

New Jersey Court of Errors and Appeals

Between

SARAH IRENE MARTIN,
Petitioner-Appellant,

and

PHILETUS BRADLEY MARTIN,
Defendant-Respondent.

On Petition,
&c.

Appeal from
Chancery.

10

BRIEF FOR APPELLANT.

20

Statement.

This is an appeal from a decree rendered in the Court of Chancery of New Jersey dismissing the petition of Sarah Irene Martin, the appellant here, without prejudice, in which she prayed for a divorce a mensa from her husband Philetus Bradley Martin on the grounds of extreme cruelty. The hearing was before Hon. Nelson B. Gaskill, Advisory Master, to whom the matter had been referred by the Chancellor. The appellant introduced evidence of physical violence (pages 90-99); gross abuse of marital rights (pages 94-95); false charges of adultery made against her by her husband (page 98); of a general run down and wretched physical condition shown by her great loss of weight (pages 95, 99, 127, 153). All of these charges were corroborated by one or more witnesses. The husband entered a general denial of the charges.

30

40

Specifications.

1. The Chancellor should have found and adjudged the allegations of the petition to have been proven and should have entered a decree delivering petitioner from the bed and board of the defendant.

10

2. The following question asked of defendant should have been allowed (page 213, line 28) :

(Question by Mr. Rosecrans.)

"Q. Did you ever ask your wife to come back to you after September 28, 1913?

Mr. Morrow: That was after the suit was commenced. I object to what happened after the suit was begun.

20

The Court: I will sustain the objection."

POINT I.

To justify a wife in separating herself from her husband such conduct of the husband must be shown as will reasonably convince the Court that her life or health was in danger, or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of the wife, or that conduct of the husband, if continued, would have brought about these conditions.

30

The above rule was laid down in Taylor vs. Taylor, 73 N. J. Eq., 745, at 748, and it is the contention of the appellant that such conduct as above described did exist on the part of the husband and

40

that it was fully and clearly shown by the testi-

mony. The discussion of the evidence produced supporting this contention is divided into four topics as follows:

(1) PHYSICAL ABUSE AND VIOLENCE.

Appellant testified that on many occasions defendant threw her violently about and hurt her (page 90) and that he kicked her (page 93, line 10) and has habitually used abusive language and used physical violence toward her in other ways (pages 94 to 99). In this she was positively corroborated by Clyde Burgstresser, an honest farmer boy who saw defendant throw his wife violently against the wall in their home at a time near the end of their cohabitation (pages 135 to 136). Defendant admitted some of these occurrences (pages 192 to 193 and 198). 10

(2) GROSS ABUSE OF MARITAL RIGHTS. 20

Appellant testified that her husband used violent methods in his sexual intercourse and used his fingers until she bled (page 94, line 20, page 95, line 33), and demanded intercourse when she was suffering from bowel trouble and was ill (page 92). Dr. Gordon corroborated this as much as any one could when he said that on his first examination of appellant made about the time she was forced to leave her husband he found abrasions at the outlet of the vagina and swelling at the urinary orifice (pages 142 to 143) which could only be caused by external violence (page 144). On his second examination made two months after appellant was forced to leave her husband he found that these conditions had subsided and the parts had become normal (page 142, line 30, to page 144). 30

As grounds for divorce, see

Moores vs. Moores, 16 N. J. Eq., 275;
English vs. English, 27 N. J. Eq., 579. 40

(3) FALSE ACCUSATIONS OF ADULTERY.

Appellant told of times when her husband accused her of adultery (page 89) and endeavored to place her in compromising situations with other men (pages 150 to 151). Mrs. Hester Rose corroborates accusations of adultery with two different men, when she testified that defendant accused his wife of adultery in conversation with her on two distinct occasions (page 130, line 30, to page 132).

10

As grounds for divorce, see

Garcin vs. Garcin, 62 N. J. Eq., 189;

Thomas vs. Thomas, 20 N. J. Eq., 97;

Spence vs. Spence, 74 N. J. Eq., 786.

It must be remembered that it is difficult to bring much corroborative proof of the charges set forth in the above three topics because of the privacy which decency and the rules of society impose upon such incidents. But when it is considered that *each* allegation is corroborated by witnesses unshaken in their testimony, it is indeed fortunate for the appellant and lends weight to her entire testimony and is indicative of more frequent transgressions upon the husband's part than those which happened to be corroborated.

20

30

(4) WRETCHED CONDITION OF WIFE, and how very strongly, clearly and decisively corroborative of the three above topics and relative to the general effect on the health of the appellant is the testimony of the wife when she says that her life became unbearable and that she became weak, run down and nervous (page 95) (particularly during the last year of cohabitation), and that within two months after leaving her husband, her weight showed the phenomenal gain of seventeen pounds; namely, from 109 pounds at the time of

40

leaving her husband (page 99, line 25) to 126 pounds two months later (page 99, line 40), which later figure she says was her usual weight (page 99) before becoming run down and which weight she now retains (page 153). And this loss of weight cannot be attributed to any particular vicious disease, for appellant testified that she had not consulted a physician until shortly before filing her petition in this case (page 250, line 1). The testimony of Edith Wilson Rosecrans who weighed appellant at the periods above mentioned and who produced a record of these weights shows the weights to be true (page 140). Dr. Gordon testified that on his first examination which was made shortly after leaving her husband, appellant was in a nervous condition and varicose veins were prominent and that on these occasions two months thereafter the wife's general health had greatly improved, she had gained much in weight, was less nervous and the varicose veins were less prominent (page 143). Such evidence as the above would have been called by Vice-Chancellor Gray "strongly supporting" evidence; which it is indeed.

Weigel vs. Weigel, 60 N. J. Eq., 322, 329.

Each of the above named and discussed topics are in themselves cause for divorce a mensa, but if each standing alone is not deemed to be sufficiently corroborated, then certainly when taken together and the clear convincing proof of the gain in the weight and the general health is added to them, they surely are sufficient to support the rule first set forth in Taylor vs. Taylor (supra), and in particular the rule laid down in Close vs. Close, 25 N. J. Eq., 526, where the Court said:

"Where *any* physical injury has been accompanied by such persistent exhibition of ill

feeling and opprobrious epithets as will endanger her health or render her life one of such discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, a decree of separation will be pronounced."

- 10 How could it be possible that a woman of middle age, without means of support of her own and dependent entirely upon her husband's bounty, would desire to leave her husband's roof to work for her living and be partly dependent upon her children (page 100, lines 1 to 30), and within two months after taking that step gain seventeen pounds in weight, if she had not led a most miserable existence with her husband which endangered her health? The final acts of her husband which
 20 caused her to leave him through fear brought on by months of abuse are fully and honestly described by her (pages 98-99).

POINT II.

- The testimony introduced in behalf of defendant does not contradict the salient parts of that of the appellant and her witnesses but some of it**
 30 **strongly corroborates her testimony.**

- Defendant admitted that he ascertained the name of a Reno, Nevada, attorney and wrote that attorney, asking him what the grounds for divorce were in Nevada (page 212, line 24, to page 213, line 25), thereby corroborating his wife's testimony as to the contents of the letters in that particular (pages 151 to 152) and explaining the reasons for
 40

his actions in regard to his wife—he was tired of her and wished to be rid of her. He admitted some scenes, but of course denied that he was ever at fault, but wrote notes bearing instructions to his wife instead of speaking them (page 211), which notes are read into the evidence (page 96, line 25), and yet he says that he did not wish to quarrel. Since the separation he never wrote his wife a line or bothered about her in the least, according to the testimony of the wife, which was not denied (page 100, line 30). Is that the way a husband who claims that he tried in every way to provide and care for his wife would naturally do? Would he not try in some way to obtain a reconciliation? It must be remembered that the appellant was his third wife (page 209). 10

Louis Konkle, brought by defendant as a witness at one of the arranged meetings with appellant, says, on cross-examination, that he admonished defendant for the way he talked to his wife (page 170, line 35). Mrs. Coursen (page 178), Mrs. Lupton (pages 175, 185) and Mrs. Jennie Martin (page 161) barely knew anything of the home life of these parties, as they only visited a few times. 20

Jerry Martin was the defendant's nephew, and when he says that the appellant told him that her husband never struck her and that this was said *after* the action for divorce had started and appellant's affidavits were made (page 156), his testimony can hardly be trusted to overthrow the denial by appellant (page 108) and the corroboration of actual infliction of violence by the disinterested witness Burgstresser. Dr. Carhart said that defendant could lift 100 pounds (page 181) and is a hustler (page 181, line 12). Defendant would surely have enough strength to throw his 109 pound wife about, though he so strenuously objected that he would not have the strength to do that if he 30 40

wished. Many men who are ruptured can do hard manual labor.

Emmet Divers' testimony, which was evidently introduced to show that it was possible for the witness Burgstresser to have seen the assault through the window, absolutely failed in this purpose as will be readily seen from a perusal of his cross examination which ended with the following question and answer:

"Q. And you can see this window from the path? A. Yes, sir."

William R. O'Neill came from Florida to testify (page 234), and admitted that he was the advisor of the defendant (page 235, line 30) during defendant's sojourn in Florida. When he says that he arranged the meeting between Mr. Slemons, Mrs. Martin and himself in March, 1913, at his office, because as a church dignitary he wished to see peace and harmony reign in the household of his flock (page 230, line 30), but denies that he arranged this meeting at the request of the defendant (page 238, line 20). That brands his story as utterly improbable. He never knew Mrs. Martin intimately at all, for on examination he admitted that he never called at her home (page 236, line 25), only passed the usual salutation when he met her in church and saw her several times on business in his office (page 236, line 30). Is it conceivable that Mrs. Martin or any other wife would pour out the story of her marital troubles to a comparative stranger at an arranged meeting? Is it not natural for a woman, a wife, to hide her deep troubles—troubles of this kind—even from her best friends and put up a bold front to the world as long as possible until the situation became unbearable? I suppose she

did say something about money at these meetings, for she had to say something to answer the queries. What wife would not complain when her husband purchased all the household supplies himself, allowed his wife no freedom in this respect, nor any money for her own use when he could afford and lavished presents upon relatives (pages 96 to 97)?

Is the lack of money the thing which caused the loss of seventeen pounds in weight? Where was the affluence after she was forced to leave her spouse and then gain seventeen pounds? It does not seem probable that there ever was a second meeting between Mrs. Martin and these parties, in which she stated that her husband never used physical violence towards her. Mrs. Martin denies it (page 248). At best, this story does not affect the corroboration of physical violence at Blairstown, *after the return north in 1913*, for the conference was held before this. The testimony of O'Neill, the advisor-friend of the self confessed weak, meek and loving husband is, to say the least, colored to suit the occasion. The meetings between O'Neill, Konkle and others, in which the wife was submitted to questioning, go hand in hand with the position of the defendant in trying to make evidence against his wife, so as to come within the divorce laws of the State of Nevada, which defendant had inquired about.

10

20

30

40

POINT III.

10 **No attempt made at reconciliation by the defendant husband during more than a year of separation precludes him from asking for a decree in his favor which would mean the sending of his wife back to his bed and board, as by which conduct it is legal inference that defendant hates his wife and further marital association between parties past middle age under such conditions might be dangerous for the wife.**

20 In cases of desertion of either party, it must be shown to be against the will of the complainant. In the specific case of a wife leaving her husband without 'just cause, the rule laid down by our Courts requires him to seek his wife and attempt reconciliation. If he does not do so, the law presumes that the absence of the spouse, is *not* against his will but that he in fact desires the separation and no divorce will be granted him. In these cases, the husband is, of course, the complainant. In the case at bar the wife is the complaining party, because she says that she was forced to leave her husband because of his cruelty, a just cause. In 30 this case the wife testified that her husband made no attempt at reconciliation (page 100, line 30), which was not denied. Therefore, by the rule above stated, it is contended that it may be legally inferred in actions for divorce a mensa that her absence from his bed and board is not against his will, but that he, in fact, desires her absence and is tired of her. And if he desires her absence and is tired of her, surely he cannot ask this Court for 40 a decree in his favor which would mean that his

wife would be sent back to his bed and board. For his conduct shows that he *does not* wish his wife to be sent back to his bed and board and he is estopped by his conduct from denying that this is the case. Therefore, on corroboration of the testimony given by petitioner, which shows legal ground for divorce (as this does), a decree in favor of the petitioner is the only thing that can be pronounced. 10

That part of the opinion of Vice Chancellor Grey in *Wood vs. Wood*, 63 N. J. Eq., 688, on page 690, is pertinent to this argument where he says: "As to the element of obstinate desertion, the rule is well established, as declared by this Court in the *Bowlby* case, that even if it be shown that the original separation was wilful and wrongful on the part of the wife, and that she left her husband when she ought not to have gone, yet, under these circumstances, the husband, being the head of the household, was bound to do what he could, as a just man, to bring about her return. The evidence shows that in the present case the husband made no effort to induce the wife to resume their marital relations. Indeed, the tendency of the proofs is to indicate that he was well content to have her stay away, and that he desired to resume the privileges of an unmarried man." 20

Of course, the case last cited (*Wood vs. Wood*) 30 was one brought by the husband on the ground of desertion. It is not contended here that in a case for divorce a mensa where the wife is petitioner, that it is absolutely necessary for the husband to make attempt at reconciliation in order to obtain a decree in his favor. For in a case where the charge of cruelty made by the wife as petitioner were not cause for divorce a mensa or were not sufficiently corroborated, then her petition would, of course, be dismissed, irrespective of whether or 40

not the husband made attempt at reconciliation. But it is most strongly urged that if the petitioner has shown good ground for divorce a mensa and her testimony has been sufficiently corroborated so as to establish a prima facie case (as has been done in this case), then the failure of the husband to attempt reconciliation precludes his being granted a decree in his favor, for it should be legally inferred that he is well content to have his wife stay away and that he is tired of her and that further association together under the circumstances would be dangerous for the wife. In short, such conduct of the husband in not attempting reconciliation since the commencement of the suit, is the barometer which conclusively indicates the character of the husband's attitude toward his wife.

A search of the authorities reveals two cases in which the wife was petitioner, suing for divorce a mensa on the ground of cruelty, which have bearing on this point; namely, *Cook vs. Cook*, 11 N. J. Eq., 195, and *Costell vs. Costell*, 69 N. J. Eq., 218.

In the *Cook* case, the husband's attitude towards his wife, since the commencement of the suit, is shown by the attempts of the husband to injure his wife's character and Chancellor Williamson, in that part of his opinion, on page 200, says: "After such an attempt, it can scarcely be believed that the defendant would appear before this Court, by his counsel, and ask that his wife might, by the decree of the Court, be sent back to his bed and board. The Court would hardly permit her to do so, if she were willing. It may be said that the Court must look at the case as the bill presents it, and must confine itself to matters which occurred previous to the commencement of the suit. But the Court may look at the conduct of the husband towards the wife, since the commencement of the suit, for the purpose of giving character to

the acts which are relied upon as grounds for divorce."

In the Costell case, the husband's attitude toward his wife during the litigation is again the principal reason for a decree in the wife's favor. Vice Chancellor Grey, at the bottom of page 221, says, in speaking of the conclusion he is led to reach by the husband's attitude: "Her husband has lost his affection for her and wants to be rid of her." And later, on page 222, observes, "It appears from the husband's conduct that he hates his wife, and at their time of life I see no reason to believe that there is any probability that his feelings will ever soften, and their further association together as husband and wife may be dangerous." It will be noted that in this case, as in the one at bar, the parties are no longer young (C. B., page 250), and that fact was taken into consideration by Vice Chancellor Grey as favoring the granting of a decree to the wife for the reason argued. 10 20

It is urged in the case at bar, for the reasons already fully discussed, that no attempt at reconciliation is also such conduct on the part of the husband as will furnish legally sound reason for drawing the same inference and arriving at the same conclusion as was reached in the Cook and Costell cases. 30

POINT IV.

The question asked of defendant relative to his conduct after the suit was commenced should have been allowed.

The case of Cook vs. Cook, 11 N. J. Eq., 195, and Costell vs. Costell, 69 N. J. Eq., 218, are authority to sustain the contention that proof of 40

the conduct of the husband towards the wife after the commencement of the suit for the purpose of giving character to the acts which are relied upon as grounds for divorce is admissible as evidence. These two cases have been discussed under Point III.

10 It is alleged that it is manifest that the ruling here complained of was erroneous.

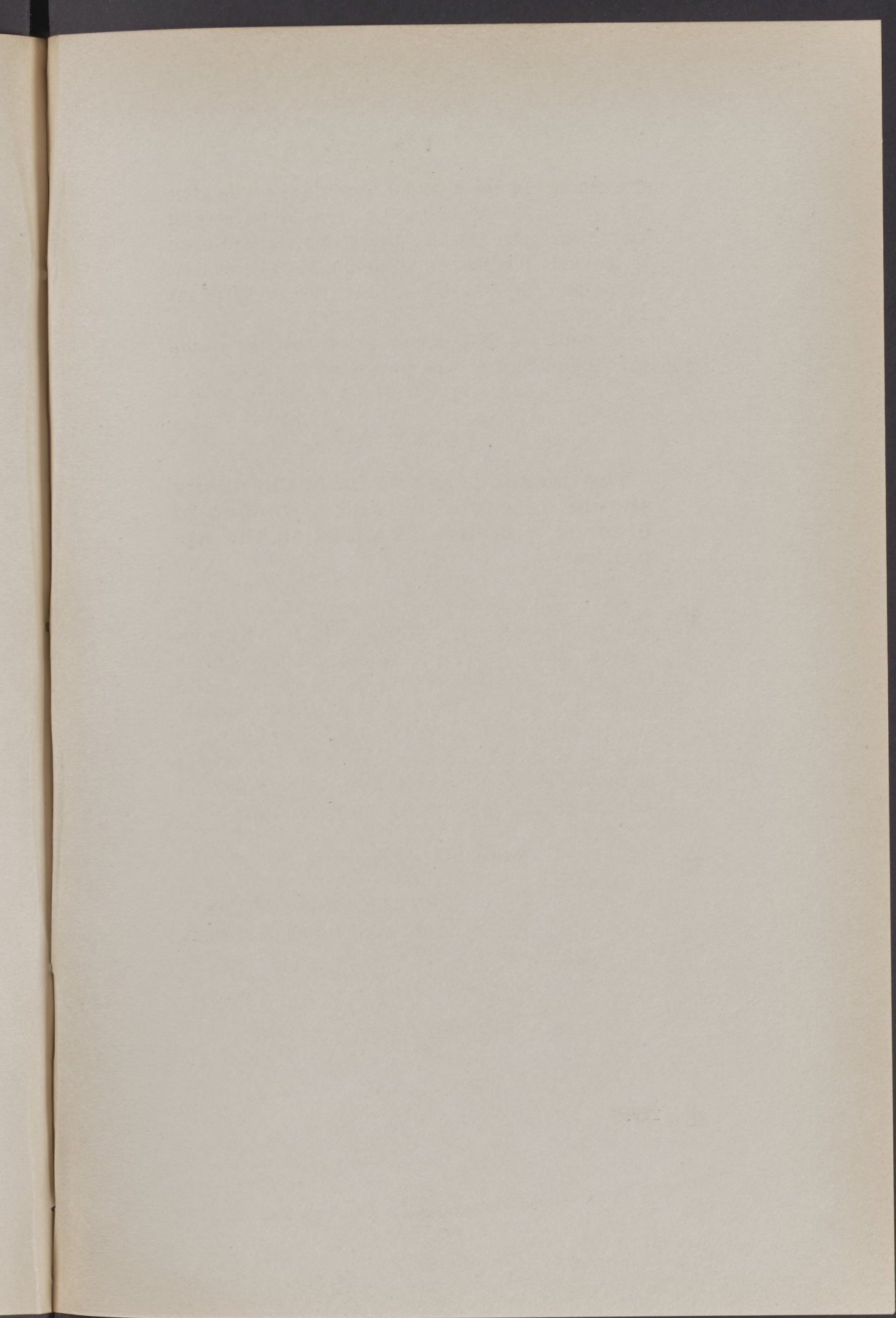
POINT V.

The decree of the Court of Chancery should be reversed and a decree of divorce a mensa granted to the appellant.

20 The Court is earnestly requested to examine the whole testimony, for it is inconceivable why a decree in favor of the wife should not be rendered in a case like this where the proofs are so varied and ample and all tending to show conclusively that this poor woman was leading a miserable life with her husband, and that it is impossible for her to resume the relation of wife with the defendant without grave danger to her health and life.

30 Respectfully submitted,

EGBERT ROSECRANS,
of Counsel with Appellant.



THE HISTORY OF THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

AND

THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

AND

THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

AND

THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

AND

THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

AND

THE

REIGN OF

CHARLES I.

BY

JOHN R. H. H.

NEW JERSEY COURT of ERRORS and APPEALS.

Sarah Irene Martin, Petitioner-appellant, and P. Bradley Martin, Defendant-respondent.	}	On Appeal from decree in Chancery.
--	---	---------------------------------------

Brief of Wm. H. Morrow, Belvidere, N. J., for respondent 10

POINT ONE.

The testimony of Clyde Bergstresser, for the appellant,—the only witness who in the least corroborates the petitioner, is not worthy of credit.

A statement of the chronological order of the proceedings in this cause from the beginning will help to a better understanding, not only of Bergstresser's story, but also of the whole case. His evidence, if true, should have been produced in the very first proceeding. 20

The petition for divorce was filed Sept. 20th, 1913.

Its second paragraph sets out the different grounds of complaint which she had against her husband.

It was sworn to on the same day of its filing, and it would seem that application for a writ of **ne exeat** was then made. It may be that the petition and affidavit was insufficient to justify the order for such writ, for the order was not made on that day; on the next day additional affidavits were filed, tending to show a purpose on the part of defendant to leave this state for his Florida home, and thereupon the order for the issuing of the writ was made and the defendant was arrested by the sheriff on the same day. 30

The affidavits were served on the defendant on the same day, and counter-affidavits upon which was based a motion to discharge the order and the writ were speedily served on petitioner's counsel, and thereupon, on Oct. 7, 1913, petitioner made a further lengthy affidavit, repeating her charges at much length.

Her affidavit was accompanied with that of Hester Rose and Anna Yetter and Dr. Gordon, the latter having reference to the physical condition of Mrs. Martin.

I do not refer to the contents of these latter affidavits, they not being offered in evidence, but mean to use the affidavit of Mrs. Martin, which was offered in evidence.

It will appear by the record that the writ of *ne exeat* was discharged.

I do not mention that circumstance to influence the action of the court on the main question, but I do state, 10 what appears by the files, that Clyde Bergstresser had made no affidavit up to that time.

On the 17th day of December, 1913, petitioner gave notice of an application for counsel fees and alimony to be made on the 23rd day of December, and that application was founded on a petition of Mrs. Martin, accompanied by a long affidavit in which she set forth particular instances of alleged cruel treatment by her husband, going into that matter with much particularity, although nothing 20 additional to the affidavits by her already made was contained in this last affidavit.

Her affidavit was sworn to on the 9th day of December, 1913.

The hearing seems to have been postponed from time to time, and on the 7th of February, 1914, Clyde Bergstresser made his affidavit in this cause, and that was the first intimation given by any charge in petition or matters set up by affidavit that Mr. Martin had on the occasion referred to by Bergstresser seized his wife by the 30 throat with both hands and bending her back over the table as though choking her and then throwing her over against the wall and her screaming or hollering, substantially as stated in his testimony.

He says Mr. Martin had her by the throat.

And this he says was in the month of May, 1913.

And he says he told no one until a Mr. Beatty came to see him, asking him if he knew anything about it, and Beatty did not ask him if Mrs. Martin had been grabbed

by her husband and pushed against the table and against the wall.

The witness says he also told Mr. Rosecrans that same summer, in July.

This was, to the Vice Chancellor to whom the application was made, surprising; it would be surprising to anyone that so serious a matter as this should have happened,—a thing which Mrs. Martin could not have forgotten, to which importance was attached by having Beatty talk to Bergstresser to see what he knew, and yet, in no one of three affidavits, and nowhere in her original petition or in her petition for alimony did she make any mention of this circumstance. 10

And, **more striking still, she made no mention of it on the witness stand.**

To be sure she told about her husband jerking her around and pushing her around, but she absolutely failed to mention this circumstance, one of so much importance to her.

It is not necessary to invoke the Vice Chancellor's surprise at these omissions; anyone would think that if such an event occurred at Blairstown, after all that is alleged to have happened in Florida, and with so short a time before the filling of her petition, that petitioner would have mentioned it with all its details. 20

Had she, on the hearing of the cause, stated this affair, with as much particularity as Bergstresser did, it would be natural for her to expect to be asked why she had not before told this story.

And the story is of so much consequence and pertinence that her counsel would be obliged to explain why, if Bergstresser made this known to him in July, he had not embodied it in one of the numerous affidavits drawn by him in support of his several applications in the cause. No explanation is made of the omission to state this affair. 30

Mr. Martin's denial of Bergstresser's testimony and Bergstresser not corroborated by even the petitioned, I think every court would refute his story as unworthy of confidence.

And I believe by the testimony of Mr. Divers it would be impossible for Bergstresser to have seen what he says he saw.

I think the rules of pleading would have required the petitioner to have set up this instance of almost brutality, because it is brutal for a man to seize his wife with both hands by the throat and push her back against a wall and cause her to scream out so that she is heard out of the door in the night time.

- 10 And it would further seem that with a case that had on two occasions before been considered weak, too weak to justify relief, the petitioner herself would have attempted to sustain her case by testifying to this single circumstance, which if true, is of great force.

I call attention to this matter at the beginning of my brief in order that it may not hereafter be overlooked.

POINT TWO.

- 20 An examination of the petition originally filed, disclosing how meagre and indifferent are the charges of cruelty and other abuse alleged to have been sustained by the petitioner.

There is, however, one matter alleged with much distinctness, and that is repeated in her subsequent affidavits and complaints.

And that is that he bought her hardly enough of the necessities of life, and that he stinted her in things he bought for her to eat.

- 30 Now, she says he always told me I should make out a list of trade and I put on the things—I knew pretty well what he would buy and what he wouldn't, and **those things I put on and he would bring them up.**

Page 97—lines 20-23.

But he did not permit her to get things herself.

She probably knew that if she reiterated her charge that Mr. Martin would not provide for her things to eat,

he would bring any amount of proof to show the contrary; but, with this admission on her part, it was not necessary to bring grocers, and bakers and butchers to prove that he bought what she required and the articles that she put upon the list.

And this statement of hers evidently refers to the general way in which they lived, because it is in answer to the question, who purchased the supplies for the house?

I do not know what the prevalent rule,—if there is any rule, about who shall buy the supplies for a household; but I know of no authority which requires the husband to give money to his wife to buy things for their joint subsistence. 10

But there is no evidence in this case, not a shadow of it, that this woman has been deprived of things necessary to eat.

She and Mr. Martin knew each other pretty well; they were cousins; I think it appears somewhere in the case that she had been his housekeeper for some time before their marriage. 20

They were married November 4, 1909, and soon after went to Florida, where Mr. Martin had been for many years accustomed to go for his health during the winter months.

She knew of his physical condition.

He had heart trouble and rheumatism, he was sometimes very sick with heart trouble, and she had seen him suffer so much that he would be almost blind, and she believed Mr. Martin when he said that it was a physician's advice that he should spend his winters in Florida. 30

See her testimony on pages 103, 104.

POINT THREE.

Mrs. Martin's testimony is not corroborated by any other testimony. In truth it is contradicted by all the testimony.

Now, in this connection, I call attention to the testimony of Mr. O'Neal, and I am sure the court will agree with me that Mr. O'Neal's standing in the community as

well as his carefulness in giving his testimony, not answering questions until he fully comprehended them, entitles him to credence at the hands of the court.

Mr. O'Neal on the occasion of the Martins' first coming to Florida, as a matter of courtesy, showed them several houses where they might take up light housekeeping; and he took them to no mean part of the city, but then and each succeeding year, the years 1910, 1911 and 1912, they lived in the best residential parts of the city of Orlando.

10 Now, Mr. O'Neal saw them occasionally, he saw Mrs. Martin from time to time in her various pursuits, and, so far as he observed, she had the appearance of the well-dressed, well-to-do woman, in good physical condition.

Mr. O'Neal says that she frequently came to his office on matters of business, and he saw her attending the church with which he was connected and met her at church festivals, etc.

The first difficulty Mr. O'Neal had knowledge of was when he took these parties to purchase a home in Orlando to which they might come for the winter; they desired to purchase a house and establish a home there.

This was probably in the spring of 1912, and then Mrs. Martin objected to the purchase of a home there unless Mr. Martin would also provide a home in New Jersey.

See Mr. O'Neal's testimony, page 232.

Mrs. Martin, in her testimony, admits that she told her husband she would stay home, that is in Blairstown, and keep the house instead of closing it up, because it did not agree with her in Florida; see page 104.

30 She had an interview at Newton with Jerry Martin long after the beginning of this suit; it was in the summer of 1914; and this interview was at her solicitation.

Mr. Martin was on the street and a Mr. Oliver told him that Mrs. Martin wished to see him, and then a Mr. L' Hommedieu came down and said Mrs. Martin, "your Aunt Rene," wants to see you. P. 155, 156.

The witness did not know that Mrs. Martin was in Newton.

In that conversation she told the witness that she wanted a nice cozy home, or something similar to that,

and wanted what money she thought she should have to use.

The evidence of Mr. Louis A. Konkle, substantially in the same direction, that she was not pleased with the South, that the climate was sluggish and she didn't like the climate, there wasn't much life about it it was not very elevating, especially in the summer or the warm part of the season. Read his evidence—L. P. 165-173.

In this connection, it will be noted that she was never required to live in the South during the summer season; 10 they did not go there until the cold weather began and they came North early in the spring, as soon as the climate was suitable to Mr. Martin's condition.

POINT FOUR.

There is no evidence in this case that Mrs. Martin was ever sick enough to call a physician; she never requested one to be called; she made to no one complaint of her condition; she said she was complaining a good bit, although she didn't complain to **anybody else** very much. 20

Then I asked her if she had ever consulted any physician about her physical condition until she went to see Dr. Gordon at Blairstown, shortly before the filing of her petition.

In truth, she did not see Dr. Gordon at all, so far as the evidence shows until the 3rd of October, 1913, five days after the filing of her petition; and her consultation with him then was probably an afterthought, and in preparation for this cause and after her husband had been arrested and he had given notice of an application to be discharged. 30

And, among all her acquaintances at Blairstown, where she had spent every summer since her marriage, not one has been called to say that she appeared to be sick.

Her next door neighbors, Mrs. Rose and Mrs. Kitchin made no mention of apparent illness.

Dr. Gordon is the only person who says anything about her condition and that is she was not in good health and run down and nervous and agitated.

And she probably was, because she was entering upon this course of litigation with her husband.

And, it will be noted that Dr. Gordon examined her only as to a special condition which could not have affected her general health.

See his testimony.

I will hereafter deal with his testimony as to these special conditions he claims to have found.

- 10 And I want to call the attention of the court to the absolute absence of testimony showing that Mrs. Martin was physically unable to perform every household duty required of her; she did that constantly and unvaryingly.

Her own diary, Pages 226-261, which I have put in evidence, shows that during the summer of 1912, after the differences between her and her husband had become, as she alleges, somewhat serious, she was engaged in the various duties of a house-wife, cooking, washing, cleaning, repairing and taking care of her house, and sewing for others.

- 20 She went out visiting, she called on her neighbors, she went to church and prayer meeting; and no person has come here to state that anyone observed the least indication that this woman was an invalid.

We have her own unsupported testimony on this point.

POINT FIVE.

And there is another striking feature of this diary.

- 30 There is not a line indicating that Mr. Martin ever offered the least violence to her. They were apparently not on good terms, and she says he did not speak to her; but as to any violence being used or threat of violence, her own story,—a natural recital of the relations between them, shows there was nothing from which she had reason to fear.

I believe the authorities require that her testimony as to the frequent abuses to which he is alleged to have subjected her must be corroborated by other evidence in the cause.

Just as much as though her evidence was that of strik-

ing her, kicking her, pounding her, cutting her face, or any other physical injury.

And yet, we have only her own story as to this alleged treatment and abuse.

And Mr. Martin denies the excesses imputed to him.

She had been a widow four years when Mr. Martin married her.

She had given birth to four children.

She was 60 years old in June last; she must have been 54 years old at the time of her marriage in 1909. One 10 would suppose there was not the least physical impediment to sexual intercourse. In truth, she says there was none,—none for the first two years. She says he was “large;” but naturally he was no larger in 1912 than he was in 1909.

She says, page 19, that the only occasion for difficulty was when he did not go at her mildly. Her story is that he did not go at her otherwise for the reason that she did not resist him; her resistance was not the occasion of his going at her “all at once,” and it was impossible to ascertain 20 from her any statement why this man who had been for two years enjoying her embraces in a natural way and without any force and without causing her any pain, should all at once, without any cause whatever, save that of wanting to be brutal and cruel to her, have “Gone at her all at once,” as she says,—and, in addition, deliberately and unnecessarily have dugged his finger nails into the mucous membrane at the outlet of her vagina, so as to cause an open sore.

She, herself, is absolutely unable to state any occasion 30 for such action on his part, and it passes comprehension to think of what satisfaction he could possibly derive from such conduct. If he did this he must have done it from sheer wantonness and ugliness! Such a thing was never heard of.

She admits that it must have been simple brutalized cruelty and indecency on his part.

And there was nothing of the sort for the first two years of their married life.

She says it was not because of resistance on her part,—it was that he wanted to abuse her. See her evidence.

How did it happen, if there was no difference between them, how did it happen that all at once, without any reason that she can give, he became a beast and a brute?

I have no doubt that she refused him the privilege he sought, and to which he was entitled,—and that she claimed, on one occasion, the bowel condition was reason for her non-compliance. But who corroborates her on
 10 this point? He denies it; he says he sought the favor and that in the beginning she did not object; but afterward, when she began to demand money, she began to make objections, and she objected strenuously, very much so. "She told me when I might have connection with her and when I could not." And she told him he could have that gratification **when she saw fit**. Not when she was physically able to gratify it,—**but when she saw fit**. And Mr. Martin denies most emphatically, that he
 20 ever thrust his fingers into her vagina or scratched her; that he never threw her around on the bed or anywhere else in order to have intercourse with her.

His detailed account of what happened on the night when there was so much noise made that some one came to their door is found on page 192-193, and I submit that this account is just as likely to be correct as is hers,—and it is rather more natural. She slid out of the bed; she made no complaint of sickness; she made no excuse but just grabbed up her dress and went out of the room; she was gone a half hour and then returned he attempted to
 30 caress her and then the brawl began. I need not repeat what he said followed.

I have no doubt one was as noisy as the other and both equally to blame for disturbing the peace of a household. His physical condition was admittedly such as to make it impossible for him to resort to the force which she says he used against her in the night-time, with his truss off.

There have been many brawls between men and their wives in the night-time, and for the same reason, and I presume there always will be; and I venture that in most cases they are the result of a hold-up by the wife in order

to compel the husband to comply with her demands for money or something of the same sort.

It is a powerful lever in the hands of a determined woman.

And it generally succeeds.

Now, there is a simple circumstance in this case that demonstrates the fact respecting this sexual question to be exactly contrary to what Mrs. Martin testifies. When the Martins came north in April, 1913, after all these things had happened, they went, by arrangement, to the house of Jock Martin and staid all night there; and they occupied the same room and bed. See page 199, and she heard Mr. Martin testify to this and did not contradict it. 10

He says he had talked over their differences there that night,—that he had coaxed her to make up their differences and let the past be the past, and then they agreed to go back to Blairstown and occupy their house there as they had done before; and that night they had sexual intercourse, and that without any objection on her part. And this she does not deny. 20

This simple fact demonstrates beyond any question that it depended absolutely on her will whether or not their sexual relations were agreeable and indulged in without trouble on the part of either.

And Martin says this was the first time for five or six weeks,—I presume always after the night when they had the brawl in Orlando; for he says that after that night she made for herself a nest in a rocker and slept there.

Then, they spent two or three days at Dr. Dearborn's house, just across the way, and that during that time and for some weeks after they lived happily together for some months, and although there may have been some little difference between them there was nothing serious; and this gives the lie to Bergstrasser's wild story of a fight some time in May! 30

Mr. Martin says he was away during May and June, fishing. Mrs. Martin packed her grip and went to visit her daughter.

I judge that it was the daughter, Mrs. Shipps, whom Martin invited to come and see them, and after Mrs. Mar-

tin came home she began again; she found fault with the things he bought and brought to the house, meat at 25 to 30 cts a lb. and this she called bum meat; Martin says he bought good things.

Then she began again to demand a share of his money.

I think the piece of testimony given by Dr. Gordon is most remarkable.

If Mr. Martin had inflicted the injuries, when was it done? I do not believe they had occupied the same bed
 10 in a month before the separation. Certainly not after the night of the 27th Sept. And she went to Dr. Gordon on the 3rd Oct. He saw some half-healed abrasions. But there is not a line of testimony as to how these abrasions were inflicted or when or by whom. Mrs. Martin, on her re-direct exm. was asked if she had visited Dr. Gordon and gave the dates of her visits; but not one word about the abrasions,—who did it or when or anything on the subject. Who says Mr. Martin did this? Why did she not go to him or to some one and exhibit these evidences
 20 of his violence soon, almost right away after they were inflicted?

This evidence of Dr. Gordon is not connected by either the petnr. or by any other thing in this case, with any act by Mr. Martin.

There is not in this entire case a single line or word of testimony corroborating that of Mrs. Martin respecting his sexual abuse of her.

Suppose her suit was founded on any other physical abuse of her,—assault and battery, kicking her, striking
 30 her, slapping her face, choking her, would there not be required some other evidence beyond her own?

Would even the exhibition of a half healed scar on her face, five or more days after the separation of the parties, be sufficient without in some way fortifying her charge that the husband had inflicted them?

She does not even say that before she went to Dr. Dearborn's office her husband had inflicted these injuries upon her.

But, apart from all this, we have his sworn denial that he did never offer violence in her private parts.

She said nothing of the kind in any affidavit she ever made in the course of this proceeding; the affidavit of Gordon was not submitted until Oct. 7th, and she neither before or afterwards said one word about these particular injuries; she said something about Martin's scratching her with his finger nails, but no suggestion that these particular hurts were the result of his scratching her. If, when she made her first affidavit, she had sustained these injuries at the hands of her husband, why had she not shown them to some person? Why wait until they were half healed? 10

Dr. Gordon was at hand all that time.

Does not every lawyer know the capability of women to cause such appearances and then parade them to a doctor?

There is something else in her testimony to which my attention is called. She says that on the last day they lived together, on the 27th Sept., probably, after he had demanded of her that she return his papers which she had taken from his trunk, and she said "you can't have them," he said to her "Well, I will fix you tonight," etc. 20

Now, although she made her affidavit on the 29th Sept., when this threat, if really made, was fresh in her mind, and again on the 7th Oct. she made another lengthy aff. and again in December, in no one did she state this circumstance. This testimony is the result of afterthought, and she is not sustained by any evidence by any person in Blairstown, although it appears her neighbors were there, where they might have heard and testified for her,—if they heard such threats. 30

POINT SIXTH.

I come now to a discussion of the, what seems to me, substantial occasion for the differences between them.

Mr. Martin found it necessary to live during the winter months in a warmer climate.

His own testimony is to this effect; Dr. Carhart, who had been his physician for many years, testifies to the ab-

solute necessity of Mr. Martin seeking a milder climate in the winter time.

I shall not repeat Dr. Carhart's testimony; it will be carefully read and considered by the court.

Mr. O'Neal testifies to the same thing; that even in the spring of 1913, Mr. Martin's health was most precarious.

Mr. Martin's physical condition as a ruptured man approximately years to be ~~no~~ absolute fact in the case.

Without the support of a truss, he was practically helpless and inefficient to do any work.

In the day-time, with his truss properly adjusted, he could leisurely row about a lake in Florida as Mr. L'Hommedieu describes.

But no person ever saw him do a stroke of hard work of any kind; and he apparently is physically unfit for such labor.

He had a right to choose his home; his health was, to him, of paramount importance, and there is not, as I have before urged, a line of testimony to show that Mrs. Martin's health was affected by the few months residence in the South.

All that we know about this is what she herself says and what she told Mr. Konkle.

But what she told Mr. Konkle does not show that she was physically sick but that she did not like the surroundings in the South.

I do not need to cite authorities or render any argument to show that it is the province of the husband to select a home according to his necessities or even, his desire.

Nothing is more usual for courts to say to dissatisfied women, just as the Court of Chancery has on two occasions said to this woman,—“Why don't you go and live with your husband?” She had no right to say, and there is no excuse or justification for her saying, you go to Orlando and live in the winter and furnish me a home in Blainstown.

She admits that she said this to him,—this was her desire.

It appears that the rented house he had furnished in

Blairstown was rented by him during the winter months, and he was under no obligation to keep up a separate establishment there for his wife's gratification or convenience.

Moreover, he was entitled to the **consortium of his wife**, to her society, her company, her circumstances, what she could do to make the life of a sick man as comfortable as might be.

And she could not render these duties while living at Blairstown and he living in Florida. 10

He provided for her the best accommodation possible in the city of Orlando; he seems to have had among his friends there the best of its people; she naturally received the attention of good people there and moved among them as the equal of anybody.

And there is not a shadow of evidence in this case, from beginning to end of it, that she was deprived of anything to which a wife, in her circumstances of life, was entitled.

Her complaint was that he did not give her money to spend; but there is no evidence from any quarter whatever to show that she lacked anything; she herself does not say that he did not buy things for her that were needful for her. 20

He may have been peculiar,—I think he is, and I would not care to live with him; but that is no ground for a separation; it is one of the risks that every woman and every man takes in entering into matrimony; it is the "for better or for worse" part of the contract.

And I have no doubt that in this case, as in very many 30 other cases, the difficulty lies quite as much with the one as with the other. The lack of consideration, the lack of patience, the lack of self-sacrifice, the lack of yielding; the, on the other hand, spirit of aggression and determination, and tongue, and the resort to one measure and another to accomplish the purposes of one or the other of an unhappily married couple, is the real occasion for most of the domestic misery that prevails.

Every lawyer of experience knows this.

It would be a simple matter to fill the dockets of the

courts with cases seeking a separation between husband and wife if complaints of this character should receive favorable consideration.

I believe that in this case Mrs. Martin wanted more of her husband's money than he was willing to give her.

I have no doubt of his grip on his money; he had a right to it; it was his own, she had not helped him to earn it.

Before she married him he entered into an agreement,
 10 whatever its terms may be, by which her rights to his money were determined, and all that she was entitled to during his lifetime was a joint support out of his money, and not a several support.

She was of a nasty, (If I may use such a word), disposition.

This diary shows it. (Printed on pp. 251, etc).

Every page of it shows it.

She had jealous thoughts in her mind, and she didn't hesitate to write them down in her book.

20 And I have no doubt she didn't hesitate to express them with her tongue to Mr. Martin.

There was absolutely no occasion for the feeling she had toward Jock Martin's wife.

In truth, on the hearing, her counsel disclaimed any imputation against Jock's wife.

Mr. Martin had helped Jock's family with money; Jock had an old farm and the buildings were poor and he had eight children, in all eleven in the family, and then they bought a new house with more rooms, and defendant said
 30 that he would give them something to help the family because they came out in a better neighborhood where they had school and church and Sunday School, and Mr. Martin sent them a check for \$200.00. He did not conceal this from his wife.

Afterward, in March, 1912, he furnished the oldest daughter some money to help her along in her high school work at Newton; he furnished a few dollars for music lessons for one of the other girls; when Mrs. Martin had hurt herself badly and needed a special examination by a

physician, Mr. Martin gave \$10.00 toward the examination.

And the disbursement of all these moneys was by Mr. Martin openly put down in a book-account which he kept and which was open to his wife's inspection.

Now, for this kindness to the nephew's family, the petitioner would speak disparagingly of the nephew's wife, and she kept this up continually and it got worse and worse until she finally, openly accused him of "laying with her."

10

Mr. Martin says these were the words she used.

See pages 160, 161.. Page 208.

I do not care that she did not especially deny this; perhaps she would have denied it if her attention had been called to it.

In her diary under date of August 7, when she complained that he did not buy as much vinegar as she thought he ought to buy, although he doubtless bought all that was required, she writes "perhaps he has been sending all his money to Jen Martin."

20

Under date of August 16, she says "if he would save the money he spends in carfare on Jock Martin's wife and children and get us a nice home as he promised me, and settle down and behave himself, we would both be better off." See pages 117, etc.

Under date of July 21, speaking of her letters, she says, as for my letters I am doing by them as he is doing by his, does not show them, all the difference is "I dare show mine," where he does not. He has too many women on the string to show me his letters.

30

Under date of August 9, she says that her husband "pretends to be sick but from some of the things he does, I can see plainly he is putting on, just for effect."

Then again, under date of August 19, when it appears that he wanted her to show him some letters she had, she says when he shows me Jen Martin's letters, I will show him mine.

And, under the same date, she says her husband finds fault because she had so many white skirts and waists, trimmed in lace and embroidery. It would look as though

she was not so poorly dressed as she pretended; while it appears that he called her a liar, she declared that he was the one that lied.

So it would seem that it was six of one and half a dozen of the other.

I think I have before remarked that in this diary, in which she was at liberty to express herself with reference to her husband's physical treatment of her, there is not one line or a word supporting her present statement of
 10 his cruelty to and abuse of her, although she says it had been commenced before they left Florida in the spring of 1912.

Now this diary illustrates one phase of the life of these two people together.

It was one of suspicion and ill will and quarrelsomeness and jealousy and dissatisfaction, and I have no doubt of their equal ability and will to have intensified their sentiments and relations to keep things just as hot and uncomfortable as could be.

20 Then, there is another matter which developed on the cross-examination of this lady.

She had, while they were still in Florida, and while Mr. Martin was from home, broken into his trunk and a small traveling bag inside of the trunk, and taken from it some letters and papers belonging to Mr. Martin.

And, although she says they were of no importance, she has not, despite his demands, returned them to him, but has given them to her counsel, who now has them.

She took the diary which he kept and has given that to
 30 her counsel, and, although she has made copies of some entries in it and refers to it, yet she does not produce it on this hearing; presumably, it would be of no use to her to produce.

This conduct of hers in Florida, and which, according to her own admission she continued after they came from Florida to Blairstown in the spring and summer of 1913, she has kept up by going through his trunk and books and taking from them his papers and conveyed them to her lawyer.

See her examination.

The leaflet which some colporteur, or salvation army man or woman or somebody else left at their house in Blairstown and which she says had warning writing on it made by Mr. Martin, writing of an accusatory or condemning character which she says he put where she could find it and about which they had a controversy the night Mr. Konkle went there to help restore peace,—Mr. Martin denying that he wrote anything on it at all,—this she says is in her counsel's possession and she does not produce it either.

10

There was a dispute in Florida over their going to some sanitary resort with a Mrs. Hillman, and from disagreements between Mr. Martin and Mr. Hillman about the expenses of this trip and Mr. Martin's request of his wife that she shouldn't go to Hillman's any more, although it seems they lived on opposite sides of the same street, and when, notwithstanding Mr. Martin's objections, Mrs. Martin did go over to convey to Mr. Hillman a message from his wife, Mr. Martin was ugly about it, probably needlessly so, and I have no doubt they had some words over this; but I think in reading Mr. Martin's account of this that there was not the least imputation either against Mr. Hillman or Mrs. Martin.

20

Now, I want to know what kind of a home this would be, between man and wife, whether in Orlando or in Blairstown?

Things would not be sweet; that is certain, and one harsh word leads to another, and one unkindness to another, and it is to be expected that just such results would follow as have followed in this case.

30

But whoever has thought that this would be a ground for a legal separation between the parties?

In the spring of 1913, before they left Orlando to come to Blairstown, Mrs. Martin had gone to see a lawyer, and that lawyer went to see a Mr. Slemmons, and he went to see Mr. O'Neal. Both these gentlemen were elders in the Presbyterian Church to which Mr. and Mrs. Martin belonged. They had a talk and the result was a conference in O'Neal's between Messrs. O'Neal and Slemmons and Mrs. Martin.

I do not know what she had said to Mr. Slemmons; but if she had said to him that Mr. Martin had been guilty of the cruelty and abuses with which she charges him and which she says he had perpetrated upon her before that time, I am sure that some mention would have been made of these things at this interview.

She had gone to Mr. Slemmons; she had gone to Mr. Giles, and Mr. Giles had seen Mr. Slemmons, and undoubtedly whatever she told Giles, Giles had told Slemmons, and whatever Slemmons had heard he doubtless told O'Neal.

How could it otherwise be?

Mr. Giles evidently thought her grievances were to be settled in the church courts and not the law courts.

When Mrs. Martin met Slemmons and O'Neal, she had the privilege, in the privacy of that office and in the presence of these two men to tell everything of which she complained against Mr. Martin. I do not think she was too modest to tell.

20 I call attention to the testimony of Mr. O'Neal, on page 250 1, and he says that Mr. O'Neal had had an interview with Mr. Giles; Mr. Giles had previously written a letter to Mr. Martin, and then after Mr. O'Neal's interview with Mr. Giles, Mr. Slemmons who did business very near by, called on Mr. O'Neal and after considerable discussion between them, it seemed wise to have Mrs. Martin meet with them and go over the situation, and determine, if possible, what the difficulties or complaints were.

And the reasons for this action are stated by Mr. 30 O'Neal, and appear to be sensible and adequate for desiring this interview.

Now, this was Mrs. Martin's opportunity; these two gentlemen were the spiritual guides of the church membership and she had gone to them to state her grievances, whatever they were.

And these are the complaints she made against her husband,

FIRST, that he didn't supply her with the amount of money that she thought she ought to have.

SECONDLY, that he did not provide always just the things that she wanted to eat, and,

THIRDLY, that she ought to have more money.

And Mr. O'Neal says there was not anything at that time said by her with reference to Mr. Martin having used any physical force against or violence toward her.

And Mr. O'Neal further says that in his efforts to get the matter adjusted he discussed with her the general situation and he asked her, "Martin has not abused you," and her reply was, "no, but he has not done what he 10 agreed to do." And that was to build a house for a home in Blairstown.

Further in the interview, she said she refused to live in Orlando as a permanent residence; that, using her own language, "I will not have a home in Orlando without I can have a home in New Jersey."

Further, in contradiction of Mrs. Martin's testimony, Mr. O'Neal said that Mrs. Martin stated,—“I don't want to live here, I want to go home. I am not getting as much of an allowance for spending money as I should 20 have. I want a sum of money set apart for my use.”

And further, that in 1912, she said that she did not like Florida and would not stay there.

Incidentally, I call attention to his testimony that on their first visit to Orlando after the marriage, Mrs. Martin, while they were looking for rooms for their occupancy said that she wished to do her own cooking and her own washing as she couldn't stand Southern help.

I think that Mr. O'Neal's position was that of an attempted peacemaker; he and Mr. Slemmons acted in 30 good faith and sought to have these two friends, members of their church, reconcile their difficulties; I believe him when he says that.

And, it will be observed that Mr. Martin, on the occasion of an interview with Mr. O'Neal at Mr. O'Neal's office in the spring of 1913, when Mrs. Martin desired to go North and Mr. Martin desired to remain in Orlando; that Mrs. Martin insisted upon going North, and Mr. Martin objected, and at last Mr. Martin yielded and said, "I am

willing to do anything to keep peace in the family and I had better go."

I think it proper to state that Mr. O'Neal did not act upon Mr. Martin's suggestion, he says it was not particularly at Mr. Martin's suggestion, that he acted, but only because he had had the interview with Mr. Giles and Mr. Slemmons, and Mr. Giles had suggested that the two elders have the conference with Mrs. Martin.

10 It is true, too, that Mr. Martin talked with Mr. O'Neal about his affairs and sought Mr. O'Neal's help and advice in these matters with respect to the differences with his wife.

It appeared further, on cross-examination, that before this interview at Mr. O'Neal's office, (erroneously said to be in 1912, while in truth it was in 1913), she had seen Mr. O'Neal individually and personally about these matters; that he had not sent for her and that Mr. Martin did not arrange the interview.

20 And notwithstanding Mrs. Martin's denial, it is to my mind clear that Mr. and Mrs. Martin visited Mr. O'Neal's office just before they came North in the spring of 1913, and Mrs. Martin was complaining to Mr. O'Neal as to where they should spend the summer.

