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**BILL OF COMPLAINT.**

Filed November 3, 1927.

**In Chancery of New Jersey**

10

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

Complaining, shows unto your Honor, your  
oratrix, Anna McLean of the City of East  
Orange, County of Essex and State of New  
Jersey:

1. That on the third day of June, 1914, she  
was lawfully married to her present husband,  
William McLean, in the City of New York,  
County of New York and State of New York by  
Reverend George Haughton, a Minister of the  
Gospel.

20

2. That after said marriage your oratrix and  
the defendant, her said husband, went to reside  
at 194 Amherst street, in the City of East Orange  
and State of New Jersey, which was the home of  
the defendant's father and mother, and there lived  
together for about one year when the defendant  
and complainant moved to 116 Hamilton street,  
East Orange, New Jersey, where they lived for a  
period of a year. The defendant and your  
oratrix then moved to 569 Main street, East  
Orange, New Jersey, where they lived for about  
a year when the defendant and your oratrix  
moved to 290 Halstead street, East Orange, N. J.,  
where they lived for about seven years when the  
defendant and your oratrix moved to 13 Cam-  
bridge street, East Orange, New Jersey, where  
they lived continuously and co-habited until the

30

40

*Bill of Complaint.*

abandonment by the defendant of your oratrix as hereinafter complained of.

3. That there were no children born to your oratrix and her said husband as the fruit of their marriage.

10 4. That about two years ago your oratrix discovered that the defendant was carrying a picture in the back of his watch of a woman not your oratrix which caused your oratrix to suspect the defendant as being untrue to her. Your oratrix upon finding said photograph in said watch removed the same therefrom and has the same in her possession at the present time.

20 5. That subsequently on several occasions your oratrix shadowed the defendant in the evenings and discovered that the defendant met this woman whose picture is above mentioned and took her out in his automobile. Your oratrix lost track of the defendant's car in the traffic on numerous occasions.

30 6. That on one occasion while your oratrix unbeknown to the defendant was shadowing him she found his car standing in front of a drug store with the woman above mentioned sitting in the car. Presently the defendant came out of the drug store and took his seat at the wheel of said car and drove off. Your oratrix hired a taxicab and ordered the driver to follow the defendant's car, which he did, but as usual the taxi driver lost the defendant's car in the traffic; but as the defendant heretofore had been in the habit of taking your oratrix to dinner at the Canary Cottage at Madison, New Jersey, your oratrix instructed the driver of the taxi to drive  
40 to the Canary Cottage to see if the defendant

*Bill of Complaint.*

would not put in an appearance at that place. The taxi driver then drove to said cottage and when he arrived there the defendant's car was already parked outside in front of said cottage. Your oratrix then went in and had the proprietor call the defendant out. He came out and stated that he was with some boy friends from the office. Your oratrix then told the defendant that she had shadowed his car and knew that he had the above-mentioned woman inside with him. She demanded entrance to the interior of the cottage from the proprietor and was admitted upon condition that she would not create any disturbance. Upon agreeing to create no disturbance the proprietor allowed your oratrix to enter. Upon entering they walked over to the table where the above-mentioned woman was sitting and where the defendant already had ordered dinner and drinks which were setting upon the table. Your oratrix thereupon informed the woman above mentioned that the defendant was married and that your oratrix was his wife.

7. On subsequent occasions your oratrix again shadowed the defendant and found that he again met the above-mentioned woman at the corner of Broad and Market streets, Newark, New Jersey, when he took her to the Broad Theatre.

8. Your oratrix subsequently learned that the above-mentioned woman was employed by the same concern where the defendant worked and through said concern learned the address of said woman.

9. Subsequently your oratrix and a friend of your oratrix went to the home of the above-mentioned woman and tried to persuade her to give up the defendant.

*Bill of Complaint.*

10 10. That the defendant for the last two years practically went out every night and would return on a good many occasions as late as four o'clock in the morning and very seldom returned before 2 A. M. That he openly stated to your oratrix that he did not care to be tied down and that he would go out with any woman that he desired and that if she did not like it she could do whatever she wanted and that he was going to continue to go out with whoever he desired and did not like the idea of being tied down to one woman.

11. Your oratrix subsequently found in the defendant's pocket a letter which read as follows:

20 "My Dear One—

Am mailing picture as promised you. This is the best I have at the present time but expect to have more taken in future and will gladly let you have one.

Will meet you as promised without fail. Am always thinking of you and always will. Counting the minutes till I see you again Honey.

Lovingly yours,

IRENE."

30 12. That in said letter was enclosed a small photograph of a woman which is a different woman than the one first above mentioned. On the back of the picture is written in the same handwriting as the letter the following:

"From one that *dearly loves you!*

IRENE."

40 13. That your oratrix on one occasion insisted that the defendant remain at home, which he refused to do, whereupon your oratrix put

*Bill of Complaint.*

on her hat and coat and went out on the porch before the defendant got out, informing him that your oratrix would follow him wherever he went. This enraged the defendant, whereupon he said "I will fix you so that you will not follow me," whereupon he rushed from the house and as he approached your oratrix could see that he had an open razor in his hand, whereupon your oratrix put up her hand to ward off any slash, whereupon the defendant slashed two fingers on the hand so held up. Your oratrix then called in a doctor, but the defendant pleaded with your oratrix not to tell the doctor how it happened but to say that she had cut her hand with a potato knife. 10

14. The defendant on several occasions threatened your oratrix that if she took him to law he would throw up his position and would skip and leave this section of the country. 20

15. That ever since your oratrix discovered that the defendant was running around with other women he has been continuously quarrelling and fighting with your oratrix to such an extent that it has caused your oratrix such nervous and mental disturbances that it became necessary for your oratrix to consult her physician with reference to her condition and that she has been under the doctor's care for the last two years for this nervous and mental condition which has been caused by the defendant. 30

16. On October 22, 1927, the defendant left his home as usual, kissing your oratrix goodbye and waving his hand back at her twice from the street. Before he left he requested your oratrix to meet him at 6:30 P. M. at the Tube station, Newark, New Jersey. Your oratrix went 40

*Bill of Complaint.*

to the Tube station and presented herself there at 6:30 P. M., as agreed, but the defendant failed to put in an appearance. Your oratrix waited until 7:20 P. M. and then went to the corner of Broad street and Central avenue, Newark, N. J., where she met a friend of the  
10 defendant who drove your oratrix home. Upon arriving home your oratrix found that the defendant was not home nor did he come home nor has he been home ever since.

17. That subsequently the defendant phoned your oratrix informing her that he had left her for good and that he wanted her to send him his clothes and again warning her that if she brought him to law he would skip and leave this section of the country.

20 18. That on the evening of November 1, 1927, the defendant phoned your oratrix informing her that he was going to skip, and that he had lost his position with the United Radio and Electric Corporation, where he was employed, on account of his domestic troubles.

30 19. Your oratrix shows and charges that on the 22nd day of October, 1927 the defendant left their home, and abandoned your oratrix, and separated himself from her, and subsequently phoned your oratrix for his clothes and told her that he had left her for good; that your oratrix gave the defendant no cause for his action but has ever been a true and faithful wife to him.

40 20. Your oratrix further shows that the defendant refused to tell your oratrix where he is living at the present time but that your oratrix knows that he is employed by the United Radio and Electric Corporation of 500 Chancellor ave-

*Bill of Complaint.*

nue, Irvington, New Jersey, where he has a position as manager and paymaster and where he is earning a salary of two hundred seventy-five (\$275) dollars per month.

21. Your oratrix further charges that ever since the 22nd day of October, 1927 the defendant has abandoned your oratrix without justifiable cause and has refused and neglected, and still does refuse and neglect, to maintain and provide for her. Your oratrix shows that she is now dependent for the support of herself on her own exertion, which she is unable to do on account of the mental and nervous condition the defendant has put her in and that your oratrix is therefore without funds of any kind. 10

22. Your oratrix further charges that the defendant was in the habit of frequenting gambling houses and was recently arrested in connection with a police raid on a gambling house, on which occasion the defendant cashed in and withdrew the withdrawal value of certain building and loan shares in order to get out of the trouble which he was in. 20

23. Your oratrix charges that as above stated the defendant is a manager and paymaster employed by the United Radio and Electric Corporation of 500 Chancellor avenue, Irvington, N. J., where he has a salary of Two Hundred Seventy-Five (\$275) Dollars per month and that he is able to earn such by his personal attention to his business and that the defendant is abundantly able to maintain and support your oratrix in a manner suitable to her position. 30

*Bill of Complaint.*

The complainant is without adequate remedy at law and prays:

10 1. That the defendant, William McLean, may be ordered and decreed to provide such suitable support and maintenance to be paid and provided for by him or made out of his property for your oratrix and for such times as the nature of the case and the circumstances of the parties render suitable and proper, and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the orders of this Honorable Court as provided by the statutes; and in case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor; and that the defendant may be required to pay your oratrix a proper amount for counsel fees and that your oratrix may have such further equity as to your Honor shall seem meet.

20 2. That a writ of subpoena or a writ of *ne exeat* may be issued commanding the said William McLean, who is the defendant in this cause, to answer this bill of complaint without oath and to abide by such decree as this Court may make in the premises.

30  
AQUILA N. VENINO,  
Solicitor for and of Counsel with  
Complainant or Oratrix.

*Bill of Complaint.*

**AFFIDAVIT TO OBTAIN NE EXEAT.**

Filed November 3, 1927.

IN CHANCERY OF NEW JERSEY.

ANNA McLEAN, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM McLEAN, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Affidavit to Obtain Ne Exeat.</i>	10
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STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } *ss.*

ANNA McLEAN, being duly sworn according to law, upon her oath deposes and says: 20

I am the complainant in the above-entitled action commenced against my husband, William McLean, for support and maintenance.

That the defendant, William McLean, has without any justifiable cause abandoned and separated himself from me and has refused and neglected to support and provide for me and continues so to do and has left me without making any provision for my support and maintenance. 30

That the said defendant, William McLean, has told me on several occasions before he abandoned me that if I took him to law he would skip and leave this section of the country so that I could not force him to support me.

That after the defendant had deserted me as above stated he called me on the phone two or three times and requested me to send him his clothes and again told me and warned me that if 40

*Bill of Complaint.*

I brought him to law he would skip and leave this section of the country.

10 That the last time he phoned me was on the evening of Tuesday, November 1st, at which time he told me that he had lost his position on account of his domestic troubles and that he has definitely  
10 decided to skip and leave this section of the country.

I verily believe that the defendant intends to quickly depart out of this State and the jurisdiction of this Honorable Court and if he is suffered to do so my just claim for support and maintenance will be defeated.

20 I therefore ask that a writ of *ne exeat republica* be issued out of this Honorable Court to restrain the defendant, William McLean, from departing out of the jurisdiction of this Court.

ANNA McLEAN.

Sworn and subscribed to before me  
this 2nd day of November, 1927.

FANNY KIRSCHNER,  
A Notary Public of New Jersey.

**ORDER FOR NE EXEAT.**

Filed November 3, 1927.

IN CHANCERY OF NEW JERSEY.

*Between*

ANNA McLEAN,

*Complainant,*

*and*

WILLIAM McLEAN,

*Defendant.*

10

*On Bill, &c.*

*Order for  
Ne Exeat.*

The complainant having filed her bill against the defendant to be relieved touching the matters therein contained, and now, upon reading the affidavit of Anna McLean whereby it satisfactorily appears that the said defendant designs quickly to depart from this State:

20

It is on this third day of November, 1927, on motion of the solicitor of the complainant, ORDERED, that a writ of *ne exeat republica* be awarded against the said defendant until he shall fully answer the complainant's bill, and this Court shall make other order to the contrary; and the said writ shall be endorsed in the sum of One thousand dollars (\$1,000).

30

E. R. WALKER,

*C.*

Respectfully advised,

ALONZO CHURCH.

40

**WRIT OF NE EXEAT.**

Filed November 18, 1927.

NEW JERSEY, to wit:

The State of New Jersey to the  
Sheriff of the County of Essex, GREET-

10

(SEAL) ING:

WHEREAS, it is represented to us, in  
our Court of Chancery, before our  
Chancellor, on the part of Anna McLean, peti-  
tioner, against William McLean, defendant, that  
the said William McLean abandons his wife,  
Anna McLean, and refuses and neglects to sup-  
port and maintain her (and the children of his  
marriage to her) and that he designs quickly to  
go into parts without the State of New Jersey, as  
20 by oath, on that behalf made, appears, which  
tends to the great prejudice and damage of the  
said petitioner: Therefore, in order to prevent  
this injustice, we hereby command you that you  
do, without delay, cause the said defendant per-  
sonally to come before you, and give sufficient  
bail or security in the sum of One thousand  
(\$1,000) dollars, lawful money of the United  
States, that he will not go, or attempt to go, into  
parts without the said State, without leave of our  
30 said court; and in case the said defendant shall  
refuse to give such bail or security, then you  
are to commit him to the common jail of your  
county, there to be kept in safe custody until he  
shall do it of his own accord; and when you have  
taken such security, you are forthwith to make  
and return a certificate thereof to our Chan-  
cellor, in our Court of Chancery, at Trenton,  
distinctly and plainly under your hand, together  
with this writ.

40

*Writ of Ne exeat.*

WITNESS, his Honor, EDWIN ROBERT WALKER,  
Chancellor of our said State, at Trenton, the  
third day of November, 1927.

THOMAS BARBER,  
Clerk. (SEAL)

AQUILA N. VENINO,  
Solicitor.

10

The defendant shall give bond in the sum of  
\$1,000, One Thousand Dollars.

ALONZO CHURCH,  
V.-C.

I hereby appoint and depute Donald Strobe to  
serve the within writ. 20

Witness my hand and seal this 4th day of  
November, 1927.

CONRAD DEUCHLER,  
Sheriff.  
(SEAL)

By RUPPERT F. MILLS,  
Under Sheriff.

Sheriff fees ..... 30

Served the within writ of *ne exeat*, November  
9, 1927, personally upon William McLean the  
within named defendant and did at the same  
time take him into custody and did deliver his  
body to the Essex County Jail.

CONRAD DEUCHLER,  
Sheriff.

By DONALD STROPE,  
Special Deputy. 40

*Bond.*

RETURN WHERE DEFENDANT HAS BEEN  
ARRESTED AND HAS GIVEN SECURITY.

10 I certify and return that I have caused the  
within-named William McLean, November 10,  
1927, personally to come before me, and he has  
found bail in the sum of \$1,000 according to the  
command of the within writ.

CONRAD DEUCHLER,  
Sheriff.

By STANLEY W. KEUGHN,  
Executive Clerk.

20

**BOND.**

30 KNOW ALL MEN BY THESE PRESENTS, That we,  
William McLean, as principal, and United States  
Fidelity and Guaranty Company, a corporation  
of Maryland, as surety, are held and firmly bound  
unto Conrad Deuchler, Sheriff of the County of  
Essex, in the sum of One Thousand Dollars, to  
be paid to the said Conrad Deuchler, Sheriff as  
aforesaid, or to his successors and assigns, for  
which payment well and truly to be made we bind  
ourselves, our heirs, executors and administra-  
tors, successors and assigns, jointly and severally,  
firmly by these presents.

Sealed with our seals and dated the Tenth  
day of November, 1927.

40 WHEREAS, the above bounden William McLean  
has been arrested upon a writ of *ne exeat* issued  
out of and under the seal of the Court of Chan-

*Bond.*

cery of the State of New Jersey, in a certain cause therein depending wherein Anna McLean is complainant and William McLean is defendant, and the said William McLean is now in the custody of the said Sheriff by virtue thereof.

Now, THEREFORE, the condition of this obligation is such that if the said William McLean shall cause his appearance to be entered in the said suit, and continue such appearance by a solicitor of the said Court of Chancery, residing in the State of New Jersey, and shall at all times render himself amenable to the orders and process of the said Court of Chancery, pending the said suit, and to such process as shall be issued to compel the performance of the final decree therein, and shall appear before the said court, or any officer thereof, when so required by the order of the said court, then this obligation shall be void, otherwise to remain in full force and virtue.

WM. McLEAN, (L. S.)

UNITED STATES FIDELITY & GUARANTY  
CO.,

By WALTER A. SCHRYVER,  
Attorney in Fact.

Signed, sealed and delivered in the presence of 30

ALFRED ROWE as to  
WM. McLEAN.

Attest:

DANIEL C. KOHL,  
(L. S.) Attorney in Fact.



*Answer.*

6. As to the allegations in paragraph 7 that the complainant shadowed him, he says that he has no knowledge or information sufficient to form a belief, but he denies that he ever met this girl at the corner of Market and Broad streets, Newark, New Jersey, and took her to the Newark Theatre.

10

7. He has no knowledge or information sufficient to form a belief concerning the allegations contained in paragraphs 8 and 9 of the bill of complaint.

8. He denies the allegations contained in paragraphs 10, 11 and 12 of the bill of complaint.

9. He denies the happenings as alleged in paragraph 13 of the bill of complaint as to the way and manner complainant's fingers were cut and says that on the night in question complainant insisted upon defendant remaining at home, which defendant refused to do, informing complainant he was going out on business. As defendant passed complainant at the foot of the steps complainant raised her right arm as if to strike defendant and he then noticed she had a razor in her hand. Defendant took hold of her arm to protect himself and in the effort to do so complainant cut her fingers. Defendant then proceeded to care for complainant's fingers, after which he remained at home for the evening.

20

30

10. He denies the allegations contained in paragraph 14 of the bill of complaint.

11. He admits the allegations of paragraph 16 of the bill of complaint and says that the reason for his not returning home was due to the fact that complainant had on numerous occasions threatened to disfigure him and take his life and

40

*Answer.*

has on one occasion attempted to disfigure him or take his life, and he feared that she might accomplish this purpose if he continued to live with her.

10 12. He admits he telephoned complainant and told her he had left for good and requested her to send him his clothes as alleged in paragraph 17 of the bill of complaint and says that he took this action because he feared that if he returned to his home complainant might make further attempts on his life. He denies the other allegations in paragraph 17 of the bill of complaint.

20 13. He admits, as alleged in paragraph 18 of the bill of complaint, that he telephoned complainant he had lost his position, but denies that he told her he was going to skip.

14. He admits that he left his home as alleged in paragraph 19 of the bill of complaint and that he telephoned to the complainant for his clothes, and says that the reason he had not returned to his home was through fear of further attempts on the part of the complainant to take his life.

30 He denies that complainant has ever been a true and faithful wife and that she gave him no cause for his action and says that some four years ago while complainant was on a vacation at the seashore defendant learned that complainant was keeping company with a married man while he was working in the city. That both of them admitted they were keeping company with each other and complainant promised defendant that she would not meet the said married man again if defendant would forgive her, which he did.

40

*Answer.*

15. He denies that he refused to tell complainant where he lived, as alleged in paragraph 20 of the bill of complaint, and says that complainant did know his address because he has a letter forwarded by her to his present address.

He further denies that he is employed by the United Radio and Electric Corporation, and denies that he is earning a salary of \$275.00 per month, and says that he lost his position with the last-mentioned firm because of the interference of complainant.

10

16. He denies the allegations of paragraph 21 and says that he continued to support complainant even after he had left her up to the time that he was discharged from his position when he had no means of support either for complainant or for himself. He further says that he has made every effort since his discharge from the United Radio and Electric Corporation to obtain employment, but he has been unsuccessful.

20

17. He denies the allegations of paragraphs 22 and 23 of the bill of complaint and says that since his discharge from the United Radio and Electric Corporation he has made every effort to obtain employment but he has been unsuccessful up to the present time.

30

He further says that he has no source of income and no other assets except those at the home at 13 Cambridge street, East Orange, N. J., which are in the possession of complainant.

Defendant, therefore, prays that the bill of complaint be dismissed.

HOWARD ISHERWOOD,  
Solicitor of Defendant.

40

**REPLICATION.**

Filed December 27, 1927.

IN CHANCERY OF NEW JERSEY.

10	ANNA McLEAN, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM McLEAN, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Replication.</i>
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The complainant replying to the defendant's answer filed in the above-entitled action alleges as follows:

20 The complainant joins issue on the answer of the defendant.

AQUILA N. VENINO,  
Solicitor and of Counsel with Complainant.

30

40

**ORDER FOR ALIMONY PENDENTE LITE.**

Filed February 21, 1928.

IN CHANCERY OF NEW JERSEY.

ANNA McLEAN,

*Petitioner,**vs.*

WILLIAM McLEAN,

*Defendant.*

10

*Order for  
Payment of  
Alimony  
Pendente  
Lite.*

This matter being opened to the Court by Aquila N. Venino, of counsel with Anna McLean, petitioner, in the above-entitled action, and in the presence of Howard Isherwood, solicitor for and of counsel with defendant, and it appearing that due notice of this application has been given to the defendant in the above-entitled action and good cause being shown by the petition and affidavits why the petitioner is entitled to relief in the premises;

20

It is thereupon, on this 21st day of February, 1928,

ORDERED, that William McLean, the above-named defendant, do pay to his wife, Anna McLean, the above-named petitioner, the sum of \$15 per week at the beginning of each and every week from the date of this order until the termination of this suit for her support and maintenance.

30

And it is further ORDERED, that the defendant, William McLean, do pay to Aquila N. Venino, solicitor for and of counsel with petitioner,

40

*Order for Alimony Pendente Lite.*

a counsel fee of (reserved until final hearing) and  
the costs of this motion to be taxed.

E. R. WALKER,  
C.

Respectfully advised,

10

JOHN H. BACKES,  
V.-C.

20

30

40

**REFERENCE TO A VICE-CHANCELLOR.**

Filed February 1, 1928.

IN CHANCERY OF NEW JERSEY.

