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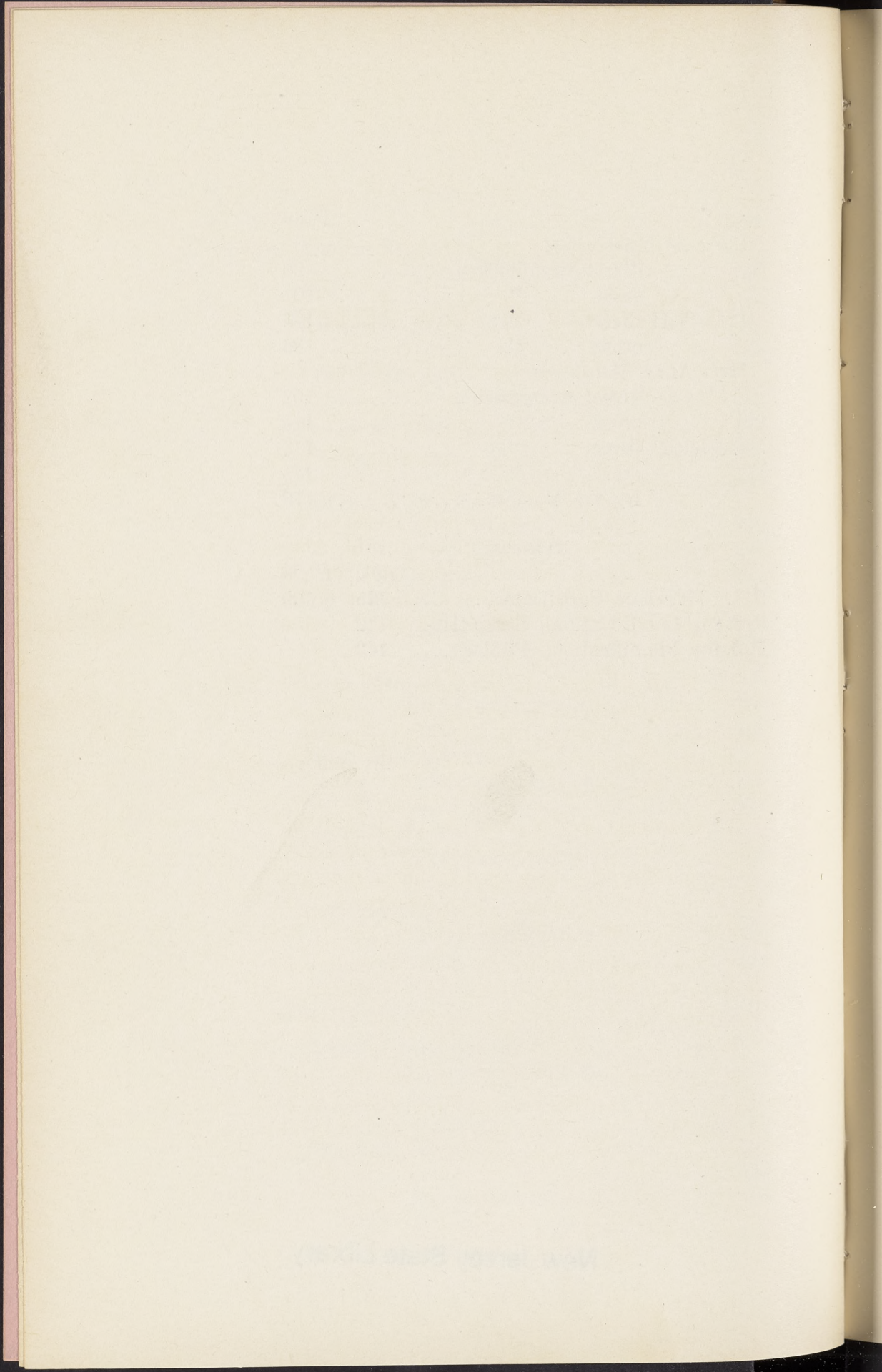
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PETITION FOR DIVORCE.

**In Chancery of New Jersey**

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

10

The petition of Peter Mackiewicz, of the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Anna Mackiewicz, the defendant in this suit, on the 15th day of January, 1905, by a Minister of the Gospel, in the City of Newark and State of New Jersey.

20

2. The defendant deserted the petitioner on or about the 20th day of September, 1926, ever since which time and for more than two years last past said defendant has wilfully, continuedly and obstinately, deserted the petitioner.

3. Petitioner was a bona fide resident of the State of New Jersey when this cause of action arose and has ever since (and for more than two years next preceding the commencement of this action) continued to be such resident.

30

4. Two children were born of the marriage aforesaid, now residing with the defendant, to wit, Florence, 23 years old, and Tessie, 21 years old.

5. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided and

40

*Petition for Divorce.*

that he may have such further or other relief as may be just.

And your petitioner will ever pray, etc.

AZZOLI & KRASNY,  
Solicitors of Petitioner.

10

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

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

20

PETER MACKIEWICZ.

Sworn and subscribed to before me  
this 24th day of November, A. D.  
1928.

HENRY J. STANFIELD,  
Attorney at Law of New Jersey.

30

40



**AFFIDAVIT AFTER PROCESS.**  
 IN CHANCERY OF NEW JERSEY.

	<i>Between</i> 10     PETER MACKIEWICZ, <div style="text-align: right; margin-right: 20px;"><i>Petitioner,</i></div> <div style="text-align: center; margin: 5px 0;"><i>and</i></div> ANNA MACKIEWICZ, <div style="text-align: right; margin-right: 20px;"><i>Defendant.</i></div>	} <i>On Peti-</i> <i>tion, &amp;c.</i> } <i>Affidavit</i> <i>After</i> } <i>Process.</i>
--	---	--

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX.     } ss.

20     PETER MACKIEWICZ, being duly sworn according to law, upon his oath deposes and says:

1. I am the petitioner in the above-entitled cause and that the age, residence and occupation of the defendant are known to me. She is about 45 years of age, and a housekeeper by occupation, and she resides at No. 17 Paterson street, Harrison, N. J.

30     2. The source of my knowledge respecting same, is that the house, No. 17 Paterson street, Harrison, N. J., is owned by the defendant and myself as tenants by entirety, and that she is residing at said property and collecting the rents thereof, as I have seen her residing in said premises. I have given the foregoing information to my solicitors.

Sworn and subscribed to before me this  
 day of December, 1928.



## ANSWER.

## IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	<i>On Petition for Divorce.  Answer.</i>
10	PETER MACKIEWICZ,  <i>Petitioner,</i>		
	<i>and</i>		
	ANNA MACKIEWICZ,  <i>Defendant.</i>		

Anna Mackiewicz, answering the petition filed by Peter Mackiewicz, petitioner, says:

1. She admits the contents of paragraph 1.
- 20 2. She denies the contents of paragraph 2 and says that, on the contrary, petitioner deserted defendant on or about the 20th day of September, 1926.
3. Defendant has no knowledge on information sufficient to form a belief as to the contents of paragraph 3.
4. Defendant admits the contents of paragraph 4.

30 Defendant therefore prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

By way of counter-claim, defendant counter-claimant respectfully shows that:

1. Defendant counter-claimant was lawfully joined in the bonds of matrimony to her present husband, Peter Mackiewicz, the defendant in  
40 this counter-claim, on the 15th day of January,

*Answer.*

1905, by a minister of the gospel in the City of Newark and County of Essex and State of New Jersey;

2. The defendant in this counter-claim deserted the defendant counter-claimant on or about the 20th day of September, 1926, ever since which time and for more than two years last past, said defendant in this counter-claim has wilfully, continuedly and obstinately deserted the defendant counter-claimant; 10

3. Defendant counter-claimant was a bona fide resident of the State of New Jersey when this cause of action arose and has, ever since and for more than two years next preceding the commencement of this action, continued to be such resident; 20

4. Two children were born of the marriage aforesaid, to wit, Florence 23 years old, and Tessie 21 years old, both of whom are now residing with the defendant counter-claimant;

5. Defendant counter-claimant charges that the defendant in this counter-claim without justifiable cause on or about the 20th day of September, 1926, abandoned defendant counter-claimant and separated himself from her, and refused and neglected to properly maintain and provide for her, and still does refuse to provide and maintain for her; 30

6. Defendant counter-claimant resides at 17 Patterson street, Harrison, Hudson County, New Jersey, with her two daughters and has no means of support and is dependent upon the charity of her two daughters for her support and maintenance. She has no other source of income, except the sum of \$30 per month, which 40

*Answer.*

is paid to her as rent and which rent she is required to pay out for the taxes, water, repairs, insurance and general maintenance of the premises which are owned jointly by her husband and herself;

10 7. The defendant in this counter-claim resides, as defendant counter-claimant is informed, at 165 Emmett street, in the City of Newark, and is employed as a foreman in a pipe bending factory, and he receives a salary of \$75 per week; defendant in this counter-claim also has money invested in various building and loans; he is the owner of mortgages of the value of \$10,000 or upwards, and is the owner of a 1927 Buick sedan for which he paid approximately \$1,600, and defendant counter-claimant charges that by diligent application and by reason of his income, he is able to earn and is possessed of sufficient moneys to maintain and support defendant counter-claimant in a manner suitable to her position.

Defendant counter-claimant is without adequate remedy at law and therefore prays:

30 1. That Peter Mackiewicz, who is the defendant in this counter-claim, may answer this counter-claim and each statement therein contained;

2. That defendant in this counter-claim may be compelled by a decree and order of this court to provide suitable maintenance to the counter-claimant, to be provided by him or to be made out of his property, and that he may be compelled to give reasonable security for such maintenance and allowance;

*Answer.*

3. That a writ of subpoena may issue commanding the defendant in this counter-claim to answer this counter-claim and each statement therein contained and to abide by and perform such order or decree as this court may make in the premises;

4. That counter-claimant may have such other and further relief as may be proper.

10

JOHN J. CLANCY,  
Solicitor of Defendant Counter-claimant.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

ANNA MACKIEWICZ, of full age, being duly sworn according to law on her oath deposes and says:

20

I am the defendant counter-claimant named in the foregoing counter-claim. I have read the same and the matters and things therein set forth are true.

her  
ANNA (X) MACKIEWICZ.  
mark

Sworn and subscribed to before  
me this 8th day of January,  
1929.

30

JOHN R. LOSEE,  
Attorney at Law of New Jersey.

40

**ANSWER TO COUNTER-CLAIM.**  
**IN CHANCERY OF NEW JERSEY.**

	<i>Between</i>		
10	PETER MACKIEWICZ, <span style="float: right;"><i>Petitioner,</i></span>	}	<i>On Peti- tion, &amp;c.</i>
	<i>and</i>		<i>Answer to Counter- claim.</i>
	ANNA MACKIEWICZ, <span style="float: right;"><i>Defendant.</i></span>		

Petitioner, Peter Mackiewicz, answering the counter-claim of the defendant, says:

20     1. He admits the allegations in paragraph one of the counter-claim.

30     2. He denies that he deserted the defendant on the 20th day of September, 1926, and ever since which time and for more than two years last past, he has wilfully, continually and obstinately deserted the defendant as alleged in paragraph 2 of the counter-claim; but states the truth to be that the defendant deserted this petitioner in manner and form alleged in his petition filed herein.

30     3. He admits the allegations in paragraph 3 of the counter-claim.

40     4. He admits the allegations in paragraph 4 of the counter-claim.

40     5. He denies that he abandoned the defendant on or about the 20th day of September, 1926, and that he separated himself from her, and that he has refused and neglected, and does refuse and neglect to maintain and provide for her, as set

*Answer to Counter-claim.*

forth and charged in paragraph 5 of the counter-claim; but this petitioner charges the truth to be that the defendant, Anna Mackiewicz, deserted the petitioner on or about the 20th day of September, 1926, ever since which time and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted this petitioner, and that ever since said 20th day of September, 1926, this petitioner has always properly provided for the support and maintenance of the defendant.

10

6. This petitioner denies that the defendant is dependent for support upon the charity of her two daughters, and that she only has an income of \$30 per month which is paid her for rent; but this petitioner charges the truth to be, that the defendant has been receiving a weekly allowance of \$10 per week from petitioner, since September 20, 1926, up to the present time, and that since the institution of these proceedings, petitioner has consented and is paying defendant the sum of \$12 per week, besides which, defendant resides free of rent in premises, 17 Paterson street, Harrison, and collects rents from the tenants thereof, which property is held as tenants by entirety by petitioner and defendant, and that at said premises the defendant conducts a boarding house, and that she has been receiving the earnings of their two children. That in September, 1928, petitioner paid defendant over \$400 from a joint savings account.

20

30

7. He denies that his salary is \$75 per week and that he has money in various building and loan associations, and owns mortgages of \$10,000 or upwards, and is the owner of a 1927 Buick sedan costing \$1,600; but states the truth to be

40

*Answer to Counter-claim.*

that his weekly income from his work is about \$32 per week, and that he is the owner of ten shares in the Kingsland Building and Loan Association, and is the owner of a 1925 Buick coupe worth about \$150, and that he owns with defendant, as tenants by the entirety, property at No. 10 17 Paterson street, Harrison, N. J., which the defendant is now in possession of and collecting the rents therefrom.

## OBJECTION IN POINT OF LAW.

Take notice, that the petitioner at the time of the hearing of the above cause, will move to strike out the answer and counter-claim filed in this cause on the following grounds:

- 20 1. Said answer is not signed by the defendant.
2. Said counter-claim does not contain an affidavit of non-collusion; both of which are required by statute, being "An Act for Divorces and for Decrees of Nullity of Marriage and for Alimony and the Maintenance of Children (Revision of 1907)."

30 Petitioner therefore prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

PETER MACKIEWICZ,  
Petitioner

AZZOLI & KRASNY,  
Solicitors of Petitioner.

**ORDER OF REFERENCE.**

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="text-align: center;">PETER MACKIEWICZ, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">ANNA MACKIEWICZ, <i>Defendant.</i></p>	}	<p><i>On Petition.</i></p> <p><i>Order of Reference.</i></p>	10
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This matter being opened to the Court by Azzoli & Krasny, solicitors of petitioner, and defendant's solicitor consenting hereto;

It is, on this                    day of September, 1929,      20  
 ORDERED, that the above-entitled cause be referred to Edward M. Colie, one of the Advisory Masters of this Court to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,  
C.

I consent to the making and entry of the fore-      30  
 going order.

JOHN J. CLANCY,  
Solicitor of Defendant.

**DESIGNATION.**  
IN CHANCERY OF NEW JERSEY.

	<i>Between</i>		
10	PETER MACKIEWICZ, <i>Petitioner,</i>	}	<i>On Peti- tion, &amp;c.</i>
	<i>and</i>		
	ANNA MACKIEWICZ, <i>Defendant.</i>		<i>Designation.</i>

20 This matter being opened to the Court by  
Azzoli & Krasny, solicitors of petitioner, and  
John J. Clancy, solicitor of defendant, consenting  
hereto;

It is, on this 2nd day of October, 1929,  
ORDERED, that the 12th day of December, 1929, at  
the hour of ten o'clock in the forenoon, at 763  
Broad street, Prudential Building, Room 401,  
Newark, N. J., be designated as the time and  
place for the hearing of the above-entitled  
cause.

Respectfully advised,

30 E. M. COLIE,  
A. M.

I consent to the making and entry of the fore-  
going order.

JOHN J. CLANCY,  
Solicitor of Defendant.

**NOTICE OF HEARING.**

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	<i>On Petition, &amp;c.</i>  <i>Notice of Hearing.</i>	10
PETER MACKIEWICZ, <i>Petitioner,</i>			
and			
ANNA MACKIEWICZ, <i>Defendant.</i>			

To John J. Clancy, Esq., solicitor of defendant.

TAKE NOTICE of the hearing of this cause before the Honorable Edward M. Colie, Advisory Master of this Court, to whom the said cause has been referred, on the 12th day of December, 1929, at the hour of ten o'clock in the forenoon, at the Prudential Building, Room 401, in the City of Newark, N. J., the time and place designated by the order of said Advisory Master. 20

AZZOLI & KRASNY,  
 Solicitors of Petitioner.

Service of a copy of the foregoing notice is hereby acknowledged this            day of October, 1929. 30

JOHN J. CLANCY,  
 Solicitor of Defendant.

**STIPULATION OF COUNSEL AS TO  
TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

71-130.

10

*Between*

PETER MACKIEWICZ,  
*Petitioner,*

*and*

ANNA MACKIEWICZ,  
*Defendant.*

*On Petition  
for Divorce.*

*Stipulation  
of Counsel as  
to Testimony.*

20 It appearing that Hubbard Hoyt, the stenographer sworn to take and who took the testimony of the petitioner on the first day of the hearing, who had been subjected to "shell-shock" during the Great War, subsequently became so ill mentally that he had to go to a retreat and was unable to read or transcribe the testimony of the petitioner taken on the first day of the hearing;

30 IT IS HEREBY STIPULATED and agreed that the petitioner shall be recalled for direct and cross examination on the subjects as to which he was examined at the first hearing, such testimony to be taken in the place of and to stand for the testimony taken on the first day of the hearing.

AZZOLI & KRASNY,  
Solicitors for and of Counsel  
with Petitioner.

JOHN J. CLANCY,  
Solicitor for and of Counsel  
with Defendant.

40

*Peter Mackiewicz, re-direct.*

**TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

PETER MACKIEWICZ, <div style="text-align: right;"><i>Petitioner,</i></div> <div style="text-align: center;"><i>vs.</i></div> ANNA MACKIEWICZ, <div style="text-align: right;"><i>Defendant.</i></div>	}	10
---	---	----

Newark, N. J., March 20, 1930.

(HEARING CONTINUED)

Before Edward M. Colie, Esq., Advisory Master. 20

Appearances:

Azzoli & Krasny, William V. Azzoli, of counsel, for the petitioner.

John J. Clancey, for defendant.

PETER MACKIEWICZ, recalled, testified further as follows:

*Re-direct examination* by Mr. Azzoli. 30

Q At the last hearing you were asked by Mr. Clancey if your wife ever accused you. You know what the word "accused" means? A Not exactly.

Q Did she blame you about anything?

Mr. Clancey: I object.

Q Did your wife ever blame you for running around with women? A No, sir. 40

*Peter Mackiewicz, re-direct.*

Mr. Clancey: I object as not proper re-direct examination.

The Master: We haven't got the stenographer here who took the last hearing.

Q Something was said about fixing a toilet  
10 for the tenant downstairs? A Yes, sir.

Q Did you ever fix a toilet downstairs? A  
Yes, sir; I fixed pipes.

Q Was that what you were doing downstairs  
—fixing pipes? A Yes, sir.

Q Who paid the doctor's bills for Tessie's  
operation? A I don't know who paid it.

Q Who gave the money for it? A At the  
time that she was operated on I didn't have any  
money. I paid \$25 to the hospital. I said when  
20 I got the money I pay the doctor's bill. After  
that for a long time I couldn't make any money  
and these people paid it themselves.

Q Do you remember the day of the hearing  
of the Chancery case for a division of the moneys  
that you had in the West Hudson County Trust  
Company, in the suit you brought against your  
wife sometime? A Yes, sir.

Q In September, 1928, and you remember you  
agreed to give her one-half of the money?

30

Mr. Clancey: I object.

The Master: Overruled.

Mr. Clancey: Exception.

A Yes, sir.

Q Do you remember while we were discussing  
the division of the moneys and talking with  
reference to you and her living together again?

A Yes, sir.

Q What was that—do you remember? A We  
40 started and the first thing I remember was when

*Peter Mackiewicz, re-cross.*

my wife was chasing me through the court. I tried to get away from that noise and she started hollering at me.

Q She wanted all the money; is that right?

Mr. Clancey: I object as leading.

10

Q Do you remember when I and Mr. Sopansky, your wife's lawyer, in your presence and in the presence of your wife talked together to get you people to live together? A Yes, sir.

Q What did your wife say about that? A She said she didn't want to; that is all.

Mr. Azzoli: That is all of my re-direct examination on the cross.

20

*Re-cross examination* by Mr. Clancey.

Q When was that hearing in court? A On Broad street.

Q When? A About two years after, it was around 1928 or something like that.

Mr. Azzoli: September, 1928.

Q Were your two daughters in court as witnesses that day? A Yes, sir.

30

Q They were standing around with your wife? A Yes, sir; two daughters standing here and four of us standing together.

Q Your wife and daughters right next to you? A Yes, sir.

Q How long had you been living apart from your wife at that time? A Pretty nearly two years.

Q You had been away two years?

40

*Stanly Zudnek, direct.*

STANLY ZUDNEK, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Azzoli.*

10 Q Where do you reside? A 30-36 Paterson street, Harrison, New Jersey.

Q Are you a married man? A Yes, sir.

Q You have children? A Yes, sir.

Q Do you know Peter Mackiewicz? A Yes, sir.

Q Do you know Mrs. Mackiewicz, the defendant? A Yes, sir.

Q Do you remember some time in 1926, being called upon by Peter Mackiewicz to go to his house for any reason? A I don't get you.

20 Q Do you remember some time in 1926, being called upon by Peter Mackiewicz to go to his house for any reason? A I don't get you.

Q Some time in September, 1926? A Yes, sir.

30 Q What happened? A Mr. Mackiewicz came into my house. It was about half-past eight o'clock that evening, about half-past seven in the evening he came to my house and he said he had some kind of a padlock on the bedroom door and he couldn't get in, "My wife had everything left in the hall." I started to laugh because I didn't believe it, what happened. He said, "Come with me and see."

40 Q You lived just across the street? A Yes, sir. I went in and saw a lock on the door and a suit of clothes being laid on the floor outside of the door. Mrs. Mackiewicz opened the door and said, "Don't come around here. I don't want you and I don't want my husband. Get out. If you don't I will call a cop and arrest

*Stanly Zudnek, direct.*

you both." I went out. I was going to my store and I left Mr. Mackiewicz on the street, Mr. Mackiewicz I left on the street.

Q Do you remember what time about in September 1926 it was? A The last part of September, but I don't know the date.

Q Whereabouts was this room that you saw the padlock on? A The second floor, on the hall room. 10

Q What did you see in the hall?

Mr. Clancey: He answered that.

Q What did you see in the hall? A Some suits of clothes.

Q Do you know what they were? A It was a little dark and I didn't see much about it. I said it was in a pile there. 20

Q When you talked with Mrs. Mackiewicz at the time in the hallway somebody opened the door? A Yes, sir.

Q Did you notice who opened it? A Mrs. Mackiewicz.

Q The defendant here? A Yes, sir.

Q What was it she said? A She said, "Get out" to Mr. Mackiewicz. She said "I don't want you. Get out." 30

Q You also? A Yes, sir.

Q You left then? A Yes, sir.

Q Did you have occasion to talk with Mr. Mackiewicz about that afterwards? A No, sir.

Q Did you see Mr. Mackiewicz around there any more? A I saw him two or three times a week after that when he was getting his car in the garage and he came around with the car and he left his car and he walked away to where he lived. 40

*Stanly Zudnek, cross.*

Q Where did he live? A He lived, he roomed at 96 Pennsylvania avenue.

Q Newark? A Yes, sir.

Q New Jersey? A Yes, sir.

Q Did you ever visit him there? A Yes, sir; lots of times.

10 Q Has he been living there up to now? A Yes, sir.

*Cross examination by Mr. Clancey.*

Q How long had you known the Mackiewicz?  
A Seven years.

Q Are you friendly with Mrs. Mackiewicz or were you friendly with Mrs. Mackiewicz? A Yes, sir.

20 Q Were you friendly with her in September, 1926? A We didn't have no argument. We were nice.

Q Friendly? A Yes, sir.

Q Did she have any reason for chasing you out of the house? A I don't know what reason. I don't have any privilege in anybody's house and if the say get out I don't have anything to say.

30 Q What did you say? A I didn't say anything.

Q You didn't tell her you were surprised she talked to you like that? A I walked away.

Q Did you tell her anything? A What?

Q Did you tell her anything at that time? You were friendly with her? A Yes, sir.

Q She had no reason to chase you out, did she? A Mrs. Mackiewicz was kind of angry with her husband.

Q She was not angry with you? A Mr. Mackiewicz walked away and I walked away.

40 Q You had no quarrel with her? A No, sir.

*Peter Mackiewicz, recalled, direct.*

Q Where was this padlock? A On the bedroom where Mr. Mackiewicz slept.

Q How do you know where he slept? A I live across the street and I saw him pretty nearly every morning and every day before he left; the windows are face to face.

Q Do you know how long he has been in that bedroom? A Since I lived on the street. 10

Q How long is that? A I live there since 1922.

Q From 1922 to 1926 he had been living in the hall bedroom upstairs? A Yes.

Q Over the street? A Yes, sir.

Q There is no doubt about that in your mind? A What?

Q There is no doubt about that in your mind?

The Master: You are certain about that? 20

Q You are certain about that? A What?

Q You are sure of that? A Yes, sir.

Q Are you as sure of everything you have testified to as you are of that? A Yes, sir.

The Master: Have you got that date fixed?

Mr. Azzoli: The latter part of September, 1926.

30

PETER MACKIEWICZ, recalled, testified further as follows:

*Examined by Mr. Azzoli.*

Q You were asked by Mr. Clancey when he cross examined you, whether or not you were at certain saloons getting drunk and you said you 40

*Alexander Rackowski, direct.*

had business to be there. What was your business to be there? A I was a special officer on special duty.

Mr. Clancey: That was all testified to.

10 Q As a special officer you were there to maintain peace on what nights, during nights?  
A Yes, sir; especially Saturdays and holidays. I also got \$6 an evening.

*Examined by Mr. Clancey.*

Q Are you still a special policeman? A Yes, sir.

Q You still go to dances? A Yes, sir.

20 Q And you don't get \$6 any more? A No, sir; not while I live in Newark. I belong to Harrison.

Q How long were you a special officer getting \$6 a night? A 1914.

Q You are not a special officer now? A Yes; and I have a badge but it don't mean anything now.

Q You don't work at it? A No, sir.

Q Have you got the badge with you? A I have it home.

30

---

ALEXANDER RACKOWSKI, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Azzoli.*

Q Where do you reside? A 310 Warren street, Harrison.

40 Q New Jersey? A Yes, sir.

*Alexander Rackowski, direct.*

Q Are you married? A Yes, sir.

Q Have you children? A Yes, sir.

Q Do you know Mr. Peter Mackiewicz? A Yes, sir.

Q And Mrs. Anna Mackiewicz? A Yes, sir.

Q Do you remember any time that Mr. Mackiewicz called on you some time ago for some reason? A Yes, sir. 10

Q What was it for?

The Master: And when?

A The latter part of September.

Q What year? A 1926.

Q For what? A He asked me I should give him a place to sleep. I laughed at him. I said, "What is the matter with you? Haven't you got your own house?" He said, "I got put out." I said, "How is that?" He said, "I got a padlock on my door and I can't get in." I said, "That is funny." I went up there. 20

Q Up where? A To his house with him.

Q Where does he live? A 17 Harrison street on the second floor. I went up there and I saw a little room in the hall with eyeholes and a padlock on it. Mrs. Mackiewicz said—she didn't open the door—"Get a cop, get a cop." I saw the party's clothes lying in the hallway. 30

Q Whose clothing? A Mr. Mackiewicz'.

The Master: How do you know that?

The Witness: I saw them there.

The Master: You saw a man's clothing and that is all?

The Witness: Yes, sir.

Q What did you do? A I walked out. 40

*Alexander Rackowski, direct.*

Q Did Mr. Mackiewicz go with you? A I went downstairs. I don't know where he went. I left him on the street and I went home.

Q Did you give him a room? A No, sir; because I didn't have enough room.

10 Q Why didn't you have room at your place?  
A I got four people and myself and my wife.

Q How many rooms do you have? A I have one room at the time.

Q Did you ever have occasion to talk with Mrs. Mackiewicz about these troubles? A Yes, sir.

Q How long after that? A Three days.

20 Q Where? A On the street. She was going to the butcher shop. I said, "What is the matter?" She said, "I don't want him around the house. He is no good. He locked up my friend. I don't want him."

Q Did you have occasion to see her after that? A The last time she didn't pay any attention to my talk and I got out.

Q Did you talk with her since that first time?  
A Yes, sir.

30 Q What did you talk with her about? A I said, "What kind of business you are doing? You put your husband out." She said, "I don't care for him. I don't care to see him around the house. I got sick and tired of him."

Q How far did you live from the Mackiewicz?  
A I lived at 28 Patterson street at the time.

Q Eleven numbers below? A Yes, sir.

Q You were all neighbors there? A Yes, sir.

40 Q How long did you continue to live at 28 Patterson street after you saw the padlock on the door of Mackiewicz? A I left two months after that.

*Alexander Rackowski, direct.*

Q Where did you go? A 525 Hamilton street.

Q How far away is that from 17 Patterson street? A Three houses.

Q How long did you live there? A About seven months.

Q Did you continue to see Mrs. Mackiewicz during that time? A I saw her the last time going to a butcher shop. 10

Q From there where did you go to live? A 450—I think it was—Hamilton street, the corner of 5th street.

Q That is further down? A Yes, sir.

Q In the same neighborhood? A Yes, sir.

Q How long did you live there? A Over a year.

Q Did you still run into Mrs. Mackiewicz during this time? A Yes, sir. 20

Q Then where did you live? A I lived on Hamilton street, No. 217.

Q Still in the same neighborhood? A Yes, sir.

Q Did you continue to see her? A No, sir. It was too far away.

Q Did you know where Mackiewicz had gone—Peter Mackiewicz? A Yes, sir.

Q Where? A 96 Pennsylvania avenue.

Q Newark? A Yes, sir. 30

Q Did you call to see him there? A Yes, sir.

Q How often? A About twice a week.

Q You visited his room there? A Yes, sir.

Q Do you know whether he is living there today? A Yes, sir.

Q From that time, 1926, until today you still say he lives there? A Yes, sir.

Q Because you visited him there? A I visit him every two weeks. 40

*Alexander Rackowski, cross.*

Q You do?

The Master: What is your business?

The Witness: Machinist.

The Master: For whom?

10 The Witness: Lee-Curtin Company.

*Cross examination by Mr. Clancey.*

Q When did you last visit him? A About four weeks ago.

Q Where was he living then? A 96 Pennsylvania avenue.

Q You didn't see him there two week, then? A No, sir.

20 Q Why did you say it? A Before I did.

Q Now, you don't? A No, sir.

Q Why didn't you say that before? A I did.

Q You said you saw him every two weeks?

A Yes, sir.

Q Now, you don't see him every four weeks?

A About one month ago.

Q Were you served with a subpoena to come here? A Yes, sir.

Q Were you subpoenaed to come here?

30 Mr. Azzoli: I object.

Q Were you subpoenaed to come here?

Mr. Azzoli: I object.

The Master: I take it. It doesn't make any difference.

Q Were you served with a subpoena? A Yes, sir.

40 Q Who served you? A Peter Mackiewicz.

*Alexander Rackowski, cross.*

Q When? A I think it was in November.

Q November? A Yes, sir.

Q How did you know this case was on today?

Mr. Azzoli: I object to the question.

The Master: It doesn't make any difference. 10

Q When were you notified of this hearing?

A I was notified the last time I was up here.

Q You were not notified since November to be here? A Yes, sir.

Q Who notified you since? A Mr. Azzoli.

Q By letter? A Yes, sir.

Q Did you talk to Mr. Mackiewicz since then?

A No, sir.

Q You didn't talk with Mr. Mackiewicz since? 20

A No, sir.

Q Not from November until now? A No, sir.

The Master: About this case?

Mr. Clancey: He said he didn't talk to him.

Q You haven't seen Mr. Mackiewicz since last November? A I saw him four weeks ago.

Q You saw him a couple of times before that? 30

A No, sir; once.

Q Only once before that? A Yes, sir.

Q You saw him four weeks ago and once before that? A Yes, sir.

Q And then November? A Yes, sir.

Q Why did you say you saw him every two weeks? A Before I did.

Q Before what? A Before November.

Q Why didn't you say that before? A I did.

*Alexander Rackowski, cross.*

Q You don't know where he lives since November? A I do know.

Q You only saw him twice? A I do know where he lives.

Q You didn't go to his house except twice? A I was there more than twice.

10

Q You were there four weeks ago and once more? A When he was in Newark.

Q I am talking about November on.

Mr. Azzoli: I object.

The Master: It makes no difference.

Mr. Clancey: I am attacking his credibility.

20 Q Was he in Newark all the time? A Yes, sir.

Q Didn't he go to Chicago? A Not that I know of.

Q You don't know about that? A No, sir.

Q How long have you known Mackiewicz? A For the last fifteen years.

Q Did he ever come to your house and visit you? A Yes, sir.

Q During 1926 did he visit you? A Yes, sir.

30 Q Where were you living in September, 1926?

A I was living on 28 Patterson street.

Q You had four children? A Three children at that time.

Q Mackiewicz visited you there? A Yes, sir.

Q He knew your wife? A Yes, sir.

Q He came to you about the room? A Yes, sir.

Q You said you couldn't give him a room because you had only one room? A Yes, sir.

40 Q That is what you said? A Yes, sir.

*Alexander Rackowski, cross.*

Q Why did he come to you? A I don't know.

Mr. Azzoli: I object.

The Master: I rule that out.

Q Did he tell you why he came to you? A 10  
He told me he had a padlock on the door and he couldn't get into his room. I laughed and said, "You got your own room and you can't get in your room?"

Q He visited you before that, hadn't he? A  
Yes, sir.

Q He knew how much room you had, didn't he; he saw your place, didn't he? A Yes, sir.

Q There was no room, was there? A No, sir.

Q Why did he come to you? 20

Mr. Azzoli: I object; that is the same question.

Q Do you know of any reason why he came to you? A He was looking for a place to sleep.

Q He had no room? A If I could give him a room to sleep.

Q You had five children or people there? A  
Yes, sir. 30

Q In one room? A Yes, sir.

Q He came to you for a room? A Yes, sir.

The Master: The whole five of you slept in one room?

The Witness: Yes, sir.

Q What day in September did he come to you? A The latter part of September; I don't know the day.

Q Do you know the date? A No, sir. 40

*Alexander Rackowski, cross.*

Q Did you see him in October? I withdraw that. Did you see him in August?

Mr. Azzoli: What year?

Q 1926. A I did.

10 Q What happened when you saw him in August? A I don't know.

Q How do you know what happened in September? A Because he called me over to his house.

Q How do you know what happened in September? A I know it was in September.

Q If you know so well, tell me what happened in October, 1926, when you saw him. A I don't know exactly.

20 Q What happened in November, 1926? A He was in Newark in November, 1926.

Q Did you see him there? A Yes, sir.

Q What happened there at that time? A Nothing.

Q That is the only time you remember anything happening—in September, 1926? A That is the only time in 1926 that he was put out of his house.