As appears by the testimony Mr. O'Neal had advised Martin to take his wife to Jerry Martin's house, and this he says was because of statements about Jerry Martin made to him by Mr. Slemmons, by Mr. Martin and by Mrs. Martin.

30 It would seem that Mr. Martin was then in poor health and Mr. O'Neal thought that Jerry's place would be suitable for them and where they could live at little expense.

And it appears from the testimony of Mr. O'Neal that Mr. O'Neal was not considering the possibilities of divorce between these parties, but his desire was to get them together, that that was what he was working at.

And I am sure from his evidence that it was Mr. Martin's desire that he and his wife should be restored to a better relation; he wanted her and he needed her.

Even long after this suit had been begun, at the conversation in the interview she had with Jock Martin at

Newton, procured by her and her friends, when she sent for him to come to a hotel, they were talking about their troubles and he having been there a number of times and never had seen so much, asked her,—“What is the trouble between you and Uncle Brad,” and she said, now mark, **“the main trouble was money matters.”**

She wanted a “nice cozy home or something similar to that, and wanted what money she thought she should have to use.”

And then, note the woman's spirit and purpose to stir up resentment or jealousy or some such evil spirit in Jerry Martin's heart,—“She mentioned about his giving my wife a check for \$200.00, and then she said that she had told Brad if he gave Jen money, it wouldn't be any more than right to give her money.” 10

But what I want to call attention to in Jerry Martin's testimony is this, that he said to her, “Has he ever struck you or anything of that kind?” and she said, “No; I will say that for Brad he has never hit me or undertook to.” And she further said he abuses me other ways. 20

In April, 1913, these parties came from Orlando and went directly to Jock Martin's house and staid over night, and what passed between them there is told by Mr. Martin, and is not denied by Mrs. Martin.

And it seems to me to be pretty clear that Mr. Martin was more than inclined to live peaceably with his wife and that his efforts were in that direction.

He says so, he says that he said to his wife, come let us make up our troubles and live as we ought to, let us forget the past, let us begin over, let us live as we ought to live. 30

And there is no denial of this by Mrs. Martin. Indeed, she admits it.

During that summer, Mrs. Jennie Martin visited them at Blairstown, but before that, she said that when they came to her house in April, 1913, they acted very decent toward each other, that she heard nothing wrong in any way, shape or manner; that he had a good manner toward her; that he talked with her.

Then, after that in the summer time, she and her son

went down to visit at Brad Martin's house and they staid over night, and Jennie Martin noticed that their relations were very nice, except when noon came.

When dinner was served and set on the table and the guests and Mr. Martin and Mrs. Martin went to the table, she served the coffee, and then left the table and went into the parlor and that was the last they saw her; that she and her Uncle Brad went on with the dinner and her Uncle Brad waited on the table, and then, after the dinner
 10 was over she came out of the parlor and helped wash the dishes.

She says that before dinner was served, during all the forenoon, Mr. Martin was there, and Mrs. Martin was there and they talked with each other and there was no apparent reason why Mrs. Martin should have left the dinner table and gone into the parlor.

On another occasion Mrs. Jennie Martin went there and asked Mrs. Martin to go down town with her but she declined and said that Jennie and Uncle Brad could go,
 20 and they went down and after they had been gone an hour at the longest, when they went back to the house, Mrs. Martin had gone and left the house alone, and this she says she is sure was the summer after they last came from Florida, although Mr. Rosecrans on the cross-examination, tried to show some too friendly relations between the witness and Mr. Martin, he did not succeed, the witness saying that she had a friendly feeling toward Mr. Martin, he was her Uncle and he had used her as one of the children, that although he had sent her money, it
 30 was sent to her for furnishing the house for the children.

I commend to the court the testimony of Mrs. Jock Martin, as that of a plain, simpleminded, honest, straightforward woman.

There is other testimony showing that there was ordinary cordial relations between the parties.

Mrs. Lupton tells of it; so does Mr. Coursen.

Mrs. Lupton is a distant cousin of both these parties. (It is a misfortune that these parties are themselves own cousins).

Mrs. Lupton says that in August, 1913, she and her

brother staid there for dinner and then she and her brother went to Culver's lake and returning for over night at Martin's.

This was in September. At the May, 1913, visit, their relations seemed to be all right; Mr. Martin talked to her and she to him; that she noticed nothing about Mrs. Martin's physical condition, she did not notice that she was sick or nervous.

Mrs. Martin got the dinner and served the dinner.

When in August or September, Mrs. Lupton and her brother proposed to go up to Culver's lake for the afternoon, Mr. Martin asked his wife to go along, but she would not go. 10

In a few days Mrs. Lupton returned to the Martin's and staid there over night, and then she noticed they were very quiet and didn't have much to say to each other; that Mrs. Martin slept with Mrs. Lupton, and not with her husband.

She says that on the occasion, there was a big day at the Stroudsburg fair, (everybody in that neighborhood goes to the Stroudsburg fair on the big day), and Mr. Martin asked Mrs. Lupton and Mrs. Martin to go to the fair, and Mrs. Lupton was willing to go if Mrs. Martin would go along; but she declined to go. 20

She made as an excuse that she had some sewing to do, she had a skirt to finish, and that was her pretense or excuse for not going.

Mr. Coursen says that he noticed nothing out of the ordinary at the time of his visit.

(A man is not quite so discerning as a woman).

Isn't it remarkable that out of all the people with whom Martin and his wife have come in contact, with whom they have associated from their marriage in 1909, to September 29, 1913, only Hester Rose and Carrie Kitchin, of Blairstown, have been called to testify to the differences between this couple? 30

And Mrs. Rose testified to what she heard on two occasions in the summer of 1913; and then she heard Mr. Martin saying that Mrs. Martin didn't care anything about him because she had a man down in Orlando; and

on another occasion she heard them talking pretty loud, Martin spoke the man's name and Mrs. Martin said she did not lie,—that she was not a liar and then she had heard him say that she was intimate with a man named Shipp.

And Mr. Martin denies this.

Well, when I read Mrs. Kitchin's testimony, all that she says is that once when Mrs. Martin had gone away from home, Mr. Martin showed her a loaf of old moldy
10 bread and said to her "See what my wife leaves me to eat when she goes visiting."

And that is all she says about them.

And, positively, no other person is called to narrate a single word about their differences; no one except this fellow Bergstresser.

And, again referring to Bergstresser's testimony, it may be said that he does not corroborate a single thing told by Mrs. Martin, and she does not corroborate his testimony in the least.

20 Now, here is the substance of the testimony in this case as to the charges made by the petitioner against the defendant.

She stands absolutely not corroborated by any testimony. Not even by her own daughter, Mrs. Shipp.

Mr. Martin denies absolutely all her charges of cruel and indecent treatment of her.

How is it to be found in the face of her uncorroborated and contradicted testimony, how is it to be found that her story is true and sufficient to base upon it a decree such
30 as she seeks?

Whatever their differences may have been, I think it beyond any question that Mr. Martin has put forth all the efforts that a reasonable man is required to put forth to bring about a better understanding between himself and his wife.

Mr. O'Neal testifies to that, and I am willing to stake his testimony against that of Mrs. Martin, who denies squarely that she was ever in O'Neal's office in company with her husband.

But I think the testimony of Mr. Louis A. Konkle is entitled to very much consideration.

Mr. Konkle is related to both of these parties; in truth he is but a second or third cousin of Mr. Martin and an own cousin of Mrs. Martin.

He is a man of years; he has been a resident of Blaiirstown for thirty-five years and is one of its leading merchants.

When, as appears by Mr. Martin's testimony and Mrs. Martin's testimony, the house in Blaiirstown in which they lived had been sold and the purchaser required its possession on the first of October, and gave notice of her desire to Mr. Martin and he thought it well to go to Orlando a month earlier than usual, he talked the matter over with his wife,—talked with her about where her goods were to be stored for the winter,—whether she wanted them stored where his were to be placed; (he certainly expected her to go with him or why store her goods?); and the relations between them were exceedingly strained; she had evidently determined not to go to Florida another winter, she didn't like Florida; she didn't like the people there, she didn't like the hired help; she didn't like the surroundings; she didn't like living in the South, and she wouldn't go; he asked her to go; he wanted her to go, and she had made up her mind that she would not go; that was her determination. 10 20

On the 7th of October, the Vice Chancellor said that he wouldn't compel Mr. Martin to remain within the jurisdiction of this court; that she ought, for all that she showed in her petition and her affidavits, she ought to go; it was her bounden duty as a wife to go; but she was determined not to go and she did not go. 30

Mr. Martin's health, as appears by Dr. Carhart's testimony, imperatively demanded that he should go; and he went and she chose to stay.

And then, later on, as appears by the files of this court and her petition and affidavit thereto annexed, sworn to on the 9th of December, 1913, she was still determined to stay in New Jersey and not go to Florida and live with her husband, as she might have done, because, as I under-

stand it is held in New Jersey, that the wife, having left her husband, may at any time before a suit is actually brought against her, offer to return to her husband and live with him and he is bound to receive her.

When she made application to the court for alimony and counsel fees, and that matter was continued from time to time until in February following, (I do not find the exact date of the order), her petition was denied, and that very denial was the equivalent of the Court of Chancery saying to her, "for all that you show, including the Bergstresser affidavit, and all the gossip and tattle and things you have said and caused your friends to say, it is your duty to go back and live with your husband."

And I urge this to show not what the Vice Chancellor thought, but that this woman had fully determined in her own mind, before she filed her petition on the 29th of September, 1913, that she would not return to Orlando; that she would continue to live at Blainstown, and that she would compel, if possible, her husband to maintain her here at his expense by herself, while, by law, she was bound to go and live with him.

Mr. Martin did not know of the length to which she would go; I do not know that he thought of such a thing as a suit grounded on his alleged ill-treatment of her; least of all, did he suppose she would by the presentation of her *ex parte* affidavits procure a writ of *ne exeat* against him; he knew though, that she did not want to return to Orlando, but he knew that he wanted her to go, and hence he went to Mr. Konkle and asked him to go to Mr. Martin's house, in the latter part of September, and act as mediator or arbitrator between them, that he might help them reconcile themselves and their troubles.

When he reached the house, he met no response, and, after waiting a few moments, started down to the town and met Mr. Martin on his way coming up, and at Mr. Martin's request, Mr. Martin insisting on it, saying to him "I want you to go back with me and see what you can do for me," he accompanied Mr. Martin to the house. And then, after a little conversation between them, Mr. Martin said to her that Mr. Konkle had come up to see

them, to see if they couldn't get together about their affairs and get reconciled; that he told her the time was about up to give up the house, that he must move his goods out and wanted to know what disposition to make of their affairs, of his goods, and he told her that he had provided a place where her goods might be stored, to which she said that she would find a place for her goods, she wouldn't store them, she wouldn't put them with his goods. In this conversation Mr. Martin told her that he was going to Orlando, that his health demanded that he should go there and that he wanted her to go with him and that he would find a place where they could rent rooms or board, **as she preferred.** 10

He told her he would use her well and would pay all necessary expenses for their proper living there.

And, in answer to his expressed wishes, she said that she would not endure another winter down there like she had had before.

I am sure the advice that Mr. Konkle gave them was good advice, and he is to be commended for what he said to them,—that he was a friend of both and he would like to see them get together and drop their differences; that this life is short and they hadn't long to stay here, and urging her to think it over until morning and "See if you couldn't get together," and she made no reply to that. 20

I want, in this connection, to call the attention of the court to Mr. Martin's testimony that in making these efforts for reconciliation with his wife he was sincere and earnestly desired her to go with him to Orlando.

As an illustration of her spirit and conduct, I call attention to the circumstances of the note or tract about which I have made mention in an early part of this too extended brief. 30

Mrs. Martin charged her husband with laying a note on the bureau; a note with a warning on it, that "You might have something to answer for, more than you think for." A warning to **her.**

Mrs. Martin insisted that it was his handwriting, that he had written this thing on this paper for her to read.

He insisted that it was not his writing.

And then, she said to him, to Martin, "You go up and get the note." Now, whoever it was that said that, and it is a little uncertain whether he said it or she said it, someone went upstairs to get the note and it was gone.

And then Mr. Martin asked her where it was, and she says well, I have it for future reference.

That is the substance of it anyway.

Now, Mr. Konkle says that his recollection is that Mr. Martin spoke of this paper as a piece of literature that
 10 some fellow had left, had thrown around the yard, or thrown in the door.

The point I now make is that this woman was making a false charge against her husband.

Whether it was of much or little consequence is not the exact question here; she thought it was of consequence.

And the worse feature is that it appears by her own admission that she and her counsel have together secreted this piece of evidence that it might not be produced before the court.

20 And, doubtless at this very time, Mrs. Martin was getting ready her proceeding to have her husband arrested.

This is evident from Bergstresser's testimony, who says that Mr. Beatty came to see him about this while Bergstresser was still working for his brother-in-law,—who says that the occurrence to which he testified to was in May, the second month before he left his brother-in-law's, and he went away from his brother-in-law in July; so that Mrs. Martin must have been busy getting her evidence together, her evidence for this suit, as early as in

30 July.

And Mr. Bergstresser told Mr. Rosecrans about this while it was yet warm weather, before the fall had set in.

Now, I say, that Mr. Martin acted in good faith, while Mrs. Martin was taking steps in her proposed litigation.

And it all shows that she was fully determined not to go to Florida, but, rather, to compel him, if possible, to maintain her in "the cozy home" in Blairstown or elsewhere at her convenience.

I have no doubt the testimony of Mr. Martin will be

carefully read and considered, but I want to call attention to some things said by him.

He tells, on pages 133, 4, about the Hillman affair; he says Mrs. Martin paid much attention to Mrs. Hillman, this while he was with the party at the Sanitarium; but he denies her statement that he favored Mrs. Martin remaining home and being cook or companion for Mr. Hillman. He says he said to his wife,—“I don’t approve.”

Note what Mr. Martin says about his condition and his wife’s neglect of him and her failure to speak to him 10 when she came in at half past eleven at night.

I do not attach much importance to the difficulty with Mr. Hillman.

Note, on page 137, the affair of the Chatauqua to which Mr. Martin had bought course tickets, showing that he provided entertainment of the best order for her. She went with him, but charged him with making Goo-goo eyes at others; she would not speak to him when they returned home; she occupied her own bed; she did her housework, but did not speak to him for days and weeks; 20 these things led naturally to differences; he was sick most of the time.

Observe, on that same page, how he provided things for their living. He would not, at her demand, hand her out money; he preferred doing that himself. (I did the same thing for 30 years after my marriage; my wife never went near a market). Families have different ways about that.

He says that he never knew the time when she was out of money.

She was for the first years satisfied with money matters; then she began to be dissatisfied and wanted a fixed sum paid to her,—to spend as she pleased.

Note what he says,—that through her lawyer in Florida she demanded \$10.00 a week; **no demand that he personally treat her better; nothing about excesses or violence,—nothing at all on these subjects.**

And this through her own lawyer. I have seen no sign of delicacy or modesty on her part that would have prevented her telling to her lawyer or to the elders of the

church the full, filthy details which she, without hesitation, retailed on the witness-stand.

He gives his account of his showing the mouse-dirt on the cake she had left for his dinner when he was a sick man. I would not have complained about this, but he did.

10 He tells about her going through his trunk and her breaking into his satchel and taking his papers out and retaining them even against his will. No difference whether they were valuable or not; they were his and her taking them in the way she did, naturally created trouble between them. I guess that is natural.

He denies that he used any violence against her on this occasion, as she testifies.

After the conference with Mr. O'Neal I am inclined to think there was some kind of reconciliation; they went to Jock Martin's. Read his evidence.

20 After that Martin went off fishing and was away from home much of the time; his wife went to her daughter's (Mrs. Shipp's). Martin went to the Farmer's picnic; his wife was there; both went to Mrs. Shipp's to stay over night.

She would not sleep with him. He wrote her to come home; they were obliged to give up the house and he wanted her there; his relatives,—hers too, were coming; she came when she got ready; she began to demand money; she wanted one-half given over to her; he refused; that renewed the troubles.

Not worth while to recite all his testimony.

30 Read what he says and I am sure he was willing to do everything, anything reasonable and proper, to induce her to return with him to Florida, where he was for his life and health's sake forced to go,—and she knew it and she stubbornly refused to go with him.

She refused to speak to him, to have anything to do with him for weeks at a time.

I cannot better describe the relations of this couple than to use the language of Vice Chancellor Backes, when he said they acted like an overgrown boy and girl, quarreling and spatting about nothing.

Every material matter testified to by petitioner stands uncorroborated. She alone makes her case against defendant. He denies her charges, and I submit that under perfectly well settled rules of the courts of this state her case must fail for want of supporting testimony.

Who beside herself testifies to what happened at the house in Orlando in the night-time? We have the stories of the two,—and his is as probably true as is hers. Even her own story does not make a single incident in support of her charge of extreme cruelty. It simply shows that this couple, in disregard of common conventionalities, created a scene, or, rather, a brawl which disturbed other occupants of the house. She sustained no injury whatever and she was in no danger. She knew how to get away from him,—how to frame up an excuse to go to the toilet; but she tells not one word said by him or any act done by him to indicate that she was in danger of bodily harm. It was of a kind perhaps prevalent among a lower class of people than these. Nevertheless, he denies using any force other than to put his arms around her and try to keep her in bed; his truss being off his rupture prevented his using much force. 10 20

I think the rule of law is so well settled that few citations are necessary. In *Fischer v. Fischer*, 3 C. E. G. 300, the Chancellor said "The Complainant has the burden of proof, and must sustain her case by something more than even balanced testimony."

In *Wiegel v. Wiegel*, 15 Dick., 322, the V. C. (Grey) said "The burden of proof of a charge of sexual abuse rests upon the complainant who alleges it. Her uncorroborated testimony cannot carry the burden. Even in undefended cases this rule prevails. Same case. 30

Note what the learned Vice C. says on page 326. This case has been referred to with approbation in many cases since decided.

It cannot be gainsaid that Mrs. Martin has, on many occasions since sustaining the peculiar, the sexual injuries of which she now speaks, had ample opportunity to make known to her friends whose counsel she sought, to Mr. Giles, to Mr. Slemmons, to Jock Martin and others,

with whom she has talked, and to no one has she complained of sexual abuse.

Especially has she denied that he ever resorted to physical violence against her. The attending facts of the case go to the corroboration of the defendant's testimony.

In **Garcin v. Garsin**, 17 Dick., 189, V. Ch. Reed, held that the rule is established in this state not to grant a divorce upon the uncorroborated testimony of a party.

In that case the husband had made most direct and vicious charges of ante-nuptial unchastity against his wife and had threatened to put a detective upon her past life. Read what is said as to the character of the charges, which he had fabricated and therefore knew to be false, and they were therefore malicious in the extreme, on page 191.

The husband afterward begged the wife's pardon and declared himself to have been a brute. The wife charged him with gross abuse of marital rights; he had no consideration for her; she was of a nervous temperament and was a lady of fragile physique; by his excessive indulgence, regardless of her physical condition, her health was impaired and he made most painful (to her) comparisons between her and his first wife; he was a habitual drinker of liquor; that he was coarse in his treatment of her,—was guilty of physical violence,—i. e., slapping, striking, choking, kicking, dragging her by the hair; that he was jealous of her and accused her of intimacy with other men.

But he denied her statements as to cruel treatment, whether sexual or otherwise, so that she stood alone.

I call attention to what the learned Vice Ch. said on pp. 204-5.

I am sure that the facts in the reported case were much stronger than in the case in hand.

And I am equally sure that **Black v. Black**, 3 Stew. 215, was a case a great deal stronger than the one in hand; the facts are recited in the opinion of Vice Chancellor Van Fleet, who declared the husband had evinced a hatred almost diabolical, against his wife, in attempting to

blast her reputation by fabricating a charge of adultery against her.

And *Spence v. Spence*, 4 Buch. 786, is a much stronger case than is this, but the now Chancellor said that "although the conduct of the husband was certainly intolerable at times, did not, according to the adjudications, amount to what in the law of this state is denominated extreme cruelty. In this cause, as I view it, the petitioner just falls short of making a case under the law."

English v. English, 12 C. E. Green, 71, where a decree 10 was granted by the Court of Chancery, but by a decidedly divided court was reversed, the case did not at all depend upon the testimony of the wife. Not only the Court of Chancery but the Court of Appeals held that the wife was corroborated by satisfactory testimony.

The Court of Appeals said that her evidence did not stand upon her story alone; that it was corroborated by other facts in the case.

The Court here will discover the wide difference between the facts in the English case and the facts in this case. The conduct of the husband there was of the most brutal and revolting character, and it is not to be wondered at that the courts have always regarded the final outcome of the case as very exceptional. 20

I do not cite that case as a ground for denying the petitioner a decree; but to show that the testimony in that case was of a very different character from that in this case.

There the wife made complaint; there the testimony of physicians, respectable professional men, furnished 30 strong corroboration of the truth of her story.

And even the eminent specialist, called in by the defendant to testify, strengthened her side of the case. He declared that, seeing her soon after the separation, moderate indulgence would not damage her, yet excessive indulgence would; and that although there would be pain, the large proportion of married women would assent under the circumstances.

And here the complaint of Mrs. Martin is that she had **bowel trouble!** but she never at the time complained to

any one; it is mere pretext! I will not further review the cases; they all are one way; and this cause is trifling in its facts as compared with the reported cases, in almost all of which the divorce was refused on the ground that the testimony of the petitioner was either uncorroborated or too weak to furnish the basis for a decree.

Many of the more recent cases are reviewed in **Suydam v. Suydam**, 79 Eq. 144, 149.

- 10 In that case the present Chancellor declared that even on application for temporary allowances "where the husband's sworn denial is abundantly corroborated, and the case made by the pleadings and affidavits on the preliminary motion is with him, by the application of the usual rule concerning the burden of truth he should not be visited with any interlocutory order for allowances where it appears that the wife has left him because of his alleged extreme cruelty, * * *, because a wife who leaves her husband does so at her peril and assumes the burden of making the desertion constructively his
- 20 "by establishing his guilt by clear and satisfactory proof. And this must be so on application for temporary alimony and counsel fee under the rule laid down in **Martin v. Martin**, **Dougherty v. Dougherty**, and **Glasser v. Glasser**, *ubi supra*, as well as on final hearing.

"It is not necessary to review or discuss the facts in the case at bar. The proofs before the Court on this motion is not more favorable to the defendant than to the petitioner; at least they make her case appear extremely doubtful; and to doubt is to deny."

- 30 See, also, what the present Chancellor said, speaking for the Court of Errors and Appeals, in **Rodgers v. Rodgers**, 81 Eq., 480,

"(1). Under our statute desertion is justified when the deserting party has been so offended against as to authorize at his or her instance a decree for divorce or judicial separation; but the guilt of the offending party must appear by clear and satisfactory proof.

Citing cases.

"(2). Assuming that the charge of cruelty in the defendant's answer is sufficiently pleaded, and that the

"pleader intends to charge the extreme cruelty which is
 "cause for divorce **a mensa et thora** under our statute,
 "still it is not proved; that is, the facts testified in sup-
 "port of the allegation do not in and of themselves consti-
 "tute extreme cruelty. But even if they did, being an
 "affirmative defense, the burden of proving it would be
 "upon the defendant; and, as it amounts to a matrimonial
 "offense pleaded in bar of a suit of divorce, it would have
 "to be supported by corroborating evidence the same as
 "though it were made the basis of an application for di- 10
 "vorce."

Citing cases.

See the further remarks of the Chancellor following what has just been quoted.

What the Chancellor said in the *Suydam* case, that **to doubt is to deny**, was repeated by him in *Maddock v. Blardot*, 87 Atl. 66, top of 68.

And that the husband's offences are required to be proven by clear and satisfactory evidence, is declared by Biddle, Adv. Master, in *Yawger v. Yawger*, 86 Atl. 419, 20 420.

In *Kirrigan v. Kirrigan*, 15 N. J. Eq. 146, 148, it was held that "where it appears that a suit for divorce was
 "not instituted by the wife in good faith, but for the mere
 "purpose of collecting money from her husband or com-
 "pelling him to support her, alimony **pendente lite** will be
 "denied. See, also, *Glasser v. Glasser*, *infra*."

And in *Suydam's* case, the Chancellor said "the rule de-
 "ducible from these cases seems to be that as well in
 "cases for divorce **a mensa et thora** as in those for ali- 30
 "mony pure and simple, where the wife has in fact left
 "the husband on account of his alleged derelict conduct,
 "her application for alimony and counsel fee **pendente**
 "**lite** will be scrutinized and decided upon the weight of
 "the testimony then presented and the rules of law appli-
 "cable thereto, just as other litigated motions are decided,
 "even though she be a favored suitor."

And in the case now before the court, the testimony all points in one direction,—and that is that this suit, instituted and pressed for the sole purpose of compelling the

defendant to pay money to the wife,—to support her apart from him,—to give her a home apart from her husband's home; and that is contrary to the long fixed policy of the state of New Jersey as evidenced by the decisions of the courts from the very beginning.

This woman never made any complaint to anyone, that is, any complaint worth noticing, except that her husband didn't give her what money she wanted.

10

20

30

...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...

10

20

30

INDEX

	Page.
Petition	1
Affidavit in Support of Motion for <i>Ne Exeat</i>	6
Affidavit of Sarah Irene Martin to Obtain Order for Writ of <i>Ne Exeat</i>	10
Affidavit of Edith Wilson to Obtain Order for Writ of <i>Ne Exeat</i>	12
Order for Writ of <i>Ne Exeat</i>	13
Affidavit of P. Bradley Martin in Opposition to order for Writ of <i>Ne Exeat</i>	14
Affidavit of Lewis A. Konkle, Read in Oppo- sition to Order for Writ of <i>Ne Exeat</i>	32
Notice of Application to Set Aside Order for Writ of <i>Ne Exeat</i>	35
Notice Accompanying Affidavit to be Read in Opposition to Motion Discharging Writ of <i>Ne Exeat</i>	36
Affidavit of Sarah Irene Martin in opposition to Motion Discharging Writ of <i>Ne Exeat</i> ..	37
Affidavit of Hester Rose in opposition to Mo- tion Discharging Writ of <i>Ne Exeat</i>	43
Affidavit of Anna Yetter in opposition to Mo- tion Discharging Writ of <i>Ne Exeat</i>	45
Affidavit of Frank S. Gordon in opposition to Motion Discharging Writ of <i>Ne Exeat</i>	46
Order Discharging Writ of <i>Ne Exeat</i>	48
Answer	49
Notice Accompanying Affidavits to be Read on Motion for Allowance and Counsel Fees	57
Petition for Allowance and Counsel Fees ...	58
Affidavit of Sarah Irene Martin on Petition for Allowance and Counsel Fees	60
Affidavit of Anna Yetter on Petition for Al- lowance and Counsel Fees	64

	Page
Affidavit of Hester Rose on Petition for Allowance and Counsel Fees	64
Affidavit of Myrtle Shipps on Petition for Allowance and Counsel Fees	68
Affidavit of Edith Wilson on Petition for Allowance and Counsel Fee	69
Affidavit of Frank S. Gordon on Petition for Allowance and Counsel Fees	70
Notice of Additional Affidavit to be Read on Petition for Allowance and Counsel Fees	73
Affidavit of Philitus Bradley Martin in opposition to motion for Allowance and Counsel Fees	75
Affidavit of Clyde Bergstreser on Petition for Allowance and Counsel Fees	73
Affidavit of Lewis A. Konkle in opposition to Motion for Allowance and Counsel Fees	77
Affidavit of William R. O'Neal in opposition to Motion for Allowance and Counsel Fees	80
Supplemental Affidavit of William R. O'Neal in opposition to Motion for Allowance and Counsel Fees	84
Order Dismissing Petition for Allowance and Counsel Fees	85
Final Decree	276
Notice of Appeal	277
Petition of Appeal	278
Answer to Petition of Appeal	279

TESTIMONY

Petitioner's:

Sarah Irene Martin,	
Direct	86
Cross	101
Re-direct	124
Re-cross	126

	Page
Re-called:	
Direct	150
Cross	152
Joseph S. L'Hommadiou,	
Direct	126
Mrs. Hester E. Rose,	
Direct	130
Cross	131
Mrs. Carrie Kitchen,	
Direct	133
Cross	134
Clyde Bergstraser,	
Direct	135
Cross	136
Mrs. Edith Rosecrans,	
Direct	140
Cross	141
Dr. Frank Gordon,	
Direct	141
Cross	147
Re-direct	148
Mrs. Myrtle Shipps,	
Direct	153
<i>Defendant's:</i>	
Jerry E. Martin,	
Direct	155
Cross	156
Mrs. Jennie Martin,	
Direct	159
Cross	161
Re-direct	164
Lewis A. Konkle,	
Direct	165
Cross	169
Re-direct	172
Re-cross	172

	Page
Mrs. Margaret Adeline Konkle,	
Direct	173
Cross	174
Mrs. Sadie C. Lupton,	
Direct	175
Cross	177
Re-called:	
Direct	185
Cross	185
Jacob E. Coursen,	
Direct	178
Cross	179
Doctor Henry O. Carhart,	
Direct	179
Cross	180
Re-direct	182
Emmet J. Divers,	
Direct	182
Cross	184
Philitus Bradley Martin,	
Direct	186
Cross	209
Re-direct	219
Re-cross	223
William R. O'Neal,	
Direct	226
Cross ..	234
Re-direct	242, 245
Re-cross	244, 245

Rebuttal:

Sarah Irene Martin,	
Direct	247
Cross	249
Re-direct	250

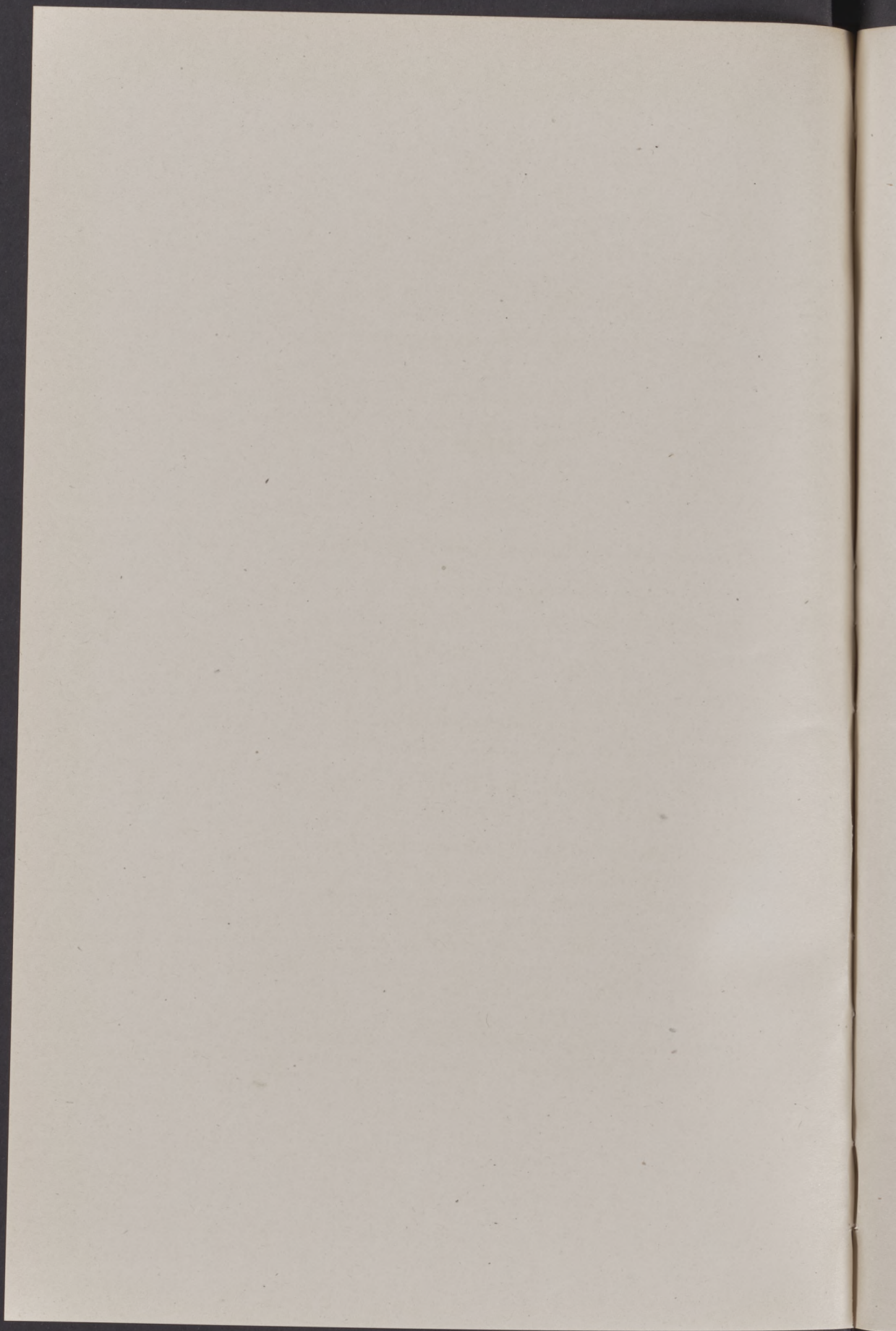
EXHIBITS

Petitioner's:

	Offered Page	Printed Page
Exhibit P-1—Note written by Philitus		
B. Martin	211	
Exhibit P-2—Note written by Philitus		
B. Martin	211	
Exhibit P-3—Note written by Philitus		
B. Martin	211	

Defendant's:

Exhibit D-1—Diary of Sarah Irene		
Martin	226	251



New Jersey Court of Errors and Appeals

Petition

(Filed, Sept. 29, 1913)

IN CHANCERY OF NEW JERSEY

SARAH IRENE MARTIN,	}	20
Petitioner,		
and		
PHILETUS BRADLEY MARTIN,		
Defendant.		

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

The petition of Sarah Irene Martin, of the town-
ship of Blairstown, in the county of Warren and
State of New Jersey, respectfully shows: 30

1. Your petitioner was lawfully joined in the
bonds of matrimony to her present husband,
Philetus Bradley Martin, the defendant in this
suit, on or about the fourth day of November
A. D. 1909, by the Rev. Dr. Church, a minister of
the Gospel, at Madison in the State of New Jer-
sey. 40

Petition

2. Petitioner and defendant cohabited at Blairstown, aforesaid, with some interruptions as hereinafter stated, from the day of their marriage until the twenty-eighth day of September, A. D. 1913, when she was compelled to separate from him, finally, because of his extreme cruelty to her, as hereinafter set forth. Almost from the beginning of her married life, petitioner suffered from the violent and ill-governed temper of her husband. That these attacks, together with the use of vile epithets and other attacks hereinafter described, continued at intervals until culminated in the instance now particularly described. While at Orlando, Florida during the winter of 1910-11 petitioner was accused by her husband of attempts to poison him and he also accused her of adultery, which charges were entirely unfounded and caused petitioner great suffering. During this last named period, petitioner's husband endeavored to entrap her into compromising circumstances with the purpose of obtaining a divorce and being freed from her, and he endeavored to accomplish his purpose by inducing petitioner to keep house for one Norman Hillman while her husband took a business trip, as he explained; said petitioner indignantly refused so to do and her husband thereupon flew into a great rage and cruelly abused her of adultery. While at Orlando, Florida during the winter of 1911-12 her husband's cruel and abusive conduct toward her increased and he would not talk to petitioner while they were in the company of others, and would not accompany her out of the house, and would wrongfully accuse petitioner of misconduct and attempts to poison him, and did cut off all her

Petition

allowance for personal expenses, all of which caused petitioner great suffering. On the first day of return of petitioner and her husband from Orlando to Blairstown, her husband did say to several of petitioner's friends "My wife has another man down there in Orlando and I am not going to live with her any more." While at Orlando Florida during the winter of 1912-13 the cruel acts of petitioner's husband grew even worse and he did compel petitioner to do his washing and laundry in the kitchen of their boarding place, where the colored help worked, and he gave her absolutely nothing for personal expenses, and bought petitioner hardly enough of the necessities of life. During this last named period and up to the time herein mentioned when petitioner was forced to leave her husband, she was subjected to gross abuse of marital rights by the defendant through the following acts; defendant demanded excessive sexual intercourse and whenever petitioner refused she was thrown about and roughly handled until partly overcome and forced to submit, and the defendant indulged in the habit of inserting his finger into said petitioner's vagina which caused her great suffering because of his sharp finger nails; and said husband would insert his penis into petitioner's vagina with no care but would roughly force entry to the great suffering of petitioner, and once at Orlando Florida her husband demanded intercourse when petitioner was weak and ill from protracted bowel trouble and when petitioner pleaded with her husband to desist he threw her about so violently that she feared for her life and called aloud until other boarders in the house answered her cries.

Petition

The husband of petitioner has frequently used such words as whoar, bitch, sow, liar in his continued and frequent abuse of her and her husband has frequently offered to strike said petitioner with his fists and did on several occasions strike and throw her down, and did kick her in the back until she was black and blue when she snored at night, and through all the aforementioned abuses the petitioner has lost considerable in weight. Finally on the twenty-eighth day of September, A. D. 1913, petitioner was abused by her husband so violently and threateningly that she started to run down the steps from the upper floor of the house where they resided in Blairstown and thereupon her husband pursued her to the street and petitioner in great fear did take refuge in the home of a neighbor. During the long course of abuse to which petitioner was subjected, she became nervous and ill, and was rendered unfit to properly discharge her duties as wife, yet she continued to live with her husband, trusting that she might regain his love and reclaim him to a sense of duty, until the last day mentioned, when it appeared that further co-habitation must be attended with grave danger for her life and being in great fear, anguish and discomfort, she left defendant's house, on said day, and fled to the home of her parents neighbors as hereinbefore stated. Petitioner says, that from his past extreme cruelty, and abusive treatment of her and his present hatred for her, it would be improper and unsafe for her to return to him, and live with him as his wife.

3. Petitioner and defendant were *bona fide* residents of the state of New Jersey when this cause

Petition

of action arose, and they have ever since continued to be *bona fide* residents of this state, down to the time of the commencement of this action, residing at Blairstown, in the County of Warren and State of New Jersey.

4. Petitioner has no means of support except 10
the income of a loan of \$300.00. Defendant possesses personal property to the value of twenty thousand dollars which is invested in loans and mortgages on real estate in Florida, and obtains thereon a yearly income at the rate of eight percent, and is also engaged in the buying and selling and dealing generally in real estate in Florida which brings him an additional income.

5. Your petitioner prays, that she may be divorced from the bed and board of her said husband for the cause aforesaid; and that the defendant may be compelled by the decree of this Honorable Court to support her; and that she may have such further relief as may be just. 20

And your petitioner will ever pray, etc.

EGBERT ROSECRANS,
Solicitor for Petitioner.

Joseph M. Roseberry,
Of Counsel.

30

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

Sarah Irene Martin being duly sworn according to law upon her oath deposes and says, that she is the petitioner in the foregoing petition; and that her said petition is not made by any collusion 40

Affidavit in Support of Motion for *Ne Exeat*

between her and the defendant, but in truth and good faith for the causes set forth in the petition.

SARAH IRENE MARTIN.

Sworn and subscribed to before me this
 10 twenty-ninth day of September, A. D. 1913.
 A. B. Craig,
 Commissioners of Deeds
 for New Jersey.
 A true copy.
 James C. Robbins,
 Clerk.

20 **Affidavit in Support of Motion for Ne
 Exeat**

(Filed, Sept. 30, 1913)

[Same title]

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

30 Sarah Irene Martin, being duly sworn according to law upon her oath deposes and says:

1. I was lawfully joined in the bonds of Matrimony to my present husband, Philetus Bradley Martin, the defendant in the above named action, on or about the fourth day of November, A. D. 1909, by the Rev. Dr. Church, a minister of the gospel, at Madison in the State of New Jersey.

40 2. We have cohabited at Blairstown, in the County of Warren and State of New Jersey, with

Affidavit in Support of Motion for *Ne Exeat*

some interruptions as hereinafter stated, from the day of our marriage until the twenty-eighth day of September, A. D. 1913, when I was compelled to separate from him finally because of his extreme cruelty to me as hereinafter set forth. Almost from the beginning of our married life I suffered from the violent and ill governed temper of my husband. While at Orlando Florida during the winter of 1910-11 my husband frequently accused me of attempts to poison him and he also accused me of adultery, which charges were entirely unfounded and caused me great suffering. During this winter last mentioned, my husband endeavored to entrap me into compromising circumstances by endeavoring to induce me to keep house for one Herman Hillman while my husband went on a business trip as he explained. When I refused so to do he sorely abused me and again accused me of misconduct and told me that he wanted to obtain a divorce from me. While my husband and I were at Orlando Florida during the winter of 1911-12 my husband's cruel and abusive conduct towards me increased and he would hardly ever talk to me while we were in the company of others, and he would rarely accompany me out of the house, and he did tell my friends that he did not trust me, and he did cut off all my allowance for personal expenses, all of which caused me great suffering. On the first day of our return from Orlando Florida in the year 1912 and about the end of February, he said to two of my friends and neighbors, "My wife has another man down there in Orlando and I am not going to live with her any more. While at Orlando Florida during the winter of 1912-13 my

Affidavit in Support of Motion for *Ne Exeat*

husband's cruel conduct towards me grew steadily worse and he compelled me to do all of his washing and laundry work in the kitchen of our boarding house, where the colored help worked and where none of the other boarders were ever seen, and he absolutely gave me nothing for any personal expenses so that I had not enough to buy a postage stamp. And he hardly bought me enough of clothes and other necessities of life. From this winter to the end of our cohabitation my husband subjected me to gross abuse of marital rights through the following acts; he demanded excessive sexual intercourse and whenever I asked him to desist he threw me about and handled me so roughly that I would become partly overcome and would be forced to submit, and he would indulge in the habit of inserting his fingers into my vagina which would cause me great suffering because of his finger nails, and he would insert his penis into my vagina without care nor regard for my feelings and would roughly force full entry which would cause me great pain and suffering and often would cause such a nervous shock and pain that I could not sleep the whole night. And once at Orlando Florida about 30 January, 1913 when I was suffering from bowel trouble and was quite ill, my husband demanded sexual intercourse and when I pleaded with him to desist he threw me about and mistreated me so badly that I called aloud to my friends in the neighboring rooms to help me and they did two of them answer me and the one did knock at our door and ask my husband to keep quiet, but my husband continued to abuse me with words for 40 quite some time thereafter during that night.

Affidavit in Support of Motion for *Ne Exeat*

And about this same month and year just mentioned at Orlando Florida my husband did kick me in the back because I snored and I had a black and blue spot where he kicked me for several days. And once in this month and year he did take hold of me in his rage and throw me on a trunk and did on several occasions subsequent and up to the time we last cohabited, threaten with his fists to strike me. And for reason of this continued abuse I have lost from fifteen to twenty pounds. Finally on the twenty-eighth day of September, 1913 at Blairstown, New Jersey my husband accused me of stealing some book in which he kept a diary and was so threatening and violent in his abuse and did raise his fist and come towards me as if to strike me that I was put in great fear for my life and did run out of our house and he did follow me to the sidewalk in front of the house and I went then to the house of a neighbor, Albert Yetter and wife, and did tell them I was afraid to go back to the house and afraid of my husband and they did tell me to stay with them. And knowing my husband's hatred for me and because of his former acts of extreme cruelty towards me I fear of bodily harm if I should go back to live with him as his wife.

3. My husband has money to the extent of nineteen or twenty thousand dollars invested in loans and mortgages on real estate in Florida and obtains thereon a yearly income at the rate of eight per cent, and he is also engaged in the business of buying and selling real estate which brings him additional income. Last year he did not engage in said real estate business but I believe he

Affidavit of Sarah Irene Martin to Obtain Order
for Writ of *Ne Exeat*

will again this coming year. I know that he has
the aforesaid amount because he frequently told
me about one year ago that he had then eighteen
thousand dollars and I judge from the fact that
10 he does not nearly live up to his income, that he
has increased this sum to the sum first mentioned.

And all the foregoing facts the petitioner, which
I am, verily believe to be true to the best of my
knowledge and belief.

SARAH IRENE MARTIN.

Sworn and subscribed to before me this
twenty-ninth day of
September, A. D. 1913.

20 A. B. Craig,
Commissioner of Deeds
for New Jersey.

A true copy.
James C. Robbins,
Clerk.

**Affidavit of Sarah Irene Martin to
30 Obtain Order for Writ of Ne Exeat**

(Filed, Sept. 30 1913)

[Same title]

State of New Jersey }
County of Warren } ss:

40 Sarah Irene Martin, being duly sworn accord-
ing to law upon her oath deposes and says:

Affidavit of Sarah Irene Martin to Obtain Order
for Writ of Ne Exeat

1. I am the petitioner in the above entitled case about to be commenced against my husband for a decree praying that I may be divorced from the bed and board of my said husband and that my said husband may be compelled to support me and that I may have such further relief as may be just. 10

2. The said defendant, Philetus Bradley Martin, has been in the habit of spending considerable of the past few years in Orlando, Florida, where he has all his financial interests and has all his capital invested; he has no property, real or personal, within the state except some household goods; he has in the past two years repeatedly expressed the wish of living permanently in Orlando, Florida, and about three weeks prior to this date he expressed the intention before my cousin, Sadie Lupton and myself that he wished to se'll part of his househo'd goods and transport the remainder to Orlando, Florida; sometime about the first part of the year 1913, while at Orlando, Florida, I was informed and verily believe that he took out "Residence Papers," with the intention of becoming a permanent resident of Florida; he has given notice to Mrs. Isaac Brown of Kingsland, N. J., the owner of the property where he now lives and which he now rents from month to month, that he will move on the first day of October, 1913; he is packing all his goods in large boxes and other receptacles, and has been doing so for the last few days from the date hereof; he is not packing any of my personal goods or effects; I verily believe that he intends sailing on the Clyde Line Steam- 20 30 40

Affidavit of Edith Wilson to Obtain Order for
Writ of *Ne Exeat*

ship "Mohawk" for Orlando, Florida, on October 3, 1913.

10 3. 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.

4. I therefore ask that a writ of *ne exeat re publica* be issued out of this Honorable Court to restrain the defendant, Philetus Bradley Martin from departing out of the jurisdiction of this Court.

Sworn and subscribed to before me this
29th day of September, A. D. 1913.

20 A. B. Craig,
Commissioner of Deeds,
for New Jersey.

SARAH IRENE MARTIN.

**Affidavit of Edith Wilson to Obtain
Order for Writ of *Ne Exeat***

30 (*Filed, Sept. 30, 1913*)

[Same title]

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

Edith Wilson being duly sworn according to law upon her oath deposes and says that:

40 1. She lives in Blairstown, Warren County,
N. J.

Order for Writ of *Ne Exeat*

2. She saw several large packing boxes brought on Saturday, Sept. 27th, 1913, to the house where said Martin resides.

3. She has noticed preparations being made for the packing and removing of furniture and goods from the place of residence of said Martin on Monday, Sept. 29, 1913, and several days previous. 10

4. She verily believes and knows through gossip in the neighborhood that said Martin is about to depart for Florida within the next few days from the date hereof.

EDITH WILSON.

Sworn and subscribed to before me this
29th day of September A. D. 1913.

A. B. Craig, 20
Commissioner of Deeds
for New Jersey.

A true copy
SAM. K. ROBBINS,
Clerk.

Order for Writ of *Ne Exeat*

(Filed, Sept. 30, 1913)

30

[Same title]

The petitioner having filed her petition against the defendant, to be relieved touching the matters therein contained, and now, upon reading the affidavit of Sarah Irene Martin and Edith Wilson whereby it satisfactorily appears that 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

the defendant, Philetus Bradley Martin, designs quickly to depart from this state; It is, on this thirtieth day of September A. D. 1913, on a motion of Joseph M. Roseberry of counsel with
10 the petitioner, ordered, that a writ of *re exeat republica* be awarded against the said Philetus Bradley Martin until he shall fully answer the petitioner's petition, and this court shall make other order to the contrary; and the said writ is to be endorsed in the sum of five thousand dollars, in words at length, and not in figures.

And it is further ordered that the said writ may be discharged on one day notice.

Respectfully advised,

20 JOHN H. BACKES.
V. C.

E. R. WALKER.

A true copy
SAM K. ROBBINS,
Clerk.

**Affidavit of P. Bradley Martin in Op-
position to Order for Writ of Ne
Exeat**

30

(Filed Oct. 10, 1913)

[Same Title]

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

P. Bradley Martin, of full age, being duly
40 sworn according to law, on his oath saith, I am

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

the defendant in the above stated cause; I was married to my wife, the petitioner, on the 4th day of November, 1909, and before that time both myself and my wife had lived near to Blairstown in the county of Warren, and had always been acquainted with each other; for the last twenty-five years I have been accustomed to spending most of my winters at Orlando, Florida, where I had business interests and where it was necessary for me to be to give attention to my business; and, also, I have always been in poor health and it has been necessary on account of my health to spend my winters there, although I have not gone every winter but the greater part of the winters I have spent there from about the first 20 of November for about five months; in three days after our marriage I took my wife with me and spent five months at Orlando, returning to Blairstown in the spring of the year and lived there until in the fall of the next year, when with my wife we returned to Orlando for the winter; the next year and the year thereafter we went to Orlando about the first of November and spent five months there each winter, the residue of the year being spent at Blairstown; the first time we 30 went there and each season thereafter we took furnished rooms, the rooms being selected by my wife, and she did the cooking and housekeeping and we lived there while I attended to my business and recuperated my health; the differences between myself and my wife, because of conditions mentioned in her petition and to be hereinafter stated, began about the second season we went to Orlando, and have continued, more or less 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

ever since, as well in Blairstown, as in Orlando;
while in Blairstown we have lived together in a
house rented by me and furnished by me; hither-
to, I have continued to pay rent for the house in
10 Blairstown, leaving the furniture therein and
locking the house; until one year ago my wife
never made any objection to going with me to
Orlando for the winter; a year ago, when I was
talking about going to Florida, my wife urged
that I leave her at Blairstown in the house and
make ample provisions for her support there and
buy her coal and fuel for her and provide liberal-
ly for her; I refused to do this because I was in
poor health and needed her company and atten-
20 tion and to cook and prepare such articles of food
as I was obliged to eat, my trouble being such
that I could not live on the ordinary fare at a
hotel or boarding house, this being the direction
of my physician; in the winter of 1911, 1912, my
wife and I united with the Presbyterian Church
at Orlando as members of that society and we
still hold membership there; before that I had
been a member of the Presbyterian Church at
Blairstown; and she a member of the Methodist
30 Church at Blairstown; I mention this to
show that we contemplated Orlando to be
as much our home as Blairstown; in truth
I was about to buy a lot and build a
house thereon for a home during the seasons
that I might spend there, proposing to
stay there seven months of the year and then
coming north for the summer months; my wife
refused to have a house furnished there and live
40 there unless I would at the same time maintain

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

a furnished house at Blairstown to which she might bring her friends to visit her; this I could not do because I purposed while we lived in Blairstown to board or live in furnished rooms, reversing the order of things.

We returned to Blairstown from Florida about the first of April last, and have since then lived together until practically the present time; it is true, there have been differences between us, as will be hereinafter stated, but I deny most positively that I have ever struck my wife or kicked her or used any personal violence against her nor have I ever threatened her to do her any harm, although on more than one occasion she has made personal attacks upon me, against which I have defended myself, but on no occasion have I struck her. 10 20

Ever since our return to Blairstown last spring it has been distinctly understood and talked about between myself and my wife and in the neighborhood generally, that I intended returning to Orlando for the winter as a matter of necessity for my business' sake and my health's sake, and I have always urged my wife to go with me, and while she manifested some unwillingness and had said she did not know whether she would go or not, she never, until the first week in September, refused to go, and then she said she would not go, and repeatedly said that she would not go with me and I have constantly urged her to go, and within a week past procured her cousin, Mr. Lewis A. Konkle of Blairstown, to come to our house and reason with her, urging her to go with me and urging us both to try to live with each other 30 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

and try to be reconciled, and that she positively refused and said she would not go with me to Florida and that she might as well tell me that now as at any other time.