<p>ANNA McLEAN, <i>Complainant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>WILLIAM McLEAN, <i>Defendant.</i></p>	}	<p><i>Reference to a Vice-Chan- cellor after Answer Filed.</i></p>	10
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This matter being opened to the Court by Aquila N. Venino, solicitor of petitioner, and upon due notice to the defendant;

It is on this 1st day of February, 1928, 20

ORDERED, that the above-stated cause be referred to the Honorable A. Church, one of the Vice-Chancellors of this court to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,  
*C.*

The entry of the above order is hereby con- 30  
sented to.

HOWARD ISHERWOOD,  
Solicitor of the Defendant.

## ORDER FIXING TIME FOR HEARING.

Filed February 24, 1928.

10

ANNA McLEAN,

Complainant,

vs.

WILLIAM McLEAN,

Defendant.

*On Bill for  
Support and  
Maintenance.**Order Fixing  
Time and  
Place for the  
Hearing of  
this Cause.*

20

Application on due notice having been made to fix the time and place for the hearing of the above stated cause and upon reading and filing the consent hereto annexed, it is on this 24th day of February, 1928,

ORDERED, that Thursday, the 22nd day of March, 1928, at the hour of ten in the forenoon, at the Chancery Chambers, Industrial Building, 1060 Broad street, Newark, New Jersey, be and the same is hereby designated as the time and place for the hearing of said cause.

30

ALONZO CHURCH,

V.-C.

We consent to the entry of the above order.

AQUILA N. VENINO,

Solicitor for Complainant.

HOWARD ISHERWOOD,

Solicitor for Defendant.

40

**NOTICE OF HEARING.**

Filed July 6, 1928.

IN CHANCERY OF NEW JERSEY.

ANNA McLEAN, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM McLEAN, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Notice of Hearing.</i>	10
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PLEASE TAKE NOTICE, that I will move the hearing of the above-stated cause before Honorable Alonzo Church, Vice-Chancellor, on Thursday, the twenty-second day of March, 1928, at the hour of 10 A. M. in the forenoon, in the Chancery Chambers, Industrial Building, 1060 Broad street, Newark, New Jersey, pursuant to the designation made and filed in this cause. 20

AQUILA N. VENINO.

To Howard Isherwood, Esq., 738 Broad street,  
Newark, N. J.

Service of a copy of the within is hereby acknowledged this 29th day of February, 1928. 30

HOWARD ISHERWOOD,  
Solicitor for Defendant.

## MEMORANDUM OF VICE-CHANCELLOR.

Filed May 5, 1928.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  ANNA McLEAN,  <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> WILLIAM McLEAN,  <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Memoran- dum.</i>
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20 This memorandum is not to be published in the official or unofficial reports.

A. N. Venino for complainant.

Howard Isherwood for defendant.

CHURCH, V.-C.

This is a bill for separate maintenance on the part of the wife against the husband.

30 My conclusions from the testimony produced before me and from observing carefully the demeanor of the wife on the witness stand are these: The wife has a very high temper and a very jealous disposition. A year before the separation she followed her husband to a restaurant where he was with another woman. She entered, sat at the table with her husband, and the woman partook of refreshments with them and accompanied her husband home, leaving the woman at her house.

40 There is no allegation of infidelity in the pleadings, and counsel stated at the hearing that none could be proved. From that time the wife

*Memorandum of Vice-Chancellor.*

harrassed her husband with accusations of improper relations with other women, threatened to kill him or to maim him and told his relatives that she would kill or injure him.

There is also testimony as to a quarrel in which a razor played a prominent part. Each says the other was the aggressor. I believe the wife was at fault. 10

Finally he left her, as he says he feared bodily injury. Counsel for complainant says that if his life became endangered, it was his own fault "because of his inconsiderate actions in running around with other women."

There are two answers to this. In the first place, complainant's counsel admits that there is absolutely no evidence of wrongdoing. Therefore the threats and accusations which I find as a fact that the wife made—are false and he was justified in leaving her because he had reasonable ground to apprehend that she might kill or maim him. Again, even if her suspicions were justified or she had absolute proof of his infidelity, she had no right to attempt to injure him. Her duty was to leave him and proceed against him in a proper manner in the courts. 20

I will advise a decree dismissing the bill.

30

40

**FINAL DECREE.**

Filed May 18, 1928.

## IN CHANCERY OF NEW JERSEY.

10 *Between*

ANNA McLEAN,

*Complainant,**and*

WILLIAM McLEAN,

*Defendant.**On Bill.**Final  
Decree.*

20 This cause coming on to be heard in the pres-  
 ence of Aquila N. Venino, Esq., solicitor for and  
 of counsel with the complainant, and Howard  
 Isherwood, Esq., solicitor for and of counsel with  
 the defendant, on bill, answer and oral proofs  
 taken in open court, whereupon and upon duly  
 considering the said pleadings and proofs, and  
 hearing and considering the argument of counsel,  
 from all of which it now appears to the satisfac-  
 30 tion of the Chancellor that the complainant and  
 defendant were lawfully joined in the bonds of  
 matrimony on the 3rd day of June, 1914, and  
 that the defendant had justifiable cause for  
 separating himself from the said complainant  
 because he had reasonable cause to apprehend  
 bodily harm from her; and that the parties have  
 their domicile in this State, and that the defend-  
 ant was personally served with process within  
 this State,

40 It is thereupon on this 18th day of May, 1928,  
 by his Honor, Edwin Robert Walker, Chancellor  
 of the State of New Jersey,

*Final Decree.*

ORDERED, ADJUDGED and DECREED that the bill of complaint filed by the complainant herein be and the same hereby is dismissed; and it is further

ORDERED, ADJUDGED and DECREED, that the application by the solicitor of complainant for a counsel fee be and the same is hereby denied. 10  
And it is further

ORDERED, ADJUDGED and DECREED, that the Sheriff of the County of Essex be and he is hereby directed to deliver up to the said defendant William McLean, or to his solicitor, the *ne exeat* bond heretofore given by the defendant under the direction of this court upon presentation to said sheriff of a true copy of this decree, certified to by the solicitor of the defendant.

E. R. WALKER, 20  
C.

Respectfully advised,

ALONZO CHURCH,  
V.-C.

**ORDER AMENDING FINAL DECREE.**

Filed May 21, 1928.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  ANNA McLEAN,  <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> WILLIAM McLEAN,  <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Bill, &amp;c.</i>  <i>Order.</i>
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20 It appearing to the Court that an order was made on the 18th day of May, 1928, directing the Sheriff of Essex County to deliver up to the defendant, William McLean, or to his solicitor, the *ne exeat* bond heretofore given by the defendant under the direction of this court, upon presentation to the said Sheriff of a true copy of the said order certified to by the solicitor of the defendant, which said order did not provide for the cancellation of record of the said bond,

30 It is on this 21st day of May, 1928, on motion of Howard Isherwood, solicitor of defendant, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED, that the Sheriff of Essex County be and he hereby is directed and ordered to cancel of record the aforementioned *ne exeat* bond upon the presentation to the said Sheriff of a true copy of this order certified to by the solicitor of the defendant.

E. R. WALKER,  
C.

40 Respectfully advised,  
ALONZO CHURCH,  
V.-C.

**NOTICE OF APPEAL.**

Filed May 25, 1928.

IN CHANCERY OF NEW JERSEY.

ANNA McLEAN, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM McLEAN, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Bill.</i>  <i>Notice of Appeal.</i>	10
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The complainant, Anna McLean, hereby appeals from the final decree made in the above-entitled cause on May 18, 1928, and also appeals from the order subsequently made in the above-entitled action on May 21, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 20

Dated, May 24, 1928.

AQUILA N. VENINO,  
 Solicitor for and of Counsel with  
 Complainant, Anna McLean.

30

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

AQUILA N. VENINO,  
 Of Counsel with Complainant, Anna McLean.

40

*Notice of Appeal.*

Service of a copy of the within notice of appeal is hereby acknowledged this 24th day of May, 1928.

HOWARD ISHERWOOD,

By ALFRED ROWE,

10 Solicitor for the Defendant, William McLean.

UNITED STATES FIDELITY AND  
GUARANTY CO.,

By JOHN B. GEYLER.

20

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**AMENDED NOTICE OF APPEAL.**

Filed May 29, 1928.

IN CHANCERY OF NEW JERSEY.

ANNA McLEAN, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>vs.</i></div> WILLIAM McLEAN, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Bill.</i>  <i>Amended Notice of Appeal.</i>	10
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The complainant, Anna McLean, hereby appeals from the final decree made by the Chancellor and advised by Vice-Chancellor Alonzo Church in the above-entitled cause on May 18, 1928, and also appeals from the order subsequently made by the Chancellor and advised by Vice-Chancellor Alonzo Church in the above-entitled action on May 21, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 28, 1928.

AQUILA N. VENINO,  
Solicitor for and of Counsel with  
Complainant, Anna McLean.

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

AQUILA N. VENINO,  
Of Counsel with Complainant, Anna McLean.

Service of a copy of the within amended notice of appeal is hereby acknowledged this 28th day of May, 1928.

HOWARD ISHERWOOD,  
Solicitor for the Defendant.

**PETITION OF APPEAL.**

Filed May 26, 1928.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

<p style="text-align: center;">ANNA McLEAN, <i>Complainant-Appellant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">WILLIAM McLEAN, <i>Defendant-Appellee.</i></p>	}	<p style="text-align: center;"><i>On Appeal from the Court of Chancery.</i></p> <p style="text-align: center;"><i>Petition of Appeal.</i></p>
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*To the Honorable the Court of Errors and Ap-  
peals in the last resort in all causes.*

30

1. The petition of Anna McLean, appellant, respectfully shows, that your petitioner finds herself aggrieved by a final decree and a subsequent order amending said final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date May 18, 1928, and May 21, 1928, respectively, in a certain cause in said Court of Chancery wherein the said Anna McLean was complainant and the said William McLean was defendant, in this respect, to wit,

That the said decree recites and adjudges that the defendant had justifiable cause for separating himself from the said complainant because he had reasonable cause to apprehend bodily harm from her; and doth

40

Further order, adjudge and decree that the bill of complaint filed by the complainant therein be and the same hereby is dismissed; and doth

*Petition of Appeal.*

Further order, adjudge and decree that the application by the solicitor of the complainant for a counsel fee be and the same is hereby denied; and doth

Further order, adjudge and decree that the Sheriff of the County of Essex be and he is hereby directed to deliver up to the said defendant, William McLean, or to his solicitor, the *ne exeat* bond heretofore given by the defendant under the direction of this court, upon presentation to said Sheriff of a true copy of this decree, certified to by the solicitor of the defendant; and doth order, adjudge and decree by the said order that the Sheriff of Essex County be and he hereby is directed and ordered to cancel of record the aforementioned *ne exeat* bond upon the presentation to the said Sheriff of a true copy of this order certified to by the solicitor of the defendant.

And your petitioner appeals from the said decree and order and from every part thereof, on the ground that the same is erroneous for the following reasons:

1. Because the decree recites and adjudges that the defendant had justifiable cause for separating himself from the said complainant because he had reasonable cause to apprehend bodily harm from her; whereas His Honor, the Chancellor should have found, recited and adjudged that the defendant without any justifiable cause, abandoned the complainant and separated himself from her and refused and neglected to maintain and provide for her and that the defendant should pay to the complainant a certain sum of money weekly at the termination of each week, from the time of the decree for the support

*Petition of Appeal.*

and maintenance of the complainant, until the further order of the Court. And that the defendant do also pay to complainant or to her solicitor the costs of suit to be taxed and a counsel fee, and that execution issue thereon according to the practice of the Court.

10

2. Because the testimony, evidence and proofs do not warrant the conclusions of His Honor, the Chancellor, nor the decree made by him.

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3. Because the final decree and order directs the Sheriff to deliver up to the defendant, William McLean, or his solicitor, the *ne exeat* bond heretofore given by the defendant under the direction of this court and to cancel the same of record upon presentation to the said Sheriff of a true copy of the final decree and order certified to by the solicitor of the defendant. This was erroneous because it allowed the defendant's solicitor to make operative forthwith a final decree before the same was signed by the Chancellor and in this way allowed the bond to be forthwith made null and void before the final decree was actually signed by His Honor, the Chancellor; and because the defendant was in default under an order made on February 21, 1928, in this cause directing the defendant to pay Fifteen (\$15) Dollars per week alimony, *pendente lite*. The said defendant having paid no alimony under said order commencing with the week of March 27, 1928, down to the time of the entering of the decree, which was a violation of the conditions contained in said bond, and which gave the complainant a right of action under said bond, all of which was brought to the attention of His Honor, the Chancellor, at the time the decree was signed; and because a

*Petition of Appeal.*

cancellation of this bond should have been made upon a separate application for that purpose upon due notice to the complainant, no notice of any kind having been given in connection with the cancellation of this bond except notice to settle the form of the decree.

10

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

AQUILA N. VENINO,  
Solicitor for and of Counsel with Appellant.

Service of a copy of the within petition of appeal is hereby acknowledged this 29th day of May, 1928.

20

HOWARD ISHERWOOD,  
Solicitor for defendant,  
By M. C. SMITH.

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## ANSWER TO PETITION OF APPEAL.

Filed July 5, 1928.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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 ANNA McLEAN,  
*Complainant-Appellant,*
*vs.*
 WILLIAM McLEAN,  
*Defendant-Appellee.*


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*On Appeal  
 from the  
 Court of  
 Chancery.*
*Answer to  
 Petition of  
 Appeal.*

20 The answer of William McLean, the above-named appellee, to the petition of appeal of Anna McLean, the above-named appellant.

30 This appellant not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a final decree and a subsequent order amending said final decree were on May 18, 1928, and May 21, 1928, respectively made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree and order, this appellee begs leave to refer thereto when the same shall be produced.

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

40 HOWARD ISHERWOOD,  
 Solicitor for and of Counsel with Appellee.

*Anna McLean, direct.*

**TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

March 22, 1928.

*Between*

ANNA McLEAN,

*Complainant,*

*and*

WILLIAM McLEAN,

*Defendant.*

10

Transcript of shorthand notes of testimony  
taken in the above-entitled cause before his  
Honor, Alonzo Church, Vice-Chancellor, at the  
Chancery Chambers, Newark, New Jersey, in  
the presence of Aquila Venino for complainant,  
Howard Isherwood for defendant. 20

ANNA McLEAN, sworn for complainant.

*Direct examination* by Mr. Venino.

Q Mrs. McLean, what is your husband's  
name? A William McLean. 30

Q He is the defendant in this suit? A Yes.

Q And when were you married? A June 3,  
1914.

Q And where were you married and by  
whom? A Married in the Church of the Trans-  
figuration, New York City, by Rev. George  
Houghton.

Q After you were married, where did you go  
to live? A 194 Amherst street, East Orange. 40

*Anna McLean, direct.*

Q With whom were you living there? A His mother and father.

Q And how long did you live there? A About a year.

Q From there where did you move? A To  
10 116 Hamilton street.

Q East Orange? A East Orange.

Q How long did you live there? A About a year.

Q And where did you move from there? A 569 Main street, East Orange.

Q How long did you live there? A About a year.

Q And where did you move to from there? A 290 Halstead street, East Orange.

Q And how long did you live there? A  
20 Seven years.

Q And where did you move from there? A 13 Cambridge street, East Orange.

Q And living there at the present time? A Yes.

Q Have you any children? A No.

Q And has your married life been a happy and peaceful one? A Yes, up until two years ago.

Q Now, what happened two years ago to  
30 make your life unhappy? A I found that Mr. McLean was running around with another woman, whose picture I found in the back of his watch.

Q How did you come to look for a picture in the back of your husband's watch? A I was told that it was there.

Q Who told you? A Mrs. May Laycock.

Q When you found this picture, did you  
40 allow it to remain there? A No, I did not.

*Anna McLean, direct.*

Q Did you let Mr. McLean know at that time that you had found this picture? A No.

Q Did he ever find out that it had been removed? A Yes.

Q When did he find it out? A About a week or two later.

Q Did he say anything to you about it? A Yes, he called me up on the phone after he missed it.

10

Q And what did he say? A He said it wouldn't do me any good, he would put another one in.

Q Before you found this picture and after you found this picture, what were your husband's habits with reference to going out at night and coming home? A He would go out sometimes two or three times a night, and he would never come in until two or after in the morning.

20

Q A night or a week? You said he went out two or three times a night? A A week.

Q And what time did he return? A Never before two o'clock in the morning.

Q After he found that you have removed this picture was there any change in his going out or coming home at night? A Yes, he went out more often.

30

Q Went out more often? A Yes.

Q Did he come home the same hour or later? A Sometimes later. As late sometimes as four o'clock.

Q In the morning? A In the morning.

Q Now, after you found this picture, did you take any steps to ascertain whether your husband ever took this girl out? A Yes, sir; I started to follow him.

40

*Anna McLean, direct.*

Q Well, now, after you found this picture, when was the first time that you followed him?

A When he called me up at night, about six, or a little after, and said he wouldn't be home for dinner, after me preparing a big dinner for him.

10 Q Did he say the first time he called up after this picture was discovered, as to where he was going? A Yes. He told me he was going with a Mr. George Spier to the Athletic Club to bowl.

Q And do you know Mr. Spier? A Yes, I did.

Q After he called you up, what did you do?

A I immediately went down to his office and found his car outside and I waited around  
20 there and he came out alone, not with Mr. Spier and got in his car and drove off.

Q Does Mr. Spier work at the same place as your husband? A Yes, he does.

Q And he did not come out? A No, he did not.

Q I see. And what did you do after he went in the car and went off? A I came on back home.

30 Q When is the second time you followed him after that? A When he again called up around dinner time and said he would not be home to dinner.

Q What did you do after—

Mr. Isherwood: Can't we fix some time about this? We have no way of meeting this at all.

The Court: Yes, fix the time.

The Witness: About six o'clock.

*Anna McLean, direct.*

Mr. Venino: You want the date?

Mr. Isherwood: Yes.

Q Can you fix the date the first time that you followed him? I mean now the month. A I knew the month was December the first time.

Q December, what year? A About two years ago. 10

Q About two years ago? A Yes.

Q Now, this second time you followed him, when was that, about? A That was about a month after that.

Q What did you do after he called the second time and said that he would not be home for dinner? A I went down again and watched outside of the office and saw his car there, and I waited around and he came out this time with a girl. 20

Q You mean a girl came out with him from where he worked? A Yes, and got in the car with him. I went then to get a taxicab, but we couldn't trace him. He had gone.

Q You mean, you had lost him; you couldn't find him? A Yes.

Q Now, when was the next time you followed him? A When he called up again and said he would not be home for his dinner that night. 30

Q When was that, about? A Well, this all happened during the course of that year. I just cannot give the date.

Q I see. A Or the month.

Q I see. What happened when you went down this third time to shadow him? A Mr. McLean was not there at all. His car was gone.

Q Down in front of his place of business? A No, it was not. 40

*Anna McLean, direct.*

Q What did you do then? A I started to come home and I saw his car in front of a drug store in Fifth street and Central avenue with this girl seated in the car.

10 Q What girl are you referring to? A This girl I found the picture in the back of his watch.

Q Was Mr. McLean in the car at the time? A No, he was in the drug store. I saw him come out of the drug store.

Q What did he do when he came out of the drug store? A He sat beside her and he drove off, and I had hired a taxi that was across the street and got in that taxi to follow him before he came out of the drug store.

20 Q And did the taxi follow him? A Yes, it did.

Q Just tell us what course? A It went straight up Central avenue to Grove street and through Grove street to South Orange avenue and up South Orange avenue. When it got to the top of the hill we lost it. He was going much faster than we were going.

Q What hill have you reference to? A The hill as you go up from South Orange avenue after you pass the car tracks there.

30 Q You mean Orange? A Ridgewood avenue, I think. The Orange mountains, yes.

Q You say the driver of the taxi had lost him? A Yes, sir.

Q Now, after he got away in this way by the car traveling faster than your taxi, what did you say to the driver? A I asked him if he knew where Canary Cottage was.

40 Mr. Isherwood: I object to conversation with a taxi driver.

*Anna McLean, direct.*

The Court: Yes. I will sustain the objection.

Q What happened then? A He didn't know where Canary Cottage was.

Q I see. A But he inquired several times.

Q And where did the taxi go after you had lost track of him? A It went the way that he was directed to Canary Cottage.

Q And did you get to Canary Cottage? A Yes.

Q Now, why did you go to Canary Cottage, Mrs. McLean? A Well—

The Court: Well, what did you find when you got to Canary Cottage, that is what we want to know.

Mr. Venino: Yes. I am going into that.

The Court: Well, go to it. What did you find when you got there?

Q What did you find when you got there? A I found Mr. McLean's car standing outside in front of the cottage.

Q And what did you do than? A I went inside and the proprietor called Mr. McLean out.

Q Did Mr. McLean come out? A Yes, he did.

Q What did he say to you? A He said to me, "How did you get up here?" and that he was up here with men from the office.

Q And what did you say to him? A I said he was not, that I had followed him, and I told him where I had followed him from with this girl, that he was here with a woman.

*Anna McLean, direct.*

Q And were you admitted in the— A Yes, the proprietor let me in on conditions I would not raise a disturbance.

Q Did you go in? A Yes, I did.

10 Q What did you find? A I found this girl whose picture I found in the back of the watch sitting there at the table with drinks in front of her.

Q And what did you say to her, if anything? A I told her that this man was my husband and that he was a married man, that I was his wife.

Q And after you went in and told her that, did Mr. McLean and you and she remain there? A No. He stayed—(interrupted).

20 Q What happened? A He paid the waiter and we came out.

Q What did you do after you came out? A Mr.—he said he had to take the girl home, so she got in the car and I got in the car with Mr. McLean.

30 Q And where did you drive to then? A We drove first to my house where he was going to leave me off, and I told him I wouldn't get out, that I was going to get this girl left, so we drove then to her house at 425 Chestnut street, Newark.

Q And the girl was left off there? A Yes, the girl was left off there.

Q And you then drove home? A We drove home, yes.

Q Now, do you know the girl's name? A Yes, the girl's name—(interrupted).

The Court: No, do not—(interrupted).

