Miss Sweitzer there?

A. Yes, sir.

Q. Did you ever see the customers that came in?

10

A. Yes, sir.

Q. What kind of a business did they do?

A. A very nice business.

Q. What did she tell you about her business?

A. She didn't tell me anything about her business.

Q. Did you see customers come in there?

A. Yes, I did.

Q. And did anything happen there on any occasion while you were there, between Miss Sweitzer and anyone else while your husband was present?

20

A. Yes, a customer came in one day and she says, "Well, I want Mrs. Butler." She came past me and says, "I want Mrs. Butler. Are you Mrs. Butler?" Miss Sweitzer says, "Yes." My husband passed around at the time and she says, "Mrs. Butler, your husband looks very bad. You had better take care of him." And she just laughed. She says, "Yes, he does look bad." After the customer left I said I didn't like that. She says, "Don't be silly, fighting over nothing."

30

Q. What did she say?

A. She said I was crabby to fight over a thing like that.

Q. While Miss Sweitzer was at your house did you have any conversation with her about the \$500 your husband had given you?

A. Not at that time; that was before.

Q. Well, afterwards, I mean, did you have a conversation with her about what he had given you?

A. Yes.

Q. What did you say to her and what did she say?

A. I told Miss Sweitzer that if I had known she had given that \$500 to my husband I would not have accepted it. She said she loaned it to him.

Q. Did you tell her what he had told you?

A. Yes, I did.

Q. What did you tell her?

A. She said, "Oh, he is crazy. Don't listen to him." 10

Q. What did you tell her that he had told you?

A. I told her he told me that she had given that to him for a divorce, if I would divorce him another \$500, and no support for the children.

Q. That was while she was at your house that you had this conversation?

A. She was in my house at that time, yes.

Q. Now before this woman came into your husband's life was he affectionate with you? 20

A. Yes, he was.

Q. And the marital relations, were they all right?

A. Yes.

Q. Now regarding the marital relations ——?

Mr. Parsons: I don't want to interpose objections here ——

The Court: Well, if you want rulings you must interpose objections. 30

Q. Now was there any change in the marital relations between you and your husband after he met this woman?

A. Yes, there was.

Q. From what time?

A. Before my baby was born.

Q. After your baby was born did he resume marital relations with you?

A. No.

Q. And how long did he continue that course?

A. Until he left me.

Q. Was there any cohabitation between you and your husband from the time your baby was born until he left you?

A. No.

10 Q. Was there any intercourse between you and your husband?

A. No, there was not.

(Objected to.)

The Court: It is answered before you object.

Q. During the time he lived with you what did he give you a week?

20 A. Thirty dollars.

Q. After he left you how much did you get?

A. Ten.

Q. How did you get the ten?

A. I had him arrested.

Q. How many times?

A. Twice.

Q. Where?

A. In Atlantic City.

30 Q. Was your husband in Atlantic City last winter?

A. No.

Q. Was Mrs. Sweitzer in Atlantic City?

A. No.

Q. How long were they away?

A. I think about three months.

Q. When did they come back?

A. In the spring.

Q. After your husband left you, did you have an automobile?

A. Yes.

(Objected to.)

The Court: Now what is the objection?

Mr. Parsons: Leading.

Mr. Peacock: I don't know how else, I could ask it.

10

The Court: Well, that is a leading question but it is of a harmless type, I think.

Q. During the time that you were at the store on those occasions what business did they do? How much money did they take in?

A. On Saturdays I seen them take in \$800.

20

Q. Did she tell you what she did with her money?

A. No, she didn't.

Q. Do you know what she did with it?

A. No, I don't.

Q. Did she tell you any time about investing any of it in stocks or bonds of any character?

A. At one time she told me she was investing in some stocks.

Q. What were they?

A. Some German bonds and then something else: I don't remember what they were.

30

Q. Did she tell you what rent they paid there?

A. Seventy dollars.

Mr. Irvins Parsons: I object to this line of questions as irrelevant and immaterial to the issue.

Mr. Davis: I submit that it is a proper piece of testimony, because under your Honor's instructions the jury may desire to add smart money to the actual damages that this lady has suffered in consequence of the defendant's conduct, and her ability to respond in smart money is a pertinent question for the jury to consider. In other words, what might be smart money to a person of small means might amount to nothing to a person of considerable  
10 means; and as I understand, all of the cases admit such testimony upon that theory.

(After argument.)

The Court: The objection will be overruled.

(Objection noted for defendant as ground of appeal.)

- 20 Q. How many trucks did they own?  
A. Three at that time.  
Q. How many men did they have employed there?  
A. Nine.  
Q. And these trucks and men employed at all times in this business?  
A. Yes, all summer.  
Q. Did she tell you whether she owned the place or not?  
A. She owned the building but not the ground.
- 30 Q. How big a building was it?  
A. It is pretty large but not very well built.  
Q. And where is it located in Atlantic City?  
A. At Little Rock and Atlantic Avenue.  
Q. Atlantic Avenue, one of the main thoroughfares in Atlantic City?  
A. Yes.

Q. When did she tell you that she had made \$800 on Saturday?

A. I seen them; I was in the store.

Q. You saw that yourself?

A. Yes.

Q. And was the business the same every day as it was that day?

A. Every day in summer; maybe \$200 less; a few hundred dollars less it might have been.

Q. Did she have any other automobiles besides the 10 trucks?

A. Not at that time.

Q. Did your husband have an automobile?

A. After he left me.

Q. Are you able to take care of yourself and children at the present time on what your husband is giving you?

A. No.

Q. Where do you work?

A. I am not working just how. I have been working in Swarthmore. I am looking for a position in Atlantic City.

Q. What does he pay you?

A. Ten dollars a week.

Q. And has he paid that ever since he left you?

A. All last winter he didn't.

Q. And how did he come to pay that?

A. When I had him arrested.

Q. Was there a court order made by the court at Atlantic City?

A. Yes.

Q. And is he under bonds to pay that?

A. I don't know whether he is under bonds or not.

Q. Did he default in his payments at any time?

A. Yes, he did twice.

Q. And was he brought before the court for default in payments?

A. Yes.

Q. Who paid the money for him at that time?

The Court: If you know.

A. Lawyer Parsons brought the money up.

Q. And that is the same lawyers who are defending Miss Sweitzer now?

A. Yes.

10

By the Court:

Q. Madam, what day were you married in 1917?

A. April 26th.

Q. And how many children have you?

A. Two.

Q. What are their names?

A. Joseph and Marie.

Q. And what was the date of Joseph's birth?

20 A. May 9, 1918.

Q. And what was the date of Marie's birth?

A. December 26, 1920.

Q. And the ages of those children now are ——?

A. Six and four.

By Mr. Peacock:

Q. Since your husband left you has he ever visited his children?

30 A. Never.

Q. Does he show any affection for them?

A. No.

Q. Does he ever write to them?

A. No.

Q. Did he see them yesterday in front of the courthouse?

A. He did.

Q. What did he say and what did the children do?

A. They walked around him and he didn't look at them; they didn't know him.

Q. Did you show them who their father was?

A. My sister did.

Q. Did they point him out to the children?

A. Yes.

Q. And then when the children went up to him what did he do?

A. He didn't notice them. 10

Q. Who was he with?

A. He was with Miss Sweitzer.

Cross-examination.

By Mr. Irving Parsons:

Q. Mrs. Butler, after your marriage in April of 1917 you lived, you say, in Atlantic City?

A. No, in Pennsgrove. 20

Q. Was your mother with you at that time?

A. No, sir.

Q. Now after you left Pennsgrove you went to Camden; is that true?

A. Yes.

Q. And you lived there, you say, with your sister Mrs. Miller?

A. Yes.

Q. What year was it that you moved to Atlantic City, can you recall? 30

A. I think it was 1920.

Q. 1920, what month?

A. It was in the spring of the year; I don't remember what month.

Q. Did you and your husband come down together?

A. No, my husband asked me to come first and get the place ready.

Q. Then you came down alone?

A. With my mother.

Q. And you went to live where?

A. I think it was North Illinois Avenue.

Q. It was not Trinity Avenue, was it?

A. Yes, I believe it was Trinity Avenue.

Q. What number Trinity Avenue?

10 A. I don't remember.

Q. Now how long after you came down did your husband come down, can you recall?

A. I think about a week.

Q. About a week afterwards?

A. Yes.

Q. And was he out of work at that time?

A. Yes.

Q. And you say this was in 1920, the spring of 1920?

20 A. Oh, no, this was—yes; I don't remember whether it was 1919 or 1920.

Q. Now can't you remember? Can't you place that particular date in your mind?

A. No, I can't. It was in the spring of the year.

Q. Well, how long after your husband came to you was it before he procured work?

A. I think about two weeks.

Q. And did he tell you where he was working?

30 A. He told me he was working on Little Rock Avenue in a fruit store.

Q. Did he give you the proprietor's name?

A. Yes.

Q. And what name did he give you?

A. I don't remember the name now. It was Miss Sweitzer's brother-in-law.

Q. He said he was working for Miss Sweitzer's brother-in-law?

- A. Yes.
- Q. On Little Rock Avenue?
- A. Yes.
- Q. In Ventnor?
- A. Yes.
- Q. Was your mother with you at that time?
- A. Yes.
- Q. Did you live in Philadelphia any time prior to your removal to Atlantic City?
- A. Yes, we had some rooms there. 10
- Q. Where?
- A. I think it was on Seventh Street.
- Q. And who was with you?
- A. My husband and my mother and my baby.
- Q. Was your husband living with you at that time?
- A. Yes.
- Q. Did you ever work over in Camden?
- A. Yes.
- Q. Did he ever live in Camden? Did your husband ever live in Camden alone? 20
- A. Yes, my husband told me he had a room where he was working and it would be much better for him if I should go to a girl friend's until he was ready to take me to Atlantic City.
- Q. Did you go to this girl friend's?
- A. Yes.
- Q. Where was that?
- A. I don't remember the address.
- Q. What was her name? 30
- A. Her name was Miss O'Neill.
- Q. But you don't remember the address?
- A. No, I don't, because I am very strange in Philadelphia. I don't remember the streets.
- Q. How long did you live there?
- A. I think about a week.
- Q. About a week?

A. It may have been longer, not very much longer.

Q. Now during that time was your husband employed in Camden?

A. Yes.

Q. Was he living in Camden himself?

A. Yes.

Q. Where was your mother then?

A. She was with me minding the baby while I was working.

10 Q. At this friend's house?

A. Yes.

Q. You say you were there only a week?

A. I think it was only a week. It may have been a few days later but it wasn't much longer.

Q. From there where did you go?

A. Atlantic City.

Q. You moved directly from your friend's house to Atlantic City?

A. Yes.

20 Q. And your mother came with you?

A. Yes.

Q. Did your husband and you at any time during this period have any disagreements or quarrels about your mother being with you?

A. No, we never did.

Q. You were never separated from that time until when?

A. Until the time the first separation was. I don't remember the year. It was over Miss

30 Sweitzer.

Q. That is what I want to ask you. I ask you if you remember when was the first time of your separation. Can you give the approximate date, about when?

A. It was in about 1921.

Q. 1921?

A. Yes.

Q. Now from that time, from 1920, when you moved to Atlantic City, up till 1921, was your husband employed at this fruit market in Ventnor City?

A. He was in business by that time.

Q. He was in business by that time?

A. Yes.

Q. When did you first meet Miss Sweitzer?

A. It was in winter time when I first met her.

Q. Can you remember what year?

A. Yes, it was in 1920.

10

Q. 1920?

A. Yes, because my baby was just about a few weeks old.

Q. Well, now, would it be in December, January or February?

A. It was about in January, I think.

Q. Of 1920?

A. Yes.

Q. And you met Miss Sweitzer how?

A. When she came to my house, when my husband brought her to my house was the first I met Miss Sweitzer.

20

Q. Had you heard of Miss Sweitzer prior to that time?

A. Yes, I had heard of her.

Q. In what way had you heard of her?

A. Of what my husband told me of her.

Q. How long prior to the time that you met Miss Sweitzer had you heard about Miss Sweitzer from your husband?

30

A. I think it was about nine months, because I was ill all the time.

Q. The first time that you saw Miss Sweitzer, if I understand right, was when she moved into your premises?

A. Yes.

Q. And she moved in without your invitation?

- A. Yes.
- Q. And she slept where?
- A. With my mother.
- Q. Did she ever sleep with you?
- A. No.
- Q. Are you sure about that?
- A. Yes, I am sure.
- Q. You are very sure?
- A. Yes.
- 10 Q. She was with you about how long?
- A. I think about a month or six weeks.
- Q. You can't remember definitely?
- A. No, I can't.
- Q. Where did Miss Sweitzer go to from there?
- A. To a room back of her store.
- Q. At that time she and your husband were in partnership?
- A. Yes.
- Q. They were in partnership?
- 20 A. Yes.
- Q. Did you and Miss Sweitzer and your husband ever have any talks about him going into partnership with Miss Sweitzer?
- A. No, we didn't.
- Q. Did you ever consent to it?
- A. I didn't know when he went in partnership.
- Q. Did you try to keep him from going into partnership with her?
- A. Yes, I did; but he was already in then.
- 30 Q. After Miss Sweitzer left your premises you say that she moved down to a room back of her store?
- A. Yes.
- Q. Where was that store located?
- A. On Little Rock Avenue.
- Q. What number?
- A. I don't remember the number.

Q. How many stores did they have on Little Rock Avenue?

A. One.

Q. Sure of that? Sure they didn't have two stores there?

A. I am sure.

Q. You are positive of that?

A. Yes, they had just left the other one.

Q. Which other one?

A. They had a small store before that.

10

Q. I am asking you if they didn't have two stores on Little Rock Avenue.

A. Not at that time.

Q. Had they had?

A. Yes.

Q. They had a store prior to the time it was moved to this new store on Little Rock Avenue?

A. Yes.

Q. Did you help her move down there?

A. No.

20

Q. Did you have any conversation about it?

A. I asked her to go, that is all.

Q. You didn't say you thought it would be nice to be over her business?

A. No.

Q. You didn't help move her there?

A. No, I didn't.

Q. Now you say that you went down there with your sister one day and tried to get into the store and couldn't get in?

30

A. Yes, on Sunday morning.

Q. On Sunday morning about what time?

A. It was about seven o'clock.

Q. Are you sure that Miss Sweitzer had a night-gown on?

A. I am sure.

Q. She didn't tell you where she had been the night before, did she?

A. Yes, she told me she had been to Pleasantville.

Q. You are sure about that?

A. Yes.

Q. How long was she in Pleasantville? Over Saturday night?

A. She told me so.

10 Q. Did you not know?

A. I didn't know only what she told me.

Q. Now this all happened prior to the time you went down to the store to work?

A. Yes.

Q. And then it is your idea to tell this jury that although you had objected to the attentions showed to Miss Sweitzer by your husband and although you had asked him time and again to give her up, and although you had told her to get out of your house and that you didn't want her to live in your house, and you had gone down to the store on Sunday morning and found her with your husband in her nightgown, you still went down and worked in the store with her?

A. Went down and helped.

Q. Answer the question. You want the jury to believe that, do you?

A. Yes.

Q. How long did you work there?

30 A. I don't remember; just a few days at a time.

Q. Were you ever there a full summer?

A. No.

Q. You are sure about that?

A. I am sure.

Q. Were you paid any money while you were there?

A. No.

Q. No money at all?

A. No.

Q. Did you know of any arrangement had between Miss Sweitzer and your husband as to him going in partnership with her?

A. No.

Q. Did you know how much salary your husband got there?

A. No.

Q. How much did he give you out of that salary? 10

A. Before he left me he gave me \$30 a week.

Q. \$30 a week?

A. Yes.

Q. And how much did he give you during the winter months?

A. The same. That was the last year.

Q. And he never said to you that he was trying to go into partnership and was putting so much money back into the firm for the purpose of going into partnership? 20

A. No.

Q. And that you and he and Miss Sweitzer talked the proposition over and that you wanted him to go into partnership with her?

A. No, we never did.

Q. Did you know Miss Sweitzer?

A. Didn't know her.

Q. After he went in business with her you did meet her in 1920, didn't you?

A. Yes. 30

Q. Did you know when they went into business together?

A. I didn't exactly know. I think it was the year we came to Atlantic City.

Q. Now did Miss Sweitzer at any time after she had left your apartment ever call on you to see you?

A. No, only when my husband was sick she came to see him.

Q. She never called to see you?

A. No.

Q. Did you ever call her on the telephone?

A. No.

Q. Did you ever go around to see her?

A. No.

Q. Were you ever out with her?

10 A. No, but my husband and her, yes.

Q. Your husband and her?

A. Sure, when she was at my house.

Q. Do you remember the time that your husband had this accident?

A. Yes.

Q. And what happened there? What was that accident?

A. He was burned.

Q. And where did he go as the result of that?

20 A. We took him first to the Atlantic City Hospital.

Q. How long was he there?

A. I think he was there about a week. He asked me to take him home and I did.

Q. He was about a week at the Atlantic City Hospital?

A. Yes.

Q. You are sure about that?

A. I think about a week.

30 A. He was not there six weeks?

A. Oh, no.

Q. How long was he ill?

A. He was ill for I don't remember how many weeks, but a good many weeks.

Q. During that time did you receive any money from the Sweitzer business?

A. Yes.

Q. Who paid you that money?

A. I received fifteen dollars a week. My husband's brother brought it to me.

Q. Who paid it to your husband's brother, do you know?

A. His partner, Miss Sweitzer.

Q. How many times did you see Miss Sweitzer during the time your husband was sick?

A. I seen her most every day. She came to see my husband.

10

Q. Most every day?

A. Yes.

Q. When this \$500 was given to your husband, as you claim, by Miss Sweitzer was that passed over to you?

A. Yes, and did you deposit it in your name in your own bank?

A. Yes, I did.

Q. And did you use that money?

A. My husband and I used it together.

20

Q. What did you use the money for?

A. For furniture and a suit for him.

Q. Did you ever ask your husband for this money prior to the time you got it?

A. No, I didn't.

Q. Never suggested you wanted it?

A. I did not.

Q. Then when he brought that money to you and gave it to you what did he give it to you for?

A. He told me that it was his share, that it was the profits of what was over that summer.

30

Q. His share in the business?

A. Yes.

Q. Now do you remember the time that your husband and Miss Sweitzer dissolved partnership?

A. No.

Q. You don't remember that?

A. You mean—the only thing—I didn't know anything about their dissolving partnership only that he told me the last time that he left me that he would sign everything over to her so my babies couldn't claim anything.

Q. Were you in the store during the month of August, 1922, or the month of April, 1922, when Miss Sweitzer passed over to you \$100 in cash?

A. No, I never received no money from Miss  
10 Sweitzer. No, I never did.

Q. Never received any money from Miss Sweitzer?

A. No.

Q. Never received \$100 from her and she told you that she was buying the business back from Mr. Butler and that that was his money?

A. No.

Q. You are sure about that?

A. I am sure.

20 Q. Did Mr. Butler tell you that himself?

A. No, he didn't.

Q. Then you never got \$100 in the month of April, 1922?

A. No, I didn't.

Q. Let's come down to September of 1922. Can you fix in your own mind or can you tell the jury the date or the approximate date when your husband left you the last time?

A. The last time, yes; he left me on the 7th day of  
30 September in 1922.

Q. Now what did you do with your furniture at that time?

A. I packed my furniture up and didn't sell it for three days, until I heard from him again, and then I sold it.

Q. How much did you sell it for?

A. I sold my furniture piece by piece. I don't remember just what I did get, I have no idea of it, but I got \$75 for everything.

Q. Do you remember you and your husband having a conversation in reference to your mother and your husband saying that unless your mother left that he was going to leave himself?

A. Oh, no, my mother wasn't living with us then.

Mr. Davis: I really don't seriously object to the testimony, but merely call counsel's attention to the fact on his opening that he objected to any cross-examination. 10

Mr. Parsons: I am cross-examining.

Mr. Davis: You are opening on the subject and we may take advantage of it.

The Court: I will permit the question. 20

Q. And as the result of this conversation you told him, there was the door and he could leave any time he got ready?

A. No.

Q. Did you ever tell him to leave?

A. No, I didn't.

Q. You never opened the door and told him to get out?

A. No.

Q. You are sure about this? 30

A. I am sure.

Q. Now during the time that you were living in Atlantic City and the time that your husband was working at this fruit store on Little Rock Avenue he paid you, you say, \$30 a week?

A. When he was on Atlantic Avenue, not the small

one on Little Rock Avenue. That was the last year, I was with him.

Q. What did he pay you on Little Rock Avenue?

A. Ten or fifteen dollars a week. I was quite sure what he gave me.

Q. Did he tell you why he paid that?

A. No, he just told me, I should be glad to get that.

Q. He didn't tell you he was putting that money  
10 back in the firm with the idea of going into partnership?

A. No.

Q. You are not sure of that?

A. I am sure.

Q. Did your brother ever work in this fruit store?

A. He helped her out on one occasion that I know of.

Q. Was he paid for that?

A. I don't know.

20 Q. Then you say that up until the time that your husband met Miss Sweitzer you never had any quarrels?

A. No, we didn't.

Q. Nor disagreements?

A. No, we didn't.

Q. And you lived very happily together?

A. Yes, we did.

Q. Now in reference to your marital relations,  
30 did you ever object to your husband having marital relations with you?

A. No.

Q. Did you ever put up the excuse that your mother was around, you couldn't do anything?

A. No.

Q. You never did that?

A. No.

Q. You never had any excuse of that kind offered to him?

A. No.

Q. You are very sure about that?

A. Yes.

Q. You said that you got no pay for the time that you worked at the store, Mrs. Butler?

A. Yes.

10

Re-direct Examination.

By Mr. Peacock:

Q. Mrs. Butler, Mr. Parsons asked you if you sold your furniture after your husband left. Why did you sell it?

A. Because I had to buy something for my children to eat.

Q. Did you sell it piece by piece? 20

A. I did, I sold first the Victrola and when I had no more money then I sold the rest.

Q. To live on?

A. To live on, yes.

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MRS. ISABEL MILLER, sworn for plaintiff.

Direct examination. 30

By Mr. Peacock:

Q. Mrs. Miller, are you a sister of the plaintiff, Mrs. Butler?

A. I am.

Q. Where do you live?

A. I live on Iowa Avenue, 117, Atlantic City.

Q. How long have you lived in Atlantic City?

A. I have been living there for about two years.

Q. Any family?

A. One child.

Q. Do you know Miss Sweitzer, the defendant?

A. Yes, I have knowed her ever since my sister has knowed her.

Q. You are this young lady's sister, are you not?

10 A. I am.

Q. Mrs. Butler?

A. Mrs. Butler.

Q. Did you go with Mrs. Butler to Miss Sweitzer's house any time in 1920?

A. Yes.

Q. Do you know what day of the week it was you went to Miss Sweitzer's house with Mrs. Butler?

A. Yes, it was on Sunday morning.

Q. And about what time?

20 A. About seven o'clock.

Q. Why did you go there?

A. I met my sister on my way from church and she said ——

Q. You can't tell what your sister told you. Did she invite you to go there with her?

A. I went with her because she wanted milk for the children and to get the money.

Q. But who did you go there to find?

A. We went to find her husband.

30 Q. For what purpose?

A. Of getting the money, where she could have the meals.

Q. When you got to the Sweitzer store what happened then? Tell the jury exactly what happened.

A. Well, when we got to the store, as we got off the car, we seen this little truck, order car, that he used to ride back and forth in. We went in front

of the store but he wasn't there, so we went through to the lot and my sister knocked and Mrs. Sweitzer answered and when she opened the door I saw my sister's husband go on through and take the truck and disappear, and Miss Sweitzer stood in her nightgown. My sister asked where was Pat, meaning her husband, and she said he had just left. So I spoke up and I says, "Yes, I see he did." She turned around to me and she says, "Well, I wasn't here. I was in Pleasantville." I says, "Well, where was Pat"? She says, "He slept on the floor out in the store all night." I says, "Why did he sleep on the floor if he has a bed at home"? She said, "Oh, well, he didn't sleep there all night. He came in and went on a cot." I says, "Why did he do that when he had a place"? She says, "Well, I don't know." "Well," I says, "you don't look as if you came from Pleasantville"; I says, "You look as if you just got out of bed." She says, "I did." I says, "I thought you were in Pleasantville." She says, "I was, but I got over here about five o'clock." I says, "Was Butler up"? She says, "He was out in the store and I was just making him a cup of coffee." I says, "In that condition"? She didn't say anything. I says, "I don't blame him for not coming home to his wife and children if you make him a cup of coffee in that condition." And she didn't say anything, turned around and looked at me and she says, "Do you know I can have you arrested, the way you talk?" I says, "I guess you can but it is up to you." She said back again, "I won't have you arrested." We will drop this and when the season is over I will give him up so he can go home to his wife and children." So we walked out of the store and went home. She had promised to give the man up.

Q. Where was Mr. Butler when you went home?

A. I went back to my own home, not back to her home, I moved.

Q. And was the truck that you saw at her home the same truck that you saw in front of her store when you went there?

A. The same one.

Q. Do you know whether he had this woman in his own home or not?

10 A. Oh, yes, several times.

Q. Were you there during the time she was there?

A. Yes, several times.

Q. Do you remember when your sister was married?

A. Yes.

Q. Were you present when she was married?

A. I was not able to attend the wedding very well because I was expecting to become a mother that month, but she was married from my home.

20 Q. Did you visit them after they were married?

A. Yes.

Q. How often?

A. Oh, quite often.

Q. When they lived in Atlantic City how close did they live to you?

A. When they lived in Atlantic City they lived with me.

Q. How long did they live with you?

30 A. Well, not so very long in Atlantic City, because it was during the war times and my husband had taken a position in a shipyard. We were up there about two weeks when he came up and accepted a position up there and still lived with us.

Q. Where?

A. In Camden, on Seventh Street.

Q. Lived with you there, his wife with him?

A. Yes.

Q. Then did you move back to Atlantic City?

A. I moved back about two years later.

Q. Now during the time that you were in Camden what were the relations between Mr. Butler and his wife?

A. Wonderful, he thought the world of his wife at that time.

Q. During the time that they were at Atlantic City at your house what were their relations?

A. Wonderful; the very same.

10

Q. After you left Camden, did you move back to Atlantic City?

A. I did.

Q. Did your sister move back?

A. Yes, but not with me.

Q. Where did she live then?

A. She had taken a little house in a small alley in Atlantic City, and I had to go to live with my mother-in-law, though my husband had the flu, I had to break my home up.

20

Q. Did you visit her?

A. I did, because I was the one that got the place for them, to be close by, because I wanted to help her out, through her being out there.

Q. What was her condition at that time?

A. All ready to become a mother.

Q. What were the relations between Mr. and Mrs. Butler up to that time?

A. Well, it was pretty good at that time when we first went to Atlantic City.

30

Q. Did you notice any change?

A. No, not just then, not for a few weeks later.

Q. Then what change did you notice?

A. Well, I noticed a change right away, when he had first taken a position, I think, in the store.

Q. What did he do then?

A. He changed so that he didn't come home reg-

ular, and he didn't seem to care for what was coming. He didn't seem to wish the little one which was coming.

Q. What did he tell you about the little one that was coming?

A. Well, one morning I went to see my sister—went every morning—and found her in a bad condition, lying abed. I asked her if she had done anything. She looked at me and she was too weak to  
10 answer. I went in and got her a drink of water. I turned her over and I says, “Anna, have you done anything to this little one that is coming?” Anna says to me he forced her to take pills last night to do away with this little baby. So I took her hand and she said, “I would love to let the little one come and have it live.” I was real short of money and my husband had the flu and we had to go to live with my mother-in-law, and I pawned my ring and bought  
20 this stuff to bring her back to life. He came in and asked me what in the hell I was trying to do there. I told him I was trying to bring back the one he tried to do away with. He got very excited when I told him and he turned around to me and says, “I should leave her for her own good, but that every one gets mad when I am around.” I told him then that he couldn't do it. He promised, he told me if we could save her and the little one that was coming he would do it.

30 Mr. Parsons: I ask that all that be stricken out on the ground that what she may have said or he may have said will not and cannot bind this defendant. We are trying the defendant, not the husband, and the defendant was not present.

Mr. Davis: He has taken his chance with everything that has been said without the slightest objec-

tion, and certainly he cannot, after the thing is all on, object to it.

The Court: I think the answer was certainly responsive to the question. I do not think the question was proper and I do not think the testimony should be in the case. I do not know what I shall do about it, after no objection is taken to the question itself. I can only strike the answer because it is not responsive, as a general thing. 10

Mr. Parsons: That is what I am asking for, to strike the answer.

The Court: This answer seems to be perfectly responsive to the question.

Mr. Davis: As I understand, counsel cannot sit by and speculate on the answer without making any objection and then move to strike out the answer if it does not suit him. 20

The Court: He may if the answer is not responsive. The question was improper. I do not mean in the sense of suggesting that it should not have been asked, but it would elicit testimony that probably should not be in the case. The answer appears to be responsive to the question and there was no objection and I will have to let it stand unless you can point out to me some respect in which the answer is not responsive to the question. 30

Mr. Parsons: The answer is responsive to the question but it goes beyond the question itself. She gives a whole dissertation between husband and wife and herself in this particular instance.

The Court: The question, "What did he say to her?"

Mr. Parsons: She explained what he said to her, what the wife said to the husband, and so forth.

The Court: That will all be stricken, and about what the two sisters said between each other will be stricken and all that about pawning the ring and bringing her back food. In other words, the whole  
10 answer will be stricken down to the time that the husband came in.

(Answer repeated as follows: "Well, one morning I went to see my sister—went every morning—and found her in a bad condition, lying abed. I asked her if she had done anything.")

The Court: Strike that. Strike what she told him. Just what he said is all that will be allowed  
20 to stand of the answer.

Mr. Peacock: If there is any objection I will consent to it being stricken out.

The Court: Of course the question actually turns on what he said to her, and that much of the answer may stand.

Mr. Davis: We concede that, if your Honor  
30 please, without any question; and my thought was this, that if part of it has been stricken out, as I think your Honor is practically right in doing, that in the emasculated form it might not speak the truth and we had better strike it all out.

The Court: Well, strike it all out, because it is somewhat emasculated now.

Q. Now I will repeat the question and you tell me nothing except that Mr. Butler said. What did he say about the little one?

Mr. Irving Parsons: If they can show that the defendant was present at the time this conversation happened, all right, but the defendant was not present, and anything that might have been said by the plaintiff or by the husband or by this witness cannot bind the defendant.

10

The Court: Now here is my difficulty. Let me explain what is in my mind. The allegation of the complaint is that the defendant alienated the affections of the plaintiff's husband, and a part of the proof which the plaintiff undertakes to offer is the difference in the manner of the conduct and treatment of the husband prior to the time when it is alleged that the defendant by her conduct alienated his affections and the treatment accorded the wife by the husband after the defendant's conduct had intervened. Now it seems to me that it is perfectly proper to prove the difference between the expressed affection of the husband before and after the happening of the event with which the defendant is charged. Now having that in mind, what have you to say as to this?

