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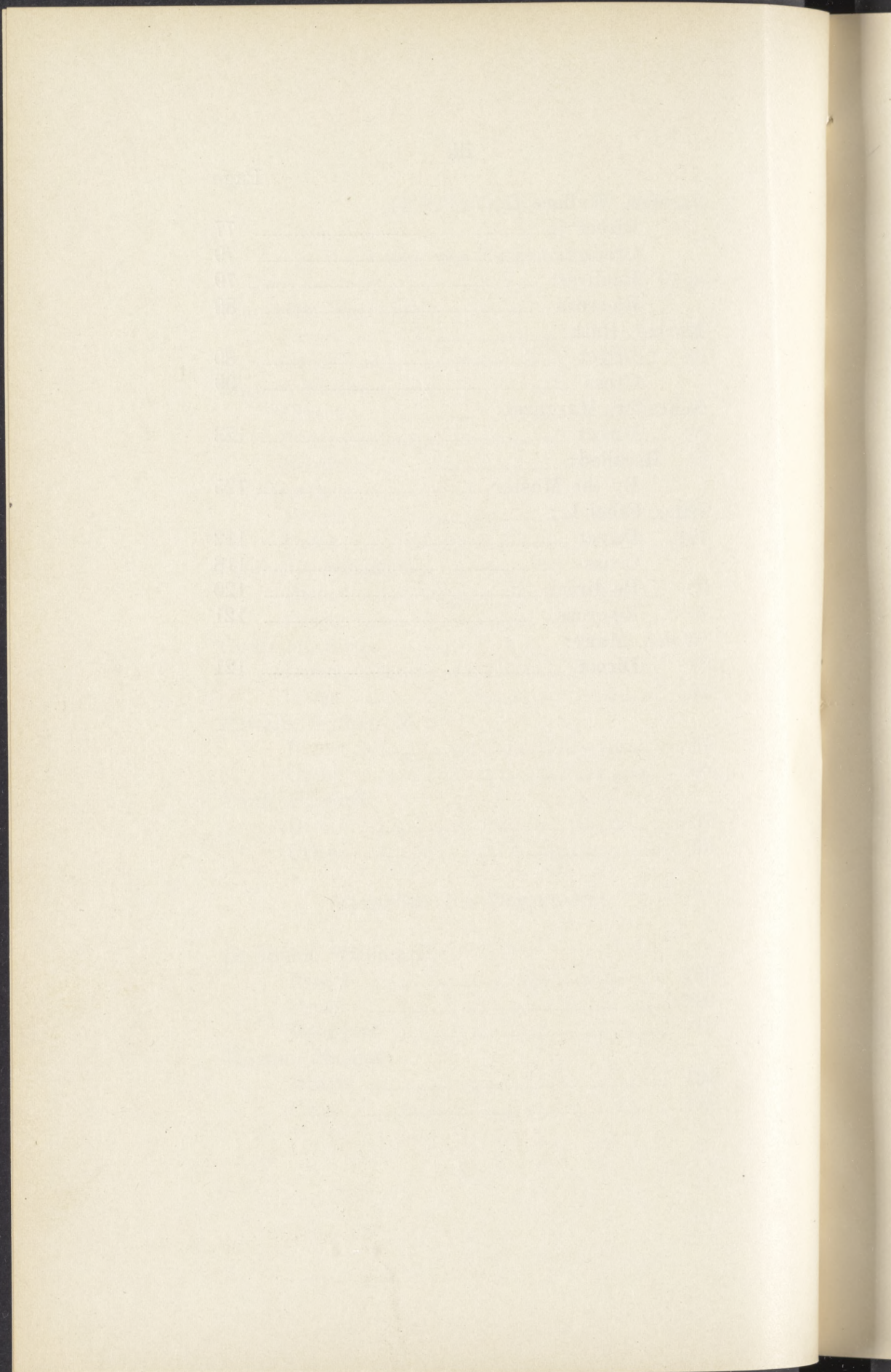
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Notice of Appeal, Filed June 5, 1930.

73/713

IN CHANCERY OF NEW JERSEY

Between:

NATHAN KERBER,
Petitioner-Appellant,

and

RUTH KERBER,
Defendant-Respondent.

10

On petition
for divorce.
Notice of
Appeal.

Please Take Notice that the petitioner, Nathan Kerber, hereby appeals to the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, from so much of the decree made in this court, in the above entitled cause, on the fourth day of April, 1930, as orders, adjudges and decrees that the petition for divorce filed by the petitioner, Nathan Kerber, against the defendant, Ruth Kerber, be dismissed; and from the whole and every part of said decree. 20 30

Such decree, so appealed from, was made by the Chancellor on the advice of Advisory Master Jacob L. Newman, of Newark, New Jersey.

Dated, May 29th, 1930.

JOHN C. HOWE,
Solicitor and Counsel with Petitioner-Appellant, Nathan Kerber.

I conceive there is good cause for appeal in the above stated cause. 40

JOHN C. HOWE.

Petition of Appeal, Filed June 9, 1930.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

010	Between: NATHAN KERBER, Petitioner-Appellant, and RUTH KERBER, Defendant-Respondent.	}	On petition for divorce. On appeal from Chan- cery. Petition of Appeal.
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020 To the Honorable, The Court of Errors and Ap-
peals in the last resort in all causes, of the
State of New Jersey:

The petition of Nathan Kerber, petitioner-
appellant, shows that:

030 1. Your petitioner finds himself aggrieved by
a decree made in the Court of Chancery by his
Honor, Edwin Robert Walker, Chancellor of the
State of New Jersey, on the 4th day of April,
1930, on the advice of Advisory Master Jacob L.
Newman, in a cause entitled as above in that
said decree recites and adjudges that your pe-
titioner has not sustained the allegations of his
petition, and is not entitled to the relief prayed;
and decreed that petitioner's said petition be dis-
missed.

040 2. Your petitioner appeals from the said de-
cree and from every part thereof on the ground
that the same is erroneous, and that the Chan-
cellor should have found and adjudged that the

Petition of Appeal, Filed June 9, 1930

several allegations of petitioner's petition had been proved, and that the respondent, had been guilty of willful, continued and obstinate desertion as alleged in the petitioner's petition, and should have ordered, adjudged and decreed that petitioner be divorced from the bonds of matrimony with the respondent for the cause aforesaid, and that petitioner should have the other relief prayed for in and by his said petition. 10

Your petitioner therefore prays that said decree may be reversed, rescinded and for nothing holden, and that he may have such further relief as shall be just.

JOHN C. HOWE, 20
Solicitor and Counsel for Petitioner-Appellant.

30

40

Petition for Divorce, Filed July 27, 1929.

IN CHANCERY OF NEW JERSEY.

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

10 The petition of Nathan Kerber of the City of Newark, in the 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, Ruth Kerber, the defendant in this suit, on the 27th day of August, 1924, by Peter T. Dondlinger, Esq., a Justice of the Peace at Stamford, in the State of Connecticut.

20 2. Defendant deserted petitioner in the month of May, Nineteen Hundred and Twenty-seven; ever since which time, and for more than two years last past, said defendant has wilfully, continued and obstinately deserted your petitioner.

30 3. Petitioner and defendant have been *bona fide* residents of the State of New Jersey continuously since the said commencement of the desertion, both of them residing in the City of Newark, Essex County, in the State of New Jersey from the date of said desertion to the present date.

4. No children were born of the marriage aforesaid.

40 5. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid according to the

Petition for Divorce, Filed July 27, 1929

statute in such case made and provided; and that your petitioner may have such further relief as may be just.

And your petitioner will ever pray, etc.

JOHN C. HOWE, 10
Solicitor for Petitioner.

State of New Jersey,
County of Essex, ss:

Nathan Kerber, 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

NATHAN KERBER,

Sworn to and subscribed
before me, at Newark, this
24th day of July, 1929.

Andrew J. Whinery,
A Master in Chancery of New Jersey.

30

40

**Answer to Divorce Petition, Filed January 28,
1930.**

IN CHANCERY OF NEW JERSEY.

Between:

10

NATHAN KERBER,
Petitioner,

and

RUTH KERBER,
Defendant.

}

On petition
for divorce.
Answer.

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

30 2. This defendant denies that she deserted
the petitioner in the month of May, 1927, and
she denies that ever since that time and for
more than two years last past she has wilfully,
continuedly and obstinately deserted the peti-
tioner, but on the contrary, defendant says that
the said petitioner deserted her and left their
home in the month of May, 1927, against defend-
ant's wishes and in spite of numerous attempts
on her part to induce him to remain with her
and cohabit with her, and that after he had
left the defendant she made numerous attempts
to induce him to return and resume their marital
relations, but he continually refused her at-
tempts at such reconciliations; and further, that
this defendant was ever ready and willing to
live with the said petitioner as husband and wife
40 and made every reasonable effort to effect a
reconciliation, but the petitioner without cause

*Answer to Divorce Petition, Filed January 28,
1930*

refused to do so and deserted the defendant. This defendant made other attempts to induce her husband to return to her and resume cohabitation but petitioner persisted in refusing her reasonable requests. 10

3. This defendant admits it to be true that petitioner and this defendant were *bona fide* residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition and that this defendant has ever since continued to be a *bona fide* resident of this State down to the time of the commencement of this action, residing in the City of Newark, Essex County, New Jersey; but whether the said petitioner has ever since said supposed cause of action arose, continued to be a *bona fide* resident of this State as alleged in said petition, this defendant is without information and neither admits or denies the same. 20

4. This defendant admits that no children were born of the marriage aforesaid.

This defendant prays to be hence dismissed with her reasonable costs and charges in that behalf most wrongfully sustained. 30

RUTH KERBER,
Defendant.

