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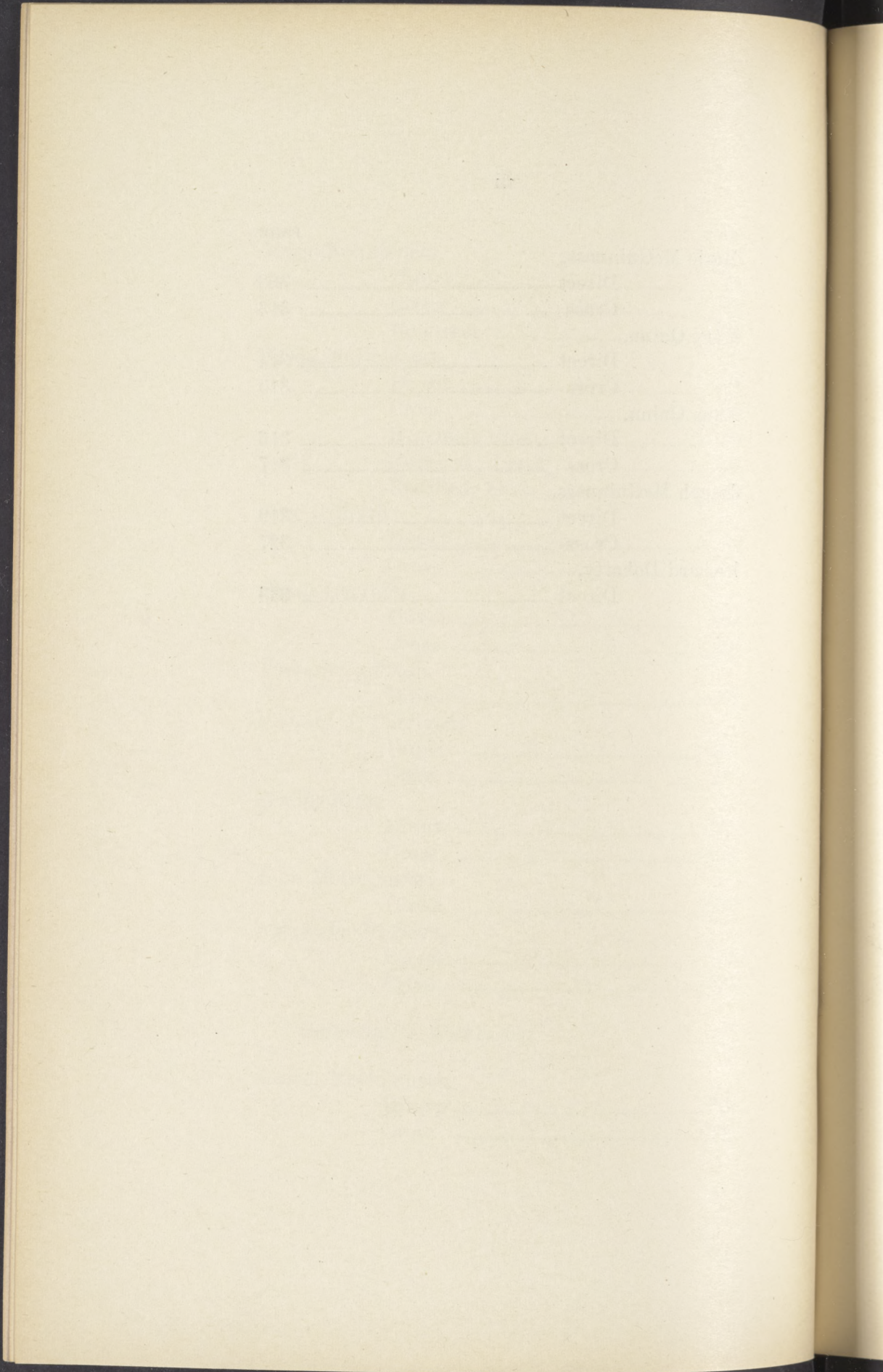
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Notice of Appeal—From Order.

(Filed, August 6, 1929.)

IN CHANCERY OF NEW JERSEY. 10

Between

MARY MCGUINNESS,
Complainant,

and

JOSEPH H. MCGUINNESS,
Defendant.

On Bill, etc.

Notice of
Appeal.

20

The complainant, Mary McGuinness, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from the order of the Court of Chancery of New Jersey advised by Honorable William R. Barricklo, Advisory Master, made and filed in the above entitled cause on the 27th day of June, 1929, in and whereby the order for alimony pendente lite made and filed on October 22nd, 1928, was modified to the extent that the alimony and maintenance during the pendency of the suit from and after the 18th day of February, 1929, and until the entry of the final decree, be the sum of \$15.00 per week to be paid in lieu of the sum of \$40.00 per week as originally ordered. 30

Dated, August 3rd, 1929.

ALEX. SIMPSON,
Sol'r for and of Counsel with 40
Complainant, Mary McGuinness.

Petition on Appeal—From Order.

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

ALEX. SIMPSON,
Of Counsel with Complainant,
Mary McGuiness.

10 Sat below:
WILLIAM R. BARRICKLO,
Advisory Master.

Petition of Appeal—From Order.

(Filed, August 22, 1929.)

20 NEW JERSEY COURT OF ERRORS
AND APPEALS.

30	<p>MARY MCGUINESS, <i>Complainant-Appellee,</i></p> <p style="text-align: center;">vs.</p> <p>JOSEPH H. MCGUINESS, <i>Defendant-Appellant.</i></p>	<p>On Appeal from the Court of Chancery.</p> <p>Petition of Appeal.</p>
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To the Honorable the Court of Errors and Appeals
in the last resort in all causes :

The petition of Mary McGuiness, the appellant
in the above entitled cause, respectfully shows
that :

40 1. Petitioner finds herself aggrieved by an order
made in the Court of Chancery by his Honor Ed-

Petition on Appeal—From Order.

win Robert Walker, Chancellor of the State of New Jersey, bearing date the 27th day of June, 1929, in a certain cause in said Court of Chancery, wherein the said Mary McGuinness was complainant and the said Joseph H. McGuinness was defendant, in this respect, to wit, that the order adjudges that the order for alimony pendente lite made in this cause October 22, 1928, be modified to the end and extent that the defendant, Joseph H. McGuinness, pay to the complainant, Mary McGuinness, for her alimony and maintenance during the pendency of the suit, and from the 18th day of February, 1929, until the making and entry of the final decree the sum of \$15.00 per week in lieu of the sum of \$40.00 a week as originally ordered. 10
20

And petitioner appeals from the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that, on the 18th day of February, 1929, when an order to show cause was obtained by the defendant why the order for alimony pendente lite should not be modified or reduced, the said defendant on that date was in arrears in his alimony payments in the sum of \$480.00, together with a counsel fee of \$200.00, and for that reason he stood in the position of a contemner, and under the settled rule of the Court of Chancery he was not to be relieved of his duty under the original order until the order had first been obeyed; and said defendant was still in arrears in his alimony payments at the time where the order for modification of the alimony pendente lite was made, namely, June 7, 1929. 30
40

Answer to Petition on Appeal—From Order.

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

Solicitor for and of Counsel
with Appellant.

Answer to Petition of Appeal—From Order.

(Filed, September 23, 1929.)

20 NEW JERSEY COURT OF ERRORS
AND APPEALS.

30	Between MARY MCGUINNESS, <div style="text-align: right;"><i>Appellant,</i></div> <div style="text-align: center;">and</div> JOSEPH H. MCGUINNESS, <div style="text-align: right;"><i>Appellee.</i></div>	} On Appeal. } Answer to } Petition of } Appeal— } From Order.
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To the Honorable, the Court of Errors and Appeals of New Jersey of the last resort in all causes.

The answer of the appellee, Joseph H. McGuinness, to the petition of appeal of Mary McGuinness from order of the Court of Chancery, made June 27th, 1929, modifying an order theretofore made
40 in said court, October 22nd, 1928.

*Order Modifying Order for Alimony
Pendente Lite.*

He denies that any part of said order is erroneous, wherein the Chancellor ordered that the order of said Court of Chancery, made October 22nd, 1928, be modified to the end and extent that the appellee pay to the appellant for her alimony and maintenance during the pendency of the suit and from the 18th day of February, 1929, until the making and entry of the final decree, and he does here protest that the same is in all things equitable, legal and just. 10

Wherefore the appellee prays that the said order, as to the matter therein appealed from, be affirmed, and that the said appeal be dismissed, with costs.

RICHARD DOHERTY,
Solicitor for and of counsel
with Appellee. 20

**Order Modifying Order for Alimony
Pendente Lite.**

(Filed, June 27, 1929.)

IN CHANCERY OF NEW JERSEY. 30

Between

MARY MCGUINNESS,
Complainant,
and

JOSEPH H. MCGUINNESS,
Defendant.

On Bill for
Maintenance.
Order Modi-
fying Order
for Alimony
Pendente
Lite. 40

An order having been made herein, October 22nd, 1928, requiring the defendant to pay to the

*Order Modifying Order for Alimony
Pendente Lite.*

complainant during the pendency of this suit the sum of \$40.00 per week by way of alimony pendente lite, and the said cause having been thereafter referred to William R. Barricklo, Esq., advisory master, to hear and determine the same for the Chancellor, and the defendant having on the 18th day of February, 1929, obtained an order to show cause why the said order for alimony pendente lite should not be modified by the reduction of said sum from and after the date of February 18th, 1929, and the same coming on to be heard in the presence of Alexander Simpson, solicitor of the complainant and Richard Doherty, solicitor of the defendant, and it appearing that in justice and equity the said order should be modified, it is on this 27th day of June, 1929,

ORDERED that the said order for alimony pendente lite made October 22nd, 1928, be modified to the end and extent that the defendant, Joseph H. McGuinness, be required to pay to the complainant, Mary McGuinness, for her alimony and maintenance during the pendency of said suit and from the said date of February 18th, 1929, until the making and entering of the final decree the sum of \$15.00 per week in lieu of the sum of \$40.00 per week as originally ordered.

Respectfully advised,

WILLIAM R. BARRICKLO,
A. M.

Petition for Contempt.

(Filed, February 13, 1929.)

IN CHANCERY OF NEW JERSEY.

Between MARY MCGUINESS, <i>Complainant,</i> and JOSEPH MCGUINESS, <i>Defendant.</i>	}	On Bill, etc. Petition.	10
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To the Honorable Edwin Robert Walker, Chan-
 cellor of the State of New Jersey: 20

The petition of Mary McGuiness of the City of
 Jersey City, County of Hudson and State of New
 Jersey, respectfully shows:

1. The petitioner is the petitioner named in the
 above entitled cause.

2. By a certain order of alimony pendente lite
 and counsel fee made and filed in this cause on 30
 the 22nd day of October, 1928, it was ordered that
 defendant do pay to the petitioner the sum of
 \$40.00 per week, for her support and mainte-
 nance, and that of the children of their marriage
 in her custody, to be paid at the beginning of
 each and every week until the termination of this
 suit.

3. That a certified copy of the order for alimony 40
 pendente lite and counsel fee was served person-

Petition for Contempt.

ally on the above named defendant on the 31st day of October, 1928, the affidavit of service having heretofore been filed in this Court.

10 4. That the said Joseph McGuiness, notwithstanding the aforesaid order of this Court, has wilfully violated and disobeyed the direction of said order.

5. That the said Joseph McGuiness is in arrears under the said order amounting to \$440.00 up to and including the week of February 4, 1929, together with counsel fee of \$200.00.

20 6. Your petitioner therefore prays that the said Joseph McGuiness, the above named defendant, may be punished for this contempt in wilfully violating the terms of the aforesaid order of this Court.

ALEX. SIMPSON,
Solicitor for Petitioner.

30 State of New Jersey,)
County of Hudson, } ss.:

Mary McGuiness, being duly sworn according to law, upon her oath deposes and says:

I am the petitioner named in the foregoing petition, and the matters and things therein contained are true.

40 There is now due me the sum of \$440.00 on account of alimony pendente lite up to and includ-

Affidavit of Service.

ing the week of February 4, 1929, together with
counsel fee of \$200.00.

MARY McGUINNESS.

Subscribed and sworn to before me,
this 9th day of February, 1929.

10

ALEX. R. DE SEVO,
Atty. at Law of
New Jersey.

Affidavit of Service.

IN CHANCERY OF NEW JERSEY.

20

Between

MARY McGUINNESS,
Complainant,
and

JOSEPH McGUINNESS,
Defendant.

On Bill, etc.
Affidavit of
Service.

30

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

John J. Sinnott, of full age, being duly sworn
according to law, upon his oath deposes and says:

On the 31st day of October, 1928, I served Jo-
seph McGuinness, the above named defendant, with
a true copy of an order, by delivering same to him
personally in the radio store of his son located

40

Order to Show Cause.

at 535 West Side Avenue, Jersey City, N. J., at
10:30 A. M.

JOHN SINNOTT.

10 Subscribed and sworn to before me,
this 1st day of November, 1928.

ALEX. R. DE SEVO,
Atty. at Law of
New Jersey.

Order to Show Cause.

(Filed, February 13, 1929.)

IN CHANCERY OF NEW JERSEY.

20

Between

MARY MCGUINESS,
Complainant,
and

JOSEPH MCGUINESS,
Defendant.

On Bill, etc.,
Order to
Show Cause.
70/199.

30

It appearing that a true copy of an order for alimony pendente lite and counsel fee made and filed in this cause on the 22nd day of October, 1928, was served personally on the defendant on the 31st day of October, 1928, under which order the defendant was ordered to pay to the complainant the sum of \$40.00 per week for her support and maintenance and that of the children of their marriage in her custody at the beginning of

40

each and every week until the termination of the

Order to Show Cause.

suit, and upon reading and filing the petition and affidavit of the complainant and whereby it appears and he has wilfully violated and disobeyed the terms of the said order and that the said defendant, Joseph McGuiness, is now in arrears under the said order in the sum of \$440.00 up to and including the week of February 4th, 1929, together with counsel fee of \$200.00, and praying that the said defendant, Joseph McGuiness, may be adjudged in contempt for his contumacy in the particulars aforesaid and punished accordingly;

It is on this 13th day of February, 1929, ORDERED, that the said Joseph McGuiness, the defendant in the above entitled cause, show cause before the Chancellor at 15 Exchange Place, Room 729, in the City of Jersey City on the 18th day of February, 1929, at the hour of 3:30 in the afternoon, or as soon thereafter as counsel can be heard, why the said defendant, Joseph McGuiness, should not be adjudged guilty of contempt of this court in the premises and punished accordingly.

It is further ORDERED, that a copy of this order, together with a copy of the petition and affidavit on which this order is founded, all of which copies may be certified to be true by the solicitor of the complainant, be served on the said defendant, Joseph McGuiness, personally within one day from the date of this order.

EDWIN ROBERT WALKER,
Chancellor.

Respectfully advised,

WILLIAM R. BARRICKLO,
A. M.

10

20

30

40

Order for Alimony Pendente Lite.

(Filed, October 22, 1928.)

IN CHANCERY OF NEW JERSEY.

10	Between MARY MCGUINESS, <i>Complainant,</i> and JOSEPH MCGUINESS, <i>Defendant.</i>	}	On Bill, etc. Order.
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20 This matter being opened to the Court by Alexander Simpson, Esq., of counsel with the complainant and in the presence of Richard Doherty, Esq., of counsel with the defendant, and good cause being shown by bill and affidavits why the complainant is entitled to relief in the premises,

30 It is thereupon on this 22nd day of October, 1928, ORDERED, that Joseph McGuiness, the above named defendant, do pay to his wife, Mary McGuiness, the above named complainant, or to her solicitor, the sum of \$40.00 dollars per week at the beginning of each and every week from the date of this order until the termination of this suit, for her support and maintenance and that of the children of the marriage now in her custody, and

It is further ORDERED that the said Joseph McGuiness do pay to the said Mary McGuiness,

Petition to Modify Alimony Order.

or to her solicitor a counsel fee of \$200.00 and costs of this application to be taxed, and

Respectfully advised,

JNO. J. FALLON,
V. C.

10

E. R. WALKER,
C.

A true copy.

THOMAS BARBER,
Clerk.

Petition to Modify Alimony Order.

20

(Filed, February 18, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

MARY MCGUINNESS,
Complainant,

and

JOSEPH H. MCGUINNESS,
Defendant.

On Bill, etc.
Petition.

30

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

The petition of Joseph H. McGuinness, of the
City of Jersey City, County of Hudson and State
of New Jersey, respectfully shows:

40

Petition to Modify Alimony Order.

1. The petitioner is the defendant in the above entitled cause, which is brought for the purpose of obtaining a decree for alimony and maintenance, and was instituted on or about October 1st, 1928.

10

2. The petitioner was thereupon served with a copy of the bill of complaint, having affidavits annexed thereto, and notice of a motion for alimony pendente lite and counsel fee returnable October 8th, 1928. Petitioner served answering affidavits to which the complainant replied, and on October 22nd, 1928, the matter was heard by V. C. Fallon, who made an order that the petitioner pay to the complainant \$40.00 a week and a \$200.00 counsel fee, reserving to the petitioner the right to apply for a modification of such order should it be found that the same was excessive.

20

3. Upon the making of such order V. C. Fallon had before him only the uncontradicted and undisputed proof presented by the petitioner that his assets consisted of two pieces of real estate in Jersey City,—one located at the corner of West Side and Clendenny Avenues, consisting of three stores in a one-story building, and the other property consisting of his home at 664 West Side Avenue, a part of which he rented to a tenant; that the Clendenny Avenue place was subject to a mortgage in process of foreclosure, which was referred to William R. Barricklo, Esq., master; he reported that the mortgage lien was \$7,354.89 and the lien of a judgment creditor, Frank J. McGuinness, was \$10,340.34; in addition the premises is subject to the lien of several years' taxes,

30

40

Petition to Modify Alimony Order.

and the charges against the same would probably amount to \$20,000.00. The latter sum is about the fair valuation of the property, and the petitioner has no substantial equity therein.

The other parcel consists of a dwelling in which petitioner resides on West Side Avenue between Gifford Avenue and the Park Plaza, part of which is, at times, rented out to a tenant, who formerly paid \$80.00 per month, but moved out. 10

At the time of the hearing it was disclosed and uncontradicted that the petitioner's total gross income was \$130.00 per month, out of which he was required to provide for taxes approximately \$1,000.00 per annum, interest on the mortgage referred to, and interest on a \$5,000.00 mortgage held by John W. Heck on the residence. 20

4. The petitioner was never able to obey the order made by V. C. Fallon requiring, as it did, the payment to the complainant of a monthly amount about \$50.00 in excess of the petitioner's gross income. The petitioner accordingly on November 26th, 1928, presented an affidavit to V. C. Fallon, and applied for an order to show cause why reference should not be had to a master to ascertain the petitioner's assets. The application was denied, and on the same day V. C. Fallon made an order to show cause returnable December 3, 1928, why petitioner should not be punished for contempt for failing to comply with the order. 30

5. December 3rd, 1928, argument was had on the order to show cause, and an order was ad- 40

Petition to Modify Alimony Order.

vised adjudging the petitioner to be in contempt, and ordering his commitment to jail for failure to pay the alimony accrued up to that time and the counsel fee. An order of arrest was thereupon made, which has not been executed, and the said
10 order, together with the order adjudging the contempt, still remain in full force and vigor, and for the purpose of enforcing the rights of the complainant is as efficacious as any order which might be made on the present application.

6. The orders last mentioned have been waived by the complainant, and by her conduct she is estopped to complain of the petitioner's failure to comply with the alimony order herein because
20 of the following circumstances:

The petitioner refers to the bill of complaint with the affidavits annexed thereto, and the answering affidavits of the petitioner and the complainant, wherein it is established that the complainant in April, 1928, without any cause whatever, departed from the petitioner's home, taking with her the two children, and has since that time
30 remained away and kept the children away, residing in the home of her brother, John F. Malone and her sister, Susan McDonough; that the petitioner still maintains said home for the complainant, and has, in his said affidavits and in his answer, offered to take her back whenever she chose to return; that the complainant has deserted the petitioner, and by preference resides in the home of her said brother and sister with whom she
40 colludes to accomplish the financial ruination of the petitioner; that the said brother and sister are

Petition to Modify Alimony Order.

the bitter enemies of the petitioner, and are using the complainant solely as an instrument to bring about his impoverishment.

Shortly after the complainant's said desertion, the petitioner made an effort to ascertain the terms upon which she would desist from her desertion, and for that purpose a meeting was arranged with her in the office of her counsel, Hon. Charles M. Egan. At such meeting the complainant refused to return to the petitioner's home, and demanded the lump payment to her of \$20,000.00. The petitioner avers that said amount was fixed by her at the instance of her said brother and sister, who were aware that \$20,000.00 represented the full equity that the petitioner had in all his real estate, and that the exaction of such an amount would mean his reduction to poverty. 10
20

Every effort made by the petitioner to compose the present difficulties with his wife since that time has been met with the same proposition, in varying forms, accompanied by the refusal of the complainant to return home.

The complainant's counsel, at various times, has urged upon the petitioner and his solicitor that the petitioner make a settlement of a lump sum upon the complainant, rather than pay the alimony which has been ordered. These overtures have been received by the petitioner with the open offer to settle upon the complaint, in consideration of the abandonment of the present suit, one-half of his entire fortune to be ascertained in any method which the complainant might suggest, and to be carried into effect in any manner she might prefer. To this end the petitioner 30
40

Petition to Modify Alimony Order.

has offered to have his entire property appraised, sell the same at public, or private, sale, and to give the complainant one-half of the net equity. As alternative proposals, he has offered, upon the appraisal of the property as aforesaid, to convey it all to her, and take back a mortgage for one-half of the net equity, or, in the event of retaining it, to give her a mortgage for such half. He has likewise proposed to convey his entire property to Mr. Simpson, her solicitor, and Richard Doherty, his own solicitor, and have them work out the division of the property by any method they might deem fit. He has also offered to either give her \$8,000.00 for her release of dower in the entire property, or to deed it all to her, and take cash or mortgage for the same amount. These various propositions have been taken under advisement by the complainant and her brother and her sister, and have all been rejected with the demand that the petitioner give the complainant \$20,000.00 outright. Annexed hereto, and marked "Schedule A" is the correspondence between counsel in connection with such matter.

During the pendency of these negotiations, the petitioner has been hopeful of their successful outcome, and has been induced to believe by the complainant and her solicitor that his offer in some form would be accepted, but in each instance the complainant has recurred to a demand which would mean the petitioner's impoverishment.

Being entirely without funds, the rents which the petitioner obtained being barely sufficient for the maintenance of himself, and defraying the

Petition to Modify Alimony Order.

lighting and fuel charges against the residence, in December, 1928, be borrowed from his son, Joseph McGuinness, \$200.00 which he paid over to the solicitor of the complainant, upon a distinct assurance that such payment would aid in bringing the negotiations for settlement to a conclusion. The petitioner, avers, however, that such inducements were wholly fictitious, and that the complainant, instigated by her brother and sister, never sought any other result than that the petitioner might be impoverished. 10

As late as February 13th, 1929, Mr. De Sevo, one of the complainant's solicitors, submitted to Richard Doherty, the petitioner's solicitor, the proposition that the complainant would take the property situate at Clendenny and West Side Avenues, free and clear, in settlement of her alimony. As heretofore indicated, this offer imported that the petitioner should pay off the mortgage thereon, and the judgment against the same, and the taxes and interest, which would mount up to \$20,000.00, so that she would get the last named sum in the form of real estate, and by compelling the petitioner to mortgage his remaining property to its full value to discharge such liens, thereby have her will and ruin him financially. 20 30

7. After the making of such proposition the petitioner's solicitor served notice of an application for the designation of a time and place for hearing, returnable on February 18th, 1929. A few hours after such service the order to show cause was obtained in the present proceeding, and the petitioner avers that said order was obtained 40

Petition to Modify Alimony Order.

not for any bona fide purpose of enforcing the decree for alimony pendente lite, but as a final desperate step to force the petitioner into acceding to the complainant's demands before the hearing of the present case, wherein she has slim hope for being successful.

10

8. The petitioner is eager to have the final hearing held in this matter, and charges that the complainant has deliberately delayed such final hearing since December 6th, 1928, when the order of reference was made, because she fears that the final disposition of the matter will blast her hopes for making the financial arrangements with the petitioner which she contemplates.

20

9. Since the making of the orders by V. C. Fallon above referred to, the petitioner's financial condition has altered only to the extent that he is now in receipt of an income from the rent of the premises at Clendenny and West Side Avenues of \$175.00. One of the tenants being a butcher, the petitioner obtains his meat supply from him, the bill for which is deducted from the rent, and averages \$35.00 per month.

30

10. The petitioner has been guilty of no act of cruelty against the complainant, extreme or otherwise, has never abandoned her, nor neglected, or refused to sustain her; maintains his home ready for her return and still offers to receive her and the children, and further charges that the complainant has, without justification, deserted him, and that her case in the present matter is purely fabricated at the instigation and

40

Petition to Modify Alimony Order.

encouragement of her said brother and sister, and that she aims at no other end than maliciously to triumph over the petitioner, and to see him a ruined man.

11. The petitioner further charges that the complainant is living at the present time in a state of far greater ease and luxury and indolence than she would enjoy attending to her ordinary marital duties; that her brother and sister who harbor her are both wealthy, and not only endure the presence of the complainant and the children in their home, but so far overmaster her will as to compel her to remain with them even though she might see the light of duty, and desire to return to her own home. 10
20

The petitioner refers and makes part of this petition all the pleadings, affidavits and orders on file in this cause, and begs leave for convenience to refer to this petition, not only in resistance of the order to show cause why he should not be punished for contempt, but likewise in his own behalf upon the application for a modification of the order for alimony pendente lite, which modification he hereby prays. 30

JOS. H. MCGUINNESS.

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

Joseph H. McGuinness, being duly sworn, on his oath says, he is the petitioner named in, and 40

"Schedule A."

who signed the foregoing petition, and the matters and things therein contained are true.

JOS. H. McGUINNESS.

Sworn to and subscribed before me
10 this 14th day of February, 1929.

MATILDA M. BRAUER,
Notary Public of
New Jersey.

"Schedule A."

ALEXANDER SIMPSON
Counsellor at Law
20 921 Bergen Avenue—Journal Square
Jersey City

December 27th, 1928.

Richard Doherty, Esq.,
921 Bergen Avenue,
Jersey City, N. J.

McGuinness v. McGuinness.

Dear Mr. Doherty:
30 Inasmuch as you have not put in writing the proposition which you discussed with me at my office, I assume that Mr. McGuinness intends to pay the \$40.00 per week. If so, he is in arrears since the 18th of November, 1928. I wish you would take this matter up with him, and oblige

Very truly yours,

40 AS:A

ALEX. SIMPSON.

"Schedule A."

Jan. 4, 1929.

Hon. Alexander Simpson,
921 Bergen Ave.,
Jersey City, N. J.

Dear Senator Simpson:

10

Replying to your letter of December 27th in which you request that the proposition in the McGuinness matter be defined in writing, I am able, at this time, to reiterate that the attitude of Joseph H. McGuinness, Sr., is to compose the troubles with his wife by either taking her and the children back to their home, or if she persists in staying away, to provide for the maintenance of her and them by turning over to her one-half of whatever equity he has in all his real estate, through such disposition of the same as may be feasible and agreeable to her.

20

To this end he is satisfied to have the property sold at public, or private sale, to turn it over to you and me as trustees for that purpose, or to accomplish the same result by any other process that might meet with the approval of Mrs. McGuinness.

30

Of course, in the ascertainment of the value of his equity, there are two mortgages and the judgment of Frank McGuinness which must be taken into consideration.

Will you kindly let me hear what the determination of your client is in this respect.

Yours very truly,

RD/MB.

40

Order to Show Cause.

(Filed, February 18, 1929.)

IN CHANCERY OF NEW JERSEY.

10	Between MARY MCGUINNESS, <i>Complainant,</i> and JOSEPH H. MCGUINNESS, <i>Defendant.</i>	}	On Bill, etc. Order to Show Cause.
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20 Upon reading and filing the verified petition of the defendant, Joseph H. McGuinness, and on motion of Richard Doherty, his solicitor, it is on this 18th day of February, 1929,

30 ORDERED, that the complainant, Mary McGuinness, show cause before the Chancellor at 15 Exchange Place, Room 729, in the City of Jersey City, on Wednesday, the 27th day of February, instant at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made modifying the order for alimony pendente lite and counsel fees made herein October 22nd, 1928, by reducing the amount of alimony ordered thereby to be paid. It is further

ORDERED, that a copy of this order to show cause, and of the said petition and verified affidavit, which may be certified as true by the solicitor of the defendant, be served upon the complainant, or her solicitor, at least 5 days before the return of said order.

E. R. WALKER,
C.

40 Respectfully advised,

WILLIAM R. BARRICKLO,
A. M.

Stipulation.

IN CHANCERY OF NEW JERSEY.

Between MARY McGUINNESS, <i>Complainant,</i> and JOSEPH H. McGUINNESS, <i>Defendant.</i>	} On Bill, etc. 10 } Stipulation.
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It is hereby stipulated and agreed that the argument on the order to show cause, made February 13th, 1929, why the defendant should not be held in contempt, be continued until Monday, the 25th day of February, 1929, at the same hour and place designated in the original order. 20

It is further stipulated and agreed that the defendant serve, at least 4 days before such adjourned date, copies of any affidavits which he may intend to use on said adjournment.

ALEX. SIMPSON,
Solicitor of Complainant. 30

RICHARD DOHERTY,
Solicitor of Defendant.

Notice of Appeal—From Decree.

(Filed, August 13, 1929.)

IN CHANCERY OF NEW JERSEY.

10	Between MARY MCGUINESS, <i>Complainant,</i> and JOSEPH H. MCGUINESS, <i>Defendant.</i>	} On Bill, etc. } Notice of } Appeal.
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20 The complainant, Mary McGuiness, hereby ap-
 peals from the final decree made in the above en-
 titled cause on the 27th day of June, 1929, and
 from the whole and every part thereof, to the
 Court of Errors and Appeals in the last resort of
 all causes.

Dated: August 12th, 1929.

ALEX. SIMPSON,
 Solicitor for and of Counsel with
 30 Complainant, Mary McGuiness.

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

ALEX. SIMPSON,
 Of Counsel with Complainant,
 Mary McGuiness.

Sat below,
 WILLIAM R. BARRICKLO,
 40 Advisory Master.

Petition of Appeal—From Decree.

(Filed, August 22, 1929.)

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

<p>MARY MCGUINNESS, <i>Complainant-Appellee,</i></p> <p style="text-align: center;">vs.</p> <p>JOSEPH H. MCGUINNESS, <i>Defendant-Appellant.</i></p>	<p>On Appeal from the Court of Chancery.</p> <p>Petition of Appeal.</p>	<p>10</p>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes: 20

The petition of Mary McGuinness, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing the date of the 27th day of June, 1929, in a certain cause in said Court of Chancery wherein the said Mary McGuinness was complainant and that the said Joseph H. McGuinness was defendant, in this respect, to wit, that the said decree adjudges that the complainant's bill of complaint be dismissed. 30

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that, from the proofs submitted by the complainant, she sus- 40

Answer to Petition of Appeal—From Decree.

tained the allegations of her bill of complaint and was entitled to the relief therein sought.

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

ALEX. SIMPSON,
 Solicitor for and of Counsel
 with Appellant.

Answer to Petition of Appeal—From Decree.

20

(Filed, September 23, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between MARY MCGUINNESS, <i>Appellant,</i> and JOSEPH H. MCGUINNESS, <i>Appellee.</i>	} On Appeal. } Answer to } Petition of } Appeal— } From Decree.
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To the Honorable, the Court of Errors and Appeals of New Jersey of the last resort in all causes:

40 The answer of the appellee, Joseph H. McGuinness, to the petition of appeal of Mary McGuinness from decree of the Court of Chancery made June

Decree of Dismissal.

27th, 1929, dismissing the complainant's bill of complaint.

He denies that any part of said decree is erroneous, wherein the Chancellor dismisses the complainant's bill of complaint, and he does here protest that the same is in all things equitable, legal and just. 10

Wherefore the appellee prays that the said decree, as to the matter therein appealed from, be affirmed, and that the said appeal be dismissed, with costs.

RICHARD DOHERTY,
Solicitor for and of Counsel
with Appellee.

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Decree of Dismissal.

(Filed, June 27, 1929.)

IN CHANCERY OF NEW JERSEY.

(70-199.)

Between

MARY MCGUINNESS,
Complainant,

and

JOSEPH H. MCGUINNESS,
Defendant.

On Bill for
Maintenance.
Decree of
Dismissal.

30

This matter being opened to the court upon issue joined between the parties, and the same coming on to be heard in the presence of Alexander 40

Conclusion.

10 Simpson, solicitor of the complainant, and Richard Doherty, solicitor of the defendant, and the proofs of the parties having been submitted and duly considered, and it appearing that the complainant has not sustained the allegations of her bill of complaint and is not entitled to the relief therein prayed, it is on this 27th day of June, 1929,

20 ORDERED, ADJUDGED AND DECREED that the complainant's bill of complaint be dismissed and that the complainant's solicitor be allowed the sum of One hundred and fifty Dollars additional counsel fee on condition that complainant executes such instrument as defendant requests to raise said amount if so requested by defendant within fourteen days from the date of this decree.

Respectfully advised:

WILLIAM R. BARRICKLO,
A. M.

30

Conclusions.

THE COURT:

This is a suit brought by Mary McGuinness, complainant, against her husband Joseph McGuinness, defendant, for separate maintenance.

40 Complainant and defendant were married on May 24, 1921, defendant at that time being a widower with three adult children living with him at his home in Jersey City. Complainant had known defendant for many years and after her marriage to defendant assumed her place as his

Conclusion.

wife in the home where his three children then resided with him. Thereafter two children were born, and at the time of the separation between complainant and defendant one child, a girl, was three years of age and the other, a boy, six years of age, the residence of the parties herein being at 664 West Side Avenue, Jersey City. 10

The testimony shows that the family lived together in harmony until about the year 1925, the daughter by defendant's first marriage, Marie, being the housekeeper and taking care of complainant's two children.

Defendant at the time of his marriage to complainant had retired from the plumbing business formerly carried on by him and owned considerable real estate in Jersey City, including his home on West Side Avenue, his income being derived from the improved real estate owned by him. 20

About the year 1925 he gave to his daughter Marie the sum of six thousand dollars with which was purchased certain real estate, his object in so doing, as stated by him, being to provide the daughter Marie with an income, his four boys having occupations, while Marie, as stated, was kept at home taking care of the same. 30

From the time of this transaction trouble arose between complainant and the other members of the family, the result being that the defendant, on the demand of the complainant, arranged his home so that he and complainant and their two children would live entirely separate and apart from the other members of the family, the children by the first wife of defendant occupying the upper part of the home while complainant and defendant and their two children occupied the lower part thereof. 40

Conclusion.

Complainant states in her testimony that the first serious trouble between her and the defendant was in November, 1926, relating to the non-payment by defendant for clothes for the children. Defendant denies that he ever refused to purchase clothing or anything else for his children and produced a check book, the stubs of the same showing payments made to various dry goods houses in the City of New York. It appears from the testimony that it was the habit of the defendant to sign checks in blank and complainant then filled in the same and used the checks for such purpose as she desired. The checks were not produced as the same had been destroyed, it being the custom of the family to permit the young children to use the same as playthings. It appears also that the complainant not only had the custody of the check book but also of the tax bills on the real estate owned by defendant.

It is apparent from the testimony herein that the real trouble between the parties began in the month of June, 1927, when defendant requested complainant to join with him in executing a mortgage on the home premises, No. 664 West Side Avenue, Jersey City, for an additional sum of two thousand five hundred dollars, he having arranged with the holder of a five thousand dollar mortgage thereon to increase the same to seven thousand five hundred dollars. Complainant states that she refused to execute this mortgage because defendant refused to tell her for what purpose the increased amount was to be used, while defendant states that he told her and she knew that there was a large amount of taxes due on his real estate, and that the two thousand five hundred dollars was to be used to pay for taxes due thereon. The testimony

Conclusion.

in my judgment indicates that the complainant was fully informed of the purpose of the mortgage, that is, to pay taxes, as there is no question she knew that defendant was in arrears for taxes and interest. Complainant admitted that defendant told her if she did not sign the mortgage she would lose the roof over her head. 10

Complainant continued her refusal to execute the mortgage, which undoubtedly led to unpleasant scenes between complainant and defendant. She states that in July, 1927, when defendant again asked her to execute the mortgage, upon her refusal to do so, defendant struck her across the face and kicked her. Defendant denies doing this. This was the first of the two alleged acts of cruelty. 20

Complainant's sister, Mrs. McDonough, testified that later in the afternoon complainant showed her abrasions on her leg. However, it appears that on that day complainant prepared supper for defendant and their home life went on as usual. The proofs do not substantiate this allegation of cruelty.

Complainant stated in her testimony that she never spoke to defendant after this alleged act of his up to the time she left, but her other testimony clearly shows that she was incorrect in making this statement, as she narrates controversies and arguments between her and defendant on various subjects during the next year. These disagreements, which undoubtedly arose because complainant would not execute the mortgage referred to, resulted in defendant and complainant occupying separate rooms in their apartment and strained relations arose between them. 30 40

Conclusion.

Complainant alleges that another act of violence occurred in April, 1928, when, she states, "I was in the kitchen and he (defendant) came in and had his lunch. After that he went into the dining room with the children. I was cleaning the table
10 off and doing my work in the kitchen when he came in and made a remark about a brother of mine and asked why he moved from Jersey City. I told him that didn't interest him; it was our own family affairs, and with that he struck me in the nose with his fist and it bled." Complainant thereupon, within an hour, left her home, taking with her the two children and also some wearing apparel, first telephoning to her sister, Mrs.
20 McDonough, who was not at home, and going direct to the residence of Mrs. Quinn, a sister of defendant, where she remained about two hours. Mrs. Quinn was sick in bed, and while complainant was at the home of Mrs. Quinn, her doctor called to see Mrs. Quinn. Both Mrs. Quinn and her daughter Miss Quinn were produced as witnesses and testified that they did not observe any cuts or contusions on the face of the complainant, but that she was in a nervous condition. From
30 the home of Mrs. Quinn the complainant went the same afternoon to the home of her sister, Mrs. McDonough, on Gifford Avenue, Jersey City, where she has since resided. Mrs. McDonough testified that upon her arrival the complainant had a mark on her eye and her lip was cut. If this testimony is correct, then these marks must have appeared on the face of the complainant after she left the home of Mrs. Quinn, as both Mrs. Quinn and her daughter stated that there were no marks
40 or cuts on her face when she was at their home earlier in the afternoon.

Conclusion.

Defendant, however, in the course of his examination testified that after he had made the inquiry as to why complainant's brother had left Jersey City, complainant "came out of the kitchen with a knife in her hand. I was sitting at the dining room window playing with the children. She came on with the carving knife in her hand. I was sitting down. As she came to me I put my hand up like that (illustrating) causing her a smack on the chin. I said 'See here, your slugging days are over.' What I meant by that was—she had a habit of every time she felt like it, it would be a little poke. She was a woman. It didn't bother me. I let her get away with it. It was what we called a bread knife. I was sitting down there and I just smacked her like that,—the first and only time I ever did it in my life. She said, 'Don't you talk about my brother,' and she came on me like a wild woman." Defendant denies that he struck complainant on the nose with his fist and that there were any abrasions on her face. There was, undoubtedly, a violent quarrel between complainant and defendant on this day, arising out of defendant's inquiry about complainant's brother.

After carefully considering all of the voluminous testimony relating to what occurred on this day, I am not satisfied that there was sufficient to justify complainant in permanently leaving her home. She states that if defendant had come after her while she was at Mrs. Quinn's (he did not know she was there) she would have returned to her home, but that upon her arrival at her sister's later on the afternoon she had fully determined never to return to her husband's home. This determination has been adhered to, as ap-

Conclusion.

pears from the testimony of various witnesses, including complainant, on the trial.

10 About three days after complainant's arrival at the home of her sister, Mrs. McDonough, the latter telephoned to Joseph McGuinness, Jr., a member of the New Jersey Bar, and son of defendant, who pursuant to the request of Mrs. McDonough, came to her home and talked over the family difficulties, the result being that complainant, defendant and Joseph McGuinness, Jr., the attorney, within a few days thereafter had a conference at the office of Judge Charles M. Egan, when, after complainant stated she would not return to the home of defendant, the subject of the division of defendant's property between 20 himself and complainant was then discussed. No agreement was arrived at. It appears further that subsequently various consultations were had between complainant, or her sister Mrs. McDonough representing her, and defendant relating to the division of defendant's property, without successful conclusion.

30 In the summer of 1928 the defendant went to Montgomery, New York, where complainant was passing the summer with her two children, and saw the children. He states complainant refused to see him when he asked for her. And at another time, defendant seeing complainant and the two children and her sister Mrs. McDonough on a street adjacent to Mrs. McDonough's home, made an effort to see his children, but their quick departure prevented his doing so.

40 Complainant's early declaration of refusal under any circumstances to return to her home and live with defendant who has continued living at the same place to the present time, and repeti-

Conclusion.

tion of these refusals absolved defendant from making further efforts to cause her to return, complainant continuing to reside with her sister Mrs. McDonough.

About two weeks after complainant left her home, by arrangement she came to her former home and caused to be removed therefrom the personal effects of herself and children and other articles. Defendant was present and when the property was being taken away, stated to complainant that as she was breaking up the home he would do likewise and thereupon with a hammer broke the glass covering of a table. This act was done after defendant knew that complainant had refused to return to her home and can be attributed to the surrounding circumstances.

Complainant admits that during their married life defendant never called her any names and never made any offensive remarks to her and it appears that notwithstanding that two families were living under the same roof the marital relations between complainant and defendant were satisfactory to both up to the time the difficulty arose concerning the execution of the mortgage to pay taxes, etc.

A careful review of the transcript of the testimony convinces me that complainant was not justified in permanently separating herself from her husband.

In this state to justify a wife in leaving her husband's home or in refusing to share the home of his selection on account of his cruelty, physical violence need not be shown, but such conduct of the husband must be shown as will convince the court that at or prior to the time of

Bill of Complaint.

10 their separation her life or health was in danger; or that her life was by his conduct rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about those conditions (Walsh vs. Walsh, 88 N. J. Equity, 368).

In my judgment, complainant has not by the proofs introduced by her in the voluminous record brought herself within either of the tests above referred to and, therefore, the bill of complaint must be dismissed.

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Bill of Complaint.

(Filed, September 26, 1929.)

IN CHANCERY OF NEW JERSEY.

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

30 The complainant, Mary McGuinness, of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

1. On the 22nd day of May, 1921, she was lawfully married to her present husband, Joseph McGuinness, by Father Barrett of St. Michael's Church, Jersey City, New Jersey.

40 2. After her said marriage, your complainant and the defendant, her said husband, resided in the City of Jersey City, in the County of Hud-

Bill of Complaint.

son, where they cohabited until the abandonment by the defendant of your complainant as hereinafter complained of.

3. There has been born to your complainant and her said husband, as the fruit of their marriage, two children, to wit: Margaret, age two and one-half years, and Lester, age six years, who are both living with the complainant. 10

4. Shortly after their marriage, defendant began to treat your complainant harshly and unjustly; about the early part of November, 1926, the defendant refused to purchase clothing for your complainant and their children and your complainant was provided for by her sister; in or about the early part of June, 1927, he requested your complainant to sign a mortgage on the premises located at 664 West Side Avenue, Jersey City, but your complainant refused to sign it unless he would tell her what it was for, which he refused to do. Because of her refusal to sign the said mortgage, he continually quarreled and wrangled with your complainant during the entire month of June, 1927. Your complainant's sister, Susan McDonough, requested the defendant to tell your complainant what the money was to be used for but he told her it was none of her business and to mind her own affairs. Your complainant's sister then offered to give to the defendant the sum of \$2,500 and all the defendant was to give her was a note but the defendant refused to accept this money. On or about July 3rd, 1927, while your complainant was in the bedroom of the premises where they lived making the bed, the defendant requested your complain- 20 30 40

Bill of Complaint.

ant to again sign the mortgage and she said she would if he would tell her what it was for. He refused to tell her and because your complainant would not sign it, he called her a vile name, struck her in the face knocking her over the bed and kicked her violently in the shins and then left the house. During the entire month of July, 1927, he continually asked your complainant to sign the mortgage and because she refused to sign it unless he told her the purpose of it, he would not speak to your complainant or have anything to do with her; he forced your complainant to cut down on the table; he discontinued the telephone service and because of his repeated failure to pay for the electric light bills, the electric light was cut off for a day and night. This condition of affairs continued until April 28th, 1928. At this time your complainant was busy in the kitchen at their home at 664 West Side Avenue and the defendant, who had been out all the previous night and returned the next morning, got up about noon for his breakfast. While your complainant was washing dishes, he came over and remarked about some family affairs in which your complainant alone was interested because it concerned her family. Your complainant told him that it was her business and not his, whereupon he struck her with his closed fist. Your complainant's nose was cut and her face was bruised. Fearing for her personal safety because of his aggressive attitude, she took the two children and went to his sister's home, Mrs. Quinn, on Fairmount Avenue and she remained there until about 4:00 P. M. He did not come for your complainant, so she went to the home of her sister, Mrs.

Bill of Complaint.

Susan McDonough, at 25 Gifford Avenue, Jersey City, where your complainant has lived with her children ever since at the expense of her sister. About a week later, your complainant went to her home to get some clothes. She saw the defendant there at the time, and he was under the influence of liquor. He had a bottle of liquor in one hand and a hammer in the other. He would drink from the bottle of liquor and then smash the glass on the dining room table with the hammer. He stated that he would smash all the furniture and also your complainant with the hammer. He then went to the front of the house, still with the bottle of liquor in one hand and the hammer in the other, and fearing that he would injure your complainant, she left with her child by going down the back stoop. The defendant for a period of about one year prior to his abandonment of your complainant would stay out every Saturday night and would not return until early Sunday morning, and when your complainant asked him where he had been, he would refuse to tell her. As a result of all this, your complainant's health became impaired and she has had to be treated and is still being treated for nervousness.

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5. Your complainant shows and charges that because of the cruel and abusive treatment of the defendant and because of her fear for her personal safety, she was compelled to leave her home and go to the home of her sister, Mrs. McDonough.

6. Your complainant shows and charges that since the 28th day of April, 1928, defendant has abandoned your complainant without justifiable

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Bill of Complaint.

cause and has refused and neglected and still refuses and neglects to maintain and provide for her and their two children; your complainant gave her husband no cause for his action, but has been a true and faithful wife to him.

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7. Your complainant shows that she is now dependent for support for herself and their children upon her relations.

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8. Your complainant charges that the defendant is the owner of property located at 533-533½ and 535 West Side Avenue, which is worth about \$25,000. He also is the owner of property located at 664 West Side Avenue which is worth about \$35,000. From the property at 533-533½ and 535 West Side Avenue he receives a monthly rent of about \$210. He rents out the first floor of the premises at 664 West Side Avenue from which he receives \$85 per month while the rest of the house is occupied by himself and his children by a former marriage. He also receives a total rent of \$40 per month from four garages in the rear of 537 West Side Avenue. All that your complainant possesses is a \$50 Liberty Bond; \$113 in a local bank and 5 shares in the Business Mens' Building and Loan Association on which she pays the sum of \$5.00 per month. She also owned 10 shares in the Danforth Avenue Building & Loan Association which she sold in June, 1928, so that she could buy some clothing for herself and children. Your complainant has no occupation by which she can earn a livelihood for herself and her children and she is entirely dependent upon her relations for support. Defendant is abundantly able to maintain and sup-

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Bill of Complaint.

port your complainant in a manner suitable to their position.

Your complainant is without adequate remedy in the courts of law and therefore prays:

1. That Joseph McGuiness, the defendant in this suit may answer this bill of complaint, without oath, and each statement made therein.

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2. That the defendant may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him or made out of his property for the complainant, and for such times as the nature of the case and the circumstances of the parties render suitable and just; and that said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory order of this Court; and that the defendant may be required to pay to the complainant a proper amount of counsel fees; and that she may have such further relief as may be just.

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3. That a writ of subpoena may issue out of and under the seal of this Court, commanding said defendant to answer this bill of complaint and to abide by such decree as the Court may make in the premises.

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ALEX. SIMPSON,
Solicitor for and of Counsel
with Complainant.

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Affidavit of Mary McGuinness.

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

Mary McGuinness, being duly sworn according to law, upon her oath deposes and says:

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1. I am the complainant in the above entitled cause, and have read the annexed bill of complaint and the facts therein stated are true to the best of my knowledge.

2. Defendant and myself were married on May 22nd, 1921, by Father Barrett of St. Michael's Church, Jersey City, N. J.

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3. After our marriage, we resided in the City of Jersey City, County of Hudson where we cohabited together until April 28th, 1928, as hereinafter stated.

4. Two children were born of our marriage, Lester, age 6 years, and Margaret, age two and one-half years who are both living with me.

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5. Shortly after our marriage, the defendant began to treat me harshly and unjustly. About the early part of November, 1926, he refused to buy clothing for me and our children, and I had to be provided for by my sister, Mrs. McDonough; in or about the early part of June, 1927, he requested me to sign a mortgage on the premises located at 664 West Side Avenue but I refused to sign it unless he would tell me what it was for, but he refused to tell me. Because of my refusal to sign the said mortgage he continually quarreled and wrangled with me during the en-

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Affidavit of Mary McGuinness.

tire month of June, 1927. My sister, Susan McDonough, requested my husband to tell me what he was going to use the money for but he told her it was none of her business and to mind her own affairs. My sister then offered to give my husband the sum of \$2,500 and all he was to give in return was a note for the same amount, but he refused to accept this money off my sister. On or about July 3rd, 1927, while I was in the bedroom of the premises where we lived making the bed, the defendant requested me to again sign the mortgage and I said that I would sign it if he would tell me what it was for. He refused to tell me and because I would not sign it, he called me a vile name, struck me in the face knocking me over the bed and kicked me violently in the shins, and he then left the house. During the entire month of July, 1927, he continually asked me to sign the mortgage, and because I refused to sign it unless he told me the purpose of it, he would not speak to me or have anything to do with me; he forced me to cut down on the table; he discontinued the telephone service, and because of his repeated failure to pay for the electric bills, the electric light was cut off for a day and night. This condition of affairs continued until April 28th, 1928. At this time, I was busy in the kitchen in our home at 664 West Side Avenue, and the defendant, who had been out all the previous night and returned the next morning, got up about noon for his breakfast. While I was washing the dishes, he came over and remarked about some family affairs in which I alone was interested because it concerned my family. I told him that it was my business and not his, whereupon he struck me with his closed fist. My nose

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Affidavit of Mary McGuinness.

- was cut and my face was all bruised. Fearing for my personal safety because of his aggressive attitude, I took the two children and went to his sister's home, Mrs. Quinn, on Fairmount Avenue, and I remained there until about 4:00 P. M. He
- 10 did not come for me, so I went to the home of my sister, Mrs. Susan McDonough, at 25 Gifford Avenue, where I have lived with my children ever since at the expense of my sister. About a week later I went to my home to get some clothes. I saw the defendant there at the time and he was under the influence of liquor. He had a bottle of liquor in one hand and a hammer in the other. He would drink from the bottle of liquor and then
- 20 smash the glass on the dining room table with the hammer. He stated he would smash all the furniture and also me with the hammer. He then went to the front of the house, still with the bottle of liquor in one hand and the hammer in the other, and fearing that he would injure me, I left with my child by going down the back stoop. The defendant for a period of about one year prior to his abandonment of me would stay out every Saturday night and would not return until early
- 30 Sunday morning, and when I asked him, where he had been he would refuse to tell me. As the result of all this, my health became impaired and I had to be treated and am still being treated for nervousness. Because of the cruel and abusive treatment of the defendant and because of my fear for my personal safety, I was compelled to leave my home and go to the home of my sister, Mrs. McDonough.
- 40 6. Ever since the 28th day of April, 1928, my husband has abandoned me without justifiable

Affidavit of Mary McGuinness.

cause and has refused and neglected and still refuses and neglects to maintain and provide for me and our two children; I gave my husband no cause for his action, but have been a true and faithful wife to him.

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7. I am now destitute of means and am now dependent upon my relations for the support of myself and children.

8. My husband is a retired business man. He is the owner of property located at 533-533½ and 535 West Side Avenue, Jersey City, which is worth about \$25,000; he also owns the property located at 664 West Side Avenue, Jersey City, which is worth about \$35,000.

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9. From the property at 533-533½ and 535 West Side Avenue, he receives a monthly rental of about \$210.00. He rents out the first floor of the premises at 664 West Side Avenue from which he received \$85.00 per month, while the rest of the house is occupied by himself and his children by a former marriage. He also receives a total rental of \$40.00 per month from the garages in the rear of the premises at 537 West Side Avenue.

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10. All that I possess is a \$50.00 Liberty Bond; \$113 in a local bank and 5 shares in the Business Men's Building & Loan Association on which I pay the sum of \$5.00 per month. I also owned 10 shares in the Danforth Avenue Building & Loan Association which I sold in June, 1928, so that I could buy some clothes for myself and children. I have no occupation whatsoever by which

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Answer.

I can earn a livelihood for myself and children, and I am entirely dependent upon my relations for support. My husband is abundantly able to maintain and support me and our children in a manner suitable to our position.

10

MARY McGUINNESS.

Sworn and subscribed to before me
this 25th day of September, 1928.

ALEX. R. DE SEVO,
Attorney at Law
of New Jersey.

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Answer.

(Filed, October 22, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between MARY McGUINNESS, <i>Complainant,</i> and JOSEPH McGUINNESS, <i>Defendant.</i>	}	On Bill, etc. Answer.
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The answer of the defendant, Joseph McGuinness, residing at Jersey City, in the County of Hudson, and State of New Jersey, shows:

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Answer.

1. He admits the allegations of paragraph 1 of the bill of complaint.

2. He admits the allegations of paragraph 2 of the bill of complaint.

3. He admits the allegations of paragraph 3 of the bill of complaint.

4. He denies the allegations of paragraph 4 of the bill of complaint that he treated the complainant harshly or unjustly at any time; that at any time he refused to purchase clothing for the complainant and their children. He admits that in the early part of June, 1927, and many times before and after that date he requested the complainant to sign a mortgage on the premises 664 West Side Avenue, Jersey City. He denies that the complainant refused to sign same unless he would tell her what it was for, and that he refused so to do. He denies that he continually quarreled and wrangled with complainant during the entire month of June, 1927. He denies that the complainant's sister requested him to inform the complainant what the money was to be used for, and that the complainant's sister offered him a loan of any sum. He denies that on July 3rd, 1927. or at any time except as herein stated, he called the complainant a vile name, or struck her, or knocked her over the bed or kicked her. He denies that at any time he refused to speak to complainant or have anything to do with her; he denies that he forced her to cut down on the table. He admits that he discontinued the telephone service; he denies that the electric light

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Answer.

was ever cut off. He denies that he had been out all the night previous to April 28th, 1928, and that he got up about noon. He denies that on the latter date, in conversation with the complainant, he made an uncivil and disrespectful remark concerning her brother, and denies that the complainant told him that it was her business and not his business, and that thereupon he struck her with his closed fist. Further answering said allegation defendant says that on the date aforesaid, defendant referring to a recent transfer of the complainant's brother from Jersey City by his superiors said to her, "I wonder why Uncle Joe was sent back to the country." Immediately 20 the complainant rushed from the kitchen in a towering rage with an uplifted carving knife and hurled herself against the defendant shrieking, "Don't you dare insult my family," and endeavored to attack defendant with the knife. In reproof of her audacity the defendant with his open palm slapped her face once and caused her to desist. He denies that complainant's nose was cut, or her face bruised, and denies that his attitude was aggressive on account of which the complainant feared for her personal safety. He denies that on such account she took the two children and went to the home of defendant's sister. He admits that he did not call at his sister's home for the complainant, and admits that it was on account of his failure to do so that the complainant went to the home of her own sister where she has since lived. He denies that a week later the complainant went to her home to get some clothes, 30 and avers that the purpose of her visit was to remove therefrom all the furnishings and furni- 40

Answer.

ture so that the existence of said home would be terminated. And he denies the remaining allegations of paragraph 4 of the bill of complaint.

5. He denies the allegations of paragraph 5 of the bill of complaint. 10

6. He denies the allegations of paragraph 6 of the bill of complaint, except the allegations thereof that the complainant gave the defendant no cause for his action in slapping her face on April 28th, 1928. He admits that the complainant has been a true and faithful wife to him except in the particular of subjecting herself to the influence and domination of her brother, John F. Malone, and her sister, Susan McDonough. In the matters of her respect for defendant and her cooperation with him, he alleges that the complainant acting in connivance with her said brother and sister has hostilely refused to join in the execution of the mortgage mentioned by her in paragraph 4 of her complaint, in order to effectuate a plot to deprive the defendant of the real estate owned by him, and to aid in the design of having the same acquired by the complainant's sister, Susan McDonough. 20
30

7. He denies the allegations of paragraph 7 of the bill of complaint, and avers his readiness at all times to support the complainant and their children whenever the complainant chooses to return to her home with them, and further answering avers that his refusal to support his wife and children in the home of the complainant's sister is solely because she left her home and removed 40

Answer.

the children and continues to remain away without cause.

10 8. He denies the allegations of paragraph 8 of the bill of complaint that he receives a monthly rental of \$210.00 from the property, 533-533½-535 West Side Avenue, Jersey City; he is in receipt of a rental therefrom of \$130.00 per month. He denies that he receives \$85.00 per month or any rent from the first floor of the premises 664 West Side Avenue. He denies that he receives a total rent of \$40.00 per month or any sum from 4 garages in the rear of 537 West Side Avenue. He repeats his denial that the complainant and 20 her children are dependent upon her relations for support, and repeats his willingness to receive her back at any time in their home.

WHEREFORE, the defendant prays that he may be henced dismissed with his proper costs and charges in this behalf incurred.

RICHARD DOHERTY,
Solicitor of Defendant.

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Replication.

(Filed, October 27, 1929.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc. Replication.	10
MARY MCGUINNESS, <i>Complainant,</i>			
and			
JOSEPH MCGUINNESS, <i>Defendant.</i>			

The complainant joins issue on the answer of the defendant.

ALEXANDER SIMPSON,
Solicitor of Complainant. 20

Stipulation Consolidating Appeals.

(Filed, October 1, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

MARY MCGUINNESS, <i>Complainant-Appellee,</i>	}	On Appeal from the Court of Chancery. Stipulation.	30
vs.			
JOSEPH H. MCGUINNESS, <i>Defendant-Appellant.</i>			

It appearing that a petition of appeal was filed appealing from a decree made on the 27th day of June by his Honor, Edwin Robert Walker, 40

Stipulation Consolidating Appeals.

Chancellor of the State of New Jersey, wherein the said Mary McGuinness was complainant and the said Joseph H. McGuinness, was defendant, in this respect, to wit, that the said decree adjudges that complainant's bill of complaint be dismissed;

10 And it further appearing that another petition of appeal was filed appealing from another decree made by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, wherein the said Mary McGuinness was complainant and the said Joseph McGuinness was defendant, in this respect, to wit, that the order adjudges that the order for alimony pendente lite made in this cause October 22, 1928, be modified to the end and
20 extent that the defendant, Joseph H. McGuinness, pay to the complainant, Mary McGuinness, for her alimony and maintenance during the pendency of the suit, and from the 18th day of February, 1929, until the making and entry of the final decree, the sum of \$15.00 per week in lieu of the sum of \$40.00 a week originally ordered;

30 It is hereby stipulated and agreed by and between Alexander Simpson, solicitor and counsel of Mary McGuinness, and Richard Doherty, solicitor and counsel of Joseph H. McGuinness, that both appeals be and the same are consolidated and shall be and appear as one issue, and that the argument of said appeals be put off until the February, 1930, term of Court.

ALEX. SIMPSON,
Solicitor of Complainant.

40 I hereby consent to the
aforementioned stipulation.

RICHARD DOHERTY,
Solicitor of Defendant.

Minutes of Hearing.

IN CHANCERY OF NEW JERSEY.

Between MARY MCGUINNESS, <i>Complainant,</i> and JOSEPH MCGUINNESS, <i>Defendant.</i>	70-199 On Bill, etc.	10
	Minutes of Hearing.	