20

(After further argument.)

30

The Court: I will admit it.

(Objection noted for defendant as ground of appeal.)

(Question withdrawn.)

Q. Mrs. Miller, when you went there and found your sister in this condition what did you do? Don't relate any conversation, what did you do?

A. I went and got her something to eat.

Q. What else did you do?

A. And then I spoke to him when he came in about it.

Q. Don't say what you said. What did he do?

A. He didn't do anything only stand and look at her.

10 Q. Did he stay there?

A. No, he had the truck and he had to go back to the store.

Q. Did he show any affection or sympathy for her in that condition?

A. Not a bit.

Q. You say he went out of the house and left you there?

A. He did.

20 Q. Who took care of her?

A. I did.

Q. Did he come back again?

A. Not until late that night.

Q. What did he do when he came back then?

A. Well, I couldn't tell. I wasn't there when he came in.

Q. Did he do anything at all to relieve her suffering when he was there in the daytime?

A. No.

30 Q. Were you there at the Butler house when Miss Sweitzer came there?

A. No; it was late at night.

Q. Were you there any time during the time she was there?

A. I was there the next morning.

Q. How many times were you there during the time she stayed there?

A. Oh, several times, because I went every day.

Q. What did you see him do with regard to Miss Sweitzer while you were there?

A. I saw him show his love towards her; he always talked good to her.

Q. In what respect did he show his affection toward this woman?

A. Come in nights and expects me and my sister both to cook for her and wait on her.

Q. What affection did he show his wife at that time? 10

A. None.

Q. Did he show any affection towards his children or speak kindly to his wife during the time this woman was in the house?

A. No.

Q. Any time that you were there?

A. No.

Q. During the times that you were at the Butler house what have you heard him say to his wife in this woman's presence? 20

A. I heard him tell her to get the hell out of the way?

Q. Tell who?

A. His wife.

Q. Was Miss Sweitzer present at that time?

A. Yes.

Q. Did you ever hear him tell her to get the hell out of the way?

A. No.

Q. Did he ever speak to Miss Sweitzer that way? 30

A. No.

Q. What else have you seen him do or say in the presence of Miss Sweitzer to his wife?

A. Well, I saw him make my sister get off the cot when she was sick and give it to Miss Sweitzer.

Q. Have you seen him do anything else?

A. No.

Q. What did Miss Sweitzer say during the time she was there regarding Mr. Butler?

A. She showed her love for him, too.

Q. In what respect?

A. Joking with him and laughing with him and going out with him.

Q. Did she ever love or show any respect for Mrs. Butler during the time she was there?

10 A. No.

Q. Did you have any conversation with this Miss Sweitzer?

A. Yes.

Q. During the time she was there?

A. Yes.

Q. What about?

A. Why once she asked me if I thought my sister would believe in a divorce.

Q. What did you tell her?

20 A. I told her I didn't know.

Q. What did she say?

A. I asked her would she marry him if she did. She said she thought so.

Q. Who was present at that time?

A. My sister.

Q. Any one else?

A. No.

Q. Did she say anything to you about any money being paid for a divorce?

30 A. No, she didn't.

Q. Did Pat say anything?

A. Yes.

Q. In this woman's presence?

A. No, she wasn't around at the time he told me.

Q. She was not present?

A. No.

Q. Have you seen Mr. Butler and Miss Sweitzer out together different places in Atlantic City?

A. Yes.

Q. Where?

A. To the movies.

Q. How many different times?

A. Oh, several times.

Q. Anyone else with them?

A. No.

Q. Have you seen them any other place together? 10

A. Yes, I saw them in the machine.

Q. How many different times?

A. Well, I saw them quite a few times in the machine.

Q. Has that been since Mr. Butler left his wife?

A. After he had left her and before he had left her.

Q. Saw them both before and after?

A. And after.

20

RECESS TO 1.30 P. M.

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(Trial of the cause resumed at 1.30 P. M.)

MRS. ISABEL MILLER, resumed.

Cross-examination.

By Mr. Parsons:

30

Q. Mrs. Miller, when did you first make the acquaintance of Miss Sweitzer?

A. When my sister first met her but I don't know just what time.

Q. Where was that?

A. In my sister's home.

Q. And you can't remember the approximate time when you first met her?

A. No, I can't.

Q. And you say you saw her continuously from that time up until the time she left your sister's house?

A. I saw her there, yes.

Q. Were you ever out with her any?

10 A. No.

Q. Were you on friendly terms with her?

A. No.

Q. Not at all?

A. Not at all.

Q. You came to Atlantic City to live, you say, what year?

A. Well, I don't know exactly what year it was.

Q. Well, can't you rememebr? Was it a year, two years ago, three or four years ago?

20 A. It is about four years ago. It was after the Armistice; about five years ago.

Q. About five years ago; that was 1919?

A. Yes.

Q. And you have been living there continuously since that time?

A. I have been living there steady since.

Q. Beg pardon?

A. I have been living in Atlantic City since.

30 Q. You said something in your direct examination about going over to see your sister when she lived on Trinity Avenue?

A. Yes.

Q. That was when?

A. Right at the same time; she was only down here about a week.

Q. What year was that in?

A. About 1919.

Q. 1919?

A. Yes.

Q. And was it at that time that you first learned about Miss Sweitzer?

A. About a few weeks after that.

Q. A few weeks after that, but you fix the time as 1919?

A. Yes.

Q. When was Mrs. Butler's baby born?

A. 1920.

10

Q. When?

A. On December 16th.

Q. Now how long before the baby's birth was it that you saw your sister at her house?

A. In her own house?

Q. Yes. I think you testified on the stand.

A. Oh, I saw my sister every day. I saw her the hour before the baby was born.

Q. But this particular instance where you testified about seeing your sister lying on the couch.

20

A. It was when she was about three months.

Q. That would be about when? That would be about what month?

A. I can't just recall the month.

Q. You say the baby was born in 1920, don't you, December 16th?

A. Yes, it was December 16th.

Q. And you say you saw her in this particular instance when she was about three months?

A. About three months.

30

Q. And that would be about what month?

A. It was about June, I guess.

Q. About June of 1919? Is that when you met Miss Sweitzer?

A. Yes, that is when I met Miss Sweitzer.

Q. In June of 1919? Now are you sure about it, Mrs. Miller?

A. I am sure about it.

Q. Was Miss Sweitzer living with your sister at that time?

A. No, not exactly at that time. She lived with her when she moved over on the other street.

Q. But still she didn't have her child then? You say you met Miss Sweitzer around June, 1919?

A. Yes.

Q. That was prior to the time that Miss Sweitzer  
10 came to your sister's house to live?

A. No, not then she didn't come to live.

Q. No, I say it was prior to the time she came to your sister's house to live?

A. Yes.

Q. Do you remember your sister saying on cross-examination that she never met Miss Sweitzer until 1920?

Mr. Davis: I object. It is improper to have her  
20 comment on the testimony of another witness.

The Court: Well, I think this is a preliminary question, evidently. She may say that she did or didn't remember it. It would be irrelevant in any event whether she did or not. I think I will overrule the question.

Mr. Parsons: Wouldn't that go to the veracity of the witness, the question itself?

30 Mr. Davis: Oh, no; you can't compare one witness' testimony with the other.

The Court: The question now is whether she heard her sister testify. She may or may not have heard her and it would be irrelevant whether she did hear her or not. I overrule that on the ground of irrelevancy.

Q. Now can you tell us what month it was that Miss Sweitzer went to live with your sister?

A. No, I can't.

Q. You can't tell about what time of the year it was?

A. No, I couldn't.

Q. But you did visit her every day of that?

A. Yes.

Q. While she was there?

A. Yes.

10

Q. How long was Miss Sweitzer there?

A. Well, I couldn't tell just how long she was there.

Q. You are not sure how long she was there?

A. No.

Q. Now how long was it after Miss Sweitzer had left your sister's place before you went down to the store to see your sister's husband?

A. About five months after.

Q. About five months afterwards?

20

A. Yes.

Q. Then what month was that?

A. You mean the time we went to see Miss Sweitzer in the store?

Q. Yes.

A. Oh, that was about a year afterward.

Q. About a year afterward?

A. After the time I met her, yes.

Q. That was the time you met who?

A. After the time I met Miss Sweitzer.

30

Q. Then you met her in 1919?

A. Yes, I met her in 1919, but I didn't go to the store in 1919.

Q. Then how long after Miss Sweitzer left your sister's home before you went to the store with your sister to see Mr. Butler?

A. That we went to the store to see Miss Sweitzer?

Q. Yes.

A. Her baby would have been five months old before we went to the store.

Q. Five months old?

A. Yes. That was in the following year again.

Q. That would be sometime in June of the following year; is that what you mean?

A. No, it was in May of the following year, 1920.

Q. The following year?

10 A. Yes.

Q. And you had met Miss Sweitzer the year previous to that?

A. No.

Mr. Davis: I don't think she hears you. She is very hard of hearing.

20 Q. What I want to fix in the juror's minds, Mrs. Miller, is the proximate date and the proximate year when you first met Miss Sweitzer.

A. 1919 is when I first met her but the date I can't tell you.

Q. Can you tell the month?

A. No, and the month I couldn't tell either, but I met her in 1919, about when my sister was about three months. That would be about June is when I first met her.

Q. That is, you think it was about June, 1919, that you met Miss Sweitzer first?

30 A. Yes.

Q. How did you meet her?

A. At the house.

Q. At whose house?

A. My sister's house.

Q. Was she at your sister's house?

A. Yes.

Q. In 1919?

A. Yes.

Q. Then you say it was about five months after the birth of the child before you went to her store?

A. Yes.

Q. And that was in May of 1920?

A. Yes.

Q. You had seen her prior to that time frequently?

A. I had seen her, yes.

Q. At your sister's house?

A. Yes, at my sister's house.

10

Q. Now, did you notice a change in your brother-in-law's attitude toward your sister in 1919?

A. Not as much as 1920.

Q. It was more so in 1920 than it was in 1919?

A. Yes.

Q. What do you mean by affection?

A. Well, he didn't show no love towards her.

Q. What do you mean by love?

A. Well, I thought a man's place —

Mr. Davis: If your Honor please, I don't believe 20  
anybody can define that.

(After argument.)

Mr. Parsons: I will withdraw the question.

Q. What do you mean, Mrs. Miller, when you say that you saw Mr. Butler show his affection towards Miss Sweitzer by joking and laughing and taking her out?

30

A. I didn't think it was fair that he should take her out and leave his wife stay home.

Q. What do you mean by joking and laughing?

A. Well, because he cut up with her in the house.

Q. He didn't cut up with his wife?

A. He didn't care for her.

Q. I didn't ask you that. I say he didn't cut up with his wife while she was in the house?

A. No.

Q. You made some remark about seeing Mr. Butler and Miss Sweitzer at the movies?

A. Yes.

Q. When was that?

A. I couldn't recall the time, because I saw it several times.

10 Q. What year was that?

A. Before the separation and after the separation.

I couldn't recall the years.

Q. What moving pictures did they go into?

A. I saw them in the Colonial movies.

Q. Any other theatre?

A. No.

Q. How many times did you say you saw them?

A. I couldn't count the times.

Q. Innumerable times?

20 A. Several times I saw them together.

Q. And you don't know what month or what day?

A. No, I couldn't count the months.

Q. What time of day was it you saw them?

A. That I saw them in the movies at times?

Q. Yes.

A. I guess around eight or nine o'clock.

Q. At night?

A. At night.

Q. Were you in the movies yourself?

30 A. Yes.

Q. And saw them in there?

A. I saw them in there.

JOHN J. TOOMEY, sworn for plaintiff.

Direct examinaiton.

By Mr. Peacock:

Q. Where do you live, Mr. Toomey?

A. Camden.

Q. How long have you lived in Camden? 10

A. Well, I was born and raised there but I have lived there several times.

Q. Where are you employed?

A. Atlantic City Railroad.

Q. Headquarters at Camden?

A. Yes.

Q. Did you formerly work for Miss Sweitzer at her place of business in Atlantic City?

A. I did.

Q. When? 20

A. In the summer of 1922. I didn't work there steady, just on different occasions.

Q. Do you know Mr. Butler?

A. Yes, sir.

Mr. Peacock: Stand up, Mr. Butler.

(Mr. Butler stands.)

Q. Is that Mr. Butler? 30

A. Yes, sir.

Q. He worked there at that time?

A. Yes, sir.

Q. Who was boss of the place?

A. I thought he was the boss.

Q. Was Miss Sweitzer there all the time he was there?

A. Yes, sir.

Q. Was there a bedroom attached to the store where you worked?

(Objected to as leading.)

The Court: It is leading.

Q. Tell me what rooms were there.

10 A. Well, if you can call it a bedroom; you can call it a bedroom; but there was a room back of the place, or on the side, rather.

Q. How was it furnished?

A. Why, it had a cot in there and a table, and I don't know whether there was any chairs or whether they were boxes, I wouldn't say. I think there was something there to sit on, and there was a small electric hot plate.

Q. Who used that room?

20 A. Well, I have been in there myself.

Q. Did you ever see Mr. Butler in there?

A. Yes, sir.

Q. Did you ever see Miss Sweitzer there?

A. Yes, sir.

Q. Did you ever see them there together?

A. Yes, sir.

Q. How many times?

A. Well, I couldn't say how many times. I don't believe it is over once or twice, because I haven't  
30 been in the place over half a dozen times.

Q. How long did they stay there together?

A. Well, they stayed in there the noon hour together.

Q. Did you ever see them eat in there together?

A. Yes, I think I did.

Q. Did Miss Sweitzer have apartments in Atlantic City at that time?

A. Yes, I think she did.

Q. Did you ever go to that apartment?

A. Yes.

Q. Who with?

A. Mr. Butler.

Q. Did you go in?

A. No, I didn't go in.

Q. Did he go in?

A. Yes, he went in.

Q. How long did he stay there?

10

A. Well, about three-quarters of an hour or so.

Q. Daytime or night time?

A. Night time.

Q. When was that?

A. In the summer of 1922.

Q. While you were employed there?

A. I don't think I was employed there at the time.

It was just one evening I went down to the market with him.

Q. How did you come to go with him up to her 20 apartment?

A. I didn't go up to her apartment with him.

Q. Did you go out in the car?

A. Yes, went in his truck.

Q. How did you come to go with him when he went in the apartment?

A. I was up to his house that evening. He says, "We will take a ride down to the market." We went down to the market. Coming towards the market he says, "I am going to stop in Hannah's a min- 30 ute. I won't be long."

Q. And how long was he?

A. About three-quarters of an hour or so.

Q. Then where did he go?

A. Went to the market.

Cross-examination.

By Mr. Irving Parsons:

Q. What store are you talking about now?

A. The store that they had there at Little Rock and Atlantic Avenue.

Q. On the corner?

A. Well, I don't know whether it was direct on  
10 the corner or next to the corner. There was a lot there. It was Little Rock and Atlantic Avenue, the store they had in June, 1922, or the summer of 1922.

Q. That store was built how, do you remember?

A. It was like a portable store, to my estimation. I couldn't describe it—or I could describe it at that.

Q. Just tell the jury what that store looked like or how it was built, if you can.

A. It was like a portable store, two windows in the front and a door in the back, looked more of a  
20 home made building, to my knowledge. It didn't look like no tools or anything like that; it wasn't no big stone place, it was a portable place.

Q. Does that completely describe the building, in your estimation?

A. What do you mean, the contents of it?

Q. No, the building itself. Was it lathed or plastered or have any foundation under it or anything like that?

A. I don't know whether it had any foundation  
30 under it. I don't think it was lathed or plastered.

Q. What about the room that you talked about in the back?

A. The room that was behind the stands, like the stands were built on a slope, and the room was on that side.

Q. Built of rough boards, was it?

A. The store was; had something tacked over it there in the front. Well, it was all windows in the front.

Q. All open in the front like?

A. Yes.

Q. Did you work with them when they had a store on Little Rock Avenue?

A. No, Little Rock and Atlantic there.

Q. No, but I mean on the side, Little Rock Avenue.

10

A. No.

Q. Who paid you your salary?

A. Well, I will tell you; I never worked there a full week in my life, because I had a position elsewhere, and I just helped out on different occasions.

Q. Who paid you?

A. Mr. Butler.

Q. Did you consider him the owner of the place or what?

20

(Objected to.)

The Court: Yes, that is a conclusion.

Q. What night was this, if you can recall, that you went to where Mr. Butler lived?

A. I couldn't recall the exact date. The only thing I could tell you, it was in the summer of 1922.

Q. What time?

A. Just about dusk when we left the house and went down there. It was dark when we arrived at the market.

30

Q. Then you went to the market, did you?

A. Yes, we went to the market after he came out of there.

Q. Did Mr. Butler buy anything at the market, do you recall?

A. I don't think he did. I don't know, I don't think so. I think we came home that night without getting anything.

Q. Where was the apartment located, do you remember that?

A. I don't know exactly the name of the street, but I think it was on Georgia Avenue. It was the north side, between Georgia and Arctic.

Q. Between what avenues?

10 A. Or not Georgia, but between Arctic and Atlantic.

Q. It was on Georgia between Atlantic and Arctic?

A. I think so. I am not very familiar with those streets down there because I wasn't there long.

Q. Do you know as a matter of fact whether he had any particular business with Miss Sweitzer or not that night?

A. No, I don't.

20 Q. Don't know anything about it?

A. He said he was going to stop in and see Hannah; that is how he addressed her.

Q. And it might have been, as far as you know, a business proposition?

A. It might have been.

By Mr. Peacock:

30 Q. You don't know what kind of a proposition it is, but you know he was there?

A. He was there.

MRS. MARY BROWN, sworn for plaintiff.

Direct examination by Mr. Peacock:

Q. Where do you live, Mrs. Brown?

A. 208 Melrose Avenue, Atlantic City, New Jersey.

Q. How long have you lived in Atlantic City?

A. Fourteen years.

10

Q. Have you any position at Atlantic City?

A. Yes, matron of the new high school.

Q. How long have you been matron of the high school?

A. At the new high school, last September I went there; Massachusetts Avenue and Atlantic, at the girls' high school, before that, twelve years.

Q. How long were you matron of the girls' high school?

A. Eleven years.

20

Q. Then you have been employed by the educational department of Atlantic City about twelve years as matron?

A. Yes.

Q. Do you know Mrs. Butler?

A. Yes.

A. Next door and in her house one summer.

Q. Where did she live at that time?

A. On New Hampshire Avenue.

Q. And when was that?

A. I have known her over four years, but she came there when Marie was about three or four months old.

30

Q. Marie was about three or four months old?

A. About three or four months old.

Q. She was born December, 1919?

A. Yes.

Q. And then she came there about what time?

A. Maybe April or May, I am not quite sure.

Q. In 1920?

A. 1920.

Q. And where was that address?

A. Well, I think it is 238 North New Hampshire Avenue.

Q. And where did you live at that time?

A. 206 Melrose Avenue, next door to where I am  
10 living now.

Q. How close was that to Mrs. Butler's house?

A. Right next door from the back. It was around  
the corner, the front.

Q. Were you friendly with Mrs. Butler then?

A. Yes.

Q. Did you visit her home?

A. Yes.

Q. How often?

A. Well, I never visited Mrs. Butler's home until  
20 Mr. Butler was injured, and I went in there to do  
for him at that time.

Q. Now your home, you say, adjoined the Butler  
home?

A. Yes.

Q. Right adjoining it?

A. Yes.

Q. Do you know this lady sitting here, Miss  
Sweitzer?

A. I met her there?

30 Q. When was she there?

A. When Mr. Butler was sick, when he was  
burned.

Q. How often was she there?

A. I couldn't just say that, but she was there  
maybe ten or twelve times, to my knowledge, while  
he was injured.

Q. You saw her there?

A. Yes.

Q. Mrs. Butler there at the same time?

A. Yes, all but one afternoon he brought her there and I didn't know who was in there, and when he came out he asked me where Anna was.

Q. Who was in the house then?

A. I don't know.

Q. Did you go in the house?

A. No.

Q. Was he there?

10

A. Yes; he said there was no one home.

Q. Was Miss Sweitzer in the house at that time?

A. With Mr. Butler. She came out with him.

Q. You say he came out; where was Mrs. Butler?

A. Mrs. Butler told me afterwards she was —

Q. Never mind what she told you. Was she ever at the house at that time?

A. No, I beg your pardon.

Q. When he asked you where Mrs. Butler was, where was Miss Sweitzer?

20

A. Standing on the porch with him.

Q. And then after he asked you where his wife was where did they go?

A. At that time he stood away to the front, I don't know where.

Q. Where?

A. They went to New Hampshire Avenue, out on the side yard.

Q. Were they coming out of the house when he asked you where his wife was, or going in?

30

A. Coming out.

Q. Did you afterwards see Mrs. Butler come home?

A. Yes.

Q. How long after they had gone?

A. Well —

Q. Well, approximately how long?

A. About an hour, maybe a half hour.

Q. Have you ever seen Mr. Butler and Miss Sweitzer together at any other place?

A. Yes.

Q. Where?

A. One evening on Atlantic Avenue between South Carolina and North Carolina Avenue, and one other afternoon in their truck. I was passing in a car.

10 Q. When you saw them on North Carolina Avenue were they walking or in an automobile?

A. Walking.

Q. A question I omitted. Do you know how long they were in the house the day Mrs. Butler was away?

A. No.

Q. Don't know how long?

A. No.

Q. Did you see them when they went in?

20 A. No, I didn't; when they came out.

Q. Was this before you saw them in the Butler house or afterwards when you saw them on Atlantic Avenue?

A. Afterwards I saw them on Atlantic.

Q. How long afterwards?

A. Well, it was last summer I saw them on Atlantic Avenue.

Q. Last summer?

A. Yes.

30 Q. And you say you saw them on one occasion on Atlantic Avenue?

A. Yes.

Q. Daytime or night time?

A. One was at night.

Q. And where were they going at that time?

A. In the afternoon he was in the truck.

Q. In what direction?

- A. Going up town, north, toward ——
- Q. We don't know what going up it. Is that toward the Inlet, going up?
- A. Going to the Inlet.
- Q. Were they riding or walking at that time?
- A. They were walking.
- Q. And about what time?
- A. Well, I couldn't tell you. It was after dusk.
- Q. At night?
- A. Yes. 10
- Q. Did you ever see them together at any other place?
- A. Only in the truck.
- Q. Those three occasions are the only times you saw them together?
- A. Yes.
- Q. Did you know Mrs. Butler before Marie was born?
- A. No, I didn't.
- Q. You knew her afterwards? 20
- A. Yes.
- Q. Have you been in the Butler home on occasions when Mr. Butler has been home?
- A. Yes.
- Q. On how many occasions?
- A. Well, I lived there one summer for two months.
- Q. You lived at their home for two months?
- A. Yes.
- Q. When was that?
- A. 1922, I think. 30
- Q. It was after you saw Mr. Butler and Miss Sweitzer together, was it?
- A. At the house, yes.
- Q. What was Mr. Butler's attitude toward his wife during that time that you knew?
- A. One night he came home; he had been away for a couple days and nights.

Q. During the time you were there?

A. Yes.

Q. Hadn't been home for two days and two nights?

A. No.

Q. What happened when he got home?

A. Well, Mrs. Butler called me out—may I say that?

Q. Not what she told you; what did you see?

10 A. Well, he had complained about being into a fight and said that he was with Hannah at the time, as he addressed her.

Q. What was his condition?

A. Well, he had been scarred; said he was taking Hannah's part, that is all I know.

Q. Where did he say he had been in a fight for Hannah?

A. In Pleasantville.

Q. Did he say whose house he had been at?

20 A. No, I don't remember now who it was.

Q. And what happened between him and his wife at that time?

A. Well, they had an argument.

Q. Over Hannah?

(Objected to.)

The Court: Yes, that is leading.

30 Q. What was the argument about?

A. Over Miss Sweitzer.

(Objected to.)

Q. Have you heard any other quarrels between them?

A. Yes, on several occasions.

Q. Over what?

A. Miss Sweitzer, as far as I know.

Mr. Parsons: I object to that answer and ask that it be stricken out.

The Court: I think the answer is not responsive. Of course if you don't know you can't say.

A. Well, that was what ——

10

Mr. Peacock: I withdraw the question and answer.

Q How many other quarrels have you heard, Mrs. Brown, between Mr. and Mrs. Butler?

A. Well, when I was there one evening while I lived in the house he got her out of bed to make coffee for him, and she had been sitting up quite late and I asked her if she would ——

20

(Objected to.)

Q. Not what you asked her. Who was present at that time?

A. Mr. Butler, Mrs. Butler and myself.

Q. Any quarrel that night?

A. Yes.

Q. What was the quarrel about?

A. Of course what I heard ——

Q. What was the subject-matter of the quarrel?

30

A. Hannah.

Q. Any other quarrels that you heard there?

A. Well, I heard numerous quarrels but I just can't recall now.

Q. Do you know of any other occasions when he stayed away over night?

A. Yes.

Q. Now do you know whether Mr. and Mrs. Butler separated?

A. Yes.

Q. How many times?

A. Well, that last time, to my knowledge —

Q. Now after they separated did you talk to Mr. Butler?

10 A. While they were quarreling I talked to Mr. Butler.

Q. Did you talk to him after he left her?

A. He came back and I talked to him then.

Q. Did you talk to him anything about his wife?

A. Yes.

(Objected to.)

Q. Was there any effort made by you with Mr. Butler for a reconciliation with his wife?

A. Yes.

20 Q. What did he say? Would he go back with her or not?

A. He said not.

Q. Has he ever gone back to live with her since he left her at that time?

A. Not at that time.

Q. Has he ever gone back to live with her since he told you he would not go back?

A. No, not to my knowledge.

Q. Where has he been living since that time?

30 A. I don't know.

Cross-examination.

By Mr. Parsons:

Q. Mrs. Brown, did you know at the time that Miss Sweitzer called to see Mr. Butler at the time he was ill that they were in business together?

A. As far as I know.

Q. Now this porch that Mr. Butler and Miss Sweitzer came out on, is that the back porch of their apartment?

A. The back porch.

Q. Backs up against your house?

A. Well, I wouldn't say—our house is right here; theirs runs like this (indicating).

Q. Where were you when you saw —

A. In my yard.

Q. Then their porch overlooks your yard; is that the idea? 10

A. Yes.

Q. At the time that you lived there with them did you hear them have any quarrels except those about Miss Sweitzer?

A. Only he coming home late at night, that was all.

Q. No other disagreements except that?

A. Not to my knowledge, no.

Q. You lived there, you say, one summer; is that the idea? 20

A. At Butler's, yes. I rented rooms of them.

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MRS. ELIZABETH HEALEY, SWORN for plaintiff.

Direct examination.

By Mr. Peacock:

30

Q. Where do you live?

A. Atlantic City, New Jersey.

Q. Where is your home at the present time?

A. Pittston, Pennsylvania.

Q. With whom do you live?

A. My son. I keep house for my son.

- Q. Are you the mother of Mrs. Butler?
- A. Yes, sir.
- Q. How long have you lived in Pittston?
- A. Well, since I went back this time it has been going on three years.
- Q. Do you have any of Mrs. Butler's children with you at the present time?
- A. I have the little boy all the time.
- Q. How old?
- 10 A. He was six years old last May.
- Q. Do you remember when Mr. and Mrs. Butler lived in Atlantic City?
- A. Yes, sir.
- Q. Did you go to live with them?
- A. I did, by her request for me to come and keep the house for her while she was going to work, to help get along.
- Q. When was that?
- A. Well, that would be before Joseph was born.
- 20 Q. Before Joseph was born?
- A. I was with her in Camden too.
- Q. Who came to you to get you to go live there?
- A. She wrote to me in a letter, sent me a letter.
- Q. And why did you go to her house?
- A. Why, because he claimed he lost his health in a shipyard and he couldn't work—do light work—and I went and kept house to let her work, light work, in a rented room; and she done the same in another place. I kept house till the oldest little boy
- 30 was nine months old, when the next baby came, and I took care of that baby until it was eleven months old. I raised the two children; that is all the harm I ever done the man.

(Objected to.)

The Court: I don't see any special objection.

Q. Did you do any work in the time you were there taking care of the babies?

A. Worked all the time until I wasn't able; worked up till the last child was born.

Q. During all the time that you lived there taking care of these children was there ever any quarrel between you and Mr. Butler?

A. Never had a quarrel with Mr. Butler at all.

Q. Did you ever have any quarrels with him during all the time you lived with him?

10

A. Never.

Q. Did you ever hear quarrels between Mr. Butler and his wife?

A. Yes, quite a few.

Q. Where were they?

A. Well, sometimes in one room, and sometimes I was in the same room listening.

Q. Do you know that woman sitting there? (indicating defendant)?

A. Yes, I know her.

20

Q. The defendant, Miss Sweitzer?

A. Yes, Miss Sweitzer.

Q. Did she ever come to your house?

A. Who, Miss Sweitzer?

Q. Yes.

A. Mr. Butler brought her there, when she was put out where she roomed.

Mr. Parsons: That is not responsive.

Mr. Peacock: She is testifying what the defendant said when she came there. 30

The Court: The question is did she ever come to her house. The answer is yes or no.

Q. When Miss Sweitzer came to your house what did she say?

A. I don't know that she said anything that night, but later on she told me why she was put out. He told it that night.

Mr. Parsons: She has answered the question.

Q. Did Mr. Butler say anything that night when he came in in the presence of Miss Sweitzer?

A. Yes.

10 Q. What did he say?

A. He said she was put out because he went to her room and brought her an oyster stew.

Q. How long did she stay there?

A. Well, I couldn't say. She was there all winter.

Q. After Miss Sweitzer came to the house did you have any conversation with her?

20 A. Well, one time she told me that this lady that put her out had told her that if Mr. Butler thought so much of her and she thought so much of him that she would tell them how to get a divorce.

Q. And where did she tell that?

A. In Mrs. Butler's house.

Q. What have you seen happen between Mr. Butler and Miss Sweitzer while she was in your house?

30 A. One Sunday afternoon I saw him make her get up off the cot and make her lay down and put his overcoat over her. And another evening he asked for a pail for her to bathe her feet. I am not positively that he put the water in the pail or not, but he set the pail down and she put her feet in the pail. She says, "I was ashamed of you one time but I ain't any more."