WILLIAM HERDA SMITH,
Solicitor for and of Counsel with Defendant.

**Conclusions of Advisory Master, Dated April
4, 1930.**

IN CHANCERY OF NEW JERSEY.

73/713

10

Between:

NATHAN KERBER,
Petitioner,
and
RUTH KERBER,
Defendant.

}

On petition
for divorce.
Conclusions.
April 4, 1930.

20

John C. Howe, Solicitor for Petitioner.
William H. Smith, Solicitor for Defendant.

NEWMAN, A. M.:

30

The petitioner in this case has not satisfied me that the defendant was guilty of wilful, continued and obstinate desertion within the meaning of the Statute in such case made and provided. The law imposes upon the petitioner the burden of establishing these facts by the greater weight of the evidence. This he has failed to do. In fact, the voluminous testimony would seem to indicate the petitioner was only too willing to rid himself of his marital obligations, and it appears that no matter what view of the evidence is deemed correct as to how the separation occurred between the parties, the husband made no such advances and concessions to resume the marital relations, as the law re-

40

quires, although the evidence indicates that the

*Conclusions of Advisory Master, Dated April 4,
1930*

defendant was willing to resume marital relations with the petitioner. The attitude of the defendant does not commend itself to the approval of the court, and she seems to have been guilty of gross indiscretions, but, nevertheless, the petitioner has not established his case by the preponderance of the evidence as required under the settled law of this State, and I shall, therefore, dismiss the petition filed herein, and deny the relief sought, and I shall allow the solicitor for the defendant a counsel fee of One Hundred Dollars (\$100.00). 10

JACOB L. NEWMAN,

A. M. 20

30

40

**Decree of Dismissal, Dated April 4, 1930 and
Filed May 12, 1930.**

IN CHANCERY OF NEW JERSEY.

73/713.

10

Between:

NATHAN KERBER,
Petitioner,
and
RUTH KERBER,
Defendant.

}

On petition
for divorce.
Decree of
Dismissal.

20

This cause coming on to be heard in the presence of John C. Howe, of counsel with the petitioner and William Herda Smith of counsel with the defendant, on petition, answer and oral proofs thereof in open Court, whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, and it appearing to the Court that petitioner has not sustained the truth of the allegations of the petition and is not entitled to the relief prayed therein;

30

It is, thereupon, on this fourth day of April, 1930, Ordered, Adjudged and Decreed, that petitioner's petition be and the same is hereby dismissed.

40

And it is further Ordered, Adjudged and Decreed, that the petitioner pay to the defendant or her solicitor the costs of this suit to be taxed and also a counsel fee of One Hundred (\$100.00) dollars and that she have execution therefor according to the practice of this Court.

Respectfully Advised,

JACOB L. NEWMAN,
A. M.

E. R. WALKER,
C.

Minutes.

IN CHANCERY OF NEW JERSEY.

73/713.

Between:

NATHAN KERBER,
 Petitioner,
 and
 RUTH KERBER,
 Defendant.

On Peti-
 tion, &c.
 Deposi-
 tions.

10

Transcript of minutes taken in the above
 cause on Friday, the 4th day of April, 1930, at
 ten o'clock in the forenoon at the Chancery
 Chambers, 1060 Broad Street, Newark, New
 Jersey, before Jacob L. Newman, Advisory
 Master.

20

Appearances:

John C. Howe, Esq., Solicitor for the Peti-
 tioner.

30

William Herda Smith, Esq., Solicitor for the
 Defendant.

NATHAN KERBER, the petitioner, being duly
 sworn on his oath, testifies as follows:

Direct-examination by Judge Howe:

Q. You are the petitioner? A. Yes, sir.

Q. Ruth Kerber, the defendant in this suit, is
 your wife? A. Yes, sir.

40

Petitioner's Witness, Nathan Kerber, Direct

Q. When were you married? A. In 1924, in August.

Q. What date? A. I think it was the 17th of August, 1924, or the 27th.

10 Q. Where and by whom were you married?
A. By the Mayor, I believe.

Q. What kind of an officer? A. The Mayor of Stamford, Conn.

The Master: Justice of the Peace it says in the petition.

Mr. Smith: That is admitted.

By the Master:

20 Q. Where were you married? A. In Stamford, Conn.

Q. Is this a copy of your marriage certificate?

A. Yes.

30 The Master: Solicitor for petitioner offers in evidence record under the seal of the Register of Births, Marriages and Deaths indicating the marriage of Nathan Kerber, Newark, to Ruth Murphy of Bloomfield on the 27th day of August, 1924, before Peter D. Dondlinger, Justice of the Peace.

Q. What was your wife's maiden name? A. Jacobus. When I married her it was Murphy. She was divorced.

The Master: The certificate is received and marked Exhibit P 1.

By Judge Howe:

40 Q. After you were married where did you

Petitioner's Witness, Nathan Kerber, Direct

and Mrs. Kerber take up your residence? A. We lived with her mother in Stamford for a while.

Q. Stamford, Connecticut? A. Yes.

Q. How long did you stay there? A. Several months. Then we moved to Newark, 19 South 7th Street. 10

Q. How long did you stay there? A. About a year.

Q. Then where did you go? A. From there we moved to 266 High Street in Newark.

Q. How long did you stay there? A. Also about a year.

Q. What was your next residence? A. Roseville Avenue and Fourth Avenue in Newark. 20

Q. How long did you remain there? A. We only lived there about six months, I believe.

By the Master:

Q. Is that where the breakup occurred? A. Yes, sir.

By Judge Howe:

Q. Do you recall the date when you left Fourth Avenue, Newark, New Jersey? A. On June 1, 1927. 30

Q. When did your wife leave that address? A. She left in May.

Q. What year? A. 1927.

By the Master:

Q. What part of May? A. The first part of May.

Petitioner's Witness, Nathan Kerber, Direct

By Judge Howe:

Q. After that where did you go to live? A. I stayed right there. I lived right there.

Q. How long? A. For the whole month of
10 May until the 1st of June.

Q. From there where did you go? A. From there I went back with my folks.

Q. Where? A. I believe they lived in Irvington at the time. I am not quite sure.

By the Master:

Q. It was in this county? A. Yes, sir.

By Judge Howe:

Q. How long did you remain with your folks?
20 A. I have been with them since.

Q. Have they lived anywhere except in Essex County since then? A. No.

By the Master:

Q. Where do they live? A. 322 Belmont Avenue, Newark, N. J.

Q. That is where you live with them? A. Yes.

Q. They lived before that in Irvington? A.
30 Yes.

Q. How long have they been living in Belmont Avenue? A. Living in Belmont Avenue a year in October, a year and five or six months.

Q. Prior to that they lived in Irvington? A. Yes, Isabella Avenue.

By Judge Howe:

Q. Do you know where your wife has lived
40 since the early part of May, 1927? A. Yes, she lived at 49 Hill Street.

Petitioner's Witness, Nathan Kerber, Direct

Q. For how long? A. I really don't know just how long. Then she lived or was supposed to be living at 1083 Broad Street after that.

Q. Do you know where she lives now? A. Yes, I do.

Q. Where? A. 25 Astor Street. 10

Q. Do you know where she lived last year, 1929? A. No, she was supposed to be living at 1083 Broad Street.

Q. Was she living there? A. No, I found out she wasn't living there.

Q. What occurred, if anything, in the month of May, 1927, at Roseville Avenue and Fourth Avenue between you and your wife? A. Well, we had quite a few discussions over her conduct, her dancing and her carousing with other men. 20

Q. What occurred during that month?

By the Master:

Q. What happened as a result of these discussions? A. She left after our last argument in the latter part of March. She left the first of May.

Q. When was the argument in March or in May? A. The latter part of March and she left in the early part of May. 30

By Judge Howe:

Q. Where was she during the month of April?
A. Home. April is when I meant—she left in May.

By the Master:

Q. You meant the quarrel was in April? A. 40
The quarrel was continuous.

Petitioner's Witness, Nathan Kerber, Direct

Q. The last quarrel? A. In April, the latter part of April.

Q. She left early in May? A. Yes, sir.

By Judge Howe:

10 Q. What took place at the time she left your home? A. We had a big argument. She came home drunk and I told her if she did not do better that something had to be done. We had a big fight.

By the Master:

20 Q. A big fight—tell us what you said, what she said, what you did and what she did, if anything? A. We said so many things to each other. In a drunken stupor she used to call me everything imaginable.

The Master: My imagination doesn't work. You have got to tell us.

By Judge Howe:

30 Q. On this date when she left, what happened just before she left your home? A. She was drunk the night before I came home. I told her this was going to be the final, that she would have to do better. She promised me then she was going to be better, she was going to quit it. She called me a God damn rotten Jew bastard. I did not have to live with her if I did not want to, that she could get all the men she wanted. I thought if that was the way she wanted to live we could not live together any longer.

40 Q. What did she do? A. She left.

Q. What did she take with her? A. She did

Petitioner's Witness, Nathan Kerber, Direct

not take anything at that moment. I told her if she left then I would give her two weeks to come back. If she did not come back in two weeks, on June 1, I was going to move the furniture to storage.

Q. Did she come back? A. She came back on June 1st, the day I had the moving men there. 10

Q. What became of the furniture? A. I gave it to her and told her she could have it.

Q. Did she take it? A. Yes. I left.

By the Master:

Q. What became of her personal belongings? A. She must have come back during the day in May and taken her clothes out— 20

Mr. Smith: I object.

