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# In Chancery of New Jersey.

## PETITION.

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

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The petition of Georgina W. Thomas, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, William J. Thomas, on the 29th day of November, 1904, by Arthur N. Thompson, Pastor of the Westminster Presbyterian Church, at Jersey City, in the State of New Jersey.

2. Petitioner and defendant cohabited at Jersey City, with some interruptions as hereinafter stated, from the date of their marriage until August 26, 1915, 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, continued at intervals, until they culminated in the instances now particularly described.

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At the time of their marriage, petitioner and her husband, together with his three children of a former marriage, two boys and a girl, went to live at 95 Broadway, Jersey City, in an apartment consisting of four rooms and bath and continued to live there for a period of about six months. During this time petitioner frequently complained to her husband that her step-children were very rude,

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## PETITION

disobedient and discourteous to her, and in particular that they had very filthy habits, whereupon her husband always became very abusive and threatened her with bodily harm, also using such vile epithets as sow, bitch, etc., and directed her not to interfere in any way with his children, at  
10 the same time allowing them to continue in above-mentioned conduct to the petitioner's discomfiture and to the detriment of her health.

About August 28, 1905, petitioner and her husband, together with the two boys of his former marriage, moved to 428a Fairmount Avenue, Jersey City. Petitioner had a large supply of clothing and wearing apparel which she had bought prior to her marriage with the defendant,  
20 she now needed new clothing and asked her husband for money with which to buy some, he became very angry and said he would not give her any money and she should go out and earn it.

About the middle of October, 1905, petitioner was about to give birth to a child and she again asked her husband for money, whereupon he became abusive, threatening her with violence and refused to have anything more to do with her. Petitioner's mother and sister, both being trained  
30 nurses, stayed with petitioner and attended her during her confinement supplying food and medicine.

About January, 1906, petitioner again complained to her husband that his two boys were rude, discourteous and disobedient and in particular that they were very filthy in their habits. Any can, bottle, vase or other receptacle they would urinate in it and they would throw pieces of bread  
40 and other food on the floor in their room. The

## PETITION

two boys were actually full of vermin. Your petitioner's little child, about three months old, was in danger of his health, as was the petitioner. Petitioner's husband fell into a violent rage and grasping petitioner by the hand he tried to throw her to the floor, he also tried to choke her, and your petitioner became ill and continued so for a long time thereafter. She told her husband that she was not physically able to clean his boys' room, or to rinse the bottles containing urine, her husband thereupon said "This is my home, and my boys can do as they please. If you don't like it, get out."

On or about August 10, 1908, petitioner became very ill and complained to her husband, he refused to get a doctor and petitioner was forced to go to relatives in South Carolina for proper medical treatment and while there underwent an operation for fistula. She stayed in South Carolina until November 18, 1909, when she again returned to live with her husband at 2216 Hudson Boulevard, Jersey City. A few days after her return petitioner said to her husband that he would have to make some arrangement to provide her with money sufficient for household expenses, clothing etc., but he refused and gave petitioner only about seven or eight dollars per week with which petitioner had to purchase food for her husband, his two boys, her own child and herself.

On or about May 15, 1911, petitioner's step son, Leonard, then between eighteen and nineteen years old, was arrested for stealing milk bottles and when petitioner's husband heard of this he called petitioner bitch, sow, and other vile names and accused petitioner of having his son arrested, gathering up his clothing he left the room, which

## PETITION

up to this time they had occupied together and declared he would never again cohabit with her. From this day to the day the petitioner was forced to leave her husband he did not cohabit with her.

10 On October 7, 1912, petitioner's younger child then about one year old was creeping around on the floor when her husband entered the room. Petitioner again requested money for clothing for herself, whereupon her husband, without answering her, approached petitioner and with his fist struck her in the face, the blow was so severe that one of petitioner's teeth was split, he saw the child on the floor and spit at it. Calling petitioner bitch, sow and other equally vile and disgusting names he left the room. Petitioner after great  
20 effort managed to get up and to get to the nearest dentist, who attended to her tooth and told her that it must have been a very hard blow that caused such a healthy tooth to split. She thereafter went to her mother and complained of the treatment she was subjected to.

Petitioner was induced to return to her husband, and she did return to him but his conduct towards her did not change.

30 On or about February 9, 1915, the butcher came to the door, petitioner was in the hall of her home talking to him and she asked her husband for some money to pay the butcher. He refused to give her any and said "If you dare ask me again, I will throw you over the banister."

About March 9, 1915, petitioner asked her husband for money to buy a pair of shoes, whereupon he said "I give you fifteen dollars for two children, I have nothing to do with you at all. If  
40 you want anything you have to go and earn it."

## PETITION

The fifteen dollars referred to by her husband was the sum he paid every two weeks.

On the 24th day of April, 1915, petitioner told her husband that fifteen dollars every two weeks was insufficient to keep up their home, he said "It is too G—D—— bad about you." On several occasions during the following month he would approach petitioner with a large knife and say "Get out of here. Your face looks like horse shit you G—— D—— son of a bitch." Without any provocation he would take a tray, book or anything he could lay hands on and throw it at petitioner. When requested to stop he swore and again used above mentioned epithets repeatedly, with others of like character. 10

On May 26, 1915, her husband fell into a violent rage with petitioner because she asked for coal to heat water with which to wash clothes and baby, he said "No, go buy it. I give you no coal for the children, you G—— D—— son of a bitch. I won't give you any." Several days after he called her bitch, sow and other like names. This abusive treatment continued for a long while thereafter wherever and whenever her husband saw petitioner he would repeat the epithets above mentioned, with others of like character, often in the presence of petitioner's young children. 20 30

On May 27, 1915, her husband came into petitioner's bed room, he said nothing and walked out into the kitchen, petitioner thereupon also went out into the kitchen, but returned to her bed room. Her husband, returning from the kitchen, went into petitioner's bed room again and said to petitioner. "Did you take anything out of the ice-box? G—— D—— you, I will break your face if you 40

## PEOITION

touch that again. I give you one dollar a day and that is enough for the three of you." He there-upon struck petitioner several times. Petitioner said, "Well you've hit me for the last time." Her husband said "I have, eh? Well I'll show you" striking your petitioner more violently than before, saying "You G—— D—— son of a bitch, you can go to your G—— D—— lawyer and go to court and see who will win." The next day her husband said he would make the house too hot for petitioner, he would give her hell, and used other harsh, cruel and menacing language. Notwithstanding petitioner stayed though he made the task of trying to keep up housekeeping impossible. During the long course of abuse to which your 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 August 26, 1915, when it appearing that further cohabitation with him must be attended with grave danger to her life, and being in great fear, anguish and discomfort, and furthermore having no food and only scant clothing, she was compelled to leave defendant's house on the last-mentioned day and went to live with her mother at 140 Cottage street, Jersey City. 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 was a bona fide resident of this State, having her permanent home at Jersey City, in the County of Hudson, when this cause of action arose as aforesaid and has ever since con-

## PETITION

tinued to be such resident down to the time of the commencement of this suit, residing successively at 95 Broadway, 428a Fairmount avenue, 530 Clendeny avenue, 2216 Hudson Boulevard, 73 Tonnele avenue, 2228 Hudson Boulevard and 145 Van Reipen avenue, at which place she has resided since August, 1913, up to August 26, 1915, when she left to live with her mother at 140 Cottage street. 10

4. Two children were born of the marriage, to wit: Marion John born October 18, 1905, and Videau, born October 9, 1911; that by reason of the defendant's habitual violent and ungovernable temper towards all the members of his household he is unfit to have the charge and custody of said infant children. 20

5. Petitioner's maiden name was Georgina Warren Levack, and she has no means of support except from her own exertions, that her physical condition at the present time is such that she could not do manual labor; that the defendant is in receipt of a monthly salary of one hundred and forty dollars (140.00).

6. 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 the said children of the marriage; and that she may be awarded the custody of the said children; and that she may have such further relief as may be just. 30

And your petitioner will ever pray, etc.

BENEDICT A. P. LOEWY,

Solicitor of Petitioner. 40

## AFFIDAVIT OF GEORGINA W. THOMAS

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.

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

Sworn to and subscribed before me this 31st day of August, A. D., 1915.

WILLIAM F. HUNEKE,

Attorney-at-law,

20 State of New Jersey.

A TRUE COPY,

ROBERT H. McADAMS,

Clerk.

30

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## ANSWER

petitioner was about to give birth to a child that he became abusive and threatened her with violence or refused to have anything to do with her. Defendant denies that petitioner's mother and sister supplied petitioner with food and medicine.

10 Defendant admits that petitioner complained to him that his two boys were rude and disobedient but denies that petitioner's child or petitioner were in danger of their health. Defendant denies that he fell into a violent rage or that he tried to throw petitioner to the floor or that he tried to choke her.

20 Defendant admits that petitioner went to South Carolina and that she left defendant and went of her own accord: that at the same time mentioned defendant was a brakeman on the railroad on a run to Washington, D. C., and that when he got back from one of his trips to Washington he found that petitioner had gone to South Carolina; that while petitioner was in South Carolina she underwent an operation and that defendant sent petitioner money for said operation and also for her support.

30 Defendant denies that he did not give money sufficient for household expenses, clothing, etc., but avers that he contributed for the support of the household the sum of about One hundred dollars a month since 1908 and up to four years ago when petitioner and defendant ceased to cohabit, although living together in the same apartment.

Defendant denies that he called petitioner vile names or that he struck petitioner in the face and knocked out a tooth.

40 Defendant denies that he refused to give peti-

## ANSWER

tioner money for the butcher and denies that he threatened to throw petitioner over the banister.

Defendant admits that recently he gave petitioner only sufficient money to support the two children because petitioner refused to prepare any meals for defendant and refused to make up his bed and keep house properly for him, but that defendant also pays the rent. 10

Defendant denies that he used the language set forth in the petition, or that he approached the petitioner with a knife, or that he threw any articles at the petitioner.

Defendant denies that on May 26, 1915, he fell into a violent rage and that he used the language set forth in the petition, or that he used abusive treatment. 20

Defendant denies that on May 27th, 1915, he struck petitioner or that he used the vile language set forth in the petition and denies that petitioner has become nervous and ill through his treatment of her and denies that petitioner was compelled to leave defendant's house.

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition, and that this defendant has ever since continued to be a bona fide resident of this State down to the time of the commencement of this action. 30

4. This defendant admits it to be true that children were born of the marriage aforesaid, whose names and ages are as stated in the petition. 40

## ANSWER

5. Defendant admits that petitioner's maiden name was Georgina Warren Levack and that his salary averages one hundred and forty dollars a month.

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

WILLIAM C. CUDLIPP,

Solicitor for Defendant.

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GEORGINA W. THOMAS—Direct  
IN CHANCERY OF NEW JERSEY

Between

GEORGINA W. THOMAS,  
*Petitioner,*

and

WILLIAM J. THOMAS,  
*Defendant.*

*On Petition for  
Divorce.*

10

**TESTIMONY.**

Transcript of testimony taken at the hearing of the above entitled cause, before CHARLES J. ROE, Esquire, Advisory Master, at the Chancery Chambers, Jersey City, New Jersey, the twenty-third day of November, 1915, at 10 A. M.

20

**APPEARANCES:**

BENEDICT A. P. LOEWY, Solicitor for  
Petitioner.

WILLIAM C. CUDLIPP, Solicitor for De-  
fendant.

GEORGINA W. THOMAS, the petitioner, being duly sworn according to law, testified as follows:

30

*Direct examination by Mr. Loewy .*

Q. Mrs. Thomas, you are the petitioner in this cause? A. Yes, sir.

Q. When were you married to the defendant, William J. Thomas? A. On the 29th day of November, 1904.

Q. By whom? A. By the Reverend Arthur Newton Thompson, Pastor of the Westminster Presbyterian Church.

40

GEORGINA W. THOMAS—Direct

Q. Where is that? A. Corner of Summit and Magnolia avenues, Jersey City.

Q. At the time of your marriage where did you go to live with your husband? A. At 95 Broadway, Jersey City.

10 Q. What sort of an apartment was this? A. It was an apartment consisting of four rooms and bath.

Q. Did you and your husband go to live there alone? A. No, sir, I went to live there with Mr. Thomas and his three children—two boys and a girl.

Q. Stepchildren of yours? A. Yes, sir, stepchildren.

20 Q. Mr. Thomas and yourself went there with the three children to live in this four room apartment after you was married,—is that it? A. Yes, sir.

Q. What was the general behavior of the defendant towards you at that time? A. He was abusive.

30 Q. About what? A. About the children: I complained about his children, that they were disobedient and that they were rude and discourteous towards me; they had very filthy habits, and thereupon Mr. Thomas became very abusive and he became very angry towards me and called me vile names and directed me not to interfere with his children.

Q. Because you complained that the children were rude to you? A. Yes, sir.

Q. How long did you live at 95 Broadway, Jersey City? A. About six months.

Q. Where did you go to live after that? A. We went to live at 429a Fairmount avenue, Jersey City, on August 28th, 1905—

GEORGINA W. THOMAS—Direct

Q. Well, who was living with you at that time besides the defendant? A. My two step boys, Leonard and Roy and his daughter.

Q. What was her name? A. Elizabeth.

Q. You mentioned a date—the 28th day of August, 1905: what happened that day? A. Why all the clothing I had I had previous to my marriage to Mr. Thomas and I needed new clothes and things to prepare for my confinement, and I asked Mr. Thomas for money with which to buy some. 10

Q. What did he say? A. He told me if I needed money I could go out and earn it.

Q. Did he refuse to give you any money for clothes? A. Yes, sir.

Q. You say that you were preparing for your confinement: when was that to take place? A. It was when we lived at 429a Fairmount avenue, Jersey City. 20

Q. About what date? A. August 28th, 1905.

Q. I am asking about the confinement? A. Oh, that was about the middle of October.

Q. The middle of October, 1905? A. Yes, sir.

Q. Well, what if anything happened then? A. I asked Mr. Thomas for money then.

Q. Did he give it to you? A. No, sir; he did not.

Q. He refused to give you any money? A. Yes, sir. 30

Q. Why did you ask him for money—for what—what did you want the money for? A. For food and medicine and clothes.

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

Q. And he refused to give you the money? A. Yes, sir.

Q. Your two step-sons were still living with you

GEORGINA W. THOMAS—Direct

at about this time and up to January, 1906? A. Yes, sir.

Q. What was their conduct: were they still the same or had they improved any? A. No, sir; they didn't improve, they were just the same: there was no improvement at all.

10 Q. Did you ever at any time, Mrs. Thomas, hear Mr. Thomas, while you were present, speak to his two sons admonishing them for being disrespectful to you?

Mr. CUDLIPP—Objected to as leading.

Q. I asked you if at any time while you were present you ever heard Mr. Thomas admonishing his two step sons for being disrespectful to you?

20 A. No, sir.

Q. How long did this condition of affairs last, Mrs. Thomas? A. Until January, 1906.

Q. What happened then? A. My step sons were so filthy about their persons and their habits, using any receptacle handy—milk bottles and vases, cans, bottles, pitchers and in fact anything they could urinate in——

Q. How old were these sons in January, 1906?

30 A. I think Leonard was about thirteen and Leroy was about nine years old.

Q. Did their filthy habits consist of anything else except what you have just told us? A. They would come in to me full of vermin, both head and body, after staying away from the house days at a time, and when I appealed to Mr. Thomas to assist me in remedying these matters——

Q. What did he say? A. Why he became violently angry and catching hold of me he tried to throw me on the floor and he also tried to choke

40

GEORGINA W. THOMAS—Direct

me. I became weak and nervous and remained so for a long time. He said to me "these are my boys and they can do as they please and if you don't like it get the hell out of here."