10 It had been long a habit of my wife in my absence to examine my private books and papers and diary and go through my satchel in which my papers were kept at different times and which had been left locked by me, and she had taken from my satchel various of my papers, which papers were of no interest to her but were of value to me, and she retained these from me although I asked her to return them to me; she also took the keys of my rooms and the only front door of
20 the house and it was impossible for me to get into my own house and rooms therein unless she saw fit to unlock the doors; she has refused to give me the keys when I asked her and she still has the keys to the front door to my house; I was in Belvidere on Saturday, the 20th of September, and on my return with my travelling bag in which I kept papers of my own personal business, I put the bag into a drawer of a bureau of my bed room and locked the drawer and the bag also was
30 locked; and it remained there so far as I know until the 28th instant, on which day I opened the drawer and satchel and from my satchel had been taken my diary and numerous letters and papers of my own personal property and relating to my own affairs. Someone had unlocked the drawer, and unlocked the travelling bag and taken these things out and then relocked the bag and the drawer; there was no other person in my house to
40 my knowledge who could have done this; I asked

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

my wife about it and she said that she had taken them and that I would not get them again, although I asked her to give them to me, I telling her that they were my property and not hers; there was no anger on my part nor did she display any and I made absolutely no offer of violence to her; I was in my bed room and she was in the adjoining room when I was urging her to give me back the papers and she was refusing so to do, and she therein without saying another word to me, went down stairs and I followed down the steps and my wife went out of the front door and went out into the yard and I went out on the porch only, and I said to her those are my papers and I want you to return them to me; she replied that she would not return them to me, that she had them and she would keep them or that I would not get them; I returned to my room and I do not know where she went; when I last saw her, she was on the lawn and not in the street and I did not pursue her or make any threat to her or offer any violence to her whatever and she still retains the papers. 10 20

My wife was not absent from the house more than from ten to twenty minutes, when she returned and went on and did her usual work when she went out again and was gone awhile and returned and prepared the dinner and we ate together at the same table and talked with each other about dividing the articles in the house, some of which belonged to me and some of which belonged to her; on the Saturday before she took some of her goods and placed them in some certain rooms of the house from which she removed 30 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

some things which belonged to me; she told me what supplies she wanted for the house on Saturday afternoon and I went out and brought them as usual; in the afternoon she made up my bed in which I slept and she did not make up her
10 bed in another room and she cleaned up my room; I was engaged that Sunday afternoon taking care of my own goods and packing the trunk which I intended taking with me to Orlando and I heard her go out of the door down stairs about three o'clock in the afternoon and she went away; I went out and was gone some little time and returned about four o'clock, and my wife was not there but I saw that she had removed a chair
20 from one room to another by a window; she did not come back that night; at six o'clock when I came for my supper, she was not there and my wife has not been there since.

My wife has on more than one occasion gone away from my house in Blairstown without telling me where she was going or how long she would stay, and in the summer of 1912, she was away on two occasions about three weeks at each time leaving me alone to care for myself and I did
30 not know where she was; and on two other occasions for shorter periods during the same year without telling me where she was going or where she was; once while she was gone I was sick and had Dr. Carhart write her asking her to come home and care for me and she would not come, although she had said she would come.

I deny most positively that I ever accused my wife of adultery; I deny that I accused her of
40 trying to poison me; there were while we lived

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

in Blairstown as well as in Orlando, times when after eating certain things I became suddenly and seriously sick and expressed the thought that something poisonous had been placed in my food, but I never charged my wife with having placed poison in my food; my wife would slur me and say that these sick spells were my monthly periods; and she would say they came to me because of my having mad fits; I deny that I ever attempted or endeavored to entrap her or to induce her to keep house for one Herman Hillman while I was on a business trip; on the only possible occasion when anything of that kind happened the said Hillman had proposed that during my absence my wife should get his meals at his house across the street from where we lived; I expressed my disapproval of such a suggestion, although our personal relations, that is, the relations between the two families, were then very congenial, and it did not then occur to me or to my wife that there was anything improper in the suggestion; at this time a business trip was not in contemplation, but I and my wife and Mrs. Hillman went away together to a health resort and Mr. Hillman remained at Orlando, attending to his business.

Upon our return from the resort there was a disagreement between me and the Hillmans and our friendly relations were severed and I requested my wife to discontinue any relations with them; soon after that she went to the Hillman's house on an errand for, as she said, Mrs. Hillman, and on her return to my home I asked her why she had gone there, saying to her that Mrs.

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

Hillman herself might have attended to the errand for herself as she was writing to her husband twice a week; but there was not the least intimation on my part that my wife had been guilty of even an indiscretion in going to Hillman's house. I simply was opposed to her going to the Hillman's house.

It is true that during our living at Orlando there was no conversation for short times between us, but it was not my fault, for she would not speak to me, and her whole effort was to have a quarrel with me and the only way was to have as little as possible to say to her.

I never refused to respond to her when she spoke kindly to me. I have endeavored, over and over again, to induce her to live on better terms with me; I have taken her into my arms and told her that we should forget whatever in the past had been unpleasant and to try to live together as husband and wife should, and she has over and over again spurned all my endeavors; she has frequently charged me having had improper relations with my nephew's wife, and with other women in Orlando; this nephew and his wife are respectable people and I have been interested in their children and in their education and I have given them small sums of money for the better bringing up of the family; this has made my wife very jealous and she has made this an excuse for saying all kinds of harsh things about my nephew's wife and myself—all of which was and is absolutely without any cause or foundation. She has declared that I have had a woman locked in the house with me, and insinuated that this neph-

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

ew's wife was the woman. My wife had an income of her own, and she earned money at dress-making and I have from time to time given her considerable sums of money; but have refused to give to her such sums of money as she has frequently demanded of me, and this because she would refuse to tell me what she wanted the money for, and she oftentimes spent money apart from her own personal necessities, but I have always provided for her every reasonable necessity. I never said to any one that she had a man in Orlando and that I would not live with her any more. I never did compel her to do the washing or laundry in the kitchen where the colored help worked; my laundry, shirts and collars was done at a laundry; the most of the laundry done by her was done for herself. 10 20

I deny each and every the statements in the petition and affidavit of my wife contained respecting abuse of marital rights; I did not demand to have sexual relations to an excessive degree with her; there were periods from one to two months during which my wife would not occupy the same bed with me; she sat up in a rocking-chair; she told, so she told me, other occupants of the same house that she had refused me and told them how she had done it and that every one knew about it, and were laughing about it. 30

I am subject to serious heart trouble and my wife is a very strong, healthy and vigorous woman, ten years younger than myself; she has never, to my knowledge, had occasion to have a physician; it would be impossible for me to throw her 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

around or to compel her to submit to me, and I never did so compel her or ill-treat her in the matter of having sexual intercourse; she has, during the past two years, in almost a majority of the times when I have endeavored to have such intercourse, resisted me and her conduct has been such that I have given up the effort; I deny the charge that I have inserted my fingers into her vagina, or that my finger nails injured her; I deny the using of force in having intercourse with her; no force was required; she was a widow when I married her; she had been married to her husband twenty-eight years before I married her; she was the mother of four children by her first husband. I never knew from her that she, while living in Orlando with me, that she was weak and ill from protracted bowel trouble and that such weakness was the occasion of her denying me sexual intercourse with her; she never told me that; on the occasion when as is alleged in her petition she called aloud and other occupants of the house heard her—I attempted to caress her while in bed; she got up and went to the bathroom, as she was accustomed to do when I made advances to her; when she came back in from 15 to 20 minutes, I renewed my attempt and she tried again to get out of the bed and I put my arms around her to try to retain her in the bed; she struggled to get out of the bed and my heart and a rupture from which I greatly suffered, prevented my retaining my hold and I was compelled to give up; she then said, not in an unusually loud voice—"Mrs. Farrar!" Mrs. Farrar occupied a room across a wide hall from our room,

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

but she made no response whatever; I don't know if she heard my wife.

Then my wife started a quarrel in which I foolishly took part, and it lasted for a half hour or longer, in the course of which we both talked in a loud voice, when the woman in charge of the house came and rapped on our door and said the ladies occupying the room under our bed-room could not sleep and had entered a protest and she had to ask us to be quiet; there was no other answer made by any one except as just stated. This affair was one of words only; there was no violence on my part. 10

The only thing I did was to attempt to retain her in the bed and she staid there until morning. 20

I had no intercourse with her from that time while we remained in Orlando, a period of perhaps two months or more.

I have never called her a whore, a sow or a bitch; she has called me a liar and I have returned the same epithet to her.

I have never offered or attempted to strike her with my fists or in any other way; I have never kicked her in the back or in any way.

I have frequently and persistently urged her during the past weeks to go with me to Orlando to spend the winter with me there—to there either rent rooms as we had done, board and treat her well and pay all reasonable expenses, but she has just as persistently declared that she would not go. I deny that my wife has become or ever was ill or nervous by reason of supposed ill-treatment by me, or from any other cause; I have never known that she was nervous or ill 30 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

from any cause; I have never known or heard that she has consulted a physician and I do not believe she ever has; she has always since our marriage been in the best of health; she has always done her housework and done fancy work and has not asked for a physician.

The trouble between me and my wife has grown out of an ante-nuptial agreement between us; she was thereby to receive at my death during her lifetime the income from an investment of \$8000.00, or so much of said income as might be necessary for her maintainance; in less than two years after the marriage she began to demand that she have more—that I had compelled her to sign away her rights; she afterwards demanded that I give to her the one-half part of my property—that this was a wife's rights; I refused and have continued to refuse to give her anything more of the principal sum of my property than what the agreement provided for her; at times she has been quite urgent that I give to her or secure to her the one-half part of my property; I have refused to give it to her; this refusal and her anger because I have given sums of money, not exceeding in all the sum of three hundred dollars, I have given to the family of my nephew—all of which has been given for the benefit of the children—one of whom is now in her 3d year in High School, two are young men, one married, two other daughters are young women and they are preparing for High School; I have contributed some money for their music lessons, and other sums for furnishing the house in which they live, and some to be expended for

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

their comfort as they deem best. This family are excellent people and need more than their father can or does give them; for this pure benevolence on my part my wife has frequently in public, charged me with furnishing a house for 10 another woman, not stating that it was my nephew's house for which I had purchased some furniture.

I am and have been sincerely desirous to have my wife accompany me to Orlando whither my business affairs and consideration for my health require me to go; I have not thought of evading my responsibility to my wife, but I have insisted to her that it is my duty to go to Orlando and pass the winter there; it is at the risk of my life 20 and health to stay here in the winter season; she demands that I furnish to her money for her support here and she refuses to go with me and live where I live; I have told her repeatedly that I would furnish her living and pay all reasonable bills and would treat her right; in this connection I say that during the first two years of our married life there was never the least physical difficulty in our sexual relations; she made no complaint about suffering pain or distress in 30 having sexual intercourse; she would say that my penis was large, but that it was not so large as that of her husband; there was no pretense on her part that she was put to pain or suffering until after she began to demand money, considerable sums, one half of what I had, or one-half of what a man had, that she began to refuse me and saying that it hurt her; but I never knew of her suffering in the least from sexual intercourse until I refused to give her any more of my prop- 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

erty than just what the agreement provided for; there has never been any reason at all why we should not have sexual intercourse excepting her determination not to have; about April 1st, last, at the house of my nephew, Jerry Martin, in Sussex County, where we were visiting; we then made up all our differences and agreed to go back to Blairstown and get the house to rights and I was willing to stay there during the summer and that was my intention on returning from Florida; we were to take a house somewhere about Blairstown, and we agreed to go to the house in which we have been living for the past five years; we had intercourse that night and there was not the least complaint on her part, she said not one word about it causing her pain or making her nervous or that she experienced any discomfort; we went back to Blairstown the following day; from that time there was no serious difficulty between us all the summer until in the month of August, although occasionally she would leave my bed in which we both slept and go to a lounge and remain on it during the night; she would stay away from me for a week at a time, and I would persuade her to come back to my bed and she would do so; during that summer, even in the face of these times of leaving my bed for even a week at a time, she would occasionally respond to my advances and appear to experience pleasure and complained of no pain or inconvenience; I was not excessive in my demands—not more than two or three times a month; on the 2d August, last, we entertained at our house as our guests a neighbor and his

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

wife with whom we both had always been on friendly terms; these friends took supper at our house and remained until about 8 o'clock when we all went together to a moving picture show and passed the evening pleasantly together there; 10
and my wife and I returned to our house at about half-past nine; in the morning I asked a favor from her and she refused, and upon my asking the reason she said because she did not want to, and gave no other reason at all; she afterward got breakfast ready and later in the day she said she had found a bed-bug in the bed and charged me with having brought it from the house of my nephew where I had staid a few nights before; 20
she then took the bed down and apart and professed to clean it and air it to get rid of the bugs which she said I had brought home from my nephew's house; this she went wild about and said all kinds of mean things about them; she kept the bed down for a week or ten days—the first two nights she slept with me, and after that she would wait until I had retired and then put her bed together and sleep in it and take it down the next morning, and so on.

I may be mistaken about the dates I have given 30
just now—there has been a good deal of these troubles that my memory is not very accurate as to dates, but all has occurred since the first of August last; since that time she has slept apart from me, sometimes keeping her door locked.

During all this time, since the first of August, I have repeatedly urged my wife to live with me pleasantly and without controversies and agree- 40

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

ably as husband and wife should live—that our differences should be considered as things of the past; she has said that she would not go with me to Florida—that she did not like it down there and she would not go—that she intended to stay
10 here in the north; she wanted to leave her things in the house where we lived and I might store my things; that house has been sold and I have been notified to give it up the 1st of October; I have no right to keep the house a day longer; the late owner wrote me that she wanted the house on the 1st day of October; and I told my wife that; she said that I should leave her goods in the house; know of no reason whatever why I and my
20 wife should not live together; I need her care and have told her so; she has no home excepting such as I am willing to furnish her; I saw a letter which her son had written her, advising her to sue me for big money, to sue for \$5000.00 and \$50 a month for life and she would likely get \$2500 in addition to a monthly sum; after I had seen that letter she admitted that she had received it from her son; this was in July, 1912.

My going to Orlando has always been for the
30 purpose of attending to my business interests there and to return north in the summer; my health has also been a consideration of much importance; I asked my wife to stay one summer in Orlando, but she refused to stay and we came here last April for the summer; I yielded to her wishes in the matter; I have said that I would like to make the trial and see how it agreed with me, but have always proposed to come to Blainstown for the summer; and I have doubtless said
40 that if it agreed with me to stay in Orlando more

Affidavit of P. Bradley Martin in Opposition to
Order for Writ of *Ne Exeat*

of the year, even making it my home, I would be glad to do so, if my wife would agree to it; I have never taken out any "Residence Papers" or taken any steps in that direction; I have never determined to take up my residence in Orlando or out of this state; in all my plans for going to Florida at this time I have always thought and purposed to return to Warren County in the Spring—my only purpose in going south being for business and health purposes, and my wife perfectly well understands this, and we have frequently talked this over and she knows full well that I am coming back here and she knows that I have made partial arrangements for employment in caring for a fruit farm in Sussex County next spring; I have no thought or purpose of evading any decree or proceeding she may seek or prosecute against me in this Court; I purpose defending myself to the best of my ability against her demands in this suit and to be here and ready on every and all occasions to respond to every demand that may be made against me; I have always said to my wife that I sincerely desire her to accompany me to Orlando for the winter, as usual, and that is my sincere wish now; there is no reason on my part why we should not live happily together, and there has been nothing done on my part to prevent our so living together hitherto; Mr. Konkle went to see my wife as stated in his affidavit to try to get us reconciled; he has stated truly what occurred then; with reference to the circular—I had nothing to do with it coming to my house; although she charged me with having written a threat on it toward her; I saw

10

20

30

40

Affidavit of Lewis A. Konkle, Read in Opposition
to Order for Writ of *Ne Exeat*

it lying on a cupboard in my bed-room; the writing was on it when I first saw it, but it was not mine, nor did I have anything to do with it.

P. BRADLEY MARTIN

- 10 Subscribed and sworn to this
6th day of Oct, 1913, before me,
Clinton B. Bodine,
Commissioner of Deeds of N. J.

**Affidavit of Lewis A. Konkle Read in
Opposition to Order for Writ of
Ne Exeat**

20

(Filed Oct. 10, 1913)

Warren County, ss:

Lewis A. Konkle, being duly sworn according to law, on his oath saith:

- I reside in Blairstown and am a merchant there where I have been in business for more than twenty-five years; I am cousin of Sarah
30 Irene Martin, the petitioner in this matter; I have always been on good personal terms with both Mrs. and Mr. Martin at the request of Mr. Martin I went to his house in Blairstown in the evening of 24th Sept., last the house was lighted up when I got there and I knocked at the door four or five times and got no response; then I went down the street and met Mr. Martin coming towards his house and requested me to return to
40 the house with him; I did so and went into the

Affidavit of Lewis A. Konkle, Read in Opposition
to Order for Writ of *Ne Exeat*

house and found Mrs. Martin there, down stairs, sewing; we talked a little and then she turned around and went on with her sewing; Mr. Martin and I talked a little about the primary election and so on; then Mr. Martin said to his wife, 10
 "Rene, Mr. Konkle has come up to see us to see if we can't get together about our affairs—to get reconciled; he said the time is about up to give up the house and I must move my goods out and I would like to know what disposition we are going to make of them; he said he had made arrangements for a place to store the goods in, and she asked him where; later on he told her where the place was and he asked her if she would take her goods to the place where he was going to take 20
 his and she said no, I want you to leave my goods where they are—he said the house was sold and he had to give it up. In the course of the conversation he told her he was going to Orlando and he wanted her to go with him; he said his health demanded that he should go there; he said we will rent rooms or we will board; he told her he would use her well and would pay all necessary expenses she said she would not go—that he might as well know it now as at any time; then Mr. Martin 30
 said to her "during our marriage I have spent over two thousand dollars, all told, on and with her," and her answer was—"I never asked you to do it." I said to her, Now, Irene, I am friend to both of you, I would like to see you get together and drop these differences; life is short and we haven't long to stay here any of us; you think over this till morning and see if you can't get together this was said just as I was going away; 40

Affidavit of Lewis A. Konkle, Read in Opposition
to Order for Writ of *Ne Exeat*

she made no answer; before that she had accused him of laying a note on the bureau saying something like this—You may have something to answer for more than you think for—he said I didn't write that note, or it wasn't my note that
 10 laid up here; she said—it was your note and your writing—and he said it was not his note and he did not write it; she said emphatically it was his note; he asked her to go and get it she refused to go; then he said—I'll go for it, and he went up and said it isn't here and then he asked her where it was?—and she said I have got that for future reference; we had been down in the sitting-room and he went up stairs for it; then he
 20 said—you knew that note wasn't there and you did that just to tantalize me; he told her that it was nothing more than a kind of missionary circular that some one had left there, with this writing on; she told him he had locked up her things in his bureau, and he denied it; she says it is locked; she went up and the drawer I heard slide out and she came down and admitted that the drawer was not locked.

I was there perhaps two hours; Mr. Martin
 30 said he was willing to get together and reconcile their differences and live together as man and wife should; she did not say anything, but I thought from her countenance she would do it, but she said nothing; she made no particular complaint of him; she did not say he had been cruel to her. Before this I had talked with her about living in the South and she said she did not like to live in the South—there was no life there—it made her feel “duncy”—this was once when
 40 she was down to my place.

Notice of Application to Set Aside Order for Writ
of *Ne Exeat*

I consider Mrs. Martin to be a reasonably well woman; there is nothing about her appearance to indicate that she is not a perfectly well woman; nothing more than the natural consequences of age; she is about sixty years old; when Mr. Martin asked me to go and see her he said to me—"Rene won't talk to me; I can't find out what she is going to do, I ought to know what to do about my business matters; he asked me to go with him and see her and see if their differences could not be reconciled. He wanted me to talk with her about their troubles and to get them reconciled, and that is the reason I went. 10

L. A. KONKLE

Sworn and subscribed this 20
6th day of October, 1913, before me,
Clinton B. Bodine,
Commissioner of Deeds of N. J.

**Notice of Application to Set Aside
Order for Writ of *Ne Exeat***

(Filed Oct. 10, 1913) 30

[Same Title]

To Egbert Rosecrans, solicitor of the petitioner above named:

Take notice that on the 7th day of October instant, I shall apply to the Court of Chancery, at the State house in the city of Trenton, at two o'clock in the afternoon, or as soon thereafter as the Court can hear me, for an order to set aside 40

Notice Accompanying Affidavit to be Read in Opposition to Motion Discharging writ of
Ne Exeat

the order made by this Court on the 30th day of September last, directing and ordering that a writ of *ne exeat republica* be issued in this cause; and on the hearing of the said application I shall read the affidavits of which the annexed are true copies

Dated Oct. 6th, 1913.

WM. H. MORROW,
Solicitor of the defendant.

Notice Accompanying Affidavit to be Read in Opposition to Motion Discharging Writ of Ne Exeat

(Filed Oct. 10, 1913)

[Same Title]

To:

William H. Morrow, Esq.,
Solicitor of above Defendant.

Take notice, that I will rely on and read the within affidavits together with the affidavits already filed in the above cause, at the Court of Chancery, in the State House in the City of Trenton, at two o'clock in the afternoon, or as soon thereafter as counsel can be heard, in defense of your motion to discharge the writ of *ne exeat republica* issued in this cause; the attached affidavits being true copies. And I will ask for a denial of your motion, with costs.

Dated, October 7, 1913.

EGBERT ROSECRANS,
Solicitor for Petitioner.

Affidavit of Sarah Irene Martin in Opposition to Motion Discharging Writ of Ne Exeat

(*Filed, Oct. 10, 1913*)

[Same Title]

10

Sarah Irene Martin, being duly sworn according to law upon her oath deposes and says:

1. I am the petitioner in the above cause.

2. I admit that my husband, the above named defendant, and I spent our winters in Orlando, Florida since the time we were married, on February 4, 1909, but deny that my husband had to go there because of his health, as he went there because he could invest his money to better advantage. I deny that I selected the rooms where we were to stop but that my husband made a show of yielding to me and in reality did what he wished, regardless of my feelings. I admit that I never made any objection to going to Orlando until a year ago when I objected to going because my husband ill treated me and abused me as stated in my petition, and going to Orlando would take me from the comfort of my friends to whom I turned in my wretchedness. I deny that my husband lives on a special diet except that he does not eat many vegetables, and he wants to skimp and save in the furnishing of our table. I admit that my husband and I joined the Presbyterian Church at Orlando but state that this was done as a step in his object to make Orlando his permanent home. I admit that my husband intends to buy a lot and build a house in Orlando because as he often has stated to me, he wishes to

20

30

40

Affidavit of Sarah Irene Martin in Opposition to
Motion Discharging Writ of *Ne Exeat*

make Orlando his permanent home. I admit that I did not wish to live in Orlando permanently because I had no real friends there and as I felt wretched from the constant abuse of my husband

10 I could not bear permanently sever my connections with the friends and children who comforted me, but I often said to my husband that if he would change toward me and treat me well I would do anything that he wanted. My husband did several times strike and kick me but I have never made any attack upon him. Since our return to Blairstown last spring my husband has treated me with extreme cruelty as stated in my petition and when he has asked me to go to Or-

20 lando with him it has been in the nature of a command that I must go, and when I said that I would go with him if he treated me better he would say that I must go no matter how I was treated. The only reason which I ever gave for not going to Orlando was because I was afraid of his ill treatment. I deny that I was in the habit of examining or taking my husbands private papers and books and diary but state that he took my own diary which I started to keep in 1911 in which I wrote

30 of my troubles and that he also took some letters which my children wrote me, and that I took these back when I got the chance. I deny that I took the keys of his room. I admit that I have the house key but state that he took this key and hid the same after a storm one night which forced me to stay at the home of my neighbor all night. He said he took the key so that I could not get in any more and I found the key when I was cleaning the mattress, under which it was hidden. I

40

Affidavit of Sarah Irene Martin in Opposition to
Motion Discharging Writ of *Ne Exeat*

deny taking his letters from his satchel. My husband has for the last two years accused me of taking papers, money and letters which belonged to him and which I did not take. I deny taking my husband's personal letters etc. from his bag in the bureau drawer but state that while opening the bureau drawers to look for some of my personal belongings which I kept there, I found his bag open and took my diary which I had long been looking for. I admit that my husband asked me for the diary which I took (this on September 28, 1913) but deny that he did so without anger but as I have stated in my petition and in the affidavits heretofore filed in this cause, my husband chased me to the sidewalk with great threats of personal violence. This diary was my own which he took away from me. I deny that I came back to our home in ten to twenty minutes and talked with my husband but state that I went to the home of my neighbor Anna Yetter, with whom I stayed until 11 a. m. when I, believing that I should cook his dinner, but with great fear and misgivings and protestations from Mrs. Yetter, went back to our home and prepared dinner but kept the back door open wide so that I might flee at once on any signs of attempted violence on my husband's part. I deny that on the Saturday before Sunday, the twenty-fourth of September, 1913, I had placed some of my goods in certain rooms. On Sunday, September 24, 1913, after I had served his dinner and he had not spoken a word to me for a long while but looked at me with a fierce look, my husband again demanded that diary and when I refused the same he came towards me with fists

10

20

30

40

Affidavit of Sarah Irene Martin in Opposition to
Motion Discharging Writ of *Ne Exeat*

clenched and I in great fear of my life ran out of the house. I deny that I came back to our home after this last time of leaving. I admit that I was away from our home on two occasions in the summer of 1912 but state that I went to visit my relatives that my husband knew where I was going and where I was. I deny ever having received any letter from Dr. Carhart asking me to come home and care for my husband. On one occasion I stayed away all night at the home of my neighbor, Mrs. Anna Yetter because a great rain storm came up while I was visiting and prevented my going home until 10 p. m., when I was afraid to go home to my husband for fear of his abuse and I told Mrs. Yetter that I was afraid to go home and she told me to stay at her home all night, which I did. This was some time about the middle of August, 1913. And when I went home the next morning my husband sorely abused me and took hold of me and threw me about. I deny having slured my husband when he was sick but state that he did accuse me of adultery and with having put posion in his food, and did try to entrap me with one Herman Hillman, all of which facts I have set forth in my petition already filed and my previous affidavits filed in this cause. I deny that I ever refused conversation with my husband nor did I ever try to quarrel with him. I deny that my husband tried to be kind to me during the last two years except in a brutish sort of way when he wished to satisfy his passions. I deny that I ever charged my husband with improper relations with his nephew's wife. I deny that I have an income of my own except \$24.00

Affidavit of Sarah Irene Martin in Opposition to
Motion Discharging Writ of *Ne Exeat*

per year income from an investment in a Florida loan and when I could find time from my house work in Blairstown, N. J., I would do some sewing for my neighbors which brought me in not over \$20.00 per year. I did this so as to get a little pin money because my husband did not give me any. My husband did compel me to do his washing in the kitchen of our boarding house with the colored help at Orlando. I deny that I refused to occupy the same bed with my husband and that I sat in a rocking chair and that I told anything like this to other people. I deny that I am stronger than my husband and deny that he is any weakling, as he frequently works in the garden, does odd jobs, goes fishing, and does about what an ordinary man would do. I assert that my husband abused me in his marital relations as set forth in my petition and in the affidavits previously filed in this cause. My husband did have excessive intercourse with me. I admit having signed ante-nuptial agreement for the income as stated in my husbands affidavit but deny that I ever demanded any more. I deny that my husband's health demands his presence at Orlando, but assert that this business calls him there. I admit that during the first two years of our married life we did not have such serious trouble as he made for me later. I deny that we had any agreement at Jerry Martin's in Sussex County as stated in my husbands affidavit, because my husband never made advances to me. I deny having said mean things about my husband's nephew and family. I admit that I did sometimes sleep apart from my husband of late because of the fear of

10

20

30

40

Affidavit of Sarah Irene Martin in Opposition to
Motion Discharging Writ of *Ne Exeat*

pain and suffering which sexual intercourse would bring on. I admit having received a letter from my son as stated in my husband's affidavit and this letter was in response to a plea for advice in
10 aid of my suffering. This letter my husband took from me and is one of the letters which he claims I took from him. I did take it back as before stated, I deny any knowledge of my husband's arrangements to manage or be employed on a fruit farm in Sussex County, next spring.

In answer to the affidavit of Lewis A. Konkle, I state that my husband is also a cousin of Mr. Konkle. On the evening of September 4, 1913, when Mr. Konkle knocked at our door I did not
20 hear him knock as I presume I was just at that time in the toilet in the rear of our home. I admit saying I would not go to Orlando but I said this looking at my husband and added "You know why" to my husband, meaning that I would not go because of his cruelty and not until he changed because I could not stand it and would rather die. I admit that I said that my husband had locked my things in the bureau for they were
30 locked earlier in the day when I tried to open the drawer. When I went up stairs I found the drawer open and knew it was a trick of my husband's to try to brand me a liar in the presence of Mr. Konkle. I did not want to state my complaints before Mr. Konkle because I did not like to and also I was afraid of what my husband would say and do to me after Mr. Konkle had gone if I told of his cruelty towards me. I deny that I ever said the South made me feel "duncy" and that
40 I did not like to live there and there was no life

Affidavit of Hester Rose in Opposition to Motion
Discharging Writ of *Ne Exeat*

there. My husband had asked Mr. Konkle to come up to our home that evening as he admits in his affidavit and after Mr. Konkle had gone my husband jeered at me and said "Now I have witness against you."

10

SARAH IRENE MARTIN.

Sworn and subscribed to before me this

7th day of October, A. D. 1913.

A. B. Craig,

Commissioner of Deeds for New Jersey.

**Affidavit of Hester Rose in Opposi-
tion to Motion Discharging Writ
of *Ne Exeat***

20

(Filed, Oct. 10, 1913)

[Same Title]

Hester Rose, of full age, being duly sworn according to law upon her oath deposes and says:

1. I know Sarah Irene Martin very well as I live in the adjoining house in Blairstown where she has lived for several years. 30

2. On or about April 1, 1912 when Mrs. Martin returned from Florida with her husband, he engaged me in conversation and accused his wife of adultery and said "she (meaning Mrs. Martin) doesn't care anything about me because she has another man down there in Orlando" and I said to him that I did not believe that of Mrs. Martin and thereupon he further said "Well that is so 40

Affidavit of Hester Rose in Opposition to Motion
Discharging Writ of *Ne Exeat*

whether you believe it or not and you might as well call me a liar" and other things to that effect which I cannot remember. Mr. Martin, her husband, also said "Well I am not going to live with her any more."

10 3. On or about the middle of August, 1913 I heard a great quarrel between Mrs. Martin and her husband and he was talking in a very loud voice and calling her liar. I could not hear very distinctly but I heard her husband accusing her of adultery with other men and she was denying the charges. This was in Blairstown.

20 4. On Sunday, September 28, 1913, I talked with Mrs. Martin at the home of Mrs. Anna Yetter in Blairstown and Mrs. Martin told me that her husband had chased her out of the house and threatened her with harm. She was very excited and seemed to be in great fear of her husband and told me that she was thus frightened and she pleaded with me to sleep with her that evening because as she said, she was so nervous and frightened.

HESTER ROSE.

30 Sworn and subscribed to before me this
6th day of October, A. D. 1913.

A. B. Craig,
Commissioner of Deeds
for New Jersey.

Affidavit of Anna Yetter in Opposition to Motion Discharging Writ of Ne Exeat

(*Filed, Oct. 10, 1913*)

[Same Title]

10

Anna Yetter, of full age, being duly sworn according to law upon her oath deposes and says:

1. I know Sara Irene Martin very well as she has lived near me for several years.

2. Mrs. Martin has told me frequently how her husband ill treats her by his abuse of marital rights, and by physical acts of force and abusive words and other acts, and that he has give her no money for the past year and more.

20

3. About the middle of August, 1913 there was a terrific rain storm in Blairstown, N. J. and Mrs. Martin was visiting at my home when it began about eight o'clock in the evening. Several times she started to go home but the rain and storm kept her back. Finally it got to be 10 p. m., before the rain ceased somewhat and Mrs. Martin said she was afraid to go home at that time for fear of what her husband would do to her. I asked her to stay here all night and she did so.

30

4. On September 28, 1913 about nine o'clock in the morning Mrs. Martin came to my home greatly excited. She told me that her husband had just chased her out of the house. She said that she was so afraid of her husband that she did not know what to do. She showed by her manner that she was greatly frightened. She stayed at my home until 11 a. m., when she hesitatingly said that she thought she ought to go back to her

40

Affidavit of Frank S. Gordon in Opposition to Motion Discharging Writ of *Ne Exeat*

home to prepare dinner but was afraid to go back because of what her husband might do to her. I told her that she had better not go back. But she went at last and came back to my house about 3
 10 p. m. the same day. She said that her husband had not spoken to her and looked so threateningly that she was afraid of what he might do to her. She showed plainly that she was very frightened, nervous and excited and asked me if she could stay with me because she said she did not dare to go back to her husband for fear of what he might do to injure her. I told her to stay with me at my home and she has stayed with me continuously ever since. While staying at my home she has
 20 shown great fear and nervousness. I can notice that she has lost considerably in weight during the past year.

MRS. ANNA YETTER.

Sworn and subscribed to before me this sixth day of October, A. D., 1913.

A. B. Craig,
 Commissioner of Deeds
 for New Jersey.

30

Affidavit of Frank S. Gordon in Opposition to Motion Discharging Writ of *Ne Exeat*

(Filed, Oct. 10, 1913)

[Same Title]

40 Frank S. Gordon, being duly sworn according to law upon his oath deposes and says:

Affidavit of Frank S. Gordon in Opposition to Motion Discharging Writ of *Ne Exeat*

1. I am a practicing physician and surgeon duly licensed to practice in the State of New Jersey and the State of New York.

2. I was graduated with the degree of M. D. from the New York University Medical College in the year A. D., 1898. I was interne at Randalls Island Hospital and the Lying-in Hospital both in the City of New York, State of New York, and was assistant attending physician at St. Michael's in the City of Newark, N. J., while at the aforementioned hospitals and during the rest of my practice I have special experience in the diseases of women. 10

3. I examined Sarah Irene Martin, the above named petitioner on October 3, 1913 for alleged injuries received to her reproductive organs. Mrs. Martin stated to me at the aforementioned time that she had received injuries to her vagina during intercourse with her husband, the defendant in the above named cause, and she said that at such times her husband seriously hurt these parts by violent intercourse and by use of his hands and fingers until she bled. 20

4. On examination I found that at the outlet of the vagina there are scars which have all appearance of being recent and in a location which would preclude all chance of their having been caused by or through natural agencies such as child birth. I also found local swelling at the urinary orifice which was not caused by any inflammation of the bladder, as I examined the urine and found it to be normal. The uterus and its appendages are fairly normal and in good position. 30

Order Discharging Writ of *Ne Exeat*

5. My examination, as hereinbefore stated, leads me to believe that the injuries and disturbances found were probably caused through the agencies stated to me by Mrs. Martin as being the cause, and in my opinion, if the condition
 10 found were allowed to continue, serious permanent injury would probably result.

FRANK S. GORDON.

Sworn and subscribed to before me this seventh day of October, A. D., 1913.

A. B. Craig,
 Commissioner of Deeds
 for New Jersey.

20

Order Discharging Writ of *Ne Exeat*

(Filed, Oct. 10, 1913)

[Same Title]

Application, on due notice to the solicitor of the petitioner in the above named cause, having been made to the Court on the 7th day of October, instant, for an order to discharge the order for a
 30 writ of *ne exeat republica* made in this cause on the 30th day of September, last, and the affidavits on the part of the petitioner and of the defendant having been read and the arguments of counsel having been heard thereon and due consideration being given, and it appearing to the Court that said order ought to be discharged—It is thereupon on this seventh day of October, in the year
 40 nineteen hundred and thirteen, on motion of Wil-

Answer

liam H. Morrow, of counsel with the defendant, ordered that the said order for the said writ and the writ thereon issued be and the same are hereby discharged and that the bond given by the defendant to the sheriff of the county of Warren, pursuant to the said order and writ, be delivered up to be cancelled. 10

E. R. WALKER,
C.

Respectively advised,
John H. Backes,
V. C.

A true copy.
Sam. K. Robbins,
Clerk.

20

Answer

[Same Title]

The answer of Philetus B. Martin, the defendant, to the petition of Sarah Irene Martin, the petitioner.

(1) This defendant admits it to be true that petitioner and defendant were lawfully married as in said petition is alleged. 30

(2) This defendant denies each and every the allegations contained in the second paragraph of the said petition excepting that petitioner and defendant cohabited at Blairstown, excepting as is hereinafter mentioned from the time of the said marriage until on or about the twenty-eighth day of September last; that during the time interven- 40

Answer

ing the marriage and the date last mentioned petitioner and defendant were accustomed to spend the months from about November first of each year until the first of April of each year at Orlando in the State of Florida—to which latter
10 place defendant was required to go and be because of his businnes affairs there and on account of his health—he being unable to pass the rigorous winters in this state. Defendant specifically denies that petitioner was compelled to leave defendant because of the alleged reasons set forth in paragraph (2) of her petition; he denies that he was in any degree cruel to her; he denies that she ever suffered from any violent or ill-governed temper of defendant; he denies that he used vile epithets
20 toward her; he denies that he accused petitioner of attempts to poison him of that he accused her of adultery; he denies that he endeavored to entrap her into compromising circumstances with any purpose or otherwise soever; he denies that he endeavored to induce petitioner to keep house for the said Hillman mentioned in said paragraph or that defendant flew into a great rage and accused petitioner of adultery; he says that when it happened that he did not go out of the house with
30 his wife it was simply to avoid a scene in public or on the streets because of her loud talk and unseemly conduct, or immediately following a brawl by her in the house in Orlando in which they lived and there was bitter feeling between them because of her constant disposition to wrangle and use harsh language toward defendant, and he sometimes refused to have much to say to her because of the constant irritation caused by her brawling and ugly manner toward this defendant.
40

Answer

This defendant denies that he ever accused her of attempts to poison him or of other misconduct; he denies that he cut off all her allowance for personal expenses; on the contrary thereof he says that he furnished her with every convenience required for her comfortable living, both in wearing 10 apparel and in things to eat and for personal necessities; that he gave to her more money for her personal expenditures than he was accustomed to expending for himself; he says that before her marriage to defendant she was not accustomed to having money to any considerable amount to expend for her immediate personal use and she had more after her marriage to defendant than she had before, and that she was as well if not better provided with ready money and 20 with things to wear and for pin money as any other woman moving in the same society, and this defendant in this respect discharged every legal duty he owed to the petitioner; he did refuse to give to her such sums of money as she often demanded and that without giving to defendant any reason why he should give to her what she demanded; he denies compelling her to do his laundry in the kitchen where colored help worked; he says she did her own laundry where and as she 30 pleased—and his laundry was principally done at a public laundry.

He denies that petitioner was subjected to gross abuse of marital rights by defendant or that defendant demanded excessive sexual intercourse or that in his endeavors to secure such intercourse or upon her refusal he threw her about or roughly handled her until she should be partly overcome and forced her to submit; he denies 40

Answer

that by force he ever compelled her to submit; he denies the charge that he inserted his fingers into her vagina or that his finger-nails caused her suffering or that he used his finger and thereby caused her any suffering; or that he, in the matter of sexual intercourse with her used force and brutality as set forth at length in said petition and particularly in the 2d paragraph thereof.

Defendant denies that sexual intercourse with petitioner caused her pain or suffering; he says that she made no complaint of pain resulting from such intercourse until after one year and upwards from the time of the said marriage; he says that before his marriage petitioner he and she had entered into an agreement by which he was to provide for her having after his death the interest of eight thousand dollars, and after one year from the time of the marriage she began to demand that she have more money at once and in defendant's lifetime; and when he refused to divide his property with her according to her demands she then began to profess that having sexual intercourse was inconvenient and somewhat painful to her; but defendant had no knowledge of that condition of things beyond what she said; and there was not the least indication that she suffered pain thereby, and, coupled, as were her refusals with demands for money from defendant, even to her having one-half of all defendant's property, he did not believe that such intercourse was painful to her in any degree whatever; but he never forced her to submit to him; nor, indeed, could he have so forced her, for she was much stronger than defendant and he would have been quite unable to compel her to submit—

Answer

even had he endeavored so to do—and he denies that he used other than persuasion and caressing in his endeavors. Defendant says that on the occasion referred to when the other occupants of the house were disturbed, it was not because of force being used by defendant, but because of an unseemly wrangle between them, following her refusal to have intercourse with defendant. 10

Defendant denies that he called petitioner a whore or a sow or a bitch; he never thought of such a thing; she has called defendant a liar, and that on many occasions, and sometimes defendant has retorted by calling her a liar; he denies that he ever struck or kicked her or offered or threatened to strike or kick her or to use personal violence towards her; she has frequently made assaults upon defendant and has warded off her attempts; if petitioner has lost in weight the fact has not come to the knowledge of defendant; petitioner is as she always has been, a strong and vigorous woman, not easily excited or being overcome with nervousness or any such thing. 20

Defendant denies that on the twenty-eighth day of September last he so violently abused or threatened petitioner that she started to run down steps of the house as set forth in said petition, or that defendant pursued her to the street, or that fear in any degree caused petitioner to take refuge in a neighbor's house. On the occasion referred to petitioner had unlawfully abstracted from defendant's possession papers and books of great value to defendant and to which she had no right whatever, and defendant was endeavoring to procure possession of these papers, but resorted to no violence in the effort. Defendant 40

Answer

denies that petitioner, because of supposed ill-treatment of her by defendant, became nervous and ill—or that she was rendered unfit to properly discharge her duties as wife; he says there would never have been the least trouble about her having the love of her husband or in having him meet and discharge every duty owing to her from him, assuming that such love had been lost, which this defendant in on wise admits to have been the case; he has always desired her love and has wanted and earnestly endeavored to live with his wife after their marriage vows and to love and cherish her as wife; and it has not been his fault if the other result has happened; he has made constant endeavors to be reconciled the one to the other, for he requires her love and kindly ministrations to continue just as they existed during the first year after their marriage, and he knows of no sufficient reason why such relations should not continue. Defendant denies that petitioner left his house under the circumstances set forth in the said petition.

Defendant says that it has been his intention ever since returning to Blairstown from Orlando in the month of April last, to return to Orlando and that petitioner has always known of such intention, but expressed dislike to return and desired that she should be allowed to remain in Blairstown, residing in the house in which they together have lived during the summer months of all the years since their marriage and that defendant would furnish her a living there, giving her such sums of money as she desired to have; but defendant was unwilling to do that, that it was necessary for him to go to Orlando, and he

Answer

needed her company with him there, as was his right to have and her duty to give to him; that his term of occupation of the house in Blirstown was uncertain; that the owner in the late summer sold the house and defendant was notified that he must give up possession of the house on the first 10 day of October, 1913; that he had no right to remain for any longer period, and he so informed his wife and requested her to go with him to Orlando and spend the winter, just as they had always done, he offering to rent a house there, or board or procure furnished rooms, as best would suit her, but that she refused to go, and finally said she would not go with him; he procured, in good faith, her cousin, Mr. Lewis A. Konkle, a very reputable citizen of Blirstown, who was 20 also defendant's cousin to go to his wife late in the month of September, and by himself to reason with her and persuade her to be reconciled to defendant and to accompany him to Orlando, that in the course of the evening while Mr. Konkle was talking with her for two hours, at least, she persistently refused to agree to go with defendant, and gave no reason whatever, only that she would not go, and Mr. Konkle, after exhausting all his endeavors, went away from the house; de- 30 fendant, saw that his wife was determined not to go with him and suggested to her that, as it would be necessary to vacate the house, he would store that portion of the goods belonging to him in some building and that she should have her goods stored somewhere, but she absolutely refused to acquiesce in any arrangement he suggested and told him to let her things alone in the 40

Answer

house; that a few days before she left the house there was some dispute between them about the possession of some articles belonging to him which she had in her possession, and there was a controversy about the drawers of a bureau belonging to her which she insisted he had locked away from her, and he had not locked the drawers, and she found it so.

When she left my home she went out of the house in an angry manner, notwithstanding that this defendant urged her not to go, and she did not return to the house, but has gone to a neighbor and sets this defendant at defiance.

Defendant denies all the charges of extreme cruelty set forth in the said petition; he denies that he has treated her with abuse, he denies that he has hatred for her, he denies that it would be improper and unsafe for her to return to him and live with him as his wife.

He has in the utmost good faith, endeavored to induce her to remain with him and go with him to Florida, but she persistently refuses so to do and the separation is not the fault or the wrong of this defendant, and he denies that the petitioner has any right whatever to relief in the premises; he denies that he is worth personal property to the value of \$20,000.00.

He says that he suffers from heart trouble, and from serious muscular rheumatism at his heart in cold weather, from rupture and from more or less general debility and that he has not much earning capacity.

This defendant says that it has been and is now his intention to return, as usual, from Or-

Notice Accompanying Affidavits to be Read on
Motion for Allowance and Counsel Fees

lando to Blairstown sometime in the month of
April or of May next.

This defendant humbly prays to be dismissed.
(Signed) PHILETUS B. MARTIN,

Defendant. 10

**Notice Accompanying Affidavits to
be Read on Motion for Allowance
and Counsel Fees**

(Filed 191)

SARAH IRENE MARTIN, Petitioner, vs PHILETUS BRADLEY MARTIN, Defendant.	}	On Petition etc. Notice.	20
---	---	-----------------------------	----

To, William H. Morrow, Esq., Solicitor for
Philetus Bradley Martin, Defendant in above
Cause.

TAKE NOTICE, that on Tuesday the twenty-third
day of December, next, at the State House in
Trenton, at ten o'clock in the forenoon or as soon
thereafter as counsel can be heard, I will apply
to the Chancellor for an order requiring you to
pay to your wife, Sarah Irene Martin, the above
named petitioner, a proper allowance for her sup-
port and maintenance pending this suit, and also
a reasonable sum for counsel fees to enable her 40

Petition for Allowance and Counsel Fees

to prosecute the said suit. And annexed hereto and served upon you herein are copies of the petition and affidavits upon which the said application will be made.

Dated December 17, 1913.

10

EGBERT ROSECRANS,
Solicitor of Petitioner.

Petition for Allowance and Counsel Fees

(Filed 191)

20

(Same title.)

To His Honor EDWIN ROBERT WALKER, Chancellor
of the State of New Jersey:

The petition of Sarah Irene Martin, the above named petitioner, respectfully shows:

1. She has recently filed her petition for divorce from bed and board, in this cause, against her husband, Philetus Bradley Martin, alleging therein that her husband did perform acts of extreme
30 cruelty upon her and against her.

2. Process of citation has been served upon said defendant.

3. The charge made in her said petition is true, as she is ready to maintain and prove, as your Honor shall direct.

4. Petitioner was forced to leave the defendant because of defendant's acts of extreme cruelty
40 towards her as is elaborated in the affidavit to be

Petition for Allowance and Counsel Fees

annexed to this petition, on the twenty eighth day of September, A. D., nineteen hundred and thirteen, since which time he has not supported petitioner, and she is destitute of means to support herself, and to prosecute her said cause in this court.

10

5. No children were born of said marriage.

6. Petitioner is informed and verily believes that her husband has money to the extent of nineteen or twenty thousand dollars which is invested in loans and mortgages on real estate in the State of Florida and he obtains thereon a yearly income at the rate of eight per cent which amounts to about fifteen hundred to sixteen hundred dollars (\$1,500.00—\$1,600.00) per annum. And the defendant is also from time to time engaged in the business of buying and selling of real estate in the State of Florida, which brings him an additional income. And petitioner says that her husband's means are amply sufficient for him to raise and pay such sums as may be necessary for the purpose aforesaid.

20

7. She prays that an order may be made requiring the defendant to pay her a proper allowance for her support and maintenance until the termination of this suit; and from the time of commencement of this suit and also to pay forthwith a reasonable sum for the fees of counsel in prosecuting this cause for her; and for such other relief as the circumstances of the case may render fit, reasonable and proper.

30

And petitioner will ever pray, etc.

EGBERT ROSECRANS,

Solicitor for Petitioner.

JOSEPH M. ROSENBERRY,

Counsel with Petitioner. 40

**Affidavit of Sarah Irene Martin on
Petition for Allowance and Coun-
sel Fees**

(Filed

191)

10 State of New Jersey, }
County of Warren, } ss:

SARAH IRENE MARTIN, the above named petitioner, being duly sworn according to law, upon her oath deposes and says:

1. I have read the foregoing petition and know the contents thereof, and the same in true; and particularly it is true that I have in good faith and truth and without collusion, brought the above entitled suit against my husband for
20 divorce from bed and board for the cause of extreme cruelty, as stated in my petition.

2. I was lawfully joined in the bonds of matrimony to my present husband, Philetus Bradley Martin, the defendant in the above named action, on or about the fourth day of November, A. D., 1909, by the Rev. Dr. Church, a minister of the gospel, at Madison in the State of New Jersey.

3. We have cohabited at Blairstown, in the County of Warren and State of New Jersey, with
30 some interruptions as hereinafter stated, from the day of our marriage until the twenty-eighth day of September, A. D., 1913, when I was compelled to separate from him finally, because of his extreme cruelty to me as hereinafter set forth. Almost from the beginning of our married life I suffered from the violent and ill governed temper of my husband. While at Orlando, Florida during the winter of 1910-11 my husband frequently
40 accused me of attempts to poison him and he al-

Affidavit of Sarah Irene Martin on Petition for
Allowance and Counsel Fees

so accused me of adultery, which charges were entirely unfounded and caused me great suffering. During the winter last mentioned, my husband endeavored to entrap me into compromising circumstances by endeavoring to induce me to keep house for one Herman Hillman while my husband went away on a business trip as he explained. When I refused so to do he sorely abused me and again accused me of misconduct and told me that he wanted to obtain a divorce from me. While my husband and I were in Orlando, Florida during the winter of 1911 and 1912 my husband's cruel and abusive conduct towards me increased and he would hardly ever talk to me while we were in company of others, and he would rarely accompany me out of the house, and he did tell my friends that he did not trust me, and he did cut off all my allowance for personal expenses, all of which caused me great suffering. On the first day of our return from Orlando, Florida in the year 1912 and about the end of February, he said to two of my friends and neighbors, "My wife has another man down there in Orlando and I am not going to live with her any more." While at Orlando Florida during the winter of 1912 and 13, my husband's cruel conduct towards me grew steadily worse and he compelled me to do all his washing and laundry work in the kitchen of our boarding house, where the colored help worked and where none of the other boarders were ever seen, and he absolutely gave me nothing for any personal expenses so that I had not enough to buy a postage stamp. And he hardly bought me enough clothes and other necessities of life. From

Affidavit of Sarah Irene Martin on Petition for
Allowance and Counsel Fees

10 this winter to the end of our co-habitation my husband subjected me to gross abuse of martial right thru the following acts; he demanded excessive sexual intercourse and whenever I asked him to desist he threw me about and handled me so roughly that I would be partly overcome and would be forced to submit, and he would indulge in the habit of inserting his finger in my vagina which would cause me great suffering because of his sharp finger nails, and he would insert his penis into my vagina without care nor regard for my feelings and would roughly force full entry which would cause me great pain and suffering and also would cause such a nervous shock and pain that I could not sleep the whole night.

20 Once at Orlando Florida about January, 1913 when I was suffering from bowel trouble and was quite ill, my husband demanded sexual intercourse and when I pleaded with him to desist he threw me about and mistreated me so badly that I called aloud to my friends in the neighboring rooms to help me and they did two of them answer me and the one did knock at our door and did ask my husband to keep quiet. But my husband continued to abuse me with words for quite some time thereafter that night. About this same month and year just mentioned at Orlando Florida my husband did kick me in the back because I snored and I had a black and blue spot where he kicked me for several days, and once in this same month and year he did take hold of me in his rage and did throw me on a trunk and did on several occasions and subsequent and up to the time when we last co-habited, threaten with his fists to strike

30

40

Affidavit of Sarah Irene Martin on Petition for
Allowance and Counsel Fees

me and did on some of these occasions strike and maltreat me. And for reason of this continued abuse I have lost fifteen to twenty pounds, and have become extremely nervous and ill. Finally on the twenty-eighth day of September, 1913 at Blairstown N. J., my husband accused me of stealing some books in which he kept a dairy and was so threatening and violent in his abuse and did raise his fists and come towards me as if to strike me, that I was put in great fear for my life and did run out of our house and he did follow to the sidewalk in front of our house and I went then to the house of Albert Yetter and wife, a neighbor and did tell them I was afraid to go back to the house and afraid of my husband and they did tell me to stay with them. And knowing my husband's hatred for me and because of his former acts of extreme cruelty towards me I fear of bodily harm if I should go back to live with him as his wife. Shortly awter I was forced to leace my husband as aforesaid I weighed 109 lbs., and I was weighed againon November 29, 1913 and weighed 126 lbs., a gain of 17lbs. in about 2 months. Both times I wore about the same weight of clothes.