Final hearing before William R. Barricklo,
 Advisory Master, at Chancery Chambers, No. 1
 Exchange Place, Jersey City, March 22, 1929. 20

APPEARANCES:

ALEXANDER SIMPSON and ALEX. DE SEVO, for com-
 plainant.
 RICHARD DOHERTY, for defendant.

Mr. De Sevo: At this time I wish to bring
 before your Honor the fact we served the other 30
 side with two notices of motions, one to stay the
 action until the alimony and counsel fee is paid
 up to date, and the other in the alternative to
 suppress the defense until the counsel fee and
 alimony be paid.

Under the case of *Verbeeck vs. Verbeeck*, 93
 N. J. Eq., 17, Chancellor Walker said: "I think
 I may safely assert that it is the policy of our 40
 law in all of these cases to see to it that the
 wives are defended at the husband's expense, and

Minutes of Hearing.

that their suits are stayed until they provide means ample for the purpose." In this case not one cent has been paid on account of counsel fee when it was awarded in October. The last time we brought it up on contempt they said it would
10 be paid. No alimony has been paid but the sum of two hundred dollars which was paid under the warrant of commitment and that was only paid last December. Under that case and under the case of *Letts vs. Letts*, reported in 85 N. J. Eq., 407. Vice-Chancellor Backes said: "The means open to enforce alimony are available to enforce the order for costs and expenses. The grounds
20 for these allowances are, indeed, indistinguishable, whether made for support solely or to carry on or defend the suit. Both are equally within the discretion of the chancellor, and subject to his sole power of enforcement." We contend before he is allowed to put in his defense he ought to pay either the alimony or counsel fee.

Advisory Master: There is no question about the decisions and the effect of the decisions in this matter, but I think in this particular case owing to the circumstances and it not appearing that
30 the complainant has been embarrassed by preparing for the case because of the non-payment of the counsel fee and alimony I think we had better proceed. As a matter of fact because the order of Vice-Chancellor Fallon directs the payment of counsel fee it must be and will be obeyed and that will not be changed. The parties are all here today and in the interests of the state the controversies of this case should be settled as soon as
40 possible. I think we had better proceed. The counsel fee will be taken care of.

Dr. John R. Commorato—For Complainant—Direct.

Mr. De Sevo: At the last hearing when the application was made to stay the action we were told that unless we were ready today the action would be dismissed and we were put to the trouble of getting ready or having the action dismissed.

Advisory Master: I think you may proceed gentlemen. 10

Mr. De Sevo: It ought to be stipulated how much alimony is not paid so we can get a ruling on it.

Advisory Master: You may proceed.

DR. JOHN R. COMMORATO, being sworn in behalf of the complainant. 20

Direct Examination by Mr. De Sevo:

Q. Where do you live Doctor? A. 262 Montgomery Street, Jersey City.

Q. Is that the place where you practice your profession? A. Yes, sir.

Q. How long have you been a practicing physician and surgeon? A. About twenty-eight or twenty-nine years. 30

Q. Do you know the complainant Mary McGuinness? A. Yes, sir.

Q. Have you ever treated her professionally? A. Yes, sir.

Q. When was the first time you treated her? A. About a year ago.

Q. Was it in the month of May? A. I haven't got any records but about that time.

Q. What did you treat her for and what did you find the matter with her? A. The first time 40

Dr. John R. Commorato—For Complainant—Direct.

I saw the patient was at 25 Gifford Avenue at the home of Mrs. McDonough, Mrs. McDonough being a patient of mine. I never had Mary McGuinness as a patient before. I found her in a very nervous state, nervous and complaining of lack of sleep and unable to eat. I made an examination and physically there was very little to be found except some suspicious looking teeth, infected teeth, and a suspicious looking tonsil. I told her on my examination there was very little to account for this tremendous state of nervousness, and after I got the history and she informed me of the trouble at home the way she put it, that this might cause her nervousness.

20

Mr. Doherty: I object to it.

Mr. De Sevo: Is your Honor going to make a ruling?

Advisory Master: What is the objection?

Mr. Doherty: The objection is it is not competent for this witness to repeat the statements made to him by the complainant as to her trouble at home.

30

Advisory Master: Objection overruled.

Mr. Doherty: Exception.

Q. Will you relate what she told you?

Mr. Doherty: My objection to the first part is applicable to all this testimony.

40

(Witness) A. We have to know the facts of the case and we feel the history must be offered by the patient so I was compelled to ask the questions and try to find out any other cause for her

Dr. John R. Commorato—For Complainant—Direct.

state of nervousness thinking I was more able to find it on cross examination.

Q. Will you tell us what you found from your questions? A. This sums it all up, that her nervous state could be due to home conditions and I advised her to go away rather than have a physician and take medicine. 10

Q. Did you send her to any particular place? A. No, I did not.

Q. Did you prescribe any particular treatment? A. I prescribed some sediments; something to make her sleep.

Q. Did you tell her the country would do her good? A. A quiet place in the country, yes, sir.

Q. Did she tell you what was the trouble at home? What was done to her? 20

Mr. Doherty: It is objected to.

Advisory Master: Objection overruled.

(Witness) A. She told me her home conditions were rather cruel and her husband maltreated her.

Q. In what way?

Mr. Doherty: I move to strike out his testimony on the ground it is clearly a reproduction of the conclusion of the complainant expressed to the witness. 30

Advisory Master: I think you have gone far enough. It is due to home conditions. The rest can be testified to by the complainant.

Mr. De Sevo: We want to find out what the home conditions were. 40

Dr. John R. Commorato—For Complainant—Direct.

10 Advisory Master: The doctor stated generally that the complainant told him certain facts and his conclusion was that her condition was due to home conditions. I think that is as far as you are entitled to go under the circumstances.

 Q. Her trouble; was it serious? Was it a disease or what was it? A. To put it in general language a nervous breakdown.

 Q. What did you attribute that to? A. A nervous breakdown where surroundings exist at home; if she had been struck or something like that.

20 Mr. Doherty: I object to it as incompetent.

 Advisory Master: Objection sustained.

 Q. What was her condition? Would you call it a disease or what would you call it? A. A disease of the nervous system.

30 Q. Was it slight or would that continue? A. Unless you remove the cause of the disease you can very seldom relieve it, and if the cause would be conditions at home naturally you would have to remove that cause.

 Q. What would she have to do? A. Go away to some quiet place.

 Q. How was she physically? A. Physically, as I said, I found only suspicious infected teeth and tonsillar infection.

 Q. Was she strong or weak? A. Frail.

40 Q. If the condition you found continued and the cause wasn't removed, what would be the result? A. No cure. Her nervous state would continue.

Dr. John R. Commorato—For Complainant—Cross.

Q. And would that have any effect on her life or no effect on her life? A. The outcome would be that the areas of the infection would advance and bring other diseases.

Q. If it was correct that the cause of the nervous breakdown was home troubles and those troubles continued, what would be the effect on her health? 10

Mr. Doherty: I object to that as calling for an opinion not based upon any hypothesis evidenced by any evidence in this case.

Advisory Master: Objection overruled.

(Witness) A. A detriment to her health.

Q. To what degree? A. To incapacitate her or affect her mind. 20

Cross Examination by Mr. Doherty:

Q. The infection of teeth bears a definite name, doesn't it, called pyorrhea? A. No.

Q. What is attributed to that condition of infected teeth? A. An abcess in the roots. On account of gold we expect the roots may be affected. 30

Q. Did you see any objectionable symptoms that would appear with diseased teeth? A. The only thing I saw was a suspicious tonsil.

Q. When you say suspicious tonsil you suspected her of having an infected tonsil? A. Right.

Q. And that is called tonsillitis? A. No.

Q. What is that called? A. Tonsillitis—

Q. I am not asking you to define tonsillitis. What name would you apply to the condition of her tonsils to characterize it as a disease? A. 40
Chronical infected tonsils.

Dr. John R. Commorato—For Complainant—Cross.

Q. You did not prescribe the removal of her teeth, did you? A. I did not prescribe the removal. I prescribed to have her X-ray the teeth.

Q. But you did not pursue your professional interest in this case to see whether or not the
10 teeth were removed? A. No, but X-ray'd—

Mr. De Sevo: I object to the witness being cut off.

Q. You did not prescribe the removal of her tonsils, did you? A. Yes, sir.

Q. And has that been done? A. No, sir.

Q. And have you been able to learn whether or not that tonsillar condition still remains? A.
20 Yes, sir.

Q. Does it? A. Yes, sir.

Q. She still has infected tonsils? A. Yes, sir.

Q. Did you ascertain whether the dental condition continues? A. Yes, sir.

Q. So this lady is now suffering from two individual morbid conditions, teeth and tonsils, is that true? A. Yes, sir.

Q. Would not the affliction from both those
30 sources make any impression upon a patient's nervous condition, Doctor? A. That is hypothetical.

Q. Don't you want to give me any opinion on that? A. I would have to dilate on it and would have to modify it in many ways. If you want me to discuss that statement I will.

Q. No, Doctor, all I want you to do is to answer my question whether or not within your competent knowledge the affliction of the infected teeth
40 and infected tonsil would in any way exhibit itself in the nervous condition of the patient? A. It will.

Dr. John R. Commorato—For Complainant—Cross.

Q. In making your diagnosis in this case and in prescribing your remedy you disregarded entirely the teeth and tonsils, didn't you? A. No, sir.

Q. Isn't it true that you were guided only in your professional action by what she told you of her home conditions? A. No, sir. 10

Q. Well, when you prescribed a vacation or a journey for her, was it to alleviate the conditions resulting from her home strife, or was it to alleviate the disease that infected her gums and her tonsils? A. Both.

Q. You say that removal to a different locality would be promotive of a better state of mind? A. Quiet atmosphere.

Q. And that would improve her state of mind, I think you said? A. Yes, sir. 20

Q. And the primary object in this case was to improve her state of mind? A. Yes, sir.

Q. You found nothing in her condition that commanded your professional solicitude except a certain state of mind? A. And I investigated those two features—teeth and tonsils.

Q. You made an affidavit in this case, Doctor Commorato, didn't you? A. Yes, sir. 30

Q. And you undertook therein to inform the Court that she was suffering from psychasthenia? A. Yes.

Q. Is psychasthenia recognized as a disease or is it one of those uncertain states of mind you have testified to? A. It is a disease.

Q. A disease of what? A. Of exhaustion of the mind.

Q. Would you say that psychasthenia is recognized in the science of chemistry as a disease? A. They don't know the cause. 40

Dr. John B. Commorato—For Complainant—Cross.

Q. Do you know of any authority on chemistry calling psychasthenia a disease? A. It is not a disease in the sense. I charged the patient to—

Q. You have called—

10 Mr. De Sevo: I object to his being cut off.
Advisory Master: He wanted to qualify it.

(Witness continuing.) You cannot compel any patient to—you may order things but the patient may not care to do it in clearing up the question on diagnosis. At that time the patient was not willing to have the teeth X-ray'd; she was too tired. Subsequently she has. There was a suspicion the teeth were infected. An X-ray showed they were. A doctor cannot compel you to do it. That condition could cause an exhaustive state or nervous state.

20

Q. You have called it psychasthenia. Is that the diseased state that might be produced in this case by her condition? A. It is not a disease, no.

Q. Do you know the characterization of psychasthenia? A. Yes.

30 Q. What does it mean? A. Psychasthenia is a compound of Greek words meaning mind and weakness.

Q. About an abulia state. What do you say to that? A. A state of mind.

Q. And it covers every mental condition, doesn't it? A. Many causes can produce it absolutely. That's what I was trying to work out.

Q. Was Mrs. McDonough present when you were treating the patient?

40

Dr. John R. Commorato—For Complainant—Cross.

Mr. De Sevo: Objected to on the ground it is irrelevant, immaterial and incompetent. It has nothing to do with this examination as to who was there.

Advisory Master: Proceed, Judge.

10

(Witness) A. She was there.

Q. Was Mrs. McDonough present? A. Yes, sir.

Q. Was she participating in the dialogue that you had with Mrs. McGuinness? A. No, sir.

Q. You have told us Doctor Commorato that you have familiarized yourself with Mrs. McGuinness' present condition. When did you examine her last? A. About ten days ago.

Q. And her condition was worse than when you saw it? A. I didn't say it was worse. 20

Q. Wasn't the tonsil and the infected teeth worse? A. You can't see the roots of the teeth.

Q. How about the psychasthenia? A. She was somewhat improved with the rest and her condition was much better.

Q. You didn't notice any sores on her face, did you? A. No, sir.

Q. And you can't tell us the date when you made the examination? A. No, I couldn't tell you. 30

Q. Were you informed by Mrs. McGuinness or by any one present on that occasion that arrangements had already been completed by Mrs. McDonough to go to a place in New York called Montgomery? Were you told that? A. No, sir.

Q. And you were not given to understand that what was sought from you merely was a recommendation that Mrs. McGuinness might possibly accompany Mrs. McDonough to Montgomery where Mrs. McDonough was going? You weren't told that? A. No, sir. 40

Mary McGuinness—For Complainant—Direct.

MARY McGUINNESS, being sworn in behalf of the complainant.

Direct Examination by Mr. Simpson:

- 10 Q. When did you marry the defendant? A. May 24, 1921.
- Q. Where? A. St. Michael's Church.
- Q. When was the date you left your home? A. April 8, 1928 when I left home.
- Q. What children were born of the marriage? A. Two children.
- Q. What are their names and ages? A. Lester and Margaret McGuinness.
- 20 Q. How old are they? A. One is six and one is three.
- Q. The boy is six and the girl is three? A. Yes.
- Q. Where did you live with your husband when you left him? A. 666 West Side Avenue.
- Q. He had been married before and he had a grown family, didn't he? A. Yes.
- Q. Did they all live in the house with you? A. One was married.
- 30 Q. When did you first begin to have any trouble at home? A. Well, in 1925 my little girl was born and three months before that I was reading a paper and I read of a mortgage of Marie McGuinness for property on West Side Avenue and my husband had been telling me all along that property was his. He had been taking me over there to look at the property and told me it was his. When this mortgage was out I waited for him to come home.
- 40 Q. Who was Marie McGuinness? A. His daughter.
- Q. A grown daughter? A. Yes.

Mary McGuinness—For Complainant—Direct.

Q. When he came home, what happened? A. I spoke to him what was in the paper and I said it was his daughter's, and he said he gave that to her but he intended to tell me after I was well enough to tell me.

Q. That was three months before your child was born? A. Yes. 10

Q. As a result of that conversation, what happened? A. I told him as long as he gave that piece of property to his daughter she was able to take care of it. With that he took his family and made a place upstairs for them and I stayed downstairs.

Q. Up until that you were all living together? A. Yes.

Q. That was in 1925? A. Yes. 20

Q. What was the next trouble you had with him? A. In 1926 he came home to me—

Q. When? About what time? A. In April. He came home to me and told me he was away back in his tax bills and he knew that I had a bank account of my own money which I had before I married him, and he asked me if I wouldn't draw out six hundred dollars to help him out. His daughter took care of my two children and I went to the bank and got the six hundred dollars in cash and came home and handed it to him, and he said the taxes were more than that but he would put the remainder to it. 30

Q. Did you have any trouble with him? A. No.

Q. When did your first serious trouble begin? A. In November, 1926, I asked him for clothes for my children and he refused to give them to me. After that he told me to go to New York and send them home C. O. D., which I did. The day that 40

Mary McGuinness—For Complainant—Direct.

they came home he refused to give me a check. He walked right out.

Q. What happened between you as a result of his failure to buy clothes? A. We had an argument.

10 Q. What was done or said? A. He walked out of the house and told me—he refused to buy some clothes and then I got money from Mrs. McDonough to pay for the coats for the children. When he came home from business I told him about the coats being sent and that my sister had to pay for them and he should pay that back, and he laughed and scorned at me.

Q. When was that? A. In November, 1926.

20 Q. After November, 1926, what happened? A. There was constant arguments all the time.

Q. When you say constant arguments, what do you mean? A. He came in very ugly or nasty.

Q. Sober or under the influence of liquor? A. No; sober.

Q. Was he sober sometimes? A. Yes.

Q. When you say arguments, what would he say or do? A. He wouldn't listen to me and told me to go where I felt like going and refused to speak to me.

30 Q. What did he say? Did he tell you to get the hell out? A. Yes.

Q. When did that begin, that course of conduct? A. That was almost daily.

Q. You say he would come home and wouldn't speak to you and when he would speak to you it was to tell you to go to hell? A. Yes.

Q. When did that course of conduct begin? A. In 1927.

40 Q. What month? A. In June, about a mortgage he wanted me to sign.

Mary McGuinness—For Complainant—Direct.

Q. Up to that time, had he ever struck you? A. No.

Q. But up to June, 1927, you say he had constant arguments with you and told you to go to hell and sometimes wouldn't speak to you? A. About the clothing you know. 10

Q. What happened in June, 1927? A. He came home to me and asked me to sign a mortgage for \$2,500.

Q. On what property? A. 664 West Side Avenue.

Q. What happened? Tell us what happened on that occasion? A. I told him I would sign it if he would tell me what he needed the money for and this he refused to do. So I would not sign it. 20

Q. What happened when you wouldn't sign it? A. Well, he said if I didn't sign it I would lose the roof over my head. I said if he would tell me the conditions I would sign it willingly but I wouldn't do it unless he told me. This he refused.

Q. Did anything occur besides your refusal to sign and his refusal to tell you? Did he call you any names or have any argument? A. He always argued with me since the time of this mortgage up until July. 30

Q. After June when you refused to sign the mortgage what was his conduct? What was his conduct towards you? What did he say or do? A. He was very disagreeable and nasty to me. He wouldn't talk to me at all. If I was in one room he would go into another room and want the boy with him. 40

Q. Which child, the little boy? A. Yes.

Mary McGuinness—For Complainant—Direct.

Q. What was the next time after June, 1927?

A. In July, 1927, he came home and spoke about the mortgage again to me. I was making the bed and I turned around and refused to do it.

10 Q. About when in July was that? A. That was about the middle of July.

Q. What happened when you refused to sign?

A. When I turned around and refused to sign he struck me across the face with his hand and kicked me in the shin.

Q. What happened when he struck you in the face and kicked you in the shin? A. He bruised my face and cut my shin.

20 Q. Did you fall down? A. He threw me into the bed.

Q. Having struck you in the face and kicked you in the shin he threw you on the bed? A. Yes.

Q. Did he say anything to you when he did it?

A. No, it was just because I refused to sign the mortgage again.

30 Q. What was the conversation before he struck you? What did you say to him and he to you before he struck you in the face and kicked you in the shin and threw you on the bed? A. He asked me to sign the mortgage and I said no unless he told me what he was going to do with the money. He refused to tell me and then he struck me. After that he got his hat and coat and walked out.

Q. Did he say anything after he hit you? A. No.

40 Q. Was anybody there with you? A. My little children.

Mary McGuinness—For Complainant—Direct.

Q. What time of the day was that? A. In the afternoon.

Q. Did your sister come in right after that?

A. An hour after.

Q. Was your face still bruised? A. Yes, and my shin was cut. 10

Q. You showed her those marks? A. And she bathed them for me.

Q. And took care of you? A. Yes.

Q. How long was he out after he had done that?

A. All afternoon.

Q. When did he come home? A. At six o'clock.

Q. What did he say? A. But in the meantime before he came home and my sister found me in this condition— 20

Mr. Doherty: I object to it as to what transpired after he went out and before he came home.

Q. Your sister found you and bathed you? A. Yes.

Q. What, if anything, happened with respect to the incident except her bathing you? She stayed with you? A. For a while. 30

Q. How long? A. For a half an hour after that.

Q. When did you next see your husband? A. At six o'clock.

Q. What occurred then? A. He came home for his supper and he ate his supper and didn't say anything.

Q. He wouldn't talk at all? A. No. 40

Mary McGuinness—For Complainant—Direct.

Q. When he ate his supper what did he do? A. He just got up and went into the living room.

Q. What was the next trouble you had with him? A. That was in July.

10 Q. That what you are describing was in July, 1927. What was the next after that? A. My sister went down to Mr. McGuinness' store and she told him—

Mr. Doherty: I object to that.

20 Q. What did the defendant do after he struck you and kicked you and threw you into the bed and went out and came in at six o'clock? What was his conduct after that? A. He never spoke to me.

Q. For how long? A. Up to the time I left home.

Q. You say he continued to refuse to talk to you. What was the next thing he did to you in the way of violence? A. That was April 28th.

By the Advisory Master:

30 Q. What year? A. 1928.

By Mr. Simpson:

Q. From July, 1927, until April, 1928, just describe what his conduct was towards you? A. Always arguing with me and at times not speaking to me at all. Just coming in for his meals and going out.

40 Q. Did he call you any names? A. No.
Q. What was the argument? A. About the mortgage.

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Q. When you refused to sign it what would he say? A. He would say he would make me do it or I would lose the roof over my head.

Q. During all that what was his conduct in the way of supporting you? How would he take care of you in the way of clothing and food? A. He refused to clothe myself and my children. 10

Q. Who clothed them? A. My sister, Mrs. McDonough.

Q. Did you talk to him about it? A. Yes.

Q. What was his explanation for not buying you clothes and the children clothes? A. He wouldn't give me any explanation. He didn't do it.

Q. Did you ask him to do it on any occasions? 20
A. Yes.

Q. And he never would do it from what time? When did he cease buying clothes? A. November, 1927.

Q. From that time he bought no clothes? A. No.

Q. What was the next act of violence towards you? A. In April, 1928.

Q. What did he do to you? A. He had been out all night gambling— 30

Mr. Doherty: I object to that.

Q. Did he tell you he was gambling? A. Yes, because I gave him \$250.00 to pay a gambling debt.

Mr. Doherty: I object to it.

Mr. Simpson: I think it is pertinent. She says she gave him \$250. 40

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Q. When was it you gave him the \$250? A. In 1926.

Mr. Doherty: I ask to strike it out about being out all night gambling.

10

Mr. Simpson: About the gambling I will consent to it. About his being out all night I won't consent.

Q. Was he out all night? A. Every Saturday night.

20

Mr. Doherty: I object to that evidence and ask that the witness be required to answer the question whether he was out the night before. She replied he was out every Saturday night.

Q. Won't you describe his conduct about being out? A. He would be somewhere every Saturday night.

Q. What time did he come back Saturday night? A. I don't know.

Q. Would he tell you where he had been? A. No.

30

Q. Give you any explanation? A. No.

Q. When did that course of conduct begin? A. Ever since I married him.

40

Q. In April, 1928, what happened? A. He had been out the previous night and did not get up for breakfast. He got up for lunch. I was in the kitchen and he came in and had his lunch. After that he went into the dining room with the children. I was cleaning the table off and doing my work in the kitchen when he came in and made a remark about a brother of mine and asked why he moved from Jersey City. I told him that

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didn't interest him; it was our own family affairs, and with that he struck me.

Q. Where? A. In the nose.

Q. With his fist? A. With his fist.

Q. Did he make it bleed? A. Yes, it bled.

Q. What else did he do besides striking you in the nose? A. That was all. 10

Q. After that did he stand there or go away?

A. He stood there arguing with me.

Q. What did he say when he was arguing with you? A. He said it was his business.

Q. Did he say anything when he punched you in the nose and made your nose bleed? A. No.

Q. Where were you standing when he punched you? A. Between the kitchen and the dining room. 20

Q. What did you do after he punched you in the nose? A. I went inside and my little boy five years old picked up a stick to hit him with it.

Q. What did your husband do? A. He didn't do anything.

Q. Did he stay in the room? A. Yes.

Q. What, if anything, else occurred between you? A. Nothing. 30

Q. How long did he stay? A. I went inside and got my children dressed and I got dressed and went downstairs to a tenant, Mrs. Harris, to use her telephone. I called up my own sister to find out whether she was at home. So I called up Mrs. Quinn and found out she was home. I called up for a taxi and went to Mrs. Quinn's house.

Q. What time of the day did you go to Mrs. Quinn's house? A. About three o'clock.

Q. You called up from the person downstairs? A. Yes. 40

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Q. And your husband was upstairs? A. Yes.

Q. You called up his sister and went to his sister's house with the children? A. Yes.

Q. How long did you stay there? A. Until about four o'clock.

10 Q. What time did you get there? A. Between two and three.

Q. Did he come there at all while you were there? A. No.

Q. Where did you go from there? A. I called up my sister to find out whether she was home. She was home and I took the children and went to her house.

Q. That was in April, 1928? A. Yes.

20 Q. Did you go back to the house? A. No. I went back on one occasion.

Q. You did go back on one occasion. When was it you went back? A. In May.

Q. Was he there in the house? A. Yes.

30 Q. What occurred? What did he do? A. He had given me permission to go after clothes for the children, so I went. When I came in he had been upstairs and he came down to me. I got the children's clothes ready and all the toys. He came down and went into the store room and got a bottle of liquor and he came out drinking the liquor. Then he went in and got a hammer.

Q. What did he do? A. He came in and smashed the dining room table and also the serving table.

Q. With the hammer? A. Yes.

Q. Did he say anything to you? A. "I will break up the house with you."

40 Q. Did he say what he would do to you with the hammer? Did he come towards you at all?

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A. He was under the influence of liquor and I was afraid of him.

Q. What did you do? A. I took my little boy and went down the back way to the home of Mrs. McDonough.

Q. And you have been there ever since? A. 10
Yes.

Q. Has he ever come to the house to see you and the children? A. No.

Q. Has he sent you any money or inquired about how the children were getting on or seeing them? A. No.

Q. You received no support for them? A. No.

Q. You say he refused to clothe you and the children from 1927 and you left in 1928? A. Yes. 20

Q. During that time where did you get your food? A. I could always order the meat from one of the tenants in the store, but the other things I had to give Mr. McGuinness a list and if Mr. McGuinness felt like it he would bring them in and if he didn't I would do without them.

Q. He gave you no money? A. No.

Q. And he gave you no credit except for meat? A. No. 30

Q. During that time was he working? A. He worked on and off.

Q. At what? A. Carpenter work on his own property.

Q. He didn't do anything for anybody else? He wasn't in business? A. No.

Q. He is a plumber by trade? A. Yes.

Q. Who would maintain you? Who bought your clothes and clothed the children and yourself since November, 1927? A. Mrs. McDonough. 40

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Q. Did he at any time after he struck you and refused to talk to you say at any time he was sorry for what he had done? A. No.

10 Q. When you left in April what was the condition of your health? Was you nervous? A. I was under a nervous strain.

Q. And when you married him had you been healthy? A. Yes.

Q. And had you been healthy up to the time he had begun this course of conduct towards you? A. Yes.

Q. And in the end when you left you were nervous and called in Doctor Commorato? A. Yes.

20 Q. How long were you under his treatment? A. May 5th, 8th and 12th.

Q. You did go away under his advice to the country? A. Yes.

Q. Where did you go? A. Montgomery, New York.

Q. Where did you go to live? A. With friends by name of Mrs. Moody and Mrs. Fitzsimons.

Q. What kind of a house was it? A. A moderate sized house.

30 Q. He made a visit to see what kind of a place you were staying in so that's the reason why I want you to describe it? A. A moderate sized house.

Q. Did he ever come up there while you were there? A. Yes, in July.

Q. Did he ask for you? A. No.

Q. Did he try to see you in any way? A. No.

40 Q. He simply came up and saw the children? A. Yes.

Q. And went away? A. Yes.

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Mr. Doherty: I object to it. There is nothing testified as to what he did or said.

Mr. Simpson: She was in the house.

Advisory Master: Objection overruled.

Q. He never asked for you? A. No. 10

Q. Do you know that he knew these persons? He had spent his vacation up there? A. Him and his whole family were there.

Q. In the affidavit referring to the place he called the place where you stayed a hovel. Was it anything like that? A. No.

Q. And he reflects on the people who were there in the affidavit. Were they all respectable people from Jersey City that you knew for a long time? Did he know them, too? A. Yes. 20

Q. His affidavit refers to strangers. Do you know of your own knowledge he knew them? A. Yes.

Q. What about his property? Do you know what his income is? What did he own? A. Three stores on West Side Avenue.

Q. Did he tell you what they rented for? A. One for seventy-five, one for sixty, and the other for sixty. 30

Q. Three stores. What other property? A. And the property 664 West Side Avenue.

Q. Where is that? A. Right where I live.

Q. Near the park? A. Yes. He got eighty or eighty-five dollars for each floor.

Q. Did he have any other source of income that you know of from him besides the three stores and the property? A. He had garages in back of his daughter's property and he told me he was collecting the rent. 40

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Q. How much did he collect? A. Forty dollars.

Q. For each garage? A. All garages.

Q. So according to him he had an income of seventy-five, sixty, eighty, forty and eighty. Did he tell you anything about any other sources of income? Whether he held mortgages or stocks or anything like that? A. No.

10

Q. Since you have been away from him when you say you were a nervous wreck, has your health improved? A. Yes.

Q. To all intents are you pretty healthy now? A. I am not quite so nervous.

20

Q. Has he at any time come to you and said to you that he was sorry for striking you or sorry for being surly; that if you came home he would treat you right so that your health wouldn't be impaired? Has he made any advances at all? A. No.

Q. How far does he live and has he lived from you since April, 1928, when you left? A. About two blocks.

Q. Although he has been living two blocks from where you live, he has not been near your house? A. No.

30

Q. Never written to you? A. No.

Q. Nor telephoned you? A. No.

Q. Nor told you if you came home everything would be all right? A. No.

Cross Examination by Mr. Doherty.

Q. You are not subject to nervous conditions, are you? A. No, not now.

Q. You are still worried and upset over all this turmoil? A. Not as much as I was.

40

Q. Are you living in a better state on account of your being at war over your husband than you

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were when you were home with him? A. No, but I am not in constant fear.

Q. But you are at the present time free from all worry? A. Oh, no.

Q. Did you know Mr. McGuinness any length of time when you married him? A. Yes. 10

Q. About how long? A. I knew him quite awhile.

Q. A matter of years, wasn't it? A. Yes.

Q. Did you know his first wife? A. Yes.

Q. And you were acquainted with all his family by the early marriage, weren't you? A. Yes.

Q. And you were quite familiar with the fact he had retired from the plumbing business? A. Yes.

Q. And you knew his income was derived entirely from the real estate that he owned and you knew that he had a household where he and all his children lived together, you knew that? A. Yes. 20

Q. And at the time of your union with him you were thoroughly satisfied to marry him and embrace those conditions as they were? A. Yes.

Q. And you say that your life with him was entirely serene until you learned something about his daughter Marie owning a piece of property? A. Yes. 30

Q. I don't want to lead you into any misstatement. Is that so that there was not a riff on the surface between you and Joe McGuinness until you found out that his daughter Marie owned a piece of property? A. Yes.

Q. And that was the first cause of upset was it? A. It wasn't an upset. It was I thought as long as he gave his property she could look out for herself. It wasn't an upset but I told him he should pay a little more consideration to his wife 40

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and tell me why he done it, but he left me under the impression that it belonged to him until it come out in the paper.

10 Q. Was your indignation based upon the fact that Marie owned the property or your husband had been keeping it from you? A. I didn't know she owned the property. I thought it was a mistake until Mr. McGuinness came in and I asked him.

Q. What did he say? A. He told me he would tell me after I was all over my troubles.

Q. Isn't it a fact that you were intimate with his personal affairs and you knew all about how Marie got that property? A. No.

20 Q. Isn't it a fact that your husband held a mortgage that was paid off and with that money he purchased the ground for Marie and that afterwards money was raised to build on it? A. No, I never knew. I signed a mortgage for the three stores.

Q. I am asking you about Marie's property. Didn't you know before that your husband had turned over money to Marie? A. No.

30 Q. That she bought the ground and that what you saw in the paper was an advertisement of a mortgage she was raising to improve that real estate? A. No.

Q. Anyhow you upon reading that demanded that there be some change in the household arrangements? A. Yes.

Q. And you insisted that Marie should no longer be in the family circle? A. No, I didn't put it that way.

40 Q. How did you put it? A. I told him he should arrange a place to put them. I was not in condi-

Mary McGuinness—For Complainant—Cross.

tion and that she should take care of her home and I take care of my home. Then it was agreed to put them upstairs.

Q. When you reported about the mortgage you said to him let them get out of the house. I can attend to our own place and let them take care of themselves? A. No, I didn't put it that way. 10

Q. You put it in the way you told us? A. Yes.

Q. Following that suggestion of yours Marie and the others left the house didn't they? A. Yes.

Q. Mr. McGuinness did not want to combat you on that suggestion? A. No.

Q. So when you said you didn't want Marie and the others then they had to go elsewhere? A. Yes.

Q. And the practical arrangement was the upper floor of the house was to be fixed up so they could live there, is that true? A. That's true. 20

Q. How many of the children then left your household? A. To go upstairs?

Q. Yes. A. Marie, and the three boys. There were three single boys.

Q. There were two who were married? A. When I was in the family there was two sons married before.

Q. Was Joseph H. McGuinness the counsellor married before you went there? A. Yes. 30

Q. Who else? A. Nobody else; the rest were all home.

Q. After the members of the family moved upstairs there was no more domestic connection between you and the children who had departed was there? A. No.

Q. Didn't you speak to them when you met them? A. Yes, I did.

Q. There was some little distance between you after they moved? A. No, I spoke to them like I 40

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always did. They had to come through my apartment to go upstairs.

Q. Are we to understand Mrs. McGuinness that was the only reason you did speak to them because they were compelled to be in that close proximity to you? A. Oh, no.

Q. You say that nothing at all transpired that is worthy of comment by you from that time in 1925 until April, 1926, when you spoke of him borrowing money for taxes? A. Yes.

Q. During that period you found nothing at all in the conduct of Mr. McGuinness to take exception to, did you? A. No.

Q. He was a pretty good averaged sort of a fellow like every man. No angel, but a pretty good sort of a fellow? A. Yes.

Q. Until April, 1926. And the episode you then speak of was he told you then he was away back in his taxes and wanted some money from you?

Mr. Simpson: That is a misquotation. What she read in the papers was a mortgage about Marie. That was the first trouble.

Q. I am speaking about 1926. In April, 1926, you had the talk about the taxes? A. But no argument.

Q. No argument, but he made a disclosure to you. He was back in the taxes wasn't he? A. Yes.

Q. And he borrowed \$600.00 from you? A. Yes.

Q. Were you a lady of any private fortune when you loaned Mr. McGuinness this money? A. No, not a whole lot, but I had some money of my own.

Q. Now this \$600.00 to which recourse was had

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at that time, that was money you had saved after you was married or did you have it before you was married? A. It was money left to me by my mother.

Q. And your disposition towards your husband was so helpful and wifely that you unhesitatingly loaned him the \$600.00? A. Yes, I did. 10

Q. And whatever dissatisfaction which had been created by your discovery that Marie owned a piece of real estate was forgotten by you and out of your mind? A. Yes.

Q. When he told you about being in arrears for taxes did he exhibit the tax bills? A. No.

Q. You took his word for it? A. Yes.

Q. You trusted him? A. Yes, because Mr. McGuinness never let me know of his business. 20

Q. Did you regard that as an indignity or did you consider it an indulgence that he was suppressing you from the enjoyment of his affairs? A. In what way do you mean?

Q. Were you glad he didn't bother you or was you sore because he didn't trust you? A. No, I trusted him when I gave him the money to pay the taxes. I had consideration for him at that time.

Q. You had in your house a document box didn't you where papers were contained in? A. No. 30

Q. Didn't you have any box? A. No box.

Q. Didn't you have any container? A. I had a drawer.

Q. With papers of value? A. Nothing belonging to Mr. McGuinness.

Q. Was there anything belonging to Mr. McGuinness in any line in that box? No deeds or receipts or bills? A. No.

Q. Did you have in this box valuable papers of your own? A. No, I had no valuable papers at 40

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that time. I only had a bank book of my own money. That's all I had.

Q. You say that the taxes that he paid in April, 1926, were even more than \$600.00? A. So he said.

10 Q. He told you that? A. He said he would put the remainder towards it himself.

Q. But he gave you to understand he was still in debt for taxes after giving him the \$600.00? A. No, he said he would pay it that day.

Q. You told us on direct examination you found out he had not paid the taxes at that time?

Mr. Simpson: Objected to. She didn't say that.

20 Q. Did you say he said the taxes were more than \$600.00 and that he would pay them? A. The remainder.

Q. Did I clearly understand your testimony you said you afterwards found out he did not pay the remainder? A. No, I never found that out.

Q. That was in April, 1926? A. Yes.

30 Q. The next date to which you allude Mrs. McGuinness is November, 1926. That is six or seven months later. Are we to understand that during that period everything was quiet and satisfactory between you and Mr. McGuinness? A. Yes.

Q. No neglect or any unkindness at all? A. No.

Q. We are to understand then that during that time he was making proper provision for you and the children was he? A. Up to November, 1926.

Advisory Master: November, 1926?

40 Mr. Doherty: No, November, 1927.

The Witness: November, 1926.

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Q. In November, 1926, you said you had a little family talk about getting clothes for the children?

A. Yes.

Q. You have told us two things. You said first he refused to provide the clothing and next he told you to order them C. O. D. Is that right? A. 10
Yes.

Q. Are we to understand from that that he was making it clear to you that he was not flush with money? A. Oh, no.

Q. Or that he did not think the children needed the clothes? Did he say that? A. No.

Q. Give us a better idea of it? A. Mr. McGuinness never took an interest in the children's clothes whether they had them or not. In 1926 the 20
children needed clothes.

Q. The clothing you are speaking of are winter coats? A. Yes.

Q. Had they no old garments at all that would serve the purpose until the winter developed? A. No.

Q. And in the conversation he told you to order them C. O. D.? A. Yes, they needed them so bad.

Q. He told you to use your own good judgment? A. Yes. 30

Q. Did you order them C. O. D.? A. Yes.

Q. And the expenditure wasn't much was it? A. One coat I bought was dear. There was two coats. I bought them from Saks in New York and sent them C. O. D. as he told me.

Q. It wasn't over \$50.00, was it? A. No.

Q. They were sent C. O. D.? A. Yes.

Q. And when they arrived you took them in and got the money from Mrs. McDonough, did you? A. Before they arrived I told Mr. McGuinness that 40
they were coming C. O. D.

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Q. What I want to point out Mrs. McGuinness when they did arrive you took them and your sister when appealed to by you gave you the money? A. After Mr. McGuinness refused to give me a check that day.

10 Q. The goods were then sent back when they arrived were they? A. No, not at that time.

Q. When they came were you already provided with the money by your sister? A. No.

Q. Did you have the man wait until you got the money from Mrs. McDonough? A. No.

20 Q. Tell us the mechanics about that? A. In the morning I asked Mr. McGuinness for the money and he refused. I called my sister up and asked her to give me the money for the coats as I expected them that day. On her way to work she stopped in and gave me the money.

Q. You told us Mr. McGuinness came home that evening and you stated to him that the coats had come and that you had paid for them with money that your sister helped you out with and that he should pay her back, and he laughed? A. Yes.

Q. Now Mrs. McDonough is your only sister? A. Yes.

30 Q. And the two of you have been brought up together rather affectionately and you are two regular loving sisters aren't you? A. Yes.

Q. And Mrs. McDonough is a widow is she not? A. Yes.

Q. Without children? A. Right.

Q. And is a lady of rather comfortable means isn't she?

40 Mr. De Sevo: I am objecting to it on the ground it is irrelevant, incompetent and

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immaterial as to what Mrs. McDonough owns. It has nothing to do with this case.

Advisory Master: Not about her personal affairs Judge.

Q. Mrs. McDonough, when she was advancing you the money did not tell you that the advancement might be considered as a present which she made to the children who were getting the coats, did she? A. No. 10

Q. She didn't hint that? A. No.

Q. Wasn't she the Godmother of one of the children? A. Yes.

Q. Isn't it true Mrs. McGuinness there was only one coat at that time? A. No, two. One for the girl and one for the boy. 20

Q. And you didn't understand your sister was making a present to her Godchild at that time? A. No.

Q. You thought that money ought to go back to her? A. Because I asked her for the money.

Q. You say when you suggested to him he ought to reimburse her he laughed? A. Yes.

Q. There was no quarrel was there? A. But he refused to pay it. 30

Q. And you felt in that connection that he kind of defrauded your sister out of the money? A. Yes.

Q. That's your only grievance? A. Yes.

Q. The coats were used by the children were they? A. Yes.

Q. You were married in 1920 and you lived together until 1928? A. I was married in 1921.

Q. Seven years. And you say during that time Mr. McGuinness came home under the influence of liquor a couple of times? A. At times. 40

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Q. A couple of times? A. I couldn't really say the amount.

Q. He was not a man habituated to coming into your house drunk? A. No.

10 Q. He never called you any names, did he? A. Oh, yes.

Q. How often? A. Well, never until the argument started in 1927. Before that no.

Q. For six years he never called you any names? A. No.

Q. And was never offensive in his remarks to you, was he? A. No.

20 Q. And when you speak of trouble developing in June, 1927, that is the matter of the mortgage that he wanted you to sign? A. Yes.

Q. And you say that he told you that it was necessary that that mortgage should be signed else you might lose the roof over your head? A. Yes.

Q. You didn't believe him, did you? A. No, I didn't.

30 Q. Cite for me any previous instance where Mr. McGuinness had been untruthful to you so as to justify your disbelieving him at that time. When did he ever lie to you before? A. On a couple of occasions when I gave him the money. He told me in a week or two he would give it back to me.

Q. When did he misrepresent any fact to you which would lead you to disbelieve him that you would lose the roof over your head if you didn't sign the mortgage? A. Because he never told me what it was for.

40 Q. Gave you no intimation what it was for? A. No.

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Q. How many times did you ask him? How many times did you speak to him about it? A. Every time he asked me.

Q. Will you tell us what he said? A. When he spoke to me about the mortgage I told him I would sign it if he told me what the money was for. 10

Q. And he would say what? A. He refused to tell me.

Q. What would he say "Sign this mortgage!", and you said "Yes, if you tell me what the money is for," and he said "I refuse to tell you"? A. Yes.

Q. How many times did that colloquy or conversation take place between you? A. Oh, quite often. 20

Q. About how many times? A. In June he asked me first. In July when he struck me he asked me again.

Q. When else? A. After that three or four times and I refused every time.

Q. Did you know at that time what his situation was as to owing money on mortgages? A. No.

Q. Did you know there was a mortgage on the house? A. Yes.

Q. And you knew how much? A. Yes. 30

Q. And you knew who held the mortgages? A. Yes.

Q. And you knew of a mortgage of \$5,000 held by John W. Heck? A. Yes.

Q. And on the other place the property he owned there was a mortgage of \$8,000 held by the Trust Company of New Jersey? A. \$7,500.

Q. Do you say, Mrs. McGuinness, you did not have custody of the tax bills that showed what was due on the property? A. No, I have no tax bills. 40

Mary McGuinness—For Complainant—Cross.

Q. Did you receive the mail? A. I never touched Mr. McGuinness' tax bills.

Q. Mr. McGuinness had no other address for the receipt of mail except where you lived? A. So far as I knew.

10 Q. And the mail was delivered but you say you never touched his mail? A. No.

Q. And you never received any tax bills? A. No.

Q. You say in June, 1927, he asked you to sign a mortgage for \$2,500.00? A. Yes.

Q. And you say he was very disagreeable and nasty when you refused to sign it? A. Yes.

20 Q. You did not feel under any wifely obligation to surrender your judgment to his in the matter of aiding him in receiving the money? A. No. If he had told me what he wanted it for I was willing.

Q. Yet your disposition at that time was to show your power and terrorize that situation so as to get him to tell you what you wanted to know? A. No.

Q. Wasn't that your attitude? A. No, I had no power in that house.

30 Q. Didn't you understand and appreciate you were the boss of the situation when he wanted your signature to the mortgage? A. No, not the boss.

Q. You knew he couldn't raise any money on mortgages without having you participate in the transaction? A. Yes.

40 Q. And you knew he was asking you to participate in order to acquire some funds for use by himself? A. I didn't know what he wanted it for.

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Q. But you knew he wanted the money for himself didn't you? A. Yes.

Q. And you were resolved he should not get the money for his own use until he first told you what he was going to do with it?

10

Mr. De Sevo: I object to it on the ground it is a mis-quotation. She said if he told her what it was for she would sign the mortgage.

Advisory Master: Answer the question.

(Witness) A. Yes.

Q. If he had yielded to your insistment that he tell you what he was going to do with the money would you have signed the mortgage? A. Yes.

20

Q. Irrespective of what use he was going to put it to you would have signed the mortgage?

A. Not unless it was a good cause.

Q. Then you were going to pass on the propriety as to how he was going to use that money?

A. Yes.

Q. And you were resolved you would not aid him in raising the money unless he was going to use the money to your taste? A. No.

30

Q. Will you tell us what you were willing to have him use it for? A. I always had an idea that Mr. McGuinness had enough income to pay his way and there was no need for him to borrow the money because he got the rents. He would gamble it and that's how I got the idea.

Q. You thought he was going to gamble the money? A. Yes.

Q. And was back in all his financial obligations because of gambling? A. Yes.

40

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Q. What obligations was he back in that you knew of at that time? A. I didn't know of any other than what he told me he was back in his interest and taxes.

10 Q. He told you at that time? A. No, before the mortgage. I felt there was no occasion to be back in his taxes because he was collecting \$300.00 a month and he could pay his way. But he kept all the money for himself and gambled it and lost it and came to me and demanded me to sign for this \$2,500.00.

Q. And told you he was back in— A. No, he didn't tell me what he wanted that for.

20 Q. But you told us that he told you that he was back in his interest and for taxes. Didn't you say that? A. Yes.

Q. When did he tell you he was back? A. Before he ever started with this mortgage, and I put it to him why didn't he pay his taxes as he collected his rents and went along.

30 Q. So when he first canvassed you to sign this mortgage you well knew he was back in his taxes and back in his interest? A. I knew he was back in his taxes.

Q. And you suspected when he got the \$2,500.00 he was going to do something else with it besides pay the taxes and pay the interest? A. Yes.

Q. But he told you "Unless you aid me in raising this mortgage you will lose the roof over your head"? Didn't he tell you that? A. Yes.

Q. Didn't that convey to you that he wanted to raise the money to pay the taxes and the interest? A. No, sir; it did not.

40 Q. He did go so far to tell you he wanted this money to insure the maintenance of the roof over

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the house? A. No, he didn't put it that way. He just told me he wanted the \$2,500.

Q. You have three times testified he told you you would lose the roof over your head if you didn't sign this mortgage. That is true isn't it?

A. Yes.

10

Q. And he told you by the medium of this mortgage to raise money to keep the roof over your head and he told you that when you knew he owed taxes and interest? A. I never knew how much taxes and interest he owed.

Q. Anyhow you would not sign that mortgage no how? A. No.

Q. You say that in June, 1927, you were making the bed and he came in and he slapped you?

20

A. In July.

Q. In July he slapped you? A. Yes.

Q. And threw you on the bed? A. Yes.

Q. And kicked your shin? A. Yes.

Q. He was rather upset, wasn't he then? A. Yes.

Q. And he was upset by the fact you wouldn't sign the mortgage for him? A. That was the cause.

30

Q. And you all throughout were distrustful of him? A. Yes.

Q. And telling him that you didn't trust him? A. No, I never told him that.

Q. Will you tell us just how he threw you on the bed and kicked your shin and slapped you? How did he proceed? A. He came in and hit me with his hand on my face and kicked me.

Q. When he hit you on the face he didn't knock you down? A. No.

40

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Q. And then he pushed you on the bed? A. Yes.

Q. Your husband is a rather heavy stalwart man isn't he? A. Yes.

10 Q. And when he kicked you on the shin did he cut your shin? A. Yes, he did.

Q. What is commonly called skint? A. Broke the skin.

Q. Do you know whether he done it with deliberation?

Mr. Simpson: I object to whether he meant it by deliberation or inspiration.

Advisory Master: Objection sustained.

20 Mr. Doherty: Exception.

Advisory Master: The witness has stated I think as to how he struck her.

Q. How did he strike you on the shin? A. He kicked me.

Q. Did you see his foot coming in contact with your shin? A. Yes.

Q. You saw his foot kick your shin? A. Yes.

30 Q. You were looking down? A. It wasn't necessary to look down.

Q. Then how do you know your shin was injured by the push or kick or whether it came in contact with the bedstead or some other object?

A. It was before he threw me on the bed he kicked me.

Q. He kicked you once? A. Yes.

Q. And you say he put on his hat and went out? A. Yes.

40 Q. And came back at six o'clock? A. Yes.

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Q. Then he ate a meal you had prepared for him? A. Yes.

Q. You were not disabled? You were not injured so as to be unable to prepare the meal?

A. No.

Q. And you were not so resentful towards him so as not to get his supper when he came back? 10

A. No.

Q. And there was no further difficulty again that day? A. No.

Q. How long was it before conversation was resumed between the two of you? A. The next day.

Q. Then everything was— A. Oh, no.

Q. Then everything was cordial between the two of you? Was there any abuse the next day? 20

A. He abused me but he didn't strike me.

Q. The abuse you speak of he again asked you to sign the mortgage? A. Yes.

Q. And you again refused? A. Yes.

Q. You say from November, 1927, until April, 1928, he didn't buy any clothes? A. 1926, November.

Q. Did you get clothes? A. Yes.

Q. From whom? A. Mrs. McDonough. 30

Q. To what value? A. According to how the children needed them

Q. Can't you tell us the extent to which Mrs. McDonough supplied the children with clothes?

Mr. Simpson: I object to it. It is not important. The important thing is whether the defendant did supply them not who else provided them. Whether Mrs. McDonough 40

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spent one dollar or one thousand dollars is not evidential on cross examination. What we are trying is the extent that the defendant did not.

10

Mr. Doherty: You introduced in this case that between November, 1926, and April, 1928, he refused to provide clothes. It is a matter we are not permitted to meet. I want to test that testimony how much clothes and when and where. Otherwise that testimony should be ruled out of the case.

Advisory Master: Objection is overruled.

20

Q. What clothes did Mrs. McDonough provide for the children between 1926 and 1928? A. I just can't remember them.

Q. Do you remember anything? A. Why, yes, she bought them spring coats. The winter coats done them until the spring and she bought them spring coats.

Q. What else? A. Dresses and shoes if they needed them.

30

Q. Those children were of a very young age? They were little babies? A. Three and five at that time.

By the Advisory Master:

Q. Was that date November, 1926 or 1927, at the time Mrs. McDonough provided the clothes? A. From November, 1926.

40

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By Mr. Doherty:

Q. Was it the spring of 1927 or the spring of 1928 she bought the coats for the children? A. 1928. They wore their winter coats all through November and December.

10

Q. Aren't you getting confused on the years? You say Mrs. McDonough bought them some clothes in the springtime? A. Yes.

Q. Spring coats? A. Yes.

Q. Was that in the spring of 1927, the spring following the purchase of the clothes from Saks or was it the spring of last year? A. The spring of 1928.

Q. When, at Easter? A. I don't know just the time.

20

Q. Do you know the value of them? A. No.

Q. So outside of that Mrs. McDonough bought them some spring clothing in 1927. Nothing of any consequence happened between you and Mr. McGuinness from November, 1926, until April, 1928? A. What do you mean no trouble?

Q. No trouble was there? A. He would argue with me but he never struck me.

30

Q. In April, 1928, the matter of your signing the mortgage and keeping the roof over your head was still a live topic between you. He kept asking you to sign and you refused to sign, is that right? A. Yes.

Q. You have testified Mrs. McGuinness that on the night before the last encounter he was out all night? A. Yes.

Q. You and he were sleeping together were you? A. No.

40

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Q. Hadn't slept together in the same room for how long? A. I just really couldn't tell.

Q. It was a protracted period of a year or more? A. No, not a year.

10 Q. He was sleeping in the living room, wasn't he on a couch? A. That was his own doing.

Q. It is the fact though and you were sleeping in the bed? A. With the children.

Q. And how far removed from the living room was the bedroom? A. Just a short distance.

Q. Was there any intervening room or were they adjoining rooms? A. You had to come through the dining room to my bedroom.

20 Q. In order to get to his couch in the living room did he have to go through the dining room? A. Yes.

Q. And did he have to pass through your bedroom? A. No.

Q. He could get to his sofa or couch in the living room without going through your bedroom? A. Yes.

Q. How many times during the night did you get up to look to see whether he was in his room?

30 A. How many times?

Q. Yes? A. Well, I didn't get up, but I left the light burning always when Mr. McGuinness was out in the dining room. When that light was out I knew Mr. McGuinness was in.

Q. And it wasn't out? A. No.

Q. Until what hour? A. I just don't know. It was morning anyhow.

40 Q. When did you see the light last? A. I don't know because I was in bed. I could see the light under that door.

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- Q. You didn't get out of bed once you retired?
A. No.
- Q. And your sworn testimony that he was out all that night, and I think you said gambling, is based upon the fact that at some time during the night you saw this light in the hall? A. Yes, in the dining room. 10
- Q. And you don't know what hour it was you saw the light? A. In the morning—daylight.
- Q. Who put it out? A. Why he must have put it out when he came in.
- Q. You don't know who put it out? A. No.
- Q. You didn't at any time look in his room to see whether he was there? A. No.
- Q. You say that he did not have breakfast at all? A. No. 20
- Q. Was it his custom to join the family at breakfast or have it when he got up? A. When he got up the children and I had it with him.
- Q. And he did not have breakfast with you that morning? A. No.
- Q. You say he got up at a late hour? A. Yes.
- Q. What hour? A. Just before lunch.
- Q. At what time would that be, about eleven o'clock? A. Yes. 30
- Q. And you prepared a meal for him then? A. Yes.
- Q. Your relations at that time were friendly, were they? A. No, not friendly.
- Q. What was the occasion for discord between you on that particular day—the last day in the house? What was the basis of the trouble between you that day? A. He had lunch with me. 40

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Q. I am speaking about when you prepared his breakfast. Were you of a friendly disposition towards him? A. Oh, yes.

Q. There was no riff in the relations between you when you were getting his breakfast? A. I was in one room and he was with the children.

Q. You didn't think your health or life was in danger when you prepared his breakfast? A. No.

Q. And he ate the meal that you prepared? A. His dinner, yes.

Q. Have any conversation with him? A. No.

Q. You didn't talk to him? A. I don't remember whether I did or not.

Q. After he ate the meal he went to another room didn't he? A. Yes.

Q. Which room was it? A. The dining room.

Q. And where were the children? A. The children went in with him.

Q. And Mr. McGuinness is a man who is addicted to playing with the children? A. Yes.

Q. Fools around with them and frolics with them? A. Yes.

Q. And that was his occupation with the children that morning? A. They were looking out the window into the park where the policemen were having a rehearsal.

Q. Did you hear any talk between him and the children? A. I wasn't paying any attention.

Q. He was not molesting you, was he? A. No.

Q. Do you remember a box of candy being in the living room that day? A. No, sir, not that day.

Q. Sure of that are you? A. Sure of it.

Q. You remember some day when there was a box of candy there? A. We often had boxes of candy.

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Q. You recall a box of candy that was a gift from one of your brothers? A. At that time, yes.

Q. Around that period? A. Yes.

Q. Do you recall the incident of Mr. McGuinness helping himself to that candy? A. No.

Q. And you stated that he had no license to eat candy that was brought into the house by your brother? A. No, I did not. 10

Q. Did you ever have any fight with your husband over a box of candy that was brought in by your brother? A. No, I did not.

Q. You say that this outburst on this April day was produced by him asking a question about a brother of yours? A. Yes.

Q. You recall the question? A. Yes. 20

Q. What was it? A. He came in and wanted to know why there was a brother of mine got out of the city and moved to the country.

Q. That's all he asked? A. And I told him it was a family affair.

Q. Is that all that happened? A. Yes.

Q. You made affidavits in this case, Mrs. McGuinness, didn't you? A. Yes.

Q. In your affidavits—in one of your affidavits. This is the affidavit with your signature, isn't it? A. Yes. 30

Mr. De Sevo: Which affidavit is that, Judge?

Mr. Doherty: The affidavit annexed to the bill.

Q. In your affidavit in following out what we are talking about you said "While I was washing the dishes he came over and remarked on some family affairs in which I alone was interested 40

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because it concerned my family. I told him that it was my business and none of his whereupon he struck me with his clenched fist." Is that the language that you complained that his question related to your family and not his and was your
 10 business and not his business? A. Yes.

Q. I ask you Mrs. McGuinness, in making that retort to your husband whether it was not your intention to insult him?

Mr. Simpson: I object to that.

Advisory Master: Objection sustained.

Q. Did you when you so spoke to your husband understand that that might have provoked him to
 20 ill feeling towards you?

Mr. Simpson: In the case of Thomas vs. Thomas, the Court of Errors and Appeals said that whatever may have been the provocation for the defendant striking his wife was reprehensible and his conduct inexcusable because he was angry or the conduct of his wife provoked him to these extremes.
 30 What moved him to strike her I submit is not a proper question what her thought was.

Mr. Doherty: Thomas vs. Thomas has been overruled, holding that violence that is provoked by the wife could not be regarded as extreme cruelty, and the case I think is Christens vs. Christens. That even the conduct of the wife in showing unkindness to the children by a former marriage
 40 is sufficient to exculpate the defendant from

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the charge of extreme cruelty where the wife provoked the cause.

Advisory Master: I will let the witness answer the question over your objection.

Q. Did you when you so spoke to your husband understand that that might have provoked him to ill feeling towards you? A. No, I did not. 10

Q. Did you intend in making that retort to him to insult him?

Mr. De Sevo: I object to it.

Advisory Master: Objection sustained.

Q. You say he showed signs of anger. Up to that time his manner was kind and considerate? A. No, not quite. 20

Q. When he came in and asked you why your brother had been transferred his tone was kind?

A. He was not kind.

Q. He was never kind? A. No.

Q. A man who never called you names, a man who never reproached you and who tried for two years to raise money to keep the roof over your head was never kind? 30

Mr. Simpson: I object to it.

Advisory Master: Objection overruled.

Q. He slapped you on the nose? A. Yes.

Q. With his open hand? A. No, his clenched hand.

Q. Did you see his fist coming towards you? A. No.

Q. Why do you say his hand was closed? A. 40
Because I know it was a blow on my nose.

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Q. Can you tell the difference between a smack and a blow on the nose? A. Yes.

Q. And you say his fist was clenched? A. It felt as though it was.

10 Q. You did not need any medical treatment for your nose did you? A. No.

Q. And the contact was only with your nose? He didn't strike you on any other part of the face? A. No.

Q. And your nose bled? A. Yes.

Q. For how long? A. For half an hour or so after the blow.

20 Q. Did you lie down after you were struck? A. When he struck me I just put a handkerchief to my nose and my little boy five years old saw him strike me.

Q. I only asked you if you lied down? A. No.

Q. So the hemorrhage started while you were walking around? A. Yes.

Q. He did not knock you down with the blow, did he? A. No.

Q. He said nothing more to you? A. No.

Q. Did he remain in the house? A. Yes.

30 Q. Just about what hour did this happen, Mrs. McGuinness? A. After lunch.

Q. It would be around two? A. Near one o'clock I guess, between one and two.

Q. You say you didn't go to Mrs. Quinn's until two or three o'clock? A. Between two and three.

Q. And during that time you were in the house with Mr. McGuinness? A. Getting my children ready to go.

40 Q. You were not in fear of your life or health? A. Yes, I was.

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Q. You feared your life at the hands of a man who was sitting there not molesting you? A. When he hit me once I thought he would do it again.

Q. When he slapped you in June, 1927, he didn't make a regular habit of it thereafter, did he? A. 10
No.

Q. Why did you think it would be habitual after 1928?

Mr. Simpson: I object to it. The only question is whether he did certain things. She might have enjoyed being punched but that is of no evidential value. The fact is what he did. What she thought is of no consequence.

Advisory Master: Objection overruled. 20

(Witness) A. I saw Mr. McGuinness was in a temper and I thought he might come back again.

Q. Did you think he might strike you irrespective of whether you gave him any provocation or not? A. Yes, I was in constant fear.

Q. You say you left the house to telephone?

Mr. Simpson: No, she didn't say that. 30

(Witness) A. I went downstairs.

Q. To Mrs. Harris' apartment to telephone? A. Yes.

Q. And you 'phoned first to Mrs. McDonough? A. Yes.

Q. And she was not at home? A. No.

Q. And you telephoned to Mrs. Quinn the sister of Mr. McGuinness? A. Yes.

Q. Why did you telephone to those ladies? A. Because they were the only two people I ever went to. 40

Mary McGuinness—For Complainant—Cross.