Q. This was in January, 1906? A. Yes, sir.

Q. Now for how long did you stay at 429a Fairmount avenue? A. Well about a year. 10

Q. Where did you move to then? A. To 530 Clendenny avenue.

Q. Who lived there? A. Mr. Thomas and myself and my baby and the two boys, Leonard and Roy.

Q. How long did you stay at 530 Clendenny avenue, Jersey City? A. We stayed there until some time in 1908.

Q. What happened then? A. I was very sick then, so much so that I needed the services of a doctor. 20

Q. About what time in 1908—what month? A. August 10th, 1908, I think it was.

Q. You became sick and what else? A. I needed the services of a doctor and I asked Mr. Thomas to get me one and he refused, positively refused. Then I was forced to go to relatives in South Carolina for proper care and surgical attention.

Q. What kind of attention did you have there? A. I underwent an operation for fistula. 30

Q. In South Carolina? A. Yes, sir.

Q. How long did you stay in South Carolina? A. I stayed until November 18th, 1909.

Q. What did you do then? A. I returned to Mr. Thomas at 2216 Hudson Boulevard, Jersey City.

Q. Well upon your return to Mr. Thomas what, if anything, happened,—that is what was his actions towards you then? A. There was no change.

Q. Well, did you seek any change? A. Well, I 40

GEORGINA W. THOMAS—Direct

asked Mr. Thomas to make some arrangement to provide me with money sufficient for household expenses, clothing and so forth.

Q. What did he say? A. He refused.

Q. He again refused? A. Yes, sir.

10 Q. Did he give you anything at the time? A. Yes, sir, between seven and eight dollars a week.

Q. What was that for, for food and clothing for yourself and your husband and who else? A. For my two step sons and my own child and himself and myself.

Q. Between seven and eight dollars a week was what he gave you,—is that right? A. Yes, sir.

Q. You say you came to 2216 Boulevard at this time,—is that right? A. Yes, sir.

20 Q. Did anything else happen at 2216 Boulevard, Mrs. Thomas? A. No, sir.

Q. Where did you move to from 2216 Hudson Boulevard? A. We moved to 73 Tonnele avenue, Jersey City.

Q. Can you fix the time about when you lived at 73 Tonnele avenue—about what year was it? A. When we moved there?

Q. Yes. A. I think it was in April or May.

Q. In what year? A. 1910 I think.

30 Q. Now while you were living in Tonnele avenue what was his treatment towards you? A. Well he was abusive, and his son was arrested then.

Q. Which son? A. His son Leonard.

Q. Which son is that, the oldest or the youngest? A. The eldest son,—he was about eighteen or nineteen.

Q. And he was arrested? A. Yes, sir, at eleven o'clock at night.

GEORGINA W. THOMAS—Direct

Q. What was the date of that, Mrs. Thomas?

A. May 15th, 1911.

Q. Well why do you say that he was arrested—what has that got to do with your story? A. He was arrested for vagrancy and theft, a charge brought on by the neighbors—charges made by the neighbors

10

Q. What did Mr. Thomas do about this? A. Well he became very abusive and he became violent because he accused me of having the boy arrested.

Q. He accused you of having him arrested? A. Yes, sir; he accused me of having him arrested and he caught me by the arm and threatened me with bodily harm and he called me a bitch and a sow and other vile names, and gathering up his clothes and all that belonged to him in the room he left it, saying he would never again cohabit with me; and from that day until August 26th, 1915, he did not cohabit with me.

20

Q. August 26th, 1915, why do you mention up to that date? A. Because he did not have anything more to do with me. I left him then: I was compelled to leave him.

Q. You left him then? A. Yes, sir.

Q. You say he became violent towards you: did he ever strike you? A. Yes, sir; he struck me.

30

Q. Why did he strike you? A. He threatened me then in 1911 when his son was arrested,—he threatened me with bodily harm, and gathering up his clothes and all his belongings in the room he left it.

Q. I asked you if Mr. Thomas ever actually struck you around this time or any time? A. He struck me, but not then.

40

GEORGINA W. THOMAS—Direct

Q. Well at any time did he ever strike you? A. He struck me in May, 1915.

Q. Well did he ever strike you before that? A. He struck me on the 7th of October, 1912.

10 Q. What provoked that? A. I was preparing breakfast in the kitchen and Mr. Thomas' son was there, Leroy, and my own boy Marion and the baby was there creeping on the floor,—she was about one year old then. Mr. Thomas entered the kitchen and he was in a very ugly mood and so I left the kitchen to himself and his son Leroy and I went in the dining room. When he was in the kitchen he would spit on the floor and tell the boys to spit on the floor also. I came in the dining room and then my son Marion followed me in the dining room and Marion said "mama, father spit  
20 on the floor and spit at the baby", whereupon Mr. Thomas struck the child in the face and I remonstrated and endeavored to try and protect the child because he had been telling the truth, and then he raised his fist and struck me in the face—he struck me a violent blow in the face.

Q. Who, Mr. Thomas? A. Yes, sir; and the blow so dazed me that I was compelled to lay down.

30 Q. You say this was early in the morning? A. Yes, sir; along early in the morning.

Q. How long did you lay down? A. I laid down just a little while. My face immediately began to swell and my mouth was bleeding, and my face was in such a condition that I could not go out in daylight and I waited all day long suffering, and I needed the services of a doctor or a dentist and I didn't go out until—I waited until night between six and seven o'clock and then I went down to the dentist. He asked me what was the  
40

GEORGINA W. THOMAS—Direct

matter and I told him that Mr. Thomas had struck me, and he said "did he strike you there", and I said yes, he did. He said "well, come in the office and I will look at your teeth and when he looked he said it must have been a very hard blow to split your tooth like that and he extracted it, and after that my face was very sore for a long time, as well as my eyes were both black, and I was very sick from that for several days afterward. 10

Q. After you left the dentist what did you do?

A. I went then to my mother's and told her the kind of treatment I was receiving and she comforted me and took me in, and then she asked me to go back to Mr. Thomas and give him another chance and things might be better, but things did not change any.

Q. This was in 1912? A. Yes, sir. 20

Q. And did this condition of affairs last, and if so how long? A. Well that was in 1912.

Q. Did you continue to ask Mr. Thomas for money and did he give it to you then? A. No, sir; he did not.

Q. He still refused to supply you with money? A. Yes, sir.

Q. Well did you make a request for it? A. In April? 30

Q. Well at any time whenever you made the request? A. Yes, sir; I asked Mr. Thomas.

Q. Since this date I mean? A. On the 24th day of April I think it was.

Q. What year? A. 1915.

*By the Master.*

Q. You lived with your husband right along from that time until the 24th day of April, 1915? A. Yes, sir. 40

GEORGINA W. THOMAS—Direct

*By Mr. Loewy.* ..

Q. Was that the first occasion you asked your husband for money? A. No, sir; I asked him for money on March 9th, 1915.

Q. What year? A. 1915.

10 Q. And did he give it to you? A. No, sir, he didn't. I asked him for the money to pay the butcher, and he said if I dared to ask him again he would throw me over the banister if I did. He said if you ask me again I will throw you over the banister.

Q. That was March 9th, 1915? A. Yes, sir.

Q. What was the next occasion when you asked your husband for money? A. I asked Mr. Thomas on the 9th of March—I asked him for a pair of shoes as my feet was on the ground and I was sick and needed a pair—the money to get a pair.

20

Q. What did he say? A. He said "I have nothing to do with you,—I give you fifteen dollars for the two children, and if you want anything you have to go out and earn it."

Q. And he refused to give you personally any money at all,—is that it? A. Yes, sir.

Q. What was the next occasion that you asked Mr. Thomas for money? A. On April 24th, 1915.

30 Q. And what happened then? A. I told Mr. Thomas that the fifteen dollars he was giving me every two weeks was not enough for the needs of the home.

Q. What did he say? A. He said it was "too God damn bad about you."

Q. Did he offer to give you any money? A. No, sir; he did not.

Q. What was the next occasion when you again this year requested money of Mr. Thomas? A. Then I asked him in May.

40

## GEORGINA W. THOMAS—Direct

Q. Can you fix the date in May? A. The 26th of May.

Q. You then again asked your husband for money? A. Yes, sir; I asked him for coal: I asked him for coal with which to do the washing and to bathe the children, especially the baby.

Q. What did he say? A. He said "go buy it; I give you no coal" he said. 10

Q. What was the next occasion. This was May 26th, 1915: did you ask him for the money for the coal? A. Yes, sir.

Q. Did anything else happen on that day? A. I asked him for coal and he said he gave me one dollar a day and that was enough for the three of us.

Q. What was the next occasion that you asked your husband for money for clothing or anything? 20  
A. On the 27th of May, 1915, Mr. Thomas came in my bed room and I was in the bed room and he never said a word and I thought it was strange and so I went out in the kitchen and Mr. Thomas went out in the hall and back to the kitchen, and I thought perhaps there was something wrong and I went back in the kitchen myself to see if there was anything wrong and seeing nothing wrong I returned to the bed room. Then Mr. Thomas came in the bed room and he said "Did you take any- 30  
thing out of the ice box" and he said "God damn you I will break your face if you do that again." I said "Yes, I took a little sugar that I saw there and a little coffee."

Q. What did he do? A. He thereupon struck me several times. I said "Well, you have hit me for the last time." On this occasion he used vile names and he would threaten me with bodily harm. He

GEORGINA W. THOMAS—Direct

called me a bitch and other vile names, and he said "I have, ha! I will show you."

10 Q. In answer to what did he say that? A. When I said that he had struck me for the last time. He said "I will show you: you can go to your God damn lawyer and go to court and see who will win."

Q. This was on the 27th of May, 1915? A. Yes, sir.

Q. Upon what occasions, if any, did you ask Mr. Thomas for money from the 27th day of May, 1915, to the 26th day of August, 1915, when you say you left him? A. I asked him for money on February 8th, 1915, and I asked him for money in May, 1915.

20 Q. I asked you after the 27th day of May, 1915, and up to the 26th of August, 1915, did you ask him for money, and if you did what was his treatment towards you? A. He refused when I asked him.

Q. Did you ask him for money? A. Yes, sir.

Q. More than once? A. Yes, more than once.

Q. Twice? A. Yes, sir.

Q. You asked him twice? A. Yes, sir.

30 Q. You say that you left him on the 26th day of August, 1915: what happened that caused you to leave him on that day? A. I was afraid of him and I was afraid of his son. I was afraid of them because they had threatened me: he had threatened me with a large knife and I was afraid he would finally use this knife on me; and he had threatened to blow my "God damn brains out" with a pistol, and he had a pistol. I was afraid he would choke me, as he threatened to do; and I was afraid that he would scratch my face as he had already done. I was afraid of his son. I had

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## GEORGINA W. THOMAS—Cross

no food in the house and I had no money and I had no clothes; they were very scant.

Q. Where did you go when you left on the 26th of August, 1915,—when you say that you finally left your husband? A. I went to 140 Cottage street, Jersey City, with my mother.

Q. And you still live there? A. Yes, sir. 10

*Cross examination by Mr. Cudlipp.*

Q. Mrs. Thomas, when you left your home in August last were either of the two sons living there? A. In August when I left home?

Q. Yes. A. Yes, sir.

Q. Which one? A. Leonard, the eldest one.

Q. The eldest son was living there when you left? A. When I left home?

Q. Yes. A. Neither one. 20

Q. Neither one was living there at the time you left home? A. No, Mr. Thomas's son Leroy was there when I left home.

Q. The eldest son had left there how many years before that? A. He left there in October, 1911.

Q. And Roy was living there when you left there? A. Yes, sir, he lived there when I left home.

Q. What was your treatment of these step sons while they were at home,—was it good or bad? A. I tried to be a mother to them and I tried to teach them to do right and lead them right and I tried to advise them right. 30

Q. Did you ever refuse either of them admission to the home? A. No, sir, I never did. I refused to remove the urinals they would make at home and I refused to clean up their room. I told Mr. Thomas that I was not physically able to because of the condition of the room,—the vermin and the food they would throw there. What 40

GEORGINA W. THOMAS—Cross

food they did not eat they would throw on the floor and about the room. He ordered me to clean up the place: he didn't like them to clean up.

Q. Did you attend to your husband's meals? A. Yes, sir; I did up until the time when he refused to give me any money in 1915.

10 Q. Did you look after the bedding at all? A. While he was sleeping with his son?

Q. In your house? A. Yes, sir.

Q. Did you pay any attention to their bed? A. Why it was in such condition that I could not handle it—the bedlinen,—my stomach revolted. I couldn't stand the sight that was in the room when he was occupying the room with his son.

20 Q. Now in your early married life how much money did your husband give you? A. None whatever.

Q. How were the bills paid for food? A. He directed me not to interfere with his children and he would send them out or go out himself. I had very little or nothing to say but to cook the meals.

Q. But who paid the butcher and the grocer and the baker? A. He went out or sent the children out for the food which I cooked in the house.

30 Q. You never during your married life paid for any food then, as I understand you? A. Not until 1909, when I returned from South Carolina, after I had been away on account of this operation. After I returned to 2216 Hudson Boulevard to live with Mr. Thomas,—that was the first that he consented that I could handle any of his money.

Q. Well then what did he give you—what money? A. Between seven and eight dollars a week.

Q. Is that all he gave you? A. Yes, sir.

40 Q. And what did you do with that money? A. I

GEORGINA W. THOMAS—Cross

provided clothes and food as best I could out of it.

Q. Well then you did pay for some food? A. After that time; but from the time of our marriage until 1909 I didn't receive any money.

Q. Well did he give you any money to pay for your clothes during that time? A. He refused me clothes.

10

Q. Prior to 1909? A. Yes, sir.

Q. How did you get your clothes? A. I would appeal to my mother and my mother would give me whatever I would ask her for.

Q. Has he never given you any money for clothes since you have been married to him? A. No, sir; I had to provide them out of just what he gave me.

Q. The elder step son, how long ago did he leave home? A. In 1911, October.

20

Q. And when did the younger step son leave home? A. He left home—I am not sure because I didn't put the date down.

Q. Well within a few weeks or a month? A. I think it was in July.

Q. Last? A. Yes, sir.

Q. You said you were afraid of this younger son? A. Yes, sir, I was very very much so.

Q. What was his age at that time—the younger son? A. About eighteen years of age—between seventeen and eighteen.

30

Q. As I understand it, Mr. Thomas did not put you out of the house but you left; that is right, is it not? A. May 26th, 1915?

Q. No, in August? A. I was afraid of him: I had no money and only scant clothes and he refused me shoes, and he said he had nothing to do with me. I had no money and I waited for him to come home and he didn't come home, and I had

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GEORGINA W. THOMAS—Cross

no clothing and I had no gas, and being afraid of him and in no condition to live like that I left and went to my mother's.

Q. Then I understand you to say that you only received something like seven or eight dollars a week from your husband during all your married life? A. Yes, sir.

Q. No more? A. No, sir.

Q. Did you cook food for him? A. Yes, sir; up until the first of 1915.

Q. And why did you stop cooking for him then? A. Because he only gave me for the two children and I could not supply him out of the children's money. I couldn't keep house and cook for him and his son out of the children's money, because I myself had to live on that, with what I got from my mother.

Q. Did you have any credit for groceries at any grocery or at any store in the neighborhood where you could have gone out and gotten food and charged it to Mr. Thomas? A. Then?

Q. Yes. A. No, sir.

Q. Then or at any time? A. Well I would try to do the best I could, if I spent the seven or eight dollars a week whatever groceries was then needed I would pay for out of the next week's money, and if it was not enough I would get it from my mother and make ends meet in that way.

Q. You said you didn't have any money to pay for the gas: didn't he give you money to pay for the gas? A. I had to pay for it out of that.

Q. Well did he give you money to pay for gas? A. I had no gas because Mr. Thomas had the gas shut off.

Q. He gave you money with which to pay for it? A. Out of the seven or eight dollars a week.

## GEORGINA W. THOMAS—Cross

Q. Didn't Mr. Thomas say to you that he didn't give you more money because you didn't take care of his house properly for him? A. I took care of the house.

