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PETITION.

IN CHANCERY OF NEW JERSEY.

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

The petition of Charles P. McLain, of the City and County of Camden and State of New Jersey, respectfully shows:

1. Your petitioner was lawfuly joined in the bonds of matrimony to his present wife, Lizzie C. McLain, the defendant in this suit, on the 26th day of July, 1884, by John R. Westwood, a Minister of the Gospel at Millville, in the State of New Jersey.

2. That from the time of their marriage until the filing of this petition, your petitioner has supported his said wife and their children of the marriage, and has furnished them with a home suitable to their condition in life, that in the month of August, 1909, his said wife wilfully refused to engage in sexual intercourse with your petitioner and from that time until the filing of this petition has wilfully refused to have sexual intercourse with your petitioner, and has, by reason thereof, been guilty of wilful, continued and obstinate desertion under the statute of New Jersey.

3. Defendant deserted your petitioner in the month of August, 1909, and ever since which time and for more than two years last past said defendant has wilfully, continuedly and obstinately deserted your petitioner.

New Jersey State Library

4. Petitioner and defendant have been *bona fide* residents of the State of New Jersey continuedly since their said marriage residing in the City and County of Camden and State of New Jersey.

5. Three children were born of said marriage aforesaid, one of which is now deceased, and two are now living, to wit, Irene C. McLain, age twenty-four years, and Ethel L. McLain, age sixteen years, both of whom are single and reside in the home of your petitioner.

6. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid according to the statute in such case made and provided, and that your petitioner may have such further relief as may be just.

And your petitioner will ever pray, &c.

HARRIS & HARRIS,
Solicitors.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } *ss.*

CHARLES P. MCLAIN, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition.

CHAS. P. MCLAIN.

Sworn and subscribed before me this 6th day of May, A. D. 1918.

PHILIP SCHMIDTZ,
Notary Public.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Divorce. Answer.

The answer of Lizzie C. McLain, defendant to the petition of Charles P. McLain, the petitioner:

1. The defendant admits it to be true that the petitioner and defendant were married as in said petition is alleged.

2. This defendant denies that the petitioner has supported her and the children of the marriage in a manner suitable to their condition in life, but alleges that the petitioner has given them and is now giving them a meager support, and the defendant further denies the wilful, continued and obstinate desertion alleged by the petition.

3. This defendant denies the allegations of paragraph 3 of the petition.

4. This defendant admits the allegation of paragraph 4 of the petition.

5. This defendant admits the allegation of paragraph 5 of the petition.

This defendant prays to be dismissed with her reasonable costs and charges in that behalf most wrongfully sustained.

LIZZIE G. MCLAIN, and
ELMER G. VAN NAME,
Of Counsel with the Defendant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Divorce.

Testimony taken in the above matter before HON. CHARLES V. D. JOLINE, Advisory Master, at Chancery Chambers, Court House, Camden, New Jersey, on Setember 5, 1918, at ten o'clock A. M.

APPEARANCES:

For the Petitioner, HARRIS & HARRIS, ESQS;
For the Defendant, ELMER G. VAN NAME, ESQ.

PETITIONER'S CASE.

CHARLES P. McLAIN, the petitioner, being duly sworn, says:

By Mr. Harris:

Q. Mr. McLain, what is your full name?
A. Charles P. McLain.

Q. How old are you?
A. 53 the 14th of last May.
Q. You are the petitioner in this case?
A. Yes, sir.
Q. How long have you resided in New Jersey?
A. In New Jersey all my life.

The Advisory Master: Well, how old are you?

Mr. Harris: He said 53.

Q. Didn't you say 53?
A. Yes, sir.
Q. Are you married?
A. Yes, sir.
Q. The lady sitting here (indicating) is your wife?
A. Yes, sir.

The Advisory Master: Is the defendant in this case your wife?

The Witness: Yes, sir.

Q. How long has she resided in New Jersey?
A. All her life, as far as I know.
Q. When were you married?
A. July 26, 1884.
Q. By whom?
A. Westwood.
Q. Reverend John R. Westwood?
A. Yes, sir.
Q. He was a Methodist Minister here in Camden at one time?
A. Yes, sir.

Q. Where were you married?
A. Millville.
Q. Millville, New Jersey?
A. Yes, sir.
Q. Where is your marriage certificate?
A. My wife has them. She has 2 of them.
Q. What is she doing with 2?
A. When I went to Mullica Hill—I had a run laid over there—I went to Mullica Hill to board and she gave her papers to her mother and her and her mother had a quarrel and fell out and they didn't speak for about 10 years——

Mr. Van Name: Objection.

Q. She obtained a second one, did she?
A. Her mother had it and she couldn't get it and then afterwards she went and got another one from the City Hall out here, then she got the other one back from her mother. Her mother returned it to her.
Q. You have neither of them?
A. I have neither of them. I haven't saw the second one at all.

The Advisory Master: Has the defendant got that certificate?

Mr. Van Name: We have the certificate.

The Advisory Master: Will you produce it?

Mr. Van Name: Yes, sir.

Mr. Harris: I offer it as part of my case.

(Mr. Van Name produces marriage certificate.)

The Advisory Master: Ask him if that is the certificate.

Q. Is that the certificate, Mr. McLain?

(Examining counsel hands certificate to witness.)

A. Yes, sir.

Mr. Harris: No dispute about it?

Mr. Van Name: No dispute.

(Certificate admitted in evidence and marked Exhibit P1.)

The Witness: I don't know whether this is the first one or the second one.

Mr. Harris: This is the first one.

Q. What is your business, Mr. McLain?
A. Conductor on the Atlantic City Railroad.
Q. How long in their employ?
A. 28 years the second of last April.
Q. And you are now a passenger conductor?
A. Yes, sir.
Q. After you were married, where did you go to live?
A. Where did we live?
Q. Yes.
A. We went to board with my mother and father.
Q. Take your wife?
A. Yes, sir.

The Advisory Master: Where?

The Witness: 509 Mount Vernon Street.

The Advisory Master: Camden?

The Witness: Yes, sir.

The Advisory Master: New Jersey?

The Witness: Yes, sir.

Q. How long did you live there?
A. I lived there—well, I don't know exactly how long.
Q. Where did you go from there?
A. To Third and Liberty. Rented a house and went to housekeeping.
Q. Camden?
A. Yes, sir.
Q. And where did you go from there?
A. From there I moved to Broadway and Kaighn's Avenue.
Q. Camden?
A. Yes, sir.
Q. And where did you go from there?
A. Fourth and Mechanic, Camden.
Q. And then where?
A. From there to Broad—to Fourth and Sycamore, Camden.
Q. Then where did you go? When did you move in Royden Street?
A. In Royden Street, moved there about 9 or 10 years ago.
Q. And what number is that?
A. 716 Royden.

Q. Camden?
A. Yes, sir.
Q. Did you live there from that time until when?
A. Until the tenth day of May.

The Advisory Master: What year?

The Witness: This year.

The Advisory Master: When you say Camden in all these places, you mean Camden, New Jersey?

The Witness: Camden, New Jersey.

Q. Did you live with your wife, as husband and wife, from the time of your marriage?
A. Yes, sir.
Q. Any children born?
A. Children born.
Q. How many?
A. 4.
Q. How many are dead?
A. 2 dead.
Q. What are the names of the ones living and their ages?
A. Ethel McLain is 17 last October. Irene is 22 or 23, I don't exactly know which now.
Q. And with whom do they reside?
A. They reside at 716 Royden Street, Camden.
Q. With their mother?
A. With their mother.
Q. And did reside with you in the same house until you left?
A. Yes, sir.
Q. What occurred, if anything, in August 9 years ago?

A. In August, why she was in bed with me and she started in to growl and she got out of bed. Of course, I wanted to have intercourse with her and she wouldn't have it and she got out of bed and left and went in the room with Ethel.

Q. Was this at night?

A. That was at night time.

Q. What did she say when you left?

A. Said she wouldn't have anything to do with me.

Q. And from that time to the present, what has been her conduct in that respect?

A. The same.

The Advisory Master: What is it?

The Witness: The same.

Q. Just tell us what she has said to you in relation to sexual intercourse.

A. All she said that she wouldn't have anything more to do with me, that I could go elsewhere, that she was done with me. That is all the excuse she ever made.

Q. What reason did she give on this night in August, 9 years ago, for leaving your bed?

A. She didn't give any reason at all any more than she said she wouldn't have anything to do with me, she wouldn't have intercourse with me, she got up and left.

The Advisory Master: When you say intercourse, what kind of intercourse do you mean? Sexual intercourse?

The Witness: Yes, sir.

Q. What has been her attitude in that respect since—and what has she said about it?

A. I have got in bed with her when she has been laying down, say in the afternoon and late in the evening, she has been laying there—of course, she wasn't undressed—laying down on the bed, and I got alongside of her and I undertook to love her up and she would smack me in the face and get up and have nothing to do with me. Several times, in the bathroom, she has been in the bathroom there and I went in the bathroom and tried to love her up and she would drive me away.

Q. Did you ever ask to have sexual intercourse with her?

A. I have.

Q. How many times?

A. Probably 25 or 50 I have asked her.

Q. What would she say on these occasions?

A. All she said was she wouldn't have anything to do with me.

The Advisory Master: When was the last time you did have sexual intercourse with her?