My husband has money to the extent of nineteen or twenty thousand dollars invested in loans and mortgages on real estate in Florida and obtains thereon a yearly income at the rate of eight per cent, and he is also engaged in the business of buying and selling real estate which brings him an additional income. Last year he did not engage in said real estate business but I believe he will again this coming year. I know that he

Affidavit of Anna Yetter on Petition for Allow-
ance and Counsel Fees

has the aforesaid amount because he frequently
told me about one year ago that he had then over
eighteen thousand dollars and I judge from the
fact that he does not nearly live up to his income
that he has increased this sum to the sum first
10 mentioned. My husband's yearly income on his in-
vestments is from \$1,500 to \$1,600. My sole in-
come is from a loan of \$300 on which I receive
the annual income of eight per cent or \$24.00. My
husband and I had an ante-nuptial agreement
whereby I was to receive at my husband's death
and during my life time, the income from an in-
vestment of \$8,000 at eight per cent. This in-
come was to be in lieu of dower or any other claim
20 which I might have on his estate.

SARAH IRENE MARTIN.

Sworn and subscribed to before me this
9th day of December, 1913

R. Craig, Jr.,

Notary Public of New Jersey.

**Affidavit of Anna Yetter on Petition
30 for Allowance and Counsel Fees**

(Filed 191)

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

ANNA YETTER, of full age being duly sworn ac-
cording to law upon her oath deposes and says:

1. I know Sarah Irene Martin very well as she
40 has lived near me for several years.

Affidavit of Anna Yetter on Petition for Allow-
ance and Counsel Fees

2. Mrs. Martin has told me frequently how her husband ill treated her by his abuse of marital rights, and by physical acts of force and abusive words and other acts, and that he has given her no money for the past year and more.

10

3. About the middle of August, 1913 there was a terrific rain storm in Blairstown, N. J., and Mrs. Martin was visiting at my home when it began about eight o'clock in the evening. Several times she started to go home but the rain and storm kept her back. Finally it got to be 10 p. m., before the rain ceased somewhat and Mrs. Martin said she was afraid to go home at that time for fear of what her husband would do to her. I asked her to stay here all night and she did so.

20

4. On September 28, 1913 about nine o'clock in the morning Mrs. Martin came to my home greatly excited. She told me that her husband had just chased her out of the house. She said that she was so afraid of her husband that she did not know what to do. She showed by her manner that she was greatly frightened. She stayed at my home until 11 a. m., when she hesitatingly said that she thought she ought to go back to her home to prepare dinner but was afraid to go back because of what her husband might do to her. I told her that she had better not go back. But she went at last and came back to my home about 3 p. m., the same day. She said that her husband had not spoken to her and looked so threateningly that she was afraid of what he might do to her. She showed plainly that she was frightened, nervous and excited and asked me if she could stay with me because she said she did not dare to go

30

40

Affidavit of Hester Rose on Petition for Allow-
ance and Counsel Fees

back to her husband for fear of what he might do
to injure her. I told her to stay with me at my
home and she has stayed with me continuously
ever since. While staying at my home she has
10 shown great fear and nervousness. I can notice
that she has lost considerably in weight during
the past year.

MRS. ANNA YETTER.

Sworn and subscribed to before me this
6th day of October, 1913.

A. B. Craig,

Commissioner of Deeds for N. J.

This is a true copy of the original filed October
7, 1913.

20

**Affidavit of Hester Rose on Petition
for Allowance and Counsel Fees**

(*Filed* 191)

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

30

HESTER ROSE, of full age being duly sworn ac-
cording to law upon her oath deposes and says:

1. I know Sarah Irene Martin very well as I
live in the adjoining house in Blairstown where
she has lived for several years. On or about Ap-
ril 1, 1912 when Mrs. Martin returned from Flor-
ida with her husband, he engaged me in conver-
sation and accused his wife of adultery and said
40 "she (meaning Mrs. Martin) doesn't care any-

Affidavit of Hester Rose on Petition for Allow-
ance and Counsel Fees

thing about me because she has another man down there in Orlando" and I said to him that I did not believe that of Mrs. Martin and thereupon he further said "Well that is so whether you believe it or not and you might as well call me a liar" and other things to that effect which I cannot remember. Mr. Martin, her husband, also said "Well, I am not going to live with her any more." 10

3. On or about the middle of August, 1913 I heard a great quarrel between Mrs. Martin and her husband and he was talking in a very loud voice and calling her liar. I could not hear very distinctly but I heard her husband accusing her of adultery with other men and she was denying the charges. This was in Blairstown. 20

4. On Sunday, September 28, 1913 I talked with Mrs. Martin at the home of Mrs. Anna Yetter in Blairstown and Mrs. Martin told me that her husband had chased her out of the house and threatened her with harm. She was very excited and seemed to be in great fear of her husband and told me that she was thus frightened and she pleaded with me to sleep with her that evening because as she said, she was so nervous and frightened. 30

HESTER ROSE.

Sworn and subscribed to before me this

6th day of October, A. D. 1913.

A. B. Craig,

Commissioner of Deeds for N. J.

A true copy of original filed October 7, 1913.

**Affidavit of Myrtle Shipps on Petition
for Allowance and Counsel Fees**

(Filed 191)

MYRTIE SHIPPS, of full age being duly sworn according to law upon her oath deposes and says:

10 1. I am the daughter of the above named petitioner, Sarah Irene Martin. On or about August 20, 1913 my mother, the petitioner and her husband, the above named defendant, were visiting at my home near Riverton, Penna. This was the first time in about two years that they had been at my home together.

20 2. While at my home the defendant quarreled with the petitioner a great deal. His eyes flashed and he had an angry look whenever he talked with petitioner. The petitioner by her quiet manner appeared to be afraid of her husband. Mr. Martin left our home without his wife and before going he told me that I should not come to see my mother at his home in Blairstown, N. J., any more. He also said that his wife's mother, my grandmother, could not come to his home any more. He told me that his wife received mail thru a "private post office" in order to do him harm.

30 3. After my mother, the petitioner returned to New Jersey from Florida in April 1913 I noticed that she was much thinner and had grown quite nervous. I had not seen her since she left Blairstown the preceeding October, 1912. Since her return to New Jersey, as aforesaid, I have seen her several times and she has continually grown thinner and more nervous. I have also noticed that her clothing looked shabby and worn during the
40 past year or more.

Affidavit of Edith Wilson on Petition for Allowance and Counsel Fees

3. My mother, the petitioner, is the third wife of the defendant. The defendant's first wife left him because of alleged ill treatment; defendants second wife left him shortly after their marriage and died shortly after. Both the first and second wives went to live with their respective families after leaving the defendant. The present petitioner is the third wife of the defendant. 10

4. Shortly after this cause of action arose, the petitioner came to my home in Riverton, Penna. She looked very much run down and was very nervous. During the several weeks that she was at my home she has increased considerably in weight, she became much less nervous, her appetite increased greatly, and she has become much brighter and happier in her manner and looks much healthier. 20

MRS. MYRTIE SHIPPS.

Sworn and subscribed to before me this

10th day of December, A. D., 1913.

Nicholas Harris,

Master in Chancery of N. J.

**Affidavit of Edith Wilson on Petition
for Allowance and Counsel Fees**

30

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

EDITH WILSON, of full age being duly sworn according to law upon her oath deposes and says:

1. I have known the above named petitioner and 40

Affidavit of Frank S. Gordon on Petition for Allowance and Counsel Fees

defendant for several years. They have both resided in Blairstown, N. J., as husband and wife, during the past three years except that during the winter months of each year they have both gone to Florida. During the past year I have noticed that the petitioner has grown thinner and her clothes were becoming rather shabby. During the first week in October, 1913, shortly after this cause of action arose, I had several conversations with the petitioner. I noticed that she was very nervous in her actions and speech, that she looked ill, and that she evinced fear of her husband. I did not see petitioner for about two months after the time above mentioned and when I did see her again in December 1913, and had conversation with her, I noticed that she was less nervous and looked healthier and had gained considerably in weight.

EDITH WILSON.

Sworn and subscribed to before me this
10th day of December, 1913.

A. B. Craig,
Commissioner of Deeds for New Jersey.

30 **Affidavit of Frank S. Gordon on Petition for Allowance and Counsel Fees**

(Filed 191)

State of New Jersey, }
County of Warren, } ss:

FRANK S. GORDON, being duly sworn according to law upon his oath deposes and says:

Affidavit of Frank S. Gordon on Petition for Allowance and Counsel Fees

1. I am a practicing physician and surgeon duly licensed to practice in the State of New Jersey. I was graduated with the degree of M. D. from the New York University Medical College in the year A. D., 1898. I was interne at Randall's Island Hospital and the Lying-in Hospital, both in the City and State of New York, and was assistant attending physician at St. Michaels Hospital in the City of Newark, N. J. While at the aforementioned hospitals and during the rest of my practice I have had special experience in the diseases of women. 10

2. I examined Sarah Irene Martin, the above named petitioner on October 3, 1913 for alleged injuries to her reproductive organs. Mrs. Martin stated to me at the aforementioned time that she had received injuries to her vagina during intercourse with her husband, the above named defendant, and she said that at such time her husband seriously hurt these parts by violent intercourse and by the use of his hands and fingers until she bled. 20

3. On examination I found that at the outlet of the vagina there are scars which have all appearance of being recent and in a location which would preclude all possibility of their having been caused by or thru natural agencies such as child birth. These scars were only caused by some external agency. I also found local swelling at the urinary orifice which was not caused by any inflammation of the bladder, as I examined the urine and found it to be normal. The uterus and its appendages are fairly normal and in good position. Varicose veins on her right leg were prominent and she was in a nervous condition. 30 40

Affidavit of Frank S. Gordon on Petition for Allowance of Counsel Fees

4. On December 8, 1913 I again examined the above named petitioner and found that her general health had improved very much since my last examination above mentioned; that the varicose veins on the right leg are not as prominent;
 10 that she has gained considerably in weight and has become less nervous. The scars at the outlet of the vagina have healed so that they are now scarcely perceptible. The local swelling at the urinary orifice has subsided and these parts have become normal.

5. My examinations, as hereinbefore stated, lead me to believe that the injuries and disturbances found were quite probably caused thru the
 20 agencies stated to me by Mrs. Martin as being the cause, and in my opinion, if the conditions first found had been allowed to continue, serious permanent injury would probably have resulted.

6. The petitioner and defendant have resided in Blairstown, N. J., as husband and wife, continuously for the past three years except that they have gone south during the winter months.

FRANK S. GORDON.

Sworn and subscribed to before me this

30 10th day of December, A. D. 1913,
 A. B. Craig,
 Commissioner of Deeds for N. J.

**Notice of Additional Affidavit to be
Read on Petition for Allowance
and Counsel Fees**

To, William H. Morrow, Esq., Solicitor of Defendant.

TAKE NOTICE: That on the application for alimony and counsel fees to be made in the above stated cause before our Court of Chancery at the State House in Trenton, I shall make use of and read the affidavit of Clyde Bergstreser, of which the within is a true copy, and which affidavit is supplemental to the affidavits already served upon you in the above matter. Said application to be made on Tuesday the seventeenth day of February, 1914. 10

Dated February 7, 1914.

EGBERT ROSECRANS, 20
Solicitor of Petitioner.

**Affidavit of Clyde Bergstreser on
Petition for Allowance and Counsel Fees**

(Filed 191) 30

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

CLYDE BERGSTRESER being duly sworn according to law upon his oath deposes and says:

1. I have been a resident of Blairstown, Warren County, New Jersey for the past three years. During that time I have known both the petitioner and defendant in this action, personally. 40

Affidavit of Clyde Bergstreser on Petition for Allowance and Counsel Fees

2. I am a brother of Mrs. Anna Yetter who lives on the same street in Blairstown as that on which the home of the petitioner and defendant is situated and that in order to go to and from between the business section of Blairstown and the
10 home of my sister it is necessary to pass the house which the petitioner and defendant occupied for the past few years.

3. From about February 1912 to February 1913 I was employed in the town of Blairstown and was in the habit of visiting my sister, Mrs. Anna Yetter and her family, during one or more nights of each week. The petitioner, Mrs. Martin, was in the habit of visiting at the home of
20 my sister and I have heard petitioner tell of the way her husband abused her and I have seen petitioner cry while telling of her domestic troubles.

4. From about the middle of February, 1913 to the middle of June, 1913 I worked for my brother in law, the husband of my sister Mrs. Anna Yetter and during this period lived at the home of my sister in Blairstown. During this period I passed the house in which the petitioner and defendant resided, about four or five times each
30 week in the evenings of successive days as it was my habit to go down about 7:30 p. m., and return about 9 p. m., to 10:30 p. m. I walked on that side of the street on which the home of petitioner and defendant was situated because there was no sidewalk on the other side of the street.

5. One night during the latter part of May, 1913 or the first part of June, 1913 I was returning to my sister's home about 10:30 p. m. after having been in the town. As I approached the
40 home of petitioner and defendant I saw a light

Affidavit of Philetus Bradley Martin in Opposition to Motion for Allowance and Counsel Fees

in their front room to the left of the entrance. I saw the petitioner and defendant standing in the room and I was attracted by their loud talking and what seemed to be a violent quarrel. I stopped and looked and saw the defendant grab his wife by the throat with both hands and bend her backward over the table as tho' choking her and then he threw her from him against the wall with great force. I then heard petitioner say "Oh, oh, oh" and saw her run out of the room. I waited a little while longer and saw the defendant still standing in the room and after I saw a light appear upstairs in the house I went on to my sister's home. 10

6. The general reputation of the defendant is that of a very quarrelsome and illtempered man. 20

CLYDE BERGSTRESER.

Sworn and subscribed to before me this

7th day of February, A. D., 1914.

A. B. Craig,

Justice of the Peace of N. J.

**Affidavit of Philetus Bradley Martin
in Opposition to Motion for Allow-
ance and Counsel Fees** 30

(Filed 191)

State of Florida, }
County of Orange. } ss:

Philetus Bradley Martin, being duly sworn according to law, on his oath saith, I know nothing about my wife visiting at Mrs. Yetter's house 40

Affidavit of Philetus Bradley Martin in Opposition to Motion for Allowance and Counsel Fees

and her telling of her troubles and that she cried; neither do I know anything about Clyde Bergstresser passing my house by day or by night; the statement contained in his affidavit, a copy of which has been served on my solicitor, and which
10 has been sent to me, that he had looked into my window in the night time and had seen me grab my wife by the throat with both hands and bend her backward over the table as tho' choking her or throwing her from me against the wall with great force, or that my wife then exclaimed "Oh, oh, oh," and that she then ran out of the room is absolutely and unqualifiedly false.

There is a side walk on both sides of the street, although the walk on the north side is probably
20 used more than the one on the south side. The house in which we lived was 40 feet or more from the street. It would be impossible for any one from the street to see what Clyde Bergstresser makes oath that he saw. Furthermore at the time stated by him my wife and I had become reconciled by an agreement made in Orlando, Florida; were having no difficulties or worded discussions or disputes; were living together in peace and har-
mony and our relations were more pleasant than
30 they had been for months.

I did not in May or June, 1913, or at any time grab my wife by the throat and treat her as stated in that affidavit.

As I have hitherto stated there have been quarrels between myself and my wife, but, as stated, I never used any personal violence toward her, and, while I do not recall the parti-
40 cular quarrel in May or June, last, I now say that

Affidavit of Lewis A. Konkle in Opposition to Motion for Allowance and Counsel Fees

no quarrels were of my beginning, and, whatever quarrels there were, my wife was just as violent and even more so than I ever was in any one of them.

PHILETUS BRADLEY MARTIN.

Subscribed and sworn to this 21st day of February A. D., 1914, before me a Notary Public of said County and State as witness my hand and official seal hereto annexed.

W. R. O'Neal,
Notary Public.

My Commission expires November 14, 1916.
(Seal).

10

20

Affidavit of Lewis A. Konkle in Opposition to Motion for Allowance and Counsel Fees

(Filed 191)

Warren County, ss:

LEWIS A. KONKLE, being duly sworn according to law, on his oath saith, I reside in Blairstown and am a merchant there where I have been in business for more than twenty-five years; I am cousin of Sarah Irene Martin, the petitioner in this matter; I have always been on good personal terms with both Mrs. and Mr. Martin at the request of Mr. Martin I went to his house in Blairstown in the evening of 24th of September last; the house was lighted up when I got there

30

40

Affidavit of Lewis A. Konkle in Opposition to Motion for Allowance and Counsel Fees

and I knocked at the door four or five times and got no response; then I went down the street and met Mr. Martin coming towards his house and he requested me to return to his house with him; I did so and went into the house and found Mrs.
10 Martin there, down stairs, sewing; we talked a little and then she turned around and went on with her sewing; Mr. Martin and I talked a little about the primary election and so on; then Mr. Martin said to his wife, "Rene, Mr. Konkle has come up to see us to see if we can't get together about our affairs, to get reconciled; he said the time is about up to give up the house and I must move my goods out and I would like to know what
20 disposition we are going to make of them; he said he had made arrangements for a place to store the goods in, and she asked him where; later on he told her where the place was and he asked her if she would take her goods to the place where he was going to take his, and she said no, I want you to leave my goods where they are, he said the house was sold and he had to give it up. In the course of the conversation he told her he was going to Orlando and he wanted her to go with
30 him; he said his health demanded that he should go there; he said we will rent rooms or we board; he told her he would use her well and would pay all necessary expenses she said she would not go, that he might as well know it now as at any time; then Mr. Martin said to her "during our marriage I have spent over two thousand dollars, all told, on and with her," and her answer was,—
"I never asked you to do it." I said to her, Now,
40 Irene, I am friend to both of you, I would like

Affidavit of Lewis A. Konkle in Opposition to Motion for Allowance and Counsel Fees

to see you get together and drop these differences; life is short and we haven't long to stay here, any of us; you think over this till morning and see if you can't get together; this was said just as I was going away; she made no answer; before that she had accused him of laying a note on the bureau, saying something like this, You may have something to answer for more than you think for, he said I didn't write that note, or it wasn't my note that laid up there; she said it was your note and your writing, and he said it was his note and he did not write it; she said emphatically it was his note; he asked her to go and get it she refused to go; then he said, I'll go for it and he went up and said it isn't here and then he asked her where it was? and she said I have got that for future reference; we had been down in the sitting room and he went up stairs for it; then he said, you knew that note wasn't there and you did that just to tantalize me; he told her that it was nothing more than a kind of missionary circular that some one had left there, with this writing on; she told him he had locked up her things in his bureau, and he denied it; she says it is locked; she went up and the drawer I heard slide out and she came down and admitted that the drawer was not locked.

I was there perhaps two hours; Mr. Martin said he was willing to get together and reconcile their differences and live together as man and wife should; she did not say anything; but I thought from her countenance she would do it, but she said nothing; she made no particular complaint of him; she did not say he had been cruel to her.

Affidavit of William R. O'Neal in Opposition to
Motion for Allowance and Counsel Fees

Before this I had talked with her about living
in the South and she said she did not like to live
in the South; there was no life there, it made her
feel "duncy," this was one when she was down to
10 my place.

I consider Mrs. Martin to be a reasonably well
woman; there is nothing about her appearance to
indicate that she is not a perfectly well woman;
nothing more than the natural consequences of
age; she is about sixty years old; when Mr. Mar-
tin asked me to go and see her he said to me,
"Rene won't talk to me; I can't find out what she
is going to do, I ought to know what to do about
my business matters; he asked me to go with him
20 and see her and see if their differences could not
be reconciled.

He wanted me to talk with her about their
troubles and to get them reconciled, and that is
the reason I went.

L. A. KONKLE.

Sworn and subscribed this 6th day of October
1913, before me.

Clinton B. Bodine,

Commissioner of Deeds of N. J.

30

**Affidavit of William R. O'Neal in Op-
position to Motion for Allowance
and Counsel Fees**

(Filed 191)

State of Florida, }
County of Orange. } ss:

William R. O'Neal of full age being duly sworn
40 according to law upon his oath deposes and says:

Affidavit of William R. O'Neal in Opposition to
Motion for Allowance and Counsel Fees

1. I have been Postmaster at Orlando Florida, fifteen years, and President of the Bank of Apopka and Director of the State Bank of Orlando. President of the Orlando Sanitarium Company and hold other offices of trust in the State of Florida. 10

2. I have known Philetus Bradley Martin for ten or more years and have had frequent opportunity to see him.

3. I have known Sarah Irene Martin for four years, since her marriage to Philetus Bradley Martin.

4. My relations with them have been such that I have been in touch with their family life.

5. Soon after their marriage on their coming to Florida, I went with them to secure suitable rooms for house keeping for the winter. The rooms they secured were in the best part of the town, on one of the best streets. There they lived during the winter. Mrs. Martin selected the rooms from several others shown her, stating that she wished to do her own cooking and washing as she could not stand southern help. 20

6. Each year on their return from the north I assisted them in getting located, always securing rooms that Mrs. Martin was pleased with and always in good locations which would carry with it social standing. 30

7. In 1912 Mrs. Martin expressed a desire for a house of her own. In my presence Mr. Martin offered to build and urged Mrs. Martin to take a house suitable to their income, in a good location in Orlando, which she refused, unless he would maintain a house in New Jersey also. Stating 40

Affidavit of William R. O'Neal in Opposition to
Motion for Allowance and Counsel Fees

that she did not like Florida and would not stay here.

10 8. In March, 1913, Mr. Martin was much out of health and broken in spirit. On my pressing him for the reason he stated that it was due to family differences.

9. In a friendly effort to adjust the matter I arranged an interview, at my office with Mrs. Martin and W. H. Slemons an elder in the First Presbyterian Church of Orlando to ascertain the facts.

20 10. I questioned Mrs. Martin closely. In reply she made the following statement. I do not want to live here, I want to go home. I am not given as much of an allowance for spending money as I should have. I do not want a divorce or separation, but I want a sum of money set apart for my use.

11. After this interview Mr. Martin agreed to take her North to New Jersey for the summer, which he did, and to provide for, as his means would permit; this he did freely and voluntarily. It was understood by Mrs. Martin that he could not live North in the winter.

30 12. During the four winters that Martin and wife were in Orlando I saw them frequently. Mrs. Martin was always well dressed, appeared healthy and strong, did not appear nervous or distressed, but on contrary seemed a prosperous well to do woman. She attended church regularly and the auxiliaries to church work.

40 Deponent further says that he frequently saw and conversed with Mrs. Martin during the seasons which she spent with her husband in Or-

Affidavit of William R. O'Neal in Opposition to
Motion for Allowance and Counsel Fees

lando, and that on neither the occasion above mentioned or at any other time did Mrs. Martin complain of any physical violence suffered by her at the hands of her husband in any form whatever; her only complaint was that she had not an allowance of money to suit her notion and she did not want to live in Florida; she urged only that she should be allowed to live at Blairstown while her husband spent the winters in Florida; and she wanted him to maintain a house for her in Blairstown, or about there; this Mr. Martin would not consent to do, always saying that when his wife married him she knew perfectly well that his former practice had been to spend his winters in Florida and that it was a matter of necessity to him on account of his health to continue to spend the winter seasons in Florida. 10 20

WILLIAM R. O'NEAL.

Sworn and subscribed at Orlando, in the county and State aforesaid, this 6th day of January, A. D., 1914, before me, a Notary Public of the State of Florida, as witness my hand and official seal hereto annexed.

Julia K. Chapman,
Notary Public.

30

My Commission expires June 11th, 1917.

**Supplemental Affidavit of William R.
O'Neal in Opposition to Motion for
Allowance and Counsel Fees**

(*Filed* 191)

10 State of Florida, } ss:
 County of Orange. }

 William R. O'Neal, on his oath further suit,
 that in an interview with P. Bradley Martin and
 his wife, Sarah Irene Martin, in my office in Or-
 lando, in April, 1913, Mrs. Martin distinctly stat-
 ed to me that Mr. Martin had never used any
 physical violence toward her in any form what-
 ever; she made this statement voluntarily and in
20 the course of a quite long interview between her
 husband, herself and myself.

 After making my first affidavit in this matter
 and the same had been mailed to Mr. Morrow,
 at Belvidere, I discovered that in copying the
 affidavit which was taken by dictation from me to
 a stenographer the statement above made had
 been omitted to be copied, and I wired Mr. Mor-
 row to add this matter to my affidavit; he had,
 however, rewritten my affidavit first sent him be-
30 cause it was in purple colored ink made on a type-
 writer and had mailed the affidavit to me to be
 sworn to, and I noticed the omission then, but the
 time was supposed to be short that I could not
 return it to him for correction to be had by him
 in time to serve and make use of it on the thir-
 teenth instance, but I asked Mr. Martin to at once
 write to Mr. Morrow and tell him of the omis-
40 sion; and he has therefore prepared this addi-

Order Dismissing Petition for Allowance and
Counsel Fees

tional affidavit to be made by me, and I make the same to supply the aforesaid omission.

WILLIAM R. O'NEAL.

Sworn and subscribed this 15th day of January, A. D., 1914, at Orlando in the county and State aforesaid before the subscriber, a Notary Public of said county and State, as witness my hand and official seal hereto annexed. 10

Julia K. Chapman,
Notary Public.
(Seal).

**Order Dismissing Petition for Allow-
ance and Counsel Fees**

(Filed 191)

20

The Petitioner above named having filed with the clerk of this Court a petition for an allowance for her support and maintenance pending this suit, and also a reasonable sum for counsel fees to enable her to prosecute the said suit, and having given to the defendant notice of an application thereon and the parties having served each other with affidavits in support of and in opposition to, respectfully, the said application, and the matter coming on to be heard before the Court on the twenty-fourth day of March, A. D., Nineteen Hundred and Fourteen, the Court being of opinion that the petition is not entitled to said allowances or either of them, it is thereupon ordered that the said petition and application thereupon be and the same is hereby dismissed. 30

E. R. WALKER,

Respectfully adviser,
John N. Bakes, V. C.

C.

40

Testimony

IN CHANCERY OF NEW JERSEY

Between
SARAH IRENE MARTIN,
Petitioner,
And
PHILETUS BRADLEY MARTIN,
Defendant.

On Petition
for Divorce
from bed
and board.

Transcript of shorthand notes of testimony, etc., taken in the above stated matter before HON. NELSON B. GASKILL, Advisory Master, at the Court House, Belvidere, New Jersey, on Friday, June 20 18, 1915, at 10:30 o'clock in the forenoon.

Appearances :

Egbert Rosecrans, Esq., for the petitioner.
William H. Morrow, Esq., for the defendant.

(John G. Van Blarcom sworn as stenographer.)

SARAH IRENE MARTIN, the petitioner,
sworn :

30

Direct-examination by Mr. Rosecrans:

Q. Mrs. Martin, you are the petitioner in this case? A. Yes, sir.

Q. On September 28, 1913, where did you reside? A. Blairstown.

Q. And for how long before that time did you
reside in Blairstown? A. I think I resided there
40 six years; four years after we were married.

Sarah Irene Martin—Direct

Q. That is Blairstown, Warren County, New Jersey? A. One year before I was married I lived in Blairstown, I think, and four years after. I kept house for Mr. Martin.

Q. You lived four years in Blairstown before September 28, 1913? A. Yes. 10

Q. Your husband and yourself had a home there? A. Yes, sir.

Q. When were you married? A. The 4th of November, 1909.

Mr. Rosecrans: That is admitted in the answer.

Mr. Morrow: Oh, yes; I suppose so, although this is not for a divorce. I do not think you need take the time.

The Court: It is stipulated between counsel that the petitioner and the defendant were married on the 4th day of November, 1909, at— 20

The Witness: Madison.

The Court: Madison, New Jersey, by the Rev. Dr. Harris D. Church.

Q. Mrs. Martin, will you describe your life with Mr. Martin after you were married? A. My life for the first two years was very pleasant; after that it was miserable. 30

Q. The first two years did you live in Blairstown continually? A. During the summer. In the winter we were at Orlando, Florida.

Q. Describe what your life was during these first two years? A. It was very pleasant. We were at home in Blairstown in the summer and in the winter we went to Orlando and everything was very nice, no complaint at all, the first year. Later on there was trouble and he was quarrel- 40

Sarah Irene Martin—Direct

some and from that on he kept getting worse and growing worse all the while.

Q. When did this quarrelsomeness that you speak of commence? A. The first quarrel that we had that amounted to anything at all was the second winter, the second that we went to Orlando.

10 Q. What was that about? A. He got angry about securing rooms, was the first thing. From that time it kept on growing worse and he would bring up different things, I can't remember them all, but I remember that one, expressly.

Q. What was the nature of those quarrels? A. They came from nothing, as you might say. He would pick at me and every thing he could think of; everything that did not go right he would

20 lay it on me, it was all my fault, and why did I do so and so; he did not have anything to do with it.

Q. What in particular? A. At that time, because the rooms did not suit, and he laid it all to me.

Q. Did your husband ever offer you physical violence during the first two years? A. Not during the first two.

Q. Did he after that? A. He did.

Q. Now, will you describe your life during the third year of your married life? First you lived in Blairstown? A. Yes.

Q. Did you go south during the winter? A. We went south in 1909 and 1910; that was our first trip, and 1910 and 1911 was the second.

Q. Did you go the following winter? A. The following winter.

Q. Describe your life in Orlando during that winter. A. That is 1911 and 1912?

40 Q. Yes. A. Well, for the first part of the sea-

Sarah Irene Martin—Direct

son until, I guess, at a little after Christmas, everything went very well. After that it was all crooked. There was a man there who he was jealous of and accused me of, which he had no reason to, and he would go off and leave me; he would not go out anywhere with me and he would be angry if I went out. He wanted me to stay home all the time and I would not do that. 10

Q. Did he offer you any physical violence during that time? A. Not there; not in Orlando.

Q. Did he accuse you of adultery? A. He did.

Mr. Morrow: That is leading. That is a conclusion.

Mr. Rosecrans: I withdraw that.

Q. Did he accuse you of any misconduct?

Mr. Morrow: I object to that. Let her tell what charges he made against her and what language he used. 20

Mr. Rosecrans: I will withdraw it.

The Court: I do not think it is particularly serious in that form. However, the question is withdrawn.

Q. Describe his conduct toward you in any particular. A. In what particular do you mean, Mr. Rosecrans?

Q. Did he accuse of misconduct? A. At first he would accuse me in this way—I do not know in what way else you would take it; all the while we were at Orlando the climate did not in a way agree with me, because it affected me in my bowels; I always was troubled with bowel trouble and I would have to go to the toilet nights, and he would accuse me, “What did you go up there for—to meet that man?” 30

Q. Did he ever accuse you of anything else with 40

Sarah Irene Martin—Direct

any third person? A. No, I do not think he did that I remember.

Q. Did he offer you any physical violence during that time in Orlando? When did he offer you physical violence for the first time? A. For the
10 first time—well, there was so many times I can't just remember. I should remember the first, I suppose.

Q. When did these times begin? A. The first time, I was at Orlando.

Q. Tell us about that. A. When we were there he got angry at me and pushed me back and threw me down in a trunk.

Q. Describe how that was? What lead up to that? A. He had some of my papers and I had
20 been trying to get them. He had taken them out of my trunk and I knew he had them with him; he had them in a little grip, and he sat by the table one day reading and had some papers and I came in and saw the little grip under the table and it was open and I imagined the papers were in it and I thought I would look in and see whether they were in it. I stooped down and picked up the grip to look into it and I no sooner done that than he got up and grabbed the grip out of my hand and
30 took hold of me and pushed me right back into the open trunk where he had taken this grip out of and the trunk stood open, and the snap on it, the hook, how they stick out on the lid of the trunk, caught me in the back and he pressed me right back against there and he said "I will give you—after my papers." I said, "I am not after yours, I only want my own."

Q. Were there any bruises on your body? A.
40 I don't know; I couldn't see whether there was

Sarah Irene Martin—Direct

a bruise or not but my back hurt me for several days. I couldn't see it on my back.

Q. When was the next time? Describe your life down there after that. A. Well, there was so many times, I can't remember them all. But at another time he had gone away fishing. He had been gone one or two days, I don't know which. He went one day, at least in the morning he went I went to washing. I was not as well as usual, being out in the hot sun and it affected me terribly down there and it brought on the bowel trouble again. I was sick all day; I could hardly finish my washing, but I did, and he was gone and I didn't do much after the washing was done, but I was up and down and out many, many times. I could not tell you how many, and the next day there was a trained nurse there caring for a sick lady, and she says to me, "You are sick—" 10 20

Mr. Morrow: I object.

Q. Tell us of the physical violence. A. The next day he came home and I was sick and that night he thought he must have sexual intercourse as usual. He did not speak to me when he went away or when he came back; he did not speak to me at any time at all. He just took that privilege, and I said, "I guess we will dismiss that tonight." "Well, I guess we wont. I have a right to it, and I am going to have it." And I says, "I am sick tonight; I am all unstrung. My bowels are in a condition I can't." "There is nothing the matter with you. You don't want me to have this privilege." And he thought he would hold me by force and hold me still for his proceedings and we had a tussel and I got out from under him and he grabbed me by the back of the neck and held me down 30 40

Sarah Irene Martin—Direct

there and I found he was either going to smother me or do something of the kind and I gave a lunge and got away and called for Mrs. Calvert, the landlady, and he said, "That is all I want. I wanted to call for your friend. I have got you where I want you." And after I called he let me go but he kept up the continual quarreling. I said, "Be still, you will wake up everybody in the house," and he said, "I don't care if I do, I want everybody to know just what kind of a woman you are." And he kept on and presently someone knocked at the door and I got up to turn on the light and he said, "Turn on that light, I want to see who is there." I did, and there was Mrs. Calvert. She said, "You must stop this noise, I can't have it. You are interrupting the whole house and I must protect my house." After that everything was quiet for the night.

Q. At that time you were suffering from this bowel trouble? A. I was suffering from this bowel trouble, I was sick, but he would not believe that; he said it was nothing, that I was only headful, that I would not submit to him.

Q. During that time did he strike you any other way or grab you? A. He had. He would take me by the shoulder and pull me around when he would get in his quarrelsome moods, and back me against something wherever I happened to be.

Q. Did you show any marks of that? A. Sometimes I had bruises all over my body; they would come all over me where I would be hit and my body was black and blue.

Q. What season was that at Orlando? A. I think that season was the last season I was there 1912 and 1913.

Sarah Irene Martin—Direct

Q. When did you return to Blairstown after that? A. I think about—well, I think it was sometime in April; I am not sure. I can't remember as to dates.

Q. April 1913? A. Yes; I think it was, or whether it was the first of May I won't be sure for I don't know. 10

Q. Did your husband ever strike you in any other way in bed? A. Yes, he has kicked me one night because I was snoring, and then I had black and blue spots on me, or he struck me with his fist, I don't know what way he struck me but he waked me up and I had a black and blue spot. He wanted me to quit snoring; he could not sleep.

Q. Did he do that more than once? A. He would do that more than once, I suppose because I snored—and no doubt I did. I don't deny I did snore. 20

Q. When you returned to Blairstown, about April 1913, what was your husband's conduct towards to you then? A. For the first week we got back home everything was very nice, but he got worse, and he grew worse and worse all the while; he was quarrelsome; I could not get a good word, and he would quarrel without any reason at all and if I would say anything to him he would take right wrong from what I meant and pick up a quarrel, and he would get angry and throw me around and he would come at me and he had a very wicked looking eye when he came toward me. He would sit at the table and look at me as if he was going to tear me all to pieces, almost. 30

Q What did he do to you in regard to physi- 40

Sarah Irene Martin—Direct

cal violence? How did he offer physical violence?

A. As I have described and in his sexual intercourse.

Q. How in any other way? A. Why, no way only jerking me around. Is that what you mean?

10 Q. Yes, tell us about that. A. When he would get in a quarrel and get real angry, he would come up toward me mad and throw me around that way.

Q. He would grab you? A. By the shoulders, sometimes, and throw me around and sometimes with the two hands and push me back.

Q. Did he do this more than once? A. Many times that was done.

20 Q. Were there marks on your body? A. Yes, indeed there were.

Q. Now, Mrs. Martin, did your husband ever abuse you in sexual intercourse? A. He certainly did.

30 Q. Will you describe how? A. He would insert his finger into me until he had me so irritated and so sore before he would use the penis, and he would do that almost every time—not for the first few years; then he treated me all right, but later on he would do that almost every time and he had me so irritated and I was so nervous from the effects of it that I didn't know how to stand it.

Q. When was this, during what period? Was that at Orlando? A. All the time during the last two years that we lived together.

40 Q. At Blainstown after you returned in 1913? A. Yes he did. I would tell him sometimes not to do it. I would say, "Don't, you hurt me so." "It don't hurt you at all; you are only nasty;

Sarah Irene Martin—Direct

you don't want me to have any pleasure with you, it is only headfulness."

Q. How often would he demand sexual intercourse? A. Two or three times a week.

Q. Were you at that time at Blairstown, in 1913, physically as strong as you were before. A. 10
No, no. I was run down until I was almost run down to nothing. My natural weight is 125 to 130 and I ran down to 109. I was sick through being nervous.

Q. Did these violent methods of sexual intercourse bring on this nervousness? A. They certainly did, to a great extent. I am always nervous, but this made me much worse, and the fear of what I had to suffer and endure just seemed to keep my nerves unstrung all the time. 20

Q. Did you ever bleed? A. I have; I have found blood on my clothes.

Q. And during the day you say he would throw you about? A. He has yes.

Q. Many times or a few times? A. Several times.

Q. I mean outside of sexual intercourse? A. Oh, sometimes outside of sexual intercourse, and when I would not submit to him he would throw me around until he got me where he wanted me, 30 and other times he would take me and hold my hands so I could not protect myself at all. He has done that.

Q. I mean when you had quarrels during the day time or in the evening, did he offer you any physical violence? A. Yes, he did.

Q. In what way? A. The way that he would do with me in that respect towards striking me, would be as I have said, to take me by the shoul- 40

Sarah Irene Martin—Direct

ders when he got mad, come up toward me very angry and take me by the shoulders and throw me around wherever I struck, wherever I hit.

10 Q. Did he always talk to you? A. No; there would be days he would not talk to me. He would go away and not say where he was going and be gone two or three days. He would not speak to me, where he was going. When he came home he would not say where he was, only as I imagine, when he took fishing things with him that he was going fishing or something of that sort and there would be days he would not speak to me.

Q. Did he ever leave any notes or messages?

A. Yes, he has done that.

20 Q. Telling you what to do? A. Yes, he has done that.

Q. I show you three notes and ask you if these are some of them which he left you. A. Coursens will be here Friday afternoon train." That is one. "This suit needs fixing and cleaning. That is one. "Coursens will be here for dinner." That is another.

30 Q. Were there other times he left notes? A. Well, I have not got them. There was another one or two left around there.

Q. When was this? A. The last summer, the summer of 1913.

Q. In Blairstown? A. Yes.

Q. Did he purchase you any new clothes during the last year? A. Nothing at all that last year.

40 Q. Did he furnish you with any spending money at all? A. No, not a cent—I am a little mistaken. The first of May he gave me ten dollars.

Sarah Irene Martin—Direct

That it all the money he gave me from that day to this.

Q. Did you ask him for it? A. I have asked him for money, yes. He would always say the law didn't compel him to give me a dollar.

Mr. Morrow: When was this, May 10 first?

Mr. Rosecrans: Nineteen-thirteen.

Q. Who purchased the supplies for the house? A. He did. He would not leave me a cent of money in the house to get something that would come along if he wasn't there to buy. He would not furnish me anything like that. There would oftentimes come luxuries along like fruit that I would like to have, but I couldn't get it and I didn't have the money. He always told me I should make out a list of trade and I put on the things—I knew pretty well what he would buy and what he wouldn't, and those things I put on and he would bring them up, but as for letting me get anything myself he would not let me. There was one summer he gave me a dollar to get supplies to go on a little picnic excursion and that was the way he left me the dollar, to get supplies with and that is the only things he let me get for the house that last year.

Q. Did he ever threaten to strike you with his fist? A. To show that he would strike me or make the motion?

Q. Well, how would he do it? Did he ever threaten you or make motions? A. Yes, he would make motions; he would get angry and sometimes he would start to hit me and he would make the motions.

Q. Did he ever hit you with his fist? A. Yes, he hit me.

30

40

Sarah Irene Martin—Direct

Q. During this last year in Blairstown, 1913?

A. Yes.

Q. Do you remember September 28, 1913? A. Yes.

Q. Will you describe what occurred on that day
10 with regard to your relations with your husband. A. Well, that was the day that I left the house, I guess. He found that I had gotten possession of my papers. I knew where they were and I went and took them and he went to his grip and found they were gone and he was very, very angry. He called to me. I was downstairs. He called to me and wanted to know what I had done with those papers, where they were. "What have you done with my papers?" he said. I
20 said, "I ain't got your papers." And he said, "You have." I said, "I ain't." "You took them out of my grip." I said, "I did not have them," "I did not take any of yours, I took my own." He was so angry, he came down with his fist drawn and I was in the door and I was afraid what he would do to me if he got hold of me and he chased me out through the yard to the street and he came back upstairs, and I slipped in. I had on an old dress, very ragged, and I slipped
30 in the door when he went upstairs and got my rain coat and put it on and went over to Mrs. Yetter's.

Q. Mrs. Yetter is a neighbor on that same street? A. Yes.

Q. Then did you go back to the house? A. I did. I went back. I got there and I got to thinking about it—"it is dinner time; what must I do? Must I go home and get his dinner or what must I do?" I did not want to go because
40 I was afraid to go back to the house, but I went

Sarah Irene Martin—Direct

home and got his dinner. He did not speak to me until after dinner was over and then I done up the dinner work. Everything was all upside down with the packing up and getting ready to go south. There was no place to sit down and I was nervous; I did not know what to do; I had no place to go to. I changed my dress and I came out. He demanded those papers and I said, "You can't have them." "Well, I will fix you tonight." And he came toward me this way (illustrating) and he said "I will fix you tonight." And I went out the door and I stayed out. I did not go back again. 10

Q. Why didn't you go back? A. I was afraid to go back. I could not go back and stay the night with him for I didn't know what he was going to do. 20

Q. Were you weighed shortly after September 28, 1913? A. I was. I was weighed the first week that I went away; that would make it in October.

Q. What did you weigh? A. I weighed 109 pounds.

Q. When were you next weighed? A. Why, I don't remember when I was weighed next; I think I was weighed three times, and I know I was weighed just along in December. I think I was. Mrs. Kitchen and I went over to Mr. Yetser's and were weighed then and I weighed 126. I began to pick up right away; as soon as I got myself where I was not nagged to death I began to gain weight and to pick up. 30

Q. You weighed 126 in December? A. I think that was it, 126. My natural weight is about 125, 126 or 130; somewhere along there. 40

Sarah Irene Martin—Direct

Q. Have you any money to support yourself with? A. I have not.

Q. What have you? A. I have nothing.

Q. Have you any money at all? A. No.

Q. Did you ever make a loan or lend out any money in the south? A. I did. I had three hundred dollars.

Q. Where is that? A. That is gone.

Q. You have supported yourself since September 28th? A. Since then, yes.

Q. Were you working or where were you living during this period from September 28th to the present time? A. The first three or four weeks I was with Mrs. Yetter. I went down from there to my daughter's below Belvidere; I was there three weeks and helped her and I went back to Blairstown and I was sewing there till Christmas time and since then I have been with my children, sewing when I could get it to do.

Q. Did you sew for other people? A. Yes.

Q. Did you sew for Mrs. Kitchen? A. I sewed for Mrs. Kitchen.

Q. And that is your only means of livelihood? A. That is the only thing I have—just what I can do with my hands.

Q. Did Mr. Martin ever send you any money during this period? A. I never had a dollar from him.

Q. Did he ever write you any letters? A. No, I never heard from him.

Q. Do you know how much money your husband is possessed of? A. I do not, now. All I know is what he told me at the time I was married, between eighteen and twenty thousand dollars, and I know he has accumulated a good bit of money since.

Sarah Irene Martin—Cross

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

Q. Did he ever tell you after that? A. I don't know. I did not pay any attention to his business affairs. I was not running that. He was to run his business affairs; not I.

CROSS-EXAMINATION by Mr. Morrow:

10

Q. Mrs. Martin, you had been married before, hadn't you? A. I had.

Q. How long before your marriage to Mr. Martin did your first husband die? A. Four years.

Q. How many children had you by him? A. Four.

Q. Was there any especial difficulty on your part about having sexual intercourse with Mr. Martin? A. Not when he would treat me decently; but he is a man—

Q. I am not asking you that. I asked if there was any physical difficulty on your part? A. Yes, there was.

Q. What? A. Because he was too large for me for one thing.

Q. And you say there was no trouble of that kind until you had been married two years—about the sexual intercourse? A. No; when he would go to me mildly it was all right, but when he wouldn't, it was not. That is the difference.

Q. The only occasion for the difficulty was that he did not go at you mildly? A. That is it, he would force and pain me.

Q. Why did he use force—because you resisted him? A. No

Q. What occasion was there then for his using force? A. He would not go to me mildly; he would go to me all at once.

40

Sarah Irene Martin—Cross

Q. What was the occasion for his going to you in that way? A. I do not know. You will have to ask him. It must have been because he wanted to abuse me.

10 Q. Simply wanted to abuse you? A. It looked that way to me sometimes.

Q. Did he ever give any reason for wanting to insert his fingers and scratch you and cause you pain and suffering before he had intercourse with you? A. He never gave me any reason.

Q. Do you know of any reason why he would do that? You don't know of any reason why he should have done that, do you? A. I don't know of any reason. I do not know why he should have done it, but he did it.

20 Q. That was simply brutality and cruelty on his part and indecency and all that? A. It must certainly have been.

Q. And he had not been that way with you for the first two years? A. No.

Q. Now, he had been spending his winters in Florida sometime before you married him, hadn't he? A. One winter, the one before I married him.

30 Q. Hadn't he been going before that for a great many years? A. He had, but he had not been there for the past eight years.

Q. He had not? A. No.

Q. He had some business interests in Florida? A. He had money invested there.

Q. Was Mr. Martin a well man? A. No, he was not.

10 Q. He had asthma, didn't he? A. I never heard him complain of asthma.

Sarah Irene Martin—Cross

Q. What did you hear of? A. Rheumatism and stomach trouble.

Q. And rupture? A. Yes.

Q. Did he wear a truss? A. He did.

Q. Was he ruptured when you married him? A. He was.

10

Q. Pretty seriously? A. He was.

Q. And was this truss apparently a necessary thing for him to wear to get about? A. It certainly was.

Q. He hadn't much strength or force without the truss, had he? A. Well he had more than you would think.

Q. Did he take it off at night when he went to bed? A. Always.

Q. Now, you went to Florida two winters and found everything all right. That was the fall of 1910, 1911 and 1912, is that right? A. The fall of 1909 and the winter of 1910. The fall of 1910 and the winter of 1911; the fall of 1911 and the winter of 1912; and the fall of 1912 and winter of 1913.

20

Q. Four years? A. Yes.

Q. Didn't Mr. Martin have trouble with asthma and heart trouble which made it necessary for him to go to Florida in the winter? A. He had heart trouble, but I never heard him complain of asthma.

30

Q. He had rheumatism and heart trouble? A. Yes.

Q. You knew that? A. Yes.

Q. Was he sometimes very sick with the heart trouble? A. Sometimes he was, yes.

Q. And sometimes he would be almost blind, so he could hardly see or move? A. I have heard him say so.

40

Sarah Irene Martin—Cross

Q. Well, you—A. Yes; I have seen it.

Q. And you knew it was his physician's advice that he go to Florida for the winter to spend comfortable winters. A. I have heard Mr. Martin say so. I never heard the physician say that.

10 Q. You heard him say that the first two winters you went there? A. Yes.

Q. You believe what he said then, didn't you? A. I certainly did.

Q. Now, Mrs. Martin, didn't you insist after the first two winters that the Florida climate and surroundings did not suit you and you would like to stay in Blairstown in the winter while Mr. Martin went south? A. I did not insist on it any more than I told him I had better stay there.
20 He was finding fault about it costing him so much, we paid out so much money.

Q. That is not what I want to know. I want to know if you did not urge that you stay at Blairstown while he went to Florida? A. I do not think I did.

Q. Didn't you request that and say you wanted a house provided for you at Blairstown while he went to Florida? A. I said I would stay home and keep the house instead of closing it up, because it did not agree with me down there.
30

Q. If you stayed at Blairstown and kept the house that would involve the expense necessary for his keeping the house going while he was away? A. Oh, no, because he paid double the rent down there.

Q. If you stayed there while he was in Florida that would involve his maintaining the house while he was in Florida? A. He maintained it anyhow, with the exception of what I would eat.
40 He rented it the year around.

Sarah Irene Martin—Cross

Q. He did not keep it warm, did he? A. No.

Q. In the winter time. A. Except one winter he rented it out; the last winter we were gone.

Q. That winter of 1912 and 1913 he rented the house out? A. Yes.

Q. Sub-let it? A. Sub-let it.

Q. While you were in Florida in Orlando, didn't you have a conversation with Mr. Sclemmons? A. I did; yes. 10

Q. You and Mr. Martin had united with the Presbyterian Church in Orlando, hadn't you? A. Yes.

Q. And Mr. O'Neil was a man of some affairs in that church? A. Yes.

Q. And Mr. Sclemmon was elder in that church? A. Yes. 20

Q. And Mr. O'Neil was an elder also? A. Yes.

Q. And you went with your husband and talked together with these two elders in the church about your affairs? A No, sir.

Q. Where did you see them? A. They made a private meeting for me to have a private conversation with them.

Q. Where? A. At Orlando at Mr. O'Neil's office.

Q. You went? A. I went there, but Mr. Martin was not there. 30

Q. In that conversation you assumed to tell of your difficulties and troubles, didn't you? A. Only that he did not provide for me as he ought to and did not give me any money was all that was brought up there; there was nothing else. They asked no more questions and I told them nothing more.

Q. Didn't Mr. O'Neill ask you questions about 40

Sarah Irene Martin—Cross

your difficulties and what they were, and didn't you say, "I do not want to live here; I want to go home. I am not given as much an allowance for spending money as I should have. I do not want a divorce or separation but I want a sum of money set apart for my use"? A. I never told him so.

Q. Mr. Martin was not present at that interview? A. No.

Q. Didn't you then say that all you wanted was a home in Blairstown where you could be provided for apart from living at Orlando? A. I did not tell Mr. O'Neil that. That was not in our conversation.

Q. And didn't Mr. O'Neil ask you in that interview if Mr. Martin had ever used any physical violence—A. He never asked me—

Q. —toward you? Now, wait a moment. And didn't you say in answer to that he never had—A. He never asked the question.

The Court: Wait until the question is asked.

Q. —that he never used any physical violence to you? A. No, sir; I never told him so because he never asked me the question.

Q. The interview you had with Mr. O'Neil was during your last winter? A. Yes. What date—

Q. Wait a moment and I will find out. In March 1913, shortly before you came away from Orlando? A. Yes, just before we came away. I know it was, but I had forgotten the date. That is why I asked you.

Q. In 1912 didn't you express to Mr. O'Neil your preference for a house of your own in Orlando? A. Of my own?

Q. Yes. A. Never. Of our own. I wanted him

Sarah Irene Martin—Cross

to take a little home of our own there if we were coming there for the winter.

Q. Don't you remember that in the presence of Mr. O'Neil on another occasion in 1912, Mr. Martin offered to build and urged you to take a house, a good location, which you refused? A. No, sir. 10

Q. Unless he would maintain a house in New Jersey also? A. I told him—

Q. Just answer my question, won't you? Didn't you say you would not take a house in Orlando to live in unless he would maintain a house in New Jersey? A. No.

Q. Didn't you say you did not like Florida and you would not stay in Florida? A. No; I did not; because I would have stayed in Florida. I did not want our permanent home there. I told Martin that all the way through; but I would go there winters if he would have made it pleasant for me. 20

Q. I understand about that. I am asking you about the interview with Mr. O'Neil. A. Yes: I saw a copy—

Q. What is that? What did you say you had seen? A. (No response.)

Mr. Rosecrans: That is not an answer to a question. 30

Q. What did you say that you had seen, a copy of Mr. O'Neil's statement? A. (No response.)

Mr. Rosecrans: Oh, yes.

