

# INDEX.

	PAGE
Bill of Complaint.....	1
Affidavit of Mary L. O'Connell.....	5
Answer .....	10
Counter-Claim .....	13
Conclusions of the Court.....	126
Final Decree .....	138
Notice of Appeal.....	140
Petition of Appeal.....	142

## TESTIMONY.

### *For Complainant.*

Mary L. O'Connell,	direct examination.....	15
	cross " .....	34
	re-direct " .....	62
	By the Court .....	65
	re-cross " .....	68
(recalled in rebuttal)	direct " .....	124
Anna L. Allaben,	direct examination.....	70
	cross " .....	73
Aldus H. Pierson,	direct examination.....	74
	cross " .....	76
Grace Weidman,	direct examination.....	85
	cross " .....	88

### *For Defendant.*

Franklin W. Rice,	direct examination.....	77
	cross " .....	79
Cornelius P. O'Connell,	direct examination.....	90
	cross " .....	103
	re-direct " .....	108
	re-cross " .....	109
John McCormick,	direct examination.....	110
	cross " .....	112

		PAGE
Mary C. O'Connell,	direct examination.....	115
	cross " .....	118
Frank Ambrose,	direct examination.....	123
	cross " .....	123
		Off'd P't'd
Exhibit D. 2.	Letter of July 11, 1920.....	61 130
Exhibit D. 3.	Twelve checks .....	96 130
Exhibit D. 4.	Five checks .....	98 135

**BILL OF COMPLAINT.**

Filed.

**In Chancery of New Jersey**

*To the Honorable Edwin Robert Walker, Chancellor of  
the State of New Jersey:* 10

The complaint of Mary L. O'Connell of Morristown, New Jersey, respectfully shows that:

1. On the fourth day of August, 1909, she was lawfully married to her present husband, Cornelius P. O'Connell, at the rectory of the Catholic Church in Short Hills, Essex County, New Jersey, by the Reverend James P. Brown, a priest of the Catholic Church.

2. That after the said marriage your oratrix and the defendant, her husband, resided at Morristown, in the County of Morris, in this State, and there lived together until the sixth day of February, 1921, and where they cohabited until the abandonment by the defendant of your oratrix, as hereinafter complained of. 20

3. No children were born to your oratrix and her said husband.

4. The defendant at the time of his marriage to your oratrix was a druggist and licensed pharmacist in business on his own account in Morristown, New Jersey, and your oratrix for many years assisted in the conduct of said business, in addition to maintaining and taking care of the home for the defendant; that your oratrix and defendant lived happily together until the month of July, 1918, when the defendant choked and beat your oratrix and since when he has repeatedly abused your oratrix and has called your oratrix vile names; that defendant has since prior to July, 1918, been addicted to the use of drugs and has become so under the domination thereof that it has been necessary for him and he has been under 30 40

*Bill of Complaint.*

10 medical treatment to secure relief from the habit of taking drugs; that until the eighth day of September, 1919, defendant was in business as a druggist, on his own account, at No. 11 South street, in Morristown, New Jersey, that on said date said business was sold out by defendant; the building formerly occupied for the conduct of said  
10 business was rented to other parties; that prior to the time of the sale of said business defendant had become no longer able to conduct the same and that the treatment of your oratrix by the defendant at said time was such that complainant did not consider it safe to continue to live longer with defendant; that the defendant was accompanied to the City of New York and taken care of by complainant while he was under treatment for the drug habit, in the attempt to cure him thereof; that he remained in New York, under treatment, by a specialist,  
20 from January, 19, 1920, to March 8, 1920, when they returned to Morristown, New Jersey, and went to live, as husband and wife, in the apartments at No. 11 South street, Morristown, New Jersey. Shortly thereafter the defendant again began indulging in drugs to excess and on the sixth day of February, 1921, after deponent had returned from a short visit to her mother, who was very sick, defendant abused complainant and hit and beat her and flung her to the floor and so mistreated and abused her that she was obliged for her personal safety, on  
30 account of the abuse and mistreatment and the vile and obscene names which she was called and subjected to, and on account of the threats which her husband had made against her, to leave her home and find a place to sleep and get her food elsewhere; at said time the defendant was unable to control himself and indulged in violent fits of passion, due, as your oratrix thinks, to his excessive indulgence in drugs.

40 5. Your oratrix and defendant, on the thirty-first day of December, 1909, purchased from one, George W. Stickle, the property at No. 11 South street, in Morristown, New

*Bill of Complaint.*

Jersey. The deed for said property was made to your oratrix, Mary L. O'Connell, and her husband, Cornelius P. O'Connell, the defendant, and is recorded in the Morris County Clerk's office in Book C-20 of Deeds, on page 218. The consideration for said deed was paid in part by your oratrix and in part by her said husband and in part was procured by a mortgage given on said property at the time of the purchase thereof. There is still a mortgage on said property for the sum of \$15,000. The first story of said property is rented for twenty-three hundred (\$2,300) dollars per annum. The said second story of said property is rented for one thousand and eighty (\$1,080) dollars per annum. The third story of said property was formerly occupied by your oratrix and her said husband, Cornelius P. O'Connell, and the rental value thereof is equal to the rental value of the second story of said property. Your oratrix is informed that the same is now occupied by her husband, Cornelius P. O'Connell.

6. Your oratrix says that she is without means of support and that she is entitled to one-half of the income of said property at No. 11 South street, as the owner thereof under the deed aforesaid, and that she is further entitled to a reasonable support and maintenance, that her husband formerly was in receipt of a good income but at the present is without occupation, as your oratrix is informed; that her husband collects the rents from the store in said building and the rents from the apartment over the store in said building, and that he occupies the third story of said building, and your oratrix further says that she is entitled as the joint owner of said building to one-half the rents thereof and to have an accounting for one-half of the value of the part of said building, to wit, the third story thereof, which he is occupying and refuses to account to her therefor; that her husband also is in possession of the furniture in the apartment, formerly occupied by them, that a portion of said furniture belongs to her, that her husband refuses to account to

*Bill of Complaint.*

her for the value of any of said furniture or to permit her to take and have any of said furniture.

7. Your oratrix charges that since the sixth day of February, 1921, her husband has abandoned her without justifiable cause and has refused and neglected and still does refuse and neglect to maintain and support her in a manner suitable to the position of herself and her said husband.

8. Your oratrix further says that in response to repeated solicitations of your oratrix, the defendant has made two payments of fifty dollars each, one hundred dollars in all, since he abandoned her as aforesaid, to your oratrix. That said payments were made without informing your oratrix whether they were on account of her maintenance and support or on account of the income due to your oratrix from said property.

Complainant is without adequate remedy in the courts of law and therefore prays.

1. That Cornelius P. O'Connell, who is the defendant in this suit, may answer this bill of complaint and each statement made therein.

2. That he may be ordered and decreed to provide suitable support and maintenance to be paid and provided by him for complainant.

3. That a receiver may be appointed for the collection of the rents of the premises conveyed to the complainant and defendant and that the equal one-half thereof, after paying interest, taxes and other carrying charges and necessary expenses, be paid to the complainant.

4. That a receiver may be appointed to take possession of and care for the personal property in possession of the defendant of which the complainant is part owner.

5. That defendant be required to account to the complainant for the income of said real estate conveyed to

*Affidavit of Mary L. O'Connell.*

them by the deed as in said bill stated, from the first of January, 1921.

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

CHARLTON A. REED,  
*Solicitor and of Counsel with Complainant.*

10

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

Mary L. O'Connell, the complainant in the foregoing bill of complaint, says that she is the wife of Cornelius P. O'Connell, that the residence of both this deponent and her said husband is in the Town of Morristown, that she was married to her said husband on the twenty-fourth day of August, 1909, at the rectory of the Catholic Church in Short Hills, Essex County, New Jersey. Deponent further says that she lived with her said husband, principally in the Town of Morristown, where her said husband was in business and conducting a drug store, that at the time of deponent's marriage to her said husband he was addicted to the use of drugs, which was unknown to deponent at the time she married him. That the drug habit to which her husband was addicted grew upon him until in the month of January, 1920, when she went with her husband to the City of New York, where he was under treatment for said habit by Dr. Ernest F. Bishop of 15 West 73rd street, that she stayed with her husband in the City of New York, while he was under treatment for the habit to which he was addicted, until March 8, 1920, when he together with deponent returned to Morristown, very much improved and as deponent hoped cured of the habit; deponent found, however, that he was not cured and that shortly thereafter he began to return to the habit of taking drugs which he has since continued down until the

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*Affidavit of Mary L. O'Connell.*

time deponent was obliged to leave the house where she had formerly lived with her husband, on account of his abusive treatment of her and his failure and neglect to provide for and support deponent. Deponent further says that prior to the time when she was obliged to leave deponent which was on February sixth, 1921, he had abused  
10 deponent and had hit her and choked her as long ago as January 24, 1918, that deponent's said husband had for the last five years prior to this date abused deponent and had called her vile, abusive and offensive names; deponent further says that when her said husband was not indulging excessively in drugs, deponent lived happily with him and had no cause of complaint as to the way she was being treated; that in the latter part of the stay in New York, in the spring of 1920, deponent's husband was agreeable and affectionate to deponent and had apparently returned to his old habits of affection and consideration for deponent, but that after deponent and  
20 her husband had returned to Morristown, to wit, in March, 1920, he began again taking dope and as soon as he started that he began again to abuse deponent. Deponent and her said husband lived in the building No. 11 South street, where he had formerly conducted business as a druggist and conditions became continually worse, as her husband indulged more excessively in drugs, until the month of February, 1921. Deponent further says that in the month  
30 of January, deponent had gone to the home of her mother in New York State, because her mother was sick and infirm and needed deponent's attention. Deponent returned to Morristown, about the first of February, and found that her husband was unable to control himself and indulged in violent fits of passion when he hit, beat and abused deponent and flung her to the floor and so mistreated and abused her that she was compelled on the sixth day of February, 1921, to go from the home where they were living and has been unable to return since said  
40 time, because she feared for her personal safety, on ac-

*Affidavit of Mary L. O'Connell.*

count of the abuse she had received from her husband and on account of the threats which he had made against her. Deponent further says that for a long time prior to the sixth of February, 1921, deponent had received no money from her husband for her support, while her husband paid the bills of the house, they were not paid promptly, and he had run in debt and is still in debt. Deponent further says that on December 31, 1909, deponent and her husband purchased from one, George W. Stickle, the property at No. 11 South street, in Morristown, N. J., that the deed for said property was made to this deponent, Mary L. O'Connell, and her husband, Cornelius P. O'Connell, and is recorded in the Morris County Clerk's office, in Book C-20 of Deeds, page 218. Deponent further says that prior to the time of the purchase of said property she had assisted her husband in his business conducted at No. 11 South street, and that she was advertised by her husband as being an aid and assistant in said business and deponent's husband demanded that she assist in said business and deponent was glad to assist in the business and continued to be an assistant in said business until the time when her said husband sold out his drug business in September, 1919. Before that time the business had been very much injured and run down by the habits of deponent's husband. Deponent further says that said building is a brick building with a store in the first story, living apartments over the store, in the second story, which has been occupied as one apartment, and living apartments in the third story, which has been occupied as one apartment. The store on the first floor is now rented at the annual rent of twenty-three hundred (\$2,300) dollars, payable in monthly payments of one hundred and ninety-one dollars and sixty-six cents. That the lease for said store was signed by deponent's husband and deponent did not join in the same until later, when the tenant ascertained that deponent was an equal owner of said property and requested that deponent sign her consent

*Affidavit of Mary L. O'Connell.*

to said lease which deponent did. The second story of said building is now leased for the sum of ten hundred and eighty dollars per year, payable monthly at the rate of ninety dollars; that deponent's husband has executed the lease for said second story and has excluded deponent from participating in collecting the rent and has excluded deponent from collecting the rent of the first story. Deponent further says that the third story of said building was occupied by deponent and her husband and that the rental value thereof is greater than the rental value of the second story on account of the arrangement and location of the rooms therein; that since deponent has been driven from the occupation of the third story with her husband, her husband has continued to occupy the same, sometimes by himself and sometimes with companions who incite her said husband to violence against her, and deponent is fearful of her safety with the said companions in the house.

Deponent further says that she has been compelled to employ an attorney in the effort to procure support from her said husband as his wife, and that she has demanded her support and that she has attempted to collect her proportion of the rents from the tenants of said building but has been unable to do so, that said tenants informed deponent that their lease was made with her husband and that they cannot safely pay to her any proportion of the rents.

Deponent further says that the husband of deponent has denied the rights of deponent to participate in the share of the rents of said building and has collected the rents therefrom himself; that the only money that deponent has received from her husband since the sixth of February, is the sum of one hundred dollars, in two payments of fifty dollars each. Deponent further says that she does not know, and her husband has never given her any information, as to how he desired said payments appropriated, whether on account of the amount which the hus-

*Affidavit of Mary L. O'Connell.*

band of deponent should pay to her for maintenance, or on account of the share of the rents of said property to which deponent is entitled. Deponent further says that she has repeatedly requested the consent of her husband to have a receiver appointed for the collection of the rents of said building so that the necessary charges against the same might be paid and the net balance thereof might be divided between deponent and her said husband. 10

Deponent further says that at the time said premises were purchased and title was taken in the name of her husband and herself, both she and her husband paid part of the purchase price and the balance was secured by mortgages on said property, which are still outstanding, in part, that at the present time there are two mortgages on said property amounting to the sum of ————; that there are some arrears of interest on said mortgages; that deponent is not at the present time employed; that on account of her physical condition and the pain, suffering and anxiety caused by her husband's treatment of her she is not able to work and that she has no means of support. 20

Deponent is desirous of having a receiver appointed for said real estate, so that the same may be rented and the net amount of the income therefrom, after paying interest, charges, taxes, repairs, &c., divided.

Deponent further says that her said husband has taken entire possession of the personal property in the home in which she and her husband lived; a part of said personal property belongs to deponent and a part to her husband; that her husband has sold some of the personal property, part of which belongs to him and a part belongs to her and refuses to account to deponent for the proceeds of the sale of the same and refuses to permit deponent to have possession of the personal property still in his possession, which belongs to her. Deponent desires to have said receiver take possession of said personal property 30 40

*Answer.*

and safeguard the same and divide said personal property between the parties entitled thereto, deponent and her husband, according to their respective rights and interests.

MARY L. O'CONNELL.

10 Sworn to and subscribed before me  
this fourteenth day of April,  
1921.

ANNIE E. MURPHY,  
*Notary Public of New Jersey.*

**ANSWER.**

Filed May 20, 1921.

20

The answer of the defendant, Cornelius P. O'Connell, to the bill of complaint of Mary L. O'Connell, the complainant in the above-entitled cause.

The defendant answering the said bill of complaint saith:

1. Paragraph one is admitted.
2. The allegations of paragraph two are admitted save  
30 that the defendant denies the abandonment therein alleged.
3. Paragraph three is admitted.
4. Defendant admits that at the time of his marriage he was a druggist in business as alleged in the fourth paragraph and admits that complainant did render some assistance but that the same was irregular, infrequent and wholly voluntary on her part. Defendant denies that he choked and beat complainant as in paragraph four alleged and denies that he has abused her and called her  
40 vile names. Defendant denies that he has been addicted

*Answer.*

to the use of drugs as alleged in the fourth paragraph. Defendant admits that until September 8, 1919, he was in business as a druggist and on that date sold the said business as alleged in paragraph four. Defendant admits that the building formerly occupied by him for business purposes was rented to others. Defendant denies that prior to the sale of his business he had become unable to conduct the same and he denies that his treatment of complainant at the times alleged was such that complainant did not consider it safe to continue to live with him. Defendant denies that he was cared for by complainant under the circumstances alleged in the fourth paragraph. Defendant admits that he was in New York under treatment during the period mentioned in the fourth paragraph and admits that they returned to Morristown at the time alleged and lived together at the place therein mentioned. Defendant denies that thereafter he began indulging in drugs and denies that on February 6, 1921 he abused complainant and hit her and mistreated her as in the fourth paragraph alleged and denies that she was obliged to leave their home for her personal safety as in the fourth paragraph alleged; and defendant denies the allegation that he was unable to control himself and indulged in fits of passion as in the fourth paragraph alleged. Defendant insists and charges the truth to be that the complainant without any fault on the part of this defendant left defendant's home and refused and still does refuse to live with him.

5. Defendant admits the purchase of the real property mentioned in the fifth paragraph and that the consideration was paid in part by complainant and this defendant and in part was procured by a mortgage as in the fifth paragraph alleged. Defendant denies that there is a mortgage on the property for fifteen thousand dollars (\$15,000) as alleged but insists that the mortgage encumbrances do not exceed nine thousand dollars (\$9,000). Defendant admits that the said premises are rented for the

*Answer.*

rentals as alleged in the fifth paragraph for the first and second floors of the premises. Defendant admits that he occupies the third floor of the property but he denies that the rental value thereof is equal to that of the second floor.

10 6. Defendant denies that complainant is without means of support and also denies that she is entitled to one-half of the property at 11 South street and further denies that she is entitled to support and maintenance from this defendant. Defendant admits that at the present time he is without occupation and that he is collecting the rents from the said building in said paragraph mentioned, but he denies that complainant is entitled to one-half the rents and to one-half of the value of the part of said building occupied by defendant. Defendant admits that he is in possession of the furniture in the apartment but he denies that any portion thereof belongs to the complainant and admits that he refuses to account to complainant for the value of said furniture and admits that he refuses to permit her to take or have any of the same. Defendant further answering saith that the said complainant is possessed of means of her own and that, in fact, she is the owner of property of the value of at least thirteen thousand dollars (\$13,000) and also is possessed of life insurance of the value of at least one thousand dollars (\$1,000). Defendant further answering saith that when he purchased the said premises in the bill of complaint mentioned he secured from the complainant the sum of two thousand dollars (\$2,000) which she in turn had borrowed from her mother and that the complainant at the same time advanced to him the sum of five hundred dollars (\$500); that the deed of conveyance for the said property was made to the complainant and defendant primarily for the purpose of securing the sum of \$2,000 advanced by complainant's mother and the sum of \$500 advanced to the defendant by the complainant; and that upon the repayment of said sums of money as against the complainant

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*Counter-claim.*

this defendant is entitled to the sole beneficial interest in the said premises.

7. Paragraph seven is denied.

8. Defendant admits that he has paid to complainant the sum of one hundred dollars (\$100) and that such payments should be credited on moneys advanced by the complainant to this defendant as hereinabove stated.

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LUM, TAMBLYN & COLYER,  
*Solicitors for and of Counsel  
with Defendant.*

**AMENDMENT TO ANSWER BY WAY OF COUNTER-CLAIM.**

Filed May 20, 1921.

20

By way of counter-claim against the complainant the defendant, Cornelius P. O'Connell, says that:

1. When this defendant purchased the lands and premises mentioned and described in the bill of complaint herein he secured from complainant the sum of two thousand dollars (\$2,000) which she in turn had borrowed from her mother, and at the same time the said complainant advanced to this defendant the sum of five hundred dollars (\$500); that pursuant to the agreement between complainant and defendant the deed of conveyance for the said property was made to complainant and defendant primarily for the purpose of securing the sum of two thousand dollars (\$2,000) advanced by the complainant's mother and the sum of five hundred dollars (\$500) advanced to this defendant by complainant; that at the time of such advancements by complainant to this defendant it was agreed between the parties that upon the repayment of the moneys so advanced to this defendant this defendant should be entitled to a conveyance of the

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*Counter-claim.*

premises to himself or in such manner as he might direct to the end that he might be entitled to hold the sole beneficial interest therein.

10 2. That prior to the institution of this suit this defendant tendered and offered to pay to the complainant the moneys advanced as aforesaid together with any interest that might be lawfully due thereon and demanded a conveyance of her interest pursuant to the aforesaid agreement, but said complainant refused to accept such tender or make such conveyance.

This defendant therefore prays:

1. That complainant may answer this counter-claim without oath and each statement herein made.

20 2. That it may be decreed that this defendant is entitled to the sole beneficial interest in the said lands and premises.

3. That upon payment to the complainant of the amount loaned by her as aforesaid with interest, that the said complainant may be decreed to make, execute and deliver to this defendant or to his appointee a good and valid conveyance in the law for the aforesaid premises.

LUM, TAMBLYN & COLYER,  
Solicitors for and of Counsel  
with Defendant.

Mary L. O'Connell, direct.

IN CHANCERY OF NEW JERSEY.

Between

MARY L. O'CONNELL,

Complainant,

and

CORNELIUS P. O'CONNELL,

Defendant.

On Bill, &c.

10

Transcript of shorthand notes of testimony taken on final hearing in the above-stated cause at Newark on the twelfth day of December, 1921, before his Honor, James F. Fielder, V.-C.

Appearances:

Charles R. Hedden, Esq., for the complainant.

20

Ralph Lum, Esq. (Lum, Tamblyn & Colyer), for the defendant.

COMPLAINANT'S CASE.

MARY L. O'CONNELL, the complainant, sworn in her own behalf, testifies as follows:

Direct examination by Mr. Hedden.

30

Q You are the complainant in this cause; you are bringing this suit for separate maintenance? A Yes, sir.

Q When were you married to Mr. O'Connell? A August 4, 1909.

Mr. Lum. The bill sets forth August 4th and the answer admits it.

Q By whom were you married? A By Father Brown, Short Hills.

40

*Mary L. O'Connell, direct.*

Q And where did you live after your marriage? A  
Morristown, New Jersey.

Q Where was the first place that you lived in Morris-  
town? A At No. 4 De Hart street, in a furnished  
room. From there we went to Whittemore avenue and  
were there a year, and from there we moved up into the  
10 building that we bought and have been there ever since,  
until February.

Q When was it that you moved into the building that  
you bought? A In March; some time in March.

*By the Court.*

Q What year? A 1909—I don't just remember what  
year it was.

Q Count it up. You were married in 1909. A Then  
that would be 1910.

20 *By Mr. Hedden.*

Q What part of the house did you occupy? A The  
top floor.

Q And what was done with the rest of the house? A  
It was rented out.

Q What was the first floor used for? A Why, a  
woman lived there, Miss Roy. The first floor?

Q Yes. A The first floor, a store occupied that. The  
30 second floor was Miss Roy.

Q And did you perform the household duties while  
you were there? A Yes, sir.

Q How long did you live there? A Up until last  
February, the sixth.

Q Were there any children born to you? A No,  
sir.

Q What was your husband's business at that time?  
A Druggist.

Q Was he a druggist at the time you married him?  
A Yes, sir.

40

*Mary L. O'Connell, direct.*

Q How long did he carry on his business as a druggist while you were married? A Up until September. I have the notes there.

*By the Court.*

Q What year? A September—

*By Mr. Lum.*

10

Q This is 1921. A 1919.

*By Mr. Hedden.*

Q Will you describe the work which you did about the household? A Why, I did every bit of the household work. I even did the janitor work of the building, cleaned two flights of stairs, cleaned out the halls. I also helped in the store, helped to keep that clean, waited on customers, elastic stockings and trusses.

20

Q In the household what did you do? A I did all the household work except washing some of the tin the last few years we had a washwoman come in and help wash and iron.

Q In addition to that, did you assist in the business? A I certainly did; yes sir.

Q Will you please state to his Honor what that work consisted of? A Why, waiting on customers, such as selling patent drugs, elastic stockings, abdominal belts, trusses.

30

Q How much of the time were you in the store? A Well, most all the time except when I was getting meals and doing a little cleaning, but I was the greatest part of my time in the store.

Q Was that done at the request of your husband? A Why, it was done to save clerk hire.

Q Did you ever receive any payment for that work? A No, sir; we were trying to pay off the mortgage, saving everything we could to do it.

40

*Mary L. O'Connell, direct.*

Q What else did you do in attempting to pay off the mortgage? A Took in roomers, made clothes, the shirts and underwear that Mr. O'Connell wore and my own, beside fitting trusses and elastic stockings.

Q Did your husband ever advertise you as being an assistant in his business? A Yes, sir; "Lady in Attendance" there.

10 Q Did you ever hear him make any representation to customers regarding your position there in the business? A Yes.

Q What? A That I was to wait on the ladies.

Q Was it only waiting on the ladies? A Oh, no; I waited on the gentlemen, too, that came in. Of course I could not fill prescriptions or do anything like that, but the patent drugs and patent things and trusses and elastic stockings, as I said before, and abdominal belts and every-

20 Q What was done with the money which was received for the rent of the various rooms? A Why, it was turned in, rung up as business done in the drug store.

Q How about the money which was obtained for work that you did outside, such as fitting elastic stockings? A Put in the drawer as business done in the store.

Q What was the money eventually used for? A Why, that money was put into the bank, used for running the place, paying bills and paying off the mortgage.

30 Q Did you ever notice anything peculiar about your husband's condition? A At times he would be very pleasant and other times he would be very cross and ugly.

Q Had you any reason for knowing the cause of his ugliness? A Yes; I am quite sure it was from different things—

*Mr. Lum.* Objected to.

Q (Question repeated.) Had you any reason for knowing the cause of his ugliness? A Why, yes.

*Mary L. O'Connell, direct.*

Q What was it? A Why, from drugs and things that he was taking that made him ugly.

Q When did you first learn he was taking drugs? A Why, five years ago.

Q Will you simply state the circumstances under which you found that he was taking drugs? A Why, at times he would go upstairs and sleep the whole afternoon and I found a great many different drugs in his pocket. 10

Q Did anything ever occur at night? A Yes; he was up around the apartment most half the night some nights, other nights not, taking high rectal injections, washing his stomach out.

Q Did you ever speak to him about the taking of drugs? A Yes, sir.

Q What did he say? A Why, he denied it.

Q Did you ever present any of the drugs to him? A Yes, one night I threw some at him that I had taken out of his pocket. 20

Q What happened? A He picked them up and put them in a little box that was there.

Q Did Mr. O'Connell ever mistreat you? A Twice.

Q Will you please state the circumstances? A One night—he had threatened a couple of times of shooting himself, and this day he had taken the revolver that he had down in his safe, he had taken it upstairs and put it in the chiffonier drawer. I took it out and he tried to force me to give it back to him, which I did not, and then he choked me. The other time, on a Sunday, he was taking down pictures which I had hung and straightened up our dining-room; I asked him not to do it; with that he took me and swung me out of the dining-room into the kitchen and hurt my arm. 30

Q Did that injury necessitate medical treatment? A Well, I went out and saw Dr. Bishop about it and he said he had strained the muscles in my shoulder.

Q What were the circumstances leading up to this assault in 1918 that you mention? 40

*Mary L. O'Connell, direct.*

*The Court.* She did not mention 1918.

Q Will you state a little more definitely the circumstances surrounding the first assault that you mentioned?

A It started over—

*The Court.* Fix the time.

10 Q When did that occur? A July 24th.

Q What year? How long ago was it? Just figure back. A (No answer.)

Q How many years was it before you left him? A About four.

*By the Court.*

Q This is 1921? A Yes.

Q You separated in February of this year? A Yes.

Q Four years ago would be 1917. Is that right? A I would have to look up my notes.

20 Q Tell us what year it was? A May I look up my notes?

Q You are testifying from recollection. We want the facts. If you cannot tell us, just say that you cannot tell definitely what year. A I really don't remember just exactly what year it was.

Q Well, cannot you approximate it? A I think it was 1915 as near as I can remember, on July 24th.

30 *By Mr. Lum.*

Q 1915, you believe? A I think so.

*By Mr. Hedden.*

Q That was the time when you had taken the gun away from him? A Yes, sir.

Q Will you describe that occurrence in greater detail, please? A Well, that happened in the evening after the store was closed up.

40 Q Where were you at the time? A Up in our apartment on the top floor.

*Mary L. O'Connell, direct.*

Q In what room? A In the front room.

Q Just what was the occurrence? A Well, he came in and demanded me to give him back the revolver and I refused to do it.

*By the Court.*

Q How did he know that you had it? A He evidently looked in his drawer and found it gone. 10

*By Mr. Hedden.*

Q When did you take the revolver? A That evening.

Q Why? A Well, I was putting clothes away and I found it in the drawer and I just took it out.

Q Had you any reason to fear that he would use it? A Well, he had made a couple of threats, if he didn't get better he was going to blow his brains out.

Q Where were you when he asked you about that revolver? A I was in the front room. 20

Q Now, will you tell the circumstances a little more in detail? A Well, he came in and demanded it and I refused to give it up. He then took hold of me and choked me and I still refused.

Q Tell us what he did. A He just grabbed hold of me and choked me and held me down on the lounge.

Q Where were you at the time he choked you? A I was lying on the lounge. 30

*By the Court.*

Q Were you lying on the lounge when he asked you for the revolver? A Yes, sir.

Q I thought you said he threw you on the lounge. A No. I was lying on the lounge and he choked me on the lounge. He grabbed hold of me.

*By Mr. Hedden.*

Q Did you call for help? A I screamed. I didn't call for help, because there wasn't any help to get. 40

*Mary L. O'Connell, direct.*

Q How long did he continue that choking? A Just a few minutes.

Q And then what happened? A He went to his bedroom. His mother asked him—she said, “That is enough now. Go to your room.” So he went to his room.

*By the Court.*

10

Q His mother was there? A Yes, sir.