40 Q Never mind.

*Anna McLean, direct.*

The Court: It is unnecessary.

Q What induced you to drive out to Canary Cottage after you had lost the automobile? A Because Mr. McLean and I had been in the habit of going there.

Q And that was the direction that the car was going that the driver had lost? A Yes. 10

Q Now, during the last two years, did you and your husband have many quarrels? A Yes, continually.

Q What were the quarrels about? A All over him running out with this girl.

Q And did you ever accuse your husband of running around with this girl? A Yes, I did.

Q What did he say? A He would say it didn't make any difference to him, he was tired of being tied down and he was not going to be tied to one woman and I could do whatever I liked about it. 20

Q Now, were these quarrels that you have had—were they loud? A Yes.

Q Mrs. McLean, I show you an envelope containing a letter and a picture and ask you whether you recognize them? A Yes, I do.

Q Where did you first see it and how did it come into your possession? A I took it out of Mr. McLean's inside coat pocket when he hung his coat up one night when he came in. 30

Q When was that, Mrs. McLean? A That was sometime in September of this year.

Q 1927? A Yes.

Q And at the time you found that, did you say anything to Mr. McLean about it? A No, I did not.

Q Why didn't you? A I waited until he missed it. He had drink in, that is one reason why. 40

*Anna McLean, direct.*

Q That night you found it? A Yes.

Q Is he in the habit of drinking? A Yes, he is.

Q Now, did you say anything to him about the letter or did he say something to you about it?

10 A The next night when he came home for his dinner he had missed the letter and wanted the letter from me and I wouldn't give it to him.

Q And did he ask you more than once for the return of this? A Yes, he did.

Q Was there anybody else in the house at the time? A Yes. His mother was there. She also insisted upon me giving it to him, which I wouldn't do.

20 Q Give any reason why you should give it to him? A No. Just so to keep peace.

Q Now, did you ever go to the—

Mr. Venino: By the way, I wish to introduce this. The envelope is addressed to William McLean, 500 Chancellor avenue, Irvington, New Jersey; has the cancelled stamp showing its mailing on September 20, 1927, containing a letter addressed and reading as follows—

30 The Court: Is there any objection to it?

Mr. Isherwood: I haven't seen it yet. I object to its being offered in evidence. It might be offered for identification. I cannot tell until it is checked up.

The Court: I will admit it. She says she found it in his pocket.

Mr. Isherwood: All right.

40 (Letter marked Exhibit C. 1.)

*Anna McLean, direct.*

Mr. Venino: The letter reads: "My dear one: Am returning picture as promised you. This is the best I have at the present time, but expect to have more taken in future and will gladly let you have one. Will meet you as promised without fail. Am always thinking of you and always will. Counting the the minutes until I see you again, honey, lovingly yours, Irene." 10

Enclosed in this letter is a picture of a young lady and on the back of the picture is written in the same handwriting as the letter and the handwriting on the envelope, "From one who dearly loves you," with an exclamation mark at the end of it, and "dearly loves" is twice underlined and signed "Irene." 20

Q Did you, after finding this letter and picture—did he ever tell you who this girl was?

A He just said that she was a manicurist here in Newark.

Q This is not the girl whose picture you found in the back of his watch? A No, it is not, it is another one.

Q Now, Mrs. McLean, did you ever go to the home of the girl whose picture you found in the back of his watch? A Yes, I did a little later. 30

Q When was that, about, do you know? A My neighbor might remember, but I don't remember.

Q But you went there? A I went right over to the house.

Q Who went with you? A Mrs. McGuire, my neighbor.

Q Why did you go there? A I went there to persuade this girl to give my husband up. 40

*Anna McLean, direct.*

Q Now, did you ever go to see a priest by the name of Father D'Aquala? A Yes, I did.

Q Who went with you that time? A Another neighbor, Mrs. Darcy.

Q And why did you go to see him? A To see—  
10

Mr. Isherwood: I object.

The Court: I will sustain the objection. That has nothing to do with it.

Q Now, Mrs. McLean, have you got the picture that you found in your husband's watch?

A No, I have not.

Q You had it, did you? A Yes, I did.

Q Where is it? A It has been stolen. I  
20 had it in an envelope in the closet.

Q In your home? A Yes, in my home.

Mr. Isherwood: I object. I think that is calling for a conclusion.

The Court: Yes. Objection sustained.

Mr. Venino: I will go into detail.

Q How do you know it was stolen?

30

Mr. Isherwood: I object.

The Court: Objection sustained, that is all assumption. It was in the closet and it is not there now. That is all.

Q Where had you put it? A I put it in the closet on a shelf.

Q And was it concealed? A Yes, it was.

Q Have you looked there for it? A Yes, I  
40 have looked.

*Anna McLean, direct.*

Q Have you looked otherwheres in the house for it? A Yes, I have looked all over for it.

Q And you can't find it? A No.

Q When you had it in your possession, did you show this picture which you found? A I showed it to Mrs. McGrath, Mrs. Darcy, my landlady, this priest and you. 10

Q What shape was the picture? A It was round.

Q About how large? A Well, about the size of a fifty cent piece.

Q Did your husband ever do you any bodily harm while you had quarrels with him? A Yes, he pulled a razor on me.

Q Just tell us about the affair.

The Court: When was it? 20

Q About when it happened, if you can place it? A It was in October.

Q What year? A Fourteenth—this year.

Q This year is 1928 that we have now? A It was October of last year.

Q 1927? A Yes, and it was—

Q Just tell us what happened? A Mr. McLean told me that morning that he was going to leave and leave for good, and when he came in that night, he immediately started a quarrel, and I said he was not going to leave, he was not going to be so silly and so we talked things over and he said, no, he was going to leave. "Well," I said, "If you leave, I will go with you wherever you go," and I started out with him and we went as far as Central avenue and he saw he couldn't get rid of me. He came back with me and come in the home up the stairs, and I didn't go up in the room with him, 30 40

*Anna McLean, direct.*

and he closed the doors and he used the telephone. I heard him use the telephone.

10 Q Yes. A I was standing in the hall and he came and insisted on my going upstairs, which I wouldn't do. I went out on the porch then and he came running downstairs—a light was on in the hall—and running out and he then pulled the razor in the front yard.

Q Before pulling the razor did he say anything? A He said, "I will fix you so you won't follow me."

Q And were you hurt in this affair? A Yes, two fingers were cut on my right hand.

Q What part of your fingers were cut? A Underneath.

Q On your two middle fingers? A Yes.

20 Q Are there any marks there? A There is a scar on one of them, not on the other.

Q Now, after—cause a further talk over these cuts? A Yes, it did.

30 Q What happened after that? A We went to go in the house and couldn't get in, the door was locked, so we then went next door to a neighbor and had the neighbor let us in, and said we would have to have a doctor and he went upstairs to use my phone and called up the doctor and the doctor came over and Mr. McLean begged me while he was telephoning not to tell how it happened but to say it was cut with a potato knife.

Q I see. Now, did these quarrels in any way affect your health? A Yes, they did. My nerves are just gone over it.

Q And it is necessary— A I am under the doctor's care at the present time and have been for the past two years on and off.

40 Q Doctoring for what? A For my nerves.

*Anna McLean, direct.*

Q Mrs. McLean, has Mr. McLean any other bad habits outside of running around with women? A Yes, he plays the horses, bets on the horses.

Q Now, how do you know that your husband bets on the horses? A Well—

10

The Court: Is that extreme cruelty?

Mr. Venino: I beg your pardon?

The Court: Is that extreme cruelty? I don't think that is pertinent to the issue.

Mr. Venino: I see. It is merely to show the character, I think it may—if your Honor thinks not—

The Court: I don't think it is important. (To witness.) Did he leave you or did you leave him? 20

The Witness: No. Mr. McLean left me.

The Court: When?

The Witness: On the 22nd of October, he kissed me goodbye and waved back—others in the street—which my landlady saw him do, wave in the street—

Q Did he say anything? A Yes. He said, meet me that night at the station at the 6:30, which is the only night he ever met me on, a Saturday night, and I went down there and waited and he never showed up. 30

The Court: Has he been back to you since then?

The Witness: No; he has not.

The Court: That's about all there is to it then?

40

*Anna McLean, direct.*

Q After your husband left, Mrs. McLean, did he phone you? A Yes, several times.

Q What did he say? A He wanted his clothes. He told me to send him his clothes.

Q I see. After you had presented yourself at the Tube station to meet your husband that night, Mrs. McLean, when he didn't show up, did you return home? A Yes, I did.

Q And what—did you have anyone with you that night or— A I went up to see—I went up to this pool room again. He knows, because he was in a raid—

Mr. Isherwood: I object to that.

The Court: No.

Q Were any of your neighbors in the house? A Yes, both of my neighbors come upstairs when they heard me crying.

Q And you say he had not returned home? A No, sir; he had not.

Q Now, after he had left you, did you ever see him—Mr. McLean, in the company of any women? A Yes.

Q After that? A Yes. I ran into him on the 15th of December with this same girl one block from her house, and I also had witnesses with me.

Q Who were with you at the time? A Mr. and Mrs. Joseph Drudy.

Q They are here in court, are they? A Yes, they are here in court.

Q Did you say anything to him at that time? A Yes, I got out of their car and went up to Mr. McLean.

Q What did you say? A I told Mr. McLean that he was with that girl and all and he denied it right up and down, he denied it.

*Anna McLean, cross.*

Q Where was your husband employed at the time he left you? A In the United Radio & Electric Corporation.

Q And do you know what salary he was earning? A Yes.

Mr. Isherwood: I object. 10

The Court: I will allow it, how much did he get.

The Witness: He earned \$275 a month.

Q And did he ever tell you that he was earning less than that? A Yes—he never told me what he earned, but I found it out.

Mr. Isherwood: I object.

The Court: Objection sustained. He says 20  
that he earned \$275 a month.

Q Are you earning any money of your own?  
A No, I am not.

Q Are you able to earn any? A Not just now.

Q Have you any surplus funds of any kind?  
A No, I have not.

*Cross examination by Mr. Isherwood.* 30

Q Mrs. McLean, you had quite a few quarrels with your husband, didn't you, prior to two years ago? A No, we did not.

Q Never had any quarrels with him at all?  
A No.

Q Have any quarrels with him about an episode down at the seashore, did you? A No, I did not.

Q You never met a man down at the seashore, did you? A No, I did not. 40

*Anna McLean, cross.*

Q Never saw him? A No, I did not.

Q When you were staying down there on your vacation and Mr. McLean was working in town, didn't you go around with a man down there? A No, I certainly did not.

10 Q And didn't Mr. McLean remonstrate with you about it? A No, he did not.

Q Didn't he talk to this certain man going around with you? A He certainly did not.

Q And didn't you say that you would never do that again, in the boarding house where you were living? A I did not—I—

Q You never went around with any men down there, did you? A No, I did not. I was working in that boarding house.

20 Q You haven't any violent temper, have you? A No, I have not.

Q Very calm, never got angry with him, did you? A Over this woman, yes.

Q Never got angry with him before? A No, I did not.

Q Never had any argument up to two years ago when you found out that he was going with a woman? A No, I did not.

30 Q You never had a quarrel with him up to that time? A No, and my neighbors can prove that.

Q And right at that time as soon as you found out about that woman, then you started these violent quarrels, is that right? A Yes.

Q And those quarrels were pretty nearly daily, weren't they? A Whatever that means.

Q Don't you know what "daily" means? A Oh, "daily." I thought you said "maly."

40 Q I say, they were pretty nearly daily? A Yes, they were.

*Anna McLean, cross.*

Q And Mr. McLean's mother was staying there at the house? A Yes.

Q For about a year up to September, 1927, was she not? A Yes, she was.

Q You had quite a few quarrels before her, didn't you? A Yes, over this girl.

Q And you voiced your sentiments about Mr. McLean after he had gone out, didn't you? A No, I— 10

Q To his mother? A Only about running with this girl.

Q That is all. Were there any arguments between you and Mr. McLean about having children? A No.

Q Didn't he ever take you to a doctor to have you examined to find out why you couldn't have children? A Yes, and Mr. McLean was told why. 20

Q Yes. All you had to have was a slight operation, was it not? A Yes.

Q And you never went under that operation, did you? A Because Mr. McLean never would put up the money for the operation.

Q Did you ever agree to submit? A Yes, I did, many times.

Q Did you ever tell anyone that you would never submit to any operation so you could have children by Mr. McLean? A No, I never did. 30

Q Wasn't that part of your trouble, because you wouldn't have children? A No. Mr. McLean knew I was willing to submit to that operation, and he also went with me to a Newark doctor down here to be examined for that reason, and all, and the doctor told him I could go under treatments instead of going under the operation, which I went with Mr. McLean week in and week out for that treatment. 40

*Anna McLean, cross.*

Q It never resulted in having any children, did it? A No, because I took sick then and couldn't fulfill the time.

Q Yes. And didn't you tell his mother that you would never have any children by him? A I never told his mother any such thing.

10 Q Did you ever tell his aunt that you would never have any children? A I never did.

The Court: Is there a counter-claim to this?

Mr. Isherwood: There is a counter-claim.

Mr. Venino: There is no counter-claim, your Honor.

The Court: Then all you ought to do is to confine yourself to the denial of her allegations.

20 Mr. Isherwood: That is one of her allegations. I want to show that was one of the reasons for the quarrelling.

The Witness: Well, that was not the reason for the quarrelling.

The Court: Now, wait a minute, madam. She says he ran around with other women and finally left her and never came back. Now, just deny that.

30 Q Did you ever show this picture to Mr. McLean, the picture that you say you cannot find now? A I did show it to Mr. McLean.

Q And you did not tell him where you had put that picture, did you? A No; but I guess Mr. McLean knows when I went to look for the stocks that had disappeared, too, \$200 worth of stocks which belonged to me.

40 Q Yes, but you have got a lot of his stuff up at the house yet. A Oh, not anything that amounts to anything.

*Anna McLean, cross.*

Q Got a lot of Masonic work up there? A He is welcome to them. Anything of value Mr. McLean and his mother have been weeding out the last year, which was stolen while I was out of the house.

Q You didn't see that, did you? A Yes, I saw it going out.

10

Q You don't know who— A Yes. My neighbor saw it going out and he took it.

Q Did you ever show that picture, Exhibit P. 1, to Mr. McLean? A Yes, Mr. McLean saw that picture and told me she was mighty nice, that she was a manicurist in Newark.

Q Didn't he tell you that he never saw that— A Yes, he told me that, but I didn't believe him.

20

Q Didn't he accuse somebody of sending that over to him to try to make trouble between you and himself? A No, he never did.

Q Were you accustomed to going into his pockets? A Yes, I was, since this trouble started.

Q You went through them all the time you were living with him, didn't you? A No, I did not. I was not interested.

Q You were not interested? A No.

30

Q You knew when to go in to find that picture, didn't you? A Oh, I was interested the last two years.

Q Certainly. You knew when to go in to find that, didn't you? A I didn't know when I went in there I was going to find that letter.

Q Did you ever take anything else out of his pocket? A No, I never did.

Q When your taxicab driver lost him on the hill— A Yes.

40

*Anna McLean, cross.*

Q Going up where you say you were driving, how did you know to go up to Canary Cottage?

The Court: I don't think that makes any difference why she went there. She went there and found him there, so she said.

10 The Witness: I went there because I saw this girl in his car and I was there to find out where he went.

Q And you got there and the girl was sitting at the table? A Yes.

Q And then you went in and you sat down and had a drink? A No, I did not.

Q You did not? A I sat down, but I had no drink. Mr. McLean offered me a drink, but I refused.

20 Q Then everything was peaceful and quiet. You didn't get excited, did you, up there? A I told this girl I—

Q You didn't see anything wrong, did you? A Oh, no, they were sitting at a table drinking. I saw enough trouble when my husband was with a girl.

Q It was in a regular restaurant? A Oh, no! They were cooped out in a car.

30 Q It was all open, wasn't it? A Yes, it was all open.

Q And the waiters were going back and forth? A Yes.

Q Yes. And they had not been in there very long, had they, before you got there? A Well, they were in long enough to have drinks and things.

Q What do you mean "and things"? A And sandwiches. They each had a sandwich.

40 Q They each had a sandwich and each had a drink? A Yes.

*Anna McLean, cross.*

Q And you came out and you went home? A Yes.

Q That is the only time you ever saw him out with a girl, wasn't it? A It certainly is not.

Q You saw him out numerous times? A Yes, numerous times.

Q Well, where did this girl work, do you know? A This girl did work in the United Radio and Electric Corporation—where this girl worked and put her off.

10

Q And you went over to the place where he was employed and told the boss about it, didn't you? A No, I did nothing of the kind.

Q And this girl was discharged? A No, not through me.

Q And then Mr. McLean was discharged through you? A Not through me.

20

Q Did you make a statement that you were going to make him lose his job? A No.

Q Never? A No, I did not.

Q To anyone? A No.

Q You are sure of that? A Yes.

Q Did you ever ask Mr. McLean—that Exhibit C. 1—where this girl worked? A Yes.

Q Did he tell you? A He told me she was a manicurist.

30

Q Did he tell you where she worked? A No, he didn't tell me where she worked.

Q Did you ask him? A Yes, I did.

Q Mr. McLean, you say, left on October 22nd. Up to that time he had paid your doctor bills, hadn't he? A He did—

Q Do you know how much the doctor's bills were for you? A No.

Q Do you know how much the dentist's bills were for you? A About \$8, I think.

40

*Anna McLean, cross.*

Q Dentist's bills. How much was the doctor's bill? A It would—

Q Do you know? A No, I don't know the exact amount. If Mr. McLean paid them, he paid them after he left me. He paid nothing before.

10 Q You say you have been doctoring for your nervous condition for two years? A On and off.

Q Yes. You had only the one physician, didn't you? A Yes, sir.

Q Who is he? A Dr. Austin Lane.

Q And you have been doctoring with him since? A Yes.

Q And have you gone as much recently as you did prior to the time that Mr. McLean left?

A No. I go now about once a week.

20 Q About once a week? A Uh.

Q For how long have you been going? A For about three months.

Q Three months, once a week? A Yes.

Q Every week you go there? A Yes.

Q Who has been paying the doctor's bill? A My father.

Q And every time Mr. McLean called you up after he left on October 22nd, he asked you for his clothes? A Yes.

30 Q That was all he said, wasn't it? A No, he said other things.

Q That was the most important? A Yes, that was the most important.

Q Yes. And when you were cut with that razor, you were cut on the inside, weren't you, of the hand? A Yes, I was.

Q What hand? A On my right hand.

40 Q On your right hand. You are positive, Mrs. McLean, that you saw Mr. McLean with that girl? A I am positive I saw Mr. McLean

*Anna McLean, cross.*

and that my witnesses, in whose car I was in, on Thursday night, the 15th of December, and my witnesses can prove, and they also watched and saw that girl go in where she lived.

Q Wasn't he alone when you saw him? A He was not alone.

Q The girl was with him? A The girl was with him, and by the time I got out of the car, she saw me just about the time I saw her, and she got across the street. He was one block from her house, corner Chestnut avenue and Grove street.

10

Q You were going to threaten her?

The Court: Now, wait a minute.

The Witness: Threaten her for what?

The Court: Well, she did not, so what she was going to do is not important.

20

Q You had threatened the young lady? A I had not threatened the young lady. I wouldn't soil my hands on her.

Q Did you ever threaten Mr. McLean? A No.

Q Did you ever threaten to take his life? A No, I never did.

30

Q Did you ever threaten to maim him so he wouldn't be of any use to any other woman? A No, that is positively ridiculous.

Q You are positive? A I am positive.

Q You never told that to anybody? A No, I never did.

Q You know that is the reason Mr. McLean left you the way he did, don't you? A I know Mr. McLean left me for love of that girl, and why isn't he honest enough to be out with it?

40

*Margaret Griffith, direct.*

Q Don't you know the reason he don't return is because you threatened his life? A He can never say that. That isn't the truth. I have witnesses to that. It is not the truth.

Mr. Isherwood: All right. That is all.

10 Mr. Venino: I would like to have the non-appearance of Father D'Aquala noted. He was regularly subpoenaed and he is not here.

The Court: Let it be noted on the record that he has not appeared and, if necessary, we will have to try and get him.

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20 MARGARET GRIFFITH, sworn for complainant.

*Direct examination by Mr. Venino.*

Q Where do you live? A 13 Cambridge street, East Orange.

Q Do you own that house? A I do.

Q And is it a two-family house? A I rent it as such.

30 Q I beg your pardon? A I rent the rooms upstairs.

Q To whom do you rent the rooms upstairs? A McLean, Mrs. McLean.

Q And how long have they lived there? A It will be five years the 1st of May.

Q You mean, Mr. and Mrs. McLean lived there? A Yes.

Q What part of the house do you occupy? A The lower part.

40 Q You, of course, know Mr. and Mrs. McLean. Now, can you tell of your own knowledge whether

*Margaret Griffith, direct.*

Mr. and Mrs. McLean lived in peace and harmony? A They were known as the ideal couple, the ideal couple.

Q Did that continue up to date? A Up to two years ago.

Q I see. Well, just what happened two years ago? A Well, of course, she didn't come to me about things at first. I didn't know anything about it until after.

10

Mr. Isherwood: I object.

The Court: Not what you told this witness, just what this witness saw or heard.

Q Just what did you hear or see with your own eyes? A Well, not so much at first, of course.

20

Q I am just asking you what you did see.

Mr. Isherwood: I object.

The Court: No. What she saw is all right.

The Witness: But little by little it got worse.

Q Did you hear any quarrelling going on between Mr. and Mrs. McLean? A I think they heard it down to Central avenue. You could hear him.

30

Q Just what were the quarrels about, could you hear? A That girl, always the girl.

Q What? A Always the girl.

Q Oh. Well, could you hear what was said between them? A Well, at times, not always.

Q And what did you hear? A The girl, always the girl.

40

*Margaret Griffith, direct.*

Mr. Isherwood: I ask that she specify, not state generally.