Q. What else did you see happen there between Butler and Miss Sweitzer?

A. Well, that is pretty near all I have seen with my eyes.

Q. Do you remember when Mrs. Butler first met Miss Sweitzer?

A. She met her, that was the first time she said she ever met her, was the night he brought her to the house.

Q. Was there anything else you saw there between Butler and Miss Sweitzer while she was at your house?

A. No.

Q. How long have you had the little boy, little Joseph? 10

A. Well, I raised him. He is six years old. His mother didn't have him very long.

Q. How long have you had him at Pittston, Pennsylvania?

A. Well, I should think it is going on two years.

Q. Has his father ever been there to see him?

A. Once.

Q. When?

A. A couple hours on an excursion when Anna was about one month. 20

Q. Does he ever write him any letters?

A. He has sent one postal card to the children during that time.

Q. Does he ever send any money for their support?

A. Well, not to me.

Q. To you, I mean.

A. No, never a nickel.

Q. Since you have had him, in the two years? 30

A. No, sir.

Q. Who takes care of and keeps you and the child at the present time?

A. My son.

Q. What is your son's name?

A. Michael Healey.

Q. Has the father ever sent any presents to the child in the two years you have had him?

A. Nothing, only one postal card.

Q. Send him anything at Christmas?

A. No, sir; not a thing.

Cross-examination.

By Mr. Parsons:

10

Q. Mrs. Healey, what year was it that you first met Miss Sweitzer?

A. Well, I couldn't tell you, because I haven't got very much education myself.

Q. You can't tell what year it was?

A. What date?

Q. What year?

A. No, I really can't tell because I never gave it a thought.

20

Q. Was it one year ago?

A. When I first met Miss Sweitzer?

Q. Yes.

A. Oh, no; it must be four years.

Q. Four years ago?

A. It must be pretty near that, because Joseph was a little baby.

Q. Around 1920?

A. Yes, sir.

30

Q. Is that the first time your daughter met Miss Sweitzer?

A. The first time my daughter met Miss Sweitzer was when he brought her to the house. Little Joseph was a baby then.

Q. You say it was four years ago?

A. As near as I can think, because I never thought there would be any trouble like this and never gave it a thought.

Q. And you say Miss Sweitzer lived at the house nearly all winter?

A. Yes, nearly all winter she lived there. She told me another time that I was a fool —

Q. No, just wait.

---

MICHAEL HEALEY, sworn for plaintiff.

Direct examination.

10

By Mr. Peacock:

Q. Mr. Healey, where do you live?

A. Pittston, Pennsylvania.

Q. What relation are you to Mrs. Butler?

A. Sister.

Q. She is your sister?

A. Yes.

Q. What is your occupation?

A. Coal miner.

20

Q. How long have you lived in Pittstown, Pennsylvania?

A. Oh, I was born and raised in Pittston, but I have been out of it on several occasions, months at a time in strikes.

Q. Who are you employed by?

A. Pennsylvania Coal Company.

Q. What position do you hold with them?

A. Miner.

30

Q. Are you a foreman?

A. No, just an ordinary miner.

Q. Do you remember when your sister and her husband separated at Atlantic City?

A. Yes.

Q. Did you go to Atlantic City?

A. Yes.

Q. Where was your sister at that time?

A. Why, I couldn't just name the street they were living on. They had a small, little basement, about four or five rooms, I guess.

Q. What conditions did you find there?

A. Very poor.

Q. Anything to eat in the house?

A. Very little.

Q. What did you do?

10 A. I went out and bought stuff and brought into the house the first night I was there, because I wouldn't set my children down to his table. The first night that I was there at my sister's home the stuff that was on the table I didn't figure was good enough for my children. I went out and went to one of the little stores next and bought stuff and brought it in and put it on the table for my children.

Q. What did you do concerning Mrs. Butler's rent?

20

(Objected to.)

Q. Did you pay her any other money?

A. Yes, at one time —

(Objected to.)

Mr. Peacock: It is all withdrawn.

30 Q. What did you do regarding the rent due on your sister's property?

(Objected to as leading.)

Mr. Peacock: Oh, no, I don't think that.

Mr. Parsons: The answer is suggested in the question. What did you do with your sister's rent?

Mr. Peacock: I don't see that. I asked him what he did regarding his sister's rent.

The Court: Well, he might have done either one of two things—even three: either paid it, not paid it or collected it. I will permit that.

A. I paid her rent. She was one month in arrears but I paid the rent for her.

Q. How much rent did you pay for her?

A. I think it was \$20. I couldn't rightly say.

Q. Were both children with her at that time?

A. Just at that present time they were in the house, because one of them had been with my mother.

Q. Where is Joseph, her other child, living now?

A. Pittston, Pennsylvania, at my home.

Q. With whom?

A. My mother and I.

Q. Who supports that child?

A. I do.

Q. During the time that you have had that child have you received any support from its father?

A. Not a cent.

Q. Has that child received any presents from its father?

A. Not that I know of.

Q. And you have had the boy how long?

A. Well, ever since my wife died, which would be going on four years.

10

20

30

The Court: I am wondering whether this testimony is relevant or not, what he is doing for some one else's child. The difficulty is in this case that the defendant is not the father, and the testimony which goes to demonstrate his delinquencies is very likely to be used by the jury as against the defendant.

Mr. Peacock: That is exactly the point, to show that this woman has been the cause of the entire trouble and even caused this man to abandon his own child, and she is the cause of it all.

The Court: I know, but the suit is not because he has abandoned the child. I am afraid you are making it a little too broad. I think that this testimony is entirely admissible for one purpose, and  
10 that is to show the mental attitude of the father toward his wife; but I cannot admit it for any other purpose.

(Mr. Davis replies.)

The Court: But you can't turn this into a damage suit for failure to support his children. There are other courts open for that purpose.

20 Mr. Peacock: Whatever your Honor thinks should be eliminated from the last question is satisfactory.

The Court: I think the question is too broad; I think a good part of the testimony.

Mr. Davis: We will not press it further.

No cross-examination.

30

PLAINTIFF RESTS.

DEFENDANT'S TESTIMONY.

HANNAH SWEITZER, sworn for defendant.

Direct examination.

By Mr. Parsons:

10

Q. Miss Sweitzer, where do you live?

A. 16 South Kentucky Avenue, Atlantic City.

Q. New Jersey?

A. New Jersey.

Q. In the early part of 1919 were you in business in Ventnor City, New Jersey?

A. Yes, with my brother-in-law, Mr. Simons.

Q. Where was that business located?

A. 28 South Little Rock Avenue.

Q. What city?

20

A. Ventnor City, New Jersey.

Q. And how long were you in business with Mr. Simons?

A. A year and six months, from June, 1918, until October, 1921—no, 1919.

Q. What happened with the business at that time?

A. At that time Mr. Simons was an elderly man and he wanted to leave the business.

Q. And did you buy the business from him?

A. Well, Mr. Butler was working there at the 30 time —

Q. No, just answer my question.

A. I bought the business October 15th.

Q. What year?

A. 1919.

Q. Now during the early part of 1919 was Mr. Butler working at this place of business?

A. My sister engaged him through the newspaper.

Q. And then he was working at that place of business in 1919?

A. He started to work at the end of May, 1919.

Q. Now after you took the business over, after the 15th of October, 1919, did you still retain Mr. Butler?

A. Yes.

10 Q. In what manner?

A. I bought the business from Mr. Simons. Mr. Butler said he would run it for me.

Q. And did Mr. Butler run the business for you?

A. He started first, he started to put "Manager" on the window, "Mr. Butler, Manager."

Q. Now was there any agreement between you and Mr. Butler at the time Mr. Butler became your manager as to partnership?

20 A. After he worked for me for awhile he asked me if it would be all right for him to work himself into the business.

Q. And what did you say?

A. I told him —

Mr. Davis: I object to the conversation.

The Court: Well, I suppose that the defense is that they were partners in business and that their relations were those of business partners.

30 Mr. Davis: I have no objection to that proof, but the conversation, I submit —

The Court: Well, I think that is probably objectionable, the conversation. I think it would be appropriate to ask whether or not they did enter into a partnership and probably whether that was evidenced by any writing, and if so to offer it.

Q. Miss Sweitzer, did you and Mr. Butler enter into any partnership?

A. Yes, sir.

Q. When?

A. Why, one year after. He worked his way into the business.

Q. And do you remember what date that was?

A. That was 1920, on October 18th, I gave him his partnership papers.

Q. In what manner did he become your partner? 10

A. He became my partner this way. He had no money and he told me he would work hard to work his way into it.

(Objected to.)

Mr. Davis: The conversation I am objecting to.

The Court: Is there a writing?

Mr. Parsons: Yes, there is a writing. We want to show the manner in which the partnership was formed. And in my opening I explained how that partnership came about: that he was to leave so much money in the firm until he got a certain amount of money, and he was to be taken into partnership. 20

The Court: I will let you show it.

Q. Proceed, Miss Sweitzer. 30

A. I told him I wanted to meet his wife first, see if she was satisfied with it; and I wanted to know his people also before I would leave any man into any partnership with me.

Q. Now was there any agreement made as to how he was to work himself into the partnership?

A. Yes, that was made. He was to leave \$10 in the winter time. In the winter time he was supposed to get \$25, \$30 a week, but he was to leave \$10 in.

Q. What about summer time?

A. In the summer time he was to receive \$50 a week and leave \$20 into the business.

Q. Now did he do that?

A. Yes.

10 Q. And did you subsequently go into partnership?

A. I didn't take him into partnership until he was all paid in.

Q. Now I show the witness what purports to be a partnership agreement and ask if that is her signature.

A. Yes.

Mr. Parsons: I offer it in evidence.

20 The Court: Is there any objection?

Mr. Davis: It has not been proven. I think the way to prove it is by the subscribing witness.

Mr. Parsons: We haven't got the subscribing witness here.

The Court: Is there any doubt about it?

30 Mr. Davis: Perhaps I should not say what is in my mind about the matter, but I think it ought to be proven in the proper way.

The Court: Well, of course, there is only one way of proving anything that is witnessed, and that is by producing the witness or accounting for his absence beyond the territorial jurisdiction of the court, and even then by proof of his signature.

Q. Miss Sweitzer, did you attempt to locate the witness to this partnership agreement?

A. No, I didn't know it was necessary, because there are four names on it. It is made by a notary public.

The Court: Can't that be admitted by agreement, if it is a partnership agreement?

(After argument.)

10

The Court: The offer is overruled.

Q. Then as a result of this agreement you and Mr. Butler became partners; is that the idea?

A. Yes.

Q. Did you give Mr. Butler the \$500 check spoken of before?

A. The \$500 check was August 27, 1920.

Q. August 27, 1920?

20

A. Yes, 1920.

Q. Was that given to Mr. Butler subsequent to the time that you met his wife?

A. No, his time was due to get his partnership papers and he had his money paid in and he asked me to give him the \$500.

Mr. Peacock: I object to the conversation.

Q. Never mind the conversation between you and him. 30

A. I gave him the \$500 to buy furniture with out of the money he paid in.

Q. And that was money coming to him from the business, is that the idea?

A. Yes.

Q. When did you first meet Mrs. Butler?

A. February, 1920.

Q. Then you didn't meet her in June of 1919?  
You didn't know her in June of 1919?

A. No, I knew nobody in 1919.

Q. Did you know Mr. Butler in 1919?

A. I knew Mr. Butler from working for my brother-in-law.

Q. You knew him from working for your brother-in-law?

10 A. He was working there, yes.

Q. He was working there?

A. Yes.

Q. That was before you took the business over from your brother?

A. Yes.

Q. Miss Sweitzer, where did you live during the year 1919?

A. 1919 I lived at North Pennsylvania Avenue with Mrs. MacDonald.

20 Q. Then where did you go to live after that?

A. From there I moved to Mrs. Butler's. She had everything ready for me to come in.

Q. What do you mean by having everything ready for you to come in?

A. Mr. Butler told me ——

Mr. Davis: I move that be stricken out.

The Court: Well, you can't state what Mr. Butler told you but you can state where you went and the circumstances under which you went there.

30

A. Well, I told him I wanted to meet his wife.

Mr. Davis: I move it be stricken out.

The Court: Yes.

Q. What do you mean by Mrs. Butler having everything ready for you?

A. To move to her house, because she wanted the room.

Mr. Davis: I move that be stricken out. She can't read her mind.

The Court: It will be stricken. Conversations with Mrs. Butler would be admissible, or in the presence of Mrs. Butler. You see a great deal of testimony was admitted this morning, conversations between Mr. and Mrs. Butler, out of the presence of the defendant, upon the theory that it disclosed the attitude of Mr. Butler toward Mrs. Butler. But with respect to this witness any conversations must have been had with Mrs. Butler that are to bind Mrs. Butler, in her presence. Some of that testimony would have been inadmissible for any other purpose except to show Mr. Butler's attitude toward his wife. It was on that theory that I admitted it.

Q. When did you go to Mrs. Butler's?

A. I went to Mrs. Butler's in February, 1920.

Q. And when you went there did you see Mrs. Butler?

A. Yes.

Q. Did you have any conversation with her?

A. When I came in she said, "I am glad to meet you. I would like to have met you long ago. Why didn't you come here long ago? I was very anxious to meet you."

Q. And as a result of meeting Mrs. Butler what did you do?

A. She told me that I could sleep with her.

Q. And did you sleep with her?

A. Yes.

Q. Did you sleep with her mother?

A. No, I wouldn't.

Q. But you did sleep with Mrs. Butler?

A. Yes.

Q. And you were there how long?

A. I was there from February, 1920, until we got out of the old store into the new store across, March 31st.

Q. And that was when?

A. That was in March.

10 Q. Of what year?

A. 1920.

Q. Did you and Mrs. Butler have any words in reference to Mr. Butler while you were there?

A. No, never.

Q. Were you and she on friendly terms?

A. Yes, she was fine.

Q. Did you pay for your room there?

A. I paid \$5 a week for my room.

Q. To whom did you pay the money?

20 A. To Mrs. Butler.

Q. Did you ever hear Mrs. Butler tell Mr. Butler or ask Mr. Butler to put you out?

A. Never.

Q. Did she ever ask you to leave?

A. No.

Q. Have you ever made any presents to Mr. Butler?

A. Never.

Q. Did you ever give him any shoes?

30 A. Never.

Q. Or suits of clothes?

A. No.

Q. Or silk shirts?

A. No.

Q. Did you ever give him a sweater?

A. No.

Q. Never gave him a sweater?

A. Yes, I knitted a sweater for him and one for the driver, because I had the yarn for it.

Q. You gave him a sweater?

A. I didn't give it to him; he paid for it.

Q. How much did he pay for it?

A. He paid \$4.

Q. Pay for the yarn or work?

A. Paid for the yarn and for the time.

Q. After you left Mrs. Butler's place where did you go to live?

10

A. I went of my own accord. I went to live in the new store. There were living quarters in back.

Q. In the new store?

A. Yes.

Q. Now you say you moved to the rear of your store on Little Rock Avenue?

A. The 31st.

Q. Did you live there?

A. Yes.

Q. Were you there continuously?

20

A. No, for the week-ends I went to Pleasantville with Mrs. Kirscht every week.

Q. Did Mrs. Kirscht live in Pleasantville?

A. Yes, sir.

Q. You say every week-end?

A. Every week-end.

Q. Came over and stayed with them?

A. Yes; they would come and get me Saturday night with the machine.

Q. And drive you over to their house?

30

A. Drive me over there.

Q. When did you come back?

A. Monday morning.

Q. Did you keep your store open on Sunday?

A. No.

Q. Were you ever in your store on Sunday?

A. I might be in there to get bills or something fixed.

Q. Were you ever there on Sunday when Mrs. Butler and Mrs. Miller came to your place and found you in a nightgown?

A. No, I never seen them.

Q. Never saw them?

A. I was never there over Sunday.

Q. While you were living at Mrs. Butler's house, Miss Sweitzer, did Mr. Butler ever show any acts of affection toward you?

10 A. No.

Q. Has there ever been anything between you and Mr. Butler?

A. Never anything but business.

Q. Did you ever employ nine men in your business?

A. Never did; never had enough business.

Q. What is the most you ever had there?

A. The most we ever had was three in the height of the season.

20 Q. What do you mean by the height of the season?

A. In the summer, starting June 15th, until the end of September.

Q. Was Mrs. Butler about in the business to know how much you had taken in there at any time?

Mr. Davis: That is objected to as conjecture.

The Court: It would be conjecture.

30 A. It was free to her if she wanted to.

(After argument.)

The Court: Mrs. Butler testified that she saw them take in \$800. You can ask this witness what opportunities she had, how often she worked there, whether she handled the money herself.

Q. Was Mrs. Butler employed in your place of business?

A. Yes, she was employed from shortly after Easter until the end of August.

Q. What year?

A. 1920, when he was working his way into the partnership.

Q. And was she paid any wages?

A. Yes, she got \$15 a week.

Q. Who paid her those wages?

10

A. I paid it to her.

Q. And you say she worked there continuously?

A. Continuously.

Q. From Easter time until sometime in August?

A. Shortly after Easter; I can't recall the date.

Q. Did you and Mr. Butler and Mrs. Butler have any conversation about him going into the business?

A. Yes; Mrs. Butler was only glad to get him into the business. She helped him out.

20

Mr. Davis: I object and ask to strike that out.

The Court: Yes; you can say what the conversations were between you, Mrs. Butler.

A. "I am glad." Mrs. Butler, she didn't know very much of business, but she asked me —

Mr. Davis: I move to strike it out.

30

The Court: Well, it is unimportant. I will let it stand.

Q. Now, Miss Sweitzer, at the time that Mrs. Butler was employed in your place of business did she in any way have access to the money that was taken in?

A. Did she have what?

Q. Access to the money that was taken in. Did she handle the money?

A. Yes, she sold and she handled the money and the register.

Q. Did she open the cash register?

A. Yes.

Q. When was Mr. Butler injured, do you remember?

10 A. It was the second season.

Q. What year?

A. 1921.

Q. And what time of the year?

A. May 17th.

Q. And where was he taken after his injury?

A. He was taken right to the hospital. Mrs. Miller called me up and told me he was burned, I should rush up there.

Q. And did you go up there?

20 A. Yes.

Q. And where was he?

A. He was in the Atlantic City Hospital.

Q. And how long did he stay there?

A. He stayed there for one week.

Q. Then where did he go?

A. Mrs. Butler took him out of there.

Q. How long was he there with Mrs. Butler?

A. He was with Mrs. Butler maybe three or four days.

30 Q. Then where did he go?

A. Then she took him to another hospital.

Q. What hospital was that?

A. The Wagner Hospital, Pacific Avenue.

Q. How long was he there?

A. He was there several weeks.

Q. During that time did the firm pay over any money to Mrs. Butler?

A. Yes.

Q. How much did she get?

A. She got \$30 every week.

Q. And did the firm pay any of his expenses in the hospital?

A. Yes, everything.

Q. Was that money paid to Mrs. Butler, Mr. Butler's wages or his earnings from the firm?

A. Yes; it was paid to her just like his wages.

Q. And who paid it?

10

A. I went up there and paid it to her myself.

Q. You gave it to her yourself?

A. Yes.

Q. Did you ever give it to her brother to bring down to her?

A. Gave it to her brother once, \$15 in advance. She wanted it, she needed it.

Q. Miss Sweitzer, did you ever tell or did you ever ask Mrs. Butler in the presence of Mrs. Miller whether she objected to a divorce or not?

20

A. Never. I have too much character.

Q. Did you ever mention divorce?

A. No, never.

Q. Did you ever mention marriage?

A. Never. I wouldn't want to.

Q. Did you ever mention to Mrs. Healey, the mother of Mrs. Butler, that Mrs. MacDonald told you that you ought to arrange for Mr. Butler to get a divorce so you could marry him?

A. Never. I am not crazy.

30

Q. Or did you say that Mrs. MacDonald said to you that if you loved him and he loved you that she could show you how to get a divorce?

A. No. Mrs. MacDonald was an old lady, very respectable. Mr. Butler was never in the house.

Q. Where is Mrs. MacDonald now?

A. She is very sick. She is in the rear of her own store.

Q. Is that why she is not here today?

A. Otherwise I would have her here. Dr. Car-  
rington is her doctor.

Q. Now, Miss Sweitzer, how long did Mr. Butler  
stay in partnership?

A. We stayed in partnership from October 18,  
1920, until 1922?

10 Q. What month, do you recall?

A. September; or no, August.

Q. And at that time did you dissolve partnership?

A. Yes.

Q. Why did you dissolve partnership?

(Objected to as irrelevant, incompetent and im-  
material.)

20 The Court: Well, unless it has something to do  
with the plaintiff I think it would be.

Mr. Parsons: If your honor please, I want to  
show by this testimony that \$100 was paid over to  
Mrs. Butler at the time that this partnership was  
dissolved by Miss Sweitzer—that is the object of  
my question—paid to her in cash.

The Court: That would have no relation to your  
question as to why they dissolved partnership.

30 Mr. Parsons: Well, it would lead up to what  
caused the dissolution and why they dissolved and  
what happened after the dissolution.

The Court: You see the trouble after all is with  
the form of your question. It calls for a conclusion.  
If there were any conversations between this wit-

ness and Mrs. Butler that led to the dissolution of the partnership those conversations can be shown.

Q. Did you have any conversation with Mrs. Butler in reference to the partnership, Miss Sweitzer?

A. Yes.

Q. What were they?

A. Mrs. Butler told me she was only too glad if her husband would be in business and we would make it wonderful.

Q. Was any conversation had with her in reference to the dissolution?

10

A. After the dissolution; yes, I was still on friendly terms with her.

Q. No, you don't understand the question. I say was there any conversation had with Mrs. Butler and yourself before the ending of the partnership?

A. Yes.

Q. What was that conversation?

A. The conversation was that the business was going bankrupt and it owed me so much that I had to take the business in order to come out.

20

Q. How much money did the business owe at that time?

A. It owed me about \$2,500.

Q. Did the brother of Mrs. Butler ever work for you in your store?

A. Yes.

Q. He did?

A. Yes.

Q. How long did he work for you?

30

A. He worked for me in 1922, the summer we dissolved partnership.

Q. The summer you dissolved partnership?

A. Yes.

Q. Then were you on good terms with Mrs. Butler?

A. Yes, Mrs. Butler worked there too that summer.

Q. Then you were on good terms after you dissolved with Mrs. Butler?

A. Yes.

Q. Did she work in your place in 1922?

A. We dissolved partnership only in 1922 at the end of the summer.

Q. Did she work in your store then?

10 A. Not at that time but a few weeks before that.

Q. Of what year?

A. 1922.

Q. In 1922 she worked at your store?

A. Yes.

Q. How long?

A. She worked—Mr. Butler's father died and he had to go to Pittsburgh to bury him and Mrs. Butler came down to the store and took his place and I paid her the same wages as Mr. Butler got.

20 Q. That was before you dissolved partnership?

A. Yes.

Q. Miss Sweitzer, do you recall any instance when any of your customers came into your store and addressed you as Mrs. Butler in the presence of Mrs. Butler herself?

30 A. All the customers we have what is there all the year round, they know my name is Miss Sweitzer, they call me up on the phone, Miss Sweitzer; but when a new customer came and they saw Butler and Company, they come in and call me Butler. I couldn't help it but I corrected them right away. They used to call me Simons before.

Q. They used to call you Simons before?

A. Yes; before my brother-in-law had the business. You can't help what people call you.

Q. Have you ever been to the moving pictures with Mr. Butler?

A. Yes, Mr. and Mrs. Butler together.

Q. Have you ever been there alone with Mr. Butler?

A. Never.

Q. Did you and Mr. Butler ever leave the store at the same time together?

A. Yes, we all left the store together, everybody that worked there; we all went home in the truck.

Q. During the day or during the business hours did you and Mr. Butler ever leave the store at the same time? 10

A. No, never.

Q. Always either one of you there?

A. No, I never missed a day in four years.

Q. You mean by that answer that you and Mr. Butler—that either you or Mr. Butler was in the store sometime during the whole day, that you were never out together at any time?

A. No, never.

Q. Miss Sweitzer, did you ever ask Mrs. Miller in the presence of Mrs. Butler or otherwise if she, Mrs. Miller, believed in divorce? 20

A. No, I never mentioned divorce.

Q. It was never mentioned at any time?

A. Never.

Q. When did you meet Mrs. Miller?

A. I met Mrs. Miller at the house of Mrs. Butler. She was there one day.

Q. That was when, what year?

A. That was in February, 1920. 30

Q. Then you didn't meet her in June, 1919?

A. No, I wasn't ever in the property until then.

Q. You didn't know her at that time?

A. I didn't know anybody.

Q. Did you know Mrs. Butler?

A. No.

Q. Did you know Mr. Butler?

A. I knew Mr. Butler from working there, the delivery man.

Q. He was the delivery man?

A. Yes.

Q. When did you first learn that you and Mrs. Butler were not on friendly terms any more?

A. Me?

Q. Yes.

A. I learned it when I got this paper served on me.

10 Q. That is the first you learned it? When you say papers you mean this suit?

A. Yes.

Adjourned till June 16, 1924, at 10:00 A. M.

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30

Mount Holly, N. J., June 16, 1924.

SECOND DAY.

(Parties present as before.)

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DEFENDANT'S EVIDENCE (Continued). 10

HANNAH SWEITZER, the defendant, recalled.

By Mr. Parsons:

Q. The last question I asked you, Miss Sweitzer, was: When did you first know—find out that Mrs. Butler was on ill terms with you?

A. When I got the papers.

Q. What do you mean by the papers? 20

A. The Court papers.

Q. The summons in this suit?

A. Yes.

Q. That was when? Do you recall?

A. It was in September, 1923.

Q. September, 1923. Now, are you sure of that date?

A. I am not quite sure of the exact date, but I know it was 1923, in September.

Q. Now, during the time that you knew Mrs. Butler—bear in mind February, 1920—was there any particularly friendly acts between you and she? 30

A. Yes.

Q. And what were those acts?

A. She used to wear my clothes, and I used to wear her clothes.

Q. Did you ever loan her any money?

A. Yes.

Q. Mrs. Butler, on direct examination, said that when Mr. Butler took you to her home, that Mrs. MacDonald had put you out of your room at her place because Mr. Butler had been up to your room. Is that true?

A. No.

Q. Did Mrs. McDonald ever put you out?

A. Never.

10 Q. Who is Mrs. McDonald?

A. She lives on North Pennsylvania Avenue.

Q. Do you know the number?

A. 234.

Q. Are you sure of that number, 234?

A. I think it is 234.

Q. Between what streets?

A. She lives between Arctic and Baltic Avenues.

Q. Is that the two hundred block?

A. I think it is two hundred north.

20 Q. What is Mrs. McDonald's condition, physically?

A. Mrs. McDonald's condition is very bad. She has enlargement of the heart. Otherwise she would be here.

Q. Did you try to have her to come up here to testify?

A. I tried hard to get her.

Q. Did you see her doctor?

A. Yes, I saw her doctor, Dr. Carrington.

30 Q. What did he say?

(Objected to.)

A. Said he could not get away.

Mr. Peacock: I ask that the answer be stricken out.

The Court: Objection sustained. The answer may be stricken out.

Q. When you had your place of business on Little Rock Avenue, in Ventnor City, where did you spend your week-ends?

A. I went with Mr. and Mrs. Kirscht, to Pleasantville, every Saturday night.

Q. Where is Pleasantville with relation to Atlantic City?

10

A. Six miles away.

Q. How long did you stay with Mr. and Mrs. Kirscht?

A. Stayed with them over Sunday, until Monday morning.

Q. Were you ever in your store on Little Rock Avenue over Sunday alone?

A. No.

Q. Were you ever there with anybody alone?

A. With Mr. and Mrs. Kirscht, to get bill heads 20

Q. Why did you go there on Sunday?

A. I went to church and told them I had to get the bill heads.

Q. Did you go to church in Atlantic City?

A. Yes.

Q. And did Mr. and Mrs. Kirscht go with you?

A. Yes, they went to their church and I went to mine.

Q. While you lived with Mr. Butler and Mrs. Butler, during February and March, 1920, did Mr. Butler ever give you a foot bath? 30

A. Never did.

Q. During the time you were living there did Mr. Butler ever force you to get up from any cot?

A. Never.

Q. Just a moment—did he force Mrs. Butler to get up from any cot so you could lay down?

A. Never.

Q. All the time you were there with Mrs. Butler was there any arguments had between Mr. and Mrs. Butler in reference to you being in their home?

A. Never heard them.

Q. Were you asked by Mrs. Butler to get out?

A. Never.

Q. Were you ever asked by Mrs. Butler's mother to get out?

10 A. No.

Q. Were you ever asked by Mrs. Butler's sister, Mrs. Miller, to get out?

A. Never.

Q. Were you on friendly terms with Mrs. Miller?

A. Very good.

Q. Mrs. Butler's mother?

A. Very good.

Q. Were you ever out with Mrs. Miller?

A. She invited me to her house.

20 Q. Did you ever go?

A. Never had the time.

Q. Were you ever out with Mrs. Butler's mother?

A. No. I was never out with Mrs. Butler's mother, but with Mr. and Mrs. Butler.

Q. Where did you ever go with Mr. and Mrs. Butler?

A. To the Apollo Theatre, and The Club, and the Colonial Theatre.

Q. Did that happen very often?

30 A. Several times during the time I lived there, and afterwards, too.

Q. Do you remember any occasion when you went with Mr. and Mrs. Butler to any cabaret in Atlantic City?

A. Yes, I went with Mrs. Butler —

Q. Just answer yes or no. Will you explain to the Jury what the particular incident was, and

where you went, and what you did, and how long you stayed there?

A. I went to Mrs. Butler's house on Friday night, moved into it. The next day was Saturday. Mrs. Butler came down to the store Saturday afternoon, until we closed up. We all went home together. And she told Pat, her husband—said, "Pat, take us up here." I said, "Where do you mean, up here?" They went all the way back, to the New World Cabaret. And she said, "I want Hannah to have some fun. I want her to see some life," she says. And we all got out, and opened the door, and she says, "Come in." I said, "No, I don't want to be seen with the colored people, dancing around." 10

Q. What kind of a place is the New World—was it the New World or Paradise?

A. New World.

Q. What kind of a place is the New World?

A. The New World is a place where it is all colored people, half naked, and dancing around, and— 20  
you know —

Q. Did you enter into the New World Cabaret with Mr. and Mrs. Butler?

A. Yes, she forced me in. I didn't want to go in. I said, "I never seen a place like this. I don't want to go in."

Q. How long did you stay there?

A. We went in and sat down at a table, and she says, "What do you want to drink?" I said, "I don't want anything to drink." She said, "I will 30  
take a highball." Mr. Butler —

Q. Just a moment—how long were you in there, Mrs. Sweitzer?

A. In there until they drank one highball—they drank two; I had a small glass of beer.

Q. Then did you go out of there?

A. No, I was there until Mr. Butler asked for money from Mrs. Butler. She handed him a five dollar bill.

Q. After you went out of there did you go directly home?

A. I started to beat it out; I could not stand it to see money thrown away like that.

Q. Answer the question.

A. I went out, and they right after me.

10 Q. Did you all go home together?

A. Yes, we all went home together.

Q. What address was that?

A. 503 North Indiana Avenue.

Q. Was that Mrs. Butler's home?

A. That was Mrs. Butler's home. I was only staying there for one day.

Q. You were only staying there for one day?

A. The second day, that happened. I went there on Friday, and that was Saturday that happened.

20 Q. As a matter of fact, you and Mr. and Mrs. Butler used to go out quite frequently; is that the idea?

A. Yes.

Q. Miss Sweitzer, while you were with Mrs. Butler, or in her home, how would she introduce you to all her friends?

A. Why, she introduced me that Sunday as "my husband's partner, Miss Sweitzer."

Q. Were you his partner?

30 A. No, we were not, yet; but she was so sure of it.

Q. You contemplated a partnership?

A. Yes.

Q. Now, Miss Sweitzer, let us go back until the time Mr. Butler received these burns. When was that?

A. In May 1921.

Q. Where was Mr. Butler taken after he received this accident?

A. Mrs. Butler called me up and told me to rush up to their house; and when I went to their house they were not there. And then I went to the hospital.

