

COURT OF ERRORS AND APPEALS OF
NEW JERSEY.

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Between)	
)	
JENNIE G. PROVOST,)	10
)	On Appeal from
Petitioner,)	Chancery.
(Appellant),)	On Petition
and)	for Divorce.
WINFIELD PROVOST,)	
)	
Defendant,)	
)	
(Respondent).)	20
)	
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BRIEF OF WILLIAM H. SPEER OF COUNSEL
WITH RESPONDENT.

This is an appeal from the Court of Chancery. The suit there was on petition for divorce filed by the wife charging a desertion by the husband on the seventh of March, nineteen hundred and three. The husband answered denying that he ever deserted his wife. After the taking of the proofs in open Court, Vice Chancellor Garrison advised a decree dismissing the petition. It is from this decree that the wife appeals. 30

The testimony taken upon the trial was very full, and for this reason it seems that it might aid the Court if a digest of that testimony were placed before it. Therefore, before proceeding to argue the law of the case, an endeavor will be made to set forth a resume of the testimony taken upon the trial. 40

The petitioner and defendant were married at the home of the petitioner's mother in Hackensack, by the Rev. Dr. Vanderwart, on the fourteenth day of October, 1897, (p. 20). They had met about two years before and had been engaged for about a year (p. 61, l. 19). About a month after their marriage, that is in November, 1897, they took up their residence in New York and resided there until May, 1898, when they came to Hackensack and lived at the home of the husband's parents, for the reason, as stated by the wife, that his father had lost his position and that the husband and wife lived with his parents for the support of those parents. They continued to live there until February, 1899, when, expecting the birth of their first child, they removed to the home of the wife's parent's, staying there about two months (p. 21), after which they returned to the house of the husband's parents and lived there until November, 1899. They then removed to a house which the wife says "was built for me. The two lots belonged to my mother and my aunt, and in order to get the lot (Mr. Provost had no money to pay for it at all) my mother accepted a note from him for \$400 to buy in her share, and then my father gave my aunt a note for \$700 to pay for her part; and that was the way he got the lot" (p. 22, l. 12 et fol.). The house was a two-family house, the upper portion thereof being rented for twenty dollars a month (p. 27, ll. 20-25). The premises were subject to two mortgages, the first for \$4,300, payable to the Building & Loan Association at the rate of forty-three dollars a month, and the second a mortgage of \$400 (p. 27, ll. 1-19). The furniture in the house was, at the time of the alleged desertion, March, 1903, mortgaged for \$225. The wife testified (p. 31, l. 22), that her husband, within a year or two prior to his leaving, was a very heavy drinker (p. 31, l. 24). She went on to testify that he was intoxicated on the Fourth of July, 1900, (p. 35, l. 20 et

fol.), and had been intoxicated on one occasion previously in January, 1900, and also on another occasion, concerning which petitioner says, "I haven't stopped to think of the year" (p. 37, l. 8), also of an occasion on Christmas Day, 1902. She states in a general way that he was intoxicated at other times, but does not state the times nor circumstances. She does, however, state (p. 223) that from the summer of 1901 until March, 1903, he would be intoxicated 10 some weeks every night and other weeks on two or three nights. The negro servant in the household of the petitioner and defendant testified that defendant "drank terribly" (p. 109, l. 2). Under cross examination this witness's testimony was entirely discredited (pp. 111-114). The Vice Chancellor at that time stated (p. 114, l. 27), "she assumed that when he was drunk he went to bed, and therefore she assumes that on other occasions when he went to bed without her seeing him he was drunk." The witness, Peter 20 C. Terhune, states that, on two occasions in 1902, he saw the defendant under the influence of liquor (p. 134-136). The effect which these happenings had on his wife's attitude of mind toward him is stated by her (p. 60) and is that she had lost her love and affections for him the first time she saw him intoxicated, years prior to his leaving her, and this seems to have been true for her husband testified that she was seldom home when he returned from work (p. 191, l. 25). 30

The husband testifies (p. 152, l. 3), that at the time of his marriage his salary was twelve hundred dollars, and at the time when he built the house on Atlantic street it was about eighteen hundred dollars. That in the following year his salary remained about the same. He also testified (p. 153, l. 3), that he made during these years, on an average, about three hundred dollars in addition to his salary. He further testified (p. 156, l. 13) that he lost about \$150 in 1902 in endeavoring to put a whistle on the market, 40

and that in 1902 a good portion of his money was spent upon his associates outside of his family (p. 156, l. 20, et fol.), and that a very small amount of his income was spent in gambling. Subsequently thereto and before the alleged desertion he was receiving a salary of \$2,000. It further appears that at the time when defendant left petitioner he was considerably in debt, over and above his liabilities on their
 10 mortgages. It further appears that at some day before the first of March, 1903, the manager of the department of the Mutual Life Insurance Company, where he was employed, commented to him upon his habit of drinking.

Such was the situation of the parties at the first of March 1903. On the third of that March the defendant received by the noon mail (p. 138, l. 2 et fol.) a letter from the Mutual Life Insurance Company of New York notifying him "that he need not come
 20 back" (p. 23, l. 11) and enclosing a check for \$400. The husband admits (p. 154, l. 13) that he "guessed" that his drinking was the cause of his losing his position, but denied that he had had any prior warning that he would be discharged (p. 155). His wife handed him this letter in the dining room and, according to her testimony he went into the bed room and read it, and (p. 23, ll. 10-30), came back to her and said, "Jen, it has come"; and she said, "What has come?" "Why, what do you mean?" and he
 30 said, "Why, this letter from the office." He then handed her the letter and showed her the check (p. 23, l. 30; p. 138, l. 11). He says that nothing was said on that day concerning his going away (p. 138, ll. 13-19). She says that it was on that day (p. 29, l. 29), and that he said: "Well, I am going South, I have always wanted the chance and now I am going" (p. 23, l. 34). And that she then "told him he simply could not go South, and that she could not let that furniture go; and he would not hear of anything
 40 else." The next thing that happened, so far as the

testimony shows, is that she on that same day, "went to see his manager but they would not take him back," (p. 28, ll. 8, 9). "On the next day" (says the defendant, p. 138, l. 23 et fol.) "I told her I was going down to South Carolina because I had a friend down there who was in the tobacco and cotton raising business and I thought I might be able to obtain something similar to do at that place." Q. "What did your wife say to that proposition on your part?" ¹⁰

A. Well, she didn't wish me to go there. She spoke about taking this trip to South America," (previously referred to in the testimony), "on one of the boats from her brother's company, which would take two months to go and return. Q. Why didn't you take that trip to South America on the boat? A. I knew I could not obtain, or have any opportunity of obtaining a position if I was on board a boat going to South America; that there were better opportunities in the South than there would be on a boat. Q. ²⁰

What was your intention in going South? A. Well, I went South to recuperate and also try and obtain a position. Q. Did you tell your wife that? A. I did. Q. Was she willing that you should go South? A. She seemed to be, only she would rather have me go aboard the boat, as she claimed I could save all that unnecessary expense, as she said it was. Q. Did you ever at any time, Mr. Provost, leave your wife with the intention of deserting her? Mr. ³⁰

MACKAY: I object. I think that is too leading to be allowed. The VICE CHANCELLOR: I will permit the question. A. No." The petitioner places this conversation on the following day (p. 29, ll. 15, 16). Her version of the conversation will be found on (p. 56, l. 35 et fol.): "Q. Mrs. Provost, while you were describing the leaving and leave-taking of your husband to go South you said he was going to South America, and then you corrected yourself—do you know what prompted that slip? A. Yes. Q. Just explain to the Court, will you, what brought that to ⁴⁰

your mind and what prompted that? A. I will. When he first talked about going, after I had talked with him and pleaded with him not to go and leave me, why it occurred to me that my brother was connected with a shipping company and he could often get trips for friends of his, and if such a thing was possible—since he insisted upon going South—if there was a boat going on a very short trip, as they

10 sometimes do, we might be able to let him take a short trip, and then I could keep my home; our home wouldn't have to be broken up. Q. That is what you advised, in fact, wasn't it? A. That is what I advised. But we found there was not a single boat going on a short trip; they were all going to South America. Then, of course, we did not consider it at all. Q. Well, didn't you, as a matter of fact, advise that he should take this South American trip, it

20 being a long trip, so that he might pull himself together and improve his nervous condition? A. No. I never advised that he should take the South American trip. I advised, if there was a boat going on a short trip, then he might do it; but never the South American trip, because I knew that would leave me for months. Q. Well, what was your idea in advising him to take a trip on a boat? A. Simply because he insisted upon going South and I thought he could get a short trip in that way, and it would not be any

30 expense to him at all, and I could keep my home. My object was to keep my home. Q. Was that the only object you had? A. Yes; that is the only object I had. Q. And the question of expense to him? A. Yes. Well, of course, if we had that \$400 don't you see we could have started— Q. (Interrupting.) Then his physical, mental and nervous condition at this time was not such as entered into your plans for him at all? A. Well, I thought if he could get on a boat that my brother was interested in we could let the captain know, and he might be able to prevent

40 him from getting anything to drink. Q. Then the

question of the expense did not, after all, enter into it so much, did it? A. Well, they all three entered in. Q. All three? A. All three, but of course my home was the first thing, the first consideration. Q. That, of course, was on account of your children? A. Well, and myself."

In this connection it is relevant to note that the wife's witness, Charles Fleischman, testified (p. 103, 10 l. 31), that the defendant "told me he was going to buy a plantation down South and I would never see him again, or something like that"—this was—"probably three or four days before he went South." This matter of buying the plantation is further involved in the testimony which will soon be considered. The brother of the wife also testifies (p. 90-28) that he had a conversation with the husband within two days of his departure and that "he" (the husband) "said he was going South, not knowing 20 when he was going to return. He was going to South Carolina, he told me; I think it was South Carolina." The maid servant testifies (pg. 116, l. 24 et fol.) that the wife told her several days before the husband left, that he was going to leave, was going away on a trip.

There was one other series of events, of great importance, which took place between the time when the husband received notice that he had lost his position and the time when he left for South Carolina, 30 and they relate to the disposition which he made of what little property he had. Of the proceeds of the \$400 check, which he received from the insurance company, he gave half to his wife (p. 25, l. 13), he turned over all his interest in his real estate and in the building and loan association, to his wife's brother, Albert Moore, Jr., (p. 26-27; pg. 90), who says that the husband sent for him by messenger for that purpose (p. 89, l. 32). The wife says that if he hadn't done so it would have been lost (p. 27, l. 16). 40

The consideration which Moore claims he gave for this transfer was the assumption of various liabilities of the husband. The wife says (p. 26, l. 32) that the title to the property stood in the names of both the husband and wife. It may be noted in passing that the most tangible result of this operation was to protect the wife's interest in the property from being cut off, together with the husband's, by foreclosure, or involved by sale under execution on judgments against the husband. And that the husband was not seeking his own advantage is obvious from the fact that, from the testimony of Mr. Moore (p. 99, l. 22-25), it appears that Mr. Moore claims to hold the property as his own property, free from any claim on behalf of the other members of his family. And it is further to be noted that the liabilities assumed were either direct charges upon the wife's interest in the property or were due to her mother or sister (pg. 20 96, l. 32 et fol.). A further act of the husband was to turn over to his wife the little business which he had worked up as a solicitor of insurance, and he, while South, by letter (p. 253), and after his return by personal advice (p. 149, l. 10 et fol.), aided her in getting the renewals of the policies which he had already written.

Such were the events which led up to the departure of the husband and his leave-taking from his wife on the seventh of March, 1903, at about three 30 o'clock in the afternoon. Two witnesses testify to this event, namely the wife, and the servant. The leave-taking took place in the dining room which was also their living room, (p. 30, l. 14). The wife says (p. 28, l. 12 et fol.), "Well, I was very much upset, of course; I was crying a good part of the day, I remember that distinctly; and he came and kissed me good-bye, and I asked him, I said, 'When will I ever see you again?' and he said, 'I don't know'; and he kissed Reginald good-bye, and he said, 'I don't 40 know when I will ever see you again.'" Q. What

did you say—anything? A. I simply said “Good-bye,” as far as I remember * * * I was crying so and I felt so terribly.” And on page 30 at line 30 we have this testimony from the wife. “A. Why, he said good-bye, he was going; and I asked him when he was coming back, and he said he didn’t know, he couldn’t tell when he would ever come back; and he kissed Reginald, he kissed him twice, and he said, ‘I don’t know when I will ever see him again.’ * * * 10
 “A. He said he was going to Darlington, I think was the name of the place, right near Florence I know he mentioned the two places, Darlington and Florence.” The servant girl testifies that she was standing by the doorway and the wife had the baby on her lap and was crying and did not have very much to say until he got ready to get up to go and he said to her “Good-bye, Jen, I am going,” and he kissed her and he kissed the little boy; and she asked him when he was coming back, and he says, “I don’t know when I 20
 am coming back,” and between her sobs he said good-bye,” and he went out and she watched him, from the dining room window, go (p. 109, l. 28; p. 110, l. 19). The husband did not say good-bye to his mother, because he felt too bad about losing his position and so forth. He left word that he would write to her, and did so the next night from Florence (p. 175, ll. 15-28). He seems to have left this word with his wife, for she went and told his mother about his having gone (p. 206, ll. 1-10). 30

Thereafter and up to the time of her husband’s return from the South, the wife continued regularly to take Sunday dinner with her mother-in-law and brought the children to see her (p. 206, l. 22 et fol.). During the time while the husband was South, the wife moved out of their house and went with the children to the home of her parents. The husband wrote his wife from Florence the next night of his departure and continued to write to her every day or two thereafter (p. 141, l. 5, et fol.). The letters from 40

the husband to the wife, covering this period, were not produced, although called for by the husband at the trial. The husband went from Florence to Darlington, in which neighborhood he remained until about the 4th day of April, 1903, that is less than a month (p. 144, l. 27 and 33), when he telegraphed to his wife that he was "on his way home" (p. 128, l. 32). He also telegraphed¹⁰ to the same effect to his parents (p. 144, l. 18 et fol.). He then returned to Hackensack and went first to the home of his wife's parents where his wife was residing (p. 145, l. 1). Before stating what happened after his return, I shall state briefly the contents of the letters as given by the evidence. She says that he wrote that he was doing better with his drinking (p. 65, l. 11), and he says that he looked about for a plantation and (p. 204, l. 15 et fol.) wrote and "asked her if I got a plantation about 25 or 50²⁰ acres of ground there, and worked it on shares, as they do when they start in, if she would care to come South and live, as you had to work while working these plantations" (p. 203, l. 10 et fol.). He further says "I wouldn't take it" (the plantation) "unless I knew she would consent to come there" (p. 204, l. 24). This is all the direct evidence there is as to what was contained in his letters to her. Her letters to him during the period while he was South will be found upon pages 237 to 242 inclusive, and upon³⁰ pages 253 to 264 inclusive. It would not be profitable to attempt to digest these letters, as it is only by taking them as a whole that the mental attitude of the wife can be plainly seen. They show that she was taking the keenest interest in what her husband was doing and attempting to do in the South, that she hoped he would get a position there, and that she wrote to him in a manner, the only reasonable interpretation of which is that their fortunes were still interdependent—in short in a manner entirely nega-⁴⁰ tivating the idea that she at that time thought or even

had a suspicion that he intended to desert her. She says in her testimony (p. 59, l. 5), that she wrote to him simply for the purpose of encouraging him, and (p. 62, l. 9) that when he had gone away she never expected to see him again. Coming down to the time when the husband returned to Hackensack, we find that he first stopped at the house of his wife's parents to see his wife (p. 145, l. 1). She was at that time in New York with her oldest son. The young-¹⁰ est son was asleep. The father was met by his sister-in-law who stated these facts to him. He left word for his wife and requested that the younger son be brought to the home of his mother the next morning (p. 145, l. 22). His sister-in-law denies this request, but states that she did bring the son (p. 130, l. 22 et fol.). The wife returned on Monday afternoon, and on Monday night called at the house where her husband was staying with his parents (p. 145, l. 30). He says in his testimony that he was out when she called,²⁰ but came in a few minutes later, and then he says: "And when I came in, she says to me, 'What are you doing home so soon?' I said, 'How long did you expect me to stay away?' She said 'I expected you to stay away a year or two anyway'" (p. 145, l. 34 et fol.). The husband's sister was present at this conversation and she gave this version of it (p. 219, l. 16 et fol.). "A. Well, it was all just as he came in. He was not at home when she came there, and he came³⁰ in and she greeted him, and said, 'Why, are you home?' And he says, 'Yes; why, how long did you expect me to stay away?' 'Why,' she says, 'for a year or two, at least'" (p. 220, l. 14). "A. That was all there was of that. It was a general conversation after that." The wife states (p. 57, l. 8 et fol.), that she did not wish her husband to go South, but that (pp. 65 and 66), when she heard from the South that he was doing better with his drinking she wished him to stay there until he had stopped entirely. This is probably the explanation of her remarks at the time ⁴⁰

of the meeting last referred to. She however, (p. 221, ll. 20-25), denied having made any such remarks. From that time, that is about the 4th day of April, 1903, until the 8th day of September of that year, the husband and wife met frequently. The wife testifies that her purpose in these meetings except the first was to consult her husband concerning the insurance business which he had turned over to her
¹⁰ when he went South, (p. 53), and concerning a note which her father had endorsed for his accommodation and which had been renewed about the seventh day of that month. As to her first call on him, she says she went to see him "for nothing at all, just to see him" (p. 50, l. 10). Of these conversations only one of them, with the exception of the first, appears to have been overheard by any person and that person is the husband's mother. She states on (p. 209, l. 4), "A. He asked
²⁰ her if she would be willing to come and live with him if he could get a position and do the best he could and get his debts paid; and she said it would take him a long time; she says, 'It will take you a long time for that?' 'Well,' he says, 'Of course it will take some time,' and I didn't listen to anything more as I was passing back and forth. But she did not give him one bit of encouragement and I felt badly and I thought to myself—" His mother also testified that after April 1st, 1903, "I said to her,
³⁰ don't you expect ever to live with him again? and she said, I don't know, I am a great deal happier as I am," (p. 209, l. 25). These three conversations seem to be all that are shown in the testimony after the return of the husband save the conversations between the husband and the wife when no one else was present. These conversations took place almost uniformly when the husband was seeing the wife either home or to her sisters after she had been to visit him to consult him on the insurance business.
⁴⁰ (p. 49, l. 10), and he states (p. 146, l. 25), that at the

time of the first call he offered to see her home and she said that she did not want him to.

The substance of these conversations was, as testified to by the husband that he asked her to come and stay one night with him at the home of his parents, (p. 147, l. 18), that subsequently he asked her to come and live with him at the home of his parents, (p. 150, l. 6; p. 151, l. 14), and that her uniform reply was that she would not live with him again until he had paid all his debts and could furnish a home such as they had had before, (p. 148, l. 26). These conversations continued until about the seventh of September, 1903, when they ceased, (p. 149, l. 26). The husband did endeavor to pay his debts, (p. 162, l. 27), but he was handicapped by the fact that his income was small and precarious, he then being at work on a commission basis, and by his being obliged to pay board to his parents, who, as has been shown before were not in good circumstances. His mother testifies that when he had money to pay board she got it, and when he had not she went without.

Such are, in brief, the facts testified to upon the hearing. That the husband left the wife and remained away for a month, less three days, is not denied. But to contend that he departed for the South and remained there with the intention of deserting her, is, in the face of the testimony, ridiculous. That a man who intended to desert his wife should give her half his ready cash and dispose of all his other property to her brother so as to protect her interests, should tell her where he was going and why, and should kiss her good-bye and should write to her almost daily during his absence telling her his improvement in the matter of drinking and asking if she would come to him if he could get the plantation for which he was looking—that a man with such intentions should then telegraph to his

wife that he was "on his way home," and should upon his return call at the house where he knew her to be living before going even to the home of his parents—that a man should do such things and yet have such an intention is not to be thought. The wife seems to recognize this for when asked, "what was the cause of his leaving on March 7th, 1903" she answered, "Well, he lost his position." I do not
 10 therefore, think that such a contention will be urged upon this Court and therefore shall proceed upon the basis that no desertion occurred at the time set forth in the petition.

There was, however, at the time when the petitioner was putting in her testimony in rebuttal, an apparent shift of ground to the position that the desertion took place after his return and took the form of failure to provide a home for her. The answer to this proposition is two-fold; first that is not
 20 the desertion charged in the petition and second that the reason why he did not contribute to her support was because she refused to allow him to do so until he had paid all his bills, which he was in the process of doing at the time.

But there is a decisive answer to the petitioners claim of a desertion after the return of the husband. She did not desire, nor would she consent to cohabit with him. She refused to come to his mothers
 30 house and spend the night with him. She refused to live with him at all, save on condition of his paying his debts and providing a home such as they had had before he lost his position. She refused him that very element of wedlock the deprivation of which Lord Pensance, (in *Yeatman v. Yeatman* cited by Pitney J. in *Foote v. Foote*, 65 Atl. 207) stated to constitute the central element of desertion. Can it be said that his failure, through lack of ability, to comply with the conditions which she imposed, amounted to a continued wilful and obstinate deser-
 40 tion. He offered her such support as he could give

—he could do no more. But let us look at this situation from another point of view. Suppose the wife, whose mind, at the time when she heard of her husband's loss of employment and that he contemplated going away, revealed itself in the remark—“I told him he simply could not go and I could not let that furniture go;” and who stated to his mother, after his return from the South, that she did not know whether she would live with him again—that 10 she was a great deal happier as she was,—suppose a woman in that frame of mind should conclude to place conditions on her husband, a little more onerous than she thought he could perform, with the purpose of claiming that he had deserted her; would any Court permit her to succeed in such a claim? To do so would be to hold that marriages are, for better, not worse; for richer, not for poorer. And yet the state of affairs supposed is fairly deducible 20 from the testimony.

There is, to put it shortly, a conclusive reason why this appeal should be dismissed, and it is that the wife did not desire to live with and renew the marriage relations with her husband. This is fully evidenced by the fact of her refusal to come and stay with him at his mother's house, and by her placing upon him conditions precedent to a renewal of the marriage relation which must have then appeared, even to her, obviously impossible of performance by him. This brings the case well within the rule of 30 *McAllister v. McAllister*, (62 Atl., 1131) and *Currier v. Currier*, (68 N. J. Eq., 7) (affirmed 68 N. J. Eq. 797). This state of affairs clearly distinguishes the present case from the cases of *Foote v. Foote*, (65 Atl. 204), *Grady v. Grady* (64 Atl. 440), and *Coe v. Coe*, (68 N. J. Eq., 157), which cases I understand will be relied upon by the appellant.

Respectfully submitted,

WILLIAM H. SPEER.

Solicitor for and of Counsel

with Respondent. 40

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History of the Case.

The appellant was married to the respondent October fourteenth, eighteen hundred and ninety-seven, at Hackensack, New Jersey, and, after residing in New York City for a short time, they returned to Hackensack, and resided with the respondent's mother from May, 1898, until February, 1899, and from thence to their own home on Atlantic street, Hackensack. The lot on which the house is built was purchased from the appellant's aunt, and was paid for by giving a note for four hundred dollars from the appellant's mother, and the appellant's father gave a note to the former owner of the property for seven hundred dollars. The money to build the house was obtained from the Hackensack Building and Loan Association. The respondent, at that time, was employed by the Mutual Life Insurance Company, of New York, and was earning a salary and commission which, at the time of the desertion, amounted to between two thousand and twenty-three hundred dollars.

The respondent, two or years prior to the desertion, indulged in the frequent use of intoxicating liquors, until a year prior to the desertion it became a confirmed habit, and he was continually under the influence of intoxicating liquors to such an extent that the Mutual Life Insurance Company finally discharged him. Prior to his discharge, he had mortgaged the furniture in his home for the sum of one hundred and ninety-five dollars, mortgaged his mother's personal property, placed a second mortgage of four hundred dollars on the home of the respondent and appellant, which mortgage was held by a Mr. Herman Abbenseth, the proprietor ~~to~~ of

the Susquehanna Cafe. In addition to this, he had become heavily indebted to various tradespeople in town and had failed to pay the Building and Loan dues for five months preceding the day of his desertion, while he had also collected the rent from the tenants who occupied his house for a period of five months, amounting to the sum of 100 dollars, prior to his desertion.

That his intention was to desert his wife, is evidenced not only by the testimony of his wife, page 27, line 30, and page 30, line 10, &c., but her testimony is corroborated by that of Charles Fleischmann, page 103, line 30. three days prior to his leaving on March 7, 1903, in which he stated to this friend and hail-fellow-well-met, at the Susquehanna Hotel, and on which occasion he had been drinking to excess, "He to'd me he was going to buy a plantation down South and I would never see him again, or something like that, three or four days before. He bid me good-bye and shook hands with me."

The appellant's testimony is fully corroborated by the statement of Mrs. Arthur Rose, who was employed by the appellant and respondent, and who was there on the day of the desertion, March 7, 1903, and saw what happened. She says, commencing on page 109, line 27: "I was standing by the dining room door, and of course I didn't have very much to say, because Miss Jennie had the baby on her lap, sitting by the table and crying. and she didn't have very much to say until he got ready to get up to go—up to go, I mean; and he said to her, 'Good-bye, Jennie, I am going,' and he kissed her and he kissed the little boy, and she asked him when he was coming back, and he said: 'I don't know when I am coming back,' and between her sobs he said, 'Good-bye.' The he went

out, and she watched him from the dining room window." -

It is also in evidence that after he left his wife he wrote to her from the South, and she wrote to him. Her first letter is dated March 13, 1903, six days after the desertion. The second letter is dated March 15, 1903; her third letter March 22, 1903, and her fourth letter March 23rd, 1903; the next, the fifth, March 27th, 1903, and they are just the kind of letters that a kind, affectionate and loving wife would write to her husband under the circumstances in order to win him back and change his ideas, even though he had left her in a sad plight financially, and even though he had been at fault in drinking to excess and losing his position.

On the day in question—March 7, 1903—he says, page 176, line 5, "I had four hundred dollars. I gave her two hundred and kept two hundred, and I told her to pay the bills." She testifies—and it is not contradicted—that she spent the two hundred dollars in the following manner, viz., page 23, line 14, and 25, line 12 and 26, line 10, etc.: "I paid one hundred dollars on a note which he had in the bank, as he directed me; I paid Mary E. Provost, his mother, fifteen dollars; Mabie and Maidment, for a claim of O'Neill, four dollars and sixty-six cents; Van Houten and Sherywood, for insurance premiums (that Mr. Provost had collected and had not paid), forty-four dollars and twenty-one cents; the Hackensack Water Company, two dollars and eighty cents; the Gas and Electric Light Company, six dollars and forty-four cents; a servant girl, ten dollars; two dollars and fifty-seven cents overdrawn on Mr. Provost's account, and then I had to sell the furniture for what I could get for it, and father loaned me the balance to pay

off the mortgage on it—one hundred and ninety-five dollars.” So that the two hundred dollars which he left was entirely used in paying his bills, and she had to borrow from her father and she had to return to her father’s home.

It is very evident from this testimony that the respondent left his wife in a cowardly manner for the purpose of shirking all his responsibility and allowing his wife and children to shift for themselves as best they could while he, with two hundred dollars in his pocket, took a trip to South Carolina. In his cross-examination he admits, page 176, line 10, that he only bought a single ticket, that he did not secure any employment down South, and that he spent his time shooting game and he had no money or prospect to purchase a plantation, and that he sent a telegram to his wife a month later that he was coming home.

Miss Bessie Moore, a sister of the appellant, speaks about the telegram and of his return on page 127, line 5: “It was on Saturday night, the Saturday before Easter. Mrs. Winfield Provost was not at home, it was about one o’clock in the morning. Mrs. Provost was in New York, and did not return until the following Monday or Tuesday,” and she says that she never saw Winfield Provost again at her home, where the appellant was staying, and that she is home almost all the time. She knew that he had sent a telegram, but did not expect him at her home. She went to the door in response to the ringing of the bell. The other members of the family had retired. The telegram was opened by Miss Bessie Moore by mistake, and it stated, “Am on my way home,” and the following conversation occurred, “He said, ‘Didn’t you expect me?’ and I said, ‘No:’ then he asked me where my sister was, and I said she was in New York, and then he said,

‘I am going to return South in two weeks.’” Q. “Did he ask about the children?” (page 129, line 29), A. “I don’t think he did, I think I volunteered the information that Reginald was with her, and that I was weaning Donald and he was asleep.” Q. “Did Mr. Provost then ask to see the son?” (page 130, line 5,) A. “He did not.” Q. “Was there any request by him in regard to this child?” A. “Not any at all.” (And on page 125, line 22): Q. “Did you ever see Mr. Provost again at your home?” A. “Never.” Q. “Are you at home or not during the day and evening?” A. “I am at home almost all the time.”

His wife still hoping, saw him immediately upon her return, and testifies, on page 49, line 18, and page 62, line 12:

Q. “Do you recall the conversation which you had with him in his mother’s home a month or so later; that is to say, the first time you saw him after his return from the South?”

A. “Well, partly.”

Q. “Well, will you repeat that part of the conversation which you remember?”

A. “Why, he was telling us about his trip South, about the time he had, the shooting he had, and he spoke about the flowers, I remember that particularly, and he spoke about the people that he lived with.”

Q. “Well, what did you say to him?”

A. “I really don’t remember, there was no reference made to my coming there to live, or anything like that; I know that distinctly.”

Q. “Did you in words express any surprise at being there?”

A. “Yes, I was very much surprised.”

Q. “For the purpose of refreshing your memory. I ask you if you did not say to him, ‘What, are

you home? I did not expect you home for a year.'"

A. "No, I never made a remark like that."

Q. "Nor words to that effect?"

A. "No."

Q. "Nor words specifying the time you expected him home, or any length of time you expected him to stay away?"

A. "No."

And afterwards, on being asked if she felt any pleasure on his return or any displeasure, she answered: "Yes," as to the latter and "No" as to the former; and finally, after analysis on a strict cross-examination in which she was asked as to her feelings on the particular day in question, more than two years previous, the conclusion she reached was that she felt displeased, because she feared that he would resume his old associations and continue his former habits, and she had every reason to believe, from what she must have heard from her sister, Miss Bessie, that he had been drinking heavily the night he returned, and it must have been only too evident that there was no reformation. But she says, on page 67, line 4, "I was always in hopes that he would reform so that in time we might have a home of our own." During the time that he was away she had hopes of reformation, and again on cross-examination, she was asked, on page 67, line 19: "Now, then, has your husband since his return from the South never asked you to come and live with him?" A. "Never, except in one letter, and I accepted his offer."

At this point it is well to read her correspondence with him, which correspondence commenced more than two years after his desertion of March 7, 1903, to wit, May 1, 1905, in answer to his letter of April 8th, 1905 (Exhibit P 7), page 245, in which he admits his faults (which were too widely

known to deny), and in which he says, "If you will only give me one more year to redeem myself," and in which he states that it was through speculation that he was driven to drink, and lost his occupation; while in his testimony on cross-examination, page 156, line 7, he admits that the only speculation he ever engaged in was in relation to the invention of a whistle in which he invested one hundred and fifty or one hundred and sixty dollars. His expression of remorse at this time and in the subsequent letter came at a very late date, after the expiration of two years, when during all that time he had failed to contribute anything for the support of his wife or children; failed to correspond with her; failed to call upon her; failed to have any one come and intercede for him; failed to give any evidence of a reformation and of the sincerity of purpose, and admits on cross-examination, page 163, line 20, to 165, line 35:

Q. "I understand, Mr. Provost, that you offered your wife a home with you on the corner of Essex and Hudson streets, is that so?"

A. "I did, on the corner of Main and Hudson streets."

Q. "And that conversation occurred in the dining room at your mother's home after your return from the South?"

A. "I won't say positively it was in the dining room."

Q. "Well, where did it occur?"

A. "I think it occurred on the walk from the home of her sister."

(Note the contradiction at this point between his testimony and that of his mother, Mary E. Provost, page 208, line 17, in which she states, "Once I remembered of having a conversation, at other times

it was merely on business that I ever saw them together.”)

Q. “Now, you were asked whether you had ever been present while those people talked together?”

A. “Yes.”

Q. “When was this one conversation?”

A. “At my home.”

Q. “In what room were Mr. and Mrs. Provost?”

A. “In the dining room.”

Q. “Where were you?”

A. “I was passing through the dining room and kitchen.”

Q. “What was said that you heard?”

A. “He asked her if she would be willing to come and live with him if he could get a position and do the best he could, and get his debts paid, and she said it would take a long time: she says, ‘It will take you a long time for that, won’t it?’ ‘Well,’ he says, ‘of course it will take some time,’ and I didn’t listen to anything more.”

This over-zealous mother does not agree with her son, who states on page 164, line 20, “I think it occurred during the walk from the home to her sister’s.”

Q. “Well, what conversation did you have—”

A. “I asked her if she was going to live with me again.”

Q. “Where?”

A. “Well, there was no place specified that time; my idea (mark you, his idea) was at my home, my mother’s home.”

Q. "But you didn't express that it was, that it was your mother's home?"

A. "I asked her if she was ever going to live with me again; I didn't say where, she didn't ask where." 164, line 8.

Q. "Then you never offered her a home in any particular place?"

A. "I did afterwards."

Q. "Where?"

A. "At her mother's home."

(At this point witness again contradicts his former testimony).

Q. "When did the conversation occur in which you offered her a home at your mother's?"

A. "As I said before, that was on the walk between my mother's home and her sister's."

Q. "Well, why did you say in your letter of May 10th, 1905, 'I think it would be better to locate outside of Hackensack?'"

A. "Because that was always her desire."

Q. "Wasn't it because it was impossible for you to agree with your wife at your mother's home?"

A. "No, sir."

Q. Page 165, line 31. "Outside of that letter where you do not locate any exact place, did you have any place in mind?"

A. "No place in particular."

Altogether, although he has endeavored to show that he was employed during the two years during the desertion, and although it is impossible to get any figures from him as to the amount of his earnings, as is shown by his cross-examination, yet he testifies, page 168, line 11, that the only bills he paid amounted in all to about fifteen dollars or less, and yet he flatly contradicts himself by a letter written December 15, 1904, to C. B. Demarest, a

grocer in Hackensack, marked Exhibit D 6, page 265, in which he states: "As you no doubt know, I have been out of employment going on two years, but expect a position the first of the year and will then pay the bill as soon as possible. I am very sorry it has stood as long as it has. When I went away I left enough money with my wife to settle all bills of the tradespeople; (did he?); the money was used for something else, and all bills returned to me unpaid. However, it was all brought about by my own folly, and as soon as I get a position you and every one else will be paid with interest. Trusting you can wait until then, I am, very truly yours, Winfield Provost."

His only intent in writing the letters, over two years after the desertion, is plainly evident that it was not in order that he could have his wife live with him again, not that he was sincere in any of the statements in his letter that he left her, but his real intent, the real Mr. Provost, is summed up in the letter of September 7, 1904, Exhibit P 11: "I shall never give up the children, though; I will fight for them until the day I die. And I will say right now that I want Donald to come around more oftener than he has, and even if you do support and clothe them you have no more say than I until the law so orders." First he pleads, then he begs, then he prevaricates, and finally he threatens, and on cross-examination, page 190, line 4, he answers this way:

Q. "How many times in all, Mr. Provost, did you see her to talk to her after your return from the South?"

A. "Probably twenty-five times."

Q. "And always in walks from your mother's home to Dr. Conrad's, on Essex street?"

A. "Yes."

Q. "And on none of these occasions were any witnesses present to hear your offer?"

A. "In my mother's home?"

Although he had previously contradicted himself on this point.

Q. "Who?"

A. "Well, I guess my sister."

Q. "That was the one occasion you spoke of before, or not?"

A. That is all I know; there might have been others."

Q. "Was that the occasion when your mother and sister were present, and you made the offer before them?"

A. "Some time in April, 1903, I believe; I don't know the exact date."

Q. "Afternoon or evening?"

A. "Evening,

Q. "How was it made; who started the conversation?"

A. "I asked her if she was going to live with me."

Q. "Yes, go ahead; tell the whole conversation."

A. "And she said no; she was not going to live with me until I could furnish a home and pay all my debts—a home like she had—that she had left; and I told her it would take a long while before I could get a home ready, and if she was willing and could live ordinarily on what I could make then—

Q. "Go on."

A. "Further than that, I have forgotten what the conversation went into."

And on page 191, line 6:

Q. "That was the only occasion you made such an offer before anybody?"

A. "That is all."

Q. "You went South, Mr. Provost, and you knew the calamity that was going to befall you, and you were aware of the fact that you had lost your position; didn't you request your wife to go over to her father's and ask him if he would not provide for her and support the children?"

A. "No."

Q. "What did you expect your wife to do after you were gone?"

A. "Why, she told me a good many times that she was going home and to stay home."

Following this, he launches into an abuse of his wife as a housekeeper, which is not corroborated, and which is apparently denied by the appellant on page²²², line—, and by Mrs. Arthur Rose in her cross-examination, page¹¹⁵, line⁴⁸³⁰—. Following this, he admits that all he has bought for his children since the desertion, is one suit of clothes for each of them, and a bicycle for the older boy after the divorce suit was commenced.

And his *uncorroborated* but *contradicted* testimony as to the number of times he tried to see his wife, page 179, line 19, is "twice."

And he is silent as to when, where or how.

Review of Vice-Chancellor Garrison's Conclusions.

The Vice-Chancellor rendered a decision at the second hearing, without argument or examination of the correspondence, and the conclusions and decree were filed later. In formulating the conclusions, the Vice-Chancellor cites *McAllister vs. McAllister*, 62 Atl. Rep., page 1131:

This cause was tried *ex parte*, and the Master to who the cause was referred reached the conclusion

that a desertion was thereby proved, but Chancellor Magie concluded otherwise. This case is not parallel, nor does it in any way bear upon the case in bar. In giving his opinion, Chancellor Magie says: "The marriage was clandestine, under an agreement by each not to publicly disclose the fact, which was violated by the wife when she heard the husband was paying attention to another woman. She made a disclosure of their marriage, and the husband then said that he would leave his parents' house." Of this there is corroboration, nor in any of the other evidence is there corroboration, and the Court properly stated that an agreement of married people to live separately is contrary to public policy. Further, the husband repudiated it and demanded a resumption of the marital relations. Such a demand must be accompanied by a bona-fide expression of willingness to live in the marital relation. The demand of the petitioner was simply for separation. This is an old principle, and was established in the case of *Reece vs. Reece*, 34 Equity, 32. "Where a husband and wife have never lived together, and the wife evinces a strong disinclination to live with her husband at all, and repulses his advances towards a reconciliation, their consequent separation held not to be desertion within the Divorce Act."

It is plainly evident from reading both of these cases, however, that the principle only applies to a clandestine marriage where the parties never lived together, and the wife or husband refused to have a reconciliation.

Review of Cases.

Upon an examination of the earlier cases, commencing with that of *Laing vs. Laing*, 21 Equity, 248, decided by Chancellor Zabriskie, it is very evi-

dent that at that time the Court had a strong aversion to granting a divorce, and the extreme rule was laid down that "Improvvidence and gross intemperance on the part of the husband and the failure to support his wife, may justify her in leaving him, but do not amount to the extreme cruelty that would justify a divorce a mensa et thoro; much less will they convert her leaving into a desertion by him so as to entitle her to a divorce for it."

However, this action was brought by the wife against the husband where she was compelled to leave because of some misconduct on his part, and the Court stated that such compulsory leaving must not be because of habitual drunkenness, or because of bad temper, or because of intemperance, or because his nature is disagreeable, but she must go away for her own safety and to protect herself from his violence. An examination of this case would lead one to the conclusion, in view of the recent decisions, that the conclusions as established by the eminent Chancellor on the facts in this case were extremely severe and that if there was no justification in this case, there was great provocation for her leaving.

This case was not appealed to the Court of Errors and Appeals, so it is therefore the view of the earlier Chancery decisions as established by Chancellor Zabriskie. And in view of the more recent decisions, and the fact that the Laing case was not appealed from, it should not be regarded as an unalterable precedent. The facts, however, are not similar to the case in bar, for the appellant contends, and her evidence is corroborated, that she did not leave the home of the respondent because of his drunkenness or his failure to support her, but on the contrary, he deserted her.

Rule of justifiable cause explained.

Following this case we find that of *Driver vs. Driver*, 28 Equity, 393, in a cause instituted by the husband against his wife. In this cause, there is the same evidence of violence, or threatened violence, and abuse. She left the husband because of his violence and threats and abusive language. Defendant's father called the next day and reproached the petitioner, and in response to his reply that he was doing the best he could, the defendant's father said he then would protect her. Next day she kissed him good-bye. He made no reply. He tacitly acquiesced in her going. He afterwards furnished her with money and then he relied upon this letter to secure his divorce: "Your letter was received and also the previous one. Was pleased to hear from you; am glad you are enjoying good health. I would have written sooner, but it was merely neglect and would only have replied in the negative to the question which you want me to answer in the letter. I have nothing further to say on this subject, as I told you what my decision was when you were here." (Signed by the wife. The Court says: "There is nothing in this letter to contradict the defendant's (the wife's) statement that she was not at all times willing, and so told the petitioner, to live with him in however humble a manner, provided he would furnish a house away from his parents." And the Court continuing, refuses to grant him his divorce.

If the respondent contends that the conduct of the appellant, as shown by her letters, was an incorrect position in asking him when, where and how he was going to provide for her, then I would respectfully ask your Honor to consider that in the previous cause the letter of the defendant stated that "provided he would furnish a home away from

his parents," a condition precedent before she would live with her husband, and the Court did not think it was obstinate desertion on her part to make such a demand.

First established rules as applied to desertion.

Following this case, in the same report, we find the case of Taylor vs. Taylor, 28 Equity, 206, which is also that of a husband against a wife, and the Court for the first time lays down three distinct rules to make out a case of desertion. (1) Cessation of cohabitation; (2) An intent in the mind of the defendant to desert; (3) That separation was against the will of the complainant.

In this case, however, the wife left the husband and the husband expressed no surprise, nor was he curious to find out what had become of her. Did nothing to effect a reconciliation. Passed her on the street without salutation. Apparently contented, indifferent, and indicated by his manner that he would rather have her stay away, and the Court properly held that he was not entitled to a divorce, as the desertion was not obstinate on her part; but altogether this case is not in point.

Conduct constituting desertion.

In Brinkerhoff vs. Brinkerhoff, reported in 29 Equity, 132, which was a suit by the wife against the husband, it appears that the husband left for presumably two or three weeks. Shortly after the wife wrote to him to return. He did not return, and five months later she removed from New York to Jersey City. On two occasions after this he called upon his wife, and there is a conflict in the evidence whether he sought a divorce, a separation or money. The Court says that his story is not

corroborated, and concludes that he has not shown any disposition to have his wife return and live with him, and a divorce was granted. Some of the facts in this case are closely akin to the case in bar.

Desertion of wife not proven.—The husband's duty pointed out.

Following *Rittenhouse vs. Rittenhouse*, 29 Equity, 274. The Court had some trouble in this cause in determining the weight of the evidence. The wife went to a church fair and did not return to her home. The evidence is conflicting, but for some reason or other she went to a neighbor's house, presumably for protection, and it was held in refusing a divorce to the husband that it was his duty, after the use of such violent language directed towards his wife, to have extended to her a proper invitation and assurance, and not having done so, the desertion was not obstinate.

Justifiable cause again explained and applied.

In *Sandford vs. Sandford*, 32 Equity, 420, which was a suit brought by the wife against the husband, the Court concludes that the testimony was not corroborated. The husband gambled and did not properly support his wife, in consequence of which she left him, and the Court returns to the old principle, stating that if the flight had been compulsory for her personal safety and he did not seek her out and persuade her to return and promise amendment, desertion would have been imputed against him.

I would respectfully call your Honor's attention to this fact that in this case the wife also left the husband without a just cause, while in the case in

bar the husband left the wife without any apparent cause.

In the case of *Trall vs. Trall*, 32 Equity, 231, which was that of a husband against the wife, the wife also deserted without cause, and the Court said in this case that the wife had also unmistakably thrown off all allegiance and duty towards her husband, and it was evident that any effort on his part to induce her to return would have been unavailing.

The evidence in the case in bar does not warrant the application of this principle.

