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**Petition.**

(Filed January 26, 1928.)

IN CHANCERY OF NEW JERSEY.

To His Honor EDWIN ROBERT WALKER, 10  
Chancellor of the State of New Jersey.

The petition of Samuel Mayerson, of the City of Perth Amboy, in the County of Middlesex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Helen Mayerson, the defendant in this suit, on the thirteenth day of September, one thousand nine hundred, by an Alderman of the Borough of Brooklyn, at the said Borough of Brooklyn, in the County of Kings and State of New York, and on the day following, viz., September 14, 1900, by a Rabbi, at the said Borough of Brooklyn. 20

2. Defendant deserted petitioner in the month of February, nineteen hundred and twenty-four; ever since which time, and for more than two years last past, said defendant has willfully, continuously and obstinately deserted your petitioner. 30

3. Petitioner has been a bona fide resident of the State of New Jersey continuously since the year nineteen hundred and twelve, residing at the City of Jersey City, in the County of Hudson, until the month of May, nineteen hundred and twenty-four, and residing at the City of Perth Amboy, in the County of Middlesex, from said month of May, nineteen hundred and twenty-four, to the present time. 40

4. Your petitioner prays, that the marriage be-

*Petition.*

tween your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided, and that he may have such further relief as may be just.

And your petitioner will ever pray, etc.

10

KELSEY & LUDWIG,  
Solicitors for Petitioner.

State of New Jersey, }  
County of Hudson, } ss.:

20

SAMUEL MAYERSON, being duly sworn according to law on 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.

SAMUEL MAYERSON.

Sworn and subscribed to before me  
at Jersey City, this twenty-third  
day of January, A. D. 1928.

30

JOHN D. McMASTER,  
Master in Chancery of  
New Jersey.

40

**Answer.**

(Filed February 1, 1928.)

## IN CHANCERY OF NEW JERSEY.

Between

SAMUEL MAYERSON,  
*Petitioner,*

and

HELEN MAYERSON,  
*Defendant.*

(67-40).

On Petition for  
Divorce.

10

Defendant, Helen Mayerson, answering the petitioner, Samuel Mayerson, says:

1. This defendant admits it to be true that the petitioner and the defendant were lawfully joined in the bonds of matrimony as set forth in paragraph I of Petition.

20

2. The defendant denies each and every allegation contained in paragraph II.

3. As to the allegations contained in paragraph III the defendant has not sufficient knowledge or information thereof sufficient to form a belief.

30

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

MELOSH, MORTEN & MELOSH,  
Solicitors for Defendant.

40



*Samuel Mayerson, direct.*

I don't remember now; I don't remember; it is on Grove Street.

The Court: If you don't remember, say so.

Q. How long did you live there? A. I lived there for about ten or twelve years. 10

Q. Prior to that did you live in Jersey City? A. Oh, I am in Jersey City since 1882.

Q. Until you went to Perth Amboy? A. I went to Perth Amboy; I lived in Brooklyn between that time a short while, a couple of years, but my home is Jersey City.

Q. How long have you lived steadily in Jersey City? A. Oh, since 1882 I have lived in Jersey City; it must have been close to 30 or 35 years. 20

*By the Court:*

Q. What years were they that you lived at Brooklyn? A. 1905 up to 1910.

*By Mr. Kelsey:*

Q. Now, you were married before you married the present defendant? A. Yes, I was married.

Q. You had five children by your first wife? A. Yes, sir. 30

Q. Were they living with you at the time that you married the defendant? A. Never; she didn't want to keep them.

Q. Listen; were the five children living with you at the time you married the defendant; at the time you married her? A. Yes; they were with me.

Q. When did you marry the defendant? A. On September 14th, 1900, I think; it is a long time ago. 40

Q. Are there any persons in court now that attended your wedding at the time? A. No.

*Samuel Mayerson, direct.*

Q. I show you a certified copy of a record of marriage; is that a record of your marriage to the defendant? A. Well, that is the certificate.

Q. Is that a certificate of your marriage to the defendant? A. Yes, sir.

10

(Certificate of marriage offered in evidence, admitted without objection, and marked Exhibit P-1.)

Q. Where did you go to live with your wife after you were married to her? A. To Vineland, New Jersey.

Q. As soon as you were married? A. Yes, sir; the second day.

20

Q. I mean your second wife. A. Yes, the second wife; yes, sir.

Q. How long did you live here in Vineland? A. Oh, about three or four months.

Q. Then where did you move to? A. To Jersey City.

Q. When is the last time that you and your wife cohabited as man and wife; I mean lived together in a home as man and wife; in your home as man and wife? A. Up to 1918, we lived up to that time as man and wife.

30

Q. Where were you living then? A. On 18th Street and Grove; 18th and Grove.

Q. Who left the home; you or your wife? A. She left it.

Q. Do you remember the exact date? A. Well, she left the home in, it must have been in June, 1921.

40

Q. Why did you say it was in 1918? A. Well, we lived in the same house, but we lived in separate rooms; she deserted me three years before;

*Samuel Mayerson, direct.*

two years before she left the house; she never cooked for me and I gave her so much a week.

Q. I didn't ask you that. A. You asked me what?

Q. My question was, when was the last time that you and your wife lived together in a home provided by you, whether you slept together or not, I didn't ask you that; when you lived together in your home. A. In June, 1921. 10

Q. Yes. A. Well, that is all.

Q. Do you know where she went to from your home at that time? A. Well, for a few days she went in the same block to a neighbor of hers, then she moved to a hotel in Hoboken, and after she moved to a hotel in Hoboken she moved to our house in Brooklyn. 20

Q. No. 2081 Pitkin Avenue? A. 2081 Pitkin Avenue; this is her own home; her own property.

Q. That was the property that you had given her previously? A. A year ago it was, what she got it off me with some schemes.

Q. What became of your five children when you married her? A. Well, she kept them for about a month; then she wanted to leave Vineland, she says she can't be there, and if I will move with her away from Vineland she will keep them, so actually I sold everything and I moved to Jersey City, and I took one girl with us, she is here now, a married woman, and I kept her for a while, and she mistreated her so that I had to put them out and board all of them; she never kept them, she never wanted them to come to the house; that is where the trouble was. 30

Q. So three of them were in the Orphan Asylum? A. Yes.

Q. Three boys? A. Yes, sir; and I couldn't afford. 40

*Samuel Mayerson, direct.*

Q. At the time you married her, how old was the oldest child? A. The oldest was about nine years, I think.

Q. Is she here? A. The oldest daughter.

Q. Mrs. Posner? A. Yes.

10 Q. Nine years old? A. I think about nine years; I don't exactly remember.

Q. Why did you send them to the Orphan Asylum? A. Because I didn't have no home for them; she didn't want to keep them and I couldn't make enough to pay the board; I couldn't make enough; I made enough for the two girls; I didn't want to have the two girls in the asylum, so I kept the two girls and paid their board, so I put them in the asylum.

20 Q. How long after that did the two girls continue to live with you? A. What do you mean?

Q. How long after you were married did your two daughters continue to live with you? A. Only about a month.

Q. Why did they leave? A. Well, I seen she didn't tend to them, she didn't do anything for them, she didn't prepare for school, she didn't want to bother, she said she didn't marry me to be a servant.

30 Q. After that you and she lived alone; is that right? A. Yes.

Q. Did your wife leave you at any time for any extended period, between the time that you married her and this date in June, 1921, when she finally left you for good? A. Oh, she left me a dozen times; more than a dozen times.

40 Q. How long would she stay away on those occasions? A. Well, sometimes, sometimes she would stay away six years, then she would come back and tell me she would be good, forget and

*Samuel Mayerson, direct.*

forgive, then I started, and then the fire started and burned again, then she left again.

Q. She was away as long as six years at one time? A. Six years; I didn't live with her; I was separated.

Q. After she left you in June, 1921, did you make any efforts to induce her to return? A. Oh, yes; I begged her to come back and live with me again, forgive and forget, let us start over, we are getting old and the children are getting big, it is only us two we could live happy alone, but she couldn't bear it, she says she didn't care for me any more. I used to come to her house where she lived on Pitkin Avenue and beg her. 10

Mr. Melosh: I object to that unless a time is fixed. 20

The Court: Don't tell in a general way; give the dates, if you can, when you did that.

A. Oh, I went in 1921, 1922 and 1923, during the case I asked her to come back.

Q. When you say during the case, what do you mean? A. While the other case was going on before Chancellor Griffin, I asked her to come back and she offered to arrest me, she offered to get an officer if I would keep annoying her, many times. 30

Q. Did she cohabit with you while that case was pending; did she go any place with you? A. She went with me; I thought I could induce her to come back.

Q. Where did she go? A. She went to Coney Island a couple of times and she went with me to Toms River.

Q. Where is Toms River? A. The State of Jersey.

Q. Whom did you go to see there? A. We went 40

*Samuel Mayerson, direct.*

to see her sister and brother-in-law, to make them induce her to come back.

The Court: Can you fix the time?

Q. What year was that, if you can tell us? A.  
10 Oh, it must have been in October, 1922, something like that, 1922.

Q. Did you go to Toms River with her on more than one occasion? A. While the case was pending I think I met her in this here relations that we might get together again, she said she didn't want nothing but a divorce and I couldn't talk anything else, the only answer I got was she wants a divorce at that time; I think she stated it on the stand at that time, but it is in the minutes.

20 Q. Do you remember the occasion that you visited Spring Lake? A. I went to Spring Lake with her, too.

Q. At what place? A. This used to be a boarding house on Monmouth Avenue.

Q. Did you stay over there with her? A. She stayed over night with us; she stayed over night with me that time.

The Court: When was that?

30 A. That was in 1922.

Q. Did you visit her at her home in 2080 Pitkin Avenue? A. Yes; I used to go there very often trying to induce her to come back, to try to induce her to take me home, in her own home.

Q. Is your son Jacob married? A. Yes, sir.

Q. When was he married? A. He will be four years this 30th of August. Q. That would be, he was married the 30th of August, 1925? A. Yes, sir.

40 Q. Did you attend his wedding? A. We attended the wedding and I met my son.

*Samuel Mayerson, direct.*

Q. Did you attend the wedding? A. Yes, sir.

Q. Did your wife attend the wedding with you?

A. Yes, sir; I asked her to that wedding; I invited her.

Q. Was your son Simon present at that wedding? A. Yes, sir. 10

Q. Was Mrs. Posner there; your daughter, Mrs. Posner? A. Yes; Mrs. Lee, she was there.

Q. And another daughter, Mrs. Lee? A. Yes, sir.

Q. Was Mrs. Lanceman present at that wedding? A. Yes, sir.

Q. And Mrs. Mary Mayerson? A. She was there, too.

Q. Your sister-in-law? A. Yes, sir.

Q. While you were there at that wedding was there any talk between you and your wife at which any other person took part— A. Well— 20

Q. Just a minute. —concerning the return of your wife to live with you? A. Well, that is the only cause that I asked her to that wedding, I think she might meet the friends.

Q. The question can be answered yes or no; was there? A. That was my intention.

Q. Say yes or no. A. Yes; that was my view. 30

The Court: I don't want to know whether it was your view or not. The question is, Was there any talk?

A. Yes, there was a talk; a family talk.

Q. Say yes or no; that is all you have to say.

A. Yes.

Q. What was said on that occasion, and who heard it? A. Well, I have told her to go—I told her, "Now, you should go and shake hands with all my children; you mistreated them and they got hard feelings against you; now is the time to 40

*Samuel Mayerson, direct.*

make up"; she said she wouldn't do it and she refused to shake hands; I was talking with her together but that is no use; when she says anything that is the law, you can't make her any other way; I know her long even.

10 Q. Did you make it a condition on her return to live with you that she must shake hands with your children? A. No; I said, "Now is the time to make up"; I didn't say to shake, she didn't have to, but I thought that would be a proper way, a nicer way.

Q. And she said she wouldn't make up? A. She would never shake hands with them.

20 Q. Did she say whether or not she would ever live with you again? A. She didn't say anything about that; she never mentioned anything.

Q. Did you ask her? A. Why, I asked her but she didn't say; she told me she was sorry she went to the wedding after all.

Q. She said what? A. She is sorry she did go to the wedding; to the wedding she said she was sorry she went.

Q. Where did you go from the wedding that night? A. Up to her house.

30 Q. At 2080 Pitkin Avenue? A. 2080 Pitkin Avenue.

Q. How long did you stay with her? A. Over night; it was so late I stayed over night.

Q. You slept with her there, did you? A. No; she had a spare room.

Q. Did you have anything to do as man and wife then? A. No.

Q. When after that did you make any effort to have her return to you? A. Yes, sir.

40 Q. When after that? A. Just a few weeks after.

Q. On the occasion of a Jewish holiday? A. A Jewish holiday; Jewish new years.

*Samuel Mayerson, direct.*

Q. What month is that? A. The Jewish holidays is the month of October.

Q. 1925? A. 1925.

Q. Where was that effort made by you? A. Up in her house I asked her to let us have the holidays together.

10

Q. Was anybody present on that occasion? A. No; nobody there.

Q. What did you ask her on that occasion? A. I asked her, "Now, there is the Jewish holidays," I says, "Let us be together again," I says, "Let us go and make up again and live together, forget and forgive," and I stayed over night; and in the morning she told me, "The only way I will go and live with you, whatever you got you got to assign it on my name and then I will live with you"; well, I didn't approve of that and I went away, that is all; I didn't give her no decided answer.

20

Q. She said you must assign everything? A. Everything I possessed at that time; I possessed a little.

Q. I show you a letter, purporting to be dated February 19, 1924. A. That is the letter I had sent her right after this.

Q. Is that letter a copy of it? A. That is a copy of it.

30

Mr. Kelsey: I will ask Mr. Melosh to produce the original of that letter of February 19, 1924.

The Court: Is it admitted that she received this letter?

Mr. Melosh: Yes.

(Copy of letter offered in evidence, admitted without objection, and marked Exhibit P-2.)

40

*Samuel Mayerson, direct.*

Q. Now, I show you another letter, or a copy of a letter. A. Yes; that is a copy.

Q. Another copy of a letter? A. That was a few years later.

Q. Dated February 25, 1926. A. Yes.

10 Q. Did you send a letter, of which that is a copy, to your wife? A. This is a copy, yes.

Mr. Kelsey: I ask for the production of that.

Mr. Melosh: I haven't got that letter.

Mr. Kelsey: May I ask Mr. Melosh then whether he will admit that the return receipt for the letter of February 19, 1924, which I now show him, was signed by the defendant?

20

Mr. Melosh: She tells me it was.

Mr. Kelsey: I offer that in evidence for the purpose of comparison of signatures.

(Letter marked Exhibit P-3 in evidence.)

Q. You say you sent the original of this letter of February 25th, 1926, by mail to her? A. Yes, sir; to her.

Q. To what address did you send it? A. 2080 Pitkin Avenue.

30

Q. Brooklyn, New York? A. Yes, sir.

Q. And you received a return receipt for that? A. Yes, sir; that is her signature; I know her signature.

Q. That is her signature; you know her signature? A. Yes, sir.

Q. How do you know it? A. Because I know for so many years I know her signature; it is the same signature on that other card.

40

Q. Have you seen her writing frequently?

Mr. Melosh: I object to that.

The Court: Yes; that may be struck out.

*Samuel Mayerson, direct.*

Q. Have you frequently seen her write? A. Yes, sir; many times, because I have gave her checks and she endorsed her name on them.

Q. You say that this signature in pencil— A. Yes.

Q. Just a minute. You say that this signature in pencil on this return receipt, which is post-marked March 5, 1926, is her signature? A. Yes, sir. 10

Q. The signature of Helen Mayerson? A. Helen Mayerson.

Mr. Kelsey: I offer that in evidence.

Mr. Melosh: I object to that, first, on the ground that we didn't receive it; and second, on the ground that it was misdirected. 20

The Court: I understand that the receipt is offered for comparison of signatures.

Mr. Melosh: To that I have no objection.

The Court: He testified that he sent this letter and got back that receipt.

Q. Do you know whether any third person saw the letter of which this is a copy? A. My son. 30

Q. Just a minute; this document dated February 25, 1926, before you mailed it to your wife? A. Yes, sir.

Q. Before you mailed the original to your wife? A. Yes, sir; I dictated it to my boy and he wrote it; then I put a stamp on the paper and he is the one that mailed it for me, because I wouldn't trust the daughter to mail that letter.

Q. Is this paper that we have been talking about here, that is dated February 25, 1926, a true copy of the original? A. Yes, sir. 40

*Samuel Mayerson, direct.*

Q. Well, this one is not signed by you; was the original signed by you? A. Signed by me; the other one was.

Mr. Kelsey: I offer that in evidence.

10 Mr. Melosh: I object to that.

The Court: Well, was there a notice to produce served?

Mr. Melosh: Yes, your Honor; but we have no such letter.

The Court: He testifies that he mailed a letter, of which this is a copy.

Mr. Melosh: Yes; that doesn't prove it by any means, that we received it, in view of the fact that my client was not living at the address.

20

The Court: Quite true; which only goes to the extent of mailing the letter. I will admit it.

(Marked Exhibit P-5.)

Q. Before I forget it, Mr. Mayerson, are you correct as to the date of the wedding of your son Jacob, as to the year? A. Yes; that was the last in August, the 30th or 31st; I don't remember exact.

30

Q. What year? A. It is four years this August.

Q. This August, or last August? A. This August it will be four years.

Q. Now, think that over; let us have it right.

Mr. Melosh: I object to that; he is trying to lead him down to another date; the question is leading.

The Court: The question is leading; that is objectionable. I will sustain the objection.

40

*Samuel Mayerson, direct.*

Q. Mr. Mayerson, what year was your son Jacob married? A. Just four years this coming August.

Q. Do you know about when it was the decree dismissing Mrs. Mayerson, the petitioner in the former case, was made? A. No; I think it was in nineteen—

10

Q. The question is, do you know? A. I remember, in 1923, I think.

Q. Don't think; do you know? A. Yes; 1923.

Q. What time in 1923, if you know? A. Between Christmas and New Years, in that week.

Q. About that time? A. About that time.

Q. After the termination of that prior suit that we have just spoken about, did you ever see your wife in a hospital? A. Yes, sir.

20

Q. Where, and when? A. In nineteen—I think that is three years ago; three years ago I heard she was in the hospital.

Q. What hospital was it? A. That was in Brooklyn, in the Jewish Hospital, and I heard that she was in the hospital, and I kind of thought to myself I will go up and see her.

Q. Don't tell us what you thought to yourself; you went up to see her? A. I went to see her in the hospital.

30

Q. Was she in bed when you got there? A. Yes, sir.

Q. Sick? A. Sick.

Q. How long did you stay there? A. Well, I stayed there that time, I think I was allowed to stay there an hour or an hour and a half.

Q. Can you fix the exact month? A. Well, actually, it must have been in July, between July and August, something around that two months.

Q. Did you at that time have any conversation about her returning to live with you? A. No, I

40

*Samuel Mayerson, direct.*

didn't say anything in the hospital to her at that time.

Q. Did she say anything to you about it? A. No; we never said anything.

Q. Neither one of you? A. No.

10 Q. How long did you stay there? A. About an hour and a half or two hours, something like that.

Q. Were you ever in the hospital since the termination of that prior suit? A. Yes, I was, three years ago, the 21st of August.

Q. In what hospital? A. In the Perth Amboy Hospital.

Q. Why were you there? A. I fell and I broke my hip, and I laid twelve weeks in the hospital.

20 Q. Are you permanently lame? A. I am lame, sure; I am lame today; I am lame the rest of my life.

Q. Did your wife visit you while you were there in the hospital? A. No, sir. We notified her.

Q. Did she visit you while you were there in the hospital? A. No, sir.

Q. Didn't she come there at all to see you? A. No.

30 Q. Didn't she call there on one occasion while Mrs. Lanceman and Mrs. Lee were there? A. Wait a minute; oh, yes; once; that is right; I remember now; that is right; she was there once.

Q. When was that? A. That must have been in September; in the month of September, three years ago.

Q. Do you know how she happened to come there? A. I notified her; I have told my daughters to notify her that I am in the hospital.

40 Q. Who else was present on the occasion of her visit, if anybody? A. Mrs. Lee and Mrs. Mayerson was there.

*Samuel Mayerson, direct.*

Q. How long did she remain there? A. She remained there about fifteen or twenty minutes.

Q. On that occasion did she say anything about returning to live with you? A. I asked her, I says, "I wish," I says, "When I come out, I wish you would take me home"; she never gave me an answer or anything. 10

Q. Was there any talk there about her coming to see you again at the hospital? A. No; never; she never came.

Q. No; was there any talk about her coming there? A. No; she didn't say anything to me when she came again; she only said good-bye, that is all she said, she has got to catch a train.

Q. Did she say whether she would or would not come again? A. She didn't say anything. 20

Q. You say that on the occasion of the wedding of your son Jacob that Mrs. Mary Mayerson, your sister-in-law, was present there? A. Yes, sir.

Q. Did you hear any conversation on that occasion between Mary Mayerson and your wife? A. Well, I heard—

Q. Just a minute; relative to her returning to you? A. Yes; she told her, "Why don't you make up and be done with it?" She says— 30

The Court: Who said that?

A. My sister-in-law said it to her.

Q. What did she say? A. Well, she said, "Why don't you make up, forget and forgive, go and live together as man and wife, you are getting old," that is why she said it, this last boy that is getting married, the children are all big.

Q. What did your wife say about that? A. Well, she didn't say anything, she just gave me a smile, that is all, no answer whatever, yes or no. 40

*Samuel Mayerson, direct.*

Q. Is your wife still residing at 2080 Pitkin Avenue? A. I actually don't know where she is residing.

10 Q. I say, is she residing there? A. No; I don't know where she lives; why should I say where she lives when I don't know where she lives at all.

Q. Do you know where she moved to from there? A. She moved to 1335 Eastern Parkway.

Q. Yes. A. Then I know where she lived.

Q. When was that that she lived in Eastern Parkway? A. Well, that is about two years ago.

Q. How long did she live there, if you know? A. She lived there a year.

20 Q. What sort of house was that; I mean an apartment, or single, or double house? A. A big apartment house; a very expensive apartment house.

Q. Did she move from there, do you know? A. Well, after she moved I don't know where she moved.

Q. Did she move? A. Yes; I went to visit her one time and the janitor told me she moved out; I don't know where she moved.

30 Q. Have you sent other people there to try to ascertain where she had moved to? A. Yes, sir.

Q. Did you learn from them her new address? A. No, never; no, nobody would tell me; I went to her relatives, to her sisters.

Q. Did your wife, when she called at the hospital to see you at Perth Amboy, did she tell you where she lived, where she was living then? A. Well, at that time she was living in the same address.

40 Q. No; but did she tell you where she was living then? A. No, she didn't tell me nothing where she lives.

*Samuel Mayerson, direct.*

Q. Did you ask her? A. I didn't ask her.

Q. Since she left this apartment on Eastern Parkway, Brooklyn, has she ever communicated with you? A. Never.

Q. I haven't finished the question yet.

The Court: Can't you wait until Mr. Kelsey gets through?

10

Q. This isn't the police court; let me ask you the question first.—Relative to her new address? A. No, sir.

Q. Has she ever since she left you, in June, 1921, written you any letters? A. Never.

Q. Or sent any communications to you? A. No; never wrote me any letter or nothing.

Q. Has she ever since that time offered to return to live with you? A. Never; she did offer if I assign everything to her.

20

Q. When was that? A. All during the time until about three or four years ago.

The Court: That is the last conversation since the wedding?

A. Yes; on the Jewish New Years, in the morning.

Q. If you would assign everything to her? A. Assign everything that I possessed; that is the only way she is going to live with me.

30

Q. Did you try to find her after she left this address in Eastern Parkway? A. Yes, sir.

Q. Do you know Emily Stolper? A. Her sister; yes, sir.

Q. Did you ever see her about it? A. I saw her about it; they wouldn't tell me where she lived; I went to Toms River to talk to the other sister.

40

Q. Mrs. Kaufman? A. Mrs. Kaufman; they

*Samuel Mayerson, direct.*

wouldn't tell me where she lived; they said if there is anything you want or something, send it to us and we will send it to her; they wouldn't tell me where she lived.

10 Q. Did your wife ever send anybody to you to suggest that she might return to you, or she would return to you?

Mr. Melosh: I object to that as immaterial.

The Court: Objection sustained.

Q. Do you know Esther Lanceman? A. Yes, sir.

Q. Did you ever send her to see your wife? A. Yes, sir; I have told her when I wrote—

20

The Court: You can't tell what you told her.

A. Yes; I have sent her up to see my wife.

Q. How many times did you send her? A. Well, I only sent her once.

Q. Is she in court; Esther Lanceman? A. No, sir; she couldn't come today; if you pick any other time she will be here.

30

Q. Did she say when she would be able to come to court. A. Any time, maybe next week or the week after, something like that.

Q. When did she say she would come? A. Well, she talked to my daughter; she will tell you when.

Q. You didn't see her? A. I saw her last Sunday; she said she is holding a very important position and she couldn't get here this week; any other time she could.

Q. Where does she live? A. In Brooklyn.

40

The Court: Is this the witness you spoke about before the opening of the case?

*Samuel Mayerson, direct.*

Mr. Kelsey: Yes; she is the witness I mentioned.

The Court: Do I understand this witness to say that he only sent her once?

Mr. Kelsey: Yes.

The Court: Did you expect to prove 10  
any more by her?

Mr. Kelsey: I want to prove by her that she went there as the emissary to request Mrs. Mayerson to return to live with him.

Mr. Melosh: We will admit that she came there on one occasion, and that she will testify that on one occasion she asked Mrs. Mayerson to return.

Mr. Kelsey: I thought you would not admit that. 20

Mr. Melosh: We will not admit that she asked her to return, but we will admit that she will testify that she asked her to return.

*By the Court:*

Q. What was the approximate date when you asked Esther Lanceman to go to see your wife?

A. When was that?

Q. Yes. A. That was in the time when I wrote, when I was coming out from the hospital. 30

Q. That was about three years ago? A. Three years ago; and I didn't have no place to go, and I went to my daughter's in Freeport, Long Island, and I laid ten months on my back in my daughter's home; this Mrs. Lanceman used to go with the other daughter from Brooklyn, because I asked her, because if I told my daughter—

Q. Never mind that.

*By Mr. Kelsey:* 40

Q. While you were at your daughter's in Freeport, Long Island? A. Yes, sir.

*Samuel Mayerson, direct.*

Q. Her name is Mrs. Posner? A. Yes, sir.

Q. Were you in bed there? A. Yes, sir.

Q. Unable to walk? A. No, sir; I was ten months in bed.

10 Q. Unable to walk? A. Yes, sir. I couldn't walk. Q. Did you try to get word to your wife while you were there? A. Yes, I was trying; I called her on the phone, when my daughter called her, then I was talking to her, I asked her to come to see me.

Q. In the presence of your daughter? A. In the presence of my daughter.

Q. Mrs. Posner? A. Yes, sir; she called her.

20 Q. On how many occasions did you talk to her? A. Oh, I think during the time I lived there I must have talked five or six times on that address.