Q. What hospital did you go to?

A. The Atlantic City Hospital, on Ohio Avenue.

Q. How long was he in there?

A. For pretty near a week.

10

Q. When you got there Mrs. Butler was there?

A. She had been there but when I got there she had left, to get something.

Q. How long was she there, a week?

A. About five times.

Q. During that time did you go to see him?

A. Yes—Mrs. Butler—

Q. Just answer the question. How many times—do you recall?

A. Oh, when he was at Mrs. Butler's home I only 20  
went there about three times.

Q. Will you name to the jury, or tell to the jury any specific incidents that happened during the time he was sick, in this house, with reference to Mrs. Butler?

A. Pardon me?

Q. Will you explain to the jury any particular incidents that happened while Mr. Butler was home, in reference to Mrs. Butler. Did she ever call you on the telephone?

30

A. Yes, called me three o'clock one night and told me, "Rush up, Hannah." She sent her brother out, Mrs. Butler's brother, to the 'phone; and he called me and told me to rush up, they thought Mr. Butler was dying. I walked out in the street and could not get a trolley car, and I did stop a machine—somebody I knew—and they took me up there.

Q. Now, how long were you there this particular night?

A. That was three o'clock in the night. I stayed there till seven o'clock in the morning, and they went back to the store.

Q. At whose request did you stay there until seven o'clock in the morning?

A. Mrs. Butler's.

Q. What request was made by Mrs. Butler?

10 A. She told me she was afraid, so afraid he was going to die; and she wanted somebody with her. She called for the doctor and he would not come.

Q. Did you sleep with anybody that night?

A. No, I didn't sleep. I got out of bed at three o'clock.

Q. No, no—while you were at Mrs. Butler's house did you get to bed?

A. I was the next day she called me in—

Q. No, this particular night you went up there, 20 did you get to bed that night?

A. No.

Q. Did Mrs. Butler go to bed?

A. No, not that night.

Q. You both sat up all night?

A. We both sat up all night. I got there about four o'clock.

Q. Were you ever up there at Mr. Butler's home while he was sick, and stayed there all night?

A. Yes, Mrs. Butler asked me to stay there. She 30 told me she was very tired.

Q. Where did you sleep that night?

A. I slept with Mrs. Butler. We had our clothes on, and we just laid on the bed.

Q. Did you and Mr. Butler, while you were in business, ever enter into any agreement for the buying of any property in Ventnor?

A. Yes, in 1921, near the time he was burned.

Q. Before or after?

A. He made the agreement before he was burned.

Q. Did Mrs. Butler know you and he had entered into this agreement?

A. Yes.

Q. Did you and she have any conversation about it?

A. Yes.

Q. What was the conversation?

A. This conversation was back in the Wagner 10  
Hospital.

Q. In the Wagner Hospital?

A. Yes.

Q. Why down there?

A. Because Mr. Butler was taken back to the  
Wagner.

Q. What was the agreement?

A. To lend two thousand dollars from Mr. and  
Mrs. Kirscht, so we were able to go through with  
the property. We paid five hundred dollars down 20  
on it, and could not get the rest of the money.

Q. Was Mrs. Butler and Mr. and Mrs. Kirscht  
—this is at the Wagner Hospital?

A. And Mr. and Mrs. Kirscht and Mrs. Butler  
and I were in the Wagner Hospital, for two hours  
and had a conversation how to get two thousand  
dollars.

Q. Did Mrs. Butler attempt to get Mr. Kirscht  
to lend this money to you folks?

A. Yes. 30

Q. In what manner?

A. She told Mr. Kirscht it would be a wonder-  
ful thing if we had our own property instead of  
paying so much rent.

Q. What was the property to be used for?

A. The property was to be used to build a store  
on it.

Q. For what?

A. For the produce business.

Q. And who was in the produce business at that time?

A. Me and Mr. Butler, as partners.

Q. As partners?

A. Yes.

Q. Did you buy that property?

A. No, we could not buy it. Mr. Kirscht took  
10 it. He took it.

Q. Did he refuse to lend you the money?

A. Yes, he did. He told Mrs. Butler he was afraid  
on account of Mr. Butler being so sick.

Q. Now, Miss Sweitzer, did you ever consider getting out of the business, this produce business?

A. Yes.

Q. When was that?

A. When Mr. Butler came out of the hospital.

Q. By the way, what was Mr. Butler's duties  
20 around this produce market? What did he do?

A. He was supposed to buy, deliver and take care.

Q. Did he act as salesman, also?

A. What?

Q. Did he act as salesman, also?

A. Yes.

Q. During his illness, were you forced to get on extra help?

A. Yes, I put on three men in his place.

Q. He was doing the work of three men?

A. Yes—he was experienced.

Q. You say you considered going out of this business. Why did you consider going out of the business?

A. When Mr. Butler came back from the hospital, around to the store, and I seen he was useless to work, I seen he wasn't able to work all summer—

he could not lift his hand—his hand was that big (indicating), and hanging down, looked like it was swollen that big (indicating); and I seen he wasn't able to work that summer. And I told him I was afraid I would not get through.

Q. What do you mean, afraid you would not get through?

A. Because, on account of the money; there wasn't enough money.

Q. Did you have any conversation with Mrs. Butler at this time in reference to you going out of business? 10

A. Yes.

Q. Was anyone else there besides yourself and Mr. Butler?

A. Mr. Kirscht.

Q. What was the conversation?

A. The conversation was—I told Mr. Butler, the first time he got out of the hospital and came down to the store, and I seen his condition, I told him I wanted to leave the business, I would not go through with the other store Mr. Kirscht was building at the time, it was too much for me. 20

Q. What was the conversation you had with Mrs. Butler in reference to this getting out of business?

A. Mr. Butler went right home, and in about two hours after that Mrs. Butler came down, she had Mr. Butler's brother drive her down in the truck, with the two children. She came to me and cried, cried terribly; and she told me, "Hannah, don't leave us in such a condition." She said, "We need you. Please stick. You are going to make out in the end. You are going to get all your money back that you put into the business." 30

Q. Were you losing money at that time?

A. Yes, losing money heavy; didn't have a cent of money.

Q. Who was present?

A. In the presence of Mr. Kirscht, who was stopping in the building we were supposed to move to.

Q. Then Mrs. Butler knew you were thinking of giving up the business?

A. Yes.

Q. And she attempted—or, wanted you to stay in the business?

A. Yes, she tried hard. And I felt sorry for her.

10 Q. Did you continue in the business after that?

A. Yes, I went through with it.

Q. Now, Miss Sweitzer, will you describe as accurately as you can, that building on Little Rock Avenue in Ventnor City, New Jersey?

(Not answered.)

Q. Proceed. Describe as accurately as you can, that store on Little Rock Avenue, in Ventnor City,  
20 New Jersey.

A. That store at little Rock and Atlantic Avenues was a store that was all open.

Q. What do you mean, by all open? Describe it, as far as you can.

A. It has a peak in it like this (indicating), and then goes straight down.\*

Q. Boards in back?

A. Yes.

Q. Boards on the side?

30 A. Yes.

Q. Any in front?

A. No.

Q. When you are standing on the sidewalk in front, can you see clear through?

A. Could see right straight through.

Q. Did you or not have any living quarters in that place of business?

A. Never.

Q. Did you ever have a cot in that building?

A. No, never.

Q. Did you ever have a stove there?

A. No, only a little electric stove, to make a cup of coffee.

Q. Did you and Mr. Butler and Mrs. Butler, and the rest of your help, ever eat in that building?

A. Yes, often.

Q. What did you cook?

10

A. Just a loaf of bread and some ham and coffee, and made sandwiches, and put the coffee on to heat.

Q. Why did you eat there?

A. Because there was no restaurant around, and we would lose too much time to go to Atlantic City.

Q. Is there any offset there from that store that can be used as a room?

A. No.

Q. Were you ever in any part of that store alone with Mr. Butler an hour at a time?

20

A. No.

Q. And you say it is all open?

A. All open.

Q. The windows all open?

A. Yes.

Q. After you left Mrs. Butler's home, you say you moved down to the rear of this store on Little Rock Avenue?

A. Yes.

Q. That store had—

30

A. Living quarters.

Q. And it was while you were there that you spent your time, your week-ends, over in Pleasantville?

A. Yes.

Q. With Mr. and Mrs. Kirscht?

A. Yes.

Q. Miss Sweitzer, have you in any way, any manner, of your own accord, ever attempted or asked Mr. Butler to leave his wife?

A. Never.

Q. Has he ever asked you to remain with him in any particular place?

A. Never.

Q. Has Mr. Butler at times, ever showed any affection toward you?

10 A. Never.

Q. Have you ever shown any affection toward him?

A. Never.

Q. Have you ever even conversed about anything related to that?

A. No.

Q. You have always considered him what, in relation to your business?

20 (Not answered.)

Q. How have you considered Mr. Butler in relation to your business?

A. I considered him all business.

Q. And was he all business?

A. Yes.

Q. Was he a good man around the place?

A. He was very good.

30 Q. Now, Miss Sweitzer, Mr. Toomey, on direct examination, testified that Mr. Butler called to see you at your apartment on Georgia Avenue. Is that true?

A. No.

Q. What was that episode? Did Mr. Butler go to your apartment on Georgia Avenue?

A. No, I had no apartment.

Q. Where were you living in 1922?

- A. With Mrs. Strickland.
- Q. Where was she?
- A. 172 North Georgia Avenue.
- Q. What did you have there?
- A. A room.
- Q. How many rooms in that apartment?
- A. Three.
- Q. What were the rooms?
- A. Two bedrooms and one living, and a kitchen. 10
- Q. Then you had four rooms?
- A. Four rooms.
- Q. Was that a kitchen or kitchenette?
- A. It was a kitchen they built onto it.
- Q. Onto the apartment?
- A. Yes, after I was there.
- Q. Did you ever see Mr. Butler in that apartment?
- A. Never.
- Q. Do you recall any time that Mr. Butler came to get some money to buy produce with? 20
- A. I gave the money to Mr. Strickland, and a list what to buy; and Mrs. Strickland gave the money to Mr. Butler.
- Q. Is that the time spoken of by Mr. Toomey?
- A. Yes.
- Q. How long did he work?
- A. I don't remember. I remember his face, but I don't remember how long he worked.
- Q. Was it over a week? 30
- A. Something like that.
- Q. Then, you have always considered yourself a friend of Mrs. Butler until this suit?
- A. Always. She was a friend of me until I got court papers.
- Q. By the way, Miss Sweitzer, did Mrs. Butler work for you during any part of 1920?
- A. Yes.

Q. When?

A. She worked there from Easter time till the end of August.

Q. And was she paid any salary?

A. Yes, I paid her fifteen dollars a week.

Q. Did she work for you any other time after that?

A. Yes, she worked for us in the year 1922.

Q. And how long did she work that time?

10 A. She worked for several weeks, and always helped us out over the week-ends, Fridays and Saturdays.

Q. Was she paid for that?

A. Yes.

Q. Then, this working happened after you left her apartment?

A. Yes.

Q. And you were still on good terms at that time?

20 A. Yes.

Cross-examination.

By Mr. Peacock:

Q. You have never done anything wrong with Mr. Butler, have you?

A. No.

Q. Everything you ever did with Mr. Butler was business, wasn't it?

30 A. Yes.

Q. What kind of business?

A. Business in front of the public.

Q. What?

A. It was in the fruit business together.

Q. All fruit business?

A. Yes.

Q. No other kind of business?

- A. No.
- Q. When did you first see him?
- A. I met him when he came to work for my brother-in-law, 1919, in May.
- Q. How long did he work there?
- A. He worked for my brother-in-law until October.
- Q. Where did he go then?
- A. The fifteenth.
- Q. Where did he go then, when he left your 10 brother-in-law?
- A. He started in with me.
- Q. He started in as partner right away?
- A. No.
- Q. What was your agreement then, to work as helper for you and get so much a week?
- A. Yes, he was working as a helper for me, until I met his family.
- Q. When did he start in as partner?
- A. He started in as partner about two or three 20 weeks later.
- Q. In two or three weeks you made up your mind to take in a man, for partner, that wasn't anything to you?
- A. I didn't make up my mind yet.
- Q. He didn't have any money?
- A. No.
- Q. He wasn't anything to you?
- A. No.
- Q. Yet, after working at your store for three 30 weeks, you made up your mind to take him in as partner?
- A. Because he was a good man.
- Q. Did you ever find any other good man to take in as partner, after three weeks?
- A. Because he worked for my brother.

Q. Did you ever know any other good man who worked for your brother?

A. No.

Q. Ever see him before?

A. No.

Q. When did you buy your brother's business?

A. October 15, 1919.

Q. Three weeks after that, Butler started as partner?

10 A. He didn't get no partnership papers.

Q. You started in as partner—made up your mind to have him as partner; that is right?

(Not answered.)

Q. Is he a partner now?

A. He was a partner once.

Q. Is he a partner now?

A. No.

Q. When did he cease to be a partner?

A. In the winter.

20 Q. Why did you cease to have him as a partner?

A. Because Mrs. Butler came to me and said he was worrying so much over the business he could not stand it.

Q. Did she ask you to get rid of him?

A. No.

Q. He was a good man in 1922?

A. Yes.

Q. Why get rid of him so quick?

A. Why get rid of him so quick?

30 Q. As a partner?

A. Because Mrs. Butler wanted him to work on a salary rather than pay back the debts.

Q. Have you ever intended to get what he owes you?

A. No.

Q. You did never intend to get what he owes you?

- A. No.
- Q. Yet you kept him there?
- A. As a working man.
- Q. Still got him there yet?
- A. No, I ain't got the business.
- Q. He came up in the car with you this morning?
- A. No.
- Q. How about Friday?
- A. I came with my attorney. 10
- Q. Did he go back with you in the car Friday?
- A. Not with me.
- Q. Didn't you leave, in front of this Ford car, with Butler and Mr. and Mrs. Kirscht, on Friday afternoon?
- A. Yes, Friday.
- Q. He sat in Mr. Parsons' car a while, until Mr. Parsons came out, and then got in the car with you, didn't he?
- A. Well, he had to get away. 20
- Q. He went down and ate with you every day, didn't he?
- A. I can't help it where a man eats.
- Q. Did he do that?
- A. No.
- Q. You went down the street and he came in the restaurant and sat down and ate with you?
- A. I could not keep him out.
- Q. You can't keep him away from you any time?
- A. Yes. 30
- Q. As a matter of fact, you don't want to keep him away from you, do you—because he is your partner; is that right?

(Not answered.)

Q. Answer that question.

A. I can't keep him away?

Q. You heard me.

(The stenographer is requested to repeat the question, which reads as follows: "As a matter of fact, you don't want to keep him away from you, do you—because he is your partner; is that right?")

A. I am not with him.

10 Q. Or he with you?

A. No.

Q. That is the way it has been ever since—he is with you but you are not with him?

The Court: You don't give her a chance to answer.

(The stenographer is requested to repeat the question, which reads as follows: "That is the way it has been ever since—he is with you but you are not with him?")

20

(The question is withdrawn.)

Q. You say he started partners in October, 1919; is that right?

A. Yes.

Q. How much was he to pay you for half of that business?

30

A. He was going to pay it off his salary.

Q. How much was he to pay you for the partnership in your business?

A. He paid ten dollars during the winter months and twenty-five dollars during the summer months.

Q. How much was he to pay you altogether for his share?

A. Three hundred and fifty dollars.

Q. Three hundred and fifty dollars?

A. Yes.

Q. A business that took in eight hundred dollars on Saturday—he was to pay three hundred and fifty dollars for a half interest?

(Objected to.)

A. No, we didn't take in eight hundred dollars on a Saturday. 10

The Court: She has answered the question.

Q. You say he was to pay ten dollars in the winter and twenty-five dollars in the summer?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. How much money did he get, in winter, a week? 20

A. He got thirty dollars a week?

Q. Then, he left ten dollars every week?

A. Ten dollars every week.

Q. How much did he make in the summer time?

A. Fifty dollars a week.

Q. And he left twenty-five dollars a week?

A. Yes, sir.

Q. How much cash did you pay him every week in the winter time?

A. Twenty dollars a week. 30

Q. How much cash did you pay him every week in the summer time?

A. Twenty-five.

Q. He had paid you, from October, 1919, up until August 1920, how much money toward the business?

A. From October—I have to get a pencil to figure that out.

Q. That would be nine months, taking four weeks in a month that would be thirty-six weeks. How much did he pay you?

A. He got five hundred dollars in August.

Q. I didn't ask you that?

A. And in October, he was just to pay three hundred and fifty dollars.

Q. October, what year?

A. 1920.

10 Q. Then, he went into business October 1919?

A. Yes.

Q. And in October, 1920, he was to pay three hundred and fifty dollars?

A. Yes.

Q. Yet he paid twenty-five dollars a week during the summer and ten during the winter?

A. Yes.

Q. Then by October, 1920, he had paid three hundred and fifty dollars?

20 A. Yes.

Q. In December, 1920, you gave him a check? A check for five hundred dollars, to buy a partnership, didn't you? What was that for?

A. Because that was paid in. He was supposed to be a partner then, but instead of that he had to pay up again.

A. You would not give me a chance to tell, so I said three hundred and fifty dollars instead of five hundred. He had to draw from there.

30 Q. Just now you said he had not paid until 1920.

Q. He had paid three hundred fifty dollars by October a year?

A. Yes.

Q. His share of the business?

A. Yes.

Q. In August, 1920, you gave him a check for five hundred dollars?

A. Yes.

Q. Then, he didn't have an interest in the partnership at that time?

A. Yes, and some money paid over.

Q. Had he paid five hundred dollars he borrowed?

A. No, that was put over.

Q. Has he ever paid it?

A. That was coming to him.

Q. Do you mean to tell this jury, he had paid his three hundred fifty dollars, his share in the partnership business, by October, 1920, yet he had that much money and five hundred dollars more? 10

A. I gave him that—

Q. Yet he had that much and five hundred dollars more coming to him, three months before he had paid up his share in the partnership?

A. Yes, he was to get the partnership papers already then.

Q. But you lived with Mrs. McDonald continually, didn't you? 20

A. Yes.

Q. How long?

A. How long? One whole summer, when I worked for my brother-in-law.

Q. When you went to Mrs. Butler's house you went from Mrs. McDonald's house?

A. Yes.

Q. And Mr. Butler went with you?

A. He did.

Q. From the McDonald house to the Butler house, Mr. Butler had the truck? 30

A. From the business.

Q. He helped move your things from the McDonald house?

A. No, I put the things in the truck myself.

Q. Yet you were sick at the time?

A. No.

- Q. You weren't sick?  
A. No.  
Q. You carried all your things?  
A. I had no furniture.  
Q. You carried all your things down from McDonald's to Butler's house?  
A. Yes.  
Q. Didn't want Mr. Butler to be seen there?  
A. I never had any men in my room.  
10 Q. And you went to the Butler house?  
A. Yes.  
Q. What did you say when you went in there, the reason you went to Mrs. Butler's house?  
A. I left the McDonald house because Mrs. McDonald wanted the room, and she said to get mine.  
Q. What was said by Mrs. Butler that night?  
A. She said, "I am glad to see you here."  
Q. That is all?  
A. She said she had the arrangements made already to have me sleep with them.  
20 Q. Mr. Butler had the arrangements made at his house while you were there?  
A. Yes.  
Q. And Mr. Butler's mother and the two children?  
A. Yes.  
Q. Two bedrooms?  
A. Yes.  
Q. You slept with Mrs. Butler?  
A. Yes.  
30 Q. Where did Mr. Butler sleep, with his mother-in-law?  
A. I don't know where he slept?  
Q. He left his wife's room and left you sleep with his wife?  
A. Yes.  
Q. Where did Mrs. Butler, the old lady, sleep?  
A. With Joe, the little boy.

Q. Where did Mary sleep?

A. Mary slept with Mrs. Butler and me.

Q. Where did Mr. Butler sleep?

A. Sometimes in the kitchen, sometimes in the front room. He slept on a couch Mrs. Butler fixed up.

Q. He left his bedroom, with his wife, and left you sleep there instead, with Mrs. Butler? He did that?

A. That was the arrangement. 10

Q. He did that I say?

A. Yes.

Q. Where did he dress?

A. I never seen him get dressed.

Q. Where did he keep his clothes?

A. I don't know.

Q. Did he keep them in the kitchen?

A. I don't know.

Q. You don't know where he kept them?

A. No. 20

Q. You were always on friendly terms with Mrs. Butler, were you?

A. Yes.

Q. Until September, 1923?

A. Yes.

Q. She had never made any objection to your actions with her husband?

A. Never.

Q. Never had any complaint against you until she brought suit against you? That is true, isn't it? 30

A. Well, that is a frame-up.

Q. You had been on friendly terms with her clear up to the time she sued you?

A. Yes.

Q. That is a frame-up on you?

A. Yes.

Q. By Mrs. Butler against you and her husband?

A. Yes.

Q. She never asked you to leave her house?

A. Never.

Q. She never made any complaint to you, did she?

A. Never.

Q. Never found you in your nightgown in her house?

10 A. No.

Q. Everything she says is untrue?

A. Is untrue. I have to tell the truth now.

Q. Mrs. Marshall has never seen you at the sister's with Mr. Butler?

A. No.

Q. You never had been out to the movies with him alone?

A. Never.

Q. Or in the car?

20 A. No.

Q. Or in the theatre?

A. No.

Q. Or in the McDonald house alone?

A. No.

Q. He has never done anything to you?

A. Never.

Q. You never tried to get his affections?

A. Never.

Q. He never kissed you?

30 A. Never.

Q. Never put his arms around you?

A. No.

A. I never showed any affection?

A. Never.

Q. Has never been anything but a partner?

A. That is all.

Q. What time of the year was it you went to the cabaret?

A. 1920, in February; when I moved into Mrs. Butler's house—the next day.

Q. February, 1920?

A. Yes.

Q. Was he a partner then?

A. He was supposed to be a partner.

Q. Mrs. Butler was working in a laundry then, wasn't she? 10

A. Yes.

Q. Did Mr. Butler have any money?

A. No, he was supposed to invite me in, and Mrs. Butler. Inside we had the conversation together.

Q. He had no money at all then?

A. No.

Q. Was she working at night or daytime?

A. Daytime.

Q. You had some money?

A. Yes, I saved it up by several years' hard labor. 20

Q. Then this girl, working in a laundry, took you and her husband in a party to a cabaret?

A. Yes.

Q. And she paid for all the drinks?

A. Yes.

Q. That is all true?

A. She got her pay that night.

Q. And she spent it there in drinks? You know that is not true?

A. That is the God's truth. 30

Q. You know it is not true?

A. I can swear to it.

Q. You never had been in a cabaret?

A. I never had been.

Q. Never in a cabaret in Atlantic City?

A. No.

Q. You never went to any place but your business?

A. No.

Q. And to church?

A. No.

Q. You paid Mr. Butler's expenses in the hospital?

A. Because they had no money.

Q. How much was that?

10 A. It was the Atlantic City Hospital, for five days.

Q. Did you pay his doctor bill?

A. Yes, Dr. Buelly.

Q. Did you pay his bill in the Wagner Hospital?

A. Yes.

Q. How much did you pay out for him then?

A. I paid for two weeks in the hospital, and pretty near one week in the Atlantic City Hospital.

Q. How much money did you pay altogether?

20 A. I have to get a pencil and figure it all out; I can't keep it in my head.

Q. Two hundred dollars?

A. More.

Q. Four hundred dollars?

(Not answered.)

Q. About? Approximately?

A. Well, it is all right if I don't say exactly?

30 Q. Four hundred dollars?

The Court: Wait a minute.

A. I don't know exactly. I am not going to lie.

Q. How much do you suppose you paid out for the hospital bills and doctors, approximately?

A. One hundred twenty-six dollars to Dr. Buelly.

- Q. One hundred twenty-six dollars for the doctor?  
A. Yes, and fifty dollars for the Wagner Hospital.  
Q. Yes—one hundred seventy-six dollars?  
A. And the Atlantic City Hospital—I don't know whether it ever got paid. I think I did.  
Q. Did you ever get that money back?  
A. Ever get it back?  
Q. From Mr. Butler?  
A. He told me—  
Q. Answer my question. 10  
A. No.  
Q. He never paid it back?  
A. No.  
Q. They had no money then, did they?  
A. He told me the business should pay.  
Q. I didn't ask you that. They didn't have money enough to pay the hospital bills?  
A. No.  
Q. They didn't have money enough to buy furniture? You had to get them the money? 20  
A. It was his earned money.  
Q. Yet this girl took you out to a cabaret?  
A. Yes, that is why she had no money, I guess.  
Q. This Mr. Kirscht you spoke of, is he the man who has been driving you up and down every day?  
A. Yes.  
Q. Very close friend of yours?  
A. No, I know him through Mrs. Kirscht, a girl friend for eight years.  
Q. She is a very close friend? Not strangers but 30 friends.  
Q. Yet you stayed every Saturday night with them?  
A. Yes.  
Q. You never stayed in Atlantic City, did you?  
A. When?

- Q. Anytime?  
A. Yes.  
Q. When?  
A. I am in Atlantic City often on Sundays.  
Q. Didn't you tell your lawyer you used to go to Kirschts' every Saturday and Sunday?  
A. Oh, at that time.  
Q. When did you start that going to Kirschts' every Saturday and Sunday?  
10 A. When I lived on Little Rock Avenue.  
Q. That is the time they say they found you in your nightgown?  
A. Yes.  
Q. How long did you keep that up?  
A. All summer.  
Q. Of what year?  
A. 1920.  
Q. When did you start going to Kirschts' every Saturday night?  
20 A. Since I moved into the place there.  
Q. When was that?  
A. In March?  
Q. What year?  
A. 1920.  
Q. You kept that up until when?  
A. I kept that up until fall, and then moved there altogether.  
Q. What time in the fall?  
A. 1920—the beginning of October.  
30 Q. From March, 1920, until October, 1920, every Saturday night you went to Pleasantville?  
A. Yes.  
Q. And stayed over until Monday?  
A. Yes.  
Q. Where did you go to church then?  
A. Who?  
Q. You.

- A. On Sundays?
- Q. Yes.
- A. In St. Nicholas Church.
- Q. In Atlantic City?
- A. In Atlantic City.
- Q. What time would you go over, to go to church on Sunday.
- A. We came over about ten o'clock.
- Q. Then, from March until October, you would come over every Sunday to Atlantic City to go to church? 10
- A. Not every Sunday—missed some.
- Q. And every Sunday you came over to Mrs. Kirscht came with you?
- A. Yes.
- Q. So you would not be alone anytime?
- A. Oh, I don't know.
- Q. From the time you got there until you returned?
- A. I don't know what you mean. 20
- Q. If you don't know, I will withdraw the question.
- A. All right.
- Q. When did you go to the theatre with Mr. Butler?
- A. Mr. and Mrs. Butler.
- Q. All right—bring it in that way. When?
- A. When I lived at the house, and afterward too.
- Q. When was that?
- A. 1921. 30
- Q. During what months?
- A. During the summer.
- Q. During the summer?
- A. Yes.
- Q. Of 1921?
- A. Yes.
- Q. How many times?

A. Several times.

Q. Do you remember when Mr. Butler was burned?

A. Yes.

Q. Mrs. Butler called you, to come to the house?

A. Yes.

Q. When you came in, Mr. Butler said he was burned and wanted you to fix the business up?

A. No, I found——

10 Q. Did he say that or not?

A. No, I found he wasn't able to talk.

Q. When you came to the hospital, did Mrs. Butler tell you he wasn't able to attend to the business?

A. She told me he was burned terribly, and to come right away.

Q. Go ahead.

A. I said go right away?

Q. Is that all?

A. That is all.

20 Q. When you got to the hospital, was Mrs. Butler there?

A. Yes.

Q. Did she tell you the reason she called you was, her husband could not attend to the business, and called you there because he could not attend to the business?

A. Yes.

Q. That was the reason for calling you there, wasn't it?

30 A. Yes.

Q. And at another time Mrs. Butler said to you, "Don't leave us in such a condition; he has got no money or anything," didn't she?

A. No.

Q. Didn't you tell Mr. Parsons that a moment ago, and that she cried when you were going to leave?

A. It was the time the building got up.

Q. When was that?

A. In 1921.

Q. While you were living at their house?

A. No.

Q. She made that statement—they were in such condition you should not leave them?

A. Yes.

Q. They had no money or anything?

A. He could not go through with the building, himself, he wasn't in condition. 10

Q. She asked you not to leave them, they were not in condition to leave?

A. She didn't tell me about leaving. She said about the business—they could not go through with it.

Q. Did you have an apartment on Georgia Avenue?

A. Yes.

Q. Whom did you live with?

A. Mrs. Strickland. 20

Q. She is here today?

A. Yes.

Q. She is a friend of yours?

A. I guess everybody is a friend of mine. I never do nothing to people.

Q. How many rooms did you have here?

A. I had one room.

Q. What floor was that on?

A. The first floor.

Q. What part of the first floor was your room? 30

A. My room was right next to Mrs. Strickland's.

Q. Front or back?

A. My room was here (indicating)—you go into Mrs. Strickland's apartment and walk right into the livingroom; this side is Mrs. Strickland's room (indicating), and this side mine (indicating).

Q. You can go to your room without going through Mrs. Strickland's room?

A. No.

Q. Do you have to go through her bedroom to get to yours?

A. No, her living room.

Q. Mr. Butler never was there to see you?

A. Never, only on business.

Q. Not to get money from you?

10 A. Yes, to get money.

Q. He has been there?

A. That night Mrs. Strickland handed him the money in the doorway—did not let no man in the house.

Q. Did he come there in a truck?

A. I don't know how he got there.

Q. But he came there to get money to buy truck?

A. Yes.

Q. Is that right?

20 A. Yes.

Q. Didn't you tell Mrs. Butler the reason you wanted to go to her house was, that Mrs. McDonald had taken a wrong meaning because you were ill and Mr. Butler was feeding you soup?

A. No.

Q. You never said that?

A. No.

Q. That is not true?

A. Yes.

30 Q. You never asked Mr. Butler if he believed in divorce?

A. No.

Q. And you didn't give him five hundred dollars for the purpose of getting a divorce?

A. No.

Q. You never told Mrs. Butler she didn't want her husband?

A. No.

Q. She never came down to you and asked you to let her husband alone?

A. No.

Q. You never stood and laughed at her and said, "You don't want him"?

A. No.

Q. When she made a complaint about your going with her husband, you never laughed and said, "You can't cook like I can"?

10

(Objected to.)