Husband's domicile and notice to wife in good faith and her obstinate refusal to return without just cause explained.

In *Hunt vs. Hunt*, 29 Equity, 96, the Court granted a divorce to the husband because he had the right to choose the place of residence of his family, and he notified his wife to come from Wisconsin to New York, where he would provide a home for her, sent her money, offered to meet her in Chicago, and she refused.

There was evidence that the husband, in the cause in bar, although he had the right to choose the place of residence of his family, never invited his wife to live in any particular place; in fact, he so admits in his testimony, page 185, line 14; page 186, line 8; page 190, line 11; and page 191; line 8.

In *Mayer vs. Mayer*, 30 Equity, 411, which is a suit by the wife against the husband, it appears that the petitioner upbraided the defendant for staying out late at night, and stated if he couldn't do better he must leave. He did, inviting his wife with him. She refused, and at no time since has she offered to live with him, and the divorce was

properly refused. This case does not in any way have any bearing on the case in bar, nor does the case of *Kestler vs. Kestler*, reported in 31 Equity, 197, where the husband left in pursuance of a positive declaration of the wife that unless he left she would, and she was held not entitled to a divorce.

Modification of rule of justifiable cause.

The case of *Schanck vs. Schanck*, 33 Equity, 363, is worthy of close consideration, as the principal involved is frequently applied in the granting or refusing of divorces. On page 366, it appears that he left in anger, and while with her momentary consent, she immediately recalled her words, and the Chancellor says on page 368, "He was not at liberty to leave her uncared for and unprotected. If his excuse were her refusal to live on the farm it could not be accepted, for he abandoned her in January, while the arrangement under which she refused to live on the farm was not to take effect until April following. But the expression of her resolution not to live on the farm was not in fact the occasion of his withdrawal from her." And on page 363, the Court, continuing, says: "The proof is clear that she was not unwilling to live in the same house with his mother." Then follows the very important announcement by the Court which may be applied to the case in bar: "Were he before the Court asking a divorce from her on the ground of desertion, his application would be denied for the reason that he had been derelict in his duty toward her under the circumstances." Quoting *Jennings vs. Jennings*, 2 Beasley 38, *Cornish vs. Cornish*, 8 C. E. Green, 208, and *Bolby vs. Bolby*, 10 C. E. Green, 406.

The case of *Sargent vs. Sargent*, 33 Equity, 204,

is a very important decision on the question of desertion, as this case was overruled by the Court of Errors and Appeals in 36 N. J. Equity, 644. It is interesting to read the decision of Vice-Chancellor Van Fleet and the subsequent decision of the Court of Errors and Appeals overruling him, both opinions having been obtained undoubtedly from a careful perusal of the evidence. And the case in many respects has an important bearing on the case in bar.

Vice-Chancellor Van Fleet describes the parting by the complainant in the following language: "He gave me no reason for going away. He did not tell me he was going. He simply went and did not come back. He went without saying anything in particular and never came back. I had given him no provocation; on the contrary, I had taken good care of him, supported him and cared for him when he came home drunk." And the Court says: "If a wife leaves her husband and he furnishes her with money for her support, and does not insist as a condition of support that she shall perform her duty as a wife, although he entreats her to come back, conduct of the parties in such case partakes too much of the character of a friendly arrangement to render the wife a deserter." After quoting *Goldbeck vs. Goldbeck*, 3 C. E. Green, 42, the Court indulges in some inferences that may be drawn from the relation of the parties, and which to his mind justify the conclusion that no divorce should be granted to the wife. But in the reversal the Court of Errors and Appeals says: "Where a husband deserts his wife without cause on her part and without fault on her part, there is not the same obligation of the wife to endeavor to effect a reconciliation that there would be on the husband were the case reversed." And although

this parting, as explained by the petitioner, was rather peculiar and unnatural compared with the manner of leaving as shown by the undisputed evidence of the case in bar, yet the Court of Errors and Appeals says: "We don't think it strange that the husband should leave in the manner he did."

Evidence of husband's duty to end separation.

In *Belden vs. Belden*, 33 Equity, 94, which was a suit of the husband against the wife, there is a great resemblance in some of the essential features to the case in bar, and if the respondent were asking for a divorce it is doubtful if his conduct could be much less negligent than that of Dr. Belden, referring to which on page 98, the Court says: "But the conduct of the petitioner from the time the defendant left him up to the letter of September 2, 1878, was such as to lead to the conclusion that he acquiesced to the separation during that time. It is true he said he asked her to return in the summer of 1874, but she denies it, and I see no reason to give greater credit to him than to her on this point. He does not appear to have sought to induce her to return to him, but on the other hand, left her to struggle along, and with great difficulty, for the support of herself and her child without aid of any kind, or even any communication from him. He did not discharge his duty towards her in the premises."

Applying this principle to the case in bar, if the respondent were seeking a divorce, would there be any evidence to infer that the appellant deserted the respondent? He left of his own accord. Her letters in March, 1903, were that of an affectionate wife, and, as Vice-Chancellor Pitney said about these letters when an application was

made for alimony and the respondent objected to paying any, "I see nothing in the letters to act as a bar. She was wasting her sweetness on the desert air."

It is not surprising that after his return, living only a few blocks away, denying her a single cent or contributing anything to her support and their two children, that he should contest the case, for it is very evident that his only reason for doing so was to escape responsibility, and from fear that the appellant would take more severe measures, in fact, criminal measures, of the nature which she hinted at in her letter dated May 8th, 1905. Exhibit P 2, page 232, line 9.

Abandonment by wife—Sincerity of husband's desire to re-unite.

It is interesting to ^{note} know the decision in Hooper vs. Hooper, 34 Equity, 93, on bill and cross-bill.

The Court, in refusing the wife's divorce, holds that although a wife leaves her husband's home through his fault, yet if he afterwards sincerely solicits her return, and she deliberately and persistently refuses to do so, her conduct constitutes desertion. She complained of cruelty, left her husband, refused to have anything to do with him, and the husband, who filed a cross-bill for desertion, clearly established his sincerity in asking her to return. He established the fact that he did not know she intended to remain away permanently. That he sought her out, that he begged her to return, that he went to her pastor and secured his assistance, who also begged her to return. He again returned to her home and begged her to return, walking seven and a half miles on a dark night to see her, and she refused to have anything

to do with him. Such conduct on his part manifested towards her the greatest solicitude and proved that he held her in the highest esteem, and that he hoped for a return of her love and affection.

Note the conduct of Hooper and that of the respondent, as appears from his cross-examination.

Similarity of facts to case in bar.

Are presented in the case of Williams vs. Williams, 35 Equity, 382, which may be followed as a precedent.

The parties to this suit were married in November, 1875. In March, 1876, the husband being angry with his wife, who upbraided him for being intoxicated when he came home, moved all of the furniture out of the house where they were then living together and left her there alone. She then went to her father's house and has ever since been supported by her parents or by her own labor. Her husband contributed nothing towards her maintenance or that of her infant during its lifetime, and he had no communication whatever with her, although they both continued to live in the same town after March, 1876. Held that she was entitled to a divorce.

Mutual Separation.

Counsel for the respondent may quote the case of Johnson vs. Johnson, 35 Equity, 20, and I would call your Honor's attention to the fact that the separation was amicable. That she went to the railroad station and parted in friendship, and furthermore, that her testimony was uncorroborated. The Court will not grant a separation where a parting is amicable, nor if the separation

is by her consent, as stated in *Plimly vs. Plimly*, 35 Equity, 18, which, no doubt, opposing counsel will also cite.

In the cause in review, the appellant had every reason to believe that a protest from her at the time of his departure would have been unavailing, but what greater protest could she have given than that of bursting into tears. Furthermore, to be entitled to a divorce himself, which principle must be applied to the conduct of the respondent, it is held in *Drayton vs. Drayton*, 54 Equity, 298, that the desertion under the statute is not justified by proof of the conduct on the part of the deserted party, (the appellant), short of that which will entitle the deserter to a decree for a divorce or a judicial separation. *Schanck vs. Schanck*, 33 Equity, 369.

Conduct of Deserter.

On this point the Court says in *Hall vs. Hall*, 14 Dickinson, 402, on page 403, "It is obvious that more effort and concession will be required of one whose conduct actually produces or contributes to produce the desertion than one who is blameless. If the party deserted is not in fault, an effort to induce the deserting party to return would probably prove unavailing, it need not be shown."

The Court of Errors and Appeals took a different view of the facts in this case than the Court of Chancery, and in 15 Dickinson, 469, in sustaining the decree of the Court of Chancery. The Court of Errors and Appeals does not depart from the point laid down by the Court of Chancery, but disagrees on the facts and lays down a principle as follows: Where a husband has by his conduct toward his wife contributed to her desertion of him, ordinarily will not be considered obstinate unless persisted in by the wife against the effort of the husband to ter-

minate it by making such advances and concessions as might reasonably be expected to bring about the result. But where it is manifest from the facts in the case that honest effort by the husband to bring the separation to an end would be unavailing or only temporarily successful, the duty to make it ceases to exist. This cause was made on the bill and cross-bill, and on page 470, the Court continuing says: "That a desertion in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded, is declared by all our cases; and ordinarily, when the husband has by his conduct towards his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him."

Undoubtedly, this rule would be stronger if applied to the case in bar, where it is plainly evident that the husband left the wife without just cause.

Vice Chancellor Pitney, in *Smith vs. Smith*, 55 Equity, 222, which was an action by the wife against the husband, on page 229 broadens the principle when he says: "If, by his conduct he has alienated her affections and given her good cause to dislike him and so have no desire to live with him, he cannot take advantage of those feelings to excuse himself for a continued desertion without any serious or honest effort to terminate it." I mentioned this case because counsel may call your Honor's attention to the conduct of the wife under cross-examination as follows:

Q. (page 63, line 19), "Did you express in action or words any pleasure at his return at that time?"

A. "No, I did not."

Q. "Did you feel any pleasure at his return at that time?"

A. "No."

Q. "Did you feel any displeasure at his return at that time?"

A. "Yes."

On page 65, line 9:

A. "Why, in the letters that he wrote from the South in each letter he said that he was doing better with his drinking; and I was in hopes that he would stop entirely." Apparently from this she knew what his condition was, as he had visited the house the Saturday previous, on his return from the South, and Miss Bessie Moore, on page 125, line 15, said: "He had been drinking."

Amount of effort required by husband to terminate separation.

In *Van Wort vs. Van Wort*, 57 Equity, 598, before Vice Chancellor Stevens, which is an action of a husband against a wife, the Vice Chancellor says: "The amount of effort or concession required to be shown will vary with the particular circumstances of the case." And continuing in this case, he says, speaking of the husband: "He made no effort whatsoever after she had gone. They met two or three times on friendly terms, on one occasion dined together at the house of a mutual friend. Neither then or at any other time did the petitioner suggest a reunion. If the evidence does not indicate that the separation was agreeable to both parties, it at least shows that the husband did not by words or act seek to put an end to it by advances on his part."

Burden of proof.

In *Loux vs. Loux*, 57 Equity, 561, Vice Chancellor Gray says: "The burden is on him to show the desertion wilful, etc." The Court, however, will observe in a great many of these cases that the desertion was by the wife, but without any justification. In *Crickler vs. Crickler*, 58 Equity, 427, the husband sued on the ground of desertion, the wife claiming that she separated because of the cruelty of the husband, and the Court said that the husband could not by mere invitation to her to return to him, put her in the position of a wife who wilfully and obstinately deserted her husband, even if she refused to come back. See pages 435, citing *McVicker vs. McVicker*, 1 Dickinson, 490. Continuing, on page 436, the Court says. "The husband, in order to make his wife's separation from him desertion, must by his conduct have given her sincere assurance that he desired her to return, and that if she would do so she would not be subject to the same dangers which she had suffered during her previous life with him, which had caused the desertion. Nowhere in the evidence has the defendant shown any willingness to return or any sincere effort or reformation."

Sincerity of husband.

In *Jeroleman vs. Jeroleman*, cited by Vice Chancellor Emery, in 54 Atl. Rep., 166, he says: "Where a separation between husband and wife occurs because of the drunkenness and cruelty of the husband, on failure of the husband to reform, and after such reformation and within two years to seek out his wife and apply to return, GIVING HER REASONABLE ASSURANCE OF THE SINCERITY OF HIS REFORMATION, the divorce for desertion is properly granted." The only other witness to prove the hus-

band's reformation was the man who kept the saloon in which the husband was employed, and his statement as to the husband's drinking habits and disposition when drunk was opposed to the weight of evidence.

In the case in bar, where the husband deserted without just cause, he has given no evidence whatever of his reformation or of his sincerity of purpose, or his desire for a reconciliation, coupled with a bona-fide intention to provide a home, nor has he sought out his wife in an honest manner for the purpose of having her return.

Conduct of husband after desertion.

If the parties in the following cases were transposed, and with the permission of the Court I will transpose them, substituting the word "wife" for the word "husband," and vice versa, we would have the opinion of *Lammertz vs. Lammertz*, 59 Equity, 649. The Court of Errors and Appeals says:

"Where a husband absented himself from the wife's home for more than two years, and such absence is not justified by the wife's conduct towards him, and the husband's conduct is such that little hope was left of a permanent reconciliation, it will be considered that the desertion is obstinate and a divorce will be decreed, although no proof was offered that the wife sought him and urged him to return."

Support.

Speaking of the character of the support and its material bearing on the issue, the Court says in *Hiers vs. Hiers*, 16 Dickinson, 491, at page 493: "The character of the support given by the husband is relevant in the desertion as an indication of a wilful intent to abandon his wife." The husband, intending to cast her off, refuses to support her, and reciting *Anschutz vs. Anschutz*, 1 C. E. Green, 163, which was a bill for alimony only, the Court says: "Where a husband refuses to have any communication with his wife or make any provision for her maintenance, it may be held an abandonment, although the parties live under the same roof. In this case no refusal is shown, simply an abstention without any circumstances indicating the reasons therefor."

In the case in bar, there is not only evidence, but his own admissions are that he did not do anything to support or maintain his wife since March 7, 1903, and in part of that time her support was very meager, but he has absolutely and obstinately, and the Court can infer wilfully, and voluntarily, refused to obey an order of the Court for the payment of alimony pendente lite. See testimony, page 192, line 20, and 193, line 1, etc., and page 19, line 21, and order of the Court, page 11.

Consent to offer home and support not sufficient.

At this point, I would like to introduce the case of a wife against a husband, *Barret vs. Barret*, 37 Equity, 29, in which a divorce was granted on the following facts: A husband who was living with his wife in New York, deserted her there in 1864 and never thereafter contributed anything to the

support of her or the children until 1876, when the wife discovered that he was then living in Paterson in this State, and removed there with her children. The husband then supported his wife and family, although not living with them, until March, 1877, when he stopped, and complaint made against him by civil authority, and an order requiring him to pay a weekly allowance for his family was obtained. In the year 1880 another similar order was obtained. Held, that the evidence by the defendant's counsel that in 1876 he got the defendant to consent to offer to take a house and live with his wife, and that defendant instructed her to inform him so, which she did, is not sufficient, in view of the facts of the case, to prevent a divorce for desertion. And in *Broom vs. Broom*, 47 Equity, 215, the Court says: "Mere declaration of a willingness to resume marital relations without any effort to put an end to separation, are of little weight in an action for divorce on the ground of desertion."

Counsel for the respondent might cite the case of *Costill vs. Costill*, 47 Equity, 346, but a careful perusal of this case, and the facts therein, will clearly show that the husband and wife separated by a mutual agreement on a promise that he would send for her, and then the Court held that if a husband does nothing to induce his wife, who has left him, to return, her desertion is not deemed obstinate. And, although a wife is not held in the same accounting for failure to seek the return of her husband, reason and justice make it at least her duty, where the husband has been absent from her for several years, presumably by their express mutual agreement, to plainly signify to him that she withdraws from the agreement, before his absence will become an obstinate desertion.

In the case in bar, however, there is no agree-

ment shown, nor could an agreement be inferred from the facts, nor does the defendant testify to any, nor does his conduct show any, while on the part of the appellant it plainly appears from her conduct and letters that she was the injured party, and she clearly stated what she would have him do.

In *Chipchase vs. Chipchase*, 48 Equity, 549, there is another example of a mutual separation. In *O'Brien vs. O'Brien*, 49 Equity, 436, it is held that a husband who, without justifiable cause, separates himself from his wife, neglects to provide for her such a support and maintenance as this Court shall adjudge, that the nature of the case and the circumstances of the parties render suitable and proper, is guilty of refusing and neglecting to maintain and provide for her in the sense in which these words are used in the 20th Section of the Act concerning divorce. Applying this principle to the defendant's conduct and admissions as to his failure to support, and applying the principle that this is an evidence of intention, how much more so is it an evidence of intention when we consider that he voluntarily violated the order of the Court directing him to pay alimony *pendente lite*.

**Husband must show that by proper steps
he has sought to bring about her
return.**

In *Wood vs. Wood*, 63 Equity, 688, Vice Chancellor Gray says orally: "In divorce by a husband on the ground of desertion the burden is on the husband in order to prove a wilful and obstinate desertion and to show affirmatively that the wife left of her own will, against his will, and that she continued to stay away when it was her duty to return." On divorce by the husband on the ground

of desertion, even if it be shown that the original separation was wrongful on the part of the wife, yet he must show that he has sought by proper steps to bring about her return.

In *Slack vs. Slack*, which I only found reported in *Atl. Rep.*, Volume 23, 1180, the divorce is granted by Vice Chancellor Bird after some hesitation in favor of the husband and against the wife on the facts therein stated. If the parties were transposed and the principle applied to the case in bar, it would make a much more sweeping change in the rules relating to desertion, even as defined by more modern decisions, for in this case the wife left with a pretext of an unsubstantial character. In the case in bar the husband positively abandoned his wife in a cowardly manner.

I find another case which is not reported in our law reports, namely, that of *Olcott vs. Olcott*, 26 *Atl. Rep.*, 469, in which case, in speaking of the conduct of the husband, Vice Chancellor Green, on page 470, says: "In pursuit of his business as physician he constantly passed the house, and while occasionally stopping to see his children, does not pretend that on any occasion did he stop to see his wife or seek from her any promise or consent to return or receive him as a husband. The furniture had all been taken out of the house; and, while he says he refurnished it immediately, he does not say that he ever told his wife he had done so, and she expressly says that she did not know until she heard it upon the trial that new furniture had been placed therein. He seeks to establish this point of the case by her repeated refusal to his public request to go back to her home and live. I am not prepared to say that she would not be entirely excusable in refusing to return and live under the surveillance of his family and subject to the

unpleasantness and the indignity that she had previously experienced under similar circumstances. Be that as it may, these various conversations of his amount to nothing unless they were sincerely made. If they were only empty words for the purpose of his suit, the Court will not give them much weight."

Corroboration of desertive act essential.

In Seeley vs. Seeley, 64 Equity, 1, which was tried *ex parte*, Chancellor Magie, in overruling the Master and refusing a divorce, examines the evidence on which the wife claims that she was compelled to leave her home because of the violence of her husband. The justification for her leaving was not made out, nor was her testimony corroborated. Counsel for the respondent, citing this case, cannot claim that the principle involved is applicable in any manner whatsoever, as the desertive act was corroborated by Charles Fleischman, page 103, line 34; and Mrs. Arthur K. Rose, page 110, line 1, &c.

On question of husband's conduct.

In Howell vs. Howell, 64 Equity, 191, Vice-Chancellor Gray, on an examination of the evidence where the wife made application for a divorce because of alleged desertion, stating that there was no proof that because he left there had been any disturbance of connubial relations. The husband was in debt. This being the situation of the parties, the husband went away without previously letting his wife know of his purpose to leave. He had not much money, and took her ring. On the day he left, he wrote to her father stating that he was in debt and was going away, and it was no use to trace him, and asked the father to take the

petitioner to his house and care for her. He did nothing to support his wife thereafter, obviously because he had no money; he corresponded with her, she sending him money. His letters showed no aversion to his wife, or purpose to abandon her. The last letter was couched in affectionate terms. It was written within ten months next before the wife filed her petition praying for a divorce because of alleged desertion for more than two years. Held, the evidence does not show wilful, continued or obstinate desertion, nor does it exhibit any intent to desert in the sense of the wife abandoning the husband.

The Court of Errors and Appeals, in overruling this decision, and also making a careful examination of the evidence, comes to an entirely different conclusion, and couches its opinion in the following language, in 18 Dickinson, pages 295 and 296: "We think that the act of his going away, in the light of the deception practiced on his wife; his statement of his purpose in his letter to his father-in-law, and his subsequent failure to give that act any other color, was desertion, and so intended by him, and the use of a few mildly affectionate words in a letter cannot deprive his acts and previous words of their legitimate force."

Mutual agreement, and pending suits a bar.

Counsel for the defendant may cite the case of Johnson vs. Johnson, reported in 65 Equity, 606, and would call your Honor's attention to the evidence in this case, which is that of a husband against a wife, and it appears that the separation was the result of a mutual agreement and that suit had been pending for other grounds between the parties prior to the decision in this last cause, and

the Court, commenting on this point, says "that it is recognized that the pending of a divorce suit between husband and wife is a justifiable cause for their living separate from each other, and that no part of the time during which a previous suit was pending can be computed in any subsequent suit as a part of the period of desertion."

The facts are not parallel; therefore, the case not being in point it is useless to go into further detail on the subject.

Duty of husband to terminate desertion by wife.

In Hall vs. Hall, 65 Equity, 709, which was an appeal from Vice-Chancellor Pitney, whose opinion is reported in 53 Atl. Rep., 455, Chief Justice Gummere lays down this rule, which, while it is not parallel or entirely applicable in principle to the case in bar, yet it imposes a duty upon the husband, even though the wife deserted him, before he can make out a case for desertion, namely, viz.: "Where the circumstances under which a wife deserts her husband are such as to impose upon the latter (the husband) the duty of using active effort to terminate it, ^{his} only excuse ^{for} making such effort, when it is manifest from the facts in the case that to do so would be unavailing."

The rule as to husband not applied to wife.

In Wilson vs. Wilson, reported in 66 Equity, 238, it is held, where a husband deserted his wife because she refused to support him in idleness, according to his desires, and the wife acquiesced in his continued desertion rose from a belief that if he should return he would, notwithstanding any

effort on her part to effect a reformation, resume the course of conduct grossly violative of his duty to her; and of which he had been previously guilty, causing her constant physical or mental suffering, such acquiescence was not a voluntary consent to the husband's desertion so as to preclude her from a divorce on that ground.

The duty of a deserted wife to invite her husband to return in order to be entitled to a divorce, is not measured by the rule which is applied to the rule of a deserted husband.

It would appear from this decision, that if her duty is not measured by the same rule which is applied him, that the duty on the part of the husband is much stronger than on the part of the wife, and the trend of the opinions rendered lead to the conclusion that where a husband seeks a divorce on the ground of desertion, or seeks to defend her suit when he is charged with desertion, he must answer the questions: Have you done everything that a reasonable, loving and affectionate husband would do, considering the circumstances of the case? Is your conduct such, and your reformation such, that the evidence logically concludes that you have made every effort to effect a reconciliation with your wife and that she has stubbornly and obstinately refused to live with you?

Cases distinguished from the one in bar.

Another case of separation by mutual consent, on which principle the Vice Chancellor applied to the case in bar, is found in *Currier against Currier*, 68 Equity, 7. By an examination of this case and the evidence and the application of the same to the case in bar, the conclusion will undoubtedly be that they are not similar.

In *Meiers vs. Meiers*, 68 Equity, 9, Chancellor Magie again lays down the principle as to the husband's duty when he says he is not entitled to a divorce for desertion without making some effort to obtain a resumption of the marital relations.

Rule as to wife seeking out husband where he deserts.

The most recent case, or rather the most recently reported case which has come to my attention, and of the facts of which I have made a careful examination, is that of *Coe vs. Coe*, 68 Equity, 157. The opinion was rendered by Vice Chancellor Pitney. It seems to be an application of the principles laid down by the Court of Errors and Appeals in *Howell vs. Howell*, and in other cases, and the facts are so closely akin to the case in bar that I consider it a precedent on all force. The learned Vice Chancellor, who has had considerable experience in divorce cases, extending over a number of years, arrives at the conclusion on the facts that where a husband left his wife to seek employment at a distant point, but he was unsuccessful, owing to his dissipated habits, and failed to care for the wife in any way and continued to write her affectionate letters, his conduct was that of a deserter and the character of wilfulness became attached to the desertion when he had shown by his conduct that he had not resolution strong enough, even if he had a desire, to do his duty towards her. Where a husband, without fault of the wife, leaves her and fails to support her, it is not incumbent on her to seek out the deserter and ask a reunion.

The learned Vice Chancellor, commenting on the evidence and his conduct, says "A careful perusal of the letters he wrote to his wife satisfies me that his want of success was due entirely to his own

misbehavior, mainly in the indulgence at intervals in intoxicants. Such letters as he wrote were very affectionate and contained frequent promises to reform, save money and come East, but at no time when he received his weekly or monthly pay did he ever divide it or send one cent to his wife. His letters were full of kisses but no money. On the contrary, on two or three occasions he asked his wife to send him money, which she was wise enough not to do." Continuing, on page 59, the Court says: "I think the tendency of the proof is to show that she was all the while as insistent as a wife should be that the husband should do something for her, and that was all that she could do. The duty of the husband to love and support his wife is a practical duty and is not performed by a manifestation of sentiment without corresponding conduct. Hence, the mere writing of love letters and a making of promises unaccompanied by a single practical act amounts to nothing. The failure to try to do anything in the way of supporting and loving his wife is desertion, no matter how much the party may indulge in affectionate letters and send kisses by the thousand in writing. The intentions and resolutions of a husband to save money for the benefit of his wife, which is too weak to resist that temptation to spend that money on himself, is of no legal value and cannot count in the way of counteracting his absolute neglect to provide for her.

"I am satisfied that the husband from time to time had money which he might have sent his wife. I am satisfied also that if he had had the simple resolution of mind to live with and support his wife, which the nature of his marriage contract required of him, he could have done something towards such support.

"The husband's conduct from the start was that of a deserter of his wife, and its character and wilfulness became fixed when he had shown by his conduct that he had not a resolution strong enough, even if he had a sincere desire, to do even a part of his duty. And I think the evidence shows that the desertion became wilful more than two years before the petition was filed.

"The attitude of the wife was not that of acquiescence in the prolonged absence and neglect of her husband. It went no further than to consent to his making an honest attempt to provide her with a home and proper support. This, I find, he failed to do.

"The question of the duty of the deserted spouse to seek out the deserter and ask a reunion has no place in the facts of this case."

In *Brady vs. Brady*, opinion by Vice-Chancellor Emery, reported July 28th, 1906, in Volume 64 of *Atl. Rep.*, page 440, and commencing on page 441, the Court concludes that the offer of the husband to provide a home for the wife after separation was not *bona fide*. And the Court, on the question of pleading, concludes that the failure to make out a special charge for desertion in a petition for divorce did not preclude the petitioner from pleading desertion under the general charge. The Court says, on page 442: "The wife's doubts as to his good faith of the offer of a home made in the letters of August 20th and September 25th were, in my judgment, entirely justified; they were honestly expressed in the letter of October 4th."

The failure of the husband after this time to renew his offer or attempt to remove her doubts confirms this view. At any rate, the result of the whole correspondence and communication between

the parties up to October, 1902, is that the wife had not up to that time wilfully or obstinately deserted her husband.

Intent, evidence and desertion, defined.

Since drawing this brief and before printing this brief, the case of Foote vs. Foote was decided by the Court of Errors and Appeals at the November Term, 1906, reported in the advanced sheet of the Atlantic Reporter, Vol. 65, dated January 17th, 1907. This important decision sustained the doctrine laid down by Vice-Chancellor Pitney in the case of Coe vs. Coe, reported in 68 Equity, and also holds that "To constitute desertion, it is not necessary that the intent to desert should have been formed at the time the party left the home, but it is sufficient if he afterwards determined to desert and persisted in such determination. On the question of the sufficiency of the evidence and corroborated evidence the Court says:

"Under a statute requiring corroborated evidence of desertion in order to obtain a divorce, the testimony of other witnesses is not required; but it is sufficient if the circumstances, as shown by the expression and conduct of the defendant, together with the letters of the party, corroborates the testimony of the complainant."

It is evident from the examination of the facts in this case that it is closely parallel to the case in bar in many particulars, and it is also evident the conduct of the defendant is less excusable than the conduct of the defendant in error. The following facts in the Foote case also exist in the cause at bar, viz.: The parties lived with her mother

after marriage, subsequently they built their own home, borrowing money from one of the parents. The defendant was employed at a salary of \$2,000 a year. He lost his position, did nothing to gain a living, and not being employed, they broke up housekeeping.

In the cause at bar the defendant did not break up housekeeping, but he actually deserted his wife and left her penniless, and she was compelled to sell all that she had and move to the home of her parents, where she still continues to reside. In the Foote case the defendant went with the consent of his wife to Laredo, Texas, for the purpose of securing a position. In this case the defendant went to Darlington, S. C., for pleasure, and from the evidence we can truthfully say with the intention of leaving his wife destitute and uncared for, as far as he was concerned. In the Foote case the defendant wrote to his wife. In this case the defendant did likewise. In the Foote case the defendant sent money to his wife. In the present case the defendant did not. In the Foote case the letters were loving and kind. The letters that we have from the defendant in this case cannot be considered loving or kind. In the Foote case the husband did something towards trying to secure a reconciliation with his wife, even though it did lack sincerity, while in the present case there is practically no evidence on his part that he made any effort at all to secure a reconciliation with his wife.

It is true that he testifies that he offered her a home, which conversation he says took place at his home shortly after he returned. This she denies. Admitting that it was true, this was the only effort, or rather only thing, he did do; and there is no evidence that he followed it up by any further move. He admits

that he did not state when, where and how he was going to provide for her or where she should live. In fact, he relies mainly upon an alleged refusal to live with him, which he says precluded him from making any further advances. The conversation that he testifies to is not corroborated in any manner whatsoever, and it is very evident from his last letter to her of the ninth of April, 1905, that he really had no definite idea on the subject, and there was no sincerity on his part whatever. It is also conclusive that at no time thereafter did he offer her a home. That at no time thereafter did he call upon her, or did he at any time thereafter support her or their two children. The next evidence that we have are the letters which she wrote him, and his replies in the exhibits which are marked from _____ to _____, and which clearly define the relation of the parties during the entire time from the separation until this correspondence ceased.

It is interesting to read his last letter. It sums up his real attitude during the entire period of his absence from his wife. It is very evident that his conduct, if it did not amount to desertion at the time which we claim, to wit, the time that he went away, on March 7, 1903, it did commence immediately upon his return in the month of April, 1903, which was more than two years prior to the bringing of this suit.

The petitioner did not start her suit till June, 1905, and she was as much justified to start her suit in June, 1905, as to wait one more year or longer, because the statute only requires continued, obstinate and willful desertion for the space of two years. Another year or two would not have made the offence any greater in the eyes of the law.

Summary of testimony.

Applying the principles gathered from the review of the cases cited, and classifying them in accordance with the decision of Taylor vs. Taylor, 28 Equity, 206, which principle was approved by the Court of Errors and Appeals in a later case, we have: First,

Cessation of cohabitation.

Not only appearing from the testimony of the petitioner as occurring March 7th, 1903, and corroborated by the testimony of Mrs. Arthur K. Rose, page 109, line 18, and Mr. Charles Fleischman, page 103, line 34, but by testimony of the defendant himself, page 138, line 20; and the Vice-Chancellor, page 159, line 10. This essential element, cessation of cohabitation, is, therefore, conclusively and positively proven and it requires no further discussion. Second,

Intent in the mind of the defendant to desert.

is known to all to be "the exercise of an intelligent will, the mind being fully aware of the nature and consequence of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it." This is probably a severe definition. Taking this, however, in its strongest views, and applying this definition to the facts before us, it can be said that the defendant did intend to desert the petitioner.

This question of intent is viewed by the Court in the light of the foregoing decisions and from the circumstances of each particular case. It is in evidence, and the defendant admits that for about two years prior to March 7, 1903, the defendant

had lapsed into a state of habitual intoxication. He had lost his position in the Mutual Life Insurance Company; he had borrowed money from his father-in-law, his wife's aunt, and had mortgaged his mother's personal property and his own personal property; given a second mortgage on the real estate, and incurred indebtedness for sundry bills, all of which must have caused him considerable worry and anxiety. It is very evident that on March 7th, 1903, he had reached some conclusion. It is fair to infer that he had become despondent. He saw no way of escape. He could not retrace his steps and regain his lost position. His wife had even tried this for him and failed. He was behind five months in the Building and Loan. He had collected rent from the tenant above for a period of five months, which he had spent, and was also indebted to an insurance company for money collected by him in the way of insurance premiums (see testimony of petitioner, page , line), and he deceived his wife—page 138, line 20—as to his reason for going away, as is shown by what he did down South, page 203, line 2c; page 192, line 16, and Exhibit P 9, pages 248 and 249. With these facts confronting him and no hope of escape he placed a second mortgage on his house; obtained the sum of four hundred dollars; confided to a friend, Charles Fleischman, page 103, line 34, that he was going away for good, and then, a few days later, packed up his things, bid his wife good-bye, handed her two hundred dollars, kept two hundred dollars, and left her to face the responsibility. He knew the debts he had contracted; he knew the weight of the responsibility; he knew that two hundred dollars would not cover the indebtedness; he knew that he could no longer support his wife, and he was cowardly enough not to call on her father or to call on his mother, or to take her to hi

mother's home; he simply could see no way of escape for himself, and he concluded that self-preservation was the first law of nature. Shirking his responsibility, concealing the true situation from his wife, bidding her good-bye, in his cowardly manner he bought a single ticket to Darlington, South Carolina, out of the two hundred dollars he had on hand. See page 176, line 10. If he intended to return, why did he buy a single ticket? He stayed there a month; made no effort to seek employment; spent a portion of his money; sent a telegram to his wife that he was coming home; called at her home one evening, under the influence of liquor, during her absence. Returns to the home of his mother, a month later; fails to invite his wife to come there and live with him; fails to call at her home to see her or the children, and continues this conduct for a period of over two years, and finally, in April, 1905, when he hears that criminal proceedings might be instituted, he writes her somewhat affectionate letters, which are marked Exhibits P 7, page 244; p. 8, p. 9, and p. 10 (see page 250, line 20). In the second of these letters; after he professes his willingness to live with her, he asks for a further year in which to redeem himself (page 245, l. 12), and in all the letters, there is no direct statement on his part showing that he desires his wife to live with him in any specific place or at any specific time. In fact, the whole course of his conduct from March 7, 1903, to the filing of the petition by his wife, evidences an utter neglect and disregard for her welfare and that of her children, during the entire period, until the filing of the petition. One of the strongest evidences of his intention is his failure to provide for her during this period, and this failure to provide for her has been commented upon as a strong evidence of intent by the Court in the case of *Hires vs. Hires*. His only excuse to show that

he intended otherwise is his statement on the night in the dining room (although he afterwards contradicts himself and says that it occurred on the walk between his house and the home of her sister) when he stated to her that it would be nice for her to live with him again.

He does not remember whether any one heard the conversation or not, but he states further, page 165, line 30, and 185, line 35, and page 186, that he never offered her a home in any definite place and he had no particular place in mind at any time. On all other occasions when she called upon him and not he on her, he insists that they were mere business calls, when she desired instructions as to the method of securing insurance, as she was compelled to resort to this business to earn her livelihood before she took up teaching school. The testimony of his offer of a home is entirely uncorroborated, and as it occurred immediately upon his return from the southern trip, it is very evident that it lacked the necessary essential element of sincerity.

Taking it as absolutely true in its entirety, and that his offer occurred, as he testifies, about April, 1903, although it is entirely inconsistent with the subsequent conduct during the entire period following up to the time of filing the petition, he admits that he did not call upon her or write to her until September, 1904, and again during April, 1905, and at no time did he contribute anything for her support or for the children. Can we assume otherwise than that he was contented and happy in the life he was living, and that on March 7, 1905, he originally intended to shirk all responsibility, and having done so, and secured his independence and freedom, he intended to continue as long as he could live that way unmolested: that

the only reason for writing the letters in April, 1905, was the fear that some means devised by law would be put in operation to discontinue his life of freedom, and that it was then necessary for him to make some kind of an excuse for his conduct. That it lacks sincerity is plainly evident from his own story, and from the apparent contradiction in a letter written to C. B. Demarest, Exhibit D 6, page 265.

The opinion delivered by Vice-Chancellor Pitney in *Coe vs. Coe*, as to the husband's conduct, reported in 68 N. J. Equity, applies to a nicety to the conduct of the respondent. In fact, stronger language could be used in condemning the conduct of the respondent in this case. Third:

Separation against will of the petitioner,

Is evidenced from her conduct since March 7, 1903, until the filing of the petition. She was compelled to seek out her husband under the circumstances. The fact that she was deserted by her husband in March 7, 1903; the fact that she was left penniless; the fact that she was compelled to seek shelter in the home of her father; the fact that she still trusted in him during the month of March, 1903; the fact that she called upon him upon his return from the South, about a month later, is not inconsistent with the conduct of an affectionate wife, which in the light of the cases would bar her recovery. She was justified in doing just what she did; in fact, she did more than she was compelled to do. She states that at no time since his return from the South did he offer her a home; that in the calls she made upon him he never gave her any money for her support or that of the children; that he never offered her a home and he never suggested that she should live with him, and that he never

suggested that he would provide for her or the children; that the talks were of a business nature only in order that she may be better posted as to how to earn her living, which she was compelled to do by his conduct and his refusal to provide a home for her. The fact that she noticed that there was no evidence of reformation on his part, and we can infer from his conduct that there could have been no willingness on his part to provide a home for her, as he admits and his mother states that he was not always able to pay his board at her home, and it is very unlikely that his mother would want the wife and children to live with her when she had difficulty in securing board from her own son.

It is evident that the wife performed her duty toward her husband when she recognized him, called upon him, talked with him in a business way; and it is very evident that if there had been any other talks or suggestions by him of providing a home for her, he would certainly have made it evident by his testimony at the trial. She states that in all she made several calls upon him at his home, that he never called upon her, that he never offered her or the children a home, and this testimony is corroborated by the correspondence which she had with him in April, 1905, and by the testimony of Miss Bessie Moore, page 125, line 20. He must then have learned that there was some activity displayed by her in relation to him, for he breaks the silence and writes her a letter suggesting that she is desirous of securing a divorce. She replied, and told him that she intended to institute criminal proceedings against him for non-support. This awakened his fancies, and he immediately replies by writing her affectionate letters. In one of these he asks a year to redeem himself (page 245, line 12). In her replies to these letters, she at all times professes

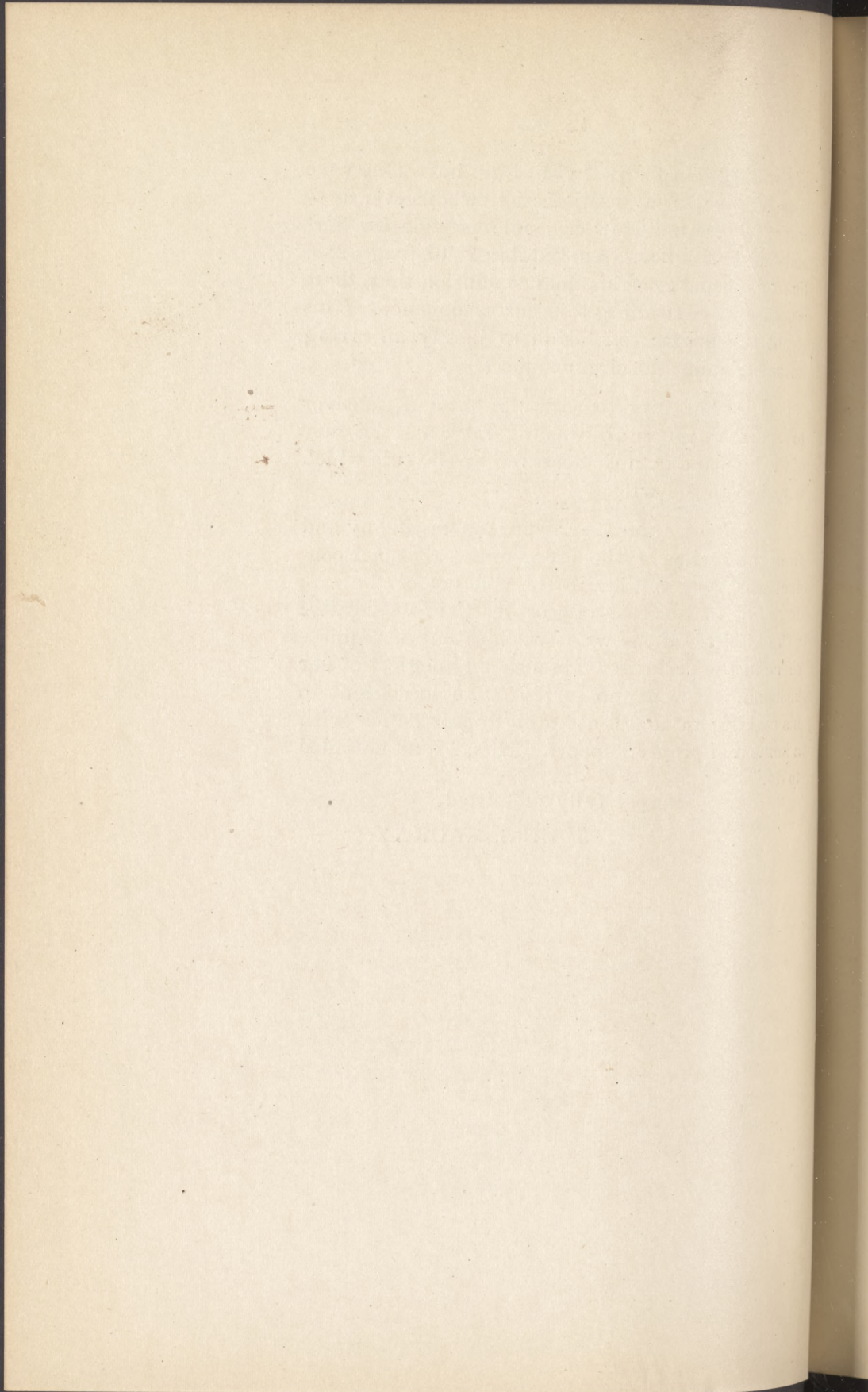
her willingness to live with him, but at no time does he give her any satisfaction whatsoever as to when, where and how he could provide for her, and his last letter. (see Exhibit P 10, page 250, line 20), seems to be his final conclusion that there is no use in continuing this correspondence. This is not the proper conclusion to justify an erring husband, under the circumstances.

It is not her duty to seek him out and endeavor to secure his return; it was his duty, and the duty of the husband is not measured by the rule which is applied to the wife.

It is evident, therefore, from the testimony and from the review of the proceedings, that her conduct was very similar to the conduct of the wife described in the case of Coe vs. Coe, 68 Equity: "The attitude of the wife was not that of acquiescence in the prolonged absence and neglect of her husband. It went no further than to consent to his making an honest attempt to provide her with a home and proper support. This, I find he failed to do."

Respectfully submitted,

JOHN S. MACKAY.