The Court: Do you insist on an answer to your question? I think you are entitled to it.

Mr. Morrow: Yes, sir.

The Witness: Why, yes; I say a copy of it.

Q. Mrs. Martin, did you see Jerry Martin, who 40

Sarah Irene Martin—Cross

is a nephew of your husband, in Newton last summer? A. I did.

Q. At a hotel? A. I did.

Q. You sent for him to come and see you, didn't you? A. I wanted to have a talk with him.

10 Q. A talk about what? A. About our family affairs, what he knew about them.

Q. On that occasion didn't he ask you if your husband had ever struck you or offered to strike you and you answered, "No; he never did."? A. I don't remember any such conversation.

Q. Well, do you say you did not tell him that in answer to his conversation? A. I do not remember telling him, no. I do not think I could have told him.

20 Q. Didn't you tell him the differences between you related to money affairs and you wanted him to provide you a cozy home in Blairstown where you could live while he went to Florida? A. Not where I could live while he went to Florida.

Q. Didn't you tell him you wanted a cozy home in Blairstown? A. I did not say it should be in Blairstown. I wanted one somewhere.

30 Q. Where? A. It didn't make any difference. I don't care whether it was Belvidere, Blairstown, Stroudsburg or—

Q. Or Orlando? A. I did not want a permanent home there.

Q. Shortly before your separation on the 28th of September had you not separated your goods from his, or rather, had not he and you together put each of your goods by themselves? A. Well, it had been done, but for a reason.

40 Q. He was going to take his personal effects to Orlando, was he not, his clothing and so on, to go with him to Orlando? A. I suppose so, yes.

Sarah Irene Martin—Cross

Q. And the household goods were to be stored?

A. Yes.

Q. And your goods were separated from his, all that you had? A. They were set apart.

Q. What were you going to do with them? A. I was going first to find out what he was going to do with his and when he said he was going to store them I said I would take mine to my daughter; that she might have them. 10

Q. Then the house in which you lived had been sold? A. Yes.

Q. And the purchaser had notified Mr. Martin, as you knew, that she would like to have possession of the house on the first of October? A. I never saw such a notice.

Q. Did he tell you that or not? A. Yes. 20

Q. And didn't you then declare you would not go to Orlando with him; that you would store your goods and stay in Blairstown? A. I did not tell him I wouldn't go.

Q. What did you tell him? A. I told him I didn't want to go.

Q. Didn't he ask you to go? A. No.

Q. Didn't he tell you that he was going and ask you to get ready and to go along? A. He expected me to go along; he didn't ask me; he didn't make any preparations. 30

Q. Didn't he get his cousin and your cousin, Mr. Lewis A. Konkle to come to the house and see you and talk over your differences? A. Yes, and we could have talked them over better ourselves.

Q. Did Mr. Konkle come to your house and have a conversation with you? A. Yes, with both of us.

Q. And he said he had come there first and knocked at the house and was not able to get admittance, didn't he? A. Yes. 40

Sarah Irene Martin—Cross

Q. And he afterward had gone away and met Mr. Martin and then the two came up to the house together, right away after? A. Yes.

Q. And found you sewing? A. Yes.

10 The Court: Was this before or after the separation?

Mr. Morrow: Just before, on the evening of the 24th of September, as we will prove the date.

Q. Didn't Mr. Martin, after you had sat there and talked about various affairs, say to you, "Rene, Mr. Konkle has come up to see us to see if we can't get together about our affairs and get reconciled."? A. Yes.

20 Q. And further, that the time was about up to give up the house and he must move the goods out and he would like to know what disposition you were going to make of yours; that he had made arrangements for a place to store his goods in and you asked him where? A. Yes.

Q. And later on he told you where the place was, and didn't he then ask you if you would take your goods to the place where he was going to take his, didn't he tell you that? A. I told him—

30 Q. Didn't he ask you if you would take your goods where he was to take his? A. He asked what I was going to do.

Q. And didn't you say, "You leave my goods where they are."? A. I do not remember saying that.

Q. Didn't he say then the house was sold and he had to give it up? A. Yes.

40 Q. Then in the further course of that conversation didn't Mr. Martin say to you he was going to Orlando and he wanted you to go with him;

Sarah Irene Martin—Cross

that his health demanded he should go there; that he would rent rooms or board and that he would use you well and pay all necessary evpenses? A. He said so.

Q. And didn't you then say you would not go—"You might as well know it now as at any other time."? A. I said— 10

Q. No. Didn't you say that? A. I do not know whether I said it or not. I won't say I didn't because I don't remember.

Q. Didn't Mr. Konkle say to you, "Now, Irene, I am a friend of both of you—" He had been a friend "of both of you."? A. Yes.

Q. He had never taken a part in your differences at all? A. No.

Q. "I would like to see you get together and drop these differences. Life is short and we haven't long to stay here, any of us. You think this over until morning and see if you cannot get together." Didn't he say that just before he went away and you made no answer to it? A. He said that long before. 20

Q. Didn't he say it just before he was going? Didn't he say he would like to see you get together and drop your differences a number of times before? A. He said that before, yes. 30

Q. Wasn't there some little trouble that night before Mr. Konkle came, that you had accused him of putting a note on the bureau for you—"You may have something to answer for more than you think for."? A. That note was on the bureau.

Q. And you said he put it there? A. I did say so.

The Court: Who do you refer to by "He"? 40

Sarah Irene Martin—Cross

Mr. Morrow: That Mr. Martin had left a note on the table which note said, "You have something to answer for, more than you think for."

The Witness: That note was there.

10 Q. And didn't Mr. Martin say right there, "I did not write that note; it was not my note; I did not lay it there."? A. Yes.

Q. And didn't you say, "It was your note and your writing."? A. Yes.

Q. And didn't he say it was not his note and he did not write it? A. Yes.

Q. And didn't you declare very emphatically it was his note? A. I did. I said it was his.

Q. And didn't he ask you to get the note and
20 produce it? A. He did.

Q. And you said you would not go? A. I did not go.

Q. And didn't he say he would go and get it and he went up and said it was not there? A. Yes.

Q. And then you said you had kept it for future reference? A. He wanted me to give it to him.

Q. Where is that note now? A. It was among my papers. I don't know whether it is with Mr. Rosecrans' papers or not.

30 Q. You and Mr. Martin had a few words about that note, didn't you? A. Yes.

Q. And it turned out it was a circular some missionary had left there? A. I don't know what the face of it was, but I know what was written on the back. It was his writing on the back; the same writing that was—

Q. Where is that note? A. I haven't got it.

Q. What did you do with it? A. I left it among my papers that I took to Mr. Rosecrans and I
40 don't know where it is.

Sarah Irene Martin—Cross

Q. You took the papers to Mr. Rosecrans? A. Yes.

Mr. Morrow: I would like to see it.

Mr. Rosecrans: I do not know where it is.

Mr. Morrow: She said she took it to you. 10

Mr. Rosecrans: There were a lot of things sometime ago—

The Court: Have you noticed counsel for its production?

Mr. Morrow: Oh, no. I did not know they had it.

Q. How long was Mr. Konkle at your house that evening? A. Probably an hour, I don't know.

Q. Two hours? A. It might have been; I don't know. 20

Q. And during all that time wasn't he trying to get you to reconcile your differences and Mr. Martin saying he was willing to get back and live together as man and wife should? A. I don't know but what he said so.

Q. Did you at that time make any complaint of him or say that he had been cruel to you? A. No, I did not, for I didn't tell my troubles to everybody.

Q. Now, you had talked with Mr. Konkle before this about living in the south and you had told him you did not like to live there; that there was no life there and it didn't suit you? A. Not just in that way. He might have understood it that way. 30

Q. That was the effect of it? A. If you want me to explain the effect—I might have said it. I would not dispute his word in that respect.

Q. Now, did you find Mr. Martin's diary in this bag that was under the table? A. No. 40

Sarah Irene Martin—Cross

Q. Haven't you got his diary? A. I have got his diary, but it was my own book.

Q. Where is that? A. I don't know; I haven't got it here.

Q. What did you do with it? A. I had it, but I haven't got it.

10 Q. Did you take it to Mr. Rosecrans? A. I don't know whether he has got it or not.

Q. Mr. Martin charged you with having his diary? A. He charged me with taking it and with taking his papers, but it was my own book and he had written into it. He took this book out of my trunk and there wasn't much written in it; but he used it for his diary all the time he was at Orlando the last time and from that time on; it was

20 my book.

Q. And that was the subject of controversy between you, wasn't it, about your holding on to his diary? A. I did not say anything about it. I never took it away from him until a few days before he went away.

Q. But it was the diary. And he also accused you of taking a lot of other papers belonging to him away from that bag and not returning them to him. A. Yes, but I wasn't guilty.

30 Q. But that made a good deal of the difference between you about that time? A. It was what always made the difference. I wouldn't have never taken one of his papers or a cent out of his pocket, which he has accused me of time and again, and did it at Orlando and—

Q. Didn't you take out a lot of letters that Mr. Martin had received from different persons? A. I supposed it was my own letters, but there was

40 one or two of his among them.

Sarah Irene Martin—Cross

Q. Did you return them to him? A. I did not because they were of no importance.

Q. Well, you judged about that. He complained to you that you had taken not merely the diary but his papers? A. No; they were papers he had thrown out and did not intend to keep and they were of no importance at all. 10

Q. He said you had his papers, didn't he? A. He said his papers—I don't know whether he said his papers. I had no papers of his. All I took was the letters.

Q. Well, they were his letters? A. Well.

Q. Where are they now? I do not know.

Q. Did you take them to Mr. Rosencrans, too? A. I don't know where they are.

Q. You talked a good deal to Mr. Martin about the wife of his nephew, didn't you? A. I would speak of her. 20

Q. And spoke of her charging him with undue relations with her, didn't you? A. No, sir.

Q. You did quite a good deal of that, didn't you? A. No, I did not. Only I thought they were a little bit intimate in a way. He paid more attention to her than he did to me. That was all.

Q. And you used to accuse him of that, didn't you? A. I did not. 30

Q. You accused him of giving her money? A. Well, he did it.

Q. And you accused him of giving her money for an improper purpose? A. No sir; I never did that.

Q. Didn't you charge him with receiving letters he did not dare to let you see? A. I don't know as I did. He got letters from her he did not let me see, but whether he didn't dare to or didn't want to I don't know. 40

Sarah Irene Martin—Cross

Q. You did not assume to have the right to read your husband's letters, did you? A. Well, if he read mine—

Q. Did he read yours? A. Yes.

Q. All of them? A. All he could get hold of.
10 There were letters he got and he offered me to read, but I wouldn't.

Q. You kept a diary too, didn't you? A. I did at one time.

Q. You wrote it in your handwriting, didn't you? A. Yes, and he took it out of my bag and my trunk just the same as I took his.

Q. Didn't you write in your diary a good deal about his affairs with the neice, the wife of his nephew? A. I don't remember what I wrote in
20 it. It has been a good while ago.

The Court: Judge, what is the purport of of this line of cross-examination?

Mr. Morrow: To show that the differences between them were not owing to the causes which she narrates, but that there was a good deal of ill feeling between them growing out of the charges which she made against him.

30 The Court: Your answer is limited to a denial. You have not set forth anything by way of a cross petition, and I am questioning in my mind just the materiality of this line of evidence, which is piling up the record. You are going into matters really, it seems to me, beyond the scope of the direct-examination.

Mr. Morrow: She says there were unpleasant differences between them continually. Now I want to show what really was
40 the source of the differences between them.

Sarah Irene Martin—Cross

The Court: I think you are entitled to do that.

The Witness: I am entitled to explain my case, too, am I not?

The Court: You are in the hands of your counsel, Mrs. Martin.

Mr. Rosecrans: Do not attempt to answer anything until you are asked. 10

Recess until one o'clock in the afternoon.

Q. I want to show this book. Is this your writing on the page turned down here: "If he would save the money he spends in carfare and on Jack Martin's wife and children and got us a nice home as he promised me and settle down and behave himself we would both be better off." Did you write that? A. I did. 20

Q. Then did you write on the next page, "He tries to make me open it—" That is the trunk—"and show him the letters I have been keeping. When he shows me Jen Martin's letters I will show him mine." Did you write that? A. I suppose I did. That is my writing.

Q. "Perhaps he has been spending all of his money on Jen Martin and didn't have enough left," and so forth. Did you write that? A. I certainly did. There is others there I wrote, too. 30

Q. I want to know if you wrote anything in this book,—a single word of his ever having struck you or used any physical violence toward you? A. That is before it was done.

Q. This book is finished, as the date of it shows—

Mr. Rosecrans: I object to this book being admitted and questions being asked from that book. 40

Sarah Irene Martin—Cross

10 The Court: There has been no offer of the book in evidence, Mr. Rosecrans. It would be improper to do so, which Judge Morow knows, and therefore he has not offered the book in evidence. He is cross-examining for some purpose and he has merely asked her whether she has written certain things in that book. So far as he has gone I think he is within his rights.

Mr. Morow: It is statements by her showing her attitude toward her husband.

The Court: What the book is has not yet been made to appear.

Q. This is a diary you kept, is it not this book?

A. Yes.

20 Q. Now, then, the last entry, next to the last, is Thursday, September 6, and that is 1913? A. 1913?

Q. Yes. A. Let me see that.

Q. It begins with July 17th, Wednesday? A. What year?

Q. Then it runs on August 1st, 4th and 14th and 19th and August 26th and August 30th and September 5th—This is all 1912, is it? A. I do not know what is the date, because this book—

30 Q. Wait. I am not asking you about that. I am simply asking you if you wrote in this book, which apparently begins July 17th. There (indicating) is July 18th.

Mr. Rosecreans: 1912?

Mr. Morow: Yes.

Q. I ask you if there is anything in this book at all respecting to Mr. Martin's violence toward you in any way whatever? A. I do not know whether there is or not. Answer me a question
40 please.

Sarah Irene Martin—Cross

Q. Yes. A. The date of this book; I do not know whether—what I want to see is the date of the year, because he told me about this book one time, and he said, “What will it ever amount to? You haven’t the year dated.”

Mr. Morrow: I am not asking that at all. 10

The Court: Do you ask it be stricken out, Judge?

Mr. Morrow: Yes.

The Witness: See here, Mr. Rosecrans.

Mr. Morrow: I object to that.

The Court: There must not be any conversation between the witness and her counsel when she is on the witness stand.

The Witness: I don’t think that (indicating) is in my writing. 20

Mr. Rosecrans: Then I object.

Q. What year was it written? A. The year I started that book was—I will have to study over it a bit because I wrote some in a book and laid it away and could not find it.

By the Court: Q. Do you remember what year you wrote in the book? A. I do not remember, but it must have been—

Q. Are you sure the date in the book is not in your writing? A. I am sure the date in that book of the year is not in my handwriting. 30

Mr. Morrow: I have since found the paper I was looking for this morning. I thought the original papers were all up here, but as they were not I had to go back to my office and find my copy.

By Mr. Morrow: Q. Mrs. Martin, you first filed a petition in this case for separation and support, didn’t you? 40

Sarah Irene Martin—Cross

Mr. Rosecrans: The records show that. I object to that.

Mr. Morrow: We have not the record to show it.

The Court: I will admit it.

10 Q. And you swore to this petition, didn't you?

A. I do not understand what you mean.

Q. You made a petition to the Court of Chancery for separation from your husband, and alimony? A. Yes.

Q. And got a writ of *ne exeat* compelling him to stay in New Jersey, didn't you? A. I do not understand that.

Q. You did something of the kind? A. I done something of the kind, but I don't understand you.

20 Q. All right. After that time you made another long affidavit of your relations with your husband, did you not? A. Yes.

Q. And then after that you made an application for counsel fees and alimony *pendente lite*—

Mr. Rosecrans: I object to that. If there is an affidavit here—

30 The Court: Mr. Rosecrans, this is apparently preliminary to some matter and I think Mr. Morrow is entitled to develop it. If upon conclusion it appears to be irrelevant and immaterial I will strike it out. The contents of the record, whatever there is in the record, will, of course, speak for itself when the record is apparent, but I am willing to have Mr. Morrow develop what he has in his mind, because he may make it material. I cannot tell at this stage.

Q. Now, afterward, in the fall or winter of the same year you made a further application to the Chancellor, for counsel fees, didn't you? A. Yes,
40 I think so.

Sarah Irene Martin—Cross

Q. And in your application you made an affidavit and set forth at great length the differences between you and your husband, didn't you? A. Yes.

Q. You swore to that, didn't you? A. Yes.

Mr. Morrow: I am going to read these affidavits on the argument of this case because they are part of the record. 10

Mr. Rosecrans: I object to that unless it is shown that the answers of the Petitioner are different from the affidavit.

The Court: I assume there must be some difference, otherwise there would be no use in reading it.

Mr. Rosecrans: Yes, but how are the affidavits better evidence than the witness.

The Court: I assume the proposition is they are statements made under oath which are in some way inconsistent with the testimony that is given here. 20

Mr. Rosecrans: I do not think that has been brought out.

The Court: Mr. Rosecrans, let me call your attention to this: If you have an objection to make, please make your objection and state the ground of it, then I can rule upon a definite proposition. Proceed. 30

Q. Mrs. Martin, did not Mr. Martin and you call upon Mr. O'Neill in his office in Orlando in April, 1913 shortly before you left Orlando, and did you not then state to Mr. O'Neill that Mr. Martin had never used any physical violence toward you in any form whatever? A. No, sir. I never was in his office but once, and that was—

Q. You have answered the question. 40

The Court: The question was doubled to a certain extent. Do you remember you

Sarah Irene Martin—Cross

were in Mr. O'Neill's office? Making a statement to Mr. O'Neill in the presence of Mr. Martin that Mr. Martin had never used physical violence toward you?

The Witness: No.

10 Q. In any form whatever? A. I and he never was there.

By the Court: Q. Mrs. Martin, what were the papers that you took from your husband's possession? A. Nothing—none of his papers.

Q. What were they? A. I did not have any papers, only a couple of letters I picked up off the table. I never took any of his papers.

Q. You took a diary of his, didn't you? A. It was in the grip and it was my own book.

20 Q. And you took some letters? A. He had them all wrapped up with mine.

Q. What other papers? A. None at all; no other paper—no; I did not take any other papers.

Q. No writings of his or anything else? A. Not a thing.

Q. The diary and the letters were all? A. All I took. I could tell you what I found. but I did not take it.

By Mr. Morrow: Q. It was his grip? A. It was 30 his grip.

Q. Where was it? A. It was locked up in the trunk.

Q. How did you get in the trunk? A. He went fishing one morning and forgot his keys, and I found them there, but I didn't take the book out then. This is when I found the papers.

Q. When he was gone you went to this trunk and found it unlocked and found his grip in it and took out the grip and took out the papers? A. 40 And read them and put them back.

Sarah Irene Martin—Cross

Q. Did you keep any of them at all? A. Not then.

Q. When was it you got them again and kept them? A. That was later on, in September 1913.

Q. When was it you first went into the trunk or found these papers? A. It was in the winter when we were in Orlando. I can't remember just the time. 10

Q. And then in September 1913 where did you find the papers then? A. In a bureau drawer in this same grip, locked up.

Q. The grip was put in a bureau drawer? A. Yes.

Q. And was the grip locked? A. Yes.

Q. And the bureau drawer locked? A. Yes.

Q. How did you get in? A. I had a key that would go in; there was a bunch of keys around the house and one fit. 20

Q. Mr. Martin did not give them to you? A. No.

Q. What did you take out of his grip then? A. Nothing but that diary, my own papers.

Q. How about these letters you said this morning you had? A. They were tied up together, but I didn't take them or read them until I got them off by themselves. 30

Q. What did you do with the papers that belonged to you? A. I kept them.

Q. Who were they from? A. Fanny Martin.

Q. What did you do with the letters? A. I didn't keep them.

Q. Well, you didn't keep them, but what did you do with them? A. (No response.)

The Court: Answer the question.

Q. What became of them? A. (No response.)

The Witness: I gave them to Mr. Rosecrans. 40

Sarah Irene Martin—Re-direct

Q. And he has never given them back to you?

A. No.

Q. For all you know he has them yet? A. I don't know anything about it.

Q. How did you get into the grip? Did you have a key for that also? A. I did.

10 Q. You hunted up the key for that, did you? A. I did.

RE-DIRECT-EXAMINATION by Mr. Rosecrans:

Q. Mrs. Martin, do you remember visiting Dr. Gordon at any time in 1913? A. I do.

Q. When did you visit ihm? A. Well, it was a few days after I left the house. It must have
20 been—it was in the forepart of October; I don't remember the day.

Q. Did you ever visit him again? A. I did.

Q. When was that? A. In December sometime. I don't remember what date.

Q. 1913? A. 1913.

Q. Did Mr. Martin ever accuse you of attempts to poison him? A. He did. He accused me of putting drugs in his coffee and victuals that made him have these fits with his bowels, with his stom-
30 ach, and accused me of putting things in his foot.

Q. How often did he accuse you? A. I could not tell you. He did it time and again.

Q. Did he tell other persons in your hearing? A. No—Yes, he did, too.

Q. Who? A. Mrs. Kuhn, down to Orlando.

Q. Did you hear him tell it? A. I heard him tell it.

Q. What income does your husband receive on this eighteen or twenty thousand dollars? A.
40 Eight percent interest.

Sarah Irene Martin—Re-direct

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

The Court: How much?

The Witness: Eight percent.

The Court: Judge, is it you desire to have that book to which you referred as a diary marked for identification?

10

Mr. Morrow: Yes.

Marked D-1 for Identification.

By the Court: Q. Mrs. Martin, what was your purpose in making entries in this book from time to time? A. Because he was in the habit of making such entries against me in his book and that is why I done this, to bring out the things he would accuse me of and say to me, and I would put them in so I could refer to them the same as he was going to do with his. He would have so many things in his that I had said and done that I had never done.

20

Q. When you were making these entries in this book did you anticipate then you would have to use it in court? A. No I did not think of such a thing.

Q. Did Mr. Martin ever tell you he was making the entries to use in court or for any other purpose? A. No, but he kept everything down in it.

Q. How do you know that? A. He for several years kept the book laying around. I could read everything that was in it for several years until he kept it concealed.

30

Q Did you intend this as a record of everything he did against you that was wrong or that you objected to? A I intended it for a record just as things happened, just as they were.

Q. What makes you think that the date of the year opposite the top of the first entry, July 27th,

40

Joseph S. L'Hommedieu—Direct

a dash, and the figures "12" are not your writing?

A. Because they don't look like it, for one thing, and another thing, he told me one time: "What will that ever amount to any way? You ain't got the date" and I imagined I hadn't the date, and
 10 he has put that on, because I know this book was commenced not later than 1911, I know it wasn't.

Q. How long since you have seen this book? A. I have not seen it for two years, any how; maybe longer.

Q. But that is longer than the book has been dated, is it not? A. That is longer than the book has been dated.

RE-CROSS-EXAMINATION by Mr. Morrow:

20 Q. Mrs. Martin, Mr. Martin complained to you that after he had eaten oat-meal or certain things he was very sick, didn't he? A. Yes.

Q. Didn't he say he had gone to see the doctor about it? A. He did.

Q. And that the doctor told him he had better be careful and not eat the things he did? A. Yes, and not eat them "until Rene did"—

Q. Until he knew you were eating these same things? A. Yes.

30 Q. You had not eaten them, had you? A. I don't ever eat oat-meal.

JOSEPH S. L'HOMMEDIEU, sworn for the petitioner:

Direct-examination by Mr. Rosecrans:

Q. Where do you live? A. Norton, New Jersey.
 40

Joseph S. L'Hommedieu—Direct

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

Q. From business? A. Yes, sir.

Q. What do you do in the winter-time? A. For the past few years I have been going to Orlando, Florida.

Q. Did you ever see Mr. and Mrs. Martin in Orlando? A. Yes, sir. 10

Q. Did you ever hear Mr. and Mrs. Martin quarrel in your presence or did you ever hear Mr. Martin accuse his wife of anything in your presence? A. I think I did once.

Q. What was it? A. Well, my wife borrowed some smoothing irons from Mrs. Martin and when I took them back one morning they were having quite a set-to over some papers Mr. Martin said she had taken. 20

Q. Go on and describe what occurred there between them that you heard. A. She denied it and he kept right on accusing her. She denied taking them at all, and she said she didn't have them, and he says—

Mr. Morrow: What took place?

Q. Did he use any foul language toward her? A. I think he told what was not so.

By the Court: Q. Did he call her by any particular name or use any epithet? A. I do not think he did. I think he just told her she lied. That was about the way he put it. 30

By Mr. Rosecrans: Q. Did Mr. Martin ever complain to you about the way his wife conducted the table, how she furnished him food? A. Yes, sir.

Q. Well, describe when that was and what he said. A. I think it was in the winter of 1912 or 1913 he brought a pie up to our place, and we were doing light housekeeping then on Church Street 40

Joseph S. L'Hommedieu—Direct

and he asked if we would like to eat such food as that, where the mice had been nibbling it. My wife made the remark she did not think it would hurt it. It looked very good.

10 Q. What did Mr. Martin say? Did he say anything about his wife, in regard to that pie? A. Well, he said it was not fit to eat, and that is the way she kept him--such food. I think that was the remark something like that, of that substance.

Q. Did you ever notice Mr. Martin's physical condition? Were you ever out rowing with him or fishing with him or anything of that kind? A. Well, I have been in a boat once or twice with him when we rowed around the lake.

20 Q. Who did the rowing? A. Mr. Martin.

Q. How far did he row? A. Well, we rowed around the Lucerne Lake. I don't know how far that would be.

Q. About how far would it be? A. Well, I should think it would be a mile, maybe that, around it.

Q. Did Mr. Martin ever talk to you about his wife in a derogatory manner?

30 Mr. Morrow: I object to that expression to that characterization of it. Suppose he says "Yes," and there it stands. That is not proper testimony.

The Court: Mr. Rosecrans, how is a declaration of that character by Mr. Martin against his wife admissible? It is not made in the presence of Mrs. Martin.

The Witness: That was the only time he ever talked to me.

40 The Court: I am merely asking for your view on the subject.

Joseph S. L'Hommedieu—Direct

Mr. Rosecrans: I presume, strictly, it would not be until I had asked Mr. Martin or laid the foundation for it and he denied he said these things.

The Court: You may advance that line of evidence either by way of contradicting, attacking his credibility— 10

Mr. Rosecrans: His feelings toward his wife, his feelings and his manner of talking to strangers, and his general feelings toward his wife.

The Court: I will admit it. If it followed an allegation of your petition it ought to stand; otherwise it will be stricken out.

Mr. Morrow: I move the answer "That was the only time he ever talked to me" be stricken out. 20

The Court: Yes.

By the Court: Q. Did he ever talk to you about his wife in any derogatory manner? A. That was the only time when I took the irons back.

Q. At any other time in her presence? A. No.

Q. Any other time out of her presence? A. Yes, sir.

By Mr. Rosecrans: Q. What did he say? A. I don't remember, but he said a good deal about her. 30

By the Court: Q. Of what nature? A. Well, that she was not the wife she ought to be. That was about the nature of it.

Q. Did he say why she was not the wife she ought to be? A. Well, I don't know; he told of a number of things.

Q. What? A. He said she had not been the wife to him she ought to have been, as man and wife. 40

Mrs. Hester E. Rose—Direct

Q. What else? A. Well, I don't know as I can recollect. We talked quite a good many times together but I don't know as I could recollect just what it was. I would not like to say anything unless I could say positively.

10 By Mr. Rosecrans: Q. At the time you were in the presence of Mr. and Mrs. Martin when Mr. Martin was accusing his wife of taking some papers, what was her conduct?

Mr. Morrow: Wait—

The Court: He can ask for words or conduct.

A. Nothing out of the way at all, only she denied the charge that she had his papers.

20 Mr. Morrow: That is what he said before. He has not added anything to that and I do not desire to ask any questions. I think you told when that was.

MRS. HESTER E. ROSE, sworn for the petitioner:

Direct-examination by Mr. Rosecrans:

30 Q. Mrs. Rose, you live in Blairstown? A. Yes.

Q. Did you live near the home of Mr. and Mrs. Martin in 1913? A. Next door.

Q. Did you ever hear Mr. Martin accuse his wife of adultery? A. Yes.

Q. What did he say on that occasion? A. He said she is—

Q. When was that?

Mr. Morrow: He said What?

40 The Court: She has not finished it.

Mrs. Hester E. Rose—Cross

The Witness: He said she was intimate with other men.

By the Court: Q. Were those the words he used? A. Well, he said—I heard him call some man by name. I think the name was Shipps (?); I know it was.

Q. What did he say about that man? A. He said that she was intimate with him. 10

By Mr. Rosecrans: Q. What did you say? A. I did not say anything. I was not where they were.

Q. Was there any other occasion that he spoke about his wife in that fashion? A. When he came from Orlando he came to my place for a pail of water and I asked how Mrs. Martin was and he said she was well and he said she didn't care anything about him any more that she had another man in Orlando. I said "Mr. Martin, I don't believe it," and he said "It is so, whether you believe it or not. I am not going to live with her. It is so." 20

Q. Did you ever hear any quarrel between Mr. and Mrs. Martin in the summer of 1913? A. That is just what I was telling you now, when I heard him say what I said.

Q. Do you mean this last answer he made, "She has another man in Orlando"? A. That was once and this is another time that I said. 30

Q. When was this other time? A. It was in the night time. They were in their own home when I heard the conversation in 1912.

CROSS-EXAMINATION by Mr. Morrow:

Q. I do not understand what that conversation was. Did you say.

Mr. Rosecrans: Yes.

Mrs. Hester E. Rose—Cross

Mr. Morrow: What did she say?

Mr. Rosecrans: Something about a man by the name of Shipps.

Q. Well, Mrs. Rose, you made an affidavit in this matter for Mrs. Martin, didn't you? A. Yes.

10 Q. You made two of them, didn't you? A. No.

Q. Only one? A. Only one.

Q. When did you tell anybody about Mrs. Martin being intimate with a man named Shipps? When did you tell that? A. Shortly after I heard it.

Q. Before you made this affidavit? A. Yes.

Q. Who did you tell it to? A. Oh, I don't remember now, who I did tell it to.

Q. Did you tell it to Mrs. Martin? A. Yes; I
20 told it to her.

Q. So she knew about it? A. Yes.

Q. Did you tell Mr. Rosecrans too? A. Yes.

Q. Do you remember in your affidavit you said that he said things, specifying them, and other things which you could not remember? A. I don't remember now.

Q. You say you told Mr. Rosecrans about this. Did you tell him about this at the time you made the affidavit? A. Yes.

30 Q. And he read over the affidavit to you before you signed it, did he? A. Yes.

By the Court: Q. Mrs. Rose, what were the words, as nearly as you can recall them, which Mr. Martin used, referring to the relations between his wife and a man in Orlando? A. Mr. Martin came to my house for a pail of water—

Q. No. I am asking you for the words. What
40 did he say? A. He said Mrs. Martin did not care

Mrs. Carrie Kitchen—Direct

anything at all about him because she had a man down in Orlando.

Q. No. I mean the first conversation you ever heard, before Mr. Martin came to your house. A. Oh, I heard someone talking very loud and I heard Mr. Martin speak this man's name and I heard Mrs. Martin say she did not lie. Mrs. Martin said "I am not a liar." 10

Q. Was there anything said at that first conversation you ever heard about any relations between Mrs. Martin and another man? A. How is that?

Q. Was there anything said in the first conversation which you ever heard by Mr. Martin? A. The first conversation was when he said she had another man in Orlando. 20

Q. That was when he came to your house for a pail of water? A. Yes.

Q. Now, the second conversation that you heard did Mr. Martin say anything then about any relations between his wife and another man? A. He was talking about a man by the name of Schipps.

Q. What words did he use? A. Well, he said she was intimate with him.

Q. Was that the word he used? A. Yes. 30

Q. Did he say where this intimacy had occurred? A. No.

MRS. CARRIE KITCHEN: sworn for the petitioner.

Direct-examination by Mr. Rosecrans:

Q. You live in Blairstown, Mrs. Kitchen? A. Yes. 40

Mrs. Carrie Kitchen—Cross

Q. In 1913 did you live near the home of Mr. and Mrs. Martin in Blairstown? A. Yes.

Q. Did Mr. Martin at any time show you any victuals or complain to you about the way his wife fed him or treated him? A. He didn't make
10 no complaint to me, but he showed me a loaf of bread.

Q. When was that, and where? A. That was right there by Mr. Dugan's place in Blairstown, right across the road from where they lived.

Q. Describe what happened then. A. I was coming from Mr. Yetter's with milk and I stopped and talked with Mr. and as I turned around Mr. Martin stood right back of me. I did not see him until I turned around; it rather
20 startled me, and he had this loaf of bread, and he said "See what my wife leaves me to eat when she goes visiting," and I said "That is only fit for chickens, go downtown and buy your bread." That is all I said.

Q. Did Mrs. Martin ever work at your home? A. She did.

Q. Was she employed by you? A. She was.

Q. When was that? A. After their separation.

30 CROSS-EXAMINATION by Mr. Morrow:

Q. What did you say about this bread, that it was not fit for anything but the chickens? A. I did.

Q. You agreed with him, that it was not good bread? A. I presume it had been baked a week, because Mrs. Martin had been away a week.

Q. His wife had been away a week? A. He
40 said she had.

Clyde Bergstraser—Direct

CLYDE BERGSTRASER, sworn for the petitioner:

Direct-examination by Mr. Rosecrans:

Q. Mr. Bergstraser, in 1913 did you live in Blairstown? A. Yes, sir.

Q. How long before that did you live in Blairstown? A. About four years I lived there before that. 10

Q. In 1913 where were you employed? A. At my brother-in-law's, Mr. Yetter's on High Street.

Q. Blairstown? A. Yes.

Q. What was your occupation? A. Farming.

Q. How long were you employed there, at Mr. Yetter's, and during what period? A. Why, I came there in February and I was there until July. 20

Q. What is the usual way to go down town, to the town of Blairstown from where you were employed at Mr. Yetter's? A. I had to go down High Street.

Q. Do you know where the home of Mr. and Mrs. Martin was at that time? A. Yes.

Q. Did you pass their home? A. That was the only way I could go to town.

Q. At any time that you passed this home of Mr. and Mrs. Martin did you notice anything unusual in their conduct? A. Yes, sir. 30

Q. When was it? A. Well, it was at night, in the latter part of May.

Q. What did you notice? Just describe what you saw and what you noticed. A. I was going home one night from town to my home up at Bert Yetter's, when I got to the residence of Mr. and Mrs. Martin I heard some loud talking and I 40

Clyde Bergstraser—Cross

stopped to see what was going on and I saw Mr. and Mrs. Martin standing in the front of the residence and they were quarreling, and he grabbed her right like that, (illustrating) and pushed her over the table, and then threw her over against the wall, and I heard her holler.

10 Q. What did she holler? A. "Oh, oh, oh." Just like that, and he stood there and she went out the room and shortly after a light appeared up-stairs and I went on home to my brother-in-law's.

Q. Where do you mean he grabbed her? A. Right up there, (indicating.)

Q. By the neck? A. Yes.

Q. Near the neck?

20 Mr. Morrow: That is not all he said. He did not say by the neck at all.

The Court: The difficulty arises entirely from the fact that the witness, instead of stating what was done, desires to show by the position of his hands what was done. Now, let the witness state where Mr. Martin put his hands on Mrs. Martin.

The Witness: He took her right by the neck, this way, (illustrating.)

30 The Court: Describe it in words instead of by showing it.

The Witness: Like that (illustrating.)

The Court: By the neck?

The Witness: Not particularly by the neck; he had her by the throat.

CROSS-EXAMINATION by Mr. Morrow:

40 Q. Put your hands up where you say he grabbed her. A. (Illustrating.) Like that.

Clyde Bergstraser—Cross

Q. Then he did not touch her neck or throat at all? A. Yes; it was right up there.

Q. Put your hands up there where you said it was. A. All right.

Q. Now you have them a little higher than before, haven't you? Was that as you recollect now? The way that he had his hands on her? A. Yes. 10

Q. That was more against her chest? A. No, sir.

Q. Was it as high as this? (indicating.) A. Yes.

Q. No higher? A. I don't know as it was.

Q. Can you tell what time this was what month? A. It was in May.

Q. How do you know it was in May? A. Because it was the second month before I left my brother-in-law's. 20

Q. Who is your brother-in-law? A. Mr. Yetter.

Q. How do you know it was the second month before you left your brother-in-law's? A. I know when it happened.

Q. How? A. Because I know, that is all. I remember when it happened.

Q. Is there any date fixed in your mind by which you say it was in May? A. No. 30

Q. What time of May was it? A. It was the latter part of May.

Q. Who did you first tell about this? A. I didn't tell anybody.

Q. At any time? A. Not until Mr. Beatty came to me.

Q. Who is Mr. Beatty? A. Mr. Beatty. 40

Clyde Bergstraser—Cross

Q. Who is Mr. Beatty? A. A resident of Blairstown.

Q. He came and asked you about it? A. He asked if I knew anything about it.

10 Q. He didn't ask you this circumstance, if Mrs. Martin had been grabbed by her husband and pushed against the table and against the wall? A. No.

Q. Who else did you tell about it? A. Mr. Rosecrans.

Q. When did you tell Mr. Beatty about it? A. I don't remember.

Q. Well, as near as you can tell? A. I can't remember.

Q. That same summer. A. Yes.

20 Q. Was it while you were working for your brother-in-law? A. Yes.

Q. When did you tell Mr. Rosecrans—while you were still working for your brother-in-law? A. No; it was when I was working for Mr. Mackey, there at Blairstown.

Q. When was that? A. That same summer.

Q. What time in the summer? A. I don't remember now.

30 Q. As near as you can tell. A. I couldn't just tell; I don't remember.

Q. When did you go to work for Mr. Mackey? A. I can't tell you just exactly; I don't just remember.

Q. Well, as near as you can tell us, when was it? A. Well, it is so long ago—

Q. This is long ago too. Can't you tell when you went to work for Mr. Mackey? A. It was after I went away from my brother-in-law's.

40 Q. When did you go away from your brother-

Clyde Bergstraser—Cross

in-law's? A. In the latter part of August—or July.

Q. Was it July or August? A. July.

Q. What time in July? A. I don't remember exactly.

Q. Where did you go then? A. To Mr. Mack- 10
eys.

Q. Right away after you left your brother-in-law's? A. About a week after.

Q. When did you quit working for Mr. Mackey? A. I worked for him very near a year.

Q. Was it that same summer you first mentioned this to M. Rosecrans? A. It was the summer that I worked for—

The Court: Judge, I do not like to cut you short on anything that is important, 20
but what is the point of this, of the exact period he communicated with Mr. Rosecrans?

Mr. Morrow: Well, your Honor will see before we get through with this case, when your Honor knows the whole case.

The Court: Proceed.

Q. Can you remember about when it was you told Mr. Rosecrans? Was it warm weather yet? A. Yes. 30

Q. Before the fall had set in? A. Yes.

Q. Did you tell anybody else? A. No.

Q. But you distinctly recognized Mr. Martin and Mrs. Martin? A. Yes.

Q. And you saw her first pushed against the table and again against the wall, and you heard her scream? A. Yes.

Q. And she was the person? A. Yes.

Q. Where were you working now? What have 40

Mrs. Edith Rosecrans—Direct

you been doing since that time? A. I am in Pennsylvania, now, Dingman's Ferry, Pennsylvania.

10 MRS. EDITH ROSECRANS, sworn for the petitioner:

Direct-examination by Mr. Rosecrans:

Q. In the fall of 1913 were you a law student in my office? A. Yes.

Q. Do you remember, at my request, that you weighed Mrs. Martin, the petitioner in this case? A. Yes.

Q. Do you remember weighing her? A. Yes.

20 Q. Did you make a record of those weights? A. Yes.

Q. (Handing witness paper) I show you that. Is that the record? A. Yes.

Q. Made at that time? A. Yes.

Q. Will you refresh your memory from that and tell us what the weights were, and on which dates? A. Well, I weighed Mrs. Martin on October 3d, 1913, and the weight was 109 pounds. Then Mr. Rosecrans asked me to weigh her again a
30 couple of months later; that was December 8, 1913, and the weight was 126 pounds.

Q. Did Mrs. Martin wear about the same clothes? A. I think she did. I did not notice particularly, but I guess about the same.

Q. Did you observe Mrs. Martin at about the time you weighed her or a few days before that? Did you have a chance to observe her? A. This was the first time?

40 Q. Yes, about October 3d, 1913, and several

Dr. Frank Gordon—Direct

days before that? A. Yes; I had observed her at different times.

Q. Did you observe her on December 8th, and a few days prior to that? A. Yes.

Q. Will you describe her condition on October 3d, compared with her condition on December 8th, 1913? A. When she came in the office on October 3, I remember she seemed to look like a person in ill-health and very pale and seemed very nervous, and when she came in the office in December, as soon as I saw her come in I noticed what an improvement there was in her physical appearance. She seemed to be much stouter, and, in fact her cheeks had filled out and seemed to be red and she looked as healthy as at any time I had ever seen her. 10 20

CROSS-EXAMINATION by Mr. Morrow:

Q. You are Mr. Morrows' student yet? A. Yes.

Q. And his wife? A. Yes.

By Mr. Rosecrans: Q. Were you my wife on October 3, 1913? A. No; just law student.

DR. FRANK GORDON, sworn for the petitioner: 30

Direct-examination by Mr. Rosecrans:

Q. Dr. Gordon, you are a physician and surgeon duly licensed to practice in the state of New Jersey? A. Yes, sir.

Q. What medical school or college did you attend?

Mr. Morrow: It is not necessary to put 40

Dr. Frank Gordon—Direct

all this down. I do not dispute he is a physician. He probably knows what he is talking about.

10 Mr. Rosecrans: I want to show his particular training for the testimony he is going to give.

Mr. Morrow: Well, all right.

Q. What medical college? A. New York University Medical College, New York City.

Q. Did you graduate from medical college? A. I did.

Q. And after your graduation where were you interned? A. One year at Randall's Island Hospital, New York City, and seven months at the Lying-in Hospital, New York City.

20 Q. Were you ever physician in any hospital in Newark? A. St. Michael's Hospital.

Q. What particular diseases were treated in St. Michael's Hospital? A. General diseases.

Q. Did you have any particular experience in the diseases of women? A. In the Lying-in Hospital, New York.

Q. Did you ever examine Mrs. Sarah Irene Martin, the petitioner? A. I did.

30 Q. When did you examine her first? A. October 3, 1913, I believe.

Q. What did Mrs. Martin complain of at that time? A. She complained of being extremely nervous and run down and debilitated and suffering also from soreness or distress in the external genitals.

Q. What was the result of your examination at that time? A. Shall I refresh my memory from this little note?

40 Q. Yes. A. (Referring to paper) Mrs. Mar-

Dr. Frank Gordon—Direct

tin's general condition was that of a person who was not in good health. She was very much run down and nervous and agitated. I examined her particularly as to the condition of her genital organs. I found at the outlet of her vagina there were half-healed abrasions of the mucous membrane. There is no need of going into this in technical language? 10

Q. Tell us what you found? A. Swelling of the external aperture or outlet, the urethra or urinary uterus and appendages in good position; urine normal; varicose veins in the left leg. That is, in substance, that examination.

Q. When did you examine her again? A. December 8, 1913.

Q. Did you describe whether there were any marks in the vagina? A. I did. I said that there were half-healed abrasions, small ones, on the mucous membrane on a certain part of the external genitals, just above the urethra or outlet of the urethra. 20

Q. You examined her again in December, 1913? A. I did.

Q. What was her condition then? A. General health much improved; varicose veins smaller; apparent gain in weight; abrasions healed; swelling at the urinary orifice subsided, gone down. On the first examination the mucous membrane was pretty red. At the second examination it was much paler. This was just local. This did not pertain to the inside of the vagina at all. 30

Mr. Morrow: That was all local—outside?

The Witness: Outside; it was open to inspection without the use of any instrument.

Q. Did you examine Mrs. Martin at any time subsequent to that? A. I examined her today. 40

Dr. Frank Gordon—Direct

Q. What was the result of that examination?

A. Practically the same as the examination of December 8th.

Q. Doctor, in your opinion would these scars and these marks which you found on the mucous membrane result from the use of finger nails?

10

A. It could.

Q. Could they result from anything but external violence of external agencies? A. I do not see how they could.

Q. What is your opinion? A. My opinion is that it was due to external violence of some kind or other and not to inflammation.

Q. And if this condition were allowed to continue, the condition which you found on your first examination, what would be your opinion as to the result as a detriment to the general health of Mrs. Martin? A. Well, it would depend on that the cause was of external violence. Do you mean a repetition of injuries on the outside? A. Yes.

20

Q. In that particular locality? Well, one possible result might be an infection of the urethral tract to the bladder, the urethra. If any external agent carrying germs or poison of any kind should injure the urethra it might infect the bladder. I am saying that is a possibility.

30

Q. Would there be a possibility of permanently injuring her health? A. I do not think the injury itself—I do not think the external injury in itself would.

Q. Would it result in a permanent injury? A. I do not think it would result in a permanent injury to her health. I think if the woman lived in a situation where she knew she was subject to

40

Dr. Frank Gordon—Direct

constant external violence, that the atmosphere of living under a fear that such things are liable to be repeated in that way would cause her to feel nervous and run down in health. The injury itself, such as cuts or bruises or anything like that would not cause a person to run down in health. 10

Q. But that would indirectly result in causing a general run down condition? A. Well, if I knew that every few days I was going to receive a blow in the face—

Mr. Morrow: This is very speculative.

The Court: Do you object?

Mr. Morrow: Yes, I do.

The Court: I think you have already covered this particular phase in a previous answer. Your question was merely a repetition of the doctor's previous answer. 20

Q. Doctor, do you know Mr. Martin, the defendant? A. Yes, sir.

Q. Is it usual for men of that age to demand excessive sexual intercourse?

Mr. Morrow: Wait a moment. That depends on a great number of circumstances. How does the doctor know about that?

Mr. Rosecrans: From his experience and observation. 30

The Court: In the first place, it does not appear the doctor knows his age. He has merely said he was acquainted with him. And the excessive intercourse has not been established as yet. I think all you have to do in order to get what you want properly is to ask a certain number of preliminary questions.

Q. Can a medical man such as you are, a prac- 40

Dr. Frank Gordon—Direct

tical practitioner, judge a man's age approximately? A. Not to a fine point; no; approximately.

Q. Within how many years? A. Ten years or five years, I suppose.

10 Q. How old would you say Mr. Martin is?

The Court: That is speculative.

A. Some people are very deceptive as to their age.

The Court: If your proposition is to base a hypothetical question on an assumption of age—

Mr. Rosecrans: I want to get some basis for it.

20 The Court: I do not think that is a sufficiently sound basis.

Q. Is there any natural agency which causes a man from sixty-five to seventy years of age to desire excessive sexual intercourse, or a desire to use his fingers to gain an erection?

Mr. Morrow: I object to that.

The Court: I think it is perfectly proper as it stands. It is a pretty long question. Let us hear the question again.

(Last question read.)

30 A. There are normal cases, but there are abnormal cases which would cause excessive sexual irritability, excessive sexual desire in a man; there are abnormal cases; no normal cases; abnormal.

Q. What are such cases? A. Physical?

Q. Yes. A. Well for instance a very common one would be an enlarged prostate gland. That frequently causes sexual hypersthenia in men with
40 ages between fifty and seventy. It is a very com-

Dr. Frank Gordon—Cross

mon complaint. Now, don't mistake me that it means a man of that age is more potent necessarily than a young man.

Q. But he would have more cause for desire?

A. On account of the irritation of this gland.

Q. Is not this enlarged prostate a usual condition found in men between fifty and seventy? 10

Mr. Morrow: I object to that.

The Court: Mr. Rosecrans, do you propose to submit any evidence that would connect the last series of questions with the defendant in this case?

Mr. Rosecrans: I want to ask the defendant that question when he takes the stand.

Mr. Morrow: He better not get this evidence in the case until he has laid a formation for it. 20

Mr. Rosecrans: I can show his age then.

Mr. Morrow: You can show his age now, for all I care.

The Court: The objection only goes to the matter of the order of proof, and it might be more convenient to have it received at this time. I will let it stand subject to a motion to strike it out if it is not 30 connected with the defendant by testimony proper to the issue before the case is closed.

CROSS-EXAMINATION by Mr. Morrow:

Q. Well, doctor, the condition which you saw in Mrs. Martin might have been occasioned by the scratch of anybody's finger nails, might it not?

A. Yes, sir. 40

Dr. Frank Gordon—Re-direct

Q. Or by any other edged agency, might it not?

A. Any external implement, yes, sir.

Q. Anything could have produced it, almost, couldn't it? A. Anything excepting an inflammation.

10 Q. Well, it was not from an inflammation? A. It was due to external injury.

Q. Where did you make this examination? A. At my office.

Q. Did you make the subsequent examination in your office also? A. In my office.

Q. Where did you make your examination today? A. In Mr. Rosecrans' office in Belvidere.

By the Court: Q. Doctor, had you seen in your experience such symptoms or indications before?

20 A. I had not.

RE-DIRECT-EXAMINATION by Mr. Rosecrans:

Q. Have you read about such things in your medical work? A. Oh, yes.

Q. There are medical citations of such? A. Well, it is very unusual for a woman to receive injuries in just that particular locality; that makes a case where it is unusual.

30 Q. But you have read of such cases in your medical text books? A. Yes.

The Court: He said that he had.

The Witness: Yes, sir.

Mr. Rosecrans: That is all.

The Court: Mr. Rosecrans, let me suggest to you that you have not submitted any testimony in denial of the husband's accusations of adultery or intimacy. In
40 your petition you allege that they are

Dr. Frank Gordon—Re-direct

false and untrue. I call your attention to that fact.

Mr. Morrow: We shall not offer any evidence of the truthfulness of such things.

The Court: You did not ask Mrs. Martin to deny the truth of those charges. I think 10
you better do so.

Mr. Morrow: I shall not offer any evidence on that at all. There is no contention that she was ever anything but a chaste woman.

The Court: Enter that stipulation on the record and that will be sufficient. Dictate what you want on the record.

Mr. Rosecrans: It is stipulated between counsel for the petitioner and the defend- 20
ant that it is admitted that Mrs. Sarah Irene Martin the petitioner in this case is a chaste woman, a perfectly chaste woman.

Mr. Morrow: And has been ever since her marriage to Mr. Martin.

The Court: Mr. Rosecrans, do you waive that part of your petition which alleges the effort of the husband to entrap the petitioner into certain compromising circumstances? 30

Mr. Rosecrans: No, your Honor, we have had such a short time for preparation that I overlooked it. I do not want to waive it. I can show it by the petitioner, if your Honor will allow me.

The Court: Certainly.

Mrs. Sarah-Irene Martin—Direct

MRS. SARAH IRENE MARTIN, the petitioner re-called.

Direct-examination by Mr. Rosecrans:

10 Q. Mrs. Martin, did your husband, while you were both in Orlando, Florida, at any time attempt to get you into circumstances or in a position which would make it appear as if you were guilty of committing adultery?

Mr. Morrow: That is a very leading question.

The Court: Yes, but I think that is the practical way to bring the matter to an issue.

A. I don't just understand your question Mr.
20 Rosecrans.

Q. Did Mr. Martin in Orlando Florida ever attempt to get you into a compromising position with any person, with any man? A. Well, one thing that he tried to do, there was a party there in Orlando, a man and his wife. The woman was very complaining, had ill health; she wanted to go to White Springs, Florida for treatment. Mr. Martin was complaining, and as they thought that a great resort for sick people, they recom-
30 mended him to go. Mrs. Hillman wanted somebody to go with her and they tried to persuade Mr. Martin to go along, and then, I thought, at first in a joking way, they said I should stay at home and keep house for Mr. Hillman in Orlando. He lived right across the street, but I didn't pay attention to it. I let them talk about it, and later on I found they meant it, that I should let them go and I should stay on my side of the street and go over once in a while and get meals for him. I
40 said that would not do.