Q. You were trying to ascertain whether they were home? A. So I could go to them.

Q. And you were determined to go to Mrs. Quinn's house? A. Yes, when my sister was out.

10 Q. And you say you left for Mrs. Quinn's two or three o'clock in the afternoon? A. Between two and three.

Q. And during that time you dressed up and prepared yourself for street appearance and went out? A. Yes.

Q. You didn't have to flee from the house in fear of your life on that occasion? A. No, but I was afraid.

20 Q. While you were making those preparations did you see Mr. McGuinness' daughter Marie? A. Yes, she came down.

Q. Have any conversation with her? A. No.

Q. You didn't speak to her when you would meet her? A. I didn't speak to her that day.

Q. Did you ever speak to her? A. Yes, but not that day.

Q. Where was it you saw Marie at that time? A. Passing through the rooms to go to her apartments.

30 Q. Where were you, in the kitchen? A. No, in the bedroom.

Q. And she passed through it? A. No, she passed through the hallway.

Q. I am showing you a diagram which is supposed to show the layout of the floor where you lived. This is the dining room, is it (indicating)? A. Yes.

Q. And here are two bedrooms? A. No, one bedroom and a bathroom.

40 Q. Where was the bedroom at the time Marie passed through? A. Right here (indicating).

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Q. At the extreme front of the house is the living room where Mr. McGuinness slept? A. Yes.

Q. Where is the light that you saw illuminated the night before? A. In the dining room.

Q. And you say it was his custom to put that light out before he went to bed and you saw it lit at a late hour that night? A. Yes. 10

Q. There was no mark on your face when you got to Mrs. Quinn's house, was there? A. There was a mark but it was a slight mark.

Q. Let me refer again to that affidavit you signed. This part of your affidavit that you have identified is untrue, is it not Mrs. McGuinness, "My nose was cut and my face was all bruised"? That wasn't true was it? A. My nose was cut. 20

Q. Your nose cut? A. Yes.

Q. Outside? A. Yes, right there (indicating).

Q. Didn't you testify here only a few seconds ago there was no mark on your nose that Mrs. Quinn could see when you arrived at the house? A. I don't know whether she saw it or not but it was a mark.

Q. But you are in doubt as to whether she could see it? How about this allegation "My face was all bruised"? Is that true? A. I didn't say my face was bruised. 30

Q. That is the affidavit that you signed is it not? A. Yes.

Q. Does that affidavit not contain the assertion that your face was all bruised? A. It was my nose but not my whole face.

Q. You did nothing while calling on Mrs. Quinn except converse with her? A. Yes. 40

Q. And all you conversed with her about was the recent trouble with your husband? A. No.

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Q. Didn't you refer to it? A. I told her how Mr. McGuinness had hit me on the nose.

Q. You told her that? A. Yes.

Q. And having made that accusation to Mrs. Quinn you spent the rest of the time while you were there talking about other topics? A. No, because she was in bed sick.

Q. You talked to her? A. Only a few minutes and I talked to my sister.

Q. As I understood your testimony you stayed at the Quinn house for two hours? A. It was between two and three when I got there.

Q. And you stayed there for a couple of hours? A. It was near three when I got there and I left at four.

20 Q. You stayed over an hour? A. Yes.

Q. And you did nothing but converse? A. Yes.

Q. And you had no conversation with her except to say her brother had struck you? A. That's all.

Q. With whom else did you converse? A. With her daughter.

Q. About other topics than your family wars? A. Yes.

30 Q. You were not upset in your mind was you? A. Yes, I was.

Q. And sitting down and paying a social visit to Mrs. Quinn and talking about other things? A. I didn't want to upset her with my troubles.

Q. Why did you go to Mrs. Quinn's house? A. Because my sister wasn't at home.

Q. Didn't you go to her house for the purpose of seeking some encouragement for breaking up your home? A. No.

40

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Q. And didn't you pick out Mrs. Quinn because you knew she was disposed to give you that sort of advice? A. No.

Q. You then went to the home of your sister Mrs. McDonough? A. She wasn't at home. I couldn't go there that day. 10

Q. Not that day? A. Not until four o'clock.

Q. But you did eventually go there? A. Yes.

Q. How long was that before you went to Montgomery, New York, to spend the summer? A. That was April 28th.

Q. When did you go to Montgomery? A. In the beginning of June.

Q. Had you had any conversation with your sister Mrs. McDonough before you left your home about spending the summer with her up in New York State? A. No. 20

Q. You arrived at Mrs. McDonough's home that same day? A. Yes.

Q. Can you recall the date when Doctor Commorato visited you? A. I had him on May 5th, 8th and 12th.

Q. So you were at your sister's home a whole week before Doctor Commorato called on you? A. Yes. 30

Q. At that time you were rather in an upset state of mind living away from your home? A. Yes.

Q. And greatly worried about your future destiny or situation? A. Yes.

Q. And your mind was rather in an upset condition wasn't it? A. Yes.

Q. And on account of that you got nervous? A. I was nervous before I left home.

Q. You are a frail woman naturally aren't you? A. No, I wasn't frail when I married him. 40

Mary McGuinness—For Complainant—Cross.

Q. But after the trials of two years of married life your health was not robust? A. But I was never sick.

10 Q. When you went to Mrs. McDonough's home that evening that was the first time you were ever away from your husband was it? A. Yes.

Q. Was it? A. Over nights, yes.

Q. You had never quit your husband before? A. No, unless I went to the country.

Q. Didn't you leave him twice? A. No, not over night. Never until this occasion.

Q. You say you went to the country did you? A. Yes, but he knew I was going with the children.

20 Q. And you never left your husband's household in a temper and stayed away from home? A. Not over night.

Q. Does it refresh your recollection on that point to refer to the circumstance of your coming home one time after one of your tempers and kicking your foot through a partition? A. No.

Q. That never happened? A. No.

30 Q. Wasn't it due to some such conduct on your part that the new sleeping arrangements were made whereby your husband slept in the living room? A. It was while I was in the country he did that, but he knew where I was. I didn't go without him knowing it.

Q. Coming back to the taxes and that mortgage. Can you recall any occasion when Joseph McGuinness, Jr., called on you to talk over the matter of your signing the mortgage? A. Joseph McGuinness never spoke of the mortgage with me.

40 Q. Did he ever call upon you to discuss affairs of his father? A. No, never. But Joseph Me-

Mary McGuinness—For Complainant—Cross.

Guinness and his father went into the living room and shut the door.

Q. Joseph McGuinness never spoke to you of the necessity of having this money raised on the mortgage? A. No.

Q. Never spoke to you about the taxes? A. No. 10

Q. Or the interest that was due? A. No.

Q. You say in your bill of complaint and in the affidavit that the telephone was cut off? A. Yes.

Q. When? A. At least six months before I left. Four or five months before I left in April.

Q. You mean the service was discontinued or it was suspended? A. It was discontinued until Mr. McGuinness paid his bill.

Q. How long was that? How long was it discontinued? A. It was never in since—at least a year. 20

Q. That is, the service was stopped altogether was it? A. Yes.

Q. How do you know it was discontinued because he didn't pay his bill? A. Because I know he got bills. He said if he didn't pay the bills it would be cut off.

Q. Don't you know as a matter of fact there was some bickering over the telephone and he told you he would have it taken out? A. No, he never said he would have it taken out. 30

Q. Wasn't he disgusted because of constant communication over the telephone between you and Mrs. McDonough? A. I don't know whether he was or not.

Q. You knew he wanted Mrs. McDonough to stay out of the house? A. Yes.

Q. Because he thought she was coming there as a trouble-maker? 40

Mr. Simpson: I object to it.

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By the Advisory Master:

Q. Do you know? A. No.

By Mr. Doherty.

10. Q. Didn't you hear him order her to stay out of the household? A. Yes.
- Q. And don't you know the reason why he evidenced to her his wanting her to stay out? A. No.
- Q. After she was told to stay out you continued to have communications with her by telephone? A. Once in a while.
- Q. And it was shortly after that the telephone was disconnected? A. Yes.
- 20 Q. And you thoroughly understood by that he did not want you and Mrs. McDonough to be in constant communication? A. No, because the whole family used to use the telephone.
- Q. You say you went back to the house once since you left to get some clothing for the children? A. Yes.
- Q. Was that the clothing your sister had bought? A. Yes.
- 30 Q. Also the spring coats? A. Yes.
- Q. That's what you wanted? A. Yes, it was in April. All the children's clothes.
- Q. Was that the only time you were back since you separated? A. Yes.
- Q. Isn't it true you were back there dozens of times? A. No.
- Q. Isn't it true you have been back to the house five or six times before the occasion when you saw Mr. McGuinness there? A. No.
- 40 Q. And you had removed whatever there was in the household that you desired? A. No.

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Q. And that it was because of these secret abstractions from the household that he put a lock on the door? A. I don't know if he put a lock on the door.

Q. Was Mrs. Harris the tenant living in the house at the time you returned for the clothing for the children? A. Yes. 10

Q. Did you come alone on that occasion? A. I brought my little boy.

Q. Didn't you bring anything else? A. No.

Q. Didn't you bring a van? A. That came after.

Q. You had ordered the van to come? A. To take the things.

Q. To carry away those two spring coats? A. No. 20

Q. What was the van supposed to carry off? A. The clothes that the children were wearing. All the clothing of the two children.

Q. In a van? A. I didn't want a van. I ordered a wagon to come and take two trunks and all the children toys.

Q. Mrs. McGuinness, didn't you have an arrangement with the operator of that van to come there that day and clear the house out to the walls? A. No. 30

Q. And wasn't it the presence of Mr. McGuinness there unexpected by you that stopped the performance of that? A. No.

Q. You say you saw him there. Did you expect to see him there? A. Yes, I went at a time when he would be there, right after noon.

Q. At noon he would be there when you arrived with the van? A. The van did not come with me. It was after I was there. 40

Q. When you arrived there he was in an excited state of mind? A. Yes.

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Q. He went in and got himself a drink of whiskey? A. Yes, he was under the influence of liquor.

Q. Tell us why you say that? A. Because he had a bottle of liquor in his hand going around from one place to another.

10 Q. Mrs. McGuinness, you have sworn that after your arrival he went into a room and got a bottle of liquor and took a drink? A. Yes.

Q. Do you want to change that now and say he was dancing around with a bottle in his hand?

Mr. De Sevo: She didn't say anything about dancing.

20 Q. What part of the house was he in when you got there? A. Upstairs.

Q. You didn't know he was under the influence of liquor until he came down? A. No.

Q. Did he stagger all over the place? A. No.

Q. Was he singing ribald songs when he came down? A. No.

Q. How did you know he was intoxicated when he came down? A. I knew.

Q. How? A. By his appearance.

30 Q. How did he look? A. He looked as though he had drink.

Q. What part of him looked as though he had drink? A. His face.

Q. What was the matter with it? A. It was all red.

Q. Is that all you saw? His face was flushed and you knew he was under the influence of liquor? A. Yes.

40 Q. Did he talk to you? A. I told him I come to take the clothes and he said take everything you want.

Mary McGuinness—For Complainant—Cross.

Q. That was further proof he was drunk when he said that?

Mr. Simpson: I object to that. How can she characterize what was his condition.

10

Q. Do you want to take back that testimony that he was drunk? A. He was under the influence of drink when I saw him.

Q. Because his face was red? The whiskey was not upstairs where he was, was it? A. No.

Q. It was downstairs. And he told you you could have everything you wanted? A. Yes.

Q. And he went and took a drink? A. Yes.

Q. Where did he get it? A. From one of our rooms.

20

Q. Isn't it the usual thing to have whiskey around the house? A. I had a bottle for medical purposes but it wasn't what he took. He had his own. He didn't go where I had the liquor.

Q. You kept yours bunked? A. No, I didn't have to bunk it.

Q. You saw him take a drink? A. Yes, I saw him take two or three drinks that day.

Q. Did you see him treat the van drivers? A. No. I heard him offer him a drink. That was in the bedroom.

30

Q. He smashed the glass cover of the table with a hammer? A. Yes.

Q. And he said "As long as you are breaking up the house I'll help you break it up"? A. Yes.

Q. What else did he say? A. Then he smashed the glass on the serving table too.

Q. What else? A. Then he took the little boy and was talking to the little boy.

40

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Q. As long as you had the ability to recognize your husband as being under the influence of liquor, didn't you also have the ability to see he was a sorrowful man? A. No.

10 Q. You didn't think he had any regret because you were breaking up the home? A. No, not for me.

Q. You yourself didn't feel sorry about breaking up the home, did you? A. Oh, yes, I did.

Q. Did you in any way tell that to your husband that you were sorry that things had come to that pass? A. No.

Q. And you were allowed to take anything that you wanted? A. That's what he told me to take.

20 Q. Now you saw your husband the next time, when? A. That was in May I went. In June I went to Montgomery.

Q. Didn't you see him in the meantime on the occasion of the laying of a corner stone at a church? A. St. Aloysius Church.

Q. And you were in the company of Mrs. McDonough? A. Yes.

Q. And you had the children? A. Yes.

30 Q. And when you saw your husband he was across the street? A. Yes.

Q. And he started to approach you? A. Yes.

Q. And you and Mrs. McDonough packed up and ran away? A. We walked away.

Q. You knew from his conduct that he was approaching you to talk to you? A. No, I didn't. I thought he was going to come to me and make a scene on the street.

40 Q. What was there in his behavior that led you to that conclusion? A. Because I knew he used to like to make little of me before people, and we

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walked away from Mr. McGuinness when we saw him coming.

Q. Tell us one time he made a public scene? A. I knew how he acted in the house.

Q. Can you tell us when he made a public scene to your humiliation? A. Not outdoors he didn't. 10

Q. So when you saw him on this occasion you were satisfied he was going to make a public scene and you ran away? A. Yes.

Q. You next saw him at Montgomery? A. Yes, I saw him.

Q. Where was he and where were you? A. I was upstairs and he was down in the yard sitting on a bench.

Q. The place there was the home of some friends of yours who had leased it or were occupying it for the summer? A. Yes. 20

Q. You were a guest of theirs? A. I boarded there.

Q. And he was just a visitor at that time? A. Yes.

Q. You saw him downstairs on what floor? A. On the lawn.

Q. And you were upstairs on what floor? A. The second floor. 30

Q. You did not come down, did you? A. No.

Q. Why didn't you come down to see your husband? A. I didn't think he came to see me. He asked for the children.

Q. Why did you think that because he asked for the children? A. If he wanted me he would have asked for me.

Q. You were standing on your dignity and waited for him to ask for you? A. Yes. 40

Q. You did not credit him with any loving con-

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sideration for you in going up there at all? A. No.

Q. You had been convinced that he was against you and you were waiting for him to show some signs of repenting? A. I thought if he wanted to see me he would have asked for me.

Q. What he did on that occasion was not to ask for you? A. No.

Q. He asked for the children? A. Yes.

Q. Whom did he ask for the children? A. I don't know; I was upstairs.

Q. Did you hear him ask for the children? A. No, I didn't.

Q. How do you know he didn't ask for you? A. I know he didn't. There was no one who came to tell me.

Q. That is the reason for your knowledge that no one told you he asked for you? A. If he had asked for me I could hear him. I was in such a place where I could hear him talk.

Q. Why didn't you hear him ask for the children? A. I can't remember.

Q. So you couldn't hear him if he asked for you? A. No.

Q. And you don't know whether he asked for you? A. No.

Q. Anyhow you didn't come down? A. No.

Q. He stayed there how long? A. For about a half an hour.

Q. Playing with the children? A. Yes.

Q. His manner was that of a happy man while he was there? A. I don't know whether it was or not.

Q. And you during his entire stay lurked in a room upstairs looking down at him? A. Yes.

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- Q. Were you afraid you would lose your life?
 A. I was afraid of him.
- Q. What did you think he would do with you?
 A. I didn't know.
- Q. You thought he would stop playing with the children and break some of your bones, is that it? 10
 A. I don't know.
- Q. You have seen him again since that occasion? A. When the little boy would go to school.
- Q. When was that? A. The little boy started to school in September. He would go up to the park to meet the boy. He would talk to him but not to me.
- Q. Did you ever bring the boy to school? A. Yes, I would bring him to school. 20
- Q. And your husband would be waiting there to intercept the two of you and he would talk to the boy but not to you? A. Yes.
- Q. He had previously talked though at a conference in Judge Egan's office, hadn't he? A. Yes.
- Q. When was that? A. The beginning of May.
- Q. That conference was arranged for the purpose of talking over business affairs between the two of you? A. It was talking over our trouble with Judge Egan. 30
- Q. And after that conference your husband went home with you? A. Yes.
- Q. And talked in a friendly way with you, did he not, on the way home? A. Yes.
- Q. Who was present at the conference in Judge Egan's office? A. Judge Egan and Mr. McGuinness, and his son and I.
- Q. Wasn't Mrs. McDonough there? A. No. 40
- Q. You say that the conference was arranged

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in the hope there might be some adjusting of the differences without the matter becoming public?

A. Yes.

10 Q. Wasn't it said that the best way for you to settle the differences was to come home? A. I said I was in fear of coming home.

Q. And at all times since then until the present time you have refused to go back to your home?

A. There has nobody brought the subject up.

Q. We are bringing it up now. Are you willing to go back to him today? A. No, on account of constant fear of him.

20 Q. You say it was never brought to your attention that your husband wanted you home. Were the contents of his affidavits filed in this case not brought to your attention? A. I read them.

Q. And you were aware from those affidavits that he swore he maintained the home awaiting for you to come back?

30 Mr. Simpson: What happened since the commencement of the suit has no bearing on it nor has the affidavits indicated whether they are sincere. Our contention is he never sincerely tried to get her to return. The affidavits as I read them certainly do not put her upon her notice.

Q. You knew all about Mr. McGuinness' willingness to take you back throughout this suit? A. No, just reading the affidavits. He really never asked me.

Q. Never asked you personally? A. No.

40 Q. We ask you now Mrs. McGuinness if he took you outside now and asked you to come home would you come home? A. No.

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Q. Was there ever a time when you would have gone home if he asked you to come? A. Not since I left home because I was in constant fear of him all the time.

Q. You left your house in April, 1928, with the intention of permanently staying away from him? 10

A. Why, no, I didn't.

Q. I am asking you now was there ever a time when you would have been disposed to go home if Mr. McGuinness asked you to come? A. I may have gone back home if Mr. McGuinness had come to me in the beginning. If he had come to me at the first time I left home, but he never came to me.

Q. The case wasn't hopeless when you first left? A. No.

Q. If he had come to you you would have been satisfied that your life and health would be safe if you went back? A. If things were different. 20

Q. But you are now convinced that because he did not come after the lapse of a considerable time and make overtures to you to come back you are now convinced your life and health are not safe in your home? A. Yes.

Q. And your feelings are not based on what transpired before you left but what happened since you left by reason of his failure to ask you to come back? A. I thought if he wanted me to come back he would have asked me in the beginning when I left home. 30

Q. When you left your home there was still a vestige of love in your heart for your husband, was there? A. Yes, I had respect and love.

Q. And that continued for how long a time after you left? A. When I went out he did not come to see me and the children and didn't inquire. I thought he did not care for us. 40

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Q. When was it your affections shrunk and you made up your mind not to go back?

10 Mr. Simpson: I don't think it is a question of her affections expiring or shrinking.

Mr. Doherty: I withdraw it.

Q. When was it that you made up your mind that you wouldn't go back to him? A. After I left.

Q. How long after? A. A couple of days. The first night I left home he never came to see where I or the children was.

20 Q. Now, down at Judge Egan's office the proposition was made to you to come back to your husband. Why didn't you go back then Mrs. McGuinness? A. Because I was in fear at that time.

(Further hearing continued to April 19, 1929.)

30 Met pursuant to adjournment this 19th day of April, 1929, at ten o'clock in the forenoon.

Appearances as heretofore.

40 Mr. De Sevo: Before we proceed I want to bring to the Court's attention the fact that since the last hearing nothing has been paid on the alimony and notwithstanding the fact that your Honor said the counsel fee would have to be paid we are still waiting for the counsel fee. It is almost a month now since the last hearing.

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The Court: Why has not the counsel fee been paid?

Mr. Doherty: I understood that your Honor's ruling was as to the entire matter being held in abeyance, and complainant's counsel was given assurance that the money would be paid, and we are awaiting a further order from you. 10

(Further argument.)

The Court: My suggestion is that Court be adjourned until two o'clock unless you can pay it sooner. I think it should be paid. It is not my order; it is Vice Chancellor Fallon's order.

(Recess until eleven o'clock.)

20

MARY MCGUINNESS, the complainant, already sworn in her own behalf, resumes the stand.

Cross Examination by Mr. Doherty.

Q. Mrs. McGuinness, among the things you testified to at the last hearing was that from November 1, 1926, until April, 1928, your husband did not buy any children's clothes? A. Yes. 30

Q. Do you recall that? A. Yes.

Q. Do you mean thereby that your husband did not personally go out and make the purchases? A. No, sir; he did not pay for any of the clothing.

Q. He did not pay for any clothing? A. No.

Q. Up to what time was your husband in default in paying for the children's clothing? A. He gave them just what was necessary.

Q. Was it his practice to give you the money in cash or did he give you some general fund out of 40

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which you paid for the clothing? A. Mr. McGuinness never gave me any cash.

Q. And how did he make the money available to you that paid for the children's clothing up to November, 1926? A. If I got clothing, he made out a check for that amount.

10 Q. Where was the check book kept in the house? A. I don't know.

Q. It was not subject to your disposal at all, that check book? A. No.

Q. You had seen it, however? A. When he would make out the checks. That was all.

Q. You never made out any checks yourself that he had signed, did you? A. Yes.

20 Q. You did? A. Yes, for the laundry when he gave me a check.

Q. For the laundry only? A. As far as I can remember, yes.

Q. Do you recall having made out any checks for department stores? A. I don't know; I don't remember.

Q. You don't remember? A. No.

30 Q. Is your memory certain or uncertain as to whether during the period when you say he did not supply clothing for the children, that is, from November, 1926, until April, 1928—is your memory certain or uncertain as to whether you made out checks during that period? A. Not for clothing.

Q. You did not? A. No.

Q. For what purpose did you make checks out? A. Only for laundry.

Q. Only for laundry? A. As far as I can remember.

40 Q. You never made them out for clothing? A. I never remember any.

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Q. When you would make out a check signed by Mr. McGuinness, would you make any notation on the stub as to the check being issued? A. Yes, I would.

Q. Did you do that in every case? A. Yes.

Q. Can you recall no case at all in which you omitted to make a notation on the stub of the check which you made out? A. No. 10

Q. I show you a check book. Do you recognize this as the check book that was used by you in filling out checks? A. Yes.

Q. I will turn over the pages of the stubs now and ask you to identify your handwriting where it appears on these stubs? A. (Indicating) This one right here. 20

Q. On May 17, 1926, a check to Gimble Brothers, check No. 1001? A. Yes.

Q. Was that for clothing? A. I don't know. It might be for things for the house. There were things bought for the house, too, in New York, as well as for the children.

Q. "Milk"—is that in your writing? A. No, it is not.

Q. Check No. 1013, to the order of Macy, \$3.98; is that in your handwriting? A. No; that is not my writing. 30

Q. Is that yours—check No. 1020, June 18, 1926, to the order of Susie, \$14.93? A. That is mine.

Q. Who is Susie?

Mr. De Sevo: I object upon the ground that that is a check which she knows nothing about.

The Court: Objection overruled.

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Q. Is Susie your sister, Mrs. McDonough? A. That is her name; yes.

Q. Can you tell us the purpose for which this check was given to Mrs. McDonough? A. No.

10 Q. (Showing witness.) Did you write this one? A. No; I did not.

Q. (Showing witness.) Or this one? A. No.

Q. Check No. 1028, to the order of Macy, you do not identify that as having been made out by yourself? A. No; I did not fill that out.

Q. Do you see any there that you did fill out? A. This one.

Q. Check No. 1038, dated August 9, 1928, Public Service Company, \$2.28? A. Yes.

20 Q. Check No. 1041, dated August 12, 1926, to the order of Model Laundry, \$5.28? A. Yes.

Mr. Simpson: I want to object to this line of testimony. It seems to me that this examination is a waste of time. We are not resting our case on anything that happened in 1926 or 1927, except in one instance. I submit that this is all irrelevant.

30 The Court: My recollection is that on direct examination the witness was examined on checks drawn by her and some by the defendant.

Mr. Doherty: She said on direct examination that during a certain period he furnished no clothing.

The Court: Objection overruled.

Q. (Showing witness.) How about that? A. Yes, sir.

40 Q. August 11, 1926, cash \$10? A. Yes; and this one here, Sheffield.

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Q. Check dated August 17, 1926, to the order of Sheffield Farms, \$8.40 for milk—is this in your writing? A. Yes, sir.

Q. Can you tell us on what account that was paid? A. No.

Q. Did you make out the check following, Susan McDonough, \$10.47? A. No, sir. 10

Q. That is in Mr. McGuinness' handwriting? A. That is in Mr. McGuinness' handwriting.

Q. You do not know why he gave that money to your sister? A. No.

Q. (Showing witness.) Is that yours? A. No; it is not.

Q. (Showing witness.) Is that yours? A. Yes.

Q. Check No. 1049, Long Branch, \$175. That was for the expenses of a vacation? A. My vacation. He signed this check and he had to— 20

Q. (Interrupting) Was that to defray the expenses of a vacation? A. Of a house.

Q. Where you spent part of the summer of 1926? A. Two months.

Mr. De Sevo: There is no-date on that check.

Q. You left the date off the stub, did you? A. Yes; I might have. 30

Q. Next? A. (Indicating) This one.

Q. Check No. 1059, dated September 22, Prudential Insurance Co., \$3.20? A. Yes.

Q. Was that a premium on a policy? A. Yes.

Q. Whose policy? A. On mine.

Q. The check following is in your handwriting? A. No.

Q. Do you see any there? A. Yes; this one. 40

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Q. Check, dated September 23, 1926, cash, \$5.00?
A. Yes; and this one, too.

Q. Check dated September 24, 1926, Gas Company, \$12.95? A. Yes; and Model Laundry, too.

10 Q. Check dated September 24, 1926, No. 1063, Model Laundry, \$8.00? A. Yes.

Q. I call your attention especially to check No. 1068, October 20, 1926, in the writing of Mr. McGuinness, to the order of the City Collector, James Radigan, \$506.75. Did you ever see that stub before? A. Did I?

Q. Yes. A. No.

Q. You never did? A. No.

20 Q. Did you ever look through these stubs at any time when you had occasion to use this book? A. No.

Q. Can you tell us why you did not?

Mr. Simpson: I object.

The Court: Objection sustained.

Q. Do you see any other stubs that you filled out? A. This one.

30 Q. Check No. 1076, no date, following check dated October 23, 1926, to Model Laundry, \$5.76? A. Yes; and this one.

Q. Check dated November 4, No. 1083, milk, \$6.40? A. Yes.

Q. Can you tell us whether that check was filled out by you? A. I don't know.

Q. Can you tell us whether the stub was filled out by you? A. Yes.

40 Q. Subsequent to the time when you say Mr. McGuinness ceased to buy clothing for the children? A. It was in November, 1926, that he ceased.

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Q. Any others? A. This one. This one here.

Q. Check No. 1086 to the order of Gimble, \$12.05, bearing no date but following check dated November 9; do you know for what Gimble was paid when you gave that check? A. No; I do not.

Q. That was the time that you ordered the coats, was it not? A. No. 10

Q. You don't know? A. It was not for clothing.

Q. Cash, \$15; is that yours? A. No. This (indicating) is mine.

Q. I call your attention to check No. 1091, to the order of John W. Heck, for \$150. Was your attention ever arrested by that stub? A. No.

Q. You never looked it? A. No. I never had any occasion because Mr. McGuinness never confided in me. 20

Q. Check No. 1094, Model—that is the Model Laundry I suppose—\$6.40? A. Yes.

Q. Now, look at this check, 1103, December 22, to the order of Sachs Co., \$21.70. You filled that out, didn't you? A. Yes.

Q. That was for supplies? A. No clothes though.

Q. Can you tell us what this was for? A. No; I cannot. 30

Q. But you know it was not for clothes? A. It was not for clothes.

Q. The check following bears the same date, December 22, No. 1104, Gimble Brothers, \$19.89. You issued that check, did you? A. Yes.

Q. The one following 1105, to Macy, \$33.14? A. I did not write that one.

Q. You did not write that? A. No.

Q. That is in Mr. McGuinness's handwriting? A. Yes. 40

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Q. Do you know what Mr. McGuinness issued that check for? A. No, because at times Mr. McGuinness used to pay for his daughter's things that used to be sent C. O. D., as well as mine.

10 Q. Do you swear that this check was applied to that purpose? A. I don't know. It might have been.

Q. January 8, 1927, Macy & Company, \$4.24. Do you know what that was for? A. No.

Q. Check 1117, laundry, \$5.92? A. Yes.

Q. Look at this. Is that yours? A. No, it is not.

20 Q. I call your attention to check No. 1120, dated January 27, 1927, to the order of Business Men's Building & Loan, paid to May 1, \$50.00. Who had that account in the Business Men's Building & Loan Association? A. I had.

Q. And your husband on January 27, paid up your dues to May 1st, did he? A. He must have, if it is there.

Q. Is that your handwriting? A. No; that is not my handwriting.

Q. That was during the period when you say he was not buying clothes for the children? A. 1927.

30 Q. Yes? A. Yes.

Q. Show me the next one? A. This one (indicating).

Q. Milk? A. Yes, sir.

Q. The notation on stub of check No. 1124, "Milk," \$5.27, that is in your handwriting, is it? A. Yes.

Q. What do you know about the stub underneath R. H. Macy, \$14.92? A. I don't know.

40 Q. That is not in Mr. McGuinness' handwriting? A. No; that is mine.

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Q. In your handwriting? A. Yes.

Q. Do you know what it was for? A. No.

Q. During this period you had permission to order things from Macy's and other department stores that you desired? A. For the house.

Q. For the house? A. Yes; not for my children or myself, though. 10

Q. Do you mean to tell us that Mr. McGuinness at any time told you that you were not to buy clothing for your children? A. He refused to buy clothing.

Q. I am asking you: Did he ever say to you: "Buy things for the house, but no clothing"? A. No.

Q. In what way did he restrain or inhibit you from buying clothing for the children if you wanted to buy it? 20

Mr. Simpson: I object to this as not proper cross examination.

The Court: Objection overruled.

A. He refused to pay for them when I sent them home and they would have to go back again.

Q. A moment ago didn't you swear that he always sent them back? Didn't you tell us that? A. I sent them back. 30

Q. Did he? A. Well, I had to if I didn't have the money to pay for them.

Q. Did you swear, as I inquired, that he always sent them back? A. If he was there he sent them back, but if he was not there, I did.

Q. Did he ever send them back? A. Yes.

Q. When? A. I just cannot recollect, but he has sent them back. 40

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Q. Tell us approximately, or by any suggestive manner, when he ever sent anything back? A. I cannot recall the dates, but he has sent them back.

Q. Can you recall the clothing that he sent back?

A. Yes.

10 Q. What? A. Dresses for the little girl and suits for the boys.

Q. Obtained from where? A. From one of the stores in New York.

Q. Which one? A. I just cannot recollect.

Q. Who ordered them? A. I did.

Q. And you cannot recall what store he ordered them from? A. No, because—

Q. Do you recall?

20

Mr. Simpson: I object to the witness' being cut off before she finishes her answer.

Q. Just continue your survey of this book, please, and see if there are any other checks that you made out? A. (Indicating) This one.

Q. Which one is that? A. Insurance.

30 Q. February 13, 1926, Prudential Insurance Company, \$2.40. Do you know whether that was an accurate statement of the year, "1926," or did you commit the common error of continuing the designation of the former year during the early part the one succeeding?

Mr. De Sevo: I object to the story about a mistake. The book speaks for itself. That is their own book.

The Court: I think I will sustain the objection.

40

Mary McGuinness—For Complainant—Cross.

Q. Was that a correct statement of the year, "1926"?

Mr. De Sevo: I object. If it is down there 1926, it must have been 1926.

Q. I call your attention to the check on the next page, March 14, 1927? A. Yes. 10

Q. Does that aid you in recalling whether that date should be 1927 or 1926?

Mr. De Sevo: I object unless the check was made by Mrs. McGuinness.

The Court: Objection overruled.

Q. Check 1128, bearing date March 14, 1927, to Greenville Building & Loan Association, \$10. That is in Mr. McGuinness' handwriting? A. Yes. 20

Mr. Simpson: Cannot we get an objection noted for the record? The witness is being examined about checks; she is being examined about stubs in a check book which prove absolutely nothing, unless the checks themselves are produced or accounted for, which has not been done. I would like to note an objection to the further examination on the stubs of this check book which is not her check book, in the absence of the checks themselves. 30

The Court: Objection overruled. If she doesn't know she can say so.

Q. Check 1128, dated March 14, 1927, to the order of the Greenville Building & Loan Association, \$10. Is that in Mr. McGuinness' handwriting? A. Yes; it is. 40

Mary McGuinness—For Complainant—Cross.

Q. Who was the shareholder in the Greenville Building & Loan Association? A. I was.

Q. You were? A. Yes, sir.

Q. You had shares in two building and loan associations, didn't you? A. Yes.

10 Q. At that time? A. Yes.

Q. The Business Men's and the Greenville? A. Yes.

Q. And Mr. McGuinness was carrying along your shares in these associations? A. I just got those at that time. I had not had them long. I bought them to accommodate his daughter. She needed a little money and I bought them off his daughter.

20 Q. To accommodate her? A. Yes.

Q. What was the book value at the time you bought it from his daughter? A. About \$300.

Q. Was it not \$600 and you paid her \$300 and promised to pay her the other \$300 and you are still owing it to her? A. No; it was not. It was \$300. She needed a fur coat and I bought it and gave her the money for it.

Mr. Simpson: I object:

30 The Court: The witness has answered.

Q. Do you see anything there? A. Yes; Model Laundry.

Q. Check 1151, Model Laundry—you cannot tell us the date of that check, can you? A. No.

Q. Except that it follows a check bearing date June 8. Was it about that time? A. It must have been.

40 Q. August 8, 1927, milk, \$12.64? A. Yes.

Q. Check 1173, bearing no date, insurance, 4.55;

Mary McGuinness—For Complainant—Cross.

check 1174, September 23, 1927, laundry, \$3.52?
A. Yes.

Q. I call your attention to check 1177, dated October 6, 1927, Dr. Murphy, dentist, \$50? A. Yes; for Mr. McGuinness.

Q. For Mr. McGuinness? A. Yes. 10

Q. Not for you? A. No.

Q. Check 1179, no date, Milk, \$6.09? A. Yes.

Q. Undated check, 1196, Milk, \$5.00? A. Yes.

Q. Do you see the word "Oppenheim" there?
A. Yes.

Q. \$49.57—are those not your figures? A. The figures are mine, but the filling in is not mine.

Q. Check 1191, Oppenheim, undated, in the amount of \$4.95. Do you know any business house bearing the name Oppenheim? A. No. 20

Q. You never heard of Oppenheim, Collins & Company? A. Yes.

Q. Department store in New York? A. Yes.

Q. Did you ever deal there? A. No; I did not.

Q. Did your sister ever buy any of her stuff from Oppenheim, Collins & Company that you know of?

Mr. Simpson: Objected to. 30

The Court: Objection sustained.

Q. This one, February 21, 1928, is it not? A. No date on it.

Q. Milk, \$8.12? A. Yes.

Q. This one, Prudential Insurance Company? A. No; that is for Mr. McGuinness himself.

Q. And you are quite certain that you issued no checks out of this book that is shown to you without preserving some notation on the stub? A. Not that I can remember. 40

Mary McGuinness—For Complainant—Cross.

Q. Now, in respect of this arrangement whereby Mr. McGuinness would sign checks and leave them for you to fill out, was there ever any restraint at all imposed on you as to how you should use those checks? Did he ever tell you what you should use them for and what you should not use them for? A. Oh, yes.

10

Q. Tell, us, in time, when he prescribed a limitation on how you should use the checks? A. For the laundry and milk only, as far as I can remember.

Q. And did you faithfully obey those injunctions of his and never issue checks except for the purpose he authorized? A. As far as I can remember; yes.

20

Q. Had you wished, however, with the signed checks at your disposal, you could have used them for other purposes, could you not? A. I don't know. It never occurred to me.

Q. It never occurred to you? A. No.

30

Q. That is, during this period when you resorted to this method of paying bills, you never so felt the pinch of poverty that you were tempted to pay for clothing or anything out of the signed checks, did you? A. Not without telling Mr. McGuinness; no.

Q. You had no servants to help you in your domestic duties? A. The first year I was married.

Q. And after that? A. I done the work myself, a thirteen room house.

Q. Did your household obligations afford you the time to go out and order the provisions for the house, groceries and other things? A. At times; yes.

40

Mary McGuinness—For Complainant—Cross.

Q. And at other times who did the ordering?
 A. I would write a list for Mr. McGuinness to bring in to me.

Q. And would he bring it in? A. If he felt like it, he did. If not, I had to do without it.

Q. In securing the household needs and the clothing from different department stores, did you yourself always go over and make the selections and do the ordering? A. As a rule; yes. 10

Q. Always? A. Yes; as a rule.

Q. Or did Mrs. McDonough ever do any ordering to assist you?

Mr. De Sevo: I object upon the ground that it is immaterial what Mrs. McDonough did. The question is whether she ever ordered it herself. 20

The Court: I think I will overrule your objection.

A. I was with her. She used to come with me at times.

Q. And these things were always ordered on the plan of having them delivered C. O. D., and you giving a check; isn't that true? A. If I got the check; yes, sir. 30

Q. I would like to bring you back to the occasion in July, 1927, when you say Mr. McGuinness struck you and kicked you. Where did that occur—in what part of the house?

Mr. De Sevo: I object to that upon the ground that it has been covered by the previous cross examination.

The Court: I do not recall that. I have a note of it on direct examination but not on cross examination. 40

Mary McGuinness—For Complainant—Cross.

A. In my room.

Q. I show you what has been prepared as a sketch of the layout of your house, this (indicating) being Westside Avenue. Can you tell us whether that is a faithful portrayal of the house as it is arranged? A. Yes.

10 Q. Where was your room? A. (Indicating) Here.

Q. Your room was in the rear of the house on the north side, was it? A. Yes.

Q. And to the south of it was a bathroom? A. Yes.

Q. Then to the front of it, in the middle of the floor, was the dining room, on the north? A. Yes.

20 Q. And in front of that again was a living room, is that right? A. Yes.

Q. On the south side of the house was a small bedroom? A. Yes.

Q. Behind that, in the middle, a kitchen? A. Yes.

Q. And in the rear, the bathroom referred to? A. Yes.

Q. And that was in your room? A. Yes.

30 Q. This small bedroom at the southwestern corner of the house was Mr. McGuinness' room, was it? A. Yes.

Mr. Doherty: I ask to have this sketch marked for identification.

(Marked D-1 for Identification.)

Q. Will you please tell us exactly how that collision between you and Mr. McGuinness happened? You were in your bedroom, were you? A. Yes, sir; I told you that before when I was here.

40

Mary McGuinness—For Complainant—Cross.

Q. Tell me again, please. How were you occupied in your bedroom at that time? A. I was clearing up my room.

Q. You were conversing with your husband, were you? A. No, while I was attending to it he came in the room. 10

Q. While you were clearing up your room he came in? A. Yes.

Q. Tell us how the conversation progressed as he came in? A. He spoke to me to sign this mortgage for him and I refused to do it.

Q. Can you tell us what his language was? A. No; I don't remember, but I refused to sign it.

Q. His language was not violent, was it? A. Well, it was not very pleasant. 20

Q. Tell us what he said. That is what we want to know. What was there that was unpleasant in his conversation? A. He told me that he would make me sign it whether I wanted to or not, and I refused to do it, and then he kicked me in the chin and threw me over the bed, and my sister came in a little while after—

Q. (Interrupting) I want to get his language. He came in and said: "If you don't sign this mortgage I will make you sign it"? A. Yes. 30

Q. He kicked you in the shin? A. Yes.

Q. And threw you on the bed? A. Yes.

Q. What was done next? A. Well, he bruised me.

Q. What did he say? A. He hit me in the face with his fist.

Q. What did he say besides: "If you do not sign this mortgage I will make you"? A. I don't know what he said.

Q. What did you say? A. I was too upset— 40

Mary McGuinness—For Complainant—Cross.

Q. How long did he stay in the house after he assaulted you? A. He walked right out and went out of the house.

Q. And came back again at six o'clock? A. Yes, sir.

10 Q. So what happened was: You were tidying up your room when he came in and said: "If you do not sign this mortgage, I will make you"; kicked you, threw you on the bed, left the room and went out? A. Yes.

Q. And that is all? A. Yes.

Q. He kicked you once? A. Yes.

20 Q. What was your posture at the time he kicked you; were you then prone on the bed or were you standing up? A. I was standing up when he kicked me.

Q. Facing him? A. Yes.

Q. And that was all that happened then? A. Yes.

Q. You were not greatly alarmed, were you, when he did that? A. Oh, yes.

Q. Were you alarmed then after he left you and went out of the house; were you afraid of this man who had run away? A. Yes.

30 Q. Why were you afraid of a man who ran away after he came in and kicked you on the shin and threw you on the bed? A. Why would I not be frightened of him?

Q. You were frightened rather than relieved, even after he went away? A. Relieved, no.

Q. You say at six o'clock when he returned he would not talk to you? A. Yes.

40 Q. His disposition was not quarrelsome at that time? A. Yes; he was always quarrelsome.

Mary McGuinness—For Complainant—Cross.

Q. At six o'clock when he came home was he quarrelsome? A. He did not speak.

Q. In what manner was he quarrelsome if he was silent? You say he was quarrelsome when he came home at six o'clock. In what manner was he quarrelsome? A. He knew what he had done to me. 10

Q. I am not asking you that. Did he quarrel with you when he came home? A. I don't remember.

Q. You cannot recall any other instance of rowdiness on your husband's part between July, 1927, and April 28, 1928, can you? A. No; he never struck me.

Q. And during all of that time were you frightened of your husband? A. Yes, I was. 20

Q. Fearful of what? A. I left him because I thought he would do the same thing that he had done to me before.

Q. What were you particularly afraid of—an assault? A. Yes.

Q. You regarded him as awaiting the chance to beat him again? A. Yes.

Q. You saw him every day during that period, did you? A. Yes. 30

Q. And every moment of every day he had the opportunity to assault you if he felt so disposed, had he not? A. I suppose he did.

Q. And although he exhibited to you that he was loath to inflict any violence on you, you were still in mortal dread that he would kick you on the other shin; is that it? A. I was in dread of him; yes.

Q. On April 28, you were in the kitchen at the time of the encounter between you and your hus- 40

Mary McGuinness—For Complainant—Cross.

band? A. I came from the kitchen into the dining-room. They are right next to each other.

Q. You had previously been in the kitchen, had you? A. Yes.

10 Q. Mr. McGuinness made a remark about a brother of yours, did he? A. Yes.

Q. Your younger brother? A. One of my brothers.

Q. It is your younger brother, is it not? A. I don't recollect.

Q. You don't know the age of your brothers? A. Yes. One of my brothers.

Q. You swear now that you do not recall who was the younger? A. Oh, yes, I know the younger.

20 Q. Which is it,—the younger or the older brother? A. The younger.

Q. He is the younger brother. Then, when you swore a moment ago that you do not recall whether he is the younger or not, you testified falsely?

Mr. Simpson: I object to that. It is a quibble.

The Court: Objection sustained.

30 Q. You now recall that he was the younger? A. One of my brothers; yes.

Q. Mr. McGuinness, at the time when he made the allusion to him, was in the diningroom, was he? A. Yes.

Q. You were in the kitchen? A. Yes.

Q. When the encounter took place you were in the diningroom, were you? A. Well, it is just a little distance between the diningroom and the kitchen.

40 Q. But you had moved nearer to where Mr. McGuinness was? A. Yes.

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Q. At the time of the collision? A. Yes.

Q. And before moving you said something to him to resent his remarks in reference to any member of your family; is that right? A. Yes.

Q. You felt offended by his taking the liberty of making any such references? A. Yes. 10

Q. And you told him so, did you? A. Yes.

Q. Will you tell us what your words were when you were reproving him for referring to your family? What did you say? A. I said that did not concern him.

Q. What else did you say? A. That it did not concern him what he spoke about; it just concerned me.

Q. I am asking you to tell me what you said to him? A. I just told him that it did not concern him. 20

Q. How did you know it did not concern him? A. Because I knew it did not concern him.

Q. Did you refer to the fact that he had no business to refer to your family? A. No; I just said it was nothing to him.

Q. Is that the language you used, or did you say: "None of your business"? A. No; I did not say: "None of your business." I said it did not concern him. 30

Q. He did not enter the kitchen? A. He came over nearer to me; yes.

Q. As you approached him? A. I was between the kitchen and the diningroom.

Q. Were you between the kitchen and the diningroom when you spoke to him and said it was nothing to him or were you elsewhere in the kitchen? A. I was in the diningroom. 40

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Q. Did you mean what you swore to in your affidavit in this case? A. What is that?

Q. As to where you were at that time. A. I believe I was in the diningroom.

Q. You believe you were in the diningroom? A.
10 Between the kitchen and the diningroom.

Mr. De Sevo: I object unless he produces the affidavit he has reference to.

The Court: Objection overruled.

Q. Were you in the diningroom when you spoke to him? A. Between the diningroom and the kitchen.

Q. You were not in the kitchen at all, were you?
20 A. In the beginning of the conversation I was.

Q. In the beginning what part of the kitchen were you in? A. I was over to the other end of the kitchen.

Q. Near what fixture? A. The sink.

Q. That is at the far side of the kitchen? A. It is a short distance.

Q. Then you advanced towards where he was?
A. Yes, sir.

Q. Do you remember what your specific occupation in the kitchen was when he spoke to you?
30 A. I was washing the dishes.

Q. Including the knife? A. No; dishes.

Q. Was there no knife used at the meal that you were cleaning up? A. No. I don't remember. I don't know. There must have been.

Q. Anyhow, you came towards him and you said you were in the entrance to the kitchen when he struck you. I am asking you now, Mrs. McGuinness, directly, did you have a knife in your hand when you left your position in the kitchen and moved over towards him at the entrance? A. No.
40

Mary McGuinness—For Complainant—Cross.

Q. You did not? A. No.

Q. Will you explain to us why you changed your position at all at the time of this altercation between you and your husband? A. Because he was talking and I went in further to hear what he had to say.

10

Q. You went there out of wifely attention to—
A. Just to hear what he had to say.

Q. And you told him it was none of his business to ask you a civil question concerning your brother? A. I didn't say it was none of his business.

Q. You told him it was none of his affair? A. Yes.

Q. What induced you to walk toward where he was in the diningroom? A. To hear what he was saying.

20

Q. You did not have any knife in your hand? A. No, I did not.

Q. Or any other weapon? A. No.

Q. You say, with his clenched fist he punched you on the nose? A. Yes.

Q. And the bruises were not on the front of the nose, but in the lobe of the nose; is that true? A. Yes.

30

Q. And then he went away? A. Then he went over to the other end of the diningroom.

Q. And said no more? A. No.

Q. At the time he struck you did he say anything? A. No.

Q. Not a word? A. I don't remember.

Q. There was nothing said except the question about your brother? A. Yes.

Q. And your retort and walking over to him and getting punched on the nose and nothing else?

40

Mary McGuinness—For Complainant—Cross.

A. Yes; he made some remark, but I do not recall what he did say.

Q. What was the remark that he made? A. I don't remember.

10 Q. Was that explosion of his induced by the fact that for the first time in your life you had attacked him with a carving knife.

Mr. Simpson: I object upon the ground that it is immaterial and has nothing to do with this case at all.

The Court: Objection overruled.

A. That is right.

20 Q. This was the first time that you ever tackled him with a knife? A. I did not tackle him at all with a knife. I did not have a knife in my hand.

Q. You remained in the house for a couple of hours after that time? A. No; not a couple of hours—just long enough to get dressed and get my children dressed.

Q. And during all that period McGuinness was still in the house, too? A. Yes.

30 Q. And he was there when you went out to telephone? A. Downstairs.

Q. To your sister-in-law? A. Yes.

Q. He was still in the house? A. Yes.

Q. He didn't say a word to you? A. No.

Q. Where did you summon the taxicab from that you traveled in when you went to Mrs. Quinn's house?

Mr. Simpson: I understand this matter was gone over on the last hearing.

40 The Court: I do not think it was gone over on cross examination.

Mary McGuinness—For Complainant—Cross.

A. State Taxi.

Q. Is that at the Hudson Tube? A. No; it is at Bergen Avenue, I believe.

Q. Were you accustomed previously to that time to travelling in taxicabs? A. No; I generally walked, but it was raining and I could not go out with the children in the rain. 10

Q. Mrs. Quinn, when you called on her, was ill and bedridden, was she not? A. Just in bed sick.

Q. And you stayed there two hours? A. Well, an hour and a half or so; I don't know whether it was two hours.

Q. You have testified that while you left your house with a lingering affection for your husband and without any intention of abandoning your home, it was while in Mrs. Quinn's home that you made up your mind that you would not return to your home and husband. Did anything transpire in the Quinn House to aid you in forming that determination? A. No. 20

Q. It just came to your own mind? A. Yes.

Q. While you were in Quinn's home, that you would not go back? A. No.

Q. Eh? A. No. I thought I would go back. I had the intention of going back if Mr. McGuinness would come after me. 30

Q. So, the final offense that determined you in leaving your husband, was that he would not call for you while you were at Mrs. Quinn's? A. He did not know I was at Mrs. Quinn's.

Q. Then, how is it, that you held it against him, not to have called for you at the Quinn house and bring you home, when you knew he didn't know where you were? 40

Mary McGuinness—For Complainant—Cross.

Mr. Simpson: I object. That is not her testimony. She has never testified that she determined to remain away because he did not come to the Quinn house, because he did not know she was there.

10 The Court: The witness has testified that she expected him to come after her and she has also testified that she was at the Quinn house and he did not know that she was there.

A. Mr. McGuinness knew that I only went to Mrs. Quinn and my sister. Those were the only two houses I ever visited.

20 Q. Had he called for you at the Quinn house and brought you home, you would have pardoned all of his past offenses; is that true? A. I might have; yes.

Q. Had he called for you you would have returned to him without any fear or apprehension of your health or life whatsoever; isn't that so? A. No; I would always have fear of him—always.

30 Q. But not such fear as would render you reluctant to go back and live with him, had he called for you? A. Yes.

Q. When you arrived at the household of your sister, did you in any way notify your husband where you were? A. No; I did not.

Q. You say that some time in May, a few weeks after, by permission, you went back to the house with a truck or wagon to get clothing? A. Yes.

40 Q. Up to that time had you communicated at all with your husband? A. No; but my husband knew where I was.

Mary McGuinness—For Complainant—Cross.

Q. How had he learned it, if you know? A. Because Mrs. McDonough called up his son and told him.

Q. Mrs. McDonough spoke to Mr. McGuinness' son? A. Yes; and his son came to Mrs. McDonough's house and met me there and my children. 10

Q. The son you refer to is Joseph McGuinness, who is present here? A. Yes.

Q. Can you tell when it was that Mr. McGuinness called at your sister's house? A. About three days after—two or three days after.

Q. Mr. McGuinness called there for the purpose of talking to you or to Mrs. McDonough? A. I don't know. We sent for him. We thought we could talk to him, to Mr. McGuinness's son. 20

Q. Did he talk to you at all while he was there? A. He spoke to me and the children.

Q. And did he refer to your becoming reconciled to your husband? A. Yes, sir; he said he would see what he could do with his father but he said his father was so thick headed he didn't think he could talk to him.

Q. He said that? A. Yes; Mr. McGuinness' son said that.

Q. Then Mr. McGuinness arranged a meeting at the office of Judge Egan, did he not? A. Not Mr. McGuinness alone; it was Mrs. McDonough and I. 30

Mr. Simpson: I object. All of this has already been gone over.

Q. Mr. McGuinness you say arranged the meeting at Judge Egan's office with Mrs. McDonough?

A. He and all of us together. 40

Mary McGuinness—For Complainant—Cross.

Q. The meeting at which you refused to return to your husband, is that the one you are referring to? A. Yes.

Q. Your husband presented you with diamonds, did he not? A. A couple.

10 Q. I beg your pardon? A. A couple.

Q. Do you know the value of them?

Mr. Simpson: Can we have the date?

Q. When was it? A. For Christmas; at Christmas.

Q. What Christmas? A. Oh, I don't know. About a year after I was married.

20 Q. Do you know the value of those diamonds? A. I guess about three or four hundred dollars, the ring and earrings.

Q. Are you not aware that they are of the value of a couple of thousand dollars? A. No; I am not.

Q. You still have them? A. Yes.

30 Q. You have all the personal belongings of your own that were in the home at the time that you left; they have all been restored to you, have they not? A. Not everything.

Q. What is it that you have not? A. There are a few personal things left there that I did not get because I was frightened out of the house when I went for the things.

Q. That is, by Mr. McGuinness smashing a table and saying he was going to help you break up the place? A. Yes.

Q. Is that it? A. Yes.

40 Q. That frightened you? A. Yes.

Mary McGuinness—For Complainant—Cross.

Q. You had been frightened to death before that? A. Yes.

Q. You have been in mortal terror of your life ever since July, 1927? A. I was in fear; yes.

Q. The property that you left was taken away in trunks, was it not? A. Two trunks. 10

Q. And of those trunks, one was a cedar chest, was it not, and the other trunk was a large trunk? A. Yes.

Q. Mrs. McGuinness, that large trunk and that cedar chest were sent to your home by your sister Sue several weeks before you left the house, were they not? A. No.

Q. How many weeks before were they sent there? A. Not at all. I always had a trunk since I was married. 20

Q. You deny that your sister did not send you those containers? A. She did not.

Q. Shortly before you moved out of the house? A. No.

Q. They were always in the house, you say? A. Always.

Q. Your husband prevented you from removing some things from the house, didn't he? A. I do not know whether he did or not. I had things ready which I did not receive. 30

Q. Didn't you have the silverware all packed up ready to be removed and were you not stopped from taking it? A. No. I had dishes, but the reason why I had them, when I went in the house to get the things Mr. McGuinness told me he intended to bring a second-hand man in and get rid of everything in the house. I took the things which were given me as a wedding present, and he told me I could take whatever I wanted. I got 40

Mary McGuinness—For Complainant—Cross.

a basket and packed the dishes and left them in the diningroom.

10 Q. You did not take them? A. I left before the man got as far as them. I don't know whether Mr. McGuinness refused to give them to the man or whether the man forgot them.

Q. Did you take the silverware? A. No; I did not. There was no silverware to take.

Q. At the time you went away it was your settled purpose never to live again in that home; is that true? A. Yes.

Q. Which is still your purpose? A. Yes.

Q. You will never go back? A. No.

20 Q. Was Marie there on that occasion? A. On what occasion?

Q. On the occasion when you removed the furniture? A. She passed through and went out of the house.

Q. You had not been there ever before, had you, from the time you moved out until you came there with the moving van? A. No.

Q. You had not been there at all? A. No.

30 Q. And you had sent no one there to remove things for the children? A. No.

Q. And during that interval from your departure until the removal of the things you never went there and saw Marie? A. No.

Q. You never called and saw Mrs. Harris? A. No.

Q. The tenant of the rooms upstairs? A. No.

40 Q. You were not present at a conference in Senator Simpson's office held on March 5, in compliance with a suggestion of the Advisory Master that you and your husband fix things up—you were not present, were you?

Mary McGuinness—For Complainant—Cross.

Mr. Simpson: I object. What happened after the suit was commenced is of no consequence. We have to stand or fall on what happened prior to the commencement of this suit.

The Court: Objection sustained. 10

Q. You testified as to Mr. McGuinness' earnings and his income from the stores. How did you obtain that information that you have given us? A. Why, Mr. McGuinness told me the rent he was collecting.

Q. Mr. McGuinness did not conceal from you his income, did he? A. No; he collected them; he told me what he collected. 20

Q. And when you testify about what his present income is you are just basing it upon what he formerly told you were his receipts from the property—is that it? You do not know anything about his present income at all, do you? A. Why, yes, I know the rents he is collecting.

Q. That is what I asked you? A. Yes.

Q. You do know what his present income is? A. Yes. 30

Q. How did you find that out? A. I know what he was always getting, and no doubt he is getting the same rent now.

Q. You just simply infer that he is getting the same rent now that he formerly got? A. Yes.

Q. Are you aware whether or not the place is entirely tenanted or whether there is any vacancy? A. He has one vacancy.

Q. How did you find that out? A. Because he had a "To Let" sign on the house and now it is down, so it must be rented. 40

Mary McGuinness—For Complainant—Cross.

Q. There was a vacancy on one floor? A. He moved his things down and put them in the floor where he was getting \$80.

Q. You have been in the house since? A. No.

10 Q. You got this information from somebody, did you? A. I know what the place is worth.

Q. How do you know the people moved downstairs or that there were any changes in the occupancy of the place; how did you know that? A. Because I have heard from the people around there.

Q. You have made inquiry? A. No; I have not made inquiry.

20 Q. People have come to you and told you? A. No; I just heard it casually.

Q. Did you send your sister Sue around to the tenants on West Side Avenue and Glendenning to find out what rents they were paying over there? A. Yes.

Q. And Sue went, did she? A. Yes.

Q. Did you send Sue up to the old home to find out from the tenants there what rents they were paying?

30 Mr. Simpson: I object. That is immaterial.

The Court: I will let the witness answer.

A. Just to the store on Westside Avenue; that is all.

Q. In an affidavit filed here did you not say that the tenant, Mrs. Harris, paid \$85 a month? A. \$80 or \$85 a month.

40 Q. You do not know which? A. Either one.

Mary McGuinness—For Complainant—Re-direct.

Q. Is it not a fact, Mrs. McGuinness, while you were in the home, you used to collect the Harris check? A. Never.

Q. And that you well knew that the rent was \$80 instead of \$85? A. I never collected the check. 10

Q. Did your sister Sue ever inform you of the amount of taxes that were unpaid by Mr. McGuinness? A. No.

Q. She did not? A. The amount of what?

Q. The amount of taxes that he owed. A. Oh, yes. Since I left home.

Q. Yes. Since you left home. Before you left home she did not tell you? A. No. I did not know myself. 20

Q. Mrs. McDonough is employed in the city hall, is she not? A. Yes.

Mr. Simpson: I object to that as immaterial. It has nothing to do with this case where Mrs. McDonough is employed.

The Court: You are going far afield now.

Mr. Doherty: I will drop that line. 30

Re-direct Examination by Mr. Simpson:

Q. Directing your attention to the meeting with Mr. McGuinness' son, when was that? A. Three or four days after.

Q. What was the name of the son? A. Joseph McGuinness.

Q. The gentlemen who is here? A. Yes.

Q. What time of day did he come? A. In the morning. 40

Mary McGuinness—For Complainant—Re-direct.

Q. And did he see you? A. He saw the children and Mrs. McDonough and I.

Q. He saw you, did he? A. Yes; he saw me.

Q. Were you present at all the conversations with him? A. Yes.

10 Q. What did he say and what did you say? A. Well, I just told him what his father had done.

Q. What did you tell him that his father had done? A. I told him—

Mr. Doherty: I object to that as incompetent.

The Court: Objection overruled.

20 A. I told him that his father had hit me and abused me and I had to come away from the home, and he said he would try and talk to his father, which he didn't think he could do.

Q. Talk to him for what purpose? A. To see what he could do.

Q. In what way? A. To see if we could be on liberal terms, me to go back and be—

Q. He was to see if he could argue with his father so that you could come back again? A. If
30 everything was right; yes.

Q. He then told you he was afraid he could not, as his father was too thickheaded? A. Yes.

Q. Did you see him again, or did he come back and report to you that his father wanted you home? A. No.

Q. Did the father come at any time while you were there and say that he wanted you home and if you would come home it would be safe for you?

40 A. No; he never came near me.

Mary McGuinness—For Complainant—Re-direct.