The Court: What did she say to him?

10 The Witness: Well, she was always begging him to give up the girl and he said, "I love that girl and I am going to have her."

The Court: You heard him say that, did you?

The Witness: When the doors and windows were open you could hear pretty plainly.

The Court: Did you hear him say that?

20 The Witness: I certainly did. He pounded the table and he said, "I am going to have it."

The Court: When was that?

The Witness: Oh, that was a year or so ago.

Q And did you see Mr. McLean leave his house on the morning of October 22, 1927? A I saw him before—just before he got out of sight, before he got—you know, the building cuts him off there.

30 The Court: That is not important to corroborate, because I see the answer admits that he left at that particular time.

Mr. Venino: Yes, it does.

Q Mrs. Griffith— A Miss Griffith. Did you get that Mrs.?

Q Do you remember a quarrel taking place between Mr. and Mrs. McLean, as she testified, where a razor was used? A That is the night he left—tried to leave.

40

*Margaret Griffith, direct.*

Q Beg pardon? A That is the night he tried to leave.

The Court: Do you remember it?

The Witness: Oh, certainly.

The Court: Well, tell us about it.

10

The Witness: Well, he came home and, of course, the quarrel started and he told her he was going to leave and she didn't want him to leave, naturally. Part of the time I listened and part of the time I did not.

Mr. Isherwood: May I ask was she there?

The Court: Were you there?

The Witness: I was in the home part of the time and she was upstairs.

The Court: Whatever you saw or heard, tell us—nothing else.

20

The Witness: Well, he started to go away and she said if he went she would follow him. So they went down to the corner—I was not watching them—and I heard them come to the front door. He went upstairs and she stayed in the hall. I said, "Don't go upstairs or he will lock you in." He tried to coax her, "But I want to talk to you." But she said, "Talk to me here." And that made him so mad and he came flying down like a madman. He said, "G. D. you, I will fix you so you won't follow me to the porch," and he came on the porch and he made this suspicious move in his pocket and I thought it was no place for me. I got in the house and I locked the door and I heard her scream and I went to the front door in a minute and she had gone to the next door neighbors and he said, "You G. D. son-of-a-b,

30

40

*Margaret Griffith, cross.*

why don't you open that door?" I said, "You better be careful what you call me. Look at your own family." I never was called that before.

The Court: What else happened?

10 The Witness: Nothing—until the next door neighbor came over to 'phone for the doctor, and I took her upstairs and she had been hurt and I saw her fingers.

Q What fingers were hurt? A The two on the right hand.

Q What part was hurt? A Cut right there.

Q On the inside? A Of course, the doctor had them all bandaged then, and all.

20 *Cross examination by Mr. Isherwood.*

Q She is a tenant of yours now, isn't she? A She is.

Q Friend of yours? A Why, to a certain extent, yes.

Q You never liked Mr. McLean, did you? A Yes, I liked him very much when he moved in. The first two years I liked him.

Q You are positive of the language he used—  
30 A Do you think I would lie?

The Court: No. Just answer the question.

The Witness: It was just what he said, only he didn't use—(interrupted).

Mr. Venino: Don't get excited.

Q Did you see him have a razor in his hand?  
A I didn't see the razor. I didn't think it was  
40 a razor. I thought he was going to pull a gun

*Joseph F. Drudy, direct.*

out of his pocket. He had a permit to carry a gun and I naturally thought it was that. I knew nothing about the razor until Mrs. McLean told me.

Q You didn't know what happened until you were told and saw her finger? A I did not. I was in the house.

10

Mr. Isherwood: Then I ask to have her testimony stricken out.

The Court: No, that is *res adjudicata*. She saw her fingers bandaged up immediately after the alleged—that is all right.

Q And you are sure it was the night he left the house the last time you saw him there, was that the time this happened? A Well, he was there eight days after that. He didn't leave that night. He was going to leave, but he couldn't, he couldn't get away from his knife, until his fingers were cut, and I don't know why he didn't change his mind and go.

20

Q He didn't go out that night? A No; he came back to the house.

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JOSEPH F. DRUDY, sworn for complainant.

30

*Direct examination by Mr. Venino.*

Q Mr. Drudy, where do you live? A 33 Ella street, Bloomfield.

Q Do you know Mr. and Mrs. McLean? A Very well.

Q How long have you known them? A Mr. McLean about fifteen years, fourteen or fifteen years.

40

*Joseph F. Drudy, direct.*

Q Did you ever see Mr McLean in the company of a woman not his wife? A I did.

Q Where and when? A Why, that was about the 15th of December on Grove street near Chester avenue, between 10:00 and 10:30.

10 Q At night? A At night.

Q And you were where? A In my car.

Q I see. Just tell us what happened. A Well, we were going along Chester avenue—Grove street, and my wife was sitting next to me and Mrs. McLean was on the outer side of the street.

Q Uh huh. A In fact, we make the trip to Orange quite frequently through Grove street.

20 Q I see. A And it so happened that we came back that way that night and, never thinking of seeing Mr. McLean, my wife saw him first.

Q I see. A And called our attention to it. Mrs. McLean in excitement opened the door of the car and I immediately applied the brakes because, if I didn't, she would have been killed in her excitement, jumping out of my car, so as she ran across the street after Mr. McLean and the girl diagonally across the street walked to her home. I turned the corner of Chester avenue to  
30 Parkway, around Parkway, and the young lady had parted from Mr. McLean, walked into the brick apartment on the corner of Grove street. We then—

Q I see. A —followed to Bloomfield avenue and watched Mr. and Mrs. McLean standing on the corner. I drove my car, say, fifty feet from Grove street to Bloomfield avenue, turned around in front of the Chevrolet plant and watched them arguing on this corner. He dragged her into a  
40 trolley car.

*Joseph F. Drudy, direct.*

Mr. Isherwood: I object to that, your Honor.

A (Continuing.) And I followed the trolley to Newark and I lost track of it.

The Court: What do you mean "dragged her into a trolley car." 10

The Witness: Got her by the arm and put her onto a trolley.

The Court: Well, that is better.

The Witness: And we followed that car to Newark. We lost track of both of them in Newark so I thought perhaps Mrs. McLean had—(interrupted).

Mr. Isherwood: I object to what he thought. 20

The Court: Just tell what you did. Don't say what you thought.

The Witness: Followed the trolley to Newark and lost track of it.

Q Did you ever have any conversation with Mr. McLean after that? A Prior to it.

Q What did you say and what did he say?

Mr. Isherwood: I ask to have the time fixed. 30

Q About when? A I should say, about three weeks prior to that.

Q I see. A I can't give you the exact date because I never contemplated being brought in court.

The Court: What did he say and what did you say? 40

*Margaret Spier, direct.*

10 The Witness: I was going out of Central avenue into Broad street and I tooted my horn to Mr. McLean and asked him to come in my car, which he gladly did. I drove down Broad street and started to tell him what a foolish boy he was. I came into Central avenue—

The Court: What did he say to you?

The Witness: He said, "I realize it. If you will talk to Anna, I will come up some night later and talk to you about it," so when I went home that evening I did call him.

The Court: Is that all he said?

The Witness: That is all.

20 Q That was after he had left his wife? A  
Yes.

Mr. Venino. I see. Take the witness.

*Cross examination by Mr. Isherwood.*

Mr. Isherwood: No questions.

Mr. Venino: Mrs. Drudy.

The Court: Is this just the same thing?

30 Mr. Venino: Corroboration, that is all.

The Court: Not necessary.

Mr. Venino: Mrs. George Spier.

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MARGARET SPIER, sworn for complainant.

*Direct examination by Mr. Venino.*

40 Q Where do you live, Mrs. Spier? A 203  
Davis avenue, Kearny.

*Margaret Spier, cross.*

Q Do you know Mr. and Mrs. McLean? A I know Mrs. McLean. I know Mr. McLean to see, that is all.

Q Did you ever see Mr. McLean in the company of a woman not his wife? A Yes.

Q Where and when? A Why, it was Hallowe'en eve, down at the corner of Clinton avenue and Broad street. I was getting out to go to the Elks' Club and my husband's car passed. My husband was in the front seat with a lady friend and Mr. McLean and his girl were in the rumble seat in the back. 10

Q Yes. Continue. A And the lady was not Mrs. McLean. I don't know who the girl was.

Mr. Venino: Take the witness.

*Cross examination by Mr. Isherwood.* 20

Q Your husband was out, too, with a young lady? A Yes, my divorced husband. He is not my husband now.

Q Oh. And you are sure it was Mr. McLean? A Why, yes, I know Mr. McLean.

Q Did you go up to the car and speak to him? A No, I don't know Mr. McLean to talk to.

Q You don't know him? A I just saw him in the car, I recognized him. 30

Q Never saw him before that time? A Oh, yes, Mr. McLean—

Q Where? A Why, he used to come every week over in my husband's car to get the children and I know him from sight, that is all. I have never met the man.

Q Never met him? A No.

Q You never saw him either, did you? A Oh, yes, I used to see him every Saturday morning. 40

*May Laycock, direct.*

Q Every Saturday morning? A Yes.

Q When he came over to the house? A Yes.

Mr. Isherwood: That is all.

*Re-direct examination by Mr. Venino.*

10

Q Your husband, Mr. Spier, that is before the divorce, was employed by the same concern that Mr. McLean worked for? A Yes.

Mr. Venino: That is all. Mrs. Laycock.

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MAY LAYCOCK, sworn for complainant.

20 *Direct examination by Mr. Venino.*

Q Mrs. Laycock, where do you live? A 206 North 9th street, Newark.

Q Do you know Mr. and Mrs. McLean? A Yes.

Q Did Mr. McLean ever come to your home? A Yes, they have been friends of my daughter and son-in-law.

Q For what purpose did he come there? A To visit my daughter and my son-in-law.

30 Q What is your son-in-law's name? A William Ogle.

Q Were they living with you? A Yes.

Q Do you know whether Mr.—oh, you say that he went to see your son-in-law, didn't you? A (Witness nods yes.)

Q Did you ever overhear any conversation between Mr. McLean and Mr. Ogle in your home? A Well, one Sunday afternoon Mrs. McLean and my daughter went to the delicatessen store and

40

*May Laycock, direct.*

Mr. McLean was down in my parlor with Mr. Ogle and they were playing the piano.

Q Who was? A And Mr. McLean took his watch out and he went over to Mr. Ogle and he opened the back of the watch and he showed him the picture and he pushed it up to his heart like that and I was sitting there and he put it back in his pocket and after dinner my daughter upstairs asked me—and Mr. McLean started telling that he wanted Anna to be a good sport. He says, “She loves me. I have made her a proposition. I gave her \$20 a week with no more claim on her if she will only fade out of the picture. I don’t love her any more.” They also started to tease Mrs. McLean. 10

The Court: Did you hear that? 20

The Witness: Yes. “Be a good sport and you can live nice on \$20 a week and what you can make.” So she sat there, she dropped her head, and then she got up from the chair and went over and put her arm on Mr. McLean’s shoulder and said, “Billy I can’t leave you,” and then he made a very insulting remark.

The Court: Were you present?

The Witness: Yes, sir, I was sitting there. No, sir, I wouldn’t— 30

The Court: Just answer questions.

Q Mrs. Laycock, did you ever tell anyone that you saw this picture in—(interrupted). A Well, not right away. I didn’t want to make any trouble.

The Court: That doesn’t make any difference whether she told anyone.

(Discussion.) 40

*May Laycock, cross.*

Q Did you ever hear any other conversation?

A Yes. At one time my daughter—he was telling my daughter and my son-in-law that he had got a raise but he didn't tell Mrs. McLean, as it was the only way that he would get away, that he was—had this girl saving money for him and when they had a suitable amount they were going to skip where she would never find him, and that she had said that she would kill herself. He said, "I got up the other morning and I found fault with everything, and I turned everything upside down and I took a gun and put it in the drawer and put the safety catch off, and about an hour after I called up and I was disappointed she was there and when I called up I said, 'Oh, are you there?' and she said, 'Billy, where do you think I would be?'"

*Cross examination by Mr. Isherwood.*

Q Your son-in-law, William Ogle, is dead now?

A Yes.

Q And that conversation you heard about the watch, where were you? A Sitting in my parlor, my living room.

Q Where were they? A Sitting right opposite me.

Q Right opposite you? A Yes.

Q Did you see the picture in the watch? A I saw the picture in the watch.

Q He showed it to you? A No, the two were standing together and I was standing here (indicating).

Q You saw the picture? A Positively.

Q You did? A Positively.

Q Could you recognize the girl now? A Well, it was small features. I didn't get a good look at it.

*May Laycock, cross.*

Q How big was the picture? A Large enough to put in the back of the watch.

Q How old are you? A Me?

Q Yes.

The Court: Well, wait a minute. I won't allow you to ask this lady that. It has nothing to do with it. 10

Q And you always were around with Mr.—  
A Not always, no.

Q When Mr. McLean came there to talk to your son-in-law? A Oh, no. They only happened to come down while the two ladies were in the delicatessen store. My grandson was playing the piano and Mr. McLean, and they were out, Mr. and Mrs.—Mr. Ogle and Mr. McLean were out in the car and they came in while the two ladies went to the delicatessen store and I told them they had went to the store and the little boy was playing the piano and they came into my living room. 20

(Discussion.)

The Court: The only defense that I could possibly see is that he had to stay away because she was going to kill him if he came back. That is all that is left. 30

Mr. Isherwood: That is the defense.

The Court: If you can prove that, go ahead.

(Discussion.)

*William McLean, direct.*

WILLIAM McLEAN, sworn for defendant.

*Direct examination by Mr. Isherwood.*

10 Q Mr. McLean, I show you Exhibit C. 1—look at it—and I ask you what you have to say about that letter and the picture? A I don't know the writer of the letter nor the person in the picture. I think that this here letter was sent to me either—

Mr. Venino: Never mind what he thinks. I object to that.

The Court: No. He says he doesn't know the writer.

20 Q Did you ever tell your wife that that was a picture of a manicurist on Broad street? A No, I did not.

Q Did you ever tell her you knew who she was? A No, I did not.

Q Do you know who she is? A I do not.

Q This is the girl you were questioned about that you went up to Canary Cottage with. How many times were you out with that girl? A Just once.

30 Q That was the time you were at Canary Cottage? A That is right.

Q Did you ever take her out after that? A No, I did not.

Q When you went home that night from Canary Cottage with your wife in the car with you and this girl, where did you drive to, first? A Drove right down to Broad street. My wife wanted to get a cup of coffee, stopped in Child's and got a cup of coffee and from there we took  
40 the girl home and then I took my wife home.

*William McLean, direct.*

Q Oh, you stayed home? A Yes.

Q Have you ever been out with that girl since the Canary Cottage ride? A No, I have not.

Q You have heard the testimony of Mr. Drudy. Were you up there with that girl on Grove street? A No; I was alone at the time.

10

Q Now, you did leave on October 27th, didn't you? A October 22nd.

Q October 22nd? A Right.

Q Why did you leave? A My wife threatened my life so many times and this here particular night, why, she attacked me with the razor and she—

Q Tell what happened. A I was coming out and I told her not to follow me and she said she was going to follow me no matter where I went that night.

20

Q Did you tell her why you were going out? A I told her I was going out on business.

Q Yes. A And she got all excited and I noticed her hand was coming up and I noticed the razor in her hand and I just twisted it and she dropped it and cut her fingers and my neighbor locked me out, so I took her to the next door neighbors and ran the water over it and I went to the drug store and asked him if he could give me something to stop the bleeding and he said no, he couldn't, and the only thing I could do was to tie her fingers up, fast with a bandage, so I tried that, and one finger stopped and the other didn't, so I had my neighbor tie it up and the doctor came in and fixed her fingers up in a couple of seconds, and after that, why, he called me out on the porch and asked me how it all happened. He said, "It is none of my business, I want to know the low down on it." Well, I told him—

30

40

*William McLean, direct.*

The Court: No, no.

Q Never mind that.

Mr. Venino: No.

10 Q Did you have that razor in your hand that night before anything happened? A I never had the razor at all. That was the second attack she made on me with a razor. She made an attack before on me in the bedroom. I threw both razors in the fire.

Q What kind of a razor was it? A I never used anything else but a straight razor.

Q It was your razor she had? A Yes, my razor.

20 Q Did you go back and get any of your clothing after you left? A I took a deputy up with me and tried to get my clothing, but she was out and the neighbor downstairs wouldn't let us in.

Q Wouldn't let you in? A No.

30 Q And what was the trouble between you and your wife, mostly? A She was more or less jealous of me and accusing me of being out with women all the time, when I was out down at the club bowling or shooting pool, or something else, like that.

Q How many nights did you usually go out a week? A Well, I only went out maybe one or two nights a week, but I never stayed out later than one o'clock. Occasionally I might have stayed out until two o'clock, but it was never two or three nights regular. Sometimes I only went out one night a week.

40 Q Who did you go out with? A I went down to the Newark Athletic Club and met the boys.

*William McLean, direct.*

Q Did you ever have any trouble about the question of children? A Yes. I have always wanted children and my wife never wanted children. I have requested it many times. She started with a doctor over on—I believe on South Thirteenth street, and she stopped going there. Then she told me she went down to see Dr. Ill and Dr. Ill said all she needed was a slight operation. 10

Mr. Venino: I object to what Dr. Ill said.

The Court: Yes, that won't do.

The Witness: She never wanted children.

Q Did you remonstrate with her about it? A Yes, more than once.

Q Did you have any arguments over it? A Many times we argued over that.

Q And did you have quarrels daily about any woman? A She was picking on me all the time about women. 20

Q Were you met by her any more than once while you were with a woman? A No.

Q Did you ever go out with this girl in question any more than once? A No.

Q You had a gun when you were over with the United Radio Corporation, didn't you? A Yes, I did.

Q And why did you have a gun? Did you have a permit for it? A I had a permit to protect the payrolls in the plant. The plant was robbed. 30

Q And did you have any conversation with your wife about this gun? A Yes, she asked me to bring it home more than once and she would use it on me.

Q Did you ever bring the gun home to your house? A Not after those remarks, no, I didn't feel it was safe. 40

*William McLean, direct.*

Q When did that happen, about? A I can't just remember dates. It was when she started to make some remarks about using a gun on me I left it in the office in the safe.

10 Q You lost your position over there at the United Radio? A Yes. My wife continually called my boss up and complained to him and he wouldn't stand for it any longer.

Q You lost your job? A I lost my position through her interference.

Q How much were you getting there? A \$275 a month.

Q Have you had any job since? A I had one temporary position for eight weeks, \$50 a week.

20 Q And during that time you paid your wife the allowance ordered by the Court? A I had to.

Q Are you working now? A No, I am not.

Q Have you been making any effort to get a position? A Yes, I have tried every employment agency in the City of Newark and New York, tried the United Fruit in New York and went through the papers.

Q You are not employed at the present time? A No, I am not.

30 Q Has your wife a position? A My wife is a dressmaker by trade.

Q Your wife says she has been doctoring with a doctor for the last two years for nervousness. A I saw the doctor here.

Q No. Did you pay any bills in the last two years? A The only bills I have ever paid in the last two years were \$14.

Q Was that for you or for your wife? A That was for my wife.

40 Q And how much were your doctor's bills in all the last two years? A \$14. Dentist bill \$6. That was my wife's.

*William McLean, direct.*

Q That is all you paid? A Yes.

Q Did you ever tell your wife that you were going to skip town? A Never did. Had no intentions. My wife knew all the time where I was living because I had mail from her.

Q Got a letter? A Yes, I got a letter from her. 10

Q Addressed in her own handwriting? A That is right.

Q Where was that? A 155 Fairmount avenue.

Q Who lives there that you have been living with? A My brother.

Q And this letter came to you from her? A That is right.

Q And you are still living there with your brother? A Yes, I am. 20

Q And have been ever since you left your wife? A Yes, I have.

Q Why don't you go back to live with your wife? A I feel my life is endangered. I am afraid of her.

Q What did she threaten to do besides kill you? A She threatened to disfigure me in such a way that I would be absolutely no use to another woman.

Q Do you refer to privates? A That is right. 30

The Court: You cannot corroborate that properly.

Mr. Isherwood: Oh, yes we can.

The Court: All right.

Mr. Isherwood: Going to try to.

*William McLean, cross.*

*Cross examination by Mr. Venino.*

Q Mr. McLean, did Mrs. McLean ever give you any reason as to why she was going to kill you or disfigure you, as you state? A Yes. She accused me of running around with other women  
10 all the time.

Q That was the reason for it? A She has threatened me, yes.

Q Yes. And after this razor affair in which Mrs. McLean was cut, you continued to live with her, didn't you? A Why, maybe for about a week.

Q About a week. And your life was not in danger during that week? A It was. I did not sleep a night that week. In fact, I hadn't slept  
20 for some time.

Q And you say that when you thought your life was in danger on account of being shot, you left the gun at the factory, did you? A That is right.

Q And this girl that Mrs. McLean has been complaining about was employed in the same place you were employed, wasn't she? A This girl I have been out the one time with?

Q Yes. A Yes, sir.

Q And the only time you ever claimed you were ever out with her was at Canary Cottage?  
30 A That is right.

Q Have you ever been out with any other woman besides this woman? A I have been out with girls in the office probably to lunch or with the girls on Broad street.

Q Now, you made some mention that you threw some razors in the fire. What razors have you reference to? A I had three razors, three  
40 straight razors, and after the first attack I threw

*William McLean, re-direct—re-cross.*

two of them in the fire and I had to buy another one.

Q What happened to the razor that was used the night of the row? A I don't know who got that razor. She had it and she threw it somewhere and I don't know who got the razor.

10

Mr. Venino: That is all.

Mr. Isherwood: I would like to ask one question.

*Re-direct examination by Mr. Isherwood.*

Q About the picture in the back of your watch, did you ever have a picture of this girl that you went out with up to the Canary Cottage in the back of your watch? A No; never had any picture in the back of my watch.