The Witness: 9 years in August. Why I remember that——

Q. In that time, have you occupied the same bed home?

A. I have occupied the same bed before, in the same room, when we roomed together and slept together. I was in the front room and she left me, she left and went in my daughter's room, Ethel, that is my youngest daughter, and slept with her, and I slept in that room for about 2 years, as near as I can judge, and then she moved my bed out

from that room into another room. I came home that night—I suppose it was 8 or 9 o'clock, somewheres around—no, it was after 9 o'clock, because they was both in bed, her and Irene in bed in this front room I always occupied. Of course, I came in and came to the door and she said, "What do you want in here?" and I said, "Going to bed." She said, "You are not going to bed in this room. Irene and I are in here." I said, "Where am I to sleep?" and she said, "I moved your bedroom suit in the other room, you go in there and sleep," and I went there to sleep and have slept there ever since.

Q. Has she ever occupied the same bed—have you together occupied the same bed in the house since August, 9 years ago?

A. She has not, except when she would be lying down, I would go there and lay alongside of her. Of course, she was dressed then at that time, she would be lying down there to rest.

Q. And on none of these occasions would she permit you to have sexual intercourse?

A. She would not allow me to have sexual intercourse with her.

Q. How many bedrooms in that house?

A. 3.

Q. Who occupies them?

A. Ethel occupies one and Irene and my wife occupy another and I occupy the other room.

Q. During the last 9 years have you taken any trips anywhere?

A. Yes, sir.

Q. Did you go to Washington?

A. Yes, sir.

Q. Who did you take with you?

A. My two daughters and my wife.

Q. How did you register there?

A. We had a room there. Just went to a private house and got a room and we got a room. They couldn't give us rooms separate and they gave us a room with 2 beds in. My wife and I slept together and the 2 daughters in the other room.

Q. In the other room?

A. In the other bed, rather.

Q. Both beds in the same room?

A. Both beds in the same room and she slept with her back to me all night, wouldn't even leave me touch her.

Q. Did you take any other trips where you took your wife?

A. I took a trip to Mauch Chunk and stayed there 3 or 4 days, both children with me that time, registered as man and wife.

The Advisory Master: Was your wife with you?

The Witness: Yes, sir, and 2 daughters, family. I had 2 separate rooms there, 2 rooms, for my daughters, one room for my daughter and one room for my wife and self. She refused to room with me and slept with the 2 girls.

Q. 3 in one bed?

A. 3 in one bed. Did not come in my room that night and I don't think she was ever in the room during the daytime, to the best of my knowledge.

Q. What was the occasion of these 2 trips?

A. I was on my vacation.

Q. Business or pleasure trips?

A. Pleasure trips.

Q. You took your wife and family?

A. Took my wife and family.

Q. What has been her demeanor toward you in these last few years?

A. Well, she abused me in every way that she possibly could. I went under an operation last October a year for a cataract, couldn't see to read, just merely get around, and I went to Jefferson Hospital, Dr. Sweet was my doctor, and when I left the house, instead of going with me and helping me along to get to the hospital, I had to feel my way the best way I could. I could just see to go ahead, and when I left the house she wished that I would go blind.

Q. Did she tell you that?

A. She said, "I wish you would go blind. I hope you never do see." When I went to the hospital, I had the operation performed, she never came to see me, I got home alone, and when I got home to the porch she opened the door. She said, "Come on in here, don't let the neighbors see you home," and I said, "What the neighbors got to do with this? I guess they are not bothering about me, whether I am home or not, maybe they got more sympathy than you have," and I came right in and she started to growl again. Well, I had to stay in 3 days, the doctor said to stay in the house, not to go out in the air, I had my eyes bandaged up and it got so bad I really couldn't stand it. I went to the cigar store at the other end, Joe Spiegel's and spent most of my time there, spent 5 weeks there before I went back for the other operation. I went back for the other operation and was in the hospital 11 days that time and she never went with me then.

Q. Didn't come to see you?

A. Never came and saw me. I laid there for 11 days, couldn't see anything, and on Thanksgiving Day my 2 daughters came over to see me, and I came

home after that and when I came home after that I came in the house and she says, "Well, you are home, are you!" and I said, "Yes, I am home." "Well," she says, "are you all right yet or no?" I says "I can see, that is, but I got to have another operation performed, he has to needle it before he will give me glasses to see at all out of it," and so I went back then. I was home 4 weeks then, I think, and I went back and had it needled and then I got the glasses and could see out of it and I went to work on the 2d day of March again. She says, "Well, the neighbors around here wishes you would go blind so as we would have to move away from here," but she says, "I see you are going to work again." "Well," I says, "neighbors got nothing to do with that part," I says, "I don't know of any of them that wishes I would go blind except you, and that you did wish when I went to the hospital then another time."

The Advisory Master: Is this necessary, all this?

Mr. Harris: I think it is, under the cases.

The Witness: Then the first pay-day I was to get from the railroad company, well, I worked 15 days but you don't get paid the first 15 days you work, you get paid the next 15 days. I came home that night which was supposed to be pay-day, not what you would really call pay-day, not if I was working right along. She says—— I gave her $12, I gave her $12 a week every week I was off sick, I gave her $12, and that night I gave her $12, and she says, "I want more money than that," she says "you have got more than that, you have made 15 days," and I said, "I haven't made no pay, I haven't got no pay——"

Q. What did she do as a result of that?

A. She undertook to take hold of me, she took hold of me, and I said, "Leave go of me," and she knocked my glasses off, and I caught them and put them on and I went to go out the back door and she shoved me out the back door, shoved me off the step, and I opened the door and said, "What did you shove me off the step for? Want to break my neck?" and when I opened the door, the door hit her on the eye and the door blacked her eye, and I went on out and went down to Spiegel's and she went out. I don't know where she went, and I went to Spiegel's and came back about 10 o'clock and went to bed.

Q. Did your daughters visit you at the hospital?

A. Once.

Q. Which one?

A. Both together.

The Advisory Master: He said they visited him on Thanksgiving Day. What year was that? Two years ago, did you say?

The Witness: Two years last October—— 1 year last October.

Q. During these 9 years have you supported your wife?

A. I have.

Q. How much did you give her?

A. I gave her $30 every pay-day, every 2 weeks, and she had the rent of a $10 house.

Q. What do you mean by the rent of a $10 house?

A. Rents for $10 a month.

Q. House you own?

A. Yes, sir.

Q. And you permitted her to collect the rent?
A. Yes, sir.
Q. You own the house in which you live?
A. I own the house that I live in.
Q. And who paid the taxes and expenses?
A. I paid the taxes and water rent.
Q. And she had $70 a month?
A. Well, she had $69.50 a month and she paid half a dollar for collecting the rent. Mr. Burr collected the rent.
Q. And since you left, have you supported her?
A. I sent her the first 2 weeks I was away $30.
Q. Have you kept that up?
A. I have paid her $25 every 2 weeks since, except the last one I sent her, I sent $30.
Q. The last check was $30?
A. The last check was $30.
Q. With reference to the house, you collect that yourself?
A. Yes, sir.
Q. Since you have been away from her, you have sent her $60 a month—— $50 a month?
A. $50 a month except the 2 weeks, $30.
Q. Charge her rent?
A. No rent.
Q. She is living in your house?
A. In my house.

The Advisory Master: What kind of house is that?

The Witness: That house, at this time, ought to rent for $20 at the least, $20 at the least.

Q. It is a stone front house?
A. Stone front house.
Q. What number Royden Street?
A. 716 Royden.

Q. What is the house worth?
A. Well, I gave $2800 for the house 9 or 10 years ago. I think it was 28, 25 or 28, either one of the two.
Q. It runs from Royden to Newton Avenue?
A. Yes, sir.
Q. Brick house with stone front and porch?
A. Yes, sir.
Q. What kind of heat?
A. Hot air.
Q. Bath?
A. Bath.
Q. Up-to-date?
A. Yes, sir.
Q. During the time that she has refused sexual intercourse, you state that you had made her offers?
A. I have.
Q. And wanted to have sexual intercourse with her?
A. Yes, sir.

The Advisory Master: Is that right?

The Witness: Yes, sir.

Q. And you stated from 25 to 50 times?
A. I suppose fully that many times.
Q. During that time, what has been your feeling toward her with reference to whether you could become a happy family again or not?
A. Always has been so.
Q. Been what?
A. Wanted to be happy and live happy with her. I sat there and took her growling and never said anything to her and I even sat out on the porch all alone and she wouldn't come out there with me.
Q. What about your meals?

Mr. Van Name: Objection. I object to this because it is taking time. It probably hasn't anything to do with the case.

(Objection overruled.)

A. Several times last winter I went to work without my breakfast. She wouldn't get up and get it. Ethel, she got up and got it 2 or 3 mornings and she said she got tired getting it, "Go get her up and do it."

The Advisory Master: Who said?

The Witness: Ethel, my youngest daughter, she said go get her mother and let her get it, "I am getting tired of getting up," and I went to work without my breakfast 2 or 3 mornings, and my eldest daughter, Irene, got up and got it 2 or 3 mornings then my wife, she seen I was getting my breakfast through the children and she got up and got it, and at night time, several times I came home at night time and she wasn't home and Irene got my supper for me.

Q. Did they eat with you?

A. My wife, I don't suppose the last 9 years has eat with me, well, over 50 meals.

Q. In your own house?

A. In my own house, and of course they would be, when she would eat with me, would be on Sunday, when I would get home somewhere around 4 or 5 o'clock, and she didn't know I was coming home at that time. They always managed mostly to have the meals eat before I got home, supper, and Irene, part of the time, she would make Irene

wait for me, I guess they eat before, and several times they would eat in the dining room and my meals was put out in the kitchen for me, one plate.