Q. He knew the house where you were? A. Yes.

Q. Mrs. McDonough's? A. Yes.

Q. What was the street address? A. 25 Gifford Avenue.

Q. That was two or three days after you left, in the morning? A. In the morning. 10

Q. Since that day has the son been to see you any more? A. No.

Q. Did he report that he had talked to his father? A. No.

Q. Did he ever follow that up and say: "I sent my son here, and I want you to come home"?

Mr. Doherty: Objected to as leading.

Q. Did the father see you at all? A. No, I never saw him there. 20

By Mr. Doherty:

Q. You did not send for Mr. McGuinness, did you?

Mr. Simpson: I object. He brought this all out. I asked three or four questions on re-direct about matters that he brought out on cross. 30

A. I asked my sister to send for him.

Q. And for what purpose did you want to see him? A. Well, I thought maybe he would talk to his father.

Q. About what? A. If he could do something with his father to get things all right again. 40

Q. What did you want his father to do? A. Well, I thought if his father had respect for me

Mary McGuinness—For Complainant—Re-direct.

or the children he certainly would come for us or do something for us and not let us live there with my sister and brother.

10 Q. Was that the reason you wanted young McGuinness to use his efforts to get his father to call on you? A. I thought maybe he could talk to his father.

Q. If his father had called on you would you have become reconciled? A. Yes; I would have at that time.

Q. Even if his father called on you at your sister's house, if he asked you to come back, would you have come back? A. I would have at that time.

20 Q. Without any fear whatsoever of your life? A. I would have had that fear, but I would have gone back.

Q. Did you in any way inform Joseph McGuinness, Jr., that that was conciliatory, or anything of that kind, that you were prepared to go back if your husband called for you? A. No; I did not say that.

30 Q. You, on the other hand, berated his father for having assaulted you? A. Yes.

Q. You told that to Joseph McGuinness, Jr.? A. Yes.

Q. And the next thing that was done was to arrange a meeting with Judge Egan to split up the property? A. No; that is not what it was for.

Q. What was it for? A. I don't know; I thought we could come to some understanding between us, but nothing about the property.

40 Q. But not about your going back to your husband? A. I don't know whether it was or not.

Susan McDonough—For Complainant—Direct.

By Mr. Simpson:

Q. Judge Doherty said something to indicate that Mrs. Quinn had told you not to go back. Nothing of that kind occurred? A. No; Mrs. Quinn did not—

10

Q. Your little boy, how old is he? A. Six years old.

Q. He was present at one of these assaults, was he? A. Yes.

By Mr. Doherty:

Q. At which assault was he present? A. The day I left home.

20

Q. Was any other person present but that young child? A. That is all.

SUSAN McDONOUGH, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Simpson:

Q. You are the sister of Mrs. McGuinness? A. Yes.

30

Q. When did she come to live at your house? A. April 28, 1928.

Q. Has she been living with you ever since? A. Yes.

Q. With the children? A. Yes.

Q. Who has been supporting her and the children? A. I have.

Q. During all the time that she has been at your house, during which you have supported her

40

Susan McDonough—For Complainant—Direct.

and her children, did her husband ever come to the house? A. No.

Q. Three days after she came to your house, did you, at her request, telephone Mr. McGuinness or his son? A. I did.

10 Q. Who did you telephone? A. To Mr. McGuinness, Jr.

Q. What did you say to him? A. I called his office at first and he was not in. Then I called his home and his wife said she would send him around. He came around about half-past ten.

Q. To your house? A. Yes; 25 Gifford Avenue.

20 Q. When he came what occurred between yourself, your sister and young Mr. McGuinness? A. Why, of course we explained to Joseph, junior, just the circumstances that took place.

Q. What did she tell him? A. She told him that his father had struck her and she was in a terrible nervous condition and hysterical. He said he would do his best if things could be smoothed out.

Q. Did you, when your sister came to your house, tell her to go back? A. Yes; I did.

30 Q. That was the first time? A. That was the first time.

Q. Why didn't you on this occasion tell her to go back? A. She was terribly nervous. I said: "Stay for supper, after supper things will be all right." I thought if we kind of calmed her down.

Q. She did not want to go back? A. No; she was afraid to go back.

40 Q. You have told us of the visit of young Mr. McGuinness. What did he say? A. He said he would do the best he could with his father. He

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said: "You know what Pop is. He is thick headed. You cannot do much with him." He said: "I could not do much with him on the other occasion."

Q. What occasion was he referring to?

10

Mr. Doherty: I object.

The Court: Objection sustained.

Q. Was that the whole of it? A. That is all he said.

Q. Did he ever come back again? A. I do not recall whether he came in or called up.

Q. Were you in communication with him? A. Yes.

20

Q. What did he say? A. He said he had gotten in touch with his father and he thought the best thing to do was to hire counsel.

Q. When the son told you that you better hire counsel, did he also say that he had communicated with his father and that his father would or would not come around to your house? A. No; he did not.

Q. He just said: "You better hire counsel"? A. Yes.

30

Q. Before your sister came the last time had she ever come previously to that to your house?

A. Yes; on Saturday afternoon.

Q. How long before the last time had she come?

A. Well, the last time she came April 28th.

Q. Before that she came and you sent her back?

A. July.

Q. What year? A. 1927.

Q. In what condition was she then? A. I went down to her home. I usually went down on Sat-

40

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urday afternoon. I went down a little earlier than usual and the remark—

Mr. Doherty: I object.

10 Q. You cannot tell us that. You went there and saw your sister? A. Yes.

Q. What condition was she in? A. She had a mark on her eye and her lip was cut and her shin was broken, and I bathed her, and she said—

Mr. Doherty: Objected to.

20 Q. I am talking about the time that she came to you when you say you sent her back. When was that? A. That was in July.

Q. That is not what you are telling us about now, is it? A. Yes; it is.

Q. What was her condition? A. She had marks on her eye, her lip and on her shin.

Q. Were they marks as if someone had struck her?

Mr. Doherty: Objected to as calling for a conclusion.

30 Q. You had some talk with her which you cannot tell us. What condition was she in? A. She was in an hysterical condition and I said to her: "The best thing I can do is to go down to—"

40 Q. You cannot tell us what you said to her. Did you take her away or did she go away with you? A. I went down and had a conversation with the son and I came back and by that time she had her baby dressed and she came away to my house.

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It was around three o'clock and she stayed until about five o'clock or a quarter after five. I said to her: "Are you going to go home now?" She said, "Yes, I will go home now."

Q. You got her to go home? A. Yes. She said— 10

Q. You sent her home in July? A. Yes; I went down with her.

Q. To the house? A. Right to the house.

Q. Did you see McGuinness there? A. No, sir.

Q. He was not there? A. He had not come in.

Q. What was the next occasion when she came to your house; the last time she came was April 28th. What was her condition? A. She came to my house about a quarter of four. She was in a hysterical and nervous condition. 20

Dr. Doherty: Objected to.

Q. When she came to your house the last time when she stayed with you, what was her appearance? A. She had a mark on her eye right here and her lip was cut and she was hysterical.

Q. What did you do with her; did you put her to bed? A. Yes; I did, and I told her I would have to call the doctor, but I was ashamed. 30

Q. You did not call a doctor? A. No.

Q. Did you put her to bed? A. Yes, I did.

Q. Who was her physician then? A. Well, I did not call the doctor.

Q. She has been with you ever since? A. Yes.

Q. What do you know, if anything, about the coats coming C. O. D., as she has testified? A. Well, I had a conversation with her about going to New York and we went over the next day to 40

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buy coats for the children, and she had sent them home, and when they came I said to her, if Mr. McGuinness didn't pay for them—the children needed the clothing—I said, "I will pay for them."

- 10 Q. Did you pay for them? A. I did.
 Q. Was McGuinness there when you paid for them? A. No.
 Q. How do you know that he would not pay for them; did she have money to pay for them or not? A. No; she had no money.
 Q. You paid for them? A. I gave sister the money to pay for them.

- 20 Q. Did you have any conversation with Mr. McGuinness at any time about this \$2,500? A. Yes, I did. It was the latter part of July. As a rule, I—

Q. July of what year? A. 1927.

- 30 Q. You had a talk with him? A. We were coming up for the children to take them down to the park, and going through the living room, he was sitting there, and when I looked at him he said: "Why don't you try and influence Mamie to sign this mortgage?" I said: "What mortgage?" He said: "You know about the mortgage as well as I do." I said: "Yes, I do, Mr. McGuinness. I will use my influence with my sister, if it is going to make peace between you and her, but \$2,500 is an awful big amount of money," and I said: "Why don't you tell her what the \$2,500 is intended for?" because on previous occasions sister had signed mortgages and when he made out a check for \$10,000 to establish two children in the Vietrola business, she did not object to that, and when
 40 he purchased a house for his daughter she did not

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object to that, and I said: "Why don't you tell her what you want the \$2,500 for?" I said: "She signed other deeds and other mortgages for you." I said: "Now, I will tell you what I will do. I will give you the \$2,500 if you will give me a note for it, if it is going to make peace between you and Mamie." He said: "G. d. son of a bitch, what are you discussing my personal affairs for?" 10

Q. He called you a G. d. son of a bitch? A. He did.

Q. He was perfectly sober when he did it? A. Yes.

Q. Had you discussed his general condition outside of what you discussed about his striking Mrs. McGuinness, your sister? How long a period of time had you been visiting them? She left him April, 1928? A. Yes. 20

Q. In all of 1927 and up to April, 1928, did you go to visit her? A. Seldom.

Q. Seldom? A. Well, in November, I think—it was the latter part of October or first of November—Mr. McGuinness came one night to the house about nine or half-past nine; he came upstairs—I didn't hear him coming in— 30

Q. This was his own home? A. In his home, West Side Avenue. Sister had a pain in her back and I was rubbing her back. I did not hear Mr. McGuinness coming in. I said: "Joe, I didn't hear you coming in." He said: "It is a hell of a thing when others can come into your house and rule your house." Nobody answered. He came over to me. He said: "Why, you G. d. son of a bitch, a street walker, you have to be kicked be- 40

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fore you take a hint." I never had had an expression like that—

Q. Was his wife there? A. Yes.

Q. When he said that? A. Yes. I said: "You have got to kick me." I said: "Why, what have I done?" The whole sum and substance of the thing on this occasion was, a brother of mine always gave me tickets to a—

Q. Did you ever come back after that? A. No.

Q. Up to that time you had been visiting your sister? A. Yes.

Q. She was your younger sister? A. No; she is older than I am.

Q. You had been visiting there and had been interested in the children? A. Yes; for I love them.

Q. Did you observe what his general condition was all through 1927? Was he employed; did he have any business or occupation? A. No, sir.

Q. Just collecting his rents? A. Just collecting his rents.

Q. Did you ever supply your sister with help on any other occasion than the purchase of these two coats? A. Yes, I did. She would come to me. There is wonderful affection between sister and I.

Q. She would come to you by reason of what? A. From her personal friends I knew she was not taken care of. I took her and dressed her.

Q. Your personal friends would say that she was not well dressed? A. She was poorly dressed. Of course I wanted her to look right and I gave her money?

Q. You gave her money? A. I have and would still continue to.

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Q. You went away one summer with your sister, didn't you, in the country? A. Yes; in Long Branch.

Q. Mr. McGuinness says you are discourteous when you meet him and so on, and he refers to an incident at the laying of a cornerstone? A. Sister noticed him first. 10

Q. When was that? A. It was St. Aloysius, the new annex to the building.

Q. About what time was it? A. It was warm weather.

Q. The summer of 1928; it was last year? A. Yes; I guess it was.

Q. What time of day was it? A. About two o'clock. 20

Q. What occurred? A. Mr. McGuinness and Mr. O'Brien stood on the opposite side of the street, and I didn't see them until sister noticed them first, and she said: "There is Mr. McGuinness over there," and with that he crossed the street. Of course, I was afraid he might create a scene—

Mr. Doherty: Objected to. 30

Q. You cannot tell us what you were afraid of. What took place? A. Sister took the baby, he was about two years and four months old at the time; and I took Lester by the hand and said: "Come on, Mamie." It was crowded there with very respectable people. We went across the street.

Q. What was Mr. McGuinness' attitude; did he want you to stop? Just describe what took place? 40
A. He crossed the street and he was well within

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hailing distance. I took the baby. As I said, I took the little boy by the hand and we walked across the street cat-a-corner over to Kensington Avenue and stood on the opposite corner.

10 Q. Did he come after you at all? A. No, sir.
Q. Did he call you when you walked away? A. No.

20 Q. He says in one of his affidavits: "Shortly thereafter I was present at the corner stone laying of a school in our neighborhood and saw the complainant and the children on the opposite sidewalk. I at once started over to renew my solicitation for her to return home, but my approach was seen by Mrs. McDonough, who evidently warned my wife of my presence and picked up one of the children and started to run away with it, followed by my wife who wheeled the other child in a carriage at a rapid pace. Amid the large number of people who were congregated, I did not pursue them for more than a block because of my disinclination to embarrass them publicly." Did anything like that occur? A. No, sir.

30 Q. Will you tell us what occurred? A. We crossed over and he did not come over.

Q. Did you take your sister away in July? A. I did, on the advice of Joseph, junior.

Q. You mean last summer. I mean an occasion when Mr. McGuinness visited Montgomery, New York in July. A. Yes.

Q. What year was that? A. That was last year, last July.

40 Q. How long were you in the country? A. Sister went up for nine or ten days.

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Q. How long were you there? A. I would only go week-ends.

Q. You went up when? A. The 9th of July.

Q. Were you up there when Mr. McGuinness came? A. Yes.

Q. When was that? A. Either the second or third Sunday in July. 10

Q. What time did he come? A. About four o'clock.

Q. In the afternoon? A. In the afternoon.

Q. What did he do? A. Well, he came up in the car with his son. They drove up to the door. I was getting ready to take the late train home. He spoke to some people on the lawn. He came in. Mr. McGuinness was very familiar with the house. He had been there before. He came in the living room and the little boy was in the back of the house. He ran upstairs and said: "Mother, daddy is downstairs." I came up and I said: "Come down and see daddy." I took him down to the livingroom. I said: "Lester, when you go in, you kiss daddy." I took him in the livingroom and his daddy greeted him, and, of course, childlike, he did not want to stay long, because one of the boys at the house had a new express wagon on Saturday and he was in a hurry to come out to play with the other boys. I went upstairs. I said to sister: "Wake up baby and I will take her down and have her see her daddy," and sister did. She woke her up and dressed her and I took her down and she greeted her daddy. I stayed a couple of minutes. He said to me: "It is a nice day." I said: "A fine day," and went upstairs. 20 30 40

Susan McDonough—For Complainant—Direct.

Q. He never asked you about his wife? A. He never asked me about his wife.

Q. Did he ask whether she was sick or well? A. No.

10 Q. In an affidavit made by him dated the 5th day of October, 1928, he describes that visit: "Shortly before July 15th I heard that the complainant and the children were at Montgomery, New York, living on a farm hired by Mrs. McDonough, and on the latter date I went to Montgomery to see the complainant and again ask her to return. When I arrived I found that they were living in most debased circumstances. The house
20 of some servant on an old farm and was hired for ten dollars a month. It was a dilapidated hovel." Will you describe what kind of a place it was? A. Well, it is—

Q. He says that it was a dilapidated hovel and that five people slept in a bed. Was there anything of that kind? Did five people sleep in a bed? A. No.

30 Q. Tell us what kind of a place it is? A. It is a small house. On the first floor they have one bedroom, livingroom, diningroom and kitchen. It is an old fashioned house. The rooms are very big. On the second floor they have two big rooms.

Q. He states that five persons had to sleep in one bed. Was there any such condition as that? A. Never.

Q. He knew all the people that were there, didn't he? A. Yes.

40 Q. They are all friends of his? A. Yes, because he had met them other years that he had visited up there at Montgomery.

Susan McDonough—For Complainant—Cross.

Q. Was there any such condition as he described? A. No, sir.

Q. Did he have any conversation with you in which he said that he came to talk with his wife?
A. No, sir.

Q. And did you reply: "Mrs. McGuinness does not want to see you"? A. No, sir; he never mentioned her name. 10

Cross Examination by Mr. Doherty:

Q. You profess a very great intimacy and acquaintance with the circumstances of Mr. and Mrs. McGuinness' life, do you?

Mr. Simpson: I object as calling for a conclusion. 20

The Court: Objection sustained.

Q. You spent considerable time in contact with the McGuinness after they were married, did you?

A. Well, I was for a whole year that I never went to their home after they were married.

Q. I am speaking of the early period of their married life. Were you a frequent visitor or a rare visitor? A. The first year I did not visit at all, but after that, on different occasions, two or three times a week, maybe, or if the children were sick, I would go up. 30

Q. Why didn't you visit your married sister during the first year; was there any disagreement between the two of you? A. No, sir; there wasn't any disagreement, but in the beginning I thought—

Q. You kept away from her? A. Yes. 40

Susan McDonough—For Complainant—Cross.

Q. How long did you keep away from her before you relented enough to call on your sister?

A. I called two weeks before her baby was born, because I knew she had not been well.

10 Q. You continued your familiarity until Mr. McGuinness told you to get out and that it was too bad you would not take a hint; is that so? A. Then I visited back and forth three or four times a week.

Q. Did he ever write you a letter telling you to keep away? A. No, sir.

Q. When was the last time that you were at their house? A. Well, it was either at the end of October or some time in November. I do not just
20 remember the month.

Q. What year? A. I should imagine 1927.

Q. Shortly before that, you had asked him to disclose to you the purpose for which he wanted to arrange that \$2,500 mortgage?

30 Mr. Simpson: I object. That is not what she said. What she said was to tell her sister what it was to be used for, not that she wished him to tell her.

A. It was that July previous to that. I do not just exactly recall the date.

Q. And his answer to you was that he thought you had an inordinate presumption to be so deeply interested in his affairs? A. He said he considered it personal and it was none of my business.

Q. And you say he called you a coarse name at the time? A. Yes; he did.

40 Q. Two distinct insults, you say, he offered to you? A. Yes; he did.

Susan McDonough—For Complainant—Cross.

Q. And your feeling against him is that of enmity, is it not? A. I am sorry to say this affair going on like it is—

Q. I am not asking you that. I am asking you: "Are you his enemy?" A. No.

Q. You feel kindly disposed toward the man? 10
A. I do not say I feel kindly. I have no ill feeling toward Mr. McGuinness other than he mistreated my sister and if he made amends that would all be forgotten.

Q. Then, you have got at the present time ill feeling towards him because of his treatment of your sister? A. If you want to put it that way.

Q. You are testifying today as his enemy, are you not? A. I would not want to be considered 20
anyone's enemy.

Q. But your feeling towards him is ill? A. No; it is not what I would call ill.

Q. Does this feeling of animosity permit you in any measure to testify to what is not true?

Mr. Simpson: I object.

The Court: Objection sustained.

Q. You say that your sister called on you on the afternoon of April 28? A. Yes, sir. 30

Q. And that she had a cut eye and a cut lip? A. Yes, sir.

Q. At that time? A. Yes; she had a mark on her eye and a mark on her mouth.

Q. Was her nose hurt? A. I could see where her nose had been bleeding, but her nose was not cut.

Q. Was there any mark on her nose at all? A. I do not just remember that there was, but I know 40
that her nose had been bleeding.

Susan McDonough—For Complainant—Cross.

Q. An internal hemorrhage from the nose or from the outside? A. Well, from the inside, as though she had been bleeding.

10 Q. Did you see the mark on Mrs. McGuinness' nose as to which she testified at the last hearing, a slight mark on the rear portion of the lower lobe of her nose—did you see that mark? A. I don't know just whether it was on the nose—

Q. You don't know how she got that cut on her mouth, do you? A. No other than from the blow she received from Mr. McGuinness.

Q. Did she tell you that Mr. McGuinness struck her on the mouth? A. She did.

Q. She did? A. Yes.

20 Q. Did she tell you that Mr. McGuinness hit her on the eye? A. Yes; she did.

Q. Did she tell you that Mr. McGuinness hit her on the eye? A. Well, there was only one blow hit, but I suppose the width of his hand covered the territory of her face.

Q. That is what you suppose? A. I suppose so.

Q. Yet you have sworn that she told you that her husband hit her on the eye and on the mouth?

30 A. He struck her, and I suppose—

Q. (Interrupting) I am not asking for your supposition—did she tell you that he hit her on the eye and hit her on the mouth? A. From the looks of it, I imagine—

Q. Did she tell you? A. She said that Mr. McGuinness had struck her.

Q. Did she tell you that he struck her with his clenched fist on the nose? Did she tell you that?

A. I cannot recall now whether—

40 Q. That is all. You say that that evening your

Susan McDonough—For Complainant—Cross.

disposition towards this matter was that they ought to patch up this trouble? A. Yes.

Q. And you were hopeful that after she had become composed by having supper with you, that she would go back to her own home? A. I really did; I honestly did. 10

Q. And nothing that Mrs. McGuinness told you at that time led you to fear that her life and comfort would be endangered if she went back to her husband? A. I noticed—

Q. Did anything that she told you lead you to fear that her life and comfort would be endangered if she went back to her husband?

Mr. Simpson: I object. What this witness felt or feared is immaterial. 20

The Court: Objection overruled.

A. Well, about half-past eight I said to her—

Q. All I want is an answer to my question—yes or no. A. She had told me that she was afraid to go back.

Q. Did you have any such impression made on your mind by what she told you? A. Yes.

Q. That her life and her comfort would be endangered? A. Yes. 30

Q. If she went back to her husband? A. Yes.

Q. You did? A. I did. I was afraid.

Q. And in the face of that you suggested to her that she ought to pack up and go home to her husband; is that true? A. I did.

Q. And get killed? A. No; I did not suppose she would get killed.

Q. Was that in your mind? A. No; I did not look for him to murder her. 40

Susan McDonough—For Complainant—Cross.

Q. You spoke of another occasion when you called on your sister and she had a mark on her eye and her shin was broken open. Was that in July, 1927? A. Yes, sir.

10 Q. What did you mean by saying that her shin was broken open? A. The skin was broken on it and it was bleeding.

Q. You mean that there was a bruise on her shin? A. Yes; there was a mark on her shin and the skin was broken and it was bleeding.

Q. And what kind of a mark was on her eye? A. Well, it was a bruise, a cut.

Q. A bruise, discolored? A. Well, there was something as if it might have been from a nail or something.

20 Q. A nail? A. A fingernail or something.

Q. You mean a scratch? A. There was a mark right here and I could see where it had bled because she had been taken care of before I came in.

Q. How do you know she had been taken care of before you came in? A. She told me she had.

Q. She told you? A. Yes.

Q. Was I correct in making the notation that I have here, that you said that at that time also was a slit on her eyebrow? Did you say that? A. Her eyebrow?

30 Q. Yes; did you give that testimony? A. I do not recall it.

Q. Her shin was broken open and her eyebrow was slit? A. No. There was a mark right here and the mark on her mouth, and the skin on her shin was broken and it had been bleeding.

Q. Was her mouth marked? A. Yes.

40 Q. Both in April, 1928 and July, 1927? A. Yes, sir.

Susan McDonough—For Complainant—Cross.

Q. Both times? A. Yes; it was.

Q. What kind of a mark was it that was on her mouth? A. Well, it looked as though it might have been—

Q. Not what you assume it might have been, but tell us just what its appearance was? A. It looked as if the skin had been broken on it also. 10

Q. Was the skin broken? A. Yes.

Q. On her mouth? A. Yes.

Q. When you speak of her mouth, do you mean the lip? A. No; the corner of her mouth.

Q. Was it in the same place in July as it was in April? A. I do not recall whether it was in the same spot on the mouth, but it was in the area of the mouth.

Q. Was it in the corner of the lip? A. (Indicating) Here, and her lips were somewhat swollen. 20

Q. Each time she had the same kind of a mark in the same place? A. I don't know if it was the same kind of a mark, but it was in the same area.

Q. You say you called on Joseph McGuinness a few days after your sister came to your house?

A. Do you mean in April, 1928?

Q. I beg your pardon. A. I called on Mr. McGuinness, junior, that was in July. July previous I went down to his office and I had a conversation— 30

Q. I am not talking about that. I am talking about the visit that you made a couple of days after your sister called at your house in April. You called upon Mr. McGuinness or called him on the 'phone. A. April, 1928, when sister came back to my house, I called Mr. McGuinness' office and he was not in. So about a quarter to ten I called his home on Glendenny Avenue and his wife said she 40

Susan McDonough—For Complainant—Cross.

would deliver the message to him and he did come over about half-past ten. That was on Monday.

Q. Had you done that on your sister's suggestion? A. We talked it over between us.

10 Q. Your sister advised you to get in communication with Mr. Joseph McGuinness, didn't she? A. We both talked it over, both sister and I.

Q. Did your sister advise you to get into communication with Joseph McGuinness, Jr.? A. Not alone.

Q. Did she alone or jointly give you that advice, that she wanted you to do it, that she wanted you to get in communication with young Joe? A. Yes.

20 Q. And you did it? A. I did.

Q. For what purpose? A. To see if things could not be patched up between them.

Q. Meaning what? A. If Mr. McGuinness would apologize for his actions.

Q. Was that talked over between you and Mrs. McGuinness? A. If Mr. McGuinness would not make amends for what he had done.

Q. Was that talked over between you two? A. Yes.

30 Q. And was the result of that talk between the two of you that if Mr. McGuinness would come back and apologize, everything would be fixed up? A. Yes; we could not expect any more if he did that.

Q. All that was sought by you was his exhibition of penitence, was that it? A. If you call it penitence.

Q. You say you told that to Mr. McGuinness? A. Well—

40 Q. Did you tell him that? A. No; I did not tell him that.

Susan McDonough—For Complainant—Cross.

Q. You did not convey to Joseph McGuinness that all you people wanted to pacify this situation was his father's apology—did you tell him that?

Mr. Simpson: I object unless he tells what he means by "you people"? 10

A. Well, when Mr. McGuinness, junior, came to the house, he said he was sorry for the acts of his father.

Q. Please tell us something that you told Mr. McGuinness to indicate— A. I told the son that I hoped things would be patched up. He said: "I will do the best I can for you." He was very nice about it. I did not say that he should apologize. 20

Q. You did not say that he should apologize? A. No; I said I hoped things would be patched up and things would be all right and they would live together as they should live.

Q. Did you say anything to indicate to Joseph McGuinness, Jr., what sort of conduct on his father's part would be sufficient to reunite these people? A. No; I did not.

Q. You did not? A. No.

Q. Although you told us that that was your purpose in summoning McGuinness? A. Yes. 30

Q. And when he arrived you did not tell him what you expected his father to do? A. Mr. McGuinness, Jr., said he would call us and let us know what headway he had made with his father, and four days later he had not called and I called his office to see what he had done about it, because sister and her babies were with me, and I have only a five-room apartment and I thought something should be done, and I called Mr. Joseph McGuinness' office, and when I got him he said the 40

Fred Hilliard—For Complainant—Direct.

best thing we could do was to get counsel. I said:
 “I have been over to see Judge Egan on Sunday.”
 On Sunday we went to Judge Egan because I did
 not want her to be without advice from someone.
 I went to Judge Egan and I told him the condi-
 10 tions.

(At this point recess is taken until two
 o'clock in the afternoon. After recess the
 witness was temporarily withdrawn for the
 purpose of calling another witness.)

FRED HILLIARD, called as a witness on the
 part of the complainant, testifies as follows:

20 Direct Examination by Mr. De Sevo:

Q. Where do you live? A. 15 Hoboken Avenue,
 Jersey City.

Q. By whom are you employed? A. Al Smith.

Q. That does not happen to be the former gov-
 ernor of New York, does it? A. No, sir.

Q. Did you have occasion to go to 664 Westside
 Avenue, Jersey City, last year? A. I did.

30 Q. About when was it? A. Some time in May.
 I don't know the date.

Q. How did you go there—for what? A. With
 a moving van.

Q. What kind of a van was it—small or large?
 A. Large van.

Q. Is that the only kind of van that your com-
 pany has? A. Just the one.

Q. Just that one? A. Yes.

40 Q. When you got there whom did you see at
 his house? A. Mr. and Mrs. McGuinness and the
 child.

Fred Hilliard—For Complainant—Direct.

Q. Did you notice what Mr. McGuinness was doing? A. No; I don't know what he was doing.

Q. Did you see him drinking anything? A. Yes.

Q. What did you see him drinking? A. It looked like whiskey in a bottle.

Q. Did he offer you a drink? A. Yes.

10

Q. Did you take it? A. No.

Q. Now, did you notice anything about the glass top of the table? A. Not on the table, on the server.

Q. What was the condition? A. Broken.

Q. Did you see Mr. McGuinness break it? A. No.

Q. Did you take anything away from there? A. Yes.

Q. What did you take away? A. Well, there was a couple of trunks and a cedar chest and the rest was toys for the children.

20

Q. Did you take any glassware or linens away? A. Not that I seen; I didn't see any.

Q. Was there anything in a basket that you were told not to take away? A. Yes, sir.

Q. Who told you? A. Mr. McGuinness.

Q. What did he tell you? A. Not to take it.

Q. Did you notice whether or not Mr. McGuinness was under the influence of liquor? A. Well, he was drinking. I do not know whether he was under the influence or not; I did not pay that much attention.

30

Q. Where was Mrs. McGuinness? Did you see her there? A. Yes, sir; she was there in the bedroom.

Q. What was her condition? A. Upset—nervous.

Mr. Doherty: I object to the characterization.

40

Fred Hilliard—For Complainant—Cross.

Q. Did you see Mrs. McGuinness go away? A. Yes.

Q. Which way did she go; how did she go out of her house? A. The back way.

Q. Through the back door? A. Yes.

10 Q. Did you hear Mr. McGuinness say anything to her? A. No.

Cross Examination by Mr. Doherty:

Q. You did not hear any conversation between them at all? A. No conversation at all.

Q. Just what were the appearance of Mrs. McGuinness that led you to believe that she was upset; how did you form that conclusion? A. Very nervous.

20 Q. How did she show it to you? A. Well, you could tell the way she spoke, the way she acted.

Q. What did you hear say—anything? A. I didn't hear her say anything; just told me to take something; that is all. Her appearance, the way she acted, she was nervous.

Q. How did she act in a nervous manner? Tell us on what you base your conclusion? How does one act when one is nervous? A. Upset, nervous.

30 Q. Was she twitching? A. Yes; she was.

Q. What part of her was twitching? A. She was nervous; she was shaking.

Q. What was she shaking, her hands? A. Her body was shaking.

Q. Her body was shaking? A. Yes.

Q. Do you mean that? A. Certainly.

Q. Then, she was in a tremor? A. Well, yes, she was.

40 Q. How long did you have her under observa-

Fred Hilliard—For Complainant—Cross.

tion? A. Every time I would make a trip I would see her.

Q. Every time you went by her you saw her shaking? A. She would be in a nervous state; yes, sir.

Q. Mr. McGuinness, you say, was drinking. How many times did you see him drink? A. Twice. 10

Q. He invited you to have a drink, did he? A. Yes.

Q. And there was a bottle there in the house? A. Yes.

Q. Whom were you working for? A. Al Smith.

Q. Was he there, too? A. No.

Q. How many of you men were there? A. Two.

Q. Is the other man here? A. Yes. 20

Q. Today? A. Yes.

Q. Are you sure that there were no more containers taken out by you except two trunks and a cedar chest? Was there any more? A. No.

Q. Just the two trunks? A. Two trunks, cedar chest, high chair, and the rest was toys.

Q. And you took very close observation of the conduct of both Mr. and Mrs. McGuinness, did you? A. No.

Q. Well, you paid attention to the number of drinks he took and you paid attention to the physical and nervous condition of Mrs. McGuinness. You observed that much, did you? 30

Mr. Simpson: I object to that as argumentative. He said he paid no attention.

The Court: Objection overruled.

A. Well, when I went up Mrs. McGuinness said: "Take this," and "Take that." She said it in what I would call a cracked voice—nervous. 40

Fred Hilliard—For Complainant—Cross.

Q. Had you any previous acquaintance with the lady? A. None whatever.

Q. Did you know what her usual tone of voice was? A. No; I did not.

10 Q. But you know there was something about her tone at that time? A. Yes.

Q. You even paid attention to how she went away. You say that she went out the back way? A. Because she left very suddenly.

Q. How do you mean "suddenly"? A. All of a sudden she left. I don't know why she left so quick.

20 Q. Did she go out running? A. She went quick, all of a sudden, suddenly. Like if a person is going to leave a place, they prepare a bit to go, but she did not, she just went.

Q. Who got there first—you or she? A. That I cannot answer. I do not know whether she happened to be there when I got there or not.

Q. Why is it that you cannot remember that? A. Well, I cannot remember whether she was there when I got there or not.

Q. Who let you in? A. I am pretty sure it was Mr. McGuinness.

30 Q. And still you do not know whether she was ahead of you or not? A. No; I don't know. I say I don't remember whether she was there when I got there or not.

Q. What was in the basket that Mr. McGuinness prevented you from taking? A. That is something I cannot answer. It was covered.

40 Q. Were the childrens' toys open and loose, or were they in a container? A. They were open, loose, separate, little games and everything. They were all separate; they were not tied up.

Fred Hilliard—For Complainant—Cross.

Q. What hour of the day was it that you were there? A. I believe it was just after dinner.

Q. Did you hear any conversation between Mr. and Mrs. McGuinness at all? A. No; I answered that question; I did not.

Q. The van you say was a large van? A. Yes, 10
sir; a large van.

Q. What about was the size of it? A. Well, you could take six rooms of furniture in it.

Q. Who gave you orders to go there—your employer? A. My boss, Al Smith.

By Mr. De Sevo:

Q. How many vans did you say your company has? A. One van. 20

Q. If I wanted you to move a small trunk you would use that same van, would you? A. If you wanted to move a pound package, if there was enough money in it, we would use that van.

By Mr. Doherty:

Q. The toys were down in the cellar? A. No; part of the toys were in the house.

Q. What toy did you get in the cellar? A. I 30
think a little express wagon, if I am not mistaken.

Q. Mrs. McGuinness brought you down into the cellar, did she, to show you where it was? A. No; she went down in the cellar by herself. I went down the other way, through the side of the house.

Q. And that was the last thing you took out, was it not? A. I cannot answer that. I do not know whether it was or not.

Q. Can you remember what was the last thing you took out? A. No; I cannot. 40

Fred Hilliard—For Complainant—Cross.

Q. Mrs. McGuinness gave you instructions after going down to the cellar, about getting the express wagon, did she? A. No. I don't know who told me to go down, to be frank.

10 Q. Somebody told you? A. Somebody told me to go down, or I would not know to go down and get it.

Q. The last you saw of Mrs. McGuinness was going out of the back door? A. The last I seen of Mrs. McGuinness?

Q. Yes. A. Up in her apartment.

Q. You left her up there? A. Yes.

Q. You went away leaving her there? A. No; no; she left the house before we pulled away with the van.

20 Q. She left the house just as soon as you had all the things in the van that you were going to put in; is that true? A. No; I didn't have all the things on when she left.

Q. What things still remained to be put on? A. Well, I cannot itemize them. I do not just remember what was there.

30 Q. Have you not already itemized them for us—two trunks, cedar chest and a couple of youngsters' toys. Is that hard for you to remember? A. Yes; just to remember as I brought each piece down. That is a peculiar job to move. If it was a regular moving job of furniture I could tell you each piece, because you have to bring them down in a certain way to load the van.

Q. Then, what was not on the truck when Mrs. McGuinness left that you afterwards put on? A. Well, the cellar stuff was not on, whatever that consisted of.

40 Q. You have told us that it consisted of an ex-

Fred Hilliard—For Complainant—Cross.

press wagon. Was there more stuff from the cellar? A. No; no.

Q. What was there? A. Just the express wagon. I believe a bicycle.

Q. That is all you got out of the cellar? A. Yes.

Q. Before you put that on she left the house? 10
A. Yes.

Q. As soon as you put those things on the van you drove away with the van? A. That is right.

Q. You say she left the house suddenly? A. Yes.

Q. After she told you what she wanted you to get out of the cellar? A. I don't know whether she told me to go down in the cellar or not.

Q. From whom were you taking orders? A. Mr. McGuinness. 20

Q. He was telling you what not to take and she was telling you what to take? A. No; no; he was telling me what to take.

Q. What did he tell you to take? A. Different things in the house, different things standing in the hallway outside of the rooms.

Q. What were the different things he told you to take? A. The toys that stood in the hallway.

Q. Were you engaged in carrying them down or was somebody else carrying them down? A. I was the one who was carrying practically everything down. 30

Q. Were there not two men there with you? A. One more man with me.

Q. Did the other man assist you in carrying down the trunks? A. No.

Q. You carried them all down alone? A. Yes.

Q. What was the other man doing? A. On the van. 40

Mr. De Sevo: I object. What difference does it make what the other man was doing?

Susan McDonough—For Compl't.—Resumed, cross.

SUSAN McDONOUGH, heretofore sworn as a witness on the part of the complainant, resumes the stand.

Cross Examination (Continued) by Mr. Doherty:

10

Q. You were telling us that you and your sister advised together as to what course to take after she first went to your house; that you were in conference over that. That is true, is it? A. Yes.

Q. Did you attend the conference at Judge Egan's office? A. No, sir.

20

Q. It is in the testimony here that at that conference Mrs. McGuinness refused to go back to live with her husband and that she demanded some sort of a division of his property. Now, I ask you: Did you two ladies advise over that particular phase, so that she took that attitude as the result of your conference?

30

Mr. De Sevo: I object to that because there is no testimony in this case whatsoever of what transpired at Judge Egan's office in so far as any division of property is concerned; and furthermore she was not present on that occasion.

The Court: Objection overruled. The question to the witness is whether that thing occurred as a result of what those two ladies had previously agreed upon.

Mr. De Sevo: My objection is that she was not present at this meeting.

The Court: Who was not present?

40

Mr. De Sevo: This witness was not present.

Susan McDonough—For Complt.—Resumed, cross.

Mr. Doherty: I am not asking that. I am asking whether the stand taken by Mrs. McGuinness was in accord with what these two women had agreed that her stand should be.

The Court: This lady knows nothing about that; she was not there. 10

Mr. Doherty: It is in evidence that Mrs. McGuinness took a certain position in Judge Egan's office. That is in evidence, precluding the complainant from denying it. I am asking the lady whether that was the result of an agreement between the two of them, that Mrs. McGuinness should so refuse to go back to her husband. 20

Mr. De Sevo: There was no such testimony.

The Court: I will sustain the objection.

Q. Previous to the time when your sister went down to Judge Egan—you know that she did go down there, don't you? A. Yes, sir; I do.

Q. Previous to that time, had you two ladies agreed that when she would be at Judge Egan's office, she should refuse to go back to live with her husband and on the other hand should demand that there should be a division of the property? A. No, sir. 30

Q. All right. That was not agreed between the two of you. Going back to these coats. In November, 1927, you say you paid your sister for them? A. Yes, sir; I gave her the money for them.

Q. Where did you give her the money? A. At her home.

Q. At her home? A. Westside Avenue. 40

Susan McDonough—For Compl.—Resumed, cross.

Q. After the delivery of the coats? A. Well, the morning of the delivery.

Q. Before or after? A. Before the coats arrived.

10 Q. Before the coats had been delivered? A. Before they were delivered, yes, because they were sent home C. O. D.

Q. So that you did not give her the money because of any refusal on Mr. McGuinness' part to pay for them when they arrived? A. I did not know whether he would refuse or not. I did not want them sent back. Sooner than let the coats be sent back I left the money with sister.

20 Q. That was in anticipation of his refusal to pay for them? A. Well, if he did refuse it, sister had the money.

Q. Your course in paying out that money was not at all induced by anything that Mr. McGuinness did, but you did it voluntarily, yourself? A. Well, I thought that Mr. McGuinness would repay me or would pay it when he found out that I had left the money with sister to pay for the coats.

30 Q. You feel aggrieved that he has not paid it back? A. No; not the amount that the coats cost—not at all.

Q. At that time you were a lady in well-to-do circumstances? A. I think that is personal.

Mr. De Sevo: Objected to.

Mr. Doherty: Question withdrawn.

Q. That same month, that previous July in 1927 you offered to lend Mr. McGuinness \$2,500? A. Yes, sir; I did.

40

Susan McDonough—For Compl.—Resumed, cross.

Q. You told him: "If you want this money for your taxes, I will lend you \$2,500 on your note"?

A. He did not tell me what it was for.

Q. Did you say that to him, that if it was for the taxes you would lend it to him? A. No, sir; I did not. 10

Q. Have you not so testified? A. I said I would give him \$2,500, if he first told his wife what he wanted to do with it.

Q. At that time you did have \$2,500 available to lend to him? A. Yes; I did.

Q. And in making that investment with Mr. McGuinness, you were controlled only by his choice of telling you what it was for or not telling you—is that true? A. Well, I did not—not telling me, but to tell his wife. I did not ask him to tell me. I asked him to tell his wife what the money was intended for, because on previous occasions—Mr. McGuinness didn't have to give me any excuse what he wanted the \$2,500 for. All he had to do was to tell his wife what he wanted it for. It was no concern of mine. 20

Q. If he told his wife, you would give him the money? A. Yes.

Q. And if he did not tell his wife, irrespective of how pressing would have been the financial need, you would not have helped him out, would you? A. Well, I would want him to— 30

Q. (Question repeated.) And if he did not tell his wife, irrespective of how pressing would have been the financial need, you would not have helped him out, would you? A. If he told his wife, I would not object to helping Mr. McGuinness out.

Q. Previous to that time had Mrs. McGuinness ever told you that her husband had informed her 40

Susan McDonough—For Compl.—Resumed, cross.

that so pressing were his financial needs that the roof over her head depended upon the raising of money on mortgage? A. No; she did not tell me that.

10 Q. He refused to take the money from you? A. Yes; he did.

Q. And you say that he called you some coarse names and told you that he resented your interference in his affairs? A. Yes; he said it was personal and he objected to me butting in on his affairs.

20 Q. Well, at that time, you did have a deep interest in his personal affairs, didn't you? A. Yes, because his two babies were there and my sister was there.

Q. And did that interest lead you to the point of looking up his taxes around that time to see how much he owed? A. Not around that time; no.

Q. But you did look them up later on? A. Later on when I had occasion to.

Q. And you also made inquiries as to the extent of his life insurance, didn't you? A. After he had taken his policy out of the house—had stolen his policy out of the house.

30 Q. He stole his policy? A. Yes; he took it out of the drawer and sold it.

Q. He sold it? A. He sold it; yes.

Q. To whom? A. To the insurance company for \$312. We found out that he had sold it. He had a loan which he never cleared, which left the face value at so much.

Q. You got that information from— A. Sister told me that he had made a loan.

40 Q. That is, Mrs. McGuinness? A. Mrs. McGuinness; and it seems bills had come different

Susan McDonough—For Compl't.—Resumed, cross.

times it was due and he was not making any effort to pay it, and she offered on the last day—

Q. Your sister was entirely familiar with his insurance? A. Well, about that end of it; yes.

Q. And that money that he was raising by borrowing on his policy, she knew all about that? A. 10
Yes, she did.

Q. And she told you? A. Yes; she did.

Q. Had your sister ever told you about his paying for her building and loan share? A. Well, it was \$5 a month. That building and loan she had before she was married.

Q. Had your sister told you about it? A. Yes; \$5 per month it was.

Q. Had your sister told you that Mr. McGuinness or his daughter had turned over to her her stock in the Greenville Building and Loan Association? A. Yes; I believe Mr. McGuinness' daughter came to her and asked her— 20

Q. She told you the stock was turned over to her? A. Yes.

Q. You were present at a conference held on March 5, 1929, in the office of Senator Simpson, were you not? A. Yes.

Q. At which Mr. McGuinness, Mr. McGuinness, Jr., you and myself and Mr. De Sevo were present? A. Yes. 30

Q. And you were there representing your sister?

Mr. De Sevo: If your Honor please, the same question was asked before of Mrs. McGuinness and your Honor sustained an objection on the ground that whatever took 40

Susan McDonough—For Compl't.—Resumed, cross.

place after the inception of this suit has nothing to do with our case.

The Court: I will sustain the objection.

10 Q. Mr. McGuinness has telephoned to your house since his wife went to live there, has he not? A. He called one evening around five o'clock.

Q. At no other time? A. At no other time; no, sir.

Q. He told you that he wanted to talk to his wife?

20 Mr. De Sevo: I object upon the ground that whatever conversation the defendant had with Mrs. McDonough is not binding on the complainant, it is hearsay.

A. Yes; it was around five o'clock.

Mr. De Sevo: I move to strike the answer out upon the ground that any conversation she had with the defendant is not binding on the complainant.

The Court: Motion.

30 Q. On the occasion of the cornerstone laying of the school, it is true that Mr. McGuinness moved over toward where you and Mrs. McGuinness were; that is true, is it not? A. He walked in our direction; yes.

Q. And you moved away from him? A. Yes, sir.

Q. And up at Montgomery Mr. McGuinness saw you, did he? A. He did, yes.

40 Q. His wife was in the house at the time? A. Yes.

Susan McDonough—For Compl't.—Resumed, cross.

Q. And you showed him into a room where he was to be received? A. He knew the house. He was very familiar with it.

Q. I am not asking you about his knowledge. Did you show him into the room where he was to remain? A. No, Judge Doherty, because when Mr. McGuinness arrived at Montgomery I was upstairs getting dressed ready to go home.

10

Q. You saw him? A. Yes; I did see him.

Q. And you showed him into a room? A. No, sir; he came into it himself.

Q. Didn't you so testify? A. No; I did not.

Q. You notified one of the children and told Mrs. McGuinness that Mr. McGuinness was there?

20

Mr. De Sevo: I object.

The Court: Objection overruled.

A. Lester ran upstairs and said: "Mother, daddy is downstairs," and we washed his face and hands to greet his daddy. I told him: "Lester, go in and kiss daddy," and he did go in to his father into the living room.

Q. Did you have any conversation at all with Mrs. McGuinness as to the propriety of her going down to see her husband? A. No; I did not, because I was downstairs.

30

Q. You were not then desirous to do any patching up of the differences between these two people, were you?

Mr. De Sevo: I object.

The Court: Objection sustained.

40

Q. How long did you remain there after his arrival? A. Mr. McGuinness stayed about thirty

Susan McDonough—For Complt.—Resumed, cross.

minutes—twenty-five or thirty minutes—twenty minutes after he left I had to go home. I go down every Sunday evening.

10 Q. During that time he saw nobody but the children? A. Yes, sir; there were other people at the house that Mr. McGuinness saw.

Q. Were they residents of the house or visitors? A. Relatives coming up for the day, Mr. and Mrs. Carrigan.

Q. They were visitors for the day? A. They were going to spend two weeks' vacation there. Mr. Carrigan was going to spend his vacation with his two sisters.

20 Q. Altogether at that time how many people occupied the house? A. Mr. and Mrs. Carrigan and their boy.

Q. Who else? A. Mrs. Fitzsimmons and her sister, Miss Theresa Carrigan, and Mrs. Fitzsimmons little boy, and my niece and nephew and Mrs. McGuinness and myself.

Q. That is, there were nine there. Have you figured it up? A. I don't know just how many there were.

30 Q. And there were three bedrooms in the house? A. Let me see—three bedrooms, one downstairs and two upstairs.

Q. Did you see Mr. McGuinness in conversation with any of these people while he was there? A. Yes; I did.

Q. With whom? A. With Mrs. Carrigan.

Q. Was he not talking to another man there that he had not met before? A. That he had not met before?

40 Q. Yes. A. Oh, the young man that I saw him with in his car.

Susan McDonough—For Compl't.—Resumed, cross.

Q. Was he also staying at the house? A. Only for overnight; he came up for the day, Mr. Waterbury.

Q. You have had several altercations with Mr. McGuinness in his house, have you not?

10

Mr. De Sevo: I object upon the ground that no matter what altercations this witness may have had with the defendant, it is not binding on the complainant.

The Court: Objection overruled.

A. No.

Q. Did you ever have an argument with him in the presence of his wife? A. Never.

20

Q. You never told him that you felt it was a shame that he allowed his children by his first marriage to stay in that house, rent free? A. Never.

Q. I ask you, did you not, in Mr. Simpson's office on March 5, express that very thought and say it was a shame that his earning capacity should be impaired by permitting his children to remain in that house rent free? A. I did not say it that day.

30

Q. You did not say that? A. No.

Q. Did you not at that conference give vent to the sentiment that he himself should pay rent to a receiver for the occupancy of that house?

Mr. De Sevo: I object upon the ground that it has nothing to do with the case and is not binding on the defendant.

The Court: Objection overruled.

40

Susan McDonough—For Complt.—Resumed, cross.

A. No, sir; I did not.

Q. You say that on that day your sister was not present? A. No, sir.

Q. Was she ill? A. No; she was not ill that day.

10 Q. She sent you as her representative, did she?

A. No, sir; she did not. I came there on other business.

Q. Didn't you tell me at that conference that that morning you had asked Mrs. McGuinness as to her desire to return to her husband and she told you she would not under any circumstances go back? Did you say that to me that day?

20 Mr. De Sevo: I object to that upon the ground that it has nothing to do with this case and is not binding upon the complainant.

A. I do not remember saying that at all.

30 Q. Did you have any such conversation with your sister that morning before you came to Senator Simpson's office? A. I did not come to Mr. Simpson's office with the intention of discussing Mrs. McGuinness' case. It was a personal affair that I came there for, my own personal affair.

Q. Mrs. McDonough, didn't you at the outset of that conference identify yourself as your sister's representative and explain why she was not there and why you were there in her behalf? A. I did not explain anything about sister.

40 Q. Do you know why Mr. McGuinness and I were present there that day? A. Yes, sir; because Dr. De Sevo went down to your office the day previously around half-past one o'clock to see if

Susan McDonough—For Compl.—Resumed, cross.

we could not come to an amicable settlement. I said yes, I thought we could if we could have a meeting, but there wasn't any time set. The next morning I was up at Mr. De Sevo's office about ten o'clock or half-past ten. In the meantime Mr. McGuinness came in and said that he had been over to Gifford Avenue and he believed there was going to be a meeting arranged, but there was no time set. 10

Q. You say you got into this conference accidentally? A. I did.

Q. Do you recall the fact that the afternoon before you and your sister were in Mr. De Sevo's office and that I was there and saw the two of you? A. No, sir. 20

Q. That is not so? A. No, sir; that is not so—the afternoon before, that was the fourth of March, because I was up to Union City, with my little nephew. It was a Monday. I remember clearly, because that was the day the president was inaugurated. The 4th of March, I remember it clearly; it was on a Monday.

Q. Do you recall that before the conference you called on the tenants on West Side Avenue to find out what the rents were, in order that you might intelligently discuss what should be the amount of money he should give Mrs. McGuinness? 30

Mr. De Sevo: I object to that upon the ground that it has no bearing whatever upon this case.

Mr. Doherty: I want to show the deep interest that this witness has taken.

The Court: Objection sustained. 40

Susan McDonough—For Complt.—Resumed, cross.

Q. Do you recall this, that Mr. McGuinness offered to have all the property disposed of and to divide the equity between himself and his wife?

A. Yes; I remember that.

10 Q. And that you said you would agree to it and let your sister agree to it only if she got \$13,000?

A. There was not any amount stipulated at all. Mr. McGuinness did suggest selling his property and putting it together, and I said: "Fine, and let sister take half and him take half." I said: "Do you think that is fair? You are only one and you want half and you want to give half to three persons? There are these two babies. One is three and one is six. These babies have to be 20 clothed and fed." Then he suggested that he would pay \$10 a week for the support of herself and the two babies.

Q. You do agree, however, that you refused to assent on behalf of your sister to that arrangement because he was taking half and she was not getting any more than half? That is true, is it?

Mr. De Sevo: I object.

30 The Court: Objection sustained. I think we have had enough of that.

By Mr. De Sevo:

Q. One question about this so-called celebrated conference. Was it not at this conference that Mr. McGuinness called you a coarse name? A. Yes; he called me a son of a B.

40 Q. Now, about this cornerstone laying that Judge Doherty claims you went away from, will you tell us why you did that? A. Well, I did not

Bessie Carrigan—For Complainant—Direct.

want any scene. It was a very respectable gathering there, around two o'clock, and the parade was just about to start.

Q. Were you afraid he was going to create a scene? A. Yes, I was. I will be honest about it.

Q. Didn't your sister sell her building and loan shares after Mr. McGuinness refused to support her? A. Yes, she did. 10

By Mr. Doherty:

Q. She sold them to you, didn't she? A. No, sir.

Q. To whom did she sell them? A. To Mr. Smith, connected with the building and loan association. 20

Q. When Mr. McGuinness called you, as you have testified, a son of a bitch, in Simpson's office, was I there? A. Yes; you were there.

Q. And Joseph McGuinness, Jr., was there? A. Yes. I jumped up—

Q. And Mr. De Sevo was there? A. Yes; Mr. De Sevo was there. 30

BESSIE CARRIGAN, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. De Sevo:

Q. Where do you live? A. 214 Dunham Avenue.

Q. Jersey City? A. Jersey City. 40

Bessie Carrigan—For Complainant—Direct.

Q. Are you related to Mrs. McGuinness? A. No; just a friend.

Q. Are you the one that owns the property up at Montgomery? A. No; Miss Carrigan.

Q. Your sister? A. My sister-in-law.

10 Q. Do you remember the time when you were up there last July, 1928? A. It was either the last Sunday or next to the last Sunday in July.

Q. Will you describe what kind of a place that is? A. A little house on the outside, but the rooms are very big, parlor, kitchen, dining room and bedroom downstairs.

Q. You would not call it a hovel, would you? A. Oh, no.

20 Q. You would not call it a dilapidated place, would you? A. Hardly.

Q. Who was living there at the time Mr. McGuinness came up there? A. Miss Carrigan, Mrs. Fitzsimmons and her son, the two little McGuinness children and Mrs. McGuinness.

Q. And Mrs. McDonough? A. Mrs. McDonough.

Q. Anybody else? A. No.

30 Q. No strangers were there? Mr. McGuinness knew them all? A. He knew everybody that was there.

Q. Did Mr. McGuinness ever spend some of his vacation up there? A. Certainly.

Q. How long did he remain there? A. When he spent his vacation?

Q. Yes. A. A week or two weeks.

40 Q. Now, on this visit of his on July 15, 1928, how did he come up there that time? A. With his son, John. He came over and shook hands with me.

Bessie Carrigan—For Complainant—Direct.

Q. Did he make any inquiry from you as to Mrs. McGuinness? A. No.

Q. Did he ask you where she was? A. No.

Q. Or about her health or anything like that? A. No.

Q. Did Mr. McGuinness have any other conversation with you; did he say anything about Mrs. McDonough? A. Yes; Mrs. McDonough was standing by a bush looking at the little boy. He was standing to the right. He said: "Do you see that son of a B. standing there. She was the cause of breaking up my home." 10

Q. What, if anything, did you say after he said that? A. I turned abrupt, not wishing to have Mrs. McDonough's name used with profanity. I said: "How is Leo, Mr. McGuinness?" He said: "You know he is married and has a baby." With that I got up and walked into the kitchen and went up to the bathroom outside of the house. 20

Q. Is that the only conversation you had with him? A. That is all.

Q. How long did he remain there? A. About half an hour.

Q. He didn't speak to Mrs. McGuinness, did he? A. No. 30

Q. In this affidavit he talks about being with strangers there at that place? A. No; everyone there he knew.

Q. He also said that five people slept in a bed; is that so? A. Hardly.

Q. He also said that he turned around to Mrs. McDonough and said: "I came here to talk to my wife." And he claims that Mrs. McDonough said: "Mrs. McGuinness doesn't want to see you." Did you hear any such thing as that? A. No. 40

Bessie Carrigan—For Complainant—Cross.

Cross Examination by Mr. Doherty:

Q. You were not with him at all the time he was there, were you? A. Yes.

10 Q. There was part of the time that he spent in the house? A. That was in the living room or parlor as we call it.

Q. Did he go in the house? A. Yes; with the children, when I told you that I got up and got out in the yard.

Q. Were you in the house at any time when he was in there and Mrs. McDonough was there? A. No.

20 Q. You did not hear any conversation with him and Mrs. McDonough? A. No.

Q. When he said to Mrs. McDonough: "I want to see my wife." You didn't hear that? A. No.

Q. This is not a large house, is it? A. It is a good sized house.

Q. Mrs. McGuinness was in there on the second floor at the time? A. Up in the bedroom.

Q. You did not see her come down at all? A. No, sir.

30 Q. You heard Mrs. McDonough's testimony here as to who were present at that time, did you? A. Yes.

Q. You heard her count up the people, did you? A. Yes.

Q. You did not see three of them; you only saw six? A. That is right.

Q. And he blamed Mrs. McDonough for breaking up his home? A. Yes; he did to me.

40 Q. He blamed Mrs. McDonough for being the son of a bitch who broke up his home? Did his son John stay there with him? A. He was out by

Bessie Carrigan—For Complainant—Cross.

the gate talking to my husband and my brother-in-law.

Q. The son John drove an automobile, did he?
A. Yes; a coupe.

Q. He drove his father up? A. Yes.

Q. That house belonged to your brother-in-law? 10
A. To my sister-in-law.

Q. It was hired by Mrs. McDonough? A. No; my sister-in-law, Mrs. Fitzsimmons pays the rent.

Q. She is not the owner? A. No; they do not own the house.

Q. The rent she pays is \$10 a month? A. \$10 a month.

By Mr. De Sevo:

20

Q. When you say there were six people, you did not include the children in that, did you? A. Well, there were four children there.

Q. How many grownups? A. Well, there was Mrs. McDonough, Mrs. McGuinness, my husband and myself.

Q. And your sister-in-law? A. My sister-in-law.

Q. That is five grownups and four children? 30
A. Four children.

Q. That is nine, is it not? A. Yes.

By Mr. Doherty:

Q. Did you see any young man that came up that afternoon—Mr. Waterbury? A. I seen him; he was there.

Q. He was not a regular inhabitant of the house?
A. No; just a visitor for the day. 40

Theresa Carrigan—For Complainant—Direct.

THERESA CARRIGAN, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. De Sevo:

10 Q. Where do you live? A. Montgomery, New York.

Q. You are the owner of the premises that have been mentioned in this case? A. We do not own it; we just rent it.

Q. Do you remember the occasion on or about July 15, 1928, when Mr. McGuinness came up to your place? A. Yes.

20 Q. Who was staying there at that time? A. Mrs. McGuinness and the two children, and my sister who is married and lives with me and her little boy. We are all living there together, and my brother came up for the day with his wife and wanted to spend two weeks vacation, and Mrs. McDonough came up over the week-end. Mr. Waterbury came up for the day with his friend, a cousin of Mrs. McDonough's, to take her home.

Q. Were there any strangers there over that week-end? A. Only Mr. Waterbury. He had been there before. Outside of him.

30 Q. Who were the five strangers that Mr. McGuinness mentions in his affidavit? A. The only stranger was Mr. Waterbury, because he had met them all before and knew them.

Q. Will you describe this house? A. It is a real old-fashioned country house.

Q. It is not a dilapidated place, is it? A. Hardly.

Q. It is not a hovel? A. Not by any means.

40 Q. And five people did not sleep in a bed? A. No; all the rooms are large enough to put four beds in, and Mr. McGuinness knows it well.

Richard J. Carrigan—For Complainant—Direct.

Q. Did Mr. McGuinness ever spend his vacation there? A. Yes; every year.

Q. Were you in Mr. McGuinness' company at all that day? A. I was around the house working.

Q. You did not hear Mr. McGuinness make any inquiry about Mrs. McGuinness? A. No; I did not. 10

Q. Did you hear this conversation that is purported to have taken place as stated in his affidavit, Mr. McGuinness' affidavit, that he spoke to Mrs. McDonough and told her that he came up to see his wife? A. I don't know that.

Q. Did you hear any such conversation that Mrs. McDonough was said to have said to Mr. McGuinness that Mrs. McGuinness would not see him? A. No. 20

No cross examination.

RICHARD J. CARRIGAN, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. De Sevo:

Q. Where do you live? A. 214 Dunham Avenue.

Q. Were you up at Montgomery, New York, on or about July 15, 1928? A. Yes. 30

Q. Did you ever meet Mr. McGuinness up there? A. Yes.

Q. Did you have any conversation with him? A. Bade him the time of the day, shook hands with him.

Q. Did he inquire about Mrs. McGuinness? A. Not to me.

Q. Did he ask you how she was getting along or anything like that? A. No. 40

Richard J. Carrigan—For Complainant—Cross.