20

Q Is that the same watch you have got on now? A Yes, sir.

Q Have you always had it? A Always had it.

Q Did you ever see the picture of a girl in the back of it at all? A No. There was never a picture in the back of this watch. I think too much of it.

30

Q Did you ever see a picture that your wife said was taken from the back of your watch? A No, I did not.

Q Did she ever show it to you and tell you about it? A No, she did not.

The Court: That is all.

*Re-cross examination by Mr. Venino.*

Mr. Venino: Mr. McLean, one question. 40

*Sarah E. McLean, direct.*

Q Did you and this girl that worked in the same place that you did—didn't you two appear before Father D'Aquala, a priest? A I went down there, yes, because my wife accused her.

Q Never mind. You went to him, didn't you?

A That is true.

10 Q Yes. A (No answer.)

*Re-direct examination by Mr. Isherwood.*

Q Why did you go there? A Because she accused the girl of living right—of living with me, and the girl asked me—she was working with me at the time—if I wouldn't go down and clear her moral standard, and I said, "Sure, I would do that for anybody."

20 *Re-cross examination by Mr. Venino.*

Q Father D'Aquala did not call for your presence, did he? A I didn't see Father D'Aquala until we got there. I don't know what he done.

Q He didn't send word to you he wanted to see you? A No, he didn't send word to me he wanted to see me.

30 Q But you put your appearance in without he calling for you? A That is true.

Mr. Venino: That is all.

The Court: That is all.

SARAH E. McLEAN, sworn for defendant.

*Direct examination by Mr. Isherwood.*

40 Q You are the mother of Mr. McLean, who was just on the stand? A Yes.

*Sarah E. McLean, direct.*

Q And Anna McLean is your daughter-in-law? A Yes.

Q Did you ever live with him? A Yes.

Q When, recently? A From September '27—from September, '26 to September, '27, about one year.

Q At what address? A 13 Cambridge street. 10

Q And how did they get along there? A Well, sometimes very nicely, and sometimes very poorly.

Q Why? A Well, there was lots of quarrels. She was very jealous of him. I tried to talk to her and tell her not to worry, but it didn't seem to appeal to her.

Q What did she quarrel about? A Oh, it was always jealousy over—she says he was running around with women. She told me she was going to shoot him, and I told her that wouldn't do any good, it would be her would suffer and not him, but she said, "You don't think I mean it, but I certainly am going to kill him," about the last words when I parted from her. 20

Q When, the 1st of September? A September, yes.

Q '27? A Yes.

Q What did she say to you then? A She said, "Don't be surprised when you get home if I call up and tell you Billie is dead, for I am going to kill him." 30

Q Do you remember what she said about the other—any other woman? A Yes. One night she got very angry, she got a fit of temper on and she dressed herself and took a razor and she said she was going to get her blood.

Q Get whose blood? A This woman's. So I got hold of her by the arms and I went in the bedroom and begged her not to do that. I said, 40

*Sarah E. McLean, direct.*

10 “You will be the one to suffer, not the woman. The woman’s troubles will be over.” And I got her—induced her to stay in that night, but I was afraid to sleep. I couldn’t sleep the last while I was there because I thought something would happen some of the nights, because she told me it would.

Q Did you speak to your son about these threats? A Yes.

Q That you— A Yes, I did. I was afraid of her poisoning him. That was what made me more afraid, because he came home sick nights and one night he said to her, “Anna, what did you put in my dinner tonight?” and she said, “Why”—(interrupted).

20 Mr. Venino: I object to that.

The Court: Yes.

The Witness: She says—he says, “I was so deathly—”

Mr. Isherwood: It was right in her presence.

Mr. Venino: I move to strike it out.

The Court: What did she say?

30 The Witness: He said, “I was so deathly sick my stomach turned upside down, and I didn’t get anything except what I ate here.” And she said, “Do you want a little soda, Billy?” and he said, “No, I will get what I want myself,” and that frightened me.

Q Did they ever talk about children? A Yes. That was the main thing with her. He wanted ten or twelve children but she didn’t want any.

40 Q What was said about it? A Well, he always wanted children and if you said anything

*Sarah E. McLean, cross.*

about little children, Willie liked them, well, she didn't like that.

Q What did she say about children? A She didn't want children. She don't care for children.

Q Did she say she would have any for him?  
A Well, she didn't say it in so many words what she would do, only one night she begged him to stay with her and she would go and have the operation. That was when he was going to leave her one night, but the next day, of course, she was all over that. 10

Q Did she ever say anything about his position? A She told me she was going to get him to lose his job. I begged her not to, but she went to the boss and went to the wife both, and talked to them and she said she would make him lose his position, which she did. 20

Q Who was he working with at the time? A The United Radio Company.

*Cross examination by Mr. Venino.*

Q Mrs. McLean, on these occasions that you allege that Mrs. McLean threatened to shoot her husband, why was she going to shoot her husband? Did she say any reason why? A Because she was jealous. She said no other woman would ever get him. 30

Q No other woman? A Would ever get him.

Q You say the main reason with Mr. McLean was that he didn't—his wife didn't have any children? A That was the feeling all along, because it was thirteen years and in that time, you know, it grows worse, it don't grow any better.

Q You mean the main reason for leaving was caused—(interrupted). A No. He was afraid 40

*Helen McLean, direct.*

of his life and I was afraid of his life. I really was happy when I heard he left the house.

Q Did you ever remonstrate with your son because he came home late at night intoxicated? A He never came home late and he never was intoxicated. I never seen him intoxicated and he never came home late at night—eleven o'clock, I have seen him as late as one o'clock, but never later than that, the whole time I was there, and Mr. McLean went away in the summertime for two weeks' vacation. He was perfectly lovely to her.

Mr. Venino: That is all.

Mr. Isherwood: That is all. Helen McLean.

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HELEN McLEAN, sworn for defendant.

*Direct examination by Mr. Isherwood.*

Q Mrs. McLean, you are a sister-in-law of Mr. and Mrs. McLean, the parties in this suit? A I am.

Q Talk loud so we can hear you. Did you ever talk to Mrs. McLean about Billy? A Why, I never talked to her so very much about Billy. She came down on Sunday afternoons quite often and she said she would kill him before she would let anybody else get him.

Q What did she say about employment? A She said that she would see that he lost his job where he was working and he would not be able to get another one in the State of New Jersey if she could help it.

40

*Margaret Hutchinson, direct.*

Q Did she say anything about children? A She said he wants her to have children but she will be darned if she will have any for him.

Q Anything else? A No.

Mr. Isherwood: That is all.

10

*Cross examination by Mr. Venino.*

Q You say Mrs. McLean told you she would kill her husband. Did she give any reason why?

A She just said that before she would let anybody else get him.

Q Meaning another woman? A I don't know what she meant. That is what she said.

Mr. Venino: That is all.

20

Mr. Isherwood: That is all. Mrs. Hutchinson.

MARGARET HUTCHINSON, sworn for defendant.

*Direct examination by Mr. Isherwood.*

Q Mrs. Hutchinson, you are the aunt of Mr. and Mrs. McLean? A Yes. 30

Q And did you ever have a talk with Mrs. McLean about how she felt toward Billy? A Well, on the 23rd of September I called—I have not been there since.

Q 1927? A Yes.

Q Yes. A And I went in and found her in an awful state. She was wild with temper and she said that she was going to kill him and I may as well know it at first. That was the greeting 40

*Bessie McLean, direct.*

I got. And she said he was running around with women. I said, "I don't think so." "Yes," she said, "He is running around with women and I am going to kill him," so, of course, I kept quiet, I didn't say anything more.

10 Q Did she say anything what she was going to do, anything about disfigurement? A Yes.

Q What did she say about that? A She said, "I will disfigure him so that nobody will look at him." She said, "I will disfigure him and I will kill him."

Mr. Isherwood: That is all. Cross examine.

*Cross examination by Mr. Venino.*

20 Q You are the aunt of Mr. McLean—not Mrs. McLean? A Yes, sir.

Q Not Mrs. McLean? A No.

Mr. Venino: No questions.

BESSIE McLEAN, sworn for defendant.

30 *Direct examination by Mr. Isherwood.*

Q Mrs. McLean, do you know Mr. and Mrs. McLean, the parties in this suit? A Known them for the past thirteen years.

40 Q Did you ever have any talk with Mrs. McLean about her husband? A About two years ago Mrs. McLean came to me with her husband to spend the evening and Mr. McLean and his brother decided to go to the club to have a game of billiards and we, of course, Mrs. McLean and

*Bessie McLean, direct.*

myself were left alone. She began to cry and I said, "Well, what is the trouble; what is the matter now?" And she said, "Oh, I believe Billy is drifting." She says, "He is going out nights and I can't stand it." And I said—and she said, "I believe tonight they are out together." I said, "Oh, I disagree with you, because I have full confidence in Mr. McLean." 10

Q What did she say, going on drifting? Did she say what she meant? A She didn't say. She just said, "Drifting." Of course, I didn't ask her what she meant by it.

Q Go on. A She says, "If I could only follow them tonight, I would." And I said, "I think they have told us the truth and the club is not far away." I said, "If you care to take a walk and go, I will go with you." We walked a block from where we lived and found his car parked outside the door, and inquired and found they were playing billiards, and she seemed satisfied he was inside playing billiards, so when they came back about eleven o'clock, she said nothing further. She seemed to be convinced there was no foundation for her suspicion that night. 20

Q Do you remember having a visit there at the time she was real angry? A I didn't understand you. 30

Q Do you remember making a visit there at the time she was real angry? A Why, on another occasion we were visiting in East Orange at 13 Cambridge street and the men folks wanted to hear the fight over the radio, and she and myself were seated in the kitchen and she said, "Why, I can't understand what is wrong with Billy." So I said, "Why, you don't say. Why do you worry so much about him?" She said, "If I ever knew he went out with another woman I would shoot 40

*Anna McLean, direct.*

him or maim him so no one else would ever have him.”

Q What kind of a temper or disposition has she got? A Very, very jealous disposition and a temper that is uncontrollable.

10 Mr. Isherwood: That is all. Cross examine.

Mr. Venino: No questions.

Mr. Isherwood: I have an affidavit of Mr. Heckel. While I had no opportunity of examining this Mr. Heckel, who died, it is right along the defense that I have set up here.

Mr. Venino: I object to it. It is no part of the evidence in this case.

20 The Court: No. You cannot introduce it—no opportunity of cross examination. The man is dead.

Mr. Isherwood: That is all. We rest.

Mr. Venino: Mrs. McLean.

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ANNA McLEAN, recalled in rebuttal.

30 *Direct examination* by Mr. Venino.

Q Mrs. McLean, did you ever tell Mrs. Sarah McLean, the mother of Mr. McLean, that you would shoot your husband? A Never.

Q Did you ever take a razor on one occasion that she testified and run out of the house? A Never.

40 Q For the purpose of cutting another woman's throat? Did you ever tell Helen McLean that you would kill your husband or would maim him in any way? A Never.

*Anna McLean, cross.*

Q Did you ever tell Mrs. Helen McLean that you would have no children for your husband? A No, I did not.

Q Did you ever tell Mrs. Hutchinson that you would kill your husband? A No, I did not.

Q Did you ever tell her that you would disfigure your husband? A I did not. 10

Q Did you ever tell Bessie McLean two years ago that you would kill your husband or maim him? A No. And another thing, I never was—(interrupted).

Q No.

The Court: No, do not volunteer. Let Mr. Venino ask the question.

Q Were you ever out with Mrs. Bessie McLean? A Never. 20

Q She testified that you and she went around to a club one evening. Is that true? A That is not the truth.

Q Did you ever go out with her at all? A I haven't ever been out with Bessie McLean alone in my life.

Mr. Venino: That is all.

30

*Cross examination by Mr. Isherwood.*

Q You don't remember anything about the circumstances at all? A Oh, I remember what I did and what I did not do, yes.

Q You know all about it? A And I would say—(interrupted).

Q I say, you know all about it? A I know I never went out with Bessie McLean in my life to follow Mr. McLean. 40

*Anna McLean, cross.*

Q And you remember talking with Mrs. Hutchinson, having some kind of a conversation with her, don't you? A Mrs. Hutchinson came to my house to settle up about selling the house.

10 Q I asked if you remember talking to Mrs. Hutchinson. That calls for yes or no.

The Court: Do you remember a conversation with this lady?

The Witness: Never.

The Court: And you never said to her—(interrupted).

20 The Witness: No. I told her about running around with a woman, yes, this one girl in particular. There is no other woman in it but this one girl.

Q You talked to your mother-in-law about it, didn't you? A My mother-in-law knew.

Q I say, you talked to her about it? A Yes.

Q You talked to Helen McLean, didn't you, about Billy? A Yes, sir.

Q Did you talk to Mrs. Bessie McLean about your husband—have a conversation with her? A Only that he was running with this girl.

30 Q Yes. You had a conversation with her, didn't you? A Yes.

Q You had a conversation with Mrs. Helen McLean, too, didn't you? A Yes.

Q About Billy? A Yes.

Q And your mother-in-law did live with you for one year, from September, 1926, to September, 1927? A Yes, she did.

Mr. Isherwood: That is all.

40 Mr. Venino: That is all. Case closed.

*Exhibit C. 1.*

The Court: I will think this matter over and notify counsel of my decision in a day or two.

Mr. Venino: If your Honor please, if you want to hear short argument on this, just on the law end of it—

The Court: There is not any law to it. It is merely a question of fact, as I see it. If it be true that the wife threatened him and was going to murder him and maim him and all that, why, then he probably was justified in leaving her.

(Discussion.)

10

**EXHIBIT C. 1.**

20

My Dear One—

Am mailing picture as promised you. This is the best I have at the present time but expect to have more taken in future and will gladly let you have one.

Will meet you as promised without fail. Am always thinking of you and always will. Counting the minutes till I see you again Honey.

Lovingly yours,

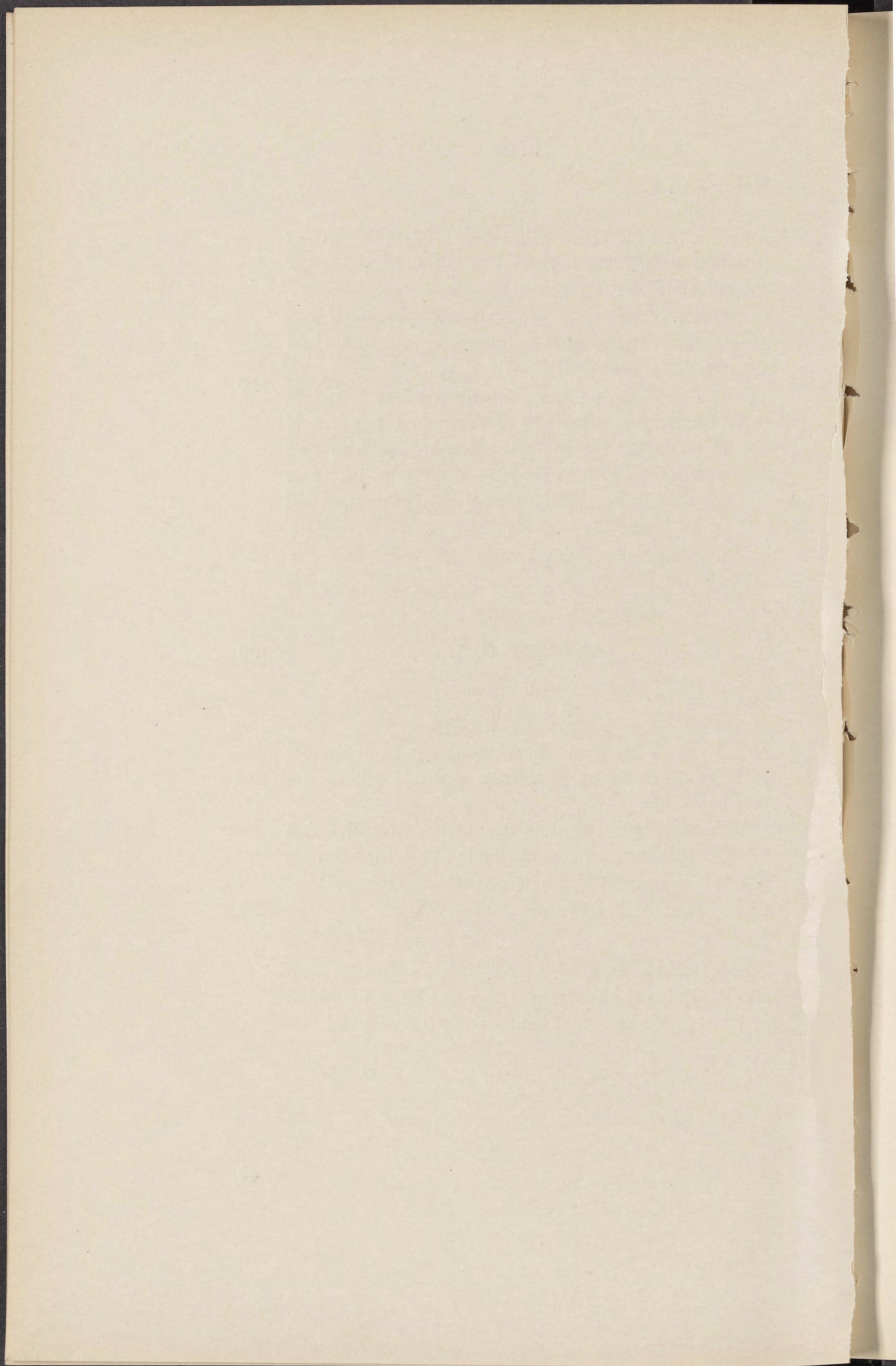
30

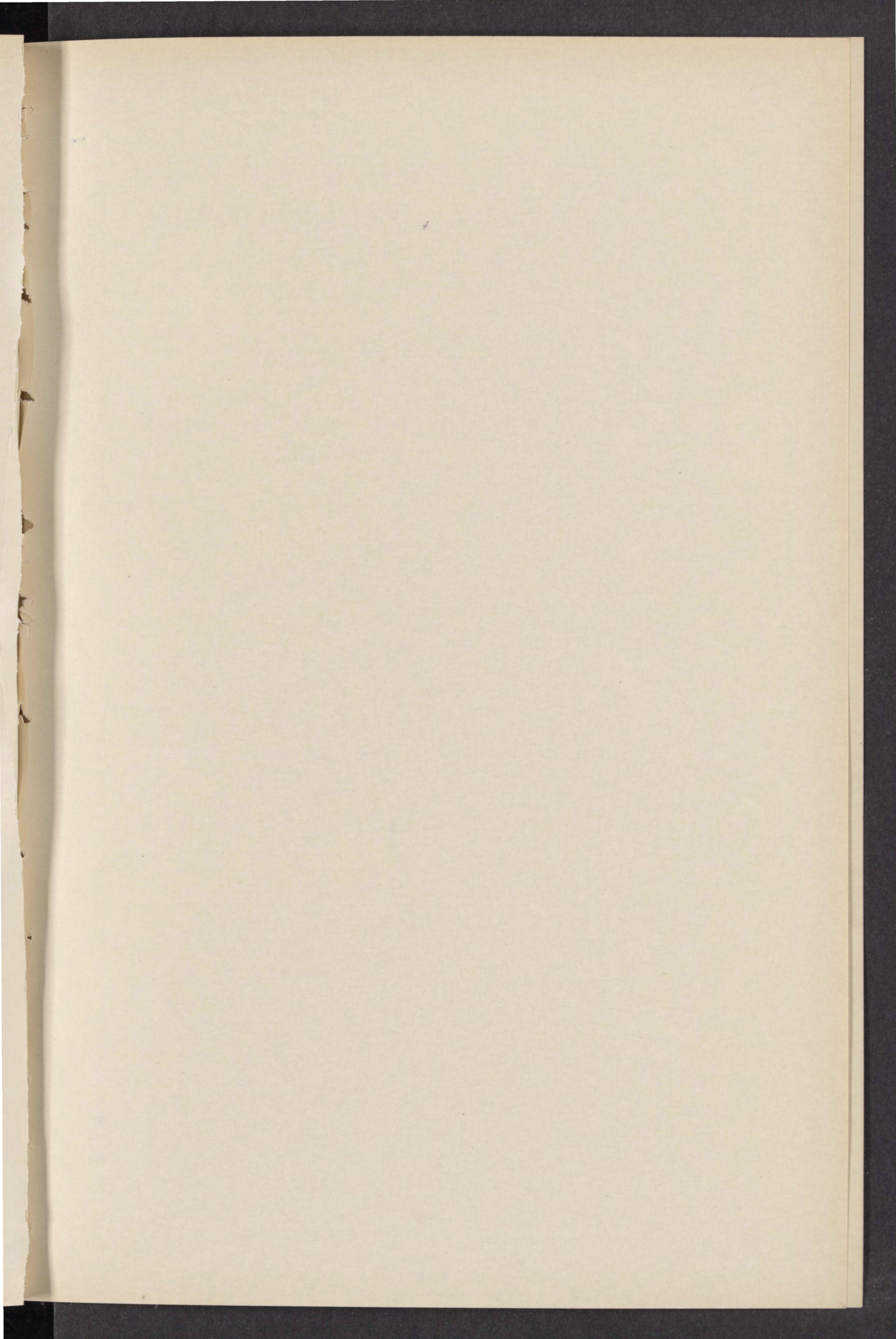
Irene.