(Objection overruled.)

A. No.

Q. You never said that?

A. No.

Q. Whose name is on the truck used by your place now?

20

A. Blue Goose Market.

Q. Whose name on it last year?

A. Blue Goose Market.

Q. Wasn't "Pat Butler" on there?

A. No.

Q. Pat Butler's name has never been on your truck?

A. Yes, "Butler & Co."

Q. Oh, Butler & Co.?

A. Butler & Co.

30

Q. You never had a truck that just said "Pat Butler"?

A. No.

Q. In 1921, did you have trucks saying "Butler, Produce"?

A. "Butler Company."

Q. What is the name on the window?

- A. There is no window.
- Q. What is the name on the billheads and letterheads?
- A. "Butler & Co."
- Q. Still on there?
- A. No,— "Blue Goose Market."
- Q. When did you change them from "Butler & Co."?
- A. When we dissolved partnership.
- 10 Q. When was that?
- A. That was in 1922.
- Q. You don't have "Butler & Co." on there now?
- A. No.
- Q. And you haven't had since 1922?
- A. No.
- Q. What time in 1922 did you dissolve partnership?
- A. September—no, in August, before August.
- Q. Then, you never did anything wrong with
- 20 Butler?
- A. No.
- Q. And all these allegations against you are not true?
- A. No.
- Q. All Butler had to do with you was in the way of business?
- A. Yes.
- Q. Nothing else?
- A. No.
- 30 Q. And every time you went to movies with Butler his wife was there?
- A. Yes.
- Q. And every time you went to his house his wife wanted you to?
- A. Yes, she called me up and says to come there for dinner.
- Q. And she could wear your clothes and you hers?

A. Yes.

Q. And she borrowed your clothes?

A. Yes.

Q. And you loaned her money?

A. Yes, thirty-three dollars one time, of my personal money; and twenty-five dollars another time.

Q. Was that about the time you loaned her money, when you went to the hospital?

A. No, not that time; that was for the baby that was born—to the doctor. 10

Q. Then, do I understand you to say you loaned her money when the baby was born, to pay the doctor?

A. After the baby was born she could not pay the bill.

Q. Then, you loaned her money to pay for the baby's burial?

A. Yes.

Q. Was the husband a partner then?

A. No, was working his way into partnership. 20

Re-direct Examination.

By Mr. Parsons:

Q. Miss Sweitzer, at the time Mr. Butler was in the hospital, on cross examination you said you had paid the doctor and hospital bills?

A. Yes.

Q. And you were interrupted, and wanted to explain something. What did you want to explain? 30

A. What?

Q. I say, you were interrupted and wanted to explain something. What did you want to explain, about the money that was paid over to the doctor and the hospital?

(Not answered.)

Q. Where did the money come from?

A. From the business.

Q. And it wasn't your own personal money?

A. No, they told me the business was supposed to pay it, Mrs. Butler said.

Q. You also, on cross examination, said that two or three weeks after Mr. Butler had come to work for you—that was 1919—you took him into partnership. Did you mean that?

10 A. No, I didn't take him in, I wanted to learn his value first.

Q. When did you take him?

A. That was 1920.

Q. The year following?

A. Yes.

Q. What was the arrangement between you and Mr. Butler as to him going into partnership?

(Objected to.)

20

A. It was all explained.

The Court: I think she should be given an opportunity to say.

Q. What was that arrangement?

A. The arrangement was made in front of Mrs. Butler.

30 Q. What were they?

(Not answered.)

Q. You testified that Mr. Butler gave so much money back every week for the purpose of going into the partnership?

A. Yes.

Q. What arrangement was made in regard to that money, how much money?

A. Three hundred and fifty dollars.

Q. How did he pay that money back?

A. How did he pay that money back?

Q. Yes.

A. He worked for it.

Q. For the months of November, December, January, February and March, how much did he get a week?

10

A. He got thirty dollars a week.

Q. From that thirty dollars a week how much did he pay back to the firm?

A. Ten dollars.

Q. During the time—during the months of April, May, June, July and August, how much was Mr. Butler getting as salary?

A. Fifty dollars a week.

Q. How much of that did he pay back to the firm?

A. He paid back twenty-five dollars.

20

Q. Can you approximate how much money Mr. Butler paid back to the firm up to August, 1920?

A. It was over five hundred dollars.

Q. Over five hundred dollars?

A. Yes.

Q. When that check was given to Mr. Butler, in 1920, the five hundred dollar check —?

A. Yes.

Q. — was that money loaned to him by you or coming to him from the firm?

30

A. That came from the firm.

Q. Where did that money go to?

A. It went to Mrs. Butler.

Q. Do you know what Mrs. Butler did with it?

A. Yes.

Q. What did she do with it?

A. She bought furniture, and moved.

Q. When you paid that money to Mr. Butler, the five hundred dollars out of the money he had paid back into the firm, did he still have the necessary three hundred and fifty dollars to go into partnership at that time?

A. No, he didn't have enough; that is why he had to pay on account until October, 1921.

Q. Now, in October, 1920, did he have enough money to go into partnership?

10 A. Just enough then.

Q. And did he go into partnership?

A. He went into partnership. His wife wanted to get the papers at the

Q. Did you enter into a partnership agreement with him?

A. Yes, sir.

Q. At the time Mrs. Butler, or Mr. Butler, paid this money out—when you were in the New World Cabaret, weren't you her guest, or their guest?

20 A. Yes.

Q. And you expected them to pay it, didn't you?

A. I didn't expect to pay; they took me in.

Q. Do you know how much she paid out?

A. About five dollars.

Q. Miss Sweitzer, did you or did you not go down in Mr. Kirscht's car and with Mr. Butler at your own Counsel's request on Friday afternoon?

A. Yes.

30 Q. In other words, your own Counsel asked you to go down in that car?

A. Yes, he wanted—the both of us.

Re-cross examination.

By Mr. Peacock:

Q. Did your Counsel request you to go down and take lunch with him?

A. I went to get lunch with Mrs. Strickland.

Q. He didn't, did he?

A. No.

Q. How did you know what Mrs. Butler did with the money, if Mr. Butler didn't tell you—the five hundred dollars I am talking about now?

A. Mrs. Butler told me herself.

Q. She told you, did she?

A. Yes, sir.

Q. Mr. Butler has never told you anything that has happened in the house? 10

A. Yes.

Q. He has?

A. Mrs. Butler, you say?

Q. I said Mr. Butler.

A. No, not Mr. Butler.

Q. Never told you anything about it?

A. No.

Re-direct examination.

20

By Mr. Parsons:

Q. Miss Sweitzer, are any of the witnesses named by the attorneys for the Plaintiff, Mr. Kirscht, Mrs Kirscht or Mrs. Strickland any relation of yours?

A. No.

Q. In no way?

A. No way.

Q. Mr. Kirscht is not your brother?

A. No.

Q. Or Mrs. Kirscht your sister? 30

A. No.

Q. Nor Mrs. Strickland is not your sister?

A. No.

JOHN W. HUGHES, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mr. Hughes, where do you reside?

A. Atlantic City.

Q. How long have you resided there?

10 A. Twenty-four years.

Q. What is your business?

A. Real estate and notary public.

Q. What was your business during the year of 1919?

A. The same.

Q. And the year of 1920?

A. The same.

Q. Do you know Mr. Butler or Miss Sweitzer?

A. I don't know as I do.

20 Q. Do you know Mr. Simon, William J. Simon?

A. Not that I know of.

Q. You don't know them personally?

A. I can't remember them.

Q. I show witness what puports to be a partnership agreement entered into the twenty-first of October, 1920, between Patrick Butler and Hannah Sweitzer, at Atlantic City. I ask whether this is your signature.

30 (Objected to.)

Mr. Peacock: The witness has testified he didn't know any of the parties.

Mr. Parsons: Well, he would know his own signature.

A. That is my signature.

Q. Did you see Mr. Butler and Miss Sweitzer sign that?

(Objected to.)

The Court: He may not know them personally, but may have seen them sign.

(Objection overruled. Exception noted for 10 Plaintiff.)

(Not answered.)

Mr. Parsons: I offer this in evidence.

Mr. Peacock: Objected to.

The Court: Objection overruled and exception noted for Plaintiff.

20

Q. Mr. Hughes, I show you what purports to be a bill of sale between William J. Simon and Hannah Sweitzer, bearing date the fifteenth of October, 1919, and ask if that is your signature as witness?

A. It is, and it is entirely in my handwriting.

Q. The whole thing?

A. The whole thing.

Q. Did you see Mr. Simon sign that?

A. I saw the party that put the signature there. 30  
I saw the party who wrote the signature there.

Mr. Parsons: I offer it in evidence.

Mr. Peacock: Objected to. He does not know the persons who signed it.

The Court: Objection overruled and exception noted for Plaintiff.

Mr. Parsons: Taking up Exhibit D2, offered in evidence, I will leave it to the Jury.

Mr. Peacock: Objected to.

The Court: Objection overruled and exception  
10 noted for Plaintiff.

Mr. Parsons: I will now read Exhibit D1, being the partnership agreement.

I offer in evidence a copy of "Ventnor News" under date of September 6, 1922, for the purpose of showing an advertisement of the dissolution of the partnership.

20

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PATRICK BUTLER, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mr. Butler, after April 5, 1917, where did you and Mrs. Butler go to live?

A. Pennsgrove, New Jersey.

30 Q. And lived there how long?

A. About four months.

Q. Did you live with anybody there?

A. Lived with my brother-in-law, Mr. Hilley, my wife's brother, for two months and then we were housekeeping by ourselves for two months.

Q. While you were in Pennsgrove what was your work?

- A. I was a paper maker.
- Q. After you left Pennsgrove where did you go?
- A. Came to Atlantic City.
- Q. When?
- A. That was August.
- Q. With whom did you live there?
- A. A cousin of my wife's, at 417 North Indiana Avenue. The name is Smith.
- Q. 417 North Indiana Avenue?
- A. Yes. 10
- Q. How long did you live there?
- A. For a few weeks, until our money had practically run out.
- Q. Then where did you move to?
- A. At my wife's suggestion we went to her brother-in-law in Camden, and I didn't want to go there because I didn't want to be with her people.
- Q. How long did you remain there?
- A. Lived there about two months.
- Q. Where did you live in 1918? 20
- A. What part of 1918?
- Q. Well, the first part or second part or last part of 1918.
- A. Well, we were in Philadelphia in 1918.
- Q. Where were you living in Philadelphia?
- A. Then went to Atlantic City in 1918 and lived at Mrs. Hill's, 28 South Florida Avenue.
- Q. 28 South Florida Avenue?
- A. Yes.
- Q. Was your wife employed at that time? 30
- A. No, she wasn't employed. I wanted to take her to Chester, to work—I had obtained work in Chester, and she said no, she didn't want to leave Atlantic City.
- Q. Did she go to Chester with you?
- A. No, didn't go to Chester with me.
- Q. Did you go to Chester?

A. About three weeks.

Q. How long?

A. My wife was at Lawyer Peacock's house.

Q. How long did she live there?

A. About five or six weeks.

Q. Was she employed while living down there?

A. Part of the time.

Q. Where?

10 A. Koury's Restaurant, opposite City Hall Square, in the thirteen hundred block.

Q. Down to that date did you have any disagreement?

A. Me and my wife always loved each other, and I love her now, but her people always had —

Q. What was the trouble?

A. She didn't—always disagreements between these people living in our house and we living in theirs—never able to accumulate money to get a start; she would always suggest this or that.

20 Q. Was this down to 1918?

A. This was down to the time we were at Lawyer Peacock's house.

Q. Did you see your wife, did you visit your wife while you were in Chester?

A. We didn't have no separation of any kind. I was there to make a living and make a home, and see if my wife would come there; but when I saw she would not, I called up on the 'phone one morning and said, "Anna, I don't feel well, and I believe

30 I will come down." Her brother said I wasn't able to support the family.

Q. You were doing everything you could?

A. I was doing everything in my power.

Q. What was your purpose in calling on the 'phone?

A. I said I didn't feel good. My purpose was to

go down to talk to her—didn't want her to think I was begging for my position.

Q. Did you ever have any difficulty with regard to any other man?

A. That evening I came down by surprise, my wife didn't expect me down —

Mr. Peacock: Objected to.

Q. What happened after you came down? 10

A. I was waiting for my wife, and I seen my wife in another car with a lady friend of hers and two gentlemen.

Q. Where was she?

A. At the corner of North Carolina Avenue, in front of Malatesta's, at eleven thirty at night.

Q. What time at night?

A. Eleven thirty at night.

Q. What did you do after you saw them?

A. I immediately got busy and tried to get another car, to find out where my wife had gone. So 20  
the taxicab station was about two blocks away at that time, it wasn't built up quite as good as today.

Q. Don't give a resume' or dissertation, just answer the question properly, you don't have to go into all that detail.

A. It is the way things happened, that is all. When I discovered I could not catch my wife, I went home.

Q. What time was that you went home? 30

A. Got home about quarter to twelve.

Q. Did you have any argument?

A. We had a terrible argument. Only for my baby we would have been separated. She is lucky she is living.

Q. Now, after that time where did you go to live?

A. I took my wife to Philadelphia then.

Q. And you lived there how long?

A. Her mother was with her. We lived there about one week, at this place, at 8th and Lombard.

Q. Were you living with her at that time?

A. We were living together.

Q. What do you mean by living together?

A. My wife and Mrs. Hilley, her mother—my mother-in-law, and our baby.

Q. Were you living there too?

10 A. I sure was.

Q. And where did you live after that?

A. I could not get proper work in Philadelphia, and suggested I go to Camden to take a position in a restaurant there; and I did so. And I told my wife I could make arrangements for her and I to live until we could accumulate enough money to have larger living quarters, and then could make reservations for her mother. She didn't want this. She said, "Pat, I want my mother with me. She is the  
20 best friend in the world." I said, "Anna, that may be so but now we have to be careful—we haven't much money."

Q. Did you move to Camden?

A. I moved to Camden.

Q. And you were there how long?

A. About two and a half months or three months, by myself.

Q. Where was your wife living then?

A. With a woman by the name of O'Neill first.  
30 and after that I don't know.

Q. How long did she live there?

A. For a few months, while I was in Camden—then went back together again.

Q. What was your position in Camden?

A. A waiter.

Q. And you worked there how long?

A. From the first part of December until into May, 1919.

Q. What happened at the end of May, 1919?

A. We were living together, my wife and I, and I was ready for promotion at the restaurant. She said, "I believe I will go down to Atlantic City. It is healthy for the child, and beings I am pregnant, it will do me good, too." I said, "We can't go down right away. We haven't enough money." She said, "I will go down and look around for something to do; and when you are through here you can come down also." 10

Q. Did you go down?

A. She went down first.

Q. Then did you go?

A. I did, after three weeks.

Q. Where did you go to live?

A. At Trinity Avenue.

Q. Who was living there?

A. Her mother and herself. 20

Q. Did you get other quarters?

A. Yes, immediately.

Q. Where did you go to?

A. 509 North Indiana Avenue.

Q. Were you working at that time?

A. No, I wasn't.

Q. Did you try to get work?

A. Tried every way—and put everything I owned in hock, I was so strapped.

Q. Then what happened? 30

A. Then I saw an ad. for a chauffeur. I never drove a car in my life before. It was in a green grocery business, and I didn't know turnips from rutabagas, but I went to that gentleman and told him I knew the business well—and I picked up so fast that the man believed I knew the business. I was sincere—I wanted the money for my wife.

Q. Did you go to work immediately?

A. I did.

Q. When was that?

A. May 10, 1919.

Q. How long did you work for Mr. Simon?

A. Until the latter part of October for Mr. Simon.

Q. What year?

A. 1919.

10 Q. At that time did Mr. and Mrs. Simon sell the business out to Miss Sweitzer?

A. He was a sick man, and had to go away, and sold it to Miss Sweitzer.

Q. Did you know her before that?

A. I knew her by working alongside of her.

Q. Did you work for Miss Sweitzer?

A. As my boss—as Mr. Simon was.

Q. Was Miss Sweitzer and Mr. Simon in partnership?

A. Yes.

20 Q. You continued to work after Miss Sweitzer bought the business out?

A. I saw she was going to keep the business established.

Q. Did you?

A. Yes, I said, "The field was big and I would have an interest in the business"—so I knew I would have a steady job.

Q. Did you say anything about having an interest in the business?

30 A. She said, "I will give you a chance if you think you can run the house as well as you think you can."

Q. What do you mean by house?

A. The store—a small place. She said, "I will give you chance." I said, "How about letting me go into the business, the same as Mr. Simon was in the business?" She said, "I don't know how that

will pay, and until I learn further details I will consider it.”

Q. Did you have any agreement with her?

A. A verbal agreement.

Q. What was the verbal agreement?

A. I said, “Well, show me your good faith. Otherwise I won’t stay. If I prove I am trustworthy and honest in every way will you take me in?” She said, “Yes.”

Q. What was the agreement? 10

A. She said she would write my people and if they proved agreeable in every way she would take me into the business.

Q. What was the other part of the agreement?

A. I was to make thirty dollars a week and leave ten dollars in, and give the other to my family.

Q. Until when?

A. Until my raise would come in the summer time, and then continue to pay more.

Q. What in the summer time? 20

A. Five months at thirty dollars and seven at fifty. During the months at thirty I was to leave ten in, and during the months at fifty I was to leave twenty-five in.

Q. Did you do that?

A. Just as I did all agreements.

By the Court:

Q. You said during the five months you were to leave twenty in? 30

A. Yes.

Q. Twenty or ten?

A. I left twenty in, I took ten.

By Mr. Parsons:

Q. How much were you getting those five months a week?

A. Thirty dollars.

Q. How much was your salary?

A. Thirty dollars.

Q. How much did you pay in?

A. Ten.

Q. What did you do with the other?

A. Gave it to my wife.

Q. During the other months how much did you leave in?

10 A. Twenty-five—I got twenty-five for my salary.

Q. In the winter time you left in ten dollars a week?

A. My wife and I had made the agreement to enter the business. She said, "Sacrifice, for the benefit of later on."

Q. How much?

A. I was then leaving twenty dollars in the firm and taking ten for myself, for five months.

20 Q. Did you and your wife have any talks or discussions about going into partnership?

A. I told my wife what a wonderful proposition it would be. And she said, "Pat, it would be wonderful if you could get in a business, and stay here. I like Atlantic City, and would be near my people."

Q. Did your wife know you were going into partnership?

A. She knew it.

Q. You talked to her about it?

A. Day and night.

30 Q. Was she willing for you to go into partnership?

A. Sure was.

Q. Where were you living in November, 1920?

A. In November, 1920, we were living at 503 North Indiana Avenue.

Q. Prior to that time had your wife met Miss Sweitzer?

A. No, but wanted to all the time.

Q. Did you talk to your wife about meeting Miss Sweitzer?

A. Yes, I told her she should meet her, because if Miss Sweitzer didn't get to know my people it would mean I would not get to go into the business. So my wife said, "Why don't you bring her up?" I said, "Why don't you invite her to live here? Your mother intends to leave here very soon."

Q. Did you bring her up?

A. I did.

10

Q. With your wife's consent?

A. I did, with my wife's consent.

Q. Did your wife make any remark when Miss Sweitzer arrived?

A. She put her arms around her, and says, "I am glad you are here. Pat told me so much about you. I am glad to meet you."

Q. Had you prior to the time had any disagreements or arguments with your wife with reference to Miss Sweitzer?

20

A. No.

Q. In any way at all?

A. No, never.

Q. When Miss Sweitzer came to the house did you say to your wife that you cared for Miss Sweitzer more than you cared for her?

A. I could not make such a false statement, because it never happened.

Q. Did you at any time bathe Miss Sweitzer's feet?

30

A. I have enough trouble to bathe my own—never bathed anybody else's.

Q. Did you ever force your wife to get up off of any cot so Miss Sweitzer could lay down there?

A. I never paid attention to who laid on cots.

Q. Did you or not?

A. I did not.

Q. Did you at any time while Miss Sweitzer was there show any affection toward Miss Sweitzer?

A. I only showed affection to one woman, my wife.

Q. Did you ever take Miss Sweitzer out?

A. With my wife.

Q. Did you ever take Miss Sweitzer out alone anywhere?

A. Never.

10 Q. Did you ever go to the theatre with Miss Sweitzer?

A. With my wife.

Q. Alone with Miss Sweitzer, I mean.

A. No.

Q. Did you go to any moving pictures alone with Miss Sweitzer?

A. No.

Q. Or were you out in a car alone with her?

A. No.

20 Q. Do you remember the episode related by Miss Sweitzer, about the New World Cabaret?

A. Yes.

Q. Did you go there?

A. Yes.

Q. At whose invitation?

A. My wife's invitation.

Q. Was Miss Sweitzer your guest at that time?

A. Yes.

Q. How long after Miss Sweitzer moved into your house?

30 A. One day after.

Q. All the time Miss Sweitzer lived in your house, did your wife, at any time, ever tell you to put her out and get her out?

A. No.

Q. Was your wife and she on friendly terms while she was there?

A. Yes, sisters could not be better.

Q. Did Miss Sweitzer ever sleep with your wife?

A. Yes.

Q. Where did they sleep together?

A. On a bed in the front room.

Q. Where did you sleep?

A. In the front room with Joe and Mary slept with the both of them.

Q. And up to this time you and your wife never had any discussions or quarrels about Miss Sweitzer?

10

A. No.

Q. Did you ever tell your wife that if it wasn't for her you could marry Miss Sweitzer?

A. Never.

Q. Did you ever suggest a divorce to your wife?

A. No, I am a Catholic and an Irishman, and I could not get a divorce if I wanted it.

Q. Did you ever tell your wife this five hundred dollars was given to you by Miss Sweitzer for the purpose of securing a divorce?

20

A. No, I got the five hundred dollars —

Q. Answer yes or no.

A. No.

Q. What did you do with the five hundred dollars you got?

A. Gave it to my wife.

Q. What did she do with it?

A. Some of it she used for furnishing our house, some of it for a Victrola and some to bury her brother's wife.

30

Q. Did she get it all?

A. She did, for her own use and her relations.

Q. Where did that money come from?

A. Out of the business—which I had worked for, day and night.

Q. Coming from the business?

A. Coming from the business. I had not entered the partnership on account of drawing this money—I had to wait until later, for papers.

Q. When did you enter the partnership?

A. Some time in October—the twenty-first, I believe.

Q. What year?

A. 1920.

Q. After the money drawn out from the partnership, was there a balance left to your credit?

A. Just about broke even.

Q. Did you leave more money in there, so as to get in the partnership?

A. We about broke even—I believe I was a little short, but I told Miss Sweitzer I wanted the papers.

Q. You got the partnership papers?

A. Yes, I got them.

Q. After you paid up?

A. After I was about paid up.

Q. Did you tell your wife where this money came from?

A. My wife knew where the money came from, my wife knew everything I done.

Q. Then your wife did know where the money came from?

A. She sure did. She was there two days before in consultation to receive that money.

Q. Where?

A. At the store.

Q. She was there to receive it?

A. Yes.

Q. During this time, Mr. Butler, you were in business with Miss Sweitzer or working with her, did your wife ever ask you to leave this business?

A. No.

Q. Did she ever tell you she ever went to Miss Sweitzer to get you to leave the business?

- A. No.
- Q. When you were burned, Mr. Butler—when was that?
- A. I was burned 1921, May 10th.
- Q. When were you burned—1921?
- A. May 10th.
- Q. After your accident where did you go?
- A. Rushed to Atlantic City immediately.
- Q. Atlantic City what?
- A. Hospital. 10
- Q. And were there how long?
- A. Five days.
- Q. From there, where did you go?
- A. To my wife's home, and my home.
- Q. How long were you there?
- A. I was there five days, I believe.
- Q. From there, where did you go?
- A. Wagner's Hospital.
- Q. Who paid the bills for the doctor and hospital expenses? 20
- A. The business paid my bills the same as it would pay anybody else's bills.
- Q. Did Miss Sweitzer ever make you a present of any money in addition to what you worked for?
- A. Never.
- Q. Did she ever give you any shoes?
- A. No.
- Q. Ever give you any jewelry?
- A. I never owned a piece of jewelry in my life.
- Q. That is not an answer to the question. 30
- A. No.
- Q. Did you ever get silk socks?
- A. No, I only had one, by my wife.
- Q. Did she ever give you any clothes?
- A. No.
- Q. Ever give you a sweater?

A. She had some relation leaving a lot of things to her.

Q. Did she give you a sweater?

A. She gave me a sweater out of that relation's things and gave the driver a sweater.

Q. Did you and Miss Sweitzer ever enter into any agreement for the purchase of land in Atlantic City?

A. Yes.

Q. Did you buy that land?

10 A. We started to buy it.

Q. Did you buy that land?

A. We started to buy it.

Q. Did you buy that land?

A. If we had bought it we would have it. We ain't got it, so we didn't buy it.

Q. Then you didn't buy the land?

A. No.

Q. Did you try to buy it?

A. Yes, we tried to buy it.

20 Q. What did you do toward trying to buy it?

A. We put five hundred dollars down; but it is never sold until you pay for it.

Q. Did your wife know you had entered into this agreement to buy this land?

A. Yes.

Q. Do you remember while you were in the hospital any conversation taking place between your wife, Mr. and Mrs. Kirscht, and Miss Sweitzer, in reference to borrowing money from Mr. Kirscht?

30 A. Yes.

Q. What was that conversation?

A. Our conversation consisted of—there was an appointment made for us all to meet at the hospital. The consequence was, we tried to borrow the money from Mr. and Mrs. Kirscht, to purchase this ground, so we would be able to establish a produce house there instead of paying rent to the landlord. Mr.

Kirscht said, "Mr. Butler is in a bad way. I refuse to lend the money."

Q. Who all was there?

A. Mrs. Butler, Miss Sweitzer, Mr. and Mrs. Kirscht.

Q. Was your wife there?

A. I was looking at my wife and talking to the folks. He would not lend me the money because I was sick.

Q. Was that the reason you didn't get the land? 10

A. That was the reason I didn't get the land.

Q. During the time you were working, or in partnership with Miss Sweitzer on Little Rock Avenue, did your wife ever work for you?

A. Where was that? I did not get that question.

Q. Little Rock Avenue.

A. Did my wife ever work for me?

Q. Yes.

A. She worked for me. She was working at the telephone business in the spring, and resigned her 20 position to go to work for us.

Q. By "us," do you mean the firm?

A. 1920.

Q. How long was she working?

A. Approximately three months, or four months.

Q. When did she start to work?

A. She started to work around May, some time.

Q. And worked how long?

A. May, June, July, August—in around there.

Q. Did she receive a salary for the work she did? 30

A. She received a salary for the work she did, of fifteen dollars a week.

Q. At that time, were you and Miss Sweitzer in a partnership?

A. No.

Q. Did she work for the firm at any time after 1920?

A. Yes.

Q. When was that?

A. She worked for us in 1922.

Q. What month, if you remember, did she work for you at that time?

A. Whenever I was real busy and I asked her to come down.

Q. Did she ever work one or two weeks at a time?

A. She worked for me approximately two weeks  
10 at the time my father died in Pittsburgh.

Q. Did she receive any money any time?

A. She received my salary the same as if I was there.

Q. Who is Mr. Toomey?

A. Just an acquaintance of my wife's.

Q. Did you know him?

A. Not very much.

Q. Did he ever work for you?

A. Two afternoons.

20 Q. Where was this?

A. Little Rock and Atlantic Avenues.

Q. Mr. Toomey testified he had seen you and Miss Sweitzer in the little room at Little Rock and Oregon Avenues as long as three-quarters of an hour at a time.

A. Little Rock and Atlantic Avenues.

Q. Little Rock and Atlantic Avenues, is that true?

A. I never took over fifteen minutes to eat my lunch.

30 Q. Answer my question. Mr. Toomey testified he had seen you and Miss Sweitzer in a room in this building at Little Rock and Atlantic Avenues, twenty-five minutes at a time. Is that true or not true?

A. It is not true.

Q. He never saw you there that long at a time?

A. No, never saw me in a room with another woman forty-five minutes at a time.

Q. Did you ever have any occasion to visit the apartment occupied by Miss Sweitzer on North Georgia Avenue—the incident to which Mr. Toomey testified?

A. One evening in 1922, I believe it was, I remember I had to wait—I got a telephone call for Miss Sweitzer, who was up town, telling me she would not be back in time to give me money for the market. Frequently when she went out she took practically all the money with her. This evening she tok practically all. She told me, “If I ain’t back by five o’clock, I will tell you where I leave the money.” She telephoned this evening, and told me she had made up the list. 10

Q. What list?

A. The merchandise in the market. So I went to Mrs. Strickland’s house and had to wait about ten minutes for Mrs. Strickland to give me this list to go to market. At that time Mr. Toomey was with me, and I told him I was going to stop at Hannah’s house on the way to market. 20

Q. Did you stop there?

A. I did.

Q. Did you see Miss Sweitzer?

A. I did not.

Q. Who did you see?

A. Mrs. Strickland.

Q. What was your conversation?

A. I was about to go in the screen door and she said, “Stay out. I am by myself. I will give you what you want.” 30

Q. What did she give you?

A. The list and the money.

Q. How long were you there?

A. From the time I left the truck until I came back was fifteen minutes.

Q. Well, Mr. Butler, it has been testified by your wife that in 1921 and 1922 you were out a good many nights all night. Can you explain, if you were out, why you were out, and where you were?

A. Yes, I was out many a night.

Q. Where were you?

A. In the market, waiting for merchandise.

10 Q. What do you mean by market?

A. The produce market.

Q. What is the produce market?

A. It is just a big vegetable market.

Q. Where located?

A. Georgia Avenue at Fairmount, and goes to Texas and Fairmount.

Q. How many squares?

A. Two squares, about.

Q. What is the number of people who buy there?

20 A. It is oftentimes, in the produce business, there is an article you can't get very well, and the next day the people in general are all hollering for this article; so, in order to have a complete business, you should have tried if you could get it. Sometimes there is only one man, from Northfield or Mays Landing, or this part of the country, who will come there with corn and strawberries, or anything at all. Maybe only one man had this, maybe at two o'clock, maybe at one o'clock,—did not know what  
30 time he would come; so the consequence was we would wait all night to get this man, in order to be the one who got him we would have to stay all night. There is many a night I stayed up to get this stock.

Q. Where did you stay?

A. Stretched out on the truck and went to sleep.

Q. You always had the truck with you?

A. Yes.

Q. What did you do?

A. I would buy the produce at the time he came in.

Q. How?

A. I gave the watchman fifty cents or a dollar, and he would wake me up when he came in,—sometimes would have him put a deposit on it so as to be sure to have it.

