

In the Privy Council

44-OF-1938  
No.....of 1938.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE HONOURABLE JOHN E. BROWNLEE,

(Defendant), Appellant

and

VIVIAN MacMILLAN,

(Plaintiff), Respondent.



**RECORD OF PROCEEDINGS**

INDEX TO PART I.

No.	Description of Document	Date	Page
IN THE SUPREME COURT OF ALBERTA			
1	Statement of Claim - - - -	22nd September 1933 -	1
2	Order for Service <i>ex juris</i> - - - -	22nd September 1933 -	4
3	Statement of Defence - - - -	10th November 1933 -	5
4	Counterclaim - - - -	10th November 1933 -	6
5	Defence to Counterclaim - - - -	17th November 1933 -	8
6	Joinder of Issue - - - -	17th November 1933 -	9
7	Opening of Proceedings at Trial - - - -	25th June 1934 -	10
8	Extracts from Examination for Discovery of Defendant - - - -	25th June 1934 -	12
<i>Plaintiff's Evidence.</i>			
9	Vivian MacMillan - - - -	25th June 1934 - 26th June 1934 - 27th June 1934 -	29
10	Jessie Elgert - - - -	27th June 1934 -	143
11	Letha Maud MacMillan - - - -	27th June 1934 -	145
12	Dorothy Kennedy MacKay - - - -	27th June 1934 -	154
13	Emma Jane MacKay - - - -	27th June 1934 -	155
14	Allan D. A. MacMillan - - - -	27th June 1934 -	156
14(a)	Discussion - - - -	27th June 1934 -	160
15	Allan D. A. MacMillan - - - -	27th June 1934 -	162
16	John Keith Fife - - - -	27th June 1934 -	163

INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

No.	Description of Document	Date	Page
<i>Defendant's Evidence.</i>			
17	Opening of Case for Defendant - - -	28th June 1934	168
18	John Edward Brownlee - - -	28th June 1934	170
19	Florence Brownlee - - -	29th June 1934	220
20	Emily Anna Brown - - -	29th June 1934	240
21	Orrin Henry Snow - - -	29th June 1934	243
22	Frederick Smailes - - -	29th June 1934	244
23	Jean McCloy (Mrs. Jean Saunders) - -	29th June 1934	247
24	Ella Loretta Lush - - -	29th June 1934	249
25	Walter Henry Hancock - - -	29th June 1934	250
26	Duncan Grant - - -	29th June 1934	251
27	Rita Picard - - -	29th June 1934	253
28	James Holloway - - -	29th June 1934	253
29	David Nicolson - - -	29th June 1934	254
30	Elora Robertson - - -	29th June 1934	255
31	Extracts from Examination for Discovery of Plaintiff, Allan D. A. MacMillan -	29th June 1934	257
32	Discussion - - -	29th June 1934	258
33	Dismissal of Counterclaim - - -	30th June 1934	260
34	Application for Amendment to Statement of Claim - - -	30th June 1934	260
<i>Plaintiff's Evidence in Rebuttal.</i>			
35	Letha Maud MacMillan ( <i>recalled</i> ) - -	30th June 1934	261
36	Vivian MacMillan ( <i>recalled</i> ) - -	30th June 1934	264
37	Jessie Elgert ( <i>recalled</i> ) - -	30th June 1934	265
38	Discussion - - -	30th June 1934	267
39	Judge's Charge to Jury - - -	30th June 1934	269
40	Verdict of Jury - - -	30th June 1934	275
41	Motion for Nonsuit - - -	30th June 1934	275
42	Formal Judgment - - -	2nd July 1934	278
43	Reasons for Judgment:—	2nd July 1934	279
IN THE SUPREME COURT OF ALBERTA (APPELLATE DIVISION)			
44	Notice of Appeal - - -	19th September 1934	280
45	Agreement as to Contents of Appeal Book	26th September 1934	281
46	Order to Dispense with Printing of Certain Exhibits - - -	25th October 1934	282
47	Clerk's Certificate - - -	undated	283
48	Formal Judgment - - -	2nd February 1935	284
49	Reasons for Judgment:—		
	(a) Harvey, C.J.A. - - -	2nd February 1935	285
	(b) Clarke, J.A. ( <i>dissenting</i> ) - -	2nd February 1935	304
	(c) Mitchell, J.A. - - -	2nd February 1935	308

No.	Description of Document	Date	Page
	Reasons for Judgment (continued) :		
	(d) Ford, J.A. - - - - -	2nd February 1935	310
	(e) Lunney, J.A. ( <i>dissenting</i> ) - - - - -	2nd February 1935	311
50	Order Approving Security for Costs -	29th March 1935	314
51	Agreement as to Contents of Appeal Book	May 1935	315
52	Registrar's Certificate - - - - -	6th September 1935	316
53	Solicitors' Certificate - - - - -	undated	317
	IN THE SUPREME COURT OF CANADA		
54	Formal Judgment - - - - -	1st March 1937	317
55	Reasons for Judgment:		
	(a) Sir Lyman Duff, C.J. - - - - -	1st March 1937	318
	(b) Rinfret, J. - - - - -	1st March 1937	324
	(c) Davis, J. ( <i>dissenting</i> ) - - - - -	1st March 1937	324
	(d) Kerwin, J. - - - - -	1st March 1937	327
	(e) Hudson, J. - - - - -	1st March 1937	328
	IN THE PRIVY COUNCIL		
56	Order in Council Granting Special Leave to Appeal to His Majesty in Council - -	1st July 1937	328

## INDEX TO PART II

Exhibit Mark	Description of Document	Date	Page
1	Letter from Plaintiffs' Solicitors to Defendant - - - - -	3rd August 1933	365
2	Letter from Vivian MacMillan to 10041 101st Street, Edmonton - -	5th July 1930	332
3	Copy of letter from Alberta College to Vivian MacMillan - - - - -	6th July 1930	332
4	Letter from Vivian MacMillan to Mrs. Brownlee, with envelope - - - -	27th September 1931	333
5	Paper containing Diet list of female plaintiff, with envelope - - - -	4-7th April 1932	335
6	Letter from Mrs. MacMillan to female plaintiff - - - - -	12th August 1933	365
7	Hospital Record (except temperature chart, not printed) - - - - -	undated	353
8	Four diaries, 1930, 1931, 1932 and 1933 (not printed) - - - - -	-----	365
9	Personal file of female plaintiff in Civil Service Commission Office - - - -	undated	336

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN:

THE HONOURABLE JOHN E. BROWNLEE  
(Defendant), Appellant.

AND

VIVIAN MacMILLAN  
(Plaintiff), Respondent.

RECORD OF PROCEEDINGS

PART I

No. 1

Statement of Claim

IN THE SUPREME COURT OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

*In the  
Supreme  
Court of  
Alberta*

No. 1  
Statement  
of Claim  
22nd  
September,  
1933.

10

1. The plaintiff Allan D. MacMillan is an assistant locomotive foreman residing at Edson and Vivian MacMillan is an unmarried woman born June 10th, 1912, and is the daughter of the said Allan D. MacMillan. The defendant is the Premier of the Province of Alberta and resides in Edmonton.

20 2. In and prior to the month July, 1930, the plaintiff Vivian MacMillan was a school girl living with her parents at Edson, and out of school hours and on holidays rendering household services to the male plaintiff whose only daughter she was.

3. In or about the month of July A.D. 1930, the defendant came to Edson on political business and as the male plaintiff was then Mayor of Edson it was his duty to entertain the defendant. The male plaintiff had no suspicion that it was unsafe or unwise to introduce the defendant to the female members of his family and took the defendant riding in his automobile with his wife and daughter. The female plaintiff was then a  
30 girl just past her eighteenth birthday.

4. The defendant was attracted by the youth and innocence of the said Vivian MacMillan and then formed the intention of enticing her from her father's home and of seducing her. He therefore proceeded to pay marked attention to the said Vivian MacMillan and persuaded her to leave her father's home and to go to Edmonton, promising to procure for her a position with the Provincial Government and promising to look after her well-being and that he, the defendant, would act as guardian to her while she was in Edmonton.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 1  
Statement  
of Claim  
22nd  
September,  
1933.  
*continued.*

5. By the enticement of the defendant the said Vivian MacMillan did leave her father's home at Edson and come to Edmonton, where she took a business course to fit her for a position in the employ of the Government.

6. Having succeeded in getting the said Vivian MacMillan to Edmonton the defendant with false statements wiles and flattery and expert love-making, proceeded with his design for her seduction. He placed a government car at her disposal and frequently took her for automobile drives and took her to his house and introduced her to his family and told her she was to consider his house as her home. 10

7. During the months of September and October 1930 while driving in the country on different occasions at night, he told her his wife was an invalid, that he and his wife had not lived together for years and that he was starved for affection, and unless the said Vivian MacMillan would give him her love he would be forced to resume marital relations with his wife, which would probably kill her. He told her that he had loved her devotedly from the first time he saw her and that it was her duty to give him the love he required. He told her that it was not wrong for her to have sexual relations with him but on the other hand was for the good of all concerned. He laughed at her old fashioned scruples. He told her that he was lonely and unhappy and needed a confidant and that he could not continue as premier unless he had her for a lover and confidant and that if she gave him the affection he had to have if he was to go on, that anything he accomplished in the future would be owing to her. All the said statements made by the defendant were false and made only with the intent of accomplishing the seduction of the said Vivian MacMillan. At the same time the defendant by caresses, kisses and fondling exerted all his arts of seduction. 20

8. The said Vivian MacMillan was an inexperienced and innocent girl of eighteen and by his false statements, wiles, flattery and expert love-making the defendant managed to make the said Vivian MacMillan feel that it would not be wrong to be the defendant's confidant and sweetheart, but on the contrary it was her duty to save the unhappy, lonely Premier for his important work to his Province and his Country and to save his wife from the danger of marital relations, and she yielded to his entreaties and was seduced by him on a lonely country road in October, A.D. 1930. 30

9. Therefore, from October 1930, to June 1933 the defendant required the said Vivian MacMillan to be at his disposal whenever he required her. He procured for her a position in the Provincial Government in an office close to his own. On Saturday afternoons and Sundays he required her to come to his office in the Parliament Buildings, where he insisted on having connection with her. In good weather he took her driving in various Government cars and insisted on having connection with her 40

on different side roads. At different times the defendant insisted on the said Vivian MacMillan staying at the defendant's house, where he had connection with her. During the months of April, May and June 1932 the defendant insisted on the female plaintiff staying for seven weeks at the defendant's house, and every night that the defendant was home he insisted on the said Vivian MacMillan having connection with him. When the said Vivian MacMillan objected to doing his wishes the defendant threatened her with the loss of her position with the Provincial Government.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 1  
Statement  
of Claim  
22nd  
September,  
1933.  
*continued.*

10 10. Solely by reason of the defendant's actions to her, the said Vivian MacMillan became physically and mentally ill and suffered a nervous breakdown and was ill during the months of June, July and August and September 1932 and was forced to leave her position and return to her father's home.

11. When the said Vivian MacMillan returned to Edmonton in October 1932, the defendant, in spite of her illness, insisted upon her resuming relations with him, and she many times visited him in his office alone, or accompanied him in a motor car at night alone.

20 12. In or about January 1933, a young man to whom the said Vivian MacMillan was becoming deeply attached proposed marriage and the said Vivian MacMillan properly felt that she could not accept his proposal of marriage until she disclosed her relations with the defendant. She did so and the proposal of marriage was withdrawn and the said Vivian MacMillan lost her chance of marriage and a home of her own.

30 13. By reason of the acts of the defendant as above stated the female plaintiff was forced from October A.D. 1930 to lead a lonely and unhappy existence. The defendant forced her to give up the companionship of young people of her own age and devote herself entirely to him. She wished many times to break off her relations with the defendant but the defendant would not allow her to do so. She had no confidant and had to lead a life of deception and stealth to prevent her relations with the defendant becoming known. She was unable to confide in her parents. Owing entirely to the acts of the defendant above stated, the female plaintiff has suffered in health and has lost her natural enjoyment of life and her prospects for future enjoyment.

40 14. Owing to the continued acts of the defendant in ordering the female plaintiff to meet him in his office in the Parliament Buildings and on the public thoroughfares of the City of Edmonton, the story of the defendant's relations with the female plaintiff naturally became widely known and the female plaintiff has been subjected to scorn, ridicule and annoyance, and her prospects for a normal, happy life have been seriously impaired.

15. The male plaintiff, by the acts of the defendant, has lost the

*In the  
Supreme  
Court of  
Alberta*

services of his daughter and has suffered loss and damage and the female plaintiff, by reason of the acts of the defendant as above stated, has suffered loss and damage.

No. 1  
Statement  
of Claim  
22nd  
September,  
1933.  
*continued.*

16. The plaintiffs plead the provisions of Chapter 102 of the Revised Statutes of Alberta, 1922.

WHEREFORE the Plaintiff claims—

- (1) Such damages as the Court may award.
- (2) Costs.

DATED at the City of Edmonton in the Province of Alberta, AND DELIVERED by Neil D. MacLean, Barrister, 616 McLeod Building, solicitor for the Plaintiffs whose address for service is care of the said solicitor. 10

ISSUED out of the office of the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, in the Court House, Edmonton, this 22nd day of September A.D. 1933.

“R. P. Wallace”  
Clerk of the Court. (Seal)

No. 2  
Order for  
Service  
*ex juris*  
22nd  
September,  
1933.

**No. 2**

**Order for Service Ex Juris**

BEFORE THE HONOURABLE  
MR. JUSTICE BOYLE  
IN CHAMBERS, EDMONTON

}  
}

FRIDAY the 22nd day of  
SEPTEMBER, A.D. 1933.

20

UPON motion by Counsel on behalf of the plaintiffs;

IT IS ORDERED that the plaintiffs have leave to serve the Statement of Claim herein upon the defendant at the City of Ottawa or elsewhere within the Province of Ontario.

IT IS FURTHER ORDERED that service of a copy of the Statement of Claim herein and of a copy of this order upon the defendant at the City of Ottawa or elsewhere within the Province of Ontario shall be deemed good and sufficient service of the Statement of Claim herein. 30

IT IS FURTHER ORDERED that the defendant shall have 25 days from the date of service upon him of the Statement of Claim herein, within which to file a Defence or Demand of Notice.

“J. R. Boyle”  
J.

ENTERED at Edmonton, this 22nd day of September, A.D. 1933.

“R. P. Wallace” (Seal)  
C.S.C.A.



**No. 3**  
**Statement of Defence**

*In the  
Supreme  
Court of  
Alberta*

No. 3  
Statement  
of Defence  
10th  
November,  
1933.

1. The defendant specifically denies each and every allegation contained in paragraph 2 of the Statement of Claim.
2. The defendant specifically denies each and every allegation contained in paragraph 3 of the Statement of Claim.
3. The defendant specifically denies each and every allegation contained in paragraph 4 of the Statement of Claim.
- 10 4. The defendant specifically denies each and every allegation contained in paragraph 5 of the Statement of Claim.
5. The defendant specifically denies each and every allegation contained in paragraph 6 of the Statement of Claim.
6. The defendant specifically denies each and every allegation contained in paragraph 7 of the Statement of Claim.
7. The defendant specifically denies each and every allegation contained in paragraph 8 of the Statement of Claim.
8. The defendant specifically denies each and every allegation contained in paragraph 9 of the Statement of Claim.
- 20 9. The defendant specifically denies each and every allegation contained in paragraph 10 of the Statement of Claim.
10. The defendant specifically denies each and every allegation contained in paragraph 11 of the statement of Claim.
11. The defendant specifically denies each and every allegation contained in paragraph 12 of the Statement of Claim.
12. The defendant specifically denies each and every allegation contained in paragraph 13 of the Statement of Claim.
13. The defendant specifically denies each and every allegation contained in paragraph 14 of the Statement of Claim.
- 30 14. The defendant specifically denies each and every allegation contained in paragraph 15 of the Statement of Claim.
15. The Statement of Claim is false, frivolous, vexatious, scandalous and an abuse of the process of the Court and the defendant will contend at or before the trial of this action that it ought to be struck out and expunged from the records of the Court.
16. Chapter 102 of the Revised Statutes of Alberta pleaded by the plaintiffs in paragraph 16 of the Statement of Claim has no application to any cause of action set up by the plaintiffs or either of them.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 3  
Statement  
of Defence  
10th  
November,  
1933.  
*continued.*

17. The defendant says that the male plaintiff's Statement of Claim discloses no cause of action.

18. The defendant says that the female plaintiff's Statement of Claim discloses no cause of action.

19. The defendant says that the Statement of Claim discloses no cause of action.

20. The defendant says that the alleged causes of action of the male plaintiff are improperly joined with each other and with the alleged cause of action of the female plaintiff and the defendant will so contend at or before the trial of this action. 10

WHEREFORE THE DEFENDANT PRAYS that this action be dismissed with costs.

DATED at Calgary, Alberta, this 10th day of November, A.D. 1933,  
and

DELIVERED by M. M. PORTER, K.C., 436 Lougheed Building, Calgary, Alberta, solicitor for the defendant whose address for service herein is in care of Messrs. Friedman, Lieberman and Newson, Bank of Commerce Building, Edmonton, Alberta.

No. 4  
Counter-  
claim  
10th  
November,  
1933.

—  
**No. 4  
Counterclaim**

20

**BETWEEN:**

**THE HONOURABLE JOHN. E. BROWNLEE,**  
**Plaintiff by Counterclaim,**

and

**VIVIAN MacMILLAN AND JOHN CALDWELL**  
**Defendants by Counterclaim.**

1. The defendant by counterclaim Vivian MacMillan resides at Edson in the Province of Alberta. The defendant by counterclaim John Caldwell is a third year student in attendance at the Faculty of Medicine at the University of Alberta in the City of Edmonton in the Province of Alberta. The plaintiff by counterclaim is the Premier of Alberta, a member of the law Society of Alberta and one of His Majesty's Counsel learned in the law. 30

2. The defendants by counterclaim wrongfully conspired with each other and with divers other persons to the plaintiff by counterclaim at

present unknown with intent to obtain money from the plaintiff by counterclaim by threatening to declare and endeavor to cause it to be believed that the plaintiff by counterclaim had enticed the female defendant by counterclaim from her father's home in Edson to the City of Edmonton, in the Province of Alberta, and thereafter had had illicit sexual relations with her threatening in default of payment of money to bring action for damages for the alleged acts against the plaintiff by counterclaim the said defendants by counterclaim and their fellow conspirators well knowing the said allegations to be untrue.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 4  
Counter-  
claim  
10th  
November,  
1933.

*continued.*

10     3. The defendants by counterclaim conspired with each other and with divers persons to the plaintiff by counterclaim at present unknown to secure for the defendant by counterclaim Caldwell a reward or profit to be paid by one or more of his fellow conspirators in consideration of the defendants by counterclaim taking such steps as would be designed to bring into disrepute the character of the plaintiff by counterclaim.

20     4. In furtherance of the said conspiracies the defendants by counterclaim and their fellow conspirators invented and made the allegations contained in the Statement of Claim and maliciously asserted and declared and endeavored to cause it to be believed that the plaintiff by counterclaim had been guilty of the acts therein alleged the said defendants by counterclaim and their fellow conspirators well knowing each of the said allegations to be untrue.

30     5. The defendants by counterclaim having failed in their attempt to induce the plaintiff by counterclaim to pay money by threatening to bring an action making allegations to their knowledge untrue caused the Statement of Claim in this action to be issued maliciously well knowing that its contents were untrue and caused it to be published in the press with the intent that by the publication of its contents the public would be induced to believe the allegations contained therein and that the reputation of the plaintiff by counterclaim would be damaged thereby.

6. The allegations in the Statement of Claim issued in furtherance of the said conspiracy are false, frivolous, vexatious and malicious and constitute a breach of the processes of this Honourable Court and the issuing of the said Statement of Claim and the publication thereof in the daily press has caused the plaintiff by counterclaim to be much injured in his public profession and personal reputation, credit and good name and to be brought into public hatred, ridicule and contempt.

40     7. The defendants by counterclaim are continuing to conspire with each other and with divers other persons to the plaintiff by counterclaim at present unknown for the purpose of inducing other persons to make allegations and do such acts or take such steps calculated to damage the reputation of the plaintiff by counterclaim.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 4  
Counter-  
claim  
10th  
November,  
1933.  
*continued.*

WHEREFORE THE PLAINTIFF BY COUNTERCLAIM CLAIMS:

- (a) Damages in such sum as may be awarded by the Court.
- (b) Special damages in the sum of ten thousand dollars (\$10,000.00).
- (c) An injunction.
- (d) Costs.

DATED at Calgary, Alberta, this tenth day of November, A.D. 1933,  
and

DELIVERED by M. M. PORTER, K.C., 436 Lougheed Building,  
Calgary, Alberta, solicitor for the plaintiff by counterclaim whose address  
for service herein is in care of Messrs. Friedman, Lieberman and Newson, 10  
Barristers, etc., Bank of Commerce Building, Edmonton, Alberta.

No. 5  
Defence to  
Counter-  
claim  
17th  
November,  
1933.

No. 5  
Defence to Counterclaim

1. The defendants by counterclaim deny that they conspired with each other or with any other person to obtain money from the plaintiff by counterclaim and deny that either of them made any threats of any nature or kind in default of payment, either as alleged in Paragraph 2 of the Counterclaim or at all.

2. The defendants by counterclaim deny that they conspired with each other or with any other person to secure any reward for the defendant 20 by counterclaim Caldwell for any consideration, either as alleged in Paragraph 3 of the Counterclaim or at all.

3. The defendants by counterclaim deny that they or either of them, or any one else, invented or made up the allegations contained in the Statement of Claim or asserted or declared or endeavoured to cause it to be believed, maliciously or otherwise, that the plaintiff by counterclaim had been guilty of any act which he had not in fact committed.

5. The defendants by counterclaim made no attempt to induce the plaintiff by counterclaim to pay money by threatening to bring action or by threatening to publish either in an action or otherwise any untrue state- 30 ments, nor did the defendant by counterclaim Caldwell have anything to do with the issuing of the Statement of Claim in this action. The statement of claim in this action was not issued maliciously or with knowledge that its contents were untrue, nor did the defendants by counterclaim have anything to do with the publication of the said Statement of Claim in the Press.

5. Both defendants by counterclaim honestly believe all the allegations contained in the Statement of Claim to be true and say that the plain-

tiff by counterclaim, the Honourable John E. Brownlee, knows that all the allegations in the said Statement of Claim are true and further say that this Counterclaim is not brought in good faith but is merely an attempt by the Honourable John E. Brownlee to influence public opinion in his favour and he well knows that neither of the defendants by Counterclaim have any money or would be able to pay a judgment of \$10,000.00 or any sum, if the said Honourable Jonh E. Brownlee secured a judgment against them or either of them.

6. The defendants by Counterclaim have never conspired with each  
10 other or with any other person nor are they now conspiring to induce any other person to make allegations or to do acts or to take steps calculated to damage the reputation of the Honourable John E. Brownlee.

WHEREFORE the defendants by counterclaim ask that this counterclaim be dismissed with costs.

DATED at Edmonton, in the province of Alberta, this 17th day of November A.D. 1933 AND DELIVERED by NEIL D. MACLEAN, K.C., 616 McLeod Building, Edmonton, solicitor for the defendants by Counterclaim, whose address for service is in care of the said solicitor.

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**No. 6**

**Joinder of Issue**

20

The Plaintiffs join issue on the Statement of Defence herein save insofar as the said Statement of Defence contains admissions.

DATED at Edmonton, in the Province of Alberta, this 17th day of November A.D. 1933, AND DELIVERED by Neil D. Maclean, K.C., 616 McLeod Building, Edmonton, solicitor for the Plaintiffs, whose address for service is in care of the said solicitor.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 5  
Defence to  
Counter-  
claim  
17th  
November,  
1933.  
*continued.*

No. 6  
Joinder of  
Issue  
17th  
November,  
1933.

## Opening of Proceedings at Trial

In the  
Supreme  
Court of  
Alberta

—  
No. 7  
Opening of  
Proceedings  
at Trial  
25th June,  
1934.

EVIDENCE AND PROCEEDINGS AT TRIAL of this action before The Honourable Mr. Justice Ives and a jury at Edmonton, commencing on Monday, June 25th, 1934.

Mr. N. D. Maclean, K.C., and Mr. R. H. C. Harrison,  
Counsel for the Plaintiffs.

Mr. A. L. Smith, K.C., and Mr. M. M. Porter, K.C.,  
Counsel for the Defendant.

MR. SMITH: If Your Lordship pleases, I am asking leave to appear 10  
without robes?

THE COURT: Yes.

MR. MACLEAN: I have suggested to my friend that we take our  
challenges alternately.

THE COURT: Do you agree about that?

MR. SMITH: Yes, My Lord.

MR. MACLEAN: I wrote my friend last week drawing his attention  
to a stenographer's error in the Statement of Claim and telling him I  
intended to apply for leave to amend. It is in Paragraph 12 of the State-  
ment of Claim. The allegation is: "In or about June 1933". That should be 20  
"In or about January 1933". And I am applying for leave to amend from  
"June" to "January".

MR. SMITH: No objection.

MR. MACLEAN: May it please your Lordship and Gentlemen of the  
Jury. There has been a great deal of newspaper comments in regard to  
this case. I presume that most, if not all of you, have read what has  
appeared in the press. I ask you on the trial of this case as far as is  
humanly possible to put out of your mind any comments that you may  
have heard on this case and any reports of this case that you may have  
read in the press and try as far as is possible to try this case according to 30  
the evidence. I am not going to waste any time. I am going to tell you  
just who the parties to this action are and what their actions are about.  
The first plaintiff in this thing is Allan D. MacMillan. He is a mechanic  
living at Edson. He is assistant foreman of the Canadian National Shops  
at Edson. His co-plaintiff is his daughter Vivian. She is now 22 years of  
age and until 1930 when she was 18, resided with her father and lived at  
home and went to school. The defendant in the case is the Premier of  
Alberta. He is now 50 years of age. I do not need to tell you more about  
him. He is a lawyer by profession. The evidence which will be put before  
you will show that Vivian MacMillan first met the Premier at Edson in the 40

summer of 1928 and when she was a school girl of 16. The Premier was there on a visit with the Lieutenant Governor. He returned to Edson in 1930 in the middle of July and was going out to a picnic at a place called McLeod Valley which is about 28 miles from Edson. The male plaintiff was Mayor of Edson at that time and as he was a supporter of the Labor Party of whom Mr. Pattinson was then a representative, Mr. Pattinson had arranged with Mr. MacMillan that Mr. MacMillan should drive the Premier out to this picnic when he came to Edson. They had lunch at Pattinson's—Mr. and Mrs. MacMillan and Mr. and Mrs. Pattinson—and

10 after lunch they started out for McLeod Valley. Mr. MacMillan was driving his car and in the front seat with him was his wife Mrs. MacMillan, Vivian's mother. In the back seat were the Premier, a young boy the son of Mr. Pattinson, and Miss Vivian MacMillan. There will be evidence submitted to you that on that trip the Premier suggested to Miss MacMillan that instead of going on with music as she intended to that she come into Edmonton, take a business course, and he would act as guardian to her while she was there, his house would be open to her and that he would assist her in finding a position. There will be evidence that that conversation influenced and changed her whole life and that instead of going on as

20 she had intended with music she did come into Edmonton the following month to take a business course at Alberta College and at the completion of it got a position in the Parliament Buildings in the Attorney General's Department. There will be evidence put before you that immediately after Vivian MacMillan came to town the Premier got in touch with her to invite her to his house, did make her welcome there and Mrs. Brownlee welcomed her also and made her feel at home and encouraged her to come. There will be evidence that shortly after she came to Edmonton the Premier began to take her on rides in the country in the car alone at night, that he told her that he had been in love with her from the first time he met her,

30 that he was leading a lonely unhappy life, that his wife was a wife to him in name only, and that as his wife had been so good to her it was her duty to submit to his desires, and she did. And for over two and a half years the Premier had connection with Vivian MacMillan at different places in automobiles, in his own house and in his office in the Parliament Buildings. In the Fall of 1932 Vivian MacMillan met a young man of whom she became exceedingly fond and he with her. In January of 1933 he proposed marriage to her. She told him that she could not marry him, and breaking down, gave him the reason why and told him the whole story of her relations with the defendant. She tried to break off with the Premier and

40 he refused to allow it. Finally the matter was, as told by her, that she broke down and told her father and mother the whole story. Gentlemen of the Jury I do not know what you and I would do under similar circumstances. Mr. MacMillan instructed this action to be brought, and it has been brought. The Premier has filed a defence to this action saying the whole story is a concoction and conspiracy from beginning to end and there is not one word of truth in it. Now there are three actions; there is the

*In the  
Supreme  
Court of  
Alberta*

—  
No. 7  
Opening of  
Proceedings  
at Trial  
25th June,  
1934.  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

No. 7  
Opening of  
Proceedings  
at Trial  
25th June,  
1934.  
*continued.*

action of the father A. D. MacMillan who claims that the Premier enticed or got his daughter away from his house and seduced her. That is one action. There is the action of the girl herself for her seduction and consequent damage and the ill health she blames on that. That is two actions arising out of the same facts. And then there is the Counterclaim by the Premier for damages against Vivian and young Caldwell who is the man who proposed marriage to her. And the charge in the Premier's action is that these two, Vivian and Caldwell, conspired together to extort money from him, to blackmail him in other words, by threatening that if he did not pay money they would bring this action. You will notice that Mr. MacMillan the father who is the plaintiff, is not charged by the Premier with any part in this conspiracy. He is not a defendant to the Premier's counterclaim. 10

My Lord, will you instruct the Jury what an examination for Discovery is? I wish to read now some of the examination for discovery of Mr. Brownlee.

THE COURT: Under our practice at some stage of the proceedings before trial the parties themselves may be summoned respectively by the opposite party to be examined on discovery. They are sworn upon such examination and such answers as they give to proper questions on discovery may be used at the trial by the opposite party as an admission or to the extent of the answer. 20

No. 8  
Extracts  
from Ex-  
amination  
for  
Discovery  
of  
Defendant

### No. 8

#### Extracts from Examination for Discovery of Defendant

MR. HARRISON: I wish to submit these extracts from the examination of Mr. John Brownlee taken in the Court House here:—

"1. Q. THE REPORTER: Have you been sworn for this examination? A. Yes.

2. Q. MR. MACLEAN: Mr. Brownlee, you are the defendant in this action, and you have been sworn on this examination? A. Yes. 30

3. Q. Do you remember an occasion, Mr. Brownlee, on the 12th of August last, when you were returning from the East with the Banking Commission, and got off the C.N.R. train early in the morning of August 12th? A. I do.

4. Q. And you and Mrs. Brownlee then drove to Edson? A. Yes."

"7. Q. And then you and Mrs. Brownlee got to Edson about what time? A. Oh, I would say around eleven o'clock, speaking from memory.

"8. Q. And you saw Mrs. MacMillan? A. I saw Mrs. MacMillan."



"12. Q. Did you understand that Mr. MacMillan was one of the parties to the action, at that time? A. At that time I did not. Your letter didn't say so.

"13. Q. By the way, that letter was dated August the 3rd, 1933? A. My recollection is that it was the 2nd, but I may be out a day.

MR. MACLEAN: Will you produce the letter?

MR. SMITH: I haven't got it with me. If you have a copy, we will accept that.

10 "14. Q. MR. MACLEAN: Is that a copy of the letter that you received, Mr. Brownlee? A. That is a copy of the letter, yes. It was dated August 3rd. (Copy of letter referred to put in and marked Exhibit 1).

Letter dated August 3rd, 1933, from Maclean, Short & Kane to the Hon. J. E. Brownlee, Parliament Buildings, marked Exhibit 1.

"35. Q. MR. MACLEAN: Do you know whether a detective named Burford has been acting for you, Mr. Brownlee. A. He wasn't acting for me.

"36. Q. You have no knowledge of any investigations that he has made? A. Mr. Burford was, I believe, engaged by the Attorney General's Department, at a certain time, to make certain enquiries.

20 "37. Q. Have you any information that Mr. Burford paid a gentleman named Coffin \$50.00 for an introduction to Mr. Caldwell, Junior? A. I have not."

MR. SMITH: "I have not." Now here is something in which I must interest myself. My friends for some reason I do not know are putting before this Jury a question that somebody gave somebody \$50.00 and the answer is "I have not" which of course makes it of no value one way or the other as evidence. I submit that matter like that on the discovery should not be put in.

30 THE COURT: It is a question of the effect of it, I suppose. If the question and reply is proper as discovery it is admissible to be read to the Jury.

MR. SMITH: The only thing I had in mind was the answer to the question "Have you any information that Mr. Burford paid a gentleman named Coffin \$50.00 for an introduction to Mr. Caldwell, Junior?" "I have not." Now what possible value can it be? And the answer is so binding—

MR. MACLEAN: Mr. Smith was present on the examination for discovery and he did not object.

MR. SMITH: Well the answer was "I have not" and I did not. This is just addressing the Court—

THE COURT: Go on Mr. Harrison. (Mr. Harrison continues):

"38. Q. Was it your money that was used, if any such was used? A. No.

"39. Q. That was the Attorney General's funds, if any? Do you know if it was the Attorney General's funds that were used to pay the \$400.00 to the Reverend Mr. Caldwell? A. I have told you that the only knowledge I have with respect to that is what I obtained from my solicitors, and that is privileged.

"40. Q. But you say that none of your money has been used to conduct investigations by either Dudley or Burford? A. I say that none of my money was used with respect to Mr. Dudley and none of my money was advanced to Mr. Burford at the time. 10

"41. Q. Have you paid Burford? A. Some time in the early part of this year, in order that there should be no misconception in the public mind of my using public funds, until such time at least as we might decide—as the Attorney General might decide—on appropriate action, I issued a cheque to the Government to reimburse the Government for the disbursements that the Attorney General had made to that date. I have no particulars of those, so far as I know.

"42. Q. How much was the cheque? A. Around fourteen hundred 20 dollars."

"45. Q. MR. MACLEAN: When was it that you gave that cheque? A. I couldn't say exactly. Somewhere around, I would say, the last of January or the first part of February, of this year, on condition that it be reimbursed to me, should—

"46. Q. What were the conditions? A. Should action prove later

"47. Q. No action has been taken as yet in regard to it? A. No action has been taken as yet.

"48. Q. Do you know a detective named Schwantje? A. I don't know him personally. I may say I have never met either Burford 30 or Schwantje.

"49. Q. Was Schwantje employed by you in this case? A. Not by me.

"50. Q. By whom was he employed? A. Well, all I can say, Mr. Maclean, is that any information I have comes to me secondhand. I didn't meet either of those men, but I have heard his name mentioned.

"51. Q. Is it your information that he was working on this case? A. I understand he was making some inquiries.

"52. Q. Working with Burford, was he not? A. I couldn't say that he was working with him.

"53. Q. Along the same line? A. Probably, yes. 40

"54. Q. Was he paid any money by you? A. What I said with respect to Burford applies equally to Schwantje.

"55. Q. He was paid by the Attorney General's Department? A. Yes.

"56. Q. And you reimbursed the Attorney General's Department? A. Yes.

"57. Q. Are Burford and Schwantje still getting money. A. I don't think so.

10 "58. Q. I am instructed that Burford and Schwantje are both being paid a certain amount per month? A. At the time I left for the East, following the time that I issued the cheque to the Attorney General's Department, I allowed them, I think it was—I am not sure; I think it was twenty-five dollars or something like that, so that they would be available in the event that they were needed in this trial.

"59. Q. Did you have any conversation with Mr. Harry Brace in regard to conducting investigations in this case?

MR. SMITH: I am objecting to that. Any of these discussions and so on which concern these people are investigations in preparation for this trial, and are therefore privileged.

20 MR. MACLEAN: I think I am entitled to know just how Mr. Brownlee is paying for his evidence.

MR. SMITH: It has been held in our Courts, in railway cases in Edmonton, that reports of employees, and made by employees with a view to trial, are all privileged.

MR. MACLEAN: No doubt the reports would be privileged, but what I want to know is: Did Mr. Brace have any instructions from Mr. Brownlee to conduct investigations in this case.

MR. SMITH: He can answer that.

30 A. Mr. Brace received no instructions from me. He was instructed by Members of the Government, while I was in the East, by the Attorney General.

"60. Q. He is under the Honourable Mr. Reid, is he not. A. Yes.

"61. Q. Did you have any conversation or communication with Mr. Reid in regard to employing Brace? A. The arrangement was made, according to my understanding, by the Ministers, during my absence."

"63. Q. Do you know—is it your information, that Mr. Brace did conduct certain investigations, and employ certain people, in regard to this case? A. Under instructions of the Attorney General, yes."

MR. HARRISON: My Lord, there is an error on page 16. And on

page 17 the same thing occurs and the questions I wish to put in are those starting with 89 on the bottom of page 16 and ending at question 95 inclusive on page 18. He has repeated the same seven numbers.

"89. Q. Now, Mr. Brownlee, prior to 1930, had you known Mr. MacMillan? A. I met Mr. MacMillan on one occasion, and one occasion only, prior to 1930.

"84. Q. You weren't then, friends in any sense? A. Absolutely not.

"85. Q. And how long before 1930 had you first met him? A. I couldn't say whether it was two years or three years; I haven't checked up, but either two or three years prior to 1930 I had paid my first official visit to Edson, with the Lieutenant Governor, and Mr. MacMillan was on the reception committee that day, and I met him casually—at least I met him as one of the reception committee. 10

"86. Q. Then you went out some time in July of 1930, to attend a picnic at Shining Bank? A. No. I went on my second official visit to Edson at the request of Mr. Chris Pattinson, Member for Edson.

"87. Q. It was purely political, then? A. Purely political. Well, I shouldn't use that word "political," because it might create a wrong impression; Mr. Pattinson is now a supporter of our Government. But I went in accordance with my practice of as far as I can, visiting the different parts of the Province, in order to give the local people an opportunity to discuss any of their problems. 20

"88. Q. There was a picnic that day at the Macleod River, was there not? A. As part of the program for the day, there was a gathering of farmers at Macleod River.

"89. Q. And you went there in the MacMillan car? A. I drove there in the MacMillan car. The arrangement was made before I went there.

"90. Q. Was that the first time you had met Miss Vivian MacMillan? A. It was the first time to my recollection, although, when Mr. MacMillan introduced us as I stepped up to the car, or just after we started away, she observed that she had met me once before; I didn't recall it. 30

"91. Q. And you sat in the back seat of the car? A. I was with Chris. Pattinson's boy, and Miss Vivian MacMillan, when I stepped up to the car, came out of the Pattinson house. Mr. MacMillan was standing by the side of the car; his wife was in the front seat. He had the back door open, and introduced me to his daughter, and I got into the back seat.

"92. Q. The answer to my question, then, is yes? A. Subject to what I said, yes.

"93. Q. And Mr. and Mrs. MacMillan were in the front seat of the car? A. Yes. 40

"94. Q. How long is that drive out to the Macleod River, from Edson?  
A. I think she says twenty-eight miles. I wouldn't deny that; she knows better than I do.

*In the  
Supreme  
Court of  
Alberta*

"95. Q. And did you have, during that drive, and conversation with Miss Vivian MacMillan, or her father, in regard to her coming to Edmonton? A. Well, there was a very casual conversation about what she was going to do, yes."

No. 8  
Extracts  
from Ex-  
amination  
for  
Discovery  
of  
Defendant  
*continued.*

"103. Q. After returning from Macleod River, where did you have dinner or supper that night? A. We had an awful time getting back  
10 from Macleod River. It rained very heavily, and the car was off the road half a dozen times, and we landed in Edson very wet and muddy, and half an hour late for a banquet that was to be held at the hotel. After that, we went to the MacMillan house, and I washed up and brushed my clothes (Dr. Wallace was with me), and we then went to the hotel to a banquet.

"104. Q. There was a dance after the banquet, was there not? A. A short dance; it didn't last very long.

"105. Q. Did you dance with Miss Vivian MacMillan? A. Yes.

"110. Q. Then when was the next time, and how was it that you met  
20 her the first time in Edmonton? A. I went home and told my wife, as I had told her when I got back from Edson about the conversation that I had had, and she hunted Miss Vivian MacMillan up, a day or two after that, and invited her over to the house.

"111. Q. Did you go with Mrs. Brownlee to the Y.W.C.A. in a car, to get her? A. I don't remember, but I may possibly have done that, the day she came over."

"113. Q. And, as I understand it, Mr. Brownlee, from then on Miss MacMillan was invited to your house very often? A. Yes, she started coming to the house; I wouldn't say frequently at first. She started  
30 coming over to meet some of the young people that were there. I remember that Miss Rice-Jones was stopping at my place from October to Christmas; and I may say that the acquaintance developed in an ordinary way, and that by December she was coming fairly frequently."

"115. Q. From Christmas 1930 on, then? A. From Christmas 1930 on, I would say that Vivian was over there nearly every Thursday afternoon, and nearly every Sunday. Mrs. Brownlee can speak better of that than I can.

"116. Q. But that is your memory, that it was practically every Thursday and Sunday? A. It developed into that, yes.

40 "117. Q. And that went on for how long? A. Well, so far as I know, until the 29th of June, 1933. I would not say that she came quite as

regularly the last half year, but we did not notice any great falling off."

"120. Q. Didn't you tell her at Edson that, if or when she came to town, you would have her over to the house and meet these young people? A. I told her to let us know when she came to the City, as I was quite sure Mrs. Brownlee would be glad to have her come over to the house. I didn't mean by that regularly, but there was a group of girls meeting there that would be a nice group of girls for her to get acquainted with. I never thought, at that time, that it would develop into her coming regularly.

"121. Q. It had nothing to do with politics? A. No. The Mac- 10  
Millans had been courteous to me that day, and had treated me very well, and Mr. MacMillan had been courteous the time I was up before, and we had put ourselves out quite a bit to be friendly to some of the young people coming from the different constituencies.

"122. Q. But there was no more reason for you being friendly to MacMillan's daughter, than there was to the daughters of a hundred men through the Province? A. No."

"124. Q. But, from Christmas, 1930, on, she was there twice a week? A. I would say that from Christmas, say the first year on; I couldn't say that she came twice a week in the early part of 1931, but I will say that 20  
it did develop to the point where, the days that the maid was out she would come over and be with Mrs. Brownlee, on the Thursday afternoons and the Sundays.

"125. Q. And was it a fact that you used to drive her home usually, on Thursdays and Sundays? A. Up until some time in 1932, yes, on some occasions with Mrs. Brownlee, and sometimes alone, as I did with all those that came to the house.

"126. Q. It is a fact, is it not, that, on many, many occasions, you would drive Vivian MacMillan home, on Thursday night and Sunday night? A. Unquestionably." 30

"131. Q. When did you start driving the big Studebaker? A. I got the big Studebaker in the summer of 1930.

"132. Q. And was that not at your disposal after that time? A. That was at my disposal, yes.

"133. Q. When was the smaller Studebaker, the grey one, 104? A. In 1932.

"134. Q. Was that the License Number, 32-884? A. 31-884 was the big one, and 104, I think, was the smaller one.

"135. Q. 31-884 was a large, eight-cylinder Studebaker? A. Yes.

"136. Q. Quite a big car? A. Yes." 40

"141. Q. And you had Chauffeur Munro at your service? A. Yes— not at my service only. He was at the service of the Government generally, for Government business, and, when he was not on other business he looked after my car.

"142. Q. Did you ever get Mr. Munro, on Thursday or Sunday nights to drive Miss MacMillan home? A. I never did, unless it was on a very odd occasion. I believe that there were occasions, when I was away, that Mrs. Brownlee would call up Mr. Munro and ask him to come over and get her."

10 "150. Q. Do you remember an occasion, in I think September of 1931 when Mrs. Brownlee I think was at the coast, when Miss MacMillan stayed for three days at your house? A. Yes.

"151. Q. Had you gone out of town on one of those days- A. Yes.

"152. Q. You were two nights in the house then, while she was there? A. I haven't checked up, Mr. Maclean, as to the exact time that she was there.

"153. Q. Do you contradict that statement of hers, that she was there for two nights while you were in the house? A. No, I don't contradict that statement."

20 "156. Q. In the summer of 1932, were your family out of town on vacation? A. Yes; they were at the lake.

"157. Q. At Sylvan Lake? A. For one month, yes.

"158. Q. And were you down there yourself? A. On Occasions.

"159. Q. You were in and out of town during that month? A. That is my recollection.

"160. Q. Was that July, or August, of 1932? A. July.

"161. Q. And, in 1933, your family were again at the lake, were they not? A. They were.

"162. Q. When did they go? A. They went on the 30th of June.

30 "163. Q. And how long did they stay? A. All through July, and some time in August. I was away on the Banking Commission, and I am not able to say what time they came back. I was in the East all through August.

"164. Q. Were you in town on the 27th of June, 1933? A. Yes."

"179. Q. On the 29th of June? A. Yes.

"180. Q. What occasion was that? A. That was the occasion that she bade Mrs. Brownlee good-bye when she was going to the lake. I took her home."

"183. Q. On the 3rd of July last, did you pick up Miss Vivian MacMillan on 97th Avenue, between 6th and 7th Streets? A. On the 3rd of July, I picked her up somewhere on the street; I don't know what the number is.

"184. Q. The street with the car-line that runs in front of the Parliament buildings? A. Yes, in front of Tupper's, her home where she was living.

"185. Q. You know that bridge that crosses 97th Avenue, and is a continuation of 7th Street? A. Yes.

"186. Q. Was it not just East of that bridge that you picked her up? 10  
A. I don't recall exactly. My recollection is that she was walking up and down, just in front of her house there. At what particular spot I picked her up, I don't know."

"189. Q. Monday would be— A. I got back from the lake on Monday the 3rd of July.

"190. Q. About what time of day did you get back from the lake? A. Sunday night as I recall. I usually drove in late Sunday night, probably around 12 o'clock or after.

"191. Q. Had the maid gone down to the lake too? A. Yes.

"192. Q. There was nobody in your house then except yourself? 20  
A. No, nobody in our house.

"193. Q. And what happened then; how did you get in touch with Miss MacMillan? A. I called her up some time during the day on Monday, as I recall.

"194. Q. In the office? A. In the office or at her house; I couldn't say.

"195. Q. Did you know where she was going to live? A. No, I don't think I did, so it must have been at the office.

"196. Q. You didn't know the name of the people that she was going to room with? A. No, not at that time; I did afterwards; she told me 30  
that night.

"197. Q. So your recollection is that you called her up during the day? A. I called her up, that is my recollection, and I told her that I would see her that evening, that I had a meeting for a while during the evening, but I would see her somewhere around half past nine or a quarter to ten.

"198. Q. And did you go for a drive. A. We did.

"199. Q. Where did you go? A. Out Stony Plain Road.

"200. Q. Did you turn off on any side roads? A. Yes. As we got



out Stony Plain Road a distance, I suggested that we might go around the square and back, and I then started up to go around the square, but the road became very hilly and narrow, and I finally stopped and backed up a distance, until I came to a drive into a farm house, and turned around and started back.

"201. Q. That road ran north of the Stony Plain Road? A. Right.

"202. Q. A rather hilly, sandy road? A. Well, it is hilly; I don't know whether it is sandy or not; I never examined it."

"204. Q. You were driving car 31-884 that evening? A. Yes."

10 "208. Q. And did you then, when you got back to Stony Plaid Road, turn off on another side road that led south of Stony Plain Road? A. My recollection is that, as we drove back, we turned and drove down another road for probably a mile; I don't know just how far, and back again.

"209. Q. That is a road that leads south off the Stony Plain Road, and east of Winterburn? A. Yes.

"210. Q. Then did you go on down further south, and turn east over to the road that leads to the Country Club? A. No.

20 "211. Q. You came back to the Stony Plain Road? A. That is my recollection, that we went down some distance, I don't know how far, and turned around and came back to the Stony Plain Road, and came into the City.

"212. Q. You came back to the Stony Plain Road? A. Yes.

"218. Q. About what time was it when you let her out? A. Half past eleven or somewhere around there or a quarter after; I couldn't say."

"220. Q. Then did you make any arrangement about her coming down to the cottage? A. Not that night.

"221. Q. Did you make any arrangement about her changing her holidays? A. I did not. I told her I thought it was very foolish for her to try."

30 "224. Q. And what did you tell her? A. Well, I told her that, in view of the lateness of the time, and the schedule had all been made, I didn't think it was advisable for me to attempt to make a change.

"225. Q. Now on July 5th did you pick up Miss MacMillan in front of the Administration Building on 9th Street? A. I did not in front of it; about half way between the corner and the Administration Building."

"228. Q. Yes. A. I got back into the City on the Wednesday night, the 5th, at around a quarter after nine, somewhere along there; I couldn't say the exact minute.

"229. Q. You had been out of town had you? A. I had. Mr. Reid and I had been down to Vermilion, had been speaking there, drove down in the morning and back in the evening; and he drove me to the house, and I called her and told her that I was going to go down to the Lake the next day, unless there was some unexpected change in my plans, and that as soon as I cleaned up I would go over and see her, and told her it would take me about twenty minutes.

"230. Q. You knew her phone number by this time? A. Because she had given it to me on the night of the 3rd.

"231. Q. What time did you call her up as near as you can remember? A. I would say somewhere around a quarter after nine. I couldn't say exactly, but my recollection is that Mr. Reid and I landed back from Vermilion just a little after nine o'clock.

"232. Q. And did you tell her where to meet you? A. I suggested that she meet me at the corner there, to save me going down that hill."

"288. Q. Did Miss Vivian MacMillan at any time make any demand on you for money? A. No demands.

"289. Q. Did Johnnie Caldwell at any time? A. I never heard a word from Vivian MacMillan or Johnnie Caldwell.

"290. Q. Did you ever tell any of the Ministers that Johnnie Caldwell had made a demand on you for \$25,000. A. I never even mentioned that Johnnie Caldwell had made a demand on me for \$25,000.

"291. Q. And it is not a fact? A. It is not a fact that I said that Johnnie Caldwell had made a demand on me for \$25,000.

"292. Q. As a matter of fact the only time you had ever spoken to him was once at the C.N.R. Station at Xmas, when Miss MacMillan was coming back from Edson? A. That is true."

"297. Q. How many times have you driven her home? A. I couldn't say, because as a matter of fact it would be rather idle for me to try to make an estimate, but I would certainly say that I have taken her home alone in the course of the three years—it is pretty hard to say; I couldn't make an estimate.

"298. Q. Did you ever, when you were home, have your chauffeur, Munro, come and drive her home? A. No I don't think so. I don't recall. Unless I were sick, for the simple reason—well I don't know that there is any need of saying that. My practice has been not to impose upon my driver and my employees any more than I have to, after hours.

"299. Q. And you didn't think it was much of a chore to drive her home when she was at your place? A. No, I did not. I admit that."

"306. Q. Have you ever picked her up on Sunday morning on 7th

Street just north of the bridge, and driven her to the Parliament Buildings? A. I couldn't say; I may have."

"310. Q. Mr. Brownlee, where were you born? A. Fort Ryerse, Ontario.

"311. Q. And when? A. In 1884, the 27th of August."

"333. Q. Now, Mr. Brownlee, during the three years that you knew Miss Vivian MacMillan very well, what was your estimate of her. A. We had no reason to think that Vivian MacMillan was anything but a great, vivacious, decent living girl."

10 "341. Q. Was it Vivian that got Kittcy her job? A. I presume in a way, yes."

"375. Q. Do you know whether or not she used your name as a reference in getting the job? A. Oh, Mr. Smaillles knew that she was a friend of the family; he had met her at a dance at the University.

"376. Q. Was she with you on that occasion? A. She was. She was there as our guest."

"397. Q. Was it easy for an inexperienced girl to get a job in July of 1931? A. Well it depends on what you mean by easy. There are always a great many changes pending in the Civil Service at the Buildings, and on  
20 the other hand it is also true that there are a great many applications.

"398. Q. As a matter of fact, in 1931 there were far more applications than you could handle, weren't there? A. I believe that is true. We couldn't give positions to all.

"399. Q. What sort of stenographer was Miss MacMillan? A. I have not the faintest idea excepting that on a couple of occasions I tested her out myself, on two or three occasions. Once, while she was going to business college I took her to the office and Mrs. Brownlee was with me on that occasion, and I dictated to her a while then, to see how rapidly she could take it down, and then had her read it over.

30 "400. Q. When was that; do you remember? A. Well, that would be some time in the spring of 1931.

"401. Q. Was this having in view the possibility of her getting service with the Government? A. No, not at all.

"402. Q. Nothing to do with that? A. No. Just a friendly interest"—

MR. SMITH: I am suggesting that you look at question 402. If my friend is going to put in the answer I submit he should put it all in.

THE COURT: There is no reason why you should not read it all.

MR. HARRISON: I will go back to 401 (reading)

"401. Q. Was this having in view the possibility of her getting service with the Government? A. No, not at all.

"402. Q. Nothing to do with that? A. No. Just a friendly interest. She was naturally wondering how she was getting on, and as to whether or not she would graduate as a reasonably competent stenographer; and we were out driving one day with the family, and I told her that, if it would give her any satisfaction at all, we could go to the buildings and I would dictate to her for a while, and see how she was getting along. And the three of us went up, and I dictated to her, for ten minutes, probably.

"407. Q. Mr. Brownlee, when Vivian came to the Y. W. C. A. in September of 1930, did you yourself ever telephone to her at the Y.W.C.A? A. I may have done so after she came to the house; I don't recall. If she were coming over at any time while she was there, I may have telephoned her; I have no recollection. 10

"408. Q. Do you remember that, after she got through with her business course, the first place she stayed was at Mrs. Forsyth's? A. I do not recall.

"409. Q. Just across the road, I think, from the Y.W.C.A. at the old Bishop Gray Residence? A. I have no recollection of her being at Forsyth's. I understand she says she was, but I have no recollection of it. 20

"410. A. Didn't you on more than one occasion call for her in the car at Forsyth's? A. I may have done, if she was going over to the house."

"413. Q. And you say that you may have done so on more than one occasion? A. I say I may have done so.

"414. Q. Do you remember a house named McKay's? A. Yes.

"415. Q. On I think 106th Street? A. Yes, I remember that one.

"416. Q. Did you ever yourself telephone her at McKay's house? A. I may have; I don't remember.

"417. Q. Did you ever call for her at McKay's House? A. I probably did, when she was coming over to the house, yes. Again that would depend upon the convenience. Sometimes I would call for her alone and sometimes the family would go with me." 30

"420. Q. Do you remember one night in November, a rather cold night you had called for her and parked right in front of Dr. Carmichael's house? A. I don't know Dr. Carmichael's house.

"421. Q. I think it is two or three doors south of McKay's, on a rather cold night in November and my instructions are that you called for her there that night about nine o'clock. You cannot recollect it? A. No.

"422. Q. And that you brought her back to McKay's house fairly

early, about half past ten, and let her out right in front of McKay's house?  
A. I couldn't say Mr. Maclean; I have no recollection.

"423. Q. But there is no doubt that you called for her at different times at McKay's house. A. When she had been coming to the house, I may have called for her at times, or if we were going for a drive, whether the family would be with me or whether the occasional time I would be alone. I have no recollection.

"424. Q. Do you recollect, Mr. Brownlee, one occasion in the end of October, 1932, when Mrs. Brownlee was away East, and you were sick in bed, and Vivian used to go over to see you occasionally after office hours?  
10 A. Well, I couldn't say as to the date, but after the Camrose by-election it is true that I took ill, and I think was at the house for two days until Mrs. Brownlee came back. She was in Toronto, and she caught the first train, and got back as quickly as she could.

"425. Q. On that occasion do you remember Vivian going to see you at the house? A. Yes, she came over to help the maid, Jean.

"426. Q. And did she used to rub your back? A. She did on one occasion only.

"427. Q. You were upstairs in your bedroom? A. Yes, and Jean  
20 was there.

"428. Q. Was Jean in the room? A. I don't think so, no."—

MR. SMITH: I am suggesting My Lord—

THE COURT: Read the rest of it.

"428. Q. Was Jean in the room? A. I don't think so, no. I was feeling pretty weary, and she got some alcohol out of the bathroom and rubbed the upper part of my back. I think she also put a mustard plaster on, the night before, on my chest."

"431. Q. Do you remember New Year's Day, 1933? Sunday was New Year's Day, and Monday was a holiday. Do you remember whether  
30 Vivian MacMillan was at your office that morning? A. She was at the office I believe; I wouldn't like to swear to it, but on the other hand, as I have understood that she says she was, I am not going to deny it."

"437. Q. What was the purpose of getting her this morning? A. She was coming to the house for that afternoon, and going to a skating party with Mrs. Brownlee, and I went over and got her, and on the way back to the house we just ran up to the office.

"438. Q. Did she go to your house on January 2nd, 1933? A. I am talking about the first.

"439. Q. I am talking about Monday, the legal holiday, not Sunday.

A. Well it was one of those days; I don't know which one it was. She was at our house I think both days; I am not sure. My recollection was that it was on Sunday the first that she was up in the office with me.

"440. Q. You wouldn't contradict her if she says it was Monday the 2nd of January, 1933? A. I don't know whether I would or not. I would want to think that over. I have been under the impression all along that it was on Sunday.

"441. Q. And I am instructed that you went over to McKay's and got her, and picked her up at the corner of 7th and Victoria? A. Right at the moment that is as far as I would want to go. I was under the impression that it was on the Sunday, but I don't recall particularly. 10

"443 Q. As a matter of fact, you quite frequently picked her up at 7th Street just north of the bridge? A. No, I wouldn't say quite frequently at all. I would say that I picked her up at different places, but mostly I think at the house."

"457. Q. Now, Mr. Brownlee, just before adjournment I was asking you about the sleeping arrangements in your house, and you told me that, I think for about thirteen years you and Mrs. Brownlee had been occupying separate rooms? A. Oh no, I didn't say that. I said that we had for a number of years. I couldn't say when that started. 20

"458. Q. I thought you said about three years after the boy was born? A. No. I said that Mrs. Brownlee had a nervous breakdown before the boy was born, and then she had tubercular trouble, and she was for three or four years convalescing from that, and just what year we started the sleeping arrangements that existed at the time referred to I wouldn't want to say offhand, but it did continue for a number of years."

"461. Q. We can say that it had been for several years prior to 1930? A. Yes I would say for some years prior to 1930; just how many I couldn't say.

"462. Q. And when did that arrangement change? A. I think just 30 some time this last winter. Alan is a pretty big boy, over 16 now, and Mrs. Brownlee didn't feel that he should be sleeping with her.

"463. Q. It would be in the winter of 1933, or 1934? A. I will say somewhere around that in the winter or fall.

"464. Q. And at present the two boys are sleeping together are they? A. Yes.

"465. Q. And you and Mrs. Brownlee are sleeping in the same room again? A. Yes."

"469. Q. I suppose you have driven those other girls that used to come around the house out on different occasions? A. Some of them. 40 It depends on what you mean by driving out.

"470. Q. I mean taking a drive in the country or in the city. A. I am not admitting that I did that very frequently with anybody. I have driven them home, the same as I did Vivian MacMillan.

"471. Q. There was nothing exceptional in your taking a drive in the country with any of those girls? A. No, excepting that it was very rarely done with any of them."

"484. Q. Did you ever kiss Vivian MacMillan? A. Yes."

MR. SMITH: I am sure my friend wants to be fair. I suggest he read the following questions to straighten up the situation.

10 THE COURT: He does not have to read it. But you may.

MR. SMITH: Now?

THE COURT: Yes.

(Reading):

"485. Q. On what occasion? A. I think maybe on two or three occasions when I was leaving the City she would be at the house. If I was bidding good-bye to the family I might have kissed her.

MR. HARRISON: And we should put in the next one 486 (reading):

"486. Q. Did you ever kiss her when you were alone? A. I can't be sure."

20 "496. Q. Did you notice any change in Vivian MacMillan's attitude to you since September 1932 when she first met Caldwell? A. No I never noticed any change in her attitude toward me. Looking back now we have noticed a little change in her attitude around the house.

"497. Q. What change if any did you notice? A. Well some time during the month of April 1933 we thought that she seemed somewhat bothered, but she continued to come to the house right along.

30 "498. Q. What do you mean by bothered? A. Well, when she was sitting around the house once or twice there was a little comment that she seemed to be a little bit bothered, but that is only looking back now; we didn't notice anything at the time."

"511. Q. In January 1933 was Mrs. Brownlee sick? A. I think she was somewhere in there, yes; just what date I couldn't say. She had a cold.

"512. Q. She had a nurse in attendance, hadn't she? A. Yes."

"531. Q. Now in your counterclaim against Vivian MacMillan and John Caldwell, you claim that they wrongfully conspired with each other and divers other persons to the plaintiff by counterclaim unknown, with intent to obtain money from the plaintiff by counterclaim, by threatening to declare, and endeavoring to have the same believed, that the defendant

*In the  
Supreme  
Court of  
Alberta*

—  
No. 8  
Extracts  
from Ex-  
amination  
for  
Discovery  
of  
Defendant  
*continued.*

had enticed the female defendant by counterclaim—you know that paragraph in the counterclaim? A. Yes.

“532. Q. When do you think that they conspired together? A. Well Mr. Maclean, I don’t know that I can answer that, because the information that I have is entirely information which my solicitors have obtained, and I don’t know first hand.

“533. Q. You have told me that there was no demand for money by either Vivian MacMillan or John Caldwell to you personally? A. Not to me personally.

“534. Q. And no written demand of any kind? A. No. 10

“535. Q. Then when did they threaten that, in default of the payment of money, they would bring an action for damages? A. Well you will have to ask my solicitor that question. As I say, they drafted the statement of claim, and they have all the information that has been gathered from inquiries.

“536. Q. Here is a declaration in paragraph 2 of the counterclaim that they endeavored to extort money from you by threatening in default of payment to bring action. Was there any kind of a threat, of any kind or description, before action was brought, of which you have information?

MR. SMITH: What is it that you want to know? 20

“537. Q. MR. MACLEAN: I want to know whether there was any claim or demand of any kind, with the threat that in default an action would be brought? A. The only information I have is what I have received from my solicitor.

“538. Q. What is that information? A. Well I am not going to tell you what my solicitors have told me under privilege.

“539. Q. What your solicitors have received under privilege, or what they have told you under privilege? A. What they have told me under privilege. They haven’t told me a great deal, but they have told me some.

“540. Q. And apart from that there was no threat to you of any kind? A. No one ever called me until I received that letter, and I didn’t know that Vivian MacMillan had even the faintest suggestion of it. 30

“541. Q. You refer to the letter Exhibit 1? A. Yes.

“542. Q. That is the first communication with you direct? A. The first communication to me direct.

“543. Q. Were there any other communications to you direct? A. Not to me direct.

“544. Q. So you have yourself received no threat or communication of any kind, other than contained in Exhibit 1? A. Only to the extent it is contained in Exhibit 1. 40



"545. Q. What is your information that the defendants by counterclaim conspired with each other, and with divers other persons, to secure for the defendant by counterclaim Caldwell a reward or profit, in consideration of the defendant by counterclaim taking such steps as would be designed to bring into disrepute the character of the plaintiff? A. My solicitors have evidence to that effect, I believe.

"546. Q. You know nothing yourself? A. They have informed me, yes, but I claim it is privileged.

"547. Q. You refuse to answer as to what information you have?  
10 A. Yes.

"548. Q. And paragraph 4 "In furtherance of the said conspiracies the defendants by counterclaim and their fellow conspirators invented and made the allegations contained in the statement of claim." What information had you in regard to that; have you any information that they did that? A. All the information I have Mr. Maclean, as I said before, is information received from solicitors, which I can claim to be privileged.

"549. Q. Paragraph 5: "The defendants by counterclaim having failed in their attempt to induce the plaintiff by counterclaim to pay money by threatening to bring an action, caused the statement of claim in this action  
20 to be issued." Now you tell me that you yourself had no communication of any kind with either of the defendants by counterclaim, prior to the statement of claim being issued? A. I had no communication from either of the defendants by counterclaim, prior to the statement of claim being issued."

"563. Q. MR. MACLEAN: When Miss MacMillan used to be in your house did you ever write her little notes, on little scraps of paper. A. I may have once or twice.

"564. Q. What was the purpose of that? A. Oh it depended on circumstances. I cannot remember the circumstances. There might be  
30 company there, that I wanted her to leave early or some thing like that.

"565. Q. So occasionally you just write her a little note and slip it to her? A. Occasionally, very occasionally.

"566. Q. Did you ever get any notes from her? A. I am not sure about that.

"567. Q. Have you got any letters or notes written to yourself by her? A. I haven't any at the moment."

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No. 9

**Evidence of Plaintiff Vivian Almeda MacMillan.**

40 VIVIAN ALMEDA MacMILLAN, one of the plaintiff's herein being called as a witness on her own behalf and having been duly sworn was examined by Mr. Maclean and testified:

*In the  
Supreme  
Court of  
Alberta*

—  
No. 8  
Extracts  
from Ex-  
amination  
for  
Discovery  
of  
Defendant  
*continued.*

Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

- Q. You are Vivian MacMillan one of the plaintiffs in this action?  
A. Yes, sir.
- Q. Are you a married or unmarried woman? A. Unmarried.
- Q. You have never been married? A. No.
- Q. You are a daughter of A. D. MacMillan of Edson? A. Yes, sir.
- Q. And your father is assistant foreman in the C.N.R. shops at Edson? A. Yes, sir.
- Q. Do you know where your father and mother came from, where they were born? A. They were born in Nova Scotia.
- Q. And what was the date of your birth? A. June 10th, 1912. 10
- Q. And you were 22 on the last 10th of June? A. Yes, sir.
- Q. And you have what other members in your family besides your father and mother? A. I have an elder brother Harry MacMillan.
- Q. And how much older was he than you? A. He is four years older.
- Q. And how old were you when your parents moved to Edson?  
A. Eight years old.
- Q. Had you been to school at all before that? A. Just for a few months.
- Q. And you had most of your schooling in Edson? A. Yes sir. 20
- Q. And went to the Edson Public School? A. Yes, sir.
- Q. And the Edson High School? A. Yes, sir.
- Q. And then, religion, What are your parents? A. Baptists.
- Q. Do they go to Church regularly? A. Yes.
- Q. And when you were a young girl did you go to Sunday School?  
A. Yes.
- Q. Regularly? A. Yes.
- Q. And to Church? A. Yes.
- Q. And when you got older did you do anything in connection with Church and Sunday School? A. Yes, sir. 30
- Q. What did you do? A. I taught a Sunday School class and played the organ in church.
- Q. And in 1929 what were you doing? A. I was going to Edson High School.
- Q. And what grade were you in as you started the fall term of 1929?  
A. Grade X.
- Q. And in the fall of 1929 did you go into Grade XI? A. Yes.
- Q. Grade XI was as far as you could go in the Edson High School at that time? A. Yes, sir.
- Q. And among your teachers in the Edson High School in the fall of 1929 was a gentleman named Carl Snell? A. Yes, sir. 40
- Q. And what did he teach? A. High School Latin in Grade VIII.
- Q. What subjects did you take from him? A. High Schol Latin.
- Q. Only the one subject, Latin? A. Yes.
- Q. And did Mr. Snell go to your church? A. Yes, sir.
- Q. And did he teach in your Sunday School? A. Yes, sir.

- Q. And you got to be very good friends with him? A. Yes, sir.
- Q. And how was it that Mr. Snell first began to come around your house? A. It was because we both belonged to the same church and there were very few young people in the same church and we just seemed to be thrown together.
- Q. It was really a church matter that threw you together first? A. Yes.
- Q. And you were going to school and taking Grade XI and Mr. Snell was teaching there. And did you gradually become friends? A. Yes, sir.
- 10 Q. It was gradually was it not? A. Yes.
- Q. And Snell began coming over to your house? A. Yes.
- Q. Quite openly? A. Yes.
- Q. Nothing hidden at all? A. Nothing hidden.
- Q. When was it that Snell began paying attention to you? A. Around Christmas, 1929.
- Q. And you had known him since September? A. Yes.
- Q. Did Snell ever ask you to marry him? A. Yes, sir.
- Q. When was that? A. In the spring of 1930.
- Q. And what did you tell him? A. I refused because I was too
- 20 young.
- Q. What were your feelings toward Snell in the spring of 1930? A. I just treated him like an older brother.
- Q. You liked him and were fond of him? A. Yes.
- Q. And had you any affection for him as a lover? A. No, sir.
- Q. Does that answer that you have made, that you felt toward him like an older brother, does that sum it up? A. Yes it does.
- Q. And before Snell came along had you had any other admirers or boy friends? A. I went around with one young chap but not steadily.
- Q. As far as you can remember there was only one before Snell came
- 30 along with whom you had gone around very much? A. Yes, sir.
- Q. So in reality Snell was your first admirer? A. Yes, sir.
- Q. And in the spring 1930 Snell was coming around to the house with your father and mother's full knowledge and approval? A. Yes, sir.
- Q. They thought a good deal of him too? A. Yes they did.
- Q. You finished your High School in June 1930? A. Yes.
- Q. You could not go any further in High School in Edson? A. No, sir.
- Q. And had there been any discussion in your family or had any decision been come to with respect to what you were going to do from that
- 40 time on? A. Yes, we had discussed about my continuing on with my music and my continuing in Edson to finish my music course and I had contemplated going in to train for a nurse.
- Q. And what did your people think of that? A. My father objected to my going away from home to train for a nurse.
- Q. Had any decision actually been come to by the time you had

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

finished High School as to what you were going to do? A. No, no definite decision.

Q. Would it have been possible to have continued your music in Edson? A. Yes, sir.

Q. You had a teacher there? A. Yes.

Q. How far had you got in your music? A. I had started to take the intermediate year, that is two years before you take your A.T.C.M.

Q. You had been taking examinations in connection with the Toronto Conservatory of Music? A. Yes.

Q. You had been taking examinations at the Toronto Conservatory of Music and you could have continued under your Edson Teacher? A. Yes, sir. 10

Q. Your father had definitely decided against allowing you to go nursing? A. Yes, sir.

Q. So that was out? A. Yes.

Q. On the grounds that you were too young to leave home? A. Yes.

Q. You were 18 on the 10th of June, 1930? A. Yes, sir.

Q. Now do you remember the occasion when the Honourable Mr. Brownlee came to Edson in 1930? A. Yes.

Q. Do you know when that was? A. It was in the middle of July 20 1930.

Q. Had you ever met him before? A. Yes on one occasion.

Q. When was that? A. In the summer of 1928.

Q. And you were then 16? A. Yes.

Q. And you had been introduced at a reception, I believe, when he was there with Lieutenant Governor Egbert? A. Yes, sir.

Q. Now on the occasion in the middle of July 1930 Mr. Brownlee had lunch, we have been told, at Mr. Chris Pattinson's? A. Yes.

Q. Mr. Pattinson is the Member in the Legislature for Edson? A. Yes, sir. 30

Q. And he is a Labor man? A. Yes.

Q. Had your father been supporting Mr. Pattinson, do you know? A. Yes he had been.

Q. Do you know who your father had supported in Federal politics? A. Supported Mr. Kennedy.

Q. And were you asked to this luncheon at Pattinson's? A. No.

Q. You did not go to that? A. No.

Q. Your father and mother went? A. Yes.

Q. And after lunch you took the car around to the Pattinson house I believe? A. Yes, sir. 40

Q. And waited there? A. Yes.

Q. And Mr. Brownlee came out after lunch? A. Yes.

Q. And what was done about arranging the seating in the car? A. Well when the party came out of Pattinson's home to go into our car I got out of the car and opened the doors and there was some discussion as to where would be the most comfortable place for mother to ride in the car

and Mr. Brownlee suggested she ride in the front seat with her husband and he would ride in the back seat with Mr. Pattinson's son and myself.

Q. And that is the arrangements that were made? A. Yes.

Q. Your mother on the right hand side in the front seat with your father? A. Yes.

Q. And Mr. Brownlee? A. On the right hand side.

Q. And Mr. Pattinson's boy in the centre? A. Yes.

Q. And you on the left in the back? A. Yes.

10 Q. Was there any conversation between Mr. Brownlee and your mother and yourself in regard to your future? A. Yes.

Q. Just as nearly as you can tell us just tell us what was said.

MR. SMITH: Was the father present?

MR. MACLEAN: Yes.

(The Witness): After we started on the road for a little way Mr. Brownlee turned to mother and said: "You have a very beautiful daughter here Mrs. MacMillan and what are you going to do with her? Is she going to stay home or come in to Edmonton and complete her education?" And I said that I did not know whether I had passed my Grade XI examinations or not and so there had not been really anything definite decided about it  
20 but I really wished to study music. And Mr. Brownlee said that a musical education was rather a useless occupation for a girl to follow because there was very little money in it and it took a long time to really get anywhere and it was a very long time before she could earn her own living at it, and I told him then I had wanted to go in training for a nurse and had practically been accepted at the Royal Alex. Hospital but my father objected to that and he said if he had a daughter he would not want her to go in training for a nurse, he thought it was too hard a life for a young girl. And he then suggested if I had thought about coming in to Edmonton to take a business course and I said no I had not because I did not think I  
30 would care for that type of work. He told me that a business career was something every young woman should have, it made her independent and then if I did go in to Edmonton and took a business course after six or ten months in a business college I could probably get a position and then I could go on and finance my own way through music. And mother said she and Dad had rather decided that I should stay home another year, that I was too young to leave home, and Mr. Brownlee said: "Well there is no reason for your feeling that way because I can assure you that if she comes to Edmonton she will be very welcome to come to my home and make it her home and I will act as a guardian to her and see that she does not get  
40 into any trouble and she just won't be alone in a strange city" And I said I could not see much use in taking a business course because a young stenographer with no experience was finding it very difficult to get a position. Mr. Brownlee assured me that if I did come in to Edmonton and take a business course that he could get me a position when I was finished.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

- Q. And this was during this ride out to this picnic? A. Yes.
- Q. And your mother and yourself and Mr. Brownlee took part in this conversation? A. Yes, sir.
- Q. As far as you remember whereabouts was the car when this conversation started? A. It might be over the first ten miles of the road.
- Q. It was during the first ten miles of the trip? A. Yes.
- Q. And this conversation started very shortly after you had met the Premier on this second occasion? A. Yes.
- Q. How far is it out to McLeod River? A. 28 miles.
- Q. And what are the roads like? A. Part of the roads are clay 10 roads and the other part is sandy.
- Q. And you got out to the picnic grounds. And did Mr. Brownlee make a speech? A. Yes, sir.
- Q. And then I understand it started to rain and you had to come home ahead of time? A. Yes, sir.
- Q. And on the way back you had a pretty bad trip? A. Yes.
- Q. Mr. Brownlee had to get out and push in the mud? A. Yes, sir.
- Q. Do you remember what time it was when you got back to Edson that evening? A. It would be about eight o'clock in the evening.
- Q. And there had been a banquet prepared had there not? A. Yes. 20
- Q. And that had to be kept waiting on account of the absence of Mr. Brownlee? A. Yes.
- Q. And did you go to the banquet? A. No, sir.
- Q. Mr. Brownlee went? A. Yes.
- Q. I suppose he was pretty muddy when he got in? A. Yes.
- Q. Where did he go to get cleaned up? A. Went to the hotel.
- Q. He did not come back to your house? A. No, sir.
- Q. And when did you next see Mr. Brownlee? A. At the dance that followed the banquet.
- Q. And where was the dance? A. It was held in the War Veterans' 30 Hall.
- Q. It that far from the Edson Hotel? A. About four blocks from the Edson Hotel.
- Q. And after the banquet they moved up to this War Veterans' Hall? A. Yes, sir.
- Q. Did Mr. Brownlee dance with you? A. Yes, sir.
- Q. How many times did he dance with you that evening? A. Four or five times.
- Q. Did he say anything to you that evening while you were at the dance? A. Yes, sir.
- Q. What did he say? A. He told me he thought I would grow up to be a very beautiful woman and he hoped I would see my way clear to come to Edmonton and take a business course and that he and his family were planning a trip through to Jasper and if there was room in the car he would like me to go along with them and if they decided to go he would telephone me beforehand so I would be ready and go along with him. 40

- Q. The road to Jasper from Edmonton runs through Edson?  
 A. Yes, sir.
- Q. When did you next see Mr. Brownlee after that evening? A. It would be early in October.
- Q. And where? A. He called around to the Y.W.C.A.
- Q. You had come to Edmonton? A. Yes, sir.
- Q. Why did you come to Edmonton? A. I came to Edmonton because of Mr. Brownlee's offer to allow me to use their home as my own home and to act as a guardian and the assurance that I would have a position after I finished my business course.
- 10 Q. You and your mother came in together? A. Yes.
- Q. When? A. Last August.
- Q. And where did you stop? A. At the Y.W.C.A.
- Q. Did you take a course anywhere? A. Yes at Alberta College.
- Q. You registered there for the September term 1930? A. Yes, sir.
- Q. Prior to Mr. Brownlee going to Edson had you even thought of taking a business course? A. No, sir.
- Q. Had there been any discussion with your mother and father about you taking a business course? A. No, sir.
- 20 Q. Not even had been thought of or mentioned? A. No, sir.
- A. And this Alberta Business College, the Principal is Dr. McCall?  
 A. Yes, sir.
- Q. And you got a room at the Young Women's Christian Association Building? A. Yes.
- Q. And where is that? A. On 103rd Street south of Jasper.
- Q. Between Jasper and Victoria? A. Yes, sir.
- Q. Now, shortly, you were at Alberta Business College from September 1930 until—can you remember when you finished? A. Yes, the last day of June 1931.
- 30 Q. And what did you do then? A. I went to work in the Attorney General's Department at the Parliament Buildings.
- Q. When did you get your position with the Government. A. About the 3rd of July.
- Q. You went to work about the 3rd of July? A. Yes.
- Q. Immediately you finished at the Alberta Business College?  
 A. Yes.
- Q. And you worked in the Attorney General's Department from July 3rd, 1931 until when? A. September 22nd, 1933.
- 40 Q. Now, Miss MacMillan, tell the Jury what happened about getting in touch with Mr. Brownlee when you came to Edmonton? A. Mother and I came to Edmonton on Sunday the last of August and I started to Business College on Wednesday the 3rd of September and mother returned home to Edson on either Thursday or Friday and the Saturday following that Mr. Brownlee telephoned me at the Y.W.C.A. around noon and in a telephone conversation he asked me if I knew who was speaking and I said I did not and he said: "Well this is Mr. Brownlee speaking."

*In the  
 Supreme  
 Court of  
 Alberta*

Plaintiff's  
 Evidence

No. 9  
 Vivian  
 MacMillan  
 Examination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

He said: "I suppose you will wonder how I knew you were in Edmonton?" And I said: "Yes I do wonder why," and he said: "Well a birdie told me you were in here and I thought I would phone you up. I would like to have you come over to my home on Sunday afternoon and meet Mrs. Brownlee and the boys." And that was all the telephone conversation.

Q. That was either one or two days after your mother had left Edmonton? A. Yes.

Q. And did you telephone to your mother at Edson about this?

A. Yes I phoned her that Saturday night.

Q. And told her about your invitation? A. Yes, sir.

Q. And wanted to know what dress you were to wear I suppose? A. Yes.

Q. And did you go over to Mr. Brownlee's house that Sunday?

A. Yes, they called for me at the Y.W. that afternoon.

Q. Who called? A. Mr. and Mrs. Brownlee both called but Mrs. Brownlee came in and introduced herself to me and I introduced myself to her.

Q. And that was the first occasion you met Mrs. Brownlee? A. Yes.

Q. And they took you riding and took you back to their house for tea? A. Yes.

Q. And how did the matter develop after that? Just tell us how the intimacy between yourself and the Brownlee family went from then on?

A. Well on this particular Sunday evening when Mr. and Mrs. Brownlee drove me back to the Y.W. Mrs. Brownlee told me she hoped I would feel free to come to their home and not to stand on any formalities about being invited and just to come over any time I was lonely and I would always be welcome there. And after that I started going over two or three times a week.

Q. Right from the start? A. Yes.

Q. And how did Mrs. Brownlee treat you? A. She was very nice to me.

Q. And how did Mr. Brownlee treat you? A. He was too.

Q. What feeling did you develop towards Mr. Brownlee and Mrs. Brownlee? A. I became very fond of Mrs. Brownlee and I had a big respect for Mr. Brownlee.

Q. Had you ever been away from home much before? A. No.

Q. You had lived since you were a girl eight years old at Edson? A. Yes.

Q. And had you ever stayed in the City before? A. No, sir.

Q. You had never gone around very much? A. No, sir.

Q. And did you appreciate the opportunity of going around to the Brownlee home? A. Yes I did appreciate it.

At 12:15 Court adjourned till 2:00 p.m.

THE COURT: Gentlemen of the Jury we will adjourn until 2:00 o'clock and I warn you and direct you that during the time of this trial and



while you are engaged upon it you will not discuss any matter concerning the trial or any evidence you hear with anyone or permit anyone to discuss it with you outside of yourselves. You understand me. A. Yes.

*In the  
Supreme  
Court of  
Alberta*

At 2:00 p.m. Court resumes.

Q. MR. MACLEAN: At the adjournment you were telling us that when you first came to Edmonton in September that Mr. and Mrs. Brownlee were asking you over to the house and that you were there quite frequently? A. Yes, sir.

Plaintiffs'  
Evidence

No. 9

Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. And I have forgotten whether I asked you or not what your  
10 feelings were for Mrs. Brownlee at the end of September or early October?

A. I had become very very fond of her at that time and I had deep respect for Mr. Brownlee.

Q. During all these occasions when you went over to the Brownlee house you were staying at the Y.W.C.A.? A. Yes, sir.

Q. And how did you get back from the Brownlee house on those occasions when you used to visit them? A. Mr. and Mrs. Brownlee would drive me home in the car.

Q. They always drove you home? A. Yes, sir.

Q. What was the first occasion when you went out with Mr. Brownlee  
20 at night alone? A. It would be about the first Sunday in October.

Q. And how did that happen? A. I had been over there for Sunday afternoon tea and when it was time for me to go home Mr. Brownlee drove me home alone.

Q. And what happened? A. When I got in the car he took a hold of my hand and said he hoped I was liking Edmonton that I felt at home at his home and he asked me what I knew about life.

Q. About life? A. Yes.

Q. What did you tell him? A. I told him I did not exactly know  
30 what he meant but I probably knew as much as any other young girl of 18 did and he suggested that I come out with him and he would tell me and I thought that was rather strange and I remember he had said he would act as my guardian and I thought probably he wanted to give me some advice.

Q. Did you arrange to go out with him? A. Yes, sir.

Q. When? A. The following Monday night.

Q. That would be the next night? A. Yes.

Q. And did he arrange where he would meet you? A. He arranged to meet me in front of the Y.W.C.A. about nine o'clock in the evening.

Q. And did you meet him there? A. Yes, sir.

Q. And what happened? A. We went for a drive on the west road  
40 to Jasper Highway about six miles from the heart of the City and then we turned down a side road going south and practically about two miles down that road off the main highway.

Q. Is there any way in which you can identify or describe that side road? A. Yes, there is a large ditch on the right hand side as you are going south that looks like an irrigation ditch and on the left hand side

there are a few ploughed fields and then the road becomes quite wooded and there are bushes on either side of the road.

Q. But there is a very large ditch on the right hand or west side of this road? A. Yes.

Q. And what occurred on that trip? A. On that trip Premier Brownlee told me that he had been madly in love with me from the start and that surely I must have known it and I told him I had not been aware of the fact, and he told me that he was very very lonely and badly in need of a pal and confidant and that he and Mrs. Brownlee had not lived together as man and wife for a great number of years and that he just could not go on any longer unless I would give in to him, and he told me it would be a matter of saving Mrs. Brownlee's life, that if she ever became pregnant that it would kill her and therefore they had not been living together for a number of years. And I told him I thought such a thing was a sin, and he just laughed at that and he told me that if his daughter had lived if she would do the thing he was asking me to do that he would have been proud of her. 10

Q. Go on. A. He told me he could not go on as the Premier of the Province of Alberta any longer if I did not give in to him and that his whole home life would be ruined and it would probably be the cause of Mrs. Brownlee's death. He asked me what I thought of Mrs. Brownlee and I told him I was very very fond of her and he said: "Well this is one way that you can show your gratitude to Mrs. Brownlee and myself." And I told him that if there was any other way that I could show my gratitude I would gladly do it and he told me that this was the only way. 20

Q. Where was this conversation? A. On the way out to the side road. The car had stopped by the time the conversation was finished.

Q. And did you stay there parked on this side road for any length of time? A. Not very long.

Q. Anything further occur that evening? A. Mr. Brownlee had his arm around me and was kissing me. 30

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

Q. Then did he take you back? A. Yes, sir, and let me off in front of the Y.W.C.A. where he picked me up.

Q. Had you given him any definite answer as to whether you would or would not have relations with him? A. No sir. He just asked me to think about it.

Q. He asked you to think about it? A. Yes.

Q. What was the next occasion on which you went out alone with Mr. Brownlee? A. The week following the Sunday night that he drove me home alone. He again drove me home from their home alone and he asked me on this occasion if I would like to learn to drive his car and I told him I knew how to drive a car and he said: "Well perhaps you do not know how to drive this one because it is much larger than the car you have at Edson, and I would like to talk to you about the discussion we had on 40

Monday night." So he made arrangements to meet me the following Monday night at the Y. about the same time.

Q. And did you meet him the following Monday? A. Yes, sir.

THE COURT: The following Monday. Is that the next night? This was Sunday.

Q. MR. MACLEAN: The first occasion you went out alone with him was a Monday night in the first week in October? A. The first night he drove me home alone was on Sunday night but it was the next night I went out with him alone.

10 Q. The first occasion on this road that runs off from Stony Plain Road was a Monday night? A. Yes, sir.

Q. And it was the next Sunday, again, that he spoke to you and arranged to meet you again on the Monday night? A. Yes, sir.

Q. Now coming to the second time, the Monday night, when he had arranged to meet you. Did you meet him again? A. Yes, sir.

Q. And where did you go? A. We went out the same road we had the week previous, out the west road and down the side road.

Q. What car was Mr. Brownlee driving.? A. He was driving a large Studebaker, 31884.

20 Q. What sized car was that? A. I believe it was an 8 cylinder car.

Q. And is it a big car? A. Yes very large car.

Q. Lots of room in the car? Yes, sir.

Q. How were the seats, Are the seats wide? A. Yes, sir.

Q. And what time was it as far as you can remember when he picked you up on this occasion? A. About ten o'clock in the evening.

Q. And had that been arranged the previous day on the Sunday when he was driving you home? A. Yes, sir.

Q. That he had arranged the time? A. Yes.

Q. And you went out again to this same place? A. Yes.

30 Q. And what happened on this occasion? A. On this occasion on the way out to the side road Mr. Brownlee again repeated to me that he was madly in love with me and how much I would be doing for him and his wife if I gave in to him and he thought it was the right thing for me to do and that it was my duty to do it to show my gratitude to Mrs. Brownlee and himself for being so kind to me. And when we got out on to the side road Mr. Brownlee suggested that we sit in the back seat of the car. He said it was rather crowded in the front seat, so I got into the back seat of the car and he again made love to me. He was kissing me and had his arms around me and told be how madly he was in love with me and that he  
40 thought it was my duty to give in to him to save his wife and his family, and he had his arms around me all the time he was telling me this and he forced me down on to the back seat of the car. And I fought against him but on this occasion he gained partial entrance and because I resisted him so much he flew into a rage and got back in the front seat of the car and drove back into Edmonton and down to the Government garage.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. You said he gained partial entrance. It is very distasteful I know, but would you mind telling me just exactly what he did do? A. When he forced me down on to the back seat of the car he still had one arm around me to hold me in place and with his other hand he raised my clothing, unfastened his own clothing and then he tried to have sexual intercourse with me.

Q. Did he succeed on that occasion? A. Not completely.

Q. And then you say, what did you do? A. I fought against him and because of my resistance he flew into a rage and got back into the front seat of the car and left me in the back seat of the car and drove to the Government garage and changed cars. 10

Q. Where is the Government garage? A. Just down behind the old Parliament Buildings where the R.C.M. Barracks are now.

Q. What were your feelings at that time? A. Well I was terrified of him.

Q. And you say he changed cars. What do you mean by that? A. He was driving the large Studebaker 31884 and for some reason he changed to the smaller Studebaker 104.

Q. Was there anybody at the garage when he got there? A. Not that I saw. 20

Q. Do you know whether or not the door was locked? A. Yes the door was locked. Mr. Brownlee unlocked the door and backed the smaller car out.

Q. What kind of a car was the smaller car? A. A smaller sized Studebaker I believe.

Q. And what was the license number of that car at that time? A. 104.

Q. And tell us what happened then when he backed the smaller Studebaker out of the garage? A. When he came to get into the larger car to drive it into the garage I got out of it and stood waiting to see what he was going to do next and when he backed the smaller car out of the garage and drove up opposite me I opened the front door to get in the front seat beside him and he told me to get in the back seat because I was not fit to ride with him. And I said: "All right then I will walk home." But at that time I did not know where the Y.W.C.A. was from the Government garage. But anyway I started to walk home but Mr. Brownlee drove up opposite me and told me to get in the front seat with him and I did so and on the way home to the Y. he apologized. He said he guessed he must have lost his head completely because he wanted me so badly and he was disappointed I was not going to do what he wanted me to do for his sake and for the sake of the family. 30 40

Q. And he drove you back to the Y.W.C.A that night? A. Yes, sir.

Q. Now when was the next occasion on which you went out with Mr. Brownlee alone? A. It would be the last week in October on the Sunday night, the last week in October.

Q. The first time that you went out with him was in the first week in October? A. Yes.

Q. And the second time was a week after that? A. Yes.

Q. And the third time, it was the last week in October? A. Yes.

Q. So there must have been a week intervening when you did not go out? A. Yes.

Q. Did you go out to the Brownlee house after that week? A. After the second Monday I had been out with Mr. Brownlee I had not phoned Mrs. Brownlee up every day as had been my custom previously.

10 Q. Had you got into the habit of phoning her every day? A. Yes. I just could not bear the thought of phoning her up and pretending to be friendly to her when the fact that I was refusing to go out with her husband might mean her death and I did not phone her up. But Mrs. Brownlee phoned me towards the end of that week, and asked why I had not phoned or had not been over that week and I told her I had been busy.

Q. There was that week intervening that you did not go out there? A. Yes.

20 Q. And this occasion in the last week in October. How did that arise? A. Mr. Brownlee phoned me on Sunday afternoon and asked if I would like to go for a drive and come out for tea and I said I would. So Mr. and Mrs. Brownlee called around at the Y.W. for me and we went for a ride and I went over to their home for tea and in the evening when it came time to drive me home Mr. Brownlee drove me home himself. At least he did not drive me home. We went for a drive out in the country.

30 Q. Where did you go? A. We went south on 9th Street to Whyte Avenue down as far as the Post Office and then turned and went south again until you come to a graveyard. There is a graveyard on the right hand side of the road and a fox farm just beyond that and at the corner of the fox farm he turned and went west for a quarter of a mile, and you turn and go south again for about a mile and it is out there.

Q. Was he alone with you again in the car? A. Yes.

Q. What car was it A. The large Studebaker.

40 Q. Tell us what happened on that occasion? A. Well on that occasion he told me he had something very important to talk to me about and that he hoped that I would tell the truth no matter how badly the evidence against me was that I was not telling the truth and I told him I would certainly speak the truth. And he asked me if I had ever had intercourse with any other man and I told him no and he said: "You must have had because after last Monday night when we were out together there was no evidence to show that I was the first man" and I told him I could not help it if there was any evidence or not and I told him he had been the first man. And he said he thought I should prove it to him. And I said if he could not take my word for it there was nothing I could do about it and he then repeated to me he thought it was my duty to give in to him to save Mrs. Brownlee's life and save his future and save the honour

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

of his family. And I told him I just could not do anything like that, that I would gladly help Mrs. Brownlee any other way and he told me that was the only way I could help her. And he parked the car and asked me to get into the back seat of the car and I told him I did not want to and he promised me he would not touch me if I got into the back seat of the car and I took him at his word and got into the back seat of the car with him but we had only been in the back seat for a few minutes when after telling me again that if his daughter had lived he would have been proud of her to do the same thing he was asking me to do and he thought it was my duty to show my gratitude to Mrs. Brownlee by doing this thing, 10 because after all it was not very much, and all this time he had his arms around me and was kissing me and telling me how much he loved me and he again forced me down on to the back seat of the car. He used his force against mine. I fought against him but he was too determined this time to be moved by either tears or any pleas I made to him. And he again had one arm around me and holding me down on to the back seat of the car. He used the other hand to raise my clothes and undo his own and on that occasion he had complete sexual intercourse with me and after he had been sexually satisfied he sat on the back seat of the car and took me in his arms and told me how wonderful I was and that it seemed strange 20 that he would have to wait until he was almost an old man before he met the woman he loved. And then he made plans for the future, how wonderful it would be when he could retire from public life and spend all his days in making me happy, and he again told me how proud he was of the fact that I had been so unselfish to do the thing that he had asked me to do. And he asked me why I was trembling and I told him that I was frightened and he said: "What of?" And I said I was afraid of becoming pregnant and he told me I need not worry about that because he knew of some pills that he would give me and if I just took them at the end of each month before I menstruated that they would be very safe and there would 30 not be any danger of me becoming pregnant. And then we came back into Edmonton and he dropped me off at the Y.W. again.

Q. And that was on a Monday night? A. Sunday night.

Q. In the last week in October? A. Yes, sir.

Q. When did you see him again? A. On Sunday night before he let me out at the Y. he asked me if he could see me again on the Wednesday night and I said he could. But on Monday evening he phoned me up and said he had some wonderful news for me and could he possibly see me on Tuesday evening and I said he could. He asked how I was feeling and I told him I had been feeling ill all day and he said he was sorry and he would pick me up at the Y.W. the following Tuesday night. And on 40 Tuesday night he picked me up just at the corner of 103rd Street and Victoria Avenue just at the corner of the funeral home, about 10 o'clock in the evening and when I got into the car he apologized for accusing me of having anything to do with another man because the condition of his clothes were such that he was afraid Mrs. Brownlee might have noticed

something and he told me he was so glad he had been the first man and that I had told the truth when everything pointed against it and I said it was all right because I knew I was telling the truth and he told me again how madly he was in love with me and what a wonderful thing I had done for him and his family and that I was really saving Mrs. Brownlee's life.

Q. Where did you go on the Tuesday night? A. On the west road again.

Q. The same place? A. Yes.

Q. Back on this road that runs down by the ditch? A. Yes, sir.

10 Q. Is that a well travelled road? A. I imagine it is travelled by farmers but it is not a road that has very heavy traffic.

Q. Was it protected or what was it? A. Well no one could approach the road from the right hand side looking south because of this huge ditch and there were trees on the left hand side of the road.

Q. And on this Tuesday night you are telling us about did you have connection with him? A. I did.

Q. And from then on tell us just what happened? A. From then on all during the time I stayed at the Y.W. Mr. Brownlee would phone me on the average of twice a week, sometimes three times a week, and we  
20 would go for a ride either out the same west road or sometimes if he was driving me home from his home alone we would go out to the south road again. But all during the winter of 1930 and the spring of 1931 when I was staying at the Y. he always picked me up at 100th Avenue and 103rd Street.

Q. During that fall and winter of 1931 were you continuing over at the Brownlee house? A. Yes I was going over there twice a week at least every week.

Q. And how was Mrs. Brownlee acting towards you? A. Mrs. Brownlee was very nice to me.

30 Q. And when did you finish your business course at Alberta College? A. At the end of 1931.

Q. Did you graduate or get a diploma or certificate or anything of that nature? A. No I did not. I did not get the full diploma for a ten months business course.

Q. You do not get a full diploma for that? A. Yes you do, but I had not got one.

Q. And what did you do and what was done as far as you know about getting a position in the spring or summer of 1931? A. Well sometimes around the house Mrs. Brownlee and I would discuss about  
40 my going to work at the Parliament Buildings and I used to wonder what kind of stenographer I would make and whether I would get a position or be able to hold one, and Mrs. Brownlee said she did not think I need worry about getting a position, she should think that could be very easily arranged. And on one or two occasions I would suggest to Mr. Brownlee—not asking for a position, but we would be talking about it—and he would tell me that getting a position would be very easy. And then about

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

a week before I left Alberta College, and Mr. Brownlee was out of the City at the time, I thought well perhaps I had better go down and see Mr. Smailes myself because I had met him on one occasion before.

Q. Who was Mr. Smailes. A. He is the Civil Service Commissioner.

Q. And do appointments go through him? A. Yes.

Q. And you had met Mr. Smailes had you? A. Yes.

Q. On what occasion had you met him? A. I met him at a dance that was held at the end of the Session in 1931 in Athabasca Hall at the University.

Q. And with whom had you gone? A. I was a guest of Mr. and Mrs. Brownlee's. 10

Q. And were you introduced to Mr. Smailes by either of them?

A. I was introduced to Mr. Smailes by Mr. Brownlee.

Q. And did Mr. Smailes know that you were with Mr. Brownlee's party? A. I suppose he did because Mr. Brownlee introduced me to him.

Q. And you were with him that evening? A. Yes, sir.

Q. Now go back to your going down to see Mr. Smailes about a position? A. I thought while Mr. Brownlee was out of the City would be a good time for me to go down to see about a position because I did not want him to think I was depending on him for getting a position. And I went to see Mr. Smailes that afternoon and I filled out an application form and the stenographer took it in to Mr. Smailes and Mr. Smailes asked me to come in to his office and I went in to his office and he asked me if I was finished my business course and I said yes and he asked me if I was ready to go to work and I said yes and he said: "Well I don't know exactly what department you will be working in but you had better report back for work in two or three days time and I will phone you up and let you know." So Mr. Smailes phoned me up I think the next day it was and told me for me to come down to the Buildings on the morning of the 3rd of July. I believe that is the date. 20

Q. Go ahead. A. So I went down to the Parliament Buildings on the morning of the 3rd of July and I was sent to work in the general office in the Attorney General's Department. 30

Q. Where is that office in relation to Mr. Brownlee's office? A. Well it is on the same floor with Mr. Brownlee's office but Mr. Brownlee's office is on one end of the hall and the Attorney General's office is on the other end of the hall.

Q. On the same corridor? A. On the same corridor.

Q. And did you start to work in the Attorney General's office? A. Yes, sir. 40

Q. And you worked there until when? A. Until September 22nd, 1933.

Q. Now you have said that Mr. Brownlee was out of town at the time you applied to Mr. Smailes? A. Yes.

Q. Did you have any talk with Mr. Brownlee about this after he came back? A. Yes I did. When he came back and we were out one



evening I told him he would be quite surprised to know that I was working down in the Attorney General's Department now and he told me that was not any surprise, that he knew I was going to work for the Government and he said: "I suppose you think you are rather clever going down there and getting a position by yourself," and he said: "It was all arranged for you."

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. Now up till you had started to work at the Parliament Buildings in July 1931 where had you been living? A. I had been living at the Y.W.

Q. That is Young Women's Christian Association Building? A. Yes.

10 Q. And when you got your position in July where did you move to?

A. I moved to Mrs. Forsyth's just across the street from the Y.W.C.A.

Q. And how long did you live at Mrs. Forsyth's? A. Just two months, July and August.

Q. And while you were living at Mrs. Forsyth's did you see Mr. Brownlee? A. I saw him on three or four occasions.

Q. And then at the end of August 1931 where did you move to?

A. I moved to Mrs. Picard's on Victoria Avenue just between 3rd and 4th Streets I believe it is.

Q. And can you remember how long you stayed at Mrs. Picard's?

20 A. Yes I stayed at Mrs. Picard's until the following April of 1932.

Q. And that would be from September 1931 until April 1932. A. Yes, sir.

Q. And just while we are at it. You were at Forsyth's in July and August 1931? A. Yes.

Q. At Picard's from September 1931 till April 1932? A. Yes, sir.

Q. And where did you go from Picard's? A. Then I went over and lived with Mrs. Brownlee for about a month.

Q. That would be in the spring of 1932? A. Yes.

30 Q. And then where did you go? A. Then I moved to Jasper Court on Jasper Avenue on 118th Street.

Q. And how long were you there? A. I was only there six weeks.

Q. That would still be in the spring of 1932? A. Yes.

Q. And from there what happened? A. From there I went home ill for seven weeks.

Q. When did you come back to the City? A. I came back to the City in September.

Q. And where did you go to stay? A. I went to live with Mrs. Mackay on 106th Street.

40 Q. Mackay's from September 1932 until when? A. Until the last of December 1932.

Q. And where did you go then? A. Then I moved to Mrs. Lush's on 114th Street.

Q. And how long were you there? A. I stayed at Lush's from January until Easter of that year.

Q. From January until Easter. That would be 1933? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. And from the Lush's where did you go? A. I moved to Mrs. Fuller's on 116th Street.

Q. From Easter of 1933 until when? A. Until the 1st of July.

Q. And from the 1st of July? A. I moved to Mrs. Cupper's at 108th Street across from the Parliament Buildings.

Q. Until when? A. Till the 22nd of September.

Q. Till you left to go home. And you have told us that while you were staying at Mrs. Forsyth's after you moved away from the Y.W.C.A. you saw Mr. Brownlee on several occasions? A. Yes.

Q. Did you used to see him while you were staying at Mrs. Picard's 10 from September 1931 till April 1932? A. Yes, sir, on many occasions.

Q. And where would you meet him and how would it be arranged? A. Well the street that Picard's live on is a very well lighted street and Mr. Brownlee would generally arrange to meet me on 107th Street down near 99th Avenue or 98th Avenue, just two blocks south of Victoria Avenue.

Q. On 7th Street in this city sloping south there is a hill that leads to a bridge that goes over into the Government grounds? A. Yes.

Q. And it is on the top of that hill he used to meet you? A. Yes.

Q. And on many occasions he would meet you there? A. Yes.

Q. And during this period when you were staying at Picard's where 20 would you go? A. We would nearly always go out to the west road.

Q. One place or more than one place? A. Always the same place.

Q. And were you having intercourse with him during all this period? A. Yes.

Q. Did this intercourse ever give you any pleasure? A. No, never.

Q. Did you ever get any sexual satisfaction yourself out of it?

A. No I did not.

Q. And what effect did it have on you? A. Well the act itself was very very objectionable to me. Every time I had intercourse with Mr. Brownlee it was just a shock to my system. And then I was always 30 worried about becoming pregnant even although I was taking pills all the time. I was always afraid that I might become pregnant.

Q. Now in September of 1931 were you staying at any time at the Brownlee house? A. Yes I stayed three days in the Brownlee house in the fall of 1931 when I was living at Mrs. Picard's.

Q. And how did that come about? A. Well Mrs. Brownlee had made arrangements to go to Vancouver and at the time their usual maid was out in the country and there was just another girl coming in in the mornings and Mr. Brownlee suggested to me before Mrs. Brownlee he thought it would be a good idea if I would come over and stay with them 40 for the length of time between the time their usual maid would come back and she was expected back in a few days, but she was late getting back and he thought it would be a good idea if I just came and stayed until the maid returned. And then the evening before Mrs. Brownlee was to leave I was over there and Mrs. Brownlee told me upstairs in her bedroom that she did not think she would go because she hated travelling alone so

badly, that she had not travelled alone since she was married and she did not think she could go because she had to travel alone and she asked me if I thought my mother would like to go along to Vancouver with her and I told her I did not know, it was rather short notice for mother to get ready to go away and Mrs. Brownlee said: "She would not have to do much to get ready and she could share her compartment on the way to Vancouver and I would not be alone on the train." So on Mrs. Brownlee's suggestion I telephoned mother to Edson and asked what she thought about it and she said at first she could not consider going and then I hung up and Mrs. Brownlee practically decided not to go. But mother phoned up later in the evening and said that Dad had said he thought it would be a good idea to go along to Vancouver because she needed a change and they would both be company on the way out. So it was arranged that Mrs. Brownlee would leave Edmonton the next evening and mother would join her at Edson and the train got into Edson about four o'clock in the morning, and mother would join Mrs. Brownlee in her compartment at Edson.

10 Q. And did you stay at the Brownlee house? A. Yes I stayed for three days.

Q. And who was in the house? A. Well at night there was just  
20 Mr. Brownlee, Jack and Allan and myself.

Q. Jack and Allan? A. Are Mr. Brownlee's two sons.

Q. And by this time did you know the sleeping arrangements in the Brownlee house? A. Yes I did.

Q. What were those sleeping arrangements? A. Mrs. Brownlee used to occupy the back bedroom and Allan would sleep with Mrs. Brownlee. And Mr. Brownlee and Jack slept in the front bedroom in twin beds and the maid was in the other bedroom at the front end of the house.

Q. The house is on what Avenue? A. On 88th Avenue.

Q. And it faces north? A. Yes.

30 Q. The front of the house faces north? A. Yes.

Q. And there are two bedrooms on the front of the house? A. Yes.

Q. One occupied by Mr. Brownlee and the eldest boy? A. Yes.

Q. And the other occupied by the maid? A. Yes.

Q. How far is it from the door to the maid's bedroom to Mr. Brownlee's door? A. Just about five or six steps.

Q. On the same corridor? A. Yes.

Q. Five or six steps from the one door to the other? A. Yes.

Q. And how far is it from Mr. Brownlee's bedroom to Mrs. Brownlee's bedroom? A. Mrs. Brownlee's bedroom is right next door  
40 to the front bedroom. It would only be about—it might be a distance of about five yards along the hall.

Q. It is the other end of the hall? A. Yes.

Q. Her bedroom is at the back end of the house and Mr. Brownlee's at the other end? A. Yes.

Q. And the bathroom, where is it? A. It is at the head of the stairs.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. Is it across the hall from Mrs. Brownlee's bedroom? A. No it is like next door to it.

Q. It is quite close to it? A. Yes.

Q. And when Mrs. Brownlee went to the Coast on this occasion with your mother you went over to stay at the Brownlee house and stayed there for three nights? A. Yes.

Q. And what room was given you to sleep in? A. I was to have the maid's room.

Q. Right next door to Mr. Brownlee's room? A. Yes.

Q. And where did Mr. Brownlee sleep? A. He was to occupy Mrs. 10  
Brownlee's bedroom.

Q. Did you hear anyone speak about that or are you telling just what did happen? A. That is just what did happen.

Q. As far as you know it was not arranged you were to have that particular room? A. Well no, but it was the only vacant room in the house.

Q. And did you go to the maid's room? A. Yes.

Q. And Mr. Brownlee did go to his wife's room? A. Yes.

Q. And where were the boys? A. Both boys slept in the front 20  
bedroom.

Q. And as far as you know did they object to that? A. I believe Allan asked his mother if he could sleep in the front bedroom.

Q. MR. SMITH: Which front bedroom? A. In the front bedroom that Mr. Brownlee used to sleep in.

Q. MR. MACLEAN: And was Mr. Brownlee in the house those three nights? A. He was in the house two nights but one night he was in Calgary.

Q. Did you have connection with Mr. Brownlee on that occasion when you were over there? A. I did.

Q. Where? A. In Mrs. Brownlee's bedroom. 30

Q. Did you ever again stay in the Brownlee house? A. Yes I stayed there for a month in the spring of 1932.

Q. How did that happen? A. Well the maid that Mrs. Brownlee had at the time was going home. It was seeding time on the farm. And Mrs. Brownlee did not want to get a strange maid in the house for a month and she thought perhaps I would like to come over and stay with her, and we would just get along without a maid.

Q. And you did go there? A. I did.

Q. And what room did you sleep in? A. I had the maid's 40  
room again.

Q. You had the maid's room?

MR. SMITH: Again?

Mr. MACLEAN: And where would Mr. Brownlee sleep? A. Mr. Brownlee slept in the front bedroom where he always did, with Jack.

Q. And you said there were twin beds in that room? A. Yes.  
 Q. How far apart were those beds? A. Just enough space between them for a small bed table for a lamp.

Q. Was there room to walk in between them? A. Yes, sir.

Q. And which way did those beds face, what wall? Were the heads up to any wall? A. Yes, the head of the beds were on the west wall of the house.

Q. And one bed would be parallel with the north end of the house?

A. Yes.

10 Q. The beds were arranged parallel with the Avenue? A. Yes.

Q. And which bed did Mr. Brownlee occupy? A. Mr. Brownlee occupied the bed next to the windows on the north side of the house.

Q. And Mrs. Brownlee slept where? A. In the back bedroom with Allan.

Q. How old is Allan? A. He would be about 12 years old then.

Q. And how old are the two boys? A. Jack would be about 16 then.

Q. And did you have connection with Mr. Brownlee while you were staying there in the house at that time? A. I did.

20 Q. Will you tell us how that was arranged? A. Mr. Brownlee asked me if I would come into his room at night and I told him no, that it was impossible to do such a thing and Jack sleeping right in the next bed and he said: "Well Jack won't wake up, it will be perfectly all right, no one will know anything about it." And he insisted that I go into his room. And so at night after everyone else was asleep Mr. Brownlee would get up out of his bed and come out into the hall and go down the hall to the bathroom and run the water in the bathroom and that covered any noise I would make in getting out of bed in the maid's room, and then on his way back to his own bedroom he passed the maid's bedroom door and I would be  
 30 standing there and he would take a hold of my hand and take me in to his room and I would walk in his footsteps so it sounded only as if one person was walking and he would stand up between the two beds and I would get into bed behind his back.

Q. Miss MacMillan, was there any reason why he should not have come into the maid's room where you were sleeping if he wanted to have connection? A. The only reason I know of is that the floor in the maid's room squeaks and so does the bed.

Q. And how would you get out of bed and back to the maid's room again? A. Mr. Brownlee would again go to the bathroom and I would  
 40 walk out in front of him and he would go down to the bath and run the water again and that would cover any noise I would make getting back into bed.

Q. And did this happen on many occasions? A. It happened nearly every night I was there except a week or ten days Mr. Brownlee was east during that period.

Q. And then what happened after that? A. By that time I was

*In the  
 Supreme  
 Court of  
 Alberta*

—  
 Plaintiff's  
 Evidence

—  
 No. 9

Vivian  
 MacMillan  
 Exami-  
 nation

*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

getting very miserable and rundown and I went to live at Jasper Court and it was while I was staying at Jasper Court that I collapsed on the way to work one day and when I was able to leave the Parliament Buildings I phoned Mr. Munro and had him come and take me over to Mrs. Brownlee's.

Q. Who was Mr. Munro? A. Mr. Munro was Mr. Brownlee's chauffeur.

Q. Was Mr. Munro at Mr. Brownlee's service do you know? A. Yes he was.

Q. At any time Mr. Brownlee wanted him? A. Yes. 10

Q. On how many occasions did Mr. Brownlee get Mr. Munro to drive you home? A. On quite a number of occasions.

Q. Any time that Mr. Brownlee wished Mr. Munro would have been at your service as far as you know?

MR. SMITH: Oh well, let her tell part of it.

Q. MR. MACLEAN: And you were saying that you collapsed and got Mr. Munro who was Mr. Brownlee's chauffeur, and what happened?

A. I asked Mr. Munro to take me over to Mrs. Brownlee's and he did so and when Mrs. Brownlee saw me she realized I was sick and she phoned Dr. J. Fife and he told Mrs. Brownlee if she would bring me over to the University Hospital in hour's time he would be there and examine me. 20  
And I went over to the University Hospital with Mrs. Brownlee and I was examined by Dr. Fife and put to bed and when I found out that I had to go into the Hospital for a while Mrs. Brownlee wrote out a cheque to cover the length of time I would be in the University Hospital and my father returned the money to her after I returned home and I remained in the hospital for about three days and after I got out of the hospital I telephoned my mother and she came in to Edmonton and on Dr. Fife's advice took me home for seven weeks complete rest.

Q. What was the matter with you? A. Stomach trouble brought on by nerves. He called it a nervous breakdown. 30

Q. Do you know the cause of that?

MR. SMITH: She can tell any symptoms but surely she is not going to diagnose her own condition.

MR. MACLEAN: Do you know what caused this?

THE COURT: How can she know? She can tell how she felt and what happened and if she was examined by the doctor then he can tell us what was the matter with her and what caused it, if he knows.

Q. MR. MACLEAN: How did you feel Miss MacMillan? A. I was feeling very tired all the time and every time I took these pills they would upset me and I kept getting a severe pain in my left side. 40

Q. How long were you home? A. I was home for seven weeks.

Q. Did you see Dr. Fife when you came back? A. Yes he asked

me to report to him before I went back to work to see if I was able to go back to work or not. And I did so.

Q. And it was after you came back on this occasion that you went to Mackay's? A. Yes.

Q. On 106th Street? A. Yes.

Q. How did your weight when you went home in this summer of 1932 compare with your weight when you came to the City? A. I had lost about 20 pounds from the time I came in to Edmonton first and when I went home ill.

10 Q. And when you were in here in the fall of 1932 living at Mackay's did you meet any young man in whom you became interested? A. Yes, I met John Caldwell.

Q. And who was John Caldwell? A. Well he is the son of the Reverend Caldwell and at that time he was taking Medicine at the University of Alberta.

Q. And how did you and he get along? A. Got along very well.

Q. Were you fond of him? A. Yes I was.

20 Q. Just tell us what happened? A. I first met him when I returned from Edson after being home for seven weeks and then I was only in the city about two weeks when I again went home for ten days holiday and it was after the ten days holiday that I really started to see something of John Caldwell. When I came back from Edson the last time he phoned me up and asked me if I would like to go out with him and I said I would. And we started going around together and we soon found out that we were quite in love with each other.

Q. And did this have any effect on you and your relations with Mr. Brownlee? A. Yes it did. It made me want more than ever to get away from him.

Q. Had you before this tried to get away? A. Yes I had.

30 Q. Would he consent? A. No he would not. He told me I knew what would happen if I broke off with him; that it would probably cost Mrs. Brownlee her life and I would be out of a position and he would certainly see that I did not get another position in the Province of Alberta.

Q. Couldn't you break away if you wanted to? A. No I could not. He seemed to have a kind of influence over me. His will power was just so much stronger than mine. If I would start to ask him to break off with me he just made me speechless or something.

40 Q. And what happened after you began to get fond of Caldwell? A. I really began to realize what a big mistake I had made and I wished more than ever to get away from Mr. Brownlee, but I just could not seem to get anywhere as far as talking to him about it because he would either fly into a rage or tell me again that he thought it was my duty and that I was saving Mrs. Brownlee's life, and in view of that I just could not get away from him.

Q. Was Mr. Brownlee coming to see you when you were at Mackay's? A. Yes very often.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. Were you going out with him? A. Yes I was.

Q. And where had you been seeing him during the period? A. Well in the winter after I started to work at the Parliament Buildings I would go to his office with him in the Parliament Buildings on Sunday mornings and sometimes on Saturday afternoons and then for rides in the country the same as we had been doing previously.

Q. What was the furniture in his office? A. A dark blue rug on the floor, a chesterfield suite, two or three ferneries.

Q. And what would you use in his office? A. The chesterfield.

Q. And did anything particular occur in the fall of 1932? A. On one particular occasion when I had been out with Mr. Brownlee and after I met John Caldwell I asked him if he would not give me my freedom and he told me that he certainly would not even consider it. 10

MR. SMITH: Was this Caldwell or Brownlee? A. Mr. Brownlee. And as a result of my asking him to give me my freedom he flew into a rage and told me that I need not bother reporting to work next morning. This was on Sunday night, by the way, he told me I need not bother to go to work on Monday morning because I would only take off my hat and coat when I would be asked to leave again, and he let me out this night in front of Mr. Mackay's home and I was feeling very badly about the whole thing and when I went into the Mackay's house I did not go into the living room as I generally did and sit and chat with the family, but went into my bedroom and threw myself down on my bed and started to cry and Dorothy Mackay heard me sobbing and came in and asked what was the matter and I told her everything. 20

Q. MR. SMITH: Are we going to have this conversation? I do not know anything about it.

MR. MACLEAN: This girl is accused of having recently fabricated this whole story. I wish to prove that before any charge of fabrication that she told the same story exactly to Dorothy Mackay on this occasion. I think it is admissible, not for the truth of the story, but to prove that it is not recently fabricated. And I submit it is clearly one of the exceptions mentioned in all books on evidence as one of the exceptions to the rule against giving similar statements. 30

MR. SMITH: My learned friend is not serious? It is so utterly silly to mention the thing that it is not worth talking about.

THE COURT: It is startling, anyway.

MR. MACLEAN: The last edition on Phipson is in my office. Possibly we could leave this or have a recess of five minutes now.

THE COURT: Oh no, we will go on. 40

Q. MR. MACLEAN: What did you actually do that night? Leave out the conversation with Miss Mackay.



MR. SMITH: If it is anything in connection with this defence all right but I do not know what she did and I am not interested neither is the Court—conversations, they are all in the same position.

THE COURT: We are not having conversations.

MR. SMITH: But what she did is not of importance unless it is something in connection with the defendant. We do not know what it was.

THE COURT: It is hard to say. Go on.

MR. MACLEAN: What did you do after the conversation with Miss Mackay? A. Miss Mackay went to her own bedroom and just  
10 before she left I received a telephone call about ten minutes past twelve and it was Mr. Brownlee telling me how sorry he was for the way he had acted and he certainly hoped I would forgive him and go to bed and get a good night's sleep and go to work next day at the office because my position would be open for me. But I decided before this to write to Mr. Brownlee and try to break it off by writing because while I was in his presence I could not get anywhere, and I started to write a letter to Mr. Brownlee and I wrote a few lines and I started to think what probably my breaking off with Mr. Brownlee would mean to Mrs. Brownlee and Mrs. Brownlee had really been as a mother to me. And then I thought about  
20 losing my position and having no work and I knew it was impossible almost for a young girl to get a position and I decided not to write a letter but to try to carry on and I tore the letter up and threw it in the waste paper basket.

Q. And did you go back to work next morning? A. Yes I did.

Q. Now during that fall did you go over to visit Mr. Brownlee when Mrs. Brownlee was away? A. Yes. Mrs. Brownlee was East that fall and Mr. Brownlee became ill with a cold and I used to go over after work and visit him for a short time and have dinner with the boys.

Q. And was Mr. Brownlee in bed? A. Yes he was in bed.

30 Q. And did you visit him in his bedroom? A. Yes I did.

Q. Did you have intercourse with him there? A. I did on one occasion.

Q. Can you remember what particular night that was? A. Yes I can. It was on the 31st of October because I was going to a Hallowe'en party with John Caldwell and I told him I would meet him about eight o'clock but Mr. Brownlee insisted I stay with him. So I telephoned John Caldwell and told him I did not think I would be able to go because I would be late and he said it would be all right anyway and he would wait for me. And it was on that occasion I had intercourse with Mr. Brownlee.

40 Q. Did you go home for Christmas in 1932? A. Yes I did.

Q. And when you came back to Edmonton after spending Christmas who was there to meet you at the train? A. Mr. and Mrs. Brownlee and another young lady and John Caldwell were all at the train to meet me.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. As far as you know had Caldwell met Mr. Brownlee at this time?  
A. No this is the first occasion he met him.

Q. And did you introduce them? A. Yes.

Q. And what happened? A. Mr. Caldwell put out his hand to shake hands with Mr. Brownlee and Mr. Brownlee just turned his back and walked away.

Q. And where were you January 1st, 1933? That, according to the diary, the 1st of January was on a Sunday. Do you remember what you did on New Year's Day? A. Yes, Mr. and Mrs. Brownlee called for me on New Year's morning about 10:30. I went over to their home for New Year's Day dinner and we went skating in the afternoon and while I was skating with Mr. Brownlee he asked me if I would come to his office the next morning and I told him I was expecting mother in town and I did not know whether she would come or not and he said: "I will phone you up and you can tell me over the phone tomorrow morning" and after we went back to the Brownlee home after skating we had tea and mother telephoned me about nine o'clock that evening from the Corona Hotel and told me she was in Edmonton. And for some reason or other Mr. Brownlee did not have a car and I called a taxi to go over to the Corona Hotel and when the taxi drove up in front of Mr. Brownlee's home Mr. Brownlee followed me out on to the verandah and said he would still phone me tomorrow morning and I could let him know then whether I could get away or not. 10 20

Q. And what happened on the morning of Monday the 2nd of January? A. Mr. Brownlee phoned me about eleven o'clock and I told him that mother was at Mrs. Mackay's with me and he said: "Well just tell your mother you are going back to work for a while and I will pick you up on Victoria Avenue just between 6th and 7th Streets." And I told mother I was going back to work at the Parliament Buildings for about an hour and then I would come right home after that. And Mr. Brownlee called for me or rather picked me up on Victoria Avenue and we went over to the Parliament Buildings and I had intercourse with Mr. Brownlee and then we went for a short drive and then he drove me home and let me off in front of the Mackay house. 30

MR. MACLEAN: I have now got a copy of Phipson. Phipson 7th edition page 471 (reading):

"It is often said that a witness cannot corroborate himself (R. v. Christie, [1914] A.C. 545, 557; Owen v. Moberly, 64 J.P. 88; Hodds v. Palfrey, 56 S.J. 172); and, where corroboration is legally required, some material evidence, independent of the witness's own testimony, is undoubtedly necessary. But where a person's conduct or statements, whether he is called as a witness or not, are evidence per se, e.g., as part of the res gesta, or as relevant under chaps. VIII-X, ante, they may, of course, be used either to confirm or contradict his subsequent testimony in the box, and in this sense a witness may corroborate himself (see Milne v. Leisler, ante, 72; R. v. Fowkes, ante, 78; O'Gorman v. O.G., post 472). 40

"And a witness's conduct, even when not otherwise relevant, is also some-  
times admissible in corroboration of his own testimony, e.g., the fact that  
"an expert witness has acted on his opinion (Stephenson v. Tyne  
Comms., ante, 385).

- "With regard, however, to statements made out of Court, but not  
"admissible per se, special considerations apply. Thus, formerly, the fact  
"that a witness had made a previous statement similar to his testimony in  
"Court could always be proven to confirm his testimony (Lutterell v.  
"Reynell (1670), 1 Mod. 282, 283; Freind's Case (1696), 13 How, St. Tr.  
10 "31-2). But afterwards the rule was changed, and such evidence is now  
"generally inadmissible either on direct examination of the witness  
"himself, to confirm his testimony, or on re-examination to re-establish  
"his credit when impeached by proof of a previous contradictory state-  
"ment, or when proved from the mouths of other witnesses (R. v. Parker  
"[1783], 3 Doug. 242; Coole v. Braham, 18 L.J. Ex. 105, 106; R. v. Coyle,  
"7 Cox 74; R. v. Coll, 24 L.R. Ir. 522; R. v. Christie, [1914] A.C. 545, 557,  
"567-8; Jones v. S. E. Ry. Co., 87 L.J.K.B. 775; Flanagan v. Fahy, [1918]  
"2 Ir. R. 361, 381-2, C.A., where this statement of the rule was approved).  
20 "Exceptions. Such statements are, however, receivable in the cases  
"mentioned below, not to prove the truth of the facts asserted, but merely  
"to show that the witness is consistent with himself:—(1) where the  
"witness is charged with having recently fabricated the story."

MR. SMITH: I have nothing to say. I am not charging this witness  
has recently fabricated the story. She has fabricated it for three years.  
That is my position. It is not recently.

THE COURT: I suppose the word "recent" would be interpreted in  
the same way that it is interpreted on the criminal side, wouldn't it?

MR. MACLEAN: The charge is that she and Caldwell conspired  
and the evidence is she did not meet Caldwell until the fall of 1932.

- 30 MR. SMITH: What has that got to do with it?

THE COURT: No, we won't have those conversations.

Q. MR. MACLEAN: And you have told us that your mother came  
to town on the first or second, I have forgotten which? A. On the first  
of January, 1933.

Q. And where did you move then? A. I moved to Mrs. Lush's on  
114th Street.

- Q. What was the reason for moving away from Mackay's? A. My  
mother and sister-in-law had planned to come in and live with me for  
about three months and they thought it would be rather nice if we could  
40 have a larger suite where we could all be together and that is why I left  
Mackay's.

Q. And you got a larger suite at Lush's and your mother moved there  
with you? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. And how long did she stay in town. Do you remember? A. She stayed in town till about the 17th of January.

Q. She was in town—no reasons connected with you at all? A. No reasons.

Q. What occurred between you and Caldwell in January 1933?

A. One Sunday night about the third week in January I had been over to the Brownlee home and John had been staying up in my apartment because it was inconvenient for him to stay at home on Sundays and I came in from the Brownlee home about ten o'clock and Mr. Caldwell was there and we were talking and he said he thought it would be awful nice to get married and have a home of our own and I agreed with him and he told me how much he loved me and I told him how much I loved him and he asked me then if I would marry him. He said I would probably have to wait three or four years and I told him I would not mind when it was something definite at the end, and then we started talking about having a home and I broke down and told him that it was all very wonderful but I could not marry him and he asked me why and I did not want to tell him at first and then he coaxed me to tell him and I told him about Mr. Brownlee and myself. And I asked John—I told him rather—that I did not think he had better come around any more and he said he certainly would but that the question of marriage would naturally have to be dropped. He told me that he would do anything he could for me to help me find my feet and to start living again the right kind of life that I should live. 10 20

Q. During this winter of 1933 after January were you still seeing Brownlee? A. Yes.

Q. And what was the situation between you? A. Well the times I asked him to break off with me became more frequent. I knew I was in love with John Caldwell, I did not know his feelings exactly towards me but the fact that I was, made my going out with Mr. Brownlee more objectionable than ever and Mr. Brownlee's demands were becoming more objectionable to me than ever, too. But he just seemed to have me under some kind of a spell and I could not get away from him. Whenever I would suggest breaking off he would always tell me about that I knew what would happen to Mrs. Brownlee and I knew what would happen to him and I knew what would happen to myself. 30

Q. Was there any particular occasion in February that you remember? A. There was one night in February when I again asked Mr. Brownlee to let me go and he refused and we had a quarrel over it and when he pulled the car up in front of Mrs. Lush's where I was staying he opened the door of the car and pushed me out. 40

Q. And what happened after that? A. And when I went upstairs to my room John Caldwell and Alf Turner were both there sitting and I was crying and at that time John knew all about it and he asked me what Brownlee had done to me now.

Q. Well never mind any conversations. Did that end matters with Mr. Brownlee? A. No it did not.

Q. And what happened after that? A. Well he phoned me up one night after that in February when the Session was on and he told me to come over to his office and I told him I was working then and he said after I was done to come up to his office and when I got through at the Attorney General's Department there was a note propped up on Miss Brown's desk, and in a few minutes he came down from the floor of the House and he kissed me and said he was not finished yet and would I please wait and I told him I would and he came down to his office and we went for a ride and he apologized again for the way he had treated me but he said I seemed to be different than what I had been before and that he could not understand the change and I told him that it was because I wanted my freedom and he said he could not understand why I could not be happy with him, that he had everything in the world to offer me and he then asked me if it was because of John Caldwell and I told him it was not, because it really was not, it was because I had been wanting all along to be free. And he told me that after all a young man had absolutely nothing to offer me, it would be years before he was through the medical course and whereas he himself had everything to offer me. And on that occasion he still refused to give me my freedom.

Q. At Easter, 1933, you moved to Mrs. Fuller's?

MR. SMITH: Can you fix the date of the last occurrence?

THE COURT: During a Session of the House in February.

MR. SMITH: Could you be more definite that that? A. No. I could not be more definite than that.

Q. MR. MACLEAN: And at Easter time you moved to Mrs. Fuller's? A. Yes on 116th Street.

Q. And she did not have a phone in the house? A. No she had not.

Q. Were you still going over to the Brownlee house? A. Yes, I did, but during this same February or it might have been March, Mrs. Brownlee was ill and after my conversation with Mr. Brownlee in February I had stopped going over there as frequently as I had been, and one day when I went over to see Mrs. Brownlee when I found out she was ill I was in her bedroom and she took hold of my hand and asked me if I had forgotten all about her and I told her I had not and she asked me to please come over more often and in face of what she said I started going over there again more frequently.

Q. Did Mrs. Brownlee question you at any time? A. Well later on and in the spring of that same year Mrs. Brownlee asked me what was the matter. She said I did not seem to be the same, and I told her there was nothing the matter and she said: "Are you sure Mr. Brownlee has not done anything to you" and I said: "No he has not."

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. And that is the only occasion on which she ever discussed him with you? A. Yes.

Q. And what was the position in May of last year, 1933, between you and Mr. Brownlee? A. Well at Easter of this year just the Sunday after the Easter I believe Mr. Brownlee made arrangements to take me for a drive on Sunday morning and as there was no phone at Mrs. Fuller's he telephoned me at the office on Saturday and he picked me up on 116th Street going north just by 107th Avenue where the street car tracks are and he picked me up this Sunday morning about half past ten and asked me if I would go over to the office with him and I told him no, and he became angry because I refused him. I told him I did not like going to the office in broad daylight because people were sure to see us and start talking about us eventually and he said that that was just my foolish imagination, but anyway I refused to go to the office with him and he became very angry and asked where I was going and I told him I was going to the First Baptist Church and to drive me around to First Baptist Church and when I got out of his car he said: "You need not bother coming over this afternoon because neither Mrs. Brownlee nor the boys nor myself will be at home to you this afternoon" and I said: "All right, you will have to give Mrs. Brownlee my explanation for not coming over." And I spent that afternoon with a girl friend of mine and this particular time John Caldwell was out of town but came back this particular Sunday night and I told him what had happened and he said, well it was probably just as well to have happened that way because I no doubt was free now.

Q. And were you free? A. No.

Q. What happened after that? A. Well I tried to stop going over to the Brownlee's very gradually because I did not want Mrs. Brownlee to suspect anything and when John Caldwell was in town I had a good excuse for not going over there but when he was not in town I had no excuse at all and I started going over again. And whenever I was over there Mr. Brownlee would insist on driving me home and taking me out for a ride in the country and having intercourse with me and I was becoming almost desperate by this time. He just seemed to be playing with me like a cat plays with a mouse. He just seemed to wear down every bit of resistance I had and I realized that unless something definite was done that I would never get away from him.

Q. And what did you try to do? A. So when John Caldwell came back and found out I had been going over to the Brownlee home again and going out with Mr. Brownlee he asked me wasn't I ever going to stop going over there because I was certainly not getting myself anywhere, and I told him that I just could not, that Mr. Brownlee's influence was too strong for me and I asked what he thought I should do to break it off and he told me well he did not exactly know but if I wanted him to he would consult a lawyer and see what could be done and I gave him my consent and as a result of that conversation Mr. Caldwell went up to see Mr.

Maclean on the 22nd of May and Mr. Maclean told John Caldwell that he would like to—

THE COURT: Wait a moment.

Q. MR. MACLEAN: And what did you do after that? A. I went up to see Mr. Maclean on the 24th of May.

Q. And what advice did you get?

MR. SMITH: My Lord, really my friend, has, in the language of the street, put over a couple of fast ones already, but surely he is not going to do it this time.

10 MR. MACLEAN: Does your Lordship uphold Mr. Smith's objection?

THE COURT: How can you now go into a conversation between yourself and this witness in asking her what advice you gave her?

MR. MACLEAN: All right, my Lord.

Q. What happened after the 24th of May? A. I decided to give Mr. Brownlee another chance to give me my freedom.

Q. Did you ask him for your freedom? A. Yes I did.

Q. What answer did you get? A. The same answer that he always gave me, that I knew what would happen to Mrs. Brownlee and I knew what would happen to him and I knew what would happen to myself and  
20 he told—

Q. Were you going out with him again? A. Yes I went out again with him in June.

Q. And did you have connection with him? A. Yes I did.

Q. And we have heard from Mr. Brownlee that his family were going down to the lake, that is Sylvan Lake, for July? A. Yes, sir.

Q. Do you know when they actually went? A. Well I said good-bye to Mrs. Brownlee on June 29th.

Q. And were they going shortly after that? A. I believe they left the next day but I am not sure about it.

30 Q. As far as you know they were to leave the next day? A. Yes, sir.

Q. And you said good-bye to her? A. Yes, sir.

Q. Where? A. At her home.

Q. Did Mr. Brownlee drive you home on June 29th? A. Yes he did.

Q. Had you been out with him a short time prior to that? A. Yes I was out with him on June 27th, just two nights before that.

Q. Where had he met you on June 27th? A. He met me on the bridge that goes over the railroad tracks that run parallel with the street car tracks on 109th Street and it is a continuation of Victoria Avenue.

40 Q. That is the bridge that carries Victoria Avenue over the C.P.R. tracks? A. Yes.

Q. A rather steep high bridge? A. Yes.

Q. Between 9th and 10th Streets? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. Did he meet you there that night? A. Yes, sir, he did.  
Q. Whereabouts were you? A. I was standing on top of the bridge.  
Q. And he picked you up right there? A. Yes, sir.  
Q. How had he arranged to meet you that night? A. He telephoned me at the office because Mrs. Fuller did not have a phone and he told me he was going to Calgary that night and that he would like to see me a few minutes before he left and I told him I did not think he should pick me up on 116th Street any more because I was beginning to hear rumors about Mr. Brownlee and myself and I thought 116th Street was rather public because every one knew me along there, and he then suggested to pick me up on Victoria Avenue, just at 9th Street. 10

Q. Did he mention the time? A. About ten o'clock.

Q. And you met him there and he picked you up? A. Yes.

Q. And where did you go on that occasion? A. Well Mr. Brownlee was leaving for Calgary on the night train and he drove over to the C.P.R. station and made reservations for a sleeper and we went back to the Parliament Buildings.

Q. When you were on this bridge which way was Mr. Brownlee's car driving when he picked you up? A. West.

Q. Then he was going west across this bridge? A. Yes. 20

Q. And there are some Catholic Churches and Hospitals on 10th Street just west of this bridge, are there not? A. Yes, sir.

Q. And after he picked you up you say he drove to the C.P.R. Station? A. Yes, sir.

Q. Do you remember the exact route he took to get to the C.P.R. station? A. I believe we drove down Victoria Avenue two or three blocks west and then down on to Jasper Avenue.

Q. Turned north to Jasper Avenue? A. Yes and then went east on Jasper Avenue to the corner of the C.P.R. station.

Q. And what did he say he was going to the station for? A. To make reservations for a sleeper to Calgary. 30

Q. He travels on a pass himself, does he not? A. I believe he does.

Q. And after getting reservations at the C.P.R. station that evening where did you go? A. We drove down to the Parliament Buildings because he was to pick up some papers there to take to Calgary with him. I did not go into the building with him, but he went up himself and brought his brief case down with him and we went for a ride and went out the same west road we had done before.

Q. And you have mentioned that you were driving with him on the 27th of June and that he drove you home on the 29th of June? A. Yes, sir. 40

Q. And when was the next time that you were out driving with him? A. It would be on July 3rd.

Q. And how did that happen? A. Mr. Brownlee telephoned me at Mrs. Cupper's where I was living and made arrangements to meet me. He told me that he did not know when he would be free but he would



phone back later and let me know when he could come and where he would meet me.

Q. And in the meantime his family had left town? A. Yes.

Q. Mrs. Brownlee and the two boys and the maid, all of them gone?

A. I believe so.

Q. And was there anything you wanted to discuss with him?

A. No there was not anything for me to discuss with him.

Q. And where did he meet you? A. He picked me up just under the bridge that goes down 7th Street to the Parliament Buildings and that  
10 bridge goes over the street car tracks that goes down 97th Avenue.

Q. And that is the same bridge we have heard about that crosses over to the Parliament Buildings from 7th Street? A. Yes.

Q. And he met you under that bridge? A. Yes, sir.

Q. And how did you know to meet him there? A. That is where he asked me to meet him.

Q. Was he in the habit of asking you to meet him at different places?

A. He always suggested the places where he would meet me.

Q. And what time was it that you met him there? A. It would be about ten o'clock at night.

Q. And where did you go? A. We went out the west road but  
20 instead of turning south as we usually did we went straight on for about another mile it might be and then we turned north and we parked on the side road going north off the main highway.

Q. And what was the condition of the Stony Plain road that night. Do you remember? A. The Stony Plain road was in good condition.

Q. A gravelled Government highway- A. Yes.

Q. And what was the condition of this side road leading north off the Stony Plain road? A. It was a bit rough but it was not wet.

Q. But not to be compared to the highway for comfort or travel-  
30 ling? A. Oh no.

Q. And how far did you go up this highway? A. I could not say for sure but it would be about a mile and a half or two miles.

Q. And what happened then? A. I had intercourse with Mr. Brownlee in the back seat of the car.

Q. Anything happen that night while you were there in the back of the car? A. Well while we were parked on the side of the road, facing north it would be, another car drove past us but I was in the back seat and I could not describe the car or anything.

Q. You did not know who it was? A. No.

Q. And after that what happened? A. After that we drove back  
40 on to the highway and instead of going straight home we turned off on to the side road we usually went down, the side road running south and we went down that for about two and a half miles until we came to a cross road that runs parallel with the highway and we turned around there and came back.

Q. And that was all on the 3rd of July last? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Exami-  
nation  
*continued.*

5th. Q. When did you next see Mr. Brownlee? A. I saw him on July

Q. Were you out riding with him? A. Yes, sir.

Q. How did that happen? A. Well he telephoned me at Mrs. Cupper's about twenty minutes to ten I believe it would be and asked me to meet him in about twenty minutes time and he suggested that I meet him in front of the Administration Building or just along that street and I said I would.

Q. And did you meet him? A. Yes I did.

Q. And what happened? A. Well Mrs. Brownlee and the boys and 10  
the maid were out of town and when I got in the car Mr. Brownlee suggested that we go over to his home and I said I did not think we should and he said: "Why not? It is not very often we have the house all to ourselves," and so I agreed to it and we started to drive over to the south side by way of the Low Level Bridge and Mr. Brownlee asked me if I noticed a car following us and I told him no, and he said: "Well there seems to be a car following us; as a matter of fact I think it is the same car that turned around in the middle of the block when I picked you up." And he asked me if I had noticed the car and I told him I had not because I had not. And when he got up the hill on the south side of the river he 20  
became quite positive that a car was following us, so he changed his mind about going to his home and we drove around the south side and this car followed us and we came back over to the north side and this car still followed us. So Mr. Brownlee thought that he could shake the car off if he went down Jasper Avenue through the traffic. So we went down Jasper Avenue. We were going east on Jasper Avenue and we drove down as far as Mike's Newsstand and Mr. Brownlee turned around the street car pole there and we drove back to the Hudson's Bay store and Mr. Brownlee suggested it might be a good idea if we both got out of the car and walked down to Mike's as he had to get papers for his son anyway 30  
and that might be a way of shaking these people or whoever were following us. And I walked down to the newsstand with Mr. Brownlee and back to the Hudson's Bay and as we came to the corner of the Hudson's Bay on 102nd Street Mr. Brownlee suggested I go home alone and I told him I did not want to do that because I was worried about this car following us and I did not know who it was and I did not know what they might be after and he agreed to drive me home and he drove me over—we went down 7th Street and just turned on to 99th Avenue and he stopped the car there and that was about three blocks from the place where I lived and it was a dark street and he let me out there and when we parked 40  
this car pulled up on the other side of the road a few feet behind Mr. Brownlee's car. And Mr. Brownlee suggested that probably I could go in and see Harriet Gamp for a few minutes and there would not be any danger of anyone following me home. I told him it was rather late to go into Miss Gamp's house and I would just pretend I was going in there so this other car would not follow me, and I walked up to the gate of the house

where Miss Gamp was living and I came out of the gate and went back home to Cupper's.

Q. Did Mr. Brownlee say anything to you afterwards about this trip on July 5th? A. Yes, he phoned me up about a week afterwards. He phoned me at the office and asked me to come up to the Speaker's rooms and be sure not to let anyone see me coming up and after I finished work I went up to the Speaker's rooms and met Mr. Brownlee there and he asked me if I had heard anything about July 5th and I said no I had not, but it all went to prove that people were talking about us and I wished he would  
 10 give me my freedom and stop seeing me and he told me not to be silly, that people were not talking, that it was just my imagination and that he would get in touch with me again in a short time.

MR. SMITH: Did she say when this interview was?

THE COURT: About a week after the 5th.

MR. MACLEAN: What was Mr. Brownlee's attitude when he found he was being followed on the 5th of July. How did he re-act to it? A. First he was very curious about it, and then I think he became a little afraid of who might be in the other car.

Q. Did he mention anything about it? A. He told me he wondered  
 20 who it could be and he asked me if I knew who it was and I told him I certainly did not because at first I thought it was just his imagination because Mr. Brownlee often used to watch for cars following us.

Q. But you yourself did find out that there was a car actually following you? A. Yes.

Q. At that time did you actually know who was in that car? A. No.

Q. Had you seen that car before you started out with Mr. Brownlee?

A. No I had not.

Q. Now when did you next see your father? A. I saw my father in the middle of July.

Q. And what happened? A. Well by this time I had come to the  
 30 conclusion I would have to do something about getting away from Mr. Brownlee, so I decided to tell my mother about it and I told mother all about it and told her my story and just what had been going on and all about it and mother told Dad and then Dad had a long talk to me about it and he asked me what I wanted to do about it and I said I did not know what I could do about it and he said: "Well I certainly am going to do something about it."

MR. SMITH: I have not objected, but really this is not evidence.

Q. MR. MACLEAN: Did you and your father then decide to do  
 40 anything together about this? A. Yes we did.

Q. And what did you decide to do? A. My father consulted Mr. Maclean about what he could do.

Q. And it was at that time that your father gave instructions, was it?

A. Yes it was at that time.

*In the  
 Supreme  
 Court of  
 Alberta*

—  
 Plaintiff's  
 Evidence

—  
 No. 9  
 Vivian  
 MacMillan  
 Exami-  
 nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Exami-  
nation  
*continued.*

Q. Did you ever at any time make any demands for money on Mr. Brownlee? A. No I never did.

Q. Did you ever at any time threaten that you would do anything if he did not pay you anything? A. No I did not.

Q. Did you ever make any demands on Mr. Brownlee on behalf of Mr. Caldwell? A. No, sir, I did not.

Q. I am sorry to have to go back again, Miss MacMillan, to the time you had connection with Mr. Brownlee. What effect did that connection have on you?

MR. SMITH: The first time? 10

MR. MACLEAN: The first time. A. Well the first time I was in the back seat of the car with Mr. Brownlee, on the second Monday night, Mr. Brownlee did not gain complete entrance, but because of the rage he had flown into and what he had tried to do he made me terrified of him.

Q. And the next week? A. And the next week Mr. Brownlee had complete intercourse with me.

Q. What did it do to you? A. Well it made me quite ill and I menstruated all the next day.

Q. And what effect did each intercourse that he had with you after that have on you? A. Every time I had intercourse with Mr. Brownlee 20 it always caused me a great deal of physical pain.

Q. On each occasion? A. Yes, sir.

Q. On every occasion? A. Yes, sir.

Q. Did it have any effect on your health?

MR. SMITH: My Lord, this is more expert. I do not mind how she felt and so on but I do not want her to give expert medical opinion.

THE COURT: I think he can go so far as to ask her if it did have any effect on her health. A. Yes it did have an effect on my health because there was no other reason why I should be losing weight or feeling tired and worn out all the time. 30

Q. MR. MACLEAN: And did you start to lose weight from the time Mr. Brownlee began having connection with you? A. I did.

Q. What is the state of your health now, Miss MacMillan? A. I certainly do not feel very well and I have a great deal of difficulty when I menstruate at the end of the month and I have not recovered from the illness I went home with when I went home in 1932.

Q. You are still suffering from that same thing? A. Yes, sir.

Q. On August 3rd, 1933, a letter was written by myself to Mr. Brownlee which has been put in as Exhibit 1. Were you working at the Parliament Buildings on August 3rd? A. Yes, sir. 40

Q. Were you ever told to get out? A. No, sir.

Q. And you were working at the Parliament Buildings from August 3rd till September 22nd? A. Yes, sir.

Q. And you left of your own accord? A. Yes I left on my holidays.

Q. And nobody fired you or sacked you? A. No, sir.  
 At 4:10 Court adourned till 10:00 a.m. Tuesday, June 26th, 1934.  
 Tuesday, June 26th, 1934, Court resumes at 10.00 a.m.

*In the  
 Supreme  
 Court of  
 Alberta*

Plaintiff's  
 Evidence

No. 9  
 Vivian  
 MacMillan  
 Cross-Ex-  
 amination

CROSS-EXAMINATION BY MR. SMITH

- Q. Miss MacMillan, I want to discuss with you first Mr. Brownlee's visit to Edson in July 1930. Now on that occasion he went there with Dr. Wallace? A. Yes, sir.
- Q. President of the University? A. Yes, sir.
- 10 Q. And this luncheon that you speak of, Dr. Wallace was there, at Pattinson's? A. Yes.
- Q. And there is no doubt you drove your father's car around to the Pattinson's house? A. Yes.
- Q. And there is no doubt that at that time you knew how to drive a motor car? A. Yes.
- Q. And there were several cars that went to Shining Bank that day? A. There were three of them.
- Q. Mr. Brownlee was in your's? A. Yes, sir.
- Q. Dr. Wallace went and was otherwise taken care of? A. Yes.
- 20 Q. And you knew that Dr. Wallace was President of the University of Alberta? A. Yes, sir.
- Q. Your father knew that? A. Yes.
- Q. Your mother knew it? A. Yes.
- Q. And Shining Bank is roughly about 28 miles from Edson? A. Yes.
- Q. In other words, it is about an hour's drive? A. It would be about that.
- Q. So that this whole conversation between your father, your mother, Mr. Brownlee and yourself is confined to an hour at the outside? A. Yes, sir.
- 30 Q. And on that occasion the subject was raised, you say, by Mr. Brownlee saying to your mother that she had a beautiful daughter? A. Yes, sir.
- Q. I suppose there was no falsity in that at all? A. None whatever.
- Q. And he then said: "What are you going to do with her?" A. Yes, sir.
- Q. There was yet nothing unusual in this conversation—as yet nothing unusual? A. No.
- Q. Nothing that raised the suspicions of your father, your mother or yourself? A. No, sir.
- 40 Q. And you then said or somebody said that you had reached the end of your school in Edson? A. Yes, sir.
- Q. In other words, the next grade was not there at all? A. Yes.

In the  
Supreme  
Court of  
Alberta  
—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
continued.

Q. But you had accomplished what is known as a junior matriculation? A. Yes, sir.

Q. So that you had that much education? A. Yes, sir.

Q. And he then told you after the music had been discussed, he then referred to people making a success in secretarial work? A. Yes he said he thought it was a very good career for a young girl to follow.

Q. Well there is not any doubt about it, is there. That is true? A. Yes that is true.

Q. And he suggested, according to you, that you should take a business course? A. Yes, sir. 10

Q. And Edmonton of course is the closest place to Edson where such a course can be taken? A. Yes, sir.

Q. There is no doubt about that? A. No.

Q. So there is nothing unusual yet, in this conversation, is there? A. No, sir.

Q. Now he proceeded then—you say that your father demurred at your leaving home? A. Yes, sir.

Q. He thought you were too young? A. Yes, sir.

Q. Did you have any friends in Edmonton at that time? A. No, 20  
sir.

Q. Where was Snell? A. At that time he did not know whether he was coming to Edmonton or not.

Q. Before you came to Edmonton Snell had come to Edmonton? A. Yes.

Q. And you knew he was going to be here during the summer? A. Yes.

Q. Studying at the Summer Course in the Alberta University? A. Yes, sir.

Q. And didn't you have some other friends here. What about Miss Hildebrand the nurse? A. Well she was living here but she was not 30  
exactly a friend.

Q. You knew her quite well? A. My parents knew her quite well.

Q. She then was a friend of your family's. There is no doubt about that? A. She was a friend of the family's.

Q. You object to the word "great" do you? A. Yes.

Q. All right. We will let it go then. What about Mrs. Lawton? A. I did not even know Mrs. Lawton was living in Edmonton then.

Q. All right. You found out that she was, didn't you? Does not Mrs. Lawton's sister live in Edson? A. No, sir.

Q. Did she then? A. No, sir. 40

Q. Mrs. Lawton was a friend of your family's? A. The last time my family had seen Mrs. Lawton was shortly after I was born, 22 years ago.

Q. And wasn't there someone here in the University whom you knew quite well? I don't mean in the holiday period but I mean attending the University? A. There was just one young fellow that I went to High School with.

- Q. Harper? A. No. His name is Peter Herbert.
- Q. And your family being employees of the C.N.R. travel on pass?  
A. Yes.
- Q. Your parents frequently came down here? A. Yes, sir.
- Q. And your mother visited here, and I think there is a family by the name of Mr. and Mrs. Rice? A. Yes, we know a family by the name of Mr. and Mrs. Rice.
- Q. And your mother visited them occasionally? A. Yes.
- Q. You knew them? A. Yes I knew them.
- 10 Q. And as a result of this hour's conversation—you then say that Mr. Brownlee said that if you came down, his home would be your home?  
A. Yes, sir.
- Q. That he would act as your guardian. He used that word?  
A. He did.
- Q. Are you sure of that? A. I am positive of it.
- Q. And that they would look after you. I suppose that means Mr. and Mrs. Brownlee? A. Yes, sir.
- Q. Did it strike you that there was some remarkable haste about that? A. Well I remarked on it afterwards that I wondered why Mr.  
20 Brownlee had taken such a great interest in me.
- Q. Then you did think there was some remarkable haste about it?  
A. Well I just wondered why he had taken such an interest.
- Q. Did you think that he had acted hastily? A. I cannot say that I thought he acted hastily. I did not think about it.
- Q. You did not discuss it with your parents because you wondered why later he had taken such an interest in you? A. Yes.
- Q. Did they think he had acted hastily? A. No, sir.
- Q. You had met Mr. Brownlee before, a couple of years before. I think he was on a visit with the Lieutenant Governor, Dr. Egbert?  
30 A. Yes.
- Q. And you were a Girl Guide? A. Yes.
- Q. And were working at the banquet or something, afterwards?  
A. Yes.
- Q. It was just a casual meeting? A. Yes it was in the afternoon.
- Q. We might as well get it cleared up. It was just a casual meeting. There was no question he had any designs on you at that time? A. No, sir.
- Q. And you do not think so now, do you? A. I do not know, now.
- Q. Your view is that some two years earlier that Mr. Brownlee then had designs upon you? Go one way or the other and I don't care which  
40 way you go? A. No that is not my view.
- Q. And so far as we are concerned here we can eliminate that first visit completely? A. Yes.
- Q. Now with whom was your coming to Edmonton discussed between the time of Mr. Brownlee's visit and your being here on the 29th of August? A. It was discussed just in our own family and with Mr. Snell.
- Q. Now prior to your coming to Edmonton do I understand you now

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

to say that you had no intention of coming down here to study music prior to seeing Mr. Brownlee? A. No intention whatever.

Q. That was to be carried on in Edson? A. Yes, sir.

Q. And you never wrote to anybody about coming down here?

A. I wrote to the Royal Alex for their calendar for a course in training for a nurse.

Q. That was with respect to a course in training for nursing?

A. Yes.

Q. When did you write them? Well never mind. Was it long before Mr. Brownlee's visit or was it after? A. It was before.

Q. Do you know how long before? A. It might have been a month before.

Q. However, there is no doubt about this you never did contemplate coming down here to study music? A. No.

Q. And you did not communicate with anybody about coming down here. A. No, sir.

Q. And when you finally did come down who met you at the train, you and your mother—Snell wasn't it? A. I believe he did. I cannot exactly remember.

Q. And I suggest he was with you every day until your mother returned to Edmonton, lunched with you every day? A. Yes he did.

Q. And Mr. Brownlee had also promised, had he not, according to you, to send a curriculum from some institutions in Edmonton? A. Yes, sir.

Q. What kind? A. Well I believe he was going to inquire at the University about taking a course in music and in English and also from one of the business colleges.

Q. So that your story is that on this visit Mr. Brownlee told you he was going to inquire about a course in music at the University? A. Well it was not so much a music course. It was more or less a culture course.

Q. But it was music and English? A. Yes.

Q. And those were the inquiries he was going to make and advise you of? A. Yes.

Q. And he never did, did he? A. No.

Q. And he never sent you any curriculum of any kind? A. No.

Q. And Dr. Wallace, the President of the University was present at the time Mr. Brownlee told you he was going to make inquiries at that University with respect to a course in culture? A. Yes, sir.

Q. It would not have been a difficult matter to have asked the man who controls the University about these very things, would it? A. No it would not have been a difficult matter.

Q. Neither you nor your father or your mother communicated in any way with Mr. Brownlee from the time he was there until you came to Edmonton? A. No, sir.

Q. Never telephoned him? A. No, sir.

Q. Never wrote him a letter? A. No, sir.

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- Q. Nor communicated with him in any way? A. No, sir.
- Q. This man who was to be your guardian? A. No, sir.
- Q. That is true, isn't it? A. Yes, sir.
- Q. And you went with your own mother to Alberta College?
- A. Yes.
- Q. About this commerce course, without consulting him, that is right, isn't it? A. Yes but it was on the suggestion of Mr. Brownlee that I went to a business college.
- Q. Made in July? A. Made in July.
- 10 Q. And you came down here at the end of August? A. Yes.
- Q. And you came down here to Alberta College and made arrangements about a course of study? A. Yes.
- Q. Without consulting this guardian? A. Yes.
- Q. And you never consulted Mrs. Brownlee? A. No, sir.
- Q. Nor did your parents? A. No, sir.
- Q. And you decided that you would not live in residence at Alberta College? A. Yes.
- Q. And your mother was with you when you made that decision?
- A. Yes.
- 20 Q. And the reason you decided not to live in residence was because the evening restrictions were too close? A. Yes, sir.
- Q. In other words, that you did not have sufficient freedom in the evening, isn't that the reason? A. Yes, sir.
- Q. And you and your mother chose to go and have you live at the Y.W.C.A.? A. Yes, sir.
- Q. So that the man and his wife Brownlee and Mrs. Brownlee—Brownlee was to act as your guardian, he and his wife were to look after you—were not even consulted as to where you should go? A. When Mr. Brownlee was introducing the subject he suggested I stay at the Y.W.C.A.
- 30 Q. Oh that is new. When did you think of that? A. It is not new.
- Q. When did you think of it? It is the first time I have heard of it.
- MR. MACLEAN: It is the first time she has been asked.
- MR. SMITH: Both of you take a shot at it. When did you first think of that? A. I was never asked.
- Q. I examined you for discovery a short time ago? A. Yes.
- Q. And you will perhaps say I treated you with the utmost courtesy?
- A. Yes, sir.
- Q. I did not press you in any way? A. Yes.
- Q. I treated you fairly, didn't I? A. Yes, sir.
- 40 Q. And I asked you then for the whole conversation between you and your parents and Brownlee on that drive to Shining Bank? A. Yes, sir.
- Q. And I am just going to read what you said (reading):
- "Q. What conversation was that? "A. Mr. Brownlee asked me what I was going to do the following year, because I would either have to stay at home and do nothing, because there was no Grade XII there, or

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

come to Edmonton; and he asked me what I would like to study, and I said I had thought of taking up music; and he said there wasn't much future in music for a woman, that it was much better to get something to make a living; and he suggested that I come in to Edmonton and take a business course and he said that he would see about the curriculum at one of the colleges in Edmonton, and let me know."

"Q. Did your father and mother join in this conversation?

"A. Yes.

"Q. Did he say anything more to you on that occasion? "A. Mother and Dad rather objected to my going away from home—at least, they didn't want me to leave; but Mr. Brownlee said that he was sure that he could give me a position at the end of my business course, and he wished me to use his home as my home, and that he would act as a guardian to me while I was in Edmonton, and of course Mother and Dad thought that that would be all right. 10

"Q. Tell me what they said; I want the whole conversation. You say your father and mother thought something. That really is not evidence. What did they say? "A. Well they said that it would be all right if I came in, but their one objection had been previous to that, that I would be in Edmonton alone, a stranger, not knowing anyone; but Mr. Brownlee suggested that I could use his home as my home in Edmonton, and they agreed that it would be rather a good plan. 20

"Q. Now you have given me, I think, practically the whole of that conversation? "A. Yes.

"Q. And did this conversation arise just shortly after the trip started? "A. Yes."

Q. You made those answers to those questions didn't you? A. Yes, sir.

Q. Do you want to say now that I did not want to get the whole conversation from you at that time? A. Well that must have slipped 30 my mind.

Q. All right. We will leave it at that. Now do you want to say this, that the reason you went to the Y.W.C.A. to stay—remember, you are here with your own mother—that the reason you went to the Y.W.C.A. was because Brownlee has suggested it. Do you want to say that? A. Yes.

Q. Your oath is that having seen him in July, having come here at the end of August and not having communicated with him or consulted him, having gone to Alberta College on your own, having decided not to live in residence because of the evening restrictions, you then went to the Y.W.C.A. simply because Brownlee had suggested it? A. Yes, sir. 40

Q. And while you were here, you and your mother, neither of you communicated with Brownlee or Mrs. Brownlee in any way? A. No, sir.

Q. Now I want you to look at a letter. Before that, when you went to Alberta College you saw Dr. McCall, didn't you? A. Yes, sir.

Q. Did you tell him that Mr. Brownlee was to be your guardian? A. No, sir.

- Q. Or did your mother tell him? A. No, sir.  
 Q. You did not mention his name in any way or Mrs. Brownlee's name to Dr. McCall, did you? A. No, sir.  
 Q. Will you look at this letter and tell me if that is your signature?  
 A. Yes that is my signature.  
 Q. And you sent that letter no doubt in the usual course of the mail, didn't you? A. Well I don't remember writing it but it is my signature.  
 Q. It is your handwriting and it is your signature?

**Letter dated July 5th, 1930, Vivian MacMillan to 10041 - 101st Street, 10 Edmonton, marked Exhibit 2.**

THE COURT: Who is it to?

MR. SMITH: That letter is addressed to 10041 - 101st Street, but that is the Alberta College? A. Yes.

Q. So on the 5th of July you were communicating with Alberta College with a view to taking a course in music at that institution. It is plain you were isn't it? A. Yes.

Q. So that when you told me a moment ago that you never had contemplated coming to Edmonton to take music before Mr. Brownlee arrived you were wrong, weren't you? A. Well there had been nothing  
 20 definitely decided from that letter or from the information we received back, if we did receive any, but I don't remember receiving any.

Q. That is not what I asked you. You told me until a moment ago until Brownlee came that you had not contemplated taking music in Edmonton and that you had not communicated with anybody. And you were wrong, weren't you? A. Yes.

Q. So there is no doubt that prior to his going the matter of your coming to Edmonton had been discussed by you with your family. There is no doubt about that? A. I do not think it had been discussed with my family. I wrote that letter on my own accord because my parents did not  
 30 want me to leave home.

Q. All right. Then you wrote this letter without your parents' knowledge, Is that the idea? A. Yes.

Q. You wanted to keep it away from them that you were writing this letter? A. I did not want to keep it away from them?

Q. You did not want them to know? A. It was not exactly I did not want them to know, either.

Q. Well what is the situation? You either did want them to know or you did not. Now which it is? Either way, it is all right with me.  
 A. I did not want them to know until I received some definite answer.

40 Q. Some definite answer being what? A. Well the information that would be returned to me from Alberta College.

Q. And did you receive that? A. I may have but I can't remember.

Q. Well I am going to show you a copy of a letter. I want you to read that copy of a letter. Now I am showing you a copy of a letter and I

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

want you to read it (handing letter to witness). Did you get a letter of which that is a copy? A. I can't remember whether I did or not but if it is addressed to me I must have got it.

Q. Well I mean doesn't it look familiar to you? A. No it does not.

Q. All right. Will you say that you did get that letter or that you did not, of which that is a copy? A. I will say I did get it because if there is a copy of it I must have got it.

**Copy of letter, dated July 6th, 1930, to Miss V. MacMillan, marked Exhibit 3.**

Q. And you no doubt received the curriculum which was enclosed there? A. Yes, sir. 10

Q. And you arrived in Edmonton just before that same Alberta College opened its term? A. Yes, sir.

Q. So that I suppose you probably admit now that the curriculum contained the business course? There is only one calendar in that institution? A. Yes.

Q. You were there for a year and surely know something about it. A. I could not say whether it contains the curriculum for music and for a business course in the same calendar.

Q. And you were there for a year and don't know that? A. Yes, 20  
sir.

Q. So that there is not any doubt that you had at least began making arrangements to come to Alberta College where you finally did come long before you saw Mr. Brownlee that summer? A. I wrote that letter and received a reply but other than that there were no arrangements.

Q. Now you have told me and told Mr. Maclean, and you told me twice this morning very definitely that Mr. Brownlee used the word "guardian". I am going to read you something that your father had said on his examination in this case and I want to know whether you are going to agree with him or not. I am reading from Question 734: 30

"Q. Now was there anything else that he put forward at that time that you recall? "A. No. He just said that he would practically act as her guardian."

"Q. That is of some importance to determine the thing. Did he say he would act as her guardian? "A. He said 'We will look after her.'

"Q. He was not voluntarily naming himself as her guardian there and then? "A. No but it practically implied that.

"Q. But the term 'guardian' was not used? "A. No, he just said he would look after her, that they would look after her."

Q. Now was the word "guardian" used? A. Yes, it was used. 40

Q. In this case you are right? A. Yes, sir.

Q. And your father was wrong? A. My father might not have heard the word used because he was driving the car.

Q. Well, any more explanations? Let us have them all now. He says he heard the conversation and the word "guardian" was not used and

your excuse is probably your father did not hear it? A. Yes, sir.

Q. Was it whispered? A. No, sir.

Q. This was an open conversation? A. Yes, sir.

Q. Brownlee was not whispering something to you that your father could not hear? A. No, sir.

Q. So that you are right and your father is wrong about that? A. Yes, sir.

10 Q. Then again, when a man you have only seen and been in conversation with for a few minutes in the presence of yourself and your parents says he is going to be your guardian, didn't that strike you as a little bit startling? A. It was not startling.

Q. Well striking—unusual? A. It just made me wonder once again why he had taken so much interest in me.

Q. Well did you comment on that to your parents? A. Yes.

Q. What did you say to them? A. As I said before. I said I wondered why Mr. Brownlee had taken such an interest in me.

20 Q. I am taking your story that the word "guardian" was used. What did it mean? What did you take out of it? What was he supposed to do for you? A. Well from the sentence he made following that he said he would see I did not get into any trouble or difficulty, or words to that effect.

Q. I am asking you what meaning you took. The word is wide open to you. Now what meaning did you take out of it? A. I thought he meant what he said, by looking after me.

Q. You never consulted Mr. or Mrs. Brownlee about one of the half dozen residences you chose for yourself in Edmonton, did you—not once? A. Yes I did.

30 Q. All right, how many? A. I consulted Mrs. Brownlee when I went to live at Mrs. Lawton's and I never moved into a place without telling Mrs. Brownlee all about it and asked her opinion of what she thought of it.

Q. You say, that before any move you made you consulted Mrs. Brownlee and asked her opinion, do you? A. I would not say I consulted but I asked her opinion. I told her about it and described the place to her.

Q. Did you take her into any of them to see them before you moved in? A. No, sir.

Q. Did you ever ask her to go and meet the people with whom you were going to live? A. No, sir.

Q. And you never consulted Brownlee at all about these changes of residences? A. Other than to tell him where I was going.

40 Q. But you never asked his advice about it? A. No, sir.

Q. This guardian of yours? A. No, sir.

Q. Now then, leaving that and moving on to the first time you say you were communicated with by Mr. Brownlee. Your mother left here on the 3rd of September? A. Either the third or the fourth.

Q. And on the Saturday of that week you had a telephone call at the Y.W.C.A. from Mr. Brownlee? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And you were there in the Brownlee house all the following day, Sunday? A. Yes, sir.

Q. Saturday was the 6th and Sunday was the 7th? A. Yes, sir.

Q. We are not mistaken about these dates, are we? You are looking at a diary produced very kindly by your counsel and I want you to look at those dates of the first week in September. Do you see it? What date was Saturday? A. Saturday was the 6th.

Q. And Sunday the 7th? A. Yes.

Q. So there is no confusion between us as to the days we are talking about. It was the 6th Brownlee phoned you and it was the 7th you were over in his house. You have already said you were there those days. I want you to take your time and say it again if you feel like it. A. Well that is as near as I can remember. 10

Q. Well are you getting a little doubtful about it now? He either phoned you on that Saturday or he did not. A. Well it was on Saturday he phoned me and on a Sunday I went over there.

Q. All right. You have told Mr. Maclean and you told me that it was the Saturday of the week your mother went back to Edson that he phoned you? A. Yes.

Q. And your mother went back on the 3rd or 4th. So Saturday would be the 6th and Sunday would be the 7th? A. Yes, sir. 20

Q. Now then did Brownlee phone you on that Saturday the 6th? A. Yes he phoned me that Saturday.

Q. The 6th? A. I am quite sure it was the 6th.

Q. If it was not the 6th it was the 13th. If it was not that Saturday it would be the next one, wouldn't it? A. Yes, sir.

Q. Which was it? A. As far as I can remember it was the first Saturday.

Q. Are you positive about it? A. I am not positive about it but I am speaking from memory. 30

Q. What were the two Brownlee boys doing on that Sunday when you were over there? A. I don't remember what they were doing.

Q. Were they there? A. I believe they were.

Q. Were they? A. As far as I can remember they were, at least one of them was.

Q. Which one? A. I believe it was Allan.

Q. And Jack was not? A. I cannot be sure about it.

Q. This is your first visit to this household Miss MacMillan? A. Yes.

Q. I suggest this to you, that Mr. Brownlee did not communicate with you on the 6th of September and that you were not at the Brownlee house or at all on the 7th. A. Well I am speaking from memory and if it was not the 6th it was the 13th. 40

Q. Is your memory clear about it? Do you want to swear to it one way or the other that you were there on the 7th and that he phoned you on the 6th? A. No I would not want to swear to it because I might be wrong, but as far as I can remember.

Q. Well we will leave it at that, that you might be wrong about that time? A. Yes I might be.

Q. And if you were not there then it would be a week later?

A. Yes.

Q. And you would not communicate with the Brownlees for another week if it was the next Sunday you were there? A. Yes.

Q. The man who was to act as your guardian who with his wife were looking after you? A. Yes.

10 A. No, sir. We just took Mr. Brownlee at his word.

Q. And Mr. Brownlee had not sent you this curriculum from Edmonton—the enquiries he was to make? A. No, sir.

Q. Didn't you think that was a little funny? A. No, I knew he was a very busy man.

Q. But a man who is trying to get a woman away from her parents in order to seduce her surely is going at least to live up to his little promises in order to accomplish it. Isn't that reasonable? Doesn't that seem reasonable to you? A. Yes it is reasonable.

20 Q. And it would seem very unreasonable if Brownlee on that occasion when he made up his mind to get you away from your home and to seduce you that he would simply drop it and do no more about it. That seems foolish, doesn't it? A. (No answer).

Q. Doesn't it? A. Mr. Brownlee made it so emphatic on the drive that we just took him at his word.

Q. And this man who made it so emphatic on the drive broke the first promise he made to you or your parents, namely, that he would make enquiries into courses of study. He broke his word? A. Yes.

Q. And yet you still had confidence in this guardian? A. Yes.

Q. And took him at his word? A. Yes.

30 Q. So that we stand with this spectacle, that after a conversation of an hour or less there was no communication of any kind between your parents or yourself with Mr. Brownlee or Mrs. Brownlee? A. No.

Q. About your courses of study and your residences and no communication with him and his failure to send you this curriculum you still come back and say that you believe that in that hour he made up his mind to entice you from your home to seduce you. You don't believe that, do you? You don't believe it? It is too silly, isn't it? A. After what happened when I came to Edmonton I do believe he had some idea.

40 Q. When did you first get that idea? A. When I first went out with him alone.

Q. There is no doubt. You would remember that very clearly, wouldn't you? A. Yes, sir.

Q. It is a terrible thing. You, a young girl become convinced that this man enticed you from your home for the purpose of seducing you. You would know when you got that idea. And that was the first time you went

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

out with him. A. I did not understand you—the first time I understood that.

Q. Well take your time. I am sorry. A. Well it would be after a year I had been going out with him.

Q. So that it would be some time in the fall of 1931 that you got the idea that he just brought you down for the purpose of seducing you?

A. It would be around there, yes.

Q. Where were you when you got this idea? What happened?

A. I did not get the idea all at once. It was gradually.

Q. When did it become a conviction with you, if you know? If you do not know, all right. A. I cannot say definitely when it became a conviction. 10

Q. Can you give me any idea when this terrible thought occurred to you that you were brought down here for this immoral purpose? A. It would be during the first year that I was working in the Parliament Buildings.

Q. And that will be after July 1931? A. Yes, sir.

Q. So that he had been having intercourse with you for a year? A. Yes, sir.

Q. And the thought had not occurred to you that he had brought you down from Edson for that purpose? A. Yes, sir. 20

Q. And what happened that had put it into your mind that he had brought you down for that purpose? What happened? What change was there? A. Well I was older for one thing, and I would hear girls talking about men and then I was working in the Attorney General's Department and there were always all kinds of files to read about young girls getting into trouble and I started to have my suspicions that perhaps Mr. Brownlee was not in love with me and—

Q. And anything more? A. And he did not need me as badly as he said he did; and perhaps that was the reason why he wanted me to come into Edmonton. 30

Q. Now you have taken your time and given me everything you can think of as to why you got this idea in the fall of 1931, have you?

A. Yes, sir.

Q. And that was from reading some files in the Department of the Attorney General? A. That was not the only reason.

Q. But that was one reason? A. That was one reason my eyes were opened.

Q. And you were working where? What department was that? A. In the general office. 40

Q. For whom? A. Mr. Hughes the chief clerk.

Q. And Mr. Hughes did not then and does not now deal with criminal seduction files, does he? A. He does not deal with them but those files were always around.

Q. So you just picked up these files and read them? A. I read one or two of them that the other girls in the office were reading.



Q. So your knowledge came then, not from the business you were doing but from the knowledge the other girls had? A. Well those girls were working for lawyers and they would hand me these things.

Q. And you were with your mother in Vancouver from time to time?  
A. Yes, sir.

Q. In fact you have travelled a good deal before you came to Edmonton? A. Just to Vancouver.

Q. You were there several times. A. Yes.

Q. It is a bigger city than Edmonton? A. Yes.

10 Q. And you told Mrs. Brownlee on one occasion that you had had, as a youngster, an unfortunate experience with a man in Stanley Park. That is true? A. Yes.

Q. And that your mother then had been very frank with you and told you all about this sex business. You told her that? A. No, my mother had not told me all about sex.

Q. I beg your pardon? A. No, my mother had not told me all about sex.

20 Q. After this occasion in Vancouver wasn't your mother quite frank with you, and to her credit—don't misunderstand me—and told you a great deal about sex relations? A. She told me not to have anything to do with a man.

Q. She told you that, at least? A. Yes, sir.

Q. And by that she meant not to have intercourse with a man. And that is to your credit, or to your mother's credit—she told that to you?  
A. Yes.

Q. So you knew what intercourse meant? A. Yes.

Q. Now I move on to the air show. When was that? A. The 17th of September.

30 Q. I suggest Mrs. Brownlee telephoned you on that occasion and took you to the air show with the family. Is that not right? A. Mrs. Brownlee may have telephoned me but my memory is that it was arranged when I was over there one time previous to that.

Q. Well how many times were you there previous to that? Because my suggestion is you were never there previous to that? A. Yes I was.

Q. How many times were you there prior to the 17th of September?  
A. Well if I was there on Sunday the 7th there would be only ten days elapse between the 7th and the 17th. I would say I had been probably over four times, something like that. I cannot say exactly, to be sure.

40 Q. Then your recollection is that prior to the 17th of September you were at the Brownlee household about four times. Is that right? A. That is my recollection if I am right about being there on Sunday the 7th.

Q. I want you to tell me if you can recollect and if you cannot it is all right, how many times you were at the Brownlee house prior to the air show? A. I cannot say definitely.

Q. And you told my friend Mr. Maclean that after going there on the first occasion, at least I understood you and correct me if I am wrong,

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

that after going there on the first occasion that you immediately started to go to that household about three times a week, is that true? A. Yes.

Q. Omitting for the moment Brownlee's interest in you. How did you establish such a tremendously quick friendship with his wife and family? A. Well because I was very lonely, being away from home for the first time in my life and I appreciated Mrs. Brownlee being so kind to me.

Q. Yes, she began to be kind at some time. But I cannot understand the speed of it—this quick growth of this intimacy. I am suggesting this to you so that we will have no misunderstanding, that you did not frequent that household, that is to any extent, until about the end of that year 1930? 10

A. Yes I did frequent that house very often before the end the year.

Q. You were there on invitation prior to that? What I have in my mind is when you subsequently came on your own. That was about just before the end of the year. Am I not right about that? A. No. I was going to the Brownlee home on my own free will long before Christmas.

Q. Well when did it start? A. Well during October I was going over there quite steadily.

Q. We will let it go at that. Now I come to the first time you went out with Mr. Brownlee. That, as I understand you to say to my friend, was in the first week in October? A. Yes. 20

Q. And in order to get this quite clear, just what was the first conversation of any private nature that you had with him and when was it? A. It was the first Sunday night in October.

Q. And this took place when and where? A. I had been over to the Brownlee home for tea and Mr. Brownlee drove me home alone and on the way over to the Y.W. he asked me how I was liking Edmonton and he also asked me what I knew about life and I told him that I supposed I knew as much as any other girl of 18 did and he told me that he thought I ought to come out with him alone some evening and he would explain a few things to me, and then he arranged to meet me the following night at the Y.W.C.A. 30

Q. About what time? A. At ten o'clock.

Q. And that is all that took place on the Sunday? A. Yes.

THE COURT: You might fix that date again. The witness can fix it. It is there.

MR. SMITH: What date would that be? A. The first Sunday would be the 5th of October.

Q. And the arrangement dating from the Monday would be the 6th? A. Yes. 40

Q. And he made an appointment to see you at ten o'clock? A. Yes.

Q. Did you think there was anything wrong about that? A. Well I wondered about it.

Q. Did you say anything? A. I did not say anything to him about it.

Q. Did you say anything to anybody else about it? A. No, sir.

Q. Didn't you think it would be a little bit peculiar that you were to go driving to learn about life from a married man you had only seen about a month? A. Well in view of what he had told me in Edson about being a guardian and looking after me I relied on his word.

Q. And all the time you were at Brownlee household you never mentioned this July conversation to Mrs. Brownlee, did you? A. No, sir.

Q. Nor did your father nor did your mother; did you? A. No, sir.

10 Q. So, here you are frequenting the Brownlee household for three years, he had promised to be your guardian, he had promised he and his wife would look after you and you never even mentioned the conversation to his wife, did you? A. No, sir.

Q. Why didn't you? A. Because Mrs. Brownlee was being very nice to me and I presumed Mr. Brownlee had told her the conversation.

Q. Well that is perhaps smart.

MR. MACLEAN: Do you think it is necessary to make these kind of remarks? There is no reason for that at all.

MR. SMITH: I am very sorry. I did not mean anything.

20 Q. You told me about Sunday night and then he called for you on Monday night which would be the 6th? A. Yes, sir.

Q. Now just tell me—on that night he drove you to the country? A. Yes, sir.

Q. And you went down the west road to my memory? A. Yes, sir.

Q. And then you turned off that road? A. Yes, sir.

Q. And you had some conversation in the car to the effect that he was a lonely man. You told me he called for you at the Y.W.C.A., that you drove west and went off on a side road and you had some conversation in the car shortly to the effect that he was a lonely man? A. Yes, sir.

30 Q. With great responsibilities? A. Yes.

Q. Was his wife mentioned that night? A. Yes, sir.

Q. He told you on that occasion that if he had sexual intercourse with his wife it would kill her? A. Yes that if she became pregnant it would kill her.

40 Q. Well you told me on your examination for discovery that if he had sexual intercourse with her it would kill her and you told Mr. Maclean yesterday that if she became pregnant it would kill her. So I am merely calling it to your attention. Which was it, or was it both? A. I believe on the first night he told me that if he had sexual intercourse it would kill her but it was some time later that he told me that if she became pregnant it would kill her.

Q. So that on the first occasion he told you, this Monday night I am speaking about, that if he had sexual intercourse with his wife it would kill her? A. Yes, sir.

Q. And did he tell you that night that the only way you could repay

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Mrs. Brownlee's kindness would be to have intercourse with him? A. Yes.

Q. And you told him that you would do anything for Mrs. Brownlee in any other way? A. Yes.

Q. To repay her great kindness to you? A. Yes.

Q. You are sure this took place that night? A. Yes.

Q. So we find this. We find this man putting a proposition to you that you should part with your honor to repay the kindness of his wife that you had only known a month. That is the situation isn't it? Isn't it? A. Yes.

Q. And that is the story you want this Court to believe is it? A. Well 10  
he did not say it was parting with my honor. He told me it was doing an honourable thing.

Q. Did you know or did you not at that time that by having intercourse with that man you were parting with your honor? Do not let us quibble over it? A. Yes I knew I was parting with my honor.

Q. So that this is true, that the proposition was put to you that you should part with your honor to repay the social kindness of Mrs. Brownlee whom you had only known for a month? A. Yes.

Q. And you finally thought you should? A. Yes, sir.

Q. I beg your pardon? A. Yes.

Q. You thought to repay Mrs. Brownlee's kindness you should 20  
indulge in fornication with her husband?

MR. MACLEAN: Adultery.

MR. SMITH: Mr. Maclean prefers "adultery". Do you want us to believe that? A. Yes.

Q. Now on this first drive did anything happen other than conversation? A. No, sir.

Q. How long were you out?

A. About an hour.

Q. And then on the second occasion it was when? A. The second 30  
week in October.

Q. And the day? A. Monday night.

Q. And the date would be? A. The 13th.

Q. Now on Monday night the 13th as I recollect it, what time did he call for you? A. Nine-thirty or ten o'clock.

Q. In fact he always called for you about that hour at night, didn't he? A. Yes.

Q. The Y.W.C.A. closed at twelve o'clock didn't it? A. Yes, sir.

Q. Sometimes at half past eleven? A. No, always at twelve.

Q. It was dark at eight o'clock in October? A. Yes, sir.

Q. Why these ten o'clock calls. Why not half past eight, and your going out would be less conspicuous? A. Because he was busy earlier in the evening.

Q. He was always busier earlier in the evening? A. Yes, sir.

Q. Always? A. Not always.

Q. Now on this occasion, as I remember it, you had pretty much the same conversation with him, that is true? A. Yes, only I believe on this occasion he mentioned about that if his daughter had lived he would have been proud of her if she would do the same thing.

Q. And that was the additional thing, or was there anything more?  
A. (No answer.)

Q. And on this occasion you went to the same place did you?  
A. Yes, sir.

Q. And the conversation, did it take place while you were driving?  
10 A. Some of it and some of it after the car had parked.

Q. Then the car was stopped? A. Yes, sir.

Q. And you got into the back seat? A. Yes, at Mr. Brownlee's suggestion.

Q. What did you get in for? A. Well he said it was crowded in the front seat.

Q. Well there were only two of you sitting in the front seat. A. Yes.

Q. And he told you it was crowded? A. Yes, sir.

Q. Crowded what for? A. Crowded for him.

Q. In what way? I think you said he had his arm around you and  
20 was kissing you, did he? A. Yes on this occasion.

Q. What did you get into this back seat for? A. Because he asked me to.

Q. Is that the only reason? A. Well he said it was crowded and uncomfortable in the front seat and I thought it was for his comfort to go there and that he wanted to go on talking to me.

Q. Your oath to this Court and to this jury is that the only reason you got into this back seat was you thought it would be more comfortable for him there and he wanted to go on talking? A. Yes, sir.

Q. That is your oath? A. Yes, sir.

Q. Now you are sure there was nothing else influenced you?  
30 A. No, sir.

Q. You did not expect that he was going to have intercourse with you? Did you? A. No, sir.

Q. You had no idea of that? A. No, sir.

Q. He had asked you to have intercourse with him? A. He had asked me to be as a wife to him and a pal.

Q. And being as a wife to him you knew meant having intercourse with him, didn't you? A. Yes, sir.

Q. So that in getting into the back seat that night it is still the fact  
40 that you had no idea he wanted to have intercourse with you. You thought he just wanted to chat with you? A. I did not think he could have intercourse with me in the back seat of a car.

Q. I do not think so yet. You were lying flat, weren't you parallel with the back of the seat? A. Yes.

Q. And how tall are you? A. 5 feet 7 inches.

Q. And how tall is he? A. Over 6 feet.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And you lying flat on the back seat of that car parallel with the back, you swear this man had intercourse with you lying on top of you, do you? A. Yes I do.

Q. In the back seat of that car? A. Yes, I do.

Q. And you lying over on your back parallel with the back of that seat A. Yes.

Q. All right. And that is true about every occasion when you say he had intercourse with you in that car. That was the position? A. Yes, sir.

Q. Well on this first occasion did you reluctantly get into that back seat or did you go willingly? A. I did not go willingly. 10

Q. Did you object? A. No, I did not object.

Q. Did you indicate to him that you were not willing to go, in any way? A. I believe I said it was quite comfortable in the front seat.

Q. And what did he say to that? A. It was because he was uncomfortable he wanted to get into the back seat.

Q. And it was solely on account of his comfort, then, that you got into it? A. Yes.

Q. And on this particular night when did you make up your mind that it was a proper thing for you to have intercourse with this man to repay his wife's kindness? When did you make up your mind to that? A. On the third night that I was out with him. 20

Q. That is not this Monday night? A. No, sir.

Q. On this Monday night did he tell you that he wanted you to have intercourse in order to save his wife's life. A. Not exactly in those words.

Q. What words? How did he put it? A. He told me that if he would have intercourse with Mrs. Brownlee it would kill her and that if I did not give in to him he would have to resume intercourse with Mrs. Brownlee. 30

Q. And that would kill her? A. Yes.

Q. So then you did, roughly a month after meeting Mrs. Brownlee, have it put to you that you would do this thing to save his wife's life? A. Yes, sir.

Q. Did that strike you as odd? A. I thought Mr. Brownlee must be very desperate.

Q. Did it strike you as odd—as peculiar? A. What was peculiar?

Q. That a man whose wife you had known just for a month should put a proposition to you that you should have intercourse with him to save the life of that wife whom you had known that length of time? Didn't that strike you as a staggering proposition? A. Yes it was staggering. 40

Q. Did you believe it? A. Yes.

Q. Did you decide then to have intercourse with him? A. On this second Monday night?

Q. Yes. A. No.

- Q. So that on the second Monday night he put you down, forced you down? A. Yes.
- Q. You fought him? A. Yes.
- Q. He had one arm underneath you? A. He had one arm around me.
- Q. Around your shoulders? A. Yes.
- Q. And forced you down? A. Yes.
- Q. And with the other hand he raised your clothes? A. Yes.
- Q. And you fought as hard as you could? A. Yes, sir.
- 10 Q. What did you weigh at that time? A. About 150 pounds.
- Q. So we find him with one arm around your shoulders and the other raising your clothes and him getting on top of you and you a 150-pound girl fighting your best in that back seat to save your honor. Is that the situation? A. Yes, sir.
- Q. Did you put a mark on him? A. No, sir.
- Q. Eh? A. Not that I know of.
- Q. Well you did not, did you? A. No, sir.
- Q. And you did not scream? A. No, sir.
- Q. And this whole thing was against your will? A. Yes, sir.
- 20 Q. And he did not obtain complete penetration, you told Mr. Maclean? A. No, sir.
- Q. And he flew into a rage? A. Yes.
- Q. And drove home? A. Drove back to the government garage.
- Q. Leaving you in the back seat? A. Yes.
- Q. And he then went in and changed cars? A. Yes.
- Q. And he first had the big Studebaker? A. Yes.
- Q. And then he changed to the small Studebaker No. 104? A. Yes.
- Q. The grey car. You told Mr. Maclean it was a small grey car?
- A. Yes.
- 30 Q. And this was in October 1930? A. Yes.
- Q. Now there is one question I forgot to ask you. How was the weather that night, that is the 13th? Look at your calendar and make sure that I am right about that. How was the weather? A. There was not any snow on the ground.
- Q. Was it clear? A. Yes. It was not stormy at all.
- Q. It was not stormy? A. Not as far as I can remember it was not.
- Q. Well are you sure? A. I could not be positive but as far as I can remember it was a clear night.
- Q. If the Edmonton newspapers say there was a blizzard that night
- 40 what have you got to say about it? A. Well I would have to believe it.
- Q. Then you were not out, were you in a blizzard? A. Yes, sir.
- Q. What? A. Yes.
- Q. I mean on the 13th of October, 1930? A. Yes.
- Q. Was there a blizzard that night? A. I don't remember.
- Q. It would be at least unusual to drive out into the country in a blizzard? A. We often did in a blizzard.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. You often drove into the country during blizzards in your acquaintance with Mr. Brownlee? A. Yes.

Q. You paid no attention to the weather? A. No, sir.

Q. It did not matter whether it was warm or cold? A. No.

Q. It gets cold here occasionally in Edmonton in November? A. Yes, it does.

Q. And did you drive out when it was 20 or 30 below? I am not maligning the town but I have heard it gets cold like that. Did you drive out on occasions like that? A. Yes because there was a heater in the car.

Q. Now I want you to come back to the Government garage. You say he went in and changed to the small Studebaker No. 104? A. Yes.

Q. There is no doubt about it is there? A. No.

Q. What do you say when I tell you that that small car the Studebaker No. 104 was not even purchased till June of 1932? What have you got to say about that? A. Well I know it was a smaller car than the one he was driving and I am quite certain that the license number was 104.

Q. You have told Mr. Maclean, and I did not suggest this to you, and you told me on examination for discovery, you told Mr. Maclean yesterday, you told me this morning he changed to the small Studebaker, the grey car No. 104? A. That is my memory.

Q. You were wrong weren't you? A. Yes I must be.

Q. And you advanced that to us here as the truth, no doubt, didn't you? A. Yes I did.

Q. And if that car was not even bought till 1932 you are quite wrong, aren't you? A. Yes.

Q. And this Government garage is the place where the police cars are as well? A. I do not know whether the police cars are kept there or not.

Q. You don't? A. No I do not.

Q. Now then go on to the next night which would be the next Monday, was it? A. No it was not the next Monday. It was not until the last week in October.

Q. Was it a Monday night? A. No it was a Sunday night.

Q. And that would be what date? A. It would be the 26th of October.

Q. And that was a Sunday night? A. Yes, sir.

Q. And you had been to the Brownlees? A. Yes.

Q. And Mr. Brownlee drove you home? A. He did not drive me home. He took me for a ride in the country.

Q. He left the Brownlee house and took you for a drive in the country? A. Yes.

Q. How long were you gone? A. About an hour and a half.

Q. And he returned you to the Y.W.C.A.? A. Yes, sir.

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Q. What car was he driving on that occasion? A. He was driving the large Studebaker.

Q. And on this particular evening he had complete intercourse with you as you told my friend Mr. Maclean? A. Yes, sir.

Q. Did you agree to it? A. I resisted him.

Q. Then you didn't agree to it? A. No, sir.

Q. And you were never persuaded it was right to have intercourse with this man to repay his wife's hospitality or to save her life, were you, never? A. Yes I was.

10 Q. When? A. On this occasion.

Q. Then on this occasion you were persuaded it was right to have intercourse with him to save his wife's life and to repay her hospitality? A. Yes I was.

Q. And you agreed to do it, did you? A. (No answer).

Q. Did you agree? A. No I did not agree to do it.

Q. Then he forced you against your will, did he? A. Yes, sir.

Q. So there is no doubt that, in spite of these things that he said to you, this was the first occasion he had complete intercourse with you and it was against your will? A. Yes.

20 Q. And only because his strength was greater than yours? A. Yes.

Q. And how did you come to get into the back seat that night? A. Well after he had talked to me for a long time and told me it was my duty to do it and told me it was not asking very much and that it was saving Mrs. Brownlee's life and if he had a daughter of his own he would have been proud of her to do what he asked me to do, and he asked me to get into the back seat of the car and I thought it was my duty to do it.

Q. To do what? A. To do what he wanted me to.

Q. And you were not forced to get into the back seat? A. I was not forced but after the conversation I felt that I had to do it.

30 Q. And it was the same conversation you had had two weeks before, wasn't it? A. Yes.

Q. And then you did not do it willingly. You fought didn't you? A. Yes.

Q. You resisted for all you were worth? A. Yes.

Q. And his strength overcame yours? A. Yes.

Q. And when you went on the drive that night did you know this man was going to try and have intercourse with you? A. No because the last time I had been out with him when he was driving me home from the Government garage he told me that he was sorry and that he would not let it occur again.

40 Q. Then on this particular occasion did you get into the back seat to have intercourse with him or did you not? You told me a moment ago you did. Now which is right? A. Yes I did get into the back seat to have intercourse.

Q. To have intercourse with him? A. Yes.

Q. You told my friend yesterday and I asked you, and you correct

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

me if I am wrong, you told my friend the reason you got into the back seat on this occasion was that Brownlee told you if you did he would not touch you. Didn't you say that in this court room yesterday? Now which is the truth? A. Well I did not exactly know he was going to have intercourse with me because he did not say he was and he had promised me before that he would not touch me.

Q. Then you did not get into the back seat to have intercourse with him? Perhaps that is the truth, is it? A. Yes.

Q. Then you did get into that back seat because he promised you he would not touch you. That was the reason? A. Yes. 10

Q. A moment ago when you told me you got in for the purpose of having intercourse that was wrong? A. Yes it was wrong.

Q. Just a mistake? A. Yes.

Q. And you also told my friend Mr. Maclean that so determined was he on this occasion that he would listen neither to tears nor pleadings? A. Yes.

Q. Did you read Mr. Cowper's column in the Edmonton Bulletin? I wondered where you got it? A. No I did not.

Q. That was your own? A. Yes that was my own.

Q. So determined was he that he would listen neither to tears nor to pleadings. Now on those occasions when you went out in this motor vehicle that you mention, why didn't you fight before you went for the drive? A. Because I had come to the conclusion that what I was doing was right. 20

Q. You told me on your examination for discovery for the first six or seven months you fought this man on every occasion and it was always against your will. Is that true or is it not? A. Yes that is true. I resisted him when I was in the back seat of the car with him.

Q. On every occasion? A. Yes.

Q. For the first six or seven months? A. Yes. 30

Q. So for the first six or seven months according to you the reason this man had intercourse with you was because he forced you on that occasion in that back seat. That is true, isn't it? A. Yes.

Q. And why did you go on those drives? A. Because he told me it was my duty to go.

Q. And you did not believe it or you would not have fought? A. I believed at the time it probably was my duty to do it but the act itself was so objectionable to me that I fought against it.

Q. And you had plenty of experience of that act being objectionable yet you continued to go? A. Yes. 40

Q. Why didn't you do your fighting before you got into the back seat? Were you going to fight for six months or seven? A. Because I was afraid of Mr. Brownlee, for one thing.

Q. When did you become afraid of him? A. After the second night I had been out with him when he flew into a rage.

Q. The second time in October when you went out with him he flew into a rage? A. Yes.

Q. And you became afraid of him? A. Yes.

Q. And did this go on and you were afraid of him? A. Yes.

Q. What were you afraid of in him? A. Well Mr. Brownlee had a very nasty temper.

Q. Did you ever see anyone else with a nasty temper? A. No not like his.

10 Q. He flew into a rage before he had intercourse with you, didn't he? A. Not before.

Q. Well as I understand you he had complete intercourse on the third night? A. Yes.

Q. It was on the second night that he flew into the rage? A. Yes.

Q. So that before you had complete intercourse with this man you knew his terrible temper? A. Yes before I had complete intercourse.

Q. And you were terrified of him? You used that expression to Mr. Maclean? A. Yes.

20 Q. So that in this City of 80,000 or 90,000 people here you were and your parents in Edmonton occasionally and a long distance telephone, which you frequently used, between the two places, were having intercourse with this man from terror. Is that your story? A. From terror and because he told me it was my duty to do it and he seemed to have an influence over me that I could not break.

Q. Influence you could not break? What do you mean? Did he hypnotize you? A. No.

Q. Well what do you mean? A. I cannot exactly describe it.

Q. Well did it make you feel queer in the head? A. It just made me have the feeling I could not refuse to do anything he wanted me to do.

30 Q. So I take it that you were mentally completely dominated by this man? A. Yes.

Q. And when did that domination begin? A. Oh right from the very first.

Q. Well do you mean in Edson in July? A. No.

Q. Edmonton in September? A. No, the first time that I had been out with him alone.

Q. Which was the first week in October? A. Yes.

Q. And did this domination come on all at once or did you feel it coming on gradually? A. No, when I was in his presence I always had the feeling that I could not refuse to do anything he asked me to.

40 Q. How does that come about? Can you explain it? Did anyone else ever have that influence over you? A. No.

Q. Are you psychic? A. No.

Q. Never acted as a medium in spiritualism or anything like that? A. No.

Q. As far as you know you are quite normal and natural and mentally sound? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And what was this feeling? Was it terror, a word you used to Mr. Maclean yesterday? A. It was a combination of fear and just this influence on me.

Q. Were you semi-conscious from this influence or anything like that? A. No.

Q. Knew what you were doing? A. Yes.

Q. You did not have delusions about anything? A. No.

Q. When he had intercourse with you you knew it was going on? A. Yes.

Q. Well you had all your faculties about you, hadn't you? A. Yes. 10

Q. And yet you continued from terror and this mysterious influence? A. Yes.

Q. And you can tell me nothing more about this mysterious influence than what you have already told me? A. Well he is very persistent.

Q. Well lots of us are that. I am quite persistent with you this morning but I have not any influence over you at all. I know that. Now can you tell me anything more about it? A. No.

Q. And the reason—and the reason is important—the reason you had this intercourse with him was first, terror and this mysterious 20 influence? A. And because of Mrs. Brownlee.

Q. Because of saving Mrs. Brownlee's life? A. Yes.

Q. And repaying her for her hospitality? A. Yes.

Q. When did this mysterious influence of Brownlee over you disappear? A. When I stopped seeing him.

Q. And that was when—July? A. Yes.

Q. July, 1933? A. Yes.

Q. And you remained in Edmonton until September 22, 1933? A. Yes.

Q. And you did not see him? A. No. 30

Q. Why didn't you stop before? A. Well I just felt I could not stop.

Q. You were able to stop in July 1933 weren't you? A. Yes.

Q. The mysterious influence had been removed, had it? A. Yes.

Q. Why didn't you stop the first drive in October 1930? A. Because I believed what Mr. Brownlee was telling me that I was saving his wife's life and the honor of the family.

Q. When did you come to the conclusion that there was nothing in that, that those were lies he was telling you? A. I started to wonder about the fact that he said he loved me so much, some time in 1931.

Q. The point that I have in my mind is this, you say you carried on 40 because of saving Mrs. Brownlee's life? A. Yes.

Q. When did you come to the conclusion that that was all nonsense, or have you come to that conclusion yet? A. Well I do not know it.

Q. What do you think about it? A. Mrs. Brownlee is still living.

Q. She is still alive, isn't she? A. Yes.

Q. And you knew her quite well? A. Yes.

- Q. And you have slept with her? A. Yes.
- Q. You have skated with her? A. Yes.
- Q. And you have seen her play golf? A. No.
- Q. You knew she played golf? A. I knew she played golf a number of years ago.
- Q. You knew she played golf while you frequented that household? A. No.
- Q. You knew she rode horseback daily for two years down at the ranch? A. For two years?
- 10 Q. The seasons I mean daily for two years? A. Yes I knew she rode horseback.
- Q. You knew she paddled a canoe at Sylvan Lake? A. It was mentioned.
- Q. You believed her? A. Yes.
- Q. And you have seen her, haven't you? A. Yes.
- Q. And you knew she discharged her social obligations, didn't you? A. What do you mean by discharged her social obligations?
- Q. She took part in the social activities of a woman in her position — teas and that sort of thing? A. I would not say she did it as much as
- 20 other women did.
- Q. She entertained at teas every Sunday, didn't she, somebody? A. Generally just the girls that came around the house.
- Q. I don't care who they were but she did entertain them at teas practically every Sunday? A. Yes.
- Q. And you have slept with her? A. Yes.
- Q. And you know she is a light sleeper? A. She said she was a light sleeper. I do not know it.
- Q. You have known her several times when she was sleeping with you to get up and go into the boy Jack? A. Yes I remember her telling
- 30 me on one occasion she got up and went in to Jack.
- Q. Now I am speaking of when you were there sleeping with her, she would get up at the slightest disturbance and go in to Jack, the boy? A. Well she said she had, but it did not waken me. I did not know she had gone, only her word for it.
- Q. But at that time you were on excellent terms? A. Yes.
- Q. And she told you in the morning she had been wakened and got up and went in to Jack—several times? A. Yes.
- Q. But it did not waken you? A. No.
- Q. But it did waken her and she did it? A. Yes.
- 40 Q. And you do not think she had any reason to deceive you in any way at that time? A. No.
- Q. And there is no doubt at all that Mrs. Brownlee is a much lighter sleeper than you are because you did not waken and she did? A. Yes.
- Q. That is obvious, isn't it? A. Yes.
- Q. And you will probably agree with me that you do know that Mrs. Brownlee is a light sleeper, will you? A. Well I do not know that she is

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*  
—  
Plaintiff's  
Evidence  
—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

a light sleeper all the time. She might have a bad night now and again when she would be awake, but I would not say all the time.

Q. Well speaking of her being disturbed and going in to the boy in the next room—Jack. She has always told you she is a light sleeper, hasn't she? A. I don't remember her telling me so.

Q. However, you do know that she is a lighter sleeper than you are, and we will leave it at that? A. Yes.

Q. Now leaving this. You were never in love with Brownlee? A. No.

Q. And you do not think he was ever in love with you, do you? A. I thought it for the first six or seven months or a year. 10

Q. This man who forced you against your will? You thought he was in love with you? A. Yes, because on one occasion, on the occasion he took me down to the Government garage, on the second occasion, he told me he guessed it was because he loved me so much and wanted me so badly that he had completely lost his head.

Q. And his love was so strong that he completely lost his head for seven months and ravished you against your will for six or seven months. Do you think he loved you? A. I thought so at the time.

Q. When did you make up your mind that he did not? A. After the first six or seven months. 20

Q. And then in all the intercourse after the first six or seven months, love goes out of the window, it is washed out, so far as both you and Brownlee are concerned. That is true? There was no love in this adultery after the first six or seven months, on either side? A. Well there was deep respect on my part.

Q. I am speaking of love. You told me that you never loved him. You told me that you knew he did not love you after the first six or seven months. So you will perhaps agree with me that in all the intercourse which you say took place after that love did not enter into it. A. He still told me he loved me. 30

Q. Did you believe him? A. I had my doubts about it.

Q. Did you believe him? A. Sometimes I did and sometimes I did not.

Q. You told me not thirty seconds ago that after the first six months you knew he did not love you? Were you telling me the truth or not? A. Well perhaps I should not put it so emphatically.

Q. Well let us change it then. How do you want to put it? A. Well I began to wonder whether he loved me or not.

Q. And when did you make up your mind that he did not. When did you make up your mind that he was not in love with you? When did you make up your mind? A. I cannot say definitely when I made up my mind, but it would be probably some time towards the end of the first year. 40

Q. So that when you told me a moment ago that you knew he did not love you after the first six months, you did not mean it. That was

wrong? You did not mean it? A. Perhaps I should have said that I doubted it. I began to doubt it.

Q. I will read you what you said on your examination for discovery in answer to a question of mine, Question 189:

"Q. And what were the false statements? "A. That he was very much in love with me.

"Q. And you found out that was not true? "A. Yes.

"Q. When did you find out that was not true? "A. After the first six months."

10 Q. A few weeks ago you gave me the same answer as you did a couple of minutes ago. It is true, isn't it? A. Yes.

Q. And then I come back again and I say to you, having twice sworn that you knew this man did not love you after the first six months, that in all the intercourse after that love had nothing to do with it? Had it?

A. As I said before I had my doubts about it and Mr. Brownlee still kept telling me he loved me.

Q. You swear that after the six months he did not love you, is it true? A. Yes.

20 Q. And surely you will agree with me that since you never loved him, that in all the intercourse following that, love had nothing to do with it? Love did not induce it? Do you know what I mean? A. Yes.

Q. Am I right about it? A. Yes.

Q. And you also told me that after the first six months this intercourse went on with you as a matter of course? A. Yes, it became a habit.

Q. So there was no inducement after the first six months. It was just ordinary intercourse between a man and a woman which had become a habit? A. Yes.

30 Q. And you had ceased fighting him after the first six months—resisting, I mean? A. Yes.

Q. And this always was physically painful to you? A. Yes.

Q. On each occasion? A. Yes.

Q. An average of three times a week for three years, or two and a half, and hundreds of times in other words? A. Yes.

Q. Always physically painful? A. Yes.

Q. And no love in it? A. No.

Q. And for the last major part of the period a matter of course? A. Yes.

Q. A habit? A. Yes.

40 Q. Now I want to turn to the incident at the house in the fall of 1931. You speak of the occasion of Mrs. Brownlee going to the Coast. I think it was in September? A. Yes in September 1931.

Q. On that occasion you were in that house three nights? A. Yes.

Q. Only three? A. Only three.

Q. Are you sure? A. As far as I can remember it was only three nights.

Q. You stayed until the maid came back? A. Yes till the regular maid returned.

Q. And will you deny that you were there for six nights? A. It does not seem that long to me.

Q. You are sure you only were in bed with Brownlee on two nights, then. You are sure of that, are you? A. Yes if I was only there three nights.

Q. All right. I don't care how many nights you were there. How many times were you in bed with Brownlee? A. It would be according to the length of time I was there.

Q. You are reasoning now, are you? A. Well if Mr. and Mrs. Brownlee say I was there six nights—

Q. Then you had intercourse five nights out of six did you? A. Yes because there was one night he was away.

Q. Well I say five nights out of six. He was away one night? A. Yes.

Q. Now did you sleep with this man two nights or five nights, which? A. I cannot be sure but my memory is I was only there three nights.

Q. And you cannot be sure whether you slept with him three nights or five on that occasion? A. No.

Q. Now Miss MacMillan this is the first time you were in bed with this man, on your own story, isn't it? A. Yes.

Q. And surely it is true that that occasion would be engraved on your memory with photographic clearness, isn't it. A. I cannot say it would be, because by that time it had become practically a habit.

Q. Practically a habit, but you had never had your clothes off?  
A. No.

Q. As a matter of fact, you told me on your discovery that you never had your clothes off until this occasion in 1931. You never even had your pants off when he was having intercourse with you? A. No.

Q. You were wearing what are known as teddies? A. Yes.

Q. And in all these dozens and dozens of times you never had your clothes off once? A. No.

Q. Either in the car or in the Parliament Buildings? A. No.

Q. So on this occasion in September when you got into his wife's bed with him you would have a pretty clear memory of when and where?

A. Well my memory is it was three nights.

Q. And he was away one night? A. Yes.

Q. Well how many times did you go to bed with him on that occasion, that is what I want you to remember, was it two or more than two? A. On two occasions.

Q. And no more than that. What I am coming at. If you were there six nights and he only slept with you two I want to know why. But you cannot help me because you do not know? A. I can't remember. My memory is it was two nights I slept with him.

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Q. And you say you slept with him two nights because you know he was home two nights? A. Yes.

Q. And did he run the water then into the sink or whatever it was in the bathroom when he got you into Mrs. Brownlee's bed? A. Not on that occasion.

Q. You told my friend Mr. Maclean, and I am going to ask you about it because I want to be sure, that during Mrs. Brownlee's absence you slept in the maid's bedroom? You told Mr. Maclean that? A. Yes.

10 Q. Are you satisfied with that answer? A. That was my room but the nights I would go into Mrs. Brownlee's room with Mr. Brownlee I would be there probably two or three hours and then go back into the maid's room.

Q. Are you satisfied that no one else slept in the maid's room during Mrs. Brownlee's absence? Now I want to make it very plain to you and I am going to say this to you; I suggest to you that Allan slept in the maid's room during his mother's absence? A. Well it is very clear to me that I was sleeping in that room.

20 Q. All right. I am suggesting to you that Allan occupied the maid's room all the time his mother was away? A. Well he could not have occupied it at all the time she was away because the maid returned and she would have to have her room again.

Q. And during the absence of the maid of course. Think it over. I suggest to you that you never slept in the maid's room in Mrs. Brownlee's absence on this occasion in 1931. Now what have you got to say about it? A. As far as I can remember I did occupy the maid's room.

Q. You and Allan and Jack sat on the Sunday night writing letters to Mrs. Brownlee in Vancouver? A. Yes I remember it was on Sunday.

Q. And you were assisting the boys with their spelling? A. Yes.

30 Q. And you no doubt know Allan's writing don't you? I am going to show you (handing letter to witness).

MR. MACLEAN: Also not produced on the examination.

Q. MR. SMITH: You remember Allan writing that letter, don't you? A. Yes.

Q. It is a letter to his mother? A. Yes.

Q. And you saw him writing it and helped him? A. Yes.

Q. I tender it as an exhibit.

MR. MACLEAN: I object.

THE COURT: You did not ask her if she knew the contents of it.

40 Q. MR. SMITH: You assisted him to write it? A. I helped him in some of his spelling. I did not know what he wrote.

Q. You said you assisted him? A. I do not know the contents of it. I knew he was writing a letter to his mother.

Q. Do you know this is Allan's letter written to his mother on

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Sunday, September 27th? Have you any doubt about it? A. I have no doubt at all.

Q. My friend objects to this?

MR. MACLEAN: I do.

THE COURT: I do not see any ground upon which you can put it in.

MR. SMITH: I am going to refer to the truth of the statements made in it.

MR. MACLEAN: I thought my friend tendered the letter as an exhibit.

MR. SMITH: His Lordship refuses me. I do not want any misunderstanding. May I not refer to the letter and ask the witness as to the truth of the statements in it? 10

THE COURT: You may examine her as to her knowledge of it.

MR. SMITH: Allan says this to his mother—

THE COURT: I do not think you can cross examine in quite that way, can you, having been refused its marking as an exhibit? However, there is a way in which you can examine.

MR. SMITH: Well I will put it to you in this way. Do you know now that Allan wrote to his mother with respect to sleeping in that maid's room? A. Yes he said he did in that letter. 20

Q. He said how much he enjoyed it? A. Yes.

Q. Do you doubt it? A. No I don't doubt it.

Q. No and it would be hard to doubt it. And where did you sleep in that house? A. Well if I was not sleeping in the maid's room there was only one other place to sleep and that was Mrs. Brownlee's bedroom.

Q. Exactly, and on this occasion the first time you had your clothes off and had intercourse with this man you don't remember where you slept? A. I remember I slept in Mrs. Brownlee's bed on the occasion I was having intercourse with him.

Q. If you had intercourse with Brownlee he came out of his own room with Jack and came into Mrs. Brownlee's bed where you were sleeping, didn't he? A. He must have. 30

Q. And he did not take you from the maid's bedroom into his wife's bedroom and have intercourse with you there did he? You are satisfied with that? A. Well before that I was speaking from memory but if Allan says he slept in the maid's room I cannot contradict it.

Q. As a matter of fact did you notice the wall of the maid's bedroom after Allan had occupied it? A. No I did not.

Q. You did not notice all the cats heads he had drawn on the wall? A. No. 40

Q. And what was the condition of your health those two nights that

you slept with Brownlee in his house. What was the condition of your health? Were you menstruating? A. Yes.

Q. On this Monday night, I understand you, Mr. Brownlee was away on Sunday, am I wrong about that? A. I do not remember specifying the dates because I do not remember the dates.

Q. The second night Brownlee slept with you and had intercourse with you twice? A. Yes.

Q. Were you menstruating? A. Yes.

10 Q. And your story is that this man on the only occasion that he ever had intercourse with you twice, you were menstruating? A. Yes.

Q. I suppose you will go further and tell us that he had intercourse with you at all times whether you were menstruating or not, will you?

A. Mr. Brownlee had intercourse with me, I would say on many occasions that I was menstruating.

Q. It must have been very painful on those occasions? A. Yes.

Q. And on this occasion he had intercourse with you twice? A. Yes.

Q. And it was very painful? A. Yes.

Q. Disgusting? A. Yes.

20 A. Q. And there was a bolt on the inside of Mrs. Brownlee's door? Yes.

Q. Why didn't you use it when you were sick? A. Because I just did as Mr. Brownlee said.

Q. And he had intercourse with you twice on this night and his two boys sleeping on the same floor? A. Yes.

Q. And Jack alone in the front room? A. Yes.

Q. He was a very nervous boy? A. Yes.

Q. He occasionally woke up screaming? A. Yes.

30 Q. He insisted on having all the lights burning before he went to sleep? A. Yes.

Q. And Allan, he walked in his sleep? A. Yes.

Q. And under those circumstances this man Brownlee stayed with you in his wife's bed for hours? A. Yes.

Q. And you are swearing to that are you? A. Yes I am swearing to it.

At 12:15 Court adjourns till 2:00 p.m.

At 2:00 p.m. Court resumes.

40 Q. Miss MacMillan, when we adjourned at noon I was discussing with you the incident at the Brownlee house in September 1931. There are just two things I want to ask you about that. I suggest to you that these were the circumstances under which Mrs. Brownlee was going away. In the first place she was going to the Coast for a holiday. That is right? A. Yes, sir.

Q. And at the last moment the maid disappointed her as to the time at which she was coming back. Am I right? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And that you, being there, suggested and insisted that she should go, that you would come over and look after the household? A. No I did not insist and suggest that Mrs. Brownlee go.

Q. Well just what did take place? A. Well before I went over to the house Mr. Brownlee suggested—told me rather—that Mrs. Brownlee was going to Vancouver and that Jean would not be back for two or three days, that Mrs. Brownlee had gone and he said he would like me to come over and stay at their place until the maid returned.

Q. Where did Mr. Brownlee say that to you? A. Out in the car I believe it was. 10

Q. How long before the night Mrs. Brownlee went? A. I could not say definitely how long before but it would be just a short time.

Q. What do you mean by that, a few days? A. Yes.

Q. How many days. You see the reason I asked you this, I intend to prove when they discovered that the maid was not coming back and I want you to tell me when he asked you to do it? A. It might have been one or two days.

Q. Well do you know? A. I cannot say definitely.

Q. Then I suggest to you that it was your idea that your mother, who had a pass—that is right? A. Yes mother had a pass. 20

Q. That your mother should accompany Mrs. Brownlee to Vancouver? A. That was not my suggestion.

Q. I want you to be clear on it. I am suggesting to you it was your suggestion and that you telephoned your mother from that house and suggested it to her? A. It was not my suggestion because Mrs. Brownlee told me in the early part of the day before she left that night that she hated travelling alone and she had not travelled alone for such a long time that she did not think she could go to Vancouver because of it.

Q. All right. Mrs. Brownlee told you that she did not travel alone for how long? A. Ever since she was married. I think that was the expression she used. 30

Q. I suggest to you that during the time you were intimate in the Brownlee household that you knew Mrs. Brownlee had travelled alone from the East to Edmonton. What about it? A. I believe it was after this occasion that Mrs. Brownlee went East. I cannot be sure about that.

Q. All right. Then I am wrong in suggesting that prior to this time you knew Mrs. Brownlee had travelled alone between the West and the East? A. I cannot remember whether she travelled alone or not or whether she had been East.

Q. You don't remember? A. No. 40

Q. Now during the time Mrs. Brownlee was at the Coast you wrote Mrs. Brownlee a letter? A. Yes.

Q. I am going to show it to you.

MR. MACLEAN: This also was not in the Affidavit on Documents.

MR. SMITH: My friend says this document was not in the Affidavit of Documents. It is not.

(Mr. Harrison hands letter to witness).

MR. SMITH: That is your letter to Mrs. Brownlee? A. Yes, sir.

Q. Written on the date which appears on it? A. Yes.

MR. MACLEAN: What is the date? A. September 27, 1931.

Q. MR. SMITH: I tender that.

**Letter dated September 27, 1931, Vivian MacMillan to Mrs. Brownlee with envelope, marked Exhibit 4.**

10 Q. And September 27th is the Sunday, the same day Allan was writing to his mother? A. Yes.

Q. (Mr. Smith reads Exhibit 4). The two crosses I take it, those are for kisses? A. Yes.

Q. Now, to be plain, the letter I have just read was written to this woman Mrs. Brownlee after her husband for the first time had you in bed with him in his own house—the day after? A. Yes, sir.

Q. The night before, when you were menstruating, he had you in his wife's bed and had connection with you twice? A. Either the night before or the next night, I don't know whether that was the night or not.

20 Q. He only had connection with you on one occasion? A. Yes.

Q. And you told Mr. Maclean before and you told me on discovery that was the second occasion of this 1931 incident? A. Yes.

Q. And that letter was written to this woman with all the love in the world and kisses, after you had been in bed with her husband in her own bed the night before? A. Yes, sir.

Q. That is your story, is it? A. Yes, sir.

Q. I suggest to you that that letter is nothing but typical of a happy girl writing to an older woman of whom she is very fond isn't it? A. I agree with you other than the happy girl part.

30 Q. Then you were very excellently deceiving Mrs. Brownlee in making her think you were a happy girl, because it is a happy chatty letter, isn't it? A. Yes.

Q. And you wrote Mrs. Brownlee several other letters when she was away. You wrote constantly to her? A. Yes.

Q. With the greatest admiration for her? A. Yes.

Q. You said to us yesterday, if I remember correctly, that she was more than a mother to you? A. Yes.

Q. And that was the attitude you had towards this woman throughout these years? A. Yes.

40 Q. And you said something yesterday, and I might as well refer to it now, you told my friend Mr. Maclean that on one occasion when Mrs. Brownlee was not well you were over to see her? A. Yes, sir.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And she said to you "Has Mr. Brownlee been doing anything to you?" Did you say that yesterday? A. I do not think it was on the occasion that she had not been well.

Q. All right. What occasion was it? A. That was later on.

Q. What year? What time? A. In the early spring of 1933.

Q. And I want you to give me all the circumstances, the time when this woman, sitting here, Mrs. Brownlee, said to you "Has Mr. Brownlee been doing anything to you?" I want you to give me all the details and all the facts. What are they? A. Well in the spring of 1933 I was trying very hard to break off with Mr. Brownlee. 10

Q. Can you give me the month or the week that this conversation with Mrs. Brownlee took place? A. It would be in March some time in 1933.

Q. Are you sure of the month? A. I am reasonably sure of it.

Q. What do you mean by that. Can you fix this thing somehow? It is important, you know. Don't guess at it. A. I cannot fix it any closer than that.

Q. It was in the month of March? A. Yes, sir.

Q. You are definite about that? A. Yes, sir.

Q. And you saw Mrs. Brownlee in her own home? A. Yes, sir. 20

Q. How did you come to go over there? A. I went over to see her.

Q. You were not staying there? A. No, sir.

Q. You went over to visit her? A. Yes, sir.

Q. Was she ill? A. No she was not ill on this occasion.

Q. And where in the house did the conversation take place, and what time of day was it? A. We were just preparing an evening meal and so it would probably be a Thursday afternoon when the maid was out and we were both in the kitchen and I had not been over for quite a while and Mrs. Brownlee must have noticed some change in me.

Q. Never mind what she must have done. Tell me about the conversation? A. Well she asked me why I had not been over more often. 30

Q. Where was this—downstairs in the house? A. Yes, in the kitchen.

Q. While you were preparing the evening meal, and she asked you why you had not been over more often? A. And I told her "Oh I have just been busy" and Mrs. Brownlee said: "Well why haven't you come over more often? Has Mr. Brownlee done anything to you or is there anything the matter?" And that is all the conversation.

Q. And what did you say? A. I said no.

Q. Did you gather at that time that Mrs. Brownlee suspected there was something improper going on between you and her husband? A. I thought that she might have had her suspicions. 40

Q. So that in March of 1933 you thought that Mrs. Brownlee might have had her suspicions of improprieties between you and her husband? That is right, is it? A. I cannot say suspicions would be exactly correct about that.

Q. Well what would they be? A. Just whether Mr. Brownlee had done anything to me or not.

Q. Done what? A. I don't know what she was referring to.

Q. Well what did you think she was referring to? A. Well because I knew what had been going on. I naturally thought she might be referring to my relationships with Mr. Brownlee.

Q. Yes. There is not any doubt on this occasion when you say that Mrs. Brownlee asked you if Mr. Brownlee had done anything to you, you thought she was referring to the improper relations which you say existed  
10 between yourself and her husband? A. Yes.

Q. There is no doubt about that? A. No.

Q. And you simply said no? A. Yes.

Q. And this woman, the wife of this man, let that thing drop there, without any further conversation? A. Yes.

Q. You were startled weren't you? A. I was worried about it.

Q. You were startled weren't you? It came as a shock to you that Mrs. Brownlee might suspect? A. Yes.

Q. Did it? A. Yes, sir.

Q. Did you show it in your face any way? A. I don't know.

20 Q. So that if after this conversation Mrs. Brownlee did not suspect anything, you had wonderful control of your feelings at that time hadn't you? A. Yes, sir.

Q. Now I want to put this to you and I want you to fix this more closely if you can. Mrs. Brownlee is here and I have discussed it with her and I want you to tell me any other circumstances as to time and place, to fix it in your mind, when this woman Mrs. Brownlee asked you that question? A. I cannot fix the day any more closely other than the fact that it would be on a Thursday.

30 Q. A Thursday in the month of March 1933? A. Yes as far as I can remember.

Q. And this is the first occasion when you thought Mrs. Brownlee suspected you? A. Yes, sir.

Q. And you cannot fix it any closer than that although it was only just over a year ago? A. No, sir.

Q. You cannot? A. No.

Q. It did not come as much of a shock to you, did it? A. Well as I said before, it worried me.

40 Q. Well, let me put it to you in this way. If I understand correctly, generally, time after time Mr. Brownlee left his house with you to drive you home and drove you to the country for an hour or for an hour and a half? A. Yes, sir.

Q. Thursday and Sunday evenings? A. Yes, sir.

Q. That is your story? A. Yes.

Q. Can you conceive it possible that on these many occasions that a married man would go and take an hour and a half to drive a single girl home, that his wife would not be suspicious? Can you conceive that to be

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

possible if it is true? A. I often wondered if Mrs. Brownlee wondered where he went.

Q. Well, isn't this the fact that if it be true, if it be true that on many occasions in driving you home, which would take a matter of what—10 or 15 minutes? A. It all depends where I was staying.

Q. Well 20 minutes? A. Yes.

Q. That if on many occasions this married man stayed out at night an hour and a half or longer, if that be true his wife must become suspicious, surely? A. Well Mr. Brownlee always gave Mrs. Brownlee some excuse.

Q. Before he left? A. Yes, sir.

Q. What excuse did he give? We will take any Sunday night you like. He is going to drive you home about ten o'clock, he took you to the country, ravished you and had intercourse with you and everything and took an hour and a half or more and what excuse did he give her? You are not making this up, are you? A. No I am not.

Q. Well go on? A. He said he was going to the office to work.

Q. Where there was a telephone? A. Yes, and sometimes he said he was going to send a wire and sometimes he was going to see someone at the Macdonald Hotel.

Q. No doubt he named the person he was going to see? A. I don't 20 remember him naming the person.

Q. Never named the person. "I am just going to see someone at the Macdonald Hotel?" A. "See a man at the Macdonald Hotel."

Q. Did she ever ask him who it was? A. Not that I know of.

Q. Well you were there? A. Not in my presence.

Q. He told her in your presence he was going to see a man in the Macdonald Hotel? A. Yes, sir.

Q. In your presence? A. Yes.

Q. And she never asked who it was? A. No, sir.

Q. Never? A. Never.

Q. Well I will leave it and I refer to the year 1932. If my memory serves me right—did you ever tell Mr. Brownlee about Mrs. Brownlee asking you if he had done anything to you? A. Yes.

Q. When? A. I believe it was in April 1933.

Q. And at what time in April? A. When I was out with him alone.

Q. When? A. In the evening.

Q. What part of the month? A. I remember the occasion quite clearly now. It was in March, not April, after Mrs. Brownlee had told me.

Q. Of course it was after Mrs. Brownlee had told you. Go on.

A. And Mr. Brownlee took me for a drive one night after work during the 40 Session and I told him that.

Q. At what time of day, after work? A. At night.

Q. And the House was sitting? A. Yes.

Q. The House was sitting? A. Yes.

Q. And Brownlee who was the Prime Minister of this Province left



the House and took you for a drive this night in March? A. I believe the session had closed when he left.

Q. You say you remember very clearly it was in March? A. Yes. But the time he would take me riding would be after the night sitting had closed.

Q. After the night Session had closed. Then he did not leave the House, he waited until the House had closed and took you for a drive in the month of March? A. Yes, sir.

10 Q. At what time in the month of March? A. I cannot place it any closer than in the month of March and it was after what Mrs. Brownlee had said to me.

Q. Of course it was very clear it was after Mrs. Brownlee had spoken to you? A. Yes.

Q. And you don't know what time in the month of March you talked to her or what time in the month of March you talked to him about it, do you? A. No, sir.

Q. How do you know it was in the month of March, or do you know or do you not remember? A. Yes I can set the time because it was just before I moved from Mrs. Lush's to Mrs. Fuller's.

20 Q. Now I turn now to the events of 1932. If my memory serves me correctly the main incident there in the spring is where you stayed at the Brownlee household in the absence of the maid? A. Yes, sir.

Q. And the Statement of Claim in this case was issued by your solicitor Mr. Maclean on your instructions? A. Yes, sir.

Q. And in paragraph 9 this appears: "During the months of April May and June 1932 the defendant insisted on the female plaintiff staying for seven weeks at the defendant's house and every night that the defendant was home he insisted on the said Vivian MacMillan having connection with him." Were you there during the months of April, May and

30 June? A. No, sir.

Q. Did you tell your solicitor you were when he published this? A. Yes at that time but since then I have checked up.

Q. What? A. Since then I have checked up.

Q. When did you check up? A. Well after that was published.

Q. You saw this in the newspaper, I suppose? A. Yes.

Q. The Edmonton Bulletin, didn't you? A. Well we take the Journal at home.

Q. Was the Statement of Claim published in the Journal? Was it?

40 A. Well we take the Journal at home and my brother takes the Bulletin so I saw it in either one of these papers, so I don't know which.

Q. Well let us give them both credit. You saw it, in any event. Well when did you check up? A. After I came in to Edmonton.

Q. When? This was issued in September of last year, 22nd of September 1933. When did you check up and find that was wrong?

A. When I came in to Edmonton this spring.

Q. When, this spring? A. About four weeks ago.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. That is before I examined you for discovery or after? You would like to have that date? 11th May, 1934. Was it before that or after that you checked up? A. It was before that.

Q. So you no doubt got the thing right by the time I examined you for discovery? A. Yes I believe I did.

Q. And you were not there during April, May and June, were you? A. I was there for the last two weeks in April and the first two in May.

Q. Just four weeks? A. Yes.

Q. And you were not there seven weeks, were you, as you say in this document? A. No, sir. 10

Q. Did you ever think you were there seven weeks? A. At that time that was prepared that was on my memory.

Q. And you were quite prepared to have this thing go that you were there seven weeks and you were only there four. That is right, is it?

A. Well at that time I was speaking the truth as far as I could remember.

Q. Now I am going to read you what you said in your examination for discovery, Question 672: We had adjourned for luncheon and we came back and I said this to you: "There is one statement in Paragraph 9 that I overlooked. You say that at different times the defendant Brownlee insisted on you staying at his house and having connection with him, and you told me then about three days in September, 1931, was it? "A. Yes. 20

"Q. When was the next occasion you were there? "A. The next spring in the month of May.

"Q. Were you there in April to stay there? A. "No.

"Q. In the month of May? A. Yes.

"Q. And do you remember what date you went there? "A. About the last two weeks in May and the first two weeks in June."

Q. Now what have you to say about that? Remember, you said you had checked up before I examined you and you swore to me there it was the last two weeks in May and the first two weeks in June. Now what do you say? A. Well that is incorrect because I remembered after that that I was not living over at the Brownlee home on the 24th of May and also that I did not go to live with Mrs. Lawton until the middle of May. 30

Q. So here is a time this man, according to your Statement of Claim and your present oath, insisted on violating you nightly for a matter of three weeks and you first placed it in April, May and June, a matter of seven weeks, you then checked it up and when I examined you in May you made it four weeks and you placed it two weeks at the end of May and first two in June and all those statements were wrong, weren't they? A. Yes, sir.

Q. Well what is right? A. Well after my examination for discovery my brother read it over and said that I could not have been staying over at the Brownlee family the first two weeks in June because he was in Edmonton during the first two weeks in June and I was staying at Mrs. Lawton's. 40

Q. So it is your brother that has corrected this situation, is it?

A. Well he drew it to my attention.

Q. And you agreed that he was right? A. Yes and I really tried to find out the exact time.

Q. Did you ever really try to find out before? A. Well I just checked once.

Q. Well I asked these very simple questions and you answered me very straightforwardly, and the answers are all wrong, aren't they? All right, tell me now when you stayed there? A. I stayed at the Brownlee family the last two weeks in April and the first two weeks in May.

10 Q. When did you leave the Brownlee household? The end of the first two weeks would be the 14th day of May, I suppose, wouldn't it? A. Yes.

Q. Would you leave on the 14th? A. I do not remember whether I left right on the 14th.

Q. I am making this suggestion to you, that you came to the Brownlee household on the 6th of April and you left on the 10th of May. In other words, you were there not seven weeks, not four weeks, but you were there five weeks. What do you think? And you left when Jean McCloy came back and left on the 10th day of May didn't you? A. Well if she came back on the 10th day of May I suppose that is when I did leave, then.

20 Q. You have no doubt that is the day you would leave because you were occupying her room, weren't you? A. Yes, sir.

Q. And from the 6th of April to the 10th of May you say Mr. Brownlee was away about a week, do you? A. Yes, as far as I can remember it was a week.

Q. Do you remember? A. I remember he was away.

30 Q. And you said in the Statement of Claim here it was seven weeks he insisted on every night, "when the defendant was home, he insisted on the said Vivian MacMillan having connection with him." What do you mean by that? Did he insist on having connection with you every night during those five weeks, or didn't he? A. Well he was away for a week or maybe ten days.

Q. The first part of his stay or the last part of his stay? A. It was the first part of my stay.

Q. And when did he get back? A. After I had been there about a week or ten days.

Q. That would be the 16th, at the outside, if you went on the 6th? A. Yes.

40 Q. I suggest to you that Mr. Brownlee left for the East on the 6th and did not return until the 24th day of April and was not in Edmonton at all. What have you to say about that? What have you to say about that? Do you want to deny it? A. I would not deny it.

Q. Well think it over. Isn't it true? A. Well as far as my memory serves me it was only ten days.

Q. You are accusing this man of some terrible things and I want to have your memory right occasionally about it. I am suggesting to you he left on the 6th of April and went East and did not return to the City of

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
continued.

Edmonton till the 24th of April. Do you want to deny it or do you not?

A. As far as I remember he was only gone ten days.

Q. You do want to dispute the statement I make to you, do you?

A. I am not disputing it. I am merely telling you the truth as far as I can remember.

Q. Well according to your statement now you had a long session of intercourses with this man in the spring of 1932, hadn't you. A. Yes, sir.

Q. His wife was at home? A. Yes.

Q. And his two boys were at home? A. Yes, sir.

Q. Allan was sleeping with his mother? A. Yes, sir. 10

Q. And Jack was sleeping with his father? A. Yes, sir.

Q. That diary you were looking at this morning, is it just an ordinary diary of Mr. Maclean's?

MR. MACLEAN: You may look at it. It is just my ordinary office diary.

MR. SMITH: It is not a diary kept by you in any sense? A. No, sir.

MR. MACLEAN: It was purely for her convenience.

MR. SMITH: Oh yes. I asked you to do it.

Q. Now during these 16 days, and I am going to confine myself to that, that is 6 days in April and 10 days in May, I suggest to you that Brownlee was either out of town or engaged all evening for at least five days of that time. Do you remember him being in Calgary after he came back from the East? Do you? A. Not that I remember. 20

Q. Do you remember him going with Mrs. Brownlee to an Old Time Dress Party at the Baker's? A. Yes.

Q. He did not have connection with you that evening, did he? A. No, sir.

Q. Do you remember him going to Government House for a dinner to Lord Byng and coming back and talking the thing over with Mrs. Brownlee for long afterwards? A. No, sir. 30

Q. You do remember Lord Byng's visit to this country, do you? A. No I do not.

Q. All the City at Government House and the dinner was at the Macdonald Hotel. Do you remember that? A. No.

Q. It is not unusual, is it, for as busy a man as the Premier of this Province in the course of 16 days to be engaged out of town or in the evening for five or six days? It is not unusual? A. No it is not unusual.

Q. So this seven weeks with which we started is now reduced to a possible ten days isn't it? A. (No answer).

Q. That is true, isn't it? A. Well as far as my memory serves me it was more than ten days. 40

Q. Well all right. How long was it? For whatever your memory is worth, how long was it? A. There might have been one or two nights

that he did not have intercourse with me after he returned from the East but that would be all as far as I can remember.

Q. And this was the first occasion he had intercourse with you at his own house when his wife was at home? A. Yes, sir.

Q. And you were in the maid's room? A. Yes.

Q. With the squeaky floor? A. Yes, sir.

Q. Noisy mattress springs? A. Yes.

Q. It was quite a joke around there about the noisiness of this mattress in the maid's room? A. Yes.

10 Q. It was subsequently changed for a quieter one? A. Not while I was there.

Q. But it was a matter of joking about the row Jean's springs made when she turned over in bed? A. Yes.

Q. And the floor in the maid's room was squeaky? A. Yes.

Q. And the Brownlee house is only a small six room house?  
A. Yes, sir.

Q. Three bedrooms and a bathroom upstairs and a narrow hall?  
A. Yes.

20 A. Q. And Brownlee and his son Jack were sleeping in the front room?  
A. Yes.

Q. And Jack was a stringy overgrown kid six feet tall even in those days, and highly nervous? A. Yes.

Q. And he and Brownlee slept in one room and the maid's room was next door and the doors being five or six paces apart? A. Yes.

Q. And as I understood, you told Mr. Maclean he would go to the bathroom and turn on the water? A. Yes.

Q. Did he flush the toilet do you mean? A. Yes, sir, and he ran the tap too.

30 Q. Flushed the toilet and ran the taps as well. Is that right? A. Yes.  
Q. Did it wake you up? A. I would not be asleep.

Q. Did you never go to sleep on any of those nights? Think that over carefully, now. Do you remember? A. It seems to me there was one occasion when I went to sleep.

Q. Did he come in and waken you up? A. No, sir.

Q. He left you there? A. Yes, sir.

Q. So that the situation is this, if you did not report he did not disturb you? A. Well I am quite sure that the night I fell asleep was the evening you referred to about Mr. and Mrs. Brownlee being over to Mrs. Baker's to a party.

40 Q. And did he flush the toilet and run the tap that night? A. I don't know. I was asleep.

Q. I am going to read you what you said to me on discovery about this. I am reading Question 681:

"Q. What was the occasion of you being there in the last two weeks of May and the first two weeks in June?" You have corrected that again?  
A. Yes, sir.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. Your answer was: "Mrs. Brownlee was without a maid and at that time rather than get a strange maid she thought she would rather have me come over and stay with her and help her with the household work as usual.

Q. "Did you have connection with Mr. Brownlee during that period?"  
"A. Yes.

Q. Was he there the whole time? "A. I believe he was East about a week.

Q. And then he would be there, like the last week in May and the first two weeks in June? "A. About that time. Well it was maybe the 10 last week in May that he went, but he was gone about a week.

Q. And did you have connection with him in that period?  
"A. Yes.

Q. Often? "A. Yes.

Q. How often? "A. Nearly every night.

Q. And where did this take place? "A. In the room where Jack was sleeping.

Q. That is Mr. Brownlee and Jack slept in the one room? "A. Yes.

Q. And it was in that room where you had connection with him nearly every night during that period? "A. Yes. 20

Q. Any particular time of night? "A. Generally after 12 o'clock.

Q. You were occupying the maid's room at that time? "A. Yes.

Q. And you would leave your room and go into his room? "A. Yes.

Q. Had he arranged that you should do this? "A. Yes.

Q. What did he say to you? "A. He asked me if I would.

Q. And did you object? "A. Yes.

Q. What did you say? "A. I said that I thought it was very unsafe to go in the same room where Jack was sleeping.

Q. And what did he say about that? "A. He said Jack would not waken up. 30

Q. And how long would you remain in that room with him?

"A. About half an hour.

Q. Would you simply have this connection and then go back to bed again? "A. Yes.

Q. And he was in bed I suppose when you went in? "A. No he used to come and get me.

Q. Go and speak to you and then you came in? "A. Yes.

Q. He would go to your room and tell you that things were all right, I suppose? "A. Yes.

Q. And then you would go back with him to his room? "A. Yes. 40

Q. Now that is the story you told me in May on this occasion in the spring of 1932, that he would go to your room and speak to you and tell you that things were all right and then you would go into this room where his eldest boy was sleeping and have connection with him. Is that true, Miss MacMillan, what you told me then? A. Yes that is true.

Q. That is true? A. Yes.

Q. So that on those occasions he went into this room with the squeaky floors? A. He did not come into the room.

Q. What did he do? A. He just went past the door and the door was always left a crack open.

Q. Well did he go and tell you that things were all right? A. Well by telling, there, I really mean it was a signal arranged between the both of us that when he would walk past my door and down to the bathroom and turn on the water that everything was all right.

10 Q. So that when you made me this answer: "He would go to your room and tell you things were all right I suppose?" "Yes"—you were not telling me the truth were you? A. Well on one or two occasions he would come to the door and just put his head in the door and say "are you ready?"

Q. And sometimes he went to your room and poked his head in the door and said "Are you ready?" A. Yes.

Q. And other times he flushed the toilet and ran the taps? A. Well he always flushed the toilet and ran the taps.

Q. He would get up out of bed and walk down to the bathroom which was close to his wife's room, wasn't it? A. Yes.

20 Q. Where Allan was sleeping? A. Yes.

Q. He would flush the toilet and run the taps? A. Yes.

Q. The basin taps or the bathtub taps? A. The basin taps.

Q. And flush the toilet. That is right? A. Yes.

Q. And how long would he let them run? A. Well the flushing of the toilet and the running of the taps was to cover any sound getting out of his bed and walking across the squeaky floor and standing in the doorway just off the hall.

30 Q. Now do you know of any better way to disturb a household that has gone to sleep than to flush the toilet and run the taps at night? Do you know of any better way to wake them up? Do you? You have lived in lots of houses. Do you know of any way by which they could be more easily wakened than by flushing toilets and running taps close to them? A. Well I suppose it does wake people.

Q. Certainly. And the toilet and taps would make a good deal more noise than the mattress and the squeaky boards would do, wouldn't it? A. Yes but then there would be a reason for flushing a toilet and running the taps but there would not be any reason for my moving around in Jean's room.

40 Q. All right. And after you were through with that purpose he went back and flushed the toilet and ran the taps again? A. Yes, sir.

Q. You understand what you are saying? A. Yes.

Q. You agree with me? A. Yes.

Q. This half hour would go by and he would go back and flush the toilet and run the taps again? A. I don't know whether he would run the taps or not the second time but he would flush the toilet.

Q. Well we will leave the taps out and take the toilet. And a minute

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

or two ago you told me you know of no better way to waken people up than to flush the toilet at night? A. Yes.

Q. And when Mrs. Brownlee was there and the flushing of this toilet after an half hour interval night after night would naturally arouse something in her mind? A. Well to anyone who did not know what was going on the flushing of the toilet would be a very natural thing.

Q. You think a woman whose husband gets up and flushes the toilet at half hour intervals night after night for two weeks, that she would not take a little bit of interest in it? A. I would, if she suspected.

Q. Suspected what—frequent urination or something of that sort? 10  
(No answer).

Q. Well we will let that go. Then you say you went into this room where this boy was sleeping and you had connection with him there?  
A. Yes.

Q. And took off the lower half of your pyjamas, you told me on discovery? A. Yes.

Q. And he took off the lower half of his? A. Yes.

Q. And he had connection with you? A. Yes.

Q. And his boy sleeping just 18 inches away, which is the width of the bedstand table? A. Yes. 20

Q. And the light right at his hand on the bedside table between the two beds? A. Yes.

Q. And the boy never wakened? A. No, only on one night.

Q. Tell us about it? A. Jack moved in bed and sort of mumbled to himself and Mr. Brownlee turned on the light to see if he was all right.

Q. With you in bed with him? A. With me in bed with him.

Q. Well, courage is a marvelous thing. However, you really tell us that? A. I do.

Q. This man Brownlee, with you in bed with him and his 16 year old boy, 6 feet long in a bed 16 or 18 inches away, Jack, mumbled and Brown- 30  
lee turned on the light? A. Yes, sir.

Q. Do you mean that? A. I do.

Q. Which bed was Brownlee sleeping in at that time? A. In the bed next the window.

Q. That would be the south bed? A. It would be the bed next to the north end of the house.

Q. And that is always the bed that he took you to? A. Yes, sir.

Q. No doubt about it? A. No doubt about it.

Q. None whatever? A. None whatever.

Q. I make this suggestion to you, that all the time you frequented 40  
the Brownlee house Brownlee never once slept in that bed, but the boy Jack occupied it, all the time. What have you to say about that? A. All the times I frequented the Brownlee house up until the summer of 1933 Mr. Brownlee slept in the bed next to the window and Jack in the other bed but at that time Mr. Brownlee changed and slept in that bed and Jack slept in the bed next to the window and the excuse that was given



was that Mr. Brownlee caught a cold from the draft of the windows.

Q. When was this? A. It would be some time after—

Q. Go on. When was it? A. It would be some time in the spring of 1933.

Q. I suggest to you that your reason is right, and that you are out over two years in your time. A. No, sir.

Q. Well in the household at that time were the two boys, Mr. and Mrs. Brownlee and Jean McCloy was the maid? A. Yes, sir.

10 Q. And if they say Brownlee never occupied that bed you say he did, what have you to say about it—that they are just all wrong? A. Yes, sir.

Q. You will stand by it? A. I certainly will.

Q. Did he remove the lower half of your clothing while you were on the floor or after you got into bed? A. After I got into bed.

Q. Did he stand up to do it? A. Yes.

Q. Did it while you were both lying down in this single bed?  
A. Yes, sir.

Q. Must have created some commotion? A. He was always very quiet about it.

Q. And didn't waken the boy? A. No, sir.

20 Q. And if I understood you correctly you told Mr. Maclean that you put your feet to the ground at the same moment he did so it would appear only like one person walking? A. Yes, sir.

Q. And this was in the dark? A. Yes.

Q. Jack's light ever on when you went in there? A. No, sir.

Q. And this nervous lad never wakened once? A. No, sir.

Q. Oh, once he did? A. Well he moved and mumbled in his sleep but he did not waken.

Q. And Brownlee turned the light on? A. Yes.

Q. And then the boy quieted down? A. Yes, sir.

30 Q. And you told Mr. Maclean, if my memory serves me right, that he shielded you in some way? A. Well I would walk in directly behind him and he would have on a big woolly dressing gown and as he stood up to take the dressing gown off he would naturally put his arms sideways to take the sleeves off and that would be a shield or cover for me to get into bed behind.

Q. Did you make that arrangement with him that he should do that? Was that planned? A. Oh that is just what he did.

Q. Did he always do it? A. Yes, sir.

40 Q. So you both knew that even if Jack had wakened up that standing there with his arms spread it would immediately allay any suspicion that anyone might be in the bed? A. Yes but Jack could not see anything in the room without turning on the lights because the blinds were always left down until after I went to bed.

Q. And it was pretty dark in there? A. Yes.

Q. And how did you know Brownlee was standing up with his arms spread out? A. I was behind him.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

- Q. And did you get into the bed? A. Yes.
- Q. In between the two beds? A. Yes.
- Q. Practically touching the sleeping boy? A. Yes, sir, practically.
- Q. Now the next date that I have in my mind—the next incident that I remember that you spoke of to my friend was on the occasion of Mr. Brownlee's illness. When was that? A. That was in the winter of 1932.
- Q. And there is no doubt at all that Mr. Brownlee on that occasion was quite ill? A. Yes he was quite ill.
- Q. Had a temperature? A. Yes. 10
- Q. Dr. Gray was attending him? A. Yes.
- Q. And he needed alcohol rubs and mustard plasters which you assisted in? A. Yes.
- Q. And telegraphed his wife to hurry home from the East. You know that? A. I cannot remember about that.
- Q. Well did she hurry home from the East. That is true? A. Yes.
- Q. And she came alone. Alone? A. Yes, sir.
- Q. There is no doubt about that, she came here alone from the East? A. Yes.
- Q. And that date, as I remember it, was the 31st of October? A. 20  
She did not come home on the 31st.
- Q. I mean on the day you had intercourse with him on that occasion was on the 31st of October? A. Yes.
- Q. And what time in the evening was it? A. It was just after dinner at night.
- Q. That would be in the neighborhood of eight o'clock? A. Yes.
- Q. And he was on his way to Regina and taken sick in Calgary?  
A. Yes.
- Q. Sent home from there by Dr. Bouck? A. Yes.
- Q. And attended here by Dr. Gray? A. Yes. 30
- Q. And a man in that condition had intercourse with you on the 31st of October? A. Yes.
- Q. And that was Hallowe'en night and the boys running about and up and down the stairs? A. As far as I can remember both boys were out at the time.
- Q. They were not in their room, I don't suppose, but they were in and out of that house as youngsters are on a Hallowe'en night? A. Yes.
- Q. And Jean McCloy was in the house? A. Yes.
- Q. And on that occasion you say this man had connection with you?  
A. Yes. 40
- Q. You told me on your examination for discovery on all the occasions this man had intercourse with you he never used a contraceptive once? A. No, sir.
- Q. And you were never pregnant? A. I was never pregnant.
- Q. You remember making that answer to me? A. Yes, sir.
- Q. And it is true? A. Yes, sir.

Q. Where did you first hear of a contraceptive? A. I don't remember where I heard the word first used.

Q. You know of course that is something to prevent conception?  
A. Yes, sir.

Q. Where did you first learn that? A. When I first started this case that question was asked me.

Q. So it was not until you started this lawsuit that you knew the meaning of the word contraceptive. You can swear to that if you want to?

A. I may have known the meaning of it.

10 Q. That is all I asked you. When did you learn the meaning of the word "contraceptive?" A. I cannot say when I learned the meaning of it.

Q. You have known it for a long time. That is true? A. I have known it for about three years.

Q. So you had no difficulty in answering me in May of this year when I asked you if he had ever used a contraceptive on any occasion and you said he had not? A. No.

Q. And you knew what it meant? A. Yes.

20 Q. And you added something new in your examination yesterday. You told my friend Mr. Maclean—your answer was that Mr. Brownlee knew of some pills which if taken before the end of the month would prevent pregnancy? A. Yes, sir.

Q. You made that answer? A. Yes.

Q. And knowing my friend's skill—I know he left it there for me to walk into and ask you all the details and I am going to do that. And I suppose you are going to tell me that Brownlee gave you those pills, are you? A. Yes, sir.

Q. Did he give them to you all at once? A. Not all at once. He gave them to me on different occasions.

30 Q. And I suppose some friends of yours will have a few of them left in some of your boarding houses? A. No I do not think so.

Q. And what are these pills? A. Well they are large black pills.

Q. A boon to the medical world if we could find something like that. What are they? A. I believe Mr. Brownlee called them Apergols or something.

Q. What drug store labels did the bottles or boxes bear? A. Mr. Brownlee never gave them to me in a drug store box or bottle.

Q. How did he give them to you—in a paper bag? A. No, a small plain cardboard box. There was nothing on it to identify where they came from.

40 Q. Anything printed on it? A. It would be just given to me in a small cardboard box.

Q. And how many did you take—at a time? A. Well when it was time for me to menstruate I would take three, three times a day.

Q. And how many days would you take them. A. Until I started to menstruate.

Q. And were you ever delayed? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

- Q. Did you ever have a miscarriage? A. No, sir.
- Q. You menstruated normally. This man was doing an abortion on you. Is that the idea? A. He was giving me these to prevent me coming pregnant.
- Q. And he told you not to take them until just before your monthly period. Is that right? A. Yes.
- Q. Did it ever strike you he was giving them to you as a contraceptive? A. I knew they were as a preventative.
- Q. And you knew a contraceptive is something to prevent conception? A. Yes. 10
- Q. And when you told me on your discovery in May about whether he had ever used a contraceptive why didn't you tell me about these pills? A. Because you asked me if Mr. Brownlee had ever used a contraceptive—not that I had.
- Q. And did you ever use a contraceptive? A. I did on one or two occasions. I took quinine.
- Q. And I suppose he gave you that too, did he? A. Yes.
- Q. And what else did he give you? A. That was all.
- Q. Did he administer it to you? A. No, I took it myself.
- Q. How were they—in tablets or capsules or powder? A. No, 20  
quinine is in capsules and the other pills are large black pills.
- Q. And how do you spell that name that you have told me? A. This may not be right.
- Q. Well do your best. A. A-p-e-r-g-o-l-s.
- Q. Was the name of it on the box? A. No.
- Q. So that it is just from memory that this is apergol that he gave you? A. I remember that is what he told me they were.
- Q. And you say that he gave you these pills to prevent conception and they did prevent conception with you. That is right? A. Yes they did.
- Q. That is right? A. Yes, sir.
- Q. Why couldn't he give them to his wife and save her life? 30  
A. I don't know.
- Q. Eh? A. I don't know.
- Q. Did it ever strike you? A. No I never thought of it.
- Q. Did it ever strike you that if he could give you pills to prevent conception he could give them to his own wife and save her life? A. But Mr. Brownlee led me to believe at first that the mere fact of having intercourse with Mrs. Brownlee would kill her.
- Q. But you got over that idea very quickly. If he could keep you from being pregnant with black pills and quinine why couldn't he save his 40  
own wife's life instead of letting her die a horrible death in pregnancy instead of handing her black pills? A. I don't know.
- Q. It makes your story about saving his wife's life look rather peculiar doesn't it? A. It might look peculiar but it is the truth.
- Q. Well the repetition of things perhaps does not make it any more true. But I put this to you, did it not occur to you that if he could prevent

your pregnancy by giving you some black pills and taking them three times a day that he could save the wife of his bosom's life by giving her these same pills? A. It never occurred to me.

Q. You never thought of it? A. No.

Q. You never thought of it now until I mentioned it? A. No.

Q. And you never thought of the pills until yesterday? A. No.

Q. When I asked you if Brownlee had used any contraceptive, in discovery in May, you concealed from me these pills just because I had not asked you? A. Yes, sir.

10 Q. You concealed them from me? A. No I did not. You did not ask me.

Q. And you did not volunteer? A. No, sir.

Q. I was asking you about contraceptives and I asked you did he use any and not did you use any. Therefore you did not tell me. Is that the story? A. Yes.

Q. You did not want me to know? A. I thought if you had wanted to know you would have asked me.

Q. You did not want me to know did you? A. If you had asked me I would have told you.

20 Q. I have no doubt but you did not want me to know, did you? A. I never thought about it.

Q. I asked you about him using contraceptives and here you were using them and you never even thought of it at the time? A. I thought of it but you never asked me.

Q. I was not smart enough. I agree with you. I was not smart enough to ask you. That is the situation, and therefore you did not tell me.

A. Yes it is right that.

Q. Sure. And going back to the incident of his illness. I have finished with that, and the next incident is in—oh there was one you forgot about in your talk with Mr. Maclean yesterday. You forgot another time?

30 A. When?

Q. Oh when you had intercourse with him in his own house. Didn't you? (No answer).

Q. Didn't you? Oh yes, when you came back from your illness in 1932 you told me on your examination for discovery that you had intercourse with this man in his house on the chesterfield downstairs and his wife lying ill upstairs? A. Yes.

Q. You told me that didn't you? A. Yes.

40 Q. And you told me on that occasion that the only times you had intercourse with Mr. Brownlee were September 1931 and the spring of 1932 and the one occasion in the afternoon when Mrs. Brownlee was lying down upstairs and you told me those were all at his house? A. Yes.

Q. And now you tell Mr. Maclean there was another occasion you had intercourse with him when he was sick?

MR. MACLEAN: She told you.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

—  
No. 9

Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

MR. SMITH: No, never mentioned it. I will leave it so you can look it up so there won't be any doubt about it. Now on this occasion when you came back, I suggest this to you, and your father has said so, that when you were home in 1932 a matter of weeks after you were ill in the hospital, your father and mother were anxious that you should stay at home?

A. Yes they were.

Q. Yes. But you insisted on coming back to Edmonton where this man had taken such a mean advantage of you didn't you? A. Yes, sir.

Q. And there was no mysterious influence at work in Edson and there was no terror and you were home for seven weeks weren't you? 10

A. Yes.

Q. There was no mysterious influence working on you there, was there? A. No, sir.

Q. There was no terror of him when you were at Edson with your parents was there? A. No, sir.

Q. And Mrs. Brownlee had lived for seven weeks without losing her life, hadn't she? A. Yes.

Q. And Brownlee was not in Edson and did not have connection with you there? A. No, sir.

Q. Then why come back to this terror and this influence when your parents wanted you to stay home? A. Well I wanted to come back to work. 20

Q. And your parents did not want you to come back to work. They wanted you to come home because they were alone? A. Yes.

Q. And your brother was married and gone? A. Yes.

Q. And your parents were alone and your father and mother wanted you to stay in Edson? A. Yes.

Q. And there was no terror and no playing like a cat with a mouse and determination against tears and pleadings and you deliberately came back here and had intercourse with him again, and his wife lying down upstairs, didn't you? A. Yes. 30

Q. And you talk about being unable to quit him. Why didn't you quit him then? And you talked about taking your freedom. Why didn't you take your freedom when you had it? Why didn't you? A. Because I liked my work in Edmonton and if I stayed home it just meant staying home and being idle all the time and I did not want people to think I was a quitter and that I would not go on working once I had a position.

Q. You have given me the reasons you came back, because you liked your work, because you would be idle in Edson and because you did not want people to think you were a quitter, having begun work and then abandoned it? A. Yes. 40

Q. And at this time you were a junior stenographer in the Attorney General's Department? A. Yes, sir.

Q. And those reasons weighed against your terror and the mysterious influence? A. When I was out at Edson I had made up my mind not to go out with Mr. Brownlee again.

Q. And you came straight back and did have connection with him on the sofa downstairs and his wife upstairs? A. Well it would not be on the same day.

Q. Oh well is was very shortly afterwards? A. I cannot remember to a month or three weeks.

Q. Now I move on to the month of February 1933 and I think you said that that was the occasion when you and Mr. Brownlee had had a quarrel; he took you home to Mrs. Mackay's and pushed you out of the car? A. Took me home to Mrs. Lush's.

10 Q. And pushed you out of the car? A. Yes, sir.

Q. Did you hurt yourself? A. No.

Q. Did you fall on the ground? A. I stumbled but I did not fall.

Q. And this man in his rage pushed you out of that car so that you stumbled but saved yourself from falling? A. Yes.

Q. And what time in February was that? A. I could not be sure of the exact time of the month.

Q. Well can't you get somewhere near it? I have to answer these things and I cannot do it if you do not give me an approximate time so that I can look into it. About when was it? Was it after the first week?

20 A. It might have been.

Q. Well was it? A. I cannot be sure about it.

Q. Well why do you say it was in February? A. Well it is easier to remember the month than the exact date.

Q. I don't want the exact date. Was it about the middle of the month? A. I cannot say what time in the month was it.

Q. What car was it you were pushed out of? A. I believe it was the small Studebaker 104.

Q. The grey car? A. Yes.

30 A. Are you sure of that. I can probably find the date from that. Are you sure what car it was? A. Yes I am quite sure it was the smaller car.

Q. By that do you mean the small Studebaker, the grey car 104?

A. Yes.

Q. You are quite sure it was that car? A. Yes.

Q. And it was in the month of February 1932? A. As far as I can remember.

Q. Was it in the month of February or do you not remember.

A. Well that is my recollection it was in the month of February.

Q. We will put it this way. Could you tell me if it was after the 5th.

40 A. No.

Q. Was it before the 20th? A. I don't know when it was in February.

Q. Do you want to swear that Mr. Brownlee was in the Province of Alberta during the month of February at all, 1933? A. I could not swear to it.

Q. You do not know? A. I do not know.

Q. When did you move to Lush's? Perhaps we can straighten it out

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

in that way? A. I moved to Mrs. Lush's on the 2nd day of January.

Q. You had been there for some time? A. No I just moved there on the 2nd of January.

Q. Well can you work from that and tell me what time in February this happened? A. It would be some time after January after my mother had gone home because she was in about 15 days in January.

Q. But you are not able to come any closer to it than that, I take it? A. No.

Q. In March you were taken ill for a short time. Did you twist your ankle or something of that sort? A. No. 10

Q. Or you had a cold early in March? A. Yes.

Q. And you had someone phone Mrs. Brownlee to come and get you. That is right? Miss Todd I think? A. Yes because I took sick on Saturday at the office and I had told Mrs. Brownlee I would come over to their place on Saturday afternoon and I had Miss Todd telephone Mrs. Brownlee and tell her I did not think I would be over because I was taken ill. But Mrs. Brownlee came over to Mrs. Lush's to see me.

Q. And picked you up and took you home? A. Yes.

Q. And I suggest again to you that you asked Miss Todd to phone to Mrs. Brownlee to come and get you. Did you or did you not? A. My 20 recollection is that I asked Miss Todd to phone Mrs. Brownlee and tell her I would not be over, that I was sick.

Q. You heard what I said. I suggest to you that you asked Miss Todd to phone Mrs. Brownlee to come and get you. Is what I am suggesting true or is it not? A. I cannot be sure whether I told Miss Todd to telephone Mrs. Brownlee to get me or not.

Q. In any event, you did go to this house? A. Yes.

Q. The house of the man who the month before had pushed you out of the motor—violently threw you out of his car? A. Yes.

Q. And you went back there when you were ill? A. Yes. 30

Q. And a little later on you were taken quite ill and you went to the University hospital? A. But this occasion was after I had been to the University Hospital.

Q. Oh this was in 1933? A. Yes.

Q. Now I am going back to your illness of 1932 and that was at what time of the year? A. It was in June some time.

Q. The time you say you had the nervous breakdown? A. Yes.

Q. I suggest to you that your hospital diagnosis shows that there was nothing wrong with you except constipation and a chronic appendix, and that is exactly what was wrong with you? A. I was never told there was 40 anything the matter with my appendix because they took several X-Rays to see if there was and they found nothing the matter with it.

Q. And you had constipation? A. Yes.

Q. And that you suffered at the time of this nervous breakdown from nothing but a good old dose of constipation, and that is what was wrong? A. Yes, and the fact that I was worn out.



Q. And your doctor was Dr. Fife? A. Yes.

Q. And before you went to the hospital you had an attack down in the toilet of the Attorney General's Department and Mrs. Baillie came in to assist you? A. It was not in the toilet of the Attorney General's Department.

Q. Well in the toilet at the Parliament Buildings? A. No it was not in the toilet.

Q. Where was it? A. I was walking back to work and I got a pain in my left side and met Miss Enilda Todd and she took me to the Attorney General's Department and I was taken to the chesterfield in Mr. Lymburn's office.

Q. That is the occasion I am speaking of when Mrs. Baillie saw you? A. Yes.

Q. You had a severe pain? A. Yes.

Q. And Mrs. Baillie asked you when your bowels had moved last and you told her you had not had a movement for days, didn't you? A. I don't remember telling Mrs. Baillie that.

Q. Isn't it a fact, whether you told her or not. Here you are in the hospital with a good dose of constipation and now it has become a nervous breakdown and that is what was wrong with you. A. That was one of the things that was the matter with me.

Q. Well I will leave it. Now on that occasion in 1932 I think you will find you took ill on the 21st of June? A. Yes that will be about the date.

Q. And when you were taken ill you went to Mrs. Brownlee's house? A. Yes.

Q. And she, thinking you were ill, took you to the hospital? A. Yes.

Q. And that was just some weeks after the terrible treatment that Brownlee had given you in his own home in the spring of the same year? A. Yes.

Q. So in spite of this awful thing he had done to you you went back to the Brownlee house? A. Yes.

Q. And from there to the hospital and from there home on sick leave? A. Yes.

Q. You were not paid for your sick leave were you? A. No.

MR. MACLEAN: It was just constipation. Why should she get paid?

MR. SMITH: I did not hear you. I imagine it was pretty clever but I didn't hear it.

Q. I suggest to you there was not one favor you were granted during all the time you worked for that Government because of your friendship with Brownlee? A. No, sir.

Q. You were never given sick leave? A. Yes.

Q. And never promoted over anyone else? A. No, sir.

Q. You were on the temporary staff? A. Yes.

Q. And put on the permanent staff? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And your holidays were the last choice of everybody else because you were the junior stenographer? A. Yes.

Q. And this Prime Minister never did you one single favor?  
A. No, sir.

Q. So we can have a note of that. Not one favor was done you by the influence of the Prime Minister while you were in the employ of the Provincial Government? A. No not while I was in the employ.

Q. And my friend asked you yesterday if they fired you on the 22nd of September or if you left on your own accord? A. Yes.

Q. And you said you left of your own accord. And if you had been 10  
fired I do not suppose anyone would have been as delighted as my friend would they? But we were not silly enough to do that. Isn't that the story? A. I don't know about the story.

Q. But cannot you use your intelligence about the thing. A. I suppose so.

Q. And it would have been a wonderful thing for my friend and for the newspaper if the Premier had had you fired after you sued him?

MR. MACLEAN: Blah.

MR. SMITH: My friend says blah. I think that is right, perhaps.  
A. Yes. 20

Q. My friend asked you yesterday about an attendance in the Prime Minister's office on New Year's Day, that is either the 1st or 2nd of January, 1933? A. Yes.

Q. What day was it you were there, was it the Sunday or the Monday? A. The Monday.

Q. And what time in the morning did you go down there? A. About eleven o'clock.

Q. You are sure it was as early as that? A. Yes.

Q. There was no one else there? A. At his office?

Q. Yes. A. No there was not. 30

Q. And you had connection with him that morning? A. Yes, sir.

Q. Between eleven and twelve o'clock? A. Yes.

Q. If a man named Snow comes here from the southern part of this Province and swears he was with the Prime Minister in his office between eleven and twelve o'clock on the 2nd of January what have you to say about it? Is he right or wrong? A. He might have been on January 2nd.

Q. Between eleven and twelve o'clock in the Prime Minister's office. Now you were both there at the same time or else one of you is wrong. Which is it? Do you want to change that date? A. No, sir.

Q. It was the 2nd. A. Yes. 40

Q. And it was between eleven and twelve o'clock in the morning?  
A. As far as I can remember.

Q. You want to change your memory. What was the time? You told Mr. Maclean eleven and you told me eleven. Do you want to change it? If you do, do you want to make it earlier or later? A. I do not want to change the time but if Mr. Snow swears to the fact that he was there

between eleven and twelve I must be wrong, but as far as I know now and as far as I can remember it was between eleven and twelve.

Q. But it is a very serious allegation against a man that you, giving definite dates, had intercourse with him in his office on the 2nd day of January between eleven and twelve o'clock in the morning. Do you swear you did or did not? A. I did have intercourse with him.

Q. Between eleven and twelve o'clock in his office on the morning of the 2nd of January? A. It was the morning of the 2nd of January but I am swearing as far as my memory goes that it was between eleven and  
10 twelve o'clock.

Q. And you still think that is right? A. Yes.

Q. And you still do not want to change that time? A. No, sir.

Q. Now you met Caldwell when? A. September 1932.

Q. That is Johnnie Caldwell who is the co-defendant in the counter-claim? A. Yes.

Q. And where did you meet him? A. I met him through a girl friend of mine.

Q. Where? A. I met him in front of 12 Street.

Q. That is a public dancing place? A. Yes.

20 Q. At which you had been? A. No I had not been to it.

Q. You were just going by? A. Yes.

Q. And you met him in front of this place with a friend? A. Yes.

Q. Now I want to talk to you about these Saturday and Sunday incidents and then I am through with that sort of thing. You told me on your examination for discovery that you had connection with the Prime Minister in the winter time nearly every Saturday or Sunday throughout all this period? A. Yes.

Q. And you still stay by it? A. Yes, sir.

30 Q. So there is no doubt that many Saturdays you had connection with him in his office? A. No there is no doubt about it.

Q. No doubt about that? A. No.

Q. And the way that was arranged, you told me, was that about a quarter to one he would telephone you at your office, about a quarter to one you would telephone him at his office. A. He would telephone me at my office.

Q. And you would go down to his office about a quarter past one? A. Yes.

Q. My friend points out I have got the wrong time.

(Reading from examination for discovery):

40 "Q. Now insofar as Saturdays, did he take you to his office on Saturday afternoons or did you go there yourself? "A. He would phone me about a quarter after one and ask me to go to his office and I would go over.

"Q. That would be at noon time. The offices closed at one o'clock Saturday, didn't they? "A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

“Q. And when would you go? A. About a quarter after one after I was through working.

“Q. You would go straight from your office to his? A. Yes.

“Q. Did anybody ever see you going in there? A. Not that I know of.”

Q. Now you made those answers to those questions which I asked you. Do you want to change them in any way? A. No, sir.

Q. Eh? A. No.

Q. You told me the truth on that occasion? A. Yes.

Q. And you went straight from your office to the Prime Minister's office? A. Yes. 10

Q. And I suppose you simply stayed in your own office till about a quarter past one until the other people had gone? A. Yes, and by the time we closed our desks down and put our work away it would be about a quarter after one.

Q. You stayed in your office and finished up your work till about a quarter past one and then went right down to the Prime Minister's office? A. Yes.

Q. And you did not go anywhere else in the meantime? A. Might have gone to the bathroom where I was waiting. 20

Q. And the Prime Minister's office is on the same floor as the Attorney General's Department, where you worked? A. Yes.

Q. And there is a great centre place that one must walk around to get from one wing to the other? A. Yes.

Q. From the Attorney General's wing to the Prime Minister's wing? A. Yes.

Q. And there are janitors going to work there every Saturday at one o'clock sharp in both corridors and around that circular place? A. Yes.

Q. And yet you never saw any of these men as you went into the Prime Minister's office for the purpose of this interview? A. I never remember seeing any janitors around Mr. Brownlee's office, but they would be down the hall where the Attorney General's Department was. 30

Q. I am saying that at one o'clock sharp a janitor starts to work right outside the door of the Prime Minister's office in that corridor. Now then did you ever see anybody, on going into the Prime Minister's office, on those Saturdays? A. No one that I can remember.

Q. You know Miss Brown is the Prime Minister's secretary? A. Yes, sir.

Q. Was Miss Brown ever there when you entered the Prime Minister's office? A. No. 40

Q. So when you went down there Miss Brown had invariably gone—roughly around a quarter past one? A. Yes, roughly around a quarter past one.

Q. And was the door locked, the outside door leading into the Prime Minister's office? A. No it was unlocked.

Q. Was it always unlocked? A. When he was there.

- Q. And you don't know anything about it when he was not there?  
 A. No.  
 Q. The times you went down to have intercourse with him are the times I am talking about. A. Yes.  
 Q. And the door was unlocked into the Prime Minister's office?  
 A. Yes.  
 Q. And no one was there? A. No.  
 Q. And no one ever came into the room while you were there?  
 A. No, sir.  
 10 Q. And no one ever saw you there? A. No not that I know of.  
 Q. And you do not know of anyone who was? A. No.  
 Q. And no one telephoned and interrupted you or anything like that?  
 A. There might have been a telephone call on one or two occasions.  
 Q. Were there? A. Yes.  
 Q. Were you interrupted in this business by the phone ringing?  
 A. Do you mean on Saturdays?  
 Q. I am talking about Saturdays only, at the moment? A. No I do not remember of any phone calls on Saturdays at all.  
 20 Q. Now I want you to think this over. You punch a time clock in that building? A. Yes.  
 Q. And you had not thought of that in connection with this Saturday business had you? A. No, sir.  
 Q. And the record of the time you left the office is recorded in the time clock in all the years you were there isn't it? A. Yes, sir.  
 Q. The time clock is on the basement floor. It is two floors down from your office? A. Yes.  
 Q. And when you told me a moment ago that you never went anywhere, you went straight from your office to Brownlee's office at about a quarter past one you did not go and punch the time clock first, did you?  
 30 A. Yes, I would go down and punch the time clock after I had finished my work, and come back upstairs.  
 Q. So when you told me a moment ago you went straight from your office to Brownlee's office except to go to the toilet, you did not mean it. I asked you if you went anywhere else and you said no, and you did not mean it? A. I was speaking the truth at the time.  
 Q. You are making this story up as I mentioned the time clock?  
 A. As you mention the time clock I remember, but I had not thought of that.  
 40 Q. And you used to go down and punch the time clock and then come back up two flights of stairs where you would meet all the people leaving the building? A. Most of them would be gone by the time I went down to punch the clock.  
 Q. I will get your record but I am telling you this, that you punch out usually about four minutes past one and at that time people would simple be streaming from that building? A. Yes, they would be going out.

*In the  
 Supreme  
 Court of  
 Alberta*

Plaintiff's  
 Evidence

No. 9  
 Vivian  
 MacMillan  
 Cross-Ex-  
 amination  
*continued.*

Q. And you would meet them on your way back to this assignation with the Prime Minister wouldn't you, if you punched the time clock and then came back. A. I would meet some of them on the stairs.

Q. So there is not any question you would see somebody you knew on your way into the Prime Minister's office? A. I never saw anyone I knew when I was going into the Prime Minister's office.

Q. Did you see anyone you did not know? Did you see anyone you did not know? A. I might have seen someone around the halls.

Q. Well do you remember? A. No I can't remember that I did.

Q. And after you punched this time clock you would go back upstairs 10 to the Attorney General's office? A. Yes.

Q. And I suggest this to you, that if you did that there was not a single Saturday but you found someone there, usually the head clerk or Mrs. Baillie? A. Mrs. Baillie was not in the general office of the Attorney General's Department. She had an office of her own right down at the end of the hall.

Q. I suggest that head clerk was the last person to leave the general office and that is the man under whom you were working and that is generally true, isn't it? A. Generally.

Q. And if you went to punch this clock at 1.02 or 1.03 or 1.04 then 20 you would come back to the general office and see the head clerk? A. I misunderstood. I would come to the ladies' dressing room. I would not go back to the office because I had my hat and coat on and would go in there to wait.

Q. You would not go back to the dressing room because you already had your hat and coat on before you punched out? A. Yes.

Q. In other words, you went down and punched out and then back up the two floors and waited in the ladies' dressing room? A. Yes.

Q. Why did you tell me you went back into the Attorney General's office? A. I misunderstood you. 30

Q. How could you misunderstand me? A. The ladies' dressing room always seems as part of the Attorney General's Department.

Q. However, you went back into the ladies' dressing room and there waited until a quarter past one? A. Yes.

Q. Mr. Brownlee did not phone you till a quarter past one? A. He would phone me before one o'clock.

Q. My learned friend Mr. Maclean corrected me. You and I were almost in agreement for a while and I read you question 532. I suggested he phoned you at a quarter to one and Mr. Maclean said I was wrong, and I was, because here is what you said: "Now insofar as Saturdays, did he 40 take you to his office on the Saturday afternoons or did you go there yourself? A. "He would phone me about a quarter after one and ask me to go over to his office and I would go over." A. Yes.

Q. Now your counsel points out that that is what you said on that occasion? A. Yes.

Q. Is it right? A. Yes it is right on some occasions.

Q. Well how could he phone you in the ladies' dressing room?  
 A. Because if he had not phoned me before one o'clock I would wait in the office.

Q. If he had not phoned you before one o'clock to come down to his office you would wait till a quarter past one when he did phone you?  
 A. Till about that time.

Q. In the office? A. Yes.

Q. In the office? A. Yes.

Q. And there is a switchboard in that office operating the telephone?  
 10 A. I do not know what you mean by a switchboard. There are only phones in the office. I never saw any switchboard.

Q. What I have in my mind—am I not right in saying that in the Attorney General's office there is a switchboard controlling several telephones?  
 A. No there is no switchboard, at least there was not when I was there.

Q. There is a general phone? A. There are several phones in the general office.

Q. So on several occasions you would go and punch the time clock and come back and wait in the general office to see if he would telephone.  
 20 Is that true? A. On some occasions that is true.

Q. Well why did you do this? A. Because he would arrange previously to get in touch with me on Saturdays.

Q. So that this Saturday business was always arranged previously. Was it? A. Not always arranged previously. If he happened to call me before one o'clock on Saturday it would not have been arranged but if he said he would phone me later I was to go over to his office and that he was not going to phone then I would just wait till a quarter past one and go over without him even phoning.

Q. So on some occasions you went over there without him telephoning at all?  
 30 A. Yes.

Q. What for? To have connection with him, I suppose? A. Yes, sir.

Q. Well what did you do it for when he did not ask you? A. Yes, but I said he made arrangements before, it might have been on a Thursday night or Friday night, "to meet me in the office on Saturday morning after work."

Q. That is your best story about this Saturday story, is it? A. Yes.

Q. Now we will turn to Sunday mornings. You told me on your examination for discovery that on every occasion you and Premier Brownlee entered the Parliament Buildings together on Sunday mornings?

40 A. Yes.

Q. And you went up to his office? A. Yes.

Q. And you never came by yourself to his office on Sunday morning?

A. No, sir.

A. And always entered together? A. Yes.

Q. And that happened very frequently? A. Yes very frequently.

Q. Very frequently? A. Yes, sir.

*In the  
 Supreme  
 Court of  
 Alberta*

—  
 Plaintiff's  
 Evidence

—  
 No. 9

Vivian  
 MacMillan  
 Cross-Ex-  
 amination  
 continued.

Q. And you never saw anybody on Sunday morning at any time?  
A. No, sir.

A. And you were never interrupted by a janitor? A. No, sir.

Q. Or by anyone else? A. No, sir.

Q. The way these Sunday meetings were arranged, he would be taking you over there for Sunday luncheon? A. Yes.

Q. And before leaving his house he would telephone you? A. Not before leaving his house. He would telephone me from his office and tell me when he was going to meet me, because sometimes he would say "I am at the office now and I will be right over."

Q. Did he go to his office and then leave it and go and get you and take you back there? A. I do not know exactly what he did before he picked me up.

Q. I am suggesting this to you that Mrs. Brownlee phoned you very often on Sunday and told you that her husband would pick you up at a certain place, and he did so? A. Any time Mrs. Brownlee phoned me to tell me he would pick me up she would tell me he was going down to the house for me.

Q. And for you to walk in a certain direction and he would meet you. That happened very often? A. I cannot remember her saying that or my walking in the same direction. I may have.

Q. You would not deny it if Mrs Brownlee says no? A. No I do not deny it.

Q. But you do say that there is no doubt at all that in your judgment he went to his office, telephoned you, and then went and picked you up and brought you back to that same office. You think that is what happened, do you? A. Yes, sir.

Q. And there are many people working or letting on they are working in these Parliament Buildings on Sunday, aren't there? A. I don't know because I never saw anyone working there.

Q. On the numerous Sunday mornings that you went in with this man Brownlee, and his office is on the floor above the entrance, and you never saw a single soul? A. No, sir.

Q. And you don't know a single soul that saw you go in there?  
A. No I do not.

Q. And to make it plain, this was going on nearly every Saturday and Sunday in the week in the winter months? A. Yes in the winter months.

Q. Now I started to ask you about you meeting Mr. Caldwell—Johnnie Caldwell—and I think you told me you met him in September 1932? A. Yes, sir.

Q. Outside the 12th Street dance place? A. Yes.

Q. And you began going together? A. Yes.

Q. And your friendship ripened rather quickly, did it? A. Yes, in about two months time I think it was.

Q. That would be in about November? A. November or December.



- Q. You got to like one another quite well? A. Yes, sir.
- Q. He was very fond of you? A. Yes.
- Q. And you were very fond of him? A. Yes, sir.
- Q. And then at Christmas of that year I think you went home?
- A. Yes, sir.
- Q. And you came back and you were met at the train by Mr. and Mrs. Brownlee? A. Yes.
- Q. And by Johnnie Caldwell? A. Yes.
- 10 Q. I don't know whether you said to Mr. Maclean or whether I read it—on that occasion you said Mr. Brownlee refused to shake hands with him, or did not? A. He did not shake hands with him.
- Q. Did you think it was with any intention of being rude or anything of that sort, or are you disposed to think it was jealousy or something like that? A. I just wondered why he turned his back and walked away.
- Q. In other words, Mr. Brownlee in your judgment, was rude to Mr. Caldwell on that occasion? A. Yes I would call it being rude.
- Q. Well you are the doctor, and I want to know, because my friend asked you about it and I am rather afraid of him. I want to know if there was any significance about this rudeness at Christmas of 1932, or why was it brought in. What was the object? A. I do not know what the object was but I just wondered at it at the time.
- 20 Q. Did you discuss it with Mr. Caldwell later? A. Yes we talked about it.
- Q. Did he resent it? A. Yes.
- Q. Was he annoyed at it? A. Yes.
- Q. And we find Caldwell annoyed at Brownlee at Christmas in 1932?
- A. Yes.
- Q. And he immediately began to resent your going over to the Brownlee household. In fact, he resented it before Christmas, didn't he?
- 30 A. He never said anything about it.
- Q. When did he first resent it? A. In January.
- Q. But he did not mind Brownlee being rude to him in Christmas 1932? A. He just wondered why Mr. Brownlee had acted that way.
- Q. Well did he not resent it? A. He resented it to the extent that he thought Mr. Brownlee thought he was not good enough to shake hands with.
- Q. But that passed over, so to speak? A. Yes.
- Q. In January what happened? A. Mr. Caldwell proposed to me.
- Q. Proposed marriage to you. Is that right? A. Yes.
- 40 Q. I suggest to you that before you went home for Christmas you arranged with Mrs. Brownlee that they should meet you on your return at the train. Did you? A. I believe it was spoken of.
- Q. It was arranged and that is the reason the Brownlees were down to meet you? A. I do not think it was definitely arranged.
- Q. Well did she say she would be there? A. If they were not doing anything else.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. If they were not doing anything else they would be there?  
A. Yes.

Q. And you say you told Caldwell in January 1933 about Mr. Brownlee? A. Yes, sir.

Q. And about what time in January was that? A. It would be about the third week in January.

Q. And I think you first said that Mr. Caldwell had proposed marriage to you? A. Yes.

Q. In the future? A. Yes.

Q. He had several years schooling to go. It was not an immediate wedding which was in prospect? A. No. 10

Q. It was in some years time? A. Yes, sir.

Q. And you told Mr. Maclean that when you had told Caldwell about Mr. Brownlee, Caldwell had told you that he would not marry you. I am not trying to use the exact words. That is what you told Mr. Maclean, in effect, yesterday? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. Now I am going to read to you what you said on your examination for discovery with respect to it. Question 843:

"Q. Was there any doubt in your mind that if you could have got away from Brownlee at that time in January that he would have gone on with his proposal of marriage to you? That was the meaning you took from the situation at that time? "A. I don't know what meaning I took at that time; I felt sort of left out of everything, but now that is the meaning I take." 20

"Q. I take it that you feel that if you could have got away from Brownlee there is no doubt that he would have gone on with his intention to marry you? You have no doubt about that, have you? "A. No."

Q. You made those answers to me? A. Yes.

Q. So the true situation is that irrespective of what you told Caldwell about Brownlee he would have gone on with his intention to marry you if you could have got clear of Brownlee at the time? A. Yes. 30

Q. And why in the world didn't you do it? A. Because I couldn't.

Q. Well you had the assistance of this man Caldwell at that time?

A. Yes.

Q. You had told him the story? A. Yes.

Q. And yet you could not get clear? A. Yes.

Q. And you wanted this marriage didn't you? A. Yes, sir.

Q. You sacrificed this marriage because of what? What were the reasons you could not get clear? A. Because I was saving Mrs. Brownlee's life and Mr. Brownlee would just refuse to hear tell of my breaking off with him and I did not want to hurt Mrs. Brownlee in any way because I had a deeper love for her than ever all that time because I had known her much longer and Mr. Brownlee made threats about me losing my position and I did not want Mrs. Brownlee to know that this had been going on. 40

Q. You have let her know now pretty well, haven't you? A. Yes.

Q. And she is still alive? A. Yes, sir.

Q. Go on, what are your other reasons? A. And then I just could not seem to get away from Mr. Brownlee because whenever I was with him he just had a way of making me almost speechless any time I would start to say anything to him about breaking off. He would just seem to have influence over me.

10 Q. Well, shortly put, the situation is this, knowing Caldwell would have gone on with his intention of marrying you if you could have got clear of Brownlee you did not get clear of him because you thought you were still saving Mrs. Brownlee's life. That is one reason? A. Yes.

Q. Although she had saved her own life seven weeks the previous fall when you were away? A. Yes.

Q. And secondly because he threatened you with the loss of your position. That is the second reason? A. Yes.

Q. That is the same position your father and mother wanted you to give up the year before, and stay at home? A. Yes.

Q. And shortly, because he had this influence over you and you appeared to be speechless in his presence? A. Yes.

20 Q. And those are the reasons you give? A. Yes.

Q. And there are no others, are there? A. No.

Q. Caldwell was a medical student? A. Yes.

Q. No doubt he told you it was all rot, this saving Mrs. Brownlee's life, didn't he? A. No.

Q. He was in his third year medicine in 1933? A. Yes, sir.

Q. It is a five year course, isn't it? A. I believe so.

30 Q. He was in his third year in 1933, anyway. Now what discussions did you have with Caldwell with a view to him assisting you to get your freedom from Brownlee? Perhaps I can put it in a somewhat chronological order. He made the proposal of marriage in January? A. Yes.

Q. Did you immediately tell him about Brownlee? A. Yes.

Q. On the same occasion? A. Yes.

Q. There was no delay? A. No.

Q. No two meetings about it? A. No.

Q. You told him about Brownlee? A. Yes.

Q. And then the matter was just allowed to drop, was it, the matter of marriage, I mean? A. Yes, sir.

Q. And he continued to see you frequently? A. Yes.

Q. And has up to this very day? A. Yes.

40 Q. And this is the same Caldwell that finally took you to see his solicitor, Mr. Maclean? A. Yes.

Q. And you did not know Mr. Maclean before that until Caldwell took you there, did you? A. No, sir.

Q. And you did not know till a couple of days before that Caldwell had been to see Maclean, did you? A. It was a couple of days before that Mr. Caldwell went to see Mr. Maclean.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. But he went to see Mr. Maclean on the 22nd and you did not know he was going? A. No.

Q. And you did not tell him to go? A. I asked his advice.

Q. You asked his advice in April. I asked you about this on discovery and you told me. He said he would do what he could? A. Yes.

Q. I put this to you, that you had no discussion with Caldwell of any nature or sort with respect to bringing an action or consulting solicitors until he told you after the 22nd of May that he, Caldwell, had been to see Mr. Maclean, did you? A. Well I asked Mr. Caldwell's advice in April.

Q. And his reply was that he would do what he could to help you to get your freedom? A. Yes. 10

Q. That was his reply? A. Yes.

Q. There was no discussion about seeing solicitors? A. No.

Q. And you never did have a discussion with Caldwell about seeing a solicitor until after Caldwell had seen Mr. Maclean? A. We had no discussion about it. Mr. Caldwell saw I was not getting away from Mr. Brownlee and that I wanted to.

Q. You say you had no discussions and I say again that you had no discussion with Caldwell whatever about taking your problems up with the solicitor until after Caldwell had done so with Mr. Maclean. That is true, isn't it? That is right, isn't it? A. We had had no actual conversation about the lawyer previous to that. 20

Q. Or any lawyer? A. Or any lawyer.

Q. So that insofar as this lawsuit is concerned Johnnie Caldwell is the first person who consulted a solicitor? A. Yes.

Q. And that is the same Johnnie Caldwell who is a defendant with you in this counterclaim? A. Yes, sir.

Q. And then he took you to Mr. Maclean's office on the 24th day of May? A. Yes, sir.

Q. Which was a holiday? A. Yes, sir. 30

Q. And there, or in Mr. George Parney's office in the offices of Boothe & Morrow, in the same building, you and Caldwell made affidavits with respect to this matter on that day? A. Yes.

Q. And you went on and continued to frequent the Brownlee household all through the month of June? A. Yes.

Q. And after having consulted your boy friend and making out these affidavits with the solicitor you went to the house of the woman whose husband you are suing now and you kissed her good-bye on the 29th of June and she was leaving with her youngsters for the lake on the same day? A. Yes. 40

Q. And you have never seen her since until in this court room? A. No, sir.

Q. And you instructed your solicitor to write Brownlee a letter which is Exhibit 1 in this case. No doubt about that? A. No.

Q. "We are instructed to commence action against you for damages

for the seduction of Vivian MacMillan." You know that letter? A. Yes, sir.

Q. And that is dated the 3rd day of August? A. Yes, sir.

Q. And after that letter was written Mrs. Brownlee, your friend, tried to see you? A. Yes.

Q. And she got you on the telephone? A. Yes.

Q. And you told her you could not see her because you were busy. A. I do not remember telling her I was busy. I remember telling her I did not want to see her and I did not have anything to see her about.

10 Q. And she called you again and you told her you would not see her. That is true? A. Yes.

Q. And that was early in August? A. That would be after the 3rd of August.

Q. And she came right up from Sylvan Lake to Edmonton and she tried to talk to the girl she had made a bosom friend of for three years and whom she had kissed good-bye on the 29th of June and the girl would not talk to her. That is the story, isn't it? A. Yes.

Q. Why? The woman's life whom you were saving; why wouldn't you see her? A. Because I did not think I had anything to see her about.

20 Q. You didn't eh? A. No.

Q. And she phoned your parents and they would not come down to see her. That is the fact, isn't it? A. Yes.

Q. And do you know why? There was no occasion for sparing Mrs. Brownlee's feelings at that time, was there? A. No.

Q. You had decided to let the chips fall where they will, you were going ahead with this thing. You had so decided? A. Yes.

Q. To ruin the woman whom you said was more than a mother to you. You took that into consideration? A. Yes I did.

30 Q. Did you talk it over with Caldwell—Johnnie Caldwell? A. I don't believe I did.

Q. And you never told your father or mother a thing about this until the middle of July? A. Till the middle of July.

Q. You told Caldwell in January? A. Yes.

Q. And you saw a solicitor on the 24th day of May? A. Yes.

Q. And you never told your parents a single word till the middle of July? A. Yes.

40 Q. And I suggest this to you; I suggest that you came down to Mr. Brownlee's office on the 15th day of July. Now I want you to get this date, that you brought some papers down to his office, that there was a council meeting there and he went across the hall with you to that big council chamber and told you that Mrs. Brownlee had telephoned him and wanted you to go down to the Lake for the week-end. Do you remember that? A. Yes.

Q. On the 15th day of July. That is right, isn't it? A. Yes it would be on the 15th of July.

Q. And you told Mr. Brownlee on that occasion that you were sorry,

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

that your father was in town with a bad knee and you could not go. Now had you told your parents about this thing at that time? A. No I had not.

Q. When did you tell them? That was the 15th you know. A. Yes.

Q. When did you tell them? A. I believe I told them the next day.

Q. When had you made up your mind to bring this action? A. I had not made up my mind.

Q. When did you make up your mind? A. My father made up my mind for me.

Q. And when did he do that? A. When he heard my story in the middle of July. 10

Q. Your father consulted you and then consulted Caldwell, didn't he? A. Yes.

Q. And after that he made up his mind that this action should be brought? A. Yes.

Q. But you had consulted a solicitor six weeks prior? A. Yes but six weeks prior—

Q. Of your own? A. Yes.

Q. Now look here. I put this to you; Caldwell had gone to Edson in the summer of 1933? A. Yes.

Q. And he there met your parents? A. Yes. 20

Q. And he stayed at your house? A. He had dinner at our home one evening.

Q. I mean visited at your house during the daytime? A. Yes.

Q. And had dinner there? A. Yes.

Q. When was that? A. That, it seems to me, was the third week in June.

Q. Of 1933? A. Yes.

Q. Had you had any discussion with him at that time about telling your parents? A. No, sir.

Q. None whatever? A. None whatever. 30

Q. Before he went to Edson had there been any discussion of any kind between you and Caldwell about telling your parents? A. No, sir.

Q. Now I go back to the 3rd of July. I am only asking you one question about that and it is this, what car were you in that night? The last time you had connection with this man what car were you in? A. I was in the big Studebaker.

Q. That is the car known as 31-884? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. The day was July 3rd? A. Yes.

Q. Two days before you were followed by Caldwell? A. Yes. 40

Q. And you are not mistaking the day? A. No.

Q. So that the car Brownlee took you out in on July 3rd was the big Studebaker 31-884? A. Yes.

Q. And you said you were out with him on the 27th of June. What car? A. I believe on the 27th of June Mr. Brownlee was driving a Chrysler.

Q. That is not a Government car is it? A. No.

Q. It is his own car? A. I believe so.

Q. Are you sure he was driving his own car on the night on the 27th of June? A. Yes I am reasonably sure.

Q. Why do you say so? Do you know? That is the point. I can check these things if you will tell me. A. I am reasonably sure it was the Chrysler he was driving.

Q. Well reasonably sure. Can you fix it by any event or anything of that kind or if I change the event will you just change your mind. What car was it now? A. (No answer).

Q. Well did he have intercourse with you in the Chrysler on the 27th? A. Yes.

Q. Back seat? A. Yes.

Q. Lying flat on your back and parallel with the seat I suppose? A. Yes.

Q. It is a small Chrysler is it? A. I don't know what size it is.

Q. And it took place in the back seat of the Chrysler? A. Yes if it was the Chrysler but I am not sure about that because Mr. Brownlee was going to Calgary that night.

20 Q. Was it by any chance car 104? A. No.

Q. It was not? A. No.

Q. You are clear about that? A. Yes.

Q. It was not that car? A. No.

Q. Was it the big one? A. The only reason I can give for thinking it was the big car was because Mr. Brownlee was going to Calgary that evening.

Q. You think it was the big Studebaker that night. I thought you told me it was the Chrysler? A. Well I know he was driving the Chrysler on one occasion but I can't remember which.

30 Q. On the 27th of June what was he driving? That is what I want. If you don't remember you can say so, but I am anxious that you should if you can. Was it a big car or a small one? A. It was a large car.

Q. You are convinced it was a big Studebaker, the Government car? A. I am reasonably sure of it because of the fact Mr. Brownlee was going to Calgary and he would be giving the car to the chauffeur.

Q. As a matter of reasoning I don't want you to say things if you don't remember them, but I am anxious to know what car that was on the 27th of June and you are giving to the best of your memory it was the big Studebaker 31-884? A. Yes to the best of my memory.

40 Q. And you cannot do any better than that for me? A. No.

Q. And on the 3rd of July, what car, do you remember? A. Yes it was the large Studebaker again.

Q. When you were out on the 3rd of July with the large Studebaker—are you sure of it? A. Yes because Mrs. Brownlee and the boys had gone to the lake and I believe Jack had the Chrysler at the lake.

Q. You are sure it was a large Studebaker on the night of July 3rd?

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

A. Yes I am sure of it as far as I can remember.

Q. That is the night you said a car had passed you when you were parked? A. Yes.

Q. Did the car that passed you stop? A. No it kept on going.

Q. You could not see it because you were lying on the back seat?

A. No I could not see it.

Q. Who was in it? A. I don't know.

Q. You don't know now do you? A. No.

At 5:35 Court adjourns till Wednesday, June 27, 1934.

Wednesday, June 27, 1934, Court resumes at 10:00 a.m.

10

MR. SMITH: Before beginning the examination this morning it seemed my duty to call your Lordship's attention to two issues of the newspaper published in Edmonton yesterday, known as the "Edmonton Bulletin," two articles on the front page both of which I call your Lordship's attention and the heading in red type across the top of the paper "Vivian testifies to harrowing ordeal" and the sub-heading "Premier Brownlee is pictured love-torn for girl companion, per J. S. Cowper" and underneath is a photograph of the defendant and above the photograph in large type is the word "Accused." The article is as follows: "Facing with courageous mien the terrible ordeal of disclosing her frailties and indignities before a Judge and Jury, counsel, reporters and the public Miss Vivian MacMillan who a few days ago had her 22nd birthday, told such a story in the witness box in the Brownlee seduction suit on Monday afternoon as never was told before in the annals of Court records or in the pages of fiction." Now, my Lord, I have only read part of it and I do not need to read any more to show you its character. Then on the same page is this article, it is headed (it is another edition) "Plaintiff is given severest of tests. Facing this morning still greater ordeal of having her story given in the witness box Monday remorselessly dissected by one of the greatest cross examiners in Western Canada"—I merely mention that of course to show how untrue it is. 20 30

THE COURT: Is that part of the contempt?

MR. SMITH: Yes, part of the contempt "Vivian MacMillan, plaintiff in the Brownlee seduction case submitted her story to the keenest test." Now, this part is in heavy type: "In no material part did she waver, though she admitted that she must have written the Alberta Business College for a curriculum before the time the Premier," and so on.

Now I consider it to be my duty to call to your attention two articles in the newspaper which in my judgment go away far and beyond any privilege which is extended to a newspaper in a fair and accurate report of a trial. 40

THE COURT: I do not know exactly what I will do about it. I have read those articles. I shall consider it.



MR. SMITH: I shall leave the papers with you, sir?

THE COURT: If you will. I just wish to say what perhaps I should have said at the opening of this Court and what seems perhaps to have been forgotten by the Press and that is that they are in receipt of some courtesy and some privilege, and it is only that, when they are at liberty to come inside the rail in a Court room. Apparently they seem to be taking it for granted and there is a flagrant abuse of that courtesy and the privilege afforded by the Court. I might exclude the representatives who are so unfortunate as to appear here for that publication and let them take their chances with the provision made by the Government for the public in the Court room. Whether I will or not I will consider and decide by two o'clock I think. In the meantime I would suggest that whoever is responsible for that article in the Bulletin had better be here at two o'clock.

MR. MACLEAN: Before we go on with the trial. There has been a gentleman named Snell mentioned and an Order was taken out or granted by Mr. Justice Tweedie for his examination on commission in Halifax. Yesterday I had application made to the Department of Education here to get Mr. Snell's file. Every school teacher who has been in Alberta has a file in the Department of Education. The Department of Education refused to either let me see it or produce it on subpoena and said they would only produce it on a Court Order. I thought possibly my friend might not oppose too strenuously application to your Lordship to let me see that file.

MR. SMITH: I won't oppose it at all. I will do everything I can to expedite it.

THE COURT: Go on Mr. Smith.

Q. MR. SMITH: I have just a few matters I have to take up with you and then I will be finished. I have examined you about the 27th of June and I want to return to that for one purpose only, and that is to find out when you were picked up by the defendant on that evening and where you went? A. He picked me up at ten o'clock in the evening and we went out on the west road about three miles beyond the city limit and then turned on to a road going north.

Q. And did you not first go to the station, as I understood you—the C.P.R. Station? A. Yes on the 27th.

Q. I am speaking of the 27th, I am sorry. A. Yes.

Q. You first went to the C.P.R. station and Mr. Brownlee either picked up or arranged for his accommodation there? A. Yes.

Q. And left you sitting outside in the car? A. Yes.

Q. Right in front of the station? A. Yes, sir.

Q. And then you went where? A. We drove around to the Parliament Buildings and Mr. Brownlee went up into the office to get his brief case.

Q. And you waited outside in the motor car? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*  
—  
Plaintiff's  
Evidence  
—

No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. And from there you went out to the west road? A. Yes, sir.

Q. And some three miles beyond the city limits. That is right. That is what you said a moment ago? A. I had the 22nd and 23rd confused.

Q. Where did you go? A. On the 27th we went out the same distance we usually did and turned south.

Q. How far would that be? A. About two miles from the city limit.

Q. And you turned south and you then parked? A. Yes.

Q. And got into the back seat again? A. Yes.

Q. And you had intercourse in the usual way there? A. Yes. 10

Q. And then you returned to the city? A. Yes.

Q. How long did this take—the usual hour and a half? A. I don't know whether it would take that length of time or not because Mr. Brownlee was going to catch the Calgary train.

Q. All right. How long did it take. What time did you get back? A. I don't know the exact time but we would be gone about an hour and a half or an hour and fifteen minutes.

Q. An hour and fifteen minutes to an hour and a half? A. Yes.

Q. Leaving at ten, that would make it 11:15 to 11:30? A. I believe it would be that time. 20

Q. Well have you any doubt about it? A. I don't know the exact time because I never looked at the clock or anything when I got back.

Q. Where did he let you out on that occasion? A. He let me out at Mrs. Fuller's where I was staying.

Q. There is no doubt at all that you were talking about the night of the 27th of June? A. No there is no doubt about it.

Q. And your story about the night of the 27th of June I suppose is just as true as your answer about these other nights? A. Yes, sir.

Q. In paragraph 11 of your Statement of Claim you say that on your return to Edmonton in October 1932, that is after your illness—after your holiday—after your illness— 30

MR. MACLEAN: After her constipation.

Q. MR. SMITH: My learned friend says after your constipation and I agree with him—that he forced you to again have intercourse with him. Now I am talking about the month of October. And you already told me of one occasion where he had intercourse with you down on the chesterfield downstairs when Mrs. Brownlee had gone to lie down upstairs?

A. Yes, sir.

Q. And did he have intercourse with you from time to time during that whole month? A. Well I could not be sure about that because Mr. Brownlee may have been out of the city. 40

Q. Well was he? Paragraph 11 reads as follows: "When the said Vivian MacMillan returned to Edmonton in October 1932 the defendant in spite of her illness insisted upon her resuming relations with him and she many times visited him in his office alone or accompanied him in a motor

car at night alone." Now then, did you in the month of October many times visit him in his office and did you many times accompany him in a motor car at night alone? A. Not in the month of October.

Q. Not in the month of October. How many times did you see him in the month of October? A. I may have only seen him about twice in the month of October.

Q. Well do not let us guess. You say you may have. Did you or did you not, or do you remember? A. I cannot remember definitely.

10 Q. Did you see him at all in the month of October? A. Yes I did see him in October.

Q. When? A. Mr. Brownlee was sick in the month of October.

Q. Of 1932? A. Yes.

Q. All right. He was sick in the month of October 1932, and you visited him? A. Yes.

Q. Where? A. At his home.

Q. More than once? A. Nearly every day while he was sick.

Q. And how long was that? How long did this every day business last? A. I cannot say definitely how long he was ill.

20 Q. Why did you visit this man when he was sick? A. Because he telephoned me at the office.

Q. So that while he was ill he telephoned you at the office and asked you to visit him? A. Yes, sir.

Q. And did you have intercourse with him while he was sick? A. On one occasion.

Q. And did he telephone you from his sick bed? A. Yes, sir.

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

Q. And asked you to come over? A. Yes, sir.

Q. On each occasion when you visited him? A. No.

30 Q. Why did you go the other times? A. Because when I would be there the night before he would ask me to come back the next day.

Q. What you are trying to say, I take it, is that you never went to see him unless he had asked you to come back and see him. Is that what you want us to believe? A. Yes generally that is the way it was. I may have gone over once or twice of my own free will.

Q. Well while he was in bed sick he did not have any spell over you then, did he? It was only in his presence that this spell acted, wasn't it? A. Yes, sir.

40 Q. Then why did you go over to see this man who had violated you, after your illness? Why did you go to see him? A. Well for one reason I knew that Mrs. Brownlee was away and that he would want me to go over and then he asked me to go and I was in the habit of doing what he asked me to do.

Q. You were in the habit of doing what he asked you to do and because you knew Mrs. Brownlee would like you to go over and see him when he was ill? A. Yes, sir.

Q. Mrs. Brownlee certainly did not suspect anything at that time did

she? A. No, sir, I don't suppose she did.

Q. Isn't it obvious if Mrs. Brownlee suspected improprieties between you and her husband she would not want you to go and visit him, would she? A. No, sir.

Q. That seems obvious doesn't it now? A. Yes.

Q. So there was no suspicion at that time? A. No.

Q. Now one question arising from that. In all your three years visiting with the Brownlees you found there a very happy household, did you not? A. Yes.

Q. The relation between Mr. Brownlee and his wife, the relations 10 were most pleasant weren't they? A. Yes, sir.

Q. And quite close? A. Yes, sir.

Q. The relation between Mr. and Mrs. Brownlee and the boys were quite pleasant as well? A. Yes, sir.

Q. In other words, a very happy household indeed? A. Yes, sir.

Q. No sign of suspicion of Brownlee of his wife or of his wife of Brownlee, or anything like that? A. No, sir.

Q. And so far as your association with the house went it is fair to say that you were treated almost as one of the family? A. Yes.

Q. Your relationship became such as you dropped in at any time? 20 A. Yes.

Q. Even during meals? A. Yes.

Q. You did some of your washing there? A. Yes.

Q. In fact, you have still got some underclothing there that you took over to wash? A. I don't know whether it was underclothing or not. The only thing I can remember is a middy.

Q. Well clothing. It was a middy? A. Yes.

Q. And you washed your head? A. Yes.

Q. You left your music there? A. Yes.

Q. You used the piano in the house? A. Sometimes. 30

Q. You taught the boys to skate, one of them, anyway. You assisted one of the boys to learn to skate? A. Yes I assisted him.

Q. And you assisted them with their lessons? A. Not very often. Mrs. Brownlee used to do that.

Q. What? A. Not very often; Mrs. Brownlee did that.

Q. Well you did to some extent? A. When I could.

Q. And you, in short, were in the position of an elder sister to these boys? A. Yes, sir.

Q. Now I am showing you—by the way, you did have some discussions with Mr. Brownlee with respect to what you were eating. He did 40 take an interest in you to that extent? A. Yes, sir.

Q. And he thought that doing your own cooking that at times perhaps you were not eating sufficient? A. Yes.

Q. And you did then prepare for him, as a matter perhaps of humor in any event, a list covering several days of the things you had eaten? A. I do not remember preparing any such list.

Q. Well I will show it to you in a minute. You may have forgotten it. And this was after some correspondence with your Aunt with respect to your physical condition. You have an Aunt who lives in Miami part of the time and in New York part of the time and who is a very able hand painter? A. Yes.

Q. And as a result of correspondence between you your Aunt on one or two occasions sent Mrs. Brownlee presents of the work she was doing? A. Yes.

10 A. Yes. Q. I mean the communication with your Aunt was with you?

Q. And as a result of you telling her it was that Mrs. Brownlee's presents arrived? A. Yes.

Q. And your Aunt had been in correspondence with you about your constipation. She was concerned about what you were eating? A. She was concerned about what I was eating. She used to tell me not to become constipated, but I don't think I ever wrote and told her that I was.

Q. I am showing you a piece of paper. I want you to examine it and tell me if you recognize it. You examined that the other day, didn't you? A. Yes but I still do not recognize it.

20 Q. Don't you recognize your own typing? A. I don't remember ever typing it. The only thing I recognize is my own handwriting at the bottom of it.

Q. Well your own handwriting is there? A. Yes.

Q. So it no doubt meant that you prepared it? A. I don't remember whether I prepared it or not.

Q. Well then one of two things has happened. That is your handwriting at the bottom of that document? A. Yes.

30 Q. Perhaps I might read this: "Went to bed at 12:30. Went to bed at 12:00. Went to bed at 11:00 p.m." And that handwriting is in various columns covering various dates? A. Yes.

Q. Now just take a look at it. Do you remember putting your handwriting on that document? A. I cannot remember anything about this document.

Q. You do recognize your handwriting at the bottom of the document? A. Yes.

**Paper containing diet list of female plaintiff, with envelope, marked Exhibit 5.**

Q. Now Exhibit 5, in this case, is a diet list for the 4th, 5th, 6th and 7th of what month? A. April.

40 Q. I am suggesting to you that is April 1932. And it is addressed to Dr. J. E. Brownlee. The envelope is also addressed to Doctor J. E. Brownlee. You will observe that? A. Yes.

Q. And it is a list showing what you had eaten and the time you went to bed? A. I don't know whether the list is to show what I had eaten or what I was to eat.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Q. You see the 4th, 5th and 6th. The 6th would not show what you were going to eat on the 4th, would it? A. No.

Q. And I mean it is a bit of clean humor, isn't it? A. I suppose it is but I can't remember anything about it.

Q. Well I know, but you have seen your handwriting on it? A. Yes.

Q. And it is a bit of clean humour which existed between you and Mr. Brownlee. He was interested in what you were eating, that is plain? A. Yes.

Q. As no doubt was his wife? A. Yes she was.

Q. How did he come to reach you that night? I think that is the day 10 you said he phoned you to your office? A. Yes.

Q. And what time did he phone? A. It would be just before five o'clock I imagine because that is when he generally did phone.

Q. That was shortly before the office closed? A. Yes, sir.

Q. And you used the public telephone in the general office when you were talking to him? A. Yes, sir.

Q. And on that occasion you say you told him not to meet you on 116th Street because you knew people there and they were getting suspicious, or words to that effect? A. Yes, sir.

Q. So that your story is with respect to this meeting on the evening 20 of the 27th of June, you in the presence of other girls and employees in that office told the Prime Minister of this country not to meet you at 116th Street because the people there were getting suspicious? A. Yes.

Q. You made that statement? A. Yes.

Q. We don't want you to rush about that. You say you did make a statement of that nature in the presence of half a dozen people? A. Yes but they did not know who I was talking to and they could not hear what I was saying.

Q. Why? A. Because there were several typewriters going all the 30 time.

Q. So, under the protection of the typewriters going you made that statement loud enough for the person at the other end to hear it and you say now you do not think the other persons heard it because the typewriters were going? A. I would not be speaking very loudly over the phone and I would have my back to every one in the office.

Q. And you were prepared to take a chance there on the 27th of June in the presence of—how many people in the office were there? A. Nine.

Q. In the presence of nine people in business hours and tell the Prime Minister of this country not to meet you in a certain place because people there knew you and were becoming suspicious? A. I don't remember 40 saying the word "suspicious". It is to that effect, though.

Q. Well I am trying to convey the meaning, but that is the effect? A. Yes that is the effect. But that word was not used.

Q. Well I am giving the proper meaning of your conversation? A. Yes.

Q. And you are prepared to state you made that statement in the presence of nine other people? A. Yes.

Q. Now I come to one more date and I have finished, and that is the date of July 5th. I understood you in your examination for discovery to say that on that evening when the defendant picked you up on the sidewalk near the Administration Building that he discovered almost immediately, he thought almost immediately that he was being followed by a car which was parked? A. Yes.

10 Q. So on the occasion of the 5th of July no doubt shortly after he picked you the defendant thought he was being followed by another car? A. Well he did not know definitely.

Q. Well he thought? A. He just thought.

Q. And then there was a John Gilpin ride all about Edmonton on the South Side? A. Yes, sir.

Q. The South Side? A. And the North Side.

Q. And who was in that other car? A. Mr. Maclean and John Caldwell.

Q. Did you instruct your solicitor Mr. Maclean to follow you that night? A. No, sir.

20 Q. Did you know you were being followed? A. After Mr. Brownlee drew my attention to it I did.

Q. Did you know you were going to be followed? A. No, sir.

Q. You had no idea of that at all? A. I had no idea.

Q. And this Caldwell is the same Johnnie Caldwell who is a party in this action? A. Yes.

Q. With whom you had been consulting your solicitor on the 24th of May? A. Yes.

Q. And you had not seen your solicitor from the 24th of May until the 5th of July, had you? A. No, sir.

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### RE-EXAMINATION

30

MR. MACLEAN: Miss MacMillan, just a few questions to clear up some things Mr. Smith raised. You had entirely forgotten about the letter of July 5th which obviously was addressed to the Alberta College? A. Yes.

Q. And the reply of July 6th, 1930. That is about four years ago? A. Yes I had forgotten entirely about it.

Q. You had forgotten about them? A. Yes.

40 Q. Can you tell me now with these to refresh your memory whether after you got your letter of July 6th, whether anything was decided in regard to coming into town to take the music course? A. Yes. After mother and Dad read the letter I had received from Alberta College and after I had told them I had written about it and we compared the prices from the Alberta College and the prices of the lessons I was taking in Edson we decided it would be much less expensive if I stayed at home and went

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 9  
Vivian  
MacMillan  
Cross-Ex-  
amination  
*continued.*

Re-Exam-  
ination

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Re-Examination  
*continued.*

on with my own music teacher because I could go just as far with her as I could in Edmonton.

Q. She could give you the same tuition as you would get at the Alberta College? A. Yes, sir.

Q. And with a good deal less expense? A. Yes, sir.

Q. Now, Miss MacMillan, I am sorry to have to bring up this subject again, but it has been raised. What position did you and Mr. Brownlee take in the back of the car when you were having sexual intercourse in the car?

MR. SMITH: Is this re-examination my Lord. My suggestion to 10 you is it is not. Surely this thing cannot be any clearer?

MR. MACLEAN: I think possibly my friend will remember I made no mention in my examination of Miss MacMillan—

THE COURT: Quite.

MR. SMITH: That is true but he did cover that subject of intercourse in the back seat of a motor car.

THE COURT: Go on.

MR. MACLEAN: Will you tell us what position you and Mr. Brownlee used to take in the back seat of this car when you were having intercourse?

A. I would be lying parallel to the back of the car and Mr. Brownlee would 20 fold up his overcoat when he had one and put it under my head, resting on the arm of the side of the car and then there was always a heavy rug in the car which he was driving and he would fold that up under his right knee and his right knee would rest on that rug.

Q. What sort of a rug was it that was in the car? A. Well the one I remember that was always in the big Studebaker 31-884 was—one side 30 was black and the other side was a pattern of some shade of yellow and black.

Q. What sort of material was it made of do you remember? A. It was very bristly. 30

Q. And how thick was the rug? A. It is quite a thick rug and quite large.

Q. And when folded up how high would it be? When folded up as he folded it? A. It would be almost parallel with the back seat of the car.

Q. And he would put this rug where? A. Under his right knee.

Q. What would it rest on? A. On the floor of the car.

Q. He put this rug folded up on the floor of the car and the top of the rug would be the same height as the seat? A. Yes before his weight was on it, and it would go down after that.

Q. And he used to put his right knee on this rug? A. Yes, sir. 40

Q. And did that happen time after time? A. Yes.

Q. And that was the usual procedure? A. Yes.

Q. And where were his legs? A. My left leg would be out around



his right leg that was on the rug. My right leg would be round his left leg which was raised on the seat of the car.

Q. And where would his right foot be? A. It would be on the floor of the car.

Q. Now I have not asked you about what sort of underclothing you wore then. What kind of underclothing did you wear? A. I wore what they call step-ins.

Q. Were they tight around the legs? A. No, very loose.

10 A. Yes.  
Q. Was it possible to have intercourse without taking them off?

Q. And at the Parliament Buildings on these different occasions did you ever take off your dress? A. Yes.

Q. What occasion would that be? A. Sometimes on Sunday morning I would be going over to the Brownlee home for dinner and the dress I would be wearing might be crushable and I would take it off so there would not be any evidence of where I had been.

Q. You have been out on many occasions with Mr. Brownlee of course? A. Yes.

20 Q. And can you remember on each occasion what particular car it was he was driving? A. Well it was nearly always the large Studebaker, but sometimes, after the small Studebaker had been purchased it would be the small Studebaker.

Q. I was just wondering, in the matter Mr. Smith brought up when on the second occasion you had driven out alone with Mr. Brownlee and you went down to the Government garage and changed a car—

A. Yes, sir.

Q. You said he got a smaller car and a small Studebaker D104?  
A. Yes that is what I thought.

Q. Have you any distinct recollection of what that car was?

30 MR. SMITH: My Lord. I submit this is not proper re-examination. I merely covered it. He went into it in chief.

THE COURT: Go on.

MR. MACLEAN: Can you recollect? A. I can recollect one thing about this car. It was a car Mr. Brownlee would use sometimes when he was driving in the country and be gone all night; the back of the front seat would straighten out so it would make almost like a bed in the car, and that is all I can remember about the smaller car.

Q. The back would fold back? A. Yes, sir.

Q. To make a bed? A. Yes, sir.

40 MR. SMITH: 104? A. I am not sure of the license number.

Q. MR. MACLEAN: You did sleep in Mrs. Brownlee's room in September 1931 after your memory had been refreshed by these letters?

A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9  
Vivian  
MacMillan  
Re-Examination

*continued.*

*In the  
Supreme  
Court of  
Alberta*  
—  
Plaintiff's  
Evidence  
—  
No. 9  
Vivian  
MacMillan  
Re-Examination  
*continued.*

Q. You had slept in the maid's room in May 1932? A. For a month.

Q. Now there is one matter that my friend brought up about one night when you were in Mr. Brownlee's room in April or May of 1932 and the boy in his bed mumbled and stirred? A. Yes, sir.

Q. You said Mr. Brownlee turned on the light? A. Yes, sir.

Q. What was the condition of that light in regard to coverings?

A. Well the lamp shade on the light was one of these green coated lamp shades but at night there was something thrown over the top of the lamp shade so the light would not shine in anyone's eyes.

Q. Had the boy any peculiar manners about lights at night? A. Yes, 10  
Jack was very nervous at night.

Q. And what would the effect of turning on the light be to him?

A. It would quiet him right away because he knew someone else was in the room and he was not alone.

Q. And so instead of waking him up that would be a quieter?

A. Yes.

MR. SMITH: My Lord, I suggest—Oh I beg your pardon.

THE COURT: Go on.

Q. MR. MACLEAN: How did Mr. Brownlee used to get in and out of the Parliament Buildings when he went with you? A. He had a master 20  
key that would open any door in the Parliament Buildings.

Q. Was your friendship with the Brownlee family known about the Parliament Buildings? A. The people knew I was going over there.

Q. Would there be any comment excited around there by your going to the Premier's office? A. No, sir.

Q. Do you know why it was that you did not speak to Mrs. Brownlee when she tried to get in touch with you after the letter of August 3rd was written? A. Well I was acting under your instructions.

Q. What instructions? A. Well, my counsel told me that there would be people trying to get in touch with me, and just to say that I had 30  
nothing to say about the matter.

Q. And according to your story, Miss MacMillan, on June 27th you were out with Mr. Brownlee driving? A. Yes, sir.

Q. On June 29th he drove you home from his house? A. Yes.

Q. On July 3rd he drove you out into the country? A. Yes.

Q. And on July 5th he started over towards the South Side?

A. Yes, sir.

Q. Was that just a fair average week of your contacts with Mr. Brownlee? A. Yes.

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RE-CROSS EXAMINATION BY MR. SMITH

40

Re Cross  
Examination

Q. May I ask one question out of what has arisen from my friend's re-examination?

THE COURT: Yes.

Q. My friend suggested to you that the turning on of this light would quieten Jack? A. Yes, sir.

Q. How would he know if he was awake? A. If he was awake it would quiet him and he would go off to sleep again.

Q. Then this light did quiet him that night did it? A. Well he was not awake.

Q. He did not waken? A. No.

10 Q. Well how could a light quiet him if he was asleep and did not know the light was on? A. Because Mr. Brownlee did not know whether he was asleep or not and he turned on the light.

Q. And your idea is he was not awake? A. Yes.

Q. And therefore the light which was turned on could not quiet him unless he was awake? A. No.

Q. And when Brownlee turned this light on he was on top of you in the process of having intercourse with you? A. No. He was lying alongside of me in bed.

Q. Was it after the intercourse or before? A. It was before.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 9

Vivian  
MacMillan  
Re-Exam-  
ination

*continued.*

#### No. 10

20

#### Evidence of Jessie Elgert.

JESSIE ELGERT, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Maclean and testified:

Q. You live in Edmonton? A. Yes.

Q. And in the year 1930 you were a maid in the household of the Honourable Mr. Brownlee? A. Yes, I was.

Q. When did you go there? A. 1st of January.

Q. And do you remember how long you stayed there? A. Yes, three months and a week.

Q. And that would take you into the first week in April? A. Yes.

30 Q. Now, Miss Elgert, when you were there where did Mrs. Brownlee sleep? A. In the south bedroom with Allan.

Q. And where did Mr. Brownlee sleep? A. In the bedroom facing the Avenue with Jack.

Q. That would be on the north side of the house? A. Yes.

Q. And did Mr. Brownlee while you were there ever discuss this arrangement with you? A. Yes.

Q. What did he tell you?

40 MR. SMITH: My Lord, I wonder if this relevant. It does seem to me that any discussions prior to the acquaintance between the parties to this action have no bearing—could not possibly have?

THE COURT: I do not see how it can—January to April 1930.

No. 10  
Jessie  
Elgert  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 10  
Jessie  
Elgert  
Examina-  
tion  
*continued.*

MR. MACLEAN: Were there twin beds in Mr. Brownlee's room at that time? A. No just the one.

Q. There were no twin beds at that time? A. No.

Q. What sort of bed was there in the room? A. It was a steel bedstead of a light colour.

Q. And Mr. Brownlee and Jack used to sleep in this one bed? A. Yes.

Q. Did you become acquainted with or know Miss Vivian MacMillan in the fall when she came to town? A. I knew her by sight to see her.

Q. Were you staying at the Y.W.C.A. at that time? A. Yes. 10

Q. Did you ever see Miss Vivian MacMillan going out driving at night? A. Yes.

Q. Can you remember when that was? A. Yes it was the latter part of October.

Q. And where were you in relation to her? A. Where was I when I saw her?

Q. Yes? A. I was about 15 feet behind her.

Q. And where was she? A. She was walking down 103rd Street and I followed her as far as the corner.

Q. That would be Victoria Avenue? A. 100th Avenue. 20

Q. And what did you do there? A. I saw Mr. Brownlee stop the car and open the door and she got in.

Q. What time of night was it? A. It would probably be 10:30 or a quarter to eleven.

Q. And the latter part of October? A. Yes.

Q. Did you recognize Mr. Brownlee? A. Yes.

Q. Did you recognize the car that he was driving? A. Yes.

Q. How did you come to recognize that car? A. I had been out in it that night myself.

Q. With Mr. Brownlee? A. Yes. 30

MR. SMITH: Now, now, my Lord. Surely there are limitations, it seems to me—other acts or similar acts.

THE COURT: Well they had not arrived at that point yet.

MR. MACLEAN: Had you ever before driven with Mr. Brownlee? A. Yes.

Q. While you were a maid in his house? A. Yes.

Q. And when? A. It was some time in March, about the middle of March.

Q. And where had you gone?

THE COURT: Now we will stop. 40

Cross-Ex-  
amination

CROSS-EXAMINATION BY MR. SMITH

Q. After you left the Brownlee household you came back there and sought re-employment? A. No.

- Q. You did not? A. No.  
 Q. You will swear you did not? A. I swear I did not.  
 Q. And that is just as true as the other things you have just said?  
 A. Yes.

*In the  
 Supreme  
 Court of  
 Alberta*

Plaintiff's  
 Evidence

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RE-EXAMINATION BY MR. MACLEAN

- Q. Did Mr. Brownlee ever ask you to come back to the house?  
 A. Yes he did.  
 Q. How did that arise?  
 MR. SMITH: My Lord—  
 10 THE COURT: We have had enough. We are not going any further  
 with that.  
 MR. MACLEAN: My friend said "Did you seek re-employment with  
 the Brownlees?" And I am seeking to re-examine on that.  
 THE COURT: She said Mr. Brownlee asked her to come back.  
 MR. MACLEAN: And it is that conversation I want to get out now.  
 THE COURT: Yes, but the reason for it, we cannot have.  
 MR. MACLEAN: With respect I submit to your ruling but I think  
 when the question of re-employment came up I am entitled to ask what  
 was said.  
 20 THE COURT: Well Mr. Maclean, I think I will not permit it because  
 of the questions that you put until I stopped you. That is why.  
 MR. MACLEAN: Then I bow to your Lordship's ruling.

No. 10  
 Jessie  
 Elgert  
 Re-Exam-  
 ination

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No. 11

**Evidence of Letha Maud MacMillan.**

- LETHA MAUD MacMILLAN, being called as a witness on behalf of  
 the plaintiffs and having been duly sworn was examined by Mr. Maclean  
 and testified:
- Q. You are the wife of Allan MacMillan? A. I am.  
 Q. And the mother of Vivian MacMillan? A. Yes, sir.  
 30 Q. Would you mind telling us how old a woman you are? A. I  
 am 57.  
 Q. And do you remember how old Vivian was when you moved to  
 Edson? A. Eight years.  
 Q. And since then, since Vivian was eight years old you and your  
 husband have lived in Edson? A. Yes, sir.

No. 11  
 Letha Maud  
 MacMillan  
 Examina-  
 tion

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 11  
Letha Maud  
MacMillan  
Exami-  
nation  
*continued.*

- Q. And he has been Assistant Foreman at the shops there? A. Yes.
- Q. And for some years was Mayor of Edson? A. Yes, sir.
- Q. Now was Mr. MacMillan a member of any church? A. Yes,  
Baptist.
- Q. Did he go to church regularly? A. Yes.
- Q. What would you say about him and his conduct in life. Is he an  
upright living man? A. I thought so.
- Q. And you still think so? A. Yes.
- Q. And did you take any part in church work yourself? A. I did.
- Q. What did you do? A. I played the organ for a great many 10  
years. I was President of the Mission Circle, taught the Sunday School  
classes.
- Q. And from the time that she was old enough did Vivian go to  
Sunday School? A. She did always.
- Q. And go to church? A. Yes.
- Q. And in the last year or two she was in Edson did she used to  
teach in the Sunday School? A. Yes in the kindergarten class.
- Q. And played the organ in the Sunday School? A. Yes, and church.
- Q. Do you know anything about her running around with young men  
or boys at Edson? A. I do not. 20
- Q. What was your estimate of your daughter Vivian when she left to  
go to Edmonton? A. Well I felt I could trust her. I always had trusted  
her. She had never gone out with boys around, she was more of a girl for  
girls.
- Q. I could not hear you because of the noise outside. A. She did  
not go out with boys. Her chums were girls.
- Q. She did not go out with boys? A. No.
- Q. Who was the first admirer she ever had as far as you know?  
A. I don't know. There was one young boy friend that went around with  
her just as a school friend. 30
- Q. And do you remember when Mr. Snell came to Edson? A. Yes.
- Q. How did he start coming to your house? A. Well he was a  
member of the same church and there were few young people in the church  
so I invited him to come to our home.
- Q. So the connection really started from your being members of the  
same church? A. It did.
- Q. And from the time that he came to Edson, from then on till he left  
he was around your house quite frequently? A. Yes.
- Q. And quite friendly both to you and Mr. MacMillan as well as to  
Vivian? A. Yes. 40
- Q. And was your son at home during that time? A. He was most  
of the time.
- Q. Your son's name is Harry? A. Yes.
- Q. And he is some years older than Vivian? A. Four years.
- Q. Can you tell us whether Harry took any interest in Vivian when  
he was growing up? A. Yes he used to be always like a father to her.

Q. Was Harry in a position to know what was going on in a little town like Edson? A. I would think so if there was anything at all.

Q. I suppose you would know practically everybody in town?  
A. Yes, sir.

Q. And did Vivian as far as you know up to the time she came to Edmonton ever get into any trouble with any man or boy? A. Not that I know of.

Q. There was one incident brought up by my friend in regard to something that happened at Stanley Park in Vancouver. Do you remember  
10 that incident? A. We were on our holidays to Vancouver.

Q. There was some mention of some unpleasant incident in Stanley Park? A. I do remember. It was not at Stanley Park. There was a man, Patterson was his name.

Q. How old was Vivian at that time? A. She was a child of about twelve I would think.

Q. And there was some man paid her some attentions or did something in Stanley Park? A. She and her boy cousin were just walking around the beach and this man just took them off for a little walk along the beach.

20 Q. There was nothing serious about it? A. There was nothing serious about it, but she came running back to me and she said: "That man just wanted me to sit down over there and I did not like it." That was all.

Q. That was all there was to it? A. That was all.

Q. Apparently on July 5th, 1930, Vivian wrote in to the Alberta College for information concerning a course in music and got back in a few days a reply giving the cost of courses in music at Alberta College. Can you remember whether or not any decision was come to in respect of the information from Alberta College as to what Vivian would do? A. Yes.  
30 We had wanted her to take music. She had written in herself and when the report came back and the paper came back we began thinking that perhaps it was rather expensive. So after we had talked it over we decided she would not take it.

Q. Now do you remember about the middle of July 1930 when Premier Brownlee came to Edson and went out on this picnic out to the MacLeod River? A. Yes, sir.

Q. And you had been at the luncheon at Mr. Pattinson's house, you and your husband, and after luncheon there was a drive out to the MacLeod River and Mr. Brownlee went in your car? A. Yes.

Q. You remember that? A. Yes.

40 Q. And you remember that your husband was driving the car and you were sitting in the front seat, Mr. Brownlee in the rear seat on the left hand side? A. Yes, sir.

Q. Mr. Pattinson's young boy in the centre and Vivian on the back?  
A. Yes.

Q. I suppose by turning your head you could see the Premier?  
A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 11  
Letha Maud  
MacMillan  
Exami-  
nation  
*continued.*

Q. Now there has been evidence of some conversation between the Premier, yourself and Vivian. Will you just give us what your recollection of that conversation was in regard to Vivian and her future movements?

A. Well when we first started out in the car Mr. Brownlee said to me: "You have a beautiful daughter here Mrs. MacMillan. What do you propose to do in the way of her education?" And he had asked Vivian what Grade she was in and she said she was in Grade XI and he said: "I suppose you will soon be going to Edmonton or some place to complete your education?" And she said: "No, I think I am going to be a nurse." And I said: "No we have decided Vivian is to take music." So then we were talking about which would be the nicest thing to do. Mr. Brownlee thought that music was not as profitable a thing these days as it had been—so many music teachers compared with what there used to be. However, he suggested why didn't she take a business course, that that was something most girls would like these days and I said: "Yes but if she would take a business course she would have to go to Edmonton and that was the thing I was trying to get away from because I thought she was too young, that we would like to have her home at least another year or more probably, and he suggested there was no reason why she should not come because Mrs. Brownlee, he knew that she would very likely have her to come to her home because she was kind to so many of the girls coming from their homes and he would be delighted to have her come there and make their home her home and also suggested he would be a guardian to her and look after her and see that nothing happened to her so I did not need to have fears on that at all. "Yes" but Vivian said then she might go through with her business course and after she was through she probably could not get a position, there were so many of the girls out of work. Mr. Brownlee suggested to her he did not think she had much to fear because he was sure he would try and see that she got something to do all right after she would be through. However, there was not much more said that I know of.

Q. That is the gist of it? Is it? A. The gist of it and we drove off to MacLeod Valley where Mr. Brownlee made a short speech to the farmers. While he was speaking it began to rain and we hurried back towards home. On the way home it did rain very hard and we were all pretty well mused up and Mr. Brownlee with the rest had to get out into the mud and when we returned to Edson we were going down the main street and Mr. Brownlee suggested he had but one pair of shoes with him and he would like to get them cleaned, and Vivian said: "You can get them cleaned just down here," it was just a joke probably, but we went home to dress and Mr. Brownlee went to the hotel.

Q. Did you see Mr. Brownlee again that evening? A. Yes at the banquet.

Q. And was there any dance afterwards? A. Yes, sir.

Q. Where was the dance? A. At the Memorial Hall.

Q. And did you have any conversation with Mr. Brownlee during the dance? A. Well I danced with him one dance and then there was



another dance, a fox trot, or something that I was not very familiar with and I said I could not dance it and Mr. Brownlee said: "We will sit down" and just as we were sitting down my daughter came along and Vivian was a good dancer and he danced with her.

Q. Do you know how many times the Premier danced with Vivian that evening? A. I should think four or five times. I noticed several occasions they were dancing.

Q. Did he make any remark to you about it? A. No not particularly except that he said she was a nice dancer. And when he went away he said to me he hoped I would excuse him because he had danced so much with my daughter and I said it was quite all right.

Q. You did not hear any suggestion about a trip to Jasper, did you? A. Not until about next morning. Vivian said to me that Mr Brownlee—

THE COURT: Well.

MR. MACLEAN: It was only what Vivian reported to you next morning? A. Yes, what Vivian reported to me.

Q. What induced you and Mr. MacMillan to allow Vivian to come to Edmonton?

MR. SMITH: Just a moment. There are leading questions and leading questions.

MR. MACLEAN: Can any leading question start with a "what?"

MR. SMITH: Yes and end with a "what", as far as that is concerned. I am objecting to the form of the question.

THE COURT: I think the question is all right.

MR. MACLEAN: What induced you and Mr. MacMillan to allow Vivian to come to Edmonton? A. Well is was the question of what Vivian should study when she came to Edmonton. We had decided she would have music but on this drive Mr. Brownlee had so strongly suggested a business course that we began to think it was perhaps the right thing for her to take.

Q. Did Vivian live at home up to that time? A. Yes.

Q. Did you keep a maid? A. Sometimes, not always.

Q. Did Vivian do any work around the house? A. Well just what most of the girls will do, just ordinarily.

Q. She would help around the house? A. Yes.

Q. And you and Mr. MacMillan were glad to have her home? A. Yes.

Q. She was your only daughter? A. Yes.

Q. And Vivian was 18 on the 10th of June 1930 just before the Premier's visit? A. Yes, sir.

Q. Did you come into Edmonton with Vivian? A. Yes, sir.

Q. And stayed with her at the Y.W.C.A.? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 11  
Letha Maud  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 11  
Letha Maud  
MacMillan  
Exami-  
nation  
*continued.*

Q. Did you go over to Alberta College with her while she was registering? A. Yes.

Q. And was there any discussion there that you can remember about whether Vivian should live in residence at Alberta College? A. Well it was spoken of. Dr. McCall suggested she would stay there but we had decided before this she would not.

Q. I did not get your last answer. A. It was spoken of. Dr. McCall spoke of it but we had decided she would stay at the Y.W.

Q. And you stayed in town with her for some time? A. Until, I believe it was Wednesday. It was the middle of the week. 10

Q. Now apparently the 1st of September in 1930 was on a Monday. That was Labor Day and a holiday? A. Yes.

Q. And I suppose school would open on Tuesday the 2nd of September? A. Yes.

Q. And you think you went home on the Wednesday? A. I think I went on Wednesday night's train.

Q. THE COURT: You came to Edmonton on what day? A. The 31st day of August I came into Edmonton.

Q. MR. MACLEAN: You left for home when? A. On Wednesday night. 20

Q. THE COURT: That would be what date?

MR. MACLEAN: The third, my Lord.

Q. And the next Saturday was the 6th of September? A. Yes.

Q. Do you remember whether or not Vivian called you up on long distance phone on the Saturday after you got home? A. Yes she did.

Q. Do not answer this until my friend has an opportunity of objecting. What did she tell you in that conversation?

MR. SMITH: Surely I do not need to object my Lord. It is so extremely wrong and my friend knows it better than I do.

THE COURT: Oh no. 30

MR. MACLEAN: I am not going to argue, but I submit it is admissible. It is a part, and very important part of the *res gestae*.

THE COURT: No.

MR. MACLEAN: When did you first become aware that Vivian was going over to the Brownlee home? A. Well she called me up on Saturday morning.

MR. SMITH: The same thing.

(The Witness): That she was going to Brownlee's home, she had been invited for dinner.

THE COURT: We do not want you to continue the conversation. 40

MR. SMITH: I am going to withdraw my objection. These words are brought out by my friend and I would rather have the fact, so I will withdraw my objection.

*In the  
Supreme  
Court of  
Alberta*

MR. MACLEAN: What did Vivian tell you over the telephone?  
A. She said Mrs. Brownlee had called her on the phone and asked her to come with them for a drive and be there for dinner or tea on Sunday night.

Plaintiff's  
Evidence

Q. And what was the reason for her calling you? A. Like lots of girls. She said "Mother what dress shall I wear to the Premier's?"

No. 11  
Letha Maud  
MacMillan  
Exami-  
nation

10 Q. Were you in and out of Edmonton much that fall, Mrs. Mac-  
Millan? A. I was in twice on two different occasions before Christmas.

*continued.*

Q. Were you at the air show that was held here on September 17th?

A. Yes, sir.

Q. You came in for that? A. Yes.

Q. And you went there to the air show? A. Yes.

Q. Was Vivian at the air show on the 17th? A. Yes, sir.

Q. THE COURT: The 17th of what?

MR. MACLEAN: September.

Q. Who did she go with? A. She went with Mr. and Mrs. Brownlee.

Q. And was Vivian home for Christmas? A. Yes, sir.

20 Q. Did you notice anything that first Christmas? A. Yes we did.  
We felt very badly when she came in. I thought she was so overjoyed to get home but when she came in the house she threw herself on the davenport and cried.

Q. Did you ask for any explanation? A. I said: "Whatever can be the matter?"

Q. Did you get any explanation? A. No, except that she was glad to be home.

THE COURT: Never mind what she said.

30 MR. MACLEAN: And were you aware that during the years 1932  
and 1933 that Vivian was going to the Brownlee house? A. Yes.

Q. Had you been over there yourself? A. Yes.

Q. What were your feelings with regard to Vivian going over there?  
A. Well I thought it was very nice for her to be going to a home like that instead of being out with young people.

Q. Had Vivian been out and around much before she came to Edmonton in September 1930? A. No.

Q. And when did you first become aware of what Vivian says was going on between her and the Premier? A. In the middle of July 1933.

40 Q. On that occasion your husband was also in town? A. Yes.

Q. And on that occasion Vivian told you and your husband? A. Yes.

Q. Have you noticed anything about Vivian's appearance or health since she came to Edmonton? A. When she first came do you mean?

Q. Yes? A. Yes, sir. She seemed, I well remember the first

occasion I came in she began telling me how she could not sleep.

THE COURT: Never mind what she told you.

MR. MACLEAN: What did you notice yourself? A. She did not sleep and was nervous.

Q. How does her weight now compare with her weight when she came to Edmonton? A. One hundred and twenty I think now and she weighed 150 or 155 when she first came to Edmonton.

Q. She weighed 155 when she first came to Edmonton. And how much does she weigh now? A. One hundred and twenty-two I think.

Q. And what is the state of her health now? A. Well it is terrible. 10

Q. What is the matter. Do you know?

MR. SMITH: Now My Lord.

(The Witness): Her nerves are—

THE COURT: Never mind.

Q. MR. MACLEAN: Mrs. MacMillan, after a letter was written on the 3rd of August, 1933, were you at Edson when Premier and Mrs. Brownlee came out there? A. Yes, sir.

Q. On the 12th of August last? A. Yes.

Q. And after they had gone did you sit down and write a letter telling Vivian, who was then in Edmonton, what had happened? A. Yes, 20  
sir, I did.

Q. And I am showing you a letter, Mrs. MacMillan, for refreshing your memory dated August 12th, 1933. Was that the letter that you wrote? A. Yes, sir, it is.

Q. And how long after the Brownlees had been there was it that you wrote that letter? A. The same afternoon.

Q. Now you may refer to that letter to refresh your memory and I want you to tell us just what happened when Mr. and Mrs. Brownlee came to your house on the 12th of August? A. Well Mr. MacMillan and I were talking this over just before one o'clock. He was going to work and he got in the car and had gone away when I heard a knock at the front door. I went to the front door and it was Mr. and Mrs. Brownlee. He told me he wanted to talk to me a few minutes. I told him I had not anything to say to him and he insisted he come in, which he did, and Mrs. Brownlee. When he came in he said he came to find out just what kind of a charge Vivian had laid against him, he had understood there was some charge laid. And I insisted that I had nothing to talk to him about as it was in the lawyer's hands and I could not talk to him. Then he thought it was very strange what it was all about. He said he had taken Vivian out for a short drive not long ago as he had often done before and she was just the same 30  
to him as she had ever been; therefore he could not see any reason for this. So Mr. Brownlee suggested to me did I realize that Vivian's name would be ruined forever if the like of this came out. I said to him: "Do you realize 40

what this will be to your own name Mr. Brownlee?" He did not answer me. And Mrs. Brownlee suggested what it would be for her boys and her home. So then he said to me: "If it is money you are after I have not got any." And when I told him I had nothing more to say he wanted to know where Mr. MacMillan was. I said he was at work, "if you wish to see him I could call him or you could go to the round house." However he did not insist so I did not call him. I think that was about all as near as I can remember, and they went away.

10 Q. What was Mr. Brownlee's manner? Was he angry or aggressive or what was his manner? A. Well he looked a sorry man to me.

Q. What do you mean he looked a sorry man to you? A. Well he looked rather sick over the whole affair as I thought. And I suppose I was feeling it myself.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 11  
Letha Mauc  
MacMillan  
Exami-  
nation  
*continued.*

#### CROSS EXAMINATION BY MR. SMITH

Q. You are not a bit surprised that a married man and the Prime Minister of this Province with two sons of his own charged with this sort of thing would be a bit surprised, are you? A. No I am not.

Q. And you tell Mr. Maclean now that you told the Brownlees that if they wanted to see Mr. MacMillan you would telephone and— A. Yes.

20 Q. And he was at work? A. Yes.

Q. And you wrote your daughter then, that same afternoon: "When they got up to go he said 'I won't bother you any more Mrs. MacMillan'," and you said: "Really they crept out like a couple of criminals. I closed the door and not a word was spoken. Oh yes, and they wanted an interview with Mr. MacMillan. I told them he did not want to see them any more than I did so they did not try to see him." Did you write the truth to your daughter in this letter? A. Yes, sir because—

Q. On the 12th day of August? A. Yes.

30 Q. All right. That is all I want to know. I want that marked. **Letter dated August 12th, 1933, from Mrs. MacMillan to the female plaintiff, marked Exhibit 6.**

Q. You had been to the Brownlee house frequently? A. Not frequently.

Q. Well a number of times? A. On two or three occasions.

Q. And you found Vivian quite happy in that household? A. Yes.

Q. And you went with Mrs. Brownlee to the Coast and shared a compartment with her? A. Yes, sir.

40 Q. Now this phone call that you had on the 6th of September, and you have looked at a diary of 1930, haven't you? You say you had a long distance call from your daughter on Saturday morning the 6th of September about going to the Brownlee household the following day? A. Yes.

Q. You swear to that? A. As far as I can remember it was in the morning.

Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 11  
Letha Maud  
MacMillan  
Cross-Ex-  
amination  
*continued.*

- Q. I am suggesting to you it was not that morning at all, if it was a Saturday it must have been at least a week later. A. No, sir.
- Q. I beg your pardon? A. No, sir, it was on Saturday.
- Q. Do you swear it was that Saturday morning? A. Yes.
- Q. Are you sure of that? A. Yes, sir.
- Q. How do you fix it on that Saturday? A. Because it would be the first week she was at Edmonton.
- Q. What time on Saturday morning was it? A. I could not tell you just that.
- Q. Was it before lunch, before the noon meal, whatever you call it? 10
- A. If it was in the morning of course it would be.
- Q. Well was it in the morning? You have sworn it was. Do you want to alter that? A. I have said I would not say if it was in the morning or evening. It is not fixed just in my mind.
- Q. You don't know whether it was in the morning or evening. Was it after breakfast? A. Yes.
- Q. Was it before lunch? (No answer).
- Q. Was it before lunch? Don't misunderstand me. I know you are doing your best to try and tell me when this was. Can you fix it during that day? A. Yes, it was on a Saturday—the first Saturday. 20
- Q. That is the Saturday the 6th? A. Yes.
- Q. And you said a while ago it was in the morning? Do you want to change that? Do you want to alter that? It is very important to me and I will tell you why—to account for the movements of the Brownlee family about that time. I want you to tell me if it was in the morning, if you think it was in the morning? A. Well as I suggested here I could not say whether it was morning or whether it was evening.
- Q. And you don't know whether it was before dinner or after dinner in the evening do you? If you do not remember, simply say so, that is all? 30
- A. No I do not remember.

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No. 12

**Evidence of Dorothy Kennedy MacKay.**

No. 12  
Dorothy  
Kennedy  
MacKay  
Exami-  
nation

- DOROTHY KENNEDY MACKAY, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Maclean and testified:
- Q. You live in Edmonton? A. Yes, sir.
- Q. And your father's house is what number on 106th Street? 40
- A. 10018 106th Street.
- Q. And in the fall of 1932 Vivian MacMillan came to reside at your house? A. Yes, sir.
- Q. Did she have her meals there? A. Yes, sir.
- Q. And you got to be quite friendly with Vivian? A. Yes.
- Q. And there is only one particular evening that I want you to see if

I can draw your attention to. Do you remember one evening when Vivian came in quite disturbed? A. Yes, sir.

Q. You recall that particular evening? A. I do.

Q. Will you tell me just what you know about it but do not give any conversation, yet? A. No. We were sitting playing bridge, my father and a friend and mother and I and later on in the evening Vivian came in. She did not come in to sit and talk with us a few minutes as she usually did. She just went straight to her room, and after a while I heard her sobbing and I went in.

10 Q. You heard her crying and you went in? A. I went in.

Q. And where was she? A. She was lying on her bed crying.

Q. I would ask your Lordship's permission to give this conversation.

THE COURT: No.

No Cross Examination.

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**Dorothy Kennedy MacKay, recalled.**

DOROTHY KENNEDY MACKAY, recalled, was further examined by Mr. Maclean and testified:

Q. I am sorry, my Lord, there is one question I forgot to ask. I ask your Lordship's indulgence. About what time was it Vivian came in?

20 A. I would say around 10:30 or eleven o'clock.

Q. How long were you with her that night? A. Oh till about two o'clock in the morning I think.

Q. Did she have any telephone calls that night? A. Yes.

Q. What time? A. Oh after twelve.

MR. SMITH: That is all, thank you; no questions.

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**No. 13**

**Evidence of Emma Jane MacKay.**

EMMA JANE MACKAY, being called as a witness on behalf of the plaintiffs and having been duly sworn was examined by Mr. Maclean and testified:

30 Q. You are the mother of the last witness Dorothy MacKay? A. Yes.

Q. And Vivian MacMillan was staying at your place in the fall of 1932? A. Yes.

Q. She stayed until about the 1st of January 1933? A. Yes.

Q. And then went to another place because she had to have a larger apartment because her mother was coming into town? A. Yes, that is right.

Q. I merely want to draw your attention to one particular night of

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 12  
Dorothy  
Kennedy  
MacKay  
Exami-  
nation  
*continued.*

No. 13  
Emma Jane  
MacKay  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 13  
Emma Jane  
MacKay  
Exami-  
nation  
*continued.*

which your daughter has just given evidence, one night that Vivian came in very much disturbed, and you and your husband and some others were playing bridge and she went and threw herself on her bed. You remember the occasion? A. I do.

Q. Next morning you were cleaning her room? A. Yes.

Q. Did you find any portions of a letter? A. Yes I did.

Q. Have you got those portions? A. Yes I have.

Q. Will you produce them please. (Produced).

Q. Is this what you found there? A. That is what I found.

Q. And you yourself saved them and pasted them on this paper? 10

A. Yes.

Q. And it has been in your custody ever since? A. Yes.

MR. MACLEAN: I am tendering what she found in Miss MacMillan's room.

THE COURT: Oh no surely not.

MR. SMITH: No questions, thank you.

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No. 14

**Evidence of Plaintiff Allan D. A. MacMillan.**

No. 14  
Allan D. A.  
MacMillan  
Exami-  
nation

ALLAN D. A. MACMILLAN, being called as a witness on behalf of the plaintiffs and having been duly sworn was examined by Mr. Maclean 20 and testified:

Q. You are the plaintiff A. D. MacMillan? A. Yes.

Q. And you are the father of Vivian? A. Yes.

Q. Vivian was 18 years of age on the 10th of June 1930? A. Yes.

Q. And at that time you were Mayor of Edson? A. I was.

Q. And you belong to the Baptist Church in Edson? A. I do.

Q. And attend church regularly? A. Quite regularly, yes.

Q. And had Vivian attended church? A. Yes, while she was there.

Q. You are assistant foreman of the C.N.R. shops? A. I am.

Q. And do you remember an occasion in the middle of July 1930 30 when Mr. Brownlee came to Edson? A. I do.

Q. And went to a picnic at MacLeod River? A. I do.

Q. Did you drive the car that took the Premier to MacLeod River and back? A. I did.

Q. We have had evidence of who were in the car and how they were seated. Had there been any decision prior to that time about what Vivian was going to do in the future? A. No.

Q. It was undecided, was it? A. Undecided.

Q. What had been discussed? A. Music, nursing, business course might have been discussed. 40



Q. Do you remember it ever having been discussed? A. Yes it was discussed.

Q. And had any decision been come to? A. No, none.

Q. What had Vivian herself wanted to do? A. Oh she talked about nursing, once.

Q. What were your feelings on that in regard to nursing? A. Well I thought it was rather a difficult job for her—nursing.

Q. Now Vivian was around the house at that time—had just finished school? A. Yes.

10 Q. In the holidays. And she was helping around the house and helping her mother? A. Yes.

Q. And living under your roof and under your care and protection? A. Yes.

Q. And I suppose you were glad to have her there and wanted to keep her there? A. Yes.

Q. Are you a little hard of hearing, Mr. MacMillan? A. Oh I might be.

20 Q. Now will you tell us what you heard on this trip from Edson out to MacLeod River Valley of the discussion between Mr. Brownlee and your wife and Vivian in regard to what Vivian should do? Tell us what you heard? A. About the time we left Mr. Pattinson's—we came out from Mr. Pattinson's after lunch. Vivian had brought the car around to Mr. Brownlee and Bill Pattinson, I think, got in the back seat and he asked Vivian: "Well what are you doing with yourself now? What are you going to do?" She said she had not decided as yet. The discussion went on. She said she was thinking of a music course but she said mother and dad did not want her to leave home at the present time for that year and Mr. Brownlee said he did not think there was much chance for a girl, much  
30 opportunity for a girl in the music line to make a living for herself if she ever had to. He said a business course was a real fine thing for a girl to take up, that there was many opportunities in the business world today and many good jobs as secretaries in the larger centres. Mrs. MacMillan expressed the idea that we did not want Vivian to leave home that year, she was too young to come to Edmonton. And Mr. Brownlee said: "Well my home will be open at any time for Vivian, she can come there and make it her place while she is in there; Mrs. Brownlee has no girls of her own and I think she will be delighted to have Vivian come to see her." And he also  
40 said there was other girls staying at his place at the time.

Q. Anything else that you can remember here? A. He said: "If she comes in we will look after her."

Q. Anything else? A. She said we were thinking of her taking music and he said he would send up—he would try and get some dope on the subject from the University of Alberta, on the music line. It was music and one or two other subjects along with her music.

Q. Anything else you can think of?

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence  
—

No. 14  
Allan D. A.  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 14  
Allan D. A.  
MacMillan  
Exami-  
nation  
*continued.*

THE COURT: Perhaps the Prime Minister will build us a Court House where we won't be bothered with this sort of thing. I wish he would. (Referring to noise).

MR. MACLEAN: It is certainly irritating. If there is anything else in the conversation will you give it to us? A. (No answer).

Q. Well if you cannot remember perhaps it will come to you. You had quite a time getting back from that trip? A. We did.

Q. And then afterwards there was a banquet and some speeches and a dance? A. Yes.

Q. And were you present at the dance? A. I was. 10

Q. And did you see the Premier dance with Vivian? A. I did.

Q. Did he dance more than once with her? A. Four times.

Q. Now Mr. MacMillan, you and Mrs. MacMillan decided to let Vivian come in to Edmonton and take a business course? A. Yes.

Q. When did you decide that? A. After the Premier's visit.

Q. Had the Premier's visit anything to do with it? A. It did.

Q. And when did Mrs. MacMillan and Vivian come in? A. The latter part of August, the 29th or 30th.

Q. Now I do not know whether or not you know anything about this. The first Saturday that Vivian was in town her mother had come back to Edson. Do you yourself know of any telephone call from Vivian? A. I do. 20

Q. You know that? A. I know she did call.

Q. The first Saturday she was alone—the first Saturday that her mother came back from Edmonton? A. It was very shortly after she came back. I know she called the first time she was over to the Premier's house.

Q. But it was that Saturday she was alone.

MR. SMITH: He said it was very shortly after she came back.

Q. MR. MACLEAN: Now Vivian came home for Christmas. That is the next time she was home? A. Yes. 30

Q. And she kept coming home at intervals after that? A. She did.

Q. And in 1932 she was home sick? A. She was.

Q. My friend suggested it was merely constipation she had? A. I don't think so.

Q. What was the matter with her? A. Nervous breakdowns.

MR. SMITH: Now, here, my Lord, we have more expert evidence.

MR. MACLEAN: Surely a father and mother will know what was the matter with their daughter when she had been to the hospital?

THE COURT: Not when they have to give it in evidence and prove it in a Court. 40

MR. MACLEAN: Is your Lordship giving doctors the monopoly?

THE COURT: I want the best evidence always. I always want juries to have the best evidence.

MR. MACLEAN: We have had a bailiff trying to find Dr. Fife and I do not think he has been found. Have you managed to subpoena him?

MR. SMITH: I have not, and I do not know him and I have not tried to.

MR. MACLEAN: Well I have.

MR. SMITH: I will be glad to assist you to find him. I will be glad to assist you in any way I can.

10 MR. MACLEAN: I thought possibly you might have a subpoena.

MR. SMITH: No I have not.

Q. MR. MACLEAN: Now Mr. MacMillan, will you compare Vivian's appearance when she first went to Edmonton with when she came home from time to time and with what it is now. What did you yourself notice?  
A. She was failing—in failing health.

Q. And what is her state of health now? A. A human wreck—just a wreck.

Q. She is living back home with you again? A. She is.

Q. When did she come back home. Do you remember the date?

20 A. I cannot say that I remember the date.

Q. She said it was the 22nd of September. A. It was around in the fall of the year.

Q. And she has been living back with you again in your house?

A. Yes.

Q. When did you first know anything about this story? A. In July.

Q. How did you come to know it? A. Her mother told me.

Q. And where were you? A. In the King Edward Hotel.

Q. In Edmonton?

30 Q. And what did you decide to do about it? A. I did not know just exactly what to do at first. I decided to take direct action. It might have been better if I had. There was three courses I could have followed. I could have taken direct action and I could have taken the course I have taken or I could have let her name be dragged in the streets that it was her fault.

Q. Why did you take this action that you did? A. To clear up her name to a certain extent—that it was not her fault.

Q. Did you give instructions that time in July to commence this action? A. I did.

Q. Did Vivian or Johnnie Caldwell have anything to do with it?

40 A. No.

Q. You are not named as a conspirator I notice. It was your instructions that commenced this action? A. My instructions.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 14  
Allan D. A.  
MacMillan  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 14  
Allan D. A.  
MacMillan  
Examina-  
tion  
*continued.*

Q. I am just wondering. Mr. MacMillan, is your daughter happy at home now? A. I cannot say that she is very happy at the present moment.

Q. Have different people come to you during the course of this action? A. They have.

Q. Name the men who have come to you who have endeavored to see you during the course of this action?

MR. SMITH: Is this evidence connected with us?

THE COURT: Well I don't know. It may or may not be.

MR. MACLEAN: I would merely like to know the names of the men. I am not going to pursue it any further in the meantime, but I would like to have it on record who the men are who have come to see him. 10

MR. SMITH: My answer is that it is not evidence unless it is connected with us. I do not know who they are.

THE COURT: I think if you propose to call any witness who has been to see this witness you may ask him if such a witness went to see him. But I think you cannot be quite as broad as you suggest and ask what men have come to see him—what people have come to see him about this case. It must be relevant in some way to the issue.

MR. MACLEAN: I expect to show that it is relevant.

THE COURT: Well if you propose to call any witnesses you may name those witnesses in a question to this witness and ask if such a witness has come to see him. 20

At 12:15 Court adjourns till 2:00 p.m.

At 2:00 p.m. Court resumes.

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**No. 14(a)—Discussion**

*In the  
Supreme  
Court of  
Alberta*

—  
No. 14(a)  
Discussion

MR. SMITH: If your Lordship pleases, before proceeding with the cross examination of Mr. MacMillan I think it my duty to call your Lordship's attention to a further edition of the Edmonton Bulletin published today. In red type across the top of the paper: "Defence tries to break Vivian's story; choked with sobs Premier's accuser holds to her main narrative." And a further heading: "Forcing back tears Miss MacMillan gave answers to questions which are designed to tear away privacies of the soul"; "Brownlee's cross examination, by J. S. Cowper." Then it proceeds— 30

THE COURT: I have read it Mr. Smith.

THE COURT: Is Mr. Campbell here?

MR. PARLEE: Yes and Mr. Cowper also.

THE COURT: Is Mr. Campbell who is here the publisher and owner of the Edmonton Bulletin and is the Mr. Cowper here whose name is at the head of these articles?

*In the  
Supreme  
Court of  
Alberta*

MR. PARLEE: Yes I believe so.

No. 14a.  
Discussion  
*continued.*

My Lord, I first apologize for appearing before the Court ungarbed but I have your Lordship's permission for that. I was asked to attend and give a short resume of what occurred, at about twenty minutes to two and I have never read either of these papers, the one to which Mr. Smith now refers nor the other one here. The application to your Lordship is one  
10 that is very summary and might be very severe. Having had no opportunity to read the papers, let alone consider what law is applicable, I ask that in fairness to the press and in fairness to these gentlemen that I be given an opportunity until tomorrow morning if possible, at any time, or after half past four or five this afternoon to read the articles and become conversant with them and possibly prepare myself much better. I think that is in fairness to these gentlemen and I ask that on their behalf. I want to say, however, that I am instructed by Mr. Campbell—and if I am inaccurate he will correct me because I have only got the information very recently within the last few minutes—that so far as he was concerned he publishes  
20 the paper, that is, his company does that, and he instructed his managing editor and Mr. Cowper to cover the case fully, fairly and impartially only. Those were his instructions and he knows nothing to the contrary until after it gets into the paper. But I do ask and urge that I be given an opportunity until after this Court adjourns this afternoon to read the papers and become more cognizant with it. As I have already intimated, I have not read the articles. I have an extract here that I picked up a few minutes ago from Lord Russell, an English Court case, in which he stated the matter was summary and Judges should exercise their jurisdiction very carefully and be satisfied. I am not urging that just now but I ask for an  
30 opportunity to prepare.

THE COURT: Is that all?

MR. PARLEE: I do not know what your Lordship proposes to say or do.

THE COURT: Do your clients wish to say anything?

MR. PARLEE: Nothing more than what Mr. Campbell has stated—what were his instructions. Now outside of that I do not know what went on this morning and I am not in a position to say what answer they would make and I think it is only fairness to any Court in this land that these people and their solicitor and their counsel be given an opportunity to  
40 prepare. If one wrong has been done that does not justify two wrongs.

THE COURT: Well I am sorry if I must for the first time that I am aware of be accused of unfairness. I am in the midst of a very important

*In the  
Supreme  
Court of  
Alberta*

—  
No. 14(a)  
Discussion  
continued.

jury trial. All cases are important to litigants and it is my duty to see that no prejudice arises insofar as I can do so. These two men are responsible for a very flagrant contempt of Court. I find that on the face of the document submitted. There are three contempts now that have been brought to my attention and I propose to deal with them summarily and deal with them now.

These contempts are more or less frequent as they affect Judges, and we will pass them by because they do not really affect the litigant. Again, in criminal trials where we can keep the Jury together we can censor such reading matter as they receive and we do so. That is one of the directions every Trial Judge gives to the Sheriff to keep from the Jury during the progress of the trial the matter referring to the trial upon which they are engaged which might tend to prejudice that Jury. But where the Jury is not kept together they are in the same position as the public and they could not well read this newspaper during this trial without reading what is there printed and published. And there is no question whatsoever that what has been brought to my attention tends to prejudice the interests of a litigant in pending litigation before the cause is ended. I propose, then, to inflict punishment for this with the object of deterring that interference with the administration of justice and the rights to which litigants are entitled and for this contempt the sentence of the Court is that Mr. Campbell be fined the sum of \$300.00 and in default of payment of that sum that he be imprisoned for a period of ten days at hard labor in the Provincial Jail at Fort Saskatchewan. He will have until tomorrow morning at ten o'clock to pay the fine. The sentence of the Court is in regard to J. S. Cowper that he be fined \$100.00 and in default of payment that he be imprisoned three days at hard labor in the Provincial Jail at Fort Saskatchewan and he will have until ten o'clock tomorrow morning to find the money. Further, I direct that all representatives, not stenographers, of the Edmonton Bulletin, here, be excluded from inside the rail until the contempts are purged—both of them.

MR. PARLEE: I suppose that money is payable to the Sheriff?

THE COURT: Yes. If there are any Bulletin Reporters here they may retire from inside the railing.

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**No. 15**

**Evidence of Plaintiff Allan D. MacMillan.**

**CROSS-EXAMINATION BY MR. SMITH**

Plaintiff's  
Evidence

—  
No. 15  
Allan D. A.  
MacMillan  
Cross-Ex-  
amination

Q. While in the middle of July you had a conversation with your wife, July of 1933, she of course told you just what her daughter had told her? A. Yes.

Q. And then you had a conversation with your daughter? A. Yes.

40

Q. Then you had a conversation with Johnnie Caldwell? A. Yes, sir.

Q. And it was on the basis of what your daughter and Johnnie Caldwell told you and your wife that you decided to bring this action? A. On my daughter's pretty much.

Q. Largely on your daughter's? A. Yes.

Q. I mean aside from discussing it with your wife and Caldwell you made no further inquiry, and decided to bring action? A. Decided to bring action.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 15  
Allan D. A.  
MacMillan  
Cross-Ex-  
amination  
*continued.*

10

**No. 16**

**Evidence of John Keith Fife.**

JOHN KEITH FIFE, being called as a witness on behalf of the plaintiffs and having been duly sworn was examined by Mr. Maclean and testified:

No. 16  
John Keith  
Fife  
Exami-  
nation

MR. MACLEAN: My Lord, I am in this position, the hospital records in questions are not in Court. They have been here and Dr. Washburn I understand has them and it is almost impossible to go ahead with this examination until Dr. Fife can see these reports.

MR. SMITH: I quite agree with my friend and I will have them here  
20 as soon as possible. They were here yesterday.

Q. MR. MACLEAN: I do not suppose you would care to give any evidence until you have seen those reports? A. I have seen them and I have a card which is an account of the patient's history, which will perhaps be sufficient.

MR. SMITH: Here is Dr. Washburn now coming through the door.

MR. MACLEAN: (handing report to witness).

Q. You are a duly qualified medical practitioner carrying on your profession at Edmonton? A. Yes.

Q. And some time in the spring of 1932 did Mrs. Brownlee call you  
30 to attend Miss Vivian MacMillan? A. Yes, sir.

Q. Have you any information as to when this was? A. I can refer to the Hospital Admission, sir. June 21st, 1932.

Q. And where did you see Miss MacMillan? A. At the University Hospital.

Q. That is Miss Vivian MacMillan one of the plaintiffs in this case.

Q. And did you examine her? A. Yes, sir.

Q. And did you prescribe for her? A. Yes sir, later.

Q. Would you mind telling me what, as far as you could ascertain at the time, was her condition? A. Shall I give you that and what my

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 16  
John Keith  
Fife  
Exami-  
nation  
*continued.*

summary of her condition was at the end of her examination at the hospital?

Q. Well what have you decided was her condition? A. Condition called irritable colon.

Q. And can you tell us what would produce such a condition?

A. That is a very difficult question, Mr. Maclean. It is associated with very many things. And its causes have never been condensed so that you could say them in a few words.

Q. Can you give us some of the things which might cause such a condition as you found? A. The main feature of the condition is irritable colon, that is irregular bowel function due to improper working of the muscles and nerves contained in the ordinary bowel, and this might be produced by any systemic condition which causes fatigue or running down of the patient by the use of cathartics to correct constipation which had existed; and by that constipation itself which had existed from some other cause—well it is very difficult to give any reason, but those are factors which are evident in such cases. 10

Q. Would this condition that you found be in any way associated with a nervous condition? A. They frequently are.

Q. And my friend has suggested that all she had was a dose of 20 constipation?

THE COURT: Well now he did not. Part of his statement was that the hospital records disclosed that she was troubled with constipation. That is what he said.

MR. MACLEAN: All right, my Lord. I will accept your Lordship's ruling.

Q. What was her condition as you found her? A. She complained of abdominal pain, nervousness and fatiguability. She could not stand exercise, she complained of sleeplessness and having lost weight, of having such symptoms as gas in the bowels and so on and so forth and particularly 30 on the day on which I saw her of a more severe attack of abdominal pain and she said she had had several attacks of this within the past six months. When I examined her I found she had, with regard to her abdominal symptoms and signs, abdominal tenderness particularly on the left side although her pain was on the right side. She had a laboratory examination with regard to the possibility of appendicitis and in an effort to rule out appendicitis or any inflammatory condition these were essentially negative within twenty-four hours with the exception of an X-ray of the bowel. The X-ray of the bowel showed a bowel which could be the bowel of a person with an irritable colon. On this basis we felt she did not have acute 40 appendicitis although she might have a chronic appendicitis which is frequently associated with such bowel condition. We therefore felt she did not need an operation but she did require treatment for her bowel condition.

Q. What did you prescribe yourself? A. After she was discharged from hospital I gave her instructions before sending her home to Edson.



The instructions were in regard to the routine bowel management which is carried out in such cases. They were, that she was to rest for prolonged periods and to be in bed for a prolonged time early each night and carry on without exercise. She was to go on a diet, which I prescribed; that she was to use no cathartics whatever; that she was to use hot water, which is a favorite remedy in such conditions, as was prescribed, and no cathartics, and she was to report at the end of a month.

Q. Did she report at the end of the month? A. I had a letter from her in which she said she wanted to stay for two weeks and if I remember  
10 right she did stay a month.

Q. Do you know a pill that is called Apergol or something like that?  
A. I do not.

Q. Ergot is the chief component factor in any of these abortion pills is it not? A. I think there is almost everything. I don't know I am sure.

Q. Supposing she had been using Ergot for some time. Might that be a possible explanation of her condition? A. It could be considered an irritant of the bowel and anything that would irritate the bowel could be considered as a factor that would produce it.

Q. She says she had a condition which she thought was a nervous  
20 breakdown. What would your opinion be on that subject? A. I think it is generally realized that the term "nervous breakdown" covers almost anything.

Q. Would it cover such a condition as you found in this woman?  
A. As commonly used I am sure it would.

Q. You have been out of town these last few days? A. Yes.

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#### CROSS-EXAMINATION BY MR. SMITH

Q. You said as commonly used you are sure it would. What does  
that mean? A. Just what I referred to a moment ago—that almost every  
30 type of condition from some definite disease which we know which produces weakness and nervousness—mental conditions—are called nervous breakdowns by the public.

Q. In other words an irritated colon might produce nervousness?  
A. I am quite sure in the irritated colon, such conditions might aggravate any nervousness.

Q. In other words, the condition you found in this girl physically might produce nervousness? A. She complained of nervousness.

Q. And that was in accord with the condition you found? A. It is frequently associated with this condition.

Q. Now I ask you this only because I have been quoted. You have  
40 the hospital record in front of you which Dr. Washburn has produced?  
A. Yes.

Q. My friend has put it in your hands so I have no objection and he will have no objection to it being marked as an exhibit. Is that right?

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence

—  
No. 16  
John Keith  
Fife  
Exami-  
nation  
*continued.*

Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 16  
John Keith  
Fife  
Cross-Ex-  
amination  
*continued.*

MR. MACLEAN: I have never seen it or had an opportunity to see it and I would much prefer to look it over before I consent.

Q. MR. SMITH: I would ask you to tell me whether that is the hospital record? A. Yes.

Q. Then I tender it.

THE COURT: Well is the whole record for which this witness is responsible—

MR. SMITH: Is that record one of your patients? A. Yes.

Q. And it is one with which you are familiar day by day? A. During her time in the hospital, yes. 10

Q. And is it a record which was kept for you? A. Yes and the hospital.

Q. But you are familiar with it and it was kept for you? A. Yes.

Q. I tender it under those circumstances.

THE COURT: What do you say now, Mr. Maclean?

MR. MACLEAN: I have understood these hospital records are prepared by nurses, that they contain possible laboratory examinations by different medical men. I doubt, My Lord, whether Dr. Fife has made any marks on this record at all. I have not seen it but I doubt whether any of it is his work. 20

MR. SMITH: The record you have there; is that the record upon which you diagnosed this girl's condition? A. Partially so.

Q. It did go into the diagnosis which my friend asked you about a moment ago? A. Yes, sir.

Q. I submit it is clearly admissible.

THE COURT: No it is not. Anything of his is admissible.

MR. SMITH: On the first page of the record which you have there there is something which I think is signed by you? A. Yes, sir.

MR. MACLEAN: If my friend would give me an opportunity to see this I could no doubt consent, but I have not seen it. 30

MR. SMITH: I will give you all the opportunity in the world. I will sit down and let you look at it. I may say I am in exactly the same position as you are. I will be glad to have my friend look it over, my Lord. I think he will admit it when he has seen it.

(Mr. Maclean looks over record). This is not your work? A. No this is a summary.

MR. MACLEAN: I have no objection.

THE COURT: Have you seen it, Mr. Smith.

MR. SMITH: No my Lord, but I am quite content it should go in.

**Hospital Record marked Exhibit 7.**

Q. MR. MACLEAN: You say it was not on this particular record but it was on your diagnosis next day that you relied for what was her condition? A. It was then I prescribed for her at the office.

Q. MR. SMITH: The diagnosis that you made, you said there was something there signed by you? A. Yes, a summary sheet.

Q. And the diagnosis which you made in that hospital, is that the 23rd of June, 1932? A. Yes.

10 Q. "Diagnosis on discharge, chronic appendicitis," with question mark. That means there is doubt about it? A. Yes.

Q. "Colonic Stasis", and the next word— A. Redundant colon.

Q. And —colonic stasis is nothing more than our good old friend constipation? A. Well constipation probably gives us chronic condition. It is often much more than constipation.

Q. A Redundant Colon means a colon which is filled, does it? A. No, sir, usually it means it is lengthened beyond the usual.

Q. I am not very good at the proper word—but a larger length? A. Yes.

20 A. Q. And a redundant colon means a bowel which is too long? A. Longer than usual.

Q. The bowel being longer than usual constipation is likely to set it? A. It is more probable in that condition than in any other.

Q. You have kinks in long bowels? A. Sometimes.

Q. I may have the wrong word. You know what I mean? A. Yes.

Q. Is there any doubt at all this girl was suffering from constipation? A. None at all. That is one of the symptoms she complained of—constipation.

Q. For some time? A. Well I could not say how long, but some months or some years.

30 Q. And she complained of loss of weight. She weighed 142 or 145 pounds? A. Well she had weighed that.

Q. Oh regularly weighed 145. That would be the information received from her of the regular weight? A. Yes.

Q. And she had lost 12 pounds in the previous six weeks. If you look at the history sheet there— A. The past six weeks.

Q. And it was in that past six weeks that she had come down from her regular weight to the weight she was when she was admitted to the hospital. That is true? A. Yes.

40 Q. And you said in some previous weeks or months she had had constipation? A. Yes.

Q. And she also told you that she had had no vacation for two years? A. Yes, sir.

Case for Plaintiff closes.

MR. SMITH: If Your Lordship pleases, I had not thought my friend

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 16  
John Keith  
Pife  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence

No. 16  
John Keith  
Fife  
Cross-Ex-  
amination  
*continued.*

was nearly through but I can say this to your Lordship in frankness I have an important decision to make and I do suggest I have some time. I had thought my friend would easily take all day today.

THE COURT: Well, will a short adjournment do you?

MR. SMITH: No it will not, because Your Lordship knows the application I have in mind and it involves quite a study of the evidence that has gone before and I would suggest that we adjourn until tomorrow morning. It is a very important decision to make in a case like this, my Lord.

THE COURT: Can we finish by Saturday?

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MR. SMITH: Certainly sir—easily.

THE COURT: Court adjourns till 10:00 a.m. Thursday, June 28th, 1934.

Thursday, June 28th, 1934, Court resumes at 10.00 a.m.

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No. 17

Opening of Case for Defendant

No. 17  
Opening of  
Case for  
Defendant

MR. SMITH: May it please your Lordship and Gentlemen of the Jury. I intend to take just three or four minutes in what I regard as my privilege and my duty in outlining to you very briefly what the position of the defence is in this action. You may have observed that in my cross examination of the female plaintiff Miss MacMillan that I endeavored as best I could and I hope with fairness to try and find exact times, where that was possible, where these alleged seductions or intercourses took place. I did that because I think you will readily realize that having regard to three years in the lifetime of anyone it is utterly impossible to account for every single day in one's life, some years after the events had transpired. So that in this case the first witness who will be called is the defendant John E. Brownlee and he will in so far as it is humanly possible traverse with day and date the incidents which the female defendant gives us and on the occasions where she does give the dates. He will deny absolutely that at any time and under any circumstances he ever had intercourse with this girl. Having said that, I leave it, because I intend to take in chronological order from the day in Edson where he first met this young lady up until the issuing of this Statement of Claim for damages on the ground of enticement and of seduction. That may be to some extent wearisome to you but it is the only way in my conception that one can make a complete detailed answer to the charges which have been brought against him. His wife Mrs. Brownlee will also be called and she in turn insofar as her memory goes will cover to some lesser extent the same ground. It has already been shown to you that in the Parliament Buildings here, that in

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30

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one wing is the office of the Prime Minister and in the opposite wing—that is the west wing if I have my evidence and directions right—is the office of the Attorney General's Department, that between those wings there is a circular well, a dome we may call it. In other words, one cannot walk straight from the Attorney General's office to the Premier's office, but at the middle of the building one must make a circle and then continue the course which one had originally set out on to arrive at that office. All the janitors who are available will be called. This has particular regard to the incidents of Saturday afternoons where the female plaintiff says that in the fall and winter months on numerous occasions she went down from her office to the office of the Prime Minister and there had intercourse with him. They will tell you whether or not they saw her. They will tell you that their duties commenced sharp at one o'clock on Saturday and that the first duties they had were in these corridors and in that circle and that on no occasion did they ever see this girl enter the office of the Prime Minister. The Secretary of the Prime Minister is one Miss Brown. She has been with him for a great many years. She will also be called and will say that except on odd occasions such as there being a cabinet council meeting in the office of the Prime Minister that she as secretary, as a matter of course—and it seems obvious in secretarial duties it should be so—did not leave that office until after her employer, the Prime Minister, had left. That is the nature of the evidence which will be given you with respect to the incidents of Saturday. Then returning, if I may just for the moment, to the question of motor cars. You will observe I did spend some time in what I trust you will conceive to be an honest effort to find out what car was in use on these occasions which, if I may use the expression, "have been dated" and all the information which is available there will be placed at your disposal. Now as yet I have said nothing about the counterclaim which is one of conspiracy between Caldwell and Miss Vivian MacMillan, in short, to ruin this man. Evidence will be given by a number of witnesses of conversations which they had with Caldwell upon which evidence when this trial has concluded I will ask you to believe that Caldwell was the directing head of this enterprise; that he was financially interested in the obtaining of money from the Prime Minister through the unfortunate Vivian MacMillan; and that he in fact was the dominating person as between them in connection with this whole matter. And having said that I have thought perhaps that at this time I might say something to you by way of distinction between seduction, upon which this action is brought, and the ordinary intercourse, but on further consideration I deem that to be unwise because it is peculiarly—it is exclusively—the problem of his Lordship when he comes to address you. Having said that I will call J. E. Brownlee.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 17  
Opening of  
Case for  
Defendant  
*continued.*

## No. 18

## Evidence of Defendant John Edward Brownlee

In the  
Supreme  
Court of  
Alberta

JOHN EDWARD BROWNLEE, being called as a witness on his own behalf and having been duly sworn was examined by Mr. Smith and testified:

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
continued.

Q. Mr. Brownlee you are a defendant in this action? A. I am.

Q. Where were you born? A. Port Ryerse, Ontario.

Q. When? A. 27th August, 1884.

Q. And I gather then you were educated in the East, and you attended Toronto University, Victoria College? A. Correct. 10

Q. And graduated from there? A. 1908.

Q. And you came West when? A. I travelled West that fall and the following spring and finally settled in Calgary in 1909 I think some time in September.

Q. And there you became articled as a student at law? A. Yes, sir.

Q. With whom? A. I started with the firm of Lougheed, Bennett and Company and spent one year there and then went to the firm of Muir, Jephson and Adams and finished there in 1912 and the subsequent year was admitted to the firm.

Q. That is the late James Muir? A. Yes. 20

Q. And you were married when? A. The Christmas of 1912.

Q. And your wife is still living and is the Mrs. Brownlee who has been in Court during this action? A. Correct.

Q. And you have how many children? A. Two.

Q. And how old are they now? A. The eldest is 18, Jack; the youngest is 16, Allan.

Q. Jack is 18 and Allan is 16? A. Correct.

Q. And you came to Edmonton when? A. At the election of 1921, as I recall, in June of that year.

Q. And you were appointed Attorney General? A. I was appointed Attorney General and came up I think on August 21st. 30

Q. And when did you become Premier of Alberta? A. November 1925.

Q. And you have been Premier from that day to this? A. Yes, sir.

Q. Now something has been said about Mrs. Brownlee's physical condition and I want you to give me shortly the history of her physical condition. A. Just before our young child Allan was born about three months before his birth, she had a nervous breakdown. I had to take her East. It was a condition that was peculiar to pregnancy and after the child was born by Christmas—the child was born in September—and by Christmas she had recovered from that complaint and I went East and got her and brought her back. Subsequently she seemed to develop colds quite easily and I became somewhat suspicious as to what might be the matter with the result that Dr. Parker of Gravenhurst Sanitarium was called in 40

and after a very complete examination he said she had incipient tubercular trouble. For some three or four years she was practically an invalid while she was being treated. The first year she was in bed entirely, the second year getting up probably an hour a day; the third year getting up more frequently and by the fourth year she was up and around most of the time.

Q. Yes. A. While she regained her condition so far as one could judge from appearance she seemed to be fearsome for some two or three years following of any little pain or anything of that kind which I considered was possibly more mental than real. In 1928 I had occasion to take our  
10 youngest child to Mayo Brothers in Minnesota as the doctors in Edmon-  
ton had said that they thought he might have a heart condition. Mrs. Brownlee went with me and while we were there I decided that she should go through too. She went through the clinic.

Q. That is a large and well known clinic? A. Yes. As a result of their complete examination which covered some three or four days they pronounced her to be organically sound in every way, that her lungs had completely healed, and told her to come back and live a normal life in every way. That seemed to be the one thing needed. She came back and since that day has lived a normal life.

20 THE COURT: When was that? A. That was in the summer, my Lord, of 1928.

Q. MR. SMITH: And from that time has your wife lived normally?  
A. Yes.

Q. And have your sex relations with your wife been normal since that time? A. What I would consider, they have been normal.

Q. And has she been able to carry on? What has been her physical condition? A. She started on her return to live a normal life. For  
30 example in sports she started playing golf with me, starting with a few holes and gradually working up to 18, so for some years she has been playing the full 18. She carried on all duties incidental to her position which are very onerous. On holidays she went horseback riding down at the ranch daily and at Sylvan Lake the following year she was paddling a canoe daily and motoring and in fact participating in every phase of our normal life in every way.

Q. And what about winter time? A. She skated a very great deal both with me and with her friends.

Q. And in the year of 1928 did you go to the town of Edson?  
A. I believe it was June 27th, 1928, yes.

Q. And Miss MacMillan has said that she met you on that occasion.  
40 Have you any recollection of meeting her? A. I have no recollection.

Q. Did you meet her father? A. Yes.

Q. I then come to the 16th of July 1930. Were you in Edson on that occasion? A. Yes.

Q. Who with? A. Dr. Wallace went with me. He had recently been appointed head of the University.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

Q. And what was the occasion of your going to Edson? A. Just an official visit as I would make to any other part. Mr. Pattinson the Member and M.L.A. for that district invited me to spend a day at Edson. It was an official visit at his request.

Q. And prior to going to Edson did you know anything of a contemplated trip to Shining Bank? A. I did not.

Q. Do you remember what you did in the morning? A. Yes, the morning was spent in the usual way in a town of that size, meeting some of the business men, visiting the schools, the hospital.

Q. And then you had luncheon at Mr. Pattinson's? A. Yes. 10

Q. And we have heard that Mr. MacMillan was there. Is that your memory? A. Yes.

Q. And then after luncheon where did you go? A. Well in the morning when I arrived I was told by Mr. Pattinson—at least I was informed, I will put it that way, as part of the program for the day there was this picnic to Shining Bank. After luncheon was over the cars came up to the front of the MacMillan house and we went out and got into the cars and drove out to Shining Bank.

Q. And in this car we have heard Mr. MacMillan drove and Mrs. MacMillan and you and Miss MacMillan in the back seat with Mr. Pattinson's boy. Is that your recollection of the arrangement for that drive? A. Yes. 20

Q. And then on the way we have been told of a conversation with respect to the future of Miss MacMillan. You might tell me what your recollection of that conversation is? A. It was a very casual conversation, as I recall, in the same way as I have done on hundreds of occasions with young people when I have been out in the country. I inquired what she was doing and I was informed she had finished her schooling. I asked her what she contemplated doing and was informed either by her or her mother, I am not sure which, that she was intending to come to Edmonton in the Fall for the purpose of taking a course in music. I replied that that would be very nice for her and I suggested that when she got into the city that she would let us know as I was sure Mrs. Brownlee would be glad to entertain her at the house and I said that there were a number of girls making their headquarters at the house, practically making their headquarters at the house, and it would be nice for her to get acquainted. 30

Q. And on that occasion did you say that you would act as her guardian? A. I never said anything of the kind and would never contemplate saying anything of that kind.

Q. Now was, in your memory, a business course or secretarial work discussed on that occasion? A. I have no recollection of that at all. 40

Q. Did you promise that you would get Miss MacMillan a position after she had finished her business course? A. In the 13 years that I have been in public life I have never promised any person in this Province a position.

Q. And did you promise her a position? A. I did not.



Q. Now it has been said by one or two of the witnesses that you promised when you got back to send a curriculum of the music course at the University. Did you say that? A. No I did not because I knew that there was no music course at the University.

Q. And how did you know there was no music course at the University? A. Because, as Chairman of the Executive Council, we have in the past five or six years contemplated opening a music course and we have contemplated doing it at such times as finances would permit.

10 Q. But you knew there was no such course? A. I knew there was no such course.

Q. Have you given me your recollection of the conversations as widely as you can, I mean? A. As far as I can remember, yes.

Q. Now we have heard that on the way back there was some difficulty in getting in on account of the rain? A. Yes, very great.

Q. And it took some considerable time? A. It did.

Q. And there was a banquet in the evening? A. Yes the banquet was at the hotel.

Q. And a dance afterwards at some other place? A. A short dance, yes.

20 Q. Were you at the dance? A. Yes, sir.

Q. Did you dance with Miss MacMillan? A. I did.

Q. And with who else? A. Speaking from memory I danced with Mrs. MacMillan, with a Mrs. McKenzie, with Mrs. Pattinson, and there is one other lady whose name I cannot remember, the wife of the man who runs the hotel in Edson.

Q. And Miss MacMillan also says that you told her when she came to Edmonton to stay at the Y.W.C.A. Did you say that? A. No.

Q. Had you ever been in the Y.W.C.A.? A. I never had.

30 Q. Did you know the persons in charge or what sort of a place it was to stay at? A. Just in the same way any other citizen of the city would. I have never met any person in charge of the Y.W.C.A. in Edmonton.

Q. Do you remember the number of times you danced with Miss MacMillan? A. Yes sir, I danced with her twice and my recollection is that in one of the dances that I did not start. Mrs. MacMillan was sitting over at the side of the room with Vivian, and that I went over and chatted with her for a while, that is with Mrs. MacMillan, and then danced a portion, just a very short portion of that dance.

40 Q. Mr. Brownlee, did you on that occasion in Edson contemplate taking this girl away from her parents with the object of seducing her? A. I did not.

Q. Now leaving Edson—by the way in these years have you done a considerable amount of travelling? A. I suppose, Mr. Smith, that since the beginning of 1930 I have probably had to travel more than at any other period of my public life, the main reason being as is publicly known, the Wheat Pool was in serious difficulty financially and depended upon me

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

very largely—I think I can say that—depended on me very largely to assist them in their reorganization, and for two years at least I was continually running between Eastern and Western Canada.

Q. We are talking about the month of July. Do you remember if you went East that month? A. July 1930?

Q. Yes. A. On the 31st day of July my family and myself left on a combination holiday and public business trip; business for the purpose of helping some work of reorganization for the Wheat Pools and then having finished that my wife and family and myself spent some weeks, two or three weeks, driving around our old familiar places in Ontario; and drove back West. 10

Q. I beg your pardon? A. We picked up a car in the East and drove back West.

Q. What car was that? A. The large 8 cylinder Studebaker. It is now No. 31-884.

Q. And did you drive that back? A. Yes, sir.

Q. And when did you arrive back in Edmonton? A. Somewhere in the neighborhood of between half past two and three o'clock on Saturday morning the 6th day of September.

Q. Now up to that time had you any communication of any kind with Miss MacMillan, Mr. MacMillan or Mrs. MacMillan? A. Not one word. 20

Q. And she says than on this Saturday, I think she said at noon—her mother said—on this Saturday at some time, that you had telephoned to Miss MacMillan and made an engagement with her to come to tea at your house the following day Sunday the 7th of September. Did you do that? A. I did not. It was practically impossible.

Q. Had you any way of knowing she was in the city? A. I did not, and that is the Saturday I landed back from the East. I was only in the office twenty minutes that day. 30

Q. And what were you doing? A. Well, as I say, we returned. We drove the last day—it was a very hard long trip—we drove from the other side of Saskatoon on the Friday into Edmonton that day and we reached Edmonton somewhere in the neighborhood of half past two or three o'clock on the Saturday morning. We were all very tired and did not get up until very late in the morning and then we had the work of opening the house and getting ready for Sunday with the result that I only ran over to the office for some fifteen or twenty minutes and was back in the house for the rest of the day.

Q. Had your house been locked up all the time you were away? A. It had been locked up while we were away. 40

Q. It had been closed? A. Closed and the maid away.

Q. And the following Sunday, was Miss MacMillan at your house at all? A. She was not there on the following Sunday nor anyone else.

Q. Now do you remember that Sunday in any way? A. Yes.

Q. What were your boys doing that day? A. They had been very

much taken up in the East with the miniature golf course fad which was then at its height and they spent the whole of Sunday building a miniature golf course in the back yard.

Q. My Lord, I wonder if you would mind if I sat down.

THE COURT: No.

Q. MR. SMITH: Now when, in your recollection, did you first meet Miss MacMillan after she came to Edmonton? A. Approximately the middle of September around the 17th.

10 Q. And how did you find out she was here? A. As I recall it about a week after I returned from the East Mr. Pattinson, M.L.A. from Edson was in my office. We had a conversation about the visit to Edson and at the conclusion of the conversation he informed me that Miss MacMillan was in town. I went home from that meeting and informed my wife that she was there and told her that as the MacMillans had been very courteous to me in Edson I would be glad if she would return the courtesy, and my wife went down and hunted her up and invited her to the air show which I believe is the first time she saw her.

Q. The air show—that was on the— A. 17th of September.

20 Q. And after the air show did you take her back for a meal? A. My recollection is she came back to the house, had dinner and spent the evening.

Q. Now she has said that after her first introduction to your household that immediately or almost immediately she frequented your house roughly about three times a week and certainly on Thursdays and Sundays? A. Not quite.

30 Q. And she finally did become a frequent visitor to your home? A. Yes, she would come at irregular times at first. I may say that a friend of ours was a guest at the house from October until towards Christmas and Vivian would come over at different times, but not until after January 1931 did she become what you would call a regular visitor at the house, that is coming almost regularly twice a week or sometimes more.

Q. Now I want to move on to Sunday the 5th day of October. Miss MacMillan says that on that Sunday you made arrangements to meet her on the following night, Monday, and to tell her about life. Where were you on Sunday the 5th day of October? A. On the way from Winnipeg here to Edmonton.

Q. You were not in Edmonton on the following Sunday at all?

A. I left Edmonton on the Friday for a quick trip to Winnipeg and returned to Edmonton on the Monday morning.

40 Q. And then she says you took her driving in the country on that Monday night and made the statements to her to the effect that you were a very lonely man, that you needed a pal in order to permit you to carry on with your heavy duties; that your wife was an invalid and to have intercourse with her meant her life and you thought it was Vivian MacMillan's duty to be as a wife to you to repay your wife's courtesies to her. Did you

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Examina-  
tion  
*continued.*

say those things to her? A. I never said anything of that kind to Vivian MacMillan at any time.

Q. Did you say it on that night? A. No.

Q. Or, to put an end to it, at any time? A. No I did not.

Q. Or anything to that effect? A. Or anything to that effect.

Q. Did you drive her into the country on that Monday night?

A. I did not.

Q. She says that the second occasion was Sunday, October 12th and that again you made arrangements to meet her on the following Monday and take her driving in the country. Did you do that? A. I did not. 10

Q. And that these same statements were repeated to her in effect at that time? A. They were not.

Q. And she says that on that occasion you were driving in this big Studebaker car. Were you using that Studebaker car during the month of October? A. I was not.

Q. What car were you driving? A. Driving a Hupmobile 8, five passenger, which we purchased I think as I recall around the 6th or 10th of September.

Q. And I think she said that on that Monday you had partial intercourse with her and flew into a rage at her resistance. Is there any truth in that? A. Not one word of truth. 20

Q. And on coming back you changed the car you were in at the garage, that is the large Studebaker, to the smaller Studebaker? A. We did not have a small Studebaker until 1932. It was purchased on the 10th or 15th of June, somewhere around there, of 1932.

Q. And was that a grey car? A. Yes, sir.

Q. And on being examined about that she said that if it was not that car that you changed to a smaller car. Did you do that? A. No, sir.

Q. She said it was a smaller car with the front seat cut down in order that it might be laid back. Now first with respect to the big Studebaker. Is the front seat of that car cut down? A. No, sir. 30

Q. With respect to the Hup. Is the front seat of that cut down?  
A. No, sir.

Q. Were the front seats of any other cars in the Government garage cut down at that time? A. Yes but only the car of one of the other Ministers, as far as I know.

Q. But I mean the cars which belong to what you call the fleet. Were any of them cut down? A. No.

Q. And where was the big Studebaker during the fall and winter that I have just been speaking of 1930 and 1931? A. It would be in storage at the Government garage. 40

Q. And used when. A. Only on very special occasions. We reserved that car from that time on to this for rather special occasions as an entertainment car and I have only used it since in those periods when the car that I was regularly using would be under repair.

Q. Now she says that on Sunday the 26th of October that you took

her out the south road and had complete intercourse with her. Is that true? A. No, sir.

Q. She then says that you telephoned her on Monday the 27th of October making arrangements to go out with her on Tuesday night the 28th of October, that you took her out on that Tuesday night and had intercourse with her that night. Did you? A. I was not in the city on the Tuesday.

Q. Well you might answer my question. Did you? A. No.

10 Q. And where were you on that Tuesday? A. I left Edmonton around mid-day and drove to Stettler where I addressed the Chamber of Commerce at Stettler at seven o'clock that evening.

THE COURT: Is that the 27th?

MR. SMITH: Monday the 27th; Tuesday October 28th.

Q. Now then proceeding for the month of November for which she mentions no special date, I would like you to tell me how much you were in Edmonton or what time you had available in Edmonton during the month of November. Now does your secretary keep a daily diary as to your whereabouts, Mr. Brownlee? A. Yes, sir.

Q. And you have those diaries here? A. Yes, sir.

20 MR. MACLEAN: Never mentioned in your Affidavit of Documents, again.

MR. SMITH: Why should it be? My friend keeps whispering Affidavit of Documents. Is there anything else about it? Let us find out about it.

MR. MACLEAN: A document in his possession. This diary being kept for him by his secretary, was not mentioned on his examination for discovery. He told me he did not have a diary, that all he had was a little pocket book in which he sometimes kept notes; he never kept a regular diary.

30 (The Witness): It is a government diary.

THE COURT: I suppose it will be the secretary who must produce the diary?

MR. SMITH: I undertake to call her, my Lord, and prove the items. I want to allow the witness to make reference to these notes.

THE COURT: You undertake to call the secretary who kept them?

MR. SMITH: Yes, my Lord, who kept the actual book.

THE COURT: Very well.

MR. MACLEAN: May I read what Mr. Brownlee said on his examination for discovery before this goes in. (Reading):

In the  
Supreme  
Court of  
Alberta  
—  
Defendant's  
Evidence  
—

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
continued.

"154. Q. Mr. Brownlee, do you keep a diary? "A. Not regularly.

"155. Q. Have you a diary? "A. I have a diary of different years in which I make all kinds of entries at odd moments but not regular diary.

"156. Q. Where do you keep those diaries; at the house or at the office? "A. I think they are kept at the office if they are kept any place.

"157. Q. And they are there; you have them at the office?

MR. SMITH: You mean anything that he has in the way of a diary?

MR. MACLEAN: Yes.

"158. Q. How long have you been in the habit of keeping a diary?  
"A. I have never kept a diary regularly at all. I carry a little book in which I may enter odd things such as a note that I am away some place and some person speaks to me and brings a matter up but I have never kept a regular diary." 10

These were not kept by Mr. Brownlee and I object to his using them.

THE COURT: I am permitting him to use them on the undertaking which is quite proper, that the one who did keep them is being called.

MR. MACLEAN: They were not made by him and he cannot use them as memory refreshers.

THE COURT: Go on.

MR. MACLEAN: Your Lordship will take note of my objection? 20

THE COURT: Yes.

MR. MACLEAN: And the stenographer will note that Mr. Brownlee is now looking over the diaries.

THE COURT: Yes.

MR. SMITH: You might, now the storm has subsided, tell me of your movements in November 1930? A. I was in the city on Saturday, November 1st, 2nd, 3rd and 4th. I left for Calgary on the 5th, was in Calgary on the 5th; was in Vegreville on the 6th. I was in the city on the 7th and 8th. We had meetings of our members which occupied both day and evening. On the 12th of November I left for Winnipeg and the East and did not return until Wednesday the 26th. 30

Q. And then I think you were in Edmonton until when? A. I was in Edmonton until the end of the month, that is the 27th, 28th and 29th.

Q. And you went to Calgary when in December? A. I was in Calgary on the 1st of December. I was in the office on the 2nd, 3rd and 4th and in Okotoks on the 5th, back in the city 6th, 7th, 8th, 9th and 10th of that month; the 11th and 12th. Well I was in the city practically the balance of the month of December.

Q. And then turning to January 1931. You might give me January.  
A. In the city on the 1st, 2nd, 3rd, 4th. I left for Winnipeg on Monday the 5th, a rush trip, and returned on the 7th. I was in Calgary on the 40

12th; in the city on the 13th, 14th, 15th and 16th. I was in Calgary on the 17th, leaving on Friday night I may say, Friday the 16th; Calgary the 17th. Then went on to the Coast.

Q. Who went with you? A. My oldest boy.

Q. And when did he come to Calgary to join you? A. I left on Friday night and he came down on the afternoon train of Saturday and joined me at Calgary.

Q. And when did you get back to Edmonton? A. On Friday morning the 23rd.

10 Q. Can you tell me when the house opened that year? A. On the 29th of January 1931.

Q. And when did it close? A. Twentieth day of March.

Q. And was Vivian MacMillan at your home in the month of January? A. Yes.

Q. Under what circumstances? A. On the day that I left for Calgary, that is Friday the 16th of January she sprained her ankle up town. My understanding is she got in touch with Mrs. Brownlee.

20 Q. Mrs. Brownlee can tell us about that? A. She went to the house, at any rate. When I went home for dinner on Friday at six o'clock she was lying on the chesterfield with a sprained ankle.

Q. And you left that night? A. I left that night.

Q. Now during the months, the remaining few days in January, and February and March you attended the Session? A. Yes, sir.

Q. Now you might tell me just what part of your time is occupied when the House is in Session? A. Well as I am responsible for the working of the Legislature from a period of approximately at least two weeks before the opening until the close of the Legislature I am engaged night and day from say nine o'clock in the morning till 12 o'clock at night at least.

30 Q. And is that a regular performance during sessions of the Legislature? A. Yes, as I think the Members of the Legislature well know.

Q. Then I come to April 1931. Where did you go if any place then? A. I left for the East on the 3rd day of April. I was in the city the 1st and 2nd. I left for the East the 3rd day of April for a conference at Ottawa and was away until the 16th. I was in Calgary on the 18th. I was home on the 22nd and 23rd.

Q. And on the 22nd and 23rd where were you? A. You mean in the house?

Q. Yes. A. In the front bedroom.

40 Q. What I mean is were you well? A. Oh no I went home and went to bed. I was sick.

Q. And what was the matter with you on that occasion? A. Bad cold.

Q. And was any change made in your sleeping accommodation in your room at that time? A. Just after that, yes.

Q. What change was made? A. I had been sleeping in the bed next to the window, that would be in the north bed. I had had a number of

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

colds and thought there might be a draft coming from the window and I asked my eldest boy to change with me with the result that I took the south bed and he took the north bed.

Q. And during this period that was yours—is that the bed you occupied from that time on? A. Yes, for the balance of the period.

Q. Now I leave that and there are no dates referred to by the plaintiff and I think certainly none in May, but you might tell me what your movements were in the latter part of May and the month of June?

A. Well just where shall I start?

Q. Well did you have anybody visiting you at that time? A. In 10  
1931?

Q. In 1931. A. Oh yes my brother-in-law and his wife came up from Toronto in the last week in May and spent the first week in June with us.

Q. And then, just to carry on from there, tell me were you out of town during the month of June? A. Well I was in the city the week of the 8th and the 15th. That is Monday the 15th. I was at a convention of the Electrical Engineers in Calgary and Banff on the 16th. I was in Calgary on the 17th and I left for Ottawa for an unemployment conference on Saturday the 20th and did not return until the evening of July 1st when I immediately went into country meetings and was in Coronation constituency on the 2nd, 3rd and 4th, Calgary the 6th and 7th of July and then I was in the office until the 15th when I left for a conference at Regina. 20

Q. Where were you on the 11th and 12th of July? A. My wife and I took advantage of that week and went down to Sylvan Lake.

Q. And was there any event on the evening of the 13th of July, do you know? A. Not that I recall.

Q. And where did you go next? A. I was in Regina from the 15th to the 18th. I was in Camrose in the afternoon of the 20th. I returned to Edmonton and drove back to Edmonton that evening and took the night train for Winnipeg and was away until the 25th. I was in the city on the 26th and 27th. I went to Ponoka on the 28th in the afternoon and drove on to Calgary at night. I was back in Edmonton on the 29th and 30th and left for Ottawa on the 31st of July; and returned on the 9th of August. 30

Q. And just go on through the month of August and then I am finished. A. As I say, I returned on the 9th of August. I was in the city on Monday and Tuesday and I held members meetings on the 12th and 13th.

Q. And do those meetings take days as well as evenings. A. Well they take all day and usually in the evening I was not in the meeting of all the members but I was meeting them individually, and I took my holidays on August 15th and went down to a ranch in Southern Alberta and I did not return until the first day of September. 40

Q. Now coming to September. Miss MacMillan says that on that occasion, the occasion of Mrs. Brownlee's trip to the Coast—you remember that, sir? A. Yes.



Q. That she stayed at your home for three nights; that on two of those nights you had intercourse with her in your wife's bed. First, did she stay at your home? A. Yes.

Q. Did you have intercourse with her as she has said you did? A. I did not.

Q. Would you tell me the circumstances of her coming to the house at that time? She says you telephoned her and asked her to come and stay there? A. That is not true.

10 Q. What were the circumstances? A. Well I cannot of course speak of the conversations that took place between Vivian and Mrs. Brownlee, but Mrs. Brownlee had made arrangements to go to the Coast on the 24th expecting Jean McCloy her maid to be back in the city that day. I was informed during the evening by telephone from Mrs. Brownlee that she in turn had been informed that Jean was delayed on account of threshing and she was very much concerned as to what she should do as I had all her transportation arranged, and when I returned to the house that evening at dinner time I found Vivian there and from the conversation between Vivian and Mrs. Brownlee was informed that Vivian had herself suggested and insisted that Mrs. Brownlee should proceed with her plans as all that was necessary was for someone to be there to look after the boys while Mrs. Brownlee was away. Later in the evening just after dinner I heard Vivian call Mr. MacMillan and heard the conversation from the one end and she insisted to Mr. MacMillan that inasmuch as Mrs. Brownlee had a compartment with an upper and lower berth and inasmuch as her mother had a pass that it would be a nice occasion for her to take a holiday and to go to the Coast with Mrs. Brownlee. A little later, about three quarters of an hour later somewhere along that, I cannot fix the exact time, a telephone message come from Edson to Vivian to the effect that they had talked it over and decided that Mrs. MacMillan should go.

30 Q. Miss MacMillan says that Mrs. Brownlee would not go because she was afraid to travel alone and therefore she, Mrs. Brownlee, suggested Mrs. MacMillan should go with her to the Coast? A. Mrs. Brownlee left home as a girl and travelled west to teach and since that time has travelled by herself on all occasions.

Q. And during Mrs. Brownlee's absence what room did Vivian occupy? A. Mrs. Brownlee's room.

Q. And where did Allan sleep? A. In the maid's room.

Q. And where did you sleep and Jack? A. Continued as we had been doing, in the front room.

40 Q. And during her stay there were you absent as she says one day? A. I was absent during the day. I left Edmonton with Mr. Hoadley and Mr. McPherson early in the morning of Sunday the 27th to attend a meeting with Senator Gideon Robertson at Calgary and we returned late that night.

Q. Now in the month of October I think you were away very little, October 1931? A. October 1931, yes that is true.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

Q. And in the month of November were you away a good deal?  
A. Yes, sir. I was in the city on Sunday the 1st. I was in Calgary on Monday, Vermilion on Tuesday the 3rd and in the city on Wednesday. I was out in the Stony Plain constituency at Magnolia on Thursday the 5th.

Q. Did you speak there? A. Yes.

Q. Did you speak there in the evening? A. Yes, sir, I attended a convention there. On the 6th, 7th and 8th I was in the city.

Q. Well what about the 7th? A. I was in the city as far as I know on the 7th.

Q. And then where did you go? A. On the 9th the Red Deer 10  
by-election was on and I left the city on Monday 9th to take my part in the Red Deer by-election and I was speaking daily afternoon and evening from that time until Saturday night the 14th.

Q. Saturday night the 14th? A. Yes, the election was on the 15th and I was home in the evening and heard the returns at home.

Q. And where next did you go? A. Well I was home on the 17th and 18th and I was in the Leduc constituency on the 19th. On the 20th and 21st, 22nd, 23rd, 24th and 25th I was in Edmonton and then on the 26th I left for Ottawa again for a further conference there and I did not return until the 9th day of December. 20

Q. Now as I understand it, you were not much away in December or January of that year. Will you tell me when the House opened? A. In 1932?

Q. Yes in 1932. A. Thursday, February 4th.

Q. And when did it close? A. April 6th I believe — Wednesday, April 6th.

Q. And would you be similarly occupied during that Session as you told me you were previously? A. Yes.

THE COURT: When did the Session close? A. April 6th.

Q. MR. SMITH: And were there evening Sessions? A. Well yes, 30  
after the first week or two, not so many at the first part of the Session. But I may explain in this way, my first task is always to get the speech from the throne ready, and then to have the debate go through and get the legislation ready and get the estimates ready to be introduced as soon as possible after the debate on the speech from the throne is over, so that I do not as a rule call the House for evening sessions on the first couple of weeks, very often, depending on how rapidly they are getting on but in the latter part of the session there are very very numerous evening sessions.

Q. The House closed on the 6th and where did you go then? A. The House closed at 11:30 in the morning and I left on the afternoon train at 5:15 for Ottawa. 40

Q. And when did you return? A. On Monday 25th.

Q. Of— A. —April. Well I may have returned to the city on the 24th, either the evening of the 24th or the morning of the 25th.

Q. Now was Miss MacMillan in your home to stay at the time you left? A. Yes.

Q. And did she stay there, and stayed until when? A. She came to the house the evening that I left to stay with Mrs. Brownlee while I was away. I understood that an arrangement was made that the maid Jean McCloy should take a month's vacation starting with the 10th of April and Jean was away until the 10th of May. I recollect Vivian stayed there from the 6th of April to the 10th of May.

Q. So that you were home from the 24th of April to the 10th of May?

A. During the time she was there, yes, sir.

10 Q. Now she has said that practically every evening you would get up from your bed, go and turn on the toilet or taps or bath taps which was an arranged signal with her, that you should meet her at the door of her room which had squeaky floors and squeaky springs, take her into your room, walk so that the footfalls would appear as those of one person and that you there had intercourse with her with your boy lying alongside of you in the next bed? Is that true? A. That is not true.

20 Q. And she also said that on one occasion when she was in bed with you that you reached over and turned on the lamp, Jack having mumbled or stirred, and she also says that that lamp shade is so arranged as to throw no light on your bed. What is the position of that lamp shade? A. Just the reverse.

Q. Why do you say that? A. Because my custom is to read for a while every night after going to bed before trying to go to sleep. It is the best way that I have of relaxation and getting to sleep. The lamp on that table between the two beds had a fairly heavy green shade and in order to enable Jack to get to sleep while I was reading we would throw a sweater or cloth over the shade.

Q. On which side? A. On the side next to Jack.

Q. And was that the invariable situation with respect to that lamp when you were at home? A. Yes, sir.

30 Q. Now taking that period when you were home and she was staying at your house, that is the period from the 24th of April to the 10th of May, have you checked up to find out whether or not you were engaged on any of those evenings—between the time you came home on the 24th of April up to the 10th of May? A. Yes. I was away on two nights at Calgary. There was one evening that my wife and I attended an old-time dress rehearsal at Baker's and did not return until half past twelve or one o'clock in the morning and another evening that I was at dinner given by the Government to Ex-Governor Byng at the Macdonald Hotel. As I recall we finished that dinner somewhere after eleven o'clock. It was nearly half  
40 past before we left the hotel and we went home and the wife and I sat downstairs and chatted for an hour or more after we got home.

Q. And what sort of a sleeper is Mrs. Brownlee? A. Very light.

Q. And why do you say that? A. Well Allan has always from very early childhood walked in his sleep; that is the younger lad. And her care for him has developed in her, I don't know whether I would call it the subconscious attitude of her mind, that she is always listening for him,

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

with the result that the slightest little movement around the house wakens her up.

Q. Have you noticed this yourself on occasions? A. Time and time again. For example on many occasions she has come into our room at night when I have been reading rather late. She would get up if I should get up out of bed myself and move around. If she heard me at night somewhat restless because of sleeplessness on many occasions she has come in and asked what was the matter. The slightest little squeak in the floor or anything of that kind usually wakens her up.

Q. Now you might just tell me what the upstairs arrangement of your house is? A. Well there are two bedrooms looking north at the front. The west bedroom is fairly large and in that bedroom there are two beds—two twin beds, probably a foot and a half apart, just a space between. The two beds are crowded as close together as possible to allow for a little square lamp stand with a lamp with a chair, between. The other room is a small room occupied by the maid usually. There is just a partition between those two rooms and the door of the west room is on the east side. There is only a small space between the two doors and Mrs. Brownlee's room is on the west side, the west and south corner of the house with just a partition between that room and the room occupied by Jack and myself and then the only other room right next to that on the east side of the house is the bathroom and the well for the stairway. It is a very short hall. It is a very small house, just a small six roomed house and a very old house.

Q. And nearest what bedroom is the bathroom? A. Nearest Mrs. Brownlee's, the south bedroom—south and west.

Q. In other words, the north side is occupied by yours' and Jack's bedroom and the maid's room? A. Yes.

Q. The south side is occupied by Mrs. Brownlee's room, the bathroom and the stair well? A. Yes.

Q. And the next date which I have which was dealt with by the plaintiff Miss MacMillan, is the time in October 1932 and the allegations in the Statement of Claim which are already in "When the said Vivian MacMillan returned to Edmonton in October 1932 the defendant in spite of her illness insisted upon her resuming relations with him and she many times visited him in his office alone or accompanied him in a motor car at night alone." I think she does not fix the time in October but she says that on one occasion then, namely on the 31st of October, that you had intercourse with her. Now I want you to give me your movements during the month of October. A. I was in the city on Saturday the 1st, 2nd, 3rd and 4th. I left for the East on the 5th. I understand that Vivian returned to the office from her illness on the 7th.

Q. Would that be illness or holidays? A. That is from illness. I left on the 5th and I was away until Saturday the 15th. I was home one day on Sunday the 16th and then left at once to take part in the Camrose by-election and was steadily engaged in that by-election afternoon and evening until Monday night the 24th. The election was on Tuesday the

25th and I heard the returns at my house. On the 26th and 27th I was in my office and then I left on the night of the 27th, Thursday night, to attend an Inter-Provincial conference at Regina and took ill in Calgary. As a matter of fact I was ill before I started, I had caught cold in the Camrose by-election but when I got to Calgary on the Friday morning I was so ill that a doctor was called in and I was ordered back to Edmonton and came back to Edmonton and went to bed and was ill until November 4th.

10 Q. And during that time did Miss MacMillan telephone you? A. Yes.  
Q. And did she come over to the house? A. Yes on at least two occasions I am sure of.

Q. And I think she said on one occasion she rubbed your back with alcohol and put a mustard plaster on your chest? A. The upper part of my shoulders, yes.

Q. And who was in the house? A. Jean McCloy and the nurse and the boys.

Q. And she also says that you had intercourse with her in your bed in your room on the evening of the 31st of October. Is that true? A. That is not true.

20 Q. Who were in the house on that occasion? A. Jean McCloy the maid and the two boys. Jack was preparing to go out. Allan stayed around the whole evening and was in and out of the house and my recollection is that Jean McCloy fairly early in the evening went up to her own room and was in all evening and the door of my room was open and Allan was back and forth all evening.

Q. Now the next incident of which we have any date at all is Christmas 1932 where I think you first met Johnnie Caldwell at the C.N.R. station in Edmonton? A. That is correct.

30 Q. I do not know what importance to attach to it but Miss MacMillan says you refused to shake hands with Caldwell. Did you? A. I did not.

Q. And how did you come to be at the train and who was with you? A. When Vivian went home for her holidays she was at the house that day. We drove her to the station in the evening and in the course of the drive Mrs. Brownlee asked her if anyone was going to meet her on her return; if not that we would be glad to meet her. She informed us that no one was going to meet her. Mrs. Brownlee rather pressed that and upon receiving a reply in the negative that no one was going to meet her Mrs. Brownlee said we would meet her on her return.

40 Q. And you did? A. We went over to the station that night to meet her as arranged and I noticed this boy walking up and down the platform and when she got off the train Mrs. Brownlee and the boy and myself met her at the train. I was introduced and shook hands and felt somewhat embarrassed by reason of the boy being there and thought probably we were interfering, and I walked on ahead of the party as we returned to the car.

Q. And the next incident of which she gives evidence is that of

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

January 2nd, 1933. Her evidence is she was in your office at the Parliament Buildings between 11 and 12 that morning, Monday morning January 2nd and that you there had intercourse with her. She fixes that time definitely. Were you in your office that morning? A. Yes.

Q. Who with? A. I received a telephone call about 9:30 from Mr. O. H. Snow of Raymond saying he was in the city and was anxious to see me with respect to a matter of financing the town of Raymond by scrip. I met him at 11 o'clock and was with him until after 12 in my office.

Q. Did you then have Vivian there? A. I did not.

Q. Was she there? A. She was not.

Q. And did you then, as she says, have intercourse with her there? 10  
A. I did not.

Q. And the next incident that I have, although I have no date, is that she says you pushed her out of the car in front of Lush's in February, 1933. Now you might tell me where you were and what your movements were during the month of February? A. The month of February, 1933?

Q. Yes. A. Well I was in the city as usual on the 1st, 2nd and 3rd, well up until the 7th, and I went home ill on the afternoon of the 7th and was ill in bed until, well I returned to the office for the first time on the afternoon of the 20th. 20

Q. And when did the House open that year? A. The House opened I think on the 9th—yes on the 9th.

Q. And you were laid up during the early stages of the House?  
A. Yes. Well as I say I went back to the office on the 20th but did not go into the Legislature that day.

Q. Well your being laid up, did it make more heavy your work for the balance of the Session? A. Yes, sir.

Q. Did you push this woman out of this car or have connection with her at any time in the month of February? A. I did not.

Q. Now she has said that on many Saturday afternoons—at least 30 many Saturdays—that you would telephone to her and that she would come down to your office about a quarter past one and have intercourse with her there although she fixes no dates of those Saturdays? Is that true A. I was never to my recollection in the office with Vivian Mac-Millan on Saturday afternoon from the time I have met her to this day.

Q. And therefore did you have intercourse with her on numerous occasions on Saturday afternoons? A. I did not.

Q. Have you ever been in your office with her on Sunday mornings?  
A. Yes.

Q. On how many occasions? A. I can't remember how many, but 40 there would be very few.

Q. Do you remember any of them? A. Yes I think on that Sunday the 1st of January we ran up for a few minutes and I know I was in the office with her on Sunday morning the 23rd of April.

Q. How do you fix that occasion? A. Some time prior to the 23rd of April each one of the Western Provinces had received a letter from the

Government of Canada with respect to our difficulties of financing. And there were reasons which were announced in the House of Commons as to why this Province was considered a little differently from the others and I did not reply to that letter for some time until I happened to notice an announcement that the Prime Minister was going to table the correspondence with the Provinces on a certain date the following week. I telegraphed him that a reply from myself would be forthcoming by the first mail. On Saturday morning the 22nd I spent a considerable part of the morning dictating a long letter to him covering the situation, left it for my secretary to finish to leave on my table with a special delivery stamped envelope; that I would be back in the afternoon and that if it was all right I would post it. I had other things to do. We got engaged in family work in the afternoon and I forgot about it and on Sunday morning when I was over after Vivian I remembered it as I passed the Parliament Buildings and I went up into the office. She sat on the chair while I studied the letter and tried to revise the last paragraph but finally concluded the letter was as good as I could make it and we finally drove up to the Post Office and I posted the letter and we went home.

10 Q. Did any intercourse take place with her in your office that Sunday morning? A. No, sir.

Q. Do you remember any other Sunday morning? A. Well I think January 1st—but when she would be in the house and there was other company I would take occasion to catch up with my work; if it was not one thing it would be another, and I remember one occasion she went up with me and helped me carry down three baskets of correspondence which I spent the remainder of the afternoon and evening in going over and she helped me carry them in the house when I got home.

30 Q. Now in order of time, I next come to June 27th, 1933, the next day that is mentioned by Miss MacMillan. She says that on that night you went to Calgary. She first says that you telephoned her that you wanted to see her on that night; that you telephoned her at her office as there was no phone where she was living; that you made an arrangement to meet her at the top of a bridge crossing Victoria Avenue and that you picked her up there about 10 o'clock that night; that you drove to the station, procured your transportation; and back to the Parliament Buildings and that you went up and got something and went out on the west road about two miles west of the city and turned south, had intercourse with her there, drove back to the city and were gone an hour and a quarter to an hour and a half?

A. That is absolutely not true and she knows it.

40 Q. What were you doing and where were you that evening?

A. I spent the first part of the evening up till at least a quarter after ten with Mrs. Brownlee.

Q. What doing? A. We were together in the house for a while and then went for a drive. A misunderstanding between my elder boy and myself had resulted—when I say misunderstanding I do not want to leave a false impression—but he had asked if he might take out the car 104 which

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

I had at the house that evening. I told him I had to go to Calgary and I wanted him to be back in good time but he misunderstood me or did not pay sufficient attention. When we got back after our drive around a quarter after ten I found to my surprise he was not there and I waited for a time and then went to the office. I may have gone to the station and picked up my transportation but I am not sure about that. I went back to the house again to see if he were there. I had my usual two or three glasses of milk which I take every evening with Mrs. Brownlee. I waited there for a while and she had packed my bag in the meantime and I went to the station and telephoned to the house again from the station to see if he were back. 10

Q. And then you took the train? A. I took the train to Calgary.

Q. And about what time was that? A. I did not take the train until just a few minutes before the train had started because I had promised Mrs. Brownlee before I left the house to phone and I was anxious about Jack and thought he might have got into an accident of some kind and I telephoned to the house.

Q. And about what time did the train leave? A. Well I am not sure but I think about ten minutes to twelve. I am speaking from memory as to that. 20

Q. And there is another occasion in the month of February also which I had overlooked. Miss MacMillan said—I am summarizing of course—that you had arranged to meet her at the office if convenient during the Session and she went there and you were not there but there was a note there for her to sit down and you went in and kissed her and apologized for having thrown her out of the car at Lush's. Is that true?

A. That is not true.

Q. Do you know what motor car you were driving on June 27th?

A. I was driving a Chrysler.

Q. Is that your own car? A. That is my own car. 30

Q. And is it a big or a small car? A. It is a five passenger six cylinder car.

Q. Is it a smaller car than the big Studebaker? A. Oh yes. The big Studebaker is a seven passenger and six cylinder car with a wheel base of possibly from 127 to 130 inches. It is a very large car. The Chrysler is a small six cylinder car and I would think the wheelbase would be 117 inches at the most.

Q. And that is the car you were driving that night? A. Yes.

Q. With Mrs. Brownlee and also to the train? A. Yes. My recollection is I went over and Jack Munroe took me to the station and put the car in for me, but Jack will know. However, that is my recollection. 40

Q. He is the driver? A. He is the driver.

Q. And something was said about you driving and the chauffeur's driving. What is the situation with respect to Mr. Munroe? A. Well he is—since 1921 we have only maintained one general chauffeur and his duty



is to give first attention to my car but when he is not working for me, driving for me, to drive for the Government generally.

Q. And what about nights and what about hours? A. My policy has been ever since I came up not to impose upon him in the evening any more than I can help with the result that I usually take the car myself at six o'clock and return it some time later. I may say that for a while in the winter time I had a heated garage over on the South Side and I would put the car in the garage there.

Q. Are you fond of driving yourself? A. I am.

10 Q. And do you drive a good deal? A. I do.

Q. Is your wife fond of motoring? A. She is.

Q. And is that one of your relaxations? A. Yes, sir.

Q. Now I leave the evening of June 27th and the next date she mentions is June 29th, 1933. And she says that that is the night that your family started to go down to the lake That is right? Do you remember that night? A. Yes I do.

Q. She says you drove her somewhere and had intercourse with her there. Is that true? A. No that is not true I do not think she said that, Mr. Smith.

20 Q. Well, yes I am wrong about that.

MR. MACLEAN: Of course.

MR. SMITH: My friend says of course I am wrong and of course I accept his view. Well that is the night your family went away? A. Yes.

Q. And was she at home that night? A. Yes.

Q. And did she appear to be in good nature? A. Yes as far as we could see. Mrs. Brownlee and Allan and Vivian and myself played cards for a while in the evening and my recollection is that somewhere around nine or half past she left that evening We were going to the lake next day and I know as we were tired she left early.

30 Q. And do you remember whether you drove her home or you and your wife? A. I drove her home that evening.

Q. Now Mr. Brownlee, did you often drive Miss MacMillan to and from your house? A. Yes, quite frequently. The arrangement was something like this, especially in the first two years, that is in the fall of 1930 all through 1931 and at least the greater part of 1932, if Mrs. Brownlee—that is if the maid was out Thursday or Sunday someone would have to stay with the boys on account of Jack's nervousness and on those occasions I would drive her alone. On other occasions if the maid was in Mrs. Brownlee would go with me.

40 Q. And when did your boys obtain their driver's licenses? A. Jack obtained his in July 1932 just before we went on our holidays, according to my recollection, and Allan obtained his last summer.

Q. Was there anyone in that household except yourself in the house who could drive a car prior to that? A. No.

Q. Now I left the 9th of June and I turn to the next day that is

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*  
—  
Defendant's  
Evidence  
—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

mentioned and that is the 3rd of July where Miss MacMillan says you called for her, took her for a drive and had intercourse with her. Were you driving with her that evening? A. I was.

Q. Did you have intercourse with her? A. I did not.

Q. By the way, Mr. Brownlee, after this period of time what had Miss MacMillan's position become in your house? Was she a familiar in your house? A. Well it was just as near being a member of the family as a person not being a natural son or daughter could be. I would say like a niece. As a matter of fact she was there and came at odd intervals whenever she wanted to without any arrangement whatever and as far as we knew was always very happy in that home. 10

Q. And what was the occasion of you being with her driving on the 3rd of July? Do you remember? A. I do.

Q. What was it? A. On the evening of the 29 of June when we were driving home she was very friendly and talking to me. Before leaving the house that evening she had expressed herself several times as being very disappointed that she could not go to the lake with us. She regretted the fact that on account of her position in the Attorney General's Department her holidays came at the end of the list, which brought it down to September. And driving home that evening she stated she would like to have a chat with me. She asked me if it was possible to change her holidays to bring them on earlier so that she could go to the lake and she said she would like to have a chat about a number of matters. I told her that I would call her up when I got back from the lake and on the following Monday I did call her up. 20

Q. And when you went down on that occasion did you know what the sleeping accommodation was at the lake? A. No. That was the reason that Mrs. Brownlee in my presence gave her for not being able to take her to the lake for the week-end of July 1st. One of our friends was going to be there in any event and we did not know just what the sleeping accommodation might be over the week-end. 30

Q. It was not your own cottage? A. No, it was a cottage we rented I think for two months in 1933.

Q. And you came back from the lake when? A. I drove back on Sunday night and landed in here after midnight.

Q. Did you get in touch with her? A. I did. I am not sure on this point. I would not want to say definitely whether I called her up on the Monday or whether I had told her when I left that I would. My recollection is that I may have called her up at the office.

Q. And did you meet her that night? A. I did. 40

Q. And did you go for a drive? A. I did.

Q. And did you bring her back again? A. I did.

Q. And where was she living at that time? A. She had moved over the week-end from Mrs. Fuller's to Mrs. Cupper, I believe the name is.

Q. And where is the Cupper house? A. Just across from the Parliament Buildings.

Q. That is north of the Buildings? A. Yes.

Q. And that is on that road where the street car tracks are below the bridge? A. Yes.

Q. And it is said, I think, that you did not let her out at that house. Is that true? A. Well that is my recollection. That house is down here and my recollection is that as we came back she told me not to bother going down the hill and I let her out on a street where the hill starts to go down.

Q. Were you parked, and when I say parked I mean at more than a stop except at a point to back or turn around at any place in this country  
10 with Miss MacMillan on that night? A. I was not.

Q. And the next day that I have is the 5th of July? Were you driving with Miss MacMillan on the evening of the 5th of July? A. Yes.

Q. Where had you been? A. I had been on that day out at Vermilion with the Honourable Mr. Reid speaking.

Q. And when did you get back to town? A. Somewhere about nine o'clock.

Q. Did you get in touch with her? A. I had promised her the previous evening that I would get in touch with her before I went to the lake to see if she had any arrangements made as to when she could go down  
20 so I could let Mrs. Brownlee know. I was planning to leave for the lake next day and when I got back in Edmonton from Vermilion I telephoned her and told her that as soon as I had a chance to wash up I would call for her.

Q. And did you? A. I did.

Q. And where did you meet her? A. I asked her to walk up the hill, that is that grade to the corner of 109th—well that street where the street car is on under the bridge south of the Administration Building.

Q. Do you mean by the Administration Building— A. At least south of the Administration Building.

Q. And is that the main artery of this town connecting north with  
30 the south side? A. It is.

Q. And you met her there? A. I did.

Q. And did you shortly discover something that evening? A. I did.

Q. What was that? A. As we drove up 109th Street I think, well I do not remember the numbers of the streets very well, but I think it is the second street past the Administration Building to the north. We went along there and down over the Low Level Bridge leading to the South Side park and up into Strathcona to Whyte Avenue and along Whyte Avenue and then I turned north again towards the city and went down a street  
40 going north, what I thought was a street that would take me across to 109th, but I found it was a blind street and I turned and went back to Whyte Avenue and then turned east again and back over the Low Level Bridge. I became aware of lights shining in the mirror of the car rather steadily and I gave particular attention to the car as I was going down the hill and over the Low Level Bridge. As I went up McDougall Hill I turned sharply around the street on to the Macdonald Hotel looking down

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Examina-  
tion  
*continued.*

over the valley and that car made the same turn. I observed to Vivian about three blocks from there that there was a car behind us that seemed to be interested in us. She looked back and after waiting for a bit she said: "Oh no there is nothing like that." I told her I was going to test it out in any event and I circled around a block and then struck back over the Low Level Bridge and back around the South Side again and finally came back again—now I am speaking from memory as to the trip because I did not pay so much attention to the actual places where we turned. I was trying to get the number of the car. I came back around the Low Level Bridge I believe. In any event I know this quite definitely that in order to obtain the number of that car I went up 109th to Jasper Avenue and went down Jasper Avenue to the street that goes down to the Macdonald Hotel. I cut around the lamp post there very quickly to see if I could get the number of the car as it followed. Failing in that I drove back and turned in sharply at the Hudson's Bay Store and caught the number of the car as it went by. 10

Q. Then what did you do? A. Vivian and I got out. I had arranged to buy some papers to take down to the boys, and we got out and we walked down to Mike's News Stand, picked up the papers, went back and got the car. 20

Q. And that was on Jasper Avenue which is the main artery of this city? A. It is.

Q. And from the Hudson's Bay to Mike's is roughly how far? A. As I recall a block or a block and a half.

Q. And you and Vivian MacMillan walked down there to Mike's and back again into your car? A. We did.

Q. And then what happened next? A. As we started up my recollection is that I noticed this car about three cars ahead and it had pulled into the Hudson's Bay and I drove past the car and pointed it out to her and said "That is the car that has been following us." And then I asked her where she wanted to get out and she confessed that she would prefer not to go home but she would like to call at the residence of Miss Pedie Gant. 30

Q. And did you take her there? A. I took her there and she got out of the car. The other car followed right behind my car. She got out of my car and the other car passed my car.

Q. It was stopped? A. Yes. It had pulled in right behind us a little to one side.

Q. She says that on that evening that you arranged with her to take her back to your house? Is that true? A. That is not true. It was never suggested. 40

Q. Now was there anything on that occasion, on either of those drives on either the 3rd or the 5th—was there anything that she wanted to discuss with you beside plans about going to the lake you told me of?

A. Well she talked over a number of matters. We talked over a number of matters. She talked to me about Johnnie Caldwell for a while.

Q. And did she tell you why she wanted to discuss him with you?  
A. She had suggested the night before there was some matters she wanted to discuss.

Q. Was that one of them? A. I presume so, yes.

Q. And when was the next occasion you saw her? A. The next occasion I saw her was on July 15th two weeks before I got the letter from her solicitors.

10 Q. Had you been down to the lake? A. I had been down to the lake and out in the country speaking. I was back in the office on July 15th which was a Saturday morning. My wife telephoned me from the lake and asked me if I were coming down that week-end and I said yes I was leaving shortly and she informed me—I suppose I should not tell the conversation —but at any rate I gathered she thought it would be a good week for Vivian to come down as she was very anxious to come down as the family were all coming in for the Edmonton Exhibition which started on the Monday. And the suggestion was that Vivian might come down on the Saturday evening with me or the bus and spend the evening with us and come back with the family on Sunday night. My secretary who heard the conversation telephoned to Vivian. I asked her to telephone and have her  
20 come to the office and at the same time I called a council meeting. She could not get over to the office for a while but she finally came over with some papers and in the meantime the Ministers had gathered and I went out and saw her and we went across to the council chamber which I used as a second room to my own office.

Q. Right across the hall? A. Yes right across the hall. I conveyed the invitation to her that day. She thanked me very nicely and said she was sorry she could not go that week-end as either her parents were in town or were coming in, that her father had a bad knee, and if I would let her know some other time when I was going to the lake she would be glad to go  
30 down with us. I may say that at that time I asked her casually if she had had any suspicion of who had been interested the previous time and she said no.

Q. That is you meant the night you were followed? A. Yes.

Q. And she told you no. Was she her usual self on that occasion? Did she seem her usual self? A. I never saw her more possessed than she was with me on that occasion.

Q. Now, generally speaking, what have you to say about her health while she was a frequenter of your home? A. In all the time Vivian MacMillan was staying at our place she was consistently bright, gay,  
40 vivacious, active with the sole exception of the time in 1932. I may say that I could not speak so much about that because I was away—when she went over to the house when she took sick on June 21st.

Q. Were you not at the house when she came out of the hospital?  
A. I returned from Regina on the morning of the 23rd and as she came out of the hospital that afternoon her mother was with her and Mrs. Brownlee and the two boys and myself took her mother and her for a drive

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18

John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

around the city that evening and finally took her to the train.

Q. With her mother? A. With her mother.

Q. Now turning for a moment to the drive on July 3rd. You told me there had been some discussion about her holidays coming at the end of the list. Was there any discussion that night about that? A. There was.

Q. And were you asked to do anything? A. We talked that over and I told her I did not think it was advisable to interfere in any way with her holidays.

Q. Had you at any time interfered or granted her favors of any description while she was an employee of the Provincial Government? 10

A. I did not.

Q. Did you speak to Mr. Smailes the Civil Service Commissioner or to anybody else with a view to getting her a position with the Provincial Government? A. I did not.

Q. And Mr. Smailes lives in Edmonton and is available? A. Will be called as a witness I believe.

Q. I am showing you Exhibit 5. Did Miss MacMillan send that to you? A. Yes.

Q. And do you remember any conversation prior to that time, at least have you any clear memory of it, or what is the position? A. Well she had an Aunt in the United States who spent part of her time at New York as I understand, and part in Florida, depending on the season. She told me was an expert painter. And she sent Vivian some money with instructions, with letters, suggesting a diet. And Vivian used to tell us over at the house about this diet. From what I gathered in hearing her talk about the diet I was of the opinion myself that it was not such a thing as a girl of her age should be taking and I spoke to her several times at the house about this diet and my recollection is that I asked her at one time if she would let me see just a sample of the diet and she made this up. 20

Q. And it was as it appears now, addressed to Dr. J. E. Brownlee— 30 the document, Exhibit 5? A. Yes, sir.

Q. Now in the winter of 1933—by the way, did you or your family skate? A. Yes, sir. Well I do not want to leave a false impression. I did not skate a great deal but Mrs. Brownlee skated much more than I did. I went skating a few times in the winter of 1933 with the family.

Q. I mean with Miss MacMillan. Would Miss MacMillan be one of the party? A. Yes. On two Sunday afternoons we went over to the University rink.

Q. When you were not engaged in business what was your rule with respect to the use of Saturday afternoon? A. In the summertime of 1930 and 1931 particularly I played a good deal of golf and would leave the office very early for the purpose of getting on the course before the rush. In 1932 I did not play so much nor 1933, during the summer, but I tried as far as I possibly could to reserve Saturday afternoons for the family and just as regularly as was possible for me to do I did spend Saturday afternoons with the family. 40

Q. And Miss MacMillan said one thing which I think I should ask you about with respect to these Saturday afternoon affairs, that on some occasions you did not telephone but told her ahead of time to come to your office shortly after one o'clock and on occasions she would wait and come down. Is there any truth in that? A. I say emphatically, Mr. Smith, I never telephoned or by other arrangements met Vivian MacMillan in the Parliament Buildings on the Saturday afternoons from the first time she came to Edmonton until she left.

10 Q. Is there a lock on the door of your office, that is the door leading into the corridor? A. Yes there is.

Q. And your secretary is Miss Brown? A. She is.

Q. And in so far as hours are concerned, can you tell me what is the regular thing? Does she leave before you do or do you leave before she does? A. With the exception of a few Saturdays, comparatively few, during the year when I might have a council meeting or a special delegation it is her invariable custom not to leave that office until after I had left.

20 Q. And can you tell me this, when you were remaining there for a council meeting, we will say, and she leaves because she knows you are so engaged, is the door locked? A. Yes, she would come in and ask me if it was in order for her to leave and upon being told yes she would lock the door and she went out.

Q. What is the physical arrangement of your office, how many rooms have you? A. Two. There is the entrance from the hall into a combination waiting room and secretary's room. There are two tables there because when it comes on the busy season in the winter I have two persons in there, and then from that office you go into the large private office which I occupy.

30 Q. And it is furnished with a chesterfield I think among other things and has a blue rug? A. Yes.

Q. And I think it has mahogany walls or timbers? A. Yes.

Q. And there are some very comfortable chairs in it? A. Yes.

Q. Were they there when you went there? A. They were.

Q. Now that is all I have to say about that. And Miss MacMillan says during this trial that you gave her some pills called Apergols. Did you give her any pills of any kind? A. Miss MacMillan knows I never gave her any pills of any kind or description at any time and I never heard that term until I heard it yesterday.

40 Q. Did you ever give her any Apergols? A. I never heard of them until I heard it in this court room.

Q. She also says you gave her quinine. Did you ever give her quinine? A. I never prescribed or gave her quinine at any time.

Q. Did you give her anything of any kind with a view to preventing conception or producing abortion? A. I did not because surely I have had enough experience by this time in Governmental work, that apart from any other consideration I know it would be useless and I never at any time

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
continued.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

gave her anything like that and never had it in mind and never considered it and never had occasion for it.

Q. She says that on one occasion which I think is about the 12th of July—it is an occasion I overlooked and—I have not any notes as to just what took place on that occasion—that you saw her in the Speaker's room. I was wondering if that is perhaps a confusion for the council room, or did you see her in the Speaker's room? A. I do not know just what you mean by this, but the fact remains I was not in the city practically at all from the time I saw her on July 5th until the 15th and I met her in the council chamber on the same floor as my own office. 10

Q. And the Speaker's room. The Speaker's room is on the floor above isn't it? A. I never saw her there. The Speaker's room is on the floor above.

Q. You never saw her and as a matter of fact were you even here on July 12th? A. No. Well let me look (looking at diary). On the 12th of July I was steadily engaged in a Members' meeting all day until about five o'clock when I left to take a meeting at Bentley and spoke at Bentley at eight o'clock.

Q. And Bentley is west of Lacombe? A. Yes west of Lacombe.

Q. And is how far from here 80 or 100 miles by road? A. Oh all 20 of 100 miles I would say—over 100 miles I would say.

Q. And the next incident I have is the receipt of a letter by you from my friend Mr. Maclean on the 3rd of August, 1933. A. Two weeks after I saw her in the office, yes.

Q. And where did you receive this letter? A. By special delivery stamp at Sylvan Lake. I believe a copy was also addressed to my office which I obtained when I came back to the city.

Q. And where were you going just at that time? A. I was to speak that evening at Rimbey, that is immediately where I was going the day I received that correspondence and I drove into Sylvan Lake just around five 30 o'clock I think and got this letter and then I was to leave the following day to take my place on the Dominion Banking Commission in Ottawa. I received the letter the day before I was to leave to take my place on that Commission.

Q. And was it a matter of public report in the newspapers you were to leave for the East at that time? A. Yes, sir, it was well known for some time.

Q. And that is the day you received the letter? A. Yes, that is the day I received the letter.

Q. And then you went East to Ottawa? A. I did. 40

Q. And you returned—by the way did you consult your solicitor before going down, Mr. Porter? A. He happened to be in Edmonton the following morning when I returned from Sylvan Lake and I consulted him.

Q. And you went down East? A. Went down East.

Q. And took your place on this Commission? A. After consulting with the Dominion Government, yes.



Q. And you then returned with the Commission? A. Yes, sir.

Q. They were on their way to the Pacific Coast? A. Yes.

Q. And you broke your journey at Edmonton? A. I did.

Q. And you went to Edson? A. Yes.

Q. Who did you see at Edson? A. I saw Mrs. MacMillan.

Q. Who went with you to Edson? A. My wife.

Q. And you saw Mrs. MacMillan at her home? A. I did.

Q. She has told us something about it. Just tell us what took place?

A. My wife and I landed at Edson somewhere, I could not say exactly,  
 10 but somewhere around the noon hour I think. We drove down after  
 making inquiries as to where it was—we drove down to the MacMillan  
 house and as we drove up to the house we noticed Mr. MacMillan and the  
 boy by a car back of the house. We went up to the front door and rapped  
 two or three times before finally Mrs. MacMillan came to the door. I asked  
 her if I could see Mr. MacMillan and after some hesitation she told me that  
 he had just left. I asked her where he had gone and she said she did not  
 know. I asked her if he had gone to the roundhouse and she said she did  
 not know but she said in any event "I don't know why you are here because  
 20 there is nothing that we have to say to you." Well my recollection is I said  
 "Well Mrs. MacMillan from my standpoint there is something I would like  
 to say and if I cannot see Mr. MacMillan could you see me for five  
 minutes?" She declined at first saying there was nothing to talk about.  
 I urged her and finally she opened the door and went in. I said: "Mrs.  
 MacMillan I am not here, I want it clearly understood I am not here for the  
 purpose of trying to interfere in any way with any action which you may  
 want to take but I have received a letter which alleges serious improprieties  
 between myself and your daughter and I have felt that it was the proper  
 course for me to come to Edson and to face Mr. MacMillan and yourself  
 and answer any questions which you may wish to ask." She again informed  
 30 me that there was nothing to talk about, that Vivian was of full age and  
 they were not responsible for what she did. My recollection is that I asked  
 her then if she could at least tell me of what I was supposed to be charged  
 with, as the only thing I knew was contained in the letter from the solicitors  
 and I did not know what I was supposed to be charged with. She would  
 not discuss the matter at all. I repeated then again that I had felt it my  
 duty to come and give them an opportunity of asking any questions before  
 an action was taken which might very seriously affect their own daughter.  
 Mrs. MacMillan, as I recall, replied it would certainly ruin me. Mrs.  
 Brownlee attempted to say something but by that time I saw it was no use  
 40 to try carrying on a conversation and I left.

Q. And Mrs. Brownlee was there during the whole of the conver-  
 sation? A. She was there during the whole conversation.

Q. And you then returned to Edmonton? A. Yes. I think I made  
 it clear that I went on my solicitor's advice.

Q. You might repeat just what you said to me. I do not think I

*In the  
 Supreme  
 Court of  
 Alberta*

Defendant's  
 Evidence

No. 18  
 John  
 Edward  
 Brownlee  
 Exam-  
 ination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

understand you. A. I said: "I think I made it clear that I went on legal advice."

Q. On Mr. Porter's advice? A. On Mr. Porter's advice, yes.

Q. Then finally the statement of claim was issued against you on the 22nd of September? A. Yes, sir.

Q. Where were you at that time? A. I was in Ottawa just finishing up the work of the Banking Commission. As the newspapers stated, I would be through in the inside of a week or ten days.

Q. And you have learned that an order for service *ex juris*, that is for service outside of this Province was taken out? A. Taken out at that time, yes, sir. 10

Q. For service upon you in Ottawa? A. Was taken out for service upon me in Ottawa.

Q. And was it served upon you in Ottawa? A. It was not.

Q. And had you instructed anybody to accept service of that statement of claim on your behalf? A. On the morning after I received the letter when I saw Mr. Porter in Edmonton here he was given instructions and I believe he did notify the plaintiff's solicitor that he would accept service on my behalf.

Q. And then you came back from Ottawa? A. I did. 20

Q. And you came back from Ottawa the Banking Commission having finished? A. Yes.

Q. And how long were you in Edmonton before this Writ was served upon you? A. Before it was served upon me?

Q. Yes. A. Well it was never served upon me at all.

Q. Service was finally accepted by your solicitor? A. I instructed my secretary the day after I got back to phone Mr. Maclean's office and inform him that I was home and could be served.

MR. MACLEAN: Did you get Mr. Maclean? A. I did not phone. My secretary phoned and I understood spoke to Mr. Kane of that firm. 30

At 12:25 Court adjourns till 2:00 p.m.

At 2:00 p.m. Court resumes.

Q. Mr. Brownlee, when we adjourned at noon I was almost through. I want to ask you what your usual custom was on Sunday morning, as to what you did? A. Well the great majority of Sunday mornings, my wife and I, well probably I should start back a bit. On Saturday afternoons we would usually get a number of papers, New York Times and New York Herald Tribune and Financial Post and Burns' Weekly and a few papers of that kind and on Sunday morning we usually rested until nearly noon.

Q. And did you on occasion go down to get Miss MacMillan to bring her up for lunch? A. Yes there were occasions when I did. 40

Q. Did you telephone her or did your wife, both or either? A. Usually either Vivian would call Mrs. Brownlee or Mrs. Brownlee would call Vivian and arrange as to what time she was coming over and

sometimes she would come over without anyone going for her and sometimes Mrs. Brownlee and I would go and sometimes I would go alone.

Q. Was there any occasion on which Vivian MacMillan was in your office with you and your wife or you and your boys and your wife? A. Yes.

Q. What were those occasions? A. Well when she first came to Edmonton I know that at one time when we were out for a drive we took her through the buildings and showed her the buildings. I know on a later date while she was still going to Alberta College we were out for a drive one day and she expressed some concern as to how she was getting on as  
10 stenographer, and I suggested at that time that if she would care to go up to the office I would dictate to her for a while to see how she managed. Mrs. Brownlee and I and Vivian went up to the office and I dictated probably for ten minutes, I just would not say for how long, and then I had her read over what was dictated. She did not type it.

Q. Well was there any occasion when Mrs. Brownlee was away when you and the boys were there during the time Miss Brown was there?

A. There was one occasion. I think it was the time Mrs. Brownlee was—I am not sure whether she was at the Coast or in the East—I had some work to do at the office and I arranged for Miss Brown to come back and  
20 Vivian and the two boys and I went up to the office. When Miss Brown came to take the work I was arranging—my recollection is that Vivian and the two boys went for a drive and then came back and picked me up when I got through. They were in the outer office.

Q. We heard the evidence of Miss Elgert who was a maid in your house the first few months in 1930. Was she a maid in your wife's employ?

A. Yes, from the 1st of January on until the spring some time and she went home to help her parents in the seeding.

Q. And after she left your house and went home did you have any conversation with her of any kind whatsoever? A. I have no recollection  
30 of ever having seen her except on one occasion. I think Vivian was with us at that time when we were passing the University Hospital and she came from the University Hospital. She came out. I think that is the only time I have seen her since she left.

Q. You think that was what? A. I think that was the only time.

Q. Were you driving with her in your car or any car? A. I was not.

Q. In October 1930? A. I was not.

Q. Now I do not know that I can find the date. Miss MacMillan has given evidence that you telephoned her at the Mackay home shortly after twelve o'clock one night? A. I never did.

Q. Did you telephone her at the Mackay home after twelve o'clock?  
40 A. I never did.

Q. Or at any late hour such as that? A. I never did. Subject to one thing, Mr. Smith. There was one night that she was going to Edson and by arrangement between the family and her I took her to the train that evening. Now where she was and whether I phoned to arrange the time

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Exami-  
nation  
*continued.*

or not I do not know, but that was one time it was arranged for me to take her to the train.

Q. After your son Jack got his license in 1932 did he drive her and other guests home from your house—after that? A. Yes, he did quite frequently.

Q. And you purchased the Chrysler car when? A. 1933.

Q. That was in 1933. Now did you at any time ask anyone or commission anyone to go to Mr. MacMillan, Mrs. MacMillan or Vivian MacMillan to settle this lawsuit for you? A. I did not.

Q. Now on the examination for discovery—these questions were read into the record from your discovery beginning at question 484: (Reading): “Did you ever kiss Vivian MacMillan?” “A. Yes.” And I suggested the next question should be read: “On what occasion?” “A. I think maybe on two or three occasions when I was leaving the City she would be at the house. If I was bidding good-bye to the family I might have kissed her.” And my friend asked me to read the next which I did: “Did you ever kiss her when you were alone?” “A. I cannot be sure.” A. Is that the way my answer reads to that last one? 10

Q. Yes. “I cannot be sure.” Have you anything to say about that? A. Well the first answer is correct that on occasions when I would be leaving and she would be leaving and saying good-bye to the family I did kiss her good-bye or she kissed me good-bye, depending on which way it was. As far as any time when we were alone I have no recollection of any kind with possibly one exception and that was the occasion when I took her to the train to go to Edson. I don't know whether I kissed her good-bye that night or not. That was one occasion when I say— 20

Q. Well I mean did you have any conscientious scruples about having done so if you did so on occasion? A. No not at all.

Q. Did you ever kiss this girl at any time with what one might call the kiss of passion or that sort of thing? A. No. 30

Q. Now she has said, without naming the occasions, that she had a number of times asked you for her freedom and urged you to let her be free—to let her go. Did she ever do that? A. Absolutely not. Vivian MacMillan could have stopped coming to our house at any time she chose.

Q. Did she ever tell you at any time that Mrs. Brownlee was suspicious of your conduct with her? A. She did not.

Q. Did she ever over the telephone, whether you called her or whether she called you, tell you not to pick her up at 116th Street because people on 116th Street were suspicious, or words to that effect? A. Never

Q. Now I have finished except this one question, which is a repetition. Did you, on your solemn oath, at any time have sexual intercourse with Vivian MacMillan? A. I did not. 40

Q. Did you, on your solemn oath, at any time endeavor to have sexual intercourse with her? A. I did not.

## CROSS EXAMINATION BY MR. MACLEAN

*In the  
Supreme  
Court of  
Alberta*

Q. Mr. Brownlee, your family went out of town to Sylvan Lake at the end of June, 1933, on the 30th of June, 1933. A. Yes.

Q. And did they drive down? A. We did. I drove them. I drove part of them. The party was in two cars.

Q. And Vivian MacMillan was over there on the night of the 29th? A. Yes.

Q. And had she desired then to be taken down to the lake with you? A. She did.

10 Q. She wanted to go down with the rest of the family? A. Wanted to arrange very badly, suggested several times she would like to go down.

Q. Did she mention on the night of the 29th of June that she wanted to go down? A. Pardon me. She was not there on the 30th. She was there on the 29th.

Q. Did she mention on the night of the 29th when she was over at your house that she wanted to go down to the lake? A. She did.

20 Q. Did she mention on that occasion that she would like to have her holidays changed so she could go down to the lake? A. She was wondering whether there was any way in which she could have her holidays changed. She mentioned it at the house.

Q. And what did you tell her then about changing her holidays? A. There was not a great deal of conversation. I told her at the time I did not know whether it could be done or not.

Q. And you then drove your family to the lake. Before you left for the lake had you made any arrangement that when you came back you would call up or get in touch with Vivian MacMillan? A. My recollection is that on the night of the 29th very distinctly I told her that when I got back I would call her up, yes. It may be that I arranged the time. I could not say.

30 Q. So before you took your family to the lake you did make an arrangement that when you got back to town you would see her? A. I did.

Q. And you took the maid out of town too, away to the lake? A. She went, yes.

Q. And you came back on Sunday night? A. No I did not come back Sunday night. As I recall Monday was a holiday and I think I came back Monday night.

Q. What night was that? A. I think the 2nd of July, somewhere around there.

40 Q. According to the 1933 diary which comes from your office Saturday was the 1st day of July, Dominion Day? A. Yes.

Q. And can you remember whether you went down to the lake on the Friday the 30th or Saturday the 1st? A. Went down on Friday. Mrs. Brownlee and I left about five o'clock.

Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
continued.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18

John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

Q. And when did you come back? Sunday would be the 2nd?  
A. I came back the Sunday night.

Q. The second day of July. And what time did you get into town?  
A. I imagine about half past twelve. I could not say exactly. I know it was late.

Q. And did you not call up Miss MacMillan that night? A. No I did not.

Q. It was a little late? A. Yes.

Q. Now can you remember whether you called her up or met her by a previous appointment on the 3rd of July? A. My recollection is that I called her but there is a possibility that I told her that night when I left here on the 29th I would meet her, but my recollection is I called her up. 10

Q. And there were only two things you wanted to discuss with her, one was the question of going down to the lake and the other was the question of a change in her holidays? A. Oh no. No, she said to me she wanted to discuss some other matters with me, she was very anxious that I should see her.

Q. Oh, I see. It was her desire to see you? A. She made that statement as we were driving home.

Q. It was first to discuss her holidays and second going down to the lake and third other matters. That was the reason you met her? A. Yes 20

Q. And she had a telephone at Mrs. Cupper's. A. I don't know where her telephone was. She had changed her boarding house when we were down at the lake.

Q. You knew where she was? A. My recollection is she gave me her telephone number on the 3rd of July.

Q. Didn't you know she was moving to this other boarding house over the holiday? A. I knew she was moving to another boarding house, yes.

Q. And didn't she give you a definite number? A. If she did I did not remember it but I am quite sure she did not. I got her telephone number the night of the 3rd of July. 30

Q. But in any case you were at the office on Monday the 3rd of July?  
A. That is my recollection.

Q. And she was at the office on Monday the 3rd? A. Correct.

Q. And if there had been any particular business she wanted to discuss you could have called her into your office very easily? A. That could have been done, yes.

Q. And you telephoned her? A. It could have been done.

Q. It could have been done over the phone? A. Yes. 40

Q. And instead of that the Premier of Alberta in these distressing times takes an evening off to go out into the country to discuss a girl's vacation? A. With a girl I had complete confidence in and who was a close intimate of our home, yes.

Q. And she said you would pick her up somewhere at this carline on 97th Avenue that runs down by the Parliament Buildings. That was your

suggestion? A. My suggestion was I would pick her up in front of the house she lived in.

Q. How did you know that? A. She told me where it was.

Q. Did you know which house she was going to live in? A. I am not sure about that but I knew it was one of those houses across from the Building.

Q. And it is a fact that where you did pick her up was under the bridge that crosses 97th Avenue from 7th Street over to the Parliament Buildings? A. That is not my recollection.

10 Q. Are you sure of that? A. I am reasonably sure it was in front of her house.

Q. I want to give you every protection. I think you told me on your examination for discovery that you had no distinct memory of where you did pick her up. Has your memory improved? A. No it has not improved but my recollection is she was walking up and down in front of her house.

Q. Can you contradict her that where you did pick her up was under that bridge on that Avenue? A. I will say most emphatically that it was not; that it was near her house.

20 A. I do not care about that, Mr. Maclean. I am telling you what I think.

Q. Anyway you did not call at her house? A. I did not call at her house. She was out in front of her house and I picked her up wherever she was at the time I got there.

Q. And you started out and went west? A. Yes on the 3rd of July, yes.

Q. I am talking about the 3rd of July only. What car did you have that night? A. She says it was 31-884. That was my first impression but I would not want to be sure, but I know I came back from the lake in car 104.

30 Q. You took two cars down to the lake, your own Chrysler and the 104? A. Mrs. Brownlee and I took the Chrysler and the boys drove the 104.

Q. And there is no doubt on your examination for discovery you said it was the big 31-884 that you took? A. No doubt at all.

Q. That was the car that was reserved for state occasions? A. If you like to put it that way, yes.

Q. A very large car? A. A very large car.

Q. Was there a rug in that car? A. Yes.

Q. A particularly heavy rug? A. Not a particularly heavy rug, medium weight.

40 Q. And when you picked her up on 97th Avenue had you come over from your own house? A. No I had been at the buildings I think.

Q. How had you got on to 97th Avenue as far as you can remember? A. So far as I can remember now I drove from the house to the buildings. I was at the house for a while. I had some business at the office. I am not sure whether I went up town or not but I came down 109th Street as I recall and went down that street.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

Q. 97th Avenue? A. Yes. I do not know the name of it.

Q. And where did you turn your car? A. My recollection is that as I saw her walking on the street I went down further and turned and picked her up on the right side.

Q. Probably at 7th Street? A. It might be.

Q. Or 6th Street. 6th Street would be the next street? A. It might be.

Q. And you turned around, circled around, and came back and picked her up as your car was heading west? A. Yes I believe that is it.

Q. And then you picked her up and went towards 9th Street?

A. I don't remember.

Q. Do you know how you went out of town? A. I think I went down to Stony Plain Road.

Q. You would go up north on 9th Street to Jasper and continue north on 109th Street, cross Jasper and go west out along 104th Avenue and then go along by the railway tracks? A. Well might have done so. I have no recollection.

Q. That was not quite as public a way as going along Jasper?  
A. I don't know. It was quite public.

Q. And do you remember saying when you got to 104th Avenue "Drop your face so you won't be recognized?" A. I never told her that.

Q. Did you ever tell her that? A. Vivian MacMillan.

Q. Yes. A. I never did.

Q. Then you went across 124th Street to the Stony Plain Road out on 102nd Avenue? A. You cannot ask me any questions about the numbers of streets in the City of Edmonton. I am the poorest fist at remembering numbers of streets.

Q. I draw your attention to the fact that there is only one road, one good road leading west from Edmonton variously called the Jasper Highway or Stony Plain Road. You know that road—the main highway?

A. Yes.

Q. That is a Government Highway? A. Yes.

Q. What do you call that, a first class highway? Is that what it is called? A. I think so.

Q. It is graded and gravelled and maintained? A. Yes.

Q. And a very good road usually? A. It is.

Q. With scrapers going over it keeping the gravel nice and clean and smooth? A. They try to, yes.

Q. That is the road you went out? A. No I do not know that I did, I went up 104th Avenue. I might have gone out Stony Plain Road. That is the one that cuts across Harry Evan's place.

Q. Well that is the road that joins this Jasper Highway at 142nd Street? A. Yes.

Q. That is a sort of back door of getting to it? A. No it was not. I have driven that road many a time with my family and other people.

Q. As Miss MacMillan said, that is where you went? A. Yes.

Q. And then you went some miles out from the City? A. Yes.

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Q. Had you discussed the question of holidays yet? A. The question of holidays came up some time reasonably soon after we started. I told her we had been thinking the matter over at the Lake and that I did not think it was advisable to make any change whatsoever. I said I could no doubt have arranged the change if I had spoken to the head of the branch of that Department.

Q. Isn't it a fact that you told her on many occasions that you did not want to interfere or appear to favor her as it might cause comment around the building? A. No, sir, I did not say that to her on any occasion.

10 Q. On any occasion? A. Well I do not know on any occasion particularly that I would put it that way.

Q. That was your attitude was it not, not to appear to be favoring her around the buildings? A. I did not show Vivian MacMillan any favoritism or partiality of any kind around those buildings.

Q. And you liked her. She was a friend of yours? A. Absolutely.

Q. And if you had wanted to you could no doubt have got her advancement over the head of other girls? A. I presume I could as head of the Government.

20 Q. And do you say that before you left the city limits the question of changing her holidays had been discussed and you decided she should not change them? A. No, because we talked on general matters that evening and I could not say just when that conversation came up and how far out we were.

Q. But you had been thinking this thing over in the meantime when you were down at Red Deer? A. Yes.

Q. And you had your mind made up you did not think it would be wise for her to make any attempt to change her holidays? A. Not at that date.

30 Q. Did you expect to be in the city in the month of July? A. Did I expect to be in Edmonton during the month of July?

Q. Yes. A. No, not very much because I had made a great many speaking engagements out in the country and also I may say I was very anxious to have as much time as I could that summer down at the lake.

Q. Once the holiday question had been disposed of that settled any question of her going down to the lake except for the week-end? A. Except for the week-end.

Q. And what were the other matters she wanted to discuss with you, that she wanted to bring up? A. She brought up the matter of her relationship with Caldwell.

40 Q. Did she tell you she was getting fond of him? A. She told us that before. We knew that pretty well.

Q. You knew that? A. I knew that.

Q. Well what was the thing she wanted to discuss? A. Well one of the things was the reason why he had not gone out on the work that he had thought of taking up, and that is canvassing for magazines.

Q. Something seemed to be worrying her? A. I don't know that.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

But what she told me was that he had disliked the work very much going from house to house and he was staying in the city.

Q. So the subject of Caldwell was brought up and her relations with Caldwell? A. Yes.

Q. And what made you decide to turn off this fine gravelled highway and go into a side road that was rather rough and hilly? A. Well in the first place I did not know the road was rough and hilly until I got started and in the second place anyone who knows anything about our family driving knows that every time we go out for a drive we get off the highways as quickly as we can whether we are with ourselves or anyone else. 10

Q. Or whether it is with Vivian or not. You always got off the highways as quickly as you could? A. No.

Q. Didn't you say that? A. Well whether it is the family or anyone else.

Q. Or whether with Vivian, you always got off the main highway as quickly as possible? A. No.

Q. Didn't you say that? A. No.

Q. You suggested you should drive around the block. What do you mean by that? A. What I thought would be around a square. I thought of going up the north road and cutting right back west and going around 20 the square.

Q. How large is a square, one mile or two miles or what? A. The square is usually one mile square.

Q. Had you ever been over that road before? A. No, not that one.

Q. It was quite a lonely road? A. It is not so lonely when you go out to see it.

Q. Is it a good farming country out there? A. It seemed to be.

Q. How can you identify that road for me? A. Oh Mr. Maclean I don't know.

Q. Identify that road. What road was it? A. Well I have been 30 out and seen that road since.

Q. I am asking you to describe it. A. The road I have reference to where I went that evening is about six miles west and then you turn north.

Q. What kind of a road is it. How far out? A. I think it is about six miles out from the end of the pavement.

Q. Six miles from here Mr. Brownlee? A. I think about six miles from the city limits.

Q. From the end of the pavement? A. I could not say that.

Q. Was it this side of Winterburn? A. No, on the other side of Winterburn. 40

Q. On the other side west of Winterburn but only six miles from the city limits? A. Approximately.

Q. And how far up that road did you go north from the main highway? A. Well I could not give the exact distance, Mr. Maclean. We went up until I could see the railway tracks by the light.

Q. And what were you discussing as you went up this road? A. At that particular time?

Q. Yes. A. I could not say.

Q. Did you stop anywhere for a cigarette or to enjoy the evening? A. No.

Q. It was a beautiful evening, wasn't it? A. As I remember, it was.

Q. Just about a year ago. You remember there was quite a nice moon that night? A. No I don't remember as definitely as that. I was not particularly interested.

10 Q. You were not interested in the summer night? A. Not that evening, no.

Q. Did you stop anywhere along that road? A. Just for a moment or two, yes.

Q. And then turned around and came back? A. Backed up into a lane into a farm house and made a turn there and came back.

Q. South to the Stony Plain Road again? A. Yes.

Q. Where did you go then? A. Started back to the city.

Q. Did you turn east or west? A. Turned east.

Q. And how far did you go east? A. Oh maybe a mile.

20 Q. And where did you go then? A. Turned south.

Q. Do you know the road you turned south on? A. Yes. I think I could find it again.

Q. Was that the road with the big ditch just west of it? A. I do not know if it had a big ditch or not. I have not noticed it.

Q. There is a road about 2½ miles west from the end of the pavement with a big ditch just west of the road and rather heavily wooded along there with brush? A. There may be.

Q. Well is that the road that you went? A. Do you say 2 miles west?

30 Q. Yes. A. No that is not the road I went.

Q. And then you went down this road for a while? A. Yes.

Q. How far did you go down there? A. Well speaking from memory I would say probably three quarters of a mile or a mile. I could not say.

Q. Did you stop the car there anywhere? A. Just for a moment or two before we turned around.

Q. Did you stop for a cigarette or anything like that? A. I do not smoke cigarettes when I am out, Mr. Maclean.

Q. So if you stopped it was not for a cigarette? A. No.

Q. And then you turned the car east and came back again? A. Yes.

40 Q. How long had all this taken? A. Well I know, Mr. Maclean, that I left somewhere around ten o'clock and I know I was home and in bed at half past eleven, and I had put the car away in the meantime.

Q. Did you take the car back to the Government garage? A. I could not say whether I took it there or not but I don't think I did. I think I put it in the back yard of the house.

Q. You did not take Vivian to her house that night either; you

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

dropped her off about a block from her house? A. I do not think so.

Q. Well just try and remember whether you did not drop her off a block from the house? A. You mean at the hill at Cupper's. Yes. At her suggestion, she said there was no use going down that big hill.

Q. You could have driven her down there and gone up 97th Avenue?

A. Unquestionably, I am a good enough driver for that.

Q. There are car tracks up 97th Avenue where Cupper's house faces and where you might have a little trouble and the roads are rough but still passable? A. Yes.

Q. But instead of that you let her off a block north of her house? 10

A. At the top of the hill.

Q. That would be the corner of 108th Street and 98th Avenue?

A. At her suggestion, yes.

Q. That is where you dropped her off? A. I let her out. I did not drop her off.

Q. Had you settled the matters you had come out to discuss?

A. We had had a general conversation, yes.

Q. Settled the matters about her holidays anyway. You told her it was no use changing them at that time? A. Oh yes.

Q. And had you settled all the other matters she wanted to discuss 20 in this hour and a half in the country? A. Well, Mr. Maclean, I do not think she wanted to discuss matters particularly that night.

Q. Oh. Just wanted the drive? A. She wanted to get me out.

Q. She wanted to get you out? A. I think so.

Q. Had you telephoned her or had she telephoned you? A. Following the conversation of the other night I had telephoned her.

Q. You telephoned her? A. Yes.

Q. And again on July 5th you telephoned her? A. I did.

Q. And that night you had been with the Honourable Mr. Reid down to Vermilion? A. Yes, we had driven down in the morning and 30 driven back at night.

Q. How far is Vermilion? A. 180 miles.

Q. So you had driven about 360 miles that day? A. That is correct, yes.

Q. Had you made any date with her on the 3rd of July to meet her on the 5th? A. Excepting to tell her that I would call her up before I went down to the lake so that if she had any message to send for Mrs. Brownlee, any suggestion as to what time she was coming down, I would take it to Mrs. Brownlee.

Q. And that was your suggestion? A. Oh yes. 40

Q. She had not suggested that? A. No she had not suggested that.

Q. And who had driven that day to Vermilion? A. I think it was Mr. Reid's car. We both may have driven part way.

Q. It was rather a disagreeable drive, wasn't it—rather dusty?

A. Yes, drives in the country at that time were dusty with the gravel.

Q. And you got pretty well plugged up with dirt that day? A. Yes,

just as usually what would happen on gravel roads.

Q. And you landed at your house when? A. No, it was my car—no, it was his car. I got out at the Parliament Buildings and got my own car around nine o'clock, I think it was.

Q. What car did you get that night? A. The big car 31-884.

Q. The seven passenger Studebaker reserved for state occasions?  
A. Plus what I told you and my counsel that at any time my own car was being overhauled I used that car.

Q. And then you drove home? A. Drove home.

10 Q. And got cleaned up? A. Yes.

Q. And telephoned Miss MacMillan? A. I telephoned Miss MacMillan as soon as I got home and told her I would be along in twenty minutes.

Q. Any particular reason you wanted to see her that night? A. I have told you the reason.

Q. What was the reason? A. That I told her I would call her up for the purpose of seeing whether she had any message to send down to Mrs. Brownlee relative to her holidays.

Q. And you spoke to her on the phone? A. Yes.

20 Q. Did you give her a message? A. No.

Q. Did you ask if she had a message? A. No. I merely said I would call and see her.

Q. You merely said "Come over." You could have given her that over the phone? A. Yes.

Q. And you had driven 360 miles that day? A. Yes, granted.

Q. And you started out for another drive? A. Yes around the city for a short drive.

Q. And your house was vacant at that time? A. Yes.

Q. And your family out of the city away at the lake? A. Yes.

30 Q. And you started out for the South Side? A. Not towards my home.

Q. Oh no. You started in a rather peculiar way. You picked her up at 109th Street in the vicinity of the Administration Building and then when you got to the north end of the Administration Building you turned east and went down a very steep rough hill and over the 105th Street Bridge that goes over to the south side park. That is the route you took.

A. You know. You followed me.

40 Q. Certainly I know. And then you went to Whyte Avenue and turned west. That was in the direction of your home, wasn't it? A. I suppose that part of it would be, yes, the way south.

Q. And then you found out somebody was following you? A. I did not, not at that time.

Q. Now, Mr. Brownlee, have you any distinct memory of that mad dash around the south side there where you were turning corners and twisting and going on and turning one corner after another up one street

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 18

John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

and down the other? Have you any recollection of that? A. There was not so much of that done.

Q. Well your memory is better than that, isn't it? Or is your memory not as good with respect to that as it is with respect to other matters?

A. Well, Mr. Maclean, I was not watching the roads as closely as you were that night, or probably did.

Q. Have you ever seen a terrier chasing a rat and the rat running down in all directions and twisting and turning? A. No I have not seen that.

Q. You would not think your course that night was much of that 10 nature? A. No.

Q. Then after chasing all over the city you finally parked on Jasper Avenue and found out the number of the car? A. Yes.

Q. That had been following you, and then you drove Miss MacMillan—oh, by the way, Miss MacMillan has said you wanted her to walk home? A. That is not true.

Q. And then you drove her to where you let her out and this other car parked possibly 20 feet behind? A. When we started?

Q. This other car, when you stopped to let Miss MacMillan out parked 20 feet behind you? A. That is correct. 20

Q. Is it a fact, Mr. Brownlee, you are one of the strongest men in town? A. Physically, do you mean?

Q. Yes. A. I never thought so.

Q. I think it was Miss MacMillan, or was it your wife, she claimed you have the strongest grip of any man in town? A. Does she? Well that is not correct.

Q. If it is not correct, I am sorry. But it has been mentioned. A. I certainly say it is not correct.

Q. But you did not get out of your car to see who was in this car behind you? A. No. I knew the number. That is all I wanted. Had I 30 known what I know now I might have done differently.

Q. But you did not consider that at that time? A. No.

Q. And this car had been following you all around the city for half an hour? A. That is correct.

Q. Mr. Brownlee, you found out within a day or two who was in the car and who had been following you? A. I found out what car it was, what number, and since that time we have—

Q. How long did it take you to find out? A. As to who was in the car? 40

Q. Yes. A. Oh I could not say, probably three or four weeks.

Q. Anyway, from that time on you never asked Vivian MacMillan to go out for another drive, did you? A. I had no opportunity to ask Vivian MacMillan to go out for another drive between that time and the time I received your very kind letter.

Q. Now perhaps you will answer my question. After the night of the

5th of July you did not ask her to go out for a drive again? A. And I have given the answer—I had no opportunity.

Q. And from the 12th to the 15th of July, about that time, the dates are immaterial, you spoke to Miss MacMillan about going down to the lake? A. About the 15th?

Q. Yes. And she told you her father was in town—either in town or coming to town? A. That is what she told me.

Q. And up to that time you did not notice any change in her at all to what she had been for the past couple or three years? A. Well I do not  
10 want my answer to be thought to be incorrect. We noticed a change in Vivian MacMillan a very decided change, in the latter part of May but she seemed to be quite friendly again around the month of June.

Q. Speaking from memory about your evidence in regard to this. I thought you said something that Miss MacMillan on the 15th seemed to be about the same she had always been? A. That is correct about that time but I do not want to leave the impression that I had not seen any change prior to that.

Q. Had you seen a change? A. As I say we all around the house  
20 noticed a change in her somewhere around the latter part of April or the 1st of May.

Q. Now after getting the letter of August the 3rd, Exhibit 1, you went east I think the day after or within a few days and then the Government took the case on—the Attorney General's Department? A. The Government started some investigations, yes.

Q. And the Government spent \$1400 in making investigations? A. That is correct.

Q. So the Government spent \$1400 before you put a nickel into this case? A. If you wish to put it that way, yes.

Q. And the Government hired Mr. Harry Brace or instructed Mr.  
30 Harry Brace to conduct an investigation? A. That is correct.

Q. Did you pay for Mr. Brace's salary while he was on this investigation? A. No.

Q. What is his particular job in the Government? A. Mr. Brace is superintendent of insurance.

Q. And he has a staff of investigators in his office? A. Yes.

Q. And he and his staff went to work on this. A. No, he and his staff did not touch it.

Q. Didn't one of his staff go to Vancouver in this case? A. Certainly not, to my knowledge.

Q. And has Mr. Brace— A. And Mr. Brace only worked in his spare  
40 time.

Q. Has Mr. Brace been paid anything by you? A. I have reimbursed the Government, because I did not wish any suspicion to rest in the public mind that public money had been, finally, spent on my case until the proper time came at least.

Q. I do not wish to quibble with you. Did the \$1400 that had been

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

paid include Mr. Brace's salary? A. It did not include his salary for the reason that I say, that he was not out of his office during the day at all. Any time he gave he gave during his spare time.

Q. What did the \$1400 you paid to the Government include?  
A. I have not asked for the particulars.

Q. You have not troubled to find out what the \$1400 went for?  
A. No, I assume it was quite all right. I had confidence in the people.

Q. And in addition to that there were several detectives hired, were there not? Didn't Mr. Brace hire Mr. Burford? A. I understand he had Mr. Burford make some inquiries.

Q. Isn't he a gentleman who spent a year in Fort Saskatchewan recently? A. I do not know anything about him.

Q. And how much were you paying him? A. I have not asked for a detailed account as I told you, and I cannot say.

Q. Have you paid him anything? A. So far as my own personal knowledge of what Mr. Burford got goes I allowed him a certain amount, somewhere around \$25 a month for two or three months to hold himself in readiness in case he should go as a witness.

Q. And do you know whether the \$1400 included any money for Mr. Burford? A. Oh yes, I imagine so.

Q. And there was Mr. Schwantze, another detective hired by Mr. Brace in the same position as Mr. Burford? A. I have not heard he was a detective. I have never met him and do not know him at all.

Q. Is it not the fact that you purposely kept away from all this stuff so that you would not know anything about it? A. Not exactly Mr. Maclean. I was as you know, on the Royal Banking Commission and was engaged in that for two months and during that time this work was done, and I was not in Alberta and had no knowledge.

Q. May I interject something personal. You have complained about not being served at Ottawa. Did you request by long distance telephone from Vancouver that that Statement of Claim be not issued until the Banking Commission had finished sitting? A. No, sir, I did not.

Q. Do you know who sent me that message? A. I do not, directly. I have an idea there was a message sent but not at my request.

Q. And the statement of claim was held off until the sittings were finished? A. Well that is something I cannot say.

Q. Well let us get on. Do you know Mr. Dudley? A. Who?

Q. Dudley was a detective working on your case? A. I do not know him at all.

Q. Do you know he was employed by anyone acting for you? A. Any information I have as regards that comes from my solicitors.

Q. Do you refuse to tell the jury anything you know about him?  
A. I do not know a thing. I never heard the man's name until you raised it in the examination for discovery.

Q. You know Mr. Dudley gave \$400 to Mr. Caldwell? A. No I do not.

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Q. Spending money like a drunken sailor. You know that. Was it your money he was spending? A. I do not know—not to my knowledge.

Q. Was it your money he was spending? A. Not to my knowledge.

Q. As far as you know none of your money has gone to pay Mr. Dudley or his expenses? A. Certainly no money I have advanced directly has gone to Mr. Dudley.

Q. Well who was paying him? A. I do not know. I cannot say at the moment.

Q. You do not know? A. No I am sure I do not.

10 Q. How much did it cost you to bring Mr. Gaweiriss from Germany for this trial?

MR. SMITH: Is that of any moment at all to ask a question like that? Has it any relevance?

THE COURT: I do not think so but I won't bar it?

MR. MACLEAN: How much did it cost you to bring Mr. Gaweiriss from Germany to give evidence? A. I cannot say from memory—his actual passenger fare plus tourist from port of entry.

Q. You went down to pay it yourself, can't you remember what it was— A. I think it was around \$200.00.

20 Q. You don't remember? A. I don't remember exactly.

Q. You brought Mr. Snell up here in December last? A. Yes, I had a talk with Mr. Snell.

Q. Mr. Snell came up at your instructions? A. Not at mine personally but through my solicitors.

Q. And was Mr. Snell instructed to come up to Edmonton and see Mr. MacMillan? A. No, sir.

30 Q. How was it arranged he come up from Calgary to see Mr. MacMillan? A. I only have that indirectly from my solicitors so I do not know it is evidence, but I understand he came at his own insistence that before he would talk to us he was going to see Mr. MacMillan over there.

Q. And you say it was not at your instructions as far as you know that he came to see Mr. MacMillan? A. I was not in Calgary at the time he made up his mind to come. It was not at my instructions either directly or indirectly.

Q. How much did it cost to bring Mr. Snell up at that time? A. Oh I have not these figures at my finger's ends but it may have cost \$125 or \$130, I do not know—return fare. I know he only charged his actual out-of-pocket expenses.

40 Q. And your solicitor Mr. Porter went down to Halifax to take the Commission? A. That is correct.

Q. Do you know the reason why Mr. Snell did not give evidence and why he has come here? A. Only what I have seen in the press. I have not talked to him.

Q. He is here is he not? A. Yes he is here.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

Q. Before 1921 you were a lawyer at Calgary? A. That is correct.

Q. And a very busy lawyer? A. I think I could say with reasonable modesty that I had as good a practice as any young man of my standing in the legal profession at that time.

Q. So you were quite used to preparing evidence for cases and getting witnesses ready for the witness box? A. No, sir, because I did not take court cases at all. I did not like them and I only took two in my life. I specialized in commercial law.

Q. And in 1921 you became Attorney General? A. That is correct.

Q. Head of the Bar of this Province? A. I believe that position carries the other—yes. 10

Q. And in 1925 you became Premier? A. That is true.

Q. And have been ever since? A. That is true.

Q. And indulging at all times in arguments, debates and so forth, and able to hold your own on the floor of the House at all times with anybody? A. I would not say that. I don't know.

Q. And in 1930 until Vivian MacMillan came here you were Premier, a lawyer and King's Counsel and 46 years of age? A. That is correct.

Q. And she was 18 years of age, a country girl without previous city experience? A. She was 18. She came from Edson; and was a girl I think who could take her place in any company. She was not a poor country girl, if you mean by that an inexperienced girl, and I use that in the best sense. I am not suggesting anything improper when I use that term. 20

Q. You did find pleasure in her society? A. We undoubtedly formed a very high opinion of Vivian MacMillan and liked to have her in our house.

Q. And whether you were tired, ill, worried or busy, when she went over there on Fridays and Sundays if the maid was not home when she left you drove her home alone? A. As a matter of ordinary common every-day courtesy, yes. 30

Q. No matter how you felt, whether tired, sick or ill, you would drive her home? A. I would be very tired or very ill before I would refuse a guest the ordinary courtesies that I thought was coming to them, Mr. Maclean.

Q. You never thought once of telephoning for Mr. Munro your chauffeur to drive her home? A. Why no because it was a very easy matter for me to get in the car when I had it there.

Q. Mr. Brownlee, I just find this is part of your examination for discovery, 496, where I was asking you whether you had ever noticed any change in Miss MacMillan. (Reading): 40

“Q. Did you notice any change in Vivian MacMillan's attitude to you since September 1932 when she first met Caldwell? “A. No I never noticed any change in her attitude towards me. Looking back now we have noticed a little change in her attitude around the house.

“Q. What change if any did you notice? “A. Well some time

during the month of April 1933 we thought that she seemed bothered, but she continued to come to the house right along.

“Q. What do you mean by bothered? A. Well, when she was sitting around the house once or twice there was a little comment that she seemed to be a little bit bothered, but that is only looking back now. We did not notice anything at the time.”

Q. You made those answers to those questions, and that is the truth?

A. That is quite true. That is practically what I have said today.

10 Q. You mentioned that your secretary was a Miss Brown? A. That is correct.

Q. She was your secretary in Calgary before you came to Edmonton?

A. Yes.

Q. How many years had you had her in Calgary? A. I think she first started to work for me in Calgary in 1918, somewhere around there.

Q. And you brought her up to Edmonton when you came? A. She came when I came, yes.

Q. And she has been your secretary ever since? A. That is true.

Q. She used to live at the Annamoe Apartments did she not? A. Not to my knowledge.

20 Q. Not to your knowledge? A. Not to my knowledge.

Q. And I suppose Miss Brown, like an efficient secretary, would, on Saturdays and any other time, wait till she saw that you did not desire her any longer. That was her custom? A. She waited until I left the office unless it was a case where I had a council meeting or some special delegation.

Q. And unless you told her she could leave the office? A. If there was a special council meeting or delegation she would ask if there was anything further and if I said no, she would go.

30 Q. And otherwise you would walk right out before she would go. All you had to do was to put on your hat and coat and go? A. She would finish up after I left, yes.

Q. And there is just another small matter you mentioned this morning. You say on one of the occasions when Vivian was in your office on Sunday mornings was April 23rd? A. That was my recollection.

Q. And you were going over to town to get her and as you passed the Parliament Buildings you remembered this letter you had written to Premier Bennett and had not sent off and you went and got Miss MacMillan and then went up to your office to finish the letter? A. That is correct.

40 Q. You did not think of going up to the office before you got Miss MacMillan? A. No, because Mrs. Brownlee had fixed a time for me to pick her up.

Q. You never thought of going there before? A. I never gave it a thought. That building on a Sunday is as much a public place as at any other time.

Q. Couldn't you have phoned her? A. I might, yes.

Q. And there is another matter, speaking about Sunday morning

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

January 1st. I would like to see whether I could not refresh your memory, that on the morning of Sunday, January 1st, 1933, that was the day after New Year's Eve, and you came over to get Miss MacMillan, don't you remember that Mrs. Brownlee was with you and remarked on Vivian's—"that she looked like something the cat dragged in?" A. No I have no recollection at all of that.

Q. Cannot you remember going with Mrs. Brownlee in the car to get Miss MacMillan on that Sunday morning? A. I can't remember that.

Q. What is your memory of it? A. Well my memory is a very vague one. I have a recollection that on that day I went over to get Vivian we came back to the building and we ran up while I picked up a bunch of papers. It was about that time. I would not swear it was the 1st of January. I am sorry, but I can't remember. 10

Q. You at all times had keys to the Government Garage? A. That is correct, yes; but not at all times. I would not say what year it was I got the key to the Government garage but I would say around 1929 it would probably be.

Q. And you have always had a master key to the Parliament Buildings? A. That is correct.

Q. Did you know that Mr. Harry Brace had called on Mr. MacMillan in town? A. I have heard there was a conversation between Mr. MacMillan and Mr. Harry Brace. 20

Q. Was that with your authority? A. No it was not.

Q. You did not authorize it? A. No. I understood it was something that was arranged between those two men over the telephone.

Q. You were at no time willing to pay Miss MacMillan any money? A. I never made an offer to Miss MacMillan directly or indirectly nor did I instruct anyone to do it.

Q. You were never willing to make an offer? A. I never was.

Q. But you do want her to pay you about \$10,000 for disbursements? A. I might have counterclaimed for that amount, but my solicitors might answer that. 30

Q. Isn't that what you are asking from this girl? A. I believe the counterclaim asked for that, yes.

Q. Do you remember on the night of June 27th, Mr. Brownlee—

THE COURT: Just a moment. Perhaps that is the handiest place for me to refer to something in my mind. You are not stating any sum of damages in your claim. What about Rule 27 in the last paragraph of it?

MR. MACLEAN: Yes I know that Rule as to costs contained a 40 provision.

THE COURT: It is just a question, if it is merely a question of costs—

MR. MACLEAN: It is under the costs section.

THE COURT: I know it is, but it looks so imperative that no damage action may be brought without stating the damage.

MR. MACLEAN: Well there has never been an application in regard to it. I may say I was expecting it. The English Practice and the Ontario Practice allows you to claim unstated damage. Our ordinary rules of pleadings contain no mention of it but it is tucked away there in the Rule as to costs.

THE COURT: If it were not for Rule 17 I would feel it had to be amended but Rule 17 may enable me to throw it out, I mean to deal with it.  
10 Rule 17 gives the Judge exclusive discretion in all those Rules from 18 to 33.

MR. MACLEAN: I have just forgotten what those rules are. I know from memory it is tucked away in the rules as to costs.

THE COURT: Go on.

Q. MR. MACLEAN: Do you remember on June 27th, I think that is the night your boy had the Chrysler out and you were a little worried about him? A. He had the 104 Studebaker.

Q. And you had the Chrysler. Is that it? A. Yes.

Q. Do you remember whether you went to your office that night to get some papers? A. I think I did.

20 Q. You think you did? A. Yes.

Q. And you went to the C.P.R. Station to get your reservation to Calgary? A. That is something I cannot say whether I went to get it then or got it when I went to the station later.

Q. You usually go from the north side station? You do not take the train from the south side station? A. I usually go from the north side.

Q. The south side station would be only a few blocks from your house? A. That is true, it is just a few blocks from the house.

Q. And you could pick your reservation up there just as easily? A. Oh yes, but I have never made a habit of doing it. That is the only

30 answer I can give you.

Q. Now I am not going to take a great deal more time. I am merely going to ask you whether, having heard the evidence of Mr. MacMillan and Mrs. MacMillan, which was not cross-examined by my learned friend, and Miss MacMillan, you still think your statement, that at no time during the drive out to MacLeod Valley was the question of a business course for Vivian brought up or the question of you acting as a guardian for her or the question of your getting a position for her in Edmonton was ever brought up, to be correct? A. I say very emphatically, and I am satisfied these people know it, that the term "guardian" was not used at any

40 time on that drive.

Q. They are all deliberately lying?

MR. SMITH: Oh no—

(The Witness): Did I say that?

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18

John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

Q. MR. MACLEAN: Is not that what you say? A. You can put any interpretation on that you like. I am saying that the word was not used.

Q. Now referring to Exhibit 6, which has not yet been read to the jury. This is a letter of August 12th when Mr. and Mrs. Brownlee visited the MacMillan home in Edson. This is a letter that was written by Mrs. MacMillan on the day that you and Mrs. Brownlee went out there on August 12th. And being a solicitor, you know, Mr. Brownlee, of course, that where a client has a solicitor it is a little unethical to go behind another solicitor's back?

10

MR. SMITH: Who says so?

MR. MACLEAN: Oh I think possibly a solicitor knows that even if he is a client.

MR. SMITH: Well as a solicitor I know you are wrong.

Q. MR. MACLEAN: You were a practising solicitor for many years with, as you say, as large a business in Calgary as any young man there. Now would you consider trying to settle an action behind another solicitor's back— A. I did not go to Edson with the slightest thought of trying to settle that action.

Q. Just answer me. You would not? Would it— A. I want to know what you mean by your question? Do you mean as a solicitor I would try to settle a case behind another's back? No.

Q. That would be part of your training. You would not do anything like that? A. Acting as solicitor to another solicitor I would say yes.

Q. Now this is a letter, gentlemen of the jury, written by Mrs. MacMillan to her daughter immediately after the visit of the Premier and Mrs. Brownlee (Reading Exhibit 6). Does that letter substantially state what was said by you on that occasion? A. That letter is absolutely inaccurate. It is inaccurate.

Q. Did you say to Mrs. MacMillan on that occasion: "It is very strange, I took her for a little drive one evening not long ago, as I had often done before."? A. I did not make use of those terms or those words in any way, shape, manner or form.

Q. Up till this time that you got this letter or up till this time, August 12th, the only communication that you had had in regard to this action was Exhibit 1, the letter of August 3rd? A. The only written communication, yes.

Q. Had you had any information from anyone about what the action was about, in the meantime? A. Well just what do you mean by that, Mr. Maclean?