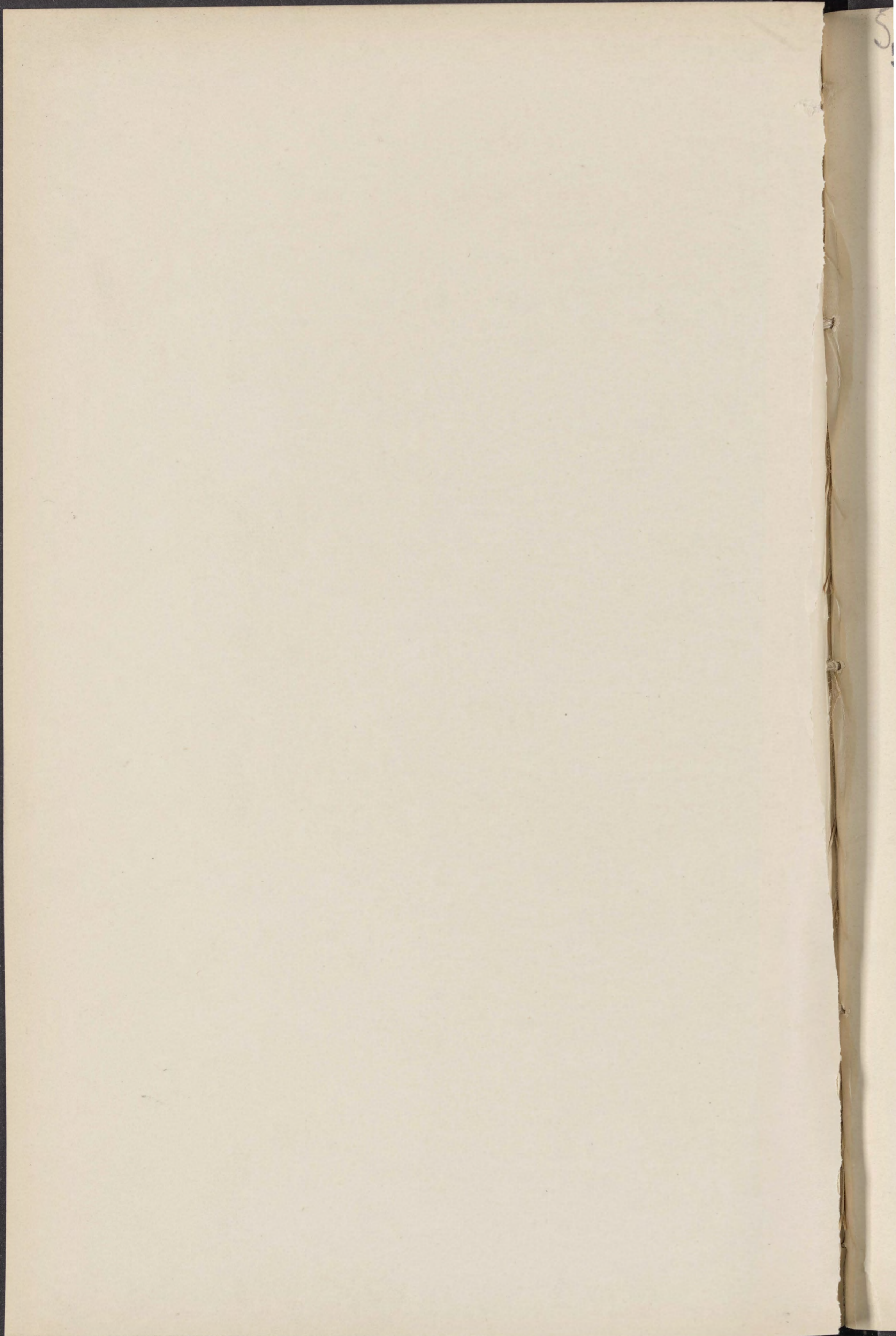
Kindly note that enclosed in this letter is a small photograph of a girl on the back of which is written "From one that dearly loves you!"

                                  
Irene."

40







Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

ANNA McLEAN,  
*Complainant-Appellant,*

*vs.*

WILLIAM McLEAN,  
*Defendant-Appellee.*

*On Bill for  
Separate  
Maintenance.*

*On Appeal  
from Court  
of Chancery.*

Sat Below  
ALONZO  
CHURCH,  
V.-C.

### BRIEF OF THE COMPLAINANT-APPELLANT.

#### Statement.

This action was one for support and maintenance commenced by the filing of a bill of complaint and the issuance of a Writ of *Ne Exeat* under which writ the defendant was taken into custody and subsequently released on a \$1,000 bond furnished to the Sheriff of Essex County by the defendant, on which the United States Fidelity & Guaranty Co., a corporation of Maryland, is surety.

That subsequently and on February 21, 1928, an order was entered in the cause directing the defendant to pay temporary alimony *pendente lite*, in the sum of Fifteen (\$15) Dollars per week, to be paid at the beginning of each and every week from the date of the order until the termination of this suit for support and maintenance and also directing the defendant to pay to Aquila N. Venino, solicitor for and of counsel with the complainant, a counsel fee of (reserved for final hearing) and the costs of the motion for said alimony *pendente lite* to be taxed.

The case after having been referred to Alonzo Church, Vice-Chancellor, was tried and heard by him resulting in the entering of a final decree dismissing the bill of complaint, denying the application of complainant's counsel for counsel fee and decreeing that the Sheriff of Essex County deliver up to the defendant or his solicitor the *Ne Exeat* bond heretofore given by the defendant under the direction of the Court, upon presentation to the Sheriff of a true copy of the decree certified to by the solicitor of the defendant. After the final decree was so entered on May 18, 1928, an order amending the final decree was entered on May 21, 1928, without notice, however, of any kind to the complainant or her solicitor, wherein the Sheriff is directed and ordered to cancel of record the *Ne Exeat* bond, upon presentation to the Sheriff of a true copy of the order certified to by the solicitor of the defendant. When at the time this order was entered and at the time the final decree was entered the defendant was in default under the said bond by reason of his failure to pay the alimony *pendente lite* as per order of the Court, which was in full force and effect at the time. Whereupon the complainant appeals from the final decree made in the above-entitled cause on May 18, 1928, and also appeals from the order subsequently made in the above-entitled action on May 21, 1928, amending the final decree, and from the whole and every part thereof.

### Abstract of the Case.

On the third day of June, 1914, the complainant and the defendant were married in the Church of the Transfiguration in the City, County and State of New York by Reverend George Haughton, a Minister of the Gospel.

That after their marriage they went to live at 194 Amherst street, East Orange, N. J., which was the home of the defendant's father and mother, where they lived for about a year, subsequently living at divers other places in said City of East Orange and were residing there when this action was commenced.

They were living peacefully and happily together until about November, 1925, which was approximately two years prior to the commencement of this suit (page 40, folio 20, also page 65, folio 10); at which time the complainant was informed by a Mrs. May Laycock that the defendant was carrying a picture in the back of his watch of some other girl (page 40, folio 30). The complainant, thereupon, looked for said picture in the back of her husband's watch and found the same there. She removed it without saying anything to the defendant. A week or so later the defendant phoned the complainant telling her that he discovered that the picture had been taken out of the back of his watch and that it would do her no good and that he would put another one in the back of his watch (page 41, folio 10). Before the complainant discovered the picture the defendant was in the habit of going out at night two or three times a week and would never return before 2:00 o'clock in the morning. But after the defendant knew that the complainant had discovered the picture he went out more often and came home as late as 4:00 in the morning (page 41, folio 30).

After the complainant had discovered the picture she shadowed the defendant clandestinely on a number of occasions picking out the occasions, however, when the defendant would phone her around 5:00 or 6:00 o'clock that he would not be home for supper (page 41, folio 40).

Upon receiving these phone calls the complainant immediately went to the place where the defendant worked and seeing the defendant's car in front of the place stationed herself in a position where she could see the defendant come out of his place of business (page 42).

The first occasion on which she shadowed him, which was about December, 1925, he had informed her that he was not coming home for supper as he was going to the Athletic Club with Mr. Spier who worked at the same place he did. The complainant saw the defendant come out of the place of business alone. Mr. Spier was not with him. He went into his car and drove off. The complainant, thereupon, returned home (page 42, folio 10).

The second occasion on which she shadowed him was about a month later, about January, 1926. The defendant had again phoned that he would not be home for supper. She saw the defendant's car in front of his place of business and saw the defendant come out with a girl who got in the car with him and drove off. The complainant tried to get a taxi to follow the defendant but none was available in time to follow the defendant (page 42, folio 30).

On the next occasion when the complainant shadowed him he had phoned home again that he would not be home for supper. That was also in the year 1926. After receiving the phone call she went to his place of business and his car was

not there. The complainant, thereupon, started to return home when she discovered the defendant's car in front of a drug store on Fifth street near Central avenue. The defendant was not in the car at the time but a girl was sitting in the front seat, whom the complainant recognized as the girl whose picture the defendant had been carrying around in the back of his watch and the same girl that the complainant saw coming out of the defendant's place of business with him on a previous occasion. The complainant saw the defendant come out of the drug store, take the seat at the wheel of the car and drive off. The complainant in the meantime had hired a taxi and was stationed across the street. The taxi followed the defendant's car. After going through Central avenue, through Grove street to South Orange avenue and up South Orange avenue into the Orange Mountains the driver of the taxi lost the defendant's car on account of the taxi not being able to make the hills fast enough in the Orange Mountains, where the defendant's car was headed. The complainant instructed the taxi driver to drive to Canary Cottage which was a road house in the direction in which the defendant's car was going. The complainant surmised that the defendant was going to this cottage as he had taken the complainant, while their married life was still happy, to this cottage on a number of occasions for supper (page 43, folio 30).

When the complainant arrived at Canary Cottage she discovered the defendant's car standing in front of the road house. She entered the Canary Cottage and requested the proprietor to call out the defendant which he did. The defendant came out and immediately wanted to know how she got up there and stated that he was

there with some boys from the office. The complainant informed him otherwise telling him that she had shadowed him and that she knew he was in there with the girl. The complainant, thereupon, was admitted to the cottage on condition that she would not raise a disturbance. She agreed to this condition. Upon entering the cottage the complainant found this girl whose picture she had previously found in her husband's watch, sitting at a table with sandwiches and drinks in front of her. The complainant went up to her and told her that the man she was with was her husband and that the complainant was his wife. The complainant sat down while the defendant and the girl finished their sandwiches and drinks, but refused to partake of any food or drink herself, notwithstanding the fact that the defendant had offered her a drink. The defendant finally paid the waiter and they came out. The defendant said he had to take the girl home so she got in his car and the complainant also got in. The defendant drove first to his home where he was going to leave the complainant off. The complainant, however, refused to leave the car and told the defendant that she was going to have the girl left out first. So the defendant drove to the girl's house where she was left off. The defendant then drove home (page 45, folio 30, also page 78, folio 30).

During the last two years the complainant and defendant quarreled continuously. The subject of the quarrels always being this girl with whom the defendant was going out. The defendant whenever the complainant accused him of running around with this girl, would say that it did not make any difference, that he was tired of being tied down and he was not going to be tied down to one woman and she could do whatever

she liked about it. The quarrels were loud and were heard by neighbors (page 47, folio 10).

On another occasion, in September, 1927, the complainant found a letter in the defendant's inside coat pocket after he had hung it up one night when he came home (page 47, folio 20). The complainant took the letter out and did not say anything to the defendant but waited until he had missed it. She did not say anything at the time she found it as the defendant had drink in him and she thought it advisable not to mention the same. The defendant being in the habit of drinking. The letter was enclosed in an envelope addressed to William McLean (the defendant), 500 Chancellor avenue, Irvington, N. J. (the business address of the defendant). The stamp was cancelled showing the mailing of the letter on September 20, 1927. The letter in said envelope read as follows:

“My Dear One—

Am mailing picture as promised you. This is the best I have at the present time but expect to have more taken in future and will gladly let you have one.

Will meet you as promised without fail. I am always thinking of you and always will. Counting the minutes till I see you again Honey.

Lovingly yours,

Irene.”

Enclosed in the said envelope and with the letter was a small photograph of a girl on the back of which was written, “From one that dearly loves you. Irene.” The words “dearly loves you” were twice underlined. The handwriting on the back of this photograph was the same as contained in the letter and the same as contained on the envelope (page 49, folio 10). The complainant did not say anything to the de-

fendant about finding this letter and photograph until the defendant had accused her of taking it out of his pocket, whereupon she admitted it. The defendant told the complainant that it was a manicurist in Newark. The photograph contained in the envelope was not of the same girl whose picture was found in the defendant's watch, this being an entirely different woman (page 49, folio 20). The defendant and the defendant's mother made repeated efforts to have the complainant give up this photograph as they both claimed it belonged to the defendant and was his. The defendant's mother argued that in order to keep peace and quiet in the family she ought to give it up. She refused to do this, however.

The complainant, on one occasion with her neighbor Mrs. Maguire, went to the home of the girl whose picture the complainant found in the defendant's watch, in order to persuade this girl to give up the complainant's husband (page 49, folio 30). The complainant on another occasion also went with a neighbor, Mrs. Darcy, to see a priest by the name of Father D'Aquala, which was the priest in charge of the church which the girl attended, whose picture complainant found in the defendant's watch (page 50, folio 10).

After the complainant had seen Father D'Aquala the defendant together with the girl whose picture was found in his watch, went to see Father D'Aquala. He went, as he says, because his wife accused the girl and because this girl had requested him to go and see Father D'Aquala with her to clear her moral standard. He was not requested by Father D'Aquala to come and see him but went of his own volition, and at the request of this girl (page 86, folio 10).

The picture which the complainant found in the defendant's watch, the complainant had in an envelope which she concealed on the shelf in her closet. While she had the picture she had shown it to a Mrs. McGrath, a neighbor, a Mrs. Darcy, a neighbor, and to her landlady and also to Father D'Aquala. The picture was round and about the size of a fifty cent piece. When the complainant went to get this picture after she had concealed it she found that it had been taken away. To use her own words "It was stolen." She looked all over for it but could not find it (page 50, folio 20).

As above stated during the last two years the complainant and defendant were living in disharmony and were continuously quarreling about the defendant going out with other women especially this one girl whose picture he had been carrying in his watch.

In October, 1927, the defendant in the morning before he left for business told the complainant that he was going to leave her for good. When he came home that evening he immediately started quarreling and said he was going to leave. The complainant informed the defendant that if he left she would go wherever he went. He left the house and she followed him as far as Central avenue. When he saw that he could not leave the house alone he came back and went upstairs and used the telephone. The complainant went back into the house as far as the hall. There was a light burning in the hall. The defendant after phoning came to the foot of the stairs and insisted on the complainant coming up. The complainant then went out on the porch and refused to go upstairs whereupon the defendant came running downstairs and ran out towards the com-

plainant pulling a razor from his pocket and saying "I will fix you so you won't follow me." The complainant put up her hand in self-defense and to protect herself from the attack and in so doing the defendant cut the inside of her two middle fingers on her right hand, the scars still being visible at the time of trial. After the fingers were cut the complainant and defendant tried to go back into the house and found that the front door was locked, having been locked by Miss Margaret Griffith, the landlady, who had witnessed the attack. Whereupon the complainant and the defendant went to their neighbor's who phoned for the doctor who came and attended to the badly-cut fingers. Before the doctor came the defendant begged the complainant not to tell anyone how it happened, but to say that she had cut herself with a potato knife (page 51, folio 30).

The constant quarreling between the defendant and the complainant has been affecting the complainant's nerves to such an extent that she has been under the doctor's care on and off during the last two years (page 52, folio 30).

The defendant also was in the habit of gambling on horse races (page 53, folio 10).

On October 22, 1927, the defendant kissed the complainant good-bye as he left the house in the morning and waved back to her from the street. Prior to leaving he had made an appointment with her to meet him at 6:30 at the Tube Station it being Saturday night. The complainant presented herself at the Tube Station at 6:30 but found that the defendant did not put in an appearance. She waited for an hour or two but he failed to appear. She thereupon went home. Her neighbors came in after she arrived home

having heard her crying in her apartment. The defendant did not come home that evening nor has he been home since. The defendant subsequently phoned instructing the complainant to send him his clothes. At the time the defendant deserted the complainant the latter was not earning any money of her own and had no surplus fund of any kind and the defendant refused to support or maintain her (page 53, folio 20).

After the defendant had deserted the complainant, the complainant on December 15, 1927, saw the defendant with this same girl whose picture he had in his watch, walking along Grove street. There was with the complainant at the time and who also saw the defendant, a Mr. Joseph Drudy and a Mrs. Joseph Drudy. The three were in an automobile at the time driving along Grove street. Mr. Drudy stopped his automobile and the complainant got out and faced the defendant right then and there. The defendant and this girl had seen the complainant and immediately the girl crossed the street. They were at the time one block from her home in which direction they were headed (page 54, folio 20).

The defendant was employed at the United Radio & Electric Corporation, earning \$275 a month (page 55, folio 10).

That in the month of November, 1927, which was after the defendant had abandoned the complainant, the defendant met Mr. Joseph F. Drudy, a friend of his. Mr. Drudy at the time being in his automobile the defendant was invited by Mr. Drudy into his automobile and in the course of conversation Mr. Drudy informed the defendant that he thought he was a foolish boy. The defendant replied by saying: "I realize it. If you will talk to Anna, I will come up some night later and talk to you about it" (page 71, folio 20).

On another occasion after the defendant had abandoned the complainant and on Hallowe'en Eve which was the latter part of October, 1927, a Mrs. Margaret Spier saw the defendant in her divorced husband's car sitting in the rear with a girl, not his wife (page 73, folio 10).

Prior to the defendant deserting the complainant and some two years before the filing of the bill of complaint in this action the defendant had been in the habit of visiting the home of Mrs. May Laycock in Newark, to see a Mr. Ogle who was a son-in-law of Mrs. Laycock. On one occasion Mrs. Laycock saw the defendant take out his watch and go over to Mr. Ogle and open the back of his watch and show Mr. Ogle a picture which he pushed to his heart. Mrs. Laycock saw the picture. It was this Mrs. Laycock who later informed the complainant that the defendant was carrying around a picture in the back of his watch of a woman not his wife (page 74, folio 20, also page 75, folio 10).

The defendant on another occasion informed Mrs. Laycock that the complainant loved him but that he had made a proposition to her that he would give her \$20 a week with no more claim on her if she would only fade out of the picture. That he did not love her any more and that the defendant in the presence of Mrs. Laycock said to the complainant, "Be a good sport and you can live nice on \$20 a week and what you can make." That the complainant sat there, dropped her head, and then got up from the chair and went over and put her arm on the defendant's shoulder and said, "Billy, I can't leave you." That the defendant then made a very insulting remark to her (page 75, folio 10).

Mrs. Laycock also testified to the fact that she overheard a conversation between the defendant and Mrs. Laycock's daughter and son-in-law wherein the defendant said, "I got up the other morning and I found fault with everything, and I turned everything upside down and I took a gun and put it in the drawer and put the safety catch off, and about an hour after I called up and I was disappointed she was there and when I called up I said, 'Oh, are you there?' and she said, 'Billy, where do you think I would be?'" (page 76, folio 10).

The defendant admits the desertion in his answer and also in his testimony (page 79, folio 10). He also admits in his answer and in his testimony the fact that he had been in the Canary Cottage with this girl as set forth in the complaint (page 78, folio 20, also page 84, folio 30). Also admits in his testimony that he had been with this girl to see Father D'Aquala without being requested to come by the priest (page 86, folio 10). Also admits that he had been out with other women (page 84, folio 30).

The defendant tries to justify his desertion by setting up the defense of extreme cruelty by stating that the complainant threatened to kill him but admits that these threats were made because he was running around with other women. The complainant absolutely denies the threats.

Specification of the Grounds of Appeal showing in what respect the Decree and Order appealed from are alleged to be erroneous.

1. Because the decree recites and adjudges that the defendant had justifiable cause for separating himself from the said complainant because he had reasonable cause to apprehend bodily harm from her; whereas His Honor, the Chancellor should have found, recited and adjudged that the defendant without any justifiable cause, abandoned the complainant and separated himself from her and refused and neglected to maintain and provide for her and that the defendant should pay to the complainant a certain sum of money weekly at the termination of each week, from the time of the decree for the support and maintenance of the complainant, until the further order of the Court. And that the defendant do also pay to complainant or to her solicitor the costs of suit to be taxed and a counsel fee, and that execution issue thereon according to the practice of the Court.

2. Because the testimony, evidence and proofs do not warrant the conclusions of his Honor, the Chancellor, nor the decree made by him.

3. Because the final decree and order directs the Sheriff to deliver up to the defendant, William McLean, or his solicitor, the *ne exeat* bond heretofore given by the defendant under the direction of this court and to cancel the same of record upon presentation to the said Sheriff of a true copy of the final decree and order certified to by the solicitor of the defendant. This was erroneous because it allowed the defendant's solicitor to make operative forthwith a final decree before the same was signed by the Chancellor and in this way allowed the bond to be

forthwith made null and void before the final decree was actually signed by His Honor, the Chancellor; and because the defendant was in default under an order made on February 21, 1928, in this cause directing the defendant to pay Fifteen (\$15) Dollars per week alimony, *pendente lite*. The said defendant having paid no alimony under said order commencing with the week of March 27, 1928, down to the time of the entering of the decree, which was a violation of the conditions contained in said bond, and which gave the complainant a right of action under said bond, all of which was brought to the attention of his Honor, the Chancellor, at the time the decree was signed; and because a cancellation of this bond should have been made upon a separate application for that purpose upon due notice to the complainant, no notice of any kind having been given in connection with the cancellation of this bond except notice to settle the form of the decree.

## BRIEF OF THE ARGUMENT.

### POINT 1.

Did the defendant have justifiable cause to desert the complainant and refuse to support and maintain her?

The defendant admits in his answer and also in his testimony that he abandoned the complainant and refused to support and maintain her, but sets up extreme cruelty as a defense which justified him in leaving the complainant.

In the case of *Cavileer v. Cavileer*, 94 N. J. Eq. 160, the Court of Errors and Appeals ruled that the husband must justify the separation by proof of extreme cruelty upon the part of the wife to the same extent as he would be compelled to

prove if he were suing for a divorce from bed and board on the ground of extreme cruelty. It further sets forth the definition of extreme cruelty and states that a single act of personal violence is not extreme cruelty justifying abandonment of, and refusal to support, the wife. And it further holds that it is proper to look at the attitude and conduct of the husband towards his wife for the purpose of giving character to the act of the husband in separating himself from his wife.