Mrs. Sarah Irene Martin—Direct

Q. Did Mr. Martin suggest this? A. Yes. I thought they were talking in fun, but Mr. Martin said I should stay and I said "That won't do, people will talk about it, and I won't do that. If you go to White Springs I will go too, for I won't stay here alone;" and they went, and we all three went, Mr. Martin, Mrs. Hillman and myself. 10

Q. Did Mr. Martin attempt to persuade you to stay? A. He did not want to bear the expense for us all to go there. We were paying big rent in Orlando and if I stayed at home it would make less expense, but I wouldn't stay, I went with them. When we got up there he fell out with Mrs. Hillman. She didn't do quite what she had promised to do, he said, and he got very angry 20 at her and when we came away she stayed, and she asked me to go over to Mr. Hillman, for we were very intimate—before we went away, she said "You go over and tell Mr. Hillman to send me the key to my suit case and some more money." So I went. I wasn't gone, I think, five minutes but after Mr. Martin found out I had gone over there it made him so angry; he demanded what business I had there, and I said I went to do Mrs. Hillman a favor and he said I 30 had no business to go there with that man there alone, and after that he was very jealous of Mr. Hillman, and if I had stayed and kept house for him first as he wanted me to—

Mr. Morrow: Objected to. That is argument.

Q. Do you know whether Mr. Martin ever attempted to get a divorce from you? A. Well, I had reason—

Mrs. Sarah Irene Martin—Cross

By the Court: Q. Do you know? A. Do I know?

Q. Yes; yes or no. A. I don't know how to answer. I have seen papers.

By Mr. Rosecrans: Q. What papers? A. A paper that he wrote—an answer to a paper that
10 he had written to Mr. Angle asking what—Oh, you know what I want to say?

Q. Just tell us. A. What ground they would have to have for divorce in Reno. The answer I seen. I did not see the letter. I saw the answer to this question. He specified several different things, one was violent temper, another was adultery, another was desertion, and, I don't know what else it was, but it was signed, "George A. Angle," where I suppose he had written Mr.
20 Angle, and Mr. Angle had answered.

Q. When was this? A. I found this letter.

Q. What year? A. 1913, the winter that I found his grip in the trunk, and was a reply from—well, I am ahead of my story. Excuse me. The answer to Angle's letter referred him to a certain party in Reno.

CROSS-EXAMINATION by Mr. Morrow:

Q. Mr. Angle's letter what? A. Mr. Angle's
30 referred to a certain party in Reno, to a certain attorney, I suppose; I don't know the name, and the reply from this attorney was what his plea should be, that it should be for certain causes, adultery and other things, and there would have to be a residence of six months in Reno. Now, I don't know what he was trying to do to get such evidence as that.

By Mr. Rosecrans: Q. Did you weigh yourself
40 to-day? A. Yes, I was weighed to-day.

Mrs. Myrtle Shipps—Direct

Q. How much did you weigh? A. One hundred and twenty-seven and a half.

Q. What has been your usual weight for the three years prior to the time you were forced to leave your husband? A. One hundred and twenty-five and a hundred and thirty. 10

By Mr. Morrow: Q. Haven't you talked about going to Reno to get a divorce? A. I never thought of such a thing.

Q. Or anywhere else? A. Never.

Q. Where is that letter from Mr. Angle, or the letter from the lawyer in Reno? A. Perhaps he has it now, for when I took my papers out of the grip the last time, they were gone. I didn't take that out of the grip, I read that and put it back.

Q. When was that? A. In Orlando, the time I 20 opened the grip and he left the trunk unlocked.

Q. What year was that? A. 1913.

Q. What time in 1913? A. I don't know just what time it was. I cannot just mention the date.

MRS. MYRTLE SHIPPS, sworn for the Petitioner. 30

Direct-examination by Mr. Rosecrans:

Q. Are you the daughter of Mrs. Martin? A. Yes.

Q. Where do you live? A. In Pennsylvania.

Q. Does your mother live with you now? A. Yes; she has been with me now nearly four weeks.

Q. Did you weigh your mother this morning? A. No. 40

Mrs. Myrtle Shipps—Direct

Q. Were you standing by when she was weighed? A. Yes.

Q. Did you see how much she weighed? A. No, I didn't look at the scales. Mrs. Widenor was with us.

10 Mr. Rosecrans: That is all I ask, your Honor.

The Court: Do I understand you rest your case Mr. Rosecrans?

Mr. Rosecrans: Yes, I rest now.

The Court: You do not desire to submit any more evidence at a later time?

20 Mr. Rosecrans: I have attempted to serve Mr. Angle with a subpoena but he is out of town. I would like to reserve the right to submit that at a later time if your Honor will permit it. And I reserve the right to rebut the evidence of the defendant.

The Court: Oh, certainly. I merely ask you whether you close your direct case.

Mr. Rosecrans: Yes, I have closed my direct case, with that exception.

30 Mr. Morrow: I cannot consent to reserving any evidence. The Court always has control of that though.

The Court: In view of the statement that the Petitioner has closed her main case, I will strike out those questions asked of Dr. Gordon relating to certain causes as producing in men of such an age certain tendencies reverted to, as not being connected by any testimony with the defendant. You may proceed Judge Morrow.

40

Jerry E. Martin—Direct

Mr. Morrow: I am going on with such testimony as I have to-day, but I will have to send a commission to Florida to take such testimony as there is there, which will take some time.

10

JERRY E. MARTIN, sworn for the defendant.

Direct-examination by Mr. Morrow:

Q. Mr. Martin, where do you live? A. Stillwater Township.

Q. Are you related to Philetus Bradley Martin? A. He is an uncle of mine.

Q. Do you know his wife, Sarah Irene Martin? 20
A. Yes.

Q. Did you have a conversation with her in Newton last summer respecting her relations with her husband? A. Yes, sir.

Q. Will you state what she said to you?

The Court: Is this supposed to be direct evidence or contradictory?

Mr. Morrow: Yes, this is direct evidence, and if its effect is to contradict her, why, so be it; that is all. 30

A. We had a conversation in the hotel, in the sitting room. I was in Newton and I saw Mr. Oliver on the street.

Q. Don't tell all the people you met there. A. I was in the sitting room.

Q. She sent for you? A. Yes, and I was talking about their troubles and I asked her—I have been there lots of times and I never saw so much, and I said "What is the trouble between you and 40

Jerry E. Martin—Cross

Uncle Brad?" And she said The main trouble was money matters. She wanted a nice cosy home, or something similar to that, and wanted what money she thought she should have to use, and at the same time she mentioned about his giving
10 my wife a check for \$200.00 and said that she had told him if he gave Jen money, it wouldn't be any more than right, I think she said, for her to give me money. I can't tell all that was said. I didn't consider it amounted to a very big lot at that time. I said to her "Has he ever struck you or anything of that kind," and she said "No; I will say that for Brad, he has never hit me or undertook to." And she said "He abuses me other ways," but I did not ask her what it was
20 or anything about it.

Q. How long did this conversation last? A. I don't know. Probably we was in there a half an hour or three quarters.

Q. I think I asked her if she told you that her husband had ever struck her or used any violence toward her. Did you ask her that? A. I didn't ask her about violence. I asked if he had ever struck her and she said no. She said "I will say that for Brad, that he has never hit me."

30 Q. Did she say he never offered to hit her? A. Well, "Made any attempt."

CROSS-EXAMINATION by Mr. Rosecrans:

Q. Mr. Martin, when was this conversation?

A. I think it was last June sometime. I can't tell you just when.

Q. In Newton? A. In Newton, in Lovely's Hotel.
40

Jerry E. Martin—Cross

Q. Did Mrs. Martin ask you to come to Newton? A. No, sir.

Q. How did you come to see her? A. I was on the street, as I answered a minute ago, and saw Mr. Oliver and he said Mrs. Martin was at his place and she would like to see me, and I said I hadn't time, and I saw Mr. L'Hommedieu, and he come down and said Mrs. Martin would like to see me—"Your Aunt Rene" he said. 10

Q. Weren't you in Newton looking for Mrs. Martin? A. No, sir. I didn't know she was there.

Q. Didn't you ever talk with Mrs. Martin at your home just prior to this? A. No, sir; she wasn't around there—

Q. Didn't Mr. Martin ask you? To see what you could get out of her? A. No, sir; never because at the time Uncle and I hadn't spoke together for almost a year, so he couldn't ask me anything like that. 20

The Court: Strike out the latter part of the answer.

Q. Why did you ask Mrs. Martin if she was ever struck? A. Because she was telling me a lot of trouble, and I was interested and I was a little ashamed myself, the way things was going on, and wanted to know why they had so much trouble. That is why I wanted to ask that question, and I think I had a right to. 30

Q. Why were you interested? A. He was my uncle and I considered she was my aunt, and it was a disgrace to the whole community.

Q. What was? A. The talk, and the way it was going on, that they had parted in their old days.

Q. Had they parted then? A. Had they? 40

Jerry E. Martin—Cross

Q. Had they parted then? A. Had they?

The Court: Answer the question.

The Witness: Yes.

Q. In June 1913? A. June last summer was
1 when they had parted, yes, sir, it was last sum-
10 mer in June, 1914.

By the Court: Q. Do you mean June 1915?

Mr. Morrow: 1914.

Q. Do you mean June 1915? A. Yes, this last
June.

Q. Well, this is June. A. Well, it is a year ago
this June.

Q. 1914? A. Yes.

By Mr. Rosecrans: Q. And you had not seen Mr.
10 Martin for a year before that? A. I had, yes,
20 sir.

Q. Hadn't he made arrangements to take
charge of your fruit farm? A. No, sir.

Q. Or some farm near you? A. He might have,
unbeknown to me, but at the time he was up to
look at the fruit farm, as I heard him say to-day,
he didn't come to my place at all.

Q. You were talking with him to-day? A. He
come down with us, yes, sir.

Q. In your car? A. No, sir.

30 Q. How did you come? A. From my place to
Blairstown in a wagon.

Q. Did you have a talk about this case? A. Na-
turally we had something to say about it.

Q. Did you talk about the conversation you had
with Mrs. Martin in Newton? A. I don't know
as we did.

4 Q. You are sure you did not? A. I don't think
40 we did. We talked about the case but I don't

know Mrs. Jennie Martin—Direct: Now we talked of it yesterday.

know about just that conversation. I know we talked of it yesterday.

Q. Did Mr. Martin never tell you to say Mrs. Martin had admitted to you that she had not been struck? A. He never mentioned such a thing to me. I said before that we hadn't spoke for nearly a year. 10

Q. And he drove down from Blairstown? A. To-day? Yes.

Q. Did he ask you to testify? A. No, sir.

Q. You did not know you were going to testify?

A. I did; yes, sir. He brought me a subpoena yesterday and said he had a ticket for me.

Q. You did not talk about the case on all this ride? A. We did yesterday, but I don't know that we did about this matter, only just as I said. 20

JENNIE MARTIN, sworn for the defendant.

MRS. JENNIE MARTIN, sworn for the defendant.

Direct-examination by Mr. Morrow:

Q. Mrs. Martin, you are the wife of Jerry Martin? A. I am, sir.

Q. Of course, you know Mr. Martin and Mrs. Martin? A. Yes, sir.

Q. Were they at your house in April 1913 right after their arrival from Florida that spring? A. They were.

Q. How long did they stay there? A. Over night.

Q. What did you observe of their relations toward each other at that time? A. I considered they acted very decent toward one another. 40

Mrs. Jennie Martin—Direct

Q. Did you hear anything wrong? A. Nothing wrong in any way, shape or manner.

Q. How was his manner toward her? A. Very well.

Q. He talked with her? A. He talked with her.

10 Q. Were you at their house in Blairstown after that? A. No, sir.

Q. Weren't you there with your son once after that? A. Yes.

Q. How long was that after their visit at your house? A. Oh, I don't know. I don't remember.

Q. Well, it was after that, wasn't it? A. Yes.

Q. In the summer time? A. Yes in the summer time.

Q. How long were you there? A. I went there
20 and stayed over night and went home Sunday evening.

Q. What were their relations toward each other then? A. Very nice, except when noon came.

Q. Just what happened at noon? A. Dinner was served on the table and we went to the table and the coffee was served and she went to the parlor and that is the last I saw of her. Uncle Brad went on with the dinner, and finished the dinner.

Q. How long were you there before the dinner
30 was served? A. I was there all the forenoon.

Q. Was your Uncle Brad there? A. Yes.

Q. And she was there? A. Yes.

Q. Did you notice whether they talked with each other? A. Yes, Uncle Brad told her about digging potatoes and she dug the potatoes in the upper end of the garden.

Q. Do you know any reason why she went in the parlor and stayed there? A. No, sir, I don't
40 know a word about it.

Mrs. Jennie Martin—Cross

Q. Who waited on the table? A. Uncle Brad.

Q. After the dinner was over what became of the dishes? A. Aunt Rene and I did the dishes.

Q. Where did she come from then? A. She came out of the parlor.

Q. Were you there at the time when Mrs. Mar- 10
tin went down town with you? A. I was there on Saturday night and asked her to go down town, but she said she had somethig to do for Sunday and she didn't go. She said "You and your Uncle Brad, can go down town." And we went down and I got two under shirts and went home but I don't think I was gone away from the house an hour at the longest, and when we came back she was gone.

Q. Did you see her down town at all? A. I did 20
not.

Q. There was nobody there when you came back? A. Nobody at all.

Q. What were the relations between her and her husband that Saturday evening? A. I didn't hear them say a word.

CROSS-EXAMINATION by Mr. Rosecrans:

Q. When was this dinner episode? A. What is 30
that?

Q. When was this that you told about being at dinner when she left the table? A. I don't know when it was, but it was at noon time on Sunday.

Q. Last year? A. It was the year they came from the South. I don't know when it was.

Q. Didn't they come from the South every year? A. Yes.

Q. Which year was it? A. Last year. 40

Mrs. Jennie Martin—Cross

Q. Are you sure it was not two years before they separated? A. Yes.

Q. Are you sure? A. I am sure.

Q. How do you know it was last year? A. I know it was last year. I am not foolish.

10 Q. How do you know it was not before last year? A. Because I was there.

Q. You are very friendly with Mr. Martin? A. He is my uncle.

Q. You have a very good friendly feeling toward him? A. I have a right to, because he has always used me as one of the children.

Q. He sent you money? A. He sent me money, and I won't deny it, but it was sent to me in regard to furnishing the house for the children.

20 Q. You don't like Mrs. Martin? A. I haven't anything against her.

Q. Do you like her very much? A. Just the same as she likes me.

Q. Do you like her as much as you do your uncle? A. I have no use to when she turns her back to me.

Q. Now, at the time this dinner party took place that summer you described, you don't know why Mrs. Martin left the room? A. No, sir, I don't
30 know the reason why.

Q. Were you in the room with Mr. and Mrs. Martin just before she left the room? A. We was right at the dinner table. She served the coffee on the table and left the room.

Q. Was Mr. Martin talking to you before she left? A. Not a word.

Q. Was he abusing her with his tongue? A. Not a word; there wasn't a word.

40 Q. Did he say anything to you? A. No, sir.

Mrs. Jennie Martin—Cross

Q. He wasn't talking to anybody? A. There wasn't nobody talking to anybody?

Q. How long was this— A. Just before we got to the table and coffee was served. That was the last I saw of her until the dishes were washed and I helped her wash the dishes. 10

Q. How long did you have a conversation after she left the room? A. I didn't have a conversation at all. I took the coffee and she went off in the room.

Q. Did you observe them talking just before this coffee was served? A. Did I what?

Q. Did you observe Mr. and Mrs. Martin talking together anywhere in that house or outside of it before the coffee was served? A. What do you mean? 20

Q. Did you see them together? A. Yes, because we was all of us together, the whole family.

Q. And he was not abusing her? A. He was not abusing her one bit.

Q. Did you see Mrs. Martin cry that day? A. I did not see her cry.

Q. How do you know she cried? A. I didn't say she cried.

Q. Didn't you hear her cry? A. I didn't hear her cry. 30

Q. How did you come down to-day? A. With my husband.

Q. Did Mr. Martin see you last night? A. He stayed there all night last night.

Q. Did he talk to you about the case? A. Not a word to me. I did not say a word to Uncle Brad Martin last night about the case. 40

Mrs. Jennie Martin—Re-direct

Q. You did not have one word with Mr. Martin? A. I did not have one word with Mr. Martin from yesterday afternoon until this morning when we started down for this case.

Q. Nothing about your testimony? A. Nothing about my testimony in any way, shape or manner.
10 He never said a word to me about it.

Q. How do you remember these things so perfectly? A. I knew where I was coming.

Q. How do you remember these things? A. I have a level head, I think.

Q. You are very smart, then? A. No smarter than you think you be.

Q. Mr. Martin did not suggest anything? A. He did not suggest anything. He never said any-
20 thing to me about any case whatever or anything at all.

RE-DIRECT-EXAMINATION by Mr. Morrow:

Q. You talked in my office before you were sworn? A. Yes.

Q. I did not ask you anything about the money. You say Mr. Martin gave you some money for your children? A. I did, yes, sir. It was to fur-
30 nish the house for the children.

Q. Is he fond of the children? A. Uncle Brad?

Q. Yes. A. He certainly is. He always said he thought the world and all of the children.

Q. Have you and he ever had any improper doings? A. Nothing at all.

Mr. Rosecrans: I do not impute that.

Lewis A. Konkle—Direct

LEWIS A. KONKLE, sworn for the defendant.

Direct-examination by Mr. Morrow:

Q. Mr. Konkle where do you live? A. Blairstown, New Jersey. 10

Q. How long have you lived there? A. About thirty-five years.

Q. What is your business there? A. Merchant.

Q. Are you related to Mr. Martin? A. Yes.

Q. How? A. Well, we are second or third cousins, or something of that sort.

Q. Are you related to his wife, Sarah Irene Martin? A. An own cousin.

Q. Did you go to Mr. Martin's house in Blairstown the last of September 1913? A. I did. 20

Q. At whose request did you go? A. Mr. Martin's.

Q. For what purpose? A. Well, as sort of an arbitrator between them that I might help them reconcile themselves and their troubles.

Q. When you went to the house first what did you do? A. I knocked at the door. I told him I would be up a certain hour but I was a little late, a half hour or so. I knocked at the door and there was no response. 30

Q. How long did you wait there? A. Oh, three or four minutes possibly.

Q. Then what did you do? A. Started back and went down High Street until I got to the top of the hill and I met Mr. Martin coming up.

Q. Did you return with him to the house? A. I did.

Q. How did you happen to do that? A. Well, at his request. I told him I had been to the house 40

Lewis A. Konkle—Direct

and knocked and there wasn't any one to admit me and I was coming back, and I insisted on going home and he said "No. I want you to go back with me and see what you can do for me."

10 Q. Did you have a talk with him then? A. Yes, after a little while he opened the subject, after we had been in and sat down for a few minutes.

Q. Do you remember him saying to her "Rene, Mr. Konkle has come up to see us to see if we can't get together about our affairs and get reconciled?" A. I do.

Q. Did he say that to her? A. He did.

20 Q. Did he say the time was about up to give up the house and he must move his goods out and he wanted to know what disposition to make of his affairs, of his goods? A. He did.

Q. Did he tell her he had made arrangements for a place to store her goods in and ask her— Did he tell her he had made arrangements for a place to store her goods in and she asked him "Where?" A. I think he did say that, and he asked her whether she would store her goods with his?

30 Q. What did she say to that? A. She asked where he was going to put the goods and he did not make any reply just at first.

Q. Then did he afterward tell her where he was going to put them? A. How was that question?

Q. Later on did he tell her where the place was that he was going to put the goods? A. I think he did.

40 Q. Then what did she say about her goods? A. I think she said that she would find a place for her's; she would not store them, she would not put them with his.

Lewis A. Konkle—Direct

Q. Did he tell her the house had been sold and he had to give it up? A. Yes.

Q. Do you remember in that conversation his saying to her that he was going to Orlando and he wanted her to go with him; that his health demanded he should go there and they would rent rooms or board as she preferred? A. Yes, I remember him saying that. 10

Q. Did he tell her there that he would use her well and would pay all necessary expenses for their proper living there? A. I think he did say that.

Q. Did she tell him in answer to his proposition that she would not go; that he might as well know it now as at any time? A. Yes, she said that she could not endure another winter down there, like she had had before. I cannot give the words just as they were given there. 20

Q. Did you say to her "Now Irene, I am a friend of both of you and I would like to see you get together and drop your differences. This life is short and you haven't very long to stay here," and urge her to think it over until morning, and "see if you couldn't get together?" A. Yes, sir, I did tell them that.

Q. Did she make any answer to that? A. I don't think she replied to it. 30

Q. Do you remember that she had charged him with laying a note on the bureau of some sort, of a warning, that "you might have something to answer for, more than you think for." A. Yes; that was brought up in the conversation.

Q. What did Mr. Martin say about that, about that note? A. Well, she insisted that it was his writing, and he insisted it was not his writing. 40

Lewis A. Konkle—Direct

She said to him, I think, "You go and get the note." And whoever it was went up stairs to get the note didn't find it. It was gone.

10 Q. Well, then, did Mr. Martin ask her where it was? A. Yes, and she says "Well—" I think she said "I have it for future reference." I think those are the words; I am not real positive. It has been a year and a half ago, nearly, since this thing occurred.

Q. Did he tell her that the note was a sort of a missionary circular that some one had left there? A. I think he did. I think he brought that around in some way.

By the Court: Q. Have you distinct recollection as to the circumstances, from which you can
20 answer yes or no. You say you think so. Are you answering that in that way because it comes from counsel with that suggestion? A. No. My recollection is that he spoke of that as a piece of literature that some fellow had left, had thrown around the yard or thrown in the door.

By Mr. Morrow: Q. Do you remember her charging him with having locked up her things in his bureau and he denying it, and then her going up and finding that the bureau drawer was
30 not locked? A. Yes, I remember that.

Q. And admitting that it was not locked? A. Yes.

Q. Is that so? A. Yes, sir.

Q. How long were you there that night? A. Possibly an hour and a half or two hours.

Q. Do you remember Mr. Martin telling her that he was willing to get together and reconcile their differences and live together as man and wife should? A. I think it was in the conversation
40 that he used those words.

Lewis A. Konkle—Cross

Mr. Rosecrans: I object to what the witness thought.

Q. State whether that conversation took place.

A. As near as I can remember he said those words; he said them.

Q. Did she say anything about living in the South? A. Not at that time; not that night that I remember. 10

Q. Had she before that? A. She had talked about the South before.

Q. What did she say about it? A. She said it was the climate, it was very sluggish and she didn't like the climate. There wasn't much life about it, not very elevating, especially the summer or the warm part of the season.

20

CROSS-EXAMINATION by Mr. Rosecrans:

Q. Mr. Konkle, had Mr. Martin asked you to go up to the house before that evening that you went? A. I think not. I don't remember it.

Q. He asked you that evening? A. He asked me that evening. He came in about four o'clock or half past.

Q. Did he say he wanted you to hear the conversation between them? A. He said to me this: "I would like you to come and talk over affairs with my wife." 30

Mr. Rosecrans: I object to the answer.

The Court: It is not strictly responsive to the question. The question is did he ask you—Read the question.

(Question read.)

The Court: Now, yes or no.

The Witness: He did not say that. His question put to me was not that way. 40

Lewis A. Konkle—Cross

Mr. Morrow: You have answered the question.

Q. In what way, in what manner did Mr. Martin begin questioning his wife? Was it in a calm way? A. He called me by my first name. He said
10 "Lew, I would like you to come up—"

The Court: That is not the question.

Q. When you got up there in the house, with Mr. and Mrs. Martin in your presence, Mr. Martin started to question his wife. Now, did he do that in a calm manner? A. After he got in Mr. Martin's house?

Q. Yes. A. Didn't you ask me a bit ago if he came in my place after me?

The Court: Wait: Answer the question
20 as it is put.

Q. I don't want to quarrel. I am trying to get the conditions up there when you were all three together in the room. Did Mr. Martin start to talk to his wife in a calm way? A. Very respectful I would say.

Q. He started to question her in a calm way? A. He said to her—

The Court: Not what he said, but the manner.

The Witness: The manner was all right in my
30 estimation. I didn't see anything wrong about it.

Q. Did he at that time commence bringing up unpleasant incidents in their past life? A. Well, there was conversation used, or words used, that you would not call really pleasant words.

Q. Did you say to Mr. Martin during the time that you were there that evening, "I don't say those things to my wife; I don't talk that way
40 to my wife?" A. Yes; I made that expression.

Lewis A. Konkle—Cross

Q. Because of the things Mr. Martin said to his wife? A. They were having some words over something, I forget what it was.

Q. Did not Mrs. Martin say that she would go to Florida if Mr. Martin would treat her as he should? A. Why, I can't remember that now. I 10 think she did say that. That is my recollection.

Q. Now, Mr. Konkle, do you remember toward the end of that time you were up there, toward the end of this conversation did Mr. Martin say "Well, you see what you can do with her. The law will have to settle this." Didn't he say that toward the end of this conversation, toward the end of the hour and a half? A. I can't recall that. There was so much said there that night that I don't remember that. 20

Q. Didn't he say something about the law having to settle it. A. I occurs to me that something like that was expressed but I can't say.

Q. Do you think it was expressed by Mr. Martin? You are just here to tell us—

Mr. Morrow: I do not want his argument with this witness.

Mr. Rosecrans: State your objection to the court.

The Court: Just a minute. 30

A. Now, that might have been said, but I am under oath. I cannot positively say that thing was said.

Q. Now, Mr. Konkle was that said in response to something that Mrs. Martin said, did Mr. Martin say "The law don't compel me to give you anything?" A. I don't remember that.

Q. Are you sure it was not said?

The Court: No. 40

Lewis A. Konkle—Re-cross

Q. Was that said? A. I don't remember it.

Mr. Morrow: You don't remember what?

The Witness: I don't remember whethere it was said.

10 Q. Mr. Martin said sometime during that conversation something about the law, didn't he? Didn't he use that word, something about the law? A. I don't remember. We said so much there I can't keep all that in my mind.

Q. Toward the end of this conversation Mr. Martin grew rather vehement in his talk, rather loud? A. He did when they were talking about the drawer being unlocked, and about the note being upstairs, that it wasn't found, and so forth.

Q. And that was the time you admonished him?
20 A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Morrow:

Q. You don't know who it was that talked about the law settling this mater, if anything of that kind was said, do you? A. I don't. I told them I wanted to forget all that when I went out of the house. I said "I want to see you people get together and settle your differences and keep
30 you home," and I hoped in my own heart I would not get here on the witness stand.

Q. You said that? A. No, I hoped in my own heart I would not get here.

Q. You did not say that, though? A. No.

RE-CROSS-EXAMINATION by Mr. Rosecrans:

Q. What made you think you would be on the
40 witness stand? Was there something said about

Mrs. Margaret Adeline Konkle—Direct

the law at that time? A. When Mr. Martin came to get me to go up to his place he said, "Rene won't talk to me—"

Q. Was there anything said about the law then that made you think you might have to go on the witness stand? A. No, but I thought I might have to go as soon as they got into this deeper trouble. 10

Q. Mr. Martin has been staying at your home sometime? A. He came there yesterday. He has not been there lately.

Q. Mr. Martin did not stay all night there, did he? A. No, sir; he did not. He came there this morning.

20

MRS. MARGARET ADELINE KONKLE:
sworn for the defendant.

Direct-examination by Mr. Morrow:

Q. Mrs. Konkle, are you the wife of Lewis A. Konkle? A. Yes.

Q. Do you know Mr. and Mrs P. Bradley Martin? A. Yes, sir.

Q. How long have you known Mrs. Martin? A. 30
Oh, for a long time; probably thirty years or more.

Q. In the summer of 1913, while they lived at Blairstown, did you see her? A. Not so very often. Once in a great while she came in for a little while.

Q. What did you notice about her being nervous or distracted or something of that kind? A. 40

Mrs. Margaret Adeline Konkle—Cross

Well, she seemed sometimes to be down-hearted, and like that.

Q. Anything else? A. No, nothing in particular.

Q. You know nothing about their affairs? A. No, she never told me, neither one. I never knew anything about their private affairs.

Q. Did you ever go to their house? A. Yes, I was invited up there once for dinner.

Q. In the summer of 1913? A. No; I think it was the year before that.

Q. How did their relations toward each other seem to be then in the summer of 1912? A. I did not see anything out of the ordinary.

By the Court: Q. When you say you did not see anything out of the ordinary, do you mean their ordinary behavior or the way the ordinary run of married people act? A. Well, I would say the ordinary run of married people.

CROSS-EXAMINATION by Mr. Rosecrans:

Q. Did you notice any difference in Mrs. Martin's dress last year? A. I would be a poor observer in that way, and I would not observe anything out of the ordinary from anything else.

Q. Mrs. Konkle, did you see Mrs. Martin after the end of September, 1913? A. I think she was in our place once, one evening, just a little bit.

Q. Did you see her any time in September, 1913, when she lived up at Blairstown? A. Well, I suppose I did.

Q. Did you notice any change in her physical condition from when you saw her in September and the time you saw her several months later?

A. Well, I don't think she seemed so nervous.

Mrs. Sadie C. Lupton—Direct

Q. Did she look better? A. Well, she did look better, I think, in a way.

Q. Did she look much better? A. I don't know as I noticed it so much, in her looking so much better, but she appeared different in a way.

Q. Did she look fleshier, fuller faced? A. Well, 10
she seemed to me as though she was **worrying** at one time, and, of course, when anybody worries it makes them look thin and bad.

MRS. SADIE C. LUPTON, sworn for the defendant.

Direct-examination by Mr. Morrow: 20

Q. Where do you live? A. Wilmington, Delaware.

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

Q. Have you visited at their house? A. Yes.

Q. Are you somewhat related to them? A. I am related to both of them. They are both distant cousins on my father's side.

Q. When did you visit them at Blairstown? A. I visited them during May, 1913, during August, 30
1913 and September, 1913.

Q. How long did you stay each time? A. In May we stayed for dinner. In August—let's see—we stayed there for dinner and went up to Culver's Lake and I came back and stayed over night.

Q. That was the May visit? A. No; it was in August and September. We went up over Labor Day. 40

Mrs. Sadie C. Lupton—Direct

Q. While you were at dinner there in May, 1913 what did you notice as to the relations between Mr. and Mrs. Martin? A. As far as I could see the relations were all right.

Q. Did he talk to her? A. Yes.

10 Q. And she to him? A. Yes.

Q. Did you notice anything about her physically, whether she was nervous or sick or anything of that kind? A. No, I didn't notice anything.

Q. Who got the dinner? A. Mrs. Martin.

Q. And who served you at dinner? A. Mrs. Martin.

Q. In August, 1913, did you have dinner there? A. Yes, sir.

Q. What time did you go up to the lake? A.

20 In the afternoon. I think that train goes about 3 o'clock.

Q. What lake was that? A. Culver's.

Q. Who all went? A. My brother and Mr. Martin. Mrs. Martin would not go. We asked her to go.

Q. What is that? A. Mrs. Martin declined to go. We asked her to go and Mr. Martin asked her to go but she would not go.

Q. Then did you come back there and stay all night that night? A. Not that night, no. I did not come back until the following Wednesday after Labor Day.

Q. How long did you stay there then? A. Over night, and for breakfast the next morning.

Q. Where did you go from there then? Did you go to the fair at Stroudsburg then? A. No; I did not go to the fair, I went to my cousin's in Blairstown.

40 Q. When you stayed over night at Mr. and Mrs.

Mrs. Sadie C. Lupton—Cross

Martin's what did you observe about their relations then? A. They were very quiet, they did not have much to say to each other.

Q. Who slept with you that night? A. Mrs. Martin.

Q. She did not sleep with her husband? A. 10
No.

Q. Were you there at any time when you were going to the Stroudsburg Fair, or talked about it? A. Yes; I came the day before the big day, or something; it was on Thursday, and Mr. Martin asked myself and Mrs. Martin to go to the fair, and I said I would go if Mrs. Martin went, but she declined to go and I did not go.

CROSS-EXAMINATION by Mr. Rosecrans: 20

Q. At that time you were going up to some lake, when did Mr. Martin ask his wife to go along? What time of the day? A. Well, I did not get there until noon, on that noon train that goes up to Blainstown, and we left on the three o'clock so there wasn't much time for anybody to get ready to go.

Q. Did Mrs. Martin say she could not get ready to go? A. She said she had some sewing to do; she had a skirt to finish. 30

Q. Did she says she did not know anything about this trip before? A. I don't recall. I don't think any of us knew.

Q. Oh, Mr. Martin didn't know he was going? A. No. We were not sure when we reached Blainstown whether we would go up to the lake or go out in the country, and we decided at the dinner table we would go up the lake, and we made it up at the dinner table to go 40

Jacob E. Coursen—Direct

Q. Did Mrs. Martin say she could not get ready?

A. She said she had a skirt to finish, some sewing to do.

By Mr. Morrow: Q. You did not go until about
10 5 o'clock in the afternoon? A. The train goes
about 3.

JACOB E. COURSEN, sworn for the defendant:

Direct-examination by Mr. Morrow:

Q. Mr. Coursen, you are a brother of Mrs.
20 Lupton? A. Yes.

Q. And related to the Martins? A. Yes, sir.

Q. Have you visited there at their house within the last two years? A. Yes.

Q. In 1912 and 1913? A. In 1913 I visited there.

Q. What time? A. I don't recall whether I was there in 1912 or not, just now.

Q. How many times did you visit there in 1913?
A. Well, I was there the latter part of August
30 and the first of September.

Q. Did you have dinner there or stay all night?
A. Yes.

Q. Which? A. We had dinner there. It was the latter part of August.

Q. What did you notice of the relations between Mr. Martin and his wife then? A. They were very pleasant. I couldn't see any difference between them whatever.

Q. And the next time you were there, what did
40 you notice? A. The first of September?

Doctor Henry O. Carhart—Direct

Q. Yes. A. Well, I stayed over night and they treated me very nice, and I did not see any difference then. It was out of the ordinary for married people.

Q. Is that the last you were there? A. Yes.

CROSS-EXAMINATION by Mr. Rosecrans: 10

Q. You were not there many times, were you?

A. What is that?

Q. You visited at their home just these times you have stated? A. Yes, and I was there at the—when my aunt died I was there at the funeral. We visited there after the funeral.

Q. You visited there only for a few hours at each of these times? A. Only for a few hours.

20

DOCTOR HENRY O. CARHART sworn for defendant:

Direct-examination by Mr. Morrow:

Q. Doctor, what is your profession? A. I am a physician.

Q. How long have you practiced medicine? A. Twenty-eight years. 30

Q. Where? A. Blairstown.

Q. Do you know Bradley Martin? A. I do.

Q. And his wife? A. I do.

Q. What has been your relations with them? A. physician to both of them.

Q. During how long? A. During that time.

Q. Do you know Mr. Martin's physical condition? A. I do.

Q. What ailment has he? A. He has a herina, 40

Doctor Henry O. Carhart—Cross

an ingrowing herina, and he also has cardiac asthma.

Q. Does he wear a truss? A. He does, a double truss.

10 Q. Can you state, doctor, how much, or to what extent the rupture affects his physical strength?
A. Well, he can do nothing when the truss gets loose and his rupture gets down.

Q. What effect would violent effort have on the rupture when the truss is off? A. It would have made a wreck of him, pretty near.

Q. With reference to his living in Blairstown, and going South, what have you to say as to the necessity for his seeking—A. I have advised him to do it for the past twenty-five years.

20 Q. Why did you give him that advice? A. Well, because he is worse in Blairstown.

Q. Do you know anything about Mrs. Martin's physical condition? A. No, I do not, of late years.

Q. Well, you said he had cardiac asthma? A. Yes.

Q. Has that any relation to heart trouble? A. Yes.

Q. What about muscular rheumatism? A. Well, he has been complaining of that off and on for
30 some years.

CROSS-EXAMINATION by Mr. Rosecrans:

Q. Doctor, this truss, what is the use of wearing this truss, what is the purpose? A. To maintain the hernia.

Q. And for the purpose of allowing Mr. Martin to do his ordinary work? A. To do his ordinary work.

Q. And when he has that on he can do his ordinary work? A. Yes.
40

Doctor Henry O. Carhart—Cross

Q. Can he row a boat for any considerable distance? A. You will have to qualify that.

Q. Well, could he row a boat for a mile? A. if his truss fit him good, yes.

Q. If his truss fit him good he could do about what an ordinary man does? A. No, I do not think he could do what an ordinary man does, for several years. He is a hustler. 10

Mr. Morrow: In ambition.

The Witness: Yes.

Q. What did you say he suffered from—herina? A. Yes.

Q. And cardiac asthma? A. Yes.

Q. What does that mean? A. It means that the heart beats too rapid and his breath gets short.

Q. Could a man with cardiac asthma row a boat a mile? A. If he didn't get palpitation of the heart. 20

Q. How do you know he has cardiac asthma? A. I said I was his physician.

Q. Did you examine him lately? A. Not lately.

Q. Does not that condition improve in persons, in some persons? A. Somewhat, at times.

Q. And that is why you advised him to be down South? A. Yes, in the winter. 30

Q. Then he did not come to you in some years in regard to this cardiac asthma? A. Yes; I sent him South last winter.

Q. Would you consider Mr. Martin a man who could lift this chair? A. Yes.

Q. Could he lift fifty pounds? A. Yes.

Q. Could he lift seventy-five? A. I should think he could.

Q. A hundred? A. I think he could. 40

Emmett J. Divers—Direct

Q. A hundred and twenty-five? A. I don't believe he could now.

Mr. Morow: That is with the truss on.

The Witness: That is taking him in perfectly good condition.

10

RE-DIRECT-EXAMINATION by Mr. Morow:

Q. Well, if he could lift these pounds he would be in good physical condition wearing his truss properly adjusted, is that what you mean? A. That is what I said.

Q. Doctor, what condition physically would he be in the night time without his truss on? A. Well, that would all depend as to what happened.

20

If it became strangulated, if the herina got down and became strangulated, there would be trouble.

Q. What is that? A. If the herina came out, and passed on down into the scrotum and became strangulated, gangrene would set in.

Q. How would it affect his strength with his truss removed? A. It would be gone; that is all. He could not do much of anything.

30

EMMETT J. DIVERS, sworn for the defendant:

Direct-examination by Mr. Morow:

Q. Mr. Divers, where do you live? A. Blairs-town.

Q. How long have you lived there? A. Twenty-eight years.

40

Q. How near to the house occupied by Mr. and

Emmett J. Divers—Direct

Mrs. Bradley Martin in 1912 and 1913 did you live? A. About a hundred feet I should say.

Q. Is that across the street or on the same side?
A. Across the street.

Q. How nearly in front of their house? A.
Very near.

Q. Have you observed them there going in and
out of their house? A. Yes. 10

Q. Have you ever observed any difficulty between them or heard any at all at your house? A.
No, sir.

Q. Did you hear Mr. Clyde Bergstraser give his testimony this morning? A. Yes.

Q. And you heard him say where he stood on the sidewalk? A. Yes.

Q. Did you measure from that sidewalk to the
windows of this house through which he says he
looked? A. Yes. 20

Q. What is the distance? A. Nearly fifty feet.

Q. State whether you endeavored to see anything that was going on in that house last night, whether from that point you looked toward the window and saw anything? A. Looking toward the house?

Mr. Rosecrans: I object to that because it asks for an explanation of conditions at a far different time than that which Mr. Bergstraser testified to. 30

Mr. Morrow: I do not know what special difference there would be in the conditions of the atmosphere at one time and another.

Mr. Rosecrans: I did not say that. I said the "Conditions."

Q. Has there been any change in the trees or the situation, the condition of things, from the 40

Emmett J. Divers—Cross

point on the sidewalk where he says he stood and the window I asked you about? A. Yes, sir.

Mr. Rosecrans: I object to that because he has not shown he knew what it was at the time Bergstraser saw it.

10 The Court: Suppose you ask if he knew the conditions at the time of which the former witness spoke.

Q. Do you know the conditions on the time of May or June, 1913? A. Yes, sir.

Q. And the conditions now? A. Yes.

Q. Is there any difference in the conditions now? A. Yes, sir.

Q. State what the conditions are? A. There has been a large tree removed and a dwelling is
20 being erected on the west side of the house.

Q. Does the change effect in any way the ability to see from the sidewalk to the window? A. Not directly in front.

By the Court: Q. From the point where you stood? A. Yes.

By Mr. Morrow: Q. What could you observe last night there, the conditions being the same. A. Well, the window was a higher elevation than the walk; that is by standing on the walk and looking
30 in the window in the front of the house it is quite a higher elevation than the walk where I was standing.

Q. How much higher than the walk where you were standing? A. I don't know, probably from four to five feet, if it was actually leveled out.

CROSS-EXAMINATION by Mr. Rosecrans:

Q. Where are they building this house? A. On the west side of the house that now stands
40 there.

Mrs. Sadie C. Lupton—Cross

Q. That is separated from the old house about twenty feet? A. Something like that; fifteen to twenty I think it is.

Q. And that tree, that was removed when this new house started? A. Yes, I think it was removed last summer.

Q. And that was just about at the corner of where the new house is standing? A. I think it lines with the old house there now. 10

Q. But a person on this path in front of the house could see the window? A. Yes.

Q. In May, before the tree was removed? A. I think so.

Q. There were no branches within six feet from the ground, or ten feet from the ground? A. Probably eight or ten feet. They are spruce trees. 20

Q. And you can see this window from the path? A. Yes, sir.

MRS. SADIE C. LUPTON, re-called for the defendant:

Direct-examination by Mr. Morrow:

Q. Mrs. Lupton, do you know this room in which Mr. Bergstraser says he saw this altercation between Mr. and Mrs. Martin? A. Yes. 30

Q. Was there a table in that room? A. I do not recall any table.

CROSS-EXAMINATION by Mr. Rosecrans:

Q. You are not sure? A. I am not sure.

Q. You were only in this house a few times? A. Well, I have been there three times. 40

Philitus Bradley Martin—Direct

PHILITUS BRADLEY MARTIN, the defendant, sworn:

Direct-examination by Mr. Morrow:

10 Q. Mr. Martin, how long have you been married to Mrs. Martin? As she stated in her testimony? A. Yes, that is correct.

Q. When did you first have any differences with your wife after you married her? A. I don't know. Maybe I don't hear good.

Q. When did the differences between you and Mrs. Martin first occur? A. Well, I will say the beginning of differences was about the second winter in Florida.

20 Q. Now, if you will please give me an idea of the time better then I will know what you mean by that.

By the Court: The time when the first differences arose. A. Well, that would be—I think she said it was—

Q. Not what she said. What you remember. A. Well, it was November, 1909 we were married, and 1909 and 1910 was the first winter, and 1910 and 1911 was the second winter we were in Florida.

30 By Mr. Morrow: Q. What was the difference between you? A. Well, the difference began about the neglect of myself when I was sick at the White Springs Sanitarium and she and Mrs. Hillman became very intimate. Mrs. Hillman went out there and she was asked to go with her in place of another young lady they were going to send as a travelling companion

40 Q. Now, be as brief as you can? A. This brings in the whole Hillman question.

Philitus Bradley Martin—Direct

Q. Very well. A. Mrs. Hillman was an invalid and attended a sanitarium in Michigan and at other sanitariums, and she came with her husband to Flordia and when I first met Mr. Hillman she was away at a sanitarium and that is when we became acquainted. We became acquainted with the family and we became quite intimate and we lived across the street. Mrs. Hillman proposed to go to the White Springs for treatment and a young lady there was to go with her and take care of her. Mr. Hillman told me he had agreed to pay this young lady's expenses to go as companion for his wife. She was not able to go alone, and he suggested to me I should go for treatment for my own rheumatism and heart trouble, and Mr. Hillman suggested I go with his wife to the Springs, and my wife, living across the street, she could come over and set out his dinner for him. He was selling lots, in the real estate business, and he suggested she could set out the dinners for him, and supper and breakfast he could get himself. I never took that serious, myself. 10 20

Q. Did you tell your wife? A. I did. I told my wife what Mr. Hillman suggested and I said "I don't approve," and she said "I don't either," and she knows it. 30

Mr. Rosecrans: I object to Mr. Morrow shaking his head.

Q. You must answer my questions, and if you don't you will have to take the responsibility. A. And she said "If you go I will go along." And I said "You can go along," and Mr. Hillman agreed that he would pay all my expenses if it was better at the springs; if I was not better I was to 40

Philitus Bradley Martin—Direct

pay all my own expenses. My wife's expenses were to be on myself. But the third week at the Springs put me in such bad condition with the rheumatism that I was taken out and I was sick in the hotel, and Mrs. Hillman and my wife, when
10 I was sick in the hotel, were out in the sitting room with the guests until half past eleven o'clock. When my wife came in she didn't speak to me and did not ask my condition. I laid there until morning and she did not speak to me until morning. Mrs. Hillman was intimate with her and we had fixed a time to go away and Mrs. Hillman said she would come with us to her husband, but when we were ready to go away she did not go, and I gave her the expense money she had
20 paid me, and Mr. Hillman had given me a ticket there—

Q. I would rather you would not tell all that. It hasn't anything to with this case at all. A. Well, we came back to Orlando and my wife after that went over to Mr. Hillman and I came back and Mr. Hillman did not come up to what he agreed to and let me stand all the expenses, and I told my wife about it and I said "We will drop the Hillmans," She didn't do it. She kept on
30 going to the Hillmans' and there was the beginning.

Q. Did you charge her with any impropriety in going to the Hillmans'? A. Never in the world.

Q. Or mean to? A. Never in the world.

Q. What did you say about the Hillman's, about her going to the Hillmans'? A. I said since the Hillmans had been untruthful to us I thought it was better we drop their society, and, as my wife,
40 I think it was her duty to stand by me.

Philitus Bradley Martin—Direct

Q. Was there anything else in the Hillman episode? A. Nothing.

Q. Did you accuse your wife of any impropriety with Mr. Hillman? A. Never in the world.

Q. Nor with any other person? A. No. 10

Q. Very well. That was the first difficulty. Now, what was another difficulty between you? A. Well, there were differences. We would have outspats sometimes. My wife was high tempered, and perhaps I was at times, and various differences we would pick up generally in talking, and then I got to a pass where we didn't talk it out; we simply walked off.

Q. What were those differences? A. They were differences I was willing at all times to look over 20 and I have endeavored to look over them all the way through.

Q. Will you kindly tell us what they were? A. Yes, I can tell some of them. She accused me—I had bought tickets for the Chautauqua season, and she accused me of making goo goo eyes at other persons and I got tired, and she wouldn't speak to me for hours and weeks, numbers of days through, she went with me and she would not go to the Chautauqua, and would not speak to me 30 at all when we came home; she occupied her bed and she did the housework, and these things led on to differences of one thing and another. I was sick most all the time; I was sick there.

Q. Was there any differences with reference to your money affairs? A. There was none in the beginning. She seemed entirely satisfied. I paid the bills. I paid the rent in Blairstown, and I paid for the supplies for everything she ordered. 40

Philitus Bradley Martin—Direct

She sometimes in the beginning told me what she wanted and later on she would make up some things I couldn't get. If I ever made a deviation at all it was things I couldn't get. She asked me once for huckleberries—

10 Q. Never mind—how generously did you provide for your living? A. I provided for people who visited us—

Q. Answer my question? A. Well, I provided very well.

Q. Were there any differences between you with reference to allowances to be made by you to her of money? A. She wanted ready cash.

Q. What do you mean? A. She wanted me to hand her out sums of money.

20 Q. How much at a time? A. She said she was going down to—She packed the grip one morning and went for the train, and asked for care fare. She had a dollar, and I said "How much?" "Whatever you are willing to give me." I had fifteen dollars in my pocket and I gave her ten dollars of it.

Q. Did you ever know that she lacked money? A. Never. I don't know the time she was ever out of money.

30 Q. Now, go back to Flordia—I suppose this giving her ten dollars was at Blairstown? A. Yes.

Q. I want to know whether she made demands upon you for any part of your property at any time? A. She told me she was entitled as a wife to half I had, and she was going to have it.

Q. What was said about that? A. I said I didn't think she was.

40 Q. How must did she make that demand of you?

Philitus Bradley Martin—Direct

How insistent was she? A. So insistent she said she was going to have half of it and live by herself.

Q. When was that? A. That occurred in Blairstown the next to the last year that we were in Blairstown.

Q. How did that happen that she made this demand upon you? How did the conversation begin? A. Oh, various things led up to it, and she was dissatisfied. The first few years she was satisfied and then she began to want more and more money, everybody was—

Q. Never mind about that. Answer my questions, please, and tell what I ask you about. Now, let us come to the matter of your sexual relations. She says that you were insistent upon having a great deal of sexual indulgence with her. State what was the fact? A. Well, the facts were, as she states, in the beginning she did not object. The time came when she made demands for money and did object; she objected very strenuously. She told me when I could have connection with her and when I could not.

Q. When did she say you could? A. When she saw fit.

Q. Now tell me whether there was at any time by you used any force or violence to compel her to submit to you? A. I did not. I was not able to with my truss off.

Q. Answer my question? A. Why no. I could not.

Q. Did you ever insert your fingers into her? A. Never in the world.

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

Q. You never did? A. No, sir.

Philitus Bradley Martin—Direct

Q. Did you ever throw her around on the bed or anywhere else in order to have intercourse with her? A. I did not; I could not. Her strength was superior to mine when I had the truss off.

Q. Did you take your truss off every night? A. Always; I can't sleep with it.

10 Q. She says on one occasion at night the dispute grew so warm and that so much violence was used, that she called out and some woman rapped at the door, or a neighbor across the hall came. I want you to tell the Court what that incident was, and tell that, and don't tell anything else, please? A. Well, that occurrence was the third—on the last year she was with me in Florida. We had furnished rooms at lady's home,
20 Mrs. Calvert, and there were other families, possibly four or five, rooming in the rooming house, and we occupied two rooms with the privileges of the toilet and bath room and halls, and it was there this occurrence happened. I had had no sexual intercourse with her for sometime. I asked the privilege. She slid immediately out of the bed without saying a word, which was her habit.

Q. Did she at that time make complaint that she was ill? A. Not one word.

30 Q. Did she give any reason for getting out of the bed? A. She did not, no, sir; she did not speak. She grabbed up her dress and went out of the room.

Q. How long was she gone? A. I should say a half hour.

Q. State what happened when she returned? A. When she came back, she came to the bed and I attempted to caress her again.

40 Q. Did she get in bed with you? A. Yes, but

Philitus Bradley Martin—Direct

she attempted to get right up again as she did before, and I said, "What is the matter now, that you run off this way?" and then the quarrel started. I attempted to retain her in the bed and I had not the strength to do it and she went on until I had to release her because of the giving way of my rupture. 10

Q. What did she do then? A. She found I was exhausted and she come back into bed and commenced a tirade.

Q. What do you mean? A. A quarrel.

Q. What did she say to you? A. She said I was a hog to come around a woman in the night.

Q. What else? A. She said she had had all of that she was going to have and from that time on there was not going to be any more of that for me, and I was foolish enough to say something back to her, some words were had, and her voice is loud and my voice is loud, and after ten or fifteen minutes, I should say, there came a rap on the door. The door was not opened; there was a voice outside, a voice I did not recognize. The voice said "This quarrelling must stop. The ladies in the room underneath you object, and I am in charge of the rooms of the house. It annoys the ladies." And we did stop right away. 20 30

Q. Did you use any violence toward her that night? A. I did not, I was not able.

Q. Can you tell us about what month that was in? A. No, not positively. I think it was something like—I have the date, but not here. It was in the diary and she grabbed it. If you would prefer to have—

Q. I am not asking you about that? A. Well, I think we came up the middle of April and I judge it was six weeks— 40

Philitus Bradley Martin—Direct

Q. You say about six weeks before you came North that spring? A. Something like that.

Q. What were your relations between each other after that before you came up? A. She got the meals on the table. She occupied a rocking chair. She built herself a nest in the rocking chair and slept in the rocking chair for weeks.

Q. Did you go to see Mr. O'Neill? A. Yes; I was downtown very frequently.

Q. Who is Mr. O'Neil? A. He is a man that handles some business for me and for a great many other people. He is one of the most prominent people of the town.

Q. Is he a lawyer? A. I think he is a graduated lawyer. He does not practise.

Q. Well, he does not practice law? A. I do not think he does. He is not known as a lawyer. He has been postmaster and is a leading town man.

Q. Did you and your wife go to see him at any time? A. Mr. O'Neil—

The Court: Answer yes or no.

The Witness: Yes.