Q. So that is what happened on the nights you weren't home? 10

A. Yes.

Q. I want the jury to understand just what that market is.

A. Well, everybody here raises produce.

Q. Did you ever have nine men working for you in your place of business?

A. No.

Q. Did you ever own three trucks?

A. Never at one time.

Q. What is the most men you had working for you? 20

A. On a busy day, five.

Q. What is the most trucks?

A. The most trucks we had at any one time was two, one good and the other no good.

Q. Did you ever insist, or did you ever cause, or did you ever force your wife to take anything while she was pregnant with the baby, to accomplish an abortion?

A. Did I ever force my wife to take anything? 30

Q. Yes.

A. No.

Q. Did you ever give her anything to force an abortion?

A. No.

Q. Did you ever ask her to take it?

A. No, never.

Q. Did you ever ask her about having children?

A. Yes.

Q. What has been your conversation about that?

A. I told her I loved children. My wife told me in plain words,—I am sorry I have to express it—“Yes, you like children, but I am no dog.” That is what my wife told me.

Q. And did she object to having a child?

A. She did. She said, “Frank Miller, my brother-  
10 in-law, only has one; and Alice Smith and Joe have none; and the way things are in this country now, one is enough.” And I said, “My father raised ten. And I love my children.”

Q. What were your marital relations with your wife?

A. What is that?

Q. What were your marital relations with your wife?

A. What were my marital relations with her?

20 Q. Yes.

A. I don't understand you.

Q. Was your wife satisfied to have intercourse, or did she refuse you? Would she fight against it, or what?

A. She was against it, yes.

Q. She was against it?

A. She was cold to me in every way. I did everything in my power to make her different with me.

Q. When was the first time you ever separated?

30 A. When was the first time we ever separated?

Q. Yes.

A. That was the disagreement in Philadelphia. I asked her who she wanted, her people or me. I said, “You love your own people?” She said, “Yes.” I said, “You won't go to Camden?” She said, “No, you haven't much money to start with, and I need my mother with me.”

- Q. You were separated how long?  
A. About two months.  
Q. When, what year?  
A. About the middle of November, 1918.  
Q. Was that before you met or knew Miss Sweitzer?  
A. A year and two months before I met Miss Sweitzer.  
Q. Did you ever separate after that?  
A. Not until the final separation,—not what you 10  
would call a separation. We had arguments.  
Q. What kind of arguments did you have,—about  
what?  
A. About the house, about people, about how  
many people were coming into my house—her  
people.  
Q. Did you ever separate while living on Madison  
Avenue?  
A. My wife often left me to go to her people, and  
I would have to go along with her. 20  
Q. Where did she go?  
A. With her people. I said she would have to  
stop going up there, they would say we lived with  
the family.  
Q. Did you go?  
A. To her brother's, often.  
Q. Did you bring her back?  
A. Yes.  
Q. When was that?  
A. In 1920. 30  
Q. Now, Butler, come down to September 1922.  
A. Yes.  
Q. What happened then?  
A. What happened?  
Q. Where were you living?  
A. 234 North New Hampshire Avenue.  
Q. Your wife and you together?

A. Yes.

Q. What happened there?

A. Her brother, Mr. Michael Healey, moved in from Pittston, Pennsylvania, with his mother and his two children. During the time he was at our house her sister, Mrs. Miller, was around the corner, and Frank and Burt Miller, and Mrs. Brandt and a whole bunch of them would congregate in the house—for instance, so many in the morning and so many in the afternoon, so many in all the time, and then the rest of them was living there. So I told my wife, “Now, listen, Anna. The bill is getting pretty big around here. We are spending all our money, and the next thing we won’t have this and that. And I find a note that you have made a deposit on a fur at Blumenthal’s and you didn’t get it. This has got to be stopped. You are spending money extravagantly; you have got to do away with most of your people.” She said to me, “If you don’t like the way the house is run and things are going, there is the door.”

So it continued on a little while, and my own sister came to live with us. There wasn’t much room—still she stayed with us. My sister became very good friends to my wife. And then my sister began to stay out late at nights. I said, “You are my sister, and you are married to a rich man, but this is a bad town.” My wife said, “Don’t listen to him. He is narrow minded—always accusing me of running here and there, and doing a lot of things I don’t do.” I said, “Anna, I have told you about your people. Don’t butt into my people. I won’t have my people come here and get a bad reputation.”

One thing brought on another, and it was a full family argument—and had calmed down to a point until Mrs. Miller came into the house, and she said,

“What, that bum? If I was you I would hit him with a pot.”

And I was afraid for my wife—she used to get so nervous she would almost faint. I didn’t want to get into any family fight.

My wife’s brother came from St. Louis—and he would say, “This food—take it away and put some decent food on.” I could not help it, it was his own sister.

Finally, in the end when it came down to the separation point, I told her I would not come home that night. I came home—because down in my heart I was only fooling. She said, “I thought you were yellow. All day I was wondering whether you would stick to your agreement.” I said, “Don’t say I am yellow. You don’t know whether I am game or yellow. Finally, on September 8th, or 7th, at her suggestion, I left. I picked up a suit case—just in a jokey way I done it. When I came home Saturday night I had my wages in my hand, thirty dollars. I said, “Here is the rent.” She said, “My brother has paid the rent.” I said, “How is that? It is not due until Monday, and this is only paying fifteen dollars.” I said, “You know that is wrong.” She said he just put me out—and I went down to see him, at Mississippi Avenue and the Boardwalk. We went into a saloon and had a couple of whiskeys and a couple of beers. I said, “Mike, what is the trouble at the house?” He said, “No trouble, only you will be better off separated— you are fighting all the time.”

#### RECESS

## AFTER RECESS

(Parties present as before.)

PATRICK BUTLER recalled for further examination.

By Mr. Parsons:

10 Q. That is the remark your brother-in-law, Mrs. Butler's sister's husband made to you?

A. Yes.

Q. Did you go back to the house any more after that?

A. Yes.

Q. When was that?

A. I went back on a few occasions to ——

Q. Do you remember the first time?

A. The first time I didn't find my wife home.

20 Q. That was in what part of September, 1922?

A. That was about September 10th, or September 9th—something like that.

Q. Did you go there after that again?

A. Yes.

Q. What did you find?

A. I found that my wife was there.

Q. Did you have any conversation with her.

A. I handed her my money. That was the time my brother—that was on the last question. I didn't  
30 quite get the first question.

Q. After this conversation with your brother-in-law, when did you go back to the house again?

A. In the middle of the week.

Q. When was that in September?

A. About the thirteenth.

Q. Did you see your wife?

A. Yes.

Q. Did you have any conversation with her?

A. Yes.

Q. What was the conversation?

A. The conversation was, I was to meet her at the Catholic Church and we were to make agreements about the children, only she didn't want me back any more.

Q. Did you meet her at the Catholic Church?

A. I was at the Catholic Church, my wife wasn't there.

10

Q. She didn't go to the Catholic Church?

A. No.

Q. In the meantime had your wife sold the furniture?

A. Everything was cleaned out.

Q. What do you mean by everything was cleaned out?

A. Everything was sold.

Q. Was the apartment empty?

A. Yes.

20

Q. Did your wife tell you how much money she had gotten for the furniture?

A. I remember her mentioning thirty-five dollars.

Q. Thirty-five dollars?

A. I don't know whether that was for all or for one thing.

Q. After you went to the Catholic Church and your wife didn't meet you there, what happened then?

A. Well, I had the money to give to her—the same as I had given to her before.

Q. Did you give it to her?

A. I could not give it to her.

Q. Why not?

A. She wasn't there.

Q. Did you try to find her?

A. I did, on Monday night.

30

- Q. Where did you go?  
A. I went to where she was stopping.  
Q. Where?  
A. To Thomas Franklin's.  
Q. Where?  
A. Pelman and the railroad.  
Q. Did you see her?  
A. No, the woman told me she had gone to Peacock's.
- 10 Q. Did you make other attempts?  
A. Yes.  
Q. When, Monday night?  
A. I didn't want to go to her people. I sent a boy who worked for me, Frank Feria. He went to Franklin's, and they told him she wasn't in town. So when he came back I told him to try Miller's.  
Q. Who was Miller?  
A. Frank Miller and Mrs. Miller, sister and brother-in-law.
- 20 Q. Where did they live?  
A. 230 Madison Avenue, in the rear. They first told the boy she was out of town, but he located her, he heard she was in the house. I went over and offered her money. She said, "You give the money to the probation officer in Atlantic City. His duty is to make people pay, who won't pay their dues."  
Q. Did you have any telephone conversation with your wife after that?  
A. I put in a note, "If you consider to see me, please call up the Postal Telegraph Company or Western Union."
- 30 Q. Did she call you?  
A. She did.  
Q. What was the conversation?  
A. She said, "Pat, I am over at 1212 Arctic Avenue, and by myself, and if you come over I will talk to you about the children."

- Q. Did you go over?  
A. She said she was purchasing a hat.  
Q. Did you go?  
A. Yes—when I got there I found it was a magistrate's office.  
Q. What magistrate?  
A. Magistrate Weinberg.  
Q. Did you know it was a magistrate's office, before you went?  
A. No, or I would not have gone. 10  
Q. What happened.  
A. Magistrate Weinberg said, "I will put you under three thousand dollars bail for attempt to kill."  
Q. Who were you supposed to have attempted to kill?  
A. My wife, her brother-in-law or any of the family.  
Q. Did you pay the bail?  
A. I walked out free. She told her story in front of me. She made it a very bad case on my part. But when I told my case, told the magistrate I was no worse nor them, and that you could not kill when you never carried a weapon in your life and never harmed anybody, he kind of liked my story and said he would hold me under bail—and still I was free. 20  
Q. Did anybody sign a bail bond for you?  
A. No.  
Q. Did you sign one for yourself?  
A. No. 30  
Q. That happened how long after this last desertion—how many days?  
A. After the separation?  
Q. Yes.  
A. We separated on the seventh, and this was about, maybe, ten days.  
Q. Ten days after?

A. Yes.

Q. And you had attempted to see your wife in the mean time?

A. Maybe it was more.

Q. How much more?

A. Maybe two weeks or three weeks.

Q. Had you attempted to see your wife between the seventh of September and the time you met her at Judge Weinberg's office?

10 A. Did I try to meet her before that?

Q. Yes.

A. I did meet my wife.

Q. When?

A. When I handed her the money.

Q. Where?

A. 234 North New Hampshire.

Q. Then you saw her before?

A. Yes, at the time she told me her brother had paid the rent.

20 Q. Did you at the instigation of your wife call to see Mr. Scull, the probation officer?

A. How is that?

Q. Did you at the instigation of your wife call to see Mr. Scull, the probation officer?

A. We were both there together.

Q. You were both there together?

A. I arrived there first and he told me I had to support my wife. I said I was supporting my wife and children. He sent for me, and, on the Friday  
30 I was there, and I was paying them regular.

Q. This happened within the space of two weeks after the last separation?

A. Yes.

Q. Is that the idea?

A. That is the idea.

Q. As a matter of fact, your wife didn't know whether or not she was getting support or not?

A. I told the probation officer I was supporting her.

Q. Did he make an order on you?

A. When Weinberg ordered me to Scull, he said, "I don't want to handle this case. You better go to Scull, both of you." And he made an order for ten dollars for the children, because my wife refused to go back to live with me, in front of my lawyer.

Q. Did she say that?

A. She told my lawyer she would rather be dead. 10

Q. And the probation officer made an order on you to pay for the two children ten dollars a week?

A. Yes.

Q. Did you pay that?

A. Always.

Q. After this occurrence where did you go?

A. I believe my wife went to Pittston.

Q. Did you go up there to Pittston to see her?

A. Oh, yes.

Q. How many times were you up there? 20

A. Once.

Q. Did you see her?

A. Yes.

Q. Did you ask her to come back to live with you then?

A. Well, we came to be great friends. I almost stayed with her. If it wasn't for her people I would have. She said she didn't want to leave Pittston for a year, and didn't want to go to Atlantic City for a while. I said, "How about us living somewhere else?" I said, "Think it over." 30

Q. She didn't want to go back to Atlantic City?

A. No, and I wasn't prepared to leave Atlantic City right away.

Q. Did you see the children?

A. Yes.

Q. Did you talk to them?

- A. Yes.
- Q. What year?
- A. That was 1923.
- Q. 1923 or 1922?
- A. 1923—no, 1922.
- Q. What month?
- A. Right before Christmas time.
- Q. After you went to Pittston where did you go?
- A. Back to Atlantic City.
- 10 Q. Were you working?
- A. Yes.
- Q. Where were you working?
- A. At the Blue Goose.
- Q. Was that in December, 1923, or 1922?
- A. 1922, yes.
- Q. Where did you go afterward?
- A. I still stayed there.
- Q. Were you in Pittsburgh any time?
- A. I worked there all winter.
- 20 Q. Worked where all winter?
- A. Worked 1922 winter out, and 1923.
- Q. Did you keep on paying your wife ten dollars a week?
- A. Yes, indeed.
- Q. Did you ever get in arrears?
- A. I did, yes.
- Q. How much did you get in arrears?
- A. It averaged one hundred dollars.
- Q. Did you pay up that arrearage?
- 30 A. Oh, yes, the minute I had —
- Q. What wages did you get?
- A. Well, I was financially embarrassed. When I got the money together I come to you with ninety dollars.
- Q. Did I pay that to Mr. Scull?
- A. Yes.
- Q. That left you how much in arrears?

- A. Still three weeks in arrears.
- Q. How much?
- A. Thirty dollars.
- Q. Then what happened?
- A. I had taken a position at the Haddon Hall and while trying to get the money together they picked me up.
- Q. What do you mean, picked you up?
- A. On a bench warrant—my wife and a lady friend. 10
- Q. What did they say?
- A. I was in arrears.
- Q. The warrant was issued by your wife?
- A. The warrant was issued by my wife.
- Q. Were you put in jail?
- A. Yes.
- Q. How long?
- A. Forty-eight hours. I could not get no outside help. 20
- Q. Did you communicate with me?
- A. I did as soon as they would do it for me.
- Q. Who paid Mr. Scull that arrears?
- A. Who paid Mr. Scull that arrears?
- Q. Yes.
- A. You mean then or later?
- Q. Then, who paid Mr. Scull the money owing to him?
- A. You did.
- Q. Did you give me the money to do it? 30
- A. Yes.
- Q. That money was paid Mr. Scull?
- A. Yes.
- Q. Were you released?
- A. I was as soon as my check was paid.
- Q. You had no hearing?
- A. No.

Q. You were released on the order of Mr. Scull, is that true?

A. That is right.

Q. Are you still paying the support of your children, ten dollars a week?

A. I am.

Q. Are you in arrears at the present time?

A. No, I have a receipt in my pocket.

Q. Mr. Butler, was any of these separations occasioned between your wife and yourself—caused by any acts or by any attempts on the part of Miss Sweitzer?

A. No.

Q. Miss Brown testified on the witness stand that she heard you and Mrs. Butler asking about Miss Sweitzer. Did you ever have any arguments about Miss Sweitzer?

A. Well, we never had any argument about Miss Sweitzer, but we had an argument in which Miss Sweitzer's name was mentioned.

Q. What was the argument?

A. Well, my wife and I got into an argument over money matters.

Q. Yes?

A. It didn't seem there was enough money in the house, didn't seem there was enough money in the house to meet different things, because it seemed there was quite a party living at the house. So my wife said, "After you are in a position to get a little money whenever you want it, why don't you do so?" I said, "What do you mean, Anna? I am giving you all I got. I can't give you any more."

Q. That is the cause of the argument—money?

A. Money, yes.

Q. Did that happen very often?

A. This happened a couple of times.

Q. There was a question asked you—Mrs. Butler testified that the same lawyer who was defending this case now, who is defending this case now, was the same one who paid your arrearage to Mr. Scull.

A. Well, is that a question, your Honor?

Q. No—is that true or isn't it?

A. Yes.

Q. The same lawyer who is defending this case now has taken care of the legal work of the defense, has he not?

10

A. Yes.

Q. Mr. Butler, there was some testimony offered, or introduced by your wife, to the effect that you had an automobile.

A. Yes.

Q. When did you have that automobile?

A. August, 1923, or October.

Q. Did you purchase that automobile yourself?

A. Yes.

Q. How?

20

A. From little savings I had.

Q. I know, but how did you get these savings?

A. I saved them. I was thrifty with my money, what little money I had over.

Q. Did you have truck or anything like that?

A. Bought one for a hundred dollars.

Q. What did you do with it?

A. I turned it in.

Q. How long did you keep the automobile?

A. Kept it until I could not keep it up.

30

Q. What did you do with it?

A. Disposed of it to the agent from whom I bought it.

Q. How much did you dispose of it for?

A. Sixty-five dollars.

Q. You kept it until you could not keep it up any longer?

A. That is right.

Q. There was some testimony introduced Friday to the effect that your children came over to you in the court room and you would not pay any attention to them, and didn't pay any attention to them—out there in the court room, and that you didn't pay any attention to them or would not pay any attention to them. Did you see your children at all that day—Thursday it was?

10 A. I seen practically everybody in the court room. I seen Mr. Hilley and Mr. Toomey but I didn't see my children.

Q. Answer the question, Mr. Butler.

A. No.

Q. Have you seen your children since you have been here attending court?

A. Yes.

Q. When was this?

A. Last Friday.

20 Q. And, who did you see and talk to?

A. My little girl.

Q. What did you say to your little girl?

A. I asked her, "Don't you know your Daddy?"

Mr. Peacock: I object to this as improper.

The Court: Yes, that is objectionable.

Mr. Parsons: The question is withdrawn.

30

Q. You say you saw your little girl?

A. Yes.

Q. On Friday?

A. Yes.

Q. Can you say, as a result of the conversation with her, what happened?

Mr. Peacock: Objected to on the same ground, as irrelevant.

The Court: Well, it may be relevant. Is it supposed to show, as a result of that conversation, that something happened between the witness and his wife?

Mr. Parsons: It was testified by Mrs. Butler that on Thursday she saw the children go over to their father and he would not pay any attention to them, and we want to show he didn't see them that day but the next day. I cannot connect Mrs. Butler with that event particularly. 10

The Court: All right. Objection overruled.

A. The baby—I asked the little girl.

Mr. Peacock: I object to the conversation. 20

The Court: Mr. Butler, you cannot testify to conversations between you and the child. You are asked what was the result of that meeting.

The Witness: I said —

Mr. Peacock: Objected to.

The Court: Don't you understand? You are only to say what happened as a result of meeting with the child—not the conversation. 30

Mr. Parsons: I will withdraw the question.

Q. You did not see your children on Thursday?

A. No.

Q. Was your wife around when you were talking with your little youngster?

A. Yes.

Q. Friday?

A. Yes.

Q. Was it through her the children came over to you?

A. No.

Q. The child came over to you?

10 A. No.

Q. Did you go to the child yourself?

A. Yes.

Q. Did you ask the child if she knew you?

A. Yes.

Mr. Peacock: Objected to.

The Court: Yes, the question is leading.

20 Mr. Parsons: The question will be withdrawn. I apologize for it.

Q. Mr. Butler, why aren't you living with your wife and children now?

A. Because her people and I can't get along.

Q. Do you want to live with her?

A. Yes.

Q. Would you live with her if her people would not interfere with you?

30 A. I would.

Q. Would you go back with her today or tomorrow?

A. Yes.

Q. And make a home for her?

A. Yes.

Q. Do you want to do that?

A. I would do it.

Q. Do you want to do it?

A. Certainly I do. What man would not?

Q. Do you love your wife?

A. Yes.

Q. Your children?

A. Yes.

Q. Do you want their company?

A. Yes.

Q. Have you tried to get your wife to come back to you? 10

A. I have.

Q. And she has refused?

A. Yes, she has refused.

Q. Have you lost any affection for your wife and children as a result of anything this defendant has done?

(Objected to.)

A. No.

Q. And you still have affections for your wife? 20

A. Yes.

Cross-examination.

By Mr. Peacock:

Q. After all you have said about her today, and after all the family has done to you, still you love her?

A. Yes. 30

Q. What kind of love is that?

A. The best kind of love.

Q. When you were before the justice of threatening to kill your wife—at that time your wife said if you would give Miss Sweitzer up she would go back and live with you, didn't she?

A. I don't understand.

(The Stenographer is requested to repeat the question, which reads as follows: "When you were before the justice for threatening to kill your wife—at that time your wife said if you would give Miss Sweitzer up she would go back and live with you, didn't she?")

A. Before the justice I could not kill my wife, I was nowhere near.

10 The Court: That is a plain question.

The Witness: I don't understand the question.

(The stenographer is requested to repeat the question again, which reads as follows: "When you were before the justice for threatening to kill your wife—at that time your wife said if you would give Miss Sweitzer up she would go back and live with you, didn't you?")

20

A. No.

Q. When you were arrested for failure to support her, before Mr. Scull, she said if you would give Miss Sweitzer up she would go back and live with you, didn't she?

A. No.

Q. She has told you that many times, hasn't she?

A. No.

30 Q. Never even said a word to you about Miss Sweitzer?

A. No.

Q. In all your married life?

A. No.

Q. The first year you were married, did you live happy?

A. By ourselves, yes.

- Q. Did you live happy?  
A. Yes.  
Q. The second year did you live happy?  
A. No.  
Q. That was in 1918?  
A. Yes.  
Q. You didn't know Miss Sweitzer then, I don't suppose, did you?  
A. No.  
Q. How about in 1919, did you live happy? 10  
A. Fifty-fifty.  
Q. 1920 were you happy?  
A. About the same.  
Q. The same in 1921 and 1922?  
A. Yes.  
Q. Did you live happy last year?  
A. Me?  
Q. Yes.  
A. No.  
Q. Since away from her? 20  
A. No.  
Q. Are you happy now?  
A. No.  
Q. And all your unhappiness has been caused by Mrs. Butler's family, has it?  
A. Yes.  
Q. What did they do?  
A. Always interfered in my business.  
Q. This lady, the old mother back here—did she ever interfere with you? 30  
A. Yes.  
Q. How?  
A. Well, my wife put her before me.  
Q. Yes, and loves her yet?  
A. Sure she loves them.  
Q. How did she interfere with you?  
A. Different ways.

- Q. How?
- A. We would have a little argument and she would butt into it.
- Q. Is that all?
- A. Different things.
- Q. Could she hear the arguments—could she?
- A. She would take the things all wrong, because she could not hear so well.
- Q. Pretty deaf?
- 10 A. Sometimes.
- Q. Did Mrs. Miller, her sister, ever interfere with your family affairs?
- A. Yes.
- Q. What did she do?
- A. She would come to my house and if there was the least argument would make things three times worse.
- Q. She tried to find you one morning when your baby had nothing to eat or anything?
- 20 A. No.
- Q. And you ran out the front door?
- A. No.
- Q. That didn't happen?
- A. No.
- Q. She didn't take food to your family when you didn't furnish it, did she?
- A. When was that?
- Q. At any time.
- A. No.
- 30 Q. She didn't stay with your wife when you were out all night, did she, so she would have some comfort?
- A. When?
- Q. At any time.
- A. Not that I know.
- Q. She didn't stay with your wife at the time

Mary was born, did she, and you were out all night?  
You don't know that?

A. No.

Q. Where were you?

A. I believe I was in Philadelphia.

Q. Before you left home your wife told you she was in labor and the baby would be born that night, didn't she?

A. No.

Q. And didn't you say to her, "If you want me 10  
you can get me at this telephone number?"

A. No.

Q. And wasn't that telephone number at this defendant's apartment?

A. No.

Q. That didn't happen?

A. No.

Q. And when they tried to find you they could not find you?

A. No. 20

Q. Did you have any love then for her?

A. Sure.

Q. Did you show it?

A. Yes.

Q. By leaving her alone?

A. The days were said wrong, for the birth.

Q. Your wife is a true woman, isn't she?

A. As far as I know.

Q. Do you know anything about her?

A. As far as I know she is fine. 30

Q. Do you accuse her of running with any man, or doing anything wrong?

A. I seen her with a man.

Q. Do you now accuse her of running with any man or doing anything wrong?

A. I don't know.

Q. And you love her?

A. Yes, I love her.

Q. And in your heart do you think she is not a true woman, true mother?

A. She is a true mother.

Q. She is a true mother?

A. She is a true mother.

Q. She never did anything wrong, did she?

A. She went with a man, with two men—and do I know what she done?

10 Q. After that you didn't accuse her, did you?

(Not answered.)

Q. You lived with her, didn't you?

A. Yes.

Q. You never brought it up before this case?

A. Oh, yes, we brought it up many a time. Frequently I caught her in the house with two men.

20 Q. You assert, on examination by your lawyer, that you brought Miss Sweitzer to your home because you owed for the partnership?

A. Yes.

Q. Did Mrs. Hilley live there all the time Miss Sweitzer was there?

A. Most of the time, I believe.

Q. She lived there after she left, didn't she?

A. I don't remember.

Q. Didn't she give up a good position to come to your house, so your wife could go out to work?

30 A. I don't know.

Q. Didn't she?

A. I don't know.

Q. You do know. Tell the truth.

A. I don't know.

Q. Don't you know she was employed, and you and your wife got her to quit her position so your wife could go to work?

A. No.

Q. And didn't your wife go to work when her baby was only two weeks old?

(Not answered.)

Q. Do you know that?

A. No.

Q. How old was the baby?

A. A couple of months.

10

Q. Wasn't it two weeks old?

A. It was born in December. She went to work before Miss Sweitzer came to live there, a day or so.

Q. And didn't she go to work in a restaurant every day, so you would have enough to eat?

A. Didn't have to, but she went to work, as she said, to keep the money in the house.

Q. You could provide for her on twenty dollars?

A. I provided for her.

Q. And two children, paying rent in Atlantic City 20—four people—you call that providing?

A. In them days. It is seventy-five per cent higher now—fifty per cent. We had a cheap rent.

Q. How much rent?

A. I brought the produce and the rent home.

Q. How much rent?

A. About fifteen dollars a month, or something like that.

Q. You say Miss Sweitzer never gave you anything?

30

A. No.

Q. Didn't she pay the doctor bill for Mary when she was born?

A. Lent money to my wife.

Q. She paid it, didn't she?

A. Lent it to my wife.

Q. Didn't she pay it?

A. Lent it to my wife.

Q. Answer the question, whether she paid the bill.

Says yes or no.

A. The money was paid back to her.

Q. Well, she paid it, didn't she?

A. Yes.

Q. She paid the doctor bills when you were in the hospital?

A. The business paid it.

10 Q. Did you ever pay it back?

A. The business still owes it.

Q. She paid the money when you were locked up?

A. The money I paid, ninety dollars, I borrowed from a friend of mine.

Q. She paid you two hundred dollars?

A. No.

Q. Did you pay it back?

A. The money came from the business. I worked hard for it.

20 Q. You entered into the business in March, 1920, didn't you?

A. No—in 1920 the obligation was over when my time was paid up.

Q. Then you went into it in August, 1920?

A. Yes.

Q. In August, 1920, she loaned you five hundred dollars?

A. That was coming to me.

Q. I didn't ask you that. Did she loan it to you?

30 A. No.

Q. Give it to you?

A. No.

Q. How did you get it?

A. I worked for it.

Q. The money came from her, didn't it?

A. The money came from the business.

Q. You said you lost your car—how?

- A. I could not meet the upkeep.  
Q. What?  
A. I could not meet the upkeep.  
Q. Where did you turn the car in?  
A. Pleasantville.  
Q. Who to?  
A. Stanley Purcell.  
Q. What is his address?  
A. You will find him—he is agent of the Star and  
Durant. 10  
Q. What is his address?  
A. I don't know.  
Q. Pleasantville?  
A. I believe so.  
Q. Wasn't your car taken away from you by the  
authorities?  
A. No.  
Q. It wasn't?  
A. No.  
Q. Never taken away from you? 20  
A. No, I could not keep the car if I had wanted  
to.  
Q. You say your wife agreed to everything you  
did with Miss Sweitzer, is that right?  
A. She encouraged me along business lines, that  
is all. That is all she needed to.  
Q. She encouraged you along business lines, to  
try to do right?  
A. To be a successful man in business.  
Q. She did that? 30  
A. Yes.  
Q. And said she would try to do everything she  
could to help you be successful?  
A. Yes, her people made me trouble.  
Q. Can you tell me anything her family have ever  
done that caused you to leave her and her two little  
children?

A. Her family caused her to tell them I was not giving her all the money I should give her, and it caused me to get out.

Q. And that is what caused you to leave your wife?

A. I gave her all I had. If I had given her all she wanted I would not be able to pay the bills in the business.

Q. It wasn't Miss Sweitzer caused it?

10 A. No.

Q. She had nothing to do with it at all?

A. No.

Q. You have no interest in Miss Sweitzer at all, have you?

A. No.

Q. Never have had, never will have any?

A. No.

Q. She is nothing to you except a partner in business?

20 A. That is all.

Q. Are you still working for her?

A. Not for Miss Sweitzer.

Q. Who for?

A. The Blue Goose.

Q. Who is the Blue Goose?

A. Mr. Kirscht is the Blue Goose.

Q. Since when?

A. Since February or something like that.

Q. As soon as this suit was started?

30 A. The business was up for sale before that.

Q. I say, as soon as the suit was started it was bought by Mr. Kirscht?

A. The same man she lived with.

Q. The same man as done all the business for you and Miss Sweitzer?

A. I don't understand the question.

Q. The same man as done all the business for you and Miss Sweitzer, that is correct, isn't it?

A. I didn't need no advisor.

Q. Never have?

A. No.

Q. That is the same man who has been bringing you up and down in the car, too?

A. I come up on the car with my lawyer.

Q. You don't work for Miss Sweitzer now?

A. No.

10

Q. Have no interest in the business?

A. No.

Q. She has no interest in it?

A. No.

Q. You both get a salary now?

A. Yes.

Q. When did you dissolve your partnership?

A. August 27th, I believe.

Q. You mean September 7th?

A. September? No, it was in August.

20

Q. Yes?

A. I think it was in August.

Q. What year?

A. 1922.

Q. Shortly after you and your wife separated, wasn't it?

A. No, before.

Q. How long after?

A. Before.

Q. When did you and your wife separate?

30

A. September.

Q. What day?

A. Pageant Day—the 7th.

Q. September 7th?

A. Yes.

Q. That is the day you separated?

A. Yes.

Q. I show you a newspaper, "D3." That is notice of settlement, isn't it?

A. Well, that says the settlement will take place there, paying out the bills and different things.

Q. Dated August 31st, isn't it, 1922? Look at it.

A. Let me see.

Q. What is the date on the bottom of it?

A. Dated August 31st.

Q. What is the date of settlement?

10

(Not answered.)

Q. What is the date of the settlement?

A. The date of the settlement?

Q. September 11th, 1922, isn't it?

A. Yes.

Q. Four days after you separated from your wife. That is true, isn't it?

A. I can't help how they write the paper up.

20 Q. I didn't ask you that.

The Court: What is the date of the issue of the paper?

Mr. Peacock You agree this notice is correct, don't you, Mr. Parsons?

Mr. Parsons: Certainly.