The defendant alleged that he left the complainant because she threatened his life many times. He also alleges that she attacked him with a razor and that she requested him to bring home his revolver so that she could use it on him. He testifies to no dates or circumstances under which the alleged threats to take his life were made. He produced no witnesses who heard the complainant threaten the defendant. He produces no witnesses to corroborate the alleged razor attack and he produces no witnesses who heard complainant tell the defendant to bring home his revolver so that she could use it on him; notwithstanding the fact that the defendant's mother lived with the complainant and the defendant in their house for the last entire year that they lived together (page 87, folio 10) and while, as the testimony shows, they were continuously quarreling, practically daily.

The defendant in an attempt to corroborate his testimony, which is absolutely and wholly insufficient to procure a divorce from bed and board, and therefore not extreme cruelty, produces four relatives of his, none of which directly corroborate any of his testimony. None of his witnesses claim to have seen the alleged razor attack and none of his witnesses claim to have heard any

threats made by the complainant to the defendant. Their testimony refers to conversation had with the complainant at separate and distinct times, not in the presence of other witnesses, and in no way corroborated; so that the testimony of the defendant and his four witnesses each tell a different story, alleged to have taken place at different times, each story uncorroborated.

The complainant meets the testimony of the defendant and his witnesses by an absolute and unqualified denial that she ever threatened the defendant's life, and by an absolute and unqualified denial that she ever attacked the defendant with a razor; she testifies to the fact that the defendant attacked her with a razor and gives the full details and circumstances under which the attack was made (page 51, folio 10). The attack was made by the defendant because the complainant insisted upon following him out of the house to see where he was going and which finally culminated with the defendant cutting the complainant's two middle right-hand fingers on the inside with a razor. This attack was witnessed by Miss Margaret Griffith, the defendant's landlady, who lived on the first floor of the house and whose testimony corroborates the complainant's in every detail (page 67, folio 20). The fact that Miss Griffith saw the attack is corroborated not only by the testimony of the complainant but also by the testimony of the defendant. The complainant testified that after the razor attack they tried to get back into the house and found that someone had locked the front door (page 52, folio 20). The defendant testified to the same occurrence (page 79, folio 20). The testimony of Miss Griffith shows that it was she who locked the door and who saw the attack (page 67, folio 30).

The defendant and all of his witnesses testify to the effect that the complainant threatened the defendant's life because the defendant was running around with other women (page 84, folio 10). In other words, the inconsiderate and inequitable and unfair conduct on behalf of the defendant has, as he says, "endangered his life" and it, therefore, can be said that it was within the power of the defendant to make his life safe by being more considerate, faithful and true to his wife and not causing her any worryment by traveling and going out with other women. If the defendant's life became endangered by his own provocation or his inconsiderate acts, which constitutes provocation, then he must fail in his defense, as provocation is a just defense against the defendant's claim of extreme cruelty. To support this contention the complainant cites the following principles established by the following cases:

"While the law does not justify the husband in striking or beating the wife, it is quite obvious that where there have been some acts of inconsiderable personal violence shown, the provoking conduct of the wife is a just defense, in this respect, that there is little reason to apprehend future violence, if she will behave herself." *Davis v. Davis*, 19 N. J. Eq. 180; *Coles v. Coles*, 32 N. J. Eq. 547; *Duvale v. Duvale*, 34 Atl. Rep. 888; aff. in 65 N. J. Eq. 775.

From the above cases it can be seen that if the defendant in this case behaved himself and stopped running around with other women it would remove the cause which he alleges and which his witnesses allege is making his life unsafe. The defendant, however, fails to show any act of personal violence on behalf of the com-

plainant. He seems to rely on his defense of extreme cruelty entirely upon words of mouth or threats.

In the case of *Eisenger v. Eisenger*, 100 Atl. Rep. 840 (the case not reported in the State reports), Vice-Chancellor Lane, on page 843, says as follows:

“It is, of course, the law that mere harsh words, mere threats even of personal violence, unaccompanied by some overt act, mere intoxication, even habitual intoxication to a certain extent, are not sufficient to warrant a decree of separate maintenance, but when all three combine, or two combine, and such a course of conduct is persisted in for a number of years, then this court will lay hold upon slight physical cruelty in order to justify a decree.”

The defendant in this case has absolutely failed to prove any overt act whatever. He attempts to do so in connection with the razor attack. But the testimony of the complainant and of Miss Griffith shows that the defendant was the one who attacked the complainant with the razor and injured her two fingers to such an extent that they had to call a doctor in to stop the bleeding (page 51, folio 30; also page 67, folio 20).

In the case of *Irwin v. Irwin*, 88 N. J. Eq., page 139, or 102 Atl. Rep. 440, Vice-Chancellor Lewis, in writing the opinion of the court, on page 441 says:

“The husband says that on one occasion she tried to push him downstairs; on another occasion that she tried to throw a chair at him. He also says that she threw a carving knife at him, which he managed to dodge, and that repeatedly in anger she came towards him with a knife, threatening to kill him, as well as herself, and that he took the knife from her. He also testified that

she threatened him with a nail file, and in his struggle to take it from her the file was broken; that she also got possession of his revolver several times and threatened to end the lives of both of them." \* \* \* "I have come to the conclusion, after carefully observing the demeanor of both the complainant and defendant, and the testimony given in this cause convinces me that the only effect on the husband of the wife's conduct has been to turn away his love, which the evidence does not disclose was very pronounced for her. I do not believe that he has ever been the least bit afraid of her, or that he ever thought for one second that she would harm him." \* \* \* "A man cannot get rid of his obligation to support his wife merely because they are always quarreling. In my opinion, she has committed no matrimonial offense for which he could obtain a divorce, and the wife is therefore entitled to a decree."

In the case of *Thomas v. Thomas*, 87 N. J. Eq. 668, or 103 At. Rep. 675, Advisory Master Roe rendered an opinion which was affirmed by the Court of Errors and Appeals (see 101 At. Rep. 1055). In that case the opinion written by the Advisory Master, approved by the Court of Errors and Appeals, says as follows:

Head Note 1. Where a husband, who had children by a former marriage, several times became angry over his wife's treatment of them, and struck her, and used vile language toward her, and also refused her the money she thought necessary, such husband was not guilty of "extreme cruelty," entitling the wife to a divorce from bed and board; such acts not endangering her safety or health.

On page 676 the Advisory Master says as follows:

"But in the present case it is clear that the petitioner brought about this very state of affairs. There are mutual obligations,

which the husband, as well as the wife, must perform. If the wife, knowing the disposition of her husband, persists in a course of conduct that brings on a state of facts of which she complains, she is not entitled to relief. *Duvale v. Duvale*, 34 Atl. 888; affirmed 65 N. J. Eq. 771, 60 Atl. 1134. She had it in her power to stop the acts of which she complained. If she had treated those children by his former marriage with kindness, if she had cared for those children, as it was her duty to do, instead of refusing to care for them or look after them, it is evident that this conduct of her husband toward her would not have occurred. If she had performed her wifely duties, looked after her husband and his children, provided them food, it is evident they would not have occurred later; but she persisted in her refusal to do this, and this fact alone shows that she disregarded the treatment of her husband of which she complains.”

In the case under consideration the facts fit the above opinion; the defendant brought about the state of affairs of which he now complains. The defendant had it in his power to stop the acts of which he complains. He testified to the fact that his wife was jealous (page 80, folio 20), and accused him of running around with other women and that the complainant threatened the defendant's life because she claimed he was running around with other women (page 84, folio 10); all the defendant's witnesses testify that the alleged threats to harm the defendant were made because the complainant claimed the defendant was running around with other women (page 87, folio 20; also page 91, folio 10; also page 92, folio 10; also page 93, folio 40). Now, if the defendant knew that his wife was jealous and knew that she objected to him running around with other women and knew that his wife threatened his life because he was running around with other

women, and he persisted in his objectionable conduct, certainly he cannot now come into a court of equity and set up the result or effect of his objectionable conduct as a defense, as it is surely within his own power to make his life safe at home by stopping running around with other women and treating the complainant equitably and fairly and not coming into this court with unclean hands.

In the case of *Cavileer v. Cavileer*, 94 N. J. Eq. 160, above cited, the Court of Errors and Appeals ruled that it was proper to look at the conduct of the husband to ascertain really why the husband left the wife. Now, let us see what the conduct of the defendant was in the case under consideration.

First of all he was carrying a picture of a girl in the back of his watch. This picture was seen first by Mrs. May Laycock (page 74, folio 10). She in turn informed the complainant of seeing this picture (page 40, folio 30). The complainant found the picture in the back of the defendant's watch and removed it and subsequently shadowed the defendant and found that he took this girl out in his car (page 43, folio 20).

On another occasion the complainant while shadowing the defendant and the girl followed them to Canary Cottage (page 43, folio 30). The defendant in his answer admits that he had this girl at the Canary Cottage and in his testimony admits that he had this girl at the Canary Cottage (page 78, folio 30). The defendant in his testimony testified that he only had this girl out on that one occasion. But under cross examination he admitted being out with the girl and accompanying her to see Father D'Aquala, a priest, at the request of said girl (page 86, folio 10).

Mr. Joseph F. Drudy and the complainant testified that they saw the defendant with this girl on Grove street on another occasion and that they were only a block away from the girl's home and were headed towards said girl's home (page 54, folio 20; page 70, folio 10). Mrs. Drudy also saw the defendant with this girl at the same time. She was called as a witness by the complainant, but the Vice-Chancellor did not think her testimony was necessary and excused her (page 72, folio 30).

Mrs. Margaret Spier saw the defendant with a girl on Hallowe'en Eve (page 73, folio 10). Defendant does not deny this.

On another occasion the complainant found a letter in the defendant's pocket from another girl, the envelope being addressed to the defendant at his place of business. It went through the mail, the stamp being cancelled, showing its mailing, and a letter was enclosed in said envelope addressing the defendant as "My Dear One," in which letter the girl enclosed her photograph, on the back of which is written "From one that dearly loves you." Signed "Irene." The letter is closed by "Lovingly yours, Irene," and in the letter she promised to meet the defendant without fail as promised (see Exhibit C. 1, page 97, folio 20). This is not the same girl whom the defendant had at Canary Cottage (page 49, folio 20).

The defendant in his testimony admitted that he was in the habit of taking out other girls from his office and on Broad street (page 84, folio 30).

Mrs. May Laycock testified that the defendant told her that he made a proposition to the complainant to pay her \$20 a week with no more claim on her if she would fade out of the picture.

That he did not love her any more (page 75, folio 10), and that when the complainant told the defendant that she loved him, the defendant replied with some insulting remark (page 75, folio 20). Defendant does not deny this.

The complainant testified that she accused the defendant of running around with other women and that he replied that he was tired of being tied down and he was not going to be tied to one woman and that she could do whatever she liked about it (page 47, folio 20). Defendant does not deny this.

Miss Margaret Griffith testified that she overheard some of the arguments between the complainant and the defendant and on one occasion she heard the complainant begging the defendant to give up the girl and that the defendant replied, "I love that girl and I am going to have her" (page 66, folio 10). Defendant does not deny this.

Mrs. Laycock also testified that she overheard a conversation between the defendant and her daughter and son-in-law, in which the defendant stated: "I got up the other morning and I found fault with everything, and I turned everything upside down and I took a gun and put it in the drawer and put the safety catch off, and about an hour after I called up and I was disappointed she was there, and when I called up I said, 'Oh, are you there?' and she said, 'Billy, where do you think I would be?'" (page 76, folio 10). Defendant does not deny this.

The complainant and Miss Griffith testified to the fact that the defendant attacked the complainant with a razor, cutting the two middle fingers on her right hand on the inside with a razor (page 51, folio 30; page 67, folio 20).

The defendant continued to live with the complainant for eight days after the razor attack and then deserted her under most favorable circumstances by kissing her good-bye that morning, waving back good-bye from the street and making an appointment to meet her at the Tube station in Newark that evening at 6:30. He failed to put in an appearance and never returned home again (page 53, folio 20). The defendant in his answer admits the circumstances under which he left the complainant.

Surely, the record in this case shows the real motive for the defendant deserting the complainant. He wanted to be free. He was even willing to make a bargain with his wife to pay her \$20 a week to be left alone and free. He was going out with other women. Did not care to be tied down to one woman. Made it so miserable for his wife that he thought she would kill herself, so he left his gun home with the safety catch off in the hopes that she would commit suicide; by making it miserable for her before he left the house to make doubly sure that she would commit suicide. He attacked his wife with a razor because she insisted on following him out of the house. Remarked to strangers that he did not love his wife and told her that he did not care to be tied down to one woman. Was found at the Canary Cottage with the girl he kept company with and admitted it in his answer and in his testimony. Because the proprietor was a witness to the occurrence, as well as the taxi driver, it was, therefore, more discreet for the defendant to admit it than to deny it and have it proven by disinterested witnesses.

If the defendant really left the complainant because he thought his life was in danger would he not have selected a more proper time to leave,

which would have been the night he claimed he was attacked by a razor or the night or day when his life was threatened? The alleged threats certainly had no effect on his health or safety in view of the fact that he continued to live with the complainant after all of the alleged threats and after the alleged razor attack, living with the complainant for a period of eight days after the alleged attack and then left under the most favorable circumstances kissing his wife goodbye one morning, waving goodbye from the street and even making an appointment to meet his wife at the Tube station at 6:30 which he was accustomed to do on Saturday nights, but failed to put in an appearance and has ever since failed to return home. There is no evidence in the testimony of any quarrel had on the night before or for a period of a week before.

Therefore, when you can read such motive for leaving into the defendant's conduct as has been proven by the complainant and her witnesses and by the admissions of the defendant, a Court of Chancery ought to look with disfavor upon the defendant's claim that he left because his life was in danger.

## POINT 2.

Does the testimony, evidence and proofs warrant the conclusions arrived at and warrant the entering of the decree?

The argument set forth under Point 1 in this brief clearly establishes the fact that the testimony, evidence and proofs in the case did not warrant the conclusions arrived at and did not warrant the entering of the decree.

In the memo filed by the Vice-Chancellor who heard the case he finds as a fact that the wife had

a very high temper and a very jealous disposition. In the case of *Harlow v. Harlow*, 96 N. J. Eq. 714 or 126 Atl. Rep. 470, the Court of Errors and Appeals in a *per curiam* opinion, near the bottom of page 470, says:

“It is probably quite true that the wife was of a very nervous type and at times exhibited hot temper, but that was not remarkable in the circumstances disclosed by the record.”

The same was true in connection with the case under consideration. There certainly is nothing strange about a woman becoming high strung when her husband is continuously running around with other women and taking them to road houses and paying no attention to appeals from the wife to discontinue the practice. It would be unnatural to find it otherwise unless the wife had no love and affection for her husband which is not a fact in the case under consideration (page 75, folios 10 and 20).

The Vice-Chancellor further finds as a fact:

“A year before the separation she followed her husband to a restaurant where he was with another woman. She entered, sat at the table with her husband, and the woman partook of refreshments with them and accompanied her husband home leaving the woman at her house.”

There is no evidence in the case at all that the complainant partook of any drink or any food at the road house (not restaurant) where she found the defendant with another woman. The evidence merely shows that the complainant was admitted to the road house upon condition that she would not cause a disturbance (page 46, folio 10). She had to promise the proprietor to this effect. She agreed to the same and was admitted and she lived up to her promise. She did

inform the woman that the man she was with was her husband (page 46, folio 10). She found drinks and sandwiches on the table and she testified that she sat down while her husband and this other woman finished their drinks and sandwiches, but that she refused to partake of any food or drink while there (page 60, folio 10). There is no proof that she sat down at the same table. That her husband then paid the bill and then told her that he had to take the girl home, and that the complainant got in the same car with the defendant and this girl and that the defendant drove to the complainant's home first intending to leave her off first and then take home the other girl. The complainant refused to be left off first and insisted upon the defendant driving the other girl home first before leaving her, which was done (page 46, folio 20).

The Vice-Chancellor further finds as follows:

“There is no allegation of infidelity in the pleadings, and counsel stated at the hearing that none could be proved. From that time the wife harrassed her husband with accusations of improper relations with other women, threatened to kill him or to maim him and told his relatives that she would kill or injure him.”

There is no allegation of infidelity in the pleadings because none is necessary to be proven in a case for support and maintenance and, therefore, no effort was made by the complainant or her solicitor in procuring any such evidence. The question of infidelity was brought up by the Vice-Chancellor in asking complainant's counsel whether he intended to prove infidelity. Complainant's counsel informed the Vice-Chancellor that none was necessary to be proven and that he had no proof of any act of infidelity. This does not mean, however, that none existed. If the

Vice-Chancellor found as a fact that the complainant threatened to kill the defendant or to maim him and told his relatives that she would kill or injure him, the same does not constitute extreme cruelty. First off, because there is no evidence in the case that the defendant's health or life became endangered. Secondly, because the defendant was guilty of provocation and had it within his power to make his life safe and thus eliminate his alleged defense. Thirdly, because there is no corroboration and fourthly, because the defendant has the burden of proof to establish extreme cruelty with the same degree of accuracy as if he were the complainant in a divorce action from bed and board, which he failed to do.

There is no evidence in the case to support the Vice-Chancellor's conclusion that the complainant accused the defendant of improper relations with other women. The only accusations made by the complainant were that he was running around with other women. This is far short of accusing him of improper relations which, in my mind, would include infidelity. Nowheres in the complainant's testimony or in the defendant's testimony or in any of the witnesses' testimony is there any allegation of improper relations. Therefore, the finding is absolutely unsupported.

The Vice-Chancellor also finds in connection with the razor attack that:

“I believe the wife was at fault.”

He does not find that she attacked the defendant. The evidence of complainant corroborated by a disinterested witness, namely Miss Margaret Griffith, clearly shows that the husband attacked the complainant.

The Vice-Chancellor further finds in his memo :

“Counsel for complainant says that if his life became endangered, it was his own fault, ‘because of his inconsiderate actions in running around with other women.’ ”

“There are two answers to this. In the first place, complainant’s counsel admits that there is absolutely no evidence of wrong doing. Therefore, the threats and accusations which I find as a fact that the wife made—are false and he was justified in leaving her because he had reasonable ground to apprehend that she might kill or maim him. Again, even if her suspicions were justified and she had absolute proof of his infidelity, she had no right to attempt to injure him. Her duty was to leave him and proceed against him in a proper manner in the courts.”

“I will advise a decree dismissing the bill.”

What threats and accusations did the complainant make which were false? The complainant accused the defendant of running around with other women. The proof in the case shows that he was running around with other women. He was found at the Canary Cottage with a woman. He admits this in his answer and also in his testimony (page 78, folio 30). He admits in his testimony that he went with this same girl to Father D’Aquala at the request of said girl (page 86, folio 10). He admits that he went around with other women from the office and on Broad street (page 84, folio 30). He was seen on the street by disinterested witnesses with other women. Does the Vice-Chancellor find that these accusations are false? What other accusations are there in the testimony outside of these? The Vice-Chancellor seems to think that the question of infidelity had to be proven or brought into the case. I do not agree with him. This is not an

action for a divorce and the question of infidelity was never brought into the case by the complainant and never was intended to be brought in and we are not called upon to prove it in order to succeed in an action for support and maintenance.

The Vice-Chancellor's opinion seems to be based entirely upon the fact that the complainant did not show infidelity and because she did not show it she fails, which is not the law.

At the conclusion of the case complainant's counsel requested the privilege of arguing the law in connection with the case. The Vice-Chancellor informed complainant's counsel: "There is not any law to it. It is merely a question of fact, as I see it" (page 97, folio 20). It can be fairly assumed from this remark that the Vice-Chancellor decided this case without taking in consideration the law laid down in the cases cited in this brief. Especially the law with reference to provocation. This case cannot be decided merely by determining questions of fact without considering the questions of law involved.

## POINT 3.

Was it error for the Trial Judge to incorporate in the final decree and in the order amending the final decree, a provision directing the delivering up of the *Ne Exeat* bond and the cancellation of the same, when the defendant was in arrears in the payment of alimony, pendente lite, as per order of the Court, and on no notice to the complainant except notice to settle the form of the decree?

The Court erred in directing the delivery up of the *Ne Exeat* bond and the cancellation of the same in the final decree and in the order amending the final decree because the defendant at the time the final decree was signed, was indebted to the petitioner for alimony commencing with the week of March 27, 1928, down to the time of the filing of the final decree, at the rate of fifteen (\$15) dollars per week which amounted to ninety (\$90) dollars. There was no notice given to the complainant or her solicitor of any application to have the bond cancelled or delivered up. The question was brought up before the Vice-Chancellor upon notice to fix the form of the decree. At the time of the argument of the form of the decree, complainant's solicitor presented to the Vice-Chancellor a petition duly verified by the complainant, setting forth that the defendant was in arrears in his alimony and asked for an order to show cause which was also presented to the Vice-Chancellor before the decree was recommended, why the bond should not be forfeited, which application was denied.

The final decree gives the defendant's solicitor the right to have the bond cancelled and delivered up by delivering a copy of the decree certified to by the defendant's solicitor. This permitted him to deliver a copy of the decree certified to by

him to the Sheriff, within five minutes from the time it was made, and thus procure the cancellation of the bond, giving the complainant no opportunity to take any further steps to prevent it.

In the case of *Ksiazek v. Ksiazek*, 89 N. J. Eq. 139, or 104 At. Rep. 315, Vice-Chancellor Lane says as follows:

“No matter what condition the *Ne Exeat* bond contains liability is same under one as under the other. That failure to pay as per order of court is breach of condition.”

The order made in the case under consideration directs the defendant to pay fifteen (\$15) dollars per week alimony, *pendente lite*, at the beginning of each and every week from the date of the order until the termination of the suit for support and maintenance (page 21, folio 30).