Q. Did you come back and find her clothes gone? A. Yes.

Q. You came back early in May and found her clothes gone, is that what you mean? A. Yes, sir.

By Judge Howe:

Q. Was she there when the moving men were there to take the furniture? A. She wasn't there. She came in directly after I came in. 30

By the Master:

Q. You mean directly after they started to move? A. They hadn't started. They were about to start to move the furniture.

Q. Was there any conversation? A. I told her she had been away the whole month of May and I had given her two weeks. Now, I was 40

Petitioner's Witness, Nathan Kerber, Direct

going to move. I told her she could have the furniture. I would give it to her. She told me I did not dare to put my hands on the furniture. That was hers—to get the Hell out, she could keep that apartment going herself, she did not need my assistance.

10

By Judge Howe:

Q. Was anyone present? A. Her mother and father-in-law and Mr. Lasinsky.

Q. Mother and father-in-law? A. Mother and step-father.

Q. Did they take any part in this conversation? A. No.

20

Q. During the month of May when you say she was absent from that house where were you? A. I slept there every night.

Q. Were you alone there? A. No.

Q. Who was with you? A. There were two different people who used to come.

Q. What are their names? A. Mr. Taub and Mr. Lasinsky.

Q. Are they here? A. They are in court, yes, sir.

30

Q. Prior to the early part of May, 1927, had there been any other separations since you were married? A. Yes, sir.

Q. When? A. She used to leave at intervals for two or three days and I did not know where she went to.

Q. How often did that occur prior to the separation? A. Quite often.

Q. How often? A. Once or twice a month.

40

Q. For how long would she be gone? A. She would stay usually two, three or four days at a time.

Petitioner's Witness, Nathan Kerber, Direct

Q. Have you any idea how many times she did that? A. I should say six or eight times during our married life.

Q. Were there any intervals when she was away more than two or three days? A. Yes, she would stay as long as a week. 10

Q. Did you ever question her as to her whereabouts during these periods when she was away? A. Yes.

Q. What explanations, if any, were given? A. Sometimes she would tell me she was to her mother's and sometimes she was to her sister's and others she would tell me it was none of my damn business where she was.

Q. Did you ever check up any of these visits to find out where she was? A. No, I did not want the whole world to know what was going on in our home. 20

Q. After these periodical trips away from home in what condition would she come home? A. It was very evident that she had been drinking, carousing, from the looks of her.

Q. Did you ever find her under the influence of intoxicating liquor? A. Yes, sir, on many, many occasions. 30

Q. Where? A. At home and on one particular occasion on 7th Street after we first moved to Newark.

Q. What do you mean on 7th Street, on the street? A. In the house.

Q. In your home? A. Right.

Q. Did you ever find her intoxicated in your home at any other time? A. Yes, sir, she used to come home intoxicated quite often. 40

Petitioner's Witness, Nathan Kerber, Direct

Q. Did you find her intoxicated in any place other than your home? A. Yes, sir.

Q. Where? A. The Veterans' Club.

Q. Where is that? A. On Hill Street in Newark.

10 Q. What kind of a place is that? A. A drink parlor.

Q. How many times did you find her there?
A. I saw her going in and out of the place many times.

By Mr. Smith:

Q. What place was that? A. The Veterans' Club.

20 By Judge Howe:

Q. Did you see her come out? A. Yes.

Q. Have you any idea on how many occasions you saw her come out? A. At least a half dozen occasions I watched her.

Q. Was there anything noticeable about her condition? A. You could tell she had been drinking. At one time I went right in after her.

30 Q. What occurred at that time? A. It is a place you have to be known to get into.

Q. Was she in there? A. Yes.

Q. Was she with anybody? A. There were a lot of bums sitting around drinking.

Q. How did you get in? A. I finally got hold of a friend of mine who knew the proprietor. I told him if he would let me go in—

Mr. Smith: I object.

40 By the Master:

Q. Did you get in? A. I finally got in.

Petitioner's Witness, Nathan Kerber, Direct

By Judge Howe:

Q. What was she doing? A. Sitting there with a glass of wine. Three or four men were sitting around drinking.

Q. Where were the men sitting with reference to her? A. Right there anywhere drinking. 10

Q. How many tables were there? A. I really could not say how many tables there were.

Q. Was there more than one table? A. Yes, sure.

Q. Was anyone at her table? A. She wasn't at a table.

By the Master:

Q. Was anyone sitting near her or with her? 20
A. Right near her, three men.

By Judge Howe:

Q. Was there any man sitting near her whom you knew? A. Not at that time.

Q. You say you saw her go in that club a number of times, did you ever see her go in with anybody? A. Mr. Loomis.

Q. How many times did you see her go in there with Mr. Loomis, if you recall? A. About three times. 30

Q. Did you ever see your wife with Mr. Loomis anywhere else? A. Yes, sir.

Q. When was the first time and where did you see her? A. In our own home on 7th Street.

Q. About when? A. That was shortly after we moved to Newark, shortly after we were married.

Q. How did Loomis get into your home? A. I really don't know. 40

Petitioner's Witness, Nathan Kerber, Direct

Q. How did he get in? How did you find him? A. I just happened to come home right before dinner time or right after dinner, I just took a run up home. I came in and there they were. When I opened the door there was Mr. Loomis and my wife both running out of the bedroom. The bedroom run right off the foyer.

10

Q. Was there anything noticeable about their clothing or the manner in which they left? A. She was in her nightgown. She ran in the bathroom. He ran in the back bedroom where there was another couple in the back bedroom, friends of theirs.

20

Q. Was there any conversation between you and your wife and Loomis? A. He was too drunk to talk.

Q. What was your wife's condition? A. Drunk. They were all drunk.

Q. Did you speak to her about her conduct? A. She went in the bathroom. She would not come out. I ordered him out. I ordered the other people out too.

30

Q. When she did come out, when you next saw her, did you have any conversation? A. I stayed there until she did come back.

Q. Did you have any conversation? A. I asked what was the idea, what this was all about. She told me it was none of my business. They were some friends of hers. They had been drinking. They were all drunk.

Q. Did you ever find Loomis in your home on any other occasion? A. Not any more.

40

Q. Did you ever find your wife in Loomis' company any other time? A. Yes, going in and coming out of the Veterans' Club.

Petitioner's Witness, Nathan Kerber, Direct

Q. Did you see them any other place than the Veterans' Club and at your home on that occasion? A. Yes, at a friend of ours on 4th Avenue.

Q. How many occasions did you see them there? A. On one particular occasion. 10

Q. Where? A. In the house. I came there after her after I got through with my work.

Q. What occurred there? A. Mr. Loomis was hiding in the closet. I searched through the house until I found him.

Q. What occurred at the time, if anything? A. I asked what was the idea of hiding from me.

Mr. Smith: I object to that.

20

By the Master:

Q. Was your wife present? A. Yes, she was present. My daughter was there too. I asked him what was the idea of hiding, why didn't he come out. I told him I had caught him in my house on that previous occasion in a drunken condition. He did not say anything at all. He said he had nothing to do with it. He wasn't friendly with my wife.

30

Q. When was that? A. That was after the incident on South 7th Street.

Q. That is very indefinite. The incident on South 7th Street was after your marriage, how long after? A. Very shortly after.

Q. One month, two months, a week? A. I should say several months.

By Judge Howe:

Q. This latter incident that occurred at the friend's house, when did that occur? A. That was after we had moved to High Street. 40

Petitioner's Witness, Nathan Kerber, Direct

Q. How long after your marriage or what year or what month? A. About a year after the 7th Street incident.

Q. Did you ever see your wife in Loomis' company on the street or in an automobile? A. Yes, sir, we followed them.

10 Q. On how many occasions? A. I saw them on various occasions going in and coming out of the Veterans' Club. Then we followed them on one other occasion.

Q. On how many occasions did you follow them? A. They would get in an automobile. I followed them this one particular night.

Q. When was this one particular night, about? A. This was the night I was talking about.

20 Q. How long before May, 1927, when you broke up your home or when your home was broken up? A. It must have been about a year.

Q. What did you do on this occasion when you saw them in the car? A. I followed around Halsey Street and up Marshall Street. When we got up Marshall Street I ran right in to them. He stopped, got out of the car and asked me what I did that for. I told him I wanted them to know I saw them in the car together.

30 Q. What do you mean you ran into them? A. From the rear. I made him stop.

Q. With your car? A. Yes, sir.

Q. Was there any further conversation than that between you and Loomis? A. She told me at that time that she told Mr. Loomis to follow me.

40 Q. Where were you during the early part of that evening? A. I went to pay interest on a mortgage on the house we owned on High Street.

Petitioner's Witness, Nathan Kerber, Direct

Q. Did you go alone? A. I had to go alone. I asked her to go with me. She said she had something else to do.

Q. How long before you found them in the car was that? A. I went up to pay the interest. I went down to the Veterans' Club. I parked myself across the street. I waited there about one-half hour. Mr. Loomis pulled up. He went in and got her and they got in the car. That is the time I followed them around to Marshall Street. 10

Q. Did you ever see them after that? A. Yes.

Q. Where? A. We followed them one night from a saloon on 6th Street.

Q. Newark? A. In Newark, yes. 20

By the Master:

Q. Can't you tell us about when that was with reference to dates? A. I am rather rusty on the dates.

By Judge Howe:

Q. How long before your home was broken up did you follow them from 6th Street? A. I believe that was the time we still lived on 7th Street. 30

By the Master:

Q. How long before your home was broken up, one month, two months? A. That was about a year and one-half before our home was broken up.

By Judge Howe:

Q. Did you own any of the homes in which 40

Petitioner's Witness, Nathan Kerber, Direct

you lived with your wife? A. Yes, sir, on High Street, 266 High Street.

Q. When you saw your wife and Loomis on 6th Street, what occurred at that time and where did they go? A. We followed Mr. Loomis. When
10 Mr. Loomis came in the store—I was working that evening—Mr. Loomis came in the store and asked me for a bottle of—

Mr. Smith: I object.