Q. What address did you call her at? A. I called her at 1335 Eastern Parkway; she lived down there.

Q. Did your daughter, Mrs. Posner, hear your conversation over the phone? A. Yes, she could hear on the phone; she asked if this was Mrs. Mayerson and she said yes, then she gave me the phone and I spoke to her.

30 Q. What did your wife say in answer to this request? A. Well, she told me she didn't want to know nothing about it. She said she is sorry I didn't break the other leg; that is all she said.

Q. She said what? A. She is sorry I didn't break both legs.

Q. What else did she say? A. That is all.

Q. Well, you said something else. A. She is sorry I didn't break the other leg.

Q. Before that you said something else that she remarked. A. No, I didn't say.

40 Q. I ask you again, what else did she say, if

*Samuel Mayerson, direct.*

anything, other than she was sorry you didn't break both legs? A. Well, then she said to me, she said, "Now," I says, "I think I am going to start a suit for divorce," then she said to me, "You better start it while I live here, while I live in this house," she says, "After that," she says, "You wouldn't know where I will be; that is the answer I got from her; "You had better start it while I live in this house." 10

Q. Before you made any effort to start any divorce, did you ask her to live with you? A. I asked her to come to see me, to visit me at Freeport.

Q. Yes. A. But she never came.

Q. What did she say about that when you asked her that? A. Nothing; that is what she answered, I wish I broke the other leg, that is all. 20

Q. On every occasion that you called her up she said the same thing? A. Not exactly all the time the same thing.

Q. What did she say on the other occasion? A. Actually I don't remember, Mr. Kelsey, she used to get me excited that I actually hung up.

Q. On any of these occasions did you ask her to come to see you? A. I asked every time I called up, it was for that purpose she should come to see me. 30

Q. Did she say whether she would or wouldn't? A. She would never come to see me.

Q. She said so? A. Yes, sir; and she never did. Now, there is one thing, Mr. Kelsey, I want to tell you.

The Court: Don't volunteer anything; just answer the questions that are asked of you. 40

Q. While your case was pending and while that

*Samuel Mayerson, direct.*

former suit was pending, and while your wife lived at 2080 Pitkin Avenue did you go over there to call on her? A. (No answer.)

10 Q. You have told of some occasions that you went there; what I mean is, did you go there very often? A. Very often I went there to try to convince her.

Q. Did you always succeed in seeing her? A. No, I couldn't see, she wouldn't even let me in, she shut the door on me when I knocked on different occasions; when I caught her on the street I spoke to her, but never upstairs for the time during the case that was pending.

20 Q. Didn't you ever stay all night with her while the case was pending? A. Yes.

Q. Were you really and truly desirous of having your wife return to live with you? A. Oh, yes.

Q. On those occasions that you asked? A. Oh, yes; at that time I made my mind up, I said I might as well, what is the use of beating around, we are getting old, we might change our characters, and I asked her many a time to come and live with me.

30 Q. Did you love her? A. Well, I actually, you know at the time I wanted her, I actually did, I couldn't get along without her, I missed her; I missed her.

Q. Well, did you truly love your wife? A. Well, I did love her.

Q. I show you a check voucher, a bank voucher, dated December 8, 1924, for \$100 to the order of Helen Mayerson, signed Samuel Mayerson, drawn on the Raritan Trust Company, of Perth Amboy. A. Yes, sir.

40 Q. Endorsed by Helen Mayerson; by Bessie Stollick; witness Rose S. Schellbaum, 192 Hartford

*Samuel Mayerson, direct.*

Avenue; and I ask you if that is your signature to that check? A. Yes, that is my check.

Q. To whom did you give that check? A. To my wife.

Q. When, and where? A. I gave it at her house, I came up there to her house on that day and I asked her to come and live with me, I said, "You can go and pick out any apartment you want in Perth Amboy," I said, "There is a check for \$100 to give as a deposit on the rent, pick out any apartment you want," I said, that is before I got sick, "Let us live together"; well, she took that check, she came to Perth Amboy and stayed there one day, and I asked her to a show that night then I took her up to my boarding house, I gave her my room and I slept downstairs in the living room, and in the morning she says she "wouldn't come to live here for no money in the world"; I said, "Give me my check back," and she said, "I went and bought a coat for it"; she cashed that check and bought a coat for it; that is what she told me.

Q. Did anyone hear that conversation between you and your wife about her renting this apartment? A. No, they weren't there.

Q. Nobody present? A. No; it is only in her house, when I wrote her the check she said, "Let me see the money."

Q. Did anyone hear the conversation when she was in Perth Amboy, or any part of the conversation? A. No, nothing.

Q. Not that you remember? A. I took her out to some apartment, but she said she wouldn't live here.

Q. Was the apartment that you took her to a suitable apartment for you to live in?

Mr. Melosh: I object to that.

*Samuel Mayerson, direct.*

Q. Was the apartment that you took her to and offered to rent for her and you to live in— A. Yes, sir.

10 Q. Just a minute. Was it an apartment suitable for you and your wife to live in, considering your financial condition and your station in life?

Mr. Melosh: I object to that as calling for a conclusion.

The Court: I will sustain the objection. You can ask him what he was making and how much the apartment cost.

Q. How much did they want as rent for that apartment? A. They wanted \$60.

20 Q. Sixty dollars a month? A. Yes.

Q. How many rooms were there? A. Oh, they had five or six rooms.

Q. A bath there; toilet and bath? A. Yes, sir; bath and everything.

Q. What location was it in there? A. A beautiful location.

Q. I mean, what street was it on? A. On High Street.

30 Q. In a residential section? A. Yes; High and Broad, Perth Amboy.

Q. How much money were you making at that time? A. I had a business at that time, I was doing there forty-five or fifty dollars a week at that time.

Q. Are you still in business? A. I am still in business down there.

Q. The chicken business? A. Chicken business.

40 Q. Are you making anything there? A. I ain't making anything, because I got to have a man in my place; I can't work with my leg.

Q. Well, you work there some of the time? A.

*Samuel Mayerson, cross.*

I am just staying there, a little help, I don't draw anything there, about eighteen or twenty dollars a week; the rest of it I give the man in my place.

Q. Why are you not able to work? A. Why I can't work?

Q. Yes; why? A. I can't use my leg; I can't stay long enough on my leg, it ain't right, my hip ain't right, I got to use a cane; you can't work with a cane in that line of business. 10

*Cross examination by Mr. Melosh:*

Q. Immediately after your wife left you as you say, where did you live? A. Where did I live?

Q. Yes. A. 384 State Street, Perth Amboy.

Q. That was immediately after your wife left you? A. No, not when she left me; I am only living five years in Perth Amboy. 20

Q. You have been living in Perth Amboy since 1924? A. 1924.

Q. And that registered letter you sent in 1924 from the Jersey City address, did you not? A. Well, I may have; that is five years this past May that I am in Perth Amboy.

Q. That is, you moved to Perth Amboy in May, 1924? A. May, 1924. 30

Q. You sent this letter in February, 1924, did you not? A. Figure that out how many years that makes.

The Court: Just answer, yes or no.

A. I sent this letter from Jersey City; I remember that.

Q. You moved to Perth Amboy in May of that year; is that right? A. In May, I think in May I came to Perth Amboy. 40

Q. Did you tell your wife when you moved to

*Samuel Mayerson, cross.*

Perth Amboy? A. Yes; I notified her; I sent her letters; I sent her letters.

*By the Court:*

10 Q. You mean you sent her letters from Perth Amboy? A. From Perth Amboy; yes, sir.

Q. How soon after you went to Perth Amboy did you send her a letter? A. I sent her the first week I have sent her a letter that I am in Perth Amboy, and the following week I have sent her some broilers, live broilers for her eating from Perth Amboy because I am in that line of business; I tried to please her and see if I couldn't change her mind.

20 Q. Do you recall when you testified in reference to your wife being present at your son's wedding? A. Yes, sir.

Q. You said that she spoke to a woman whose first name was Susie, in reference to coming back to you. A. Not Susie.

Q. Whom did she speak to? A. To Mary Mayerson.

Q. You heard that? A. I stood there.

30 Q. You stood there and heard that? A. I heard that.

Q. Why did you previously testify that she never mentioned anything about it when she was at the wedding? A. Who said that?

Q. You said that early in your testimony. A. She never said anything?

Mr. Kelsey: I object to that.

40 Mr. Melosh: I asked him why in his previous testimony he never said anything about her coming back at that time; I am asking whether later on in his testimony he said that she answered Mary Mayerson,

*Samuel Mayerson, cross.*

told Mary Mayerson that she would not come, whereas early in his testimony he said that when his wife was at his son's wedding she never mentioned anything about coming back. I want to know why he changed his story.

10

Mr. Kelsey: He repeatedly told about what happened at that wedding, about requesting her to come back.

The Court: I may be mistaken, I am not absolutely clear about that, but I think he said that there was no talk between him and his wife at the time of the wedding about coming back, but that he overheard a conversation between certain other people.

Mr. Melosh: Yes; but he said that she never mentioned anything about coming back.

20

A. Not to me.

Q. Not to you? A. No.

Q. While you were in the hospital and made these strenuous efforts to have your wife take you back, did you have any place where she could go with you? A. No, I only had a room, but she had a home; she had a \$85 rent apartment.

30

Q. When? A. She lived in that apartment; when I was up there she had a year lease up there for \$85 a month.

Mr. Melosh: I object to that unless he knows the lease.

The Court: It is not responsive; it may be struck out.

Q. Then at the time you were in the hospital you had no place to go, but your wife was living in that home? A. Yes.

40

*Samuel Mayerson, cross.*

Q. And you wanted to go back to her home? A. I was saying she would take me home.

Q. You wanted her to take you to her home? A. To come to her home or to make a home; what is the difference?

10 Q. You had no intention of providing her with a home? A. Well, I would pay the rent; what is the difference, if she has got a home I would pay the rent.

Q. Would you provide a home for your wife now? A. Now, I don't think so now; it is so many years now that I have begged her all this time, I gave her all the chance in the world, counselor.

20 Q. Did she go down to Perth Amboy at your request to look at an apartment? A. Yes, sir; I gave her a check for that purpose.

Q. You asked her to come down and look at the apartment? A. That is where I am going to live, I got to live and she has to go where I am making a living.

Q. She went there to look at the apartment? A. She came to Jersey.

30 Q. You didn't go to get her; she came there herself, didn't she? A. Well, I just directed her how to come.

Q. But you stayed in Perth Amboy? A. Why, I had to tend to my business.

Q. And she looked at the apartment, isn't that so? A. She came and I took her to the apartment.

Q. What did she say about that? A. She wouldn't live in Perth Amboy.

Q. Did you attend to have her look at any other apartment? A. No.

40 Q. Just the one? A. Well, as long as she told me she wouldn't live here, she didn't like the town.

*Samuel Mayerson, cross.*

Q. Then you didn't go any further? A. That is my home town—

The Court: Yes or no.

A. No, I didn't induce her any more to go to Perth Amboy to live. 10

Q. That was in December, 1924? A. Yes, about that time.

Q. Have you made any attempts since that time to get your wife to live with you, with the exception of the wedding? A. Yes, I made attempts that I will be able to come home once a week if I come to her house to live; well, she says, she says she has a mortgage on the house for \$10,000 and she wanted me to pay to her brother-in-law that mortgage. 20

Q. You said you would go to live with her at her home? A. I said I could go out once a week.

Q. To her place? A. To her place, where she is living.

Q. You never offered to give her a home, other than this apartment in Perth Amboy? A. I offered to move her to Perth Amboy, but she wouldn't move out of her own house.

Q. That was one time. A. If she refused, what could I say? 30

The Court: You mean you didn't ask her again?

A. I asked her right along, I asked her after "I will come and live in your house and I will pay," but she says, "The only way you can come is if you pay off my brother-in-law the \$10,000."

The Court: Except for that time in December, 1924, did you ever ask her to live in Perth Amboy? 40

*Samuel Mayerson, redirect.*

A. No, never.

Q. During the time that you were living in Perth Amboy, did you ever live in anything but a furnished room? A. That is a furnished room.

10 *Redirect examination by Mr. Kelsey:*

Q. Were you, or were you not, always ready and willing to furnish a home for your wife if she would come to Perth Amboy to live with you? A. Yes, sir; at that time; this is before my accident was happened.

20 Q. Down to what time were you willing? A. Well, up until the time that I was to visit her in the hospital, when I came to visit her in the hospital, when she was laying in the hospital; there is another thing, there is one thing I forgot to tell you, she laid in the hospital in New York and I came to visit her on crutches and I told her, I says, "Helen," I says, "Whenever you come out of the hospital, let me know"; I came on crutches; she never let me know when she went out of the hospital; when I came to look after her, I came to the house, she lived on 1335 Eastern Parkway, I came on crutches with a slippery night to see her, and I asked her, I says, "I can't get back to Free-  
30 port because it is slippery," I says, "Let me stay over night," I says, "You got a spare room"; but she didn't, she took me as far as the trolley car, put me on a car, with the crutches, and that is the last I ever saw that woman, so I thought if she done anything like that I didn't want to go to see her any more.

40 Q. Did you ever hear from her after that, or communicate with her? A. No; then she moved; at the time when I got a little well that I could walk with one crutch, I went to look for her and

*Frances Posner, direct.*

she moved, the janitor says she moved and nobody knows where.

Q. Since that time have you been able to communicate with her? A. I couldn't find her; I went to her sisters and they wouldn't tell me; nobody would tell me; I didn't have a sign of her.

10

FRANCES POSNER, sworn.

*Direct examination by Mr. Kelsey:*

Q. Where do you live? A. 84 Church Street, Freeport.

Q. Long Island? A. Yes, sir.

Q. You are a daughter of Mr. Mayerson? A. Yes, sir.

20

Q. A daughter by his first wife? A. Yes, sir.

Q. Did he have any children by his second wife? A. No, sir.

Q. Do you know how long your father has been living at Perth Amboy? A. I think he has been living there about five years.

Q. Do you know that of your own knowledge? A. Of my own knowledge, yes.

Q. Do you know how long he lived at Jersey City prior to that? A. Why, that I couldn't tell you exactly; he has lived most of his life in Jersey City, as long as I can remember.

30

Q. Were you born in Jersey City? A. No, I was born in Philadelphia.

Q. How old are you? A. Thirty-eight.

Q. How long ago did your mother die? A. Why, I was just seven years; that is thirty-one years. Q. Are you the oldest child of the family? A. Yes, sir.

Q. How long after your mother died did he

40

*Frances Posner. direct.*

marry his second wife, the defendant here? A. About two years, I think.

10 Q. Did you continue to live with him? A. We did for a while; when he got married he brought her home to where we were living; we lived there a little while; I can't remember definitely how long.

Q. Then what happened? A. Then he moved to Jersey City, and I believe we both were with him, just my sister and I, he didn't take any other children because she didn't want any of them; so then she made it so unpleasant we couldn't stay there.

20 Mr. Melosh: I object to that; she is going back a long way; she is testifying about when she was nine years old; and furthermore, that is immaterial.

The Court: I will let it stand.

A. I remember distinctly when we lived on Grove Street, Jersey City, I can tell you exactly where, there was a church across the street—

Q. Don't tell us all about that; we don't want to know all about that. A. I can remember that.

30 Q. But then you went from their home, did you? A. Yes, sir.

Q. Where did you go? A. I went to live with my aunt in the Bronx, Mrs. Mary Mayerson.

Q. She is the one that has been mentioned here as having attended your brother's wedding? A. Yes, sir.

Q. When was that wedding, by the way? A. August 30th, it will be four years this August, 1929; 1925.

40 Q. This coming August it will be four years? A. This coming August; I think that is correct.

*Frances Posner, direct.*

Q. Do you know whether your father and his second wife lived happily together; I mean, did they live continuously together? A. No, continuously they didn't; there were many splits, of course I wasn't with them very much.

Q. Did your father continue to live there in the same place; the same residence? A. Yes; I remember she used to take occasional trips, because she had a home furnished of her own that she had standing always ready for her to come to. 10

Q. Where? A. In Pitkin Avenue, Brooklyn.

Q. When did she acquire that place? A. Why, my father owned that house originally; when he went and sold the business, he bought a business elsewhere, and she continued to have that apartment up there all the time. 20

Q. Do you remember about what year that was? A. No, I couldn't tell you.

Q. For how long at a time would she remain away on those occasions? A. Well, I wouldn't say, because I don't know; there were times she would go for years; I never saw her much; I was never welcome, so I stayed away.

Q. Did you ever talk with her about her relations with your father; I mean troubles? A. No, I never did. 30

Q. Until what time? A. Why, I never had much with her, until this last time when I called up, got the number for my father, got her on the phone to talk to him, and he asked her to come back; that is all I know.

Q. You mean when you called her from your home? A. From my own home.

Q. In Freeport? A. In Freeport.

Q. You mentioned an occasion that he was there at your home? A. At that time. 40

*Frances Posner, direct.*

Q. When was that? A. Well, that is about three years ago; from then he stayed with me approximately a year.

10 The Court: What is your recollection on that; your own recollection, about the length of time he was there?

A. Well, it is two years this coming May; he came home in November, just before Thanksgiving, when he was discharged from the hospital, and he stayed with me approximately a year; now the dates I can't tell you, but the hospital has records exactly when he was discharged, and he came to me; he had to be carried there.

20 Q. Relative to these telephone calls to his wife, how did you do that, to call up? A. I got the number for him, asked if this is Mrs. Mayerson and she said yes.

Q. Did you recognize her voice on those occasions? A. Why, I think I know; I didn't never have any conversation with her much over the phone and it is hard to recognize voices.

30 Q. Was there any doubt in your mind that it was Mrs. Mayerson? A. There was no doubt it was her; I didn't doubt it.

Q. Did your father then talk to her when you called her? A. Yes; he had a lengthy conversation; the telephone bills showed it.

Q. Do you remember the telephone number? A. No, I couldn't remember the phone number.

Q. Did you hear what he said? A. Yes; he pleaded with her; I was right in the room.

40 Q. What did he say? A. He pleaded with her to furnish a home again, he asked her to come back, and we got the same thing recently from her.

*Frances Posner, direct.*

Q. You don't know what she said? A. Why, I couldn't tell you definitely, no, what she said.

Q. Only from what he said, eh? A. Yes. I know it always wound up arguing, angrily.

Q. What is that? A. I say it usually wound up angrily.

10

Mr. Melosh: I object to that.

The Court: Objection sustained. That is voluntary.

Q. Did she ever come to see him while he was there? A. No, she never did.

Q. While your father was there with you was he able to leave the house? A. No; he was indoors most of the time until he could walk on crutches; he stayed indoors.

20

Q. Did he use a crutch or cane? A. Both; first he used two crutches.

Q. Yes. A. Then after a while he could use a crutch and a cane; then he went on one crutch; when he left my house he couldn't go without a crutch; he had to use a crutch and a cane when he left me.

Q. Did you ever hear any conversation between your father and his wife, I mean when they were both present and you were present, concerning their living together? A. No; I never heard any conversations; I was very seldom there.

30 .

Q. Were you present at the wedding of your brother Jacob? A. Yes, sir.

Q. Did you hear any conversation between Mary Mayerson and his wife on that occasion? A. No; I never heard any conversations.

No Cross Examination.

40

*Estelle Lee, direct.*

ESTELLE LEE, sworn:

*Direct examination by Mr. Kelsey:*

Q. Mrs. Lee, where do you live? A. 421 Crown Street, Brooklyn.

10 Q. Are you a daughter of the petitioner, Mr. Mayerson? A. Yes, sir.

Q. You were a very young girl when your mother died? A. Yes.

Q. How old were you, about? A. I was about three.

Q. About three years old? A. Three years.

Q. Do you remember living in Vineland? A. Well, I just remember it by going back there to see the place, but I just don't remember it.

20 Q. Your father and his wife moved from Vineland to Jersey City? A. I remember being here at home in Jersey City for a very short time.

Q. Then where were you taken from there? A. Oh, I had several places.

Q. But first where did you go? A. I went to, I went to some people in Vineland.

Q. Oh, you went back to Vineland? A. No; when I came to New York; well, I don't remember where I went right then, but I remember living the latter part of my childhood with my aunt.

30 Q. Which aunt? A. My mother's sister.

Q. Where? A. In Brooklyn; I think first we lived on the East side of New York, then we moved to Brooklyn.

Q. After you were three years old did you visit your father and his wife in Jersey City? A. Well, I went there, he brought me over there once, I stayed there about a week; when she came she raised a rumpus if we didn't get out.

40

*Estelle Lee, direct.*

Mr. Melosh: I object to that.

The Court: The latter part of the answer will be stricken out.

Q. Do you remember the occasion of one visit there when you were there about a week? A. Yes, I remember that. 10

Q. When was that? A. Oh, that was, I was about six years old, or five years old.

Q. What happened on that occasion?

Mr. Melosh: I object to that; it is absolutely incredible that a child six years old could remember that.

A. I remember that there was a rumpus because I came there, there was dishes broken, things were thrown, she left me all alone, and I remember I slept out on the street, and he took me into the store, very definitely, and when she came home and found that I was in his store, she came in and she almost broke up the place, she hit him on the head, she opened his head, I remember that very distinctly; I can't forget such things. 20

Q. Then you went out; you went away? A. I was taken away.

Q. Did you ever go back there again? A. No; I never went to live there; every time I needed clothes I was afraid to go into my father's store. 30

Q. You were present when the other case was tried, the former case brought by your step-mother against your father? A. Yes, sir.

Q. Do you remember the occasion of a visit you made to your father in the hospital in Perth Amboy? A. Yes, sir; I was there; yes, sir; with Mrs. Lanceman.

Q. Mrs. Lanceman went there with you? A. With me. 40

*Estelle Lee, direct.*

Q. Is she a friend of yours? A. She is a friend about fifteen years.

Q. A girl of your own age? A. Yes, sir.

10 Q. When you went there to this hospital in Perth Amboy to see your father, did you anticipate that your step-mother would call while you were there? A. I didn't know she would be there; when I came in I saw her sitting there.

Q. How long did she remain after you arrived? A. Oh, about fifteen minutes at the most.

Q. You were all in one room there together? A. We were out on the porch.

Q. Your father, too? A. My father was still out on the porch. It was very hot day.

20 Q. Did you hear any conversation between him and your step-mother? A. No conversation, it was only about his illness, then she rose and said she was going; I remember him saying, "When are you coming again?" She said, "Oh, I don't know; it is too much of a trip"; that was all; and she left.

Q. Is that what she said? A. That is just what she said.

30 Q. Were you present at your brother's wedding; at Jacob's wedding? A. Yes.

Q. Did you hear any conversation on that occasion between any other persons present concerning the possibility of her returning to your father? A. No, I didn't hear anything.

Q. While your father was lying sick in your sister's home in Freeport, when he was injured and living there, as he testified, did you see Mrs. Mayerson in Brooklyn? A. I didn't see her much.

40 Q. Did you see her? A. I would see her sitting down on the Parkway; yes, but I never went to her home; I just took Mrs. Lanceman to her home,

*Estelle Lee, cross.*

when Mrs. Lanceman went up to her I remained downstairs.

Q. Did you ever see your step-mother at the theatre there in Brooklyn? A. Yes, I did see her in Brooklyn there at one time.

Q. When was that? A. I can't remember the time. 10

Q. Was it while your father was lying in bed in Freeport? A. I couldn't tell you; I happened to walk in and she happened to be sitting right in front of me.

Q. Did she speak to you? A. No.

Q. Did you speak to her? A. No.

Q. Did she see you? A. She certainly did.

Q. Do you know whether she saw you? A. She turned right around and looked directly at me, and I heard her tell people alongside of her; whenever she would see me she would mumble things, but I didn't pay no attention to her muttering. 20

*Cross examination by Mr. Melosh:*

Q. You were never very friendly with your step-mother, were you? A. Well, I was too young to ever become a friend, and she didn't want to be friends with us. 30

Mr. Melosh: I object to that.

The Court: The latter part of the answer may be struck out.

Q. This little fight that you had, and this little street scene that you had; tell us a little more about that, will you? A. About what?

Q. When you were about six years old as you said before. A. I didn't have a fight with her; she fought because I was there.

Q. Just tell us all about that? A. Well I will 40

*Estelle Lee, cross.*

10 tell you just where we lived, we lived on Newark Avenue, I made my home there very often, I would go out, there was a place just full of rats and mice in that apartment and I was afraid of it, and when she would leave me I would go out and stay out, and one night I stayed downstairs and on the stoop, somebody must have told my father that I was out on the street that hour of the night; well, he called for me and he put me asleep in back of the store; she came home and found I wasn't there, then she came to the store and raised an awful rumpus, she threw the cigar boxes and everything all over the place; I was afraid to stay there because she would leave me alone.

20 The Court: Didn't you say something about splitting your father's head?

A. She certainly did, she opened his head; I remember he went into a convulsion.

Q. He had stitches put in his head? A. He had stitches put in his head.

Q. Do you remember the name of the doctor that put in the stitches? A. No, I don't remember those things.

30 Q. Had you ever seen any mice or rats before?  
A. Yes, I was certainly, from people who know what a mouse and rat is, because she told me when the mice would come out she would take the poker and heat it, she had the poker struck in the stove for that.

*Simon Mayerson, direct.*

SIMON MAYERSON, sworn.

*Direct examination by Mr. Kelsey:*

Q. You are a son of the petitioner? A. I am, sir.

Q. Do you remember the death of your mother and the marriage of your father to his second wife? A. Well, I remember the death of my mother; I never will forget it the longest day I live. 10

Q. You were the second child? A. I am the second oldest.

Q. At that time you were about six years old? A. Exactly; she died June 10, 1899.

Q. You were about six years old? A. She was buried about midnight and I will never forget that night. 20

Q. You were about six years old? A. Six and a half.

Q. And you lived at that time in Vineland? A. Yes; on Wood Avenue, Vineland.

Q. Then about two years later, your father married the defendant here? A. So I heard after that.

Q. Well, you saw her at your home there in Vineland after the marriage here? A. Yes, sir. 30

Q. How long did you continue to live there after they were married? A. It wasn't very long at all.

Q. From there where did you go to live? A. I went to work for a grocer, doing chores.

Q. Where did you live? A. A little town called Broatmanville.

Q. Near Vineland? A. Right close by; my grandaunt's home.

Q. When did you and your two brothers enter the orphan asylum? A. 1904, on the last day of the year of 1904. 40

*Simon Mayerson, direct.*

Q. Why did you go there? A. Of my own accord; me and my two brothers; we had no home; she put us there.

10 Q. When you say you had no home, what do you mean? A. Well, we didn't; she couldn't afford to keep the three of us, my father paid her, I think it was \$18 a week at the time, but she couldn't see it.

Q. Whom do you mean by she? A. My aunt.

Q. Your aunt? A. Yes.

Q. Well, wasn't your father and his wife living there together? A. I didn't go from Vineland; I told you I went to work after the home was broke up.

20 Q. Where was this orphan asylum that you went to? A. In 156th Street, New York.

Q. Oh, in New York? A. Yes, sir.

Q. How long did you and your two brothers remain in the orphan asylum? A. I remained there, I entered the last day of 1904, and I remember the next day was New Years, and came out in October, 1907; my brothers remained a good many years after that.