Q You said there was no help to get. A Well, his mother didn't help me. There was no outside help to get.

Q Was his mother in the room when this happened? A Yes, sir.

Q She was? A Yes, sir.

*By Mr. Hedden.*

20

Q Was anyone in the room at the time of the other assault that you mentioned? A Yes, this young boy that is here.

Q Who was it? A John McCormack.

*By the Court.*

Q When did this happen? A February 6th; on Sunday.

Q What year? A 1920.

Q Do you mean this year or last year? A This year.

30

Q This is 1921? A I mean 1921.

*By Mr. Hedden.*

Q Mrs. O'Connell, did your husband ever accuse you of trying to injure him? A Why, a couple of times he told me I had tried to poison him, that brought on all of this stomach trouble. He said an old lady told him to be careful of me.

Q When was that? A Last year, 1921.

Q Has he ever used any vile names towards you or been abusive in his treatment, in his language? A Yes, he has used vile names.

*Mary L. O'Connell, direct.*

Q Will you just state as to when and under what circumstances? A When we would be having arguments.

Q What has he said at those times? A Oh, he has called me a bitch and a faggot and a thing and pro-German.

*By the Court.*

Q A bitch and a faggot and a thing? A Yes, sir; and a hussy. 10

*By Mr. Hedden.*

Q What else? A That is all.

Q At the time that he was saying these things has he ever threatened you? A Only by raising his voice to me when he would be saying these things.

Q How often and on what occasions have these statements been made to you? A Oh, a great many different times when he would be in a vile temper. 20

Q Did you ever do anything to help or attempt to cure Mr. O'Connell of the drug habit? A Yes, sir; I have.

Q Will you just state when and under what circumstances? A Why, we had Dr. Alleban. His mother went and got Dr. Alleban and she treated him and he did not respond. Then we went down to Dr. Cossett and Dr. Cossett sent us to Dr. Bishop, and Dr. Bishop treated him and when we left there he was pronounced all right except to gain a little strength.

Q Who took care of him at that time? A I took care of him part of the time, and between Miss Sills and I, the two of us took care of him, that is, nursed him. 30

Q Did you nurse him while he was in the home? A Yes, sir.

Q To what extent did that nursing go? A Why, hot packs, irrigations, stimulating.

Q During what time—how long was it that this nursing went on? A At intervals he would get around and get up and be about again and then he would have another severe attack and be down and out again. 40

*Mary L. O'Connell, direct.*

*By the Court.*

Q When did that start in? A Why, most of it started in 1915.

Q You started nursing him in 1915? A Yes; taking care of him.

Q Until when? A Up until February 6th.

10 Q 1921? A 1921; yes, sir.

*By Mr. Hedden.*

Q When did he take this treatment with Dr. Bishop?  
A 1920.

Q What month in 1920, or what month in 1920? A January.

*By the Court.*

Q How long a time did he receive treatment of Dr. Bishop? A He came home on March—

20 Q He came home from where? From Dr. Bishop? A Yes, March 16th.

Q You mean the treatment was from January, 1920, to March 16, 1920? A Yes, sir; by Dr. Bishop and Dr. Cossett.

*By Mr. Hedden.*

Q When you returned home what was his condition?  
A Excellent. The doctors pronounced him cured except  
30 to gain a little strength. Dr. Bishop advised him to go away and he promised Dr. Bishop that we would go up in Maine until September. Then he was to start in the real estate business in New York.

Q When he returned to Morrystown did he resume his drug habits or did you live pleasantly? A The second night that we were home he started in again and he has been ailing off and on from that time on.

*By the Court.*

40 Q He started in what? A On his drugs.

*Mary L. O'Connell, direct.*

Q What did he do? A I think he took morphine and cocaine.

Q You say you think he did? A I am quite sure he took them on account of the symptoms and conditions.

*By Mr. Hedden.*

Q From the time that he returned to Morristown, what was his treatment of you, that is, in March, 1920? 10

A Sometimes all right and other times very disagreeable.

*By the Court.*

Q What do you mean by "disagreeable"? A Sometimes he would eat his meals when I had them ready and other times he would not—cross.

*By Mr. Hedden.*

20

Q Would he call you vile names? A At times; not always. There were times that things were pleasant and there were times that they were very unpleasant.

Q Did you occupy the same room with him? A Not all the time; no, sir.

Q When was it? Why did you leave his room, or did you leave his room or did he leave your room? A I left his room or our room.

Q When? A Why, at different times I would— 30

*By the Court.*

Q When was the first time, if you can fix it, after March, 1920, that you left the room? A I cannot remember.

Q Was it in the spring or summer? A Why, it was shortly after we came here from New York.

Q Would you say in April? A Yes; I would say it was as long as that.

40

*Mary L. O'Connell, direct.*

*By Mr. Hedden.*

Q What was the occasion for your leaving his room?

A On account of his sitting up nights, burning the light. He could not sleep and when he did go asleep, he twitched and jerked and snored so it was impossible to rest. We had a spare room; we had nobody on the  
10 floor then with us and—

Q Did he mistreat you at any of these times? A Only just by disagreeable talk; that is all. He didn't hit me or anything of that kind.

Q What was his disagreeable talk? A Oh, saying that I didn't do anything and that I neglected my home and things like that.

*The Court.* Don't say "things like that," because that does not mean anything at all. You must say what he did say. If you have anything  
20 more to tell, I would like to hear it.

Q Did he keep you awake? A Yes, sir.

Q In what way? A By turning on the light late nights and by going back and forth from the bedroom to the kitchen, washing out his stomach, taking enemas.

Q Did he show any intention to keep you awake? A Only by turning on the lights and back and forth from the bedroom to the kitchen and the bathroom, the annoyance of it.

30 Q Did he interfere with your sleep in any other way, or with your rest? A No, sir.

Q At the time that you removed to another room did you have any fear or bodily violence? A Yes, sir; I did. I got so that I was decidedly afraid of him.

Q What was the occasion of that? A On account of him having that loaded revolver there and making threats.

*By the Court.*

40 Q Are you talking about after March, 1920, or before that? A After March, 1920.

*Mary L. O'Connell, direct.*

Q After March, 1920, were you afraid of bodily harm?

A Yes, sir; I was.

Q Why? A On account of him having that revolver there.

Q You have not said anything about any revolver being there after March, 1920. That revolver incident was in 1915? A Yes; but he had it there in his possession in the bedroom. 10

*By Mr. Hedden.*

Q Where did he keep this revolver? A In the bureau drawer.

Q Was it loaded? A Yes, sir.

Q What was it kept there for? A I don't know what was kept there for.

*By the Court.*

Q Why were you afraid of the revolver? A Simply because he had threatened to use it. 20

*By Mr. Hedden.*

Q When did he threaten to use it—under what circumstances? A Well, he said that if I ever brought anybody up there, he would blow the first person's brains out that ever entered the stairs, and if I ever brought him in court, he would make things more than interesting for me. 30

Q Why had he reason to suspect that you were going to bring anyone upstairs; had you called for help? A No, sir; I tried to keep friends out of it.

*By the Court.*

Q Can you answer counsel's question? A The only reason that I was afraid was because he had said several times—he told Dr. Bishop that if it had not been for my close watching of him he would have taken his own life, 40

*Mary L. O'Connell, direct.*

which has happened in the family; and in his violent tempers I was positively afraid of the threats.

Q The question was, which you have not answered yet: Why did he say, if you know, that if you brought anybody into the house, he would blow that person's brains out? A I don't quite understand.

10 Q You said that he said to you: "If you bring anybody in the house, I will blow his brains out"? A Yes.

Q Why should he have said that to you? A Because I had said at different times if he did not behave himself I would have him arrested, bring a policeman in to him.

*By Mr. Hedden.*

Q Now, Mrs. O'Connell, did you ever receive any money from the rent of the house? A No, sir; except to make two suits of clothes, I had a tailor to make them  
20 and he took it out in his rent.

Q How much was that for? A One was twenty-five dollars and the other was forty-seven dollars.

Q What was done with all the rentals from the property? A It went in to pay off the mortgage and help run the business.

*By the Court.*

Q If you know of your own knowledge, not what you  
30 may have been told. A Why, I know that of my own knowledge, that the rent that came in from the building went in to pay off the mortgage and carry expenses because there was not any money to carry expenses except what came in from the building.

*By Mr. Hedden.*

Q What was the rental value; what was the second floor rented for in 1920? A Out of the back part of the second floor we got twenty-five dollars from Miss Roy. For the front we were getting thirty-some dollars;

*Mary L. O'Connell, direct.*

I don't know just whether it was thirty-four or thirty-seven dollars.

*By the Court.*

Q You mean you got thirty-four or thirty-seven dollars for the second floor? A Yes; for the two front offices and twenty-five dollars out of the back which were four rooms. 10

*By Mr. Hedden.*

Q This was per month? A Yes, sir.

Q Will you kindly state whether the third floor was as good as the first floor? A The third floor is better than the first floor. You mean the apartments, not the store?

Q Yes. A The third is better than the second. They are larger rooms, better light and more improvements in them.

Q What are the improvements? A Well, there are tubs there and sink and toilets, electric lights, gas. Downstairs on the second floor there are no tubs. 20

Q Did you have any furniture in your apartment on the third floor? A Yes; the house was thoroughly furnished.

Q Was any of that furniture yours? A Yes, sir.

Q Without going into any detail as to all of the items of furniture, will you state some of the things which were yours? A Why, the dining-room, one of the dining-room tables was mine, and there are pictures, some chairs there, rugs, some of the dishes, some of the china that was given as presents together. 30

*Mr. Hedden.* I do not know whether at this time we want to go into full details as to this.

*The Court.* I think you can leave the details as to the furniture to some other time.

Q From whom had you received this property? A You mean the furniture? 40

*Mary L. O'Connell, direct.*

Q Yes. A Some of it was from my husband, most all my husband, Christmas presents, birthdays, and from his mother, wedding gifts and birthday presents, marked with both of our initials and given to the two of us.

Q You mentioned pictures. Were those pictures of value? A Yes, sir; paintings, and etchings, and engravings.

10 Q Have you any idea of their value? A Well, the only way I can give as to their value is what some of the same man's work has been sold at in New York and different places and what we paid for them and what we have refused.

Q What have you refused? A We refused one thousand dollars for one.

Q That offer was made to you? A Made to Mr. O'Connell.

20 Q In your presence? A No.

*By the Court.*

Q Did he tell you about it? A Yes, sir; he did. Most all of our furniture and stuff has been bought at auctions.

Q By whom? A Both of us together. We always attended them together.

Q The money that paid for them came from where? A Came from the store and rents from the building.

*By Mr. Hedden.*

Q Do you know how much the mortgage is still on the building? A Nine thousand dollars.

Q Have you ever received any of the rents of the building since—

*The Court.* She has answered that. She said nothing except twenty-five dollars and forty-seven dollars for two suits of clothes.

*Mary L. O'Connell, direct.*

Q When was this occurrence that you mention his striking you when you had a dispute about hanging pictures? A February 6, 1921.

Q What happened after that? A I went over to police headquarters and the chief of police, Chief Morrison, wanted me to—

*Mr. Lum.* I object.

10

*By the Court.*

Q You went to police headquarters. What happened after that? A Why, the chief of police wanted—

Q You cannot state what anybody else said to you. What happened as a result of your visit to police headquarters? A Why, nothing, only I—

*By Mr. Hedden.*

Q You did not lodge any complaint? A No.

20

Q Then did you go back to live with Mr. O'Connell? A No, sir.

Q Where did you go? A I went to Mrs. Price's, 11 Earley street.

Q From there where did you go? A To my home, my mother's home in Middletown, New York.

Q Have you lived there since? A No; I have been back to Mrs. Price's several times, between Mrs. Price's and Middletown.

Q Has your husband ever made any advances to request you to come back? A No, sir.

30

Q Have you received any money from your husband since February 6th? A Fifty dollars a month; yes, sir.

Q That is how much all told?

*The Court.* Every month from February, 1921, up until December.

*Mr. Lum.* And including December.

Q Have you demanded the furniture and pictures? A I have asked for them; yes, sir.

40

*Mary L. O'Connell, direct.*

*By the Court.*

Q How did you ask? A Through Mr. Reed.

*Mr. Hedden.* I believe it is admitted in the pleadings that that demand was refused.

10 *Mr. Lum.* The pleadings state that it is Mr. O'Connell's furniture.

*By Mr. Hedden.*

Q Have you demanded the rents of the house since you have left Mr. O'Connell or since February 6th; have you demanded a share of the rents of the house? A Yes; through Mr. Reed.

Q But you have never received anything except the fifty dollars? A That is all; yes, sir.

20 Q Mrs. O'Connell, in the purchase of that house did you pay some of your own money? A Yes, sir.

Q How much was that? A There was two thousand dollars that my mother loaned me, gave me, and there was seven hundred dollars—

*By Mr. Lum.*

Q You said "gave" you? A Yes, sir.

*By the Court.*

30 Q And seven hundred dollars? A Seven hundred dollars of my own; three hundred more that mother gave me and we took our vacation to Maine on that; which makes three thousand.

*By Mr. Lum.*

40 Q Did that three hundred dollars go into the purchase? A We took a vacation. It was banked and drawn out. It was put in as business done and then drawn out to take a vacation on.

*Mary L. O'Connell, direct.*

*By the Court.*

Q You don't mean that went into the purchase of the property? A No, sir; it was just put into the bank.

*By Mr. Hedden.*

Q About the occurrence on February 6th that you mention, how did your husband seize you and what did he do to you? A Why, he grabbed me and threw me from the dining room out into the kitchen. 10

Q Where did he grab you and how did he throw you? A He grabbed me by the shoulders and just simply gave me a throw. Of course, in resisting to be thrown out, that is what hurt me.

*By the Court.*

Q I understood you to say that you were lying on the lounge when he grabbed you? A That was before. 20

*Mr. Hedden.* February 6th was the time when the dispute arose about the pictures; the other was the dispute about the gun when she was lying on lounge and he choked her.

Q Tell us again what happened on February 6th, 1921. A Why, he was disarranging and upsetting the dining room after I had it all straightened out, and I went in and asked him to leave them alone as I had them, and he said he would not do it, and with that he got down off the step ladder and grabbed me and threw me through the butler's pantry into the kitchen. Then I dressed myself and went over to the police headquarters. 30

*By Mr. Hedden.*

Q Do you know how much the premises are rented for at 11 South street in Morristown? A The first floor, the store, is rented for \$191.67 and the next floor \$100. 40

*Mary L. O'Connell, cross.*

*Cross examination by Mr. Lum.*

Q You say that you married in 1909 and lived happily for how long? A For pretty near six years.

Q That would be until 1915? A Yes, sir.

Q Are you sure that that is as long as you lived happily? A That is my judgment.

10 Q Were you familiar with the bill that was filed in this case by your lawyer?

*The Court.* There was an affidavit annexed to it.

Q The bill was read over to you, was it not? The bill that you filed in this case was read over to you? A Yes.

Q You signed an affidavit, I believe, annexed to it? A Yes, sir.

20 *The Court.* She has the original bill in her hands and she says that is her signature to the affidavit.

Q In the fourth paragraph of your bill you state that you lived happily until July, 1918. Do you know how you came to make that statement in the bill? A Unless it is a mistake of dates.

Q When did your husband first become addicted to drugs, as you say? A To my knowledge, five years ago.

Q That is 1916? A 1915.

30 Q Did he use hypodermic injections? A Not to my knowledge; not hypodermics.

Q You never saw him use an hypodermic needle? A No.

Q You never saw any marks of an hypodermic needle on his arms? A No, sir.

Q You never saw him take drugs? A Yes; I have seen him. I could not say what it was. I have seen him take drugs, but to say what the drug was I cannot.

40 Q You don't know whether it was an aspirin tablet or a headache pill? A No; it was not an aspirin tablet.

*Mary L. O'Connell, cross.*

Q It might have been a pill for regulating the bowels for all you know? A No; it was to produce sleep.

Q How do you know—from having seen him take it? A Because he would sleep right after taking it; that is, a short time after taking it, he would be in a heavy sleep.

*By the Court.*

10

Q What time of day did he take the pill? A Why, I have seen him take them in the middle of the day, in the evening, and down in the store he used to go down in the cellar and take things.

Q What time of day did he take these drugs? A It would be any time—morning, afternoon or evening.

Q The point is this: If he took a pill at nine o'clock at night and went to sleep after that, that would be a natural thing for him to do; if he took it in the morning and went to sleep immediately, that would be unnatural. Now, I want to know what time of day he did it. A Most always he would take pills and medicine at night.

20

*By Mr. Lum.*

Q When he went upstairs before going to bed? A Yes, sir.

Q You say when he went down in the cellar he took drugs. You did not see him take any when he was in the cellar, did you? A No; but I could hear him sniff. Taking from that, it would—

30

Q If he went down in the cellar and sniffed, then you you are sure he took drugs, is that it? A Well, from the symptoms, yes; because he would come upstairs and be very hilarious and other times not—very cranky.

Q This drug sometimes made him very hilarious? A Yes.

Q Other times you say he was very cranky? A Yes.

Q Was it the same kind of a drug that had the different effects? A No; it was a different drug.

40

*Mary L. O'Connell, cross.*

Q Have you any idea what kind of drugs he took? A Why, sometimes he took cocaine, morphine and heroin.

Q You are familiar with the symptoms of these drugs? A Well, somewhat, yes.

10 Q What experience have you had that enables you to be acquainted with the action of these drugs? A Taking care of some drug addicts.

Q What is the difference in the action of heroin and morphine? A Well, morphine sometimes will make you very sleepy. Other times it will—heroin will make you hilarious and ugly.

Q That doesn't mean a thing to me. You mean that they each will sometimes make you hilarious and sometimes make you sleepy? A It depends on the size of the dose you take.

20 Q You could not tell me anything at all as to which drug a person had taken, unless you knew the size of the dose he had taken? A Not always.

Q Will you just explain it so that I can understand you? A Sometimes larger doses will produce different effects; sometimes smaller doses.

Q Of which—heroin or morphine? A Heroin and morphine.

30 Q So that, as I say, if you do not know the size of the dose a person had taken, you could not tell which drug he had taken, could you? A (No answer.)

*By the Court.*

40 Q I understand you could not tell anyway from his symptoms whether he had taken a large dose of any particular drug. A Well, some of the drugs will produce—taking morphine, that will dilate the pupils of the eyes so that there is a squinty condition. Then you take bella donna and some of those things that dilate the pupils of the eyes.

Mary L. O'Connell, cross.

By Mr. Lum.

Q Did he take bella donna? A Yes; I have seen him take that out of a bottle.

Q Drink it? A Mix it in a glass, not drink it from the bottle.

Q What did he take it for? A Stimulating, dilating the pupil of the eye. 10

Q You do not count bella donna as taking a drug, do you? A Yes; if it gets to be a habit.

Q Well, how many times have you seen him take bella donna? A A great many times; I cannot state as to how many times because I did not make notes of those things.

Q Will you say he had a habit of taking bella donna? A Yes; I have seen him take it a great many times, and nox vomica.

Q He had a habit of taking nox vomica, too? A Yes. 20

Q For how long has he been taking nox vomica? A He has been taking that right along for a stimulant and stomach tonic.

Q Are you familiar with the recent operation that was performed on your husband? A No, sir.

Q You did not go near the hospital while he was there? A No, sir; he did not send for me and I was told to stay away.

Q You knew he was at the hospital? A I had heard it; yes, sir. 30

Q Who told you to stay away? A Dr. Rice.

Q When did he tell you that? A When I called on him.

Q On Dr. Rice? A Yes.

Q Did you know the nature of the operation that was performed? A Only from what Dr. Rice told me.

Q Were you informed that it was a very serious operation? A I was told it was an operation for appendicitis and that they had made an exploration and found trouble with the gall duct. 40

*Mary L. O'Connell, cross.*

Q And they found certain parts of the intestines grown together, did you know that? A No; I don't know.

Q Were you informed that they had been grown together for some considerable time? A No, sir.

10 Q Were you informed how extensive the incision or cutting was that was made? A No, sir.

Q You knew that your husband had been suffering excruciating pain at times for several years while you were living together, did you not? A Yes.

Q And there was very keen evidence of terrific pain at times, was there not? A Yes.

Q And frequently he had to get up in the night and take high enemas and he was awake frequently for hours at a time in the night with pain, was he not? A Yes.

20 Q And it was this that disturbed you so that you left his room, was it not? A Well, after he snored and jerked and twitches in the room.

Q The fact that he was up and down with pain was evident? A Yes; and sitting up reading. Lots of times he was not in pain, only sitting there reading until two and three o'clock in the morning.

30 Q You left the home occasionally, did you not, for quite protracted visits? A Only in case of my mother's sickness. I never left the home except when I was called to my mother's bedside.

Q When you were called by your mother, you left your husband, no matter what his condition might be? A My husband was never sick, that is, seriously sick; he was not in bed at any time I left.

Q Whenever your mother called you, you left the home? A Yes.

Q And you stayed away for a long time sometimes, did you not? A Until my mother was feeling better to come back.

*Mary L. O'Connell, cross.*

*By the Court.*

Q If you will, state something about the period. A Six months.

*By Mr. Lum.*

Q Do you recall going to Middletown in December, 1917? A Yes, sir. 10

Q You were there about three weeks on that occasion, were you not? A Yes.

Q Do you recall going there in May of that same year, 1917? A Yes.

Q You were there about three months on that occasion? A I was not there then to take care of my mother; I went there for a rest.

Q In May, 1917? A Yes. I was taken sick myself and had the measles and was laid up three weeks. 20

Q And then in May, 1920, I believe you went away again? A No; I cannot say as to that. I don't remember.

Q Do you remember going away in 1920? A I don't remember the dates.

*The Court.* Were you away some time in 1920? That is only a year ago.

Q Just put your mind on the question. In the summer of 1920, a year ago last summer, were you not away? A (No answer.) 30

Q Let me ask you. Don't you recollect being away from May until September, 1920, practically five months? A No, sir. I was never away in my life for five months.

*By the Court.*

Q You said a little while ago six months. A Six weeks. I have never been away from home any more than—

*Mary L. O'Connell, cross.*

*By Mr. Lum.*

Q You were away three months in 1917 when you went for a rest? A 1917?

Q Yes. A No.

Q Didn't you just a moment ago tell us that you went away for a rest for three months in 1917? A No, sir; not 1917. No, sir; not 1917.

Q You just told us so. What did you mean by it? In May, 1917, how long were you away for a rest? A In 1917 I was not away for a rest at all.

*By the Court.*

Q You distinctly said a short time ago that you went away in May, 1917, to rest and were taken sick with the measles. A That was not 1917. Did I say 1917?

Q You certainly did. Correct it if it was not so. A It was nineteen and—let me think a minute. It was 1920 that I was sick with the measles; I had the measles; it was 1920.

Q How long were you away then? A I was away from May until the twenty-third of August.

*By Mr. Lum.*

Q During all of that time you did not attend to any work at the house, did you? A No, sir.

Q You have spoken of roomers that you took in to help. The last roomer taken in at your house was how many years ago? A I could not say.

Q Just let me go back in your memory; it must be seven or eight years ago? A It is not as long as that.

Q As near as you can, fix the last time there was a roomer in your house. A She was a demonstrator for Ward's bread.

Q For two nights, was it not? A Well, that little woman used to come there for two nights or a night or sometimes three nights; but the last steady roomer that was there was Dr. Mc Carthy and his wife.

*Mary L. O'Connell, cross.*

Q How long ago was that? A Why, I don't just remember how long ago that was.

Q About six or seven years ago or more? A No; it is not as long as that.

*By the Court.*

Q Five years ago, four years ago? A I should judge 10  
by my memory it was five years ago.

*By Mr. Lum.*

Q You say the first you knew your husband was taking drugs was in 1915 or 1916? A Yes, sir.

Q That is when he began it? A That I could not say.

Q Have you any idea that he ever had the habit before that? A I could not say.

Q I ask you on what basis it was, then, that you swore 20  
in your affidavit, on the first page, that at the time of deponent's marriage to her said husband he was addicted to the use of drugs. On what basis did you swear to that. You say it was unknown to you at the time you married him? A (No answer.)

Q Will you please tell me? A The only basis I 30  
would have to say he was addicted at the time of marriage, he used to itch and scratch in the groin and after he broke out between the toes, and after he got through with Dr. Bishop and Dr. Cossett every bit of that left, and when he started back again at drugs these symptoms all came back, the itching of the groin and the breaking out between the toes all came back. I said to Mr. Reed he must have taken drugs when I married him.

Q In other words, because there was a breaking out--  
A Yes.

Q You were willing to swear that he was taking drugs at the time you married him? A Taking those symptoms, that is all.

*Mary L. O'Connell, cross.*

Q In your affidavit you have also sworn that he abused you and hit you and choked you as long ago as January 24, 1918? A July, not January.

Q In the last line of your affidavit you say as long ago as January 24, 1918? A That is a mistake. It was in July.

10 Q Do you recall that he did hit you or choke you in January, 1918? A No, sir; not January; it was in July.

Q You do not know how you came to swear to that? A That is a mistake.

Q You were at the outset of the war, I believe, according to your declarations, favorable to Germany? A No, sir.

Q Didn't you make different statements to different people that you were? A No, sir. There was nothing German about me.

20 Q Did you ever complain as to the way in which you lived or the way your husband treated you? A I used to complain having to climb those two flights of stairs so much.

*By the Court.*

Q As to anything else? A No, sir; because our plans were to get our mortgage paid off and then go back in the country.

*By Mr. Lum.*

30 Q Then you did not complain that he failed to provide for you and support you; you did not make those complaints against him? A I have not made those complaints against him.

40 Q I ask you again how you come in your affidavit filed in this case, to swear that you were obliged to leave the house where you had formerly lived with your husband on account of his abusive treatment of you and his failure and neglect to provide for and support deponent. How did you come to swear to that under oath, when it was not true, as you have just told us now?

*Mary L. O'Connell, cross.*

*The Court.* I know you are not attempting to mislead the witness—

*Mr. Lum.* No.

*The Court.* You should read the whole of it—failure to support on February 6, 1921.

Q You never at any time up to the time you left your husband complained that he failed to provide for you? 10

A The last month he never gave me a cent to go out and buy anything or get anything I wanted. He simply went out and bought it by me writing it down on a piece of paper, a list of things.

Q That was between January and February? A That was between January and February; yes.

Q As a matter of fact, you went away in January, didn't you? Do you remember when you went away in the end of 1920 or early part of 1921? A I was not away in January. 20

Q When were you away around that time? A Well, it was around Christmas Holidays. Just as to the date I don't know.

Q In your affidavit on page 2 you say: "Deponent further says that in the month of January, deponent had gone to the home of her mother in New York State because her mother was sick and infirm and needed deponent's attention. Deponent returned to Morristown about the first of February." A Oh, no; because it was right after the holidays, right after Christmas, I came back, because I sent my husband a pair of slippers for his Christmas present, and I was home on Christmas at my mother's bedside on Christmas Day. 30

Q Will you, then, tell me how it is that you came to swear in this affidavit that you left in January and came back in February? A That is a mistake; that is a mistake.

Q Do you recall swearing to this affidavit in Morristown on the fourteenth of April of this year; don't you re- 40

*Mary L. O'Connell, cross.*

call swearing to this affidavit? A Yes; but as to dates I am not sure.

Q Didn't you read the affidavit over before you signed it or have it read over to you? A Yes; Mr. Reed read it over to me.

10 Q Did you call his attention to the fact that these dates were wrong? A No, sir; I did not notice at the time that they were wrong.

Q Would you not have been likely to remember a date in January of this year better in April than you do now? A I know I came home right after Christmas.

Q Well, you never did complain of money matters with Mr. O'Connell, did you, either that he neglected to support you or provide for you while you lived there with him,—did you at any time? A Well, I have often asked him for more money that he has given me; he would give me sometimes a dollar and sometimes two dollars.

20 Q That is not the question, Mrs. O'Connell. Did you ever complain to anybody, up to the time you left, that Mr. O'Connell failed to properly provide for you and support you? A No; I never complained to anybody.

Q This drug business, there was a bill of sale for that to Mr. O'Connell, I believe, was there not? You didn't have any interest in the drug business, did you? A Except to work there as any woman would have an interest in her—

30 Q You volunteered to assist as any wife would give a hand to her husband? A Because my husband asked me to help him out in the drug store and take the place of a clerk.

Q You assisted as a wife or a daughter would? A Well, I assisted willingly to help pay off the mortgage. I did everything that I did in there willingly and made clothes and everything else and even took in some outside sewing and even boarded some dogs, which money was put into the drawer.

40

*Mary L. O'Connell, cross.*

Q When was the drug business sold? A In September, 1919.

Q At the time it was sold you did not make any demand for half of the money or any part of the money, did you? A No, sir; because there was only the first papers taken out when I got a telegram to come to my mother, she was not expected to live.

Q You did not say anything to Mr. O'Connell about your having any interest in the money that was to come from the sale of the drug business? A I asked Mr. O'Connell how much he got out of the business when I got home and he told me it was none of my business.

Q That was 1919? A That was 1919, yes; and to this day I do not know what he got out of the business or where the money has been put or spent or anything else. I don't know anything about that, one way or the other.