A *Ne Exeat* bond is really given to give the complainant some kind of security and since it is her security why should she not have the privilege of enforcing any moneys due her under the order made in this case? (See page 14, folio 20 for form of bond.)

#### POINT 4.

**Should the application of complainant's solicitor for counsel fee be denied?**

When the application for alimony and counsel fee, *pendente lite*, was made the order directed the defendant to pay fifteen (\$15) dollars per week alimony, *pendente lite*, but on account of the defendant alleging that he had a position that was not permanent the Vice-Chancellor postponed the fixing of the counsel fee until the final hearing. He did not refuse the counsel fee, but post-

poned the fixing of the amount until the final hearing as the order reads as follows:

“And it is further ORDERED, that the defendant, William McLean, do pay to Aquila N. Venino, solicitor for and of counsel with petitioner, a counsel fee of (reserved for final hearing) and the costs of this motion to be taxed.”

In the case of *Hopson v. Hopson*, 95 N. J. Eq. 540, or 123 Atl. Rep. 100, the question of allowing counsel fee to a solicitor for an unsuccessful wife under the Divorce Act was fully considered by Vice-Chancellor Bentley, who went into the question very thoroughly and based his opinion upon authorities.

Vice-Chancellor Bentley in his opinion says as follows:

“The difference between counsel was as to whether or not, the wife having been unsuccessful, was entitled to any counsel-fee allowance.” \* \* \*

It must be common knowledge among the bar that the wife in a divorce suit from the bonds of matrimony is even more favored in the matter of counsel fee than when she seeks alimony, and for perfectly apparent and sound reasons. At most, it must be confessed that, even in the light of the most abundant *ex parte* proofs, the opportunity to weigh the eventual rights of the parties is far less than after the assistance of final hearing, and, while in a doubtful case no irremediable harm is done by a refusal of alimony, it would be a most grievous and irreparable injury were a mistake to be made in withholding counsel fee so that the unfortunate woman would be barred from an opportunity to properly present her case. ‘Equality is equity.’”

“Bishop, in his work on Marriage, Divorce, and Separation, vol. 2, paragraph 976, says:

'Natural justice and the policy of the law alike demand that in any litigation between husband and wife they shall have equal facilities for presenting their case before the tribunal. This requires that they shall have equal command of funds. So that, if she is without means, the law having vested the acquisition of the two in him, he should be compelled to furnish them to her, to an extent rendering her his equal in the suit.' "

"And again in section 992:

'It would be a disgrace to the law and a grievous offense against justice if, after a woman had given her person and property in marriage to a man with whom afterwards a litigation arose as to the conduct of either in the new relation, or as to the validity of the marriage itself, she must sustain her prosecution or defense without the money essential thereto, and with no possible access to the fund which she had contributed to accumulate. Hence, the doctrine and practice of suit money.' " \* \* \*

"On the other hand, Chancellor Williamson, in the case of *Anthony v. Anthony*, 11 N. J. Eq. 70, allowed counsel fee, although the circumstances of the proofs were such that he refused any allowance for the wife for her support. In the case of *Oram v. Oram*, 77 N. J. Eq. 1, 75 Atl. 994, Vice-Chancellor Emery dealt with the subject under examination here, and at page 6 of 77 N. J. Eq., at page 994 of 75 Atl., distinctly ruled that the refusal of alimony *pendente lite* presented, in itself, no bar to counsel fee; and in that case, as in the *Anthony* case, temporary alimony was refused, and counsel fee allowed. Indeed, Mr. Bidle has pointed out, in his *New Jersey Divorce Practice* (2d Ed.) 170, not only the above rule, but cited the case of *Clare v. Clare*, 19 N. J. Eq. 37, where, at page 41 of 19 N. J. Eq., Chancellor Zabriskie made an allowance for counsel fee to the unsuccessful petitioning wife."

“In the present case the husband was the petitioner. He had brought his wife into this court to litigate. She answered his petition, denied the desertion, and filed her counter-claim, alleging that the desertion was not hers, but the petitioner’s. The case, as it would have been presented to me, had an application for counsel fee been made in the regular course, would not have only presented a probability that the wife might succeed in her defense and on her counter-claim, but even after final hearing it was not until I had gone carefully over a transcript of the proofs that I was able to make up my mind that she was the deserting party. Under these circumstances, and viewing the case from the proofs that would have been submitted to me under the circumstances I have referred to, it is indubitable that a counsel fee would have been ordered.” \* \* \*

“Since filing this opinion, the Chancellor has called my attention to his opinion in *Verbeeck v. Verbeeck*, 93 N. J. Eq. 17, 20, 115 Atl. 136, in which he held that the matter of costs in a divorce suit is *sui juris*, and clearly indicated that the broadest principles of justice should be applied for the purpose of giving a defendant wife who denies wrongdoing every reasonable opportunity to present her defense. In that opinion the Chancellor based his conclusions, in part, so far, as this phase of the case is concerned, upon *Oram v. Oram* and *Main v. Main*, *supra*, as well as the quotation from section 992 of *Bishop*, appearing above.”

“In addition, it is provided by the sixth section of the Chancery Act of 1915 (P. L., p. 185) that the court may charge even the successful party with costs or a reasonable counsel fee, or both, ‘in any case in which the court shall deem it just to do so.’ ”

The evidence shows that the wife at the time she was deserted was absolutely destitute. She was not earning any money of her own. She

had no assets either real or personal of any kind and the defendant refused to contribute to her support and maintenance (page 55, folio 30).

She further testified that the quarrels between them for the last two years had shattered her nerves so that she had to be under the doctor's care during that period of time (page 52, folio 40, also page 62, folio 10), and that after he deserted her she was under the doctor's care and had to see him once a week (page 62, folio 20).

It would be very strange considering the authorities cited that when application was made for alimony, *pendente lite*, and counsel fee, that alimony would be allowed and counsel fee denied. It is generally the reverse. Counsel fee is usually allowed but alimony is denied. Vice-Chancellor Backus who heard the motion for alimony and counsel fee, *pendente lite*, did not deny the counsel fee but reserved it until final hearing at which time the amount should have been set. He reserved it until final hearing because the defendant claimed he had no permanent position at the time. Instead of the amount being set it was denied by the Vice-Chancellor who heard the final hearing.

The complainant in the case under consideration has no means of her own. She was absolutely destitute at the time the application was made for alimony and counsel fee, *pendente lite*. Her case was presented to the court below and is being presented to the Court of Errors and Appeals with borrowed money which she is under obligation to pay back. The denial of counsel fee under such circumstances is contrary to the authorities cited, and is certainly denying the wife the equal protection of the law.

For the foregoing reasons it is respectfully submitted that the complainant's appeal should be upheld and the decision of the lower court reversed.

AQUILA N. VENINO,  
Solicitor for and of Counsel  
with Complainant-Appellant.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

ANNA McLEAN, <i>Complainant-Appellant,</i> <i>vs.</i> WILLIAM McLEAN, <i>Defendant-Appellee.</i>	}	<i>On Bill for Maintenance.</i>  <i>On Appeal from Court of Chancery.</i>
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### BRIEF OF DEFENDANT-APPELLEE.

#### Abstract of the Case.

Appellant's brief summarizing under this caption the facts as disclosed by the testimony, abstracted complainant's case in minute detail. The defense, on the other hand, is entirely disregarded except that it was based on extreme cruelty. There were, of course, controverted statements and denials with which the Court should be acquainted.

Defendant denied that he had the picture of any girl in his watch (p. 85, ll. 19-20). Complainant's testimony as to his late night habits is contradicted not only by defendant (p. 80, ll. 32-38), but by his mother as well (p. 90, ll. 8-12). The latter was a member of the household for a year of the alleged contentious two-year period (p. 96, ll. 36-38). He does admit taking a girl to supper at Canary Cottage on the occasion mentioned, but denies taking her out on any other occasion (p. 78, ll. 28-32). He denies knowing the writer of letter, Exhibit C. 1, and the person whose photograph accompanied that letter, and that he told his wife she was a manicurist in Newark (p. 78, ll. 19-21). Respecting the razor attack, his version is that she got all

excited, that he noticed her hand coming up with a razor in it, that he twisted her hand and she dropped the razor thereby cutting her fingers (p. 79, ll. 23-26).

The defense shows that he lost his position through her interference (p. 82, ll. 12-13; p. 89, ll. 16-20); also that one matter of serious discord between them was her unwillingness to have children (p. 81, ll. 4-13; p. 89, ll. 7-9; p. 91, ll. 4-5).

The defense of extreme cruelty is based on overt acts on her part, and threats of death and bodily harm made not only to him but to other witnesses whom he produced. Their nature and effect will be fully considered in the argument which follows.

## II.

**Defendant had justifiable cause to leave the complainant and refuse to support and maintain her.**

That complainant was jealous is an admitted fact. Not only do the defendant and his witnesses say so, but the burden of complainant's own testimony is to the same effect. That she suspected him of companionship with other women on every occasion when he was away from home is also apparent. That this was unjustified is shown by the fact that the first time she shadowed his movements, he came out of his office alone, got in the car and drove off (p. 42, ll. 19-21); and on another occasion when she and Bessie McLean found that he had gone to the club in accordance with his expressed intention (p. 92, l. 35; p. 93, l. 28). Several witnesses state that she had a real temper; the mother

describes it as "a fit of temper" (p. 87, l. 36); Mrs. Hutchinson found her "wild with temper" (p. 61, l. 38), and Bessie McLean calls it an "uncontrollable temper" (p. 94, ll. 8-9).

According to Bessie McLean she exhibited herself in this light prior to the securing of any of her alleged proofs, for according to the testimony at the bottom of page 93 she said "If I ever knew he went out with another woman I would shoot him or maim him \* \* \*."

Defendant gives as his reason for his leaving such a wife and his refusal to return to live with her that "I feel my life is endangered. I am afraid of her" (p. 83, ll. 23-24). And on what was such a fear based?

First upon two attacks with a razor; the first in the bedroom (p. 80, ll. 13-15), which is not denied; the second, heretofore referred to, and for which each lays the blame on the other; defendant's account, we admit, is not corroborated; but neither is complainant's, as to the important details, in spite of counsel's bold assertion in his brief to the contrary. Miss Griffith witnessed a part of the encounter, but herself testified that she knew nothing about the razor until Mrs. McLean told her (p. 69, ll. 6-7). Under such circumstances the conclusion of the Vice-Chancellor with his opportunity to observe the demeanor of both parties on the stand, that the wife was at fault (p. 27, ll. 10-11) cannot be as summarily dismissed as counsel has attempted to do.

Then, again, her repeated requests for him to bring home his gun from the office so that she could use it on him (p. 81, ll. 36-37)—likewise a statement which has not been denied—constituted a suggestion which naturally produces disquiet-

ing effects. Again, he states that she threatened to disfigure him in such a way that he would be of absolutely no use to another woman (p. 83, ll. 27-28).

Corroboration of her threatening attitude is found in the statements which she made to other persons to the same effect.

She told his mother that she was going to shoot him—"I certainly am going to kill him" (p. 87, l. 24, l. 32); on one occasion when he was deathly sick with his stomach, and asked his wife what she put in his dinner, he refused to let her prescribe for him; this frightened his mother and made her suspect an attempt to poison (p. 88, ll. 13-36). His mother said further "he was afraid of his life and I was afraid of his life. I really was happy when I heard he left the home" (p. 90, ll. 4-5). She told Helen McLean that she would kill him before she would let anybody else get him (p. 90, ll. 34-5). She told Mrs. Hutchinson that she was going to kill him (p. 91, l. 39) and that she would disfigure him so that "nobody will look at him" (p. 92, ll. 12-13). To Bessie McLean she said "If I ever knew he went out with another woman, I would shoot him or maim him so no one else would ever have him" (p. 93, l. 40; p. 94, ll. 6-7).

These various statements appellant, in rebuttal, hastens to categorically deny (p. 94, l. 31; p. 95, l. 28), but upon cross examination admits conversations with these witnesses on this very subject (p. 96).

It is admitted that there are no proofs of infidelity in the case. It is significant that when he took the young lady to supper, they went to Canary Cottage, a place to which in times past he had often taken his wife. Very im-

properly, we submit, counsel criticizes the term "restaurant" used by the Vice-Chancellor and characterizes the place as a "roadhouse" when there is absolutely nothing in the testimony to justify such criticism or characterization. Then, too, his visit to Father Aquala (p. 86, ll. 4-29) incurs counsel's condemnation. When we understand that complainant herself had gone to this priest (p. 50, l. 5) with accusations against a woman parishioner, to accede to the latter's request that he call upon the priest to clear her name of the stigma of those accusations, which was undoubtedly the purpose of the visit, can by no stretch of the imagination be interpreted as an evidence of guilty conduct. Counsel intimates that an innocent party would have made such a visit only at the priest's request. From such a theory we beg to dissent. If the incident is of any significance, the latter course would have involved a suspicion which under the circumstances is wholly lacking.

Extreme cruelty, as used in our Divorce Act (2 C. S., p. 2028) has been defined by this court as "such cruel conduct as endangers the safety of the person or the health of the aggrieved party, either actually inflicted or reasonably apprehended—*Cavileer v. Cavileer*, 94 N. J. Eq., 160, 119 Atl. 101.

This same case fixes the test which the defendant here must meet in order to justify his leaving, namely, "proof of extreme cruelty upon the part of his wife to the same extent as he would be compelled to prove if he were suing her for a divorce from bed and board on the ground of "extreme cruelty."

In the *Cavileer* case, *supra*, this defense did not avail because supported only by one isolated

incident—namely a scuffle in which the wife scratched or hit the husband's face. The element of apprehension of further personal injury did not figure in the case.

But even a single violent act coupled with reasonable apprehension is sufficient to meet the test. In the early case in the Court of Chancery of *Cook v. Cook*, 11 N. J. Eq. 195, the opinion reads at pages 196 and 197:

“It is true the single act of personal violence, standing alone, would not be sufficient; but the question is, whether the act was committed under circumstance to furnish a reasonable apprehension that the continuance of the cohabitation would be attended with further personal injury? It is not the amount or degree of personal violence actually used by which the court is governed in forming its judgment but it is the apprehended danger, which the actual violence committed may reasonably excite, against which the court will extend its protection to the injured party. As was said in *Evans v. Evans*, 1 Haggard's Ecc. Rep. 312, the court is not to wait until the hurt is actually done. Where the evidence shows a reasonable apprehension of bodily hurt the court will act. The suit for divorce on the ground of cruelty is substantially a proceeding *quid timet*. The court interferes not so much to punish an offense already committed, as to relieve the complainant from an apprehended danger. Bishop on Marriage and Divorce 456.”

The inquiry may be either to the safety of the person or to the health of the aggrieved party, and it is not necessary that it be actually inflicted; it is sufficient if it be reasonably apprehended. No rigid rule can be presented to define the extent of the injury, actual or apprehended, which will justify judicial interference—*Close v. Close*, 25 N. J. Eq. 526, in which the

Cook case was cited with approval. In *Smith v. Smith*, 40 N. J. Eq. 526, this court upheld the charge of extreme cruelty in a case where the acts of violence were slight but were associated with unjust accusations, jealous watchings and reasonable apprehension of bodily harm.

In *Doty v. Doty*, 92 N. J. Eq. 660, 122 Atl. 373, it was held that the conduct of the offending spouse (here the husband) need not consist of actual physical violence, but is sufficient if it endangers the wife's life or health, or renders her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife.

In the instant case both these factors are present. To start with, a wife with a jealous disposition and an ungovernable temper. Acts of actual violence in the form of two razor attacks. Apprehension of future injury raised by first her insistence that his gun be brought home for use by her on him, second the suspicion of poison in his food as testified to by defendant's mother, and third, by threats made not only to defendant but to others as well, that she would kill or permanently disfigure him.

The court below with his opportunity to observe the parties and their witnesses had, as this court has said, no rigid rule to follow, but was confronted by the real fact as to whether or not defendant's life or person would be endangered if he returned to his wife. Answering as he did the question in the affirmative he very properly refused to impose upon him a penalty for not so returning. In this, we submit, he was right.

## III.

**The Vice-Chancellor committed no error in directing the cancellation of the Ne Exeat Bond.**

Our examination of the printed record in this case fails to disclose any record or other proof showing that defendant was in arrears in the payment of alimony *pendente lite*, nor does the record include the petition and order to show cause alleged to have been presented in connection therewith, nor the order of the Court denying the same. With nothing in the record as presented to this Court we submit the attempt to argue upon mere assumptions is highly improper.

Such facts, if properly before the Court, constitute no reason why the bonds should not be cancelled.

Failure to comply with a court order for the payment of maintenance does not constitute a breach of a *ne exeat* bond—*Foote v. Foote*, 140 Atl. 312, 6 N. J. A. R. 357.

## IV.

**The request for counsel fee was properly denied.**

Once more counsel injects in his brief statements which find no basis in the record. Nowhere, other than in his brief, do we find Vice-Chancellor Backes' reason for postponing counsel fee, or that the proceedings in both courts were being prosecuted with borrowed money which she is obliged to pay back.

As we interpret the cases, including *Hopson v. Hopson*, quoted at length in appellant's brief and those therein cited, the Court of Chancery

on an application for alimony *pendente lite* may award a counsel fee to the wife's solicitor not only when the application is granted but also in a proper case when such application is denied; also that a counsel fee may be awarded on final hearing even though the relief be denied. But in both cases, such award is discretionary with the Court.

An award of costs in Chancery is discretionary except where otherwise directed by statute—*Harris v. McMurray*, 92 N. J. Eq. 1.

The statute controlling the award of counsel fees to unsuccessful litigants (1 C. S. Supp., p. 271) is Section 6 of the Chancery Act of 1915. We quote it in full:

“The Court, upon making any order or decree, *may* charge the successful party with costs, or a reasonable counsel fee, or both, in any case in which the *court shall deem it just so to do.*”

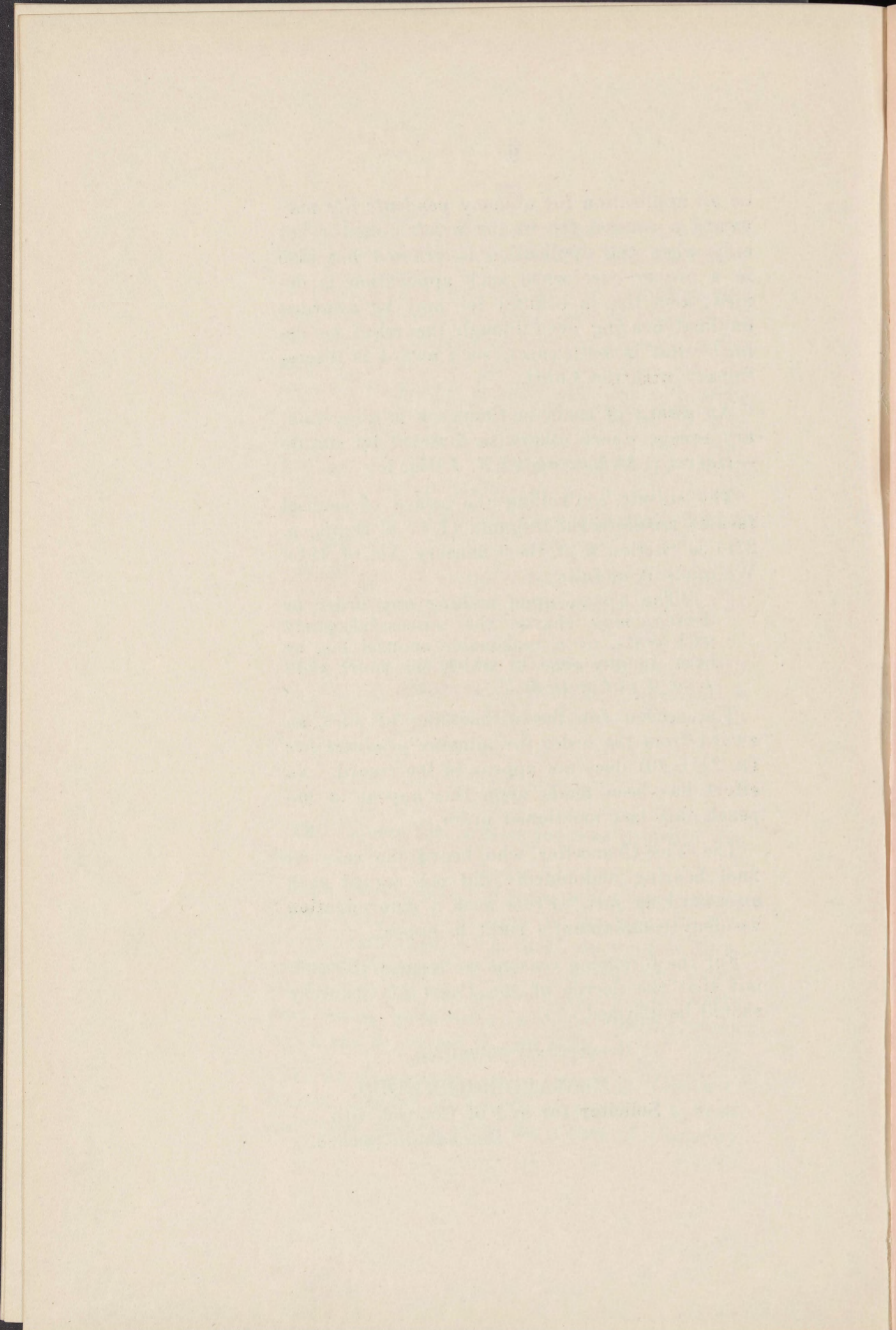
The reason for the withholding of such an award from the order for alimony *pendente lite* (p. 22, l. 10) does not appear in the record. No effort has been made upon this appeal to impeach this last mentioned order.

The Vice-Chancellor who heard the case on final hearing undoubtedly did not regard such an award as just. From such a determination we deny complainant's right to appeal.

For the foregoing reasons we respectfully submit that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

HOWARD ISHERWOOD,  
Solicitor for and of Counsel with  
Defendant-Appellee.



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