The Master: Never mind what Mr. Loomis asked for.

A. We did not see them on 6th Street. We went up there. He was in a saloon. From there
20 we followed them down to back of the terminal and there he met her.

Q. What happened after that? A. He met her on the corner and Mr. Franzblau and I came up and asked him what are they doing. They told us they did not know each other and here they are meeting. He said he had some business to take care of.

Q. Had they been talking? Had they had time to talk? A. They just met there for about a half
30 a minute when we came up.

Mr. Smith: I object.

The Master: It is not specific. I don't see how you can object to that.

By Judge Howe:

Q. Did you see them talking together when you came up? A. Yes, they stood right there.

40 By the Master:

Q. You were asked a single question. Did you see them talking there together? A. Yes, sir.

Petitioner's Witness, Nathan Kerber, Direct

By Judge Howe:

Q. What was the answer given to you? A. That they had just accidentally met.

Q. What was the rest of it? A. I told him that he was lying to me right along.

Q. What did they say about not knowing each other? A. They did not know each other, accidentally met there, just friendly.

Q. Was this before or after these other occasions about which you spoke when you say you saw your wife and Loomis together? A. It was after.

Q. What happened to the home on High Street which you say you owned? A. I sold it.

Q. Why? A. It needed a lot of repairs.

The Master: Are we interested in that, Mr. Howe?

Judge Howe: I thought we were.

Q. What, if anything, did you do to change this condition under which you and your wife were living? A. I put her in business.

Q. When? A. In 1925, I believe.

Q. What was that business? A. Delicatessen.

Q. Where? A. On High Street in Newark.

Q. Why did you get that delicatessen business? A. She asked me to get some little delicatessen business where she could keep busy and keep away from her friends and keep out of mischief. If I would get it, she would change, she would be different.

Q. What was her conduct in this delicatessen store? A. She did not pay any attention to it at all.

Mr. Smith: I object to that.

Petitioner's Witness, Nathan Kerber, Direct

By Judge Howe:

Q. What became of the delicatessen business?

A. I finally had to close it up.

Q. How long did you have it? A. About two
10 months.

Q. Why did you have to close it up? A. She
would not take care of it.

The Master: Why is that essential?

Judge Howe: I am trying to show how
he did everything to keep this woman
away from the company she was keeping.

The Master: I think you have succeeded
in doing that.

20 By Judge Howe:

Q. In whose name was the delicatessen? A. In
hers.

Judge Howe: Will you admit it was in
both names.

The Master: If it was, it is a fact.

By Judge Howe:

Q. Did you do anything else besides purchase
30 this delicatessen to attempt to change the con-
ditions in your home? A. I did. I put a de-
posit on a farm down in South Jersey.

Q. Why did you put this deposit on a farm?
A. She said if she could have a little farm some-
where and had a roadside stand she could live
out of town and she could forget her friends and
get away from them.

40 By the Master:

Q. Pursuant to that request you made a de-

Petitioner's Witness, Nathan Kerber, Direct

posit on a farm. Did you buy the farm? A. No, sir.

Q. What happened to your deposit? A. The party I was to go in with could not raise his money.

Q. You dropped the proposition? A. Yes, sir. 10

By Judge Howe:

Q. What was the financial result of that venture and the delicatessen?

The Master: I am not interested in that.

By Judge Howe:

Q. Your wife was a Newark girl or Connecticut girl? A. Connecticut girl. 20

Q. Is that how you came to marry her in Connecticut? A. Yes, sir.

Q. Were there any children born of your marriage? A. No, sir.

Q. Have you seen your wife since May, 1927, since you separated? A. Yes, I saw her at the hearing both times.

By the Master:

Q. What hearing? A. Hearing before Judge Siegler. 30

By Judge Howe:

Q. Have you seen her on any other occasions? A. Yes, I followed her several times just to see if she was changing her conduct any.

Q. When was the last time you followed her? A. In 1927.

Q. Since 1927 when is the last time you followed her? Have you seen her within the last 40

Petitioner's Witness, Nathan Kerber, Direct

few months? A. Yes, I saw her only last week, two weeks ago.

Q. Where? A. At her home.

Q. Where is her home? A. 25 Astor Street.

10 Q. How did you come to get to 25 Astor Street? A. We followed a man that I knew she was going with.

Q. What is his name? A. Mr. Goodman.

Q. Is he in court? A. Yes.

Q. How did you come to follow him? A. I followed him from a candy store in back of the Mosque Theatre.

Q. When was that? A. On the 17th of March.

20 Q. Where did you follow him to and what happened? A. I followed him to 25 Astor Street.

By the Master:

Q. Your wife's apartment? A. Yes, sir.

Q. What happened? A. After he was in there a little while some fellow pushed me up on the sill outside. I looked in. She was sitting on the bed and he was sitting there with her.

Q. What was their condition? A. She was in her nightgown. He had his coat off.

30

By Judge Howe:

Q. That was March 17? A. That was March 17, two weeks ago.

Q. What time did you see him go in? A. He went in about 11:30.

Q. What time did he come out? A. About two o'clock in the morning.

40 Q. How did he get in? A. I don't know how he got in there that night.

Q. You say your wife was in her nightgown? A. Yes.

Petitioner's Witness, Nathan Kerber, Direct

Q. What was the man's condition? A. He had his coat and hat off.

Q. Where was this room with reference to the street?

The Master: Nobody knows that he saw it. 10

By Judge Howe:

Q. Did you see your wife on any other occasion with Goodman prior to March 17? A. Yes, sir.

Q. When and where? A. On several occasions coming from the Veterans' Club and going into 49 Hill Street.

Q. When? A. That was in 1928. 20

Q. Did you ever see him at any time in 1929 with your wife? A. I saw him on different occasions. She met him in back of the Mosque.

Q. Did you follow him on any of these occasions? A. Yes.

Q. Where did they go? A. To 1083 Broad Street.

Q. What is 1083 Broad Street? A. A rooming house. 30

By the Master:

Q. What is 49 Hill Street? A. That is where Mrs. Kerber lived after she left me.

By Judge Howe:

Q. What kind of a place is 49 Hill Street?

Mr. Smith: I object to that. Is it a hotel or house? He can't characterize it. 40

Petitioner's Witness, Nathan Kerber, Direct

By the Master:

Q. What kind of house is it? A. An apartment house.

By Judge Howe:

10 Q. Who did you see go in that apartment house? A. Mr. Goodman.

Q. Alone? A. With Mrs. Kerber.

Q. How many occasions did you see them go in there? A. Not many, only two or three occasions.

Q. What time, if any, did you see them go in the apartment house? A. After eleven o'clock at night.

20 Q. What time did they come out? A. I never seen Mr. Goodman come out of 49 Hill Street after he went in.

Q. Did you ever see your wife come out? A. No.

Q. How late did you stay after you had seen them go in 49 Hill Street? A. I stayed there two or three hours to watch and see if he came out.

30 Q. At 1083 Broad Street, what kind of building is that? A. It is a big brick building, furnished rooms.

Q. Do you know whether your wife lived there or not? A. She was supposed to live there. She had an address there.

Q. What do you mean by that? A. When I sent her money down to her I sent it there.

Q. What money is that? A. Her allowance, her weekly allowance.

40

Petitioner's Witness, Nathan Kerber, Direct

By the Master:

Q. You used to send it to that address? A. Yes.

Q. For how long a period, for months or years? A. For months I sent it there to her. 10

By Judge Howe:

Q. When did you stop sending money to 1083 Broad Street? A. Nine months after she left me.

Q. Why did you stop sending it to that address? A. She would not do any better. I gave her \$25 a week to see if she could not conduct herself better. If she had, I might have gone back with her. 20

Q. Did you give her that money voluntarily or under a court order? A. Voluntarily.

Q. When was it you were paying this \$25 a week? A. After she left me.

Q. You were ordered by Judge Siegler at one time to pay your wife \$10 a week, were you not? A. Yes, sir.

Q. Where did you send those payments? A. 1083 Broad Street. 30

Q. When did you stop sending money to 1083 Broad Street? How long ago is it you stopped sending that money? A. Only three or four months ago.

Q. Why did you stop? A. I was ordered by Judge Siegler to stop payment.

Mr. Smith: I object to that and move that it be stricken out.

The Master: That was a verbal order. 40

Petitioner's Witness, Nathan Kerber, Direct

Q. Do you know whether your wife got the checks at 1083 Broad Street?

Mr. Smith: I object to that.

10 The Master: I think that he has a right to answer that.

A. Yes, she got them.

Q. Do you know whether she lived at 1083 Broad Street? A. Not from the information I got.

The Master: That will be stricken out.

By the Master:

Q. You don't know of your own knowledge?
20 A. No, sir.

By Judge Howe:

Q. Did you ever follow your wife to 1083 Broad Street? A. Yes.

Q. Did you ever see her at 1083 Broad Street?

Mr. Smith: I object as immaterial.

The Master: He may answer it.

30 A. I did.

Q. Was she with anybody? A. With Mr. Goodman.

Q. When did you see her at 1083 Broad Street in Mr. Goodman's company, during what year or years? A. During '28 and '29.

Q. How did you come to see her there? A. I followed Mr. Goodman and her.

Q. How many occasions did you follow her to 1083 Broad Street? A. Only a few, two or three
40 occasions.

Petitioner's Witness, Nathan Kerber, Cross

Q. How did you find out Mr. Goodman's name? A. Through his wife.

Q. How? A. I had a notice in the paper.

Mr. Smith: I object to that.