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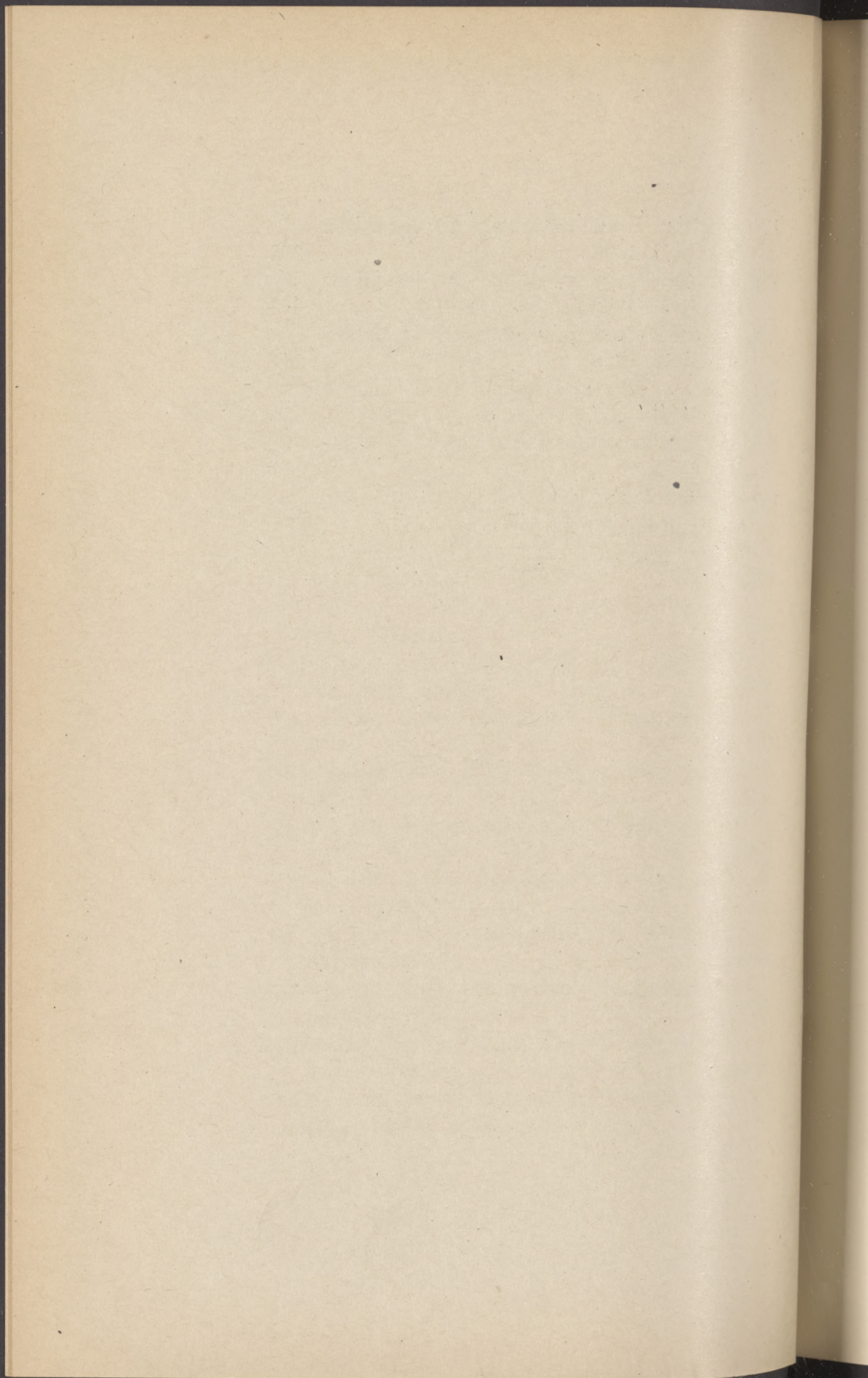
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IN CHANCERY OF NEW JERSEY.

BETWEEN

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

Defendant.

10

Petition for Divorce.

To his Honor, William J. Magie, Chancellor of the State of New Jersey. The petition of Jennie G. Provost, of the Town of Hackensack, County of Bergen and State of New Jersey, respectfully shows that your petitioner was married on the fourteenth day of October, eighteen hundred and ninety-seven, at Hackensack, by the Rev. Herman Van de Wart, at the home of the parents of the petitioner, Mr. and Mrs. A. V. Moore, at the Town of Hackensack, County of Bergen and State of New Jersey, to Winfield Provost, her present husband.

20

That after their marriage they removed on November first, eighteen hundred and ninety-seven, to the city of New York, and boarded there until the first day of May, eighteen hundred and ninety-eight. That the petitioner and the defendant then returned to Hackensack, and resided at the home

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of the parents of the defendant, until February first, eighteen hundred and ninety-nine, and thereafter at the home of the parents of your petitioner, until April first, eighteen hundred and ninety-nine, and again returned to the home of the parents of the defendant and resided there until November, eighteen hundred and ninety-nine. That thereafter the petitioner and the defendant removed to
 10 a home of their own on Atlantic street, Hackensack, New Jersey, and resided there until the seventh day of March, nineteen hundred and three, since which time, and that your petitioner, after the defendant deserted her, as hereinafter set forth, returned to the home of her parents, Union street, Hackensack, New Jersey, since which time she has resided, and still resides at the home of her parents aforesaid, in the Town of Hackensack, in the County of Bergen aforesaid.

20 And your petitioner further shows, that her said husband lived with her and supported her until the seventh day of March, nineteen hundred and three, when he deserted her and left the state of New Jersey, as she has understood and believes; that he has since returned to this state, and now resides at the home of his parents, Hudson street, Hackensack, New Jersey, in the County of Bergen.

30 And your petitioner further shows that for more than two years last past her said husband has willfully, continuedly and obstinately deserted her, and during all that time has wholly neglected to make any provision for her support.

And your petitioner further shows that she has two children by her said husband, viz: Reginald Provost, born February seventh, eighteen hundred

and ninety-nine, and Donald Provost, born September fifth, nineteen hundred and one.

And your petitioner further shows that her maiden name was Jennie G. Moore ; and that she has no means of support except by her own exertions ; and that she is residing with her parents and is now supporting at the home of her parents her said two children, with the aid and assistance of her parents.

Your petitioner therefore respectfully prays that she may be divorced from her said husband ; that he may be compelled by the order and decree of this Honorable Court to provide for and support her and her said children ; and that she may have such further and other relief as may be equitable and just.

And your petitioner will ever pray, &c.

JOHN S. MACKAY,

Solicitor and of Counsel with Petitioner.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN. } SS.

Jennie G. Provost, the petitioner in the foregoing petition, being duly sworn says that her complaint in said petition is not made by any collusion between her and the defendant in the said bill, for the purpose of dissolving their marriage, but in truth and good faith, for the causes set forth in the petition.

And the petitioner further says that the desertion complained of is not the fault of the peti-

tioner, as the petitioner has at all times been ready and willing to live with her husband and to have him provide for and support her.

JENNIE G. PROVOST.

Sworn and subscribed to before me, this 21st day of June, 1905.

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GEORGE C. MERCER,
Notary Public of N. J.

Filed June 21, 1905.

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IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

*Defendant.**On Petition for
Divorce.*

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Answer.

The answer of Winfield Provost, defendant, to the petition of Jennie G. Provost, petitioner in the above entitled cause.

This defendant for answer unto said petition, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering says :

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That he admits that he was married to Jennie G. Provost, the petitioner herein on the fourteenth day of October, eighteen hundred ninety-seven, by the Rev. Herman Van de Wart, at the home of the parents of the petitioner Mr. and Mrs. A. V. Moore, at the Town of Hackensack, in the County of Bergen and State of New Jersey. Defendant further admits that after said marriage he and petitioner removed on or about November first, eighteen hundred and ninety-seven, to the City of New York in the State of New York, and there resided until about the first day of May, eighteen hundred and ninety-eight. Defendant further

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admits that the petitioner and this defendant then returned to, and took up their residence at, the home of the parents of this defendant at Hackensack aforementioned, and continued to reside there until about the first day of February, eighteen hundred and ninety-nine, and that thereafter said petitioner and defendant removed to, and took up their residence at the home of the parents of the petitioner and there resided until about April first, eighteen hundred and ninety-nine, at which time they returned to the home of the parents of the defendant and resided there until November, eighteen hundred and ninety-nine. Defendant further admits that thereafter the petitioner and the defendant removed to a home of their own on Atlantic street, in said Hackensack, and there resided until the seventh day of March, nineteen hundred and three. This defendant further admits that on or about the seventh day of March, nineteen hundred and three, the petitioner herein returned to the home of her parents in said Hackensack, since which time she has resided and still resides at the home of her parents aforementioned. Defendant further admits that he lived with and supported the petitioner herein, his wife, until the seventh day of March, nineteen hundred and three, and that on or about the said seventh day of March, he left the State of New Jersey, and that thereafter and on or about the sixth day of April, nineteen hundred and three, he returned to the said town of Hackensack. Defendant further admits that there are now alive two children born of said marriage, viz: Reginald Provost, born February seventh, eighteen hundred and ninety-nine, and Donald Provost, born September fifth, nineteen hundred

and one, and that petitioner's maiden name was Jennie G. Moore; and that petitioner and said children are residing with the parents of petitioner.

This defendant denies that he has ever deserted his wife, the petitioner herein; and he further denies that he at any time neglected to make provision for her support, but on the contrary avers that when he left State of New Jersey in the month of March, nineteen hundred and three, as aforementioned, he did so with the full assent of his wife, and that he then left her means of support, and that upon his return to Hackensack aforementioned, he sought out his wife and requested her to live with him, and told her that he had ample means to support her and their children, but that his said wife utterly refused to live with this defendant or to allow him to contribute to her support or to the support of said children. And defendant further denies that petitioner has no means of support except from her own exertions. And this defendant further answering says that he has at all times been ready and willing to live with his said wife, and has been ready, willing and able to support her and his said children, and has so informed his said wife, the petitioner herein, but that she did without any just cause refuse to live with this defendant or to allow him to contribute to the support and maintenance of herself and her said children, and has utterly refused to allow this defendant to meet her for the purpose of trying to induce said petitioner to return to and live with this defendant or for any other purpose.

All which matters and things this defendant is ready and willing to aver, maintain and

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prove as this Honorable Court shall direct and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WINFIELD PROVOST,
Defendant.

10 WILLIAM H. SPEER,
Sol'r for and of Counsel with the Defendant.

Filed July 27, 1905.

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IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner, } *On Petition for**and**Divorce.*

WINFIELD PROVOST,

Defendant.

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For Alimony.

To His Honor, William J. Magie, Chancellor of the State of New Jersey :

The petition of Jennie G. Provost, the above named petitioner, respectfully shows that she has recently filed a petition against her husband in this cause for divorce. That the said Winfield Provost was duly served with a citation for that purpose and has caused his appearance to be entered in this suit, and has put in his answer to said petition denying the allegations of said petition. 20

The your petitioner further shows that the charge of desertion made by her against her said husband in her said petition is true, and that her said husband has wilfully, continuously and obstinately deserted her, the said petitioner, for more than two years last past. All of which matters and things your petitioner is ready to aver, maintain and prove as this Honorable Court shall direct. 30

And your petitioner further shows that she is wholly destitute of the means of supporting herself pending this suit and of carrying on her said suit and defraying the costs and expenses attend-

ing the same. Your petitioner further shows that she has two children by her said husband, namely, Reginald Provost, aged six years, and Donald Provost, aged four years, and that said petitioner is now supporting the said two children aforementioned. That your petitioner has been informed and verily believes that her husband is employed by
 10 some wholesale liquor dealer or dealers as their agent in selling their goods, and receives, as your petitioner is informed and believes, about \$25 a week for his labor and services.

She, therefore, prays that an order of this Court may be made requiring the said Winfield Provost to pay her a proper allowance for her support and maintenance and for the support and maintenance of her said two children, until the termination of this suit ; and also to pay forthwith a proper sum
 20 for counsel fee in prosecuting this suit until its termination. And your petitioner will ever pray, &c.

JOHN S. MACKAY,
Solicitor and of Counsel with Petitioner.

BERGEN COUNTY, SS.

Jennie G. Provost, the above named petitioner, being duly sworn according to law, on her oath says—that the matters and things set forth in the
 30 above petition are true to the best of her knowledge and belief.

JENNIE G. PROVOST.

Subscribed and sworn to before me this 21st day of October, 1905.

GEO. C. MERCER, *Notary Public, N. J.*

Filed Nov. 2, 1905.

IN CHANCERY OF NEW JERSEY.

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

Defendant.

On Petition for 10
Divorce.

Order for Alimony.

This matter being opened to the Court by John S. Mackay, with the petitioner, and upon due notice given to William H. Speer, Jr., of counsel for the defendant, and the petition of the petitioner and the affidavits taken for the purposes of this application having been read, the counsel for the defendant not having appeared, and it appearing to the Chancellor that the prayer of the said petition should be granted ;

It is, on this twenty-eighth day of November, nineteen hundred and five, ordered that the said Winfield Provost pay to the said Jennie G. Provost the sum of seven dollars per week, at the termination of every week, from the date of this order for her maintenance and support, and for the maintenance and support of her two children, until the

further order of this Court in the premises, together with the costs of this order to be taxed.

W. J. MAGIE,

C.

Respectfully advised,

H. C. PITNEY,

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V. C.

A true copy,

VIVIAN M. LEWIS,

Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

Defendant.} *On Petition for* 10
*Divorce.***Order of Reference.**

It is, on this 12th day of December, nineteen
hundred and five, on consent of John S. Mackay, of 20
counsel for the petitioner, and William H. Speer,
Jr., of counsel for the defendant, ordered that the
above stated cause be referred to Lindley M. Gar-
rison, one of the Vice Chancellors of this Court, to
hear the same for the Chancellor, and to report
thereon to him and to advise what order or decree
should be made therein.

W. J. MAGIE,

C.

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A true copy.

VIVIAN M. LEWIS,

Clerk.

IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

10

Petitioner,

and

WINFIELD PROVOST,

Defendant.

*On Petition for
Divorce.*

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Order.

The above cause having been referred to Lindley M. Garrison, Esquire, one of the Vice Chancellors, to hear the same for the Chancellor, and to report and advise what order and decree should be made therein ;

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And John S. Mackay, solicitor of the petitioner, having made application for a day for the hearing of the said cause, and the solicitor for the defendant, William H. Speer, consenting thereto ; it is, on this eighth day of February, nineteen hundred and six, Ordered that the hearing of the said cause be fixed for the third day of April, nineteen hundred and six, at ten o'clock in the forenoon, at the Chancery Chambers in the city of Jersey City.

LINDLEY M. GARRISON,

V. C.

On the part of the petitioner we consent to the above order.

MACKAY & MACKAY,

Solicitors for Petitioner.

On the part of the defendants I consent to the above order.

WILLIAM H. SPEER,

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Solicitor for Defendant.

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IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner, } *On Petition.*

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and

WINFIELD PROVOST,

*Defendant.***Hearing and Proofs.**

For the Petitioner, JOHN S. MACKAY, Esq.

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For the Defendant, GEORGE T. VICKERS, Esq.,
(with whom was MR. KELLOGG of the New
York Bar).WILLIAM H. SPEER, Solr. for and Counsel with
Respondent.Before HON. LINDLEY M. GARRISON, Vice-
Chancellor.

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Chancery Chambers, Jersey City, N. J., Apr. 3, 1906.

Mr. Mackay :—I would like to make a
motion to suppress the defense because
the defendant has not complied with
Vice Chancellor Pitney's order for the
payment of alimony and costs.

The Vice Chancellor :—How do I know he has not paid it ?

Mr. Mackay :—I can call the petitioner to prove it.

The Vice Chancellor :—You will have to give notice.

Mr. Mackay :—I think I am entitled to make this motion orally.

The Vice Chancellor :—You are entitled to make the motion, but how are you going to require the court to hear proofs orally in a matter which ought to be brought up on notice ? The proper way to punish a defendant who has not obeyed an order of the court is to take the orderly procedure so to do. If your desire is not to punish him, but to prevent him from exercising his constitutional right to defend himself, you must give him notice of the fact of your intention. If you had desired to suppress this defense, the proper practice would have been to give notice that upon the hearing of this suit you proposed to move that the defendant be not allowed to put in any defense by the introduction of the testimony of witnesses or documents because he had remained in contempt of this court, or had done whatever you think was that which deprived him of his right to make

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a defense. But to grant a motion to suppress the defense, without the defendant being notified that he is to meet that issue, it seems to me would be to lay down a practice which the court could hardly approve of, unless you have a precedent for it, and if you have, I will consider it.

Mr. Mackay:—It is not provided by the rules of this court, but I understand that is the practice.

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The Vice Chancellor:—If it is the practice, it is a practice that violates the fundamental rule that a man shall not be deprived of any right without notice. You have not given him any notice that you are going to move to have his defense suppressed, and he comes here utterly unprepared to meet that issue.

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Mr. Mackay:—I would like to say this: If, at the close of our case, your Honor wishes to consider that question, I will ask that the defence be postponed until I serve notice.

The Vice Chancellor:—I will not consider the question at all under the present conditions. I shall hold that this case, now having been set down for trial, and counsel for both sides responding that they are ready for trial, the case must proceed. If it was your intention to move to have this defense

suppressed because some order of the Court had not been complied with respecting the payment of alimony, in my view it was necessary that you should have given him some prior notice that that issue was going to be tried. The thing he is called upon to meet here to-day is the issue raised by the petition filed by his wife charging him with desertion upon a certain date. Now, that, presumably, he is here to meet. But you say, "I first propose to have him meet a totally different issue, and that is whether he has obeyed an ancillary order of the Court that he pay a certain sum as alimony." I do not think a man should be called upon to meet an issue of that kind without previous knowledge that he is going to be called upon to do so. I therefore overrule your motion.

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Mr. Mackay.—I would also make a motion that I am ready to produce proof orally at this time that he has not complied with the order of the court in furnishing alimony.

The Vice Chancellor.—I shall make no ruling upon that. I have made my ruling.

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THE CASE FOR THE PETITIONER.

HERMAN VANDERWART, sworn.

By Mr. Mackay.

Q. Where do you reside ?

A. Hackensack.

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Q. And have resided there for how long ?

A. Twenty years.

Q. Are you acquainted with the petitioner and defendant, Mrs. and Mr. Provost ?

A. Yes, sir.

Q. What is your profession ?

A. Clergyman.

Q. And you have been a clergyman for how long ?

A. Thirty years.

20

Q. And you are pastor of what church ?

A. First Reformed Church of Hackensack.

The Vice Chancellor.—The marriage is conceded. The answer admits the marriage. I do not see why you spend any time proving it.

Mr. Mackay.—I did not so understand. I will just ask the formal questions.

30

Q. You married the petitioner and defendant ?

A. I did.

Q. On what date ?

A. October 14th, 1897.

MRS. JENNIE G. PROVOST sworn :

By Mr. Mackay :

Q. Mrs. Provost, where do you reside ?

A. Hackensack.

Q. What is your full name ?

A. Jennie G. Provost.

Q. And you are the wife of Winfield Provost ? 10

A. Yes.

Q. And your maiden name ?

A. Jennie G. Moore.

Q. When were you married ?

A. October 14th, 1897.

Q. Where ?

A. At my mother's home.

Q. In Hackensack ?

A. In Hackensack.

Q. After your marriage where did you reside ? 20

A. We went to New York, and lived in New York from November, 1897, until May, 1898; and then in May, 1898, we came out to Hackensack. Mr. Nelson Provost lost his position; they had no support—

Q. Who was Mr. Nelson Provost ?

A. Mr. Nelson Provost is Mr. Winfield Provost's father. And we had to live there for their support. We lived there from May, 1898, until February, the first of February, 1899, when I was going to be confined, and went to my mother's home to be confined. 30

Q. In 1899 ?

A. That was in 1899, February. We stayed there for two months. Then, on account of Mr. Nelson Provost not having any position yet, we

went back and stayed with Mr. Nelson Provost's family until November, 1899, when we went into our own house. That was the Atlantic street house.

Q. That was in November, 1899?

A. That was in November, 1899.

10 Q. And was that house built for you to live in, you and your husband?

A. That house was built for me. The two lots belonged to my mother and my aunt, and in order to get the lot (Mr. Provost had no money to pay for it at all) my mother accepted a note from him for \$400 to buy in her share, and then my father gave my aunt a note for \$700 to pay for her part; and that was the way he got the lot.

20 Q. How long did you reside in this house on Atlantic street, Hackensack?

A. We lived there from 1899; November, 1899, until Mr. Provost went away in 1903; March, 1903.

Q. Since he left in March—March 7th, was it?

A. March 7th, 1903.

Q. Since he left in March, 1903, where has he resided?

A. With his mother.

Q. Where?

A. On the corner of Hudson and Main, Hackensack.

30 Q. Is he residing there now?

A. Well, as far as I know, he must be at the present time; although I had heard he was out of town.

Q. Since 1903 he has not resided with you?

A. No.

Q. What was the cause of his leaving on March 7th, 1903?

A. Well, he lost his position.

Q. Where was he employed ?

A. He was employed in the Mutual Life.

Q. Insurance Company ?

A. Yes, in the New York agency.

Q. When did he lose that position ?

A. He lost that position—well, it was in March, about March 7th, 1903. He had been staying home a great deal, off and on, all the time ; and finally he got word that he need not come back, and he received a check for \$400. 10

Q. When ?

A. Well, as far as I remember, it was the morning of March 7th, 1903 ; and when the notice came I was in the dining room, and I gave him the letter—I didn't know what it was, it was with some other letters ; he went into the bedroom and read it, and he came back to me and he said " Jen, it has come." I said, " What has come ?" I didn't know what he referred to at all ; I hadn't the slightest idea that he was expecting such a thing, for whenever he had been home a great deal and I had said, " Why, you will lose your position," he had laughed at me and said they simply couldn't do without him, it was impossible for them to get along without him, and, foolishly I really believed him. And so when he said " Jen, it has come," I said, " Why, what do you mean ?" He said " Why, this letter from the office," and he handed me the letter and showed me the check; and I didn't know what to make of it; it took me some time to collect my thoughts; and I said to him " Well, what are you going to do? What will we do?" and he said " Well, I am going South," he says, " I have always wanted the chance, and now I am going." He said, 20 30

10 “ You will have to go over to your parents and see if they can let you come over there with the children and live there ; and we will let the furniture go.” The furniture was mortgaged for \$225. There had been simply one payment on it. This was the second mortgage we had had on the furniture. The one mortgage was taken out May 10th with the Knickerbocker Loan Company, and on November 26th, 1902, we were eighty dollars behind in paying, and then Mr. Provost sent for the Jersey City Mortgage Company, who had a representative in Hackensack, and he came, and he borrowed \$225 from them.

20 *Mr. Vickers.*—I object to this testimony at this stage of the case. It is not at all relevant and material in any way whatever. There is not a word here of testimony as to any desertion. This is subsequent to the time I understand that is alleged in the petition.

The Vice Chancellor.—Oh, no; it is proper. The desertion is alleged as of the 7th of March, 1903, and she is now telling what happened in November of 1902. She is telling what happened up to the time he left. I will permit it.

30 A. (Resuming.) He borrowed \$225 from them with which he paid the \$80 that was owed to the Knickerbocker Loan Company, and also \$100 that was due in the bank. Previous to this, in order to pay my aunt her money from the lot, there had been a note taken out from the Trust Company for \$500,

and he had borrowed from my sister \$250, with which to pay my aunt for her part of the lot. Then, in order to pay the Trust Company, he paid \$100 cash to the Trust Company, and then my father signed a note for him from the Hackensack Bank for \$400, with which the Trust Company was paid that whole \$500. There was \$200 that was paid the bank, then that other \$200 ran until our furniture was mortgaged for the second time for the \$225, and with \$100 of that \$100 of the note was paid, and \$100 was left and when he went south he left me \$200, and he took \$200; and he told me, he said, "Now pay that note of \$100 in the bank with \$100 of that." As to the rest, I have checks with me, if you care to see them (producing a number of checks). There was Mary E. Provost, \$15 (referring to check for that amount). Their furniture was mortgaged for, I think the amount was \$250, and when Mrs. Provost knew that her son had gone away and left them without any provisions whatever to pay their mortgage, she did not know what to do, and she told me she did not know where she was going to get the money from—

Q. Well, don't tell us what anybody else told you.

A. Well, I gave her \$15.00 toward the second payment; there was one payment made (producing check). Then Mabie & Maidment had a claim—there was \$4.66 to settle on a bill from O'Neill's; O'Neill had appointed them to collect the bill; and I paid that out of the remainder of that \$200 (producing check). Then Van Houten & Sherwood, insurance people—when Mr. Provost went away he had collected this money, \$44.21, and he had not paid it to them, and I paid that (producing

check). Then the Hackensack Water Company, \$2.80—we had to pay that, or our water would have been turned off (producing check). Then the Gas and Electric Company, \$6.44—that had to be paid (producing check). Then for the servant, \$10.00, (producing check), and the Hackensack National Bank, \$100 (producing check). Then Mr. Provost's account was overdrawn in the National Bank for \$2.57; there is the check for that (producing check). Then I have the other check that I paid afterwards, when I had sold as much of the furniture as I could get anything for and my father loaned me some more money to pay the mortgage on the furniture; \$195 they settled for.

10 Q. So that two hundred dollars that he left you before he went away was entirely used up in paying these bills?

20 A. Entirely used up, and I had to borrow more because I couldn't raise the amount on the furniture. They only offered me seven dollars for one bedroom set and, I think it was, nine dollars for the other. Mr. Nelson Provost's family took one. I took the other.

Q. What time did he leave on the 7th of March?

A. As far as I can remember, he took the 3 o'clock train.

30 Q. The title to the real estate was in his name before he left?

A. It was in both of our names.

Q. What was done with that property before he left?

A. Why, about two days before he left it was turned over to my brother. There was a \$400 mortgage on it. That was the second mortgage.

Q. How much was the first mortgage on it?

A. \$4,300.

Q. That was the Building and Loan mortgage?

A. That was the Building and Loan mortgage.

Q. And the second mortgage?

A. The second mortgage was \$400, taken out by Abenseth, who has charge of the Susquehanna Cafe.

Q. Was there any equity in that property, Mrs. Provost?

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Objected to.

Question withdrawn.

Q. What was the reason of his conveying that property to your brother Bert?

A. Why, simply, if he hadn't it would have been lost. We were five months behind in the Building and Loan. He had gotten word that he had to pay up. We were five months behind, and it was \$43 a month; and the upstairs people paid him \$20 a month that he did not turn into the Building and Loan; he put that in his pocket.

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Q. It was a two-family house?

A. It was a two-family house, and the upstairs family paid \$20 a month for five months, that he put in his pocket instead of paying it in the Building and Loan.

Q. What time did he leave on the 7th?

A. Took the 3 o'clock train as far as I remember.

Q. What did he say before he left? Just tell the occurrence as it happened.

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A. When he gave me this letter, why I told him that he simply could not go South, and I could not let that furniture go, and he would not hear of anything else; and he said he always wanted the

chance, and now he was going ; and finally I said, "Won't you let me go down to the office and see if they won't give you one more chance?" and he would not hear of that at first ; I begged and begged, and I had to talk with him for a long time before he would consent to my going down to see his manager. Finally he did ; and I went to see his manager, but they would not take him back on account of his past record.

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Q. What was said, on the afternoon of his leaving, between you and him ?

A. Well, I was very much upset, of course ; I was crying a good part of the day, I remember that distinctly ; and he came and kissed me good-bye, and I asked him, I said, "When will I ever see you again ?" and he said, "I don't know" ; and he kissed Reginald goodbye, and he said, "I don't know when I will ever see you again."

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Q. This was on the afternoon of the 7th ?

A. This was in the afternoon.

Q. What did you say—anything ?

A. I simply said, "Good-bye," as far as I remember. I was crying so, and I felt so terribly. You can imagine how I was—left nothing but debts, my furniture had to go—

Mr. Vickers.—I object.

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The Vice Chancellor.—Only say what happened, madam. You must not argue. If you were crying, that is a fact that you may testify to ; what you said is a fact that you may testify to ; what he said is a fact that you may testify to ; but to argue your condition is in the

province of counsel. So do not tell us anything about the situation excepting the facts.

Q. When did you learn, on the afternoon of that day, that he was going?

A. Well, of course he told me he was going the moment he received this letter.

Q. That was before this day?

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A. That was two days before.

Q. Then it was after that that you went down to New York to see his manager?

A. I went down that very same day.

Q. Two days later he told you he was going?

A. Yes. I think it was the next day we turned over the property.

Q. Did he give you any notice of it, talk it over with you, about his going away?

A. He simply said that he was going.

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The Vice Chancellor.—She has told us what happened. We can determine whether that is notice or not.

By the Vice Chancellor:

Q. Do I understand you that when he first got this letter he told you that he would now carry out his idea of going South?

A. Yes; he said he had always wanted the chance.

Q. That he said when he first got this letter?

30

A. Yes.

Q. Then these other things occurred that you told about—you went to New York to see his manager, and came back, and that day or the next day you made the transfer of the real estate, and it

was two days after he got the letter that he carried out this intention that he expressed on the first day that he got it ?

A. Yes, sir.

By Mr. Mackay :

10 Q. Just relate the exact conversation, or just what happened between you and Mr. Provost, on the afternoon of the 7th before he left. Where did it occur, in what room of the house ?

A. We were in the dining room. The dining room was our living room.

Q. Was he in the house all that morning ?

A. No, he went out part of that morning. Where he went, of course, I don't know.

Q. What time did he come back ?

20 A. Well, as far as I can remember, about noon.

Q. Did he say anything about it, when he came back, that he was going away that day ?

A. Well, of course, he was talking about it at different times. He simply said that he was going, and seemed to look forward to it.

Q. Well, what did he do ?

A. Why, he packed his things ; packed his trunk and his valise, and he took his gun with him.

Q. And then, what did he say to you ?

30 A. Why, he said, good-bye, he was going ; and I asked him when he was coming back, and he said he didn't know, he couldn't tell when he would ever come back ; and he kissed Reginald, he kissed him twice, and he said, "I don't know when I will ever see him again."

Q. Did he say where he was going ?

A. Yes ; he knew just where he was going ; he

was going to South America, or South Carolina, I should say.

By the Vice Chancellor :

Q. Just state what he said. Did he say where he was going ?

A. He said he was going to Darlington, I think was the name of the place, right near Florence. I know he mentioned the two places, Darlington and Florence. 10

By Mr. Mackay :

Q. How long after the conversation between you and him, that he was going and didn't know when he would return, did he leave ?

A. That was just when he had his things ; he had his hat on and overcoat, and he set down his grip and gun. He carried his grip in one hand and the gun in the other. 20

Q. What was his conduct prior to his leaving, within a year or two prior to his leaving ?

A. Well, he was a very heavy drinker—

*Mr. Vickers :—*I object to that evidence along that line, as not supported by the petition. There is a case in this state which holds that habitual drunkenness cannot be ground for divorce for desertion, where the desertion is constructive desertion. 30

*The Vice Chancellor :—*There is no evidence here of constructive desertion.

*Mr. Vickers :—*And then his habits

seem to be absolutely immaterial. There is no cruelty alleged.

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The Vice Chancellor :—In all of these matrimonial actions the Court has got to determine the character of the conduct, which may be innocent or may be guilty, from other facts, usually, than any characterization of it by the parties. It is almost a unique case where the deserting party says, "I am going to go away, and never come back, and never see you again, and I now desert you." But whether the going away, the separation of the two people, is of one kind or of another, must be determined largely by their previous relationship towards each other and the nature of the separation. So in all of these cases we have to let in a great deal of evidence that is not germane, really, upon any other issue than to enable the Court to determine the fact which is material, and that is, the nature of the separation. If it were true that a man had constantly neglected his work, and shown that he did not want to work, and had left the house and gone elsewhere to rid himself of the necessity of supporting his family, that, of course, would all be proof germane to the desertion, although the non-support while he lived in the house might not be sufficient to found any decree upon.

Mr. Vickers :—I respectfully suggest to the Court that that is not in accordance with the settled law of this State (citing *Foote vs. Foote*, 61 A. R., page 90).

The Vice Chancellor :—I know that case ; but this is a question of whether the Court will allow proof of matrimonial conduct for the purpose of determining what was meant by each of the spouses under given circumstances ; and I do not see how it is possible to determine what their acts meant unless we have testimony of the previous history of the parties while together. Your departure from your own home this morning may have been a desertion, depending entirely upon your past conduct toward your wife. It may have been your customary every-day departure to your duties in Court or at your office. Now, to say that the only thing that the accusing party can prove is what happened at the minute of the departure is to limit that party to proof which would almost never be sufficient. For instance, if it develops, in one of these matrimonial actions, that a man has been affectionate, a kind father, an attentive man in every way to his home duties, and that he left home one morning, and, we will presume, was never heard of again, the Court would not draw the inference that he intended

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to desert ; the Court would believe that something had happened to him ; because there is nothing upon which the Court could base a finding that he had any animus to remain away. But suppose it were proved that he had been quarreling with everybody about his house, and was dissatisfied with his home life. We would have to admit proof of all that, not because the charge was habitual cruelty, or that we were going to found any decree upon that conduct, but because that conduct enables us to determine what his frame of mind was, what he meant by his acts ; and in these cases, of course, there is not only the mere physical separation—which is never sufficient alone—but there is to be considered the animus with which the physical separation was brought about. So I have always believed it was necessary, in these desertion cases, to permit counsel to have a pretty wide latitude of proof as to the relationships of the parties, because it casts light upon the nature of the separation. The separation itself, as you know, is never sufficient. It must be desertion, willful, continued and obstinate. It must not be merely separation, because there are thousands of separations that are not within the divorce act.

Mr. Vickers :—It seems to me, that, as habitual drunkenness is not ground

for divorce, evidence of this kind ought not to be permitted until there has been evidence introduced supporting the bill. There is absolutely nothing here to show anything excepting that a man walks out of his home to go, by consent apparently of his wife—certainly not against her reasonable protest—to another place—(South Carolina in this case), and there is absolutely nothing here at this time to support the charge of desertion. 10

The Vice Chancellor :—I will overrule the objection.

Question repeated.

A. Well, he was a very heavy drinker ; and the first date that I remember distinctly was the 4th of July, 1900, when he was up at the Golf club all day long, and sent word down to me by a hackman for me to come up in the evening with my sisters. I went there; and he came over and spoke to us, and then left us, and then went over and sat down at a table with a married couple and this lady's unmarried sister, and he staid with them the whole evening, drinking ; and when it was time for us to go home, why, at two different times two different gentleman friends of mine went and told him that we wanted to go home ; that I wanted to go home ; and he said, "All right," and he never came with us at all, simply let me go with the rest of the people, and he came home about one or two o'clock in the morning very much intoxicated. 20 30

Q. What was the next occasion that you distinctly remember?

10 A. Well, in 1901—no, in 1900, at the date of his brother's wedding, January, 1900, his mother was very sick with pneumonia, and he asked me to go sit up with her that night, and I went. And that night there was a fire in town; he was there all night, and the next morning he came around to his mother's house about eight o'clock in the morning to find out how she was, and I asked him to go home and go to bed, because he looked terrible; so he said he would; I went home about 11 o'clock, and he wasn't there, nor had he been there, the girl said; and about 12 o'clock he came in, in a hack. He could not walk.

Q. Noon or night?

20 A. 12 o'clock noon, about, it was. He came in a hack. He could not walk straight. And he went in the room and lay down, and I said to him, "What are you going to do about your brother's wedding? How are you going to go there?" and he said that he had taken medicine to straighten himself out, and if he could just sleep for a couple of hours he would be all right. So he did. I woke him up about quarter of four, and we took the four-something train; and on our way home at night—we came down I should say about ten or eleven o'clock—I have forgotten exactly the time
30 —he had a hack to take his sister and me home; and on the way around to the house he said he had forgotten to buy some cigarettes; I said, "Now let me go back with you and get the cigarettes," and he would not hear of it; he made the driver drive me home, and then he went back and never turned up again until about two or three o'clock in the morn-

ing, and then, of course, he was intoxicated again. He was always intoxicated when he came home at that time of night, very frequently when he came in at eight o'clock, and sometimes when he came home at even two and three o'clock. One day, I remember distinctly—I haven't stopped to think of the year—

Mr. Vickers:—I wish to object to this. 10

The Vice Chancellor:—Under my ruling, I am going to take this.

A. (Resuming) I supposed that he had gone to his business, and instead of that, about 10 o'clock, he came home very much intoxicated. He was home any number of times and did not go to business so that they had to telephone out, and I had to telephone down that he was ill, every single time. 20

Q. At the time of these first occurrences that you mention, was he still holding his position in New York with the Mutual Life?

A. Yes; he was holding his position.

Q. How long after that did he continue to hold this position?

A. Until March 7th.

Q. Other than this occurrence at the wedding, what distinct occasion do you remember when he came home intoxicated? 30

A. Why, on Christmas Day, 1902, the last Christmas we spent together, his family were going to spend Christmas with us; and in the morning he went out and took a sleigh ride with a

friend of his, and came in about 12 o'clock so intoxicated that he had to go immediately to bed; he did not eat Christmas dinner with us at all; and in the afternoon, about, I should say, seven o'clock, he came out. That was only because his mother had insisted on seeing him.

Q. This was at your home on Atlantic street?

A. Yes.

10 Q. How did he provide for you and the children after your marriage and up until the time of his leaving?

A. Well, before this, when we lived in New York, he had allowed me \$10 a month to dress myself; but from the time we came to Hackensack I never had a penny of my own to do anything with. All of our bills had to be charged. We had to trade at all the stores where they would charge. I have with me now two bills that have never been paid.

20

a grocery bill and a butcher's bill.

Mr. Vickers:—They are objected to, and also this line of examination in regard to the financial condition of this man.

The Vice Chancellor:—It all comes in under my previous ruling, that I will hear both sides on the matrimonial life of these people.

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Q. Whose are they?

A. C. B. Demarest, grocer, \$33.51—

Q. What is the date of it?

A. From June 1, 1902, to December 31, 1903.

Q. What is the other bill?

A. The other bill is John Shaffer, butcher, from February 7 to December 11, 1902, \$37.86.

Q. Are there any other bills, outside of those you have originally mentioned, that have not been paid?

A. No; not that I know of.

Q. Every other bill, outside of these, you have paid yourself?

A. Only those that the checks show. There were three bills; I think two were of five dollars each and one of a dollar and something, that he paid. 10

Q. How much of a salary was he earning at the time?

A. \$2,000; and the Christmas before he was discharged he received a Christmas present of \$200.

Q. What did he provide for you and the children in the way of clothing?

A. He never gave me but one skirt in his life. That costs \$4. And he only even gave me money to buy material to make one waist. One suit I had my mother gave me; another suit a cousin felt so sorry for me she gave to me; and another suit my brother gave me. 20

Mr. Vickers:—I object to how the cousin felt.

The Vice Chancellor:—Yes; strike out how the cousin felt. 30

Q. Just tell what they gave you.

A. Well, a couple of waists my sisters gave me for Christmas presents. Reginald, the oldest child, only ever had two suits of clothes. He never had a coat that was bought. I made all of his

clothing from old clothes that Miss Provost and my sisters gave me. At the time that Donald was born in 1901, which was in September, Reginald only had summer clothing, and Mr. Provost's mother, Mrs. Nelson Provost, made him a cape that he could wear until I was strong enough to make him a coat.

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Q. What were the running expenses of the household during the time that you lived on Atlantic street in your own home?

A. They were very low, just as low as we could get them. You see what the bills were. That was the style of them. The bills had to run always three or four months before they could be paid. The baker had to send the clerk around to see if they couldn't do something about collecting it. I promised that I would do what I could. Mr. Provost didn't have the money, or wouldn't give it to me, and so I went over and borrowed it from my sister, \$10. The bill had been running for some months, for bread.

20

Q. Who handled the finances?

A. Mr. Provost entirely. I was never given anything to do anything with.

Q. Would the rental of your home and the providing of necessaries and clothing for you and your children have exceeded \$2,000 a year?

30

A. Indeed not; nowhere near it.

The Vice Chancellor :—I do not understand that exactly.

Mr. Mackay :—I mean the building and loan payment, less the rent received.

Q. Would the building and loan payment that your husband paid, less the amount that he received from the rental of the upstairs portion of the house, together with the provisions and so forth used in the home and the clothing you had to have, have exceeded \$2,000 a year?

(Objected to as immaterial.)

The Vice Chancellor.—It is not shown that this witness knows what the tax expenses and the other expenses were. I will overrule that question. 10

Q. Do you know how much the Building and Loan payment was?

A. I do.

The Vice Chancellor.—What is your purpose? Is it your purpose to prove that he did not support his wife? 20

Mr. Mackay.—I am showing that as one of the elements to prove that he deserted her on this occasion. I think that the fact that he was receiving a salary of \$2,000, and was in the habit of drinking, and that he left with these bills behind him, and lost his position, are certainly evidence that he wanted to desert on this occasion. 30

The Vice Chancellor.—I will permit you to prove that. She has told us the Building and Loan payment was \$43 a month.

Q. And what was the income from the upstairs portion of the building ?

A. \$20 a month.

Q. How much did he spend on you from the time of your living in Hackensack in this home until his leaving on the 7th of March, 1903, in the way of clothing ; can you remember that ?

10 A. I can. I can tell to the cent. He only paid \$4 for a short golf skirt for me, and a waist that did not cost \$2. I never had so much as a collar or a ribbon that were not given me by my sisters. When I was going to the theatre with him one time to celebrate our wedding anniversary in 1901 (it had been customary with his mother and father to go to the theatre, and so he thought it would be nice for us to do so) and when we were first married we went twice ; the last time we went in October, in 1901 ; we ought to have gone on our wedding day, October 14th, but that day he never
20 came home to dinner ; I sat down and ate my dinner alone, and he came in later intoxicated. A week later we did go to the theatre, and then I had to borrow a waist and collar from my sister to go with ; and he was at that time making \$2,000 a year.

Q. So he was not spending anything on clothing ?

A. Nothing at all.

Q. For either you or the children ?

A. No.

30 Q. What about your provisions in the house ? Do you know how much they were—to run the house, the household expenses ?

A. Before Donald's birth we paid the servant \$7 a month ; in the month Donald was born, in September, 1901, we paid her \$12 ; that was because I

gave her a present of \$2 ; and after that until the time our home was broken up we paid her \$10.

Q. What were your other expenses for provisions ?

A. Well, at the outside, the grocery bill could not have been more than \$10 ; or the butcher's bill more than \$10 at the outside.

Q. A month or a week ?

A. A month.

10

Q. And the butcher's bill \$10 ?

A. The butcher's bill \$10 ; and the baker's bill was \$10 for several months. They had to send this clerk around to collect it and I had to borrow the money from my sister.

Q. Did he ever give you any money during the month as spending money, for any purpose whatever ?

A. Very seldom ; once in a while a dollar or so, perhaps, to buy things that the vendors might come around with.

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Q. Did that occur often ?

A. Often ? No ; indeed not.

Q. After he left on the 7th day of March, 1903, did you hear from him ?

A. Yes.

Q. When ?

A. Well, I don't remember the exact dates, but he wrote, and I wrote back to him.

Q. What did you do after he left ? Where did you go ?

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A. Why, after the furniture was disposed of I went over to my mother's and lived there. Then I right away took steps about getting a position to teach school. In order to do that I had first to wean my baby.

Q. You have two children ?

A. I have two children.

Q. When was the first one born ?

A. The first one was born in 1899, February.

Q. And his name ?

A. Reginald Moore.

10 Q. And the second child ?

A. The second, Donald, was born September 5th, 1901. He was only eighteen months old.

Q. Both boys ?

A. Both boys.

Q. And you took them with you to your mother's home after he left ?

A. I took them with me.

Q. Where have you been living with the children since the 7th day of March, 1903 ?

20 A. At my mother's home.

Q. Just proceed now, with the continuation of what you did after he left.

A. I had to wean my baby, so we thought the best plan would be for me—

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The Vice Chancellor :—How does this cast any light on the situation ? The question is whether this man deserted her on the 7th of March, 1903. What she did without his participation cannot cast any light on that question. If she had letters from him, that is all evidence ; but I do not see that what she did in Hackensack when he was somewhere else can cast any light on his conduct.

Mr. Mackay :—Or whether or not he

contributed to her support during the time he was away?

The Vice Chancellor :—Oh, certainly; that is a question of what he did, not what she did.

Q. What did he do toward your support after the 7th day of March, 1903, up to the present time, or the time of the filing of the bill of complaint? 10

A. He never gave so much as twenty-five cents' worth to either the children or myself; never so much as bought the children a pair of stockings even.

By the Vice Chancellor :

Q. By that answer you mean he has done nothing?

A. Nothing, nothing. 20

By Mr. Mackay :

Q. Where did he live after the 7th day of March, 1903?

A. After he came from the South, you mean?

Q. Yes. Continue and tell me what he did after the 7th day of March, 1903.

A. He went South—

Q. Where?

A. To Darlington, I think it was Darlington and Florence; those are the two names I remember. 30

Q. Did he write to you?

A. He wrote to me.

Q. Have you any of that correspondence?

A. No. I have not.

Mr. Mackay :—I have served a notice, your Honor, on the other side to produce any replies or any correspondence that we sent to him.