30 Mr. Peacock: September 6, 1922.

Q. Four days after you and your wife separated?

A. They only make the paper once a week.

Q. I am not complaining of that. That is no fault of yours or mine. I say, the settlement was four days after you and your wife separated?

A. No, my wife separated before we separated; and my wife received the money in her own hands.

Q. Didn't you tell me that you and your wife separated September 7th—the Pageant Day?

A. Yes, but I sold the business in August.

The Court: The witness has at least five times said that so far as he was concerned the settlement was in August. That newspaper settlement, as I read it, was a settlement by Miss Sweitzer.

Q. Mr. Toomey was present one time when you were around to Miss Sweitzer's apartment, wasn't he? 10

A. Yes.

Q. And you went around in a truck?

A. Yes.

Q. Miss Brown has heard arguments between you and your wife, in which her name has been mentioned?

A. Yes.

Q. How many times? 20

A. A few times.

Q. More than once?

A. About three or four times, probably.

Q. And did you bring Miss Sweitzer to your house to live?

A. Yes.

Q. There has never been any affection on your part as far as she is concerned?

A. No.

Q. All the money you could make, to pay your wife, is twenty dollars a week; that is right, isn't it—because you were buying out the business? 30

A. When was that?

Q. During the time you were living with her?

A. Living with my wife?

Q. Yes.

A. Yes.

Q. After you left you could? Sixty-five dollars a month for a car, couldn't you?

A. No.

Q. How many months did you pay that?

A. One or two months.

Q. How long did you have the car?

A. A couple of months.

Q. On direct examination you said you could not keep your wife and family and her family, and that  
10 was one of the reasons for separation; is that true?

A. It made an awful hole in the bank book.

Q. Did any of her family ever live on you?

A. Yes.

Q. You also said you helped bury the wife of an old miner, who was on the stand the other day?

A. Yes.

Q. Do you mean that to be true?

A. Yes.

20

MRS. MARIE T. ARMES, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mrs. Armes, where do you reside?

A. For eight or nine months in the year at 5403 Boardwalk, in Ventnor.

Q. In Ventnor?

30 A. Yes.

Q. How long have you lived in Ventnor, Mrs. Armes?

A. Over seven years.

Q. Do you know Miss Sweitzer?

A. I have dealt with her.

Q. While she was still with her brother-in-law, Mr. Simon?

A. I have dealt with that business.

Q. Do you know Mr. Butler?

A. Yes.

Q. Do you know Mrs. Butler?

A. I saw her in the store during the springs. I think, if I remember rightly, it must have been about 1920, over there in the store.

Q. How often would you visit the store?

A. During the summer of 1920 to 1922. I get all my green groceries there. 10

Q. Did you see Mrs. Butler there during the entire summer of—

A. I go away in the early part of August.

Q. Did you see her while you were there?

A. Yes.

Q. Did you see Mrs. Butler in that place of business any time during the summer of 1922?

A. I think she was there in the spring, if my memory is correct.

Q. Was she waiting on the customers there? . 20

A. Yes.

Cross-examination.

By Mr. Peacock:

Q. Where did you say you lived?

A. At 5403 Boardwalk for eight or nine months of the year.

Q. How many times were you in the Butler store in 1920? 30

A. I could not name the times.

Q. How often a week did you go there?

A. And that I could not name.

Q. Did you see her there in August, 1920?

A. Not in August. I would not have been in Atlantic City nor Ventnor.

Q. Did you see her there in July, 1920?

A. I think I left about the first of August. She was there the early part of the season, as I stated.

Q. Did you see her there in May, 1920?

A. Well, now, she was there in the early part of the summer. I can't go back to just the dates.

Q. Can you tell what time you saw her in 1920?

A. In the spring and early summer.

Q. Are you interested in the store in any way?

10 A. Absolutely not, except as a customer.

Q. As a customer?

A. Yes.

Q. And you paid particular attention to who was there in the store in 1920, about four years ago, did you?

A. Oh, well, I have known all the people who worked in the store, because I buy my family supplies there.

20 Q. How many times did you see her in the store in the summer of 1920?

A. I can't tell the number of times. That is getting down to too fine a point.

Q. When did you see her in the store in the summer of 1920?

A. It must have been in the early spring, early.

Q. What month?

A. I usually go away on the first of July—'round about that.

Q. I don't want to know when you usually go away.

30 A. Pardon me?

Q. I asked you how many times.

A. It must have been in the early spring or early summer.

Q. April or May?

A. Yes.

Q. How many times did you see her there in 1922?

A. I can't tell you the number of times.

Q. How many times did you see her there last year?

A. I don't remember seeing her there last year.

Q. Was she there?

A. I do not know.

Q. Who worked there last year?

A. I saw the boys there. They have different boys around. 10

Q. Who were they?

A. I could not name these boys.

Q. You didn't have enough interest in the business to find out their names, did you?

A. I don't understand you, saying anything like that.

Q. Have you seen her there this year?

A. No, I haven't. 20

Re-direct examination.

By Mr. Parsons:

Q. Mrs. Armes, are you related in any way to Miss Sweitzer and Mr. Butler?

A. Oh, absolutely not.

---

MULFORD T. ROSE, being duly sworn, was examined 30  
and testified as follows:

By Mr. Parsons:

Q. Mr. Rose, where do you live?

A. 6929 Monmouth Avenue, Ventnor City.

Q. What is your business?

A. Real estate and insurance.

Q. Where is that business located?

A. Corner of Little Rock and Atlantic Avenues, Ventnor.

Q. How near and how close to the store known as the Blue Goose Produce Market?

A. Ten feet.

Q. Are you the owner of that particular business property?

A. I am.

Q. Did you rent this ground to the Blue Goose Produce Market?

A. I rented it to Butler and Company.

Q. "P. Butler & Company?"

A. Yes.

Q. Will you describe to the jury the construction part of that building—about how wide is it?

A. Not twenty-six feet.

Q. And about how deep?

A. About twenty-four, possibly twenty-two.

Q. Is the front closed or opened up?

A. Entirely open.

Q. What are the sides of the building constructed of?

A. Ordinary boards.

Q. And the rear?

A. The same thing.

Q. Is there any offshoot in the rear of that building where a room is made, or there is a room?

A. No.

Q. Did you ever have access to that building?

A. Every few days.

Q. In that building is there any room in which there is a cot or sofa or table or living quarters of any kind?

A. No.

Q. Did you ever see any acts of indiscretion of any kind on the part of Miss Sweitzer and Mr. Butler?

(Objected to.)

The Court: Negative testimony at best.

(Question withdrawn.)

10

Q. Do you know Miss Sweitzer?

A. Yes.

Q. Do you know Mr. Butler?

A. Yes.

Q. How often in 1920, did you have occasion to see Mr. Butler or Miss Sweitzer?

A. Every day.

Q. What about 1922?

A. The same thing.

Q. Were they always in the store together?

20

A. Well, no. One would always be there—one or the other.

Q. One or the other would always be there?

A. Yes.

Q. Do you know Mrs. Butler?

A. Just knew that she was Mrs. Butler, seeing her at the store occasionally.

Q. Is this lady sitting here Mrs. Butler?

A. Yes.

Q. During 1920, did you ever see Mrs. Butler in this store on Little Rock Avenue?

30

A. Yes, I have.

Q. How often did you go there?

A. Not very much—I was more interested in my own business.

Q. Did you ever see her waiting on customers there?

A. Yes.

Q. During 1922, did you ever see Mrs. Butler at Little Rock and Atlantic Avenues?

A. Yes.

Q. On many occasions?

A. No.

Q. Did you ever see her standing around the store?

A. No.

10 Q. Did you ever see her waiting on customers there?

A. No.

By the Court:

Q. Mr. Rose, is this building just a building with a roof and three walls and no partitions or inclosure walls in front at all?

A. Just wire.

20 Q. No glass?

A. No glass and no doors—closed in at night by wire screening, door size, about, placed up against there and locked up each night.

Q. Any partitions inside?

A. Just a small, low one—not a partition, either, just two persons could possibly walk backward and forward in there, with some goods there, about—maybe a few bunches of bananas hanging.

30 Cross-examination.

By Mr. Peacock:

Q. In 1920, wasn't a section of that store built for them?

A. It was not built in 1920.

Q. And didn't they have this built in 1920?

A. No.

Q. When was it built?

A. 1921.

Q. In 1921?

A. Yes.

Q. Wasn't there a partition of some sort back on the right side, as you look at it?

A. No, because I was fussing with them all the time what they were going to do.

Q. What do you say—there were curtains or something there?

10

A. No, we will say this (indicating) is the top of a small running partition, where you would have a background for goods to be shown against—not a partition—this high from the wall (indicating).

Q. How wide is that?

A. Only the entire length of the building.

Q. How long was that partition?

A. The length of the building, I guess—I should think.

Q. The length of the building?

20

A. Yes.

Q. I understood you to say it was as wide as the building, that was raised up.

A. Maybe I don't get your meaning.

Q. As you look at the building from the front—

A. Yes.

Q. Wasn't there a part of the partition off?

A. This small part of the partition that runs there, from one side to the other?

Q. Yes.

30

A. From the ceiling down is this far open, all the way (indicating).

Q. How high from the floor up?

A. I should say four and a half feet.

Q. And that runs from the rear?

A. Directly across.

Q. And the rear is closed in?

- A. Just ordinary—what you call—  
Q. Weather board?  
A. Sheathing.  
Q. There is an enclosure there?  
A. Just the two I have spoken of.  
Q. The rear enclosure, of weather boarding—a  
partition that does not reach to the ceiling?  
A. Does not reach to the ceiling, no.  
Q. Was there a cook stove in there?  
10 A. No.  
Q. Did you ever see anybody cook there?  
A. No.  
Q. You are there every day?  
A. I must be. I am in business ten feet away.  
Q. You are in the real estate business?  
A. Surely.  
Q. You don't attend to what they are doing in  
there?  
A. I should say not.  
20 Re-direct examination.  
  
By Mr. Parsons:  
  
Q. How wide is the building?  
A. Twenty-six feet wide, and the partition twenty-  
six feet wide and from six feet down; it is open  
to the ceiling.  
Q. You say that is as long as the building. How  
30 wide is that partition back?  
A. What is that?

The Court: What do you mean, the distance be-  
tween the back wall and the partition?

Mr. Parsons: Yes.

A. That is possibly three feet.

Q. Was that partition used for display of fruit and so forth?

A. Backing up to it is all fruit, displayed against it.

Re-cross examination.

By Mr. Peacock:

10

Q. Is there a back door to that building?

A. Yes.

Q. And a front entrance also?

A. Yes.

Q. Yes.

A. There is nothing in the back of the building for a distance of six-five feet—entirely open; it can be seen from the street.

Q. Do you know where her room was on Little Rock Avenue, in 1920?

20

A. No, I know where the business was.

Q. How close was that to this building?

A. They put bridges across.

Q. What construction was that building?

A. One story brick.

Q. Was there a room in back?

A. Yes.

Q. They were in it in 1920?

A. So far as I know.

30

Re-direct examination.

By Mr. Parsons:

Q. Are you related in anyway to Miss Sweitzer or Mr. Butler?

A. No.

MRS. ALICE STRICKLAND, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Where do you live?

A. 17 North Georgia Avenue.

Q. Where were you living during the year of  
10 1922?

A. 17 North Georgia Avenue.

Q. Do you know Miss Sweitzer?

A. Yes.

Q. Do you have an apartment at 17 North Georgia  
Avenue?

A. I certainly do.

Q. What is that?

A. Livingroom, two bedrooms and a kitchen.

Q. During 1922, did Miss Sweitzer ever live with  
20 you?

A. Yes.

Q. Did she have a room at your place?

A. One room.

Q. While she was there with you, did you ever  
see Mr. Butler in the house with her?

A. No, sir.

Q. Mr. Toomey testified that sometime during  
the summer of 1922, Mr. Butler called at your apart-  
ment. Do you remember that occasion?

30 A. I do.

Q. What was the occasion?

A. Miss Sweitzer went out and left the money and  
slip for me to give him when he come, to buy the  
produce for the next morning.

Q. He came?

A. He came.

Q. And you passed him the money?

A. I passed him the money and the slip.

Q. Tell the court and jury what happened when he came.

A. He knocked on the door, a screen door. I said, "You stay there. I will get the money." I forgot where I had put it. It was about fifteen minutes before I did find it. And I gave it to him and he went on.

Q. You never saw Mr. Butler in Miss Sweitzer's apartment? 10

A. No, I don't have that place for men.

Q. Would you be in a position to know if Mr. Butler was ever there with Miss Sweitzer?

A. Yes.

Q. Why?

A. Because that place is not made for doors and we have nothing there but drapery.

Q. How big a place was that?

A. It was made into a three-room apartment; big enough for me to live in; made it on purpose for 20 me to live there.

Cross-examination.

By Mr. Peacock:

Q. How many times was Butler there?

A. Once.

Q. You know that?

A. Yes. 30

Q. Have you always been there?

A. I never go out.

Q. You never go out?

A. No, not often, to movies.

JOSEPH J. SANSOME, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Where do you live, Mr. Sansome?

A. 125 North Florida Avenue.

Q. Atlantic City, New Jersey?

10 A. Atlantic City, New Jersey.

Q. Do you know Mr. Butler?

A. I do.

Q. Do you know Miss Sweitzer?

A. I do.

Q. Were you ever in their employ?

A. I was in their employ in 1922, from May 1st, to around August 20th.

Q. Of 1922?

A. Of 1922.

20 Q. Do you know Mrs. Butler?

A. I do.

Q. During 1922, did you ever see Mrs. Butler there in the store?

A. Mrs. Butler worked at the store during 1922, one straight week, when Mr. Butler's father died; and used to come around on week-ends and help us out.

Q. Did she wait on customers?

A. She did.

30 Q. Mr. Sansome, did you ever have any dealings with what is called the Produce Market in Atlantic City?

A. I did. I done the buying the week Br. Butler was away, and assisted Mr. Butler in doing the buying while I was there.

Q. Will you describe what the produce market is?

A. The farmers pull in between Georgia and Texas

Avenues, taking in three squares, all hours of the night—nine o'clock until three or four in the morning, certain times of the year. There is a scarcity of different articles, and we used to manage to get there around half past ten or eleven o'clock and would wait for the farmers to pull in. At times we would spend one solid night there, trying to get a certain article for the next day.

Q. Did you ever go to the market with Mr. Butler to purchase things?

10

A. I did almost every night.

Q. What would you do when you got there; and what did you get there?

A. We used to leave the store after closing hours and pull up to the restaurant and have a sandwich and a cup of coffee; and then pull down to the market, and I would help Mr. Butler do his buying from the wholesale houses. And I would retire—and wake Mr. Butler on many occasions out of his sleep.

20

Q. These are three or four wholesale houses?

A. Yes.

Q. Where the retailers purchased their stuff?

A. Where the retailers purchased their stuff, yes.

Q. Would they get the stuff in time to open up their stores the following morning?

A. We used to buy it and pack it in our ice box, and put it on sale the following morning.

Q. Is that the way you would get the other truck?

A. The other truck we would get from the farmers. Many a night we would spend the whole night waiting for them to come in.

30

Cross-examination.

By Mr. Peacock:

Q. Then be at work all day?

A. All day.

Re-direct examination.

By Mr. Parsons:

Q. Would this occur every night?

A. Not every night. We would be at the market Sunday nights and Friday nights, and one night during the week—Saturday night to get stuff for Sunday morning.

10 Q. You would sleep in the truck?

A. Mr. Butler would sleep in the truck, and I would retire. I lived only fifteen or twenty feet from the market.

Q. You lived near the market place?

A. Yes.

Q. And you came down and got Mr. Butler up from his truck?

A. Yes.

20 Re-cross examination.

By Mr. Peacock:

Q. That would not happen every night?

A. No.

Q. You would not do it three straight nights and work all day?

A. Positively not. We are human, not made of cast iron.

---

30 JAMES REED, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mr. Reed: where do you live?

A. 135 North Georgia Avenue.

Q. What is your business?

A. Watchman.

Q. Where?

A. Farmers' Produce Market.

Q. How long have you been a watchman there?

A. Going on four years.

Q. Do you know Mr. Butler?

A. Very well:

Q. Did you ever see Mr. Butler at the produce market?

A. I saw him every time he come down there at nights. I haven't missed a night in the last three 10 years.

Q. Will you explain to the jury what the produce market is?

A. The produce market is a body of farmers composed of horses and wagons and trucks and so forth, with fresh truck on. Besides that I watch the wholesale houses, of fruits and so forth.

Q. Of any one locality?

A. Yes.

Q. And do the produce dealers go there and buy 20 their fresh truck and fruit and so on?

A. Yes.

Q. At the wholesale houses?

A. Yes.

Q. Do you remember seeing Mr. Butler at this produce market during any time of the year of 1921 and 1922?

A. 1922 and 1923, I do, anyhow.

Q. How would you see him there?

A. I would see him when he was running around 30 buying goods, in the evening.

Q. Did you ever see him there all night?

A. Lots of times.

Q. Where would he be when he would stay there all night?

A. In his truck.

Q. He would be asleep?

A. Yes, I would cover him up with a blanket, to keep him warm.

Q. Did you ever have occasion to wake him up, yourself?

A. Lots of times.

Q. Why?

A. Because he would ask me to see that he could get something from the farmers, that he was short  
10 of, like grass or strawberries or something like that.

Q. That is, the retail dealers must take pot luck?

A. Yes.

Q. And if he got there late they would be all sold out?

A. Yes.

Q. Did you see him there frequently?

A. Lots of times.

Cross-examination.

20 By Mr. Peacock:

Q. What months of the year do the farmers bring their goods into market?

A. They begin in May, as a general thing.

Q. Until when?

A. All summer, clear up until Christmas.

Q. Do the farmers bring it in in the winter time?

A. They bring in potatoes and turnips in winter.

Q. Did you ever see him lay out all night in the winter, down there?

30 A. No.

---

FRANK CESARIO, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mr. Cesario, where do you live?

A. 60 North Mississippi Avenue.

- Q. Do you know Mr. Butler or Miss Sweitzer?  
A. I do.  
Q. Were you ever in their employ?  
A. I was.  
Q. When?  
A. September 15, 1922.  
Q. How long?  
A. Until May 15, 1923.  
Q. Were you working in the store located at Little Rock and Atlantic Avenue? (10  
A. Yes.  
Q. Are there any living quarters in that building?  
A. No.  
Q. Any cots there?  
A. No.  
Q. Any tables on which you can eat?  
A. No.  
Q. Did you ever eat in there?  
A. Oh, they have a little electric stove—would cook some toast or make some coffee, that is all. (20  
Q. Who would eat there?  
A. All of us.  
Q. The help?  
A. The help sometimes, too.  
Q. That was done when?  
A. A few weeks or months.  
Q. During the busy season?  
A. Yes.  
Q. While you have been in the employ there of Mr. Butler, did you ever see nine men working there? (30  
A. No.  
Q. Did you ever see him own three trucks?  
A. No.  
Q. What did you do there, Mr. Cesario?  
A. Sir? I rode a bicycle then.  
Q. Deliver merchandise?  
A. Yes.

Cross-examination.

By Mr. Peacock:

Q. You didn't work at the place on Little Rock Avenue, did you?

A. Sir?

Q. You didn't work at the place they had on Little Rock Avenue?

A. No.

Q. You didn't know about that place?

A. No.

---

JOSEPH J. SANSOME, recalled.

By Mr. Parsons:

20 Q. Mr. Sansome, during the time you worked for Mr. Butler and Miss Sweitzer, were you in a position to know what the receipts of the business there were?

A. I was in a way, yes.

Q. What do you mean by in a way?

A. I was assistant buyer, and did the buying and the business that was done in the store daily—I could average up what it was.

30 Q. At any time while you were there, would the business take in eight hundred dollars in one day?

A. No, it is impossible for a business of that kind to take in eight hundred dollars in one day, with the help we had there.

Q. What would be its average a week?

A. When I first went there, in May, it averaged between six hundred and six hundred and fifty dollars a week.

Q. Gross or net?

A. Gross.

Q. The expenses and buying of produce came out?

A. Yes. In August the receipts were six hundred and fifty dollars.

Q. The two biggest months in the year?

A. The two biggest months in the year.

Q. Was that gross?

A. Gross receipts.

Q. Then, the expenses—the help, the rent, the 10 buying of produce, would come out of that gross receipt?

A. Yes.

Q. Did you ever see nine men working there?

A. Who is that?

Q. Did you ever see nine men working there?

A. Nine men? Not at the time I was there; and not at the time I have known the place.

Q. Did they ever have three trucks while you were working there?

20

A. Not that I know of, never.

Q. Mr. Cesario, Mr. Butler testified that he gave you a note to take to his wife.

A. He did.

Q. After they had separated. Is that true?

A. Yes, that is right.

Q. Did you endeavor to deliver this note to his wife?

A. Sir?

Q. Did you endeavor to deliver this note to his 30 wife?

A. Yes, sir.

Q. Were you successful?

A. No, sir.

Q. Why not?

A. One of them told me to go to another house. So I told Pat I went there. He told me to go to

another house. I didn't go. He told me to go some place on Fairmount Avenue. A couple of fellows came out and grabbed me, and called for Pat—about giving the note. One said, Hit him." And the other said, "Don't hit him at all." And they held me.

Q. Do you know who they were?

A. No.

Q. Did you ever find out who they were?

10 A. No.

Q. Did you see Mrs. Butler?

A. Mrs. Butler? No, sir.

Q. Did they call up and 'phone, or don't you know?

A. What do you mean?

Q. Did you say they held you and were to get Pat?

A. Yes, over at the Western Union, with the note that I had.

20

---

ROBERT KIRSCHT, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mr. Kirscht, where do you live?

30 A. Edgely and Mulberry Avenues, Pleasantville, New Jersey.

Q. How long have you lived there?

A. At this present house, about a year and a half. It is a new house.

Q. How long have you lived in Pleasantville?

A. About five years or more.

Q. Where did you live before that?

A. 164 South New Road.

- Q. Where is that?  
A. That is about a mile from where I live at the present time.  
Q. Was that in Pleasantville?  
A. That is in Pleasantville.  
Q. How long did you live there, Mr. Kirscht?  
A. I lived there about four or five years.  
Q. Do you know Miss Sweitzer?  
A. I do.  
Q. How long have you known her?  
A. The number of years? 10  
Q. Yes.  
A. I would have to figure that out.  
Q. About how long?  
A. About eight years or more.  
Q. Then you knew her during the year 1920?  
A. Oh, yes.  
Q. At any time during that year, did Miss Sweitzer stay with you?  
A. Yes.  
Q. At your home? 20  
A. Yes.  
Q. When was that?  
A. Over the week-ends.  
Q. What would that mean?  
A. That would mean from Saturday evening all night, Sunday—Sunday afternoon, probably Sunday evening.  
Q. And she would come back to Ventnor when?  
A. Monday mornings.  
Q. Did that happen every week-end? 30  
A. Yes.  
Q. During what time?  
A. During the time she lived at 31 Little Rock Avenue.  
Q. How would she get over to Pleasantville?  
A. In my machine.

Q. With whom?

A. My wife and Miss Sweitzer and myself.

Q. Would you go over and get her?

A. Yes.

Q. It has been testified, Mr. Kirscht, that shortly after Mr. Butler was injured, and while in the Wagner hospital, you and your wife, Mrs. Butler, Miss Sweitzer and Mr. Butler were in Mr. Butler's room talking about trying to get a loan of two thousand  
10 dollars from you. Is that true?

A. Yes.

Q. Explain that conversation, will you please.

A. They had put down, before Mr. Butler had burned his arm through an accident, about five hundred dollars; and they needed more money to complete the purchase of a lot on that street, towards Ventnor Avenue, on the same side.

Q. Was Mrs. Butler there, present when this conversation was going on?

20 A. In the hospital.

Q. Did she attempt to persuade you to loan that money to Mr. Butler and Miss Sweitzer?

A. She said it would be nice for them to have a place of their own.

Q. Anything further said?

A. Of course, there was something said there yet, about the accident; there was something said about how it happened.

Q. Did you loan Miss Sweitzer or Mr. Butler this  
30 money?

A. No, we did not; that is, my wife and myself.

Q. When was Mr. Butler burned? What year was that?

A. In the spring of 1921.

Q. And this conversation happened during that time you speak about?

A. Yes.

Q. It has been testified, Mr. Kirscht, that some-time following Mr. Butler's release from the hospital, Miss Sweitzer wanted to give up the business, and that Mrs. Butler came down to Miss Sweitzer and asked her not to give up the business, that Pat would soon be in a position to go ahead, and they would soon make money. Is that true?

A. Yes.

Q. Were you present?

A. Yes.

10

Q. What was that conversation, if you recall?

A. Why, there was some conversation there that

Q. Where did that conversation take place?

Mr. Peacock: Wait until he answers the question. He has not told the conversation yet.

The Court: I think that is quite correct. There is no answer to the question now.

20

(Question withdrawn.)

Q. What was that conversation in reference to Miss Sweitzer leaving the business?

(Not answered.)

Q. Can you remember?

A. Not just exactly. I don't want to get it wrong.

Q. Well, take your time and get it right.

30

A. I am afraid I would keep you waiting here until six o'clock, to get it right.

By the Court:

Q. Mr. Kirscht, the purpose is to have you state the substance.

A. The substance?

By Mr. Parsons:

Q. Oh, not word for word. I don't want you to do that.

A. Well, the talk was to stay in business, and it would be nice if they would stay in business, or could stay in business so that they could clear up whatever money they had to pay on certain things.

10 Q. Did Mrs. Butler make this request of Miss Sweitzer herself, do you recall?

(Not answered.)

Q. Can you answer that yes or no?

A. I can't recall just now.

Q. Did you go up after Mr. Butler and Mrs. Butler went down to this place in your machine?

A. I remember one time taking Miss Sweitzer in  
20 my machine, and my wife, up to the hospital.

Q. Yes?

A. But just what date that was I forget. It was evening, though; it was evening.

Q. Are you talking about the time they made application for the two thousand dollar loan or the time Miss Sweitzer had decided to go out of business?

A. Well, there was some effort made—that they wanted some money off of me, and I backed out, somehow; I forget how that was. I didn't want  
30 to have spent too much money—I was afraid of losing it.

Q. But you do remember hearing a conversation between Mrs. Butler and Miss Sweitzer in reference to her staying in the business?

A. Yes.

Q. And that took place at the corner of Little Rock and Atlantic Avenues?

A. Yes.

Q. Was that after the building had been constructed or before?

A. This was before.

Q. Were you building the building yourself, at the time?

A. I am not sure whether it was before—it was before I started the building over on the empty lot.

Q. And you built that building there, did you; 10  
you started to build it?

A. I started to build there.

Cross-examination.

By Mr. Peacock:

Q. You live in Pleasantville now?

A. Yes.

Q. What is your business?

20

A. Carpenter.

Q. Where do you work?

A. I work for myself.

Q. In business for yourself?

A. Yes, sir.

Q. You are a close friend of Miss Sweitzer's?

A. Well, through business.

Q. What?

A. Through business.

Q. Would she visit you often?

30

A. She would visit me, about building.

Q. Is that all?

A. Well, then she would visit my wife, through social friendship.

Q. Does she visit now, over a week-end?

A. At times.

Q. How often?

A. I can't say how often.

Q. Did she visit you last year every week-end?

A. Not every week-end.

Q. When was the last time she was ever to see you?

A. Last evening.

Q. Last night?

A. Yes.

Q. In 1920, how many times was she in your  
10 house?

A. Over week-ends.

Q. Starting when?

A. In the spring.

Q. What month?

A. About March.

Q. Every Saturday she came to your house; is that correct?

A. Yes.

Q. In March?

20 A. Yes.

Q. Every Saturday she was there in April?

A. During the summer, too.

Q. Clear on down to what month?

A. Well, she would come over during the winter months also, if she was here.

Q. You say she was at your house, in 1920, every Saturday in March—until what month did she come over every Saturday?

A. She came over pretty regular.

30 Q. Well, did she come over every Saturday all during the summer of 1920, from March?

A. The house was open for her to come any time she wanted.

Q. I will ask you the question again. Would she come there every Saturday from March, during the summer of 1920?

A. Repeat the question, please.

Q. Did she come there every Saturday from March, during the summer of 1920?

A. Yes.

Q. She was at your house every Sunday morning from March, during the summer of 1920?

A. Yes.

Q. There every Sunday afternoon during the same period?

A. Unless we went over to Atlantic City.

Q. Did you ever go over on a Sunday? 10

A. Yes.

Q. Did you ever go over on a Sunday morning?

A. Yes.

Q. Did she ever go over with you?

A. Yes.

Q. And she has been in Atlantic City on Sunday mornings, then, during the summer of 1920?

A. Yes.

Q. Did she ever leave you while she was over there on a Sunday, during the summer of 1920? 20

A. She left to go in a store.

Q. Never out of your sight during that time, any of that time during the summer of 1920, on a Sunday?

A. Sure.

Q. Lots of times, wasn't she?

A. Not very long.

Q. Everywhere she went during the summer of 1920, you were with her; is that correct?

A. Not every time. 30

Q. Did she do the same in 1921?

A. No.

Q. She didn't do the same in 1922 either, did she?

(Not answered.)

Q. Did she?

(Not answered.)

Q. She didn't visit you every week-end during 1922, did she?

A. She visited me during the times—I haven't got that year, have the year mixed up.

Q. You can remember four years. Now, bring me up to two years ago. Is your memory just as good two years ago as it was four?

10 A. It ought to be.

Q. She only spent the week-ends and Sundays with you during the time Mrs. Butler claimed she found her there in her nightgown; is that correct?

A. She visited me before that.

Q. She never visited you before this case started?

A. She was there before this case started.

Q. That just came to you since this case was sued?

A. No.

20 Q. When did you make up your mind you remembered that?

(Not answered.)

Q. Just lately, wasn't it?

A. No, she has been coming there whenever she wanted to.

Q. Tell me why she spent the week-ends during the summer of 1920, and has not done it since?

A. She didn't want to stay in the store.

30 Q. That is your reason, is it?

A. That is my reason.

Q. You don't know where she spent the week-ends during the last four years, do you—during the summer?

A. I can't keep track of her all the time.

Q. You have the place of business now that she had?

A. Yes.

Q. When did you buy it?

A. February 13th.

Q. After this suit was started; is that right?

A. What do you mean, when the suit was started?

Q. You remember when it was started, don't you?  
Didn't she tell you?

(Not answered.)

10

Q. I will withdraw the question. Maybe I can make it plainer. She has told you she has been sued in this case?

A. Yes.

Q. Over at your house?

A. Yes.

Q. You had a conversation about buying the business in your name, didn't you?

(Not answered.)

20

Q. Isn't that true?

A. Yes.

Q. You agreed to put the business in your name, didn't you?

(Not answered.)