The Master: I don't see it makes any difference how he found out his name. He knows it and the man was with her. 10

CROSS-EXAMINATION by Mr. Smith:

Q. You say you were married in 1918, weren't you? A. I didn't say 1918.

Q. 1924? A. That is right.

Q. You moved to Newark subsequently, to 19 South 7th Street? A. Yes, sir. 20

Q. Things were going along all right then, weren't they? A. Not so good.

Q. That was within six months after your marriage? A. It was shortly after we moved to Newark.

Q. How long after your marriage did that take place that you moved to South 7th Street? A. Several months after.

Q. You and your wife weren't getting along? A. We got along for a month or two after we moved to Newark. 30

Q. Then you moved to 266 High Street? A. Yes, sir.

Q. How many rooms did you have at 266 High Street? A. Five rooms.

Q. What kind of a lease did you have there? A. 266 High Street, I owned the building.

Q. Then you moved to Roseville Avenue and 4th Avenue, how much rent did you pay there? A. I believe it was \$55 a month. 40

Petitioner's Witness, Nathan Kerber, Cross

Q. How long a lease did you have there?

A. One year.

Q. When did you rent that place?

10 The Master: Direct his attention to the date.

A. I don't remember. I didn't have a lease on it except a monthly tenancy, verbal lease, month to month lease.

Q. And not for a year? A. Verbal lease.

Q. When did you say you left those premises?

A. June 1st.

Q. What time of the day did you leave the premises? A. About ten-thirty in the morning.

20 Q. The furniture was still in the premises?

A. Yes, sir.

Q. The furniture remained in the premises until the 1st of July, didn't it? A. I don't know how long it remained there.

Q. You said you put it in storage? A. I didn't put it in storage.

Q. You left the furniture and you took out your clothes? A. That is all I took.

30 Q. Your suitcases? A. I didn't have any suitcases. I put my clothes on me and walked out.

Q. Mrs. Kerber was there that morning? A. She ordered me to get out, yes.

The Master: That will be stricken out.

Q. I asked you if Mrs. Kerber was there that morning? A. She was there.

40 Q. You walked out? A. After she ordered me out, yes.

Petitioner's Witness, Nathan Kerber, Cross

Q. You had a discussion with her? A. Yes, I had a discussion with her.

Q. Over what? A. Over her being away the whole month of May.

Q. She was arguing with you about going with other women? A. She had no occasion for that. 10

By the Master:

Q. Did she argue with you about that? A. She didn't argue with me about going out with any other women.

By Mr. Smith:

Q. Didn't she argue with you about finding nurses in the back of your drug store which is across the street from St. Michael's Hospital? A. No, sir, she did not. 20

Q. Didn't she argue with you about having a girl by the name of O'Hara?

Judge Howe: I am going to object on the ground this is new matter and not proper cross-examination at this time.

The Master: Cross-examination of the petitioner and affecting his credibility. It also may have some bearing on the case. 30

A. Yes, sir.

Q. She did argue with you? A. Not on that particular morning.

Q. On the morning before? A. No, sir.

Q. When did she argue about those people in the back of your drug store at night? A. She would accuse me of those things every once in 40

Petitioner's Witness, Nathan Kerber, Cross

a while when she got in one of her drunken stupors to cover herself.

Q. How many times did she get in a tantrum over these habitues? A. She used to use that as a subterfuge to cover herself up.

10 Q. You knew Helen O'Hara? A. Yes, she lives upstairs.

Q. She had been in the back of the store before you left her? A. No, sir.

Q. Never had been there? A. No, sir, I don't allow any strangers in there.

Q. You didn't consider her a stranger? A. That is all women.

Q. You knew her before you married Mrs. Kerber, didn't you? A. Yes, sir.

20 Q. She wasn't so much of a stranger to that extent, was she? A. No.

Q. How many times did you go out with her before you were married to Mrs. Kerber?

Judge Howe: I object to that. What bearing can it have?

The Master: I will overrule the question.

30 Mr. Smith: Exception.

Q. Mrs. Kerber argued with you about the nurses from St. Michael's hospital being in the back room of your store? A. On several occasions she argued with me, yes.

Q. About the nurses? A. She tried to accuse me of having nurses in the back room but that is a lie.

Q. There is a hospital across the street? A. 40 Yes, sir.

Petitioner's Witness, Nathan Kerber, Cross

Q. You are in the drug business on the corner? A. Yes, sir.

Q. Didn't Mrs. Kerber tell you that she was going to this nurse and tell her what she thought of her and you said, "If you do that, I will throw you out of the house"? A. No, sir. 10
What nurse did she mean?

Q. You left on the morning of June 1 and Mrs. Kerber was in the house at the time? A. Yes, she ordered me out.

Q. You went out meekly? A. I went out, yes, after she ordered me.

Q. You had your clothes under your arm? A. Yes, sir.

Q. Where did you go? A. I took my clothes 20
down to my store.

Q. Where did you sleep that night? A. Turkish Bath.

Q. Didn't Mrs. Kerber have occasion to argue with you about going to Turkish baths before you left the premises? A. No, sir.

Q. At no time? A. No, sir.

Q. You have been in Turkish baths during your married life? A. Yes, sir. 30

The Master: Yes, but Mrs. Kerber didn't object to it.

Q. Did you maintain your residence at the Turkish bath after that? A. No, sir.

Q. Where did you maintain your residence? A. Home with my folks.

Q. You didn't go back to your apartment after that, did you? A. No, sir.

Q. Didn't you speak to Mrs. Kerber's mother 40
after you left her and didn't you say to her

Petitioner's Witness, Nathan Kerber, Cross

that you would be willing to give her \$25 a week to live away from her? A. No, sir.

Q. You don't remember saying that? A. I said I would maintain her to the best of my ability.

10

By the Master:

Q. Do you remember saying that? Your answer is no? A. Yes, sir.

By Mr. Smith:

Q. Didn't you further say to Mrs. Kerber's mother—

20

Judge Howe: May I ask Mr. Smith to fix a time.

Q. Shortly after you left the premises, the same day you left the premises, didn't you meet Mrs. Kerber's mother, isn't that right? A. Mrs. Kerber's mother was right there in the house.

30

Q. Didn't you tell her that you would be willing to have yourself caught in bed with another woman so your wife could get a divorce? A. No, sir.

Q. You say you did not offer her \$25 a week? A. No, sir, I did not offer anything then.

Q. She remained in those premises after that date, didn't she? A. I don't know how long after that day.

Q. You knew she was in there? A. Yes, sir.

40

Q. There was nothing between you on the day of the argument on June 1, 1927, outside of an argument in the premises? A. Just an argument over taking the furniture.

Petitioner's Witness, Nathan Kerber, Cross

Q. Just one of those family arguments. You proceeded to leave? A. After she ordered me out, yes.

Q. Didn't Mrs. Sipp, Mrs. Kerber's mother, plead with you to stay in those premises and live with this woman as her husband? A. No, sir. 10

Q. You had a conversation with her? A. Yes, sir.

Q. How long did that conversation last that you had with Mrs. Sipp? A. Only a few minutes.

Q. Nothing was said about your coming back? A. No, sir.

Q. She did not ask you? A. No, sir. 20

Q. You did not return to that apartment until sometime around the first of July?

The Master: I don't understand that he ever returned.

A. I never returned to the apartment.

Q. You did not take the furniture out, did you? A. No, sir.

Q. You paid to have it moved, didn't you? A. No, sir. 30

Q. You had an argument in May, 1927, with Mrs. Kerber, did you not? A. No.

Q. When you gave her two black eyes? A. No, sir, she wasn't home all the month of May.

By the Master:

Q. Did you have an argument? A. No, sir.

By Mr. Smith:

Q. It was done in an automobile, wasn't it? 40

Petitioner's Witness, Nathan Kerber, Cross

By the Master:

Q. Did you give her two black eyes in May in an automobile? A. No, sir, I never gave her any black eyes.

10 By Mr. Smith:

Q. She lived there with you from May until June 1st so far as you know? A. I lived there.

Q. She lived there with you? A. No, sir.

The Master: That isn't the testimony.

The testimony is she was away about a month and then came back.

20 Q. When did she come back? A. About 10:30 in the morning.

By the Master:

Q. He means with reference to dates? A. On the 1st of June.

By Mr. Smith:

Q. Was that the same morning that the furniture discussion occurred? A. Yes, sir.

30 Q. You said something on direct-examination that she called you a God damn Jew bastard and other vile names, when did that take place?

A. So many occasions I don't remember.

Q. You called her vile names too, didn't you?

A. I called her a drunk.

Q. You called her a dirty bitch? A. I don't remember whether I did.

Q. You don't remember calling her that name? A. No.

40 Q. You wouldn't say you didn't call her that? A. I wouldn't say I did.

Petitioner's Witness, Nathan Kerber, Cross

Q. When did you stop paying her the \$25 a week? A. Nine months after she left.

Q. Why did you pay that \$25 after she ordered you out of the house? A. I wanted her to try and live decently. I thought that we might be able to get together again if she behaved herself. 10

Q. That was arranged at a lawyer's by the name of Mulligan's office? A. No, sir.

Q. Was that arranged in Mulligan & Koenig office? A. No, sir, I did that voluntarily.

Q. Didn't Mrs. Kerber ask for \$50 and also for the rent and you wouldn't pay that. You said you would pay \$25 a week? A. No, sir.