30 Q How do you fix that month in your mind?

The Master: Why do you say September instead of October?

The Witness: Because it was in September.

Q How do you know that? A You think I can read and can't see a calendar?

Q How do you know it was not in October?

A I know it was in September and not October?

40 Q Why?

*Alexander Rackowski, cross.*

The Master: Because he remembers it.

Q Do you remember what day it was?

Mr. Azzoli: I object on the ground it is repetition.

10

A No, sir.

Q What time did he come to your house? A It was around five or six o'clock.

Q What time—was it five or six? A Between five and six o'clock.

Q Can you give me any time nearer than that? A I didn't look at the clock.

Q What day of the week was it? A It was in the week.

20

Mr. Azzoli: I object.

The Master: He answered that before.

Q What day was it? A I don't know.

Q Was it Sunday? A No, sir.

Q It was a working day? A Yes, sir.

Q Where was Mr. Mackiewicz working then?

A He was working down in the Tube Company.

Q Where? A Empire street in Newark.

Q That was a couple of miles from where he lived? A I think so.

30

Q What were his hours there? A I don't know because he was boss there, he was taking charge of the gang.

Q He worked there every day? A Yes, sir.

Q He was a hard-working man? A Yes, sir.

Q Do you know what time he went to work in the morning? A I couldn't tell you exactly what time he went to work in the morning because I don't know; I was not watching him when he went to work.

40

*Alexander Rackowski, cross.*

Q What time did he quit work? A I don't know.

Q You would see him evenings from work at six or seven o'clock? A When I saw him?

Q A number of times? A Yes, sir.

10 Q What is there that happened that fixes the time between five and six o'clock that this padlock business happened on a working day of the week? A What?

Q What is there that happened that fixes the time between five and six o'clock that this padlock business happened on a working day of the week? A What?

Q How do you fix it as five or six o'clock? A I didn't look at the clock.

20 Q Why did you say the time if you don't know?

The Master: Your question is when did this man come home?

The Witness: I didn't look at the clock.

Q Had you had your supper? A No, sir.

Q What time did you have your supper? A Any time I feel like it; sometimes eight o'clock, sometimes nine o'clock.

30 Q You are the boss in your house? A I am not the boss; my wife is the boss.

Q You have your supper any time you feel like it? A Yes, sir; because my wife works and I have to wait until she comes home to fix supper. I ain't going to fix my supper.

Q You don't know what time Mackiewicz came to you? A No, sir; because I didn't look at the clock.

40 Q You went to his house with him? A Yes, sir.

*Alexander Rackowski, cross.*

Q Have you known Mrs. Mackiewicz a number of years? A Yes, sir.

Q Do you know the two daughters? A Yes, sir.

Q Two nice girls? A Yes, sir.

Q It was dark, wasn't it, when you went to the house? A In the evening. 10

Q It was dark when you went to his house? A Yes, sir.

Q Where was the padlock on the hallway door; where on the door was it? A In the hallway.

Q Where on the door? Show me. A In the middle of the door.

Q Go to that door and show me. A Right. (Witness indicates.)

Q Indicating about the center of the door. Did it have a lock on it? A Yes, sir; two eye bolts and a lock on it. 20

Q What are they? A You screw them off and there is eyes on it where you put the lock.

Q When was the last time you were in the house before that? A I was not in the house before that day.

Q You never were? A Yes; I was a couple of months before that. He was called on the telephone to the shop and I used to go to the house and get him. 30

Q You just went in the hallway and called upstairs and called him downstairs to the telephone? A Yes, sir.

Q Where was this pile of clothes in the hallway, where? A On the second floor.

Q Where?

The Master: How near the door that was padlocked? 40

*Alexander Rackowski, cross.*

The Witness: About a foot away from the door.

Q Did Mackiewicz say at that time that any or all of his clothes were locked in the room? A They were outside of the room.

10 Q There was only one suit? A I don't know how much was there. I didn't count them. It was dark in the hallway and I couldn't see them.

Q Did you look at it at all? A I stopped there and I saw something lying there. I don't know whether there was one or two or three suits.

Q How do you know it was a suit? A I know it was a man's suit.

Q It was dark? A Yes; but I could see it.

20 Q Do you know how many suits were there? A I don't know how many suits were there.

Q Do you know whether there were two or more than two? A I don't know how many suits were there.

Q Just suits there? A Yes, sir.

Q You saw no overcoats there? A I didn't look.

Q What? A I saw there was clothes there; that is all I saw.

30 Q You said three suits? A Coat sleeves.

Q That is all you saw? A There must have been suits.

Q Wait a minute. Did you see any pants there? A Yes, sir.

Q How many—two? A I think one or two pairs of pants.

Q And one or two coat sleeves? A Yes, sir.

Q That is all you saw? A Yes, sir.

40 Q Where was the other clothes? A I don't know.

*Alexander Rackowski, cross.*

The Master: What was the date of the trouble with the boarder?

Mr. Azzoli: July of 1926.

Q Do you remember when Mackiewicz lived on Emmett street in Newark? A No, sir; I never saw him there. 10

Q You didn't go and visit him there. How long was he living on Emmett street? A I don't know.

Mr. Azzoli: I object.

Q How long was he living on Emmett street? A I don't know. That is all I know, when he lived on Pennsylvania avenue.

The Master: I sustain the objection. 20

Q Did he tell you he was living on Emmett street? A No, sir. He told me he lived at 96; that is where I visited him and I didn't see him at any other place.

Q Do you know of any troubles between Mr. and Mrs. Mackiewicz before September? A There was no trouble.

Q Do you know of any troubles between Mr. and Mrs. Mackiewicz before September? 30

The Master: Answer the question. Do you know of any trouble or hear of any between them before September 1926?

The Witness: No, sir.

Q You lived just across the street from them, down the street? A Two houses below.

Q They always got along very well so far as you know? A Yes, sir. 40

*Andrew Turowski, direct.*

Mr. Clancey: That is all.

*Re-direct examination by Mr. Azzoli.*

Q You didn't examine any of those clothes in the hall? A No, sir.

10 Q All you saw was a padlock; you examined that? A Yes, sir.

Q That is what made you curious to go and see? A Yes, sir.

*Re-cross examination by Mr. Clancey.*

Q Why were you curious about the padlock?

The Master: Why did you go and look at the padlock?

20 The Witness: I didn't believe him when he said there was a padlock and I went there to see if it was there.

Q Why were you interested in knowing whether there was a padlock? A Because he asked me for a room to sleep.

Q What was that your business?

Mr. Azzoli: I object to the question.

30

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ANDREW TUROWSKI, called as a witness,  
being duly sworn, testified as follows:

*Direct examination by Mr. Azzoli.*

Q Where do you reside? A 311 Warren street, Harrison.

40 Q Do you know Peter Mackiewicz? A Yes, sir.

*Andrew Turowski, direct.*

Q Do you know Mrs. Mackiewicz? A Yes, sir.

Q How long have you known them? A Five or six years.

Q In September, 1926, where did you live? A In Hamilton and 5th in a furnished room.

Q How far away is that from 17 Patterson street? A About three blocks. 10

Q Did you know Mr. and Mrs. Mackiewicz at that time? A Yes, sir. At that time when I kept a car in 12 Patterson street, right across from Mr. Mackiewicz, when I came there one evening I took my car out to go to Newark and I saw Mr. Mackiewicz standing by the stoop.

Q That was when? A September.

Q What part of September? A I think towards the end. I don't remember exactly. 20

Q In September? A Yes, sir.

Q What year? A 1926.

Q Go ahead. A I tried to get my car out to go to Newark and I saw Mr. Mackiewicz and he said, "Come here. I want to show you something." I was about three times in his place. He brought me upstairs.

Q Where? A On the second floor where he lived. He said, "Look what my wife did to me."

Q What did you see? A That evening? 30

Q What did he show you? A He showed me a lock on the door and the clothes lying alongside of it.

Q Where was the lock? A On the back, on the side of the door. There is a small hallway there and there was a lock there. Before coming up he tried to get in. I heard a noise inside.

Q You heard Mrs. Mackiewicz then? A Yes, sir. We took some through the door. I said we can take this to my house. 40

*Andrew Turowski, direct.*

The Master: Strike that out.

Q What did you do? A I took the car to the garage.

Q Where? A Back of his house. I took some suits or something like that and he took the rest of it. After that I came there and I said, "You just—"

Q Never mind that. Where did Mackiewicz go? A He was left there and I went to Newark because I had a date.

Q What time was this about? A Between nine and ten o'clock or something like that; I don't remember exactly, but I know it was starting to get dark; it was almost dark.

Q You left Mackiewicz there? A Yes, sir.

The Master: I don't understand this witness, where he left the petitioner. Where did you leave him?

The Witness: I said, "I am sorry but I have a date." I left him in front of his house.

Q You went away? A Yes, sir.

Q That was after you helped him put some clothes in the garage? A Yes, sir. I helped first and then I left.

Q When did you next see him? A One or two weeks after that, I believe.

Q Where did you see Mrs. Mackiewicz? A One time but I don't remember the date, in Mahatma Hall at a ball.

Q How long after that? A Two or three months.

Q Where was this hall? A Harrison avenue.

Q Did you talk with her? A No, sir.

*Andrew Turowski, cross.*

Q Did she talk with you? A No, sir. She was dancing and I attended to my business and she attended to her business.

Q Do you know who she was dancing with?  
A I didn't pay any attention to it.

Q Was Mr. Mackiewicz there? A No, sir.

10

Q Did you see what time she went home? A No, sir. I left early, about 10 o'clock.

Q That is all you know about it? A Yes, sir.

Q Do you know where Mr. Mackiewicz went to sleep that night? A No, sir.

The Master: Did you see Mrs. Mackiewicz at the time you went up to see this door?

The Witness: No, sir. I just heard a noise. I didn't see her; no, sir.

20

*Cross examination by Mr. Clancey.*

Q Do you know whether or not it was eight or nine or ten o'clock? A Something like that.

Q Within those three hours?

Mr. Azzoli: Well, now—

The Master: This is cross examination. Let him answer the question.

30

Q What was it? A It was on a Monday.

Q Are you sure? A Yes, sir.

Q You are sure of it? A Yes, sir; because—

Q It was Monday? A Saturday I had a pay day and I worked Monday.

Q What time was it—nine or ten o'clock? A I didn't have the time with me.

Q Was it light or dark? A It was starting to get dark.

Q It was in September? A Yes, sir.

40

*Andrew Turowski, cross.*

Q We want to fix the time. A Because if I had my watch—I never wear a clock with me.

Q You can guess what time it was. A Around nine some time.

Q Was anybody else around there? A Not that I know of.

10 Q You didn't see anybody else? A No, sir.

Q No other men there? A No, sir.

Q When was the last time before that you were in the house? A I never was there.

Q Before that? A Before that it was July or June. People were living downstairs and I fixed up the stove for them.

Q Were you ever upstairs? A Yes, sir.

Q Did you meet Mrs. Mackiewicz? A Yes, sir; and the daughter.

20 Q Did you talk to her? A Yes, sir.

Q Did you see the girl outside? A Yes, sir.

Q Was she there? A Both of them.

Q Both girls were there? A Yes, sir.

Q When was the last time before this night that you saw Mackiewicz? A I don't know, about a week or so.

Q Where? A I saw him in a candy store. I bought cigarettes when he went by.

30 Q You said "Hello" to him? A Yes, sir. We talked because we used to be good friends before.

Q Did he visit you? A With Mrs. Mackiewicz, also. She joined us on a party one time. They lived in peace at that time. I didn't see him go out or anything like that; and what happened after that I don't know.

Q Where was Mackiewicz that night when you first saw him?

The Master: On the night of the 20th?

40 Mr. Clancey: Whatever the night was.

*Andrew Turowski, cross.*

A He was by the stoop.

Q Where were you—across the street? A I kept the car across the street in a garage.

Q You went over there. Did he call you there? A I came to get my car.

Q Did he call you over there? A Yes, sir.

Q What did he say to you? A He called me 10  
uptairs.

Q What did he say to you when he saw you?

A He said, "Come here. I will make you a surprise, what I got."

Q Did you know he talked to two other men the same way? A No, sir.

Q Did he tell you he brought in two more witnesses? A No, sir.

Q That is all he said to you? A Yes, sir. After that he wanted me to give him a hand to 20  
move the clothes.

Q What was on the door? A A padlock.

Q Where on the door? A On the side when you go into the hallway.

Q Show me on the door where it was.

The Master: How high up?

The Witness: About there; I can't remember exactly.

Mr. Azzoli: In the center of the door. 30

Q You heard some people inside? A Yes, 30  
sir.

Q Talking? A Yes, sir.

Q You didn't talk to them? A No, sir.

Q He tried the door where the lock was? A Yes, sir.

Q It did not open? A No, sir.

Q Then you picked up the clothes? A He told me to pick them up and he took the rest. 40

*Andrew Turowski, cross.*

Q What did you pick up? You had overcoats and suits and pants? A I had a handful.

Q You don't know what you picked up? A No, sir.

Q You both walked out and went to the garage? A Yes, sir.

10

The Master: This is to his garage.

Q In back of the house? A Yes, sir; his garage.

Q That is all that happened? A Yes, sir.

Q You have told me everything? A Yes, sir.

Q Have you told me everything that happened from the time you went there until the time you went out? If not, tell me now—anything else.

20

A That is all.

Q Were you friendly with Mrs. Mackiewicz?

A I was before.

Mr. Azzoli: He answered that before.

Q Why didn't you go in to see Mrs. Mackiewicz? A When I saw the lock on the door I knew there was trouble.

Q You were a friend of his? A Yes, sir.

30

Q Of hers? A Yes, sir.

Q You knew there was trouble? Why didn't you try to patch it up? A I couldn't do it because I was busy.

Q You had a date? A Yes, sir.

Q That was more to you than the friendship with them? A Yes, sir.

40

*John Arnheiter, direct.*

JOHN ARNHEITER, called as a witness, being first duly sworn, testified as follows:

*Direct examination by Mr. Azzoli.*

Q Where do you reside? A 604 Malone Place, Harrison. 10

Q Are you a police officer of the Town of Harrison, New Jersey? A Yes, sir.

Q You have been such how long? A Five years.

Q In 1926 were you such a police officer in Harrison? A Yes, sir.

Q Do you recall being called to the home of Mr. and Mrs. Mackiewicz at 17 Patterson street sometime in 1926? A Yes, sir.

Q Do you remember the month? A I am 20 not sure about the month; I don't remember that, but I know it was in 1926.

Q Do you remember what time of the year it was? A It would be pretty hard to tell.

Q These records show—

Mr. Clancey: Don't testify.

Q Was it in the summer or in the winter? A Summer. 30

Q Was it prior to September or October or what? A I think it was close on to September, if I am not mistaken.

Q What did you go there for? A I was at headquarters and I got a call to go down, I was wanted at Patterson street to see what was the trouble. When I arrived there this gentleman here—

Q Mr. Mackiewicz? A Yes, sir. I entered the room. I was called upstairs and I entered 40

*John Arnheiter, direct.*

a room. When I got there they were sitting at a table. Mrs. Mackiewicz was on this end and a young man—I don't know his name—was sitting on the other side. He told me he wanted that man locked up.

Q Who told you that? A Mr. Mackiewicz.  
10 Q What happened? A Of course, I locked him up.

Q What happened to Mrs. Mackiewicz, if you know? A Nothing happened at this time. She just got up and said something in her language to him and I took the prisoner out.

The Master: You put him out or took him out?

The Witness: I took him out and locked  
20 him up.

The Master: To the station house?

The Witness: Yes, sir.

Q What officer was with you? A Another officer, Martin Flynn. He is sick now.

Mr. Azzoli: That is all.

Mr. Clancey: No cross examination.

Mr. Azzoli: We rest with the exception of  
30 the records of the arrest of this man, which I will produce.

The Master: Mr. Clancey proceeds with his case on behalf of the defendant on the answer and the counter-claim.

*Tessie J. Mackiewicz, direct.*

TESSIE J. MACKIEWICZ, called as a witness,  
being duly sworn, testified as follows:

*Direct examination by Mr. Clancey.*

Q You are the daughter of Peter Mackiewicz  
and Anna Mackiewicz, the petitioner and the 10  
defendant in this proceeding? A Yes, sir.

Q Where do you live now? A 17 Patterson  
street, Harrison, New Jersey.

Q Have you lived there at home all the  
time? A Yes, sir.

Q How long is it since your father has been  
away from there? A I guess about six or seven  
years.

Q Do you remember when he left? A Yes,  
sir; I do. 20

Q What month was it? A It was in the  
warm weather.

Q The testimony of your father is that the  
last time he was there—

Mr. Azzoli: I object to that.

Mr. Clancey: I am going to refresh her  
memory.

The Master: Let me hear the question 30  
and I will rule on it.

Q Have you any better recollection than that  
as to when your father left? A I remember the  
doors were all closed and it was cold weather;  
it was not cold, but it was mild weather, but  
enough cold to keep the doors closed.

Q That is your best recollection of the date,  
is it? A Yes, sir.

Q I want to refresh your memory. The testi-  
mony of your father is that the last time he was 40

*Tessie J. Mackiewicz, direct.*

there was on September 20, 1926. With that testimony in your mind, is your recollection refreshed as to when your father left?

Mr. Azzoli: I object.

10 The Master: Sustained. You can't refresh the witness' memory by other testimony.

Q You remember the night that your father left, don't you? A My father left—he didn't leave on any definite date.

Q The final time he left? A The final time he left—

Q Do you remember that night? A Yes, sir.

20 Q How long have you been working? A Since 1926.

Q You were working at that time? A No, sir; I was going to school.

Q How long after that did you start to work—in the middle of the year or when? A I started to work in August. My first position I applied for in July and in August I received a position with the Commercial Casualty Insurance Company.

30 Q What was your sister doing at that time? A She was working.

Q How did your father and mother get along before that time? A Before that time there was no disagreement or anything in any way hard; it was a pleasant home.

Q For how long a time? A I was just entering high school when the trouble began. I was graduated from the grammar school and things were not just right.

40 Q Take your time. Things were just not right?

*Tessie J. Mackiewicz, direct.*

The Master: When did you leave high school?

The Witness: 1926.

The Master: In June?

The Witness: Yes, sir.

The Master: It was after that?

10

The Witness: What was after that?

The Master: That your father and mother had trouble?

The Witness: It was before that. It was the entire time I was at high school; it was the same thing.

The Master: When did it begin—after you left grammar school?

The Witness: It was before.

Mr. Azzoli: When did you graduate from the grammar school?

20

The Witness: In 1921.

The Master: Did you take a full high school course?

The Witness: A four-year course.

The Master: The trouble began, according to you, between your father and mother as far back as 1921?

The Witness: Yes, sir; I remember the time.

30

Q What is the time you remember? A The first time when my father and mother had some money in the bank and my father was preparing to leave my mother and my mother prevented him from leaving. She had an attorney from Jersey City to put an attachment on the money and they went to the bank and the attachment was put on the money. After that things were never right in our home.

40

*Tessie J. Mackiewicz, direct.*

Q Tell me some of the things. How did your father and mother get along—how did he act around the house? A He never acted very nice to us. He was always looking for an argument. Things were never right. No matter what we did, nothing ever pleased him.

10 Q Did he drink? A Yes, sir.

The Master: Don't get troubled about this. It is not very nice.

Q How often was he drinking? A He drank frequently.

Q How did he act when he was drinking? A He always picked an argument with my mother.

20 Q About what? A That she wouldn't cook for him, she wouldn't do anything for him, the children were not brought up right, things were not done around the house; he said supper was not ready for him, that mother was not home, there are daughters home to serve his supper.

Q What time did he get home? A The hours varied.

Q He had no set time? A No, sir.

30 Q Would he come in around six or seven or eight? A He would come in sometimes at seven o'clock. Oftentimes we would be doing homework when father walked in and we would have to get up and serve supper for him; sometimes it would be eight or half-past eight, no set time was set for his coming home.

Q How did he act towards your mother? A He never had a pleasant word for her.

Q Were they ever affectionate, if you remember? A Yes, sir.

40 Q How long before? A Just before—I remember when everything was all right, just before the money matter.

*Tessie J. Mackiewicz, direct.*

Q After that they didn't get along at all?

A No, sir.

Q How did he act when he was drinking? A He was vulgar. If he couldn't start an argument with mother he would start one with us. If we didn't answer him—we had a little pup and he would sit down and tease the pup and get mad and we would have to put the dog outside. We tried to have peace but he was never satisfied. He never wanted to do anything to please us. 10

Q Did he ever strike you? A Yes, sir.

Q How many times?

The Master: Of course, that has no relevancy.

Q Could you tell whether your father had a little bit to drink or a whole lot to drink? A When he had quite a bit to drink he was always pale and of course by that we could tell whether—in what condition he was, when he came home drunk. We bought a new gas range and he threw that out and said he wouldn't pay for it. We said mother hasn't anything to cook on and he said she didn't need anything. 20

Q He threw it out of the window? A Right out. He put it out on the piazza. 30

Q What else did he do? A One time I recall he came home late. He knocked at the door. Of course, we were asleep. It was past midnight, about half-past one o'clock in the morning; he came home intoxicated. He had dragged his car into the garage and he came upstairs through the back way and knocked at the door. Before the time mother had got up out of bed he had knocked the door out with his foot. He said he was boss of the house; he could come in when he pleased and nobody could stop him. 40

*Tessie J. Mackiewicz, direct.*

Q What else did he do that night?

Mr. Azzoli: What time was this?

Q Can you fix the time about that?

10 The Master: You ask her what else she recalled that night.

Q What else do you recall that night? A He told my mother he was the boss, he could do as he pleased. My mother said, "My door is open until twelve o'clock. Anybody in the family can come in up to that time, but I will not keep the door open after that because I am afraid, because there are plenty of robberies going on and I am nervous." He said, "You will have to  
20 leave the door open until I come home." Mother said, "You can come home before twelve or on the dot of twelve, the door is always open."

Q Did he do anything to your mother that night? A He tried to beat her up.

Q What did he do? A The front door was closed and he got her up against the door and he was going to kill her or something—I don't know.

Q What did he say? Take your time and  
30 don't get excited. What did he say? A He said he was the boss of the house and whenever he wanted to come in he could come in and nobody was going to prevent him from coming into his own house. My mother said, "You can always come in the house but I don't want you to keep the hours you are keeping." He said, "Who is going to tell me what to do around here?" My mother said, "Don't get excited, don't get excited." He said "Nobody is going  
40 to tell me what to do." My mother said, "No-

*Tessie J. Mackiewicz, direct.*

body is telling you what to do. You can do whatever you want." He said, "What do you want me to do?" My mother said, "Where were you?" He said, "Why do you want to know?" She said, "I am your wife. I want to know where you are." He said, "It is none of your business," and he would not tell her where he was. After that my mother was against the door and while he was doing it my sister and I went up and took my father's arms away. He said, "What do you want around here?" We said, "Don't do that, don't do that." He said, "I will do what I want. What are you going to do about it?" We quieted him down somehow or other. My sister was going out to get a policeman and then he calmed down. My sister went out and came back. 10  
20

Q What happened when she came back? A He calmed down and after that he opened the hall door and went in the hall room to sleep.

Q How long had he been sleeping in the hall room before he left?

The Master: This was in 1921?

Mr. Clancey: Yes, sir.

Q Do you know when he went to sleep in the hall bedroom? A His excuse for— 30

The Master: Answer questions. When?

A It was beginning of December.

Q Of that year that he left?

The Master: While you were at school?

The Witness: Yes, sir.

*Tessie J. Mackiewicz, direct.*

Q Why did he go in the room—did he say?

A He said he was too warm in the bedroom off the kitchen, that it was cooler in the hall room for him to sleep, that he had to work hard in the day; and at night my mother was going in to see him and he would close the door on her.

10

The Master: Where were you when that happened?

The Witness: We were all prepared to go to bed.

Q How many times did that happen? A Numerous times.

Q Did he ever refuse to sleep with your mother? A Yes, sir.

20 Q Did you hear him say why?

The Master: Did you hear him say he would not sleep with her?

The Witness: Yes, sir.

Q Tell us what he said. A It was Sunday morning and my mother had gone into the hall room.

30 The Master: How long was this after he kicked in the door?

The Witness: He refused to sleep with her.

The Master: How long was it after he kicked in the door the way you have described—was that the occasion when he told why he didn't want to sleep in the room with your mother?

40 The Witness: He wouldn't give any excuse.

*Tessie J. Mackiewicz, direct.*

The Master: Did he ever say why he wouldn't sleep with your mother?

The Witness: No, sir; we never heard it.

Q Did you ever see him strike your mother?

A Yes; numerous times.

10

Q Can you tell us some of the times? A One time it was nine o'clock at night, in the summer; I was home and my mother was home.

The Master: What time with reference to the time he kicked in the door?

Q Was it before or after he kicked the door in? If it was before, how long before; if it was after, how long after? We want to get some idea of the time. Were you going to school? A Yes, sir.

20

Q To high school? A No, sir; I was going to grammar school.

Q That was back around 1925 or six? A It was before that.

Q What did he do that time? A He came home and started an argument with mother and said, "I am going to kill you." Mother ran out of the house. I ran after her. I saw him chasing her down the street. He said, "I will get you yet." Mother ran down to the corner and I ran after her. We got to one of the corners, the first one down Hamilton street, and I didn't see him.

30

The Master: What time of night was this?

The Witness: Nine o'clock at night.

Q Did he throw anything at her? A Yes, sir; he was throwing stones at her.

40

*Tessie J. Mackiewicz, direct.*

Q Was he sober or drunk? A He was partly intoxicated.

Q How long did your mother stay out of the house that night? A She stayed out until about ten o'clock and then she returned.

10 Q Where was he during that time? A He was not home.

Q Can you tell any other time when he struck her? Do you remember any occasions when he did? A One night he came home. That was in the warm weather also. He was sitting in his underwear in a rocking chair. He was drunk and he was teasing the dog. My mother said, "Let the dog go." He wouldn't bother to say anything to her and my mother got up and he started an argument with her. My sister and I  
20 got up because he was going to beat mother. I interfered, I was taking the dog out of his arms and putting it outside on the back porch and he grabbed me.

The Master: Straighten that out.

Q What did he do to your mother? A He had her against the wall.

Q With his hands? A Yes, sir.

30 Q Where were his hands on her? A One was against the chest and the other one was shaking at her.

Q What kind of language did he use around the house? A Vile and profane language.

Q Was that a rare occurrence or a frequent occurrence? A That happened every time he spoke to us.

Q What time would he get home at night? A Whenever he pleased.

40 Q No set time? A No, sir.

*Tessie J. Mackiewicz, direct.*

Q Do you know how long he had been sleeping in the hall bedroom—was it six months or a year? A I guess it was at least a year because the cold weather came up.

Q He was out there then? A Yes, sir.

Q Did you ever see a padlock on the door?

A No, sir; he put one on.

10

Q Did you see one on the door?

The Master: Strike that answer out. You can only state what you saw with your own eyes and what you heard with your own ears.

Q Did you see a padlock on the door? A When was the padlock there?

Q I don't know. Did you ever see one? A There is one there now.

20

Q How long has it been there? A My father put it on.

The Master: Strike out the answer.

Q Did you see him put it on?

The Master: You can only tell what you saw done with your eyes.

30

Q Did you see anybody put a padlock on the door? A Yes, sir.

Q Who did you see put that lock on? A My father.

Q When did you see him do that? A It was Saturday afternoon he bought the padlock and attached it to the door.

Q Who was there when he did it? A I was there because I was cleaning up.

Q Was your mother there? A No, sir.

40

*Tessie J. Mackiewicz, direct.*

Q Just you? A Yes, sir.

Q How long was the padlock on before he finally left—one month or two or three months?

A It was more than that.

Q How long after he went into the hall room did he put the padlock on? A About two  
10 months after.

Q Was that always locked when you went up there? A When he was in the room; yes, sir.

Q During the day when he was out did he keep that locked? A No, sir.

Q Did you go in there to clean up? A Yes, sir.

Q The padlock was open; just hanging there, the door was open and you could get in? A Yes, sir.

Q Did your father come home every night?  
20 A Some nights I didn't see him because I was in bed.

Q Did you go up there Sunday mornings early and find him out? A Yes, sir.

Q How many times did you go in his room early in the morning and find him missing?

A On one occasion, I know I had to go up to his room on a Sunday morning, because I was  
30 going up to go to church and it was necessary for us to go in his room to get some clothes. Sometimes he would open the door for us, other times he would not. Sometimes he would be out and I would ask mother where he was and she would say—

The Master: Strike that out. Tell us only what you saw and what you heard.

Mr. Azzoli: I call your attention to it and move to strike out the testimony of the witness—inasmuch as this is not pleaded in  
40

*Tessie J. Mackiewicz, direct.*

the counter-claim—desertion is all that he pleaded.

The Master: He has the right to show the background.

Q Did your father ever go out late at night after he came in? A Yes, sir. 10

Q Do you know where he went? A No, sir.

Q Did you ever watch him when he went out? A Yes, sir.

Q Where did he go? A He always went toward Hamilton street.

Q What time did he go out at night? A About nine or ten o'clock.

Q Did your father ever come in around midnight and go out after that? A I never saw him. 20

Q Did you ever hear him go out?

The Master: Don't answer that question.

Q Do you know whether your father ever went out late at night after he came in?

The Master: She just said she didn't remember. 30

Q Did you hear your mother charge him with going out at two o'clock in the morning or times like that? A Yes, sir.

Q How many times did your mother charge him with doing that? A At least three times a week.

The Master: That means in his presence?

The Witness: Yes, sir. 40

*Tessie J. Mackiewicz, direct.*

Q What did your mother say to him? A She asked him where he went and he said he didn't go out. My mother said, "I saw you go out." He said, "No; you didn't." She said, "What is the idea of going out?" He said he went out to get a drink. Mother said, "There is something in  
10 the house. Why not come in and not go out?" He said he didn't want it.

Q Did she charge him with going to any special place? A Yes, sir.

Q Where was the place? A When he was going to sleep in another room.

The Master: Where was this other room?

The Witness: In Newark.

The Master: Now you have got to the  
20 limit of this kind of testimony on this issue.

Q What did he say about the accusation?

The Master: That is not necessary. You are not charging adultery. All that goes out.

Q Do you remember when he left? A Yes, sir.

Q When was it—do you remember the month?  
30

The Master: Have you settled that other question? Wasn't it September 20th?

Q What happened on the night of September 20th?

The Master: If you know—what you saw and in the presence of your father on that  
40 night in question—if you heard him say anything or if you heard anything said between

*Tessie J. Mackiewicz, direct.*

your father and mother that night you can tell it or anything else that he did.

Q Tell us what happened the last night he was there? A The last night he was there he took his clothes out of the work room. I said to him, "Where are you going?" He said, "I am going to the tailor. I will be right back." I didn't see him after that. 10

Q Who was there at that time? A I was.

Q Was your mother there? A No, sir.

Q Did you see him walk out? A Yes, sir.

Q Did he have a suit with him? A He had a bundle wrapped up in a newspaper, which consisted of a suit because I could see the pants trousers hanging out. 20

The Master: Who was with him at that time?

The Witness: He was alone.

Q What time was that? A It was after nine o'clock.

Q Was any of his clothing left there? A Yes, sir.

Q What was left? A A raincoat and an old hat and an old pair of shoes he wore around the garage. 30

Q Did he have other clothes besides that? A Yes, sir.

Q Where were they? A They were gone.

Q Did you ever see him take some out before that? A Yes, sir.

Q When did you see him and what did he say? A About a week apart he was always saying he was going to the tailor's. I said, "Pa, if you are busy I will take them and you can go 40

*Tessie J. Mackiewicz, direct.*

wherever you have to go." He said, "Oh, no, I will take them."

Q He took them? A He took them.

Q Little by little?

The Master: She didn't say that.

10

Q He took some on each occasion?

The Master: She is only talking about one occasion.

Q Were there more than two times that you saw him take clothes out? A It took over a period of a month.

20 Q Did you see him take out laundry or anything like that? A One evening he took his collars. It was always my job to get his collars to the laundry. I said, "Leave them on the table and I will take them in the morning." He said he would take them. His collars were gone. His shirts—my mother was washing for him.

Q How do you know that? A I saw her doing it.

30 Q What did he do with the shirts? A When they were laundered my mother would not see them any more. I would go in the hall room and look in the dresser and they were not there but only a clean white shirt.

Q That was within a month of his leaving? A Yes, sir.

Q After your father left did you see him? A Yes, sir.

Q When did you see him first and how long after he left? A The first time I saw him was on a trolley car.

40 Q What day of the week? A It was Sunday evening.

*Tessie J. Mackiewicz, direct.*

Q Where did you see him? A He got on a trolley car at John street and Harrison avenue, on the Harrison car. He was intoxicated. He got on the car and I was sitting on one of the side seats. He had to stand because the car was crowded. I saw my father there. He waived to me, "Hello." I nodded my head, I acknowledged his greetings. He rode down to Broad and Market streets and I got off there. I was getting out of the car and he took me by the arm and said, "Where are you going?" I said, "I am going out." I was waiting for a bus. 10

The Master: Where was your father?

The Witness: He came with me. As I was walking he caught up with me. I was standing waiting for a bus and he was waiting with me. I got the bus. While we were standing there he was talking to me. He said, "How is mother?" I said, "All right." "How is sister?" I said, "She is all right." "How is everybody?" I said, "Fine." I said, "How is dad?" He said, "Fine." He said, "How is baby getting along?" I said, "I am all right." "I am sorry I left home." I said, "Nobody put you out." He didn't have any remarks to make. I said, "You are always welcome to come back." He had nothing to say about that. He asked how I was getting on, how I felt. My bus came and I got on it and he remained there. 20 30

Q What was the next time you saw him after that? A At the building loan.

Q Where was that? A On Cleveland avenue.

Q That is Harrison? A Yes, sir. 40

*Tessie J. Mackiewicz, direct.*

Q Did you talk with him there? A No, sir.  
He turned his back on me.

Q You saw him there? A Yes, sir.

Q What did he do? A He turned his back  
on me.

10 Q When did you next see him? A I didn't  
see him after that.

Q Did he ever since he left come to you and  
ask you to in any way intercede for him so that  
he could come back home? A No, sir.

Q Did you on any other occasion than the  
one you have told us about ask him to come back  
home? A No, sir.

Q Has he been around to the house to see you  
or your sister in your presence since he has been  
away? A No, sir.

20 Q Did you ever see him there when your  
mother was home; did he ever come there while  
your mother was home, that you know of, that  
you were present at? A No, sir.

Q Did he keep his car in the garage after  
he left? A Yes, sir.

Q How long about—a month or a week? A  
A period of a year.

Q Did you see him come there for his car?  
A Yes, sir.

30 Q Frequently or seldom? A Seldom.

Q Did he use it during the wintertime at all?  
A No, sir.