Q. Isn't that right?

A. I bought it.

Q. How much did you pay for it?

30

A. Seven hundred and fifty dollars.

Q. Cash?

A. Yes.

Q. Did you give a check?

A. I gave several checks.

Q. Did you give a check for seven hundred and fifty dollars?

- A. I gave several checks.  
Q. How many different checks?  
A. Why, I can't tell the number exactly.  
Q. What bank?  
A. Different banks.  
Q. What is the name of some of them?  
A. I will have to refer to the checks.  
Q. What bank did you deal with?  
A. I deal with the Pleasantville National Bank.
- 10 Q. The what?  
A. The First National Bank of Pleasantville  
And I did deal with the First National Bank of  
Atlantic City, on the corner of Pennsylvania and  
Atlantic Avenues.  
Q. What else?  
A. And the Second National Bank.  
Q. What?  
A. The Second National Bank, on New York Ave-  
nue and Atlantic, Atlantic City.
- 20 Q. On which bank did you draw the check for  
seven hundred and fifty dollars?  
A. I drew several checks.  
Q. How many, do you suppose?  
A. Well, I can produce them.  
Q. Then you didn't pay for this place with one  
check, did you?  
A. No, sir.  
Q. How long a space of time did it take you to  
pay the seven hundred and fifty dollars—a month,  
two months or three months?
- 30 A. Well, it took—I could not get the money out  
without two weeks' notice.  
Q. Are you the manager of the business now?  
A. No, sir, the owner.  
Q. Are you there every day?  
A. I can't be.  
Q. When do you go there?

A. When I have a chance.

Q. How often is that?

A. That depends on the weather or my work. I have been serving on the jury in Mays Landing, and could not go.

Q. How often before you went on the jury—how often did you visit the place?

A. Quite often; as much as I could.

Q. Once a week?

A. Yes.

Q. Who takes care of the money received from the produce?

A. Miss Sweitzer.

Q. Who puts it in bank?

A. Miss Sweitzer.

Q. What bank does she put it in?

A. The Ventnor Trust.

Q. How long has she been doing that?

A. Ever since I took the building over.

Q. Who pays the bills?

A. She has got power of attorney to pay the bills.

Q. She runs the business?

A. Yes.

Q. How much have you got out of it this year?

A. I haven't got much out of it.

Q. Don't expect much, do you?

A. Well, the season is not over yet.

Q. As a matter of fact, this was placed in your name while this suit was pending, wasn't it?

A. Yes.

Q. Isn't that true?

A. Well, I have a bill of sale.

Q. That is not what I asked you. This business was placed in your name while this suit was pending against her; isn't that true?

(Not answered.)

Q. And wasn't that your agreement with her; isn't that true?

A. No.

Q. What?

(Not answered.)

Q. After this suit is over the business goes back to her, doesn't it?

A. No.

10 Q. Do you mean to tell this jury you purchased it outright, and intend to run it?

A. I paid seven hundred and fifty dollars.

Q. That is not the question. Do you intend to run the business?

A. Can't a person have a business and have someone run it for them?

Q. They can, but isn't this a plan between you and that woman to keep this business in your name, and run you in on it; isn't that true?

20 (Not answered.)

Q. You don't need to hesitate.

A. Well, I have to have something for my money.

Q. Then, you entered into a plot with that woman to keep charge of this business until this case is over?

(Not answered.)

Q. You know that is true, don't you?

30 (Not answered.)

Q. Do you have to hesitate on that? Will you answer that question?

(Not answered.)

Mr. Peacock: Will your Honor instruct the witness to answer the question?

By the Court:

Q. Do you understand the question?

A. No, sir.

(The question was repeated, as follows: "Then, you entered into a plot with that woman to keep charge of this business until this case is over?")

(Not answered.)

Q. Do you understand it now? Look at me; never mind looking at her. 10

A. I borrowed the money.

(Mr. Peacock makes a request of the stenographer, as follows: "Read it again, will you?")

By the Court:

Q. Mr. Kirscht, do you know what "plot" means?

(Not answered.)

By Mr. Peacock: 20

Q. Do you understand my question? If you don't, say so.

A. I don't understand.

Q. I will speak plainer. Isn't there an agreement or an arrangement between you and Miss Sweitzer to have this business in your name for the present time? Hasn't there been such an arrangement made between you and Miss Sweitzer?

A. No. 30

Q. Have you talked it over, about you taking care of the business until this case is over? You have talked it over in your house, haven't you?

(Not answered.)

Q. Do you understand that question?

(Not answered.)

Q. Haven't you and Miss Sweitzer talked it over, about you keeping the business in your name until the case is over?

A. No.

Q. How much do you make a day?

A. That varies.

Q. And you saved up enough money to buy this business; that is correct, isn't it?

A. Yes, sir.

10 Q. Have you received any money from the business since you put seven hundred and fifty dollars into it?

A. No, sir.

Q. No profits at all?

A. No.

Q. When did you buy it?

A. February 13th.

Q. What year?

A. 1924.

20 Q. 1924? Then, it has been going since February until June and you haven't received a cent profit?

A. No, sir.

Q. Business is going every day?

A. Yes, sir.

Q. Good business; that is correct, isn't it?

A. Yes.

Q. Have the books ever been submitted to you since you have had the business?

30 (Not answered.)

Mr. Peacock: I will withdraw that. Maybe he doesn't know what "submit" means.

Q. Did you keep books for the business?

A. Yes.

Q. When did you see them?

- A. They are there on the desk.  
Q. Are these it (indicating)?  
A. Yes.  
Q. In whose possession?  
A. Down at the store at times.  
Q. Who keeps them?  
A. I keep them.  
Q. Is this your book (indicating book marked "Day Book")?  
A. The other is the most important one? 10  
Q. Well, look at this first. This is some goods purchased April 15th?  
A. Yes.  
Q. Is that all you bought in April?  
A. This is what we bought.  
Q. Is this the way you keep them? Paste the bills in?  
A. Yes.  
Q. Who paid them?  
A. The firm. 20  
Q. Who drew the checks?  
A. Miss Sweitzer drew the checks to pay them.  
Q. You don't have the checking account in your name, do you?  
A. I have as her power of attorney.  
Q. Then, the account is in her name, as power of attorney?

(Not answered.)

- Q. Tell me why you started to keep them that way April 15th and then quit. 30  
A. The other book shows that.  
Q. Can you tell me why you started that way April 15th and then quit?  
A. This is just a copy of the order.

Q. Well, we will look at this book marked "Ledger." What is this book?

A. Haven't had time to take care of all the books.

Q. And you don't know anything about that, do you?

A. Yes, I have done all this.

Q. Where did you get the information from, that you put in that book?

A. From the slips.

10 Q. What slips?

A. The purchase slips.

Q. Who gave you those slips?

A. I got them when I came there.

Q. When was that?

A. Different days.

Q. Does this show all your business?

A. So far it is not complete.

Q. June 2d, \$309.50. That is what you took in that day, was it?

20 A. That was deposited in bank.

Q. It says "Cash received, June 2, 1924,"—"Cash received, \$309.50." Is that how much you took in that day?

A. I took that out of the bank check. I didn't make the deposit.

Q. You don't know how much you took in?

A. No.

Q. You make these books up, you say?

A. Yes, sir.

30 The Court: I don't want to interrupt your examination. The whole examination, I presume, is to determine whether this witness is the owner of this business temporarily or owns it permanently. So far as the examining of the books of that business, and the amounts he takes in, and so forth, I don't think we want to go into that.

Mr. Peacock: The question is, who is the owner of that business, and of the profits received from it?

The Court: The testimony here is that he purchased this business outright, and that he has no agreement with anybody concerning the business.

Q. Mr. Kirscht, as a matter of fact, aren't you holding that business at the present time as trustee for Miss Sweitzer, and not for yourself? 10

A. I am holding it for myself.

Q. You expect to return it to Miss Sweitzer?

A. No.

Q. You say in the spring of 1921, you heard a conversation in which Mrs. Butler was a party. What was that conversation?

A. A conversation about a lot they had purchased for the firm.

Q. Where?

A. On Little Rock Avenue. 20

Q. Who had purchased it?

A. The firm, or it was supposed to be the firm.

Q. Which firm was that, Mr. Butler and Miss Sweitzer?

A. Butler and Company, I think was the name of the firm at that time.

Q. Did you purchase the lot?

A. Could not go through with it.

Q. Where did the conversation take place?

A. In the store. 31 Little Rock Avenue. 30

Q. That is the time Mr. Butler was burned, wasn't it?

A. The spring, yes.

Q. How long was Mr. Butler home after he was burned; do you know?

A. I could not say exactly how long.

Q. How long was he away from the place of business during the time he was suffering from those burns?

A. Quite a long time.

Q. Two or three months?

A. I could not say exactly.

Q. When was he burned?

A. The month?

Q. Yes.

10 A. He was burned at the time I was constructing the first part of this building on Atlantic Avenue.

Q. About in March, wasn't it?

A. The record will show the permit.

Q. He was away about three months; is that correct?

A. I could not say exactly whether three months.

Q. The conversation took place, where?

A. In the store?

20 Q. 31 Little Rock Avenue?

A. Yes.

Q. That is a brick store, and room in the rear?

A. Kind of a partition; the ice box stood in front, and toward a wall, I guess, about two feet.

Q. Mrs. Butler said it would be nice to have a place of their own; is that all she said?

A. I could not say exactly, there was so much said there I forget—by different people.

30 Q. What day of the week was this conversation held?

A. I could not say.

Q. What time of the day?

A. Towards evening, when I could go there.

Q. Who was present?

A. My wife, Mr. Pat Butler, sometimes, and Miss Sweitzer was always there, and Pat's wife was there.

Re-direct examination.

By Mr. Parsons:

Q. Mr. Kirscht, have you got the checks spoken of, to purchase this business?

A. I have.

Q. I show witness a check drawn on the First National Bank of Pleasantville, New Jersey, dated February 15, 1924, payable to the order of Johanna Sweitzer, in the amount of fifty dollars signed, by Robert Kirscht, Jr., is that your signature? 10

A. Yes.

Q. Did you pass that check over to Miss Sweitzer?

A. Yes.

Q. For what purpose?

A. For the purpose of purchasing this building.

(The check is offered in evidence.)

Q. I show witness a check dated April 2, 1924, drawn on the Second National Bank of Atlantic City, New Jersey, to the order of Johanna Sweitzer, for one hundred dollars; signed Robert Kirscht, Jr.; and ask if that is your signature? 20

A. Yes.

Q. What does that "B. G." mean?

A. Means "Blue Goose account."

(The check is offered in evidence.)

30

Q. I show witness a check drawn on the Atlantic City National Bank, marked "Time Account," dated April 7, 1924, payable to the order of Johanna Sweitzer, for one hundred dollars, signed Robert Kirscht, Jr.; and ask if that is your signature?

A. Yes.

Q. And that "B. G." means what?

A. Blue Goose account.

Q. I show witness a check dated April 10, 1924, drawn on the Second National Bank of Atlantic City, New Jersey, payable to the order of Johanna Sweitzer, for two hundred dollars, signed Robert Kirscht, Jr.; and ask if that is your signature?

A. Yes.

Q. What was that check given for?

10 A. The same thing.

(The two checks are offered in evidence.)

Mr. Peacock: What do those checks total up to?

Mr. Parsons: Four hundred and fifty dollars.

Q. You gave these checks, totaling four hundred and fifty dollars, to Miss Sweitzer, for the purchase  
20 of this business; is that a fact?

A. Yes.

The Court: The checks will be admitted and marked in the order in which they have been offered—"D4, D5, D6, and D7."

Q. Now, Mr. Kirscht, what is your business? Do you have a trade?

A. I do carpenter work.

Q. Are you working at it all the time?  
30

A. Most of the time, yes.

Q. Why aren't you working at it all the time?

A. My health does not permit it.

Q. Your health?

A. Yes.

Q. When you purchased this property from Miss Sweitzer, did you purchase it with the absolute idea of having it to be your own business?

A. To have it easy for myself.

Q. When you purchased the business, did you have any idea, or any agreement between yourself and Miss Sweitzer, that you would at any time pass it back to her?

(Not answered.)

Q. Can't you answer that?

A. If I get my money—I want my money back.

Q. What do you mean by that, if Miss Sweitzer pays you seven hundred and fifty dollars you would pass the business back to her?

A. I would have a right to invest my money; I would have to adjust it again.

Q. Did you have any agreement with Miss Sweitzer that you would pass it back to her after this suit was over?

(Not answered.)

Q. Can't you answer that yes or no?

A. Yes.

Q. You did have? And when this suit is over you are going to pass this business over to Miss Sweitzer again, are you?

A. No, I want my money.

Q. Mr. Kirscht, when you bought this property, did you buy it with the idea of defrauding anybody who might get judgment against Miss Sweitzer?

(Not answered.)

Q. When you bought this property from Miss Sweitzer, did you buy it with the idea that if Miss Sweitzer was sued and damages recovered against her they could not recover any damages because you owned the property?

A. I want it easy for myself.

Mr. Peacock: I ask that that be stricken out.

Q. When you bought this property from Miss Sweitzer, did you buy it from her with the idea that if she was sued and damages were recovered against her the plaintiff, Mrs. Butler, could not recover damages because she did not own the property?

A. That was my idea.

10 Q. That was your idea?

A. Yes.

(Adjourned to Tuesday, June 17, 1924, at 10:00 o'clock A. M.)

20

30

THIRD DAY.

Tuesday, June 17, 1924.

Parties present as before.

DEFENDANT'S EVIDENCE (continued). 10

MRS. JOSEPHINE KIRSCHT, being duly sworn, was examined and testified as follows:

By Mr. Parsons:

Q. Mrs. Kirscht, where do you reside?

A. I live in Pleasantville.

Q. Are you the wife of Robert Kirscht? 20

A. Yes.

Q. Do you know Miss Sweitzer?

A. Yes.

Q. How long have you known Miss Sweitzer?

A. About eight years.

Q. Then, you knew her during the year 1920?

A. Yes.

Q. It has been testified that during the spring and summer of 1920, Miss Sweitzer spent the week-ends at your home? 30

A. Yes, she did.

Q. Is that true?

A. Yes, that is true.

Q. How did she get over there?

A. We took her over in a machine, our machine.

Q. When would you take her over there?

A. Saturday nights, eight o'clock.

- Q. And she would stay there how long?  
A. Until Monday morning.
- Q. Has Miss Sweitzer lived with you at any time?  
A. Yes.
- Q. When has that been?  
A. She comes over very often—keeps a trunk in our home all the time.
- Q. Keeps a trunk there?  
A. Yes.
- 10 Q. Has she spent any continuous length of time in your home?  
A. Yes.
- Q. When was that?  
A. It was in 1921.
- Q. Mrs. Kirscht, it has been testified that in the Wagner Hospital Miss Sweitzer, Mrs. Butler, Mr. Butler, your husband, Mr. Kirscht, and yourself were there talking about borrowing some money?  
A. Yes.
- 20 Q. Were you there?  
A. I was there.
- Q. What was that conversation?  
A. The conversation was, they wanted to borrow two thousand dollars from us; but, on account of Mr. Butler being burned——
- Q. Talk louder.
- A. They wanted to borrow two thousand dollars from us; and, on account of Mr. Butler being burned, we were afraid and would not loan them the money.
- 30 Q. What did they want that money for?  
A. To buy a lot.
- Q. That was when?  
A. It was in June—in May.
- Q. What year?  
A. 1921.
- Q. Was Mrs. Butler there?  
A. Mrs. Butler was there, in the hospital, yes.

Q. Did she endeavor to get Mr. Kirscht to loan that money to Mr. Butler and Miss Sweitzer?

A. She wanted us to loan it.

Q. What did she say to Mr. Kirscht?

A. She said she would like to have the money to build, so those two could get ahead.

Q. What is that?

A. She said she would like to have the money to buy that lot.

Q. Did any of your money go toward buying this business from Miss Sweitzer? 10

A. Yes.

Q. I show you a check dated March 17, 1924, drawn on the Atlantic Safe Deposit and Trust Company, drawn to the order of Johanna Sweitzer, for two hundred dollars. Is that your signature?

A. Yes.

Q. I show you a receipt dated March 1, 1924, reading, "I received one hundred dollars from Josephine Kirscht." Did you sign that? 20

A. Yes.

(Offered in evidence.)

(The check was marked "Defendant's Exhibit D8," and the receipt "Defendant's Exhibit D9.")

Q. Mrs. Kirscht, then are we to understand that some of the money, some of the seven hundred and fifty dollars paid to Miss Sweitzer, was part of your money?

A. Yes.

Q. Now, at the time Mr. Kirscht bought this business from Miss Sweitzer, what was his reason for buying it? 30

A. Bought it on account of his health, to go away from the carpenter business, because it is too hard for him.

Q. Louder, Mrs. Kirscht.

A. The carpenter work was too hard for him; and that is the reason he bought it to get away from it, that is the reason he bought the business from Miss Sweitzer.

Q. Is he under the doctor's care at the present time?

A. Yes.

Q. What doctor?

A. Doctor Conover, of Pleasantville.

10 Q. What is his health now?

A. He is not well; he has a dislocation of the neck.

Q. Dislocation of the neck?

A. Yes.

Q. At the time Mr. Kirscht bought this business from Miss Sweitzer, was it a bona fide sale?

(Objected to.)

20 The Court: I think the question calls for a conclusion. I think you can ask for the facts of the sale.

Q. Were you present at any conversation held between Miss Sweitzer and Mr. Kirscht at the time this business was bought?

A. Yes.

Q. Will you tell the jury what circumstances led up to the purchase of this business?

30 A. I don't quite understand.

Q. Will you tell the jury how Mr. Kirscht came to purchase this business from Miss Sweitzer?

(Objected to.)

The Court: Objection overruled. Exception noted for plaintiff.

Q. Will you explain to the jury just how Mr. Kirscht came to buy this property from Miss Sweitzer, or this business?

A. We had been talking about it before——

Mr. Peacock: I object to that and ask that it be stricken out, because it is not responsive.

The Court: Objection overruled.

10

Q. Proceed.

A. How is that?

Q. Proceed. Answer the question.

(The stenographer is requested to repeat the question, which reads as follows: "Will you explain to the jury just how Mr. Kirscht came to buy this property from Miss Sweitzer, or this business?")

A. We had been talking about it before, and, as I said before, we would like that kind of business because it would be better for my husband's health

20

Q. Talk louder.

A. We had been talking about buying the business before, and, as I said before, it would be better for my husband's health—to get away from the carpenter business, because the carpenter business is too hard for him.

Q. At the time your husband purchased this business, was there any agreement made between your husband and Miss Sweitzer that he was to pass that property, that business, back to her?

30

A. No.

Q. Was that an outright sale?

A. Yes, we intend to keep it.

Q. What?

A. We intend to keep the business.

Q. Then, when your husband, on the stand yesterday, testified that he was going to transfer the business back to Miss Sweitzer; that is not correct?

(Objected to.)

Mr. Peacock: She cannot testify to what is in her husband's mind.

10 The Court: No, but I think the question is objectionable; and I will sustain the objection.

Q. And you say that was an out and out bona fide sale between Mr. Kirscht and Miss Sweitzer?

(Objected to.)

The Court: It has already been testified too.

No cross-examination.

20

#### DEFENDANT RESTS.

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#### PLAINTIFF'S EVIDENCE IN REBUTTAL.

MRS. ANNA BUTLER, recalled.

By Mr. Peacock:

30 Q. Mrs. Butler, were you ever in the New World Cabaret with the defendant, Miss Sweitzer, and did you treat her to highballs?

A. No, I was not.

Q. Did your family ever cause any trouble between you and your husband, to cause a separation?

A. No.

Q. When your husband went into partnership with this defendant, did you know he was to go into partnership?

A. No, I did not. My husband told me he was managing it. I didn't know it until I seen his name on the truck. I never seen those papers; and I am not sure of it yet.

Q. Did you ever go out of Koury's restaurant and get into a car with two men, at three o'clock in the morning?

(Objected to.)

Mr. Parsons: That is not the evidence.

10

Q. Did you ever go out of Coury's restaurant at eleven o'clock, with another woman and two men, and stay out until three o'clock in the morning?

A. No, I did not.

Cross-examination.

Q. Did you know anybody by the name of Quinn, in Atlantic City?

A. Quinn?

20

Q. Yes.

A. No, I don't. I don't remember anyone by that name.

Q. Do you know a man in Atlantic City, a blind man, by the name of Quinn?

A. Yes, I do.

Q. Were you ever in his company?

A. I waited on him, I remember.

Q. Were you ever in his company?

A. No.

30

Q. Did you ever go to his house while he played the piano?

A. No.

Q. On North Carolina Avenue?

A. No.

Q. Who is Miss Smith?

A. My cousin.

Q. What is her name?

A. Mrs. Alice O'Neill.

Q. Then her maiden name was Alice Smith?

A. Yes, Alice Smith.

Q. Was she married at this time?

A. At what time?

Q. At the time we are talking about, in Koury's restaurant.

A. Yes, she was.

10 Q. And you were with her that night?

A. I don't know what you mean.

(Objected to.)

Q. You were working with her in Koury's restaurant?

A. Yes, I did.

Q. You worked with her?

A. Yes.

Q. Where did she live?

20 A. She lived out on the west side, on North Illinois Avenue.

Q. Where did you live?

A. I lived on Georgia Avenue.

Q. On Georgia Avenue?

A. Yes.

TESTIMONY CLOSED.

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Mr. Peacock: (Addressing the jury) Counsel  
30 for defendant desires me to make an opening, and  
I will make it very short.

(Mr. Peacock makes the opening argument to the jury.)

(Mr. Parsons argues to the jury.)

(Mr. Peacock makes the closing argument to the jury.)

## CHARGE OF THE COURT.

By SCHIMPF, J.:

Ladies and gentlemen of the jury: Pat Butler and his wife, the plaintiff in this case, were married in April, 1917. Their matrimonialship seems to have been in the breakers a great part of the time from its launching. There has been testimony in this case, admitted, concerning the conduct of the husband toward his wife, for the sole purpose of exhibiting to you his mental attitude toward her. You are not trying an action between Mrs. Butler and her husband; you have been permitted to consider the testimony of his conduct toward her for the purpose of showing his mental attitude toward her, and that is all. 10 20

Now, that mental attitude is alleged, in this case, to have been caused by the defendant, Miss Sweitzer; and this is an action between Mrs. Butler and Miss Sweitzer in which Mrs. Butler alleges that Miss Sweitzer alienated the affections of her husband.

The testimony in the case is for you. The weight or credence which you will give to the witnesses is entirely for you; and you will resolve into the truth, as you see it, the discrepancies between the testimony of the various witnesses in this case. I think it is not necessary for me to comment on the testimony, so I shall charge you the rules of law within which you will consider your verdict. 30

An action for damages lies in behalf of a wife against one who has enticed away or alienated the affections of the husband. Express malice need

not be proved, intentional, unjustifiable and wrongful alienation being sufficient from which to imply the requisite malice.

Intention and design on the part of the defendant to effect an alienation are essential, though an actual intent to alienate is not necessary if defendant's acts are inherently wrong and seductive and tend to and do have the effect complained of.

10 It is essential that the defendant should directly interfere between the spouses, to the extent of causing a loss of consortium, that is, a loss of conjugal society.

The mere fact of the husband's infatuation with defendant is insufficient and the burden is on the plaintiff, the wife, to show such interference.

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20 Mr. Peacock: If the Court please, we desire to take an exception to that part of your Honor's charge, in which is declined the charge as to the loan she has sustained in the way of support.

POSTEA.

(Filed June 26, 1924.)

NEW JERSEY SUPREME COURT.

BURLINGTON COUNTY.

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<p>ANNA M. BUTLER,  <i>Plaintiff,</i> )  v. )  HANNAH SWEITZER,  <i>Defendant.</i> )</p>	}	<p>Action at Law.  Postea.</p>
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This case was tried before Judge Theodore W. Schimpf, with a jury, at the Burlington County Circuit Court, on June 16, 1924.

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The jury rendered a general verdict against the defendant in favor of the plaintiff for ten thousand dollars (\$10,000).

THEO. W. SCHIMPF,  
*Judge Burlington County  
Circuit Court.*

Filed June 26, 1924.

EDWARD J. KELLEHER,  
*Clerk.*

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## JUDGMENT.

## NEW JERSEY SUPREME COURT.

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<hr style="width: 10%; margin: 0 auto;"/>	
ANNA M. BUTLER, <i>Plaintiff,</i>	) Action at Law. On Postea. Judgment.
v.	
HANNAH SWEITZER, <i>Defendant.</i>	
<hr style="width: 10%; margin: 0 auto;"/>	

20            It is ordered that judgment be and here-  
 \$10,000.00 by is entered in favor of plaintiff and  
 50.90 against the defendant for the sum of ten  
 ————— thousand dollars besides costs to be taxed  
 \$10,050.90 *nisi*.

Entered June 26, 1924. On motion of

ROBERT PEACOCK,  
*Attorney.*

30

ASSESSMENT OF DAMAGES.

NEW JERSEY SUPREME COURT.

10

ANNA M. BUTLER, <i>Plaintiff,</i>	}	Action at Law.
v.		On Postea.
HANNAH SWEITZER, <i>Defendant.</i>	}	Robert Peacock, Attorney.
		Assessment of Dam- ages.

Judgment entered this twenty-sixth day  
 \$10,000.00 of June, A. D. nineteen hundred and 20  
 50.90 twenty-four, in favor of plaintiff and  
 ———— against the defendant for the sum of ten  
 \$10,050.90 thousand dollars damages and fifty dol-  
 lars and ninety cents costs.

WM. S. GUMMERE,  
*C. J.*

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NOTICE OF APPEAL.  
 NEW JERSEY SUPREME COURT.  
 BURLINGTON COUNTY.

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ANNA M. BUTLER, <i>Plaintiff,</i>	}	Action at Law. Notice of Appeal.
v.		
HANNAH SWEITZER, <i>Defendant.</i>		

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*To Robert Peacock, Esq., attorney for plaintiff:*

20

Take notice that the defendant appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause.

Dated June 20, 1925.

Yours respectfully,  
 CARLTON GODFREY,  
 WM. I. GARRISON,  
*Attorneys for Defendant.*

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[ENDORSEMENT]

Service acknowledged this 20th day  
 of June, 1925.

Robert Peacock,  
 Attorney for Plaintiff.

REASONS WHY A NEW TRIAL SHOULD BE GRANTED.

NEW JERSEY SUPREME COURT.

BURLINGTON COUNTY.

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<p>ANNA M. BUTLER, <i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>HANNAH SWEITZER, <i>Defendant.</i></p>	}	<p>On Appeal to the Court of Errors and Appeals. Reasons.</p>
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Defendant assigns the following reasons why a new trial should be granted in the above stated cause: 20

1. Because the verdict was against the clear weight of the evidence.

2. Because the amount of the verdict was excessive.

3. Because the Court permitted, over objection of the defendant, the following testimony to be received by the jury: 30

“Q. Was there any intercourse between you and your husband?

A. No, there was not.

(Objected to.)

The Court: It is answered before you object.

Q. During the time he lived with you, what did he give you a week?

A. Thirty dollars.

Q. After he left you how much did you get?

A. Ten.

Q. How did you get the ten?

A. I had him arrested.

Q. How many times?

A. Twice.

10

Q. Where?

A. In Atlantic City.

Q. Was your husband in Atlantic City last winter?

A. No.

Q. Was Mrs. Sweitzer in Atlantic City?

A. No.

Q. How long were they away?

A. I think about three months. . .

Q. When did they come back?

20

A. In the spring.

Q. After your husband left you, did you have an automobile?

A. Yes.

(Objected to.)

The Court: Now what is the objection?

Mr. Parsons: Leading.

Mr. Peacock: I don't know how else I could ask it.

The Court: Well, that is a leading question, but it is of a harmless type, I think.

30

Q. During the time that you were at the store on those occasions, what business did they do? How much money did they take in?

A. On Saturdays, I seen them take in \$800.

Q. Did she tell you what she did with her money?

A. No, she didn't.

Q. Do you know what she did with it?

A. No, I don't.

Q. Did she tell you any time about investing any of it in stocks or bonds of any character?

A. At one time she told me she was investing in some stocks.

Q. What were they?

A. Some German bonds and then something else; I don't remember what they were.

Q. Did she tell you what rent they paid there? 10

A. Seventy dollars.

Mr. Irvins Parsons: I object to this line of questions as irrelevant and immaterial to the issue.

Mr. Davis: I submit that it is a proper piece of testimony, because under your Honor's instructions the jury may desire to add smart money to the actual damages that this lady has suffered in consequence of the defendant's conduct, and her ability to respond in smart money 20 is a pertinent question for the jury to consider. In other words, what might be smart money to a person of small means might amount to nothing to a person of considerable means; and as I understand, all of the cases admit such testimony upon that theory.

(After argument.)

The Court: The objection will be overruled.

(Objection noted for defendant as ground of appeal.) 30

Q. How many trucks did they own?

A. Three, at that time.

Q. How many men did they have employed there?

A. Nine.

Q. And these trucks and men employed at all times in this business?

A. Yes, all summer.

Q. Did she tell you whether she owned the place or not?

A. She owned the building, but not the ground.

Q. How big a building was it?

A. It is pretty large, but not very well built.

Q. And where is it located in Atlantic City?

A. At Little Rock and Atlantic Avenue.

10 Q. Atlantic Avenue, one of the main thoroughfares in Atlantic City?

A. Yes.

Q. When did she tell you that she had made \$800 on Saturday?

A. I seen them; I was in the store.

Q. You saw that yourself?

A. Yes.

Q. And was the business the same every day as it was that day?

20 A. Every day in summer; maybe \$200 less; a few hundred dollars less, it might have been.

Q. Did she have any other automobiles besides the trucks?

A. Not at that time.

Q. Did your husband have an automobile?

A. After he left me.

Q. Are you able to take care of yourself and children at the present time on what your husband is giving you?

A. No.

30 Q. Where do you work?

A. I am not working just now. I have been working in Swarthmore. I am looking for a position in Atlantic City.

Q. What does he pay you?

A. Ten dollars a week.

Q. And has he paid that ever since he left you?

A. All last winter he didn't.

Q. And how did he come to pay that?

A. When I had him arrested.

Q. Was there a court order made by the court at Atlantic City?

A. Yes.

Q. And is he under bonds to pay that?

A. I don't know whether he is under bonds or not.

Q. Did he default in his payments at any time? 10

A. Yes, he did, twice.

Q. And was he brought before the court for default in payments?

A. Yes."

"Q. Did he ever abuse you and curse you in her presence?

(Objected to.)

The Court: The question is leading.

Q. What did he do with regard to cursing you, if anything? 20

Mr. Parsons: I object again.

The Court: Well, I suppose the question may be asked whether he did or did not use language to her of that nature.

Q. Did he use abusive language to you in her presence?

A. Yes, he did.

(Objected to. Objection overruled.)

Mr. Parsons: I ask that it be stricken out.

The Court: No, I will admit it.

(Objections noted for defendant as Ground 30 of Appeal.)"

4. Because the verdict was against the charge of the Court.

CARLTON GODFREY,  
WM. I. GARRISON,  
*Attorneys for Defendant.*