Q. Did he make any inquiry of you as to the children? A. No.

Q. How long did he remain there? A. I should judge thirty minutes.

10 Q. Do you know who these five strangers are that are referred to in his affidavit? A. No, sir.

Q. Did Mr. McGuinness know everybody that was at the place?

Mr. Doherty: I object to that.

A. I believe he did.

Q. Who was there? A. Mrs. McGuinness and her children, Mrs. McDonough, Mrs. Carrigan and myself and my boy, Thomas Fitzsimmons and Mrs. Fitzsimmons.

20 Q. Do you know whether Mr. McGuinness had met them before that? A. He had met them before.

Q. Then he knew every one of them? A. Yes.

Q. You did not hear any conversation between Mrs. McDonough and Mr. McGuinness, did you? A. No, sir.

Q. How long did he remain there about? A. About thirty minutes.

30 Q. Did you see him speak to the children? A. I think I did.

Cross Examination by Mr. Doherty:

Q. Nine people were living in that house, ten dollars a month, containing three bedrooms; is that right?

Mr. De Sevo: I object to that unless the witness knows they were paying \$10 a month.

40 The Court: Objection overruled.

A. I don't know what they were paying.

Walter Frey—For Complainant—Direct.

WALTER FREY, sworn as a witness on the part of the complainant, testified as follows:

Direct Examination by Mr. De Sevo:

- Q. Where do you live? A. 579 Westside Avenue. 10
 Q. Who is the owner of that property? A. That
 is where I live.
 Q. What is your business? A. Butcher.
 Q. Where is your place of business? A. 533
 Westside Avenue.
 Q. Who is the owner of that property? A. Mr.
 McGuinness.
 Q. How long have you been there? A. I have
 been there, it is going to be three years in Sep- 20
 tember.
 Q. How much rent do you pay? A. \$75.
 Q. How long have you been paying this rent?
 A. Since I occupied the store.

Cross Examination by Mr. Doherty:

Q. Do you pay always in cash or do you take something out for account? A. I deduct—

Mr. De Sevo: I object upon the ground 30
 that whether he deducts anything on account of purchases, has nothing to do with the question here.

- Q. Does Mr. McGuinness get meat from you?
 A. Yes.
 Q. Then, there is a settlement at the end of the week, is there? A. Yes.
 Q. And you take out your bill from the rent? 40
 A. Yes.

Walter Frey—For Complainant—Cross.

Q. And can you tell us how his bills run, as a rule? A. \$35, \$45.

Q. A month? A. Yes.

By Mr. De Sevo:

10

Q. Does anybody else get meat there except Mr. McGuinness; do any of his children get any meat there and charge it against the rent? A. Well, I charge it to Mr. McGuinness.

Q. Is he the only one that gets it, or do the children get it, too; don't the children get their meat also? A. What you are talking about now—

Q. At any time? A. Once in a while I deliver meat upstairs.

20

Q. That was also charged against the rent, was it not? A. No.

Q. You mean to say that Mr. McGuinness gets \$35 to \$45 worth of meat personally from you? A. That doesn't mean meat only; it means butter, eggs and everything.

Q. How much does he get now—\$35 to \$45? A. Not quite as much now.

Q. How much? A. Not quite as much.

30

Q. How much foodstuff does he get now that is charged against the rent? A. \$20 to \$30.

Q. When you said \$35 to \$45, when did that cover; what period of time did that cover; how long ago was that? A. When Mr. McGuinness was living there with his family.

Q. Now, it is only \$25? A. \$25 to \$30.

40

Q. Mr. McGuinness lives there with his children now? A. They live together, the way I understand; I do not know who uses the meat, but it is ordered and delivered to the McGuinness home on Westside Avenue.

John McGuinness—For Complainant—Direct.

Q. He does not deliver it himself, does he? A. No.

Q. Who does? A. The butcher boy.

Q. Who gives the order? A. Sometimes Mr. McGuinness gives the order; sometimes Miss McGuinness calls up to have it delivered. 10

Q. When you say Miss McGuinness you mean his daughter? A. Yes.

By the Court:

Q. How much does he order now? A. \$25 to \$30.

By Mr. Doherty:

20

Q. Did Mrs. McGuinness, when she was living with Mr. McGuinness, ever order meat from you, or who did order it? A. Mrs. McGuinness called up or came in the store once in a while.

Q. That is, she had an account with you? A. Yes.

Q. For whatever meat was needed? A. Yes.

30

JOHN MCGUINNESS, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination By Mr. De Sevo:

Q. Where do you live? A. 193 Glendenny Avenue.

Q. You are the son of the defendant by a former marriage? A. Yes.

Q. What is your business? A. Electrical and radio. 40

John McGuinness—For Complainant—Direct.

Q. Where is your place of business? A. 535 Westside avenue.

Q. That is property owned by your father? A. Yes, sir.

10 Q. How long have you been there? A. Three years this August.

Q. What rent do you pay now? A. \$50.

Q. How long have you been paying \$50? A. Since September 1st of last year.

Q. What did you pay prior to that? A. \$55.

Q. How long had you been paying \$55? A. Since I have been there.

Q. How did you pay your father—check or cash? A. Check and cash.

20 Q. Did you ever pay \$60? A. Never.

No cross examination.

Mr. De Sevo: I have also subpoenaed another party who occupies one of these stores. I do not see him here. He was here at the last hearing.

Mr. McGuinness: That man moved out of town. I do not know where he moved to. The place is vacant.

30 The Court: He was directed to be here. If he is not here, you have your remedy.

Mr. De Sevo: Will Your Honor direct that a warrant be issued for his arrest?

Mr. Doherty: He paid \$50, the same as John McGuinness, but he has vacated the store.

Mr. De Sevo: We had someone who inquired from him and he told us he was paying \$60 a month.

40 Mr. Doherty: We will stipulate that this

Joseph McGuinness—For Defendant—Direct.

tenant, while he was an occupant of the store, paid \$50 a month.

Mr. De Sevo: I will not stipulate anything. When he takes the stand, I will examine him.

10

Complainant rests.

Defendant's case.

JOSEPH McGUINNESS, the defendant, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. Doherty:

20

Q. You are the defendant in this proceeding?

A. Yes, sir.

Q. What is your age? A. Sixty-three—past sixty-three.

Q. And you formerly engaged in the plumbing business? A. Well, about twelve years ago.

Q. You retired about twelve years ago? A. Yes.

Q. After your retirement what was your source of income? A. Well, real estate.

30

Q. Did it come from real estate investments? A. Real estate.

Q. It is in evidence here that you were married before and that you have grown up children by your former marriage. You were married to your present wife in 1920? A. Yes; I believe so.

Q. And you have had two children by this marriage? A. Yes.

Q. And your marriage to her was subsequent to your retirement from business? A. Yes.

40

Joseph McGuinness—For Defendant—Direct.

Q. And since your marriage to her, your reliance for an income has been entirely on real estate rentals? A. Yes.

10 Q. Can you state whether or not, at the time of your marriage to the complainant, she was aware of what your source of income was? A. Yes.

Q. It had been communicated to her by you? A. Yes.

Q. After your marriage, or rather after the death of your first wife, you lived in the family home with your children? A. Yes.

Q. And your housekeeper was your grown daughter Marie? A. Yes.

Q. Who was keeping house for you? A. Yes.

20 Q. And the rest of your family consisted of boys, did it? A. All boys.

Q. How many of them were there? I am speaking of the time you married Mrs. McGuinness? A. Five boys.

Q. After the event did she come to the house there to live in that family circle? A. Yes.

Q. And how long did she live there with the children without any change? A. How long did she live there?

30 Q. Yes. A. Well, of course, I cannot give the exact time, but it was until about April 8th. She lived there until she left there the last time.

Q. The question is: When she came there to live with you and your children, how long did that arrangement continue, that is, all of you living together? A. Well, it continued up until about the time I bought this property for my daughter.

Q. That would be how many years ago? A. I suppose two or three years ago.

40 Q. You spoke of the property that your daugh-

Joseph McGuinness—For Defendant—Direct.

ter bought as having something to do with the arrangement being changed? A. Yes.

Q. Did you buy the property for your daughter?

A. Well, I gave the money for my daughter to buy ground, and then—

Q. How much was it? A. I do not just know 10
what I gave her—around \$6,000 or \$7,000.

Q. From what source did you get that money?

A. Well, I had a mortgage that was due, that came due.

Q. And will you tell us why you showed that degree of generosity to your daughter Marie?

Mr. Simpson: I object to that upon the ground that it is immaterial and incompetent and has nothing to do with this case. 20

The Court: Objection overruled.

A. Well, I realize that she was the only daughter I have and never had to go out to any occasion, and I began to believe that my wife's folks were imposing on me and trying to get—well, I wanted to protect her.

Mr. De Sevo: I object. 30

The Court: The latter part is not responsive and should be stricken out.

Q. You say you wanted to make some provision for her? A. I wanted to protect her.

Q. And why was it that you were alarmed because of her future? A. Well, I was alarmed for her in this way; I began to feel that my wife's folks were digging into my purse and borrowing money off me and fooling my wife and getting 40

Joseph McGuinness—For Defendant—Direct.

every dollar they could off her. I thought while I was alive I ought to do anything I could for the only girl I had.

10 Mr. Simpson: I move that the entire answer be stricken out upon the ground that it is not responsive and is not binding on the complainant.

The Court: Motion denied.

Q. Who of your wife's folks were borrowing money from you and who was getting in on your funds and getting every dollar from your wife?
 20 A. Well, I wasn't married over three months when one of her brothers came up and got \$300 off me.

Q. Which brother? A. The bachelor, John J. Malone. He wanted to buy an automobile. He wanted to buy an automobile. That was the first. I gave him the \$300 and of course I never heard tell of the \$300 after that.

Q. You mean he never paid it back? A. Never saw a cent of it since. Then the sister, Mrs. McDonough, which then, of course they hadn't any
 30 money of any kind; they were very poor; she started and—

Mr. De Sevo: I want to object to this line of examination upon the ground that it is not material to the issue.

Q. You have spoken of an unpaid loan that J. Malone got? A. Yes.

Q. Who else of the Malone family borrowed
 40 money from you?

Joseph McGuinness—For Defendant—Direct.

Mr. De Sevo: I object. Whatever loans he gave to the Malones has no bearing whatsoever on our case. Furthermore, this loan, if it was given, was given prior to when we allege the difficulty arose.

Mr. Doherty: It is part of the res gestae. 10

The Court: Objection overruled. I want to hear the whole history.

A. After the brother came up, then he cleaned me out in about a year. Before my wife would not recognize Mrs. McDonough. Then Mrs. McDonough came up, and as soon as Mrs. McDonough came up I began to feel her influence; she would get the money that I would give my wife to buy necessary things with, and after my wife would buy it, and after my wife would have it a week or two, Mrs. McDonough would get it. I began to feel as though I was being bled. I began to pull in my horns a little. So I says: "If anything happens to me, what will become of my daughter? I am able to provide for her while I live. The boys will be able to take care of themselves." So naturally I bought that piece of property for her. 20

Q. After that transaction, were you deprived of the means of supporting your wife and your family suitably; did it impoverish you? A. No. 30

Q. You still had ample means to support your family after making that gift to your daughter?

A. Yes.

Q. Did the making of that gift lead to any friction between you and your wife when she heard about it? A. Oh, yes.

Q. Tell us what that was? A. Well, then, I was 40
disbarred as husband altogether.

Joseph McGuinness—For Defendant—Direct.

Q. What does that mean? A. I was not allowed in her room. She says: "If you don't give me all you got, I ain't your wife; you will have to bunk by yourself."

10 Q. Was that said by her around the time of the gift? A. After she found out about the transfer to my daughter.

Q. You mean that she excluded—

Mr. Simpson: I object to leading questions.

20 Q. You mean by being disbarred, that you were excluded from matrimonial contact with your wife? A. Yes. I had to go to work and sleep on the lounge. I was put out. Of course, being a peaceable man, I did not want to create any trouble. I was put out of the room. I had to sleep on a couch in the front part of the house.

Mr. De Sevo: I object and move to strike this out as not being responsive. It is just a voluntary statement.

The Court: Objection overruled.

30 Q. Is the room in which you thereafter slept the small room that is shown on the floor plan that has been marked here? A. No; I slept on the couch for at least six months or seven months, all winter, and of course it was a big, heavy couch, and coming on summer, due to the suffocating, I did not want to sleep on it.

40 Q. Where was that room in which you slept? A. This room formed, at the time I was speaking of—

Joseph McGuinness—For Defendant—Direct.

Q. (Interrupting) You are referring to what?

A. That was all one room.

Q. Extending the entire width of the house? A. Yes; the living-room, the whole front of the house. Here (indicating) was the couch, in here.

Q. Was it in the front room of the house? A. 10
In the front room, and I slept in there until the hot weather came, and then I suggested to my wife—they used to call this a music room—that is what they called it—I suggested to my wife building a bedroom there and putting up a partition. They wouldn't have it. I had to sleep on that couch. Well, all right. So they came along and went up to the country—up to Montgomery—

Mr. De Sevo: I object and move that the answer be stricken out. The witness goes on volunteering testimony. 20

The Court: Motion granted.

Q. Eventually was that room called the music room, partitioned off? A. Yes.

Q. When was that?

Mr. De Sevo: I object to Judge Doherty leading the witness. 30

The Court: Objection overruled.

A. That was done in the summertime.

Q. When your wife was home? A. When she was away.

Q. Was your sister-in-law with her? A. Yes.

Q. During her absence you put up that partition? A. Yes.

Q. And after that where did you sleep? A. Af- 40
ter that I slept in this room. I bought a bed for myself and slept in there.

Joseph McGuinness—For Defendant—Direct.

Q. And from the time of the altercation that you had with your wife over the gift to Marie, you have not slept with her? A. No.

10 Q. For how long a time were you thus separated—how many years? A. Oh, practically from—I guess it is about three years; I don't know exactly the time; I don't know the date.

Q. During that time were your relations with your wife peaceable or were they marked by discord?

Mr. De Sevo: I object to the question as leading.

The Court: Objection overruled.

20 A. Well, it was peaceable.

Q. There were no outbursts? A. No outbursts.

Q. What other change was made in your household arrangements, as a result of her discovery of her gift to Marie? Did Marie continue to live in the house? A. No.

30 Q. Tell us about that? A. She was always harping on Marie. She insulted Marie and the children and she ordered them out of the place. In consequence, I had upstairs fixed up for them. She wanted them put out of the house altogether.

Q. When you speak of her ordering them out of the place, do you mean she gave that command to the children? A. Yes.

Q. Or did she deliver her injunction to you that they should get out? A. She delivered the injunction to me and to the children.

Q. To get them out? A. Yes, sir.

40 Q. Following that, what did you do? A. I went to work and put in all the improvements, made a kitchen up there in the top floor, so that my

Joseph McGuinness—For Defendant—Direct.

daughter and the three boys could live there, so they would not interfere with her at all, as she would have no occasion to find fault with them.

Q. Thereafter, nobody lived in the former home but yourself and herself and the two children? A. And the two children. 10

Q. She has testified here that you were never civil to her; is that true or not? A. No, sir; it ain't true.

Q. Was your attitude towards her quarrelsome or friendly? A. Well, it was friendly.

Q. What were the standing arrangements whereby the provisions for the house and those of the children should be provided; what was that arrangement? A. Well, sir, there were always signed checks left in the house, always signed checks, and there were enough, and she always had the privilege to go to any of the traders on Westside Avenue and ordering what they wanted, and she was never refused anything she wanted. There was never anything sent back. but nothing that was not paid for, and she could get along with her checks besides that any time. Sometimes I would get paid by one of the tenants in cash. Well, I would give her what she needed, and maybe give it all to her. 20 30

Q. There have been instances where you gave her all of the receipts? A. All of the receipts.

Mr. De Sevo: I object to counsel leading.

The Court: Objection overruled.

Q. What was your practice as to the number of checks you would sign to be available for Mrs. McGuinness? A. Why, I would sign two pages and maybe another page. 40

Joseph McGuinness—For Defendant—Direct.

Q. Having signed these checks, did you ever dictate to her for what purpose these checks should be filled up by her? A. Never.

Q. She was mistress of the situation? A. Yes.

10 Q. Did she ever complain to you that you had signed insufficient checks for her? A. Never.

Q. Were those checks always good and valid checks? A. Never one of them ever came back—always good.

20 Q. So that she had your entire fortune at her disposal at all times? A. She had control of everything, handled the checkbook and everything. She was the only one in my house that had a key. I had nothing. I was more like a boarder. She controlled everything.

Mr. De Sevo: I object and move that the answer be stricken out upon the ground that it is not responsive.

The Court: Motion overruled.

30 Q. You spoke of a key. What key? A. Well, the key to all the drawers and everything in the house. She was the custodian. She had control. Anything that was locked up, she had it locked, and she had the key. I would not be allowed to have a key. She had the key to the drawers. Everything she had locked up. She took possession of all my papers, all my check books, all my tax bills, all of those things, and she locked them up. I would have to go to her if I wanted anything.

40 Q. Reference has been made to a box in which papers were kept. Was there such a box? A. Never a box.

Joseph McGuinness—For Defendant—Direct.

Q. Where were the tax bills kept? A. Well, she had them locked up in her drawer.

Q. Your tax bills? A. All my tax bills.

Q. Paid and unpaid? A. Paid and unpaid.

Q. Mrs. McGuinness has testified that she was not familiar with the state of your affairs with respect to unpaid taxes. Tell us what was the extent of her knowledge as to your taxes being paid? A. Judge Doherty, I never opened the mail in my life. I never opened a letter since I was married to her. 10

Mr. De Sevo: I object and move that the answer be stricken out upon the ground that it is not responsive. 20

The Court: Motion denied.

Mr. De Sevo: One question is asked and instead of answering that question he tells us something else and then the Judge goes back. In other words, he gets something in indirectly that he could not get in directly.

Q. Did the tax bills come by mail? A. They came by mail; yes. 30

Q. And Mrs. McGuinness got them? A. She always got them.

Q. You never got them? A. I never got them. When they were paid they came back receipted by Malone.

Q. Did you have any discussion with Mrs. McGuinness as to the taxes that were owing at the time when you were trying to raise a mortgage? A. Yes. I tell you how that was— 40

Joseph McGuinness—For Defendant—Direct.

Q. Now, I have referred in the last question to a mortgage. For what purpose did you want to raise a mortgage? A. I wanted a raise a mortgage because I owed two years taxes.

10 Q. And about how much would they amount to? A. I suppose the taxes and water rent would amount to about \$1,500 or \$1,600.

Q. And how were you as to resources at that time for paying these taxes; were you able to do it? A. I had not a penny.

Q. What was the purpose for which you wanted to raise money by mortgage? A. To pay my taxes.

20 Q. And who was it that was going to advance the money? A. John W. Heck.

Q. He holds a mortgage on your property? A. Yes; he does.

Q. For how much? A. He holds a mortgage of \$5,000.

Q. And he was going to advance more money on mortgage? A. Yes.

30 Mr. De Sevo: Must I object every minute to leading questions?

The Court: They are not harmful to you.

40 Q. Now, can you recall the occasion when you first broached the matter of signing a mortgage, to Mrs. McGuinness? A. Well, I could not tell you exactly the date, but it was about the time I wanted the money. I suggested to Mrs. McGuinness that I was going to make an application to Mr. Heck for a loan of \$2,500.

Joseph McGuinness—For Defendant—Direct.

Q. Can you fix the time when you told her that you were going to apply to Mr. Heck for relief? A. I could not exactly fix the time.

Q. Can you tell us how much taxes were due then? A. On, about \$1,500 or \$1,600.

Q. Now, do you recall any occasion when you and Mrs. McGuinness verified the amount of taxes that were due? A. Yes. 10

Q. How was that done? A. Well, she says I didn't owe so much taxes. I went in the—

Mr. De Sevo: I object. The question is: Can you verify the amount of taxes that was due. Now, he is telling us what transpired.

The Court: Objection overruled. 20

Q. How much did you ascertain was the amount that you owed? A. Well, I figured it up to see what I owed and it was around \$1,500.

Q. You say Mrs. McGuinness was inclined to dispute that? A. Yes, but she did not understand tax bills.

Q. What did you do to confirm the amount that was due? A. I had her get me the tax bills out and I figured them up to her and showed it to her. 30

Q. That is, she released the tax bills from the drawer? A. Yes.

Q. And you pointed out to her the amount that was due? A. Yes.

Q. What did that lead to? Would she then sign the mortgage?

Mr. De Sevo: I object upon the ground that the question is leading. 40

Joseph McGuinness—For Defendant—Direct.

The Court: Leading questions are not as harmful in this court as before a jury, and they will have no effect on me, and I think it is rather useless to take up so much time objecting to leading questions unless they are harmful. I think you ought to facilitate the trial.

10

Mr. De Sevo: I do not want the Judge to ask the question and then answer it.

A. No.

Q. What was her condition then? A. She would not sign it.

Q. Did Mrs. McGuinness ever assign any reason for refusing to join in the mortgage? A. She never assigned any reason; no.

20

Q. Did she or did she not refuse to sign? A. Well, she always refused to sign it; she would not sign any mortgage.

Q. It has been testified by Mrs. McGuinness that she has offered uniformly to sign the mortgage that you desired, if you would just yield to telling her what the money was for. Did she ever say that to you? A. Never in her life.

30

Q. Was there ever any time when she was ignorant of the purpose for which you were raising that money? A. No.

Q. Did you, in July, 1927, have a conversation with Susan McDonough, in which she told you to tell your wife what you wanted to raise the money for. Was there such a conversation? A. Never.

40

Q. Was there a conversation of that character in connection with which Mrs. McDonough offered to give you \$2,500, if you would only unbosom

Joseph McGuinness—For Defendant—Direct.

yourself to your wife and tell her what you wanted the money for? A. No.

Q. She says at that time you called her a God damned son of a bitch and that you did not want her to interfere in your private affairs. Was there ever any such clash as that between you and Mrs. McDonough? A. Never. 10

Q. Was there ever any conversation or meeting of that kind between the two of you? A. Never.

The Court: I think Mrs. McDonough testified that she offered to lend him \$2,500 on his note. Your question was whether Mrs. McDonough said she would let him have \$2,500 if he would tell his wife what he wanted the money for. 20

Q. Did she ever offer to lend you \$2,500 on your note? A. No.

Q. Did she ever offer to advance \$2,500 to you at any time? A. Never.

Q. Did the conversation she has testified to ever take place? A. Never. 30

Q. If she had offered you \$2,500, in your financial plight at that time, would you or would you not have accepted it? A. Why, I would thank her from the bottom of my heart if she gave it to me and I would have taken it willingly.

Q. Is it true or not that you, in soliciting your wife to sign this mortgage, ever told her that the maintenance of the roof over her head depended on you raising that money; did you ever 40

Joseph McGuinness—For Defendant—Direct.

tell her that? A. I certainly did. I even explained thoroughly to my wife—

Mr. De Sevo: I object.

- 10 Q. Did you ever tell her that? A. Yes.
Q. What further explanation did you make to your wife as to the reason for raising this money? A. I showed her where if I did not get it, that the City would sell my property, would advertise the sale of the property over my head—because I had not a dollar at that time to pay it.
- 20 Q. You cannot recall the time when you first spoke of raising the mortgage to Mrs. McGuinness? A. No. If I could find out from Mr. Heck when I made the application to him, I could tell you.
Q. Mrs. McGuinness has testified that that was about June, 1927. Do you assent to that, or do you say it was a different time, or was it about then? A. About then.
- 30 Q. She says that one day in the month of July, 1927, she was in her room tidying up and that you came in and said to her: "Mary, if you won't sign that mortgage, I will make you sign it," and without further conversation that you went over and kicked her on the shin and threw her on the bed, slapped on your hat and left the house. Did that ever happen? A. Never. Can I explain what happened?
- 40 Q. We will give you an opportunity to explain later on. Did you at that time or at any time, ever kick your wife and throw her on the bed and run out of the house? A. Never.

Joseph McGuinness—For Defendant—Direct.

Q. Did you ever say to her: "If you do not sign the mortgage, I will make you sign it"? A. No.

Q. Do you know of your wife around that time having any bruises or injury to her shin? A. Never. 10

Q. It is next stated that in November, 1927, you refused to pay for clothing, coats that were ordered for the two children, that were delivered and paid for by Mrs. McDonough. What have you to say about that? A. I never refused it. I never knew the coats were coming.

Q. Your wife has testified that she discussed that matter with you before the delivery, but you first refused to sanction the purchase of the coats; that next you told her: "All right, get them C. O. D." Did that conversation ever take place? A. Never. 20

Q. She has testified that on the day of the delivery she told you that the coats had arrived, that she had paid for them with money obtained from her sister Susan, and suggested to you that you pay Susan back, and you refused. Did that ever happen? A. It never happened. 30

Q. Susan is the Godmother of one of these children, is she not? A. Yes.

Q. She is a widow, is she not? A. Yes.

Q. With no children? A. No.

Q. Did you, from that time in November, 1926, until the departure of your wife in April, 1928, always refuse to buy clothing for the children? A. Never in my life.

Q. Were you at any time asked by your wife to provide clothing for the children, which you refused to do? A. Never. 40

Joseph McGuinness—For Defendant—Direct.

Q. Were you ever spoken to by your wife about that topic, at all? A. Never.

Q. During that time, were or were not these signed checks of yours at your wife's disposal?

A. Always.

10 Q. And in the book that has been marked here for identification? A. Yes.

Q. Where are the returned checks? A. Well, when they came home, Mrs. McGuinness would give them to the baby to play with.

Q. They came by mail? A. For awhile they came by mail.

Q. They came by mail? A. Yes.

20 Q. And were received by Mrs. McGuinness?
A. For a while. The last three months before Mrs. McGuinness went away I had so much trouble with my checks, with her questions over what the checks were for, that there was a fight every time the checks came back, so that I had the bank hold them. Then I would bring them home myself, and I later on would give them to the children to play with.

30 Q. And these cancelled vouchers are not to be gotten at all, are they? A. No; only the ones my wife has.

Q. When she was removing things from the house, do you know whether she took cancelled checks with her? A. Well, they were all in that drawer. When the children had been playing with them—

40 Mr. De Sevo: I object to the answer upon the ground that it is not responsive.
The Court: Motion denied.

Joseph McGuinness—For Defendant—Direct.

Mr. Doherty: At this stage I will offer in evidence the stubs that have been examined, as well as the floor plan of the house.

Mr. De Sevo: I have no objection to the floor plans. I have no objection to the check book.

10

(Floor plan is marked Exhibit D-1. Check book is marked Exhibit D-2.)

Q. Did you ever at the time refuse or deny your wife anything? A. Never.

Q. Anything that she wanted? A. Never in my life.

Q. And anything that she desired was furnished to you by her? A. Everything.

20

Q. On April 28, on the night preceding April 28, where did you sleep? April 28 is the day on which Mrs. McGuinness left you. On the night before where did you sleep? A. I slept in the bedroom where I always slept.

Q. At what time did you retire? A. I should judge about nine o'clock, after I was done reading the paper.

Q. It has been testified by your wife that you were out all that night gambling. Is that true or not? A. It is a lie.

30

Q. She says that she knows that you were out because the light in the house which you were accustomed to extinguish when you would go to bed, was lit all night. Do you know anything about that? A. I never knew what light could be there to extinguish.

Q. Is there any provision made for a light such as Mrs. McGuinness has described in her testi-

40

Joseph McGuinness—For Defendant—Direct.

mony? A. I cannot see where there could be a light unless I would go into the dining room and put that light out.

10 Q. Mrs. McGuinness says that from her position in bed in her room she could see a light which you were accustomed to extinguish the last thing when you turned in at night? A. There was never any light late in the living room until I was going to bed. If there was a light it would be in my bedroom.

Mr. De Sevo: I object to the question and move that the answer be stricken out.

The Court: I will let it stand.

20 Q. There is a light in the kitchen? A. In the kitchen; yes, sir.

Q. Could Mrs. McGuinness, from her position in her bedroom see into the kitchen whether the light was aglow or not? A. She could not see any light in any part of the house from her bedroom, not from where she was in her bedroom.

30 Q. No light was visible to her that would indicate to her whether or not you were in? A. Not a light, unless the bathroom.

Q. What time did you get up on April 28th? A. I should judge about eight o'clock.

Q. Mrs. McGuinness says you slept until noon and that you broke fast at luncheon instead of breakfast? A. It ain't so.

Q. Did you have breakfast that day? A. I had breakfast that day.

Q. Served by whom? A. Mrs. McGuinness.

40 Q. Did you have luncheon? A. Yes, sir.

Joseph McGuinness—For Defendant—Direct.

Q. Prepared by whom? A. Mrs. McGuinness.

Q. Up to that time Mrs. McGuinness was able to perform all of her household duties to your satisfaction? A. Yes.

Q. Her wifely duties were not at all noticeably impaired by anything that you— 10

Mr. De Sevo: Objected to as leading.

A. No.

Q. After luncheon how did you conduct yourself? A. After luncheon I came out into the dining room and I saw a box of candy on the dresser—a box of candy that came from Atlantic City—and the two children were at the window looking out. I took up a handful of the candy and I went over with the children, playing with the children, and the little boy, Lester, says: "Uncle Joe bought this," and Mrs. McGuinness hollered out from the kitchen: "Leave that candy alone. That is Malone's candy." I merely laughed. The boy says: "Uncle Joe sent that from Atlantic City." 20

Mr. De Sevo: I object to what the boy said on the ground that it was not said in the presence of the complainant. 30

The Court: Objection overruled.

Q. He said that Uncle Joe had brought it to the house and had left it at the house? A. No; that Uncle Joe sent the candy from Atlantic City.

Q. Uncle Joe is a brother of— A. (Interrupting) A. brother of Mrs. McGuinness, and, by the way— 40

Joseph McGuinness—For Defendant—Direct.

The Court: Never mind "by the way" just answer the question.

10 Q. We are interested only in the progress of events. Mrs. McGuinness overhearing the child's remark, said something about the candy? A. Yes. She said: "That is Malone's candy, leave it alone."

Q. Speaking to whom? A. To me.

Q. "That is Malone's candy, leave it alone"?

A. "Leave it alone."

20 Q. What was said or done next? A. Well, I left it alone and it brought something to my mind. I just went into my wife. Says I: "By the way, Mamie, why did they send Joe back to the country?" Innocently—

Q. That was referring to the brother having received a new appointment from his superiors?

A. Yes.

Mr. De Sevo: I object to Judge Doherty's testifying.

The Court: Objection overruled.

30 Q. What was her reply to that? A. She came out of the kitchen with a knife in her hand. I was sitting at the dining room window playing with the children. She came on with the carving knife in her hand. I was sitting down. As she came to me I put my hand up like that (illustrating) causing her a smack on the chin. I said: "See here, your slugging days are over." What I meant by that was she had a habit of everytime
40 she felt like it, it would be a little poke. She

Joseph McGuinness—For Defendant—Direct.

was a woman, it didn't bother me. I let her get away with it.

Q. How often did it occur that she took the liberty of smacking you?

The Court: I think you had better confine yourself to the particular occasion the witness was speaking of. 10

Q. When you had last seen Mrs. McGuinness in the kitchen, just in what portion of the kitchen was she? A. (Illustrating) Here is the kitchen; the kitchen sink is here.

Q. Suppose we take the liberty of marking that "SK"? A. "SK," and here is our table what we have in the kitchen. Mrs. McGuinness was washing the dinner dishes. 20

Q. Where were you at the time when the dialogue took place that you have just told us about? A. Over here at the window with the children. There was a cedar chest there and we were sitting on it.

Q. Where was the cedar chest? A. Cedar chest right in the window. 30

By Mr. De Sevo:

Q. About how far is that? A. About 24 feet.

By Mr. Doherty:

Q. 24 feet from where to where? A. From one end of the house to the other, about from where she was and where I was. 40

Joseph McGuinness—For Defendant—Direct.

Q. Where were you when the two of you came together? A. I was sitting down here with the children on the cedar chest.

Q. You say that Mrs. McGuinness traversed the distance of 24 feet from the sink to where you were? A. Yes.

Q. Having in her hand a knife? A. A knife.

Q. What sort of a knife? A. Carving knife—what we call a bread knife. I was sitting down there and I just smacked her like that, the first and only time I ever did it in my life.

Q. Was that the first and only time she ever tried a knife on you? A. The first and only time she ever tried a knife on me.

20 Q. Did she say anything in her travel towards you, when she was approaching you with the knife? A. Only this: "Don't you talk about my brother." That is the remark she made. I never spoke about her brother.

Q. What was her appearance at that time as to indications of self possession or control? A. She came at me like a wild woman.

30 Q. Tell us what you mean by that? A. Her face drawn like you get when you are very excited.

Q. Can you say whether Mrs. McGuinness is ordinarily an excitable woman or not? A. She is a very nervous woman.

Q. Just when did her nervousness first show itself? A. Always.

Q. She was always nervous? A. Always.

40 Q. That is, she is not a woman— A. She is a woman who if she got in a temper you had no living with her at all.

Joseph McGuinness—For Defendant—Direct.

Mr. De Sevo: I move to strike that out upon the ground that it is not responsive to any question.

The Court: Motion denied.

Q. I think we will go back now to what you had in mind when you told her that her slugging days were over. What did you have in mind when you said that? A. Well, every little word I would say, the first thing she slugged me, in front of her sister, every little thing, she would slug me, but I paid no attention to it. 10

Q. What do you mean by "slugged you"? A. Poked the devil out of me, if you call that slugging. I would let her get away with it. 20

Q. You didn't object to having the devil knocked out of you?

The Court: That does not mean anything.

Q. What did she actually do in the way of these assaults or attacks? A. Why, she would come up and poke me just the same as—

Q. What do you mean by "poked"? A. Punched me and scratching. 30

Q. Scratching? A. Yes.

Q. Slapping? A. Slapping; yes; whatever you want to call it. You know when a woman gets mad and wild tempered what she would do. That is the only way I can explain it.

Mr. De Sevo: I object.

Q. Some of us do not know what a woman does when she gets mad and wild tempered? A. She 40

Joseph McGuinness—For Defendant—Direct.

would up with her hands and punch you and slap you and even kick you.

Q. How many times can you recall that she offered you the indignity of presuming to slap you? A. At least fifty.

10 Q. Fifty times? A. Yes; in the time we have been married.

Q. At those times what did you do? A. I walked away from her.

Q. You walked away from her? A. Yes; because she is a frail, little woman; she could not hurt me.

Q. That is what you had in mind on this particular occasion when you told her that her slugging days were over? A. Yes.

20 Q. How far beyond that part did the quarrel go; was there anything more to it? A. No; that situation stopped right then. I was in the house and the first thing I knew she went out with the children.

Q. She has testified that you struck her with your clinched fist on the nose? A. Why, I would kill her if I did that. What is the use of talking that way?

30

The Court: Strike that out.

Q. (Question repeated.) She has testified that you struck her with your clenched fist on the nose. Did you do that? A. No.

Q. For the purpose of the record, will you tell us what your physical characteristic is? Are you a strong man?

40

Joseph McGuinness—For Defendant—Direct.

Mr. De Sevo: I object. That is for your Honor to say. Your Honor can decide that without any testimony.

The Court: Objection overruled. I think it should appear on the record whether he is a strong man or not. 10

A. (No answer.)

Q. What is your weight? A. About 220 or 230 pounds.

Q. You are a man of medium size, are you? A. Yes.

Q. And you are a heavy, rugged man? A. Well, pretty fair.

Q. Pretty good, are you? A. Pretty good. 20

Q. And you are strong and heavy. Your wife on the other hand, weighs about how much? A. About 110 pounds, I guess.

Q. When you slapped her, did she fall? A. No.

Q. She testified that the back part of the lobar section of her nose was cut. Did you cut her? A. Never; no.

Q. Was any blood shed by her? A. Not a sign of anything.

Q. It has been testified by another witness that later she gave evidence of having an ordinary internal hemorrhage of the nose. Did she have a nosebleed? 30

Mr. De Sevo: I object upon the ground that the question is a misquotation. There is no such testimony that there was any hemorrhage.

The Court: That is what I understand. 40
That is what a nosebleed is.

Joseph McGuinness—For Defendant—Direct.

A. No.

Q. Did she have an ordinary nosebleed? A. Never.

Q. It has been testified that later in the day she exhibited a cut on her eye and also a cut in the corner of her mouth. Was her eye cut? A. I don't know of any cut.

Q. Was her lip cut? A. No, sir.

Q. Or the corner of her mouth here (indicating)? A. Not a mark on her.

Q. How forcibly would you say was the slap that you gave her? A. The slap was just the putting up of my hand merely like that (illustrating). I would not hurt the woman.

Q. It was a backhand slap? A. Yes, a backhand slap.

Q. How many times did you do that? A. Just the once. It was more of a protection for me.

Q. What was its effect on Mrs. McGuinness after you slapped her? A. She let go of the knife and started giving me the devil.

Q. Verbally? A. Verbally—tongue thrashing.

Q. What did she say? A. Oh, I could not recall exactly what she said.

Q. Can you recall anything she said? A. Once I scared her I did not pay any more attention to her.

Q. Mrs. McGuinness has testified that after the blow no more was said between the two of you; is that true? A. Nothing said by me. All saying was done by her. She done a whole lot of it.

Q. You said nothing? A. Not a word.

Q. How long after that was it that she subsided and the matter died down? A. Well, I suppose in

Joseph McGuinness—For Defendant—Direct.

twenty minutes after that she was out of the house. I went right into the living room. The first thing I knew about it she was gone with the children.

Q. Were you aware that your wife was telephoning to her sister and your sister, Mrs. Quinn?

A. No.

10

Q. When did you next hear from your wife? A. Why, I think the next I heard from her was at the cornerstone laying, the next time I saw her.

Q. Was there not some sort of communication established between you and her by your son Joseph H. McGuinness? A. Oh, yes; I had my son around to see her and find out the conditions.

Q. When did you learn that she was staying at Mrs. McDonough's? A. I guess it must have been a week afterwards.

20

Q. Tell us how you learned that? A. Through my son Joe.

Q. Joseph told you where she was? A. Yes.

Q. You say you gave him some instructions? A. Yes.

Q. In respect to your wife? A. Yes.

Q. Then, you saw her next at the cornerstone laying? A. Yes.

Q. Was that before the conference had been had at Judge Egan's office? A. Yes.

30

Q. Before that? A. Yes.

Q. The cornerstone laying was in your neighborhood, was it? A. Yes; right up at the corner of Bergen Avenue.

Q. Sunday afternoon? A. Yes; Sunday afternoon.

Q. Was there a large assemblage of people there?

A. Quite a few.

40

Joseph McGuinness—For Defendant—Direct.

Q. During the course of the ceremonies you saw your wife and Mrs. McDonough and the children?

A. Before the ceremony, as I went up there.

10 Mr. De Sevo: I want to know if it is proper for Judge Doherty to ask leading questions?

The Court: Objection overruled.

Q. You started over towards them? A. I walked over across the Boulevard.

Q. For what purpose? A. I thought my wife would meet me and we would come to some reconciliation; there was a friend of mine with me, a man she knew.

20 Q. That was the time you tried to see your wife? A. The first time.

Q. Why, Mr. McGuinness, did you enlist the services of your son to establish contact with your wife while she was at Mrs. McDonough's; instead of you yourself going there? A. Well, Judge Doherty, they would not recognize me.

By the Court:

30 Q. Why did you send your son to your wife rather than go there yourself? A. Because I knew I could not talk to them.

By Mr. Doherty:

Q. On what did you base that fear? A. Because they have maligned me every possible chance they could.

40 Q. The Malones? A. The Malones.

Mr. De Sevo: I object.

Joseph McGuinness—For Defendant—Direct.

Q. Who are "they"? A. The Malones.

Q. Who abides in the household of Mrs. McDonough except herself; who else lives in it? A. Her brother.

Q. John? A. John.

Q. Is he friendly to you? A. No. 10

Q. And you did not go there because of what you understood was an established enmity towards you by Mrs. McDonough and John Malone?

A. Yes.

Q. And the result of that hostility of your wife?

A. Yes, sir.

Q. That is why you chose to send your son?

A. Yes, sir.

Q. What instructions did you give your son to be communicated by him to your wife? 20

Mr. De Sevo: I object upon the ground that any instructions he gave his son are not binding on the defendant and are merely hearsay.

The Court: Objection overruled.

A. I told him to go up there and try to make a settlement with them. 30

Q. Did you authorize him to request your wife to come home? A. Yes.

Q. If possible? A. If possible.

Q. And you got a report from Joseph? A. Yes.

Q. And as the result of that report you attended a conference at Judge Egan's office? A. Yes.

Q. Mrs. McGuinness was there? A. Yes.

Q. Was your son Joseph there? A. Yes.

Q. And yourself? A. Yes.

Q. And Judge Egan? A. And Judge Egan. 40

Joseph McGuinness—For Defendant—Direct.

Q. Now, at that time what, if anything, was said to your wife respecting her attitude to return to her home; what was said by Joe or anyone to her? A. Well, it was suggested—Joe asked her would she come home and live with me and she
10 says: “No; not under any consideration.” Then we came to the conclusion, if we could not get her to come back, we better make a settlement, because I did not want the thing to get into the courts and eat up the few dollars I had in the house. I thought we could come to some possible settlement. I says: “Well, Mamie, I will sell the house and give you half because I want to protect these children.” She says: “No, I won’t take
20 less than \$20,000.”

Q. Was any computation made at that conference as to what your property would net on a sale? A. Well, we calculated and figured it, that it would amount to \$20,000.

Q. Altogether? A. Altogether. I made the suggestion I would borrow \$10,000 by manipulating it and give it to her if she would take it; in other words, if she would go to work and take the property over and give me a mortgage on it for \$10,000
30—in other words, one or the other help the other along.

Q. That \$20,000 was your understanding of what the gross equity was? A. That I owned at that time.

Q. You say she wanted \$20,000? A. She wanted \$20,000; she wanted it all.

Q. Leaving you nothing? A. Leaving me nothing. I says: “Mamie, you do not seem to care what
40 will become of me.” She didn’t care.

Q. Did she say that? A. Yes.

Joseph McGuinness—For Defendant—Direct.

Q. That she didn't care what became of you?

A. Yes.

Q. Did she ever make any reference as to her indifference, to your fate? A. Yes.

Q. What did she say? A. She told me—

Q. When was this that she made that reference? 10
A. When I was asking her to sign the mortgage. I says: "Mamie, you will ruin me." She says: "I don't care whether I do or not, I will have enough to bury you out of Corrigan's back room."

Q. Corrigan is an undertaker in the neighborhood? A. Corrigan is an undertaker.

Q. He has a back room where homeless people are carried out? A. Yes.

Mr. De Sevo: I object. There is no testimony in this case that Corrigan has a back room where people that have no money are buried from. That is what Judge Doherty says. 20

The Court: I think you are technically correct, but we will pass Corrigan's back room and go on to something else.

Q. After Judge Egan's conference, did you go out with Mrs. McGuinness? A. Yes. 30

Q. Did you go home with her? A. I went home with her, that is, I went home and she had to go down Monticello Avenue. I came as far as Cator Street. She said: "I have to go down Monticello Avenue and meet Sue." I bade her good-bye. That was just a block from Gifford Avenue.

Q. That is, you travelled about two miles with her up to Monticello Avenue? A. Yes. 40

Joseph McGuinness—For Defendant—Direct.

Q. When did you next try to get in contact with your wife? A. Well, through Joe, my son, I found out she was up in Montgomery, New York. I did not know where she was until then.

Q. How far away is Montgomery, New York?

10 A. It is about sixty miles, I guess.

Q. You went up there? A. I went up to Montgomery.

Q. Driven by your son in his automobile? A. Yes.

Q. Now, will you tell us when you arrived there what happened? A. I arrived there about two or three o'clock. As I got out of the car I saw my little boy playing in the yard. The little boy ran into the house. I went right straight into the Carrigan house and I met some young man there. I didn't know who he was. I says: "Is Mrs. McGuinness here?" He says: "Yes. She is upstairs." I says: "I would like you to tell her that I would like to see her." I went into the livingroom and I sat down there a while, and then in comes Mrs. McDonough and the two children. Well, I kept playing with the two children and Mrs. McDonough stops right in the doorway. So, we will say, about fifteen or twenty minutes I was playing with the children, and I get up and go out in the front yard with the children, and Mrs. McDonough is there. I says to Mrs. McDonough: "I would like to see Mrs. McGuinness." She says: "Mrs. McGuinness don't want to have anything to do with you." Says I: "All right." With that I came out and played around in the front yard with the children I suppose for about twenty minutes more.

20

30

40 Q. Did you have any conversation with Bessie Carrigan on that occasion? A. I don't know that

Joseph McGuinness—For Defendant—Direct.

I ever spoke a word with her. I might have said: "How do you do," but I had no conversation with her or with any of them.

Q. Bessie Carrigan testified that while you and she were standing near a bush you pointed out Mrs. McDonough and said: "There is the son of a bitch who broke up my home"? A. I never said "son of a bitch." I might have said— 10

By the Court:

Q. Did you say that? A. No; I did not say that.

By Mr. Doherty:

Q. Did you have any conversation with Mrs. Bessie Carrigan at all about Mrs. McDonough? A. Yes. I said to her: "There is the one who is ruining my home." 20

Q. You did not see your wife at all? A. I did not see my wife at all.

Q. Did you ever by telephone endeavor to get in communication with your wife? A. I have telephoned about fifteen or sixteen times there and part of the time I would get Mrs. McDonough on the telephone and I would inquire for Mrs. McGuinness, but she was always out, and part of the time, as soon as she caught my voice, she would put up the telephone so that I could not get any answer at all. 30

Mr. De Sevo: I object and move to strike out the answer upon the ground that it is hearsay.

The Court: Motion denied. 40

Joseph McGuinness—For Defendant—Direct.

Q. Are you familiar with the telephone voice of Mrs. McDonough? A. Yes.

Q. And the person who answered you was Mrs. McDonough? A. Mrs. McDonough.

10 Q. For what purpose did you make those telephone calls? A. To try and get in communication with my wife.

Q. Looking towards what object? A. A settlement.

Q. To settle your strife? A. Yes; I thought if I could talk with my wife—

Q. Do you recall a conference held at Mr. Simpson's office in deference to the suggestion of the Advisory Master, on the 5th of March? A. Yes.

20 Q. Mrs. McDonough was there? A. Yes.

Q. Did you hear what Mrs. McDonough said as to your wife not being present?

Mr. De Sevo: I object upon the ground that anything that Mrs. McDonough said cannot bind the complainant.

The Court: I do not think we need to go into that.

30 Q. Did you, at that conference, in the hearing of Mr. Joseph McGuinness and myself, call Mrs. McDonough a son of a bitch? A. Never in my life. Never in my life.

Q. Did you ever call her a son of a bitch? A. Never in my life.

(At this point adjournment is taken to May 3, at two o'clock in the afternoon.)

40 (Further adjourned to May 10, 1929, at ten o'clock in the forenoon.)

Joseph McGuinness—For Defendant—Direct.

Met pursuant to adjournment this 10th day of May, 1929, at ten o'clock in the forenoon.

Appearances as heretofore.

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JOSEPH MCGUINNESS, the defendant, heretofore sworn in his own behalf, resumes the stand.

Direct Examination (Continued) by Mr. Doherty:

Q. I believe, Mr. McGuinness, at the time your examination was discontinued, we were talking about your trip to Montgomery? A. Yes.

Q. At that time you did not see your wife at all? A. No.

20

Q. What was your purpose in going to Montgomery? A. Well, I went there to see my wife to see if we could come to some sort of an understanding.

Q. Whom did you see when you got there? A. When I first went there, there were three or four people in the yard and my little boy was playing in the yard and as he saw me coming he ran into the house.

30

Q. Your boy? A. My boy. So I went into the house and I met a young man there. He was the only one there. I asked him could I see Mrs. McGuinness, was Mrs. McGuinness there? He says: "Yes; she is upstairs with the girls. I will tell her." She says: "Go inside and sit down and I will tell her."

So he went up and told Mrs. McGuinness. With that Mrs. McDonough came down with the children. So I got to talking and playing with the

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Joseph McGuinness—For Defendant—Direct.

children waiting for Mrs. McGuinness. She did not come down. After a while there, ten or fifteen minutes, I asked Mrs. McDonough, I says: "I would like to see Mrs. McGuinness." Mrs. McDonough said: "Mrs. McGuinness don't want
 10 to have nothing to do with you." Says I: "All right." With that I took the two children out of the yard and stayed playing with them for a while and in about an hour's time or so I came home.

Q. When did you next see your wife? A. Well, I think it was at the cornerstone laying, St. Aloysius Academy.

Q. That was in your neighborhood? A. Right in the neighborhood. I went down to the corner-
 20 stone laying. I was on this side of the Boulevard and I saw Mrs. McGuinness and the two children and Mrs. McDonough on the other side of the Boulevard. With that I walked across the Boulevard and I was about half way, when Mrs. McDonough picked up one of the children and Mrs. McGuinness, and they went away—

Q. Why did you approach them, Mr. McGuinness? A. Well, I thought I could go over and have a talk with my wife and come to some understand-
 30 ing with her. It seems to me if I could have got that chance, but Mrs. McDonough would never allow me a chance to get near my wife—she was always kept away from me, so much so, that the little boy, I found out that he went to school, and the second morning I went up there to meet the little boy—some mornings Mrs. McDonough would bring him down part of the way and so I would not meet him—

Q. (Interrupting) Mrs. McDonough used to
 40 bring him part of the way? A. Part of the time;

Joseph McGuinness—For Defendant—Direct.

yes. Sometimes it would be a week before I would see the child. One day I went into the school and I inquired of the sister could I see the boy. She said yes. I went in and I stayed in the school-room about twenty minutes with the boy. It was coming on the holidays I gave the little boy a present of a watch, and he was very much pleased to see me; and after that they took the boy away from school so I could not see him. 10

Q. How did you find that out? A. Well, I went up—I kept watching morning after morning to see the boy and I never saw him. Then I went and inquired and they told me the child was not going to school any more.

Q. Do you know to what school the child was transferred? A. I believe they kept him out of school altogether. 20

Q. Did that transpire before or after the interview in Judge Egan's office? A. Afterwards.

Q. You were present at the conference in Judge Egan's office, were you? A. Yes.

Q. How was that arranged, Mr. McGuinness? A. Well, the arrangement was made between my son and Mrs. McDonough, I believe, because Mrs. McGuinness never had anything to do in this affair at all. 30

Mr. De Sevo: I object unless he knows of his own knowledge.

Q. Did you, in any way, contribute towards arranging that conference? A. Yes; I told my son to try and make the arrangement so we could come to some understanding. 40

Joseph McGuinness—For Defendant—Direct.

Q. He was acting for you at that time? A. Yes.

Q. At the conference who were present in Judge Egan's office? A. Mrs. McGuinness, my son and Judge Egan and myself.

10 Q. And the purpose of it was what? A. To try and make some reconciliation for us to come together.

Q. Was any proposal made to Mrs. McGuinness that you should come together? A. Yes.

Q. How was that made—in what terms? A. Well, my son was there—Judge Egan was trying to settle it between us—

20 Mr. De Sevo: I object to what Judge Egan was trying to do.

Q. Proceed. A. I could not do nothing. I explained to Judge Egan what I proposed to do and what I was willing to do.

Q. Was your wife there? A. My wife was there.

30 Q. Tell us what you explained to Judge Egan? A. I explained that my wife ought to come home, that there was no occasion for her to stay away, and my son asked my wife in some way whether she intended to come back. She says: "No; I would not live with him under any circumstances." He said that we better come to the best understanding we possibly can, so I suggested to Judge Egan, to be fair, that I wanted to give half of everything I owned. She said: "No, I will not take less than \$20,000." I said, "Why, Mamie, that is nonsense, because if I have to give you \$20,000, I practically go to Laurel Hill. I could not give you \$20,000."

40 Q. Can you tell us, in a general way, about what your clear equity in your property would be worth,

Joseph McGuinness—For Defendant—Direct.

how much it would amount to? A. Well, I do not think, after paying my bills, it would be worth over \$13,000 or \$14,000, if it was all sold out tomorrow.

Q. What other proposal was made by you or Mrs. McGuinness or anyone else? A. I then made a proposal to her, I says to her, she wanted \$20,000. I says: "I will take \$10,000 and give you all I own, sign over everything to you, and I will make it easy for you so that you can handle it. I will take a mortgage for the \$10,000. If you don't want that I will give you \$10,000. I will raise a mortgage of \$10,000 and give you that." Well, they would not take less than \$20,000. 10

Judge Egan explained it to her and they left with the understanding that they would think it over. 20

Q. Will you tell us what Judge Egan explained to Mrs. McGuinness? What did Judge Egan say to Mrs. McGuinness about the proposal? A. He just merely put the suggestion. He thought it was a fair proposal.

Q. He told that to Mrs. McGuinness? A. Well, I would not say he did, but he said it to me. 30

Mr. De Sevo: I move that that be stricken out.

Mr. Doherty: I will consent to striking out that he told the witness it was a fair proposition.

By the Court:

Q. Did he tell Mrs. McGuinness that? A. I don't remember whether he told Mrs. McGuinness that or not. 40

Joseph McGuinness—For Defendant—Direct.

By Mr. Doherty:

Q. After that conference, where did you go? A. Well, my wife and I came up on the bus and I explained and told her conditions. I says:
 10 "Mamie, you are doing a very foolish thing, because the few dollars we have for the children will only go to the courts and lawyers. You are doing a very foolish thing." She says: "I am going to do it, no matter how it comes out."

We walked along. We got off the bus at Bergen Avenue. We walked over toward Gifford Avenue and she said: "I have to meet Sue down at Monticello Avenue."

20 Q. Who is Sue? A. Sue is her sister.

Q. I think you said that at the Egan conference it was arranged for her to come to the house and get some belongings? A. She asked Judge Egan if I would have to have notice to let her come and get the children's things. I said: "No; you can come any time you want." I asked her: "What time will you be there?" The stuff I found out was stolen. I wanted to put locks on—

30 Q. What was your discovery about your stuff being stolen? A. Well, I didn't discover anything. What made me open my eyes—I never paid much attention to it—all the silverware and stuff was on the dressers—everything that was in the diningroom. I came home one night. My daughter says to me—

Mr. De Sevo: I object.

40 Q. Don't tell us what your daughter said. A. I put locks on the place, and after I had the locks on the place she asked me whether she could have

Joseph McGuinness—For Defendant—Direct.

permission to go in and get clothes and I says yes.

Q. Coming back to the cornerstone laying, do you remember whether or not on that occasion the baby was carted off in a carriage or perambulator?

A. Yes.

Q. Do you know how Mrs. McGuinness got that carriage? A. I do not. 10

Q. Was it taken away?

Mr. De Sevo: I object. The witness has testified he does not know how she got it.

Q. Was it in the house at the time she left the house? A. I believe it was.

Q. She did not take it away with her when she was going, did she? A. I was not there. 20

Q. You have heard the testimony that she called a taxicab?

Mr. De Sevo: I object.

The Court: The witness says he was not there.

Q. You do not know how she got possession of that carriage? A. No. 30

Q. Was there any conclusion at all arrived at between yourself and your wife the night you brought her home after Judge Egan's conference?

Mr. Simpson: I want to object for the reason that if this case is going to be appealed, to load up the record with—

Mr. Doherty: Question withdrawn. 40

Joseph McGuinness—For Defendant—Direct.

Q. When did you next see your wife? A. After Judge Egan's office?

Q. Yes. A. As I say, I met her a couple of times on the Boulevard bringing the child to school.

10 Q. Did you have any conversation with her? A. I have seen my wife practically every Sunday. She would go to church and she would deliberately go over past my house going home.

Mr. De Sevo: I object to the word "deliberately."

20 Q. She passed your house? A. She passed there just as though she was rigging me or trying to insult me.

Q. How near to the church is your house? A. Well, I should judge maybe 400 feet on the opposite side.

30 Q. Did you have any conversation with your wife on the occasion when you brought her home from Judge Egan's office? A. The only conversation I was trying to explain to her, as I told you before, that we better come to an agreement of some kind, if she did not want to live with me. She said no, she would have to consult Sue.

Q. Did Mrs. McGuinness ever assign any reason why she would not come back to live with you? A. She never assigned a reason.

Q. Did she ever say she was in fear of her life or health?

40 Mr. De Sevo: I object unless the time is fixed.

Joseph McGuinness—For Defendant—Direct.

Q. Coming home from Judge Egan's office, when you asked her to come to some agreement did she then say anything about fear of her health or life? A. No; she appeared to be—

Q. Did she refer in any way to your cruelty, past cruelties toward her, that would interfere with the performance of her wifely duties? A. Never in her life. 10

Q. You have spoken of giving the boy a present? A. Yes.

Q. Since the removal of the children from your custody have you sent them any other presents? A. Yes. I sent the little girl presents, toys which I thought would be pleasing to her. 20

By Mr. De Sevo:

Q. Please fix the time. A. I should say a little while before Christmas.

By Mr. Doherty:

Q. You sent over— A. (Interrupting) I sent the little boy toys. I gave the boy a nice watch. I sent the toys to the home where my wife was in Gifford Avenue, and that night the toys were all brought back and put in my hall. 30

Q. You don't know who brought them back? A. I don't know who brought them back; no.

Q. I think in your earlier testimony you spoke of making your wife a gift of jewelry. What other gift did you make your wife? A. Well, I made my wife— 40

Mr. De Sevo: I object unless the time is fixed.

Joseph McGuinness—For Defendant—Direct.

10 Q. Fix the time. A. About three years ago I made my wife a present of a mortgage—I guess about \$1,200—I do not know the exact amount. I had three mortgages and I gave her one of them. It was either \$1,000 or \$1,600. I think I have a witness here today to prove the amount of it. Then the Christmas before that I gave her a present of \$500 in gold—in \$20 gold pieces.

Q. Do you know whether you ever presented your wife with furs? A. I bought her a fur coat.

Q. Do you know the value of it? A. Well, I could not exactly say. It was between \$400 and \$600.

20 Q. Do you know when you gave her that—how long ago? A. I should judge about three years ago.

30 Q. Your wife has testified that from November, 1926, until April, 1928, you refused to buy any clothing for your children. What have you to say as to that? A. I never refused my wife in my life to buy her anything. I was only pleased for her to get everything she wanted. She would buy three or four dresses at a time, which dresses she never wore, but I never objected to an article. Whatever came home in my house I paid for it. I paid for it. When I had no money, she always had hundreds of dollars at her disposal.

Q. She has testified that you let the telephone be cut off because you would not pay your telephone bill? A. Well, now, I will tell you about the telephone bill.

40 Mr. De Sevo: I think that question can be answered yes or no.

Joseph McGuinness—For Defendant—Direct.

Q. Please tell us what you know in reference to the telephone being cut off? A. I had a lot of trouble with the telephone, interference, when I would go to the telephone, when I went to answer it it would be shut off on me. In the first place, about three or four months before I ordered my wife's sister out of the house, she was making trouble for me, and after that the telephone would be ringing and if I went to the telephone it would be shut off and I would get no answer; so I came to the conclusion that I better have it taken out. So I ordered the telephone taken out. 10

Q. It was not removed because you did not pay the bill? A. No. I did not owe a penny on it. 20

Q. It has also been testified that the electric light was shut off for a whole night in the month of June. What do you know about that? A. The electric light was never shut off one minute since I had electric light—not one minute.

Q. It is also alleged that you forced your wife to cut down on the table. What is your knowledge on that? A. There was only her and I and I was not going to starve myself, and I do not know why I should cut down on the table unless I cut down on myself. There was never anything that way. My house was full and plenty. If I had to steal it I would bring it home. Cutting down on the table? I have raised a family of ten or twelve children and there was full and plenty for everybody that came in the house. It has never been known when my table was empty. 30

Mr. De Sevo: That is just cluttering up the record. It is all volunteered testimony. 40

Joseph McGuinness—For Defendant—Direct.

The Court: The witness should just answer the question and not volunteer.

10 Q. Mrs. McDonough has testified that she has knowledge that you gave \$15,000 to your son Vincent to establish him in business. What about that?

Mr. De Sevo: I object. Whatever Mrs. McDonough said is not binding on the complainant.

A. If I did, I do not know it.

Q. You never did it? A. I never done such a thing.

20 Q. She testifies further that you gave your son Joseph \$500 in connection with the purchase of a house by him? A. I never gave him five cents.