Q On the occasions when you did see him did  
he talk to you? A No, sir.

Q Did you ever see him talk to your mother?  
A No, sir.

Q Do you know where your father has lived  
since he left home?

40 The Master: Of your own knowledge.  
You must have gone there to see him; and

*Tessie J. Mackiewicz, direct.*

you must know, also, how long he stayed there and whether he slept there and got his meals there.

A No, sir.

Q Did you see him in any house since he left, did you see him any place else? 10

The Master: That will not do. Strike that out.

Q Did you see him at any other house? A I seen him go into places.

Q Where did you see him going into—houses or what? A Saloon.

Q Before he left did you ever see him go into a saloon? A Yes, sir. 20

Q Frequently or seldom? A Frequently.

Q Did you ever go to a saloon to get him to come home? A Yes, sir.

Q On how many occasions? A Whenever there was company at our house I would have to go to a saloon to get him.

Q Would you always find him in a saloon? A Yes, sir.

Q Did you ever go in a saloon or where there was no dance hall connected with it? A Yes, sir. 30

Q Which one? A Mrs. Polowitz on Cross street.

Q Any others that you can remember the names of? A One on the corner of Sixth avenue and Harrison avenue, but I don't remember the name; and one on Fifth street and Harrison avenue; that is all I recall.

Q Do you remember the occasion when you came back from the hospital after your operation? A Yes, sir. 40

*Tessie J. Mackiewicz, direct.*

Q Did you talk with your father? A Yes, sir.

Q Did you have a discussion with **him** about the bills? A Yes, sir.

Q What was said by him and by you?

10 Mr. Azzoli: I object to the question.

Q What did he say? A I asked **him** to pay the doctor's bill. He said he didn't get the doctor for me and he wouldn't pay for **him**. I said, "I haven't got any money and the doctor wants his money." He said, "I don't care whether you are living or you are dying; it makes no difference to me."

Q Who paid the doctor's bill? A I went to work after that and I went to see the doctor.

20 Q Did you pay the bill? A Yes, sir.

Q Were you home the night your father was fixing the plumbing and range downstairs? A Yes, sir.

Q Do you remember what happened that night? A We were sitting on the stoop.

Q In front or in back of the house? A The front stoop. My **mother was talking to the neighbors** across the fence. We were sitting out there. I went upstairs. It was about after nine o'clock. I had to complete my homework and I went upstairs. Mother remained on the stoop. I needed a pencil and a couple of erasers in order to do my homework. I went downstairs on the stoop and asked mother for the money. I had to go around the back of the house and I heard hammering and an argument. Of course, I hesitated. My father came from outside. My mother and he were arguing. Mother went upstairs first. Mother asked him what he was doing and he said

30

40 he was fixing the pipes.

*Tessie J. Mackiewicz, direct.*

Q How long was he in there?

The Master: How could she tell?

Q Where was your father when you were sitting on the porch—were you going downstairs first? A I don't know because he was supposed to be working. 10

The Master: Strike that out.

Q He was not on the porch? A No, sir.

Q Later you saw him come from the floor downstairs? A He was not home; he came from Hamilton street.

The Master: You were asked whether, when you came out to get these things, your father was down there or not. 20

The Witness: He was not on the porch.

The Master: You don't know where he was?

The Witness: Yes, sir.

The Master: Where did you see him?

The Witness: He asked mother where the tools were.

The Master: I am talking about when he was downstairs. You didn't see him there? 30

The Witness: Yes, sir.

The Master: Where?

The Witness: When I heard voices as I came downstairs.

The Master: Then you heard your mother's voice and his?

The Witness: Yes, sir.

The Master: Did you hear your mother's voice? 40

*Tessie J. Mackiewicz, direct.*

The Witness: Yes, sir.

The Master: Did you see your mother?

The Witness: Yes, sir.

The Master: Did you see your father?

The Witness: Yes, sir.

10 Q Do you remember the occasion in July when the policeman came to the house? A Yes, sir.

Q Were you home at that time? A Yes, sir.

Q Where were you? A Getting dressed.

Q Where was your mother? A She was sitting by the table.

Q Where was that man? A He was sitting with his coat on his arm at the other end of the table.

20 Q How long had you been home? A All the afternoon.

Q How long was that man there? A No more than ten minutes.

Q What was he doing there? A Nothing.

Q Was he visiting?

The Master: Strike that out.

30 Q Was he talking to your mother? A Yes, sir.

Q Did you hear them talking? A Yes, sir.

Q Do you know what they were talking? A Yes, sir.

Q What were they talking about? A He was recommending a doctor for me.

Q Were you there all the time he was there? A Yes, sir.

40 Q Tell us what happened. When did your father come there? A He came up with two policemen about ten minutes after.

*Tessie J. Mackiewicz, direct.*

Q Do you know what time of the day it was?

A Yes, sir; it was after three o'clock in the afternoon.

Q Had he been there before he came with the policemen? A Who?

Q Your father? A No, sir.

Q He just walked in with the policemen? A 10  
Yes, sir.

Q What was said there? A He accused my mother of different things.

The Master: Strike it out.

Q What did he say? A He accused her of adultery.

The Master: Strike it out.

Q Tell me what words your father used. A 20  
He said, "I always waited for this chance. Now I got it. I got you at last."

Q Did he say anything else? A No, sir.

Q What did your mother say? A My mother didn't know what happened.

Q What did your mother say? A She asked him what he was waiting for, what he wanted to catch her.

Q What else did she say? A That is all. 30  
He said to the officers, "Lock that man up."

Q Did they ask you what happened? A No, sir.

Q Did your father talk to you? A No, sir.

Q They took the man out? A Yes, sir.

Q Have you seen your father since he left other than the time you mentioned with any other person?

The Master: Don't answer that question.  
He has a right to be with all kinds of people 40

*Tessie J. Mackiewicz, direct.*

and it is too far apart. If you are going to prove adultery, all right.

10 Mr. Clancey: I am not. But I think it is proper because if there has been no other man—the testimony that he was seen with certain other people may be the basis or the reasons why he didn't come back.

The Master: It is too remote unless you are going to prove that question.

Mr. Clancey: I ask for an exception to the ruling.

Q Do you remember an incident concerning an ash tray at your home? A Yes, sir.

20 Q What was that? A My sister had bought an ash tray.

The Master: What happened to the ash tray?

The Witness: He took it out.

Q Did he say anything about it? A He said, "We are not going to keep bums in our house and buy them ash trays."

30 Q Did you see your father go away that night when he had the clothes?

The Master: She said so.

Q Did you see him come back that night? A No, sir.

Q How late were you up that night? A Half-past ten o'clock.

The Master: When did you graduate from high school?

40 The Witness: June, 1926.

*Tessie J. Mackiewicz, direct.*

The Master: When did you go to work?

The Witness: In August.

The Master: What time in August?

The Witness: What?

The Master: What time in August?

The Witness: It was at the end of August. 10

The Master: From what time to what time did you work?

The Witness: I am working now. I don't understand your question.

The Master: How much of the time in August, 1926, did you work—where did you work?

The Witness: The Commercial Casualty Company. 20

The Master: When did you go there to work?

The Witness: In August.

The Master: What time in August?

The Witness: It was around the 25th of the month.

The Master: How long did you work—how many weeks? 30

The Witness: There?

The Master: Yes.

The Witness: I worked there about nine months.

The Master: What were your hours there?

The Witness: They were changed.

The Master: What were your hours at first?

The Witness: From nine to five. 40

*Tessie J. Mackiewicz, direct.*

The Master: Did you go out at noon for lunch?

The Witness: Yes, sir.

The Master: Did you go out for lunch?

10 The Witness: Yes, sir; three-quarters of an hour for lunch.

The Master: How long were you there from nine to five?

The Witness: Until the summer of 1927.

The Master: Then your hours were always the same?

The Witness: No, sir. They were a quarter to nine to a quarter to five; no change on Saturday.

20 The Master: When was the change made?

The Witness: In 1927, at the end of May.

The Master: Then it was from 8:45 to 4:45?

The Witness: Yes, sir.

The Master: Saturdays was half a day?

The Witness: No work in the summer on Saturday.

30 The Master: Yes. But you were there until the wintertime of 1927 that is made up of December 1926 and January 1927 and so forth?

The Witness: Yes, sir.

The Master: You left in May, 1927?

The Witness: I didn't leave.

The Master: Were you discharged? I am talking about leaving the Commercial Casualty Company.

40 The Witness: I stayed there nine months, about.

*Tessie J. Mackiewicz, direct.*

The Master: You stayed until May, 1927?

The Witness: Yes, sir.

The Master: I ask you during what part of that time you had half holidays on Saturdays. They didn't shut up all Saturdays the whole year round?

10

The Witness: No, sir.

The Master: Tell me when they closed.

The Witness: June and July were the two months.

The Master: And the others you closed at 12 o'clock?

The Witness: Yes, sir.

The Master: How long did it take you to get home from your place of business?

The Witness: I walked home and it took me about half an hour. 20

The Master: You mean you got home about half-past five or a quarter of six o'clock?

The Witness: Yes, sir.

The Master: Sundays were free?

The Witness: Yes, sir.

The Master: Did I understand you to say that you saw your father put that padlock on the door? 30

The Witness: Yes, sir.

The Master: When?

The Witness: Saturday afternoon.

The Master: What Saturday?

The Witness: The date?

The Master: What year?

The Witness: In 1922 or 1923; it was earlier than that, I believe. 40

*Tessie J. Mackiewicz, direct.*

The Master: It was way back in 1922 or 1923? Or 1921 or 1922?

The Witness: Yes, sir.

The Master: You saw him actually put it on?

10 The Witness: Hammering it on.

The Master: You say it was about what time?

The Witness: About 2:30 in the afternoon.

The Master: Otherwise there is nothing special to make you say it happened at 2:30?

The Witness: I completed my housework and mother had gone to the butcher's.

20 The Master: Did you say anything to your father when you heard him hammering?

The Witness: Yes, sir.

The Master: What did you say to him?

The Witness: I didn't say anything to him.

30 The Master: I asked you if you said anything to your father and you said yes. Did he say anything to you when you saw him hammering?

The Witness: No, sir.

The Master: You didn't ask him why?

The Witness: No, sir.

The Master: Did you tell your mother that the padlock was on there?

The Witness: Yes, sir.

The Master: How did you come to do that?

40

*Tessie J. Mackiewicz, direct.*

The Witness: I told her that Pa had put a padlock on the door and she said, "What for?" And I said I didn't know.

The Master: I asked you what you told her and you say you told her your father put a padlock on the door.

The Witness: Yes, sir.

10

The Master: You never had a word with your father on the subject of the lock at all?

The Witness: No, sir.

The Master: I understood you to say that in spite of the lock, when your father was away all day long you could still go in the room and do what you had to do in the way of cleaning up?

The Witness: Yes, sir.

20

The Master: What was the use of the lock?

The Witness: He closed that door at night, using a lock.

The Master: But the lock was on the outside of the door?

The Witness: It was on the inside of the door.

The Master: If they locked the door on the inside and he was on the outside he couldn't get in.

30

The Witness: No, sir.

The Master: Since it was locked on the inside and you were on the outside, how could you have got in?

The Witness: He left the door open.

The Master: I understand you to say it was open from morning to night except when he was in there?

40

*Tessie J. Mackiewicz, direct.*

The Witness: Yes, sir.

The Master: And the padlock was on the inside?

The Witness: Yes, sir.

10 Q If the door was locked on the inside nobody could get out of the room unless they jumped out of the second-story window? A No, sir. It was one of the push and pull things.

Q Was it a lock that you opened with a key? A There is one there now.

Q How long has that been there? A After father left.

20 Q How long had he been out? Who put it on? A One of the boarders. The lock that is there now was put there by a boarder. It is one of the arrangements—one part goes against the wall and the other part holds against the door, so you can lock it.

Q Who put that on? A A boarder.

Q What is his name? A I don't know.

The Master: Why did he put it on there?

30 The Witness: Because we went out so often during the daytime and she had valuable clothes and we had clothes in her room. We tried to arrange to work the bottom key.

The Master: You have three locks on the door. One lock your father put on the inside; an ordinary lock and the padlock on the outside?

The Witness: Yes, sir.

Q Was the boarder a man or a woman? A A woman.

40 Q Do you know her name? A Petroleul Vouloski.

*Tessie J. Mackiewicz, cross.*

Q When did that woman go there to board?

A I don't remember the date.

Q Is she there now? A No, sir.

Q How long has she been out?

The Master: When did she come?

Mr. Clancey: She doesn't know.

10

Q How long has she been out of there? A  
Over a year.

Q How long was she in there? A She stayed  
there about six months.

The Master: That door is just as it was  
when your father left there except the pad-  
lock on the outside?

The Witness: Yes, sir.

20

The Master: I want it understood that  
Mr. Azzoli will go up to the door and I think  
the Court will go.

Mr. Clancey: I will be glad to have you  
do it.

*Cross examination by Mr. Azzoli.*

Q Do you remember when your mother left  
home and was away two days sometime prior to  
your father leaving? A No, sir.

30

Q Do you remember when she went to Brook-  
lyn and was away eight days?

Mr. Clancey: I object.

The Master: Overruled.

Mr. Clancey: Exception.

A She was never away eight days.

40

*Tessie J. Mackiewicz, cross.*

Q She was never away overnight at any time?

A Yes, sir.

Q Going to Brooklyn? A She went there once.

Q What did she go for? A This woman was moving and my mother and my father's cousin  
10 Winess went over to help this woman move.

The Master: Recess until two o'clock.

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AFTER RECESS—2:00 o'CLOCK P. M.

TESSIE J. MACKIEWICZ, recalled, testified further as follows:

20 *Cross examination* (continued) by Mr. Azzoli.

Q What is that cousin's name? A Edna Winess.

Q That is the woman who was here at the first hearing? A Yes, sir.

Q She testified in this case? A Yes, sir.

Q She was quite friendly with you and your mother?

30 The Master: Strike that out.

Q Your father worked at these different saloons and dance halls? A Sometimes.

Q The saloons you called were places that had dance halls? A No, sir.

Q Were you ever in them? A No, sir.

Q How do you know they had no dance halls?  
A Because I went into the corridors where the saloons were.

40 Q Did you go inside the saloons? A No, sir.

*Tessie J. Mackiewicz, cross.*

Q Did you go in the back rooms? A No, sir.

Q You don't know what they did in there? A Yes, sir.

Q Did you go in there? A No, sir.

Q How do you know? A Because I knew the people who owned the saloons and I know the sons of the people. 10

Q Did you go inside the back rooms of the saloons? A No, sir.

Q You don't know whether they danced back there or not? A I went to dances where my father was.

Q I mean these other saloons. A There were no dance halls there.

Q You don't know of your own knowledge? A Yes, sir.

Q You were in them? A No, sir. 20

Q How did you get your knowledge—from information somebody gave you? A No, sir. I went to school with a boy whose mother owned a saloon.

Q And you never went inside in the apartment? A I went inside the corridor.

Q Did you go inside? A Not inside the saloons; no, sir.

Q You have no personal knowledge? A Yes, sir. 30

The Master: She said she got her knowledge from going in the corridor.

Q Your father worked steadily? A To my knowledge; yes, sir.

Q He never shirked work, did he? He was a steady worker, wasn't he? A Yes, sir.

Q He always worked overtime most of the time? A That was his excuse. 40

*Tessie J. Mackiewicz, cross.*

Q He worked overtime? A I don't know; I wasn't there.

Q He generally came in at seven or eight o'clock, didn't he? A No, sir; different hours.

10 Q When he came in he came in in his working clothes? A No, sir.

Q Would he come home clean because he left his working clothes where he worked? A Yes, sir.

Q Then he would look for supper? A Yes, sir.

Q He would come straight from work? A We never asked him where he was.

20 Q Your mother didn't like his coming in at eight or nine o'clock for supper? A She had nothing to say about it. Her suppers was always cooked and standing in place.

Q You didn't like it, either?

The Master: Strike that out.

Q Your mother didn't like it? A She didn't like it. It was her position to do it.

30 Q What did you testify to on your direct examination, that your father came in at eight or nine o'clock and wanted some meals and they were not ready? A He would come in and he would say to mother that none of his meals were done or anything and none of his shirts were clean and nothing was done for him.

Q That was the only complaint made? A Yes, sir.

Q He played the piano and the other people played violins? A Nobody played violins.

Q Who played the piano? A My sister and I took lessons.

40 Q Did your father play? A Yes, sir.

*Tessie J. Mackiewicz, cross.*

Q Did he ever play the piano? A Yes, sir.

Q Did you ever go around together and play together some nights? A No, sir.

Q Did he ever play with you and your sister?

A No, sir.

Q The piano? A He played the piano. 10

Q Didn't you stay near him? A No, sir.

Q You let him alone? A Yes, sir.

Q You were not chummy with him at all? A Sure.

Q Weren't you there when he played the piano? A No, sir.

Q Didn't you gather around in a family way; didn't you get together? A No, sir; only on Sunday mornings, but never at night.

Q How old were you in 1921? 20

The Master: How old are you now?

The Witness: 23.

Q Then you were about fourteen? A Yes, sir.

Q You and your sister started to work about the same time? A No, sir. She started before I did.

Q You didn't start until some time in August, 1926? A Yes, sir. 30

Q Finished school in June, 1926? A High school.

Q Who was this man who was in the house?

A I don't know his name.

Q Who was coming there to recommend a doctor for you? A I don't know his name.

Q He was coming there to recommend a doctor for you? A I don't know his name.

Q Had you seen him before? A Once before. 40

*Tessie J. Mackiewicz, cross.*

Q Where? A We were sitting on the stoop, my mother and the neighbors next door and I.

The Master: Strike that out.

Q Where had you seen this man before? A  
10 He was standing outside speaking with another man and this man knew my mother.

Q How long before was it prior to your seeing him in your house? A About four or five months.

Q So that five months after you had seen him the first time he was in your home? A What?

Q Five months previous to this time was the first time you had seen him and you saw him in your home afterwards? A Yes, sir.

Q What time of the day was this when  
20 this man was in your house talking to your mother? A After three o'clock.

Q Was the table set? Did you have anything to eat there? A My mother set it.

Q Were you having anything to eat at that time? A Only her.

Q Was the man sitting at the table? A Yes, sir.

Q Did he have his coat off? A Yes, sir.

Q Where had you come from? A I was  
30 home.

Q Where had you been in the morning? A No place.

Q You hadn't been out yet? A No, sir.

Q You were still home when he came? A Yes, sir.

Q Had your father been home before he went out to get an officer? A No, sir.

Q What was the matter with you that anybody  
40 should recommend a doctor for you?

*Tessie J. Mackiewicz, cross.*

Mr. Clancey: I object as immaterial.

The Master: Sustained.

Mr. Azzoli: Exception.

Q The man was arrested? A Yes, sir.

Q Did you go to the police station? A I did. 10

Q At the police station you didn't know what his name was? A No, sir.

Q Do you know the name of John Brusolski?

A I don't know his name.

Q Do you recall who was John Brusolski?

A No, sir.

Q Was he fined \$20?

Mr. Clancey: I object to the question.

The Master: That is irrelevant. Strike it out. 20

Mr. Azzoli: I take an exception.

Q This lock that you talked about is not a lock but was a small thing that you push on in the side—a small sliding bolt? A Yes, sir.

The Master: Inside?

Mr. Azzoli: Inside the hall room.

The Master: That is not the lock she testified to. 30

Q There is a lock on the outside? A Yes, sir.

Q That lock is fastened how? A One piece is to the sash of the door.

The Master: A jamb?

The Witness: Yes, sir. A small piece is hammered there and the other part is to the 40

*Tessie J. Mackiewicz, cross.*

door itself. You can close that over on the small piece, shoving the lock to.

Q Has it not got two eye bolts?

10 The Master: I understand it perfectly plain now.

Q Was a lock there at any time that had two eye bolts and a lock that slips in?

The Master: That is what she described just now. It is a padlock—this padlock is a sort of heart-shaped thing.

The Witness: Like the kind they use on a cellar bin.

20 The Master: The room that these locks were on is the hall bedroom?

The Witness: Yes, sir.

The Master: That is the room in which your father slept?

The Witness: Yes, sir.

The Master: At the time that he left?

The Witness: Before he left.

30 The Master: Of course; but before he left he slept in it up to the time he left—in that room?

The Witness: Yes, sir.

The Master: He had been sleeping in this bedroom how long since that man was arrested?

The Witness: He was not home at the time the man was arrested.

40 The Master: Was your father sleeping in that hall bedroom at the time when he was home, that this man was arrested?

*Tessie J. Mackiewicz, cross.*

The Witness: No, sir.

The Master: When did your father go to sleep in this room?

The Witness: It was warm weather.

The Master: How many months before your father left had he been sleeping in the hall bedroom? 10

The Witness: A year and a half.

The Master: After your father left what use was made of the bedroom?

The Witness: We stored clothes in there, and there was a woman who wanted to board there and my mother thought she would make a few dollars.

The Master: Strike that out. I wanted to know one fact. After your father left what use was made of the bedroom? 20

The Witness: It was made a storeroom and a woman came to board.

The Master: Did that woman sleep in that room?

The Witness: Yes, sir.

The Master: Did your family have anything in the room after the boarder came there and occupied the room? 30

The Witness: We had an old clothes closet and she asked that we take them out and we did and she kept her own things in it.

The Master: So that nobody used that room after the boarder came and the things were taken out as long as the boarder was there?

The Witness: There was a chiffonier and all bed clothes and things were in it. 40

*Tessie J. Mackiewicz, cross.*

The Master: Aside from that you had nothing else there?

The Witness: No, sir.

The Master: When did you say the boarder left?

10 The Witness: I don't recall.

The Master: Try to recall. How long ago was it?

The Witness: She has been gone about six or seven months. I think it was longer than that.

The Master: How long—a year ago?

The Witness: Yes, sir; it is about a year.

The Master: After that boarder left what use did you make of that room?

20 The Witness: We stored things in it.

The Master: What things?

The Witness: Clothes and we kept our bed clothes in there, and groceries.

The Master: Was the bed in there yet?

The Witness: Yes, sir.

The Master: What use do you make of it now?

The Witness: Storeroom.

30 The Master: Is the bed in there yet?

The Witness: Yes, sir.

The Master: What was the boarder's name.

The Witness: Volouski.

The Master: Do you know her first name?

The Witness: Yes, sir.

The Master: Do you know where she lives?

40 The Witness: No, sir.

*Tessie J. Mackiewicz, cross.*

The Master: Do you know where her family lives when she lived there at your house?

The Witness: She had no family.

The Master: Where did she work?

The Witness: She worked in Kresge's Restaurant and a place on Clay street and in a factory. She worked in Child's Restaurant for a while. 10

The Master: A waitress?

The Witness: No, sir. She was counter girl and dish washer.

The Master: Was she leaving of her own accord?

The Witness: Yes, sir.

The Master: You didn't ask her to leave? 20

The Witness: No, sir.

The Master: You never had any boarder or tenant of that room since; you had only one boarder?

The Witness: Yes, sir. We had another boarder, but she didn't sleep there.

The Master: Where is the key to the lock?

The Witness: Hanging in the kitchen. 30

The Master: The key to the padlock is hanging in the kitchen?

The Witness: Yes, sir.

The Master: How long has it been hanging in the kitchen?

The Witness: It has always been hanging there.

*Tessie J. Mackiewicz, cross.*

Q While this boarder lived there your father was storing his car in the garage in the rear of the home? A Yes, sir.

Q You say your father came in and out occasionally? A Yes, sir.

10 Q You never told him that the boarder had his room there, did you? A He didn't ask me.

Q Didn't you talk with him? A He didn't talk to me.

Q Did you holler out and talk to him? A No, sir.

Q Did your mother talk to him? A Yes, sir.

Q Did you ever go to him and say, "Come on up?" A No, sir.

20 Q Did you ever ask him to come up and have a cup of coffee or something to eat? A No, sir.

Q Do you know where he went to sleep for a while? A No, sir.

Q Do you know that his clothes were in the garage for a while? A They were not.

Q Do you know or don't you know? A I know they were not.

Q Did you go in there and see? A Yes, sir.

Q The day after he left? A Yes, sir.

30 Q How long after? A I had occasion to go in there quite often.

Q When did you go in there after your father was out of the house the first time? A It was at noon the following day.

Q While you saw your father coming in and out did you ever see him have a key to the padlock? A What is that?

40 Q To the door that the boarder had made—where the padlock was, to the hall room? A No, sir.

*Tessie J. Mackiewicz, re-direct.*

*Re-direct examination by Mr. Clancey.*

Q The boarder had the key to the padlock?

A Yes, sir.

Q Did she give it to your mother when she left? A Yes, sir.

Q And you have it in the kitchen ever since? 10

A Yes, sir.

Q Did your boarder keep it while she was living there? A Yes, sir.

The Master: Did you see the boarder put that lock on the outside of the door yourself?

The Witness: Yes, sir.

The Master: When was it?

The Witness: It was in the daytime.

The Master: When? 20

The Witness: It was on a Saturday.

The Master: You saw her put it on herself?

The Witness: Yes, sir; and I was helping her.

The Master: Did she ask you to help her?

The Witness: Yes, sir.

The Master: What did she say to you?

The Witness: She was hammering there and she struck her finger and she said, "Will somebody hold this for me?" I said, "I will" and I ran out and held it for her. 30

The Master: Did you ask her why she put it on?

The Witness: We knew why.

The Master: How did you know?

The Witness: She asked my mother's permission to put it on. 40

*Florence Mackiewicz, direct.*

The Master: In your presence?

The Witness: Yes, sir.

The Master: What did she say to your mother in your presence?

10 The Witness: She said to mother that she had a lot of valuable things and the bottom lock wouldn't work right and she was sure some of her valuables would be taken when my mother was out. She said if she could put on another lock and my mother said yes.

---

FLORENCE MACKIEWICZ, called as a witness, being duly sworn, testified as follows:

20

*Direct examination by Mr. Clancey.*

Q How old are you? A 24.

Q Are you a daughter of Peter and Anna Mackiewicz? A Yes, sir.

Q Where do you reside? A 17 Patterson street, Harrison, New Jersey.

Q Have you lived there with your mother? A Yes, sir.

30 Q Until the time your father left you lived with your father and mother and sister? A Yes, sir.

Q When did you start to work? A June, 1923.

Q You have been working ever since? A Yes, sir.

40 Q Can you tell me generally how your father and mother got along, something of your family life? A About ten or eleven years ago my father had an affair with a woman on Third

*Florence Mackiewicz, direct.*

street. My mother watched a couple of times and he would go to sleep and he would go around with this woman.

The Master: Strike that out.

Q What was said at home about it? A My 10  
mother—

The Master: Between your father and mother.

Q Yes. A She asked him not to go around and not to bother with this woman. There was always an argument over it because—

The Master: Never mind because. We 20  
want to know what was said.

A He said she was much better than my mother and that he would go with whom he pleased.

Q What else? A Later on he started to go with another woman on Cross street.

The Master: Strike it out. Tell us what you saw or heard your father and mother say to each other.

The Witness: I saw him bothering this 30  
woman.

The Master: Strike it out.

Q Did you see him with a woman?

The Master: What difference does it make?

Mr. Clancey: I will connect it up.

The Master: No. 40

*Florence Mackiewicz, direct.*

Q What was said between your father and mother about another woman? A She asked him nicely not to bother with this woman.

Q What did he say? A He said he would bother with who he pleased and he insisted upon it.

10

Q Tell us some of the other details of your family life—how did your father and mother get along? A He was always arguing with my mother. He never came home for supper, always hung around the saloon.

The Master: Strike it out.

Q Was it the cause of complaint on the part of your mother about your father hanging around the saloons? A Yes, sir.

20

The Master: He was doing it at night?

The Witness: Yes, sir.

The Master: Not coming home for meals?

The Witness: Yes, sir.

The Master: Did they discuss these things in your presence?

The Witness: Yes, sir.

30

The Master: What was said about them?

The Witness: She asked him to come home for supper afterwards and he never came home. If anybody was sick—

The Master: Strike it out.

Q Did you ever have occasion to go to a saloon for your father? A No, sir.

Q Do you know whether anybody did? A Yes; my sister.

40

*Florence Mackiewicz, direct.*

The Master: How can she know unless she went with them? Strike out the answer.

Q Did your father ever come back after your sister went out for him with her? A No, sir.

Q Did he ever after that say a word where he had been or did your sister tell you in your father's presence where she found him? A Yes, sir. 10

The Master: Where did she find him?

The Witness: In Hautman's saloon.

Q Did your father drink? A Yes, sir.

Q Did you see him intoxicated? A Yes, sir.

Q How many times? A About twenty.

Q How did he act when he was intoxicated? A Very nasty. 20

Q What did he do and what did he say? A He used to swear at us and at mother. He called us vile names and tried to put us out. He would come home late whenever he was drunk. He would get out of bed and argue with us and tried to get us out of the house.

Q What time did he do it? A Two or three o'clock. 30

Q After you had gone to bed? A Yes, sir.

Q How did he act toward your mother when he was in that condition? A He would beat her up.

Q Did he hit her? A Yes, sir.

Q Tell me one time that you remember. A He came home one night and he wanted to beat her and she ran downstairs in her nightgown.

Q What time was it? A About two o'clock in the morning. 40

*Florence Mackiewicz, direct.*

Q Did he go out after her? What did he say and what did he do to your mother that night, in your presence, if anything—you were there that night? A Yes, sir.

10 Q Tell us what he said to your mother. A He came home drunk. He started to argue with us and called us vile names and tried to put us out of the house. My mother tried to speak to him and he started to hit my mother and my mother ran downstairs.

The Master: You didn't go with her?

The Witness: No, sir.

20 Q Do you remember any other occasion when he came home drunk, do you remember any special thing that happened?

Mr. Azzoli: The time was not fixed as to this.

Q Do you remember an occasion of his throwing out on the porch the gas stove or range? A Yes, sir.

30 Q Tell us about it. A He came home one day. We had a little gas stove. My mother bought a gas range and he put it out on the porch.

Q Did he say why? A He said he would not pay for it because we didn't need it.

Q Do you remember another incident about an ash tray? A Yes, sir. I brought a dollar ash tray home and put it in the parlor and he said he would not have it in the house for bums.

Q Was that the only occasion he talked to you about bums? A No, sir.

40 Q What other time did he speak of them?

*Florence Mackiewicz, direct.*

The Master: It makes no difference how many times he mentioned bums to this witness.

Q How long before your father left had he been sleeping in the hall room—a month or two?

A A month.

10

The Master: The other witness said several years.

Mr. Clancey: She said a year and a half.

Q How do you fix that as a month? A It is more than a month.

Q Was it a month or more than a month? A It was more than a month.

Q How much more than a month—was he out in the hall bedroom for a year before he left?

20

Mr. Azzoli: I object.

The Master: I don't care about that. She has answered it.

Q You can't remember whether it was a month or not. Do you remember the time they had this trouble with the man your father had arrested? A Yes, sir.

30

Q That was in July, wasn't it? A Yes, sir.

Mr. Azzoli: I object as leading.

Mr. Clancey: That is an admitted fact.

Q Was your father sleeping in the hall bedroom at that time? A I don't remember.

Q Where did he sleep before? A What?

40

*Florence Mackiewicz, direct.*

Q Before he went in the hall bedroom. A  
With my mother.

Q Did you hear any conversation between him  
and your mother as to why he went into the  
hall? A He just didn't want to sleep with her.

10 Q What did she say? A That he didn't  
like to sleep with her.

Q That is what he said? A Yes, sir. He  
said he couldn't stand her any more.

Q Tell me what you remember? A That  
she smelled and he wouldn't sleep with her.

Q Can you fix any time when that conversa-  
tion took place—what year or what month it  
was? A When he went in the hall room?

Q Yes; or when he had that conversation  
with your mother? A No, sir.

20 Q You remember when your sister graduated  
from high school? A Yes, sir.

Q That was in June of what year? A 1925.

Q Was your father sleeping in the hall bed-  
room then? Do you remember whether he was  
sleeping in the hall bedroom when your sister  
graduated from the high school in June? A  
Yes, sir.

Q Did you hear your father come in at night  
frequently? A Yes, sir.

30 Q Do you know whether he came in in the  
early evening or late at night as a general rule?  
A Late at night as a general rule.

Q Do you remember at all about the time he  
left? A I guess it was around three years ago;  
this is the fourth year.

Q Do you know what month that was? A I  
don't remember exactly.

The Master: When did your sister grad-  
uate from the high school?

40

*Florence Mackiewicz, direct.*

The Witness: June, 1925.

The Master: I think your sister said she graduated in June, 1926.

Q Did you see your father within a month before he left? A I didn't see him much.

Q You didn't see him? A Yes, sir; occasionally. 10

Q Did you see him with any bundles or packages? A Yes, sir.

Q What did you see him with? A Shirts. He said he would take his shirts to the laundry.

Q Did you talk to him about it? A Yes, sir.

Q What did he say? A He said he would take his shirts to the laundry.

Q How many times did you see him taking things like that? A Four or five times. 20

Q Did you put a padlock on the door of your father's hall bedroom before he left? A No, sir.

Q Did you see your sister put one on? A Not before he left.

Q Did you see your mother put one on? A No, sir.

Q How long after he left did you have a boarder? A I guess about a year.

Q Do you remember her name? A Vouloski. 30

Q Do you know how long she lived there? A Fourteen or fifteen months.

Q Do you know approximately how long she had been out of your house? A About a year and a half.

Q Did she have a padlock on the door? A She put one on.

The Master: How do you know that?

The Witness: I didn't see her. 40

*Florence Mackiewicz, direct.*

The Master: Strike it out.

Q How long after she was there did the padlock appear on the door? A A couple of months, I guess.

10 Q So that about a year or a year and a half before she came there was there a padlock on the door from the time your father left until the time she came? A No, sir.

The Master: You saw that room every day?

The Witness: Yes, sir.

The Master: You went in and out of it every day?

The Witness: Yes, sir.

20 The Master: Did you ever see your father since he left?

The Witness: Yes, sir.

The Master: Where did you see him?

The Witness: The building loan, and I saw him passing in a car.

Q You were at the building loan? A Yes, sir.

30 Q How far away from him?

The Master: We want to find out whether he said anything about coming home.

Q Did you talk to your father at the building loan? A Just to say, "Hello."

Q Did he talk to you? A No, sir; he wouldn't answer me.

Q When was the next time you saw him? A I saw him pass in a car.

40

*Florence Mackiewicz, direct.*

Q Pass your house? A Yes, sir.

The Master: When did you see your father to speak to him after he left your house?

The Witness: I saw him once at the building loan and once on Johnson avenue. 10

The Master: What did you say to him?

The Witness: I said hello to him and he wouldn't answer me. In the building loan I said "Hello" to him. There was another policeman standing there and he wouldn't answer me, he turned his back to me.

Q Has he ever written you any letters? A No, sir.

Q Have you ever seen him at your house? A No, sir. 20

Q When he came in the garage for his car did he ever talk to you? A No, sir.

Q Did he ever come in the house and attempt to talk to you? A No, sir.

Q Did you ever see him talk to your mother at any time you were home? A No, sir.

The Master: Did this boarder take meals at your house?

The Witness: No, sir. She bought her own meals. 30

The Master: During the time she was there you had a living room on the floor?

The Witness: Yes, sir.

The Master: In the evening did this young lady ever sit in the living room with you?

The Witness: She had access to all the house; yes, sir. 40

*Florence Mackiewicz, direct.*

The Master: She had the run of the house?

The Witness: She didn't run the house.

The Master: I say she had the run of the house? She could go anywhere she pleased?

10

The Witness: No, sir.

The Master: She could go to the bathroom?

The Witness: Yes, sir.

The Master: Did she go in your sitting room, your family room?

The Witness: I don't remember her coming in this room.

20

The Master: You don't remember sitting around all evening with the young woman when she was there?

The Witness: Yes, sir. She spoke to us all the time.

The Master: Where?

The Witness: In the kitchen.

The Master: You got to know her fairly well?

The Witness: Yes, sir.

30

The Master: Did you ever talk to her since she left as a boarder?

The Witness: No, sir; I didn't see her since.

The Master: Where did she come from? Did she tell you?

The Witness: I think she lived on Central avenue before she came to us.

The Master: Was she a Newark girl?

40

The Witness: I think she originally came from Lithuania.

*Florence Mackiewicz, cross.*

The Master: When she left you she was working where?

The Witness: I think in Kresge's.

The Master: How long ago was that?

The Witness: Since she left us?

The Master: Yes.

10

The Witness: She had been out of our house about a year and a half.

Mr. Clancey: I am going to make an effort to locate this woman.

*Cross examination by Mr. Azzoli.*

Q How long a time after your father was out of the house did this woman come to live with you? A About a year and a half, I guess.

20

Q Your father was away from home that time before this woman came there? A Yes, sir.

Q In the meantime that year—that whole year—your father had come in and out of the garage at your home? A Yes, sir.

Q You would see him quite often? A Not I; no, sir.

The Master: She was working.

30

Q He would come in the evening to get his car, wouldn't he? A I didn't see him. I never saw my father except on two occasions I told you about.

Q If he came in to get the car at seven or nine o'clock at night, wouldn't you see him? A No, sir.

Q Your father was an officer at a dance hall, wasn't he? A Yes; sometimes.

40

*Mrs. Anna Mackiewicz, direct.*

Q He was an officer in a lot of those dance place around there and got paid for it, didn't he?

A Yes, sir.

Q Your father was sleeping in the parlor for a while, wasn't her? A No, sir; never.

10 Q Prior to his going in the hall room he didn't sleep in the parlor? A No, sir.

Q And you girls objected?

The Master: Or in the dining room.

The Witness: In the dining room.

Q How long had he been sleeping in the dining room prior to going in the hall room? A I don't know; I don't think he slept there more than a few years.

20 Q He slept there for quite some time, didn't he? A No, sir.

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MRS. ANNA MACKIEWICZ, the defendant, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Clancey.*

30 Q You are the wife of Peter Mackiewicz? A Yes, sir.

Q Where do you reside? A 17 Patterson street, Harrison, New Jersey.

Q These two girls who testified here are your daughters? A Yes, sir.

Q How long have you lived at 17 Patterson street, Harrison? A Twenty years.

40 Q You live there now with your daughters? A Yes, sir.

*Mrs. Anna Mackiewicz, direct.*

Q When did you and your husband start having trouble? A About seven years ago.

Q What was the trouble about? A The children were growing up and it was a shame for the girls because the father flirted with ladies.

Q Did you tell him that? A Yes. He said nobody would stop him, he would do what he likes. 10

Q What other trouble did you have? A He started hitting me.

Q When did he hit you? A He hit me. I said, "What are you doing?" He said, "I don't like you."

Q Did your husband drink? A Yes, sir. Since I am married he always drank.

Q How did he act when he came home after drinking? A He started fighting. 20

Q Did he hit you? A Yes, sir.

Q Many times? A Yes, sir. I have witnesses, neighbors of mine.

Q Over how many years? A Ten or eleven years.

Q Do you remember this night when you ran out of the house? A Yes, sir.

Q Tell me about that night. A He got stones in his pockets.

Q What happened in the house? A He started to argue with me. 30

Q About what? A Night.

Q What time of the night was it? A About ten o'clock.

Q What did you do? A He said I am no good and this and that.

Q What did he say? A My husband?

Q Yes. A He said he never live with me.

Q Did you fight? A Yes, sir.

Q Did he hit you? A Yes, sir. 40

*Mrs. Anna Mackiewicz, direct.*

Q Where? A Here in the chest, and he slapped me in the face. He hit me and the neighbors stopped him hitting me.

Q Did you run out? A Yes, sir.

Q Were you dressed? A No, sir. I am in my nightgown.

10 Q Do you remember early in the morning when he broke the door? A Yes, sir.

Q Tell me about that. A At three o'clock in the morning.

The Master: This was at the same time?

Mr. Clancey: This is another time.

Q Was it the same time when he knocked the door in? A No, sir.

20 Q Tell me about the door. A It was about a month before.

Q What happened when the door broke in? A He came in at three o'clock and he said, "Open the door." I said, "Peter, wait." He broke the door.

Q What did he do to you? A He started to hit me.

Q Where did he hit you? A He kicked me and started to hit me, and the children and the neighbors came in to help me.

30 Q Was he drunk? A Yes, sir. He fell like a paper.

Q What time did he get home at night as a general rule? A Late.

Q Was he home for supper? A No, sir. I said, "Why don't you come like a man for supper?" He said he didn't care, "I don't like the way you cook."

40 Q Did you and your daughter get his meals for him late at night? A Yes, sir; six and seven o'clock.

*Mrs. Anna Mackiewicz, direct.*

Q Do you remember when he went in the hall to sleep? A He started to fight. He said, "I don't want to sleep with you." I said, "Why?" He said, "You stink," and this and that.

Q What else? A He called me names.

Q What did he call you? A He called me a whore and bad names. I started to cry. He said, "I'll never sleep with you," and he went to the hall room and slept there before he left. 10

Q Do you know what time he came at nights when he was sleeping in the hall room? A Late. Sometimes he came early and make out he sleep in the room. Everybody sleep at one or two o'clock and he sneaked in. He had a carpet on the steps. He sneaked in. I said, "Peter, where are you going?" He said, "None of your business." 20

Q Did you see him? A Yes, sir.

Q Did you talk to him? A Yes, sir.

Q How do you know you saw him? A Because I opened the door in the kitchen and I waited and he went dressed up. Everybody says, "Where is your husband going so?"

The Master: Strike that out.

Q What did you say? A I said, "Where did you go?" He said, "I go where I like. It is none of your business." 30

Q Did you watch him? A Yes, sir.

Q Did you see him go out of the house? A Yes, sir.

Q Did you watch him go down the street? A Yes, sir.

Q After that you don't know where he went? A No, sir.

Q Did he come home every night? A No, sir. 40

*Mrs. Anna Mackiewicz, direct.*

Q Did he stay away? A Yes, sir. He started to go Friday and came home Monday. I said, "Peter, is it a woman?" He said, "None of your business."

Q Did you ask him where he was Saturday?  
A Yes, sir.

10 Q How long did he keep on staying away from Friday until Monday? A Six or seven months.

Q Before he left? A Yes, sir.

Q He never told you where he went? A No, sir.

Q He never slept with you for a year and a half after—only in that room? A No, sir.

20 Q Did you ever go in that room with him?  
A Yes, sir. I said, "If you are going to live nice what's the matter with you?" He said, "I hate you," and he hit me, and my girls sometimes. One time he hit me and I thought I was dying.

Q What did he hit you with? A His foot.

Q He kicked you? A Yes, sir.

Q How long was this before he left? A Six or seven months.

30 Q Did you put a padlock on the door of his room? A No, sir.

Q Do you know when he left? A No, sir; I was not in the house. One of my daughters was there.

Q Did you notice whether his clothes were in his room or not? A I didn't see anything.

Q Did you ever throw any of his clothes into the hall? A No, sir.

40 Q Did he ever tell you he was leaving? A No, sir. He said he always hated me; he complained all the time that he hated me.

*Mrs. Anna Mackiewicz, direct.*

Q When you saw the clothes missing did you ask him where his clothes were? A Yes, sir.

Q What did he say? A He said he was taking them to the tailor.

Q Did you ask him why he didn't bring his clothes back? A He said it was none of my business. 10

Q After he left did he ever ask you or talk to you about coming back and living with him? A I didn't see him.

Q Has any information come to you as to why he went away? A No, sir.

Q Did you see this woman who was here the last time? A I never saw that woman in my house.

Q She didn't come to you and ask you to come back and live with him? A No, sir. 20

Q Do you know that lady? A Yes, sir.

Q Did anybody come to you and ask you to live with him? A No, sir. He is that lady's uncle.

Q He is that lady's uncle? A Yes, sir.

Q Helen Reneskowski? A I never saw her in my life.

The Master: Except here? 30

The Witness: Yes, sir.

Q You never saw her before you saw her here? A No, sir.

Q Do you know Edna Wenkiss? A That is my husband's niece.

Q Did she come to you and ask you to come back to your husband? A No, sir. I never saw her in my house.

Q Did your husband ask you? A No, sir. 40

*Mrs. Anna Mackiewicz, direct.*

Q Did he ever write you letters and asking you to come back and live with him? A No, sir.

Q Or did he ask you to let him come back?

A No, sir.

10 Q Did you see him around the garage after that time he left? A Once I was sitting on the front stoop with another lady and he came in.

Q Did he walk right by you? A Yes, sir.

Q Did he talk to you? A No, sir.

Q Did you talk to him? A No, sir.

Q What did you say to him? A Nothing.

Q He didn't say a word to you? A No, sir.

Q He went in to get his car and went out?

A Yes, sir.

20 Q Did you ever see him any other time? A No, sir.

Q Did you see him on a trolley car? A Once.

Q How long after he left? A About the first case I saw him on a trolley car.

Q How long after he left? A About two and a half years.

Q Did you talk to him on the trolley car? A No, sir.

30 Q At the time of the case in court did your husband ask you to come back and live with him?

A No, sir.

Q Did you chase him down the hall of the court room? A No, sir.

40 The Master: These two women came here and testified that they went to see this woman several times as emissaries of the petitioner and asked her to come back or to take him back home. She said, according to that, what?

*Mrs. Anna Mackiewicz, direct.*

Mr. Clancey: This Reneskow woman testified that she saw him at a dance hall and the other woman said she said she didn't want him.

Q Did you ever talk to your husband about why he fought with you? A No, sir; I never saw him. 10

Q I mean before he left? A Yes, sir. I asked him many times, I said, "Come in bed." He said, "I hate you and I don't want to go with you."

Q Do you remember this time that he was fixing the pipes downstairs? A Yes, sir.

Q What happened that time? A He went to fix that pipe because the water leaked.

Q Where were you? A On the front stoop. 20

Q Where was he? A On the inside fixing that pipe on the first floor. He started to flirt with that lady.

The Master: Strike that out.

Q How long was he inside? A Three or four hours.

Q What did you do? A I was sitting on the front stoop. 30

The Master: You sat on the stoop three or four hours?

The Witness: Yes, sir; in the summer-time.

Q What did you do? A I went upstairs.

Q Did you go downstairs? A Yes, sir. I went looking for him.

Q What did you see? A I saw him kissing a lady. 40

*Mrs. Anna Mackiewicz, cross.*

Q Did you talk to him about it? A Yes, sir; and he started to fight with me.

Q Did he hit you? A Yes, sir.

Q Do you remember the time when something was done to the gas stove? A Yes, sir.

Q What was done about it? A It was on  
10 the back porch and he said he never paid for it. The girls started to cry—we got a new gas stove to cook with, and he said, “I never going to pay for it.”

Q Did you ever see your husband at any other house since he left you? A No, sir.

Q Did you see him going in any other house?

The Master: Strike it out. It makes no difference.

20 A I saw him a couple of times.

The Master: It is too remote.

Q Did you see him at any other house?

The Master: She testified she never spoke a word about it.

30 Mr. Clancey: I want to show the occasions when he was there and they might have talked.

It is stipulated on the record by counsel that the arrest of the party referred to in the evidence who was taken to the police station in Harrison, New Jersey, took place at 4 o'clock in the afternoon of July 8, 1926.

*Cross examination by Mr. Azzoli.*

40 Q Do you know John Brozowsky? A No, sir.

*Mrs. Anna Mackiewicz, cross.*

Q He was the man in the house when the police officers came? A John Prozowsky?

Q Where does he live? A I don't know.

Q What was he doing in the house? A My girl was under an operation, she was very sick and that man was very sickly. I met him in my lady friend's house and I tried to explain to him my daughter is very sick and he started to tell me a good doctor; that is all. 10

Q That is what he came up there for? A Yes, sir.

Q Your daughter had had her operation? A Yes, sir; she was very sick.

Q She had been in the hospital? A Yes, sir.

Q The operation had been finished how long? A She had heart trouble. 20

Q The operation had been finished how long before that time? A She was sick at the time.

Q How long was she back from the hospital? A About three weeks.

Q You had a doctor for her? A Yes, sir.

Q What doctor? A Dr. Karl Tel.

Q Did you meet him at Mrs. Bulowski's house or farm? A In the house.

Q Did you meet him at Caldwell in 1925? A No, sir; I never met him but once. 30

Q Why did you want another doctor? A I wanted to help my daughter.

Q When did you meet him the first time? A In my friend's house.

Q How long before? A Two or three months before.

Q Your daughter had been operated on yet? A No, sir.

Q How long after you met Prozowski the first time was your daughter operated on? A About three weeks. 40

*Mrs. Anna Mackiewicz, cross.*

Q Three weeks after you met him your daughter was operated on? A Yes, sir.

Mr. Clancey: I think that is immaterial.

The Master: Yes.

10 Q Do you remember going to Caldwell to Mrs. Bulowski's farm? A I never was on a farm in my life.

Q Did you ever go to Harkumtitz's dance hall? A No, sir.

Q At 324 Cross street? A What?

Q Do you go to any dance hall? A Why not? Do you think I am going to cry all my life?

20 Q You want to go to a dance hall while you are living?

Mr. Clancey: That makes no difference to me.

Q While living with your husband and getting in about one or two o'clock in the morning?

A Who said so?

30 Q I am asking you. A I never said it. I always stay in my house. I take care of my house and I am not crazy.

Q You never went to a dance hall? A Do you think I cry all my life?

Q Did you ever go? A I never was.

The Master: Do you really mean that?

The Witness: Yes, sir.

The Master: You hadn't been to a dance at any public place?

40 The Witness: No, sir. I go to church. I go to see my friends and cousins.

*Mrs. Anna Mackiewicz, cross.*

Q You never went to Benang's? A In the summer?

Q Yes. A Once I was.

Q You got home two o'clock in the morning?

A Who said so?

Q Answer my question. A No, sir.

Q One o'clock in the morning? A No, sir. 10

Q Did you ever go to Rensch's Hall? A No, sir.

Q You didn't get home at one o'clock in the morning? A No, sir.

Q Your husband worked every day, didn't he? A I don't know. He came home late.

Q Seven or eight o'clock? A Nine or ten o'clock and argue for supper.

Q He wanted to eat? A Yes, sir.

Q If he asked you for supper he was not eating outside, was he? A I don't know. 20

Q He asked you for supper?

The Master: Let that go.

Q Didn't he work overtime? A I don't know.

Q You remember the time when he was in business in Harrison? A He never was in business in Harrison.

Q When he went in the tubing business? A Not in Harrison. 30

Q Irvington, New Jersey, he was in business there, wasn't he? A Yes, sir.

Q He used to work until quite late, didn't he? A I don't know.

Q He was special officer at different dance halls at nights getting \$6, wasn't he? A He was a couple of times.

Q He used to get paid for being a special officer? A I don't know; I didn't see any money. 40

*Mrs. Anna Mackiewicz, cross.*

Q He bought a house at 17 Patterson street and put it in your name and his name a long time ago? A Yes, sir.

Q Then you made him sleep in the dining room, didn't you? A No, sir.

Q How long did he sleep in the dining room?

10 A He deserted me and went to sleep in the dining room.

Q How long did he sleep in the dining room? A About a week or two weeks.

Q Didn't he sleep in the dining room any more? A I don't know.

Q Then he went in the hall room, didn't he?

A Yes, sir.

Q When did he start to sleep in the hall room? A He left me. He said that way to me—

20 Q When? A In May.

Q What year? A Since he left me.

Q What year? A I don't know what year. He left me three years and a half ago.

Q Was that before the police officer came to your house or after? A Before.

Q Was it after the police officer came to your house to take Prozowski out? A He left me before.

30 Q He left the house or what? A He left my room before they catch that man in my house. He slept in the hall room—he had left me before.

Q While he slept in the hall room he used to go to work every morning? A Yes, sir.

Q What time? A Six o'clock.

Q You saw him going to work every morning? A I didn't see him; sometimes I cooked coffee and made breakfast for him.

40 Q He would go away at six o'clock in the morning? A Yes, sir.

*Mrs. Anna Mackiewicz, cross.*

Q When would he go out at two o'clock in the morning? A When he slept in the hall room.

Q What days would he go out at two o'clock—every night? A No, sir. He left me Friday and came Monday.

Q Two o'clock Saturday morning he was away? 10

Mr. Clancey: Fridays.

Q On Fridays and came back Mondays? A Yes, sir.

Q In September, 1926, the Saturday before the 20th of the month, did he go away again and come back Monday? A I don't remember that time.

Q The Friday or the Saturday before he went away did he go away at two o'clock in the morning and come back on Monday? A It was so many times. 20

Q And that was the last time that your husband went away on Friday at two o'clock in the morning and came back on Monday, before he left you, before you didn't see him any more? A In May.

Q When did you see him the next time after he went away? A A couple of times. 30

Q With reference to September did you ever see your husband go away in September and come back on Monday? A I saw him many times.

Q You didn't like your husband being always drunk and striking you? A What can I do?

Q You didn't want him around the house any more, did you? A Why not?

Q Did you? A Yes, sir. 40

*Mrs. Anna Mackiewicz, cross.*

Q He was always beating you up and he was calling you such bad names? A I am raising children. He is my husband and we ought to live together.

Q Although he was so bad you still wanted him? A What are you going to do?

10 Q Was it because he was so bad you didn't care for him any more? A He didn't like me.

Q Was it because it was so bad you didn't care for him any more? Why didn't you talk to him when he came and got his automobile? A He didn't want to talk to me.

Q For a year's time he was no more in the house. When he came to get his automobile why didn't you talk to him? A He didn't talk to me. He hit me.

20 Q You didn't want him? A He didn't want me.

Q Why didn't you try to talk to him? A He didn't want to talk to me.

Q Why didn't you talk to him? A I will talk to him but he didn't want to talk to me.

Q You say he walked in and didn't say nothing? A He abused me. I was sitting with the ladies on the stoop.

30 Q Outside? A Yes, sir; and he didn't want to talk to me.

Q Did you ever see him going in to get his car? A No, sir; because I slept in the morning.

Q In the evening? A In the evening I didn't see him.

Q You didn't look for him? A I didn't see him.

Q There was a key to the door in the room? A He got his own key.

40

*Mrs. Anna Mackiewicz, cross.*

Q The hall room? A He had a key to the hall room. He had it to the inside.

Q I am talking about the key for the door. A Yes, sir.

Q He had that key? A Yes, sir.

Q The door could be locked from the inside through a slip bolt, so that the only key your husband had for that room was the key that fitted the lock to the door? A To the kitchen. 10

Q I am talking about the hall room door key. He had that key to the lock that was in the door?

A Yes, sir.

Q When the house was built, he had it? A Yes, sir.

Q He had no other key, had he? A No, sir.

(The diagram of the floor plan of the second floor where the petitioner had lived is marked Exhibit 1.) 20

(Adjourned to March 21, 1930, at 1 P. M.)

30

40

*Andrew Torowski, further direct.*

Transcript of further proceedings in the above-entitled matter before Edward M. Colie, Esq., as Advisory Master, at his office, Prudential Building, Newark, New Jersey, on Friday the 21st day of March, 1930, at 2 P. M.

10

Appearances:

William V. Azzoli, Esq., solicitor of petitioner.

Merritt Lane, Esq., John J. Clancey, Esq., present, solicitor of defendant.

O. H. Frost, the stenographer, was duly sworn.

20 ANDREW TOROWSKI, heretofore sworn, recalled for

*Further direct examination by Mr. Azzoli.*

Q Mr. Torowski, did you, last night, go to 17 Patterson street, Harrison? A Yes, sir.

Q Who was with you? A Mr. Zudeneck and Mr. Rakowski.

Q Was Mr. Mackiewicz with you? A He was at that time.

30 Q Did you look at the hall room door on the second floor? A Yes, sir, I did.

Q Did you look to see if there was any lock there on the outside of the door? A There was a lock, but it was different altogether, kind of a strap like that (indicating) and there was little screws in it and another small piece that goes over here (indicating). That was different altogether, see.

40

*Andrew Torowski, further direct.*

The Master: It was not what you saw when you were there before?

The Witness: No, different altogether.

Q It was a lock and hinge, is that what you saw? A Yes, besides that Mrs. Mackiewicz was making too much noise, she ran down and she snapped the front door. She would not give us a chance to look at that. 10

Q How long did you look at the door? A Maybe half a minute.

Q What you saw there was a hinge lock that closes over on one end an eyelet that closes over on the other side, that has got a sort of staple? A Yes.

Q And in that staple is where you put the lock? A Yes. 20

The Master: Is there a padlock?

The Witness: No lock.

The Master: No padlock?

The Witness: No, sir, no padlock.

The Master: Is there a place for a padlock?

The Witness: Yes, sir. 30

Q How large a hinge on the door?

Mr. Clancey: I object as immaterial because it is not the same lock as was there that other day and it does not make any difference.

Q How was this fastened on there, was it nailed or how? A I saw the paint there, but I could not tell you whether it was nailed on or 40

*Andrew Torowski, further direct.*

screwed on because I did not have no chance to see, she would not let us look it over.

Q How was the door? A The door looked like it was painted, some kind of gray paint. It was not light, it was around seven o'clock.

10 Q What was the lock you saw in September, 1926? A It was about two inches—was about two inches square, a kind of like flat.

Q The lock? A The lock.

The Master: Can you draw the lock you saw last?

The Witness: I cannot remember exactly.

Q How was it fastened on? A Kind of flat block about two inches square.

20 Q How was the other? A Two eye-bolts.

Q One on the door and one on the jamb? A That's it.

Q And the lock and the catch are on them? A This was different altogether.

The Master: What I want to know is, how with the present lock you would lock the door from the outside.

30 Mr. Azzoli: It closes this way (indicating). If you will let me have a piece of paper I can show you. (Tears off a sheet of paper and illustrates the sort of lock.)

Q Did the lock that you saw in 1926, September, 1926, lock into a hinge like the one you saw there last night? A It was eye-bolts before.

Q Eye-bolts before? A Yes.

40 Q There was no hinge like you saw last night? A No, there was not.

*Andrew Torowski, cross.*

*Cross examination by Mr. Clancey.*

Q It all comes down to this, that the lock or the bolt with the lock hinge, or whatever is on the outside of that door locking it now is not the same thing that you say was there in 1926?

10

Mr. Azzoli: I object. He said he saw no lock there.

Q I say, whatever is there now is not the same thing that was there in 1926; it is something different? A Something different.

Mr. Azzoli: You saw no lock?

The Witness: No.

The Master: There was no padlock there on what you saw last night? 20

The Witness: No.

The Master: Nor any way of locking that door from the outside on the thing that you saw there last night?

The Witness: You can put a lock on it. There was a place for a lock.

The Master: But there was no lock on it last night?

30

The Witness: No.

The Master: On the night you were there back in 1926, was there a lock on the door?

The Witness: There was a lock on it.

The Master: A padlock.

The Witness: A padlock with two little eye-bolts, see.

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*Alexander Rakowski, further direct.*

ALEXANDER RAKOWSKI, heretofore sworn,  
recalled for

*Further direct examination by Mr. Azzoli.*

Q Did you go to 17 Patterson street last  
10 night? A Yes, sir.

Q With Mr. Torowski? A Yes, sir.

Q Was Mr. Zudeneck there? A Yes, sir.

Q Was Mr. Mackiewicz there? A Yes, sir.

Q Did you look at the door on the second  
floor in the hall room? A I did.

Q Did you notice what you saw on the door  
there; if it was just as you saw it in 1926? A  
No, sir.

Q What did you see on there last night? A  
20 I seen on there last night a catch where you could  
put a lock on, but there was no lock there.

Q Without a lock on it? A Yes.

Q What did you see in 1926? A In 1926 I  
saw eye-bolts on the lock.

Q What kind of a lock was it—what size? A  
About three inches long and two and one-half  
inches wide.

The Master: You are talking about what  
30 you saw in 1926?

The Witness: Yes.

Q How was it fastened on the door? A Two  
eye-bolts screwed in, one on the hinge and one on  
the door.

Q What do you mean, one in the jamb and  
one in the door? A Yes, sir.

Q Show us by the door there (indicating door  
in Master's office) how it was? A One here  
40 (indicating on door) and one here (indicating on

*Alexander Rakowski, cross.*

jamb). The eye-bolt was here and the lock was here.

The Master: I am interested to know how you would lock that door; that would not lock that door.

The Witness: One was on the jamb and one was over here on the door. 10

Q One eye-bolt was here where the jamb is now? A Yes.

Q And one eye-bolt was here where that door is now? A Yes.

Q And the lock between both eye-bolts fastened on it, closed and locked the thing? A Yes.

Q What you saw last night, was it that way?

A No. 20

Q Did you see a lock on the door last night?

A No.

The Master: Both of the locks, the one you saw last night and the one there in 1926, would not have locked that door unless there was a padlock, would they?

The Witness: Yes, put a padlock and a lock on the door.

The Master: But you had to have a padlock to lock the door? 30

The Witness: Yes.

The Master: On both of them?

The Witness: Yes.

*Cross examination by Mr. Clancey.*

Q Is the door over there the same as this; is the door of that house and the jamb over there just the same as they are on that wall there (in- 40

*Alexander Rakowski, cross.*

dicating wall in Master's office)? A Not with the glass in.

Q No, without the glass, were the doors, the two, the door runs right along even with the wall? A Even with the wall.

10 Q Now, isn't it a fact that the wall comes in here (indicating) and the door is in there (indicating), that is the way it runs, isn't it? A No, there is a little board on the floor here right in front of the door.

Q Isn't there a sill there on the floor, isn't there? A No sill on the floor.

Q And doesn't the sill run in here (indicating) about that much (indicating six or eight inches) and then the door is in there (indicating)? A The door is like this one here.

20 Q It is flush with the jamb, is it? A It is flush with the door. One is over here (indicating) and one is over here (indicating).

Q The door is flush with the wall, right even? A No, not right even, just a little out.

Q About an inch or say an inch and a half, there is no space of about four to six to seven inches? A I did not notice it.

Q It is only about an inch and a half, isn't it? A I did not have no ruler.

30 Q You know the difference between an inch and six inches, don't you? You know the difference between that much and that much, don't you (indicating one inch and six inches)? A Yes.

Q Why do you say that much? A About that much.

Q Why do you say this much, just like that? A Not that much.

40 Q You said it is just like that? A The eye-bolts are very large.

*Peter Mackiewicz, further direct.*

Q You told me one inch or an inch and half, didn't you, when I held the pencil?

The Master: You have it on the record.

Mr. Azzoli: Did you notice how this hinge was fastened on this door last night?

The Witness: I did not examine it to see whether it was nailed or screwed on. I know it was on it. 10

Q Did you pull the door out and look in the room? A No.

Q Did you open the door? A No.

Mr. Azzoli: I object. We did not go for that. We just went to look at the door.

Q How does the door open—out? A Opens in. 20

Q Opens in? A Yes.

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PETER MACKIEWICZ, heretofore sworn, recalled for

*Further direct examination by Mr. Azzoli.* 30

Q You went up to 17 Patterson street, where your wife lives, last night? A Yes, sir.

Q To inspect the hall room door on the second floor? A Right.

Q What did you find was on that door last night? A There was a strap hinge fastened on the right side of the jamb. There is another little piece fastened on the door so you can bend this over, and goes through like a little bent wire, a staple, and then you can put the lock through 40

*Peter Mackiewicz, further direct.*

that staple when you slip this over like this, and then you put a lock through here and it is locked.

The Master: You mean a padlock?

The Witness: Yes.

10 Q Was there a padlock on there last night?

A No.

Q Now, in September, 1926, what was on there then? A There was just as I say, these two eye-bolts.

Q Tell us? A The eye-bolt was about three-sixteenths of an inch thick, one screwed in the jamb and one to the door, and the padlock was of the color of brass. I don't guarantee that it was brass.

20

The Master: Where was it?

The Witness: It was right through the two eye-bolts hanging in the lock there. I tried to see if I could open it, but I could not unscrew it. I thought I would be responsible for it, so I did not do it.

The Master: I am asking you what you saw there in 1926?

The Witness: That is what I saw.

30

The Master: Will you show us on the door of this room how the two eye-bolts were fastened and how the lock was?

The Witness: Cannot very well show on that door. I can on this door. That is a jamb exactly like the room door. The door opens that way.

The Master: On the inside.

The Witness: On the inside. This eye-bolt was over here, just about the same

40

*Peter Mackiewicz, further direct.*

height; there was one over here and one was over here, and the lock was through that. That is all I can say.

The Master: I don't understand that kind of a lock at all.

Mr. Clancey: He means that one was screwed in here (indicating on box cover) and stuck out, and one was screwed in here and stuck out, and you stuck the lock in between. 10

The Master: They were just wide enough apart to permit you to put in a padlock.

Q Now, then, last night, however, you found that there was a hinge, as you call it? A I call it like a strap hinge with a hole in it.

Q Show us on that door you used there how the strap hinge is on the door and how the staple is? A Last night I stood about six feet away from the door. 20

Q What was over there? A The other man was right over there. I noticed this screwed in here, exactly the same way; instead of the two eye-bolts was screwed in that hinge, and it slips over here and you can put a padlock in it.

Q Now, Mr. Mackiewicz, did you notice the wood, whether it was in the same condition it was in in 1926? A No. 30

Q What is it today? A It is painted a different color.

Q Been painted over? A Yes, painted over, a different color.

The Master: When you go out I want you to get those two eyelets and see if you can borrow or beg a strap iron hinge.

*John Arnheiter, direct—cross.*

JOHN ARNHEITER, heretofore sworn, recalled  
for further

*Direct examination by Mr. Azzoli.*

10 Q In July, 1926, when you went up to Mr.  
Mackiewicz' house to get this man out, was  
Tessie Mackiewicz in the house at that time? A  
No, she was not. I will tell you where she was  
now, as I can remember. When I was taking  
the man down the stairway she was just coming  
in the front door. She was at the bottom of  
the stairways and she says to me, "What do you  
call this?" and I didn't make no remark, just  
went out with my prisoner.

20 Q She was not upstairs in the dining room  
where you found the man? A No, she was not.

Q How long have you known Mr. Mackiewicz?  
A I have known the both of them, I guess, for  
about eight years.

Q The husband and wife? A Husband and  
wife.

Q You knew that Peter Mackiewicz was a  
special officer in Harrison? A I heard that he  
was, but I really did not know it at the time.

30 Q Do you know what his reputation is for  
sobriety? A I have always known him to be  
a good man. I could never say anything else  
about him.

Q Did you ever find him drunk at any time?  
A I never seen the man drunk.

*Cross examination by Mr. Clancey.*

40 Q Your testimony with respect to this man's  
character is that you never heard anything bad  
about it? A No, I never did hear anything bad  
about it.

*John Arnheiter, re-direct.*

Q You would see him maybe once or twice a week? A Well, sometimes that and sometimes maybe once a month.

Q And maybe sometimes you would not run into him for a couple of months? A I would not run into him for a couple of months.

Q You are a police officer and those things usually come to your attention when complaints are made? A Yes.

Q And you heard no police complaints that you know of? A No, not for the time I knew the man. At that time I know he was good.

Q That is all you know about him? A That is all I know about him.

*Re-direct examination by Mr. Azzoli.*

Q To be a special officer in the department of Harrison, is it necessary that a man must have a good character for sobriety?

Mr. Clancey: I object for the reason that this witness is not properly qualified. He is not in charge of the special officers.

The Master: Strike it out. It does not make any difference. That goes without saying.

Officer, I want to ask you, the Mr. and Mrs., the two parties here, the husband and wife, the man and the woman, were they known, do you know what their relation was supposed to be in Harrison; were they understood to be married or not?

The Witness: Yes, so far as I know, they were supposed to be married.

The Master: Always supposed to be?

*Antonio F. Rudnicke, direct.*

The Witness: Yes.

The Master: Did you ever hear him speak of his wife?

The Witness: No, I never did.

The Master: Did you ever hear her speak of her husband?

10

The Witness: No, I never did.

The Master: Did you know their reputation in the community, as to whether they were married or not?

The Witness: That I could not say.

The Master: Did you ever hear they were not married?

20

The Witness: Yes, I heard that they were married. I thought that they were very much that way.

Mr. Clancey: They had a couple of children. You knew those children were known in the neighborhood as his children?

The Witness: Yes, that is right.

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ANTONIO F. RUDNICKE, sworn for the petitioner.

30

*Direct examination by Mr. Azzoli.*

Q Where do you live? A 412 Hamilton street.

Q Are you married? A Yes, sir.

Q Do you know Peter Mackiewicz? A I know him.

Q Do you know Mrs. Mackiewicz here? A Yes, sir.

40

*Antonio F. Rudnicke, direct.*

Q How long have you known both of them?

A About—over twelve years.

Q Do you know that they are husband and wife? A Yes, sir.

Q Do you know they have two children? A Yes, sir.

10

The Master: Were they called husband and wife, do you know?

The Witness: Yes, sir.

The Master: Have you heard them call each other husband and wife?

The Witness: Well, I don't know if they called that to me, but I know it is husband and wife all right.

Q Did you work with Peter Mackiewicz? A Yes, sir. 20

Q How long did you work with him? A Since 1908 until 1918.

Q And while both of you were working together, was he always sober? A While we were working together we got to be sober. When we worked we were sober.

Q Was he a steady worker? A Yes, sir.

Q Are you also a special officer? A Yes, I am. 30

Q Was Peter Mackiewicz a special officer? A Yes, sir.

Q Did you work together in dance halls as special officers? A We were together on the big dates. On the little dates and Saturday and Sunday I was there.

Q When you were together with him at these places, did you see him get drunk at those places? A You cannot, cannot drink while you are in uniform; no, sir. 40

*Antonio F. Rudnicke, cross.*

Q Did you ever see Peter Mackiewicz drunk during the time that you knew him? A No, never saw him drunk. Only after work take a glass of beer sometimes, but I never seen him drunk.

10 Q Do you know Mrs. Mackiewicz here; have you ever seen her around the dance halls where you were a special officer? A I have.

Q How often have you seen her at dance halls? A Well, at balls, you know, society balls, I would see Mrs. Mackiewicz there.

Q Did you see what time she would leave the balls? A Sometimes around ten o'clock, eleven o'clock. I could not tell you exactly, whatever the class of the ball.

20 Q Did you ever see her take a glass of beer or anything like that? A No, I never seen it. A glass of soda sometimes.

The Master: In what town have they lived since the time you knew them?

The Witness: In Harrison.

The Master: All of the time?

The Witness: All the time since I knew them.

The Master: During all the years?

30 The Witness: Since 1908 I have known the peoples.

*Cross examination by Mr. Clancey.*

Q Did you go to see them at their house? A Very seldom; a couple of times before they were living together I was two weeks or three weeks there in the house.

40 Q Were you there more than four or five times altogether? A More than that?

*Antonio F. Rudnicke, cross.*

Q Before they were living together? A Yes.

Q In the twenty-two years that you have known them have you ever seen them more than ten times in the house? A Before they were living together?

Q When they were living together? A Yes.

Q How many times? A I was there some week days, Saturdays and Sundays. Many times I saw them when they were living together.

Q You say he was sober when he was at work? A Yes.

Q You were sober, too, you had to be sober to do your work? A Yes, sir.

Q The same way when you were acting as special policeman, you were there to keep order and take care of drunks? A Yes, sir.

Q And see that they did not get in a fight? A Well, sometimes a fellow fight. He does not have to be drunk.

Q You were there to keep order, watch out for drunks and everything else? A Yes, sir.

Q And you have to keep sober to handle your job? A Yes, sir.

Q Who were some of the men that Mr. Mackiewicz went out with at night? A Pardon me?

Q Who went out with him at night most of the time? A Who do you mean?

Q Peter Mackiewicz? A I could not tell you.

Q He went out with friends of his all the time? A I could not tell you.

Q Would you see him at all during the week? A When he was working I saw him.

Q After that you went home? A After that I went home. I took care of my family and he

*Antonio F. Rudnicke, re-direct.*

took care of his. I could not tell you whether he stayed in or stayed out.

Q You could not say; all you know about it is what you saw of him during the day, and some times when you would be a special policeman?

10 A Sometimes I met him when we go to a meeting, and once in a while I saw him in the hall. That is all I can say.

Q Did he drink whiskey? A I don't know if he drinks or not. When we would go out sometimes after work I would see them with a drink of whiskey.

Q Do you read Polish? A Yes.

Q Did you ever see Mr. Mackiewicz' handwriting; did you ever see him write anything?

A Yes.

20

The Master: Mr. Clancey, what are you supposed to have there?

Mr. Clancey: I am going to show him where Mr. Mackiewicz bought a couple bottles of whiskey and a couple of kegs of beer; put them down in his diary.

*Re-direct examination by Mr. Azzoli.*

30 Q Did you work every day during the time you were working? A Yes, sir, we worked every day from eleven, ten or eleven o'clock, from two o'clock or four o'clock, all night sometimes too. We worked together. He was the foreman of the tube mill and I was foreman of the rolling mill.

Q What time did you get home when you worked every day? A We came home at four o'clock and then go to bed, eat breakfast and go to work.

40 Q Four o'clock in the morning? A Yes, sir.

*Peter Mackiewicz, further direct.*

Q Did you ever come home at eight or nine o'clock at night? A Yes, sure, we worked eight hours a day, eight hours every day and overtime if we got a chance, the machinery broke we would stay and help on it.

The Master: What did you work at? 10

The Witness: I was foreman of the rolling mill. It was a factory making shells, ring shells.

The Master: Was this during the war?

The Witness: Yes, and before the war too, before I was foreman I worked over time.

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PETER MACKIEWICZ, recalled for further 20

*Direct examination by Mr. Azzoli.*

Q You testified at the former hearing that you were married in 1905, on January 25th, didn't you? A That is right.

Q At Newark, New Jersey, by a minister of the gospel? And you produced your marriage certificate, which is Exhibit P. 1 for identification? A Yes. 30

Mr. Azzoli: I offer it in evidence.

(Exhibit P. 1 for identification now becomes Exhibit P. 1.)

Q You also testified on direct examination that about September 20, 1926, your wife deserted you and locked you out? A Yes.

Q You testified how was it you were locked out, what had happened? A When I came 40

*Peter Mackiewicz, further direct.*

home from work Monday night I saw a padlock on my bedroom door where I slept.

Q Did you talk with your wife? A No, not right away. She would not open the door. I knocked on the door and she would not open; just hollering inside: "I don't want you no  
10 more, you get out." That is all there was to it.

Q So you went? A I went out.

Q Where did you go? A I went across the street to my neighbor.

Q And you showed Mr. Zudneck, you took him upstairs? A Yes.

Q You showed him the padlock? A I did.

Q While Zudneck was up there, did your wife come? A She did not come out; just opened  
20 the door a little ways and says, "Get out, lest I have both of you arrested." She slammed the door right away and then we went downstairs.

Q Then you went over to somebody else's? A Yes, I went to Rakowski's and asked for a room where I slept for the night.

Q Then you brought Rakowski back, is that right? A Yes, then I came over, Mr. Rakowski, the both of us.

Q And then you went upstairs to your room  
30 again? A Yes.

Q And showed him the padlock on it? A Yes.

Q When you went up there the first time when you got home from work you say you found your clothes in the hall? A Yes, not all, some of them.

Q Did your wife say anything to you about those clothes? A Only when she opened the door she says "Here is your clothes, get out."  
40 That is all I heard.

*Peter Mackiewicz, further direct.*

Q Then you left Rakowski and you went to Mr. Torowski, didn't you? A No, Rakowski went home with me, we went downstairs and I stood on the sidewalk maybe a minute or two and he went home, and then later on this man was going across the street to get his car—

Q Who was that? A Torowski. 10

Q And you called him? A Yes, when he said "Hello" to me I said "Hello" and I said "I want to tell you something" and he said "All right, I ain't got no time, I am in a hurry now."

Q You took him upstairs? A Yes.

Q And you showed him the padlock? A Yes, I showed him the padlock and he helped me take my clothes out down to his garage. Then he went away. He said "I am in a hurry."

20

The Master: How did you get the rest of your clothes?

The Witness: I did not get them yet.

The Master: Never got them yet?

The Witness: No, my two overcoats hang up in the attic and my rain coat and palm beach suit.

The Master: What did you get and take to the garage?

30

The Witness: I just got two suits.

The Master: How about your underclothes, shirts, stockings and drawers?

The Witness: I did not get them; just what I had on me.

Q Where did you sleep that night? A I slept that Monday night, I slept in the garage; I could not get a room anywhere.

40

*Peter Mackiewicz, further direct.*

Q Then where did you sleep after that? A After that I moved to Pennsylvania avenue.

Q And you have been living there ever since, Pennsylvania avenue, Newark? A Yes.

10 The Master: Where did you take your clothes to, the two suits, and all that?

The Witness: It was in the garage.

Q Did you keep your car there for all the time? A Yes, I kept my car since I bought a car up to June, if I remember exactly, a date around the 16th of June, when I got a garage in Newark. A new garage was built and I hired a garage.

20 Q So from September, 1926, until June, 1927, you kept your car in the garage at 17 Patterson street and went there right along to get it? A No, not every day.

Q Did you ask your wife why she put a padlock on the door? A Yes, I did.

Q What did she tell you? A She said, "I don't want you."

Mr. Clancey: When?

30 The Witness: That evening, when I was locked out, Monday night.

Q Do you remember testifying at the last hearing about her telling you about locking up the man, what was it she said about that? A She said if you lock up my friend then I don't want you. You ain't got no business taking anybody out of my home. He is a good friend of mine and I want him to come around to see me.

40

*Peter Mackiewicz, further direct.*

Q On July 8, 1926, what time did you get home? A Around three o'clock, quarter to three. I did not look exactly.

Q And who did you find upstairs in your house? A I found John Bunzkowski.

Q What did you see when you went in; who was there? A My wife sitting at one end by the table and he was sitting at the other end. 10

Q Is that all that was in the house then? A That is all, only the two of them.

Q What was said when you went in? A When I went in I said to my wife, I said, "Who is this man?" because I never saw that man before. She did not answer me and I asked her again, I asked her about four times, and I said "Tell me, who is this man." She said this man came around looking for board. I said, "For board, I ain't got room where to sleep myself, why boarders? I don't want no boarders. Anyhow, this man is a stranger to me, I don't know him." So she says, after that she did not answer a word, she sat there and just kept on eating. 20

Q Was this man eating too? A Yes, he was sitting right by the table eating.

Q How was he dressed, was he in his shirt sleeves or did he have his coat off? A No, just a blue coat on. He was not very well dressed. 30

Q Then what happened? A Then I say "Who you are" to this man, and I says what is the reason for your coming around here, and he said "I came around to see your wife." I say, "To see my wife," I say, "What for?"

Q Was your wife there at the time? A Yes, she was sitting right by the table. He said "Your wife is my friend. I just come around to see her friendly. I say, "You ain't got no busi- 40

*Peter Mackiewicz, further direct.*

ness to come around to see my wife." I say, "My wife, your friend, I don't like that. I don't want you to come around here to my house any more." And he said "I am going to go" and I say, "Wait a minute. You are not going to go yourself," and I call two policemen from  
10 downstairs and call them to take this man out.

Q Who were the two police? A Arnbeiter and Martin Flynn.

Q And you had him taken to the police station? A Yes.

The Master: Is that all there is of it?

The Witness: Then I went into the house and the cops came out and she jumped from the table and jumped at me and hit me.  
20

The Master: Who?

The Witness: My wife, saying that I should keep away from her. The other man, the policeman with Flynn grabbed her by the arms and says, "Don't argue here, argue in the court but not in here. Don't bother with it."

Q So they took him away? A We went  
30 down, the two cops with that man together, and I was the last one to go downstairs and then when we were coming down the stairs Tessie opened the door and walked right in from the outside.

Q The downstairs door? A Yes, the downstairs door. She is coming in from the outside. If I am not mistaken she had a newspaper in her hand, and then she says, she stopped right by the steps, and she says, "What's this about my mother?" She was hollering from upstairs  
40

*Peter Mackiewicz, further direct.*

you see, and she hears her just like that, and I walked out and after that I don't know.

Q Did you continue to sleep home then until September, 1926, when you got home finally one night and found the padlock? A Yes, all the time when I came from work, for I worked overtime until nine o'clock.

10

Q Where were you working at that time? A I was working for the General Tube Company.

Q What time did you quit work? A We generally quit at six o'clock, but sometimes I stayed overtime. When we were building the new plant we had a lot of improvements there, so a few men worked overtime once in a while.

Q What time would you get home? A About nine o'clock.

Q Would you ask for your supper when you got in? A Certainly.

20

Q Now, how did you come to go to sleep in the hall room? A That happened this way; we slept together in one bedroom, my wife—

The Master: In one bed?

The Witness: Yes, in one bed. She started to complain at me. "You are a stinker" and things like that. "I don't want to sleep with you," and she argued all night sometimes. I didn't have no sleep for half an hour some nights. So I say, "All right, if you don't like me, then I go and sleep in the dining room," so I went in the dining room and slept in there, and then my wife started to complain because when I get up in the morning I ain't got no time to fold up the bed again, so I left them that way, and they don't want them when fellows come around in the evening to show them your bed. They

30

40

*Peter Mackiewicz, further direct.*

don't like it. A boarder was there in that little room where I was sleeping, and that boarder, I asked that boarder, I say, "Listen, Mike," I say, "you better—"

Mr. Clancey: I object to that.

10 Q You had that room vacated and you took it yourself? A Yes.

Q How long had you been sleeping in the dining room before you went into the hall room?

A Oh, around a month, something like that; I cannot remember the dates.

Q Did you wife know you were going to go in the hall room? A Certainly.

Q That was arranged with her? A Not arranged, either. If she did not like me, why, I  
20 can go and take the room, the bed was there.

Q How long had you been sleeping in the hall room before the padlock was put on the door? A I imagine over a year, around a year, something like that. I could not tell you the exact date because I did not pay any attention to that.

Q When you went into that room was there any padlock on the outside of the door? A No, no such thing; it was not; no, sir.

30 Q Was there anything there like this exhibit here, in the nature of a hinge?

(Strap hinge marked Exhibit P. 2 for identification.)

Q Was there anything like this Exhibit 2 on the door? A No, nothing, just a plain door like this here, with a lock from the inside of the room, which you can open with a key from this  
40 side.

*Peter Mackiewicz, further direct.*

Q Regular lock in the door? A Regular lock in the door when the house was built.

Q Was there anything on that door like Exhibit 3, that lock, and the way it is fastened? A No, nothing at all.

(Padlock marked Exhibit P. 3 for identification.) 10

Q Now, did you support your family all the while you lived in that house? A Certainly, the best I could.

Q 17 Patterson street is a piece of property that was purchased by you, was it? A Yes, sir.

Q Did you put it in your wife's name also? A Yes, sir.

Q You opened a bank account for your wife, didn't you? A Yes, we opened together, not at first; it was opened in my own name. 20

Q In your name first? A Yes.

Q And then you put it in your name and her name? A Yes, my wife was not satisfied and then we went down to the bank and put it in two names required to draw.

Q And then you opened a special account for her? A Yes, I took two hundred dollars and took my wife to the West Hudson Trust Com- 30  
pank Bank and opened up a special account. I says if anything happened to me, I say, if I get hurt you would get something in the beginning to start with, so you would not suffer from it.

Q After you found the padlock and you could not get into the house any more, did you continue to support your wife? A Yes, sir, the best I could.

Q How? A I used to pay the butcher bills and everything that was taken there, and then 40

*Peter Mackiewicz, further direct.*

allow just a few dollars to myself for my own expenses, and I paid the butcher bills. Sometimes I paid sixteen dollars, sometimes twenty, sometimes eighteen. Once I paid thirty-five. According to what they eat.

10           The Master: Are you talking about after you left the house?

          The Witness: Yes.

          The Master: Who did you give that money to?

          The Witness: To the butcher.

          The Master: No, you said you got cash.

          The Witness: Just a few dollars for expenses that I gave home to my wife.

20           The Master: Then you saw your wife after you left, I am asking you.

          The Witness: Never was in the house.

          The Master: What did you do for your living?

          The Witness: I went to the butcher and say, "Anything my wife buy here or my children, I am willing to pay for," and he say "All right," so we continued that for a long time.

30           Q How much were the bills a week after you left? A The highest bill I paid, once before Christmas, was thirty-five dollars and some few cents.

          Q How long did you continue that way before you started to send her any money? A That was for a long time; I could not remember exactly.

40           Q And then you started to send her ten dollars a week, isn't that right? A No, after that

*Peter Mackiewicz, further direct.*

I found out that such big bills, I say, "Three people, two girls and my wife, could not eat that much," so I discovered they always having parties and I had to pay for it, so I say to the butcher, "I am going to discontinue that; I am going to give you just ten dollars every week for my wife. I think her girls are big enough to make a living for themselves and they don't pay no rent," so I say, "Ten dollars for my wife is going to be enough," and we agree on that, so I kept on paying ten dollars. 10

Q To whom? A To the butcher, the butcher bill, and when I took that the butcher said—

The Master: Never mind.

Q Then you stopped paying the butcher and you sent it to your wife, didn't you? A Afterwards, when I stopped, it was not convenient for me living in Newark to run down there every Saturday, and it cost me for carfare, so I opened an account, a checking account in the Weequahic Trust Company and I sent her a check every week. 20

Q Ten dollars a week? A Ten dollars a week.

Q And you kept that up, that ten dollars, until you brought suit? A Yes. 30

Q And then you started paying twelve dollars a week after suit? A Yes, Mr. Azzoli told me the Court required me to pay twelve, so I paid her twelve up to now.

Q In September, 1926, were your daughters Tessie and Florence working? A In September?

Mr. Azzoli: Yes, Tessie testified she went to work in August of that year. The testi- 40

*Peter Mackiewicz, further direct.*

mony is they were working; isn't that so, Mr. Clancey?

Mr. Clancey: Yes.

Q You were not getting any money? A No, I don't say no, for once Tessie brought—she said,  
10 “Papa, here is my pay.” I say, “No, I am very glad you are getting it.” I say, “You save that for yourself. I am going to give you board, you can keep on saving only for your own expenses.”

Q Were your daughters working at the time they said they were under oath? A Yes, they were, but, really, exactly I don't know, because—

Q They were living home, weren't they? A Yes, they were living home.

Q So far as you know, they have been living  
20 all the while in that house in Patterson street?

A Just as long as I know; yes, sir. They were away for a couple of weeks in the summer; I don't know.

Q Now, 17 Patterson street is a two-family house? A Yes, two stories.

Q One family downstairs that occupies it? A Yes.

Q And that family pays rent? A Yes, pays  
30 \$30 a month.

Q None of this rent ever paid to you? A That is, before?

Q After you left? A No, not a cent.

Q I mean the rents that were collected on that property were not paid to you after you left? A No.

Q You did not go and claim any, did you? A No, not a thing.

Q There was a building and loan mortgage on that property? A Yes, there is today.  
40

*Peter Mackiewicz, further direct.*

Q How much is the building and loan mortgage? A \$1,400.

Q That is fourteen dollars a month to be paid? A \$13.80 a month.

Q Exactly? A Exactly.

Q She is paying that, isn't she, your wife? 10  
A I believe so, I don't know exactly.

Q She is collecting the rent and living there, she has got to pay it, that is all.

The Master: Go on, examine your witness.

Q While you were living home did you do anything else outside of your regular work or employment? A Yes, I was a special officer.

Q That is all I want to know. I think that covers your main testimony. Now, getting back 20  
to September of '26 when you were padlocked out of your house, as you say, did you ever go to see your wife about making up, at any time?

A I was talking to her—

The Master: Answer the question, yes or no.

The Witness: Yes.

Q When? A That was when—I don't re- 30  
member, possibly two weeks later.

Q Where? A She was standing on the back porch or the stoop and I was standing in the yard. I say, "Hello, Anna"; she turned around and looked like that. I say, "What's the matter you don't want me to come home?" "No, not no more; I get along without you better," so what more could I say?

Q Did you ever request anybody to talk to your wife? A Yes. 40

*Peter Mackiewicz, cross.*

Q Who? A Quite a few people in private, when Miss Winciss used to come around.

Q Who is she; she is your niece? A She is my sister's daughter; I don't know how you pronounce it.

10 Q You asked her to go and speak to your wife? A Yes.

Q Did she do that? A Yes.

Q She brought back a message to you? A Yes.

*Cross examination by Mr. Clancey.*

Q When did you become a special officer? A I don't remember the date of it, but I think it was in 1913, if I can remember.

20 Q You only worked once in a great while, didn't you; you did not work often at that? A I worked every week sometimes, and sometimes twice a week.

Q How much did you average on that? Six or ten dollars a week? A Average on that, I got six for one evening.

The Master: How much did you get every day you worked?

30 The Witness: Six dollars.

Q You say you had a job as special officer every week? A Pretty nearly.

Q Did you work one night a week? A No, not every night. Sometimes one night and sometimes two nights a week.

40 Q Would you say that on an average you worked one night every week? A No, there is sometimes not so many dances.

*Peter Mackiewicz, cross.*

Q Would you say you worked at twenty-five dances a year, one every two weeks? A Maybe, I did not mark it down; I don't remember that.

Q You got six dollars a night? A Before I was getting five. After they got me six I had four dance halls to take care of.

Q How much were you getting, how much was your salary, how much were you making at your work? A Work? 10

Q Yes, in the Tube Company as foreman? A The New Jersey Tube?

Q Yes. A My salary was paid by the hour.

The Master: How much?

The Witness: My salary was paid by the hour.

The Master: How much did you get a week? 20

Q How much an hour, a dollar and a half?

A No, sir; I did not get a dollar and a half.

Q How much did you get? A I think it was eighty-five cents an hour.

Q How much did you get a week? A In a week it never was equal.

Q About what would you get a week, on the average? A Sometimes sixty dollars a week, sometimes seventy-five. I have made as high during the war as one hundred and twenty a week when I worked— 30

Q When you worked overtime? A Yes.

Q When you were working and getting from seventy-five to one hundred and twenty dollars a week, did you support your family? A Positively.

Q Did you buy the piano home? A Yes, sir.

Q Did you buy the furniture? A Yes, sir. 40

*Peter Mackiewicz, cross.*

Q Did you buy the automobile? A Yes, I bought two.

Q Did your wife have any money? A Yes.

Q Did you give her the money? A I brought the pay home.

10 Q How much did you give her out of your pay? A Everything I got. I did not open my envelope for fourteen years.

Q And you gave her everything? A Everything.

Q If you got sixty dollars you came home and gave it to her? A Sixty, seventy-five, thirty or fifty, it does not make no difference how much I made, I brought everything right there. A good many times she refused to take it, and I picked it up off the floor with tears in my eyes for refusal to take my wages from me.

20 Q Did you support your children? A The best I could. She had a right to do anything with the money.

Q Did you buy clothes for her? A Who?

Q For her and the girls? A Yes, bought them dresses.

Q So that your wife had all your pay for her clothes and everything for the home? A There was fourteen pairs of shoes in the bedroom.

30 Q It cost her thirty to forty dollars a week to live and buy shoes, dresses and things like that, didn't it? A I don't know.

Q You knew what your pay was, didn't that run that high? A No, I don't think so.

Q Thirty dollars a week? A Thirty, sometimes less.

Q Twenty-five to thirty-five in others? A The butcher did not cost very much and the outside little bills was very small.

40

*Peter Mackiewicz, cross.*

Q And after you left you sent her ten dollars a week? A Yes, ten dollars a week.

Q Now, this is a two-family house and your wife also collected the rent, didn't she? A Not up to two years before, when she started to collect.

Q Two years before you left she started to collect the rents? A Yes. 10

Q All the time from then on she collected? A Yes.

Q Out of that the building and loan was paid? A Yes.

Q The taxes? A Yes, the taxes for 1925 were paid by myself. My wife paid for 1926.

Q She has paid them ever since, hasn't she, so far as you know? A I did not investigate that. 20

Q She is keeping up the building and loan? A She must be.

Q And the taxes, so far as you know? A She must be.

Q She is still living there and the mortgage has not been foreclosed? A Yes, sure.

Q And the rent from that is \$30 a month? A \$36 she is getting now, \$6 for the garage and \$30 for the five rooms downstairs. 30

Q Then you were never in the house since you left, were you? A In the house?

Q Never in that house since you left, were you? A No, I could not get in unless I broke the door, and I did not want to get arrested.

Q You were never in it since you left, were you, and the night you left when you saw this padlock why didn't you break the door down? A I was in trouble once for breaking a door, and the Chief sent me a note— 40

*Peter Mackiewicz, cross.*

Q Why didn't you do it? A He told me he was going to put me away for a year or so if I should do—

Q It was your house? A It was all right, but I had to listen to my Chief.

10 Q It is your house, isn't it? A No, my wife's.

Q Yours and your wife's. If you felt that you were in the right, it did not make any difference about the Chief going to do something to you? A I had to listen to him.

Q You knew it was half your house as much as hers? A I did not want to break my half of the house.

20 Q It was your home, that is where you lived for years? A Yes.

Q You came in once before and found the door locked? A Yes.

Q And you kicked it in? A No.

Q You pushed it in, got in? A No.

Q You broke it with your fist? A No, I just cracked the panel.

30 Q You cracked the panel and then you got in? A No, Florence opened the door. My wife did not get up to open the door. I knocked there for over three-quarters of an hour. It was so cold I was freezing my ears off.

Q It was so cold and you chased your wife out in her nightgown? A I did not chase anybody out.

Q She ran out? A Then I went to bed; I did not have no reason to chase anybody.

40 Q Why didn't you break the door down to get into your room; were you afraid of getting arrested? A Positively I was afraid, because the Chief gave me a strong talking to, called me

*Peter Mackiewicz, cross.*

over and said, "I don't want you to make a disturbance in this house, you broke the door."

Q Your wife complained about your breaking the door? A I don't know.

Q The Chief told you, didn't he? A Yes, the Chief told me about breaking in the door, and I fixed the door so that it was all right. 10

Q What did you say to her when you saw her on the porch after you left? A I say, "Hello."

Q What did she say? A She did not answer, turned around like this (indicating sidewise glance).

Q What else did you say? A I said, "Don't you want me home?" and she did not answer me a word, just turned around.

Q You never talked to her after that? A I met her on the stoop, she was sitting by it, she saw me and she turned around. 20

Q You did not talk to her and she did not talk to you? A No.

The Master: A minute ago on your direct examination, that is not what you said took place between you and your wife when you saw her on the back stoop. That is not what you said before. You said you asked her whether she did not want you to come back and then what did she say? 30

The Witness: She did not answer a word. She started hollering, she says, "I don't want you, I get along better without you."

Q You think about this after you are reminded about them, don't you, you just happened to think of that again after you were reminded about it, didn't you? A I said that before. 40

*Peter Mackiewicz, cross.*

The Master: You want to be careful what you say.

Q Your car was in the garage from September until June of the following year, June, 1927?

A Yes.

10 Q Did you use it during the winter? A No.

Q When did you stop using it, in December when the winter came on? A No, it was not very cold.

Q When did you stop using it? A I cannot remember the month or the day.

Q How long after? A It was not cold weather.

20 The Master: When do you think you stopped using it?

The Witness: Around before Christmas.

Q Then from around Christmas until June you did not use that car—no, I should say, that from after Christmas then when did you go over there and start using it again, a couple of months later? A No, the motor was cracked, I could not use it, so I left the car stay until I could get a fellow to fix it.

30 Q The motor froze up on you, didn't it? A Yes.

Q That was cold weather when it froze? A Yes.

Q What did you mean to tell me it was not so cold for? You told me you did not use it because the motor cracked up, and the motor cracks up in the cold? A It was a day, weather like today.

Q The motor cracked up on a day like this?

40 A When I came home in the evening.

*Peter Mackiewicz, cross.*

Q You explain it to Mr. Azzoli, I don't want your explanations, I want your answers.

Mr. Clancey: I move to strike that out as not responsive.

Q Then when did you get it fixed, what month? A It was any time I could get a little bit— 10

Q March or April? A, I think it was before that. I could not give the exact date.

Q Tell me about when?

The Master: Nobody wants you to give it exactly. We want to know something we can depend on as nearly as you can recollect.

20

A Around March or sooner.

Q Then you used it from March to June 16th?

A Yes.

Q How often would you use it at night? A No, some times in the day I come to get my car to go to work and some times I go out in the evening, not every night.

Q Did you use it two or three days a week?

A Three or four days a week, two days a week, five days.

30

Q Where is the garage? A Right in back of my house.

Q How far from the back of your house, 200 feet or something like that? A It would be more around twenty-five or thirty feet.

Q There is a driveway, is there, running— A No, I got an entrance from the back of the lot, my house runs into the street, and a street goes by my garage, that is the way I get entrance to my garage.

40

*Peter Mackiewicz, cross.*

Q And did you go in the alleyway alongside of your house? A Yes, that is the only way I can go in, through the alleyway.

Q When you went to get your car you would go into the alleyway alongside of the house?

A Yes.

10 Q And you did that two or three, maybe four times a week from September to June, with the exception of the winter when it was laid up? A Yes.

Q You talked with your wife once? A Yes, I saw her on the porch.

Q You have not talked to her since; you did not talk to her since; you did not go up to her? A Up to her?

20 Q Up to her? A I didn't go up to her, why I was up there last night.

Q You were up there to look at the lock last night?

The Master: One minute, you got to listen and you got to answer the question.

Q Ever since you left? A Ever since I left I only spoke to her one time, and I did not get no answer.

30 Q You were upstairs talking to this man in July in the house? A Yes.

Q What time did you get home? A That night?

Q That afternoon in July when the cop was there? A In July?

Q What time did you get home that afternoon? A Right before three o'clock.

Q Did you get off early that day? A Yes, I got off.

40 Q You got off early? A I had my car by the lane and I came down in my car.

*Peter Mackiewicz, cross.*

Q You did not work during the day, that day? A No.

Q Why not? A There was no reason.

Q No work? A No work.

Q You were foreman? A I was not foreman, I was helping to assist the foreman.

10

Q You were not off the day before, were you? A What day before?

Q The day before this July day, you worked all day the day before, didn't you? A Yes.

Q Why did you get off at three o'clock this day? A Because I wanted to come down to my home.

Q Why? A Because, I know why.

Q Tell me why? A I wanted to come down to see what was doing home.

20

Q Who called you up? A I did not get no word from anybody.

Q How did you know anybody was home? A I came down to see it and found out.

Q Why, how did you know there was anybody there? A I knew it before that.

Q Who told you? A A lot of people, all my neighbors told me.

Q Somebody told you there was somebody in your house? A Not that day or the day before; it was six or seven weeks before.

30

Q You just came home and took a chance on finding somebody there? A That's right.

Q When you left the factory, then you came right to the house? A Right straight to my house.

Q You went right upstairs? A No.

Q What did you do, listen? A No, I went up on the stairs, I wanted to be sure if there was anybody in there or not.

40

*Peter Mackiewicz, cross.*

Q You listened? A I heard somebody talking so I went down to the station house.

Q You went down to the station house just because you heard somebody talking? A That is right.

10 Q Why didn't you break in when you heard somebody talking? A Do I want to get a bullet in my brains?

Q It was your house? A How do I know that man, or the way he act, I never saw that man before.

Q It was your house? A It was my house.

Q There was a man in there with your wife, you were suspicious of your wife? A No.

Q You thought you would catch her? A No.

20 Q Why did you think somebody would shoot you then? A Because I had been told some big fellow came around there.

Q You are a big fellow? A I could not trust anybody.

Q Why didn't you break in? A I did not want to break in; I wanted to make sure.

Q When you came back with the police who went in first? A I went in and the police.

30 Q Right after you; you walked right in and saw him there? A No, the police was standing there.

Q Did you walk right in? A I walked right in.

Q Why didn't you walk right in the time before? A Because I was not protected.

Q That is the reason for it, the door was open and you walked right in and saw him sitting at the table having something to eat and you had him arrested? A I had him arrested because—

40

*Peter Mackiewicz, re-direct.*

The Master: Answer the question, yes or no.

The Witness: Yes.

Q Where have you been living ever since you left? A In 96 Pennsylvania avenue.

10

*Re-direct examination by Mr. Azzoli.*

Q Did you ever throw stones at your wife? A Never had any reason.

Q Have you ever picked up stones and ran after your wife and hit her with stones?

The Master: It is not so alleged here.

Q Throw stones at her? A I never threw stones at her, there was no stones to find even—

20

The Master: Strike that out.

Q Did you ever strike your wife? A No.

Q Did you ever come home in a drunken condition and throw your wife around the house as your daughter testified? A Never drank any liquor to get drunk, I drank beer.

Q Right after you had this man arrested in July you continued to sleep in that room? A Yes.

30

Q Did you walk into your wife's bedroom and pull the girls out of bed when you were drunk, in a drunken condition, did you go into your wife's bedroom and pull her out of bed and pull the girls out, want to put them out because the door was not opened for you? A No.

Further hearings adjourned to Friday, April 25, 1930.

40

*Peter Mackiewicz, direct.*

Depositions taken before Edward M. Colie, Advisory Master, on Friday, April 25, 1930, at 10 A. M., at his office, Room 401 Prudential Building, 763 Broad street, Newark, New Jersey, pursuant to the order of reference made herein bearing date August 13, 1929, and in the presence  
 10 of Azzoli & Krasny, solicitors of petitioner, and of John J. Clancey, solicitor of defendant.

Helen E. Daly, stenographer, duly sworn.

PETER MACKIEWICZ, the petitioner, being recalled by Mr. Azzoli, testified further as follows:

Q Before you found the lock on the door, had anything taken place with reference to your  
 20 room—the hall room—where you were sleeping?  
 A Yes.

Q What? A Yes. When I come home Friday night from my work—when I went to put the car in the garage—and I find the bedstead in the garage, so—I noticed my wife's bed, so I went upstairs and see my bed is gone out of my room, so I tried the door in the kitchen and I opened the door in the kitchen. My wife was home.  
 30 Tessie and Florence, my daughters, were working. I looked in my wife's bedroom and my bed was in the room. I said to my wife, "What is the reason that the bed was thrown out—that your bed is in the garage?" She said, "This is my bed; I bought it. This belongs to me. You can stay where you want to."

Q What was in the garage, only the bedstead?  
 A The springs and the bedstead.

*Peter Mackiewicz, direct.*

*By the Master.*

Q How was it standing—loose or put up?

A The springs too—

*By Mr. Azzoli.*

Q What did you find? A I find two ends. 10

Q Bedstead ends? A Yes, two side rails and springs.

Q How were they in the garage? A Against the wall—back close to the wall.

Q No bedclothes? A No bedclothes—nothing.

Q What was in your room? A Nothing, bare floor.

Q Where did you sleep that night? A On the floor. 20

Q How did you make a bed? Did you sleep on the floor of the garage? A No. In the same room where I slept all the time.

Mr. Clancey: I thought he previously testified he slept in the car.

Q How did you make a bed in that hall room?

A Took my overcoat, put it on the floor. I had a lot of clothes on the wall and put the clothes on the floor and slept on the clothes. 30

Q Where did you sleep on the next night?

A Same room, same floor.

Q Where on Sunday night? A Same way.

Q You came home on Monday and that is the night you found the lock you testified to when you couldn't get it and your clothes were out of the room? A Out in the hallway.

Q What you testified to about seeing the lock, and so forth, that night you slept in the garage?

A Yes. 40

*Peter Mackiewicz, cross.*

Q Where did you sleep in the garage? A In my car. In my automobile.

*By Mr. Clancey.*

10 Q What did you do when you found the bed in the garage? A I just went upstairs to my room first.

Q What did you do then? A Then I see my bed is gone, and I went into the kitchen and looked in my wife's bedroom and my bed was there that I was sleeping on before.

20 Q What did you say to your wife? A "What reason you took my bed in my room and throw yours out, your bed in the garage?" She say, "This is my bed, I bought this myself. This is mine. You take bed from the garage."

Q Was that all was said? A That's all.

Q Then you went out? A I went out to see the reason—I was put out—no room for me to sleep.

Q Did you have a quarrel or argument with your wife the night before that? A Not the night before. My wife was angry for nearly two months.