Cross-examination:

By Mr. Van Name:

Q. You own 716 Royden?
A. Yes, sir.
Q. And lived there for how many years?
A. Between 9 and 10 years, I don't know exactly the date.
Q. Up until May 10, 1918?
A. Yes, sir.
Q. And on the morning of that day, immediately after breakfast, you left?
A. After breakfast, I got my breakfast, I didn't return any more.
Q. Now, where are you living at present?
A. I have a room at 535 Stevens Street.
Q. With your cousin?
A. With my cousin.
Q. Her name is Annie Henderson?
A. Yes, sir.
Q. Now, when did you go there? Immediately after leaving?
A. I went there that night.
Q. That night?
A. May 10th.
Q. Been there ever since?
A. Been there ever since, sir.
Q. And of course you haven't returned to 716 Royden Street up to the present time?
A. No, sir.

Q. Have you asked your wife permission to return?

A. I have not.

Q. Did you intend when you left to return?

A. No, I did not.

Q. Now, after leaving, you notified the agent who collected the rent of that property that your wife usually got, not to pay it to her but to pay it to you?

A. Yes, sir.

Q. And you reduced her allowance for all excepting the first and last weeks, $25 each pay-day, twice a month?

A. Yes, sir.

Q. And you gave notice to the department stores where she had charge accounts not to sell to her on your credit?

A. I did; yes sir.

Q. Did you do that personally?

A. I did.

Q. You had intended to leave for several years, hadn't you?

A. No, sir.

Q. When did you make up your mind to leave?

A. I made up my mind a week before I did leave.

Q. One week before you left?

A. Yes, sir. I had told her several times that if she didn't stop nagging I would get another place to board.

Q. Then you made up your mind on May 3d?

A. About May 3d; yes, sir.

Q. Which was Friday. Then when did you go see Mr. Harris?

A. I think it was on the 3d that I went, on Friday, that I went to see Mr. Harris, and I think it was after that I made up my mind I would leave, after I consulted counsel.

Q. When did you swear to your petition?

The Advisory Master: That is proved by the petition itself. He swore to it on the 6th day of May, 1918.

Q. Did you swear to the petition on the 6th day of May, which was Monday?

A. On Monday, yes.

Q. Did you say anything to your wife, before you left, about the divorce suit?

A. I did not. She told me——

Q. Wait a minute. You did not?

A. I did not.

Q. Now, you say you left because of her refusal to have intercourse?

A. I did, and nagging.

The Advisory Master: Which was it? On account of her nagging or on account of her refusal to have intercourse with you?

The Witness: Why, both. It got so I couldn't bear it any longer. She wouldn't have anything more to do with me and she was all time growling and if I went out and went up to the lodge and came home she would be ready to jump all over me.

Q. Would you have left merely of the intercourse feature?

A. I would have; yes, sir.

Q. Did you love your wife all during the 9 years between August, 1909, and the time you left?

A. Did I love her?

Q. Yes.

A. I did.

Q. Did you love her when you left?

A. Well, why, I must say that I did, yes, I did love her when I left.

Q. Have some doubt about it, though?

A. No, I didn't.

Q. Had no doubt?

A. No, I did not.

Q. Now, then, since August, 1909, up to the day you filed your petition, did you desire your wife to have intercourse with you?

A. I did; yes, sir.

Q. Did you request her?

A. No, not—in what time request her?

Q. At any time between August, 1909, and the day you filed your petition?

A. August 1909?

Q. Any time, did you request your wife?

A. 1909?

Q. 1909.

A. Yes, I had.

Q. How many times?

A. Why, I suppose, 25 or 50 times. Of course, I never counted them up. Several times, I know.

Q. When was the last you requested her to have intercourse?

A. One day, why, in April, I laid alongside of her in bed there.

Q. April what year?

A. This year. She was laying down there, on a Sunday, in bed.

Q. That was the last time that you requested?

A. That was the last time. That was in April.

Q. And after that you, of course, made up your mind you were not going after any more?

A. Yes, sir.

Q. Did you desire intercourse with your wife 2 weeks before you left?

A. 2 weeks before I left?

Q. Did you desire it?

A. Did I have any desire? Yes, I had desire.

The Advisory Master: Did you ask her to? That is what you mean?

Q. I want to know his mental attitude.

A. Yes, sir.

(At this point the noon recess was taken.)

AFTERNOON SESSION.

CHARLES P. MCLAIN, recalled for further cross-examination.

By Mr. Van Name:

Q. Now, Mr. McLain, do you remember the day that—the rainy day that you were out in Collingswood and your wife came out there to Mrs. Nathan's house?

A. Yes, sir.

Q. And you had told her you were going to court in Philadelphia?

A. That day? Yes, sir.

Q. But instead you were in Collingswood?

A. Yes, sir.

Q. And she asked you why you were out there, didn't she?

A. Yes, sir.

Q. And you told her you didn't know?

A. No, sir; I told her I went out there to see a young man, a son, that I wanted to talk to him about getting a situation.

Q. You told her that right then and there, did you?

A. Yes, sir.

Q. Now, after you returned home that night, Mrs. McLain was in your bedroom, wasn't she, with you?

A. In my bedroom?

Q. Yes.

A. She came in there to fight.

Q. She was in there?

A. She came in there to fight; yes, sir.

Q. Did you request her to have intercourse that night?

A. She was standing right in the door. She was in there growling.

The Advisory Master: The question is did you request her to have intercourse that night?

The Witness: No, I did not.

Q. Was the door open or closed?

A. The door was open; always is open.

Q. Was there a light in your room?

A. No, there wasn't no light in there.

Q. You say there was no light?

A. No light. We very seldom have light upstairs unless dressing or something of that kind, because there is an electric light on the corner; giving light through the house.

Q. Do you now desire to live with your wife as man and wife?

A. No, I don't know as I do now.

Q. You do not?
A. After this trouble.
Q. Are you willing to return now?

Mr. Harris: Objection.

The Advisory Master: I don't think that question has any bearing on the case.

Mr. Van Name: I will withdraw the question.

Q. Now, then, this trouble about the intercourse began in August, 1909?
A. Yes, yes.
Q. And you occupied one room by yourself and your wife occupied another room with one of the children?
A. One of the other children; yes, sir.
Q. And did you usually close your door or leave it open?
A. My door was open most of the time.
Q. Most of the time?
A. Yes.
Q. You mean at night when you were sleeping?
A. Yes, sir.
Q. Now, when did you close it? On what occasions did you close your door?
A. Why, I would have to go in there sometimes when it was cold or something like that, I would close it.
Q. How often did you close the door?
A. I couldn't say how often.
Q. Well, give us your best idea.
A. Well, I couldn't tell you that and tell the truth. I don't know. I might close it tonight and maybe

not close it for a week, and then just shut it. It was never locked.

Q. You have estimated the number of meals and number of requests and I will get you to estimate the number of nights your door was closed during that period in 9 years.

A. I suppose, maybe, 100 times, maybe not. I couldn't tell you exactly.

Q. Did you ever lock the door?

A. No, sir.

Q. Never locked it?

A. Never locked it.

Q. Have you the key to the door?

A. I have not.

Q. Where is it?

A. I don't know. I don't think there is any key to the door.

Q. Did you ever have a key?

A. Not that I know of.

Q. Well, now, you would know. I want to know whether you ever had a key or not.

A. No, I never had a key to the door.

Q. Has your wife reached the change of life?

A. What say?

Q. Had your wife reached the change of life?

A. I guess she has about 15 years ago, from what she said.

The Advisory Master: What is her age?

The Witness: Her age is 53.

Q. Her age is 53?

A. Yes. Well, about 12 year ago. The change of life came when she was on Fifth Street.

Q. You mean by that it began about 12 years ago?

A. Yes, sir, from what she said.
Q. When did it end?
A. I don't know anything about that part.
Q. What say?
A. I couldn't tell you.
Q. Has it ended?
A. I don't know.
Q. About 2 years ago, after your wife had seen you at a certain house on Beckett Street, did you or did you not tell her that you were 21 and that you could do as you pleased and could have as many women as you wanted?
A. I did not.
Q. Did you on that same occasion say that lawyers, judges and police officers were no better than you and that you could do as they did, that police officers left their wives as they saw fit and paid them only $3 a week and that is all you would give?
A. No, sir; on the other hand, she said——
Q. Did you or did you not?
A. No, sir; I did not.
Q. Have you told your wife on a great number of occasions that you were tired of her and that the only mistake she had made was that she didn't die long ago?
A. I did not.
Q. Never said that?
A. I did not.
Q. Did you tell your wife——

The Advisory Master: When and where?

Q. Last winter, after your wife saw you at Collingswood, did you tell her that you were done with her and had no use for her only in a business way?
A. I did not.

Q. You did not?

A. No, sir.

Q. Did you not, on frequent occasions, say, in the presence of your family, to your wife, that you were going to California when the children were big enough, and leave her?

The Advisory Master: I think you ought to name the time and place, and the members of the family in whose presence he said it.

Q. The time that I refer to was at your home, on various occasions, and on one occasion in particular when both daughters were present?

A. That I said that I was going to California?

Q. When they were big enough to leave them behind?

A. When they were big enough? Well, I think they are big enough now.

The Advisory Master: That isn't the question.

The Witness: I don't remember saying anything of the kind.

Q. Did you or did you not say it?

A. I might have, in an offhand way, in a joke or something of that kind, but I don't remember it.

Q. You would not care to deny that entirely?

A. No, I would not, to tell the truth, I would not, because I might have been a-joking at the time, but I didn't mean it if I did say it.

Q. On the occasions when George Mecum came to your house on Royden Street, in regard to the key of the Beckett Street house, you said to your wife that she ought to be over in town where the blazing

flag was hung out, and have the job of pushing them out, did you?