Q. Mr. Mulligan was there, wasn't he? A. 20
Mr. Mulligan sent me a letter at one time.

Q. You went down to Mr. Mulligan's office? A. Yes, sir.

Q. You made an arrangement with him and your wife that you were to pay \$25 a week? A. She wasn't there.

By the Master:

Q. You made the arrangement with Mulligan? A. I was paying that before I went to Mulligan. 30

By Mr. Smith:

Q. What occasion did you have to go to Mr. Mulligan? A. She wanted \$50.

Q. You continued paying the \$25 for how long? A. Nine months.

Q. During those nine months did you see her around at different places? A. Yes.

Q. Despite all that you kept paying the \$25? A. Yes. 40

Petitioner's Witness, Nathan Kerber, Cross

Q. Why did you pay her \$25? A. I thought she might come to her senses at some time or other.

10 Q. What did you pay her after the first nine months? A. \$10 a week.

Q. You paid \$20 a week for a while, didn't you? A. I don't remember that. I think after the \$25 I paid her \$10.

Q. Didn't Judge Siegler order you to pay \$20 a week for a while?

The Master: He doesn't remember.

Q. Subsequent to that you paid \$10 a week? A. Yes.

20 Q. You paid that \$10 a week until this September, didn't you, with the exception of some irregular periods? A. I believe it was in September.

Q. Up until this September, 1929? A. I believe it was in September. I am not quite sure on the dates, the month.

Q. You further paid a check of \$10 on February 2, 1930? A. Yes, sir.

30 Q. You have not paid anything since September, 1929, until February 2, 1930? A. No, sir.

By the Master:

Q. Why did you make a payment in February? A. I was ordered by my attorney.

By Mr. Smith:

40 Q. When did you go to the Veterans' Club, what date was that?

Petitioner's Witness, Nathan Kerber, Cross

The Master: When you saw your wife there, I presume.

A. The first time was when we lived on High Street.

By the Master: 10

Q. Are you referring to after or before the separation?

By Mr. Smith:

Q. Before the separation? A. When we lived on High Street.

Q. What date was that? A. I really don't remember the dates.

Q. What year was it? A. I believe it was 20
in 1925.

Q. 1925? A. I believe it was.

Q. You lived on High Street? A. Yes, I know it was the time.

Q. You lived on 7th Street in 1925, didn't you? A. We moved to 7th Street in 1924 a few months after we were married. We lived there about a year, then we moved to High Street.

Q. You didn't see her in the Veterans' Club 30
that day? A. I saw her coming out.

Q. There were no men with her? A. One man.

Q. Who was that? A. Mr. Loomis.

Q. In 1925? A. Yes, sir.

Q. You didn't say that before on direct-examination? A. Yes, sir.

Q. Where did they go? A. I followed them 40
around to Marshall Street. That was the time I run into them.

Petitioner's Witness, Nathan Kerber, Cross

Q. Where did you run into them on what street? A. Marshall Street.

Q. How fast were you going? A. I don't know how fast.

10 The Master: His story is they wouldn't stop so he bumped into them.

Q. What did you do to make them stop? A. I ran into them.

Q. Outside of running into them? A. I run into them and he had to stop.

Q. Did you strike him hard? A. Hard enough to make him stop.

20 Q. Did he get out? A. Yes, he wanted to know what was the idea. I told him I wanted to show him they weren't putting anything over on me.

Q. You say you were in the Veterans' Club at one time? A. Not on that occasion.

Q. When were you in the Veterans' Club? A. After that.

Q. What year was that, if you know? A. That was also while we lived on High Street.

Q. 1925? A. 1925 or 1926.

30 Q. You don't know which year it was? A. I don't remember which year it was.

Q. You are very indefinite as to the year? A. I know it was while we were living on High Street. I don't remember the year.

Q. That was the time she was waiting on the corner? A. No, that wasn't the time.

Q. She was there that day with a Mabel Jones? A. No, sir.

40 Q. You didn't know Mabel Jones? A. There was no other woman there.

Petitioner's Witness, Nathan Kerber, Cross

Q. The occasion in your home you say you saw Mr. Loomis there? A. Yes, sir.

Q. Miss Beckett was there, wasn't she? A. I don't recall her name. Her first name was Lillian.

Q. You knew Lillian? A. Sure I knew her. 10

Q. Mr. Riegel was there? A. Yes, sir.

Q. You knew that those people were at your home that night? A. It was in the daytime. I didn't know they were there.

Q. What time of day was it? A. Around noontime.

Q. Where were you before that? A. Working.

Q. Where? A. In my drug store. 20

Q. You knew that Miss Beckett stayed there all night? A. No, sir.

Q. Where were you? A. She wasn't there the night before.

Q. Where were you the night before? A. Home.

Q. You saw Miss Beckett there? A. No, sir, she wasn't there.

Q. You say that Mrs. Kerber at one time was in her nightgown? A. Yes, sir. 30

Q. Wasn't she in the bedroom? A. No, sir, she was just going from the bedroom to the bathroom as I came through the foyer.

Q. How far away was your place from your place of business? A. I am at High Street and Sussex Avenue, about three or four minutes' drive.

Q. You kept paying the money all the time. Did you make any effort to go back or ask her to go back? A. Not after the Roseville Avenue affair. 40

Petitioner's Witness, Nathan Kerber, Cross

Q. That was when you walked out? A. When she ordered me out.

By the Master:

10 Q. Did you ever make any effort from the time you were ordered out of the house up to the present time to have her come back to live with you? A. No, sir, only by paying the \$25.

Q. You made no solicitation, verbal or in writing, for her to go back and live with you? A. No, sir.

By Mr. Smith:

20 Q. Didn't she plead with you to make up with her and keep a home together? A. No, sir.

Q. At different times? A. No, sir.

Q. Didn't her mother plead with you? A. Not after that.

Q. When did her mother plead with you? A. On several other occasions when she left.

Q. When did she plead, what time?

The Master: He means prior to the last separation.

30 Q. Mrs. Kerber wrote you a letter asking you to come back and patch things up? A. No, sir.

Q. Didn't Mrs. Kerber on April 30, 1928, write a letter and say:

“Dear Nate:

40 For the past five weeks I have not heard from you. You must realize I have no money to live on. My friends have been very good to me but I do not want to impose on them always. What do you intend to do? Don't

Petitioner's Witness, Nathan Kerber, Cross

you want to start over again? I have the furniture in storage and if you will only say the word, I think we could let the past take care of itself. Nate, I must do something. I have looked for work but it is hard to get a position just now. When I 'phone you, they say you are not in, so I am writing you. 10

Please answer and tell me what to do."

Remember receiving that letter? A. No, sir.

Q. You have a clerk in your store, haven't you, by the name of Shaffer? A. Yes, sir.

Q. You know his handwriting, don't you? A. Yes, sir.

Q. Isn't this his signature to a receipt for a registered letter? A. It looks like it. 20

Q. Are you satisfied it is his signature? A. It looks like it.

Mr. Smith: I ask that it be marked for identification. Dated May 5, 1928.

Marked Exhibit D-1 for identification.

Q. You didn't respond to that letter? A. I didn't receive it.

Q. You had received telephone messages that Mrs. Kerber had called on several occasions during that month, did you not? A. She would call if I was a day or two late in sending her check. 30

By the Master:

Q. Is Mr. Shaffer in court? A. No, sir.

Q. Is he still working for you? A. Yes, sir.

By Mr. Smith: 40

Q. You wrote her a letter on August 15, 1927.

Petitioner's Witness, Nathan Kerber, Cross

Is that your signature to that Mr. Kerber? A. Yes, sir, it looks like mine.

Mr. Smith: I ask that it be marked for identification.

10 Marked Exhibit D-2 for identification.

Q. From the time you lived on High Street to the time you went up to Roseville Avenue to live you lived with your wife, Mr. Kerber, did you not? A. Yes, sir.

Q. You did not live with her as man and wife, you had no intercourse with her for a period of a year? A. Not a year, six months.

20 Q. Didn't you tell her that she could have it with other men? A. No.

Q. Didn't you further add "especially when I have other women"? A. No, sir.

Q. You didn't love her then, did you? A. I loved her to the best of my ability.

Q. You had ability to live with her properly as man and wife?

By the Master:

30 Q. Why didn't you have relations with her for a period of six months? A. She wasn't behaving herself and I was afraid of her.

By Mr. Smith:

Q. You had no reason to doubt that this woman wasn't healthy, perfectly healthy? A. Only that I knew she wasn't all mine.

Q. Did you ever find her in the company of a man in bed? A. Not directly in bed.

40 Q. Or in a compromising position? A. Coming out of the bedroom with a man.

Petitioner's Witness, Nathan Kerber, Cross

Q. Didn't she beg you to have intercourse with her during the period of six months? A. No, sir.

Q. You didn't have her examined, did you? A. No, sir.

Q. You didn't leave her at any time during that six months? A. No, sir. 10

Q. In spite of those conditions you speak of? A. Yes, sir.

Q. You still continued to live with her? A. Yes, sir.

By the Master:

Q. Under the same roof with her? A. Yes, sir. 20

By Mr. Smith:

Q. Weren't most of your troubles with your wife brought about because of the fact that she wanted to be with you and you did not want to be with her? A. No, sir.

Q. Didn't you on many, many occasions say to your wife, "Why don't you go up to your sister's or your mother's for a couple of days?" A. That would be only natural at times—we were getting along well—for a little vacation for herself. 30

Q. A vacation for you too? A. I wouldn't say that. I was working every day. I did not take any vacation.

Q. A little vacation from her for you?

By the Master:

Q. Was your aim in sending her away for two or three days so you should be rid of her for that period? A. No, sir. 40

Petitioner's Witness, Nathan Kerber, Cross

By Mr. Smith:

Q. You sent her up to Connecticut to her sister's for ten days? A. I did not send her, she went.

10 Q. You acquiesced in that? A. I was quite willing that she go. She enjoyed herself up there and she always liked it up there.