Q. Where did you go to see him? A. At his office.

Q. When was that? How long before you came North? A. Not long.

Q. Was it after this occurrence at night? A. Yes.

Q. Tell the Court what passed between you and your wife in the presence of Mr. O'Neil? A. My wife demanded I should set a certain amount of money aside and obligate myself to give her so much a week, ten dollars a week, and she would supply the table. She made that demand through her attorney in Florida, and I objected. This

Philitus Bradley Martin—Direct

came out of that and we talked the matter over about it and that was the interview at Mr. O'Neil's office.

Q. Who was present at that interview? A. The three of us.

Q. Did she in that interview say anything about your using any violence toward her personally? 10

A. She did not.

Q. Did she make a statement, whether you had used violence toward her? A. She did not.

Q. Did not what? A. Make a statement I had used violence.

Q. Did she say anything on that subject? A. Not to my recollection, no. Her talk was particularly about money matters and what she demanded of me. 20

Q. Did she make any other complaint of you before Mr. O'Neill at that time? A. It was quite a lengthy conversation and she might have said what difficulties we had—

The Court: No.

Q. You hear my questions, don't you? A. Well, I—

Q. Then why don't you say if you can't remember? We can all imagine what you might have done. We want to know what you did do. Then, 30 on any other occasion did she and you go to Mr. O'Neill's office and see him or Mr. Sclemmons there? A. No; I wasn't there.

Q. How do you know she went there? A. Mr. Sclemmons told me afterwards.

Q. What did she tell you? A. Mr. O'Neill told me—

Q. What did your wife tell you? A. She told me in answer to what I asked her, that she had been there. 40

Philitus Bradley Martin—Direct

Q. What did she say? A. She had been there.

Q. What did she say about the interview—anything at all? A. Very little.

Q. Do you recollect what she said? A. No, only that she could not get granted what she wished. She said she asked for a certain amount of money,
10 that Mr. O'Neill should see I gave her a certain amount, a weekly allowance, obligate myself to that.

Q. What did she say that O'Neill said about that? A. That Mr. O'Neill would talk to me about it.

Q. I want to know what she said to you. A. That Mr. O'Neill would see me about it.

Q. Did you have a talk with him after that? A. I did.
20

Q. And then did you have a talk with your wife again about that? A. Yes.

Q. What was the talk between you and your wife? A. I would not agree to give the amount she insisted on having.

Q. Do you remember what it was? A. She asked for ten dollars a week.

Q. And you said you would not give it? A. Yes.

Q. What were your relations after that? A. Strained, as before.
30

Q. What was it? A. I was sick on the second of February, we were invited to dinner by a lady and her daughter who were friends, but I was not able to go. I had been out on a fishing trip and the water did not agree with me and I had diarrhoea very bad and she put the dinner on the table and she went on to the dinner, and when I uncovered the dinner table she has a cake there that was
40 mouse-eaten around it and it had mouse dirt on it,

Philitus Bradley Martin—Direct

and it was put on there with a fly screen or mosquito netting over it.

Q. Did you show that to Mr. L'Hommedieu?

A. I did.

Q. Did you make any other complaint to your wife beside that? A. She had taken some papers. 10

Q. What about that? A. The papers taken in Orlando?

Q. Yes. A. She had the key to my trunk and went through it at her leisure I did not keep it locked at that time, and after things got to that stage I asked her about it and she denied. My diary was there and she read it at leisure and went through the other things. I left the trunk unlocked one morning when I went fishing and she went in there and broke into one satchel and the lock was broken and she had the papers. She says today that she did not take them out; that she read them and returned them. There were some papers missing at that time. 20

Q. When you got home and found the trunk had been opened and the satchel broken, did you say anything to her about it? A. I certainly did.

Q. What happened about that? A. She denied she had been in it, and I told her to prove it right there and she said she left the things in as they were. I threw the lock up and the grip was locked but the lock was broken. 30

Q. Did you have a wrangle about that? A. Well, we had words about it.

Q. What other subject did you have differences about? There were others? A. Yes. There was another time when she was uptown somewhere, I don't know where; she was out and I was reading at my table and I had this grip setting 40

Philitus Bradley Martin—Direct

down near my feet; it was open and she came back, walked to the side of me like this (illustrating) and she made a pass and grabbed this hand satchel. I had the pen between my fingers, like this, (illustrating) in the right hand as she started
10 to go for it I reached over and took hold of the handle to take it from her. She pulled on it and as she pulled she let go and she fell over back next the trunk. I couldn't touch her because I had the pen between my fingers.

Q. Did you touch her at all? A. I did not except I took the grip from her, and she sat down against the trunk.

Q. Did you push her against the trunk? A. I did not. I had one hand—

20 Q. You have answered the question. Did you then look at the satchel? A. She did not get anything that time. I locked it up and put it away.

Q. When you came up from Florida in the Spring of 1913, what were your relations between each other? A. That was the same season I was speaking about.

Q. Were you relations strained then? A. Considerably so, yes.

30 Q. Did you ever have a conversation with her about making up your troubles? A. Certainly I did.

Q. How often? A. Both down there and after I came up here.

Q. What did you say to her? A. My nephew met me at Blairstown and we went to his house until we decided what to do, whether to go back and occupy the house we had or adjust our differences and we went to this house.

40 Q. Did you talk over your differences there? A. We talked it over that night.

Philitus Bradley Martin—Direct

Q. What did you do then? A. I coaxed her to let the past be the past, and we agreed to go back to Blairstown and occupy the house as we did before.

Q. Did you occupy the same bed at his house that night? A. Yes.

Q. Did you have intercourse with her that night? 10

A. I did.

Q. Was there any objection on her part? A. Not a bit.

Q. How long was it before that you had had sexual relations with her? A. I am not sure; I think five or six weeks.

Q. What happened after you came to the house at Blairstown? A. We stopped with a neighbor while we were putting it in shape. 20

Q. Who was the neighbor? A. Mr. Dearborn.

Q. Connected with Blair Hall? A. They lived right across the way and he asked us to stay there while we were getting the house to rights.

Q. How long were you there? A. Two days or two days and a half.

Q. Where is he now? A. I don't know.

Q. They are not in Blairstown? A. No; they were in Florida and I judge they are there yet.

Q. What were your relations with her during these two or three days? A. We lived together and started new and it was our intention to go ahead. 30

Q. How long did that continue? A. Several months.

Q. All summer? A. I don't know as I would say all Summer, but quite some time.

Q. No disputes between you then? A. We might have had some little differences, but nothing serious. 40

Philitus Bradley Martin—Direct

Q. When was the first trouble between you that Summer? A. That is hard to tell.

10 Q. The witness, Mr. Bergstraser says that in the latter part of May or early in June, or somewhere along about there, he passed by your house one night and heard quarrelling between you and looked through the window and saw you jam your wife against the table and over against the wall. Will you state whether anything of that kind ever occurred? A. There never such a thing happened.

20 Q. Were there any differences between you in May or June? A. I wasn't there. During that part of May I had been over to Swartswood with Mr. Dearborn, and I went another time with Mr. Dearborn, a week or so and everything was all right, and that was from about the twentieth of May to the first of June.

Q. You were fishing? A. Yes; the pickerel season opened on the twentieth of May, and later on Mr. Smith and I went up and it was a week or ten days later, which would put it nearly the first of June.

30 Q. Well, after the first of June, what occurred then about your family affairs? A. Well, the affairs went on about the same and there wasn't anything serious at all. My wife packed her grip and went as she said to her daughter's.

Q. When was that? A. I asked her to come up when I went there in the Spring, if I remember rightly, and she said she wanted to go home and get things straightened up first. Anyhow, this thing cropped out when she was having these spells, and I got the habit of walking off downtown and saying nothing about it.

40 Q. You have not told us a word about what

Philitus Bradley Martin—Direct

these spells were? A. Well, she got quarrelsome. She would find fault. If she sent downtown for meat and I got a piece of meat and it didn't just suit, if I paid twenty-five or thirty cents a pound she called it bum meat.

Q. What did you buy, good things? A. I did 10
buy good things. If you have any doubt about it the merchants can tell you.

Q. What were the differences from that time on between you? A. You have got me. I can't say that by yes or no.

Q. What lead up to the— A. She was continually demanding of me money, cash money.

Q. And you continually were not giving her any.
A. I had been told—

Q. I cannot be your lawyer and handle your 20
case and carry it on for you unless you answer the questions I ask you. Was there any demand that Fall or the latter part of that Summer for the possession of your money, or anything of that kind? A. Yes.

Q. Tell us about that. A. She demanded a share of my money.

Q. How much? A. She demanded half I had, and said as my wife she was entitled to it and I said she wasn't. 30

Q. Did you have a difference about that? A. Yes.

Q. How serious? A. Well, so serious that that seemed to be about the only way we could make up.

Q. How about your sexual relations during that Summer, say July and August and September?
A. There were times when she saw fit to grant it but the majority of times she did not. 40

Philitus Bradley Martin—Direct

Q. Did you use violence toward her? A. I did not. I could not.

Q. When you came up from Florida what was the understanding as to your returning there in the Fall of the year? A. The understanding was we would go there for the Winter, every Winter I was directed. The understanding was to go back.

10 Q. When did you first begin to make arrangements to go back? A. Our usual time had been to go back about the first of November. That year Mrs. Brown had sold the house. She is my landlady and I had been renting of her different years. She had sold the house and gave me notice she must have the house the first of October and I must vacate. and I told my wife this and I wrote her—

20 Q. Who? A. She was away at my daughter's, and while she was away I wrote her that she must come home and get ready to go because we must vacate the house.

Q. Did she come home? A. When she got ready.

Q. When was that? A. Twice she was away three weeks there twice; that last year she was away less than three weeks.

30 Q. When did she come back, in what month or what time? A. I think one trip was the fore part of the season and one the latter part of the season.

Q. Now, will you answer when she came back,—what length of time? A. She was down that one season to the Farmer's Picnic and stayed two or three days.

Q. Were you here at that picnic also? A. I was.

Q. Where did you go with her from that picnic?
40 A. I did not go with her from the picnic.

Philitus Bradley Martin—Direct

Q. Where did you go? A. I went to her daughter's.

Q. Where was your wife? A. She went with a buggy.

Q. Did you stay there that night? A. Yes.

Q. Did she sleep with you that night? A. No, 10
sir; she would not come to the bedroom. I asked her the next morning to come home, as Mr. Coursen was coming in two days afterward and I would need her there to get the dinner.

Q. What did she say? A. Thursday morning I came over to Mr. Shipp's with the milk wagon but she didn't come until the following Saturday afternoon? A. Had the Coursens been there in the meantime? A. They had.

Q. What happened that Saturday about your 20
going away? A. I talked the matter over and she told me she would not go.

Q. Did she give you any reason? A. No.

Q. What did she want? A. Money to live by herself.

Q. Where? A. She didn't tell me.

Q. To live by herself? A. To live by herself.

Q. What did you tell her about going to Florida?

A. I told her I wanted her to go with me to Florida. 30

Q. And her answer was what? A. She was not going to Florida; she never was going back to Florida.

Q. Did she tell you she was not going back to Florida? A. She did.

Q. Were you making arrangements to give up the house by the first of October? A. Certainly.

Q. Now, tell us about your proposition to store your goods with her goods. A. Well, before that I wanted a definite answer to know what to do 40

Philitus Bradley Martin—Direct

about storing my goods, but I could not get a definite answer from her what to do about the different things, and I asked Mr. Konkle to come and see what could be done, whether we could get together and see about storing the goods and going to Florida.

10 Q. Did you get him to come? A. I did.

Q. In good faith? A. I did, certainly.

Q. Did you tell her he was coming? A. I could not say positively. I do not think I spoke to him about coming until that afternoon, toward evening

Q. Where did you see him? A. Down to his store.

Q. Where did you see him next? A. He went to the house, and I went up the hill and I met him coming back, and I said, "How is this, I meet you up the hill?" He said, "I went there and there is a light there on the stand but there is no one there." I said, "You better go back with me." "Rene is there somewhere." And she was sewing and she opened the door and we went in and talked about politics a little and I broached the subject.

Q. What did you say? A. I said, "Now Rene, Lew has come up here to see if we can't get together about these things, and you go with me to Florida. I want you to go with me to Florida."

Q. What did Lew say? A. He said just as is sworn to here. He wanted to be a peace maker and wanted us to get together. I said I was willing to get together and that was what I was trying to do, and she said she would not go, and she might as well tell me that now as any other time.

Q. How long did Lew stay there? A. Some-time; probably an hour or longer; possibly an hour and a half. We had quite a lot to talk about.

40

Philitus Bradley Martin—Direct

Q. Well, tell us what you said. A. We talked about separating the goods. We talked about storing the goods. She wanted to know where I was going to store them and I said I had a place to store the goods and asked her if I should take her goods there with mine, pack her goods, pack them up, and she said "No," and I said, "What shall I do with your goods?" and she said, "Leave them here in the house where they are." 10

Q. Was there any conclusion reached about what you were going to do in that conversation? A. I just left it as Mr. Konkle, that if she decided to go to Florida, we would get together and go. I told her I was going as usual and I said I would rent furnished rooms as we had done before. We always had rooms in a good section of the city. and we were both in church work. It is a pretty hard thing to tell, but we were living in that way and I told her we would go there and get rooms and I would hire a house or board and pay all necessary expenses, but she said she would not go, positively and affirmatively. 20

Q. Did you talk with her about it the next morning? A. This was Wednesday.

Q. I don't know. A. Well, this was on a Wednesday—I am not positive about that. 30

Q. That would be the last Wednesday in September? A. Yes.

Q. Did you have any further discussions of the subject with her at all? A. Yes; I talked something about it from that on.

Q. How many days before she commenced proceedings against you? A. This was on Wednesday and we began packing the next day and separating the things and cleared the parlor bedroom out, I think possibly Thursday or Friday and be- 40

Philitus Bradley Martin—Direct

gan putting the things in there that were hers and taking out the things that were mine. She had some carpet and two or three tables and a stand, a little furniture and things like that, and I took the parlor bedroom on the second floor and took my things all out of it, even took the clothing out of the clothes press.

Q. Did she assist you in that? A. Yes.

Q. And did you assist her with her things? A. Both, all the way through, and took my things out of that room and put her things in, as far as I could. There were a few pieces too heavy to get up and down stairs and we did not put them in there. Aside from some large pieces of furniture and carpets, I think every item of hers was put in that room.

Q. Did you talk with her during that time? A. There were two beds left up and one she occupied and one I occupied. We had never occupied the same bed for nearly two months.

Q. During August and September? A. The most of August and the entire month of September.

Q. You had slept away from her? A. I had slept away from her.

Q. Did she refuse to come to the bed? A. She had left the bed and fixed up a bed for herself.

Q. After that did she come to the bed at all? A. Not a bit.

Q. What about the doors of her bedroom? A. She fastened them every night.

Q. In what way did you first have knowledge of the beginning of proceedings against you? A. When I was moving the goods out on Tuesday—

Q. The next Tuesday? A. The next Tuesday, the last day of the month, I think it was. I think

Philitus Bradley Martin—Direct

Wednesday was the first of October. About four or five o'clock in the afternoon, the Sheriff came along with the writ. That was the first information I had of anything.

Q. Now, she says you injured her vagina by inserting your finger nails. Did you ever do that at all? A. Never. It is perfectly untrue. I had no occasion at all to do anything of the sort? 10

Q. You never did? A. Never.

Q. Do you remember when Mrs. Martin came there and a dinner was prepared—Was that Mrs. Martin who came there when the dinner was prepared and your wife went out of the room? A. Yes, she was there with her oldest son on that occasion and had dinner, and everything seemed to pass off all right. We talked together and we were downstairs in the sitting room and we were called to dinner and we went out and my wife served the coffee and after she served the coffee she went out into the parlor. 20

Q. How long was she gone? A. Until after the meal was finished and Mrs. Martin began to do the dishes.

Q. Had there been any special difference between you and your wife that day? A. Nothing at all that I know of. She simply got these spells of temper and went off. 30

Q. What had been your relations between you and your nephew's wife, that is Jennie Martin? A. Nothing but what was perfectly proper.

Q. How about them helping with money? A. I had helped them with money so they would have a better place. He sold an old farm where he was and the buildings were very poor and he had the eight children, and three grown persons, eleven in the family, and they had a small old house of only 4.)

Philitus Bradley Martin—Direct

eight rooms and the attic, and they bought the new house of eleven or twelve rooms, and I said I would give them something to help the family because they came out in a better neighborhood where they had school, and church and Sunday and
10 I sent them a check for two hundred dollars when they bought that place.

Q. Did you conceal that from your wife? A. Never.

Q. How would she speak to you about your nephew's wife? A. Disparagingly, and when it got worse she accused me openly between our two selves of "laying with her." That was the words she used.

Q. Was that during the last two month? A. Oh,
20 continually from the time we went up there in the Spring.

Q. How long ago was it you furnished that money? A. I think that is three years ago this last March.

Q. In March 1912? A. I think so.

Q. Have you furnished them any money after that? A. I furnished the oldest daughter some money to help her along a little in the High School work at Newton. I furnished a few dollars for
30 one of the other girl's music lessons, and when Mrs. Martin hurt herself so badly and needed a special examination by a physician I gave ten dollars for an examination.

Q. Did you wife know about that? A. Yes.

Q. What did she say about it? A. All these items were put down openly in that book of account she saw. I never kept any of these from her.

Q. Now, in all these efforts to induce your wife
40 to return to Florida with you, and to be reconciled,

Philitus Bradley Martin—Cross

what was your purpose? A. My purpose was I needed a home and I was sick most of the time and I needed a nurse and a home and it was my purpose and I was spending a good deal of money that we might live in comfortable circumstances.

CROSS-EXAMINATION by Mr. Rosecrans:

10

Q. Mr. Martin, how long have you lived in Blairstown? A. Six years.

Q. Six years before 1913? A. No, all told. Well, I say six years. I came there the first of April, moved in the first of April.

Q. Why did you say you could not hear Judge Morrow? A. Well, the voice he gave me then I could not hear him distinctly.

Q. Do you hear me? A. I do sometimes. You spoke quite different from what you do sometimes over here. 20

Q. Mrs. Martin, your present wife, is your third wife? A. Yes.

Q. You divorced your first wife?

Mr. Morrow: What difference does that make? whether she is the third wife or fourth wife or first wife? I object to that.

The Court: On what theory is it admissible Mr. Rosecrans?

30

Mr. Rosecrans: Well it might be a circumstance to lead the Court to believe, sitting here as a judge of the facts and of the law, that this man had a proclivity in the direction of having trouble with his wife.

The Court: I will sustain the objection and overrule the question.

Q. You never offered to strike your wife? A. I never laid my hand on her to hurt her in the world. 40

Philitus Bradley Martin—Cross

Q. Did you ever lay your hand on her? A. Sure; I have caressed her lots of times.

Q. But you never grabbed her by the shoulder and shook her? A. No, sir.

Q. That is preposterous? A. I should say it was.

Q. Did she ever grab you by the shoulder? A. She caressed me as a wife would sometimes, and sometimes she did something else.

Q. Did she ever strike you? A. She did.

Q. Did she ever grab you by the shoulders? A. She grabbed me in a worse place than the shoulders.

Q. She did it when she hit you? A. I got away as quick as I could.

Q. You just ran away? A. Yes.

Q. You did not get mad at all? A. I had no reason to get mad. I tried to make up and she would not make up.

Q. But you never struck her or shook her? A. She has told that herself repeatedly.

Q. But you never struck her or shook her. Why was it you didn't want to talk to her sometimes? A. After the continual quarrelling, I found it was better policy for me to walk off.

Q. Oh, you were not quarrelsome? A. I guess you and I never had much did we?

The Court: Answer the question.

Mr. Morrow: If you don't want to answer the questions, Mr. Martin, suppose we quit right here?

Q. Did you ever quarrel with your counsel? A. No, sir.

Q. Do you want to quarrel with me?

The Court: That is enough.

Philitus Bradley Martin—Cross

Q. Now, why did you write notes to your wife instead of talking to her? A. I judge she was not there at the time, much of the same as she wrote notes for things she wished and put them on my plate instead of asking me to get them.

Q. You thought she was not there? A. Perhaps she was. I don't know. 10

Q. (Showing witness paper) Is that in your handwriting? A. Yes.

Q. Are these other two in your handwriting? A. Yes.

Mr. Rosecrans: I offer those in evidence.

Three papers referred to are marked respectfully "Exhibit P-1," "Exhibit P-2," "Exhibit P-3."

Q. Why did you write this? A. I am not sure. I have no memory when that was. 20

Q. For instance, you wrote one, "This suit needs cleaning and fixing and pressing." Was your wife away when you wrote that? Wasn't she home? A. Perhaps she was.

Q. Then why didn't you tell her? A. Perhaps I did at times.

Q. Then why did you write the note? A. I don't know. I have no recollection.

Q. Didn't you write the notes because you were angry at your wife and did not want to talk to her? A. No, I did not. 30

Q. Then she always picked quarrels with you, did she—very quarrelsome, was she? A. Part of the time she did, and part of the time it was between us.

Q. But you never started any quarrel? A. Yes, possibly I did; sometimes she objected to what I said. 40

Philitus Bradley Martin—Cross

Q. But she was the one that started the quarrels mostly? A. She did, a good many times.

Q. And you walked away? A. Many times.

Q. Now in regard to your sexual intercourse, do you mean to say you never used you fingers to gain an erection? A. I never did. I had no call to.
10 Why should I?

Q. Answer the question. You say you never did? A. I never did. If I attempted to caress her she objected. If I attempted to have sexual intercourse with her she told me whether she would or would not, if she had a notion to.

Q. Did you get angry when she refused you? A. I did at times, yes.

Q. Didn't you grab her or push her by the
20 shoulders? A. That would not accomplish anything would it? I have said—

Mr. Morrow: Mr. Martin, there is no question asked of you.

Q. Why did you ask Mr. Angle for the name of some attorney in Reno? A. There were two reasons. My wife had talked about she was going to have a divorce, that she could have her share of the money. I had been talking with parties down South about lands in one of the valleys of Nevada
30 and I got the address of a land agent.

Q. Then who did you write to in Reno? A. I don't recollect the name.

Q. You don't? A. I do not.

Q. Did you ever write them? A. I wrote the party then and got circulars or letters.

Q. In this letter did he advise you what grounds were necessary for a petition to the Court in Nevada? A. I think they did.

Q. Why did you ask for that? A. Why did I
40 ask wor that?

Philitus Bradley Martin—Cross

Q. Did you want to get a divorce from your wife? A. No. That was not my purpose.

Q. You wanted to find out for your own information? A. Yes.

By the Court: Q. You did make inquiries of a Nevada lawyer as to getting a divorce in Nevada? A. Yes, and about lands also. 10

By Mr. Rosecrans: Was this in 1913 or 1912? A. I don't remember.

Q. Weren't you angry at your wife then? Didn't you want to get rid of her then? Weren't you tired of her? A. No.

Q. You never tired of her? A. (No response).

Q. Answer me. Don't stop and think. A. Explain what you mean by "tired of her."

Q. Weren't you sick of her? Didn't you want to get rid of her? A. Never. 20

Q. And didn't you want a divorce for that reason? A. I didn't ask a divorce from her.

The Court: The question was, did you not want a divorce.

The Witness: No. If I did I would not have tried to make up as I did so many times.

Q. Did you ever ask your wife to come back to you after September 28, 1913?

Mr. Morrow: That was after the suit was commenced. I object to what happened after the suit was begun. 30

The Court: I will sustain the objection.

Q. Now, Mr. Martin, the meetings you arranged down South in Orlando, why did you arrange these meetings between your wife and Mr. O'Neill and others? A. Why that first one I did not arrange. She went to Mr. Sclemmons' store and made an outcry, and Mr. Sclemmons said— 40

Philitus Bradley Martin—Cross

Q. What do you mean by "outcry"? Were you there? A. No.

Q. What do you mean by "outcry"? A. She made a scene in the store.

10 Q. Didn't you have Mr. O'Neill or Mr. Sclemmons or somebody else send for Mrs. Martin and have her come to the office and talk to her? A. Mr. Sclemmons did.

Q. Can you think of any reason why Mr. Sclemmons wanted to talk about these things? A. Because she went there and tried to get his sympathy—she did get it.

Q. Did you arrange any meetings with Mr. O'Neill? A. No.

20 Q. Did you ask Mr. O'Neill to try to get something on her? A. I didn't.

Q. Wasn't this about the same time you wanted this divorce? A. It was not.

Q. Wasn't it the same time you wrote a lawyer out in Reno? A. I wasn't asking for a divorce.

The Court: Wasn't it the same time you sent a letter to Reno?

The Witness: Not to my knowledge; no, sir.

30 Q. Did you work up on a fruit farm, or make partial arrangements to work on a fruit farm in Sussex County? A. I was asked to take charge of one as Superintendent.

Q. Didn't you make partial arrangements to take charge of that fruit farm? A. No.

Q. Didn't you make an affidavit to that effect? A. I went up and tried to make some arrangements but I couldn't, or didn't.

Q. Well, you wanted, didn't you? A. I was willing to but they couldn't come to terms.

40 Q. How big a fruit farm was it? A. I don't

Philitus Bradley Martin—Cross

know how much of the land was in question. It was the Robinson place in Sussex County.

Q. How many trees? A. Oh, I don't know. There were apple and peach and pear.

Q. What were you going to do there? A. I had a life time experience in growing fruits.

Q. You were not going to do any work. Did you ever do a great deal of fishing or rowing in Orlando? A. Yes. 10

Q. Did you ever have any trouble in regard to your heart? A. Yes, I have been out this week, but I have had to give it up.

Q. Did you row with Mr. L'Hommedieu? A. Yes.

Q. Do you remember rowing a mile with him? A. I don't know that I took it regularly. If I sit in this position, (illustrating) I can, I can row leisurely in a quiet lake, but I can't row against the tide. 20

Q. What kind of a truss is this? A. Would you have an examination of it?

Q. Tell me. A. I don't know; it is a steel band and I have an opening about three inches.

Q. In front? A. Right here. (Indicating.)

Q. Does that allow your penis to come out? A. It just supports the entrails. It is not an ordinary rupture. I ruptured myself some years ago by straining of my reach. 30

Q. That does not cover the penis? A. No.

Q. Then why do you take it off every night? A. I cannot lay comfortably.

Q. Can you lay lown? A. Of course, I can. I cannot sleep with comfort.

Q. Do you mean to say you cannot have intercourse when the truss is off? A. I cannot have it with it on. 40

Philitus Bradley Martin—Cross

Q. Why not? A. I never have tried it. I do not think I could; I do not think it is agreeable to myself or the woman either one.

Q. Can you have it without it? When it is off? A. If they don't put up a fight.

10 Q. And she did put up a fight? A. Occasionally she did.

Q. And that made you mad? A. Yes.

Q. Do you mean to say all your troubles arose from the fact that Mrs. Martin wanted half of your money? A. Yes.

Q. And that continued down to the time she left? A. The first two years there was no troubles about the sexual intercourse.

Q. And the whole trouble arose about the money? A. Yes.

Q. What did she want you to do with the money? A. She wanted me to give her half of it.

Q. How much was half of your money? A. I could not tell you.

Q. About how much? A. I suppose twenty thousand dollars.

Q. And she wanted you to give her that? A. Give her half.

Q. Give her half? A. Lay out to her just what
30 she asked for.

Q. Before you were married didn't you persuade her to make an ante-nuptial agreement, that she was not to have her legal share of your money at your death, if she survived you?

Mr. Morrow: I object to that, what they did before their marriage. How could that be material to the issue, if she made an ante-nuptial agreement, which was her agreement, and there has nothing been offered or
40

Philitus Bradley Martin—Cross

proposed to be shown of any proceedings taken to invalidate that agreement? How can that affect the marriage relations, if there was an ante-nuptial agreement between them?

(After argument.)

The Court: So far as the matter has gone it merely calls for a yes or no answer, whether or not there was such an agreement in existence. I will allow the question. Answer it yes or no. 10

The Witness: There was.

Q. Then, Mr. Martin, she was present, she signed that agreement? A. She refused to sign it at that time—

Mr. Morrow: Won't you answer the questions?

The Court: Strike out that last part. 20

That was volunteered.

Q. Why do you think—

The Court: No.

Q. She wanted half of your money; she wanted ten thousand, did she? A. She asked for half my money. She said she would get half of it.

Q. And that was the whole trouble between you? A. That was the beginning, as I consider it, of the trouble.

Q. And she kept this up two years? A. All the 30 while.

Q. And you never abused her? A. I said I never put my hand on her or hurt her.

Q. And you never quarreled with her? A. Sometimes. Sometimes perhaps I said something that irritated her.

Q. What income did you receive on this twenty thousand dollars.

Mr. Morrow: Is this important?

40

Philitus Bradley Martin—Cross

Mr. Rosecrans: Oh, yes.

10 The Court: I can not see how, Mr. Rosecrans. There is no present application for alimony or for the fixing of a sum whatsoever, in which the estate of the defendant becomes an important matter.

(After argument.)

The Court: It may be under the language of your prayer that that is a proper subject of inquiry, I am not sure.

Mr. Rosecrans: Will your Honor allow me to ask it subject to your future ruling?

20 The Court: I will allow you to ask it, Mr. Rosecrans, subject to its being stricken out if I conclude on a subsequent examination that it ought not to have been asked. My present idea is, it is proper.

Judge Morrow, what is the basis of your objection to it, in the light of the petition?

Mr. Morrow: My objection is that it cannot make any difference now, on the main question of the case, what his income is at all.

30 The Court: No; it cannot make any difference as to the right of the petitioner to a decree.

Mr. Morrow: When he gets the decree that will be sufficient time to know.

(After argument.)

Mr. Rosecrans: This matter has been referred to your Honor for final determination; that is for final determination as to the whole substance of it.

40 The Court: What are the terms of the order of reference?

Philitus Bradley Martin—Re-direct

Mr. Rosecrans: (Reads order of reference) Now, if your Honor finds a decree should pass in favor of the petitioner, would it not be part of your Honor's duties to state what maintenance should be granted this petitioner?

The Court: That is just the point, Mr. Rosecrans, upon which I am uncertain, whether it should be done as part of these proceedings on the main issue or whether by supplemental proceedings, in which the ability of the defendant to support would be thoroughly established. 10

Mr. Rosecrans: Could I not ask this question as your Honor suggests, subject to ruling afterward? Could I withdraw the question? 20

The Court: You may withdraw the question if you like. If it is discovered later that it is a proper part of this inquiry, I will see that your rights are protected, of course.

Mr. Rosecrans: Then I withdraw it without prejudice to my interests?

The Court: Yes.

RE-DIRECT-EXAMINATION by Mr. Morrow: 30

Q. Mrs. Martin has testified about a note being left in your house, and it was the subject of some talk between you and her and Mr. Konkle the night he was there. What was that note? A. Why, there was a small printed circular with some writing on it in pencil that laid on a cupboard in my bedroom. That is the first I saw of it.

Q. Did you put it there? A. I did not. 40

Philitus Bradley Martin—Re-direct

Q. Did you write on it? A. I did not. It was not my writing at all.

Q. Where was that note? I would like to have you tell as briefly as you can the history of that affair that night. A. I know nothing about it, except it laid there on that cupboard.

10 Q. What passed that night about it? A. It was there before Mr. Konkle came that night.

Q. Go on. A. And I said, "Where did that note come from?", and I don't remember whether she said, or some one else told me it was a circular of some society at the Prebyterian Church which had passed around these circulars. It had come from there. I went to look for it that night when she said it was there and said it was in my handwriting, and I disputed it in Mr. Konkle's presence.

20 She would not go and get it, and I said I would go and get it and I went upstairs and it wasn't there and I came down and she said in derision, "I knew you would not find it," and I said, "Where is it?", and she said, "I have got it for future reference."

Q. Have you seen that since? A. Never.

Q. Now, Mr. Martin, some people have testified to things you are reported to have said about your wife. I want to ask you if you told Mrs. Rose, about the first of April 1912, when you returned from Florida that she, meaning your wife, "Does not care anything about me, because she has another man down there in Orlando." A. If there was anything—

30

Q. Answer my question, or else I will go out of the room. Did you tell her that?

The Court: Yes, or no.

The Witness: Not to my recollection, I am quite

40 positive I did not.

Philitus Bradley Martin—Re-direct

Q. She says that in the middle of August 1913 she heard a quarrel between you and your wife but she could not hear very distinctly; that you were accusing her of adultery with another man, and she was denying the charges. Is that true or not true? A. No, sir; that is not true.

Q. Now, Mr. Martin, I am reminded that on a day in the latter part of September, 1913, Mrs. Martin herself testified to some controversy between you about your satchel being open. Do you remember about that? A. Yes. 10

Q. What was it that occurred at that time? A. I had a satchel in our room in a bureau drawer, a satchel that locked, with my papers in it, with my diary in it, some of my letters, some of my papers from the agency that I have in Florida and do business with, and that Sunday morning I went to get it and it was gone; this bureau drawer had been opened; it was not locked, the satchel had been broken, the lock of the satchel had been broken, one end of it and the other sprung out and the papers were missing, letters of Jack Martin's, some letters of mine, my diary and some other papers that pertained to my business in Florida. 20

Q. Well what happened between you then? A. Why, I asked her what she done with them. I demanded them. 30

Q. What did she say? A. She said she had taken them and was going to keep them.

Q. What else? A. I was upstairs. She went downstairs as though she was going to get them from the sewing room, and I followed down the steps, but instead of going in the sewing room, she went out on the front porch and out in the front yard. 40

Philitus Bradley Martin—Re-direct

Q. Did you drive her out? A. I did not.

Q. Did you say anything about going out? A. I did not.

Q. Did you make any threat to her that day? A. No.

10 Q. Were there any words on that occasion? A. Nothing; no, sir.

Q. Well, you did not ask in a gentle voice, did you? A. I asked her to give them to me but she did not give them to me.

Q. I show you "D-1 for Identification" and ask you in whose handwriting that is? A. The whole thing?

Q. Yes. A. Her's.

Q. Do you see that date of 1912 in this book?

20 A. Yes.

Q. In whose handwriting—There it is, "July 30" something or other—"1912." Look at that writing please and answer the question I am going to ask you. A. That is in my opinion the same handwriting as the other.

Q. It is in your wife's handwriting? A. Yes.

Q. You did not put it there? A. No, sir.

Q. You never had this book? A. I did not write a word in that book.

30 Q. Do you know where the diary is that was in that satchel? A. I do not.

Q. Did she ever give it to you? A. No.

Q. Did she ever return the letters to you? A. She never did.

Q. Did she ever return the notes she found there? A. She never did.

Q. What was the nature of the letters from Mrs. Jennie Martin? A. Nothing but family letters.

40 Q. Friendly letters? A. Friendly family let-

Philitus Bradley Martin—Re-cross

ters written from herself and husband and children.

The Court: Family or friendly letters?

The Witness: Family and friendly letters.

Q. What were her letters to you? A. To me.

Q. Oh, they were all family letters? A. Yes, 10
sir. There has never been a letter passed between us excepting such.

Q. Did you ever accuse your wife of having a man in the house besides yourself? A. I never did.

The Court: Mr. Martin, have you made a Will?

The Witness: Yes.

The Court: Did you wife know the contents?

The Witness: In connection with the ante-nuptial agreement. 20

Q. Ratify them? A. Yes.

Q. You couldn't do much else I suppose. That agreement is still in existence. A. Yes.

RE-CROSS-EXAMINATION by Mr. Rosecrans:

Q. How often during the night do you have to urinate? A. Sometimes once, and sometimes I don't. I scarcely ever get out of bed for that purpose from the time I go to bed, perhaps eight 30
or nine o'clock until six or seven or eight in the morning.

Q. Do you have any desire for sexual intercourse at that time?

Mr. Morrow. Wait. Ought that to be asked?

Q. Did you have any desire for sexual intercourse before September 28, 1913?

The Court: With whom?

Q. With your wife? 40

Philitus Bradley Martin—Re-cross

Mr. Morrow: I don't object to that.

A. Why certainly.

Q. You often did? A. Yes.

Q. And you grew angry when you were refused?

A. No.

10 Q. You were glad you were refused? A. It didn't do me any good to get angry.

By Mr. Morrow: Q. I do not think I have asked you how often you had sexual intercourse with her the last year you lived together? A. Various times; it would be perhaps two or three times a month, and times we would not be at all intimate.

The Court: Depending on what?

The Witness: Her humor.

Q. How much did you demand of her? A. As I
20 said, possibly two or three times a month. I did not demand it. I asked.

Q. Did she at that time, when you were having such relations with her, ever complain to you it made her sick or hurt or caused her pain? A. For the last year or two.

Q. What did she say then? A. She said it made her nervous.

Q. Did she ever go to a physician on that account? A. Never to my knowledge.

30 Q. Did she ever request that a physician come and examine her or visit her or that she should visit a physician to see what effect upon her physical system having sexual relations with you would cause? A. She never had such an examination until after this started.

Q. State whether you saw any indications of nervousness or ill effect upon her as a result of having sexual intercourse with her. A. Never.

Q. None at all? A. No, sir, not half so much as
40 her temper when she got mad.

Philitus Bradley Martin—Re-cross

Mr. Morrow: I will offer that book in evidence, and I will have to stop now until I can get my other witnesses or take their testimony in Florida. It was only night before last that I got notice of this examination today, and I at once sent for Mr. Martin and issued my subpoena for everybody that was in reach, but I had other witnesses we desire to examine in this case. 10

The Court: You can assure me that they are of such materiality that you cannot safely close without them?

Mr. Morrow: I think so; yes, sir. Your Honor will see what I have indicated as to Mr. O'Neill and Mr. Sclemmons in Orlando.

The Court: There is scarcely any discrepancy in the testimony of either Mr. or Mrs. Martin as to what took place in Mr. O'Neill's office, and it seems to me, if there was any difference, my first impression was it was not a material difference. I do not want to circumscribe you in the least, if you feel there is anything more to add by those witnesses you can do so. It does not seem to me there is much difference between the parties as to what took place there. 20 30

Mr. Morrow: Well, I do not think Counsel in a case of this kind ought to close his case without having the testimony of the witnesses he deems to be material. I do not mean to say what your Honor may think about this testimony, but this is not a Court of last resort, and other people may regard it differently.

The Court: I am merely asking to be assured by you. 40

William R. O'Neal—Direct

Mr. Morrow: That is my contention, that the testimony of these two gentlemen ought to be taken.

10 The Court: Do you apprehend it will be necessary to send a commission down or can you get them personally?

Mr. Morrow: I do not think they can come here.

(Book referred to by Mr. Morrow and offered in evidence is marked "Exhibit D-1.")

(After discussion).

20 The Court: I will note upon the record that the matter is adjourned to a day to be fixed by consent and on motion after it is determined whether or not other testimony is to be taken by Commission to a foreign State, both sides having rested upon the testimony presented.

Transcript of shorthand notes of testimony, etc., taken in the above stated matter before Hon. Nelson B. Gaskill, Advisory Master, at his office in the Broad Street Bank Building, Trenton, New Jersey, on Friday, July 16th, 1915, at eleven o'clock in the forenoon.

30 Appearances:

Egbert Rosecrans, Esq., for the petitioner.

William H. Morrow, Esq., for the defendant.

WILLIAM R. O'NEAL, a witness being duly sworn on behalf of the defendant, testified as follows:

40 Direct-examination by Mr. Morrow:

William R. O'Neal—Direct

Q. Mr. O'Neal, where do you live? A. Orlando, Florida.

Q. How long have you lived there? A. Twenty-eight years.

Q. What has your occupation been there? A. Banker, investment broker and insurance and real estate. 10

Q. Have you held any public office? A. I was postmaster for sixteen years.

Q. And with what financial institutions are you connencted?

Mr. Rosecrans: I object to his going into the life history of the witness.

The Court: I suppose it is for the purpose of establishing the credibility of the witness. I think it is proper. 20

A. I am president of the State Bank of Apopka and I am one of the Directors and Executive Committee of the State Bank of Orlando.

Q. How long have you known Mr. Martin, the defendant in this case? A. Ten years or more.

Q. What part of the years has he spent in Orlando since you have known him? A. The Winter, the Fall, Winter and Spring Season.

Q. What has bee his occupation there, if anything? A. So far as I know he has not been able to have any. 30

Q. Unable by reason of what? A. By reason of his health.

Q. Do you remember how long it is since his present wife, the petitioner, has been going to Orlando? A. Since 1911 is my recollection.

Q. And have you known her during all that time? A. I have. 40

William R. O'Neal—Direct

Q. How closely have you been acquainted with her in her family life since 1911? A. I have seen her from time to time in my office, in her attendance at the church services where I attend church regularly; at social occasions of the church and
10 I met her from time to time in the usual course of acquaintance.

Q. Did you go at any time with her and Mr. Martin to look for houses or places where they might live? A. I did, on several occasions.

Q. State whether or not places were secured? A. On their first coming to Orlando, as a matter of courtesy, I showed Mr. & Mrs. Martin several houses where they might obtain rooms for light housekeeping.

20 Q. And will you state what was the character of the location of the neighborhood in which these places were to be found? A. The house that was first taken was in the best part of Orlando, not far from the Courthouse, nearly opposite the Episcopal Church within one hundred yards of the Bishop's—stead of the Episcopal Church. The following winter I took them to several places and they secured an apartment in what is known as our best residential section not far from
30 Lake Luzerne and a short distance from the Church Home and Hospital, which is our largest institution; the following year in the house on South Main Street, not far from Lake Luzerne which is by me considered the best location, or at least where property sells for the highest figure in the town.

Q. Was that the last winter they spent in Florida? A. So far as I recall it, yes, sir.
40

William R. O'Neal—Direct

Q. Do you remember of their living across the street from Mr. Hillman's the second winter they were there? A. Yes, sir, I do.

Q. Was that a good neighborhood also? A. It is, very.

Q. Now, Mr. O'Neal, state what was the general appearance of Mrs. Martin as to her dress and her physical condition during the time that she lived in Florida each winter? A. So far as I ever observed, she had every appearance of the well dressed, well to do woman. 10

Q. And her physical condition, what was that? A. Good, in so far as it ever appealed to me.

Q. Did you have any business transactions with her? A. I did.

Q. Of what character? A. I made a loan for 20 her.

Q. Was she in the habit of coming to your office? A. I saw her frequently, I don't recall how often.

Q. What was the first knowledge you had of differences between herself and her husband? A. As I recall it, Mr. Martin desired to purchase a house and establish a home. I took them to see several properties which they might purchase and establish a home where they might come for the winter. At that time Mrs. Martin objected to the purchase of any home there unless he should also provide a home in New Jersey. As I recall it, this was the first time that they had any decided differences of opinion. 30

Q. Was that marked by any particular feeling on her part or his part, an expression of feeling on the subject? A. Nothing except the general impression that I gathered from their conversation.

William R. O'Neal—Direct

Q. Will you state when this was, this situation you have just described? A. I should say in the spring of 1912.

10 Q. What was the next information or knowledge you had on the subject? A. When Mr. Martin showed me a letter from an attorney asking him, Mr. Martin, to call and see him in reference to certain complaints which had been made by Mrs. Martin.

Q. Who was the attorney? A. Mr. LeRoy Giles.

Q. Where did he live? A. In Orlando.

Q. How soon after that did you see Mrs. Martin? A. Not long.

Q. Where did you see her? A. In my office.

20 Q. At that time did she say anything about having seen Mr. Giles? A. I don't think so.

Q. Did she at any time speak of having seen Mr. Giles? A. I don't recall that.

Q. Or having seen any lawyer at all? A. I don't recall that.

30 Q. What was the occasion of your seeing her at your office, I mean the occasion with reference to the difficulties between herself and her husband? A. After my interview with Mr. Giles, my friend, Mr. William Slemons, who is an Elder in the Presbyterian Church and does business within two door of my office, called on me with reference to the difficulties between Mr. & Mrs. Martin. After considerable discussion between he and I it seemed wise to ask Mrs. Martin to have a meeting with he and I and go over the situation, and determine, if possible, what the difficulties or complaints were. This was done for two reasons. Both Mr. & Mrs. Martin were
40 friends of Mr. Slemons and myself, attended the

William R. O'Neal—Direct

same church, and we, Mr. Slemons and I, felt that if the matter could be adjusted that it was our duty to do so.

Q. You are an Elder of the same church? A. I am.

Q. All right, now go on? A. Mr. Slemons saw 10 Mrs. Martin, he and she came to my office.

Q. Now, you may state what complaints she made against her husband? A. That he didn't supply her with the amount of money that she thought she ought to have, and that he did not provide always just the things that she wanted to eat, and that she ought to have more money.

Q. Was there anything at that time said by her with reference to Mr. Martin's using any physical force against her or violence toward her? A. 20 There wasn't.

Q. Did you afterwards have an interview with her in your office when her husband was present? A. I did.

Q. And how shortly was that before Mr. Martin left Orlando in the spring of 1913? A. Just a few days, I don't recall, but a very short time indeed, when they were getting ready, getting ready, in a general way, I should say a week.

Q. Now, Mr. O'Neal, in that interview, did she 30 make voluntarily any statement with reference to Mr. Martin having used physical violence toward her in any form whatever. A. In my efforts to get the matter adjusted, I discussed with her the general situation and I asked her, "Martin has not abused you" and her reply was, "No, but he has not done what he agreed to do."

Q. Did you ask her what that was? A. Well, I understood that he had not given her the money—

William R. O'Neal—Direct

The Court: No, the question calls for an answer of yes or no.

(Question repeated.)

A. No.

10 Q. Mr. O'Neal, in that interview or in the other interview you have mentioned, what, if anything, did she say about her being willing to live in Orlando and make that their residence? A. She refused to live in Orlando as a permanent residence.

Q. Did she make any statement there about her having a home in New Jersey? A. She did.

Q. What was that statement? A. "I will not have a home in Orlando without I can have a home in New Jersey."

20 Q. Did she state how her home in New Jersey was to be provided? A. She did not.

Q. Now, I will ask you what was Mr. Martin's statement there with reference to his desire to be on better terms with his wife. State whatever he said or did on that subject or what his attitude was. I refer now to an interview or interviews when Mr. and Mrs. Martin were present, what was his attitude toward a reconciliation of their difficulties? A. My understanding and im-
30 pression formed—

The Court: No.

Mr. Morrow: No, tell generally what it was.

The Court: Either the language of the conversation Mr. O'Neal, or the substance of the conversation as you can recall it. What statements did Mr. Martin make on the occasion of this interview with reference to his desire to be on better terms with his wife? A. I don't think I can
40

William R. O'Neal—Direct

identify statements made on that particular occasion.

Q. Well, then, on other occasions.

Mr. Rosecrans: I object, unless the wife was present.

The Court: Objection sustained.

10

Q. Do you remember anything said by him in her presence on that subject? The substance of it. I don't want the exact words, you couldn't remember that probably. A. I don't think that I can sufficiently recall. There were so many occasions that I can't recall just on that particular occasion what was said.

Q. Can you recall the substance of what was said by him on any occasion when his wife was present?

20

The Witness: If your Honor please, I would like to make a statement then you can rule on it as you wish.

The Court: All right.

Witness makes statement.

The Court: That cannot be offered voluntarily, but counsel must bring it out by questions.

Q. I ask him to state the interview between Mr. Martin and his wife just before they went from Orlando north in the spring of 1913, when you were present in your office? A. Mrs. Martin desiring to go north; Mr. Martin desiring to remain in Orlando; Mrs. Martin insisted upon going north; Mr. Martin objected; Mr. Martin stated, "I am willing to do anything to keep peace in the family and I had better go." I then arranged for their tickets for them and they left Orlando.

40

William R. O'Neal—Cross

Mr. Morrow: Now, if the Court please, I want to call his attention to things to which I specifically called Mrs. Martin's attention on her cross-examination.

10 Q. Did she, in the interview you had with her and Mr. Slemons at your office, say to you, "I don't want to live here, I want to go home. I am not getting as much of an allowance for spending money as I should have. I want a sum of money set apart for my use." A. That was Mrs. Martin's statement.

20 Q. Do you remember on their first visit to Orlando, after their marriage, that Mrs. Martin stated in the matter of getting rooms, and so forth, for their occupancy, that she wished to do her own cooking and washing as she couldn't stand southern help? A. That was her statement when I was showing her the rooms at Mrs. French's

Q. Did she say to you in 1912 that she did not like Florida and would not stay there? A. Yes, sir.

Mr. Morrow: That is all.

CROSS-EXAMINATION by Mr. Rosecrans:

30 Q. Mr. O'Neal, when did you come from Florida on this trip, when did you start? A. I started midnight Tuesday night.

Q. And when did you arrive here? A. Eight-fourteen this morning.

Q. I mean, first in New Jersey, did you take a steamer? A. No, sir, I came through on the Atlantic Coast Line, train 82.

40 Q. Did it take you from Tuesday night until this morning to get here? A. I went to New York

William R. O'Neal—Cross

with my family last night, arriving on that train, and I came out this morning on the seven o'clock train, arriving here at 8:14.

Q. Did you see Mr. Martin before you came to this office? A. I did, yes.

Q. How long did you see him? A. From nine 10
o'clock until we came over here.

Q. Did you talk with him about his case? A.
A general conversation, yes, sir.

Q. As to the testimony you were to give? A.
No, sir.

Q. Didn't speak anything about it, and did you have a copy of this affidavit that you made in Florida some year and a half ago? A. I did.

Q. Did you study that carefully? A. There was
no necessity for studying it. 20

Q. You remembered it, all? A. I remembered it,
the substance of it.

Q. Then you testified here without refreshing
your memory from this affidavit?

The Court: He hasn't said that or admitted that.

Mr. Rosecrans: Q. I ask him that question? Do you testify here without refreshing your memory from that affidavit? A. Of course, I refreshed my
memory. 30

Q. Now, Mr. Neal, you were the adviser of Mr. Martin in Florida, weren't you, his general adviser? A. Yes, sir.

Q. And did you have real estate transactions with Mr. Martin while in Florida? A. For many years.

Q. You were engaged in mutual real estate transactions, were you? A. May I ask for a definition, your Honor, of the word "mutual." 40

William R. O'Neal—Cross

The Court: Don't you understand the question, Mr. O'Neal?

The Witness: I do not, no, sir.

The Court: I understand it to mean whether or not you were engaged in real estate transactions together, whether as partners, as principal
10 or agent or otherwise? A. Yes, sir.

Q. Then why did you testify that Mr. Martin was not engaged in any business down there in Florida during the past few years? A. His interest in any transaction was the advance of a small amount of money on one transaction which required no effort upon his part in any way, shape or form.

Q. And that extended over these years, did it,
20 that you have just testified to? A. So far as any real estate transactions are concerned, yes, sir.

Q. This one transaction extended over all these years? A. Yes, sir.

Q. Did you ever visit Mr. or Mrs. Martin at their home in Florida? A. I did not.

Q. Did you have any conversation, lengthy conversations with her at these church affairs? A. Not lengthy, no, sir.

Q. How often did Mrs. Martin visit your office
30 during the past few years? A. Several times, I don't just recall how many.

Q. Three times? A. Yes, sir.

Q. More than that? A. Yes, sir.

Q. How many more? A. I don't recall, but she was in from time to time.

Q. Did you have a conversation with her at these times about her family affairs? A. Not all the times, no, sir.

40 Q. This meeting at your office between you and

William R. O'Neal—Cross

Mr. Slemons and Mrs. Martin, did Mr. Martin ask you to have this meeting? A. The meeting was called at my suggestion.

Q. Your suggestion to whom, Mr. Martin? A. Mr. Slemons and Mr. Martin.

Q. This was after Mr. Martin had talked and consulted with you about his domestic affairs, wasn't it? A. Yes, sir. 10

Q. Then it was practically at Mr. Martin's suggestion? A. I don't think so.

Q. Why had you so great an interest in their affairs if it wasn't at Mr. Martin's suggestion?

A. As an elder in the Presbyterian church I have certain responsibilities.

Q. Please answer the question.

The Court: I don't think your answer is complete. It may be if you finish the idea you have in your mind. A. Well, in any differences in the families in our church it becomes the duty of the Eldership to advise, counsel and adjust. 20

Q. Well, how do you know that there were differences between Mr. & Mrs. Martin unless they were brought to your attention by Mr. Martin?

A. I had had the interview with Mr. Giles, the attorney for Mrs. Martin, in which he suggested that we meet together. 30

Q. Didn't Mr. Martin, in fact, talk to you about his affairs and didn't he ask you to help him and advise him in these matters with respect to the differences with his wife? A. Yes, sir.

Q. Then that was the first intimation that you received of their difficulty? A. I don't think I can locate the first intimation or knowledge that I had on the matter.

Q. Now, Mr. O'Neal, you never visited their 40

William R. O'Neal—Cross

home. You saw Mrs. Martin a few times at church, never had any lengthy conversations with her and she visited a few times at your business office. Now, you didn't get your idea of troubles in their family life from her, did you? A. Part of it, yes, sir.

10 Q. On these short talks she complained about her husband's demeanor? A. She did complain definitely and specifically at one interview.

Q. But before this interview at your office in 1912. A. Before that, yes, sir. She had seen me individually and personally about the matter.

Q. And you had not sent for her? A. Yes, sir, I had not.

Q. Didn't you send for her at the request of
20 Mr. Martin? A. I did not.

Q. So that is the first intimation you received of their difficulties? A. I cannot recall the first intimation.

Q. When was this second interview between you and Mr. & Mrs Martin that you testified to? A. Shortly before they left for the north. I don't identify the exact date.

Q. Was it at your request that she came to your office. A. It wasn't.

30 Q. What time of the day was it? A. My recollection is that it was before noon.

Q. And how large an office have you, how many rooms in your office? A. I have the general room and my private room.

Q. And where was this conference held? A. In my private room.

Q. Did Mr. & Mrs. Martin simply walk in on
40 you at this conference? A. I don't recall.

William R. O'Neal—Cross

Q. Do you recall how Mr. & Mrs. Martin came to visit you at your office together on this occasion? A. My business is such—

Q. Now, answer the question without going into great detail please. A.—that the waiting line of people to see me—

10

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

The Court: Can you recall Mr. O'Neal, how Mr. and Mrs. Martin came to make this second visit to you?

The Witness: In the ordinary course of business, getting ready to go home.

Q. Who started the conversation about their troubles? A. I don't recall.

Q. Did you? A. I don't recall.

20

Q. Was there anybody else present in this room when you had this conversation? A. Not in the room.

Q. Now, as a matter of fact, Mr. O'Neal, you didn't have any talk with Mr. & Mrs. Martin in regard to their personal relations just prior to the time they went home, did you? A. In the preparation to go home, yes, sir.

Q. In the preparation to go home, but did you have any talk with them in your office at that time in regard to their details, family differences? A. Mrs. Martin was complaining—

Q. Answer the question.

The Court: He is answering it.

A. Mrs. Martin was complaining to me as to where they should spend the summer.

Q. Was it at this conversation? A. Yes, sir.

Q. At this time? A. Yes, sir.

Q. So that that was the start of the conversa- 40

William R. O'Neal—Cross

tion, was it? A. And the general conversation as to the summer was carried on.

Q. And you asked Mrs. Martin the question whether she was ever physically abused by her husband. A. I did.

10 Q. Why did you ask her that? A. For the reason that Mrs. Martin was complaining to me that Brad had not kept his agreement.

Q. No other reason? Why would that lead you to ask that question? A. The conversation which we had had in the interview in my office, in the evening, together with the complaints that he had not carried out his agreement and was not going home, or at least she thought he was not going home—

20 The Court: Mr. O'Neal, you are making your answer entirely too complex and too intricate. You were asked why you asked Mrs. Martin the question as to whether or not she had ever received any abuse. Now, possibly a certain amount of explanation is involved in your answer, but certainly not such a complicated statement as you are making.

The Witness: May I put it this way, in my desire to effect a settlement between them.

30 Q. Does that finish your answer? A. Yes, sir.

Q. Are you acquainted with the divorce laws of Florida? A. In a general way, yes, sir.

Q. What grounds are necessary for a divorce in Florida?

Mr. Morrow: Is that cross-examination?

The Court: I don't quite see where the materiality or the relevancy of it is.

40 Mr. Rosecrans: The reason is this, I want to show that this witness was asking

William R. O'Neal—Cross

these questions at the suggestion of Mr. Martin in order to pin Mrs. Martin down to admissions which would be against her interests in case of an action for divorce, and that this witness was well acquainted with the grounds for divorce. I would like 10 to reframe that question.

Q. Are you acquainted with the general law in regard to the necessary proof to establish grounds for a divorce. A. In Florida?

Q. In any state. A. Not sufficiently to answer definitely.

Q. Are you in Florida? A. No, sir.

Q. Are you a member of the Bar of Florida?

A. I am not.

Q. Did you ever study law? A. I have. 20

Q. Where did you study law? A. In the state of Ohio.

Q. How long was the course? A. Three years in a general office.

Q. And have you kept up in the study of law since then? A. I have not.

Q. Not at all? A. No, sir.

Q. And didn't you advise Mr. Martin as to the necessary proof which Mrs. Martin would have to produce in order to furnish her with sufficient 30 grounds for a divorce? A. I did not.

Q. Didn't you advise him how he might block that? A. No divorce was contemplated.

The Court: That answer will be stricken out.

Question repeated.

A. I did not.

Q. Didn't you advise Mr. Martin to take his 40

William R. O'Neal—Re-direct

wife to Jerry Martin's in Sussex County, New Jersey after leaving Florida in 1912. A. Yes.

Q. Didn't Mr. Martin always go north in the summer time? A. I can't answer that question.

10 Q. You testified you were well acquainted with his actions in the south, that you bought their railroad tickets for them. Now, don't you know whether he always went home in the summer time? A. My impression is yes.

Q. You don't know? A. Not definitely.

Q. Now, in regard to this statement of Mrs. Martin, that she didn't want to live in Orlando, did she tell you the reason why she didn't. A. That none of her friends were there.

20 Q. Didn't she say she was ill, down there, sick? A. She did not.

Q. Didn't you suggest to Mrs. Martin that Mr. Martin should furnish her with enough money to run the house? A. I did.

Q. Then do you mean to say that you and Mr. Martin never talked over the question of blocking Mrs. Martin's possibility of getting a divorce? A. We did.

RE-DIRECT-EXAMINATION by Mr. Mor-
30 row:

Q. Well, what was that Mr. O'Neal, when was that? A. I don't recall.

Q. Was that before or after she began proceedings? A. After.

Q. Did you give him any advice about it? A. I don't think so.

Q. When asked about this advice to him, to take his wife to Jerry Martin's, how did that happen?

40 A. The question of the expenditure of money,

William R. O'Neal—Re-direct

where they could most economically and best spend the summer.

Q. How did you know about Jerry Martin's?

A. Through statements made to me by Mr. Slemons, by Mr. Martin and by Mrs. Martin.

Q. Now, what were the statements by Mrs. Martin? I want to get at this to know why you should have suggested their going to Mr. Martin's, the nephew? A. My understanding was that this nephew, or whatever the relationship is, had ample room, lived on the farm in a locality with which Mr. Martin was familiar and in his state of health he needed the country, Mr. Martin appearing to me to be very ill at that time, and I personally was of the opinion that he would hardly live for the summer. 10

Mr. Rosecrans: I move that that be stricken out. 20

The Court: How much of it.

Mr. Rosecrans: As to his opinion of how long he would live.

The Court: That will be stricken out.

Q. Was that opinion expressed to Mrs. Martin or in her presence? A. I don't recall that.

Q. There was nothing in that relative to any supposed relations between Mr. Bradley Martin and the nephew's wife, was there? A. Nothing in the world, no, sir. 30

Mr. Rosecrans: I ask that that be stricken out as not proper re-direct-examination.

The Court: I will let it stand for what it is worth.

Q. That last question that Mr. Rosecrans asked you, if you had given him advice about blocking 40

William R. O'Neal—Re-cross

his wife's divorce suit, did you give him any advice on the subject?

Mr. Rosecrans: I object to that, it has been answered.

10 The Court: My recollection is that the witness was asked first whether he had consulted with Mr. Martin with reference to blocking his wife's action for divorce, and he said yes, and then he was asked if he had given him any advice for a defense and he replied he had not. I think that was the witness' testimony.

Mr. Morrow: I guess that will finish Mr. O'Neal's examination.

20 RE-CROSS-EXAMINATION by Mr. Rosecrans:

Q. Mr. O'Neal, when you suggested that Mr. Martin go to Jerry or Jock Martin's in Sussex County, New Jersey, didn't you tell him if his wife didn't go with him that would be grounds for divorce. A. I don't recall that.

Q. Can't you remember that, whether you said that or didn't say that? A. I was not advising Mr. Martin as his attorney.

30 Mr. Morrow: Answer his question.

The Witness: No, I cannot remember.

Q. But you can remember it now very fully, can you?

The Court: He said he couldn't remember it.

Q. Did you say it would be grounds for desertion? A. I don't recall that.

40 Q. Did you advise him at all in regard to that matter?

William R. O'Neal—Re-cross

The Court: In regard to what?

Mr. Rosecrans: In regard to his going to Jerry Martin's and the result of Mrs. Martin not going with Mr. Martin.

A. I did not advise him.

Q. Did you have any talk with him in regard to it? A. Yes, sir. 10

RE-DIRECT-EXAMINATION by Mr. Morrow:

Q. Talk with him about what, you leave it indefinite. A. Re-state the question please, will you?

Q. You talked with him about going to his nephew's home with reference to a question of desertion by his wife upon her refusal to go with him? A. As I recall it, Mr. Martin stated to me— 20

Mr. Rosecrans: I object to these lengthy answers. I don't think it is necessary.

Mr. Morrow: I want an explanation.

The Court: You don't ask for it. Did you talk with Mr. Martin about the possibility of desertion arising if his wife refused to go to Jerry Martin's?

The Witness: May I make a statement and then ask you a question? 30

The Court: No, answer yes or no or whether you can recall.

The Witness: I don't recall it at this time.

RE-CROSS-EXAMINATION by Mr. Rosecrans:

Q. You mean then that you had absolutely no talk, that you cannot recall any talk in regard to the possibility of grounds arising for desertion, 40

William R. O'Neal—Re-cross

if Mrs. Martin did not accompany Mr. Martin to his nephew's in Sussex County. A. Yes, I recall the conversation distinctly, and with the permission of the Court I will make a statement.

Mr. Rosecrans: I object to that.

10 The Court: All right. Now, for the satisfaction of the Court, Mr. O'Neal, I should like to know precisely what that conversation was.

The Witness: Mrs. Martin had stated to me in an interview—

20 The Court: No, I want you to give me simply the conversation you had with Mr. Martin bearing upon the possibility of a desertion arising on the part of his wife if she refused to go with him to Jerry Martin's.

The Witness: If your Honor please, it didn't take that form. The conversation occurring between Mr. Martin and I was this, as I understood it, she would have to go where he went and if she refused to go to Martin's and insisted upon stopping at Blairstown or wherever the home is, if I were he I would go right on up to Martin's.

30 The Court: Was there any part of the conversation at that time which dealt with a possible right of action for divorce or defeat of an action for divorce?

The Witness: I don't think so. It was a question, your Honor, of getting them together. That is what I was working on.

40 Mr. Morrow: Was not anything said at any of these interviews with reference to a possible charge by Mrs. Martin that he deserted her if he went to live somewhere she

Sarah Irene Martin—Direct

would not accompany him?

The Witness: I don't recall that.

Mr. Morrow: I desire to offer in evidence all the affidavits made by Mrs. Martin in the various proceedings taken in this case, first, the application for an exeat, and second, the application for alimony and her answer to the counter affidavit of Mr. Martin. They are her own statements under oath. 10

The Court: They are part of the original files of the Court of Chancery.

Mr. Morrow: Yes, sir.

The Court: They will be admitted, but not marked.

Mr. Rosecrans: Do I understand they are as evidence in this case? Is that the question, that these affidavits are to be admitted as evidence in the case? 20

The Court: No, the matter stated in this affidavit was evidence for the purpose for which they were used, but they are not evidence for this purpose.

Mr. Morrow: They don't prove the truth of the things said or done, they are used to refute her testimony. 30

Rebuttal

SARAH IRENE MARTIN, being duly sworn on behalf of herself, testified as follows:

Direct-examination by Mr. Rosecrans:

Q. Mrs. Martin do you remember any interview 40

Sarah Irene Martin—Direct

with Mr. O'Neal in Florida in his office in April, 1912? A. No, sir, I do not.

Q. Do you remember any interview in Mr. O'Neal's office in Florida when Mr. Martin was present? A. Never, I was in Mr. O'Neal's office in Florida with Mr. Martin only when he was
10 on business. That was the only time I was there.

Q. With Mr. Martin. A. With Mr. Martin.

Q. Mrs. Martin, did you have an interview with Mr. O'Neal and Mr. Slemons at Mr. O'Neal's office in Florida? A. I did.

Q. In March? A. March 27, 1912.

Q. Was Mr. Martin present? A. No, sir.

Q. Did you say to Mr. O'Neal that you didn't want to live in Florida? A. I told him I didn't
20 want my permanent home in Florida. I was willing to go there for the winter but I didn't want to move to make my permanent home there.

Q. Why? A. Well, I like it better in the north, that was about the reason I guess, and another thing, it didn't agree with me altogether. The last winter I was there I was complaining a good bit, although I didn't complain to anybody else very much.

Q. Did you ever tell Mr. O'Neal that Mr. Martin had never offered you physical violence? A.
30 No, I never told him so. I was never asked the question and it was of a kind that it was too delicate to bring up before strangers.

Mr. Morrow: That is not an answer to the question. She said, no, she didn't.

The Witness: I didn't tell him anything about it.

Q. Were you asked that question? A. No, I
40 wasn't asked and I didn't bring it up.

Sarah Irene Martin—Cross

CROSS-EXAMINATION by Mr. Morrow:

Q. Before the interview at Mr. O'Neal's office, before you had the interview with Mr. Slemmons and Mr. O'Neal, you had seen a lawyer named Giles, hadn't you?

Mr. Rosecrans: Objected to as not being proper cross-examination. 10

The Court: I don't think it is proper as cross-examination as it refers to a matter which has not been opened on the direct-examination at all in this rebuttal testimony.

Mr. Morrow: Well, I don't ask it as cross-examination, but as an independent fact that I didn't know when she was on the stand in Belvidere. 20

The Court: I am inclined to allow you to ask the question as a matter disclosed without knowledge to you at the time of the original cross-examination. I will permit the question.

(Question repeated.)

A. Yes.

Q. About your differences with your husband?

A. About his assaulting me.

Q. I mean about the differences between you and your husband? A. Yes, if that is what you call it. 30

Q. Who conveyed word to you to go to Mr. O'Neal's office to meet him and Mr. Slemmons?

A. Mr. Slemmons.

Q. Mr. Slemmons arranged that meeting? A. He came to me and asked me to go.

Q. Mrs. Martin, did you ever consult any physician about your physical condition until you 40

Sarah Irene Martin—Cross

went to see Dr. Garden at Blairstown, shortly before the filing of your petition in this case? A. I did not.

RE-DIRECT-EXAMINATION by Mr. Rosecrans:

10 Q. Did you suffer from any bowel trouble while in Orlando? A. I did. That was my trouble in Orlando. I couldn't stand the heat.

Both sides rest.

The Court: It doesn't appear, so far as I recall, anywhere in the testimony, what the ages of these parties are, and I should like to have either the
20 testimony of the parties or a statement, because I think it has considerable bearing upon the case.

Mr. Morrow: How old are you, Mr. Martin?

Mr. Martin: I am in my seventy-first year.

Mr. Morrow: When will you be seventy-one?

Mr. Martin: Next February.

The Court: I would like to know somewhere generally at least, the age of Mrs. Martin with reference to the time of these occurrences which are made the basis of this action.

30 Mrs. Martin: I was sixty in June.

Mr. Rosecrans: And these occurrences were about two years ago.

Mrs. Martin: Yes.

The Court: Yes, that is what I wanted to know.

It was agreed that briefs would be submitted in substitution of oral argument.

Exhibit D-1

Wednesday July 17th

Taken from Brads Diary.

Rene has not eat any oat meal in three weeks and something is going wrong with my bowels, and stomach, and the Dr. says I had better quit eating it until Rene eats it. 10

In reply to that.

What can he mean by that? Brad has been for some time before we left Orlando last spring accusing me of putting Croten Oil in his victuals. Can it be he has been telling the Dr. such things as that and that Dr. Carhart would make such a reply? I must ask him.

Thursday July 18th

20

Brads Diary reads.

Very hard spell of gripes after dinner. Eat some boiled rice. Rene does not eat any of it think there must be something in it, as it has never used me so before. I never fail to get all the orders for the house.

My reply to that is. That sounds well, wish I could say it was true but I cannot, I give the orders for just what I have to have and just what I think he will eat regardless of myself. I eat just what I can get. If he sees fit to get what I order all right if not I have to do without it and that is quite frequently I have asked him to leave me some money for supplies, if any fruit or anything I need comes along, but he wont leave me any money nor buy any fruit. 30

Exhibit D-1

Sunday July 21

Brads Diary reads.

10 "Rene returned 'dirty novel' to Mrs. Lance. 'Jane Carey' and got two more hid one of them a well as her letters." My reply to that. I did not hide either 'of them just layed them down where I sat reading. Am not ashamed of anything I read. As for my letters I am doing by them as he is doing by his, does not show them all the difference. "I dare show mine" Where he does not. He has to many women on the string to show me his letters.

Friday July 26.

20

Bards Diary says:

Very bad with headache stomach and bowels. Must be something in what I eat puts me in such cramps. Five times out in afternoon.

July 27 /12

30 I told Brad to bring me a beef tongue that I might cook it while I was doing my morning work, so that I might have it for over-Sunday. Made no answer, neither did he bring that or any other kind of meat, nor even say a word as to why he did not bring it. He says he "never fails to get all the orders for the house" I think that looks like it. I called on Annie Lance in evening. She quite complaining.

Exhibit D-1

July 28.

Clear in morning I to church and Sunday school. Brad home all day, did not speak a word to me not even answer when I call him to his meals. Sat out in the yard under the shade tree nearly all the afternoon reading his newspaper. Heard him tell Mr. Dearborn, he was feeling very bad. Rained some toward night, did not go to church in evening. Collection 8cts. 10

Monday July 29.

Rainy in morning, found Brads Diary and copied of a few items. Where he is accusing me of putting something in his victuals to give him cramps and gripes in his bowels. Then washed but did not rinse my clothes. It did not rain much. Called on Mrs. Carter in evening. Very destructive hail storm up about Swartswood and back of Stillwater. Hail stones as large as shelled walnuts some say. It is reported that it cleaned up three crops for Jack Martin, corn, oats and buckwheat. No rain here. Some wind. 20

Tues. July 30. 30

Clear and warm. Sent with Brad for trade in morning. Sugar, rice, salt and meat, he came up to dinner. Not a thing. Neither did he say a word as to why he did not get it. Another case where "he never fails to get all the orders for the house" When he came to supper he brought the sugar and a pound of the cheapest rice he could get. Broken grains not fit for any one to use. I wrote to Myrtie and Irene. 40

Exhibit D-1

Wed. July 31.

I ironed in morning. Brad down town and brought up piece of meat for dinner "Dog meat" poorest cut he could get, "Brisket" but little meat mostly bone, grizzle and fat. I could hardly eat it. I eat a very small piece, and felt mean in my stomach all the afternoon, "must been something in it." Brad gone all forenoon from eight o'clock until half-past twelve. Came home eat his dinner and started again. Found letter to him from Janie, dated July 7. Kept it hid all this time. The salt he has not brought yet. He wants me to use some coarse salt in my cooking that has been sitting around in the barn and shanty going on five years I know and I don't know how much longer, and I will not do it.

Thursday August 1st.

Rained a little in night. But clear and cool this morning. Mrs. Rose and I to Mr. Wildrick's blackberrying. Walked all the way there had a good time. A fine dinner and lunch before we started home, and got a nice lot of berries. Rode home as far as the Creamery with Mr. Wildrick then walked to Dan Smiths when Dr. Allen and wife passed us and asked us to ride, and brought us all the way home. Brad home at supper time. Did not say a word. I called him to supper but he did not answer as usual. Eat his supper fast as he could swallow it down, took the Lawn mower, mowed the side walk, and went down town, was told he came home a few minutes past eight. I down town to Band Concert. Suppose

Exhibit D-1

he saw me there is why he came home so early. I stayed until they quit playing then came home with Mrs. Lantz. Spent most of the evening sitting on Mellie Wildricks porch. Got home 20 minutes past ten.

Friday Aug. 2nd 10

Gave Brad list of trade needed. Lard, matches, yeast cake and chocolate. Told him that was a list of trade wanted. He took it but said nothing as usual if he would get it or not. Brought it all but the chocolate. I canned my berries in forenoon. Trimmed my old hat, called on Mrs. Rose. She about used up from trip. Brad came in at five p. m. put on old clothes and went for bait. 20
Waited for him to come to supper until eight. Mrs. Quick and Ruth called.

Sat. Aug. 3d.

Baked all the forenoon, done a little cleaning and stopped at that. Clear and very cool. Brad brought my chocolate in the morning, never said a word. Mrs. Rose and I down town in the evening to Post Office. Malita Sipleys and Lew Konkles. Home a few minutes past nine. Brad 30
come that night few minutes past eight. Was in bed when I came. Had took the clock in the bed room something unusual for him to do. Suppose he did it to see what time I came in. He got up this morning a quarter past two and went to his pykes I suppose as he had some fine big eells did not say a word when he was going came home about day light.

Paper needles 5 cts.

40

Exhibit D-1

Sunday, Aug. 4th.

10 Clear and cool. I to Sunday school to Presbyterian church, and to the Methodist for preaching services. No preaching at the Pres. Church. Mrs. Yetter's baby born. Brad home all day working on his book most of the time. Never said a word to me but looked daggers at me when I went out to Church both times. I called him to his meals every time but he never answered me. I to Church in evening. Collection 12 cts. I to Mrs. Lantz's in afternoon.

Mon. Aug. 5

20 Clear and cool. I washed. Brad down town all forenoon. Don't speak. I guess he has lost his voice. Mrs. Dearborn over to get me to do some sewing. Over to Mrs. Dearborns in afternoon looked over her dress to see what was to be done to finish it. Mrs. Dearborn said there was no truth in Brads statement that they had said I went away with a basket of clothes. I did not think there was. Was sure from the start. Brad had made it all.

30

Tues. Aug. 6.

I ironed in forenoon afternoon sewed for Mrs. Dearborn here at home. Fine day. Brad no speak. Tongue runs like a clatter mill when he is down town. Mrs. Newbacker and Carrie Kitchen called in the evening.

Exhibit D-1

Wed. Aug. 7th.

Clear and cool. I sewing on Mrs. Dearborns dress, apron and waist. Brad down town all the time only stays home long enough to eat and sleep. Don't say a word rather it would be thus than to have him picking a quarrel every time he comes in the house. Sent with him for some trade. I bought four Cantelopes for twenty-five cents 25. 10

Thursday, Aug. 8.

Some cloudy but no rain Lake Grinnell Picnic. I still sewing for Mrs. Dearborn. Told Brad to bring me a quart of vinegar and a yeast cake. Brought the cake but only a pint of vinegar, not a word said as to why he did not get a quart. Perhaps he has been sending all his money to Jen Martin and did not have enough left for a quart of vinegar and of course if any one had to do without things that are needed it would be me. 20

Friday Aug. 9.

A little dull but no rain to speak of only a sprinkle once in awhile. Baked some and nearly finished Mrs. Dearborns work. She was in just a minute the first she was ever here. Won't come in when Brad is here, like a good many others. He still does not speak. I called on Carrie Kitchen in the evening stayed till nearly nine. He was in bed when I came in nobody said a word. Pertends to be sick but from some of the things he does I can plainly see he is putting on "Just for effect" as I have often heard him say. 40

Exhibit D-1

Sat. Aug. 10.

Warm and muggy with occasional showers, forenoon was spent in my usual Saturday's work. Finished Mrs. Dearborns work all that I have.
 10 Don't know if she has any more for me to do or not. Told Brad to bring some Huckleberries if there was any in town. He made me no answer don't know if he will bring them or not "Time will tell" Night came so did Brad but no berries. Mrs. Rose and I down town. Rained so hard did not get home until after nine.

Paid out for postage 10 cts. Envelopes 10 cts.

Sunday Aug. 11.

20 Dull and cloudy in morning. I to Sunday school. Very small attendance. Then to Church. Rev. George Hoagland preached very good sermon and a good congregation. Brad home all day. No speak to me. Collection 10 cts.

Mon. Aug. 12.

Clear. Rained in the night. Hard shower. I
 30 washed. Brad had one of his blind spells. I did not know what to do for him, and he would not tell me, so very little done. What I offered to do he refused, so I said no more. He went to the Doctor and got more medicine.

Tues. Aug. 13.

Rained again in the night. Clear all day but
 40 very close and sultry. I ironed. Brad said he

Exhibit D-1

was better when I asked him but that was all he said to me. In the afternoon he rode out somewhere with Mr. Andrew Yetter, but said nothing about his trip nor where he was.

Wed. Aug. 14. 10

Belvidere Picnic. I just made up my mind if he could go and come just where and when he pleased I could do the same so I fixed myself after he went down town and went. Saw him at the Station after I was on train talking and smiling to the people on the platform as though he was one of the most pleasant men in the world. Don't know if he saw me or not. Know he saw Mrs. Lantz and I was with her. Had a pleasant time at the Picnic, "big crowd." Rained in afternoon. Two showers. I intended to come home at night but Myrtie insisted so hard on my going home with her and I went so that I would avoid the crowded train. 20

Carfare	.92 cts.	
Peaches	.10	
Ice Cream	.15	
Cake	.10	
		30
	\$1.35	

Thurs. Aug. 15.

Clear and fine. Made a dress for little Sadie. Came home on Dinkey at night. Brad down town. Came home about eight. He did not speak so I thought I would not, so not a word said until I called to breakfast next morning then he never answered me. 40

Exhibit D-1

Friday, Aug. 16.

Clear and cool in morning. Brad down town early. Few minutes past six when he left the house. Told him I would have to have some
10 sugar. Made me no answer. Found a letter on table from Orrin & Janie. He has been writing to them that he would like to go out there this month, but he has never said a word to me about it, and I will never make any preparation to go until he does say something. He lays all our trouble to me. He writes them he wants to come out there and go to work. I think he acts as if he could work. If he would save the money he spends in car fare and on Jack Martins wife and chil-
20 dren, and get us a nice home as he promised me, and settle down and behave himself we would both be better off.

Waited for him for supper until after seven. When he came never said a word why he was late or anything else. I got a letter from mother, and wrote to Orin and Janie.

Sat. Aug. 17.

30 Clear and very warm. Showery in afternoon. Done my usual Saturday work. Baking, cleaning and so forth. Brad down town most of the forenoon and all the afternoon. No speak a word to me. Heavy showers in night. Took Mrs. Dearborns work home.

Sun. Aug. 18.

40 Cloudy in morning. Did not go to Sunday school or church. Cleared away about ten.

Exhibit D-1

Showery in afternoon. Called on Mrs. Carter in afternoon, and Mrs. Dearborn in evening. Not a word said at home all day. Brad read his papers and wrote up his book. Went out somewhere in afternoon don't know where.

Mon. Aug. 19. 10

Showery all day but not much rain up to three p. m. Brad broke loose at breakfast table. Began by asking if I had read Orrins letter. And then led on to everything that was ever said or done between us. Wants me to take back what I said about signing away my rights. I cannot do it it is true and truth must stand. I told him I was willing to bury the past He should behave 20
himself and act accordingly. But he still persisted in accusing me of putting something in his victuals and wanting to kill him for his money if I was not afraid of the rope. Denied ever saying "Mrs. Lantz said, she would quarrel it out she would make it hot for me." He did say it, and I know Mrs. Lantz never said such a word. I asked him for some money, and he said right out he would not give me any, so I don't think we are any where near a reconciliation. He went 30
away in the morning went to Belvidere I think, did not say where he was going or when he was coming back. Finds fault with me all the time because I don't tell him where I go, but when he tells me where he goes I will tell him. Makes a big racket because my trunk is locked and tries to make me open it and show him the letters I have been getting. When he shows me Jen Martins letters I will show him mine. I have no letters that will do him any good or me any harm. In his 40

Exhibit D-1

conversation he accused me of lying to him and called me a Damnnable hypocrite, and he was the one that lied, not I. Finds fault because I have so many white skirts and waists all trimmed in lace and embroidery hanging around and so much
10 lace in my bureau drawers. He must snoop around to see. Wanted to know who found the soap and starch to wash and do up all those fine clothes. Says I don't wash his clothes, that is not true. I always wash all he throws in the basket and often tell him to change his clothes when he will not. I down town in afternoon. Had Freeman fix my glasses, cost 25 cts. Supper time Brad not home. I eat and left the table with the
20 victuals all on for him when it was time for the Dinkey then I lighted the fire and made him some coffee and boiled him some corn. An awful hard shower about that time and he did not come until after nine. Never said a word eat his supper, read the paper and went to bed. In his tirade in the morning he called me a Damnable lying hypocrite.

Tues. Aug. 20th.

I went at my ironing. Brad writing a letter to
30 Orrin and Janie I think. Mrs. Dearborn came over paid me for my sewing \$1.25 and wanted me to come and help her with her washing. Told her I would soon as I ironed my starched pieces. Brad went down town and came back with a piece of meat throwed it down on the table and said there is a piece of meat. Hope now you will have one square meal. Say I am starving you to death. I had another wife that said I starved her and
40 now she is rotten in her grave. I told him perhaps he did starve her for what I knew. Then he

Exhibit D-1

told me I should go and creep in that hole I decorated on decoration day. After he blowed out he went down town and stayed until noon. I went as soon as I could leave and helped Mrs. Dearborn until half-past eleven then came home and put his dinner on the table and went right back eat my dinner there and helped her until she was all through. Wrote to Myrtie and sent Irene a box of flowers. Paid out for postage stamps 10.

Wed. 21.

Helped Mrs. Dearborn iron and when I was through she paid me \$1.35 for the two days and it comes very good to me, if he wont give me any money I will have to work and earn it. Thought I would get through in time to fix Brads pants he was finding fault about not being mended but did not. Was into Carrie Kitchen's a little while in the evening. Gave the children a boquet of Dahlias. Came home wrote to Orrin and went to bed. Brad out until eleven don't know where and care less. Rather dull all day raining part of the time. 20

Thursday 22. 30

Nice and clear until the afternoon then it was some showery but not much rain. I told Brad in the morning he should leave them pants now and I would try and fix them. Yes he said take them down stairs for two or three days again and keep him out of the use of them. Just for spite. There he said was stuff to make him shirts but I would not make them but would sew for other folks and do "needle work" but would not fix his clothes. 40

Exhibit D-1

I had pressed the coat he wore on Monday and got it all wet and it was in an awful condition. He found fault because I did not do it better. Said it was because I was mad and for spite would not try to do it good. I pressed the coat just as
10 good as I could and worked at it the best part of an hour. Said he never could say a word about having his clothes fixed but what I flew up right away he would take the money I wanted him to give me and hire his clothes pressed but he did not do it. I had to press and fix the clothes and he keeps the money, and told me if I wanted money to use my own. Had it over again about my decorating Jims grave again. Said "you
20 don't give me any flowers you damned lying hypocrite you." In the afternoon he brought up a big express package, did not say what was in it, unpacked it while I was down stairs and as he says by my novels hid the contents. He had two new suits of clothes that he packed the pants in a bureau drawer and the coats, and vests he hung in the clothes closet under another coat so I would not see it. He had a new shirt and two or three pairs of cuffs. Must be getting ready to go to Oregon. I went in to Miss Bellis's in the after-
30 noon and took her some Lady slippers in the evening. I called to Bert Yetters to see the baby. Learned later Brad was to New York on the 19th instead of Belvidere. Bought his suits there.

Friday Aug. 23.

Brad sick came home from down town and went to bed. Asked him what I could do for him and he said nothing. I baked some and swept and
40 cleaned some in forenoon afternoon worked on

Exhibit D-1.

Carrie Kitchen's skirt. Brad down town bigger part of afternoon. He went to bed early, groaned and carried on. I asked him what I could do for him. He said nothing. Asked him about his medicine he said it was all gone but one tablet. I asked him if I should go and get him some more he said no he would wait until morning. 10

Sat. Aug. 24.

Clear and hot, asked Brad how he felt said his head did not ache so bad. After he had been down town I asked him he saw the Dr. he said yes. I asked if he gave him more medicine he said "no" I said "how was that," he said the Dr. told him he had done all he could for him and if that medicine did not help he could do no more. 20
Mrs. Armstrong called in the afternoon. He told her how he was suffering from muscular rheumatism and how bad off he was and he would have to go away some where to get away from it and he guessed it would be "To the Happy Land of Caanan." He went down town soon as he swallowed his supper and staid until nine. I went down a little bit paid Pullis for thread 5. Went to the Office no mail for me. Came right home and sewed until bed time. 30

Sun. Aug. 25.

Beautiful day but very hot. I to Sunday school and Church. Rev. Roberts of Philadelphia preached a very interesting sermon both morning and evening. Collection 10. Brad feeling better. Home all day sat in yard under shade tree all the time. At the dinner table he began to nag by say- 40

Exhibit D-1

ing, what did you do with those peas and beans left from supper last night. I suppose he had went through everything in the cellar while I was at Church. That is the way he generally does. I told him there was only about a spoonful left and they was sour. Will that rice never come
10 back on the table. Did you throw that out to? "No sir" that rice did come back there was only a big tablespoon full of that and I put it in the meat gravy. Then he wanted to know what became of the cold biscuit that was left a few days ago. There was three left and they was on the table and not eat so they was put out of the way. Just that way he nags and finds fault over every
20 ing about and sometimes he don't.

Mon. Aug. 26.

Fine and clear but awful hot. Brad commenced another tirade at the breakfast table, by asking if I had answered Orrin's letter, and what I was going to do about going out there he wanted to write and tell them. I told him it all depended on him. I would go if he wanted to but asked him
30 what he was going to do with things here. He wanted to know if I was going to keep right on in this way or if I was going to take back what I had said. I told him I would let the past go if he would, but I could not take back what I had said until he first took back what he had said that was the means of my saying what I did and then all his spite was up. He would not do it and he went over everything again. Accusing me of having
40 kill me if you could get the chance in a minute.

Exhibit D-1

You know you would all you want is my money. You lying hypocrite you lie every breath you draw. Repeatedly denied things that he had said before and called me a liar. Accused me of going up over the hill to meet Wes Gorger. And of stinking so he could not hardly come around me. I told him if that was the case he need never come near me. He said I would burn a quart of oil every night making long prayers you lying hypocrite. I told him I would never have to answer for the things he told about me that was not true, and that I felt very thankful he was not my Judge. Well you will have to answer for more than you think you will and for more than you have any idea of and perhaps soon. Now I would like to know what he means by such a threat as that. He certainly is getting to be a dangerous man. More than one person has told me they would be afraid of him and sometimes I am afraid he will injure me in some way. There must be something awful in his heart or he would not tell me I have murder in my heart. If he never dies until I murder him he will be like Elijah go up to heaven in a Chariot of fire. He used some of the most vile language that any man could utter and brought up again about my going down to the Cemetery. Asked me if I thought I done right. I don't know that I done anything wrong.

Tues. Aug. 27.

Fine and clear turned cooler. I ironed and cooked things for dinner in the forenoon. Brad brought up a piece of meat but never said a word to me all day. All I said to him was to call him to his meals. Waited until twenty minutes after 40

Exhibit D-1

twelve for dinner for him. He took his paper and envelopes with him down town to write letters. Very seldom writes at home any more. I think he wrote to Orrin as he said yesterday he was going to write to him. He looks and acts as spiteful as ever. Mrs. Rose came home but went right
10 back. Talked with her just a few minutes. Had a postal from Hannah Hines saying she was coming up this way and expected to make us a visit. Bought ten quarts of green gages of Crouse, 60 cts.

Wed. Aug. 28.

Clear and cool in morning. Mr. and Mrs. Dearborn, Carrie Kitchen and children all went to Easton for a holiday. Picnic at Swartswood, Clouded over about ten and at three began to rain, mussy all afternoon. I made some apple jellie in forenoon. Afternoon went down town bought six pounds sugar, 36 cts. Paid for it out of my own money I had saved, also stamps 50 cts. Came home canned my plums had six quart cans and two pints.

30

Thurs. Aug. 29.

Cloudy in forenoon. In the morning I told Brad I wanted a quarter of Tea. A yeast cake, and would have to have some more sugar. He wanted to know what I had in that paper yesterday. He sat on Read Pulli's store talking with Joe Ervine and some one else. I did not know who when I went down the street. He sits around on purpose to watch me if I go down town and
40 to see where I go. I did not tell him at first what

Exhibit D-1

I had but later I told him I had sugar, for I knew he would ask Everette if he had not already so I told him. Wanted to know who it was for. I told him I had bought some plums to can and I bought the sugar to can them with. Such house-keeping as that wont go here, Well I said give me some money then to buy such things for the house. I must have something, and you have not bought a peach a plum, a pear, nothing at all only four quarts of apples. He told me to use my own money. Well if that is what he wants me to do, what reason has he to blow out so when I use my own money for some fruit. I was not finding any fault about it. He is so afraid of his money, and I know he never eats any plums so I would not ask him to buy any for me. Grumbled about my using five pounds of sugar in less than a week. Sure I did, but how far does five pounds of sugar go in making Jelly. He went down town came back about eleven. I was sewing he came in and began "Now you lying hypocrite see what you will be about next. I said whats the matter now, this thing must come to a stop before long. I will not stand for it, tell me what I have lied about, say I am starving you to death. I never have said so. I always have something to eat but I will say he does not provide as a man of his means should. Just certain things he will get, and after that there is a fuss every time I ask for some of the things I would like. My appetite is very poor this summer and I long for some little delicacy. A little nice fresh fruit, a little piece of beef or veal, steak or a nice little roast of veal, or a little piece of lamb, or a chicken or something of that kind, so I can have a change, but if he gets meat it is always a three or four pound of beef to boil, and

Exhibit D-1

I can hardly eat it after I have to warm it over and that I must do for it will last almost a week. He out until half-past ten at night. Not a word said when he came in.

Friday Aug. 30.

10

Clear and cool. Brad let his teeth fall and broke them. Never said a word to me, but dressed himself after breakfast and started off without speaking. Gone somewhere to get a new set made I suppose. Home on Dinkey, and that was very late. I was gone when he came. When I came back I found he had been home and got him something to eat. His dirty dishes all stood there. I washed them up and went to my sewing. He had left a paper bag on the table with five peaches in it. I left them set there and thought I would have them for breakfast as I knew he would not eat any for supper. He came to supper, eat as fast as he could and started back down town without saying a word. I dressed myself and went with Carrie Kitchen and children to the Tom Thumb wedding. Met Brad coming home. It was about half-past seven, something very unusual for him to come so early. Never does only when there is something going on that he thinks I want to go. Then if he comes home why I suppose he thinks I will stay home to, or if I go of course he can say I went and left him alone. Big crowd to the wedding and it was very good. Admittance 25 cts. and you was entitled to a dish of ice cream at the reception. Home at ten. Brad had me locked out downstairs had to go through the wet grass up to the kitchen door, something he has

20

30

40

Exhibit D-1

been doing of late every time I am out when he comes home. I went to bed without lighting a lamp. Had been in bed but a few minutes until he got up under pretense he had to go out. When he came in he struck a match and looked what time it was. Neither of us said a word.

10

Saturday Aug. 31.

Up at six. Went to peal my peaches for breakfast, they was gone. I stepped to the door and asked what he had done with them. He said he had used them. I asked in what way no answer. I asked again what way he had used them as he wont eat peaches nights, still no answer, so I went on with my breakfast and he layed still so as to make me wait or else call him. When breakfast was ready I called him. He got up took more than ordinary time to dress. Went to the toilet made a long stay, washed and gave his hair an unusual brushing. Just to make me wait breakfast or to provoke me in saying something, but I kept still. At the table he commenced by saying the entertainment must have been to much for you last night. I made no answer. Or else it was your company, or you must have laughed to much, still I did not answer. Then he said you would get mad over five cents worth of peaches. Yesterday when I broke my teeth you would not say a word to me your an angel aint you? Still I made no reply. After breakfast he went in the other room brought out the peaches. Here he said is those peaches I put them in there so you would not have them for breakfast. I brought them for you. I want you to take them down cellar where you have your private table, along with

20

30

40

Exhibit D-1

your cantilopes, they will do you a whole lot of good. I still made no answer so he found he could not get up a racket and he went of downtown. Came home about half past ten it was rainy, cold and damp, so he sat up stairs in his private bed room as he says by me from that time

10 until after supper looking over papers and reading except the time he was at his meals. Nothing said until after supper when he put on his overcoat and took his gloves out of his pocket and they was mouldy. I have no place to hang things, only one small clothes closet and that is filled mostly with his clothes, and the over coat was left down stairs where it is very damp, but when he gets a decent house where there is room for his

20 clothes they need not be kept where it is so damp. Then he began about my leaving his coat down stairs, and his gloves all mouldy. I told him I could not help it if they was mouldy. When he provided a decent place to live, perhaps they could be kept in better condition. He said I put them down there on purpose to aggravate him. You don't put any of your own clothes down there. I have some of my own there and told him so, and I have had two pairs of kid gloves entirely

30 ruined before I knew it by keeping them in that room in my trunk. Also he cannot see that it is my best ingrain carpet that is down stairs in one of those rooms, and going to ruin from the dampness, and the hard wear that is on it. And my Organ in the same room, he says nothing about that I am afraid it will be ruined. His old organ that aint worth houserom can be up in the parlor. I finished Carrie Kitchens sewing about nine o'clock. Card from Em Burtt asking both of us

40 to come and visit she and cousin Hannah Hines.

Exhibit D-1

As she had no way to get Hannah here and she was not able to go from home, but he said nothing about going.

Sun. Sept. 1st.

Cloudy and rainy. Showers all day. Cold, damp, and disagreeable. Brad tried to start fire in his old worn out broken stove. Could not make it work, had the house full of smoke, so you could not see. I did not go to Sunday school or Church. Called on Mrs. Newbaker in the afternoon. Saw Brad going up the street while I was there looking with both eyes to see if I was in to Mrs. Lantz. Not a word said only as I called him to his meals all day.

10

20

Mon. Sept. 2d.

Dull and cloudy in forenoon but not much rain. I washed. Brad wrote a letter and down town. I told him the eggs was all gone. No answer. Afternoon began Mrs. Yettters dress. Not a word said only as I call him to his meals.

Tues. Sept. 3d. 30

Still cloudy and damp but not much rain. I in to Mrs. Lantz while I cleaned the beans and shelled the peas for dinner. When I came back he had been home and brought some meat and was just locking the door. Neither of us said a word but he looked like a thunder gust all day. I bought a water melon paid 25.

40

Exhibit D-1

Wed. Sept. 4.

10 Cleared away in the morning and the sun shone out very warm. I put the clothes on the line and they soon dried. The Pres. and Methodists joined and held their Picnic at Cedar Lake. I did not go worked on Mrs. Yettters dress. She paid me for making her dress \$1.75.

Thursday Sept. 5th.

20 Unsettled weather. Very warm. I ironed in morning. Brad shaved gave his clothes and hat a good brushing and went down town early. Came back about eight, shined his shoes and started of without saying a word. Dinner time came but he nix. Supper time the same, about five there came up a shower and it rained until after eight. He home on Dinkey I guess as he came to the house right after the Dinkey came in. Don't know if he was to the Fair or to Belvidere or where, he did not say nor I did not ask. Not a word passed between us.

Friday 6th.

30 Clear all day. I finished and pressed Mrs. Yettters dress and will take it home after supper. Done my Saturdays work and am getting ready to go to Myrtie tomorrow. Down town in afternoon. Also called at Allie Carters. Bought pr. over shoes 70. Brad sat on Read Pullis' porch talking and laughing as though he was one of the best natured men the Lord ever let lived. Yes he is a Street Angel and a home D—l. Now if I go away tomorrow my book will get a rest for some
40 time.

and
joined
and
me

in
and
came
of
but
came
He
house
if
he
did
passed

Yet
happy
ready
after
or
sch
the
he
do

Final Decree

(Filed 191)

IN CHANCERY OF NEW JERSEY

10	Between SARAH IRENE MARTIN, Petitioner, and PHILETUS BRADLEY MARTIN, Defendant.
----	--

On petition for divorce a *Mensa et Thoro*.

20 This case coming on to be heard before the Chancellor, and in the presence of Egbert Rosecrans; of counsel with the petitioner, and of William H. Morrow, of counsel with the defendant, whereupon duly considering the petition of petitioner and the answer of the defendant, and the evidence offered to sustain the allegations thereof and the evidence on the part of the defendant and the arguments of counsel, it appearing that the petitioner is not entitled to any relief in the premises and that her said petition should be dismissed, it is thereupon on this 30 day of September, in the year nineteen hundred and fifteen, by the Chancellor of the State of New Jersey, ordered, adjudged and decreed that the said petitioner is not entitled to relief as sought in and by her said petition and that her said petition be and the same is hereby dismissed.

40 And it is further ordered that this decree of dismissal be without prejudice, so that the facts

Notice of Appeal

urged in said petition may be used by the petitioner, if she shall hereafter bring another proceeding in this Court for relief against the defendant.

E. R. WALKER,

Ch. 10

Respectfully advised,
Nelson W. Gaskill,
Adv. Master.

Notice of Appeal

(Filed Jan. 14, 1916)

IN CHANCERY OF NEW JERSEY

Between

SARAH IRENE MARTIN,

Petitioner,

and

P. BRADLEY MARTIN,

Defendant.

On petition for
divorce.

20

Sarah Irene Martin, the petitioner, hereby appeals from the final decree made in the above stated cause and filed on the 1st day of Oct., 1915, and from the whole and every part of the same, to the Court of Errors and Appeals in the last resort in all causes.

Dated, Dec. 21, 1915.

EGBERT ROSECRANS,
Sol. of Petitioner.

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

Served Feby. 26, 1916.

JNO. I. WELLER,
Of Counsel with Petnr. 40

Petition of Appeal*(Filed Jan. 22, 1916)*NEW JERSEY COURT OF ERRORS AND
APPEALS

10

Between SARAH IRENE MARTIN, Appellant, and PHILETUS B. MARTIN, Respondent.	}	On appeal from Chancery.
---	---	-----------------------------

To the Honorable the Court of Errors and Ap-
 20 peals in the last resort in all causes:

The humble petition of Sarah I. Martin, appel-
 lant, respectfully shows that your petitioner finds
 herself aggrieved by a final decree made in the
 Court of Chancery by his Honor Edwin Robert
 Walker, Chancellor of New Jersey, bearing date
 the 1st day of October, 1915, wherein petitioner
 was petitioner and the said Philetus B. Martin was
 defendant, in this respect to wit that said de-
 cree adjudges that your petitioner has not sus-
 30 tained the allegations of her petition, and is not
 entitled to the relief therein judged; and doth
 decree that your petitioner's said petition be dis-
 missed.

And your petitioner humbly appeals from said
 decree and from every part thereof on the ground
 that the same is erroneous and that the Chancellor
 should have found and adjudged the several al-
 legations of your petitioner's petition to have
 40 been proven, and the respondent to have been

Answer to Petition of Appel

guilty of extreme cruelty toward your petitioner, and should have ordered, adjudged and decreed that your petitioner be delivered from the bed and board of respondent for the cause aforesaid, and that petitioner should have the other relief prayed in and by her said petition.

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

10

EGBERT ROSECRANS,
Sol. of Appellant.

JOHN I. BLAIR WELLER,
Of Counsel. 20

Answer to Petition of AppealNEW JERSEY COURT OF ERRORS AND
APPEALS

Between

SARAH IRENE MARTIN,

Appellant,

and

PHILETUS B. MARTIN,

Respondent.

On appeal
from decree in
Chancery

30

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

40

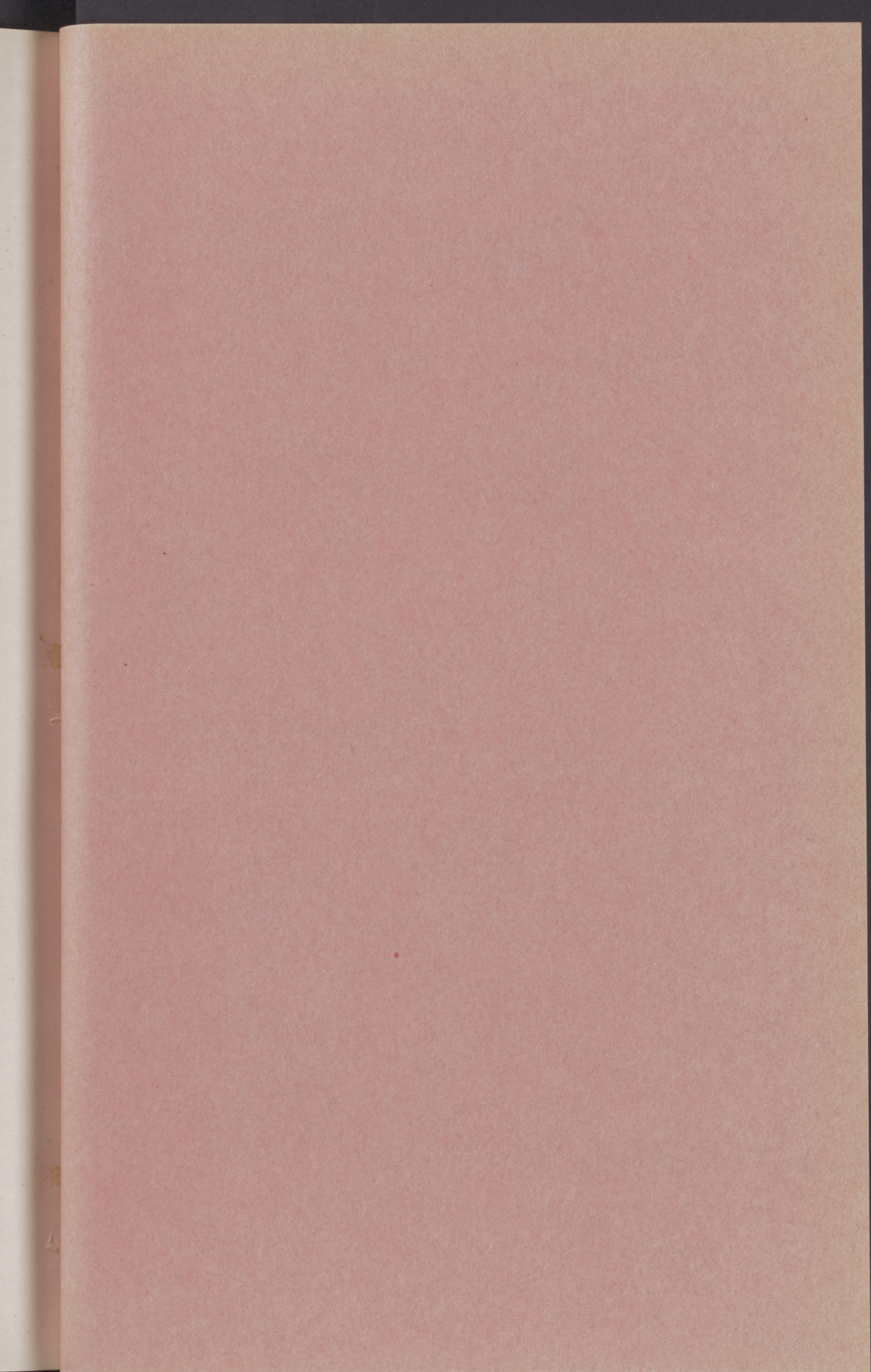
Answer to Petition of Appel .

10 This respondent, not acknowledging all or any of the matters which in the said petition are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on the day of August 1915, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer to the same when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

20

WILLIAM H. MORROW,
Solicitor for and of counsel with respondent.



THE HISTORY OF THE UNITED STATES

The history of the United States is a story of the growth of a nation from a small colony to a great power. It is a story of the struggles of the people to establish a government of their own, and of the triumphs of the American spirit. The story begins with the first settlers, who came to the New World in search of a better life. They found a land of opportunity, but also of hardship. They fought for their freedom, and they won. They built a nation that has stood the test of time, and that has inspired the people of the world.

And the story goes on. It is a story of the growth of a nation, of the triumphs of the American spirit, and of the struggles of the people to establish a government of their own. It is a story that has inspired the people of the world, and that has shown the way to a better life.

WILLIAM H. HARRIS

Author of "The History of the United States"

BOUND