A. No, she said—

Q. Did you say it?

A. I don't know how it was, I said she ought to be somewhere where she could have the pleasure of throwing people outdoors, all she wanted to do was fight.

Q. And Ethel was there at the time?

A. No, she wasn't, she wasn't in the room, she was out in the other room.

Q. But she could hear what you said, couldn't she?

A. I suppose she could.

Q. On the day following your trip to Collingswood, when your wife came out there, you went to Philadelphia, didn't you?

A. On the day following?

Q. Day following?

A. Yes, I went to court.

Q. Saying that day that you had to go to court?

A. I went to court and the case was put off and I went the next day.

Q. You went to Philadelphia that day?

A. Yes, sir.

Q. And your wife attempted to go along with you?

A. No, no.

Q. Did she meet you on the street that day?

A. No.

Q. Did she go over on the ferry boat with you?

A. No, sir; not that day.

Q. Did she go up the elevated stairs with you?

A. No, sir; not that day.

Q. What day did she?

A. That was the first day I went to court and the next day it was called and the next day it was put off again and the next day—

The Advisory Master: What bearing had this on the case? The issue is whether she had sexual intercourse with him.

Q. Now, when was it that she followed you to Philadelphia? What day was this?

A. What point now do you want to know? What part?

Q. The day that your wife went with you to Philadelphia.

A. You mean when she went to Philadelphia?

Q. Yes.

A. You want me to recite what was done that day?

Q. No, I want to know what day it was.

A. That was on a Friday. The day of the month I couldn't tell you now, because I don't remember.

Q. It was the day, then, following the rainy day that you went to Collingswood?

A. No, that wasn't the day that she went over the city to follow me.

Q. How long after the Collingswood affair was it?

A. That was a week afterwards, a week or two weeks after, I won't say which.

Q. She went along with you to Philadelphia?

A. After I started out of the house. I showed her a subpoena to go to court for the railroad company and as soon as I showed her the subpoena and got out of the house she came after me and said, "I am going along with you," and I said, "You can't go with me, I am going to court," and she said, "No, you are not, you are going to meet some ornery woman." And she still kept on following me out and I got down to the ferry and I said, "You turn on around and go back home, I am going to court," and I said, "I am not going to pay your fare in here," and she said, "Well, you will," and

so I said, "Come on, then," and I put my hand in and said, "Give me two tickets," and she reached over my head and said, "Sell this man two tickets," and so we went on in the ferry house.

The Advisory Master: I can't see what bearing this has.

Q. I want to get to the point where you arrived on the other side and to the head of the stairway, when you got to the head of the stairway.

Mr. Harris: What do you mean? The elevated stairway or Post Office Building?

Q. Elevated stairway. Did you not tell her to go back?

A. Told her to go back to the Camden side, and on the ferry boat she began to bawl me out there before a lot of people.

Q. Did you not there slap her in the mouth and give her a push and knock her down?

A. No, sir; I did not.

Q. You did not? And was she not afterwards sick in bed three days as a result of it, with a bruised hip?

A. No, sir; she took hold of me when I started up the stairway and she fell down, she began to pull me back.

Q. You deny what I ask you, do you?

A. I deny that I didn't hit her, that I pulled away from her and she fell on her side when I was going up, caught hold of my coat to hold me back.

The Advisory Master: What is your salary?

The Witness: $4.85 a day.

The Advisory Master: How much is that a month? Do you know what you are paid a month?

The Witness: Well, we get paid every two weeks.

The Advisory Master: How much are you paid every two weeks? What does it average?

The Witness: Some days we will average more than others, some weeks.

The Advisory Master: Approximately what do you get every two weeks?

The Witness: About $150. About $70 to $80 every two weeks.

Q. About $150 a month?

A. Something like that, $4.85 a day. I did get $4.20 a day until this last raise.

Q. This was your last raise?

A. Yes, $4.85. Before that we got $4.20.

Q. Now, on the occasion to which you referred this morning, about going to a hospital to have your eye operated upon, when you left the house did your wife ask you when you would come back?

A. She did not.

Q. And did you not reply you might be gone a year?

A. I did not.

Q. Did you not call her names that morning?

A. No, sir.

Q. Because she asked you to give her some money?

A. No, sir.

Q. To live with until you came back?

A. To live with until I came back? She had money enough to live with until I came back.

Q. And did you not further say to her, upon that occasion, to run away with another man or to take a houseful of boarders when you were gone?

A. No, sir; I would not allow a boarder in my house.

Q. Did you ever back your wife up against the wall and choke her?

A. I never have but she has caught hold of me.

Q. Never mind. I am asking you. When you didn't like things and were angry, did you shove her over so that she would fall to the floor?

A. No, sir.

Q. Did you tell her that you begrudged her everything she ate?

A. No, sir.

Q. Did you ever strike her in the eye so that her eye remained black?

A. I never did.

Q. After you had sworn to your affidavit on the petition, before Mr. Schmitz, on Third Street, did you at home ask your wife if she would go out with you?

A. No, I don't ever remember asking after I swore to the petition. I think a week or so before that I had asked her whether she wouldn't go out and at first she said no and I went upstairs and I was washing myself and she said, "Yes, I will go out with you," and I said, "No, you won't, you refused to go out with me, you won't go now."

Q. That is what you said to her, was it?

A. Yes, sir.

Q. Now, on this occasion after the papers had been sworn to, did you not ask her, and when you

found that she had a hat on, ready to go, didn't you ask her where she was going to go out and shut the door in her face and say you wouldn't go out with her?

A. I did not.

Q. And God forbid that you should be seen on the street with her?

A. No, sir.

Q. Didn't say that? Did you not, on frequent occasions when you were angry, say to your wife—

The Advisory Master: When were these occasions? Lately or long ago?

Mr. Van Name: During the past nine years.

The Advisory Master: Don't you think you ought to enumerate them or state when they were?

Mr. Van Name: It would be almost impossible to do that. A record is not kept, of course, of the dates, etc. The matter in question was of frequent occurrence.

The Advisory Master: That is what you say.

Mr. Van Name: And for that reason he could readily remember whether—

The Advisory Master: I will let you ask the question if you say you can't name the dates.

Q. Did you not say on numerous occasions, to your wife, and in the presence of both of your daughters, that you would see her go to the poor house and that it was good for her and that she was not as

good as a whore, as they were friends to their husbands?

A. I never did.

Q. Didn't say that?

A. No, sir.

Q. Are you acquainted with Mrs. Mecum, of Collingswood, who formerly lived in your house on Beckett Street?

A. I am. She was a tenant.

Q. She is not now your tenant?

A. No, sir.

Q. You frequently go to her house in Collingswood?

A. I do not.

Q. Did you write this letter to your wife?

(Examining counsel hands letter to witness.)

A. Yes, I wrote it.

(Said letter marked Exhibit D1 for identification.)

Q. And you wrote this the day you left, after your arrival in Atlantic City?

A. Yes, sir.

The Advisory Master: What date was this?

Q. May 10, 1918?

A. Yes, sir.

Q. And you mailed it to her?

A. I did; yes, sir.

Q. Who sent you this post card?

(Examining counsel hands post card to witness.)

A. I don't know anything about that at all. Never saw it before.

Q. Never saw it before?

A. No, sir; I don't ever remember seeing that postal card.

(Said post card marked Exhibit D2 for identification.)

Q. Who sent you this one?

(Examining counsel hands post card to witness.)

A. I couldn't tell you who sent that.

Q. You couldn't tell who sent that?

A. No, sir.

(Said post card marked Exhibit D3 for identification.)

Q. Who sent you this one?

(Examining counsel hands post card to witness.)

A. I never remember seeing it.

Q. Whose handwriting is it?

A. Indeed I couldn't tell you. I don't know.

(Said post card marked Exhibit D4 for identification.)

Q. Who sent you that one?

(Examining counsel hands post card to witness.)

Mr. Harris: I would like to inquire the object of all this.

The Advisory Master: It is simply for identification now.

A. I don't know. Can I look on the back of it?

Mr. Harris: I think he is entitled to look on the back of it.

The Advisory Master: Look at the whole card if you want to, sir.

The Witness: I don't know who sent it to me.

(Said post card marked Exhibit D5 for identification.)

The Witness: But I think that was sent from home. I remember that one on account of them capitals.

Q. Who sent you this one?

(Examining counsel hands to witness Exhibit D4 for identification.)

A. I think that was sent from the same place, from home. I accused them of it at the time, that card.

Q. Feel sure of that, do you?

A. Yes, sir.

The Advisory Master: How many post cards were there?

Mr. Van Name: I only referred to four.

Q. Now, what was the number of that property where your wife used to collect the rents?

A. 834 South Eighth Street.

Q. What other property besides this do you own and the Royden Street property?

A. Besides South Eighth?

Q. Yes.

A. 429 Beckett Street.

Q. What else?

A. That is all. I own a building lot in Magnolia.

Q. How much building loan stock have you?

A. I have ten shares.

Q. What building loan?

A. Clementon Building and Loan.

Q. How old is that?

A. Two year old, very near two year.

Q. How much money have you in bank?

The Advisory Master: Has that got any bearing on this case, how much money he has in bank?

Mr. Harris: I am willing to let him go the limit on it all, but I can't see the bearing.

The Advisory Master: I don't think the question is relevant to the issue.

Re-direct examination.