30 Q That was the first you noticed anything really wrong when you found your wife's bed in the garage? A Not the first.

Q That was the first night anything happened? A It kept on for two months. I was sleeping in the hall room all the time before that—two months.

Q Why didn't you put your wife's bed in the hall room? A It wouldn't fit in there; it was 4 x 6, so small, and there would be no room to turn around.

40

*Peter Mackiewicz, cross.*

Q Why didn't you take the bed out of your wife's room and put it in your room? A She won't let me.

Q What do you mean? A She told me—

Q You didn't try? A I didn't try to get the bed—no.

Q You didn't try any night after that, did you? A To take the bed out? No.

Q You didn't attempt to sleep in the bed with your wife in her room? A No, she didn't let me in her room.

Q She said she wouldn't? A She chase me out and tell me to get out and say, "I will get the cops and get you arrested if you don't keep away from my home."

Q How much do you weigh?

Mr. Azzoli objects on the ground that the question is immaterial.

A Around 200.

Q About 190, then, didn't you? A No, about 183, something like that.

Q You are six feet tall? A Five feet eleven.

Q Your wife is short and fat, isn't she? A Yes.

Q Why didn't you knock the lock off the door when you found it there? A I got orders from the Chief of Police not to disturb any doors. "If your wife don't let you in don't go in"—that was orders from the Chief of Police.

Q You didn't do anything with it—you broke the door once before? A The Chief of Police called me over and said if I do it again he will take my badge away and "send you away for a year and a day."

Q To Atlanta? A He didn't say where.

*Helen Revenko—Edna Winciss, direct.*

HELEN REVENKO, being recalled, testified further as follows:

*Examined by Mr. Azzoli.*

10 Q Do you know Mrs. Mackiewicz? A Yes, I know Mrs. Mackiewicz. I met her about two years ago. I met her in a dancing hall. I saw her with John Browoski. Mrs. Mackiewicz talked to him and he take her out to dance and says to him, "What is the matter?" She said to me, "Not your business." They went away together. That is a couple of months ago.

*By Mr. Clancey.*

20 Q When was this? A I don't recall what day.

Q When; about when? A Now going to be a year and a half.

Q Was this on Saturday or Sunday night?  
A Saturday night.

EDNA WINCISS, being duly sworn, testified as follows:

30 *By Mr. Azzoli.*

Q Where do you live? A 230 Davis avenue, Kearny.

Q Are you married? A Yes.

Q How many children have you? A Two.

Q Are you related to Mr. Mackiewicz, the petitioner? A That is my uncle.

Q Do you know Mrs. Mackiewicz? A Yes, sir.

40 Q Do you know about the trouble between your uncle and his wife? A Yes.

*Edna Winciss, direct.*

Q Did your uncle ever ask you to go to see his wife? A Yes.

Q When was the first time? A First time in 1926, October.

Q What did you go to see her about? A He asked me—he said she chased him out and he asked me to go see her— 10

Q What did you go to see her about? A See her and ask her to take him back and live nice; it was a shame for him and her children—

Q Who asked— A My uncle.

Q Did you talk with her? A Yes.

Q What did she say and what did you say? A I say, "Take him back, be nice"—all like this—and she say she don't want him because he arrested some fellow. She said he arrested some fellow and what right did he have to arrest this fellow—he came asking for the board, that fellow, and came to see her and he came and arrested him. 20

Q Did she tell you whether she would take her husband back? A She tell me she don't want him back, she don't want to, the reason what she say, she don't care for him.

Q Did you ever see her again? A Yes, my husband and me take her out in the automobile, we were going with her and the children. 30

Q Did you keep going out with her? A Yes.

Q When did you usually go out with her? A Sundays.

Q Did you at those times talk together about her and her husband? A I was talking and she say, "If you want to talk any more," she don't want to see me even.

Q When was the last time? A 1928, September. 40

*Edna Winciss, cross.*

Q Where? A I saw her; it was at her house the second time, it was on Hudson Park, Kearny.

Q Did you talk with her then? A I talk with her and she don't want to see me, she say, "You always talk to me, take back," she don't care, she live better without him, she say.

10 Q Did you ask her to take him back? A Yes, I ask her to take him back and live nice and she said she don't want to. She don't want to hear even what I say. I don't have to mention about him, she told me.

*By Mr. Clancey.*

Q How do you fix the time as October, 1926? A I remember because I was working—

20 Q How do you remember? A I remember I was working for Dupont and was just out from my—I was laid off.

Q How long? A I was working about three years.

Q That is how you remember it? A Yes.

Q What day was it? A I wouldn't remember. What day? I remember—

Q Where did you see him? A Where I see him? He was coming to my house.

30 Q How many times did you see her, altogether, and talk to her after he left? A I saw her very often.

Q How many times, five times? A More than that.

Q Ten times? A More than that.

Q Why did you say the last time you testified that you saw her twice? A I saw her that day twice.

40 Q You didn't say last time you saw her twice that day, you said you saw her twice about ask-

*Edna Winciss, cross.*

ing her to take her husband back? A I saw her twice—

Q Why now do you say ten times? A Before when he left, I was staying with him very often. He said, "Any time you go out—" I take her out in my automobile.

Q Why did you testify the last time you only saw her twice? A The last time I was out— 10

Q Do you remember being in the other room in this case about a month ago? A Yes.

Q You remember when you testified here before, don't you? A Yes.

Q Why did you testify then that you went to see Mrs. Mackiewicz twice about getting her husband back, and tell us now that you saw her ten times and asked her about it? A I ask her, my husband ask her, to take him back. 20

Q Why did you do that? A Because my uncle asked me to go and ask her, so I did.

Q Why did you say at one time you saw her twice and today that you saw her ten times? A I saw her lots of times, I can't count the times.

*By Mr. Colie.*

Q Why did you say the last time you were here that you saw her twice? A Yes.

Q Now, you just say you saw her as many as ten times? A I don't know why that—I meant before that the last times I saw her twice on the same day, that is what I meant. 30

*By Mr. Clancey.*

Q You did not say that? A Yes, I did say that.

Mr. Clancey: The testimony will show that she did say that. 40

*Edna Winciss, cross.*

Q You saw her first in October? A Yes.

Q You talked to her that time about him? A Yes.

Q The next time you saw her was in September, 1928? A No, September, 1928, was the last time.

10 Q Did you go out riding with her after October? A Yes.

Q How long after October? A Almost every Sunday we would go and take her out.

Q Was it a week after the first time? A The first time? A week? I could not tell you, I couldn't remember, a week—a couple of days—I could not tell you exactly the date.

Q Did you talk to her in October, the first time, in the morning or afternoon? A That was the afternoon.

20 Q You don't remember what day of the week—you don't remember what day it was—the next time you talked to her a couple of days later—was it Sunday? A Yes.

Q You just told me that you saw her in October, 1926, you don't think in the morning, and then a couple of days later, on Sunday, when you went for a ride and talked to her again? A Yes.

30 Q Five minutes ago you told me you saw her twice on one day? A That was the last—that was in September—it was the last. That was in September when I saw her last.

Q Had you visited your uncle's house before they broke up? A Yes.

Q You know the two girls? A Yes.

Q Did Mrs. Mackiewicz complain to you about the way her husband was drinking? A Before? I wouldn't remember. They were living nice before.

40

*Jacob Makolowitch, direct.*

Q Were they, or don't you remember? A I don't know.

Q When did you talk this over last? A What do you mean "last"?

Q Did you see Mr. Mackiewicz this morning? A I did not see him this morning.

Q Did you talk to him since you were last here, or did you talk to him this morning at all?

A I saw him Wednesday.

Q Two days ago? A Yes.

Q He went over this case with you again, didn't he? A Yes, he told me I got to go here.

Q Did he talk to you about going to see his wife? A No.

Q Didn't you talk over your story? A No. 20

Q Did you talk it over this morning? A No.

Q Did you talk it over with Mr. Azzoli? A Yes, he talked it over.

Q When? A This morning.

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JACOB MAKOLOWITCH, a witness called by Mr. Azzoli, testified as follows:

Q Where do you live, Mr. Makolowitch? A 135 Elm street, Kearny. 30

Q Do you know Mr. and Mrs. Mackiewicz? A I know them—

Q Yes or no? A Yes.

Q How long have you known them? A 23 years.

Q You lived with them at one time, didn't you? A Yes, boarded and had a furnished room with them. 40

*Jacob Makolowitch, direct.*

Q Do you remember calling upon Mrs. Mackiewicz at the request of Mr. Mackiewicz at any time? A No, sir.

Q Don't you understand my question? I asked you whether you remember calling upon Mrs. Mackiewicz at the request of Mr. Mackiewicz? A Yes, sir.

10 Q When was the first time you called on her? A March, 1927.

Q How did you happen to go there? A I worked in the Modern Improvement on Frelinghuysen avenue and Empire street and it was dinner time and I always go to the lunch wagon--

Q What took place between you and Mr. Mackiewicz? You met him in the lunch wagon? He told you his troubles and one thing and another and you went to see his wife? A Yes.

20 Q That was in March? A Yes.

Q Where did you go in March to see his wife? A In March? The first was on Saturday afternoon, right from work, I went to see Mrs. Mackiewicz' house and did not find her home. I only find her daughter home.

Q Which one? A The young one, Tessie. Then I went the same day, Saturday afternoon, I went and found Florence home. I asked her for her mother.

30 Q She said her mother was out? A Her mother was out and I asked her if she would be home about 6 o'clock Monday evening. I didn't go Monday, for Monday evening I worked overtime. I stopped in Tuesday and I find Mrs. Mackiewicz home.

Q What took place? A I asked her why put him out like that and separate, why not live together? She said "It is my—I don't want to know him, he's nothing but a bum," and she

40

*Jacob Makolowitch, cross.*

don't want him any more. I was there before supper and she give me a bowl of soup and I took her in the car to her friend and that is the last I see her since I left the house.

Q While there did she show you the rooms, were there any improvements in the house? A She show me the only thing between the dining room and living room, the door was narrow and she told me she make it wider, open it up. 10

Q Did she say anything else, what she was going to do in the house? A No, she didn't tell me anything.

Q I mean as to decorations and things like that? A Decorations? She just was finishing the door she showed me, she said the man was going to do decorating, I don't know what decorating. It was a long time, I can't remember that. 20

*By Mr. Clancey.*

Q Did you work with Mr. Mackiewicz? A I did, but a long time ago, around 1910.

Q Were you working with him at the time you made this call? A No, sir.

Q Where did you meet him? A The lunch wagon.

Q How long before that was it that you worked with him? A I worked with him around 1909-1910, something like that, I don't know about the year. 30

Q This happened in 1927? A Yes, sir.

Q You had not worked with him for 17 or 18 years? A Yes, sir.

Q Before that time, when was the last time you visited their house? A The last time I visited their house was around 1920, before I got married. When I got married I moved to 40

*Jacob Makolowitch, cross.*

Kearny, and when I moved to Kearny a couple of years I was in Harrison and then went to work in Newark.

Q From the time you got married around 1920, you had not been to their house until 1927?

A Yes, sir.

10 Q When was the last time you saw Mr. Mackiewicz before today? A Wednesday evening when he brought the subpoena to my house.

Q You had not seen him from that time back to the time you were over there? A Yes, sir.

Q You did not see him at all from the day you were over there on Tuesday until he sent you the subpoena? A When I was over to their house I went back to work the next day and at dinner time I told him all about it, what she say.  
20 He told me when I see her again talk over it again. I didn't see her since. I told him—I said it was none of my business, I don't want to put my fingers—it was between themselves, "it is up to you, between yourselves."

Q Did she tell you about Mr. Mackiewicz? A Yes.

Q She told you he was a bum and would get drunk and beat her up and everything? A Not  
30 beat her up. She don't like him, he is a bum.

Q That he was drunk all the time and creates a disturbance? A She told me he always get drunk, she didn't tell me he beat her up.

Q Are you related to him? A No, sir.

Q Did you go out nights with Mr. Mackiewicz? A No, very seldom. When we lived together we go out to the movies or walk around.

Q Since 1920 you never were out with him?

A No, sir, never did.

40

*Anna Mackiewicz, direct.*

*By Mr. Azzoli.*

Q When was it you boarded with them? A Before I went to service.

Q To the war, you mean? A Yes.

Q After you got back from the war, where did you go? A When I come back I came to brother's, my brother was living on Manor avenue. 10

Q Did you pay a visit to Mr. and Mrs. Mackiewicz upon your return from the war? A Yes.

Q Did you find them living together? A Yes, living together, the same as when I was living with them.

Q Whenever you called did you notice anything between them that would show any discord between them? A No.

Q Did you ever see Mr. Mackiewicz intoxicated or drunk at any time? A No, sir. 20

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ANNA MACKIEWICZ, being recalled by Mr. Clancey, testified further as follows:

Q Do you know the last man who testified? A Yes, sir.

Q Did he come over to your house in March, 1927, and ask you to take your husband back? A No, I never see him. 30

Q He was never to your house? A I never see him. He used to board in my house.

Q Has he ever been to your house since he left in 1920? A No.

Q From the time he came to visit your house after he came back from the war, did he ever visit your house and talk to you down to the present time? A No. 40

*Anna Mackiewicz, direct.*

Q Did he ever go to you and ask you to take your husband back? A No.

Q Did you ever talk to him about your husband and your affairs since 1920? A No.

Q You never saw him at your house? A No.

10 Q Are you willing to take your husband back and live with him now? A Sure.

Q Were you always willing to take him back? A Sure I would take him back.

Q Did you put his bed in the garage? A No.

Q Did you put your bed in the garage and take his bed out of the hall room? A No, never did.

20 Q Was his bed always in the room? A Yes, the same bed that is there now.

Q It has always been there? A Yes.

Q Did your husband four or five nights before he left the house come to your bedroom and see his bed in your bedroom and ask you what that bed was doing in there and you told him you did not want him, he could get out? A No, he never was in my room.

30 Q Did you say to him that his bed was out in the garage, that that bed was your bed and you paid for it? A No.

Q Did you have any differences at all about the bed four or five nights before he left? A No.

Q The same bed he was sleeping in is still in the bedroom? A Yes.

Q Has it ever been taken out at any time? A No.

40 Q Did you see that lock which looks like this, Exhibit 2 for identification, be put on the hall door; did you see that being put on? A No.

*Anna Mackiewicz, cross.*

Q Did you see someone put on the lock on the hall room door? A Tessie and the lady Mrs. Zimmerman.

Q Who is she? A The tenant downstairs.

Q How long has she lived there? A Four and a half years.

Q Was she present in the hallway when it was being put on? A Yes. 10

Q Where was Mrs. Zimmerman when the lock was being put on? A Yes, Mrs. Zimmerman helped.

Q So that your daughter Tessie was there and Mrs. Zimmerman, your tenant, and that lady that was the boarder in the hall room? A Yes.

Q And you were there? A Yes.

Q Do you know Mr. Winciss and Edna Winciss? A Yes, I know. 20

Q Did she come to your house in October, 1926, and ask you to take him back? A I never see her.

Q Answer the question? A No.

Q Has she ever been to see you and asked you to take him back? A No.

Q Were you ever out riding with her in their automobile since your husband left? A No.

Q Do you know Helen Revenko? A I don't know that lady. 30

*By Mr. Azzoli.*

Q Your husband always got drunk, didn't he? Is that right? A Sure.

Q Your husband is a bad man, is that right? A Sure, he beat me.

Q With all his being a bad man and beating you, you want him back? A Yes.

Q You want him to beat you? A Everything is best. 40

*Anna Mackiewicz, cross.*

Q When did you make up your mind "everything is best"? A Mind? I got it now.

Q When did you first make up your mind that "everything is best"? A Because I want to take him back, live with him.

10 Q When did you make up your mind you were willing to do that? A Every day in my mind.

Q When did you first make up your mind that you wanted him back? A Since he left me I wanted to take him back, live with me.

Q Why didn't you tell that to Mrs. Winciss? A I never was—

Q You know where she lived? A I was never in her house.

Q You saw her right along? A No.

20 Q Weren't you in Cranbury, N. J., with her? A No.

Q At the farm? A No.

Q Weren't you riding with her and her husband? A No.

Q Didn't you meet her and go out with her? A No.

30 Q With all your husband being a bad man and beating you up, you want him back, is that right? A Yes, right back and live with him, same as everybody.

*By Mr. Colie.*

Q How soon after he left did you make up your mind? A I always think I want to take him back.

*By Mr. Azzoli.*

40 Q Your husband always supported you, didn't he? A Yes.

*Anna Mackiewicz, cross.*

Q He bought the house and put it in his name and your name? A Yes.

Q Right after he was locked out of the house he kept supporting you, didn't he? A Yes.

Q He kept up supporting you and you didn't have to make any complaint to anybody? A No.

Q For a year and a half your husband kept the garage, didn't he? A No. 10

Q After he left the house your husband kept putting his car in the garage? A No, maybe two or three months.

Q Two or three months, according to your testimony. And during those two or three months you saw him right along getting the car? A No, never see him, he always pass in alley, take the car and went.

Q How do you know he passed in the alley if you didn't see him? A I see from the kitchen window. 20

Q Why didn't you call him? A He don't want to talk to me.

Q How do you know if you didn't try? A I don't know. I sat on the stoop and he passed and do that (witness bends head) and not want to talk to me.

Q I am talking about when you looked from the window? A I call "Peter" and he turn his face and don't want to talk to me. 30

Q You testified that you saw him from the window many times, why didn't you talk to him? Why didn't you try? A I call him and he not talk to me.

Q Isn't it true that you testified that your husband kept his car in the garage over a year and you knew it? A Not keep it so long.

Q Did you testify to that before, did you say— A Sure, I see him couple of times. 40

*Anna Mackiewicz, By the Master.*

*By Mr. Colie.*

Q Did you say when you were here before that your husband kept the car in the garage for a year after he left? A Yes, he kept it so long, about two or three months.

10 Q Do I understand you that there was no bedstead put in the garage about the time that your husband left? A No.

Q There was no bedstead put in there? A No.

Q No spring? A No.

Q Did you ever go in the garage after he left, right after he left? A I give it to rent for Mr. Einheider, after he left I give him the key.

20 Q When did you give it to him for rent? A First a Polish fellow, Mr.—

Q When did you rent the garage? A When?

Q When did you first rent the garage? A I don't understand that.

Q You rented the garage later, didn't you? A Yes.

Q When did you first rent the garage out? A I don't know really.

Q Stop and think. How soon after your husband left? A He left me about a year.

30 Q Did you go into the garage at all? A No.

Q When did you first go into the garage after your husband stopped sleeping in your apartment? After your husband left your house, when was it you first went in the garage? A Me?

Q Yes, you? A I never was.

Q You mean to say you were never in the garage since your husband left? A No, I give the key to Mr. Einheider and rent that garage.

40 Q During the year after your husband left you, before you rented it, which you say was a

*Anna Mackiewicz, By the Master.*

year after your husband left, did you never go in the garage? A No.

Q Never at all? A No.

Q Didn't you tell your husband that the bed that you had in your room was your bed and that you had paid for it? A No.

Q Wasn't that the bed that had been in his room? A No, Judge. 10

Q Isn't it true that the bedstead you got in your room you did pay for? A Yes, that is still there, before and now.

Q That is the bed you sleep on? A No.

Q Didn't you pay for the bed you are sleeping on? A Yes.

Q That is what I asked you about, the bed you sleep on you paid for? A Yes, I got a new bedroom suite. 20

Q How long has the bed you have been sleeping on been in the room that you are now occupying as a bedroom? A About 2 or 3 years.

Q Did you and your husband sleep in that bed? A No, because I got new furniture.

Q When? A About 2 years.

Q What did you do with the old bed after you got the new furniture? A It was no good—junk. 30

Q I asked you what you did with it? A I throw it away—no good.

Q That is the bedstead you bought yourself? A Yes, sir.

Q While your husband lived with you? A No, by myself.

Q When your husband and you lived together and slept in the same bed you bought the bed that you two slept together in? A I don't know. It is a long while. 40

*Anna Mackiewicz, By the Master.*

Q When did you put that bed that you and your husband used to sleep on out of the house?

A He left me. I throw it away because it was no good.

Q When did you throw it away? A I buy that new bed.

10 Q Who did you buy the new bed from? A I buy it.

Q Who did you buy it of, what store? A Harrison avenue.

Q What name? A Jacobs.

Q When did you buy it? A About two years.

Q How much did you pay for it? A \$250 for the bedroom set.

20 Q What else did you put out of the house besides the bed when— A That is my daughter bought my set.

Q This is your daughter's set? I am talking about the bed you are sleeping on now? A I buy that set in Jacobs.

Q You just said a moment ago that your daughter bought it? A The dining room set she buy it.

30 Q I am not talking of the dining room? A I buy from Jacobs, I show you the receipt. I pay \$250 for the full set.

Q That is the bedroom set—not the dining room set? A Yes.

Q Where did you throw the old bedstead that you and your husband used to sleep on? A No good, I throw it away.

Q Where did you throw it? A In the street.

Q What did you throw it in the street for? A Because it was no good.

40 Q The whole bedstead? A It was so rusty, no good.

*Tessie Mackiewicz, direct.*

Q Did you throw the whole bedstead—back and front and sides and mattress and spring—in the street? A No, I put the mattress in the fire because it was no good—rotten.

Q Did you put the spring in the fire? A No, I throw it away, everything, because it was all rusty. 10

Q How long had you and your husband used this bedstead that you say you threw in the street? A 20 years, more maybe.

Q Did you buy—when you bought of Jacobs did you buy anything for the bedroom except the bedstead? A For the bedroom? No, I bought a three-piece set.

Q You paid \$250 and took the old bedstead you were sleeping on for years and put it out in the street? A Yes. 20

Q You threw it out in the street, is that right? A Yes.

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TESSIE MACKIEWICZ, being recalled by Mr. Clancey, testified further as follows:

Q You are a daughter of Peter and Anna Mackiewicz? A Yes. 30

Q Do you know Jacob Makolowitch who testified here this morning? A Yes.

Q Were you ever home on a Saturday afternoon in the month of March, 1927, when he came to your house? A No.

Q Did you ever see him at your house on any Saturday in March, 1927? A No.

Q Has he been at your house any other time since he left? A No.

Q How many years is it since he left your house? A About 10 years now. 40

*Tessie Mackiewicz, cross.*

Q Since about 1920? A Yes.

Q Was the bed ever taken out of your hall bedroom by your mother before your father left?

A No.

Q Is the bed there now—the same one that has been there all the time? A Yes.

10 Q Did your mother, or you, or anyone acting for your mother, to your knowledge, ever put the bed in the garage belonging to your father?

A No.

Q What bed does your mother sleep in now?

A We bought her that bed.

Q When? A About two years ago.

Q Where? A Jacobs, on Harrison avenue.

Q What did you do with the old one? A We discarded the old one and burnt the mattress.

20 Q Did you ever ask your father to come home? A No.

Q Did you ever talk with him on Broad street one day? A Only one Sunday evening I was going down to Broad and Market street and he talked to me; we were on the same car.

Q Did he ever ask you to intercede with your mother and get him back? A No.

Q Did you and your mother and sister talk about your father coming back? A Yes.

30 *By Mr. Azzoli.*

Q Were you ever around there in the evening—on a Saturday night—when Mr. Makolowitch was there? A No.

Q You say your mother discarded the old bed. What did she do with it? How did she discard it? A I was not home when it was taken down, but when I got home the pieces of the bed were outside on the sidewalk and the mattress  
40 was out in the yard being burnt when I got home.

*Tessie Mackiewicz, By the Master.*

Q Which bed was that? Where did the bed come from? A It came out of my mother's bedroom.

Q What happened to the bed in the hall room? A It is still there.

Q Why did you discard the other furniture—because it was old? A It was so ragged and old and worn out we were ashamed to bring anyone in the house to such a home. 10

Q What about the bed in the hall room? A It is still there.

Q It is old, too? A No, in good condition.

Q How long have you had that bed in the hall room? A I guess 12 or 13 years now.

Q How long had you had the other furniture you discarded, the other bed? A Since my mother was married. 20

Q Is that the same furniture—the furniture bought when your mother married was discarded? A The old furniture, yes.

Q Do you know when the bed in the hall room was bought? A About 12 years ago.

Q How old were you about 12 years ago? A About 11 or 12.

Q You are 23 today? A Yes. 30

Q Is the mattress the same that has been there for 12 years? A Yes, everything was as it was left.

Q The mattress is 12 years old and is still there; is that it? A Yes.

*By Mr. Colie.*

Q Where did you say the bed was bought that your mother now sleeps on? Jacobs? A Yes. 40

*Tessie Mackiewicz, By the Master.*

Q What else was bought at Jacobs? A That was all bought in Jacobs. I think—the kitchen furniture, I think, was bought in Jacobs.

Q What furniture in the kitchen was bought there? A Table and four chairs.

10 Q Just ordinary wooden chairs? A Yes.

Q And a wooden table? A Metal-top table.

Q Were they bought the same time you bought the bed? A No, they were bought first.

Q When the bed was bought you didn't have anything to do with buying it, did you? A Yes.

Q Did you go over and select it? A Yes.

Q How much did you pay for it? A I am not sure; I think \$220 or \$225; I think \$225.

Q For this bedstead? A For the whole bed and two pieces to go with it.

20 Q What were they? A Vanity and dresser.

Q What did you have in place of the vanity and dresser before in the room of your mother's?

A Nothing, only the bed.

Q You must have had chairs? A No chairs in the bedroom.

Q Did you say that you went with your mother to select them? A Yes.

Q Who else went with you? A Only her and I—and my sister went, too.

30 Q The bed that your father and mother used to sleep in, what was it made of? A It was an iron bedstead.

Q And the one you got is made of what? A Iron one—made of metal.

Q What was the matter with the iron bedstead that you gave up? A The springs were all sagged in.

40 Q You could get new springs, why not? A We wanted something new and better for mother—because we wanted to get a new set.

*Tessie Mackiewicz, By the Master.*

Q Who paid for this? A We did.

Q Who? A My sister and I were working.

Q You paid the whole of it, did you? A Yes.

Q When did you discard the old iron bedstead? A About two years ago.

Q Who took it out? A I don't know who took it out. 10

Q There was only yourself and mother and your sister to do it, wasn't there? A Yes.

Q Which of the three of you took it out and downstairs? A It was too heavy for me.

Q Who could have done it, who do you think did do it? A I don't know who did it.

Q It was a complete bedstead, an iron bedstead that you put out in the street, on the sidewalk. It was a complete bedstead, front, back and two sides? A Yes, sir. 20

Q Were you there when the new set came?

A No, I wasn't there. I was working.

*By Mr. Clancey.*

Q This bed that was put out was the one that was 20 years old? A Yes.

Q It was an iron bed? A Yes.

Q How was the paint on it? A It was all cracked. It was white paint and then pink and it all cracked and you could see the iron through it. 30

Q The new iron bed, is that colored? A Yes, it matches the set.

Q What color it is? A Sort of mahogany.

Q A metal bed with mahogany finish? A Yes.

Q It is a newer style bed? A Yes.

*Florence Mackiewicz, direct—cross.*

FLORENCE MACKIEWICZ, being recalled by Mr. Clancey, testified further as follows:

Q When did your mother get the bedroom suit? A About two years ago.

Q Where? A Jacobs.

10 Q Where is that? A Harrison avenue.

Q Do you know about how much it cost? A About \$225.

Q What happened to the old bed? A The old bed was so old. It was about 23 or 24 years old.

Q What happened to the old bed? A It was thrown out.

Q What happened to the mattress? A It was thrown out in the yard.

20 Q What was the matter with the old bed? A It was all chipped. It was painted a couple of times and it chipped, and the mattress was all sagged.

Q What bed is in the hall bedroom now? A It was always there.

Q The same one that has been always there? A Yes.

Q How long has it been there? How long, if you remember? A Ten or twelve years.

30 Q Did your mother, or you girls, or anyone working for you, ever take a bed out of the hall bedroom and put it in the garage? A No, never.

*By Mr. Azzoli.*

Q Where was the old bedstead and mattress thrown out? Where was it put? Where did you throw it? In the yard? A Yes.

Q The bedstead and mattress were thrown in the yard? A Yes, for the garbage man.

40 Q For the garbage man? A Yes.

*Florence Mackiewicz, cross.*

Q Nothing was done with the mattress—it was just thrown in the yard? A Yes.

Q Are you sure of that? A Yes.

Q Were you there when it was done? A No, not when it was done. I saw it in the yard when I come home from work.

Q You saw the mattress and bedstead in the yard when you come home from work? A Yes. 10

Q What time of the week was it, the middle, towards the end or the beginning of the week?

A I couldn't tell the exact date, no.

Q When you bought the things at Jacobs' did you buy on time? A Yes.

Q When was the first time that you and your mother bought goods and furnishings at Jacobs' in Harrison? A Anything, you mean?

Q Yes. A I don't know. 20

Q Had you had an account with Jacobs—had your mother an account there? A I believe so.

Q You had a previous account with Jacobs for furniture bought there? A We never bought furniture.

Q You had a prior account there? A Yes.

Q So, when you went with your mother to buy these other furnishings you had them put on the same account, didn't you? A I don't think so, I think the other account was all paid up. 30

Q All paid up? A Sure.

Q Had there been any household furnishings, household furniture, bought prior to the time you went there? A A kitchen set.

Q The kitchen set was bought prior to that time? A Yes.

Q How long prior to the time you went to buy the bedroom suit? A The kitchen set? About two years, I believe. 40

*Florence Mackiewicz, cross.*

Q About two years before? A Yes.

Q Had you bought anything else outside of the kitchen set two years before, before you went in to buy the bedroom set? A A gas stove—gas range.

10 Q Anything outside of that? A I don't know. I can't remember anything else.

Q Wasn't there a bed bought there prior to this time that you went there to buy these other goods—the same time you bought the kitchen set? A No bed, no.

Q Did you ever buy a bedspring? A No.

Q What was the matter with the bed that was put out? A The one we threw out?

20 Q Yes? A It was so old it was falling apart, really.

Q The bedspring was all right? A It was all sagged and was all chipped and needed painting. It had been painted twice before and looked ugly to look at. The spring was all—the mattress was all caved in.

Q Who painted the bedstead before? A I don't know.

Q Couldn't you repaint it again? A I suppose so.

30 Q And you could have bought a new spring and put it on the bed, is that right? A Yes.

Q How old was the mattress? A About as old as the bed, 23 years old.

Q You could have bought the mattress? A It was cheaper to buy a new bed.

Q The bed that is in the hall room you spoke of is there now? A Yes.

Q How old is that? A 10 or 12 years.

40 Q Isn't that chipped also? A It was not used as much, it was a different kind of iron.

*Florence Mackiewicz, cross.*

Q Was it ever painted over? A I don't think so.

Q What is the difference? A It is not painted, it is wrought iron or something like mahogany that don't chip.

Q The mattress is how old on the bed? A About the same. 10

Q About 10 or 12 years old? A Yes.

*By Mr. Colie.*

Q Were you home when the new bedstead was brought there? A No.

Q Do you know who sent it up? A No, only what my mother told me. I wasn't there.

Q What did your mother tell you? A She told me the man who brought the furniture put up the new bed. 20

Q You weren't in when the other bed was taken downstairs? A No, sir.

Q Do you know the name of the man who delivered the furniture? A No, I don't know his name.

Q About two years ago you got it? A Yes.

Q You didn't have a man in the house, did you? A No.

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*Henry I. Jacobs, direct.*

Transcript of proceedings in the above-entitled cause taken before Edward M. Colie, Esq., Advisory Master, at his office in the Prudential Building, Newark, N. J., on Saturday, June 7, 1930, at ten o'clock A. M. (Daylight Saving Time).

10

Appearances:

For the petitioner, Azzoli & Krasny, by William V. Azzoli, Esq.

For the defendant, John J. Clancey, Esq.

HENRY I. JACOBS, witness produced on behalf of the petitioner.

*Direct examination by Mr. Azzoli.*

20 Q What is your name? A Henry I. Jacobs.

Q Where do you live? A No. 65 Grand Place, Arlington.

Q Are you in business in Harrison? A Yes.

Q What business are you in? A Furniture business.

Q That business is conducted under what name? A Jacobs Bros.

30 Q Do you know Mrs. Anna Mackiewicz? A I do.

Q Did she purchase furniture from you from 1926 down to the present time, at any time? A She did buy a gas range.

Q And when was that? A That I couldn't tell you.

Q Did she buy from you a bedroom suite? A She did not.

Q Or a bedstead, iron bedstead? A I don't think so.

40

*Henry I. Jacobs, direct.*

Q Do your books show her buying a bedstead, or bedroom suite? A I couldn't find any records of that.

Q Did she call and see you sometime in April of this year? A She did.

Q What did she say? A She came in and asked me for a bill. 10

Q For what? A For a bedroom suite bill.

Q What did you tell her? A I said, "Haven't you got your bill for what you bought?" She said, "No, I lost it." I said, "Did you buy a bedroom suite from us?" She said, "Yes." "Well," I said, "I wouldn't give you another bill until I looked up my records and find if you did buy a bedroom suite." I looked up my records and I couldn't find any records of any bedroom furniture that she bought, or anything like that. I said, "I couldn't give you any bill." She said, "Why couldn't you help me out and give me a bill?" I said, "I couldn't do that." 20

Q Did you find any records of a sale for the gas range? A I didn't look for that, but I know she did buy a gas range.

Q Did Anna Mackiewicz or her daughter carry an account with you or did your books show that she carried an account with you on the installment plan? A I didn't know her daughter. 30

Q Did your books show an installment account, of furniture bought on installments at your store? A No.

Q Did Anna Mackiewicz ever buy furniture at your store on time? A For a bedroom suite?

Q Yes. A No.

Q Have you any account in the name of Tessie or Florence Mackiewicz? A I didn't look for them. You didn't tell me I should 40

*Henry I. Jacobs, cross.*

look for them. I just looked for the parties you told me.

Q Who is the driver of your business truck?

A Paul Zacharvitz.

Q And how long has he been in your employ?

A About 8 years, I believe.

10 Q He is the only driver you have? A He was the only driver up to lately.

Q What do you mean by lately? A Up to last year.

*Cross examination by Mr. Clancey.*

Q Where are your books? A In the store.

Q Why didn't you bring them? A I have no records of them, what is the use if they do not show any records.

20 Q Why didn't you bring them so that we could see? A You couldn't see. There isn't any.

Q You didn't look for Tessie or Florence Mackiewicz? A No.

Q You don't know whether they are there or not? A I only looked for the party you asked me.

Q Will you bring those books over? A They do not show any records—

30 Q Will you bring them over whether you can find the records or not, and let me look.

Q Do you sell furniture in the store? A I do.

Q What kind of records do you keep? A Regular records.

Advisory Master: Ledger?

A Day book and ledger.

40 Q Have you any card system? A I have a card system, too.

*Henry I. Jacobs, cross.*

Q When did you put that in? A About a year ago.

Q Do you know how much that gas range cost? A I do not.

Q Do you remember that Mrs. Mackiewicz or her daughter bought a new bed or bedroom suite when she bought the gas range? A I don't think so. 10

Q Do you know how much, approximately, the gas range cost? A No.

Q Well, was it \$50 or \$40? A Cheaper than that, I think.

Q \$25 or \$30? A Something like that.

Q You give out stamps in your store, don't you? A Yes.

Q And do you get so many stamps when you purchase a dollar's worth of merchandise? A Yes. 20

Q How many stamps do you give with every dollar's worth of merchandise? A Every dollar, ten stamps.

Q Ten stamps with a dollar, a stamp for every ten cents then? A Yes.

Q How much do those stamp books hold? A 120.

Q So that you would have to buy \$1,200 worth of merchandise before you got stamps enough to fill a book? A \$120. 30

Q Didn't Mrs. Mackiewicz and her daughters fill one of those books of stamps, and bring it in to be redeemed? A I don't know. I couldn't tell.

Q Why don't you know? A Do you suppose that we count every book that comes in the store. There are so many, I don't know.

Q You say you remember she only bought a gas range? A Yes. 40

*Henry I. Jacobs, cross.*

Q If you couldn't find it in the books, how do you know? A We don't know.

Q If she brought a full book of stamps in, that would indicate that she bought \$120 worth of merchandise, wouldn't it? A No. She might get them from a friend of hers, or some one else.  
10 I know people who do that.

Q You don't know that she did? A No.

Q When people buy merchandise they save stamps to get merchandise which to them is for nothing? A Yes. When they haven't a full book, they get some of their friends to fill a book. I find this many times. Mrs. McCarthy gives some to Mrs. Jones.

Q When was Mr. Mackiewicz to see you lately? A He was to see me—it happened to be  
20 the same day when Mrs. Mackiewicz was there.

Q Has he been to see you since? A No.

Q Did you get a subpoena to appear here?  
A Yes. He (indicating Mr. Azzoli) subpoenaed me the last time.

Q Have you got the subpoena with you? A Yes.

Q Let me see it. (Witness handed subpoena to Mr. Clancey.)

Q Well, now, this subpoena was the subpoena  
30 which ordered you to produce at the time of the hearing your books showing the account, if any, between Jacobs Bros. and Peter and Anna Mackiewicz. Why didn't you bring them? A I have no records of an account with them.

Q You say she bought a gas range. Why didn't you bring your records and let me see them and let the Court see them?

Advisory Master: The subpoena says something else, read it.

*Paul Zacharvitz, direct.*

Mr. Clancey reads from the subpoena: You are commanded to produce at that time your books showing the account, if any, between Jacobs Brothers and Peter and Anna Mackiewicz since 1926. A I have no account.

Q That is in the books, isn't it? A I don't know if it shows anything since 1926. 10

Q You said she bought a gas range since then, why didn't you bring your books for that? A I didn't find out that she bought a gas range, but the driver he told me.

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PAUL ZACHARVITZ, witness produced on behalf of petitioner.

20

*Direct examination by Mr. Azzoli.*

Q What is your name? A Paul Zacharvitz.

Q Where do you live? A Harrison, No. 201 Second street.

Q Do you know Jacobs Brothers? A Yes.

Q You work for them? A 12 years.

Q What do you do with them? A Drive a truck.

Q What do you drive a truck for? A Delivering furniture. 30

Q Were you working, delivering furniture for Jacobs Bros. in 1926? A Yes.

Q Were you delivering furniture for Jacobs Bros. in 1928? A Yes.

Q Were you delivering furniture for Jacobs Bros. in 1929? A Yes.

Q Was anybody else delivering furniture for Jacobs Bros.? A No.

Q Do you know Anna Mackiewicz? A Yes. 40

*Paul Zacharvitz, cross.*

Q Do you know where Anna Mackiewicz lives? A Patterson street.

Q Did you leave anything there for her from Jacobs Bros.? A Just a gas range.

Q When was that? A About four or five years ago.

10 Q Did you deliver anything else there? A No.

Q Did you ever deliver a bedroom suite there? A No.

Q Did you ever deliver a bedstead there? A No.

Q Did you ever deliver a iron bedstead in 1928 from Jacobs Bros. there? A No.

Q Were you in the store when Anna Mackiewicz called to see Mr. Jacobs in April of this year? A Yes.

20 Q Did you hear what she said to Mr. Jacobs? A She said, Mr. Jacobs, get me a slip for the furniture.

Q What did he say? A He said, I couldn't give you a slip because you didn't buy here. That is all I hear.

Q Did you hear her say anything more to Mr. Jacobs? A I didn't hear.

30 *Cross examination by Mr. Clancey.*

Q What number does Anna Mackiewicz live on Patterson street? A No. 17.

Q How far is that in from Harrison avenue? A About a half a block.

Q What kind of a house is it? A Wood house, two family.

Q Has it a little attic on the top? A I don't know.

40 Q What is in the back yard? A A little garage.

*Paul Zacharvitz, cross.*

Q A two-car garage? A I don't know.

Q What floor does Mrs. Mackiewicz live on?

A Second.

Q Do you know who lives on the first floor?

A No.

Q How many times were you there? A  
Two times.

10

Q When was the first time? A I couldn't remember. First I went to deliver the gas range, and after she exchanged it.

Q For another gas range? A Yes. That is all.

Q Did you deliver any bed there at any time?

A No.

Q No time at all? A No.

Q Either before or after 1926? A No.

Q Were you subpoenaed to come here? A  
Yes.

20

Q By Mr. Mackiewicz? A Yes.

Q When did he subpoena you? A I think Thursday or Wednesday.

Q Last week? A Yes.

Q Have you seen him since? A I saw him only that time in the store when he gave me the subpoena.

Q Weren't you with him on the street? A  
No.

30

Q Didn't you wait by the Mackiewicz house with him? A No.

Q Weren't you standing across the street from the Mackiewicz house with him? A No.

Q Weren't you in a saloon with him? A No.

Q Do you keep any record of your deliveries?  
A Some.

Q What kind of records do you keep? A Delivery slips.

Q Who signs them? A The customer signs them.

40

*Paul Zacharvitz, cross.*

Q What do you do with them? A Return them to the office.

Q You have been getting slips signed for delivering furniture for the past twelve years?

A About three or four years I have been getting slips signed. Before that they don't sign.

10 Q And then you turn them over to the office?

A Yes.

Adjourned by agreement of counsel to  
Monday, June 16, 1930, at 2:00 o'clock.

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**EXHIBIT P. 1.****CERTIFICATE OF MARRIAGE**

Church of  
ST. STANISLAWS  
Newark, N. J.

10

This is to Certify

That Peter Mackiewicz and Anna Kochauska  
were lawfully Married on the 15.—day of Janu-  
ary 1905.

According to the Rite of the Roman Catholic  
Church and in conformity with the laws of the  
State of

New Jersey, Rev. V. Masnicki officiating, in the  
presence of Hlord Zisbro and Julia Kowerlska  
Witnesses, as appears from the Marriage  
Register of this Church.

20

Dated 10 Dec—1929.

Rev. Jos. Olszewski  
Pastor

(SEAL)

30

40

## CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

71-130.

10	<p><i>Between</i></p> <p style="text-align: center;">PETER MACKIEWICZ, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">ANNA MACKIEWICZ, <i>Defendant.</i></p>	}	<p><i>On Petition for Divorce.</i></p> <p><i>Conclusions.</i></p>
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20 The petition is for a divorce on the ground of constructive desertion by the wife and her counter-claim is for maintenance.

30 The record in the case is confused as to the order of the testimony by reason of the fact that the stenographer who took the testimony the first day of the hearing who had been subjected to "shell-shock" in the Great War—subsequently became so ill mentally that he had to go to a retreat and was unable to read or transcribe the testimony of the petitioner taken on the first day of the hearing. By stipulation it was agreed that the petitioner should be recalled for direct and cross examination on the subjects as to which he was examined at the first hearing, such testimony to be taken in the place of, and to stand for the testimony taken on the first day of the hearing.

40 The parties were married on January 15, 1905, and lived together until September 20, 1926. The wife's attitude toward her husband became very bitter after July 8, 1926, when the husband

*Conclusions of Advisory Master.*

caused the arrest of a man whom he found in the afternoon of that day sitting in his shirt sleeves in the kitchen talking with petitioner's wife. According to the testimony on behalf of the petitioner, on September 20, 1926, he found the door of his bedroom—a hall bedroom which he had been occupying as a sleeping apartment for a considerable length of time prior thereto—locked against him by a strong hasp lock and padlock, the testimony being that the padlock was about 3" long by 2½" wide; he found his clothing, or a large part of it, in the hall in front of his room and down in the garage a bedstead. A few days prior thereto the bedstead in the hall bedroom occupied by petitioner disappeared and the petitioner found it in his wife's bedroom and he slept in the hall bedroom on the floor, using his clothing for his bed and covering for a few days until he found the room padlocked against him on September 20, 1926. He slept in the garage in his car for a few days after the 20th of September and then he moved to other quarters, keeping his car in the garage until it was laid up for the winter. On the occasions when he was on the premises in connection with the garage his wife gave him no recognition and to the parties whom he sent to see his wife to endeavor to bring about a reconciliation, she stated that she was through with him.

The testimony on behalf of the defendant is given by herself and her two daughters. Their manner of testifying showed intense antipathy to the petitioner and made it clear to me that any further efforts he might have made toward a reconciliation would have been futile. The testimony of all three is to the effect that the padlocking of the petitioner's bedroom was done by

*Conclusions of Advisory Master.*

a woman boarder who came to board with the defendant after her husband had left and that the daughters, or one of them, assisted in putting the padlock on the door. The name of the boarder was known to the defendant and her daughters and her occupation in various places  
 10 of employment was also known and no testimony was offered explaining the failure to produce the boarder as a witness, nor any testimony given as to efforts to locate her and produce her as a witness.

The defendant and her daughters further testified in contradiction of the petitioner that the bed placed in the wife's bedroom was not the bed petitioner used in the hall bedroom, as he testified, but was purchased of a well-known furniture  
 20 dealer—one Jacobs—after the petitioner had moved to other quarters upon being padlocked out of his hall bedroom.

Three disinterested witnesses testified to seeing the padlock on the hall bedroom door and they impressed me as both disinterested and candid. They not only saw the padlock on the door, but the clothing thrown in the hall and one of them helped the petitioner carry that clothing down to the garage. Later, during the hearings,  
 30 they again saw the hall bedroom door and the hasp lock was still there but the padlock itself was not attached to the hasp. At the request of both counsel and in their presence I visited the *locus in quo* and found on the door of the hall bedroom a substantial hasp and lock complete except that the padlock itself was not on the hasp.

My observation of the manner of testifying by the defendant's witnesses led me to have great  
 40 doubt as to the veracity of their testimony and

*Conclusions of Advisory Master.*

this doubt was conclusively confirmed by the production of the witness, Jacobs, a substantial business man and wholly disinterested, who testified after an examination of his books that he had not sold to the defendant, as testified to by herself and her two daughters, any bedstead, and further that the defendant had been to see him pending the hearings and asked him to make a false bill for a bedstead such as she and her two daughters swore she had purchased from Jacobs since the petitioner had left her and which she claimed was the bedstead in her bedroom. 10

Further the only driver employed by Jacobs during the period involved testified that he had delivered no bedstead at the Mackiewicz home during the period that she and her daughters testified she has purchased and received the bedstead in question. The testimony of the defendant and her two daughters as to the disposition of the bedstead said to have been in the mother's room prior to the alleged purchase of the new bedstead from Jacobs is so full of contradiction that I find it is not worthy of credence. 20

Under these circumstances I find that the allegations of the petition are sustained and the petitioner is entitled to the relief prayed for.

I therefore advise a decree in favor of the petitioner and dismissing the counter-claim of the defendant. 30

EDWARD M. COLIE,  
Advisory Master.

## DECREE NISI.

## IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}		
10	PETER MACKIEWICZ,		<i>Petitioner,</i>	<i>On Petition for Divorce.  Decree Nisi.</i>
	<i>and</i>			
	ANNA MACKIEWICZ,		<i>Defendant.</i>	

20 This cause coming on to be heard in the presence of Azzoli & Krasny, solicitors and of counsel for petitioner and John J. Clancy, Esq., of counsel for defendant, upon petition, answer and counter-claim; and answer thereto and upon proofs taken in open court; whereupon, and upon

30 duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, from all of which it appears satisfactorily to the Chancellor that the petitioner and the defendant were lawfully joined in the bonds of matrimony on or about the fifteenth day of January, A. D. nineteen hundred and five and

40 that the defendant has been guilty of wilful, continued and obstinate desertion of the petitioner for the term of two years as alleged in the said petition, and that at the time the cause of action for divorce for the said desertion arose the petitioner and the defendant were bona fide residents of this State, and that the said petitioner and defendant have continued so to be down to the time of the commencement of this action, and that the petitioner and the defendant have been, for the two years next preceding the commence-

*Decree Nisi.*

ment of this action, bona fide residents of this State; and it further appearing that jurisdiction has been acquired by personal service of process upon the defendant within this State, as well as by the appearance and answer of the defendant and her counter-claim filed against the petitioner: and it further appearing that the defendant has failed by her proofs to sustain the allegations of her counter-claim, and that the same should be dismissed: 10

It is thereupon, on this 18th day of July, A. D. nineteen hundred and thirty, 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 counter-claim of the said defendant Anna Mackiewicz be dismissed, and that the said petitioner, Peter Mackiewicz and the said defendant Anna Mackiewicz be divorced from the bond of matrimony for the cause aforesaid, as charged in the petition of the said Peter Mackiewicz, and that 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 a counsel fee in the sum of one hundred and seventy-five dollars be allowed to the defendant's solicitors, to be paid by the petitioner in addition to that heretofore allowed by the order of this court.

E. R. WALKER, C.

Respectfully advised,

EDWARD M. COLIE,  
Advisory Master.

**NOTICE OF APPEAL.**

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>PETER MACKIEWICZ, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ANNA MACKIEWICZ, <i>Defendant.</i></p>	<p><i>On Petition for Divorce.</i></p> <p><i>Notice of Appeal.</i></p>
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20 Defendant hereby appeals from the whole and every part of the decree nisi made herein on or about the 15th day of July, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Edward M. Colie, Advisory Master, to the Court of Errors and Appeals in the last resort in all causes.

Dated September 30, 1930.

JOHN J. CLANCY,  
Solicitor for and of Counsel  
with Defendant.

30 I conceive there is good cause of appeal in the above stated cause.

JOHN J. CLANCY,  
Of Counsel with Defendant.

**PETITION OF APPEAL.**

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

*Between*

PETER MACKIEWICZ,  
*Petitioner-Respondent,*

*and*

ANNA MACKIEWICZ,  
*Defendant-Appellant.*

*On Appeal* 10  
*from Court*  
*of Chancery.*

*Petition*  
*of Appeal.*

*To the Honorable, the Court of Errors and Appeals in the last resort in all causes.*

The petition of Anna Mackiewicz, the appellant 20  
in the above-entitled cause, respectfully shows  
that your petitioner finds 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, upon the advice of the  
Hon. Edward M. Colie, Advisory Master, on the  
15th day of July, 1930, in a cause wherein Peter  
Mackiewicz was petitioner and Anna Mackiewicz  
was defendant and counter-claimant, in these  
respects, to wit, that the said decree nisi orders, 30  
adjudges and decrees that the said petitioner  
Peter Mackiewicz, and the said defendant, Anna  
Mackiewicz, be divorced from the bonds of matri-  
mony for the cause of desertion, and that the  
said parties and each of them be freed and dis-  
charged from the obligations thereof unless suffi-  
cient cause be shown to the Court why such  
decree should not be made absolute within three  
months from the date of said decree; and that the  
said decree nisi orders, adjudges and decrees 40

*Petition of Appeal.*

10 that the defendant has failed by her proofs to sustain the allegations of her counter-claim and that the same should be dismissed. And your petitioner humbly appeals from the said decree and each and every part thereof upon the ground that the same is erroneous, for that the evidence did not warrant the Court in finding your petitioner guilty of desertion and in making the decree aforesaid, and the petition of the petitioner Peter Mackiewicz should have been dismissed, and upon the further ground that the same is erroneous for that the evidence did not warrant the Court in finding that the defendant has failed by her proofs to sustain the allegations of her counter-claim and that the same should be dismissed and in making the decree aforesaid.

20 Your petitioner therefore prays that the decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOHN J. CLANCY,  
Solicitor for and of Counsel  
with Petitioner.

30

40

16 MAY.T.1931

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

Between

PETER MACKIEWICZ,  
Petitioner-Respondent,

and

ANNA MACKIEWICZ,  
Defendant-Appellant.

*On Petition  
for Divorce;  
Decree Nisi  
for Husband;  
On Counter-  
claim by wife  
for separate  
maintenance;  
Decree Nisi*

**dismissing  
Counterclaim.**

*Appeal of  
Wife.*

**Heard below  
before Colie,  
Advisory Master.**

*before Colie,*

### BRIEF FOR APPELLANT.

The wife appeals from a decree nisi, entered July 18, 1930 (p. 205), dismissing her counterclaim for separate maintenance and divorcing her and respondent from the bonds of matrimony for the cause of desertion. Respondent's petition charged a *simple* desertion by his wife on September 20th, 1926, (p. 1), and appellant's counterclaim, contained in her answer, charged simple desertion by respondent on the same date (p. 7).

From a reading of the Court's conclusions (p. 200) it is at once apparent that the testimony of appellant and her witnesses was almost totally disregarded, and that the decision below was founded entirely upon testimony of respondent's

witnesses, although their testimony is in large part vague, unconvincing and at many points self-contradictory, and is met at every turn by complete denials on the part of appellant and her two daughters.

The Court found that after July 8, 1926, when respondent caused the arrest of a man he found talking to his wife in the kitchen of their home, the wife's attitude toward her husband became "very bitter" (p. 200). There is no testimony upon which this conclusion can be based. The testimony of appellant and her daughters throughout indicates that she was uncomplaining and acquiesced in everything her husband did, although he gave her much cause for complaint while he lived at home. As far back as 1921, respondent became troublesome, after a controversy over money (p. 49). Appellant and her daughters testify (and their testimony is denied only by respondent himself) that respondent drank a great deal and frequently came home intoxicated, on which occasions he had a habit of striking his wife (pp. 50-56, 93, 94, 103-106). He quarreled with her on little or no provocation, and on one occasion chased her out of the house (p. 55). He stayed out late at night (pp. 51, 52, 56, 96); and when appellant inquired or complained about his late hours, he became abusive, usually quarreling with and striking her (pp. 52, 53, 60, 93, 94, 103-106). For a long time prior to the date he left, he would stay away from home from Friday night to Monday morning, (p. 115) and any inquiries as to his whereabouts during that time brought "None of your business," and "I can do as I please" (pp. 52, 53, 92, 105). A few months before he left home, he refused to sleep with his wife, saying she smelled (pp. 54, 96, 105) and he could not stand her any more. He moved into the hall bedroom (p. 53) and slept there

until September 20th, 1926, when he left, never to return. In all their matrimonial troubles, he was the aggressor, and any bitterness which may have been manifest came from him, not from her. By his actions and his testimony, he clearly showed that he was tired of her. Appellant, on the other hand, was an uncultured, rather illiterate woman, but nevertheless devoted to her family. She always manifested a dumb devotion toward her husband, despite his faults and abuse of her. When questioned by respondent's counsel, she indicated her state of mind (p. 116):

Q You didn't like your husband being always drunk and striking you? A What can I do?

Q You didn't want him around the house any more, did you? A Why not?

Q Did you? A Yes, sir.

Q He was always beating you up and he was calling you such bad names? A I am raising children. He is my husband and we ought to live together.

Q Although he was so bad you still wanted him? A What are you going to do?

Q Was it because he was so bad you didn't care for him any more? A He didn't like me.

Q Was it because it was so bad you didn't care for him any more? Why didn't you talk to him when he came and got his automobile? A He didn't want to talk to me.

Appellant always was, and still is, willing to take him back (p. 174). She has the enduring and fatalistic state of mind common among people of her class and environment. She was loyal to him, in spite of his faults. In her station in life, drunkenness and wife-beatings are not uncommon. They are something to be borne by the wife as part of her very existence. The testimony of the daughters shows that their

father's harsh treatment of his family was almost a daily occurrence in their lives since their early years. Their narration of his frequent intoxication, his patronage of saloons, the many occasions on which his youngest daughter had to seek him out and try to bring him home, his tendency to quarrel and physically abuse his wife, is not the result of antipathy toward him. Such happenings were almost matters of course in their lives, to be accepted as such. They could not have testified differently had they desired to. There is no indication of antipathy, much less *intense* antipathy toward respondent, as the Court finds.

It is submitted that the arrest instigated by respondent on July 8th, 1926, was merely an attempt on his part to secure possible evidence against his wife and justify his contemplated desertion of her. It does not appear anywhere in the record that any charge was brought against the man arrested, nor does the cause of his arrest appear. Respondent's counsel said he would produce the record of the arrest (p. 46) but he failed to do so, although such records are public and easily subpoenaed. The only inference is that their production would work against respondent in building up a case in which the arrest was intended as the entering wedge. Respondent's actions on that day and the manner of the arrest itself can reasonably only lead to the same inference, and to the further inference that the arrest was probably a frame-up. Respondent worked every day until about 6 o'clock in the evening (p. 141); *yet on Thursday, July 8, 1926, he came home about 3 o'clock* (p. 139). *Why?* He attempts to evade the answer on cross examination, but finally says (p. 157):

Q Why did you get off at three o'clock this day? A Because I wanted to come down to my home.

Q Why? A *Because, I know why.*

Q Tell me why? A *I wanted to come down to see what was doing home.*

Q Who called you up? A I did not get no word from anybody.

Q How did you know anybody was home?

A I came down to see it and found out.

\* \* \* \* \*

Q You just came home and took a chance on finding somebody there? A *That's right.*

It is a remarkable coincidence that he "took a chance" and actually did find someone there. The arrested man had never been in the house before, and respondent had never found his wife entertaining men at any time. Respondent says he went upstairs at once and saw the man eating at table with his wife, then walked downstairs (p. 140) and called up the policemen *whom he had downstairs, ready and waiting for the word.* On cross examination, he contradicts himself by saying he did *not* go upstairs at first, *but listened on the stairs* (p. 157) and then went to the police station (p. 158). When asked why he did not go upstairs the first time, as master of the house, and see what was going on, he again equivocates and evades a direct answer (see his testimony, p. 158). He again contradicts himself when he says he walked right up *with the police* and into the kitchen (p. 158) as soon as he got to the house. The presence of the man in the house is explained by the daughter, Tessie, who says (p. 68) that he had been sent by a friend to her mother to recommend a doctor for the witness; he was only there a few minutes when respondent walked in *with the policemen*; Tessie was there all the time; respondent had not been home earlier in the day (p. 82); when respondent walked in with the police, he said to his wife, "*I always waited for this chance. Now I got it. I got you at last*" (p. 69). Respondent

does not deny this, and nothing could indicate his motive more clearly, nor show more clearly that he had no real charge against his wife or this man, but had the latter arrested to build up a case against his wife. In spite of this and his self-contradictions, however, the Court assumes that the arrest was bona fide. It is submitted that the Court was entirely unjustified in finding that the arrest was bona fide or that it engendered a "bitter" attitude in appellant toward respondent.

The Court advises a decree for respondent upon a petition charging *simple* desertion, yet the Court finds a state of facts which, if true, can only spell out a *constructive* desertion. A petition for divorce must set out the cause of action relied upon, and if simple desertion is pleaded and constructive desertion proved, the proof does not correspond to the allegations of the petition and a decree will be refused. *Smithkins v. Smithkins*, 62 N. J. Eq. 161; *Metzler v. Metzler*, 69 Atl. Rep. 965. The Court was in error in saying, at the beginning of its conclusions, that "the petition is for a divorce on the ground of *constructive* desertion." The petition charges actual and simple desertion (p. 1) in paragraph 2, and if the facts proved by respondent are true, they established a constructive desertion, in which event the Court should have refused a decree based on this petition. There was no application to amend the pleadings to conform to the proof.

The Court found that shortly prior to September 20, 1926, appellant removed respondent's bed from the hall bedroom, installed it in her own room for her own use, threw her old bed out in the garage and told respondent that he could use the old one if he wished, and that on Septem-

ber 20, 1926, appellant padlocked the hall-room door against respondent and told him to get out.

On this phase of the case, appellant's two daughters testified, without substantial contradiction, their father had been quietly removing his clothing from the house for about a month before he left (pp. 61, 62, 97, 107), evidently in contemplation of desertion; while he slept in the hall bedroom, he had a slide lock on the inside of the door (pp. 75, 76); he had the only key to the built-in lock on the door; the *outside* padlock, upon which the Court relied so strongly, was installed *after* respondent left the house by a woman boarder whom appellant had taken in (pp. 89, 90). The Court ignored all of this testimony, although it stands uncontradicted, upon an entirely unfounded assumption that these witnesses showed "intense antipathy" toward their father and, therefore, were unworthy of belief. Yet their testimony as to the bed in the hall-room and the padlock is in striking contrast to that given by respondent's witnesses, which was vague and unconvincing in many places, and palpably false in others, and on the whole far below the standard of proof required in divorce cases.

Respondent brought up three men purposely to see the padlock he claims was placed on the hall-room door by his wife (pp. 20, 24, 38). They all saw the premises in the evening (pp. 21, 32). Zudneck and Rackowski had known respondent for many years before 1926, the former 7 years, the latter 15 years. All of them said emphatically that they saw the *padlock*, but all were significantly vague as to the clothing on the floor, and what it consisted of (pp. 21, 36). Their testimony as to the lock exactly alike, but as to the clothing it varied; and they were also quite vague as to when they had last seen respondent, especially

Rackowski (pp. 27, 29). This indicates that if, in fact, they were ever in the house and saw any lock, they were brought there solely to see a lock, and everything else is forgotten. Rackowski, in particular, cannot say at what hour he saw the lock, although directed to fix the time with reference to the end of his working day and his supper-time (p. 34). On examination by respondent's counsel, he said (p. 38):

Q You didn't examine any of those clothes in the hall? A No, sir.

Q All you saw was a padlock; you examined that? A Yes, sir.

Q That is what made you curious to go and see? A Yes, sir.

He was brought in solely to manufacture evidence for respondent. His attempt to justify his inspection of the lock is both clumsy and pathetic (p. 38):

Q Why were you curious about the lock?

The Master: Why did you go and look at the lock?

The Witness: I didn't believe him when he said there was a padlock and I went there to see if it was there.

Q Why were you interested in knowing whether there was a padlock? A Because he asked me for a room to sleep.

If he was interested to that extent, and a friend of respondent and his family for 15 years past, why did he not attempt to intercede and get respondent and his wife together? It would have been the act of a true friend.

It is further significant that all three witnesses were brought up singly and silently to see the lock (pp. 42, 43). They did not arouse the wife, but merely scrutinized the lock and then left. Turowski, when asked if he was friendly with Mrs. Mackiewicz, says, "*I was before*" (p. 44),

and then he states that, although he knew both parties, he was "busy" and "had a date," so that he could not attempt to intercede between them! This is absurd, if he were a real friend, and it serves to brand *his* testimony, too, as false and manufactured, and raises a doubt that he was *ever* in the house.

Either the stories of the three witnesses are correct, or they are entirely false fabrications for the purpose of creating evidence. It is submitted that the striking similarity between the three versions of the padlock, and their inconsistencies as to the surrounding circumstances brand the stories as rehearsed fabrications throughout, and that the Court was not justified in accepting them as true, as against the evidence given by appellant's two daughters as to the *origin* of the padlock, which is uncontradicted and not touched on by any of respondent's witnesses.

Tessie, the younger daughter, testified: she saw her father put a lock on the hall-room door (p. 57) on a Saturday afternoon about two months after he began sleeping in the hall-room (p. 58); it was an inside lock (pp. 76, 77) with a sliding bolt (pp. 76, 83); the *outside* padlock, to which the Court attaches great importance, was not on the door when respondent left the house in September, 1926; it was put on by the boarder, and Tessie helped her put it on one Saturday afternoon (pp. 76, 89). Florence, the other daughter, says there was no padlock on the outside of the door for about a year after respondent left, until the boarder put it on; and both girls were in and out of the hall-room to tidy it up every day for about a year (pp. 76, 98). The girls are positive there were two locks; a sliding bolt inside the

door and an eye-bolt affair outside. Respondent's witnesses can testify only as to an outer lock, and they are vague as to that. The strangest feature of their testimony is that in 1930, four years later, when they re-examined the premises, Turowski is able to say that a "two inch square" padlock had been on the door in 1926 (p. 120), although he had not given that detail at the previous hearing. Rackowski says the lock had been "about 3 inches long and 2½ inches wide" (p. 122), contradicting Turowski. Respondent himself says it was brass-colored (p. 126), but Turowski and Rackowski could not testify as to that. The only thing the three of them can agree upon, is the existence of eye-bolts in 1926, but they could find no marks of them in 1930. This demonstrates again that their story regarding the situation in 1926 is a mere fabrication which they had not rehearsed in enough detail to enable it to withstand the test of cross examination.

When the master visited the premises in 1930, he found a hasp and lock complete (p. 202), entirely different from what may have been there in 1926 (pp. 118, 121, 122, 126). The eye-bolts were gone, and a strap hinge lock was in their place. It is difficult to see how a totally different arrangement of things in 1930 can corroborate testimony of the existence of an entirely different lock in 1926. Yet, the Court seemed to think that the existence of *any kind* of lock four years later furnished additional proof that a lock of the type testified to by respondent's witnesses was actually on the door in 1926; and this, in spite of *their* testimony that the situation was altogether different in 1930! Nor is there any testimony regarding a "strong" hasp lock, for none of the witnesses on either side

used the word "strong," and two contradictory dimensions for the lock were given by Rackowski and Turowski.

The Court makes light of appellant's version of the origin of the outer padlock, saying (p. 202)—

"The name of the boarder was known to the defendant and her daughters and her occupation in various places of employment was also known and no testimony was offered explaining the failure to produce the boarder as a witness, nor any testimony given as to efforts to locate her and produce her as a witness."

From the Court's examination of Tessie Mackiewicz (pp. 86, 87), it appears that this boarder was an itinerant worker, a floater, with no family, working wherever she could get a job. She only slept at appellant's house (p. 99). It is not surprising, then, that appellant and her daughters should not know her whereabouts in 1930, nearly four years after she left appellant's house. Appellant's counsel stated that he would make an effort to locate this woman, but it was unavailing after the lapse of four years; and the testimony elicited by the Court showed that such efforts would probably be unavailing at the time of the hearings. It is submitted that the Court was unwarranted in relying upon the failure to produce this woman to discredit the testimony of appellant and her daughters, and that the Court thereby disregarded testimony elicited by its own examination and which it had no reason to disbelieve.

In discounting the testimony adduced on behalf of appellant, the Court relies on the testimony of one Jacobs, regarding the purchase of the hall-room bedstead which respondent claims

his wife took away from him before she locked him out.

At the hearing of August 25, 1930, appellant, under cross examination by the master, denied that she put an old bedstead in the garage at the time her husband left. She stated: the bed she used was bought by her daughters in 1927 or 1928 from Jacobs' (p. 180), and the old one was thrown out as junk. Tessie stated: her father's bed was still in the hall bedroom as he left it in 1926 (pp. 182, 183); her mother was using the bed she (the witness) had bought for her from Jacobs' (p. 182); she selected it with her sister (p. 184), and both paid for it on time payments (p. 187). Florence corroborates her in every particular (pp. 186-188).

After hearing this testimony, at the next hearing, June 7, 1930, respondent produced Jacobs, under subpoena *duces tecum* to produce records showing any account between his concern and *Peter or Anna Mackiewicz* (pp. 194, 195). Counsel *knew* that appellant and her daughters had previously testified that the *daughters*, Tessie and Florence, had bought and paid for the bedroom suite. In that event, any record of the sale must have been in *their* names. In spite of this, Jacobs is told to examine his records for *Peter or Anna Mackiewicz*, and, of course, he found nothing (p. 191). At that, he was not *sure* that Mrs. Mackiewicz had never bought a bedstead from him; he "didn't think so" (pp. 190, 193). He did not produce his books before the master because, as he says, "I have no records of them—you couldn't see. There isn't any" (p. 192). When asked by respondent's counsel whether he had any account in the name of Tessie or Florence Mackiewicz, he answered, "*I didn't look*

for them. You didn't tell me I should look for them. I just looked for the parties you told me'' (pp. 191, 192). Having searched under the wrong names, it is obvious that the testimony he gave from his records could not contradict the testimony of appellant's daughters in the slightest degree.

Nor does the testimony adduced regarding the conversation between appellant and Jacobs in his store justify an inference that appellant had unworthy motives in asking for a bill. Appellant is an ignorant, uncultured woman, incapable of expressing herself very accurately and clearly. When she asked Jacobs for a bill, she meant the bill for the furniture delivered to her home, regardless of the purchaser. She merely wanted a record of the purchase, whether it be in the name of Peter, Anna, Tessie or Florence Mackiewicz. Her difficulty in expressing herself accurately was manifested to the Court throughout the trial. There is no testimony whatsoever to justify a finding that she asked Jacobs for a false bill.

It is significant, and characteristic of respondent's whole testimony, that, although he strongly maintains his wife seized his bed and then locked him out, he made no effort whatever to retake his bed, which he says *he* owned, to get back into his room later, or re-establish himself in his own home. He was half-owner of the house (p. 152), yet he never asserted himself and stayed there. His excuse for not retaking the bed is "She won't let me" (p. 163). He was sturdy, 5 feet 11 inches tall and weighed 190 pounds; his wife was short and fat (p. 163). He did not strike the alleged padlock from the hall-room door because "I got orders from Chief

of Police not to disturb any doors" (pp. 152, 163); and this, in his own home! It is a perfectly childish excuse and characteristic of his attempt throughout the trial to make himself appear as a maligned and harassed father, who is cruelly ejected from his own home! When testifying that he gave all his wages to his wife, he said (p. 150)—

A Sixty, seventy-five, thirty or fifty, it does not make no difference how much I made, I brought everything right here. A good many times she refused to take it, and *I picked it up off the floor with tears in my eyes for refusal to take my wages from me.*"

It is difficult to imagine a six-footer, who was a foreman in a tube-rolling plant and a special policeman, bursting into tears over this!

It is submitted that the testimony adduced by respondent with respect to the padlock and bedstead incidents is so vague, unconvincing and self-contradictory as that it falls far short of the standard of proof required to sustain a decree of divorce; that it is outweighed by the consistent testimony of appellant and her daughters; and that upon this proof, coupled with the evidence of respondent's troublesome attitude at home prior to his desertion, and his conduct subsequent thereto, the Court would have been justified only in finding that respondent left his home voluntarily and deserted and abandoned appellant without justifiable cause on September 20, 1926.

Respondent's conduct *after* September 20, 1926, shows a complete indifference to his family and thereby supports appellant's contention that he was the deserter. After he left, he made no sincere or genuine efforts to return or effect a reconciliation with his wife and family, al-

though it was his duty and he had ample opportunity to do so. After September 20, 1926, he says he kept his car in the garage back of the house until June, 1927 (p. 155); he used it until December, 1926, and in the spring from March to June, 1927. He used it 3, 4 and 5 days a week during this period (p. 155). To get it out of the garage, he had to pass through an alley alongside the house (p. 156), and yet, in all those months, he was *never* inside the house (p. 144); he saw appellant only once on the porch, and all he said was, "Hello, Anna" (pp. 147, 153, 156). *He* says she did not answer, so he walked away and made no further attempt to talk to her. Appellant denies this and says she spoke to him several times, but he always turned away, silent (p. 108). Even if his version of the meeting were true, his action could hardly be called a sincere effort at reconciliation by a man anxious to live at home with his family! He must have been fabricating much of his testimony on this point as his cross examination proceeded, for the Court reminded him (p. 153) that he was contradicting his direct testimony, and he then changes his story and puts words in his wife's mouth! (p. 153, bottom). His wife often saw him going to the garage and called to him (p. 177), but he ignored her and the children (p. 88). It was his *duty*, not appellant's, to attempt a reconciliation, but he refused all overtures on her part. He was indifferent to his children and their welfare. His daughter, Tessie, met him on one occasion (p. 63) and asked him to come back, but he had nothing to say. If he was wronged, as he would have the Court believe, why did he not justify his leaving to his daughter, or speak about the padlocks? This was the *only* occa-

sion on which he showed any interest in his family. Tessie saw him later, but he would not speak to her and turned his back (p. 64). He acted in the same way toward Florence, his other daughter (p. 99). He made no attempt to see or speak to his children whenever he came for his car (pp. 88, 99, 101). After he left, he reduced the amount he formerly paid the butcher for the family meat bills to \$10.00 a week, telling the butcher—(p. 145)—

“I am going to discontinue that; I am going to give you just ten dollars every week for my wife. I think her girls are big enough to make a living for themselves and they don't pay no rent.”

This is hardly the attitude of a loving father and family man.

Three witnesses testified for respondent that they approached his wife at his request and asked her to take him back, which she refused. The first witness, Revenko, did not have to be examined, but poured forth everything she had been primed to say, in answer to the question, “Do you know Mrs. Mackiewicz?” (p. 164). Her testimony is obviously a rehearsed falsehood.

Edna Winciss testifies to similar efforts at intercession (pp. 164-169), yet she cannot remember how many times she saw appellant (p. 167). She had rehearsed her testimony with respondent's counsel the morning of the day she testified (p. 169).

Makolowitch had not seen respondent or his family *in six years* (p. 171), yet respondent sent him around as an ambassador! It is incredible that respondent, if he were sincere, would send an almost total stranger to act for him in such a delicate matter.

Both appellant and her daughters deny receiving visits from these witnesses (Tessie, p. 181; appellant, pp. 107, 173, 176). It is more than probable that Makolowitch never did talk to appellant. In answer to the first pertinent question of his direct examination, "Do you remember calling upon Mrs. Mackiewicz at the request of Mr. Mackiewicz at any time?" he says, off his guard, "No, sir.;" and then counsel is compelled to lead him to the answer he was expected to give, "Yes, sir." (p. 170). His first answer was the truth.

#### THE LAW.

It is well settled in this State that, in most cases, it is the *husband's* duty, and not the wife's, to seek a reconciliation where the parties have separated, *even where the wife is the deserter*; and the duty of a deserted wife to invite her husband back is not measured by the rule applied in the case of a husband. *Sargent v. Sargent*, 36 N. J. Eq. 644; *Wilson v. Wilson*, 66 N. J. Eq. 237. In the *Sargent* case this Court was confronted with facts similar to those at bar, finding that—

"the defendant was absent from and did not live in marital relations with his wife for more than the period required by the words of the statute \* \* \* It is just as evident that he went away without saying anything to such effect and never returned to live with the complainant again. All his actions show he did not intend to do so. His wife made little or no effort to ascertain what had become of him."

This Court then decided that the decree below dismissing the bill for maintenance should be reversed, saying (p. 646):

“There is another reason why that decree should not stand. The marital relation is recognized, both legally and morally, as imposing obligation *pre-eminently on the husband*. Society, so far at least, has regarded the duty of the latter in maintaining and preserving those relations as of the superior order. This may or may not be modified in the future. Not that the tie is more sacred or less binding on the part of the wife, *but where the act of desertion occurs without reason on his part and without fault on her side, the same efforts to restore harmonious relations are not expected from her as would be from him, if the case were reversed*. The principle that the integrity of the matrimonial tie requires this of the husband, is stated clearly by the Chancellor in *Schank v. Schank*, 6 Stew. Eq. 363, and must command general assent.” (Italics mine.)

This rule has been in nowise changed or modified so as to impose a greater duty on the wife. See *Wilson v. Wilson*, 66 N. J. Eq. 237, and *Shaw v. Shaw*, 89 N. J. Eq. 214 (Court of Errors and Appeals), both of which cite and follow the Sargent case.

The general rule, as applied to divorce cases, is stated in *Van Wart v. Van Wart*, 57 N. J. Eq. 598, by Vice-Chancellor Stevens (p. 599):

“In considering what effort or concession must be made in any given case, the conduct of the parties toward each other must be considered. It is obvious that more effort and concession will be required of one whose conduct actually produces or contributes to produce the desertion than of one who is blameless. If the party deserted is not at fault and effort to induce the deserting party to return would probably be unavail-

ing, it need not be shown. *Trall v. Trall*, 5 Stew. Eq. 231."

In *Hahn v. Hahn*, 93 N. J. Eq. 296, Vice-Chancellor Backes stated (p. 298):

"I know of no rule requiring a deserted wife to approach her husband to have her marital rights restored—in this case to inaugurate them. The shoe is on the other foot. That is a duty imposed by law on the husband. *Bowlby v. Bowlby*, 25 N. J. Eq. 406. The testimony clearly shows that the petitioner was at all times receptive and ready to rejoin her husband *had he made reasonable overtures*. That this deserted wife did not complain, was passive, even content in the separation, does not indicate that the desertion was not obstinate—against her will."

The reasoning of the Vice-Chancellor in that case applies with equal force to the situation presented by the testimony in the case at bar. Respondent was the trouble-maker in the home until he left; he was not ejected, but left of his own accord; and after leaving he was completely indifferent to his wife and children. Appellant was receptive and indicated by her testimony that she was always ready to live with him, for the sake of the children. In such circumstances, under the rule of the Sargent case, respondent was bound to make reasonable and sincere advances to his wife; and this he did not do. His "efforts" have not even the semblance of sincerity or good faith.

The Court below finds that any further efforts which respondent might have made toward reconciliation would have been futile. There is no credible evidence adduced anywhere in the record on behalf of respondent which would justify this finding. It would require much

stronger and more convincing evidence than that presented in this record, of a desire to keep him out of his home, coupled with acts which would admit of no other interpretation than that they were committed in an earnest effort to keep him out, to justify a husband in believing that attempts at reconciliation would be futile. Such a situation is not presented by the facts at bar. Even if the Court had been justified in finding that appellant told respondent to get out and stay out, that in itself would not be enough to relieve him from making sincere attempts at reconciliation. In *Pica v. Pica*, 106 N. J. Eq. 233, this Court stated, in a similar situation (p. 235):

“We are, therefore, of the opinion that the petitioner (the husband) was not justified in leaving the house and remaining absent continuously therefrom merely because the defendant had told him to get out. It was the duty of the petitioner, after his wife had time to reconsider her words, to use every reasonable effort to bring about a reconciliation.”

This Court then reversed the decree for the petitioner advised by the Court below.

#### Conclusion.

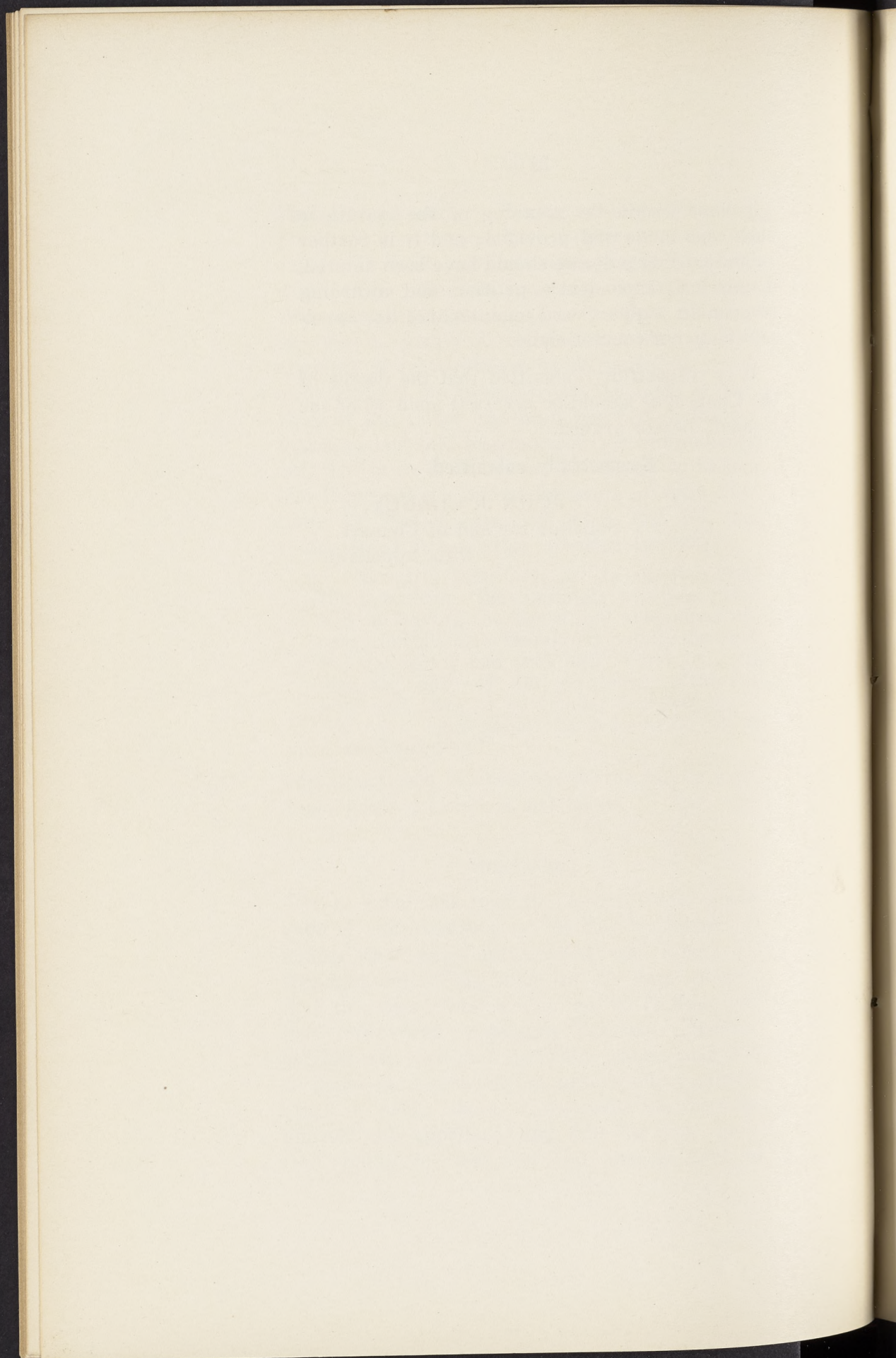
It is submitted that the Court below erred, upon a consideration of all the testimony, in finding that appellant ejected and locked respondent out of his home on the date alleged; that the Court was warranted in finding only that respondent voluntarily deserted appellant on that date, without justifiable cause, and that he made no reasonable or sincere efforts thereafter to bring about a reconciliation between himself and appellant, and that he was, therefore, guilty of desertion and abandonment of

appellant within the meaning of the statute in such case made and provided; and it is further submitted that a decree should have been entered, dismissing respondent's petition and awarding reasonable support and maintenance to appellant upon her counter-claim.

It is respectfully submitted that the decree of the Chancellor should be reversed upon all of the grounds herein argued.

Respectfully submitted,

JOHN J. CLANCY,  
Solicitor for and of Counsel  
with Appellant.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

PETER MACKIEWICZ,  
*Petitioner-Respondent,*

*and*

ANNA MACKIEWICZ,  
*Defendant-Appellant.*

*On Petition  
for Divorce.*

*On Appeal  
from  
Chancery.*

### BRIEF OF RESPONDENT.

Petitioner-respondent below filed his petition for divorce on the ground of desertion. Defendant-appellant below filed an answer and counter-claim for maintenance.

The cause came on for hearing before the Honorable Edward M. Colie, Advisory Master, who advised a decree nisi for divorce in favor of the petitioner and against defendant, and dismissing her counter-claim.

The conclusions of the Advisory Master are found on case, page 200. The decree advised on case, page 204.

The record in this cause is somewhat confused as to the order of the testimony, due to the reason, that the stenographer who took the testimony on the first day of the hearing, became mentally ill, and therefore unable to read and transcribe his notes. By stipulation it was agreed that petitioner should be recalled for direct and cross examination on the subjects on which he was examined at the first hearing, such testimony to be taken in the place of and to stand for the testimony taken on the first day of the hearing (see stipulation, case, p. 16).

Such testimony of the petitioner is found in case, page 135, *et seque*, and other parts of his testimony case, page 17, page 23, and 125, etc.

The appeal is directed against the whole of the decree as advised by the Advisory Master.

### BRIEF.

The petitioner was a hard working man, living with his wife and two daughters at 17 Paterson street, Harrison, N. J. The house was purchased by him with his funds, taking title in the names of both of them. He also opened a bank account for his wife, and also another account jointly between them (case, p. 143), admitted by defendant (case, 114).

On July 8, 1926, he came home about 3 o'clock and found in his home a man by the name of John Bunzkowski sitting at the table in his shirt-sleeves dining with petitioner's wife, and his testimony on this point is as follows (p. 139):

Q What was said when you went in?

A When I went in I said to my wife, I said "Who is this man?" because I never saw that man before. She did not answer me and I asked her again, I asked her about four times, and I said "Tell me, who is this man." She said this man came around looking for board. I said, "For board, I ain't got room where to sleep myself, why boarders? I don't want no boarders. Anyhow, this man is a stranger to me, I don't know him." So she says, after that she did not answer a word, she sat there and just kept on eating.

Q Was this man eating, too?

A Yes, he was sitting right by the table eating.

Q How was he dressed, was he in his shirt sleeves or did he have his coat off?

A No, just a blue coat on. He was not very well dressed.

Q Then what happened?

A Then I say "Who you are" to this man, and I says what is the reason for your coming around here and he said "I came around to see your wife." I say, "To see my wife," I say, "What for?"

Q Was your wife there at the time?

A Yes, she was sitting right by the table. He said "Your wife is my friend. I just come around to see her friendly." I say, "You ain't got no business to come around to see my wife." I say, "My wife, your friend, I don't like that. I don't want you to come around here to my house any more." And he said "I am going to go," and I say, "Wait a minute. You are not going to go yourself," and I call two policemen from downstairs and call them to take this man out.

He called two police officers, Mr. Arnbeiter and Martin Flynn, both of whom took the man to the police-station, and that when petitioner went into the house with the policemen, his wife jumped up from the table at him to hit him, saying "that he should keep away from her." That as they were going downstairs, his daughter, Tessie, was coming from the street into the hallway. The daughter Tessie sought to testify that she was in the house at the time when her mother was entertaining this man. Officer Arnbeiter testified on page 128, that Tessie Mackiewicz was not in the house at the time, but that while he was taking the man down the stairs, Tessie was coming in the front door. "She was at the bottom of the stairs," and she said to him "What do you call this?" "I did not make any remark just went out with my prisoner." He further says in his testimony that Tessie Mackiewicz was not there. Right after this incident the attitude of the wife towards petitioner became very bitter.

From July 8, 1926, until September 20, 1926, he kept sleeping in the hall bedroom where he was compelled to sleep after having slept in the dining room for a while, as stated in his testimony on page 141, that his wife did not want him to sleep with her, that he worked overtime continuously. That while he was sleeping in the hall bedroom, on the evening of September 20, 1926, on his return home from work around 6 o'clock, he found a padlock upon the door, which locked him out, case, page 136. That he tried to talk to his wife by knocking on the kitchen door, and she would not open it "just hollering inside"; "I don't want you any more, you get out." That he went across the street, where Mr. Zudnick lived, and brought him across to his house, so that he may talk to his wife, and to both of them she stated that they should "get out, lest I have both of you arrested," and "slammed the door right away," and they both went downstairs. That later, petitioner met Mr. Rakowski, who went with petitioner upstairs, and saw the padlock upon the door, and that his clothes were lying in the hallway, and at that time, defendant opened the door a little and said "here is your clothes, get out." Later in the evening, petitioner met Mr. Turowski and he went upstairs with the petitioner to see what he could do, and that he saw the padlock upon the door and also helped petitioner take his clothes down to the garage. That this September 20, 1926, was on a Monday night, and petitioner slept in the garage as it was late, and with his working clothes on he could not get a room anywhere (p. 137). Later on, he moved to Pennsylvania avenue, Newark. That he owned a car and kept it in the garage from September, 1926, until June, 1927, at the address, 17 Paterson street, Harrison, their home, and that he went

there right along to get it. Further on in his testimony, on page 138, he is questioned if he had asked his wife why she put a padlock on the door, and his answer is, that his wife told him "I do not want you." She said "if you lock up my friend then I don't want you. You ain't got no business taking anybody out of my home. He is a good friend of mine and I want him to come around to see me."

This is not denied by the defendant. To excuse the presence of this man being in the home on that occasion, the wife testified on pages 110-111:

Q Do you know John Brozowsky?

A No, sir.

Q He was the man in the house when the police officers came?

A John Prozowsky.

Q Where does he live?

A I don't know.

Q What was he doing in the house?

A My girl was under an operation, she was very sick and that man was very sickly. I met him in my lady friend's house and I tried to explain to him my daughter is very sick and he started to tell me a good doctor; that is all.

Q That is what he came up there for?

A Yes, sir.

Q Your daughter had had her operation?

A Yes, sir; she was very sick.

Q She had been in the hospital?

A Yes, sir.

Q Your daughter had had her operation?

A Yes, sir; She was very sick.

Q The operation had been finished how long?

A She had heart trouble.

Q The operation had been finished how long before that time?

A She was sick at the time.

Q How long was she back from the hospital?

A About three weeks.

Q You had a doctor for her?

A Yes, sir.

Thereby denied knowing the man, and then admitting the man was there.

On page 114, the question is put to her "he left the house or what?" referring to petitioner:

A He left my room before they catch that man in my house, he slept in the hall-room, but had left me before."

It was stipulated in the record on page 110 that the arrest of the party referred to in the evidence, was taken to the Police Station in Harrison, N. J., and took place at 4 o'clock in the afternoon on July 8, 1926. On page 106 of her testimony as to the padlock, is as follows:

Q Did you put a padlock on the door of his room?

A No, sir.

Q Do you know when he left?

A No, sir. I was not in the house. One of my daughters was there.

Q Did you notice whether his clothes were in his room or not?

A I didn't see anything.

Q Did you ever throw any of his clothes into the hall?

A No, sir.

The defendant sought to show that the padlock was not put on there by her. She sought to put in evidence that it was put there by the petitioner. Then she charged that it was put on by a woman boarder by the name of Voulski, then at another hearing by the testimony of the defendant herself, she charged that it was put on the door by the tenant that lives downstairs.

On page 73, the daughter, Tessie, testified that she actually saw her father, the petitioner, put the padlock on the door, that it was on a Saturday afternoon. This girl is about 22 to 23 years

old now, and at the time she was graduating from high school, so that she knew what she was testifying about. Following the examination of this girl, the Court will find that she is finally driven to the point of having to change her testimony after being quizzed by the Master, and on page 76, she says that a boarder put the padlock on the door. On page 89 she says that she helped this boarder put on this padlock on a Saturday afternoon. Anna Mackiewicz, the defendant, who had formerly testified as heretofore pointed out, that she did not put the lock on his room testifies on page 175, "that Tessie and the lady Mrs. Zimmerman put the padlock on the door," and that "Mrs. Zimmerman is the tenant downstairs" and that "she has been living in that house for about 4½ years."

Consequently, this was a direct, flat contradiction, and it is nothing more than framed testimony to excuse the padlocking of the door. The petitioner testified on page 163, that the reason why he did not knock off the lock off the door, when he found it there, was because he had orders from the Chief of Police not to disturb any doors. That the Chief of Police had told him "if your wife don't let you in, don't go in," as he had broken the door once before and the Chief of Police warned him that he would send him away to jail and take away his badge as "Special Officer" on complaint of his wife.

On Friday night, previous to September 20, petitioner found the bedstead in the hall bedroom occupied by him had disappeared and that he found it in the garage, and was compelled to sleep in the hall bedroom on the floor using his clothing for his bed and covering for a few days until he found the room padlocked against him on September 20, 1926. He slept in his car for

a few days after September 20, then he found other quarters on Pennsylvania avenue, Newark (case pp. 160, 161, 162), and on page 163, he testifies as to the threats of his wife to have him arrested if he did not keep away from the home, which was not denied by the defendant.

The testimony as to the padlock being on the door is testified to by several witnesses. Stanley Zudnick testified that he was a neighbor and that he lived at 30 Paterson street, Harrison, and he knew both of the parties. That sometime in September, 1926, Mackiewicz came into his house between 7:30 and 8:30 in the evening, and told him there was a padlock on his door and that he could not get in. That he went across the street with him up into his house. His testimony is found on page 20, and he further testifies as follows:

I went in and saw a lock on the door and a suit of clothes being laid on the floor outside of the door. Mrs. Mackiewicz opened the door and said "Don't come around here. I don't want you and I don't want my husband. Get out. If you don't I will call a cop and arrest you both." I went out. I was going to my store and I left Mr. Mackiewicz on the street. Mr. Mackiewicz I left on the street.

Q Do you remember what time about in September, 1926, it was?

A The last part of September, but I don't know the date.

Q Whereabouts was this room that you saw the padlock on?

A The second floor, on the hall room.

Q What did you see in the hall?

Mr. Clancy: He answered that.

Q What did you see in the hall?

A Some suits of clothes.

Q Do you know what they were?

A It was a little dark and I didn't see much about it. I said it was in a pile there.

Q When you talked with Mr. Mackiewicz at the time in the hallway somebody opened the door?

A Yes, sir.

Q Did you notice who opened it?

A Mrs. Mackiewicz.

Q The defendant here?

A Yes, sir.

Q What was it she said?

A She said, "Get out" to Mr. Mackiewicz. She said "I don't want you. Get out."

Q You also?

A Yes, sir.

Q You left then?

A Yes, sir.

Q Did you have occasion to talk with Mr. Mackiewicz about that afterwards?

A No, sir.

Q Did you see Mr. Mackiewicz around there any more?

A I saw him two or three times a week after that when he was getting his car in the garage and he came around with the car and he left his car and he walked away to where he lived.

Alexander Rakowski testified on page 25, that he knows Peter and Anna Mackiewicz and that the latter part of September, 1926, petitioner had gone to him requesting a place to sleep, stating that his door had been padlocked and that he went with him to his house and there saw a little room in the hall with a padlock on it. "Mrs. Mackiewicz said—she had opened the door—'Get a cop, get a cop.' I saw the clothes lying in the hallway." That he had an occasion to talk with Mrs. Mackiewicz about her troubles about three days later, when she was going to the butcher shop (case, p. 26), and he talked with her and his testimony on page 26, is as follows:

She was going to the butcher shop. I said: "What is the matter?" She said, "I don't want him around the house. He is no good. He locked up my friend. I don't want him."

Q Did you have occasion to see her after that?

A The last time she didn't pay any attention to my talk and I got out.

Q Did you talk with her since that first time?

A Yes, sir.

Q What did you talk with her about?

A I said "What kind of business you are doing? You put your husband out." She said, "I don't care for him. I don't care to see him around the house. I got sick and tired of him."

Q How far did you live from the Mackiewicz?

A I lived at 28 Paterson street at the time.

Q Eleven numbers below?

A Yes, sir.

Q You were all neighbors there?

A Yes, sir.

Q How long did you continue to live at 28 Paterson street after you saw the padlock on the door of Mackiewicz?

A I left two months after that.

Mr. Andrew Torowski was called for the petitioner, and he said he knew Mr. and Mrs. Mackiewicz and that on case, page 39, he testifies that in September, 1926, he lived on Hamilton and Fifth streets, in a furnished room, which is about three blocks away from the home of petitioner and defendant, and that he kept his car in No. 12 Paterson street right across from the Mackiewicz house, and that he was going over to get his car to go to Newark, on an evening in September, and that Mr. Mackiewicz called him over and brought him upstairs and said to him "Look what my wife did to me"; his testimony on page 39 is as follows:

Q What did you see?

A That evening?

Q What did he show you?

A He showed me a lock on the door and the clothes lying alongside of it.

Q Where was the lock?

A On the back, on the side of the door. There is a small hallway there and there was a lock there. Before coming up he tried to get in. I heard a noise, inside.

Q You heard Mrs. Mackiewicz then?

A Yes, sir. We took some through the door. I said we can take this to my house.

and on page 40, he says he helped the petitioner put his clothes into the garage and that two or three months later he saw Mrs. Mackiewicz at a dance hall, and did not talk to her. On cross examination he states that he thinks the night he saw the padlock on the door was on a Monday, and it was starting to get dark?

On conclusion of the hearing, March 20, 1930, the Master directed that these three witnesses with petitioner go to the premises and take a view of the premises again and see if a padlock was on the door at this time, and their testimony as to what was seen on that evening was sworn to the next day and their testimony is found on page 119 *et seque*, and that they found there, a strap hinge fastened on the right side of the jamb; on pages 125-126, the testimony is as follows:

There was a strap hinge fastened on the right side of the jamb. There is another little piece fastened on the door so you can bend this over, and goes through like a little bent wire, a staple, and then you can put the lock through that staple when you slip this over like this, and then you put a lock through here and it is locked.

The Master: You mean a padlock?

The Witness: Yes.

So that the lock was still there, but the padlock itself was not attached to the hasp. The *locus in quo* was visited by the Advisory Master and counsel who found on the door of the hall bedroom, a substantial hasp and lock complete except that the padlock itself was not on the hasp.

On the fact of the bed having been put out of petitioner's bedroom, considerable testimony was taken. On page 180, defendant, is questioned by the Master:

Q When did you put that bed that you and your husband used to sleep on out of the house?

A He left me. I throw it away because it was no good.

Q When did you throw it away?

A I buy that new bed.

Q Who did you buy the new bed from?

A I buy it.

Q Who did you buy it of, what store?

A Harrison avenue.

Q What name?

A Jacobs.

and she says on the same page that she threw the whole bed in the street and further on she says that she put the mattress in the fire.

Tessie Mackiewicz, the daughter, tells that she never asked her father to come home whenever she met him. That they threw the old bed out. That when she got home the pieces of the bed were outside of the house and that the mattress was out in the yard being burnt, and that she thinks the bed cost \$225.00. On page 185 she admits that the bed was too heavy for her to take out of the house or her mother or her sister, and she does not know who had taken the bed out.

Florence Mackiewicz, testifies on page 186, that the old bed and mattress was thrown out in the yard for the garbage man and that nothing was

done to the mattress, but thrown in the yard, and that is where she saw the bedstead, and that when they bought the bed from Jacobs' that it was bought on time.

Mr. Jacobs was called in behalf of the petitioner and testified on page 191, that the defendant called to see him and asked him for a bill saying that she had lost it, for a bedroom suite, which she claimed she purchased. That he told her that his records showed that she had bought no bedroom suite from him or anything like that, and that he stated to her "I can't give you any bill." She said "Why couldn't you help me out and give me a bill?" He said "I can't do that." He further said that the only person who was his driver and who delivered the goods purchased from his store for the past twelve years, was Paul Zacharvitz, whose testimony is found on page 195, *et seque*, and who says that he has been working for Jacobs Brothers for twelve years, and that he has been delivering furniture and that he was the only one doing that work for them, and that he knows Anna Mackiewicz and knows where she lives and that the only thing he delivered to her on 17 Paterson street about five years ago was a gas range, and that he never delivered to her a bedroom suite or a bed or an iron bedstead, and on page 196, he testifies:

Q Were you in the store when Anna Mackiewicz called to see Mr. Jacobs in April of this year?

A Yes.

Q Did you hear what she said to Mr. Jacobs?

A She said, Mr. Jacobs, get me a slip for the furniture.

Q What did he say?

A He said, I couldn't give you a slip because you didn't buy here. That is all I hear.

So that the conclusions of the Master as to the testimony of the defendant and her two daughters with reference to the disposition of the bedstead said to have been in the mother's room prior to the alleged purchase of the new bedstead from Jacobs' is so amply supported by the testimony that it is full of contradiction that impelled him to find it not worthy of credence.

On occasions when the petitioner was on the premises in going to the garage to get his car, which was for a whole year, his wife gave him no recognition, case, page 147, and defendant's testimony, page 177, *et seque*, and to the parties whom he sent to see his wife, to endeavor to bring about a reconciliation, she stated that she was through with him. He sent to her Mrs. Edna Winchiss. She states on page 165 that her uncle, the petitioner, asked her to go and see his wife to bring about a reconciliation. That the petitioner had told her that the wife had "chased him out and he asked me to go and see her," and that she went to see her, the defendant; "see her and ask her to take me back and live nice; it was a shame for him and her children" and her testimony continues on same page:

Q What did she say and what did you say?

A I say, "Take him back, be nice"—all like this—and she say she don't want him because he arrested some fellow. She said he arrested some fellow and what right did he have to arrest this fellow—he came asking for the board, that fellow, and he came to see her and he came and arrested him.

Q Did she tell you whether she would take her husband back?

A She tell me she don't want him back, she don't want to, the reason what she say, she don't care for him.

Q Did you ever see her again?

A Yes, my husband and me take her out in the automobile, we were going with her and the children.

Q Did you keep going out with her?

A Yes.

Q When did you usually go out with her?

A Sundays.

Q Did you at those times talk together about her and her husband?

A I was talking and she say, "If you want to talk anymore," she don't want to see me even.

Q When was the last time?

A 1928, September.

and on page 166:

Q Where?

A I saw her; it was at her house the second time, it was on Hudson Park, Kearny.

Q Did you talk with her then?

A I talk with her and she don't want to see me, she say, "You always talk to me, take back," she don't care, she live better without him, she say.

Q Did you ask her to take him back?

A Yes, I ask her to take him back and live nice, and she said she don't want to. She don't want to hear even what I say. I don't have to mention about him, she told me.

He also sent to his wife, Mr. Jacob Makolowitch, who lived at 135 Elm street, Newark, and knew Mr. and Mrs. Mackiewicz and had at one time boarded with them, having known the people for twenty-three years, and he says on page 170, that he had met Mackiewicz while he was working for the Modern Improvement Co. on Frelinghuysen avenue in Newark, and that he met Mackiewicz in a lunch wagon, and petitioner told him about his family troubles and witness agreed to go to see his wife for him. This was in March, 1927, and that in that month and year, on a Saturday evening, right from work, witness called

to see Mrs. Mackiewicz, but did not find her home, only the daughter Tessie was in the house at that time. He asked for her mother and made an appointment to call there at 6 o'clock on Monday evening, but being unable to go on that night, he went on Tuesday evening, and found Mrs. Mackiewicz home. Questioned on what took place between both of them, he says; on page 170:

A I asked her why put him out like that and separate, why not live together? She said "It is my—I don't want to know him, he's nothing but a bum," and she don't want him any more. I was there before supper and she gave me a bowl of soup and I took her in the car to her friend and that is the last I see her since I left the house.

All of this testimony, coupled with the testimony of the three disinterested witnesses as to what the defendant said that she was through with her husband, and that was why she had locked him out, led the Master to the conclusion that he found.

The question presented in the case was purely one of fact and the testimony on the part of the petitioner is clear and convincing, and that of the defendant is so full of contradiction that it is unworthy of belief, which irresistably led the Advisory Master to the conclusion that he reached, who had the opportunity of hearing and observing all of the witnesses and find that the defendant wilfully deserted the petitioner.

In a case of somewhat similar import, this Court in *Foster v. Foster*, 93 N. J. Equity, page 182, the Court held that the husband was entitled to a divorce on the ground of wilful, continued and obstinate desertion. The syllabus of the case is as follows:

“Where a wife drove her husband from their home with an iron poker, with which she struck him, at the same time calling him abusive names, after which, on the same day she had him arrested for assault and battery, which charge was dismissed for failure of proof, and she thereupon left their home, but later returned while he was away at his usual summer employment in the country and took absolute possession of the home and *changed the lock on the door* so that the husband on his return, *found himself locked out* and unable to use his key and his request for a key to fit the new lock was not heeded, and his efforts to effect a reconciliation were repulsed. Held that the husband was entitled to a divorce on the ground of wilful, continued and obstinate desertion.”

The petitioner showed an attitude of kindness and consideration towards his wife and his family even with all he was locked out of his home and threatened with arrest. On page 176, *et seque*, the defendant's testimony is as follows:

Q Your husband always supported you, didn't he?

A Yes.

Q He bought the house and put it in his name and your name?

A Yes.

Q Right after he was locked out of the house he kept supporting you, didn't he?

A Yes.

Q He kept up supporting you and you didn't have to make any complaint to anybody?

A No.

Under the circumstances of this case, and considering the temper and disposition of the defendant and her attitude towards her husband as shown by the evidence, we question that there

was any further duty imposed upon petitioner to make advances to his wife to terminate the separation under the ruling of

*Hall v. Hall*, 60 N. J. Equity 469.

The desertion was wilful, it was brought about by the conduct of the wife, and not on the part of the husband. If there was any duty on his part to make any other advances, he fully performed his duty and discharged it in full measure.

*Bowlby v. Bowlby*, 25 N. J. Eq. 406.

He was incontinently repulsed and it is quite apparent any other effort would have been futile.

*Hall v. Hall*, *supra*.

Therefore the defendant's desertion was not only wilful but also continued and obstinate.

It is respectfully submitted that the decree advised should be affirmed.

AZZOLI & KRASNY,  
Solicitors for Petitioner-Respondent.

WILLIAM V. AZZOLI,  
Of Counsel.

January Term, 1931.

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