30 Q. Did you visit your father and your step-mother while they lived in Jersey City? A. Yes; I never entered their home; but I was always in his place of business.

Q. You never went to their home? A. No, sir.

Q. Why not? A. Because I wasn't welcome there.

Q. How do you know? A. I don't go where I am not welcome.

The Court: How do you know you weren't welcome?

40 A. Well, if I wasn't wanted when I was a

*Simon Mayerson, direct.*

youngster, I did not think I was wanted when I was an older person.

Mr. Melosh: I object to what he thinks about it.

The Court: Well, I think the answer is plain; I will let it stand. 10

Q. Were you present at Jacob's wedding? A. My brother's; yes.

Q. Did you on that occasion hear any conversation between anybody concerning the possibility of your step-mother returning to live with your father? A. Well, I happened to stand right close by when there was a conversation going on, I didn't want to listen to it, but I couldn't help but overhear a few words that my aunt Mary Mayer-son tried to be a peacemaker, but I walked away. 20

Q. Did you hear what was said and who said it? A. Why, of course; to my step-mother.

Q. What did she say to her? A. She said to forget the old things, why don't you get together, you are getting old; and I stepped right away; I didn't hear any more.

Q. You didn't hear what your step-mother said, did you? A. No, sir.

Q. Did you have anything to do with the writing or sending of the original of this Exhibit P-5; that is the letter of February 25th, 1926? A. I remember he showed me the letter and asked me to write it. 30

Q. Who did? A. My father.

Q. The original of that letter? A. The original; I know it was just this copy we had; he asked me to mail it; that is all. I called him an old fool.

Q. Did you mail it? A. I did.

Q. Where do you live? A. I live in the City of Bridgeport, Connecticut. 40

*Estelle Lee, direct.*

Q. Married? A. Yes, sir.

*Cross examination by Mr. Melosh:*

10 Q. When your father showed you that letter, as I recall your testimony you said that he was an old fool; is that right? A. Yes, I told him so; that was my opinion of him.

Q. You weren't very enthusiastic about him and your step-mother getting together again? A. To tell you the God's honest truth, I wasn't interested.

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ESTELLE LEE, recalled.

*Direct examination by Mr. Kelsey:*

20 Q. Mrs. Lee, you have been mentioned in your testimony as going to the address on Eastern Parkway, Brooklyn, the address of your step-mother, with Mrs. Lanceman. A. That is right.

30 Q. When was that, about, can you tell us? A. It was the time my father was ill in Freeport, I was there to visit him, and he says on my way home he wanted me to go to her home; I says I wouldn't go to her home; he says to Daisy, to Mrs. Lanceman, he says, "Why don't you go?" he says, "You could go," I should take her and show her just where it is.

Q. What did he ask Mrs. Lanceman to do? A. To go up and talk to her and tell her to come to see him.

Mr. Melosh: I object to that.

The Court: Objection sustained.

Q. At any event, you say you went with Mrs. Lanceman? A. Yes.

40 Q. Do you know whether she went up to that

*Estelle Lee, direct.*

apartment? A. Oh, yes; I waited downstairs; when she came down I said, "What did she say?"

Q. Never mind what Mrs. Lanceman had said; but you and Mrs. Lanceman went there at the request of your father? A. Yes, sir.

Q. Do you know whether Mrs. Lanceman knew your step-mother prior to that time? A. Oh, yes; she met her at the hospital and met her at the wedding. 10

Q. This was after the occasion that you and Mrs. Lanceman went to the hospital in Perth Amboy?

A. That was at the time he went to Freeport, when he came out of the hospital.

Q. What sort of apartment was that? A. Well, she told me it was pretty nice; I believe it was on the first floor. 20

Q. I mean the building itself. A. Oh, it is quite a nice apartment; an expensive apartment.

Q. Elevators in there, do you know? A. No, it hasn't elevators; it is only three stories; I know the rent there; I have lived in the same kind of apartment.

Q. You live near there? A. Yes.

Q. How near? A. Well, I lived only about five or six blocks from there.

Q. In the same sort of apartment? A. Yes. 30

Q. Do you know about what the rents are there? A. Yes; it rents for four rooms about \$80.

No Cross Examination.

*Helen Mayerson, direct.*

DEFENDANT'S CASE.

HELEN MAYERSON, sworn.

*Direct examination by Mr. Melosh:*

10 Q. Mrs. Mayerson, your husband has testified that you were married to him on September 14th, 1900, by a Rabbi; is that correct? A. Yes, sir.

Q. Before your marriage to your husband did you know whether or not he had any children? A. No, I didn't.

Q. Where did you go to live immediately after you were married? A. Well, we went to Vineland, New Jersey.

20 Q. When was the first time you knew your husband had any children? A. Well, when I moved to Vineland, New Jersey.

Q. Is that the first time that you knew about that? A. Yes, sir.

30 Q. Mrs. Lee has testified that there was quite a rumpus due to the fact that she came over to where you were living on Newark Avenue, and that you didn't let her stay in the house; she said something or other about rats and mice; and you hit your husband over the head and broke his glasses; is any of that true? A. No; I don't think that is right.

Mr. Kelsey: I object to that.

The Court: I think you had better reframe your question and ask her whether this is so and that is so; the question is too general and characterizing somebody else's testimony.

40 Q. When Mrs. Lee was about six years old did she visit you and your husband on Newark Ave-

*Helen Mayerson, direct.*

nue? A. Well, I don't remember if it was in Newark Avenue; I know she came one time when we was living on—I forget the street on the hill; Bergen Street; I forget the street there—she came to see me; my husband never wanted to have them home; he never wanted his children; he never wanted to get his children home or nothing. 10

Q. How do you know that? A. Because he didn't want them.

Q. Did he ever tell you that? A. Sure, he told me that he didn't want his children with him.

Q. Did you have any objection to the children? A. No.

Q. Did you ever strike your husband over the head with a piece of glass or a box? A. Well, my husband was striking me and I defended myself; yes, sir. 20

Q. How many times have you seen your husband since February 14, 1921? A. Well, during the time that my case was going on I saw him several times.

Q. Have you ever seen him since the case was on? A. Oh, yes; we made up; we was living together.

Q. You made up and you were living together? A. Yes.

Q. When was that? A. Well, that was in 1925. 30

Q. That was in 1925? A. Yes.

Q. Where were you living? A. Well, I was living in Pennsylvania Avenue, Brooklyn.

Q. Where? A. Pennsylvania Avenue, Brooklyn; my husband used to come home once a week, every Sunday he used to come home; I went with him on a wedding, a friend of mine got married and I went with my husband on the wedding, that was the time when my husband gave me the check to buy a coat, I didn't have no coat to go and he 40

*Helen Mayerson, direct.*

gave me a hundred dollars I shall go and buy a coat that I could go to the wedding, in 1925, I think it was the 30th—

10 Mr. Kelsey: I think she should answer questions and not go rambling all around.

Q. You say you and your husband were living together in 1925; is that right? A. Yes.

Q. When did you stop living together? A. Well, my husband left me in 1925, on the 14th of September.

Q. The 14th of September? A. Yes.

Q. 1925? A. Yes.

20 Q. Do you know where he went from there?  
A. Well, on the 7th of September I presented ten dollars in Toms River to the new synagogue, Mr. Mayerson and myself, we had been there and I paid him that ten dollars; we stopped in my sister's house over night; on the 8th of September, 1925, we was going home from Toms River, he stopped in Red Bank to go to Perth Amboy, and I went to Brooklyn, and he told me that he will be home for the holidays, for the Jewish holidays; that was on the 12th of September; well, Mr. Mayerson, he came home, the 12th was Friday, and he stayed  
30 Friday, Saturday and Sunday afternoon; on Sunday afternoon he told me that he is going to visit his daughter at Freeport and he will be back in the night, but he never showed up; since that time my husband never showed up and didn't look for me.

Q. That is September, 1925? A. 1925, yes.

Q. You haven't seen your husband since? A. Well, I did see him, yes; I saw him in 1926.

40 Q. Where was that? A. Up in 1335 Eastern Parkway.

*Helen Mayerson, direct.*

Q. Where? A. 1335 Eastern Parkway, where I was living.

Q. You were living there? A. Yes, when I sold my house.

Q. What did he come for? A. Well, we was living together.

10

The Court: In 1926?

A. In 1926, sure.

Q. Again? A. Yes; I telephoned to him that I sold my house and I moved here, and he came up in 1926 to see me there.

Q. Well, when was it in 1926? A. Well, I couldn't tell exactly the month; it must be, I moved out from there, it was on the 15th of February, I sold my house on the 15th of February, 1926, and I moved to 1335 and he came there, because I telephoned to him that I sold the house and couldn't get the money, the lawyer stole the money, he didn't want to give me the money, and he came and he went up with me to the lawyer.

20

Q. He did what? A. He came and tried that the lawyer shall give me the money back; see, the lawyer took my money away, \$2,000, and he didn't want to give it to me.

Q. Your husband got the money? A. No; he didn't get it; I telephoned for him that he shall come, that the lawyer took my money away, he shall come, and he came and he went up to the lawyer then, the lawyer shall give me the money back; after that he went and I asked him for money and he says he hasn't got no money and he didn't give me any.

30

Q. You said a minute ago that you were living with him in February, 1926. A. That is what it was.

40

*Helen Mayerson, direct.*

Q. Where was that? A. Where I was living?

Q. You said he was living with you in February, 1926. A. No; in September I say I called him up, and I sold my house and I called him up that the lawyer don't want to give me the money.

10 Q. Well, you say in February, is that right, 1926, in February? A. No; this wasn't in February; I don't remember what month was it; I think it was—

Q. Well, did he ever live with you after September, 1925? A. No.

Q. But you have seen him since then? A. I did, sure.

Q. At any time when you saw him did he ever speak to you about returning to live with him? A.  
20 No, sir; he always was talking about a divorce; he always says that he is anxious for a divorce.

Q. You are absolutely sure that he didn't ever ask you to come back and live with him? A. No; never.

Q. We have admitted that a woman by the name of Susie Lanceman visited you at your house; is that true? A. Well, I want to tell the story.

Q. Will you tell us exactly what was said? A.  
30 Well, when my husband was laying in the hospital I went up to visit him and I was only three months myself after my operation, I was very sick when I came home; I found a message that my husband is laying in the City Hospital; I came home on the 5th of October, not the 7th; so the 7th was Sunday, or the 8th was Sunday; no, Sunday was the 8th of October, I went over to see my husband in the hospital, in the City Hospital; when I came there nobody was there, only me and my husband, and  
40 I was stay there about two hours I was talking to him, and he asked me how I feel, because I only

*Helen Mayerson, direct.*

was three months after the operation; we was talking, and after came my step-daughter, Ella, with that other woman, it was six o'clock in the evening and I went to go home, we didn't talk nothing, the only thing I asked my husband when is he going to leave the hospital; he says I shall call up my step-daughter, Estella Lee, to find out from her when he is going out from the hospital; well, I believe, in a couple of weeks, around that, that woman came upstairs, what is her name?

10

Q. She was with her; she was up there? A. Yes, about nine o'clock in the evening somebody rang my bell and when I went over to the door I saw her; she says, "Your husband sent me over to you to tell you that he just went out of the hospital, he went to his daughter in Freeport," that is all she says, nothing else; she stayed a little while and then she walked out; I said I am glad to hear that he walked out of the hospital, because I couldn't take care of him, I was sick myself, he has healthy daughters they could take care of him, I couldn't.

20

Q. Did Mrs. Lanceman ever visit your home at any other time? A. No; that was the first time that she ever went to my home.

Q. You are absolutely sure of that? A. Absolutely positive.

30

Q. Did you have any conversation with Mary Mayerson at the wedding of one of Mr. Mayerson's sons in reference to your returning home with your husband? A. Well, he didn't have to tell me that, because my husband was living with me, he gave me \$50 to buy a dress to go to the wedding and he stayed in my house, he had a room, he used to come every Sunday, he used to give me ten dollars every week to help me, to live on.

40

Q. He gave you ten dollars a week to live on?

*Helen Mayerson, direct.*

A. Yes; he didn't give me no home; he was living in my home.

Q. Did Mary Mayerson say anything to you at the wedding of Mr. Mayerson's son Jacob, in reference to your living again with your husband?

10 A. She didn't say anything—

Q. Yes or no. A. No; we was living together.

Q. Why not? A. Because we was living together.

Q. Did she know that, do you know? A. Yes, sure, she knows it.

Q. Did you ever tell your husband that you would not return unless he assigned everything over to you? A. No; I never spoke about such a thing.

20 Q. Did you go to Perth Amboy for the purpose of selecting an apartment house to live in? A. No; my husband was Sunday up in my house and he told me that he has tickets to a concert, I shall come to Perth Amboy; well, when I came to Perth Amboy we went to see the concert, Rosenblatt was giving a concert in Perth Amboy, and he took me up in the room that he had there and I stayed over night; where my husband was sleeping, I don't know.

30 Q. While you were there did he take you to an apartment? A. No, sir.

Q. You are absolutely sure of that? A. No, sir; absolutely sure.

Q. Did you say you were sorry your husband didn't break both of his legs? A. No, I never say such a thing.

40 Q. After he got out of the hospital he testified that he called you up and he said, after quite some conversation, that he was going to start suit for divorce, and you said you had better start it while

*Helen Mayerson, cross.*

you lived here; is that true? A. No, sir; I never told him that.

Q. Are you willing to return to your husband now? A. Yes; if he can give me a home to return to him.

*Cross examination by Mr. Kelsey:*

10

Q. Where did you go to live after you left your home with your husband in Jersey City, on 18th Street? A. Well, I went in to a friend's the first night to stay, and after I went to the hotel, and from the hotel I went to Brooklyn.

Q. To Brooklyn? A. Yes.

Q. Pitkin Avenue? A. Yes.

Q. That was your house, was it? A. Well, yes, that was my house.

20

Q. That was the house that Mr. Mayerson had given you, wasn't it? A. No, no, Mr. Mayerson took away \$3,000 of my money and he bought that house; we had it on both names.

Q. At any event, it was in your name at the time that you went there to live from Jersey City? A. Well, we sold it; we sold the house about 15 or 16 years ago; we sold it; I and my husband; he couldn't keep it there and my sister had a second mortgage on the property.

30

Q. I don't care about this; at the time that you went there— A. I want to tell you how I came by the house.

Q. At the time that you went there to live, when you went there from Jersey City, in or about the month of June, 1921, that house was in your name? A. Yes.

Q. You had three rooms there, did you, in that house? A. No; there was people living there; they moved out and I took the three rooms.

40

*Helen Mayerson, cross.*

Q. I say, you occupied three rooms. A. I didn't; there was people living there.

Q. How many rooms did you have there? A. Well, the people moved out from those three rooms and I lived in there.

10 Q. Well, I say, you occupied three rooms there; you moved into the three rooms; you lived in the three rooms. A. Oh, yes; I did.

Q. That is what I asked you. A. I thought you said I was occupying it before.

Q. Then how long did you live there? A. Well, I was living there up until 1906; until the 15th of February, 1906.

Q. 1906? A. Yes; 1926; 1926, yes; pardon me.

20 Q. Then where did you move to? A. On the 15th of February I sold the house and I moved to 1335 Eastern Parkway.

Q. How many rooms did you have there? A. I had four.

Q. How much rent did you pay? A. Eighty dollars.

Q. Who paid that rent? A. Well, I sold the house, I had the money and I paid the rent myself.

30 Q. Then how long did you live at this address at 1335 Eastern Parkway? A. Well, I was living eighteen months.

Q. From there where did you move to? A. I moved to my sister's, on Osborne Street.

Q. Where? A. 206 Osborne Street.

Q. In the Bronx? A. No; in Brooklyn.

Q. What is the name of that sister? A. My sister's name is Esther Stolick.

40 Q. How long did you live there? A. Well, I am living still there.

Q. You always lived there since you went there? A. Yes, sir.

*Helen Mayerson, cross.*

Q. From Eastern Parkway? A. Yes; a year ago.

Q. Never lived in any other place? A. No.

Q. Where do you live now? A. In the same place.

Q. Do you know the property at the corner of Albany and Eastern Parkway, Brooklyn? A. Albany and Eastern Parkway? 10

Q. Albany Avenue and Eastern Parkway. A. No.

Q. Do you live there now? A. No, sir.

Q. Did you ever rent an apartment there? A. No, sir.

Q. Now you say that your husband came from the hospital, after he left the hospital in Perth Amboy, that he went to live with you. A. When he left the hospital in Perth Amboy he came to live with me? I didn't say that; pardon me. 20

Recess until two o'clock.

After recess the witness resumed the stand for further cross examination.

Q. Mrs. Mayerson, will you please tell us the address of your sister, Esther Stolick? A. Osborne Street. 30

Q. What number? A. 206.

Q. Have you any other sister about here? A. I have a sister in Toms River, New Jersey.

Q. Mrs. Kaufman? A. Yes, sir.

Q. They are the only two sisters? A. That is the only two sisters.

Q. Isn't her address 214 Osborne Street? A. 214 Osborne Street?

Q. What? A. 214? 40

*Helen Mayerson, cross.*

Q. Osborne Street. A. 206; maybe I am mistaken.

Q. You have lived there all these years. A. I lived there, you know sometimes you are liable to make a mistake in the address; I think it is 206; if it is 214, I don't remember.

Q. Before you married Mr. Mayerson you were acquainted with his sister? A. What sister?

Q. Your sister-in-law; you knew Mary Mayerson before you married Mr. Mayerson? A. No, sir.

Q. Who introduced you to Mr. Mayerson? A. Mr. Mayerson himself; I had a candy store; I was a greenhorn; I had a candy store.

Q. You had a candy store? A. A stationery store.

Q. At 112 Ludlow Street? A. I couldn't tell you exactly the number; it is so much years that I don't know.

Q. You had a former husband in Poland? A. No; my husband was dead long ago.

Q. I say, you had one, though. A. I was married, yes.

Q. Morris Pinchuk? A. Yes, sir.

Q. He wasn't dead when you married Mr. Mayerson, was he? A. Oh, yes; my husband was dead.

Q. What? A. Sure; Mr. Mayerson knows everything.

Q. The only way you knew, you thought that he was dead— A. He knows everything.

Q. Just a minute; I haven't finished. The only reason that you thought he was dead was because somebody in the market place over in Poland told you that they heard he was dead; isn't that so? A. Oh, no; when I married Mr. Mayerson he was dead.

*Helen Mayerson, cross.*

Q. When you married Mr. Mayerson you didn't tell him about having married the other man, did you? A. Oh, yes; I did.

Q. When you made the application for a marriage license you said you were a single woman, didn't you? A. Oh, I couldn't talk no English; I don't know; Mr. Mayerson he explaind everything; I didn't know nothing. 10

Q. What? A. I didn't understand nothing what they were talking to me; I only was two months in this country.

Q. You said you were a single woman, didn't you? A. Well, I didn't say anything; Mr. Mayerson was saying all.

Q. What? A. He was doing the talking; not me.

Q. Well, what is your age now? A. My age is 54. 20

Q. You gave the name of Helen Ditman, did you know, when you took out your marriage certificate? A. No; I gave Helen Ditman Pinchuk; if they didn't put it in it isn't my fault.

Q. If they didn't put it in it wasn't your fault? A. Mr. Mayerson was doing all the talking.

Q. You said you were single, did you not? A. I didn't say anything. 30

Q. Do you know how they came to put in here that this was your first marriage? A. Well, I don't know.

Q. What? A. I don't know.

Q. In this certificate, Exhibit P-1. A. I couldn't tell you anything, because I didn't understand what they was talking to me; I couldn't tell you.

Q. You didn't understand; you gave them you age? A. That is what Mr. Mayerson did; but that is not my right age; Mr. Mayerson gave me more than what I was. 40

*Helen Mayerson, cross.*

Q. Now, didn't you testify in the former case, the case that you brought against your husband, that you were twenty years old at that time? A. Well, I did say twenty years old; he gave me 26.

Q. That is when you were married. A. Yes, sir;  
10 I was twenty years old when I married.

Q. You say you are 54 now? A. By my marriage I am 54; by right I am only 49.

Q. This certificate was issued on the 14th day of September, 1900? A. Yes, sir.

Q. And at that time you were twenty years old? A. Yes, sir.

Q. Now you are 54? A. Well, by my marriage; by the marriage I am 54.

Q. If you were twenty years old when you were  
20 married 29 years, how are you 54 years old now?  
A. I am 49.

Q. Now? A. That is by my right; by my marriage, by the marriage I am 54, going on 55.

Q. Haven't you just testified here that you were 54 years old? A. Well, I am saying by the marriage, that Mr. Mayerson gave me, he made 26 years.

Q. Now, if you testified at the former trial that  
30 you were twenty years old when you married Mr. Mayerson, that isn't true then, is it? A. Just what, please?

Q. If you testified in the former case that you brought against him, if you testified that you were twenty years old at that time, that is not true, is it; you were not twenty years old at that time? A. How do you know it?

Q. What?

The Court: Just answer, yes or no.

40 A. Yes, I was.

*Helen Mayerson, cross.*

Q. You were? A. Yes, sir.

Q. Now you are 54? A. Well, by the marriage.

Q. Now you mean to say that you didn't know that Mr. Mayerson had children when you married him? A. I didn't.

Q. Where did Mrs. Mary Mayerson live at that time, with reference to the location of your store? 10  
A. I don't know; I didn't know her.

Q. What? A. I didn't know it; Mary Mayerson.

Q. You didn't know where she lived? A. No, not at that time.

Q. Your store was at 112 Ludlow Street, New York? A. Yes, sir.

Q. And Mrs. Mary Mayerson lived about five doors away? A. Five doors? I don't know.

Q. Didn't Mr. Mayerson come up there, and wasn't he living with his sister, staying there with his sister, at the time he married you? A. No, sir. 20

Q. Five doors away from your store? A. No, sir; he was in Vineland, New Jersey.

Q. Didn't he come up there for a few days before he married you, and didn't he stay there with his sister-in-law, Mrs. Mayerson? A. I don't know where he stopped.

Q. You don't know where he stopped? A. No. 30

Q. You say that you never saw any of his children until you got down to Vineland? A. I didn't know; no.

Q. Isn't it a fact that when you went to Vineland with Mr. Mayerson, from New York City, that he had his son Simon with him on the train? A. That was after the marriage.

Q. Yes; after the marriage. A. After the marriage; but not before.

Q. But you have testified here that the first you 40

*Helen Mayerson, cross.*

knew he had children was when you got to Vine-  
land, New Jersey. A. After the marriage.

Q. What do you mean; after you got to Vine-  
land, or after the marriage? A. After I got mar-  
ried.

10 Q. After you got married? A. Yes, sir.

Q. That is the first time you knew he had chil-  
dren? A. Yes, sir.

Q. Will you please tell me this: You remember  
this young man coming into your store there be-  
fore you were married, do you not (indicating)?  
A. Yes, sir.

Q. When he was living there with his aunt, Mrs.  
Mayerson, five doors away from you? A. No, sir.

20 Q. Didn't he used to come up and buy ice cream  
there? A. No, sir.

Q. And wasn't it common talk that you were  
going to marry his father? A. No, sir.

Q. And that is as true as everything else you  
testified to? A. I am testifying to the truth; some-  
body else didn't testify it.

Q. Why did you marry him without finding out  
what children he had?

Mr. Melosh: I object to that.

30 The Court: I will sustain the objection.

Q. You sold your property at Pitkin Avenue  
and you went to live at 1335 Eastern Parkway?  
A. Yes, sir.

Q. The last that Mr. Mayerson lived with you  
was on September 14th, 1925, at the Pitkin Ave-  
nue address, was it? A. Yes.

Q. That is the last address he lived at with you?  
A. Yes, sir.

40 Q. That is the last time he had any connection  
with you as husband and wife; any intercourse at  
all; is that right? A. Yes.

*Helen Mayerson, cross.*

Q. Do you know whether he knew that you moved to Eastern Parkway? A. Yes, he did know.

Q. How did he know? A. I had telephoned to him.

Q. You telephoned to him where? A. That I moved to Eastern Parkway, 1335. 10

Q. Where did you get him on the wire? A. Perth Amboy.

Q. How long after you moved there? A. Only about a few days.

Q. Do you know how it was that he came to send you the letter of March 5th, 1926, to the address at Pitkin Avenue? A. Well, that is his own business; I don't know.

Q. What? A. I don't know; that is his business; he is fixing it. 20

Q. Maybe he sent it to the wrong address on purpose? A. Well, I don't know.

Q. When you lived there in this address at Pitkin Avenue, how many other people lived there in that house? A. I don't know; it is a big tenement house; I don't know how many people.

Q. You don't mean to say that Mr. Mayerson came in there right along, living there with you, do you? A. No, he didn't live with me at Pitkin Avenue; he didn't want to know me; I got sick and he didn't care for me; I went to the hospital and he didn't want to pay the hospital or nothing. 30

Q. You say he left you on September 14th, 1925? A. Yes.

Q. You don't mean to say that before that he was living with you? A. He did; he came every Sunday.

Q. What? A. He came home every Sunday.

Q. And people would see him coming in and out of there? A. Sure. 40

*Helen Mayerson, cross.*

Q. Have you got any of those people in court?

A. Where; in Pitkin Avenue?

Q. Yes. A. That is only a small two-family house.

10 Q. I thought you said it was a flat full of people. A. I thought you meant in this Eastern Parkway. I didn't understand you.

Q. Have you any of the people here now that saw him coming there in September, 1925? A. I haven't got anybody.

Q. Why not? A. I didn't know I needed anybody.

Q. You didn't know that? A. No.

20 Q. Well, you never had any trouble with your brain, did you, or anything of that sort? A. For what?

Q. Have trouble with your brain? A. No.

Q. Your brain is good? A. Thank God, yes.

Q. You know Mrs. Davids over there that runs a restaurant over there on the lower floor? A. Sure, I do.

Q. She is a good friend of yours? A. No; she is a friend of Mayerson's.

30 Q. She was in the street when you spat in Mr. Mayerson's face, wasn't she there to help you? A. She is no friend to me; she is a friend of my husband's.

Q. She has a restaurant in this building, hasn't she? A. Well, I don't know; she used to be when I was there; I am out of there three years.

Q. Why didn't you bring her over here? A. Because I don't want her.

Mr. Melosh: I object to that.

Mr. Kelsey: I will withdraw the question.

40 Q. You didn't go down to see this apartment of

*Helen Mayerson, cross.*

Mr. Mayerson's in Perth Amboy? A. He didn't take me down there in any apartment.

Q. You didn't go to see any apartment? A. Well, he never mentioned about any.

Q. Well, did you go to see one with him? A. No.

Q. You don't know Mr. Jacob Machinsky, the owner of this apartment down there, do you? 10

Mr. Melosh: I object to that.

The Court: I will permit the question.

Q. You don't know Mr. Jacob Machinsky, the owner of the apartment that you visited? A. Well, Mr. Mayerson was stopping there.

Mr. Melosh: I object to that; she hasn't said she visited any apartment. 20

The Court: I will sustain the objection to the form of the question.