By Mr. Harris:

Q. Mr. McLain, your trips to the Philadelphia courts that he has asked you about, what court was that?

A. Why, there at the post office building.

Q. Ninth and Market?

A. Yes, sir.

Q. And why were you there?

A. I was there for a witness on a case that a lady got killed at Clementon last summer, a year last summer.

Q. Suit against your railroad company?

A. Yes, sir.

Q. How many days did you go there?

A. I went there two days.

Q. Tried on one of those days?

A. It hasn't been tried yet; no, sir, it was put off.

Q. And it was one of those two days that your wife tried to follow you?

A. Yes, sir.

Q. You showed her the subpoena before you left?

A. Yes, sir; and I showed it to her in Philadelphia and I told her she was detaining me and if I didn't get there by 10 o'clock I would lose my job, and I got there five minutes after ten and the case was put off.

Q. Did she go all the way?

A. She went all the way and I left her there.

Q. On this day that he asked you about striking her at the ferry, did she go all the way to the court house with you?

A. Yes, sir.

Q. And stayed in the court house?

A. Yes, sir; second floor.

Q. And you went out and left her there?

A. I went out and left here there.

Q. Did she show any marks on her from the ferry to the court house building?

A. I didn't see any marks on her. We got off the subway at Lit's, and of course my sight isn't any too good travelling around them stairs and I got bewildered. She said, "You don't want to get out,

you came here to do some shopping to buy somebody some clothes," and she said, "but this is where you came to get your letters here." This was at the post office and we went up the elevator and I left her there.

Q. And she went all the way up to the corridor?
A. Yes, sir.
Q. And you saw no bad effects of the quarrel?
A. No, sir; she was walking up and down there.

IRENE C. MCLAIN, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

By Mr. Harris:

Q. Miss McLain, you are the daughter of these two people?
A. Yes, sir.
Q. How old are you?
A. 23.
Q. Did you live with them at 716 Royden Street?
A. Yes, sir.
Q. How many rooms on the second floor?
A. Three. Three bedrooms and a bath.
Q. What room did you occupy?
A. The bay window room, the room on the corner.
Q. Where did your sister sleep?
A. She slept in the back bedroom.
Q. Who with?
A. My mother.
Q. Where did your father sleep?
A. He slept in the room on the other side.

Q. That has continued for how long? How many years has that continued, occupying that same room?
A. Nine years anyway.
Q. What say?
A. Nine years.
Q. And it continued up to the time he left?
A. Yes, sir.

Cross-examination.

By Mr. Van Name:

Q. Now, Irene, you say that you live with your mother at 716 Royden?
A. Yes.
Q. And how did you happen to come here today?
A. Why, my father had me for witness.
Q. Serve you with a subpoena?
A. Yes, sir.
Q. Now, you say that for a period of nine years your father occupied one bedroom by himself and your mother occupied another bedroom?
A. With Ethel.
Q. Either with Ethel or with you?
A. Yes.
Q. Now, what time would your father get up in the morning?
A. He always got up at 6 o'clock and left at half past 6 to go to work.
Q. And when would he return from work?
A. Well, he came in at all hours, quarter of 6, 6 o'clock, half past 6.

The Advisory Master: This is not cross-examination. You can call her as your own witness. It is not cross-examination.

Mr. Van Name: I will confine myself to the occupancy of the rooms.

Q. Did your father ever enter your mother's bedroom?

A. For a towel or a wash rag, that was the only time.

Q. Were those occasions during the day or at night?

A. Well, of course, in the daytime I wasn't home, I was employed, and in the evening he generally had his in his own bedroom.

Q. Had his towel in his own bedroom?

A. Yes, and once a week he came in and—

Q. And so once a week he came in to get that?

A. To get that.

Q. When would that be? What hour of the day?

A. Whenever he wanted a clean one he came in and would get it.

Q. Was it day or night?

A. Sometimes he would come in in the evening.

The Advisory Master: Was the closet in which the towels were kept, in your mother's bedroom?

The Witness: They were kept in the washstand drawer.

The Advisory Master: In your mother's room?

The Witness: Yes, sir; in the room that I occupy.

The Advisory Master: With your mother?

The Witness: Yes.

Q. You say he would go in there once a week to get those supplies and take them into his own room?

A. He always kept them in his own room.

Q. Now, did he ever go in your mother's room on other occasions?

A. No.

Q. Did your mother enter your father's room?

A. No, I don't know of any time she has ever been in only to hang her things up, hang her clothes up if she has been out.

Q. Hang?

A. Her clothes up. She had the cupboard that was in his room.

The Advisory Master: Would she stay in there any time or just go in and hang them up and come out?

The Witness: Just go in and come out.

Q. Was your father in there at the time she entered for that purpose?

A. Yes.

Q. What is the relative location of the doors of those rooms? I mean to describe the position of the doors of the two rooms, the one occupied by your mother and the other occupied by your father.

A. There is a wall about that big (indicating).

The Advisory Master: Six inches.

The Witness: And the doors are side by side.

The Advisory Master: Was there a door between your father's room and your mother's room?

The Witness: No.

Q. There is no communicating door?
A. No.
Q. Now, on the occasions when you saw your father enter your mother's room or your mother enter your father's room during the last nine years, did you hear any conversation?
A. No, I didn't.
Q. Heard no conversation whatever?
A. No.
Q. Did you hear any voices at all?
A. Could hear them talk. Always was a racket whenever they was going in each other's room. That is all we ever knew.

The Advisory Master: Always a racket, you say?

The Witness: That is all we have ever known.

The Advisory Master: You mean to say they quarreled with each other?

The Witness: Quarreled.

Q. What was the nature of these quarrels?

Mr. Harris: He will be bound by it, of course.

The Advisory Master: Yes. You are going into matters that are not cross-examination.

Mr. Van Name: Under those circumstances, I am satisfied to cross-examine the witness insofar as she testified directly and to examine her directly insofar as she is asked to testify concerning things which Mr. Harris didn't ask her.

The Advisory Master: Don't you think it will clarify the case to do that when you come to your defense? If I were you, I would do it then.

Mr. Van Name: Yes, I think it would. So that up to the present, we will consider it cross-examination and continue that line.

The Advisory Master: Yes.

Mr. Van Name: All right, that is sufficient.

Re-direct examination.

By Mr. Harris:

Q. You state that you heard no conversations?
A. No.
Q. Do you recall being in bed with your mother on one or more occasions—
A. Never.

The Advisory Master: Don't you think you had better wait until she is examined later?

Mr. Harris: I am afraid he won't ask it.

Mr. Van Name: I won't object to it.

Q. Do you recall on one or more occasions, when you occupied the same bed with your mother, that your father came in after a towel or wash rag or something and your mother told him to get out of there?
A. Never.
Q. Positive about that?
A. Yes.

CALANTHO PHILLIPS, a witness produced on behalf of the petitioner, being sworn, testified as follows:

By Mr. Harris:

Q. Mrs. Phillips, where do you reside?
A. 714 Royden Street.
Q. That is next door to where the McLains live?
A. Yes.
Q. Do you know Mrs. McLain?
A. Yes.
Q. How long have you known her?
A. Well, nearly ten years. We have lived there almost ten years.
Q. Did you ever have any conversation with her, say four years ago, in reference to whether she was a wife to her husband or not?

Mr. Van Name: Objection.

The Advisory Master: Did you or did you not? Say yes or no.

A. Yes.
Q. What did she tell you in reference to whether or not—
A. That it had been some time—

The Advisory Master: Don't answer the question until I tell you whether you can.

Q. What did she say to you as to whether or not she had sexual intercourse with her husband?

Mr. Van Name: Objection. The objection is that you have laid no foundation for such a question, and

a further objection that it is not proper corroboration.

(Objection overruled.)

Mr. Van Name: Exception.

A. She simply told me it had been some time, but I can't tell you now, it has been too long, I forget.

The Advisory Master: Told you what?

The Witness: That there had been no marital relations between them.

The Advisory Master: Do you mean to say that there had been no sexual intercourse between them?

The Witness: That is what I mean, yes.

Q. Did you say how long that had been?
A. She may have said so but it has been too long.
Q. How long has it been?
A. Four or five years.
Q. And where were you?
A. On our front porch.
Q. And her front porch immediately adjoins yours to the east?
A. Yes.

Cross-examination.

By Mr. Van Name:

Q. You say it has been four or five years ago?
A. Yes.

Q. No, how did this conversation come up between you and Mrs. McLain?

A. That I couldn't tell you. I think she was telling me some things and in the way of telling me those things she told this. I couldn't tell you just how now.

Q. Did she say whether or not her husband had made any requests?

A. No.

Q. She didn't say about that?

A. No.

Q. Did she say that her husband had made requests?

A. No.

Q. Did anyone ask you to testify that way today?

A. No.

Q. And why did you testify that way?

Mr. Harris: Objection.

A. No, nobody asked me directly, no.

Q. Nobody asked you directly?

A. No.

Q. And why did you testify that way?

A. Simply because I am asked the question.

Q. Because what?

A. Because I am asked to testify.

The Advisory Master: Because what?

The Witness: I am asked to testify.

Q. And were you subpoenaed to come here today?

A. I was.

ANNA JOHNSON, a witness produced on behalf of the petitioner, being sworn, testified as follows:

By Mr. Harris:

Q. Mrs. Johnson, where do you live?
A. 558 Newton Avenue.
Q. How far is that from McLain's?
A. Why, I should judge almost as far as from here to Munger & Long's.
Q. On the opposite side of the street and a little above?
A. Yes.
Q. You know Mrs. McLain?
A. Yes.

The Advisory Master: When you say Munger & Long's, you mean the building right opposite the Court House?

The Witness: Maybe not that far, maybe to the trolley track, but looking this distance about that far.