Q He told you that it was his business, in 1919, and not yours, didn't he? A Yes, sir; he did.

Q You did not make any claim then to any part of it, did you? A I didn't make any claim to it, no.

Q This dining room table that you have spoken about, where was that purchased? A At Mr. Checkerjans.

Q How much was paid for it, do you know? A No. It was less than a hundred dollars. How much less I could not say.

Q You are not even sure of that, are you? A No.

Q Do you recall that it was more than that? A No. That was the selling price and by paying cash and in gold we got it for less.

Q Are you sure of that? A Yes.

Q You paid cash? A Yes.

Q You are sure you paid cash? A We paid cash.

Q And you are sure that there is not a check that will show that this was paid by check? A No, sir; I am quite sure that was paid, some in gold.

Q I am going to ask you how sure you are that that was paid in cash and in gold. A I took my husband's word for that, as I did everything else.

*Mary L. O'Connell, cross.*

Q Then you are testifying to that according to your husband's word and not according to what you know?

A Well, you naturally take your husband's word and I would not go into all of these little details.

Q You did not see the cash paid for the dining room table, did you? A I saw part of it paid for it.

10 Q In cash? A Yes.

Q With your own eyes? A Yes.

Q Your husband didn't tell you that? A Whether the rest was paid in cash that I could not say.

*By the Court.*

Q Were you with your husband when the table was bought? A Yes.

Q Where did you buy it? A From Mr. Checkerjan.

Q That is an auction room? A No; second hand and new furniture and antiques.

20 Q You were present when he paid for it? A As I remember.

Q As you remember? You testified you were. A He paid some cash just to hold the table and I know the rest of it was paid when the table was delivered.

*By Mr. Lum.*

Q Didn't he pay fifty dollars cash at the time the table was bought? A I could not say how much cash was paid.

30 Q And seventy dollars in a check when the table was delivered? A It was less than one hundred dollars.

Q The check that was paid for it was drawn by Mr. O'Connell? A All checks were drawn by Mr. O'Connell. I never had any of the privileges of drawing any checks or paying for anything, except the household and the wearing apparel.

Q The rents that came in, you never demanded half of the rent? A No, sir; that all went into the cash register.

40

*Mary L. O'Connell, cross.*

Q You knew that Mr. O'Connell was collecting the rents as time went on? A Yes, sir.

Q The running charges, the repairs, taxes, insurance, interest, all of those things, were paid out by Mr. O'Connell? A Yes; naturally they were paid.

Q You never demanded any account as time went on? A No, sir; had no reason to demand any account because it was supposed that we were leaving it— 10

Q You recall when the property was bought, don't you? A Yes.

Q At that time, I believe, your mother had some two thousand dollars in bank in New York? A Yes.

Q She was getting four per cent. interest on that, was she not? A Yes.

Q Do you remember a conversation in which it was discussed that five per cent. interest would be better for her? A Yes; because we got it cheaper from her; that is, four per cent. she got for a while; then we raised it to five per cent. because the rates had gone up. 20

Q Two thousand dollars was borrowed from your mother at that time? A My mother gave me the two thousand dollars and then three hundred dollars.

Q You say your mother gave you that two thousand dollars? A Yes.

Q Of course, interest would be paid to you on that two thousand dollars, would it not? A No; it was paid to my mother. 30

Q Why, if your mother gave you two thousand dollars in 1909, was interest paid to your mother continuously up to the time of her death? A Simply because it was a matter of my mother having support, and my husband always said he would pay my mother's money back and pay me as soon as the business was sold.

Q He said he would pay you back the money you had put in and pay back your mother's money as soon as the business was sold? A Yes. 40

*Mary L. O'Connell, cross.*

Q And when the business was sold you were to get your money and your mother's money both? A Yes, sir; that money was to be set aside for mother and have the interest on it.

Q There was five hundred dollars to be paid to you and two thousand dollars to be paid to your mother? A  
10 No, sir; there was more than five hundred dollars of my money.

Q How much? A Seven hundred dollars.

Q And you were to be paid two thousand dollars of your mother's money when the business was sold? A Yes; and the three hundred dollars that we took the vacation up to Maine on.

Q You are sure of that? A Yes.

Q Do you remember going to John Mills' office? A  
Yes.

Q That was after the business was sold? A Yes.  
20

Q And that was for the purpose, I believe, of being repaid the money that was coming to you? A No, sir; that was for the purpose of my signing off my share in the building.

Q Why were you to sign that off? A I don't see any reason why I was to sign it off.

Q You went to Mr. Mills' office, didn't you? A I certainly did.

Q You had a conversation with him? A Very few  
30 words. Mr. Mills asked me to sign the papers, and then he says: "Your husband will give you a check for seven hundred dollars you have in the place." I said: "No, sir; Mr. Mills," and walked out of the office. A few days later I went in the office again to look over the papers, and Mr. O'Connell and Mr. Mills were there, and I turned and walked out of the office, and that is the last time I was in Mr. Mills' office.

Q Why did you go there a second time to look over the papers? A Curiosity to see what was in the papers, to  
40 see what I was to sign.

*Mary L. O'Connell, cross.*

Q You did not intend to sign anyway? A No, sir.

Q If you did not intend to sign anyway, why were you curious to see what was in the papers? A Just simply to see what was in the papers, to see what I would have signed, if I had signed it.

*By the Court.*

Q What was in the papers? A I could not tell you; I never looked. 10

Q What did they offer seven hundred dollars for? A For the money that I had in the building.

Q Why wouldn't you take the seven hundred dollars? A I would not take the seven hundred dollars and sign these papers and sign my rights in the building.

Q Why not? A Because half of the building amounts to a great deal more than that.

Q Why did you think you had a half interest in the property? A Because I had worked and put myself—put twelve or thirteen years of my hard work in the building as a wife. 20

*By Mr. Lum.*

Q You thought the work that you had put in and the fact that you were a wife was sufficient to overcome the agreement that you were merely to get out of the property what you had put into it? A That was not taken into consideration at all. 30

Q Will you say that you did not say in the presence of John Mills that you would sign off if you got twenty-five hundred dollars? A Positively not; positively not.

Q Will you say that in the presence of John Mills there was no conversation about what was to be paid you? A Nothing, except he said: "You sign these papers and Mr. O'Connell will give you a check for seven hundred dollars that you have in the building."

Q What was said about your mother's interest? A There was nothing said about it. 40

*Mary L. O'Connell, cross.*

Q You are sure of that? A Positive.

Q Did you say anything about your mother's interest?

A No, sir.

Q How long were you in Mr. Mills' office? A Not more than five minutes.

10 Q Did you not say in the presence of Mr. John Mills on this occasion just referred to, that you had the agreement that if you got your money back, you were to sign it? A No, sir.

Q This occasion that you have referred to of the assault in 1915 you took a revolver, you say, out of a drawer? A Yes, sir; I did.

Q And went and laid on the sofa? A Yes.

Q You say Mr. O'Connell's mother was in the room?

A Mr. O'Connell's mother was in the room; they came upstairs together.

20 Q Mrs. O'Connell, the mother, was there because you had sent for her, was she not? A No, sir; I had not sent for her.

Q Was she there against your wish? A No, sir.

Q She did not interfere by coming there against your wish? A Not at that time.

Q All right. And did you call to her for any help or assistance whatever during this brutal assault? A No, sir.

30 Q Never opened your mouth? A Except to yell; and he directed his mother to close the windows and pull down the shades.

Q You did yell, did you? A Yes, I did yell.

Q You did not tell us anything about this yelling on direct examination, did you; did you testify to that on direct examination? A Yes; I said I had yelled or screamed.

40 Q I thought the Court asked you why you did not call out or scream and you said there wasn't any use because there was no one to help? A Well, there wasn't anybody in the building.

*Mary L. O'Connell, cross.*

Q Didn't you tell the Court that the reason that you did not call for help or scream was because there was no one in the building to give you any help? A No.

Q Didn't you say that on direct examination? A No; I didn't yell for any help; I just simply screamed.

Q Do you recall saying on your direct examination that you did not call out or scream or call for any help because there was no one to give any help? A No— 10

Q Just listen to the question. Do you recall saying on direct examination that the reason you did not call for help was because there was nobody to help you? A I do remember saying that there was nobody there to help me if I had called for help.

Q How do you explain the fact that you testify on direct examination that way and now you tell me that you did scream and that he called to his mother to put down the windows and pull down the shades—how do you reconcile those two bits of testimony? A Well, he did direct his mother to close down the windows and pull down the shades. 20

*By the Court.*

Q Did she? A Yes, she did.

Q That was so your screams would not be heard on the street? A On the street.

*By Mr. Lum.*

30

Q Then you did scream? A Yes.

Q Loudly, vigorously? A Well, I don't remember how loud it was or how vigorous it was.

Q Screaming for help? A I did not call for help. I just simply let a scream out of me.

Q Why did you scream? A Because he was choking me.

Q You screamed while he was choking you? A While he had his hands on me, choking me. 40

*Mary L. O'Connell, cross.*

Q You screamed while he was choking you? A Well, he had released his hands.

Q You didn't scream until after he choked you? A Until after he had released his hands.

Q You did not call for help? A No, sir.

10 Q The mother sat in a chair looking at you? A No, sir; the mother stood there.

Q Did she scream? A That I could not say.

Q She did not raise a hand to protect you? A No, sir.

Q Mr. O'Connell, I believe, after the incident, you say, went back to his room? A Yes. She said: "Con, that is enough. Go to your room."

Q Did you stay on the couch all night? A I sat at the window until four o'clock. His mother sat there and talked to me and said every family had their troubles.

20 Q You and his mother sat in the room there most of the time? A Up until around four o'clock in the morning.

Q Well, this didn't affect your health, I presume? A It left me afraid of—

Q I believe you say you continued to live with him up until 1921, did you? A Yes, sir.

Q There was no other time that he placed his hands on you or committed any act of violence until 1921, February of this year? A Yes, sir.

*By the Court.*

30 Q What is this incident of January, 1918, which you say should be July, 1918? A That is when the choking went on.

Q You mean this incident that you have just been testifying about? A Yes.

Q At which his mother was present? A Yes.

Q You said it was 1915. A Well, 1915 is right, not 1919. There wasn't—

40 Q I have not said anything about 1919. Your affidavit says January, 1918— A Some of these dates are wrong.

*Mary L. O'Connell, cross.*

Q You say in your affidavit that he had abused and hit you as long ago as January 24, 1918, and you said awhile ago that month was wrong and that it was July, 1918. A Yes; it was in July.

Q It was 1918? A I really—I would have to look that up in my note book.

Q You don't know whether it was July, 1918, or July, 1915. A I know it was in July. 10

Q But whether it was 1918 or 1915 you cannot say? A I cannot swear positively to that until I look that note up because the nervous strain has been very great.

*By Mr. Lum.*

Q Do you recall this incident in February when Mr. O'Connell and John McCormack were hanging pictures?

A Yes, sir.

Q I believe you came in and did not like the place where they were hanging the pictures? A No; it was taking down pictures that I had put up; I had done the hanging. 20

Q You did not like the place the pictures were being put; that is the fact, is it not? A They were taking down pictures; they were not putting them up; they were taking them down to put up others in their place.

Q What was your objection to that? A Simply because I had my room arranged as I liked it and had worked hard to have it arranged. 30

Q You have some temper? A Oh, yes. I don't admit that I have no temper.

Q (Showing witness.) Do you recall ever having seen this instrument that I am showing you now, before? A No, sir.

Q Just examine it? A That has been torn up since. That is one of the dish towels.

Q And this (indicating) is a nut pick? A Yes; that is a nut pick. 40

*Mary L. O'Connell, cross.*

Q You never saw them arranged in the form in which I show them to you? A No, sir.

*Mr. Lum.* I ask that they be marked for identification.

(Marked D. 1 for identification.)

10 Q Is it not a fact that you attacked Mr. O'Connell with this instrument in this form? A No, sir; positively not.

Q At any rate, whether it was the result of an attack or otherwise, you were put out of the room in which Mr. O'Connell was? A Yes, sir.

Q And into what would be the kitchen part of the house? A Into the kitchen.

Q Well, did you go away quietly then? A No, sir; I tried to get in.

Q You tried to get in through a window, didn't you? A Yes.

20 Q Over an air shaft? A Yes.

Q You were in a towering rage, were you not, at the time? A Well, I was not in a very good humor.

Q This place where you were trying to get in was one of danger, was it not? A Not particularly.

Q You might have easily fallen down through the air shaft? A No.

Q If you had slipped, where would you have fallen if not down in the air shaft? A On a wire screening.

30 Q One floor below? A Over the air shaft.

Q One floor below, would you not? A Yes; I would have fallen—

Q You would have fallen? A But there was a platform there.

Q Your attitude, your condition of mind, was such that regardless of that danger you attempted to go in through that window? A Yes; I attempted to go in through the window.

40 Q The window was barred against you and you were prevented from going in? A Yes.

*Mary L. O'Connell, cross.*

Q Then you went over and tried to swear out a complaint against Mr. O'Connell? A No, sir; I didn't try to swear out a complaint.

Q You went to police headquarters? A I went to police headquarters; yes.

Q And you have never sworn to a complaint? A No, sir. 10

Q You never asked Mr. O'Connell to provide a home for you? A No; because Mr. O'Connell put a lock on the front door so that I could not get in if I wanted to.

Q Do you recall a meeting at the office of Mr. Reed in Morristown in an effort at an amicable adjustment of your differences? A Yes; favorable to Mr. O'Connell, but unfavorable to me.

Q That was in April of this year, was it not? A I could not say as to what date that was nor what month it was. 20

Q It was a few weeks after you had left, was it not? A I think it was a couple of months or more.

*By the Court.*

Q How long before you commenced your suit, or do you remember that? A Why, I went up and saw Mr. Reed the following Monday morning.

*By Mr. Lum.*

Q I am asking you about an interview at Morristown? A That night, do you mean? 30

*The Court.* Maybe you can fix it from the fact that the bill was filed April 19th.

Q Do you recall it with reference to when the bill was filed? A Not as to date; no, sir.

*By the Court.*

Q Was it a few days, or a week, or when? A Well, that happened on Sunday and I went up to Mr. Reed's 40

*Mary L. O'Connell, cross.*

office on Monday morning and had the suit commenced that day.

Q On Monday? A Yes, sir.

*By Mr. Lum.*

10 Q Don't you recall that it was at the end of April, 1921, that we had the meeting there? A I could not say as to what day it was or what month it was.

Q Well, at any rate, whatever time it was, do you recall my urging you to return and live with Mr. O'Connell? A No; I don't remember you urging me to return and live with Mr. O'Connell.

Q Do you recall my asking you if you would not return and live with him and your saying that you would have to think it over? A No, sir; I don't remember.

20 Q Do you recall sitting in Mr. Reed's room? A Yes; I remember sitting there that evening.

Q You certainly do recall the matter of your return to your home and you and Mr. O'Connell living together being discussed on that occasion, do you not? A I remember the discussion being as to the rent and the income from the rent and the dividing of the rent and as to the woman having no right in her husband's business; I remember that.

30 Q That is not the question. Will you please confine yourself and keep your mind on the question? I am concerned now with the discussion that night, at this time, so far as it had to do with the matter of you and Mr. O'Connell establishing a home again and living together and your return. Do you recall that being discussed? A No; I do not.

Q You do not recall one thing being mentioned on that entire subject at that meeting? A No, sir; I do not.

Q Have you a very bad memory? A Well, I don't think I have such a very bad memory, but I am not good on dates.

*Mary L. O'Connell, cross.*

Q Did Mr. Reed never communicate to you any wish or request that you should return to live with Mr. O'Connell?

A Mr. Reed advised under the circumstances not to return.

Q Then no matter what invitation had been given, no matter what was said, you did not intend to return? A Not under those circumstances, not under the way things were. 10

Q I believe John McCormack was present during the entire time of this February assault that you have referred to? A Yes; John was there.

Q Did you call to him for help? A No; I did not.

Q Did you ask him to give you any assistance? A No, sir.

Q He had been employed, I believe, two or three years around the store? A Yes; as a boy, just to sweep up.

Q And to wait on people sometimes and help around the store and run errands? A Run errands, yes. 20

Q And he had been up in your house almost every day during that time? A Not every day; no, sir. Many times he used to send him up when—

Q You did not ask him for any assistance at all? A No.

Q You say Mr. O'Connell took hold of you where? A The shoulder.

Q Which shoulder? A Right shoulder. 30

Q With both hands or one hand? A Both hands.

Q Then what did he do? A Threw me out in the kitchen.

Q Were you facing him when he took hold of you? A No.

Q Did you have your back to him? A He grabbed me by the side.

Q Which side? A Right side.

Q How far did he throw you? A Out in the kitchen.

Q One throw? A Yes, sir. 40

*Mary L. O'Connell, cross.*

Q You landed on your head or feet or how? A I landed spinning around in the air and caught myself against the tubs.

*By the Court.*

10 Q Clean through the butler's pantry out into the kitchen? A Yes, sir.

*By Mr. Lum.*

Q How far a distance was that? A I could not say.

Q That is fifteen feet or eighteen feet, is it not? A It is as far as from here to the wall. As to the feet I could not say.

Q That is approximately fifteen or eighteen feet, is it not? A I don't know.

20 Q Fifteen feet you think he threw you before you landed at all, or were you on your feet during the throw? A Well, I don't know. I landed on my feet, I know, spinning.

Q He picked you up and threw you in the air and you landed fourteen or fifteen feet away spinning like a top, is that it? A I don't know as I spun like a top. I know I spun around.

Q You are sure that you landed on your feet? A Yes; I am sure I landed on my feet.

30 Q Did you touch the floor at all during the fourteen-foot throw? A I don't know whether I did or not.

Q You were there, were you not? A Yes; I was there.

Q Were you knocked insensible? A There are little things that you do not take any notice of times like that.

Q Is it not a fact that when you came at Mr. O'Connell with this instrument in your hand— A No, sir; I never came at Mr. O'Connell with that in my hand.

40 Q He took you by the wrist and backed you out into the kitchen? A No, sir.

*Mary L. O'Connell, cross.*

Q Is it not a fact that he took you by the wrist and backed you out of the room? A No, sir; he threw me out of the room.

*By the Court.*

Q Who prevented you from coming back through the window into the dining-room? A Mr. O'Connell did because he took nails and nailed the window down. 10

Q While you were crawling through, all of this happened? A While I was trying to. John brought him the nails and hammer.

*By Mr. Lum.*

Q You said that Mr. O'Connell on different occasions had threatened to shoot himself? A Twice.

Q He told you that the pain was so excruciating that he could not stand it? A That I watched him too close and prevented him. He told that to Dr. Bishop. 20

Q That was because of the excruciating pain he was suffering? A I presume you might think so.

Q He said so. A He didn't say to Dr. Bishop it was excruciating pain.

Q You knew that, didn't you? A I didn't know until he had admitted to Dr. Bishop that he intended to do it, but he says: "That little girl watched me so close I didn't get a chance." 30

*By the Court.*

Q Did he say why he intended to shoot himself? A No; he did not.

Q Didn't he ask him why? A Dr. Bishop didn't ask him why.

*By Mr. Lum.*

Q Didn't you ever ask him why? A No, sir.

Q You were not interested in that? A I was interested. If I was not, I would not have taken care of him. 40

*Mary L. O'Connell, cross.*

Q Why didn't you ask him why he threatened to shoot himself? A I don't know why I didn't ask him. I didn't ask him.

Q Do you recall his saying if he did not get better, he would blow his brain out? A That is what he told Dr. Bishop.

10 Q If he did not get better he would blow his brains out. You knew that had reference to his suffering, didn't you? A It had reference to his condition. At least I took it that way.

Q Do you remember writing to the Federal authorities a letter about drugs? A No, sir.

Q You are sure that you never wrote to them an anonymous letter? A No, sir.

Q Is your health pretty good? A No; it has not been.

Q For how long? A It has not been very good, that is, I have been run down, worn out, for four or five years.

20 Q It is about the same now as it was four or five years ago? A No; I am in a little better condition as far as flesh is concerned. I am a heavier weight now than I was four or five years ago.

Q Mr. O'Connell never threatened you with a revolver, did he? A No, sir.

Q But he said that if you brought a policeman or anybody else up to attempt to remove him, that they might have trouble? A Yes; he said that he would blow anybody's brains out that attempted to enter the stairs.

30 Q That is, any policeman that you tried to bring in? A Anybody that I would bring up.

Q Why was there this discussion between you two as to your bringing a policeman up? A Why, different arguments that went on there.

*By the Court.*

Q What did the arguments have to do with the policeman? A Well, he would say to me: "If it was not for your sex, I would kill you." I would say to him:

*Mary L. O'Connell, cross.*

“If you try to do that, the law will take care of you.”  
Then he would say: “If you ever bring anybody in to me, I will blow their brains out before they get upstairs.”

Q If it was not for your sex, he would kill you? A Yes, sir.

*By Mr. Lum.*

10

Q At those times when you had your altercations, you called just as many names as he did, didn't you? A No; not as many names.

Q Different names? A Yes; I called him a gutter snipe.

Q What else? A “Bum.”

Q What else? A That is all.

Q And he called you a “hussy” and something else? A Yes.

Q And pro-German? A Yes.

20

Q And after those words were out of the air, why, then you settled down for another round as before—both sides went on living just as formerly? A No. After each one of the arguments and quarrels, there was not the love and affection that there was before they started.

Q I show you a letter of July, 1920, written from Waldon, New York. That is your writing? A Yes.

Q Do you recall sending that letter? A Yes, sir.

(Marked D. 2 for identification.)

30

Q In that letter do you recall asking for a check for your mother for her interest? A Yes.

Q You were familiar with the fact that your mother received interest regularly, were you not? A Yes.

Q You knew your mother's endorsement? A Yes, sir.

Q (Showing witness.) Will you hastily glance over these checks and see if they are endorsed by your mother?

A They are not endorsed by my mother because my mother did not write.

40

*Mary L. O'Connell, re-direct.*

Q Just look at them. A They are not endorsed by her because mother did not write.

Q That was not your mother's endorsement on the first one that you identified? A No, sir; not on there.

Q Whose was it? A That is my sister-in-law's.

*By the Court.*

10

Q They were all endorsed for your mother? A Yes.

Q By persons that were authorized to endorse for her?

A Yes, sir.

*Mr. Lum.* I offer them for identification.

(Marked D. 3 for identification.)

*Re-direct examination by Mr. Hedden.*

Q You were asked as to that occurrence when Mr. O'Connell choked you while you were lying on the lounge?

20 A Yes.

Q You said that you screamed? A Yes, sir.

Q You said that you did not yell for help? A No, sir; I did not.

Q Because you knew that there was no help? A There was nobody in the building except Miss Roy and she had not got home yet.

Q And you knew that Mr. O'Connell's mother was there? A She was there.

30

Q What do you mean that there was no help that you could get? A I knew perfectly well she would not help me. I knew that perfectly well. She would not help me because she has more or less interfered in the family life.

Q Regarding the support that you received, was Mr. O'Connell ever niggardly in payments to you? A No; it came every month sometimes around—

Q I am not speaking about the payments of fifty dollars that you received. I mean prior to your separation in February, 1921, did Mr. O'Connell ever restrict you in the amounts which he gave you? A Oh, yes; before I

40

*Mary L. O'Connell, re-direct.*

left on February 6th he had not given me any money, and before that I had to ask for every bit that I got, and it would be a dollar or two dollars, sometimes three dollars, and the very most five dollars; he would lay it on the tubs. After the last time returning from Middletown he went out and did all the buying himself; he never left a cent. I would write down a list of what I wanted. Some days he would get it; other days he would not. 10

Q Did he ever buy any clothes for you? A He went with me one time seven or eight years ago to get silk for a little dress to attend a nurse's alumni dinner in.

Q That is all that he ever gave you? A Well, that is all.

*By the Court.*

Q How did you get your clothes? A I have friends who have given me a good many clothes. I have a friend, Mrs. ——— and she has given me a great many clothes, and different friends have given me things to wear. 20

Q Did you ever ask your husband for any money to buy material for a dress when he has refused? A Well, simply this; he would say—

Q Did you ever ask your husband for money to buy material for a dress, which he has refused? A Because we always took that up and he would say: "I cannot afford it this month and maybe next month we can do it," and I was perfectly satisfied as long as we were making payments and getting along with our mortgage. 30

*By Mr. Hedden.*

Q Regarding that mortgage, why was it that you refused to take the seven hundred dollars and sign off your interest? A Why, because I did not think it was a fair thing to me after working there and putting in all the work in the store and in the household and everything else; I didn't think that was fair and just in any way.

Q Was it the understanding between your husband and you that the money arising from the conduct of the 40

*Mary L. O'Connell, re-direct.*

business and any other way in which you should work, should go to reduce the mortgage? A Yes; and it was reduced right along.

Q How do you know it was reduced through those payments? A Because different payments I have seen him personally pay checks to Mr. Stickle.

10 Q In the conversations you have held with your husband regarding this matter, have you both assumed that your joint earnings were going into the reduction of the mortgage? A Yes, sir.

*Mr. Lum.* Rather leading.

*The Court.* It is answered. Objection overruled.

Q Why didn't you demand any rent from him? A Because I was too anxious to get the mortgage paid off that we might have a home outside of the apartment, as we had planned, where we could have a garden and a home outside of the town.

20

Q What was the conversation between your husband, your husband and you regarding that? A This plan went so far as to look at a big stone house that was far beyond our means between Madison and Chatham.

Q Did he ever mention that to you without your mentioning it to him? A He took me down there two different times to look it over. We went all through the grounds.

30

Q Was there a proposal to you regarding the purchase of that property? A He said then: "I don't see why you don't take your money out of the building and put it in there. Then you will have a nice home." I said: "We cannot afford it. We are under a mortgage now." It was forty thousand dollars, which was more than we could afford.

Q What did he mean by taking your money out of the building? A I suppose that three thousand that is in there.

40

*Mary L. O'Connell, By the Court.*

Q Had he ever recognized that you had a full half interest in the building? A Except by the deed and by Mr. King. Mr. King drew up the lease and the store was leased half and half, he always considered half and half.

*By the Court.*

Q When you bought the property what was the purchase price? A I think twenty-three thousand; I won't say positive—either twenty-three or twenty-five thousand; I would say positive. 10

Q How much mortgage was given? A There were two mortgages. I cannot say how much mortgages there was.

Q Don't you know anything about it? A I didn't know the first thing about it until this trouble began.

Q If you know now, tell me? A I don't know.

Q How much cash was put in? A I don't know how much cash he put in. All I know is what I put in. I don't know how much you put in it. I know he borrowed on my life insurance policy twice to make payments on fixtures for the store and some repairs. I am not sure because he was a man I had perfect confidence in and I never questioned his word one way or another. 20

Q I understood you to say that he had put you out into the kitchen on this day in February, 1921? A Yes.

Q And you dressed and went to the police station? A Yes. 30

Q Where did you get your dress from? A Out of my bedroom.

Q How did you get in there if you were locked in the kitchen? A I was not locked in the kitchen. I was thrown in the kitchen. I was not locked in the kitchen.

Q Why didn't you attempt to come around from the kitchen to the dining room? A Because it was locked.

Q Could you get from your kitchen to your bedroom? A Yes, sir. 40

*Mary L. O'Connell, By the Court.*

Q How soon after you were ejected from the dining room was it that you left for the police station? A Just as soon as I could get my clothes on.

Q I don't know how soon that was? A Not more than fifteen minutes.

Q Did you see your husband in the meantime? A Yes; I have seen him occasionally in the park—

10 Q Between the time when you were put out into the kitchen and when you left the house? A No, sir.

Q Did you go back to the house after going to the police station? A Not that day; no, sir.

Q What day did you go back? A Two or three days after.

Q What for? A To get some of my clothes.

Q And did you get your clothes? A Most all of them; not all of them; there was more of them.

Q What else did you take? A Some of the bric-a-brac.

20 Q Anything else? A Couple of pictures.

Q Anything else? A No.

Q Did you see your husband on that occasion? A No, sir.

Q Did he know that you were coming back, as far as you know? How did you get in the house? A I had a key then for the front door and the apartment itself.

Q Did you know where he was when you entered the house on that occasion? A No; I did not.

30 Q Did you look to see whether he was in the store? A No; he was not in the store.

Q Did you look? A Yes; I did look.

Q How do you know he was not in the store? A Because I looked as I passed by.

Q Did you wait until he was out of the store before going into the house? A If he was in the store?

Q Did you wait until he was out of the store before going in the house? A Yes; he was out of the store.

Q Did you wait until you knew he was out of the store? A No, sir.

*Mary L. O'Connell, By the Court.*

Q Would you have gone into the house if he had been in the store and knew you were going in? A No, sir.

Q Why not? A Because I was afraid of him.

Q Afraid of what? A Well, that he would attack me.

Q How did you move your things out? A Carried them downstairs and took them out in an automobile.

Q You had an automobile standing outside waiting for you? A No, sir; there was a friend took them out at different times from her apartment. 10

Q I don't understand. A They were taken down to the front apartment underneath.

Q In the same house; in the same building? A Yes.

Q And left there? A And left there.