Q. Do you know Mr. Jacob Machinsky? A. I was there when Mr. Mayerson came Sunday to my home and he told me that he has two tickets—

Q. I didn't ask you that, lady; I asked you if you knew Mr. Jacob Machinsky, from Perth Amboy.

The Court: Yes or no, madam; do you know him? 30

A. I know he lived there; that was Mr. Mayerson's room there.

Q. Did you know Mr. Jacob Machinsky before you slept in Perth Amboy? A. No; not before I slept there.

Q. When did you meet Mr. Jacob Machinsky?

A. Well, when Mayerson told me to come there and I stop over night there.

Q. You went to Mr. Jacob Machinsky's apartment to see it, did you not? A. Well, I don't know 40

*Helen Mayerson, cross.*

who that man is; I don't know; I never went to see any apartments.

10 Q. Mr. Mayerson wasn't living there in Perth Amboy on that occasion; he wasn't living in any apartment, was he? A. Well, Mr. Mayerson had a furnished room by a family there where he took me there, I stopped over night after we came back from the concert.

Q. Didn't he take you from there to another apartment owned by Jacob Machinsky and show it to you? A. Show it to me?

20 Q. Show you the apartment? A. Oh, now I remember myself; he took me to a friend of his to show me his friend, but not the apartment, he took me and introduced me as his wife and that is his friend, but not to show me any apartment there.

Q. Didn't you go down there with your husband to see that apartment, to rent an apartment in that same place of Mr. Jacob Machinsky's? A. I did not.

Q. No? A. No.

30 Q. You say that you needed this coat that you bought with this \$100 to go to a wedding of some relative of yours? A. Well, I went, and Mr. Mayerson went, and my sister went with the children, and I bought that coat; I didn't intend to go and he gave me the money to buy the coat and I bought the coat for that money.

Q. You wanted the coat in order to wear it to this wedding of some relative of yours? A. Well, I didn't have no coat, I couldn't go to the wedding, because I didn't have no winter coat.

40 Q. Do you remember when the wedding was? A. Well, I couldn't remember what date was it, or what month was it, but whatever it was, after that he gave me \$100 to buy a coat.

*Helen Mayerson, cross.*

Q. How long was it before or after the wedding of Jacob Mayerson that you went? A. This was before.

Q. How long before? A. Well, Jacob Mayerson got married on August 31st, or the 30th, something like this; this was in the winter time I bought the winter coat. 10

Q. This was in the January before? A. Well, I couldn't tell you what month was it.

Q. Well, it was after Jacob's marriage, was it? A. No, it was before Jacob got married.

Q. Jacob was married in August, 1925? A. Yes.

Q. And this relative of yours was married the winter before that? A. No, he was married the same winter; he got married in the summer time, 1925. 20

Q. I say, he was married the winter before Jacob was married? A. Yes.

Q. He was married then in the early part of 1925, was he? A. Well, I couldn't tell you; I don't remember exactly; I don't know; he was married in the same year when the check was given to me, like on a Sunday, like this Sunday my husband was there and I asked him that I ain't got a coat and he went and gave me a check for \$100, and in the following Sunday we went to the wedding. 30

Q. Who was this friend of yours, or this relative of yours that was married? A. Well, this isn't a relative to me; he is a relative to my niece's.

Q. What is the name? A. They are cousins; really I don't know; they are cousins of my niece's.

Q. Do you mean to say you went to a wedding without knowing the name of the people? A. Well, I say I could remember; I think their name is Kutchinsky, if I am not mistaken. 40

Q. Where did they live at that time? A. Well,

*Helen Mayerson, cross.*

I couldn't tell you, because I went with my sister and my niece.

Q. You don't know where they are living? A. I am telling you, I went with my sister and my niece.

10 Q. And you don't know where they live? A. No, I don't know.

Q. Do they live in Brooklyn? A. No, we went to New York.

Q. Was it a young lady or young man? A. It was a swell wedding, I know that.

Q. Didn't that wedding take place in the summer of 1924, that you went to? A. In the summer?

Q. Yes. A. No, sir; it was winter time.

20 Q. Wasn't it at least four months or five months before that check of December 8th, 1924, was given to you? A. Only a week before.

Q. Only a week before? A. A week after.

Q. You can't tell us the name of the party, or where they live? A. Well, they live in New York; I don't know the party; I went with my sister; my sister took me down there; the same way Mr. Mayerson went there.

Q. He went with you to this wedding? A. Yes.

30 Q. Now, Mr. Mayerson never visited you then at the home of your sister, Bessie Stolick, did he? A. What is that, please?

Q. Mr. Mayerson never called on you at the home of your sister, Bessie Stolick, after September, 1925? A. Well, he was there, I didn't was home, he was there but I don't know how long ago, about eight months, nine months, or ten months ago, he called there, and he insulted me by my sister, he called me all kinds of names; I don't was home.

40 Mr. Kelsey: I ask to have that struck out, that he called her names.

The Court: Strike it out.

*Helen Mayerson, cross.*

Q. Do you know what he went there for? A. Well, I don't know; he wants to serve me with papers for the divorce; my sister told him to leave the papers there and when I come she will give it to me.

Q. When you were down there to the hospital why didn't you give Mr. Mayerson your address? 10

A. What hospital?

Q. When you went to see him down at the hospital in Perth Amboy, why didn't you tell him where you lived? A. Well, my husband was several times before he went to the hospital in my house; he knew where I was living.

Q. Do you know why he went up to see your sister after that? A. This was only eight months ago; this was three years ago when I was in the hospital, see, three years, it will be three years in July that I was there; it was two years in February that I was the second time in the hospital, and he came to see me on crutches as he says here. 20

Q. Well, you say it is only ten months ago that he went there? A. I don't remember exactly how long ago; eight or ten or nine, that he called, at the time that he had to serve the papers.

Q. Your sister knew where you lived, didn't she? A. Well, my sister told him to leave the papers there with her, I was living with her, and he didn't want to leave any. 30

Q. Did you know that Mr. Mayerson went down to Toms River also to ask your other sister down there where you lived? A. Why, sure I know.

Q. You knew where he lived in Perth Amboy? A. Well, I went up to my lawyer, we sent you a letter, in case you want to serve me with any papers to leave that with my sister, because I go 40

*Helen Mayerson, cross.*

out, I am a sick woman and I have to go to the doctor to visit him.

10 Q. As I understand you, the only time you got in communication with Mr. Mayerson after you moved out of Eastern Parkway was when you went down to see him at the hospital; is that right?

A. No; after that when I saw Mr. Mayerson in the hospital, it was three months after an operation and I have an attack in my appendix on the 7th of February and on the 8th of February I was operated on, I called on the telephone Mr. Mayerson from the Post Graduate Hospital that Mr. Mayerson should come up to see me, he came up on the 9th and the 10th to see me in the Post Graduate Hospital.

20 Q. When was that? A. In 1927.

Q. What month? A. What month, February, I was operated on the 8th and he came on the 9th and the 10th to see me, and I was talking he shall do something, because I was laying in the ward, I couldn't stand it, he shall go and get me a nurse that he shall take care of me; he went down and ordered a nurse but he never paid for it.

30 Q. Did I ask you anything about hiring a nurse or anything like that?

The Court: Just answer the questions, Mrs. Mayerson.

A. Yes, your Honor.

Q. Now, after you moved from Eastern Parkway—you say you lived there eighteen months?

A. Yes, sir.

Q. You moved there February 15th, 1926, and you moved— A. 1926; I moved there in 1926 and I moved out in 1928.

40 Q. You were there eighteen months. Why did

*Helen Mayerson, cross.*

you not inform Mr. Mayerson where you were living? A. Mr. Mayerson didn't care for me; he told me that he is going to kill me whenever I got sick, he is going to shoot me.

Q. When did he tell you all that, and where?  
A. Where? 10

Q. Yes. A. When he came back to my house.

Q. When? A. When I came back from the hospital, in 1335 Eastern Parkway, he says, "If you will appear in the case do you know what I am going to do? I am going to shoot you; if not, my children will shoot you." I want my husband to be responsible for anything that happens to me; if anything happens to me, my husband and his children will be responsible. My husband always threatens me that he is going to kill me. 20

Q. Did you have anyone else living in that apartment at 1335 Eastern Parkway? A. No.

Q. Did anyone else hear of these threats? A. What do you think, Mr. Mayerson is so foolish that he is going to tell anybody else he wants to kill me.

Q. Did you have anyone else living there with you at that time? A. No.

Q. You say that this Mrs. Lanceman came there to see you at Eastern Parkway, but she came there to tell you that Mr. Mayerson was in Freeport at his daughter's home? A. Yes, sir. 30

Q. When was it that she came there? A. Well, I couldn't exactly tell you; I know it was in November, or it was in October yet, because I came home from the country on the 5th of October, and the 8th I went over to see Mr. Mayerson in a couple of weeks after that.

Q. Let me understand; you went on the 8th of October to have the operation performed at the hospital? A. Yes. 40

*Helen Mayerson, cross.*

Q. Yes. A. And I waited a couple of weeks, because Mr. Mayerson told me I should ring up Mrs. Lee after I got home; when I got home I would ring her phone several times and I never got any answer; one day it was about nine o'clock in the evening the bell was ringing, I opened that door and that lady came in, really I don't know her name, she came in and she said "Your husband—"

10

Q. When was that? A. Well, I couldn't tell you when was it.

Q. How long was it after October 8th when you went to Perth Amboy? A. Well, I think a couple of weeks after; a month after; I couldn't tell you.

20

Q. It was in the month of November, was it? A. I couldn't tell you exactly; I don't remember when was it.

Q. You know as a fact that Mr. Mayerson went to Freeport from the hospital in November, 1926, do you not? A. 1926?

Q. Yes. A. Well, I don't know when was it, what month was it; I know that I saw him in the 8th.

30

Q. Well, it must have been after he went to Freeport? A. When that lady came up in my house?

Q. Yes. A. Why, sure; he was in Freeport.

Q. Do you know why it was that she came there to tell you that he was in Freeport, when long before that Mrs. Posner had been telephoning you almost every day and your husband had been talking to you over the telephone from Freeport? A. Well, my husband telephoned to me after that woman was in my house.

40

Q. What; after? A. After that woman was in my house and told me that Mr. Mayerson is in Freeport by his daughter.

*Helen Mayerson, cross.*

Q. But never before? A. Never before.

Q. Why didn't you go to see him in Freeport then? A. Because his children don't want me.

Q. Is that the only reason? A. I went one time, they wouldn't talk to me and I don't go there any more. 10

Q. Is that the only reason? A. Why, sure.

Q. Why didn't you go to see him after he came to Perth Amboy? A. When?

Q. Why didn't you go down to see him again? A. I was there several times.

Q. To Perth Amboy? A. Yes.

Q. When? A. He didn't care about me.

Q. When did you ever go to Perth Amboy to see him after he went there from Freeport? A. I was there several times. 20

Q. When? A. When he came back from Freeport?

Q. Yes. A. Well, I don't know when he came back from Freeport; but before that.

Q. The reason you didn't go is because you never went there to find out, isn't it? A. Well, he told me when I came near him he is going to kill me, and I didn't want him to kill me; he was threatening me. 30

Q. You were afraid of him? A. Well, I don't want to die; I don't want a man that would kill me.

Q. Now, you went all through a divorce case with him, did you not, in which you charged him with adultery, and in which he counterclaimed that you were married to a man at the time that you married him; you went through all that acrimonious outbreak and trouble and you weren't afraid of him then, were you? A. Mr. 40

*Helen Mayerson, cross.*

Mayerson knew everything when I married him; he knew I was married before.

Q. You testified in that other case that you never would live with him, didn't you? A. Who said that?

10 Q. You did. A. No, I didn't.

Q. What? A. If I testified I never lived with him; I don't know that; it is so long I don't remember that.

Q. Do you remember this question being asked you by Mr. Morten on direct examination in that case, and this answer be given: "Since you left your husband in May, 1921, when you discovered this adultery that you claim to have discovered at Vineland, has your husband been to see you or been in communication with you; if so, for what, and how often? A. Well, my husband was there about three or four times a week making me I should come back to him; he said he would do anything in the world for me, he would assign mortgages that he has on houses, and he bought just a new house and he wanted to sign it on my name and his name that I should go back to him." Is that right? A. No, sir.

20

30 Q. You didn't testify so? A. No.

Q. Was this question asked of you by your attorney, Mr. Morten: "How many times has your husband attempted to do that since last May, trying to get you to come back? A. Oh, always, about three or four times a week he used to come around. Q. Where did he see you? A. He used to wait for me when I came down for my supper at seven o'clock; I used to go down for my supper at seven and he waited on the street and talked to me that I should go to him, and I always refused"; did you so testify? A. I don't remember it.

40

*Helen Mayerson, cross.*

Q. Was this question asked: "Did he give you any reason as to why he wanted you to go back to him? A. Well, he says he loves me and he wants I should go back to him and I should not be so foolish on account of such a woman that I should sue him for divorce; and he said he would be the happiest man in the world that I should walk with him in the street, and we should walk in the street with Mrs. Neiditch and he would spit in Mrs. Neiditch's face; he would be the happiest man in the world that I should go back to him." And didn't your lawyer then say, "What did you tell him?" and didn't you say, "I told him I never would go back to him." A. I don't remember it.

Q. You don't remember that? A. No, sir.

Q. It is true, isn't it? A. Well, I don't know; I don't remember nothing; well, this was before my divorce; after we make up; after I lived with Mr. Mayerson in my home; he never gave me a home.

Q. Why didn't you answer these letters that he sent to you, and this one that you got from him on the 17th of February? A. I don't have to answer it, because you have a postal card there in 1924, on the 17th of February, that he wrote to me; when he wrote to me he only wrote that letter that he should have something on me.

Q. Has he got anything on you? A. No.

Q. Whom have you been living with all these years? A. With myself.

Q. Who has been supporting you all these years? A. Myself.

Q. On what? A. On my house.

Q. On your house; what house? A. The house that I had.

Q. On Pitkin Avenue? A. Yes.

*Helen Mayerson, cross.*

Q. You got \$30,000 for it? A. I haven't got \$30,000; I got \$6,000.

Q. What? A. I only got \$6,000.

Q. You only got \$6,000? A. Yes.

Q. Didn't you sell it for \$30,000 that house?

10 A. No, sir.

Q. How much did you sell it for? A. \$19,000.

Q. How much were the mortgages on it? A. Well, my mortgage was \$6,000.

Q. \$6,000? A. Yes.

Q. How much cash did you get? A. I got \$3,000.

Q. So you got \$9,000? A. I was skinned out of \$2,000; yes.

Q. You got \$9,000 clear? A. No, not \$9,000.

20 Q. How much clear? A. Well, only \$7,000.

Q. And you have been living on that ever since?

A. Yes.

Q. Did the man pay off the second mortgage?

A. No.

Q. How are you living on it if he didn't pay it off? A. Well, the little that he does pay me I live on that.

Q. What little? A. He pays me \$125 every three months, and I live on that.

30 Q. With that you paid \$80 a month rent on Eastern Parkway? A. No; I am not living on Eastern Parkway now.

Q. You lived there eighteen months. A. Well, I had \$3,000 that I spent, and I moved out.

*By the Court:*

Q. How much is that mortgage? A. Well, the mortgage is not all; about \$3,000 now.

40 Q. You mean he owes you that much on the mortgage? A. Yes, \$3,000; but I have trouble, he don't pay me; I have to foreclose.

*Helen Mayerson, cross.*

Q. How much interest does he pay you on that \$3,000? A. Six per cent.

Q. That is \$180 a year? A. \$180. It is \$3,000. No; it is only on \$3,000, \$180 a year comes out, your Honor.

Q. I am asking how much interest he pays you on it? A. Well, he pays me every three months. 10

Q. \$125 every three months? A. \$125 is the payment on it, instalment, and besides interest.

Q. Well, how much was the mortgage originally? A. Well, when I sold the house I had \$6,000.

Q. That was in the form of a mortgage, was it? A. Yes; and \$3,000 he paid me in cash.

Q. By instalments on that mortgage he has already paid that much? A. Yes; he owed me now, because now I can't get nothing out of it; he don't want to pay; I have to put it in foreclosure. 20

*By Mr. Kelsey:*

Q. Isn't it a fact, Mrs. Mayerson, that the visit of Mrs. Lee and Mrs. Lanceman to your place, in 1335 Eastern Parkway, was in January, of 1927?

A. Well, I don't remember; I couldn't tell you exactly the day when was it.

Q. It might have been as late as January, 1927? 30

A. I don't know when was it.

Q. Did Mrs. Mary Mayerson attend your wedding in Brooklyn when you were married to Mr. Mayerson? A. Yes, I think so; I am not sure; it is so long that I can't remember it.

Q. Well, you knew her pretty well before that, did you not? A. I did not.

Q. Never saw her before? A. I saw her, but I didn't was acquainted with her; he introduced me one time that is his sister-in-law; I don't was with 40

*Helen Mayerson, cross.*

her only a week, around about three weeks, when we got married; how could I know his family.

Q. You mean to say Mr. Mayerson came into your store and that is the time you got acquainted with him? A. Yes.

10 Q. He came in to buy something? A. To buy something and we got to talking.

Q. He didn't tell you you where he lived? A. He told me he lives in Vineland, he has a house and farm and garage and horses, but he didn't have anything; he took away my money what I had, and my jewelry what I had, he took that away from me.

Q. He took everything away from you? A. Why, sure.

20 Q. You got the \$19,000 house from him afterwards, did you? A. Well, I got \$19,000; the \$19,000 is mine; the \$6,000 mortgage and everything else.

Q. You wanted him to sign over everything he had if you would come back to live with him? A. What do you mean, sign back?

Q. Turn everything over to you? A. What do you mean sign over to me; that house didn't belong to him.

30 Q. What? A. That house didn't belong to him.

Q. No, but everything he had; the other property he had on Grove Street; all that you wanted him to turn over to you? A. I didn't want anything; I worked for everything; he kept me in the closet for three long years, I used to work in back of the bar room and help him make all that money what he owns, and after he bought the property on his children's name.

40 Q. You were willing to work in the bar room?

*Helen Mayerson, cross.*

A. I was working for 21 years in the bar room for him to help him make all the money that he has.

Q. Yes. A. And he didn't want to give me nothing.

Q. That is the reason you wanted him to turn everything over to you on condition that you come back? A. I didn't want anything off him; I wanted him to support me and give me something, not to sleep in a closet. 10

The Court: Did you say that you would go back and live with him if he would turn over to you all his property?

A. No, sir; I did not.

Q. Don't you know that it is a fact that after Mr. Mayerson turned this property that he had in Brooklyn over to you that he didn't have a cent, and that he had to borrow money from his daughter here to buy the property on Grove Street, and then to go there in business with Sam Handler? A. Listen, that isn't true; Mr. Mayerson took away \$3,000 off me; we bought the property and after we sold it; my sister had a \$4,000 mortgage on that piece of property; the man who bought it off us he didn't pay any on the first mortgage, he didn't pay the second mortgage, I had to pay my sister back she shouldn't lose her \$4,000 and I went and bought it back on my own name; that is the way I got the property. 20 30

Q. You ran a saloon in Brooklyn yourself there; you had a saloon in the building in Brooklyn, did you not? A. I ran a saloon?

Q. Yes; for a year there. A. Mr. Mayerson will tell you all kinds of stories; he had the license on my name because he hasn't got no name; he couldn't have it on his name. 40

*Helen Mayerson, cross.*

Q. You wouldn't tell any stories? A. No, sir.

Q. In this former case here that you had against Mr. Mayerson he tried to show, did he not, that it was his contention that if there was any guilt on his part, which he denied, that in any event you had condoned the offense; did he not? A. What?

Q. While the case had been pending that he had been over to Coney Island with you? A. He did not.

Q. He tried to show that, didn't he in the case? A. He didn't show.

Q. Didn't he call witnesses that he went with you? A. He did not.

Q. What? A. He did not.

Q. But he tried to show it, I mean. A. He tried to deny my divorce to say I didn't have nothing to do with him when I was suing.

Q. He tried to show that he did, did he not? A. Well, he tries to show anything; you can't stop him from saying anything.

Q. You admit that you went down to Coney Island with him a couple of times? A. I did not.

Q. To visit his brother down there, or your brother? A. I did not.

Q. And that you went down to Toms River with him and stayed over night down there? A. I did not.

Q. Didn't you admit that? A. Not in the time when I was suing; this was after.

Q. Why, isn't that all through this testimony, that he went down to Toms River with you, that you and he had intercourse on a bench down there while he was prevailing on you to come home; isn't that all in this testimony? A. No; it isn't the truth.

Q. It was so testified? A. Well, he could testify anything.

*Helen Mayerson, cross.*

Q. After all that testimony you denied absolutely that you were with him, or that you had anything to do with him while that case was pending? Didn't you say so? Didn't you swear in that court that he had absolutely nothing to do while that case was pending? A. When I was suing for divorce? 10

Q. Yes. A. Sure not; he didn't have nothing to do with me in the time I was suing for divorce.

Q. He didn't come over to Pitkin Avenue? A. No; after.

Q. While the case was going on he came over there to see you? A. No.

Q. Didn't you just hear the testimony read to you? A. Well, you are trying to mix me up; I remember that I didn't say it. 20

Q. Didn't you hear it? A. I did not.

Q. Didn't you testify here, weren't you asked this: "Since your husband left you in May, 1921, when you discovered this adultery that you claim to have discovered at Vineland, has your husband been over to see you, or been in communication with you; if so, for what purpose, and how often? A. Well, my husband was there about three or four times a week begging me I should come back to him." A. I never said that. 30

Q. You never said that? A. No, I didn't.

Mr. Kelsey: I would like to have the opportunity to call the stenographer; I think it is Mr. Robertson, who took the minutes of that trial.

The Court: What is the date of that hearing?

Mr. Kelsey: Why, back in 1923; this is October 8, 1923. 40

*Helen Mayerson, cross.*

Q. Do you remember going to Spring Lake with him, while the case was going on? Didn't you go down to visit him at the Spring Lake boarding house? A. Well, I don't went to Spring Lake; I have a sister living out in Toms River and he came, he told me that he is going to go to Toms River with me, my brother and all the children and he went and took me down to Spring Lake; not to Toms River.

10

Q. Well, he first went down to Toms River and then came to Spring Lake? A. No; first he went to Spring Lake, and after he came to Toms River, back to Toms River.

20

The Court: You went with him to both places?

A. Well, yes.

Q. You and he occupied the same room all night in Spring Lake while the case was going on, didn't you? A. No, sir.

Q. No? A. No.

Q. Nothing of that sort? A. No; I was sleeping with Mary Mayerson; she will testify that I was sleeping with her.

30

Q. You went out to the theatre with Mr. Mayer-son when the case was going on, and he also went to buy some dishes for the house? A. No, sir.

Q. What? A. No, sir; I didn't.

Q. What? A. No; he followed me; I just would see Mr. Mayerson in the time and he followed me to New York.

Q. Didn't you go with him to buy a lot of dishes for your house? A. I did not.

40

Q. No? A. He followed me; he isn't such a good man to buy dishes.

Q. He wanted to buy the dishes for you? A. He

*Helen Mayerson, redirect.*

didn't buy the dishes for me; I bought myself with my own money.

Q. He was following you all around? A. He was following me right out from this building here where Mr. Morten had an office, in this building, he was by you, he was following me.

10

Q. He was crazy to have you come back and live with him, wasn't he; he followed you here from the court room to try to get you to come back? A. Don't you see how crazy he was, he wrote me a letter to the hospital he didn't care for me.

Q. You were in the hospital? A. Why didn't he pay for me? Why didn't he bring me back.

Q. Why didn't you go with him? A. He didn't want to pay; I did ask him; don't you see how much he cared for me? My family cared for me; they took me out, but not him; he didn't want to give me nothing; he didn't want to give his children in their home; he didn't want to give to anybody.

20

Q. You were very sympathetic about his children. A. I had to sleep in the closet.

Q. You were very much concerned about his children, weren't you? A. Well, I think I was.

Q. You were very much worried about them? A. Because the father didn't see them; he was no father to them.

30

Q. Do you remember the day that you hit him with the glass over the head arguing with him, when you threw the children's clothing out in the street? A. Oh, that is not so.

Q. Their coats and everything? A. Because I didn't want to work in the bar room and he struck me; he didn't want to give me nothing to eat.

*Redirect examination by Mr. Melosh:*

40

Q. When you testified here, "By marriage I am

*Helen Mayerson, recross.*

54 years old," what did you mean by that? A. Well, Mr. Mayerson, when I married him I was twenty years old, I couldn't talk no English, I was only two months in this country; Mr. Mayerson was doing all the talking. My family was against that I should marry Mr. Mayerson, and he was afraid they might annul the marriage because I was twenty years old, so he gave 26. Well, 26 and 29, that makes 54, 55 years. That is what I am going by, by my marriage.

10 Q. Then what you really mean is that the age that was given at the time of your marriage, plus the number of years you were married, makes you 54 years old? A. What is that?

20 Q. That the age which was given at the time you were married. A. Yes.

Q. Together with the length of time you were married; is 54 years old? A. Yes, by my marriage; but really I am 49 years old.

Q. Now you are actually how old? A. 49.

*Recross examination by Mr. Kelsey:*

30 Q. Do you know how it was when I asked you here before I showed you this certificate of marriage what your age was you said it was 54? A. By the marriage.

Q. Before I asked you anything about the marriage, why did you say your age was 54? A. By my marriage I am 54.

Q. Did you go by your marriage to figure it out? A. I go by the paper.

Q. Or your age? A. I am in the paper here, my marriage papers, I am that much; I go by that.

40 Q. You would date your age from the date on the marriage paper? A. That is what Mr. Mayerson gave it to me.

*Helen Mayerson, recross.*

Q. You don't date your age from the date you married Pinchuk? A. Well, I was fifteen years old that time.

Q. When you married him? A. Yes, sir.

Q. Your parents thought of an annulment because you were too young a lady? A. What is that? 10

Q. They tried to get an annulment? A. My husband thought of that. I don't want you to mix my first husband in that case; that has got nothing to do with me and him.

Q. It makes you a little worried— A. Let him rest in peace.

Q. It makes you feel a little worried when we talk about that. A. Well, sure; I lost a good husband. 20

The Court: I am not quite clear about the receipt of these two letters. I think she said she received one of these letters; I don't recall that she said she received the other.

Mr. Kelsey: Oh, yes; I would like to ask her about that.

Q. I would like to ask you, Mrs. Mayerson, to write your name on there, please; write it the way you always write it. A. (Witness writes as directed.) 30

Q. Just write it now with a small "h"? A. I don't know another "H"; that is the only "H" I know how to write.

Q. You know what a small "h" is, do you not? A. Well, I don't know how to write it; that is the only thing I write.

Q. Write your name now with a small "h". A. I can't write a small "h"; that is my "h" what I write on everything. 40

*Helen Mayerson, recross.*

Q. Write it in ink, please. A. (Witness writes as directed.)

Q. Do you always write as slowly as that? A. Yes.

10 Q. You can't write your name with a small "h," eh? A. That is the only "H" I write.

Q. You never write your name with a small "h"? A. Well, I don't know; that is the way I always do.

Q. So this "h" that I show you on this Exhibit P-4, you can't write that because you never use a small "h"; is that right? A. I don't know; that is not my signature.

Q. Well, that is because you can't use a small "h"? A. Because it isn't my signature.

20 Q. You never use a small "h"? A. I never use a small "h."

Q. You can't write your name with a small "h"? A. No.

Q. You never do? A. No.

Q. I show you that signature on the back of that and I ask you if this is not your signature with a small "h"? A. That is my niece wrote it.

Q. What is that? A. My niece wrote it.

30 Q. Your niece wrote it? A. Yes.

Q. Did you see her write it? A. I gave her the pencil.

Q. Did your niece write that on Exhibit P-4? A. No.

Q. How do you know your niece wrote that (indicating)? A. Because I see.

Q. You saw it; does your niece live with you? A. I live with them, yes, not all the time; not in the time she signed that check; she cashed the check for me; she wrote on that.

40 Q. So you didn't sign your name there then? A. I think she signed.

*Simon Mayerson, direct.*

Q. You think she signed; don't you know? A. That is not my signature; I don't remember when that check was cashed; I know I gave it to my niece that she should cash it; if I signed it, I don't know.

(Specimen of handwriting marked Exhibit P-7.) 10

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REBUTTAL.

SIMON MAYERSON, recalled:

*Direct examination by Mr. Kelsey:*

Q. At the time your father married your stepmother, where were you living? A. Vineland, New Jersey. 20

Q. At the time of the marriage? A. I went down from Vineland to Brandonville, which was the home of my grand-aunt and grand-uncle; we stayed there because we had no home at the time.

Q. What I want to know is this: Did you live in New York at the home of Mary Mayerson when your father married your stepmother? A. Yes, sir.

Q. When was that? A. We came to, my father took me to New York, I must have been about nine years old at the time, I was only a youngster and my aunt had some children, and I was a child, we all played together, that was only on a visit. 30

Q. How long were you up there on that trip? A. That I couldn't say, how long.

Q. While you were there was your father married? A. No; not that I know of.

Q. Were you ever there at any time when he was married? A. Well, I remember the night that 40

*Simon Mayerson, direct.*

he was to be married I cried, because I wanted to go.

Q. Where were you then? A. In my aunt's house.

10 Q. Now, who, if anybody, went with you back to Vineland from New York, after he was married? A. Why, his wife, and I and he.

Q. Did you know your stepmother before your father married her? A. I used to go in her store.

Q. How far was that from your aun't home? A. Just a little ways.

20 Q. Well, was that three miles, or three feet, or what? A. Well, my aunt lived on, as I recall, on Ludlow Street, in New York, and there was a school opposite the house, as I picture the thing, and we were across from Delancey Street, and she had her store there on the same side of the street.

Q. On Ludlow Street? A. Yes; my aunt's brother had a sewing machine store opposite her store, we all used to play right in front of this sewing machine store, and we used to cross over to her store to buy little things when we were kids at the time.

30 Q. Did she knew you? A. Why, certainly.

Q. Did she know that you were a son of the man that she intended to marry? A. My aunt's kids used to put me up to go in there so that we would get ice cream, because they used to say that is going to be your new mother.

Q. Did she know that? A. Why, certainly; she never took the money from us; that is indelible in my mind.

40 Q. Well, do you know whether your stepmother knew about any other children; do you know

*Samuel Mayerson, direct.*

whether she did or not? A. Well, that I can truthfully answer I don't know.

Q. Did you attend the wedding? A. No.

Q. You said they wouldn't take you? A. Yes; I wanted to go; I remember crying myself to sleep that night; they all went and I had to stay at my aunt's house. 10

Q. Do you know whether Mrs. Mary Mayerson was acquainted with your stepmother before her marriage? A. She used to come up to the house.

Q. Who; your stepmother? A. Certainly.

Q. She used to visit your aunt? A. Why, certainly.

Q. Before they were married? A. Why, that is how she got to know him; that is the way I understand. 20

Q. Through Mrs. Mary Mayerson? A. Yes.

*By the Court:*

Q. Do you mean that you were there when she used to visit your aunt? A. Yes, because she came to visit; that is the time they got married and went back.

No Cross Examination.

30

SAMUEL MAYERSON, recalled.

*Direct examination by Mr. Kelsey:*

Q. After the determination of that former case of your wife's against you, in your favor, did you take up marital relations with your wife; I mean did you live with her as husband and wife at Pitkin Avenue, Brooklyn? A. Did I live with her?

Q. Yes. A. No, sir; she wouldn't allow me to the house; she only met me on the street. 40

*Samuel Mayerson, direct.*

Q. I mean after the case was decided. A. After the case she wouldn't; all the meetings I had with her was in the street for a while; then she took me upstairs because she wanted to surprise me; she fixed up her apartment.

10 Q. Did you stay there all night? A. Not over night; only that night from the wedding, and the Jewish holidays I thought we were going to make up, the following morning she told me very thoroughly what she wants and I told her, "Mrs. Mayerson, good-bye and good luck to you."

Q. What do you mean she told you thoroughly? A. That she wants everything I got, I should give it to her.

20 Q. That was that Jewish holiday that was in October, 1925? A. That is five years ago; it will be four years.

Q. That was the last time you were ever in her apartment on Pitkin Avenue, Brooklyn? A. Yes, sir. I didn't know she sold the house; I never knew she moved; after this second letter, then.

30 Q. What about that second letter? A. I have wrote her a letter, that was after that Jewish New Years, about a few months after, I went and wrote her that letter, thinking she made her mind up, but I didn't know that she sold the house, I never knew that she moved; I sent it to 2080 Pitkin Avenue; then she calls me up a week later that she received a letter from me, I should meet her in New York; I says where, she says, "Which way are you coming?" I said I am going in through Staten Island; meet me at the ferry there down there." I waited five hours for that woman and she didn't show up.

40 Q. When was that? A. That was after she received the second letter, about a week.

*Samuel Mayerson, direct.*

Q. In February, 1926? A. That is the one she denies it; then on the following week she calls me up, she says it was raining, she couldn't come down, I should meet her at Van Nostrand Avenue, at the subway, and Eastern Parkway, at one o'clock; and I came there from Perth Amboy and I came out of the station from the subway and I looked around, she was standing across the street and I went over to her, she says, "What are you standing here for?" She says, "Well, I wanted to meet you here." So I says, "All right," I says, "Let us go to dinner," I went with her to dinner, then I went in to a show with her trying to talk to her, then after I says "Take me up to your home" and she said, "I don't want to stay tonight," so she went and took me as far as the station, thinking at the time that I went down to the tube that she will go home; when I came out I beat her, I wanted to find out where she lives; I found her take in the taxi and I met her five stations from that, so that I shouldn't know where she lives; I didn't know where she lived until I found out through her lawyer, I had to call him up, I told her lawyer that is her brother-in-law, I didn't tell him who it was, I told her it was her brother-in-law from Toms River, and he gave me her address, and I sent my daughter to find out and tell me where she lives; then I came up to her house.

Q. Is it true that you didn't tell her that you had children before you were married? A. Why, I told her I wanted a mother for my children; that is the only way I got married, for I wanted a good mother for my children.

Q. Where did you first meet her? A. I met her through my sister-in-law's mother-in-law; they were across the street, and I came to New York

*Samuel Mayerson, direct.*

from Vineland, and they told me there is a lady over there just came from the other side, she is a very fine woman, she has no children, she will make a good mother; they were the matchmakers; these people told me they were.

10 Q. Who introduced you to her? A. My sister-in-law's mother; she was the matchmaker.

Q. Mary Mayerson's mother? A. Mary's mother; she is dead now; I never knew that woman till she introduced me to her, because I never lived in that part of the city.

20 Q. Where was your boy Simon at the time of your marriage? A. Well, I brought him with me when I came to New York for a visit, I brought him with me, because I wanted to place him with my own sister in New York, he was going to school, it was too far to go where he went and I wanted him to go to a Jewish school.

30 Q. What I mean is, was he in New York at the time you were married? A. He was in New York and she knew; I took her up to my sister before we were married and I took her up to a cousin of mine in Brooklyn where she had a suit made down there. I wouldn't deny my children; I wanted her to be a good mother, as she never had any children.

Q. Who, if anybody, went back to Vineland with you after you were married? A. Only her and I, I took the boy back.

Q. Did the boy go back? A. Sure; I thought I would have a home for them with her.

Q. Who was the owner of that apartment in Perth Amboy that you took her to view?

40 Mr. Melosh: I object to that; that is immaterial; I don't see how it applies one way or the other here.

*Samuel Mayerson, direct.*

The Court: I will permit it subject to your objection.

A. He had a house in Jersey City.

Q. No; who was the owner? A. A man by the name of Jacob Machinsky and his wife; I took her up there, so then this Jack Machinsky wanted to sell the house, and I then told her and I asked her to come, I show you the apartment I live in.

10

Q. If this case is laid over can you bring Jacob Machinsky here to testify? A. I will have him here; he will come willingly to testify, he and his wife, if it is necessary. She refused to go and live with me; I tried everything in the world to make her come here to live with me, because I can't knock around; after I became crippled I couldn't get around.

20

Q. After you left the hospital at Perth Amboy and went to Freeport to your daughter's home, how long after you first got there, as your daughter says, carried in, did your daughter telephone your wife? A. I don't think it was more than a week or ten days when I was able to help myself up a little and do a little talking over the phone, because the phone was right at the bed in the same room.

Q. When was it— A. And actually, your Honor—

30

Q. When was it that you sent Mrs. Lee and Mrs. Lanceman to the apartment on Eastern Parkway to see your wife? A. Just in the same month, as soon as I found out where she lives.

Q. Was it before or after you had telephoned her from Freeport? A. No; after I telephoned; she never notified me that she laid in the hospital in New York, but I used to go for treatments to the Post Graduate for my leg, electric treatments; when

40

*Samuel Mayerson, direct.*

I came there I gave my name and they told me there is a Mrs. Mayerson, Helen Mayerson, that was upstairs and I wanted to climb up with my crutches, I came in and I found her there.

10 Q. Did you know before that that she was in there? A. I didn't know; I just happened to go in this room.

Q. Is it true that she asked you to get a nurse for her and she spoke about her expenses? A. I couldn't. How could she ask me? She seen me on crutches; everything was paid; she hired the biggest man to operate on her, she paid about \$300. for the operation.

20 Q. Before you went there? A. I didn't know it, because I put my name down there for treatment, when I came up there he asked me my name when I came in the hospital; she never let me know.

Q. Did you ever go to her sister's home to try to find out where she lived? A. Yes; I went to look, to try to find her, but she wouldn't tell me.

Q. Was that ten months ago, or how long ago? A. Why, it is only a short while ago, I don't think it is ten months; it must be four or five or six months ago I was trying to hunt her up.

30 Q. Well, it was while this action was pending? A. No; I don't know anything about this case, about any papers; you had that case pending.

Q. Just a little slower. A. I will just tell the time, when the Zeppelin was there in—

40 Q. Lakehurst? A. Lakehurst; I went to see the Zeppelin, a friend of mine took me, then I says to my friend, "Take me over to Toms River to see if they got any information about my wife"; he took me over there; when I came there I seen her sister, her sister told me she comes here but she couldn't tell me where she lives; I asked where

*Samuel Mayerson, direct.*

the other sister lives and she told me 214 Osborne Street; I walked around, I walked down Osborne Street and I spoke to her sister, and her sister wouldn't give me no satisfaction. I said, "Is there any possible way for us to come together?" She said, "No, you couldn't talk to her." 10

Q. Was this before— A. In the time the Zepelin was there.

Q. Was this before or after this suit was started, this present suit? A. If you started the suit or not I don't know how far you went with it yet, and I always thought I might get her, I might find her, but she never let me know where she lived, she was hiding away. She was living with another man. That is as true as I am living here. 20

Mr. Melosh: I object to that.

The Court: Strike that out.

Q. Do you remember the time of the wedding of that party she says she didn't know the name of? A. Yes.

Q. Do you know the name of the party? A. I don't know the name of the party; wherever she asked me to go with her I pleased her, I thought she might get good. 30

Q. When was that? A. I went with her to the wedding.

Q. When was that? A. It was in the summer.

Q. What year? A. It was in 1924—no, 1925, in the summer, it was a summer wedding, Sunday afternoon.

*By the Court:*

Q. With relation to the wedding of your son, was it the same summer? A. That was the same summer, a couple of months later. 40

*Samuel Mayerson, direct.*

Q. Your son's wedding was a couple of months later? A. A couple of months later; I done everything to convince her.

10 Q. Was that wedding before or after this check for \$100 was given by you to her? A. That check was given in December; that was after the wedding.

Q. How long after? A. The wedding was in the summer, in 1925, and that check was given a year ahead, when she was down in Amboy to look at that apartment, I gave her that check, she went and cashed it.

20 Q. How long after you gave her that was that wedding? A. The wedding was in 1925, in the summer, this check was in 1924; I will get the certificate to that wedding and you could prove that about the next case.

*By Mr. Kelsey:*

Q. Did you hear the questions and answers that I read to her from the minutes of the former case? A. Yes, sir.

Q. Were those questions asked and the answers given at that trial? A. Yes, sir; that was true; I don't deny it.

30 Q. You had this testimony in your hands of that trial? A. Yes, sir.

Q. Until lately; very recently? A. Yes, sir; I had to look it through.

Q. Have there been any changes in it in any way? A. No, sir; I think Mr. Melosh has a copy of that, too; I paid for three copies.

40 Q. Well, it is a fact that he did have it; you paid for three copies of the minutes? A. Sure, I paid.

*Samuel Mayerson, cross.*

Q. One for the Court? A. One for the Court; Mr. Melosh has got the book.

*By the Court:*

Q. When is the last occasion on which you spent the night in company with your wife; I mean to be in the same room with her? A. Well, that was in 1925, I stayed over night on New Years night; since that time, your Honor, I never had nothing to do with the woman. 10

Q. That was when; in January, 1925? A. No; that was in September; the Jewish holidays falls in September, 1925.

Q. That was in Brooklyn? A. In Brooklyn.

Q. You stayed over night with her there? A. With her, but in a separate room; she has a spare room. 20

Q. You stayed in the spare room on that occasion? A. Yes, sir.

Q. You didn't have sexual relations with her then? A. No, sir.

Q. When was the last occasion that you had sexual relations with her? A. That was during the time the trial was going on, in Spring Lake; she denied it.

Q. The date of that was when? A. Oh, that was Labor Day, in 1922, I think, while the trial was going on. 30

*Cross examination by Mr. Melosh:*

Q. On the last visits to your wife you met her on the street, is that right? A. The last?

Q. The last visits, you met her on the street; one time you said you met her in front of the ferry house; is that right? A. I didn't meet her that 40

*Samuel Mayerson, cross.*

night in front of the ferry house, she disappointed me; and I sent her a second letter.

Q. Another time you met her in front of the ferry house? A. No; she told me to meet her in front of the ferry house but she didn't show up.

10 Q. Didn't you testify just a little while ago that you came in the ferry house and you saw your wife standing there and you said, "What are you doing here?" And you took her to her sister's and you took her out to show, and she got in a taxicab and skipped away from there; didn't you testify to that? A. Not in the ferry house; the second time, at the subway station.

Q. You saw her first in front of the ferry house?

A. No, she disappointed me.

20 Q. She disappointed you? A. In front of the ferry house, she did.

Q. Another time when you came over you saw her? A. Not at the ferry house.

Q. When was the last time you were at your wife's house? A. When was I the last time?

Q. Yes. A. That was two years ago, in the month of April.

30 Q. That would be April, 1927? A. Two years ago, I came on my crutches and I needed a home I didn't have no place to be, I had to move to a furnished room; my daughter has a sick child and I went up there for that purpose to ask her, I said, "Helen, let us make up, take me in"; she says, "No"; I says, "Couldn't I stay here over night, it was in the evening, I was on crutches, it was kind of slippery, in April, the beginning of April, she says, "No"; I says, "Easter is coming, let me spend Easter with you"; she said, "No, I am going away to my sister in Toms River," then she went down; 40 I said, "If you don't do that I will have to look

*Helen Mayerson, direct.*

for some court action, that is the very question and she said I could do as I pleased; that is the last answer.

Q. Didn't you say in your direct examination that you hadn't been at your wife's house since the previous case? A. Since what do you mean, previous? 10

Q. The last case. Since it was finished? A. Sure, I admit that I went to give her an inducement to go to live with me.

Q. How often were you there? A. I haven't been to the house; it was always in the street.

Q. Then you met her in the street after New Years? A. She asked me up to the house, after my son's wedding I went to the house.

Q. Up to her house? A. Yes; and I saw she had some nice furniture and I offered to live there, she says she had to pay instalments, it cost \$1,800, and I said I will pay the rest of the instalments. 20

Q. Is this your signature (indicating)? A. Yes, sir; that is my signature.

(Card marked Exhibit D-1 for Identification.)

HELEN MAYERSON, recalled: 30

*Direct examination by Mr. Melosh:*

Q. Mrs. Mayerson, I show you a card addressed to Mrs. Helen Mayerson, 2080 Pitkin Avenue, Brooklyn, New York; did you receive that card? A. Yes, sir.

Mr. Melosh: I don't think that is proper redirect examination now. This could have been gone into before. I object to that as immaterial. 40

*Helen Mayerson, direct.*

The Court: I will overrule the objection.  
(Card offered in evidence, admitted and  
marked Exhibit D-1.)

10 Q. After you received that card did your husband visit you at your house as he said he would on that card? A. Yes, sir.

NO CROSS EXAMINATION.

20 The Court: I think the testimony in the other case should be put in. As it stands now, the defendant has not admitted testifying as you have read from the record. If the record of the prior case reads the way you indicated by your question that it reads, that ought to be in the case.

Mr. Kelsey: Well, Mr. Melosh, I presume, will look at his testimony, and if he hasn't a copy I will let him have this one.

Mr. Melosh: I haven't it here; that is undoubtedly in the office.

The Court: I am not sure but what, being in the same court, I might take judicial notice of it, provided the record is certified.

30 By agreement of counsel it is admitted that the following is an extract from the testimony given by Helen Mayerson before Vice-Chancellor Griffin on October 8, 1923, in her suit for divorce against her husband, appearing on pages 306 and 307 of the trial minutes.

40 "Q. Since you left your husband in May, 1921, when you discovered this adultery that you claim to have discovered at Vineland, has your husband been to see you, or been in communication with you; and if so, for what, and how often? A. Well,

*Helen Mayerson, direct.*

my husband was there about three or four times a week, begging me I should come back to him; he said he would do anything in the world for me; he would sign mortgages that he has on houses, and he bought just a new house, and he wanted to sign it on my name, that I should go back to him. 10

“Q. How many times has your husband attempted to do that since last May—tried to get you to come back? A. Oh, always, about three or four times a week he used to come around.

“Q. Where did he see you? A. He used to wait for me when I came down for supper at 7 o'clock; I used to go down to my house for supper; and he used to wait on the street and talk to me that I should go back to him, and I always refused. 20

“Q. And did he give you any reason as to why he wanted you to go back to him? A. Well, he says he loves me and he wants I should go back to him, and I should not be so foolish on account of such a woman that I should sue him for divorce; and he said he would be the happiest man in the world that I should walk with him in the street, and we should walk in the street with Mrs. Neiditch and he would spit in Mrs. Neiditch's face; he would be the happiest man in the world that I should go back with him. 30

“Q. What did you tell him? A. I told him I never would go back to him.”

**Exhibit P-1.**

## CERTIFICATE OF MARRIAGE.

172975

New York, July 28, 1921.

10 A Transcript from the Records of the Marriages reported to the Department of Health of The City of New York.

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The City of New York.	No. of Certificate,
Department of Health	5494

STATE OF NEW YORK.

## CERTIFICATE AND RECORD OF MARRIAGE

of

20 (Groom) (Bride)  
Samuel Mayerson and Helena Dittman

---

30 Groom's Residence—Vineland N. J.  
Age—33 yrs.  
Color—White  
Single, Widowed or Divorced—Widowed  
Occupation—  
Birthplace—Russia  
Father's Name—Jacob Mayerson  
Mother's Maiden Name—Minnie Isariel  
Number of Groom's Marriage—Second

40 Bride's Residence—Brownville Brooklyn  
Age—26 yrs.  
Color—White  
Single, Widowed or Divorced—Single  
Maiden Name if a Widow—  
Birthplace—Russia  
Father's Name—Sigmund Dittman  
Mother's Maiden Name—Ida Gross  
Number of Bride's Marriage—First

---

*Exhibits.*

I HEREBY CERTIFY, that the above-named groom and bride were joined in marriage by me in accordance with the laws of the State of New York, at..... in the Borough of Brooklyn, City of New York, this 14 day of Sept. 1900.

Signature of person performing the Ceremony—JAMES J. BRIDGES  
Official Station—Alderman  
Residence—283 Front St., 10

Witnesses to } Nathan Worth  
the Marriage } A. Oppenheim

Date of Record—Sept. 19, 1900.

A True Copy, 20

CHARLES L. KOHLER,  
(Seal) Secretary,  
Board of Health,  
City of New York.

S. J. BYRNE M.D.  
Assistant Registrar.

NOTICE.—In issuing this transcript of record, the Department of Health of The City of New York does not certify to the truth of the record transcribed. The seal of the Department of Health attests only the correctness of the transcript, and no inquiry as to the facts reported has been provided for by law. 30

*Exhibits.***Exhibit P-2.**

(Letter dated February 19, 1924.)

Feb. 19, 1924.

10 Mrs. Helen Mayerson,  
2080 Pitkin Ave.,  
Brooklyn, N.Y.

My Dear Wife:—

Now that the case has been determined, you have no justification in refusing to live with me.

Everytime I have met you, in the last six weeks, I have asked you to live with me again, and you have said that you will not.

20 You should not expect me to support you while you persist in living away from me.

I love you and need you and know of no reason why we could not be happy again, if you would only come over to Jersey and live with me, or at least give it a trial.

30 You know, without need for me to tell you, that the same home you left more than three years ago is still open to you, and that you would be more than welcome; and, of course, if you don't like the place, we can select another apartment here that will suit you.

I hope you will give this letter carefull consideration and give me a favorable and early answer.

From your loving husband,

SAM MAYERSON

*Exhibits.***Exhibit P-3.**

Photostatic copy of Return Receipt for letter dated February 19, 1924, inserted at end of Record.

**Exhibit P-4.**

10

Photostatic copy of Return Receipt for letter dated February 25, 1926, inserted at end of Record.

**Exhibit P-5.**

(Copy of Letter dated February 25, 1926.)

February 25, 1926

20

My dear Helen:

As you know the two years have passed. I have tried on several occasions to induce you to come and live with me. You never made any attempt to do so and to forgive and forget.

I would like to know if these few lines will convince you to come and live with me as man and wife. If you can't consider it, the only way out is to start court proceedings for divorce as the time is up according to the Desertion Law.

30

I will give you ten days to consider this. Please let me know either by mail or phone what your intentions are.

From your husband,

SAM MAYERSON

40

*Exhibits.*

**Exhibit P-6.**

Photostatic copy of Check inserted at end of Record.

10

**Exhibit P-7.**

Photostatic copy of Handwriting inserted at end of Record.

**Exhibit D-1.**

POST CARD

Port Amboy Oct. 17 1924

20

Mrs. Helen Mayerson  
2080 Pitkin Av.  
Brooklyn  
N. Y.

My Dear Vife Helen

I wil call you up on the telephone Sunday be-  
case I goth to be at the building our jeneter left  
us and we got to look for another jeneter mighth  
you know some one that wold taike that job wait  
30 for me at the house I will come to the city 2 P. M.  
I will keep open Sunday open a half a day from  
your husband

S. MAYERSON

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**Opinion.**

No formal opinion filed.

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## LETTER OF ADVISORY MASTER TO COUNSEL.

“In this case I think it clearly proved that the petitioner, Samuel Mayerson, is entitled to a decree for divorce against the defendant, Helen Mayerson, on the ground of desertion. While the petitioner denies that the defendant sought her return in any such bona fide manner as he was, under the circumstances, required to do, the force of her testimony is, in my opinion, entirely nullified by the testimony she gave in the previous litigation between the parties. On the other hand, the petitioner is well corroborated.

“If there should be an appeal and I am informed of it, I will prepare a formal memorandum. This letter is entirely for the information of counsel. I will advise a decree in the usual form.”

---

Harry Lane, Esq.,  
75 Montgomery St.,  
Jersey City, N. J.

*Mayerson v. Mayerson*

Dear Sir:

Yours of the 31st ult. is at hand. I do not think any opinion will be necessary as the case only involves facts.

Very truly yours,

DH:EMS

DOUGAL HERR.

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*Decree Nisi.*

with process within this State, and that (the petitioner being at the time of the commencement of this action a *bona fide* resident of this State) jurisdiction herein has been acquired by publication of notice to the defendant of this suit, followed by notice to the defendant without this State, as service substituted for personal service within this State, pursuant to the orders heretofore made by the Court in this cause for that purpose, and as prescribed by law and the rules of this Court, as well as by the appearance and answer of the defendant. 10

It is thereupon, on this 5th day of August, A. D. nineteen hundred and twenty-nine, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, and of the acts of the Legislature in such case made and provided doth hereby ORDER, ADJUDGE AND DECREE that the said petitioner, Samuel Mayerson, and the said defendant, Helen Mayerson, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute, within three months from the date hereof. 20 30

And it is further ORDERED, ADJUDGED AND DECREED, that the said petitioner do pay to the said counsel of the defendant a counsel fee of fifty dollars.

Respectfully advised,

E. R. WALKER,

DOUGAL HERR,

C. 40

A. M.

*Notice of Appeal.*

We hereby approve the above-stated decree as to its form.

MELOSH, MORTEN & MELOSH,  
Solicitors of the Defendant.

10

**Notice of Appeal.**

(Filed Oct. 22, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL MAYERSON,  
*Petitioner,*

and

HELEN MAYERSON,  
*Defendant.*

67/40.  
On Petition for  
Divorce.  
(Sat below  
WALKER C.  
HERR, A. M.)

20

The above named defendant, Helen Mayerson, hereby appeals from the decree *nisi* filed in this cause, made by the Chancellor on the advice of Advisory Master Dougal Herr, bearing date the 5th day of August, A. D., 1929, and from every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

30

CAREY & LANE,  
Solicitors for and of Counsel with Defendant.

Dated October 22nd, 1929.

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

HARRY LANE,  
Of Counsel with Defendant.

40

(Service duly acknowledged.)

**Petition of Appeal.**

(Filed November 1, 1929.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

Between

SAMUEL MAYERSON,  
*Petitioner-below,*  
*Respondent,*

and

HELEN MAYERSON,  
*Defendant-below,*  
*Appellant.*

Divorce.  
On Appeal from  
Chancery.

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

20

The petition of Helen Mayerson, the appellant, respectfully shows; that your petitioner find herself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Advisory Master Dougal Herr, bearing date the 5th day of August, A. D. 1929, in that the said decree recites that the defendant has been guilty of wilful, continued and obstinate desertion of the petitioner-below for the term of two years, as alleged in the petition filed in said cause; and that said decree further recites and orders, adjudges and decrees that the said petitioner, Samuel Mayerson, and the said defendant, Helen Mayerson, be divorced from the bonds of matrimony for the cause aforesaid; and that the said parties and each of them be freed and discharged from the

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*Petition of Appeal.*

obligations thereof unless sufficient cause be shown to the Court why such decree should not be made absolute within three months from the date thereof.

10 And your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous in that the said Chancellor should have recited and adjudged that your petitioner, the defendant-below, was not guilty of wilful, continued and obstinate desertion of the petitioner for the term of two years as alleged in the petition filed in said cause, and that the proofs did not sustain the allegations of the said petitioner-below, and that the said respondent herein was not entitled to be divorced from the bonds of  
20 matrimony with your petitioner for the cause aforesaid as alleged in his petition, and that the said Chancellor should have dismissed the petition of the respondent.

Your petitioner, therefore prays that the said decree *nisi* may be reversed, rescinded and for nothing holden and that your petitioner may have such further relief as may be meet.

30  
CAREY & LANE,  
Solicitors for and of Counsel  
with Appellant.

(Service duly acknowledged.)

**Answer to Petition of Appeal.**

(Filed November 20, 1929.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

Between

SAMUEL MAYERSON,  
*Petitioner-below,*  
*Respondent,*

and

HELEN MAYERSON,  
*Defendant-below,*  
*Appellant.*

On Appeal from  
the Court of  
Chancery.

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20

The answer of Samuel Mayerson, the above named respondent, to the petition of appeal of Helen Mayerson, the above named appellant.

This respondent, not admitting truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree *nisi* was, on August 5, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

30

This respondent is advised and believes that the said decree is agreeable to law and equity; and he prays that the same may be affirmed with costs to be adjudged to this respondent.

KELSEY & LUDWIG,  
Solicitors for and of Counsel  
with Respondent.

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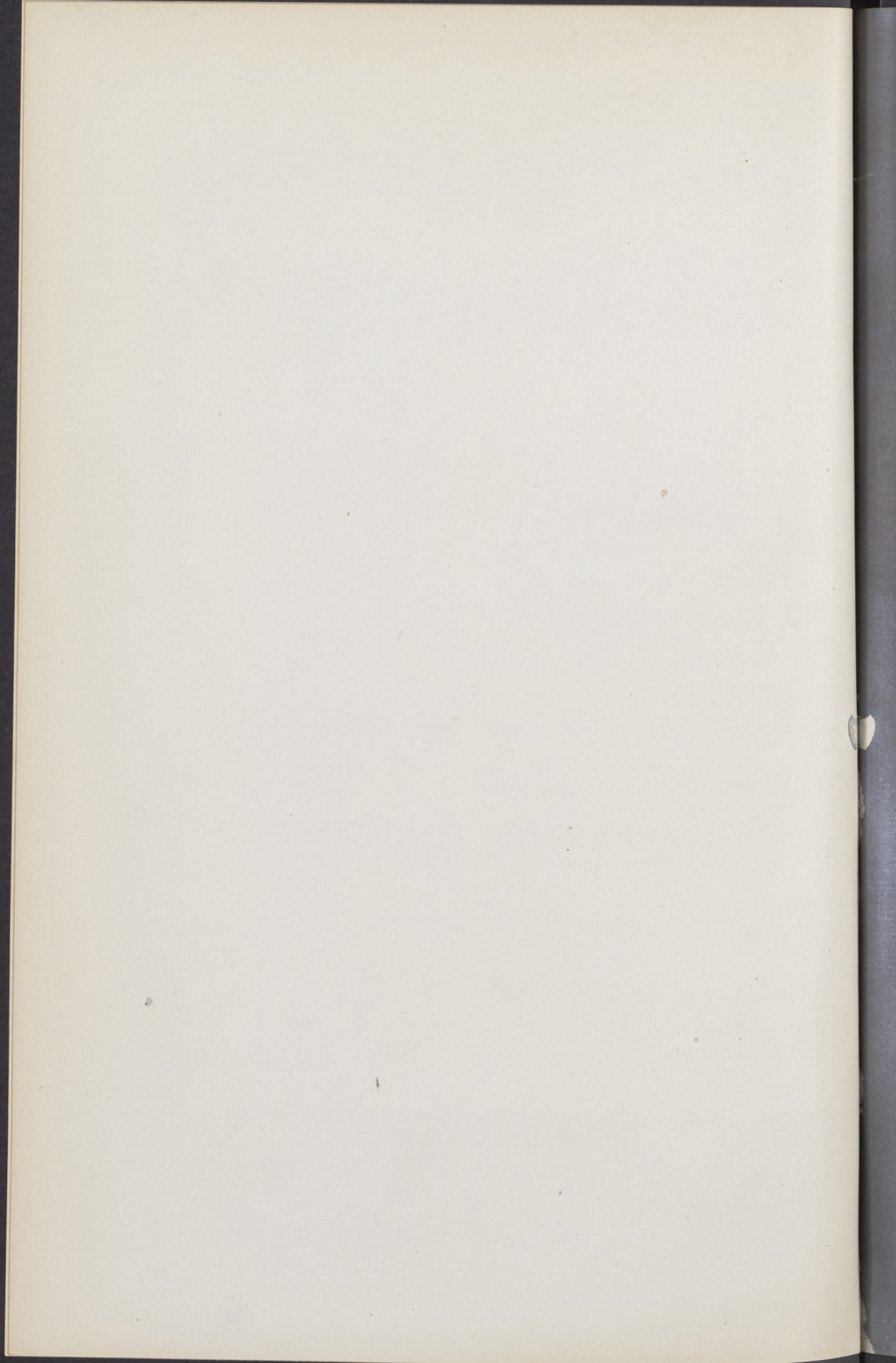
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AYTO  
OR

From





*P. in ev.*

*Helen Mowerson*

*Helen Mowerson*

*P. in ev.*

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

*Personal receipt Helen Mowerson*  
\_\_\_\_\_  
(Signature or name of addressee.)

\_\_\_\_\_  
(Signature of addressee's agent.)

Date of delivery, *2/21*, 192*7*  
Form 3811

*P. in ev.*

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

*Helen Mowerson*  
\_\_\_\_\_  
(Signature or name of addressee.)

\_\_\_\_\_  
(Signature of addressee's agent.)

Date of delivery, *2/26*, 192  
Form 3811

U.S. DEPARTMENT OF POSTS AND TELEGRAPHS

16-5112



## New Jersey Court of Errors and Appeals

Between

SAMUEL MAYERSON,  
*Petitioner below*  
*Respondent,*

and

HELEN MAYERSON,  
*Defendant below*  
*Appellant.*On Petition, etc.  
On Appeal from  
Chancery.

## BRIEF OF APPELLANT.

This case comes up on appeal from a decree of the Court of Chancery granting a divorce to the petitioner on the ground of desertion (p. 110). The petition sets forth that the petitioner and defendant were married on September 13, 1900, by an Alderman of Brooklyn, and on the day following, September 14, 1900, by a Rabbi in Brooklyn; that the defendant deserted petitioner in the month of February, 1924, ever since which time and for more than two years last past she has wilfully, continuedly, and obstinately deserted the petitioner (p. 2). The answer is a general denial of the desertion (p. 3). The case was tried before Advisory Master DOUGAL HERR. No formal opinion was filed. The Advisory Master by letter notified counsel that he would advise a decree. When the appeal was taken he further advised counsel that he did not think any opinion would be necessary as in his opinion the case only involved facts (p. 109).

### **Grounds of Appeal.**

The grounds of appeal are found in the petition of appeal printed in the record on page 113. Briefly they are that the decree granting a divorce on the ground of desertion was erroneous and that the Chancellor should have adjudged that the defendant was not guilty, of wilful, continued and obstinate desertion of the petitioner for the term of two years as alleged in the petition; that the proofs did not sustain the allegations of petition and that the petitioner was not entitled to a divorce from the bonds of matrimony for the cause alleged in the petition and that the petition should have been dismissed.

### **BRIEF OF THE ARGUMENT.**

**Under the evidence, the petitioner was not entitled to a decree of divorce on the ground of desertion and his petition should have been dismissed.**

#### **A.**

#### **FACTS.**

#### **Brief Resume of Testimony.**

*Samuel Mayerson, Petitioner:*

The petitioner testified that he lives in Perth Amboy and has lived there for six years; prior to that time he lived in Jersey City for about ten or twelve years (p. 4). He had five children by his first wife who were living with him at the time that he married the defendant (p. 5). They lived together as man and wife up to about 1918 when they were living at Grove Street, Jersey City; that his wife separated herself from him but they lived

together in the same house for about two years and that in June, 1921, she left (p. 6); at this time they were living on Grove Street, Jersey City. When his wife left him she went to live first in a hotel in Hoboken and later moved to a house owned by her in Brooklyn. On page 8 he testified that his wife left him a number of times before she finally left in June, 1921; sometimes she would stay away six years then she would come back and tell him she would forget, be good, forget and forgive. On page 9 he testified that he several times in 1921, 1922 and 1923 asked her to come back and live with him; also that during the trial of the case before Vice-Chancellor GRIFFIN that he asked her to come back. (It must be remembered that this was during the trial of a case which the defendant had started against petitioner alleging adultery.) That during the trial petitioner and defendant went to Coney Island a couple of times and also to Toms River. Also that he went to Spring Lake with her (p. 10).

On page 11 he testified that in 1925 (which was a year and a half after the date of the desertion alleged in the petition) he and his wife attended the wedding of his son. On page 11 he was asked as to whether there was any talk between himself and his wife in which any other person took part and his testimony is as follows:

“Q. While you were there at that wedding was there any talk between you and your wife at which any other person took part— A. Well—

“Q. Just a minute—concerning the return of your wife to live with you? A. Well, that is the only cause that I asked her to that wedding, I think she might meet the friends.

“Q. The question can be answered yes or no; was there? A. That was my intention.

“Q. Say yes or no. A. Yes; that was my view.

"The Court: I don't want to know whether it was your view or not. The question is, was there any talk?

"A. Yes, there was a talk; a family talk.

"Q. Say yes or no; that is all you have to say. A. Yes.

"Q. What was said on that occasion, and who heard it? A. Well, I have told her to go—I told her, 'Now, you should go and shake hands with all my children; you mistreated them and they got hard feelings against you; now is the time to make up'; she said she wouldn't do it and she refused to shake hands; I was talking with her together but that is no use; when she says anything that is the law, you can't make her any other way; I know her long even.

"Q. Did you make it a condition on her return to live with you that she must shake hands with your children? A. No; I said, 'Now is the time to make up'; I didn't say to shake, she didn't have to, but I thought that would be a proper way, a nicer way.

"Q. And she said she wouldn't make up? A. She would never shake hands with them.

"Q. Did she say whether or not she would ever live with you again? A. *She didn't say anything about that; she never mentioned anything.*"

On page 12, he testified that after the wedding he went to the defendant's home in Brooklyn with her and that he stayed there over-night, but he testified that he slept in a separate room. It would not appear from this fact that this was immediately after his wife had been asked to live with him and she refused. On page 13 he said that he was up to his wife's house over the Jewish holidays in the month of October, 1925, and asked her to let them holiday together; that there was nobody else present in the house; that he stayed over-night on this occasion, *although he does not state that he did not sleep with her on that occasion* (p. 13).

On page 13 there was admitted in evidence a letter which the petitioner wrote to defendant on February 19, 1924. This letter the defendant admits receiving. It is printed in the record as Exhibit P-2 on page 106. *It will be noted that this letter was written a year and a half prior to the time when the petitioner and defendant went to the wedding together at Spring Lake and he went home with the defendant and stayed over-night and the time during the Jewish holidays in October, 1925, when he stayed with his wife at her home over-night.*

*It is also important to note that this letter was written just after the determination of the first case for divorce. There does not appear to be any other letter until the alleged letter of February 25, 1926 (p. 14). The receipt of this letter is denied by the defendant. The letter was offered in evidence and marked Exhibit P-5 and is printed on page 107. It is also contended that the defendant was not living at the address to which the letter was sent in February, 1926. Photostatic copies of the return receipts for both letters are inserted at the end of the record and are Exhibits P-3 and P-4. Also photostatic copy of handwriting of defendant as Exhibit P-7. It will be noted that a comparison of the handwritings will show that the "H" in the alleged receipt of the letter of February, 1926, is entirely different from the "H" in all the other samples of handwriting of the defendant and is similar to the "H" in the body of the check Exhibit P-6 and the "H" endorsed on the check one of which was apparently written by petitioner and the endorsement by someone other than defendant.*

On page 17 petitioner testified that the decree dismissing the defendant's former suit against petitioner was signed between Christmas and New

Years, 1923. He testified that three years before the trial he heard his wife was in the hospital in Brooklyn and that he went to see her; that she was sick in bed and he was allowed to stay an hour and a half. When he was asked if he had any conversation with her about returning at that time, he said he did not (p. 18, line 5). On page 18, he testified that he fell and broke his hip three years ago and was in the Perth Amboy Hospital for twelve weeks. He said that his wife did not visit him in the hospital. *Subsequently he admitted that she called there at the hospital once in September* (p. 18); that she remained there about fifteen or twenty minutes and that he said to her that he wished that she would take him home when he came out, but that she never gave him an answer. Apparently, he did not ask her to come to see him again (p. 19). At the bottom of page 19, he was asked in reference to the time when his wife was present at the wedding of his son in 1925 and he testified that his sister-in-law asked her why she did not make up and forgive and that his wife simply gave him a smile; "*that is all, no answer whatever, yes or no.*" On page 21, he testified that his wife never offered to return to live with him, *but that she did offer to if he assigned everything to her*; he testified that after his wife moved from Pitkin Avenue he endeavored to find where she lived and went to see her sister and asked her where she lived and that her sister told him that if there was anything that he wanted to send her that he should send it to her and they would send it to her, but she would not tell him where she lived (p. 22). Also he testified that he sent Mrs. Lanceman to see his wife on one occasion. Mrs. Lanceman did not testify, but defendant's solicitor admitted that if she were

called she would testify that on one occasion she asked the defendant to return, but defendant's solicitor expressly stated that *defendant would not admit that Mrs. Lanceman asked her to return*. On page 24, he testified that he called his wife on the telephone at 1335 Eastern Parkway, which is an apparent contradiction of his previous testimony that he did not know where she lived. On page 25 (line 5), he testified, however, that on this occasion over the telephone he told her that he thought he was going to start a suit for divorce. He also admitted that *he hung up the telephone* while he was talking to defendant. It is significant at the top of page 26, that when he was asked if while a former suit was pending, he went over to his wife's home to call on her that he did not answer, although at line 18 he admitted that he did stay all night with his wife while the case was pending.

On page 26, a check was produced which petitioner had drawn to the order of his wife, dated December 8, 1924, for \$100. He testified that he gave it to her at her house and said that she could give it as a deposit on the rent and that she simply cashed it and came to Perth Amboy and stayed there one day and he asked her to a show that night. That he took her to his boarding house, gave her his room and she slept there all night, and he slept downstairs in the living room and that in the morning the defendant said that she would not come to live there for no money in the world. That no one heard the conversation about renting the apartment. It is significant, in passing, that the defendant puts an entirely different version on this check incident, and it might also be noted that the *petitioner gives no explanation as to why he did not sleep with his wife in the*

*boarding house, but slept downstairs. For instance, he does not state he endeavored to have his wife sleep with him and she refused.*

On page 31, he was asked on cross examination if at the time when he was in the hospital and, as he testified, he asked his wife to come back to him, if he had any place where she could go with him, and he said:

“A. No, I only had a room, but she had a home. She had an \$85 rent apartment.”

*Frances Posner:*

Mrs. Posner is the daughter of the petitioner. She testified that there were many splits between her father and the defendant. She testified that *she never talked with the defendant about her relations with the petitioner* except that on the occasion when her father was living at her home in Freeport after he was discharged from the hospital in November, 1927, and stayed with her approximately a year, that she got the number of the defendant for her father and then her father talked with the defendant over the telephone; that her father pleaded with her to furnish a home again; that she did not hear what the defendant said over the telephone (p. 38). She stated that she was present at the wedding of her brother at Spring Lake, but that *she did not hear any conversation* between Mrs. Mary Mayerson, petitioner's sister-in-law, and the defendant. *Mrs. Mary Mayerson did not testify at the trial.*

*Estelle Lee:*

The testimony of Mrs. Lee, another daughter of the petitioner, starts on page 40. She testified that she was present at the hospital in Perth Amboy when the defendant came to see her father, who

was in the hospital; that defendant remained about fifteen minutes after they got there. She testified, however, that *she did not hear any conversation between the petitioner and the defendant wherein the petitioner asked his wife to come back and live with him* (p. 42). She also testified that she took Mrs. Lanceman to the Parkway house to call on defendant, *but that Mrs. Lanceman went up alone while Mrs. Lee stayed downstairs; that she did not hear what the conversation was.*

*Simon Mayerson:*

The testimony of Simon Mayerson, a son of the petitioner, starts on page 45. He testified that he was present at the wedding of his brother at Spring Lake. He was asked if he heard the conversation between his aunt, Mary Mayerson, and the defendant, and said:

“A. Well, I happened to stand right close by when there was a conversation going on, I didn’t want to listen to it, but I couldn’t help but overhear a few words that my aunt Mary Mayerson tried to be a peacemaker, but I walked away.

“Q. What did she say to her? A. She said to forget the old things, why don’t you get together, you are getting old; and I stepped right away; I didn’t hear any more.

“Q. You didn’t hear what your step-mother said, did you? A. No, sir.

He also testified that he mailed the letter of February 25, 1926, Exhibit P-5 (p. 47).

*This was the entire petitioner’s case. It will be noted that the only testimony was given by the petitioner and his three children. Mrs. Mary Mayerson was not produced nor was Mrs. Lanceman, nor was Jack Machinsky, the alleged owner of the apartment house in Perth Amboy.*

### Defendant's Case.

*Helen Mayerson:*

Mrs. Mayerson testified that the petitioner did not want to have his children in the home (p. 51). She was asked as to whether she ever struck her husband and said that she defended herself when her husband was striking her (p. 51). (This was, however, many years ago.) That during the time that the trial of her previous case was going on she saw her husband several times:

“Q. Have you ever seen him since the case was on? A. Oh, yes; we made up, we was living together.

“Q. You made up and you were living together? A. Yes.

“Q. When was that? A. Well, that was in 1925.

“Q. That was in 1925? A. Yes.

“Q. Where were you living? A. Well, I was living in Pennsylvania Avenue, Brooklyn.

“Q. Where? A. Pennsylvania Avenue, Brooklyn; my husband used to come home once a week, every Sunday he used to come home; I went with him on a wedding, a friend of mine got married and I went with my husband on the wedding, that was the time when my husband gave me the check to buy a coat, I didn't have no coat to go and he gave me a hundred dollars I shall go and buy a coat that I could go to the wedding, in 1925, I think it was the 30th \* \* \*” (p. 51).

And further down:

“Q. When did you stop living together? A. Well, my husband left me in 1925, on the 14th of September.”

She also testified to her husband coming to her home and staying with her at her home over the Jewish holidays, from Friday to Sunday after-

noon— “On Sunday afternoon he told me that he was going to visit his daughter at Freeport and he will be back in the night, since that time my husband never showed up and did not look for me” (p. 52). On pages 54 and 55 she testified in relation to the occasion when she went to see her husband in the hospital; and that it was only three months after she had had an operation. She testified that there was nothing said about her husband and herself going back to live together.

On page 55 she testified about Mrs. Lanceman coming to see her and stated the conversation as follows:

“A. Yes, about nine o'clock in the evening somebody rang my bell and when I went over to the door I saw her; she says, ‘Your husband sent me over to you to tell you that he just went out of the hospital, he went to his daughter in Freeport,’ that is all she says, nothing else; she stayed a little while and then she walked out; I said I am glad to hear that he walked out of the hospital, because I couldn't take care of him, I was sick myself, he has healthy daughters they could take care of him, I couldn't.”

At the bottom of page 55 she testified that her husband used to come to see her every Sunday and give her ten dollars a week.

On page 56 she was asked if Mary Mayerson said anything to her at the wedding of petitioner's son in reference to her living again with her husband, and said that she did not say anything.

“A. No; we was living together.”

She *denied* on page 56 that she told the petitioner that she would not return to him unless he assigned everything to her.

On page 56 she testified about the time she went to Perth Amboy as follows:

"Q. Did you go to Perth Amboy for the purpose of selecting an apartment house to live in? A. No; my husband was Sunday up in my house and he told me that he has tickets to a concert, I shall come to Perth Amboy; well, when I came to Perth Amboy we went to see the concert, Rosenblatt was giving a concert in Perth Amboy, and he took me up in the room that he had there and I stayed over night; where my husband was sleeping, I don't know.

"Q. While you were there did he take you to an apartment? A. No, sir.

"Q. You are absolutely sure of that? A. No, sir; absolutely sure."

(In view of this absolute denial it was certainly incumbent on petitioner to call Jack Machinsky and his wife to corroborate him if they could.)

At the top of page 57 she testified *that she was willing to live with her husband*. (Her husband testified he was *not* willing to take her back at the time of the trial.)

On cross examination Mrs. Mayerson was severely cross examined by counsel for petitioner as to whether or not she received the 1926 letter but her testimony that she had never received it was unshaken. Also, she was questioned as to whether she did not go to look at an apartment owned by Jacob Machinsky but she denied going (*Mr. Machinsky was not called by the petitioner*). From her testimony on pages 70 and 71 it would seem that when the petitioner went to her sister's home as he stated to find out the address of his wife, *that he went there for the purpose of ascertaining where to serve divorce papers*. On page 72 she testified that when she was sick in the hospital and had an operation that she sent for her husband and he came there and she asked him to get her a nurse; that he got her a nurse, *but that he never paid for her*.

On page 73 she testified that her husband threatened to shoot her if she appeared in the case. This statement is not denied by the petitioner.

On page 75 she testified that she did not go down to see her husband in Perth Amboy or Freeport because he did not care anything about her and also that he threatened her.

It appeared from the testimony on page 75 that the case before Vice-Chancellor GRIFFIN was a divorce case started by the defendant against the petitioner, charging him with adultery, and that in that case he *counterclaimed alleging that the defendant was married to a man at the time that she married him.*

Mrs. Mayerson, on pages 76 and 77, was asked in relation to certain alleged testimony in the adultery suit. A reading of this testimony would indicate that the petitioner was simply, *during the time this case was pending, endeavoring to get his wife to forget about the other woman and condone the alleged offense.*

On page 83 the testimony would indicate that the defendant claimed that she discovered the alleged adultery of the petitioner in May, 1921.

### Rebuttal.

Petitioner was called on rebuttal.

He denied that he lived with the defendant after the determination of the former divorce suit. He said: "A. No, sir; she would not allow me to the house; she only met me on the street." Although on page 92 he *again admitted that he stayed overnight with the defendant at her home, the night of the wedding and over the Jewish holidays in 1925.*

On pages 92 and 93 he tells a remarkable story about the defendant calling him up after the alleged receipt of the letter of February, 1926, and

arranging to meet him in New York. That she met him at the subway station.

On page 92 his testimony is as follows:

“Q. Did you stay there all night? A. Not over-night; only that night from the wedding, and the Jewish holidays I thought we were going to make up, the following morning she told me very thoroughly what she wants and I told her, ‘Mrs. Mayerson, good-bye and good luck to you.’”

This was in September, 1925. On page 95, line 20, he testified that he tried to have his wife come and live with him because he was crippled: “because I can’t knock around; after I became crippled I couldn’t get around.” On page 97 he admits going to the other wedding with his wife, which was the time the defendant testified he gave her a check for \$100 with which to buy a coat. On page 99 his testimony is as follows:

“Q. When is the last occasion on which you spent the night in company with your wife; I mean to be in the same room with her? A. Well, that was in 1925, I stayed over-night on New Years night; since that time, your Honor, I never had nothing to do with the woman.

“Q. That was when; in January, 1925? A. No; that was in September; the Jewish holidays falls in September, 1925.

“Q. That was in Brooklyn? A. In Brooklyn.

“Q. You stayed over-night with her there? A. With her, but in a separate room; she has a spare room.

“Q. You stayed in the spare room on that occasion? A. Yes, sir.

“Q. You didn’t have sexual relations with her then? A. No, sir.

“Q. When was the last occasion that you had sexual relations with her? A. That was during the time the trial was going on, in Spring Lake; she denied it.

“Q. The date of that was when? A. Oh, that was Labor Day, in 1922, I think, while the trial was going on.”

On page 102, the testimony of the defendant given in the previous trial before V. C. GRIFFIN was admitted. According to this testimony, while the case in which the defendant charged petitioner with adultery was pending, the petitioner evidently was making the *most robust efforts* to get his wife to go back with him and condone the offense. Also, as a matter of fact, he testified in this case while the trial was pending he had intercourse with his wife.

It must be conceded that the testimony produced on behalf of the petitioner is very scanty and unconvincing. The only witnesses produced were the petitioner and three of his children. None of his children testified to any real knowledge of any efforts on the part of the petitioner for the return of his wife to him. Mrs. Lanceman, who went to see the defendant, was not produced. Mrs. Mary Mayerson, who, the petitioner testified, asked the defendant to return to him at the time of the wedding of petitioner's son, was not produced. Neither was Jacob Machinsky, the owner of the alleged apartment house to which the petitioner took defendant to look for an apartment produced, although counsel stated that they could be produced at any time.

The case is therefore barren of any *corroboration* of any real efforts on the part of the petitioner to have his wife return to him. Likewise the testimony of the petitioner himself does not show in a convincing manner any *robust effort* on the part of the petitioner to have the defendant return and live with him.

## B.

**The evidence falls short of proving an obstinate desertion.**

In the case of *Garabrant v. Garabrant*, 95 N. J. E. 136, Vice-Chancellor FIELDER, held that:

“Where a husband not living with his wife, notified her that he would establish a home in certain rooms, which were not adequately furnished for housekeeping purposes, and she did not unqualifiedly refuse to live therein, and the husband made no effort to induce her to live there or elsewhere with him, but left the state and filed his petition for divorce in another state, he is guilty of abandoning her and separating himself from her.”

In the case of *Popopics v. Popopics*, 98 N. J. Eq. 350, this Court dealt with the question of *bona fides* of a husband's request to his wife to return and commented upon the lack of proof of *bona fide* intention in that case and upon perfunctory and artificial pleas.

Vice-Chancellor LEAMING, in the case of *Davenport v. Davenport*, 97 N. J. Eq. 14, held that:

“A wife's desertion, though wilfull, cannot be adjudged obstinate unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end under the particular circumstances of the case.” (Citing numerous cases.)

The Vice-Chancellor, on page 16, commented upon the fact that for two years prior to the separation petitioner had refused to share his wife's bed and also upon the fact that when his wife informed petitioner that she was going to leave, he made no effort to dissuade her from leaving him.

*As a matter of fact in this case there is absolutely no testimony to the effect that when the defendant left the home of petitioner, that petitioner endeavored to persuade her not to leave.*

The testimony of the petitioner is to the effect that on several occasions prior to the last time his wife left the home, but that she always returned. It also must be remembered that at the *time alleged for the commencement of the desertion*, to wit, February, 1924, *there was no actual leaving of the petitioner by the defendant.* All that happened at that time was the writing of a letter to the defendant by the petitioner. It must further be remembered that this was shortly after the trial of a divorce suit instituted against petitioner by defendant in which she accused him of adultery. It must also be remembered that in this previous suit petitioner filed a counterclaim alleging that defendant had a husband living at the time she married him. It must further be remembered that according to the testimony of both petitioner and defendant, during the time the previous divorce suit was pending, the petitioner made all kinds of efforts to persuade his wife to forget the divorce suit and return to live with him and, as a matter of fact, petitioner testified that during the time the suit was pending he had sexual intercourse with defendant. Then according to his own testimony, *the happening on which he bases the commencement of the alleged desertion was simply the writing of a naked letter to his wife.* There was no question, but that his wife believed him guilty of adultery. Likewise, it may fairly be presumed, from the actions of the petitioner himself in doing everything to endeavor to persuade his wife to condone the alleged offense and drop the divorce suit, as evidenced by his persistently going to see her while the suit was pending, that

there was considerable justification for her belief, even though after the final hearing Vice-Chancellor GRIFFIN dismissed the petition. After the suit was ended, it is apparent that *petitioner was not quite so interested in having his wife go back and live with him as he was when the case was pending*. This is very clear because apparently as soon as he was relieved from the previous suit he did not go to see his wife three or four times a week or take her out as he did while the suit was pending. All he did was in February to write this formal letter. And, in passing, it might also be noted that the fact that this letter was written by him solely for the purpose of establishing a two-year period of divorce is indicated by the further fact that just two years and six days after the writing of the first letter he wrote the second letter. We submit that these two letters, Exhibits P-2 and P-5 (the receipt of the first of which was admitted by the defendant, although she denied receiving the second) *were no more than perfunctory letters written for the purpose of making evidence upon which to secure a decree of divorce*. We further submit that the effect of the first letter was entirely dissipated by the *subsequent actions of the petitioner*, particularly in staying at her house overnight after the wedding of his son and also over the Jewish holidays in October, 1925.

Except for these two letters, there is absolutely no corroboration of any bona fide effort on the part of the petitioner to have his wife return and live with him. His attempt to show that at petitioner's request defendant went to Perth Amboy for the purpose of looking at an apartment is absolutely uncorroborated. This testimony was *absolutely denied* by the defendant. There is no doubt she went to Perth Amboy; she says to attend a concert with her husband. There is no doubt

but that she stayed that night in petitioner's room in his boarding house, and that her husband slept downstairs. It should be noted that petitioner does not state *why* he slept downstairs. For instance, he does not state that he requested the defendant to permit him to sleep with her and that she refused or anything of that nature. Neither does the fact that the defendant stayed at the room of petitioner in the night indicate that there had been any dispute between the petitioner and the defendant or that she had refused to go and live with the petitioner in an apartment in Perth Amboy. It might be different if Perth Amboy was a considerable distance from Brooklyn, but it is less than 30 miles from New York and trains run almost every hour. The fact that she stayed all night in Perth Amboy is rather corroboration of her testimony that she went to Perth Amboy to attend a concert with her husband for which he had tickets. *Lack of corroboration of this alleged offer to rent an apartment is most significant in view of the fact that according to the statement of counsel, corroboration could be had by the production of Jacob Machinsky, the owner of the alleged apartment house and his wife. Their not being produced must be most strongly construed against petitioner.*

"1. A wife's desertion of her husband cannot be adjudged obstinate unless it has resisted such efforts on the part of the husband as he ought to have made to bring it to an end, under the circumstances of the case."

"2. On the evidence in this case, held, that conceding there was a desertion of the husband by the wife, his conduct was to some extent contributory thereto, and that his subsequent invitations to her to return were not such as might be reasonably expected to bring about that result; and hence, that the

desertion, if there was a desertion, was not obstinate.”

*Baxter v. Baxter*, 101 N. J. Eq. 236 (Court of Errors and Appeals).

In the case of *Oertel v. Oertel*, 83 N. J. Eq. 39, Vice-Chancellor STEVENS held that if the wife's act was desertion in the first instance, it was the husband's duty to make proper effort to terminate it by making those advances and concessions which might reasonably have been expected of him with a view of inducing her to return. Citing the case of *Hall v. Hall*, 65 N. J. Eq. 710.

“1. In a husband's suit against his wife for desertion, evidence examined and held, that it was not shown that the desertion was obstinate against the will of the petitioner.

“2. Although a wife may without cause or justification abandon her husband, the law imposes upon him a duty to use active efforts to terminate the separation by making such advances or concessions as might reasonably be expected to induce her to return to him, and he is excused from discharging this obligation only when it is manifest from the facts in the case that to do so would be unavailing.

“3. Also held, upon the evidence that the denial of the decree is further sustainable because of the charge of willfulness of the supposed desertion as supported only by the petitioner's evidence.”

*Norcross v. Norcross*, 82 Eq. 195 (Opinion by Vice-Chancellor BACKES).

In the case of *Hill v. Hill*, 2 N. J. Misc. 865 (apparently not officially reported), Vice-Chancellor BUCHANAN affirmed a report of the special master against the granting of a decree upon the ground that the obstinacy of the desertion was not proved

because the husband had failed to make reasonable efforts to have the wife return. The Vice-Chancellor comments upon the fact that the petitioner had testified that his wife left him several times before and the argument of counsel that this proved that he could not have induced her to return except perhaps temporarily, the Vice-Chancellor says on page 166:

“That is by no means a necessary or probable conclusion. It is equally inferable that he would have been successful in obtaining her return.”

The Vice-Chancellor held that the husband's proofs were insufficient and the exceptions must be overruled.

### C.

#### **There was not sufficient corroboration to justify a decree of divorce.**

The decisions of this State are to the effect that there must be corroboration of all of the necessary elements to justify a decree. While it has been held that this corroboration need not under all circumstances be corroboration by word of mouth of other witnesses, nevertheless, where there can be such corroboratory testimony that such testimony should be produced.

The law of divorce requires corroboration of the petitioner's testimony even if the Court believes it to be true without corroboration.

*Smith v. Smith*, 96 N. J. Eq. 59.

In that case Vice-Chancellor BACKES held that while the corroboration was meager it was enough in his judgment to satisfy the rule. It is significant that he was dealing in that case with allegations

of marital misconduct which are usually committed under cover and suffered in silence.

In the case of *Lasker v. Lasker*, 91 N. J. Eq. 352, the Chancellor held that where actual corroboration is possible, resort to constructive corroboration will not be had but the best evidence must be produced.

On page 353, the Chancellor said:

“The doctrine that corroboration of petitioner’s testimony need not be by witnesses to every fact, but that if sufficient corroboration exists as to certain facts the testimony may be accepted throughout, is made to relieve petitioner in a case of hardship where she would be defeated for want of corroboration of facts which it is impossible to obtain. It has not been evolved, nor is it intended to permit petitioner to withhold the best evidence of facts essential to be proved in order to grant a divorce, where proof of those facts is obtainable. And this by analogy to the rule requiring the best evidence of which the nature of the case is susceptible. I say by analogy to the rule, because it does not bear directly on the situation before me. The testimony of the petitioner is in strictness the best evidence because it is the sworn word of one who knows the fact; but, because of the rule in divorce cases which requires that a decree may not be granted unless the complaining party is corroborated, the rule allowing constructive corroboration will be given effect only when better evidence cannot be adduced. Resort to actual corroboration of parts of petitioner’s testimony as tending to show her truthfulness, and thus render her entire story acceptable, will not be resorted to in aid of her case when it appears that actual corroboration of all the salient facts is obtainable but is withheld unless excusatory explanation is made which satisfies the court. Why the sister with whom petitioner has lived was not examined as to de-

fendant's continued desertion is in nowise explained."

Other cases on this point are:

*Orcutt v. Orcutt*, 94 N. J. Eq. 304 (opinion by Vice-Chancellor BACKES);

*Meek v. Meek*, 92 N. J. Eq. 23 (opinion by the Chancellor);

*Rogers v. Rogers*, 89 N. J. Eq. 1 (opinion by the Chancellor);

*Orens v. Orens*, 88 N. J. Eq. 29 (opinion by the Chancellor).

This case is particularly lacking in corroboration on the real question of dispute, to wit, the obstinacy of the desertion. The petitioner's own testimony is not convincing that there were any *bona fide* efforts on his part to have his wife return and live with him. Certainly the two perfunctory letters, if it be held that defendant actually received the two letters, written apparently for the sole purpose of establishing evidence upon which to secure a divorce, cannot be held a sufficient robust *bona fide* effort on the part of the petitioner to have his wife return and live with him. It is undisputed from his own testimony that he at no time had established a proper home for her to return to. It further cannot be said that he was excused from making such efforts by reason of any actions of his wife upon the ground that such efforts would be absolutely fruitless. The petitioner in the Court below certainly did not testify to any such fact. His testimony is directed to the effect that he did make proper efforts to her to return but she refused. He must stand on one contention or the other. From his testimony there is nothing that indicates that he believed it would be of no avail to make overtures to his wife. According to his testimony while the previous

divorce suit was pending he made the most robust efforts to have his wife return and live with him. These efforts, the wife was absolutely justified in declining while she had a suit pending against her husband for divorce on the ground of adultery, and while he had a countersuit pending against her for annulment on the ground that she had a former husband living at the time of the marriage. *After* the previous divorce suit was dismissed so far as petitioner's testimony was concerned, *he did not go to see the defendant* to endeavor to persuade her to come back and live with him, *nor did he furnish a home* to which to take the defendant, but *he discontinued seeing the defendant and simply wrote her*—the letter of February 19, 1924, Exhibit P-1. Apparently he made no further real efforts, but the defendant's relations with him were such that in 1925, a year and half after the letter was written, she went with him to the wedding of his son and he came back with her and stayed in her house overnight. Also that he visited with her and stayed in her home over the Jewish holidays in October, 1925. Also he went with her to the wedding of a friend of hers. He testified that he occupied a separate room on these occasions, but the defendant's testimony is to the contrary. It may be here noted that the courts hold that a husband and wife staying under the same roof are presumed to cohabit together. Particularly where the defendant testified that during a considerable period of time he came to see her every Sunday.

In addition to the two letters the petitioner testified to three separate alleged occasions when he asked her or she was asked to return to him, which were subject to being corroborated.

The first, the occasion of the alleged looking for an apartment in Perth Amboy. As stated above, this was subject to being corroborated by Mr.

Machinsky and his wife but they were not produced, although the circumstances, under the decisions, would seem to corroborate the fact that defendant went to Perth Amboy to attend a concert with her husband for which he had tickets.

Although he testified he could produce Machinsky and his wife no effort was made to take their testimony. On page 95, line 10, petitioner testified as follows:

“Q. If this case is laid over, can you bring Jacob Machinsky here to testify? A. I will have him here; he will come willingly to testify, he and his wife, if it is necessary. She refused to go and live with me, because I can't knock around; after I became crippled I couldn't get around.”

As the Chancellor held in the *Lasker* case, 96 N. J. Eq. 352, where possible to obtain corroboration *it must be produced*.

Second, the occasion when the petitioner states that Mrs. Mary Mayerson asked the defendant to go back and live with petitioner. Mrs. Mayerson, who could corroborate this, was not produced.

The son who was produced did not in any wise corroborate this alleged offer. The testimony of the petitioner himself heretofore commented upon also would seem to indicate that what was said was simply that the defendant should go and shake hands with the children of petitioner, who according to all of the testimony, were estranged from her.

Third, the alleged incident when Mrs. Lanceman went up to the home of defendant. The daughter of petitioner went with Mrs. Lanceman, but did not go upstairs. Her testimony is absolutely no corroboration. The defendant admitted Mrs. Lanceman's being there and testified as to what

was said. Mrs. Lanceman could have been produced but was not.

Therefore, the petitioner's case is absolutely deficient in corroboration and although the petitioner could have produced corroborative testimony of all of these three alleged efforts to have his wife return to him.

Why he did not is as stated by the Chancellor in *Lasker v. Lasker*, "*is in nowise explained.*"

### CONCLUSION.

We respectfully submit that the evidence produced in this case was not sufficient to sustain the decree of the Court of Chancery granting a divorce to the petitioner upon the ground of wilful, continued and obstinate desertion. The parties separated several years ago. The defendant instituted a suit for divorce on the ground of adultery, and the petitioner counterclaimed for annulment upon the ground that the defendant had a previous husband living at the time of the marriage. During the trial the petitioner was constantly and personally endeavoring to get his wife to forget the adultery and return and live with him. He testified that while the suit was pending he had intercourse with the defendant. On pages 102 and 103, five questions and answers of the defendant's testimony of the previous trial were put in evidence. The Advisory Master in his memorandum letter apparently laid great weight in arriving at his decision on this testimony (p. 109). I fail to see how this testimony affects the defendant's case in anywise. Naturally, while this previous case was pending, in which the defendant accused her husband of adultery, she would refuse to go back with the petitioner. The testimony is to the effect that the petitioner, during the previous trial, told de-

defendant that she should not be so foolish on account of such a woman that she should sue him for divorce, and further, that petitioner would be the happiest man in the world if she should walk with him in the street and he spit in Mrs. Neiditch's face. The petitioner put this testimony in. (I do not find in the record of this case any denial by petitioner that this is what he said.) Certainly a statement by a wife, while a divorce suit instituted by her for adultery and a countersuit by him for annulment were pending, that she would never go back to live with the petitioner, cannot be held to be proof that if after she had lost the divorce suit, if she had been properly approached, she would not go back with him. Too much emphasis cannot be laid upon the fact that there is no proof, *with any corroboration whatever*, that the petitioner, after the divorce suit, made any *bona fide* effort to have his wife return to him. Even according to his own testimony, after the divorce trial, he did not go near his wife, but after waiting a month or two, sent her the letter of February 19, 1924. The petitioner's statements as to efforts to have his wife return to him were not corroborated. The petitioner's story if true, was subject to being corroborated. No excuse is given for the withholding of this alleged corroboration. The further fact that defendant was willing to go out with her husband and to have him stay at her home overnight is significant. In addition to that, sight must not be lost of the fact that defendant testified that he used to go to her home on Sundays. In this connection, we desire to point out to the Court, a statement by the petitioner himself, *which was undoubtedly a slip*. On page 93, line 20, the petitioner testified to a meeting with his wife in February, 1926, when he met her in New York at her request, and his wife went to dinner with him and

to a show, and he testified that he then said, "Take me up to your home," and she said "*I don't want to stay tonight.*" What the defendant meant by this latter statement, when taking into consideration the rest of the conversation, is undoubtedly that she did not want to have intercourse with her husband that night. She did not say that she did not want her husband to stay at her home that night. What she said, as testified to by him, was: "*I don't want to stay tonight.*" In determining the veracity of witnesses, very often small matters turn the scale one way or the other. Taking into consideration the presumption where a husband and wife stay together overnight under the same roof on numerous occasions and taking into consideration this testimony of the petitioner to the effect of his wife stating that she did not want to stay tonight, and further taking into consideration the fact that petitioner testified that while the previous trial was pending he had intercourse with his wife at Spring Lake, we say that not only has the petitioner not sustained his burden of proof of non-cohabitation, but that the weight of the evidence is to the effect that the petitioner and defendant *did cohabit* together during the years 1925 and 1926.

We therefore respectfully submit that the decree of the Court of Chancery should be reversed and the petition dismissed.

Respectfully submitted,

CAREY & LANE,  
Of Counsel with Appellant.

NEW JERSEY

Court of Errors and Appeals

Between

SAMUEL MAYERSON,  
Petitioner below,  
Respondent,

and

HELEN MAYERSON,  
Defendant below,  
Appellant.

On Petition,  
etc.

On Appeal  
from  
Chancery.

**BRIEF ON BEHALF OF RESPONDENT.**

The statement of the case as set forth in the brief for the appellant does not present all the facts and questions involved, and is controverted.

**STATEMENT OF THE CASE.**

From a decree *nisi* granting the respondent, Samuel Mayerson, a divorce from the appellant, Helen Mayerson, for the cause of wilful, obstinate and continued desertion for the term of two years, the appellant has taken her appeal, and alleges in her petition of appeal that she was not guilty of the desertion and that the proofs offered by the husband do not sustain the allegations of desertion. The decree appears on pages 110 and 111 and the petition of appeal on page 113 of the printed book.

The opinion of Advisory-Master Herr is contained in a letter from him to counsel, set forth on page 109 of the printed book and reads as follows, viz.:

“Letter of Advisory Master to Counsel.

In this case I think it clearly proved that the petitioner, Samuel Mayerson, is entitled to a decree for divorce against the defendant, Helen Mayerson, on the ground of desertion. While the petitioner denies that the defendant sought her return in any such bona fide manner as he was, under the circumstances, required to do, the force of her testimony is, in my opinion, entirely nullified by the testimony she gave in the previous litigation between the parties. On the other hand, the petitioner is well corroborated.

If there should be an appeal and I am informed of it, I will prepare a formal memorandum. This letter is entirely for the information of counsel. I will advise a decree in the usual form.”

Witnesses were called and documentary evidence was produced by the respondent in corroboration of his testimony, but although the appellant testified in her own behalf she failed to produce any witnesses in support of her defense, and it would appear from the opinion of the Advisory-Master that he did not believe her story and rejected her testimony. He had the advantage of seeing and hearing the witnesses testify, and the testimony of the appellant was replete with contradictions and reckless statements of facts which were shown to be untrue. She even denied her own handwriting and swore that she did not testify to certain material matters in a former suit brought by her against the respondent, although the minutes of the trial of that case were produced and showed that she did so testify.

The facts of the marriage and of the residence of the respondent in New Jersey and the departure of the appellant from her husband's home in the year 1921, at the time she brought suit against him for divorce, were proved, also the fact that she had never returned to him; and the only matters left for determination were the efforts made by the respondent to induce her to resume cohabitation and whether those efforts were sufficiently corroborated.

The incidents of this case were not proved in their chronological order, but in the following resumé of the testimony and other evidence the facts will be stated in that order as nearly as possible.

## 1.

### THE FACTS.

The appellant and respondent were married on September 14, 1900, at Brooklyn, N. Y. (p. 5; p. 105, Ex. P-1) and lived four months in Vineland, N. J., removing from there to Jersey City, where they lived until 1905. They then purchased the lot and building in Brooklyn known as 2080 Pitkin Avenue, in their joint names, and lived there from 1905 to 1910. The respondent then purchased the lot and building in Jersey City known as 628 Grove Street, and they lived there from about 1910 to June, 1921 (pp. 4, 5, 6, 7, 29 and 35). For periods between the date of the marriage and the month of June, 1921, when she "finally left him for good" and sued him for divorce, the appellant, more than a dozen times, left the respondent for extended periods of time, in one instance remaining away longer than six years (pp. 8, 9 and 37). From

about June, 1918, to June, 1921, while they were living at the house on Grove Street, they occupied separate rooms and had no relations as man and wife (pp. 6 and 7). The respondent testified that the appellant got the house and lot in Brooklyn away from him in the year 1920 by schemes and unfair means (p. 7). She testified that her sister held a second mortgage for \$4,000 on this property, and they sold the property about the year 1914, and her sister foreclosed her mortgage and the appellant bought it in at the foreclosure sale (pp. 57, 80, 81). She admitted that she thereafter sold the property in 1926, for \$19,000 (pp. 80 and 81). In June, 1921, the appellant brought suit against the respondent in the Court of Chancery of New Jersey for a divorce for alleged adultery, and she left their home on Grove Street and lived for a few days with a neighbor and then for a short time at a hotel and thereafter, until February, 1926, in her house, 2080 Pitkin Avenue, in Brooklyn (pp. 7, 53, 57 and 102).

The trial of the suit brought by the appellant was held on October 8, 1923, before Vice-Chancellor Griffin, and he decided the case in December, 1923, in favor of the husband (pp. 17 and 102). In that suit the husband denied the charge of adultery and raised the additional defense of condonation, and counterclaimed for an annulment of the marriage on the ground that she had a former husband living at the time of their marriage (pp. 82, 87, 75 and 76). While that case was pending and awaiting trial, the respondent continued to reside at his home on Grove Street, in Jersey City, and did all that he could to convince his wife of his innocence of the charge made against him and to induce her to resume cohabitation. He truly loved her and all his efforts, made while the former case was pending and thereafter, were made because

he was truly desirous of having her return to live with him and because he could not get along without her (pp. 9, 10 and 26). While that suit was pending she accompanied him on pleasure trips to Coney Island on at least two occasions and on a visit to her sister, Mrs. Kaufman, who lived at Toms River, and on another occasion remained over night and had intercourse with him at Spring Lake (pp. 9, 10, 82 and 84). This was on Labor Day of the year 1922, while the former case was pending and was the last occasion on which he had intercourse with her (p. 99). He also visited her often in the three years that the former suit was pending, at her home in Brooklyn, in efforts to induce her to return to him, *and she told him that she never would go back to him* (pp. 10, 102 and 103).

Although the appellant testified in her former suit, before Vice Chancellor Griffin, on October 8, 1923, *inter alia*, that after she left her husband, in May, 1921, he called on her at her home in Brooklyn about three or four times a week begging her to go back to him, and said he loved her and wanted her to go back to him and would be the happiest man in the world if she would do so, and that she told him she never would go back to him (see stipulation of counsel, pp. 102 and 103)—although she so testified in the former case—when she was asked during the trial of the present suit whether she had not so testified, she denied point blank ever having done so (pp. 76, 77, 83), and although she was confronted with the minutes of her former testimony and it was read to her, she still insisted and swore that she had not so testified, and that it was not true, and that he did not visit her at her home while that case was going on (pp. 76, 77 and 83). These denials by the appellant of the testimony given by her in the

former suit were doubtless what prompted the Advisory-Master to say in his opinion-letter, that: "The force of her testimony is, in my opinion, entirely nullified by the testimony she gave in the previous litigation between the parties" (p. 109).

On February 19, 1924, about two months after the filing of the decree in the former suit, the respondent sent a letter to the appellant (p. 106, Ex. P-2) by registered mail (p. 13), and she received it on February 21, 1924, as indicated by the return receipt signed by her (Photostatic copy of Ex. P-3 on last page of printed book). She admitted receiving this letter (p. 13). From the contents of this letter, it would appear he therein begged her to live with him again and that in the six weeks intervening between the decision of the former case and the sending of the letter the respondent had visited the appellant a number of times and requested her to live with him again and that she had declined to do so. In May, 1924, the respondent removed from Jersey City to Perth Amboy, where his chicken business was located, and sent her letters notifying her of his removal and also sent her some broilers in efforts to see if he could not change her mind (pp. 29 and 30). She did not deny having received these letters. She did not answer the letter of February 19, 1924, or these later ones because she thought he had sent her the letter of February 19, 1924, to "get something on her" (p. 77).

The next incident appearing from the record is the postal card sent by the respondent to the appellant on October 17, 1924, and produced and placed in evidence by the appellant (p. 108, Ex. D-4; pp. 101, 102). Evidently the building referred to in this card was his property on Grove Street in Jersey City. She testified that he called

on her in accordance with the promise in the card. This card and visit show another effort on his part to induce her to resume cohabitation.

About seven weeks later, on December 1, 1924, the respondent again visited the appellant at her home in Brooklyn and requested her to go and live with him at Perth Amboy. He gave her a check for \$100 payable to her order (pp. 26, 27, 116, Ex. P-6) and told her to pick out any apartment she liked in Perth Amboy and pay the \$100 check as a deposit for the rent thereon (p. 27). Perth Amboy was the place where he was making his living and where he had to live (p. 32). She accepted the check and went down to Perth Amboy and stayed there only until the following day. He took her to a show that evening and then to his boarding house where she occupied his room and he slept downstairs in the living room. In the morning she told him that she "would not live in Perth Amboy for all the money in the world." He demanded the return of his check and she told him she had cashed it and bought a coat for herself (pp. 26 and 27). While she was at Perth Amboy on this occasion, he took her to see an apartment that he proposed to rent for their occupancy, one in a good location and for which the landlord demanded \$60 a month rent. After inspecting this apartment she said she would not live in Perth Amboy (pp. 27, 28, 32 and 33). As long as she did not like Perth Amboy and expressed her determination not <sup>to</sup> live there, he did not make any further efforts to induce her to go there to live, but he offered to go to live with her in her house in Brooklyn and pay the expenses. She declined to allow him to do this unless he would first agree to pay off a mortgage for \$10,000 held by her brother-in-law on the house (p. 33). The owner of

the apartment in Perth Amboy they went to see was Jacob Machinsky (pp. 94 and 95).

The appellant tells a story about this transaction of the check for \$100 radically different from that related by the respondent. She says that the respondent did not invite her down to Perth Amboy to see an apartment but to attend a show there and that he gave her the check with which to purchase a coat to be worn by her at a wedding of a relative of hers which she and the respondent attended the following Sunday, and that she did not visit Perth Amboy for the purpose of inspecting an apartment; but she admitted that she went with the respondent to the home of Jacob Machinsky in an apartment and was there introduced to him and his wife (pp. 56, 66, 67, 68, 69 and 70), and in an earlier part of her testimony she said (at pp. 51 and 52) that it was in 1925 that the respondent gave her the check and they attended the wedding and that she and the respondent were then living together. The respondent testified, on rebuttal, that this wedding occurred in the summer of 1925, about two months later than the wedding of his son (pp. 97 and 98), and while he was testifying he suggested that if the trial could be adjourned to a later date he would procure a certificate of the date of the wedding in question (p. 98); but the Advisory Master evidently did not think it was necessary. The respondent also denied that he lived with the appellant in the year 1925 or at any other time after the determination of the former case (pp. 91 and 92).

Notwithstanding the rebuffs by the appellant and her refusal to go to Perth Amboy to live with him, the respondent persevered in his efforts to win her over. She and his five children by his first wife had become estranged, and he thought

that if he could bring them together again it would help him in his endeavors. The wedding of his son Jacob had been fixed for August 30, 1925, and he invited the appellant to attend with him (pp. 10 and 11). All of respondent's children were present at the wedding and he suggested to her that she shake hands with them and make up, but she refused to do so (pp. 11 and 12). Mrs. Mary Mayerson, a sister-in-law of the respondent, was also present at the wedding and had a conversation with the appellant, in which she said to the appellant: "Why don't you make up, forget and forgive, go and live together as man and wife, you are getting old" (p. 19). Simon Mayerson, a son of the respondent, as well as the respondent, heard the question asked (pp. 19 and 47). The appellant made no answer to this suggestion of Mrs. Mary Mayerson (p. 19). The appellant testified that no such conversation ever took place between her and Mary Mayerson (pp. 55 and 56). The respondent remained overnight, after the wedding, at the appellant's home in Brooklyn, but occupied a spare room and had no intercourse with her (p. 12). The appellant did not deny this statement of the respondent that he occupied the spare room in her home and had no sexual relations with her on that occasion.

The Jewish New Years occurred in the month of September or October, 1925, a few weeks after the incident at the son's wedding, and the respondent visited the appellant at her home and begged her to forget and forgive and live with him again. He stayed that night in her home, and the next morning she told him that she would not renew cohabitation unless he first transferred everything he possessed to her. She told him very thoroughly what she wanted and he bade her good-bye and

good luck (pp. 13 and 92), and that was the last time he was ever in her home at 2080 Pitkin Avenue (p. 92). He testified that he occupied the spare room again on this occasion and had no intercourse with her (p. 99); and she did not deny his statement.