Q. You have had conversations with Mrs. McLain, haven't you?
A. No. I have talked with her but never had any conversations, just friendly talk.
Q. Did you ever have a conversation with her as to whether or not her husband and she were maintaining sexual relations?
A. Never.
Q. Sure about that ?
A. She never said anything to me about that.
Q. You are under subpoena today, aren't you?
A. Sure, or I wouldn't be here.

No cross-examination.

Mr. Harris: If the Court please, I issued a subpoena for Mrs. John Chamberlain, after I had interviewed her, and the subpoena has been out several days and the officer told me this afternoon that he had tried to serve it. She is not here and told me she could not be here this afternoon and had not been served with a subpoena, otherwise she would have been here. She lives out at Mt. Ephraim and she said she couldn't come away from her husband's business. I would like to reserve the right to have her testify. I used due diligence in endeavoring to get her here.

IRENE MCLAIN, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

By Mr. Harris:

Q. Miss McLain, you recall going up to Reading with your father on a trip?

A. Yes.

Q. You stayed at what kind of boarding house or hotel?

A. Well, indeed, I don't remember what kind of place we were in.

Q. How many rooms did you have?

A. I don't remember. I was too young to remember that.

Q. How long ago has it been?

A. Nine or ten years, all of that.

Q. Don't you recall?

A. I don't remember the trip to Reading at all.

Q. You don't recall it at all?

A. I don't remember what kind of place we was in.

Q. Who slept with you?

A. My sister.

Q. And your mother?

A. Well, I don't remember. I don't remember the trip to Reading at all.

Q. Do you remember the trip to Washington?

A. I remember the trip to Mauch Chunk and Washington. It was at Mauch Chunk.

Q. You remember that trip?

A. Yes, sir.

Q. You stayed at a hotel?

A. Yes.

Q. When was that?

A. That has been all of six years anyway.

Q. You had how many rooms?

A. We had two rooms.

Q. Who slept in your bed?

A. My mother and Ethel was with me. I was sick when we went away.

Q. Who slept in the room with you?

A. My mother. There was a cot and a bed and I was so very bad sick I was afraid to stay alone and my mother came in and laid on the couch with me.

Q. And your father occupied the room by himself?

A. He had the other room and he made no objections. He was perfectly satisfied, because I was afraid, that was the reason.

Q. She didn't sleep with her husband?

A. No.

Cross-examination.

By Mr. Van Name:

Q. You were ill before you went?
A. Yes; the doctor said it would do me good, the trip to the mountains.
Q. How long did you stay?
A. Three days.
Q. How long did you plan to stay?
A. Two weeks.
Q. But you came home on account of illness?
A. Yes, I had a chill.

LIZZIE C. MCLAIN, the defendant, produced on behalf of the petitioner, being duly sworn, testified as follows:

By Mr. Harris:

Q. You are the defendant in this suit?
A. Yes, sir.
Q. Mr. McLain, the petitioner, is your husband?
A. Yes, sir.
Q. Is it true that about the month of August, nine years ago, you, since the month of August, nine years ago, you have not had connection with your husband?
A. Yes, sir, it is true. But there is reasons—

Cross-examination.

By Mr. Van Name:

Q. Mrs. McLain, has your husband made any requests for you to have intercourse with him during that period?

A. Never since that time.

Q. Has he shown any desire for it?

A. Never has put his arms around me or kissed me in ten years.

Q. Has he indicated by his conduct whether or not he has any affection for you?

Mr. Harris: Of course, it is pretty hard to get the exact facts and it is one of those cases where it is almost impossible to give them. I would like to have the fact of what he did, what led up to it. I think we are entitled to know the facts.

The Advisory Master: Answer the question, please.

(Question repeated.)

A. Never in any way.

Q. Has he shown any ill-will toward you?

A. In lots of ways.

Q. Has he said anything during the nine years, concerning the subject of intercourse with you?

A. Never has mentioned it.

The Advisory Master: Has he ever requested you, during these nine years, to have sexual intercourse with you?

The Witness: Never. He told me he only had use for me in a business way and that he didn't love me, that he was done with me years ago.

Mr. Harris: We rest.

Mr. Van Name: I don't understand whether an arrangement has been completed about this Mrs. Chamberlain.

The Advisory Master: If she appears before the case is closed—

Mr. Harris: I can't get her here today.

Mr. Van Name: If the Court please, it will depend on what she has to say entirely as to whether I close my case without offering any testimony. In other words, if she says certain things, I will desire to put a case in defense; if she does not, I will have no testimony to offer. If we can agree in general terms as to what her testimony is to be, possibly we can dispose of that this afternoon.

Mr. Harris: I rest.

The Advisory Master: If you rest, I won't allow you to call her.

Mr. Harris: I understand.

The Advisory Master: Except in rebuttal. You can call her in rebuttal.

Mr. Van Name: In that event, we will rest also.

BOTH SIDES REST.

MASTER'S REPORT.

(Filed Oct. 3, 1918.)

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Divorce. Master's Report.

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The desertion in this cause is claimed on the ground of the refusal by the wife to allow the husband to have sexual intercourse with her for nine years last past, or nine years before the filing of the petition. The husband must prove her refusal and corroborate it. The mere fact that they didn't have sexual intercourse doesn't prove any refusal upon her part. He has sworn to the fact that he hasn't had sexual intercourse with her for nine years. He has attempted to corroborate it by evidence of the daughter Irene, by evidence of Mrs. Phillips and by evidence of the defendant herself. Under such circumstances, I think very slight evidence is necessary to corroborate a thing of this sort, and it might be that the evidence of the daughter Irene is a sufficient corroboration of the fact that there has been no sexual intercourse; but it certainly doesn't corroborate the fact that the wife refused

to let him have sexual intercourse or that she abstained from letting him have sexual intercourse for good reasons. An attempt has been made on the part of the petitioner to corroborate this by a witness by the name of Phillips. Her testimony was that the wife had stated these facts to her about four or five years ago. That might prove it up until four or five years ago, but it doesn't prove that she hasn't had sexual intercourse with him from that time down to the present time, therefore, it is not sufficient corroboration.

The case of Garrett vs. Garrett, decided by the Chancellor and found in 1st Bayard Stockton 293, holds that a confession of the party against whom a charge has been made, or the testimony of a witness to whom that confession was made, is not legal evidence, and it must be corroborated by some evidence of the fact itself and not by evidence of the admission itself. Therefore, that is not a sufficient corroboration.

The petitioner then called the defendant upon the stand, and she has admitted that she has not had sexual intercourse with her husband for nine years. Garrett vs. Garrett being the law of the land, that admission on her part is not a sufficient corroboration; therefore, the only corroboration in this case of the husband is the testimony of Irene, the daughter, to the fact that she has slept with her mother for nine years last past, that the father slept in another room, that he came into the mother's room only to get a towel or wash cloth and that mother went into the father's room for the purpose of hanging up his clothes. I understand that Irene—absent, working, during the day, and there might have been sexual intercourse during that time.

I understand it that there must be a refusal on the part of the wife to let her husband have sexual intercourse with her and the husband must not only prove it, but he must corroborate it. This wife has testified that she never refused him. She has said that he didn't have sexual intercourse with her and she testified that he stated to her that he wouldn't have anything to do with her except as a matter of business; that he had made other remarks, the exact wording of which I can't recall at the present time, which, to my mind, show that the husband, if the wife tells the truth, refused to have sexual intercourse with the wife. I may say that I believe her.

I don't understand that the wife must go to the husband and beg him to have sexual intercourse with her; that isn't necessary. If the husband wishes to have sexual intercourse with the wife, he should approach her, and while he has said he did do this, she has stated that he did not but that he refused absolutely to do it. The burden of proof being upon him, and he being required to corroborate it, I don't think he has done so, and for that reason I will advise a decree refusing the divorce.

Since the hearing in this case, the solicitor of the petitioner made a motion for a re-hearing on the ground of after discovered evidence. The motion was heard in my office on the 28th day of September, 1918. He then admitted that he had no further testimony to offer. He then made a motion that I should advise a decree without prejudice to the petitioner. I cannot see any reason why I should do this. Were I to advise such a decree, the defendant would be placed in a state of uncertainty

as to her status, which I think she should not be subjected to. Respectfully submitted October 1st, 1918.

C. V. D. JOLINE,
Advisory Master.

A true copy.

JESSE R. SALMON,
Clerk.

DECREE OF DISMISSAL.

(Filed Oct. 3, 1918.)

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Divorce. Decree of Dismissal.

This cause coming on to be heard before the Court in the presence of John Harris, Esquire, of Harris & Harris, of counsel with the petitioner, and of Elmer G. Van Name, Esquire, of counsel with the defendant, on petition and answer and oral proofs taken in court, counsel for the defendant offering no proof, whereupon and upon duly considering the said pleadings and proofs and the arguments of counsel, from all of which it now appears satisfactorily to the Chancellor that the said petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 26th day of July, 1884, that at the time the cause of action for divorce arose the petitioner and defendant were bona fide residents of this State, and have continued to be down to the time of the commencement of this action, and that jurisdiction has been acquired by personal service of process upon the defendant

within this State, and it appearing to the Court that the petitioner has not sustained the truth of the allegations of his petition, and is not entitled to the relief therein prayed for:

It is thereupon on this 1st day of October, 1918, ordered, adjudged and decreed that the petitioner's petition be and the same is hereby dismissed.

And it is further ordered, adjudged and decreed that the petitioner pay to the defendant, or to her solicitor, the costs of this suit to be taxed, and also a counsel fee of $50, and that she have execution therefor, according to the practice of this Court.

E. R. WALKER, *C.*

Respectfully advised,
C. V. D. JOLINE,
Advisory Master.