Q And then did you come back and get them after they were taken there? A No, sir; she brought them to me, to my home. 20

Q How long did it take you to move the things from your apartment to your friend's apartment? A Less than an hour.

Q Did you go back to the apartment building afterwards? A No, sir; I have never been in the building.

Q Why not? A Because there was a Yale lock put on the front door.

Q How do you know? A I saw it there.

Q Your friend was still living in the building? A Yes.

Q You might have got in with your friend's key if you wanted to? A That Yale lock was put on after this friend moved out. 30

Q From the time you were ejected from the dining room into the kitchen, have you seen your husband to talk to him? A No, sir; not to talk to him. We have held no conversation at all.

Q Did you meet him anywhere? A Up in Mr. Reed's office.

Q How long was that after this time that you left your husband's house? A I could not say. 40

*Mary L. O'Connell, re-cross.*

Q Was it a week, or two weeks, or two months? A I think it was about two weeks.

Q That was the first time you saw him after your trouble? A Except in the park sitting on the bench or sitting in the window; I have seen him sitting in the window.

10 Q Did he send anybody to you in the meantime in his behalf? A No, sir.

Q Did you send anybody to see him? A No, sir.

Q In Mr. Reed's office, did you have any conversation with him? A No, sir.

Q Did he offer to speak to you? A Just bowed.

Q What did you do? A Bowed back.

Q You neither spoke to the other? A No, sir.

*Re-cross examination by Mr. Lum.*

20 Q You have spoken of the matter of insurance. Do you recall that when you loaned him this money to go into the apartment, something was said about insurance? A When I put the money into the apartment.

Q When the building was purchased do you remember the subject of your insurance was mentioned? A No.

Q Before the building was purchased who had paid your insurance premiums? A I had.

30 Q After the building was purchased? A Naturally my husband did.

Q In other words after the building was purchased there was a change made in the payment of your insurance premiums? A Yes; naturally.

Q As a matter of fact, it was agreed at the time you advanced this money, that interest was to be paid to your mother on the amount that she loaned and that you were to be paid interest in the form of Mr. O'Connell paying for your insurance premiums? A No; that was never mentioned.

40

*Mary L. O'Connell, re-cross.*

Q Will you tell us why he paid the insurance premiums? A Simply because I had no way of paying them. Working in the store I had no money.

Q Before the building was purchased, what way did you have of paying the insurance? A Nursing.

Q The building was bought in 1909, was it not? A Yes.

10

Q Did you do any nursing in 1908? A Yes, sir.

Q During the year between the time when you were married and when the building was purchased, did you do any nursing? A After I was married I did no nursing.

Q You did no nursing after you were married? A No, sir; because my husband told me I would be a great deal more advantage and value to him as clerk in the store than to go out nursing.

Q You knew that your insurance premiums amounted to fifty dollars a year and that they were paid by Mr. O'Connell, didn't you? A Yes, sir; there was no other way of paying it.

20

Q You spoke of money being borrowed on your insurance? A Yes, sir.

Q That was repaid by Mr. O'Connell, was it not? A Yes, sir; because I had no way of repaying it. I had no salary coming in and no money coming in.

Q As a matter of fact, you have property of your own, have you not? A No income property.

30

Q No income property? A No, sir; I have no income from any property.

Q Was there not money in the Middletown bank in the joint name of yourself and your mother? A That was mother's money. I had no money; no, sir.

Q My question is this—and you will save time if you will answer it: Was there not money in the Middletown bank in the joint name of your mother and yourself? A Yes; we put everything that way, but there wasn't one penny of my money in there. Mother simply did it—

40

*Anna L. Allaben, direct.*

Q Although it was in your joint names? A I could not draw it. I had no right to draw it. That belonged to my mother.

Q Why was it in your joint names? A Just simply because mother wanted it in my name.

Q Your mother has died since? A Yes, sir.

10 Q And that money is entirely yours? A Except what I have spent for funeral expenses and given to the rest of the family.

*Mr. Lum.* I want to reserve the right to go into that later. I do not think there is any use of going into that at this time.

*The Court.* You may reserve that.

ANNA L. ALLABEN, sworn as a witness on the part of the complainant.

20

*Direct examination by Mr. Hedden.*

Q You are a practicing physician in Morristown? A Yes.

Q How long have you practiced there? A Twenty-six years.

Q During the course of your practice did you ever treat Mr. O'Connell? A Yes, sir.

30 Q At what time was that? A January 10, 1921, to January 15, including January 15, 1921.

Q At whose request did you treat him? A I went to him at the request of his mother. She came to me in the morning and almost begged of me to go, because as a rule I do not have men patients, but I knew his mother quite well; she had been one of my good nurses. She came and said he was very ill and begged of me to go and see him.

40 Q Will you state in what condition you found the defendant when you saw him? A I found him suffering terribly, terrible pain, constant nausea, vomiting, and I found him, as she had said, a very sick man. I treated

*Anna L. Allaben, direct.*

him for nearly a week—it was five days. I found I was not getting anywhere with him. I made up my mind—I was undecided just what was the cause of his pain, whether it was all from gall stones; there were indications of gall stones; also there was an acute gastritis; he did not retain much, if any, food—just for awhile some liquid nourishment. He did not respond to anything I did for him and I advised strongly to have him go in one of our hospitals for observation and examination, because I suspected it was a radical case, but he refused to go to one of our hospitals, and I said there was no use of my continuing, because I was not doing him any good. I even resorted to morphine and it did not touch him. I gave him what I considered large doses hypodermically; it did not touch his pain and he scarcely slept from it; if he did he would awaken with more pain. I said it was no use, if he would not do what I wanted, there was no use for me to continue with the case; and I think the next day they sent me word that they had taken him to a New York specialist.

Q What were you treating him for? A I was treating him for gastritis and gall stone colic as well as I could. Usually we give things to control the pain, and I saw he did not respond to any dose I gave; I gave him as much as two grains and a half of morphine without touching him; it did not scarcely relieve his pain for an hour. I suspected at that time that he had been taking something that prevented any ordinary dose from reaching him.

Q What do you mean by that? A Why, I began to make up my mind that he must be addicted to morphine, that he must be in the habit of taking it or an ordinary dose would quiet his pain; but he was a sick man.

Q It was for that reason you gave it? A Yes; I thought there was no use; I wanted to take him to a hospital and he would not go; he would not consent to go.

*Anna L. Allaben, direct.*

Q Were there any other symptoms that you saw indicating that he was a drug addict? A Not that I could swear to; I never saw him take anything but what I gave him.

10 Q What were the symptoms which you found indicating that he was a drug addict? A His extreme nervous condition might, but then if he had been suffering like this he could explain his taking it.

Q At the time you were treating him what was your diagnosis? A I did not make a positive diagnosis, because the symptoms were confusing, as I saw them.

*The Court.* The doctor treated him for gall stones and acute gastritis, as I understand it.

*The Witness.* Yes.

20 Q The symptoms? A I think an examination would have carried out the gall stone diagnosis if he could have had an X-ray examination, as I wished to have.

Q The symptoms which you observed, you will say—

*The Court.* Do not lead the witness.

Q What was there that would lead you to say that Mr. O'Connell was a drug addict?

30 *The Court.* I have not heard the witness say that she thought he was a drug addict. She said that he might have taken morphine to relieve the pain from which he was suffering.

*By the Court.*

Q Was not that it? A Well, partly; but if anyone is in the habit of taking drugs long, they generally take more and more and get where any ordinary dose does not affect them at all; that is what made me suspect, but I did not know. I had given him a grain and a half of morphine and it did not touch him; he went on with the pain just the same.

*Anna L. Allaben, cross.*

*Cross examination by Mr. Lum.*

Q You are a homeopathic doctor? A Yes.

Q You resort usually to moderate doses, small amounts? A What do you mean exactly?

Q You resort usually to small doses, do you not? A Why, homeopathic medicines or morphine, if we need it. 10

Q But have you had many cases in your experience where morphine has been given to people suffering excruciating pain? A Oh, yes.

Q Have you had any cases where, because of the intensity of the pain, an ordinary dose would have no effect? A But they would respond to ordinary doses.

Q Have you not had a case where the individual who had not been in the habit of taking drugs, failed to respond to ordinary doses of morphine because of the excruciating pain? A No; except that the pain would come back when he came from under the influence of the drug. 20

Q Did you know that this man had internal adhesions? A That is just why I wanted him to go to the hospital; I wanted to find out his condition; I could not tell.

Q In that condition it would not be anything extraordinary to find that morphine failed to register the usual effect? A I should think that ordinary doses of morphine would quiet him down for awhile. 30

Q You say you gave him injections? A Hypodermically; yes.

Q Which arm? A Why, the left arm, I should say.

Q How many times? A I do not remember.

Q Are you sure of that? A Why, I am sure of it.

Q Have you your record of the treatment of this case with you? A No; only the record of visits.

Q Did you keep a record of your treatment? A I think I have at home, but it is so long ago I have not it here. 40

*Aldus H. Pierson, direct.*

Q When did you look over it last? A When I discharged the case and he went to the hospital.

Q Not since then? A I have not referred to it.

Q The injections would be bound to leave a mark on the arm, would they not? A A tiny pin prick.

Q And it would show? A Why, for a little while, yes.

10 Q And if you gave him an injection, of course, that would show up on your records, would it not? A It might or might not; I do not always put those things down.

ALDUS H. PIERSON, sworn as a witness on the part of complainant.

*Direct examination by Mr. Hedden.*

Q Are you acquainted with Mr. and Mrs. O'Connell?

20 A Yes.

Q How long have you known them? A I have known them both for a good many years.

Q What years? A I could not tell; I knew them considerably before they were married; just how long I don't know.

Q Have you known them from 1909 to the present time? A Oh, yes.

Q Did you ever live near them? A No.

30 Q Did you ever have any business relations with either of them? A Why, as the representative of the Newark News I had deskroom in the O'Connell store; I was there close to eight years, seven or eight years.

Q What years? A Between 1911; I think it was 1911 I went there.

Q During that time, did you have an opportunity to see the way the business was conducted in the store? A Yes, naturally, being in there.

40 Q During that time, will you please state what Mrs. O'Connell's relations to the store were, as far as you saw? A Mrs. O'Connell came into the store and acted

*Aldus H. Pierson, direct.*

in the nature of a clerk; she sold things and looked after things, and I know that Mr. O'Connell later on specialized rather in fitting trusses and such things and Mrs. O'Connell used to look after the ladies, and I think I have heard him frequently speak of that, that he had a lady in attendance, and I think he advertised that fact; she was there attending to these things and other work down at the store. 10

Q What time of the day would she be there? A Most any time. I think she came down in the morning more or less; I would see her when she came in and in the evening, my work took me there very largely in the evening.

Q She would be attending to what work then? A She would be waiting on customers in the evening along with Mr. O'Connell.

Q How late in the evenings? A When I first went there the store used to keep open as late as ten o'clock; ten o'clock, I think, was closing time then. 20

*By the Court.*

Q How many days a week would you say she spent in the store during the time you were there? A She used to be there practically every day. During the first year the store was open Sundays as well as other days. During the latter part of the time the store was closed, except for a few hours. 30

Q Every day the store was open she would be there?  
A Yes.

*By Mr. Hedden.*

Q Did Mrs. O'Connell take care of the store in the absence of Mr. O'Connell? A Yes.

Q During the year 1919, the first part of 1919, how frequently did you see her there? A I was not there in the early part of 1919; I left in the latter part of 1918. 40

*Aldus H. Pierson, cross.*

Q Then was Mrs. O'Connell working there as a clerk during the whole time you were there? A Yes; she attended to her household duties, I presume, and I know many times they cooked meals in the back room, before that was occupied, and after that they got their meals out.

*Cross examination by Mr. Lum.*

10 Q When did you leave the store? A Latter part of 1918.

Q What were the circumstances of your leaving? A Well, Mr. O'Connell seemed to want to have more privacy, as he expressed it, and seemed to want to have us get out.

Q You did not take kindly to that, I presume? A I did not, but I had no words with Mr. O'Connell whatever.

Q Are you subpoenaed? A Yes, I would not be here otherwise.

20 Q I understand that Mrs. O'Connell was in the store as a clerk and helping about at different times? A Yes.

Q Irregular as to hours? A Yes.

Q Some days she would not be in the store? A There were days, of course, when she went away, but they both of them stuck close to the store, though.

Q She, of course, took care of the meals and house-work upstairs? A As far as I know.

Q While she was doing that she was not in the store? A No.

30 Q Do you recall weeks at a time when she was not in the store? A Not very many times. I recall one—a week.

Q Do you recall three weeks in December, 1911? A I am a little bit surprised that it was as long as that. I do not recall that she was away as long at that.

Q It might have been three months? A It might have been. I knew she was away.

Q During that time the store went on just as usual? A The store ran on.

40

*Franklin W. Rice, direct.*

*Mr. Lum.* I have a doctor here as a witness and with leave of the Court and consent of counsel I would like to call him now and let him go.

*The Court.* You may.

FRANKLIN W. RICE, sworn as a witness on the part of defendant. 10

*Direct examination by Mr. Lum.*

Q What is your profession? A Physician and surgeon.

Q How long have you been such? A Five years.

Q Where do you practice now? A Practice in Morristown, New Jersey.

Q Do you do any hospital work? A Yes; I am surgeon to All Souls' Hospital.

Q Do you recall Mr. O'Connell being in that hospital? A Yes, sir; I do. 20

Q When did he come there? A It was June of this year.

Q Were you familiar with the diagnosis of his condition? A I was.

Q How did you become familiar with his condition? A Well, he was X-rayed before he went into the hospital as a patient, that is, he first came to my office around April and he was kept under observation for about two months. 30

Q April of this year? A April of this year, and he was under observation for about two months, and he was X-rayed and gone into as thoroughly as we could at the time, and then he was sent to the hospital for further observation. While in the hospital he had an attack of colic which at the time we thought was due to gall bladder condition and possibly a chronic condition of the appendix and also adhesions, and I advised him that medical treatment would be of no avail; that the only thing would be to have an exploratory operation.

Q Did he have such an operation? A He did. 40

*Franklin W. Rice, direct.*

10 Q What was the result? A At the operation we found a chronic appendicitis, that is, the appendix was bound down with adhesions and stuck to his back and there were adhesions between the gall bladder and the beginning of the small intestines, that is, the part called the duodenum. Some of these adhesions we broke, but it was impossible to break all the adhesions; that is, it was not advisable, because surgical experience shows that adhesions come back if they are broken to too great an extent. At that operation his appendix was removed; his gall bladder was explored; there was a thickening; his gall bladder showed evidence of chronic gall-cystitis.

20 Q Have you continued to be in touch with his condition? A Well, I took care of him while he was in the hospital, and since he has been out of the hospital I have seen him about once in two weeks; I have not seen Mr. O'Connell, that is, for treatment, for the last two or three weeks.

Q Up to that time what was his general condition, as to ability to do ordinary work? A Well, he was gradually improving, but I did not advise him to do any work at the time because I was afraid of a hernia occurring and I was afraid of the adhesions causing more trouble. I advised him to take things easy for awhile.

30 Q Was that your advice from April forward? A That was my advice from June, the time of the operation, until the last time I saw him.

Q During or after the operation was there any drug administered? A Yes; he had morphine and the usual remedies that a patient would get after an operation. I might say here that he did not take a good anesthetic, and when he come out of the operating room, he was partially in shock, and one of the treatments for shock is to administer morphine.

40 Q Was it administered to him? A It was administered to him; yes.

*Franklin W. Rice, cross.*

Q How was the reaction? A Well, the effect was very good; just the same effect as it would have on any other patient.

Q During any of your treatment did you observe that he was addicted to drugs or morphine in any way—any signs of it whatever? A Why, from my study of the man I have never had any evidence that he was addicted to those things that is as far as a physician could tell. 10

Q No evidence to show it to you in any way? A Not in pupillary changes nor in any other changes.

Q Have you ever known of whether excruciating pain might have the effect of preventing the influence of drugs registering? A Will you please repeat that?

Q I mean, in your medical experience, have you had any cases where a patient was suffering such excruciating pain that the ordinary dose of morphine would not register its effect? A Yes, I have.

Q Will you tell us whether or not these adhesions and these growths and this condition that you found on your exploratory operation would have been very painful or not? A Yes; they would be very painful. 20

*Cross examination by Mr. Hedden.*

Q Is it possible, doctor, to treat a patient that has been addicted to drugs in such a way that when the drug is administered, such as morphine, it will have the effect that it would have on an ordinary person who was not addicted to drugs? A It is a long question— 30

*The Court.* I think what counsel means is this—correct me if I am wrong, Mr. Hedden—will the ordinary dose of morphine react in the same manner on a patient who is addicted to the use of morphine as it will on a patient who is not addicted to morphine?

*Mr. Hedden.* That is not my question.

*The Court.* Ask the witness what you wish to know. 40

*Franklin W. Rice, cross.*

10 Q I want to know whether it is possible to fix a patient by treatment in such a way, that is, a patient who has been accustomed to the use of drugs and who would not react normally to treatment of morphine—is it possible to treat such a patient by the use of other drugs, or in any other way medically, so that when you do give him morphine he will react as a normal patient would? A No.

Q If a patient who is a drug addict had been undergoing months of treatment to cure him of drug habits, would he then be able to react normally to a dose of morphine? A No; he would not, not if he had been under treatment for morphine and was given an ordinary dose—he would not react to that ordinary dose.

20 Q If he had been under treatment to such an extent that he had been pronounced cured and then was given an ordinary dose of morphine, would he react normally? A He would after a certain number of years.

Q How long a period of years would be necessary? A At least two or three.

Q Did you yourself make the diagnosis in this case? A Yes, sir; I did with the help of the X-ray.

Q Did you find any evidence at all which might indicate that Mr. O'Connell had been addicted to the use of drugs? A No, I did not.

30 Q What are the symptoms which would indicate that a person is addicted to the use of drugs? A It depends on the drug that is used, whether it is chloral or morphine or veronal, or what drug you are using.

Q Morphine? A Usually the pupils become contracted; they more or less remain in the pin point condition; the respirations are more or less prolonged. Their mental condition is dulled.

40 Q After a person has been undergoing treatment for morphinism for several months, would that dilation of the pupils still show—or was it contraction? A Yes, sir; contraction of the pupils. No, it would not show.

*Franklin W. Rice, cross.*

Q Would such treatment remove the evidence of morphine? A Yes; the immediate evidences of morphinism are only transitory anyway; they are only there while the patient is taking the medicine, except the mental condition.

Q Would the use of drugs affect the stomach or intestines the way you found Mr. O'Connell's to be affected? 10

A No; that is due to infection—not adhesions—a chronic cystitis, chronic gall bladder cystitis—that is due to some infection. There is a germ at the base of the whole thing.

Q Did you notice the condition of Mr. O'Connell's stomach at the time the operation occurred? A Yes; I had X-ray pictures that showed the condition.

Q Did they show any condition which might have arisen from the excessive use of drugs? A No; it did not; it showed that the condition of Mr. O'Connell's stomach had 20 been caused by discharges from the gall bladder and appendix—probably caused by.

Q Could it have been caused by the use of drugs? A No.

Q Does the use of drugs result in serious constipation? A Well, there are so many causes of constipation that you could not just say.

Q I mean: Does the use of drugs result in serious constipation? A Yes; the use of certain drugs. 30

Q What drugs? A The morphine group.

Q Was Mr. O'Connell suffering seriously from constipation? A He was.

Q Did you notice any nervousness or twitching of any part of Mr. O'Connell? A Yes; I did.

Q Might that have been due to the use of drugs? A I don't think so.

Q Why not? A Because there was a defined pathological basis for his condition, which was the basis of an infection, chronic gall bladder cystitis and chronic ap- 40

*Franklin W. Rice, cross.*

pendicitis and adhesions, the adhesions causing the constipation.

Q Might that not have been due, however, to the use of drugs? A No; due to infection.

Q The twitching? A The constipation will make a nervous condition and be the basis for twitching.

10 Q Might the twitching been due to the use of drugs?

*The Court.* In his condition?

*Mr. Hedden.* Yes.

A I don't know. No physician can say.

Q Was the amount of morphine which was administered to Mr. O'Connell greater than that ordinarily administered to a patient? A Just the average for a man in shock following an operation. He received a quarter of a grain after the operation and it was repeated again that night. That is what you would do with any operation.

20

Q Might that appearance of shock have been due to the fact that Mr. O'Connell was addicted to the use of drugs?

A No; the shock is due to the trauma during the operation.

*By the Court.*

Q How closely did you observe Mr. O'Connell from April, 1921, when I understand he first came under your care to the time of the operation? A I saw him about six times and during those times, or part of the time, he was being X-rayed at All Souls' Hospital, Morristown.

30

Q Had he been addicted to drugs during that period, would it have shown in his condition during those examinations? A Yes, sir; it would.

*By Mr. Lum.*

Q Will you tell us whether or not this pelvic condition that you found was sufficient to account for the twitchings and everything else that you found? A It is not

40

*Franklin W. Rice, cross.*

sufficient to account for all the symptoms of his pathological condition, but I maintain that it is the basis for at least seventy-five per cent. of all his trouble.

Q Have you ever known of a case of appendicitis in which the patient had not suffered from constipation? A Yes, sir.

Q You have? A Yes, sir; I have seen them every day. 10

Q When you saw Mr. O'Connell, did you have an opportunity to observe his mentality? A Why, as a study in my office and as a study at the bedside.

Q Was it dull or active? A I should say it was the same as the average man.

Q Do you recall Mrs. O'Connell coming to you while her husband was in the hospital? A No; I do not know just whether it was after the operation or before the operation, but he was not in the hospital at the time.

Q Do you recall her coming to see you? A She came to see me. 20

Q When she came to see you, was he in the hospital? A I don't know.

Q Do you know whether or not you advised her not to go and see her husband at any time? A My advice was for the doctor to keep out of all family troubles. I did not advise her one way or the other.

Q Mrs. O'Connell has said that she did not go to see her husband because of your advice. Will you tell us whether or not you advised her not to go and see her husband? A I did not. 30

*By Mr. Hedden.*

Q Did you ever have any disagreement with Mrs. O'Connell? A No.

Q Did she ever suggest anything at that time, at the time of the conversation you have just mentioned, which would cause any ill feeling between you and her? A None whatever. 40

*Franklin W. Rice, cross.*

Q Do you remember asking Mrs. O'Connell whether she had been to see her husband? A I do not remember asking her that question. When Mrs. O'Connell was in my office I told Mrs. O'Connell that it was not any of my affairs what came between her and her husband, that my duty was to the patient; that as long as he was a patient  
10 of mine I would take care of him to the best of my ability, but as far as family affairs were concerned, I am out of it.

Q Don't you remember asking her whether she had been to see her husband and when she told you that she had not, you said, "Well, then, I would not go." Are you certain that you did not say that? A Well, now; I would not say I am certain about that.

Q You might have told her that? A I might have told her that and I might not have; I don't know.

*By the Court.*

20 Q But you are certain even if you had told her that, he was not then in the hospital? A He was not in the hospital; no.

*By Mr. Hedden.*

Q When was the conversation held, do you remember? A Well, I think it was—yes; I think it was after his operation.

Q How long was he in the hospital after his operation? A I am wrong in my statement. He was in the hospital  
30 at the time and she came up about two or three days after the operation to know his condition, whether he was going to die or not.

Q Then you asked her whether she had been to see him? A She came to find out if there was any immediate danger of death, and I told her no.

Q You asked her whether she had been to see him? A A I might have.

Q And when she said, "No" you might have told her: "I would not go"? A I might have advised her not to  
40 go at the time on account of the condition of the man.

*Grace Weidman, direct.*

GRACE WEIDMAN, sworn for the complainant.

*Direct examination by Mr. Hedden.*

Q Are you acquainted with Mr. and Mrs. O'Connell?

A I am.

Q How long have you known them? A I have known Mrs. O'Connell for the past four or five years. Mr. O'Connell I met when we moved into his flat in August of last year. 10

Q 1920? A Yes.

Q What part of the flat did you occupy? A Second floor.

Q Was that under the part used by the O'Connell's? A Yes, sir.

Q Did you ever hear anything while you were there which would indicate anything as to Mr. O'Connell's condition? A In the natural course of events we lived there day in and day out we could hear very plainly every word, one to the other. 20

Q Will you state to the Court some of the things you heard? A What do you mean?

*By the Court.*

Q Anything peculiar or unusual that you think has anything to do with this case. You ought to know what you are here to testify about. A Why, they had their fusses; I could hear conversations; I could hear some parts of them. Working around about the flat, I would make it my business to listen. 30

*By Mr. Hedden.*

Q Did you ever hear Mr. O'Connell call Mrs. O'Connell any name? A Yes.

Q When and under what circumstances? A I could not say dates; it was when they were having one of their little rows. 40

*Grace Weidman, direct.*

Q What did he call her? Please give the words. A Why, he called her a "whore."

Q Anything else? A Not that time.

Q Was this in the evening or morning or noon or night? A In the afternoon.

10 Q In 1920. Was it shortly after you moved in or long after or when? A I could not say; I should say it was the first of this year.

Q And where were you when you heard this? A In my bedroom downstairs.

Q And you knew Mr. O'Connell's voice? A Yes.

Q Where did you hear them having the argument? A I could not say; I should say though in the kitchen, where I was at that time.

Q Was that above you? A Yes.

Q Did Mr. O'Connell ever say anything to you about Mrs. O'Connell? A At one time.

20 Q Will you state what he said? A At one time Mrs. O'Connell was called home by telegram; her mother was very ill with pneumonia; she came to show me the telegram and after a time I went upstairs to help her dress and to get off, and she was crying and he stood in his bedroom and she was in her bedroom dressing and I helped her to get dressed, and Mr. Weidman carried her suitcase to the station; she had not means enough to get there; I loaned her \$20, and Mr. Weidman went to the  
30 station with her, and afterwards Mr. O'Connell came downstairs; we met out in the hall by accident, he said that it was just another one of Mrs. O'Connell's tricks to go away from home; he didn't think her mother was ill at all, and he was very angry about her going. He said he did not believe her mother was sick at all and thought it was a fake telegram and it was not the first time she had gotten away from home under those circumstances. I told him I saw the telegram.

40 Q Did he make any comments on what he would do to her or anything like that? A Well, he was very angry

*Grace Weidman, direct.*

and he said at that time that if Mrs. O'Connell had been a man he would have murdered her. That is one statement I remember that he said.

Q Did you ever hear anything unusual at night up in the apartment above you? A Well, yes; Mr. O'Connell was a heavy sleeper; he snored and was up and down and because his room was right over ours we could hear him at all times of night. 10

Q "Up at all times of night." How did you know that? A You could hear him coming out of bed, his feet on the floor.

Q What else did you hear? A I could hear him go from his room into the bathroom. Our back bedroom opened into a hall, an open stairway in between, so you could hear every sound.

Q Did you hear any conversations or any talk or anything there at night? A Yes; sometimes. 20

Q What? A I remember one night I woke up by the conversation, steady talk, and I asked Mrs. O'Connell if they had company that night—

*By Mr. Lum.*

Q Was Mr. O'Connell present? A No.

*Mr. Lum.* I object.

*By Mr. Hedden.*

Q What did you hear that night? A I heard constant talk, and it was still going on when I dropped off to sleep again. 30

Q Whose voice was it? A Mr. O'Connell's.

Q Did you hear anybody else? A No.

Q You just heard his voice all the time? A Yes.

Q Did Mr. O'Connell ever call Mrs. O'Connell by any other names? A Not that I heard.

At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand. 40

*Grace Weidman, cross.*

*Cross examination by Mr Lum.*

Q When did you move to the apartment? A August first, last year.

Q Did you meet Mrs. O'Connell right away? A No; she was not home.

Q How long before you met her? A I could not say; when she came home.

Q Well, was it a week or two months? A I think it was the latter part of August; I could not say for sure.

Q Are you sure it was not the middle of September? A No; I am not sure.

Q When did you leave the apartment? A First of April of this year.

Q Do you know when Mrs. O'Connell went away again after August or September, 1920? A When she went home to her mother's?

Q When she went anywhere. A That was the first time; when she went home when she got the telegram from her mother.

Q What date was that? A I could not tell you.

Q What part of the year? A I could not say; I think it was just before the holidays, because I remember—

Q How long was she away then? A I could not say.

Q Was it a week or a month? A It might have been either; I don't remember.

Q You are not living in the apartment now? A No, sir.

Q When you heard the talk going on upstairs, I suppose you heard both of them talking? A You mean at night?

Q Yes. A Not always; no, sir.

Q Sometimes? A Sometimes, yes.

Q And during the day sometimes? A Yes, sir.

Q You heard them talk? A Yes.

Q Did you hear her call him a guttersnipe? A Yes.

Q What other names did you hear her call him? A None.

*Grace Weidman, cross.*

Q Are you sure you heard him call her a hussy or hag—which was it? A Neither one.

Q You did not hear him call her either one? A No, sir.

Q You could hear what he said clearly downstairs? A Yes, sir.

*The Court.* That is not what she said.

10

Q What was the word that you heard him call her? A A dirty whore.

Q You were at that time downstairs? A Yes, sir.

Q When did Mrs. O'Connell first begin to talk over with you her family affairs? A I could not say.