Q. In deference to a suggestion made by the Advisory Master, a conference was held at Senator Simpson's office? A. Yes.

Q. Since this case has been referred? A. Yes.

Q. Were you there? A. Yes.

30 Q. Who else was there? A. Well, Mr. De Sevo and Mr. Doherty and my son and Mrs. McDonough.

Q. Was your wife there? A. No.

Q. Do you know why your wife was not there? A. No.

Q. Did Mrs. McDonough say what her character was in that conference, whom she was representing?

Mr. De Sevo: I object.

40 Q. Did Mrs. McDonough say anything of the character in which she attended that conference?

Joseph McGuinness—For Defendant—Direct.

Mr. De Sevo: I object upon the ground that the question is leading.

Q. What did Mrs. McDonough say as to why she was there? A. Mrs. McDonough came there as the representative of my wife. 10

Q. Did she say so? A. She said so.

Q. Did she explain why your wife was absent? A. Yes; she said my wife had, I think, laryngitis.

Q. At that conference was anything said about Mrs. McGuinness coming back to her home? A. I don't remember.

Q. What was discussed there among the parties? A. Well, it was practically Mrs. McDonough who was discussing the whole thing. Mrs. McDonough wanted so much money. In fact, she wanted me to go to work and give them all my and for me to go to work. 20

Q. Do you remember whether Mrs. McDonough insisted upon any bottom price that she would take for her sister? A. Yes; she made the proposition that she wanted the West Side Avenue property free and clear, everything free. I explained that I could not do it unless I got the money to do it with. "Well," she said, "if you don't do that we will take chances with the court." 30

Q. Was there any proposition made as to the sale of your property? A. I made the suggestion there of selling the property and giving them half, splitting fifty-fifty.

Q. How did that strike Mrs. McDonough? A. She did not want that. She would not listen to anything only the three houses, free and clear. 40

Joseph McGuinness—For Defendant—Cross.

Q. You say Mrs. McDonough made a proposition to you that you go to work? A. Yes. She says: "You have got these two children, you know, and you ought to give them your money. You are able to go to work." She says: "Go out
10 and go to work."

Q. Mrs. McDonough has stated that in the hearing of your son Joseph and myself, you at that conference called her a son of a bitch. Did you or did you not apply any such epithet to that woman?
A. No, sir.

Q. Will you take your wife home at this time?
A. Yes.

Q. Do you want her to come home? A. Yes.

20 Q. Will you treat her with kindness and consideration and generosity, if she returns? A. Yes.

Q. Do you make that offer now to the Court? A. Yes.

Q. And you have the financial ability to support her if she comes home? A. Yes.

Q. And you want her and the children at your fireside? A. Yes.

Cross Examination by Mr. De Sevo:

30 Q. Mr. McGuinness, how much does the "Baby" store owner pay you for rent? A. \$50.

Q. Did he ever pay \$60? A. Never in his life, and only paid \$50 three months for four months' rent.

Q. You have answered the question. How long has that "Baby" store owner occupied these premises? A. About three months.

40 Q. And how did he pay you—by cash or check?
A. Cash.

Joseph McGuinness—For Defendant—Cross.

Q. Who occupied the store prior to those three months? A. It was vacant.

Q. For how long? A. About seven months.

Q. Vacant for seven months? A. Yes.

Q. Who had it before that? A. A Chinaman.

Q. How much did he pay you? A. \$55. 10

Q. \$55 a month? A. Yes.

Q. Who was the "Baby" store owner, what was he, was he a Chinaman, too? A. No.

Q. Your son pays how much for his store? A. \$50.

Q. He paid \$55, did he not? A. Yes.

Q. How long did he pay the \$50 a month? A. Well, he has paid \$50 since—

Q. (Interrupting) Since this suit started? A. No; since the "Baby" store paid it. When I had to reduce to \$50, I tried to rent it for \$50 and he accepted it, and I could not charge— 20

Q. How much does the butcher pay? A. \$75.

Q. How does he pay—cash or check? A. Check.

Q. He pays you \$75— A. He took the butcher bill off it.

Q. How much does that amount to? A. That varies.

Q. What is the average? A. Well, I should judge it averages about \$30. 30

Q. And that covers what; what does that \$30 cover? A. The meat.

Q. And that meat is used by both yourself and your other children; is that right? A. Yes; I don't eat it all myself.

Q. How many children live with you now? A. Three.

Q. Who are they? A. My daughter and two boys. 40

Joseph McGuinness—For Defendant—Cross.

Q. How old are the two boys? A. One of them is twenty-one. You are sticking me on this.

Q. Don't you know? A. No; I cannot remember the ages.

Q. Do they work? A. Now they are, yes.

10 Q. And where do they work? A. One works in Wall Street and the other works in a bank.

Q. What does the fellow in Wall Street make?

A. You have got me.

Mr. Doherty: I do not see how this is proper cross examination.

The Court: It is all right.

Q. What does the fellow in Wall Street make?

20 A. I don't know.

Q. What does he give you? A. Nothing.

Q. He lives with you and gets meat for nothing? A. He lives with my daughter.

Q. I understood you to say that the meat which you got from this butcher which is charged against the rent is used by yourself and your children; is that right? A. Yes.

Q. And you do not get any support from the children, do you? A. No.

30 Q. How about this other boy; how much does he make? A. There is no other boy there.

Q. You said there were two boys; one works in Wall Street. Where does the other one work?

A. In a bank.

Q. What does he get? A. Well, I don't know.

Q. This other boy, you never got anything from him either? A. I never got a penny off a child in my life.

40 Q. You are supporting them, are you? A. No.

Q. You testified that Mrs. McGuinness opened all your mail; is that right? A. Every letter.

Joseph McGuinness—For Defendant—Cross.

Q. Even though it was addressed to you? A. Yes.

Q. Did you ever say anything to her about opening the mail? A. Yes.

Q. What did you say to her? A. I told her not to open my mail; she might find something in it some day she would not like. 10

Q. Notwithstanding that, she kept on opening the mail? A. Yes.

Q. Did Mrs. McGuinness ever give you any money to pay taxes or anything like that? A. If she did, I don't know it.

Q. Didn't she give you \$600 some time ago to pay the taxes and pay a gambling debt to Pete Feenan? A. No. 20

Q. Do you know who Pete Feenan is? A. No.

Q. You don't know? A. I know Feenan.

Q. Feenan? A. I know who Mr. Feenan is; yes.

Q. Do you know who Pete Feenan is? A. And Pete Feenan.

Q. Yes. Did you ever gamble with him? A. Never.

Q. Did you ever gamble with a man named Feenan? A. Tell me what do you mean by gambling,—that is what I don't understand—so I can answer it intelligently. 30

Q. You do not know what gambling means? A. No.

Q. Do you ever play cards? A. Yes.

Q. Did you ever play for money when you played cards? A. Yes.

Q. What do you call that when you play cards for money? A. An ordinary game of cards—rummy. 40

Q. Did you ever play poker? A. Yes.

Joseph McGuinness—For Defendant—Cross.

Q. And didn't you lose some money playing poker to a man named Feenan and did not your wife give you that money? A. No.

Q. Never such a thing happened? A. No; such a thing never happened.

10 Q. You say that Mrs. McGuinness did not want to sign this mortgage, this \$2,500 mortgage; isn't that right? A. Yes.

Q. Did she ever sign any other mortgage for you—yes or no? Why do you hesitate? A. I want to think.

The Court: Give the witness a chance to answer. You asked him a general question.

20

Q. Did she ever sign any other mortgage for you? A. Yes; she signed one for me.

Q. Did she ever say anything to you at that time when she signed a mortgage; she didn't have any complaint to make, did she? A. No, because that was her own house; she got the benefit of it.

Q. Wasn't this for her own benefit, this time, the \$2,500 for taxes? A. It was for her own benefit. I don't know how she figured it out.

30 Q. You collected the rents from these premises since last October when the order was made against you? A. Yes.

Q. What have you done with all that money? A. I owe money on it yet what I have not paid.

Q. Whom do you owe money to? A. Different people.

Q. Name one? A. Dr. Opdyke.

Q. How much do you owe him? A. \$95.

40 Q. What was that \$95 for? A. For medical attendance.

Joseph McGuinness—For Defendant—Cross.

Q. For whom? A. For my family.

Q. Who in your family? A. Well, my wife and children,—the two children.

Q. Covering what period of time? A. Well, I don't know what period of time.

Q. Can you give us some idea? A. No. 10

Q. You don't know? A. No.

Q. Whom else do you owe money to? A. I owe my daughter \$400, where I have to borrow it.

Q. Which daughter is that? A. I have only one daughter.

Q. Which? A. Marie.

Q. When did you borrow this \$400? A. I borrowed it, I suppose, about three or four weeks before Mrs. McGuinness left, to pay part of the taxes on my property. 20

Q. Three or four weeks before Mrs. McGuinness left? A. Yes.

Q. You only paid it back— A. (Interrupting) I borrowed it—

Q. (Interrupting) When did you pay her back? A. Well, it was a note of \$400 and I paid the note. That is all I know when it was paid back.

Q. Have you got that note? A. I haven't got the note. 30

Q. How did you pay it—cash or check? A. As the note would come due—

Q. (Interrupting) How did you pay it—cash or check? A. In cash.

Q. You are sure of that? Was it not a check? A. Well, it might have ben in a check, a part of it. It was not paid at one time.

Q. Have you got your check book to show the payments? A. No. 40

Joseph McGuinness—For Defendant—Cross.

Q. Is not that the only check book you have?

A. That is my wife's check book. That check book was left at home.

Q. Where is this check book? A. This check book, I want you to understand—

10 Q. (Interrupting) Answer the question. Is that the only checkbook you have? A. Yes, sir.

Q. That is the only one? A. Outside of the stubs.

Q. Is that the only stub check book you have? A. Yes; yes.

Q. You cannot give me the date when you paid your daughter the \$400? A. No. I did not pay it at once. The note would be for three months and maybe I would pay \$100 at a time.

20 Q. You testified you paid the \$400 at one time?

A. I never did; I never said such a thing.

Q. When was the last time you paid anything on it? A. I couldn't tell you.

Q. Will you look at this book and see if you can tell me? A. I know it ain't in there. I never had recourse to that. You would not find three stubs of mine in that book. That was my wife's book.

30 Q. Now, you also testified on direct examination that you had to sleep in a bed by yourself; is that right? A. Not a bed—a couch.

Q. Is it not a fact that the reason you refused to sleep in bed was because you did not want to sleep with the baby? A. No.

Q. That was not so? A. No. There was a crib there for the baby to sleep in. There was no occasion for me to get out of bed for the baby.

Q. Who held your tax bills? A. My wife.

40 Q. Didn't you testify on direct examination that

Joseph McGuinness—For Defendant—Cross.

your wife did not know anything about taxes—did you or did you not? A. No.

Q. At the last hearing, didn't you testify that your wife knew nothing at all about taxes? A. Well, now, what do you mean by "nothing at all"?

Q. You didn't say that on direct examination? 10
A. No—that is tax bills, she knew about tax bills.

Q. But she knew nothing about taxes? A. My wife would never know whether the taxes were on the Woolworth Building or my house, she did not understand taxes, but the tax bills she controlled.

Q. Why did she want to hold the tax bills?

Mr. Doherty: I object upon the ground 20
that it calls for a conclusion.

A. Because she had the full possession of everything in the house, everything coming in there was hers, bills and everything coming in there. I was a star boarder.

Q. Did you ever allow her a check account? A. Yes.

Q. She had a check account? A. Yes. Here is my own check book which she had. She would not know how to keep a check account. 30

Q. She would not know what? A. She would not know how to keep a check account. You can see the book. You can see she doesn't know how to keep the book.

Q. That is your own check book? A. That is her check book. You can see the way it is, half is out and the other half is—

Q. Could she sign her name to one of those checks? A. No. 40

Joseph McGuinness—For Defendant—Cross.

Q. Then, it is your check book? A. Yes, if you put it that way, it is my check book, but she had custody of it.

10 Q. You testified on direct examination, when the question was put to you by Judge Doherty, were you ever spoken to about clothes between November, 1926, and April, 1928, and you said no; is that right? A. That is right.

Q. During that period did your wife buy any clothes for the children? A. Mrs. McDonough done the buying.

Q. Answer, yes or no. A. I don't know those things.

20 Q. Did the children get any clothes during that period, whether you paid for them or not? A. They always had full and plenty of clothes; yes.

Q. Now, in your direct examination, you also stated that you did have a conversation with Mrs. McDonough regarding the \$2,500, in July, 1927; is that right? A. I said I did have a conversation?

Q. Yes. A. No; I never said such a thing in my life.

30 Q. You didn't say such a thing? A. Never in my life, because it was impossible for me to testify to such a thing.

Q. You also testified that you told Mrs. McGuinness, your wife, that unless she signed that mortgage for \$2,500, the city would sell your property for taxes; did you say that? A. Yes.

40 Q. Did you read the affidavit you made in this cause when the application was made for alimony pendente lite and counsel fee—this long affidavit; did you read that affidavit that you made in this cause on that application? A. Yes.

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Q. Did you say anything in there that the reason why you wanted that \$2,500 mortgage was to pay taxes; did you say anything like that in that affidavit?

The Court: Show him the affidavit.

10

Q. (Continuing) Do you remember saying that?
A. I ought to remember that, because that is the only thing I wanted the money for; so it would be in the affidavit. I could not take it and play marbles with.

Q. It is a long winded one. A. Without the affidavit, I will say yes.

The Court: Do not volunteer anything. 20

Q. You might want to take it back again. A. No; I would not.

Mr. De Sevo: I do not think this is the affidavit. There is another one. I will pass that.

Q. Now, you testified on direct examination, Mr. McGuinness, that at the time when you had some quarrel with your wife about her brother Malone being sent to the country, that you smacked her on the chin. That is the word you made use of; do you remember saying that? A. I don't know whether I said that or not, but I know I did. 30

Q. You did smack her on the chin? A. Yes; what you call smacking her to scare her.

Q. You used physical violence? A. Physical violence? I tried to scare my wife. I merely tried to scare her so she would not—if anybody came 40

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at you with a knife you would not let them jab it at you.

Mr. Simpson: I think this ought to be stricken out of the record.

10 The Court: I think you are right. The witness should answer the question.

Q. You also testified that you slapped your wife on fifty different occasions, at the last hearing?

A. No.

Q. You never said that? A. No; never in my life. That is impossible.

20 Q. You also said at that time, when you testified relative to this smack on the chin, that she gave you a tongue thrashing. Do you remember saying that? A. Never.

Q. You did not say that at the last hearing? A. No.

Q. When was the first time you made any effort to see your wife after she left? A. The first time?

Q. Yes; when was the first time? A. I ain't positive, but I think the first time was at Montgomery.

Q. At Montgomery? A. Yes.

30 Q. How long was it after she left that you first went to Montgomery? A. Well, I did not know where she was—

Q. When was it? A. I don't know exactly.

Q. Was it a couple of months after she left? A. No; it was not as long as that.

Q. Was it a month? A. No; I don't think it was a month.

40 Q. Less than a month? A. I think it was about two weeks.

Q. Two weeks? A. Two or three weeks.

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Q. Was it in July when you went up to Montgomery? A. I don't know. It was in the summer, —in fact as soon as I heard she was there.

Q. Do you remember the date when your wife left? A. When she left?

Q. Yes. A. No. 10

Q. You don't know? A. I don't know. I could not swear to what date she left.

Q. Can you give me any idea? A. No. According to her paper she said it was April 28th.

Q. Was it April 28th? A. I could not swear it was.

Q. You think it was two weeks after that when you saw her at Montgomery? A. Two or three weeks. 20

Q. Do you remember making an affidavit in this case? A. Yes.

Q. Do you remember saying: "Shortly after July 15, I went up to Montgomery"? Do you remember saying that? A. That might be shortly before July 15—

Q. "Shortly after July 15, I went up to Montgomery." Do you remember that? A. I cannot give you no date. You may be right.

Q. So, she left April 28th and you figure that two or three weeks later you saw her at Montgomery. Yet your affidavit states it was shortly after July 15. How did you get up there? A. My son, I think he drove me up there. 30

Q. You knew your wife was up there, did you? A. Yes; through my boys, the first time I knew where she was.

Q. After your wife left did you go to her sister's house to see if she was there? A. I never did; I did not know where my wife was. 40

Joseph McGuinness—For Defendant—Cross.

Q. Did you make any efforts to go to her sister's house to see if she was there? A. I have never been in her sister's house in my life to ask where she was.

10 Q. Where does her sister live? A. Gifford Avenue.

Q. How far is that from where you live? A. I should judge about maybe two good long blocks.

Q. You never walked those two blocks to see if she was there? A. No; I never was in that house. I did not know she was there.

Q. You did not know she was there? A. I did not know she was there.

20 Q. Did you ever go near it? A. I did not know where she was.

Q. Did you speak to her sister at any time after your wife left?

Mr. Simpson: May I take charge of this examination at this time? I think I can make it shorter?

Mr. Doherty: All right.

By Mr. Simpson:

30 Q. When did your wife leave? A. I don't know.

Q. You don't know? A. Not the exact date. They tell me about April 28th.

Q. What year? A. April, 1928.

Q. At that time her sister had been visiting your house, had she not? A. No; not for three or four months before.

Q. Not for how long? A. For about four months before she left.

40 Q. You never went to her sister, who lived two blocks from you, at any time, to make inquiry

Joseph McGuinness—For Defendant—Cross.

about where she might be? A. I never was in her sister's house in my—

Q. (Interrupting) Did you go there? A. I did not know she was there.

Q. Did you write to her sister? A. Never.

Q. Whether you knew she was there or not, didn't you go to inquire as to her whereabouts to find out where she might be? A. No.

Q. Did you know Mr. Malone, her brother? A. I know him, yes.

Q. Did you know where he lived at the time she left you? A. Yes, sir.

Q. Did you ever go to his house to inquire where your wife was? A. No.

Q. Did you know where Malone worked at the time your wife left you? A. Yes.

Q. Did you ever go down there to ask where your wife was? A. I never saw Malone in six years—

Q. (Interrupting) Did you ever go down to ask him? A. No.

Q. So that you made no inquiry whatever, either personally or by letter, of any of the relatives of your wife as to where she might be? A. No.

Q. What was the time when you saw your wife on the street with her sister when the cornerstone was being laid? A. I cannot tell you the date.

Q. How long after she left? A. I didn't know. Maybe, perhaps, a couple of months. I could not tell you.

Q. You saw her with her sister, is that right? A. Yes.

Q. And you did not speak to your wife then, did you? A. I could not.

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Q. You did not speak to her? A. I tried to speak to her—I went over to speak to her.

Q. Did you speak with your wife at the time you saw her on the street with her sister on the occasion of the cornerstone laying? A. I tried to.

10 Q. Did you speak to her? A. No.

Q. Where did she go when she ran away from you? A. Her and her sister went along the Boulevard. I don't know where they went.

Q. Across the street from where you were? A. No; along the Boulevard. She was across the street from where I was.

20 Q. And you saw her cross the street and go along the Boulevard; is that right? A. I went over to meet her to talk with her and she went away, her and her sister.

Q. Did you follow her? A. Part of the way. I did not want to make a show of the woman.

Q. Did you follow her, show or no show? A. No.

Q. Where was she when you last saw her; when she disappeared from your sight, where was she? A. I don't know.

Q. You saw her go away? A. I don't know where she went.

30 Q. The last time you saw her you told us where she was on the Boulevard? A. Why, she was directly opposite, opposite St. Aloysius Academy.

Q. That is the last place you saw her? A. That is the last place I saw her.

Q. She had the children with her? A. Yes.

Q. What time of day was it? A. I should judge about two o'clock.

40 Q. Where did you see your boy when you met him going to school? A. Corner of the Boulevard.

Q. How did you know you would meet him, if

Joseph McGuinness—For Defendant—Cross.

you did not know where your children or wife was? A. I knew he went to school and I knew where they lived and I took a chance of stopping him there.

Q. Did you know where his mother was? A. His mother was there with him. 10

Q. When you saw him? A. Yes.

Q. Did you speak to his mother then? A. Yes.

Q. What did you say to her? A. I asked her what was the trouble with her. I said: "Mamie—" I will tell you exactly—

Q. What did you say to her? A. I asked her why she did not come to some understanding and settle all of this dispute. She said: "You go and see Mr. Simpson." 20

Q. That was a year after she left you? A. Eh?

Q. That was a year after she left you? A. Yes. Oh, no, it was not.

Q. When was it? A. That was along, I don't suppose it was over three or four months.

Q. She had never seen anybody but Egan up to the time she came to see me? A. That is all.

Q. So the first thing you said to her, three months after she left you and you met her on the street with the boy you said: "Why cannot we fix this thing up?" A. Yes. 30

Q. She said: "Go and see Mr. Simpson"? A. Yes.

Q. You are positive about that? A. Yes.

Q. That is the first time you saw her after she left you? A. No; it ain't. I saw her in Montgomery. You are all twisted.

Q. You are doing the twisting. A. The first time I saw my wife was in Montgomery. Get that. 40

Q. In Montgomery? A. Yes.

Joseph McGuinness—For Defendant—Cross.

Q. She left you on April 28th? A. I believe so.

Q. And you saw her next in Montgomery? A. In Montgomery.

Q. I thought you didn't see her in Montgomery. You said you went up to see her and you didn't see her? A. I went to see her.

Q. You say the first time you saw your wife was in Montgomery? A. The first time I went to see her.

Q. A little while ago you swore you went to Montgomery and could not see her? A. I went to Montgomery to see her, but did not see her.

Q. Then, that is not the first time you saw her? A. No.

Q. What is the first time you saw her after she left you in April, 1928? A. The first time I saw her was in Judge Egan's office.

Q. So that you never spoke to her until you saw her in Judge Egan's office? A. No.

Q. When was it that you saw the boy going to school, met him on the street—when was that—before you saw her in Judge Egan's office? A. No.

Q. After you saw her in Judge Egan's office? A. After I saw her in Judge Egan's office I saw the boy.

Q. When did you first see your son, as you have described, going to school, on the street? A. The first time I saw my son at a distance on the street was on the Boulevard at the laying of the cornerstone.

Q. Leave that out. You have described that.

The Court: The question is: When did you first see your son?

A. The first I saw him was, as I answered, at the cornerstone laying.

Joseph McGuinness—For Defendant—Cross.

Q. You have described meeting your boy and talking to him on the street and you have described your wife's sister taking him another way to school so that you could not see him? A. Yes.

Q. When was that? A. Well, I cannot give the exact date. To get it straight, this school where the cornerstone was laid is where the child went to. It was after the cornerstone laying when the child went to school. When does the school open? 10

Q. Don't begin to ask me questions. How long after your wife took the child was it that you met the boy on the street and talked to him as you have described? A. Well, I suppose about a month or two months after the cornerstone laying—between a month and two months. 20

Q. And at that time you saw him alone, or was he alone? A. No; no; I never saw him alone.

Q. Who was with him when you saw him at the time? A. My wife one time and my sister-in-law another time.

Q. What did you say to your wife when your wife was with him? A. I just tried to explain to the wife—I asked her what was the matter with her, why she didn't come to some understanding and come home and live a natural life. I told her it is only a disgrace—"You are disgracing these two poor little children." 30

Q. Is that all you said to her? A. That is all I said to her.

Q. You did not say: "I am sorry I smashed the glass top table that day"? A. No, because I was not sorry.

Q. You were glad you did it? A. Yes, I was.

Q. You did not say: "I am sorry I struck you"? A. No. 40

Joseph McGuinness—For Defendant—Cross.

Q. You did not say: "If you will come home, it will be perfectly safe for you and I won't strike you again, and I won't break the glass table"? A. She knew that. I didn't have to say it.

Q. You did not say it? A. No.

10 Q. You did not, in any way, indicate to her that if she would come home you would treat her kindly; that you would not use violence to her, and that you would not call her names?

Mr. Doherty: I object upon the ground—

Mr. Simpson: I will reframe the question.

20 Q. Did you say anything to her to indicate that you were sorry and contrite for what you did and that you wanted her to come home and that it would be safe for her to come home?

Mr. Doherty: I object.

The Court: Objection overruled.

A. Yes; I told her to come home.

30 Q. Did you say to her that you were sorry for smashing the table with a hammer? A. No; because there was no occasion for it.

Q. That you were sorry that you had struck her—did you say that? A. She knew I was sorry.

Q. I do not care what she knew. Did you tell her that? A. No.

Q. Did you say to her: "If you will come home, I will never strike you again"? A. She knew it.

Q. Did you say it? A. No.

40 Q. All your discussions with her, between you and her, concerned the division of the property; isn't that so? A. Eh?

Joseph McGuinness—For Defendant—Cross.

Q. All of these talks that you have had with your wife have been about the division of the property? A. No, not all of them.

Q. When you were in Judge Egan's office, you never went over and sat down alongside of her and said: "This is all wrong. Let us forget about the property. You come home and I will take good care of you"? You did not say that, did you? A. I did not say that to her, no. 10

Q. Or anything of that kind? A. No; I did not.

Q. You did not manifest any affection towards her whatever? A. I certainly did.

Q. How did you do that? A. I went in and saluted her.

Q. How did you salute her? A. You know what I was up against. In fact, I didn't say anything. 20

Q. In fact, your attitude all through this has been about the division of the property, has it not?

A. No; never until I was forced to.

Q. Will you tell me of any letter you ever wrote to her in care of her sister saying that you wanted her to come home and if she came home she would be treated all right, no violence and no trouble whatever, that you would treat her as your wife? Did you ever write a letter of that kind to her? A. No. 30

Q. In care of her sister? A. No.

Q. You never did that? A. I never did.

Q. You say you went up to Montgomery to see her? A. Yes.

Q. You say she would not come down to see you; she did not want to see you? A. I said her sister said she did not want to have anything to do with me. 40

Joseph McGuinness—For Defendant—Cross.

Q. You did not go in and say to her: "Is this true, that you told your sister you did not want to have anything to do with me?" A. I went in the house and could not see her.

10 Q. What effort did you make to see her; what effort did you make after you went in the house?
A. That is all.

Q. Did you go in the room where she was when her sister said she did not want to see you and ask her if it was true that she sent such a message? A. No.

Q. You have never sent her a nickel since she walked out? A. No.

20 Q. You do not know who has been supporting and feeding your children ever since she left? A. Yes; I do.

Q. How do you know that? A. Well, I know she has money.

Q. You do not know where they have been. You told me you did not know where she was? A. I know where she is living now.

Q. You did not at that time know where she was when she left you? A. At that time I did not.

30 Q. You did not know? A. Because my wife had piles of money. The condition of the children, I knew they were not hungry.

Q. You knew she had piles of money? A. Yes.

Q. Where did she get the piles of money? A. From me.

Q. How much did she get from you—piles of money? A. Well, in spending-money, in all, she must have got \$3,000 from me.

40 Q. Over what period of time? A. Maybe about four years.

Joseph McGuinness—For Defendant—Cross.

Q. \$3,000 in four years? A. Yes.

Q. You think she saved enough out of that—
A. (Interrupting) I mean in spending-money.

Q. You think she saved out of that \$3,000 in four years, so that you need not worry about whether your children had anything to eat or not? 10

A. Not for a couple of weeks; no.

Q. You knew they were living with her sister?
A. Afterwards.

Q. How long afterwards? A. I don't know how long afterwards.

Q. A month after she left? A. We will say a month, yes.

Q. Two months? A. We will say a month or two.

Q. Finding out where these children were, 20
didn't you have any sense of pride to prevent people that you did not like feeding and clothing your own children? A. What do you mean by people I didn't like?

Q. You don't like her sister? A. Well, I don't hate her.

Q. You don't like her. You were quite content to have her sister feed your children? A. No; it was not her sister. Her sister would not spend anything on these children. I knew my wife would take care of the children. 30

Q. Out of the sum of \$3,000 that you had given her in small amounts over a period of four years?
A. Yes, sir.

Q. How much was this mortgage that you wanted her to sign? A. I believe it was \$2,500.

Q. But you had already given her \$3,000 in four years? A. Yes.

Q. Did you ask her for any of that money which 40
you assumed she had saved, to help you take

Joseph McGuinness—For Defendant—Cross.

care of this obligation? A. No; there was no occasion for it.

Q. You say here that you are satisfied to give her half of what you own and let her go her way; is that right?

10

Mr. Doherty: I object. He did not say "and let her go her way"?

A. No; that ain't right.

Mr. Simpson: I object to counsel's interrupting.

Mr. Doherty: I want to object to counsel's perversion of the evidence.

20

Q. Have you not said, and was not your talk at Egan's office every time, about the division of the property? A. Not until she would not come back to me.

Q. Didn't you say today that you would give her half of your property? A. I will, too.

Q. Didn't you say you would give her all if she would give you \$10,000 in cash? A. No; I did not; not in cash. Get it right.

30

Q. If she would give you a mortgage for \$10,000, you would convey the title to your property to her? A. At Egan's office.

Q. You have already allowed judgment for \$10,000 to go against you in favor of your brother? A. Of course, that \$10,000 in cash would not have anything to do with that judgment.

Q. He has a lien on your property for \$10,000? A. Yes.

40

Q. There are \$4,000 taxes; is that right? A. I believe so.

Joseph McGuinness—For Defendant—Cross.

Q. That is \$14,000? A. Yes, sir.

Q. Then there is a mortgage of \$7,500 held by the Trust Company; is that right? A. (No answer.)

Q. Any other liens? A. John W. Heck has a mortgage of \$5,000.

10

Q. Anything else? A. Not that I know.

Q. What do you say the value of this property would be—all your holdings in your own name? A. Well, I should say I would value them at \$33,000. Let me get this right—about \$38,000.

Q. Which is it—\$33,000 or \$38,000? A. \$38,000. That is my valuation. I am not saying I would get that for it.

Q. That would be \$11,500. You are willing to give her \$11,500 and take a mortgage from her for \$10,000; in other words you are willing to pay her \$1,500 for her life expectancy; is that right? A. I don't know how you figure it.

20

Q. You figure liens of \$26,500; you first valued it at \$33,000 and then you increased it to \$38,000, and the difference between \$38,000 and \$26,500 is \$11,500. You say: "Give me \$10,000 and I will give you \$11,500," which, as I figure it, would give her \$1,500 for her life expectancy and the two little children? A. How do you get \$1,500 out of \$11,500?

30

Q. You are willing to give her \$11,500 and you want \$10,000? A. I want to give her \$10,000.

Q. You want to give her \$10,000 out of \$11,500? A. Whatever the equity was I would have given her \$10,000 above that at the time we were at Egan's office. Of course, I cannot give it now.

Q. At Egan's office you would have given her \$10,000 out of \$11,500. You would have lost

40

Joseph McGuinness—For Defendant—Cross.

money on that. You would have had only \$1,500.
A. I cannot help it. I would have taken a chance.

Q. If you were in a generous mood at Egan's office, why was it that you never sent your little children anything? A. I have sent the children
10 stuff, but the class of people I was dealing with ignored the stuff I sent them.

Q. Who were the people you were dealing with that ignored the stuff? A. Mrs. McDonough. I sent my children different little things and she—

Q. Did you ever send them anything to eat? A. I sent them a sandwich.

Q. What kind of a sandwich? A. Don't be asking me such foolish questions.

Q. What kind of a sandwich? A. A Chinese
20 sandwich.

Q. The two little children? A. Yes.

Q. What kind of clothes did you send them? A. I never had anything to do with the clothes of the children. I ain't such a Mollie as that. My wife took care of both of her children.

Q. You could have sent her money to buy clothes. After she left you did you send her any money to buy clothes for the children? A. No.

Q. You never did? A. No.
30

Q. This interview at Egan's office, who arranged that interview? A. It was arranged between my wife, I suppose my wife, my son and Mrs. McDonough.

Q. When you went to Judge Egan's office who was there? A. I believe my wife. I do not think the Judge was in at the time, but I ain't sure.

Q. Was your son with you? A. I do not know whether he was.

Q. You found your wife in Judge Egan's office?
40 A. Yes.

Joseph McGuinness—For Defendant—Cross.

Q. At that time how long had you been separated? A. I guess maybe two or three weeks.

Q. That was before you went to Montgomery, was it? A. Yes.

Q. Now, at that time, when the separation was still new, only about three weeks old, did you say 10
to your wife: "Come in one of these rooms. I want to talk with you alone. I do not want the people around here, your sister and Egan and my son to hear us. Let us go into this room and talk this thing over"? A. You do not know my wife or you would not ask me that question.

Q. I don't know your wife. I don't know you. I asked you that question. Did you do that? A. No; I did not.

Q. So you sat out there with these people and your wife. How long did you talk? A. How long— 20

Q. (Interrupting) Were you represented by counsel, or did Judge Egan represent both you and your wife? A. Egan was like a referee to settle it.

Q. The talk was about the property, and you went out of that office with your wife? A. I went out with my wife. 30

Q. Where did you go with her? A. We came up home—up to her home.

Q. With her sister? A. Her sister was not there.

Q. How did you go up—in a car, taxicab or how did you go? A. Bus.

Q. Where did she leave you? A. We got out of the bus at Montgomery Street and we walked over Bergen Avenue. After we came to Gifford Avenue she said: "I have to go down and meet Sue. She is with the children on Monticello Avenue." 40

Joseph McGuinness—For Defendant—Cross.

Q. What did you say? A. "All right."

Q. And the next time you saw her was at Montgomery? Is that the next time you saw her? A. I said that before—I don't know whether—no; I did not see her in Montgomery.

10 Q. Well, the next time that you were anywhere near where she was at Montgomery? A. I did not see her.

Q. You did not see her? A. No.

Q. That was in July, 1928. Now, did you ever see her after July, 1928? A. Yes.

Q. How soon after? A. Well, I have seen her—I could not say—well, every little while when I went up to see the boy at school.

20 Q. Every week you saw? A. I would go up there every week.

Q. What did you say to her every week that you saw her; did you give her any money? A. No; I have not given her any money.

Q. You never gave her any money? A. Not a dollar.

Q. What did you say? A. Yes; I gave her \$200.

Q. When? A. I don't know, but Mr. De Sevo, your friend, said he would—

30 Q. That is when they had a warrant out for your commitment to the county jail that you paid that money to stop going up to the county jail? A. No; I did not. Malone had to receive some money so he could talk some settlement.

Q. You did not give her the money; you gave the money to De Sevo? A. I gave the money to De Sevo. I borrowed the money from my son.

Q. Your son gave you the money? A. Yes.

40 Q. What did you mean by telling me that you gave your wife \$200? Did you ever give your wife \$200? A. No. She got it.

Joseph McGuinness—For Defendant—Cross.

Q. Did you yourself, personally, give your wife \$200 at any time since she left you? A. No.

Q. Although you say you met her about every week during the fall of 1928. Is that right, you met her every week, you saw her every week? A. No; I didn't say no such thing.

10

Q. What is the fact? A. I didn't say no such thing.

Q. What is the fact? A. The fact is I would go up to the school to meet the boy and I might meet him once in—well, I might go up four or five times and not meet him and perhaps meet him next week; I might accidentally meet him next week, because then the sister would bring him up a roundabout way. They knew where I was standing and they would not pass me.

20

Q. How many times did you see your wife, in the fall of 1928? A. Well, I saw her mostly every Sunday.

Q. Did you talk to her? A. I never talked to her.

Q. Where did you see her every Sunday? A. After she came from church she would come past the house.

Q. You did not go out and accost her? A. I was in the house.

30

Q. You did not open the window and call to her? A. I could not do that.

Q. You did not do it? A. No.

Q. You saw her pass your house every Sunday, but you never spoke to her, is that right? A. No. One day I went over that way as she was coming up and I made arrangements to meet her. As she saw me she turned up on the far side of the street. I went after her. Of course I could not walk up the park hill as fast as she

40

Joseph McGuinness—For Defendant—Cross.

could. She started walking fast and I started walking faster. So I wanted to catch up. I started on a little trot. With that she went on a trot. Well, it was on a Sunday and I didn't want to make a show of her.

10 Q. Did you set that up in any of your affidavits? A. This was after the affidavits.

Q. What date was it? A. You got me on the dates.

Q. Was it early in this year? This is May, 1929. A. Well, it was, we will say, two months ago.

Q. Did you speak to her on that occasion? A. I could not.

20 Q. Did you speak to her? A. I could not because she ran away from me.

Q. Where did she go? A. She ran up Bergen Avenue.

Q. Towards her sister's house? A. Yes.

Q. Did you go to her sister's house after she ran away from you? A. No.

Q. You were very eager to get her to come home? A. I always have; yes.

30 Q. Her sister lives within two blocks of you; is that right? A. Yes.

Q. During all the time your wife has been away, you have never been to her sister's house, you have made no inquiry of her relatives, you have written no letters, and you have sent her no money or support? A. I telephoned at least forty or fifty times.

Q. To whom did you telephone? A. To Mrs. McGuinness.

40 Q. What did you say to her? A. I could not say anything. The only person I could get was Mrs. McDonough.

Joseph McGuinness—For Defendant—Cross.

Q. What did you say to Mrs. McDonough the forty times you called her up? A. At one time right from Mr. Doherty's office I asked her where my wife was, about six or seven o'clock in the evening.

Q. That was after this suit was started, about two months ago, was it not? A. It seems to me it is longer than that. 10

Q. When you called her from Mr. Doherty's office what did you say to her sister, Mrs. McDonough; what did you ask her? A. I asked her could I speak to Mrs. McGuinness.

Q. What did she say? A. She said: "No," that Mrs. McGuinness was out with the children, out visiting. I asked her when she would be in. She said she didn't know, and then I called her up in the morning, and before that— 20

Q. (Interrupting) No; no. Let us have one thing at a time. A. I want to give the list—

Q. At that time did you say to Mrs. McDonough: "Is she out with a chauffeur?" A. Yes.

Q. Why did you say that? A. She says: "She is out visiting." I says: "Has she got a chauffeur?"

Q. Did you say: "Is she out with a chauffeur?" A. No. I said: "Has she got a chauffeur?" 30

Q. You said: "Has she got a chauffeur?" A. Yes.

Q. What was the next thing? A. That is all.

Q. Were you under the influence of liquor at that time? A. No.

Q. You know your grimaces do not get on the record. Just answer the question. Were you under the influence of liquor? A. No. 40

Joseph McGuinness—For Defendant—Cross.

Q. Mrs. McDonough says she hung up because your voice sounded as though you had been drinking? A. Ask your own lawyer.

Q. Who is my own lawyer? A. Your pal or your partner.

10 Q. Does he serve drinks? A. No. He was there. It was at his request, to show him that I had been calling up. I explained to him how I had been trying to get in communication with my wife, and to prove to him I called up while we were there in Judge Doherty's office—he was sitting there—at his request.

Q. That was at his request? A. At his request.

20 Q. You did not want to do it? A. I did it to show him I had been trying to communicate with my wife.

Q. You called your wife's house to show her lawyer that you wanted to talk to her? A. To show what happened when I called her up.

Q. Her sister said: "She is out visiting," and you said: "Has she got a chauffeur?" A. Yes.

Q. And her sister hung up? A. Yes.

Q. Did you call up again that day? A. That night.

30 Q. Any time that day? A. That was in the evening that I called up.

Q. Did you call up again? A. No.

Q. The next day? A. Yes.

Q. What time the next day? A. Well, I called up at least four times the next day.

Q. Now, in your affidavit, as I remember it, you admit smashing the glass with a hammer when she was leaving you, didn't you? A. Yes, sir.

40 Q. You thought that that would induce her to sign, did you? A. No. When I saw my home that

Joseph McGuinness—For Defendant—Cross.

had cost me a lifetime to build—when I saw it going to pieces,—I lost my head and I was willing to wreck the whole place.

Q. To assuage your grief, you were going to wreck the whole place? A. Yes.

Q. That is the way you usually assuage your grief? A. Yes. 10

Q. You say on page 13 of your affidavit of October 5th: “So strong were my emotions and so controlling my grief that while she was engaged in packing up the things I did strike the glass cover of the table with a hammer and expostulated that in view of the melancholy state of affairs everything might as well be smashed.” What did you mean by telling her that everything might as well be smashed? A. My home was going to pieces. 20

Q. What did you say to her when you smashed the glass table? A. I says to her: “Mamie, you are doing a foolish thing. We had such a time collecting this home and went to such expense on it and here you are, wrecking it. Can’t you reconsider?” She says: “No.” I says: “Well, to hell with it, let it all go.”

Q. You said what? A. “To hell with the home. Let it all go.” That was my feeling at the time. 30

Q. She went out? A. She did not.

Q. What did she do? A. She stayed there.

Q. How long? A. Maybe fifteen or twenty minutes.

Q. Then what did she do? A. When she got all she could take she went home.

Q. She went away from you? A. She went home; yes.

Q. The last thing she heard you say was: “To hell with it all,” and you were going to smash it 40

Joseph McGuinness—For Defendant—Cross.

all. You never after that went to her sister's house either to see her or inquire for her, did you?

A. Never.

Q. You have an occupation. You are a master plumber? A. No.

10 Q. What is your occupation? A. Years ago I was in the plumbing business.

Q. You were in business for yourself? A. Yes.

Q. How long since you have been in business for yourself? A. I guess about eleven years.

Q. You say these two grownup boys board with you or live with you? A. No.

Q. Didn't I understand your testimony to be that they lived with you? A. Why, they live in the same house with me.

20 Q. Do they pay rent to you? A. No.

Q. You own the house? A. Yes.

Q. They eat at your table? A. One meal.

Q. Do they pay for anything, for anything that they get, either rent or meals? A. No, sir.

Q. Has not the whole trouble been between you and your wife, this grownup family of yours? A. The only trouble between us is that she wanted to put them out. She wanted to put my family out.

30 Q. What did you do about it? A. I would not allow it. I would not do it. I would not put them out.

Q. Although they were grown up? A. No, you cannot say grown up.

Q. How old are they? A. Sixteen or seventeen years old.

Q. How old is the young lady? A. I could not tell you. She is over twenty-one I guess.

40 Q. Your wife wanted her to get out of her household and you said you would not allow it; is that

Joseph McGuinness—For Defendant—Cross.

right? A. No; my wife wanted to put them out and make them get out and get another apartment. I done the next best thing. It cost me \$3,000 or \$4,000 to fix up an additional floor so that my children could have a place to live.

Q. How could you spend \$3,000 or 4,000 when you were strapped? A. These things made me strapped. All these things strapped me. It broke me. I would not have been strapped if it had not been for these things. When you pay for a lot of clothes and— 10

Q. (Interrupting) What clothes? A. Mrs. McDonough got everything.

Q. Did she ever get anything that you didn't give her? A. I never gave her anything, but I know she was hogging everything she possibly could. She was getting it from my wife. 20

Q. Did your wife tell you she was giving it to her? A. No, but I saw my stuff going. I was spending money like a drunken sailor.

Q. What stuff did you see going? A. My money.

Q. Let us get down to the interview that the Advisory Master suggested. You met Mrs. McDonough at De Sevo's office? A. Yes.

Q. Judge Doherty was there? A. Yes. 30

Q. And your wife had laryngitis? A. I believe so.

Q. What was said and done at this interview? A. Well, Mr. Doherty and Mrs. McDonough was the whole thing as the wife's representative.

Q. You don't mean to say you kept quiet? A. Until the time to speak.

Q. It is always time for you to speak? A. No; it ain't. 40

Joseph McGuinness—For Defendant—Cross.

Q. What did you do at this interview? A. After they came to some kind of arrangement to settle this thing up about Mrs. McDonough wanting the three houses free and clear—

Q. What is the value of these houses if they were free and clear? A. The value of them

Q. If they were free and clear? A. You cannot tell that. I suppose—

Q. (Interrupting) What do they rent for? A. They rent for \$175, the three of them, when they are rented,—\$175.

Q. You do not know what your own property rents for? A. Yes; I am telling you what it rents for.

20 Q. Three houses on Westside Avenue rent for—
A. (Interrupting) When they are rented, \$175.

Q. For the three of them? A. For the three of them.

Q. What do you say is the value of them? A. I will tell you—I figure the value—I will tell you what it cost me, if you want to know that?

Q. Yes. A. They cost me about \$12,000. That is what they cost me.

Q. That is, each? A. No; the three of them.

30 Q. They rent for \$175 a month. Is there any mortgage on them? A. Yes.

Q. How much? A. I suppose now it is nearly \$8,000.

40 Q. If you would like to give your wife \$10,000, as you say, if she would release any claim she had on you, and it only cost you \$12,000 for the three of these houses, why would you not turn these three houses over to her for a mortgage of \$2,000 on the three houses? A. Where can I get the money to clear off the mortgages and taxes on the houses?

Joseph McGuinness—For Defendant—Cross.

Q. What taxes are there on the houses? A. I don't know. There must be over two years or three years taxes all told, and water rent.

Q. The proposition of Mrs. McDonough was, in lieu of support, to deed your wife these three houses, which cost you \$12,000, and three stores, are there? A. Three stores. 10

Q. Three stores that cost you \$12,000; and you said: "I cannot do that. I cannot give you these stores free and clear; there is a mortgage of \$8,000; I cannot clear that mortgage." Is that what you said? A. Yes.

Q. And in that way the thing broke up, the conference broke up. Now, you owe us, under the order of the Vice Chancellor, about \$960, don't you? A. What? 20

Q. You owe us under the order of the Vice Chancellor, \$40 a week, about \$960? A. I don't know.

Q. How many weeks is it you have not paid? A. Haven't you got it there?

Q. \$40 a week. A. I have not seen it.

Q. You never paid any of it? A. I have not.

Q. You paid \$200 when they threatened to put you in jail? A. You say I did not pay it. 30

Q. Did you or didn't you? A. It was through your office.

Q. What do you mean—the \$200? A. That is what I consider.

Q. Out of \$1,160 you paid \$200, didn't you? A. I believe so.

Q. Now, then, while your heart was aching with affection for your wife, when you met Mrs. McDonough and Judge Doherty and De Sevo, under the direction of the Advisory Master, you knew 40

Joseph McGuinness—For Defendant—Cross.

your wife had received no support from you? A. Yes.

Q. And Mrs. McDonough made what was, in your mind, an unreasonable proposition? A. She made a proposition which could not be fulfilled.

10 Q. Did you at that time say: "While we cannot agree, here is \$10 or \$100 to carry them along until we see where we are at"? A. No; I told them to see if we could not come to some arrangement and try to sell the property. We cannot imagine what we are going to get out of the property.

Q. What did the property cost where you are living? A. Do you mean what it cost me at the time I put it up? About \$6,000.

20 Q. What would it cost now? A. Well, that is what I say. Now I judge the lot is worth more than that. I suppose if I built it, the house would cost me, with lot and all, if I could buy the lot it would cost about \$10,000 and it would cost me \$10,000 to build it.

Q. What will you sell it for? A. Any price I get.

30 Q. You were holding it at \$35,000. Didn't Teddy Brandle want to buy it from you and didn't you want \$37 500? A. No; I offered it to Teddy Brandle for \$25,000.

Q. You are clear about that? A. I am clear about that. My son made a suggestion of \$35,000. I said to Teddy: "If you want to take it I will sell it for \$25,000."

Q. Any mortgage on it? A. Yes.

40 Q. In your affidavit you testified: "My son informed Brandle that the property could be purchased for \$35,000 and at a subsequent interview Malone told him that he had spoken to Brandle

Joseph McGuinness—For Defendant—Cross.

and that he would not think of buying it at so exorbitant a figure. My son thereupon looked about for another purchaser and found one who was willing to pay \$25,000." Is that right? A. That is right.

Q. Well, what is the mortgage on it? A. The mortgage is \$5,000 with two years' interest. 10

Q: You realize you have a moral obligation to support your children? Leaving your wife out of it entirely, you have a moral obligation to support your children? A. If I had them, I would be glad to support them.

Q. Whether you have them or not, you have a moral obligation? A. Yes; and I will support them. 20

Q: You are very fond of them? A. Yes, I am.

(At this point recess is taken for five minutes. After recess witness resumes the stand and cross examination continues.)

Q. When the Advisory Master left the room, did you address any remarks to your wife or her sister down here? A. I don't understand you.

Q. After the Advisory Master left the room, when you left your chair, did you address any remarks to the back of the room where your wife and your sister are? A. Well, as I say— 30

Q. Did you say: "You God damned gold digger"? A. No.

Q. You did not say anything like that? A. I did not.

Q. You did not say anything? A. I might have said something about gold diggers; yes. 40

Q. At this conference when you said you would not agree to Mrs. McDonough's proposition, didn't

Joseph McGuinness—For Defendant—Cross.

you say: "I will pay no more than \$10 or \$12 a week? A. I could not agree to her proposition. It was obvious.

Q. Did you mention \$10 or \$12 a week? A. I did not mention any figure.

10 Q. Was it mentioned in your hearing? A. Not that I remember; no.

Q. You do not remember any such remark? A. Nothing said about it.

Q. Do you own any garages? A. No.

Q. Did you ever own any? A. No.

Q. Did you transfer any garages to your daughter? A. I never owned any to transfer.

20 Q. Does she own any? A. Yes; in the back of her property on Westside Avenue.

Q. Was that ever your property on Westside Avenue? A. Never.

Q. You never owned that property? A. No.

Q. You never gave her the money to buy it? A. Yes; I gave her part of the money to buy that piece of property.

Q. How much did you give her? A. In the neighborhood of \$5,000 or \$6,000.

Q. That is in her name now? A. Yes.

30 Q. Has she ever repaid you that money? A. No; I gave it to her to buy that property as a present because she was entitled to it.

Q. When was that? A. I should judge about four years ago.

Q. When they were stripping you of everything you had? A. No; they never stripped me. My children never stripped me of anything.

40 Q. You have sworn that your wife's sister was stripping you, have you not? A. No; I have said they were working me out; yes, sir.

Joseph McGuinness—For Defendant—Cross.

Q. Did you get any rents from these garages at all? A. No.

Q. How long a time after you were married did you get along all right with your wife? A. Until that devil came in the house.

Q. Who is the devil? A. Mrs. McDonough. 10

Q. When did the devil come in the house? A. About near two years ago—about a year and a half after we were married. Before that my wife would not let her in.

Q. Ever since that time the devil has been in the house? A. Yes.

Q. Did you ever get any tickets for football games from the— A. (Interrupting) Tickets?

Q. Tickets for football games? A. Yes. 20

Q. From the devil? A. Yes.

Q. Tickets for football games from the devil? A. No; never in my life.

Q. Now, you have said that you love your children and you realize that you have a moral obligation to support them? A. I certainly do.

Q. How do you reconcile your failure to support your children with your statement that you are very fond of them and that you realize you have a moral obligation to support them? A. I know the children ain't in want. 30

Q. That is your conclusion? A. Yes.

Q. You have not supported them although you admit you are under a moral obligation to do so, and you have not sufficient self-respect to do it. You have not done it, and the reason you have not done it is because you say you know they are not in want? A. Yes.

Q. You know they are with your wife's sister and therefore they are not in want? A. Yes. 40

Joseph McGuinness—For Defendant—Cross.

By Mr. Doherty:

Q. You have told us that both at the conference in Judge Egan's office and at the conference in Senator Simpson's office, two propositions were
 10 made by you, one to have your wife come back and the other proposition was for her to agree on a financial settlement?

Mr. Simpson: I object. This has all been gone over at the last hearing.

Mr. Doherty: It is only preliminary.

A. Yes.

Q. Which proposition on each occasion was
 20 made first,—that she come back or that she accept a money settlement? A. That she come back.

Q. And the discussion as to money followed the refusal to come back? A. Yes.

Q. At Senator Simpson's office do you remember what Mrs. McDonough said as to her inquiring of her sister would she come back; do you remember what she said about that? A. Well, as
 30 near as I can understand she said my wife would not under any consideration live with me.

Q. And then the money subject came up? A. Yes; then the proposition of the money came up.

Q. Was there at that time any computation made by those present as to what your net income was from the property? A. Yes.

Q. Do you remember what the final figures were as to what your net income was? A. Well, I hardly remember, but the final figures on the net income was then, I think, about \$130 a month.

40 Q. Was it after a computation of your circumstances, agreed by everyone all around that your

Joseph McGuinness, Jr.—For Defendant—Cross.

net income was just \$750 per year? A. Yes; per year.

Q. Did you after that say that you could see your way clear to give your wife only \$10 per week from that income; did you say that? A. I might have; yes. 10

Q. And did Mrs. McDonough thereupon suggest to you that you put your children out of the house and collect rent from the place that they were occupying and that you then go to work and that you consent to have a receiver appointed for all your property?

Mr. Simpson: Judge Doherty is testifying. I object to this method of leading all the time. I do not object if your Honor wants to have him go over this again, but I do object to the Judge testifying. 20

The Court: I think the objection is proper, that you are putting the answers in the witness' mouth.

Q. Do you remember the amount that Mrs. McDonough said that she would be satisfied to have her sister take in settlement of everything? A. Well, Mrs. McDonough— 30

Q. Do you remember the amount? A. Yes.

Q. How much was it? A. \$35 a week.

Q. You said that at one time you rang up from my office at the suggestion of Mr. De Sevo? A. Yes.

Q. Will you tell us what Mr. De Sevo's suggestion was to you at that time, in getting into communication with your wife? A. Mr. De Sevo first told me that he heard that Mrs. McDonough had 40

Joseph McGuinness, Jr.—For Defendant—Cross.

made arrangements to meet me. I said: "No such thing, because I have been calling up that woman; I have been trying to get in communication with my wife every other day." I says to Mr. De Sevo: "To prove that to you, I will call them up on the telephone now and show you how they will treat me." I said: "You sit right there." I called her up, and the conversation in which she said she was out came up. I could not get my wife at all on the 'phone, in front of Mr. De Sevo. I wanted to prove to him how I was trying to get into communication with my wife and I could not, through Mrs. McDonough.

20 Q. Will you tell us what your experience with Mrs. McDonough was on the previous occasions when you rang up? A. When I would ring up and she would hear my voice, down would go the 'phone. I have tried in every way to get in communication with my wife and she always headed me off. In fact, it is her that is suing me for divorce, it ain't my wife.

Q. Do you know whether the telephone of Mrs. McDonough is listed or not listed? A. It is not listed.

30 Q. And from whom did you obtain the number? A. I think it was from my son.

Q. You got that number for the purpose of establishing communication with whom? A. With my wife.

Q. Am I correct in these questions as to the order of the different transactions? First you saw your wife at Egan's office? A. Yes.

Q. Then you went up to Montgomery? A. Yes.

40 Q. And tried to see her? A. Yes.

Q. And the next you saw her was at the cornerstone laying? A. Yes.

Joseph McGuinness, Jr.—For Defendant—Cross.

Q. And when you saw her bringing the child to school? A. Yes.

Q. You have spoken of giving your wife \$3,000 spending money? A. Yes.

Q. From that money was she supposed to disburse any of it for the running of the house? A. 10
No. That was all her own.

Q. That was clear personal funds of her own? A. Yes.

Q. Your wife had a couple of building and loan accounts also? A. Yes.

Mr. Simpson: I object. That has all been gone over. He has proved that. We will admit she had building and loan accounts. 20

The Court: I think that has been brought out about the building and loan accounts. There is no dispute about that, as I understand it.

Q. At the time when your wife called with the truck; do you know in what sort of a container she took away the things? A. Well, the truck—what they call a truck was one of the largest vans in Jersey City. Three men came with it. I was just at the table eating lunch with my daughter and one of my sons; he was not employed at that time at all; he was not working; we were eating lunch, there I guess about one o'clock— 30

Mr. Simpson: I object to this.

Q. Did she have trunks or boxes or cases of any kind? A. She had. Mrs. McDonough about three months before— 40

Marie McGuinness—For Defendant—Direct.

Mr. Simpson: Objected to.

Q. Did she have a trunk? A. Yes; there were trunks.

Q. Was there a cedar chest? A. Yes.

10 Q. How long had the cedar chest been in the house? A. About three months.

Q. Where did it come from? A. From Mrs. McDonough.

Q. She sent in? A. She sent it.

Q. When? A. About three months before Mrs. McGuinness got out.

20 Q. And Mrs. McDonough, you say, sent it to the house, after you had some clash with her? A. After I had ordered her out she sent that and a big wardrobe trunk.

Q. And they were both used in carting away—
A. (Interrupting) Carting away the stuff.

By Mr. Simpson:

30 Q. When Mrs. McDonough told you at the interview with Mr. De Sevo that your wife would not return, she also told you that it was because your wife was afraid of you, didn't she? A. No.

MARIE McGUINNESS, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Doherty:

40 Q. You are the daughter of Joseph McGuinness, the defendant? A. I am.

Marie McGuinness—For Defendant—Direct.

Q. At the time of your father's marriage to your stepmother, where were you living? A. I was living with them.

Q. And how long did you continue to live with them? A. I think about two years afterwards.

Q. And then when you moved, what was the arrangement? A. My father fixed a place upstairs for me and my three brothers at that time. 10

Q. Have you any knowledge of why that change was made in your living arrangements? A. The only knowledge I have is that she was always finding fault with me and wanted me out of her way.

Q. Did she have personal bickering with you? A. I did not have any fight with her, because I thought it was best not to. 20

Q. Did she ever tell you that your presence was not desired in the family? A. No, but she acted very funny towards me.

Q. Tell us what her conduct was towards you. A. Well, she had the children so that when I passed by she made them stick their tongues out at me.

Mr. Simpson: I object to this statement that she made them stick their tongues out at the witness. The question for your Honor is: Does this man support his wife and children, and if he does not, is his refusal justified or unjustified? Going back to the time of the marriage and showing that his second wife did not get along with the children of the first marriage, does not help your Honor to determine that question. 30

The Court: I think on your direct case you went into the question of the separation of 40

Marie McGuinness—For Defendant—Direct.

10 the two families and the fact that Mr. McGuinness prepared a part of the house for his daughter as one of the reasons for the difficulties between the family and that he spent a considerable amount of money on them. I think it is well, under the circumstances, to take it.

Q. When you changed your residence to the upper part of the house, what other members of the family went along with you? A. Three.

Q. Who were they? A. Tom, James and Leo.

Q. Thereafter there were two separate households maintained there? A. Yes.

20 Q. During the time that you were living with your father and stepmother, were you aware of any quarrelling between them? A. Yes.

Q. What was the nature of the quarrels that they had? A. Well, it was mostly, the whole trouble was when my father signed over, gave me money to buy property.

Q. And from that time quarrelling started between them? A. Yes.

30 Q. Can you tell us how violent these quarrels became? First, fix the time? A. That was in 1928.

40 Q. How violent were these quarrels? A. I remember one time, I was upstairs in my place—of course, she was always very, very loud; I could hear her; she would get excited; and I came right down and she was picking up the 'phone to call the police and I tried to finally persuade her to put it down; then she picked up a glass bottle to throw at him. I finally persuaded her not to do that.

Marie McGuinness—For Defendant—Direct.

Q. Can you recall any other scenes of violence between them? A. Well, of course, they were off and on. I was not always in the house.

Q. Do you remember the day that Mr. McGuinness left the house? A. Yes.

10

By Mr. Simpson:

Q. While we are on the subject, what did you do to persuade her not to throw the bottle? A. I put my hand up.

Q. You stopped the throwing of the bottle? A. Yes.

By Mr. Doherty:

20

Q. You were telling us about the day that she left. What time did you see her? A. Well, I came home for lunch about one o'clock. I had been out to business. I came home for lunch. It was about one o'clock or so when I got home and to go up to my apartment I had to go through the house, through the diningroom, and she was standing there. I just glimpsed her face and went up to my place.

30

Q. What was the condition of her face? A. The only condition I could see in her face, she looked as if she was in a temper and sort of wild, as far as I noticed.

Q. Was her face cut? A. No; not that I could see.

Q. Did she have a gash on her eyebrow? A. No.

Q. Was the corner of her mouth ripped? A. No.

Q. Was her nose bleeding or did it look as if it had been bleeding? A. No.

40

Marie McGuinness—For Defendant—Direct.

Q. Was her face bruised at all? A. Not that I could see.

Q. When next did you see Mrs. McGuinness? A. That was the day she left the house.

10 Q. Did you ever see her after that? A. Well, yes. Afterwards I was sitting in the diningroom and all of a sudden I heard somebody come in and I went and looked. She was going over the stuff with a valise. I went upstairs in my own place and stayed up there and after I had staped there about twenty minutes I came down and looked over on the buffet and I saw where she had been in there and taken out linens and different things.