A true copy.

ROBERT H. MCADAMS,
Clerk.

ORDER DISMISSING PETITION.

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Re-hearing and Order to Show Cause. Order Dismissing Petition.

The petitioner having filed his petition, praying that the decree of dismissal of the petition for divorce entered October first, 1918, in this cause, be opened and set aside, and a re-hearing be granted the petitioner; and an order having been granted on April twelfth, 1919, to show cause before Honorable Charles V. D. Joline, Advisory Master, on Friday, the eighteenth day of April, 1919, at 10 o'clock in the forenoon, why the final decree aforesaid should not be opened and set aside and a re-hearing granted;

And this matter having been heard in the presence of Harris and Harris, solicitors of the petitioner, and Elmer G. Van Name, solicitor of the defendant, and it appearing that the petitioner is not entitled to the relief prayed;

It is thereupon, on this day of May, A. D. 1919, on motion of Elmer G. Van Name, solicitor of the defendant, ordered, adjudged and decreed that the petition for rehearing be, and the same is hereby dismissed.

Respectfully advised,

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between CHARLES P. McLAIN, *Petitioner,* and LIZZIE C. McLAIN, *Defendant.*	On Petition for Divorce. Notice of Appeal.

Charles P. McLain, the above-named petitioner, hereby appeals from the final decree in this cause dated the first day of October, 1918, dismissing his said petition for divorce and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

HARRIS & HARRIS,
Solicitor for and of Counsel with Appellant.

Dated July 23rd, 1919.

I can see there is good cause for appeal in the above stated cause.

JOHN HARRIS,
Of Counsel.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CHARLES P. McLAIN, *Appellant,* and LIZZIE C. McLAIN, *Appellee.*	On Petition from Chancery. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Charles P. McLain, appellant, respectfully shows that your petitioner finds himself aggrieved by a final decree in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the first day of October, 1918, in that the said decree recites and adjudges that your petitioner has not sustained the allegation of his petition and is not entitled to the relief therein prayed; and does decree that your petitioner's said petition be dismissed. And your petitioner appeals from said decree and every part thereof, on the ground that the same is erroneous and that the Chancellor should have found and adjudged the several allegations of your petitioner's petition to have been proved, and the respondent, Lizzie C. McLain, to have been guilty of wilful, con-

tinued and obstinate desertion of your petitioner, for the term alleged in your petitioner's petition and that your petitioner should have the other relief prayed in and by said petition.

Your petitioner therefore prays that the said decree may be reversed, rescinded and for nothing holden and that the Court of Chancery may be directed to enter a decree in favor of your petitioner granting unto him an absolute divorce and that your petitioner may have such further relief as shall be meet.

HARRIS & HARRIS,
Solicitors and Counsel of Appellant.

ANSWER.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CHARLES P. McLAIN, *Appellant,* and LIZZIE C. McLAIN, *Appellee.*	On Appeal from Chancery. Answer.

The answer of the respondent or appellee to the petition of appeal of the appellant.

The respondent admits it to be true that a certain decree was on October 1st, 1918, made and entered in the Court of Chancery as in petition of appeal is stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that said decree is agreeable to law and equity, and she prays that the same may be affirmed with costs and counsel fees to be adjudged to this respondent.

This respondent alleges that by reason of appellant's acquiescence in said decree, he has lost any

right of appeal, as the respondent stands ready to prove.

ELMER G. VAN NAME,
Solicitor and of Counsel with Respondent.

[ENDORSED]

"Filed Aug. 28, 1919.
Thomas F. Martin,
Clerk."

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES P. McLAIN,
Petitioner and Appellant,

vs.

LIZZIE C. McLAIN,
Defendant and Appellee.

On Petition for Divorce.

Appeal from Decree Dismissing Petition.

BRIEF ON THE PART OF THE APPELLANT.

The petitioner and the defendant were married at Millville, in the State of New Jersey, on the 26th day of July, 1884, and both have resided in New Jersey continuously from their marriage to the present time.

The divorce is sought upon the ground that in the month of August, 1909, the defendant wilfully refused to engage in sexual intercourse with the petitioner, and from that time to the present has wilfully refused to have sexual intercourse with petitioner, by reason whereof the defendant has

been guilty of wilful, continued and obstinate desertion.

At the conclusion of the petitioner's testimony the solicitor of the defendant moved to dismiss the petition for the reason that petitioner had not been sufficiently corroborated, which motion the Advisory Master sustained and a decree of dismissal was entered.

The sole question now before the Court is, was petitioner's testimony corroborated sufficient to grant the prayer of the petition?

The petitioner's testimony was that in the month of August, 1909, while in bed the petitioner sought to have sexual intercourse with his wife; that she began to growl, and refused, and got out of bed and went to her daughter's room and has never returned (p. 11, l. 1-30) and the only reason she gave was that "she wouldn't have anything more to do with me."

About four or five years before the hearing in this cause, defendant told Mrs. Phillips, a witness producted by the petitioner, that there had been no sexual intercourse between her and her husband for a long time (p. 48-49).

The defendant was called by the petitioner and she was asked whether it was true that since the month of August, nine years ago she has not had connection with her husband? Answer, "Yes, sir, it is true, but there are reasons" (p. 54, l. 30). In cross-examination, she said her husband had never made any requests for her to have intercourse with him.

The fact that there has been no sexual intercourse between the petitioner and the defendant since August, 1909, is established, and was not and is not

now denied. The husband says it was wilful, and the wife says he never requested it.

First did he seek it? He says he did. (p. 12 and 13.) That he requested her at least 25 to 50 times. He requested while on a trip to Washington, D. C., and Mauch Chunk (p. 14). His daughter Irene (p. 48, l. 1 to 30) "That whenever they went into each other's rooms they quarreled. There was a racket. That is all we have ever knew."

We ask, what did they quarrel about, was it because he sought sexual intercourse and was refused?

Petitioner says on one occasion he came home in the afternoon and she was laying down on the bed, and he got alongside of her and undertook to have sexual intercourse, when she smacked him in the face and got up (p. 12, l. 1-20). Under cross-examination, he said this was in April on a Sunday afternoon (p. 24, l. 25). Was this one of the quarrels the daughter heard?

Did this woman have any love for this husband? Any affection for this husband? The answer must be no, not even any regard, when we examine the testimony.

He says she abused him in every way that she possibly could. (p. 15, l. 1-10.) This man had a cataract, and could just merely get around. He had to go to the Jefferson Hospital in Philadelphia, and had to feel his way the best he could. Did she go with him? No! As he left their home her parting words were, "I wish you would go blind. I hope you never do see."

Did she go see him at the hospital? No! He was there on three occasions, once as long as eleven days, and she never went to see him. On Thanksgiving Day he was on the cot in that hospital blind, and

she let him lay there. He says she told him she did not want anything more to do with him. Could there be any stronger corroboration than her own conduct? And these statements are not denied by her.

When he came home after the first operation, he was ordered by his physician to stay in the house, and not go out in the air. His eyes were bandaged so that he could not see, and he testifies that he could not remain home because her conduct was so bad, and he went to a nearby cigar store (p. 15, l. 20-30).

The petitioner was able to go to work. By the rules of his employer, they held back 15 days pay, and paid every 15 days, so that he received no pay until the end of 30 days' work. When he came home on the 15th day which she thought was pay day, she demanded money, would listen to no explanation, she caught hold of him, knocked his glasses off, and shoved him out of the back door and closed the door (p. 16-17). This half blind man was compelled to go to a cigar store where he remained until ten o'clock and went to bed, no evening meal prepared for him. This was the treatment he received after his day's labor. This conduct of the defendant was not denied. Bearing in mind that she was in court and had the opportunity to make a denial and did not, is this not strong corroboration of the petitioner's testimony?

Petitioner said that he always wanted a happy family. That he wanted to be happy and live happily with her. "I sat there and took her growling "and never said anything to her, and I even sat "out on the porch all along and she would not come "out there with me." (p. 19, l. 28.) He further said

that in nine years the defendant had not eaten with him over fifty meals. (p. 20, l. 25.) And the petitioner went still further and said that his family would on many occasions eat before he came home and his meals would be put out in the kitchen for him on one plate (p. 20, l. 30, and p. 21, l. 1-5). Again this is not denied. Did the petitioner tell the truth when he said his wife told she did not want anything more to do with him? Is he not corroborated by her conduct in this instance?

During all these years he supported her. Gave her $30 every fifteen days. She collected the rent of one house at $10 per month. He owned the house in which they lived. He paid the upkeep of this house, the coal bills and other incidentals.

He says he loved her, and did he not show it? He supported her, and the proof is that after he left he still supported her as he had while he lived with her. And we say without fear of contradiction that he still does, and why? There is no order of Court against him. We say he still has respect for his wife and affection for his children. With this feeling in his breast, was he not a man who would be likely to seek sexual intercourse with the mother of his children? Is not the atmosphere surrounding this family corroborative of everything the petitioner says?

In criminal cases, Chief Justice Magie in *State vs. Parker,* 61 L. 308, at p. 313.

But where the accused is upon trial, and the evidence tends to establish facts which if true would be conclusive of his guilt of the charge against him, and he can disprove them by his own oath as a witness, if the facts be not true, then his silence would justify a strong inference that he could not deny the charges.

This defendant did not deny the many acts testified to by the petitioner. She admitted that there had been no sexual intercourse for nine years, and explained it by saying that her husband had not requested it. Does her conduct at the hearing corroborate the petitioner? In *Parmly vs. Parmly*, 106 At. 456, on p. 459, the learned Vice-Chancellor said the atmosphere of the trial may be considered in corroboration. What was her conduct? Merely brushing aside her husband's testimony without even a denial or explanation. We insist that the atmosphere of the hearing corroborated the petitioner.