The Vice Chancellor :—Read the notice.

(Notice read by Mr. Mackay.)

10

The Vice Chancellor :—What is your response to that notice, Mr. Vickers?

Mr. Vickers :—I produce a letter dated May 8th, 1905, and one dated May 1st, 1905.

The Vice Chancellor :—Those letters are now to be marked in evidence, having been called for and produced.

20

(The two letters were thereupon marked Exhibits P-1 and P-2).

Mr. Mackay :—I called for all the letters within three years of the filing of the petition.

30

(Under the call counsel for the defendant produces four other letters as follows: One postmarked August 10, 1903, marked Exhibit P-3; one dated August 19, 1903, marked Exhibit P-4; one dated August 27, 1903, marked Exhibit P-5, and one dated October 12, 1904, marked Exhibit P-6.)

Mr. Vickers :—We have five other letters from Mrs. Provost, dated from the 17th of March, immediately after

the departure of Mr. Provost, down to and connecting with these letters, and we offer them also. I am not sure whether they are called for.

Mr. Kellogg :—He has only called for those within two years of the filing of the petition, which would make it June 21st, 1903.

10

The Vice Chancellor :—They have offered those letters to you, Mr. Mackay ; what have you to say about it ?

Mr. Mackay :—I will wait until they produce them on cross-examination.

The Vice Chancellor :—They may very properly offer them now. If you do not want them you do not have to take them now.

20

Mr. Mackay :—I would like to offer in evidence, your Honor, letters received from the defendant.

The Vice Chancellor :—Have them identified.

(Mr. Mackay hands to opposing counsel two letters.)

Mr. Vickers :—The letter of April 8th, 1905, is conceded to be in the handwriting of the defendant ; the letter of May 3d, 1905, is also conceded to be in the handwriting of the defendant ; (and referring to two other letters now handed to him by Mr. Mackay) the let-

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ter of April 12th, 1905, is also conceded to be in the handwriting of the defendant, and the letter of May 10th, 1905, is conceded to be in the handwriting of the defendant.

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(The four letters produced by Mr. Mackay and identified as in the handwriting of the defendant are offered in evidence, admitted without objection and are marked, respectively, P-7, P-8, P-9 and P-10.)

Mr. Mackay :—I also offer letter of September 7, 1904.

20

(The letter of September 7, 1904, is conceded to be in the handwriting of the defendant, is offered in evidence, admitted without objection and marked Exhibit P-11.)

Q. Has the defendant ever offered you a home since March 7, 1903?

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The Vice Chancellor :—It has not been shown that she ever had a conversation with him since March 7th, 1903, or had any personal communication with him.

Q. Have you ever had any personal communication with him since March 7th, 1903, outside of the writing?

A. Yes.

Q. When?

A. Why, after he came home from the South.

In the first place, he had had a fire insurance business—

The Vice Chancellor :—You are just asked the question when did you have a conversation with your husband after the 7th of March, 1903.

A. Why, at different times, when I went to his house to find out about this insurance. 10

By the Vice Chancellor :

Q. Well, when, madam? Was it two years ago, one year ago, one month ago, two days ago? Tell us when.

A. Right after he came from the South.

Q. And when did he come from the South?

A. He came from the South about a month afterwards. He was gone about one month. 20

Q. About April, 1903, he returned; is that correct?

A. Yes.

Q. How soon after April, or when, with respect to April, 1903, did you first see him and have a conversation with him?

A. About two or three days after he came from the South.

By Mr. Mackay : 30

Q. Where did you see him?

A. At his mother's house.

Q. Voluntarily, or at his request?

A. Voluntarily.

By the Vice Chancellor :

Q. That is, you went to see him ?

A. Yes.

By Mr. Mackay :

Q. What for ?

10 A. The first time I went to see him was when he came from the South. I simply went for nothing at all, just to see him.

Q. What conversation occurred between you ?

A. He was telling us about his trip South, about what he had done there, how he had been shooting, and told us about the country.

Q. Anything else ?

A. Nothing that I can recall.

Q. How long did you stay there ?

A. Why, I should say about an hour.

20 Q. Did he offer to provide a home for you ?

A. Made no offer at all.

Q. Where was he living ?

A. With his mother.

Q. Did he say anything about it ?

A. Nothing.

Q. About your home ?

A. Nothing.

Q. About your welfare ?

A. Nothing.

30 Q. About his children ?

A. Nothing.

Q. When did you see him again ?

A. Shortly after that I went to see him in regard to the fire insurance business.

Q. Voluntarily, or at his request ?

A. Voluntarily.

Q. What business was that?

A. It was a business that they gave me the agency of.

Q. Who did?

A. Van Houten & Sherwood, of Jersey City here, were the agents, and they gave me the Bergen county agency for the Firemen's Fund Insurance Company. Mr. Provost had had charge of the agency, and just after he had gone, a letter came recalling the agency from him. 10

Q. They gave it to you?

A. They gave it to me. I went down to see them personally.

Q. And you went to see him?

A. Yes.

Q. How long after your first visit, after his return from the South, was this second call?

A. Why, it may have been the very next week. I knew nothing about the business. 20

Q. How long did you stay there?

A. Just long enough to find out what I wanted to know.

Q. How long was that?

A. Probably about an hour.

Q. What did he say to you, outside of the insurance business—anything?

A. Nothing.

Q. Did he offer you a home?

A. No. 30

Q. Give you any money?

A. No. I asked him for some—

The Vice Chancellor.—This witness has testified that from the 7th day of March, 1903, until the 3d day of April,

1906, this man has not contributed one cent to her ; her answer was "Nothing." Now, it is not worth while to ask her, with respect to those particular dates, as to whether he gave her anything. She has already testified that he has given her absolutely nothing between those dates. (To the witness:) Now, go on and give any conversation that you had with your husband upon any occasion from the 7th of March, 1903 ; that is very material to this suit, and you should state what you said and what he said.

10
20 A. Well, I asked him for some, and he said he had none to give me ; he said he had nothing.

Q. Do you know what business he was in at that time ?

A. He was in no business.

Q. Did you ask him ?

A. I did.

Q. When did you see him again ?

A. Very shortly after that I went again in regard to another policy. He walked with me as far as my sister's house ; I was going to stop there
30 for another sister.

Q. How far was that ?

A. A distance of about half a block, just about half a block—across the street and half a block.

Q. What did he say ?

A. He had been drinking ; he was not intoxicated, but he had been drinking ; and he told me that his mother would not allow him to live at

their house any longer, that he had no place to go, that he wouldn't go back and even stay over night.

By the Vice Chancellor :

Q. At his mother's ?

A. At his mother's. And I said to him, "Well, why can't you go up in the country at Oak Ridge?" —a place up in the country where they had some distant connections. He said, no, he would not go there; and he kissed me goodbye, and told me again he would never see me again. 10

Q. What was that date? Can you remember about the date?

A. I cannot remember the date, but I do remember that it was in the summer.

Q. About how long after his return from the South?

A. The summer after his return in 1903. 20

By the Vice Chancellor :

Q. About how long after his return, Mr. Mackay asked you.

A. Why, probably two or three months.

By Mr. Mackay :

Q. When was your next call, or his call—when did you next see each other?

A. Well, I saw him several times then in regard to the insurance. 30

*The Vice Chancellor :—*When, Madam?

A. And I saw him once in September in regard to signing a note that was due at the bank.

Q. September of what year ?

A. That must have been in 1903.

Q. Have you any memorandum to refresh your recollection ?

A. Yes, I have.

Q. Just turn to that.

A. (Witness produces and refers to a paper.)

Q. What is that you have in your hand ?

10 A. This is a memorandum of the notes from the Hackensack bank.

Q. Are those the occasions that you saw him on ?

A. I did not see him on all these occasions.

Q. Well, speak particularly of the ones you did see him on.

A. I saw him May 7th, when he signed a note.

Q. For how much ?

A. For \$200, that had come due on May 7th.

Q. What for ?

20 A. That he had had. This note was taken out January 7th, 1903, just two months before he went South. That morning he called me in his room, and he told me that he had received a notice from the Insurance Company that he had to pay a bill, that he had collected and spent the money, within that day, that that was the last day given him, and if he did not pay it that day he would be liable to arrest, and he wanted me to go over and ask my father to endorse a note for him. At first I refused ; and he told me if I didn't do it he would never come back, he would simply leave home with all the debts and everything and never come back. That was on January 7th, just two months before he went South. Finally I did consent to go over and ask my father to do it. He did it ; and it was so
30 important that I had to telephone Mr. Provost in

New York that my father was willing to endorse this note. I had to sign the note myself.

Q. For how much?

A. For two hundred dollars. I had to sign the note myself.

Q. Is that the note you spoke of being renewed shortly after his return on that date?

A. Yes.

Q. When did you see him again after that date? 10

A. I saw him May 7th when that same note was renewed again.

Q. Where?

A. I went out to his house to see him, and told him that note was due and that he would have to sign it. Then I saw him on July 7th again.

Q. Let me ask at this point: Was there any other conversation outside of the renewing of that note?

A. Nothing whatever—purely business. 20

Q. What else after that?

A. Then on September 8th, 1903, I went to see him again, because the note was due again, and I had to go to his house a couple of times then, because he was not home; and finally I had to go to the bank and sign that note myself, and left word at his house that he could go and sign it also.

Q. What date was that?

A. That was signed on September 8th, 1903. 30

Q. For how much was that note?

A. For \$200.

Q. What became of that note?

A. I paid it after I taught school.

Q. Yourself?

A. I paid it myself ; I paid it with my first year's salary.

Q. Did you see him again after that date ?

A. Not to speak to.

Q. Not to speak to ?

A. I saw him sitting in his window.

10

By the Vice Chancellor :

Q. You have never spoken to him since what date ?

A. Since September 8, 1903, as far as I can remember.

Q. At this time that you had the conversation with him, when he said that he would go away and you never would see him again, in the summer of 1903, did he continue after that to live right along at his mother's ?

20

A. Yes, he did.

Q. He did not actually go away ?

A. No, he did not. He was simply intoxicated, and I suppose did not know what he was saying.

Q. And, as far as you know, without committing yourself to any knowledge excepting that which one gets by living in the same town, you understand that he has been living right along there at his mother's ?

30

A. Yes.

Q. Making that his home ?

A. He has.

Cross Examination by Mr. Vickers :

Q. Mrs. Provost, while you were describing the leaving and leave-taking of your husband to go South you said he was going to South America,

and then you corrected yourself—do you know what prompted that slip?

A. Yes.

Q. Just explain to the Court, will you, what brought that to your mind and what prompted that?

A. I will. When he first talked about going, after I had talked with him and pleaded with him not to go and leave me, why it occurred to me that my brother was connected with a shipping company and he could often get trips for friends of his, and if such a thing was possible—since he insisted upon going South—if there was a boat going on a very short trip, as they sometimes do, we might be able to let him take a short trip, and then I could keep my home ; our home wouldn't have to be broken up. 10

Q. That is what you advised, in fact, wasn't it?

A. That is what I advised. But we found there was not a single boat going on a short trip ; they were all going to South America. Then, of course, we did not consider it at all. 20

Q. Well, didn't you, as a matter of fact, advise that he should take the South American trip, it being a long trip, so that he might pull himself together and improve his nervous condition?

A. No. I never advised that he should take the South American trip. I advised, if there was a boat going on a short trip, then he might do it ; but never the South American trip, because I knew that would leave me for months. 30

Q. Well, what was your idea in advising him to take a trip on a boat ?

A. Simply because he insisted upon going South, and I thought he could get a short trip in that

way, and it would not be any expense to him at all, and I could keep my home. My object was to keep my home.

Q. Was that the only object you had?

A. Yes; that is the only object I had.

Q. And the question of expense to him?

A. Yes. Well, of course, if we had that four hundred dollars, don't you see we could have started—

10

Q. (Interrupting) Then his physical, mental and nervous condition at this time was not such as entered into your plans for him at all?

A. Well, I thought if he could go on a boat that my brother was interested in we could let the captain know, and he might be able to prevent him from getting anything to drink.

Q. Then the question of the expense did not, after all, enter into it so much, did it?

A. Well, they all three entered in.

20

Q. All three?

A. All three, but of course my home was the first thing, the first consideration.

Q. That, of course, was on account of your children?

A. Well, and myself.

Q. So far as he is concerned you did not interest yourself in him, with regard to your home, did you?

A. Why, indeed I did.

30

Q. Well, you haven't mentioned it; that is the reason I called your attention to it.

A. Well, the only reason I corresponded with him right along after he had gone South, and even the next summer, was simply to encourage him to do better right along, and in every way I possibly could I encouraged him.

Q. You did correspond with him, and he wrote to you, and your correspondence on each side was that of a loving wife to a loving husband, and vice versa, was it not?

A. Simply to encourage him.

Q. You did not mean what you said in those letters, did you, when you expressed terms of endearment and affection?

A. I do not think I ever expressed terms of endearment or affection, unless it was saying "My dear Win" at the beginning of a letter. 10

Q. Didn't you ever sign those letters as "Your loving wife?"

A. Certainly; as a rule.

Q. As a rule. Did you mean that?

A. Why, certainly; in a way.

Q. Then when you did express terms of endearment and affection they were not simply to encourage him, were they? 20

A. Well, do you mean terms of endearment and affection in the beginning and ending of a letter like that?

Q. Yes, or in between—anywhere—the beginning or ending?

The Vice Chancellor:—She has a right to say that she should not be bound by an answer to something which has not been shown to exist. She says she admits that she called him "Dear Win," and signed herself "Your loving wife." Beyond that you must show her what she did say. 30

Mr. Vickers:—I will only bind the witness as to that part of the question.

Q. As to the beginning and the ending—when you, if you did use endearing terms, did you mean them, or were they purely for the purpose of encouraging and helping your husband?

A. I wanted to help him and wanted to encourage him.

10

Question repeated.

By the Vice Chancellor :

Q. The point of the inquiry was, did you mean what those words imply? If you signed yourself, "Your loving wife," did you mean that you were his loving wife? That is what counsel is asking you, and he is entitled to an answer.

20

A. Well, in a way, of course, I meant it; but I certainly did not love him as I did once upon a time, if that is what you mean.

By Mr. Vickers :

Q. As a matter of fact, you had lost your love and affection for him, had you not?

A. Well, I had lost it when I saw him intoxicated.

30

Q. And you had lost it when you saw him intoxicated the first time?

A. Yes.

Q. This was years prior to his leaving you?

A. Yes.

Q. Is that right?

A. Yes.

Q. And from that time you had no further interest in your husband excepting as a home-provider—is that right?

A. No ; that is not right.

Q. And what interest had you in him, excepting as a home provider, after that period ?

A. I don't understand.

By the Vice Chancellor :

Q. After the first time that you saw your husband intoxicated, which had the effect that you have testified to upon your affections, what was your attitude towards your husband ? 10

A. Why, he was my husband, and I always wanted to do what was right and to try and make him do what was right. I realized he was my husband.

By Mr. Vickers :

Q. How long prior to your marriage had you known your husband ?

A. Probably a couple of years, I think ; for we were engaged for a year before we were married. 20

Q. You knew he drank ?

A. I did not know he drank. He never acknowledged it to me in his life.

Q. Did you never see him drink prior to your marriage ?

A. I had never seen him intoxicated.

Q. And had never noticed any influence of liquor upon his breath or in his actions, prior to the marriage ? 30

A. Never. Once I had heard that he did, and I asked him about it ; and I asked why he always ate Italian mints, and he simply said he always did it because he smoked, and that would take the odor of the smoke away.

Q. As far as you know, that was true ?

A. I have heard differently since.

Q. Now, do you say this : That when your husband left you on the 7th of March, 1903, he left you under such circumstances as warranted you then, and warrants you now, to say that he left you to remain away ?

A. Yes ; I never expected to see him again.

10 Q. You never expected to see him again ?

A. No.

Q. Do you recall the conversation which you had with him in his mother's home a month or so later—that is to say, the first time you saw him after his return from the South ?

A. Well, partly.

Q. Well, will you repeat that part of the conversation which you remember ?

20 A. Why, he was telling us about his trip South, about the time he had, the shooting he had, and he spoke of the flowers—I remember that particularly—and he spoke of the people that he lived with.

Q. Well, what did you say to him ?

A. I really don't remember. There was no reference made to my coming there to live, or anything like that ; I know that distinctly.

Q. Did you, in words, express any surprise at his being there ?

30 A. Yes, I was very much surprised.

By the Vice Chancellor :

Q. Did you express that surprise ? Did you say anything about your surprise ? That is the question.

A. I don't remember.

By Mr. Vickers :

Q. For the purpose of refreshing your memory, I ask you whether you did not say to him, "What, are you home? I did not expect you home for a year!"

A. No, I never made a remark like that.

Q. Nor words to that effect?

10

A. No.

Q. Nor words specifying any time when you expected him home, or any length of time that you expected him to stay away?

A. No.

Q. Did you say to him that you had never expected to see him again, or anything to that effect?

A. No.

Q. Did you express, in actions or in words, any pleasure at his return at that time?

20

A. No, I did not.

Q. Did you feel any pleasure at his return at that time?

A. No.

Q. Did you feel any displeasure at his return at that time?

A. Yes.

Q. Will you explain what that displeasure was, and what the basis of it was?

A. Well, I was so surprised I really do not remember anything at all about that, about what I said; I was in New York at the time that he came; I did not know anything about it until that night I had come home from New York.

30

Q. You had known for several hours before

your meeting on that occasion that he had returned from the South, had you not ?

A. No, it was not several hours.

Q. Well, how long was it ?

A. Why, it was only about an hour.

Q. And how did you find it out ?

10 A. My sister told me.

Q. Showed you a telegram, did she ?

A. No. I did not see the telegram.

Q. When you say you "did not see the telegram," you refer to a telegram which he sent to you informing you that he would return at a definite hour, a certain time in the day, is not that right ?

A. Yes.

20 Q. Your husband returned home on Saturday, did he not ?

A. I don't remember the day.

Q. Do you remember the day on which you met ?

A. I remember the day, but I don't remember what day it was.

Q. If I ask you this question will it refresh your memory : That you were spending Saturday and Sunday in New York with, I believe, a sister of yours, and during that visit he returned, did he not ?

30 A. Yes.

Q. And upon your return from that visit you found that a telegram had been sent to you as described ?

A. Yes.

Q. Now, then, you say that you felt some displeasure, and I ask you to explain that, and as answer you gave me that you were excited, it was so sudden practically ; now, you had had an hour

to think this situation over of your meeting your husband, and during that hour hadn't you time to collect your thoughts on the situation that would confront you when you did meet him?

A. No, I had not. During that hour I had eaten my dinner and changed my clothes.

Q. And why did you feel any displeasure at your husband's return?

A. Why, in the letters that he wrote from the South, in each letter he said he was doing better with his drinking; that he could not leave off right away, but he was gradually stopping it; and I was in hopes that he would stop entirely. 10

Q. Now, was that the reason you were displeased when you saw him?

A. Yes.

Q. And you were displeased when you heard that he had returned?

A. Yes.

Q. Is that the only explanation that you can give, that he had made this effort during the time he was South to stop drinking? 20

The Vice Chancellor :—That is not a very intelligible question.

Q. For your displeasure at his early return?

A. I don't understand what he means.

By the Vice Chancellor : 30

Q. He wants to know whether the only explanation that you now give of why you were displeased that your husband had come back was because he had written you that while in the South he was

lessening the amount that he drank—is that your only explanation for your displeasure?

A. Yes; and I thought that as soon as he came to Hackensack again he would get in with his old associates.

Q. He wants to know whether that was your only reason?

A. No; it was simply on account of his drinking.

10 Q. Well, then, is that the only reason you were displeased—because of this drink situation?

A. Yes; that is the only reason.

By Mr. Vickers:

Q. You were in the hope that he would stay in Carolina long enough to wean himself from the drink habit entirely, were you not?

A. That was what he said in one of his letters.

20 Q. You were in the hope that that would be so—is not that the fact?

A. Well, I was in the hope that when he came he would have given it up entirely.

Q. When he returned?

A. Yes.

Q. And that was the day to which you were looking forward?

A. Yes.

Q. And your letters to him were to that same effect, constantly, during his absence in the South, were they not?

30 A. Always encouraging.

Q. Encouraging, and expressing that hope?

A. Yes.

Q. You were sincere in expressing that hope to him, that he would reform, were you not?

A. Yes; I was.

Q. And what, if you can say, was the motive that actuated you in that sincerity?

A. I was always in hopes that he would reform so that in time we might have a home of our own.

Q. Had you, during his stay in the South, formed any opinion as to how long it would be necessary for him to remain away to bring about a reformation as to his drinking?

10

A. No. I had never thought of that.

Q. Had you ever formed, during that same period, any opinion on his ability to reform and stop the drink habit?

A. No.

Q. You were during all that time living in the belief and the hope that he would reform,—is that it?

A. Yes.

Q. Now, then, has your husband, since his return from the South, never asked you to come and live with him?

20

A. Never, except in one letter, and I accepted his offer.

Q. In what manner did you accept his offer?

A. I told him just as soon as he could tell me what salary he was getting, by whom he was employed, and where we could have our home, I was ready to give up my position at school. I waited until the very last day given me to sign my contract at school in the hopes that there would come a letter telling me. There was nothing further came except the one letter that I could not resign my position on.

30

Q. Now, first; can you refer to the letter, and have you it, in which he offered you a home?

A. It is there, I suppose.

Q. Will you take it from among those letters (handing witness Exhibits P-7, P-8, P-9, P-10 and P-11)?

A. (The witness selects Exhibit P-9, dated April 12, 1905.)

10 Q. This letter, which begins, "As your counsel informs me that you will not agree to any reconciliation"—that is the letter you mean, is it not?

A. That is the letter that I refer to.

Q. And had you so instructed your counsel to inform your husband that you would not agree to a reconciliation?

A. No; I had not.

Q. You had not?

A. I had not.

20 Q. So, if your counsel made that statement to your husband, it was without any authority of yours?

A. It was.

Q. I show you a letter, and ask you whether this is your letter to your husband, and whether that is the letter to which you referred when you said that you accepted the proposition set forth in Exhibit P-9?

A. That is one of them.

30

The Vice Chancellor :—Is that letter in evidence?

Mr. Vickers :—No; it is not in evidence.

The Vice Chancellor :—What is the date of it?

Mr. Vickers :—May 1st, 1905.

Mr. Kellogg :—It is in evidence. It is Exhibit P-1.

Q. And does that contain the acceptance to which you referred of the proposition of your husband, with the conditions annexed as you have testified to; or is that acceptance, and are other conditions set forth in another letter? 10

A. There is another letter.

Q. I show you Exhibit P-2, and ask you whether that is it?

A. Yes; that is the letter.

Q. And these two letters, Exhibit P-1 and Exhibit P-2, express the conditions under which you were willing to accept your husband's offer to return and live with him; is that right? 20

A. Why, it says in there that as soon as he would tell me what his salary was, and by whom he was employed, and where our home could be, I was ready to go and live with him.

Q. And those were the final conditions made by you?

A. Yes. I could not give up my school until I knew something definite.

Q. Now, when did you first make application for a position to teach school, after your husband went South? 30

A. Why, not until after I had taken up the examination. I did not take up the examination—I could not—until the first Saturday in May, 1903.

Q. And your husband had returned at that time?

A. Yes; he had returned.

Q. And you knew he had returned?

A. I knew he had returned.

Q. And prior to that time had you taken any steps towards getting this position?

A. No.

Q. None whatever?

A. None whatever.

10 Q. Did you have to send any notice that you would apply for examinations?

A. No.

Q. How came you to go in May to take these examinations?

A. That was the time of the examination.

Q. I mean what prompted you?

20 A. Because I had no support. Mr. Provost was doing nothing; he was living on his mother; I was living on my mother and father, and he was no support. As far as I saw or heard, he was not trying to get a position.

Q. When did you first make up your mind to earn your own livelihood?

A. You mean after he left me?

Q. After he left you on March 7th?

A. Why, it was not until just two weeks before the examination took place, for I had just exactly two weeks to study eleven subjects.

30 Q. That was either the latter part of April, or the first part of May?

A. Yes.

Q. You had taught prior to your marriage?

A. I had taught before.

Q. Prior to these two weeks, now, before this examination, had you determined upon earning your own livelihood?

A. Why, I knew I would have to.

Q. Well, had you determined to do it and taken any steps in that direction?

A. Simply in studying, you mean?

Q. No; in anything—doing anything toward earning your own livelihood?

A. Why, do you refer to one time when I answered an advertisement?

The Vice Chancellor :—If that was a step, yes. He means any step you took. 10

A. Yes, I answered an advertisement once.

Q. What was that relative to?

The Vice Chancellor :—He means what kind of work.

A. Why, I cannot tell you. It was simply, as far as I could make out, office work. It was simply done to frighten Mr. Provost. It was done before he went South. 20

Q. Before he went South?

A. Before he went South.

The Vice Chancellor :—You did not mean that, did you, Mr. Vickers?

Mr. Vickers :—I did not mean that. I am glad to know it. 30

The Witness :—I got an answer from it, and they told me to come down and see them; but, of course, I never went.

Q. And you informed him of that fact?

A. Yes ; he knew it.

Q. Pardon me. (Question repeated).

A. Yes ; he—

Q. What were you going to say more ?

A. I was going to say he told me if I wanted to earn money I could take his fire insurance business, and he was perfectly willing and would have been glad to have given it up.

10 Q. You at that time expressed your discontent with the conditions existing there between you and him, and in your home, and told him that you would go out and earn your own money ; is not that the fact ?

A. I told him that if he did not try to save his money and keep his money, I would have to do it. I would be compelled to do it.

Q. And so, to frighten him, you answered this advertisement ?

20 A. Yes.

Q. But up to the time of his leaving, when he suddenly left on this 7th day of March, you had no real intention of going out to earn your own living ?

A. Not a particle.

Q. And you had not determined that it was incumbent upon you in any way to assist in providing for that home by your work outside of the home ?

30 A. I could not see how it should be necessary when he was earning a salary of two thousand dollars.

Q. It was only the question of his being prodigal—the money not coming to your hands properly—that you objected to, wasn't it ?

A. I do not understand what you mean.

Q. I say, the only objection you had to make was that he was prodigal ?

The Vice Chancellor :—That you did not have enough money to spend for the household, and to properly care for yourself and the children ?

A. You mean that was the reason I said I would have to go to work ? 10

Q. Yes.

A. Yes.

Q. He was earning enough, and capable of earning enough ?

A. Certainly.

Q. And had been throughout the years through which you were married ?

A. Yes.

Q. Until he lost his position two days before he left for the South ? 20

A. Yes.

Q. Now, I want to ask you again whether you are quite certain that you did not urge your husband to go away somewhere after he lost his position—take some of this four hundred dollars and go away somewhere, and build up his system and his health ?

A. Why, certainly not.

Q. It was not necessary, was it ?

A. To urge him to go away ? 30

By the Vice Chancellor :

Q. No ; it was not necessary for his health, is what Mr. Vickers means. In your view, was it

necessary for the reformation of your husband's health that he should go away somewhere? That is what he wants to know.

A. I do not understand why he could not have reformed right there.

Q. You did not think it was necessary for him to go away, then?

A. No.

10

By Mr. Vickers :

Q. Well, you were very much surprised when he came back to the place after a month, were you not?

A. I was.

Q. And you have already testified that one of the reasons of your resenting that was because he came back to that place where you thought he could not reform; is not that the fact?

20

A. But he said he was doing so much better there where he was.

Q. So that you determined that his judgment was best as to the place for him to go to reform his habits; is that right?

A. I do not think I quite understand what you mean.

By the Vice Chancellor :

30

Q. Having said that while he was in the South he was getting along so well, having said that you were displeased that he came back to Hackensack because you feared the result of his old associations upon him there, Mr. Vickers asks whether you trusted his judgment then, rather than your own,

as to where he had better be, for the purpose of gaining better habits or losing old ones?

A. Well, he knew how he was getting along and I did not. He knew how much less he was drinking and, of course, I simply took his word.

By Mr. Vickers :

10

Q. You had no reason to doubt his word as given to you in those letters, had you?

A. Why, he never kept any promises that he had ever made.

Q. None?

A. Very few.

Q. And that refers to your marriage relations since you were married?

A. What I was referring to particularly, was in these notes; he would promise, before I would go over to my father and ask to have them renewed, he would promise me faithfully that he would give up drinking, and sometimes that very night he would come home intoxicated, after I had done as he wanted.

20

Q. Your domestic difficulties largely centered about these notes and the payment for the lots, and so forth; is not that right?

A. No; not at all.

Q. Now, when your husband left, he left you this two hundred dollars of the four hundred which he had and left you, at your own request, in charge of this insurance business that he had?

30

A. No. I beg your pardon.

Q. Didn't he?

A. He did not.

Q. I only asked you that question. And—

The Vice Chancellor :—She has explained that she did not take up this insurance question until after he had come back. That was my understanding.

10 Q. While your husband was down South you took up the insurance business, didn't you?

A. Yes.

Q. And conducted it on your own account?

A. Yes.

Q. And started out for yourself, didn't you?

A. Yes.

Q. And so—in order that you may correct yourself—prior to two weeks before the examinations you had taken steps towards your own support, hadn't you?

20 A. Oh, I did not understand that you mean in regard to the insurance business.

The Vice Chancellor :—He means in regard to anything.

A. Well, for all the years I have had it I have never made fifty dollars out of it—never made twenty-five. It was simply the insurance business of my father's and my brothers and some of my relatives, with very, very few outside.

30 Q. But you took it up and, on your own hook, solicited insurance, didn't you?

A. Yes. I did.

Q. And so announced to your friends and relatives?

A. No. I did not announce it at all to my friends.

Q. Not to all of your friends, but didn't you announce it to friends and relatives?

A. To very few.

Q. Why to very few?

A. Well, because it was a hard thing to do, for me to go around and solicit. I had not been accustomed to go around and seeing men and interviewing them, as that would necessarily mean that I had to do; and there was very little of it that was left; I simply went to see those people whose policies were due. 10

Q. That is, you are now speaking of fire insurance?

A. Yes; that is all that was done.

Q. Didn't you go into the life insurance also?

A. No. I did not.

Q. And did you never announce that you had taken up the life insurance work?

A. No. I never took up life insurance. 20

(Question repeated).

A. I don't remember of having announced it. I never knew anything about it.

The Vice Chancellor :—The answer is that she does not remember.

Q. I ask this now—whether, after your husband's return from the South, within a month of that time, he did not ask you to come, together with your children, to the home of his parents that he might support you there and furnish for you as good a home as he was then able to provide? 30

A. No; he never asked me that.

Q. And this, prior to your having taken up your school work?

A. No ; he never did.

Q. Taking the examinations and getting your position ?

A. No.

10 Q. Did not your husband, at any time, come to your home where you were stopping and ask you to come down to his mother's house where he was stopping, and talk this matter over—in fact, to come there and spend the night with him as husband and wife ?

A. No ; he did not.

Q. Never ?

A. No ; he did not.

Q. He never made such a proposition to you ?

A. Never.

20 Q. Now, I ask you whether, on the day after your first meeting after his return from the South, at about six o'clock in the evening, your husband did not come to your mother's home, where you were stopping, and ask you to go down to his mother's house and spend the night with him and talk this situation over ?

A. No ; I never remember it.

Q. Do you say that he did not ?

A. He did not, to my knowledge.

Q. Well, can there be any doubt in your mind ?

A. I do not think there can.

30 Q. Did your husband, at any time, ever ask you to take up with him your usual marital relation, excepting in that letter ?

A. No.

By the Vice Chancellor :

Q. Leaving out whatever he may have said in

the letter which you have identified, did he at any time after his return from the South ask you to resume marital relations with him ?

A. No ; he did not.

By Mr. Vickers :

Q. Now, this home in which you lived in Hackensack prior to your husband's going South was well appointed, was it not? 10

A. Yes.

Q. And you entertained there ?

A. No. Well, simply his family and my family.

Q. Your family and his family. And you entertained freely, did you not ?

A. No. I did not.

Q. Were you ever deprived of social intercourse, at your own home, with your husband's family or your family or your friends, by reason of any act of your husband's? 20

A. Why, it was simply on account of the way he was going on. I could not invite any one outside of the two families there to the house. One time, when I had invited one sister and her husband there to Sunday night supper, and he knew it and had been willing that they should come, he staid in the bedroom asleep as the result of being intoxicated that morning. This was on Sunday evening. And he went out through the kitchen door without having seen them. Of course, if I wanted my guests subjected to that, then I could have invited them ; but I did not want them subjected to such treatment. 30

Q. These people you now refer to are members of his family ?

A. Members of my family.

Q. Of your family?

A. They were members of my family.

Q. What sister was that?

A. That was Mrs. Clarendon.

10 Q. Now, you have said that your husband im-
properly provided for you and for your children
during the few years just prior to leaving for the
South; is it not a fact that you were, during that
time, enjoying the luxuries of life in the way of
the opera and theatre?

A. I had a Christmas present from my brother
of some (I think there were five, I could only use
three) opera tickets in the family circle. Mr. Pro-
vost never paid for the opera for me in his life.

20 Q. Do you say that you never yourself purchased
theatre tickets and opera tickets during these
years that you are complaining that your husband
stinted you?

A. Never, with his money.

Q. And with whose money did you purchase
them?

A. My brother gave me the money to do it. He
made a Christmas present of them to me.

Q. Your brother made you a Christmas present
of money?

30 A. Yes.

Q. And that money you spent for a season
ticket for the opera?

A. No; it was not a season ticket.

Q. What was it?

A. It was five tickets for the family circle, at a
dollar apiece.

Q. And that used up the five dollars?

A. I could only use three of them. At two other times, once Mr. Provost was home himself with tonsilitis, and another time one of the children was ill and I could not go.

Q. How long was it prior to your husband's leaving you in 1903, that he had not taken you anywhere to the theatre or opera or any entertainment ?

A. Why, as far as my recollection is, we went to the theatre twice the winter that we were living in New York ; that was right after we were married; that was in 1897, the winter of 1897 ; we lived in New York from November, 1897, until May, 1898. We went to the theatre twice. We went to one dance, for which he was given a ticket. We went to one concert, for which we were given complimentary tickets. After that we never attended a concert from the time we left New York until the time he went away; and we went to the theatre twice. 10

Q. Now, after his leaving it had been agreed between you that the furniture should be sold ; is that right ? 20

A. He told me to let the furniture go.

Q. And you were to have the proceeds of that ?

A. That was to pay the mortgage.

Q. And then you at once took steps to get a position, is that right ?

A. Why, after I had come home from New York. This was after I had weaned the baby. I did not do anything about it until after the baby was weaned. 30

Q. By the way, how long did you nurse that baby ?

A. Why, I was going to wean him in the fall—

Q. How many months, I mean? Pardon me.

A. Well, he was eighteen months old. I was going to wean him in the fall and he had the

whooping cough and I could not do it ; first it was in September I was going to wean him, and he was teething, and they advised me not to do it ; then I was going to do it later on in the fall, and he had whooping cough, and I couldn't do it then.

Q. Did you nurse him, then, over eighteen months?

A. Yes ; for eighteen months.

10 Q. Did you nurse your first baby eighteen months?

A. I don't remember.

Q. How is it you remember the weaning of this baby?

A. I remember it because I wanted to wean him twice before and I could not on account of his health ; I could not do it, I remember that distinctly.

20 Q. Now, your having these young children who were nursing interfered somewhat with your going to the theatre at nights and going outside of your own home to enjoy yourself, did it not?

A. Why, it need not necessarily have. When Donald was only about two months old was when we went to the theatre, and my sister came over and staid over night with the children until we got home from the midnight train.

Q. And how often did that happen?

A. That happened once.

30 Q. But, as a matter of fact, you know that you could not have gone for any length of time while you were nursing a baby—more than three or four hours at a time?

A. You can go for four hours.

Q. And that that would have interfered with

your going from Hackensack to the theatre in New York and back again ?

A. If I had gone all the time ; but not to go once in a while, though.

Q. Do you know any way you could have gone from Hackensack to the theatre in New York and back again between nursings ?

10

A. Why, people very frequently go to New York for a whole day while they are nursing a baby.

Q. You could go for longer than four hours then ?

A. You could go for all day long, and leave proper food for the baby.

The Vice Chancellor :—She does not mean that she could go from Hackensack to New York and back again in four hours ; she means to say that if she went to the theatre she would have to omit the nursing for a certain length of time, until she got back.

20

Q. I show you five letters here and ask you whether those letters are letters to your husband ?

Mr. Kellogg :—We do not intend to cross examine her upon those letters.

30

The Vice Chancellor :—Well, why take this time to have them identified ?

Mr. Vickers :—We want to offer them for identification as being her letters.

The Vice Chancellor :—Cannot the husband identify them ? Unless you

are going to cross examine her upon them I do not see any use in taking any time with her about them.

Mr. Vickers :—We are not going to cross examine her upon them.

10

The Vice Chancellor :—The husband can undoubtedly testify that they are in her handwriting. I thought you were going to cross examine her upon them. If you are not, there is no use in her spending any time now in reading them.

Q. Are they all in your handwriting?

A. Yes.

20

(The five letters were thereupon marked for identification, G. T. V-1, G. T. V-2, G. T. V-3, G. T. V-4 and G. T. V-5.)

Q. On or about the 20th of April, 1903, immediately after your husband's return, were you not at the home of Mr. Provost's mother and did you and he not have a conversation then relative to your returning to live with him?

30

A. Never.

Q. Do you remember whether, on or about April 20th, you were at that house and did have a conversation with him?

A. I do not remember that.

Q. Do you remember meeting Mrs. Nelson Provost, Mr. Provost's mother, at a card party in the latter part of May, 1903, where Miss Provost was

present, where the question of your return to Mr. Provost to live with him was discussed ?

A. No. I do not.

Q. Do you say that there was not such a conversation ?

A. I do not remember any such conversation.

Q. Do you remember this meeting that I speak of ?

A. I do not remember that particular meeting. I think I was there at two different card parties. 10

Q. When were the times ?

A. Well, one must have been in the winter of 1903, and one in the winter of 1904.

By the Vice Chancellor:

Q. By "winter" do you cover April? They are asking you about April or May.

A. Well, they usually ran until May.

Q. Then there are some that may have been in May, 1903, and some in May, 1904 ? 20

A. Yes.

By Mr. Vickers:

Q. Well, at the first one of these meetings after your husband went South, do you remember any such conversation ?

A. No. I do not.

Q. And will you say that Mr. Provost's mother did not ask you then whether or not you were going to return and live with your husband ? 30

A. Yes. I will say she did not.

Q. Will you say that at any time you said to Mrs. Provost, Mr. Provost's mother, that you would not return to live with him ?

A. No. I never said anything like that.

Q. Did you ever tell her of any conditions upon which you would return to live with him?

A. I do not remember it.

Q. To your best memory, was the question ever discussed between you and Mr. Provost's mother?

A. No; as far as I can remember.

10 Q. Didn't you say, at this card party in May, 1903, that you did not think you would return to live with Mr. Provost, that you were happier as you were, or words to that effect?

Mr. Mackay:—I submit the question has practically been asked and answered before. She said that no conversation whatever occurred at any card party. I object.

20

The Vice Chancellor:—I overrule the objection.

A. I never made such an answer or said such a thing.

Q. Didn't you say words to that same effect, at a card party held just before the New Year, 1904—that is, at the end of 1903—in the presence of Mrs. Nelson Provost and Miss Provost?

A. I did not.

30 Q. Then at no time were any such words, or words to that effect, said by you at any place?

A. No.

Q. Before you got your position in the school, before you had made your application for it, and after your husband returned from the South, did you ever go to him or cause him to come to you for

the purpose of making any arrangements to re-establish yourself in a home?

A. I really do not understand what you mean.

(Question repeated.)

A. Why there was no occasion; we could not; he had no position; he had nothing to make a home on. I was never invited to go to his home and live there. 10

Q. If you had been invited to go to his home, in the frame of mind you were then in immediately after his return from the South, to live with him there with your children, would you have done so, and would you have considered it your duty to do so?

Mr. Mackay:—I object.

The Vice Chancellor:—How do you vindicate a hypothetical question? Why speculate as to what she would or would not have done in a situation which she says did not arise? 20

Mr. Vickers:—Because I want the benefit of the witness's frame of mind as to what her duty was, and therefrom to draw the inference as to what her attitude, was toward her husband.

The Vice Chancellor:—Well, that attitude, so far as he is concerned, could only have been properly ascertained either by what she said or what she did; and I do not think that it is proper to enter into speculation. 30

(Question withdrawn.)

Q. Do you remember having had some conversation with your husband, after his return from the South, relative to his various debts ?

A. Why, do you mean what debts he still owed ?

Q. The debts he still owed, yes ?

10 A. Well, I sent him all the bills, so he could see for himself.

Q. And you had had some conversation about it, hadn't you ?

A. Not particularly.

By the Vice Chancellor :

Q. Well, did you talk to him about it at all ?

A. Probably, because I sent him all the bills. He wanted the bills and I sent him them.

20

By Mr. Vickers :

Q. He asked you for the bills ?

A. He asked me for the bills.

Q. In order that he might know what his debts were ; is that right ?

A. Yes.

Q. And how did he express that want to you, by word of mouth, or by letter or by messenger.

30 A. I really do not remember that.

Q. Is it not the fact that you told him at that time that you wanted him to pay his debts, and that you would not go to live with him until he had paid his debts ?

A. No ; I never said that. He suggested paying his debts in a letter that came from the South.

Q. Is not this a fact, that you told him to go ahead and pay his debts, and that he need not con-

tribute to your support or the support of his children until he had paid his debts?

A. I never said so.

ALBERT V. MOORE, JR., sworn.

By Mr. Mackay :

Q. What relation are you to the petitioner?

A. Brother.

10

Q. Do you remember your sister and your brother-in-law residing in Atlantic street, Hackensack?

A. Yes.

Q. Did you ever visit their home?

A. I did.

Q. Do you remember the day that Mr. Provost, the defendant in this suit, left his home on Atlantic street?

A. I do not remember the day he left; I did not see him that day; I don't think it was that day; I am not quite sure as to whether I had met him that day or a day or so before.

20

Q. Well, did you see him on the day he left?

*The Vice Chancellor:—*The witness says he is not sure.

Q. Did you see him before he left?

A. Yes. I did.

Q. How long before?

30

A. Within two days.

Q. For what purpose did you go to the house?

A. At his request.

Q. Where did he make his request?

A. By messenger.

Q. To your home?

A. To my home.

Q. How far away did you live from their home on Atlantic street at that time?

A. A full block.

Q. Did you go to his home?

A. I did.

Q. What time of day?

10 A. In the morning.

Q. What was the purpose of the visit, did he tell you?

A. He wanted to transfer to me some property.

Q. And did he transfer it to you?

A. He did.

Q. What property?

A. The two-family house at 15 Atlantic street, or whatever the number is.

20 Q. Now, did he express anything to you at that time as to what he was going to do after he transferred the property to you? Did he say what he was going to do?

A. He said he was going away.

Q. Did he say where?

A. He said he was going South.

Q. Just relate the conversation that occurred between you and him—what he said about his going away?

30 A. He said he was going South, not knowing when he was going to return. He was going to South Carolina, he told me; I think it was South Carolina.

Q. Was this prior to or after the signing of the papers?

A. This was prior.

Q. How long prior to the signing?

A. Well, we were talking generally prior to the signing over of the papers.

Q. What did you say in reply to his statement that he was going away and did not know when he would return?

A. I cannot remember just exactly what reply I made to that.

10

Q. Did you take charge of the property then after he deeded it over to you?

A. I did.

Q. What did you find on the property in the way of encumbrances?

A. There was a Building and Loan mortgage for \$4,250 or \$4,500, I am not quite sure which, thereabouts; a mortgage of W. Abenseth for \$400 and back interest, about \$75—well, I don't know how much back interest, there was back interest on the mortgage.

20

Q. Have you the Building and Loan books?

A. No, sir; I have not with me.

Q. How much did you have to pay the Building and Loan for any back dues, if anything?

A. Some \$300.

Mr. Vickers:—That is objected to, on the ground that the financial condition of these people is not at all a relevant issue.

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The Vice Chancellor:—It may be. If a husband, about to go away, gives his wife all the property he has, or two-thirds of it, that may cast some light on the state of his mind towards her. I cannot say it is not relevant. Just

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how necessary it is to go into all this I cannot say, but in these cases, where a man does not do some affirmative act which shows exactly what the court must find that act to be, we must let in practically all that happened so as to show what the frame of mind of the party was. Now this was just about the time he was going away, and I think it is material to show the relationship of the parties at that time, and what they did.

(Question repeated.)

20

Mr. Vickers :—It is not shown that he took over the Building and Loan stock.

Mr. Mackay :—I am going to show that.

Q. Have you got the check?

A. (Witness produces check.)

30

The Vice Chancellor :—I am letting all of this testimony in upon the theory that in these matrimonial actions I have to permit testimony to be given by each side as to the relationship of the parties, and what they did and said to each other, and I will permit them to show what they did and said about the property; but I am not going to spend a great lot of time stating an account here that should not be stated in this

case. If the defendants object, or endeavor to prove that this witness did not pay those things that he is now going to be permitted to testify that he did pay, then I will permit him to be recalled, and will go into the thing in extenso. But I ask counsel now to confine themselves to generalities about this property ; and if the defendant does not put in counter testimony, then we will have as little as necessary of it in the case. It cannot be very important, surely.

Q. Generally, Mr. Moore, in relation to this property, what equity, if any, was there in it after the transfer was made to you, and you paid or assumed his existing debts ?

The Vice Chancellor :—That assumes that this gentleman is an expert on real estate values. What you can prove is how much he paid, if he still owns the property, what its income is over its outgo, and, if you want to qualify him as one that knows the value of it, then show that he knows something about it.

Mr. Mackay :—I would like to prove this fact, that this property was encumbered at this time with mortgages almost to its full value, but that the witness did assume other outstanding obligations that were not a lien on the property, and which he paid, and therefore it left him in a position where he

was taking the property because he was forced to take it and pay other indebtednesses which were not a lien on the property, at the request of the defendant.

The Vice Chancellor :—Why do you bring all that in ?

10

Mr. Mackay :—To show the condition the defendant was in at the time he left, and that he anticipated this when he made this transfer.

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The Vice Chancellor :—Why do you first erect this man of straw and then destroy him ? It has no other bearing that I can see. What bearing had that upon his going South with no animus to return. I must confess I think we are very far afield. He transferred this property to this gentleman, and this gentleman said he spent \$300 for back dues. Now, I will permit you to show what else he spent on this property, and what he gets out of it ; and, if necessary, if I have got to do it, I will permit you to bring real estate experts to prove how much it is worth, if you want to ; but of course he cannot testify how much it is worth unless you show that he knows.

30

Cross Examination by Mr. Kellogg :

Q. You say the messenger came to you and

asked you to come over to Mr. Provost's house ;
who was the messenger ?

A. I don't remember.

Q. Wasn't it the servant girl from the Provost
house ?

A. I do not remember.

Q. You would not say that it was not the servant
girl? 10

A. I do not remember.

The Vice Chancellor :—When a man
says he utterly fails to remember who
a messenger was, that seems to me set-
tled. He testified that he does not re-
member at all who came for him.

Q. Between the 4th and 7th of March did not
you speak to Mr. Winfield Provost and suggest to
him that he go upon a vessel, which you were con-
nected with, South? 20

The Vice Chancellor :—This is not
cross examination. He was not asked
about anything excepting the transfer
of this property to him. Do you want
to make him your witness for this pur-
pose? 30

Mr. Kellogg :—Well, I prefer to wait,
if he will wait here, under his subpoena.
I do not want to have him march out
before our case comes on.

The Vice Chancellor :—(To the wit-
ness) Would you prefer to be examined

now upon this subject, rather than to wait until the defense comes on ?

The Witness :— Well, it is for my lawyer to say.

10

The Vice Chancellor :— Unless counsel for the petitioner now tenders this witness as present in court, and desires you to cross examine him upon that subject now— which he may do if he wants to— I shall rule that it is not cross examination and that you may not do so now.

Mr. Kellogg :— I will then withdraw that line of examination.

20

Q. Is it not true, Mr. Moore, that this property was deeded to you by Mr. Winfield Provost without any money consideration passing at the time, any cash payment ?

The Vice Chancellor :— (To the witness) You did not pay him anything for the property, did you ?

30

A. No ; but I assumed various liabilities.

Q. Of his ?

A. Yes.

Q. Well, what did you assume ?

A. Why, there was a note of my sister, Fannie M. Chrystal.

Q. How much was that ?

A. \$250.

Q. What else ?

A. A note of my mother's.

Q. How much ?

A. \$400 or \$500, I don't know which.

Q. What else ?

A. Back dues in the Building and Loan Association, as previously stated, and the two mortgages.

Q. Did he transfer the building and loan association stock to you ?

A. He did.

Q. How much had been paid by Provost on this building association stock when he transferred it to you ? 10

A. I don't really remember just about that.

Q. You still own this property, do you ?

A. I do.

Q. What is its income now, what rent do you get out of it ?

A. About \$46 a month.

Q. What are your taxes a year ?

A. Somewhat less than \$100.

Q. And what is your insurance ? 20

A. The general disbursements, I don't know ; I don't know what they figure up ; I have never added them up.

Q. What do you do with the surplus money, give it to your sister ?

A. I do not. There is no surplus money.

By Mr. Vickers :

Q. Do you consider it your own money ? 30

*The Vice Chancellor :—*He says there is none.

By the Vice Chancellor :

Q. I do not understand this. You say your tax is around \$100 and then—

A. (Interrupting) Yes, but there are dues on these various mortgages.

10

*Mr. Mackay :—*I would like to prove by this witness also that the stock, the money in the Building and Loan shares, had also been borrowed upon for any equity that existed in the shares.

*The Vice Chancellor :—*That that had been borrowed out by the defendant?

*Mr. Mackay :—*Yes.

By the Vice Chancellor :

20

Q. These building shares, when they were transferred to you, had already been borrowed on by Provost; had they?

A. Yes, they had.

By Mr. Kellogg :

Q. Did that check for \$300 cover that payment for the Building and Loan on the amount that was borrowed?

30

A. I do not really know just how it was figured in.

Q. What was the check for?

A. For dues and interest to date.

By the Vice Chancellor :

Q. In addition to dues and interest, did it include

what Provost had borrowed from the Building Association on the strength of this stock?

A. Well, the payment of the mortgage, the way I understand it, was so much longer delayed, in lieu of the loan on the stock that Mr. Provost secured at the time ; in other words it put off the date for payment.

10

Recess until 2 o'clock p. m.

Hearing of the cause resumed at 2 o'clock p. m.

ALBERT V. MOORE, JR., recalled.

20

By Mr. Kellogg :

Q. Mr. Moore, do you claim that you hold this property as your own property, free from any claim on behalf of the other members of your family?

A. I do.

Q. And of the wife, Mrs. Provost?

A. I do.

Q. It was just given to you?

30

A. Not by a long shot.

*The Vice Chancellor :—*He has stated that he gave some consideration for it. He told what he assumed. It is not proper to sum up what this witness has said as if it were a gift. He has said

10 he assumed the payment of one note to his sister, and of one note to his mother and of building association back dues. You can characterize that in some way, if you want to, but that testimony distinguishes it from a gift and makes it a contract.

CHARLES FLEISCHMAN sworn.

By Mr. Mackay :

Q. Where do you reside ?

A. Hackensack.

Q. How long have you lived there ?

A. Thirty-eight years.

20 Q. Are you acquainted with the defendant ?

A. Yes, sir.

Q. How long have you known him ?

A. Oh, a long time. I don't know how long.

Q. Did you know him when he resided on Atlantic street, Hackensack ?

A. Yes, sir.

Q. Did you have an opportunity to observe his conduct and his actions in the evenings prior to March, 1903 ?

30

*Mr. Vickers :—*I object to it as being immaterial and irrelevant.

*The Vice Chancellor :—*You do not object to his asking whether he had the opportunity to observe it? He was not asked what they were.

(Objection withdrawn.)

A. I have.

Q. Where, Mr. Fleischman?

A. Hackensack.

Q. Whereabouts did you see him in the evening?

A. At several places; hotels.

Q. Principally hotels?

The Vice Chancellor:—He has not said so.

10

Mr. Mackay:—I asked the question.

The Vice Chancellor:—I will overrule the question. You must not lead your witness.

Q. Where did you see him most frequently, Mr. Fleischman, in the evenings?

Mr. Vickers:—I object to it as immaterial and irrelevant.

20

The Vice Chancellor:—I cannot say that it is. I will let it come in.

A. At the Susquehanna Hotel.

Q. Do you know what his habit was as to drinking, Mr. Fleischman?

Mr. Vickers:—That is objected to as immaterial, incompetent and irrelevant.

30

The Vice Chancellor:—Well, I cannot say that that is so, Mr. Vickers. It is undoubtedly the law in this state that there is no such thing as divorce based upon a charge or proof of the fact of

10 habitual drunkenness ; but it is not the law that a man may disenable himself to properly perform his matrimonial duties, support and so forth, by drunkenness and escape thereby that which in a sober man would be desertion. That is to say, if I am earning \$2,000 a year and am abstaining from giving my wife any money at all, and there is no proof of my bad habits, it might be very strong proof that my intention was to desert her within the meaning of the divorce statute ; now, if the same result is achieved by my taking all the money which I otherwise would contribute to the support of my family and spending it in dissipation, I do not know why that is not a perfectly relevant matter of proof. I will permit it for what it is worth.

20

A. Yes.

Q. Just state then to the Court the different times and occasions on which you saw him under the influence of liquor.

Mr. Vickers :—I object to that as containing an unwarranted assumption of facts, and as being leading.

30 Q. I will ask you what was his habit as to drinking ?

A. Why, he used to drink.

Q. To what extent ?

A. Oh, to quite an extent.

Q. Would you say to excess or not ?

A. I would say so.

Q. On how many occasions, prior to March, 1903, did you see him under the influence of liquor, to excess?

A. I don't know how many times; several times.

Q. Do you know where he was employed?

A. Only in the insurance business. He had my policy. 10

Q. Did he ever inform you whether or not he was still employed there, prior to his leaving Hackensack?

A. He did not.

Q. Did you know he was going to leave Hackensack in March, 1903?

Mr. Vickers :—Objected to as immaterial, irrelevant and incompetent. 20

The Vice Chancellor :—Well, no; I won't say that. The question is objectionable because whether this man knew or not, its relevancy will only depend upon whether he learned it from the defendant. If the defendant had a conversation with him in which he learned this fact that might be very relevant.

(Question withdrawn.)

30

Q. Did you ever have a conversation with the defendant, Mr. Winfield Provost, prior to his leaving Hackensack, about his intentions?

A. He told me he was going to buy a plantation down South and I would never see him again, or something like that.

Q. When did he tell you that?

A. Before he went South.

Q. How long before ?

A. Oh, probably three or four days.

Q. What else did he say about his coming back, or his staying there, or anything about it ?

10 A. Nothing, only I would never see him again, and good-bye. He shook hands with me.

By the Vice Chancellor :

Q. Was he intoxicated at that time ?

A. I would not say he was ; no, sir.

Q. Had he been drinking ?

A. Yes, sir ; a little.

By Mr. Mackay :

20 Q. Did you see him after that ?

A. No. That is the day he left, you know for the South.

Q. Did you see him after he came back from the South ?

A. Yes.

Q. Where ?

30 *The Vice Chancellor :—*If this is more proof about the hotels, and so forth, how is that relevant ?

*Mr. Mackay :—*It is on the question of his ability to support his wife after his return.

*The Vice Chancellor :—*All right, that is relevant. But you are now directing the witness' attention to where he saw him. It seems to me if your purpose is

to elicit testimony about his drinking in the hotels, that that casts no light on the question of the motive with which he left home on the 7th of March. It may cast light upon his ability to support his wife. I will permit it.

A. In front of the Susquehanna Hotel.

Q. Do you know whether he had any employment then, after his return from the South ? 10

A. I don't think so ; I don't know for sure.

Q. Do you know how long he was out of employment ?

A. No, sir.

Q. Did you ever have any conversations with him ?

A. In regards to what ?

Q. In regard to his business.

A. No.

Q. Did you ever have occasion to go out with him ? 20

A. Yes.

Q. Where ?

A. Shooting, and one thing and another.

Q. For any length of time ?

A. Oh, only for a day; for a hunt on the river, or something like that.

Q. Do you know what he was doing between March 7, 1903, and April, 1905 ?

A. I think he was selling whiskey some time between that. He had a job selling whiskey, I know. 30

Q. Did you have occasion to see him often or not ?

The Vice Chancellor :—When? At which period?

Q. After his return from the South, and until April, 1905?

A. Very often; yes.

Q. Did you observe what his condition was as to drinking?

10 A. Oh, he used to drink a little.

Q. What were his general habits?

A. All right.

Q. Where was he living?

A. Home, I think; I am not positive; I think he told me he was living home with his parents.

Q. Did he ever talk to you about his family affairs?

A. No; he never did.

Q. Did you ever see him out with his wife?

20 A. Never in my life.

Q. Did you ever see him so intoxicated that he could not walk?

A. No; he could always navigate.

Q. Did he ever speak to you about losing his position with the Mutual Life Insurance Company?

A. I don't think he did.

Cross Examination by Mr. Vickers:

30 Q. How frequently did you meet the defendant prior to March, 1903?

A. Very, very often.

Q. And usually where?

A. Susquehanna hotel, or the depot, somewhere of that kind; some pleasure resort.

Q. Well, that is a hang-out for the boys of the town who are hail-fellows-well-met ?

A. Yes, sir.

Q. And you are one of them ?

A. Yes, sir.

Q. And are you a married man ?

A. Yes, sir.

10

Q. Is your wife living ?

A. Yes, sir.

Q. Have you a family ?

A. Yes, sir.

Q. Are you living with your wife and family ?

A. Certainly, sir.

Q. And supporting them ?

A. Yes, sir.

Q. And you and this defendant were sort of cronies around the Susquehanna there, weren't you ?

20

A. Yes, sir.

Q. You would go off on shooting trips ?

A. Yes, sir.

Q. And until this trouble came up you never knew anything out of the way with Provost, did you ?

A. We are still friends now.

Q. Just answer my question : You never knew anything out of the way with him, did you ?

A. No, sir.

30

Q. He was, to your mind, such respectable company as you were proud to keep ; is that right ?

A. Yes, sir.

MRS. ARTHUR ROSE, sworn.

By Mr. Mackay :

Q. Where are you living?

A. Oradell.

Q. It is out of Hackensack some miles?

10 A. Well, about six miles.

Q. You are married?

A. Yes, sir.

Q. Do you know Mrs. Provost and Mr. Provost, the petitioner and defendant?

A. Yes, sir.

Q. Were you in their employ?

A. I was.

Q. Were you married then?

A. No.

20 Q. How many years ago?

A. I was fourteen when I went there. It was in November.

Q. How old are you now?

A. Twenty.

Q. How long did you stay there?

A. I staid there until they broke up housekeep-
ing.

Q. That was on Atlantic street.

A. On Atlantic street.

30 Q. When did they break up housekeeping?

A. They broke up housekeeping March 7th, 1903.

Q. Did you have a chance, an opportunity, while you were working for Mr. and Mrs. Provost, to observe Mr. Provost's conduct about a year or two before or prior to March, 1903? Did you have a chance to notice how Mr. Provost acted?

A. Yes.

Q. What was his conduct ?

A. He drank terribly.

Q. What time would he get home in the evenings ?

A. Well, he very seldom was home for supper—for dinner, I mean.

Q. What would he do when he came home ?

A. Go to bed. When he came home he went to bed.

Q. What would he say when he came home, that you observed ?

A. Nothing.

Q. How did he act toward Mrs. Provost ?

A. Well, he didn't have anything to say. He would go right to bed. Of course he would be drinking, you know, and he would go right to bed.

Q. What time on this particular day in March did Mr. Provost leave the house, if you remember ?

A. He left the 7th.

Q. What time on the 7th ?

A. 3 o'clock.

Q. 3 o'clock in the afternoon ?

A. Yes, sir ; about 3 o'clock in the afternoon.

Q. Were you in the house that day ?

A. I was.

Q. Will you tell just what you saw ?

A. I was standing at the dining room door, and of course, I didn't have very much to say, because Miss Jennie had the baby on her lap, sitting by the table and crying, and she didn't have very much to say until he got ready to get up.

By the Vice Chancellor :

Q. Get up from the table, do you mean ?

A. To get up to go, I mean ; and he said to her, "Goodbye, Jen, I am going," and he kissed her and he kissed the little boy ; and she asked him when was he coming back, and he says, "I don't know when I am coming back," and between her sobs he said goodbye.

By Mr. Mackay :

10 Q. Well, what did you do, and what did he do, after that? What did he do?

A. After he went away?

*The Vice Chancellor :—*No ; he means what did he do after he said goodbye ; did he leave the house?

A. Well, he went out, and then she watched him by the dining room window go.

20 Q. How long did you stay in the house, and how long did Mrs. Provost and the children stay in the house after that day?

A. After the day he went away?

Q. Yes.

A. Well, I staid a week with her after Mr. Provost was gone, because my month wasn't up then. I staid with her, and then I went away.

Q. Where did Mrs. Provost go?

A. She went to her mother's.

30 Q. Have you been working for her since?

A. Well, I worked for her mother, not for her, since ; not since the day I left.

Q. Not since the day you left?

A. Not since the day I left. For her mother I worked.

Q. Did you ever have an opportunity, a chance I mean now, to make it plain, to see Mr. Provost on the street at any time, intoxicated ?

The Vice Chancellor :—What has that to do with it? The only purpose of permitting the testimony about this petitioner's habit of intoxication or lack of intoxication is to throw light upon his separation from his wife, and this does not do that. The question is over-ruled. 10

Cross Examination by Mr Vickers :

Q. Did you ever see Mr. Provost take a drink of intoxicating liquors ?

A. Yes. 20

Q. Where?

A. Home.

Q. They had liquor right there in the house always?

A. Yes, because he has often sent me for it.

Q. Sent you for what?

A. For whiskey.

Q. While he was taking his meals?

A. No.

Q. When? 30

A. When he used to stay home. He used to stay home, and used to send me for whiskey. I have often had to leave my wash tub and go for whiskey for him.

Q. And did you ever see him take a drink of liquor outside of his own home ?

A. Not outside of his own home.

Q. When he came into the house and went right upstairs to bed he let himself in at the front door, didn't he?

A. He did, all beside one time.

Q. Well, that was his habit, wasn't it, to let himself in the house?

10

The Vice Chancellor :—Why, yes; she said all beside one time. If a man, during three years, did a thing every time excepting once, I will decide that that was a habit.

Q. How many times do you know that he came into the house near dinner time and went to bed without taking his dinner?

20 A. Do you mean at night?

Q. What meal did you have at evening time in this house when you were living there? What did you call the meal they had around six o'clock, between six and seven?

A. Dinner.

By the Vice Chancellor :

30 Q. Now, counsel wants to know how many times, if any, you remember this man coming home around dinner time and going to bed without first eating his dinner?

A. Many a time.

By Mr. Vickers :

Q. He would go upstairs without your seeing him, wouldn't he?

A. Yes, sir. Excuse me, do you mean not seeing him go in his room?

The Vice Chancellor :—Yes; would he go upstairs without your seeing him, or would you always see him come in?

A. We lived in a flat, and of course I couldn't help knowing him to come in and go in his room. We did not have any upstairs.

Q. Where were your duties in that house?

A. In the kitchen.

Q. If he let himself in the front door he could go to his room without your seeing him, couldn't he? 10

A. Yes, sir.

Q. Would you always see him when he came in intoxicated, as you say, and without coming to his dinner afterwards?

A. He never did it, unless he was.

Q. Well, who told you that he was intoxicated at the times when you did not see him?

A. Nobody. 20

Q. Did you just guess that?

A. I know it.

Q. Now, you did not see him come in and you did not see him take a drink outside of his house, and he went to his bed without your seeing him, and yet you are now swearing that he was intoxicated at those times; is that right?

The Vice Chancellor :—Do you understand the question, madam? 30

Witness :—Well, he always was that way when he went to bed.

By the Vice Chancellor :

10 Q. Counsel asks you this : You have sworn that this man came into the house at times when you did not see him, and went to his room; and you have assumed to swear that he was drunk at those times. Now, counsel wants to know how you can say he was drunk at those times, if he came into the house without your seeing him and went to his room without your seeing him? Did some one tell you he was drunk, or how did you arrive at the knowledge that he was drunk? That is what counsel wants to know.

A. You could tell when he was that way.

Q. If you did not see him, how could you tell? How can you tell what the condition of a gentleman is who is sitting in that room, if you do not see him go in there?

A. But I have seen him go in.

20 Q. But you have testified that at times he came in and let himself in the door and you did not see him, and he went to his room and you did not see him, and still you say he was drunk?

A. Well, that is what he always used to do when he was drunk; he used to go to bed.

30 *The Vice Chancellor :—*She assumed that when he was drunk he went to bed, and therefore she assumes that on other occasions when he went to bed without her seeing him he was drunk.

By Mr. Vickers :

Q. And what directed your attention to that was

the fact that he did not come to his dinner ; is that right ?

A. Yes, sir.

Q. Now, is not this a fact, that many times when he came home there was not any supper there for him, or no wife to serve his supper for him—or dinner ?

10

A. His supper was always ready for him, but he never came to it. He would come once in a while, but not like a man would do.

Q. Is it not a fact that Mrs. Provost was, many times around dinner time, over in her mother's house, and not there to receive her husband when he came home ?

A. No, that is not so. Once a week she would go to her mother's, on Monday, and sew, and the rest of the time she was home.

20

Q. Every day except Mondays she was home ?

A. Yes ; she was home.

Q. You are positive of that ?

A. I know it.

Q. You were there three years, nearly, and every night, excepting Mondays, Mrs. Provost was at home around dinner time ?

A. She was always home.

Q. Answer my question. (Question repeated.)

A. Well, she went over to her mother's to sew, you know, but she was always home for dinner. She went over after dinner to sew.

30

Q. Did you say that once a week, on Mondays, she went to her mother's to sew ?

A. Yes, sir.

Q. And that on other days she was not at her mother's, and was at home in the evening in time to receive her husband for dinner ?

A. She always was home.

The Vice Chancellor :—She says even on Mondays she was home from her mother's at dinner time.

10 Q. She was always home, even Mondays when she went to her mother's to sew ?

A. Yes, sir.

Q. So that Mrs. Provost was never out in the evening when her husband came to dinner ; is that right ?

A. Yes, sir.

Q. Now, how came you to be standing at the dining room door on this day when Mr. Provost left, and he was taking leave from his family ?

20 A. Because I heard her crying, and I went to the door ; I went to the door to see what was the matter.

Q. Well, did you know that Mr. Provost was going away ?

A. Going to leave, you mean ?

By the Vice Chancellor :

Q. Did you know he was going away on a trip ?

A. Only when Mrs. Provost told me.

30

By Mr. Vickers :

Q. When did Mrs. Provost tell you ?

A. It was not long before he went away.

Q. Several days ?

A. Several days, about.

Q. Several days beforehand. And on this very

day that he actually did go you saw him there packing his trunk and his valise, didn't you?

A. I did not see him pack it.

Q. Well, do you know that on that day he did pack his trunk and valise to go away?

By the Vice Chancellor :

Q. Did you see them after they were packed so that it convinced you that he had packed the trunk and valise? 10

A. After they was packed I seen them.

By Mr. Vickers :

Q. And before this time that you were standing at the dining room door the expressman had come there for his trunk, hadn't he?

A. Yes, sir.

Q. Then when Mrs. Provost was crying didn't you know she was crying because her husband was going away on a trip? 20

A. I did.

Q. Then, what were you standing around the dining room door to find out?

A. Because I felt sorry for her.

Q. Had Mrs. Provost talked with you about her husband's going away?

A. Not until she told me he was going away that day—that time, I mean.

Q. And why did you feel sorry for Mrs. Provost? 30

A. I thought a great deal of her.

Q. Yes. Didn't you also feel sorry for Mr. Provost? Yes or no.

A. No, sir.

Q. Why didn't you feel sorry for Mr. Provost?

A. Because I didn't think he done what was right.

Q. And did you know how long he was going to stay away?

A. No, sir.

Q. Did you know where he was going?

A. Only South.

10 Q. Who told you he was going South?

A. Miss Jennie.

By the Vice Chancellor :

Q. That is Mrs. Provost?

A. Yes, sir.

By Mr. Vickers :

20 Q. And she told you that two or three days before he actually went away, did she?

A. Yes, sir.

Q. Did she tell you what part of the South he was going to?

A. I don't remember.

Q. Have you got any people, any relatives, down south?

A. No.

Q. You did not inquire what part of the South he was going to?

A. No.

30 Q. Did you inquire how long he was going to stay?

A. Well, he told her he didn't know when he was coming back.

Q. Well, you didn't know that at that time?

A. I heard him tell her so.

Q. When?

A. When I was standing at the dining room door.

Q. At the dining room door on this day when he actually left?

A. Yes, the day he left.

Q. But before that, several days, you knew that he was planning a trip down South, and nothing was said then about his staying away any length of time, was there, to you by Mrs. Provost? 10

A. No, sir.

Q. Did you stay at that dining room door and overhear all of the conversation between these people?

A. No, sir.

Q. Well, how long did you stay there?

A. Well, I was there when I heard her cry. I went there and I stayed there until he went. 20

Q. Then you stayed there and you heard and saw all that was going on while this husband and wife were taking leave; was that right?

A. Yes, sir.

Q. In other words, you were eavesdropping there?

The Vice Chancellor :—Oh, no. I won't admit that. She told you what she did; you can call it whatever name you please when you come to argue the case. 30

Mr. Vickers :—I want to know what her frame of mind was; whether she did this out of pure devotion to the wife, or whether she was not standing

around listening to a thing which was none of her business, or whether it was by arrangement with the wife.

The Vice Chancellor :—You may ask her that if you want to.

10 Q. Did Mrs. Provost cry before Mr. Provost started to go away from the house and before she was in the dining room, or in the parlor?

A. Yes, sir ; she cried.

Q. Now, by the way, were you standing in the dining room at the door, or outside of the dining room at the door?

A. Well, our dining room doors they pushed back and forth, and it was open, and I stood right on the side of the door, in the kitchen.

20

By the Vice Chancellor :—

Q. Between which two rooms did you stand? If you stood in the doorway, wasn't it between two rooms?

A. The dining room and the kitchen.

By Mr. Vickers :—

30 Q. Mrs. Provost and her husband and the children were in the parlor, weren't they?

A. No ; they were in the dining room.

Q. And on the day that Mrs. Provost first told you that Mr. Provost was going away, two or three days before the day he actually did leave, was Mrs. Provost crying then?

The Vice Chancellor :—The day Mrs. Provost told you that her husband was

going away, which you have already said was some two or three days before he actually did go away, was she crying when she told you that?

A. No, sir.

Q. And on this first day when she told you about his going away, did she tell you you had better look for another place?

10

A. Well, she simply told me, and I knew then that I would have to go. She did not tell me to look for another place, for I knew it.

Q. What day did you know that you would have to look for another place?

A. Why, when he lost his position.

Q. Then, as soon as he lost his position you found out that you would have to look for another place?

A. Yes.

Q. Who told you that he lost his position?

20

A. Mrs. Provost.

Q. And she told you that two or three days before he left?

A. I think it was something like that.

Q. And did she say anything about her breaking up housekeeping?

A. I don't remember.

Q. Or that she was going to go to her mother's and live with her mother?

A. Yes; she said she was going home and live with her mother.

30

Q. She told you that before Mr. Provost went away, didn't she?

A. When he lost his position.

Q. Yes ; as soon as he lost his position she told you that she was going back to live with her mother and Mr. Provost was going away ; is not that it ?

A. Yes, sir.

A. V. MOORE, SR., sworn.

10 *By Mr. Mackay :*

Q. Where do you reside, Mr. Moore ?

A. Hackensack, New Jersey.

Q. Do you know where Mr. and Mrs. Provost were living on Atlantic street ?

A. Yes, sir.

Q. Have you any connection with the Building and Loan Association at Hackensack—the Mutual?

A. I have had for a number of years.

20 Q. At the time the property of Mr. and Mrs. Provost was transferred to your son Albert V. Moore, Jr., were you connected with the Building and Loan at that time ?

A. I was.

Q. Do you know what the condition was of the stock which Mr. Winfield Provost held in the Building and Loan, and which was surrendered as collateral for this loan on the mortgage on the Atlantic street property ?

30 *Mr. Vickers:*—I object to that on two grounds : First, it contains an unwarranted assumption of fact, a conclusion of law, and also that there has been no foundation laid for any such testimony, and that there is better evidence of it.

It is hearsay, so far as this witness is concerned.

The Vice Chancellor :—How do you vindicate the right to have some man testify that he knows about this building association at Hackensack, and about the condition of different members' accounts? That is not the way to prove it. 10

Mr. Mackay :—I was just trying to save time. If Mr. Moore knows it he would not state an untruth.

The Vice Chancellor :—The objection is sustained.

Q. What position do you hold in the Building and Loan association, Mr. Moore? 20

A. At present I am one of the directors.

Q. At that time, when the property was transferred in 1903, what position did you hold?

A. I was a director. I have been a director there for about nineteen years.

Q. Did you personally examine the condition, the status, of the loan taken out by Mr. Winfield Provost, on the Atlantic street property? 30

A. No, I did not; there is too many of them. The secretary does that.

Q. What relation is Mrs. Provost, the petitioner, to you?

A. My daughter.

Q. Where has she been living since March 7, 1903, or shortly after that date?

A. At my house.

Q. Is she living there at the present time?

A. She is.

Q. Do you know Mr. Winfield Provost? Of course you know him, the defendant?

A. Yes.

10 Q. Did you ever see him at your house after his return from the South?

A. No, sir.

Cross Examination by Mr. Vickers :

Q. You do not say that he was not there at your house after his return from the South, do you, Mr. Moore?

A. He may have been there, but I never saw him.

20 MISS BESSIE MOORE sworn.

By Mr. Mackay :

Q. Where do you reside?

A. In Hackensack.

Q. You are unmarried?

A. Yes.

Q. Do you live with your father and your mother?

30 A. Yes.

Q. Where is your sister, Mrs. Jennie Provost, living?

A. At the same home.

*The Vice Chancellor :—*There is no dispute that she is living with her father.

Q. Did Mr. Winfield Provost ever call at the house?

A. The night of his return.

Q. What date was that?

A. It was on Saturday night, I think it was on Easter Saturday—I don't know the date—the Saturday before Easter.

Q. Was your sister at home that day, Mrs. Winfield Provost?

10

A. She was not

Q. What time was it?

A. After the midnight train, about one o'clock.

Q. What was his condition?

A. He had been drinking.

Q. Where was your sister, Mrs. Provost, the petitioner?

A. In New York.

Q. When did she come home after that?

A. I think it was the following Monday or Tuesday.

20

Q. Did you ever see Mr. Winfield Provost again at your home?

A. Never.

Q. Are you at home, or not, during the day and evening?

A. I am at home almost all the time.

Cross Examination by Mr. Vickers:

Q. You do not mean to say that you are at home so constantly and continuously that Mr. Provost could not have come to the house there and seen his wife and talked to her, shortly after his return from the South?

30

A. Why, you know she is teaching, and she is at

home most of the time when I am at home. If I am out it is usually before that time.

Q. Now, you will pardon me ; I did not know that she was teaching, because I understood she was not teaching shortly after he came home from the South ?

A. She is now, I mean.

10 Q. She was not then ? This is in April, right after Easter, in April, 1903. You do not mean to say that you are at home so constantly and continuously that Mr. Provost could not have come to the house there and have seen his wife and talked to her, shortly after his return from the South ?

A. I would be very apt to have known it.

Mr. Vickers :—I will amend the question by adding the words, “without your having seen him.”

20 *By the Vice Chancellor* :

Q. The real question is this, whether you are so constantly at home that it would be impossible for anybody to have come there and have a conversation with some inmate of your house without your being surely there to see him ; are you so constantly at home that you can safely say that ?

A. Well, I go out occasionally, of course.

30 *By Mr. Vickers* :

Q. Now, when Mr. Provost came home on this Saturday night before Easter you let him in, did you ?

A. I did.

Q. About what time ?

A. It was after one.

Q. At night?

A. At night.

Q. Did you know that he was coming?

A. I knew that he had sent a telegram. I did not expect him at our home.

Q. What other inmates were there of your home at that time? 10

A. My father and mother and my brother and the maid and a nephew.

Q. How came you, after one o'clock at night, to go to the door to respond to the ring?

A. Well, I have often done it to let any one in when, by mistake, we have locked the door, so they could not get in with the latch. I am usually the one who does that, if any of the family come on the midnight train and the door has been locked. 20

Q. Was any member of the family out on this night in question?

A. Not anybody.

Q. So that you had no reason to believe that some member of your family was coming in at that hour of the night?

A. No. There was no light in the house, unless it was a little night light I had, because I was taking care of the baby.

Q. Now, it is a fact, is it not, that you were expecting your brother-in-law home on that night? 30

A. No, it is not.

Q. You did receive a telegram saying that he would return on the Saturday on which this occurred, had you not?

A. Yes.

Q. What did you do with that telegram? Pardon me, to whom was it directed?

A. It was directed to Mrs. Provost.

Q. Your sister?

A. Yes, Mrs. Jennie Provost.

Q. And what did you do with the telegram?

A. I opened it, thinking it might be something that would require being sent on to her.

10

(Question repeated.)

A. I opened it.

Q. Then what did you do? Did you read it?

A. Yes.

Q. And do you remember its contents?

A. It was expressing the fact that he was returning.

20

By the Vice Chancellor :

Q. Do you remember the contents?

A. Not verbally.

By Mr. Vickers :

Q. Have you the telegram?

A. No.

Q. Do you know where it is?

A. I burned it.

30

Q. You burned it. Now then, just state the substance, if you can, of that telegram.

A. "I am on my way home."

Q. And do you remember where this telegram purported to be sent from?

A. No.

Q. Didn't you look?

A. I don't think I did.

Q. You knew where Mr. Provost then was?

A. I knew he had been in the South.

Q. As far as you knew he was still there ?

A. Yes.

Q. And what did you do after the receipt of this telegram as to advising Mrs. Provost of the prospect of the return of her husband ?

A. I went down to see Miss Mame Provost.

Q. That is the sister of the defendant ?

10

A. Of the defendant.

Q. Well, what took place there ?

Mr. Mackay :—I object to any conversation between Miss Mame Provost and this witness.

(Question withdrawn.)

Q. When Mr. Provost came to the house whom did he inquire for, on this night in question ?

20

A. I don't know if he made any inquiry.

Q. Well, will you tell us what the conversation which took place between you and Mr. Provost was ?

A. He said, "Didn't you expect me?" and I said, "No," and then he asked me where my sister was, and I said she was in New York, and then he said, "I am going to return South in two weeks."

Q. Did he ask about the children ?

A. I don't think he did. I think I volunteered the information that Reginald was with her, and that I was weaning Donald, and he was asleep.

30

Q. That is to say, that one son was with his wife in New York ?

A. Yes.

Q. And you had the other son at the house there ?

A. Yes.

Q. And he was asleep ?

A. Yes ; the son that was at the house was asleep.

Q. And did Mr. Provost then ask to see the son ?

A. He did not.

Q. Didn't you tell him that he could not see the son because he was being weaned and you did not want to wake him ?

10 A. I did not. Naturally, at half-past one at night, or after one o'clock, you are not supposed to waken children.

The Vice Chancellōr :—Strike that last all out. She was not asked that.

Q. Was there any request made by Mr. Provost at that time, during that conversation, in regard to this child who was then asleep at the house ?

20 A. Not any at all.

Q. Did not Mr. Provost ask you to bring that boy on the following Sunday, that is the next day, to his mother's house that he might see him ?

A. He did not.

Q. Did you bring that child there the next day ?

A. I did.

Q. Did it of your own accord ?

A. Yes.

30 *Mr. Mackay* :—I have eight or ten other witnesses on the question of drunkenness, as to specific occasions either before or after his return from the South.

The Vice Chancellor:—I can take no notice of it, unless you call them and swear them and examine them ; unless the other side will make some stipulation I cannot do anything.

Mr. Mackay:—I would like to save time on it.

The Vice Chancellor:—So would the Court, but I cannot put on the record that you have eight or ten witnesses that will swear to anything. Let them be called and sworn. 10

Mr. Vickers:—What stipulation does the petitioner want ?

Mr. Mackay:—As to the general habit of the defendant.

Mr. Vickers:—Oh, no ; we won't admit that. 20

MRS. LOUISE WHITE SNYDER sworn.

By Mr. Mackay:

Q. Do you know Mr. and Mrs. Provost, the petitioner and defendant in this suit ?

A. I do. 30

Q. Where did you reside prior to the year 1903, between 1900 and 1903 ?

A. In Mrs. Provost's house.

Q. On Atlantic street ?

A. Atlantic street.

Q. Which portion of the house did you occupy?

A. The upper one.

Q. Did you have occasion to observe the conduct and habits of Mr. Provost during the time that you occupied that house as a tenant?

A. Some; yes.

Q. Can you state what his habits were as to drinking, if you know?

10 A. Well, I don't know just how to word that.

By the Vice Chancellor :

Q. What he wants to know is what your information is, as derived by what you yourself saw and not from what anybody told you, but what you saw with your own eyes? If you did not see anything, your answer then is you don't know.

A. I did see him.

20 *By Mr. Mackay :*

Q. Just relate what you saw.

A. I saw him come home when he needed to be helped in the house a good many times.

Q. How many times?

A. Oh, I cannot tell you how many.

Q. What do you mean by that, that you couldn't count the number?

A. No. I could not count the number.

30 Q. Was it frequent or infrequent?

A. It was frequent.

Q. Can you remember, on these occasions, what he did when he got home?

*The Vice Chancellor :—*How has she shown that she ever was in his house?

Mr. Mackay :—She lived upstairs.

By the Vice Chancellor :

Q. You do not pretend to know what happened to him after he got in his own apartment, do you?

A. Nothing, only what I heard.

10

By Mr. Mackay :

Q. What do you mean by “hearing”?

A. What was going on downstairs.

Q. Well, what did you hear? Could you distinguish voices?

A. Not enough to understand, but I could tell who was talking.

Q. Well, what happened after Mr. Provost came home that was unusual, if anything happened unusual?

20

A. Well, on one occasion there was a general breaking of dishes.

The Vice Chancellor :—This testimony is so infinitesimal it seems almost not worth while to take it. Such testimony as this cannot cast any light on the real issue. If you think it does, bring it out by somebody who knows about it. This lady cannot pretend to say what happened in somebody else’s flat when she was not present.

30

Mr. Mackay :—I could prove that by recalling Mrs. Provost, if you would allow me to go into it. On direct examination I did not want to lead her as to these specific instances.

The Vice Chancellor :—I do not see that it is material, but I certainly do not think it is material from this witness, who could not tell about what took place behind walls where she could not see.

Cross Examination by Mr. Vickers :

10 Q. When did you cease living in the same house where Mrs. Provost lived ?

A. In 1900 we moved in, and lived two years there.

Q. Then you moved out in 1902—winter, spring, summer or fall ?

A. Spring.

Q. In the spring of 1902, you moved away ?

A. Spring of 1902.

Q. And where did you move to ?

20 A. Union street.

PETER C. TERHUNE sworn.

By Mr. Mackay :

Q. Mr. Terhune, where do you reside ?

A. Corner of State and Atlantic streets, Hackensack.

30 Q. Do you know where Mr. and Mrs. Provost lived prior to 1903 and up to March, 1903 ?

A. Yes.

Q. How far is your house from theirs ?

A. About 150 feet.

Q. Can you see their house from yours ?

A. Yes.

Q. Did you have any opportunity to observe the conduct and habits of Mr. Provost, the defendant?

A. Yes.

Q. Can you give any specific occasions when you saw him under the influence of liquor, if he was ever under it?

A. Yes.

Q. When and where, and how did he act?

A. Why, as near as I can remember, it was the spring of 1902, or thereabouts; it was Saturday afternoon, in the neighborhood of 3 o'clock; I saw him coming home, or rather, I passed him going to my home from Main street, and I had to step one side when I went by him; of course he was taking pretty much all the sidewalk; he certainly was very much under the influence of liquor at the time, and I walked on home, and after some little time he came down the street and went to his house, and he had hard work getting up over the curb. He was very much under the influence then, of course, as he was before when I saw him.

Q. Any other occasion?

A. The same year, in the fall I think it was, I saw him one Sunday morning trying to get on his wheel over in front of the Methodist church, which is a couple of hundred feet away, and he had very hard work then to get on his wheel; in fact, I don't think he did at all; he was busy there for half an hour trying to get on; the minister went out to help him and found him intoxicated, and left him alone, and went back, I believe.

Q. On the first occasion that you saw him, that you mentioned, did he get into the house that day?

A. I think he did; but I am not positive.

Q. Do you know what his general reputation was

around that neighborhood, prior to 1903, as to sobriety?

Mr. Vickers :—I object to that.

The Vice Chancellor :—I do not think general reputation has anything whatever to do with this case.

No Cross Examination.

10

CORNELIUS HARTLEY sworn.

By Mr. Mackay :

Q. Where do you reside, Mr. Hartley?

A. Hackensack, State street.

Q. Do you know where the defendant and petitioner resided prior to 1903, on Atlantic street?

A. I do.

20

Q. How far from there did you live?

A. Well, I suppose it is about a quarter of a mile, at present.

Q. At that time how far away did you live?

A. What time?

Q. Prior to 1903, between 1902 and 1903?

A. I think I have lived neighbor, next door.

Q. Did you ever have an opportunity to observe the habits and conduct of Mr. Provost?

30

A. Yes. I saw him going out and in; saw him at different times.

Q. Do you know whether he drank at all to excess?

A. Well, I have saw him come home when I thought he was under the influence of liquor.

Q. How often?

A. Oh, on different occasions ; I wouldn't say how often.

Q. Do you remember any particular occasion ?

A. Yes. I remember one evening seeing him come home.

Q. Just relate when, and how, and the time.

A. Well, this was in the fall ; I think it was in the fall of 1900 ; I saw him come home, and the hackman take him from the hack and put him in the house. 10

Q. Afternoon or evening ?

A. It was in the evening.

Q. What time ?

A. Oh, I suppose about in the neighborhood of seven o'clock ; half past seven.

Q. How did he get out of the hack ?

The Vice Chancellor :—Oh, I won't go into that. We are not trying to convict anybody of the crime of habitual drunkenness. 20

No Cross Examination.

PETITIONER RESTS.

THE CASE FOR THE DEFENDANT. 30

WINFIELD PROVOST sworn.

By Mr. Kellogg :

Q. Mr. Provost, you are the defendant in this suit ?

A. Yes, sir.

Q. Will you kindly state to the Court what was the exact day upon which you received a notice, if you did receive a notice, that you had lost your employment in the Mutual Life Insurance Company of New York?

A. It was on the 3rd day of March, 1903, by the noon mail, I received the letter.

10 Q. What did you do upon the receipt of that letter?

A. I showed it to my wife.

Q. What did she say to that?

A. Well, she felt very badly about it, and I too.

Q. Was anything said by you, or by her, in that conversation at that time, concerning your going away?

A. Not at that present time, no; not right then.

Q. You mean not then?

A. Right at that time? No.

20 Q. When was the first time that anything was said between you and your wife concerning your going away?

A. On the next day I told her that I was going down to South Carolina because I had a friend down there who was in the tobacco and cotton raising business and I thought I might be able to obtain something similar to do at that place.

Q. What was your friend's name?

A. Statlander.

30 Q. What did your wife say to that proposition on your part?

A. Well, she didn't wish me to go there. She spoke about taking this trip to South America on one of the boats from her brother's company, which would take two months to go and return.

Q. Why didn't you take that trip to South America on the boat ?

A. I knew I could not obtain, or have any opportunity of obtaining, a position if I was on board a boat going to South America ; that there were better opportunities in the South than there would be on board a boat.

Q. What was your intention in going South ?

A. Well, I went South to recuperate and also to try and obtain a position. 10

Q. Did you tell your wife that ?

A. I did.

Q. Was she willing that you should go South ?

A. She seemed to be, only she would rather have me go aboard the boat, as she claimed I could save all that unnecessary expense, as she said it was.

Q. Did you ever at any time, Mr. Provost, leave your wife with the intention of deserting her ?

Mr. Mackay :—I object. I think that is too leading to be allowed. 20

The Vice Chancellor :—I will permit the question.

A. No.

Q. When was the first time that anything was said between you and your wife concerning a disposition to be made of your house in Hackensack before your going away ?

A. It was on Friday night. I went away Saturday, I think it was. 30

Q. That was the night before you left ?

A. The night before I left, yes. I cannot tell the day exactly. It was the night before I left.

Q. Who opened that subject in the conversation, you or your wife?

A. Well, that I couldn't say. Her brother came around at that time.

Q. That night?

A. That night; in the evening.

Q. Did you send for the brother?

A. I did not.

10 Q. What arrangement was made that night between you and Albert Moore, Jr., and your wife concerning that property, if any was made?

A. There was none made that night.

Q. When did you next meet and discuss the matter?

A. The next morning.

Q. What arrangement was made at that time?

A. They wanted me to sign the property over to her brother, Albert V. Moore, Jr.

20 Q. Who wanted you to, your wife?

A. Yes.

Q. What reason did she give for that request?

30 A. I don't know as she gave any reason other than that the notes for the property that the house was built on belonged partly to her mother and partly to her sister; that the property belonged in her family, and instead of letting the Building and Loan foreclose I signed the property over to her brother. I was in such a state of mind that morning that I really did not figure out or really know how the financial end of it stood.

Q. Where was the first place in the South to which you went after you left Hackensack?

A. Well, I stopped at Florence over night.

Q. And where next?

A. I drove from Florence to Darlington on Sunday morning.

Q. Did you write from either of those places to your wife?

A. I wrote the first night I arrived at Florence.

Q. And you continued to write letters subsequent to that?

A. Upon nearly every day, I guess.

10

Mr. Kellogg:—I have forgotten just what the state of the record was concerning these letters that were marked for identification, whether they were identified by the witness or not.

The Vice Chancellor:—If they were marked for identification, of course they were identified.

20

Mr. Kellogg:—Then I wish to offer these five letters, G. T. V. 1, to G. T. V. 5, inclusive, at this time.

The Vice Chancellor:—Is there any objection?

Mr. Mackay:—(After inspecting the letters which are now handed to him.) No objection.

30

(The letters were thereupon admitted in evidence and marked Exhibits D-1, D-2, D-3, D-4, and D-5.)

Q. Did you say to your wife, at any time after you lost your position with the Mutual Life Insurance Company, that you had always wanted a

chance to go South and that now you would take this one ?

A. No.

Q. Did you go South for the purpose of improving your health and recuperating and getting a position, or did you go South for the purpose of simply seeing the country and shooting ?

10 A. I stated before I went South to recuperate and also to get a position in that line of business, tobacco raising and cotton raising.

Q. Did you look around, when you got down there, for such an opportunity ?

A. I did.

Q. Did you find one which was open to you at the present time—I mean then ?

A. I did not.

Q. Did you write to your wife to that effect ?

A. I did.

20

The Vice Chancellor:—The letters will show what he wrote to his wife. Are there any letters of his in evidence of that time ?

Mr. Vickers:—Yes, sir.

Mr. Mackay:—Not of that time, your Honor. I produced all the letters that the notice called for, and there were not any.

30

The Vice Chancellor:—Oh, no ; she said she got letters from her husband during that period. She said after he left for the South she wrote to him and he wrote to her, and I was not sure

that she put the letters in evidence that she got from him or not.

Mr. Vickers :—The notice calls for the production of letters from Winfield Provost to Jennie G. Provost from the 1st day of March, 1903, to the day of the date of this notice, which is March 30th, 1906.

The Vice Chancellor :—What is the response of the petitioner to that notice ? 10

Mr. Mackay :—Those are all the letters I have; I have offered in evidence, with the addition of these two letters here (producing and handing to counsel for the defendant, two letters).

The Vice Chancellor :—The response to the call is that counsel has produced all of the letters that the petitioner has in her possession between the dates named. 20

Q. Did you keep any copies of these letters, Mr. Provost, that you wrote from the South ?

A. No.

The Vice Chancellor :—Are there any letters in evidence, written by this witness to his wife, from the 7th of March, 1903, to the 1st of June, 1903 ? 30

Mr. Kellogg :—There are no such letters in evidence, I believe.

Q. What did you find to be the opportunities for

the getting of business, or for tobacco raising and cotton raising in the South, at that time of the year, in the year 1903?

10 A. I applied to one of the leading men there in the county where I was stopping; he was a large plantation owner; he raised both tobacco and cotton, and he said that was a very poor season of the year, as that was planting season; that the best time would be in the fall, and he said he would do all he could do for me and look out for me.

Q. Did you write your wife, stating the facts you have just stated now to the Court?

A. I did; and wrote a letter to my parents also with the same facts.

Q. When you decided to come North again what did you do?

A. I telegraphed to my wife and I telegraphed to my parents.

20 *By the Vice Chancellor :*

Q. How often did you write to your wife during the time you were in the South?

A. On an average of every other day.

Q. How long were you in the South?

A. About thirty days.

By Mr. Kellogg :

30 Q. Can you tell us the day upon which you arrived at Hackensack from the South?

A. (Consulting a diary now produced by the witness) I arrived there on April 4th, Saturday.

Q. Where was the first place you went to after you arrived in Hackensack?

A. I went to my wife's parents' home, where she was stopping.

Q. What time did you get there ?

A. Well, I cannot tell the exact time ; it was at night.

Q. Whom did you see there ?

A. Her sister, Miss Bessie Moore, came to the door. 10

Q. Did you ask for your wife ?

A. I did.

Q. Did you ask for your children ?

A. I did.

Q. What were you told concerning the whereabouts of your wife and children ?

A. Miss Bessie Moore told me that my wife and Reginald, the oldest child, were in New York, and Donald, the youngest one, was asleep, and I asked when my wife would be home, she said on Monday she expected her some time. I asked her if she would bring Donald around, the youngest child, on Sunday, the next day, which she did. 20

Q. Do you remember who took Donald home to the Moore house that night ?

A. I do not.

Q. When and where did you first see your wife on your return from the South ?

A. She called there on Monday evening, and I was out when she called, but I returned about a few minutes after she had been there. 30

Q. Where is "there" ?

A. At my mother's home. And when I came in, she says to me, "What are you doing home so soon?" I said, "How long did you expect me to stay away?"

Q. What did she say ?

A. She said, "I expected you to stay away a year or two years anyway."

Q. Was anybody present at that conversation?

A. My mother and my sister were in the room, I believe.

Q. What was the next subject of conversation that was taken up between you and your wife at that time?

10 A. Well, about different things that happened while I was South that I cannot recall now.

Q. Was anything said in the presence of your mother and your sister, by you or by your wife, concerning you and your wife living together again?

A. Not that night.

Q. Your wife did leave that house that night, did she?

A. Leave my mother's house?

Q. Yes.

20 A. She started to go; she was going home, she said; "Well," I said, "I will walk home with you."

Q. What did she say?

30 A. She said, "No, you needn't mind. I don't want you," and I said, "I will go anyway." She said, "I am only going as far as my sister's on Essex street," which is about a thousand yards, I suppose, from mother's house. I walked with her as far as the front of their house, and I asked her then about coming or staying there with me, and she said she wasn't going to live with me any more until I could furnish a home like the one we had left.

Q. Did you offer, during that walk and conver-

sation, to have her live with you in any particular place, or to have her live with you at all?

A. Well, I asked her if she wasn't going to live with me, and the way she treated me that evening gave me the impression that she intended to drop me entirely because I returned.

Q. That was, as I understand it, on Monday night, was it, that this happened?

A. Monday night.

Q. When was the next time after that Monday night you saw your wife? 10

A. I called at her house, or her mother's house, about six o'clock the next evening.

Q. That is Tuesday?

A. Tuesday.

Q. Who let you in?

A. Her nephew, Horace Chrystal, came to the door, and they were at supper. He called my wife out, and we stood in the hall, and I asked her if she would come around and stay all night that night so we could arrange matters and talk things over. 20

Q. What did she say?

A. She said no, she would not stay all night; she said, "I will come around and you can find out what you want and ask what you want, but," she says, "I will not stay all night"; and she says, "I don't want you to come around here any more to my father's house."

Q. What did you do then?

A. I put on my hat and walked out. 30

Q. When did you next see her?

A. That same night that she called at my mother's house.

Q. Where did that conversation take place ?

The Vice Chancellor .—Which one ?

Q. Where, in your mother's house, did you see her on that night ?

A. In the dining room.

10 Q. What was the subject of conversation between you and your wife at that time ?

A. Well, that was principally about the insurance business. She said she was so sorry she hadn't found out all about the business before I went away.

Q. Any other subject discussed ?

A. Not that I remember.

Q. Did you walk home with your wife that night ?

A. I did.

20 Q. What subjects did you discuss with your wife while walking home with her ?

A. Why, I asked her about living together again, and I said that I could continue on in the insurance business and I might, in the meantime, in the fall, be able to secure something in the South.

Q. What did she say to that ?

A. She said she would not live with me again until I could furnish a home like we left. She said, "I don't want you to help me in any way, or the children, until you pay all your debts."

30 Q. Have you succeeded in doing that yet ?

A. Not all of them.

Q. You have been at it ever since, have you ?

A. No ; not ever since. I stopped when this suit was brought.

Q. But up to that time you continued to pay them to the extent of your ability ?

A. I did.

Q. And you did pay a certain number of them ?

A. I paid three or four smaller ones.

Q. Do you remember when and where was the next time, after that Tuesday night, that you saw your wife and talked with her ?

A. I don't know when. The place was at my mother's house, but when, what time, I could not say. It was in the evening. She called there about every third night, I should imagine, to consult me on this insurance business. 10

Q. And you had left that business in her charge when you went South, had you not ?

A. I did. I left all the books and everything. They were principally renewals ; policies that were renewed.

Q. And when you returned North you still left that business with her ? 20

A. I left it with her.

Q. How long did these visits of hers to you, concerning the insurance business, continue—how many months were they scattered over ?

A. Until about the 1st of September, 1903, when they ceased.

Q. Mr. Provost, up to the time of the bringing of this suit, have you or have you not been ready and willing to live with your wife and support her up to the extent of your ability ? 30

A. I have.

Q. Are you still willing ?

A. I am.

Q. Did you ever say to your wife that you did not know when you would come back ?

A. I do not remember that I did.

Q. Did you, before you departed, give your wife

to understand that as soon as you were financially able to start a new establishment you would do so, and request her to come and live with you, wherever that might be?

A. I did.

Q. After your return from the South, and before the 21st day of June, 1905, did you ask your wife to come and live with you at the house of your mother?

10 A. I did.

Q. How many times did you ask her that?

A. Several times. I could not say just how many.

Q. Approximately?

A. Probably three or four times.

Q. Did her replies to those requests vary at all?

Mr. Mackay:—I object.

20 *The Vice Chancellor*:—The question is objectionable.

Q. Did she reply to those requests at all?

Mr. Mackay:—I object.

30 *The Vice Chancellor*:—The objection is sustained. The proper way to elicit what the reply was and what it meant and what he did toward his wife is to have the conversations. Have him state where and when the conversations took place and what they were.

Q. Where was it that these conversations took place?

A. Well, one that I remember was in my mother's

house, in the dining room; and the other times were generally on the walk from there to her sister's home when she left in the evenings.

Q. On this first occasion what was said by you and what was said by her?

The Vice Chancellor:—By “on the first occasion” he now means when the question of her coming to live with you at your mother's was discussed between you, what did you each say about it? 10

A. Well, I asked her if she was going to live with me again, and she said, “Not until you can furnish a home like the one we had,” and I says, “Why, can't we live with my mother?” She says, “I will not do it”; she says, “I will not let you in any way support me or the children until you have paid all your debts and furnished a home like the one we left.” There was generally that same reply each time. 20

Cross Examination by Mr. Mackay:

Q. Were you employed by the Mutual Life Insurance Company at the time you were married?

A. I was.

Q. How much of a salary were you receiving at the time you were discharged or gave up your position?

A. \$2,000. 30

Q. How long had you been receiving that salary?

A. About a little over a year—a year and three months.

Q. What was your salary at the time of your marriage in 1897?

A. My salary was \$1,200, if I recollect.

Q. When was it increased?

A. Well, it was increased from year to year, and some years it was not.

Q. You lived on \$1,200 nicely after your marriage?

10 A. I did.

Q. How much were you making when you built this house on Atlantic street and moved into it?

A. Either \$1,600 or \$1,800, I imagine.

Q. Could you live cheaper in that house in Atlantic street than you could where you were living before?

A. No.

Q. Much additional expense?

A. Yes, quite some.

20 Q. What year did you move into the Atlantic street house?

A. I do not remember the exact year.

Q. How long after your marriage?

A. Well, it was probably two or three years; probably 1898.

Q. You were married in 1897, weren't you?

A. 1897.

Q. 1898 would be the next year?

30 A. 1898—no, it was 1900, I guess—1900 or 1901; about that time.

Q. What was your salary in 1900?

A. Either \$1,600 or \$1,800.

Q. How much were you making outside of your regular insurance business, additional money?

A. That I cannot tell.

Q. Approximately?

A. It varied.

Q. Well, what would the minimum be?

A. Well, from \$1.50 to \$50.

By the Vice Chancellor :

Q. A year, do you mean?

A. Well, at any time. It was commissions on insurance, if I obtained commissions.

Q. You must take a period. He wants to know what your approximate average was for say a year. 10

A. Some years it might not be anything, and other years it might be \$100, \$200, \$300, \$400.

By Mr. Mackay :

Q. Did you make as high as \$500?

A. No, never.

Q. \$300?

A. I made probably \$300.

By the Vice Chancellor :

20

Q. You have averaged some years \$300 over whatever salary the company paid you; is that your answer?

A. Yes, sir.

By Mr. Mackay :

Q. You got along very nicely in the year 1900 30
in your home, didn't you?

A. I did.

Q. Your married relations were happy, weren't they?

A. They were.

Q. Did you take to drinking after that?

A. Why, I always did drink.

Q. Always drank?

A. Drank before I was married.

Q. To excess?

A. No.

Q. Some times?

A. Well, I might have taken—

10 Q. (Interrupting). Didn't you drink more particularly to excess in the year 1900?

A. More than I did previously; yes.

Q. And did not that continue from then on, you drank more to excess, and got worse and worse from 1900 on?

A. Well, it did; yes.

Q. Wasn't that the cause of your losing your position in 1903?

A. Yes; I guess it was.

20 Q. Did you owe the insurance company any money at that time,—the company that employed you?

(Objected to.)

(Question withdrawn.)

Q. Did you anticipate losing this position?

A. I did not.

Q. Didn't you know about it several weeks before?

30 A. I did not.

Q. Hadn't you been warned the year before by the company, the officials of the company and the manager, where you were employed, that you would lose your position if you continued your habits?

A. I was not.

Q. Didn't he give you any warning at all?

A. He spoke about my drinking, but he did not warn me in any way.

Q. Was not your position at one time threatened, a year before you lost it, because of your habits?

Mr. Vickers:—I object to that on the ground that it is utterly immaterial—the relations which this man had with some unknown person named as a manager or employer. 10

The Vice Chancellor:—From what the witness says, he without doubt knows who counsel is talking about; he has in mind evidently just what counsel has in his mind. On that ground I would not overrule it. I think the question is too indefinite, to ask this witness about his being “threatened.” 20
A man would know, without anybody speaking to him, that if he pursued a certain line of conduct a certain thing would most likely happen to him. The witness has stated with entire frankness that his manager spoke to him about his drinking habits, and the Court will take judicial notice that he did not commend them. The witness is singularly frank about this, very commendably frank, and has told us exactly the facts. I do not see that there is any use in going into a lot of details about it. 30

Q. Did you not observe, in the year 1902, that you were running behind financially ?

A. I did.

Q. What was that due to ?

A. Well, it was speculation.

Q. What kind of speculation ?

A. I undertook to put an article on the market which I failed in.

10 Q. What was the name of the article ?

A. A whistle.

Q. How much did you put into that ?

A. \$150 or \$160.

Q. Did you pay for the machinery that you used in connection with the manufacturing of that instrument ?

A. I did not.

20 Q. And you could not have spent that money in that direction, could you ? Is it not a fact that your money was largely spent on your associates outside of your family, and because of the life you were leading in 1902 ; is not that so ?

A. There was a good portion of it spent in that way.

Q. A large portion of it, was there not ?

A. I don't know what you mean by "a large portion."

By the Vice Chancellor :

30 Q. Well, of \$2,000 was a large portion spent inside your house, or on matters outside, that is what he wants to know ?

A. It was.

By Mr. Mackay :

Q. Was not some of your money spent in gambling, Mr. Provost—some of your income?

A. Very small amount.

Q. You have gambled in your own home, haven't you, in the absence of your wife?

(Objected to.)

The Vice Chancellor :—Yes; counsel does not seem to be able to rid his mind of the idea that this Court is not a moral censor. I have nothing to do with this man's moral character, if he has not committed adultery. I have nothing to do with his habits so far as gambling was concerned, unless it was the cause of his desertion. If you can convince me in some way that this gambling had something to do with his desertion, then I am willing to listen to you. Are you prepared to show that the fact that this man gambled in his own house had anything to do with the events of the 7th of March?

After argument by Mr. Mackay :

The Vice Chancellor :—I do not see that the fact that he gambled in his own house is relevant. I will give you all the opportunity in the world to show me how the fact that he gambled in his own house had anything to do with the happenings on the 7th of March when

the alleged desertion took place. I think myself that is too far afield.

Q. Mr. Provost, the losing of your position was the final climax after your actions in the year 1902, when you say you did divert money from your home and the use of your family?

10 (Objected to on the ground that it is argument and too vague.)

The Vice Chancellor—Yes; that is argument. This witness is not on the stand to testify to climaxes; he is on the stand to testify to facts.

Q. Did you tell Mr. Fleischman—do you know Mr. Charles Fleischman?

A. I do.

20 Q. Did you see Mr. Fleischman a week before you went South?

(Objected to on the ground that it is not proper cross examination.)

The Vice Chancellor :—I will permit it.

A. I saw him before I went South; I don't know whether it was a week or not.

30 Q. Did you have a conversation with him about your going away?

A. Yes.

Q. Did you tell him you were going away for good?

A. I did not.

The Vice Chancellor :—What is the purpose of this? Mr. Fleischman has been on the stand and has given, as your witness, his version of this conversation, and this witness has not contradicted him in the least. What do you want to do?

Mr. Mackay :—It is to lead up to his going away.

10 10

The Vice Chancellor :—It is admitted that he went away. If there is any one fact that is not disputed by anybody, it is that this man went away at 3 o'clock on the 7th day of March, 1903. You do not have to lead up to that.

Q. When you went down South, Mr. Provost, what did you do to earn a living while you were there?

20 0

A. I did not do anything to earn a living. I could not find anything to do at that time of year.

Q. Did you have any money with you when you left?

A. I did.

Q. How much?

A. \$200.

Q. Did you have any money when you came home?

30 0

A. I did.

Q. How much?

A. That I don't know exactly.

Q. Can you approximate?

A. Probably \$100.

Q. Did you get a position after you came home?

A. Not right away.

Q. How long after?

A. A position? Now, I did not obtain a position, except in working on commission.

By the Vice Chancellor:

10 Q. That is what he means: Did you get something to do which paid you some money?

A. I did.

Q. Now, he wants to know when. You got home in April, 1903, didn't you?

A. Yes, sir.

Q. Now, he wants to know when you got any kind of employment that paid you any money?

A. Why, the same week.

By Mr. Mackay:

20 Q. Where, with whom?

A. Insurance companies.

Q. What companies?

A. There was no particular company. It was a broker for all companies, fire, life, accident, general.

Q. Did you get an agency in your name?

A. I did not. I said it was for a broker.

Q. What broker?

A. New York brokers.

30 Q. What were their names?

A. That I cannot say. C. E. Atkinson was one. It is now the Bergen Realty Company.

Q. How much insurance did you get for him?

A. I could not remember.

Q. How much money did you make?

Q. A. I do not remember just on those occasions.

Q. Did you make any steady income?

A. It varied.

Q. Well, what was the minimum and what was the maximum?

A. Probably \$5 a week and maybe \$12 or \$15 a week.

Q. Did you make as much as that?

A. I have.

Q. How long did you stay in that business?

A. Well, I have been in that business up until here the 1st of last April, I guess it was. 10

By the Vice Chancellor :

Q. You do not mean day before yesterday?

A. A year ago, 1905.

By Mr. Mackay :

Q. Have you any record of the policies that you took out, that you secured? 20

A. I have none.

Q. Have you any record of how much you made?

A. No.

Q. Did you pay any board at your own home, at your mother's home?

A. I did.

Q. How much?

A. Well, that varied as my business varied. If I made very little, why, I paid accordingly. 30

Q. How much did you pay?

A. Well, I paid from \$3 to \$5 a week?

Q. From the time of your return from the South until when?

A. Well, sometimes I have not paid any. You understand, I did not say every week ; I say it varied as my business varied.

Q. What business were you in on September 7th, 1904 ?

A. Special agent for the Aetna Life Insurance Company, but I did not do any business for them.

Q. What business were you in on the 12th day of April, 1905 ?

10 A. With the Artistic Ad. Company, of New York, I think it was.

Q. And we will go back to the 8th day of April, 1905 ; what business were you in then ?

A. I think with the Artistic Ad. Company.

Q. Why did you give up the insurance ?

A. This was more profitable, as the insurance business was going backward.

20 Q. When did you realize that the insurance business was unprofitable, Mr. Provost, soliciting insurance ?

A. About that time, in April, 1905.

Q. Were you making enough in April, 1905, to support your wife and children ?

A. I could.

Q. Why did you ask, in your letter of April 8th, 1905, then, for another year to redeem yourself ?

A. So I could complete the paying of my debts, as she asked me to do, before I came to live with her.

30 Q. Then you were not ready to provide a home for your wife and family, were you, on April 8th, 1905 ?

Mr. Vickers :—I object to that on the

ground that the witness has not at any time said anything to that effect.

(Question allowed.)

A. I was.

Q. What did you mean by saying you wanted one more year to redeem yourself?

A. So I could pay my debts, as she requested me to do.

10

Adjourned until Wednesday, April 4th, 1906, at 10 o'clock, A. M.

Wednesday, April 4th, 1906.

Hearing of the cause resumed at 10 o'clock, A. M.

WINFIELD PROVOST recalled.

By Mr. Mackay:

20

Q. I understand, Mr. Provost, that you offered your wife a home with your mother on the corner of Essex and Hudson streets, Hackensack; is that so?

A. I did; on the corner of Main and Hudson streets.

Q. And that conversation occurred in the dining room at your mother's home after your return from the South?

A. I won't say positively it was in the dining room. 30

Q. Well, where did it occur?

A. I think it occurred on the walk from the home to her sister's.

Q. Well, what conversation did you have, if any,

in your own home, about offering her a home with your mother, outside of your three walks on her way home to her sister's?

A. I asked her if she was going to live with me again.

Q. Where?

A. Well, there is no place specified; at that time my idea was at my home, my mother's home.

10 Q. But you did not express that to her; that it was your mother's home?

A. I asked her if she was ever going to live with me again; I did not say where; she did not ask where.

Q. Then you never offered her a home in any particular place?

A. I did afterwards.

Q. Where?

A. At her mother's home.

20 Q. When did the conversation occur in which you offered her a home at her mother's?

A. As I said before, that was on the walk from my mother's home to her sister's.

Q. Well, why did you say in your letter of May 10th, "I think it would be better to locate outside of Hackensack?"

A. Because that was always her desire. After I went South she did not want me to be in the associations I had been in previously.

30 Q. Wasn't it because you could not live at your mother's home?

A. No, sir.

Q. Wasn't it because it was impossible to agree with your wife at your mother's home?

A. No, sir.

Q. Well, why did you suggest that it would be better to locate out of Hackensack ?

The Vice Chancellor:—He has just explained it.

Mr. Mackay:—I do not think the explanation is full.

The Vice Chancellor:—Let the stenographer read his previous answer.

(Previous answer read as follows :— 10
"Because that was always her desire. After I went South she did not want me to be in the associations I had been in previously.")

The Vice Chancellor:—You may ask him, if you choose, about other reasons.

Q. You refer in your letter of May 10th to locating outside of Hackensack ; where did you mean to locate ? 20

A. Anywhere she preferred to.

Q. Did you suggest any place ?

The Vice Chancellor:—The letter will state whether he suggested any place or not. You are now asking him about a letter. If the letter states it, that ends it; if it does not, that ends it. 30

Q. Outside of that letter, where you do not locate any exact place, did you have any place in mind ?

A. No place in particular.

Q. You testified yesterday that your wife, after

your return from the South, sent you the bills that were still unpaid ; what bills did she send you ?

A. There was C. B. Demarest; John Shaffer; Ackerman; John Demarest, the plumber; Dr. Conrad; Fink.

Q. The Hackensack News Company ?

A. Yes.

Q. Was that all ?

A. And several other small ones I don't remember.

Q. Well, were there any others now, Mr. Provost ?

A. (Referring to the contents of an envelope now produced by the witness) Clark A. Hayden was another.

Q. Is that all ?

A. And the Hackensack Steam Laundry.

By the Vice Chancellor :

Q. Were these bills that were incurred during your absence in the South, or were they some items that had previously accrued ?

A. Previously accrued.

By Mr. Mackay :

Q. That was all, wasn't it, Mr. Provost ?

A. That is all I have now.

Q. Now, what bill did you pay ?

A. The bill of Dr. Conrad's was considered paid. He took some things. Dr. Conrad's bill was considered paid for a deer head I had and a clock. Ackerman's bill was paid. J. H. Demarest, the plumber's, was paid, and the Hackensack News Company's was paid.

Q. Were those all you paid ?

A. This far, yes.

Q. You testified yesterday that you did not pay any bills after the suit for divorce was commenced ; is that so ?

The Vice Chancellor :—Do you mean to ask whether it was so that he testified to that ?

Mr. Mackay :—Yes, sir.

10

Q. Did you so testify yesterday, that you paid all the bills that you did pay before the suit for divorce was started ?

A. I did.

Q. Is it not a fact, Mr. Provost, now, that you paid the bill of Frank Ackerman, the plumber, on June 17th, 1905 ?

The Vice Chancellor :—That does not contradict his statement, if he did.

20

Mr. Mackay :—The suit was brought in May, I believe.

The Vice Chancellor :—The 21st day of June, 1905, is the date of the filing of the petition.

Q. What date did you pay Frank Ackerman's bill ?

A. June 17th, 1905.

30

Q. And the bill of J. H. Demarest, the plumber ?

A. June 19th.

Q. And the bill of the Hackensack News Company ?

A. June 4th, 1904.

Q. June 19th, you mean, don't you ?

A. June 4th, 1904.

Q. Are you sure you paid it on that date and not on the 19th ?

A. It is receipted for that date.

Q. Those bills aggregated how much, Mr. Provost ?

10 A. I have not footed up the total.

Q. Approximately speaking, do they exceed \$15 ?

A. That is, that I paid ?

Q. Those three.

A. Probably about that.

Q. About \$15 or less. Did you have a position continuously, as acting for a broker in securing insurance, from a week or two after your return from the South, until April, 1905 ?

A. I acted as broker ; for no particular house ; no.

20 Q. Answer my question.

The Vice Chancellor :—I do not understand this witness has attempted to say that he was in any employment in the sense that anybody had engaged him at a wage. I understand his testimony to be that he went around from place to place and from person to person, seeking insurance, and that when he found anybody that wanted any character of insurance he took it to a broker and placed it ; is that correct ?

30

The Witness :—Yes, sir.

Q. Were you engaged in that business steadily

from a short time after your return from the South until April, 1905?

A. I was.

Q. Why didn't you pay the bill of C. B. Demarest, the grocer?

Mr. Vickers :—That is objected to, on the ground that it is immaterial to this issue and irrelevant. So far as this issue between the parties is concerned, there was no obligation on him to pay these bills whatever. So far as the relations between the husband and wife are concerned, he is charged here with desertion at a specific time, and we are now dealing with a period subsequent to the filing of this petition. 10

The Vice Chancellor :—Well, that is not correct. He is dealing with a period after the 7th of March, 1903, when this bill was sent to the defendant, and he is inquiring as of a period from that time to the time of the filing of the petition; because, I gather from what the witness says, that he would not have paid after that if he had the money. Now, I think it is material in this view only, that in these matrimonial actions one of the grave questions for the Court always to consider is the ability of the husband to support the wife, and if the man has no money the divorce court has no way of compelling him to contribute to her support. If the woman 20 30

has had the misfortune to marry a man who cannot earn his living that is her misfortune. And I suppose it is proper to show the relative means of these parties. I do not see that I could shut it out without perhaps doing violence to the well settled rule that we must ascertain the means and faculties of the parties.

10

Mr. Vickers:—I may have misunderstood the nature of the inquiry, but I understood it to be covering a period of time from the time he left for the South up to the 1st of April, 1905.

The Vice Chancellor:—Well, that is before the filing of the petition, before the beginning of this suit.

20

Mr. Vickers:—It would come within the two years before the filing of the petition, and it would not be relevant for that reason.

30

The Vice Chancellor:—I do not see that it casts any light whatever upon the petitioner's case, but that is entirely a matter for counsel for the petitioner to consider. In other words, the fact that he did not pay grocers cannot possibly give her any right to have a divorce. But I cannot say that it is not relevant. He may be eliciting testimony that is valuable for your case; but I cannot say the testimony is not

relevant, and your objection may be that it is not relevant.

Mr. Vickers :—That it is not relevant or material.

The Vice Chancellor :—The fact that he is proving your case, I do not suppose is any objection you have a right to urge. I shall not rule it out at the present time. I will say to Mr. Mackay, though, so that he may stop this line of examination, unless he has some very good idea that will influence my mind, that the only effect I can see that it can have is that if he proves that this man is unable to pay grocer's bills, he is in no position to say that his refusal to buy a home or hire a home for his wife arose out of any animus or bad motive. You may proceed.

10

20

A. Well, my business was not in a way that I could. I did not make money enough at that time, or since then. I was paying board and for clothing and so forth.

Q. So you were only making enough money yourself to pay for your board and your own clothing in the employment you were engaged in, soliciting insurance?

A. I was.

Q. I show you a letter. Is that your handwriting? Is that your name?

A. That is mine.

Q. And your handwriting?

A. Yes.

30

10 Q. Didn't you write to Mr. C. B. Demarest, the grocer, on the 17th day of December, 1904, "As you no doubt know I have been out of employment going on two years but expect a position the first of the year and will then pay the bill as soon as possible. I am very sorry it has stood as long as it has ; when I went away I left enough money with my wife to settle all the bills of the tradespeople ; the money was used for something else and all the bills returned to me unpaid ; however it was all brought about by my own folly and as soon as I get the position, you, and everyone else, shall be paid with interest. Trusting you can wait until then, I am, very truly yours, Winfield Provost." ?

A. I wrote that ; yes.

20 Q. Then how do you reconcile that statement to Mr. Demarest, that letter, with the previous statement that you had an employment steadily during that time ?

30 *The Vice Chancellor* :—I will rule on that without an objection. He has not said that he had an employment. Your question is incorrect on cross examination, in that it assumes as one of its elements that this man has testified that he had employment. He has distinctly differentiated what he did from anything that could properly be termed employment.

Q. Did you consider that you had a position when you were soliciting this insurance ?

A. It was not a salaried position.

Q. Did you consider it was a position ?

A. Employment of some kind, it was not a position.

Q. It was not a position ?

A. No.

Q. Well, what did you mean by "expecting a position"?

A. A salaried position.

Q. As a matter of fact, were you doing anything to earn any money ?

A. I was as I stated.

Q. Can you tell me how many policies you issued or secured in that time ? 10

The Vice Chancellor :—When ?

Q. From your return from the South and until April, 1905 ?

A. I cannot tell exactly.

Q. Cannot tell at all, can you ?

A. I can.

Q. You haven't any idea, have you ? 20

A. Oh, yes.

Q. How many ?

A. Oh, over a hundred.

Q. In what place, Bergen County ?

A. Bergen County.

Q. With what companies ?

A. John Hancock Insurance Company.

Q. After your return from the South ?

A. After I returned from the South. 30

Q. Renewals of old work ?

A. No, sir ; new business.

Q. Aggregating how much ?

A. I couldn't say.

Q. How much did your premiums aggregate ?

A. That I don't know.

Q. Haven't any idea? Did you collect your premiums?

A. Did I collect the premiums?

Q. Did you receive your premiums after they were collected?

A. Yes.

Q. How much?

A. That I don't know, I say.

10 Q. Didn't you keep any books?

A. Not for that.

Q. You don't know how much you made, then, during that time?

A. I cannot say, exactly.

Q. And you did not make enough only to board yourself and clothe yourself and pay bills amounting to fifteen dollars; is that so?

A. That is it.

20 Q. Weren't you special agent for the Aetna Life Insurance Company?

A. I was.

Q. Were you doing any business for them?

A. No; I stated that yesterday.

Q. What do you mean by "special agent"?

A. Well, there is nothing meant by it; a special agent can be anybody; an ordinary agent can be a special agent.

Q. You really had no authority to act as agent for them?

30 A. I had.

Q. Had you in 1904, in October?

A. I had at that time. I don't remember the date.

Q. During the year 1904?

A. At that date; yes.

Q. Were you under a salary ?

A. No.

Q. Did you do any business for them ?

A. No.

Mr. Mackay :—I offer that letter to C. B. Demarest in evidence.

The Vice Chancellor :—What is the date?

10

Mr. Vickers :—December 17, 1904.

(The letter referred to is admitted without objection and is marked Exhibit D-6.)

Q. When you went down South, I believe you stated you went down to recuperate yourself and secure a position ?

A. I did.

Q. Did you say goodbye to your mother ?

20

A. No.

Q. Why didn't you ?

A. I felt too bad.

Q. What do you mean by that ?

A. Well, about losing my position and so forth. I left word that I should write to her, which I did the next night from Florence.

Q. Did you bid goodbye to anybody but your wife ?

A. And children,

30

Q. And the children ?

A. Yes.

Q. Anybody else ?

A. Well, there were some men at the station.

Q. None of your relatives ?

A. No. Well, my wife and children.

Q. I say, outside of your wife and children—none?

A. None.

Q. You had two hundred dollars with you?

A. About that.

Q. When you came back you had a hundred?

A. About that.

10 Q. Did you buy a single ticket, or a return trip ticket?

A. A single ticket.

Q. Why did you buy a single ticket?

A. Because a return ticket is not good for only six days, I believe.

Q. Is it not a matter of fact that you did not know when you were coming back, and that is the reason you bought a single ticket?

A. No.

20 Q. Didn't you understand you were going to stay down there if you got a position?

A. Why, yes.

Q. Then you did not get a return ticket?

A. No.

Q. Wasn't that your reason in buying the single ticket?

A. If I got a position I would not have returned.

Q. Were you in the heart of the City of Darlington, or were you on the outskirts, in the country?

30

The Vice Chancellor:—When do you mean?

Mr. Mackay:—After arriving there That is the only place he went to, as he testified—Darlington.

The Vice Chancellor:—I do not think that he testified that that is the only place he went to.

Mr. Mackay:—He stopped at one place before he got there, but he only stayed at Florence for an hour or so.

The Vice Chancellor:—I think it is immaterial whether he went to the centre of the city or not.

Q. As a matter of fact, didn't you merely board at Statlander's because he was a friend of yours ?

A. I did not board at Statlander's.

Q. You did make an effort to board there ?

A. I went there ; they had no accommodations, and I went to W. E. Dorgan, about three miles from there.

Q. A hotel ?

A. No, sir.

Q. A private boarding house ?

A. No ; a private home.

Q. What did you do down there ? How did you spend your time ?

A. I tried to obtain a position, some employment, and went shooting about two or three days.

Q. What did it cost you to live down there thirty days ?

A. Well, I was paying seven dollars a week board.

Q. Your other expenses, what were they ?

A. Well, to drive into the city of Darlington.

Q. What did your ticket cost down there ?

A. \$17.50, I think.

Q. And the same coming back ?

10

20

30

A. Yes, sir.

Q. Have you any of the money in the bank now?

A. No.

Q. After you returned in April, 1903, as you state to see your wife when you called that evening at her home, when did you write your first letter to your wife?

10

Mr. Vickers :—I object on the ground that it is too general. There is no evidence that he ever wrote, or that there was any occasion to write after his return to Hackensack.

The Vice Chancellor :—The witness can say that he never wrote, if he did not.

20

A. That I don't remember.

Q. Wasn't the date October 1st, 1904?

A. I don't remember the date.

Q. Do you remember writing a letter before a letter dated October 1st, 1904?

A. I remember writing a letter, but I cannot remember the exact date.

Q. Can you tell how many letters you wrote, after your return from the South, to your wife?

A. Well, eight or ten.

30

Q. As a matter of fact, Mr. Provost, didn't you wait over a year after your return from the South, and your failure, as you stated before, to see your wife to make arrangements with her, before you wrote her a letter?

Mr. Vickers :—That is objected to.

The Vice Chancellor :— Yes ; the question implies that he did not see his wife, whereas all the testimony is that he saw her very frequently. I overrule the question.

Q. You have testified, Mr. Provost, that you failed to see your wife at her home ?

A. I did.

Q. After that first call, did you not ?

10

Mr. Vickers :— That is objected to.

The Vice Chancellor :— I will overrule that question.

Q. How many times did you try to see your wife at her home ?

A. Twice.

Q. Now, is it not the fact, Mr. Provost, after trying to see your wife twice and failing that, you waited over a year before you corresponded with her ?

20

The Vice Chancellor :— You overlook the fact that he did see the wife in her own home ; that he went there ; that she came out in the hall ; that he had a conversation with her, and she said, " I won't discuss the matter here ; I will come to your mother's house tonight," and that she went there and discussed it with him. Therefore, your question contains an assumption of fact which is right in the face of the evidence.

30

Q. Now, is it not the fact, Mr. Provost, after trying to see your wife at her home, and failing that, you waited over a year before you corresponded with her?

10

The Vice Chancellor:—He testified that he did see her; that she came out in the hall, and that the substance of the conversation there was that the wife said, "I won't talk about this matter with you here; I will come to your mother's house and have the conversation," which she did that same night. Therefore your question is not intelligible because it ignores what the witness has testified to, namely, that he did have a conversation.

20

Q. Well, excepting the two occasions that you mention?

The Vice Chancellor:—I overrule that question. It is not intelligible to me, and no answer would convey anything to my mind.

30

Q. Mr. Provost, having called at your wife's home on your return from the South, and not having seen her because she was away, and having called again at her home and been informed by her that she would see you at your home, as you testified, is it not a fact that you waited over a year before you corresponded with her?

The Vice Chancellor:—I consider

that that is immaterial. It is shown that after that time he quite frequently met his wife and had long conversations with her ; therefore, it must be immaterial whether he waited a year before he corresponded with her. It can throw no light upon the matrimonial relations of two people if they have failed to write letters to each other when they are meeting each other every day. That would be utterly immaterial testimony. It could not cast any light on the issue. 10

Q. Do you recall any other letters but those dated as follows, Mr. Provost, after your return from the South ; September 7th, 1904 ; October 1st, 1904 ; April 8th, 1905 ; April 12th, 1905 ; May 3d, 1905, and May 10th, 1905 ?

A. I cannot recall the dates. 20

By the Vice Chancellor :

Q. He wants to know whether you recall any other letters that you wrote to your wife after your return from the South and up to the beginning of this suit ?

A. I cannot, unless I know the contents of those letters.

Q. Is there present in your memory now any recollection of any other letters than these that he has given you the dates of ? Can you now recall that there are other letters than those ? That is what he wishes to know. 30

A. Why, yes.

By Mr. Mackay :

Q. When?

*The Vice Chancellor :—*Do you mean when did he write other letters than those?

*Mr. Mackay :—*Other than these. He said he did write others, and I asked him when.

10

A. From the South I wrote.

Q. No; after your return from the South.

The Vice Chancellor :—(To the witness.) The question was entirely directed to letters written after your return from the South and up to the beginning of the suit.

20

A. No. I cannot recall any others.

Q. Is it not a fact that the calls of your wife upon you at your home were business calls and merely to instruct her in handling the insurance business?

A. Yes.

30 Q. When you wrote to Mr. Demarest, on December 17th, 1904, that you left ample money with your wife to pay all the trades bills, did you remember that your account was overdrawn \$2.57 in the bank; that there was \$100 due the Hackensack National Bank on a note which you were on as maker; that the Gas and Electric Light Company had a bill of \$6.44; and the Hackensack Water Company a bill of \$2.80; and Van Houten & Sherwood a bill of \$44.21; and that the lawyers Mabie, &

Maidment, had a claim for O'Neil of \$4.56 ; and that you owed your mother \$15.00 ?

Mr. Vickers :—I object to that, on the ground that it contradicts absolutely nothing ; it is based upon collateral evidence which they introduced and which they cannot themselves contradict.

The Vice Chancellor :—I will overrule the question, because what the man said in the letter was that he had left sufficient money with her to pay trades bills, and notes due banks do not come under the head of trades bills ; fifteen dollars due his mother is not a trades bill. It does not in any way cast any light upon the matter of this inquiry. Having said there was money for the trades bills, there was no apparent or real contradiction. If he owed thousands of dollars to banks, he did not say he left it with her to pay to banks ; he said he left it with her to pay trades bills.

Q. On your return from the South, Mr. Provost, and on May 7th, 1903, there was a note due at the Hackensack Bank of \$200, was there not ?

A. As near as I can remember.

Q. And your wife called upon you at that time, and you placed your signature again on a note for renewal, did you not ?

A. I did.

Q. Making the note fall due September 7th, 1903 ?

A. I did.

Q. That was one of the calls that you spoke of that your wife made upon you after your return from the South?

A. That was the last one.

Q. You never renewed that note again, did you?

Mr. Vickers :—I object.

10

The Vice Chancellor :—You will have to vindicate, Mr. Mackay, the propriety of going into his relations with some bank about some note?

20

Mr. Mackay :—I vindicate it on the opinion in the case of Jerolaman vs. Jerolaman, reported in 54 Atl. Rep., 166; that he has not shown real sincerity of purpose in his avowed intention of providing a home. He must give some definite assurances, and if he is so handicapped financially that he cannot provide a home, he certainly cannot give any definite assurance that he is sincere in what he says; and I have a right to cross examine him on that issue.

30

The Vice Chancellor :—You have undoubtedly a right to cross examine him upon that issue; but how does it cast any light upon the sincerity of his purpose to do the best he could for his wife to show that he owed three or five hundred dollars to a bank?

Mr. Mackay :—It shows that he was

in no position to carry out the promise he made in the letter ; that he was only fooling with his wife's affections, as the letters indicate.

The Vice Chancellor :—Well, I will admit the testimony for what it is worth. In case this Court decides adversely to you, and there is an appeal, the Court of Errors will then have the testimony before it.

10

A. No.

Q. Never paid it?

A. No.

Q. Now, you stated that you called upon your wife at her home once after your return from the South, and asked her to come down and stay with you over night ; what was your purpose of having her stay over night with you at your mother's home?

A. So we could talk over the situation, how things stood.

20

Q. Not to have her live there?

A. She had already told me she would not live with me.

Q. That was not your purpose, though, was it, to have her live there?

A. She had already told me before she would not live with me until I furnished a home like we had left.

30

By the Vice Chancellor :

Q. He wants to know whether, when you requested her to come and spend the night with you

at your mother's, your purpose was to have her continue to live there from that time on—that is what he has asked you?

A. No.

By Mr. Vickers:

10 Q. You never attempted to have any talk with your wife after September 7, 1904, in relation to providing her with a home and having her live with you, did you?

A. No.

Q. On your return from the South, and while you were at your mother's home, and when your wife called upon you, do you remember her asking you for some money for her support?

A. No.

Q. Don't you remember refusing, and stating that you had no money?

20 A. I remember saying I had no money at the time she asked me. She never asked for money for her support; she wanted me to pay four dollars on the interest of that note; that is what she came there for.

Q. You told her you had no money, didn't you?

A. I did.

Q. What did you do with that one hundred dollars that you had when you came back from the South?

30 A. That was in September this happened.

By the Vice Chancellor:

Q. When this conversation took place with your wife about paying the interest on the note, that was in September, was it?

A. Yes, sir.

Q. Of 1903?

A. 1903.

By Mr. Mackay :

Q. Did you ever offer your wife any money after your return from the South at all until your last talk with her in September, 1903?

*The Vice Chancellor :—*You said 1904 before. 10

(Previous question read as follows :
“ You never attempted to have any talk with your wife after September 7, 1904, in relation to providing her with a home and having her live with you, did you ? ”)

*Mr. Mackay :—*1903 is what I should have said. 20

(Pending question read.)

A. I offered to buy clothes and look after the children, and she told me she did not want me to do anything for the children or her until I paid all my debts.

Q. Where did you make that offer?

A. Right in front of her sister's home, on Essex street.

Q. When?

A. Some time between September and the 6th or 7th of April ; between April 7th, 1903, and September, 1903. 30

Q. In front of Dr. Conrad's home on Essex street?

A. Yes.

Q. Anyone else present ?

A. No.

Q. What was you going to buy it with—how were you going to provide for her and give her any money? You hadn't any, had you ?

A. I had at that time.

Q. What did you have ?

10 A. I couldn't say the exact amount, because it was just after I had come home. Well, previous to that, when I asked her about taking care of the children, I had money then for providing clothes for them.

Q. When was that ?

A. Some time between April and August, at that time.

Q. Get your dates fixed right now and tell me the date ?

20 A. I couldn't give you the exact date.

Q. About when ?

A. Well, it was probably the latter part of April, 1903.

Q. What money did you have ?

A. I don't know the exact amount.

Q. That was not the conversation you spoke about in front of Dr. Conrad's ?

30 A. Well, most all the conversations I had with her was in front of Dr. Conrad's house, but she refused to let me walk home with her, and I walked home with her that far, and she would not allow me to go any further.

Q. She always went into the Doctor's on these occasions, didn't she ?

A. Yes.

Q. Didn't go home ?

A. That is as far as she would allow me to go with her.

Q. How could you walk home with her when she was not going home?

A. I did not say "home."

Q. You knew she was only going to the Doctor's, didn't you?

The Vice Chancellor:—Don't waste any time over that. That certainly casts no light on any issue that this court has to determine. If he misspoke himself by calling his sister's home "home," it certainly cannot be of any significance. 10

Q. What money did you have at that time, Mr. Provost? About the latter part of April what money did you have?

A. Forty or fifty dollars.

Q. Going to start housekeeping on that? 20

The Vice Chancellor:—One moment. He has not suggested that he was going to start housekeeping then. You are now talking about a conversation in which he offered to buy clothing for the children.

Q. Did you offer the money to her there? 30

A. No.

Q. Did you have it with you?

A. Yes.

Q. Why didn't you offer it to her?

A. She previously told me she did not want me

to do anything for her or the children.

Q. Didn't tell you that that night?

A. She told me again that night.

Q. How many times, in all, Mr. Provost, did you see her to talk to her, after your return from the South, April, 1903, to September 7th, 1903?

A. Probably twenty-five times.

Q. And always in walks from your mother's home to Dr. Conrad's on Essex street?

10 A. Yes.

Q. And on none of those occasions were any witnesses present to hear your offer?

A. In my mother's home.

Q. Who?

A. Well, I guess my mother and sister.

Q. That was the one occasion you spoke of before, wasn't it?

A. That is all I know of. There might have been others.

20 Q. What was that occasion when your mother and your sister were present, and you made the offer before them?

A. Some time in April, 1903, I believe; I don't know the exact date.

Q. Afternoon or evening?

A. Evening.

Q. How was it made? Who started the conversation?

30 A. I asked her if she was going to live with me.

Q. Yes; go ahead; tell the whole conversation.

A. And she said no, she was not going to live with me until I could furnish a home and pay all my debts—a home like she had, that she had left; and I told her that would take a long time before

I could get a home ready, and if she was willing I could live ordinarily on what I could make then.

Q. Go ahead.

A. Further than that I have forgotten what the conversation went into.

Q. That was the only occasion you made such an offer before anybody?

A. That is all.

Q. Before you went South, Mr. Provost, and you knew the calamity that was going to befall you and you were aware of the fact that you had lost your position, didn't you request your wife to go over to her father's and ask him if he would not provide for and support her and the children? 10

A. No.

Q. I mean Mr. A. V. Moore, Sr.?

The Vice Chancellor:—Oh, he knows who her father is.

Q. What did you expect your wife to do after you were gone? 20

A. Why, she told me a good many times she was going home and stay home.

Q. When?

A. Well, different times previous to my losing my position; and she was home most of the time; afternoon after afternoon when I would get home from business at five o'clock she would never be home. I would go in the house—we had a girl, paid her \$12 dollars a month—and the house would be all upside down, the kitchen stove rusty, grease all over the floor, no one around the house, my wife out; supper time would come, and she would come in about the last minute. More than once the girl 30

didn't come there, and she would have to get meals ready, and at different times they would be spoiled.

Q. So you were disgusted with your home life then, weren't you?

A. No. I was not disgusted with it.

Q. You felt pretty sore about it apparently?

A. She was over home all the time.

10 Q. Was that the reason you did not come home nights?

A. No; I had to work a good many nights; I work until twelve and one o'clock, and worked all night long.

Q. Was that one of the reasons you left and went South?

A. I went South to recuperate and try to obtain a position.

20 Q. During the time, Mr. Provost, from your return from the South, you have never given any money or clothing to your wife or children, up to the time of the filing of the bill of complaint or to the present time, have you?

Mr. Vickers:—I object. That has been gone over again and again.

The Vice Chancellor:—It will take less time to let him answer it though.

30 A. I have.

Q. What?

A. Why, I bought clothes for the children last year.

Q. That was after the suit was started?

A. I don't know the exact date.

Q. What did you buy?

A. A suit of clothes.

Q. For whom ?

A. For each of them.

Q. That was after the suit was started for divorce ?

A. I bought a bicycle for my oldest boy, also.

Q. Was not your only reason, Mr. Provost, for contesting this suit in order that you may fight for the possession of the children ?

A. No.

Q. What did you mean by this statement in the letter, then, of September 7th, "I shall never give up the children ; I shall fight for them until the day I die" ? 10

A. I will.

Q. Wasn't that your sole reason ?

A. Not in Court, I didn't mean ; for their rights, as a father should.

Q. Not in Court, you mean ?

A. I did not mean in Court.

Q. Why did you say, then, in your letter following, on April 12th, 1905, "I can see no other way but to let it, take its course in the courts" ? 20

Mr. Vickers:—I object to that. That it is not a contradiction.

(Question withdrawn.)

Q. Didn't you have in your mind, Mr. Provost, fighting in Court for the possession of the children? 30

A. No.

Q. What do you mean by this clause in your letter then, Mr. Provost, of September 7th, 1904 : "I shall never give up the children, for I will fight for

them until the day I die, and I will say right now, that I want Donald to come around more often than he has, and even if you do support and clothe them, you have no more say than I until the law so orders." Did you have in mind then going to Court to get an order for the possession of those children?

A. I did not.

10 Q. What did you mean by "until the law so orders" then?

The Vice Chancellor:—I think that sentence does not require any particular exegesis.

Mr. Mackay:—It is not clear to me.

20 *The Vice Chancellor*:—It is perfectly clear, if you will read it. He says that until the law forbids him either to see the children, or shall regulate when he shall see them, as he understands it, he has a right to see the children.

Mr. Mackay:—Does the Court overrule the question?

The Vice Chancellor:—No, no.

(Question repeated.)

30 A. Well, the law or the Court would decide if I could not see the children or if I could see them. As I hadn't seen the children then, she would not allow them around often, I asked to have them come there so I could take the oldest one to the circus. She refused to let him go. I have not seen the children now—

The Vice Chancellor :—You have answered the question.

Q. As a matter of fact, you have seen the children every Sunday, haven't you?

The Vice Chancellor :—Don't go into that. That is since the beginning of the suit, and we have nothing to do with that.

10

(Question withdrawn.)

Mr. Vickers :—There is one thing that I think we are entitled to have cleared up, and that is that long question with the dates regarding the letters. He was asked if it was not a fact that he had not, from the time he returned from the South, after having failed to see his wife a few times, written to his wife up to September 4th, 1904. Now, we called for the production of all the letters—

20

The Vice Chancellor :—What is it you are now doing?

Mr. Vickers :—I want to ask the Court to rule that in all fairness, we have a right to have the petitioner now say whether they so contend, because we have been deprived of those letters ; they say they do not exist ; we have called for the letters, and they say they do not exist. I want to know whether it is their contention that he did not

30

write. Then we will be able to rebut it. We have some letters of Mrs. Provost's, but we have not his letters ; and I want to know whether they contend that this man did not write from the time he failed to see his wife up to the 7th of September, 1904. I think we are entitled to know that, in all fairness.

10

The Vice Chancellor :—Have you made a call upon them for these letters ?

Mr. Vickers :—Yes, sir ; and they have not produced them.

20

The Vice Chancellor :—You may examine this witness as to the contents of them, if you so desire. You can offer any letters from her to him, if you so desire. I do not see that you can elicit from counsel on the other side what they are going to contend. That is a matter of argument.

Mr. Vickers :—They say they have no letters other than those they have produced. Now, they follow that up by asking, “ Is it not a fact that you did not write at all ? ”

30

The Vice Chancellor :—Well, what is his answer ?

Mr. Vickers :—He does not say he did not write ; he says he did. There is nothing produced, however.

The Vice Chancellor :—All right ; if you want to introduce secondary evidence of their contents you seem to have laid the ground perfectly.

Mr. Mackay :—The record will show, if the stenographer will turn back to it, that he did say that he wrote these letters, and those only, from his return from the South until that date.

The Vice Chancellor :—The Court has ruled. You may proceed, Mr. Vickers ; there is nothing before the Court. 10

By Mr. Kellogg :

Q. Mr. Provost, I show you Exhibit P-5, and, refreshing your memory from that exhibit, I ask you whether it is not a fact that you wrote to your wife a letter shortly before the 27th of August, 1903 ?

A. Yes. 20

Q. Do you remember what you stated in that letter ?

Mr. Mackay :—I object to the question, as not being in rebuttal or redirect, for the simple reason that I did not examine him on any letters that he wrote down South, and that is one of the letters, I believe. 30

Mr. Kellogg :—It is August 27, 1903.

The Vice Chancellor :—Oh, no ; he got back from the South in April, 1903. You may proceed.

A. I cannot recall just what was in the letter.

Q. I show you Exhibit P-3, and ask you, after having looked at that, whether you wrote your wife just previous to that date, the date being August 10th, 1903?

A. I do not remember writing to her just previous.

10 Q. I show you Exhibit P-4, dated August 18th, 1903, and ask you whether, during the month of August, 1903, while your wife was at Sparta, you did not carry on a correspondence with her by letter?

20 *The Vice Chancellor* :—I will suggest to counsel that if these letters of the wife are apparently in response to letters from the husband this is a useless waste of time. You are evidently not eliciting evidence of the contents of whatever letters he wrote his wife; you are merely having him look at a letter which evidently contains language conveying to anybody's mind the fact that it is in reply to a letter from him. The Court is quite as competent to gather that impression from the written words as the witness is.

30 Q. On your cross-examination you stated, I believe, that you made no request for an interview with your wife after September, 1904; I now show you Exhibit P-8, and ask you if, from reading that exhibit, you can now state whether or not you made such a request?

Mr. Mackay :—I object to it, because

I specially excluded those letters in my question.

The Vice Chancellor :—I do not think you understood the question. (Question repeated.) Now, they show him a letter, and he is asked whether, in the light of that letter, he wishes to correct his answer. I think the question is a proper one.

10

A. I did.

Q. Therefore, you desire to correct your former answer to that extent?

A. I do.

Q. Immediately after your return from the South, Mr. Provost, did your wife turn over to you any bills, or receipts or books?

Mr. Mackay :—I object to the question on the ground that they have been all over this. 20

The Vice Chancellor :—I will overrule the objection.

A. Not all.

Q. (*By the Vice Chancellor*). You were not asked about all; did she turn over any?

A. She did.

Q. And you had them here in court this morning, and read off the amounts and the names, didn't you? 30

A. Yes.

The Vice Chancellor :—Yes; we have been all over this.

Q. (*By Mr. Kellogg*). You know, as a matter of fact, do you not, that she retained a number of those bills and receipts that she had in her possession?

A. She did.

Q. And those are the bills and receipts which she now produces on this hearing—and the checks?

A. They are.

10 Q. Mr. Provost, at any time within a year before you left for the South, did your wife say anything to you concerning her seeking employment, other than that she had answered a certain advertisement?

20 *Mr. Mackay*:—I object to that. I do not think that is proper. It has not been discussed on direct examination nor on cross-examination; it is new matter brought out now for the first time.

The Vice Chancellor:—It may be properly objected to upon that ground. The only way counsel can introduce it is to crave the indulgence of the court because of having overlooked it in the direct examination, if that is the fact.

30 *Mr. Kellogg*:—I do crave the indulgence of the court, to introduce this new matter at this time.

The Vice Chancellor:—You may proceed.

A. No.

Q. Mr. Provost, while you were at the South did you write to your wife?

The Vice Chancellor :—Oh, you have been over this, and he even told us the number of letters that he thought he wrote.

Q. Did you state anything in the letters that you wrote from the South, Mr. Provost, that you hoped to get a plantation there, and ask your wife if she would come down there and live, if you did? 10

Mr. Mackay :—That is objected to as leading.

The Vice Chancellor :—A further objection is that if the letter is in evidence it will speak for itself ; and if it is not in evidence I am not aware how you have a right to give secondary evidence of its contents. Those two things being established, the witness is the one to give the evidence, and not counsel. 20

Mr. Kellogg :—We have noticed them to produce letters between those periods. They say that if there have been such letters they have been destroyed.

The Vice Chancellor :—You have not shown that any such letter was written. They merely say, “ We haven’t got it.” How does that give you a right to formulate a whole lot of things and then ask this man to testify to them? I will overrule the question. 30

Q. While you were at the South, and while you were corresponding with your wife, was there any suggestion made, either by you or by her, concerning her coming South?

Mr. Mackay :—I object ; because they would have to correspond, and the letters would show that.

10

The Vice Chancellor :—I will permit a yes or no answer to that question.

A. Yes.

Q. Who made the suggestion?

A. Myself.

Q. In your letter?

Mr. Mackay :—Objected to as leading.

20

The Vice Chancellor :—I will permit it. It is certainly not leading to ask a man, when a suggestion is said to have been made, whether it was made in a letter.

A. Yes.

Q. What did you write to your wife concerning her coming South?

30

Mr. Mackay :—Objected to. The letter should be in evidence, if it is here.

The Vice Chancellor :—I understand counsel to state that they called on you for these letters, and you say you haven't any. That certainly gives them the right to introduce secondary evi-

dence of any letters that this man wrote, if you destroyed them.

Mr. Mackay :—I object furthermore, on the ground that the question is not specific.

The Vice Chancellor :—Your objection on that ground is overruled.

A. I asked her if I got a plantation, about twenty-five or fifty acres of ground there, and worked it on shares, as they do when they start in, if she would care to come South and live as you had to live while working these plantations. 10

Q. Have you any copy of such a letter?

A. I have not.

By Mr. Mackay :

Q. Were you sincere when you wrote such a letter, asking her, if you would buy a plantation, whether she would come South, were you sincere in that remark in the letter? 20

A. I certainly was.

Q. Where were you going to get the money to buy such a plantation?

A. I didn't say "buy it." I said, "work it on shares."

Q. How work it on shares?

The Vice Chancellor :—Don't you know what "working on shares" means? 30

Mr. Mackay :—I want to know whether the witness does or not.

The Vice Chancellor :—(To the witness) Answer as fully as you can what you mean by “working on shares”—that is what he wants to know.

A. Why, to pay out of the profits for the use of the land, the hire of the land.

Q. Hire the land, the farm ?

10 A. And pay out of the profits for it ; yes.

Q. Did you have any money to hire a farm ?

A. I did; all that was necessary there.

Q. How much ?

A. \$175.

Q. Did you make any inquiry ?

A. I certainly did.

Q. What kind of a farm did you inquire about ?

A. A plantation.

Q. Did you find such a farm ?

20 A. I did not.

Q. Was there such a farm down there ?

A. Well, not right in that vicinity.

Q. Why did you make the inquiry ?

A. Because I thought I could get one, and I wouldn't take it unless I knew she would consent to come there.

Q. What were your thoughts based on ?

30 *The Vice Chancellor* :—What were your thoughts of getting a farm based on? Were they based on ideas in your mind, or were they based on facts and information ?

A. Facts and information.

Q. Then you did have a farm in mind, in view, did you ?

A. I did not.

ALBERT V. MOORE, Jr., recalled.

By Mr. Kellogg:

Q. Mr. Moore, did you, about March 7th, 1903, speak with Mr. Provost concerning Mr. Provost's going to South America in a vessel with which you were connected ? 10

A. I did not.

No Cross Examination.

MRS. MARY E. PROVOST sworn.

By Mr. Kellogg:

Q. Mrs. Provost, you are the mother of the defendant ? 20

A. I am.

Q. Did the petitioner and defendant live at your house for a period of time before March 7th, 1903 ?

A. They did.

Q. What was the first that you heard that Winfield Provost had gone South—when was the first ?

A. It was on March 6th, 1903, about 5 or 6 o'clock in the afternoon. 30

Q. How did you hear it ?

A. His wife came down and told me.

Q. State the conversation between you and Mrs. Winfield Provost at that time.

A. Well, she came in, and she said that Win had gone South, that her husband had gone South, and, of course, I was very much surprised, and I said, "How is that?" "Well," she said, "he lost his position around the first of the week, and so he has gone away," and she says he told me to tell you that he hadn't the heart to come down and say anything to you or bid you goodbye, but he would write you just as soon as he got there.

10

Q. Did he write you?

A. He wrote me.

Q. From where?

A. From South Carolina—Darlington, I think the post address was.

Q. Was there any further conversation with her at that time?

A. Well, I don't remember. I don't remember that there was anything particularly.

20

Q. During the time while your son was away at the South did you see his wife at all?

A. Yes; she came to dinner every Sunday while he was away—dinner and tea—she and the children came every Sunday until he came home; I suppose it was four or five Sundays.

Q. Did she continue to come after his return?

A. Only on business.

Q. During the time while your son was South did she say anything to you concerning her plans?

30

(Objected to as leading.)

(Question allowed.)

A. Her plans? I don't understand what you mean by "plans."

The Vice Chancellor :—The witness does not understand that question. Put another one which will elicit the conversation, for that is what you have got to come to anyhow.

Q. Mrs. Provost, please state the substance of the conversation, as nearly as you can.

The Vice Chancellor :—No ; let her state the conversations. If she is only able to state the substance, then she may state the substance. Let her state what conversations she had with this man's wife about this situation, about her son and herself. 10

Q. Mrs. Provost, kindly state the conversations which you had with Mrs. Winfield Provost, during the time while your son was in the South, concerning the relations between Mr. and Mrs. Provost ? 20

A. Well, they seemed pleasant relations.

By the Vice Chancellor :

Q. You are not asked to characterize them ; you are asked to state the conversation. If she said anything, that is part of the conversation ; if you said anything, that is part of the conversation. That is what you are asked to state, and not to characterize it, not to say what impression was made on your mind ; but you are to repeat the language to us. 30

A. Well, I cannot quite understand—only about the letters; she would tell me what was in his let-

ters when he sent them, and I would speak about hers.

By Mr. Kellogg :

Q. Was anything said by her or suggested by her in those conversations, concerning Mr. Winfield Provost having left her and his children for good?

10

(Objected to as leading.)

(Objection sustained.)

Q. After your son's return from the South, do you know whether or not any conversation took place between him and his wife?

A. Once I remember of them having a conversation; at other times it was merely on business, that I ever saw them together.

20

By the Vice Chancellor :

Q. But those are all conversations. Any time when two people get together and talk to each other that is a conversation. Now, you were asked whether you had ever been present when these people talked together?

A. Yes, sir.

By Mr. Kellogg :

30

Q. When was this one conversation?

A. At my home.

Q. In what room were Mr. and Mrs. Provost?

A. In the dining room.

Q. Where were you?

A. I was passing through the dining room and

kitchen ; I was at work, and of course went back and forth.

Q. What was said by Mr. and Mrs. Provost, if anything, at that time, that you heard ?

A. He asked her if she would be willing to come and live with him if he could get a position and do the best he could, and get his debts paid ; and she said it would take him a long time ; she says, " It will take you a long time for that, won't it ? " " Well," he says, " of course it will take some time," and I didn't listen to anything more, as I was passing back and forth. But she did not give him one bit of encouragement, and I felt badly, and thought to myself— 10

The Vice Chancellor :—No, no ; strike all that out about what she thought.

Q. Did you ever talk with her after April 1st, 1903, concerning her relations with your son ?

A. No. I made a mistake there—I did speak to her after that, of course. 20

Q. Well, what was said by her at those conversations ?

A. By her ? I asked her to come and see us, and she said, no, she didn't think she would come ; and I said to her, " Don't you expect ever to live with him again ? " and she said, " I don't know ; I am a great deal happier as I am." 30

Q. Did you have any other conversation than the one you have mentioned with her ?

A. Yes ; I had another conversation with her one time.

Q. What was that ?

A. I asked her to come and spend New Year's

with us ; it was our home day, and I asked her if she was not coming, and she said, no, she didn't think she would come ; she thought it would be a great deal better to stay away from them altogether.

Q. What New Year's was that ?

A. That was the following New Year's after he came from the South.

10 Q. January 1st, 1904 ?

A. Yes.

Q. Do you remember when your daughter-in-law went to teach, after April, 1903 ?

A. Well, I don't remember the date ; I know she taught that is all.

Q. Prior to her going to teaching had you and she spoken about her going ?

A. No.

20 *Cross Examination by Mr. Mackay :*

Q. Those two conversations which you spoke of, and which you did not remember at first ; where did they take place ?

A. At my home. She was at a card party at my home, and she came in the kitchen to help to serve the refreshments, and we were talking ; and I asked her at that time ; at both times.

30 Q. That card party was a young ladies' afternoon card party that she belonged to, and also that your daughter belonged to ?

A. Yes.

Q. And was at your home ?

A. Yes.

Q. Now, Mrs. Provost, is it not a fact that you

had no opportunity to talk to her that afternoon at all?

A. I had. It was in the kitchen when we were serving the refreshments. She came and helped me. We talked that matter over at both times, when she said this, in my kitchen, at the table.

Q. Didn't you ask her then how she felt, and she, bouyant and happy like, said she felt good?

A. No.

Q. You were not talking, really, about the relations between her and her husband? 10

A. I was not talking about anything but just what I said.

Q. Did you start the conversation?

A. I asked her to come to the house. I started it, of course. I asked her to come, and she wouldn't come.

Q. Come to what—to dinner on Sundays, or what?

A. Come to my house and spend New Year's, 20
the way she was used to doing.

Q. When was this conversation, in the Fall of 1903?

A. Yes.

Q. What did she say in reply to that?

A. I said what she said. She said that she would not come because she thought it was better that she did not come with him at all.

Q. Well, did she come?

A. No, she did not come. 30

Q. Was not the whole substance then, of what was said merely your invitation to have her call New Year's day as she had formerly done, and the remark intended by you to ascertain whether or not it would be proper for her to come?

A. No.

Q. What were you doing the time this conversation took place ?

A. We were serving the refreshments, and she was helping me cut the cake and one thing and another ; she was helping me out.

Q. Carrying them from the room ?

A. She was.

10 Q. They were ready to be served, were they ?

A. I was getting them ready, and she was carrying them to the other room.

Q. Have you carried that conversation in your mind all these years, since 1903 ?

A. Yes, I have.

Q. Well, why was it your first impulse to say that you had not talked to her at all ?

A. Well, I did not understand the question exactly ; I didn't know what he meant.

20 Q. And the next conversation that you heard was at another card party ?

A. At another card party.

Q. And under the same conditions and circumstances ?

A. Just the same.

Q. And that, coupled with the remark that you overheard in passing through the dining room when they were talking, is all you know about their relations since your son's return from the South ?

30 A. All.

Q. How long did these conversations last on these two occasions ?

A. Not very long.

Q. Short ?

A. Yes.

Q. Merely the suggestion and reply ?

A. Yes.

Q. You would not say this conversation is exactly word for word as it occurred, would you ?

A. I would almost say that it was. I remember it particularly, because I was very much interested in her not having anything to do with him, or not encouraging him in any way at all, as it made me feel very badly ; and so all these things I have remembered, because they were impressed very much on my mind.

10

Q. Is not your remembrance of this conversation due to the fact that you are over-zealous in behalf of your son's suit here ?

Mr. Kellogg :—I object.

The Vice Chancellor :—I will permit it.

A. I was over-zealous about his welfare, not particularly about the suit.

20

Q. Do you know how much money your son had when he came back from the South ?

A. I do not.

Q. Do you remember how much board he has paid you while living at your home ?

A. When he had it he would give me board ; when he hadn't I didn't get any.

Q. Do you remember how much you have received from him since his return from the South ?

30

(Objected to as not proper cross-examination.) (Objection sustained.)

Mr. Mackay :—I can use this witness

for my own purpose, and make her my own witness on this question ?

The Vice Chancellor :—You can do that, if you desire.

Mr. Vickers :—At this time ?

10

The Vice Chancellor :—Oh, this case has been prolonged to a tremendous extent, and I do not think I will require the witness to go off the stand and come back. I will permit him to examine her as his own witness, and you may cross-examine.

By Mr. Mackay :—(In direct examination.)

Q. Did he have any money on his return from the South, to your knowledge ?

20 A. I don't know anything about the money matters at all.

Q. He was not employed after his return from the South ?

A. Yes.

Q. Immediately ?

A. Well, not immediately.

Q. How long ?

A. I could not tell you.

Q. Approximately, about ?

30 A. Oh, I don't know ; two or three or four months, perhaps ; I don't know ; I couldn't tell you when now.

Q. During that time, of course, you did not get any board whatever ?

A. When he didn't have anything to do I did not get any board.

Q. Is it not a fact that your husband, Mr. Provost, used to pay his laundry bills and furnish him with tobacco and such things?

The Vice Chancellor :—You are not cross examining this witness now.

Mr. Mackay :—I am examining her for the petitioner. 10

The Vice Chancellor :—Then there could not be a more improper way to examine a witness directly than for you to state the facts to her ; let her state the facts.

Q. Can you remember, Mrs. Provost, how much he did pay you after he did secure a position, say in the latter part of 1904, and up until April, 1905? 20

A. When he had a position that was a paying position he gave me \$5 a week.

Q. When did he get a paying position, to your knowledge?

A. Well, here for the last year—not the whole year.

Q. Not the whole year?

A. No.

Q. But before that he has not had any paying position? 30

A. Yes ; he had something to do, but not, what I mean is, that he could pay me that amount of board.

Q. You are saying now that you have been paid board for the last year only?

The Vice Chancellor:—She has not said that ; she said she had been only paid five dollars a week during a certain period that she mentioned. She said before that he paid her when he could what he could. It is not fair to sum up that she said she only received board during the last year, because she did not say any such thing.

10

Q. When did you begin to receive any board, Mrs. Provost, from him?

A. When he got something to do.

Q. When was that?

A. Well, I couldn't tell you.

Q. About when—approximate?

A. I could not tell you what time ; it was after he had been home from the South some time, but I could not tell you when ; I couldn't say whether it was three or four months, or anything about it ; I couldn't just tell you when he did.

20

Q. Did you get it regularly then, or at intervals?

A. When he had it I got it.

Q. How long did that continue before you got it regularly?

A. As long as he had anything to do. When he did not have it I did not get it ; when he got it, when he had something to give me, he gave it to me.

30

Q. Cannot you give me anything more definite than that?

The Vice Chancellor:—This is your own witness, Mr. Mackay. With your own witness you may not cross examine

in that way. You cannot ask for her sources of information and get them, and then go on as if you were cross examining and find out by your insistent that she must remember something else ; that is what cross examining counsel may do. When you produce a witness, you are under the restriction of allowing the witness to testify. Therefore, you must ask general questions which elicit the witness's information. This examination now is permitted by the grace of the court. You should have proven all this in your own case. It was only that I might not do you an injustice that I permitted this examination; so you must be bound by the strict rules for the examination of witnesses. 10

Q. Before your son went South, Mrs. Provost, and in order to help him and his wife out, you had mortgaged your furniture for \$250, in your home, had you not? 20

(Objected to).

The Vice Chancellor :—Counsel must realize that that is not a proper question to put to his own witness.

Q. Was your son indebted to you at all before he left for the South? 30

A. Yes.

Q. How much?

A. Well, I couldn't tell; for the mortgage for the furniture.

The Vice Chancellor :—Is there any dispute about it? Do I not understand that it has been proven by somebody on your side that he owed some money to his mother? Didn't you prove that in your own case?

Mr. Mackay :—Yes, sir; I did.

10

The Vice Chancellor :—Has he denied it?

Mr. Mackay :—He has not denied it

The Vice Chancellor :—Well, then, what is the use of repeating it?

Mr. Mackay :—I am asking her now if he ever paid her back.

20

The Vice Chancellor :—You did not ask her that; you were asking her whether he did not owe her some money; and I am suggesting that you proved in your own case that he did owe her some money, and he has not denied that he never paid her back. I will permit you to rebut it if they attempt to show by some subsequent witness that he did not owe his mother money, or had paid her back. They have outlined their defense pretty thoroughly; they had the defendant on the stand, and he has not attempted to say that he did not owe all of this money, nor attempted to say that he paid any of it.

30

MISS MAME PROVOST sworn.

By Mr. Kellogg :

Q. You are the sister of the defendant here ?

A. I am.

Q. Have you seen the petitioner and defendant together since the defendant's return from the South ?

A. Yes.

Q. When? 10

A. Why, on Monday night, as he came home Saturday.

Q. Where ?

A. At our home.

Q. What was the conversation between them, if any, at that time ?

A. Well, it was all just as he came in. He was not at home when she came there, and he came in, and she greeted him, and said, "Why, are you home?" and he says, "Yes ; why, how long did you expect me to stay away?" "Why," she says, "for a year or two, at least." 20

Cross Examination by Mr. Mackay :

Q. Who was present on that occasion ?

A. My mother and my brother.

Q. You did not hear your mother testify to that, did you ?

*The Vice Chancellor :—*That must be immaterial, as to whether she heard her mother testify to that. 30

Q. Aren't you mistaken about that, Miss Provost ?

A. I am not.

Q. Where was this conversation you speak of?

A. In the dining room.

Q. Was that the only time you heard any conversation?

A. That is about the only time I ever heard anything between them at all.

Q. What day was this?

A. It was on Monday night, I think.

10 Q. Your mother was present, and you were present, your brother and your sister-in-law?

A. They were.

Q. How long did the conversation last?

A. That was all there was of that. It was a general conversation after that.

DEFENDANT RESTS.

20 COMPLAINTANT'S REBUTTAL.

MRS. JENNIE G. PROVOST recalled.

By Mr. Mackay :

Q. Is it true or untrue that you had a conversation with Mrs. Provost, senior, at two card parties, in which you stated you were happier living as you were than with your husband?

30

*Mr. Vickers :—*I object to the question as improper rebuttal, on the ground that this was denied on the witness's cross examination in chief.

*The Vice Chancellor :—*I know, but I

do not understand that cross examining counsel can, in that way, gain the advantage of what questions shall be asked a witness about a matter that he is going to develop through his witnesses, and then deprive the counsel for the witness of the opportunity to have the direct contradiction, if he so desires. I shall permit the question. Mr. Mackay did not go into that on the direct examination of the witness, in chief ; if he had done so, and you had contradicted it, I would not now permit him to return to it, but the matter was brought out first in your cross examination of this witness. 10

A. It is not true.

Q. Did you have any conversation with her, on those occasions, with relation to your husband ?

A. Not that I remember of. 20

Q. Did you state, upon your husband's return, at the home of Mrs. Provost, in the presence of Mrs. Provost and her daughter and your husband, that you did not expect him home for a year or two, or words to that effect ?

A. I did not.

Q. Is it so, or not, that your husband, before his departure, a short time before his departure, directed you to go and live with your father and mother, and speak to your father about supporting you after that ? 30

A. He certainly did.

Q. Mrs. Provost, is it true or not true that you did keep your house in a very disorderly condition,

with greasy pans and dirty floors, and that you were out most of the time, and especially around dinner time when your husband came home—is that so, or not, as he has testified?

A. It is not so.

Q. What was the condition of your house?

10 A. Why his bedroom, his bed was always in a filthy condition, because he would come home intoxicated and lie right on the white counterpane with his muddy feet, and although I changed them very frequently it was almost impossible to keep it clean.

Q. What was the general condition of the household, as to the cleanliness of the house?

A. Of course, right after breakfast the house was always cleared up. By the time it was time for him to come home for dinner it was always in order. His underwear—

20

The Vice Chancellor :—He has not asked you about his underwear. You have answered the question.

Cross Examination by Mr. Vickers :

Q. How often, during the three years prior to Mr. Provost's going South, did it occur that he came home and lay in his bed in a filthy condition, due to intoxication?

30 A. Why, it was almost impossible to say; every night when he came home intoxicated he always lay down without undressing. When he first came home intoxicated I helped him, I took off his shoes myself, and he said to me "Jen, I don't want you to do it." That was the first few times he came

home intoxicated. After that he simply lay down, and I did not do it. There were times when he lay down with his coat on.

Q. His overcoat, you refer to?

A. With his overcoat on ; and there were times when he simply fell on the floor and slept there all night long.

Q. How often did this occur, madam, during the three years prior to his going South?

A. Well, it is almost impossible to say, because it was almost a nightly occurrence from the year 1901, the summer of 1901, until he lost his position in 1903 ; it was almost a nightly occurrence. 10

Q. Then what you say is this, is it not : That your husband was daily in a beastly state of intoxication for three years prior to his going South, is that right?

A. No, it is not three years ; from 1901 is not three years.

Q. Then for more than two years? 20

The Vice Chancellor :—Don't quarrel over the date. She has given us the exact dates.

Q. With the dates in mind that you have given, do you say that your husband was daily in a beastly state of intoxication?

A. No. I said, "almost daily."

Q. How many times in a week do you mean by that, when you say "almost daily"? 30

A. Well, some weeks it would go along and it would be every night ; then other weeks it would go along perhaps it would be two or three nights a week. Some nights it would be so bad that he

could not go to business for days ; he would have to stay home for two or three days in order to fix himself up so that he would be presentable at his office.

Q. And when your husband made the suggestion to you, just before he went South, that you go to live with your father, what did you say to him ?

10 A. Do you mean when he told me to go over home—

The Vice Chancellor:—Read the question.

(Question repeated.)

A. Why, at first, of course, I talked with him about not going South, and finally, when he would not hear of anything else, I went over home and asked my father if I could not come over there and live.

20 Q. What did you say to your husband ?

A. Why, I think I said I would go to the house ; I really don't remember.

Q. Let me ask you this :—Is it not a fact that you agreed with your husband that if he would go down South and recuperate and start life anew, you, if necessary, would go back to teaching to support yourself and the children ?

A. No ; I never agreed with that.

30 Q. Is it not a fact that before he returned from the South, in your correspondence, you and he talked this matter of your teaching over ?

Mr. Mackay :—I will have to object to that question. That is certainly not cross-examination, this matter of cor-

respondence when he was down South, as it is fully covered in letters.

The Vice Chancellor :—Well, but you have brought out from this witness upon this rebuttal testimony, that the husband agreed to her version of this incident as to asking her to go and live with her father ; now, it is perfectly proper for counsel to prove all the conditions under which that was done, and if it was part of a whole general agreement, he is certainly entitled to bring that out ; and if it was referred to subsequently in letters, that casts light upon what the original understanding was. 10

A. Why, I really don't remember. I probably told him in a letter that I would have to teach.

Q. Well, how soon did you tell him, or make up your mind that it would be necessary for you to teach? 20

A. Why, as soon as our home was broken up.

Q. And will you just fix that date again, if you can—if it has been fixed?

The Vice Chancellor :—When did you move out of the house? 30

The Witness :—Why, I had to stay in the house ; I had to get rid of the furniture.

The Vice Chancellor :—When did you move out of the house?

The Witness:—I probably moved out of the house around the 15th of March, as far as I can remember.

The Vice Chancellor:—Then the housekeeping was broken up on or about the 15th of March?

The Witness:—As far as I can remember.

10 Q. Now, prior to that, and on March 13th, and prior to March 13th, hadn't you made up your mind, in accordance with the agreement entered into with your husband before he went South, that you were going to apply for a teacher's certificate, or the renewal of your former certificate?

A. No; I had not made up my mind, for I did not want to teach.

20 Q. In your letter of March 13th, Exhibit D-5, you say, "My teacher's certificate has run out but Mr. Terhune is going to write the State Superintendent to see if he can't renew it if I take up two extra studies; otherwise I will have to take nine or ten and go back to third grade which means some hard studying." How came you, at that early date after your husband's leaving, to discuss the subject of your going to teaching, or your teacher's certificate?

30 A. Why, because I was afraid that I might possibly have to go back to teach, and I knew that my certificate was very nearly run out, if not run out, and I simply went around to consult the County Superintendent about it to see what could be done in case anything happened that I would have to take it up.

Q. Hadn't you, together with such a plan as

your going back to teaching, also suggested to your husband that you would take up the insurance business, or seek employment in the Mutual Life Insurance Company yourself, in order to support yourself and your children?

The Vice Chancellor:—This is not cross examination, nor rebuttal. You went all over this with this witness before, about taking the agency for the insurance, and when she first took it, and why she took it, and all that, and what she made out of it. 10

(Question withdrawn.)

Q. Is it not a fact that you and your husband talked over the situation before he went South, and that between you mention was made of this, that you might go to the Mutual Life Insurance Company and seek employment there, if necessary? 20

A. No; it was not.

Q. Then, how was that part of the subject-matter of the letter D-3, suggested to you, in which you say: "I have been thinking it over and if the family approve, if I cannot renew my diploma by simply taking the two subjects, will see if I couldn't get a position in the Mutual Life, perhaps through Mr. Raymond & Thiebault I might." 30

Mr. Mackay:—I think the witness should be permitted to examine the full letter.

The Vice Chancellor:—If the witness

expresses any desire to read the whole letter, she may do so.

Mr. Vickers:—I haven't any objection whatever (handing the letter Exhibit D-3 to the witness).

10 A. Why, Mr. Provost's sister had, at different times, spoken of trying to get a position in the Mutual Life, and before he went away there was nothing suggested about my trying to get a position there at all. I said in that letter, after think-
it over—

The Vice Chancellor:—No; you have answered the question. The letter speaks for itself.

20 Q. Then the suggestion of your getting a position in the Mutual Life came from conversations or a conversation which you had with Miss Provost?

A. No; not at all.

30 *The Vice Chancellor*:—She has not said that. You are apparently summing it up as if the witness had said that Miss Provost had suggested this thing to her. She does not say that. She says her husband did not suggest it, and that all she knew about it was what she had heard this other lady say about it.

Q. Well, did you have any conversation with Miss Provost regarding your getting a position in the Mutual Life?

A. Not that I remember of.

Q. Did Miss Provost say anything to you about your getting a position in the Mutual Life?

A. Not that I remember of.

Q. Well, what was your reference then to what Miss Provost had said about a position in the Mutual Life?

A. Why, that was how I knew that young ladies could get positions with the Mutual Life. It was because Miss Provost had always thought that some day she might be able to get there. 10

BOTH SIDES CLOSE.

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30

EXHIBITS.

(COPY OF EXHIBIT P-1.)

Dear Win,

10 Your letter of April twelfth was received by me and its contents caused me some surprise, because I have not engaged any counsel to act for me, to prevent a reconciliation, if a reconciliation is possible. You have apparently waited a long time before you correspond with me, and when you write your last letter, it is only a carefully planned one, and on its face if compared with the previous letter is an attempt on your part, through your lawyer, to cover up your wilful desertion and neglect. You know very well that you left me over two years ago, voluntarily, and went South, turned over the property to Bert, heavily encumbered.

20 You know very well that your drinking and gambling habits had complete control of you, and that you were heavily in debt.

You seem to forget that you spent an income of \$2,000 in gambling, speculation and in associating with men whom you would not receive in your home, while the children and I had to suffer, not only by reason of the humiliation and degradation but from being deprived of necessities. You know you lost your situation through neglect.

30 When you went South do you remember that you left a lot of bills unpaid, that you had a chattel mortgage on our furniture and you had mortgaged your mother's furniture? Certainly you have shown no sense of regret or a desire to change your conduct.

Your last letter written at the dictation or direction of your lawyer does not agree with your letter of April 8th in which you promise to do better if given one more year. Why a year? You have waited over two years and what have you accomplished? What can I expect in another year?

Notwithstanding the truth of all these things I have mentioned, notwithstanding your desertion of me for over two years and even though you have broken my heart, I am willing to live with you if you will provide a home and necessaries for myself and children. But I must know now whether you are going to do so; whether your offer is made in good faith or only to make my heart ache. 10

You know very well I am teaching school for a living! You know that I will have to take the examinations again on Saturday, May 6, 1905, and further that I must make a contract for another year as teacher or else be unable to support myself and the children. With this knowledge I must ask you what you are going to do; and I must ask you to let me know within a reasonable time, and to act within a reasonable time, in view of the foregoing. 20

Awaiting your reply,

I am,

Your broken-hearted wife 30

Jennie.

May 1st, 1905.

(COPY OF EXHIBIT P-2.)

Dear Win,

10 Your letter of May third was received by me and my reason in not answering your letter of April eighth was because you had deserted me for over two years, and failed to do anything for myself and children, and so one of the family consulted Mr. Mackay, the Assistant District Attorney, as to the advisability of having you arrested for non-support and neglect. That is how Mr. Mackay became familiar with the fact that you had written to me.

Mr. Mackay was about to proceed against you when he was instructed by one of the family not to do so at present.

20 In September and October, nineteen hundred and four, you did write a letter but neither the contents of the letter or your outrageous conduct called for an answer.

30 When you say you went South with my consent, you are telling a deliberate falsehood, and my statement to that effect can be supported by others. You know very well that I begged and pleaded with you not to leave me, and you would not listen to me. You would not even go to say goodbye to your own mother, as you knew she would not approve of your leaving me. Your own mother and sister can tell you how badly I felt about it, and how I cried and used every effort in my power to make you stay, but you were determined to go.

My object in suggesting that Bert secure a passage for you was in order that you might go on a short trip on one of the boats belonging to the

company in which he is employed, in order that you might go on a boat with a captain who knew your habits and could prevent you from getting something to drink, or drinking to excess. It was only when we found that all these boats belonging to the company were going to South America, that the idea of following out this plan was abandoned. You well remember that you had not the faintest idea of when you would return, as you wrote both your mother and myself that you would not come back until you had shown the people of Hackensack that although you had fallen by the wayside, you could yet do the right thing and become a different man from what you had been. 10

As to the two hundred dollars which you left with me, that was the least you could do under the circumstances, but you seem to forget that I used this money to pay the Gas and Electric Company \$6.44, the Water Company \$2.80, Van Houten & Sherwood \$44.21, a claim to Lawyers Mabie & Maidment on O'Neill's account \$4.56, the sum of \$15 to your mother to help the mortgage on her furniture, \$100 on a note which you had in the Hackensack Bank, \$10 to the servant girl Lilly, and \$2.57 on your account in the bank which was overdrawn to that amount. I had to pay this note and also the overdrawing of your account. The balance \$14.42 went toward paying the mortgage on the furniture, of \$195, and as they threatened to foreclose this mortgage, I had to sell the furniture to pay it, and even then I had to borrow some from my father to make up the amount. I was then left in destitute circumstances, and I had nowhere to go except to my father's. 20 30

As you say in your letter that the girl was paid twelve dollars, I wish to inform you and you know it very well, that she was only paid that amount for one month, and that was September, 1901, when Donald was born. Before that, for one year and ten months, we had been paying seven dollars a month, and after Donald's birth for one year and a half we paid her \$10.

10 Until the last year, 1902, you would never buy me a machine, although you had loads of money to waste on yourself and your wild associates. Any sewing I had to do had to be gotten ready and then taken over to my mother's to stitch, and when I did finally buy a machine for \$8, I had to borrow the money from my sister to pay for it, and this amount has never been repaid to her.

20 At another time when you were home on a drunk and did not have a cent, I had to borrow \$5 from my father to pay a small bill of \$3, and the balance you insisted on having to buy whiskey, saying at that time that you were afraid that some one would come out from the office, and you wanted to send out for the whiskey on the pretence that you were sick. You will remember at that time the office had engaged a man to investigate your conduct, and you pretended to be home sick.

30 As to keeping the house in order, how could you expect a girl to keep the house in perfect order when she had to go out at any time to get you whiskey, even at times when she was busy at the washtub, and you know this happened very frequently. You also know that you took the money out of Reginald's bank to buy it with, even his four Christmas dollars, and Donald's one, that my father gave them; and when you had no money

you sent the girl to Banta's to see if she could get a quart charged to me, as you knew that they would not trust you, and you remember very well that at that time they would not let her have it, as they knew it was for you.

You will probably remember the last time you were to take me to the theatre. It was to celebrate our wedding anniversary, 1901, and on our anniversary day you never even came home to dinner, and later in the evening when you did come home, you were so much under the influence of liquor that you went to bed. The following week we went to the theatre, and I didn't have any decent clothes to wear, and had to borrow a silk waist and collar from my sister Bess, when you were earning a salary of two thousand dollars a year. 10

You speak about the house not being kept in order. You know very well that the house was always in order when you came home. If you had said the condition of your bed-clothes was filthy, I would not have been surprised, but I would like to know how one was to keep a clean bed when you came home and laid down in it with your muddy feet, without so much as taking your shoes off, and on those occasions you were in a filthy, drunken condition. 20

As to buying clothes, when Donald was only a month old, Reginald had no proper clothing, and your mother went to work and made him a cape to wear until I was well enough to make him a proper coat. You never bought Reginald a coat in his lifetime, although he was four years old the time you went away, and you have only bought him two suits. 30

As long as I lived with you, you only bought me

one skirt, for less than five dollars, and one dress, which was placed on a charge account at O'Neill's and they had to employ a lawyer to collect the money. The only other suits I had, one was given to me by my brother, one by my mother, and the third by my cousin, because she felt so sorry for me not having proper clothes to wear. I would like to ask you how you would like to be placed in my position.

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You say in your letter that you are in a position to provide a home and necessaries for me and the children right away, and will pay off the debts which are owing, and which amount to considerable. In reply to this I wish to say that as soon as you inform me of the position which you have, and the amount of salary you are making, and where the home is located which you intend to provide, I will come at once and live with you; but I must know this right away. Last Saturday I took the teachers' examination again and I must sign the contract for another year and teach school, or otherwise I will have no means of support, and I cannot stand the humiliation any longer. I certainly have cause enough never to live with you again, and if I thought I had to live the same life which I have led in the past years of our married life, I would rather be dead than go through such an ordeal.

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These explanations and these facts can be supported by a number of persons, and how you can say that I deserted you or that you left to go South with my consent is beyond my imagination. The only furniture that I have now and which is left out of the wreck is one bed, one bureau and three

chairs. The other bed and bureau are at your mother's house.

An interview with me is not necessary until you satisfy me that you are willing and able to provide a home and support myself and the children in ordinary, decent circumstances.

Awaiting your reply,

I am, yours truly,

Jennie.

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Hackensack,

May 8, 1905.

(COPY OF EXHIBIT P-3.)

Sunday Eve.

Dear Win,

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We came up here last Saturday morning. I did not know till half-past nine the night before that we were to take the nine o'clock train the next day; you can believe we had to work that night. Bess and I were up till after midnight and the next morning I was up at six. I had to go to Clark's on another errand before we left and with it all had plenty of time to catch the train. The children were just as good as could be and it was a long ride, two and a half hours. The proprietor from the Morris Lake House told the girls we were coming so they were out at the gate waiting for us. It is certainly delightful here, so nice that

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we can do as we please. The children run around and play out doors all the time, they cannot go to the glen alone although it is just across the road but quite a little walk at that and all through the woods. It is certainly beautiful in the glen, the brook is a mountain brook and makes so much noise rushing over the rocks that at night it sounds just like the waves on the seashore. During the rainy days last week the children hardly knew what to do with themselves but I put on their things and let them play out on the piazza for a while. We have such a lovely piazza, it extends along the two sides of the house and on the one side it is only one step to the ground. Then they have two hammocks and plenty of easy chairs. The house is certainly situated delightfully so close to the glen and only about 10 or 15 minutes from the lake. Their boat is on the upper lake where they row and fish. It is the reservoir for Newton. The bathing place is on the lower lake only a five minute walk from our house, we are all going bathing some time this week. The girls have had quite a little trouble about getting their mail, it has been going all over the town, you see we do not get our mail unless some one goes to the village for it and we do not go every day only when we have to, so when we write letters we have to go to mail them. It is a lovely walk through the glen but the shortest time you can do it in is $1\frac{1}{2}$ hours and then we do not even stop to rest. The girls wrote a letter to Mrs. Vandewart and M. Cadmus inviting them to lunch next Thursday. They are one end of the place and we the other end. Joe Kingley was here this morning, neither Dr. or John are here over Sunday.

John is away and Dr. has not been able to be up over night yet although he has been up to spend two days. Reginald received the ball from Grandpa we got it on Friday when we went to the village. I had bought a little red cart for D. and we could only get a couple of other things for the children to play with, none of the stores keep toys. R. is very proud of his ball and is going to write a letter to Grandpa to thank him. Both children are in bed now. Mrs. Cole's cow is in the lot next to us and the children love to watch her and call her. Then they have pigs and chickens and a little black kitten that the children hug to death and worry the old lady who loves her cat. I hope you have started in working as you said you were because it is for your interest, if you do not care for mine as you should. 10

Yours affectionately,

Jen. 20

March 27, 1903.

(COPY OF EXHIBIT P-4.)

Sunday Eve.

Dear Win,

You no doubt have received my letter, although I have heard nothing from you. Last Monday morning Grace McK. and I went to call on Mrs. Vanderwart and mailed our letters and then went to the train to meet Miss Brooks, but she did not 30

come till the afternoon and Mrs. Vanderwart was not in, so we were rather disappointed. They are staying at the nicest and largest hotel here, have tennis, croquet and a golf course, but are too far from the lake to enjoy that. When we got home we were pretty well tired out and then found that Donald had met with quite an accident. The girls had taken Grace's baby and Reginald and Donald down to the glen to play when a bee stung Lillie, Grace McK's girl, who was carrying Edgar. She ran and little Edgar was not stung at all, but Donald, who was just behind them, must have stepped in the nest, for they said he was just black with the bees all over him. He put up his hands over his face and in that way held some of them tight against his face, so suppose they stung him all the harder. Martha knocked them off of him and was not stung at all, but Reginald had one sting on his neck. Well, by the time I got home one of D's eyes was shut and the other one only opened a crack. He was such a sight, his cheeks and eyes and nose all swollen out even so there was no shape to his face at all. After the first sting he did not seem to mind it so much except when we wanted to bathe it. For a couple of days he was very cross but he is all right again now. I was so glad I had found a place to get some toys so brought a whole lot home and that took his mind off of himself. Both the children have been so well. Reginald particularly looks fine. We have been in bathing twice this week and are going in often now since we have started. Both children went in with us Saturday. Mrs. Vanderwart and Mabel were here to lunch Thursday and Saturday when we went to

meet Bert Mr. and Mrs. Cadmus and the Vrooms all got off the train. Dr. John McK. and Bert are all spending Sunday with us, this is the first Dr. has been up over night. Grace McK. has had her friend Miss Brooks here for a week so it has made it more lively for us; she goes home on Tuesday when we are going to take a drive to Newton as she takes the train from there.

You know the Gas & Electric policy of Englewood expires on the 26. I wrote the F. F. Mr. Sherwood is on his vacation, so they wouldn't take more than \$1,500, and rather than bother with that I wrote the Sun to renew it. I simply wrote the address Sun Insurance Co., Pine St., N. Y. City, and have heard nothing from them so will get Bert to telephone them tomorrow to see if they received the letter. If they won't renew it I will probably have to let it go, as I wouldn't know where else to put it and could hardly attend to it so far away. Was so sorry the F. F. would not take it as it would have saved so much trouble and I would have made so much more. The weather here has been fine but then I guess it is fine all over. Must close now with love to all.

Jennie M. P.

Why don't you write, I'm anxious to know if you have gotten the position you spoke of.

(COPY OF EXHIBIT P-5.)

Wednesday.

Dear Win,

Received your letter when we were driving to Newton as we passed the post office, one of the girls got out and brought us our mail. Miss Mackey came up yesterday and Martha, Grace's girl, goes home today. Grace, Lillie and Reginald are going down to the station to see her off. Reginald has taken a great fancy to her and called her cousin. The weather has been so much warmer this week that we have been in bathing every day, this week both D. and R. went with us yesterday and today. Yesterday we ran all the way there and were only able to stay in about 10 min. then ran all the way home. It was so awfully black we had the worst thunder shower have had since we have been here. A man who lives in the vil-
lage drove past very fast and when he drove in his yard both horses were instantly killed, the wagon smashed and he was thrown out but not hurt. It does not seem possible we will be home so soon, would so love to stay another month. Neither of the children want to go back to H. except when R. is going to bed then he is ready to go home. Little D. did not want to come out of the water at all this morning he was the last one out. Will probably be home either Monday or Tuesday cannot yet
tell exactly what day. Hoping the folks have all kept well, with love to all,

Jennie.

(COPY OF EXHIBIT P-6.)

Dear Win,

In regard to your debts you wrote me about, you seem to have forgotten that the note for \$200 that my father endorsed was taken out in Jan. and you lost your position in March. It was *not* taken to pay off the \$700.

Perhaps you will remember how I refused to humiliate myself and go over and ask papa to sign another note, when he had already endorsed the other one so many times before it was paid. You told me if I would not go over and ask you would simply run away and leave everything—that you were liable to arrest and had to have the money that very day; it was the last day given you. You had used some insurance money that was not really yours and had to make it good. After I had seen papa I had to telephone you it was all right and had to take it immediately to the bank to deposit it, so important did you consider it. You spoke of \$300 in the B. & L. in dues, you considered to your credit. How about the rent? According to that you are not allowing any rent for a long time. You remember you borrowed all you possibly could after we had been in the B. & L. two years and then a year after were so angry when they would not let you borrow again, that you would not pay anything at all for six months, not even what the upstairs people paid you. So you made a clear \$120 by that. The \$400 second mortgage of Abbenseth's, the \$250 note of my sister's, and the \$400 note of my mother's for her part of the lot, which was never paid, were all

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taken by Bert when he took the house ; you know he also had to pay up the six months that you would not pay in the B. & L. Now, in regard to what you now owe—I have paid the \$200 to the bank by great economy and sacrifice, but I certainly expect you to pay it back as soon as you can do so. The bills you owe to the tradespeople around town you have, so you know what they are. If you have destroyed them I have the amounts down and can send them to you. I hope you will pay Ackerman, the plumber, just as soon as you can, as he does not seem to think you will ever pay him, for he has been sending the bill to me and writing me about it. For the children's sake and in order to clear your name as much as possible I hope you will be able to settle up the housekeeping bills soon.

Yours etc.,

JENNIE M. PROVOST.

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Oct. 11, 1904.

(COPY OF EXHIBIT P-7.)

Hackensack, N. J., April 8th, 1905.

30 Dear Jen :

It is with great sorrow I am writing you, and I trust you will sympathize with me. I have been informed that you wish to secure a divorce on the ground of desertion. Now, Jen, you know that when I came home from the South you would not

live with me and told me that you would not live with me until I could have a home like the one we left, you know I pleaded with you and came around to your father's house and you told me you did not want me to come there, so you can see it has been no desertion on my part, had you tried to help me I might have secured a good position and would soon have been able to pay my debts and have a home.

I am paying my debts off as fast as I can, and I *beg* of you to reconsider the action you have taken and think of the children and if you would only give me *one* more year I could have all my debts paid and a fairly good home, as I have very good prospects before me, and will do anything you might suggest if you will only grant me one more year to redeem myself. Can't I come around some evening, so we can talk it over, and I think we might be able to fix matters up without taking it to Court, or if you do not want me to come around can't you come here, as I would like very much to see you before it goes further, you know I have always loved you, and my ambition to make money (for your sake) got me in trouble, as I wanted a finer home than we had, and it was through my speculations that drove me to drinking and in that way lost my position. I have vowed never to drink again, and if you will only give me one more trial you will never have cause to regret it. You know I have never harmed you, like your sister Fanny's husband did her, and see what she put up with. Can't you forgive me for the sorrow and humiliation I have caused you? Think of the children you know I love them better than I do my own life and to have

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them grow up and realize it would be awful. Jen,
I beg of you to let me have a talk with you and
also to reconsider the step you have already taken.

Trusting you will grant me the above request, I
am,

As ever,

Win.

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(COPY OF EXHIBIT P-8.)

Hackensack, N. J., May 3rd, 1905.

Dear Jen :—

Yours of the first inst. received, and was
more than glad to receive same, you say you was
surprised because you had not engaged any coun-
20 sel to act for you, now some one is not telling the
truth. I wrote you a letter dated April 8th, 1905,
in which I begged you to reconsider the action you
had taken and give me one more year to redeem
myself and pay my debts and I could provide a
fairly good home, the next time I saw your counsel
John Mackey he informed me that you showed him
the letter and that you would not answer same,
which you never did, and that you would never
hear to any reconciliation, and also that in case
30 you could not get a divorce there was no law that
could compel you to live with me and that you
had made up your mind that you never would, then
on April 12th, '05, I wrote you another letter and
informed you of the above facts and eighteen days
later I received your reply and then you say

I have waited a long time before I corresponded with you. I don't quite understand that. Sept. 7th, 1904, I wrote you a letter and informed you I had sent a note with Reginald over six months previous and had never received any reply. Oct. 1st, 1904, I wrote you again and said, as I cannot get any reply to any of my letters or see you to talk over as to how I stand regarding my debts, I trust you will be so kind as to answer this one, etc. Oct. 12th, 1904, I received a reply. In your letter of 10
 May 1st, 1905, you say that I attempt through my lawyer to cover up my wilful desertion and neglect and that I left you voluntarily over two years ago, you know perfectly well when I went South it was with your consent, and Bert wanted me to take a trip to South America on one of his boats, you also tried to persuade me to go, and the letters you wrote me when I was South verify my statements. You also say that you and the children were deprived of necessaries; you know perfectly well 20
 that is not so; you hired a servant girl and paid her twelve dollars a month, which was a luxury for you, but a disgrace to the method of house-keeping, day after day, week after week, and months I have come home you would either be on the streets or over to your home, and the house left all alone and things strewed all over, and the kitchen looked disgraceful, grease all over the floor, stoves rusty, dishes not washed; it was not only a few times, but hundreds, and you know I 30
 spoke to you about it continually; you also had to have your season ticket for the opera. When I went South I left you two hundred dollars, and you told me you would pay all the tradespeople; on my return you sent all the bills back to me un-

10 paid and I have never to this day been able to get an account of the household goods you sold; you know that you asked my mother for me to mortgage her furniture, and that you knew of all my debts long before I lost my situation. The reason I asked in my letter of April 8th, 1905, for one year's time was so I could pay all my debts and have a home that would be satisfactory to you. I am in a position now to provide a home and necessities for you and the children right away and will pay off my debts as soon as I possibly can. I wish you would let me have an interview with you so I would know just what furniture, etc., you have sold and what we would need to commence our married life anew.

Trusting you will let me see you and that you will try and forget the past, I am,

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Your loving husband,

Win.

(COPY OF EXHIBIT P-9.)

Hackensack, N. J., April 12th, 1905.

Dear Jen :—

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As your counsel has informed me that you will not agree to any reconciliation, and that you would not answer my last letter in which I pleaded with you to reconsider the steps you had already taken for the sake of the children if for no other, I have consulted my lawyer and laid the facts before

him from beginning to end and he says I have never refused you a home, and that when I went South it was with your consent, and on my return you refused to live with me until I could have a home like the one we left, and you would not allow me to come and see you or the children, that instead of you bringing suit for divorce I am the one that is entitled to do so, and you know perfectly well that I would never do that as I think too much of you and the children, however if you are determined I can see no other way but to let it take its course in the Courts. 10

Trusting you will give this careful consideration and allow me the opportunity to provide a home however so humble I am,

As ever,

Win.

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(COPY OF EXHIBIT P-10.)

Hackensack, N. J., May 10th, 1905.

Dear Jen :

The tone of your letter dated May 8th, '05, cooperates the statements I made in my previous letters, as to your feeling toward me and furthermore that the desertion was not on my part, as to the non-support and neglect you don't mention that you refused to allow me to come around and see you a few days after my return from the South and also refused to come and stay over night at my mother's house, and when you came around to 30

my mother's house it find out about the insurance business you would not allow me to walk home with you, my mother has asked you several times to come and take dinner and you refused. You certainly have had a little income from the insurance business I turned over to you, however there is no use corresponding back and forth in relation to the faults of each other as we might keep it up forever. I am employed by an old established firm at a fairly good salary and prospects of the very best for the future. I think it would be better to locate outside of Hackensack and as I said before I am ready at any time to furnish a home and necessaries for you and the children.

As you refuse me an interview as you have done a number of times before, I cannot understand your letter of May 1st, '05, in which you state that you have not engaged a counsel to prevent a reconciliation if a reconciliation is possible how are we to become reconciled? I have now given you the necessary information as to my willingness and ability to furnish you and the children a home and necessaries of life, and as to corresponding further and making up old scores I am through and trust you are also. If this is not satisfactory and as you will not allow me an interview I can see no other way but to let it rest.

Trusting you will accept my offer for the sake of the children if for no other, I am

As ever,

Win.

(COPY OF EXHIBIT P-11.)

September 7th, 1904.

Dear Jen :—I wrote you a note and sent it with Reginald over six months ago. I have never received a reply, and now I want to know if you intend to disown me or not? so I will know what answer to give when I am asked. Last night when I took R. around he wanted me to come in and see you awfully bad, he put his arms around my neck and begged and begged me to come in, he kept on and on and I did not know what to say to him. I have given up my worst fault, and have not touched a thing in over four months, and never intend to again, no matter what befalls me. It is very hard to get a position. I have been to see most every one I know and written to a good many and I have come to the conclusion that as you (a wife) will not have anything to do with me, why certainly no one else will, but I am young yet and will fight it out, and in future years you may regret it. As I said in a previous letter, I never harmed a hair of your head and never laid a hand on you, my drinking was my only fault (and you knew I drank before you married me) and by that I got so deeply into debt. I have conquered my fault and now I intend to make a man of myself no matter if I can't find a position right away it will come sooner or later. Jen, I don't think you acted the way you have from your own inclination, but have been influenced by others, and for the children's sake if not for mine, I think you could be a little more friendly, there is one thing, and that is, I shall never give up the children, for I will fight for them until the day I die, and I will

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say right now, that I want Donald to come around more often than he has, and even if you do support and clothe them, you have no more to say than I until the law so orders. I have done as you asked me, that is, not to come around and what is more, I never shall, unless it is for my rights and the children, and then * * *

10 You told me the last time I saw you that you would never live with me again until I could have a home of my own, like the one we left. Now, Jen, you know it would take quite some time to do that even after I get a position, if I am not good enough for you when I lose everything, I certainly am not good enough when I reach the top of the ladder, you know the vow you took better or worse, now if you think carefully over this I think you will say I am pretty near right.

20 Jen, I think, with a little of your influence I might be able to get a position much sooner, and if you think anything of me you would try and help me, you pretend to be a Christian but show a very little of it in this line. I still love you, Jen, and if you have any love for me at all and for the sake of the children you will give this letter your careful consideration, now let me know what your answer is. I will close.

With love,

Win.

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(COPY OF EXHIBIT D-1.)

Hackensack, N. J., Monday Eve.

Mar. 23, '03.

My dear Win,

Just received your letter to-day and hope you are having better weather than we, it has been pouring off and on all day. I told you I was taking up the insurance. I must have written it wrong for T. H. & S. said I could do the business but they will write the policies till I understand it better. Now, there is a policy of Paul Scoskie on Building, Passaic st., \$2500 rate .40 in the N. Y. Now, must I write directly to the N. Y. or did you do it through an agent? I wrote all those that were due the month of Apr. and said I was taking charge of your business while you were away and I would reinsure them at the lowest possible rate. Pearce has one due so Papa is going to see him tomorrow. I wrote T. H. & S. for the lowest rates they would give so will probably hear from them tomorrow. Then how about the com. I don't know how much I am to get. There is one of Givernaud due and I wrote to H. Hubbard Jr. & Co. Is the Firemen's Fund in the Middle Dept., and could I give a rebate even on the rates F. H. & S. send in order to get any one? You see I don't know anything about it. If I had only studied it while you were here and had taken up the business a good while ago, how much I could have made, there is so much you let go. There is another one for Pearce due in May, E. side of Main st. \$2000 rate 50. Frederick Paulson, E. Orange \$2500—.40, is that all the address neces-

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sary? I see it is in the Erie, did you get it from any one and what is the address? G. H. Schizel, Hoboken, \$4,000—.25. What is his address? Geo. K. Bradfield (W. S. Anderson St.)? \$1,200—.40 in the N. Y. H. Gattle office furniture, 65 Nassau St. \$500 rate must have been .60 as premium is \$3 (W. R. Collins) in the German American. Is he the agent? and what is his address. There is one for Herman Preferred Accident, accident ins. 10 \$5,000—5-27-03. Shall I write him and ask him if he does not want it renewed and what is the rate and would I get a com. on it? These are all for the month of May so if you can write me right away about them I will understand it better. I suppose it would be as well to write F. H. & S. some time in Apr. and ask their lowest possible terms for all you have in your book for May. If I could understand all about it soon I would take up 20 life too. A lady has just come to town who is going around a little to see if she wants to come here for the summer and work the town. You asked about H's mortgage Bert will pay that in the fall if possible but I told him you would pay the \$25 int. It would be lovely if you could get something so we could begin to pay some of our debts. I adv. in the Record to sell our dining room furniture and what was left, so hope to hear something. Don't forget to tell me all about Papa's ins. where 30 you got the binder and how long it will be good. Both children are well. D. got your picture the other day and was kissing it.

With love,

Jen.

(COPY OF EXHIBIT D-2.)

Hackensack, N. J., Friday Eve.
Mar. 27, 03.

My Dear Win,

Was so in hopes I would get a letter from you this morning so waited to hear what you had to tell me about papa's insurance. Our letters the first part of the week must have crossed each other. I do hope you have been successful in finding something to do although you must not be discouraged even if you do not find anything immediately. You must remember you have only been trying to get something a very short time and we must all hope and pray you will have some more of the good luck you always used to have. 10

Now Win, about returning North—until you can come as you said yourself and show the H. people you have made a success of life and not a failure, I know it is going to be awfully hard on you to stick it out, harder than any of us can really realize, but it will certainly be better for you. I have been trying so hard to think how we could arrange it. If you only get a small position enough to pay your board. You will have to economize and stint yourself in every way possible, and, Win, it will be hard but it will be the only way you can learn to appreciate the value of money. Your mother and I were talking about it and I was wondering if you could not get a position in some lumber and coal business, then that would not be entirely office work, or if you cannot get anything at Darlington, how about Florence? Wouldn't either the Equitable or 20 30

the Mutual start an office there if you did some work for them and wrote to them about it. Again, if you only got a small position couldn't you do something in the insurance line as an outside business as you did here? Only one thing, Win, be sure and leave the saloons and hotels severely alone and don't gamble even in a small way, you know from your experience you do not meet the class of people you want dealings with in such places. Then, again, think of the expense it would mean if you came North! One hundred dollars wasted and you say you would want to go South again for the winter that would make \$150. It would take a long time to save that amount and if we did have it could pay up all our bills in town except the Bank notes, and that reminds me, they say there is a society to be started in town, right soon, among the business men, posting the names of all those who do not pay their bills, so unless we can't pay all of ours in a little while, I suppose ours will be among the others. I paid off the \$100 note due on 26 Mar. and papa settled the mortgage and loan for \$195, so if I do not raise all of that by selling the furniture, will have to work for the rest of it. It has been terrible and I wouldn't go through it again for anything. I haven't had time to even think, and then to know that every one in town is talking so about us. But I am trying to look forward to the time when our name will be all right. Now, Win, you must keep up your courage and try more than your best, and remember to be positively stingy with your money. That is the only way. I will try to write you just as often as possible so as to help you, and hard work will keep you happier and make you eat

and sleep. You know, Win, you always said yourself you had things too easy, so now it is going to be particularly hard, but you must remember there are others who are working hard too to save the pennies. Reginald wrote this letter to you. He wanted to know today how soon you were coming back so that we could go to live over home again. Now, write as often as you can and remember to be brave. Reginald would like a little pig, but of course it would be out of the question here and besides if you really did think of it, I don't think you could afford it. He wrote this letter to you and he sends his love and three kisses. He says I must make a round O O O for kisses. 10

With love,

Jen.

Papa just tells me J. Romeyn and I. I. Demarest have bought out J. C. Van Horn.

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(COPY OF EXHIBIT D-3.)

Hackensack, N. J., Sunday Night,

March 15, '03.

My Dear Win :

Have just come from spending the day with your family. Emma, the baby and Newt were there also to tea and I know they all missed you and thought as well as talked of you. Your father had Mame's old geography out and Darlington and Florence were both on the map. He also had a 30

railroad map and found Florence quite a railroad center. Reginald decided to stay over night so father walked home with baby and me ; he said he was going home to write to you.

10 Papa was anxious to find if you had done anything about that policy of his, so don't forget to write as soon as you can, what you did about it and what he must do. I looked all over for the policy and could not find it, so thought perhaps you might have it with you. Van Houten & Sherwood wrote you a letter saying as you had not done much business lately, they would withdraw the agency from you ; as soon as I showed it to papa he thought some one from H. had been writing them asking them for the agency, so I am going to write them tonight and ask them to keep it while you are away and say I will go down personally and see them if they want me to, about it. There is one policy
20 that was sent you from Hubbard or Givernaud the premium \$19, so you see it would be something if I could keep it.

30 Papa was just talking to me, he thinks I might rather go down tomorrow morning the first thing to see Van H. & S. myself ; he is afraid if I write it might be too late, so I guess I'll go. I have been thinking it over and if the family approve if I cannot renew my diploma by simply taking the two subjects, will see if I couldn't get a position in the Mutual Life, perhaps through Mr. Raymond & Thiebault I might. Now, Win, write a nice long letter and tell me all about yourself and your surroundings. You did not say what board you have to pay, but I don't suppose it is so much out in the country. Isn't the tobacco business a fine business ? If you could only get a position in Mr. D's ware-

house wouldn't you be able to learn all about it? You don't know how nice the house looks in the paper. All the ceilings and borders are tinted and the side walls papered you wouldn't know the place; the parlor and dining room are not done yet, but they will do them tomorrow. Did I tell you Brier was here with us. Bert wants to keep him, he goes out with him on horseback, and Grace would also like to have him. We have been having such beautiful days that we can hardly get Reginald in long enough to eat, but have made up our minds he must take a nap, as he gets so tired and cross about 5 o'clock, even little Donald wants to run out and cries when we bring him in. 10

Now write just as often as you can and don't forget to tell me about the policy of Papa's With lots of love,

Yours,

Jen. 20

P. S.—Monday night. Papa thought I had better go down to see Van H. & S. today so I did and they seem to think I could easily carry on your business, so will try to get all the new business I can.

Jen.

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(COPY OF EXHIBIT D-4.)

Hackensack, N. J., Sunday, Mar. 22.

My dear Win,

10 While Bess is keeping Donald I thought I'd get a letter started anyway, if I haven't quite time to finish it. Reginald went down to spend the day with Mame. D. and I were to go but it has been raining all day long. Your father and mother were to go to J. C. today to spend the day and Mabel and Lou started today for Pittsburg. Lou had to go on business, so took Mabel along. I have been working awfully hard this week trying to get things fixed. Last night we borrowed the painter's cart and Bess, Bert and I moved the desk, couch, chair, hat rack and our bed room suit over. Everything has been in a dreadful mess, half of our things over there and half over here.

20 I am keeping all the things I possibly can, but don't quite know how we will make out ; we have not settled up yet. I told you they would settle for \$196.25, so we will try to have it fixed by the 26th. If we could only get a good price for the dining room and back bedroom things. Now, Win, I don't know what to say about the plantation business. We all really think it would be better for you than in-door work, but it seems to me it

30 would require a great deal more money than you have to start in with. The young fellow you spoke of must certainly have had something in the beginning. He must have had help and horses besides utensils and living expenses. Why don't you find out all about it from him? Then you would have to work for some one to learn all about it and I

doubt while you are learning if you could make more than enough to pay your board, which I think quite a little. And that reminds me, Win, please don't write to any of the men in town outside of your own family. In yesterday's paper among the personals was your address, and just now when every one in town is talking about us it seemed very funny to do such a thing. You said you had gotten a binder for Papa's policy but didn't say what company it was in or how long it was good. I went down to see Van H. & S. last Monday and they said for me to send my business to them and they would write the policies till I could do them; but as much as told me I'd have to hustle and get more business. Mr. S. said you had not done any since Oct. and it wasn't enough for a company like theirs in a town like H. I have to write to them to-night to send me a book of rates. I can only find your old one. In case you hired land could you use your wheel if I could keep it or haven't they good enough roads? If I can get a half way decent price for my machine I'm afraid I'll have to let it go. I am trying to keep so much out. Edgar thinks I ought to take up the life insurance business too, so perhaps will try it after I am better acquainted with the fire. Mr. Meeks sent me a note to you in regard to a policy for David Adam of J. C. The policy to be sent to Wm. Innis. H. Bert telephoned him to ask about it and Meeks said to return the policy to him as he had made a mistake he thought you sent it to him and found out different. Now did you send it or not, for if you did I ought to get some com.

You forgot to send a daily to V. H. & S. about the barber's insurance so I have to send one tomor-

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row. Now, don't forget to write and tell about the binder on papa's policy. The barber paid you for his policy, didn't he? Now I must go and get Reginald. Will write you again in a couple of days, and let you know how things are. Be sure and write every two or three days and tell me all about yourself and everything there.

With love,

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Jen.

(COPY OF EXHIBIT D-5.)

Hackensack, N. J., Friday Morning,
March 13.

20 My Dear Win,

Your letter came yesterday and I was so glad to get it, have been looking for it ever since your first one came from Florence. Yesterday I went to see Mr. Terhune and afterward to your mother's, but your mother had just gone around to our house. That is the first she has been out. She took Reginald back with her to spend the day and stay over night, so he is there now. He is to spend all his Sundays there and Donald and I will go every once in a while. My teacher's certificate has run out but Mr. Terhune is going to write the State Superintendent to see if he can't renew it if I take up two extra studies, otherwise I will have to take nine or ten and go back to Third grade which means some hard studying. So will

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have to see him in about a week to find out what he has heard. I do hope you will be able to find some work you will like and that will pay you pretty well, and would a great deal rather you were with Mr. Dargan rather than F. S. I think it would be so much better for you to be with perfect strangers, and especially as you like them and respect them. Don't you think there might be a chance for you to do some insurance business even if you get something else? It would keep you out, and you know the business so thoroughly you might make a great success at it. If Mr. Dargan is a good business man don't hesitate about asking his advice; you know all men like to be consulted, and he certainly must know what your chances might be at Darlington. How sweet those flowers were you sent us! The South must be beautiful now. Reginald has come home so tired and cross playing all day long. Mame brought him around. Have been very busy over home every day from morning till half past six. Bert has just gone up to Mrs. Hofman's, Florence Hofman's mother's, to have her sign the lease. She said she would take it and bought our coal that we had—gave me \$5 for it—and perhaps will buy the gas range. Bert will buy the leather chair, rug and couch, and your father is going to take your desk and chair; he and Newt will take the bird panels between them; they came tonight and got them when Bess and I were at the Library; was so sorry I couldn't see them. Mama said Newt was not feeling well, had been to the doctor's Friday just after you had gone. Mr. Illig came to see me; he was very sorry to hear about you, but wanted us to keep up the payments

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just the same even if we had to wait six weeks this time and then only make a small payment ; but papa thought it robbery. You see we were paying \$90 for the use of the money for the year ; so today he went to Jersey City to see if he could make a settlement ; they told him he must see the Hackensack man and make his arrangements with him ; so he will see him as soon as possible.

10 Everything has been in such a terrible mess, we can't move any of the things till it is settled what we can do ; and the painters have been there working. The ceilings are all tinted and the side walls to be papered. We have to keep moving the things around and I have to keep chasing after the painters and covering things up. Then I have been washing all the furniture off and polishing it up as I thought it might bring better prices.

20 When night comes I'm almost dead and not fit for anything but bed ; but if I can only sell the things or get good prices it will pay. Edgar took the clock and deer head for the bill, with the understanding if you ever wanted them back you could have them for the prices he paid (that is his bill) of course the same with your birds. I'm going to write Van Houten & Sherwood and see if I can't carry on your business while you are away ; just tell them you are away indefinitely. Hubbard sent a policy to renewed April 1st so will write and

30 see what I can do about it. Bert has just come back. Mrs. H. signed the lease for \$24 and \$5 toward water. How's that ? I told Bert he must give me the extra \$1 as I got him for it. Must close now, be sure and write just as often as you can, as you know how glad we are to hear from you. Now, Win, do what you know is right, think

of us at home here. I will be so happy when you can write me you have been able to give up your drinking entirely.

With lots of love,
Yours,
Jen.

(COPY OF EXHIBIT D-6.)

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Hackensack, N. J.,

Dec. 17th, 1904.

C. B. Demarest, Esq.,
Town.

Dear Sir :—Your note enclosing bill received and am very sorry that I cannot comply with your desire and by Jan'y 1st, '05.

As you no doubt know I have been out of employment going on two years, but expect a position the first of the year and will then pay the bill as soon as possible. I am very sorry it has stood as long as it has, when I went away I left enough money with my wife to settle all the bills of the trades-people, the money was used for something else and all the bills returned to me unpaid ; however, it was all brought about by my own folly, and as soon as I get the position you, and everyone else shall be paid with interest. Trusting you can wait until then, I am,

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Very truly yours,
Winfield Provost.

IN CHANCERY OF NEW JERSEY.

 Between

JENNIE G. PROVOST,

Petitioner,

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and.

WINFIELD PROVOST,

Defendant.

*On Petition for
Divorce.*
Conclusions.

(Decided May 5, 1906.)

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Heard upon petition, answer and proofs in open Court.

For the Petitioner, MACKAY & MACKAY.

For the Defendant, GEO. T. VICKERS, Esq., with whom was MR. KELLOGG of the New York Bar.

GARRISON, V. C.

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This is a petition by Jennie G. Provost against her husband for divorce upon the ground of desertion.

The parties were married October 14th, 1897. This petition was filed June 21st, 1905. The allegation is that the desertion took place on the 7th

day of March, 1903. The parties were at that time living at Hackensack, N. J., and upon that day the defendant left Hackensack to go to Darlington, S. C.

The defendant was engaged in the life insurance business and had fallen into dissipated habits, and undoubtedly had frequently been a source of humiliation to his wife. Just before the 7th of March, 1903, his habits led to his discharge from the position which he theretofore had held in the Mutual Life Insurance Company, and the money then due him from that company was paid him. This money, amounting to four hundred dollars, he divided, giving two hundred dollars to his wife, and retaining two hundred dollars. 10

There is not the slightest evidence that when he left for the South on this occasion he intended to desert his wife. The letters which passed between the parties at this time entirely disprove any such contention. They show that the parties were on the most intimate terms; that the wife was sincerely desirous that he should cease his bad habits and resume life with her again; and his communications to her were all along the same lines. 20

I do not think that there was in either of their minds at that time any thought that a desertion or a permanent separation had taken place.

He returned to Hackensack in about a month, and constantly saw his wife thereafter for a long period, and undoubtedly endeavored to renew his married life with her. She is a very self-respecting woman, who had always been accustomed to nice surroundings—although not accustomed to luxuries—and she undoubtedly did not wish to take up life with him again until he should have 30

paid all his debts and secured another home as good as the one they had left, and therefore refused to come and live with him under any other conditions.

I do not think it helpful to review the testimony at length or to cite either from it or from the letters. I fail to find anywhere in the case any evidence of any desertion within two years before the filing of the petition in this suit.

10 If the petitioner, abandoning her original contention of a desertion on the 7th of March, 1903, now contends that the failure of the husband to support her and the children since his return to Hackensack in April, 1903, constitutes desertion, she cannot succeed in this latter contention. The original separation not being a desertion, it can only be turned into desertion by one party, in good faith, demanding of the other a resumption of the marital relationship and the refusal of the latter to accede thereto.

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McAllister vs. McAllister, 62 A. R., 1131 (Magie, Ch., 1906).

30 So far from the petitioner showing a demand upon her part for a resumption of the marital relationship and a willingness upon her part to return thereto, all of the evidence shows that she refused to go back to her husband excepting upon terms formulated by her. No citations are necessary to establish the doctrine that a wife must accept the situation that her husband is able to maintain, and cannot refuse to live with him because of his inability to support her in the way she demands—that is to say, she cannot so do and then claim that he has deserted her because of his non-fulfilment of her demands.

The petition must, therefore, be dismissed.

IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

*Defendant.**On Petition for
Divorce.*

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Decree.

This cause coming regularly on to be heard in the presence of John S. Mackay, Esq., of counsel with the petitioner, and of William H. Speer, Esq., of counsel with the defendant, and the petition of the petitioner herein, and the answer of the defendant thereto having been read, and the proofs of the respective parties having been taken in open court, and said respective counsel having each consented in open court to the determination of the cause without argument, and the court having duly considered said pleadings and proofs ; and it appearing to the court that the said defendant did not desert the said petitioner in manner and form as the said petitioner in her petition complains, and that the said petitioner is not entitled to the relief sought and prayed for by her in her said petition,

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It is on this eighteenth day of April, A. D., one thousand nine hundred and six, on motion of

William H. Speer, solicitor for and of counsel with said defendant, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the petitioner's petition be and the same is hereby dismissed, but without costs as against said petitioner.

10 And it is further ordered that the questions of the custody, maintenance and right of visitation of the children of said petitioner and defendant be left for future determination upon due application to be made by either party to this suit.

Respectfully advised,

LINDLEY M. GARRISON,

V. C.

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IN CHANCERY OF NEW JERSEY.

Between

JENNIE G. PROVOST,

Petitioner,

and

WINFIELD PROVOST,

*Defendant.**On Petition, etc.*

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Notice of Appeal.

The petitioner, Jennie G. Provost, hereby appeals from the final decree made in this Court in the above entitled cause wherein it is ordered, adjudged and decreed that the petitioner's petition be dismissed, to the Court of Errors and Appeals, the last resort in all causes.

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Dated December 1906.

JOHN S. MACKAY,
Solicitor for Petitioner.

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

MILTON DEMAREST,
Of Counsel.

Service acknowledged by the defendant's solicitor.

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Dec. 22, 1906.

WM. H. SPEER,
Of Counsel with Respondent.

was guilty of wilful, continued and obstinate desertion for the space of two years in manner and form as alleged in the petition of Jennie G. Provost and that the said petitioner, Jennie G. Provost, is entitled to the relief prayed for in and by her petition in said cause.

Your petitioner, therefore, prays that the said decree of the Chancellor as hereinbefore set forth may be reversed, set aside and for nothing holden, and that your petitioner may have such further relief in the premises as this Honorable Court may deem meet. 10

JOHN S. MACKAY,

Solicitor and of Counsel with Appellant.

Service acknowledged by defendant's solicitor.
December 22, 1906.

WM. H. SPEER,

Counsel with Respondent. 20

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

Between

JENNIE G. PROVOST,

Petitioner,

Appellant,

and

WINFIELD PROVOST,

Defendant,

Respondent.

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Answer to Petition of Appeal.

The answer of the above named respondent to the petition of appeal of the above named appellant.

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This respondent, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the eighteenth day of April, A. D., nineteen hundred and six, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated ; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

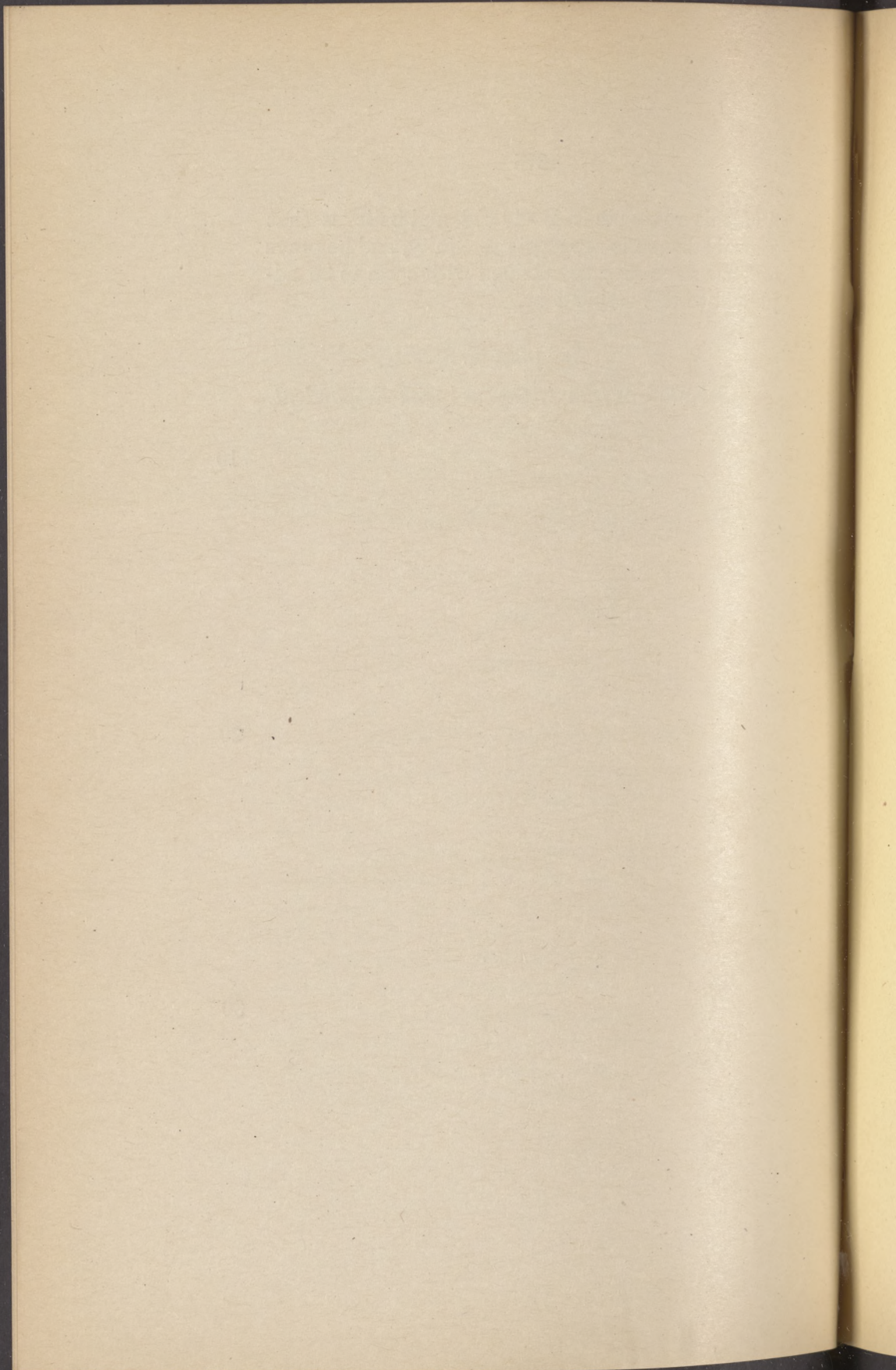
WILLIAM H. SPEER,

Solicitor for and of Counsel with Respondent.

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NEW JERSEY
STATUTES AND APPEALS

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