Q Well, pretty soon after you came in? A I don't remember.

Q You have no recollection of it at all? A No, sir; not when we first began to talk about it; no.

20

Q Was it a week after you moved in or a month? A Mrs. O'Connell was not there when I first moved in.

Q A week after she came back or a month? A I could not say; I don't remember.

Q Well, whatever the time was when she first began to talk to you about family affairs, she complained about her husband, didn't she? A I don't know that she complained.

Q She did not complain to you about him? A No; she just talked over family trouble.

30

Q But did not complain about his treatment of her? A I don't remember that she did.

Q You have been in touch with Mrs. O'Connell since she left? A Yes.

Q You have seen her quite frequently in Morristown? A Yes.

Q Now, this time when Mrs. O'Connell went away and you loaned her \$20, did you cash a check for her? A No, sir.

40

*Cornelius P. O'Connell, direct.*

Q Do you know whether she had a check for exactly \$20 that Mr. O'Connell gave her at that time? A I do not.

Q Did she say anything to you about it? A No, sir.

Q Mr. O'Connell was sick that time before the holidays, last year when his wife went away, was he not? A He was about all the time.

13 Q He was sick and suffering pain, was he not? A Not that I know of.

Q You did not know it? A No, sir; he was about.

Q You did not know whether he wanted his wife to stay and take care of him instead of going to her mother's, did you? A No, sir.

Q You don't know anything about that? A No, sir.

Complainant rests.

20

DEFENDANT'S CASE.

CORNELIUS P. O'CONNELL, the defendant, sworn in his own behalf.

*Direct examination by Mr. Lum.*

Q How long have you been a druggist? A Since 1887.

30 Q How long have you owned a drugstore? A Since 1898.

Q Had you taken care of a drugstore before you were married? A Yes; for a considerable number of years—twelve or fifteen years.

Q After your marriage, what assistance did Mrs. O'Connell render; what did she do? A She rendered casual assistance in the store, if she felt so inclined and she did not have anything else to do.

Q Was her employment regular there? A Not at all; she was at liberty to come and go as she pleased.

40

*Cornelius P. O'Connell, direct.*

Q Mrs. O'Connell has stated that in 1915 you attacked her, some incident regarding a revolver; do you recall the incident she refers to? A Very distinctly.

Q About when did it take place? A I should say along in the summer months, along about July.

Q What year? A It seems to me about along in 1910. 10

Q Tell us what happened? A Why, mother and I were sitting at the parlor windows; it was a hot night; my wife came into the room and wanted to know if we were not going to bed; I told her yes. After awhile—I don't remember—my wife in the meantime had gone out and came in and when she came in she laid on the sofa. Mother and I got up and started for bed, probably ten or fifteen minutes afterwards. I asked my wife if she was going to bed. She said no. I went to bed; I went in the room; I noticed something peculiar about her; what it was I could not say; there was something very peculiar; I went in my bedroom and I noticed she had taken the revolver out of the bureau drawer that was there. I went in my mother's room. My mother was just preparing to undress and I said— 20

Q (Interrupting.) Not what you said outside of Mrs. O'Connell's presence. What happened? A I went in the room and demanded the revolver and I got no response. She acted as if she were in a sort of stupor. I got no response, and I could not get the gun from her. I finally leaned over and lifted the pillow up and reached under to see if she had it under the pillow. With that she began to holler. Presently my mother came in. I said, "Mother get the revolver away if it is possible." She was in the meantime screaming and hollering. I told mother to close down the windows rather than have anybody outside hear the noise that was going on. Well, I stayed there for about an hour trying to reason with her and talk her out of whatever she had in her mind; whatever it was I did 40

*Cornelius P. O'Connell, direct.*

not know. I being sick, my mother advised me to go to bed and she would take care of her.

Q Did you on that occasion choke your wife? A Absolutely no, never laid a hand on my wife in my life.

Q Did you strike her? A Never struck her in my life.

10 Q Did she give up the revolver in accordance with your request? A Not that night; mother sat with her until four o'clock in the morning.

Q When you went to bed was your mother sitting in the room? A Mother sat until four o'clock in the morning with her, trying to talk to her and get the revolver away from her.

Q Will you tell us whether or not you ever threatened her? A Absolutely no.

Q Did you ever threaten to kill anyone at any time? A Never in my life.

20 Q This matter of morphine has been referred to. Have you on occasion taken morphine? A Only on my physician's advice if I did take it at all.

Q How many times, upon your physician's advice, in the last four or five years, have you taken morphine? A Why, I don't know as I had any occasion to take it more than once or twice—about an eighth of a grain at a time.

Q You have been a sufferer of pains for how long? A I suffered excruciating pains for over five years.

30 Q Have you ever gotten up in the night and taken rectal douches to annoy your wife? A Not to annoy my wife; I have gotten up to relieve myself from severe pain.

Q In February of this past year, do you recall an incident in connection with changing some pictures? A I do.

Q Who was present at the time? A Why, John McCormick was with me, helping me to hang some pictures.

40 Q What happened? A Why, I removed a picture from the dining room to the parlor, where I was hanging

*Cornelius P. O'Connell, direct.*

pictures, and my wife remonstrated with me for doing so. Finally she left the room. I was on the ladder hanging the picture in the parlor when she came in with a sharp instrument, a nut pick, with a piece of towel wrapped around the end, and started to attack me.

Q (Showing witness.) Do you recognize this as the instrument? A Yes; that is the instrument that she had, just like it is. 10

Q Is it exactly in the condition it was at that time? A Exactly, except for the elastic; I put that on to hold it.

Q What happened when she came at you? A Why, she struck at me three or four times. I caught her by the wrist; she was in a fierce rage. I saw there was no use talking with her. I gently backed her out of the room as well as I could, holding her by the wrist until I got to the door and I then turned the key in the door.

Q Then what did she do? A There is a window over an airshaft and she climbed out to the airshaft and tried to come through the window. 20

Q What did you do regarding that? A She tried to lift the window up and I held it down and finally got John to bring me a hammer and nails and I nailed it down so she could not come in. I was afraid she would do some damage.

Q Was she barred from the rest of the house? A No; the rest of the house was free, every room of it except where I was. 30

Q When you came out where was your wife? A We did not come out; we stayed in there.

Q When you came out, I said? A She was gone.

Q Has she ever returned to your home since? A Never.

Q Do you recall that conversation at Mr. Reed's office that has been referred to? A I do very distinctly.

Q Do you recall about when it took place? A Yes, sir; there was a meeting called with the intention of trying to effect a reconciliation. 40

*Cornelius P. O'Connell, direct.*

Q When was that? A It seems to me it was along in April.

Q Who was present? A Why, my wife, Mr. Reed, you and myself.

Q Do you recall whether or not there was anything said to your wife about returning to the home? A Yes; I told you before we went in, the home was there for her; it was open and she had a key to it.

Q What was said in Mrs. O'Connell's presence? A Why, you told her to come home, it would be better for her to come home and live with me.

Q Was that conversation entirely in a tone of friendliness or was it unfriendly? A Why, it seemed to me a very friendly conversation, as far as I could say.

*By the Court.*

Q What did she say? A Why, there was nothing said that I can remember; I bowed to her when I went in.

Q When Mr. Lum told her she had better come home, what did she say in answer? A She did not say anything; she did not seem to pay any attention to it whatever.

*By Mr. Lum.*

Q Has your wife ever returned to the home since? A Not since; no, sir.

Q Do you know whether she came back and took any furniture away? A Yes; on three different occasions.

Q How do you know that? A Why, I missed the things when I came home at night, late at night. She entered the home between seven and eleven o'clock at night. I was visiting my mother those nights. I was in trouble and I went down to visit my mother, and she entered the house; she had a key to the front door.

Q Will you tell us whether or not your mother was at the house when she was not asked to be there? A My mother never came except upon my wife's telephoning for

*Cornelius P. O'Connell, direct.*

her and when she had asked whether I did not think it would be right to have mother help her, and she telephoned to a neighbor of my mother's.

Q Will you tell us whether or not you have ever called your wife a dirty whore? A I never did; absolutely no.

Q Did you and your wife ever have any quarrels in which words were used? A We at times had trouble, 10 verbal controversies is what I should call them.

Q What words did she use to you on those occasions? A Well, she would often call me very vile names.

Q Such as what? A Damned bum, guttersnipe.

Q What did you call her? A Well, as a rule, I left her and went in my room and locked the door.

Q When you did not leave her, what did you call her? A I do not distinctly remember calling her names, but I never called her such names as has been mentioned.

Q Have you called her a hussy? A Yes, sir; I think 20 I have.

Q Will you tell us whether or not your wife, while you lived with her, ever demanded money or support of you that you refused? A Absolutely never; she got what she asked for.

Q In the matter of the property, do you remember when the property was purchased? A The property was purchased in December, 1909, the last of December.

Q Who arranged for its purchase? A I did.

Q Who negotiated the bargain? A I did. 30

Q Was any money borrowed from Mrs. O'Connell or her family? A Yes; it was borrowed in this way, that I had made arrangements to purchase the property and my wife suggested that I take the money that she had in New York.

Q About how much? A I think the money belonged to her mother; it was only drawing four per cent., and she suggested that I could afford to pay five per cent. I said yes, I could and so under those conditions I took the money. Then the question came up about the surety 40

*Cornelius P. O'Connell, direct.*

for the money. I said, "I have no security to give you; there are two mortgages on the property now. The only thing I can do is put your name in the deed until such time as I can pay you back." That was agreed upon.

Q How much was to be paid back?

10 *Mr. Hedden.* I object. This is an attempt to vary the deed. It is shown that Mrs. O'Connell was a joint tenant.

*The Court.* Objection overruled.

A Why, the amount of money she put in, \$2,000 of her mother's and \$500 of hers.

Q Was this \$2,000 of her mother's recognized as a contribution towards the purchase of the property or as a loan? A It was recognized absolutely as a loan.

20 Q How was that recognized? A It was recognized by me as a loan by me paying interest on it for years.

Q For what time did you pay interest? A I paid interest from the first; I paid interest from that on, every six months.

Q These checks marked D. 3 for identification, are these the checks? A Yes, sir.

*Mr. Lum.* I ask to have them marked in evidence.

30 (Received in evidence and marked Exhibit D. 3.)

Q The letter of your wife asking for the interest, which was marked for identification D. 2, do you recognize that? A Yes; I remember her writing to me; I recognize this.

Q And this (showing witness) is the envelope in which it was received? A Yes; July 13th.

*By the Court.*

40 Q Mr. O'Connell, when did you pay the last interest?  
A January 1, 1921, I think.

*Cornelius P. O'Connell, direct.*

*By Mr. Lum.*

Q Of this year? A Yes; this last January—December 30, 1920.

Q That was the interest for when? A That was the interest due for the preceding six months.

Q Due January 1, 1921? A Due January 1, 1921.

Q In other words, you anticipated the payment by one day? A Yes, sir; one day. 10

*By the Court.*

Q It was for interest for the preceding six months? A Yes.

Q Interest up to January 1, 1921? A Yes.

Q Why didn't you pay any after that? A Why, I was waiting to see the outcome of this case, to see what would come of it. 20

*By Mr. Lum.*

Q In other words, before another interest payment came due this suit had been started? A Yes; this case had been started.

*By the Court.*

Q Her mother was dead? A Yes; she died last July.

*By Mr. Lum.*

Q Of this year? A Yes, sir. 30

Q Was there any other reason, aside from the pendency of this suit, why the interest was not paid as usual?

A None whatever. It had been for all of these years.

Q Certain life insurance premiums were paid by you, according to the evidence? A Yes.

Q What was the understanding with regard to that? A The agreement was that instead of paying interest semi-annually on the \$500, I would take care of the life insurance policies, which I did since 1910. 40

*Cornelius P. O'Connell, direct.*

Q Was anything said about that, as to whether that was more than the legal interest? A No. I said: "I will take care of the policies for you, for your interest, \$50.81."

Q Was that agreed to? A Yes, sir; absolutely.

Q (Showing witness.) Are these the checks for the payments? A Those are some of the checks.

10 Q Something was said about money having been borrowed on this insurance policy for the purpose of repairs or something; was that repaid? A Yes; I repaid it.

Q (Showing witness.) Is that the check—\$288? A Yes, sir; that is the check.

*Mr. Lum.* I offer in evidence as one exhibit the checks relating to the insurance.

(Marked Exhibit D. 4.)

20 Q Will you tell us whether your wife at any time after she left last February demanded any part of the rent from the property? A Nothing whatever.

Q Did she demand any profits from your business? A Never thought of such a thing.

Q Did she have any interest in your drug business? A Never whatever.

Q When did you first hear anything on behalf of your wife claiming a half or any other interest in your property? A When Mr. Reed made claim for her.

30 Q In this suit? A Yes, sir.

Q Do you recall a visit to the office of Mr. John Mills? A I do distinctly.

Q When was that? A It was right after I sold my business. I sold the business December 26th.

Q What year? A 1918.

Q What was the object of that visit? A Why, to pay her back. She had been asking me for two or three years previous for this money. I told her as soon as I got the money I would pay her and get title to my property.

40

*Cornelius P. O'Connell, direct.*

Finally I said: "Come up to John Mills' office and I will give you your money," which she did.

Q Did she go voluntarily? A Absolutely.

Q Did you have to use any force, duress or threats to get her to go? A None whatever.

Q When you got to John Mills' office what happened?

A When we got to John Mills' office, he read over some papers that he had drawn, papers pertaining to the case, that is, in reference to signing off. 10

Q A deed, do you mean? A A deed, yes. He read a deed to her.

Q Are you quite sure that he read that deed to her?

A Yes; he did.

Q Were you there when he read it? A Absolutely.

Q What was said? A There was nothing said just then. The two checks were there lying on Mr. Mills' desk. 20

*By the Court.*

Q Something must have been said about the purpose of the deed? A The deed was to give me the property in my own name.

Q A deed from your wife? A Yes, sir.

Q Conveying her interest in the property? A Yes, sir.

*By Mr. Lum.*

Q Was anything said in that conversation by her as to whether she owned a half interest—a demand by her? 30

A Why, yes; she acknowledged to Mr. Mills, in my presence, that it was perfectly right, but she would not sign anything.

Q What was it that was perfectly right? A Perfectly right that she should sign it in consideration of these two checks.

Q Did she say whether she had a half interest in the property? A No; she did not say that. 40

*Cornelius P. O'Connell, direct.*

*By the Court.*

Q How much were the checks? A One check was \$2,000 and the other one was \$500.

Q Did she say whether the \$2,700 was sufficient or not? A She did not seem to have any thought about it?

10 Q Did she tell you that? A No, sir.

Q What did she say then to you? A She said nothing. She just turned around and walked out of the office.

Q You say that she had been asking you for two or three years to give her her money back? A Yes.

Q And you said when you sold the business you would give it back to her? A Yes.

Q You sold the business and then after you had adjusted it financially you told her to come to Mr. Mills' office and you would pay the money back? A Yes, sir.

Q And you said that \$2,700 was the amount you would repay her? A \$2,500.

Q You said you would give her \$2,500? A Yes.

Q Did she make any objection to it before she went to Mr. Mills' office? A No, sir.

Q How did she come to go there? A Went there voluntarily.

30 Q And when you got to Mr. Mills' office you offered her \$2,500? A Yes.

Q She refused and would not sign? A She refused and would not sign.

Q Did she say why? A She did not say why; no, sir.

*By Mr. Lum.*

Q During this conversation at Mr. Mills' office, had she said anything at all about her having any money in the property? A Not at all; not that I remember. She said very little in fact.

40

*Cornelius P. O'Connell, direct.*

Q Well, do you know what conversation she and Mr. Mills had? A Why, Mr. Mills told her this was for the money she had loaned and asked her if she was willing to sign.

Q What did she say? A She did not say anything. She did not say whether she would or not.

Q Do you know whether she at any time said to Mr. Mills that she had an agreement, that if she got her money back she would sign off? A I don't remember her saying that, no. I do not really remember her saying that. There was very little said outside of drawing the paper and she simply said she would not sign anything. She admitted there was a loan made, to Mr. Mills. 10

Q "She admitted"—that does not mean anything. What did she say? A She said: "I made the loan to him; I won't sign anything; I made the loan on this property, but I do not want to accept it; I won't sign." 20

Q Something was said about her having loaned you more than \$500; what is the fact with reference to that? A This \$500 that she has referred to was given to her by her mother one time when we were visiting there; she suggested that we take that money and take a trip to St. John's, New Brunswick, which we did.

Q Did she ever demand that back? A She never has yet.

Q Did you ever hear of any claim of having more than \$500 in the property? A Not until this case came up. 30

Q Who has attended to the matter of the leasing of the property, the insurance, taxes and the managing and renting of it? A I did always.

Q What claim has your wife made to any part of the proceeds that have been received? A Never made any whatever. I never dreamt of such a thing.

Q Will you tell us whether or not you have been able to work since your operation? A I have not been able 40

*Cornelius P. O'Connell, direct.*

to do anything. I have been in a very feeble condition. My heart is very bad.

Q The matter of the furniture that has been referred to; by whom was that purchased—you or your wife? A By me altogether.

Q And up until this suit started, what claim had she  
10 ever made to any part of it? A Never had made any claim whatever.

*By the Court.*

Q In whose name is the furniture insured? A There is no insurance.

Q In whose name was it insured? A Never insured.

Q When you bought the property did you give back a mortgage? A Yes; gave two mortgages, a first and a  
20 second mortgage to George Stickle.

Q Did your wife sign them? A Really, I don't know; I could not say that. I do not think she did.

*By Mr. Lum.*

Q Have either of the mortgages been paid off? A Why, the second mortgage I paid off \$6,500 of \$8,000.

Q That has been transferred to the Morristown Library Association? A Yes, sir.

Q And do you know where the paper itself is? A  
30 The mortgage?

Q Yes. A Mr. Hinchman, the trustee for the Morristown Public Library, has it.

Q Do you know whether your wife has any property of her own? A Yes; she has property in New York State; she has a farm of 138 acres with five or six buildings on it—good buildings.

Q Do you know whether she had any money while her mother was alive? A Why, she had money in the Middletown bank in their joint names.  
40

*Cornelius P. O'Connell, cross.*

Q Do you know whether the insurance policy is now paid up? A I paid the last premium on it I think last February.

Q When this incident arose in February and you put your wife out of the room, was there anything said at that time as to whether she was going to leave the house permanently? A Why, no; I presumed it was just an incident, as far as I was concerned; I had seen her in these rages before and I paid no attention to it. 10

*Cross examination by Mr. Hedden.*

Q Did you ever attempt to lease or sell that property to the American Auto Supply Company? A I leased it to the American Auto Supply Company.

Q At that time did your wife join in the lease? A No; she did not until afterwards. Harold Price was a personal friend of mine and he was the lawyer who drew up the papers and knowing conditions as they were, that is, that I was sickly and that there was more or less dis-sension between us, why he suggested, previous to making the lease, he felt he would rather have my wife in it. She signed it after the lease was drawn. 20

Q Did you attempt first to get them to accept it without her signature? A Why, they did accept it.

*By the Court.*

Q When was this lease made? A This lease was made—I think it was October 1, 1918 or 1919—1919—when I went out of business. 30

*By Mr. Hedden.*

Q Then you did not consult her at all about the leasing of it when you first attempted to lease it? A Not at all.

Q They refused to accept the lease without her signature? A They did not refuse; they accepted it, but Harold Price made the suggestion. He was the lawyer in 40

*Cornelius P. O'Connell, cross.*

the case and he would not have made that suggestion had it not been that he was friendly with both of us.

Q You say he knew of the dissension? A Yes—

Q You say— A (Interrupting.) I don't know what he knew about the dissension, but—

19 Q Did he ever say anything to you about Mrs. O'Connell having a half interest in that property? A Not that I remember; no.

*By the Court.*

Q How long is the lease for? A Five years with the privilege of five more.

*By Mr. Hedden.*

20 Q Have you been able to carry on your business without interruption for the last six years? A What do you mean by interruption? Except sickness—intervals of sickness.

Q Your sickness has laid you up for different times? A Half a day or a day at a time, with severe attacks of stomach trouble.

Q During that time you relied upon Mrs. O'Connell to look after the store? A With the help that was there; I had a clerk there besides.

Q What is that? A As a rule I had a clerk there.

30 Q Who was that? A I had a man by the name of DeClark for one. I had John McCormick there and I had other young men there.

Q Did you trust John McCormick to take care of the store, fit trusses and attend to other things there? A I fitted the trusses as a rule.

*By the Court.*

40 Q When you were sick and laid up Mr. Hedden is asking you about? A I just simply had to make the best of it. She was not competent to take care of it.

*Cornelius P. O'Connell, cross.*

*By Mr. Hedden.*

Q When you were laid up the business was closed up?

A It was not closed. Just went on the best it could.

Q Was she there to take care of it? A She is not competent to take care of that business. She is not a druggist.

10

*By the Court.*

Q She could sell the other things that are sold in a drug store? A Yes; she did the best she could.

*By Mr. Hedden.*

Q Didn't she do that at your request? A No, not specially; there was a mutual understanding that she would do it.

Q Was there any conversation between you that you would work together and save in order to pay off the mortgage on that property? A Not that I know of particularly.

20

Q Was not that the understanding? A Never heard of such a thing. We would probably be as thrifty as we could.

Q What was the reason for having her do the washing and cleaning in the apartment? A She did not do the washing. I had a woman come in and do the washing for years.

Q Didn't she make her dresses? A Yes; she did that—seamstress. 30

Q Did she make most of her own clothes? A No; she had her tailor make her clothes.

Q When did she have a tailor make her clothes? A Different times; just before she left she had three or four suits of clothes made.

Q When? A Last winter she had a beautiful overcoat made by Hoff that cost me \$65.

40

*Cornelius P. O'Connell, cross.*

Q Going back to that incident of the revolver, you reached under the pillow to get the revolver? A It was not there; I did not find it.

Q Where was the revolver? A I don't know; I don't know where it was.

10 Q Didn't you tell us that you struggled with her to take it from her? A I did not say I struggled with her. I said I reached under the pillow to see if it was there. I did not say struggle with her.

Q Didn't you say you struggled to take it from her? A I did not struggle to take it away from her. I did not testify to that either.

Q You testified that you asked your mother to stay there to see that she did not hurt herself with her revolver? A No, sir; I did not testify to that either. I testified I asked my mother to stay with her, to see that there was no damage done. That is what I testified to.

20 Q Didn't you say that you asked your mother to stay there to see that she did not hurt herself with the revolver? A I did not testify to anything of the kind, sir.

Q You testified that she came at you with a nut pick; you said you were up on a ladder, did you not? A I was up on a ladder when she came into the room, but I got down when I saw her coming.

30 Q Did you take the nut pick away from her? A Yes.

Q And that it was necessary to back her from the parlor out into the kitchen? A Not from the parlor; from the dining room into the pantry—I did not back her into the kitchen—closed the door; the pantry leads into the kitchen, just big enough for a refrigerator and china closet.

40 Q At the time that you did that you had no difficulty at all in taking it away from her? A I experienced some difficulty, yes; I had quite a struggle in my weakened condition; I should say I did.

*Cornelius P. O'Connell, cross.*

Q Were you very much weaker than you are now? A I should say I was in a very weakened condition and very sickly condition.

Q What was the occasion on which Mrs. O'Connell called you a damned bum? A On the occasion of these verbal arguments that would come up occasionally, as they do come, I suppose, in every family.

10

Q Where were you at the time? A Sometimes in our kitchen, sometimes in the parlor; just wherever the event happened to occur.

Q What did you do? A I didn't do anything; eventually walked away from her and went in my room and locked the door; she would sometimes come to the door and holler in through the door at me.

Q How much did you ever pay to Mrs. O'Connell for her personal use? A You mean spending money?

Q Yes. A I could not tell you. I gave her money as she needed it and asked for it—as she needed it.

20

Q Did she have any source of income aside from the money which you gave her? A Not that I know of; no.

Q How did you expect her to pay any insurance premiums? A The question did not come up; if she had asked me to pay the policy outside of her agreement with me, I would have gladly have done it with her.

Q You knew at the time, as I understand you to say this agreement was made that you should pay the policy in lieu of the interest; you say that you paid the premium as interest on the loan which she had made? A That is the idea.

30

Q Although you knew she had no independent source of income and was not getting any other income? A She had no income that I knew of. Her bills were paid by me.

Q Referring to that conversation at Mr. Mills' office, I understand you to say that Mrs. O'Connell said nothing after the deed was read to her, but turned around and

40

*Cornelius P. O'Connell, re-direct.*

went out? A She said she would not sign anything and went out.

Q Didn't you testify, in the first place, that it was merely read to her and she turned around and went out.

A No; I said she acknowledged that the money was loaned and she had agreed to sign off, but she did not sign off; that was all.

10 Q When did she say that? A Why, she said it in Mr. Mills' office that night or that evening.

Q Didn't you say that the only thing that was done was that he read the deed and she said she would not sign it and walked out? A I did not say anything of the kind.

Q When was it she acknowledged that she would take the money— A Why, when she was with Mr. Mills.

Q When? A At the meeting there that afternoon; she was there at five o'clock.

20 Q She came in and the deed was read to her? A Yes; the conditions were explained to her and she said then that that was so and admitted it, and she said she would not sign—that was all—and walked out of the office abruptly.

Q Did you ever meet her again there at the office? A Yes; Mr. Mills was my counsel and I had—I was there—she was not supposed to come there—she came in the office, looked in the door and went out.

30 Q Mr. O'Connell, you testified that once or twice you took morphine on the physician's advice; when was that?

A I don't remember; it was incidental. I did not try to memorize these things.

Q What was there incidental about taking morphine; how did you take it? A Why, I took it—

*The Court.* He has said he took it twice.

*Re-direct examination by Mr. Lum.*

40 Q Except this one lease to the Auto Company, did Mrs. O'Connell ever sign any other lease? A Not at any other time in all the years I had the property.

*Cornelius P. O'Connell, re-cross.*

Q During the twelve years of the property there have been many leases signed by you, have there? A A great many.

Q The doctor who testified this morning, said that she gave you a hypodermic injection? A She did not.

Q Could she have done so without your knowledge? A Not without my knowledge; no, sir. 10

*Re-cross examination by Mr. Hedden.*

Q Were you also paying out of the income from the building and of the business—were you paying premiums on your mother's life insurance? A I was paying it out of my business profits; yes.

Q Was there any separate account for keeping the income from the building and from the business? A There is a separate report from the building.

Q Which you kept at the time? A Yes; always kept in my check book. 20

Q In what fund was the income from the rent of the apartments to transitory parties placed? A I did not keep that under any separate fund whatever. That eventually went towards living expenses, whatever it was; it did not amount to anything; they were there only occasionally; it is seven or eight years, probably nearer eight years, since we had the last person in there.

Q Did you ever make any representations to the credit agency that you owned this property? A I did, always; yes. 30

Q I mean that you owned the property belonging to Mrs. O'Connell or Mrs. O'Connell's mother up in New York? A I reported it belonged to me.

Q The property in New York? A Not the property in New York.

Q You made no report at that time that the property belonged to you? A Absolutely never. I never misrepresented anything that way. 40

*John McCormick, direct.*

*By the Court.*

Q Where is this property in New York? A It is up  
in New York on the Erie Railroad; it is close to 200 miles  
up in New York State; it is three miles from the railroad  
station; there is a piece of property she paid \$4,500 for  
in Middletown, a private residence that her mother lived  
10 in before she died, but I presume it belongs to her now  
from what I hear. This money she had in the bank was in  
their joint names.

JOHN McCORMICK, sworn for the defendant.

*Direct examination by Mr. Lum.*

Q How old are you? A Fifteen.

Q Do you go to school? A Yes.

Q What grade? A First year High.

20 Q Morristown? A Yes.

Q Do you know Mr. and Mrs. O'Connell? A Yes.

Q Did you ever work for Mr. O'Connell? A Yes.

Q For how long? A Three years.

Q In what capacity? A Why, errand boy.

Q Were you ever up in the apartment of Mr. and  
Mrs. O'Connell? A Yes.

Q How often? Q Nearly every day.

Q Were you present in the apartment in February of  
this year? A I think so.

30 Q What was going on with reference to the pictures?

A Mr. O'Connell and I were up hanging pictures on  
Sunday afternoon and he went into the dining room and  
took down a picture and Mrs. O'Connell came in and she  
did not want the picture removed from there. So he took  
the picture down and she went out of the kitchen. She  
had a nut pick that she was using for walnuts and there  
was a towel in her hand that she had and she came in to  
stick him with it.

40 Q (Showing witness.) I show you this, did you ever  
see that before? A Yes, sir.

*John McCormick, direct.*

Q Did you ever see that before? A Yes, sir.

Q When and where was it when you first saw it? A Up at Mrs. O'Connell's.

Q Where was it? A That is the one she was using.

Q How was she using it? A Picking walnuts.

Q And when did you next see it? A That I don't remember. 10

*By the Court.*

Q When you saw it in her hand and she came back into the room with it, what did she do? A Mr. O'Connell was taking the picture and she tried to jab him with it; she had it in her hand like that.

Q Like a knife or dagger? A Like a knife.