What manner of woman is this? Did she have any love or respect for her husband? If she did, would she let this almost blind man feel his way to the hospital without assistance? Would she have let him lay for weeks blind without going to see him? Would she have left him on that bed in the hospital on the day of all days—Thanksgiving —without a visit to him to cheer him up? And what must have been his thoughts—blind, in a bed in a hospital and deserted by his wife? Is not the defendant just the character of a woman who would refuse sexual intercourse to the husband she had no love or respect for? Does not her conduct in this respect corroborate the petitioner and does not the atmosphere which surrounds her corroborate the petitioner?

In concluding this branch of the case, we insist that the testimony of the petitioner was corroborated by the testimony of his daughter Irene (p. 42, to p. 46), to which testimony the Court's attention is particularly directed, to page 44, line 3 to 10. This young girl testified that her father never en-

tered her mother's room except for a towel or wash-rag, and she testified to the location and occupancy of the several bed-rooms. This girl was an adverse witness, so much so that the Advisory Master suggested to the solicitor of the petitioner that he had better wait before asking certain questions until she was examined later, indicating thereby that the defendant would put her upon the stand (p. 47, l. 12-22).

As we understand the rule in Chancery, on a motion to dismiss the petition, after the petitioner has rested his case, the defendant admits all the facts testified to be true and therefore the rule as to the corroboration required as stated in a number of cases is relaxed.

Cessation of co-habitation has been held to be grounds for divorce in this State.

In *Rector vs. Rector,* 79 Atl. 295; 78 Eq. 386, Vice-Chancellor Garrison said, "A wife has deserted her husband if withholding all other marital obligations and relations she continues to accept support," and he also holds, "Unjustified refusal of one spouse for the statutory desertion period to have sexual intercourse with the other, and withdrawal from other marital duties against the other's will, constitutes desertion, though they continue to reside in the same house."

The cases involving the same principal are *Raymond vs. Raymond,* 79 Atl. 430; *Sutton vs. Sutton,* 90 Atl. 280, 82 Eq. 648; *Ortel vs. Ortel,* 90 Atl. 1006, 83 Eq. 391.

In *Robinson vs. Robinson,* 90 Atl. 311, Vice-Chancellor Leaming held, "A decree of divorce will not be granted, where the establishment of some essential element necessary to the relief sought depends

upon the uncorroborated testimony of the petitioner." And also, "The corroboration of the testimony of the petitioner on some matter essential to a decree of divorce need not be by other witnesses, but may be furnished by surrounding circumstances."

This case is also reported in 92 Atl. 94. Also 93 At. 699.

The learned Chancellor in *Bolmer vs. Edsall,* 106 Atl. 646, on page 652 said, "On this subject of corroboration, especially as it relates to the cause of action in this case, it may be helpful to observe that corroboration, in order that a divorce may be decreed, need not be testimony given by another or other witnesses to all of the same identical facts to the minutest particulars, but only such facts and circumstances as will make the testimony believable. Orens vs. Orens, 88 N. J. Eq. 29, 102 Atl. 436. And corroboration need not be the testimony of witnesses; it may be furnished by surrounding circumstances adequately established. Rogers vs. Rogers, 104 Atl. 32."

"I am unable to spell anything out of the case which would seemingly show that the parties, or either of them, were not credible witnesses; and nothing appears in the case to suggest collusion."

In Parmly vs. Parmly, 106 Atl. 456, the learned Vice-Chancellor held, "Corroboration need not necessarily be by the testimony of other witnesses to the facts. The circumstances surrounding the acts of the parties, rendering petitioner's testimony more probable, the circumstances surrounding the case, including the manner in which the trial, if contested, is conducted, may all be considered in corroboration of petitioner's story."

And on page 459, he said, "(2) The question then arises whether the acts have been sufficiently corroborated; whether the fact of the cessation of sexual intercourse has been sufficiently corroborated to justify a decree. There is no doubt in my mind whatever as to the facts in this case. There is no conceivable question but that what the husband and the wife testified, did in fact occur. Notwithstanding the fact that they slept in the same bed, the case is free from any suspicion or possibility of collusion. The question is whether the rule which has been held to be the law in this State, that a divorce will not be granted upon the uncorroborated testimony of the petitioner and the defendant, operates to prevent a decree in a case such as this. It was said in Rogers vs. Rogers, 104 Atl. 32; Foote vs. Foote, 71 N. J. Eq. 280, 65 Atl. 205; Orens vs. Orens, 88 N. J. Eq. 29, 102 Atl. 436; Robinson vs. Robinson, 83 N. J. Eq. 150, 90 Atl. 311, affirmed 84 N. J. Eq. 201, 93 Atl. 699, that the corroboration necessary need not be corroboration by witnesses, but there may be corroboration from circumstances, corroboration from what may be termed the atmosphere of the case. I find in this case that there has been such corroboration. It it true that there is not testimony (corroborated) before me that from June, 1915, until a period in 1917 there was such a marked difference between the conduct of the parties then and the conduct of the parties preceding June, 1915, as to indicate, standing along, a cessation of matrimonial intercourse. There is evidence, however, from the witness Gladys, and I think from others, from June, 1917, down to the present time, that the relationship of the parties had become so strained that, as in the Rector case, there was nothing left

of the matrimonial status except support given by the husband to the wife. Such a condition, of course, is one which probably would exist in a case of cessation of matrimonial intercourse. There are the letters which were written in September and November, 1917, to the husband, in which the wife indicates clearly her desire to return to a life of husband and wife, and indicates clearly that the non-relationship had been existing from a period in 1915 or thereabouts. He did not reply to the letters."

Some question has been raised that the petitioner has complied with the decree and therefore cannot appeal. It is true that on advice of counsel, the petitioner paid the counsel fee and taxed costs, and to that extent he has complied with the decree. This we insist was his duty in order to aid his wife in her defense to his cause of action, and rather than to be criticized, he should be commended. In *Gates vs. Gates,* 43 Atl. 437, 59 Eq. 100; the Court said that the fact that a husband supported his wife during desertion is not a bar to divorce for desertion. Citing, *Sergent vs. Sergent,* 33 Eq. 204; on Appeal, 36 Eq. 644.

Where the ground relied upon as in this case, the cessation of cohabitation, the difficulties of corroboration must be apparent to everyone, and the Courts should not require the same strictness of witnesses to testify, but should rely more upon the circumstances surrounding the case and as Vice-Chancellor Lane says, of "the atmosphere of the case and of the trial."

In *Lasker vs. Lasker,* in the opinion just filed (not yet published), by the learned Chancellor, the question of corroboration is fully covered and it is pointed out that while circumstances may corrobo-

rate, yet it does not relieve the petitioner from producing the best evidence.

We, therefore, ask that the decree below be reversed and a decree entered in the petitioner's favor in accordance with the prayer of his position.

HARRIS & HARRIS,
Solicitors of and of Counsel
With Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

CHARLES P. McLAIN, *Petitioner and Appellant,* vs. LIZZIE C. McLAIN, *Defendant and Appellee.*	On Appeal from Decree Dismissing Petition for Divorce.

BRIEF ON THE PART OF THE APPELLEE.

All of the witnesses who testified were called by the petitioner. Since petitioner did not make out a *prima facie* case, defendant was not obliged to put in any testimony, and did not (p. 56).

The petitioner in his brief quotes a great deal of his testimony before the Advisory Master, but to no avail, because the Advisory Master said he believed the testimony of the wife (p. 59, l. 13).

Petitioner had seen counsel and made up his mind to leave on May 3 (p. 22, l. 30), he swore to his petition for divorce, a step calculated to separate him forever from the mother of his children, on May 6 (p. 23, l. 5), left home without mentioning the divorce proceedings on May 10 (p. 21, l. 14 and p. 23, l. 10) and never afterwards returned (p. 21, l. 32 and

p. 22, l. 1). At the hearing he said he did not then desire to live with his wife (p. 26, l. 34). He testified that they did not get along agreeably, and his daughter testified there was always a racket whenever they went into each other's room (p. 46, l. 13). Yet he claimed that he loved his wife all during the nine years between August, 1909, and the time he left her (p. 23, bottom) and that he loved her *when he left* (p. 24, top) on *May* 10, 1918. LITTLE WONDER THE ADVISORY MASTER DID NOT BELIEVE HIM.

It will be noted that Mrs. Phillips, a witness to the admission of non-intercourse, did not attempt to place the responsibility.

Anna Johnson knew nothing whatever (p. 51).

The only other witness was the daughter, Irene. Far from corroboration of petitioner, she corroborated her mother, the defendant, when she said her father occupied another room and made no objection (p. 53, l. 28).

THERE IS NOT SUFFICIENT CORROBORATION of non-intercourse to satisfy the rules of law.

Even if there were, there is NO CORROBORATED PROOF THAT DEFENDANT REFUSED any requests of her husband.

And even if there were, there is NO PROOF nor corroboration thereof, that such refusal was not JUSTIFIED.

ON THE CONTRARY, defendant testified that her husband was not affectionate, showed no desire for intercourse, showed ill-will toward her in many

ways, and NEVER during the nine years in question requested her to have sexual intercourse with him (pp. 55-66) and the Advisory Master said he BELIEVED HER.

Hence the petitioner's case, which is based on wilful refusal to have intercourse, must fall.

We therefore, ask that the decree below be affirmed, with costs to the defendant-appellee.

ELMER G. VAN NAME,
Solicitor for and of Counsel with Appellee.