20 Q. How long after her going was that? A. Well, I could not just say.

Q. Did you, in the course of any quarrel that Mrs. McGuinness had with your father, hear her make any specific reference to yourself? A. Yes, sir.

Q. What did she say? A. Well, I had been away to Denville with a nervous breakdown. Soon after I came back I heard her say to him: "I sent her away to Denville and I will be the cause of sending her there again."

30 Q. When did your nervousness develop—while you were living in the household or after you had moved away? A. When I was in the household.

Q. Do you know about the arrival of a truck there to remove things from the house? A. No; I had left before it came, but she was taking things before she left.

Q. In the truck? A. I did not see the truck.

40 Q. The occasion when she came with the valise, was that before or after the arrival of the truck? A. Before.

Marie McGuinness—For Defendant—Cross.

Cross Examination by Mr. Simpson :

Q. When you were away at Denville, did she take care of your apartment? A. Not that I know of.

Q. Did she ever nurse you while you were ill at all? A. Before that she did. I was on friendly terms with her before all of this trouble. 10

Q. When did you get on unfriendly terms with her? A. When my father signed over the money to buy the property. After that she—

Q. She was all right before that; she was all right before he gave you the money to buy the property. How much did he give you? A. He did not give it to me. 20

Q. How did you get the property? A. He bought the property for me.

Q. That is, he bought the property; the money did not go through your hands? A. In my name.

Q. After that you and she did not get along together? A. No.

Q. When you say the day she left the house, was that the day the glass was broken? A. Yes.

Q. Were you there the day the glass was smashed? A. No. 30

Q. What time of the day was it that you saw her, the day she left? A. About one o'clock.

Q. Where was she standing when you went in the apartment? A. In the diningroom.

Q. How near were you to her? A. Nearer than I am to you.

Q. Did you go and look at her face to see whether she was bruised? A. No, but she was looking at me. 40

Q. Did you make an examination of her? A. No.

Mary Quinn—For Defendant—Direct.

Q. You had no reason to look for any marks on her face? A. No, but I could see her.

Q. You had no reason to look for them, had you? A. No, but I heard her talking and I opened the door—talking very loud.

10 Q. Whom was she talking to? A. To my father.

Q. Do you know what she was saying? A. No.

Q. Do you know what he was saying? A. No; he was not saying anything.

Q. You did not stay and take any part in the quarrel, did you? A. No.

Q. You went right on upstairs? A. Yes.

Q. As you passed, you noticed no marks of any kind on her? A. No.

20 Q. But you made no special observation for marks, did you? A. No.

Q. As I understand all the trouble dated from the time when this property was taken in your name; is that right? A. Yes.

MARY QUINN, sworn as a witness on the part of the defendant, testifies as follows:

30 Direct Examination by Mr. Doherty:

Q. You are a sister of Joseph McGuinness, the defendant? A. Yes.

Q. You are the lady who is mentioned as having been visited by Mrs. McGuinness on the day that she left her home? A. Yes.

40 Q. On that occasion what was the state of your health? A. I was sick in bed at the time, the doctor was attending me; and Mrs. McGuinness

Mary Quinn—For Defendant—Cross.

came in; she was crying. When she sat down she started to cry and she said to me: "I did not know you were sick or I would not come in." She said: "I wanted to go to my sister's, but she was not at home." Then the doctor came in and she stepped out of the room. That is all I observed. 10

Q. You did not observe that her eye was cut?

Mr. Simpson: I object to the question as leading.

Q. What did you observe in respect to any unusual condition of Mrs. McGuinness' face at the time when she called on you or at any time? A. I did not observe it; I did not notice it. 20

Q. Did you make any observation as to her nose? A. I did not.

Q. Or her eyebrow? A. No; I did not.

Q. Or as to the corner of her mouth being ripped apart? A. No; and she did not say so in her testimony.

Q. Susie said so. A. She did not say she came into my house cut and bruised.

Q. She did not have any trouble in your house? So that at five o'clock, the time of her visit there, she did not appear in the mangled condition that she has testified? A. No; no. 30

Q. Your daughter was there? A. Yes.

Q. Is Miss Quinn here now? A. Yes, she is.

Cross Examination by Mr. Simpson:

Q. You were very ill in bed? A. Yes.

Q. With the doctor? A. Yes.

Q. This lady came in? A. Yes. 40

Anna Quinn—For Defendant—Direct.

Q. You did not talk to her very long? A. No; I did not.

Q. You found out why she was crying? A. No, because as soon as she came in the doctor stepped into the room and she stepped out and she did not come back for a long time.

10 Q. All you noticed she was crying? A. That is all.

By Mr. Doherty:

Q. How long did she stay in your house? A. I do not recall.

Q. Have you told us all the conversation that you had with her? A. I did not have any conversation with her because I was not able to; I was bad with neuritis and I was not able to talk with her.

20

ANNA QUINN, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Doherty:

30 Q. You are the daughter of Mrs. Mary Quinn, who just left the stand? A. Yes, sir.

Q. You are a niece of Mr. McGuinness, the defendant? A. I am.

Q. You are the daughter who was home with your mother on the day when Mrs. McGuinness called? A. Yes.

Q. Will you describe what you observed concerning Mrs. McGuinness' face at that time? A. Well, Mrs. McGuinness came in, but my mother was ill and the doctor came in and Mrs. McGuin-

40

Anna Quinn—For Defendant—Cross.

ness stepped out of the room where my mother was and did not bother my mother with any of her trouble. I said: "Mamie, what is the matter that you are crying?"

Q. What did you see or observe? A. I noticed that Mrs. McGuinness was very hysterical. 10

Q. What did you observe as to the condition of her face? A. I do not recall.

Cross Examination by Mr. Simpson:

Q. This lady was hysterical, was she? A. Yes; she was.

Q. Did you have any talk with her? A. Yes; I did. She said she had had trouble— 20

Mr. Doherty: I object upon the ground that it is not cross examination. If counsel wants to go into it, he must make the lady his own witness.

Q. What did she say as to why she was hysterical? A. She said she had had trouble with Mr. McGuinness, my uncle, and I said I was most sorry, but I was upset with my mother's condition; I didn't know just what was the matter, but I said I was sorry. Really I could not repeat what Mrs. McGuinness said, except that she said that she had had trouble with my uncle. 30

Q. She did not tell you what the trouble was? A. No; just martial differences.

Q. She seemed to be hysterical; she was crying? A. She was crying.

Q. She left you? A. Yes; she stayed for a little while and she telephoned and Mrs. McDonough was home and she left our house. 40

Anna Quinn—For Defendant—Cross.

Q. You did not examine her to see any marks?

A. I did not.

Q. You were concerned about your own mother?

A. I was very much concerned about my mother.

10 By Mr. Doherty:

Q. Did she say that her husband had struck her a violent blow on her face? A. I don't remember.

Q. Did she say anything about an encounter in which a knife was wielded? A. Why, no.

By the Court:

20 Q. When Mrs. McGuinness came out of your mother's room and saw you, was the door closed between the two rooms? A. She stepped a ways down the hall into the kitchen. She did not speak in my mother's hearing whatsoever.

30 Q. Did she sit down when she came into the kitchen with you? A. She might have, but it was on a stool and we were very busy. We had expected the doctor. Both of us were getting ready for him, and I do not remember the exact details of the meeting whatsoever, except that she was nervous and hysterical.

Q. Do you recall seeing on her face any bruise or cuts or anything of that kind? A. Not that I can remember.

Q. How long were you with her in the kitchen—five or ten minutes or more? A. I could not say the exact time.

40 Q. Did she telephone from the kitchen? A. No; she telephoned from another room in the front of the house.

Joseph McGuinness, Jr.—For Defendant—Direct.

Q. How long was she in your home altogether?
A. She might have been there about an hour.

Q. During that time you saw her practically all of the time except when you were in your mother's room? A. Yes, sir; I saw her, and then the doctor came.

10

By Mr. Doherty:

Q. You had seen Mrs. McGuinness nervous before? A. No; I never had.

Q. Don't you know that she is a woman of neurotic constitution and is always nervous? A. No; I do not; I do not know anything about her condition.

20

Q. You were a little nervous that day? A. About my mother, yes, but I was not hysterical.

Mr. Doherty: Will counsel stipulate that if Mrs. Harris were here she would testify that Mrs. McGuinness, at the time she used the telephone after the supposed encounter, did not display any marks on her face?

Mr. Simpson: No; I will not stipulate that, because it is not the fact.

30

JOSEPH MCGUINNESS, Jr., sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Doherty:

Q. You are a son of Joseph McGuinness the defendant? A. I am.

40

Joseph McGuinness, Jr.—For Defendant—Direct.

Q. And you are a solicitor of this court? A. I am.

Q. Do you recall the time of the separation of your father and his wife? A. I do.

10 Q. Did your father request you to do anything in respect to that? A. Why, the first thing he did was to try and get me on the job to effect a reconciliation.

Q. In what terms was his proposition made to you?

Mr. Simpson: I object as calling for a self-serving declaration of the father. What he did is admissible. Anything his father told him is utterly self-serving.

20

Mr. Doherty: It is offered in corroboration of the defendant's testimony. I want to show the extent of the authority reposed in the witness by his father.

Q. What did your father instruct you to do?

30

Mr. Simpson: I object to that upon the ground, as I have already stated, that whatever his father stated to him is a self-serving declaration. His father has already testified, which he could do, "I told my son to do so and so." It is not proper to have the son testify: "My father said so and so."

40

The Court: I think, under the circumstances, it is wise to have on the record all of the circumstances relating to what the witness did right after the separation between the complainant and the defendant

Joseph McGuinness, Jr.—For Defendant—Direct.

and how he happened to do it. I think we might as well have the whole story.

Q. Please answer the question: What did your father instruct you to do? A. Why, some time in the latter part of March or first part of April, 1928, I had occasion to go over to his house, at the request of a Mr. Heck, who contemplated advancing some money to my father. This morning I called up his house and the 'phone was answered by Mrs. McGuinness. I told her that I was calling up and I wanted to get in touch with my father, and she immediately rang off. 10

By Mr. Simpson: 20

Q. This is before she left? A. Yes. This was some time in the latter part of March or first part of April. This was before she left.

By Mr. Doherty:

Q. Where did you call her? A. She was with her husband at 664 Westside Avenue. This was before the actual leaving took place. 30

Q. Go on. A. As I said before I went over that morning. I was a little bit sore to think I had been cut off on the 'phone, and I wanted to know what was the idea of being so discourteous, and she replied that she felt that I had it in for her. I never had any dealings with—

The Court: I do not think we can go into this. 40

Joseph McGuinness, Jr.—For Defendant—Direct.

Q. At that interview that you had with Mrs. McGuinness, was any reference made to arrears of taxes? A. Absolutely.

10 Q. Tell us what was said? A. The first conversation took place, I said—this was all said in the presence of Mr. and Mrs. McGuinness in the diningroom of their house on Westside Avenue. I said: "Pop, Mr. Heck asked me to tell you and your wife to come down to the office, that he has a mortgage for \$2,500 ready to be signed by you and your wife." Immediately she flew into a rage and said: "I won't sign any papers."

20 Then my father began pleading with her in my presence. He said: "Now, Mamie, you know well enough we have got to pay the taxes." She said: "I don't care what taxes you have to pay. I won't sign any papers."

He said: "Mamie, if you do not sign this paper, it means this property will be sold over our heads." She said: "I do not care what happens. I do not care if you are ruined; I will not sign any papers."

30 I said: "As long as I cannot do anything, I might as well leave." I did not go into any other room in the house. He said: "I will get in touch with Mr. Heck myself."

Q. This was about how long before Mrs. McGuinness left the house? How long was that before Mrs. McGuinness left the house? A. I imagine it was—I am not exact about the month—this was some time in the latter part of March and I believe she left April 28th.

40 Q. What did your father direct you to do after Mrs. McGuinness left; what did he tell you to do? A. The first that I knew that Mrs. McGuinness

Joseph McGuinness, Jr.—For Defendant—Direct.

left was from Mrs. McDonough. Mrs. McDonough, I believe, called me up, and I think, in pursuance of that telephone call, I called at her house on Gifford Avenue, and at that conference Mrs. McDonough was there, Mrs. McGuinness was there; the two children were not there—I may be wrong about that—I do not know whether the children were there or not. I was sorry that this situation took place— 10

Q. (Interrupting) Never mind that. Tell us what was said and done in Mrs. McGuinness' presence? A. They told me of this trouble. I said: "I am sorry that this thing took place." I said: "Here I am, an attorney, and naturally I am interested." I suggested that they get counsel and see whether we could not try and bring about a reconciliation, for their reputation as well as my own. 20

Q. Was that accepted? A. About a week later I received a letter from Judge Egan requesting me to meet Mrs. McDonough and at our convenience to make an appointment in his office. In pursuance of that request we did make an appointment at Judge Egan's office. Mrs. McDonough was not there. Mrs. McGuinness was at Judge Egan's office, and the first proposition was whether Mamie would come back and live with her husband. I put the question myself. I said: "Before we enter into this thing or proceed with negotiations, Mamie, will you come back and live with my father?" She said: "Absolutely no." 30

Q. And from that point on how did things go? A. From that point on Judge Egan wanted to parcel father's estate. He wanted to divide it. Rather than have any trouble or any more diffi- 40

Joseph McGuinness, Jr.—For Defendant—Direct.

10 culty, finally father made one proposition,—\$10,000. He said: "That is the best I can give you." That was all based on the assumption that they could not get together." The next best thing was to adjust it. He said: "I will give you half of my equity," and they computed his equity and they figured it would amount to about \$10,000. She refused that.

Then the proposition was made to finance it, whereby he would give her \$10,000 by raising a mortgage for the purpose of settlement. She said: "Absolutely no." He said: "Mamie, what do you want?" She says: "\$20,000."

20 Judge Egan told her to go home and think it over and let him know what took place. That was the end of that conference.

Q. What was your next step in settling this matter? A. The next activity, I recall that I saw Jim Malone when Jim came back from the shore. I think it was in front of Exchange Place tube—

Mr. Simpson: I object.

The Court: Objection sustained.

30 Q. Did you have any reason for talking to Mr. Malone as a person who would be interested in this matter? A. Naturally, because his sister was involved in it.

Q. Had his sister in any way recommended you to talk to him? A. I never saw the sister.

Q. Were you present at the conference with Mrs. McDonough and your father at Senator Simpson's office? A. I was.

40 Q. Was any proposition for a reconciliation made there? A. Absolutely.

Joseph McGuinness, Jr.—For Defendant—Direct.

By Mr. Simpson:

Q. Mrs. McGuinness was not there, was she?

A. No.

By Mr. Doherty:

10

Q. Who was there? A. Mrs. McDonough, who had authority from Mrs. McGuinness.

Q. How do you know? A. Because that was understood all along. It was understood by Mr. De Sevo that Mrs. McDonough was acting for Mrs. McGuinness.

Q. Did Mrs. McDonough say anything about that herself? A. Mrs. McDonough made the statement that she came there as representative of her sister.

20

Q. Was a proposition for reconciliation made there? A. It was the very first proposition that was put to her.

Q. To Mrs. McDonough? A. Absolutely. Mrs. McDonough said that under no circumstances would Mamie return to live with Mr. McGuinness.

Q. Did she say when she had canvassed her on that point? A. That morning.

30

Q. What next? A. The negotiations centered about Mr. McGuinness' finances, and they computed what he was actually receiving, and I think it was something in the neighborhood of \$740 or \$750 a year, and then it was shown there that the man actually got about \$10 or \$12 a week income net.

Q. What was your father's offer made to Mrs. McDonough? A. The offer that was not brought out was this, that he was willing to take \$8,000 and get out of it altogether.

40

Joseph McGuinness, Jr.—For Defendant—Direct.

Q. Was there any counter proposition? A. That was the proposition.

Q. Was it accepted? A. No.

10 Q. Did she have any counter proposition to make to him? A. She wanted, as I recollect it, about \$35 a week. She figured Mamie ought to get \$15 and each of the children \$10.

Q. Was there any proposition made by her as to a lump settlement? A. Absolutely.

Q. What? A. \$13,000.

Q. Nothing came of that? A. Absolutely nothing.

20 Q. Did you ever discuss the matter of the accumulation of taxes in the presence of Mrs. McGuinness, except on this one occasion? A. That is the only talk I know of about the taxes—that is when they were arguing in their home on West-side Avenue.

Q. And just one month before— A. (Interrupting) I never had anything to do with that.

Q. In that conference at Senator Simpson's office did your father call Mrs. McDonough a son of a bitch? A. That is a lie.

30 Q. Were you present on an occasion in my office when your father telephoned to Mrs. McDonough? A. I was.

Q. What was the state of your father as to sobriety? A. He was absolutely sober, and he made the telephone call at the suggestion of Mr. De Sevo, and I was present at the conference; you were present, Mr. De Sevo and my father.

Joseph McGuinness, Jr.—For Defendant—Cross.

Cross Examination by Mr. Simpson:

Q. You are a member of the bar? A. I am.

Q. Whose office did you study in? A. Treacey & Milton's.

Q. At your first interview at the house of Mrs. McDonough was there anything said in your presence by either woman about your father having struck her, or claiming that he had struck her? A. Nothing at all. 10

Q. Was nothing said? A. I said: "Listen, ladies, no matter what you tell me, I am the son of my father. I am not interested with the merits of the case." I said: "Get an attorney and see whether we cannot get together." 20

Q. Did either woman say anything charging that your father struck Mrs. McGuinness? A. I don't remember.

Q. Do you remember saying on that occasion: "You know what my father is. He is hot headed. I am very sorry"? A. I did not say that. That was the reason I went over there, to get on the job and try to reconcile them.

Q. You did not say anything of that kind? A. Never. 30

Q. On each occasion when Mrs. McGuinness herself or Mrs. McDonough for her, refused to come back, was there any reason given? When Mrs. McGuinness said: "I won't return," did she say why she would not return? A. Absolutely.

Q. At the conference in Mr. De Sevo's office, when you said "Mamie, will you come back to my father?" did she give any reason why she would not come back? A. No. 40

Susan McDonough—Complnt.—Recalled, direct.

Q. At the conference with Mr. De Sevo, didn't it appear that your father was getting \$175 rent for three stores? A. No.

Q. How much was he getting? A. I think altogether he was getting \$130, and he had—

10 Q. How was it figured that he was getting \$780 a year? A. Mr. De Sevo and Judge Doherty figured it. That was his entire assets, his entire estate.

Defendant rests.

REBUTTAL.

20 SUSAN McDONOUGH, heretofore sworn as a witness on the part of the complainant, recalled in rebuttal, and testifies as follows:

Direct Examination by Mr. Simpson:

Q. At the interview with De Sevo and Judge Doherty and Mr. McGuinness, did you say that your sister would not return to Mr. McGuinness? A. No, sir; I did not.

30 Q. Was there any discussion made of her return and did you say that she was offering to return? Did you, at the conference with Judge Doherty, Mr. McGuinness and De Sevo, in discussing the affairs of your sister, say she was offering to return? A. Yes; I did.

Q. It has been testified that at that conference you were called a name? A. Yes; I was.

40 Q. Who called you the name? A. Mr. McGuinness.

Susan McDonough—Complnt.—Recalled, cross.

- Q. Mr. McGuinness, senior? A. Yes.
- Q. What did he call you? A. Well—
- Q. Did he call you a bum? A. No; he called me a son of a b.
- Q. In whose presence was that called—in the presence of Judge Doherty? A. Yes, and Joseph, junior. 10
- Q. And Mr. De Sevo? A. And Mr. De Sevo.
- Q. What was the occasion of that? A. Well, Mr. Doherty said certain things, and then Mr. McGuinness, senior, said: "This son of a bitch broke up my home," and I jumped up. And I said: "Mr. McGuinness, you ought not to talk that way to me. You have no occasion to talk that way." He said: "You dirty bum, you broke up my home." Mr. De Sevo was there to hear it. 20
- Q. At this conference he offered ten or twelve dollars a week and you thought that \$35 was the lowest your sister could take? A. No; Mr. McGuinness offered \$10 and Mr. Doherty said: "Well, Joe will go you one better. We will give you \$12.50." He said: "We will raise it." I said: "That will hardly keep the babies and Mamie, because the little boy has been sick all winter." 30

Cross Examination by Mr. Doherty:

- Q. You say that in my presence you were called a dirty bum? A. Yes; he did.
- Q. And a son of a bitch? A. Yes; he did.
- Q. And you did not say anything in response? A. I jumped up—
- Q. Just wait. You said that I did not ask you at that episode or at that conference, whether your 40

Susan McDonough—Complnt.—Recalled, cross.

sister would come back to her husband? A. No; you did not.

Q. I did not ask you and you did not tell me that that morning you had asked her if she would do it and she told you not under any circumstances? A. No, sir.

10 Q. You swear that was not said? A. No.

Q. That was not said? A. You did not say that to me. I will tell you what you did say.

Q. Let me ask you this question: After he called you a son of a bitch and a dirty bum, you stayed there in that conference thereafter? A. Well, it was not very long.

Q. You did stay there after he called you a son of a bitch and a bum? A. Yes, sir; I did, because it was—

Q. You say that when he offered you \$10 I used such English as: "Well, Joe will go you one better"? A. You certainly did.

Q. Did you ever hear me employ that language in your life? A. I never met you before. You certainly did so. I will tell you just exactly—

Q. Nothing at all was said about Mr. McGuinness or the value of Mr. McGuinness' property? A. Yes, there was.

Q. Was there any figuring or computation done? A. Yes; there was.

Q. And was the amount of his debts reckoned up? A. Yes.

Q. And a valuation was put upon his property? A. Yes, sir.

Q. And the amount of the total rents was considered? A. Yes.

Q. And deductions for taxes? A. And meat bills.

40

Susan McDonough—Complnt.—Recalled, cross.

Q. Is that so? A. Yes.

Q. And then will you tell us whether we arrived at any conclusion as to the amount of his income?

A. Yes; we did.

Q. How much was it? A. \$175 he said he was receiving. 10

Q. The net income was \$175? A. \$130 after the deduction of this butcher bill. He had his butcher bill taken out of that.

Q. Do you know what "net" income is? A. Yes; I do.

Q. Just what do you understand net income to be? A. Well, the net income is after all debts are deducted.

Q. Was it figured up that his net income after the deduction of all debts was \$175 or \$130? A. From \$130 to \$135. 20

Q. That was net income? A. Net income.

Q. Net income is after the deduction of debts, do you understand? A. Yes; I do.

Q. And then when you deduct all his debts and clean up his obligations, his income was \$175? A. No, sir; he said the income from the stores was \$175 and he deducted his meat bill, sometimes \$30 and sometimes \$35, and he said his income then would be \$130 or \$135. That was after the debts. 30

Q. Was anything said about deductions for interest or taxes? A. No, sir.

Q. Nothing at all? A. No.

Q. You don't know that interest or taxes ought to be deducted from the gross income in order to ascertain the net income? A. I did not go into that. 40

Susan McDonough—Complnt.—Recalled, cross.

Q. Was there at any time a conclusion arrived at that his net income was \$750 per year? A. Not that I recall.

10 Q. Are there things that you forget about what took place? A. Well, no, I am trying to remember the episode again.

Q. Do you remember telling us at that conversation that you had busied yourself searching the records to find out what his taxes were, that you had gone around to see all his tenants to see how much rent was paid, and that you had also investigated his mortgages to find out how much were due on the mortgages; did you tell us that you had done that? A. For my own personal
20 benefit.

Q. Did you? A. I did.

Q. You have got your own personal interest in this matter? A. I have.

Q. Apart from any solicitude or interest that you may have in Mrs. McGuinness or the children? A. Yes.

Q. You have your own personal interest in this case? A. Well, they come first.

30 By Mr. Simpson:

Q. Judge Doherty asked you about an investigation that you had made? A. Yes.

Q. To find out what his income was? A. Yes.

Q. Did you tell them at that conference what you found out his income was? A. He first said that the—

40 Q. (Interrupting) Judge Doherty asked you if you had made a personal inquiry? A. Yes.

Richard Doherty—For Defendant—Direct.

Q. And you gave them the information of your personal inquiry? A. Yes.

Q. What information did you give them? A. I said—I asked the storekeeper—

Q. What did you find out the rental was? A. The rental was \$60 and Mr. McGuinness had said it was \$50. 10

Q. You were asked by Judge Doherty about your personal interest and you said: "They come first." Whom did you mean? A. The babies and their mother.

Q. The two children? A. Yes, sir.

Q. That is your interest? A. Yes.

Mr. Doherty: I would like to have the opportunity of testifying concerning what they said took place in my presence. 20

Mr. Simpson: I have advised De Sevo that it is unethical to take the stand in his own case. I have advised him not to take the stand, no matter what Judge Doherty says.

RICHARD DOHERTY, sworn as a witness on the part of the defendant, in rebuttal, testifies as follows: 30

Direct Examination by Mr. McGuinness:

Q. Were you present at a conference in Mr. De Sevo's office that Mrs. McDonough has testified to? A. I was.

Q. Who was present at that conference? A. Mr. De Sevo, your father, yourself, myself and Mrs. McDonough. 40

Richard Doherty—For Defendant—Direct.

Q. At any time during that conference in that office did you hear Mr. McGuinness refer to Mrs. McDonough as a dirty bum? A. I did not hear, and he did not make the reference.

10 Mr. Simpson: I object and ask to have that stricken out,—“He did not make the reference.”

The Witness: He did not make it. I heard everything that was said.

Q. You were present during the entire conversation? A. Throughout the entire conversation.

20 Q. At that conference did you hear Mr. McGuinness refer to Mrs. McDonough as a son of a bitch? A. I did not hear it.

Q. Did you, at the beginning of that conference address any conversation to Mrs. McDonough relative to Mrs. McGuinness? A. I did.

30 Q. What did you say? A. I said that I understood that we were there at the behest of the Advisory Master, who said that the matter of prime importance was to try to have these parties come together, and I asked Mrs. McDonough whether—I told Mrs. McDonough that Mr. McGuinness wants to have his wife come back, and I asked her if it would be feasible for the wife to come back. Her reply was that that was un-supposable; that that morning she had asked Mrs. McGuinness if she would come back and live with her husband and Mrs. McGuinness said that under no circumstances would she do that.

40

Alexander De Sevo—Complnt.—Rebuttal, direct.

ALEXANDER DE SEVO, sworn as a witness on the part of the complainant, in rebuttal, testifies as follows:

Direct Examination by Mr. Simpson:

Q. I first advised you not to take the stand because I considered it unethical? A. Yes. 10

Q. Were you present at the conference that has been referred to? A. Yes.

Q. Did you hear Mr. McGuinness say anything about this lady who has been on the stand, Mrs. McDonough? A. Yes. He called her a bum. I said: "If he keeps this up, this conference is at an end."

Q. Did the conference stop then? A. Practically right after he said that. 20

Q. Was Judge Doherty there when he said that? A. Yes, sir.

Cross Examination by Mr. Doherty:

Q. You and I have discussed the character of Mrs. McDonough's testimony since she testified?

Mr. Simpson: I object as not proper cross examination. 30

The Court: Objection overruled.

Q. Have not you and I spoken of it several times? A. Once or twice; yes.

Q. And Mr. De Sevo, have you not agreed with me that Mrs. McDonough is a perjurer? A. No, sir.

Q. Have we not discussed time and again what Mr. McGuinness said in your office? A. Not in my office; no, sir. 40

Alexander De Sevo—Complnt.—Rebuttal, cross.

Q. Have not you and I referred to the fact that Mrs. McDonough had said to Mr. McGuinness: "I am not a bum," and that Mr. McGuinness said: "I never said, Susie, that you were a bum. I said that you brought my wife and children up to Montgomery to a pack of bums"? A. No, sir.

Q. We have not talked about that? A. No, sir. What we did say was that you—

By Mr. Simpson:

Q. What did he say? A. What we did say,— I met Judge Doherty coming to the office one day. I said: "I think Mrs. McDonough made a mistake when she said he called her a son of a bitch, but what he did say was that she was a bum."

By Mr. Doherty:

Q. Where did this conversation take place? A. Out on the street.

Q. You said that he didn't call her a son of a bitch? A. I told her as far as the son of a bitch part was concerned I thought there was a mistake, but that he did call her a bum.

Q. But he didn't call her a son of a bitch? A. As far as I remember, I don't remember son of a bitch at all.

Q. It was after Mrs. McDonough had testified that you and I had reference to McGuinness saying that she brought his wife and children to a pack of bums? A. Yes.

Q. That was after? A. After.

Q. And not before? A. After.

Case closed.

New Jersey Court of Errors & Appeals

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Between MARY MCGUINNESS, <i>Complainant-Appellant,</i> and JOSEPH MCGUINNESS, <i>Defendant-Appellee.</i>	}	<i>On Appeal from the Court of Chancery.</i>
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BRIEF FOR COMPLAINANT- APPELLANT.

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This case is on appeal from an order (S. C. p. 5) and a decree (S. C. p. 29) of the Court of Chancery, made by the Chancellor on the advice of Advisory Master William R. Barricklo, both dated the 27th day of June, 1929.

Under a stipulation made and entered into between the solicitors of the respective parties and filed in this Court, the appeals have been consolidated and will be treated as one appeal (S. C. p. 53). 30

I will first take up the appeal from the order of the Court of Chancery.

POINT I.

The learned advisory master erroneously modified the order for alimony *pendente lite*.

A suit for separate maintenance was instituted against the defendant because of his cruel and 40

abusive treatment of the complainant, which caused her to leave him. An application for alimony *pendente lite* and counsel fee was made to the Chancellor, and, under an order of the Chancellor, advised by Vice-Chancellor Fallon, dated October 2nd, 1928, the defendant was ordered to pay to the complainant the sum of Forty Dollars (\$40.00) per week from the date of the order until the termination of the suit, for her support and maintenance and that of the children in her custody and he was further ordered to pay a counsel fee of Two Hundred Dollars (\$200.00). (S. C. pp. 12-13).

20

The defendant failed to pay in pursuance to the said order of the Court of Chancery, and an application was accordingly made to Advisory Master Barricklo, to whom the cause had been referred for final hearing, on the 13th day of February, 1929, for an order to show cause why the defendant should not be held in contempt of Court for wilfully violating and disobeying the terms of the order of the Court of Chancery (S. C. pp. 7, 8, 9, 10). The defendant, previous to this application, had already been adjudged in contempt of Court for disobeying the said order of the Court of Chancery, and a commitment for his arrest was issued, but before the service of same, he paid the arrearages in alimony only (S. C. p. 15, l. 30 to p. 16, l. 15; p. 299, l. 29).

30

The rule to show cause on this application was made returnable on the 18th day of February, 1929 (S. C. p. 11, l. 22). A stipulation was entered into continuing this order to show cause until February 25th, 1929, as the defendant claimed

40

that he wished to file certain affidavits (S. C. p. 25). On the original return date of the order to show cause obtained by the complainant, that is, February 18th, 1929, the defendant filed a petition to modify the alimony order heretofore referred to wherein the order for alimony, advised by Vice-Chancellor Fallon, is attacked as if the matter was on appeal (S. C. p. 13). An order to show cause was obtained by the defendant on the petition for the modification of the alimony order (S. C. p. 24). 10

When both the order to show cause why the defendant should not be adjudged in contempt of Court for failure to live up to the terms of the Court of Chancery order and the order for the modification of the alimony order came on for argument on February 27th, 1929, before Advisory Master Barricklo, the learned Advisory Master refused to hold the defendant in contempt and held the matter of the modification of the alimony in abeyance until the final hearing. 20

At the time of the hearing on these orders to show cause on February 27th, 1929, the defendant was in arrears in his alimony payments in the sum of Four hundred and eighty Dollars (\$480.00) together with the counsel fee of Two hundred Dollars (\$200.00). 30

At the time of the final hearing, which took place on March 2nd, 1929, the defendant had not as yet paid one cent towards the alimony arrearages or the counsel fee. Although an application was made, on notice, to stay the action, or, in the alternative, to suppress the defense until the 40

alimony arrearages and counsel fee were paid at that time, the learned Advisory Master refused
 10 to do either and allowed the cause to proceed without the defendant paying one cent towards the alimony arrearages or counsel fee (S. C. pp. 55, 56, 57). When the hearing was resumed on April 19th, 1929, nothing had been paid towards the alimony and counsel fee, notwithstanding the fact that the Advisory Master had directed the defendant to pay up the counsel fee at the termination of the hearing held on March 22nd, 1929. The hearing on April 19th, 1929, was held up for one hour, or until eleven o'clock in the morning,
 20 when it was resumed upon the payment of the counsel fee, but nothing was paid on the alimony arrearages (S. C. pp. 124-125).

Nothing was paid on the alimony arrearages from the time that the order to show cause to hold the defendant in contempt of Court was made returnable on February 18th, 1929, or when the application for modification of the alimony order was made on February 18th, 1929, until after the decree for dismissal was signed on June 27th,
 30 1929. At that time, that is, June 27th, 1929, the learned Advisory Master advised an order, dated June 27th, 1929, modifying the order for alimony *pendente lite* made on October 22nd, 1928, to the extent that the defendant should pay the sum of \$15.00 per week after February 18th, 1929, until the entry of the final decree (S. C. p. 6).

At the time of the application for modification was made, viz., February 18th, 1929, and every day before and after this date, and even at the
 40 time when the order for modification was made,

on June 27th, 1929, and in fact during the entire proceedings between the complainant and the defendant, the defendant was in arrears in his alimony payments and for that reason, no order for modification should have been made until he had first obeyed the terms of the order of the Court of Chancery by paying up all the arrearages. 10

The case on all fours with the case *sub judice* is that of Cooper v. Cooper, reported in 143 Atlantic 559, where the defendant husband made an application to set aside an order requiring him to pay Fifty Dollars (\$50.00) monthly, for the maintenance of his divorced wife and two children, or in the alternative, for the reduction of the award. 20
Chancellor Walker there said:

“A party’s first duty is to give absolute obedience to an order of the Court; and it is a principle of law that one will not be relieved of his duty under an order, unless that order is first obeyed. It is an established rule of this Court that it is not open to any party to question its orders, or any process issued under its authority, by disobedience; and even where the order is improvidently granted or irregularly obtained, it must, nevertheless, be respected until it is annulled by the proper authority. It is not necessary that there be a judgment of contempt against a person to deny him relief against an order of the Court; it will be denied if he has not obeyed it and stands in the position of a contemner.” 30

So in the case at bar. The defendant was in the position of a contemner throughout the entire proceedings, especially at the time when he made his application for modification, and even at the time when the order for modification was signed on June 27th, 1929, and for that reason, he had no standing in Court until he purged himself. 40

10 It may be argued that the learned Advisory Master was correct in making the modification date back to the date when the application was made, but this is not so because when an order is made for alimony *pendente lite*, such an order shall be in force and effect until a superseding order is entered, and, in our case, no such order was made during the pendency of the suit.

In the case of *Swallow v. Swallow*, 84 New Jersey Equity, 109, point 3 of the syllabus holds:

20 "An order made during the pendency of the suit, directing alimony to be paid 'until the further order of the Court, in the premises', construed to mean that it was to be paid during the progress of the suit, unless in that period a superseding order was entered."

30 It is respectfully submitted that the order for modification of alimony should not have been advised because the defendant had not obeyed the order of the Court of Chancery for alimony *pendente lite* dated October 22nd, 1928, at any time during the pendency of the suit, especially at the time when the application for modification was made on February 18th, 1929.

POINT II.

The learned advisory master erroneously dismissed the bill of complaint.

(a) *Testimony adduced on behalf of Complainant.*

40 The complainant and defendant were married in May of 1921, this being the second marriage

of the defendant. Two children were born as the fruit of this marriage, one child, a boy, of the age of six years, and the other, a girl, of the age of three years, both of whom are residing with and are in the custody of the complainant ever since she was forced to leave her husband in April, 1928. 10

Mr. and Mrs. McGuinness lived together in harmony until 1925, or about three months before her child was born, when she read in a local newspaper regarding a mortgage made by the defendant's daughter on a piece of property located on West Side Avenue in Jersey City. This quarrel was induced by the fact that the defendant had informed his wife that he owned this property, when, in reality, he had transferred it over to his daughter (S. C. pp. 66, 67). 20

The next difference between the parties took place in about November, 1926, when the defendant refused to give his wife any money with which to purchase clothes for herself and the children. After his refusal to give his wife the necessary money to buy clothing, he informed his wife to go to New York and have the clothes sent C. O. D. On the day when the company sent the clothes, the defendant refused to pay for them and the complainant's sister had to advance the money, and, notwithstanding that his wife requested the defendant to reimburse her sister, he refused to do so (S. C. p. 68, l. 15). 30

After this event they had considerable quarrels between them. He would not listen to anything that she told him, and at times he refused to speak 40

to her, and would tell her to "get the Hell out".
(S. C. p. 68, ll. 18-36.) This was almost a daily
10 occurrence (S. C. p. 68, l. 34).

The beginning of the serious trouble between
Mr. and Mrs. McGuinness, which finally culminated
in Mrs. McGuinness being forced to leave her hus-
band, was in June of 1927. On that occasion the
defendant requested his wife to sign a mortgage
for \$2500.00 which she refused to do unless he
informed her as to why he needed this sum of
money (S. C. p. 69, l. 20; p. 91, l. 10). The defend-
ant refused to tell his wife why he needed the
20 money. Her refusal for not wanting to sign the
mortgage, as brought out on cross examination,
was that her husband had sufficient income to
take care of all of his needs and that she believed
this sum was to be used for gambling (S. C. p. 93,
ll. 31-40). As a result of her refusal to sign, the
defendant thereafter became very disagreeable
and nasty to his wife (S. C. p. 69, ll. 36-40). This
condition of affairs continued down to July, 1927.
In the meantime, he would not talk to her other
than to pester her about signing the mortgage, al-
30 though he always refused to tell her why he re-
quired the money.

In about the middle of July, 1927, while Mrs.
McGuinness was making the bed, the defendant
came home and again asked her to sign the mort-
gage, but she refused because he would not tell
her the necessity for this loan. He told her that
"he would make her (me) do it or she (I) would
lose the roof over her (my) head" (S. C. p. 73,
ll. 1 to 3), undoubtedly meaning that he would
40 make life so miserable for her that she would be

forced to leave him. He then struck her in the
 face and kicked her in the shins and threw her
 on the bed (S. C. p. 70, ll. 1 to 20). Mrs. McDon- 10
 ough, a sister of Mrs. McGuinness, came to her
 home about an hour later and saw the bruises on
 her face and her shin cut and bathed them for her
 (S. C. p. 71, l. 10). His conduct thereafter was
 very disagreeable. He would seldom speak to his
 wife other than to start an argument with her
 primarily over this mortgage (S. C. p. 72, l. 32).
 He refused to clothe his wife and the children and
 they were clothed by her sister (S. C. p. 73, l. 10).
 This commenced in November, 1927, and continued
 until she was forced to leave him in April, 1928. 20
 On that occasion the defendant had been out the
 previous night and did not get up for breakfast,
 but did for lunch. While Mrs. McGuinness was in
 the kitchen he made a remark regarding a brother
 of hers, a priest, who had been transferred from
 Jersey City, and she told him that that pertained
 to her own family affairs and that it did not in-
 terest him, whereupon he struck her on the nose
 with his clenched fist (S. C. p. 74, l. 32 to p. 75,
 l. 10; p. 105, l. 34), causing it to bleed. She then
 went into her room and dressed up her children 30
 and herself and went downstairs to the tenant,
 Mrs. Harris, to telephone her sister, and inasmuch
 as her sister was out, Mrs. McGuinness went to
 the home of her husband's sister, Mrs. Quinn
 (S. C. p. 75, ll. 30 to 40). The tenant, at the time
 of the hearing, had moved and neither side was
 able to get her to come to Court (S. C. p. 319, l.
 22). Mrs. McGuinness was in fear, when she left
 her husband, that he would strike her again (S.
 C. p. 106, l. 40; p. 107, l. 31). She remained at
 the defendant's sister's home but a short while 40

as Mrs. Quinn was very ill, and she then went to her own sister's home where she has remained
10 ever since.

Mrs. McGuinness returned to her own home in May, 1928, by arrangement, to get some of her children's clothing (S. C. p. 76, l. 22). From the time that she left her husband in April, 1928, until she returned for the clothing in May, 1928, her husband made no effort to get in touch with her or to get her to return to his home. While she was getting the clothes ready, her husband came into the room she was in with a bottle of
20 liquor in his hand and he immediately smashed the glass top of the table with a hammer (S. C. p. 76, l. 35). Fearing that he might strike her with the hammer, she left by going out through the back door of her home and went to her sister's home (S. C. p. 77, l. 3).

When she was forced to leave her husband in April, 1928, she was a very nervous woman, although at the time of her marriage and up to the time when defendant began his course of conduct
30 against her, she was very healthy (S. C. p. 78, ll. 5-15). She was treated by Dr. Commorato, who is a physician and surgeon of thirty years standing, after she had been beaten by the defendant (S. C. p. 57). He found her in a very nervous state; was complaining of lack of sleep and inability to eat, and from his examination of Mrs. McGuinness there was little to account for the tremendous state of nervousness, and after getting the history from her, the Doctor testified that the cause was due to her home conditions (S. C.
40 pp. 58-59).

In order to restore her to normalcy, he advised her to go to some quiet place—the country (S. C. p. 60, l. 33). On cross examination the Doctor stated that if these home troubles continued it would greatly affect her health (S. C. p. 61, l. 13). At the time of the hearing the Doctor, on cross examination, testified that Mrs. McGuinness' condition had improved (S. C. p. 65, ll. 18-25). 10

Mrs. McGuinness stated that her husband made no attempt to get in touch with her after she was forced to leave him. On page 80, ll. 17-32 of State of Case, she testified as follows:

Q. Has he at any time come to you and said he was sorry for striking you or sorry for being surly; that if you came home he would treat you right so that your health wouldn't be impaired? Has he made any advances at all? A. No. 20

Q. How far does he live and has he lived from you since April, 1928, when you left? A. About two blocks.

Q. Although he has been living two blocks from where you live, he has not been near your house? A. No.

Q. Never written to you? A. No.

Q. Nor telephoned you? A. No.

Q. Nor told you if you came home everything would be all right? A. No. 30

While the complainant was away in the country in Montgomery, New York, in July, 1928, the defendant came up to see his children, but he did not ask for her, nor ask to see her in any way (S. C. p. 78, l. 35). On cross examination she testified that she did not go downstairs to see her husband when he came to Montgomery because he did not ask for her, and if he wanted to see her he could have asked for her (S. C. p. 119, ll. 40

30 to 38). As a matter of fact Mrs. McGuinness was even afraid of him at that time (S. C. p. 121, 10 l. 2).

The next time she saw the defendant was in September, when she was bringing the boy to school. Her husband spoke to the boy but did not speak to her (S. C. p. 121, l. 18).

About a few days after she was forced to leave her husband, the defendant's son, Joseph, an attorney-at-law of the State of New Jersey was communicated with by Mrs. McGuinness' sister and 20 he came to see Mrs. McGuinness. She told him of what his father had done to her, but he said that he knew that he could not do anything with his father because he was thickheaded. He never came back to Mrs. McGuinness to inform her of what his father had said, nor did his father come to see her after the first visit, although she lived only two blocks away from where he was living (S. C. p. 158, l. 20 to p. 159, l. 20). She would have gone back to live with him again if he had come for her, even though she would have fear in going back (S. C. p. 116, ll. 12-23). 30

Mrs. McDonough, complainant's sister, testified that her sister and the children had come to live with her on April 28, 1928, and they have remained with her ever since, and she has supported them (S. C. p. 161). During the entire time that her sister has been at her home, her husband has never been over to see her and the children (S. C. p. 162, l. 1). She communicated with the defendant's son, Joseph, so that he could get in touch 40 with his father about getting them together, but

after speaking to Mr. McGuiness, Jr., he communicated with her by telephone a few days later and told her that her sister had better hire counsel (S. C. p. 163, l. 20). 10

Mrs. McDonough testified that in July, 1927, when Mr. McGuiness struck his wife over her refusal to sign the mortgage, she went to see her sister and saw the bruises on her face and shin, and she bathed them for her sister. She took her to her own home and after her sister had remained there a few hours she got her to go home (S. C. pp. 164-165). She spoke to the defendant about the mortgage and told him that her sister would sign the mortgage, as she had signed other papers for him, if he would tell her (meaning her sister) why he needed the money. To keep peace in the family she was willing to give the defendant \$2500.00 of her own money and just take back a note, but the defendant called her a "G. D. S. of a B. for discussing his personal affairs". (S. C. pp. 16-167, l. 12.) She gave her sister money for clothes when her husband refused to give it to her, and she was very solicitous of her sister because of the "wonderful affection" that existed between them (S. C. p. 168, l. 30). 20 30

After her sister was forced to leave her husband she saw Mr. McGuiness on the occasion of the laying of the cornerstone at the school that the young boy attended, and, in fear that he might create a scene, they walked away and he did not follow them (S. C. p. 169), and they did not "run away" as alleged by the defendant (S. C. p. 170).

While she was in the country in Montgomery, New York with her sister in July, 1928, Mr. Mc- 40

Guinness came there and inquired for the children only and not for his wife (S. C. pp. 171-172, l. 2).

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On cross examination Mrs. McDonough testified that she had no ill feelings towards the defendant other than he mistreated her sister, and that if he had made amends all would have been forgotten (S. C. p. 175, l. 10). She also testified about communicating with the defendant's son with the hope that things could be patched up so that they could live together as they should (S. C. p. 181, ll. 21-23). Although four days elapsed since her interview with the defendant's son, he did not communicate with her as he had promised, and it was necessary for her to phone him, and he said that he could do nothing and suggested that her sister hire counsel (S. C. bottom of page 181).

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Mr. Hilliard, the moving van man, testified that on the occasion in May, 1928, when he called at the home of Mr. McGuinness to get the things for Mrs. McGuinness, he saw Mr. McGuinness with a bottle of whiskey in his hand and also noticed that the glass top on the table was broken. Mr. McGuinness refused to let him take some of the things away (S. C. p. 183). He also stated on cross examination that Mrs. McGuinness was very nervous and that he could tell this from the way she spoke and acted—she was twitching and her body was shaking (S. C. p. 184). He saw Mrs. McGuinness leave the house suddenly (S. C. p. 186, l. 18). On redirect examination this man testified that his company had only one van which would be used whether you removed a one pound package or a one ton package (S. C. p. 187, l. 21).

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The next witness adduced by the complainant was one Bessie Corrigan, who testified that she was not related to the complainant; that the place in Montgomery, New York, where the complainant went for her health, was a typical summer home and was not a "hovel" as described by the defendant in his affidavit which was introduced on the application for alimony *pendente lite*, and that Mr. McGuinness has spent his vacations there (S. C. p. 204). When Mr. McGuinness came there he shook hands with her and made no inquiry for his wife, nor did he inquire as to the condition of his wife's health. The only conversation that she had with the defendant was when the defendant pointed to Mrs. McDonough and said, "Do you see that son of a B. standing there. She was the cause of breaking up my home". (S. C. p. 205, l. 14.) Mr. McGuinness remained there for about a half hour on this occasion. She denied, as alleged by the defendant in his affidavit, that he had told Mrs. McDonough that he had wanted to see his wife and that Mrs. McDonough had stated that her sister did not want to see him (S. C. p. 205, l. 38).

The next witness was Theresa Corrigan, who rented the premises in Montgomery, and who also described the place as a typical old-fashioned country house, and not a dilapidated place as the defendant described it. Apparently his motive in saying this was to show that Mrs. McDonough was bringing his wife to a place that was not a fit place for her to live in although Mr. McGuinness had spent his vacations there (S. C. p. 209, l. 1). She did not hear Mr. McGuinness make any inquiries for his wife.

Richard Corrigan testified as being present in Montgomery, New York, in July, 1928, and although Mr. McGuinness shook hands with him and bade him the time of the day, he made no inquiries whatsoever about his wife (S. C. p. 209, l. 30 to p. 210, l. 2).

It will be seen from the testimony adduced by the complainant and her witnesses that the defendant beat and struck his wife on two occasions; that from the time of the first beating of his wife to the second, he treated her almost like a stranger, never speaking to her except whenever it was necessary or to nag her or to pick an argument with her because of her refusal to sign the mortgage. Surely a wife has a right to know what her husband is going to do with such a large sum of money and her refusal to sign is justified, especially since she believed he was going to gamble with the money.

Since she was forced to leave her husband he made no effort, at least a *bona fide* effort, to get her to return to him, or even say to her that he was sorry for what he had done and that if she would return he would treat her more kindly, and that there would be no repetition of his conduct. Whatever efforts, if we may be charitable enough to call them efforts, on the part of the defendant to get his wife to return back to live with him, were made after the suit was instituted and were made, either at the suggestion of the learned Advisory Master or of counsel, and not on the initiative of the defendant himself.

(b) *Testimony adduced on behalf of Defendant.*

Practically the entire direct examination of the defendant was the result of leading questions. Hundreds of questions on irrelevant and immaterial matter were allowed by the learned Advisory Master primarily "to hear the whole history" (S. C. p. 219, l. 10). Although objection after objection was interposed, leading questions were allowed repeatedly (S. C. pp. 220, 221, 223, 225, 226). The learned Advisory Master, on page 228 of State of Case, said, after many objections were made on leading questions, "that they were not harmful". I also wish to bring to this Honorable Court's attention the fact that the defendant volunteered a great deal of his testimony, and although motion after motion was made to strike out these answers as not responsive, the Advisory Master refused to do so (S. C. pp. 220, 221, 224, 225, 239).

On direct examination the defendant testified that the complainant refused to sign the mortgage although she would not give a reason for it (S. C. p. 228, l. 20). This statement of the defendant is in line with practically the rest of his testimony—he would make a statement without the slightest regard for the truth. There was testimony given by both the complainant and her sister regarding the reason for not signing the mortgage. As a matter of fact the complainant's sister testified that her sister had signed mortgages for the defendant on previous occasions (S. C. p. 166, l. 36), and the defendant himself admitted that his wife had signed mortgages on other occasions (S. C. p. 268, l. 22).

Relative to the occasion when the defendant struck his wife in April, 1928, he testified that he
10 "just smacked her like that" (S. C. p. 238, l. 14), forgetting that in his answer he had stated that he slapped her face (S. C. p. 50, l. 25). The only remark that the complainant was alleged to have made was "Don't you talk about my brother", although the defendant testified that he never spoke to her about her brother (S. C. p. 238, l. 23). Does it seem possible that a wife would say something regarding her brother unless the defendant spoke about her brother? This is another example of the defendant's veracity.

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The defendant stated that his wife always punched, scratched and slapped him; that this took place at least fifty times, and all he would do was to walk away (S. C. p. 240), although he was a heavy set and rugged man weighing about 230 pounds (S. C. p. 241), and she weighed only about 110 pounds (S. C. p. 241).

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After his wife was forced to leave him he did not go to see her but sent his son, and the reason
he gave to the Advisory Master for not going himself was because "I knew I could not talk to them." (S. C. p. 244.) He gave instructions to his son to go and see his wife to "try and make a settlement with them." (S. C. p. 245, l. 30.) He did not say to his son that he should try to get his wife back. This is the time when the defendant spoke his own mind. However, his counsel supplied the missing link by the very next question when he asked about getting his wife back. Of course it was useless to object because repeated objections were overruled before and

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counsel was told by the learned Advisory Master (S. C. p. 228) that these leading questions were harmless and that the trial should be facilitated. 10

Regarding the conferences held in Judge Egan's office, who acted like a referee (S. C. p. 289, l. 26), those present were the defendant, his son, and the complainant. The defendant testified that it was his son who suggested to the complainant that she go home, but the defendant himself did not say anything on this score (S. C. p. 246, l. 9).

After the conference held in Judge Egan's office, the defendant accompanied his wife to Monticelb Avenue, a distance of about two miles, and he did not ask her then to go back and live with him, nor did he say that he was sorry for what he had done (S. C. p. 247, ll. 30 to 40). 20

The defendant testified that the next time he attempted to speak to his wife was in Montgomery, New York, but was prevented by his wife's sister (S. C. p. 248, l. 36). This is denied not only by the complainant's sister, but by disinterested witnesses. Although the defendant denies saying that he said that Mrs. McDonough was a "son of a B.", he does admit saying to Mrs. Corrigan, pointing to Mrs. McDonough, "There is the one who is ruining my home". If this Honorable Court could have seen the demeanor of the defendant on the stand, it could easily get an idea of the truth of the defendant's denial of this epithet, for the defendant was very sarcastic, rude and impertinent on the stand, revealing his true character (S. C. p. 279, l. 39; p. 290, l. 28; p. 293, l. 38; p. 294, l. 8; p. 301, ll. 27 to 40). 30 40

The defendant testified that he endeavored to get in touch with his wife by telephone, and the
 10 defendant again speaks his own mind when he stated that the purpose of his telephone call was to arrange a settlement with his wife (S. C. p. 250, ll. 9 to 12), and his solicitor again goes to his rescue by supplying the answer. The defendant (S. C. p. 263, l. 14) testified, in answer to his solicitor's question, that he did not remember whether anything was said regarding Mrs. McGuinness coming home at the conference held in the lawyer's office after the institution of the
 20 suit, although his son later testified that that was the first thing that was brought up at this conference.

The defendant's cross examination revealed a startling situation; where on his direct he was very voluble, on cross examination he seemed to have suffered a lapse of memory and insisted upon "fencing" with counsel. He did not know the ages of his boys, nor could he say how much they were earning, notwithstanding that they were living with him (S. C. p. 266).

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An example of his regard for the truth, and how he comported himself on cross examination in contrast with his direct examination, we have the following: On cross examination (S. C. p. 274) he was questioned as follows:

"Q. You also said at that time, when you testified relative to this smack on the chin, that she gave you a tongue thrashing. Do you remember saying that? A. Never.

Q. You did not say that at the last hearing? A. No."

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On page 242 on direct examination he testified,

“A. She let go of the knife and started giving me the devil.

Q. Verbally? A. Verbally—tongue thrashing.”

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He did not remember nor did he have any idea when his wife left him (S. C. p. 275, ll. 9 to 16). Although during the entire proceedings he blamed his wife's sister for breaking up his home, yet he admitted that she had not been to his home for four months before his wife left him (S. C. p. 276, l. 38).

The defendant, after “fencing” with counsel, finally admitted that he did not inquire as to the whereabouts of his wife at her sister's home, although she lived only two blocks away, nor did he write to his wife; nor did he communicate with his wife's brother, Mr. John Malone, at his home or in his office in the Mayor's office in Jersey City (S. C. p. 277). His testimony on this score, summed up, was as follows:

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“Q. So that you made no inquiry whatever either personally or by letter, of any of the relatives of your wife as to where she might be? A. No.”

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He saw his wife on the occasion of the cornerstone laying, and although he was asked three times whether he spoke to his wife, he finally admitted that he did not (S. C. p. 278, ll. 1 to 10).

The defendant could not give a coherent story as to when he first saw his wife after she was forced to leave him. Once he would say it was at the time of the cornerstone laying, and in the same

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breath he stated it was up in Montgomery and finally stated it was in Judge Egan's office (S. C. pp. 278, 279-280).

Since his wife was forced to leave him, at no time did the defendant ever tell his wife that he was sorry that he struck her and that if she would return to live with him he would treat her kindly (S. C. p. 281, l. 35 to p. 282, l. 23), nor did he say anything of that kind to his wife on the occasion when he met her in Judge Egan's office (S. C. p. 283, ll. 4-14; p. 289, l. 10). He did not send her one letter asking her to come home (S. C. p. 283, l. 25), nor did he make any effort to effect a reconciliation with his wife while she was up in Montgomery, New York (S. C. p. 284). Since his wife was forced to leave him he did not send her a cent for her support and that of the children until he was forced to by a contempt order of the Court of Chancery (S. C. p. 284, l. 16; p. 290, l. 30); nor any money with which to buy clothes for his children (S. C. p. 288, l. 30).

The conference in Judge Egan's office, who was acting as a referee, was to settle the property question, and not about getting them to live together (S. C. p. 289, ll. 23 to 27).

In the fall of 1928, the defendant saw his wife pass his home practically every Sunday on her way to church, and he did not go out once to accost her or attempt to speak to her (S. C. p. 291, ll. 22 to 34).

On the occasion in May, 1928, after she was forced to leave her husband, complainant

went to the defendant's home by arrangement to get some of the children's clothing and other things and at that time the defendant smashed the glass top of the table and said, "To Hell with the home. Let it all go". (S. C. p. 295, l. 29.) 10

The conference held in counsel's office at the suggestion of the Advisory Master (S. C. p. 297, l. 26) availed nothing because the defendant wanted to give to his wife and children practically nothing (S. C. p. 299, l. 18). Even after the conference the defendant did not send anything for the support of his wife and children, although he owed \$1160.00 and he had paid only the sum of \$200.00 after a warrant for commitment had been issued (S. C. p. 299, l. 30). 20

Although he referred to the complainant's sister as the "devil", and although he knew he was at least under a moral obligation to support his children, still he did nothing towards supporting them because he stated that he knew that his children were not in want because they were living at the complainant's sister's home (S. C. p. 303, ll. 10 to 40). 30

Notwithstanding the fact that the defendant had been thoroughly examined by his solicitor regarding the conferences in Judge Egan's office and counsel's office and other matters, the learned Advisory Master, over the objection of counsel, allowed the defendant to go over this testimony again (S. C. p. 304, l. 13), and, of course, with the aid of leading questions (S. C. p. 305, l. 18).

The defendant's daughter, by a previous marriage, testified that on the occasion in April, 1928, 40

10 when complainant was forced to leave, that although she saw no marks on the complainant's face, with whom she was not on friendly terms, she admitted on cross examination that she entered the house and immediately went upstairs, but saw her and saw no marks on her face. However, she made no special observation of her face and had no reason to look for marks (S. C. p. 314).

20 The defendant's sister, Mary Quinn, testified on behalf of the defendant and said that when complainant came to her home, she saw her crying but did not converse with her because she was very sick in bed with neuritis, and that complainant came into her room almost simultaneously with the doctor and stepped out of the room immediately (S. C. p. 315, l. 37 to p. 316, l. 12).

30 The daughter of the defendant's sister also testified on behalf of the defendant, who stated that the complainant was hysterical and crying while she was in their home, but she did not pay much attention because of the grave illness of her mother, although complainant told her that she had had trouble with her uncle. After staying a short while, the complainant left their home (S. C. p. 317).

40 The next witness for the defendant was his son, a solicitor of this Court, and the learned Advisory Master allowed this witness to testify to self-serving declarations made by the defendant over counsel's objection (S. C. p. 320, l. 10). The defendant's son testified that it was the complainant's sister who first communicated with him re-

garding the separation of his father and step-
 mother (S. C. p. 323, l. 1). He admitted that he
 was very much interested and told complainant 10
 that she should get counsel (S. C. p. 323, l. 19).
 At the conference in Judge Egan's office he tes-
 tified that he, and not his father, asked the com-
 plainant in a blunt way that before entering into
 negotiations whether she was willing to return
 to his father (S. C. p. 323, l. 36). On cross exam-
 ination the defendant's son stated that at the in-
 terview of the complainant and her sister, neither
 of the sisters said anything regarding his father
 striking Mrs. McGuiness (S. C. p. 327, l. 10), and
 later he had a lapse of memory, for he stated he 20
 did not remember whether either sister had
 charged his father with striking Mrs. McGuiness.
 He also testified, on cross examination, that when-
 ever the complainant or her sister, acting for
 complainant, was asked to return no reason was
 given for the refusal (S. C. p. 327, ll. 31 to 40).
 This witness may perhaps be excused for this
 kind of testimony because he is the son of the
 defendant, and of course greatly interested.

On rebuttal, complainant's sister denied that, 30
 at the conference held in counsel's office at the
 suggestion of the master, she said that her sister
 would not return to Mr. McGuiness (S. C. p.
 328).

This was practically all of the testimony ad-
 duced at the respective hearings before the learn-
 ed Advisory Master. It seems without a question
 of a doubt that the defendant did strike and beat
 his wife on two occasions, and that between the
 time when he first struck his wife and the time 40

10 that she finally left him, his attitude and conduct towards his wife was one of unpleasantness. Since she was forced to leave him, he made no effort whatever to effect a reconciliation or to make known to his wife the fact that he was sorry for what he had done and that if she returned to him, he would treat her kindly. Whatever overtures were made took place after the suit had been instituted, and the Court of Chancery and this Court, without burdening your Honors with citations on this score, have held repeatedly that when such overtures are made at such a late date, they do not come with good grace.