Q What did Mr. O'Connell do? A He took her by the two wrists to take it away and backed her out of the room and turned the key in the door. 20

*By Mr. Lum.*

Q He backed her from what room? A From the dining room into the pantry.

Q Did you see all of this? A Yes, sir.

Q Was she quiet or was she angry? A Why, she seemed to be very angry.

Q What kind of force did Mr. O'Connell use? A I do not think he used any force. 30

Q Are you sure you saw where he took hold of her? A Yes, sir.

Q Did he grab her by the shoulders? A No, sir; by the two wrists.

Q Did you see him throw her out of that room? A No, sir.

Q If he had done that would you have seen it? A Yes, sir.

Q Do you recall her trying to get back through the window? A Yes. 40

*John McCormick, cross.*

Q What was done to prevent her? A Mr. O'Connell held the window down and told me to get the hammer and nails and he nailed it down.

Q He nailed it down? A Yes, sir.

Q At the time of this incident did she look pleasant or otherwise? A She looked very angry.

10 Q Did you ever see any other incidents between these two parties at any other time? A Not that I remember.

Q Did you ever hear any quarrel between them at any time? A No.

*By the Court.*

Q What was said by either of them during this time? A Mr. O'Connell didn't say anything, but she said: "Leave the picture there," and she went out of the room.

20 Q Did he say anything to her? A He didn't say anything—just took the picture in the front room.

Q Then what did she say? A Then she went out in the kitchen and brought that instrument in.

Q Did she say anything when she came at him? A I don't just remember what she did say.

Q Was anything said? A I don't remember what was said.

30 Q When he grabbed hold of her by the wrists and backed her out of the room did he say anything or did she say anything? A No, sir; she said—I forget what she said.

*Cross examination by Mr. Hedden.*

Q Did you ever notice Mr. O'Connell choking an old man? A No, sir; I don't remember that.

Q Did you ever notice Mr. O'Connell acting in a peculiar way at all? A Not that I can remember—not while I was there; not in the store.

Q Anywhere? A No, sir.

40 Q You were errand boy there in the store? A Yes, sir.

*John McCormick, cross.*

Q How often during the daytime were you there? A I was there in the morning and then I came back again after school.

Q In the morning while you were there was Mrs. O'Connell there? A Yes; she came down in the morning and she went back up again and he came down.

*By the Court.*

10

Q When did you go there first? A Why, I think it was in February.

Q Of 1918? A February, 1919, I think—or 1918.

Q You said you worked there three years? A Yes; I think it was 1918.

Q When did you stop working for him? A 1920.

Q Then you must have gone there in 1917? A Yes.

Q Did he have any clerk working for him during those three years? A Not that I remember.

20

*By Mr. Hedden.*

Q Did Mrs. O'Connell wait on the store right along while you were there? A Yes.

Q Did you ever know her to carry any packages at night? A Yes, sir.

Q You were the errand boy? A Yes; I left at six o'clock.

Q Are you certain Mr. O'Connell did not take hold of Mrs. O'Connell by the right shoulder? A Yes, sir.

30

Q Absolutely certain of that? A Yes, sir.

Q When Mrs. O'Connell went out how far out in the pantry did Mr. O'Connell take her? A Just to the door sill.

Q Just to the door sill? A Yes; then he turned the key in the door.

Q Does the door move from the outside? A There is one door each side; you can go into the pantry and turn to the kitchen and there is another door to the dining room.

40

*John McCormick, cross.*

Q He just took her to the door sill between the dining room and the pantry, didn't he? A Yes, sir.

Q Which way does the door swing from? A It swings into the dining room.

Q It swings into the dining room? A Yes.

10 Q And when he let go of her did she try to get into the dining room? A Not from the door she didn't.

Q He let her go right on the door sill, did he? A No, sir.

Q He did not take her into the pantry itself and leave her on the door sill between the pantry and the dining room? A Yes, sir.

Q He shut the door? A He did.

Q Did she try to hold it back and get in? A Yes, sir.

20 Q ~~Where~~ were you when that was going on? A I was right in the dining room, right alongside of the table.

Q He did not push her in any way? A No; just gently.

Q How did he hold her? A He held her with one hand and—

Q Which hand did he hold her with? A Right hand.

Q Both her wrists? A Yes, sir.

Q Where was the nut pick then? A Why, I think it was on the dining room table.

30 Q When did he take it from her? A Before he put her out of the room.

Q It was in the parlor, was it? A It was in the dining room.

Q I thought you said she came into the parlor? A No; he came out of the parlor to get the picture in the dining room and that is where it happened.

Q Was there a whole towel that she had in her hand? A It did not look like a whole towel to me.

40 Q Had she been using the nut pick? A Yes; she was picking walnuts with it.

*Mary C. O'Connell, direct.*

Q Where was she doing that? A In the kitchen.

Q Did she have a towel wrapped around it like that?

A Yes; she had it in the towel.

Q In a towel? A Yes.

Q A whole towel? A I could not say whether it was a whole towel or what it was.

Q Did she have a whole towel in her hand when she came in? A No; I did not notice any whole towel then. 10

Q Just that little piece of rag wrapped around it? A Yes.

Q You are sure of that? A Yes; as far as I could see.

Q As far as you could see? A Yes. I saw the piece she had in the palm of her hand. That was all I could see.

Q Was there anything else dragging down? A No. 20

Q Did you see Mrs. O'Connell drop or fall at all? A No, sir; she did not fall or drop either.

Q Did she try to get into the door after the door was closed? A I don't just remember her trying to get to the door; she did go to the window.

*By Mr. Lum.*

Q Do you remember DeClark, a clerk? A No, sir.

Q You do not remember any clerk at the store while you were there? A No, sir. 30

MARY C. O'CONNELL, sworn as a witness on the part of the defendant.

*Direct examination by Mr. Lum.*

Q Where do you live? A In Morristown.

Q You are the mother of the defendant, Cornelius C. O'Connell? A Yes, sir.

Q You have known Mrs. O'Connell since your son's marriage? A Well, no, sir; I have known her for some 40

*Mary C. O'Connell, direct.*

two years or three years after their marriage. I did not approve of the marriage. I had not met her.

Q You did not meet her until after the marriage? A No, sir.

Q Did you ever go to the house? A I was invited there; I have been to meals there and to tea.

10 Q Have you ever gone there uninvited? A Not unless to stop into the store to speak a word to my son.

Q I mean to the house? A No, sir.

Q Do you recall this incident of the revolver? A Perfectly.

Q How did you happen to be at the house that night?

A I was invited there; I was taking care of my son; he had been ill and was ill at the time.

Q Was Mrs. O'Connell there? A Yes, sir; she was there. I went there to help her out.

20 Q Did you and she have any words? A I never had any words with her.

Q Did she ever object to your interference in household affairs? A Never; for I never interfered with her.

30 Q Now, this incident of the revolver, what did you first know about it? A My son and I were sitting at the front room windows getting a little air; it was a very hot, sultry night; she came into the room and began to speak in a very hasty voice and wanted us to go out and go to bed. It was a very hot night. My son looked at me. He said something—I have forgotten—I stood up to leave the room—I stood up and went to my room and I was not very long in the room when he came in and told me: "She has taken the revolver, mother; you must come in and get it." I just got in the room a little after—but I made a mistake—before this thing happened, when we were sitting at the window, there was a sofa there; she came in; she had a large sheet and she laid it over the sofa and I thought she was going to sleep there for the night. She sat down and she dangled her feet. I took a  
40 side glance at her; I was surprised at her condition; her

*Mary C. O'Connell, direct.*

eyes were glassy and she was dangling her feet; there was not a word said, and after that she left the room and went out and ordered us to bed, and then I made a motion to my son. I said it was better—

*By the Court.*

Q What happened after your son called you into the room? A My son missed the revolver and he said: "Mother, come in, she has taken the revolver." 13

Q After that what did he do? A He went in the room and just simply tried to get the revolver from her.

Q What did he do? A Nothing in the world but simply talked to her and tried to persuade her to give up the revolver.

Q He did something; what did he do? A Told her to give it up.

Q He said something? A Yes, sir.

Q What did he say? A He said, "Give up my gun; give up the gun you have taken out of the drawer." She said no she would not. 14

Q What did he do? A He simply persuaded with her.

*By Mr. Lum.*

Q Did he choke her? A Never.

Q Are you sure? A Positively sure. Never. I would not allow it if he had done it. I should attend to it. I would not allow it. 15

Q Do you recall her making any outcry? A Yes; I think she screamed. 30

Q When did she scream? A During this persuading I asked him to bring in an officer to get the gun away from her, and then she began to scream and he told me to close the window.

Q Then the occasion for the screaming was the talk of the officer? A Yes, sir.

Q Would it have been possible for your son to have choked her or attacked her without your knowledge? A I was standing directly almost opposite them, right close 10

*Mary C. O'Connell, cross.*

to the sofa, there in full view, and I saw her all the time he was trying to get the revolver away from her.

Q Did she give up the revolver? A Never that night.

Q Did your son attempt to wrestle it from her? A We could not find it.

10 Q Did he attempt to wrestle it from her? A I never seen anything of the kind.

Q Did he reach under the pillow for it? A He did.

Q What did he do? A He was trying to get her to acknowledge and give up the revolver. We thought she had the revolver under the sheet.

Q Did he get the revolver? A No, sir.

Q What did he do later; where did he go? A I told him to go to bed, which he did; he went to his room.

Q Did he go to bed? A He went to his room.

20 Q Where did she stay? A She stayed right there where she was.

Q Did she move from the sofa? A After some time I went over to her to ask her if she would not give up the revolver. I stayed with her until almost four o'clock in the morning.

Q Did she say why she would not give it up? A No.

Q What time did you go to bed? A Four o'clock in the morning.

Q Did she still have the revolver? A Yes, sir.

30 Q Do you recall any other incident or disturbance between this husband and wife? A No, sir.

Q Were you ever present at any altercation of words between the two of them? A No.

Q Did she ever complain to you of his having ill-treated her? A Never.

*Cross examination by Mr. Hedden.*

Q How do you know that Mrs. O'Connell had the revolver? A She had taken it out of the drawer where it had been.

*Mary C. O'Connell, cross.*

Q How do you know? A My son said so; he had missed it right out of his drawer right there, and she did not deny that she had it.

Q Did she say where it was? A She did not say, she said she would give it up in the morning; I remember that distinctly.

Q Did she say she would give it up in the morning? A 10  
Yes.

Q Did you attempt to see whether it was under the pillow? A Yes; we tried to see if we could find it. It was under the sheet we supposed.

Q You tried to take her off the sheet to look under it? A Yes, sir; I done that myself.

Q Who did that? A I did.

Q You tried to take her off the sheet? A I looked around for the revolver.

Q Did you try to take Mrs. O'Connell off the sheet? 20  
A No.

*By the Court.*

Q You mean that she was lying on the couch and you tried to see if the revolver was under her? A Yes.

Q How did you try? A Just putting my hands under to feel for it.

*By Mr. Hedden.*

Q How did Mr. O'Connell try? A He just simply 30  
said—he felt around for the revolver.

Q He was feeling around for the revolver? A Yes.

Q When he was doing that what was she doing? A She was lying there, sitting there, trying to shift around, I presume.

Q Was she lying down? A She was sitting up; she was lying down when we first went in; then she was sitting up.

Q Was she sitting up when he went to look under the pillow? A Yes; she was sitting up. 40

*Mary C. O'Connell, cross.*

Q Then there was nothing to prevent him from looking under the pillow? A Why, he looked under the pillow.

Q She was sitting up when he looked under the pillow?

A Yes; partly.

Q You saw that? A Yes.

10 Q Do you remember Mr. O'Connell saying that she was lying down and that he reached over? A Yes, sir; she was lying down when we went into the room at first.

Q Mr. O'Connell tried to remove her from the sofa so that he could find the revolver? A Yes.

Q How did he try to remove her? A Just simply to feel around, as well as I remember.

*By the Court.*

20 Q You have said that he tried to remove her from the couch. Counsel is asking you how he tried to do it? A He raised her up a little.

*By Mr. Hedden.*

Q He raised her up? A Yes.

Q Where did he put his hands? A At her back.

*By the Court.*

30 Q You said he did not put his hands on her at all. Please think of the question and do not answer without thinking? A There were different movements in the affair for we had to persuade with her a long time trying to get the revolver away from her, and there were many movements.

Q Then he did put his hands on her? A Yes.

Q What did he do? A He did not do—

Q He put his hands on her? A He laid his hands on her shoulder.

Q And lifted her up? A Yes.

Q Did she resist? A No; she simply lay there.

*Mary C. O'Connell, cross.*

*By Mr. Hedden.*

Q How long was it before she screamed? A I really don't remember.

Q How long was it before you closed the windows? A Quite some time; I persuaded with her for some time. I did not take particular notice of these times and moments.

Q Mr. O'Connell asked you to close the windows. For what reason did he ask you to do that? A He said that the public should not hear, that was all. 10

Q Had he threatened to call a policeman? A I threatened. I asked him to let me call in an officer to get the weapon away from her. He said, "No; I don't want the public to know the trouble."

Q Have you not had some disputes or differences with Mrs. O'Connell about religion? A About religion; never in my life, not a word, not a word. 20

Q Have you always gotten on very harmoniously with Mrs. O'Connell? A Not after this time that she was in such a state of mind. She came in to me the morning after, I think it was, she was at the breakfast table and she ordered me from the house; I tried to reason with her and asked her to have sense, what was the matter and she said this was her home. I said, "There is nobody interfering with your home."

Q Who paid the taxes and interest and building and loan and insurance on your house? A Mr. O'Connell. 30

Q Was there any question between you and Mrs. O'Connell about the fact that you were being supported by Mr. O'Connell? A Never. I support myself.

Q You support yourself? A Yes.

Q But Mr. O'Connell made a gift to you of the interest and taxes and insurance? A At some times, yes.

Q Some times or all the time? A Well, not all the time.

Q Did Mr. O'Connell ever order you to leave the house? A Never. 40

*Mary C. O'Connell, cross.*

Q When this trouble was going on about the revolver, did you say to Mr. O'Connell, "That is enough now?" A I asked him to go to his room, to go to bed; he had been ill and was ill.

10 Q Then when Mrs. O'Connell got up did you try to find the revolver? A No. I was very glad to keep her quiet and to say nothing and to reason with her; I reasoned with that woman all night.

Q Had you ever seen her in such a condition before? A I have seen her intoxicated in her own room.

Q On what occasion? A Once.

Q When was that? A Oh, sometime before.

Q When? A I cannot tell you how long before; sometime before; perhaps months before.

Q Before what?

20 *The Court.* Before this accident.

A Before that happened. She came into the room with her two hands out, trying to balance herself and simply not able to speak.

Q Did you smell any liquor on her? A I did as I passed her; yes; I did.

Q Did you report it to Mr. O'Connell? A Never a word; not to my own daughter; never a word of it escaped my lips to anybody.

30 Q Did you ever have any words with Mrs. O'Connell about it? A Never a word; it was never mentioned.

*By Mr. Lum.*

Q The doctor who testified—did you send for her? A Yes, sir.

Q Do you remember the question of hypodermic injections coming up with her? A Yes.

40 Q What was said by you to her? A I asked Dr. Al-laben—we were to take my son to New York in the morning; I asked her to give him a hypodermic and she said no.

*Frank Ambrose, direct—cross.*

FRANK AMBROSE, sworn on the part of the defendant.

*Direct examination by Mr. Lum.*

Q You live in Morristown? A Yes, sir.

Q And have for some years? A Twenty odd years.

Q Your place is on the way from O'Connell's down to the station? A Yes. 10

Q Will you tell us whether or not Mrs. O'Connell ever stopped in your house? A Yes, sir.

Q Frequently or not? A Infrequently.

Q How often in the last three or four years? A Three times.

Q Do you remember her having any conversation with respect to her husband with you? A Not directly with me—with Mrs. Ambrose.

Q Were you present during that conversation? A Part of it. 20

Q What did you hear her say with reference to her husband? A Oh, that he was a drug fiend.

Q Did you hear her say that on more than one occasion? A Oh, yes; in the store I have.

Q You have been up at the store? A Every morning.

Q What have you heard her say about him in the store? A Same thing.

Q To whom? A To me.

Q How often has she said it? A Every time I went in there. 30

Q Do you know whether she has charged others with the same thing, particularly doctors? A They are all drug fiends, dopes.

Q Has she said that to you herself? A Yes.

Q On many occasions? A Very many.

*Cross examination by Mr. Hedden.*

Q Have you ever had any disagreements with Mrs. O'Connell? A Never. 40

*Mary L. O'Connell, direct.*

Q And what particular persons has Mrs. O'Connell said were drug fiends? A The physicians in town that I can remember of.

Q Did she name them specifically by name? A Yes.

Q Did she ever accuse you of being a drug fiend? A Not me.

10 Q What was the occasion for her saying this? A Why, Mr. O'Connell had been in such a condition, twisting and turning around in the store and on his chair, it was dope and nothing else.

Q What was the occasion of her saying that with reference to the other people? A I suppose she had it in for everybody in the profession probably.

*By Mr. Lum.*

20 Q Did you on those occasions when you were at the store see Mr. O'Connell attending to business? A Yes, sir; always.

Q Did you ever see him under the influence of drugs so that he was unable to take care of business? A Not that I know.

Q How often were you at the store? A Sometimes twice a day—every day.

30 *Mr. Lum.* With the reservation of Mr. Mills, we rest. His testimony is very important to this defendant, but he has matters before the Grand Jury which would absolutely make it impossible for him to come here today. He has written what his testimony will be. I am wondering whether we could not agree as to his testimony.

MARY L. O'CONNELL, complainant, sworn in rebuttal.

*By Mr. Hedden.*

40 Q Did you ever have any conversation with the last witness in which you accused doctors of being dope fiends?

*Mary L. O'Connell, direct.*

A Never in my life; never; I never accused any doctor of being a dope fiend.

Q At the time of the difficulty about the revolver did Mrs. O'Connell attempt to get any revolver away from you? A No. Mr. O'Connell did, but his mother did not.

Q Was she attempting to persuade you to give up any revolver after Mr. O'Connell left the room? A Yes. 10  
She said: "Every man wants his own gun. Why not give it up to him?" I said I would not do it; I would not give it up until morning.

Q Have you ever been intoxicated? A Never in my life.

Q Have you ever met Mrs. O'Connell under circumstances which would give her the impression that you were intoxicated? A Never.

Q Have you ever had any differences with Mrs. O'Connell? A Except that she would come over to meals and on visits and she and her son would always get in religious arguments. One day at dinner he ordered her out of the house and she went out and stayed for a long time. Then when she would get in need again, she would come back. 20

CASE CLOSED.

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*Conclusions of the Court.***CONCLUSIONS OF THE COURT.**

*The Court.* (Orally at close of case.) I shall indicate my views in this case only briefly. As to the first part of the complainant's case, which is for a decree for separate maintenance and support, I have concluded that the  
10 complainant has not proved her case and has not made out a cause of action which will entitle her to such decree. The undisputed evidence is that in February, 1921, she left the defendant's home and has not returned and has not offered to return and has not sought reconciliation with her husband. In order to entitle her to support and maintenance under such circumstances, it would be necessary for her to show that the separation was caused by acts on the part of the defendant which made it unnecessary in law for her to remain longer with him as his  
20 wife. She endeavors to justify her leaving by offering some proof that her husband was a drug addict and at times, when under the influence of drug, was cruel, coarse and harsh and used opprobrious epithets toward her, and she also endeavors to justify her leaving by showing two occasions upon which her husband struck her or mistreated her. The first occasion was back in 1915, although in the affidavit annexed to the bill of complaint, it is alleged to have been in 1918. It seemed somewhat uncertain in the mind of the complainant at the time she filed  
30 her bill, otherwise she would not have made a mistake as to the date. There is not sufficient proof of the occurrence of that incident and even if it had occurred, they lived together for nearly six years after that and it was not until the date of the separation that the other incident occurred, which she claims justified her in leaving. The preponderance of proof is against the complainant as to that incident and as to what occurred on that occasion. I do not find that there is any testimony in the case sufficient to induce me to believe that the defendant was a  
40 drug addict. It would seem rather, from the testimony of

*Conclusions of the Court.*

the physicians who testified here, that the defendant, was suffering from a very serious disease which necessitated an operation in June of this year and which, in the opinion of the doctors, must have caused him considerable pain, and probably, in his condition of pain, his temper was not of the best and he may have been easily excited and even if he were, I do not find that he gave way to that excitement to such extent as to justify this Court in charging him with cruelty against his wife; so that as to the complainant's claim for support and maintenance, relief will be denied. 10

The next claim is for an accounting and the appointment of a receiver for the real and personal estate, the real estate standing in the name of the husband and wife by deed made to them as tenants by the entirety, the personal estate, so far as the testimony shows, having been bought by the husband with money earned in the business that he was conducting. As to the personal estate, I do not think there is sufficient proof to justify any claim on the part of the complainant that she is entitled to a joint interest with her husband in the personal property and her application for a receiver of the personal property will be denied. 20

I think, however, the question of the real estate stands upon an entirely different footing. We have here a deed, a writing, which declares that the property is conveyed to the husband and wife and it defines their interest through the construction that the law places upon a deed of such a nature. The husband had a right to give his wife an interest in the real estate that he was purchasing at the time this deed was made; he had a right to make her a joint owner with himself, to make her share the same as his and to provide that the property should be taken by them as tenants by the entirety and it would take very convincing evidence to vary the terms of that deed, to show that anything else was the intention of the husband or the intention of the parties. I do not think it is 30 40

*Conclusions of the Court.*

necessary for me to take into consideration the proportions of cash that went into the purchase of this property, or how the cash was raised, but it seems to me that the wife borrowed from her mother two thousand dollars which she put into the property and she also put in five hundred dollars of her own money; that the two thousand dollars she borrowed from her mother was on her own obligation to her mother; that the payment of interest by the defendant on account of that loan was simply a sum of money he was giving to his wife to enable her to pay the interest. The purchase of the property at that time as tenants by the entirety seemed to indicate an intent, as I say, on the part of the husband, that the wife should have the same interest in the real estate as he had, and that intention seems to be borne out by the relation under which the parties lived together with regard to the business that he conducted. She seems to have shared the matrimonial duties with him and in the performance of her duties as wife, she took care of the household and at spare moments took care of the store. It is only natural that the moneys that were earned from the store should be applied in reduction of the mortgage obligation on the property and for the support of the husband and wife and also for the payment of taxes and such other incidental charges as might be necessary in connection with the real estate. I think, therefore, that the wife is entitled to her interest in the real estate and that she is entitled to an accounting from the defendant for the rent from the date of the separation, or from February 1st, 1921, up to the present time, and that in that account must be taken into consideration the rental value of the part of the building occupied by the defendant, such rental value to be ascertained, of course, and fixed by testimony to be taken before the Special Master to whom I shall refer the matter of accounting, unless the parties can agree among themselves as to the amount of money

*Conclusions of the Court.*

due and what the rental value of this third floor should be.

After stating the foregoing conclusions, I feel that a slight modification should be made. I said that in accounting for rent, the defendant should be charged with the rental value of the floor occupied by him since the date of the separation of the parties. Having decided that complainant was not justified in leaving defendant, I think the defendant was required to maintain for a reasonable time, a home to which complainant might return, should she choose to do so. Therefore, he should be directed to account for the rent of the floor which had been their home, only from the time he leased it to others, or from the date complainant filed her bill, whichever is the earlier date.

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*Exhibits D. 2—D. 3.*

**EXHIBIT D. 2.**

July 11, 1920.  
Walden, N. Y.

Dear Bill:

10 Enclosed I found the three checks, which I took the Dr. to him, got the bill receipted and will send to you. "Sent mother's to her." Thank for the 10 for me, which I needed. I have been to the Dr. office twice and will go twice more before I leave here. He was very considered with me I think.

I am glad it is cool there in town and that you are well, hope you stay so, as life is not worth much to one if they are not well. It is raining here today. I am able to sleep pretty near the night through.

Yours Lucy.

20

Mr. C. P. O'Connell,  
11 South St.  
Morristown,  
New Jersey.

**EXHIBIT D. 3.**

THE NATIONAL IRON BANK OF MORRISTOWN

30

55—231

No. ——— Morristown, N. J., *Dec. 18th*, 1916.

Pay to the order of *Mary A. Dunn* \$54.71  
*Fifty-four and 71/100* Dollars

(Not over Sixty Dollars \$60)

C. P. O'CONNELL,  
Successor.

(Endorsed)  
Mary A. Dunn.

40

*Exhibit D. 3.*

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— Morrystown, N. J., *July 11th*, 1917.  
 Pay to the order of *Mary A. Dunn* \$57.00  
*Fifty-seven and no/100* Dollars  
 (Not over Sixty Dollars \$60)

C. P. O'CONNELL, 10  
 Successor.

(Endorsed)

her  
 Mary A. (X) Dunn,  
 mark  
 M. L. McKean, witness.  
 R. C. Whitman.

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231 20

No. ——— Morrystown, N. J., *May 20*, 1917.  
 Pay to the order of *Mary A. Dunn* \$7.00  
*Seven and no/100* Dollars  
 (Not over Ten Dollars \$10)

C. P. O'CONNELL,  
 Successor.

(Endorsed)

Mary A. Dunn.

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— Morrystown, N. J., *July 5th*, 1917.  
 Pay to the order of *Mary A. Dunn* \$63.50  
*Sixty-three and 50/100* Dollars  
 (Not over Seventy Dollars \$70)

C. P. O'CONNELL,  
 Successor.

(Endorsed)

Mary A. Dunn.

40

*Exhibit D. 3.*

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— Morrystown, N. J., *Aug. 29, 1918.*Pay to the order of *Mary A. Dunn* \$47.75*Forty-seven and 75/100* Dollars

(Not over Fifty Dollars \$50)

10

C. P. O'CONNELL,  
Successor.

(Endorsed)

Mary A. Dunn.

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— Morrystown, N. J., *Dec. 7th, 1918.*Pay to the order of *Mary A. Dunn* \$7.00*Seven and no/100* Dollars

20 (Not over Ten Dollars \$10)

C. P. O'CONNELL,  
Successor.

(Endorsed)

Mary A. Dunn.

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— Morrystown, N. J., *Jan. 10, 1919.*30 Pay to the order of *Mary A. Dunn* \$57.00*Fifty-seven and no/100* Dollars

(Not over Sixty Dollars \$60)

C. P. O'CONNELL,  
Successor.

(Endorsed)

Mary A. Dunn,

(M. M.)

40

*Exhibit D. 3.*MORRISTOWN, N. J., *July 11th*, 1919. No. ———

## THE NATIONAL IRON BANK

OF MORRISTOWN, N. J.

*Private a/c.*

Pay to the order of *Mary A. Dunn*  
*Seventy-one and 53/100* Dollars  
 \$71.53 10  
 (Not over Eighty Dollars \$80)

C. P. O'CONNELL,  
*Private a/c.*

(Endorsed)  
 Mary A. Dunn.

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— MORRISTOWN, N. J., *Aug. 29th*, 1919.

Pay to the order of *Mary A. Dunn* \$11.20  
*Eleven and 20/100* Dollars 20  
 (Not over Fifteen Dollars \$15)

C. P. O'CONNELL,  
 Successor.

(Endorsed)  
 Mary A. Dunn.

55—231

## THE NATIONAL IRON BANK OF MORRISTOWN

No. ——— MORRISTOWN, N. J., *Jany. 3rd*, 1920. 30

Pay to the order of *Mary A. Dunn* \$55.00  
*Fifty-five and no/100* Dollars

Collectible at par through  
 the Federal Reserve Bank, New York.  
 (Not over Sixty Dollars \$60)

C. P. O'CONNELL,  
*Private a/c.*

(Endorsed)  
 Mary A. Dunn.  
 Ira Kniffin.

40

*Exhibit D. 3.*

55—231

THE NATIONAL IRON BANK OF MORRISTOWN

No. — — — — — Morrystown, N. J., *July 2, 1920.*Pay to the order of *Mary A. Dunn* \$55.00  
*Fifty-five and no/100* Dollars10 Collectible at par through  
the Federal Reserve Bank, New York.  
(Not over Sixty Dollars \$60)C. P. O'CONNELL,  
*Household a/c.*(Endorsed)  
Mary A. Dunn.  
Ira D. Kniffin.

55—231

THE NATIONAL IRON BANK OF MORRISTOWN

No. — — — — — Morrystown, N. J., *Dec. 30th, 1920*20 Pay to the order of *Mary A. Dunn* \$55.00  
*Fifty-five and no/100* DollarsCollectible at par through  
the Federal Reserve Bank, New York.  
(Not over Sixty Dollars \$60)C. P. O'CONNELL,  
*Private a/c.*(Endorsed)  
Mary A. Dunn.

30

THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. — — — — — Morrystown, N. J., — — — — — 191—

Pay to the order of *M. & S. E. Co.* \$ — — — — —  
— — — — — Dollars(Written across face of check) "*Void.*"

(On reverse of check):

Wife in N. Y. State—up in N. Y. State—Dec. 10th, 1917  
—3 weeks.