The appellant testified that she and the respondent made up and that he lived with her as man and wife from some time in the early part of the year 1925 until September 14, 1925, at her home on Pennsylvania Avenue, in Brooklyn (pp. 51 and 52). This residence of hers, on Pennsylvania Avenue, was none other than the building also known as 2080 Pitkin Avenue, the lot being situated at the corner of Pennsylvania and Pitkin Avenues. She also testified that on the night of September 7, 1925, they remained all night at the home of her sister, in Toms River (p. 52). The respondent denied that he ever resumed living with her as husband and wife after the determination of the former suit brought by her against him (pp. 91 and 92). The appellant testified further that the respondent lived with her at 1335 Eastern Parkway, Brooklyn, after February 15, 1926 (pp. 52 and 53). Then she changed her testimony and said that he never lived with her after September, 1925 (p. 54). Thereafter she testified that the respondent did not live with her even at the Pitkin Avenue house (p. 65).

Whether it was her intention to testify that he lived with her as husband and wife at either or both these addresses, the proof of that fact constituted an important part of her defense to the present suit, and if it were true, she could have proved it beyond question by any number of witnesses, and she could have called her sister from Toms River to testify. She was asked, on cross-

examination, whether people saw the respondent going in and out of her home in Brooklyn and she said that they did, and she was then asked why she had not produced some of them as witnesses, and said she did not know she needed anybody as witnesses (pp. 65 and 66).

About five months after the refusal of the appellant to live with the respondent unless he would transfer all his earthly possessions to her, to wit, on February 25, 1926, he sent her a letter (Ex. P-5), of which a copy is set forth on page 107 of the printed book. He dictated the letter to his son, who wrote it out and forwarded it by registered mail and retained a copy (pp. 15 and 47). The son at the time called his father a fond fool. This letter contained a renewal of the respondent's request and invitation to the appellant to live with him.

Prior to the day on which the trial of this cause took place demand was made on the solicitors of the appellant for the production of the original of this letter of February 25, 1926, and her counsel stated that the appellant was not living at the address 2080 Pitkin Avenue when the letter was sent, but he did not say that she did not receive the letter (p. 16). She testified that she had sold the house 2080 Pitkin Avenue and removed therefrom to 1335 Eastern Parkway, in Brooklyn, on February 15, 1926, ten days before the sending of the letter (p. 58). A return receipt, signed "Helen Mayerson," was given on delivery of the letter (Ex. P-4, p. 107, and photostatic copy thereof inserted on last page of printed book), which states that the letter was delivered on March 5, 1926, eight days after it was mailed. She testified further that she telephoned him at Perth Amboy, a few days after her removal, that she had removed to

the Eastern Parkway address and that he sent the letter to her old address in order to "fix" his case against her (p. 65). She changed her statement later on by testifying that the reason she did not inform the respondent that she was living at 1335 Eastern Parkway was because he did not care for her and had threatened to shoot her whenever she got sick (pp. 72 and 73). *She did not testify that she did not receive the letter of February 15, 1926,* but she did testify that the signature "Helen Mayerson" on the return receipt (Ex. P-4) was not written by her (p. 88). At the request of counsel, she wrote her name in two places on a sheet of paper and same were received in evidence (pp. 87, 88, 89, 108, Ex. P-7, and photostatic copy at end of printed book). The check for \$100 of December 1, 1924, to the order of the appellant, and with her name, "Helen Mayerson," endorsed on the back, was received in evidence for purposes of comparison of her signatures (Ex. P-6; p. 88, lines 25 to 40; p. 89, lines 1 to 10). The record on page 88 does not show the receipt of this check in evidence, but it was marked by the stenographer "P-6 in Ev." and a photostatic copy thereof appears at the end of the printed book. At first, the appellant insisted that the endorsement of her name on the back of the check was written by her niece, Bessie Stollak, who cashed the check for her, but later on she testified that she might have endorsed her name there herself (p. 89). It is perfectly clear, however, that Bessie Stollak does not write; for she endorsed her mark on the back of the check and her name was written underneath the mark by a witness to her mark (Ex. P-6; photostatic copy on next to last page of printed book). The appellant testified that she gave a pencil to Bessie with which to endorse

the appellant's name on the back of the check (p. 88), but the names on the back of the check are written in ink. The name "Helen Mayerson" on the return receipt (Ex. P-4) is written in pencil.

The endorsement of the check by the appellant in person having been admitted by her (p. 89), her signature provides a standard whereby her name on the return receipt (Ex. P-4) may be judged, and it is not necessary to have the skill of an expert in order to determine that the appellant wrote her name as it appears on Exhibit P-4 as well as that on the back of Exhibit P-6.

(These exhibits, P-3, P-4, P-6 and P-7, will be handed to the Sergeant-at-Arms for inspection by the Court.)

Eight days passed between the sending of the letter to 2080 Pitkin Avenue and its receipt by the appellant at 1335 Eastern Parkway, which shows that there was some delay in locating the appellant at her new address.

The respondent testified that when he sent the letter of February 15, 1926, to the appellant he had no knowledge that she had removed from 2080 Pitkin Avenue, but that she called him up a week later and told him that she had received the letter and requested him to meet her at the Battery, in New York, at the Staten Island Ferry; that he waited for her at the appointed place for five hours and she failed to appear; that about one week later, she again called him on the phone and made another appointment to meet him in Brooklyn, which appointment she kept; that after taking her out to dinner and to a show, he requested her to take him to her new home, and she refused to do so and by taking a taxi prevented him from following her and ascertaining her new address (pp. 92 and 93).

He did not succeed in obtaining her address at 1335 Eastern Parkway until the month of January, 1927 (p. 95), and then he got the information from her lawyer by pretending to be her brother-in-law (p. 93).

It appears that this visit of the respondent to Brooklyn was in March, 1926, and that nothing of importance thereafter occurred in this case until the following month of July when the respondent learned that the appellant was in a Jewish hospital in Brooklyn and went up there from Perth Amboy to see her (pp. 17, 18 and 71). She did not send for him and she had refused to let him know where she was living, but he went there voluntarily to see her.

On August 21, 1926, about one month after his visit to the appellant at the hospital, the respondent met with an accident which crippled him for life, and he was taken to the City Hospital at Perth Amboy for an operation and remained there until the month of December following (p. 18). In some way he got word to the appellant, through his daughter, that he was in the hospital, and the appellant visited him there in the month of October (pp. 18, 19 and 54). On this occasion he requested her to promise to take him to her home when he was able to leave the hospital, and she made no answer, nor did she ever go there again to see him or promise to do so (pp. 19, 30 and 31). She said it was too much of a trip (p. 42). She did not on the occasion of this visit tell him where she was living (p. 20).

In December, 1926, the respondent was carried from the hospital, in Perth Amboy, to the home of his daughter, Frances Posner, in Freeport, L. I., where he lay on his back in bed most of the time for ten months (pp. 23, 24 and 38). After he had been

at his daughter's home a short time, he obtained the address of the appellant from her lawyer (pp. 93 and 95) and at the respondent's request, Mrs. Lanceman, his daughter's friend, went to the home of the appellant at 1335 Eastern Parkway and informed her that he was at the home of his daughter in Freeport and requested her to go there to see him and live with him again. The respondent was unable to procure the attendance of Mrs. Lanceman as a witness in court on the trial day and his counsel requested a continuance of the trial for the purpose of procuring her attendance, and it was thereupon stipulated on the record by counsel for the appellant that the appellant admitted that if Mrs. Lanceman were called as a witness she would testify that she called on the appellant and requested her to return to live with the respondent (pp. 22 and 23). Thereafter, on a number of occasions beginning in the early part of January, 1927, the respondent's daughter, Mrs. Posner, called the appellant on the phone, and he talked with her and asked her to visit him at Freeport and come back to him (pp. 37, 24 and 25). Mrs. Posner recognized her voice and heard what her father said over the phone on these occasions (pp. 38 and 39). In answer to these requests of the respondent, the appellant told him she was sorry that he did not break both his legs and that if he contemplated starting a suit for divorce he had better not delay for after she had removed from where she then lived he would not know where to find her (p. 25). He telephoned her in this way as many as five or six times (p. 24) and on each occasion requested her to visit him at Freeport, but she refused, and never went to see him during the entire ten months he remained there (pp. 24, 25, 37, 38 and 39). He was obliged to use crutches at first, and later, a crutch and a cane (p.

39), and in February, 1927, the appellant was compelled to go to a hospital again, this time the Post Graduate Hospital in New York (p. 71), and she did not let the respondent know she was there, but he also went to the same hospital for treatment and was told that she was there and went in to her ward to see her. He was on crutches (pp. 95, 96, 34). The appellant testified that when the respondent came in to see her on this occasion she requested him to get a nurse for her and take care of her and that he got her a nurse but did not pay her (p. 72). He testified that he was on crutches and unable to help her, and she already had hired a noted surgeon to whom she had paid \$300 (p. 96). She failed to advise the respondent when she left the hospital, and he called at her apartment, at 1335 Eastern Parkway, in the month of April, 1927. It was evening, he was on crutches and the pavements were slippery (pp. 34 and 100). He told her that he could not return to Freeport that night because it was so slippery and asked her to let him stay there all night and occupy the spare room, but she would not listen to his requests and took him as far as the trolley car and put him on the car with his crutches, and that was the last he saw her until the day of the trial (pp. 34, 35 and 100). He thought that after that treatment he did not want to go to see her any more (p. 34), but even after all that, he still tried to effectuate a reconciliation.

After he was able to walk with one crutch, he went again to the apartment on Eastern Parkway but found that the appellant had removed from there and the janitor of the building was unable to give him her address, and he was never thereafter able to find her (pp. 34, 35, 21 and 22).

About the time of his return, in October or November, 1927, from Freeport to Perth Amboy, the

respondent visited the two sisters of the appellant—Mrs. Molly Stollak (or Stolick), who lived at 214 Osborne Street, Brooklyn, and Mrs. Kaufman, who resided at Toms River, N. J.—in efforts to secure information of the address of the appellant, but they refused to tell him (pp. 59, 96 and 97).

The secrecy with which the appellant veiled her movements and place of residence after her removal from the Eastern Parkway residence and the obstinacy of her desertion of the respondent from the time she lost her suit against him, is shown in these refusals of her sisters to reveal her place of abode to him and also in the refusal of Mrs. Kaufman to reveal the appellant's address to the solicitors of the respondent when they wrote her for that information at the time they were making inquiries for the appellant after the present suit had been started. The present suit was commenced on January 26, 1928 (p. 1), and the affidavit of inquiry made by the solicitor of the respondent on November 22, 1928 (on file with the original papers in this cause but not printed in the state of the case) shows that Mrs. Kaufman wrote the solicitors that she was the sister of the appellant and that any notice or papers they wanted to send the appellant could be forwarded to Mrs. Kaufman and she would see that the appellant received them. At this time the appellant was residing with Mrs. Stollak in Brooklyn (p. 58). The petition and citation in the present case were served through special substituted service by mailing them to Mrs. Kaufman.

Some of the contradictions and inconsistencies in the testimony of the appellant are seen in the following: Her misstatement of the street number of the home of Mrs. Stollak, the very place where she was living at the time she testified (pp. 58, 59 and 60); she testified (at p. 61) she was then fifty-

four years of age and changed her testimony (at p. 62) and testified she was forty-nine; she testified (at pp. 50 and 63) that prior to her marriage to the respondent she did not know he had children, whereas the testimony of the respondent and his son Simon (pp. 89 to 91 and 93, 94) show positively why she must have known at that time that he had children by his first wife; she was asked, on cross-examination (p. 75), why she did not visit the respondent when he was at Freeport, and she testified that she did not go there because his children did not want her; she testified at first (p. 75) that after the respondent returned from Freeport to Perth Amboy in the fall of 1927 she went down there several times to see him, but when pressed she changed her testimony and said the occasions of her visits were before he went to Freeport; she then testified to an incredible story (pp. 75 and 76) that the reason she was afraid to visit him at Perth Amboy was because he had threatened to shoot her; she contradicted the testimony of all the witnesses called by the respondent.

The brief filed on behalf of the appellant is full of statements in italics—long drawn out stage whispers based in greater part on a misconception or misstatement of the facts. We invite the attention of the Court to the following glaring errors, picked therefrom at random:

Page 4, last two lines: "Although he does not state that he did not sleep with her on that occasion." He did state that he did not sleep with her on that occasion and his testimony that he did not appears on page 99 of the printed book.

Page 5, top of page: The statement that the letter of February 19, 1924 (Ex. P-2), was written a year and a half *prior* to the time when the defendant and petitioner went to the wedding to-

gether at Spring Lake and he went home with the defendant and stayed overnight. In the first place, the time and only time, as shown by the evidence, that the parties ever went to Spring Lake was away back in the year 1922 while the former suit was pending (pp. 10, 82 and 84) and neither of the two weddings they attended in 1925 were at Spring Lake.

It is true that the respondent and defendant occupied a room together overnight at Spring Lake, in the year 1922, while the former suit was pending, but that does not justify the changing of the time to have it appear that the occupancy of a room together overnight occurred while the present suit was pending.

Page 5: The statement that until the alleged letter of February 25, 1926, there did not appear to have been any other letter than that of February 19, 1924. But there *were* other letters; the appellant offered in evidence Exhibit D-1, which was written by the respondent to her in October, 1924, and according to his testimony, not denied (pp. 29 and 30), he sent her letters about the time, in May, 1924, that he removed to Perth Amboy.

Page 5: The statement that a comparison of the handwritings would show that the "H" in the return receipt of the letter of February, 1926, was entirely different from the "H" in all the other samples of handwriting of the defendant. This is not a true statement of the fact. The defendant admitted that she endorsed her name on the back of the check when she said (at top of page 89 of Case), "If I signed it, I don't know." And it is submitted that a comparison of her signature on the back of the check and that on the return receipt (Ex. P-4) will show they are identical.

Page 6: The statement "Apparently he did not ask her to come to see him again." This had reference to the appellant's visit to the respondent at the hospital in Perth Amboy. The testimony of his daughter, Mrs. Lee, is that her father asked appellant when she was coming there again and she said she did not know, as it was too much of a trip (p. 42).

Page 7: The statement that the respondent testified on page 24 of his testimony that he called his wife on the phone at 1335 Eastern Parkway which was a contradiction of his previous testimony that he did not know where she lived. A reference to pages 93 and 95 of his testimony will show that the respondent obtained her address from her lawyer before he telephoned her.

Page 8: The statement that "He does not state he endeavored to have his wife sleep with him and she refused." The testimony of the appellant herself was that he occupied another room than that occupied by her (p. 56).

Page 9: The statement that the only testimony given on behalf of the respondent was that of himself and his three children, and that Mrs. Lanceman was not produced. This statement overlooks the fact that the reason Mrs. Lanceman was not produced was because what she would have testified to if called was, by stipulation of counsel, entered in the record (p. 23).

Page 12: The statement of testimony of the appellant that while she was at Perth Amboy respondent did not take her to an apartment. She did testify, however, that on this occasion the respondent took her to call on Jacob Machinsky, the owner of an apartment.

Page 12: The statement that appellant testified at the trial she was willing to live with her hus-

band and that he testified that he was not willing to take her back. Why should he consent at the trial to take her back when his cause of action for a divorce had accrued in February, 1926, and he had for years thereafter unsuccessfully tried to induce her to return to him?

Page 12: The statement that the appellant was unshaken on cross-examination as to her testimony on direct that she had never received the letter of 1926. As a matter of fact she did not testify that she did not receive that letter.

Page 15: The statement that the respondent, as a matter of fact, testified in this case that while the trial was pending he had intercourse with his wife. He certainly did not testify that he had intercourse with her while the *present* case was pending.

Page 15: The statement that Mrs. Lanceman was not produced to corroborate respondent. Her testimony was entered on the record by stipulation.

Page 17: The statement at top of page that when the appellant left the home of the respondent (in June of 1921) he did not endeavor to persuade her not to leave. But at the time she left, she was just about to begin her suit for divorce.

Page 17: The statement that "The happening on which he bases the commencement of the alleged desertion was simply the writing of a naked letter (Ex. P-2) to his wife." This is not so; the letter states on its face that he had met her a number of times in the six weeks previous to sending the letter and requested her to live with him.

Page 24: The statement "He testified that he occupied a separate room on these occasions, but the defendant's testimony is to the contrary." She did not testify to the contrary.

Page 25: The statement "The son when produced did not in anywise corroborate this alleged offer." This had reference to the suggestion made by Mary Mayerson to the appellant at the wedding that she should resume cohabitation with the respondent and the son overheard that conversation and testified to it (p. 47).

Pages 24, 25 and 26: The briefers aver, in effect, that they had set forth on these pages of their brief *all* the various efforts made by the respondent to induce his wife to return to him; but they have mentioned only a few. No mention is made of the efforts over the phone from Freeport and lots of other attempts and requests on his part.

Page 28: The statement near the end of the brief that the weight of the evidence was to the effect that the appellant and defendant did cohabit during the years 1925 and 1926. Erroneous. Even the appellant herself testified that he never lived with her after September, 1925 (p. 54).

## 2.

### THE LAW AND ARGUMENT.

After their substitution, the present counsel for the appellant found that the advisory-master had rejected her testimony *in toto* and that the exigencies of her case required drastic treatment. They examined the minutes of the trial and must have obtained only a confused conception of the incidents and dates; for in their brief they have assigned to the instant case incidents and occurrences that transpired while the former case between these parties was pending and to the former case those of later years. They even went so far

in the argument as to say (at p. 26 of their brief) that during the trial of the former case the husband "was constantly and personally endeavoring to get his wife to forget the adultery," and they thus accuse him of being guilty of the very charge of adultery of which he was exonerated more than six years ago. They say that they evolved two defenses to the husband's suit—first, that the continuity of the wife's desertion was broken by a cohabitation of the parties in the year 1925 as man and wife, and secondly, that the wife's desertion was not obstinate because the husband did not make the necessary advances required by the divorce law to entitle him to a divorce and that the proof of the efforts made by him was not corroborated. It must be conceded that these defenses are inconsistent; for in one breath they say that the husband's efforts—which certainly were strenuous and extended over a period of about six years—were not sufficiently *robust* and that if they had been more so, the wife might have been induced to capitulate and resume cohabitation, while in the next they say that as a matter of fact she did cohabit with him.

The wife had the burden of proof of showing that her husband lived with him in 1925 as man and wife, and she failed in that proof. She admitted that a great number of people saw him living with her in 1925 at the Pitkin Avenue address, but none were called as witnesses. He denied living with her and claimed he remained in her home overnight on only two occasions and that he had no sexual relations with her on either of those occasions. However, as demonstrated in the preceding pages of this brief, she testified falsely to material matters on the trial of this present case, and her entire testimony was rejected.

In *Riehl v. Riehl*, 101 N. J. Eq. 15, the Chancellor held:

“The Chancellor, as the trier of the facts of a case before him, is the judge of the credibility of the witnesses, and, like a jury, does not have to believe a particular witness; a witness is not entitled to credit whose testimony is inconsistent with the common principles by which the conduct of mankind is naturally governed, and the court may disbelieve a witness whenever there is a reason therefor.”

The testimony of the appellant having been absolutely false in some material matters, e.g., her denial of what she testified to in the former case, the advisory-master had the right to reject all of it—“*Falsus in uno, falsus in omnibus.*”

The mere fact that a husband and wife stayed under the same roof for two nights does not raise a conclusive presumption that they had sexual relations there.

*Graham v. Graham*, 50 N. J. Eq. 701 (at pp. 706, 707).

There was proof of the marriage, and corroboration.

There was proof of the residence of the respondent in New Jersey for at least 18 or 20 years last past, and corroboration thereof.

There was proof and corroboration thereof that in June, 1921, the wife left her husband's home and commenced a suit against him for divorce, which suit was decided against her in December, 1923; also that she had never returned; that as soon as the case was decided in his favor, the husband sought out his wife and begged her to return and continued those efforts, by letter and personal

visits and the solicitation of third persons, down to the month of April, 1927, and until she changed her residence and hid herself so that he was unable to find her; that these advances or efforts on his part were sincere and just and were deliberately and persistently rejected by her.

She was cold, calculating and mercenary, and evidently smarted under her defeat in the case in which she had unjustly charged her husband with adultery. She swore on the trial of her case that she never would live with him again, and she kept her word. After succeeding in parting him from his lands in Brooklyn, she exacted as a condition for her return to him that he transfer all his remaining property and earthly possessions to her. This he could not see his way clear to do. The love in this case was all on one side; the husband loved the wife and continually sought her and endeavored to effect a reconciliation, but she evaded him and never voluntarily went where he was except in the one instance when she visited him at the hospital in Perth Amboy, and even then he had to request her to go there.

The wife failed to prove the charge of adultery brought by her against the husband and it became her duty to return to him after her failure in that respect, and in view of the fact that she testified on the trial of that suit that she never would live with him again, there was a grave question whether he was required to make the advances.

*Hall v. Hall*, 60 N. J. Eq. 469.

*Purnell v. Purnell* (not officially reported), 70 Atl. Rep. 187.

But the husband was greatly in love with his wife, and while her case was pending he made many efforts to induce her to return to him, and

it was hardly determined before he went after her to return. His letter to her of February 19, 1924 (Ex. P-2), shows this. The desertion is alleged to have occurred in the month of February, 1924, the month in which this letter was sent, and the husband's cause of action and right to petition for a divorce accrued, therefore, in February, 1926. A charge has been made in the brief for the appellant that this letter and the other letters sent by the husband to the wife were not sincere and were sent with a purpose in mind to use them as a foundation for obtaining a divorce. If that were so, he would not have waited until January, 1928, to bring his action nor would he have made any further attempts in or after February, 1926, to induce her to return. His good faith and sincerity are shown from the fact that after his right of action had matured he sent her another letter, in February, 1926, and in other ways continued his efforts down to and through the year 1927. She made no reply to either of these letters, and the reason given by her for her failure to do so was that she thought he wrote her in order "that he should have something on me"; and it would seem that if that were true, and it was not, there was all the more reason why she should not have remained silent.

The Advisory-Master said, in his opinion-letter, that the husband sought the return of the wife in the *bona fide* manner he was, under the circumstances, required to do, and that he was well corroborated.

In the preceding pages of this brief, the efforts of the husband in this respect have been set forth in detail, with the corroboration and corroborative facts and circumstances.

In *Hooper v. Hooper*, 34 N. J. Eq. 93, Chancellor Runyon held:

“Although a wife leaves her husband’s house through his fault, yet if he afterwards sincerely solicits her to return and she deliberately and persistently refuses to do so, her conduct constitutes desertion within the meaning of the divorce act.”

In the case of *Tabatsko v. Tabatsko*, 96 N. J. Eq. 674, this Court affirmed a decree for divorce granted a husband in a case where the advances made by the husband for the wife’s return were not nearly so persistent or numerous as those of the husband in the present case.

In *Remond v. Remond*, 95 N. J. Eq. 650, this Court held that:

“When the two-year period of desertion made by the statute a ground for divorce has once elapsed, the desertion becomes permanently established, and its character continues until the filing of the petition, unless sooner brought to an end by the act of the injured spouse.”

And in *Mikecz v. Mikecz*, 95 N. J. Eq. 39, held (at p. 42) that:

“Now, the act which would destroy the vested right of action, would be reunion and resumption of cohabitation.”

In *Mayhew v. Mayhew*, 95 N. J. Eq. 696, Vice-Chancellor Leaming said (at p. 697):

“The best and surest test to determine whether the element of obstinacy is to be found in any given desertion is for the deserted party to make at least some real effort to terminate it. \* \* \* If the husband is at

fault at all in the occasion of the desertion the duty weighs more heavily upon him than it would in a case where he was not at fault ”

In *Byrne v. Byrne*, 93 N. J. Eq. 6, the Chancellor held :

“In a suit for divorce, if the proofs show a willful, continued and obstinate desertion for two years next before the filing of the petition, the offence is complete, notwithstanding that a date earlier than the commencement of that period was alleged in the petition as the actual date upon which the desertion commenced; but, desertion once commenced, must have been continued without interruption for the statutory period to entitle the petitioner to a decree.”

In *Foster v. Foster*, 93 N. J. Eq. 182, Judge Ackerson speaking for this Court said (at p. 187) :

“The question presented to us is purely one of fact, and while the testimony of the petitioner is in some respects contradictory, nevertheless, our examination of the whole case leads us to the conclusion that there was sufficient evidence to justify the advisory master, who had the opportunity of hearing and observing all of the witnesses, in finding that the defendant willfully deserted petitioner.”

The testimony of the petitioner as to his efforts was sufficiently corroborated :

“Surrounding circumstances, adequately established, may be of a nature to fully supply the office of corroboration which the law requires in matrimonial cases.”

*Robinson v. Robinson*, 83 N. J. Eq. 150, aff'd 84 N. J. Eq. 201 :

“Under a statute requiring corroborative evidence of desertion in order to obtain a divorce, testimony of other witnesses is not required; but it is sufficient if the circumstances, as shown by the expressions and conduct of the defendant, together with the letters of the parties, corroborate the testimony of the complainant.”

*Footte v. Footte*, 71 N. J. Eq. 273.

In *Haskell v. Haskell*, 99 N. J. Eq. 399, this Court held, in a suit by a husband for divorce on the ground of desertion, that:

“In such an action by the husband against the wife surrounding circumstances, as evidenced by the testimony of witnesses as to the mental and physical condition of the husband and the marital relations which he reluctantly confided to them, may be sufficient corroboration to satisfy the legal rule.”

In *Van Wart v. Van Wart*, 57 N. J. Eq. 598 (at p. 599), held:

“In general it may be said that a desertion is to be adjudged obstinate which has resisted such effort or concessions as the party alleging desertion ought, under the particular circumstances of the case, to have made to bring it to an end. \* \* \* And it is obvious that more effort or concessions will be required of one whose conduct produces or contributes to produce the desertion than of one who is blameless.”

In *Orens v. Orens*, 88 N. J. Eq. 29, Advisory Master Oliphant held:

“The corroboration of a petitioner’s testimony, required by law, 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 mi-

nutest particulars, but only their giving such facts in evidence as already testified to by petitioner, or such circumstances tending to establish them, as renders petitioner's testimony so much more probable as to be legally acceptable, and which serves to empower the judge to accept the truth of the petitioner's whole story.

Corroborative testimony of other witnesses is not always required in divorce proceedings, but circumstances shown by expressions and conduct of a defendant, together with letters of the parties, are, in some cases, sufficient."

The following are decided cases where decrees of divorce were granted petitioning husbands and in which their efforts to induce the return of their wives were not as great as in the instant case, or no greater, viz. :

*Lee v. Lee* (not officially reported), 71 Atl. Rep. 605.

*Calichio v. Calichio* (not official reported), 96 Atl. Rep. 658.

*Pozzi v. Pozzi*, 87 N. J. Eq. 676.

*Fry v. Fry* (not officially reported), 100 Atl. Rep. 839.

The cases cited in the appellant's brief are not applicable. They rather support the respondent's side.

It is respectfully submitted that the decree *nisi* of divorce granted to the respondent in the Court of Chancery should be affirmed.

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