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The first time that the parties met each other was on the occasion in Judge Egan's office, which was the result of the suggestion of the complainant's sister, and at that time the only one who made a remark regarding the complainant going back to live with the defendant again was the defendant's son, if we believe his testimony, and it was done in such a blunt way. The attitude of the defendant throughout the entire proceedings was one that displayed the feeling that he did not care whether his wife came back or not, and that all he was interested in was in a partition of the property. Notwithstanding that he professed a love for his children, yet during the entire time of the separation he did not send one cent for their support, nor even a gift, although he admitted he was receiving \$175.00 a month rental from his store alone and his two boys who were living with him were working, one in Wall Street and one in a Bank (S. C. pp. 265-266). The only time he paid one cent to his wife, notwithstanding that the Court of Chancery had made an order com-

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pelung him to support his wife and children, was when a warrant for commitment was issued, and then he paid only \$200.00 leaving a balance at the time of the hearing of about \$1000.00. No *bona fide* effort, and in fact no effort, was made by the defendant to get his wife to return to live with him. 10

As a result of the defendant's treatment of his wife, her health was greatly impaired and she was justified in leaving him, as the doctor testified that if her home conditions continued her health would be greatly impaired. 20

POINT III.

The Law.

It may be contended, as it was contended before the Advisory Master, that since the complainant somewhat provoked her husband, when she told him that the matter of the transfer of her brother from Jersey City was a personal matter which did not interest him, he was justified in striking her, but this action has received the condemnation and disapproval of this Court. 30

In the case of *Thomas v. Thomas*, reported in 87 N. J. Eq., this Court, adopting the opinion of the Court of Chancery, on page 670, said:

"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 had promised to protect. 40

10 His conduct is not excused by the fact that he was angered or that the conduct of his wife provoked him to these extremes."

Vice-Chancellor Lewis, in the case of *Vishnauskas v. Vishnauskas*, reported in 100 N. J. Eq., at the bottom of page 70, said:

"I think that the wife should be protected to the fullest extent of the law against any tendency to violence on the part of the husband."

20 Mrs. McGuinness was justified in telling her husband that this personal matter did not interest him when you consider that from July, 1927, the time when he first beat her, until this particular instance, he had treated her with indifference and had made life miserable and unpleasant for her.

30 The testimony is undisputed that the complainant's health had been greatly impaired from the commencement of the defendant's course of conduct, after he had first struck her in July, 1927. The doctor testified that if her home conditions continued it would be detrimental to her health (S. C. p. 61). Throughout her entire testimony, and it was corroborated by her sister, the complainant said that she was in constant fear of her husband, and that was the reason she left him when he beat her on the second occasion. She was afraid that he would beat her again. It is not necessary that physical violence must have taken place to justify a wife to leave her husband. A man can be more cruel to his wife by his action and conduct than if he had physically thrashed her.

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On this question I will allude to the case of Doty v. Doty, reported in 92 N. J. Eq., where, this Court, speaking through Justice Kalisch, on page 661, said: 10

“To justify a divorce a *mensa et thoro*, actual physical violence need not be proved, but such conduct, by the husband, must be shown as will justify the Court in believing that, if he is allowed to retain his power over his wife, and she is compelled to remain subject to him, her life or her health will be endangered, or that he will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. *Close v. Close*, 10 C. E. Gr. 529; *English v. English*, 12 C. E. Gr. 585.” 20

In this same connection we have the case of *Pinkinson v. Pinkinson*, reported in 92 N. J. Eq., in which Justice Katzenbach, speaking for the Court of Errors and Appeals, on page 671, said:

“The complainant left her husband. It is the duty of the wife to live with her husband at his home and to give him her services and society. From these obligations she is only relieved if she can show that the conduct of her husband has been such as will reasonably convince the Court that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of wife or that the conduct of the husband, if continued, would have brought about these conditions.” 30

To the same effect is the case of *Walsh v. Walsh*, reported in 88 N. J. Eq., p. 368.

It may be argued by the defendant that the complainant did not have any corroboration of her statements regarding the impairment of her 40

10 health and the acts of cruelty, both physical and mental. This, of course, is not so, but if we concede this solely for the sake of argument, still this Court has held that corroboration in a maintenance action is not necessary, and the reason for this rule is that in a suit for separate maintenance the marital status is preserved and not dissolved and that its only object is to enforce the duty resting upon the husband to support the wife.

This Court, in the case of *Shore v. Shore*, reported in 96 N. J. Eq., on page 661, held:

20 "The public policy prescribing corroboration of the parties in actions for the dissolution of the marriage relation does not prevail in suits for maintenance, and a court of equity may make a decree in favor of the wife on such a suit although her testimony is uncorroborated."

30 The attitude of the defendant towards his wife since she was forced to leave him, was anything but that of a repentent and repining husband. He made no effort at all to become reconciled to his wife, notwithstanding that she was living only two blocks away at the time and since the separation. The only request for her return was the blunt and cold-blooded one made by his son in a law office. Surely, he never won his wife by that method. His other requests, if we believe his testimony, and there were many instances when he flatly contradicted himself, were made after the suit was instituted, and they were not made with a sincere and bona fide motive.

40 In the case of *Popovics v. Popovics*, reported in 98 N. J. Eq., Justice Minturn, speaking for

the Court of Errors and Appeals, on page 352, said:

“The plea that he has endeavored to procure her return and that she has obstinately and unreasonably refused to listen to his appeal * * * a plea of that character must be supported by at least proof of his *bona fide* intention, and some proof of his heartfelt contrition for his past conduct. Lister v. Lister, 65 New Jersey Equity, 109, affirmed in 66 New Jersey Equity, 434; McVacker v. McVacker, 46 New Jersey Equity, 490.” 10

“In estimating the sincerity of such an appeal, the Court necessarily proceeds upon the theory *quo animo*, and, in reaching any satisfactory conclusion as to his motives, the old adage that ‘conduct speaks louder than words’ must needs play an important part. Upon the witness stand, where his contrition might be publicly evinced, and the *bona fide* character of his overtures fully exemplified, he displayed his old animus, for there he * * *” 20

To the same effect is the case of Holst v. Holst, reported in 139 Atl., where Vice-Chancellor Fallon, on page 337, said:

“That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded, is declared by all our cases; and ordinarily, when the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him.” 30

In the case of Baxter v. Baxter, reported in 136 Atl., 191, the Court of Errors and Appeals, held:

“Conceding there was a desertion of the husband by the wife, his conduct was to some 40

10 extent contributory thereto, and that his subsequent invitations to her to return were not such as might be reasonably expected to bring about that result, and hence that the desertion, if there was a desertion, was not obstinate."

20 It is always proper to look at the conduct of the husband towards his wife since the commencement of the suit for the purpose of giving character to the act of the separation. There is nothing in the defendant's answer, and this is very significant, wherein he states that his wife could have no reasonable apprehension for her welfare by resuming cohabitation with him. Neither does he make a request that his wife should return to him. It will be well to quote from his answer. On page 51 of the State of Case, ll. 34 to 36, we have the following:

"He avers his readiness at all times to support the complainant and their children whenever the complainant chooses to return to her home with them."

30 Does that show that he wanted his wife to return to him? Is that the *bona fide* effort that he proclaims he made to get his wife to resume cohabitation with him? It is the settled rule of the Court of Chancery that it is incumbent upon the husband to seek his wife when he has caused her to leave him, no matter how trivial the cause may have been. He is only excused when he was without fault and that to induce the wife's return would be probably unavailing.

40 In this connection, see the case of Davenport v. Davenport, reported in 97 N. J. Eq., page 14, which was a suit for absolute divorce on the

grounds of desertion, in which Vice-Chancellor Lewis said:

“It is clear that petitioner was not without fault, and equally clear that he made no effort to prevent his wife leaving and has at no time sought her return; nor can it be determined that any reasonable efforts on his part to procure her return would have been unavailing.” 10

The defendant displayed an amazing indifference towards both his wife and children in that since the time she left him, he did not send her one cent towards her support and that of the children, notwithstanding the fact that he had been ordered by the Court to support his wife and children. He paid the sum of \$200.00 only when a warrant for commitment had been issued out of the Court of Chancery. He did not even send a gift to his children during the Christmas Holidays. Another significant fact is that at no time during the entire proceedings did he make application to visit the children or have temporary custody of them for even a few hours a week. 20

It is well to observe that the complainant and her witnesses all testified freely and frankly in contrast to the equivocation and the “fencing” with counsel on the part of the defendant. He exhibited a spirit of venom, not only towards his wife but to her brother and sister, and he showed a desire to do as much injury as possible, irrespective of the truth. Although he accused his wife’s sister of breaking up his home and stealing from him, he made not the slightest attempts to prove his assertions. 30

10 The defendant admitted that he had an income of \$175.00 a month from the rental of his property. He also admitted that he owned property which cost him the sum of \$12,000.00 to build (S. C. p. 298), but which he wanted to sell for \$35,000.00 (S. C. p. 300). He admitted that he was in very good health and by trade a master plumber. Three of his children by a previous marriage were living with him and were all working.

20 *It is respectfully urged that the decree of dismissal be reversed to the end that a decree may be made by the Chancellor ordering the defendant to provide suitable support and maintenance for the complainant and the children of their marriage.*

Respectfully submitted,

ALEX. R. DESEVO,
Solicitor for Complainant-Appellant.

ALEX. SIMPSON,
Of Counsel.

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BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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New Jersey Court of Errors and Appeals

Between

MARY MCGUINNESS,
Complainant-Appellant,

and

JOSEPH MCGUINNESS,
Defendant-Appellee.

On Appeal
from Court of
Chancery.

BRIEF FOR DEFENDANT-APPELLEE.

This matter is presented upon two appeals—one from the decree dismissing the appellant's bill for maintenance based on constructive desertion, and the other from an order of the Advisory Master, to whom the case was specially referred, granting an application to reduce the amount of alimony *pendente lite* from and after the time when such application was made, and exacting full compliance with the original order up to that time. By stipulation the hearings of both appeals are consolidated, and the appeal from decree of dismissal will be first referred to.

1. Appeal From Decree Dismissing Bill.

Facts.

The exposition of the facts contained in the appellant's brief is not reliable, since it consists chiefly of extravagant constructions placed upon the appellant's own evidence. A particular examination of the record is necessary to understand that the wife, as a witness, abandoned vital

allegations of her bill of complaint and the affidavit accompanying the same upon which the order for alimony *pendente lite* was made, and woefully failed to sustain the remaining charges of cruelty. The bill and affidavit contains the following allegations, to support which no testimony whatever was offered:

“Shortly after their marriage the defendant began to treat your complainant harshly and unjustly; * * * because of her refusal to sign the said mortgage he continually quarreled and wrangled with your complainant during the entire month of June 1927; * * * because your complainant would not sign it he called her a vile name, * * * he would not speak to your complainant or have anything to do with her; * * * he forced your complainant to cut down on the table; * * * he discontinued the telephone service and because of his repeated failure to pay for the electric light bills, the electric light was cut off for a day and a night. * * * My face was all bruised” (Bill, par. 4, p. 39; aff., par 5, p. 44).

These allegations were obviously inserted as a makeweight for the three main accusations, viz., (1) in the early part of November, 1926, the defendant refused to purchase clothing for complainant and the children; (2) on July 3rd, 1927, he struck her, knocked her over the bed and kicked her shin because she refused to sign a mortgage, and (3) April 28th, 1928, he struck her with his closed fist when she answered to an inquiry which he made concerning her brother that “it was her business and not his”. The Advisory Master accordingly had before him only evidence touching these three allegations, together with some proof as to the defendant’s demeanor when the wife called at the home for her belongings a week after her departure. These three allegations will be treated in order.

(A) *Refusal to Purchase Clothing in
November, 1926.*

Direct examination of complainant:

"In November, 1926, I asked him for clothes for my children and he refused to give them to me. After that he told me to go to New York and send them over C. O. D., which I did. The day that they came home he refused to give me a check. He walked out of the house and told me—he refused to buy some clothes and then I got the money from Mrs. McDonough to pay for the coats for the children. When he came home from business I told him about the coats being sent and that my sister had to pay for them and he should pay that back and he laughed and scorned at me (p. 67, l. 35). He wouldn't give me any explanation for not buying me and the children clothes, though I asked him to do it. He ceased buying clothes November, 1927" (p. 73, ll. 15-25).

Cross-examination:

"Mr. McGuinness never took an interest in the children's clothes whether they had them or not. In 1926 the children needed clothes. The clothing I am speaking of are winter coats. They had no old garments that would serve the purpose until the winter developed. In the conversation he told me to order them C. O. D., they needed them so bad. He told me to use my own good judgment. I ordered them C. O. D. One coat I bought was dear, there were two coats. I bought them from Saks in New York and sent them C. O. D. as he told me. It wasn't over \$50.00. Before they arrived I told Mr. McGuinness they were coming C. O. D. I took them and my sister gave me the money after Mr. McGuinness refused to give me a check that day. The goods were not sent back. When they came I was not already provided with money by my sister. I did not have the man wait until I got the money from Mrs. McDonough. In the

morning I asked Mr. McGuinness for the money and he refused. I called my sister up and asked her to give me the money for the coats as I expected them that day. On her way to work she stopped in and gave me the money. Mr. McGuinness came home that evening and I stated to him that the coats had come and that I had paid for them with money that my sister helped me out with, and that he should pay her back and he laughed" (p. 87, ll. 15-40; P. 88, ll. 1-25).

"Mrs. McDonough is my only sister and we have been brought up together rather affectionately, and are two regular loving sisters. She is a widow without children. She did not tell me when she was advancing the money that the advancement might be considered as a present which she made to the children who were getting the coats. She was the godmother of one of the children. I did not understand that she was making a present to her godchild at that time. I thought the money ought to go back to her because I asked her for it. When I suggested to him that he reimburse her he laughed. There was no quarrel, but he refused to pay it. I felt in that connection that he kind of defrauded my sister out of the money and that's my only grievance" (pp. 88 and 89).

"He didn't buy any clothes from November, 1926, until April, 1928. I got clothes from Mrs. McDonough according to how the children needed them. I just can't remember what clothes Mrs. McDonough provided for the children between 1926 and 1928. She bought them spring coats. The winter coats done them until the spring and she bought them spring coats; dresses and shoes if they needed them. The children were three and five at that time" (pp. 97 and 98).

"I do not mean that my husband did not personally go out and make the purchases and that he did not pay for any of the clothing. In paying for the children's clothing he gave them just what was necessary. He never gave me any cash. Up to November

1926 if I got clothing he made out a check for that amount. I don't know where the check book was kept in the house; it was not subject to my disposal. I had seen it when he would make out the checks, that was all. I made out checks myself that he had signed, but only for the laundry as far as I can remember. I don't remember making out any checks for department stores. I don't remember making out checks for clothing during the period from November, 1926, until April 1928. I made them out for laundry. Never remember any I made out for clothing. When I would make out a check signed by Mr. McGuinness I would make a notation on the stub in every case.

On May 17, 1926, I made out a check to Gimbel Bros.; I don't know whether it was for clothing. Check No. 1013 to the order of Macy is not my writing. Check 1020, June 18, 1926 to the order of Susie \$14.93 is in my writing. Susie is Mrs. McDonough" (pp. 125, 126 and 127). "I did not fill out check 1028 to the order of Macy" (p. 128, l. 12). "The check to Susie McDonough for \$10.47 is in Mr. McGuinness' handwriting" (p. 129, l. 10). "It was in November, 1926 that Mr. Guinness ceased buying clothing for the children. I do not know for what check No. 1086 to the order of Gimbel \$12.05 bearing no date, but following check dated November 9th was given. I filled out check No. 1103, December 22nd, to the order of Saks Co. \$21.70. It was for supplies, no clothes though, I cannot tell you what it was for, but I know it was not for clothes. The check following, bearing the same date, December 22nd, No. 1104 Gimbel Brothers \$19.89 was issued by me. The one following No. 1105 to Macy \$33.14 is in Mr. McGuinness' handwriting. I do not know what Mr. Guinness issued that check for because Mr. Guinness used to pay for his daughter's things that used to be sent C. O. D. as well as mine. I do not know that this check was applied to that purpose. It might have been. I do not know what the check dated

January 8, 1927 to Macy & Co. \$4.24 was for.

The check No. 1120 dated January 27, 1927 to the order of the Businessmens Building & Loan Association 'paid to May 1st, \$50.00' was on the account that I had in the Businessmens and my husband on January 27th paid up my dues to May 1st. That was during the period when I say he was not buying clothes for the children; in 1927. I don't know about the stub underneath R. H. Macy \$14.92. It is in my handwriting. I do not know what it is for.

During this period I had permission to order things from Macy and other department stores what I desired for the house, but not for my children or myself though. Mr. McGuinness did not tell me that I was not to buy clothing for the children, but he refused to buy clothing. He never said 'Buy things for the house but no clothing'. He refused to pay for them when I sent them home and they would have to go back again. I sent them back; I had to if I did not have the money to pay for them. He sent them back if he was there. He sent them back, but if he was not there, I did. I cannot recollect when he sent them back. I cannot recall the dates, but he has sent them back. He sent back dresses for the little girl and suits for the boy obtained from one of the stores in New York, but I cannot recollect which one" (pp. 125-134).

"Check #1128 dated March 1st, 1927, to the order of Greenville Building & Loan Association \$10.00 is in Mr. McGuinness' handwriting. I was the shareholder, and Mr. McGuinness was carrying along my shares in both the Businessmen's and Greenville Building and Loan Association" (pp. 135 and 136).

"In respect of the arrangement whereby Mr. McGuinness would sign checks and leave them for me to fill out, he prescribed the limitation that I should use the checks for laundry and milk only, so far as I can remember; and so far as I can remember I faithfully obeyed those injunctions and never used checks ex-

cept for the purpose he authorized. I could have used them for other purposes, but it never occurred to me. That is during this period when I resorted to this method of paying bills, I never so felt the pinch of poverty that I was tempted to pay for clothing or anything out of the signed checks without telling Mr. McGuinness. At times my household obligations afforded time to go out and order the provisions for the house, and at other times I would write a list for Mr. McGuinness to bring in to me. He would bring it in if he felt like it, and if not I had to do without it. In securing household needs and clothing from department stores, as a rule, I went over and made the selections and did the ordering. Mrs. McDonough used to come with me at times and these things were ordered on the plan of having them delivered C. O. D. and I giving a check, if I got the check" (p. 138 and 139).

Susan McDonough, direct:

"I had a conversation with her about going to New York, and we went over the next day to buy coats for the children and she had them sent home and when they came I said to her, if Mr. McGuinness didn't pay for them—the children needed the clothing—I said, I will pay for them and I did. Mr. McGuinness was not there when I paid for them and she had no money to pay for them. I gave sister the money to pay for them" (p. 161, l. 37).

Cross-examination:

"I gave my sister the money for the coats at her home the morning of the delivery before the coats arrived. I did not give her the money because of any refusal on Mr. McGuinness' part to pay for them when they arrived. I did not know whether he would refuse or not. I did not want them sent back; sooner than letting the coats be sent back I left the money with sister; in anticipation of his refusal to pay for them, if he did refuse

it, sister had the money. I thought that Mr. McGuinness would repay me or would pay it when he found out that I had left the money with sister to pay for the coats. I do not feel at all aggrieved that he has not paid me back. I think the question whether I am a lady in well-to-do circumstances is personal" (pp. 191 and 192).

Defendant, direct:

"There was always signed checks left in the house, always signed checks, and there were enough, and she always had the privilege to go to any of the traders on West Side Avenue and ordering what she wanted, and she was never refused anything she wanted. There was never anything sent back and nothing that was not paid for, and she could get along with her checks, besides that, any time. Sometimes I would get paid by one of the tenants in cash; I would give her what she needed and maybe give it all to her; there have been instances when I gave her all the receipts. It was my practice to sign two pages and maybe another page of checks to be available for Mrs. McGuinness. Having signed these checks I never dictated to her for what purpose they should be filled up by her. She was the mistress of the situation. She never complained that I had signed insufficient checks. She had control of everything, handled the check book and everything. She was the only one in my house that had a key. I had nothing. I was more like a boarder; she controlled everything" (pp. 223 and 224).

"I never refused to pay for the coats that were ordered for the two children and that were delivered and paid for by Mrs. McDonough; I never knew the coats were coming. The conversation to which my wife testifies wherein we discussed the matter before the delivery and in which I first refused to sanction the purchase of the coats and next told her; 'Alright, get them C. O. D.', never took place. The occasion, to which she testifies, of having told me that the coats had arrived,

that she paid for them with money obtained from her sister Susie, suggesting that I pay Susan back and that I refused, never happened. Never in my life did I refuse to buy clothing for the children. I was never asked by my wife to provide clothing for the children and refused to do so. I was never spoken to by my wife about that topic at all. During that time these signed checks of mine were always at my wife's disposal" (pp. 231 and 232).

Cross-examination:

"It is right that I was never spoken to about clothes between November, 1926, and November, 1928. During that period Mrs. McDonough did the buying. I don't know those things. The children got clothes during that period, whether I paid for them or not. They always had full and plenty of clothes" (p. 272, ll. 10-20).

"I never had anything to do with the clothes of the children. I ain't such a Mollie as that" (p. 288, l. 25).

(B) *Alleged assault on July 3, 1927.*

Complainant, direct:

"In June, 1927, he came home to me and asked me to sign a mortgage for \$2,500.00 on 664 West Side Ave. I told him I would sign it if he would tell me what he needed the money for and this he refused to do, so I would not sign it. He said if I did not sign it I would lose the roof over my head. I said if he would tell me the conditions I would sign it willingly, but I wouldn't do it unless he told me. This he refused. He always argued with me since the time of this mortgage up to July. He was very disagreeable and nasty to me. He wouldn't talk to me at all. If I was in one room he would go into another room and want the boy with him.

In July, 1927, he came home and spoke about the mortgage again to me. I was mak-

ing the bed and I turned around and refused to do it. That was about the middle of July. When I turned around and refused to sign, he struck me across the face with his hand and kicked me in the shin. He bruised my face and cut my shin. He threw me into the bed. He did not say anything when he did it. It was just because I refused to sign the mortgage again. He asked me to sign the mortgage and I said no unless he told me what he was going to do with the money. He refused to tell me and then he struck me. After that he got his hat and coat and walked out. He did not say anything after he hit me.

My sister came in an hour after that and my face was still bruised and my shin was cut. I showed her those marks and she bathed them for me. He was out all afternoon and I next saw him at 6 o'clock. He came home for his supper and ate his supper and didn't say anything. When he ate his supper he got up and went into the living room. He never spoke to me up to the time I left home. He refused to talk to me and the next thing he did to me in the way of violence was on April 28th, 1928; from July, 1927, until April, 1928, he was always arguing with me and at times not speaking to me at all" (pp. 69, 70, 71 and 72).

Cross-examination:

"We were married in 1921 and lived together until 1928. During those seven years Mr. McGuinness came home under the influence of liquor at times. I really couldn't say the amount. He was not a man habituated to coming into my house drunk. He never called me names until the argument started in 1927; before that, no. For six years he never called me any names. He was never offensive in his remarks to me. He was a pretty good average sort of a fellow; no angel, but a pretty good sort of a fellow.

The trouble that developed in June, 1927, was the matter of the mortgage that he

wanted me to sign. He told me that it was necessary that the mortgage should be signed, else I should lose the roof over my head. I did not believe him. The only times when he ever lied to me were a couple of occasions when I gave him money and he told me in a week or two he would give it back to me. I was led to disbelieve him that I would lose the roof over my head, if I didn't sign the mortgage because he never told me what it was for. He gave me no intimation, although I asked him every time that he asked me. When he spoke to me about the mortgage I told him I would sign it if he would tell me what the money was for. He refused and he would say 'Sign this mortgage' and I would say 'Yes, if you tell me what the money is for' and he said 'I refuse to tell you'. This conversation took place quite often. In June he asked me first, in July when he struck me he asked me again, after that time three or four times and I refused every time. At this time I did not know what his situation was as to owing money on mortgages. I knew there was a mortgage on the house, knew how much and who held the mortgages. I knew of a mortgage of \$5,000.00 held by John W. Heck and that on the other property there was a mortgage held by the Trust Company, not for \$8,000.00 but \$7,500.00" (pp. 84, 89, 90 and 91).

"I never touched Mr. McGuinness' tax bills and never received any tax bills. In June, 1927, he asked me to sign a mortgage for \$2,500.00 and was very disagreeable and nasty when I refused. I did not feel under any wifely obligation to surrender my judgment to his in the matter of aiding him in raising the money. If he had told me what he wanted it for I was willing. My disposition was not to show power and terrorize the situation; I had no power in that house and did not understand and appreciate that I was the boss of the situation. I knew he couldn't raise any money on mortgages without hav-

ing me participate, and although I knew he was asking me to participate in order to acquire funds, I did not know what he wanted it for. I was resolved that he should not get the money for his own use until he first told me what he was going to do with it. If he had yielded to my insistment that he tell me what he was going to do with the money I would have signed the mortgage, but not unless it was a good cause. I was going to pass on the propriety as to how he was going to use that money and was resolved that I would not aid him in raising the money unless he was going to use it to my taste.

I always had an idea that Mr. McGuinness had enough income to pay his way and there was no need for him to borrow the money because he got the rents. I thought he was going to gamble the money and was back in all his financial obligations because of gambling. I did not know in what obligations he was back other than what he told me. He was back in his interest and taxes. He told me that before the mortgage. I felt there was no occasion to be back in his taxes because he was collecting \$300.00 a month and could pay his way, but he kept all the money for himself and gambled and lost it and came to me and demanded me to sign for this \$2,500.00. He told me he was back in his interest and taxes before he ever started with this mortgage, and I put it to him why didn't he pay his taxes as he collected his rents and went along. When he first canvassed me to sign this mortgage I well knew he was back in his taxes, but I suspected when he got the \$2,500.00 he would do something else with it besides pay the taxes and pay the interest. When he told me that unless I aided him in raising this mortgage I will lose the roof over my head, that did not convey to me that he wanted to raise the money to pay the taxes and the interest. He didn't put it that way; he just told me he wanted the \$2,500.00.

In July he slapped me, threw me on the bed and kicked my shin. He was rather upset,

and the cause of being upset was the fact that I wouldn't sign the mortgage. All throughout I was distrustful of him, but did not tell him that. He came in and hit me with his hand on my face and kicked me. He did not knock me down when he kicked me. He pushed me on the bed. He is a rather heavy stalwart man and cut my shin and broke the skin when he kicked me. I saw his foot coming in contact with my shin; it wasn't necessary to look down. It was before he threw me on the bed he kicked me. He kicked me but once. He came back at 6 o'clock and ate a meal I had prepared for him. I was not injured so as to be unable to prepare the meal, and was not so resentful towards him as not to get his supper. There was no further difficulty again that day. The next day conversation was resumed between the two of us" (pp. 89 to 97).

"I cannot recall any other instance of rowdiness on my husband's part between July, 1927, and April 28th, 1928. He never struck me. During all that time I was frightened of him. I left him because I thought he would do the same thing he had done to me before. I was particularly afraid of an assault. I regarded him as awaiting a chance to beat me again. I saw him every day that period, and although he exhibited to me that he was loath to inflict any violence on me I was still in dread of him" (p. 143, ll. 10-36).

Susan McDonough, direct:

"July, 1927, I went down to her home. She had a mark on her eye and her lip was cut and her shin was broken and I bathed her. That was in July. That is what I am telling about now. She had marks on her eye, her lip and her shin. She was in a hysterical condition. I went down and had a conversation with the son and by that time she had her baby dressed and she came away to my house. It was around 3 o'clock and she stayed until about 5, or a quarter of 5. I said to her 'Are

you going to go home now'. She said 'Yes, I will go home now' " (p. 163, l. 5).

Defendant, direct:

"It never happened that one day in the month of July, 1927, she was in her room tidying up and I came in and said to her 'Mary if you won't sign that mortgage I will make you sign it' and without further conversation I went over and kicked her on the shin, threw her on the bed and slapped on my hat and left the house That never happened. I never at any time kicked my wife, or threw her on the bed and ran out of the house. I never said to her if you do not sign the mortgage I will make you sign it. I do not know of my wife ever having any bruises or injury to her shin" (pp. 230 and 231).

(C) *The assault of April 28th, 1928.*

Complainant, direct:

"He had been out the previous night and did not get up for breakfast. He got up for lunch. I was in the kitchen and he came in and had his lunch. After that he went into the dining room with the children. I was clearing the table off and doing my work in the kitchen when he came in and made a remark about a brother of mine and asked why he moved from Jersey City. I told him that did not interest him; it was our own family affair and with that he struck me in the nose with his fist and made it bleed. That was all he did. After that he stood there arguing with me. In arguing he said it was his business. He did not say anything when he punched me in the nose and made my nose bleed. I was standing between the kitchen and the dining room. I went inside and my little boy of five years old picked up a stick to hit him with it. My husband did not do anything; he stayed in the room and nothing else occurred between us. I went inside and got my children dressed and I got dressed and

went down to a tenant, Mrs. Harris, to use her telephone. I called up my own sister to find out whether she was home. So I called up Mrs. Quinn and found out she was home. I called for a taxi and went to Mrs. Quinn's house, going there about 3 o'clock. I stayed there (Quinns) until about 4 o'clock. I got there between 2 and 3. He did not come there at all while I was there. I called up my sister to find out whether she was home. She was home and I took the children and went to her house" (pp. 74 and 75).

Cross-examination:

"On the night before the last encounter he and I were not sleeping together. I could not really tell for how long we had not slept in the same room. It was not so protracted a period as a year. He was sleeping in the living room on a couch; I was sleeping in the bed with the children. I did not get up during the night to see whether he was in his room, but I left the light burning always when Mr. McGuinness was out in the dining room. When that light was out I knew Mr. McGuinness was in. It wasn't out. I don't know until what hour; it was morning anyhow. I don't know when I saw the light last because I was in bed. I could see the light under the door. I did not get out of bed once I retired. My testimony that he was out all that night gambling is based on the fact that at some time during the night I saw this light in the dining room. It was in the morning, daylight, that I saw it. He must have put it out when he came in, but I don't know who put it out. I did not at any time look in his room to see whether anyone was there.

It was his custom to join the family at breakfast or to have it when he got up. When he got up the children and I had it with him. I did not have breakfast with him that morning. He got up at a late hour, just before lunch. That would be about 11 o'clock. I prepared a meal for him then. He had lunch with me and I was of a friendly disposition to-

wards him. I was in one room and he was with the children. I did not think my health or life was in danger when I prepared breakfast. He ate the meal that I prepared. I don't remember whether or not I talked to him. After he ate the meal he went to another room, the dining room, and the children went in with him. Mr. McGuinness is a man who is addicted to playing with the children,—fools around and frolics with them,—and that was his occupation that morning. They were looking out the window in the park where the policemen were having a rehearsal. I was not paying any attention to the talk between him and the children. He was not molesting me.

I recall a box of candy that was a gift from one of my brothers. At that time I do not recall the incident of Mr. McGuinness helping himself to that candy. I did not state that he had no license to eat the candy that was brought in the house by my brother. I never had a fight with my husband over the box of candy that was brought in by my brother.

This outburst on this April day was produced by him asking a question about a brother of mine. He came in and wanted to know why it was a brother of mine got out of the city and moved to the country. That is all he asked, and I told him it was a family affair. That is all that happened" (pp. 99 to 103).

"I made an affidavit in which I stated that 'he came over and remarked on some family affairs in which I alone was interested because it concerned my family, but I told him that it was my business and none of his, whereupon he struck me with his clenched fist'. When I so spoke to him I did not understand that would provoke him to ill feeling towards me. Up to that time his manner was not quite kind and considerate. I did not see his fist coming towards me, but I saw his hand was closed because I know it was a blow on my nose. I can tell the difference between a smack and a blow on the nose, and it bled as

though his fist was clenched. I did not need any medical treatment. He did not strike me on any other part of the face. My nose bled for about a half an hour or so after the blow. I did not lie down when he struck me. I just put a handkerchief to my nose and my little boy five years old saw him strike me. The hemorrhage started while I was walking around. He did not knock me down with the blow. He said nothing more to me; remained in the house.

This happened after lunch. It would be near 1 o'clock; I guess between 1 and 2. I did not go to Mrs. Quinn's until between 2 and 3. During that time I was in the house with Mr. McGuinness, with my children ready to go. I was in fear of my life. Although he was sitting there not molesting me, when he hit me once I thought he would do it again. When he slapped me in June, 1927, he did not make a regular habit of it thereafter, and I thought it would be habitual after 1928 because I saw Mr. McGuinness was in a temper and I thought he might come back again. I was in constant fear that he might strike me, irrespective of whether I gave him any provocation or not. I left for Mrs. Quinn between 2 and 3 o'clock, dressed up and prepared for street appearance. I did not have to flee from the house in fear of my life on that occasion, but I was afraid. While making these preparations Mr. McGuinness' daughter Marie came down and passed through the rooms to go to her apartment" (pp. 104 to 108).

"When I got to Mrs. Quinn's house there was a mark on my face, but it was a slight mark. I made an affidavit which I identify, 'my nose was cut and my face was all bruised'. Although that is in the affidavit, my face was not bruised. My nose was cut. While calling on Mrs. Quinn I did not converse with her about my recent trouble with my husband. I told her how Mr. McGuinness had hit me on the nose. I had no conversation with her except to say that her brother had struck me.

I conversed with her daughter about other topics than my family wars. I was upset in my mind and was sitting down paying a social visit to Mrs. Quinn and talking about other things and did not want to upset her with my troubles" (pp. 108 to 110).

"April 28th I came from the kitchen into the dining room. They are right next to each other. I had previously been in the kitchen. Mr. McGuinness made a remark about one of my brothers. I don't recall whether it was my younger brother or not. I know the age of one of my brothers and I know it was the younger. Mr. McGuinness at the time when he made the allusion to him was in the dining room. I was in the kitchen when the encounter took place. I moved nearer to where Mr. McGuinness was at the time of the collision. Before moving I said something to him to resent his remarks in reference to any member of my family. I felt offended by his taking the liberty of making any such reference and told him so. I said that did not concern him what he spoke about; it just concerned me. I did not say 'none of your business', I said it did not concern him. He did not enter the kitchen. I was in the dining room. I believe I was in the dining room; between the kitchen and the dining room; between the dining room and the kitchen. In the beginning of the conversation I was in the kitchen, I was over to the other end of the kitchen near the sink. I advanced towards where he was when he spoke to me. I was washing the dishes. I do not remember whether there was a knife used at the meal. I was clearing up, there must have been.

I changed my position at the time of this altercation because he was talking, and I went in further to hear what he said. I did not say it was none of his business, I told him it was none of his affair. With his clenched fist he punched me on the nose, and the bruise was not on the front of the nose but in the lobe of the nose. Then he went over to the other end of the dining room and said no

more. At the time he struck me he did not say anything. Not a word that I remember. There was nothing said except the question about my brother and my retort and walking over to him and getting punched on the nose and nothing else. He made some remark but I do not recall what he did say. That explosion of his was induced by the fact that for the first time in my life I had attacked him with a carving knife" (pp. 143 to 148).

Susan McDonough, direct:

"On April 28th she called at my house about a quarter to four. She was in a hysterical and nervous condition. She had a mark on her eye, her lip was cut and she was hysterical. I put her to bed and told her I would have to call the doctor, but I was ashamed and did not" (p. 165, ll. 20-40).

Cross-examination:

"She had a cut eye and a cut lip. She had a mark on her eye and a mark on her mouth. I could see where her nose had been bleeding, but her nose was not cut. I don't just remember that there was any mark on her nose at all, but I know that her nose had been bleeding. A hemorrhage from the inside as though she had been bleeding. I don't know how she got that cut on her mouth other than a blow that she received from Mr. McGuinness. She told me that Mr. McGuinness had struck her on the mouth. She had told me that Mr. McGuinness had hit her on the eye. There was only one blow hit, but I suppose the width of his hand covered the territory of her face. She said that Mr. McGuinness had struck her. I cannot recall that she said he struck her with his clenched fist on the nose" (pp. 165 to 176).

"Her mouth was marked both in July, 1927 and April, 1928. It looked as if the skin had been broken on it. When I speak of her mouth I mean the corner of her mouth. I do not know whether it was the same spot in July

and April, but it was in the area of her mouth. It was in the corner of the lip" (pp. 177 and 178).

Defendant, direct:

"On the night before I slept in the bedroom where I always slept. I retired about 9 o'clock after I was done reading the paper. It is a lie that I was out all that night gambling. I never knew of any light that I was accustomed to extinguish when I was going to bed. There was never any light lit in the living room until I was going to bed. If there was a light it would be in my bedroom. Mrs. McGuinness from her position in her bedroom could not see any light in any part of the house, unless a light in the bathroom.

On April 28th I got up, I should judge about 8 o'clock. I had breakfast that day served by Mrs. McGuinness and had lunch prepared by her. Up to that time Mrs. McGuinness was able to perform all her household duties to my satisfaction and her wifely duties were not at all noticeably impaired by anything that I did. After lunch I came out in the dining room and saw a box of candy on the dresser. A box of candy that came from Atlantic City and the two children were at the window looking out. I took up a handful of the candy and I went over to the children playing with the children and the little boy, Lester, says, 'Uncle Joe brought this', and Mrs. McGuinness hollered out from the kitchen 'Leave that candy alone, that is Malone candy'. I merely laughed, the boy said 'Uncle Joe sent that from Atlantic City'. Uncle Joe is a brother of Mrs. McGuinness. Mrs. McGuinness overhearing the child's remark said 'That is Malone candy, leave it alone'. She was speaking to me.

I left it alone, and it brought something to my mind. I just went into my wife and says I 'By the way, Mamie, why did they send Joe back to the country'. Innocently, that was referring to the brother having received a new appointment from his superiors. By

way of reply she came out of the kitchen with a knife in her hand. I was then sitting at the dining room window playing with the children. She came on with the carving knife in her hand. I was sitting down. As she came to me I put up my hand like that (illustrating) causing her a smack on the chin. I said 'See here, your slugging days are over'. What I meant by that was that she had a habit of every time she felt like it it would be a little poke. She was a woman and did not bother me. I let her get away with it.

When I had last seen Mrs. McGuinness in the kitchen she was at the sink and at the time the dialogue took place I was at a cedar chest at the window with the children. The distance was 24 feet from where she was and where I was. She traversed the distance of 24 feet from the sink, having in her hand a carving knife, what we call a bread knife. I was just sitting down there and I just smacked like that, the first and only time I ever did it in my life. That was the first and only time she ever tried a knife on me. She didn't say anything except 'don't you talk about my brother'. She came at me like a wild woman. Her face was drawn like you get when you are very excited. She is a very nervous woman. She was always nervous. She is a woman who, if she got in a temper, you had no living with her at all.

When I told her that her slugging days were over what I had in mind was that every little word that I would say the first thing she would slug me in front of her sister, every little thing, she would slug me, but I paid no attention to it. By slugged, I mean poked the devil out of me. If you call that slugging. I would let her get away with it. By poked I mean punched me and scratching, slapping, whatever you want to call it. You know when a woman gets mad and wild tempered what she will do. That is the only way I can explain it. She would up with her hand and punch you and slap you and even kick you.

I can recall at least fifty times when she offered me the indignity of presuming to slap me. At those times I walked away from her because she is a frail little woman; she could not hurt me. That is what I had in mind on this particular occasion when I told her that her slugging days were over. The quarrel did not get beyond that; that situation stopped right then.

I was in the house and the first thing I knew she went out with the children. If I had struck her with my clenched fist on the nose I would have killed her. What is the use of talking that way, I did not strike her with the clenched fist on the nose. I weigh about 220 or 230 pounds. I am a pretty fair heavy rugged man. My wife, on the other hand, weighs about 110 pounds. When I slapped her she did not fall. I did not cut her never. There was no sign of blood or anything. She did not have a nose bleed, even an ordinary nose bleed. I don't know of any cut on her eye and also a cut on the corner of her mouth. It has been testified that later in the day she exhibited a cut on her eye and also a cut on the corner of her mouth, but I don't know of any cut. Her lip was not cut, nor the corner of her mouth. Not a mark on her. The slap was just the putting up of my hand merely like that (illustrating). I would not hurt a woman. It was a back hand slap. Just once, it was more of a protection for me.

After I slapped her she let go of the knife and started giving me the devil verbally, tongue thrashing. I do not recall what she said, but once I scared her I did not pay any more attention to her. Nothing more was said by me. All saying was done by her. She done a lot of it. I said not a word. I suppose the matter died down in twenty minutes after that" (p. 243).

Cross-examination:

"I don't know whether I said I smacked her or not, but I know I did. What you call

smacking her, to scare her. I merely tried to scare her so she would not,—if anybody came at you with a knife you would not let them jab it at you” (pp. 273 and 274).

Mary Quinn, direct:

“I was visited by Mrs. McGuinness on the day she left home. Mrs. McGuinness came in, she was crying. When she sat down she started to cry and she said to me ‘I did not know you were sick or I would not come in’. She said ‘I wanted to go to my sister’s, but she was not home’. Then the doctor came in and she stepped out of the room. That is all I observed. I did not observe anything unusual in respect of Mrs. McGuinness’ face. I did not notice it. I did not make any observation as to her nose or her eyebrow or as to the corner of her mouth being ripped apart. *She* did not say so in her testimony. *She* did not say she came in my house cut and bruised. She did not appear in the mangled condition she has testified. No, no. I did not talk to her very long. I did not find out why she was crying because as soon as she came in the doctor stepped into the room and she stepped out and she did not come back for a long time. I did not have any conversation with her because I was not able to” (pp. 314 to 316).

Anna Quinn, direct:

“I was home with my mother the day Mrs. McGuinness called. My mother was ill and the doctor came in and Mrs. McGuinness stepped out of the room and did not bother my mother with any of her trouble. I said ‘Mamie what is the matter, you are crying’. I noticed that Mrs. McGuinness was very hysterical. I do not recall anything as to the condition of her face. She said she had some trouble with Mr. McGuinness. I don’t know just what was the matter. I could not repeat what Mrs. McGuinness said. She did not tell me what the trouble was; just marital

differences. She was crying and stayed for a little while, telephoned and left our house. I did not examine her to see any marks. I don't remember that she said that her husband had struck her a blow on the face. She did not speak in my mother's hearing whatsoever. I do not remember the exact details of the meeting whatsoever, except that she was nervous and hysterical. I cannot remember seeing any bruise or cuts of any kind on her face. She was in our home altogether about an hour. During that time I saw her practically all the time except when I was in my mother's room" (pp. 316 to 319).

Marie McGuinness, direct:

"On the day that she left I came home for lunch about 1 o'clock, and to go to my apartment I had to go through the house through the dining room and she was standing there. I just glimpsed her face and went up to my place. The only difference that I could see in her face she looked as if she was in a temper and sort of wild. Her face was not cut that I could see. She did not have a gash on her eyebrow. The corner of her mouth was not ripped; her nose was not bleeding or looked as if it had been bleeding; her face was not bruised at all that I could see" (pp. 311 and 312).

Cross-examination:

"When I went in she was standing in the dining room. I was nearer to her than I am to you. I did not look at her face to see whether she was bruised, but she was looking at me. I did not make an examination of her, but I could see her. When I opened the door I heard her talking very loud to my father. I don't know what she was saying, but he was not saying anything. As I passed I noticed no marks of any kind on her" (pp. 313 and 314). "All the trouble dated from the time the property was taken in my name" (pp. 313-314).

(D) *Smashing the Table by Defendant When
Complainant Called for Her Clothes
After Her Departure.*

Complainant, direct:

“I took the children and went to the home of my sister in April, 1928. I went back to the house in May. He had given me permission to go after clothes for the children. When I came in he had been upstairs and came down to me. I got the children’s clothes ready and all the toys. He came down and went into the storeroom and got a bottle of liquor and he came out drinking the liquor. Then he went in and got a hammer and smashed the dining room table and also the serving table saying ‘I’ll break up the house with you’. He was under the influence of liquor and I was afraid of him. I took my little boy and went down the back way to the home of Mrs. McDonough” (p. 76).

Cross-examination:

“I expected to see him there. I went at a time when he would be there, right after noon. When I arrived he was in an excited state of mind. He went in and got himself a drink of whiskey and I saw that he was under the influence of liquor because he had a bottle of liquor in his hand going around from one place to the other. I knew by his appearance he was intoxicated. He looked as though he was drunk. His face was all red. I told him that I had called to take the clothes and he said take everything you want. I saw him take two or three drinks that day and heard him offer the van drivers a drink. He said ‘As long as you are breaking up the house I will help you break it up’. I was not able to see that he was a sorrowful man. I did not think that he had any regret for me because I was breaking up the home. I felt sorry about breaking up myself, but I did not tell that to him” (pp. 115 to 118).

The defendant testified:

“I admit the smashing of a glass with a hammer. I did not think that would induce her to sign. When I saw my home that had cost me a lifetime to build—when I saw it going to pieces, I lost my head and was willing to wreck the whole place. I says to her ‘Mamie, you’re doing a foolish thing. We had such a time collecting this home and went to such expense on it and here you are, wrecking it. Can’t you reconsider?’ She says ‘No’. I says ‘Well, to hell with it, let it all go’. That was my feeling at the time. When she got all that she could take she went home” (pp. 294 and 295).

As to these four assertions of mistreatment the Advisory Master found as follows:

- (A) As to failure to provide clothing: “It appears from the testimony that it was the habit of the defendant to sign checks in blank and complainant then filled in the same and used the checks for such purpose as she desired” (Concl., p. 32, l. 15).
- (B) As to the allegation of assault in July, 1927 the finding was: “The proofs do not substantiate this allegation of cruelty” (Concl., p. 33, l. 27).
- (C) As to the assault on the day of departure the finding was: “There was, undoubtedly, a violent quarrel between the complainant and defendant on this day, arising out of defendant’s inquiry about complainant’s brother. After carefully considering all the voluminous testimony relating to what occurred on this day, I am not satisfied that there was sufficient to justify complainant in permanently leaving her home” (Concl., p. 35, ll. 25-35).
- (D) As to the smashing of the table two weeks after departure, the finding was:

“This act was done after complainant had refused to return to her home and can be attributed to the surrounding circumstances” (Concl., p. 37, ll. 15-20).

The Advisory Master further found upon ample evidence that the complainant (far from leaving her home in fear of her person and safety), would have returned to her home if defendant came after her while she was at Mrs. Quinn's, upon whom she called socially, but of whose presence there he was not aware. He further found that it was upon her arrival at her sister's, later in the afternoon, that she fully determined never to return to her husband's home and thereafter adhered to such determination (Concl., p. 35, ll. 35-40).

He found that the defendant made adequate overtures to his wife at the outset and was absolved from making further efforts in that direction, because of the complainant's early declaration and repetition of her refusal to return (Concl., pp. 35, 36 and 37).

He further noticed the complainant's admission that during their married life defendant never called her any names, never made any offensive remarks to her and that the marital relations between them were satisfactory, up to the time the difficulty arose concerning the execution of the mortgage to pay taxes, etc. (Concl., p. 37, ll. 20-30).

The astounding statement of the appellant's brief that defendant made no effort at all to become reconciled to his wife calls for correction. A few days after her departure he learned of her whereabouts through his son to whom Mrs. McDonough telephoned. He directed his son to call upon his wife and instructed him to request her to come home (p. 243, ll. 15-25; p. 245, ll. 20-30); a few days later he met her in the office of Judge

Egan and at the outset of the conference it was proposed to her that she come home and she refused to come home under any consideration (pp. 121, 122, 246 and 256). After the conference at Judge Egan's office he walked home with her, their conversation was cordial and on the way home he again besought her to come home, reminding her that his substance would be eaten up by court expenses and she answered that "she was going to do it no matter how it comes out" (pp. 121 and 256, l. 10); shortly after, seeing her on the street with the children and her sister, he approached her but they hastened away (p. 118, l. 20 and p. 169, ll. 20-40); when she returned to the house for her clothing he again asked her if she would not reconsider the wrecking of the home and she answered in the negative (p. 295, l. 25); he journeyed to Montgomery, N. Y. where she was spending a vacation in June in an effort again to see her and was met by her sister who hold him that his wife did not want to have anything to do with him (p. 248); he telephoned to his wife fifteen or sixteen times and her sister, who answered, would announce that she was out and hang up (p. 249); in the course of his practice to see the boy on the way to school, he met him on an occasion when the complainant was with him and the defendant again sought to have his wife relax, telling her she was disgracing the two children (p. 281, l. 25); shortly after she was walking near his home and he went after her, becoming aware of his efforts to talk with her she quickened her pace and eventually started to run (p. 291, ll. 30-40 and p. 292). About three months after her leaving he met her on the street and asked "Why cannot we fix this thing up" and she answered "Go and see Mr. Simpson" (p. 279, l. 30).

His answer sets up that he maintains the home awaiting her return (pars. 7 and 8, p. 51). In his

petition to modify the order for alimony he reiterates the same readiness (par. 10, p. 20, l. 34). In his testimony he stated that he wanted her to come home, that he would treat her with kindness, consideration and generosity, that he had financial ability to do so and wanted her and the children at his fireside (p. 264, ll. 20-30).

The evidence shows her determined refusal to return from the time she arrived at her sister's home until the trial. When asked on the stand if she would then return she refused (p. 122, l. 15); she stated that when she left the house she had no fear of her personal safety, but on the contrary had respect and love for him, that she would have returned if he had sought her out that day, that she did not make up her mind that she would not go back until the night of that day; that she was then influenced by the fact that he did not pursue her and the children to find out where they were (pp. 122, 123, 124, 149, 150, 152, 154 and 160). Her sister testified that upon her arrival at her house on the day of the desertion the sister advised her to go home and the complainant refused (p. 177) and thereafter they further discussed the matter and resolved that the complainant should return only if the defendant would apologize for his actions (pp. 180 and 181).

POINT I.

The finding of the Advisory Master was justified.

The testimony on every feature of the case was conflicting, and the court cannot reverse unless it appears that the finding of the Advisory Master on the facts was clearly unjustified.

Martin v. Martin, 87 N. J. Eq. 361.

The Advisory Master's conception of the complainant's rights was correct and her proof in no aspect brought the case within the doctrine of *Walsh v. Walsh*, 88 N. J. Eq. 36, which he cited in his conclusions.

She relied exclusively upon the single blow which she said was inflicted before she left, and apart from the defendant's explanation that he repelled an attack with a knife, this circumstance, unaccompanied by other evidence of continuing hostility, would not sanction her leaving him.

Illustrative of the insignificance of a single blow is the well known case in which a wife was justified in abandoning the husband when the blow was *in anger* and was with *sufficient force to injure her eyesight* and was a culminating brutality following a long train of cruelty in which the husband unjustly and untruthfully accused her of unfaithfulness to him and frequently told her that she might go to her own home if she did not like his proceedings.

Parker v. Parker, 57 N. J. Eq. 577.

In an early definition of "extreme cruelty" justifying divorce it is stated that "the violence must be such as endangers life or health or, alternatively, violence, accompanied by persistent ill feeling and opprobrious epithets, such as render her life one of extreme discomfort and wretchedness".

Taylor v. Taylor, 73 N. J. Eq. 745.

The willingness of the complainant to return to her husband and her free avowal that she would have done so had he asked her on the day of her departure, but not afterwards, negatives that she was the victim of violence of the type required. Indeed there was no showing of any violence

whatever that assimilated cruelty, or a hostile attitude of the defendant. On the contrary both isolated instances of assault on which the complainant relies were incited by her own conduct. She admits that the first assault was provoked by her refusal to sign the mortgage and the second by the combined influence of her insolent retort and her approach to the defendant with a knife.

Her case came very aptly within the ruling that acts of violence exasperated by the conduct of the wife do not partake of the nature of extreme cruelty.

Coles v. Coles, 32 N. J. Eq. 547;
Saunders v. Saunders, 82 N. J. Eq. 49;
Thomas v. Thomas, 87 N. J. Eq. 670;
Renk v. Renk, 38 Atl. 427.

In the last case the husband was not quarrelsome but the wife was nervous. They had some violent quarrels, in one of which he produced an unloaded pistol and threatened to shoot himself and also, according to her testimony, threatened to kill her. On the morning they separated she struck him with an iron stove lifter and attempted to throw a cup at him, whereupon he caught her, held her against the wall and asked his son to go for an ambulance to have her taken to an insane asylum. The quarrels were the results of complaints being made that she was compelled to help support the family by dressmaking. Although he made no defense, it was held that she was not entitled to a decree on the ground of cruelty.

In the present case there was a failure of proof that the defendant both abandoned the complainant and refused to support her.

Parker v. Parker, *supra*.

A few days after her departure, the meeting was held in the office of Judge Egan, and from

that time until February 13th, 1929, the defendant persistently urged the complainant to cooperate with him in a division whereby she would receive one-half of his entire fortune. This offer she repelled, with a demand that he pay her \$20,000. At no time, therefore, did he refuse to support her.

2. Appeal From Modification of Order for Alimony *Pendente Lite*.

Facts.

According to the complainant's brief (p. 34), at the time of the hearing the defendant was in receipt of an income of \$175 a month. This was an increase over the amount of his income at the time of the original order for suit money; his total faculties at that time being \$130 a month. Out of this he was required to provide for taxes approximately \$1,000 per annum and the interest on two mortgages aggregating \$12,354.89, together with repairs, insurance, his own maintenance, etc. (p. 15, ll. 15-25). This testimony was not open to question, but, notwithstanding, there was an order made that he pay the complainant \$40 per week, or about \$10 in excess of his gross monthly income; a counsel fee of \$200 was also allowed (Order for Alimony, p. 12).

The defendant was unable to discharge the burden thus imposed, and on November 26th, 1928, applied to the Vice-Chancellor for an order to show cause why a reference should not be had to a Master to ascertain truly the petitioner's resources. The application was denied, and at the same time the Vice-Chancellor made an order that he show cause why he should not be punished for contempt, and on December 3rd so adjudged him, and ordered his committment to jail (p. 15,

ll. 25-40; p. 16, ll. 1-15). He escaped actual incarceration by borrowing \$200 from his son, which was delivered to the complainant on December 13th, 1928, on an assurance that the defendant would resume the negotiations for the division of his property proposed by defendant. Those negotiations were pursued, but the complainant immovably demanded \$20,000, which represented the entire equity that he had in his property; they terminated on February 13th, 1929.

Meanwhile, the cause had been referred to Mr. Barricklo, on January 6th, 1929. The complainant took no steps to bring on the hearing, and the defendant, upon the collapse of the negotiations, on February 13th, 1929, gave notice of an application to designate a time and place of hearing returnable February 18th. Upon the service of the notice the complainant retaliated by obtaining on the same day a new order that the defendant show cause why he should not be punished for contempt, returnable February 27th. Pending this order, the defendant, on February 18th, 1929, filed his petition with the Advisory Master and obtained an order to show cause why the alimony should not be modified; this order was likewise made returnable February 27th (pp. 13 to 24).

The application to punish and the application to modify being heard together, the Advisory Master fixed the date for hearing March 8th, one week thence, and announced that he would then dispose of both applications. On the day set the complainant was not ready and the hearing was reset for March 22nd. The taking of testimony occupied three days at intervals, and the final argument was not heard until May 16th, at which time the Advisory Master gave his decision that the bill should be dismissed.

The hearing on the suspended applications to punish for contempt and to reduce the alimony was then set and after postponements, they were finally argued June 18th, 1929. The defendant was in arrears on the original order to the extent of \$480.00 having paid but five weeks alimony and the \$200.00 counsel fee; sixteen weeks had elapsed from the time that he presented his petition to modify until the day when the same was finally heard. The ruling of the Advisory Master was that the application to punish for contempt should be dismissed and that the alimony should be reduced from \$40.00 to \$15.00 per week from the time of the application therefor, but conditioned upon the defendant obeying the original order up to the time of the making of his application. The signing of the decree was held in abeyance until the defendant discharged all obligations in respect of the alimony as thus directed. The defendant did so comply, and the decree of dismissal was signed June 27th, 1929. In this way the defendant paid to the complainant \$1020.00 in addition to the counsel fee.

That he thus provided the complainant with ample means for prosecuting her suit is evinced by the record showing that the complainant was at all times equipped with not one, but two, counsel to make her applications for alimony, to punish for contempt, to resist modification, to attend her at almost a dozen hearings before the Advisory Master as well as to represent her on the present appeal. On a motion to suppress the defense the Advisory Master found and ruled that appellant had not suffered through appellee's default, and indicated his purpose to require compliance with the original order (p. 56, l. 30).

POINT I.

The appellant complains of no denial of justice in the modification of the alimony.

The sole point made is that the Advisory Master was over-indulgent in permitting the defendant to *present* his petition at a time when he was in arrears; the Court on appeal is not asked to do more than reprobate such magnanimity. It is not even sought to direct that the defendant pay the difference between \$40.00 and \$15.00 for the sixteen weeks that the latter sum was operative, and indeed the Court could not be asked to do so in the absence of proof that the necessities of the appellant in prosecuting her suit required the payment of such additional amount.

“The allowance of suit money is a subject that is *sui generis*. It lies entirely within the discretion of the court, is based upon necessity, must be guardedly dispensed so as to avoid injustice to either party and is a mere temporary expedient which may be modified at any time on the application of either.”

Amos v. Amos, 4 N. J. Eq. 171;

Westerfield v. Westerfield, 36 N. J. Eq. 195;

McGrail v. McGrail, 51 N. J. Eq. 537.

POINT II.

The question on the appeal as to the modifying order is moot.

In the face of the defendant's ultimate compliance with both orders made below, and the failure of the appellant to complain that any right was infringed by the making of the same, the Court is

called upon to criticize merely the procedure followed below.

The appeal in such circumstances must be rejected because the appellant is not a person aggrieved by any order or decree of the Court of Chancery.

C. S., Vol. 1, Par. 111, P. 450.

POINT III.

In making the order to modify the Advisory Master observed all recognized rules of equity.

The appellant relies solely upon *Cooper v. Cooper*, 143 Atl. 559. It is notable that this case was decided October 27th, 1928, six days after the making of the order for alimony *pendente lite*. Obviously it inspired the appellant to a course of rigorousness which otherwise would not be apparent in this matter. From the time of its publication the appellant has insisted its holding is that one, under an order for alimony *pendente lite*, could not apply for relief in any form until he had complied with the terms of the order absolutely, and that he would not be even heard to complain that such order was impossible of performance. The *Cooper* case expounds no such principle, but merely reiterates that one may not question the order of a court by *disobedience* and that a contemnor will not be heard to ask the Court's indulgence without first purging himself of the appearance of contumacy.

In the *Cooper* case the decree that was flouted was for permanent alimony, *i. e.*, an ultimate award of justice, as pointed out in *Swallow v. Swallow*, 84 N. J. Eq. 109; in the present instance

the order was for temporary alimony, dependent for its justice upon the necessities of the complainant. In the Cooper case the defendant was an habitual and incorrigible offender who had been oft reprehended for contempt and while shown to be of ample capability, had nevertheless refused to comply with the Court's order; in the present case the complainant was the object of an order, unwarranted in the first instance, and which the advisory master cut down over 60%. There was no holding in the Cooper case that the defendant was not entitled to relief. The result pronounced was that he would not be heard to vacate or modify the decree *unless and until* he pays every dollar of arrearages.

In this matter the Advisory Master strictly observed the principle of the Cooper case; he withheld relief from the appellee, both on the application to modify and on the signing of the main decree until he paid up in full the amount of the arrearages on the first order to the time of his application. The objection of the appellant, in sum, is not that she was thereby deprived of her due, but that the Advisory Master, with a greater harshness to the appellee, should not have received his petition at all, nor inquired into the actual justice of the situation inasmuch as he was at that time in arrears, even though inevitably so.

This contention does not consound with the provision of the statute governing the matter which confers upon the Court the widest conceivable discretion in maintenance cases to order suitable support "for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the Court" * * * and from time to time to make such

further orders touching the same as shall be just and equitable.

C. S., Vol. 2, Par. 26, P. 2038.

It is submitted that the decree of the Court of Chancery and the order complained of be both affirmed.

RICHARD DOHERTY,
Solicitor for and of counsel
with Defendant-Appellee.