40

May 20, 1917—up to her mothers 3 months

*Exhibit D. 4.*

M. L. O'Connell left May 1st, 1920, came home Sept. 7th, 1920—5 months.

M. L. O'Connell left in Dec., 1920, came home Jany. 5th, 1921.

2½m

I and a ½ months.

(Writing on slip of paper):

4 *Spindle Chairs*, 12

1 *Card Table Map* 16.

*Mirror* 15

*Paid*

(On other side):

*Portland Shop*

27 *Hanover Str.*

*O. Besse*

27 *Hanover St.*

*cor Portland.*

10

20

**EXHIBIT D. 4.**

Morristown, N. J., *Jany. 11th*, 1911. No. 102.

THE NATIONAL IRON BANK

OF MORRISTOWN, N. J.

Pay to the order of *The Equitable Life Assurance Society*

*Two Hundred and Eighty-eight and no/100* Dollars

\$288 *no/100*

30

C. P. O'CONNELL,

*Private a/c.*

Usual Bank endorsements.

40

*Exhibit D. 4.*MORRISTOWN, N. J., *Jan. 12th, 1911.* No. 103.

## THE NATIONAL IRON BANK

OF MORRISTOWN, N. J.

Pay to the order of *The Equitable Life Assurance Society*  
*of the U. S.**Fifty and 81/100*

Dollars

10 \$50.81/100.

No Protest.

C. P. O'CONNELL,  
*Private a/c.*

Usual Bank endorsements.

MORRISTOWN, N. J., *Aug. 7th, 1916.* No. ———

## THE NATIONAL IRON BANK

OF MORRISTOWN, N. J.

*Personal a/c.*20 Pay to the order of *The Equitable Life Assurance Society*  
*of U. S.**Two Hundred and Fifty and no/100*

Dollars

\$250.00.

(Not over Two Hundred Sixty \$260.)

C. P. O'CONNELL,  
*Personal a/c.*

Usual Bank endorsements.

30

## THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ——— MORRISTOWN, N. J., *Jan. 14, 1918.*Pay to the order of *The Equitable Life Assurance Society*  
*of the U. S.*

\$50.81

*Fifty and 81/100*

Dollars

(Not over Fifty Dollars \$50.)

C. P. O'CONNELL,  
Successor.

40

Usual Bank endorsements.

*Exhibit D. 4.*

THE NATIONAL IRON BANK OF MORRISTOWN

55—231

No. ———

Morristown, N. J., *Jan. 20, 1919.*

Pay to the order of *The Equitable Life Assurance Society*  
*of the U. S.*

\$50.81

*Fifty and 81/100*

Dollars

(Not over Fifty Dollars \$50.)

10

C. P. O'CONNELL,

Successor.

Usual Bank endorsements.

20

30

40

*Final Decree.*

**FINAL DECREE.**

Filed January 31, 1922.

This cause, coming on to be heard at the Chancery Chambers in the City of Newark, in the presence of Arthur T. Vanderbilt, of counsel with complainant, and Lum, 10 Tamblin & Colyer, of counsel with defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard, and the Court having duly considered the pleadings, proofs and argument,

It is, on this thirty-first day of January, 1922, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the complainant's application for separate maintenance be and the same hereby is dismissed.

20 And it is further ordered, adjudged and decreed that the complainant, Mary L. O'Connell, and the defendant, Cornelius P. O'Connell, are tenants by the entirety in and to the premises mentioned and described in the bill of complaint and known as #11 South street, in the Town of Morristown, Morris County, New Jersey, and more particularly described in a certain deed from George W. Stickle to complainant and defendant, recorded in Book C. 20 of Deeds for Morris County, at page 218, &c., subject to 30 the mortgages of record covering said premises, and that the complainant is entitled to one-half of the rents, issues and profits thereof, and the defendant entitled to one-half of the rents, issues and profits thereof,

And it is further ordered, adjudged and decreed that Arthur Day, of said Town of Morristown, be and he hereby is appointed the receiver of said premises, with full power to collect the rents thereof, to make all necessary repairs thereon, to pay for the same as well as the taxes, interest on mortgages, insurance and other necessary carrying charges thereof, and after deducting his allowances 40

*Final Decree.*

to be fixed by this Court, to pay one-half of the net profits remaining in his hands quarterly to complainant and the other half to defendant.

And it is further ordered, adjudged and decreed that so long as defendant shall occupy the third floor of said premises he shall pay to said receiver a reasonable rent therefor, to be fixed by the Special Master. 10

And it is further ordered, adjudged and decreed that the defendant account to the complainant for all the rents and profits of said premises received by him beginning February 6, 1921, less his disbursements for taxes, interest, insurance and other necessary carrying charges and repairs, and that if the parties hereto cannot agree to the terms of the account to be submitted by the defendant to the complainant within ten days from the date hereof, that it be referred to Edward D. Byrne, one of the Special Masters of this Court, to state said account between the parties, and that in such accounting the defendant shall also be charged from April 15, 1921, on, with a reasonable rent for the third floor of said premises occupied by him as shall be fixed by the Special Master. 20

And it is further ordered, adjudged and decreed that the defendant pay to the complainant the costs of this suit to be taxed within five days of service upon him of a copy of this decree and the taxed bill of costs in this cause, and that in default thereof execution issue according to the practice of this Court. 30

E. R. WALKER,  
C.

Respectfully advised,

JAMES F. FIELDER,  
V.-C.

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed February 2, 1921.

The defendant hereby appeals to the Court of Errors and Appeals in the last resort in all causes, from so much of the final decree made in this Court in the above-stated  
10 cause as decrees as follows:

“And it is further ordered, adjudged and decreed that the complainant, Mary L. O’Connell, and the defendant, Cornelius P. O’Connell, are tenants by the entirety in and to the premises mentioned and described in the bill of complaint and known as #11 South street, in the Town of Morristown, Morris County, New Jersey, and more particularly described in a certain deed from George W. Stickle to complainant and defendant, recorded in Book C. 20 of Deeds for Morris County, at page 218, &c., subject  
20 to the mortgages of record covering said premises, and that the complainant is entitled to one-half of the rents, issues and profits thereof, and the defendant entitled to one-half of the rents, issues and profits thereof.

“And it is further ordered, adjudged and decreed that Arthur Day, of said Town of Morristown, be and he hereby is appointed the receiver of said premises, with full power to collect the rents thereof, to make all necessary repairs thereon, to pay for the same as well as the taxes, interest on mortgages, insurance and other necessary carrying charges thereof, and after deducting his allowances to be fixed by this Court, to pay one-half of the net profits remaining in his hands quarterly to complainant and the  
30 other half to defendant.

“And it is further ordered, adjudged and decreed that so long as defendant shall occupy the third floor of said premises he shall pay to said receiver a reasonable rent therefor, to be fixed by the Special Master.

“And it is further ordered, adjudged and decreed that the defendant account to the complainant for all the rents  
40 and profits of said premises received by him beginning

*Notice of Appeal.*

February 6, 1921, less his disbursements for taxes, interest, insurance and other necessary carrying charges and repairs, and that if the parties hereto cannot agree to the terms of the account to be submitted by the defendant to the complainant within ten days from the date hereof, that it be referred to Edward D. Byrne, one of the Special Master of this Court, to state said account between the parties, and that in such accounting the defendant shall also be charged from April 15, 1921, with a reasonable rent for the third floor of said premises occupied by him as shall be fixed by the Special Master. 10

“And it is further ordered, adjudged and decreed that the defendant pay to the complainant the costs of this suit to be taxed within five days of service upon him of a copy of this decree and the taxed bill of costs in this cause, and that in default thereof execution issue according to the practice of this Court.” 20

Dated February 1, 1922.

LUM, TAMBLYN & COLYER,  
*Solicitors for and of Counsel with Defendant.*

RALPH E. LUM,  
*Of Counsel.*

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

RALPH E. LUM, 30  
*Of Counsel with Defendant.*

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed February 7, 1921.

**New Jersey Court of Errors and Appeals**

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*Between*

MARY L. O'CONNELL,  
*Complainant-Respondent,*

*and*

CORNELIUS P. O'CONNELL,  
*Defendant-Appellant.*

*On Bill, Etc.*

*Petition of  
Appeal.*

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*To the Honorable, the Court of Errors and Appeals, in the  
last resort in all causes:*

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The petition of Cornelius P. O'Connell, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the thirty-first day of January, 1921, wherein the said Mary L. O'Connell was complainant and the said Cornelius P. O'Connell, was defendant, in this respect, to wit: That the said

decree adjudged that the complainant Mary L. O'Connell, and the defendant, Cornelius P. O'Connell, are tenants by the entirety in and to the premises mentioned and described in the bill of complaint and known as #11 South street, in the Town of Morristown, Morris County, New Jersey, and more particularly described in a certain deed from George W. Stickle to complainant and defendant, recorded in Book C. 20 of Deeds for Morris County, at page 218, &c., subject to the mortgages of record covering said premises, and that the complainant is entitled to one-half of the rents, issues and profits thereof, and the defend-

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*Petition of Appeal.*

ant entitled to one-half of the rents, issues and profits thereof.

That said decree further adjudged that Arthur Day of said Town of Morristown be and he hereby is appointed the receiver of said premises, with full power to collect the rents thereof, to make all necessary repairs thereon, to pay for the same as well as the taxes, interest on mortgages, insurance and other necessary carrying charges thereof, and after deducting his allowances to be fixed by this Court, to pay one-half of the net profits remaining in his hands quarterly to complainant and the other half to defendant. 10

That the said decree further adjudged that so long as defendant shall occupy the third floor of said premises he shall pay to said receiver a reasonable rent therefor, to be fixed by the Special Master.

That said decree further adjudged that the defendant account to the complainant for all the rents and profits of said premises received by him beginning February 6, 1921, less his disbursements for taxes, interest, insurance and other necessary carrying charges and repairs, and that if the parties hereto cannot agree to the terms of the account to be submitted by the defendant to the complainant within ten days from the date hereof, that it be referred to Edward O'Byrne, one of the Special Masters of this Court, to state said account between the parties and that in such accounting the defendant shall also be charged from April 15, 1921, with a reasonable rent for the third floor of said premises occupied by him as shall be fixed by the Special Master. 20 30

That said decree further adjudged that the defendant pay to the complainant the costs of this suit to be taxed within five days of service upon him of a copy of this decree and the taxed bill of costs in this cause, and that in default thereof execution issue according to the practice of this Court, and your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as 40

*Petition of Appeal.*

aforesaid, upon the ground that the same is erroneous for that the Chancellor should have adjudged that the complainant's bill be dismissed with costs, and should not have dismissed your petitioner's counter-claim, but should have granted the relief prayed for by your petitioner in his said counter-claim.

- 10 Your petitioner, therefore, prays that the said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises, as to this Honorable Court may seem meet.

LUM, TAMBLYN & COLYER,  
*Solicitors for Appellant.*

RALPH E. LUM,  
*Of Counsel.*

- 20 Answer to petition of appeal filed in common form.

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## New Jersey Court of Errors and Appeals

*Between*

MARY L. O'CONNELL,  
*Complainant-Respondent,*

*and*

CORNELIUS P. O'CONNELL,  
*Defendant-Appellant.*

*On Appeal  
from Chancery.*

### **BRIEF FOR RESPONDENT.**

The appeal in this case brings up for review a decree of the Court of Chancery (State of Case, p. 138) to the effect that the complainant-respondent, Mary L. O'Connell and her husband, the defendant-appellant, are tenants by the entirety in and to certain premises known as 11 South street, Morristown, New Jersey, and that each are entitled to one-half the net rents and profits thereof; the decree under review further provided for the appointment of a receiver to manage the property in question and directed the defendant-appellant to account for net rents and profits of the premises since February 6, 1921, the date when the parties separated, and ordered that the said defendant should be chargeable with the reasonable rental value of that part of the premises occupied by him since April 15, 1921, the date of the filing of the bill for separate maintenance and an accounting.

### **Statement of Case.**

On April 15, 1921, the complainant, Mary L. O'Connell, filed her bill of complaint for separate maintenance, and for the appointment of a receiver to take charge of certain real estate at No. 11 South street, Morristown, N. J., belonging jointly to herself and her husband, the

defendant, and further praying for an accounting for the income from the said premises and for certain personal property belonging to the complainant personally.

On the final hearing of the cause, the decree as advised by Vice-Chancellor Fielder denied the complainant's petition for separate maintenance on the ground that the cruelty complained of by the complainant was not proven by preponderance of evidence (Case, pp. 126-127). The complainant's petition for an accounting for personal property is likewise denied, but the petition for the appointment of a receiver, and an accounting for the rents and profits of the real estate was granted. This appeal concerns only the decision as to the real estate.

The complainant and defendant were married on August 4, 1909. Prior to the marriage, the complainant had been a trained nurse, but after her marriage she did no nursing but assisted her husband in his drug business, at the request of her husband (Case, p. 69). The defendant had been carrying on business as a druggist for a number of years prior to his marriage to the complainant (Case, p. 90).

On December 31, 1909, six months after the marriage, complainant and defendant purchased from George W. Stickle premises known as No. 11 South street, Morristown, N. J. The deed for these premises ran to the complainant and defendant as husband and wife and was recorded in the County Clerk's office of Morris County, in Book C. 20 of Deeds, p. 218. The consideration for the deed was paid in part by the complainant, in part by the defendant, and in part by a large purchase money mortgage. These facts are admitted by both sides, being set forth in the bill of complaint (Case, pp. 2-3) and admitted in paragraph 5 of defendant's answer (Case, p. 11) and is supported by ample testimony throughout the case. It is admitted that the original mortgage has now been reduced to nine thousand dollars (\$9,000.00) instead of the fifteen thousand dollars (\$15,000.00) which is stated in the complaint to be still outstanding.

There is a conflict of testimony as to the amount of the original consideration paid by the complainant. The complainant testifies that she contributed twenty-seven hundred dollars (\$2,700.00) (Case, p. 32) while the defendant says that the complainant contributed twenty-five hundred dollars (\$2,500.00) (Case, p. 96, l. 15). It further appears by the testimony of both complainant and defendant that of the amount contributed by the complainant two thousand dollars (\$2,000.00) was borrowed by the complainant from her mother, and interest on this amount was paid by checks of the defendant, the complainant testifying that after her marriage she had no independent source of income, and that all payments on her own life insurance and interest on the loan to her were made by the defendant from the income derived from the property (Case, pp. 68-69).

The defendant alleged that the money which the complainant had herself advanced was given to him as a loan and that the deed for the property was made to the complainant and defendant primarily for the purpose of securing the advances thus made and that at the time of such advancements it was agreed between the complainant and defendant that upon repayment of the money so advanced the defendant should be entitled to a conveyance of the premises to himself or in such manner as he might direct. The defendant further testified that the complainant admitted in the office of Mr. John Mills in December, 1918, after the sale of the drug business, that she had originally agreed to sign off her interest in the property on the repayment of the amount originally advanced by her. The complainant denied any such original agreement (Case, p. 68, ll. 35-39) and further denied positively that she had ever made any such statement as alleged in the office of Mr. Mills (Case, pp. 49-50).

According to the testimony of complainant (Case, pp. 17-18), Aldus H. Pierson (Case, pp. 74-76) and John McCormack (Case, p. 113) the complainant, from the

time of her marriage until the defendant's business was sold, worked in the drug store as a clerk and was advertised by the defendant as in attendance at the drug store. Mrs. O'Connell testified that she did every bit of the housework, as well as janitor work of the building, waited on customers, and went out to fit elastic stockings and trusses to customers, in addition to making most of the defendant's clothes (Case, p. 17).

All the rents from the property, together with the money earned by the personal work of Mrs. O'Connell, was turned into the cash register as money earned in the business and went eventually to pay the interest, running expenses, household expenses, and paying off the mortgage (Case, p. 18, ll. 20-30, p. 28, ll. 15-25). The complainant never made any demand for rents, as she testified to a clear understanding between the defendant and herself that all of the income earned was to go to pay running expenses and reduce the mortgage so that they could eventually retire to the country and buy another house (Case, p. 44, ll. 30-40, p. 42, ll. 25-28, p. 46, ll. 38-40, p. 47, ll. 1-10, p. 63, ll. 30-40, p. 64, ll. 1-21).

It further appears that the complainant and defendant joined in a lease of part of the said premises to the American Auto Supply Company as tenants by the entirety, in October, 1918 (Case, p. 65, ll. 1-10, and p. 103).

Both complainant and defendant testified that there had been an agreement between them that on the sale of the drug business the loan to the complainant from her mother was to be paid off. The business was sold on December 26, 1918, after serious disputes had arisen between complainant and defendant. At that time, at the request of the defendant, complainant went to the office of John Mills, and learning that defendant sought to have her sign away her interest in the property at the same time that the repayment of the loan from her mother was tendered, refused to relinquish her rights in the property, or have anything further to do with the matter (Case, pp. 48-49, 100, 101, 108).

On these facts the Court below decided that the property was taken by the complainant and defendant as tenants by the entirety and that, regardless of the actual amount of money put in by the complainant, the evidence did not rebutt the presumption that the defendant was entitled to her interest as a tenant by the entirety and that the original intention of the husband to make the wife such tenant by the entirety was borne out by the surrounding circumstances. Pursuant to this finding, the Court decreed that the complainant was a tenant by the entirety of the said property, and, as such, was entitled to one-half of the rents, issues and profits thereof, and appointed Arthur Day of Morristown receiver of the said premises to administer the property and pay one-half of the net profits remaining in his hands quarterly to the complainant, and the other half to the defendant. The Court further decreed that so long as the defendant should occupy the third floor of the said premises he should pay the receiver a reasonable rental to be fixed by the Special Master and that the defendant should account to the complainant for the net rents and profits of the premises received by him, beginning February 6, 1921 (the date on which the alleged assault upon the complainant occurred which caused her to leave defendant) and should pay a reasonable rental for the premises occupied by him from the time of the filing of the bill for separate maintenance and accounting to the date of the decree. From this finding and decree the defendant appeals.

## I.

The Court below correctly found the complainant and defendant held the premises No. 11 South street as tenants by the entirety.

*A. It is a well settled rule in this State that where real estate is conveyed to a husband and wife, an estate by the entirety is thereby created, and the wife becomes vested with a half interest in the property as a tenant in common with right of survivorship. Of such interest, evidenced by a regular deed, she cannot be divested except by overwhelming evidence of a contrary intent.*

Even where the husband procures real estate to be conveyed to his wife, he paying the consideration, and there being no evidence of any kind of consideration contributed by the wife, it is a well established rule that a presumption arises that he intended to settle the property on his wife, and while such presumption may be rebutted, the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties.

*McGee v. McGee*, 81 N. J. Eq. 190;

*Midmer v. Midmer's Executors*, 26 N. J. Eq. 299;

*Linker v. Linker*, 32 N. J. Eq. 174;

*Andreas v. Andreas*, 84 N. J. Eq. 375;

*Beck v. Beck*, 78 N. J. Eq. 544;

*Lister v. Lister*, 35 N. J. Eq. 49.

As stated by Vice-Chancellor Van Fleet in *Midmer v. Midmer's Executors*, 26 N. J. Eq. 299, 304:

“Nothing short of certain, definite, reliable, and convincing proof will justify the court in divesting one of title to lands evidenced by a regular deed, and putting it in another.”

This rule has been adhered to by this Court in many cases where the evidence showed that the consideration was paid by the husband alone and the title taken in the wife's name with the evident intent of holding the prop-

erty for the family use free from possible attacks by the husband's creditors. *McGee v. McGee*, *Linker v. Linker*, and *Lister v. Lister (ubi supra)*. In no case has the wife ever been divested of her interest where there was any evidence that she contributed to the original purchase price or helped to pay off the mortgage. No case has been found in our reports where the presumption that a deed to husband and wife creates a tenancy by the entirety has been rebutted.

*B. The evidence in the case at bar not only fails to furnish convincing proof to overcome the presumption but actually strengthens such presumption.*

The deed to the premises in question was made to the husband and wife jointly as tenants by the entirety. It is admitted that the complainant invested twenty-five or twenty-seven hundred dollars in the property; of this amount two thousand dollars had been loaned her by her mother. This is conceded by the defendant in his own testimony and in the pleadings. The defendant seeks to prove that the money contributed by the complainant was merely a loan. He states that "It was recognized by me as a loan by me paying the interest on it for years" (Case, p. 96, l. 15). He further asserts that the payments made on the complainant's insurance were in lieu of interest on the five hundred dollars alleged by the defendant to have been contributed by the complainant (Case, p. 97, l. 30). The complainant not only denies this (Case, p. 68), but repeatedly states that the payments by the defendant on account of interest and insurance premiums were the natural result of the complainant having no funds of her own (Case, p. 69), as she no longer had an income from nursing. All of the money earned by her and all her share of the rent from the premises were turned into the cash register as part of the income of the business. As she testifies, the chief object of both the complainant and defendant was to save by every method so as to reduce the mortgage which was event-

ually reduced to nine thousand dollars (Case, p. 44, ll. 30 to 40, p. 42, ll. 25 to 28, p. 46, ll. 38 to 40, p. 47, ll. 1 to 10, p. 63, ll. 30 to 40, p. 64, ll. 1 to 21).

It appears from the testimony of both complainant and defendant that there was some agreement, that upon the sale of the business (*not the sale of the property*) the loan which Mrs. O'Connell had received from her mother was to be repaid. It is respectfully pointed out that such an agreement to repay complainant's mother furnishes absolutely no evidence to contradict the presumption that the complainant had a half interest in the premises. Throughout the nine years during which they had owned the property, the complainant and defendant had been steadily working to reduce the mortgage, and during that time nothing had been paid on the principal of the loan which the complainant had received from her mother, although the complainant testified that this money was needed for her mother's support and that it was agreed that the loan to her should be repaid as soon as the business was sold (Case, p. 47, ll. 30-40). As all the rents and profits from the property were turned into the business, it was necessary that the interest on the said loan should be paid out of the funds taken from the business. This money, originally, the complainant was obliged to borrow from her mother and naturally was obliged to repay this loan some time. This could not be done out of the complainant's personal funds as she had none and had no means of acquiring any personal income since all of her time and energy were devoted to increasing the returns from the business. If the complainant had kept out of the business her share of the rents during the nine years which elapsed between the purchase of the property and the sale of the drug business she would doubtless have acquired more than enough to pay off her mother's loan, together with the interest on the same; for the uncontradicted testimony of the complainant showed that the first story of the property has a rental value of \$2,300.00 per annum and the second floor of more than one thou-

sand dollars (\$1,000.00) per annum. Instead of following such a plan, however, it was agreed to turn in all of the rents as part of the income of the business and from this was paid the interest on the mother's loan, with the understanding that when the business was sold, the mother's loan was to be paid off.

It was on this understanding that the complainant went to the conference at Mr. Mills' office after the sale of the business. When she got there she found that instead of paying off the mother's loan as agreed her husband was endeavoring to get her to sign off her interest in the property. This she naturally refused to do.

The defendant's testimony as to the transaction at Mr. Mills' office is quite significant. On direct examination (Case, p. 99) the defendant testifies that the complainant acknowledged to Mr. Mills in his presence that she would sign off her rights in the property in consideration of those two checks for two thousand and five hundred dollars, but that she did not say whether she had a half interest in the property. In reply to the question by the Court (Case, p. 100, l. 11) the defendant states that the complainant said nothing, that she just turned around and walked out of the office. Further (Case, p. 100, l. 38) defendant says that he cannot remember that the complainant said anything at all about having any money in the property. And again (Case, p. 100, ll. 1 to 10) he states that Mrs. O'Connell did not say anything at all, that she did not say whether she would or would not sign, and in lines 10 to 20 he again states that Mrs. O'Connell did not say she had made an agreement to sign off, but that in fact, little was said outside of the drawing of the paper and Mrs. O'Connell's statement that she would not sign anything. On cross examination (Case, p. 108) the defendant again asserts that Mrs. O'Connell acknowledged that the money was a loan and that she had agreed to sign off but would not sign off.

On the other hand Mrs. O'Connell denies positively that she agreed to sign off her interest or admitted that her

interest was merely a loan (Case, p. 48, p. 49, ll. 30-33) and positively denies that she stated in the presence of Mr. Mills that she had an agreement to sign off if she got her money back (Case, p. 50, ll. 8-12).

When questioned as to the reason for her refusal to sign away her rights in the property at Mr. Mills' office, complainant explained that entirely apart from any question of gift by the defendant, she felt that such a suggestion was entirely unfair as the payment for the property had been a joint affair throughout the entire married life of complainant and defendant, in which the complainant, as she had repeatedly testified, had endured many privations and worked continuously with the sole aim of enjoying the property eventually.

It is clear from a reading of the whole testimony that the complainant felt that it was not a question of a gift but that she had contributed as much as if not more to the purchase of the property than had her husband; and the uncontradicted testimony in the case shows that she was justified in this feeling. We are not here relying on a gift from the husband to the wife in which the wife did nothing more. We find here originally an investment by the husband and the wife jointly with the agreement, that the amount which the wife had borrowed for this purpose should be paid off when the business was sold, into which went all the rents and profits from the premises. Although the complainant does not and did not claim a half interest in the defendant's business as such, nevertheless the rents and profits from the building and the money earned by the complainant and the income from the business were inextricably intermingled for a single common purpose, the reduction of the mortgage, and the rents and services of both complainant and defendant were merged in the property jointly owned. It is to be noted here that according to the testimony of both defendant and complainant, the complainant never made or received any portion of the purchase price of the business and the defendant

refused to reveal to complainant how much he had received for the said business or what he had done with the same. Defendant has made no claim that the proceeds of the said business when sold went to pay off the mortgage.

In this case, the complainant and defendant jointly purchased the property after their marriage and the complainant advanced what appears to be a sum approximately equal to that paid by the defendant. The major part of this sum was borrowed from her mother. The wife, in addition to her household duties, acts as a clerk in her husband's business in order to save expense, and contributes to the business her share of the rents and income from the premises jointly owned. She is practically a partner in the business, although she makes no claim to any such interest but there is an agreement between the husband and wife that when the business is sold, her debt to her mother will be paid out of the proceeds of the business to which she has contributed so much.

It is respectfully submitted, that such agreement cannot in any way rebutt the presumption that complainant and defendant are tenants by the entirety of the premises which were conveyed to them jointly. The fact that the wife made no claim for rents or profits, either before or after the business was sold, is likewise no evidence to rebutt the presumption that the complainant was a joint owner. They were still husband and wife and living together; and, as Mrs. O'Connell herself testified, there was no reason for her to demand a separate income until the situation became so tense that it was impossible for them to continue living together.

Furthermore, there is no inconsistency in denying the claim to the personal estate, while finding that the complainant was a joint owner of the real estate. The personal property to which the complainant laid claim, was certain household furniture, pictures, etc., purchased by complainant and defendant jointly, or gifts made to the complainant and defendant. There was no claim ever made

to an interest in the business, and as pointed out before, there is no inconsistency in holding that the complainant is entitled to one-half the interest in the real estate when the current proceeds of the business went to the reduction of the mortgage on the real estate. There is nothing in the case to indicate, as intimated on page 15 of defendant's brief, that considerable payments on liens were made largely out of the proceeds of the sale of the business in December, 1918. The evidence is clear that the husband intended, at the time of the purchase of the property, that the wife should have the same interest in the real estate as he had. It is a well established rule of law in this State that the presumption of advancement to or settlement upon the wife cannot be rebutted by the subsequent declarations of the husband or by his present declarations of his intention at that time. (*Lister v. Lister*, 35 N. J. Eq. 49.)

## II.

**The complainant is entitled to have a receiver appointed to take charge of the property and to divide the net rents and profits.**

Mrs. O'Connell, as a tenant by the entirety, was entitled to the enjoyment of one-half of the income and use of the property from the first moment of conveyance by virtue of the Married Woman's Property Act.

*Buttlar v. Rosenblath*, 42 N. J. Eq. 651 (Court of Errors and Appeals);

*Bilder v. Robinson*, 73 N. J. Eq. 170;

*Grummenger v. Alderton*, 85 N. J. Eq. 434;

*Schultz v. Zeigler*, 80 N. J. Eq. 199 (Court of Errors and Appeals).

In this last case, Justice Parker says, see page 201:

“Whatever the estate during the joint lives may be called, it is in effect a tenancy in common between husband and wife, or between the husband's grantee and the wife, during the joint lives, with remainder to the survivor. The essential feature of

a tenancy in common is the unity of possession, as distinct from unity of title, interest, or time of creation. Such a tenancy is partible by the express language of the statute."

This entitled Mrs. O'Connell to the enjoyment of one-half of the rents and profits regardless of the fact that she was occupying the house as wife. Mr. O'Connell was bound to support her and could not demand her share of the rents, but would have to account for said rents unless Mrs. O'Connell made a gift of them or authorized their use for other purposes. The testimony clearly shows that Mrs. O'Connell apparently devoted her share of rents, as well as all her time, to reducing the mortgage debt on the premises, thereby increasing the value of the equity jointly owned by the two. Any profits from the business not needed for living expenses were likewise devoted to the same purpose.

By virtue of the effect of the Married Woman's Property Act on the common law estate of tenancy by the entirety Mrs. O'Connell became virtually a tenant in common with her husband during their joint lives and as such is entitled to demand an accounting from her husband for rents and profits from the time she ceased to live with him and ceased to devote said rents to the reduction of the mortgage debt.