Q. Didn't Mrs. Kerber plead with you by letter asking you to come up there, by letter and telephone, asking you to come up and get her and bring her back home? A. I always went up after her.

Q. You didn't go up that time? A. On most occasions we always drove up together.

20 Q. That particular time when she went up for ten days? A. What year was that?

By the Master:

Q. There was one occasion when she went up there and stayed ten days. Did you go up for her or did you ask her to come back? A. I don't remember whether I went up for her or not.

30 By Mr. Smith:

Q. Wasn't Mrs. Kerber always wanting to be with you if you only took her to a moving picture show? A. I took her as often as I could.

Q. How often did you take her? A. Two or three times a week.

40 Q. Who would run the store? A. I would get off a few minutes to nine and run up to the Central Theatre. On most occasions we would go to the nine-o'clock show.

Petitioner's Witness, Nathan Kerber, Cross

Q. That was her pleasure to be with you? A. Yes.

Q. You knew she liked to be with you? A. Yes, when we were getting along well.

Q. When did you buy the \$20,000 house?

10

The Master: Do we have to go into that?

Mr. Smith: I want to show that after these alleged conditions of affairs took place he purchased a \$20,000 home or house and put it in both their names.

By the Master:

Q. When did you buy that house? A. I believe it was 1926. I think so. I am not sure as to the date.

20

Q. You put that house in your wife's name and your name? A. Yes, sir.

Q. At that time you were aware of the fact your wife was running around with other men? A. Yes, sir.

Q. Notwithstanding that fact you placed the house in her name and your name? A. Yes, sir.

30

By Mr. Smith:

Q. When did you dispose of that property? A. Shortly after we moved to Roseville Avenue.

By the Master:

Q. How long did you own that house? A. As long as we lived there.

40

Petitioner's Witness, Nathan Kerber, Cross

By Mr. Smith:

Q. How long before you left the house was it? You say you left on June 1, 1927, with your clothes over your arm. A. I was ordered out,
10 yes.

Q. How long before that time did you sell the house? A. About six months. We only lived on Roseville Avenue about six months.

Q. Who did you sell the house to?

The Master: Don't let's go into the real estate transaction.

By Mr. Smith:

20 Q. Mrs. Kerber signed off for that house?
A. Yes, sir.

Q. You did not have to force her to do it?

The Master: There is no evidence that he did and therefore why bring it out. They have not brought out there was any trouble over Mrs. Kerber's signing it. Mrs. Kerber evidently willingly signed it because it was sold.
30

Mr. Smith: I want to show that this leaving was contemplated; that it was in the mind of this man; and that he sold his property to get rid of his assets.

Q. Mrs. Kerber didn't get any of that house, any of the proceeds of that sale? A. No, sir.

40 Q. For signing off for that house you promised to get her another house? A. I did not.

Q. Do you own property now?

Petitioner's Witness, Nathan Kerber, Cross

By the Master:

Q. Do you own any real estate? A. I don't know whether I own it or not. I have not paid my taxes and interest on it so long.

Q. Where is it? A. Long Branch, a lot. 10

By Mr. Smith:

Q. Did you buy this lot in both your names and let it go by default for taxes and it was bought in by you? A. No, sir.

Q. Through Mr. Franzblau as your attorney? A. No, sir.

Q. Who bought it for you? A. I really don't know who bought it back. I know they were sold for taxes. 20

Q. What property have you an interest in? A. None.

Q. Are you a member of any corporation which owns real estate? A. No, sir.

Q. You have a drug store? A. Yes, sir.

Q. How long has that drug store been at the corner of High Street and Sussex Avenue? A. It will be eight years in July. 30

The Master: That he owns it.

Q. You had it for eight years? A. Yes.

Q. Do you know how long that has been a drug store? A. Eight years.

Q. It is an old stand? A. It wasn't a drug store when I opened there.

By the Master:

Q. You have run it for eight years? A. Yes. 40

Petitioner's Witness, Nathan Kerber, Cross

By Mr. Smith:

Q. You ran that business for a period of eight years? A. It will be eight years this July.

10 Q. You are opposite the St. Michael's Hospital? A. Yes, sir.

Q. You are in the vicinity of many doctors?

The Master: What is the purpose, to show the character of the drug store?

Mr. Smith: Yes.

By the Master:

20 Q. How much do you draw per week out of your drug store for your services? A. No regular amount, whatever I can afford.

Q. What do you earn there per year? A. You mean my yearly income. It is an average of \$50 a day.

Q. Is that profit? A. No, that is daily receipts.

30 Q. We are not interested in your receipts. Figure your profit. What do you make there per week or per month or per year? A. There are no profits.

Q. How much do you draw? A. I draw whatever I can.

Q. How much do you draw yearly? A. An average of \$45 per week.

By Mr. Smith:

Q. What do you gross every day?

40 The Master: He says \$50 a day.

Q. Did you ever gross any more than that at any time? A. Yes.

Petitioner's Witness, Nathan Kerber, Cross

Q. How much? A. Went as high as \$60.

Q. When was that? A. Times were better several years ago.

Q. In the summer time or in the winter time?

A. Probably in the summer time.

Q. Business is much better in the winter time than in the summer, isn't it? A. We have a fountain business in the summer.

Q. I mean the gross receipts taken as a whole. A. No.

Q. You knew in 1924 that you took in \$61 a day in the summer time or thereabouts? A. Yes. I did not say that I didn't.

Q. That is a poor time of the year in your business? A. Summer time, no, sir, it is not a poor time. The fountain is going in the summer time.

Q. You wrote a letter to her, didn't you? A. I don't remember it.

Q. In August, 1924? A. That is it.

Q. In that letter you say, "You can hardly imagine how tired I am after working all day." How much profit do you figure there a day?

The Master: You need not answer that.

You need not go into that, Mr. Smith.

Mr. Smith: I would like to have the letter marked for identification.

Marked Exhibit D-3 for identification.

By the Master:

Q. Have you any books of account? A. Just my daily receipts.

Q. You don't run a regular set of books?

A. We average 33 per cent gross.

Petitioner's Witness, Nathan Kerber, Re-direct

By Mr. Smith:

Q. How much do you gross a year?

The Master: He says \$50 a day, you can say \$60.

10

Q. You figure out of that gross one-third is profit? A. Gross profit.

RE-DIRECT EXAMINATION by Judge Howe:

Q. Has there been any marital relations between you and your wife since May, 1927? A. No, sir.

20

Q. You state your wife 'phoned you when you were late in sending checks. Did she ever ask you to return to her? A. No, sir.

Q. Did you strike your wife in the eye, as Mr. Smith attempted to ask you? Did you ever blacken your wife's eyes? A. No, sir.

Q. Did you ever strike your wife? A. Only in self-defense.

30

By Mr. Smith:

Q. You did blacken her eyes? A. Only in self-defense.

By Judge Howe:

Q. Mr. Kerber, was there an incident at Dunnie Brook Farm in which you found your wife?

A. Yes, sir.

40

Mr. Smith: I object to that.

Judge Howe: While they were still living together as man and wife.

Petitioner's Witness, Benjamin Lasinsky, Direct

Q. While we were living together. I was working and she called me up and wanted to know what time I was going to be home.

Q. What occurred at Dinnie Brook Farm?

A. When I got there she was coming out with another man and woman. 10

Q. How did you know she was at Dinnie Brook farm?

Mr. Smith: I object to that.

Q. What kind of a place is Dinnie Brook Farm? A. A roadhouse.

BENJAMIN LASINSKY, being duly sworn on his oath, testifies as follows: 20

Direct-examination by Judge Howe:

Q. Mr. Lasinsky, do you know Mr. Kerber?

A. I do.

Q. Do you know Mrs. Kerber? A. I don't.

Q. Did you know Mr. Kerber in the month of May, 1927? A. Yes, sir.

Q. Do you recall where he lived then? A. Yes, sir. 30

Q. Where? A. At Roseville and Fourth Avenues.

Q. Did you ever visit that home? A. Yes, sir.

Q. When? A. During the month of May.

Q. Why did you go to that home during the month of May? A. Mr. Kerber asked me to go up with him. 40

Q. Did you remain there or just visit? A. I remained overnight with him.

Petitioner's Witness, Benjamin Lasinsky, Direct

Q. How long? A. About twelve or fifteen times through the month of May.

Q. Did you at any time during that month see Mrs. Kerber at home? A. No, sir.

10 Q. What was the condition of the house? A. Disorderly.

Q. In what way? A. Filthy parrot cage, cockroaches in the ice box, cockroaches in the kitchen, bathroom upset.

Q. Were you there on June 1, 1927? A. Yes, sir.

Q. Did you see Mrs. Kerber on that day? A. I did not know who Mrs. Kerber was until the conversation started.

20 Q. Did you see this lady there? A. Yes, sir.

Q. What took place there that day, June 1, 1927? A. There was a conversation between Mr. Kerber and Mrs. Kerber.

Q. Did you hear it? A. Some of it.

Q. What did you hear? A. I heard when she told him to get out and leave the furniture, she would take care of it herself.

Q. Was her mother there? A. Yes, sir.

30 Q. Did you hear her mother speak to Mr. Kerber? A. No.

Q. Did you hear anyone at all ask Mr. Kerber to remain and keep open his home? A. No, sir.

By the Master:

Q. That wasn't said at all in your presence? A. No, sir.

40 By Judge Howe:

Q. Who told Mr. Kerber to get out? A. That woman there.

Petitioner's Witness, Edward Taub, Direct

CROSS-EXAMINATION by Mr. Smith:

Q. What do you do for a living? A. Chauffeur.

Q. Taxicab driver, aren't you? You used to be a taxi driver. A. That is a chauffeur. 10

Q. What were you brought up to that house for, do you know? A. No, sir.

Q. When did Mr. Kerber see you prior to June 1, 1927? A. His place of business is next door to the Yellow Cab garage. I made his acquaintance through purchases in the store.

Q. Did he hire you as a detective or witness? A. No, sir.

Q. Pay you anything for it? A. Not a quarter. 20

Q. What did he say to you before he took you up to the house? A. Never said nothing.

Q. Why did you go up to the house? A. When he invited me up I went.

EDWARD TAUB, being duly sworn on his oath, testifies as follows: 30

Direct-examination by Judge Howe:

Q. Mr. Taub, do you know Mr. Kerber? A. Yes, sir.

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

Q. Do you know where they live or where Mr. Kerber lived in May, 1927? A. Yes, sir.

Q. Where? A. On Roseville Avenue.

Q. And what? A. Fourth Avenue. 40

Q. Newark? A. Yes.

Petitioner's Witness, Edward Taub, Cross

Q. Were you at any time during that month in the home with Mr. Kerber? A. Yes.

Q. How many times? A. About five or six times.

10 Q. Daytime or nighttime? A. At night.

Q. How long did you stay? A. Stayed with him for the night.

Q. Did you on any of those occasion see Mrs. Kerber at home? A. No, sir.

Q. What was the condition of the home? A. It did not look tidy. Things were thrown around such as wearing apparel. The ice box did not look like it was kept up, looked very untidy, stale food stuff in the ice box.

20 Q. Were you there on June 1? A. No, sir.

CROSS-EXAMINATION by Mr. Smith:

Q. You knew Mrs. Kerber, didn't you? A. Yes, sir.

Q. She was there at the time you were there on Roseville Avenue? A. No, sir, she was not.

30 Q. Her mother was there too? A. No, sir.

Q. What were you doing there? A. I was with Mr. Kerber.

Q. Were you ever there before? A. No, sir.

Q. Why did you go that day? A. Mr. Kerber asked me to come up.

Q. Where did you live? A. At the present time?

Q. Where did you live? A. At that time I lived on Elizabeth Avenue in Newark.

40 Q. With whom? A. With my parents.

Petitioner's Witness, Edward Taub, Cross

Q. You have been very friendly with Mr. Kerber? A. I have, yes, sir.

Q. A very dear friend of yours? A. Yes, sir.

Q. In fact you two have an apartment together, haven't you? A. No, sir. 10

Q. Do you live with your people yet? A. No, sir.

Q. Where is your apartment? A. Oriental Street.

Q. Mr. Kerber comes down to your place quite often? A. He has never been to my place.

Q. You are dear friends?

The Master: He says they are friends. 20

Q. You say you looked at the ice box? A. I did not look at it. I was shown the ice box.

Q. By whom? A. By Mr. Kerber. He said, "Isn't this a terrible condition for a home to be in?"

Q. You were in the home before when she was there? A. Yes.

Q. When you were in the house it always was nice and tidy, was it not? A. I wouldn't say it was a tidy home. I have seen neater homes. 30

Q. It was fair? A. I would call it fair at the time they were living together.

Petitioner's Witness, William M. Powers, Direct

WILLIAM M. POWERS, being duly sworn on his oath, testifies as follows:

Direct-examination by Judge Howe:

10 Q. Mr. Powers, do you know Mr. Goodman?
A. I do.

Q. Do you know Mrs. Kerber? A. I know her by sight.

Q. Do you know where she resides or where she was staying last night?

Mr. Smith: I object to that.

The Master: I will allow it.

A. No.

20 Q. Do you know where she lives at the present time? A. Yes.

Q. Where? A. Astor Street, I think it is 25.

Q. Did you see Mr. Goodman last night anywhere at all? A. I did.

Q. Where? A. I followed him. I had a paper to serve on him. He opened the door of this apartment.

30 Q. Which apartment was it? A. The first apartment.

Q. In Astor Street? A. Yes. He opened the door with a key and went in.

Q. Did you serve him? A. I served him.

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

Q. What time? A. It was half past eleven last night.

Q. What time did he go in? A. He was in there about ten minutes.

40 Q. Did you see Mrs. Kerber or anyone else there? A. Another man with a dog.

Q. Did you see Mrs. Kerber? A. I did not.

*Petitioner's Witness, Nathaniel Franzblau,
Direct*

CROSS-EXAMINATION by Mr. Smith:

- Q. What is your business? A. Constable.
 Q. Night watchman too? A. No. 10
 Q. Don't you lock doors? A. I watch about
 150 business houses at night.
 Q. You are a special detective? A. No.
 Q. All you went there last night for was to
 serve a subpoena? A. That is all.

NATHANIEL FRANZBLAU, being duly
 sworn on his oath, testifies as follows: 20

Direct-examination by Judge Howe:

- Q. What is your profession? A. Attorney.
 Q. Do you know Mr. Kerber? A. He is my
 cousin.
 Q. Do you know Mrs. Kerber? A. I know
 Mrs. Kerber.
 Q. Did you visit them in their various homes
 after they were married? A. The only home 30
 I visited was the South 7th Street home.
 Q. Do you know a gentleman named Loomis?
 A. Yes.

By the Master:

- Q. Do you know him? A. Yes.

By Judge Howe:

- Q. Did you ever have occasion to follow either
 Mrs. Kerber or Mr. Loomis? A. I followed 40
 Mr. Loomis.

*Petitioner's Witness, Nathaniel Franzblau,
Direct*

Q. When? A. This was in the year 1927. I think it was in the month of April or May, 1927.

By the Master:

10 Q. Before the separation or after? A. Before the separation.

By Judge Howe:

Q. Have you any idea how long before it was? A. It was when they lived on South 7th Street.

Q. Who did you follow this man Loomis with?
A. We followed him to the rear of the Public Service Terminal and he met Mrs. Kerber. Mr. Kerber got very nervous and jumped out as they met. Mr. Kerber accused him of knowing his wife and accused Mrs. Kerber of knowing Loomis and they emphatically denied they ever knew one another. Mr. Kerber was very excited. I dragged him away from the scene and left Mrs. Kerber at home. The following day Mrs. Kerber called me up on the telephone. I know her voice because she spoke to me several times on the telephone. She pleaded with me and she told me that incident last night sort of broke up her home and pleaded with me to effect a reconciliation between her and Nate, her husband. "Do you think I would prefer that Chink to Nate?" He looked Oriental. That afternoon I went up to Mr. Kerber's store and I had quite a talk with him. He hesitated at first—

40

*Petitioner's Witness, Nathaniel Franzblau,
Direct*

By the Master:

Q. You prevailed upon him? A. Yes. He came home. I went home with him. It was the following day, the second day after we saw them in back of the Public Service. It must have been about 5:30 or 6:00 in the afternoon. As we came in the house we found Mrs. Kerber in the bedroom. The house was in terrible shape. He said, "What drunk again?" She didn't expect us that afternoon. 10

The Master: Strike that out.

A. We found she was intoxicated and he said to her, "Drunk again." She looked in a rage. She went after him and I had some time keeping them apart. 20

Mr. Smith: I object to that.

The Master: That is perfectly all right.

A. She called him names.

By the Master:

Q. What were the names she called him in your presence? A. She called him a Jew bastard. She used vile language, two or three words that were not very pleasant. 30

Q. What were the other words? A. She called him a son of a bitch, I remember that distinctly. The son of a bitch did not have as much effect as the other words. At any rate after I heard the other words I said, "Ruth, I am through with this affair. You have asked me for the second time to effect a reconciliation between 40

*Petitioner's Witness, Nathaniel Franzblau,
Direct*

you and Nate. Now, I have seen how you act I am positively finished." I walked out.

Q. Was she intoxicated? A. She absolutely was.

10

By Judge Howe:

Q. Did you see her on any other occasions than this under the influence of liquor? A. No.

Q. Did you ever see her in the company of Loomis on any other occasions than the one you mentioned in back of the Public Service? A. No.

20

Q. Have you seen her in the company of any other men? A. Yes.

Q. When? A. The day before this case was set down for March 18, March 17.

Q. Where did you see her? A. At Astor Street.

30

Q. Tell us about that occasion. How did you get there? A. We wanted to find out who this man Goodman was. We went down to find Mr. Goodman. We found him in the candy store in back of the Mosque. I even had a conversation with him about Coca Cola. We followed him up Broad Street, up Brunswick Street until he got to Astor Street. He went into this apartment. As you drive by you can look right in the window and I saw Mrs. Kerber and Mr. Goodman.

By the Master:

40

Q. Where did you see them in the room? A. I was driving the car on Astor Street. I drove

*Petitioner's Witness, Nathaniel Franzblau,
Cross*

up to the next corner. Mr. Kerber got out. There was another man who got out. I watched them. They were sitting in the window.

By Judge Howe:

10

Q. Who was the other man? A. I don't know his second name.

Q. Is he here? A. No, he isn't here.

Q. Were you able to see whether anyone else was in the room? A. Mr. Goodman.

Q. I mean beside? A. No, I did not see anybody else but those two. Then we stayed there. We waited until he came out. He came out about 2:30.

20

By the Master:

Q. In the morning? A. In the morning.

Q. What time did he go in? A. About 11:30. We followed him up Astor Street, up High Street to the apartment on the corner of Spruce and High Streets.

CROSS-EXAMINATION by Mr. Smith:

30

Q. You were shadowing two years, were you, Mr. Franzblau? A. If you call it shadowing, I was.

Q. Were you employed as an attorney or investigator? A. Mr. Kerber is my cousin.

Q. What were you employed as? A. I did it because of our relationship.

Q. You saw Mr. Loomis and Mrs. Kerber speak to each other down in back of the Public Service Terminal? A. