

9, 1951

In the Privy Council:

No. 44 of 1950.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN

MARK T. McKEE (Defendant) - - - - - *Appellant*

AND

EVELYN McKEE (Plaintiff) - - - - - *Respondent.*

Record of Proceedings - Vol. 1

Pages 1-200

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Appellant's Solicitors.

HANCOCK & SCOTT,
222-225 Strand, W.C.2,
Respondent's Solicitors.

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-3 OCT 1956

I

44240

IN THE SUPREME COURT OF CANADA

APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE HABEAS CORPUS ACT, REVISED
STATUTES OF ONTARIO 1937, Chapter 129 and amendments
thereto, and

IN THE MATTER OF AN APPLICATION OF EVELYN McKEE
as next friend and legal guardian for possession
of her son Terry Alexander McKee.

BETWEEN: EVELYN McKEE,
(Plaintiff) Appellant,
-and-

MARK T. McKEE,
(Defendant) Respondent.

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STATEMENT OF CASE

1

IN THE SUPREME COURT OF CANADA.
APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF The Habeas Corpus Act, Revised
Statutes of Ontario, 1937, Chapter 129 and
Amendments thereto, and

10 IN THE MATTER OF Terry Alexander McKee, an Infant,
BETWEEN:

EVELYN MCKEE,

(Plaintiff) Appellant,

- and -

MARK T. MCKEE,

20

(Defendant) Respondent.

PART 1

STATEMENT OF CASE

This case is a contest between two American citizens
for the custody of their child. The custody of the in-
fant child, Terry Alexander McKee, was awarded to the
Appellant mother, Evelyn Alexander McKee, by the Courts
30 of the State of California, where the child was born
and where the parties resided, in a proceedings com-
menced there by the father, Mark T. McKee, the Respon-
dent. The child was brought into Ontario by the father
for the purpose of avoiding the operation of that judg-
ment and in direct violation of an agreement between
the Appellant and Respondent not to remove the child
from the United States of America. The mother, the
Appellant, promptly followed the father and child into
Ontario and asked the Ontario Courts to deliver posses-
40 sion of her son to her in accordance with the Judgment
of the Courts of the State of California whose jurisdic-
tion had been invoked by the father.

The father, mother and child are citizens of the
United States of America. They were all born there and
always lived there. They never had any previous con-
nection with Canada.

STATEMENT OF CASE

This appeal is from the majority Judgment of the Court of Appeal for Ontario (Robertson, C.J.O., Hogg, J.J.A. and Aylesworth, J.J.A.) dated the 24th day of June, 1948, Robertson, C.J.O., dissenting, dismissing the appeal of the Appellant from the Judgment of the Honourable Mr. Justice Wells dated the 18th day of October, 1947 awarding custody of her son Terry Alexander McKee to the Respondent.

10 These proceedings were commenced on the 21st day of March, 1947 by an application made by the mother for a Writ of Habeas Corpus directed to the father, and to Wilhelmina Ament and William A. Ament, (with whom the infant and father were lodging temporarily) requiring the production of the infant.

20 Upon the return of the Writ of Habeas Corpus the Honourable Mr. Justice Smily directed an issue as to the custody of the child, in which issue the mother should be the Plaintiff and the father the Defendant, and gave leave, if leave were necessary, to the mother to make a formal motion for delivery of the infant into her custody. At the opening of the trial of the issue, which was tried before the Honourable Mr. Justice Wells between the 24th day of September and the 10th day of October, 1947, Counsel for the mother made application for delivery of the child into her possession, and thereafter the learned Trial Judge proceeded to try the issue as if it were an issue as to custody under The Infants Act and the child domiciled in Ontario, and as
30 if the Order of Smily, J., which directed an issue only, gave the Trial Judge the right to dispose of the whole matter.

By Judgment dated the 18th day of October, 1947 Wells, J. awarded sole custody of the infant child to the father, thus reversing the Judgment of the Courts of California whose jurisdiction the father had unsuccessfully invoked in an effort to gain custody.

40 The mother appealed to the Court of Appeal, consisting of Robertson, C.J.O., and Justices Hogg and Aylesworth, from the Judgment of the Honourable Mr. Justice Wells, which Court by Judgment dated the 24th day of June, 1948 dismissed the appeal, Robertson, C.J.O., strongly dissenting.

The point to be decided in this appeal is whether a person who virtually kidnaps a child in a foreign jurisdiction and brings it into Ontario, has the right

STATEMENT OF CASE

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to require the person who has legal custody of the child to go through the trial of an issue in Ontario again to determine the right of custody, or ought our Courts to deliver the child into the possession of its legal custodian in accordance with the judgment of the foreign Court leaving it to the Courts of the parents' own jurisdiction to determine their rights.

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NOTICE OF MOTION

4

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF THE HABEAS CORPUS ACT REVISED
STATUTES OF ONTARIO, 1937 Chapter 129 and Amend-
ments thereto and in THE MATTER of an application
of EVELYN MCKEE as next friend and legal guardian
for possession of her son Terry Alexander McKee

10 TAKE NOTICE that a Motion will be made on behalf of
Evelyn McKee as the next friend and lawful guardian of
Terry Alexander McKee before the presiding Judge in
Chambers on Friday the 21st day of March, 1947 at 10:00
O'Clock in forenoon or so soon thereafter as the motion
can be heard for an Order that a Writ of Habeas Corpus
ad subjiciendum may be issued directed to Mark T. McKee,
William A. Ament and Wilhelmina Ament to bring the said
Terry Alexander McKee to the Bar of this Court.

20 AND TAKE NOTICE THAT in support of such motion will
be read the Affidavit of Evelyn McKee this day filed
and the Exhibit therein referred to and such other and
further material as Counsel may advise.

DATED this 18th day of March, 1947.

TO The Attorney-General
for Ontario.

30

BROCK, WEIR & TROTT,
49 King Street East,
Solicitors for the
Applicant.

40

AFFIDAVIT OF EVELYN MCKEE

5

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF THE HABEAS CORPUS ACT REVISED
STATUTES OF ONTARIO 1937 Chapter 129 and Amendments
thereto and in THE MATTER OF an Application of
EVELYN MCKEE as next friend and legal guardian for
possession of her son Terry Alexander McKee

10 I, EVELYN MCKEE of the City of Los Angeles in the
State of California, one of the United States of America,
make oath and say as follows:

1. I am the mother of the above mentioned Terry
Alexander McKee and as such have knowledge of the facts
herein deposed to.

2. Mark T. McKee is the father of the said Terry
Alexander McKee.

3. The said Terry Alexander McKee was born on the 14th
20 day of July, 1940 at the City of Pasadena in the said
State of California.

4. The Superior Court of the State of California in
and for the County of Los Angeles delivered judgment on
the 1st day of August, 1945 awarding full custody of
said Terry Alexander McKee to me. Now produced and
marked Exhibit "A" to this my affidavit is a true copy
of the said Judgment.

5. On or about the 22nd day of December, 1946 the
Supreme Court of California denied the right of appeal
30 of the said Mark T. McKee from the said Judgment.

6. On or about the 24th day of December, 1946 the said
Mark T. McKee without my knowledge or consent and with
intent to deprive me of the lawful custody of the said
Terry Alexander McKee brought him to the City of Kit-
chener in the County of Waterloo and Province of Ontario
and he is now detained and restrained at the dwelling-
house of William A. Ament and Wilhelmina Ament, 40 Heins
Avenue Kitchener, Ontario under the direction and in-
structions of the said Mark T. McKee.

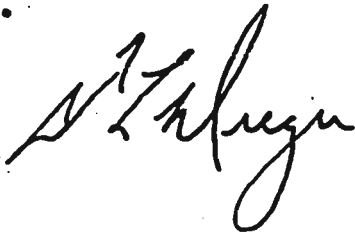
40 7. The said Mark T. McKee, William A. Ament and Wil-
helmina Ament are determined to carry out their design
to deprive me of the lawful custody and possession of
the said Terry Alexander McKee and have refused to de-
liver him up to me and still refuse so to do and they
will not do so unless compelled by this Honourable
Court.

AFFIDAVIT OF EVELYN MCKEE

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8. I am desirous that a Writ or Writs of Habeas Corpus ad subjiciendum be issued directed to the said Mark T. McKee, William A. Ament and Wilhelmina Ament, commanding them to produce before this Honourable Court the body of the said Terry Alexander McKee, that he may be delivered into the lawful custody of me.

10 SWORN before me at the
City of Kitchener, in
the County of Waterloo,
and Province of Ontario,
on the 17th day of March,
1947.



A Commissioner etc.,



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30

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THE HONOURABLE : FRIDAY, the 21st
 : day of March,
 MR. JUSTICE TRELEAVEN : A.D. 1947.
 :
 :
 IN CHAMBERS :

10 IN THE MATTER OF THE HABEAS CORPUS ACT, REVISED
 STATUTES OF ONTARIO, 1937, Chapter 129, and
 amendments thereto, and

IN THE MATTER OF an Application of EVELYN MCKEE
 as next friend and legal guardian for possession
 of her son Terry Alexander McKee.

20 UPON the application by Evelyn McKee the next friend
 and lawful guardian of Terry Alexander McKee, no-one
 appearing for the Attorney General for Ontario although
 duly served as appears from the admission of service
 endorsed on the Notice of Motion filed; and upon hearing
 read the affidavit of Evelyn McKee, the exhibit therein
 referred to and the original Order of the Superior Court
 of the State of California in and for the County of Los
 Angeles dated the 1st day of August, 1945, wherein
 Evelyn McKee was the Plaintiff and Cross-Defendant and
 Mark T. McKee was the Defendant and Cross-Complainant;
 upon hearing what was alleged by Counsel for the Appli-
 cant,-

30 IT IS ORDERED that Evelyn McKee be and she is hereby
 given leave to issue a Writ of Habeas Corpus ad sub-
 jiciendum directed to Mark T. McKee, William A. Ament
 and Wilhelmina Ament and such Writ shall provide that
 the said Mark T. McKee, William A. Ament and Wilhelmina
 Ament shall produce the infant Terry Alexander McKee
 before the presiding Judge in Chambers at Osgoode Hall
 on Tuesday, the 25th day of March, 1947, at 11 a.m.

40

A. J. Palmer
 Assistant Registrar & Co.

WRIT OF HABEAS CORPUS

8

IN THE MATTER OF the Habeas Corpus Act, Revised Statutes of Ontario, 1937, Chapter 129, and amendments thereto,

and

10

IN THE MATTER OF an application of EVELYN McKEE as next friend and legal guardian for possession of her son Terry Alexander McKee

TO Mark T. McKee, William A. Ament and Wilhelmina Ament

WE COMMAND YOU, That you have before the Presiding Judge in Chambers at Osgoode Hall, Toronto, on Tuesday, the 25th day of March, 1947, at 11 a.m., the infant Terry Alexander McKee

20

detailed in your Custody, as it is said, together with the day and cause of his being taken and detained by whatsoever name he may be called or known therein, together with this our Writ, that we may further cause to be done thereupon what of right and according to law we shall see fit to be done.

30

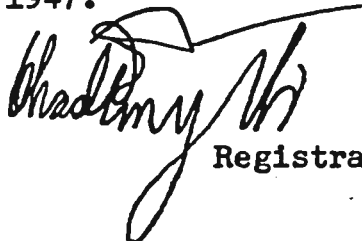
IN WITNESS WHEREOF this Writ is signed for the Supreme Court of Ontario by CHARLES WALTER SMYTH, Registrar of the said Court at Toronto, this 21st day of March, A.D. 1947.



Registrar S.C.O.

40

Issued from the Registrar's Office of the Supreme Court of Ontario, at Toronto, in the County of York, pursuant to the order of the Honourable Mr. Justice Treleaven dated March 21st A.D. 1947.



Registrar S.C.O.

AFFIDAVIT OF MARK T. MCKEE

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I, Mark T. McKee, of the City of Kitchener, in the County of Waterloo, Airlines Executive, do hereby return to the writ of Habeas Corpus herein under oath as follows:

1. On or about the 18th day of July, 1933, I was married to the said Evelyn McKee, the divorced wife of Lavooy Berry. At the time of such marriage I was domiciled and ordinarily resident in the State of Michigan, one of the United States of America, where I remained domiciled and ordinarily resident until the month of December, 1946. I have never been domiciled or ordinarily resident in the State of California, one of the United States of America.

2. During the year 1937, the said Evelyn McKee expressed a desire to live in the said State of California and I purchased a home in the said State of California for her where she resided thenceforth with the exception of frequent visits to my residence in the Town of Port Austin, in the said State of Michigan.

3. Unhappy differences having arisen between the said Evelyn McKee and myself we separated during the month of September, 1941. On or about the 17th day of September, 1941, the said Evelyn McKee commenced an action against me in the Superior Court of the State of California in and for the County of Los Angeles claiming dissolution of the said marriage, custody of the said Terry Alexander McKee and other relief. Various amendments to the complaint of the said Evelyn McKee were subsequently delivered. On or about the 28th day of September, 1942, I caused to be delivered a cross-complaint in the said action claiming dissolution of the said marriage, custody of the said Terry Alexander McKee and other relief. At that time I was advised by my California Attorneys and verily believe that the code of Civil Procedure of the State of California provides as follows:

(a) An action for dissolution of marriage could be brought before the Courts of the State of California by a plaintiff who alleged his or her residence within a certain County of the said State for a period of one year prior to the date of complaint;

(b) Such an action having been commenced, the defendant therein was entitled to deliver and prosecute a cross-complaint even though the said de-

AFFIDAVIT OF MARK T. MCKEE

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endant was not, and never had been a resident of the said State of California.

4. Judgment was delivered in the said action on the 17th day of December, 1942 by the Trial Judge, the Honourable Thurmond Clarke. A true copy of the findings of fact and conclusions of law of the said Trial Judge is hereto annexed and marked exhibit "A" to this my return. A true copy of the said Judgment is hereto annexed and marked exhibit "B" to this my return.

5. Notice of Appeal from the said Judgment was delivered by the said Evelyn McKee, but the Appeal was abandoned.

6. During the month of November, 1942, after the said Trial Judge had specifically ordered and directed the said Evelyn McKee in her presence to deliver custody of the said Terry Alexander McKee to me the said Terry Alexander McKee was clandestinely removed from the home of the said Evelyn McKee by one Max de la Fuente, who is referred to in the said findings of fact and conclusions of law, and his hirelings and the said Terry Alexander McKee remained secreted for a period of five days until an anonymous telephone call to the Office of the Sheriff of the said County of Los Angeles revealed his whereabouts. As a result of such kidnapping the Trial Judge made an Order supplementary to the Judgment referred to in paragraph 4 hereof as follows:

(a) Enjoining the said Evelyn McKee from removing the said Terry Alexander McKee from the said County of Los Angeles without an Order of the Court;

(b) Giving me possession of the said Terry Alexander McKee for one day of each week during the period of three months in each year that the said Evelyn McKee had possession of the said Terry Alexander McKee;

(c) Enjoining the said Evelyn McKee from having the said Terry Alexander McKee in the sight or presence of the said Max de la Fuente at any time.

7. Pursuant to the provisions of the said Judgment, during the years 1943 to 1946 inclusive, the said Terry Alexander McKee resided with me during 9 months of each year and with the said Evelyn McKee during the months of July, August and September of each year. During the

AFFIDAVIT OF MARK T. MCKEE

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said years I ordinarily resided at my home in the said Town of Port Austin. During the years of 1943 and 1944 it was necessary for business reasons for me to maintain a residence in the City of Milwaukee, in the State of Wisconsin, where I resided from time to time with my son, Julian then of the age of 14 years, my daughter Jane McKee Leonard, and the mother-in-law of my said daughter, Nancy Leonard, and the said Terry Alexander McKee.

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8. On or about the 20th day of August, 1943 the said Evelyn McKee applied to the said Superior Court of the State of California for a modification of the Judgment as to custody referred to in paragraph 4 hereof alleging that I had improperly treated the said Terry Alexander McKee and praying that custody might be given to the said Evelyn McKee. Such application was denied on the 29th day of September, 1943.

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9. On or about the 7th day of January, 1944, the said Evelyn McKee commenced an action against me in the Circuit Court of the County of Milwaukee, in the State of Wisconsin demanding Judgment awarding custody of the said Terry Alexander McKee to her. In the said action the said Evelyn McKee under oath made the following claims and allegations, inter alia:

(a) That I was not a fit and proper person to have custody of the said Terry Alexander McKee;

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(b) That the Judgment referred to in paragraph 4 hereof was null and void on the ground that the Court entering such Judgment did not have jurisdiction as the said Evelyn McKee did not have a domicile or legal residence in the State of California but that her residence was in the State of Michigan.

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(c) That the said Judgment violated the constitutional provisions contained in the Fourteenth Amendment to the Constitution of the United States of America and that the said Judgment did not come within the terms of Section 1 of Article IV of the said Constitution which requires that "full faith and credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State".

(d) That the said findings of fact and conclusions of law and judgment were obtained by collusion, fraud and perjury as follows:

AFFIDAVIT OF MARK T. McKEE

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(i) That my Attorneys and myself secretly entered into collusion with the Attorneys for the said Evelyn McKee and with the Trial Judge;

(ii) That the Trial Judge was dishonest and corrupt;

(iii) That I subjected the Trial Judge to my domination and control and thereby caused the Trial Judge to find as a fact that the said Evelyn McKee was and had been for more than one year immediately preceding the commencement of the action a resident of the said County of Los Angeles;

(iv) That I made substantial payments to the Attorneys of the said Evelyn McKee to secure their assistance and co-operation in conniving at the defeat of the said Evelyn McKee;

(v) That the said Judgment was based on perjured testimony and that I was guilty of subornation of perjury;

(vi) That as the result of collusion and fraud between the Trial Judge and myself the application of the said Evelyn McKee for Attorneys' fees and expenses to prosecute and appeal from the said Judgment was allowed only to the extent of \$1,000.00.

10. Upon learning of the charges made against him, the said Honourable Thurmond Clarke swore an Affidavit denying the said charges in detail and categorically and avowing that the said findings of fact and conclusions of law and judgment were based solely on the evidence which was adduced before him at the Trial.

11. I emphatically and Categorically deny and continue to deny that there was any truth whatsoever in the said charges referred to in paragraph 9 hereof. Specifically, I state as follows:

(a) That I have been at all times and still am a fit and proper person to have custody of the said Terry Alexander McKee;

(b) That neither myself nor my Attorneys at any time entered into collusion with the Attorneys for the said Evelyn McKee or with the Trial Judge;

(c) That at the opening of the said Trial my Attorneys objected vigorously to the jurisdiction of the Court on the ground that the said Evelyn McKee had not been a legal resident of the said County of Los Angeles for more than one year prior to the

AFFIDAVIT OF MARK T. MCKEE

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commencement of the action. An issue was delivered on this question and as a result of the sworn testimony of the said Evelyn McKee that she had been a resident of the said County of Los Angeles since the month of August 1937 the Trial Judge ruled that the Court has jurisdiction to hear the action;

10 (d) The only payments at any time made by me or by anyone on my behalf to the Attorneys for the said Evelyn McKee were such payments as I was Ordered by the Court from time to time to make in respect of Attorneys' fees and expenses pursuant to the provisions of the Code of Civil Procedure of the State of California;

(e) That to the best of my knowledge, information and belief the testimony adduced on my behalf was fair and honest;

20 (f) That I was not guilty of subornation of perjury directly or indirectly.

12. The said Wisconsin Action never proceeded to Trial. During the month of June, 1945 the said action was dismissed on the merits upon the consent of both parties.

30 13. For more than 33 years I have been an Attorney of the said State of Michigan. From my own knowledge of the Laws of Michigan and according to the advice of my Attorneys in Michigan I do verily believe that the Judgment referred to in paragraphs 4 and 5 of the Affidavit of Evelyn McKee herein sworn the 17th day of March, 1947 is invalid by the Law of Michigan on the ground that the said Superior Court of the State of California was not a Court of competent jurisdiction to make any Order concerning the custody of a child not then domiciled, ordinarily resident or physically located within the said County of Los Angeles or State of California. The Trial resulting in the said Judgment took place during the month of May, 1945. From the 1st day of October, 1944 to the 40 1st day of July, 1945 the said Terry Alexander McKee was in my possession and residing with me in the said Town of Port Austin. The said Terry Alexander McKee has never been domiciled in the said State of California. I am further advised by my Solicitors in Ontario and I do verily believe that the said Judgment is invalid according to the Law of Ontario for the same reason.

AFFIDAVIT OF MARK T. MCKEE

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10 14. I am advised by my Attorneys in Michigan and do verily believe that even were the said Judgment to be considered valid by the Courts of Michigan as having been granted by a Court of competent jurisdiction the said Judgment is not enforceable per se in the Courts of Michigan in as much as by the Laws of both the States of California and Michigan the said Judgement is not a final Judgement. I am further advised and do verily believe that the Courts of Michigan would review the said Judgment and determine the question of custody on the merits in the best interests of the child.

20 15. That I am advised by my Solicitors in Ontario that even were the said Judgment to be considered valid by the Courts of Ontario as having been granted by a Court of Competent jurisdiction, the said Judgment is not enforceable per se in the Courts of Ontario but that the Courts of Ontario would determine the question of custody on the merits of the entire case in the best interests of the child.

30 16. I am advised by my Attorneys in the State of California and do verily believe that in the converse situation of a child moving to California after an award as to custody of a foreign Court of competent jurisdiction, the California Courts on an application to them would determine the question of custody on the merits and would over-ride the decision of the foreign jurisdiction if in the opinion of the California Courts such was required in the best interests of the child.

40 17. That the said Terry Alexander McKee and myself are now legal residents of the Dominion of Canada and that we became resident in the said City of Kitchener at a date when I had lawful custody of the said Terry Alexander McKee. The effective date of the decision referred to in paragraph 5 of the Affidavit of Evelyn McKee herein sworn the 17th day of March, 1947, was not the 22nd day of December, 1947, but was the 13th day of January, 1947.

18. That I intend to make my permanent home in the said City of Kitchener where there are many relatives of my said first wife to whom I am greatly attached. I have no residence, physical or otherwise, in any municipality other than the said City of Kitchener. For some considerable time I have entertained the

AFFIDAVIT OF MARK T. McKEE

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10 desire of partially retiring and residing in the district of the said City of Kitchener, pursuant to which desire I purchased a home in the said County of Waterloo during the month of March, 1945. I have also entered into negotiations for the purchase of a residence either in the said City of Kitchener or in the Town of Waterloo, in the County of Waterloo and have been unable to complete such negotiations only because of the present housing shortage. I have engaged a suitably young married couple who have two sons of the ages of 5 and 3 years who are great friends of the said Terry Alexander McKee to reside with me and my said son.

19. I honestly and sincerely believe that the said Evelyn McKee is not a fit and proper person to have the custody of the said Terry Alexander McKee for the following reasons, inter alia;

20 (a) The findings of fact referred to in paragraph 4 hereof established that she is not a person of good character;

30 (b) She continued her relations with the said Max de la Fuente after the date of the said Judgment until the said Max de la Fuente was removed from the City of Los Angeles to Costa Rica towards the end of 1943. During the proceedings in the said Wisconsin Action it was testified by a former California Attorney for the said Evelyn McKee on an examination taken at the instance of the said Evelyn McKee that she had paid money to the said Attorney to assist in clearing the said Max de la Fuente of a charge of an indictable offence against him under the federal Narcotics Act, of the United States of America.

40 (c) The said Evelyn McKee has stayed overnight at a hotel with a man to whom she was not married. At such time and place the said Evelyn McKee had the said Terry Alexander McKee with her;

(d) The said Evelyn McKee has spent weekends and longer periods of time with married men

during the year 1945;

(e) The said Evelyn McKee has indulged in heavy drinking to the extent that she has been seen in the company of men in a very intoxicated condition in public places on many occasions;

10 (f) At no time have I referred to his mother in the presence of Terry Alexander McKee in any other than a proper and respectful manner. On several occasions, however, upon returning to me after having been with the said Evelyn McKee my said son has made spontaneous remarks and inquiries clearly indicating that the said Evelyn McKee has had him with her while in the company of other men with whom she was on terms of great intimacy;

(g) The said Evelyn McKee does not attend any Church and I am informed and verily believe that while the said Terry Alexander McKee was with her he did not attend any Church or Sunday School;

20 (h) The proceedings in the Wisconsin Action referred to in paragraph 9 hereof indicating beyond question that the said Evelyn McKee is a person who has no respect for the truth and no respect for the integrity of the Courts of Justice;

(i) On or about the 15th day of March, 1947, the said Evelyn McKee swore an information against me charging me with the abduction of the said Terry Alexander McKee under Section 316 of the Criminal Code. Pursuant to such information a Summons was issued and left for me at my residence in the said City of Kitchener in my absence therefrom. I was advised by my Solicitors that such was not a valid and proper service but on my instructions my Solicitors attended at the Magistrate's Court on the returnable date of the said Summons and waived personal service. The said charge is still pending. I am advised by my Solicitors and do verily believe that I am not guilty of the said offence, technically or otherwise.

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20. The said Evelyn McKee has not been denied access to the said Terry Alexander McKee since her arrival in Kitchener. After such arrival, to my positive knowledge the said Evelyn McKee made no attempt or request to see the said Terry Alexander McKee. Having learned that the said Evelyn McKee was in Kitchener on my instructions

AFFIDAVIT OF MARK T. McKEE

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my Solicitors wrote and had personally delivered to her during the morning of the 6th day of March, 1947, a letter, a true copy of which letter is hereto annexed and marked exhibit "C" to this my return. Solely as a matter of the greatest convenience and the least unpleasantness to all concerned the said Evelyn McKee was requested to make arrangements for her visits through my Solicitor. Pursuant to such letter the said Evelyn McKee has had
10 lengthy visits alone with the said Terry Alexander McKee on the 6th, 16th, 20th, 22nd and 23rd days of March, 1947. On no other occasion has the said Evelyn McKee made any attempt or request to see the said Terry Alexander McKee except as follows:

(a) On the 15th day of March, 1947 I am informed that the said Evelyn McKee called at the Office of my Solicitor who was out of town whereupon she spoke to one of the Partners of my Solicitors who attempted to get in touch with me by telephone but was
20 unable to do so at the moment because my line was busy. A few minutes later the said Evelyn McKee arrived at the said 40 Heins Avenue accompanied by three men all of whom were strangers to me. These four people created such a disturbance that it was such a disturbance that it was reasonable and necessary for the reasons referred to in paragraph 6 hereof to deny them admittance. Upon his return to Kitchener the same evening my Solicitor was informed of these events and immediately got in touch with
30 the said Evelyn McKee and arranged for the visit the following day. It later developed that the said three male companions of the said Evelyn McKee were her Detroit Attorney and the staff writer and photographer from the Detroit News;

(b) On the 19th day of March, 1947, I am informed that the said Evelyn McKee called at the said 40 Heins Avenue but was unable to see the said Terry Alexander McKee as we were all out and returned later in the day.

40 21. By my said first wife I had six sons, the youngest of whom is now of the age of 18 years. I believe that all of my said sons have been brought up to be upright and honourable men. Five of my sons volunteered for service with the United States Armed Forces during the recent wars and had lengthy active military or naval careers. My only desire is to do everything possible to see that the said Terry Alexander McKee has a proper

upbringing and education. I honestly and sincerely believe that I am a more fit and proper person to provide such advantageous upbringing and education than is the said Evelyn McKee. In none of the many Judgments that have been tried by various Courts in proceedings between the said Evelyn McKee and myself has there ever been the slightest suggestion that I was not a person of good character or that I was not a fit and proper person to
10 have custody of my said son. My financial position is such that I am able to give my said son all the advantages of any education which may be desirable for him to have and thereafter a proper start in whatever business or professional career he may choose to follow.

22. The said Terry Alexander McKee is not now and never has been detained, restrained or confined by me or anyone else. He goes out, associates and plays with other children his own age, attends Church or Sunday School regularly and generally does the things a child of his
20 age ordinarily does. On the 21st day of March, 1947, he was thoroughly examined by a qualified physician in the said City of Kitchener and was pronounced to be in excellent health. During the week of March 17, 1947, he was given an intelligence test by the teacher employed by the Public School Board of Kitchener for such purposes and he made a score of 122 which the said teacher informed me was a very good one for a child of his age.

23. For the reasons hereinbefore contained I respectfully request this Honourable Court to make an Order awarding
30 custody of the said Terry Alexander McKee to me. In the alternative I respectfully request this Honourable Court to direct an issue to determine the custody of the said Terry Alexander McKee as a legal resident of this Province and this Country in the best interests of his own welfare. If such issue be directed pending its determination I do solemnly undertake as follows:

(a) Not to remove the said Terry Alexander McKee or cause him to be removed beyond the confines of the County of Waterloo at any time without the permission of this Honourable Court;
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(b) To produce him at any time and place I am directed to do so by this Honourable Court;

(c) To enable the said Evelyn McKee to see him alone at any reasonable time and for any reasonable length of time.

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SWORN before me in the
City of Kitchener, in
the County of Waterloo,
this 24th day of
March, 1947.

} Mark T. McKee

J. W. [Signature]

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A Commissioner, etc.

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IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE) WEDNESDAY THE 2nd DAY OF
SMILY IN CHAMBERS) APRIL, A. D. 1947.

UPON the return made on the 25th day of March 1947,
10 of the writ of habeas corpus dated the 21st day of
March, 1947, and directed to the said Mark T. McKee,
William A. Ament and Wilhelmina Ament requiring the pro-
duction of the infant Terry Alexander McKee, in the pre-
sence of Counsel on behalf of Evelyn McKee and Counsel
for the said Mark T. McKee, William A. Ament and Wilhel-
mina Ament, and upon hearing read the said Writ, the
affidavits of Evelyn McKee (2), Roland Frederick Wilson,
Mark T. McKee, William A. Ament and Wilhelmina Ament
and the exhibits referred to therein, and a certified
20 copy of the Order of the Superior Court of the State
of California in and for the County of Los Angeles dated
the 1st day of August, 1945, and upon hearing what was
alleged by Counsel aforesaid and Counsel on behalf of
Evelyn McKee asking that the said infant be delivered
into her custody and such request being treated as an
application for an Order for delivery of the said infant
into the custody of the said Evelyn McKee, although no
formal application therefore had been filed and leave
having been given to the said Evelyn McKee to file such
30 an application if so advised, and judgment on the appli-
cation having been reserved until this day.

1. IT IS ORDERED that the said Evelyn McKee and the
said Mark T. McKee do proceed to the trial of an issue
in which the said Evelyn McKee shall be Plaintiff and
the said Mark T. McKee shall be defendant and the ques-
tion to be tried shall be who is to have the custody
of the infant Terry Alexander McKee as between the said
Evelyn McKee and the said Mark T. McKee.

2. AND IT IS FURTHER ORDERED that this Order shall
40 constitute the record for the trial of the issue and
that pleadings and discovery be and are hereby dispensed
with.

3. AND IT IS FURTHER ORDERED that the parties to the
issue shall have the right to take evidence de bene esse
or on commission in the State of California, the State
of Michigan or elsewhere for use at the trial of the said
issue and that either party may apply, under the provisions

of Rule 269, to the trial Judge for leave to read any of or all the hereinbefore recited affidavits at the trial of the said issue.

4. AND IT IS FURTHER ORDERED that the issue shall be set down and tried without a Jury at the next sittings of this Court to be held at the City of Kitchener, in the County of Waterloo, or at such other place as may be agreed upon between the parties or ordered by the
10 Court.

5. AND IT IS FURTHER ORDERED that until the trial, unless hereafter otherwise ordered the infant Terry Alexander McKee shall remain in the custody of the said Mark T. McKee upon the said Mark T. McKee filing or depositing with this Court within one week of the date of this Order a Bond in the penal sum of \$5,000.00 the condition of such Bond being the delivery by the said Mark T. McKee of the custody of the infant, Terry Alexander McKee, pursuant to such Order in that behalf as may be made by
20 this Court.

6. AND IT IS FURTHER ORDERED that the costs of the motion for the Writ of habeas corpus and of this application shall be disposed of upon application being made therefor to the Judge trying the issue or in Chambers.

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"H. P. Palen"

ASSISTANT REGISTRAR, S. C. O.

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REASONS FOR JUDGMENT OF SMILY, J.
DELIVERED 2nd DAY OF APRIL 1947.

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SMILY, J.:- Upon the return of the writ of habeas corpus directed to Mark T. McKee, William A. Ament and Wilhelmina Ament for the production of the infant Terry Alexander McKee, the mother, Evelyn McKee, a resident of the City of Los Angeles in the State of California, one of the United States of America, asks that the said infant be delivered into her custody in accordance with the provisions of the order of the Superior Court of the State of California in and for the County of Los Angeles dated the 1st day of August, 1945. I am of the opinion that formal proceedings should have been filed with the Court, returnable at the time of the return of the writ of habeas corpus, making application on behalf of the said Evelyn McKee for custody of the infant, or for delivery of the infant into her custody. It was contended on behalf of the said Evelyn McKee that such was not necessary and does not appear to have been done in the case of Re Ethel Davis, 25 O.R. p. 579. It is true that in the report of this case no reference is made to such an application. On the other hand, in the case of Re Kenna, 29 O.L.R. 590, the report refers to a motion for an order for delivery of the child to the custody of the applicant which suggests that a formal motion was made. In any event, as the matter was fully argued I will treat it as though such a motion had been made and will give leave to the said Evelyn McKee to file such an application if she is so advised.

At the time of the proceeding in the Superior Court of the State of California in which the said order dated the 1st day of August, 1945 was made, the said infant appears to have been lawfully in the custody of his father, the said Mark T. McKee, pursuant to a prior order of the said court. At the time of the said order dated the 1st day of August, 1945, the residence and domicile of the said Mark T. McKee was apparently in the State of Michigan and it would appear from the recital in the said last mentioned order, the basis for modification of the previous order was, in part at least, that the said infant had, since approximately the 1st day of October, 1944, been kept by the said Mark T. McKee at his home at Port Austin, Michigan, in a place not accessible, snowbound in winter and subject to severe weather conditions, and that the said infant had been under the care and supervision for most of the time (because of frequent absences of the father from the

home) of aged employees hired by the father and that in keeping the said infant in Port Austin, Michigan, the mother had been deprived of the opportunity of visiting and caring for her child and further that the said place where the said infant had been kept is many miles from adequate transportation and adequate school facilities and that the child had reached the age when it was necessary that he attend school. The said infant is now residing with his father in the home of William A. Ament and Wilhelmina Ament in the City of Kitchener, in the Province of Ontario, and the said Mark T. McKee deposes that it is his intention to establish a permanent residence in the District of the said City of Kitchener.

Counsel for the applicant, the said Evelyn McKee concedes that this court has jurisdiction to determine the custody of the said infant pursuant to the Infants Act of Ontario but contends that unless changed circumstances are shown, this Court should follow the decision of the California Court and that in any event, in view of the order of the California Court the applicant has the prima facie right to the custody of the infant. It does appear that the circumstances surrounding the living conditions of the infant have changed at least to some extent from those mentioned in the order of the California Court as above stated.

Counsel for the respondent, the said Mark T. McKee contends that the order of the California Court is not enforceable here and in any event is not a final judgment, that the California Court was without jurisdiction and that the child welfare as presently indicated should alone be considered.

I have considered the authorities referred to by Counsel but in view of the disposition which I propose to make of the matter, I do not think any purpose would be served by my discussing them. I have come to the conclusion that the question cannot be disposed of in a summary way and an issue should be directed. As to the custody of the infant, until the trial of the issue it does not appear that the applicant has a home for the infant in Ontario whereas the respondent does appear to have a satisfactory place for him to reside here and, therefore, he should remain in the custody of the respondent, the said Mark T. McKee until such trial. However, in the circumstances I think the applicant is entitled to some further guarantee that the infant will not be removed from the custody and care of his father,

as to which the respondent does give an undertaking in his affidavit.

I, therefore, direct an issue to be tried as to the custody of the infant in which the mother shall be the plaintiff and the father the defendant, such issue to be set down and tried at the next sittings of the Court at Kitchener, in the County of Waterloo, pleadings and examination for discovery to be dispensed with but the
10 parties to have the right to take evidence de bene esse or on commission in California, Michigan or elsewhere if necessary. The place of trial may be varied on consent or on further application if it is found that the issue cannot be made ready for trial at the next sittings in Kitchener or that some other place is more convenient for trial.

Until the trial or other order of the Court the infant shall remain in the custody of the father upon his depositing with the Court within one week of the date
20 hereof a bond conditioned upon his delivery of the custody of the infant pursuant to such order as the Court may make. The costs of the motion for writ of habeas corpus and of the application on the return of said writ shall be in the discretion of the trial Judge.

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IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE GENEST)	Tuesday, the 15th
)	day of April,
IN CHAMBERS)	1947.

UPON APPLICATION of Counsel on behalf of the above-named Evelyn McKee for an Order granting leave to the said Evelyn McKee to appeal from the Order of the Honourable Mr. Justice Smily herein, dated the 2nd day of April, 1947, directing the trial of an Issue as to the custody of the said Terry Alexander McKee, in the presence of Counsel for the said Evelyn McKee and Counsel for Mark T. McKee, upon hearing read the reasons for Judgment dated the 2nd day of April, 1947, and upon hearing what was alleged by Counsel aforesaid,

1. IT IS ORDERED that this application be and the same is hereby dismissed.
2. AND IT IS FURTHER ORDERED that the costs of this Motion be costs in the cause.

"H. B. Palen"

Assistant Registrar S.C.O.

NOTICE OF MOTION

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NOTICE OF MOTION

TAKE NOTICE that a Motion will be made on behalf of Evelyn McKee as next friend and legal guardian of her son Terry Alexander McKee before the Judge presiding at the sittings of this Court for the Trial of actions to be holden at the City of Kitchener on Monday the 8th day of September, 1947 at the hour of 10:00 in the fore-
10 noon or so soon thereafter as the application can be heard for an order for delivery of the said infant Terry Alexander McKee into the custody of the said Evelyn McKee pursuant to leave given to the said Evelyn McKee to file such an application by the order of The Honourable Mr. Justice Smily dated the 2nd day of April 1947.

AND TAKE NOTICE that in support of such application will be read the said order of The Honourable Mr. Jus-
20 tice Smily and such other and further material as Counsel may advise.

DATED at Kitchener, this 4th day of September,
A. D. 1947.

TO: Sims, Bray, Schofield & Lohead,
Kitchener, Ontario
Solicitors for Mark T. McKee.

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BROCK, WEIR & TROTT,
Kitchener, Ontario
Solicitors for Evelyn McKee

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NOTICE OF APPEAL TO THE COURT OF APPEAL

TAKE NOTICE that Mrs. Evelyn McKee, the mother of the said Terry Alexander McKee, intends to appeal and hereby appeals to the Court of Appeal from the Judgment of the Honourable Mr. Justice Wells herein, dated Saturday the 18th day of October 1947, and for an Order reversing the said Judgment, and for an Order granting
 10 sole custody of the infant child Terry Alexander McKee to the said Evelyn McKee, on the following amongst other grounds:

1. The said Judgment is contrary to law, against the evidence and the weight of evidence.
2. The Learned trial Judge erred in awarding custody of the said infant, Terry Alexander McKee, to his father, Mark T. McKee.
3. The learned trial Judge ought to have found that Mark T. McKee, the father of the child, was neither domiciled
 20 in nor a bona fide resident of the Province of Ontario, but was merely temporarily within the jurisdiction of this Court for the purpose of evading a valid judgment of the courts of California awarding the custody of the child to the appellant, and that all the business interests of the said Mark T. McKee and all his property interests are in the United States of America, and that the purchase of property in this Province (if he has purchased any) since the date of the California Judgment which he has not registered in his own name, is not
 30 evidence that the said Mark T. McKee is either resident or domiciled in Ontario.
4. The learned trial Judge improperly assumed to retry an issue which had been fully tried before the courts of California as if the said Mark T. McKee and Evelyn McKee and the said Terry Alexander McKee were permanent residents of the Province of Ontario.
5. The said Mark T. McKee to evade a Court order of California, in which Court he himself had sought custody of the said infant, and knowing that the California
 40 Court had awarded full custody to the mother, wrongfully and improperly brought the child into Ontario, while the mother who was entitled to the full custody of the said infant under the order of the California Court, without any delay whatever, and before the said Mark T. McKee could in any view be taken to be a resident of Ontario, applied to this Honourable Court for an Order requiring the child to be delivered to her.

NOTICE OF APPEAL TO THE COURT OF APPEAL

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6. The learned trial Judge erred in holding that the mere physical presence of the child in Ontario gave him jurisdiction under The Infants Act to "make such order as the Court sees fit regarding the custody of the infant . . ." and ought to have found that as Mark T. McKee is neither domiciled in this Province nor a bona fide resident thereof, The infants Act had no application, and the only question which ought to have been
- 10 tried was which of the parties had legal custody in their own jurisdiction; or, in the alternative, if the said Infants Act had any application, it was limited to the ascertainment of the circumstance that the Order held by this appellant from the California Court was obtained after a trial in the California Court on the merits by a Court of competent jurisdiction in a friendly state and there was no change in circumstances except those brought about by the said Mark T. McKee.
- 20 7. The learned trial Judge ought to have received evidence of the Law of Michigan to the effect that the Michigan courts regard the California decree as valid and binding in the State of Michigan.
8. The learned trial Judge ought to have found that the mother, this appellant, was entitled to custody in the jurisdiction to which the parties belonged.
9. The learned trial Judge ought to have found that the Ontario Courts do not recognize orders for permanent custody not made by the Courts of the domicile, and as
- 30 it was clear that neither Mark T. McKee nor the said infant was domiciled in the Province of Ontario, the Ontario Court had no jurisdiction to make a permanent custody order, and ought to have refused to review the proceedings in the courts of California or to interfere with the Order made in that jurisdiction.
10. The learned trial Judge ought to have found that the courts of California had jurisdiction to make the Order made there in 1945 awarding full custody of the infant child to this appellant.
- 40 11. The learned trial Judge ought to have found that the said Mark T. McKee was estopped from denying the jurisdiction of the California Court or the validity of the Order made in the California Court, because
- (a) in the year 1942 he evoked the jurisdiction of the California Court and obtained a divorce from his wife in those Courts, and at that trial obtained a judgment for partial custody of the infant child;

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(b) that the said Mark T. McKee acted upon that judgment and asserted its validity and took custody of the child in pursuance of that judgment;

(c) that the said Mark T. McKee took part in subsequent proceedings in the California Court with respect to the custody of that child;

10 (d) that in a proceeding which Mrs. McKee brought in Wisconsin the said Mark T. McKee again asserted the validity of the California judgment, and hence the jurisdiction of that Court to deal with the custody of the child;

(e) that in the year 1945 the said Mark T. McKee again applied to the California Courts to have the custody order made in 1942 varied so as to give him full custody of the child, but in such proceeding the mother, Evelyn McKee, was awarded full custody of the child;

20 (f) that the said Mark T. McKee appealed to the Court of Appeal of California from the said judgment and his appeal was dismissed;

(g) that the said Mark T. McKee applied for leave to appeal to the Supreme Court of California and his appeal was refused on the 23rd day of December 1946.

12. The learned trial Judge ought to have found that the said Mark T. McKee was estopped from seeking custody of the infant Terry Alexander McKee, because prior to divorce proceedings in 1942 in the State of California,
30 Mark T. McKee and his then wife, this appellant, Evelyn McKee, entered into a property settlement whereby the said Mark T. McKee agreed

(a) not to remove the child from the United States of America;

40 (b) to pay the mother, Evelyn McKee, \$125.00 per month for the maintenance and support of the said Terry Alexander McKee; and in pursuance of that agreement, the said Evelyn McKee with the consent of Mark T. McKee had taken custody of the said child in California;

(c) The said Mark T. McKee was at the time of the property settlement in California on the 4th of September 1941 when custody of the child was by his own agreement given to the mother Evelyn McKee, fully aware of the circumstances on which he relied in this action to show that the mother was unfitted for the custody of the child, and knowing those

NOTICE OF APPEAL TO THE COURT OF APPEAL

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circumstances he was at that time content that the mother should have full custody;

(d) The said Mark T. McKee learning of the judgment of the Supreme Court of California on the 23rd of December 1946, brought the child to Ontario on the 26th day of December 1946, and failed to disclose the whereabouts of the child until late in the month of February 1947;

10 (e) the mother Evelyn McKee at the earliest possible moment after discovering the whereabouts of the child came directly to Kitchener, Ontario, about the 1st of March 1947 in an endeavour to obtain custody of the child and enforce the judgment obtained in proceedings commenced by the father, Mark T. McKee.

13. The learned trial Judge improperly heard evidence of the conduct of the mother prior to the Order made by the California Court in the year 1945, because

20 (a) the order made by the California Court in 1945 was res judicata as regards all matters up to and inclusive of the date thereof;

(b) in any event the matters complained of did not show Mrs. McKee unfitted for the custody of her child;

(c) there has been no change in circumstances since the order of the California Court except changes brought about solely by the said Mark T. McKee.

30 14. The learned trial Judge wrongfully admitted evidence which was alleged to be unknown to the plaintiff during the divorce proceedings in California in 1942. The only Court having jurisdiction to hear such evidence was the Court in California.

15. No evidence was adduced at the trial to show that the mother Evelyn McKee was unfitted for the custody of her child, and the learned trial Judge ought to have held that Mark T. McKee was estopped from adducing such evidence because for ten years the said Evelyn McKee
40 had mothered the ten children of Mark T. McKee by his first marriage.

16. The learned trial Judge improperly gave weight to evidence that certain newspaper reporters had come to Kitchener with Mrs. McKee and had taken photographs and given undue publicity to the fact that Mark T. McKee had improperly taken the child out of the State of Michigan into the Province of Ontario.

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17. The learned trial Judge completely failed to take into account the fact that Mrs. McKee had been in Kitchener for a number of days and had made application to the father for custody of the child pursuant to the California Court Order and had been refused before the Detroit newspaper reporters came to Kitchener at all, and the learned trial Judge failed to take into account
10 the fact that the said Mark T. McKee was prominent in politics in the State of Michigan.

18. The learned trial Judge improperly gave weight to certain allegations made in proceedings brought by Mrs. McKee in Wisconsin.

19. The fact that a Detroit newspaper had sent reporters and photographers to Kitchener and the fact that certain allegations were made in an action in Wisconsin which was never tried, were matters which were entirely irrelevant to the issues before the learned trial Judge.

20 20. The learned trial Judge in judging the fitness of the said Mark T. McKee for custody of the child failed to take into account the disregard for law and order exhibited by the said Mark T. McKee in taking the child out of the United States of America in breach of his own agreement not to do so, and in breach of the Order of the California Court.

21. The learned trial Judge was in error in finding that the said Mark T. McKee was not bound by his agreement not to remove the child from the United States of
30 America.

22. The Judgment of the learned trial Judge constitutes a grave miscarriage of justice and is contrary to international law.

23. Such further and other grounds as Counsel may advise and as may be disclosed by the evidence.

DATED at Toronto this 20th day of October, A.D. 1947.

40 TO: SIMS BRAY SCHOFIELD & LOCHEAD,
Kitchener, Ontario.
Solicitors for Mark T. McKee.

SLAGHT FERGUSON BOLAND & SLAGHT
320 Bay Street,
Toronto, Ontario.
Solicitors for Evelyn McKee.

NOTICE OF APPEAL

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IN THE SUPREME COURT OF CANADA

TAKE NOTICE that Evelyn McKee, the mother of the infant Terry Alexander McKee, intends to appeal and hereby appeals to the Supreme Court of Canada from the Order of the Court of Appeal for Ontario, dated the 24th day of June 1948, in so far as the said Order dismisses the appeal of the said Evelyn McKee from the Order
10 of the Honourable Mr. Justice Wells, dated 18th day of October 1947, refusing on the return of a Writ of Habeas Corpus to order the release of the said Terry Alexander McKee from the custody of Mark T. McKee on the following amongst other grounds:

1. The parties are resident and domiciled in the United States of America and by an order of the Superior Court of California confirmed by the Court of Last Resort in California the custody of the said Terry Alexander
20 McKee was awarded to Evelyn McKee.

2. The father, the said Mark T. McKee surreptitiously and contrary to his own undertaking and the order of the Court of California, removed the said child into the Province of Ontario to evade the operation of the order of the Court of California.

3. The Courts of Ontario ought to have ordered the
30 said Mark T. McKee to deliver the said child to its lawful custodian, the said Evelyn McKee.

4. The Infants Act of Ontario has no application.

5. Never before has the Canadian Court refused to recognise a custody order with respect to a foreign child made by foreign courts having full jurisdiction.

40 6. Such further and other grounds as counsel may advise.

DATED at Toronto this 22nd day of October, 1948.

NOTICE OF APPEAL

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TO:

MARK T. McKEE

AND TO:

10 SIMS, BRAY, SCHOFIELD & LOCHEAD,
Kitchener, Ontario,

His solicitors,

AND TO THEIR TORONTO AGENTS:

BLAKE, ANGLIN, OSLER & CASSELS,
25 King Street West, Toronto, Ont.

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SLAGHT FERGUSON BOLAND SLAGHT
320 Bay Street, Toronto, Ont.

Solicitors for the Plaintiff.

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IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE THE CHIEF) SATURDAY THE 2ND DAY OF
JUSTICE OF ONTARIO) APRIL, 1949.

UPON THE APPLICATION of Counsel on behalf of Evelyn Alexander McKee, the above named Appellant, made on Wednesday the 29th day of March, 1949, in the presence
10 of counsel for the Respondent, upon reading the affidavit of Robert Irvin Ferguson, filed, and the Exhibits therein referred to, and the proceedings in this matter, and upon hearing what was alleged by Counsel aforesaid, and Judgment having been reserved until this day,

1. IT IS ORDERED that the time within which an appeal to the Supreme Court of Canada from the Order of the Court of Appeal for Ontario dated the 24th day of June, 1948 may be brought by the said Evelyn Alexander McKee
20 be and the same is hereby extended until the 1st day of September, 1949.

2. AND IT IS FURTHER ORDERED pursuant to Section 66 of the Supreme Court Act that upon the said Evelyn Alexander McKee filing the case with the Registrar of the Supreme Court of Canada on or before the 1st day of September 1949 that her appeal herein be allowed.

3. AND IT IS FURTHER ORDERED that the costs of this
30 application be costs in the Appeal to the Supreme Court of Canada.

Shastri
Registrar S.C.O.

IN THE SUPREME COURT OF CANADA

APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF The Habeas Corpus Act, Revised Statutes of Ontario, 1947, Chapter 129 and Amendments thereto, and

10 IN THE MATTER OF Terry Alexander McKee, an infant.

BETWEEN:

EVELYN McKEE,

(Plaintiff) Appellant

- and -

20

MARK T. McKEE,

(Defendant) Respondent

IT IS HEREBY AGREED by and between the parties hereto that the case in appeal herein to The Supreme Court of Canada shall be composed of and comprise the following documents and papers, to wit:

1. Statement of Case.
- 30 2. Notice of Motion for Writ of Habeas Corpus.
3. Affidavit of Evelyn McKee.
4. Affidavit of Mark T. McKee.
5. Order of the Honourable Mr. Justice Smily.
6. Order of the Honourable Mr. Justice Genest.
7. Notice of Appeal to the Court of Appeal for Ontario.
8. Notice of Appeal to the Supreme Court of Canada.
9. Order of Robertson, C.J.O., extending time for completion of Appeal.
- 40 10. Evidence at trial.
11. Exhibits at trial.
12. Reasons for judgment of the trial Judge, Mr. Justice Wells.
13. Order of the Honourable Mr. Justice Wells.
14. Reasons for judgment of The Honourable the Chief Justice of Ontario,

The Honourable Mr. Justice Hogg,
The Honourable Mr. Justice Aylesworth.

15. Judgment of the Court of Appeal for Ontario.
16. Agreement as to the contents of the case.
17. Order dispensing with the printing of exhibits numbered 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 25, and 27.

10

DATED this 9th day of July, 1949.

Slight Ferguson Boland & Slight

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Solicitors for the Appellant

Senior Brody Schepel & Lockard

30

Solicitors for the Respondent

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IN THE SUPREME COURT OF CANADA

AN APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

THE REGISTRAR, IN CHAMBERS } MONDAY, THE 25th DAY
 } OF JULY, 1949

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Upon application made this day on behalf of the above named Appellant, upon reading the affidavit of Joseph Corti Boland, filed, as well as the agreement between the parties as to the contents of the case,

1. IT IS ORDERED that the printing of exhibits numbered 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 25 and 27, filed on the trial of this action in the Supreme Court of Ontario, be and the same is
20 hereby dispensed with.

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

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EXTENSION ORDER

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IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE HOGG) WEDNESDAY, THE 21ST DAY
In Chambers) OF SEPTEMBER, 1949

IN THE MATTER OF The Habeas Corpus Act, Revised
Statutes of Ontario 1937, Chapter 129, and
Amendments thereto, and

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IN THE MATTER OF Terry Alexander McKee, an
infant, and

IN THE MATTER OF an appeal pending in the
Supreme Court of Canada.

B E T W E E N:

EVELYN ALEXANDER MCKEE,

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Appellant:

-and-

MARK T. MCKEE,

Respondent.

UPON THE APPLICATION of Counsel on behalf of
Evelyn Alexander McKee, the above named appellant made
this day, in the presence of Counsel for the respondent,
upon reading the affidavit of Robert Irvin Ferguson,
filed, and the Order of The Chief Justice of Ontario
herein dated 2nd day of April, 1949, and upon hearing
what was alleged by Counsel aforesaid,

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1. IT IS ORDERED that the time within which an Appeal
to the Supreme Court of Canada from the Order of the
Court of Appeal for Ontario dated the 24th day of June,
1948, herein, may be brought by the said Evelyn
Alexander McKee, be and the same is hereby extended until
the 8th day of October, 1949.

40 2. AND IT IS FURTHER ORDERED pursuant to Section 66 of
the Supreme Court Act that upon the said Evelyn Alexander
McKee filing the case with the Registrar of the Supreme
Court of Canada on or before the 8th day of October,
1949, that her appeal herein be allowed.

3. AND IT IS FURTHER ORDERED that the costs of this
application be costs to the Respondent in any event
of the Appeal.

Chas. W. Smyth,
Registrar S.C.O.

OPENING REMARKS AT TRIAL

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McKEE Vs. McKee

TRIAL

before the Honourable Mr. Justice Wells, at
Kitchener, Ontario, and Toronto, Ontario,
Thursday, September 18, 1947, et seq.

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APPEARANCES:

G. R. Brock, K. C., Counsel for Mrs. McKee;

G. H. Lohead, Counsel for Mr. McKee.

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HIS LORDSHIP: In the McKee application, Mr. Brock,
you are appearing for the applicant? Are you not?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: Mr. Lohead, are you appearing for
Mr. McKee?

MR. LOCHEAD: Yes, my lord.

HIS LORDSHIP: Now, Mr. Brock, I understand from
both of you that this matter will take more than the
two days I have remaining at this Assizes, and what I
30 have been able to arrange is that I can conclude the
matter while I am sitting in Toronto next week. If
that is satisfactory to both of you.

MR. BROCK: Very satisfactory to me.

MR. LOCHEAD: My lord, it is satisfactory to me.

HIS LORDSHIP: Have you the reasons for judgment
of Mr. Justice Smily?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: I think I should see those.

I assume that what was decided on the application
40 in Weekly Court becomes rather important here, does it
not?

MR. BROCK: Yes, my lord.

I will file as an exhibit, my lord, the formal
order of the Honourable Mr. Justice Smily.

HIS LORDSHIP: That will be Exhibit No. 1.

OPENING REMARKS AT TRIAL

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---EXHIBIT NO. 1: Order of Mr. Justice Smily, in
Chambers, dated April 2nd, 1947.

MR. BROCK: Before proceeding with the hearing, my
lord, I have a motion to make, to put on the record.

HIS LORDSHIP: Then I might hear that now.

MR. BROCK: My lord, the basis of the motion is
for an order for delivery of the said infant, Terry
10 Alexander McKee, into the custody of the said Evelyn
McKee. As appears by the formal order, there was
some doubt, upon the writ of habeas corpus, whether
the formal application should have been made for
delivery of custody of the said infant into the
custody of Evelyn McKee.

HIS LORDSHIP: Is not that what the issue is
about?

MR. BROCK: Yes, it is, it is true.

On the return of the writ of habeas corpus, objec-
20 tion was taken that there was no formal application,
and leave was given by the Hon. Mr. Justice Smily, at
that time, to make the application should Evelyn
McKee desire to do so.

HIS LORDSHIP: You are now formally applying for
custody of Terry Alexander McKee, on behalf of Mrs.
McKee; is that right?

MR. BROCK: Yes.

HIS LORDSHIP: I think I should consider Mr.
Justice Smily's reasons. I have not read them. I am
30 wondering if the best way of disposing of this is not
to adjourn now and let me read and consider the
reasons of Mr. Justice Smily, and commence the
hearing of the issue at two o'clock.

MR. BROCK: Thank you, my lord.

MR. LOCHEAD: Very satisfactory, my lord.

HIS LORDSHIP: Is there anything else in the pro-
ceedings I should look at? If there is, I think it
would be well if you were to give them to me now.

MR. BROCK: It is provided in the formal order,
40 my lord, that the order--

HIS LORDSHIP: I saw that.

MR. BROCK: --that the order shall constitute the
record of the Court.

HIS LORDSHIP: There are no other proceedings than
the habeas corpus proceedings that I should look at?
With the order of Mr. Justice Smily's reasons, I have

OPENING REMARKS AT TRIAL

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all I need to see in that respect?

MR. LOCHEAD: The application for leave to appeal to the Court of Appeal was dismissed by the Hon. Mr. Justice Genest.

As far as my learned friend's application on the motion this morning is concerned, I suppose nothing could be usefully added by me.

10 HIS LORDSHIP: It is an application to regularize the situation; that is all it is?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: We will adjourn now until two o'clock.

---Court adjourned at 12.05 p.m. until 2.00 p.m.

AFTERNOON SESSION

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---On resuming at 2.10 p.m.

HIS LORDSHIP: Mr. Brock, I understand you are not well, and you do not feel you can go on this afternoon?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: I think we had better adjourn this case until the morning, and you can see how you are, and let me know.

30 MR. BROCK: Thank you, my lord.

HIS LORDSHIP: I understand that is agreeable to you, Mr. Lohead?

MR. LOCHEAD: Quite agreeable.

HIS LORDSHIP: We will adjourn now until 3.30 p.m.

---In the meantime, other cases are proceeded with.

40 ---On resuming Friday, September 19th, 1947, at 10.18 a.m.

HIS LORDSHIP: Mr. Brock, you are for the plaintiff in this case, are you not?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: Will you proceed?

OPENING REMARKS AT TRIAL

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MR. BROCK: My lord, I have tendered in evidence, as Exhibit No. 1, the order of the Hon. Mr. Justice Smily, dated April 2nd, 1947.

I tender, as Exhibit No. 2, the judgment of the Superior Court of the State of California in and for the County of Los Angeles, dated the first day of August, 1945. It is a certified copy, my lord, under the seal of the court.

10 MR. LOCHEAD: My lord, I wonder if I might have the opportunity to examine this document, as to its admissibility?

HIS LORDSHIP: Yes.
How about it?

MR. LOCHEAD: My lord, I am quite satisfied. It appears to be an exemplification, rather than a certified copy.

MR. BROCK: With your lordship's permission, I will read into the evidence the contents of the judgment of the Superior Court of the State of California, in and for the County of Los Angeles,

20 ---EXHIBIT NO. 2: Judgment of Superior Court of State of California, dated August 1st, 1945.

MR. BROCK: I will call, as the first witness, Evelyn McKee:

30 MRS. EVELYN MCKEE, (sworn)

---EXAMINED BY MR. BROCK:

Q. Mrs. McKee, you are the Evelyn McKee who is named in these proceedings? A. I am.

Q. You are the mother of Terry Alexander McKee, the infant in these proceedings? A. I am.

40 Q. And Mark T. McKee is the father of the infant Terry? A. He is.

Q. Where are you living now? A. At 1424-A Dickens Street, Sherman Oaks, California.

Q. That is in Sherman Oaks, California. When were you married to Mark T. McKee, the other party in these proceedings? A. In 1933.

Q. Where were you married to him?

A. St. Albans, Vermont.

Q. Are you a citizen of the United States of America? A. I am.

Q. Where were you born? A. In Eldon, Missouri.

Q. After the marriage, where did you live with Mark T. McKee? A. Washington, D.C., a few months in Port Austin, Michigan, and two years in Milwaukee, Wisconsin. And we went to California in 1937.

Q. That is, you and the other parties to these proceedings, Mark T. McKee, went to California in 1937? A. Yes, we did.

Q. Where in California did you reside or live?

A. We bought a home at Azusa, 940 East Foothill Boulevard.

Q. In whose name was that home placed?

A. In my name.

Q. Where is Azusa in the State of California? That is, what county is it in? A. In Los Angeles County.

HIS LORDSHIP: Is it in the vicinity of Los Angeles?

A. Yes, it is a suburb.

MR. BROCK: Q. You say that you and Mark T. McKee went to California in 1937. Did anyone move to this home at Azusa with you? A. Yes, our children; I believe we had eight children with us at the time.

Q. Eight children? A. Yes, I believe, eight.

Q. Will you name them? A. Rosemary was the eldest daughter, and Jane, Joann, Mark, Malcolm, Muir, Julian, Gerald and Cynthia.

Q. How many of these children were you the actual mother of? A. One.

Q. Which was that? A. That is Jerry.

Q. Is Mark T. McKee the father of the other children? A. Yes.

Q. So you are the stepmother; is that right?

A. Yes, I am.

HIS LORDSHIP: I take it that they are children of a previous marriage?

THE WITNESS: Yes.

MR. BROCK: Q. When you and Mark T. McKee moved to California in 1937, did these seven children of Mark T. McKee, and your child, move to California with you?

MRS. EVELYN McKEE -- Witness for Plaintiff --
Examination-in-Chief

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A. Yes, they did.

Q. And did they all live in this house at Azusa, with you? A. Yes, they did.

Q. When was the infant Terry Alexander McKee born? A. The 14th of July, in 1940.

Q. Where was he born? A. St. Luke's Hospital, Altadena, California, in Los Angeles County.

Q. He was born in Los Angeles County?

10 A. Yes.

HIS LORDSHIP: Q. Was this the only home Mr. McKee was maintaining at that time? A. He had a summer home at Port Austin, Michigan.

Q. Apart from that, this was your residence?

A. Yes.

MR. BROCK: Q. Did you separate from Mark T. McKee? A. Yes.

Q. When did you separate from him?

A. December, 1940.

20 Q. Was there any agreement between you and him subsequently arrived at? A. Do you mean such as a property settlement?

Q. Yes. A. Yes.

Q. I show you an agreement between yourself and Mark T. McKee. Will you examine that. A. You do not wish to have me read it all, do you?

HIS LORDSHIP: Just look at it and see if it is a copy of the agreement. A. Yes, it is.

30 Q. Is it signed? A. It is signed by Sue M. Sirath; that is Mr. McKee's sister.

MR. BROCK: This is not the original. That is why I am asking the witness to look at it.

HIS LORDSHIP: Look it over and see if that is the agreement. Is the original available?

MR. LOCHEAD: I believe I have a copy.

HIS LORDSHIP: Are you prepared to admit that?

MR. LOCHEAD: Yes, I am prepared to admit it, subject to the opportunity of examining on it.

HIS LORDSHIP: You are familiar with it?

40 MR. LOCHEAD: Yes, my lord, I have copies of it.

THE WITNESS: Yes, that is a copy of the agreement.

MR. BROCK: That is a copy of the property settlement agreement entered into between you and Mark T. McKee dated September 4th, 1941.

HIS LORDSHIP: Is that admitted?

MR. LOCHEAD: Yes, my lord.

HIS LORDSHIP: That will be Exhibit No. 3.

---EXHIBIT NO. 3: Property Settlement Agreement,
dated September 4th, 1941.

MR. BROCK: My lord, I would like to read into the
evidence clause 5 of Exhibit No. 3, being the
property settlement:

10 "(5) It is further understood and agreed
"that neither of the parties hereto shall remove
"TERRY ALEXANDER MCKEE, son of the parties hereto,
"from or out of the United States of America
"without the written permission of the party
"not so removing, or wishing to remove said boy
"from the United States of America."

I would like to read the first part of paragraph
6:

20 "(6) It is further understood and agreed
"that the home place of the parties hereto, which
"is located in Azusa, California, stands in the
"name of the Party of the First Part:--"

HIS LORDSHIP: That is Mrs. McKee, who is the
party of the First Part.

MR. BROCK: Yes.

Q. What home was this home mentioned as the home
place in the agreement? A. The Azusa home.

Q. The Azusa home that you, Mr. McKee and his
seven children and your one child moved to in 1937?

30 A. Yes, that is right.

Q. Is that where you had continued to reside from
the time you went to California in 1937, until the
separation? A. Yes, some time after the
separation I stayed there.

Q. Where did Terry reside from the time of his
birth--did you tell us the date of his birth?

A. The 14th of July, 1940.

40 Q. Where did Terry reside or live from July the
14th, 1940, until the separation between you and
Mr. McKee? A. He lived at home, at Azusa,
with us.

HIS LORDSHIP: Q. He lived with you?

A. Yes, he did.

MR. BROCK: Q. And it was in December, 1940,
that you separated? A. Yes.

Q. Where did Terry reside from that time until

the property settlement agreement? A. He remained there at that residence, at Azusa, with me.

HIS LORDSHIP: Q. Where did he stay after that?

A. He stayed with me until the time of the trial, when I moved from the large home to the City of Pasadena.

Q. When was that? A. In 1941. I moved shortly after the property settlement.

10 Q. The property settlement was 1941? A. Yes. I moved in October.

Q. You are sure it was not September? A. No. The trial was held a year after.

Q. Was that the divorce action? A. Yes, it was.

MR. BROCK: Q. How much were you to receive for maintenance under the property settlement agreement?

A. Well, I was to get \$300 for myself, for supporting myself.

20 Q. How often? A. Once a month. And \$125. for Terry, until Terry reached the age of twenty-one, and \$100. for Jerry, until he was twenty-one. And he has reached twenty-one.

Q. The action for divorce was commenced, was it not? A. Yes, it was.

Q. Where was it commenced? A. In the State of Los Angeles, -Los Angeles County.

Q. In the State of California? A. Yes.

Q. Who commenced it? A. I did.

30 Q. Can you remember the date it was commenced? Perhaps, your lordship, I might lead the witness a little here. I intend to submit further evidence that will establish the dates.

HIS LORDSHIP: Well, I presume it is a matter of record.

MR. BROCK: Yes, it is.

Q. It was on September 18, 1941, you commenced the action? A. I knew it was in September, but I didn't know the exact date.

40 Q. Where was Terry, the infant in these proceedings, at that time? A. He was with me in the Azusa home.

Q. Had he been there with you from the time of his birth? A. Yes.

Q. Until this time, from July, 1940? A. Yes, he was.

Q. And he was in the State of California, in the County of Los Angeles? A. Yes.

Q. I suggest to you that the judgment is dated December 17th, 1942, in the divorce proceedings?

A. Yes.

Q. In those proceedings, did Mr. Mark T. McKee appear? A. Yes, he appeared in person.

10 Q. And by his attorney? A. Yes, he had three attorneys.

Q. What was the award in the judgment, as to the custody of Terry Alexander McKee? A. Well, Mr. McKee got nine months and I got three months.

MR. LOCHEAD: My lord, I suggest that perhaps the judgment should be put in, and let it speak for itself.

HIS LORDSHIP: It would be better; if it is here.

MR. LOCHEAD: I have an exemplification of that judgment.

20 MR. BROCK: I do not wish to put in the judgment as part of my case.

HIS LORDSHIP: Unless you are prepared to prove the judgment, I do not know that I can have you prove bits of it.

MR. BROCK: My lord, we are dealing now with the custody of the child, and I would like my friend to be at liberty to put it in as part of his case.

HIS LORDSHIP: Just as you wish. What I am saying is, if I do not see the whole judgment, I will pay no attention to all the clauses of it.

30 MR. BROCK: I trust your lordship won't.

MR. LOCHEAD: I take it, my lord, that the answer of the witness as to the award of custody may be struck off the record, unless my friend is prepared to put in the judgment.

HIS LORDSHIP: It seems to me it is complete hearsay.

MR. BROCK: Then, my lord, I will prove where the child was subsequently.

HIS LORDSHIP: All right, you do that.

40 MR. BROCK: Q. Do you know if there was a final judgment for divorce entered in this action?

A. Yes, there was, by Mr. McKee and his attorney.

HIS LORDSHIP: What I am really interested in is Terry Alexander McKee. Where did he go, at that point? A. At the trial?

Q. After the trial? A. Mr. McKee took him

to Milwaukee, Wisconsin.

Q. So he took charge of him at that time. He was about two years old? A. Yes, he was.

Q. Did you have custody of Terry subsequent to that? A. Yes.

Q. You said you were given the right to have him three months? A. Yes.

Q. You had him then three months each year?

10 A. Yes, I have, other than this summer.

Q. That arrangement stood until these proceedings, or the events that precipitated these proceedings arose?

A. I don't understand just what happened that I didn't have him this summer.

20 MR. BROCK: My lord, I am informed by my friend, counsel for Mark T. McKee, that the final judgment for divorce, which was filed at the request of the attorney for Mark T. McKee, was filed on the 3rd of February, 1944.

HIS LORDSHIP: Is that the action that you referred to as being the one in which judgment was given in December, 1942?

MR. BROCK: Yes. It is like, I presume, our judgment absolute.

30 Q. Then, you have told the Court that from the time Terry was born, in July of 1940, until the judgment of the court in the divorce and custody action, that Terry had been with you, living in the County of Los Angeles, in the State of California; is that true?

A. That is true.

Q. When did you next have custody --

HIS LORDSHIP: I understood Mrs. McKee to tell me that after December, 1942, Mr. McKee took Terry to Milwaukee; she had him for three months every summer, but apart from that he was in Mr. McKee's custody; is not that correct?

MR. BROCK: I do not mean the final decree.

40 HIS LORDSHIP: Am I right in this; in December of 1942, Mr. McKee took Terry and had him for nine months each year, until these further proceedings in California in 1945?

A. That is correct, your lordship.

MR. BROCK: Q. Have you had Terry in the summers of 1943 and 1944? A. Yes, I did.

Q. Where did you keep Terry during that time?

A. In 1943, he was in Los Angeles County.

Q. That is, in the State of California?

A. Yes. And in 1944 I visited friends, with him, at a beach in Michigan, and then took him to California, where I turned him over to Mr. McKee at the end of my three months' period.

Q. Which was October 1st, 1944.

10 MR. LOCHEAD: I understood the witness to say that she visited friends in Michigan in 1944, but I did not catch the name of the town?

THE WITNESS: Port Austin, Michigan.

MR. BROCK: Q. In June, 1945, the hearing was had, and there was a modification of the custody of the minor child, Terry?

A. Yes.

Q. Is that right? A. That is correct.

Q. Who initiated or commenced those proceedings?

A. Mr. McKee.

20 HIS LORDSHIP: Are those the proceedings which resulted in the judgment filed?

MR. BROCK: Yes.

Q. Were these the proceedings that resulted in the judgment of Ruben S. Schmidt, Judge of the Superior Court of the State of California, as witnessed by Exhibit No. 2 in these proceedings? (Shows Exhibit No. 2 to witness.)

A. Yes, that is correct.

Q. Were you present at these proceedings in June, 1944?

A. I was.

Q. 1945? A. Yes.

30 Q. And did you have counsel represent you at those proceedings?

A. Yes, I did.

Q. Was Mark T. McKee, the other party to these proceedings in this court, present at the proceedings in California in June, 1945?

A. Yes, he was, and represented by the same attorneys - Mr. Risse, and Mr. Scott.

Q. Was he present in person? A. Yes, he was.

Q. You saw him there? A. Yes

40 Q. Was evidence adduced; that is, was oral evidence adduced by word of mouth? A. Yes, there was quite a lengthy trial.

Q. Now, Mrs. McKee, in between the divorce action in 1942 and the hearing of the custody action and proceedings in the State of California in June, 1945, were there any other proceedings in the State of California, between you and Mark T. McKee with

respect to the child? A. Yes, we had had two other - there had been several orders made by the Court and we had each tried to get custody of Terry on two occasions that I remember.

Q. That you had each commenced?

A. Actions for modification.

Q. You commenced proceedings in the State of California with respect to Terry? A. Yes, that is

10 correct.

MR. BROCK: I wonder if there is a record here of the proceedings in California?

HIS LORDSHIP: Are you referring to the Commission?

MR. BROCK: Yes.

HIS LORDSHIP: Is it mentioned in the evidence?

MR. BROCK: Yes, it is, my lord. I am not sure whether a copy of the record of the Superior Court of the State of California is placed in the Commission.

20 MR. LOCHEAD: My lord, I may be able to help my friend. I do not know if this is what he is looking for or not, but I have an exemplification of the court register in California which gives the dates of the proceedings from 1941.

HIS LORDSHIP: I think that is here, not copies, just a list.

MR. LOCHEAD: I am willing to let my friend have this.

MR. BROCK: I will have to examine that thoroughly before I put it in.

30 Q. Now, then, at the conclusion of the hearing in 1945, which resulted in the judgment, Exhibit No.2 in these proceedings, did you have custody of Terry after that? A. Yes, I did.

Q. When did you obtain custody?

A. The 1st of July, in 1945.

Q. The 1st of July, 1945? A. Yes.

Q. How long did you have possession and custody of him? A. Three months.

Q. That is, until October 1st, 1945? A. Yes.

40 Q. Where did you keep Terry during that time?

A. In Los Angeles.

Q. That is, in Los Angeles, in the State of California? A. Yes, it is.

Q. And on the first of October, what happened?

A. I was advised by my attorneys to surrender Terry to Mr. McKee, because he had appealed to the

Appeal Court, and they stayed the decision of Judge Smith.

Q. I show you a letter dated June 25th, 1945, from Joseph Scott to F. Millar Cloud--

HIS LORDSHIP: Wait a minute. How can that be evidence?

MR. BROCK: It is with respect to Terry.

10 MR. LOCHEAD: It is obviously inadmissible, but if my friend wishes to put it in, I have no objections. It indicates there was an arrangement made for Terry to be turned over.

MR. BROCK: Q. Who is Joseph Scott? A. That is Mr. McKee's attorney in California.

Q. Who is Millar Cloud? A. He is my attorney.

Q. Who is Jerome J. Mayo?

A. He was also my attorney in that.

20 Q. That is, Messrs. Cloud and Mayo appeared for you in the proceedings of 1945, in California?

A. That is correct.

Q. I tender this as Exhibit No. 4. It is a letter dated June 25th, 1945, from Joseph Scott to Messrs. Cloud and Mayo:

"RE: McKee-vs-McKee

"Gentlemen:

30 "This will advise you that we
"will take an appeal from Judge Schmidt's
"order in the above entitled matter as soon
"as the same is signed.

40 "Because an appeal from an order of
"modification of the custody of the minor
"child keeps the original order in status quo,
"we will deliver Terry Alexander McKee to
"Mrs. McKee on July 1, 1945, and will expect
"Mrs. McKee to return him to Mr. McKee on
"October 1, 1945.

"You are requested to let us know
"where you wish the child to be delivered
"next Saturday, the 30th of June, and we
"will be governed accordingly.

Very truly yours,"

---EXHIBIT NO. 4: Letter dated June 25, 1945, from Joseph Scott to Messrs. Cloud and Mayo.

10 Q. Now, an appeal as indicated by the letter of Joseph Scott, Exhibit No. 4, was taken from the judgment of the Honourable Ruben S. Schmidt, dated August 1st, 1945; is that correct? A. That is correct.

Q. I show you a card, from the District Court of Appeal, Second District, California State Building - HIS LORDSHIP: Is there any argument as to that, Mr. Lohead?

MR. LOCHEAD: No, my lord. I have offered to give my friend a mimeographed copy of the complete court record, which is admissible, and covers that action.

HIS LORDSHIP: I think you should put that in.

MR. BROCK: May I just look at it?

20 HIS LORDSHIP: This is all very interesting, but I do not think it is getting to the point of the case at all. What I have to do is having regard to the welfare of the infant. While I should pay respect to the proceedings in California, I am not governed by them.

MR. BROCK: They have great weight.

HIS LORDSHIP: They have weight. It is the welfare of the infant that is the guiding principle I have to go on.

30 MR. BROCK: Perhaps, to shorten it up; I do not suppose you know of the various proceedings that occurred in connection with the appeal in the courts of California, do you? A. I was not present at one of them.

Q. When did you learn of the final determination of the appeals in California?

HIS LORDSHIP: Mr. Brock, suppose you tell me what happened? There is no mystery about it.

40 MR. BROCK: My lord, perhaps I could put in, as Exhibit No. 5---

HIS LORDSHIP: I am not going to take the law of the State of California. Tell me shortly what happened. Mr. McKee has presented all the proceedings; let us have them and find out what did happen. There is no use sparring around this way about this. It has very little to do with the principle upon which I have to

decide the case, but I think I should know of those proceedings. If you have a transcript of the judgments of the California Courts, I will be glad to look at them. Tell me, shortly, what was the result.

10 MR. BROCK: The judgment was affirmed, my lord, by the Appellate Court, but there is a proceeding whereby they may apply for a re-hearing at the same Appellate Court. And it was denied. There is another procedure whereby they may appeal to a higher court in California for a re-hearing. And that hearing was denied.

HIS LORDSHIP: So the original judgment stands?

MR. LOCHEAD: No question about that.

MR. BROCK: Q. When did you first hear of the result of the final hearing in California?

A. On Christmas Eve.

20 MR. LOCHEAD: My lord, that is necessarily hearsay. Surely the record speaks for itself. I have given my friend a complete record of the actions, from 1941 to 1945.

HIS LORDSHIP: That will be Exhibit No. 5.

---EXHIBIT No. 5: Copy of Original Register of Action Sheets. Re McKee v. McKee divorce action in the Superior Court, Los Angeles County, No. D211536.

30 HIS LORDSHIP: Do you want to tell me something of what happened to the appeal? After all, I think you are entitled to do that.

MR. LOCHEAD: Surely what this witness learned as to what the Court of Appeal did is not material to this issue.

HIS LORDSHIP: I do not think it is very important either way. I think what I am interested in knowing is what happened to the boy. Ask her that.

40 MR. BROCK: Q. When did you first learn, Mrs. McKee, of the result of the final appeal in the State of California? A. December 24th, 1946.

Q. That is the Christmas Eve you referred to, or the day before Christmas? A. Yes.

Q. Who informed you of that?

A. My attorney, Mr. Cloud.

Q. I show you a card from the Clerk of the

Supreme Court, State Building, San Francisco,
California.

HIS LORDSHIP: I do not think it is evidence. I
do not think it is really material.

MR. BROCK: I think it will be.

HIS LORDSHIP: I am quite unable to follow that.

MR. BROCK: I will tender as Exhibit No. 6 a card
dated December 23rd, 1946, advising that the hearing
10 was denied, in the action of McKee vs. McKee.

MR. LOCHEAD: A card from whom to whom?

MR. BROCK: From William I. Sullivan, Clerk.

HIS LORDSHIP: You can put it in if you like. I
presume the exemplification shows the same thing.
Mrs. McKee is not able to prove that card. It is
something she received.

MR. LOCHEAD: I would like my objection to be
noted to the card going in.

HIS LORDSHIP: Yes. I will admit it subject to
20 objection.

---EXHIBIT NO. 6: Card, dated December 23, 1946,
from Clerk of Supreme Court,
San Francisco, California.

MR. BROCK: Q. You have had possession and
custody of Terry, as you told us, from July 1st, 1945,
until October 1st, 1945? A. That is correct.

Q. Did you have possession and custody of him
30 after that? A. Yes, in 1945, and in 1946.

HIS LORDSHIP: Q. That was during the summer?

A. Yes.

MR. BROCK: Q. In 1946, also.

HIS LORDSHIP: Q. Have you had custody of Terry
since December 24, 1946? A. No, I haven't.

MR. BROCK: Q. You saw him also in the State of
California? A. Yes.

Q. When this judgment was delivered, denying
right of appeal in December, 1946, what did you do
40 about Terry? A. Well, I naturally asked my
attorney how Terry was going to be delivered to me,
and they said--

MR. LOCHEAD: No, my lord.

HIS LORDSHIP: Mr. Brock, you surely know that is
not evidence.

MR. BROCK: Q. You went to your attorney?

A. Yes.

Q. Did you learn where Terry was?

HIS LORDSHIP: That again is clearly hearsay.

MR. BROCK: I submit it is not.

HIS LORDSHIP: Of course it is. How could it be anything else? What her attorneys told her is hearsay. I suppose she saw Terry some place.

10 MR. BROCK: Q. What did you do as a result of the information your attorneys gave you, as to Terry?

A. Well, I don't know just how to state it, because--

HIS LORDSHIP: Q. I presume you tried to get hold of him? A. Yes.

Q. You may have instructed them to try and get him? A. Yes, that is what I did. And when I

learned where he was, here in Kitchener, I came to Kitchener, in the latter part of February of 1947.

20 Q. Had you consented to Terry being brought to Ontario? A. No.

Q. When you came to Kitchener, did you make any demands for Terry? A. Yes, I did.

Q. What was the result of that?

MR. LOCHEAD: Well, now. Let us have more than that.

HIS LORDSHIP: You will have to go further than that. To whom did she make the demands?

I am going to adjourn now until 11.30.

---(Intermission.)

30 MR. BROCK, (resuming): Q. Now, Mrs. McKee, you told us you came to Kitchener in February of 1947.

When you came to Kitchener, did you see Terry?

A. Yes, I did. After coming to see you and making arrangements with Mr. Lohead.

Q. Where did you see Terry? A. At 40 Heines Avenue, in the home of Mr. and Mrs. Ament.

Q. How often were you able to see him?

40 A. Well, it varied; sometimes I saw him every day, and sometimes I couldn't see him for two or three days.

Q. On most of these occasions was anyone else around? A. Yes, always. The first time, there was an agreement that you accompany me with Mr. Lohead. Mr. Lohead was there, and that was the first time I saw him; I saw him for about an hour.

Q. The first time, Mr. Lohead, you and I were

over at this house on Heines Avenue, at the home of the Aments? A. That is correct.

Q. On any of these occasions were you ever allowed to take him out of this house? A. Never.

Q. Now, do you remember the third time you saw Terry at this house? A. Yes, I do.

Q. Will you tell the court what happened on that occasion? A. Well, I asked Mrs. Ament, an elderly lady, who was taking care of Terry, if she knew of the custody appeal and Terry had been brought from California, against the court order, and she said--

HIS LORDSHIP: Now, wait; you cannot tell what Mrs. Ament said. A. Oh, I am sorry, I didn't mean to do that, your lordship. I cannot tell you what Mrs. Ament said?

HIS LORDSHIP: No.

MR. BROCK: Q. Was Mr. McKee present on this occasion? A. Yes, he was.

HIS LORDSHIP: If Mr. McKee was there, I think you can tell what was said.

MR. BROCK: Now, you can tell us what was said and done while Mr. McKee was present.

HIS LORDSHIP: Just tell us what anybody said while the two of you were there. A. At the time I was speaking to Mrs. Ament, and I guess it wouldn't be proper, because at that time I didn't see Mr. McKee when I first started the conversation with her.

HIS LORDSHIP: Describe what was said by you when Mr. McKee was present. A. Well, I asked to take Terry with me, and she refused, and they said I would be held there. Then I asked Mrs. Ament if I might use the telephone to call for a taxi, when Mr. McKee appeared and bounded at me.

Q. He what? A. He bounded at me with great force, and started to strike me and tell me to get out of the house, and used abusive language in front of the boy, and told me to leave.

MR. BROCK: Q. What did you do?

A. Well, I had to leave, because it was very disagreeable.

Q. Do you remember the occasion when Terry had a cold when you visited him at the home of Mrs. Ament?

A. Yes, I do.

Q. You remember about when it was? A. Well,

it was in April some time, I believe early in April. I know I gave you the date at the time, but I can't recall it just from memory.

Q. Tell us what took place on that occasion.

A. Well, he was coughing very hard, and his nose was very much stopped up. And I asked him if anything was being done for his cold. And apparently there was not anything being done. They had no medicine. So I
10 asked Mrs. Ament then--

HIS LORDSHIP: Was Mr. McKee there?

MR. BROCK: I would like to clear up this one point. Since Mrs. Ament is a party to these proceedings from the fact that Mr. and Mrs. Ament were a party to the habeas corpus proceedings, and this arises out of the habeas corpus proceedings, I submit what was said and done between the Aments and McKee and Mrs. McKee is relevant.

HIS LORDSHIP: Oh, not parties. This issue is
20 between Mark T. McKee and Evelyn McKee. I am only trying the issue, not trying the habeas corpus.

MR. BROCK: I submit, with great respect, my lord, it is an issue arising out of the habeas corpus proceedings.

HIS LORDSHIP: It may. I do not think that lets the evidence in. She can say what she saw.

MR. BROCK: Q. Well, what did you see on this occasion when you visited at the home of Mrs. Ament, in April?
30 A. Well, I just don't know how to state it, what happened.

HIS LORDSHIP: You said he had a cold, and didn't seem to have any medicine. You can say whether you saw any medicine around, what was his condition, how dressed, was he warm or cold?
A. No, he was not dressed properly.

Q. Tell us how he was dressed?

A. I went to get medicine for him.

Q. You say he was not dressed properly. What was wrong with his clothing?
40 A. He was in just a little thin shirt, and the house was very drafty and cold. It was a very cold time of the year. He had on little bedroom slippers, and they were holey, and he had little socks, little socks, and no proper pants, and his legs were cold. Mr. Lohead called me and told me I couldn't see Terry for five days, that he was going out to the country. I asked Mr. Lohead

then to please not take him to the country, because he was ill.

MR. BROCK: That is, as agent for Mr. McKee.

MR. LOCHEAD: I am quite satisfied to have conversation with me go in.

MR. BROCK: Q. What did you do as the result of what you saw on this occasion? A. Well, I went to the drugstore and described the condition and got

10 medicine for him.

Q. What did you do with that medicine?

A. Well, I took it back to the house in about an hour after that.

Q. Did you see Terry? A. No, I didn't.

Mrs. Ament came to the door.

HIS LORDSHIP: Q. Did you give him the medicine?

A. No, she was very angry.

Q. Did she allow you to see Terry?

A. No, she didn't allow me to see him.

20 Q. Do you know if he was there?

A. I can't very well answer, because that is what she said.

MR. BROCK: Q. You didn't see Terry when you came back to the house; is that right? A. No, I didn't see Terry.

Q. Were you able to give Mrs. Ament the medicine?

A. She slammed the door in my face and told me she didn't need me to help take care of Terry.

30 Q. Who was present, when you brought the medicine there, with you? A. Miss Kirby.

Q. On another occasion when you visited Terry, did Mrs. Hiller call for you? A. Yes, she did.

Q. Why did Mrs. Hiller call for you?

A. She took me up in the car, because it was quite a distance there. I had promised Terry that he could meet Mrs. Hiller's little girls, who were of his age.

Q. Whose little girls were those?

A. Mrs. Hiller's, of Kitchener.

Q. What happened on that occasion? A. Well,

40 I just - she came up on the porch, and I asked her where the children were.

HIS LORDSHIP: Who came up on the porch?

A. Mrs. Hiller.

MR. BROCK: Q. Were you allowed to have Terry meet these children? A. Mrs. Ament came out and screeched at me.

HIS LORDSHIP: Q. Did she let you see Terry?

A. Yes, she let me see Terry, and I just asked that the two children be allowed to see Terry with me when I had my visit with him.

Q. Were they allowed to see him?

A. No, they were not.

MR. BROCK: Q. Was Mr. McKee there that day?

10 A. Yes, Mr. McKee was, and he again created a very great scene; he came lunging at me twice. And used the very same language he had used before, and slammed the door. And as I started out the door he slammed the door on my leg, and told me they were going to call the police. And Terry pleaded with him not to call the police on his mother.

Q. Was Terry allowed to see these two little children of his age? A. No, he was not.

HIS LORDSHIP: Q. What did Mr. McKee say?

20 A. Mr. McKee said: "You heard Mrs. Ament tell you to get out of this house. You get out, and you stay out."

Q. There is nothing abusive in that.

A. I didn't want to use his words. Do you want me to?

HIS LORDSHIP: I think you should.

MR. BROCK: Tell his lordship the exact words Mr. McKee said.

A. He said, "You are just a miserable woman, and you have come here to see this baby, and I don't want you in this house."

30 Q. What happened to you shortly afterwards?

A. Well, I was, when I went back, I was ill for three days in the Walper House.

Q. You were staying at the Walper House?

A. Yes, I was, and I was ill there for three days.

Q. What followed that? A. I had a nervous breakdown a few weeks after that.

Q. You had a nervous breakdown? A. Yes, I was taken to the hospital.

Q. How long were you in the hospital?

40 A. A few days, and I convalesced at the Hiller's residence.

HIS LORDSHIP: Q. How long were you there?

A. About a week, I believe.

Q. That is, at Mrs. Hiller's? A. Yes, I was.

MR. BROCK: Q. Where is Mrs. Hiller's residence?

A. On the Rockway Drive.

Q. In the City of Kitchener? A. Yes.

Q. Up until the time you went to the hospital, had you been allowed, to take Terry away from the Ament home? A. No.

Q. Now, did you see Terry at all at Hiller's?

A. Yes. At the Ament address, I don't know whether I was making that clear, but I never got to see Terry without a previous appointment with Mr. Lohead to go there to see him; I was not allowed to just go and see him.

Q. You were not allowed to just go and see him, you had to make an appointment?

A. Yes. Usually, I could stay about an hour.

Q. At Hiller's home on Rockway Drive, did you see Terry? A. Yes, I saw Terry; he was brought by the bailiff-detective, and usually the visitation lasted about an hour; on some occasions it has been a little longer than that.

Q. Who was this bailiff-detective?

A. Well, a man by the name of Moyer.

Q. He accompanied Terry? A. Yes, he came with him and stayed in the living-room, or if we went outside he went outside.

Q. Then, when you and Terry talked in the house, Moyer was there; and when you went outside to talk, he was there? A. If we went to the kitchen, I wouldn't exactly find him following me to the kitchen.

HIS LORDSHIP: I suppose the theory was he was there to see you didn't waltz him off some place?

A. I asked him why, the last time, and he said that he was there to watch Terry.

MR. BROCK: Q. How often did he bring Terry to see you, at Hiller's? A. Once a week, on Saturday, for an hour, usually.

Q. I understand that you had to leave for California in June, the latter part of June of this year?

A. That is right.

MR. BROCK: Mr. Lohead, have you a letter from me to Mr. Lohead, dated June 27, 1947?

HIS LORDSHIP: While we are waiting, will you give me the citations in the California Reports that cover these proceedings?

MR. BROCK: Pacific Reporter, Second Series, 174, page 18.

I offer as Exhibit No. 7 the letter dated June 27,

1947, from Brock, Weir & Trott, to Messrs. Sims, Bray, Schofield & Lohead.

MR. LOCHEAD: My lord, in view of the fact that the letter from my firm dated June 19th is referred to in that letter, I submit that letter should also go in.

HIS LORDSHIP: Have you the reply to that letter?

MR. BROCK: That will be revoked by the earlier letter of mine, which should go in, I submit.

10 HIS LORDSHIP: It can be part of the same exhibit, Exhibit No. 7.

Did you receive a reply to that letter?

MR. BROCK: No, I did not, my lord.

HIS LORDSHIP: Read to me the letter of June 19th, or let me see it.

---EXHIBIT NO. 7: Letter, dated June 19th, 1947, from Messrs. Sim, Bray, Schofield & Lohead to Messrs. Brock, Weir & Trott.
20 Letter, dated June 27th, 1947, from Messrs. Brock, Weir & Trott to Messrs. Sims, Bray, Schofield & Lohead.

MR. BROCK: Q. Now, Mrs. McKee, were you allowed to see Terry without the bailiff-detective, after June 27th, 1947, before you went to California?

30 MR. LOCHEAD: My lord, I do not like to interrupt my learned friend, but so there may be no misunderstanding, I believe my friend stated he received no reply to this letter of June 27th.

HIS LORDSHIP: Yes.

MR. LOCHEAD: I submit that the record should show that the matter was the subject of telephone conversation between my friend and myself.

MR. BROCK: Perhaps my friend will tell me what date the telephone conversation was.

HIS LORDSHIP: You continued the conversation over the telephone.

40 MR. BROCK: In any event, Mrs. McKee, were you allowed to see Terry after the writing of this letter, alone, and before you went to California?

A. No, Mr. Moyer again brought Terry on the Saturday, that you are speaking of.

Q. Mr. Moyer again brought Terry? A. Yes.

Q. Did he stay with Terry and you until Terry was

taken home again? A. Yes, he took him when he left.

Q. Now, during the time when Terry visited you at the home of Mr. and Mrs. Hiller, what was his condition? A. Terry arrived in a very bad condition, very shabby clothes, and very dirty.

Q. Very shabby clothes, and very dirty?

A. Yes.

10 Q. Before we go on. How old a woman is Mrs. Ament?

HIS LORDSHIP: How can this witness say that?

MR. BROCK: Q. From your judgment, how old do you think she is? A. Well, I know how old she is from her brother, - she is seventy.

Q. We will prove that later.

MR. LOCHEAD: My friend will not have to prove it, my lord; Mrs. Ament will be called.

20 MR. BROCK: Q. You said Terry came to Mrs. Hiller's in a dirty condition, and with shabby clothes. What did you do about the shabby clothes?

A. I have always sewed for the children; I made his clothes for him, and I bathed him, and cut his hair, and put clean clothes on him; I put the new clothes on him I had made, and sent him home. The backs of his feet were so dirty that even a little scouring brush wouldn't take the stuff off them. I asked if he had gone barefoot, and he said--

Q. No. Anything else about his cleanliness?

30 A. His head was very dirty, and I washed his hair.

Q. You made clothes for him as well? A. Yes, I always made his clothes.

Q. When did you return to Kitchener from California? A. Well, about the 2nd, I think, of September.

Q. About the 2nd of September this year?

A. Yes.

Q. Have you seen Terry since you returned?

40 A. Yes, he has been brought, I think it may be twice since then, on Sunday, and the same bailiff-detective has brought him, - Mr. Moyer.

Q. On the first occasion he visited you at Hiller's, since you returned from California, how long was he allowed to stay there?

MR. LOCHEAD: How long did he stay?

A. An hour and a half.

MR. BROCK: Q. You told us about-- A. I

believe it was about an hour and a half.

Q. You had not seen Terry since that Saturday in June? A. No, he was brought at 3.30, I believe, and I think he left about a quarter of five, maybe, I don't just know exactly.

Q. Who brought him? A. Mr. Moyer brought him.

Q. Where did Mr. Moyer stay on that occasion?

10 A. He stayed in the house, and outside, both.

HIS LORDSHIP: Q. He stayed around, as it were?

A. Yes.

MR. BROCK: Q. Now, then, has Terry got a dog?

A. Yes, he has a Collie.

Q. Where is that dog now? A. I am keeping it for him, because it had been abandoned and left at the place in Michigan.

20 Q. Repeat that. A. This dog had been abandoned, and it was just going hungry up there, so I brought him over in the car with us.

Q. Where did you find him?

A. Just running about at one of the neighbour's, that was leaving. That is a resort, and everybody leaves there at the end of the summer, and this girl was leaving, and she told me there would be no one--

Q. Not what she told you.

HIS LORDSHIP: You found the dog running loose, and you brought him here? A. Yes, I asked the care-

30 taker if it had been arranged that the dog be taken care of.

Q. In any event, you picked him up and brought him here? A. Yes.

MR. BROCK: Q. Where is this resort?

A. Austin, Michigan, - it is called "Broken Rocks."

HIS LORDSHIP: Q. Is that in northern Michigan?

A. Up in the thumb of Michigan.

MR. BROCK: Q. On the last occasion when you saw Terry at the Hiller's place, who brought him?

A. Mr. Moyer.

40 Q. When did Mr. Moyer leave?

A. Well, Terry stayed longer this last time; he came in the afternoon-- I believe it was about three o'clock, or something like that, and he stayed and had dinner with the children.

Q. With whose children? A. With the Stevens' little boy, and Mrs. Hiller's two little girls.

Q. Where was Moyer? A. Well, Mrs. Hiller asked him to step outside, because she said she didn't think he had any right to stay in the house when we had company. And he stood just outside the door.

Q. You have told us that you were living on Dickens Street, in Sherman Oaks, California; is that right? A. Yes.

Q. How many rooms were in this house?

10 A. It is a five-room place, with two bedrooms.

Q. Is there a bath in the house?

A. Oh, yes, it is a new place, - we were the first occupants.

Q. What kind of district? A. It is a very nice district, it is a new district, - Sherman Oaks is a new subdivision.

Q. Who lives there with you, Mrs. McKee?

A. My son Jerry, and Mr. McKee's daughter Cynthia.

20 Q. That is, the four of you are living there?

A. Yes

Q. Is there a school in the neighbourhood?

A. Yes, there is a very nice school. It is on the same side of the street, three blocks from where we live, on Dickens Street.

Q. I have some photographs. Of what are these a photograph? A. That is of the school, and play-

ground.

MR. LOCHEAD: Who took them?

30 HIS LORDSHIP: I suppose she can say what they are.

A. They are written on here.

HIS LORDSHIP: Q. What are they pictures of?

A. Of the school and playground, and the name is on it, "Sherman Oaks."

MR. BROCK: You have said that the school is three blocks away from your home on Dickens Street?

A. Yes.

40 ---EXHIBIT NO. 8: 4 photographs of the Sherman Oaks school.

Q. Will you tell his lordship about this house, your living accomodation which you have, in California?

A. Well, I don't know whether you are familiar with the same type we have, or not, but it is like a duplex, and I am on the first floor, on

the front side of the place, and it has a front and back yard, just as you do with a house. There are three other units, and one section is an L-shape building, and the playgrounds and grounds are in the back. We have two entrances, -a front and back entrance. And at the front it is all gardens, and so on. There are no children playing on the street.

10 Q. In the front, it is grounds, and at the back is the playground for the children? A. Yes.

Q. You live in one of the duplexes?

A. Yes, that is right. It is rather small, it is not one of those large places, it has four rooms on one side; they are like homes; and four rooms on the other side. They are completely divided in separate units.

20 Q. What is the climate in this district of California where you live? A. Well, I think probably everybody knows that you don't have freezing weather in Southern California; it is quite pleasant weather.

HIS LORDSHIP: Q. What part of California is this in? Is Sherman Oaks a suburb of the city?

A. Yes, of Los Angeles. It is like Pasadena. It is in Los Angeles County.

MR. BROCK: Q. Is this a new or an old home?

A. No, this is new, it has just been built, and I am the first occupant in it. My son is able to get it because he is a G.I.

30 Q. You have, as you stated before, \$300 a month from Mr. McKee under the property settlement agreement?

A. Yes.

Q. That is right, isn't it? A. Yes, that is correct.

Q. And \$125; is that right?

A. Yes, that is correct. For Terry.

Q. Under the property settlement agreement?

A. Yes, that is correct.

40 Q. For the support and maintenance of Terry, a month? A. Yes.

Q. If Terry is given to you by this Court, what do you intend to do? A. Well, I intend to take him to this home in California.

Q. You intend to take him to this home in California? A. Yes.

Q. Do you intend to work? A. No, I intend

to continue to keep house and take care of my children, and look after Terry.

Q. How old is Terry? A. Terry is seven,- he is just seven.

Q. Do you like housekeeping and all it entails?

A. Yes, I love housekeeping, and I love taking care of the children.

Q. I understand you have said you are able to make
10 clothes, and things of that nature?

A. Well, I have always done that. As I say, I love housekeeping, and all that goes with the responsibility of keeping a home.

Q. Who makes your clothes? A. I make all my own clothes, and my own hats.

Q. How did you furnish this home in California?

A. I did most of the work on it; it is a new place, and I upholstered my own furniture for it.

Q. This summer? A. Yes, when I went back
20 there.

Q. What did you do? A. I upholstered the furniture. It was getting old. And I made my curtains.

HIS LORDSHIP: Q. Is Jerry your child?

A. Yes, he is.

Q. And he is also Mr. McKee's child? A. No, he is not.

Q. He is your child? A. He is my child.

Q. Cynthia is Mr. McKee's daughter by another marriage? A. That is correct.

30 MR. BROCK: You told us you have upholstered your furniture. What else did you do for the home?

A. Well, I did all the little painting, and everything in my home; I always have. And cooking.

Q. You mentioned about curtains?

A. I do all that sort of thing.

Q. What is your regard for Terry?

A. I love him with all my heart. I want him, to take care of him.

40 Q. Are there any medical doctors in the neighbourhood of your home in Sherman Oaks?

A. There is one right in the same block where we are.

Q. Thank you.

HIS LORDSHIP: You can go on until 12.30.

---CROSS-EXAMINED BY MR. LOCHEAD:

Q. Now, then, Mrs. McKee, I believe you told us that you left the Azusa house shortly after the property settlement agreement, in September, 1941; is that correct? A. That is correct.

Q. Now, will you please tell me the addresses at which you have lived since then, with the dates when you lived there? A. I don't quite understand you, Mr. Lothead.

Q. I want to know the addresses of the places where you have lived since September, 1941. At least I should like to have an approximate idea of how long you have been there.

MR. BROCK: My lord, my friend might ask the question with respect to while Terry was with her. We are only concerned with Terry.

HIS LORDSHIP: I think he is entitled to ask the question.

MR. LOCHEAD: Q. First, where did you live when you left the Azusa house? A. On Prospect Avenue, - I believe it is Prospect Circle, in Pasadena.

Q. Is that September, 1941?

A. September or October - I believe September.

Q. How long did you stay there?

A. About four months. It was a rented house.

Q. That would take us up to early in 1942.

HIS LORDSHIP: Q. What did you do with the house in Azusa? It was your own, was it not?

A. Yes, I sold it at auction. It was a large house.

MR. LOCHEAD: Q. That would take us up to early in 1942, would it? A. Yes.

Q. Where did you go from there?

A. To El Molino Avenue, in Pasadena.

Q. Was that a rented house? A. Yes.

Q. That is also at Pasadena?

A. Yes, it is.

Q. And that was a rented house? A. Yes, it was.

Q. How long did you stay there?

A. I believe about six months.

Q. To perhaps some time in the summer of 1942?

A. Yes.

Q. Where did you go from there? .

A. I moved to a smaller place. It was after the trial, so that would be in - it would be about Christmas time, I suppose.

Q. Were you in the El Molino house until after the trial? A. Yes, until after the trial.

Q. So, at Christmas time, 1942, you moved to where?

A. On Detroit.

Q. Detroit, Michigan? A. No, that is the
10 street.

Q. Is that in Los Angeles? A. Yes, it is.

Q. What did you have there, - a rented house?

A. It was a duplex.

Q. How long did you stay there?

A. Well, I kept that place, I guess, about two years in my name. I was not there all that time, but I kept it about two years.

Q. Is that the place you had when you were in Milwaukee? A. Yes.

20 Q. I believe you were in Milwaukee early in 1944; is that correct? A. Yes.

Q. Then, I believe in the summer of 1944, you went from Milwaukee to Michigan? A. Just a visit with Terry and Mr. McKee's daughter Cynthia.

Q. Cynthia had been to Milwaukee with you?

A. Yes.

Q. How long were you at Milwaukee?

A. Oh, I was there about a year.

30 Q. From early in 1943 until early in 1944,- about a year? A. Yes, it would amount to about a year.

Q. Did you keep this duplex in California, on Detroit Street, all that time? A. Yes, I sublet that.

Q. To whom? A. To people by the name of Hopkins.

Q. You returned from Michigan to California when?

A. Pardon me?

40 Q. On what date, approximately did you go from Michigan to California in the summer of 1944?

A. In August, I believe.

Q. By the way, how long were you in Michigan during that summer? A. I really don't know. I went over there and stayed shortly after I got Terry, and stayed with these people, the Clarks.

Q. You were there a matter of a few weeks?

A. Yes.

Q. Did you still have this duplex on Detroit Street when you went back to California in August, 1944?

A. Well, no, I leased it to some other persons.

Q. Where did you go to live then?

A. I went to the Lido Apartments.

Q. I believe that is an apartment hotel?

10 A. Yes, it is.

Q. You went there with Terry and Cynthia?

A. Yes.

Q. Did you have your own apartment, or were you living with someone else? A. No, we had our own apartment.

Q. How long did you stay at the Lido?

A. Well, if I remember correctly, I was there until a detective made trouble there about that five-day period; so the manager told me he would have to ask me to find some place else, because it was over the OTA, because there was a ruling that you could only stay there five days unless you were a citizen, and I had been there about three weeks.

Q. That would be up until early in September, 1944?

A. No, it wouldn't be September. Yes, it would.

Q. Then, where did you go from the Lido?

A. It was five days from that date when I checked in at the Hollywood-Franklin.

30 Q. You lived there for five days? A. Yes.

Q. That is also a hotel?

A. It is an apartment hotel. It was a question of taking what you could get; it was very difficult.

Q. It is just a local hotel in Hollywood?

A. Yes, near the Lido.

Q. You stayed there five days? A. Yes, there had been an order placed to keep me in Los Angeles with the baby.

Q. That was an order of the Milwaukee Court?

40 A. No, it was an order of Mr. McKee, - instigated by Mr. McKee.

Q. That was an order that had been made by the Milwaukee Court? A. No, it was an order made by the California Court.

Q. Where did you go from the Hollywood-Franklin hotel? A. I came back to visit with my friend

Mrs. Stevens.

Q. Where? A. In San Mateo, out of San Francisco.

Q. Did you have Terry then?

A. No, I had surrendered Terry to Mr. McKee.

Q. Mr. McKee got Terry, with one of the officials?

A. Yes.

Q. Then you visited with Mrs. Stevens, near
10 San Francisco, for how long? A. A few weeks.

Q. Then, where did you go? A. I went back to Milwaukee.

Q. Did Cynthia go back to Milwaukee with you?

A. Yes, she did.

Q. How long did you stay at Milwaukee?

A. Until after Christmas.

Q. Of 1944? A. That would be 1945.

Q. I think you skipped a year. We were talking
about the summer of 1944, and that was in the winter.

20 A. You asked when I came back, - and I came back in 1945, after the New Year.

Q. You stayed in Milwaukee until December, 1945?

A. No, I went back there in 1944.

HIS LORDSHIP: Until the summer of 1944, you were in Milwaukee, and went back to California in the fall of 1944, in September; you then proceeded to find proper shelter, and you stayed around Los Angeles, with Terry, until, I presume, the first of October, when Mr. McKee took him again?

30 Q. Is that when you went to visit your friends near San Francisco? A. Yes. Then I went on to Wisconsin, and that would be 1945 when we lived there.

Q. You stayed for a whole year in Wisconsin, did you? A. No, that wouldn't be a whole year; it would be four or five months.

MR. LOCHEAD: I still think there is some confusion. As I understand it, we have Mr. McKee getting Terry in California, which would be the first of October, 1944, or thereabouts?

40 Q. You went to visit Mrs. Stevens near San Francisco; is that correct? A. Yes, that is right.

Q. Approximately how long did you stay with Mrs. Stevens? A. I don't know; a month or so.

HIS LORDSHIP: Q. Were you there until Christmas?

A. No, I came back to Milwaukee, and must have been

there about three months, before I returned, which
mades it early 1945.

Q. Early in 1945, where did you go?

A. I came back to Los Angeles.

MR. LOCHEAD: Q. Before we leave Milwaukee -
was Cynthia with you at that time in Milwaukee?

A. Yes, she was.

Q. Where did you live there? I mean, the type of
10 accommodation?

A. An apartment, which had a kitchen and cooking
facilities.

Q. Then, did you have the same housekeeping
apartment all the time you were in Milwaukee?

A. No, not all the time.

Q. How many times did you change addresses?

A. I stayed in the same building.

Q. All this time, by the way, until you left
Milwaukee, early in 1945, did you keep your lease on
20 this duplex on Detroit Street? A. I didn't
have a lease, but they let me work out some kind of
lease with my attorney.

Q. You left Milwaukee early in 1945 and where
did you go? A. I came to Los Angeles.

Q. Where did you live then?

A. Well, I stayed with the Hopkins, who had my
apartment, when I first arrived there.

Q. And did Cynthia stay with you?

A. Yes, she did.

30 Q. Was Jerry still in the army? A. Yes, he
was.

Q. How long did you stay with the Hopkins?

A. Oh, I think about a week; what would be con-
sidered a reasonable visit.

Q. Then, where did you go from there?

A. I went to a dude ranch, - McCarthy's dude ranch,
with Cynthia.

Q. I believe that is about sixty miles from Los
Angeles? A. I don't know the exact mileage;
40 it is somewhere there.

Q. How long did you stay there?

A. It was, I believe, about ten days.

Q. With Cynthia? A. Yes.

Q. Where did you go from there? A. When we
came back again, we had great trouble again getting
a place to stay, except a hotel room, and we stayed

at the Carleton.

Q. Is that a hotel or apartment?

A. That is a hotel.

Q. How long did you stay there?

A. I really don't know the exact dates.

Q. Approximately? A. Just a matter of

days.

Q. Where did you go from the Carleton?

10 A. We found a hotel that was not downtown; I can't remember the name.

Q. Did you stay at hotels for some time?

A. Yes, until I was able to locate a place.

Q. And Cynthia stayed with you at various hotels until you got some kind of permanent location?

A. It was about four weeks, and then I found an apartment at the Arcady.

Q. Is that an apartment, or an apartment hotel?

A. It is an apartment hotel.

20 Q. That would be probably early in February or in March, 1945? A. Yes.

Q. How large was that place? A. A three-room place.

Q. You and Cynthia lived there? A. Yes.

Q. How long did you stay in this apartment?

A. Very shortly; it was very expensive. We went to stay then with Mrs. Stevens.

Q. Still near San Francisco? A. Yes. She has a country place there.

30 Q. How long did you stay with Mrs. Stevens then?

A. Well, I stayed with her until the time of the trial that came up there. I believe it was in June, was it not, 1945?

Q. The time of the trial that gave rise to this order? A. Yes.

Q. That was early in June, I believe, 1945?

A. Yes.

Q. You stayed with Mrs. Stevens until then?

A. Yes.

40 Q. Where did you go from Mrs. Stevens' home?

A. I came down for the trial and stayed at what is called the Elk's Club.

Q. Did Cynthia come with you?

A. She didn't come down at first, but came down later, two or three days after I was there.

Q. Was she with you at the trial?

A. No, not then; she came down a few days later.

Q. Was she with you when the trial was going on?

A. No, she was not.

Q. She was still at Mrs. Stevens'? A. Yes,
she was.

Q. How long did you stay at this place?

A. Just until I was able to find an apartment,
which amounted to two or three weeks, I suppose.

10 Q. Probably towards the end of June?

A. No, I found a place just two or three days
after I got the baby.

Q. You got the baby on the first of July, as usual?

A. Yes.

Q. Where did you keep him for those few days?

A. At the Elk Club. There was a park across the
street, and he played in the park.

Q. Is the Elk's Club a hotel?

A. Yes, a hotel.

20 Q. You got a place shortly after that?

A. Yes, a friend of mine gave me her two-bedroom
apartment. It was really a duplex, and two yards.

Q. Something like the one you are living in now?

A. Yes, it is not just like an apartment.

Q. It was a duplex, rather than an apartment
hotel? A. What do you mean?

Q. Was it a duplex, or an apartment hotel?

A. This place where I took the baby was a duplex
and had gardens and all.

30 Q. How many rooms did it have? A. Five.
There were two bedrooms.

Q. What were the other three rooms?

A. Living-room, dining-room, kitchen and bath.

Q. How long did you have that place?

A. I had that place about--almost two years,
until I came to Kitchener here.

Q. In other words, from early in July, 1945, until
February, 1947? A. Yes, and a couple of

months after I came here, my daughter stayed then.

40 Q. Who lived there during the summer of 1945 in
this duplex? A. Cynthia and Terry, and myself.

Q. Was Jerry still in the army?

A. Yes, he was.

Q. By the way, when did Jerry get out of the army?

A. That following winter, so that would have been-
he got out in 1946, I guess.

Q. In 1946? A. Yes.

Q. Do you remember approximately the month?

A. I know it was the winter time. I believe it was after Christmas; that would be 1946.

Q. Early 1946? A. Yes.

MR. BROCK: Your lordship, I would just like to interrupt here for a second. I perhaps should do this by way of reply, or re-examination, but would you mind asking the witness, if Jerry was in the army?

10 MR. LOCHEAD: She has already said that he was. I asked her that two or three times, and she said he was.

THE WITNESS: He was in the C. B. overseas.

HIS LORDSHIP: He was in the services?

A. Yes.

MR. LOCHEAD: We will use the word "services", then. You were still living in this apartment during the summer of 1946, Mrs. McKee? A. Yes.

20 Q. Is that where you had Terry during the three months in 1946? A. Yes, both summers I had him there.

Q. Who lived with you in the apartment during the summer of 1946? A. Well, my son Jerry, Cynthia, and Terry.

Q. The four of you were in that apartment?

A. Yes.

Q. Anybody else living there during 1946?

A. No.

30 Q. Then, I am not certain that I understood you properly; I believe I understood you to say that you kept the apartment for about two months after you came to Kitchener? A. My daughter Cynthia stayed on in the apartment.

Q. Did Jerry stay there, too? A. Yes, he was there part of the time.

Q. He was there during part of the time you were in Kitchener? A. Yes.

Q. Was Cynthia there all the time?

40 A. No, just part of the time; she went back and forth.

Q. At any rate, you gave it up probably towards the end of April? A. I believe about the end, I don't know the exact date.

Q. Then you had this apartment you have told Mr. Brock about? A. Yes.

Q. Did you have a lease of the apartment?

A. Yes, to the extent you pay on the first of the month, which means you have to give notice and it works like a lease.

Q. It works like a lease, for what period of time?

A. They could ask me to move at the end of six months.

Q. They can give you six months' notice at any time?

10 A. Yes.

Q. Cynthia and Jerry are living with you now?

A. Yes.

Q. And are likely to continue living with you?

A. Well, Jerry is. I don't know about Cynthia.

Q. How many rooms in this apartment are there? I believe you said five? A. Yes.

Q. Are they the same type of rooms as in the other apartment; that is, two bedrooms, living-room, kitchen and dining-room? A. Yes, a very lovely place.

20 Q. What size are the rooms - large, or medium, or small? A. Yes, it is very comfortable. There are about eight closets.

Q. How large are the two bedrooms?

A. They have full sets of furniture in them; about five pieces, and they are commodious.

HIS LORDSHIP: This might be a good point at which to stop.

We will adjourn until 2.45 p.m.

---Court adjourned at 12.28 p.m., until 2.45 p.m.

30

AFTERNOON SESSION

---On resuming at 3.19 p.m.

---MRS. EVELYN MCKEE resumes the stand.

---CROSS-EXAMINATION CONTINUED BY MR. LOCHEAD:

40

Q. Now, Mrs. McKee, you recall that when we adjourned this morning we were discussing the set-up of the duplex you presently have in California. Just one further question I wanted to ask you about that. I believe you said that the both bedrooms were fully

furnished. That is correct? A. Yes.

Q. What beds are in them? Double beds, or twin beds? A. Twin beds.

Q. Twin beds in each room? A. Yes.

Q. Now, passing to another aspect, Mrs. McKee; you recall at some time in January of this year you instituted proceedings in California for the recovery of a judgment against Mr. McKee, to provide for attorney's fees, and expenses in connection with continuing your proceedings? Is that correct?

A. That is correct.

MR. BROCK: My lord, I fail to see how this concerns the welfare of the child.

HIS LORDSHIP: I do too, at the moment.

MR. LOCHEAD: I was simply introducing the subject to the witness; I intend to pass to certain statements given in evidence at those proceedings.

HIS LORDSHIP: Have you resources of your own, apart from the income you receive under the agreement?

THE WITNESS: No, I have nothing.

MR. LOCHEAD: I believe that the hearing on that particular application--

MR. BROCK: My lord, I object to the admission of this evidence.

HIS LORDSHIP: You better wait until we see what the question is. I don't know what the question is yet.

MR. LOCHEAD: Perhaps I can avoid further interruption of this cross-examination by pointing out that I intend to ask this witness certain questions as to the evidence she gave at the time in the depositions which are an exhibit to the Commission taken in California in this proceeding, my lord. It is sworn to by the stenographer.

MR. BROCK: My lord, I still fail to see how that well affect the welfare of the child.

HIS LORDSHIP: I don't know. If evidence was taken in these proceedings in California I think Mr. Lohead is entitled to cross-examine on that evidence, surely.

MR. LOCHEAD: I believe the proceedings occurred in court on February 25th, 1947; is that correct?

A. About that time, yes.

Q. You were present and gave evidence at that time?

A. Yes.

Q. I propose to read certain questions and answers to you from these proceedings, Mrs. McKee, and I am reading from page 10, at line 14. The general line of

the questioning at that time was as to Mr. McKee's assets, and his activities.

HIS LORDSHIP: How do you identify the part of the volume from which you are reading?

MR. LOCHEAD: It is Exhibit 2, of the Commission. At page 10, lines 14 to 24:

"Q. What in regard to Mr. McKee's activities in Washington did he ever tell you?

10 "A. Lobbied for companies, corporations.

"Q. Did he lobby for any other company?

"A. Yes, for Pan-American, Aviation Corporation and American Airlines.

"Q. Did he ever tell you how he was paid, whether in cash or by check, for those lobbying

activities? A. Well, mostly he got that in cash for this lobbying.

"Q. Did he tell you that on more than one occasion? A. Yes. I know, because I

20 "have seen the money."

Were you asked those questions, and did you make those answers at that time? A. Yes, I did.

Q. Then, I propose to read further from those proceedings, Mrs. McKee, commencing on page 13, line 9:

"THE COURT: Yes. Do you, Mrs. McKee, have any knowledge of your own as to his financial worth, apart from his income?

30 "MRS. MCKEE: Yes, he has farms -- Mr. Mayo hasn't gone into that very thoroughly with me yet, but he has farms, and his stock in Sand Products, he owns quite a bit of it.

"THE COURT: What would you say his net worth is, as you have knowledge of it?

"MRS. MCKEE: His net worth -- I would say \$100,000.00.

"THE COURT: \$100,000.00 -- that 24-room house is probably worth that. I am talking about his total net worth now.

40 "MRS. MCKEE: One half million, I guess. His Sand Products Company is a million dollar corporation, and he and his brother have that, and he has a trust fund --

"MR. MAYO: He has an insurance trust fund of \$160,000.00, has he not?

"MRS. MCKEE: Yes. I thought you meant how much he could convert into cash.

"THE COURT: No, I meant by that what the value of all of his properties in full, everything he has, would be worth. If he would make a report to somebody as to his worth, say to Dun & Bradstreet, that would probably show his net worth.

"MRS. McKEE: He said he was a millionaire, and that's about as far as I can go.

10 "THE COURT: All right. Is that all?

"MR. MAYO: That is all."

Were you asked those questions and did you make those answers? A. I was asked those questions and I made those answers.

Q. Now, Mrs. McKee, in connection with those answers at that time with regard to Mr. McKee's financial worth, were you giving those answers from what was your own knowledge, or from what had been told you?

20 A. I think I made it clear that I was basing it--

MR. BROCK: My lord, I would ask my friend to indicate which questions he meant and read it and then ask her if that answer was given of her own knowledge. There are a number of questions and answers there, and some are supplied by the Court itself.

HIS LORDSHIP: I think Mrs. McKee is quite an intelligent person. Do not attempt to answer something you are not quite sure of; if you are not sure of what you are being asked, do not attempt to answer.

30 THE WITNESS: They do sound ambiguous, two or three of them.

MR. LOCHEAD: I am quite willing to go into them individually, if you wish; I thought we could save time by referring to them generally. The question was: What was your husband worth? One of your answers was, you said that he was a millionaire, and that he is worth one and a half million.

Were those answers given, as far as you were concerned, from your knowledge, or from what you had heard?

40 A. Well, from living with him and managing his family for him, I base it on that, and on the moneys I saw him have.

Q. You will recall that you told Mr. Brock this morning that you arrived in Kitchener, I believe it was toward the end of February this year?

A. Yes.

Q. Do you recall that shortly after that you had a charge of abduction laid against Mr. McKee?

A. What are you asking me? Did I do that?

Q. Yes, did you do that? A. Yes, I did

Q. Do you remember the date on which that charge was laid? A. Well, no; I think it was laid perhaps some time early in March.

Q. My recollection is that it was March the 17th.

10 Would you quarrel with that? A. Well, I know it was in March, yes.

Q. As a result of that charge having been laid against Mr. McKee, the matter came up in the local Police Court several times; is not that correct?

A. I wouldn't know.

Q. You don't know anything about it? A. No.

Q. Were you ever present in the Police Court yourself? A. The time we swore out--I believe I went there.

20 Q. When you signed what is called "Information"?

A. Yes.

Q. You were never in the Police Court on any occasion when the charge appeared before the magistrate; is that correct? A. That is correct.

Q. Do you know whether or not McKee was ever in court on any of those occasions?

A. I was not there; I wouldn't know.

Q. What eventually happened to that charge?

MR. BROCK: My lord,--

30 HIS LORDSHIP: Mr. Brock, that is quite proper to ask, surely. It relates to the relations.

MR. LOCHEAD: What eventually happened to that charge, Mrs. McKee? A. We dropped the charge.

Q. Do you remember when that was done?

A. No, I don't remember the date.

Q. A matter of some weeks after the charge had been laid; is not that correct? A. Yes.

40 Q. I believe it is correct to say that the notice of motion for the writ of habeas corpus was issued just two days after the abduction charge was laid; is not that correct? A. Well, I don't know the amount of days, but it was after that action.

Q. A very short time? A. Yes.

MR. LOCHEAD: Now, my lord, I know that your lordship wishes to adjourn in this case shortly. I am quite willing to proceed, but I am afraid that the next

aspect will take quite some time, and I think perhaps it is not fair that the witness should start and leave it suspended.

HIS LORDSHIP: I do not either.

Now, Mr. Brock, about next week. I will let Mr. Gillies know on Monday when I can appoint a time. As I understand, you are both prepared to go on next Wednesday, or thereafter; is that correct?

10 MR. LOCHEAD: Yes, my lord.

MR. BROCK: Yes, my lord.

HIS LORDSHIP: Is Wednesday all right for you both?

MR. LOCHEAD: Wednesday morning is quite satisfactory to me, my lord.

HIS LORDSHIP: I will try to let Mr. Gillies know on Monday morning, so you might enquire from him.

I will adjourn the case, subject to being resumed next week, and I will let you know as soon as we can.

20

---Court adjourned this case until Wednesday,
September 24th, 1947, to be continued in Toronto.

CERTIFIED CORRECT as to pages 1 to
65, inclusive.

30



Official Reporter, S.C.O.

---The Court resumed at 10.00 o'clock a.m. on
September 24, 1947.

40 EVELYN McKEE, still under oath, resumed
the stand

CROSS-EXAMINATION BY MR. LOCHEAD (Continued):

Q. Now, Mrs. McKee, you will recall last week you testified among other things that you had separated

from Mr. McKee in December of 1940, I believe you said that?

A. Yes.

Q. At that time you were living in the house in Azusa?

A. Yes.

Q. You recollect that you are under oath, you were sworn originally and it still is valid?

A. Yes.

10 Q. Is it not true from the time of your marriage to Mr. McKee in 1933, at least until the time of the separation, you always had servants in the house to assist you in running the house?

A. Yes, most of the time.

Q. As a matter of fact I believe after the separation, at least say until the period of the trial late in 1942 you had servants in the house to assist you in running the house?

A. Yes.

20 Q. Now, again with regard to the period of time prior to the separation is it not true that you on very many occasions were on extended trips either with or without your then husband?

A. Yes.

Q. Would you agree that there were hundreds of trips during that time from 1933 to 1940?

A. From the time we married.

Q. Yes, from the time you were married until the time you separated?

A. Well, Mr. McKee is a travelling man.

30 Q. You were away a great many times during that period?

A. Yes.

Q. And about how long would those absences on your part from him be; can you give me a maximum?

A. Never very long; there were times when I went to take care of Mr. McKee when he was ill.

Q. Where was that? A. In Chicago.

Q. Would you agree on several occasions you were absent from the home as much as six weeks?

A. No.

40 Q. Were you ever absent from home that long?

A. No.

Q. By the way where, generally, did these trips take you? A. Well, Chicago or New York.

Q. Milwaukee frequently? A. Not very frequently.

Q. Occasionally at least? A. Really, I

don't remember going back more than two or three times.

Q. Michigan? A. Yes, a few times.

Q. Bermuda? A. Yes, for about four or five days.

Q. Florida? A. Yes, about the second year of my marriage I believe I was there for about two weeks.

10 Q. As a matter of fact I believe before you moved to California you went down south frequently?

A. Not frequently, twice.

Q. Not more than twice? A. I don't remember more than twice.

Q. Nassau? A. Yes, like for a couple of days I would fly over.

Q. Havana? A. I never stayed there but just over night.

Q. Honolulu? A. Well, yes, that trip when we went to the Orient I took the two girls with me.

20 Q. Which two girls? A. Joanne and Cynthia.

Q. That was the trip to Honolulu?

A. Yes.

Q. You were in Hong Kong? A. Yes, we just made a flying trip about two or three days in the whole thing.

Q. You referred to this time when you were in Chicago when Mr. McKee was ill. I don't think you told me how long you were absent?

30 A. I guess the best I can remember I think was about three or four weeks.

Q. Aside from that trip what would you say was the maximum of your absence from home?

A. I would say a week--within a day's flying time always.

Q. Not more than a week? A. That is right.

40 Q. Now, my lord, I may have occasion during this cross-examination to refer rather frequently to certain depositions that were taken from this witness in Milwaukee in a prior action and I am mentioning that now to anticipate any objection that may be made by my learned friend. The situation is I have two copies of the depositions here, one for your lordship and one to be used, and I may say the reporter who took those depositions is under subpoena to appear if necessary.

MR. BROCK: My position in that matter is that these matters have been raised at previous hearings and are

now res judicata.

HIS LORDSHIP: He is not raising any issues as I understand it. He proposes to cross-examine her on certain answers she gave on previous hearings that may throw some light on her general conduct. I do not know what it is about yet myself but we are not dealing with issues which are res judicata.

10 MR. BROCK: I say, your lordship, that the whole matter of the Milwaukee proceedings were adjudicated upon at the hearing held in California in June of 1945.

HIS LORDSHIP: What has that to do with cross-examination? If I understand Mr. Lohead correctly he is proposing to cross-examine Mrs. McKee and he is going to ask her if she made certain answers on another occasion.

MR. BROCK: The only thing, your lordship, is that if he is allowed to go into that fully we are going to be here for a month.

20 HIS LORDSHIP: I can't help that, I cannot shape counsel's case. I think Mr. Lohead's position here is that if they are matters directly in issue here then he may be able to prove them subsequently. If they are collateral matters he is bound by Mrs. McKee's answers.

MR. BROCK: My friend should confine himself to cross-examination on things in issue.

30 HIS LORDSHIP: I do not think I can restrict his cross-examination. I do not know the purpose of the cross-examination we are listening to at the moment; it does not tie into anything.

MR. BROCK: I was going to suggest that myself, your lordship.

HIS LORDSHIP: I do not think I should confine counsel too rigidly in cross-examination.

MR. BROCK: My position is this: the Milwaukee proceedings are not admissible except for purposes of tying in something.

40 HIS LORDSHIP: Oh, no, it may be relevant to credibility. I don't know about that until the questions are put.

MR. BROCK: I submit, your lordship, that my friend should first raise the issue before he cross-examines on it and introduces any evidence taken on the Milwaukee proceedings. I understand your lordship has read the report of the case in the California courts.

HIS LORDSHIP: That does not throw much light on the matter. I read the judgment of the Court of Appeal which deals largely with the question of law apart from the dissenting judgment.

MR. BROCK: That is true, your lordship.

HIS LORDSHIP: I have not read Exhibit 2; I will read it but I have not read it yet.

MR. BROCK: Your lordship will recall I read it at
10 the opening of Court.

HIS LORDSHIP: You read me a formal judgment but are the reasons of the trial judge reported anywhere?

MR. LOCHEAD: My lord, I do not believe written reasons were given in that instance. I believe there was a verbal adjudication at the close of the trial but I do not think formal reasons were given.

HIS LORDSHIP: It was not clear from the report and I did not have time to check back.

MR. BROCK: My lord, if I may say, our position is
20 this, before counsel for McKee is able to cross-examine Mrs. McKee upon any of the depositions taken at the Milwaukee proceedings or any proceedings which were held prior to the hearing of the motion in June of 1945 he should first raise the same issue on matters which have arisen since that time.

HIS LORDSHIP: I do not understand that. As I understand it the issue that I have to determine is the suitability of one or other of these parents to look after this child and regarding the child's best
30 interest I think that the fundamental principle I have to proceed on is that suitability and I do not think any evidence that tends to throw some light on that either way is evidence which I cannot receive.

MR. BROCK: But, my lord, evidence going back to 1942 is far too remote.

HIS LORDSHIP: I do not think so at all.

MR. BROCK: Our position is this in any event, your lordship, that my friend first should raise some issue arising after June 1945 before he is permitted to go
40 into it.

HIS LORDSHIP: Frankly I do not understand your argument.

MR. BROCK: Well, some matter that has arisen since June 1945.

HIS LORDSHIP: I do not think you can just cut it off at some point. I think I have to investigate both

of these persons and their general conduct and capacity for caring for this boy and in doing so I have to pay great respect to the judgment of the Court of Appeal in California which is the only judgment I have, although I am not bound by it.

MR. BROCK: I do submit this, your lordship, and that is if this Court is going to hear what has been tried and adjudicated upon in California through all
10 the years --

HIS LORDSHIP: Well, I think what I had better do is let Mr. Lohead go on and if you object to something I will try to decide.

MR. LOCHEAD: My lord, it may be of some assistance to your lordship and my learned friend to make my submissions now as to the relevancy of the evidence I propose to adduce in the Milwaukee action, and might I say, subject to your lordship's direction, I intend to go into it rather thoroughly in cross-examination.
20 My submissions as to its admissibility are three. In the first place I am presently concerned solely with the question of credibility.

HIS LORDSHIP: I would think on that ground it is admissible.

MR. LOCHEAD: Further to that, my lord, there will be subsequent questions I will ask this witness. First I will submit certain aspects of the Milwaukee case which bear very materially on the character of the present witness.

30 HIS LORDSHIP: There was a hearing.

MR. LOCHEAD: An action was commenced but never proceeded to trial. The proceedings I have reference to now is an adverse examination which is analagous to our examination for discovery.

HIS LORDSHIP: That is the action which in the California judgment is referred to as the Wisconsin action?

MR. LOCHEAD: Yes, my lord.

40 MR. BROCK: My lord, this matter has been gone into in the proceedings in California.

HIS LORDSHIP: I am not bound by what happened in California.

MR. BROCK: Are we going to have a re-hash of the whole thing?

HIS LORDSHIP: I don't know, we will find out as we go along.

MR. BROCK: If it is the intention to have a re-hash of the whole thing, which I submit is contrary to our rules of evidence, then this may go on for months.

HIS LORDSHIP: It may, I do not know. It will go on as long as it is necessary. I trust it will not go on too long.

MR. BROCK: Then, your lordship, we are also in the position that I have not copies of these depositions.

10 HIS LORDSHIP: I think for the moment Mr. Lohead is prepared to lend you a copy.

MR. LOCHEAD: Quite, my lord, I have two copies here.

HIS LORDSHIP: It seems to me it is admissible if there is anything in the proceedings that relate to the issues in this matter. If she swore to certain things then it is surely relevant to her credibility here if her story now varies.

20 MR. BROCK: If your lordship would confine it to the issue of credibility.

HIS LORDSHIP: I do not know, I cannot tell until Mr. Lohead asks the question, and I think probably the best way is to let him go ahead and if you object you can object at the time.

MR. BROCK: Your lordship has read the report of the case?

HIS LORDSHIP: I have read the judgment of the Court of Appeal of California.

30 MR. LOCHEAD: My lord, I have an extra copy of the depositions in Milwaukee.

HIS LORDSHIP: Let Mr. Brock have them, I think he can make more use of them.

MR. LOCHEAD: You will remember, Mrs. McKee, in connection with the Wisconsin action you appeared at very considerable length on what is called an adverse examination. Do you recall when you were examined?

A. Yes.

40 Q. I propose to read certain questions and answers which were made according to this transcript at that time and I shall ask you then if that is correct. I am reading from page 8.

MR. BROCK: I would like to point out, your lordship, these depositions are not certified.

HIS LORDSHIP: I do not think that makes any difference. All Mr. Lohead is asking here is whether she was in fact asked those questions and made those

answers and if she says no, then I think that is the end of it. If she says yes, I have to assume she is telling the truth unless there is some evidence to the contrary.

MR. BROCK: I submit, your lordship, that first before he would be able to introduce any evidence adduced in these depositions that he should first of all raise something here which is relevant to the issue.

10 HIS LORDSHIP: How can I tell that in advance? I do not know what he is raising, I have to let him ask the question first. You cannot raise an issue without getting down to it, surely. He is not raising any issues, he is cross-examining the witness as to her truthfulness and credibility. Was this testimony under oath in Wisconsin?

MR. LOCHEAD: Yes, it was, my lord.

HIS LORDSHIP: Then, I think you are entitled to ask her if that is what she said and if she says she did
20 not say it she will tell us so. I do not think we can tell until she is asked.

MR. LOCHEAD: I am reading from page 10 of your divorce examination commencing at the second last line; this is at page 8.

HIS LORDSHIP: Would you indicate where they are in the examination?

MR. LOCHEAD: At page 8, my lord, commencing at the second last line and I propose to read through to the fourth last line on page 9.

30 "Q. Then you lived in California continuously
"from the time that you left the Michigan home
"for California until you claim that you came
"back here to Milwaukee about the first of
"this year?

"A. No, I wouldn't say that I lived there continuously because I traveled a great deal with
"Mr. McKee.

"Q. What is the longest time you were away from
"California on any of these travels?

40 "A. Oh, six weeks, I suppose, is the longest.

"Q. Where did you go on these travels?

"A. I --. Just the will of God. I couldn't
"tell you.

"Q. Well, how many trips did you make?

"A. That would be an impossibility to tell you.
"I don't know. There was hundreds of them.

"Q. Hundreds of them?

"A. Just hundreds of them.

"Q. Well, did you go to New York?

"A. Yes, many times.

"Q. Chicago?

"A. Yes.

"Q. You didn't come to Milwaukee?

"A. Yes, I believe --, yes, I was in Milwaukee.

10 "Q. And Michigan?

"A. Yes.

"Q. Did you go south?

"A. To Florida?

"Q. I don't care. South.

"A. Yes, I liked it there very much. I went
"quite often."

Q. Now, were you asked those questions and did
you make those answers at that time?

20 A. Well, I went quite often but I don't remember
going twice.

Q. Do not misunderstand my question; I am just
asking you if you were asked those questions and made
those answers at that time in Milwaukee?

A. Yes.

Q. Now then, I believe you told us last week that
the Azusa property was in your name?

A. Yes.

30 Q. Now is it correct that that is property which
was purchased by Mr. McKee when you moved to California
in 1937 and was put into your name at that time?

A. Yes.

Q. It was his money paid for it?

A. Yes.

Q. Then I believe you told us it was late in
September of 1941 that the Azusa property was sold by
you? A. I believe it was 1941.

Q. Late in September of 1941?

40 A. No, I believe it was in 1942. I moved from
there, I think I told you, in 1941. I think I told
you I moved from there in 1941.

Q. You sold it some time after you moved?

A. Yes.

Q. Do you recall at what price you sold it?

A. No, I don't.

Q. Was it \$13,000? A. Something like that.

Q. Do you recall whether or not there was what we

call in Canada a reserve bid and what you in the United States call a set price on it? Was the set price \$16,000? A. No.

Q. It was not? A. Not that I remember of, no.

Q. At any rate you do recall the property was sold for about \$13,000? A. Yes.

10 Q. Do you recall that Mr. McKee, through his attorney Joseph Scott, made an offer of \$17,500 for that house? A. No, I don't remember; he made some kind of an offer at one time for the house; I don't remember.

Q. You do not remember the details?

A. I remember part of them.

Q. Do you remember he did make an offer?

A. Yes.

20 Q. You don't remember the amount? A. It seems to me he offered \$24,000 for it at one time and we disagreed about the furniture. That was worked out by my attorney.

Q. You do not recall the amount?

A. There wasn't any at the time of the sale that I knew about.

Q. I believe at that time your attorney was E. G. Haumesch? A. Yes.

Q. Was he present at the sale? A. Yes.

Q. Do you recall that he advised you to refuse the price of \$13,000?

30 A. No, he advised me to take it.

Q. He didn't tell you it was too little?

A. He said it was too little but he told us we could never sold it because we were out in the country.

Q. Do you recall having a conversation with Mr. Haumesch about the sale of the property when a person Max de la Fuente was present?

A. No.

40 Q. Do you recall Mr. Haumesch informing you of an offer of \$17,500 that had been made by Mr. McKee and advising you to accept it and Mr. de la Fuente made a remark to the effect that you would give it away before you would let McKee have it. Do you remember that?

A. There was quite a bit of conversation. Mr. McKee wanted it for a 24 year old girl he was going to marry and I said no.

Q. I am simply asking you a question whether or not

you recall something. I will restate my question. Do you recall a conversation that I referred to between you and Mr. Haumesch and de la Fuente?

A. There was none between us three.

Q. Do you recall de la Fuente saying, in Mr. Haumesch's presence that you would give the house away before you would let Mark have it?

A. I didn't say that.

10 Q. I am asking you if you recall such a conversation?

A. There was not any such conversation between us three.

Q. You deny that was said?

A. I know it was not said.

Q. Now, in fairness to my friend there are certain points in evidence in which one of the exhibits on the commission becomes rather relevant at this point. I am quite prepared to read it now.

HIS LORDSHIP: Are you not bound by her answer.

20 Later on you will not be able to adduce evidence to say there was that conversation.

MR. LOCHEAD: My lord, with great respect I submit this evidence goes to what is perhaps the most important issue in this case; that is, the respective morals and character of these people. My cross-examination will continue to refer to the relationship between this witness and Max de la Fuente.

HIS LORDSHIP: Yes, but no conversation about the sale price of the house.

30 MR. LOCHEAD: Perhaps I had better make my submission at the time I propose to refer to these depositions and perhaps your lordship will prefer I leave the matter until that time.

HIS LORDSHIP: I would rather deal with these things concretely if I could.

MR. LOCHEAD: Very well, my lord. Then, further with regard to Mr. de la Fuente, Mrs. McKee, I believe Mr. Haumesch also acted as attorney for Mr. de la Fuente?

A. No, I don't know anything about that.

40 Q. Do you remember whether or not Mr. de la Fuente ever retained Mr. Haumesch in connection with his affairs?

MR. BROCK: He is going too far afield, my lord.

MR. LOCHEAD: Let me finish my question. Do you remember whether Mr. de la Fuente ever retained Mr. Haumesch in connection with a United States federal

narcotics charge in which a member of Mr. de la Fuente's staff was involved?

A. I know nothing about that.

Q. Do you remember you instructed Mr. Haumesch to add the amount of Mr. de la Fuente's bill for these services to your account?

A. That is absolutely untrue.

10 Q. So if Mr. Haumesch swore under oath that was done then he would be telling a lie?

A. That is correct.

Q. Do you regard Mr. Haumesch as a responsible member of the bar in California?

A. I really do not.

Q. Now, continuing with regard to your relations with de la Fuente, I believe at the time you met him he was a member of the Peruvian Consular Service?

A. That is correct.

20 Q. And he was at that time Peruvian Consul in the City of Los Angeles?

A. Yes, and I was separated at that time.

Q. As a matter of fact do you remember when you first met him?

A. Yes, February of 1941, February or March.

Q. I believe you were introduced to him at the Vista del Arroyo Hotel? A. Yes.

Q. By Mrs. Stevens who was then Mrs. Hart?

A. That is correct.

30 Q. Did Mr. de la Fuente ever stay overnight in your Azusa house between March and September of 1941?

MR. BROCK: My lord, I do not like to be objecting but all this has been adjudicated upon by the California Courts.

HIS LORDSHIP: I do not see what that has to do with it. I am not bound by the California decision. If Mr. Lohead wants to go into this he is entitled to.

MR. BROCK: I submit he is not entitled to raise matters now which have been adjudicated upon.

HIS LORDSHIP: What is your authority for that?

40 MR. BROCK: There is the case of Wallace v. Wallace, Dominion Law Reports, 1929, Vol. 2, page 253.

HIS LORDSHIP: Whose judgment is it?

MR. BROCK: A judgment of Martin J.A. of the Saskatchewan Court.

HIS LORDSHIP: Just let me see that, will you, please. This is not dealing with the effect of a

former judgment at all, it is a judgment of the same Court.

MR. BROCK: My lord, this is a court of competent jurisdiction.

HIS LORDSHIP: I do not know, that has not been proved yet. I cannot assume the California court is competent.

MR. BROCK: My lord, it is prima facie a court of
10 competent jurisdiction and has jurisdiction until my friend proves otherwise.

HIS LORDSHIP: That is something that has to be established, but I am willing to assume it was.

MR. BROCK: Then, I refer your lordship to the case Manary v. Manary, 1942 Ontario Weekly Notes, at page 417. It is a decision of Chief Justice Robertson.

HIS LORDSHIP: What page?

MR. BROCK: Page 417. It is right at the bottom
of page 417.

20 "The court was of the opinion that the order
"sought to be appealed from was not interlocutory,
"in the sense of leaving the parties to return
"and do something more. It finally determined
"the rights to custody of a child at the time
"it was made, and if the applicants' argument
"were to prevail, there could never be a final
"order in such cases."

30

HIS LORDSHIP: In one sense an order for custody is final as it deals with it at that time. What is the effect of a foreign judgment?

MR. BROCK: I submit, my lord, the effect of this judgment is, the Court being prima facie a court of competent jurisdiction, it concluded the matters for all time, all matters arising before June of 1945.

HIS LORDSHIP: I see, that may be. What I propose to do is admit the evidence subject to your objection.
40 I am noting you are objecting to it. I am simply going to mark it that way and decide whether I should give it weight or not later on. I will want argument on that.

MR. LOCHEAD: Now, I believe my last question to you was this, did Mr. de la Fuente ever stay overnight in your Azusa house from March to September of 1941?

A. Am I supposed to answer against the objection?

HIS LORDSHIP: Oh, yes, I want you to answer it.

A. Yes, he did.

MR. LOCHEAD: On how many occasions?

A. Well, on several occasions. It is out in the country and it is a large home and we had many people who stayed overnight. He stayed overnight.

Q. You were there on those occasions?

10 A. Yes, with many servants and all the children.

Q. When was it you moved to the El Molino house?

A. That was December, 1941.

Q. During the period of December '41 until the divorce trial in California in October and November of 1942 how often, or rather did Mr. de la Fuente stay overnight in your house in El Molino?

A..Yes, he did.

20 Q. On many occasions? A. Yes, on several occasions.

Q. Specifically during the period from the 9th of April 1942 to the 20th of May 1942, on how many occasions did he stay overnight?

A. I wouldn't know.

Q. Would it be correct to say during that period of time he was living at your house?

A. He was not.

Q. In other words he didn't stay there very often?

A. He stayed there sometimes.

30 Q. During that period of six weeks give me your best estimate of how many times he stayed there overnight? A. I don't know, I don't know whether I can give you my best estimate because I really do not know.

Q. Would it be an average of once a week?

A. He might have, yes.

Q. And over week-ends? A. Yes, with other guests.

40 Q. And at that time Terry was with you in that house? A. Yes, he was.

Q. And he also had been with you at the Azusa house? A. Yes.

Q. And I believe also that certain children of Mr. McKee were with you on those occasions?

A. Yes, two of them.

Q. Including Cynthia? A. Yes.

Q. Now I believe on one occasion Mr. de la Fuente

became possessed of a car which had been yours?

A. Yes.

Q. Was it bought by him or given to him?

A. Bought by him.

Q. Where did you get that car?

A. That was part of the property settlement.

Q. That was a car, in other words, given to you by Mr. McKee?

10 A. At the property settlement.

Q. Was that a car that had been given to you by Mr. McKee? A. Yes.

Q. He had paid for it?

A. I assume he had.

Q. You didn't pay for it?

A. In California it is considered that both people have an equal share in what they have. I do not know how you want to put it.

Q. I think all I am asking you is if in fact it was 20 a car Mr. McKee bought?

A. Yes.

Q. You subsequently sold it to Mr. de la Fuente?

A. Yes, and later bought it back.

Q. What car was that, do you remember?

A. It was an Oldsmobile.

Q. Then, do you recall the week-end of April 12, 1942, when I suggest to you that you and Mr. de la Fuente went on a trip to San Luis Obispo?

A. There has been testimony about that. That was with 30 Cynthia and Mr. de la Fuente and I. He went there to give some kind of speech.

Q. The three of you went up one afternoon and remained in the hotel overnight in this city and returned to Los Angeles the next day?

A. Yes, Cynthia and I had a room there.

Q. The same room where Mr. de la Fuente was?

HIS LORDSHIP: Mr. Lohead, we are not trying an issue of adultery between these people.

MR. LOCHEAD: No, my lord, but I submit the re- 40 lationship between this witness and de la Fuente is very vital and material and frankly, my lord, the reason I am going into it at this time is that I propose as part of my case to present findings of fact and the judgment in the divorce action in 1942.

HIS LORDSHIP: How does that help me now unless you show that the relationship still exists?

MR. LOCHEAD: My submission, my lord, will be there was some impropriety in 1942 that is a factor which will preclude Mrs. McKee from having custody of her son now.

HIS LORDSHIP: It may be an element but it seems to me to be a very slight element unless you show a continuous course of action of the same type of life.

MR. LOCHEAD: That is what I propose to do, my lord.

10 HIS LORDSHIP: If you do not do that, frankly it does not strike me as having much weight.

MR. LOCHEAD: My lord, with respect I agree with your lordship that the events of 1941 and 1942 are not entitled to great weight at the present time, but I do submit being the first step in what I will attempt to establish is a course of conduct they are of very considerable weight.

HIS LORDSHIP: If you can relate it to her present-day conduct it may have some weight.

20 MR. LOCHEAD: I propose to do that, my lord, and with respect I trust I will establish it successfully. I consider it only proper for me to question this witness on that point in view of the fact that I propose to present the judgment as part of my case.

HIS LORDSHIP: I take it there was a finding against Mrs. McKee in that judgment?

MR. LOCHEAD: Yes, my lord. I propose to put that judgment in as part of my case.

30 HIS LORDSHIP: I want to tell you very frankly I do not think that has a great deal of weight at the present time. I think what I have to concern myself with is the capacity at the present time and mode of life at the present time of these parties in relation to this child.

MR. LOCHEAD: Yes, my lord, but there will be evidence adduced before your lordship as to what mode of life has continued since that time.

HIS LORDSHIP: I see.

40 MR. LOCHEAD: Then, Mrs. McKee, perhaps you have no knowledge of this, but I believe on one occasion Mr. de la Fuente did commence an action for slander against Mr. McKee in the modest sum of approximately \$100,000, is that correct?

A. I read it in the paper.

Q. You were aware of that action?

A. I was aware of the action.

Q. And are you aware that the action did not go to trial, but was dismissed on the merits?

A. No.

Q. You were not aware of that? A. No.

Q. Now then, I believe it is true, Mrs. McKee, that immediately after the taking of evidence was concluded in the California case, which I believe was November 20th, 1942, His Honour Judge Clarke made an order forthwith to deliver custody to Mr. McKee. Were you present in Court when that happened?

A. I do not believe I was, I wasn't in Court.

Q. That is the time you told me earlier you got three months' custody and your husband got nine?

A. Yes.

Q. Those terms were incorporated in the judgment issued in December, my lord. I am speaking now of the verbal disposition. At any rate you were advised that an order to deliver custody forthwith to Mr. McKee had been made at that time?

A. That is true.

Q. Do you know whether or not custody was turned over to Mr. McKee at that time?

A. He gained possession of the child, yes.

Q. Immediately? A. No, I think it was a few days.

Q. Do you know why there was this delay of a few days? A. Yes, Mr. Scott and Mr. McKee went out and broke the house down and frightened Cynthia and she took the child away.

Q. You knew about that? A. Heard about it.

Q. Did you know? A. Cynthia took the child.

Q. Did you know Cynthia had taken the child away at that time? A. No, I knew she had gone, I knew she had custody of the child; the Court had placed custody with Cynthia at that time in my home.

Q. That was during the trial? A. Yes.

Q. That order had been superceded by a subsequent order to deliver custody?

A. She didn't know that.

Q. You don't know whether she did.

A. I am sure she did not.

Q. Do you know who was with Cynthia when she took the child away?

A. She said she called a taxi and took the child by herself.

Q. Do you know whether or not de la Fuente was with her?
A. I feel certain he wasn't. She told me he wasn't and I think in evidence she would tell you that.

Q. Did de la Fuente tell you if he had been with Cynthia or not?
A. No, he did not know where Cynthia and the baby were because I asked him.

Q. He didn't?
A. No.

10 Q. Anything you know about the circumstances of Terry being taken away is purely hearsay?

A. What Cynthia told me. When I got back the baby was gone.

Q. I believe there was a tremendous hue and cry in the newspapers about it?

A. The papers have made a great deal of it. It is too bad, it is unfortunate for all the children.

20 Q. Let us not have speeches. There was, I think, a tremendous hue and cry at that time about his disappearance?

A. I don't know why you want me to say it, but I guess so, yes.

Q. How long was he away?
A. A few days.

Q. Do you know where he was before he was returned?

A. No, I didn't know until the day I saw him.

Q. Were you in touch with Cynthia during the time she was away?
A. Not once.

Q. Was de la Fuente in touch with Cynthia?

30 A. Later he was.

Q. At any rate the child was eventually returned?

A. Yes, my attorney advised me where he was.

Q. Your attorney advised the sheriff where the child was?
A. Yes.

Q. Now then, I believe you were in the Court of Appeal in December when there were certain proceedings before Judge Clarke to this episode of Cynthia's?

A. Yes, Judge made an order--

Q. I am just asking you if you were in Court.

40 Now then, just answer the question you are asked. If something needs explanation that is what your counsel looks after. Now, were you in Court early in December when there were some proceedings before Judge Clarke having to do with Terry's disappearance?

A. Yes.

Q. Is it not true that on that occasion the judge threatened Cynthia with committal and that she was

saved as it were by the intervention of Mr. McKee's attorney?

A. No, evidently that was a hearing I was not present at.

Q. You didn't hear that? A. No.

Q. Did you ever hear anything to that effect, that it had happened? A. No.

Q. Now then, I believe subsequently that you were
10 named as a co-respondent in a divorce suit by Mrs. de la Fuente against her husband?

A. Yes.

Q. When was that? A. I don't know, some time after all this big fracas.

Q. 1943? A. I wouldn't know just when, some time after that.

Q. Some time after the California trial of yours?

A. Yes, I saw it in the paper.

Q. Have you any idea how long after? Were you
20 served with any papers?

A. No, this is just something the newspaper put out.

Q. Can you give us an approximate idea how long it was after the California trial?

A. I don't know, I suppose six or seven months. I can't really say, I don't remember exactly. I had too much to think about but it must have been six or seven months or it might have been sooner, I don't just know.

Q. Now, by the way, there was some evidence last
30 week by you as to your son Jerry being in the services and I believe we finally found out he was in the navy?

A. Yes, a branch of the navy.

Q. When did he join the navy, do you know?

A. It would be 1941 or 1942.

Q. Was it after the United States were in the war or before?

A. Yes, after.

Q. Pearl Harbour was when? A. December 7,
1942, it was in 1942.

40 Q. He joined the navy in 1942?

A. 1942, I believe.

Q. How long was he in the navy?

A. Oh, I suppose a year and a half or two years.

Q. So he was discharged some time in 1944 -- I think you are a little out on those dates.

A. I really don't know.

HIS LORDSHIP: When did he come out of the navy, was it after the war or during the war?

A. After the war.

Q. And he had been in for a period of about two years?

A. About two years, yes.

MR. LOCHEAD: I want to get these dates tied down if I can.

10 A. I will help you, I will think about it.

Q. Perhaps this will be of assistance to you remembering back.

Can you tell us how long he has been out of the navy? A. I know he came back after I won the decision in 1945, so that would be in 1945 -- I believe February 1946 would be about correct.

Q. About one and a half years ago? A. Yes.

Q. You already told us he had been in about two years? A. I believe it was about two years.

20 Q. Now, Mrs. McKee, do you know a man called William Shields. I may have the first name wrong.

A. I think he was called John Shields.

Q. Was he a dentist in civilian life?

A. Yes.

Q. Practising where? A. In Milwaukee.

He was a commander in the navy, I think, and served on Roosevelt's private ship.

Q. By the way, just one point I forgot, I do not believe Jerry ever attained a commissioned rank?

30 A. Yes, he was a third class SeaBee. It is equivalent to an officer's rating, I think.

Q. Did he wear an officer's uniform?

A. He just wore a plain blue.

Q. Middy and slacks? A. Yes.

Q. A middy and slacks?

A. Yes, perhaps they do not call that -- anyway he was a third class seaman.

Q. He didn't wear an officer's uniform?

A. No.

40 Q. Do you know whether or not this man Shields is married? A. I know he has been married.

Q. Is he still living with his wife?

A. I don't know.

Q. Has he any children? A. Yes, he told me he had two.

Q. He told you he had two and was married at the time you knew him?

A. He just said he had two children.

Q. When did you meet him?

A. I guess it would be 1944.

Q. Do you remember about what month?

A. Yes, it was shortly after Christmas, I know.

Q. Shortly before Christmas of 1944, approximately
three years ago now? A. Yes.

10 Q. Where did you meet him?

A. I met him -- my daughter had been going to him
for work about two months and I went to him for some
work.

Q. Was he practising dentistry in Los Angeles?

A. No, in Milwaukee. He was selling his office
at the time I met him.

Q. That is before he joined the navy?

A. No, he was a regular officer in the navy and
was retired with some kind of heart ailment.

20 Q. Was he carrying on a civilian practice in
Milwaukee at that time? A. Yes.

Q. Did you ever see him in Los Angeles or any
suburb of Los Angeles? A. Yes.

Q. Specifically I would ask you to direct your
attention to the second of September, 1944, at the
Hollywood Franklin Hotel. I believe you are familiar
with that hotel?

A. No, I didn't see him there.

Q. You know the Hollywood Franklin Hotel?

30 A. Yes, I stayed there.

Q. As a matter of fact I believe that is in
Hollywood? A. Yes.

Q. You say you didn't see him there on the 2nd of
September, 1944? A. No.

Q. Did you ever see him there?

A. No, I never did.

40 Q. I am suggesting to you that on the date I have
mentioned you were with Terry and were driven by a
Mrs. Butterley and arrived at the Hollywood Franklin
Hotel about eight o'clock in the evening?

A. No, that story is a complete fabrication, there
isn't one word that is correct. I did stay at the
Hollywood Franklin Hotel.

Q. When you say that story is a complete fabrication
I take it you are familiar with all the details of
the story to which I refer?

A. Yes, I read that.

Q. Were you at the Hollywood Franklin Hotel that night? A. I can't tell you the exact dates. I told you in my last testimony I stayed at the Lido Hotel and we had to leave on account of the detective who reported us to the O.P.A. I went to the Hollywood Franklin and remained there five days with Cynthia and Terry and turned Terry over to Mr. McKee. I never stayed all night in the Butterley's home and I didn't
10 have bags in her car at all so the whole thing is a complete mistake by the detective, I take it.

Q. Just to review one point in what you have just told us, do I understand you to say you stayed at the Hollywood Franklin Hotel with Cynthia and Terry for a period of five days?

A. Yes.

Q. That was in 1944? A. That was 1944.

Q. At the end of that five days you turned Terry over to Mr. McKee?

20 A. Would that be in 1945?

Q. 1944 was the year when Terry was turned over to you in Milwaukee and you went to Michigan and out to California.

A. That was 1944.

Q. At the end of that five days you turned Terry over to Mr. McKee? A. Yes.

Q. In Los Angeles? A. Yes.

Q. I believe up to 1946, in each year you have turned Terry over to Mr. McKee either on September 30th
30 or October 1st, is that right?

A. Yes.

Q. Aside from those five days you referred to, did you ever stay overnight at the Hollywood Franklin Hotel? A. No, I never.

Q. Now, do you know a place in California called the McCarthy Ranch? A. Yes.

Q. It is what you Americans call a dude ranch?

A. That is correct.

Q. Have you ever stayed there?

40 A. Yes.

Q. When? A. I think it was in the summer of -- it was in February about the 22nd. I have thought about it since I testified the other day and have tried to make the dates clear, and I think it was about the 22nd, something like that.

Q. You were there in February of what year?

A. I think it was in 1945.

Q. By the way, how did you register at the McCarthy Ranch, what name did you use?

A. You don't register there.

Q. What name did you use?

A. I have used my maiden name ever since the divorce -- Alexander.

Q. I believe you were known at the ranch as Lynn Alexander?
A. Yes, Lynn is my name, everyone calls me that.

Q. Lynn being a nickname for Evelyn?

A. Yes.

Q. What was the name of your first husband?

A. Leroy.

Q. No, I mean the last name.

A. Barry.

Q. By the way how did that marriage terminate?

MR. BROCK: My lord, that happened years ago before her marriage with McKee. My friend is taking a great many liberties and I submit he should be stopped at some time.

HIS LORDSHIP: I can't see it makes much difference.

THE WITNESS: I was given a divorce.

MR. LOCHEAD: Q. When was that, by the way?

A. Goodness, I can't even tell you.

Q. How long before you married McKee?

A. It must have been two or three years.

Q. I take it your son Jerry is a son of that marriage?
A. Yes.

Q. Now then, while I am on the question of names, Mrs. McKee, by what surname does your son Jerry go now?

A. McKee.

Q. When did he start using that surname?

A. When I married Mr. McKee.

Q. He has used it ever since then?

A. Yes, Mr. McKee had that in the agreement.

Q. I believe there is a clause in the agreement which provides that payments are to be made; in the settlement there was a payment to you for Jerry until he was 21?
A. Yes.

Q. Is it true that in 1944 Jerry went through some form of proceedings in California to have his name formally and finally changed to McKee?

A. No.

Q. He just used the name as a matter of fact ever

since you were married? A. Yes.

Q. Now then, was Cynthia at McCarthy's ranch with you? A. Yes.

Q. During the entire period? A. Yes.

Q. Any other member of your family?

A. No

Q. Was this man Shields who has been referred to, there? A. He stopped by there on his way to
10 Los Angeles, it is a train stop junction there.

Q. From where to where?

A. From Chicago.

Q. How long was he there? A. I have tried to remember since this testimony and the best we can figure out is three days.

Q. Later on I am going to ask you some questions about Murray's Dude Ranch. Was it Mr. Shields with whom you had an incident at Murray's Dude Ranch?

A. There was no such incident as that.

20 Q. McCarthy's Ranch is made up of a number of cabins as far as accommodation is concerned?

A. They are sort of in a string, like.

Q. But they are individual cabins, they are not in the form of one building?

A. No, they are not all like that. Just like tourist cabins.

HIS LORDSHIP: Q. What did you stay in?

A. Cynthia and I stayed in a little place where there were three rooms altogether.

30 MR. LOCHEAD: Q. Three bedrooms altogether in one building?

A. Yes.

Q. Do you remember in what cabin Shields stayed?

A. Yes, I remember he stayed in a cabin that was quite a distance over, I don't know how many feet, 100 feet or something, maybe more than that.

Q. Some distance from yours? A. Yes.

Q. Did you on frequent occasions, you and Cynthia, have your meals with Shields?

40 A. We all had our meals in the same hall every day.

Q. Did he sit at your table?

A. Yes, he always sat at our table.

Q. Next to you? A. Not always next to me, he sat next to me on occasions. It was just whoever got there first. You do not have special places.

Q. Did he ever kiss you when you were in the dining-room? A. Of course not.

Q. Did he ever have his arm around you when you were in the dining-room? A. No. I don't know, there may be such a thing when people walk in, it is possible.

Q. That is possible? A. That is always possible when you are around a group. I don't remember it.

Q. It wasn't important enough to remember?

10 A. I say it is possible that we were all in a group together there like that and it happened.

Q. Were you ever in Shield's cabin?

A. Yes, Mrs. McCarthy and Mr. Miller and Cynthia and I stayed there one evening.

Q. Is that the only time you were in his cabin?

A. That is the only time I was ever in his cabin.

Q. Were you drinking? A. We had some wine, he wasn't drinking, he doesn't drink. He said due to his heart condition he didn't drink.

20 Q. He didn't drink at all while he was at McCarthy's ranch? A. I don't know that, I didn't see him.

Q. As far as you know he didn't? A. No.

Q. Now, you have already said there was no such incident as one at Murray's Ranch. I take it you have read the evidence taken on commission?

A. Yes, I did read that.

Q. And you know the incident to which I refer. Did you ever go to Murray's Dude Ranch?

30 A. Yes, I did twice.

Q. With whom? A. Once before Dr. Shields came there, the whole group went over one evening, it is a place where you have a nicolodeon and you sit and sing and all that.

Q. I suppose it is also the closest place to McCarthy's where you can get drinks?

A. I don't believe they sell drinks there. I don't remember that, I don't remember them selling drinks. I believe they had beer there.

40 Q. Did they sell any drinks at McCarthy's?

A. No.

Q. I believe Murray's Dude Ranch is a place frequented by both coloured and white people?

A. Yes.

Q. And coloured and white people both occupy the same large room for their eating and dancing?

A. I don't think so, I didn't see coloured people there. I just saw Mr. and Mrs. Murray. It is possible they did have but I didn't see it at that time.

Q. You know they do? A. Yes, I know they do.

Q. While you were there were you dancing at all with a soldier, a chap in an American uniform?

A. I wasn't dancing at all, I was there convalescing, waiting to have an operation.

Q. I don't believe you told me who was with you when you went over, or did you say it was the whole group?

A. The group; Mr. Miller I know drove his car.

Q. Did Shields go over?

A. On this one occasion.

Q. Did he go with you on the other occasion?

A. No.

Q. Did he go over later on? A. No, he was only there once that I know of.

Q. You were only there twice?

A. I was only there twice.

Q. Do you recall one of the coloured servants at Murray's Dude Ranch, Wade Bentley, who was sort of a general handyman around the place?

A. I don't believe he was there at all. I never saw a coloured man there.

---A short adjournment.

30

Q. Now, Mrs. McKee, do you know a man called William Miller? A. Yes.

Q. What age is he? A. About 64 or 65, I guess.

Q. Is he married? A. Yes.

Q. He has been separated from his wife for a number of years? A. Yes.

Q. Approximately how many years?

A. I don't know because I met him in 1945, 40 February 1945.

Q. Was he separated at that time? A. Yes.

Q. You met him in February of 1945, was that at the McCarthy Ranch? A. Yes.

Q. You did not know him before that? A. No.

Q. Isn't it true that Mr. Miller told you about this McCarthy ranch?

A. No, I was ill and couldn't find a place to live and I found it through the Chamber of Commerce.

Q. Have you ever been at a place called the Elks Club with Mr. Miller?

A. When Mr. Miller was not staying I stayed there, yes.

Q. When was that? A. I believe it was April, some time in April.

10 Q. Was that 1945? A. Yes.

Q. I think you gave evidence of that. I believe you said you stayed there for some time?

A. I didn't live there, I stayed there trying to find a place.

Q. That was in April of 1945?

A. Well, it may have been in May, I couldn't be sure. I believe it was May.

Q. Were you at the Elk's Club in July, 1945?

20 A. No, that was later I was at the Elk's Club. I was stopping there during April in 1945, whatever date that was.

Q. Did you ever have Terry at the Elk's Club staying there with you? A. Yes I did, I had him there a few days before I found a place.

Q. That would be after the 1st of July, 1945?

A. Yes, I stayed there and lived -- it is like a hotel. I told you I visited my friend Mrs. Stevens.

Q. And you went back for a short while?

A. Yes.

30 Q. Did you ever see Mr. Miller at the Elk's Club?

A. Yes, I believe he came over a couple of times to pick me up to take me some place.

Q. I suggest you were with Miller at the Elk's Club on July 28, 1945? A. I know he picked me up, he took me to his son's house -- I don't remember when it was.

Q. Then did you ever go to a resort at Big Bear Lake?

A. Yes, I visited Mr. Miller there and Cynthia and Terry and his grand daughter.

40 Q. That is Mr. Miller, not his son? A. Yes.

Q. Do you know when that was? A. That was in the summer of 1945.

Q. I suggest to you it was from the 1st to the 4th of September 1945, would you quarrel with those dates?

A. No.

Q. I believe you said you were with Terry and

Cynthia and Mr. Miller's grandchild? A. And Mr. MacLeod, my attorney.

Q. How did you go to Big Bear Lake?

A. Mr. Miller drove all of us. His son was going to go but at the last minute there was a strike at the studio.

Q. When you say "all of us" you mean Mr. Miller drove Terry and you and his grandchild? A. Yes.

10 Q. Do you remember the date when you went up?

A. No.

Q. You were there about three or four days?

A. I believe about three days.

Q. How did Mr. and Mrs. MacLeod travel, did they drive up? A. Yes.

Q. Separately? A. Together.

Q. Separately from you I mean? A. Yes.

Q. I believe they arrived a day after you got there?

A. I believe they arrived the day before we did.

20 I don't remember how it was, I think anyway there was one day we were there that they were not there.

Q. Your recollection is they arrived the same day and returned to Los Angeles before you did?

A. I think that is correct.

Q. How did you return to Los Angeles -- with Miller? A. Yes, we drove to his son's house and left Diane and they drove us home.

Q. Now, you have referred to 1945, to the 1945 trial in June. Is it true that that trial lasted

30 several days? A. Yes.

Q. And is it not true that Mr. Miller was in attendance at that trial? A. He came one day to pick me up but I wanted to see someone.

Q. He didn't give evidence? A. No.

Q. Is it not true he was sitting in the Court Room during a substantial part of the trial?

A. No he wasn't because I just saw him the one time, and that was ten minutes before we recessed.

Q. When he picked you up he took you some place?

40 A. Yes.

Q. I want to direct your attention to the action which you commenced in Milwaukee which I believe was commenced early in 1944? A. Yes, we established that, but the other day whatever it was I didn't know the exact date.

Q. I believe among other things in the Milwaukee

action you swore that at that time and at the time of the 1942 trial you were domiciled in Michigan, is that right? A. I swore my domicile I felt was where Mr. McKee's was.

Q. Which was where at the time of the 1942 trial?

A. That was a question of the opinion of the judge. I thought California was until the judge said he would make him a resident of Michigan and me a resident of
10 California.

Q. I am just speaking of what you swore to in the Milwaukee action, and I am suggesting you swore you believed your domicile at the time of the California trial was that of McKee, and secondly you believed that was Michigan; is that right?

A. I may have sworn that I felt wherever Mr. McKee was -- our home had been in California and it was difficult for me to understand what domicile means because Mr. McKee has changed domicile very often and
20 it is difficult to understand what he really calls a domicile, but I swore I was married and living with him and had not been separated a year and the judge had all that before him in California.

Q. As a matter of fact, going back to the California trial, is it not true in your complaint or statement of claim in the California trial you necessarily swore you were a resident of California within the meaning of the California rules?

A. I didn't quite understand at the time of the
30 California action, the original action.

Q. In the original action that you commenced in September 1941, isn't it true you were required to swear in your complaint that you were a resident in California and had been for at least a year?

A. Yes, I felt we both were because that was our home. We voted in Michigan but it was for purposes of income tax.

Q. You felt at that time your permanent home was in California? A. Yes I did. When I gave
40 that testimony I felt that.

Q. As a matter of fact I believe in Mr. McKee's answer in the California proceedings he denied you were a resident in California? A. He did, but I didn't understand the laws.

Q. I was asking you is it correct he denied you were a resident of California? A. Yes, he did.

Q. As a result of that I believe further at the commencement of the California trial an issue was directed as it were, as to whether your residence was in California, and evidence was taken?

A. Yes, that is correct.

Q. And you swore on that occasion your permanent residence was in California? A. Yes, I did.

10 Q. And had been for at least a year as is required by their procedure? A. Yes, we had been there for several years then.

Q. Now then, is it not true also on the same point, Mrs. McKee, in your Milwaukee action that you claimed that the California decree of divorce and the consequent award of custody were invalid because you had not been resident or domiciled in California at that time? Isn't it true in the Milwaukee action you claimed the California divorce decree was invalid because you were not a resident of California at the
20 time of the trial? A. Yes, I believe I did that.

Q. And is it not true also that in the Milwaukee action you claimed that Mr. McKee had been guilty of fraud in connection with the California action in connection with having your residence established as being in California? A. I felt it was one of the things among the others that were fraud.

Q. And you claimed Mr. McKee had committed that fraud on the California Courts? A. I couldn't
30 understand why the judge took that attitude, and I still don't.

Q. I am not asking you that. My question is simply this, is it not true in your Milwaukee action you charged Mr. McKee with fraud in the California proceedings in that he had your residence established as being in California? A. I think it was one of the things set up.

Q. I may say, my lord, I have an exemplification of these Milwaukee proceedings. Perhaps your lordship
40 may wish me to put it in now.

MR. BROCK: I object to the admission of any proceedings from Milwaukee. My friend has had a great deal of liberty in cross-examining the witness as to credibility, but this has already been adjudicated upon by the California Courts.

HIS LORDSHIP: She also accuses the judge, whose

decision she didn't like, of fraud and dishonesty and it may have a great deal to do with the credibility I attach to her evidence.

MR. BROCK: Very well, my lord, but the California Court heard it and considered it, and this Milwaukee action was dismissed.

HIS LORDSHIP: I understood she discontinued it.

10 MR. BROCK: No, my lord, in 1945, and before the California judgment was delivered Mrs. McKee had dismissed her Milwaukee action with prejudice.

MR. LOCHEAD: Oh no.

THE WITNESS: Yes, they had me dismiss it.

HIS LORDSHIP: All I know is in reading the report it would appear one of the terms they imposed was that she discontinue or agree to a dismissal of the Wisconsin action and I assume that was done.

MR. BROCK: Yes, it was done before the judgment was issued.

20 HIS LORDSHIP: That is what I gather.

MR. BROCK: I do submit that now except for my friend
2 cross-examining as to credibility, it has no weight in this Court.

HIS LORDSHIP: No, but her course of action in that may have considerable reference to her credibility.

MR. BROCK: Your lordship has read the judgment of the Court of Appeal in California and you have also read Exhibit 2, the judgment of the trial court.

30 HIS LORDSHIP: No, I have not; you read it to me. Suppose it is shown that this woman is prepared to swear to anything to achieve her ends -- that is putting it on the worst possible grounds from your viewpoint -- am I not interested in that being shown by her course of conduct she has done that. It surely relates to the weight I can give her evidence.

MR. BROCK: It might bear on that, my lord, and on that alone, and I submit it should be used for no other purpose.

40 HIS LORDSHIP: I think I am entitled to look at her conduct and decide what weight I should attach to her testimony:

MR. BROCK: Not to the extent, my lord, of allowing it to be admitted in this action.

HIS LORDSHIP: Well surely if a woman swears on one occasion she is domiciled in California and then commences an action in which she says she was not

domiciled in California, that has some bearing on the weight I put on her testimony. It may have been she had not had any legal advice.

MR. BROCK: That is what the California Courts must have found.

HIS LORDSHIP: That is not the point; I am looking at this witness and I am going to make up my mind from looking at her and listening to her. Her testimony is
10 not res judicata as far as I am concerned; I have to value it from listening to her here in the box. That is all it is directed to as I understand it.

MR. BROCK: Just as a matter of credibility?

HIS LORDSHIP: I think it is admissable on that ground.

MR. LOCHEAD: Now, Mrs. McKee, just to review one or two questions on this point. It is true I believe that in the issue which I referred to at the opening of the California trial you swore California was your residence
20 and permanent home?

A. I swore it was my residence, yes.

Q. And Mr. McKee on that same occasion gave evidence to the effect that and swore that Michigan was your residence, is that not correct?

A. Yes, he did.

Q. And then you will recall the depositions on adverse examination in the Milwaukee trial which I referred to earlier, and I propose to read certain questions and answers from those depositions. My lord,
30 I am reading first at page 7 commencing at line 14 and proceeding to line 18:

"Q. Did you reside at any other location from
"the time you first moved in to the Azusa
"residence? A. Do you mean, did I go any
"other place?

"Q. No, did you reside in any other location?
"Did you live in any other --?"

Did you make those answers to those questions on your Milwaukee adverse examination?

40 A. Yes, I believe so.

Q. Then I propose to read further from page 21 of the same depositions, commencing to read at line 13 and continuing to line 18 inclusive:

"Q. Well, you admit now, don't you, Mrs. McKee,
"that you and the children and Mr. McKee, at
"least until the separation, lived in the Azusa

"home if you lived anywhere?

"A. We didn't consider it our residence.

"Q. You did not consider your Azusa home your residence?

A. No, we considered Michigan our residence. I voted there."

Now, were you asked those questions and did you make those answers? A. Yes, and I may have said

10 in the beginning of the trial in Los Angeles too that I voted in Michigan.

Q. Did you not also say, as you have told us now, you stated you regarded California as your residence and domicile?

A. That is a question I didn't quite understand -- domicile and residence. We had taken our children to California to live there and as I say I didn't understand until the lawyer explained it to me.

Q. In any event, in the California proceedings you gave evidence and Cynthia gave evidence on which Judge
20 Clarke concluded California was your residence?

A. Yes.

Q. And Mr. McKee gave evidence at that time that you were not a resident of California?

A. I think just that he wasn't. I don't think he said that I wasn't; I don't remember it.

Q. At any rate he did attack in the California proceedings, the jurisdiction of the California courts due to the fact that you were not a resident in that country?

30 A. That he wasn't.
Q. That you weren't? A. I don't believe he did, I don't remember. The judge had copies before him that I had voted in Michigan and I said I had.

Q. Do you remember that on this issue I have spoken about as to whether or not you were a resident of California during the time of the California proceedings, do you remember whether or not Mr. McKee gave evidence on that issue? A. Yes, I remember he said he wasn't a resident.

40 Q. Now then, is it not true also Mrs. McKee, that in your Milwaukee action you attacked the validity of the California judgment on the ground that Mr. McKee's cross complaint against you had not been personally verified by his signature; is that correct?

A. I believe I did, I don't remember it. I believe I did.

Q. In any event, in the California proceedings Mr.

McKee had filed a cross complaint against you claiming dissolution of the marriage, is that not correct?

A. Yes.

Q. And the result of the proceedings was that your complaint for a divorce was dismissed and his was granted?

A. That is correct.

10 Q. Now then in the Milwaukee action Mrs. McKee, did you not also swear in your complaint that Judge Thurman Clarke, the trial judge in the California action had been fraudulent and corrupt?

MR. BROCK: My lord, I object to the admissability of that evidence.

HIS LORDSHIP: Why?

MR. BROCK: On the same grounds; that it cannot be a question of credibility.

HIS LORDSHIP: It might be. I think I am entitled to look at her course of action. I will admit it subject to your objection.

20 MR. LOCHEAD: My lord, I may say that I am coming to this question not only on the point of credibility, but I submit that the evidence is also admissable for this reason -- during the course of the preliminary proceedings which led up to the issue now being tried by your lordship, there were many suggestions in Court as to the alleged defiance of McKee in removing this child and I have no doubt that point will also be brought up by my friend in this case. For that reason I submit I am entitled to discover if this witness has
30 also evidenced defiance of the Court.

THE WITNESS:: Your lordship, do you wish me to answer?

HIS LORDSHIP: Oh yes, I want you to answer.

THE WITNESS: Yes, I did.

MR. LOCHEAD: Is it not true that as a basis for such complaint on your part you alleged firstly that Mr. McKee's attorney, Joseph Scott, had arranged to have the case assigned to Judge Clarke. Did you swear that?
40 A. Yes, I did.

Q. Secondly that Joseph Scott had arranged for the appointment of Judge Clarke to the California bench?

A. I think it is common knowledge.

Q. Did you swear that in your Milwaukee complaint?

A. I did.

Q. Thirdly that the Scott and Clarke families were close friends -- did you swear that? A. Yes, I

did.

Q. Fourthly, that Judge Clarke had conferred with the son of Joseph Scott, who was also a judge of the Superior Court of Los Angeles. Did you swear that in the Milwaukee action? A. Yes, I did.

Q. And you will recall that the question of your reasons for making these complaints were gone into very thoroughly I believe at the time of your adverse examination in the Milwaukee action, is that right?

A. Yes.

Q. And I believe in those depositions you referred to the following facts -- perhaps I should read specific questions and answers, my lord. I propose to read certain questions and answers on the same basis I read the prior ones from the Milwaukee adverse examination. Before I go on with that there are one or two other matters I wish to refer to in this witness' complaint. Did you also swear on the Milwaukee action that Mr. McKee and Judge Clarke had secretly colluded to defeat your ends?

A. Yes, I did.

Q. Did you also swear that Judge Clarke was under the control of Mr. McKee and was compelled by Mr. McKee to make a finding as to your California residence?

A. I don't know how the statement went.

Q. Something to that effect? A. Something to that effect, I don't remember the wording.

Q. I will read it to you. Now, Mrs. McKee -- my lord, in fairness to the witness and my friend I perhaps should refer to what I propose to discuss at the moment. I have here an exemplification in the usual form under the seal of the Circuit Court in Milwaukee together with the complaint of this witness, two interlocutory orders and I have a further exemplification of the judgment. Since I propose to refer to that now, I suppose it should be put in as my exhibit.

MR. BROCK: I object to the introduction of that. The witness has not denied anything. Why should that be introduced in evidence here?

HIS LORDSHIP: It is being used as part of the basis of the cross-examination.

MR. BROCK: But, my lord, there is no denial -- so far as credibility is concerned there is no reason to put it in.

MR. LOCHEAD: I am quite content not to put it in. She has said she does not recall certain wording and I

was going to read the paragraph to her.

HIS LORDSHIP: Suppose you put it in later on.
You can read it to her.

MR. LOCHEAD: Now, Mrs. McKee, I am reading from
page 19 of your Milwaukee complaint, the last 15 lines
of that page.

10 "A. Mr. Poss, the children were shunted
"around like little birds from every place.
"I don't know.

"Q. I move that be stricken.

"MR. PAULSEN: We object to striking.

"COMMISSIONER: All that portion of it that is
"not responsive may be stricken, namely,
"reference to the children being pushed around.

"WITNESS: I didn't say 'pushed'

"COMMISSIONER: Well, or a synonymous word.

"MR. POSS:

20 "Q. Where was Julien when you and Joan or you
"and Cynthia were at the Port Austin?

"A. That would be impossible for me to say.

"MR. PAULSEN: I object to the insinuation in
"Counsel's question. (to witness) Just a second.

"WITNESS: I can't answer it, because I don't
"know."

Q. Now, did you swear that in your Milwaukee
complaint? A. Yes.

30 Q. As a matter of fact, Mrs. McKee, just for the
record, I believe the procedure in American Courts is
such that all pleadings require to be personally sworn
to by the plaintiff or defendant as the case may be?

A. I wouldn't know that.

Q. You did swear to this? A. Yes, I did.

MR. BROCK: My lord, I do not think the witness
should be asked questions as to law.

HIS LORDSHIP: I think we will adjourn now.

---The Court was then adjourned at 1.00 o'clock p.m.
until 2.30 o'clock p.m.

40 ---The Court resumed at 2.30 o'clock p.m.

MR. LOCHEAD: My lord, you will recall at the ad-
journment I was asking about allegations made by Mrs.
McKee against Judge Clarke in the Milwaukee action and
I believe I had just read into the record from page 19

of her complaint, that Mr. McKee subjected the judge to his domination in making a finding.

MR. BROCK: I think my friend is reading from the complaint, that is similar to our statement of claim.

HIS LORDSHIP: My last note is that Mrs. McKee said that that was one of the allegations she made and swore to in Milwaukee.

10 MR. LOCHEAD: I would like to make that clear and inform your lordship on the motion which was authorized by our courts; my friend was authorized to take evidence of Judge Clarke in California.

HIS LORDSHIP: He will put in his case and you put in yours. There is no evidence of Justice Clarke here, as I understand it.

MR. LOCHEAD: Q. Mrs. McKee, is it also true that in your Milwaukee action you alleged collusion between Judge Clarke and Mr. McKee because the fees that were allowed to you to appeal that decision were allowed in
20 the amount of \$1,000 only?

A. Yes, that didn't even cover the transcript.

Q. It is true you made that charge in the Milwaukee action? A. Yes, it is.

Q. Now, I propose to read to you certain questions and answers in the Milwaukee depositions in regard to the matter we have just discussed. First with regard to your charge that Mr. Scott had caused this action to be assigned to Judge Clarke; I propose to read, Mrs. McKee, the last six lines of page 79 and the first
30 sixteen lines of page 80 as follows:

"---and prior to the trial of the action, said "Joseph Scott caused the action to be assigned "for trial before Honorable Thurman Clark, a "Judge of said Court. Who informed you of that?

"A. I heard it from different places.

"Q. Well now, just name the different places.

"A. Well, I wouldn't like to name them.

"Q. Oh, you must name them.

40 "A. I'm afraid I can't remember them right now. "I'm afraid I have to think about it.

"Q. There is nothing you have to be afraid of.

"A. No, but I am not going to hurt some other "honorable person.

"Q. You must answer that, Mrs. McKee, because "that is a very serious charge.

"A. It's a serious case too.

"Q. I want you to take it seriously.

"A. I am taking it seriously. My lawyer, Mr.

"Connell, told me.

"Q. What is his first name?

"A. Thomas Connell.

"Q. When did he tell you that?

"A. He told me after the decree was granted.

"Q. Where did he tell you that?

"A. He told me at his home."

10 Q. Now, were you asked those questions and did you
make those answers in your Milwaukee depositions?

A. Yes, I was asked those questions and that is my
answer.

Q. Then, I propose to read from page 125, commenc-
ing at the sixth line and reading only three lines:

"Q. Now, what did Connell say to you with
respect to Scott having caused this action
to be assigned to this Judge?

20 "A. He didn't say it. I didn't tell you he
"did."

Q. Were you asked that question and did you make
that answer?

A. Probably I didn't understand the question when
I was being asked it there. Connell had told me that.

Q. Were you asked that question at that time?

A. I don't know that because I say I know that
Connell was the person that told me. Connell told me
that and the lawyer I dismissed told me that too.

Q. Who was that, Mr. Solomon? A. Yes.

30 Q. You are now saying that Mr. Solomon and Mr.
Connell told you?

A. I believe Mr. Connell told me, it is a long
time ago. I am not prepared to say exactly but I feel
certain Mr. Connell told me that. I know Mr. Solomon
told me.

Q. At any rate I take it you were asked that
question and made that answer?

A. Yes, I know I said that because I was told that.

40 Q. Let me read to you from page 150, commencing to
read at line 6 and reading to line 14 inclusive:

"Q. What did Mr. Solomon say to you on the
occasion that you refer to with respect to Mr.
Scott having secured the appointment of Judge
Clark?

"A. He said he had heard that Joseph Scott had
"been instrumental in getting the appointment

"but he didn't believe that Scott had gotten him to assign the case to him. I told him that I had heard he had been instrumental in getting the appointment. He said, yes, he had, but that he didn't believe that Scott had gone to him and got the case assigned to him."

Q. Were you asked those questions and did you make those answers in your Milwaukee depositions?

10 A. Well, I know there was testimony like that.

MR. BROCK: My lord, I don't know how long this is going to continue.

MR. LOCHEAD: Quite a while.

MR. BROCK: It seems my friend is taking small parts of the evidence taken in the Milwaukee action.

HIS LORDSHIP: Mr. Brock, you are going to have quite free rights of re-examination.

MR. LOCHEAD: I have supplied my friend with
20 copies of the examination and he is quite at liberty to examine and re-examine.

HIS LORDSHIP: I do not propose to limit Mr. Lohead's cross-examination. I will take it subject to your general objection on which I propose to hear argument before I deal with it, but at the same time I think it might save time if Mr. Lohead reads some of these questions. You may interject but it may save time if the whole thing was put to her at once.

MR. BROCK: I would like to point out, my lord, if
30 this evidence is offered to credibility there must be some inconsistency.

HIS LORDSHIP: That is a matter of argument.

MR. LOCHEAD: There is some inconsistency, the witness has now stated that Mr. Solomon did tell her that Scott had assigned the case whereas she stated before he had not.

HIS LORDSHIP: Here is a woman who is determined to have custody of the child and the father is determined the other way. I daresay she resorted to many things
40 she perhaps should not have, but does it bear greatly on the question we have to deal with now?

MR. LOCHEAD: I suggest it does, my lord, and on the charges of defiance which have been made.

HIS LORDSHIP: I think it is quite obvious your client is in contempt of the courts in California.

MR. LOCHEAD: Assuming the validity of the California decree.

HIS LORDSHIP: I mean insofar as they are concerned he is.

MR. LOCHEAD: My purpose in going into the details in this is because of these very serious charges made under oath in the Milwaukee action.

HIS LORDSHIP: I assume anybody who does not decide in accordance with Mrs. McKee's wishes is subject to suspicion anyway. I won't go further than that.

10 MR. LOCHEAD: Perhaps subject to suspicion but not subject to these very serious charges made on what I am going to submit to your lordship was the flimsiest possible evidence.

Then, with regard to your Milwaukee complaint as to the friendship of the Scott and Clarke families I want to read to you from page 136, reading the first nine lines:

20 "Q. So, the only thing you have given us so far
"is your answers as to the close relationship
"between these families of Mr. Scott and Judge
"Clark is that you read in the newspapers after
"the trial that Mr. Scott was a pallbearer?

"A. That is just one of them.

"Q. Well now, give us one more.

"A. Just that people in general speak of it.

"Q. And that is the best answer you can make?

"A. At this moment, it is the best I can make."

30 Q. Were you asked those questions and did you make those answers in Milwaukee?

A. Well, something to that effect. I think I did.

Q. Then, with regard to your charge in the Milwaukee complaint that Judge Clarke had obtained his appointment through the good offices of Joseph Scott, I propose to read to you from page 132 commencing at line 9, being the balance of that page and the first four lines of page 133:

40 "Q. Now, you allege in this Complaint that
"Judge Clark secured his appointment as a judge
"to the bench of Court through the efforts of said
"Joseph Scott.

"A. Yes.

"Q. Why do you laugh?

"A. I am just laughing because I remember now
"who told me that. Just thought maybe you
"wanted to know.

"Q. Who told you?

"A. Mr. de la Fuente told me.

"Q. Mr. de la Fuente told you that too, you say?

"A. He told me that.

"Q. Maybe he told you about this first thing, too?

"A. I am not referring to anything other than
"just what I said.

"Q. You find considerable humor in this allegation?

"A. Sometimes I smile, you know, at the least
"little things, you know, Mr. Poss.

10 "Q. You didn't smile. You laughed out loud.

"You say Max de la Fuente told you that Clark --,
"that Judge Clark secured his appointment as
"Judge to that Court through the efforts of
"Joseph Scott. Now did anyone else other Max
"tell you that?

"A. No, I believe --. I don't know. Yes, I
"heard it but I can't tell you any specific
"names. That name just came to me. Maybe the
"others will come just like that."

20 Q. Now, were you asked those questions and did you
make those answers in Milwaukee?

A. That sounds very likely that I did.

Q. Then, with regard to the charge in the Milwaukee
complaint as to the frequent conferences between Judge
Clarke and Joseph Scott's son, Judge Scott, I propose
to read firstly at page 160, the last two lines of page
160, and the first eight lines of page 161:

30 "Q. Now, you also state here upon information
"and belief in this Complaint that, during the
"trial of your action out there, Judge Clark
"frequently conferred concerning the case with
"Honorable A. Scott, Judge of the Court and son
"of attorney Joseph Scott. Now, did anyone
"tell you that during the trial of the action?

"A. No.

"Q. Did anyone tell you that after the trial?

"A. Well, that was just conversation that I heard.

"Q. You don't recall the name of any specific
"person that told you that?

40 "A. I don't at this moment."

Q. Now, were you asked those questions in your
Milwaukee action and did you make those answers?

A. That sounds like I probably did.

Q. Then I propose to read the last 14 lines of page
161:

"Q. Now, at the time that you signed this, you

"verified this Complaint in this pending action
"here, Mrs. McKee, you alleged that during the
"trial, Judge Clark frequently conferred con-
"cerning the case with Honorable A. Scott, Judge
"of the Court, and son of Attorney Joseph Scott.
"Do you know --, have you any information as to
"how frequently he conferred?

"A. No, I have none.

10 "Q. None at all?

"A. No, I just heard that he went to, that the
"son was at the father's house, etc., and so on,
"and Miss Peden told me that she thought she
"saw Judge Clark there one evening.

"Q. Who is Miss Peden?

"A. She is a friend."

Q. Were you asked those questions and did you make
those answers?

A. Yes, I believe so.

20 Q. Then on the same point, reading from page 168,
commencing at line 7, and reading to line 10 inclusive:

"Q. Did anyone else give you any information
"with respect to conferences between Judge
"Clark and Judge Scott, A. Scott, the Judge,
"concerning this action?

"A. I don't remember right now."

Q. Were you asked those questions and did you make
those answers?

30 A. I did because I had to keep part of it for my
case. At that time I couldn't tell all. It was a
known fact that many of them would not testify then.

HIS LORDSHIP: You were under oath?

A. Yes.

Q. Just read me that again; just the last question.

MR. LOCHEAD:

"Q. Did anyone else give you any information
"with respect to conferences between Judge
"Clark and Judge Scott, A. Scott, the Judge,
"concerning this action?

40 "A. I don't remember right now."

HIS LORDSHIP: Do you remember anything else?

A. Well, I don't right now but I know I had been
advised that some of the things would have to prove my
point.

Q. You are explaining now, as I understand it, that
what might be interpreted as reticence in some answers

was affected by the fact that you wanted to save ammunition for the trial?

A. Well, I was advised so.

MR. LOCHEAD: You followed the advice?

A. Partly I did, yes.

HIS LORDSHIP: Do not follow it here.

MR. LOCHEAD: I wish to read from page 173, commencing at line 13 and reading through to the end of the
10 page:

"Q. Well, In May, 1944, you verified this
"Complaint and in that Complaint you said that
"you were informed that Judge Clark and Judge A.
"Scott frequently conferred about your divorce
"action in California during the trial. That is
"only about a month and a half ago.

"A. I think I have given you where Miss Peden,
"she said she was sure she saw the Judge at the
"Scott home and they were there, because the
20 "Scotts watched our home and it seemed the kids
"watched theirs.

"Q. Well, my question was, was there any other
"information, had you any other information
"besides Miss Peden's hearsay?

"A. I can't tell you right now, Mr. Poss.

"Q. Well, would you tell me if you knew?

"A. Of course.

"Q. Well, did you have additional information in
"May, 1944, when you verified the Complaint?

30 "A. I might have. I don't know."

Q. Now, were you asked those questions and did
you make those answers?

A. It sounds as if I had been asked that and that
I made those answers.

Q. By the way, do you recall the dates upon which
these depositions were taken? I believe it was late
in June and early in July in 1944?

A. It was in 1944 in the spring.

40 Q. You wouldn't quarrel that it was late in June
and early in July?

A. No, I don't quarrel at all.

HIS LORDSHIP: I think he means you do not disagree
with him.

MR. LOCHEAD: You wouldn't disagree with me it was
late in June and early in July, 1944?

A. No, I would not disagree.

Q. Now then, with regard to the collusion which you allege in that only \$1,000 was allowed on appeal as a fee, I want to read to you from pages 227 and 228; the last 13 lines of page 227 and the first 7 lines of page 228:

"Q. Now, who informed you of a collusion between the defendant and the Judge with respect to the allowance of \$1,000.00?

10 "A. Why, I took it from what the Judge said on the bench when he knew that the transcript --.

"Q. Just a moment. Were you there when the Judge said this?

"A. Yes, I was.

"Q. What did the Judge say from the bench in your presence?

20 "A. When my lawyer made his plea for money, the Judge, he asked how much the transcript would be, and Mr. Barr was the one who had taken it, and he would not write it up for less than a thousand dollars. And that was for attorneys' fees and the transcript, and they knew I had no money. It was upon that you based your belief that there was collusion between Mr. McKee and Judge Clark?

A. Yes, and the judge had said that McKee had money but he had it well hidden.

"Q. Did he say this in your presence?

"A. No, he said that to Mr. Connell.

30 "Q. We move that be stricken.

"COMMISSIONER: It may be stricken."

Q. Were you asked those questions and did you make those answers?

A. I believe I did.

Q. Then in general with regard to your allegations against Judge Clarke I propose to read the first 16 lines of page 248:

40 "Q. Is it your claim, Mrs. McKee, in the conduct of the trial and in his decision, and the making of and issuance of the Order subsequent thereto, Judge Clark, the presiding Judge in the divorce action in California, was dishonest?

"A. I would say he was dishonest.

"Q. Is that your claim?

"A. That is what I am claiming, yes.

"Q. That he was dishonorable?

"A. Dishonest and dishonorable mean the same thing, Mr. Poss.

"Q. That he was dishonorable, is that correct?

"A. Yes.

"Q. That he was corrupt?

"A. I don't know how corrupt he was.

"Q. I didn't ask you how corrupt he was. I merely asked, is that your claim, that he was

10 "corrupt? Answer that 'yes' or 'no'.

"A. Yes, Mr. Poss."

Q. Were you asked those questions and did you make those answers? A. I believe so.

Q. Now then, as a matter of fact, I believe that as another proceeding in the Milwaukee action you caused Judge Clarke to be called in California to give evidence on deposition, is that correct?

A. That is correct.

20 Q. I believe that when that deposition was taken both you and Mr. McKee were present and represented by attorneys?

A. I know Mr. McKee was represented but I don't know if he was there or not.

Q. You were there? A. Yes.

Q. And you were represented? A. Yes.

Q. And Judge Clarke was examined by your counsel?

A. Yes.

Q. Is it not true he made a complete denial of the charges against him made by you in the Milwaukee case?

30 A. I do not believe he did.

Q. In what did he? Did he admit he was corrupt?

A. I do not know, I haven't the testimony before me.

Q. I suggest to you he denied every charge, every charge of corruption you made against him?

A. He didn't deny having worked around Mr. Scott and the families were political friends.

Q. Did he admit he was corrupt or deny it?

40 A. I don't know whether he was asked, "Are you corrupt?"

Q. Was he asked, "Are you dishonest?"

A. Since we were charging that I imagine he was.

Q. What was his answer? A. I couldn't tell you, I don't remember.

Q. Was he asked if he was dishonourable?

A. I do not believe that question was put to him

like that.

Q. Was he asked if he had been under the domination and control of Mr. McKee in connection with this trial?

A. I really don't remember. I imagine somebody must have his testimony which I am willing to have put in the case.

HIS LORDSHIP: Does it matter much what he said?

10 THE WITNESS: I do not just remember, your lordship, or I would be glad to say so.

MR. LOCHEAD: My only point is to get on the record that he denied all charges that were made.

MR. BROCK: My lord, if it will assist the Court, he may as well put in the whole Wisconsin proceedings instead of taking them piece-meal.

HIS LORDSHIP: I do not know, Mr. Brock, I do not think that is a proper suggestion.

20 MR. LOCHEAD: Mrs. McKee, do you know whether or not in your Milwaukee action Judge Clarke filed an affidavit in which he denied charges that you had made against his integrity?

A. I do not remember that -- you mean that there would be something in Wisconsin?

Q. Yes, an affidavit filed in Wisconsin denying all charges you made against his integrity. Do you know whether or not that was done?

A. I don't know, he might have.

30 Q. Now, passing to another aspect of the Milwaukee action, Mrs. McKee, I believe you also alleged in the Milwaukee action that your own counsel had been fraudulent. Is that correct?

A. Well, I did that because I knew he kept documents that I had ready for the court and that was of my own knowledge I knew he held them back.

Q. Then, to get it straight, I believe when the trial commenced you were represented by Mr. Haumesch and Mr. Solomon?

A. When it commenced, yes.

40 Q. During the course of the trial, half-way through, you dismissed them and you were represented from then on by Mr. Connell?

A. Yes, a very young and naive lawyer.

Q. I am referring to the California trial, I take it that this is the divorce proceedings in California?

A. Yes.

Q. And Mr. Cloud came in later on?

A. Mr. Cloud came in before the appeal.

Q. I believe your charges of fraud against your own counsel were three in number. You have already mentioned they withheld certain evidence, certain documents, that you thought should have been put in evidence?

A. It was what we agreed to have the divorce on.

10 Q. And I believe you alleged that was the fault of Mr. Haumesch? A. Yes, I felt he was the one because he was the one I had given the papers to.

Q. Yet is it not true in your Milwaukee action you called Mr. Haumesch as a witness on your behalf to take evidence in California? A. Yes.

Q. Is it not true that he was called as a witness in California by Mr. McKee to give evidence in this proceeding but refused to testify, or don't you know that?

20 A. Yes, I believe there was something he refused to testify.

Q. Then I believe you also allege there was collusion between Mr. McKee and Mr. Haumesch and Mr. Solomon, is that correct?

A. That is very correct.

Q. What was the basis of that allegation as you recall it?

A. Are you asking me what happened or something about Wisconsin?

30 HIS LORDSHIP: He wants to know what you based that suggestion on.

A. Well, I felt he was paid out of the ordinary fees --

MR. LOCHEAD:

Q. The fact that Mr. McKee paid your counsel?

A. The Judge heard part of the trial without the transcript at the beginning.

40 Q. Is it not true, as a matter of fact, that the money which was paid by Mr. McKee to Mr. Haumesch was as a result of a settlement between counsel which was approved by the Court? A. I do not believe that is the way it was.

Q. How do you think it was?

A. I heard the judge say that after the decision was made, after the decision was made the judge announced from the bench he had been informed I believe by Mr. Scott, I think it had been told-out of court how

much these attorneys would be paid the night before the decision was handed down by the judge, but the judge from the bench made a decision of \$200 for about two or three weeks work.

Q. The judge also approved the settlement arrived at to Mr. Haumesch and Mr. Solomon. Was that not approved by the judge?

10 A. I don't know, I don't just remember about that. I believe he just said that they had settled it. I wasn't aware the amount was mentioned, I don't think it was.

Q. Do you know from what you have learned since that the amount was \$1250?

A. Well, I heard that, yes.

Q. And Mr. Haumesch and Mr. Solomon were engaged in the preparation of this case for trial?

A. Apparently they were.

20 Q. They were also engaged in Court with you on several days, probably at least ten days?

A. No, I saw Mr. Haumesch as well as I remember, twice.

Q. In court? A. I thought you meant in preparation, I am sorry I did not understand.

Q. Perhaps I didn't state myself properly. You and I do not know how long they worked on the preparation, but isn't it true they both appeared representing you in Court on many days before Connell took over?

30 A. Yes.

Q. And the allowance of \$1250 was an allowance for attorney's fees for that work?

A. Yes, that is what they said.

Q. Now, is that the only payment you have reference to that was made by Mr. McKee to your attorneys Haumesch and Solomon?

A. I don't know what you are asking me.

40 Q. We have covered the fact that Mr. McKee paid \$1250 for your attorneys for their fees. Is that the only payment that you have reference to when you allege in your Milwaukee action that Mr. McKee had made payments to your lawyers?

A. I don't know what I had reference to.

Q. You don't know? A. I don't remember.

Q. You have no knowledge now or information as to other payments?

A. I don't remember really, Mr. Lohead.

Q. Now then, still referring to the Milwaukee action, is it true that in your complaint you made charges against certain witnesses of perjury in the California trial and against Mr. McKee of subornation of perjury? A. Yes, I did, because I knew it was perjury.

Q. But you did make that charge in the Milwaukee action? A. Yes, I did.

10 Q. And I believe your charges of perjury were made against a man called Charles Wood who was a secretary to Mr. McKee?

A. Well, secretary, whatever you want to call it.

Q. He was an employee? A. Yes, he was.

Q. You charged him with perjury in the California action? A. Yes.

Q. And you charged Mr. McKee's son, Muir McKee, with perjury? A. Yes, he was a young boy of fourteen.

20 Q. And you charged Mr. McKee's daughter, Joanne?

A. Yes, she had given a deposition for me first and then gave one for him.

Q. And you charged his son Julian with perjury?

A. Yes, he was about twelve at that time.

Q. You charged his daughter Meredith with perjury?

A. Yes.

Q. I believe all those children I have named, Muir, Joanne, and Julian lived with you at least part of the time you were with Mr. McKee before you separated?

30 A. Yes, they stayed on with me until about the time of the property settlement.

Q. Now then, I want to read to you from pages 210, from line 14 to 25:

"Q. Mrs. McKee, you allege in your Complaint in
"the action here that the findings of fact made
"by the California Court in finding that you
"had been guilty of wrongful conduct and the
"defendant had been free from wrongful conduct
"are each and all based upon perjured testimony.
"That is, you allege upon information and belief
"that the defendant was guilty of subornation of
"perjury in securing such testimony. Now, what
"testimony do you refer to?

40 "A. His children's; Charles Watt.

"Q. Mr. McKee's children?

"A. Yes.

"Q. Give me their names.

"A. Muir, Julian, Jo Ann, Meredith."

Q. Were you asked those questions and did you make those answers?

A. I am sure I did.

Q. Then, I want to read the first 17 lines of page 211 of your Milwaukee depositions:

"Q. And you claim that each of those children perjured himself or herself on the witness stand?

10 "A. I do.

"Q. And you claim they did that at the instance of their father?

"A. I do.

"Q. Now, what testimony do you have reference to?

"A. Their testimony.

"Q. Yes, what was the nature of the testimony?

"A. Damaging.

"Q. What was the nature, not what was the result of it.

20 "A. You know the answer. Just ask me. I don't know what you want me to say.

"Q. Well, what testimony did you --?

"A. Against me.

"Q. What testimony did they give which you claim was perjured testimony?

"A. All of it --, most of it was."

Q. Were you asked those questions and did you make those answers?

A. I believe I did.

30 Q. Then, reading at page 212, commencing at line 13 and reading to line 16:

"Q. Is it your claim that all of the testimony, to use your own words, given at the trial by Meredith, Jo Ann, Muir and Julian, was perjured testimony?

"A. Everything that was damaging about me."

Q. Were you asked those questions and did you make those answers?

A. I probably did.

40 Q. Beg pardon? A. I probably did. It has been quite a while and I have been terribly upset. I cannot remember it all.

Q. I want to read to you from page 214, the first seven lines:

"Q. Mr. Connell told you what Meredith had testified?

"A. Well, that is just one of the things I remember she said. She said, in general, I was a good mother and her father was a good father. Course, I knew she had told me he wasn't. So I considered that perjured testimony.

"Q. What other testimony?

"A. I haven't read it. I didn't yet."

10 Q. Were you asked those questions and did you make those answers?

A. I think that I misunderstood that question there. I was ill and the court went on without me. I wasn't in court when they heard testimony and I heard it from my lawyer. I was not present for about one-third of the case.

Q. Do you wish me to re-read those questions and answers? A. I understand what you are asking me now.

20 Q. Then were you asked those questions and did you make those answers?

A. I believe so, yes.

Q. Then, I believe you also alleged that Mrs. de la Fuente committed perjury in the California trial, is that correct? A. Yes.

Q. I am reading to you from page 219 from line 12 to the end of the page:

"Q. Now, is there anyone else who testified on behalf of Mr. McKee who perjured himself or herself?

30 "A. Yes, Mrs. de la Fuente.

"Q. Mrs. de la Fuente was the wife of Max?

"A. Yes. I don't know whether she was his wife or not, but she went by that name.

"Q. But you know they were divorced recently, don't you?

"A. I heard something to that effect. I know he had a detective --.

"Q. You also know that in her divorce she named a certain woman as correspondent?

40 "A. No, I don't believe --.

"MR. PAULSEN: I object to that as being improper and highly prejudicial.

"WITNESS: I don't know.

"MR. POSS:

"Q. What did she allege?

"A. I don't know, but I was correspondent."

Q. Were you asked those questions in the Milwaukee depositions and did you make those answers?

A. I don't just quite understand what you are asking me.

Q. I am asking you now if at the time of this examination in Milwaukee you were asked the questions I have just read?

A. Something came up about it, I know.

10 Q. Something to that effect? A. Yes.

Q. Well, reading at page 220, from lines 10 to 23 inclusive:

"Q. In what respect did Max de la Fuente's wife, from whom he was recently divorced, perjure herself in the course of this trial?

"A. I didn't hear her testimony. I wasn't in Court but I just heard something about it.

"Q. From whom did you hear it?

"A. I think, from Mr. Connell, my attorney.

20 "Q. What did Mr. Connell say to you?

"A. Well, as well as I remember, he said that when I met them, they were all at my house, that I kissed Mr. de la Fuente in front of her."

Q. Were you asked those questions and did you make those answers?

A. I probably did.

Q. Then reading from page 222 from line 7 to 9 inclusive:

30 "Q. Do you know anyone else on the witness stand who, you claim, gave perjured testimony in favor of Mr. McKee?

"A. That is all, I believe, that I heard of."

Q. Were you asked that question and did you make that answer?

A. Yes, but I know he had some detectives.

Q. What I am asking you now is, do you remember being asked that question?

A. I don't, no. I suppose it was asked but I do not remember it.

40 Q. Then you have mentioned the question of detectives and I will read to you what you say about that. At page 262 from lines 11 to 23 inclusive:

"Q. You testified yesterday and gave the names of four children of Mr. McKee who, you claimed, perjured themselves on the witness stand in the action in California?

"A. Yes.

"Q. You recall that?

"A. I do.

"Q. And I think you added the name of a Mr. Watt?

"A. Yes. He testified --.

"Q. I am just asking you for the names. And did you mention any other name of any other witness?

10 "A. I probably said his detective. I don't know.

"Q. Well, you didn't give the names of any detectives?

"A. Well, as I remember, it was Cunningham, or something like that."

Q. Were you asked those questions and did you make those answers?

A. Yes, I did, but I must have made a mistake because Mr. Wood did not testify at the trial, he gave some sort of statement or deposition.

HIS LORDSHIP: Was the deposition wrong?

20 A. Yes, I believe it was.

MR. LOCHEAD: Q. At any rate you did claim in the Milwaukee action that Charles Wood's evidence was perjury? A. Yes, I did.

Q. Now then, the net result, I believe, of the Milwaukee action was that on consent of both parties and all attorneys your action was dismissed on the merits, is that correct?

A. In 1945?

Q. Yes, in June of 1945? A. Yes.

30 Q. That is correct, is it? A. Yes.

Q. Now then do you recall that the question of the dismissal of your Milwaukee action or, rather, deposition, was subject of some discussion at the end of the hearing in California in June of 1945 between you and the judge. Do you recall that there was some question by the judge to you as to what you proposed to do about the Milwaukee action?

A. Yes.

40 was to be done? Q. And there was considerable discussion about what

A. Yes, I think he told me to dismiss it if I wanted any relief in the Court, or something to that effect.

Q. On the basis of his statement of that fact you did consent to dismiss the Milwaukee action?

A. On the basis of what he said to me?

Q. Yes? A. On the advice of my attorneys, they told me to dismiss it.

MR. BROCK: My friend has been reading that all along, he might read that too.

MR. LOCHEAD: I am quite satisfied to have her tell us what happened. Would it be a fair statement on the basis of that statement by the judge to you, the attorneys agreed to dismissal of the Milwaukee action?

10 A. It was then I realized I was going to lose the trial and I was not going to have the baby even for a day, and I had to take that chance.

Q. What chance do you mean?

A. I had to take that chance I could get relief in the California Court.

Q. You still have not answered my question. On the basis of what you told us the judge said to you in California, I suggest to you that that was the basis of the agreement by your attorneys in California and your-
20 self to consent to the dismissal of the Milwaukee action. Now, is that right or is it not?

A. I can hardly say that is correct because I think I have given you my real feeling that I was never going to get control of the child.

Q. At any rate is it true to say that from what the judge said in California you concluded that unless you consented to the dismissal of your Milwaukee action you would not get relief from the California Court?

30 A. The judge wanted us to settle it off the bench and I tried, that was the understanding I had. He asked us to try to settle it out of court and I did, I tried.

Q. Now, you are speaking of settling the California action or the Milwaukee action?

A. No, this action in 1945; Mr. McKee brought an action before the California Court and Mr. McKee asked us to try to keep from being lampooned in the paper, to try to keep it out of court.

40 Q. There was some references to the charges made against the California court in the Milwaukee action?

A. I don't think he was pleased with my charges.

Q. At any rate is it not true that from what the judge said in California you came to the conclusion that you would not get any favourable decision in California from Judge Smith unless you disposed of your Milwaukee action?

MR. BROCK: I object.

HIS LORDSHIP: On what ground is it objectionable?

MR. BROCK: Every person in a court action hopes for success, my lord.

HIS LORDSHIP: Why isn't it a proper question in cross-examination?

MR. BROCK: It tries to put the intention in the mouth of this witness.

10 HIS LORDSHIP: She is quite intelligent, she can tell us what she felt. I think she is quite able to look after herself.

MR. LOCHEAD: Q. Do you recall my question?

A. I think I have given you an answer, I am not trying to be evasive. I think I said I would not have jurisdiction over the child again.

Q. You felt you have said, the Milwaukee action would have to be settled and you would take the judgment of the court in California?

20 A. Yes, I did.

Q. Now, by the way, Mrs. McKee, I suppose it goes without saying that Terry was not actually in California at the time of the 1945 trial?

A. I had not been allowed to see Terry all that year. I don't know where he was really.

Q. He wasn't in California as far as you know?

A. Not as far as I know.

Q. Possession of Terry was delivered to you on July 1st, 1945? A. That is correct.

30 Q. As in previous years? A. Yes.

Q. And the California trial took place on several days in June, 1945?

A. That is correct.

Q. Now then, are you aware, Mrs. McKee, in the year 1936, Mr. McKee, who was then your husband, entered into trust agreements in respect of each of his then children?

A. I believe it was 1936, yes.

40 Q. At any rate you are aware trust agreements were entered into? A. Yes.

Q. Are you also aware of the fact that, in order to enter into those trust agreements, Mr. McKee assigned to the trusts a very substantial portion of his wealth? Are you aware of that or were you aware of it then?

A. I know he framed it up so he could keep using it.

Q. Let us not get ahead of ourselves. I am asking you this, were you aware at that time, in order to set up these trusts, Mr. McKee assigned to them the great bulk of his assets?

A. Yes, and he still has control of it.

Q. Did he do it? A. I don't know for sure that he did. I know he set up some trusts.

10 Q. You do not know whether or not they represented the great bulk of his wealth at that time?

A. No, I don't know.

Q. Did you ever see one of the agreements that was prepared in connection with these trusts?

A. I can't remember whether I seen them or not.

Q. Would you recall any of the terms of them now?

A. If you state some of them I may.

Q. I believe you have already stated Mr. McKee was made trustee? A. Yes, I know he kept control.

Q. Do you know what the word "irrevocable" means?

20 A. Yes.

Q. Is it not true all these trusts were irrevocable trusts? A. Yes, they all had to be.

Q. Because of some taxation? A. Yes.

HIS LORDSHIP: I take it this was advised to meet taxation problems?

MR. LOCHEAD: No, my lord, the question of their being irrevocable might have been but the trusts agreements themselves were not advised because of taxation at all.

30 HIS LORDSHIP: I don't think it matters to me what they were, I am not concerned with taxation laws in the United States.

MR. LOCHEAD: Q. Then, were you aware that the Azusa house which you have already told us about was purchased by Mr. McKee on a trust deed and what is called in Canada a mortgage? What I am getting at is this, Mr. McKee, when he purchased the Azusa house, did not pay much for it?

A. No, he owed something on it.

40 Q. A rather substantial amount?

A. Yes, it seemed like a quite substantial amount. We spent about \$22,000 to fix it.

Q. When he bought it there was a substantial amount owing? A. Yes.

Q. I suppose he bought it in 1937 when you moved to California? A. Yes, I believe so.

Q. I believe the Azusa house was mentioned in the property settlement which has been put in as an exhibit. Was the Azusa house the subject of the reference in the property settlement?

A. Yes.

Q. And by the property settlement was turned over to you? A. Yes.

10 Q. I want to read to you the second paragraph of paragraph number 6 of the property settlement which reads as follows:

"(6) It is further understood and agreed that
"the home place of the parties hereto, which is
"located in Azusa, California, stands in the
"name of the Party of the First Part; and that
"the Party of the Second Part purchased said
"aforementioned home for the purchase price of
"Twenty-two Thousand (\$22,000.00) Dollars;
"that thereafter the said Party of the Second
20 "Part had said home place remodeled, repaired,
"altered and additions placed thereon at a
"cost of Fourteen Thousand (\$14,000.00) dollars;
"that said Party of the Second Part purchased
"furniture, furnishings, silverware, linens,
"draperies and all incidentals in connection
"with said home and paid therefor the sum of
"Fifteen Thousand (\$15,000.00) Dollars.

30 "That at the present time there is now unpaid
"the sum of Seven Thousand Seven Hundred Seventy-
"seven and 40/100 (\$7,777.40) Dollars upon a
"Trust Deed, the beneficiary being CRYSTAL LINDLEY,
"and the payments thereon are One Hundred Fifty
"\$150.00) Dollars per month, including principal
"and interest.

40 "The Party of the Second Part hereby sells,
"assigns, transfers and delivers to the Party
"of the First Part all of his right, title and
"interest in and to the aforementioned Azusa
"home, and all furniture, furnishings, silverware,
"linens, draperies and all incidentals in
"connection with said home that were situated
"therein during the time said home was occupied by
"the parties hereto, excepting therefrom, however,
"all personal effects, books and pictures belong-
"ing to the Party of the Second Part.

"As of September 1, 1941, there is due, owing

"and unpaid the sum of \$800.00 on said aforementioned note and trust deed in favor of Crystal Lindley, and the Party of the Second Part agrees to pay, or cause to be paid, to Crystal Lindley the sum of \$800.00 upon the signing of this agreement thereby bringing said note and trust deed up to date as of September 1, 1941.

10 "That said Party of the First Part agrees to save harmless and relieve the Party of the Second Part of any and all liability or responsibility in connection with the said aforementioned note and deed of trust in favor of said Crystal Lindley."

Q. Now, were you aware of that clause in the property settlement at the time you entered into it?

A. I must have been, I sort of have forgotten now.

Q. Then, I also want to refer to the fact that I believe by the property settlement a motor car was turned over to you by Mr. McKee, is that right?

20 A. Yes.

Q. And I am reading clause 14 of the property settlement:

30 "(14) The Party of the Second Part further agrees to deliver, or cause to be delivered, to the Party of the First Part that certain Black, Oldsmobile Four-door Sedan, which is now in the possession of the Party of the Second Part, and the First Party agrees that upon the signing of this agreement she will forthwith pay off, or cause to be paid off, the balance of Five Hundred (\$500.00) Dollars which is now due and unpaid on said automobile herein described. Said aforementioned Five Hundred (\$500.00) Dollars due on said automobile is evidenced by a promissory note signed by the Party of the Second Part in favor of the Port Austin State Bank, Port Austin, Michigan, and the First Party agrees to relieve and save harmless the Party of the Second Part of any liability or responsibility in connection with the encumbrance and/or promissory note against said automobile."

40 Q. Now, were you aware of that provision in the property settlement?

A. Yes, and as far as I remember that was taken care of because there wasn't any way to prove the car

had something against it. As far as I remember I didn't pay the \$500.

Q. You are not sure whether or not you paid the \$500?
A. I remember there was a controversy about it but it seems there wasn't anything against it, it seems the car was clear and had title.

Q. I presume the car was purchased when you and Mr. McKee were still living together?

10 A. I couldn't say.

Q. In other words you do not remember when the car was bought?
A. No, I do not right now.

Q. No idea where Mr. McKee bought it?

A. It seems to me it was a 1941 car. I don't know whether we got it in 1940 or just when. I think it was a short time before we separated, I couldn't say for sure.

20 Q. Now, I believe that after the June 1945 trial there was a proceedings before another judge of the California court in order to fix the fees which were to be allotted to you in connection with an appeal which Mr. McKee was taking from that decision. Do you recall that?

A. I had forgotten, there was something about a fee for an appeal. I remember there was some fee paid over to the attorneys for the 1945 trial.

30 Q. This is not for the trial, I am suggesting to you that after the trial and the decision had been given there was a proceeding at which both you and Mr. McKee were present when evidence was adduced as to Mr. McKee's worth in order to have the judge base on that evidence a finding in your favour as to the fees that should be allowed to you on the costs of appeal that was being taken. Do you remember that proceeding?

A. No, I don't. It was right from the bench the judge said he would base whatever Mr. Scott was going to charge Mr. McKee.

40 Q. No, I think you are confused. I am speaking of the 1945 trial.

A. No, that was the same thing, the judge was going to base it on what Mr. McKee was going to pay Mr. Scott and I believe Mr. Scott got up and said he was going to charge Mr. McKee \$1600 for seven days' work.

Q. At any rate, you do not recall the proceeding?

A. For the appeal money I really don't. If there is something there I may recall it.

Q. I must confess I have not the depositions but I am instructed that you and Mr. McKee were both present, but you don't remember that?

A. No, I just remember the judge making that award right after the decision.

Q. Perhaps it might be of assistance to you if I informed you that the hearing regarding the fees for the appeal was before a different judge than the trial.
10 It was not before Judge Smith. It was when the allowance was set that your attorneys were to get to conduct the appeal which Mr. McKee was taking?

A. Well, I actually don't remember that. I just remember this decision from the bench that day.

Q. I am informed now that you had first obtained an order to show cause after Mr. McKee commenced appeal. You got an order to show cause in order to get fees set that you would be given to fight the appeal?

A. What was I given, I don't remember it at all?

20 Q. \$500. A. Attorney's fees for the appeal?

Q. For the appeal from Judge Smith's decision.

A. Somehow I can't remember that at all. I would help you but really I don't remember it. I do not remember the award of \$500 for the appeal.

Q. You do not remember an enquiry after June, 1945, for the appeal as to Mr. McKee's worth, his assets, in order to determine the fees you should be allowed, you do not remember that now?

A. I think it was kind of gone into that day. I
30 think Mr. Scott got up and said no doubt as to his being able to pay.

Q. Do you recall on the same hearing evidence was given by Mr. McKee that his worth would be ten or fifteen or twenty thousand dollars?

A. I know he made many statements, I do not remember what he said.

Q. You have heard him make that statement many times? A. I have heard him make statements about his wealth since this litigation has begun.

40 Q. I am asking you this specific question, do you recall an action in court between the 1945 trial and the appeal that was taken from it, when Mr. McKee stated his worth was ten thousand or fifteen thousand dollars, or thereabouts?

A. I don't remember what he stated.

Q. Now then, turning to the question of payments

that have been made by Mr. McKee to you for Terry;
I believe reference was made last week by your counsel
to clause 7 of the agreement providing for payments
of \$125 a month under the property settlement,
Exhibit 3?

A. Yes.

Q. And is it also correct that it was provided that
these payments were to be made out of the trust which
had been set up by Mr. McKee for Terry?

10 A. Yes, I believe that.

Q. And is it also correct that the property
settlement expressly provided that there was to be no
personal liability on Mr. McKee whatsoever but they
were to come from that trust only?

A. I do not remember the paragraphs on that.

HIS LORDSHIP: You might read it.

MR. LOCHEAD: I will read the whole of clause 7 to
you:

20 "(7) It is further understood and agreed that
"the party of the Second Part, as Trustee for
"TERRY ALEXANDER MCKEE, agrees to pay or cause
"to be paid to the Party of the First Part the
"sum of One Hundred Twenty-five (\$125.00)
"Dollars on the 1st day of September, 1941, and
"One Hundred Twenty-five (\$125.00) Dollars on
"the first day of each and every month there-
"after until the said TERRY ALEXANDER MCKEE
"reaches his twenty-first (21) birthday, for
"his use and benefit; said payments shall be
30 "made out of the Trust heretofore created on
"December 16, 1940 for the said TERRY ALEXANDER
"MCKEE.

"It is further understood and agreed,
"however, that in no event shall the Party
"of the Second Part be personally responsible
"for the payments mentioned in this paragraph."

Q. Do you remember now that there was no personal
responsibility? A. Yes.

40 Q. And you were certainly aware of it at the time
this agreement was executed?

A. I read the property settlement, yes.

Q. Do you recall also that the property settlement
required Mr. McKee to take out a \$50,000 insurance
policy in the Mutual Life of Des Moines?

A. He had over \$100,000 and my understanding was
he was to give \$50,000 of that.

Q. Is it not true that by the separation agreement

and what was understood under it, that the payments of premiums on that insurance policy were to be made out of this same trust or don't you know that?

A. Yes, I believe that is true.

Q. Do you happen to know whether or not that trust that is referred to in clause 7 of the separation agreement was subsequently dissolved by reason of the fact that its assets had been entirely dissipated in
10 the payment of the allowance for Terry and the premiums for the insurance policy?

A. I was informed it was a \$50,000 trust fund in the beginning and I was quite surprised when I got to Milwaukee and found it was a small trust fund.

Q. Do you know or do you not know now that the trust referred to in clause 7 was subsequently dissolved because it had been dissipated in payment of Terry's allowance and payments on the insurance policy?

A. I didn't hear that until right now.

20 Q. Then I believe that the California judgment, which I propose to put in in due course, provided that Mr. McKee should pay you the sum of \$100 a month for Terry for each of the three months he was with you in each year?

A. Yes.

Q. In spite of that I believe it is true that Mr. McKee did in fact pay you \$125 a month for each of the months Terry was with you?

A. That seems to me debatable with my attorneys whether he should pay because the property settlement
30 was still in effect.

Q. You say now he should pay you \$225 a month?

A. I don't know the law on it. I just know I had the property settlement he gave me until the child was
21.

Q. The fact does remain for each of the three months in each of the years that Terry was with you Mr. McKee has paid you \$125?

A. That is correct.

40 Q. I don't suppose you have ever made any claim that Mr. McKee should pay you an allowance of \$600 a month? A. I never complained about that at all.

Q. You felt that your rights are limited to \$300 a month? A. I don't know what I felt, it depends on the cost of living and what Mr. McKee is worth.

Q. Now then, I refer you also to clause 4 of the

separation agreement which I would like to read to you:

"(4) The Party of the Second Part agrees to pay or
"cause to be paid to the Party of the First Part,
"for the use and benefit of GERALD BERRY MCKEE,
"son of the Party of the First Part, the sum of One
"Hundred (\$100.00) Dollars per month, commencing
"with the 1st day of September, 1941, and continu-
"ing until the said GERALD BERRY MCKEE shall reach
"his majority. In the event, however, that the
"said Party of the Second Part shall be called to
"active duty in the United States Army, then and
"in that event, said payments as aforesaid shall be
"suspended during the time that said Party of the
"Second Part shall be in the Army in active duty,
"and he will not be required to make any payments
"whatsoever during said time.

"It is also understood and agreed between the
"parties hereto that in the event the said GERALD
"BERRY MCKEE does not continue to use and go by the
"name of GERALD BERRY MCKEE, then in that event said
"payments as aforesaid shall immediately terminate
"and cease, and there shall be no further liability
"on the part of the Party of the Second Part to
"make any further payments under this paragraph
"of this agreement."

Q. Now, as a matter of fact, I believe you told
us this morning that Jerry had continued to use the
name of McKee and is doing so up to the present day?

A. Yes.

Q. I believe you told us that there had never been
any formal court proceedings to that effect?

A. Nothing other than this agreement.

Q. How old is Jerry now? A. Twenty-two.

Q. Is it not true Mr. McKee did continue making
these payments to him until he was 21?

A. They were made until he was 21.

HIS LORDSHIP: Q. Jerry was a comparatively young
boy when you were married?

A. Yes, he was.

MR. LOCHEAD: Q. Now, there was some reference
last week to the proceedings in February of this year
and there are just one or two questions I want to ask
you about that. I believe as a matter of fact that
was an application by you for an allowance in the
amount of \$25,000 for attorney's fees and expenses in

connection with the proceedings that have developed?

A. Yes, for helping to secure the return of Terry.

Q. And actually I believe an order was given to you on February 25, 1947, in the amount of \$10,000?

A. We didn't think it would be so long and we ourselves said that \$10,000 was enough.

Q. On that basis the order was made in that amount?

A. Yes.

10 Q. By the same Court, the Superior Court?

A. Yes.

Q. And that order as far as you know still stands, you have never withdrawn it, have you?

A. No.

Q. There was also some reference by you I believe last week to this dog of Terry's?

A. Yes.

---A short adjournment.

20

Q. Now, Mrs. McKee, I had just started talking about the dog.

A. Yes.

Q. Had you ever seen this dog before you were in Port Austin a couple of weeks ago?

A. No.

Q. I believe you told us last week you found the dog at Broken Rocks, which is a colony of small cottages?

A. Yes.

Q. And Mr. McKee has a cottage at Broken Rocks?

A. Yes.

30

Q. And Mr. McKee also for some time resided in what we call the town house in Port Austin?

A. I didn't know he had a town house.

Q. Has he another house as well as the cottage at Port Austin?

A. Another cottage, yes.

Q. Do you know a man called Bill Shoemaker?

A. Yes, I do.

Q. Do you know whether or not Bill Shoemaker and his family have for some time resided with Mr. McKee in Port Austin?

40

A. I believe about two months before Terry came here to Canada.

Q. That would be in say October of 1946?

A. Yes.

Q. Up to September of this year, is that correct?

A. What are you asking me?

Q. I am asking you if you know whether or not the

Shoemaker family resided in Mr. McKee's house or cottage?

A. No, Mr. McKee's son, I understand, was in his cottage.

Q. Isn't it true Mr. McKee's son was in the house and Mr. Shoemaker and his family were in the cottage?

A. I heard that.

10 Q. Do you know Mr. Shoemaker had the dog with him in Broken Rocks? A. They moved away.

Q. Do you know whether or not Mr. Shoemaker and his family had this dog with them at the cottage at Broken Rocks this summer?

A. I heard they had it for a while.

Q. Mr. Shoemaker moved away, when do you know when that was?

A. I think he moved away from there in June or July.

Q. Of this year? A. I am just guessing.

Q. If you don't know say so.

20 A. From what they told me I understand he stayed there this summer in the little cottage.

Q. Do you know where they are living now?

A. In Port Austin.

Q. You found this dog around the little cottage, is that correct? A. No.

Q. Where did you find him? A. He had gone to my friend's home, the Clarke's, who were the only people who lived in the resort.

Q. They also reside at Broken Rocks?

30 A. They have a summer place.

Q. How far is the small place from the cottage?

A. It would be a few blocks.

Q. At any rate you picked up the dog and brought it back to Kitchener?

A. They pleaded with me to bring the dog back.

Q. Will you please answer my question. You took the dog somewhere?

A. I brought him here.

Q. You brought him back to Kitchener?

40 A. Yes, I did.

Q. Do you remember two weeks ago last Sunday when Terry paid you a visit at the home where you are living in Kitchener? A. Yes.

Q. You had the dog there then?

A. Yes.

Q. And Terry saw the dog? A. Yes, he played with the dog.

Q. And I believe when you gave your evidence about the dog in Kitchener you referred to it as Terry's dog?
A. Yes.

Q. Do you remember after that visit Allen Moyer, to whom you referred, came back to the house and made a formal request upon you to give you possession of the dog to turn over to Terry?

A. Yes.

10 Q. You refused, did you not? A. I told him the dog was very poor -- I said I was keeping him because the dog was hungry.

Q. The result was you refused to give the dog to Mr. Moyer to give to Terry?

A. That is correct.

Q. When you brought the dog through the border did you have to sign any paper bringing the dog to Canada?
A. It took me about an hour and a half to get the dog vaccinated.

Q. Whose dog did you tell them it was?

20 A. I told them it was Terry McKee's.

Q. I believe when you were in Port Austin Cynthia was with you?
A. Yes.

Q. When was the last time you had been at Port Austin prior to that?
A. The summer we went there.

Q. The summer you came from Milwaukee?

A. I had just driven through since I have been here in Canada.

30 Q. Some time late last spring or early this summer?
A. Yes.

Q. That is the only time you have been there since the summer of 1944 until the time two or three weeks ago?
A. Yes.

Q. Do you know the last time Cynthia was in Port Austin until she was there with you?

A. She was there at the time Terry and I were there in 1944.

Q. She has not been back since then?

A. No.

40 Q. Is it true Cynthia went into her father's house while you were there and removed certain articles from the house?
A. She went down to get a picture of her mother.

Q. Did she take anything else?
A. No, I didn't see anything else.

Q. Not that you saw? A. No.

Q. Now, I want to pass to a discussion of your visits with Terry since you came to Canada. Now, I believe you arrived in Kitchener on a Monday night, is that correct? Do you remember? The reason I am asking you that is I want to tie down the date if I can. Do you remember if it was a Monday night?

A. From where?

10 Q. When you first came here last winter?

A. I wouldn't know for sure about the dates. I will give it to you as clearly as I can, but I don't know if it was on a Monday or not.

Q. As I recall you stated you arrived in Kitchener toward the end of February of this year and I am suggesting to you the date roughly was Monday, March 3rd?

A. That could be possible.

Q. Then I want to produce to you a letter which was written to you on March 6th -- sorry, it was March 7th.

20 Mrs. McKee, perhaps I can ask you this question, do you remember about three or four days after you arrived in Kitchener receiving a letter from me which was delivered to you personally at the Walper House?

A. Not by you.

Q. I am not saying me personally, but somebody from my office? A. I don't know where she was from.

Q. You did get a letter? A. Yes.

Q. Have you the original of that letter now?

30 A. I believe I turned it over to Mr. Brock.

MR. BROCK: I do not appear to have it now.

HIS LORDSHIP: Have you seen this letter?

A. Yes.

Q. You are satisfied this is a copy?

A. Yes.

HIS LORDSHIP: If the original turns up you might substitute it.

MR. BROCK: Yes, my lord.

40 MR. LOCHEAD: You acknowledge you did receive this letter on that morning?

A. Yes, I did.

Q. I would like to read this letter dated March 7th. Perhaps you will recall that that letter was delivered to you on a Thursday morning, or don't you remember the date?

A. I don't know, I received that letter.

Q. Now, coming back to the night of your arrival in Kitchener, is it not true that same night you were advised that I had been retained by Mr. McKee and was acting for him? You were given that information, were you not?

A. Yes.

Q. Is it not true also that from that Monday night to Thursday morning when this letter was delivered you made no attempt whatsoever to get in touch with me to see if arrangements could be made for you to see Terry?

A. I believe we immediately did something after receipt of that letter.

Q. I am speaking about the time of your arrival in Kitchener on Monday night to the time you received this letter the following Thursday morning, is it not true during that period of time you made no effort whatsoever to get in touch with me so as to see Terry?

MR. BROCK: My lord, the witness has not said she got here on the Monday. The date of the letter is March 7.

HIS LORDSHIP: I think the witness is quite capable of handling that.

MR. LOCHEAD: My lord, perhaps I can clear it up by asking this question. Do you recall how long it was you had been in Kitchener before you received that letter?

A. No, it wasn't more than a couple of days, I don't think.

HIS LORDSHIP: That is about what Mr. Lohead had been saying. He said you got there late on Monday night and got the letter on Thursday morning.

MR. BROCK: My lord, I might point out March 7th was a Friday.

MR. LOCHEAD: At any rate it was a matter of two or three or four days after you arrived in Kitchener that you got this letter?

A. Yes, I don't know what the procedure was.

Q. It is true you made no attempt to get in touch with me directly or indirectly to arrange a visit with Terry?

A. When I first arrived here I wanted to be advised by a counsel.

Q. I am not asking your motives, I am simply asking if it is true that you made no attempt to get in touch with me between the time you arrived in Kitchener and the time you got the letter?

A. I believe I spoke to Mr. Sims about it the first night I arrived.

Q. You think you spoke to him? A. Yes.

HIS LORDSHIP: She was just being cautious, she didn't know you.

MR. LOCHEAD: I am not suggesting there was anything wrong about it, I simply want to follow through the history of these visits and I thought it was only fair to introduce it to this witness in that way. At any rate, having respect to this letter I believe you took it to
10 Mr. Brock and he got in touch with me by telephone that same day?

A. Yes, I remember doing something immediately.

Q. And a visit to see Terry was arranged for that very afternoon? A. That is correct.

Q. By agreement between Mr. Brock and myself, we were both present at the Ament House on the occasion of that first visit?

A. You were both present, I don't know what your agreement was.

20 Q. We were both there? A. Yes.

Q. Is it not true also on the occasion of that first visit you saw Terry in the large double living - room of this house with no one else present in the room with you? A. No, as I remember, it was just a room and you were right by the hall where you could see in the room.

Q. Mr. Brock and myself? A. I could see both of you.

30 Q. You were in the room with Terry and nobody else was with you? A. That is right.

Q. Isn't it true that on that occasion no pressure was put on you by anybody to leave, you were permitted to stay as long as you liked?

A. I knew I had gone there just to stay an hour.

Q. There was no pressure put on you to leave the house? A. No one came and told me to leave.

40 Q. Now, is it not true, Mrs. McKee, that no further attempt was made by you or Mr. Brock on your instructions to get in touch with me about seeing Terry for a week, until the following Friday, March 14?

A. No, I saw him, it seems to me I saw him a few days after that or the next day or two days. That is the best of my recollection.

Q. I suggest to you, and I think it will become clear later, that your visit was some time later. At

any rate let us say that during the seven or eight days subsequent to your first visit, will you agree with me there were never times when you asked to see Terry and I did not permit it?

A. There were many times. I couldn't say that because I don't know.

10 Q. Is it not true on Friday, March 14, you returned to Kitchener, I believe you had been out of town for a few days shortly after your arrival at Kitchener?

A. I know I left and went to Detroit.

Q. How long were you there, do you remember?

A. I don't remember, a few days.

Q. You came back to Kitchener I believe with Mr. Pulfer?

A. Yes.

Q. Your Detroit attorney? A. Yes.

Q. And I suggest to you with a staff reporter from the Detroit News, Mr. Rex White, came back with you on that occasion? A. Yes.

20 Q. And also a photographer for the Detroit News?

A. I don't know if he was a photographer for the News or not, he was a photographer.

Q. From a Detroit paper? A. Yes.

Q. You tried to get in touch with me on Saturday morning, the day after coming back to Kitchener, about seeing Terry, and you were advised by my office that I was out of town, I believe they told you I was in Peterborough and would be back later that day?

A. Yes, I know I saw an attorney in your office.

30 I had this letter with me saying I could see the baby and I showed it to him.

Q. I believe as a matter of fact you and Mr. Pulfer and some other men called on Mr. Bray late in the morning of that Saturday and made a formal request or demand to see Terry?

A. Yes.

Q. And Mr. Bray advised you to the effect that he had no instructions from me on the point and could not grant any permission, or words to that effect?

40 A. Yes, I believe he said he couldn't, but it was up to him. He tried to call the house, I believe that is the way it was at that time since I had the letter.

Q. And then I believe in spite of these instructions from Mr. Bray you and Mr. Pulfer and the two newspaper men went there?

A. No.

Q. Let me finish the question, you and Pulfer and these two men nevertheless called at 40 Hinds Avenue, the address of the Ament home about 4.30 that afternoon?

A. That is right.

Q. And before doing that were you in touch with anybody in that house by telephone to let them know you were coming?

10 A. I saw Terry through the window.

MR. BROCK: I think the witness has said she was up to see Mr. Bray in the morning.

MR. LOCHEAD: Yes, he said he couldn't do anything because he had no instructions. Then she went over, apparently went over to the Ament house. I am asking the witness if prior to going to the Ament house she spoke to anybody by telephone or any other way to let them know she was going.

20 THE WITNESS: Mr. Bray said they were at home but weren't answering the telephone for some reason.

Q. Let me ask you this question, before going to the house on that afternoon did you speak to anybody in the Ament house to tell them you were going?

A. No, I did not.

MR. BROCK: My lord, it is apparent Mr. Bray tried to get in touch with them.

HIS LORDSHIP: Let the witness proceed. We are not arguing the case piece-meal.

30 MR. LOCHEAD: Q. Were there photographs taken on that occasion?

A. Yes, when I saw that Terry was there and they wouldn't let me see him I knocked on the door and tried to get in to see him.

Q. How did you see Terry, through the window?

A. I saw him, there is some kind of little window and I saw him go up the steps.

Q. What window were you looking through?

A. There must be some window on the side because I saw him go up the stairs.

40 Q. Did you go around and peek in the windows of this house?

A. I just looked through the door.

Q. Who was with you at that time or who was around the house?

A. Mr. Pulfer.

Q. Either of the two newspaper men?

A. Just the photographer.

Q. The Detroit photographer was there?

A. Yes.

Q. And I believe you told me a few minutes ago he took certain pictures?

A. Yes, he took a picture.

Q. And I say, my lord, that to anticipate an objection which my friend will undoubtedly make I intend to produce several newspapers and if necessary I will call the reporters and photographers concerned.

HIS LORDSHIP: I realize this is all very interesting but how does it advance the problem I have to deal with? Suppose she had pictures taken showing her knocking at the door to see her child, that is all very moving, but how does it affect me?

MR. LOCHEAD: I submit it would move your lordship in three respects. In her examination-in-chief this witness made certain charges and inferences that her ability to see Terry was certainly not facilitated.

HIS LORDSHIP: That is true enough, but under the circumstances how does that help me to decide whether she is a proper person to have custody? Isn't that what this issue is directed to?

MR. LOCHEAD: On that point, my lord, I submit that evidence to the effect that she was mistaken in the statements she made before your lordship certainly goes to credibility.

HIS LORDSHIP: What I am getting at is it doesn't seem to help me very much in deciding the principal issue and I do not want to get lost in bickerings between this man and woman. I think I am much more interested in her capacity for taking care of Terry.

MR. LOCHEAD: I submit also, my lord, this line of questioning is admissible on this point. I will submit to your lordship later the reprehensible nature of the publicity which the witness has invited. In the first place there is the particular point with which we are now concerned, having newspaper men and photographers present when Terry was right there. It is simply encouraging young Terry to realize he is a public spectacle.

HIS LORDSHIP: I think we have to temper that with the knowledge that she comes from a place where there is no aversion to that.

MR. LOCHEAD: She arrives in Kitchener with a newspaper man, not only from a considerable distance but

from a foreign country, and it was publicity which I submit is reprehensible.

HIS LORDSHIP: It may be admissible all right, but I do not think it is helping you very much.

MR. LOCHEAD: The question of newspaper publicity, at least that which has occurred in Canada, is necessarily tied up with the evidence as to her visits, because it will be my submission to your lordship and
10 I believe I can submit evidence to support such a submission, that completely false statements of fact have been made, not only in this Court but in the newspapers.

HIS LORDSHIP: It all depends on the view you take of the thing. It probably has some bearing but I do want you to appreciate the fact that what I am much more interested in is when this woman has had Terry for three months or for a number of years. How did she look after him, that is something I really want to know, what care she gave him and what sort of home she
20 gave him. She seems to have been moving around at a great rate during the last number of years. I would like to find out just how he was looked after when she had him and that may develop later on.

MR. BROCK: My lord, I would like to point out that the first time I heard of the McKee action was through publication in the Kitchener Record before Mrs. McKee came to Kitchener.

HIS LORDSHIP: I suppose that is possible.

MR. BROCK: And it was quite a long write-up and if
30 your lordship admits this evidence taken from newspapers I have some to produce too.

HIS LORDSHIP: If you want to produce it you may.

MR. BROCK: I don't see why the record should be cluttered up with a lot of pictures and stories which may have been gotten in any way.

MR. LOCHEAD: The photographs were not taken without her knowledge. She came here with the photographer from Detroit.

HIS LORDSHIP: It may have some bearing. I will
40 allow it.

MR. LOCHEAD: Now I produce for your examination an excerpt from the Globe and Mail of March 14, 1947, which purports to represent a picture of you and a gentleman. Is that the picture that was taken by this Detroit photographer on the date we are speaking about?
A. Yes.

Q. Who is that gentleman? A. Mr. Pulfer.

Q. Your Detroit attorney? A. Yes.

Q. The picture indicates he is peering in the window and you are looking over his shoulder in the window, is that correct? A. Yes.

Q. And I see a write up beside the picture that has to do with the abduction charge that you laid against your former husband? A. That is correct.

10

---EXHIBIT 10 - Photograph from Globe and Mail dated March 14, 1947.

Q. Now then, I believe that I was in touch with you that same night on my return from Peterborough, is that correct. Perhaps I can recall it to your attention by recalling that Mr. Brock and myself saw you at the Walper Hotel that Saturday night?

A. Yes, that is correct.

20

Q. And as a result of that interview I believe an arrangement was made for you to see Terry the next day? A. It might have been. I know that I have seen him on several occasions.

Q. And I am suggesting to you that at the same time the agreement was made in your presence between Mr. Brock and myself that neither one of us would be present. Do you recall that? A. I believe I don't just remember what the arrangement was.

30

Q. At any rate I am suggesting you did have quite a long visit with Terry the next afternoon which was a Sunday afternoon, and neither Mr. Brock or myself were there? A. Terry usually told me when I arrived that I could stay an hour or what time I could stay.

Q. He told you that? A. Yes, he usually did.

Q. Did he tell you how long you could stay?

A. Yes.

40

Q. On the occasion of that visit is it true that you told Terry that you were agreeable to divided custody of Terry between yourself and Mr. McKee but that Mr. McKee was not. Do you understand my question?

A. No, I don't understand it at all.

Q. I am suggesting to you on that Sunday afternoon you told Terry that you were agreeable to having divided custody of Terry between yourself and Mr. McKee

but that Mr. McKee was not. Now, is that true or is it not? A. No, Mr. Lohead. I would like to tell you that conversation since you ask me.

Q. I was asking you if that was said?

A. No, it wasn't said like that, no. You asked me at that time when I was at the place if I would be willing to have him for six months and Mr. McKee have him for six months and I told you we tried to agree
10 with Mr. McKee in the Court in California and we couldn't do so and when I got there Terry asked me when I first came in, he said "Mummy, I want to stay six months of my time with you and six months with Mr. McKee -- with dad" -- and I knew you had discussed it with him and Mr. McKee and I thought that very unfair. I guess he had tears in his eyes.

Q. I heard all about the tears in his eyes. Please do not tell us what you guess.

MR. BROCK: She is telling you what she saw.

20 MR. LOCHEAD: Yes?

THE WITNESS: That is not really what I am trying to say. The child knew that you had said that and he was very nervous and upset and I tried to calm his fears. I know he must have some feeling for his father and I knew it was very hard for the child to have a decision to make like that and I said "Honey, Mummy will never do anything that isn't right and fair by you." I didn't want to bring this up and discuss it with him because I felt he was too young, and I felt you both
30 had done that with him and I thought that was very unfair.

Q. You are saying now you felt that Mr. McKee and myself had talked to him? A. I didn't see how he could say your exact words "six months for me and six months for his father."

Q. Let us get back to the question I asked you. Did you tell Terry that afternoon that you were agreeable to such split custody but Mr. McKee was not?

A. No I didn't, because I wasn't agreeable to that.

Q. Now then, I believe that was the same afternoon
40 that you told us about last week when you said there was considerable unpleasantness between you and Mr. McKee?

A. Yes, that is correct.

Q. Now, is it true that you -- Let me ask you this question first; when you visited Terry, when you first went in, is it not true you were in this same room

with him alone -- there was nobody with you until you called Mrs. Ament? A. No, it was a different room.

Q. At any rate you were in the room with Terry until you called Mrs. Ament into it?

A. Mrs. Ament sat outside the door.

Q. Is it not true you called Mrs. Ament in and told her about this California order and made a formal demand
10 on her for possession of Terry?

A. Yes, I did.

Q. In Terry's presence? A. Yes, I did.

Q. And is it also true Mrs. Ament said to you she had nothing to do with it and had no right to permit Terry to be taken away. Did she say that or words to that effect? A. She said she would detain me; I couldn't take him.

Q. Did she say she had nothing to do with it?

A. No, she didn't say that because she evidently
20 did have something to do with it. She was keeping him there.

Q. Did you then ask Mrs. Ament for permission to use the telephone to call a taxi? A. Yes I did.

Q. And that was in Terry's presence?

A. Yes, it was.

Q. And did you tell Mrs. Ament you wanted to call a taxi so you could take Terry away with you?

A. No, she asked me if I expected to take Terry
with me.

30 Q. What did you say? A. I said, yes, I did.

Q. Was that conversation in Terry's presence?

A. Yes, it was.

Q. Was it at that point that Mr. McKee came down?

A. I don't know where Mr. McKee was but he came
down at me.

Q. He came into the room at any rate? A. Yes.

Q. Did he then tell you that Terry was legally a resident of Canada? A. Yes, he did.

Q. And was it then that this unpleasantness you
40 have referred to between yourself and Mr. McKee occurred? A. Yes, after that; -- no, he lunged at me right in the beginning.

Q. Do you remember whether or not on that occasion Mr. McKee asked you not to make a disturbance in front of Terry?

A. No, I asked him not to -- just the opposite.

Q. Do you remember whether on that occasion he asked you not to make a disturbance on Sunday?

A. No, he didn't say anything like that. I just asked him to please keep quiet and lower his voice.

Q. Did he ever tell you not to make a disturbance on Sunday? A. Well, I don't remember that coming in the conversation.

Q. Then, Mrs. McKee, I am producing a copy of the
10 Kitchener Record of the date of March 17, 1947, and I want to read one or two paragraphs to you from the write up that appears in that newspaper.

MR. BROCK: I object to that.

MR. LOCHEAD: If my friend will wait until I present my grounds of admissability --. I propose to read these articles and ask this witness if it was from her this information was obtained.

MR. BROCK: I suggest my lord he allow the witness to read it.

20 HIS LORDSHIP: You are not before a jury here. I am capable of sorting this out I think; at least I hope I am.

MR. LOCHEAD: Now then, Mrs. McKee, this is Monday's paper, the day after the events of the Sunday afternoon, which we have been speaking about, and I will read you the eighth paragraph of the write up which appears in column 2 of page 3:

"During the visit, Mrs. McKee said, 'we had

30 "quite an altercation, and he (Mr. McKee)

"tried to strike me and ordered me out of

"the house'".

Q. Did you tell that to the newspaper reporter of the Daily Record? A. I did, and he did that.

Q. Then I want to read paragraphs 10, 11, 12, 13:

"Mrs. McKee said that she told Mrs. Ament that

"the child had been legally given to her and

"that she would like to take him away with her.

"Mrs. Ament said that she could not let him go.

40 "I asked to use the phone to call for a

"cab,' she continued. 'Mrs. Ament asked me if

"I planned to take the baby, and I said that I

"would like to. With that he (Mr. McKee)

"bounded downstairs, lunged at me and Billings-

"gated me.

"I asked him to refrain on account of the

"baby being present,' she said.

"'It doesn't look as though they will let
"me see him again.'"

Q. Did you make those statements to the newspaper?

A. I did because they told me I couldn't come back;
both of them.

Q. You made all those statements to the newspaper
reporter? A. I did. I didn't get in touch

10 with the reporters -- they found me.

HIS LORDSHIP: You just talked to them?

A. Yes, I did, when they asked me.

---EXHIBIT 11 - Newspaper reports from the
Kitchener Daily Record above
referred to.

MR. LOCHEAD:

Q. Now, I am also producing a clipping from the
20 Globe and Mail of March 18th, and I am going to read
you paragraphs 3 and 4 of that write up:

"Mrs. McKee charged today she was ordered to
"leave the home of W. A. Ament, 40 Heins Ave.,
"where the boy is living with his father. Terry,
"she claimed, is being kept there 'like a little
"prisoner.' She admitted an altercation occurred
"during the visit before her divorced husband
"ordered her to leave the house.

30 "'It doesn't look as though they will let
"me see him again,' she said."

Q. Now, did you make those statements to a
reporter for the Globe and Mail? A. Yes, I
guess that is the same reporter, isn't it?

Q. It may be. It is marked "Special".

A. I just made that to the press in Kitchener.

Q. Was that the press conference you had in your
room? A. No, he called me and I went down in
the lobby.

Q. How many? A. One.

40 Q. Just one? A. I believe just one.

Q. Do you know who it was? A. Yes, I would
know his name if you told me.

Q. Mr. Taylor? A. Yes.

Q. He is the only reporter you saw about these
events of that Sunday? A. Yes, that is the
only one I remember seeing.

Q. Did you not also see the resident reporter for the Globe and Mail, the correspondent for the Globe and Mail who is a resident in Kitchener?

A. I just remember one.

Q. Just one about that particular event?

A. Yes.

Q. Now then, I suggest to you that was on Sunday these events took place and I suggest to you no
10 further attempt was made by you to see Terry until the following Wednesday morning, March 19th, when you telephoned to the Ament house and were referred by them to me?

A. They told me at 11 o'clock in the morning that Terry was still sleeping.

Q. Let us not have all this other evidence. I am suggesting to you that after that Sunday you made no further attempt to see Terry until the morning of the following Wednesday, March 19th, when you phoned the Ament house and you were referred by them to me. Now
20 is that true or is it not?

A. I was ill I know for a couple of days in bed.

Q. Is it true or don't you remember?

A. I know it was a little time because I was ill.

Q. Is it true the next time you did try to see him you phoned the Ament house and were referred by them to my office?
A. Yes, I believe that is true because I tried to reach you or something.

Q. Then I believe as a matter of fact you did phone my office and find I was gone out of town.

30 Do you remember that? A. Yes, I believe that is true.

Q. And you also remember that was the day on which argument was heard in Toronto between your counsel and myself on your application to appeal from the decision of the Honourable Mr. Justice Smiley?

A. I don't remember that.

Q. You do remember that such an application was made, do you? A. Yes, I do.

Q. And at the time you knew the date upon which
40 argument on it was going to be heard? A. I don't think my attorney appeared down here -- I don't remember that.

Q. Mr. Wilson appeared for you. Did you know the date on which argument was going to take place?

A. I don't believe I knew. I knew it was going to happen but I don't believe I knew the date. If I did

I don't remember it now.

Q. Well then, in any event I believe you did go down to the house that afternoon about 1 o'clock and found there was nobody home? A. I found they were there but wouldn't let me in.

Q. You found they were there? A. Yes, I saw them in the hall.

Q. You were peaking through windows?

10 A. Mr. Lohead, I can't help but try to see the child.

Q. And did you see in the house on that Wednesday afternoon? A. When I went there I saw Terry and I saw Mrs. Ament.

Q. Nobody else? A. No.

Q. When was that? A. In the afternoon sometime.

Q. Where was Terry? A. I don't remember whether I saw him the same way going up the stairs
20 again.

Q. Is it not true on that day you were informed by the neighbours of the Aments that they had left the house at 11:45 that morning? A. I had seen him before that. It seems I had been there twice that day because when I went back the second time the neighbours told me they left after I was there the first time, he said "they left shortly after you left".

Q. Is it correct that time was about 11:45 in the morning? A. I don't know the exact time. I
30 know I went there twice that day.

Q. The second time you went there you were informed by the neighbours they had left the house some time earlier? A. They left after I was there the first time.

Q. Then do you remember the next day you again phoned Mrs. Ament directly to arrange a visit and had quite an unpleasant conversation with her over the telephone? A. She never was pleasant with me at any time.

40 Q. I don't know about that but I am asking you if you remember phoning Mrs. Ament the morning after the
40 day you went there twice, to arrange for a visit and Mrs. Ament referred you to my office?

A. No, I remember I couldn't get in touch with you and Mrs. Ament had made a statement to the paper that I could come any time to the house. I called up and

said, "Is it true I am invited to come and see the child any time".

Q. And you were referred by her to my office at that time?

A. Yes, and I told her I couldn't get in touch with you.

10 ---The Court was then adjourned until 10:30 o'clock a.m. on September 25, 1947.

---The Court resumed at 10:30 o'clock a.m. on September 25, 1947.

E. McKEE, having been previously sworn, resumed the stand:

CROSS-EXAMINATION BY MR. LOCHEAD: (continued)

20 Q. Now, Mrs. McKee, yesterday you will recall we were talking about the various visits you had made to the Ament home to see Terry and the arrangements that preceded those visits. You will remember the first point mentioned was my letter to you of March 7th, I believe it was, pursuant to which you went to see Mr. Brock and arrangements were made over the telephone and a visit was made that day?

A. Yes.

30 Q. Were you present in Mr. Brock's office when he telephoned me to arrange for that visit?

A. Well, I don't know whether I was present in his office or not; I know there was an arrangement made.

Q. Do you recall that an undertaking on your part was requested by me and given by Mr. Brock that there would be no attempt that day on your part to remove Terry, to take him away? A. I don't know

whether Mr. Brock said that or not.

Q. You don't know anything about that?

A. No.

40 Q. Do you know anything about an undertaking ever being requested on your part that you would not attempt to take Terry away? A. When you asked me whether I would take him away?

Q. When I asked you or Mr. Brock and it was passed on to you? A. No, I don't remember you ever asking me.

Q. Now then you mentioned something yesterday and I believe also last week in answer to my question as to whether or not anybody had ever asked you to leave the house and cut short your visits and I believe your answer was to the effect that the only person who had asked you was Terry; he had said you had to go?

A. Other than the altercations I had with Mr. McKee.

10 Q. The only other person you said on some occasions was when Terry told you the visit was over or words to that effect? A. Yes.

Q. Is it true you were informed and knew that Terry was taking lessons from a teacher each day during the entire period? A. Yes. I asked to see him in the morning and they told me he hadn't got up.

Q. Is it not true you were told by me the hours of those lessons were from 2 to 4 each day.

A. Yes, but Mr. Lohead, you dragged it out so I couldn't see him.

20 Q. Isn't it true also on many occasions you were given your choice by me of going to see Terry either before or after the lesson, whichever suited your convenience. Isn't that true? A. Maybe the hours, possibly.

Q. Isn't it true you were given your choice of suiting your convenience whether you visited Terry before his lesson or after it? A. Very often, yes.

30 Q. Now then, there was also some mention yesterday of write ups in newspapers and I believe the name of Rex White was mentioned. You know Mr. White, do you?

A. Yes.

Q. He is a staff correspondent with the Detroit news, is that correct? A. Yes.

Q. And I believe you told us yesterday he was one of the newspaper men who came with you to Kitchener when you returned with Mr. Pulfer?

A. Yes, that is correct.

40 Q. I am producing for the same purpose as yesterday a clipping from the Detroit News of March 18, 1947, and I am going to read certain paragraphs from it and ask you if you gave Mr. White the information upon which this write up was based. Firstly there is the first paragraph dated Kitchener, Ontario, March 17th:

"Across a table in a room in the Walper Hotel is a toy train. It is new, shiny,

"expensive. In the room is a woman who has
"wept often."

Then I read the fifth paragraph:

"For more than a week Mrs. McKee has tried
"to see her son. Except for brief glimpses
"of him through windows, her efforts have
"failed."

10 Q. Now, did you give Mr. White the information
upon which that write up was based? A. Yes.

Q. I direct your attention to the fact that the
write up is dated in Kitchener on March 17th, which
was a Monday, and I direct your further attention to
the fact that both yesterday and last week you referred
to the visit you had made to Terry on March 16th, which
was a Sunday, and that was the visit when the unpleasant-
ness about the taxi and the alleged altercation with
Mr. McKee occurred. Now, in view of that why did you
state that you had not seen Terry for more than a week?

20 A. Perhaps at that time that was true; there were
weeks when I didn't get to see him you know.

Q. It is true that up to that time at any rate
there was never a time for a week when you tried to
see Terry and were refused? A. There was a
week about the beginning where it was impossible to
get you.

Q. You had been out of town the previous week your-
self had you not? A. I can't recall the exact
dates.

30 Q. Well, it was the previous Friday you arrived
with White and Pulfer and the Detroit News photographer.
You told us yesterday you had been in Detroit several
days before that? A. The newspaper people in-
terpreted it in their own way. I just read the articles
yesterday and see there are many misprints.

Q. Is it true you were out of town on many occasions
the previous week? A. I was out of town
on two or three occasions when I was here; I don't
remember.

40 HIS LORDSHIP: Well, the whole performance speaks
for itself.

MR. LOCHEAD: Then I am going on Mrs. McKee, to read
paragraphs 9, 10, 11, 12, 13 and 14 of this article.

MR. BROCK: Your lordship will note my objection
to the introduction of this evidence?

HIS LORDSHIP: Oh yes, certainly.

MR. LOCHEAD: Starting at paragraph 9:

"Mrs. McKee finally located Terry in
"Kitchener. Armed with the California court
"papers granting her custody of the boy, she and
"a Detroit attorney arrived here Friday. Before
"she went to the home where Terry is living,
"she bought the train.

10 "Accompanied by her attorney, she went to the
"house. Clutching the train, she rang the door-
"bell. There was no response. She pounded on
"the door with her fists. There was still no
"answer. She banged on the door with the train.
"The door remained closed.

20 "She went around the house, peering in
"windows. She could see her son, playing on the
"floor. Terry, who has spent most of his six
"years with his father, did not know his mother.
"He did not respond to her calls, or her knocks
"on the window.

"Finally Mrs. McKee gave up. With the train
"still in her hands she went back to her hotel.

"'Any little boy would love it,' she said,
"as she stood looking down at the gleaming toy.
"'They won't even let me give him a present.
"They won't let me take him for a walk. They
"won't let me talk to him. I can't hug him and
"tell him how much his mother loves him.'

30 "Her composure broke and she wept. She has
"shed many tears since, as her successive
"efforts to see Terry have failed."

Q. Now did you give Mr. White the information
upon which those paragraphs were based?

A. Yes, and many times that is true.

---EXHIBIT 13 - Newspaper clipping from Detroit
News, dated March 17, 1947,
above referred to.

40 Q. Now then, I believe yesterday it was said that
the occasion of your first visit was the afternoon of
the day upon which that letter of mine was written.
Did Terry recognize you when you went that day?

A. Terry acts very aloof. He recognized me with-
out any trouble.

Q. He recognized you?

A. Yes. He is frightened to talk to me.

Q. Now then, I want to refer you to a news write up in the Kitchener Daily Record of March 19th, and I propose to read to you the third last paragraph of this article:

10 "I took him a small racing car present, which he loved,' she said, 'and I'll have to find something else to take him today.' In Detroit she has a huge electric train which she brought all the way from California and which she hopes to give him as a special present marking his return to her custody."

Q. Did you give the reporter of the Record the information upon which that write up was based?

A. No I didn't; I guess I talked to him but that train has been added to it.

20 Q. Did you talk to Mr. Taylor at any time about this train? A. I don't remember whether I told him anything about the train or not.

Q. At any rate you didn't tell him what was in this article? A. No, that was in Detroit.

---EXHIBIT 14 - Newspaper clipping from the Kitchener Daily Record of March 19, 1947, above referred to.

Q. Now, as a matter of fact where did you buy this train? A. In California.

30 Q. Why did you tell Mr. White then you bought it in Kitchener? A. I suppose Mr. White probably misunderstood me.

Q. Are you saying now you told him you didn't buy it in California? A. I don't think he asked me that.

Q. Where did you have it at the time to which these articles refer; where was the train?

A. I had it with me at the hotel.

Q. In the hotel in Kitchener? A. Yes.

40 Q. Did you take it to the Ament house on the Saturday? Did you take it when you went with Mr. Pulfer and Mr. White? A. I took the two cars.

Q. You have seen Terry several times since?

A. Yes, I have.

Q. Did you ever give him the train?

A. No, because I seen the way things are being

taken care of, the way he is living.

Q. But you did give him other presents?

A. Yes, things I didn't think had to be looked after.

Q. You felt the train required some special care?

A. It is very hard for me, Mr. Lockheed. I felt he had to have someone to train him and teach him. He has already broken four bicycles I understand.

10 Q. Let us stick to what you know rather than what you understand, believe, guess or estimate. Now then, yesterday, as far as these visits are concerned I believe we had got as far as Wednesday, March 19th, when, as you told us, I was in Toronto and as you said you went down to the house twice. Do you recall that?

A. I don't know where you were.

Q. I was out of town? A. I couldn't vouch for that.

20 Q. That isn't what you have been asked; you were asked if that is the day you went down to the house twice? A. So much has happened--

Q. I thought you said this yesterday afternoon. I don't think anything turns on it. A. I don't know the dates.

30 Q. All I am trying to do is bring you up to the point where we were yesterday so we can start again in some logical sequence. Now then, do you recall that the day after you made, as you say, these two trips to the Ament house to visit, a visit was arranged for the day after which was Thursday?

A. Well I can't say what dates they were unless Mr. Brock has it down. I don't know whether he has a record of it or not but I think he must have. I have been terribly upset.

Q. I suggest to you that was the date upon which you went to visit Terry and I was there but Mr. Brock was not. Do you recall that visit?

A. I remember the second time I saw him you were there and Mr. Brock wasn't.

40 Q. And do you know also that I had told Mr. Brock that in view of what had happened the previous Sunday, the altercation, that I would be present and invited him to be present if he wished and he declined. Did you know that?

A. No, Mr. Brock didn't tell me that.

HIS LORDSHIP: Frankly, I do not think it matters

in the least. I still would like to say to you that the altercations in Kitchener, while they may be very interesting, do not assist me in coming to a conclusion in this matter. We have a woman who is possibly acting in a rather hysterical manner under some justification and while I cannot possibly approve of some of the things she did I think I am more interested in the general tenor of her life. That is what I have to consider
10 so that if you are going on at great length as to various altercations which took place in Kitchener, unless it illustrates something in that light I do not think it is of great value.

MR. LOCHEAD: My lord, may I say I do not propose to go on at great length. As a matter of fact this witness only referred to one other altercation. I propose to go into that briefly but I do submit the evidence will indicate that the statements made by this witness last week as to visits was evidence coloured
20 to indicate there was almost a conspiracy to prevent her from seeing Terry and I submit on that ground the evidence is admissible not only as to credibility but as to her behavior.

HIS LORDSHIP: Yes, she made those suggestions in examination-in-chief.

MR. LOCHEAD: I am going into it with this witness simply because I propose to call evidence in contradiction.

HIS LORDSHIP: I would still like to emphasize to
30 you, if I may, that what took place in Kitchener, unless it indicates her capacity or lack of capacity to look after this child is not of great help to me and I think it is going to consume a great deal of time. It may afford Mr. McKee some satisfaction but I do not think that is what we are here for.

MR. LOCHEAD: Might I assure your lordship I am not trying to afford anybody satisfaction. I think your lordship has indicated this evidence is of some value to indicate the attitude of this witness.

HIS LORDSHIP: All I am suggesting to you is it
40 should not be laboured too much.

MR. LOCHEAD: Then, Mrs. McKee, I am suggesting to you that on this same day when I was present and Mr. Brock was not there that you were called for at the Ament home by two gentlemen in a car, one of which gentlemen was the photographer for the Kitchener Daily

Record and it was his car; is that right?

A. Well, he came by to ask me --

Q. Never mind what he asked you.

A. He just drove me there because he was there at that time.

Q. I will repeat my entire question. I am suggesting to you on this same date when I was present and Mr. Brock was not, that you were called for at the Ament
10 home by two gentlemen in a car. One of these gentlemen was the photographer for the Kitchener Daily Record and it was his car. Is that right?

A. He was there.

MR. BROCK: It just indicates the Press is polite at times.

HIS LORDSHIP: Do not let us have these interruptions. Let us get along with it.

MR. LOCHEAD: Q. I am producing, Mrs. McKee, a clipping from the Globe & Mail of March 21st, which is
20 dated Kitchener, March 20th, Special:

"Although granted full custody of her 6-year-old son by the United States appellate court many months ago, Mrs. Evelyn McKee of Los Angeles, Calif., today saw her child for the first time since last October. Coming on the eve of the hearing of a writ of habeas corpus in Toronto's Osgoode Hall Friday, the hour-long visit was described by the 38-year-old divorcee as the
30 "'first real visit I have had with my son since last October.'"

"The divorced wife of Mark T. McKee, former airline executive and Michigan millionaire, Mrs. McKee came to Canada in an effort to have Canada's courts uphold the decision of the United States courts in granting her full custody of the child, Terry.

"In 1942, it was learned, the child was taken by his father to Wisconsin after a California court had granted him custody for three months, and Mrs. McKee custody for nine months. Following them to Wisconsin, Mrs. McKee had depositions taken for another trial following which father and child left for Michigan. In 1945, Mr. McKee asked a California Superior Court for full custody of the child, but a similar case entered by Mrs. McKee was granted in her
40

"favor and upheld by the appellate court.

"Terry, it was stated, was taken to
"Kitchener in December, where he has been kept
"in the home of W. A. Ament, Heinz Ave."

Q. Did you give the reporter the information on
which that write-up was based?

A. I do not like to talk against the Press, they
just misquoted it.

10 Q. Never mind a speech, you either gave him the
information or you did not.

A. Well, I guess I have no reason to misquote any-
thing.

HIS LORDSHIP: Well, did you?

A. No, I did not.

MR. LOCHEAD: Q. That is something he has framed
up as far as you are concerned?

A. I am not going to speak like that about him.

20 ---EXHIBIT 15: Clipping from the Globe & Mail dated
March 21st, 1947, above referred to.

MR. LOCHEAD: Q. Now then, I am also producing the
Kitchener Daily Record for March 21st which was Friday,
the day after the time you visited the Ament home when
I was there and Mr. Brock was not there, and I want to
read to you the last nine paragraphs:

"Yesterday Mrs. McKee was able to see her son
"for the second time this week.

30 "She was very pleased with her call which, she
"said, was her first real visit with her son since
"last October. It lasted an hour.

"'He seemed quite thrilled with the rope and
"ring game that I brought him', Mrs. McKee said.
"'I also brought him a book. He sat on my lap most
"of the time and ran his little fingers through my
"hair. He looked so pathetic. He seems thin and
"pasty, probably from being moved around so much
"and not being able to play outdoors like any
40 "normal child. He has had so many keepers in
"the last few years.'

"The attractive Mrs. McKee said her divorced
"husband did not put in an appearance yesterday
"afternoon after she was permitted to visit
"the home of W. A. Ament, Heins Ave., where
"Mr. McKee and the youngster are staying.

"However, George Lohead, counsel for Mr. McKee, remained in the room during her visit.

"'Before I left Terry asked me if I could bring ice cream and ginger ale to-morrow and we'd have a party," Mrs. McKee said.

"Although no agreement had been reached concerning a visit, to-morrow, Mrs. McKee felt certain she would be allowed to see him again.

10 "'Until to-day it has been terrible not being able to see him,' she added. 'But everything worked out very nicely.'

"Mrs. McKee said it was obvious the child had been coached as to what to say. Although only six, he is aware of the trouble, she maintained.

20 "'For four years I have been battling for the child,' she said. 'My heart is crying for him. He's all I have to look for and I want to take care of him. But I am certain I shall win him back.'"

Q. Now, did you give Mr. Taylor the information upon which that write-up was based?

A. Yes, but I don't know what date that was he put that in and those are my sentiments.

Q. Did you tell him I remained in the room with you during the visit?

A. No, I explained where you sat.

30 Q. You told him that? A. Yes, I did.

---EXHIBIT 16: Clipping from Kitchener Daily Record dated March 21st, 1947, above referred to.

MR. LOCHEAD: Q. Now then, Mrs. McKee, do you remember last Friday, I believe it was, in Kitchener, you gave evidence to the effect that on one occasion I telephoned you or Mr. Brock to inform you Terry
40 would be away for five days?

A. You did.

Q. Do you recall giving that evidence?

A. Yes, I do.

Q. Now then, is it not true that was over the Easter week-end and that I informed you he was going to the country for the vacation?

A. Yes, and it was snowing bad if you remember.

Q. It is true I told you that?

A. Yes, it is quite true.

Q. And is it not true immediately after he came back from the country a visit was arranged and you did go to see Terry?

A. No, you didn't let me see him for several days and I was under the impression he was very ill. You
10 said he was back but you didn't let me see him.

Q. Are you suggesting that at any time Terry was in town I refused to let you see him?

A. I am suggesting it, Mr. Lohead, because I think it is very true.

Q. I am suggesting to you that immediately he came back from the country visit, a visit was arranged at your request and on that occasion you spoke to Terry and referred to Mrs. Ament and said, "That old woman had slammed the door in your face and you hoped
20 she didn't treat Terry that way." Did you make that statement to Terry?

A. Mr. Lohead, I never talked to Terry about things like that.

Q. All right, you never made that statement?

A. No.

Q. The evidence you gave last week as to the nature of the altercation you had with Mr. McKee was that on that occasion you said Mrs. Hiller was in town with her two children?

30 A. Yes.

Q. I believe that was Sunday afternoon?

A. Yes, I believe it was Sunday afternoon.

Q. I believe you went in and had some visit with Terry before these other people arrived?

A. Yes, I just planned for them to pick me up.

Q. And did you say anything to Mrs. Ament or ask her permission that the stranger should come into her house?

40 A. They weren't going to come in. I explained that inside the door.

Q. Please confine yourself to my question. I am simply asking you, did you ask Mrs. Ament if these people could come into her house?

A. No.

Q. Before they arrived did you tell Mrs. Ament they were coming?

A. Yes, I am sure she heard. She was just on the other side of the door and I told Terry, I was talking about these sweet little girls I wanted him to talk to. I can't see that is bad for my child.

Q. I am not asking you your opinion. The lady that did come to the door, did you introduce her to Mrs. Ament?

10 A. I didn't see Mrs. Ament then when she first came to the door.

Q. Did you at any time introduce this lady to Mrs. Ament? A. It would be impossible she came out with her hands in the air.

Q. Your answer is no? A. The answer is no.

Q. I suggest you introduced this lady to Mrs. Ament as Mrs. Brock. Is that correct or is it not?

A. It is ridiculous, of course not.

20 Q. Now then, Mrs. McKee, do you know that on one occasion, specifically the 21st of April, an arrangement was made between Mr. Brock and myself regarding a visit with Terry and he forgot to tell you about it? Were you ever told that? Now, give me your answer.

A. I would be glad to. Tell me the date again.

Q. On the 21st of April I am suggesting to you a visit for you to see Terry was arranged between Mr. Brock and myself and he forgot to tell you about it and all I am asking you is, did you know about that?

30 A. It just seems to me Mr. Brock did tell me some- thing like that. I know we were to see him and Mr. Brock was in court or something.

Q. Do you recall on the last two occasions you told Terry you would be back to see him the next day and you didn't go back?

A. Yes, because I was ill. They wouldn't let me talk to him on the phone, I called on the phone and they didn't let me speak.

40 Q. Now then, you remember when Terry went out to live in the country where he is now living and started to go to school, you remember that you were told about that? A. I think I learned about it.

Q. You found out about it?

A. I found out.

Q. Is it not true that on the first occasion of a request to me for a visit to see Terry you or your counsel were informed he had gone to the country and

was attending school regularly but arrangements would be made for you to see him every week-end at your convenience?

MR. BROCK: My lord, I suggest that is about a three-barrelled question.

HIS LORDSHIP: I don't think so.

THE WITNESS: Mr. Lohead, will you read the question to me.

10 MR. LOCHEAD: My question is this; is it not true that when Terry went up to the country to start to school I informed you or Mr. Brock that had occurred but arrangements would be made for you to see him at any time over the week-end at your convenience?

A. It has never been at my convenience.

Q. I am not asking you if it was at your convenience.

A. You never said that and you know it.

20 Q. Very well, I am quite willing to give evidence on the point. Is it not true after Terry went to the country a visit with him for you was arranged every week-end it was requested?

A. You have arranged since he has been in the country for me to see him once a week when a detective was there.

Q. You have seen him every week-end when he was in the country?

A. When I have been there.

30 Q. Is it not true that towards the end of May I was informed by your counsel or your solicitor then that it was against your doctor's orders to go to the Ament house on Hinds Avenue and thereafter arrangements were made for Terry to be brought to the house where you were staying and thereafter Terry was brought to the Hiller house where you were staying? That is true, is it not?

A. Yes, that is true.

40 Q. Now then, you said last week and you managed to interject it again to-day that any time he came to the Hiller house he was with a detective. I presume you refer to Mr. Moyer?

A. Yes, I presume that is his name.

Q. Now I suggest to you that for the visits of the 7th, 14th and 21st of June Terry was brought to the Hiller house accompanied only by his brother Julian, is that correct or not?

A. No, that is incorrect.

Q. Who else was there? A. Mr. Moyer.

Q. Are you saying Mr. Moyer was there on every occasion?
A. I say Mr. Moyer was there on all of them.

Q. Is it not true that prior to the time you returned to California that Terry came down to the Hiller house on several occasions and stayed for a matter of two or three hours on each occasion?

10 A. He came at that time and I fixed a little refreshment for him and he had two meals last Sunday and the Sunday before.

Q. Are you saying he was not there for a meal in June or May?

A. Not a real meal, a little snack.

Q. How long did he stay on the visits during the month of June in the Hiller house?

A. They were always short.

Q. What do you mean, short?

20 A. Sometimes very short, sometimes they went over an hour.

Q. Over three hours? A. I believe one time three hours. It was a longer visit the day before I left Kitchener, Mr. Moyer let him stay longer.

Q. Now then, I believe you have had three visits with him on three Sundays since you have been back?

A. Yes, I think it is three.

Q. You have had a visit with him every Sunday since you have been back, yes or no?

30 A. Yes

Q. And he is going to school and you know that, do you not?

A. Yes, I know he is going to school.

Q. And I suggest to you that the first Sunday he visited you he was there for a couple of hours at least on Sunday afternoon by agreement between Mr. Brock and myself, is that right?

A. No, Moyer was with him.

40 Q. I say he was there for two or three hours by agreement between Mr. Brock and myself?

A. He may have been there for two hours, it was something over an hour.

Q. I am suggesting to you when he was there a week ago last Sunday, it would be the 14th of September, he was with you from 2.30 in the afternoon until 8.00 o'clock at night. I believe you had a birthday party

for somebody?

A. I believe he left at 7.30, a little after 7.

Q. He was there about five hours, in any event?

A. About four hours.

Q. Is it true on that occasion that Cynthia took Terry, unaccompanied by Mr. Moyer, to a restaurant a couple of blocks away from the house?

A. Yes, Mr. Moyer got in the wrong part of the
10 house.

Q. Is that true? A. That is true.

Q. I am very pleased you find it so amusing and more pleasant than yesterday afternoon. Last Sunday, the 21st of September, is it not true Terry was with you for a matter of three or four hours?

A. What Sunday?

Q. Last Sunday? A. Yes, he was, he came and stayed just an hour.

HIS LORDSHIP: Q. How long was he there last
20 Sunday? A. I believe he came about 3.30 and left by six. He was supposed to stay an hour.

Q. And when he came last Sunday who was with him; Mr. Moyer wasn't? A. No.

Q. He was with you alone in the house, there was nobody in the house with you?

A. No, there wasn't anyone.

Q. Now with regard to the visits, and by the way I want to ask you these questions and please listen very carefully. I am suggesting to you that on no occasion
30 that you have been in Kitchener when I have also been in Kitchener and Terry has been available that you have been refused permission to see him. Is that not correct? Do you understand it?

A. Well, I can't say that, Mr. Lohead, because that is not exactly right.

Q. You say it is not right?

A. I say part of it is true and partly it isn't.

Q. What part is true and what part isn't?

A. I think you always covered up Mr. McKee by say-
40 ing he was gone and that sort of thing.

Q. You are suggesting, I take it, that I was dishonest in telling you where I was?

A. I do not want to bicker with you about your honesty.

Q. I am asking you if that is what you are suggesting. Do not worry about my feelings. Are you sug-

gesting I was dishonest in telling you where Terry was?

A. You are Mr. McKee's counsel and I think you help him.

Q. I help him all I can, but I am asking you if you are suggesting that I was dishonest. Are you suggesting that or not?

A. I would like to reserve that unless the Judge wants me to answer it.

10 HIS LORDSHIP: Answer it this way. Is there any time when you have asked Mr. Lohead to see Terry in which you think he deliberately kept you away when he was available?

A. Yes.

MR. LOCHEAD:

Q. Just enumerate them?

A. Yes, sir, the time he was ill, I felt he was in Kitchener because I felt I had seen him in the house.

Q. What did I tell you then about where he was?

A. You said he was not there.

20 Q. I said he was in the country?

A. Yes, and I said I would like to see him in the country and you said I was not allowed to see him.

Q. On how many occasions do you say that I told an untruth about where Terry was?

A. I didn't say that.

Q. What did you say, I want to get to the bottom of it.

A. I said I felt you covered up for him. You told me when I spoke to you about it, if you remember; I 30 told you about the altercations I had and I said, "Mr. Lohead, this is going to get the child upset when I go there".

Q. Are you saying now that after Easter week-end when Terry was in the country, when you asked to see him, I told you an untruth as to where he was in order to keep you from seeing him? Are you saying that?

A. I surmised it. I don't say you were dishonest but you kept me from seeing him for several days and you told me he would be back in three or four days and 40 time went on before you let me see him and I was upset because the child was ill and I had no other reason to be angry or fighting with you, Mr. Lohead.

Q. Now, Mrs. McKee, the calendar indicates that Easter Sunday this year was April 6th.

A. He left several days before, if you remember.

Q. I am suggesting to you that you had a visit with

Terry on Tuesday, April 1st, and Thursday, April 3rd, of the week before Easter. Is that true or don't you know?

A. Well, I saw him, I don't just know when.

Q. You wouldn't argue with that?

A. No, I would not argue.

Q. Then I am suggesting that I phoned you on the 3rd of April about 5.00 o'clock in the afternoon and
10 told you that Terry would be in the country for the 5th, 6th and 7th days of April, that would be Saturday, Easter Sunday and Easter Monday. Is that true or is it not?

A. Yes, I believe that is true you said he would be gone about three days.

Q. I am suggesting to you further on Tuesday, April 8, the first day he was back in Kitchener, you had a visit with him in the Ament house. Is that true or is it not or don't you remember?

20 A. I told you it was about that many days before I saw him. That would be about right.

Q. Now then, you will be glad to know, Mrs. McKee, that I only have two more newspapers to talk about. The first one is the Detroit News of September 4th of this year, of which I have the first and second pages, and I want to refer your attention to an article which appears in the sixth column of the second page by Rex G. White and I want to read the first, fourth and fifth paragraphs:

30 "Cynthia McKee, grown daughter of Mark T. McKee, "wealthy former Michigan politician, will testify "against her father and on behalf of her step- "mother next week in Kitchener, Ont., when Mrs. "Evelyn McKee attempts to regain custody of her "6-year-old son, Terry.

"The trial is the latest in a series of court "actions instituted by Mrs. McKee, during which "she has traveled 20,000 miles between Ontario "and the Pacific Coast.

40 "When the McKees were divorced several years "ago in California, the wife gained custody of "Terry. McKee, however, brought the boy to "Michigan and subsequently placed him with "relatives in Kitchener."

Q. Did you give Mr. White the information upon which that article was based?

A. I think in substance.

Q. I note that your step-daughter is referred to in that article as Cynthia McKee. Is it not true she was married some time ago?

A. Yes.

Q. Where does her husband live?

A. In San Francisco.

Q. Why then is she referred to in that newspaper
10 and picture on page 1 as Cynthia McKee?

A. You will have to put Mr. White on the stand and ask him, I guess.

Q. Did you tell Mr. White that Cynthia was married?

A. Yes.

Q. Did you introduce her to him as Cynthia McKee?

A. No, I just introduced her as Cynthia.

Q. Mrs. McKee, you know, do you not, that two
brothers and a sister of Mr. McKee live in and around
Detroit? You know that, do you not?

20 A. I don't know where they live now, I don't keep
in touch with them.

Q. You know they live in Michigan?

A. They do.

Q. You also know several of Mr. McKee's children
and their children live in and around Detroit?

A. I believe so.

Q. Now then, the last newspaper is the Toronto Star
of September 18 of this year in which I direct your
attention to two pictures that appear at the top of the
30 page and the article that appears in columns 1 and 2.
I propose to read to you the sixth and seventh para-
graphs and the eleventh paragraph, the last paragraph.

MR. BROCK: The same objection, my lord.

HIS LORDSHIP: Yes.

MR. LOCHEAD:

"While the case is being decided, Terry will
"continue to live on a farm at nearby Linwood.

"He is under his father's supervision and Mrs.

"McKee is permitted to see him one hour a week

40 "while a bailiff-detective is in the room.

"Terry rides a black Shetland pony to and

"from school. Neither he nor his playmates

"have an inkling his future is being debated

"in Kitchener.

"Court records show a stormy divorce trial
"between Mr. and Mrs. McKee was followed by

"depositions taken out by Mrs. McKee against
"her own lawyers and the judge which decided
"the hearing on custody of her child. Mrs.
"McKee charged her lawyers and the judge were
"guilty of 'fraud'."

MR. BROCK: My lord, I suggest that my friend
ask about one paragraph at a time in connection with
this.

10 HIS LORDSHIP: I do not think that necessary. Wait
until you see what questions he asks.

MR. LOCHEAD: Now, did you give the information upon
which that write-up was based?

A. He does not ride a Shetland pony, he goes to
school in a little buggy.

Q. Did you ever see Lloyd Lockhead?

A. Yes.

Q. Did you talk to him about the case at this time?

A. Yes.

20 Q. Did you give him any of the information I have
read to you; substantially that is the information you
gave? A. No, he was reading records. He told
me he had gotten back newspaper issues because he made
several mistakes and they are not quotes of what I said.

Q. Did you tell him you were permitted to see Terry
one hour a week while I attended?

A. I told him I was permitted to see him and he
said, "Aren't you allowed to take him out?", and I said,
"No".

30 Q. Did you tell him about the Milwaukee action which
he refers to here and that you had charged your own
counsel and the judge with fraud?

A. I think that is something he read. I don't
think he asked me that.

Q. Did you tell him?

A. I don't remember telling him that, and I don't
think I did.

40 Q. Did you tell him Terry was brought to Kitchener
just prior to the expiration of the nine-month custody
period with his father?

A. No, that would not have been true, I didn't tell
him that.

---EXHIBIT 18: Copy of Toronto Star dated September
18, 1947, above referred to.

Q. Now then, we are through with the newspapers. Now you remember yesterday there was some reference to a visit that occurred after the divorce trial in California in 1942 when Terry disappeared for a few days. I am just asking you if you remember talking about it?

A. Yes.

HIS LORDSHIP: That is the time you said Cynthia took him?

A. Yes.

10 MR. LOCHEAD: Q. And I believe that as a result of that incident certain proceedings were taken by both yourself and Mr. McKee to modify the custody award that had been made by Judge Clarke and there was a hearing on June 10, 1943?

A. Yes, I believe that is about the time of the hearing.

MR. BROCK: The record will show that.

HIS LORDSHIP: If it is so, that is all we want to know.

20 MR. LOCHEAD: Mrs. McKee, were you present in Court during that June 10th trial?

A. I believe at most of the trials I was present. I can't tell you if that is a trial I was present at.

Q. An order was subsequently made on June 28, 1943, specifically referring to the fact that you were present in person and represented by an attorney. You agree with that?

A. Yes.

Q. And you remember a man called Wilbur Frankson gave evidence?

A. Yes.

30 Q. Do you recall his evidence was something to this effect --

MR. BROCK: My objection is noted, my lord.

HIS LORDSHIP: On what grounds do you object?

MR. BROCK: On the grounds that this is now res judicata.

HIS LORDSHIP: Oh, I see; very well.

40 MR. LOCHEAD: I will read his evidence if you like but I think we can save time if I refer to a summary I have made. You recall Frankson's evidence was something to this effect, he and Max de la Fuente and a man Rey, he met them at the Queen of the Angels parking station. Do you remember that?

A. I don't remember the place but I remember there was testimony.

Q. Substantially that is correct?

A. Yes.

Q. Do you remember Mr. Frankson said he left his car there and he and Max de la Fuente and Rey proceeded in Rey's car? A. Yes.

Q. And do you remember they said, Frankson said the three of them went to the house of Mr. Cloud who was then your California attorney?

A. Yes.

10 Q. And from Cloud's house they proceeded to a drug store where Max de la Fuente phoned Cynthia and later on Cynthia phoned back to the same drug store and spoke to Frankson?

A. Cynthia wasn't home then.

Q. I am not asking you that. Do you remember whether that is correct or not, if that evidence was given by Frankson?

A. Yes, but you are leaving out so much of the evidence here of what I testified to.

Q. This is Frankson's evidence?

20 A. I told you Mr. de la Fuente did not take the child away from the house.

HIS LORDSHIP: There is no suggestion in that evidence he did. I do not know what he is leading up to but it is simply suggesting that this man and Max de la Fuente and Rey went in Rey's car to your attorney's and then phoned Cynthia.

A. That is true.

30 MR. LOCHEAD: Q. Then, do you recall Mr. Frankson went on to say that Cynthia told him the baby was sick and he, Frankson, met Cynthia with the baby. Do you recall that was said by Frankson?

A. I believe that is the story Cynthia gave me too, she took him out in order to --

Q. You will have lots of chance to explain about it but I am asking you do you recall that is substantially what Frankson said?

A. Substantially, I think so.

40 Q. Do you remember he went on to say that de la Fuente, Cynthia and Frankson proceeded to Frankson's home?

A. Yes.

Q. And he left Cynthia and Terry at Frankson's house. Frankson did say he left Cynthia and Terry at his house?

A. Yes.

Q. And he went back with de la Fuente and Rey to get his car? A. I believe it is true.

Q. And do you remember that on the same occasion there was read into the record a transcript of evidence

which had been given by Cynthia before Judge Clarke, the previous December, immediately after the baby had disappeared and was returned?

A. I wasn't there.

MR. BROCK: My lord, this is going too far, what Cynthia said and what Frankson said --

MR. LOCHEAD: She was present.

THE WITNESS: I wasn't present, no.

10 Q. You were present at the trial of June 10th, 1943?

A. Yes, but I wasn't present for this that Cynthia said to the judge, I wasn't there.

Q. I am not suggesting you were present when Cynthia was before the judge in September, 1942. All I am saying is that you were there in June, 1943, when the transcript of Cynthia's evidence in December, 1942, was read to the Court in the presence of yourself and Mr. McKee?

A. I believe that is correct.

20 Q. Is it not true that transcript said substantially that Cynthia took Terry to Frankson's house alone in a taxi?

A. If she said that I know she couldn't; if she is confused that could be straightened out with her.

Q. Did Cynthia go on to say she had done it on her own?

A. Yes, because she did.

Q. Then you will recall that Mr. Rey gave evidence in these proceedings?

A. Yes.

30 Q. Mr. Rey, I believe, at that time was in the same Consulate as Mr. de la Fuente?

A. No, Mr. de la Fuente had left the country before that.

Q. They had been in the same Consulate together?

A. Yes, at one time.

Q. Do you recall that Mr. Rey appeared as a very unwilling witness only under subpoena?

A. He didn't have to appear.

MR. BROCK: How would she know?

40 THE WITNESS: If they are from a foreign country they never have to appear, they can always ask not to.

MR. LOCHEAD: Q. Do you recall that Mr. Rey substantially confirmed the evidence of Frankson as to the method of removal of Terry?

A. I think it is all true just the way they have it down there.

Q. Do you recall also that Rey told the Court that

he had been present a few days later at a cocktail party with you and Mr. de la Fuente before the baby had been returned?

A. Mr. Rey didn't tell the truth about that.

Q. I am asking you, do you recall that?

A. I have no way of checking that. That was not true.

Q. My question is simply that, do you recall it?

10 MR. BROCK: My lord --

HIS LORDSHIP: You have made your objection.

MR. LOCHEAD: Do you recall Mr. Rey said that on the witness stand on that occasion?

A. For what reason would he have said that if he was an unwilling witness?

Q. There are just two more points about those proceedings. Do you recall that Mr. McKee gave evidence on that occasion?

20 A. Would you refresh my mind as to what he said there?

Q. The only point I have in mind is that Mr. McKee gave evidence on one occasion while the baby was still away. He came up to your office and you called down at him from an upstairs window and he testified as to very vile and obscene language you used. I am not asking you if you used that language, I am asking you if you recall it?

30 A. Yes, but the distance where he stood I don't know how he could have heard if I yelled at the top of my lungs.

Q. You recall that evidence by Mr. McKee was not denied by you on that occasion?

A. There was no cause to, I don't think.

Q. You don't deny it?

A. I shall now if you want me to.

Q. You didn't deny it then?

A. I don't know, Mr. Lohead, whether I did or not but I do not use vile language and I can't think I used it on that occasion.

40 Q. Just one final question; do you recall that Judge Clarke specifically stated in Court on that occasion that Cynthia had told him an untruth?

A. Well, I think Cynthia didn't have a very good chance to clear that. I believe it did look like misrepresentation but I don't know if the judge understood it. I asked her about it and she said she thought he

was asking her who helped her take the baby from the house and she said she took him on her own.

Q. Let us get back to the question. Do you recall that the judge in Court specifically stated that Cynthia had told him an untruth?

A. I seem to remember he did say that, yes.

Q. Now then, my lord, to anticipate an objection which my friend may make, I propose to refer very briefly to an order made by the California Court dated June 28, 1943, subsequent to the proceedings to which I have been referring and the order is Exhibit "B" to the complaint of this witness in the Milwaukee action of which I have an exemplification which will be tendered to your lordship.

Now, Mrs. McKee, is it not true as a result of those proceedings of June 10, 1943, an order was made by the Court, I won't give you the date because there is no reason why you should remember it, and it expressly forbade you from removing Terry from the county of Los Angeles without permission of the Court?

A. That was at the instigation of Mr. McKee.

Q. I am just asking you if it is true this order was made?

A. Yes, it was.

Q. Is it not true also that the order provided that during the period July 1st, 1943, to September 30th, 1943, when you had possession of Terry for three months, Mr. McKee was given access to Terry one day each week?

A. Yes, and many times I let him have two days and kept him overnight, which he never did for me.

Q. Is it not true that it is further provided --. My friend has asked me why I won't put it in. I tried to put it in during his examination and he wouldn't permit me.

Is it not true the order further provided that if Mr. McKee was not able to take advantage of this privilege of seeing Terry one day a week during those three months his agent was permitted to visit your home one day a week and make investigations?

A. Yes, which I have never been able to do and they do.

Q. Is it not true that the order expressly forbade Cynthia from removing Terry from your residence at any time?

A. She never did.

Q. It is true the order contained that provision?

A. That is true.

Q. Is it not also true that that order provided you were not to utter any defamatory or derogatory remarks about Mr. McKee in the presence of Terry?

A. I wouldn't do it.

Q. I have no doubt you wouldn't but did the order provide that? A. It did.

Q. Is it not also true that that order expressly
10 forbade you to have Terry in the presence of Max de la Fuente at any time?

A. That was after Mr. de la Fuente had left the country.

Q. Did the order contain that?

A. Yes, it is for newspaper publicity.

HIS LORDSHIP: I understand, Mr. Brock, you are objecting to its production?

MR. LOCHEAD: With great respect, my lord, I offered
20 to put it in and my friend refused to permit it. I am quite willing to put it in now or any time.

Is it true that that order expressly forbade Max de la Fuente calling at your house any time while Terry was there?

A. Yes, he was out of the country and he wasn't likely to. I told the judge myself that I would never have him see the child.

Q. You told the judge that yourself and the judge also told you?

A. I agreed that I would not.

30

---The Court then adjourned until 2.00 p.m.

---The Court resumed at 2.00 o'clock p.m.

EVELYN McKEE, previously sworn, resumed the stand.

40 ---CROSS-EXAMINATION BY MR. LOCHEAD CONTINUED:

Q. Mrs. McKee, is it true that you and Mr. McKee have not spoken together since the time of the property settlement in September, 1941?

A. That is true.

HIS LORDSHIP: That is apart from the interlude in

Kitchener.

MR. LOCHEAD: Perhaps I should have framed my question differently, my lord.

Q. You remember, I believe it was yesterday afternoon, Mrs. McKee, I was asking you some questions about the McCarthy ranch, and I believe you told us Cynthia was there with you?

A. Yes.

10 Q. What name did she use at the McCarthy ranch?

A. Cynthia.

Q. What surname? A. I don't know, she didn't sign the register. I went by Alexander.

Q. Did you register for her?

A. You do not sign a register there.

Q. She didn't register herself nor was not registered by anybody?

A. I don't know, I didn't see her.

20 Q. Were there any occasions when her surname was used? A. I doubt that, it was always my daughter Cynthia.

Q. You introduced her and she was known as your daughter Cynthia? A. Yes, I always have.

Q. Now, it is true, I believe, Mrs. McKee, that under the date of April 25th of this year on behalf of Mr. McKee I wrote to your solicitors with an offer of settlement of this case?

A. Well, I know there was an offer, I don't remember the date.

30 Q. I have reference to a letter dated April 25th. You know that your solicitors had received an offer of settlement from me and I presume the matter had been discussed with you?

A. Well, may I see it? Yes, that is the same letter.

Q. I am going to offer this as an exhibit, my lord. I would like to read it to the Court.

40 ---EXHIBIT 19: Letter dated April 25th above referred to. Read to the Court.

MR. BROCK: My lord, I suggest that my friend put in our reply.

MR. LOCHEAD: I am quite agreeable.

HIS LORDSHIP: They may be put together in the same exhibit, Exhibit 19.

MR. LOCHEAD: Q. What was your attitude in respect to that offer?

A. I felt it was very unfair due to the fact that I want custody of the child.

Q. Apart from that were you interested in it at all?

A. No, that wouldn't be interesting to a mother of a child, I don't think.

10 HIS LORDSHIP: I presume the boy has to be some place during the school year, he has to be with some one and should be in one spot for the school year.

THE WITNESS: Oh yes, the child must be thought of.

MR. LOCHEAD: My lord, my friend has asked me to put in the reply to that letter dated May 22nd, 1947.

---Letter dated May 22nd, 1947, read to the Court by Mr. Lohead.

HIS LORDSHIP: Is that still your decision?

20 A. Yes, it is.

MR. LOCHEAD: Now, I want to ask you this question, is it not true that in all the proceedings which have taken place in the Courts of California, Wisconsin, any action in regard to this custody matter, there has never once been a court finding against the character or good morals of Mr. McKee?

A. Well, you have the findings and you know more about that than I do.

30 Q. Are you saying you don't know whether there has been such findings or not? I am not asking your opinion of Mr. McKee, I am simply asking you --

HIS LORDSHIP: What he is asking you is if in these proceedings you know of anything that reflected on Mr. McKee's character?

A. I believe one part there is that he took my sister to a hotel in Washington and registered her as his daughter.

MR. LOCHEAD: In which judgment?

A. I believe that was in the judgment.

40 Q. The judgment in the California trial?

A. That was in the trial.

Q. Aside from that is there anything that you know of? A. I don't really know, Mr. Lohead, I

wouldn't say for sure.

Q. Now then, you saw Terry as recently as last Sunday and you have seen him three times this month since

your return from California. Would you not agree with me he is in a very healthy condition at the present time?

A. I don't think he is sick but I think he is a very nervous child which goes to show the upset he is having in his life and I feel he is thin for a boy his age, but I do not believe he is in any dire condition of health.

10 Q. Would you agree with me he looks what would be called the picture of health?

A. That is a matter of opinion but I don't think he does.

---RE-EXAMINATION BY MR. BROCK:

20 Q. Just a few questions arising out of the cross-examination. You were asked and you gave the reply that Mr. and Mrs. Cloud were at the Miller home on Big Bear Lake in September of 1945 along with Mr. Miller, Cynthia and the children. Who are the Mr. and Mrs. Cloud you referred to on that occasion?

A. That is my attorney and his wife.

Q. From Low Angeles? A. Yes.

30 Q. Now you were asked about the change of lawyers which took place in the original trial in California, that is in 1942 when Mr. Haumesch was retired and I believe Mr. Connell was your new lawyer and you also stated that you had changed your lawyers because some documentary evidence had not been put in. What documentary evidence was that?

A. Well, one was a transcript that Mr. McKee had given in this action in Washington.

Q. Had that anything to do with the divorce?

A. It tended to show the sort of things he has been involved in.

40 Q. What documentary evidence was it in particular that was produced at that time?

A. It was the main evidence for getting a divorce after I had gone back and lived with Mr. McKee and conceived a child by him. It was when I was in hospital on the 14th of July Mr. McKee wired a girl in New Orleans and took her --

MR. LOCHEAD: Q. Surely this must be hearsay.

HIS LORDSHIP: She was asked about this, she had better be allowed to explain what was on her mind.

MR. LOCHEAD: Is this documentary evidence or is it something she was told?

HIS LORDSHIP: She says it is evidence she had.

MR. BROCK: What documentary evidence was it?

A. This girl was 24 years old.

Q. Where was she living?

10 A. New Orleans. She was contacted by a lawyer and I secured --

HIS LORDSHIP: Do you know this yourself?

A. Yes, I saw it.

Q. You saw the evidence? A. Yes, I saw statements of hers.

HIS LORDSHIP: I suppose she can say she saw the statements but I do not think she can give the contents.

MR. BROCK: You had a statement from this girl and what else did you have at this time?

20 A. Where Mr. McKee had registered her.

HIS LORDSHIP: If you are going to give that in evidence you will have to bring the girl.

THE WITNESS: This is what I had from the register, a photostatic copy of it.

HIS LORDSHIP: Yes, but it is what is called hearsay evidence.

THE WITNESS: They photostated it.

30 HIS LORDSHIP: You can tell us you had a statement but I am sorry you cannot tell us what was in the statement.

MR. BROCK: You had a statement of this girl in New Orleans and you also had what else?

A. A photostatic copy.

HIS LORDSHIP: She says it was a photostatic copy.

MR. BROCK: You mean of the registration card where he registered her?

A. Yes at the Union League Club in Washington.

HIS LORDSHIP: That is not admissible evidence.

40 MR. BROCK: I am asking the witness what documentary evidence she had.

HIS LORDSHIP: She can say she had a registration card and a statement from this girl in New Orleans.

MR. BROCK: you had a statement and you had a registration card of the hotel or club?

MR. LOCHEAD: My lord, I object to any reference to that.

HIS LORDSHIP: I think you are entitled to and I do not propose to give it any weight.

MR. BROCK: I am asking the witness what she had.

HIS LORDSHIP: What was the record of which you had a photostatic copy? I do not want you to tell me what was in it.

MR. BROCK: If you go to a hotel they give you a card to sign; is it that sort of record?

10 A. Yes.

Q. Was it a photostatic copy of the record in the book? A. Yes, you see I was prepared to prove this was the girl because this was her statement.

HIS LORDSHIP: You will have to bring her if you are trying to prove it here.

MR. BROCK: Now, you told us you had a photostatic copy of the registration card at what is the name of the club?

A. The Union League Club in Chicago.

20 Q. And you had a statement of Miss Audrey Smith?

A. Mrs. Audrey Smith.

Q. Whose signature was it on this registration card?

MR. LOCHEAD: My lord, I must object to that.

HIS LORDSHIP: She may know.

MR. BROCK: Do you know the signature of Mark T. McKee? A. It was his signature and he had signed "and daughter".

HIS LORDSHIP: She can say she saw his signature.

30 MR. BROCK: Are you familiar with Mr. McKee's writing? A. Yes, very.

Q. Whose writing was on the card?

A. Mr. McKee's.

Q. What became of this statement of Miss Audrey Smith and the photostatic copy of the registration card of the Union League Club?

A. Well, my lawyer never did produce it.

Q. Did he give it to your lawyer, Mr. Connell?

A. No.

Q. You have never seen it again?

40 A. No, I have not.

Q. Now, at the time of the property settlement agreement, that is before September 4th, 1941, to what lawyer did you go to consult with respect to your property settlement?

A. Mr. Scott.

Q. Mr. Joseph Scott of Los Angeles?

A. Yes. Mr. McKee wanted me to go to Nevada to get my divorce.

Q. Anyway Mr. Scott advised you in connection with the settlement?

A. Yes, and heard my evidence for a divorce.

Q. Did he draw a property settlement agreement as your solicitor?

10 A. Yes, he did. I didn't sign that copy he drew for me.

Q. In what capacity did you next find Mr. Scott?

A. I think for Mr. McKee.

MR. LOCHEAD: My lord, I do not want to take the time of the Court but I would like my objection to that last evidence registered. There was no reference to Mr. McKee's attorney in cross-examination.

MR. BROCK: Now, Mrs. McKee, some mention has been made of a man, Max de la Fuente. When was the last time you saw de la Fuente?

20 A. It was a few months after the trial of 1942, three or four months, maybe not that long, maybe two months.

Q. Two months after the trial? A. Two or three.

Q. Have you seen him at all at any time since?

A. No, I have not.

Q. Was he one of the parties to the divorce action?

30 A. I don't think he was named as my co-respondent; I don't know whether that is the way it was stated or not but there was evidence about him.

Q. Now, Mrs. McKee, in cross-examination you mentioned that you had sub-let your apartment in Los Angeles in 1943 so that you could be near Terry. Now when next did you obtain a suitable place that you could live and keep Terry.

A. After the decision in 1945, after that decision I found this apartment at 3058 and I kept him there in 1945 and 1946 and I only let that go after I came to Kitchener.

40 Q. You let that apartment go when Mr. McKee brought Terry on to Kitchener, is that right?

A. That is right.

Q. So at the moment you have no apartment?

A. I have now, I have one at Sherman Oaks and I brought a picture for you to see that.

Q. You have mentioned that you moved around so much

in the interval between subletting of this apartment in 1943 until you moved to 3058 in 1945; why was it necessary for you to move around so much?

A. You see I had to come back to Wisconsin to take depositions and when I got there I didn't have a place to live and you are familiar with the fact that it was impossible during the war to even get a room to stay in and I had two or three places submitted by my attorney to Mr. McKee, places to stay with the child, and one was only 20 miles down on the ocean, and I was forced into these rooms.

Q. Mr. McKee's attorneys would not let you take Terry out of the County of Los Angeles?

A. That is correct.

Q. Now, my lord, since the opening of the trial in Kitchener we have obtained from California a photograph of the apartment house.

HIS LORDSHIP: Certainly Mr. Lohead has to have 20 rights of cross-examination in respect to that.

MR. LOCHEAD: I simply object to its production. It is not re-examination of this witness.

HIS LORDSHIP: I suppose he can produce it again by another witness if he has to. I said I would like to see where she was living.

MR. BROCK: Might I put it in now?

HIS LORDSHIP: No, I think you had better put it in with another witness. I may ask for it, Mr. Lohead.

MR. LOCHEAD: In that case, my lord, I withdraw my 30 objection.

MR. BROCK: Mrs. McKee, I show you a photograph. Of what is that a photograph?

A. This is the apartment and this is the entrance there.

Q. You have that lower flat?

A. Yes, that whole lower floor and this is not a very good view of the front, but there is a playground in the back, a fenced play ground.

40 ---EXHIBIT NO. 20: Photograph of apartment above referred to.

Q. And Mrs. McKee, it has been said in cross-examination that orders were obtained compelling you, when you had custody of Terry, to keep Terry within the County of Los Angeles while you had him. Have you

obeyed such orders?

A. Yes, I never disobeyed a Court order.

Q. Of the State of California?

A. I have never disobeyed any order of any Court.

HIS LORDSHIP: Mrs. McKee, Terry was born in 1940, wasn't he?

A. Yes, in July, July 14th.

Q. When did your difficulties with Mr. McKee commence?

A. December.

10 Q. December of that year? A. Yes.

Q. Then your divorce hearing was in 1942, was it?

A. Yes.

Q. From 1940 until 1942 you lived at the Azusa house?

A. Not that entire time.

Q. Tell me how long you stayed there.

A. I was making preparation to move then and I think I just stayed there a couple of months.

Q. I have in my notes that you went from there to the house on the outskirts of Los Angeles?

20 A. Each time I had to get a little lower.

Q. During that time prior to the divorce hearing did you have Terry with you?

A. Yes, I had Terry until the divorce.

Q. He was a small infant? A. Yes.

Q. The divorce was granted when?

A. I believe it was granted in January.

Q. So Terry was about a year and a half old at the time?

A. At the time of the trial he would be over two. You see he was born in July, 1940.

30 Q. There would be half a year there and all of 1941, that would be a year and a half, wouldn't it? When was the decree of divorce?

A. The divorce trial was ended on November 20th, 1942. You are right, he was pretty close to two.

Q. He was nearly two and a half years old. Then, how did you care for Terry during that time, did you have servants to help you?

A. I had one girl who came in.

Q. Who had you living with you?

40 A. Cynthia and Joanne and my son Jerry and Terry.

Q. They helped look after him too?

A. Yes, Cynthia helped to take care of him.

Q. After the divorce in 1942 did Mr. McKee have him?

A. Yes, he had him in Wisconsin by Christmas.

Q. From the beginning of 1943 up to 1945 the only times you had Terry were during the three months of the

summer in which you had custody under the order of the Court?

A. Yes.

Q. Take 1943, where did you keep him that year when you had him?

A. At the apartment on First Street. I think it is 3050.

Q. I want to know you were living?

10 A. It was like a duplex, even a nicer one than this one I showed you.

Q. He was about three years old at that time?

A. He had his birthday with me.

Q. Who did you have living with you then?

A. I believe Cynthia and my son had not gone into the service yet, I believe he was still there.

Q. Then did Cynthia help looking after Terry?

A. She helped me. I had no help then. She many times put him to bed and did things if I was doing the cooking.

20 Q. During the three months you had him in 1943 were you there all the time or away part of the time?

A. I never went away once.

Q. Coming to 1944, what happened then?

A. 1944 was the summer I had him turned over to me in Wisconsin.

Q. Did you start this action in Wisconsin at that time?

A. Yes, I did. I took him to Port Austin and Mr. McKee came to visit him there.

30 Q. Did you spend the entire three months in Port Austin?

A. No, I was taking them there while the depositions were coming up.

Q. In 1945 where did you have him?

A. It is like a house, it has a yard of its own.

Q. Not the present one? A. No.

Q. In 1946 you had him at the same place?

A. Yes.

Q. Did you have him in 1947? A. Yes.

Q. You had him at the same address? A. Yes.

40 Q. And during that time was Cynthia living with you? A. Yes, and my son.

Q. None of the other children were with you?

A. No, Mr. McKee's children on occasion the two boys came to see Cynthia and the baby. I didn't say anything, I didn't tell them they couldn't.

Q. Has Cynthia lived with you throughout?

A. Yes.

Q. She is the youngest of Mr. McKee's daughters?

A. The youngest of his daughters.

Q. During 1945 and 1946, were you with Terry for the whole three months?

A. Yes, I was, I never missed any time.

HIS LORDSHIP: I would like to ask you something, I would like you to treat very seriously and I would like you to search your conscience before you answer.

10 Do you want Terry because you feel you can do better for him than his father or do you just want to take him from his father for that reason?

A. I hope you believe me, I have no animosity for him. I have really gotten over that. I had that away in the beginning but it is not true any more.

Q. Do you think you can look after him as well now he is getting to the age he has to be educated?

A. I know I can.

Q. Have you resources to do it?

20 A. If I don't have it through Mr. McKee I know I can do something myself. I can design clothes, I have had offers to do this and if it comes to that I want to do it.

Q. What I have to look at is the welfare of this boy and I want you to consider that very carefully and it seems to me it is not beyond the realm of possibility that you might work something out that may be for his benefit and not yours.

A. There isn't any feeling like that about McKee.

30 I think he thinks I have not done right and I think he has not.

Q. I appreciate you feel that way about each other and I am wondering what is the best thing to do about the boy and I am not going to ask you to answer this now. I wonder if you shouldn't seriously think if there is some understanding you can reach with Mr. McKee or Mr. Brock for you with Mr. Lohead in which both of you might agree the best way to look after this boy until he is educated?

40 A. I don't see why Mr. McKee can't give me a chance to see him. He always has that before the Court if I do not take proper care of the child:

Q. I don't think he has suggested that yet and I am just wondering if there isn't some possibility, as I said -- I am not asking you to tell me what the possibility is now, but I am asking you in all seriousness

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to consider if there is anything you can do which you might work out so the two of you see that he is properly cared for and both have him some portion of the time.

A. When Terry spoke to me about having him for six months I said, "I know you love your father and I am not going to do anything to hurt you".

Q. You obviously cannot divide it for six months of the year because the boy has to go to school for 10 nine months. I am asking you to think it over very, very seriously and if you have any ideas as to something that may be worked out I am asking you to take the responsibility to see if you can do anything. Will you do that?

A. Thank you, I will be very serious about it.

Q. That is all, thank you, Mrs. McKee.

20

MARGUERITE KIRBY, sworn,

---EXAMINED BY MR. BROCK:---

Q. Where do you live? A. In Kitchener.

Q. What is your occupation? A. I am a secretary.

Q. You work in my office? A. Yes, sir.

Q. Do you know Mrs. Evelyn McKee?

A. Yes, I do.

Q. Do you remember an occasion when you went with 30 Mrs. McKee to 40 Hinds Avenue in Kitchener?

A. Yes, I remember it very clearly.

Q. Where did you meet Mrs. McKee before going there? A. I met her at the Walper House Hotel where she was staying.

Q. Did Mrs. McKee make any calls before you and she proceeded to Hinds Avenue?

A. Yes, before we went she said she wanted to stop in a drug store and buy some medicine.

Q. Just tell us what she did.

40 A. She went to the drug store and bought some medicine.

Q. Did you see what kind of medicine it was?

A. Penetrol, I think, and mentholatum. I think that is what it was, I am not sure.

Q. Then where did you go? A. We went down to 40 Hinds Avenue.

Q. And what Mrs. McKee do when she got there?

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A. We both got out of the cab and went up to the and Mrs. McKee rapped on the door and after a few minutes a lady answered the door.

Q. A lady answered the door?

A. Yes, and Mrs. McKee talked to her.

Q. Then what happened? A. She offered the medicine and the woman said something to her and slammed the door in her face.

10 Q. She offered the medicine and the woman said something to her?

A. She refused the medicine.

Q. And slammed the door? A. And slammed the door in her face.

Q. In Mrs. McKee's face? A. That is right.

Q. And what was the reaction of Mrs. McKee to this?

A. She was heartbroken and indignant.

Q. And was there any discussion at this time when you were there? A. No, sir, I never spoke to the woman and Mrs. McKee didn't proffer an introduction or anything.

Q. Was there anything mentioned at this time that you were Mrs. Brock? A. No, sir.

Q. You didn't speak to the woman?

A. No, I didn't.

---CROSS-EXAMINATION BY MR. LOCHEAD:

30

Q. On whose instructions did you go down there with Mrs. McKee? A. I was invited.

Q. You were invited by Mrs. McKee?

A. I was invited by Mrs. McKee to accompany her.

Q. Prior to this had you been in the habit of going out with Mrs. McKee?

A. No, I had not.

Q. You wouldn't say you had achieved a degree of friendship? A. I would say I liked her and 40 respected her and felt rather sorry for her because she was alone in Kitchener and didn't know anybody.

Q. You were never out with her before but on this day she invited you down to take some medicine to this house, is that right?

A. Not entirely.

Q. What is wrong about it?

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A. In the afternoon a friend of mine invited me out for dinner and suggested I bring Mrs. McKee with me and when I went to take her out she was going to take the medicine to Terry and naturally I went along with her.

Q. You are sure you didn't go along to be a witness to litigation she expected?

A. I am sure she didn't expect any.

10

MARIE IRENE HILLER, sworn,

---EXAMINED BY MR. BROCK:

Q. Where do you live? A. In Kitchener.

Q. Whereabouts in Kitchener? A. On Rockway Drive.

20 Q. Are you a married woman? A. Yes.

Q. Who is your husband? A. Wilbur Hiller.

Q. What does he do? A. He is a professional hockey player.

Q. What is he doing now? A. At the present time he is secretary-manager of the Rockway Golf Club.

Q. Have you any children? A. I have two daughters.

Q. What are their ages?

A. Eight and seven.

Q. And do you know Mrs. McKee? A. Yes, I do.

30 Q. Do you remember an occasion last spring when you and Mrs. McKee went to 40 Hinds Avenue, that is the house of Mrs. Ament?

A. Yes, I remember it very well.

Q. Will you tell the Court about that occasion?

A. I called for Mrs. McKee after her visit, at the conclusion of her visit with Terry, to introduce my children to Terry.

Q. That is, you were going there to introduce your two children ages seven and eight, to Terry McKee?

40 A. Yes. I called at the house and I was late for my appointment so I left the children in the car and went up to the door and Mrs. McKee was watching for me so she answered the door and asked me where the children were.

Q. Do not tell us what you said but what you did.

A. Oh, well, I told her.--

MR. LOCHEAD: No, no, no conversation.

HIS LORDSHIP: What did you do? Did you stay there or go back?

A. No, I remained there and then when she asked me where the children were and Mrs. Ament came out and said --

MR. BROCK:

10 Q. Do not tell us the conversation, just tell us what happened.

A. Mrs. Ament refused to --

Q. What happened to your children, did they stay in your car? A. Yes.

Q. They didn't come in? A. No.

Q. Did Mr. McKee appear at all?

A. Yes, he came out of what I supposed was the kitchen and bounded at Mrs. McKee and told her to leave and to not return.

Q. And what did Mrs. McKee do?

20 A. He suggested that they call the police and have her thrown out and Mrs. McKee asked him to do that.

Q. Did Mrs. McKee leave then?

A. Not immediately, Mr. McKee made another lunge.

Q. What do you mean, lunge?

A. He raised his fist up underneath her chin.

Q. He raised his fist up underneath Mrs. McKee's chin? A. Yes.

30 Q. What did he say? A. "You wicked woman", or something to that effect. I have forgotten the exact words.

Q. When he said "You wicked woman", was Terry there?

A. Yes, Terry was there.

Q. Then what happened?

A. Shortly after that we went to leave and on our way out of the door Mr. McKee closed the door on Mrs. McKee's foot as we were leaving.

Q. Now I understand that Mrs. McKee has been living at your house in Kitchener? A. Yes.

Q. When did she come there first, do you remember?

40 A. I brought her to my home after she was removed from hospital after her illness.

Q. And that would be when? A. That was about, I believe it would be some time in May.

Q. Some time in May of this year? A. Yes.

Q. Have you observed Mrs. McKee in your home? I suppose you have? A. Yes, I have. I find her

a very pleasant companion and there is nothing in the home she is afraid to do. I have seen her scrub floors and wash dishes and in fact I have let her take over my cooking because she is a very good cook.

Q. Is she a good housekeeper? A. She is very tidy in every respect.

Q. And your two children live at this house, do they not, with you and your husband?

10 A. Yes, and they are very fond of Mrs. McKee. She does many things for them and she has a wonderful way of handling them and I have never seen her lose control of her emotions at any time.

Q. That is with the two children?

A. That is right.

Q. During the time that she has been at your place has she made any clothes for Terry?

20 A. Yes, she made several suits, playsuits, shirts and numerous articles of clothing for Terry and she has also made things for my children and for herself.

Q. She has made things for your children too?

A. Yes, and for herself.

Q. Now, during the time that Mrs. McKee has been at your home from May of this year, has Terry visited her at your home?

A. Yes, on the week-ends, the Sundays when he was allowed to visit.

Q. When she first came there did you see Terry when he came to visit Mrs. McKee?

30 A. You mean when she first came to my house -- I was always present when Terry was brought there.

Q. And on those occasions who brought Terry?

A. Mr. Moyer.

MR. LOCHEAD: On each occasion?

That is when Mrs. McKee first came to the Hiller home after being released from hospital.

HIS LORDSHIP: Q. That was when, Mrs. Hiller, roughly? A. Some time in May.

Q. Of this year? A. Yes.

40 MR. BROCK: Q. Now, in what condition was Terry during these occasions when he visited Mrs. McKee around the time she first came to your house?

A. He always was very dirtily clothed, shabbily, and I myself have bathed him when Mrs. McKee was ill in my home. I have bathed Terry, combed his hair and cleaned his ears, he was in such a filthy condition.

Another time he was brought there and Mrs. McKee brought him in and he had crusted dirt on the bottom of his feet and I asked him if he walked in his bare feet and he said, no, he was not allowed to.

Q. Was it during this time that Mrs. McKee had made the clothes for Terry?

A. Yes, that is the day I am speaking of when I gave him a bath. She wanted to take pictures when he came and she certainly couldn't have taken any in the condition he was. She also cut his hair and dressed him up in some clothing she made.

Q. Did she send him back in these clothes?

A. No, she had a smart suit with short trousers she put on him that day and he returned home in that outfit.

Q. Do you know who made the suit that she sent him home in?

A. Mrs. McKee.

Q. And all during the time that Terry had visited Mrs. McKee at your home who brought him?

A. Mr. Moyer, he always accompanied him and sat in our living-room or somewhere in hearing distance.

Q. He came and sat in your living-room or somewhere?

A. The only reason I permitted is Mrs. McKee came to my husband and I and asked us if we would permit that.

MR. LOCHEAD: Isn't that hearsay?

MR. BROCK: In any event, on Mrs. McKee's account you permitted Moyer to sit in your house?

A. Yes, so she could see Terry.

HIS LORDSHIP: Was he objectionable in any way?

A. Not exactly objectionable but it isn't very nice to have someone in the living-room when you are moving around and I didn't think it was good for my little children.

Q. Why did it hurt them?

A. They knew he was a detective because Terry said he was, Terry told them so.

---CROSS-EXAMINATION BY MR. LOCHEAD:

Q. Now, Mrs. Hiller, is Mrs. McKee still living at your place?

A. Yes, since her return.

Q. She has been there since her return from