Q. When you asked him for more money didn't he say he would give you more money if you took proper care of himself and his home and his step sons? A. No, sir. 10

Q. You went to South Carolina of your own choice, did you not, for this medical treatment? A. He refused to get a doctor and I was sick and needed the services of a doctor, and I needed to consult a doctor about my condition, and I asked Mr. Thomas for a doctor or to give me money to go and consult a physician and he refused, and so then I went home. I was forced to go home. 20

Q. Didn't you decline to sit at the table with your step sons? A. No, sir, I sat at the table with them. 20

Q. This younger boy Roy went to work, did he not? A. For a time in 1913 he did, and then was home for months at a time, and then he didn't go to work again until May, 1915.

Q. You have spoken about the boys' bad habits in the way of urinals; did they have access to the bath room? A. Yes, sir; but they were naturally filthy in their habits, and any receptacle that was handy, a bottle, vase or milk bottle or can or pitcher they would use, and even up until 1915 he was using anything that was in the room for a urinal,—anything so they would not have to go to the bath room. 30

Q. Outside of that how did the boys treat you—more particularly the younger boy—didn't he treat you all right? A. No, sir; he was very rude. 40

## CHRISTINA LEVBACK—Direct

CHRISTINA LEVBACK, a witness on behalf of the petitioner, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Loewy.*

10 Q. Mrs. Levback, you are the mother of the petitioner in this cause? A. Yes, sir.

Q. I believe you are acquainted with the defendant, William J. Thomas? A. Yes, sir.

Q. Did you ever visit the petitioner and the defendant? A. Yes, sir, I came there in 1905 when she lived on Fairmount avenue and I took care of her in her confinement. I came there to be with her in her confinement.

20 Q. How long did you stay at that time? A. I believe about six weeks.

Q. You say you took care of her during her confinement: what particular qualification did you have to do that? A. I was a nurse.

Q. You are a nurse? A. Yes, sir.

Q. You are a trained nurse? A. Yes, sir.

Q. Did anybody else stay there at that time during her confinement in 1905? A. Yes, sir.

Q. That is outside of her immediate family? A. Yes, sir, my daughter was there.

30 Q. Is she qualified in any particular way? A. Yes, she is a trained nurse.

Q. How long did you stay there? A. I stayed there six weeks.

Q. What time did you come? A. In the latter part of September.

Q. What year? A. 1905.

Q. And Marion was born when? A. October 19th, 1905.

40 Q. So that you were in the house before the

## CHRISTINA LEVBACK—Direct

birth of the child for a period of about a month?

A. Not quite a month; yes, about a month.

Q. About a little over a month? A. Yes, sir.

Q. Now, Mrs. Levback, during this period before the birth of Marion were you ever present when Mr. and Mrs. Thomas were there when Mrs. Thomas asked Mr. Thomas for money? A. Yes, 10  
sir.

Q. Just tell us about that? A. She asked him for money and she asked him to get a doctor and he refused.

Q. He refused in your presence? A. Yes, sir.

Q. Now this was before the birth of the child was it not? A. Yes, sir.

Q. That was one occasion? A. Yes, sir.

Q. Did you ever hear on more than one occasion Mrs. Thomas ask for money from Mr. Thomas? 20  
A. Yes, sir; I heard her ask on several occasions for money.

Q. You say that you stayed with Mrs. Thomas during her confinement and that Mr. Thomas refused to furnish money and refused to supply a doctor? A. Yes, sir.

Q. How was Mrs. Thomas furnished with food and so forth? A. I had to furnish it when I was there, the things that were needed—money for food. I bought linen and everything that was re- 30  
quired during the confinement and while she was sick.

Q. After the birth of the child did you hear Mrs. Thomas ask Mr. Thomas for money—that is during the period you stayed there in 1905? A. Yes, sir, I heard her ask for money and I heard him refuse her, calling her some ugly names.

Q. Did she ask for it more than once after the birth of the child while you were there? A. She 40  
asked more than once.

## CHRISTINA LEVBACK—Direct

Q. You say that you stayed there for six weeks: where did you go then? A. I went back home.

Q. You went back south? A. Yes, sir.

Q. What was the next occasion that you visited the petitioner and the defendant? A. In 1908, when she lived on the Boulevard.

10 Q. About what month was that? A. July.

Q. July, 1908? A. Yes, sir.

Q. On this occasion what if anything happened: what was the relationship between the petitioner and the defendant at that time? A. He was still abusive. She was suffering at that time and was weak: she was suffering with fistula: she was in very bad health at that time.

20 Q. Did you hear Mrs. Thomas ask Mr. Thomas for a doctor at that time and tell him that she was sick at that time? A. Yes, sir; she wanted money to go to consult a doctor and for carfare.

Q. What did he say? A. He refused to give her any money.

Q. Well, then what happened? A. Well then she left with me and went south to be treated by a physician.

30 Q. What was Mr. Thomas's conduct towards you while you was up there on those two occasions? A. He was very rude and insulting. He told his wife that she could get the hell out of there.

Q. That was when? A. That was in 1908.

Q. Just before she left for South Carolina? A. Yes, sir. I told him not to use that language and he said "You get the hell out of here too."

Q. This was in July, 1908? A. Yes, sir.

Q. Did you stay in South Carolina then? A. Yes, sir.

40 Q. When did you come to visit the petitioner

## CHRISTINA LEVBACK—Direct

and the defendant again? A. I came up in 1911 to be here with her in the second confinement.

Q. How long did you stay there then? A. I stayed from June to December: she was in bad health then and she needed care and attention at that time.

Q. What was the condition of the petitioner as to food and so forth: was she supplied with food and clothing and so forth at that time: what was her physical condition in that regard? A. Well she had no necessaries as she ought to have: she was in pitiable condition. 10

Q. Just what do you mean by that? A. Well she had no necessaries that she ought to have.

Q. She did not? A. No, sir.

Q. Did you do anything? A. I furnished her with money and other necessary things. 20

Q. This was in 1911, and you stayed there then some few months? A. Yes, sir.

Q. What was the next occasion that you visited Mrs. Thomas? A. In August, 1912, I think it was. I heard him cursing then.

Q. What did you hear him say? A. I heard him saying vile things to her.

Q. Well just what did you hear? A. Well he called her "a God damn son-of-a-bitch."

Q. Did you hear that more than once? A. I heard it several times. 30

Q. Was that the first time you heard such a thing from the defendant? A. No, sir, it was a common thing all along.

Q. What was the next occasion upon which you saw the petitioner after August, 1912? A. She came to me about eight o'clock in the evening and her face was swollen.

## CHRISTINA LEVBACK—Cross

Q. On this same day? A. On the 7th of October, 1912.

Q. She came to you and her face was swollen?  
A. Yes, sir.

10 Q. And what else? A. And it was discolored and her eyes were black and her mouth was bleeding.

Q. What did she say to you? A. I asked what was the matter—what had caused that, and she said that Mr. Thomas had struck her in the face.

Q. This was on the seventh of October, 1912: since that occasion have you ever visited the defendant? A. Yes, sir; I visited them occasionally—that is when she was by herself in the house and when Mr. Thomas was not there. I had occasion to go some times when her baby was sick.

20 Q. You did not after that time visit them when Mr. Thomas was present? A. No, sir.

Q. What did you find the condition of Mrs. Thomas's household in regard to food and so forth? A. She had neither food or coal. She came to me in that condition and of course I couldn't see her in want. I had no fortune but I tried to do the best I could for her.

*Cross examination by Mr. Cudlipp.*

30 Q. Did you take care of your daughter in her second confinement? A. Yes, sir; I looked after the house and I looked after her.

Q. Did you see a trained nurse there? A. Yes, sir. I came to her and took care of her and everything, but my health would not allow me to assume the responsibility.

Q. Was there a trained nurse there taking care of Mrs. Thomas in the second confinement? A. Yes, sir; after I came.

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## MARION J. THOMAS—Sworn

Q. How long was the trained nurse there—several weeks? A. I don't know whether it was two weeks or not—two weeks, I think.

Q. How often have you visited your daughter since the time of the second confinement? A. I visited her occasionally when the child was sick.

Q. Did you ever stay there over night? A. No, 10  
sir; not since that.

Q. And by occasionally, what do you mean? A. Once or twice a week.

Q. Once a week? A. Yes, sir.

Q. You lived near her after the second confinement? A. I was living by myself.

Q. Was your house near to where the petitioner and defendant lived? A. Yes, sir.

MARION J. THOMAS, called on behalf of the petitioner, was first examined by the Master as to whether he understood the nature of an oath: 20

*By the Master.*

Q. How old are you Marion? A. Ten years old.

Q. Do you know what you are here for? A. Yes, sir.

Q. What? A. To tell the truth.

Q. Who do you live with? A. My mother.

Q. Have you always lived with your mother? A. 30  
Yes, sir.

Q. Where is that? A. On Cottage street, Jersey City.

Q. Do you go to school? A. Yes, sir.

Q. Where? A. 23 School.

Q. Do you go to church? A. Yes, sir.

Q. Where? A. The Presbyterian Church.

Q. Do you go to Sunday School? A. Yes, sir.

Q. Do you know what an oath is? A. Yes, sir. 40

## MARION J. THOMAS—Sworn

Q. In Court I mean? A. Yes, sir.

Q. What is it? A. To tell the truth before God.

Q. Do you know what the result is if you don't tell the truth? A. Yes, sir.

Q. What? A. God won't love me.

Q. Do you know whether you will be punished?  
10 A. Yes, sir.

Q. How—if you tell a lie? A. He won't take me to heaven.

Q. Do you know whether you will be punished in this world, if you don't tell the truth? A. No, sir.

Q. You don't know that you are committing a crime if you tell a story and swear to it, do you?  
A. No, sir.

*By Mr. Loewy.*

20 Q. Do you know what the truth is? A. Yes, sir.

Q. And you know when you came here and when you swear that you will tell the truth and you don't tell the truth, what will happen to you? A. God won't love me and I won't go to heaven.

Q. Is that the only thing that will happen to you if you don't tell the truth here? A. No, sir.

Q. What else will happen to you? A. I will go to jail.

30 Q. How do you know you will go to jail—who told you that? A. Nobody.

*By the Master.*

Q. How do you know then that you will go to jail? A. I know it myself.

Q. What would you go to jail for? A. Because I told a lie.

Q. Does everybody go to jail who tells a lie?  
A. No, sir.

40 Q. Then there are some kinds of lies that you will not go to jail for? A. Yes, sir.

JOHN LUETZOW—Direct

Q. What kind are those? A. For stealing.

Q. You won't go to jail for stealing? A. Yes, you will.

Mr. CUDLIPP—I hardly think that it is proper to have this child sworn and take his testimony, and I object to it. 10

THE MASTER—I don't think the boy understands the nature of an oath and I don't think he should be sworn.

JOHN LUETZOW, a witness on behalf of the petitioner, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Loewy.* 20

Q. Mr. Luetzow, where do you live? A. 209 Grand street, Hoboken, New Jersey.

Q. What is your business? A. I am a clerk in the law office of Mr. Loewy.

Q. Do you remember on the 28th of June, 1915, my asking you to visit Mrs. Thomas's house? A. Yes, sir.

Q. For what purpose did I send you up there? A. To ascertain the condition of the home—the condition of Mrs. Thomas's residence. 30

Q. Did Mrs. Thomas or anybody up there know that you was coming there? A. No, sir; she did not.

Objected to.

Nobody knew that I was coming up at the time.

Mr. CUDLIPP—I object to that.

Q. Did I in your presence make any arrange- 40

JOHN LUETZOW—Direct

ment with Mrs. Thomas for you to come up specially and visit her apartment? A. No, sir.

10 Q. When you visited her apartment what was the condition of it in general? A. In general the rooms were in very neat order with one exception, that is the room of Mr. Thomas. In this room on a chair there were several newspapers that had not been picked up, and on the bed there was a bean pan, in which there was a half consumed candle. The bed was very filthy—candle grease and different pieces of food was on it. Underneath the bed was a milk bottle which was about three-quarters full of urine; and in the closet of this room there was a large paper bag hanging up in the closet which contained coffee and bread and butter.

20 Q. Did you go in the kitchen? A. I did.

Q. And in the dining room? A. Yes, I went in the dining room.

30 Q. Did you find any food in the house? A. The ice box was in the dining room and there was no ice. The compartment where the ice was supposed to be had some food—leaving from the table—about a quarter full. In a rear compartment there was a pail containing some rancid butter, and there was several empty bean pans and also some suet in a paper bag. The top of the ice box was a bread box that contained a few pieces of zwieback.

Q. Did you find any food in any other place? A. In the kitchen there was a small bag of potatoes and also a little coffee.

Q. Did you find any fuel of any kind in the kitchen? A. Why some coal in a bag and a little wood.

40 Q. What was the next occasion that you visited

JOHN LUETZOW—Direct

Mrs. Thomas's house? A. On Wednesday, August 25th.

Q. What time did you go up there on that day?

A. Why a little after twelve o'clock—about half past twelve.

Q. What date was that? A. August 25th, 1915.

Q. Tell us what you found there then? A. I rang the bell and no one came to the door and answered the bell and I waited quite a while; then I finally rang the bell of a party of the first floor and they informed me that Mrs. Thomas was at Mrs. Van-Winkles' on the same block and I went and inquired there and I finally found Mrs. Thomas on the same block—I don't recall the number. 10

Q. About what time did you finally get in touch with Mrs. Thomas on that day? A. I don't recall but I think it was somewhere around two o'clock. 20

Q. It was about an hour and a half after you had come up there? A. Yes, sir.

Q. You finally got in the apartment? A. Yes, sir.

Q. And did you find any food or fuel there? A. I found no food and no fuel.

Q. Where did you look for it? A. In the ice box and in the bread box.

Q. And did you find any food or fuel? A. No, sir. 30

Q. Did you on this occasion go in the room occupied by Mr. Thomas? A. Yes, sir.

Q. What did you find there? A. The condition was about the same—things were thrown around—the sheets were stained and the urine in the milk bottle was there the same.

Q. This was about a month after your first visit? A. Yes, sir.

Q. What was the general condition of the room? 40

## JESSIE LEVACK—Direct

A. Why it was not quite as filthy at this time. There was soiled shirts and socks and different articles of clothing scattered around.

JESSIE LEVACK, a witness on behalf of the petitioner, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Loewy.*

Q. Miss Levack, you are a sister of the petitioner? A. I am.

Q. Are you acquainted with the defendant in this suit? A. Yes, sir.

Q. Did you ever on any occasion visit the home of Mrs. Thomas? A. Yes, sir, I was requested by Mrs. Thomas to come there during her confinement when Marion was born, her first child.

Q. What year was that? A. In 1905—October.

Q. And you went there? A. Yes, sir, I did.

Q. Well did you just pay a visit or did you stay there? A. No, sir, I made preparations to visit her, being a professional nurse, in the capacity of nurse.

Q. How long did you stay there? A. I went about the first of the month and Marion was born on the 19th, and I stayed about ten days after. One day Mr. Thomas came in the house, which was in perfect condition, and I suggested to satisfy her that he go and sit with his wife and I would have the dinner on the table in a few minutes. After a while he came out and I was taking the washing off the line—the week's washing that my mother and I had done. He stepped behind me and looked at me and he said "You are too God damn smart." I turned surprised, not expecting it, and I said "Why, Mr. Thomas, what do you

JESSIE LEVACK—Direct

mean?" and he said "the pair of you are too God damn smart," and as he said that he went down the cellar stairs slambing the door behind him. He said this to me the day I made out a list of things, which occasioned such an outburst of temper. My sister was then about ten days more or less from her trouble and I found that it was impossible under these conditions to remain there and so I left and went to New York and resumed my work there. 10

Q. During your stay at the petitioner's home and the defendant's home did you ever hear the defendant ask the petitioner for any money? A. Well on that occasion I didn't hear it, but I did on other occasions.

Q. Tell us the occasion please? A. On that occasion things were needed in the home and I didn't like to ask him and so I bought things myself because he would not give her the money. He would not really supply the necessaries for herself and child. I found that there was a great lack of necessary things for the occasion—the child had no clothes and the only clothes she had was what I simply made and prepared for the child; and such things as a sick room would need I got myself. 20

Q. But was there any occasion when you heard her ask him for money? A. That was later on: this was during the time when my brother was sick with the typhoid fever and I went on that occasion to nurse him as she was not in condition to nurse him as she was in extremely delicate health, and while in the room which my brother occupied, which was next to the kitchen, I would on many occasions hear altercations going on there in the kitchen and refusals for money when she would 30 40

JESSIE LEVACK—Cross  
WILLIAM J. THOMAS—Direct

ask him for it. He would get angry and curse and abuse.

*Cross examination by Mr. Cudlipp.*

10 Q. What was the date of this altercation? A. I can't tell you that: I only know this occasion was in 1905—during the month of October, and then during the month of June, 1911.

Q. Were you there at the time the second child was born or about that time? A. No, sir, I was not there at that time the second child was born. I refused on account of the abuse I received, and my mother was not well enough to undertake it and the services of a trained nurse had to be called in.

20

PETITIONER RESTS.

WILLIAM J. THOMAS, the defendant, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Cudlipp.*

Q. Mr. Thomas, you are the defendant in this cause? A. Yes, sir.

Q. How long have you lived in Jersey City? A. All my life.

30

Q. That is how long? A. Since 1868.

Q. You lived with your second wife, that is in the house with her up until what time? A. August 26th, 1915.

Q. Well, did you sleep there up until that time? A. No, sir, I did not.

Q. When did you cease to sleep there? A. About four years ago.

Q. You did not sleep in the house for four years? A. No, sir; not overnight: I would take a nap in

40

## WILLIAM J. THOMAS—Direct

the afternoon when I came home during the day.

Q. Your business is what? A. Conductor with the Pennsylvania Railroad.

Q. How long have you been employed by the Pennsylvania Railroad Company? A. Since 1893.

Q. Continuously? A. Yes, sir.

Q. You were first a brakeman, were you not? A. 10  
Yes, sir.

Q. And you have been promoted to a conductor?  
A. Yes, sir.

Q. How long have you been a conductor? A. Well a regular conductor since 1911 and an extra conductor since 1908.

Q. Why did you cease to sleep at home four years ago? A. Because my wife told me there was no room in the bed for me.

Q. Up until the time that you ceased to sleep 20  
home—that is up to four years ago, what money did you pay your wife, if anything? A. When I was braking I brought all my money home, which was between seventy-five and eighty dollars a month.

Q. You say you brought it all home: do you mean you gave it all to your wife? A. Yes, sir, I gave it all to her when I was brakeman.

Q. When you needed colthes yourself what did you do then? A. I got them the best way I could 30  
out of the money I handed her.

Q. Would you hand all of your wages over to her? A. Yes, sir, when I was braking.

Q. When you wanted money for your clothes would you ask her for the money? A. There was very little clothes I had outside of my uniform.

Q. Up until what time did you do that? A. Up until 1908, when I was made an extra conductor.

Q. You had two sons, did you not, by your first marriage? A. Three sons—one is dead. 40

WILLIAM J. THOMAS—Direct

Q. Two sons and a daughter? A. Three sons and a daughter; one son is dead.

Q. As I understand it your younger son stayed in your wife's home up until August last? A. Yes, sir.

10 Q. When did your daughter leave the household? A. Well, I can't give you the date.

Q. I mean within a year—was it five or six years ago? A. Yes, sir, much longer than that.

Q. She married? A. Yes, sir.

Q. When did your elder son leave? A. He left about five years ago—going on five years ago.

Q. And when did your younger son leave? A. The latter part of August last.

20 Q. What were the relations between you and your wife and her step sons? A. What were the relations between my wife and her step sons?

Q. Well, yes. A. Well practically from the day we was married she took a dislike to my three children.

Q. Did she treat them proper? A. No, sir, she did not—not from the day we was married. She never treated them right.

Q. But you still kept paying her money? A. Yes, sir.

30 Q. Up until how many years ago: when did you stop paying her your full wages? A. From 1908: up until two or three years I gave that woman one hundred dollars a month—fifty dollars every two weeks.

Q. What were you earning during your employment by the Pennsylvania Railroad: as a brakeman how much did you get? A. Between seventy-five and eighty dollars a month.

40 Q. And after you became a conductor how much did you get? A. Well when I was an extra con-

WILLIAM J. THOMAS—Direct

ductor I had no special amount—it all depended upon how much I did—that is up until I had a regular position as a conductor.

Q. When did you get a regular position? A. In 1911.

Q. Since that time how much have you been getting? A. It was \$125 a month up until a year and a half ago and now I get \$135. 10

Q. You have said that your wife did not treat your children of your first marriage properly from the time that you married her? A. No, sir.

Q. What was the nature of her treatment of these children? A. Well she would not do anything for them and she took a personal dislike to them and she never done anything at all for them or take care of them in any shape. I was not married to her three weeks when she got mad and went and stood on the front stoop an hour while we were cooking the meal. 20

Q. Why did she get mad? A. I don't know—something that took place in the house between her and the children.

Q. Did you call her any names? A. I may have called her names occasionally if occasion required it. I think I did.

Q. Did you ever strike her? A. Not the way she says. 30

Q. She says that about the time that she was to give birth to her first child she asked you for money and you became abusive and threatened her life: what do you say about that? A. I positively deny it.

Q. Did she complain to you about the habits of her step sons, about their being filthy? A. Yes, sir, once in a while she did. 40

WILLIAM J. THOMAS—Direct

Q. Well what did you know about their habits—were they filthy? A. Not as I know of, no.

Q. Did she allow them access to the bath room? A. I dont' know that she ever refused them.

Q. Did she cook for them. A. When she cooked for me.

10 Q. When did she cook for you? A. Up until about three months before she left me, and then she positively refused to cook for my son, but she did cook for me at the time. I told her then that if she couldn't cook for my son she couldn't cook for me, and that was when I refused to give her any money. I then allowed her one dollar a day for the two children. I didn't think she was entitled to any more when she refused to do anything for me.

20 Q. When the second child was born did you make provision for caring for your wife? A. I paid a trained nurse from Christ Hospital sixty-five dollars—thirty-five dollars for the first week and thirty dollars for the next; and her mother and younger sister were to the house and they positively refused to take care of her. They were all enemies with one another.

30 Q. In August, 1908, your wife says that she became ill and that you refused to get a physician for her and she was forced to go to relatives in South Carolina for medical treatment. A. I deny that she requested a physician at that time.

40 Q. Did she go to South Carolina? A. Yes, sir, with her mother. I was running to Washington at that time and she was talking about moving from this place and she came to me and said she would go out and look for a place. I went to Washington and I came back the next afternoon at four o'clock and my two sons were sitting on

## WILLIAM J. THOMAS—Direct

the stoop and they told me Georgiana and her mother had gone to Washington and left them.

Q. How long did she stay in South Carolina at that time? A. About fourteen months.

Q. Was there any communication between you and her during that time? A. Yes, sir: I sent her money all the while she was there. 10

Q. How much did you send her? A. I can't say how much I sent her all together.

Q. Well then she returned about November, 1909? A. Yes, sir.

Q. And after that time how did you provide for her maintenance? A. Fifty dollars every two weeks—one hundred dollars a month. When I was getting monthly payments I paid her one hundred dollars a month, and when I got it every two weeks I gave her fifty dollars every two weeks. 20

Q. You paid her semi-monthly because the Pennsylvania Railroad pays it employes semi-monthly? A. Yes, sir.

Q. She has spoken about your eldest son being arrested on a charge of vagrancy: what do you know about that? A. Yes, sir; she forced him out of the house—put him out of the house and she wouldn't let him in the house and he had to roam around every where and he was sleeping in the cellar to my knowledge for a week and the man down in the store had him arrested. There was no occasion for it at all. 30

Q. Your wife has testified that in October, 1912, she asked you for money and that you without answering her struck her and broke her tooth. A. I deny that.

Q. She says that in February, 1915, she asked you for money to pay the butcher and you refused to give it to her and that you said if you dare 40

WILLIAM J. THOMAS—Direct

to ask me again I will throw you over the banister? A. No, sir, I never knew of any occasion when the butcher came there and she asked me for money for him.

10 Q. And the following month, March of this year, she asked you for fifteen dollars for the two children and that she needed money to buy shoes, and she says that you told her "I will have nothing to do with you: if you want anything you will have to go out and earn it?" A. Yes, sir, I gave her fifteen dollars for her children and I refused to give her anything more because she refused to do anything for me or to cook for me, and so I thought if she wanted shoes or anything she ought to go out and earn them.

20 Q. You said that she refused to do anything for you: what did she fail to do? A. Well, I don't know that she done anything that a wife should do for a man who was trying to keep a home together the way I did and give her the money I did, a hundred dollars a month and I couldn't get a meal out of it. If I wanted my breakfast I had to go and get it myself, she refused to get my breakfast. She gave me no meals at all. I had to pay for my laundry—my laundry and bed linen out of my money.

30 Q. Did she attend to your bed linen at all? A. She did not. All my clothes, my underclothes and everything else I had to attend to have them laundried.

Q. She has spoken of the condition of your bed room; what bed room was that? A. My son's bed room.

Q. Where did you sleep after you ceased to sleep home? A. At the Pennsylvania Railroad.

40 Q. When did you stop sleeping in the same

WILLIAM J. THOMAS—Direct

house with her? A. I think I slept out for at least four years. I never have slept there much, except taking a nap in the afternoon.

Q. During the last four years when you slept nights where did you sleep? A. The Pennsylvania Railroad bunk room.

Q. That is a room for conductors and brakemen is it? A. Yes, sir. 10

Q. What has become of your two sons? A. One is in the navy now and the other one is in the Training Station at Newport, Rhode Island.

Q. That is a navy training station? A. Yes, sir; my younger son.

Q. Your eldest son left home how long ago? A. Between four and five years ago; he has been away from home all that time.

Q. Well, now coming down a little later, the 24th of April last, Mrs. Thomas says that she told you that fifteen dollars every two weeks was insufficient to keep up the home and that you said "It is too God damn bad about you"; do you remember that? A. I may have said it: I don't know: I said a good many things. 20

Q. And she says that during the following month you threatened her with a large knife and told her that you would do her harm? A. That I positively deny. 30

Q. And that you threatened to blow her brains out with a pistol? A. I positively deny that.

Q. And on May 26th of this year she says she asked you for money for coal to heat water to bathe the children and you said go buy it, I will give you no coal? A. Yes, I refused to get any coal for her.

Q. Why did you refuse to get any coal at that time? A. Because there was no reason for buying coal at that time. She had burned up the winter 40

WILLIAM J. THOMAS—Direct

supply and I didn't think there was any occasion to get any more coal then.

Q. Was it necessary to heat water? A. She could heat it otherwise to bathe. There was no reason to have a fire in the house. She was never in the house any how.

10 Q. Where was she? A. Going out all the time.

Q. Do you know where she was when she was out? A. No, sir; I did not and I didn't think it was worth while to find out either.

Q. Did she have her children with her when she was out? A. Yes, sir, she did.

Q. Now on May 27th last she says that you struck her several times and you threatened to break her face: what do you say about that? A. I deny that.

20 Q. And she says you said you would give her hell and used other harsh language? A. I may have told her that.

Q. Did any members of her family come to live at your house? A. Yes, up until about four years ago practically the whole family lived there on and off.

Q. How many were there in the family? A. Well her sister Jessie and the rest of them.

30 Q. How many were the rest of them? A. Well her mother and her daughter Frances and her son was there, and her son's wife was there too.

Q. Well did you furnish them with food? A. Yes, sir, I did.

Q. Did you give her money with which to pay for the gas: she said that the gas was cut off? A. She would not pay the gas bill out of the hundred dollars she received a month, and the gas was shut off because I refused to pay it, because she had the money to pay for it.

40

WILLIAM J. THOMAS—Direct

Q. When did you cease to pay her the one hundred dollars a month? A. About three months before August last.

Q. Well why did you go home at all: you say she didn't do any cooking for you and she didn't attend to making your bed or anything of that sort? A. I wanted to keep a home for my son who was not working. 10

Q. Did you pay the rent of the apartment? A. When?

Q. While you were giving her the money? A. No, she paid it when she got the one hundred dollars a month. When I stopped giving her that I paid it.

Q. How much was the rent at 145 VanReipen? A. Twenty dollars.

Q. Your wife has testified that she has been in poor health: what do you say about that? A. Not since I knew her has she been in poor health. 20

Q. Did you ever see your sons misbehave, your sons by your first marriage, in the presence of your present wife? A. No, sir, I have not.

Q. She says she asked you for money for clothing and you refused her money? A. She was getting plenty of money to furnish herself with clothing. 30

Q. That is, she was getting the one hundred dollars a month up until three months ago? A. Yes, sir.

Q. Is there anything else that you would like to tell his Honor—something that I have not asked you; is there anything else that you want to say in response to your wife's testimony? A. No, I don't think so.

*Cross examination by Mr. Loewy.*

Q. Mr. Thomas, I show you a paper—is that your signature? A. Yes, sir.

Q. This paper is your answer in this action, is it not? A. I believe it is.

10 Q. In the second paragraph you have admitted that the petitioner complained to you about her step sons being rude and disobedient. The petitioner complained to you in 1904 and 1905 about her step sons, didn't she? A. Yes, sir.

Q. And further on in your answer you again admit that the petitioner complained to you in 1906 that the two boys were rude and disobedient, did you not? A. Yes, sir.

20 Q. Now what did you do, if anything, in the period of 1904 and 1906: what did you say to your sons? A. Why I advised them not to be discourteous and rude to her.

Q. To your wife? A. Yes, sir.

Q. How many times did you speak to your sons about their conduct towards your wife? A. I was always speaking to them and checking them up.

Q. You say that you left the petitioner about four years ago? A. I didn't say I left her.

30 Q. Well you refused to cohabit with her, did you not? A. When she refused to allow me the right to sleep in the bed.

Q. You refused to cohabit with the petitioner four years ago? A. Yes, sir.

Q. Now that was in 1911? A. Yes, sir.

Q. Between 1911 and up until the time that the petitioner left the house what effort, if any, did you make to become reconciled to her? A. I made one.

Q. You made one? A. Yes, sir

40 Q. When was that? A. I can't tell you the date.

WILLIAM J. THOMAS—Cross

I walked in the bed room where she was and she was sitting in front of the dresser and the youngest child was there on the bed, and I said to her, "Come, girl, let us make up and be friends" and I caught her around the waist and she turned around and positively refused to have anything to do with me and then I walked out of the room. 10

Q. Can you fix the year of that about? A. No, sir, I can't remember it.

Q. Didn't you think the petitioner was worth while making more than one effort of that kind? A. No, sir, not after that.

Q. You say your wife's brother was there? A. Yes, sir, and she had plenty of room for her sister to come there.

Q. That was one of the reasons you left your wife? A. I didn't leave her. 20

Q. In your testimony you state that you gave that woman one hundred dollars a month—that is, fifty dollars every two weeks to about January, 1915: why do you characterize the petitioner as that woman? A. Because she is nothing else to me.

Q. In other words you have absolutely no love for her at all? A. No, sir, she was wife in name only and by law.

Q. In your testimony you likewise say that you called your wife names occasionally: will you tell the court what you mean by occasionally? A. There was many times when she would provoke me or bring up an argument and other things like that. 30

Q. What particular names did you have ready for her on those occasions? A. I had no particular names—only these arguments would come up.

Q. But what names would you call her? A. I couldn't tell what I called her. 40

## WILLIAM J. THOMAS—Cross

Q. Don't you remember? A. No, I don't, but I never called her such names as she says I called her.

Q. What names did you call her? A. I never called her a bitch or a sow. I may have cursed at her.

10 Q. Did you ever curse at her? A. Yes, sir, I did curse at her.

Q. Several times? A. Yes, sir, several times.

Q. You also testify in answer to the question "Did you ever strike her" and your answer was "No, not the way she says." Just tell the court what way you struck her.

Q. I slapped her in the face with my open hand, not hard enough to kill a fly.

Q. And how else? A. No other time.

20 Q. That was the way you struck her, was it? A. Yes, sir.

Q. You say in your testimony, Mr. Thomas, that her two step sons were sitting on the stoop when you came home at the time your wife went to South Carolina and they told you that Georgia had gone? A. Yes, sir.

30 Q. Was that the way they referred to the petitioner, as Georgina? A. That was what she asked them to call her herself. She would not allow them to call her mother. She did not have that much love for them.

Q. You say that when the petitioner asked you for money you said "it is too God damn bad about you." You had absolutely no interest in the petitioner whatever when she asked you for money? A. No, sir, I did not.

40 Q. And your only answer was a curse. Furthermore in your testimony you state that you refused to get coal for her? A. Yes, sir.

WILLIAM J. THOMAS—Cross

Q. And it was necessary for her to have coal at times to use for heating water and otherwise: she didn't have anything to heat the water in any other way? A. By wood for the amount of water she needed for the child to take a bath.

Q. You say, Mr. Thomas, that the petitioner was constantly away from home when you lived at the house? A. Yes, sir. 10

Q. And you likewise say that you didn't think it was worth while to find out where she went? A. No, that didn't interest me any.

Q. Your wife didn't interest you a single bit? A. No, sir, not that way.

Q. You also said you said you would give her hell—you say you might have said that? A. Yes, sir.

Q. Now, Mr. Thomas, your testimony was that since you have known the petitioner she has never been in poor health: didn't she ever complain to you about being in poor health? A. Oh, occasionally, with little ailments. 20

Q. She complained to you, didn't she? A. Yes, sir.

Q. Did you get a doctor? A. No, sir.

Q. How did you know that she was not in poor health? A. Why her general appearance.

Q. In other words you are capable of looking at a person and saying whether they are in poor health or not? A. I could judge her, yes, sir. 30

Q. And she asked you to give her money to go to a physician, didn't she? A. I didn't refuse it.

Q. You didn't refuse it? A. No, sir, I didn't refuse to get a doctor at any time—not on any occasion.

Q. You said she had never been in poor health?

WILLIAM J. THOMAS—Cross

A. She is the same as everybody else: we are not any of us in perfect health all the time.

Q. She complained to you about that? A. Yes, sir, she would like to run to the doctor for every little ailment.

10 Q. Every time she told you about being in poor health you refused to let her go to a doctor? A. I did not.

Q. Isn't that what you said? A. No, I didn't.

Q. You said she wanted to run to the doctor for every little ailment? A. I did.

Q. Now, Mr. Thomas, you say that you gave the petitioner one hundred dollars a month? A. I did.

20 Q. That is up to 1908? A. No, I said it commenced in 1908: that is when I commenced to give her one hundred dollars.

Q. You gave her one hundred dollars a month? A. Yes, sir.

Q. And up until August last when she refused to cook for me—three months before August.

Q. She refused to cook for you? A. Yes, sir, positively refused.

Q. Did she give you any reason? A. No, only she would not cook for me, and I told her she couldn't have the money if she couldn't cook for me.

30 Q. Is it not a fact she didn't have the money? A. No, sir, it is not a fact.

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

Q. At this time did she have the money? A. Yes, sir, she was receiving the money.

Q. Did you ever during this year when she asked you for money refuse it? A. No, sir, I did not.

Q. You never did? A. No, sir, I never refused her any money when I had it to give to her.

WILLIAM J. THOMAS—Re-direct

ROY THOMAS—Direct

*Re-direct by Mr. Cudlipp.*

Q. Was anybody present when you made these payments? A. Yes, sir, my son was there when I made these payments and her son was there when I handed her the money.

10

Q. Is there anything else you would like to tell the court? A. No, I dont' care about going in any further details.

ROY THOMAS, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Cudlipp.*

Q. How old are you? A. Seventeen years old. 20

Q. When will you be eighteen? A. On December 13th.

Q. You lived with your father and your step mother up until what time? A. Until August 1st.

Q. August 1st last? A. Yes, sir.

Q. From that time where have you been? A. In the Navy training Station.

Q. Where is that? A. Newport, Rhode Island.

Q. How old was you when your father married the second time? A. I don't remember that. 30

Q. What has been the treatment of your step mother to you and your brother? A. She was mean to us and never treated us right and she never did anything for us, and if we tried to do right she would kick just the same. She would take all we did wrong just the same.

Q. Can you give us some specific instance of ill treatment by your step mother towards you and your brother? A. Well, whenever I would go in 40

ROY THOMAS—Direct

the house she would always fight with me, and whenever I wanted to get anything to eat in the morning I never got it. When I came home from work I couldn't get in, and I had to push the key out of the door and the door was locked.

10 Q. Well what about your meals—your food? A. The only time I got any food was when she cooked for my father.

Q. She would only cook for your father? A. Yes, sir.

Q. She has spoken about the filthy condition of your bed room: was that your bed room? A. Yes, sir.

Q. Did she take care of the bedroom? A. No, sir.

20 Q. What was your treatment of her? A. I have always treated her properly. I know I have not been exactly respectful to her all the time, because she often called me names and cursed me; but I never called her any names or anything, and I never talked back except once or twice.

Q. She did cook for you sometimes, didn't she? A. Yes, sir, when I was small.

Q. When you was young? A. Yes, sir.

Q. Well now you went to work, did you not, a little while ago? A. Yes, sir.

30 Q. About how long ago was that? A. About two years ago.

Q. Where did you get a position then? A. In Lorillard's factory.

Q. And did you live home right along? A. Yes, sir.

Q. And after that you had a job with other companies? A. Yes, sir.

40 Q. What jobs were they? A. I worked for Swift & Company and the Adams Express Company.

Q. And did you continue working for the Adams Express Company up until the time you went in the Navy Training Station last August? A. Yes, sir.

Q. When you came home from work at the Adams Express Company early in the morning could you get in the house? A. No, sir. 10

Q. How did you get in: what did you do? A. I found a match and pushed the key out of the door and put my key in.

Q. And you say that your step mother cursed you; did you ever hear her curse anybody else? A. Yes, sir.

Q. Who? A. Her sister.

Q. Now, she has complained about the filthy habits of yourself in the way that she has testified; was there any reason for that? A. Well, if she was not occupying the place herself or her son the door would generally be locked. 20

Q. What door do you mean? A. The bath room door.

Q. Well, now, did you ever see your father give your step mother any money? A. Yes, sir.

Q. What did you see your father give your step mother—what amount of money, if you know? A. Generally around fifty dollars and over.

Q. Well, how many times have you seen your father give your step mother money? A. Three or four times. 30

Q. Where did you get your meals after your step mother stopped cooking for you? A. I bought them in a restaurant.

*Cross examination by Mr. Loewy.*

Q. Did your father ever speak to you about the complaints your step mother had made to him in regard to your behavior? A. Yes, sir. 40

LOUISE ADAMS—Direct

Q. When? A. Well, many a time he spoke to us.

Q. What did you do? A. I tried to do what he said.

Q. What did he say? A. He always said I must behave myself and be respectful to her.

Q. And you tried to do that? A. Yes, sir.

10 Q. You state in your testimony that if you tried to do right she would kick just the same; what do you mean by that? A. Well, no matter what we done she would fight with us; no matter whether it was right or wrong.

LOUISE ADAMS, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

20 *Direct examination by Mr. Cudlipp.*

Q. Where do you live? A. 115 Garrison avenue, Jersey City.

Q. How long have you lived there? A. About thirty-two years.

Q. Do you know William J. Thomas? A. Yes, sir.

Q. How did you get acquainted with him? A. Through the train service; my husband is a train-  
man.

30 Q. Does Mr. Thomas come to your house? A. Well, he came to my house when he was studying for a conductor; he studied with my husband.

Q. Do you know why he came to your house? A. Yes, sir; to study.

Q. What did he say? A. He said on account of the quarrelsome nature of Mrs. Thomas he couldn't study home.

40 Q. Did you ever live near the Thomas family? A. Yes, sir.

## ELIZABETH GIBSON—Direct

Q. And your families would visit each other at times? A. The only time I was there in their house was twice—I went to see her little baby.

Q. On these many occasions that Mr. Thomas came to your house did he ever complain about the treatment he had received? A. Yes, sir.

Q. What did he say? A. He said there was no meals cooked for him and I used to cook for him. 10

Q. Did he say anything about the care of the beds?

Mr. LOEWY—Objected to as incompetent.

Question overruled.

Q. You have known Mr. Thomas for a long time? A. Yes, sir.

Q. How long? A. About twenty years. 20

Q. Have you ever known him to act in any other than a gentlemanly manner? A. No, sir; never.

Q. How about his two sons—did you ever know them to be insolent and rude? A. No, sir.

Q. What was their manner generally? A. They was polite boys; I would not be ashamed of them any where.

Q. Well, Mrs. Thomas has complained that she didn't have enough money for clothes; what do you know about her clothes? A. Every time I saw her she was nicely dressed. 30

## NO CROSS EXAMINATION.

ELIZABETH GIBSON, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Cudlipp.*

Q. Where do you live, Mrs. Gibson? A. 143 Van-Reipen avenue. 40

JOHN J. KEEGAN—Direct

Q. And you have lived there how long? A. Four years.

Q. How near was that to where Mr. and Mrs. Thomas lived? A. I guess they lived there about two years.

Q. Is that next door? A. Yes, sir; next door.

10 Q. And you became acquainted with both of them at that time? A. No, sir; not Mr. Thomas, but Mrs. Thomas did.

Q. Did Mrs. Thomas talk to you about washing and ironing the clothes of her husband? A. She told me she would do nothing for him—absolutely nothing, as she was not paid for it to do such work.

20 Q. When did she tell you that? A. Oh, I guess over a year ago. And she was in Roy's room and it was in a very dirty condition and she refused to let him stay in the room with her. I thought she was a very hard hearted woman—a boy without a mother.

Q. Did you ever hear Mrs. Thomas quarrel with her neighbors? A. Well, no, I have never heard her quarrel with her neighbors.

30 Q. Well, with anybody else? A. Well, yes, on one occasion she was very mean to me about the children and I told her she was a very foolish woman to fight about the children. That was the last time I ever spoke to her.

## NO CROSS EXAMINATION.

JOHN J. KEEGAN, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

*Direct examination by Mr. Cudlipp.*

40 Q. Mr. Keegan, where do you live? A. 99 Romaine avenue, Jersey City.

## DOROTHY CYESTER—Direct

Q. How long have you lived in Jersey City? A. About twenty-five years.

Q. How long have you known William J. Thomas? A. About twenty-two or twenty-three years.

Q. You and he are conductors on the Pennsylvania Railroad, are you not? A. Yes, sir. 10

Q. What do you know about Mr. Thomas as far as his character is concerned: what is his general reputation for truth and veracity? A. I have always known Mr. Thomas to be a truthful industrious and peaceable man, as far as I have ever come in contact with him or as far as I have ever known him as a working associate.

Q. And you have been working with him how many years? A. About twenty-two or twenty-three years probably. 20

Q. Have you ever seen Mr. Thomas and his son getting their meals in restaurants? A. Yes, I have seen them on different occasions coming from the Marion Station and they said they were going to a restaurant for their meals on account of not being able to get them at home.

## NO CROSS EXAMINATION.

DOROTHY CYESTER, a witness on behalf of the defendant, being duly sworn according to law, testified as follows: 30

*Direct examination by Mr. Cudlipp.*

Q. Mrs. Cyester, where do you live? A. 75 Ton-  
nele avenue, Jersey City.

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

Q. Only with Mrs. Thomas? A. Yes, sir. 40

GEORGINA W. THOMAS, recalled—Direct

Q. Do you know the son Roy who has just testified? A. Yes, sir, by his playing with the children. He was a nice boy and a kind boy and loved by the children in our neighborhood.

10 Q. You are not well acquainted with her mother, are you? A. I don't know Mrs. Thomas's mother, no.

Q. Roy was a well behaved boy? A. Yes, sir, he was, and a well loved boy in our neighborhood. I didn't know any one who could speak ill of him.

GEORGINA W. THOMAS, the petitioner, recalled in rebuttal, testified as follows:

*Direct examination by Mr. Loewy.*

20 Q. Mrs. Thomas, you have heard the testimony of your husband, have you not? A. Yes, sir.

Q. Did you hear him say that he gave you one hundred dollars a month from the period of 1908 to January, 1915, I believe or something about that? A. Yes, sir.

Q. Is that the truth? A. No, sir, it is not.

30 Q. Did he give you any money at all? A. He gave me between seven and eight dollars a week, just as I have said. I asked him to make such arrangement to provide for clothes and food and so forth and that was all he did.

Q. You heard Mr. Thomas testify that you would do nothing for his children, your step children—is that true? A. No, sir, it is not.

40 Q. What did you do? A. I cooked for them and I washed for them and I cleaned the house after them, but I told him that I would refuse to clean the urinals that they made in the room. I told him that they were filled with vermin, both head and body. When Mr. Thompson would be away

GEORGINA W. THOMAS, recalled—Direct

they would stay away nights at a time sleeping in stables and sheds.

Q. How did you know that? A. Because when they came in I could tell by the smell of horse manure on their clothes and their body. You could tell by the odor that they had been in a horse stable. When I told Mr. Thomas about that he would become abusive and curse me and call me vile names such as I have mentioned before. 10

Q. You heard Mr. Thomas's testimony that his two sons called you Georgina when they informed him that you had gone to South Carolina, and he said that you had requested them to call you Georgina: is that true? A. No, sir, it is not true. They frequently called me Mrs. They were not courteous. 20

Q. Did you ever object to their calling you mother? A. No, sir, I never did. I tried to be a mother to them, but I objected to their filthy habits. I tried to send them to Sunday school and to day school, and I went to school to see if they were there and I wrote notes for them if I kept them home, and whenever they would stay home of their own accord—I would go to school to see if they were there. Often I would get a note from the principal that they would not be to school. 30

Q. You heard the testimony of your step son Roy? A. Yes, sir.

Q. You heard him say that you refused to let him in the house? A. No, sir, I never did. Whenever he would go out of the house I would ask him if he had his key to get in and if he said no I would take the key out. It was the orders of Mr. Thomas to me that the door be kept open for his son. I slept night after night with the door open—that is, unlocked, and I didn't think it was safe. 40

GEORGINA W. THOMAS, recalled—Direct

Q. You heard Roy Thomas testify in regard— he said if she was not occupying the place herself then her son was and otherwise the door would generally be locked. He referred to the bath room as I remember. A. No, sir, that is not true.

10 Q. Did you ever leave the bath room locked? A. No, sir, never.

Q. Now, Mrs. Thomas. Roy Thomas testified that three or four times he saw his father give you money: was he ever present when Mr. Thomas handed you money? A. No, sir, he was never present when he gave me any money.

Q. He was never present? A. No, sir, he was never present.

20 Q. Did you ever curse Roy Thomas? A. No, sir, I never cursed him because I heard enough of that from his father.

Q. Did you ever curse your sister as he says? A. No, sir.

*By the Master.*

Q. How old were the boys when you married Mr. Thomas: how old was the eldest boy? A. He was about nine or ten years old.

30 Q. And the little boy was about four years old? A. Roy was going to No. 23 School when I married Mr. Thomas.

Q. He was only four years old, was he not? A. Well, he was going to No. 23 School.

Q. Did you know how old these children were when you married Mr. Thomas? A. Well Mr. Thomas said he was seven years old, and he was going to 23 School then.

*Cross examination by Mr. Cudlipp.*

Q. Mrs. Thomas, you were married eleven years ago this month? A. Yes, sir.

Q. What were the arrangements as to money matters between you and him at that time that you were married: how much money did he give you? A. He didn't give me any. 10

Q. He never gave you any money at that time? A. No, sir, not until I asked him to make an arrangement in 1909.

Q. Then in 1909 what arrangement did he make? You say you asked him to make an arrangement: did he make any arrangement? A. Yes, sir.

Q. And he made an arrangement: what arrangement did he make? A. Between seven and eight dollars a week. 20

Q. And he paid the rent, didn't he? A. Yes, sir.

Q. What else did he do? A. Well I provided food and whatever medicine and clothes I could out of that—particularly food.

Q. You provided food for the four children and yourself and him out of seven dollars a week? A. Yes, sir; my two step sons was there and my own child.

Q. And yourself and Mr. Thomas were all provided with food out of that seven or eight dollars a week? A. Yes, sir. 30

Q. You provided for the whole family out of seven or eight dollars a week? A. Yes, sir.

Q. And he continued to pay that same amount of money from 1909 you say? A. Yes, until 1915, the first part.

Q. What happened after that in regard to money matters? A. Well he gave then only fifteen dollars every two weeks for the two children. He said 40

MARION J. THOMAS—Direct

it was not for me. He figured he had to look after the children and pay for them.

*By the Master.*

10 Q. Well, that was the same amount he had been giving you? A. Yes, sir; I told him, however, it was not enough for the home and asked for more.

*Cross, continued.*

Q. If that was enough for you all of these years why was it not enough now? A. Well whatever else I needed outside of that I got the money from my mother. I would ask her for money and she would give it to me.

*By the Master.*

20 Q. That was all he gave you? A. That was all.

Q. Since 1909? A. Yes, sir.

Q. He didn't give you fifty dollar every two weeks? A. No, sir.

Q. At any period at all? A. No, sir.

Adjourned until December 29th, 1915, at 10 A. M.

Continuation of the hearing of the above entitled cause this twenty-ninth day of November, 1915, at 10 A. M.

30 THE MASTER—I will permit the case to be opened at this time and take the testimony of the young boy, Marion J. Thomas, whom I refused to permit to be sworn at the last session.

Mr. CUDLIPP—I renew my objection to the taking of the testimony of this child.

MARION J. THOMAS, a witness on behalf of the petitioner, being duly sworn according to law,  
40 testified as follows:

MARION J. THOMAS—Direct

*Direct examination by Mr. Loewy.*

Q. Marion, how old are you? A. Ten years old.

Q. You were here when your mother testified on last Tuesday? A. Yes, sir.

Q. Do you remember way back in 1911, Marion?  
A. Yes, sir. 10

Q. Around May? A. Yes, sir.

Q. Will you tell this Court what happened at that time, Marion? A. My father and my step brother Roy and myself were in the kitchen and my step brother Roy told my father that Leonard was arrested, and my father came in the bed room with his sleeves rolled up to hit mother.

*By the Master.*

Q. How do you know he came to hit your mother? A. I don't know. He said to my mother "you God damn son-of-a-bitch, you had my son Leonard arrested." 20

Q. Was that all? A. Yes, sir.

*By Mr. Loewy.*

Q. Well, this was in 1911, quite a long ways back? A. Yes, sir.

Q. Do you remember anything that happened in 1912? A. Yes, sir. 30

Q. That is not so very far back: you were seven years old then? A. Yes, sir.

Q. Some time in 1912—tell us about that? A. My father and mother and my step brother Roy and myself were in the kitchen and my father spit on the floor and my mother went in the dining room and I went after her, and then my step brother and my step father came in after us. I told my mother that my father had spit on the 40

MARION J. THOMAS—Direct

floor and then my father got very angry and hit me in the face. My mother came to protect me and my father hit her in the jaw with his fist and he hit her a hard blow.

Q. You saw that, Marion? A. Yes, sir.

10 Q. Besides hitting her did he call her any names? A. Yes, sir.

Q. What? A. "You God damn son-of-a-bitch."

Q. And then what happened? A. Then my mother went down to the dentist, and then after that she went to my grandmother's and then she went home.

Q. Now, Marion, do you remember anything that happened in the house this year between your father and mother; do you remember anything unusual that happened? A. Yes, sir.

20 Q. Tell us what? A. My mother wanted my father to get her a pair of shoes, and he said, "No, sir; I will give you no shoes; I give you fifteen dollars only for the two children, and that is enough." He said "I have nothing to do with you."

Q. Anything else you remember that happened this year at the house? A. Yes, sir, my mother asked my father for coal.

30 Q. What happened then? A. My father said "I will give you no coal," and he called her a "God damn son-of-a-bitch," and he said "if you want any coal you will have to go out and earn it."

Q. Now during this year 1915, Marion, did you hear any quarrels between your father and mother? A. Yes, sir.

40 Q. Tell us about some of those quarrels. A. He said to my mother "I will blow your God damn brains out," and he said he would throw her over the banister. My mother asked him for money

## MARION J. THOMAS—Cross

and he threw the money on a bag of buns, and he said "if you don't like that get out of here."

Q. Did you see this money? A. Yes, sir.

Q. How much was it? A. Fifteen dollars.

Q. Did you on any other occasion see your father hand your mother money? A. Yes, sir.

Q. You did? A. Yes, sir.

10

Q. Well on the occasion that you saw it how much was it? A. Fifteen dollars.

Q. Did you ever see him hand your mother any money in 1914 or 1913 or anywheres farther back than that? A. Yes, sir, as far back as 1913.

Q. How much did you see your father hand your mother? A. Fifteen dollars.

Q. You never saw your father hand your mother any more than that, did you? A. No, sir.  
*By the Master.*

20

Q. Who told you it was fifteen dollars? A. I saw it and he showed it to me.

Q. Who showed it to you? A. My father.

Q. Did you count it? A. Yes, sir.

Q. As far back as 1913? A. Yes, sir.

*Cross examination by Mr. Cudlipp.*

Q. Did your father count the fifteen dollars out to you every time he gave it to your mother? A. He only showed me the fifteen dollars.

30

Q. Did he always show you the fifteen dollars before he gave it to your mother? A. Yes, sir.

Q. How long has he been giving your mother fifteen dollars: how many years do you think? A. As far back as 1913.

Q. Do you go to school? A. Yes, sir.

Q. What school do you attend? A. Number 23 on Tonnele avenue.

40

MARION J. THOMAS—Cross

Q. Are you ten years old now or will you be ten years old soon? A. Ten years old now.

Q. When were you ten? A. On October 18th.

Q. Your mother has talked to you about this matter, has she not? A. Yes, sir.

10 Q. Are you telling us now what your mother told you to tell? A. No, sir.

Q. You say your mother has talked to you about this matter: what has she said to you? A. She went over it with me and I saw it myself.

Q. Has anybody else talked with you about what you were to tell us this morning? A. No, sir.

Q. Your father gave your mother only fifteen dollars a week for how long a time? A. Every two weeks.

20 Q. For how long a time: do you know how long that was? A. He gave her fifteen dollars when we lived on VanReipen avenue.

Q. How long did you live on VanReipen avenue? A. Since 1913.

Q. What did your father do when he gave your mother money—did he give it to you first? A. He called me out in the yard sometimes or out in the street and my mother would be in the house.

30 Q. Did he give you the money sometimes to give to your mother? A. Yes, sir; he gave it to me all the time to give to my mother.

*By the Master.*

Q. Were your mother and father mad at each other? A. My mother was not mad at my father.

Q. What did your father get mad about? A. Because he said the meat was not fit to eat and he quarreled all the time whenever he would come in.

40

## MARION J. THOMAS—Cross

Q. Did he eat with your mother? A. No, sir.

Q. He didn't eat at the house? A. Yes, sir, he would eat at the house but not with my mother.

Q. Where do you sleep? A. In the bedroom.

Q. With who? A. With my mother and my sister and myself.

Q. How long have you been doing that—ever 10  
since you can remember? A. Yes, sir.

Q. Where did your father sleep? A. He slept  
in his own bed room.

Q. Was he home much? A. No, sir.

Q. Was he kind to you? A. No, sir.

Q. How did he treat you? A. When I would  
ask him for a penny he would say to go to my  
mother, and if I would ask him for money for  
Sunday school he would say to go to my mother.

Q. When did you ask him? A. All the time. 20

Q. Don't you love your father? A. No, sir.

Q. Why not? A. Because he was not good to  
us.

Q. How was that: did he whip you? A. No, sir,  
but he would not give me any pennies and he  
would not treat me right.

Q. What do you mean by not treating you right?  
A. He would not bring anything to us: he would  
not give us anything.

Q. Didn't he give you anything? A. No, sir. 30

Q. Did your mother talk about that to you? A.  
No, sir. I was there and saw that myself.

Q. When you was there? A. No, sir; I saw it  
myself.

Q. Your mother was not afraid of your father,  
was she? A. Yes, sir, she was afraid of him.

Q. How did she show it? A. Because he would  
always get angry and curse her.

MARION J. THOMAS—Cross

Q. What for: what did he curse her for: did she say something to him? A. No, sir.

Q. Then he would curse her when she would not say anything? A. When she would ask him for money he would curse her.

10 Q. Don't you like your brothers, Leonard and Roy? A. No, sir.

Q. Why not? A. Because they don't like me.

Q. They don't like you? A. No, sir.

Q. Your mother didn't like them either, did she? A. No, sir.

Q. Why not? A. Because they were not nice to her.

Q. Why were they not nice to her? A. They would holler at her and talk back to her.

20 Q. Would she talk back to them? A. No, sir.  
*Cross continued.*

Q. Your mother and you have talked about this often, have you not? A. Yes, sir.

Q. Now she told you about the fifteen dollars, didn't she: she told you that was all your father gave her? A. No, sir.

Q. You didn't count the money every time? A. No, sir.

30 Q. Didn't you tell us that he gave your mother fifteen dollars every two weeks and you saw it every time? A. Yes, sir.

Q. You was home and saw it? A. Yes, sir.

Q. You say he gave it to her? A. Every two weeks.

Q. And you saw him give it to her? A. I gave it to her.

Q. Did you count it before you gave it to her? A. Yes, sir.

CASE CLOSED.

MEMORANDUM OF CHARLES J. ROE,  
ADVISORY MASTER

The petitioner prays for divorce from bed and board on the ground of extreme cruelty.

The parties were married November 29th, 1904, and lived together as husband and wife until August 26th, 1915, which time the petitioner left the house of the defendant. Two children were born of the marriage, one on August 28th, 1905, and the second child in June, 1911. 10

At the time of the marriage, the defendant had two boys by a former marriage, aged nine and thirteen years respectively, and which lived in the family.

The trouble between the parties was occasioned by these children. The petitioner, it is clear, disliked these children, and did nothing to win their confidence. She gave them no care or attempted to exercise control over them. This is plainly indicated by petitioner's statements of the filthy condition of the room in which these children slept, their careless habits and their long absences from their home. 20

The first serious trouble between the parties occurred in 1906. Petitioner says her husband became angry because of the "boys." Exactly why she does not say, but says these boys stayed away some days—and that her husband catching hold of her, throwing her down said, "This is my boys' home, if you do not like it get out." This statement would indicate that the defendant was angered because the petitioner had driven his two young boys from the home. 30

In 1908, the petitioner complains that her husband refused to furnish her medical attendance and that she was forced to go South with her 40

## MEMORANDUM OF CHAS. J. ROE, ADVISORY MASTER

mother for her health. The husband denies that he ever failed to provide such medical attendance when necessary. The fact that the petitioner did come back in 1909, and continued to live with her husband and the further fact appearing that no trouble existed between the two until the summer of 1911, after a second child was born is sufficient to eliminate all consideration of all prior acts to this date.

On May 15th, 1911, Leonard, the oldest stepson, was arrested and the defendant accused the petitioner of causing this arrest.

The facts and circumstances of this arrest do not appear but upon the occasion, the defendant became very angry and called his wife vile names, striking her, and said he never would cohabit with her again.

That from that date until August 26, 1915, they occupied different rooms and never lived together as man and wife.

"The defendant says, he attempted to reconcile his wife but she refused," this is not denied.

In October, 1912, she interfered with her husband in correcting their child, and she says he struck her then.

From then until March, 1915, there is no evidence showing the manner the parties lived together, except the general statement of the wife that defendant did not give her the money she required. On this last date, she says her husband threatened to throw her over the banisters, upon her demand of him for more money, and that in May, defendant became angry because she had taken some sugar that belonged to him and struck her, but nothing else is detailed.

The petitioner left her husband's house in Aug-

MEMORANDUM OF CHAS. J. ROE, ADVISORY MASTER  
ust, 1915. No facts are given upon which the Court  
can determine the cause of her leaving at that  
time.

The defendant practically admits these facts  
but says, he gave her all his wages until about six  
months before she left when she refused to cook  
or provide anything for him and from that time  
forward he gave her the amount she says. 10

The defendant's conduct whatever may have  
been the provocation, in striking his wife or in  
calling her names, which he admits, is reprehensi-  
ble and does not entitle him to any consideration.  
He has been guilty of using vile language and ac-  
tual violence towards the wife he had promised  
to protect. His conduct is not excused by the fact  
that he was angry or that the conduct of his wife  
provoked him to these extremes. 20

On the other hand, the petitioner herself is not  
guiltless. In a measure she provoked these out-  
bursts on the part of her husband. She undoubt-  
edly had formed a dislike for her stepchildren and  
her description of the manner in which these chil-  
dren lived, or tried to live at that house, indi-  
cates that she did not do her duty as a wife. They  
were her husband's children, and it was her duty,  
as the wife of the defendant, to have exercised a  
care over them and she appears never to have ex- 30  
ercised any care. On the other hand, she has neg-  
lected them whether from her own dislike of them  
or to tantalize her husband, does not appear, but  
the fact does appear that in this respect she made  
her husband angry and continued to make him  
angry and to call down upon herself the treatment  
of which she complains.

They lived together for eleven years and these  
outbursts are extended over that period at recur- 40

## MEMORANDUM OF CHAS. J. ROE, ADVISORY MASTER

rent intervals. At the time she left, there was nothing that had taken place that would lead her to any apprehension with regard to her safety or health. She had deserted her husband for some period before she left his house.

10 "Extreme Cruelty," as defined by the Courts of New Jersey, is laid down in *Close v. Close*, 25 N. J. Eq. 526, and that is—

20 "Where the husband has been guilty of or there is reasonable ground to apprehend that he will be guilty of any actual violence that will endanger the safety or health of the wife, or where he has inflicted upon her any physical injury, accompanied by such persistent exhibition of ill feelings and opprobrious epithets as will endanger her health, or render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, the decree of separation should be pronounced."

30 This doctrine is approved in *Taylor v. Taylor*, 73 Eq. 745, wherein it says that where there is no physical violence towards her, that she must prove that the conduct is such as to place her life or health in danger and to render her life one of extreme discomfort and wretchedness such as to incapacitate her in the discharge of her duties.

In the latter case, the husband used profane language and was indifferent to his wife, but the Court held that this was not sufficient.

40 In the same court, in *Smith v. Smith*, 40 Eq. 566, it was held that a charge of incest made by

## MEMORANDUM OF CHAS. J. ROE, ADVISORY MASTER

the husband against his wife and persisted in without cause, attended by slight acts of violence, suspicious conduct, and a reasonable apprehension of bodily harm is a good ground for separation.

Our courts have never held that course and profane language, actual violence or lack of proper food and medicines are of themselves sufficient grounds for divorce from bed and board. They go a step farther and say that if any of these acts of the husband will endanger the safety or health of the wife or that there is reasonable ground to apprehend that they will render her life one of such wretchedness as to incapacitate her towards the discharge of her duties. In that case only will a decree be granted. 10

In the present case none of these acts of personal violence, running over a period of ten years, are of such character as to endanger petitioner's safety or health, they were outbursts of anger and of no serious character. The same may be said of the use of the vile language—it only occurred at these angry moments. The refusal of more money for petitioner than she thought necessary does not bring this case within the doctrine of "extreme cruelty." 20

But in the present case, it is clear that the petitioner brought about this very state of affairs. There are mutual obligations which the husband, as well as the wife, must perform. If the wife, knowing the disposition of her husband, persists in a course of conduct that brings on a state of facts of which she complains, she is not entitled to relief. 30

Duval v. Duval, 34 Atl. 888 affirmed, 65 Equity, 771.

She had it in her power to stop the acts of 40

## MEMORANDUM OF CHAS. J. ROE, ADVISORY MASTER

which she complained. If she had treated those children by his former marriage with kindness, if she had cared for those children as it was her duty to do, instead of refusing to care for them or look after them, it is evident that this conduct of her husband toward her would not have occurred. If  
10 she had performed her wifely duties, looked after her husband and his children, provided them food, it is evident they would not have occurred later, but she persisted in her refusal to do this, and this fact alone shows that she disregarded the treatment of her husband of which she complains.

The petitioner is not entitled to the decree prayed for but the case is one of such character that either of the parties should not be precluded from using the facts proved in this case in seeking  
20 other relief.

I advise a decree dismissing the petition without prejudice.

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DECREE  
IN CHANCERY OF NEW JERSEY

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Between

GEORGINA W. THOMAS,

*Petitioner,*

*and*

WILLIAM J. THOMAS,

*Defendant.*

---

} *On Petition.*

10

DECREE.

This cause coming on to be heard before the Honorable Charles J. Roe, one of the Advisory Masters of this Court, pursuant to the reference made to him, and in the presence of Benedict A. P. Loewy, of counsel with the petitioner, and of William C. Cudlipp, of counsel with the defendant, whereupon, and upon duly considering the petition of petitioner and answer of defendant and the evidence offered to sustain the allegations thereof it now satisfactorily appears to the Chancellor that the petitioner and defendant were lawfully married on the twenty-ninth day of November, A. D. One thousand nine hundred and four; and that the defendant has not been guilty of extreme cruelty towards the petitioner so as to render it unsafe and improper, under existing circumstances, for her to cohabit with him, or to be under his dominion and control; and that both the petitioner and defendant are bona fide residents of this State.

The petitioner is not entitled to the decree prayed for but the case is one of such character that either of the parties should not be precluded

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30

40

## DECREE

from using the facts proved in this case in seeking other relief.

It is thereupon, on this twenty-first day of December, A. D. nineteen hundred and fifteen, by His Honor, Edwin R. Walker, Chancellor of the State of New Jersey, ordered adjudged and decreed that  
10 the petition of the petitioner be and the same is hereby dismissed, without prejudice.

And it is further ordered, adjudged and decreed, that the defendant pay to the petitioner, or her solicitor, the costs of this suit to be taxed, and also a counsel fee of One hundred Dollars, and that execution issue therefor according to the practice of the court.

E. R. WALKER, C.

20 Respectfully advised,

CHARLES J. ROE,

Advisory Master.

A TRUE COPY,

ROBERT H. McADAMS, Clerk.

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NOTICE OF APPEAL  
IN CHANCERY OF NEW JERSEY

Between

GEORGINA W. THOMAS,

*Petitioner,*

*and*

WILLIAM J. THOMAS,

*Defendant.*

*On Petition, &c*

10

NOTICE OF APPEAL

GEORGINA W. THOMAS, the above named petitioner, hereby appeals from the decree final filed in this cause and dated December 21st, 1915, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

20

Solicitor for and with Petitioner.

Dated, July 3rd, 1916.

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

J. W. MILLER,

Of Counsel.

30

40

PETITION OF APPEAL  
 NEW JERSEY COURT OF ERRORS AND  
 APPEALS

Between

GEORGINA W. THOMAS,  
*Appellant,*

and

WILLIAM J. THOMAS,  
*Respondent.*

*On Appeal  
 from Chancery.*

10

PETITION OF APPEAL.

To the honorable the Court of Errors and Appeals in the last resort in all causes :

20 The petition of Georgina W. Thomas, appellant, respectfully shows, that your petitioner finds herself aggrieved by a decree final made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the twenty-first day of December, A. D. nineteen hundred and fifteen, in that the said decree recites and adjudges that your petitioner has not sustained the allegations of her petition, and is not entitled to the relief therein prayed, in that the said respondent has not been guilty of extreme cruelty  
 30 towards the petitionr so as to render it unsafe and improper under existing circumstances for her to cohabit with him, or to be under his dominion and control ; and doth decree that your petitioner's said petition be dismissed without prejudice. And your petitioner 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 allegations of your petitioner's petition to have been proved, and the  
 40

## PETITION OF APPEAL

respondent, William J. Thomas, to have been guilty of extreme cruelty towards the petitioner so as to render it unsafe and improper, under existing circumstances, for her to cohabit with him, or to be under his dominion and control; and that both petitioner and defendant are bona fide residents of this State, and should have ordered, adjudged and decreed that your petitioner be divorced from the bed and board of her said husband, the respondent, and that the said respondent be compelled to support the children of the marriage, and that she may be awarded the custody of the said children. 10

Your petitioner therefore prays, that the said decree final may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet. 20

ISIDOR H. BRAND,  
Solicitor for and with Appellant.

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The first part of the paper is devoted to a discussion of the  
 various methods of determining the rate of reaction. It is shown  
 that the most accurate method is the one which involves the  
 measurement of the change in concentration of one of the  
 reactants or products over a period of time. This method is  
 particularly applicable to reactions which are first order.  
 In the case of second order reactions, the method of initial  
 rates is often used. This involves measuring the initial rate  
 of reaction at several different initial concentrations of the  
 reactants. The initial rate is determined by measuring the  
 change in concentration of one of the reactants or products  
 over a short period of time at the beginning of the reaction.  
 The method of half-lives is also used for second order  
 reactions. This involves measuring the time required for the  
 concentration of one of the reactants to decrease to one-half  
 of its initial value. The half-life is constant for first order  
 reactions and varies with the initial concentration for second  
 order reactions.

JOHN H. HARRIS

Department of Chemistry, University of California, Berkeley

27

NEW JERSEY

Court of Errors and Appeals.

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BETWEEN

GEORGINA W. THOMAS,  
*Petitioner-Appellant,*

*and*

WILLIAM J. THOMAS,  
*Defendant-Respondent.*

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*On Petition for  
Divorce.*

*On Appeal  
from Chancery.*

**Brief of Petitioner-Appellant.**

This is an appeal from a decree entered in the Court of Chancery by Charles J. Roe, Esq., Advisory Master, dismissing the petition of the petitioner appellant. Suit was originally instituted in the Court of Chancery by the petitioner-appellant for a divorce from bed and board, on the ground of extreme cruelty. The parties were married November 29, 1904, and lived together as husband and wife until August 26, 1915. Two children were born of this marriage. At the time of the marriage between the parties, the defendant had two boys by a former marriage, aged 9 and 13 years respectively.

The question involved in this case is "Whether or not the petitioner is entitled to a decree of divorce from bed and board on the grounds of extreme cruelty."

Extreme cruelty under our decisions and our statutes is such cruel conduct as endangers the safety of the person, or the health of the aggrieved party,

and it is not necessary that it be actually inflicted; it is sufficient if it be reasonably apprehended.

“To entitle a wife to divorce for constructive desertion in that she was compelled to leave her husband because of his conduct, his conduct must be the degree of cruelty necessary to support a decree *a mensa et thoro* ”

Thomas v. Thomas, 74 Atl., 125.

In view of the rule laid down in the above case, it would seem that in order to obtain a decree *a mensa et thoro*, the facts would almost have to be identical, as if an action were brought for a divorce *a vinculo*. If the wife was compelled to leave the husband by reason of his alleged cruel conduct, and remained away from her husband through his acts for a period of two years or more, she would be entitled to a decree of divorce on the ground of constructive desertion, and surely if the same evidence is adduced in a case of this kind, she should be entitled to a decree *a mensa et thoro*, which is a decree of a lesser degree.

The petition in this case alleges the marriage between the parties and the fact that they cohabited from the 29th day of November, 1904, the day of the marriage up to August 26, 1915, when she was compelled to separate herself from him finally, because of his extreme cruelty.

In support of this allegation at the trial, petitioner testified (case, p. 14): “I complained about his children, that they were disobedient, and that they were rude and discourteous towards me; they had very filthy habits, and thereupon Mr. Thomas became very abusive, and he became very angry towards me, and called me vile names, and directed me not to interfere with his children;” and (case,

p. 15), she further testified: "Why, all the clothing I had, I had previous to my marriage to Mr. Thomas, and I needed new clothes and things to prepare for my confinement, and I asked Mr. Thomas for money with which to buy some. He told me if I needed money, I could go out and earn it."

She further testified (case, p. 15):

"Q. Did he refuse to give you any money for clothes? A. Yes, sir.

"Q. You say that you were preparing for your confinement; when was that to take place? A. It was when we lived at 429a Fairmount avenue, Jersey City.

"Q. About what date? A. August 28th, 1905.

"Q. I am asking about the confinement. A. Oh, that was about the middle of October.

"Q. The middle of October, 1905? A. Yes, sir.

"Q. Well, what if anything happened then? A. I asked Mr. Thomas for money then.

"Q. Did he give it to you? A. No, sir; he did not.

"Q. He refused to give you any money? A. Yes, sir.

"Q. Why did you ask him for money—for what—what did you want the money for? A. For food and medicine and clothes.

"Q. And you told him that? A. Yes, sir.

"Q. And he refused to give you the money? A. Yes, sir.

She further testified that her step-sons were disrespectful and rude to her, and this condition of affairs lasted until January, 1906 (case, p. 16), and that when she appealed to Mr. Thomas to assist her in remedying these matters, she answered to the question "What did he say?" (answer) "Why he became violently angry and catching hold of me he

tried to throw me on the ground, and he also tried to choke me. I became weak and nervous and remained so for a long time." He said to me, "These are my boys and they can do as they please and if you don't like it get the hell out of here."

In 1908, petitioner testified, she was sick and needed the services of a doctor and he refused to get one for her, and that she was then forced to go to relatives in South Carolina for proper care and surgical attendance, at which place she underwent an operation for fistula (case, p. 17). In 1910 the defendant's oldest son was arrested charged with vagrancy and theft on charges made by neighbors, and that petitioner was accused by her husband of causing the arrest of the boy, by reason of which he became very abusive and violent, and the testimony is as follows (case, p. 19):

"Q. He accused you of having him arrested? A. Yes, sir; he accused me of having him arrested, and he caught me by the arm and threatened me with bodily harm, and he called me a bitch and a sow and other vile names, and gathering up his clothes, all that belonged to him in the room, he left it, and from that day (May 15, 1911), until August 26, 1915, he did not cohabit with me.

"Q. August 26th, 1915? Why do you mention up to that date? A. Because he did not have anything more to do with me; I left him then; I was compelled to leave him."

She further testified (case, p. 20), that she was struck by her husband on October 7, 1912, and the testimony is as follows:

"Q. Well, did he ever strike you before that? A. He struck me on the 7th of October, 1912."

"Q. What provoked that? A. I was preparing breakfast in the kitchen, and Mr. Thomas' son was

there, Leroy, and my boy, Marion, and the baby was there creeping on the floor; she was about one year old then. Mr. Thomas entered the kitchen and he was in a very ugly mood, and so I left the kitchen to himself and his son, Leroy, and I went in the dining room. When he was in the kitchen, he would spit on the floor and tell the boys to spit on the floor also. I came in the dining room and then my son, Marion, followed me in the dining room, and Marion said: 'Mamma, father spit on the floor and spit at the baby,' whereupon Mr. Thomas struck the child in the face and I remonstrated and endeavored to try and protect the child because he had been telling the truth, and then he raised his fist and struck me in the face; he struck me a violent blow in the face.

"Q. Who? Mr. Thomas? A. Yes, sir. And the blow so dazed me that I was compelled to lay down.

"Q. You say this was early in the morning? A. Yes, sir; along early in the morning.

"Q. How did you lay down? A. I laid down just a little while; my face immediately began to swell and my mouth was bleeding, and my face was in such a condition that I could not go out in daylight, and I waited all day long suffering, and I needed the services of a doctor or a dentist, and I didn't go out until I waited until night between six and seven o'clock, and then I went down to the dentist; he asked me what was the matter, and I told him that Mr. Thomas had struck me, and he said: 'Did he strike you there?' and I said: 'Yes, he did;' he said: 'Well, come in the office and I will look at your teeth,' and when he looked he said: 'It must have been a very hard blow to split your tooth like that,' and he extracted it, and after that my face was very sore for a long time, as well as my eyes

were both black, and I was very sick from that for several days afterward.

“Q. After you left the dentist what did you do?

A. I went then to my mother's and told her the kind of treatment I was receiving and she comforted me and took me in, and then she asked me to go back to Mr. Thomas and give him another chance and things might be better, but things did not change any.”

When petitioner would ask her husband for money, he would answer that if she dared to ask again he would throw her over the banister. That on the 9th of March, 1915, she asked him for a pair of shoes as her feet were on the ground, as she was sick and needed a pair of shoes, but he refused to give her money to buy them and in April of the same year, when she told him that the sum of \$25.00 he allowed her every two weeks was insufficient to maintain the household, he replied (case, p. 22): “It was too God damn bad about you,” and he refused to give her any more money although the testimony shows he was earning \$135.00 a month. In May of the same year she asked him for money for coal and he answered (case, p. 23): “Go buy it, I give you no coal.” He further said he gave one dollar a day which was enough for three of them, and further (case, pp. 23, 24, 25) she testified as follows:

“Q. What was the next occasion that you asked your husband for money for clothing or anything?

A. On the 27th of May, 1915, Mr. Thomas came in my bed room and I was in the bed room and he never said a word and I thought it was strange and so I went out in the kitchen, and Mr. Thomas went out in the hall and back to the kitchen, and I thought perhaps there was something wrong and I went back in the kitchen myself to see if there was anything wrong and seeing nothing wrong I returned to the

bed room and he said "Did you take anything out of the ice box," and he said "God damn you I will break your face if you do that again." I said "Yes, I took a little sugar that I saw there and a little coffee."

"Q. What did he do? A. He thereupon struck me several times? I said, 'Well, you have hit me for the last time.' On this occasion he used vile names and he would threaten me with bodily harm. He called me a bitch and other vile names, and he said, 'I have, ha! I will show you.'

"Q. In answer to what did he say that? A. When I said that he had struck me for the last time. He said, 'I will show you; you can go to your God damn lawyer and to court and see who will win.'

"Q. This was on the 27th of May, 1915? A. Yes, sir.

"Q. Upon what occasion, if any, did you ask Mr. Thomas for money from the 27th day of May, 1915, to the 26th day of August, 1915, when you say you left him? A. I asked him for money on February 8th, 1915, and I asked him for money in May, 1915.

"Q. I asked you after the 27th day of May, 1915, did you ask him for money, and if you did what was his treatment towards you? A. He refused when I asked him.

"Q. Did you ask him for money? A. Yes, sir.

"Q. More than once? A. Yes, more than once.

"Q. Twice? A. Yes, sir.

"Q. You asked him twice? A. Yes, sir.

"Q. You say that you left him on the 26th day of August, 1915; what happened that caused you to leave him on that day? A. I was afraid of him, and I was afraid of his son; I was afraid of them, because they had threatened me; he had threatened me with a large knife, and I was afraid he would

finally use this knife on me; and he had threatened to blow my 'God damned brains out' with a pistol, and he had a pistol. I was afraid he would choke, as he threatened to do; and I was afraid that he would scratch my face, as he had already done. I was afraid of his son. I had no food in the house, and I had no money, and I had no clothes; they were very scant.

"Q. Where did you go when you left on the 26th of August, 1915—when you say that you finally left your husband? A. I went to 140 Cottage street, Jersey City, with my mother.

"Q. And you still live there? A. Yes, sir."

The petitioner is corroborated by her mother to the effect (case, p. 31) that in 1905, when the child Marion was born, the defendant refused to advance money to the petitioner for a physician, and during the confinement the defendant refused to furnish moneys for medicine. That she had to furnish money for food, and purchase the linen, and everything that was required during the confinement of the petitioner, and that after the birth of the child, when petitioner would ask defendant for money, defendant refused, calling her ugly names, and on page 32 in answer to the question, "What was Mr. Thomas' conduct towards you while you were up there on those two occasions," the answer was, "He was very insulting, he told his wife that she could get the hell out of there," and when I told him not to use that language, he said to me, "You get the hell out of here, too," and on (case, p. 33) this witness furnished petitioner with money and other necessaries, because she was in a pitiable condition. She was not receiving a sufficient supply of food and clothing at that time, and that on several occasions she heard defendant call petitioner "A God damn son-of-a-bitch." This witness corroborates the petitioner as to the occurrence on the 7th of October, 1912,

that when petitioner called at her home on that day, petitioner's face was swollen and discolored, and her eyes were black, and her mouth was bleeding, and when asked who did it, replied, "That Mr. Thomas struck her in the face" (case, p. 34).

JESSIE LEAVACK, a witness produced on behalf of the petitioner (case, p. 40), testified that she was a sister of the petitioner. She further testified (case, p. 41):

"Q. Well, did you just pay a visit or did you stay there? A. No, sir; I made preparations to visit her, being a professional nurse, in the capacity of nurse.

"Q. How long did you stay there? A. I went about the first of the month and Marion was born on the 19th, and I stayed about ten days after. One day Mr. Thomas came in the house, which was in perfect condition, and I suggested to satisfy her that he go and sit with his wife and I would have the dinner on the table in a few minutes. After a while he came out and I was taking the washing off the line—the week's washing that my mother and I had done. He stepped behind me and looked at me and he said, "You are too God damn smart." I turned, surprised, not expecting it, and I said, "Why, Mr. Thomas, what do you mean?" and he said, "The pair of you are too God damn smart," and as he said that he went down the cellar stairs slamming the door behind him. He said this to me the day I made out a list of things, which occasioned such an outburst of temper. My sister was then about ten days more or less from her trouble and I found it was imposible under these conditions to remain there and so I left and went to New York and resumed my work there.

MARION THOMAS, ten years old, was called to testify on behalf of the petitioner but was not allowed at

first to testify because the Master did not think that the boy understood the nature of an oath, but permitted him to be called on rebuttal as appears (case, p. 69) and who testified that he heard defendant say to petitioner, "You God damn son-of-a-bitch, you had my son arrested." He corroborates his mother, the petitioner, as to what took place in 1912 when the defendant struck the petitioner in the jaw with his fist and hit her a hard blow.

The defendant claims that the petitioner took a dislike to his boys from the very day that they were married. He says that he paid petitioner at first \$50.00 every two weeks and denies that he only gave her \$15.00 every two weeks as she testified. He admits (case, p. 45) that once in a while she complained about the filthy habits of the boys, and on (case, p. 49) on direct examination when asked the question "Well, now coming down a little later, the 24th of April last, Mrs. Thomas says that she told you that \$15.00 every two weeks was insufficient to keep up the house, and that you said, 'It is too God damn bad about you,' do you remember that? A, I may have said it. I don't know. I said a good many things."

He denies most of the allegations as to the assault charges made by the petitioner, but he testified (case, p. 53), as follows:

"Q. In your testimony you state that you gave that woman \$100.00 a month—that is, \$50.00 every two weeks to about January, 1915; why do you characterize the petitioner as that woman? A. Because she is nothing else to me.

"Q. In other words you have absolutely no love for her? A. No, sir. She was a wife in name only and by law."

He admitted that occasionally he called his wife names. He denies that he ever called her a "bitch"

or a "sow," but says he may have cursed at her. He denies that he struck her, but admits that he did slap her in the face with his open hand, but says it was not hard enough to kill a fly.

Further on (case, p. 54):

"Q. You say that when the petitioner asked you for money you said, 'It is too God damn bad about you'—you had absolutely no interest in the petitioner whatever when she asked you for money?

A. No, sir; I did not.

"Q. And your only answer was a curse. Furthermore in your testimony you state that you refused to get coal for her. A. Yes, sir."

And on (case, p. 55):

"Q. You say, Mr. Thomas, that the petitioner was constantly away from the home when you lived at the house? A. Yes, sir.

"Q. And you likewise say you didn't think it was worth while to find out where she went? A. No, that didn't interest me any.

"Q. You also said, you said, you would give her 'hell'—you say you might have said that? A. Yes, sir."

He produces one of his sons and several neighbors to corroborate part of his testimony, but it's of so little value that it is unnecessary to make any comment on the same.

It seems that the solicitor for the defendant endeavored to induce the Court to believe that the quarrels were all caused because of the ill-treatment of the step-sons by the petitioner.

The memorandum filed by the Advisory Master (case, p. 75) is as follows: "The trouble between the parties was occasioned by these children. The petitioner, it is clear, disliked him, and did nothing to win their confidence. She gave them no care or

attempted to exercise control over them. This is particularly indicated by petitioner's statements of the filthy condition of the room in which these children slept, their careless habits, and their long absences from their home."

I cannot find any reason for such a conclusion in view of the testimony adduced at the trial. Petitioner-appellant testified (case, p. 14): "I complained about his children that they were disobedient and that they were rude and discourteous towards me; they had very filthy habits, and thereupon Mr. Thomas became very abusive, and he became very angry towards me and called me vile names and directed me not to interfere with his children." And (case, p. 16): "My step-sons were so filthy about their persons and their habits, using any receptacle handy—milk bottles and vases, cans, bottles, pitchers, and, in fact, anything they could urinate in. They would come to me full of vermin, both head and body, and after staying away from the house days at a time, and when I appealed to Mr. Thomas to assist me in remedying these matters he became violently angry, and, catching hold of me, he tried to throw me on the floor and he also tried to choke me (case, p. 17). I became weak and nervous and remained so for a long time. He said to me, 'These are my boys and they can do as they please, and if you don't like it, get the hell out of here.'" On cross-examination she testified (case, p. 25): "I tried to be a mother to them, and I tried to teach them to do right and lead them right and I tried to advise them right. I refused to remove the urinals they would make at home and I refused to clean up their room; I told Mr. Thomas that I was not physically able to, because of the condition of the room; the vermin and the food they would throw there" (and on case, p.

29); in answer to a question as to whether the boys had access to the bath-room, she said, "Yes, sir; but they were naturally filthy in their habits, and any receptacle that was handy, a bottle, vase, milk bottle, a can, or pitcher they would use, and even up to 1915 he was using anything that was in the room for a urinal, anything so they would not have to go to the bath-room."

There is no doubt but that the petitioner has proven the existence of actual violence towards her on the part of the defendant, as in the memorandum filed in the Court below (case, p. 71), we find the following: "The defendant's conduct, whatever may have been the provocation, in striking his wife or in calling her names, which he admits, is reprehensible and does not entitle him to any consideration. He has been guilty of using vile language and actual violence towards the wife he has promised to protect. His conduct is not excused by the fact that he was angry or that the conduct of his wife provoked him to these extremes."

I believe that the petitioner has made out a cause of action sufficient to entitle her to the relief prayed for. There are numerous citations which may be offered, but I have confined myself to the cases in this State.

We have proven the fact as to actual violence, and more particularly that in 1912 he struck her, by reason whereof her eyes were blackened and her face discolored, and she was compelled to seek the aid of a dentist who saw the marks on the petitioner the same day.

In the case of *Lister v. Lister*, 55 Atl., p. 1093, an action for divorce was instituted by the wife against the husband on the grounds of constructive desertion. It was held that a wife is justified in

leaving her husband on account of his cruelty, and a separation is legally chargeable to her husband and constitutes a legal abandonment or desertion upon his part, citing:

Weigand v. Weigand, 41 Eq., 202.

Dunner v. Dunner, 41 Atl., 159.

McVicker v. McVicker, 46 Eq., 590.

In the case of *Lister v. Lister* (supra) the petitioner testified that the act of cruelty which led to the final separation was her husband's choking her while in bed, abusing her and threatening to kill her. The wife is the only witness to this occurrence and the husband denies that he either struck, choked or threatened her. Two witnesses, however, swear that on that day they saw on the wife's neck marks or bruises, and one of them—the bell-boy—says that in her husband's presence, the petitioner said the defendant had done this. The other witness saw marks on the neck and arm on the same day in New York, where petitioner had brought her children to stay.

In the case of *Thomas vs. Thomas*, 74 Atl., 125, the learned Chancellor on page 125 cites part of the testimony in the case as follows: "He came back into the house with the knife in his hand and kept pointing it at the petitioner and then at himself. So close was he to the petitioner that he placed the knife against her. She was very much scared and through the shock was ill for several days. She does not say that he coupled this singular conduct with any threat whatever, and, if he had any malignant intentions they appear to be as much directed against himself as against her. At the conclusion of her original deposition, the petitioner was asked to tell what caused the desertion, and she answered

that the only reason she knew was that the defendant almost always after they were married talked to her and acted towards her as if he did not like her and wanted to get away from her. She did not think he was a drunkard, but that he was selfish, and she thought very miscellaneous in his affections, and that was all the reason she could give."

"There is no corroboration in the case of the the butcher-knife incident, nor any testimony from witnesses other than the petitioner concerning acts of cruelty whereby it might be inferred that the defendant had been guilty of the butcher-knife episode, and even if he were guilty, the incident standing alone, or in connection with other facts, does not amount to extreme cruelty."

"Quite often, when a wife approaches confinement, she either has her mother come to her house or goes to her mother's for the occasion. Such was the case in *Skean v. Skean*, *ubi supra*, in which Vice Chancellor Van Fleet held that mere failure by a husband to furnish his wife with sufficient support is not a ground for divorce, and in which case he refused a decree."

"The confinement of the petitioner in this case was two months off at the time she left her husband's home and went to her mother's, and a doctor and nurse were doubtless hardly required at that time. The Master reports that the defendant constructively deserted the petitioner. With this view I am unable to concur. The testimony, in my judgment, at best for the petitioner, makes the case one of doubt and difficulty, and to doubt is to deny."

"Isolate and infrequent acts of cruelty by a husband to his wife, culminating in physical violence of a dangerous character accompanied by abusive

words and a disavowal of any affection for her are sufficient grounds for divorce from the bed and board, especially where the wife is a weak and immature child of 16 years."

Boyle v. Boyle, 67 Atl., 690.

It is apparent by reading the evidence in this case that not only was there the usage of vile names and abusive treatment on the part of the defendant towards the petitioner, but these were coupled by acts of violence on several occasions. It appears that the petitioner was not a physically strong woman, but it was necessary for her to obtain medical aid from time to time, which was denied her. She did not receive sufficient moneys to provide for her maintenance and the support of the children, all of which tended to weaken her physical condition.

**The testimony of the husband is clear that he had no love for his wife, and admits that he struck her, but not in the way she says, and admits that he refused to get a doctor for his wife on several occasions. That he did not cohabit with his wife for four years, and that he made only one attempt at that time to effect a reconciliation.**

In view of all circumstances, I believe that the petitioner is entitled to the relief prayed for, because of the acts complained of, and I respectfully submit that a decree *a mensa et thoro* be advised.

Respectfully submitted,

ISIDOR H. BRAND,

Solicitor of Petitioner-Appellant.

JOHN H. SHERIDAN,

Of Counsel.

NEW JERSEY

Court of Errors and Appeals.

GEORGINA W. THOMAS,  
*Appellant-Petitioner,*

*vs.*

WILLIAM J. THOMAS,  
*Respondent Defendant.*

*Brief for  
Respondent.*

This is an appeal from the Court of Chancery dismissing a suit for divorce from bed and board on the ground of extreme cruelty.

The appellant is not entitled to the relief asked for because (1) she has not shown extreme cruelty; (2) if there was any cruelty it was due to appellant's own actions.

I.

**Extreme cruelty has not been shown.**

Extreme cruelty is such cruel conduct as endangers the safety of the person, or the health of the aggrieved party. It is cruelty of an extraordinarily serious and dangerous character and must be such as to threaten to seriously injure the person or health of the wife. Quarreling, bickerings or incompatibility of temper are not extreme cruelty.

Smith vs. Smith, 40 N. J. Equity, 566.

Taylor vs. Taylor, 73 N. J. Equity, 745.

It has not been shown that the safety or the health of the appellant is endangered. Mere words

even though abusive and threatening, do not impair a wife's health, and there is no case reported in this State where it has been so held. Even if there were such a case, petitioner has not shown that her health has been impaired by the words of her husband. Her testimony has not been corroborated with reference to lack of money to support herself and children. The testimony of the witness, Christina Levback, consists mostly of conclusions and opinions, but nothing of proof.

The testimony of Jesse Levack (page 40 to 42) is of little or no value. It consists only of conclusions and practically no testimony as to what happened between the petitioner and her husband; it is only a statement of what the witness did in the home of the defendant. It is admitted that the rent was paid by the husband. There is no proof that petitioner was without food or clothing, due to defendant's conduct. On the contrary, defendant testified that he gave petitioner ample means wherewith to obtain food and clothing, and continued to do so until petitioner refused to keep house for him and the stepchildren. The slight violence referred to in the testimony is insignificant, there being but one occasion, and the petitioner suffered neither in health or mind therefrom.

**If there was any cruelty, it was due to appellant's own actions.**

If there was any cruelty, it was due to petitioner-appellant's own actions. She brought about the very conditions of which she complains. She did nothing towards trying to keep the love and respect of her husband; she had an aversion for her stepchildren; she would not attempt to do anything that might be pleasing to her husband or to his children.

Luetzow, a witness for the petitioner-appellant, testifies (page 38, lines 1 to 10), that "the rooms were in very neat order with one exception, that is the room of Mr. Thomas," proving that the petitioner was able to and did keep the house properly if she wanted to, but neglected the home as far as her husband and his children were concerned. By her very actions, as testified to by her witness, the petitioner brings about conditions of which she complains to this Court. Again, on page 39, lines 30 to 40, same witness testifies "the condition (of room occupied by Mr. Thomas) was the same." This was two months after the first visit of witness to petitioner's home, and the wife had done nothing towards improving conditions. The provoking conduct of the wife had a great deal to do with the state of affairs.

The conduct of the complaining party must not have contributed to *or induced* the conduct relied upon to constitute cruelty.

Smith vs. Smith, *supra*.

Davis vs. Davis, 19 N. J. Equity, 180.

Coles vs. Coles, 32 N. J. Equity, 547.

Duvale vs. Duvale, 34 Atl. Rep., 888; affirmed 65 N. J. Equity, 771.

Separation on the ground of cruelty is decreed as a protection for the wife in future, and petitioner has not shown that her future life will be dangerous or even unpleasant. There is absolutely nothing to show cruelty in the future, and little, if anything, to show cruelty in the past, sufficient for divorce.

WILLIAM C. CUDLIPP,  
Attorney for Respondent.