40

Q. Well for instance, you stated, according to the letter Exhibit 6, you gave certain information to Mrs. MacMillan that the charge was that for some years you had had illicit relations? A. I did not use that term with Mrs. MacMillan. I did ask her if she would tell me what I was charged

with because I did not know at that time whether I was supposed to be the father of a child—a coming child, or what, and I was anxious to know.

Q. But there was no information contained in Exhibit 1, the only letter which you got, that your conduct extended over a course of years?

A. I did not say that to Mrs. MacMillan. I told you—

Q. That is pure—you never said that? A. I did not use those terms, no. I gave the Court this morning the gist of that conversation to the best of my recollection.

10 Q. Did you make any memorandum of the visit at the time? A. No I did not make any memorandum.

Q. It is not in your diary? A. My memory on matters of that kind is fairly good and as a man who had been a solicitor, and I went there on solicitor's instructions, so I was very careful what I said.

Q. When Miss MacMillan was over there at your house you occasionally did slip her little notes wanting her to leave? A. Yes on one or two occasions I think I did, in company with my wife.

Q. And any time you wanted her to slide out you would slip her a note? A. That is not true.

Q. But you did write her notes? A. On one or two occasions.

20 Q. And on January 2nd, 1933—that was the Monday that Mr. Snow, you say, was in your office? A. That is correct.

Q. Did you see Miss MacMillan that day? A. I am quite sure I did not.

30 Q. You could not by any chance have driven her back to her boarding place that morning? A. I am quite sure I did not see her because my recollection is very, very clear that after Mr. Snow left, somewhere after 12 o'clock that I went home. Mrs Brownlee and I wanted to get away to the theatre that afternoon and we had an early lunch and went to the theatre and I later went to Government House to the reception. And I am quite sure I did not see her that morning.

Q. You would not have time to drive Miss MacMillan home and did not do so? A. I am quite sure I did not, because I am quite sure I did not see her that morning.

Q. Your recollection is quite clear? A. I am telling you my recollection, Mr. Maclean, absolutely.

Q. Just as clear as anything else you have given evidence on? A. Mr. Maclean, I have given evidence today to the best of my information and belief.

40 Q. But of course you may be mistaken? A. Oh I suppose every man is fallible but I have given this Court everything I could.

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RE-EXAMINATION BY MR. SMITH

Q. There is just one matter I want to ask you about. Something was said about notes—

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 18  
John  
Edward  
Brownlee  
Cross-Ex-  
amination  
*continued.*

Re-Exam-  
ination

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 18  
John  
Edward  
Brownlee  
Re-Exam-  
ination  
*continued.*

Q. MR. MACLEAN: I am sorry Mr. Brownlee. There is another thing I had meant to ask you. In all these times that you have been out with Vivian MacMillan you have never put your arm around her?

A. What do you mean by that?

Q. Have you ever put your arm around her shoulder as a caress?

A. Not as an intentional caress—no.

Q. Have you ever kissed her when you were out on those drives?

A. No.

Q. Have you ever had any desire to kiss her while you were out on those drives? A. No.

10

Q. Have you ever had any sexual desire for her whatever? A. No.

Q. MR. SMITH: A moment ago my friend Mr. Maclean asked you if you had written Vivian MacMillan any notes and you said on one or two occasions you might have. Tell me what those occasions were without mentioning anybody's name. A. I have a recollection of one evening that we had company and I was very tired and my recollection is I slipped a note across to her and asked her if she would leave early.

Q. For what purpose? A. Well I did not wish to appear discourteous to company but as a matter of fact I thought I could get to rest a little earlier by doing it.

20

Q. Break up the evening? A. Yes.

Q. Did you ever write her any other kind of notes? A. I do not think I wrote her more than two or three during the time she was there. There would be occasions of that kind.

### No. 19

#### Evidence of Florence Brownlee

No. 19  
Florence  
Brownlee  
Exami-  
nation

FLORENCE BROWNLEE, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Q. You are the wife of the last witness, John Brownlee? A. Yes. 30

Q. And you are the mother of Allan and Jack Brownlee? A. Yes.

Q. Have you ever given evidence before, Mrs. Brownlee? A. I have never been in a Court House before.

Q. Now I intend to begin with you with 1928. At that time you visited the Mayo Brothers with your husband and your boy Allan?

A. Yes.

Q. And I want to ask you if from that time on you have lived a normal sex life with your husband? A. I have lived a normal life in every way, Mr. Smith.

Q. Including sex matters? A. Yes.

40

Q. And what activities have you engaged in since that time, first, with respect to sports? A. Well I have golfed, paddled a canoe, ridden horseback, skated.



Q. You have carried on your social duties? A. As far as I have been able to with the boys. I must say that I am not as active socially as some women in the City but I think I have carried along my social duties in so far as they were required of me.

Q. And have you enjoyed physical and mental health? A. Perfect.

Q. Now you prior to that had had tuberculosis? A. Yes.

Q. And what assurance did you receive from Mayo Brothers with respect to your condition of tuberculosis? A. They told me that I could come home and live normally and just carry on as I had done before I had  
10 any knowledge of the trouble.

Q. And had you had discussions with Vivian MacMillan with respect to your physical condition? A. Oh yes we had. My son was quite interested in his trip to Rochester and was continually talking about it and in that way we got into family discussions about the clinic and how wonderful it was, and Vivian told me her mother had been there just a short time before I had, evidently, and in the discussion I mentioned what had been done for me and how they had declared that I was physically and organically sound.

Q. And did she know from you that you were physically fit. A. Oh  
20 yes, she could not help but know because she was around so much and heard these discussions.

Q. And had she not from time to time slept with you in the same bed at home? A. Yes.

Q. And knew something of your physical condition? A. Yes.

Q. When did you first hear of Vivian MacMillan? A. After my husband had been for that trip to Edson in July. He came home and his clothes were in a terrible condition and I gathered them up to send them to the cleaner and we got into a conversation over this trip.

Q. A terrible condition, in what way? A. Mud.

Q. And did he discuss with you this trip to Shining Bank? A. Yes.  
30 there seems to have been a little fun over the experience coming home.

Q. And did he or did Vivian MacMillan or Mr. MacMillan or Mrs. MacMillan tell you that on that occasion your husband had promised them he would act as a guardian to their daughter when she came to Edmon-  
ton? A. Never.

Q. Did any of them ever tell you that he had promised to get her a job when she had finished her business course? A. No.

Q. And from the time he was in Edson until Miss MacMillan came to Edmonton did you receive a communication of any kind from her, her  
40 father or her mother? A. I had never even seen her father until in the Court House the other day. I had never seen him although I know he has been in Edmonton. Her mother I have entertained here on several occasions but she had never asked me how Vivian was getting along at school; she only hoped she had not been a nuisance in my household.

Q. But had you any conversation about her coming to Edmonton to go to school? A. No.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

Q. Or were you consulted about her living at the Y.W.C.A.? A. No I was not.

Q. And with all the various changes of residence which Vivian subsequently made did she show you the places at which she intended to live? A. No, she used to pick up our newspaper when she was thinking of making a change and go through the list of boarding houses but she never asked my advice at any time nor did I ever see her boarding house until she had been there and there have only been one or two or them that I have ever been inside.

Q. Now Miss MacMillan has said that in response to a telephone call she received on the 6th of September she was at your home on Sunday the 7th and had tea. Was Miss MacMillan at your house on the 7th of September? A. No, Mr. Smith, she was not. 10

Q. Where had you been just prior to that? A. We were in Eastern Canada all of August and in September we motored back from the East. We arrived in Edmonton some time between two and four o'clock in the morning of Saturday very weary. We had come from far beyond Saskatoon that day and we stayed in bed almost the entire morning resting. I had to open up the house. I had to get my maid and she certainly was never invited over to my house for Sunday or that week-end. 20

Q. Or was anybody else invited? A. No, we were by ourselves until I got the maid.

Q. And I want you to tell me how you just got in touch with Vivian MacMillan? A. To the best of my recollection some time in the middle of September my husband came home from the office and he said "Do you remember me telling you about a girl in Edson who might come down?" And I said I guess I did and he said "A friend was in the office today and tells me she is in town." Well I said: "I will look her up when I get time." And just shortly after that the first air exhibition took place out at the airport. This was the 17th of September. As I remember I went over to Alberta College in the morning just before noon and asked for her at the desk and she came from her classroom. I introduced myself. 30

Q. You had to introduce yourself? A. Oh yes I had to introduce myself. And I asked her if she would care to go to the show that afternoon because we had to know in time to get tickets.

Q. Were you going to procure— A. No but my husband was, but I was to phone him.

Q. And did she agree to go to the air show with you? A. She was very happy to go.

Q. And was that the first occasion on which you ever saw Vivian MacMillan? A. I believe it is, for this reason that all that afternoon we called her Miss MacMillan and it was the one and only time we did. At our second meeting she begged us to call her Vivian and I remember so vividly her appearance. A woman does notice that when she meets another woman for the first time. She was a much smarter looking girl than I had expected to see—rather more travelled looking. 40

Q. And after the air show where did you go? A. I think we brought her home for dinner that night but I am not sure of that.

Q. Do you remember the dress she had on on that occasion when you say she was smartly dressed? A. Oh yes, she wore a navy blue suit of some sort and she carried in her hand a white beret and out at the air show we met friends from Ponoka and I remember her pointing out a young man from home to me. I have a very vivid picture of her that afternoon, in my mind.

10 Q. Now when did you in your memory next see her? A. I think I asked her over for the following Sunday to tea because again I see a picture or her as she was that day and I know that day we called her Vivian.

Q. Now at that time did you have any girls frequenting your house? A. Oh yes there were quite a few girls coming.

Q. And has that been a habit of yours to make your home headquarters for single girls? A. Ever since a friend from Winnipeg came to take a nursing course here. She brought her friends to our house and after she left her friends continued to come both young men and young women.

Q. And that has been so ever since? A. That has been the custom.

20 Q. And these girls you speak of. Had they anything to do with the hospital over there, any of them? A. Oh yes most of them were girls in training.

Q. What hospital? A. In the University Hospital.

Q. Which is not far from your home? A. Just around the corner a couple of blocks. I have always been interested in nurses in training because my sister was in charge of a general hospital.

Q. Whereabouts? A. In Calgary.

Q. And had you associated with girls in training at that time?

A. Yes I had. I had become interested in their training course.

30 Q. Well now after that Sunday will you tell me as well as you can the next time you remember seeing her? A. Yes. As far as I can remember my husband and I were going for a drive on a Saturday afternoon and we drove through the town to pick up books and we were going on down the Fort Trail and we met Vivian and the young man and asked them if they would care to go for a ride with us. The young man looked a bit doubtful but Vivian was happy to come, and they both got in the car in the back seat and when we got back to town I said: "Why not come over and have dinner with us?" And they came over. I remember this occasion so well because I had a rather incompetent maid and I got home and found her cooking breakfast sausage for dinner, so we went on down to Mayfair  
40 Country Club for dinner and it was towards the end of the golf season because it was chilly and we had to have our dinner inside by the fire.

Q. Now I want to ask you this. Miss MacMillan has said that immediately following her first visit to your home in September whenever that was—she says it was on Saturday that immediately she started going to your house an average of three times a week. Is that correct? A. No, that is a mistake. Anyone who knows me knows that I am rather slow

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

making friends. I keep them when I make them. Oh, she came—well I have given you the general account there to the end of September. After that, well, she came on Sundays, I am quite sure of that and probably on the odd Saturday afternoon but it was not until close to Christmas that she started coming over frequently. I had another friend staying there and I had nieces at the time staying with me and I had a pretty full house.

Q. They were staying with you at the house? A. The nieces were with me and this friend was with me.

Q. Now when did Miss MacMillan first stay with you at your home?  
A. January 1931, the 16th of January. 10

Q. And what was the occasion then? A. She sprained her ankle. She had sprained her ankle.

Q. And how did you get in touch with her? A. Two of her friends telephoned me at noon on Friday the 16th and told me that Vivian had turned her ankle and did not know what to do about it. "Well," I said: "I cannot get a car at this time"—it was at lunch hour—"but tell Vivian I will get a doctor to go down to the Y.W.C.A. and strap the ankle."

Q. And did you do that? A. I believe I did. I think I got Dr. Mewburn, I am not sure, but I think he went to the Y.W.C.A. and strapped the ankle. But in the afternoon I went and got her. The doctor had asked for an X-Ray of the ankle. That is why I think he had seen it, and I took her to the University Hospital and Dr. Proctor took a picture of that ankle. They gave her crutches and I brought her home. I had two empty beds at that time because that night my husband went to Calgary and my son John joined him next day and they went to the Pacific Coast. She was with me for some little time then. I cannot tell you for how long. 20

Q. Do you remember when Mrs. MacMillan was first in your home?

A. Oh I cannot say that exactly Mr. Smith. I know she was there in the winter of 1931 at least twice. She had tea with us and spent the evening with us. 30

Q. Did you ever have any complaint from her, her husband or her daughter Vivian with respect to your husband's treatment of Vivian MacMillan? A. Oh no, nothing.

Q. Nothing? A. No.

Q. Now I am going back again. You say she was there in the winter of 1931? A. January, yes.

Q. And I wonder if you could tell me just in those visits, how would she be termed—at home? A. My recollection of her that winter, she was a school girl and she had not started coming Thursdays at that time. She was in our house more often Friday and Saturday and always Sunday I think. Friday nights and Saturday nights the boys were free from homework and she was up and we often went to a show, the whole family, and we would take her home at that time and then come home ourselves. If we did not go to a show the family were free to go along in taking her home those nights. Later in the year she developed the habit of coming Thursdays but I had another friend who used to come Thursdays at that time and she 40

just lived a couple of streets away. She had been coming to our house for some years.

Q. Well was there anyone in your house in 1931 capable of driving a car except your husband? A. No.

Q. And he drove the guests home from your house in the evening?  
A. Always if I asked him. If he was there he offered to do it. I often had to telephone him and ask him if he could.

Q. And did you on occasion go with him driving these people?  
A. Always if there was someone staying with the boys.

10 Q. Are you fond of motoring? A. Very fond of it. I motored back from Eastern Canada. I am that fond of it.

Q. Well you are fond of it? A. Yes I am very fond of it.

Q. Now you had a maid named Jean McCloy? A. Yes, she came to me on the 1st of November 1930.

Q. And she was in your employ throughout your acquaintance with Vivian MacMillan? A. Almost entirely. She left me to go home the 1st of May 1933 but I wanted to go east in June and I got her back for the month of June again. She was up practically there all through.

20 Q. And what was the situation that finally developed? What place did Vivian MacMillan finally make in your household? I mean in your regard in respect to your family? A. Well she was very dear to me. She was just like a daughter to me. I was annoyed with her at times just as I would have been annoyed with my own daughter. I was very happy with her at times. She was careless around the house, but most girls are I think. But she certainly was just one of my family.

Q. And would that be Vivian's relationship existing between her and the other members of the family? A. Yes, especially my younger boy was very fond of her and I think she was very fond of him.

30 Q. And did she play with the boys and amuse them and assist them?  
A. Yes, and with the dog, the boys and the dog.

Q. And did she appear to be a normal healthy girl while she was associated in your house? A. Yes, the way I thought of her was just a bit of sunshine in the house.

Q. Now coming to the month of June 1931. Did Vivian stay with you in the month of June in your husband's absence? A. Yes, she was over there for at least two weeks I think.

Q. Were you glad to have her? A. Very, very. She and I took a great deal of pleasure in fixing up a little front room for my niece who was coming for the summer.

40 Q. And she finished her business course about the end of June?  
A. Yes.

Q. Did she have any discussion with you about obtaining a position?  
A. Yes. She asked me if I thought that Mr. Brownlee would mind speaking to Mr. Smailes and I said I did not know but I would ask him. The next morning at breakfast, I think it was, I asked him and he said: "Oh no I would rather not do that. Tell her to go over and see Mr. Smailes herself."

And I took it upon myself to phone over and tell Mr. Smailes and I reminded him of the young lady he had met in the winter at the Legislative At Home and dance and I asked if he could see her and he said: "Why of course, tell her to come along."

Defendant's  
Evidence

Q. And did she go? A. Yes.

Q. Now we have already heard Mr. Brownlee was away a good deal in July and August of that year. So I am not going into it. But do you remember when you went on your holidays that year, where you went?

A. The family, Mr. Smith?

Q. Yes. A. Yes we went down southwest of Pincher Creek in the foothills to the ranch of a friend. 10

Q. And do you remember when you returned? A. Yes, it was some time early in September.

Q. Now, as a matter of fact you went to the Coast during that month? A. Yes.

Q. And we have had some evidence with respect to that. On that occasion Mrs. MacMillan accompanied you in your compartment?

A. Yes, she joined me at Edson at four o'clock in the morning.

Q. And Miss Vivian MacMillan has said that you did not want to go to the Coast because you were afraid to travel alone? A. That is not true. 20

Q. And that you requested her to telephone her mother to ask her mother to join you. Is that true? A. No that is not true.

Q. What are the circumstances of the mother joining you? A. After dinner at night we sat in the living room. I was all packed and ready to go and Vivian sighed and said: "Oh I wish my mother was getting a holiday trip like this." And we went on talking and after a while there was another sigh and she wished her mother was going to get the benefit of sea breezes. And after two or three hints of that sort I suddenly realized that Mrs. MacMillan had a railroad pass and I had the upper berth in my compartment unoccupied and I told Vivian if she wanted to phone her and tell her mother that that berth was available, to phone. And she went to the phone immediately and spoke to her father and she told him and she said: "Dad, you will have to ask mother to call back soon because Mrs. Brownlee's train leaves in a short while—I think it was at ten. And after a while she phoned back and spoke to Vivian and spoke to me and said she would be very happy to go if I was sure she was not dis-commoding me. 30

Q. Were you used to travelling alone before that? A. Oh yes, I have done a great deal of it.

Q. Vivian stayed at your place during your absence? A. Yes, quite a time. 40

Q. How was that? A. Well that is quite a story. We were in Banff in the early part of the Fall. Well I had better start—my maid went home on the 15th of June and she was to be back on the 15th of September and she was to let me know if anything happened that she could not be back. I took the precaution of writing from Banff to her and when I got back to town I had not heard from her, so we drove out to Busby where

the girl lived. In the meantime she drove into Edmonton. We crossed. But she left a message for me that she would be a week or ten days longer, she would not be back on the 15th; it would be a week or ten days longer. I made my plans accordingly to go on the night of the 24th. The afternoon of the 24th I got a phone call saying that she could not possibly be in until the first of October or the last of September. And I had started my packing. I immediately stopped. I think I phoned my husband stating Jean was not going to get back. About ten minutes after five Vivian came over to the house. It was a Thursday. She came right up to my bedroom and she said:

10 "Aren't you packed?" I said: "I am not going, Vivian." "Well," she says: "You are so" and I said: "No I am not, Jean is not going to get back." And she said: "Oh you are not going to miss a trip like this, you are going to go and I am going to stay right here till Jean gets back."

Q. And did she remain there? A. Well she had to go and get her things before she could remain. She had no bag at the house.

Q. And that was done? A. Oh yes.

Q. And were you quite content to have her remain there? A. Very happy. I knew she would see Jack was not left alone late in the evening.

20 Q. And did Mrs. MacMillan return from the Coast with you? A. Oh yes. She knew I was having the compartment coming back too, and the berth was available and we joined each other, I think she got on the train at Merritt or some place on the way back. I came from Victoria.

Q. And you returned about what time? A. Well I got in here on a Sunday morning. We could have checked that in a newspaper. I said to you earlier I thought it was the 13th but I think it was the 16th. I have not any diary, but roughly, and we got in on a Sunday morning and Mrs. MacMillan came right through to Edmonton and Sunday afternoon Mrs. MacMillan and Vivian came over to our house and had tea with us and spent the evening making up some kind of basket to take a little pup home

30 that Vivian had given her.

Q. Now going on to Christmas of that year. Did Miss MacMillan go home for Christmas 1931? A. I believe so.

Q. Did you receive any presents from her aunt? A. Not just at that Christmas time but I have on two occasions. Her Aunt first sent me a very pretty work basket hand painted.

Q. When was that? A. Some time in the winter of 1931.

Q. Anything later? A. In June of 1932. I had already purchased my spring costume and Vivian had evidently written her and told her what colors I was wearing, because she sent me a wicker work purse matching

40 the colors of the costume I was wearing and—

Q. Before you went to the Coast Vivian was left at the house. What sleeping assignments did you make for the persons there? A. She was in my bedroom and Allan was in the maid's room. My bed was the most comfortable in the house and there was a telephone there.

Q. But did you assign Allan to the maid's room? A. Yes, because in the spring when I did over that room Allan went wild over it and he

wanted it for his own and I had promised him if there was ever a chance for him to sleep in it he could.

Q. Do you remember your husband going east in the month of April, 1931? A. Oh yes he was away then and he was away later in the spring of 1931.

Q. And did Miss MacMillan stay with you for some time at that time? A. Well she stayed with me in the spring of 1931, she stayed with me the last two weeks of June I know.

Q. But I am speaking of earlier than that. I am speaking of April? A. In April she may have done. I know in the spring of that year she was with me some time because we would get up some Sunday mornings and go to church together. 10

Q. I want to speak to you about the spring of 1932. Was Mr. Brownlee away and was Miss MacMillan staying with you? A. Yes.

Q. And do you remember the time? A. I remember very definitely the time. My husband left the 6th of April and Vivian came to us the 6th of April and on that night the boys and Vivian and myself went to the theatre after my husband had left. The train left early then and we saw that Frenchman Maurice Chevalier's picture.

Q. And she says that when she returned practically every night he took her from the maid's room where she was sleeping, under the cover of running water in the bathroom and took her into his own bed with Jack sleeping beside him and put her into his own bed and had sexual intercourse with her there? Could that be true? A. No, sir, it could not be true. 20

Q. Could that go on without you knowing it? A. No it could not.

Q. Why not? A. Well I even hear the dog when he pads up at night and I don't think anyone can make less noise than the dog padding and I can even hear my husband snore in the night and I always go to see what was the matter.

Q. And has that always been the case? A. Ever since we have been in Edmonton and since he has been ill with congestion of the lungs. 30

Q. And she says how she was there half an hour and that then he flushed the toilet again? A. Well the second is too many.

Q. Well what do you mean by that? A. I would have investigated, without a doubt. My family are not in the habit of getting up in the night and the only one who walks in his sleep is Allan and he sleeps with me.

Q. And at that time what was Jack's nervous condition? A. Well he has grown terribly fast ever since he was a baby. He has had his leg in a plaster cast on three different occasions from the hip to the ankle. The first time he was in that plaster cast was after the dull month of December and he was quite a youngster and the thing got the better of his nervous system. He had had a scare years before in Calgary and he is a highly strung youngster, anyway. Well the winter he had the cast on for the first time I could not leave him for any length of time at all because of his nervous system. From year to year it has improved. 40

Q. Was he a highly nervous boy at this time, 1932? A. Very



nervous. When his father was not home and sleeping in the house we had to have the hall light burn all night and his bedroom light burning a great part of the night.

Q. Between these two beds we have learned there is a table with a lamp on it? A. A study lamp

Q. And which of those beds did your husband occupy and which did your boy occupy in 1932? A. My husband occupied the bed by the reading desk and Jack in the bed by the window.

Q. That is the north and your husband south? A. Yes.

10 Q. That lamp we have heard from Miss MacMillan was shaded in such a way that when turned on it did not shine on your husband's bed? A. Well that is wrong. My husband read at night and the light was put on the other side to keep the light out of Jack's eyes and my husband read. I often went in and asked him if he did not think it was time to stop reading at night. It is a very powerful light on that lamp.

Q. On whose invitation did Miss MacMillan stay at your house first when you went to the Coast? A. Well she did not stay on anybody's invitation. She came over and said: "You are going, you are not going to miss this trip." And after, we talked it over, and I was very happy to have  
20 her stay.

Q. In the spring of 1932 when your husband was East on whose invitation did she stay with you? A. My invitation. I never knew my husband to give an invitation; even for afternoon tea I do not think he ever has. I do not think he has ever invited anyone for tea without consulting me.

Q. And what time did Jean come home that spring? A. The 10th of May. She left on the 10th of April and came back on the 10th of May.

Q. Now had Miss MacMillan any knowledge of Jack's nervous or Allan's habit of waking qualities? A. That was the object of her  
30 staying in the fall of 1931, because she knew he might get a fright in the evening, his Dad away from home. I had a maid then but she was sleeping out of the house, but that was the object of her staying so that Jack would not get any cause for alarm.

Q. Had it been discussed with you from time to time? A. Oh yes.

Q. And did she know whether or not you had got up when she was sleeping with you, on occasion, during the night? A. I think she was disturbed enough that she knew that.

Q. Did you in fact get up for various reasons at night in that house when Miss MacMillan was sleeping with you? A. Yes, and I remember  
40 one night she was sleeping with me I had the two boys in the front room and Allan was troublesome with his getting out of bed and rousing Jack and making him nervous that I had to bring Allan into my room and Miss MacMillan went into the other room for the night.

Q. Do you remember when that was? A. No I don't remember when that was.

Q. And in July 1932 you went down to the lake I think? A. We

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

went down in June, at the end of June, and stayed July and part of August.

Q. And then where did you go? A. We went south to the ranch.

Q. Mr. Earl Cook's ranch near Pincher? A. Yes.

Q. And then your husband went east late in August and you returned to Edmonton? A. Yes he was called away and our vacation was broken.

Q. And that brings us to pretty well the end of August of that year. And the next event I have in mind is an occasion when you were East in that same fall? A. Yes.

Q. And was your trip to the East broken up? Was it cut short? 10  
A. Oh yes I had planned to stay another week but I came back.

Q. Why did you come back? A. My husband took ill.

Q. Were you requested to come back on account of your husband's illness? A. Not at first. A wire was sent me saying he had a cold but not to be alarmed and when I heard he did not speak on the radio I came home as quickly as I could without being told.

Q. And by the time you got back had he recovered? A. Very nearly. I think he was up for a while that day.

Q. Now I carry you to the month of November 1932 and I want you to tell me do you remember any discussion there with your own family, 20 I mean your husband and family and Miss MacMillan, that you can remember? A. Yes I remember very vividly because now I feel very much disgusted with it. My husband received a very nice offer from Ottawa for a permanent position with a salary—a good salary—and we discussed the advisability of going to Ottawa to live, I remember, in the morning up in my bedroom. Miss MacMillan—

Q. Was Miss MacMillan there? A. She was there and she said: "What will become of me if you go to Ottawa?" And I assured her she had lots of friends in Edmonton now.

Q. As late as November that was her attitude? A. As late as 30 November 1932.

Q. Did she stay with you in December 1932 in your husband's absence? A. I think she did. I think she was there for a short time, yes, we were skating a good deal together then.

Q. And now I turn to the month of January. Did she attend your house fairly regularly during the month of January 1933? A. She was over there on a good many occasions. I know she was not over as much as she would have been, as her mother was in town.

Q. And when your husband was ill did she phone to inquire about his health? A. Every day. That is in February he was ill. 40

Q. And your husband was in bed, he has told us, from Friday 7th to the 19th? A. Yes, all of that.

Q. And during that period did she phone you to inquire about your husband's health? A. Yes and she came over.

Q. Did she wait on him during that illness? A. Yes, she carried the odd tray up and let the nurse stay at the dinner table.

Q. And up to this time had you noticed any change in what you told me your view of this girl was in your home? A. Oh no.

Q. What was her attitude? A. Just the happy girl she had always been around the house.

Q. Did she continue to come to your household throughout March? A. Yes. I was ill in March. My husband had a relapse in March and I was ill for a week and she was over frequently and then for one Sunday she was over because I remember the doctor making a remark to her about her dress.

10 Q. And did she take ill during that time? A. Yes.

Q. And what did you do about it? A. Well one of the girls from the office phoned me Saturday noon and told me Vivian wanted me to know she had been brought home from the office with another attack of the same complaint and I said—"Well tell Vivian as soon as I can get a car—I could not always get a car on Saturday afternoon. I said: "As soon as I can get a car tell her I will come over and see her."

Q. And did you? A. Yes, soon after two o'clock I went over. It was a very nice day and that was the only occasion I was in that suite of rooms. I packed her bag for her. She lay on the couch and looked very ill and I had the driver wait outside and I had her come over to my house for the week-end and put her to bed.

Q. And that was in March? A. It was the end of March some time.

Q. When did you first notice any change whatever in her attitude? A. Early in April. She had a bad cold and came over to the house one Saturday evening, I think it was a Saturday. I was getting ready to go to a dinner party and she lay down in my room while I dressed and I called the nurse that I had had because I had to go to this party. I could not postpone it. I called the nurse I had had who was a friend of hers and I went along to my party. The nurse came over and they called the doctor and I got home some time after eleven o'clock and that is the first change I noticed in her. She made a fuss about staying there in my bed and she was afraid I would catch a cold and should not she get up and stay in the hospital?

Q. Was that the first time you found a reluctance? A. That was the first time I found a reluctance.

Q. And when did you first meet Caldwell? A. I met him only once.

Q. When? A. I think on Christmas night, 1932.

Q. That is when she came back from Edson? A. Yes. I think on the station platform.

40 Q. Did he, during the year 1933 telephone Miss MacMillan frequently at your home? A. Frequently.

Q. And we have heard something about this station platform matter. I do not know how important it is but Miss MacMillan says that you and your husband and Caldwell went to the train to meet her and your husband refused to shake hands with Caldwell. Is that true? A. Not to my knowledge. My impression is he shook hands and in his usual way so as

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

not to embarrass two young people, he walked away to the end of the platform. I have enough of a match-maker in me that I stayed behind.

Q. And you walked with him? A. I walked with him.

Q. Now during the month of May 1933 did she come fewer times to your house than previously? A. There was one time in April, I think it was Sunday the 23rd, I remember this because we had a guest in town and she was over that Sunday and we took two cars and went out to the Country Club, that is a long way out of town, to dinner, Sunday night. And after we got back to the house instead of spending the evening with us Vivian asked the boys if they would take her to church and after she left the girls who were there remarked two or three times: "What is the matter with Vivian?" 10

Q. Did you notice a change in her? A. Oh yes, she was not quite herself.

Q. And during the month of May did she come to your house less frequently? A. Much less frequently.

Q. And was she there in June? A. Yes, more often.

Q. Now she has told us that at some time, I have forgotten when, but it was in 1933 that you asked her what was wrong with her and she said nothing? A. I can tell you the occasion of that. 20

Q. Will you tell me? A. That was on Thursday, May 11th.

Q. How do you place it? A. My husband was in Calgary and on that occasion I phoned Vivian. I did not often have to. She phoned me. And I said: "Are you coming over tonight Vivian?" And she said: "I was going out with Johnnie but if you are alone I will be over." And I said: "Do not bother if you have a date with Johnnie." However she came over and when she was in the living room. I don't know whether it was before tea or after, I said: "Vivian, have any of us offended you in any way? You are not over as often." And she said: "Oh no." And I said: "Johnnie's exams are over, aren't they?" And she said: "Yes" And that is all. 30

Q. And did you ask her— A. I asked her if we had offended her in any way.

Q. And when did the examinations close at the University? A. The end of April.

Q. And probably she was busy with him, you thought? A. Yes, just that.

Q. Was there any change made in the sleeping arrangements in the front room, that is as between Mr. Brownlee and Jack? A. Yes, that was when Vivian came to the house. That was in the spring of 1931. My husband had been getting a number of nasty little colds and I changed his bed. There seemed to be a draft at the window and he was taking colds. His resistance was low at that time. 40

Q. And did that arrangement continue during 1932 and 1933?  
A. Yes, always.

Q. After that change was made I think I asked you this, after that

change was made which bed did your husband occupy? A. The one nearest the door into the hall.

Q. In other words, in what direction was that? A. South.

Q. And Jack occupied the north? A. By the window.

Q. That is the bed by the window? A. Yes.

At 4:20 Court adjourns till 10:00 a.m. Friday, June 29th, 1934.

Friday, June 29th, 1934. Court resumes at 10:00 a.m.

Q. In your examination we came to the month of June. I want you to turn your mind to the evening of June 27th and I want you to tell me  
10 what you and your husband did? A. On the evening of the 27th of June my husband and I went out in our own car for a drive. We drove into the country. I do not remember where we went, but quite an extended drive. The car was new and we took our own car because it was such a pleasure in driving it. Our older boy had taken the other car to go for a short drive as we understood, but he did not understand that his father would want the car later and he went back into the country with a party of young people. I drove with my husband until dusk. We came home just at dusk.

Q. About what time was that? A. Well I went out the other night to see what time it was dusk, and it was a quarter to eleven, and it was  
20 dusk then, the 26th. It was a clear night, but if it had been cloudy it would have been dusk a little earlier.

Q. This was practically a year ago now? A. Yes a year ago Wednesday.

Q. And what happened after that? A. My husband went over to the buildings to get his papers. I went into the house to pack his bag. He was going to Calgary and he came back over home with his papers and we sat down and had something to eat before his going to the train and there was some little talk then. We wondered where Jack was and why he was not home and my husband said: "Well I will call you just before I get on  
30 the train and make sure that he is back." And he called me just before train time and Jack was not back then and he went down to Calgary feeling very uneasy about him.

Q. Now I wish to go to the 29th. By the way, what day did you go to the lake? A. The 30th.

Q. And on the 29th what were you doing all day? A. Packing.

Q. Was Miss MacMillan at the house? A. She was over after five. She was over for tea that night.

Q. And who drove her home that evening do you remember? A. My husband, alone.

Q. And did you have any discussion with Miss MacMillan about  
40 your lake trip? A. Oh yes. We were chatting about the lake. She wished she was going with us. She expressed the wish two or three times and I told her I was sorry I could not invite her down for the week-end. I knew she was free that week-end as it was the 1st of July, but I had

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

another guest coming out from Red Deer and we were taking one of Jack's friends down with us and I told her I did not know what our sleeping arrangements would be and I would let her know later. And there was some discussion about her getting a change in her vacation and I told her we had taken a cottage for two months this year, until the end of August, and if there was any change made she would be very welcome down.

Q. And did you subsequently invite her down? A. Oh yes I sent up invitations.

Q. Who through? A. Through my husband. She changed her boarding house the day after I left and I had neglected to get an address. 10

Q. Now move on to the time that your husband received the letter of August 3rd. Where were you when he received that letter? A. I was with him and I was with him when he opened it.

Q. Whereabouts? A. Down at the lake.

Q. And what did you do? A. I came up to Edmonton with him. He was just leaving to go on the Banking Commission. I came up and packed his clothes for him and spent the day here.

Q. And did you get into communication with anybody at that time? A. Well my husband saw Mr. Porter that day.

Q. Mr. Porter was here? A. Yes. 20

Q. And did you get into communication with anybody else? A. Well not until the first of the week.

Q. And what did you do then? A. I went back down to the lake that night and Mr. Porter got a message to me. I think it was Monday.

Q. And did you return to Edmonton? A. I phoned from Red Deer. My boy was in the hospital. He had just been operated on. He was in the Red Deer hospital and I phoned from Red Deer to Edson and talked to Mr. MacMillan and I told him I was very anxious to see him. I asked him if he would come down to Edmonton and meet me if I came up from Red Deer and he said he could not because he had a lame knee but that his wife would come. I said: "Very well, we will meet her train." My son—my younger son—was going to drive me up and I came up to Edmonton that Tuesday morning and met the train Tuesday evening about seven o'clock. She did not get off the train so I went to the phone and phoned Edson and I spoke to Mr. MacMillan again and I said that Mrs. MacMillan did not come off the train and I wondered if she was motoring down or coming some other way and he said no she was not coming. So I said: "Well if I may see you I will come along to Edson," but he said he would much rather not see me. 30

Q. So you did not go? A. I did not go. 40

Q. And did you get in touch with Vivian? A. I did. I telephoned her in the evening first and asked her if I could see her, if she would come for a car ride, I had Allan there to look after, and in a very indifferent way she said she was sorry, she was busy and I then said: "Well that does not matter, Vivian, I am staying in tomorrow, I will give you a ring tomorrow." And I phoned her at five minutes to twelve. I knew she went to lunch at

twelve. I phoned her at five minutes to twelve and asked her if she would have lunch with me and she said she would ring me back in five minutes and let me know. So I waited and inside of five minutes she phoned back and said she could not come with me and I said: "Well how about a drive after five?" And she said: "I am sorry I cannot come with you." I said: "Vivian, do you mean you cannot or you won't?" And she said: "I won't Mrs. Brownlee." I told her I was sorry and I hung up.

Q. Later on you went to Edson with your husband? A. Yes.

Q. And just tell me what took place when you got there? A. We got  
 10 into Edson some time around noon, I don't know what time. We had some trouble finding the house. When we did get to the house we parked a little way down the street. It seems to me there was a grassy bank or something just in front of the house, and we could not park there and we walked up to the house, and as we walked towards the house in the rear I saw an elderly man and a younger man around a car. We knocked at the door. Mrs. MacMillan was some time answering the door, I remember. The dog came and barked. She did not open the door. She just came to the screen and Mr. Brownlee asked for Mr. MacMillan. Mrs. MacMillan said: "He is not here" and Mr. Brownlee said: "Where could I see him?" And she said:  
 20 "I don't know, he has just gone." And Mr. Brownlee says: "Well has he gone to the shops?" meaning his place of employment; it may have been a roundhouse—I do not know. And she said: "I do not know where he has gone," but she said: "There is nothing to talk to you about anyway, I do not see why you are here." "Well," my husband said, "Mrs. MacMillan, as far as I am concerned there is a great deal to talk about and I wonder if I cannot see Mr. MacMillan whether you could give me five minutes of your time," and rather grudgingly she opened the door and we entered. When we were seated I think his first words were not to ask them to refrain from  
 30 the proposed action but to tell them the allegation was not true and to face them frankly and answer any questions they might like to put before they went in with the action that might hurt their daughter so terribly, and Mrs. MacMillan replied that Vivian was of age and had already started her action. And my husband repeated again the allegation was utterly false and said: "If you do not want to ask me questions I would like to ask you if you can tell me with what I am charged; I do not know whether I am supposed to be the father of a child or what the story is." And Mrs. MacMillan shrugged her shoulders and said: "Well how can I tell what Vivian has been doing since she has been in Edmonton?" I started to say something, I don't remember what, and my husband said: "I do not see  
 40 any use in taking up any more of Mrs. MacMillan's time." That is as far as I remember it, Mr. Smith.

Q. And then you drove back to Edmonton? A. Yes.

Q. Now I want to ask you this; in all the time that she was a visitor at your home did you ever see anything by way of a look or a glance, or hear anything? A. There was never a look of any kind nor a glance nor did I ever hear a word and I think I have the average normal woman's

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

instinct and average intelligence too. I never saw anything that roused my suspicion.

Q. Now I want to speak to you about this. She says that a number of times in the evening when your husband drove her home they drove to the country and were absent roughly an hour and a half? A. Yes.

Q. Did you observe any undue length of time that your husband took in driving her home from your house? A. I did not. I have a trick of looking at my watch from time to time. I have always worn it. I have worn it for 25 years. And as he would go out of the door I would look at the time and I would think: "Well, so much time for going over, so much time for coming back, so much time for garaging the car or getting Mr. Munro if he was driving back and then he will be home." And as a rule he was within the time." 10

Q. Why did you do that? A. Well in those early years I was left there with the two boys, Jack being nervous he used to get me in an upset condition at times. I mean if he was uneasy he would finally make me uneasy and I was glad to know my husband was back and we were settled for the night.

Q. And did your husband on many occasions say that he was going down to the hotel to see a man? A. Well Sunday night was not a night that he saw a man. He did not as a rule see anyone on Sunday nights. 20

Q. What I am coming to is this; were there any occasions at all that he stayed a length of time seeing somebody at night? A. Well there were evenings when he would say he was going down to the Corona to see so-and-so.

Q. Did you know who he was going to see? A. I had to know where my husband was going to be because there were so many phone calls for him and I liked to be able to get the message through to him or to be able to tell people where they could get him.

Q. Now about what time on Saturdays did you have your luncheon? 30  
A. At 1:15.

Q. And was your husband often late for luncheon on Saturday?  
A. Very seldom.

Q. And if he was late? A. If he was I rang the office and on those occasions there would be a brief council meeting. I could hear the men talking in the office, or he would say: Mr. Hoadley or Mr. McPherson is with me"—whoever it happened to be—"I will be there very shortly."

Q. Were there any prolonged or continued delays on Saturdays?  
A. No, because if he had occasion for a real cabinet meeting he came home for lunch, had his rest, and went back about three o'clock. As a rule our 40  
Saturday afternoons were spent together.

Q. Did Miss MacMillan call you up from her place of business?  
A. From her office, sometimes, and sometimes from her residence.

Q. But did she often call you up? A. Oh she called me every day in the week almost.

Q. And did she use your home familiarly, I mean more or less as her



own? A. Well she used the whole of the house. There was no place shut off she could not use. If she happened to be hungry when she came in she would go to the pantry and get something to eat; she was just one of the family. My own nieces could not be any more at home in the house than Vivian was. I often was not there when she came over in the afternoon, especially when she was at school but she would come in and make herself at home till I got home.

Q. Now what was the habit in your house on Sunday mornings?  
 10 A. Well Sunday morning was a morning of rest for my husband and for myself. We always had breakfast in bed together and Saturday night he would bring home his bundle of papers—the Herald, Tribune and New York Times, Barron's Weekly and Financial Weekly and so on, and we would read those papers. The Herald Tribune always had a very good cross word puzzle in it. My husband and I would work it out together. The year the jigsaw puzzles were so much in vogue I always got at least two puzzles for the week-end. We had a tray and worked those. The morning was just relaxation and pleasure.

Q. And did you on occasion on Sunday morning phone Miss Mac-Millan about coming over?  
 20 A. Well she usually phoned me to see if it was all right. Occasionally I did phone her.

Q. But I mean about transportation? A. Well if she phoned me or if I phoned her if the car was going to be where she could reach it I would tell her. Occasionally my husband was working at the buildings, not often, but in the busy season, and if she phoned I would say: "Well the car is out in front of the buildings, if you walk down and get in it you will get a ride over." Sometimes she would come that way and sometimes she would say: "I am going to walk across." And of course there were many mornings when the boys went and got her. There were some mornings when the whole family were out and picked her up.

30 Q. Now this household of yours consisting of your husband, yourself and two boys—was it a happy household? A. Very very happy and very informal, Mr. Smith.

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#### CROSS-EXAMINATION BY MR. MACLEAN

Q. What were you doing on the night of June 25th, 1933?  
 A. That was a Sunday night. I have an idea Miss MacMillan was over to the house. That was that Sunday night. She was over several times in June.

Q. And on Monday? A. Monday would be the 26th. I was with my husband.

Q. Where? A. At home.  
 40 Q. Just stayed at home? A. We may have gone for a car ride.

Q. Did you go for a car ride? A. I could not tell you. We came back from the east—

Q. Can you remember whether or not you went for a car ride on the

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Cross-Ex-  
amination  
*continued.*

night of June 26th, Monday night? A. I could not say positively we did, but I expect we did because I was to learn to drive the car.

Q. You were a school teacher before you were married? A. I taught for two years.

Q. And when you got this letter on August 3rd you thought this was a terrible accusation that was being made against your husband? A. I did, certainly.

Q. And you immediately went to his defence? A. Certainly I did.

Q. Of course you would? A. Certainly I did.

Q. And whether he was right or wrong you would have gone to his defence? A. No, scarcely. 10

Q. Oh now. A. Do you think that any woman could countenance a thing like that?

Q. I think any good woman would stick by her husband when he was in a jamb, no matter what he had done. A. I don't think it would be immediate. I think there would be quite a long period after that before there was any decision.

Q. But you immediately became very busy in your husband's behalf? A. I did that, not immediately, when he showed me the letter. He handed it right over to me. 20

Q. And since this action was coming up for trial you have had a solicitor of your own, have you not? A. No I have not.

Q. Is not Mr. Stanley McCuaig your solicitor? A. No.

Q. Haven't you gone around to different houses with Mr. McCuaig and said: "This is my solicitor?" A. I went around with a friend last fall and this spring when we wanted to find out whether the evidence was desired Mr. McCuaig went, but I went along with him to make it more easy.

Q. You and Mr. McCuaig did go around from place to place looking up evidence? A. We went to three places. 30

Q. Where did you go? A. We went to see Mrs. Lush and Mrs. Lawton and Mrs. Pickard.

Q. All those places were places where Miss MacMillan had stayed? A. Yes.

Q. And what was the purpose of going around there to these different places? A. Well to see if they knew how Vivian felt towards us, if she felt happy in coming to our house, or if she had ever made any protest about it.

Q. Wasn't it to endeavor to rake up some dirt against her? A. Oh my no. 40

Q. Was it for that purpose at all? A. It was not.

Q. Did you go to Mrs. Fuller's place? A. Last fall I did. I went with a friend, a lady.

Q. And you would not believe anything against your husband, would you? A. Well it would depend who would tell me.

Q. You knew Jessie Elgert, a maid in your house? A. She was there in the winter for a few months.

Q. Well, January to some time in April? A. Yes.

Q. Did you know your husband was going out with Jessie Elgert?  
A. No.

Q. Would you believe Jessie Elgert if she says she was out car riding with him? A. No, I would not. You mean giving a lift?

Q. Oh I mean going out in the country with the car parked? A. No I would not.

10 Q. If I showed you a written statement of Miss Elgert would you?

A. No. I have lived with my husband for 22 years.

Q. I agree entirely with your attitude. I think it is the proper thing for a wife to do. Do not mistake me, please. I honour you for it. You started out by saying that the first time you saw Vivian MacMillan she was wearing a navy blue suit and white beret? A. I said she carried the beret in her hand.

Q. What kind of blue suit was it? A. It was a woollen suit of some sort. It had a knitted appearance. Quite a neat appearance, a short skirt and jacket, a tailored effect.

20 Q. I am just wondering whether you could describe it so it could be identified. A. Well it was not a woollen fabric, not what the tailors use as a suit. It was more of a knitted material of some sort.

Q. Was it made of twill? A. No I would not think so. It was a sort of rough fabric.

Q. Did you know that Mrs. MacMillan was in town on the day of the air show, the 17th of September, 1930? A. No I did not or we probably would have invited her over.

Q. You did not meet her that day, then? A. I did not meet her.

30 Q. And if Vivian says her mother was in town and did attend the air show all you can say is you did not see her? A. I did not meet her.

Q. Now Mrs. Brownlee. You are not surely saying that every time your husband went out you clocked him and gave so many minutes to get back home? A. It was my custom, the first year especially Vivian was there, and after that the boys were older, but it has been my habit right along. I did not watch him that closely but I had a good idea just when to expect him home.

Q. You had been married 22 years and you said that you did that the first year? A. No I did not say the first year. I said the first year Vivian was with us.

40 THE COURT: She said the early years.

MR. MACLEAN: Take 1929, 1930, 1931, 1932 and 1933 when your husband was Premier of Alberta. Did you clock him every time he went out? A. No.

Q. Or where he went? A. No, but as a rule I knew where he was going and when he would be back.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Cross-Ex-  
amination  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 19  
Florence  
Brownlee  
Exami-  
nation  
*continued.*

Q. Possibly you remember the first time you met Vivian. You said yesterday it was at the Alberta College? A. I am under the impression I called there.

Q. I am instructed that it was at the Y.W.C.A. A. I think it was in the morning at the Alberta College I called because I wanted to find out if we should buy tickets to accommodate her too.

Q. I was just wondering if you are absolutely certain about that. A. Well as absolutely certain as I can be.

Q. Because I am instructed by Miss MacMillan that never once as far as she knows were you ever in Alberta College? A. Oh yes. I took 10 her spectacles over one day when she had left them at our house, in class hours, and left them at the desk.

Q. Did you see Miss MacMillan? A. I don't know whether I saw her but she knew I had been there. You said I had never been to Alberta College. I well remember it.

Q. Miss MacMillan, I am instructed says—

THE COURT: You will have to be very careful with a jury.

MR. MACLEAN: I am sorry.

Q. Are you positive or is it just to the best of your memory that the first occasion that you met Miss MacMillan was at Alberta College? 20

A. I feel positive about it.

Q. And if she was staying in your house and you heard the bathroom—any noise in the bathroom—flushing the toilet or taps running, you would have got up immediately and investigated it? A. Well not the first time but it could not happen the second time. I would lie awake and listen for a time and then get up to see who was up.

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### No. 20

#### Evidence of Emily Anna Brown.

No 20  
Emily Anna  
Brown  
Exami-  
nation

EMILY ANNA BROWN, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and 30 testified:

Q. You are secretary to the Prime Minister of Alberta? A. Yes, sir.

Q. And you have been for a good number of years? A. Yes, sir.

Q. I am showing you some diaries that were kept by you? A. Yes.

Q. And is it one of your duties to keep track of the whereabouts of Mr. Brownlee? A. Yes.

Q. And you have done so in these books? A. I have.

Q. I ask to tender them as exhibits in case anyone wants them.

THE COURT: Oh yes. They are not evidence as to contents, but proved as the document which the defendant was permitted to use to 40 refresh his memory.

MR. MACLEAN: I formally object.

Four diaries—1930, 1931, 1932 and 1933, marked Exhibit 8.

Q. MR. SMITH: Now I want to ask you about only one other thing. With respect to the closing time at Saturday noon, what time do the Government offices close? A. One o'clock.

Q. And would you leave before Mr. Brownlee? Was it your custom to leave the office before him, or after? A. No I always left after him with a few exceptions.

Q. And what would those exceptions be? A. It would be if there  
10 was a council meeting or some other appointment which kept him later. In that case I would wait till a quarter past or 20 minutes after one and if I thought the appointment would be later than that I would go in and ask Mr. Brownlee if I could leave or if there was anything else for me to do and he would say no and I would go.

Q. Did you ever leave under those circumstances without his permission? A. No.

Q. Did you ever see Miss MacMillan in your office? A. I have seen her on two occasions.

Q. What were they? A. The first was when Mr. Brownlee called  
20 her, the time Mrs. Brownlee telephoned from Sylvan Lake inviting her to go down for the week-end.

Q. And that was when? A. That would be around the middle of July 1933.

Q. And who telephoned to her on that occasion? A. I did.

Q. And was there another occasion when you saw her in the office?

A. Yes one evening Mr. Brownlee was leaving the City and asked me to go back to work and Mr. Brownlee and his two sons and Miss MacMillan were in the outer office. They left shortly afterwards and called for him afterwards.

30 Q. Who left? A. Miss MacMillan and the two boys.

Q. And you did your work and Mr. Brownlee remained? A. Yes.

Q. And they called back for him? A. Yes, and he went with them.

Q. When you would leave your office what about the door?

A. I always locked the door.

Q. And that is the only door leading into the offices? A. Yes.

#### CROSS-EXAMINATION BY MR. MACLEAN

Q. Miss Brown, I am showing you the diary for 1930? A. Yes.

Q. And the date, Saturday 6th day of September? A. Yes.

Q. And in that you have a notation "returned to office." That shows  
40 that Mr. Brownlee was in his office on Saturday the 6th of September 1930? A. Yes, for a little while, possibly just for a short time. I have no time stated.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No 20  
Emily Anna  
Brown  
Examina-  
tion  
*continued.*

Cross-Ex-  
amination

Q. That does not show in the diary? A. No, Mr. Maclean, naturally. I do not put his hours in.

Q. Why did you add that, Miss Brown? A. Well I had no reason. I said he returned to the office there.

Q. Why did you add "possibly just for a short time" have you any recollection of it? A. No.

Q. How long have you been with Mr. Brownlee? A. Since the fall of 1917.

Q. These diaries show nothing of his movements except whether he was in town or out of town and where he was? A. Yes. 10

Q. There is no record of his movements during all the day or anything like that? A. No.

Q. If Mr. Brownlee said to you "I won't need you any more Miss Brown you may go" I suppose that would be all there was to it? A. Yes.

Q. Just as an example, I am taking the daily Journal, the diary of 1933, taking Tuesday the 10th of January. I notice the word "Mannville." Have you any recollection or do you know when he left or what time he got back or anything like that? A. No. I know he went to Mannville. That is all I know.

Q. And take for instance Monday the 3rd of July 1933. There is no record of Mr. Brownlee being out of town that day? A. Not unless it is in here. 20

Q. And on Wednesday the 5th of July 1933 you have a record that he was in Vermilion that day? A. Yes.

Q. And what is this c-h-g-d written in pencil? A. These books were used for making up his travelling expense account and shows it had been charged.

Q. That merely means that the disbursements had been charged up? A. Yes.

Q. "Spoke at meeting of Board of Trade to farmers." So according to your diary Mr. Brownlee would not be in Edmonton on the 5th of July? 30

A. Well he left at 11 o'clock in the morning as the diary shows.

Q. But he was in town that evening? A. I don't know.

Q. Wouldn't you know? A. Well after five o'clock I would not keep track of his movements.

Q. I am just taking one more date, June 27th, 1933. Mr. Brownlee was in town? A. Yes.

Q. But you have no record of his going to Calgary that night? A. No if he left on the midnight train I would have no record of it.

Q. Wednesday the 28th of June shows he was in Calgary? A. Yes. 40  
Well then, he left on the midnight train.

## No. 21

## Evidence of Orrin Henry Snow.

*In the  
Supreme  
Court of  
Alberta*

ORRIN HENRY SNOW, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Defendant's  
Evidence

Q. Where were you living in January 1933? A. I was living in Raymond, Alberta.

Q. Are you still living there? A. Yes, sir.

Q. And did you have occasion to come to Edmonton the first of the 10 year?

No. 21  
Orrin  
Henry  
Snow  
Exami-  
nation

A. Yes, sir. I happened to be Secretary Treasurer of the town of Raymond. We were having difficulty with our schools. I called Mr. Brownlee on Saturday night the last day of the year to see if I could meet him on Monday to see about arranging some finance for our schools and he said he would meet me on Monday morning.

Q. And did you come to Edmonton? A. I came to Edmonton. I arrived on the morning train the morning of the 2nd of January 1933.

Q. Did you get in touch with him? A. Yes, sir, I came to the Corona hotel, breakfasted, called Mr. Brownlee between nine and 9:30 and 20 arranged to meet him as we had agreed before I left home.

Q. At what hour? A. We arranged to meet about 10:30 but he was just a little late. I walked over to the Buildings and it was nearly 11 a.m. when he came in.

Q. And did you go to his office? A. Yes.

Q. And did you spend some time with him? A. It took an hour or so to go over the details of our troubles and I think we separated some time between 12 and 12:30.

Q. And you were there from eleven o'clock? A. I think I was there from 15 minutes before eleven o'clock and I was with him—

Q. You were with him until— A. I was with him until after noon 30 that day.

Q. Did you know him before that? A. Yes, sir. I have known him more for the last 8 or 10 years.

---

CROSS-EXAMINATION BY MR. MACLEAN

Q. Are you a friend of Mr. Brownlee's? A. Not specially.

Q. You have just known him in a business way for 8 or 10 years?

A. I have been Secretary-Treasurer for 8 or 10 years and I met him.

Q. And what were you doing before you were secretary of the town?

A. I was in the real estate business.

Q. Where? A. In Raymond.

Q. And how long were you a real estate agent? A. From 1912 until 40 1925.

Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 21  
Orrin  
Henry  
Snow  
Cross-Ex-  
amination  
*continued.*

Q. And business was not so good and you took the job with the town? A. Well it gave more ready money, at any rate.

Q. Just how much ready money does a job of that kind pay you? A. Well not enough to make me rich.

Q. THE COURT: Were you the Snow that was in the banking business in Cardston? A. No. He is a relative, sir.

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**No. 22**

**Evidence of Frederick Smailes.**

No. 22  
Frederick  
Smailes  
Exami-  
nation

FREDERICK SMAILES, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and 10 testified:

Q. What is your position in the Civil Service in this Province? A. Civil Service Commissioner.

Q. And as Civil Service Commissioner do you have to do with the hiring of employees? A. I do.

Q. Do you hire them? A. The majority—certain classes that come within my purview.

Q. Do you know Miss MacMillan? A. Yes.

Q. And when did you first meet her? A. At a dance at the University, 1931. 20

Q. And did you have a dance with her? A. I did.

Q. And did you have a talk to her about future employment? A. No. In a conversation she told me she had come from Edson and she was taking a secretarial course. And I made the remark that "I suppose when you get through you will be coming to see me" and she apparently did not understand what I meant; she did not know who I was and I followed that up by saying that I was the person to whom people applied for positions in the Service. And she made the remark she would be afraid to come down. That is why I remember the conversation so well.

Q. Did she come to see you with respect to a position? A. She did. 30

Q. Did you know whose guest she was that night at the dance? A. Yes I was under the impression she was with Mr. and Mrs. Brownlee.

Q. And did you give her a position? A. Yes.

Q. Now you might tell me when she saw you and when you gave her this position? A. She came to my office on the 7th of July 1931 and she received a temporary position on the 15th of July.

Q. Did Mr. Brownlee ever speak to you at any time with respect to getting a position for this girl? A. No.

Q. Did he ever ask you for any special consideration for her at any time that June? A. No, never. 40



## CROSS-EXAMINATION BY MR. MACLEAN

*In the  
Supreme  
Court of  
Alberta*

Q. Every person that applies for a position in the Civil Service has to file an application? A. Yes.

Q. With recommendations and so forth. Have you got Miss MacMillan's application? A. Yes I have the application.

Q. Will you produce it please? A. I left it with the Clerk of the Court, Mr. Mason, downstairs.

Q. Now you are a Civil Servant yourself? A. I am.

Q. And your appointment is at pleasure? A. Yes.

10 Q. You can be fired at ten minutes notice? A. I presume so.

Q. And you saw Miss MacMillan first in company of Mr. and Mrs. Brownlee? A. Yes.

Q. And Mr. Brownlee at that dance at the University introduced you to Miss MacMillan? A. Either Mr. or Mrs. Brownlee, I am not quite sure.

Q. And then you had a little talk about what she was going to do in her secretarial course and you would say "come and see me"—something like that? A. Oh no, no. I never suggested she would come and see me.

20 Q. Didn't you say "I suppose when you get through your secretarial course you will come and see me?" A. I suppose so but I did not ask her to come.

Q. Oh no. You did not have to, did you? Didn't Mrs. Brownlee herself take the trouble of calling you up and asking you to get this girl a job?

A. I have not slightest recollection of Mrs. Brownlee ever phoning me.

Q. Well is your memory good? A. It is fairly good, yes.

Q. Surely if the wife of the Premier ever called you up about giving a girl a job you would remember it, wouldn't you? A. Not necessarily, three years after.

Q. But you have no memory whatever? A. Of Mrs. Brownlee phoning me, no I have not—not the slightest.

30 Q. Did Mrs. Brownlee ever phone you up about any other girls?

A. I don't remember Mrs. Brownlee phoning me at any time.

Q. Do you know Mrs. Brownlee personally? A. Yes.

Q. Are you a visitor at their house? A. No never.

Q. And I would think you would remember if she ever did phone you up? A. I do not.

Q. And then how was it that in July 1931 you gave this girl from Edson a job when there must have been thousands of Edmonton girls looking for jobs? What was the reason? A. There were not thousands. There were about 500 or 600 applications on my file at that time.

40 Q. Looking for jobs? A. Yes.

Q. Five hundred or 600 Edmonton girls looking for jobs and you gave the job to this girl from the country? A. Yes.

Q. Did she ever have a certificate from the Alberta Business College?

A. No. Her application showed she had had a business course.

Q. And you have the records there? (Produced).

Defendant's  
Evidence

No. 22  
Frederick  
Smailes  
Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 22  
Frederick  
Smailes  
Cross-Ex-  
amination  
*continued.*

Q. And this is the official record? A. Yes.  
Q. Would there be any objection to putting this in? It may be returned to you after the trial? A. I have no objection.  
MR. SMITH: I have no objection at all.

**Personal file of Miss MacMillan in Civil Service Commissioner's office, marked Exhibit 9.**

Q. And I notice there is a report on Miss MacMillan at the time by the Reverend Mr. Dickerson? A. Yes, sir.

Q. This is part of the official record? A. Yes.

Q. And he says: "Vivian, without being mid-Victorian is a real fine conscientious girl, bright, cheerful and conscientious, but a little fearful lest she should not make good. If her departmental chiefs will give her even a little encouragement she should make fine progress. I have seen her grow from girlhood to young womanhood, with special observation of those things which are finest and best in life and have been very pleased with her progress." Did her description at that time live up to this recommendation at the time she came first to the building? A. I thought she was a very fine type of girl. 10

#### RE-EXAMINATION BY MR. SMITH

Re-Examination

Q. In this record of yours I find on February 6th, 1933, copy of a letter addressed to Miss V. MacMillan, Attorney General's Department, Buildings, Edmonton, as follows: "February 6, 1933. I am directed to call attention to the amount of time lost by you during the year 1932, which was as follows: January 1½ days; February 2 days; May ½ day; June ½ day; September ½ day; October 1 day; December 3½ days. You will, I feel sure, realize that physical fitness is an essential factor in employment in the Service, and as the time lost appears to be excessive it has been decided to regard the next three months as a period of probation, following which a further review of the situation will be made. I confidently hope that your attendance will improve to such an extent that there will be no need for further consideration of the matter." 20 30

Q. Was that letter written by you? A. Oh yes.

Q. And I take it it was written to several other employees? A. Yes.

Q. And was it written after consultation with Mr. Brownlee?

A. Yes.

Q. And others as well? A. Yes.

Q. And after an examination of their record of attendance? A. Yes.

MR. MACLEAN: Does Mr. Brownlee consult with you every time you call down one of the girls for lack of attendance? A. No. About the end of each year I generally give him a statement, a summary statement, showing the attendance of the whole Service. 40

Q. And this letter was for the purpose of calling to the attention of

Miss MacMillan the time she had been away from work? A. Pointing out to her she had lost so much time in the year.

Q. You did not point out to her the reason for her absences, whether sickness or going away on a holiday? A. We have the whole record on that file.

Q. And that is a formal letter sending her word that she had been away too much for the year 1932? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 22  
Frederick  
Smalles  
Re-Exam-  
ination  
*continued.*

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No. 23

**Evidence of Jean McCloy, (Mrs. Jean Saunders).**

10 JEAN McCLOY, (Mrs. Jean Saunders), being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Q. I think you worked for Mrs. Brownlee from the 1st of November 1930? A. Yes.

Q. And you remained except for going home on odd occasions until April 1933? A. Yes.

Q. And you are now Mrs. Saunders? A. Yes.

Q. Now did you in all the time you were there ever notice anything which might lead you to suspect anything wrong between Mr. Brownlee and Miss Vivian MacMillan? A. No.

20 Q. Do you remember Hallowe'en night of 1932? A. Yes.

Q. The 31st October? A. Yes.

Q. Were you in the house that night? A. I was.

Q. Where was Mr. Brownlee? A. Mr. Brownlee was in bed.

Q. And were the boys in that night? A. Yes.

Q. Was Miss MacMillan there? A. Yes.

Q. Was Mr. Brownlee ill? A. Yes Mr. Brownlee was in bed with a bad cold.

30 Q. And did you go part way home with Miss MacMillan that night? A. I did. I took her to the carline.

Q. About what time in the evening was that? A. I think it would be between 8 and nine. I could not say the exact time.

Q. And there were plenty of Hallowe'en boys about that night? A. Yes there were boys.

Q. And were the two Brownlee lads in the house that night? A. Yes.

Q. And prior to Miss MacMillan going home were you upstairs that evening? A. Yes I was in my room.

Q. And was the door open or closed? A. My door was open.

40 Q. And had you been looking after Mr. Brownlee in his illness as best you could? A. Yes I did the best I could.

No. 23  
Jean  
McCloy  
(Mrs. Jean  
Saunders)  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

## CROSS-EXAMINATION BY MR. MACLEAN

Defendant's  
Evidence

No. 23  
Jean  
McCloy  
(Mrs. Jean  
Saunders  
Cross-Ex-  
amination

- Q. Just on this evening of October 31, 1932, that is Hallowe'en evening? A. Yes.
- Q. Was Miss MacMillan at the house for dinner? A. Yes.
- Q. And the boys were there for dinner? A. Yes.
- Q. And did you prepare dinner for Mr. Brownlee also? A. Yes.
- Q. And did you take the tray up to him to bed? A. I cannot remember whether I took the tray up or not.
- Q. He certainly was not at the table? A. No he was not at the table.
- Q. Was it you or Miss MacMillan took that tray upstairs with his dinner? A. I don't know. It might have been me or it might have been Miss MacMillan. 10
- Q. You can't remember? A. No I can't remember.
- Q. And I suppose after dinner you washed the dishes in the kitchen? A. Yes.
- Q. And I suppose being Hallowe'en, the boys would start off on their Hallowe'en nonsense? A. No they did not.
- Q. Didn't they go out that night? A. Yes Jack went out that night.
- Q. Now you were the maid in the Brownlee house from November 1930 until what time? A. Till the 30th of April 1933. 20
- Q. That is last April, a year ago? A. Yes.
- Q. And why did you leave? A. Well at that time I was half planning to get married.
- Q. What was the state of your health when you left? A. Perfect.
- Q. You did not have sickness? You did not leave on account of your health? A. No I did not.
- Q. You did not have a nervous breakdown when you left? A. No.
- Q. And when did you get married? A. I got married on the 14th of March, 1934.
- Q. So you were home a year practically before you did get married? A. Yes, I was. 30
- Q. And you got married last March? A. I did.
- Q. Now this room that you lived in at the Brownlee house—of course you knew it well? A. Yes.
- Q. Did it have a squeaky floor? A. Very squeaky.
- Q. And were the springs on the bed squeaky? A. Yes.
- Q. Very squeaky? A. Yes very squeaky.
- Q. They could be heard all over the house could they? A. Yes.
- Q. Do you know what sort of bathrobe Mr. Brownlee had? A. I don't know just what you mean. 40
- Q. A dressing gown. Did he have a big heavy dressing gown? A. (No answer).
- Q. A kimona. Do you know what I am talking about? A. Yes I know what you are talking about.
- Q. Did he have one? A. Yes he did.

Q. What was it like? Just tell me what it was like. A. Well it seemed to be a heavy blanket cloth; I couldn't tell you.

Q. A heavy blanket cloth? A. Yes.

Q. Was it a long one? A. Well it looked fairly big to me; I don't know.

Q. Did you used to close your door at night or did you leave it propped open a little bit? A. No I had my door closed.

Q. You used to close your door? A. Yes.

10 Q. And when you went up to your room on the evening of the 31st of October you left your door open? A. Yes.

Q. Had you any particular reason for that? A. No I do not think there was any particular reason for leaving it open.

Q. Was it your habit on every occasion when you went to your room to close the door? A. No not every time I went to my room I do not think; I could swear to that.

Q. Do you know where the Brownlee boys are now? A. Well I think they are at Sylvan Lake.

Q. They are at the lake, are they? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 23

Jean  
McCloy  
(Mrs. Jean  
Saunders)

Cross-Ex-  
amination  
*continued.*

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**No. 24**

20

**Evidence of Ella Loretta Lush**

ELLA LORETTA LUSH, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Q. I think Miss MacMillan stayed a little with you? A. She did.

Q. And when did she come and when did she go? A. She came on the 1st of January and left on the 15th of April 1933.

Q. And I suppose you had discussions with her? A. Yes.

Q. And did you know she used to visit the Brownlee household?  
A. Yes.

30 Q. From her discussions with you what was her attitude towards the Brownlee house? A. Well I understood she used it as a sort of second home.

Q. What was her attitude towards Mr. and Mrs. Brownlee? A. Well she seemed to think a lot of them.

Q. Did you notice anything unusual about her or did she appear to be a normal happy girl? A. That was my impression.

No. 24  
Ella Loretta  
Lush  
Exami-  
nation

---

**CROSS-EXAMINATION BY MR. MACLEAN**

Q. As far as you knew, Mrs. Lush, she appeared to be quite a normal girl? A. Yes.

Cross-Ex-  
amination

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 24  
Ella Loretta  
Lush  
Cross-Ex-  
amination  
continued.

- Q. Didn't have any vivid flights of imagination that you saw?  
A. Not that I noticed.  
Q. As far as you know she was not telling you wild fairy tales that had no basis in truth? A. Not that I know of.  
Q. As far as you could see she was a decent normal girl? A. That is what I always thought.

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**No. 25**

**Evidence of Walter Henry Hancock.**

No. 25  
Walter  
Henry  
Hancock  
Exami-  
nation

WALTER HENRY HANCOCK, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. 10  
Smith and testified:

Q. I believe you are employed as a janitor at the Parliament Buildings? A. Yes, sir.

Q. And how long have you been so employed? A. I have been there about 15 years sir.

Q. And do you know the wing in which the Premier's office is?  
A. Yes.

Q. Have you been employed there? A. Yes.

Q. And how long have you been on that wing? A. About 15 years.

Q. And what are your hours there on Saturdays? A. I start at one 20  
o'clock.

Q. And go through till— A. —till I finish.

Q. And do you know the location of the Premier's office? A. Yes.

Q. Have you a key to open all the offices in the wing? A. Yes, sir.

Q. And do you know Miss Vivian MacMillan? A. Never seen her in my life.

Q. Did you ever see any woman enter the Prime Minister's office shortly after one o'clock on any Saturday afternoon since you have been there? A. No, sir.

Q. And where did your duties commence at one o'clock? A. I gener- 30  
ally start in the Premier's office at one o'clock I try to get that cleaned up so I won't be held up later on.

Q. In the event that he might be returning to work? A. Yes.

Q. So you are watching that office pretty closely so you can get your work done? A. Yes, sir.

Q. And after the Premier leaves on Saturday at noon where do you first go after he leaves? A. I go right into his office if Miss Brown has gone.

Q. And that is your first job after coming on at one o'clock?  
A. Yes, sir. 40

## CROSS-EXAMINATION BY MR. MACLEAN

- Q. Did you ever even see Vivian MacMillan before? A. Well I saw her this morning coming up the steps when she was pointed out to me.
- Q. But you never saw her when she was down at the Parliament Buildings? A. Well I could not tell you that of course.
- Q. Hundreds of them? A. I suppose so.
- Q. Do you know any of them particularly? A. No.
- Q. Do you know some? A. Oh yes.
- 10 Q. But you never saw her going into the Premier's office at any time during the three years she had been there? A. I never saw any girl go into the Premier's office.
- Q. I am speaking of any time. Have you ever seen girls going into the Premier's office? A. Oh yes I have seen them—girls going in on business.
- Q. Would there be girls that you would not recognize? A. No.
- Q. Now tell me, were you called in by anybody in regard to the evidence you were to give on this case? A. Well last night, for the first time.
- 20 Q. Weren't you called in some time last summer or fall? A. It was just mentioned to me.
- Q. Who mentioned it to you? A. Mr. Porter.
- Q. And where was this, at the Buildings? A. No, sir.
- Q. Where was it? A. At the Macdonald Hotel.
- Q. Was Mr. Brownlee there? A. No, sir.
- Q. Who else was there? A. No one else.
- Q. And did Mr. Porter call all the other janitors into the hotel?
- A. I don't know.
- Q. And you understood Mr. Porter was Mr. Brownlee's solicitor?
- A. Yes.
- 30 Q. And you knew you were going to be asked to give evidence in a case in which the Premier was interested? A. No, sir. I never expected that at all, that I would be called as a witness.
- Q. But you knew the case you were being asked about? A. Oh yes I will admit that.
- Q. And I don't suppose janitors down at the Parliament Buildings would want to give evidence against the Premier? A. Well I would not tell lies for the Premier, if I knew it. A janitor has got some kind of honour, you know, anyway.

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 25  
Walter  
Henry  
Hancock  
Cross-Ex-  
amination

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 No. 26

## Evidence of Duncan Grant.

40

DUNCAN GRANT, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

No. 26  
Duncan  
Grant  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*  
—  
Defendant's  
Evidence  
—  
No. 26  
Duncan  
Grant  
Exami-  
nation  
*continued.*

Q. I believe you are a janitor employed at the Parliament Buildings?  
A. I have been.

Q. You were?  
A. I were, yes.

Q. And what years were you there?  
A. From the spring of 1931 to the spring of 1933.

Q. And what part of the building did you work in?  
A. In the corridors and the rotundas, that is the circles around.

Q. And on Saturday what time would you go to work?  
A. One o'clock.

Q. And do you know Miss MacMillan?  
A. I have seen her. 10

Q. Did you ever see her on Saturdays go down the corridor to go into the Prime Minister's office?  
A. Never.

Q. Now there are many people working in that building?  
A. Yes.

Q. And are there people working after hours?  
A. Usually some come back after hours.

Q. And at what time on Saturday are the outside doors locked, if you know?  
A. Usually shortly after one o'clock.

#### CROSS-EXAMINATION BY MR. MACLEAN

Cross-Ex-  
amination

Q. Mr. Grant, did you ever on any Saturday see Miss MacMillan going into the Attorney General's office?  
A. Never did. 20

Q. Did you ever see her on any occasion going into the general office in the Attorney General's Department?  
A. Well I have seen the face in the corridor as I remember, just in the corridor.

Q. What is that?  
A. I have seen her in the corridors.

Q. I am asking you about going into the office?  
A. No.

Q. But you have seen her in the corridors?  
A. Yes.

Q. That is in the corridors of the Legislative Building?  
A. Yes.

Q. Walking up and down the corridors, or going from place to place?  
A. No, in the Attorney General's quarters.

Q. There are several offices down in the Premier's wing. There is the council chamber?  
A. Yes. 30

Q. And what other offices are there there?  
A. Well I just cannot name them exactly. I am not just quite sure.

Q. But there are several offices?

Q. Communicating with the Premier's office?  
A. Yes.

MR. SMITH: I don't know whether you understood my learned friend. He said "communicating with the Premier's office." A. Well I don't know what he means there—communicating with them.

MR. SMITH: My Lord, I want just a moment. We have progressed very fast and I feel we have gone away beyond— 40

THE COURT: Yes, I was going to ask for five minutes recess, anyway. There will be a period of ten minutes.



At 11:22 Court adjourns for ten minutes.  
At 11:45 Court resumes.

*In the  
Supreme  
Court of  
Alberta*

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**No. 27**

**Evidence of Rita Picard**

RITA PICARD, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Defendant's  
Evidence

No. 27  
Rita Picard  
Exami-  
nation

- Q. You live at 10409 100th Avenue? A. Yes.  
Q. And Miss MacMillan at one time stayed with you? A. Yes.  
Q. Do you remember when that was, what year? A. 1932 I think,  
10 starting 1932 and into 1933.  
Q. I beg your pardon. A. Well it was two years ago in April.  
I don't remember very well.  
Q. And how long did she stay with you? A. Seven or eight months.  
Q. And did you know of the Brownlee family? A. I knew that she  
went there once in a while.  
Q. Now during the time Miss MacMillan was with you did you hear  
her make any criticism at all of the Brownlee family? A. No.  
Q. Did she appear to you to be a happy normal girl while she was  
with you? A. Yes.

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20 **CROSS-EXAMINATION BY MR. MACLEAN**

- Q. At the time that Miss MacMillan was staying with you she was  
there for seven or eight months? A. Yes.  
Q. And you and she were on fairly good terms? A. Yes.  
Q. Did you find she was in the habit of romancing and telling fanciful  
stories? A. No.  
Q. She seemed quite a sensible girl, to you? A. Yes.

Cross-Ex-  
amination

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**No. 28**

**Evidence of James Holloway.**

JAMES HOLLOWAY, being called as a witness on behalf of the  
30 defendant and having been duly sworn was examined by Mr. Smith and  
testified:

No. 28  
James  
Holloway  
Exami-  
nation

- Q. You are a janitor employed at the Parliament Buildings? A. Yes.  
Q. And how long have you worked there? A. I started in November  
1930 and was let out about May 1933.  
Q. And did you work on the circle? A. Yes.  
Q. What do you call that middle place? A. The circle.  
Q. Do you know Miss MacMillan? A. No, sir.

*In the  
Supreme  
Court of  
Alberta*

Q. What time do you go to work on Saturdays? A. One o'clock.  
Q. Did you ever notice any girl habitually going down the corridor into the Prime Minister's office at one o'clock on Saturday?

Defendant's  
Evidence

MR. MACLEAN: I object to that question. To the form, my Lord. That is not the evidence.

No. 28  
James  
Holloway  
Exami-  
nation  
*continued.*

MR. SMITH: Well "frequently."

THE COURT: Well it is a proper question I should say. It is a matter of weighing the answer, for the jury, bearing in mind the question.

Q. MR. SMITH: Well I will use the word "frequently". Did you notice any girl frequently going down the corridor and entering the Prime Minister's office shortly after one o'clock on Saturday? A. No, sir. 10

Q. Did you ever notice any girl go down into the Prime Minister's office on Saturday afternoon? A. No, sir.

---

CROSS-EXAMINATION BY MR. MACLEAN

Cross-Ex-  
amination

Q. And I suppose that answer includes Miss Brown, the Prime Minister's secretary? A. Yes.

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No. 29

Evidence of David Nicolson.

No. 29  
David  
Nicolson  
Exami-  
nation

DAVID NICOLSON, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified: 20

Q. I believe you are a janitor employed at the Parliament Buildings?  
A. I am.

Q. How long have you worked there? A. Almost four years; four years in November, the coming November.

Q. And do you work on the circle? A. I do at times.

Q. And what time do you go to work on Saturday? A. One o'clock.

Q. Do you know Miss MacMillan? A. I do not.

Q. Have you ever noticed any girl shortly after one o'clock on Saturdays frequently entering the office of the Prime Minister? A. No. 30

Q. Have you any memory of any girl on any Saturday at that time entering the office of the Prime Minister? A. No I do not.

---

CROSS-EXAMINATION BY MR. MACLEAN

Cross-Ex-  
amination

Q. How many floors are there on that circle? A. There are four.

Q. And do you have one particular floor or do you work on all of them? A. We work on all of them.

Q. And these janitors on the circle. How many janitors work on that circle? We have had evidence of several. A. Well we are off and on several times. I am not there all the time.

Q. Take Saturdays. How many janitors are working on the circle? How do they start? A. They start on the top floor and come down.

Q. So all the janitors working on the circle would start on the fourth floor and then work down? A. Not all of them, not all. Maybe two would start on the top and work down.

10 Q. And how many would be on the third floor of the circle? A. Well of course I could not answer that.

Q. So it all depends. They might start anywhere all over the building? A. Oh not anywhere.

Q. Well on the circle. They might start—if a janitor was working on the circle he might start on the fourth floor, the second floor or the main floor? A. Well they usually do it in a routine.

Q. Where did you usually start on Saturday afternoon? A. Usually started on the fourth floor at the top.

Q. And what floor is the Premier's office on? A. On the third.

*In the  
Supreme  
Court of  
Alberta*

—  
Defendant's  
Evidence

—  
No. 29  
David  
Nicolson  
Cross-Ex-  
amination  
*continued.*

### No. 30

20

#### Evidence of Elora Robertson.

ELORA ROBERTSON, being called as a witness on behalf of the defendant and having been duly sworn was examined by Mr. Smith and testified:

Q. I think you have just driven in from Sylvan Lake? A. Yes.

Q. And you are and have been for many years a close friend of Mrs. Brownlee's? A. Yes.

Q. And you have been at her home on a great many occasions? A. Yes.

30 A. Yes. Q. And did you there become acquainted with Miss MacMillan?

Q. And were you at that home, the Brownlee home, on the night or the day upon which Mrs. Brownlee went to the Coast? A. Yes.

Q. That was when? A. I cannot give the exact date.

Q. I don't want the exact date. A. She went in the Fall to the Coast.

Q. Of 1931? A. Yes.

Q. Now, Mrs. Robertson, you might just tell me in your own way what discussion there was between you and Mrs. Brownlee and Miss MacMillan as to Mrs. Brownlee going on that occasion? A. Well she had been hesitating.

40 Q. Was Miss MacMillan there? A. She was there when I was there, yes.

Q. And what time of day was it? A. I fancy towards six o'clock, somewhere around that period.

No. 30  
Elora  
Robertson  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 30  
Elora  
Robertson  
Exami-  
nation  
*continued.*

Q. And tell me just what took place? A. Mrs. Brownlee had been hesitating about going because she did not want to leave Mr. Brownlee and the children and I found her packing and she decided to go.

Q. Never mind any conversation A. Well I went in and Miss MacMillan said: "Well I am making Mrs. Brownlee go."

Q. And where was the maid at that time? A. I went straight upstairs to her room.

Q. And where was the maid? A. I suppose in the house. It would be close to six o'clock.

Q. Well, in your memory, was the maid home? A. Yes she would be at home. 10

Q. Well she would be, or do you remember? A. I do not remember. I went up to her room. I did not see the maid.

Q. Now have you on various occasions slept with Mrs. Brownlee? A. Yes.

Q. What have you to say as to her sleeping? A. Well you cannot move but what she is awake.

Q. Now have you heard Miss MacMillan make any reference to the Brownlee household or to Mrs. Brownlee? I mean what their relationship was? A. On different occasions. She always said it was like a home to her and that Mrs. Brownlee was like a mother to her. 20

Q. And during this period that Miss MacMillan was there were there other girls visited the Brownlee home? A. Yes.

Q. I mean frequently? A. In and out.

Q. They were in and out of there all the time? A. Yes.

Q. Just answer my learned friend.

#### CROSS-EXAMINATION BY MR. MACLEAN

Cross-Ex-  
amination

Q. Mrs. Robertson, the maid in the house was Jean McCloy at the time Mrs. Brownlee went to the Coast, do you remember? A. I cannot say definitely. 30

Q. Well you think the maid was in the house at the time? A. Oh I think so. Well I can't tell you. I don't know. I went upstairs.

Q. MR. SMITH: Thank you, Mrs. Robertson. I am now calling Mrs. Lawton.

My Lord, apparently Mrs. Lawton is not here. I am going to make this request, that we adjourn until two o'clock and if you do so I think I have some evidence that I will be able to furnish at that time which will shorten the whole proceedings.

THE COURT: Have you any objections. I will do anything to shorten this. Until two o'clock, Mr. Smith? 40

MR. SMITH: Yes, my Lord.

At 12:00 o'clock Court adjourns till 2:00 p.m.

At 2:00 p.m. Court resumes.

## No. 31

## Extracts from Examination for Discovery of Plaintiff A. D. MacMillan.

*In the  
Supreme  
Court of  
Alberta*

MR. SMITH: My friend Mr. Porter will read certain portions from the examination for discovery of Mr. MacMillan. (Reading):

"372. Q. Were you able to persuade her to stay home? A. No.

"373. Q. Why did she say she wanted to come back? A. She wanted to go back to work.

"374. Q. You had made it clear to her that you would have been better satisfied if she stayed home? A. Yes.

10 "375. Q. And her home was there, available for her to stay?  
A. Yes.

"376. Q. And you would have been happy to have her stay?

A. Yes. Her mother and I were all alone at that time.

"377. Q. But she insisted on coming back? A. Yes."

MR. MACLEAN: My Lord, in order to make it intelligible I submit that the previous questions should be read to show to what occasion this has reference.

THE COURT: Yes.

20 MR. PORTER: Well I have to read a great deal of it in order to do that.

THE COURT: Was this after her illness?

MR. PORTER: This was at the time she was home in Edson in 1932.

THE COURT: That answers your purpose?

MR. MACLEAN: Oh yes, as long as we know.

"724. Q. Now I want to go back for a minute to this drive out to that picnic at Shining Bank. How far is it out there? I think you told me, this morning, twenty-five or twenty-seven miles? A. I would think it is, or perhaps it might be more.

30 "725. Q. There is a ferry there, is there? A. Yes, across the Macleod River.

"726. Q. Your picnic was the other side? A. Just the other side.

"727. Q. Just where you get off the ferry? A. Just a little bit away from the ferry.

"728. Q. I suppose the picnic grounds were on the river, were they? A. Pretty close to it.

40 "729. Q. You told me this morning that your memory of Mr. Brownlee's statement at that time was that there was a better prospect of earning for the girl, if she would take up secretarial work or stenographic work, and that, if your daughter came in to Edmonton, she could use his home as her home? A. Yes.

"730. Q. Not, I think, with the idea of going there to live? A. No.

Defendant's  
Evidence

No. 31  
Extracts  
from Ex-  
amination  
for  
Discovery  
of Plaintiff  
A. D. Mac-  
Millan

*In the  
Supreme  
Court of  
Alberta*

Defendant's  
Evidence

No. 31  
Extracts  
from Ex-  
amination  
for  
Discovery  
of Plaintiff  
A. D. Mac-  
Millan  
*continued.*

"731. Q. That was a base like, which she could visit? A. Yes; they would look after her to a certain extent.

"732. Q. It would be some place to go? A. Yes.

"733. Q. I think you told me that he said that there were other girls going there that she would meet? A. Yes, I think I did.

"734. Q. Now was there anything else that he put forward at that time, that you recall? A. No. He just said that he would practically act as her guardian.

"735. Q. That is of some importance to determine the thing. Did he say he would act as her guardian? A. He said: "We will look after her." 10

"736. Q. He wasn't voluntarily naming himself as her guardian, there and then? A. No, but it practically implied that.

"737. Q. But the term guardian was not used? A. No. He just said he would look after her—that they would look after her.

"738. Q. And you said this morning that he told her that, when she got through, he would get her a job? A. That no doubt he could get her a job.

"739. Q. Now, Mr. MacMillan, at the time did that strike you as an unusual proposition? A. No, it didn't. 20

"740. Q. It was just something that arose in the course of the conversation, and it was not unusual, or outstanding, or peculiar? A. No, I don't suppose it was.

"741. Q. It didn't, in itself make you think that there was anything more than a friendly interest at that time? A. Not at that time, no.

"742. Q. Any opinions you have about the purpose now are formed by subsequent events. A. Yes".

## No. 32

### Discussion

No. 32  
Discussion

MR. SMITH: My Lord, I want to make an application that the Court and the Jury should inspect this house. I realize that that is something which can perhaps only be done by consent but in order to have a proper understanding of the situation I think it should be done. 30

MR. MACLEAN: My Lord, I am told that changes have been made since the time that these matters arose. If the Jury would like to inspect this house I would be very glad to agree to it but unless they desire to do so I can see no good purpose in it.

THE COURT: What do you say, Gentlemen of the Jury, do you wish to go over and see Mr. Brownlee's house?

A JURYMEN: I think it would be well, my Lord. We were speaking amongst ourselves and we thought if we did have a chance we would like to see this road out in the country—if we did have a chance. I am 40

only speaking of it and possibly it would not be necessary.

THE COURT: Inspect this what?

A JURYMAN: This road out here—out west and I thought it would be necessary.

THE COURT: Well you could have the chance, I should say, if you think it will assist you. You can be taken out there. It is for the Jury to say.

MR. SMITH: Which road?

MR. MACLEAN: I would ask then for leave to have the Jury  
10 inspect this road west that has been described. The one with the ditch?

A JURYMAN: Yes, sir.

MR. MACLEAN: It is not a great distance out, my Lord, and then possibly on the return trip they could go to the Brownlee house if that is convenient.

MR. SMITH: I have no objection to the Jury inspecting any road but I have no idea which road it is. There is one two miles west and one three miles west and then there is one south.

THE COURT: You are referring to the one described as having a big ditch on one side of it—the one that has been mentioned so often?

20 A JURYMAN: Yes, Your Lordship, where it was spoken of so many times.

THE COURT: I suppose the plaintiff would have to point that road out?

MR. MACLEAN: My Lord, I would suggest that the plaintiff go out and pick out, and point out, the road. If your Lordship would come in the car with counsel we could ask the plaintiff to go ahead and pick out the road in another car.

THE COURT: I think so. Is this a convenient time to go?

MR. SMITH: I know of no better.

30 A JURYMAN: However, your Lordship, we do not wish to do anything that would not be agreeable to the Court or that would possibly cause the case hanging on unduly.

THE COURT: It is quite agreeable to me.

MR. MACLEAN: Shall I arrange for cars, then your Lordship?

THE COURT: If you like. You can arrange for cars for the Jury and for those of us who go.

THE COURT: Do you want the Court Reporter?

*In the  
Supreme  
Court of  
Alberta*

—  
No. 32  
Discussion  
continued.

MR. SMITH: Of course no evidence can be given out there but we have to have the clerk in order that the court may be properly constituted.

At 2:15 Court leaves to visit roads in question and defendant's residence.

At 4:30 Court resumes.

Court adjourns till 10:00 a.m., Saturday, June 30th, 1934.

Saturday, June 30th, 1934, Court resumes at 10:00 a.m.

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**No. 33**

**Dismissal of Counterclaim**

No. 33  
Dismissal  
of Counter-  
claim  
June 30th,  
1934

THE COURT: Gentlemen of the Jury: I apologize for keeping you 10  
waiting but it was owing to the question that was sent in to me by you and  
I have taken the matter up in conference with counsel for both parties and  
I will deal with it when I come to charge you.

MR. SMITH: If your Lordship pleases, I am calling no further evi-  
dence. I say that because we have now a very clear cut issue—seduction or  
no seduction, and I do not intend to complicate it by the counterclaim in  
respect to conspiracy and I am not calling evidence with respect to that in  
this Court. May I also say that I am quite ready and willing that your  
Lordship should deal with that in your charge?

MR. MACLEAN: May I move, then, that the defendant's counter- 20  
claim be dismissed?

THE COURT: Yes. The counterclaim will be dismissed and I will  
deal with the question of costs at the close of the action.

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**No. 34**

**Application for Amendment to Statement of Claim**

No. 34  
Application  
for Amend-  
ment to  
Statement  
of Claim  
June 30th,  
1934

MR. MACLEAN: There was a matter which your Lordship men-  
tioned as to whether or not the statement of claim had complied with the  
provisions of the last section of marginal rule 27. In order that there may  
be no question about it I am asking your Lordship's leave to amend the  
claim in the Statement of Claim by setting up a claim for damages and I 30  
would ask your Lordship for leave to amend accordingly.

MR. SMITH: I am not objecting.

(Mr. Maclean hands statement of amendment to the Court.)

THE COURT: The claim has been amended, Gentlemen of the  
Jury, by simply stating, in pursuance to a rule of Court, a stated sum of



damages claimed. The action as constituted at present claims no sum except what you might award. Now the claim is on behalf of the male plaintiff for \$10,000 damages; on behalf of the female plaintiff \$10,000 damages. So it does not affect the issue in any way; it simply gives a stated sum as claimed.

THE COURT: Any rebuttal, Mr. Maclean:

*In the  
Supreme  
Court of  
Alberta*

No. 34  
Application  
for Amend-  
ment to  
Statement  
of Claim  
June 30th,  
1934

No. 35

**Evidence of Letha Maud MacMillan. (Recalled).**

10 LETHA MAUD MACMILLAN recalled by the plaintiff as a witness in rebuttal was examined by Mr. Maclean and testified as follows:

Plaintiff's  
Evidence in  
Rebuttal

Q. You are already sworn in this case? A. Yes.

Q. Were you present when Mrs. Brownlee was giving her evidence?

A. No.

Q. Mrs. Brownlee stated that on the occasion when Mr. Brownlee and Mrs. Brownlee went over to Edson on the 12th of August you would not talk to them, they went out there and tried to talk to you and you would not talk to them. Was there any particular reason why you would not talk to them?

No. 35  
Letha Maud  
MacMillan  
(Recalled)  
Exami-  
nation

20 MR. SMITH: If your Lordship pleases, this is not rebuttal. It was covered completely by Mrs. MacMillan in her examination in chief and the other version was given, and it is not rebuttal, surely.

THE COURT: You say Mrs. Brownlee stated that this witness would not talk to them?

MR. MACLEAN: "I have nothing to say," words to that effect?

THE COURT: You can ask if that is true or not but you cannot ask in rebuttal her reasons, surely.

MR. MACLEAN: My Lord, she has not mentioned the reasons in her examination.

30 THE COURT: But it is not rebuttal. Rebuttal would be of a statement in the evidence of the defendant's witness, if it is true or not true. That is rebuttal.

MR. MACLEAN: I naturally accept your Lordship's ruling.

THE COURT: Well we won't go into the reasons because the question itself purports the truth of the defence evidence and starts for the reasons of it. That is not rebuttal.

MR. MACLEAN: Did you tell Mrs. Brownlee on that occasion that you did not care to talk about this case or had nothing to say or words to that effect? A. Yes.

*In the  
Supreme  
Court of  
Alberta*

—  
Plaintiff's  
Evidence in  
Rebuttal

—  
No. 35  
Letha Maud  
MacMillan  
(Recalled)  
Exami-  
nation  
*continued.*

Q. And did you know at that time that your husband and daughter had given instructions to a solicitor? A. Yes.

Q. Now do you remember the date January 2nd of 1933; that would be the Monday—the first Monday in the year? A. Yes I do.

Q. What reason had you to remember that date? A. My son's wife was sick in the hospital.

Q. And had you come in to Edmonton? A. Yes I came in.

Q. And were you at the hospital on Monday the 2nd of January? A. Yes.

Q. And where was your daughter staying at that time? A. At Mrs. MacKay's. 10

Q. And did you go to Mrs. MacKay's that morning? A. Yes.

Q. About what time did you get to Mrs. MacKay's? A. Shortly after nine o'clock.

Q. You went from the hospital? A. Yes.

Q. And was your daughter there? A. Yes.

Q. Can you remember what your daughter did that morning?

MR. SMITH: Just a moment, please, your Lordship. Clearly this is not rebuttal. They exhausted very carefully as to certain hours and certain dates. Now this is in no sense rebuttal. 20

THE COURT: Well it is not so far.

MR. SMITH: Well I think I waited until I came to the proper place as I thought.

THE COURT: I think the question is proper so far, if I anticipate the rebuttal properly.

MR. MACLEAN: What happened that morning, Mrs. MacMillan? A. Shortly after I went to Mrs. MacKay's the phone rang and Vivian went to the phone. She said: "It is too bad mother but—"

MR. SMITH: Well.

THE COURT: Oh never mind what she said. 30

Q. MR. MACLEAN: What did she do? A. She got ready and went to the office, to the Buildings.

Q. Did you see her leave? A. Yes.

Q. Did you see her come back? A. Yes.

Q. How did she come back?

MR. SMITH: Now my Lord.

(The Witness): In a car, in Mr. Brownlee's car.

Q. She came back in Mr. Brownlee's car? A. Yes.

Q. Did you see Mr. Brownlee? A. Yes, sir.

MR. SMITH: This is obviously not rebuttal. Here is an incident upon 40

which they relied and upon which they called evidence, but it is clearly not rebuttal. One must give one's own evidence in proof in the allegation and it cannot be done by way of rebuttal.

MR. MACLEAN: This arises out of the evidence of Mr. Snow and it is rebutting the evidence that was given by the defendant's witness, Mr. Snow.

THE COURT: Yes, I think so. The evidence of the defendant's witness Mr. Snow accounts for the defendant's time from 11 or a few minutes before till 12:30.

10 MR. MACLEAN: Twelve or 12:30.

THE COURT: The defendant said 12 or 12:30 and Mr. Snow said 12:30, as I remember it. I have a clear recollection of it. Go on.

MR. MACLEAN: Did you move with your daughter to Mrs. Lush's boarding house or rooming house on that day? A. Yes, shortly afterwards, in the afternoon.

Q. And you remember the incidents of that morning very well? A. Yes, I certainly do.

Q. What time did you and your daughter move to Mrs. Lush's? A. It was in the early part of the afternoon.

20 MR. SMITH: Then my Lord this is absolutely new.

MR. MACLEAN: It is merely, my Lord, to set times.

THE COURT: You are not in rebuttal at present.

Q. MR. MACLEAN: Mrs. MacMillan, Mrs. Brownlee stated in her evidence that the first time she met Vivian MacMillan in September, 1930, Vivian was wearing a blue tailored suit, that she was carrying a white beret. This was the first time your daughter had gone away from home to stay by herself? A. Yes, sir.

Q. Did you help prepare her clothes? A. Yes.

30 Q. Did she have when she came to Edmonton on that occasion at the end of August, 1930—did she have a blue tailored suit? A. She did not.

Q. When was the first blue tailored suit that she ever had as far as you know? A. Just before she went to work.

Q. Did you know how she got it? A. Yes, she bought it.

Q. Did you go and help to choose it? A. I went and helped to choose it.

Q. Where was it bought? A. At the Hudson's Bay store.

Q. When was that? A. Somefew days before she went to work.

Q. And she went to work some time in July, 1931? A. Yes, sir.

40 Q. And you are sure that up till that time she had never had a blue tailored suit? A. She had not.

MR. SMITH: No questions.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence in  
Rebuttal

No. 35  
Letha Maud  
MacMillan  
(Recalled)  
Exami-  
nation  
*continued.*

## No. 36

In the  
Supreme  
Court of  
Alberta

## Evidence of Plaintiff Vivian MacMillan. (recalled)

Plaintiff's  
Evidence in  
Rebuttal

No. 36  
Vivian  
MacMillan  
(Recalled)  
Exami-  
nation

VIVIAN MacMILLAN, recalled in rebuttal, was examined by Mr. Maclean and testified as follows:

Q. You were sworn already, Miss MacMillan? A. Yes.

Q. Did you have in September, 1930 a blue tailored suit? A. I did not.

Q. When was that suit acquired by you? A. Just a couple of days before I went to work in the Attorney General's Department.

Q. And where was it bought? A. Bought at the Hudson's Bay 10 Company's store.

Q. Is there anything about that suit that stands out in your memory?  
A. Yes there is. It is the first garment I bought and wanted to pay for myself.

Q. Did you want to pay for it yourself? A. I did.

Q. Out of your salary? A. Out of my salary.

Q. And it is the first garment you bought and paid for yourself?

A. Yes, sir.

Q. What arrangements did you make at the Bay for buying it?

THE COURT: Oh I don't think so. Oh I don't think so.

20

MR. MACLEAN: Now either Mr. or Mrs. Brownlee has stated that when you went home for Christmas of 1932 that they drove you to the station and on that occasion asked you if you had anyone to meet you on your return and said that if it were possible they would meet you on your return. You heard that evidence? A. Yes, sir.

Q. What time was it that you got on the train to go to Edson for your christmas of 1932? A. Six-thirty in the morning.

Q. And how did you go to the station? A. I telephoned for a taxi for Mrs. Mackay.

Q. MR. SMITH: In the first place "I phoned for a taxi for Mrs. Mac- 30 kay," I do not think that evidence was given.

MR. MACLEAN: You took a taxi from where? A. From Mrs. Mackay's to the Canadian National Station.

Q. And neither Mr. or Mrs. Brownlee took you to the station? A. No, sir.

Q. Mr. Brownlee has given evidence that in some of these cars the back of the front seat was cut so it could be lowered backwards? A. Yes.

Q. Do you know anything about that? A. Yes. I know there was one car that Mr. Brownlee used to drive in 1930 that had the front seat cut down so it would lay back.

40

Q. Did he ever let the back down when he was out with you?

MR. SMITH: Now of course I must object to this.

THE COURT: Oh no. Stick to rebuttal. She gave it in her evidence-in-chief here that the small Studebaker had the seat cut so that it would fall back. Mr. Brownlee's evidence was that the Studebaker and the Hup were both so treated.

MR. MACLEAN: I am very desirous of submitting to your Lordship's ruling, but I would like to show whether or not that back seat that was cut down was ever used?

THE COURT: Oh no, oh no. There is no evidence it ever was—not a tittle—so there is nothing to rebut about.

10 MR. MACLEAN: Do you remember the first occasion on which you went to the Brownlee house? A. Yes, sir.

Q. Do you remember the condition of the house at that time?

MR. SMITH: No, my Lord, this was all gone into, this first occasion was threshed back and forth. This is certainly not rebuttal.

THE COURT: Oh no, it is not rebuttal.

MR. SMITH: No questions. Thank you.

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No. 37

**Evidence of Jessie Elgert. (recalled)**

20 JESSIE ELGERT, recalled as a witness for the plaintiff in rebuttal testified as follows:

MR. MACLEAN: You are already sworn. Mr. Brownlee has given evidence that after you left his employ the only occasion that he ever saw you was at the University Hospital and that Miss MacMillan was with him at that time.

MR. SMITH: Leaving the University Hospital.

Q. MR. MACLEAN: At the University Hospital or leaving it. I don't care which? A. Lots of times I saw Mr. Brownlee.

MR. SMITH: Just a moment. This is not rebuttal. It could not be. It is contradiction of something irrelevant.

30 THE COURT: No.

MR. MACLEAN: It is not irrelevant, my Lord, and it is most material.

THE COURT: Well the evidence of the defendant was that on the occasion in the vicinity of the University Hospital was the time he last saw her and Miss MacMillan was with him. If she saw him afterwards it is not evidence or rebuttal. If she spoke to him afterwards it is evidence of a rebuttal of that statement. Now that is as far as you can go.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence in  
Rebuttal

No. 36

Vivian  
MacMillan  
(Recalled)  
Exami-  
nation  
*continued.*

No. 37

Jessie  
Elgert  
(Recalled)  
Exami-  
nation

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence in  
Rebuttal

No. 37  
Jessie  
Elgert  
(Recalled)  
Exami-  
nation  
*continued.*

MR. SMITH: It is an immaterial statement, that is my point, and cannot be contradicted.

MR. MACLEAN: Did you have a conversation with Mr. Brownlee after you left his employ? A. Once, the time I said, in October.

Q. And where was that?

MR. SMITH: She says in October, as she has already given in evidence.

Q. MR. MACLEAN: Is that the only occasion you had a conversation with him? A. Yes.

Q. And what was that conversation? 10

MR. SMITH: We have already had that.

THE COURT: Well I have forgotten. Where was it? A. It was in his car.

MR. MACLEAN: Was anyone else in the car?

MR. SMITH: Now I object to this. Surely this is not right.

MR. MACLEAN: He said Miss MacMillan was there.

THE COURT: No he did not—when he last saw her. No I am quite clear, Mr. Maclean.

MR. MACLEAN: Where was this conversation?

MR. SMITH: We have already had that. 20

THE COURT: You can ask where the car was.

MR. MACLEAN: Where was the car?

MR. SMITH: She has already said so in her evidence-in-chief—that this time in October she had been in Mr. Brownlee's car and she got out and Mr. Brownlee picked up Miss MacMillan. Now there is the whole story and it is denied, and my friend cannot divide his case.

MR. MACLEAN: This was not allowed in in chief, my Lord, where the conversation took place.

THE COURT: No and I do not propose to allow it now. The point you wish to rebut is the question of time and you have not done it yet. 30

MR. MACLEAN: Not time, my Lord.

THE COURT: Yes. The defence is the last time he saw this woman was the occasion near the University Hospital.

MR. MACLEAN: At or near the University Hospital and Miss MacMillan was with him on that occasion?

THE COURT: If she deposes to having a conversation with him after that then undoubtedly it is rebuttal because she must have seen him and he must have seen her. That is all.

MR. MACLEAN: Where was this conversation that you had with Mr. Brownlee the last time that you were with him?

THE COURT: When was it? A. In October.

MR. MACLEAN: When was it? A. In October.

Q. In October, 1930? A. Yes.

Q. And where?

10 THE COURT: That is the point upon which we have had evidence-in-chief. We won't go over it again.

MR. SMITH: No questions.

THE COURT: Anything more?

MR. MACLEAN: That is all, my Lord.

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**No. 38**

**Discussion**

MR. SMITH: If your Lordship pleases, I am going to make a suggestion to the Court. In our Jury Act there is no provision made as to precedence of addresses of counsel.

20 THE COURT: Well the rules provide—

MR. SMITH: With respect I submit the rules do not apply to cases tried by juries. Provision is made for addresses but no provision as to precedence.

THE COURT: 191, yes.

30 MR. SMITH: Your Lordship means the Rule provides the person calling the evidence must first sum up to the jury and when the evidence has been called he may again sum up. The point I have in mind is that this matter is purely discretionary with the Court in the absence of arrangement and as there is no arrangement I had a proposal to make and that is all I expected to do, and either let it be accepted or not as your Lordship wishes.

THE COURT: Well.

MR. SMITH: My suggestion is this, that I will begin. My friend may follow. I should have a short reply or if he wishes he will begin. I shall follow and he shall have a short reply. I may say that course was adopted very recently in a jury case.

*In the  
Supreme  
Court of  
Alberta*

Plaintiff's  
Evidence in  
Rebuttal

No. 37  
Jessie  
Elgert  
(Recalled)  
Examina-  
tion  
*continued.*

No. 38  
Discussion

THE COURT: Oh there is no doubt about that. There is no doubt about that. I have in mind the practice always followed by the late C. C. McCaul and that was his invariable practice—to be rather short in his opening and bring all his guns to play in his reply. That was his strategy, always.

MR. SMITH: Well I am content to have it either way.

THE COURT: Well either of you who begins may reply. It does not matter a bit. I am not not going to cut you off.

MR. SMITH: Very well. Shall I begin, my Lord?

THE COURT: Just as you like. What do you say, Mr. Maclean? 10

MR. MACLEAN: Well in the 19 years I have been practicing in Alberta I think the practice has been settled the defendant begins.

THE COURT: Well it is not always done and whenever possible I accede to counsel's wishes always. Now, Mr. Maclean, you may have the choice. You can either begin and have your reply or you can let Mr. Smith begin with the understanding that he is going to reply. You can do just what you like.

MR. MACLEAN: My Lord, with great respect I must submit as your Lordship settles the practice in this Court—

THE COURT: I do not think it is a question of settling the practice 20 of the Court. I think it is a question of not inhibiting in any way that I can avoid the desires of counsel in their dealing with the litigation which they have in charge.

MR. MACLEAN: If your Lordship grants a reply I would respectfully submit it is a new practice. I have never been present in any jury case or heard a jury case, civil, where there was a reply.

THE COURT: Which would you like to do?

MR. MACLEAN: I would prefer my friend to begin, which is the usual ordinary practice.

THE COURT: Very well. Well just one moment. I think perhaps it 30 would be better if with counsel I decided upon whether or not I would put questions or ask for a verdict before counsel begin. It might make some difference, and I think that matter should be determined now. Will you come in for a moment?

MR. SMITH: I am quite agreeable my Lord.

MR. MACLEAN: Whatever your Lordship says.

At 10:40 Court adjourns and counsel retire with His Lordship.

At 11:00 a.m. Court resumes.

Mr. Smith addresses Jury.



At 12:30 Court adjourns till 2:00 p.m.

At 2:00 p.m. Court resumes.

Mr. Smith continues and concludes at 2:45.

At 2:45 Mr. Maclean addresses Jury.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 38  
Discussion

THE COURT: The Jury cannot assume she has lost a happy married life here.

MR. MACLEAN: The evidence is that Snell was wanting to marry her in October, 1930; that Johnnie Caldwell was wanting to marry her in January, 1933.

10 Q. THE COURT: Yes and after that.

Mr. Maclean concludes at 3:25.

MR. SMITH: Your Lordship gave me the right to reply and my friend objected to it, and to prevent it being unfair I have decided not to do it.

MR. MACLEAN: Your Lordship consented to ask questions and also refused my suggestion that the jury could be told they could give a general verdict. I wish to draw attention to the fact that the Jury Act has been amended.

THE COURT: Is it a special verdict? Well that does not change the matter.

20 MR. MACLEAN: With respectful submission. That provision that they must answer questions has been struck out and I submit that on the elimination of that clause that your Lordship should tell the jury that they do not need to answer the questions and that they can give a general verdict.

THE COURT: Oh, no. I am reading it as amended now:  
"Upon a trial by jury except in an action for libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him, in which case the jury shall answer such questions and replies thereto shall constitute a special verdict."  
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But they must answer them.

MR. MACLEAN: I submit not, my Lord.

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No. 39

**Judge's Charge to Jury**

Gentlemen of the Jury,

This issue is clear cut and easily defined. It is a question of seduction, and that alone is the issue. "Seduction", as used in law in this case, means

No. 39  
Judge's  
Charge to  
Jury, June  
30th, 1934

*In the  
Supreme  
Court of  
Alberta*

—  
No. 39  
Judge's  
Charge to  
Jury, June  
30th, 1934

this—inducing a woman to part with her virtue for the first time or inducing her to again part with her virtue after she has rehabilitated her character following a prior lapse.

Now we need not worry very much about any prior misconduct of the female plaintiff in this action because there is not any evidence whatsoever that there was any and it is unquestionably to be assumed that if her story is true that on the first occasion the seduction took place. The inducement or persuasion may be by deception or bribe or flattery—any artful device that brings about her consent. If force is used but also accompanied by persuasion, and she is induced thereby, the presence of force does not necessarily prevent its being seduction. But if force alone was the reason for the intercourse and by force alone it was accomplished it would not be seduction; it would be rape. Now you have severally and solemnly sworn to find a true verdict on the evidence. I suppose that in these days of the latest facilities for rapid communication that it would be impossible to empanel any jury to deal with any charge or any issue who had not prior to their assuming their duties heard this issue or the charge discussed and talked about and opinions expressed in regard to it, and probably they may have expressed their own opinions. There is the telephone, the radio, the press, the motor car, all of which enable much more discussion to take place than in days gone by before these facilities were to be had, and if you would discharge your duty as you have taken an oath to do you must entirely exclude from your minds any impressions that you had, anything that you have read or heard about this case and any opinions you may have had. You must decide this issue upon the evidence that you have heard within this court room from the witnesses who have been called. And having imposed that great responsibility upon you the law in turn clothes you with the exclusive power to judge the evidence. Should you gain my opinion of this issue in my summing up you are not bound by that. Yours is the sole responsibility of saying what facts the evidence you have heard proves. It is for you to say what are the reasonable and proper inferences to be drawn from facts which you find proved. Now the way that we all weigh evidence, and you should weigh it, is to bring to your aid your experience as men of affairs in your daily lives. You have to bear in mind when you hear a witness what interest the witness has in the subject of that evidence being given. You listen to the tones of his voice, you watch his conduct in examination and in cross-examination, and perhaps one of the strongest aids you have is to consider the reasonableness of the story told to you in evidence. Where you have contradictory testimony, as you have here, flat contradiction, I know of no better aid that you can have than to test the respective stories told by the witnesses in the light of reason—how consistent is the conduct they allege with that conduct which you would expect of the average reasonable man of ordinary habits of mind if he were in like circumstances? That is what counsel for the defendant was doing in his address when he asked you whether or not it was reasonable to suppose that the Prime Minister would take the risk of

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parking on a road which bears evidence of being used considerably in a thickly settled district, with a conspicuous car. Would he take the risk of parking there frequently and of indulging himself there as alleged? Would the average man of ordinary habits of mind do that when it was not necessary—there is no doubt of that because, by the story that the female plaintiff tells us these acts took place at the office of the defendant in the Parliament Buildings. It could have been done there. There were as suggested many points no doubt where some concealment could have been effected. Any other motor car travelling down there with headlights on

- 10 would pick up without trouble the license number of a parked car, and would not a parked car perhaps occasion some inquiry from a passing motorist as to whether there was trouble there or not that he could help? Again, as suggested, on other days, the 27th of June, the 3rd of July, and the 5th of July, both the house was available and empty and the office in the Parliament Buildings was available—would the average reasonable man have gone out with a motor car and selected that method? You have to ask yourselves this where you have contradictory evidence in order that you may come to a conclusion as to what is probably the truth. You do not find a verdict upon possibilities; you balance probabilities, what is probably so, and it is upon probabilities that you come to a conclusion as to the truth.

- 20 Now there is this must be said, that the story of the female plaintiff in so far as this misconduct is concerned is wholly and entirely unsupported by any other evidence. It is just her own evidence. If this were the subject of criminal enquiry a jury would be prohibited from bringing in a verdict because of the absence of corroboration. In the civil side it is your right if you come to the conclusion that the female has established the truth of her allegation to act without her story in any way being corroborated by other evidence.

- 30 The evidence on the other hand of the defendant is supported in many instances by that of other witnesses. You apply to his evidence the same aids and tests that I have suggested you apply to the evidence of any witness including the female plaintiff. What is his interest in the evidence he is giving? Are the facts which he alleges and relates reasonable under the circumstances prevailing at all times? Are they reasonable? Is the conduct, that he represents as having been his, the conduct that you would expect under the same circumstances from the average man of ordinary habits of mind—that is to say is it reasonable?

- 40 There is this thought that must occur to you, that if this relationship is as deposed by the plaintiff extending over a period of fully three years and considering the conspicuous position occupied by this defendant it is astounding to my mind that no one has been found who in any way had reason to suspect anything other than a very proper relationship. If they had been going frequently into such a public place as the Legislative Buildings it is reasonable to suppose that someone about those buildings would in time have had some thought about the frequency of these two particular people being seen together. Undoubtedly it is astonishing that over a period

*In the  
Supreme  
Court of  
Alberta*

—  
No. 39  
Judge's  
Charge to  
Jury, June  
30th, 1934  
*continued.*

*In the  
Supreme  
Court of  
Alberta*

—  
No. 39  
Judge's  
Charge to  
Jury, June  
30th, 1934  
*continued.*

of three years no one either the wife of the defendant or the maid in the house over a period of three years of frequent visiting of that house ever saw anything that in any way gave them any grounds for a suspicious thought. It may be possible but is it probable? That is what you must ask yourselves—is it probable?

Oh, gentlemen of the jury, before I forget it. You asked a question this morning. There is no evidence whatsoever of a complete or any medical examination except the evidence you have heard from Dr. Fife. There is no evidence of any examination at any time of the vagina or the sexual organs and there is no evidence by Dr. Fife or anyone else except the plaintiff that her ill health resulted or was caused by sexual intercourse. 10

I propose to ask you to answer questions? The first question is this—  
“Did this defendant seduce the plaintiff Vivian MacMillan?” If you answer that question “No” you need not go on to any further question. It ends the case. If you find that she was not seduced by this defendant that ends the matter. If, however, you find that there was seduction, The second question is—

“If so when?”

The third question is—

“If so did she suffer damage?” 20

If no damage follows the seduction the action is not maintainable. There must be damage accruing. Without it the action cannot be maintained.

You are entitled to assume that if there was a seduction the father has felt a humiliation, has lost some services of his daughter, and you are entitled to assess, if you find a seduction, such damage as you think will fairly compensate him and you may even go beyond that and inflict an exemplary damage—an expression of your opinion that the misconduct was such that it deserves punishment. You are entitled to assume that the female plaintiff may suffer at the hands of society and if you find her illness was brought about by sexual intercourse with this defendant that is a ground for damage and you may assess to her such compensation as in your opinion will meet those items. 30

I pointed out before if you answer the first question in the negative you need not answer the others.

Now the second question I have asked you is: “If so when?” I have told you what seduction is. If you believe the evidence of Vivian MacMillan as to the occurrence on Monday night the 13th of October when she alleges that intercourse was only partial—if you believe that, then seduction took place at that time.

I am not going over the dates. They have been very carefully covered 40 by counsel—very. I am not going to review the different facts. That has been done and you must have them in mind. It is quite clear that the female plaintiff is out and wrong in her dates, in a measure. It is quite clear that she could not have seen the defendant on the 5th of October because he was on his way back from Winnipeg and was not in this city at any time on the 5th of October. It is for you to say whether it is probable that she

saw him on the 28th of October because he was in Stettler that day at some function which required his official presence, and he was speech making there. It is true that one may expect faulty memory about certain things—most things—but one must remember that where such unusual, repugnant and extraordinary happenings are related that at least they must have been so impressed on the memory of the relator to whom they occurred that there could be little chance of mistaking the date.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 39  
Judge's  
Charge to  
Jury, June  
30th, 1934  
*continued.*

10 THE COURT: Gentlemen of the Jury, any five of you who agree may answer the questions. It is not necessary in civil jury trials that the jury be unanimous; five, if they agree, may bring a verdict and in this case answer these questions.

I think Gentlemen of the Jury, that I cannot usefully say anything more to you. It is possible that I will ask you to come back if counsel have objections to make, after I hear them.

Will you now retire and commence your consideration?

At 3:55 jury retire.

20 MR. MACLEAN: May I formally get down the objections which I made to your Lordship when we were discussing this matter of questions? I do respectfully submit that the jury are entitled to be told that they may bring in a general verdict. I submit to your Lordship that question 4 in regard to the male plaintiff is not a proper question and his rights do not depend upon seduction; that something should be said in regard to him in regard to enticement and possible seduction, as an aggravation.

In regard to your charge to the jury. There are other definitions of seduction given in the leading case in our courts—that of Gibson and Rabey—and in the leading cases.

THE COURT: In the leading cases? I have them before me.

MR. MACLEAN: It does appear to me that you picked out the definition which is most unfavorable to the plaintiff's case.

30 THE COURT: Well it is only consistent — well it is the only consistent definition with all those given by one. The American definitions are used in some cases and the English in others. But the American definitions are not ours. In the case of Rex and Moon, which is the case cited in Gibson and Rabey as the English case, they are very clear about it. Take the Bouvier—"The act or crime of persuading a female by flattery or deception to surrender her chastity." Well now, if she has surrendered it already she cannot surrender it again, which amounts to the same definition as is given in Rex and Moon. And Cyc I pass over—"It is generally used in the special sense of wrongfully inducing a woman to consent to sexual  
40 intercourse."

MR. MACLEAN: In your charge to the jury you said there was no corroboration. I submit that that is not correct.

THE COURT: Where is it?

MR. MACLEAN: I submit that Jessie Elgert seeing him drive off after ten o'clock at night is corroboration. The Premier's own story that he was driving around the country at night is corroboration.

THE COURT: Oh no, not the corroboration of misconduct; corroboration of the matter of opportunity, perhaps.

MR. MACLEAN: I would draw your Lordship's attention that you said to the jury that it is astonishing that no one has been found who in any way had any reason to suspect anything. I submit we are not entitled to bring evidence before this Court of mere suspicion. There may have been hundreds at the Parliament Buildings who suspected something but we cannot get them to give evidence. We could have brought evidence of suspicions. She gave evidence that people were talking about her. 10

THE COURT: She said she told the defendant that over the telephone.

MR. MACLEAN: May I ask your Lordship that you re-instruct the jury as to some additional grounds for damages? The father is entitled to damages for distress of mind.

THE COURT: I told them so.

MR. MACLEAN: For the dishonour which he has received and for loss over the dishonour of his daughter and loss of society of his daughter and that they are entitled to take into consideration the situation in life of the parties and the conduct of the defendant including his conduct on the stand at the trial. 20

THE COURT: The conduct of the defendant—I think that is met where I told them they might assess damages as a punishment—to express their opinion of his conduct. It there anything else?

MR. SMITH: I take exception to the view your Lordship expressed—I know your Lordship will disagree with me, but I do take the position that there is no evidence whatever connecting damage in this case with the seduction itself, if it existed—not one word of evidence. 30

THE COURT: Well it is her evidence that her illness resulted from it.

MR. SMITH: I am submitting that is not proper evidence upon which a finding may be made. May I say I agree with my friend with respect to the persons who were suspicious? No doubt what you meant was "Who saw facts that might arouse suspicion"—incidents.

THE COURT: Oh I think I am going to leave it alone.

At 8:40 p.m. the jury return.

**No. 40**  
**Verdict of Jury**

*In the  
Supreme  
Court of  
Alberta*

THE COURT: Gentlemen of the Jury, have you agreed on answers to the questions submitted? If so, say so by your foreman. Did this defendant seduce the plaintiff Vivian MacMillan?

No. 40  
Verdict of  
30th June,  
1934

THE FOREMAN: Yes.

THE COURT: If so, when?

THE FOREMAN: At the time when Mr. Brownlee gained only partial entrance, as stated by Vivian MacMillan.

10 THE COURT: If so, did she suffer damage and in what amount?

THE FOREMAN: Yes. \$10,000.

THE COURT: If there was seduction did the male plaintiff suffer damage, and in what amount?

THE FOREMAN: Yes. \$5,000.

MR. MACLEAN: I move that judgment of this Court be entered in accordance with the jury's finding.

MR. PORTER: I move that the Court dismiss the action.

THE COURT: I suppose we can let the jury go?

MR. MACLEAN: Yes my Lord.

20 THE COURT: Gentlemen of the Jury, you are excused and you may go. I think I should say openly and publicly while you are present that I strongly disagree with your answers. The evidence does not warrant them. You may go.

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**No. 41**

**Motion for Nonsuit**

30 MR. PORTER: The action, my Lord, is founded on three causes. The first of those is the action of enticement brought by the parent. The action of enticement involves the breach of a contract between the master and the servant or the breach of an implied contract between the parent and the child by the representation of a third person. No such action lies here, my Lord, because the evidence is that this girl came to Edmonton not only with her parents' consent but at their expense and in her mother's company. On that ground, I submit, my Lord, there is no verdict founded on enticement can stand.

No. 41  
Motion for  
Nonsuit  
June 30th,  
1934

The other action is the father's action for seduction. That, my Lord, is founded on loss of service. Mere seduction in itself has never been a cause of action.

*In the  
Supreme  
Court of  
Alberta*

No. 41  
Motion for  
Nonsuit  
June 30th,  
1934  
*continued.*

THE COURT: Oh you need not argue that. It is quite clear that I am bound by Gibson and Rabey. And it is clearly laid down that unless there is damage it is not maintainable.

MR. PORTER: Very well, my Lord. The jury having found that the seduction occurred in October 1930 and the evidence having been established that for six months after this having become a habit and that there being no evidence that there was any effect on this girl that involved loss of services to her parents or that could have involved a loss of services to her parents had she been living with them, I submit there is no ground for action. Now our Statute makes it unnecessary to prove that the girl was in her father's service but it does not dispense with the necessity for showing loss of service. Now there is no loss of service proved here nor any change in her physical or mental condition that would involve a loss of service had she been living with her parents. The only testimony is that she lost ten pounds in weight and there is no tittle of evidence that she was unable to carry on for herself or would have been unable to carry on for her parents. Now on that ground there was no loss of services to her parents and consequently no damage. 10

Then we come to the action of the girl herself. The language of our Statute vesting that right in the female plaintiff has been interpreted by our own courts, in Gibson and Rabey in this Province and in Bilinski vs. Kowbell in Saskatchewan and both those courts say that she must suffer the kind of damage that would have given her parent or master a right of action. Now there being not only no evidence of the loss of wages—but there is no evidence that she was in any way damaged. 20

I desire to read, shortly, my Lord, from Harrison and Prentice, an Ontario decision on the subject. I will just read the head note (reading). There is no evidence.

THE COURT: Where is that?

MR. PORTER: Harrison and Prentice; 24 Ont. A.R. at page 677. Bilinski and Kowbell; 1931 Sask. C.A. Vol. 2, page 239. Mr. Justice Martin as a member of the Court of Appeal considering an action brought there by a female plaintiff under a section identical in its terms with our section says (reading). 30

That is my submission. There is no damage proven as a result of this seduction which in any way would impair her ability to render service had she been at home, and there is no testimony that she herself lost anything.

MR. MACLEAN: I submit, with great respect, this Court cannot render a verdict contrary to the decision of the jury.

THE COURT: Oh yes it can. I have done it before now on two different occasions and been upheld by the Court of Appeal. 40

MR. MACLEAN: May I say this before your Lordship gives judgment? This jury trial has cost the male plaintiff over \$500 in jury fees.



He has only been able to raise that by mortgaging his home. He is not able to get another jury or have another trial.

THE COURT: Well that is not a reason which should influence a judgment of mine. Candidly, Mr. Porter, I do not feel capable of dealing with this now and I propose to reserve decision on your application, and until I have had an opportunity of refreshing my mind on the subject and when it is rested to some extent I will write a short judgment and send it up.

Court adjourns.

*In the  
Supreme  
Court of  
Alberta*

—  
No. 41  
Motion for  
Nonsuit  
June 30th,  
1934

*continued.*

## Formal Judgment

*In the  
Supreme  
Court of  
Alberta*

No. 42  
Formal  
Judgment  
2nd July,  
1934

THIS ACTION having come on for trial at the City of Edmonton, in the Province of Alberta, before the Honourable Mr. Justice Ives and a jury at a special jury sittings on the 25th day of June, A.D. 1934, and continuing until the 30th day of June, A.D. 1934, in the presence of Counsel for all parties:

AND THE JURY having found a verdict for the Plaintiff Allan D. MacMillan for \$5,000.00 damages and for the Plaintiff Vivian MacMillan for \$10,000.00 damages, and counsel for the Plaintiffs having moved that judgment be entered for the Plaintiffs for the said sums; and counsel for the Defendant having opposed the motion of the Plaintiffs for judgment, and having moved that the action of the Plaintiffs be dismissed with costs. 10

AND THE LEARNED TRIAL JUDGE having reserved his judgment upon the said motions and having on the 2nd day of July, A.D. 1934, delivered judgment allowing the motion of the Defendant and dismissing the action of the Plaintiffs with costs;

THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs to be paid by the Plaintiffs to the Defendant forthwith after taxation thereof one bill of costs only to be taxed, but to include costs of discovery. Costs of and incidental to the Commission ordered herein to be awarded to the Plaintiffs and set off against the above costs. 20

THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the counterclaim be and the same is hereby dismissed with costs to be paid by the Plaintiff by counterclaim to the Defendants by counterclaim forthwith after taxation thereof, the said costs to include costs of discovery.

"R. P. WALLACE,"

Clerk of the Court

ENTERED this 1st day of September, A.D. 1934.

30

"R. P. WALLACE,"  
C.S.A.

APPROVED AS TO FORM AS AMENDED.

"NEIL D. MACLEAN,"

Solicitor for the Plaintiffs and  
Defendants by Counterclaim.

## Reasons for Judgment

*In the  
Supreme  
Court of  
Alberta*

In this action the father joins with his daughter in the action for seduction of the daughter by the defendant.

No. 43  
Reasons  
for  
Judgment  
2nd July,  
1934

The Jury by a special verdict of questions and answers have found that seduction took place on the 13th day of October, 1930; and have awarded damages to the parent plaintiff in the sum of \$5,000 and to the daughter in the sum of \$10,000.

10 Upon the verdict being announced by the Jury, Counsel for the defendant moved for dismissal of the action on the ground that there was no evidence of any interference with the daughter's services to the parent to which he was entitled and no evidence that the seduction in any way interfered with the daughter's ability to serve.

It is quite clear that the daughter left her home in Edson with the consent and approval of her parents and was accompanied to Edmonton by her mother. It is equally undoubted that no illness resulted from the seduction and no evidence that the ability of the daughter to render services was in any way interfered with.

20 In my opinion the law is well settled that damage is the gist of the action and I am also of the opinion that the damage necessary to found a right of action in the woman must be of the same character as gave the master his right of action, that is loss of service, or at least an interference with the woman's ability to serve. I see nothing in our Statute to convey a contrary intendment of the legislature.

In my view of the law the action must be dismissed with costs, including costs of discovery, and only one bill should be taxed.

No evidence being offered by the defendant on his counterclaim, it will be dismissed with costs including discovery.

"W. C. IVES"  
J.S.C.

30

CALGARY, Alberta, 2nd July, 1934.

N. D. MACLEAN, ESQ., K.C.,  
For Plaintiffs.

A. L. SMITH, ESQ., K.C., and  
M. M. PORTER, ESQ., K.C.,  
For Defendant.

## No. 44

## Notice of Appeal

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 44  
Notice of  
Appeal  
19th Sept.,  
1934

TAKE NOTICE that the Plaintiffs intend to appeal and hereby appeal to the Supreme Court of Alberta, Appellate Division, at the next sittings at Edmonton at which by the practice of the said Court the appeal can come on to be heard, from the whole of the judgment of the Honourable Mr. Justice Ives, entered the first day of September, 1934, whereby the Plaintiff's action was dismissed with costs, upon the following amongst other grounds:—

1. The said judgment is against law, evidence and the weight of evidence. 10
2. There was evidence of damage to go to the Jury.
3. No evidence respecting damage was required by reason of the provisions of Cap. 102 of the Revised Statutes of Alberta, 1922.
4. No application to withdraw the case from the Jury having been made by Counsel for the Defendant either at the close of the Plaintiffs' case or at the close of the whole case and the learned trial Judge having instructed the Jury that if they found that the Defendant had seduced the female Plaintiff, damages could be awarded, the learned trial Judge erred in dismissing the action after the Jury had found that the Defendant seduced the female Plaintiff and after the Jury had awarded 20 damages.
5. The learned trial Judge erred in considering that no illness resulted from the seduction of the female Plaintiff and that the ability of the female Plaintiff to render services was in no way interfered with.
6. The learned trial Judge erred in considering that the damage necessary to found a right of action in the female Plaintiff must necessarily be of the same character as gave the master his right of action.
7. The learned trial Judge erred in considering that the Seduction Act, R.S.A. 1922, Cap. 102, made no change in respect to the law of damage in seduction cases. 30
8. Upon such further or other grounds as may become apparent upon a transcript of the evidence being procured and as shall be notified to Counsel for the Defendant.

Dated at the City of Edmonton in the Province of Alberta, this 19th day of September, A.D. 1934.

*In the  
Supreme  
Court of  
Alberta*

NEIL D. MACLEAN,  
Solicitor for the Plaintiffs.

*(Appellate  
Division)*

TO:

THE CLERK OF THE COURT,  
Court house, Edmonton.

No. 44  
Notice of  
Appeal  
Sept. 19th,  
1934  
*continued.*

TO:

10 M. M. PORTER, ESQ., K.C.,  
Solicitor for the Defendant.

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No. 45

**Agreement as to Contents of Appeal Book.**

IT IS AGREED between the Solicitors for the respective parties that the Appeal Book on the appeal to the Supreme Court of Alberta, Appellate Division, shall consist of the following:

No 45  
Agreement  
as to  
Contents  
of Appeal  
Book  
26th Sept.,  
1934

1. Pleadings.
2. Evidence and Proceedings at Trial.
3. Reasons for Judgment of the learned trial Judge.
4. Formal Judgment.
- 20 5. Exhibits, of which Exhibits Nos. 8 and the temperature chart of Exhibit No. 7 need not be printed.
6. Notice of Appeal dated 19th September, 1934.
7. Clerk's Certificate.
8. This agreement.

DATED at Edmonton in the Province of Alberta this 26th day of September, A.D. 1934.

"NEIL D. MACLEAN,"  
Solicitor for Plaintiff (Appellant)

"M. M. PORTER,"  
Solicitor for Defendant (Respondent)

No. 46

**Order to Dispense with Printing of Certain Exhibits.**

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 46  
Order to  
Dispense  
with  
Printing of  
Certain  
Exhibits  
25th Oc-  
tober, 1934

UPON motion by Counsel on behalf of the Plaintiffs (Appellants), in the presence of Counsel for the Defendant (Respondent);

IT IS ORDERED that the printing of Exhibit No. 8 and the Temperature Chart of Exhibit No. 7 in the pending appeal in this action be and the same is hereby dispensed with.

“HORACE HARVEY,”  
C.J.

ENTERED AT Edmonton, this  
25th day of October A.D. 1934.

10

“R. P. WALLACE,”  
C.S.C.A.

(SEAL)

No. 47

Clerk's Certificate

In the  
Supreme  
Court of  
Alberta

(Appellate  
Division)

No. 47  
Clerk's  
Certificate  
Undated

10 I, the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, hereby certify that the foregoing document is a true copy of the Statement of Claim, Order for service ex juris, Statement of Defence, Counterclaim, Defence to Counterclaim, Joinder of Issue, Evidence and Proceedings at the trial before the Honourable Mr. Justice Ives and a Jury, Reasons for Judgment, Formal Judgment, List of Exhibits, Notice of Appeal, Agreement as to Contents and Order dispensing with the printing of certain exhibits.

That this action was commenced in the Supreme Court of Alberta, Judicial District of Edmonton on the 22nd day of September, A.D. 1933.

That this appeal book has been approved by the Solicitors;

AND that the Appellants filed Notice of Appeal on the 19th day of September, A.D. 1934;

.....  
C.S.C.

ENTERED this..... day  
of October, A.D. 1934.

## Formal Judgment

IN THE SUPREME COURT OF ALBERTA  
 APPELLATE DIVISION

In the  
 Supreme  
 Court of  
 Alberta  
 (Appellate  
 Division)

No. 48  
 Formal  
 Judgment  
 2nd Febru-  
 ary, 1935

BEFORE THE HONOURABLE THE CHIEF JUSTICE OF ALBERTA,  
 BEFORE THE HONOURABLE MR. JUSTICE CLARKE,  
 BEFORE THE HONOURABLE MR. JUSTICE MCGILLIVRAY,  
 BEFORE THE HONOURABLE MR. JUSTICE FORD,  
 BEFORE THE HONOURABLE MR. JUSTICE LUNNEY.

Saturday, the Second Day of February, A.D., 1935. 10

BETWEEN:

ALLAN D. MACMILLAN and VIVIAN MACMILLAN

Plaintiffs.  
 (Appellants).

—and—

THE HONOURABLE JOHN E. BROWNLEE

Defendant.  
 (Respondent).

The appeals of the above-named Appellants from the judgment of The Honourable Mr. Justice Ives entered the first day of September, A.D., 1934, having come on to be heard before this Court in the presence of Counsel for all parties on the 15th, 16th and 17th days of January, A.D. 1935, and this Court having been pleased to direct that the said appeals do stand over for judgment, and the same coming on this day for judgment:

IT IS ORDERED AND ADJUDGED that the said appeals be and the same are hereby dismissed with costs.

“R. P. WALLACE,”  
 Registrar.

APPROVED AS TO FORM,  
 “FRIEDMAN, LIEBERMAN & NEWSON,”  
 Agents for Solicitors for Defendant.

30

ENTERED at Edmonton, this  
 28th day of March, A.D. 1935.

“R. P. WALLACE,”  
 C.S.C.A.

(SEAL)



**No. 49**  
**Reasons for Judgment**

*In the  
Supreme  
Court of  
Alberta*

(a) HARVEY, C.J.A.

*(Appellate  
Division)*

The action is brought by the father and daughter for the alleged seduction of the latter by the defendant. It was tried by Ives, J., with a jury. The jury's verdict in answer to questions submitted to them by the Trial Judge, was that the defendant did seduce the plaintiff daughter on the date sworn to by her as that on which the defendant attempted with only partial success to have intercourse with her and they assessed damages at \$10,000 for her and \$5,000 for her father. Counsel on both sides applied for judgment, Counsel for the plaintiffs on the ground of the jury's verdict, Counsel for the defendant on the ground that there was no evidence of damages to support the verdict. The Trial Judge reserved judgment and subsequently gave written reasons for granting the application of defendant's counsel and dismissed the action from which judgment the plaintiffs now appeal.

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935

The view that by giving judgment as he did the Trial Judge made a finding on the facts contrary to that of the jury is entirely erroneous and a misconception of the law and practice.

Under our system of jury trials while the jury is sole judge of the facts all questions of law must be decided by the Judge and it has always been a question of law whether there is any legal evidence, that is, whether if the facts of which evidence is given are all true they constitute such a case as in law will support a verdict for the plaintiff.

Whether the Trial Judge's conclusion on the point of law was correct or not his procedure was quite correct and in accordance with the best recognized practice. In *Dalton v J. I. Case Co.*, 1934, 2 W.W.R. 88, decided by this Division only a few months ago in which the Trial Judge at the close of a long trial with a jury after all the evidence had been given on both sides, dismissed the action on the ground that there was no evidence proper to be submitted to the jury, the Appellate Court was of opinion that the Trial Judge was wrong and there must be a new trial and pointed out that if notwithstanding his view he had taken the jury's verdict, which he could easily do by answers to questions, it would have obviated the expense and delay of a new trial. In the case now under appeal, for obvious reasons, the defence did not apply before verdict for dismissal and if it had, the Trial Judge, even if of opinion that the application should succeed, in the exercise of a wise discretion, should have taken the jury's verdict as he did so that if on appeal he were held to have been wrong in that respect a new trial would not necessarily be required. In *Skeate v Slaters Ltd.*, 1914, 2 K.B. 429, the Trial Judge had refused to take the case from the jury but the jury disagreed. The Court of Appeal gave judgment for the defendant dismissing the action. Lord Reading, L.C.J. at p. 434 said:

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

“Frequently at trials with a jury, the Judge, although he thinks  
“the plaintiff has not made a case, submits it to the jury in or-  
“der that their views may be ascertained. This practice very  
“often has the advantage of making an end of the contest as to  
“the facts and in the event of a successful appeal against the  
“Judge’s ruling enables this Court to dispose of the action  
“without sending it for retrial.”

The other Judges all express the same view but Lord Justice Phillimore points out that while it is proper practice and one which he has followed, it may lead to misconception when as in the present case the jury gives a ver- 10  
dict in favor of the plaintiff.

Plaintiffs’ counsel contends that the learned Trial Judge was wrong in dismissing the action and should have directed judgment for the plaintiffs in accordance with the verdict because first, as regards the daughter’s action, no evidence or damage is necessary, the right of action being given by the Statute for the seduction without more, and secondly, as regards both, there was evidence of such damage as will support the action.

Defendant’s counsel on their part while upholding the judgment on the ground upon which it was put contend that there can be no judgment for the plaintiffs on the verdict because of misdirection particularly in 20  
one respect and because the verdict is perverse and one which no reason-  
able jury could find.

As regards the argument that there was misdirection, the evidence of the daughter is that on the occasion when according to the jury’s finding she was seduced as well as on the next occasion when she swears there was again intercourse, the intercourse was accomplished by force and against her will and her resistance. They contend that the jury by finding that she was seduced which implies that she consented, have impliedly found that she perjured herself though that is aside from the question of misdirection. 30  
The daughter would have no right of action for seduction but for The Se-  
duction Act, but she would have a right of action for assault or trespass to  
the person at common law if force were used. The action here is based on  
the Statute and in *MacKenzie v Palmer* (1921) 14 Sask. L.R. 117, it was  
held that a judgment for seduction could not be given when the evidence  
was of a similar character to that here. The Supreme Court of Canada 62  
S.C.R. 517, reversed that decision not on the ground that judgment could  
be given for seduction when the evidence was consistent only with rape,  
but on the ground that taking all the evidence it could not be said that the  
Trial Judge could not come to the conclusion that it was seduction and not  
rape. 40

In *Cole v Hubble* (1894) 26 O.R. 279, Meredith, J., at p. 282 says:  
“It is true that in actions for seduction only if rape only be  
“proved, the plaintiff must fail: seduction and rape are in-  
“consistent.”

In that case before the case went to the jury the plaintiff was given leave to amend his claim and set up a claim based on connection by force as alternative to the claim based on seduction. Such being the case judgment was entered on the verdict of the jury in favor of the plaintiff on the alternative plea and on appeal the judgment was sustained.

*In the  
Supreme  
Court of  
Alberta*

*(Appellate  
Division)*

In *Cline v Battle*, 1928, 3 W.W.R. in our own Courts my brother Lunney, sitting as a Trial Judge, dismissed the plaintiff's claim for seduction on the ground that the evidence established rape and not seduction.

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935

10 The learned Trial Judge in his instructions to the jury explained the law to them in accordance with those decisions when he said:

“But if force alone was the reason for the intercourse and by force alone it was accomplished that would not be seduction; it would be rape.”

But later near the end of his charge after he had explained the questions he was submitting he said:

20 “Now the second question I have asked you is: ‘If so when?’  
“I have told you what seduction is. If you believe the evidence of Vivian MacMillan as to the occurrence on Monday night, the 13th of October when she alleges that intercourse was  
“only partial—if you believe that, then seduction took place at  
“that time.”

This in my opinion might very well have misled the jury whose duty it was to determine whether the partial intercourse which she swore took place on that occasion and was accomplished by force, was in fact rape or seduction. It was I think such a misdirection as would vitiate the verdict of the jury whichever way it went but the result could only be a new trial.

30 On the other argument there are undoubtedly many authorities establishing the power of the Court to set aside a verdict in favor of the plaintiff and order a new trial, or in a proper case give judgment for the defendant.

In *Cox v English, Scottish and Australian Bank*, 1905, A.C. 168, the jury had given a verdict for the plaintiff. On appeal this had been set aside and a new trial ordered. An appeal to the Judicial Committee of the Privy Council was dismissed. The head note of its decision states:

“In discharging the verdict of a jury, the Court must be satisfied that there is such a preponderance of evidence against it as to make it unreasonable and almost perverse that the jury, when instructed and properly assisted by the Judge, should have returned it.”

40 The closing paragraph of the judgment indicates that if it had been open

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

to it to do so the Committee would probably have dismissed the action, for it states:

“The judgment of the Court below directs a new trial. It was  
“not asked that judgment should be entered for the defendants  
“and their Lordships cannot go beyond the judgment that  
“was given. All they can do, therefore, is humbly to advise  
“His Majesty that the appeal should be dismissed. The appel-  
“ant must pay the costs of it.”

In *Banbury v Bank of Montreal*, 1918, A.C. p. 626, there had been a judgment for the plaintiff entered after verdict for large damages. Al- 10  
though there had been no application to the Trial Judge to dismiss the ac-  
tion the Court of Appeal unanimously held (1917 2 K.B. 409) that while  
there were grounds for a new trial the whole evidence was such that a ver-  
dict for the plaintiff could not be supported and that therefore there should  
be judgment for the defendants. An appeal to the House of Lords was  
dismissed by a majority. A portion of the head note reads as follows:

“The omission of the defendant in a jury action to ask the  
Judge at the trial to nonsuit the plaintiff or to direct that  
“there was no evidence upon which the jury could reasonably  
“find for the plaintiff does not preclude the Court of Appeal 20  
“on a motion for a new trial from entertaining the question of  
“no evidence, and in a proper case the Court, under Order  
“LVIII r. 4, may order judgment to be entered for the de-  
“fendant on that ground, notwithstanding such omission.”

Our rule is exactly the same as the English rule referred to though on the argument Mr. Maclean was of opinion that it differed.

In *Allcock v Hall*, 1891, 1 Q.B. 444, which was referred to in the *Ban-*  
*bury* case as a decision of high authority the jury had given a verdict for  
the plaintiff. Judgment was reserved and a motion was made to the Court  
of Appeal to set aside the verdict and direct a new trial. At p. 445, Lindley 30  
L.J., said:

“The impression on the minds of myself and my colleagues is  
“that the verdict was unquestionably wrong. I think the jury  
“misapprehended the nature of the evidence. I have also con-  
“sulted Hawkins J., because it is extremely difficult for the  
“Court of Appeal to deal with evidence which comes before  
“them only in writing. The demeanor of the witnesses and  
“other matters are very material in estimating the value of  
“evidence. The learned Judge says that his opinion is, and al- 40  
“ways has been, that the verdict was utterly wrong. Under  
“these circumstances the question is, What ought the Court of  
“Appeal do? The Court is always very cautious about setting  
“aside the verdict of a jury. The principle on which it acts is

10 "laid down in various cases, the most recent of which is the  
 "Metropolitan Ry. Co. v Wright, 11 App. Cas. 152. In giving  
 "judgment in the Court of Appeal, Lord Selborne L.C., said: 'I  
 "have always understood that it is not enough that the judge  
 "who tried the case might have come to a different conclusion  
 "on the evidence than the jury, or that the Judges in the Court  
 "where the trial is moved for might have come to a different  
 "conclusion; but there must be such a preponderance of evi-  
 "dence, assuming there is evidence on both sides to go to a  
 "jury as to make it unreasonable and almost perverse that the  
 "jury when instructed and assisted properly by the Judge  
 "should return such a verdict.' And in the same case, when be-  
 "fore the House of Lords, Lord Herschell states the principle  
 "thus: 'The case was one unquestionably within the province  
 "of a jury; and, in my opinion, the verdict ought not to be  
 "disturbed unless it is one which a jury, viewing the whole of  
 "the evidence reasonably, could not properly find.' The same  
 "principle was recognized by the Privy Council in Brown v  
 "Commissioner for Railways, 15 App. Cas. 240. Can we say  
 20 "that the present case falls within the rule thus laid down—  
 "that though the question was unquestionably within the  
 "province of the jury, yet the jury, if they had viewed the  
 "whole of the evidence reasonably, could not possibly have  
 "found such a verdict? In my opinion, the case was brought  
 "within that Rule. It appears to me that the verdict was so ut-  
 "terly irreconcilable with the evidence, when reasonably con-  
 "sidered, that it ought to be set aside. But this does not en-  
 "tirely dispose of the case. The question now arises whether  
 "the Court should simply order a new trial, or whether it  
 30 "should exercise the power of entering judgment for the de-  
 "fendants. That is a more difficult matter."

Lopes L. J., at p. 477 said:

"I am satisfied that the verdict was wrong. It was one which  
 "twelve men looking at the evidence reasonably could not  
 "have given. It was a perverse verdict, and in this view I am  
 "confirmed by the opinion of Hawkins J. What then ought  
 "this court to do?"

40 In the result the Court was unanimous in dismissing the action notwith-  
 standing that the application had been only for a new trial, and it was  
 stated that the Judges of the other Branch of the Court agreed with the  
 decision.

In the light of the law as declared by the authorities mentioned it is  
 necessary to consider the evidence for the plaintiffs in the case. It is of such  
 a nauseating character that I shall deal with it in the most general way pos-

*In the  
 Supreme  
 Court of  
 Alberta  
 (Appellate  
 Division)*

—  
 No. 49  
 Reasons for  
 Judgment  
 (a) Har-  
 vey, C.J.A.  
 2nd Febru-  
 ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

sible. In the first place apart from the daughter's own evidence there is not a tittle of evidence that she is not still a virgin. In every reported case which counsel has been able to find in which the plaintiff has succeeded with the exception of one nearly one hundred years ago at nisi prius which some of the Courts have described as of doubtful authority there has been the birth of a child or at least pregnancy furnishing indisputable evidence of sexual intercourse. There is nothing of that sort here, notwithstanding the fact that the witness swears that for between two and a half and three years sexual intercourse took place on the average two or three times a week. She says that to prevent conception the defendant, not however till 10 after the seduction found by the jury took place, furnished her with pills to take which she describes by a name unknown both to the physician whom she called and to the dictionaries, and of which no specimen is produced. Her whole story is quite unsupported by other evidence in all material respects and in many of its details is of such an impossible, not to say incredible character, that it seems impossible, that any reasonable person could believe it in its entirety. There is also apparent in her cross-examination a readiness to admit that she may be mistaken as regards very positive and definite statements previously made when by the questions it appears that there may be independent evidence to show that she is wrong. There 20 are also other inconsistencies in her evidence. She states that this intercourse throughout its whole course was distasteful and painful to her and she only endured it because of the defendant's influence over her. She admits that that influence was effective only when she was in his presence yet after the relationship had existed for nearly two years and she had been at home during an illness for several weeks and her parents urged her to remain home and not return to Edmonton, she against their wishes, returned and could have had no other expectation than that the former relationship which she says existed would be resumed. Also on one occasion 30 later when her mother was with her and she received a telephone call from the defendant she left her mother for what she knew would be an act of intercourse which she says was so repulsive to her. Then for several months after she had told a young medical student, who had proposed marriage to her, of her relationship with the defendant she continued that relationship without change. And also for several weeks after she had been taken by this young man to the solicitor, who subsequently brought and conducted the action, and had made a sworn statement of her relation with the defendant the relationship continued. This was in the summer of 1933 and the defendant admitted that he looked on her very much as a member 40 of his family and frequently took her for a drive in the evening. These drives continued for some weeks after the interview with the solicitor and she says that intercourse took place during those drives except on the last one which was arranged over the telephone. When the defendant arrived with his car to pick her up on this last occasion the young man, the medical student referred to and the solicitor, apparently having learned in some way of the projected drive were stationed in a motor car near the place

where she joined the defendant and trailed the defendant throughout the drive. She says she did not know for some time that she was being followed. It looks much more as though it was a deliberate attempt with her connivance if not more to trap the defendant in some compromising situation and it is difficult otherwise to explain her continued relations with the defendant and his family without change after she had consulted a solicitor.

10 It seems almost as incredible that a girl could concoct such a story as that it can be true, but in that regard there is some evidence that seems significant. She was being cross-examined as to how and when she came to the conclusion that the defendant had enticed her to come to Edmonton in order that he might seduce her and the following evidence appears:

“When did it become a conviction with you, if you know? If you do not know, all right?”

“A. I cannot say definitely when it became a conviction.

“Q. Can you give me any idea when this terrible thought occurred to you that you were brought down here for this immoral purpose?”

“A. It would be during the first year that I was working in the Parliament Buildings.

20 “Q. And that will be after July, 1931?”

“A. Yes, sir.

“Q. So that he had been having intercourse with you for a year?”

“A. Yes, sir.

“Q. And the thought had not occurred to you that he had brought you down from Edson for that purpose? A. Yes, sir.

“Q. And what happened that had put it into your mind that he had brought you down for that purpose? What happened? What change was there?”

30 “A. Well I was older for one thing, and I would hear girls talking about men and then I was working in the Attorney-General’s Department and there were always all kinds of files to read about young girls getting into trouble—”

While a jury has of course the right to believe and accept a part of a witness’s testimony, while not prepared to accept it all, yet it must be apparent to any reasonable person that it is most unsafe to place reliance on any important portion of the evidence of a witness whose general story is of such an improbable character as not to seem worthy of belief, especially when it is denied as emphatically as it was in this case. We have, as the Court of Appeal had in the Allcock case the emphatic opinion of the Trial

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

Judge, who had the same opportunity of estimating the value of the evidence as the jury had, that the verdict was quite wrong, and he so expressed it to the jury when the verdict was given. From a careful reading of the evidence I have formed an opinion wholly in accord with his.

There are other circumstances which appear from the record which suggest that the jury's verdict was not founded on the evidence in the case. The damages awarded seem unduly large considering that there was no publicity attached to her relationship with the defendant except what she herself brought about. Ordinarily there is a child or at least a pregnancy which publishes the fact of the woman's shame to the world. In this case though she states that for more than two years she had been having intercourse with the defendant in his own home, in his own office in the Legislative Buildings and in the Government car used by him as Premier, upon the public highways about Edmonton, there is no hint in the evidence that anyone had seen anything that furnished even a suspicion of impropriety until she disclosed what had been going on to the young medical student who proposed marriage to her. This is a circumstance that should have been considered by the jury in assessing the damages, whether the damages are so excessive as to justify the setting aside of the verdict and ordering a new trial I do not consider and I am dealing with it only as a circumstance indicating that the jury may have been swayed by something other than the evidence given in Court. 10 20

There is another circumstance of even greater importance in this regard. The record shows that during the course of the trial there were newspaper reports of, and comments on the proceedings, which came to the notice of the jury, of so unfair and pre-judicial a character that the Trial Judge on the third day of the trial, when they were brought to his attention, found it necessary to impose a fine on the publisher and reporter in respect of two or three which were read to him in the presence of the jury. What other similar reports the jury may have heard or read we do not know. Having regard to the general nature of the evidence and the circumstances referred to, I feel no doubt that it is proper to hold that there was not a fair trial and that no judgment founded on the verdict could be allowed or if given could be permitted to stand. The more difficult question, however, is whether the consequence should be a new trial or a dismissal of the action. 30

I do not however find it necessary to answer this question because I am very definitely of opinion that the Trial Judge was right in dismissing the action on the ground on which he based his decision, viz., that the action could not be sustained by either plaintiff without proof of some damage which the law will recognize and that there was no evidence of any such damage proper to be submitted to the jury. 40

The action for seduction has been known to the English law for centuries though in its history it has taken different forms. Its history has



been considered in numerous cases amongst others *Dent v Maguire*, 1917, 2 R Ir. 59. But it has been dealt with probably as satisfactorily as anywhere in our own Court in the case of *Gibson v Rabey* (1916) 9 A.L.R. 409. It is stated there as it is in all the cases and text books that the basis of the action is the loss suffered by a master through the interference with his servant as a consequence of which her capacity to render service had been diminished. As it is stated in *Smith's Master & Servant* (8th Ed.), p. 110:

- 10 "To support this action it is necessary to show an actual or  
"constructive relation of master and servant existing between  
"the plaintiff and the person seduced at the time of seduction  
"and a consequential loss of service."

As early as 1653 this was pointed out clearly in the case of *Norton vs. Jason*, Style 398 (82 E.R. 809) which is quoted by Rolfe B. in *Eager v Grimwood* (1847) 16 L.J. Ex. 236. The *Norton* case was "an action upon the case for entering into the plaintiff's house and making an assault upon his daughter and getting a bastard child upon her per quod servitium amisit." The question was whether the action was not barred by the Statute of Limitation it being after the period when an action of trespass which the daughter might have had and had not taken, would lie, Roll C.J., said:

- 20 "This action is an action brought for the damage done to the  
"master, and though the servant will release the battery, yet  
"the master may have an action for the damage caused him by  
"the battery and although the daughter cannot have an action  
"her father may, although not for entering into his house, be-  
"cause it was with his leave, nor for assaulting his daughter,  
"and getting her with child, because this is a wrong particu-  
"larly done to her, yet for the loss of her service caused by  
"this, he may have an action."

- 30 The *Eager v Grimwood* case is also instructive for in it while it was  
shown that the defendant had had intercourse with the daughter it was  
shown that it was not his intercourse but that of some one else which had  
caused conception and the subsequent loss of service, and it was held that  
there was no right of action against him. *Grinnell v Wells* (1844) 7 M. and  
G, 1033, shows clearly that a plaintiff cannot succeed without, not merely  
proving, but also alleging damage by way of loss of service. Tyndal C.J.,  
in delivering the judgment of the Court, says at p. 1041:

- 40 "The foundation of the action by a father to recover damages  
"against the wrongdoer for the seduction of his daughter, has  
"been uniformly placed, from the earliest time hitherto, not  
"upon the seduction itself, which is the wrongful act of the  
"defendant, but upon the loss of service of the daughter, in  
"which service he is supposed to have a legal right or interest.  
"Such is the language of Lord Holt in *Russell v Corne*, and  
"such the opinion of the Court in the earlier case of *Gray v*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

“Jefferies, with reference to an action by a father for a per-  
sonal injury to a child, which stands precisely on the same  
“footing. See also *Randle v Deane*, 2 Lutw, 1497. It has, there-  
fore always been held that the loss of service must be alleged  
in the declaration, and that loss of service must be proved at  
the trial, or the plaintiff must fail. See *Bennett v Alcott*. It  
is the invasion of the legal right of the master to the services  
of his servant, that gives him the right of action for beating  
his servant; and it is the invasion of the same legal right, and  
no other, which gives the father the right of action against  
the seducer of his daughter. This distinction is most clearly  
and pointedly put by the Court in *Robert Mary’s case*, where  
it is said, ‘If my servant be beaten, the master shall not have  
an action for this beating, unless the battery is so great that  
by reason thereof he loses the services of his servant; but  
the servant himself for every small battery shall have an  
action; and the reason of the difference is, that the master  
has not any damage by the personal beating of his servant,  
but by reason of a per quod, viz., per quod servitium amisit;  
so that the original act is not the cause of his action, and the  
consequent upon it, viz., the loss of the service, is the cause  
of his action’.”

10

20

In 1 Halsbury’s (2nd Ed.) p. 16 No. 17, it is said:

“The basis of an action for seduction is the right (whether of  
a parent or a master) to enjoy the services rendered by the  
woman seduced; and unless this right is infringed a parent  
or master can recover no damages for the seduction, though  
he may have incurred expense in maintaining the woman se-  
duced, the injury to his feelings not being in the eye of the law  
injuria.”

30

Under a note to the first part of this proposition authorities are cited to show that there must be service at the dates both of the seduction and of the succeeding incapacity to serve. This is expressed by Avory J., in the moderately recent case of *Peters v Jones*, 1914 2 K.B. 781, where at p. 785, he says:

“Now it is admitted to be the law that the relationship which  
justifies the maintenance of the action must exist at the time  
of the seduction and also at the time of the illness consequent  
upon it which deprives the plaintiff of the girl’s services.”

It is also clear however that once damage is shown in loss of service 40  
other circumstances may be taken into consideration in assessing damage.

In *Terry v Hutchinson* (1868), L.R. 3 Q.B. 599, the jury awarded £150. An appeal was taken on the ground that the girl was not shown to be in the service of the plaintiff her father at the time of the seduction

and on the ground of excessive damages. The appeal, was dismissed on both grounds, it being held that there was at least constructive service which was sufficient in that case. On the subject of damages Blackburn J. at p. 603, said:

10 "As to the amount of damages, I hold that now the jury are  
 "to consider the injury as done to the natural guardian, and all  
 "that can be referred to that relation; I do not say that they  
 "ought to calculate the actual cost of the maintenance of the  
 "grandchild, though they cannot well exclude that fact; but  
 "they may consider not only that the plaintiff has a daughter  
 "disgraced in the eyes of the neighbours, but that there is  
 "also a living memorial of the disgrace in a bastard grand-  
 "child. Considering this, are £150 too much. I cannot say that  
 "they are."

It is to be noted that Blackburn J., speaks of an illegitimate child as a feature in actions for seduction and in Bullen & Leake's precedents of pleadings we find the following allegations:

20 "3. In or about the month of....., 18....., the defendant  
 seduced the said G. H. whereby she became pregnant with  
 child, and was delivered thereof on the.....of.....  
 18.....

"4. In consequence of the said seduction, the plaintiff was deprived of the services of the said G. H. for a long time (or state the period) and incurred £——expense in nursing and taking care of her and about the delivery of the said child."

30 As already stated, so far as counsel or I have been able to ascertain, no action for seduction ever succeeded in England where there was not an illegitimate child born or conceived with one possible exception decided over one hundred years ago which is spoken of as of doubtful authority. That case is *Manvell v Thomson* 1826- 2 C. & P. 303. That was an action by an uncle for seduction of his niece.

40 It was shown, in part by the evidence of a surgeon that "after she had been seduced and abandoned by the defendant she was in a state of great agitation and continued so for some time; that she received medical attendance, and was obliged to be watched lest she do herself some injury." The only objection taken by the defendant so far as the report shows is that the uncle was not in the relation of master to the niece and while the case does not appear to have been referred to in any subsequent English case it is cited in *Smith's Master and Servant* only on this point. In *Readhead v Midland Ry* (1867) L.R. 2 Q.B. 412, Blackburn J., speaking of the C. & P. and another series of reports, says at p. 437: "These are it is true only nisi prius decisions and neither reporter has such a character for intel-

*In the  
 Supreme  
 Court of  
 Alberta  
 (Appellate  
 Division)*

—  
 No. 49  
 Reasons for  
 Judgment  
 (a) Har-  
 vey, C.J.A.  
 2nd Febru-  
 ary, 1935  
*continued.*

ligence and accuracy as to make it at all certain that the facts are correctly stated or that the opinion of the Judge was rightly understood." The following note appears at the foot of the report: "The general evidence in cases of this description to prove loss of service is the fact of the birth of a child and the sickness of the confinement which are attendant upon it; but in the present case the party had no child; and therefore the above was the only evidence given to support that part of the case."

It seems doubtful whether in view of the almost if not quite uniform practice an action for seduction could be maintained in England in the absence at least of pregnancy and perhaps of the birth of a child. As late as 10  
1913 in *Barnes v Fox*, 1914, 2 Ir. R. 276, Holmes, L.J. at p. 281, says:

"—but the cause of action does not arise from the mere sexual intercourse. If pregnancy does not follow, no action lies. The wrong is the diminished capacity to serve arising from the pregnancy. In most instances of seduction the girl continues after the seduction to live with the plaintiff, and to be in theory his servant just as she had been before; and it is assumed that he loses her services during her confinement."

The law of England, however has been changed by Statute here in some respects though not in terms as affecting this particular feature. 20

It is apparent that under the law of England as above explained, if a woman were seduced by her master he could not be sued as there could be no one else plaintiff. It was held in *Whitbourne v Williams*, 1901, 2 K.B., 722, that a father could not maintain an action in such circumstances. If she changed masters between the time of the seduction and the time of the loss of service neither master nor anyone else would have a right of action. In Upper Canada these omissions were overcome by legislation enacted in 1837 by which the father or in case of his death, the mother, was given a right of action for the seduction of the daughter though she was in the service of someone else. The right of the master to maintain the action was 30  
not absolutely taken away but it was maintainable only "if the father or mother be not resident in Upper Canada at the time of the birth of the child which may be born in consequence of such seduction, or being resident therein does not bring an action within six months from the birth of such child." This last clause clearly restricts the right of a master to a case where an illegitimate child is born and seems to contemplate that fact as an essential to the right of action for seduction.

This Statute did not give the seduced woman any right of action for the seduction, but in a second part of the Statute provisions were added whereby if she took the necessary steps she could make the father of an illegitimate child liable for its maintenance. In this latter respect there was 40  
similar provision in the law of England. In the second session of the Legislature of the North West Territories held in 1903 that legislation of Upper Canada was enacted in exact terms both as regards seduction and the sup-

port of the illegitimate child as Chapters 8 and 9 and is now to be found without change as C. 102 and C 218 R.S.A. 1922. However, in C. 8 there was a section added in the following words: "Notwithstanding anything in this Ordinance an action for seduction may be maintained by any unmarried female who has been seduced, in her own name, in the same manner as an action for any other tort and in any such action she shall be entitled to such damages as shall be awarded."

10 In *Ward v Serrell* 3. A.L.R. 138, this Court held that where we take a Statute from another jurisdiction we should prima facie construe it in accordance with the authorized construction of that jurisdiction. That rule was applied in later cases e.g. *Bennefield v Knox* (1914), 7 A.L.R. 346, and, with reference to the particular Statute now in question, in *Cambridge v. Sutherland* (1914), 8 A.L.R. 25. Mr. Maclean agrees that as far as the father's action is concerned the decisions of the Ontario Courts should be applied. It is necessary, therefore, to examine the decided cases in Upper Canada and Ontario.

20 In the early days of the life of the Statute a case came before the Court of the Queen's Bench on Appeal, *L'Esperance v Duchene* (1849) 7 U.C.R. 146. The action was by the father for seduction of his daughter who at the time of the seduction was living with another family where she had been brought up from a child. The action was commenced in February and the child was born in March. The objection which was taken and argued before the full Court was that the action would not lie before the birth of the child. Robinson, C.J. delivered the judgment of the majority and I quote from his reasons. He said:

30 "It was denied on the trial, and the point has been strenuously argued on this rule, that any action can lie for seduction before the birth of the child. Few things, perhaps, could be less desirable, than that parties should be encouraged to suppose that an action for seduction could be maintained upon the mere proof of criminal intercourse, not followed by the birth of a child, nor even by pregnancy. That is not necessary to be maintained, in order to support this verdict, for there is in the declaration the usual averment that the plaintiff's daughter became pregnant and was in consequence unable to perform the necessary affairs and business of the plaintiff, her father and master.

40 "In the case of *Joseph v. Cavender*, tried at Winchester in 1834, before Lord Chief Justice Denman, the action was held to lie, although the daughter had not been actually confined before action brought, and although the plaintiff had voluntarily turned her out of his house upon discovery of her pregnancy." . . . . .

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

“Our Statute does not, in my view of it, vary the terms of this question. It authorizes no new form of action, but deals with the action of seduction as already well known to the law. A declaration which would not be held in England to contain a sufficient statement of a cause of action for seduction, must be held to be insufficient here. I think his declaration does state what in England would be held to be a good cause of action, and on that ground I consider it to be a good cause of action here.”

That case expressly decides that an action will lie if pregnancy follows the intercourse and by implication would seem to hold that without it it would not lie. The English case referred to is apparently an unreported one at nisi prius. 10

The same point arose in *Westacott v Powell* (1864) 2 U.C. E. & A. 525, and was argued before seven Judges comprising the combined Court of Appeal. All of the Judges agreed that the action would lie before the birth of the child and two were of opinion that the Statute did away with the necessity of showing either act of service or loss of service or its equivalent. A. Wilson J., saying (p. 538): “I think the legislature has expressly given to the parent a remedy against the seducer of a daughter for the act of seduction alone.” The other five Judges took the contrary view, which became the judgment of the Court, that there must be loss of service or its equivalent, as expressed by Hagarty, J. (p. 534): “I see no other course than to adopt the view above suggested that no action lies unless the ability to serve be affected.” There was pregnancy in that case and he had already said: 20

“I think that our Statute has had the effect of establishing conclusively the relation of master and servant between the parent and a daughter said to be seduced; and that any wrong done to the servant, the effect of which is to render her less able, or unable to do her master’s business, is a good cause of action. It is unnecessary to prove that she was in the actual service, or actually performed any service; the Statute gives her that position, and if she be disabled from performing or doing service, the law assumes there was such service to be done, and will receive no proof to the contrary. It contents itself with proof of the disability or lessened ability to do the service. This, I think, is the view of the Courts heretofore; and *L’Esperance v Duchene* takes that view in substance. A father, I consider, acquires no right of action against a defendant merely for an illicit connection with the daughter, not causing illness, etc. As the late Sir J. B. Rob- inson says, ‘Few things could be less desirable than that parties should be encouraged to suppose that an action for se- 30 40

“duction could be maintained upon the mere proof of criminal  
“intercourse, not followed by the birth of a child, nor even by  
“pregnancy.”

“I think the action is maintainable before the birth of a child,  
“if proof be given of a pregnancy, proved to have caused illness  
“or weakness, in any sensible degree affecting the ability of  
“the servant to work for, or serve the master (i.e. in nearly  
“every case the parent). If any injury or sickness followed  
“the act of intercourse creating the same disability, the cause  
“of action would be complete.

10

“I cannot accede to the proposition stated thus, that connec-  
“tion followed by pregnancy, gives a cause of action. Add to  
“it the qualification above suggested, as to disability, and I  
“think it is law.”

20

After Confederation the Court of Appeal of Ontario dealt with the  
question in the case of *Harrison v Prentice* (1897), 24 O.A.R. 677. The case  
has several points of similarity to the present one. The action had been  
tried by Rose J. The statement of claim alleged loss of service but there was  
no evidence of pregnancy. The jury gave a verdict for the plaintiff but  
only for the sum of \$100. Subsequently the Trial Judge dismissed the ac-  
tion on the ground that no action would lie in the absence of pregnancy. His  
judgment is reported in 28 O.R. at p. 140. He apparently thought that was  
the implication to be taken from the judgment in *Westacott v. Powell*  
though he says (p. 144): “The decision was that the action lay before the  
birth of a child and that the Statute does not dispense with proof of pecun-  
iary loss or damage. The fact was that pregnancy was proved so the ques-  
tion raised here did not squarely arise.” If he had not thought that to be  
the effect of the *Westacott* case he would apparently have given judgment  
for the plaintiff, for he says: (p. 141):

30

“If in the Statute by ‘seduction’ is meant simply carnal inter-  
“course, although not followed by pregnancy, then this action  
“is on the evidence maintainable, for evidence was given that  
“there was such a disturbance of the system as in some slight  
“degree might have created a disability to serve, for it would  
“appear that under the Statute whatever would render the  
“girl less able to perform service would be evidence of dam-  
“age, whether she was residing at home or with another.”

40

The Court of Appeal dismissed the appeal not on the ground on which the  
Trial Judge had given but on the ground that it was necessary to prove  
actual damage and none was shown, expressing no opinion on his ground.  
All the report shows of what the alleged loss of service or damage consisted  
of apart from some slight statements in the judgments, is that, “Pregnan-  
cy did not result and there was no sickness. The girl stated, however, that

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

after the illicit intercourse she was tired and less able to perform her household duties." Burton, C.J.O., says (p. 681):

"The leading case of *Westacott v Powell*, 2 E. & A. 525 was a "decision of the old Court of Error and Appeal and although "two of the Judges there held that it was not necessary now "to prove loss of service, but that the fact of carnal connection "was sufficient, that view was not entertained by a majority "of the Court.

"I have a very strong impression that reading the third in con-  
"nection with the other two sections the Court might well have  
"held that an action was not maintainable under the Statute  
"until after the birth of a child. The decision arrived at was  
"that pregnancy was sufficient under the Statute as well as at  
"common law to sustain the action; but upon the construction  
"of the Statute the majority of the Court were unanimous in  
"holding that the only effect was to render it unnecessary to  
"establish the relation of master and servant where the action  
"is brought by the parent, but to place the law in this country  
"in all other respects on the same footing as it was in England  
"when the action is brought by the father, and the daughter  
"resides with him."

10

20

and Osler, J.A., with whom Moss, J.A., concurred, says (p. 682):

"In England an action has been held to lie in such circum-  
"stances where serious illness was the consequence interfer-  
"ing with the daughter's ability to do service: *Manvell v.*  
"*Thomson* 2 C. & P. 303. The disability is usually caused by  
"the illness of pregnancy, but so long as it is caused by any  
"illness traceable to the illicit intercourse, it may be thought,  
"having regard to the foundation on which the action there  
"specially rests, viz., the wrong done to a master by injuring  
"his servant, that that would be enough.

30

"There are to be found in our reports opinions of individual  
"Judges, perhaps it may be said decisions, that in order to  
"maintain an action by the father or mother under our Stat-  
"ute, the seduction—sexual intercourse—must be followed by  
"pregnancy, which is naturally attended by some degree of  
"illness which causes the interruption or loss of service which  
"has always been regarded as an essential ingredient of the ac-  
"tion. That question was left undecided in *Westacott v Pow-*  
"*ell*, 2 E. & A. 525, and in the view I take of this case it is not  
"necessary to decide it now.

40

and later (p. 684):

"All that is proved is that the defendant had sexual in-



“tercourse with her. I think there was no evidence of illness proper to be submitted to the jury. In no respect does the case in this respect come near that of *Manvell v Thomson*, 2 C. & P. 303. It seems almost ludicrous to speak of the languor which the young woman says she experienced as an illness causing a disability to serve, etc., and on this ground only I affirm the judgment and dismiss the appeal.”

10 The law of Ontario was then as declared in the case mentioned when in 1903 it was adopted in this jurisdiction and it seems clear, as far as a father's action is concerned, that it cannot succeed unless it is shown that the daughter's ability to serve has been injuriously affected. Whether that must arise out of pregnancy is not settled.

20 In Saskatchewan and in Alberta in which alone the woman seduced has the right to maintain an action in her own name, no case has occurred prior to the present one where it appears that there has not been pregnancy. In *Collard v Armstrong* (1913), 6 A.L.R. 187, this does not appear from the report but it was the fact that there was pregnancy. No question arose regarding this or regarding the subject of damage. There was a question of the sufficiency of the statement of claim not alleging loss of service and it is with reference to that that my remark was made that since she could not serve herself as she would a master there could be no question of loss of services.

30 In *Gibson v Rabey* (1916), 9 A.L.R. 409, to which reference has already been made the opinion was expressed by Beck, J., concurred in by Stuart, J. that the giving of the right of action to the woman seduced did not alter the nature of the action in its essentials and the same view was expressed by Scott, J. (as he then was), where he says that the same meaning must be attached to the word seduction in her action as in the action by a father. Beck, J. also points out that if the action were brought as a common law action of trespass for assault, consent which is an essential element of seduction, would be a good defence.

40 In *Bilinski v Kowbell* (1931), 2 W.W.R. 245, the Judges of the Court of Appeal of Saskatchewan expressed their concurrence with those views. In neither case does it appear to have been necessary for the decision because in both cases the essential elements of the former action existed, loss of service having already been interpreted as loss of ability to serve and when Martin, J.A. (at p. 249) says that the Statute provides that it should not be necessary to prove loss of service, unless that is a slip for “act of service” he apparently means nothing different from the interpretation placed on the Statute by the Ontario Courts for he goes on to say, “Damages—loss of service—per quod servitium amisit—has always been the gist of the action and I think the intention of the Legislature was to confer upon the woman seduced the right to a similar kind of action.”

Although the views expressed in the two preceding cases are only in

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

the way of dicta and are not binding on us I should hesitate to make a decision contrary to them unless I felt very strongly that they were wrong. On the contrary they appeal to me as distinctly right. Sections 2, 3 and 4 speak of an action for seduction, 2 and 3 when brought by the father, 4 when brought by the master. Then section 5 also speaks of an action for seduction which however may be brought by a still different person, i.e., the woman seduced if unmarried. The Ontario Courts held that when the Statute gave the father a right of action which he did not before possess it in no way changed the essential nature of the action as one for damages arising out of the seduction. There would seem to be much more reason for restricting the right in her case than extending it for if a tort, it is one to which the plaintiff has consented which could not be said in the case of an action by a master or parent. Mr. Maclean suggests that the Legislature had in view the protection of inexperienced young girls against the wiles of older men, but the terms of the section do not seem to justify any such inference. The protection whatever it is, is given as much to an unmarried female of forty as to one of twenty and equally as much against a man of twenty as one of forty. Then do the words "in the same manner as an action for any other tort" furnish any assistance? The words "in the same manner" seem to be more appropriate to the procedure than to the substance. Then we have the words "any other tort." Now, we all know that certain torts give rise to a cause of action though no pecuniary damage results, such as libel and trespass, though not the latter of course if consent is given, for it would not then constitute trespass. On the other hand there are many torts, such as deceit and negligence which give no right of action unless damage results. Clark & Lindsell on Torts (8th Ed), at p. 114, states: "As a general rule an action of tort will not lie unless the plaintiff has suffered some damage sufficiently substantial to be worthy the attention of the Courts, the maxim being 'De minimis non curat lex.' There are, however, certain exceptional cases in which an action will lie although no damage has been suffered."

It is urged that we should consider the right of action for seduction given to the woman seduced as for any other tort, as intended to be put in the class of exceptions rather than in the general class where the cause of action theretofore existing for the same tort always was.

In my opinion the proper view is that the Legislature intended no change in the nature of the action but only specified another class of person who could maintain it. The same rule then must be applied in this case to the action of the father and that of the daughter and for either to succeed there must be evidence proper to be submitted to the jury of damage "sufficiently substantial to be worthy the attention of the Courts." Perhaps indeed it would be more accurate to say that without damage there is no tort, the earliest cases showing that the cause of action lay in the damage done.

It is necessary then to consider what evidence there is of damage in the present case.

As I have pointed out there appears to have been no case either in England or Ontario or Alberta or Saskatchewan in which it has been held that judgment could be given for the plaintiff when pregnancy had not resulted, and I would hesitate at this late date to establish a precedent, but in the light of the dicta that have been uttered in various cases I will consider the evidence.

10 The jury have found that the seduction took place on the 13th day of October. There is no evidence that she suffered in the least from that partial intercourse. She says that the intercourse on the next occasion a week later made her quite ill and that every act of intercourse caused her physical pain. Now even if those sufferings could be considered as not too remote there is no suggestion that they in any way interfered with her work or her ability to serve if she had any occasion to serve. This would, therefore, not be evidence which the jury would be entitled to consider as showing such damage as the law requires, but rather in the words of Osler, J.A. in *Harrison v Prentice*, "It would be ludicrous to speak of it as an illness causing a disability to serve."

20 She did, however, clearly suffer a disability to serve when she was ill for several weeks in the summer of 1932, but that was nearly two years after the seduction as found by the jury. Even if the cause of that illness could be traced to the acts of intercourse sworn to by her it would certainly seem too remote since, as she says, there had not then nor for more than a year before been any question of seduction but the intercourse had become a habit. But I think there is no evidence that would justify the inference that the intercourse had any causal relation to the illness. It is true she says it caused the illness and her loss of weight but she called a physician who treated her on that occasion and he gave no evidence that supported that  
30 in the least, but rather suggested that her condition was due to natural and ordinary causes. There was therefore I think no evidence proper to submit to the jury of any such damage as the law requires to support the action in the most favorable aspect for the plaintiff in which it can be put.

In addition to the authorities mentioned on the first branch of the case as to the right of a judge to dismiss the action when there is no proper evidence to submit to the jury reference may also be made to *Everett v Griffiths* (1921), A.C. 631.

40 There being no proper evidence of damages which could support a verdict it was the right and duty of the Judge to dismiss the action as he did, and I would accordingly dismiss the appeal of both Appellants with costs.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(a) Har-  
vey, C.J.A.  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta*  
(Appellate  
Division)

(b) CLARKE, J.A.  
Dissenting.

This is an action by the two plaintiffs, father and daughter, for the seduction of the latter, each claiming separate damages.

The trial was before Mr. Justice Ives and a Jury.

In answer to questions submitted by the Judge, the Jury found:

1. That the defendant seduced the female plaintiff.
2. At the time when he had partial entry. (Oct. 13, 1930).
3. The female plaintiff suffered damage to the amount of \$10,000.
4. The male plaintiff suffered damage to the amount of \$5000. 10

Upon these findings the Plaintiffs moved for judgment and the Defendant moved for dismissal of the action on the ground that there was no evidence of any interference with the daughter's services to the parent to which he was entitled and no evidence that the seduction in any way interfered with the daughter's ability to serve.

The Judge gave effect to the defendant's motion and in his judgment made this statement of the law:

"In my opinion the law is well settled that damage is the gist  
"of the action and I am also of the opinion that the damage  
"necessary to found a right of action in the woman must be 20  
"of the same character as gave the master his right of action,  
"that is loss of service, or at least an interference with the  
"woman's ability to serve. I see nothing in our Statute to  
"convey a contrary intendment of the Legislature."

The Plaintiffs' appeal from this judgment and the defendant by cross-appeal attacks the findings of the Jury, particularly the finding of seduction and asks this Court to hold that such finding was not justified by the evidence.

Rule 326 empowers this Court to draw inferences of fact and to give any judgment and make any order which ought to have been made and to make such further or other order as the case may require. 30

Rule 868 of the English Practice is to the same effect.

I have examined the cases referred to by Counsel where Appellate Courts have exercised the powers given by these rules but I have found none and Counsel were unable to refer to any case where a Jury's finding upon the credibility of witnesses was ignored.

In *Groff v Herman*, 26 A.L.R. p. 9 this Court reversed a finding of fact of the Trial Judge upon conflicting evidence but on appeal to the Supreme Court of Canada, 1932, S.C.R. 720, the judgment was reversed. Anglin, C.

No. 49  
Reasons for  
Judgment  
(b) Clarke,  
J.A.  
Dissenting,  
2nd Febru-  
ary, 1935

J.C. stated that he concurred in the result of the judgment on the simple ground that the case involved nothing but a finding of fact; upon which the Trial Judge had made a specific finding based upon evidence which, apparently, fully warranted it, and there was nothing in the case to justify the action of the Appellate Division in setting that finding aside, based, as it was, chiefly upon the credibility of witnesses.

This is an action which by "The Jury Act" R.S.A. Cap. 74 either party was entitled to have tried by a Jury.

10 In *Croker v. Croker*, L.R. 1932, Pro. D. at p. 178 the Court of Appeal in a divorce action gave relief contrary to a finding of the Jury as in the opinion of the Court the evidence practically compelled a verdict in one way but it was pointed out that parties to a matrimonial suit had no inherent right to insist on having trial by a Jury.

20 The story of the female Plaintiff is a strange one but "Truth is always strange. Stranger than fiction." Her evidence on some matters of detail is unsatisfactory and in some matters improbable but on the essential question of seduction she is positive and the evidence of the defendant to the contrary is equally positive. It was open to the Jury to disregard portions of her evidence and to accept other portions of her evidence as they evidently did.

Respecting the question of her seduction on the 13th of October, 1930. According to her evidence, the connection was obtained by force without her consent. If that statement were accepted the claim would be one for assault and not seduction which implies consent but as was held by the Supreme Court of Canada in *McKenzie v Palmer*, 62, S.C.R. 517, it was competent for the Jury to discredit her evidence as to force and want of consent and find seduction. I think no fault can be found with the Judge's charge upon this aspect of the case taken as a whole.

30 It may be that the finding of the Jury is not in accordance with the very truth and the same applies if the finding had been the other way, for, who can probe the hidden recesses of the mind? The law does not profess to provide a tribunal which is infallible but only one which is best designed to solve questions in dispute, which in this case is the jury. It is immaterial that the Trial Judge or the members of this Court may have arrived at a different conclusion, it is the judgment of the Jury alone which must prevail.

40 Seldom, I think, has a jury been called upon to perform a more difficult or painful duty. I see nothing in the record to indicate perverseness or failure to do their duty in arriving at an honest verdict after a full consideration of all the evidence.

In my opinion the finding of seduction cannot be disturbed.

There remains to be considered the legal question of liability for damages dealt with by the Trial Judge in dismissing the action.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(b) Clarke,  
J.A.  
Dissenting,  
2nd Febru-  
ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49

Reasons for  
Judgment  
(b) Clarke,  
J.A.  
Dissenting,  
2nd Febru-  
ary, 1935  
*continued.*

By the common law of England which is in force here except as altered by Statute law in force in this Province the girl had no right of action and the father's right of action was conditional upon loss of service and of the existence of the relationship of master and servant at the time of the seduction as well as at the time of loss of service.

The cases of *Terry v Hutchinson*, L.R. 3 Q.B. 599 (1868), and *Hedges v Tagg*, L.R. 7 Ex. 283 (1872) are instructive. Cap. 8 of the Ordinances of the North West Territories, 1903, 2nd Session, now part of the Statute Law of Alberta and appearing as Cap. 102, R.S.A. made important changes in the law of seduction and for the first time gave a right of action to the girl. 10  
The Act, except Sec. 5 which deals with the girl's action, relates to the action of the parents and master and is copied from a Statute of Ontario passed in 1837. That Statute before its introduction into the North West Territories was the subject of considerable difference of Judicial opinion, two leading decisions are *Westacott v Powell*, 2 U.C. E. & A. 525 (1865), and *Harrison v Prentice*, 24 O.A.R. 677 (1897). The minority opinion was that the effect of the Statute was to give the father a right of action regardless of the relationship of Master and service or of loss of service but the prevailing opinion appears to have been that expressed by Hagarty, J. in *Westacott v Powell* at p. 533. "I think that our Statute has had the effect 20  
of establishing conclusively the relation of master and servant between the parent and a daughter said to be seduced; and that any wrong done to the servant, the effect of which is to render her less able, or unable to do her Master's business, is a good cause of action. It is unnecessary to prove that she was in the actual service, or actually performed any service; the Statute gave her that position, and if she be disabled from performing or doing service; the law assumes there was such service to be done, and will receive no proof to the contrary. It contents itself with proof of the disability or lessened ability to do the service."

In his charge to the Jury the Trial Judge said: "You are entitled to as- 30  
sume that if there was a seduction the father has felt a humiliation; has lost some services of his daughter, and you are entitled to assess, if you find a seduction, such damage as you think will fairly compensate him and you may even go beyond that and inflict an exemplary damage—an expression of your opinion that the misconduct was such that it deserves punishment." This is not in accordance with the majority judgments in the Ontario Courts and Counsel for the Plaintiffs agrees cannot be supported. The result is, therefore, that the verdict in favor of the father cannot stand. A new trial would, therefore, be necessary on that branch of the case if the Plaintiffs insist on pressing the claim of the father but Counsel consents 40  
that the father's claim be dismissed if the verdict in favor of the daughter stands. The Jury were not asked to consider whether or not there was sufficient evidence to justify a finding of loss of service.

In my opinion there was not. She speaks of being ill after intercourse

but does not say that it interfered with her pursuits and her breakdown in 1932 is not shown to be due to her seduction.

Now in regard to the claim of the female plaintiff, her right of action is founded on Sec. 5 of the Act which reads as follows:

“Notwithstanding anything in this Act an action for seduction  
 “may be maintained by any unmarried female who has been  
 “seduced in her own name, in the same manner as an action  
 “for any other tort and in any such action shall be entitled to  
 “such damages as may be awarded.”

10 In my opinion the mere fact of seduction gives her a right of action, per se, and there is no occasion of importing the fiction of loss of service as in case of the father's action.

The Trial Judge in his charge to the Jury on this branch of the case, said: “If no damage follows the seduction the action is not maintainable. There must be damage accruing, without it the action cannot be maintained.”

20 “You are entitled to assume that the female plaintiff may suffer at the hands of society and if you find her illness was brought about by sexual intercourse with this defendant this is a ground for damage and you may “assess her such compensation as in your opinion will meet those items.”

This is not very clear. If it means that she can only recover if her illness was brought about by sexual intercourse with the defendant, I think it is erroneous and that she is entitled to nominal damages in any event, and if damages be required to be proved the proof of loss of chastity with its resultant evils is sufficient.

Sec. 5 was considered in *Collard v Armstrong*, 6 A.L.R. 187 (1913) and the following opinion was expressed:

30 “The ordinance of the Territories in force in Alberta permits “the woman seduced to bring an action for seduction in her “own name and recover damages for her personal benefit. As “the woman could not lose her own services as her parent or “master could, it must necessarily follow that when the action “is brought by her as in the present case there can be no ques- “tion of loss of services.”

In Vol. 57 *Corpus Juris* at p. 12 the following statement of the law appears:

40 “Where the seduced woman may maintain an action for her “own seduction the essential element in her cause of action is “the act of seduction itself, which can be accomplished only “by persuasion, flattery, deceit, false promises, or other arti- “fices on the part of defendant, by reason of which she is in-

*In the  
 Supreme  
 Court of  
 Alberta  
 (Appellate  
 Division)*

—  
 No. 49  
 Reasons for  
 Judgment  
 (b) Clarke,  
 J.A.  
 Dissenting,  
 2nd Febru-  
 ary, 1935  
*continued.*

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(b) Clarke,  
J.A.  
Dissenting,  
2nd Febru-  
ary, 1935  
*continued.*

“duced to yield to sexual intercourse. Illicit or unlawful in-  
“tercourse does not of itself constitute seduction.”

I think the definition of seduction given by the Trial Judge in his charge to the Jury is not open to objection in this case but I reserve for consideration should be occasion arise, the question as to whether or not it is limited to cases where the woman parts with her virtue for the first time or after she has been rehabilitated following a prior lapse. Reverting to the same volume of corpus Juris at page 27, the question of damages is dealt with.

“In an action by a woman for her own seduction it is a suffi- 10  
“cient averment of damages to allege, after alleging the se-  
“duction, that plaintiff has been damaged by defendant in a  
“certain sum, for which she asks judgment; averments charg-  
“ing the seduction entitle the plaintiff to general damages,  
“and an express averment that the damages were produced  
“by the alleged seduction has been held not necessary.”

I think the finding of the jury in favor of the female plaintiff must stand and that there should be judgment in accordance with it.

I see no reason for interfering with the amount awarded.

Some objections of a minor nature were made on the hearing to the 20  
conduct of the trial but I do not think they constitute a mistrial.

The result is that, in my opinion, the appeal of the father should be dismissed with costs, such costs as well as the costs of the action payable by him to be limited to the amount by which the defendant's costs have been increased by reason of the inclusion of the father's claim in the action.

The appeal of the female Plaintiff should be allowed with costs and there should be judgment in her favor for Ten Thousand dollars with costs including costs of Examinations for Discovery.

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(c) MITCHELL, J.A.

(c) Mit-  
chell, J.A.  
2nd Febru-  
ary, 1935

This appeal arises from the fact that notwithstanding the verdict of 30  
the jury that the female Plaintiff was seduced by the Defendant and the award of substantial damages to each of the Plaintiffs, the learned Trial Judge dismissed the action with costs. No evidence having been offered with respect to the Defendant's counterclaim, it also was dismissed with costs.

In giving judgment the Trial Judge in considering the question of damage in an action for seduction expressed the opinion that “Damage is the gist of the action,” and that “the damage necessary to found a right of ac-



tion in the woman must be of the same character as gave the master his right of action, that is loss of service or at least an interference with the woman's ability to serve." Continuing he said, "I see nothing in our Statute to convey a contrary intendment of the Legislature," and accordingly dismissed the action.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

The question of the interpretation to be put upon Section 5 of "The Seduction Act" which gives any unmarried female the right to maintain an action for seduction in her own name was argued at length before us.

No. 49  
Reasons for  
Judgment  
(c) Mit-  
chell, J.A.  
2nd Februa-  
ry, 1935  
*continued.*

Appellants' Counsel, while admitting that the common law rule as to  
10 damage resulting from loss of service or inability to serve, save as modified  
by the Statute, and particularly with respect to any act of service, applied  
in the case of the male plaintiff, contended in effect that Section 5 gave a  
new and different right of action to the female Plaintiff, in that in her case  
the mere fact of seduction constituted a sufficient damage upon which to  
successfully found the action, and this quite apart from the question of  
evidence of loss of service, or inability to serve, which had theretofore  
been an essential ingredient in an action for seduction on the part of a  
master or a father or mother, as the case may be. In other words it was  
20 contended that the common law basis of the action, which admittedly had  
been preserved, except in the case of a female Plaintiff, notwithstanding  
provisions of the Statute, are entirely swept away and a new and entirely  
different principle invoked in the case of the female plaintiff.

In my opinion so definite a change in the rights and liabilities of liti-  
gants could never have been intended, nor do I think any such meaning can  
be read into the language of the section. Prior to the enactment of this  
Statute not only damage, but a specified and restricted class of damage,  
must necessarily have been proved in order to succeed. The law relating to  
seduction was developed upon this principle, largely a fiction but evidently  
30 for a purpose, and in the view I take of the section there is nothing to indi-  
cate that it was intended to depart from this principle, even by implication.  
In this respect I see no inconsistency in the application of this principle,  
whether it be the action of the master, parent or the female in her own name  
for in the last mentioned case, where the question of service may not actu-  
ally arise evidence of any interference with her ability to serve can and  
should, I think, properly be taken into consideration.

The learned Chief Justice has dealt with this branch of the case in a  
most exhaustive manner and inasmuch as I am in accord with his view of  
the law, it becomes unnecessary to discuss the question further.

There is, however, a cross-appeal against the verdict, including the  
40 finding of the jury as to seduction. It will be sufficient for the purpose, if I  
content myself with the brief statement that in my opinion there was evi-  
dence of a conflicting nature proper to be submitted to the jury and of such  
character, embodying facts and circumstances of such a nature as the jury

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(c) Mit-  
chell, J.A.  
2nd Febru-  
ary, 1935  
*continued.*

were entitled to take into consideration in reaching a conclusion and which may have had an influence upon their ultimate conclusion.

To say that another jury might have regarded the evidence in a different light is beside the point, for it was upon this jury that the responsibility rested.

Taking the evidence as a whole it cannot, I think, be said that the verdict was such that reasonable men could not have given or that it could be characterized as perverse. I agree that much of the Plaintiffs' evidence seemed highly improbable and difficult to believe but the jury has seen fit to make a finding on the point and I cannot say that it ought to be set aside. 10

As in my opinion there was no evidence of damages of the kind I consider necessary to support the verdict, I think the judgment of the Trial Judge should not be disturbed and I agree that the appeal of both appellants should be dismissed with costs.

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(d) FORD, J.A.

(d) Ford,  
J.A.  
2nd Febru-  
ary, 1935

The other members of the Court have permitted me to read their reasons for judgment and I am obliged to them for doing so.

I find myself in agreement with the conclusion of those of my learned brothers, who, without expressing any decided opinion as to its correctness, decline to disturb the finding of the jury on the question of fact as to whether and at what time the defendant seduced the female plaintiff. 20

As I read their judgments all the other members of the Court, for substantially the same reasons, agree that there was no evidence proper to be submitted to the jury to support the male plaintiff's claim, a conclusion with which I agree.

The only real difference of opinion seems to be as to the law now applicable to the claim of the female Plaintiff, having regard to section 5 of the Seduction Act. As to this I fully concur in the view expressed by the Chief Justice and Mitchell, J.A., and for substantially the same reasons. To hold otherwise would, in my opinion, do violence to that cardinal and indeed fundamental rule of construction of Statutes upon which Mr. Maclean himself so strongly relied. 30

I agree that the appeal of both plaintiffs must be dismissed with costs.

(e) LUNNEY, J.A.  
Dissenting.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(e) Lun-  
ney, J.A.  
Dissenting,  
2nd Febru-  
ary, 1935

The claim of the Senior Plaintiff, Allan D. MacMillan, is founded on enticement and seduction of his daughter, Vivian, the junior plaintiff, by the defendant. The action of the junior plaintiff is for damages for seduction. Upon the conclusion of the trial the jury brought in a verdict in answer to questions submitted to them by the learned Trial Judge. Their answers were to the effect that the defendant had seduced the plaintiff Vivian MacMillan on October 13th, 1930, that she suffered damage in the sum of \$10,000 and that the male plaintiff suffered damage in the sum of \$5000. Before dismissing the jury the Trial Judge informed them that he strongly disagreed with their answers. Subsequently he dismissed the action with costs. No evidence having been offered by the defendant on the counterclaim it was also dismissed with costs.

In charging the jury the Trial Judge defined seduction as "inducing a woman to part with her virtue for the first time or inducing her to again part with her virtue after she had rehabilitated her character following a prior lapse," adding that the matter of prior misconduct need give them no worry because there was not any evidence of prior misconduct. Whether or not this definition is too narrow does not materially affect this case since the jury found the verdict they did. He referred to the use of force, accompanied by persuasion, and stated further, that, if force alone was the reason of the intercourse the act would be one of rape and not seduction.

He told the jury that the evidence of the female plaintiff, insofar as misconduct was concerned was wholly and entirely unsupported by any other evidence. "It is just her own evidence. If this were the subject of criminal inquiry a jury would be prohibited from bringing in a verdict because of the absence of corroboration. In the civil case it is your right, if you come to the conclusion that the female has established the truth of her allegations to act without her story in any way being corroborated by the evidence."

Objections to the charge were taken by both Counsel but the jury was not recalled.

Insofar as the argument that the plaintiff's evidence was to the effect that she had been raped and not seduced is concerned I think the charge of the learned Trial Judge fully covered that point. Lamont, J.A., in *M. vs. P.* 1921, 1 W.W.R. 425, in a dissenting judgment which was subsequently upheld in the Supreme Court of Canada stated that the fact that the plaintiff testified the intercourse was without her consent and against her will was no bar to her right to maintain the action for seduction, provided the jury was satisfied that the defendant was the father of her child and that there were facts and circumstances testified to, whether by herself, or

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 49  
Reasons for  
Judgment  
(e) Lun-  
ney, J.A.  
Dissenting,  
2nd Febru-  
ary, 1935  
*continued.*

someone else, which would justify the jury in concluding that she did, in fact, consent. "It is in my opinion, the duty of the Court to give effect to the rights of the parties as the Court finds them to exist, and not to withhold from the plaintiff a right established by the evidence simply because, in an attempt to conceal her shame, she was untruthful in a portion of her testimony."

The evidence of the female Plaintiff told of her relations with the defendant and her story of sexual intercourse with him was unqualifiedly denied by the Defendant. The evidence of the plaintiff, if believed by the jury, was, in my opinion, sufficient to establish seduction on the part of the defendant. The jury believed her story and came to the conclusion that she was seduced on the night when she stated the defendant had partial intercourse with her. 10

It is apparent the learned Trial Judge did not take the same view of the evidence as did the Jury. The evidence was conflicting and the jury accepted that of the plaintiff.

Under certain conditions a Judge may give judgment contrary to the verdict of a Jury. One of the leading cases is Metropolitan Railway Co. vs. Wright 11 A.C. 152. In this case Lord Herschell, L.C., says:

"The question we have to determine is, not what verdict we should have found, but whether the Court of Appeal was wrong in holding, as they have done, that the verdict was not against the weight of evidence. The case was one unquestionably within the province of a jury; and in my opinion the verdict ought not to be disturbed unless it was one which a jury, viewing the whole evidence reasonably could not properly find." 20

Lord Fitzgerald in the same case, said:

"The verdict should not be disturbed unless it appeared to be not only unsatisfactory, but unreasonable and unjust. The question then, for your Lordships' consideration is whether the evidence so preponderates against the verdict as to show that it was unreasonable and unjust." 30

In the Court of Appeal in this case Lord Selborne, L.C., stated: "There must be a preponderance of evidence, assuming there is evidence on both sides to go to the jury, as to make it unreasonable, and almost perverse, that the jury, when instructed and assisted properly by the Judge, should return such a verdict."

In *Allcock vs. Hall*, 1891, Q.B.D., 444, a verdict of the jury was set aside, Lindley, L.J., testing it in this manner: 40

"Can we say that the present case falls within the rule thus laid down—(as stated by Lord Herschell in the Metropolitan "Railway case) that though the question was unquestionably "within the province of the jury, yet the jury, if they had "viewed the whole of the evidence reasonably could not possibly have found such a verdict. In my opinion the case was "brought within that rule. It appears to me that the verdict "was so utterly irreconcilable with the evidence, when reasonably considered, that it ought to be set aside."

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 49  
Reasons for  
Judgment  
(e) Lun-  
ney, J.A.  
Dissenting,  
2nd February,  
1935  
*continued.*

- 10 In *Banbury vs. Bank of Montreal*, 1918, A.C. 626 the law is outlined by Lord Atkinson:

"They must, according to the decision in *Metropolitan Ry. Co. vs. Wright*, have come to the conclusion that 'the verdict "was one which a jury, viewing the whole of the evidence reasonably, could not properly find.' And what conclusion should "a Judge come to before he can direct a verdict to be entered "for a defendant? Why, that there is no evidence to go before "a jury upon which they could, as reasonable men, find a verdict for the plaintiff."

- 20 In the present case, in my opinion, there was evidence before the jury to substantiate the claim of the female plaintiff and I do not think the verdict of the jury should be disturbed. See *Athenas vs. Ottawa Electric Ry. Co.*, 1931, S.C.R. 139.

- As to damage. The third question, in which the jury was asked if the female plaintiff suffered damage, was answered in the affirmative. It has been argued before us that damages are not to be awarded in actions of this nature unless the seduction is followed by pregnancy. We have had two cases cited to us where damages were given when there was no pregnancy. A further argument was that the action of the female plaintiff cannot succeed unless she establishes the existence of some degree of service on her part and the interruption of that service as the result of childbirth or pregnancy with consequent damage. In other words it is argued that the same defence is available in the case of the female plaintiff as in the case of the male plaintiff. Reference is made to the judgment of Beck, J., in *Gibson vs. Rabey*, 9 A.L.R., 409 to support this contention.

- Section 5 of Chap. 102, R.S.A., 1922, being "The Seduction Act" is:
- 40 "Notwithstanding anything in this Act an action for seduction "may be maintained by any unmarried female who has been "seduced, in her own name, in the same manner as an action "for any other tort and in such action she shall be entitled to "such damages as may be awarded."

I think the opening phrase of this section is important and places the section in a position as if it were an enactment separate from the preced-

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

ing sections of the Act. It gives an unmarried female, who has been seduced, an action in the same manner as for any other tort. As was pointed out by Harvey, C.J. in *Collard vs Armstrong*, 4 W.W.R. 879, in reference to Section 5:

No. 49  
Reasons for  
Judgment  
(e) Lun-  
ney, J.A.  
Dissenting,  
2nd Febru-  
ary, 1935  
*continued.*

“As the woman could not lose her own services as her parent  
“or master could it must necessarily follow that when the ac-  
tion is brought by her as in the present case there can be no  
“question of loss of services.”

In the *Collard* case, which was one for seduction and breach of promise the plaintiff, before the appeal, relinquished all that part of the judgment in excess of \$6000. Two of the Judges on the appeal stated that they would not consider the original verdict of \$20,000 as excessive under the circumstances. The jury in the present case awarded the female plaintiff the sum of \$10,000 by way of damages and I do not think the amount excessive. 10

The action of the male plaintiff, in my opinion, rests on different grounds. There was no loss of service proved and I do not think there was evidence of enticement on the part of the defendant. The authorities are clearly to the effect that either of these factors is an essential to his success.

I would allow the appeal of the female plaintiff, Vivian MacMillan and would direct judgment in her favor in the sum of \$10,000 and costs, to include costs of Examination for Discovery. 20

I would dismiss the appeal of the male plaintiff, Allan D. MacMillan, with costs.

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No. 50

Order Approving Security for Costs

IN THE SUPREME COURT OF ALBERTA  
APPELLATE DIVISION

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No. 50  
Order  
Approving  
Security  
for Costs  
29th March,  
1935

BEFORE THE HONOURABLE THE  
CHIEF JUSTICE OF ALBERTA,  
AT EDMONTON, ALBERTA.

FRIDAY THE 29th  
DAY OF MARCH, A.D. 1935 30

BETWEEN:

VIVIAN MacMILLAN,

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

(Plaintiff)  
Appellant.

—and—

THE HONOURABLE JOHN E. BROWNLEE

(Defendant)  
Respondent.

No. 50  
Order  
Approving  
Security  
for Costs  
29th March,  
1935  
*continued.*

10 UPON motion by Counsel on behalf of the Appellant, Vivian Mac-  
Millan, upon hearing read the Notice of Motion and certificate of pay-  
ment into court of \$500, and upon hearing Counsel:

IT IS HEREBY ORDERED that the sum of Five Hundred Dollars (\$500.00) paid into Court to the credit of this action as security that the Appellant will effectually prosecute her appeal from the judgment of this Division delivered the 2nd day of February, A.D. 1935, and will pay such costs and damages as may be awarded against her by the Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

20 AND IT IS FURTHER ORDERED that the costs of this action be  
costs in the cause.

“HORACE HARVEY,”  
C.J.A

APPROVED AS TO FORM,

“FRIEDMAN, LIEBERMAN & NEWSON,”  
Agents for Solicitors for Defendant.

ENTERED at Edmonton, this  
30th day of March, A.D. 1935.

“R. P. WALLACE”,  
C.S.C.A.

30

**No. 51**

**Agreement as to Contents of Appeal Book.**

IT IS AGREED between the Solicitors for the respective parties that the Appeal Book to the Supreme Court of Canada shall consist of the following:

1. Pleadings.
2. Evidence and Proceedings at a Trial.

No. 51  
Agreement  
as to  
Contents of  
Appeal  
Book  
May, 1935

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

No. 51  
Agreement  
as to  
Contents of  
Appeal  
Book  
May, 1935  
*continued.*

3. Reasons for Judgment of the Trial Judge.
4. Formal Judgment at Trial.
5. Exhibits of which Exhibits No. 8 and the Temperature Chart of Exhibit No. 7 need not be printed.
6. Notice of Appeal.
7. Reasons for Judgment of Appellate Division.
8. Formal Judgment of Appellate Division.
9. Order approving security for costs of Appeal to Supreme Court.
10. Registrar's Certificate.
11. This agreement. 10

DATED at the City of Edmonton, in the Province of Alberta, this — day of May, A.D. 1935.

NEIL MACLEAN,  
Solicitor for (Plaintiff) Appellant.  
M. M. PORTER,  
Solicitor for (Defendant) Respondent.

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**No. 52**

**Registrar's Certificate**

No. 52  
Registrar's  
Certificate  
6th Sep-  
tember,  
1935

I, the undersigned Registrar of the Supreme Court of Alberta, Appellate Division, DO HEREBY CERTIFY that the foregoing printed document, Pages 1 to 354 inclusive, is the case stated by the Parties, pursuant to Section 73 of the Supreme Court Act and the Rules of the Supreme Court of Canada, in an appeal to the Supreme Court of Canada pending herein. 20

AND I DO FURTHER CERTIFY that the (Plaintiff) Appellant herein has given proper security to the satisfaction of the Honourable the Chief Justice of Alberta, as required by Section 75 of the Supreme Court Act, by the deposit in Court of the sum of Five Hundred Dollars (\$500.00) and a copy of the order approving the said security is included in this Appeal Case. 30

AND I DO FURTHER CERTIFY that the Honourable the Chief Justice of Alberta, the Honourable Mr. Justice Clarke, the Honourable Mr. Justice Mitchell, the Honourable Mr. Justice Ford and the Honourable Mr. Justice Lunney delivered the reasons for judgment of the Appellate Division of the Supreme Court of Alberta in this case and that the said reasons for judgment are printed in the foregoing case.



IN TESTIMONY WHEREOF I have subscribed my name and affixed the seal of the Supreme Court of Alberta, this 6th day of September, A.D. 1935.

(Sgd.) "R. P. WALLACE",

Registrar of the Appellate Division  
of the Supreme Court of Alberta.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division)*

—  
No. 53  
Solicitor's  
Certificate  
Undated

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**No. 53**

**Solicitor's Certificate.**

10 I, NEIL DOUGLAS MACLEAN, of the City of Edmonton in the Province of Alberta, a solicitor of the Supreme Court of Alberta, HEREBY CERTIFY that I have personally compared the annexed Print of the case in appeal to the Supreme Court of Canada with the originals and that the same is a true and correct reproduction of such originals.

(Sgd.) "NEIL DOUGLAS MACLEAN",

Solicitor for (Plaintiff) Appellant.

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**No. 54**

**Formal Judgment**

IN THE SUPREME COURT OF CANADA  
MONDAY, the first day of March, 1937.

20 PRESENT:

The Right Honourable Sir Lyman Poore Duff, P.C., G.C.M.G., Chief Justice,

The Honourable Mr. Justice Rinfret,  
The Honourable Mr. Justice Davis,  
The Honourable Mr. Justice Kerwin,  
The Honourable Mr. Justice Hudson.

BETWEEN:

VIVIAN MacMILLAN

Plaintiff (**Appellant**)

—and—

30 THE HONOURABLE JOHN E. BROWNLEE

Defendant (**Respondent**)

The appeal of the above named Appellant from the judgment of the Appellate Division of the Supreme Court of Alberta sitting in and for the

*In the  
Supreme  
Court of  
Canada*

—  
No. 54  
Formal  
Judgment  
1st March,  
1937

*In the  
Supreme  
Court of  
Canada*

No. 54  
Formal  
Judgment  
1st March,  
1937  
*continued.*

Judicial District of Edmonton, pronounced in the above case on the 2nd day of February in the year of our Lord one thousand, nine hundred and thirty-five, affirming the judgment of the Honourable Mr. Justice Ives, sitting in and for the Judicial District of Edmonton rendered in the said cause on the 2nd day of July in the year of our Lord one thousand, nine hundred and thirty-four; having come on to be heard before this court on the 16th and 19th days of October in the year of our Lord one thousand, nine hundred and thirty-six, in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid this Court was pleased to direct that the said appeal stand over for judgment and the same coming on this day for judgment; 10

THIS COURT DOTH ORDER AND ADJUDGE that the said Appeal should be and the same was allowed and that the said judgment of the Appellate Division of the Supreme Court of Alberta should be and the same was reversed and set aside and the said judgment of the Honourable Mr. Justice Ives sitting in and for the Judicial District of Edmonton should be and the same was reversed and set aside insofar as the said judgments relate to the action of this Appellant and that in place thereof judgment should be entered in favour of the Appellant against the Respondent for the sum of Ten Thousand Dollars (\$10,000) the amount of the verdict of the jury. 20

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said Respondent should and do pay to the said Appellant the costs incurred by the said Appellant as well at the trial of this action before the Honourable Mr. Justice Ives and in the said Appellate Division of the Supreme Court of Alberta as in this Court.  
Form approved:

“M. M. PORTER”  
for Respondent.

Settled April 7th, 1937 30

“NEIL D. MACLEAN”  
for Appellant.

(Sgd.) J. F. SMELLIE,  
Registrar.

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**No. 55**

**Reasons for Judgment**

No. 55  
Reasons  
for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937

(a) Sir Lyman P. Duff, C.J.—This appeal raises an important question as to the construction of section 5 of The Seduction Act of Alberta (Cap. 102, R.S.A. 1922) which was first enacted as Cap. 8 of the Ordinances of the North West Territories, 1903.

There is undeniably force in the argument that the "action for seduction," which an unmarried female is by that section given the right to institute, rests "in its essentials" upon the same cause of action as the "action for seduction" which the parents are entitled to bring under sections 2 and 3 of the statute. This is the view which prevailed with the majority of the Appellate Division and is supported by the Chief Justice of Alberta in a powerful judgment.

Each part of the statute ought, it may fairly be argued, to be read with each of the other parts; and, reading sections 2 and 3 with section 5, and section 5 with sections 2 and 3, and construing each of these parts of the enactment by the light of the other, and having regard to similarity of language in sections 2 and 5, the contention is by no means without substance that, *prima facie*, section 5 presupposes a cause of action capable of being asserted by the parents, if (at all events) living in Alberta, and that, given such a cause of action vindicable by the parents, a cause of action having the same constitutive elements (the parental relations being, of course, in this case irrelevant) is, by section 5, bestowed upon the seduced woman.

It follows from this, it is said, that damage of the kind which is the gist of the action under sections 2 and 3 (disability for service resulting from childbirth, pregnancy or physical illness directly due to the sexual intercourse) is also of the essence of the cause of action under section 5.

The other view of the section, which was, I think, in effect accepted by Mr. Justice Clarke and Mr. Justice Lunney, may be summarily stated thus:

Sections 2 and 3 are concerned exclusively with conduct that constitutes a wrong to the parents, and, in point of law, the essence of this actionable wrong consists in the fact that it results in some loss of the services of the daughter, or illness entailing (presumptively or actually) some disability for service; while section 5, on the contrary, is concerned exclusively with the wrong which the law, by the parent enactment passed by the Legislature of the North West Territories in 1903, first recognized as effecting a prejudice to the interests of the seduced female herself, in respect of which she is entitled to legal protection, and that the sole purpose of the enactment in section 5 is to provide redress for this wrong.

Then, it is said, in construing the enactment in which this novel rule and principle of liability are embodied, one would not appear to be justified in imputing to the words employed by the Legislature for that purpose alone, a rather artificial signification derived from the earlier sections which, notwithstanding the similarity of language, do deal with a subject-matter that is widely different; and, it is added, there is less likelihood of frustrating the legislative intention if one gives effect to this enactment according to the commonly understood meaning of the words, having re-

*In the  
Supreme  
Court of  
Canada*

No. 55  
Reasons  
for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937  
*continued.*

gard, of course, to its manifest purpose. The cause of action under section 5 arises, no doubt, out of an occurrence or occurrences which, assuming the conditions to subsist as to resulting damage, might form the foundation of an action by the parents of the woman. But the action under section 5 is bestowed upon a person who, *ex hypothesi*, is a voluntary participant in the acts which are the essential basis of her right to redress; and, in consequence, in passing upon a claim for damages under section 5, the tribunal of fact is faced with issues and with considerations of an order totally different in their nature from anything that can arise in considering or adjudicating upon a claim under sections 2 and 3. That circumstance alone, it is said, sharply differentiates, in substance, the cause of action under the later section from that under the earlier. 10

First of all, it is said that in an action under sections 2 and 3, on the question whether or not the cause of action has been constituted (as distinguished from the assessment of damage), the conduct of the seduced woman is irrelevant; while leave and license by the parents, which might be established by proving consent either by words or conduct, would be an answer to the action. In an action under section 5, on the other hand, the conduct of the woman as well as her character both enter into the determination of the existence of the cause of action. The relief given by section 5 presupposes, it is said, that the woman seduced was, at the time she was corrupted by the defendant, a woman of virtuous life and habits; and, moreover, that the words of the section, read according to the meaning they bear in the common language of men, imply that some enticement has been employed by the defendant, or some unfair advantage taken, through which he has induced the woman to have intercourse with him. All this, as has been said, would be irrelevant in an action under the earlier sections, which would lie even in a case in which it appeared that the advances of the woman seeking the gratification of her own desires were the preponderating factor in bringing about the common act. Again, no consent, no enticement or manoeuvring on the part of the parents could be relevant in determining the existence of a cause of action under section 5. 20 30

In this view, since the action under section 5 has nothing to do with the parental relations, nothing to do with the relation of master and servant, nothing to do with loss of service or service, there is, it is contended, no *a priori* probability that section 5 contemplates relief conditioned upon the seduction being followed by childbirth or pregnancy or illness directly traceable to physical act of copulation and giving rise to some disability for service; and it is not susceptible of dispute that the language of the section (assuming damages to be the essence of the cause of action) when read alone, and without colour derived from the preceding sections, neither expresses nor implies such a condition. 40

In passing upon these rival views we are not without assistance from judicial decisions. The ordinance of the North West Territories of 1903

was reproduced in its entirety (with the addition of the heading "Persons entitled to maintain action") by Cap. 102 of the R.S.A. 1922, which came into force on the 19th January, 1923, by virtue of a statute which was assented to on the 9th day of March, 1923.

*In the  
Supreme  
Court of  
Canada*

No. 55

Reasons for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937  
*continued.*

10 Before that date, two decisions were pronounced by the full court of Alberta, one in 1916 and one in 1922, both in the same sense. The decisions are concerned with the construction of section 5 of the North West Territories Ordinance; and, in so far as they involve a construction of that section, they must, we think, be taken to have received legislative sanction when section 5 was reproduced without material alteration in R.S.A. which came into operation in 1923. (*Barras v. Aberdeen Steam Trawling & Fishing Co.*) (1933 A.C. 402).

I turn now to the decisions. The first is *Gibson v Rabey* (1916) 9 Alta. L.R. 409). Two judgments were delivered, one by Scott J., another by Beck J., in which Stuart J. concurred. Scott J. proceeded upon the ground that seduction in section 5 has its ordinary meaning and implies some enticement on the part of the seducer by which a virtuous woman is induced to give herself to him. That appears conclusively from the sentence:

20 "In my view the evidence was sufficient to support the conclusion the trial judge must have reached that she was enticed and persuaded by"

the defendant to commit the act (p. 412) Beck, J., in the course of his judgment, observes at p. 414 that,

30 "The section of the ordinance already quoted, though awkwardly drafted, inasmuch as in giving the woman herself a right of action it does away with the whole idea of service and loss to a master, by the clearest necessary intendment constitutes the seduction, not mere seduction but seduction followed by damages consequent upon the seduction, the cause of the action. For I think that damage was the 'gist' of the action in the case, and at all events the ordinance itself, I think, makes it the gist of an action by the woman seduced. It was contended that, in an action by a woman for her own seduction, the word should be interpreted as it appears to be very generally by the American authorities to involve an enticing by the defendant. The history of the action shows that so long as the action was based on loss of service, seduction was ultimately taken to mean no more than having carnal intercourse with. The reason, however, was that damage by way of loss of service was the gist of the action and consent by the servant was no answer to an action by the master."

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He proceeds at p. 415:

*In the  
Supreme  
Court of  
Canada*

No. 55  
Reasons for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937

*continued.*

"Now that the woman herself is enabled to be the plaintiff, I think her action is subject to a like defence, that is, if she be the tempter or even if she deliberately consents from lasciviousness or even from the strength of mere natural passion, provided her consent has not been brought about by enticement of the defendant she cannot recover."

"In this way, I come in effect to the same conclusion as my brother Scott."

"I think, however, that in the absence of evidence of loose behaviour on the part of the woman, the presumption is that there was enticement on the part of the defendant in cases of this sort and that the burden of showing that the plaintiff cannot succeed on the ground that she was at least equally morally guilty is on the defendant."

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Although it does not appear from the report, it seems that in this case pregnancy supervened, and, consequently, although it is stated by Beck J. that damage is of the gist of the action, no question arose as to the character of the damage necessary to sustain the action.

The second decision was pronounced in *Tetz v. Tetz* (1922) 18 Alta. L.R. 364, by the Appellate Division of the Supreme Court of Alberta (Scott C.J., Stuart, Beck, Hyndman and Clarke JJA). The judgment of the Court was delivered by Beck J.A., and in the course of his judgment he summarizes the judgment of Stuart J. and himself in *Rabey's* case at pp. 365 and 366, thus:

"In that case I said that, in my opinion, it would be a defence to an action for seduction if it were shown, (1) that the woman was the tempter, or (2) even if she deliberately consented from lasciviousness or even from the strength of mere natural passion, provided her consent had not been brought about by the enticement of the defendant. To this I added that, in my opinion, in the absence of evidence of loose behaviour on the part of the woman, the presumption is that there was enticement on the part of the man and that the burden of showing that the plaintiff could not succeed on the ground that she was at least equally morally guilty is on the defendant. Stuart J. concurred with me and Scott C.J. (the Court being composed of three members) was evidently of the same opinion."

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Now, it is clear that some points were decided in these two cases touching the construction and effect of section 5. In each it is declared that the plaintiff's right to recover under that section is conditioned in certain specified respects. When the facts are ascertained, it is held, the plaintiff cannot succeed if certain propositions of fact are established concerning

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the conduct of the plaintiff and defendant towards one another; and the investigation, when the plaintiff's right to recover is disputed, will involve the assignment to one or other of the parties the preponderating role in bringing about the result, the investigation of the part played by the woman's natural passion, and, it may be, the determination of the relative moral guilt of the pair.

10 These decisions, in other words, recognize that, in examining a disputed claim for relief under section 5, the court must deal with issues and considerations which could not arise and would not be relevant in the trial of an action under sections 2 and 3. It is of no importance that the matters mentioned in the judgment of Beck J.A. are said to be matters of defence; the investigation of these matters necessarily results, the judgment's recognize, from the fact that the right to relief under section 5 is given to the seduced woman herself.

20 Seduction, as Beck J.A. says, at common law and in the earlier sections of the Act signifies nothing more than carnal intercourse. Enticement on one side or the other, relative moral responsibility, and so on, are matters which, as already observed, have no bearing upon the issue as to the existence of the cause of action. Under section 5 according to the decisions, such matters are the determining factors; and, in view of these decisions, since the re-enactment of the statute in 1922, any construction is precluded by force of which the determining factors in the trial of an action of seduction under section 5 are to be deemed essentially or substantially the same as those in the trial of an action of seduction under the earlier sections or at common law.

These decisions have nothing to say as to the nature of the damages which must be proved by the plaintiff under section 5, although in the first of them it was definitely stated that under that section damage is the gist of the action.

30 Starting from this point, it follows, we think, that section 5 should be construed according to the ordinary meaning of the words and that damage of the special character mentioned—damage actually or presumptively entailing some loss of service or some disability for service—is not of the gist of the action under that section.

Neither have we any doubt that there was sufficient evidence of damage to support the action.

40 There remains the question raised by the able argument of Mr. Smith in support of his contention that the judgment of the Appellate Division should not be disturbed on the ground that, on the evidence, the only reasonably admissible finding would be one against the plaintiff, or, in the alternative, that there should be a new trial on the ground that the verdict is against the weight of the evidence and particularly that the damages

*In the  
Supreme  
Court of  
Canada*

—  
No. 55  
Reasons for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937  
*continued.*

*In the  
Supreme  
Court of  
Canada*

No. 55  
Reasons for  
Judgment  
(a) Sir  
Lyman P.  
Duff, C.J.C.  
1st March,  
1937  
*continued.*

awarded are unreasonably excessive. This argument presents a question of a type with which the courts are very familiar.

It is no part of our duty to ask ourselves what verdict we should find upon the evidence as presented to us in the record without the advantage of hearing and seeing the witnesses. The settled rule is that the verdict of the jury must stand unless, examining the evidence as a whole, the court is clearly of opinion that it is one which no jury, acting judicially, could give. This, in our opinion, has not been established by argument. So also as regards damages. It was for the jury to determine whether the evidence, or how much of the evidence, of the appellant should be accepted as correct; and we find ourselves unable to say that if her evidence was accepted the sum awarded was such as no tribunal of fact acting reasonably could have awarded. 10

The judgment of the Appellate Division should be vacated and in lieu thereof it will be ordered that judgment be entered for the amount of the verdict. The appellant will have her costs throughout.

(b) Rinfret  
J.  
1st March,  
1937

(b) RINFRET, J.—I concur with Sir Lyman P. Duff, C.J.C.

(c) Davis,  
J.  
Dissenting  
1st March,  
1937

(c) DAVIS, J. (dissenting)—The appellant, an unmarried female brought an action for seduction in the Supreme Court of Alberta against the respondent, a married man. The appellant's own story may be shortly but I think fully stated. From October, 1930, until July, 1933, she says she had frequent sexual intercourse with the respondent who she knew from the beginning was a married man with a wife and family. When the relations first commenced she was a girl of about 18 years and 4 months of age. During the summer of 1932 she consulted a physician, as she had lost weight during the two prior years. She says she had "stomach trouble brought on by nerves" and she felt "very tired all the time," and that the pills she had been taking to avoid pregnancy had upset her. The physician, who was called by her counsel as a witness at the trial, described her then condition as "irritable colon," an irregular function which "might be produced by any systemic condition which causes fatigue or running down of the patient by the use of cathartics to correct constipation which had existed"—and which condition, he said, is frequently associated with a nervous condition. He said that there was no doubt that she was suffering from constipation. At that time she went home to the country to her parents for 5 or 6 weeks' rest. Upon her return to Edmonton, she admits she continued her relations with the respondent. In January, 1933, she says she told with a good deal of remorse a young man of her own age who, she says, was proposing marriage to her, of her relations with the respondent. But she admits she continued thereafter the same relations. In May, 1933, she says that at the instance of the young man she consulted a solicitor. Obviously this was with a view to taking some action against the respondent. But she admits again that she continued thereafter the same frequent relations with the respondent down to July 3rd, 1933. On the evening of 20 30 40



July 5th, 1933, she says the young man and the solicitor pursued in a motor car the car in which she and the respondent were driving about the city, and that the respondent became aware that his car was being followed. The respondent was a man prominent in the public life of the province and the episode of that evening appears to have put an end to the relations between the parties, if there ever were any such relations as the appellant describes. Shortly thereafter the writ in this action was issued. It is admitted that there was not a child, or even pregnancy, resulting from the alleged relations. Nor is the action founded upon any misrepresentation, coercion or deceit. It is a suit upon section 5 of the Alberta Seduction Act, being chap. 102 of the Revised Statutes of 1922.

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In my opinion, one has only to state the facts of this case to see, and I say it with the greatest deference to those from whom I differ, that the appellant cannot succeed upon the broadest possible interpretation, most favorable to the appellant, that can be put upon section 5 unless it be reduced to giving a cause of action for fornication per se.

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If the cause of action in section 5 (excluding necessarily the relation of master and servant) is the same as in the other sections of the statute, the birth of a child or pregnancy or at least some physical disability as a direct result of the conduct complained of is an essential element of that cause of action, and the illness that was proved in this case was too remote and insufficient to sustain the action. If, on the other hand, the cause of action in section 5 is to be regarded as a new and independent tort, separate and distinct from the action for seduction referred to in the other sections of the statute, then, whatever be the essential elements of this new cause of action, there must be, it seems to me, at least something in the nature of negation of choice. Taking either interpretation of section 5, the action, in my opinion, fails upon the evidence.

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The proper method of interpretation of section 5, in my view, is to read the statute as a whole. Section 5 is part and parcel of the entire statute. The statute is a very short one, there being only four operative sections. It was enacted in its entirety as an ordinance of the North West Territories in 1903 and became part of the statute law of the province of Alberta when that province was formed out of a part of the Territories. The statute has remained unchanged except that in the revision of 1922 a heading in large type "Persons Entitled to Maintain Action" was inserted at the commencement of the operative provisions of the statute. Section 5 therefore ought to be interpreted, not as an isolated piece of legislation to be given a new meaning and significance, but as part of an entire statute dealing with the same subject-matter.

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In examining the statute, it is to be observed that the right of action is given firstly to the father or, in case of his death, to the mother, notwithstanding that the unmarried daughter was at the time of her seduction serving or residing with another person upon hire or otherwise; and proof

*In the  
Supreme  
Court of  
Canada*

—  
No. 55  
Reasons for  
Judgment  
(c) Davis,  
J.  
Dissenting  
1st March,  
1937  
*continued.*

*In the  
Supreme  
Court of  
Canada*

No. 55  
Reasons for  
Judgment  
(c) Davis,  
J.  
Dissenting  
1st March,  
1937  
*continued.*

of acts of service in such case is dispensed with and no evidence shall be received to the contrary. Secondly it is provided that in case the father or mother had before the seduction abandoned the daughter and refused to provide for and retain her as an inmate, then any other person who might at common law have maintained an action for the seduction may maintain such action. Thirdly it is provided that any person other than the father or mother "who by reason of the relation of master or otherwise" would have been entitled at common law to maintain an action for the seduction of an unmarried female may still maintain such action (and the following words are very significant),

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"if the father or mother is not resident in Alberta at the time  
"of the birth of the child which is born in consequence of the  
"seduction or being resident therein does not bring an action  
"for the seduction within six months from the birth of the child.

These are all the provisions of the statute save and except the last section, section 5. Now those provisions necessarily import as an essential ingredient of the cause of action an illegitimate child born or conceived as a result of the relations complained of. And that, I believe, has always been the common understanding in Canada of the cause of action for seduction. It is not without its own significance that counsel have not been able to find any case in Canada where an action for seduction has succeeded without proof of at least pregnancy, and no reported case in England since *Manvell v. Thomson* (1826) 2 C. and P. 303. Not only was the question not raised in that case, but the case was prior to the legislation enacted in Upper Canada in 1837, being 7 William IV, chap. 8, "An act to make the remedy in cases of seduction more effectual, and to render the fathers of illegitimate children liable for their support," which statute without substantial change became the law of the province of Ontario at Confederation and (except that the provisions for the maintenance of illegitimate children were carried forward in a separate statute) remained substantially unchanged until 1903, when the North West Territories enacted the Ontario statute verbatim and added thereto the section which is now section 5 in the Alberta revised statute.

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Section 5 uses the same words as used throughout the other sections of the statute. "Any unmarried female who has been seduced" are the same words as used in section 2. The words "an action for seduction" in section 5 are substantially the same as "an action for the seduction" that are used throughout the statute. Then there is the general heading: "Persons entitled to maintain action." The words in section 5, "Notwithstanding anything in this Act," mean, I think, that notwithstanding that the action for seduction may be maintained by the several classes of persons referred to in the preceding sections, the unmarried female may herself maintain the action, and the words "in the same manner as an action for

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any other tort" refer to the procedure for maintaining in her own name the right of action and are not words creating the substance of a new cause of action.

*In the  
Supreme  
Court of  
Canada*

- 10 It is a safe rule of statutory interpretation to assume, in the absence of an expressed intention to the contrary, that a Legislature when it uses the same words in different sections of the same statute, particularly a very short statute, uses the words in the same sense throughout the statute. Are we to interpret section 5 so as to import into the words used in that section a different quality or meaning from that which the same words have in the other sections of the statute? If the Legislature had intended that the words in section 5 should mean something different from what they mean in the other sections, the Legislature could have said so. Of course, where the right of action is given to the unmarried female herself there is necessarily excluded the relation of master and servant as an essential in the cause of action and with it the necessity for proof of loss of service; but the substance of the statutory cause of action, the birth of a child or at least the condition of pregnancy, remains. Again, with the greatest deference to those from whom I differ, I cannot see that the re-enactment of the statute in the revision of 1922 touches the point as to the substance of the cause of action, because the fact of the birth of child, or pregnancy, in the Alberta cases prior to the revision has been admitted or accepted by counsel and those cases did not turn upon that question.

No. 55  
Reasons for  
Judgment  
(c) Davis,  
J.  
Dissenting  
1st March,  
1937  
*continued.*

In the view I take of this appeal, it becomes unnecessary to examine minutely the evidence at the trial, as we were invited by counsel for the respondent to do, to ascertain whether or not the jury was justified in arriving at its verdict of guilt against the respondent. In my opinion, the evidence discloses no cause of action and therefore the action was properly dismissed.

The appeal, in my opinion, should be dismissed with costs.

- 30 (d) KERWIN, J.—I agree with the judgment proposed by my Lord the Chief Justice and with the reasons therefor given by him, but I think I should add that a consideration of the language of section 5 of the Act leads me to the same conclusion.

(d) Ker-  
win, J.  
1st March,  
1937

- 40 The section does not provide that "the" action of "seduction" may be maintained, but the expression used is "an action for seduction." In the old action of seduction at common law, the master was required to prove an act of service. A parent as master or mistress would not be able to prove that act where the daughter was serving or residing with another person, and, it being deemed that the parent should have a right of action under those circumstances, the first change in the common law, made by statute, was to provide that the parent might maintain an action for seduction notwithstanding the daughter was serving or residing with another person, and it was also provided that the parent need not prove any act of

*In the  
Supreme  
Court of  
Canada*

No. 55  
Reasons for  
Judgment  
(d) Ker-  
win, J.  
1st March,  
1937  
*continued.*

service performed by his daughter for the parent. Then in 1903 when the Ordinance was passed, the intention was to give to the woman, by section 5, a right of action of some sort even though a parent could by statute maintain the ordinary action for seduction notwithstanding the absence of the daughter from home, etc. Hence the expression "notwithstanding anything in this Act."

The decisions as to the effect of the first alteration by statute in the common law are clear that, when the new right of action was given to the parent, while the statute provided that evidence of service need not be given, the Act did not dispense with the necessity of proving loss of service. There is no provision in section 5 that in the action thereby given "it shall not be necessary to prove any act of service performed by the party seduced." If the contention that section 5 is speaking of the old form of action be correct, there would appear to be as much reason for the plaintiff to prove actual service (to someone) as the loss of that service. 10

The learned Chief Justice of Alberta was of opinion that the words "in the same manner as an action for any other tort" dealt with a mere matter of procedure, but, with respect, it seems to me rather that they are part of the substantive provisions dealing with the right of action thereby given and lend weight to the argument that the unmarried female may maintain a new action and not the old action of seduction. 20

The section concludes that "she shall be entitled to such damages as may be awarded." It does not say that she is entitled to "the" damages, thus indicating that the damages in an action brought by her may be on a different basis from the damages that could have been given in an action by a parent.

(e) Hud-  
son, J.  
1st March,  
1937

(e) HUDSON, J.—I concur in the result.

**No. 56**

**Order in Council Granting Special Leave to Appeal  
to His Majesty in Council**

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AT THE COURT AT BUCKINGHAM PALACE

The 1st day of July, 1937

PRESENT

**The King's Most Excellent Majesty**

LORD PRESIDENT

SIR THOMAS INSKIP

LORD MOTTISTONE

SIR ROBERT CRAIGIE

SIR HORACE RUMBOLD

*In the  
Privy  
Council*

No. 56  
Order in  
Council  
Granting  
Special  
Leave to  
Appeal  
To His  
Majesty in  
Council  
1st July,  
1937

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of June 1937 in the words following viz.:—

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10 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Honourable John E. Brownlee in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and Vivian McMillan Respondent setting forth (amongst other matters) that the Petitioner is desirous of obtaining special leave to appeal from a Judgment of the Supreme Court dated the 1st March 1937 which by a majority of four Judges to one allowed the Respondent's Appeal from the Supreme Court of Alberta (Appellate Division) which had dismissed Appeals by the Respondent and her father from the Judgment of Ives J. dated the 2nd July 1934 in an Action wherein the Respondent and her father severally claimed damages from the Petitioner for the seduction of the Respondent: that the question of law on which the Petitioner desires leave to appeal was stated by the Chief Justice of Canada to be 'an important question as to the construction of section 5 of the Seduction Act of Alberta' and is whether as the Petitioner contends section 5 of the Seduction Act merely entitled an unmarried female who has been seduced to maintain an Action for seduction already known to the law the gist of which is proof of damage of a special kind i.e the birth of a child or pregnancy consequent upon the seduction or at least some physical disability directly resulting from the seduction or whether as the Respondent contends section 5 created a new cause of action for fornication per se: that a section in identical terms is in the Seduction Act of Saskatchewan being chapter 70 of the Revised Statutes of Saskatchewan 1930: that the Action was tried before Ives J. with a jury: that the Respondent admitted in evidence that she had never been pregnant: that the case was fought on the one issue of fact whether or not the Petitioner had seduced the Respondent: that the questions put to the jury and the answers returned were:—Question: 'Did this Defendant seduce the Plaintiff Vivian McMillan?' Answer: 'Yes'. Question: 'If so when?' Answer: 'At the time when Mr. Brownlee gained only partial entrance as stated by Vivian McMillan'. Question: 'If so did she suffer damage and in what amount?' Answer: 'Yes \$10,000'. Question: 'If there was seduction did the male Plaintiff suffer damage and in what amount?' Answer: 'Yes \$5,000': that the time referred to in the second answer is given in the Respondent's evidence as the 13th of October 1930: that Ives J. in the presence of the jury stated that he strongly disagreed with the answers and that the evidence did not warrant them: that in his considered Judgment Ives J. held that in law damage was the gist of the action and that the damage necessary to found a right of action in the woman must be of the same character as gave the master his right of action that is loss of service or at least an interference with the woman's ability to serve; that he saw nothing in the Seduction Act to convey a contrary intendment; and that there was no evidence of

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*In the  
Privy  
Council*

—  
No. 56  
Order in  
Council  
Granting  
Special  
Leave to  
Appeal  
To His  
Majesty in  
Council  
1st July,  
1937  
*continued.*

*In the  
Privy  
Council*

—  
Order in  
Council  
Granting  
Special  
Leave to  
Appeal  
To His  
Majesty in  
Council  
1st July,  
1937  
*continued.*

illness resulting from the Respondent's seduction or of interference in any way with her ability to render services: that he therefore dismissed the Actions of both Plaintiffs: that both Plaintiffs appealed to the Supreme Court of Alberta (Appellate Division) which unanimously dismissed the Appeal of the Respondent's father and which by a majority of three Judges to two upheld the Judgment of Ives J. dismissing the Respondent's claim: that the Respondent's father did not appeal from the Judgment of the Supreme Court of Alberta (Appellate Division): that the Respondent appealed to the Supreme Court of Canada: that the Court was composed of Sir Lyman Duff C.J. 10 and Rinfret Davis Kerwin and Hudson JJ.: that the Chief Justice stated reasons for allowing the Respondent's Appeal with which Rinfret J. agreed: that Kerwin J. also agreed and stated additional reasons for allowing the Respondent's Appeal: that Hudson J. concurred in the result and Davis J. dissented: that the Petitioner calls attention to the fact that in applying the principle of *Barras v. Aberdeen Steam Trawling & Fishing Co.* (1933) A.C. 402 the Chief Justice erred since its application was negated expressly by section 10 of the Revised Statutes of Alberta Act 1922 which provides:—'10. The Legislature is not to be deemed, by reason of the Revised Statutes of 20 Alberta, 1922, being so substituted, to have adopted the construction, which, by judicial decision, or otherwise, has been placed upon the language of any of the Acts or Ordinances, or parts thereof, included amongst the Revised Statutes': that the application of the rule in the *Barras* case to the revision of the statutes in 1922 was not argued in the Supreme Court of Canada nor in the lower Courts and section 10 of the Revised Statutes of Alberta Act 1922 was not therefore drawn to the attention of the Supreme Court: that there has thus been a marked difference of judicial opinion regarding the interpretation of section 5 of the Seduction Act: that of the five Judges of the Supreme 30 Court of Alberta (Appellate Division) three were in favour of the Petitioner and two against while of the five of the Judges of the Supreme Court of Canada four were against the Petitioner and one in favour: that of the eleven Judges who have dealt with the case five have been in favour of the Petitioner and six against: And humbly praying Your Majesty in Council to grant special leave to appeal from the Judgment of the Supreme Court of the 1st March 1937 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into 40 consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 1st day of March 1937 upon

depositing in the Registry of the Privy Council the sum of £400 as security for costs:

*In the  
Privy  
Council*

“And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

—  
No. 56  
Order in  
Council  
Granting  
Special  
Leave to  
Appeal  
To His  
Majesty in  
Council  
1st July,  
1937  
*continued.*

10 HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

*Exhibits  
and  
Documents*

**PART II**  
**EXHIBITS AND DOCUMENTS**

**No. 2**

**Letter from Vivian MacMillan to, 10041 101st Street, Edmonton  
(Defendant's document)**

Edson, Alberta,  
July 5, 1930.

No. 2  
Letter from  
Vivian  
MacMillan  
to 10041  
101st St.,  
Edmonton,  
5th July,  
1930

10041 - 101st Street,  
Edmonton.

Dear Sir:

Please send a calendar and full information concerning a course in  
Music. I have already my Junior and Primary Theory complete. Have also  
had one year Intermediate Pianoforte and one year Harmony.

Vivian MacMillan.

10

**No. 3**

**Copy of Letter from Alberta College to Vivian MacMillan  
(Defendant's document)**

July 6, 1930.

No. 3  
Copy of  
Letter  
from  
Alberta  
College to  
Vivian  
MacMillan,  
6th July,  
1930

Miss V. MacMillan,  
Edson, Alta.

Dear Miss MacMillan:

Under separate cover we are mailing you our College Calendar which  
will give you particulars respecting our College residences, courses of  
study, rates, etc.

We shall be able to give you the work you require in music. On page  
29 to 32 of our calendar you will find a brief outline of our Conservatory of  
Music. In our Music Department we have sixteen teachers on our staff.

The cost of a ten months' course is as follows:

Registration fee . . . . . \$2.00

Board, room & laundry . . . . . \$365.00

30

Piano lessons will cost you 75c, \$1.00, \$1.25, \$1.50 per lesson according to  
the teacher from whom taken. Theory or Harmony from 50c to \$1.50 per  
lesson. Piano practice will cost you \$2.00 per month for one hour's practice  
per day and \$1.50 per month for each additional hour.

Young ladies in residence are given Physical Culture classes free of  
charge.

Any other information required regarding our courses will be gladly  
given upon request.

Kindly fill out the enclosed application form and return together with  
a deposit of \$5.00. A room will then be reserved for you from September 20  
2nd the beginning of the fall term.

Yours very truly,

WH:MS.

40



## No. 4

Letter from Vivian MacMillan to Mrs. Brownlee with Envelope  
(Defendant's document)*Exhibits  
and  
Documents*No. 4  
Letter  
from  
Vivian  
MacMillan  
to Mrs.  
Brownlee  
with  
Envelope,  
27th Sep-  
tember,  
1931Edmonton  
11:30 a.m.  
Sept. 28  
1931  
Alta. 2-Cent StampMrs. J. E. Brownlee  
2 The Willingdon,  
Victoria,  
B.C.

c-o Mrs. S. H. Frame.

10

Sept. 27-31

Dear Mrs. Brownlee:

Sunday night and all is well, except that Mr. Brownlee went to Calgary this morning but expects to be back tonight. He and Mr. Hoadley drove down this morning, started at 7:30 and expect to be back tonight about 12.

20 Everything is going fine as can be expected without you dear. The boys have been very good, and Mary is doing her best, but you know she cleans, but just doesn't understand how to put things to rights. I got up this morning, changed the beds, did the rugs and floors etc. Then we had dinner, consisting of roast, cabbage, donated by Mr. Hunder, potatoes, lemon pie, so you see we aren't starving.

Then Agnes came over and we went over to my room to get some necessities, you can guess what, came home, had pass around and now Jack and I are writing to you, Agnes is reading, Alan and Bobby are writing.

30 Oh! I forgot to tell you I made a cake—Oh! boy, it turned out rather good. Maybe I'll be able to cook by the time you return, who knows.

Jack just asked me how to spell "Lysol" so I needn't tell you any more. It is a dear kitten, poor thing was so starved, but if you object terribly I'll take it home with me.

*Exhibits  
and  
Documents*

—  
No. 4  
Letter  
from  
Vivian  
MacMillan  
to Mrs.  
Brownlee  
with  
Envelope,  
27th Sep-  
tember,  
1931  
*continued.*

I do hope you are having a nice time, plenty sleep and fresh sea air, oh I can smell it. I needn't tell you that we miss you terribly, but I just keep looking ahead, and remembering that you are going to be lots more rested than when you left.

I hope you are having the grand weather we are. Today has been perfect, when it comes to weather, only.

We have a nice hearth fire on, and the kitten is curled up beside the fire, rather home like I should say.

I didn't forget the flowers, changed the water and they still look nice. I picked some for the table out of the rock garden. I gave the plants a good watering yesterday, Mary scrubbed the porch, so you see things are still moving. 10

Well, I seem to be running out of news, so guess I had better bid you good-night. Mr. Brownlee asked me to send his love, etc. when I wrote, so am doing so.

With all the love in the world.

Your

Viv. XX

P.S. Excuse writing, etc., but Jack asks so many questions.

**No. 5**  
**Paper containing Diet List of Female Plaintiff with Envelope**  
**(Defendant's document)**

*Exhibits  
and  
Documents*

—  
No. 5

Paper  
containing  
diet of  
Female  
Plaintiff  
with  
Envelope,  
April 4-7,  
1932

DR. J. E. BROWNLEE

	APRIL 4 WEDNESDAY	APRIL 5 THURSDAY	APRIL 6 FRIDAY	APRIL 7 SATURDAY
	BREAKFAST	BREAKFAST	BREAKFAST	BREAKFAST
10	1 Yeast Cake Post Bran Flakes 1 Piece of Toast 1 Cup of Tea	1 Yeast Cake 1-½ Grape Fruit Post Bran Flakes 1 Muffin 1 Cup of Tea	1 Yeast Cake 1 Glass Orange Juice Post Bran Flakes no toast 1 Cup of Tea	1 Yeast Cake 1-½ Grape Fruit Bran Flakes no toast 1 Cup of Tea
	LUNCH	LUNCH	LUNCH	LUNCH
20	1 Yeast Cake Sliced Tomatoes and Toast 2 Cups of Cocoa 1 Banana and Cake	1 Yeast Cake Cold Chicken and Tomato Salad 1 Cup of Tea and 2 Pieces of Cake	1 Yeast Cake Salmon Salad Rhubarb Pie 1 Glass Milk	1 Yeast Cake Eggs and Toast Cake and Coffee
	DINNER	DINNER	DINNER	DINNER
	1 Yeast Cake Chicken, Peas and Carrots I didn't eat any Potatoes 1 Cup of Coffee Jello-Cake	1 Yeast Cake Liver and Bacon I didn't eat pie 1 Cup of Tea	I didn't want any supper	I didn't want any supper
30	Went to bed at 12:30	Went to bed at 10 min. to 12	Went to bed at 11 p.m.	

(5)

H.

DR. J. E. BROWNLEE.

Exhibits  
and  
Documents

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office

Form CI-3M-2-33.



**No. 9**  
**Personal File of Female Plaintiff in Civil Service Commissioner's Office**  
**(Plaintiff's document)**

CIVIL SERVICE  
July 7, 1931  
COMMISSIONER

THIS FORM IS TO BE FILLED OUT IN INK IN APPLICANT'S OWN HANDWRITING,  
and forwarded to the Civil Service Commissioner, Government Buildings, Edmonton. If  
applicant cannot be found at address given, the application will be considered as withdrawn.

**THE PUBLIC SERVICE EFFICIENCY ACT FILE**

P

INFORMATION TO BE FURNISHED BY APPLICANT FOR EMPLOYMENT

1. Name in full MISS VIVIAN MacMILLAN  
(Use prefix, Mr., Mrs., or Miss)
2. Age last birthday 19 years. Date of birth 1912
3. Birthplace Nelson, B.C. Present nationality Canadian
4. Are you a British subject by birth? Yes?
5. Are you a naturalized British subject? Yes
6. Residence Y.W.C.A. City Phone 22964  
(Street Address and Telephone Number)
7. Married, Widow, Widower, Single Single Dependents
8. How long resident in Canada? 19 years; in Alberta 17 years
9. Educational standing and where educated Grade XI (complete) Educated in Edson, Alberta.
10. Work taken up after leaving school Business Course at Alberta College
11. Name and P.O. addresses of references as to character and habits:—  
(1) Rev. Dickerson, Edson, Alberta  
(2)   
Names and P.O. addresses of references as to ability:—  
(1) Miss G. B. Grenm, Alberta College  
(2)
12. Experience in stenography and typewriting
13. Experience in accounting and bookkeeping
14. Experience in office work other than above
15. Total experience under 12, 13 and 14
16. Work desired, if other than such referred to under 12, 13 and 14
17. Experience in work of that nature

(PLEASE TURN OVER)

*Exhibits  
and  
Documents*

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

18. Present (or last) employment other than military \_\_\_\_\_  
 \_\_\_\_\_ for \_\_\_\_\_ years, at \_\_\_\_\_  
 \_\_\_\_\_ at salary of \_\_\_\_\_ per \_\_\_\_\_

19. Why did you leave (or are you leaving) that position? \_\_\_\_\_

20. Details of previous employment with Government (if any) \_\_\_\_\_

21. If information under paragraph 18 does not cover the last five years, in what other work, place  
 and capacity employed during that period, with dates of each engagement: \_\_\_\_\_  
 \_\_\_\_\_

22. Have you ever been discharged from any position in civil life? \_\_\_\_\_

If so, when, where, and why? \_\_\_\_\_

23. Have you ever been refused bond by Surety Company or otherwise? \_\_\_\_\_

If so, by what Company or person, and when? \_\_\_\_\_

24. Military service (if any): from \_\_\_\_\_ 19 \_\_\_\_\_ to \_\_\_\_\_ 19 \_\_\_\_\_

Applicant's military number \_\_\_\_\_ Unit (or units) served in \_\_\_\_\_

Period of service: In Canada \_\_\_\_\_; In England \_\_\_\_\_; On Continent \_\_\_\_\_

Period in hospital: In Canada \_\_\_\_\_; In England \_\_\_\_\_; On Continent \_\_\_\_\_

Reason for discharge \_\_\_\_\_

Physical Condition \_\_\_\_\_

(NOTE)—If the information on this form relates to a woman or a man who has not seen military service personally, details asked for in paragraph 24 may be furnished concerning a near relative who has served, the relationship being stated. If the paragraph is not filled in it will be concluded that neither applicant nor any near relative rendered such service.

25. Any other statement applicant desires to make:—  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date \_\_\_\_\_ July 7, 1931 \_\_\_\_\_ "Vivian MacMillan"  
 (Signature of applicant)

Exhibits  
and  
Documents

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*



## THE PUBLIC SERVICE EFFICIENCY ACT

### TESTIMONIAL AS TO CHARACTER, HABITS AND ABILITY

FILE  
T/A  
July 16, 31

GOVERNMENT BUILDINGS, EDMONTON, ALBERTA.

To. Rev. Dickerson, Edson, Alberta.

Miss Vivian MacMillan of Edmonton

who is an applicant for employment as a \_\_\_\_\_ in the Public Service of this Province has referred to you as being able to speak with knowledge of her character, habits and ability for the position she seeks. Any replies you may see fit to make to the enquiries set out below and on the reverse side hereof will be accepted as offered in the general public interest and appreciated accordingly. Should you so desire, and mark this form "Confidential" before returning it to me, you may rely upon statements so made being received in the strictest confidence.

Yours faithfully,

F. SMAILES,

Civil Service Commissioner.

1. Are you related to the above named Applicant? If so, in what way?	No.
2. Are you well acquainted with the Applicant? What period does your acquaintance cover and what has been its nature?	I have been her pastor in the town of Edson for almost four years. I am well acquainted with her, and with the whole family. Apart from her relations I probably know her better than anyone else in Edson.
3. Has the Applicant ever been in your employ? If so, upon what dates was your service entered and left?	No.
4. If the Applicant has had other employment during the past five years, can you give the names and addresses of former employers?	No other employment.
5. If the Applicant has been in business on own account, can you state the nature of the business and for how long it has been, or was, carried on?	Not in business.
6. Has the Applicant, to your knowledge, been bankrupt or insolvent or involved in pecuniary embarrassment of any kind?	None whatever.

*Exhibits  
and  
Documents*

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

7. What can you say respecting the Applicant's character and habits with particular reference to such matters as honesty, truthfulness, industry, general intelligence, sobriety, etc.?	Will rank 100% for the best qualities of young-womanhood.
8. What can you say respecting the Applicant's abilities for the position asked for?	Liable to be over-conscientious if anything.
9. Are you aware of any circumstances tending to disqualify or otherwise render the Applicant unfit for the position asked for?	None whatever.
10. Would you yourself trust the Applicant with employment requiring undoubted integrity, and would you recommend him or her for such to your personal friends?	Most certainly, since she is a fine Christian girl of a happy, sensible, good natured type, very likeable.
11. What has been the state of the Applicant's health during the period you have been acquainted.	I do not remember her being seriously sick at all. She had enjoyed athletics.
12. If the Applicant has been disabled in any way by reason of war service, is such disability, in your opinion, of such a nature as to render him unfit to sustain continued mental or bodily exertion If so, in what way and to what extent?	She doesn't fight!!!!
13. Do you wish to add anything further to what you have said above in support of Applicant's request? If so, please do so.	No need to add much. Vivian, without being mid-Victorian, is a real fine conscientious girl, bright, cheerful and conscientious but a little fearful lest she should not make good. If her departmental chiefs will give her even a little encouragement she should make fine progress. I have seen her grow from girlhood to young womanhood, with special observation of those things which are finest and best in life, and have been very pleased with her progress.

Signature \_\_\_\_\_ "Reverend Herbert William Dickerson" \_\_\_\_\_

Occupation \_\_\_\_\_ Baptist Minister \_\_\_\_\_

Date \_\_\_\_\_ July 22, 1931 \_\_\_\_\_

Address \_\_\_\_\_ 5th Avenue West, Edson, Alberta \_\_\_\_\_

Exhibits  
and  
Documents

CIVIL SERVICE  
Jul. 24-1931  
COMMISSIONER

C6-2M-5-34

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

THE PUBLIC SERVICE EFFICIENCY ACT

TEMPORARY EMPLOYMENT

IN DUPLICATE

DEPARTMENT..... ATTORNEY GENERAL .....

BRANCH OF DEPARTMENT..... GENERAL OFFICE .....

EDMONTON,  
Jul. 23, 1931

MEMO FOR THE CIVIL SERVICE COMMISSIONER

For the reasons set forth below it has become necessary to employ, temporarily, the services of an additional official in this Department, and you are hereby notified of the fact in order that the prescribed procedure to furnish the assistance required may be followed:

Name (in full) of person selected to fill position from  
among the persons whose applications are on  
file in your office: VIVIAN MacMILLAN

Address: Y.W.C.A. Edmonton

Position: Stenographer

Reason for employment: Holiday Relief

Statutory or other authority for said work being under-  
taken and for remuneration for services rendered: Public Service Act

Period for which appointment is made,  
and date of commencement: 15th July to 31st August

Previous employment in the service, with character of  
service rendered, and reason why it was terminated: None

"Geo. B. Henwood"  
*Deputy Minister.*

(For Use in Civil Service Commissioner's Office.)

CERTIFICATE OF COMPETENCY

Under the provision of Section 6 of The Public Service Efficiency Act in that behalf, I certify that the person above named is duly qualified for the position he is selected for.

Salary \$ 2.25 , per diem

*Civil Service Commissioner.*



Sept. 8, 1931 *Exhibits  
and  
Documents*

**OFFICE OF THE CIVIL SERVICE COMMISSIONER**

Memo. for the Attorney General's Department

Kindly note that the temporary appointment of:

Vivian MacMillan \_\_\_\_\_ August 31, 1931

expires on:

Would you kindly advise me whether an extension of service will be necessary. If the appointment was terminated prior to said date, would you kindly give that date; otherwise it will be assumed and recorded accordingly that the term of employment covered the full period authorized. In any case please furnish report below and return this form.

F. Smailes

Civil Service Commissioner.

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

**TO THE CIVIL SERVICE COMMISSIONER**

**Statement re Efficiency of Employee**

	<u>Excellent</u>	<u>V. Good</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
ABILITY			X		
QUALITY OF WORK			X		
INDUSTRY			X		
CO-OPERATION			X		
INITIATIVE			X		

Please indicate degree of efficiency by use of X in space provided.

"Geo. B. Henwood"

Deputy Attorney General

Deputy Minister.

Exhibits  
and  
Documents

CIVIL SERVICE  
Sept. 12, 1931  
COMMISSIONER

C6-2M-5-34

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

THE PUBLIC SERVICE EFFICIENCY ACT

TEMPORARY EMPLOYMENT

IN DUPLICATE

DEPARTMENT \_\_\_\_\_ of Attorney General \_\_\_\_\_

BRANCH OF DEPARTMENT \_\_\_\_\_ General Office (Succession Duties) \_\_\_\_\_

EDMONTON,  
9th Sept., 1931

MEMO. FOR THE CIVIL SERVICE COMMISSIONER

For the reasons set forth below it has become necessary to employ, temporarily, the services of an additional official in this Department, and you are hereby notified of the fact in order that the prescribed procedure to furnish the assistance required may be followed:

Name (in full) of person selected to fill position from  
among the persons whose applications are on file in your office: VIVIAN MacMILLAN

Address: Y.W.C.A. Edmonton

Position: Stenographer

Reason for employment: Relieving Miss Flanagan, transferred to Mr. Frawley

Statutory or other authority for said work being undertaken and for remuneration for services rendered: Public Service Act

Period for which appointment is made,  
and date of commencement: 1st September to 31st October

Previous employment in the service, with character of  
service rendered, and reason why it was terminated: None

*Deputy Minister.*

(For use in Civil Service Commissioner's Office.)

CERTIFICATE OF COMPETENCY

Under the provisions of Section 6 of The Public Service Efficiency Act in that behalf, I certify that the person above named is duly qualified for the position he is selected for.

Salary \$ 2.25 , per diem

"F. Smailes"  
*Civil Service Commissioner.*

CIVIL SERVICE  
October 30, 1931  
COMMISSIONER

*Exhibits  
and  
Documents*

**OFFICE OF THE CIVIL SERVICE COMMISSIONER**

October 24, 1931

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Memo: for the Department of the Attorney General

Kindly note the date on which the temporary appointment of the following person expires:

Vivian MacMillan ..... October 31/31

If the services of this said employee were dispensed with prior to the said date, would you be good enough to advise me; otherwise it will be assumed and recorded accordingly that the term of employment covered the full period authorized. In any case please furnish report below and return this form.

F. Smailes  
Civil Service Commissioner.

**TO THE CIVIL SERVICE COMMISSIONER**

Respecting the service of the above-mentioned person, I have to report:

	<u>Excellent</u>	<u>V. Good</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
ABILITY			X		
QUALITY OF WORK			X		
INDUSTRY	X				
CO-OPERATION	X				
INITIATIVE			X		

Geo. B. Henwood"  
Deputy Minister.

Exhibits  
and  
Documents

FORM C2. 1M-2-33

IN DUPLICATE

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

**THE PUBLIC SERVICE ACT**  
**THE PUBLIC SERVICE EFFICIENCY ACT**

DEPARTMENT \_\_\_\_\_ the Attorney General \_\_\_\_\_

CIVIL SERVICE  
Nov. 1, 1931  
COMMISSIONER

BRANCH OF DEPARTMENT \_\_\_\_\_ General Office \_\_\_\_\_

TO HIS HONOUR

EDMONTON,

THE LIEUTENANT GOVERNOR IN COUNCIL.

October 30th, 1931

The undersigned has the honour to make application for the appointment, during pleasure, of the undermentioned person to the staff of this Department.

Name in full:—	Vivian Almeda MacMillan.
Address:	Edmonton
Position to be filled:—	Stenographer
When position became vacant and why:—	Re-arrangement of staff owing to resignation of Dorothy Donley
Statutory or other authority for appointment and remuneration:—	The Public Service Act
Date of appointment:—	November 1, 1931
Nature of previous employment in the Service (if any) and reason why same was terminated:—	Employed in this department since July 15, 1931, Services satisfactory.

D.A.G.

J. F. LYMBURN  
Minister.

The undersigned has the honour to recommend the appointment of Vivian Mae MacMillan to the position of Stenographer in the Department of Attorney General, Gen. Office and that the said Vivian Mae MacMillan be classified and graded in Class 5, Grade—, Division—, third Period, at an initial salary of \$750.00 per annum, such appointment to take effect upon the first day of 1931.  
Dated November 2, 1931

Dated November 2, 1931

PRESIDENT OF COUNCIL.

FOR USE IN THE CIVIL SERVICE COMMISSIONER'S OFFICE ONLY

CERTIFICATE OF COMPETENCY

I hereby certify that the person above named is duly qualified for the position he is selected for.

F. SMAILES

Dated November 2, 1931

Civil Service Commissioner.

## CIVIL SERVICE COMMISSIONER

O.C. 1166-31  
Civil Service  
Nov. 28, 1931  
Commissioner

*Exhibits  
and  
Documents*

—  
No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office

Approved and Ordered.

(Signed) W. L. WALSH

LIEUTENANT GOVERNOR

Thursday, November 28th, 1931.

Edmonton.

Upon the report and application of the Honourable the Attorney General, dated October 30th, 1931, and upon the recommendation of the Honourable the President, dated November 2nd, 1931, the Executive Council advises that VIVIAN MAE Almeda MacMillan be and she is hereby appointed during pleasure, to the position of Stenographer in the Department of the Attorney General, General Office: and that she be and is hereby classified and graded in Class 5, Third Period, at an initial salary of Seven Hundred and Fifty Dollars (\$750.00) per annum, said appointment to take effect upon November 1st, 1931.

(Signed.) J. E. BROWNLEE,  
Chairman.

*continued.*

---

DR. JOHN W. SCOTT  
Physician  
825 Tegler Building,  
Edmonton, Alta.

February 8, 1932.

TO WHOM IT MAY CONCERN:

This is to certify that I have attended Miss MacMillan on February 8, 1932.

Her illness was such that I advised her to remain at home for several days.

'JOHN W. SCOTT'  
John W. Scott, M.D.

JWS:IB.

Exhibits  
and  
Documents

CANADA  
PROVINCE OF ALBERTA }

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

### OATH OF ALLEGIANCE

I, Vivian Almeda MacMillan  
of Edmonton, Alberta  
in the Province of Alberta, swear by Almighty God that I will be faithful and bear allegiance to His Majesty King George the Fifth, His Heirs, and Successors according to law. So help me God.

**Taken** and subscribed before me  
at Edmonton  
this 13th day of  
September A.D. 1932 } "V. A. MacMillan"

"John D. Hunt"  
*A Commissioner, etc.*

CANADA  
PROVINCE OF ALBERTA }

### OATH OF OFFICE

I, Vivian Almeda MacMillan  
do solemnly and sincerely swear that I will faithfully and honestly fulfil the duties which devolve upon me as Stenographer, Attorney General's Department  
and that I will not ask or receive any sum of money, service, recompense or matter, or thing whatsoever, directly or indirectly, in return for what I have done or may do in the discharge of any of the duties, of my said office, except my salary of what may be allowed me by law or by an Order of the Lieutenant Governor in Council. So help me God.

**Taken** and subscribed before me  
at Edmonton, in the Province of  
Alberta, this 13th day of  
September A.D. 1932 } "V. A. MacMillan"

John D. Hunt  
*Clerk of Executive Council.*

## GOVERNMENT OF THE PROVINCE OF ALBERTA

## MEMORANDUM:

From The Civil Service Commissioner,  
To Miss V. MacMillan,  
Attorney General's Dept.,  
BUILDINGS.

Date February 6, 1933

I am directed to call attention to the amount of time lost by you during the year, 1932, which was as follows:

January	1½ days.	September	½ day.
February	2 days.	October	1 day.
May	½ day.	December	3½ days.
June	½ day.		

You will, I feel sure, realize that physical fitness is an essential factor in employment in the Service, and as the time lost appears to be excessive it has been decided to regard the next three months as a period of probation, following which a further review of the situation will be made. I confidently hope that your attendance will improve to such an extent that there will be no need for further consideration of the matter.

FS:RP

CIVIL SERVICE COMMISSIONER.

## GOVERNMENT OF THE PROVINCE OF ALBERTA

## MEMORANDUM

From Department of Attorney General  
To Civil Service Commissioner,  
Buildings.

Civil Service  
Sept. 30, 1933  
COMMISSIONER

Dated September 29, 1933

Miss V. A. MacMillan, stenographer of this Department has tendered her resignation. I may say that she is at present on holidays and was due back in the office on the 2nd October.

Will you please do whatever is necessary in connection with the amount to her credit in the Superannuation Fund. The address of Miss MacMillan is Edson, Alberta.

RG:EE.

E. R. HUGHES, Chief Clerk.  
per "R. H. Glen."

Holidays Sept. 11 to 30-33. Prior to

31-10-33	....	\$52.09
Interest	.....	1.40
acc.	.....	.58

---

\$54.07

Exhibits  
and  
Documents

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Government Buildings  
Edmonton, Alberta

October 26, 1933.

TO HIS HONOUR  
THE LIEUTENANT GOVERNOR IN COUNCIL:

The undersigned has the honour to report the retirement of the undersigned employees upon the dates stated and recommends accordingly the cancellation of their appointments.

Respectfully submitted.

Name	Department	Date
Milne, Margaret	Municipal Affairs	October 31, 1933
Broughton, William H.	Education	July 31, 1933
Watson, Bessie	Public Works	October 14, 1933
Robertson, John D. (deceased)	" "	August 3, 1933
MacMillan, Vivian A.	Attorney General	September 30, 1933
Preston, Goldie Mae	Treasury	September 16, 1933
Edgar, James E.	Agriculture	July 10, 1933
Smith, Wesley G.	"	October 11, 1933
Heckbert, Sydney C.	"	September 5, 1933
Peterson, Frank	"	October 21, 1933
Scott, Janet M.	Lands & Mines	October 14, 1933
Dixon, Genevieve M.	" "	September 2, 1933
Lonsdale, Clara	Public Health	September 30, 1933
Christian, Edith B.	" "	August 31, 1933
Bore, Elsie Joan	" "	June 10, 1933
Swabey, Jessie E.	" "	September 2, 1933
Onions, Barbara H.	" "	

PRESIDENT OF COUNCIL.



Approved and Ordered,  
 LIEUTENANT GOVERNOR,  
 Edmonton, Monday, October 30th, 1933.

The Executive Council has had under consideration the report of the Honourable the President, dater October 26th, 1933, respecting the retirement of the undermentioned persons, and, upon the recommendation of the Honourable the President, the Executive Council advises that their appointments be and are hereby accordingly cancelled as from the dates set opposite their respective names:

No. 9  
 Personal  
 File of  
 Female  
 Plaintiff  
 in Civil  
 Service  
 Commis-  
 sioner's  
 Office  
*continued.*

Name	Department	Date
Milne, Margaret	Municipal Affairs	October 31, 1933
Broughton, William H.	Education	July 31, 1933
Watson, Bessie	Public Works	October 14, 1933
Robertson, John D. (deceased)	" "	August 3, 1933
MacMillan, Vivian A.	Attorney General	September 30, 1933
Preston, Goldie Mae	Treasury	September 16, 1933
Edgar, James E.	Agriculture	July 10, 1933
Smith, Wesley G.	"	October 11, 1933
Heckbert, Sydney C.	"	September 5, 1933
Peterson, Frank	"	October 21, 1933
Scott, Janet M.	Lands & Mines	October 14, 1933
Dixon, Genevieve M.	" "	September 2, 1933
Lonsdale, Clara	Public Health	September 30, 1933
Christian, Edith B.	" "	August 31, 1933
Bore, Elsie Joan	" "	June 10, 1933
Swabey, Jessie E.	" "	September 2, 1933
Onions, Barbara H.	" "	

(Sgd.) J. E. BROWNLEE,  
 Chairman.

Exhibits  
and  
Documents

Form CS 1M-2-34

Nov. 1 31 166

Dept.....Att. Gen.....

File.....

Temp.....

Perm.....

## ATTENDANCE RECORD

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Week Ending 1931	Time Lost	Time Deducted	Amount Deducted	Days Absent	Amount Deducted	Extra Time		REMARKS
						Before 6 p.m.	After 6 p.m.	
Jul. 15								
Jul. 25	Nil							
Aug. 1	"							
8	"							
15	"							
22	"							
29	"							
Sept. 5	"							
12	"							
19	"							
26	"							
Oct. 3	"							
10	"							
17	"							
24	"							
31	"							
Nov. 7	"							
14	"					21		
21	"							
28	"			1 d		31		Sprained Ankle
Dec. 5	Nil							
12	"							
19	"							
26				½				Holidays
1932								
Jan. 2	Nil							
9	"							
16	"			1 ½				Ill
23	Nil							
30	"							
Feb. 6	"							
13				2				Ill M.C.
20	"							
27	"							
Mar. 5	"							
12	"							
19	"							
26				1	2.05			Home for Easter

Form CS 1M-2-34

Nov. 1 31

166

Dept.....Att. Gen.....

*Exhibits  
and  
Documents***ATTENDANCE RECORD**

File.....

Temp.....

No. D-32

NAME MacMILLAN, VIVIAN, A.

Perm.....

No. 9

Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Week Ending 1932	Time Lost	Time Deducted	Amount Deducted	Days Absent	Amount Deducted	Extra Time		REMARKS
						Before 6 p.m.	After 6 p.m.	
Apr. 2	Nil							
9	"							
16	"							
23	"							
30	"							
May 7	"							
14				½				Ill
21	.45	.34						Illness of Mother
28	Nil							
June 4	"						2.03	
11	"							
18				½				Ill
25	.40	.60		4				Sick, leave without pay
Jul. 2				6				Do
9				6				Do
16				6				Do
23				6				Do
30				6				Do
Aug. 6				6				Do
13				6				Do
20	Nil							
27	"							
Sept. 3	"							
10				½				Ill
17	Nil							
24				6				Holidays
Oct. 1				6				"
8				4/16h				"
15	Nil							
22	"							
29				1				Ill
Nov. 5	Nil							
12	"							
19	"							
26	"						1.20	
Dec. 3							1.47	
10				3				Flu
17				½				"
24	Nil						.44	
31	"							

Exhibits  
and  
Documents

Form CS 1M-2-34

Nov. 1-37

166

Dept. .... Att. Gen. ....

**ATTENDANCE RECORD**

File.....

Temp.....

Perm.....

No. 9

No. D-32

NAME MacMILLAN, VIVIAN, A.

Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Week Ending 1932	Time Lost	Time Deducted	Amount Deducted	Days Absent	Amount Deducted taken.	Extra Time		REMARKS
						Before 6 p.m.	After 6 p.m.	
			16 days holidays	1932				Apr. 15 1 d ill 2.05 1 dy more for Easter
Jan. 7				1/2				Ill
14	Nil							
21				2				Sprained Ankle
28	Nil							
Feb. 4	"							
11	"							
18	"							
25	"							
Mar. 4	"							
11	"							
18	"							
25	"							
Apr. 1	"							
8	"							
15				2				1 d Ill. Mon., Apr. 10 1 d Home for Easter 2.05
22	Nil							
29	"							
May 6	"							
May 13	Nil							
20	"							
27	"					18		
June 3	"							
10	"							
17	"							
24	.04	.15						
Jul. 1	Nil							
7	"							
14	"							
22	"							
29				1/2				Ill Jul. 29, 1 p.m.
Aug. 5				1/2				Ill Jul. 31, 1 p.m.
12				2				Ill ug. 7-8
19	Nil							
26	"							
Sept. 2	"							
9	"							
16				6				Holidays
23				6				"
30				6				"
Resigned Sept. 30/33.								

353  
 No. 7  
**Hospital Record**  
 (Defendant's document)

*Exhibits  
 and  
 Documents*

FILE No... 14186...

No. 7  
 Hospital  
 Record  
 (Except  
 Tempera-  
 ture Chart  
 not  
 Printed)

**UNIVERSITY OF ALBERTA HOSPITAL**

Name: MacMillan, Miss Vivian

Redundant — Superfluous — Excessive — Copious — full — luxurious

U.H. Form 91—6-34-5M-11618.

Serial No.....12781.....	<b>UNIVERSITY OF ALBERTA HOSPITAL</b>	Size of Plates
House No.....	<b>X-Ray Department</b>	Pri. Ref Ier No. 11520
Surname MacMillan	Christian Name Vivian	Sex M. F.
Address Y.W.C.A. City & Edson		Occupation
Referred by Dr. Mewburn		Telephone No.
Address		Initials of A. & D. Officer I. S.
Nature and Details of Examination Required X-Ray Ankle		Date of Request by Dr. Jan. 16/31

Radiographic examination of the ankle fails to show evidence of fracture.

R. Proctor, M.D.

Exhibits  
and  
Documents

Serial No. .... 15224

UNIVERSITY OF ALBERTA  
HOSPITAL

Size of Plates

House No.....14186....

X-Ray Department

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)  
continued.

Surname MacMillan	Christian Name	Sex M. F.	Age 20	Occupation
Address 2nd Fl.			Telephone No.	
Referred by Dr. Fife		Address		Initials of A. & D. Officer

Nature and Details of Examination Required

Barium enema.  
Severe pain in L. L. Q. and tenderness in R.L.Q.

Date of Request by Dr.

June 21/32

Date Report submitted to Dr.

June 23 /32

Barium enema shows large dilated redundant colon and caecum.  
Caecum and colon are not fixed by adhesions, freely movable.  
There is marked redundancy of the colon in the left iliac region.

**UNIVERSITY OF ALBERTA HOSPITAL  
HISTORY SHEET**

*Exhibits  
and  
Documents*

Ward II-B  
No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

DATE

NAME MacMillan, Vivian SERVICE Surg. Room

Under Charge of Dr. Hosp. Number 14186

Re-admission—NO. Disability previous Admission

History:

June 20/32

**COMPLAINTS**

- (1) Pain in L.L.Q.—4 hours
- (2) Loss of weight 12 lbs. in 6 weeks

**Present Illness.**

Seized with severe pain in L.L.Q., lasting 15 minutes and followed by twinges of pain. Nausea but no vomiting. During past 7 weeks has had about 6 similar attacks. In past 6 weeks appetite has been poor and patient has lost 12 lbs.

**EXAM.** Showed marked tenderness in the R.L.Q., without rigidity. Leg test negative. Prov. Diag. (1) Subacute appendix.

W.B.C. 11,200 on admission but next a.m. down to 8,800 and pain has subsided. To have Barium Enema this a.m.  
B.C. show a large redundant colon in left iliac region.

**DIAGNOSIS** (1) Colonic Stasis

UNIVERSITY OF ALBERTA  
HOSPITAL

*Exhibits  
and  
Documents*

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)  
*continued.*

DATE

NAME

No.

PAGE No.

Miss Vivian MacMillan  
St. 3, Jasper Court,  
Edson, Alberta

20/S1  
office  
work

Pain severe left side—lasting 15 minutes—couldn't straighten up—since (4 hours.) twinges of pain. Has had about 6 attacks of pain in seven months—has not felt well—Nausea—no vomiting during this time. Bowels somewhat constipated—some rumbling with pain.

Mict. — D — 3 — 4  
N — O

Cts. R — 28 — some pain — not severe  
3½ — 4

Last period — June 14th — Pain then general

Wt.—145 up to 1932. Has lost 12 lbs. in past 6 weeks and poor appetite — No vacation for 2 years.

No night sweats — but has not been sleeping well — nervous and irritable — not much if any spasm. Tenderness in R.L.Q. XX

Should have Barium Enema and X-Ray

W.B.C. 11,200 Temp 100° 99°.

This is a typical history but positive findings of subacute appendicitis and should be treated as such if no other diagnosis can be made—

FIFE.



NAME	MacMillan, Vivian		No. 14186	Dr. Fife	Admitted	June 21/32	Class
PERMANENT ADDRESS	No. 3 Jasper Court, City		Telephone	Temporary Address	How Long	Telephone No.	
HOW LONG Residing at (Description of Land)	2 mos. Permanent 2 years in City		Occupation	Name and Address of Employer Attorney General's Dept. Prov. Gov't.			
Birth Place	Nelson, B.C.		Birth Day and Year	Country of Birth of Parents Mother Canada Father Canada			
How Long Lived in Canada	Born	How Long Lived in Alberta	18 yrs.	Age	20	Sex	Female
Name and Address of Nearest Relative (Next of Kin)	Father A. D. MacMillan, Edson, Alta.		Religion	Prof.		M.S.W.D. Single.	
Name and Address of Two Business Friends (For Reference)							Telephone No.
Type of Bed Desired	S. Pri. 11-B	Rate	3.50	Name and Address of Person Responsible for Account Patient			
Amount Deposited	24.50	Arrangements Regarding Payments					
Description of Articles Left for Safe Keeping	Safety Deposit No.		Signature of Officer Admitting Patient M. B. Sterns.				

## PROVINCIAL DIAGNOSIS:

Observ.

Dr. referring patient      Dr. Fife      Address      Letter on file—Yes—No

Permission is hereby granted to the authorities of the University Hospital for such procedure as may be necessary in the case of V. MacMillan and if an operation or special treatment is necessary, authority for such procedure as is considered advisable by the physician or surgeon in charge, is granted.

Signed Vivian MacMillan

Admitting Officer M. B. Sterns

Relationship

Date of Discharge June 23/32

Exhibits  
and  
Documents

### UNIVERSITY HOSPITAL SUMMARY SHEET

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)  
continued.

Name	Miss V. MacMillan	Address	No. 3 Jasper Court, Edmonton	Age	20	Number	14186
Doctor in Attendance	Dr. Fife	Referred by					
Date of Admission	June 21/32	Date of Discharge or Transfer	June 23/32				
Diagnosis on Admission	Observ.	If transferred, to what institution	—				

Summary of conditions and important negative findings, including Consultations, X-Ray findings, Positive Laboratory Findings and Treatment.

Patient about 4 hours before admission was seized with severe pain in L.L.Q. which lasted for 15 minutes and followed by twinges of pain. On examination marked tenderness was present in the R.L.Q. with no rigidity leg test negative W.B.C. 12,400 on admission, following morning 8,800. Patient has had about 6 similar attacks in past 7 months. Lost 12 lbs. in weight, X-Ray examination showed a large redundant colon. Patient discharged feeling better.

Remarks on follow-up or excerpts of letter to referring physician

Diagnosis on Discharge — 1. Chronic Appendicitis?  
2. Colonic Stasis 3.  
Redundant Colon

Condition on Discharge: Well — Improved — Unimproved —  
Deceased (Please underline)

Sig. House Office "J. Bennett"

Sig. Dr. in Charge "Fife"

**Summary** — Case No. 14186 — Vivian MacMillan

Age 20.

*Exhibits  
and  
Documents*

Dr. in attendance: Dr. Fife.

Date of admission:—June 21, 1932 Date of Discharge — June 23/32

No. 9  
Personal  
File of  
Female  
Plaintiff  
in Civil  
Service  
Commissioner's  
Office  
*continued.*

Patient about four hours before admission was seized with severe pain in L.L.Q. which lasted for 15 minutes and followed by twinges of pain. On examination marked tenderness was present in the R.L.Q. with no rigidity. Leg test negative. W.B.C. 12,400 on admission, following morning 8,800. Patient has had about 6 similar attacks in past 7 months. Lost 12 lbs. in weight. X-Ray exam. showed a large redundant colon. Patient discharged feeling better.

Diagnosis on discharge: (1) Chronic appendicitis?  
(2) Chronic Stasis — Redundant Colon.

Condition on discharge: Improved.  
Sig. House Officer "J. C. Bennett."  
Sig. Dr. in Charge "Fife"

#### History Sheet

June 20/32 Complaints: (1) Pain in L.L.Q. — 4 hours  
(2) Loss of weight 12 lbs. in 6 weeks

Present illness:—seized with severe pain in L.L.Q. lasting 15 minutes and followed by twinges of pain. Nausea but no vomiting. During past 7 months has had about 6 similar attacks. For past 6 weeks appetite has been poor and patient has lost 12 lbs.

Exam.: Showed marked tenderness in the R.L.Q. without rigidity. Leg test negative.

Prov. Diag. (1) Subacute appendix.

June 12/32 W.B.C. 11,200 on admission but next a.m. down to 8,800 and pain has subsided. To have barium enema this a.m. B.E. show a large redundant colon in left iliac region.

Diagnosis: (1) Colonic Stasis.

Exhibits  
and  
Documents

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)  
continued.

Notes by Dr. Fife.

Miss Vivian MacMillan — Ste. 3 Jasper Court, Edmonton, Alta.

Pain severe left side lasting 15 minutes; couldn't straighten up since (4 hours) — no signs of pain.

Has had about 6 attacks of pain in seven months. Has not felt well; nausea; no vomiting during this time.

Bowels somewhat constipated; some rumbling with pain.

Mict.         $\frac{D - 3 - 4}{N - O.}$

$\frac{R - 28}{3\frac{1}{2} - 4}$

some pain not severe.

Last period — June 14th. Pain then general  
Wt. 145 up to 1932. Has lost 12 lbs. in past 6 weeks; poor appetite; no vacation for 2 years.

No night sweats, but has not been sleeping well. Nervous and irritable. Tenderness in R.L.Q. XX not much if any spasm.

Should have barium enema and X-Ray.

W.B.C. 11,200    Temp 100°        99°

X-Ray examination.

June 21/32        MacMillan, Miss        age 20

Barium enema.

Clinical diagnosis: Severe pain in L.L.Q. and marked tenderness in R.L.Q.

Service of Dr. Fife. Internes: Bennett.

Barium enema shows large dilated redundant colon and caecum. Caecum and colon are not fixed by adhesions, freely movable. There is marked redundancy of the colon in the left iliac region.

"R. Proctor, M.D."

**UNIVERSITY OF ALBERTA  
HOSPITAL**

*Exhibits  
and  
Documents*

X-RAY REQUISITION

X-Ray No. 15224  
Admission No. 14186  
Date June 21/32  
Ward 2nd Fl.

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)

Surname	Christian Name	Age
MacMillan	Miss	20

---

Radiographic

Examination of Barium enema

Fluoroscopic

Clinical Diagnosis—Severe pain in L.L.Q. and marked tenderness in R.L.Q.

Remarks

X-Ray Treatment for—

If X-Rayed before	Date	Old X-Ray No.
Service of Dr. Fife	Interne—Bennett	Resident

---

ROENTGENOLOGIC AND FLEUROSCOPIC FINDINGS

Examination complete — Date \_\_\_\_\_ 19\_\_

Barium enema shows large dilated redundant colon and caecum. Caecum and colon are not fixed by adhesions, freely movable. There is marked redundancy of the colon in the left iliac region.

"R.P."

R. Proctor, M.D.

Roentgenologist "T.O.G."

UNIVERSITY OF ALBERTA HOSPITAL

LABORATORY REPORT

Priv. \_\_\_\_\_

Pub. \_\_\_\_\_ No. 14186

S.P. \_\_\_\_\_

O.P.D. \_\_\_\_\_

Name McMillan, Miss Vivian Ward 205 Admitted 21-6-32 Service Dr. Fife

URINE

GASTRIC ANALYSIS

Date	React.	S.G.	Alb.	Sug.	Acet	Bile	Blood	Micro	Time	Free Acid	Total Acid	Bl.	Bile	Lactic Acid	Stich.
21-6-32	Acid	1024	—	—	ft trace			occ pus cell occ r.b.c. occ epith cell							

BLOOD MORPHOLOGY

Date	R.B.C.	W.B.C.	Hb.	P.M.N.	Lymph.	End.	Eos.	Bas.	Other Forms
21-6-32	4,100,000	11,200 11,400							
22-6-32	8,800								

BLOOD CHEMISTRY

Date	W.R.	Urea. N.	N.P.N.	Creat.	NaCl	Sug.	Chol.	Ca.	P.	Plas. Prot.	CO 2	LI.	V.D.B.	Aggn.

CEREBRO-SPINAL FLUID

BLOOD CULTURE

Date	Press.	Appca.	Cell Count	Glob.	NaCl	Sug.	W.R.	Coll. Gold	Bact.	Date	Findings

STOOL EXAMINATION

SPUTUM

Date	Form	Color	Mucus	Gross Blood	Occ. Blood	Pus	Parasites	Date	Appca.	Micro

Other data:

**UNIVERSITY OF ALBERTA HOSPITAL  
STANDING ORDERS**

*Exhibits  
and  
Documents*

Name—MacMillan, Miss Vivien

No. 14186

No. 7  
Hospital  
Record  
(Except  
Tempera-  
ture Chart  
not  
Printed)  
*continued.*

	Ordered	Stopped	Treatment or Medicine	Ordered	Stopped	Diet
	21.32		Catheter spec.  Urine stst. Blood count  Dr. Bennett			
	21		s.s. enema tonight to X-Ray for Ba. enema in a.m.  Repeat W.B.C. in a.m.  Dr. Fife s.			
	21		Luminal gr. iss Dr. Fife s.			
	22		May be up this p.m.  Hot water 5-6 glasses daily and a.m. before breakfast  Dr. Fife			Soft solid diet  Dr. Fife
	23		Discharged Dr. Fife mn			

Exhibits  
and  
Documents

No. 7  
Hospital  
Record  
(Except  
Temperature Chart  
not  
Printed)  
continued.

UNIVERSITY OF ALBERTA HOSPITAL

Room \_\_\_\_\_  
Ward \_\_\_\_\_ Fl 11 205 \_\_\_\_\_ History No. \_\_\_\_\_ 14186 \_\_\_\_\_  
Name \_\_\_\_\_ MacMillan, Miss Vivian \_\_\_\_\_ Service \_\_\_\_\_ Dr. Fife \_\_\_\_\_

Year 1932 Date	Hour	Catheter Spec	Urine	Stools	Condition of Patient, Effect of Medicine, Description of Excreta
June 21	6.30 p.m.				Admitted (walking) T. 99 R. 78 R. 20  Complained of severe pain in rt. side when down town prior to admission. Not complaining of any pain now. Fe is quite flushed  Dr. Bennett notified Dr. Fife visited and examined abdomen  Very effectual  Feeling better after enema
	9.30 p.m.	Catheter Spec Urine to lab. Blood Count  s.s. enema			
	10.30 p.m.	Luminal grs iss			
22	6.00 a.m.	s.s. enema	eff. very		No complaints, slept well Resting comfortably No pain M. Hawkes
	7.30 a.m.	W. B. Count Delay breakfast			by Dr. Bennett Dr. Fife visited
	10.00 a.m.				To X-Ray for Barium enema Sleeping a great deal this a.m.
	1.00 p.m.	Soft diet Hot water y glasses daily			Ate portion of her lunch Appetite not very good
	2.00 p.m.				Dr. Fife visited Resting quietly
	4.00 p.m.				A fairly good day. No pain but seems quite tired. Up out of bed this p.m. M. Herbert
	6 p.m.				Resting comfortably E. Sage A. Gentress
	9 p.m. 11 p.m.				Feeling rather tired Sleeping
23	2 a.m.				Sleeping
	6 a.m.				Slept at intervals, a good night G. Shandruk
	1.30 p.m.	Hot water 6 glasses daily  Discharged			



**No. 8**  
**Four diaries, 1930, 1931, 1932 and 1933**  
**(Defendant's document—Not printed)**

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No. 8  
 Four  
 Diaries,  
 1930, 1931,  
 1932, and  
 1933

**No. 1**  
**Copy of letter from Plaintiff's solicitors to Mr. Brownlee**  
**(Plaintiff's document)**

No. 1  
 Copy of  
 Letter  
 from  
 Plaintiff's  
 Solicitors  
 to Mr.  
 Brownlee,  
 3rd Aug-  
 ust, 1933

MACLEAN, SHORT & KANE  
 Barristers, Solicitors, Notaries

N. D. Maclean, K.C.  
 E. W. S. Kane  
 W. A. Short  
 Please refer to No. 1-27453  
 Your No.

Telephone 21456  
 Cable Address "Macshort"

615-617 McLeod Building,  
 Edmonton, Alta.  
 Canada  
 August 3rd, 1933.

The Honourable J. E. Brownlee,  
 Parliament Buildings,  
 Edmonton, Alberta.

Dear Sir:

We have been instructed to commence action against you for damages for the seduction of Miss Vivian MacMillan.

We see by the newspapers that you are about to leave the Province for three months and would be glad, therefore, if you would let us have the name of your solicitor, who will accept service on your behalf of the Statement of Claim which we will be issuing within the next few days.

Yours truly,

"MACLEAN SHORT & KANE."

7.

**No. 6**  
**Letter from Mrs. MacMillan to Female Plaintiff**  
**(Defendant's document)**

No. 6  
 Letter  
 from Mrs.  
 MacMillan  
 to Female  
 Plaintiff.  
 12th Aug-  
 ust, 1933

Edson, Alta.  
 Aug. 12-33.

Dearest Vivien:

I have but a few minutes before the mail goes, but I must try to tell you of the day's visitors.

Your father was just getting in the car at the back to go to work when a knock at the front door. It was Mr. and Mrs. Brownlee, after standing a minute he said may I have a few minutes to talk with you, I said come in, but I have nothing to talk to you about.

Mr. B. said I simply want you to tell me just what all this is about and just what the charge is that Vivian has laid against me. I just looked at

Exhibits  
and  
Documents

—  
No. 6  
Letter  
from Mrs.  
MacMillan  
to Female  
Plaintiff,  
12th Aug-  
ust, 1933  
continued.

him and said I told you I had nothing to say to you. He said as I understand they are trying to make out that for the past two or three years I have been having improper conduct with Vivian and said it is very strange. I took her out for a little drive one evening, not long ago as we have often done before, and she appeared just the same to me as always. Mrs. Brownlee said, and you have nothing to say in the matter, poor girl, it is a pity. I am sorry for her. Mr. B. said it is too bad ruining her young life for ever and looking at the floor all the time. I just looked at him, and said "What about you." Mrs. B—but just think of my home and boys. It is all so strange.

When they got up to go, he said I won't bother you any more Mrs. MacMillan, really they crept out like a couple of criminals. I closed the door and not a word was spoken. Oh yes and they wanted an interview with Mr. MacMillan. I told them he did not want to see them any more than I did. So they did not try to see him.

My dear I thought I would try to tell you as near as I could just what they said.

I will write again tomorrow, as I have time for no more today.

Your ever loving parent.

Love and Kisses

Mum.

# In the Privy Council.

No. of 1938.

On Appeal from the Supreme Court of Canada

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BETWEEN

THE HONOURABLE JOHN E. BROWNLEE  
(Defendant) Appellant.

AND

VIVIAN MacMILLAN  
(Plaintiff) Respondent.

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## RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
37, Norfolk Street, Strand,  
W.C.2.  
*For the Appellant.*

BLAKE & REDDEN,  
17, Victoria Street,  
S.W.1.  
*For the Respondent.*