*Cooper v. Cooper*, 6 N. J. Eq. 556;  
*Izzard v. Bodine*, 11 N. J. Eq. 403,  
*Davidson v. Thompson*, 22 N. J. Eq. 83;  
*Barrell v. Barrell*, 25 N. J. Eq. 173.  
*Edsall v. Merrill*, 37 N. J. Eq. 114;  
*Lloyd v. Turner*, 70 N. J. Eq. 425;  
*Cole v. Cole*, 69 N. J. Eq. 3;  
*Switzer v. Switzer*, 57 N. J. Eq. 421.

In *Edsall v. Merrill*, 37 New Jersey Equity 114, Vice-Chancellor Van Fleet stated the rule as follows:

"Where the tenant in possession has prevented his co-tenants from obtaining from the premises such profits as they were capable of yielding, or has taken possession of the whole and has used

them as his own, and thereby makes a profit, he must account either for the rental value or the profits.”

A receiver may be appointed at the suit of the tenants by entirety or tenant in common to administer the property and divide the net rents. See *Bilder v. Robinson*, 73 New Jersey Equity, 170.

### III.

The Court below properly ordered the defendant to pay a reasonable rental for the third floor occupied by him from the date of the filing of complainant's bill.

It is well established that a tenant by the entirety, who by virtue of the Married Woman's Property Act has the rights of a tenant in common, can properly call on a cotenant to account for the use of premises from which such tenant has been actually or constructively excluded. *Wickoff v. Wickoff*, 18 Atl. 74; *Vass v. Hill*, 21 Atl. 585; *Switzer v. Switzer*, 57 N. J. Eq. 421; *Maxwell v. Eckert*, 109 Atl. 730.

Under the doctrine of the last mentioned case, complainant respectfully shows that she is entitled to an accounting from the defendant for both rents collected and use of third floor from the time that the strained relationship between complainant and defendant made it impracticable to continue to reside together. Even though the Court found that complainant had not proved by preponderance of evidence, such cruelty as would justify her in obtaining a separate maintenance from her husband, this clearly does not mean that the wife is obliged to continue living with her husband under intolerable conditions at the risk of sacrificing her property rights.

It is therefore respectfully submitted that the lower court correctly found that the complainant was entitled, as a tenant by the entirety, to a one-half interest in the premises at No. 11 South street, Morristown, N. J., and

that as such she is entitled to the appointment of a receiver to manage the said premises and pay her one-half of the net income therefrom; and that she is furthermore entitled to an accounting from the defendant for the net rents and profits received since their separation, as well as an accounting for the reasonable value of the portion of the premises occupied by the said defendant from the time of his refusal to account to her for the rental of said premises.

Respectfully submitted,

ARTHUR T. VANDERBILT,  
*Solicitor for and of Counsel with Respondent.*

For a full description of the contents of this book see the  
title page and the preface. The book is intended for  
the use of students in the various departments of the  
University of California.

1892

## New Jersey Court of Errors and Appeals

*Between*

MARY L. O'CONNELL,

*Complainant-Respondent,*

*and*

CORNELIUS P. O'CONNELL,

*Defendant-Appellant.*

*On Appeal from  
Chancery.*

### BRIEF FOR APPELLANT.

#### Statement of the Case.

This appeal is taken from a portion of the final decree made in this cause in the Court of Chancery.

In her bill of complaint the complainant prayed primarily for suitable maintenance and support from her husband, the defendant. This portion of the relief prayed for was denied by the final decree. In connection with her bill for maintenance the complainant prayed for the enforcement of her alleged rights in certain real property standing in the names of both parties on the record. It is from the adjudication of the Court with respect to the rights of the complainant in this real property that this appeal is taken. In this statement of the case we will eliminate all reference to the allegations in the bill and pleadings relative to complainant's claim for maintenance which as before said are not involved in this appeal.

In her bill of complaint (Case, p. 2, par. 5) complainant alleges that she and defendant on December 31, 1909, purchased from one George W. Stickle premises known as No. 11 South street, Morristown, N. J. The deed for these premises evidently ran to the complainant and defendant, husband and wife, and was recorded in the Morris

County Clerk's office in Book C. 20 of Deeds, on page 218. She further alleges that the consideration for the deed was paid in part by her and part by her husband and in part by mortgages given on the property at the time of purchase.

Again in the sixth paragraph of her bill (Case, p. 3, par. 3) complainant alleges that she is entitled to one-half of the income of said property No. 11 South street as the owner thereof under the deed aforesaid. And again she alleges in the same paragraph that she is entitled as joint owner of said building to one-half the rents thereof and to have an accounting for one-half the value of the part of the building which the defendant was occupying. These are substantially all the allegations in the bill with reference to this property.

In her prayer for relief (Case, p. 4) complainant prays that a receiver may be appointed for the collection of the rents of the premises above mentioned and that one-half thereof, after paying the carrying charges, be paid to her. She further prays that defendant be required to account to her for the income of said real estate conveyed to them by deed as aforesaid from January 1, 1921.

In and by his answer the defendant admits the purchase of the property from George W. Stickle as aforesaid and that the consideration was raised and paid as indicated in the fifth paragraph of the bill (Case, p. 11).

In the sixth paragraph of his answer defendant denies that complainant is entitled to one-half the property at 11 South street and denies that complainant is entitled to one-half the rents and to one-half of the value of the part of the building occupied by the defendant.

Defendant further sets forth in his answer that when he purchased the premises above mentioned he secured from the complainant the sum of two thousand dollars (\$2,000) which she in turn had borrowed from her mother and that the complainant at the same time advanced to him the sum of five hundred dollars (\$500); that the deed of conveyance for the property was made to the com-

plainant and defendant primarily for the purpose of securing the sum of two thousand dollars (\$2,000) advanced by complainant's mother and the sum of five hundred dollars (\$500) advanced by the complainant to the defendant, and that upon repayment of said sums of money defendant is entitled to the sole beneficial interest in the premises (Case, p. 12, l. 30).

To this answer there is added an amendment by way of counter-claim of the defendant against the complainant (Case, p. 13).

In his counter-claim defendant alleges that when he purchased the lands above mentioned he secured from the complainant two thousand dollars (\$2,000) which she borrowed from her mother and from the complainant herself the sum of five hundred dollars (\$500); that pursuant to the agreement between complainant and defendant the deed for the property was made to them jointly, primarily for the purpose of securing these two sums; that at the time of such advancements by complainant to the defendant it was agreed between them that upon repayment of the moneys so advanced to the defendant, defendant should be entitled to a conveyance of the premises to himself or in such manner as he might direct, to the end that he might be entitled to hold the sole beneficial interest therein.

It is further alleged in the counter-claim that prior to the institution of suit defendant offered to pay complainant moneys advanced with interest and demanded the conveyance from complainant, but that complainant had refused to accept the moneys offered or to make conveyance. He, therefore, prays that it may be decreed that he is entitled to the sole beneficial interest in the lands and upon payment of the amount loaned with interest that complainant may be decreed to make and deliver to defendant or his appointee a good and valid conveyance for the premises.

The cause thereafter came on to be heard before the Court and after the taking of proofs and hearing the

arguments of counsel the Court below rendered its conclusions, which will be found on page 126 of the case. Pursuant to such conclusions the final decree was made in the cause as set forth on page 138 of the printed case.

In and by the decree among other things the Court adjudged that the complainant and defendant are tenants by entirety in and to the premises above mentioned and that the complainant is entitled to one-half of the rents, issues and profits thereof and that defendant is likewise entitled to the other one-half.

It is further decreed that one Arthur Day be appointed receiver of the premises with power to collect the rents and other powers as are particularly set forth in the decree, and said receiver is directed to pay one-half the net profits quarterly to the complainant and the other half to the defendant.

And it is further decreed that the defendant so long as he shall occupy the third floor of the premises shall pay a reasonable rent to be fixed by the Special Master and that the defendant account to the complainant for all rents received by him beginning February 6, 1921, and if the parties cannot agree to the terms of the account that it be referred to Edward D. Byrne, a Special Master, to state said account between the parties as more particularly set forth in the decree, as appears on page 139.

And the defendant is ordered to pay complainant costs of this suit. (See final decree, printed case, pp. 138 and 139.)

Thereafter the defendant gave notice of appeal to this Court from the said decree in so far as it affected the premises No. 11 South street and the rights of the appellant therein. (See Case, p. 140.)

The petition of appeal was filed in due course and an answer thereto has been filed in common form. (Case, pp. 142-144.)

### Specifications of Error.

The appellant respectfully insists that the final decree of the Court of Chancery is erroneous in the following respects:

1. Because the Court below held that the complainant is entitled to one-half of the rents, issues and profits of the said premises No. 11 South street, Morristown, N. J.
2. Because the Court below has appointed a receiver of the said premises and directed the division of the net profits between complainant and defendant.
3. Because the Court below directed that this defendant shall pay a reasonable rent for the third floor of said premises so long as occupied by him.
4. Because the Court below directed this defendant to account for rents and profits of said premises from February 6, 1921.
5. Because the Court below directed this defendant to pay complainant's costs of this suit.
6. Because the Court below denied this defendant the prayer in his counter-claim to the effect that he is entitled to the sole beneficial interest in said lands and premises and is entitled to a valid conveyance thereof to himself or to his appointee.

### BRIEF OF ARGUMENT.

- I. The appellant is entitled to hold the premises No. 11 South street as his sole property.

In his testimony the appellant sets forth the circumstances under which this property was purchased on page 95 of the printed case and the following pages. It appears therefrom that the purchase was made some time in December, 1909. The appellant negotiated the purchase. At the suggestion of the complainant she secured from her mother the sum of two thousand dollars (\$2,000). In this connection the question arose as to securing the

payment of this money. In his testimony at the top of page 96 defendant said to his wife:

“I have no security to give you. There are two mortgages on the property now. The only thing I can do is put your name in the deed until such time as I can pay you back. That was agreed upon.”

When he is asked how much was to be paid back he says:

“Why the amount of money she put in, \$2,000 of her mother’s and \$500 of hers.” (Case, p. 96, l. 15.)

He further states that the two thousand dollars (\$2,000) advanced by the mother was recognized as a loan. From the time of its advancement up to the institution of the suit the defendant paid interest on this sum of money every six months.

In this connection the checks marked Exhibit D. 3 were offered in evidence showing the payment of interest and are set forth on pages 130 to 134 of the printed case.

There is also an acknowledgment of a receipt of the mother’s check in Exhibit D. 2 (Case, p. 130).

In addition to paying interest to the mother on the amount advanced by her defendant testified that pursuant to an agreement with his wife instead of paying interest semi-annually on the \$500, which she had advanced, defendant agreed to take care of the life insurance policies of the complainant, which he has done since 1910 (Case, p. 97, l. 30). Certain moneys were borrowed upon the insurance policy and the same was repaid (Case, p. 98, l. 10).

Exhibit D. 4, Case, p. 135, is a copy of the check by which the loan was repaid.

The defendant also offered in evidence certain of the checks by which he made payment of the premiums on the life insurance policies for his wife. These are set forth in Exhibit D. 4, pages 136 and 137.

It further appears from the testimony of the defendant that complainant never prior to the institution of suit

demanded or claimed any part of the rent from the property nor did she ever make any claim of an interest in the property herself (Case, p. 98, l. 20).

Defendant further testifies with regard to certain transactions with his wife at the office of Mr. John Mills, his counsel. His testimony on this subject is set forth in pages 98, 99, 100 and 101 of the printed case.

From his testimony it appears that defendant sold his business which he had conducted on the premises on December 26, 1918. At that time he made a visit to the office of Mr. Mills. The complainant had been asking him for two or three years previously for the money that she and the mother had advanced to him. Defendant told her that as soon as he got the money he would pay her and get title to his property. Finally he invited her to go to Mr. Mills' office with him, which she did. When the parties were all at Mr. Mills' office Mr. Mills read over to them a deed which he had prepared for the purpose of vesting the sole legal title in the defendant. It appears that at the time defendant had two checks, one for the sum of two thousand dollars (\$2,000) and the other for the sum of five hundred dollars (\$500). The moneys were tendered to the complainant, but she refused to sign the deed but gave at the time no reason therefor.

However, it appears from the testimony of the defendant that the complainant admitted that the moneys advanced by her and through her mother were a loan, but she refused to accept the moneys and to sign the deed of conveyance.

Again on cross examination the defendant (Case, p. 108) said that the complainant acknowledged that the money was loaned and she had agreed to sign off, but she did not sign off.

We will now refer to the testimony of complainant with respect to this transaction. This is found on pages 47, 48, 49 and 50 of the printed case.

In her testimony she recalls the purchase of the property. At that time her mother had some \$2,000 in bank

in New York. This complainant says her mother gave her and that thereafter interest was paid to her mother on this sum. This corroborates the testimony of the defendant absolutely on this point. However, the complainant apparently takes the view that the mother gave her the \$2,000, although the interest was paid, as she admits to her mother, for her support. Complainant also states:

“My husband always said he would pay my mother back and pay me as soon as the business was sold.” (Case, p. 47, ll. 30-40.)

She is thereupon questioned with regard to the transactions at the office of Mr. John Mills. She remembers going there after the business was sold as testified by the defendant. Evidently she knew the purpose of going to Mr. Mills' office was to clear up the matter of title to the building. She states that Mr. Mills asked her to sign the papers and said her husband will give her a check for \$700 she had in the place. She states that she refused and walked out of the office of Mr. Mills. She admits going again to the office of Mr. Mills to look over the papers and she says she turned and walked out and that was the last time she was in his office. She explains her second visit to his office by saying it was prompted by a curiosity to see what was in the papers; to see what she was to sign, although she contends she didn't intend to sign anyway.

When pressed by the Court for an explanation for her second visit she gives no more satisfactory answer. She states that she would not take \$700 and sign her rights in the building as she expresses it.

When she is asked on further examination with respect to her agreement that she was merely to get out of the property what she put in it, she replied: “That was not taken into consideration at all.”

When pressed further on cross examination she states that her mother's interest was not considered at all and contends that all that was said by Mr. Mills was that

she should sign the papers and her husband would give her a check for \$700 which she had in the building.

Again on re-direct examination, when the complainant is asked why she refused to take \$700 and sign off her interest, she answered:

“Why, because I did not think it was a fair thing to me after working there and putting in all the work in the store and in the household and everything else; I didn’t think that was fair and just in any way.” (Case, p. 63, l. 30.)

The foregoing is a summary of the testimony in the cause pertinent to the issues now under consideration.

With the evidence in this plight the Court below nevertheless proceeded to determine the rights of the parties to this action in the property by reference simply to the form of the deed of conveyance. After determining that the wife has no interest whatever in the personal property of her husband the Court proceeds as follows:

“I think, however, the question of the real estate stands upon an entirely different footing. We have here a deed, a writing, which declares that the property is conveyed to the husband and wife and it defines their interest through the construction that the law places upon a deed of such a nature.” (Case, p. 127, l. 25.)

It seems, therefore, that the Court held that the wife had no interest in the business which the husband had been conducting on the premises, yet the Court seemed to hold that the fact that she may have assisted in the details of the business gave her some semblance of a claim to an interest in the property.

We respectfully submit, however, that the testimony of the complainant conclusively shows that her whole concern was for the repayment of the moneys that she had advanced to her husband, either directly or through her mother. In fact, the testimony on both sides negatives any idea of a joint purchase or a gift by the husband to the wife.

If any presumption arises, as seems to be intimated by the Court below, by reason of the form of the deed, we contend that such presumption is rebuttable and that the defendant here may show that there was no intention to make a gift and may show exactly what the transaction was.

The observations of the Court of Chancery in *Andreas v. Andreas*, 84 N. J. Eq. 375, on page 377, are pertinent to the matters now under consideration. It is there stated:

“It is a well-settled rule in this State that where a husband transfers either real or personal property to his wife, it will be presumed that the conveyance and transfer were intended to be by way of voluntary settlement upon her. This, however, is a rebuttal presumption, and the deed having once been made and delivered, by which title is vested in her, the burden of proof is on him to establish a different result. And it may be said at this point that where there is conflicting evidence as to a husband’s object in making a conveyance of lands to his wife, the ordinary presumption that it is intended as a provision or settlement for her benefit is not rebutted (Case cited). Therefore, if, on a balancing of the testimony, it should be found that the husband has not met the burden of proof, his application to the court must fail. The proceeding must be judged by what took place at the time of the execution and delivery of the deeds, and not by circumstances which occurred afterwards.”

In the case above cited there had been a direct conveyance from husband to wife through a third party. In this respect the situation differs from the case now before the Court. However, the observations of the Court in the above cited case are pertinent here showing that the form of the deed in this case whereby an estate by the entirety seems to be vested in the parties, does not preclude the showing of the facts relative to the intention of the parties at the time the deed was executed. In other words, if there is a presumption of a voluntary settlement by reason of the form, we respectfully insist that it can be shown that such was not the intention in this

case. In fact, we respectfully insist that the testimony shows that no voluntary settlement upon the wife was intended.

In the case above cited the Court holds that the proceeding must be judged by what took place at the time of the execution and delivery of the deed and not by circumstances which occurred afterward. The uncontradicted evidence of the defendant with respect to the purchase of the property shows that he borrowed from his wife and from her mother a sum of money aggregating \$2,500 to enable him to complete the purchase. He further testified that the wife wanted security for the money which she had directly and indirectly advanced or agreed to advance. Thereupon for their protection it was agreed between them that she, the wife, should also be a grantee in the deed and should have this form of security until the moneys were repaid by the husband. He continuously thereafter up to the beginning of this suit paid interest to the mother on the amount of the money advanced by her, which, by the way, the wife now claims as hers. The husband also paid the premium on the insurance policies of the wife in lieu of interest on the money advanced by her.

It thus appears that the intentions of the parties were, so far as the form of the deed was concerned, to secure the wife for the moneys that she had directly and indirectly raised for the benefit of the husband. The husband's testimony with regard to these features of the transaction is in no way contradicted by the wife. When she was offered as a witness in rebuttal and had the opportunity to contradict if she could the testimony of the husband with regard to the inception of the transaction, she made no attempt whatsoever to do so.

Furthermore, we would refer also to the opinion of the Court of Chancery in the case of *Shotwell v. Stickle*, 83 N. J. Eq. 188, at page 194. In this case the husband had furnished the purchase money for land which for cer-

tain reasons was conveyed to his wife. In the course of the opinion the Court proceeds as follows:

“Did a trust result in favor of the husband from the circumstances appearing in evidence? Ordinarily, it is presumed, that when a husband voluntarily transfers property to his wife he does it by way of gift or settlement. This, however, is a mere presumption and is rebuttable if facts exist sufficient for the purpose. In my opinion, the facts do exist, and the presumption is rebutted, and a resulting trust has been established in favor of the husband.”

In this case the Court found that the husband had advanced the money for the payment of the property purchased and he indicated to the vendor that the premises should be conveyed to his wife with the arrangement between them that the same should be conveyed from her to her husband as soon as the same could conveniently be done.

The circumstances of the Stickle case above mentioned were somewhat similar to those under consideration in the case now before the Court. In this case it appears very clearly that the wife was not joining with the husband in the purchase of this property. There is perfect agreement between the husband and wife to the effect that the wife made these advancements to the husband to be used in the purchase of this particular property. It is very evident that the wife did not consider that she was a joint purchaser in the transaction. This is very evident from the testimony of both to the effect that the wife was to be repaid these moneys which she had advanced. It appears by the testimony of the wife throughout that she was anxious to recover these moneys as soon as possible. In fact, she says that the husband promised to repay the same when he sold his drug business. He admits his promise to repay and further testifies as to the attempt to settle with her at the office of Mr. Mills. It must, therefore, follow conclusively that the relation between the husband and wife when this property was purchased was that

of borrower and lender. She was not joining with him in a joint enterprise. He was not intending to make any advancement for her benefit nor was she expecting to secure any personal benefit. Apparently her sole anxiety, as said before, was to secure the money she and her mother were advancing and nothing more.

Furthermore, the fact that the wife attended at the office of Mr. Mills, the attorney for the husband, certainly corroborates the testimony of the husband in all essential particulars. At that time there was nothing as between the husband and wife which required the services of an attorney other than this particular matter of clearing up the claim of the wife as to her interest in the property arising out of the loan. There were no other claims made by her. The husband had sold the business, but she made no claims to that and, in fact, the Court below in this very suit has held she had no interest in his personal estate. Therefore the only occasion to attend at Mr. Mills' office was to clear up and settle her equitable claims against the premises arising out of the loans to her husband. After the husband had testified with respect to his attendance at the office of Mr. Mills with the moneys to repay the \$2,000 received originally from the mother and the \$500 advanced by the wife, she did not attempt to deny it, and although put on the stand again in rebuttal she never made any reference to this transaction in any way. It is clear, therefore, that the attendance at the office of Mr. Mills was for the purpose of effecting a settlement between the husband and wife with regard to the real estate. The wife does not deny the arrangements under which the moneys were advanced and she was made a grantee with the husband in the deed. She does not deny the original agreement that the husband should have the property solely upon repayment of the moneys advanced. When she is asked why she did not join in the conveyance prepared by Mr. Mills she simply states that she didn't think it was fair after putting in all the work in the store and in the household. The work she put in the store and the household had no direct bearing on this tran-

saction. As stated before, she made no claim upon the husband after the sale of the store for any moneys derived therefrom. She admits practically that she did not give their original agreement any consideration at all. On page 49 of the printed case, at line 25, she is asked on cross examination:

“You thought the work you had put in and the fact you were a wife was sufficient to overcome the agreement that you were merely to get out of the property what you had put into it?”

“A That was not taken into consideration at all.”

In no portion of her testimony does the complainant deny the circumstances under which the property was purchased and the occasion for making the deed run to the husband and wife as grantees. She surely did not intend to contribute anything toward the purchase and was always solicitous from her own testimony for every dollar that had gone into the premises coming from her or from her mother. She does not deny the testimony of her husband that the deed was made in this peculiar form for the purpose of her protection. She does not deny the attendance at Mr. Mills' office which could have been for no other purpose than settling the claim made by the wife.

Furthermore, the business of the husband was sold by him during the year 1918 (Case, p. 98, l. 35). The bill of complaint was filed apparently in April, 1921. At no time after the sale of the business and prior to the commencement of this suit for maintenance, did the complainant herein make any claim against the husband for any share in the rents, issues and profits of the real estate.

**II. There is no intention on the part of the husband to make an advancement to the wife.**

In the course of the opinion of the Court below the Court says:

“The purchase of the property at that time as tenants by the entirety seemed to indicate an intent, as I say, on the part of the husband, that the

wife should have the same interest in the real estate as he had." (Case, p. 128, l. 14.)

Further proceeding in the opinion of the Court says:

"It is only natural that the moneys that were earned from the store should be applied in reduction of the mortgage obligation on the property and for the support of the husband and wife and also for the payment of taxes and such other incidental charges as might be necessary in connection with the real estate."

In her complaint the complainant alleges that there is still a mortgage on the property for the sum of \$15,000. In his answer, however, the defendant denies that there is any such encumbrance now and that it does not exceed \$9,000. While the exact amount that has been paid off upon the encumbrances does not appear, yet it appears constantly through the case that defendant has made considerable payments on the liens and that these payments were made largely from the proceeds of the sale of the business above mentioned in December, 1918.

Although the complainant made claim to the personal estate of the husband, the Court below determined she had no interest therein. In the course of the opinion (Case, p. 127, l. 20) the Court says on this subject:

"As to the personal estate, I do not think there is sufficient proof to justify any claim on the part of the complainant that she is entitled to a joint interest with her husband in the personal property and her application for a receiver of the personal property will be denied."

With conditions in this plight it seems inequitable to give to the wife indirectly a benefit in the personal estate of the husband which she did not have directly. The Court has held that she had no interest in his personal estate. Yet when his personal property is used to reduce the mortgages on the real estate she is given the benefit of an interest in the personal estate by reason of the mere form of the deed by which the realty is held. In view of the uncontradicted evidence as to the relations of the parties at the purchase of the property, it is certainly

clear that there was no intention on the part of the husband to increase the interest of the wife in the property by his liquidation of the mortgage indebtedness.

**III. The appellant should not be charged with rent for the third floor of the premises.**

In addition to the grounds above urged, we respectfully submit that the appellant should not be charged with rent for the third floor of the premises. The complainant filed this bill primarily for separate maintenance. This relief was denied her. However, the relation of husband and wife still exists and it seems inequitable and unjust to hold the husband liable for rent of the third floor of the premises where the parties originally made their home. Evidently the complainant did not satisfy the Court that she had a just cause for separation from her husband and on this branch of the case relief was denied her.

**IV. The appellant is entitled to the relief sought and prayed for in his counter-claim.**

In view of the testimony presented in this case relative to the relations of the parties in the purchase of the property aforesaid, we respectfully submit that the appellant is entitled to the relief prayed for in his counter-claim and that upon payment to the complainant of the amount loaned with interest she may be decreed to convey to defendant or his appointee a good and valid conveyance for the premises.

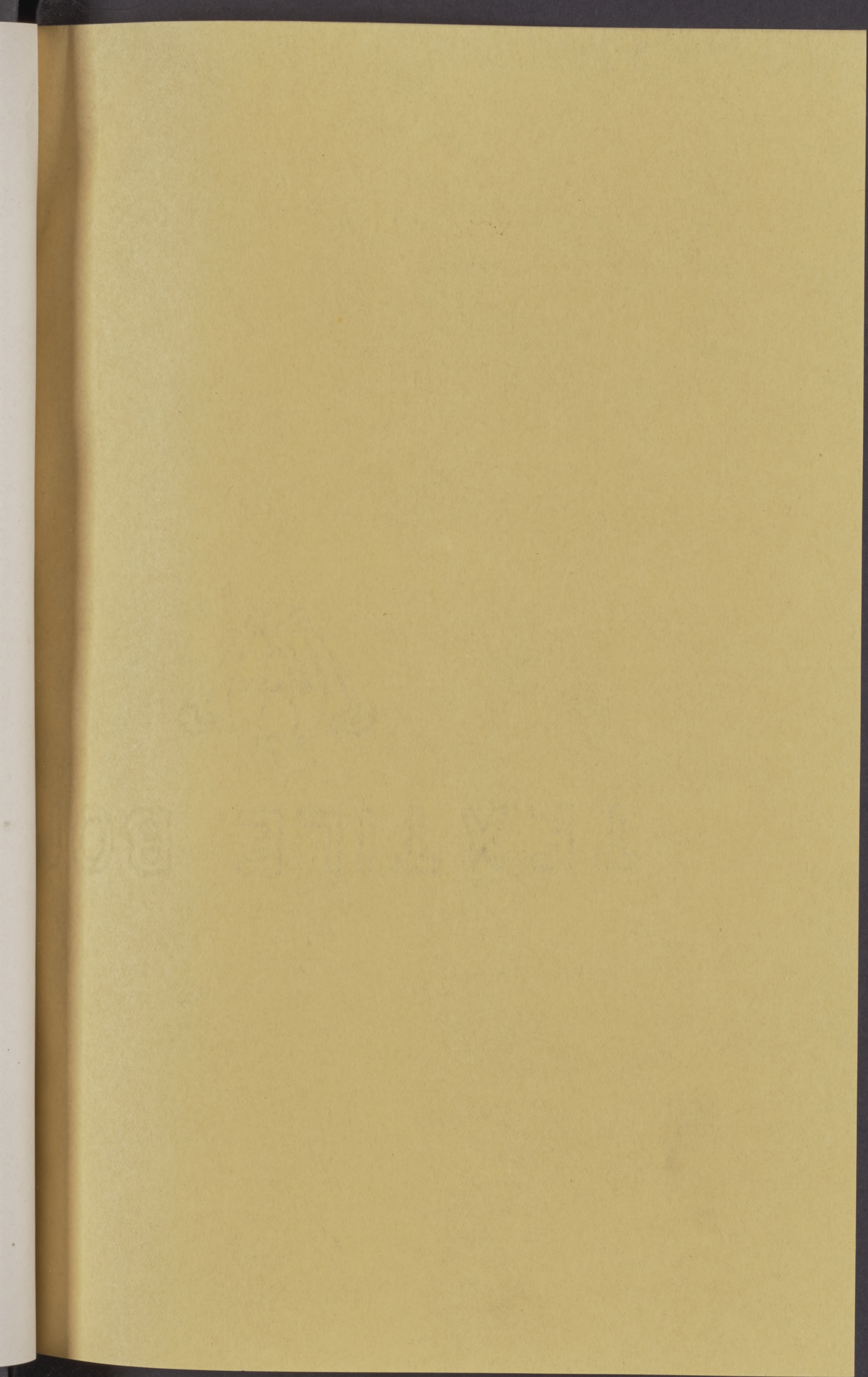
We respectfully submit, therefore, that the decree of the Court of Chancery in the particulars mentioned should be reversed and that the appellant should be granted the relief sought and prayed in his counter-claim.

Respectfully submitted,

LUM, TAMBLYN & COLYER,

*Solicitors for and of  
Counsel with Appellant.*

RALPH E. LUM,  
*Of Counsel.*



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LEXINGTON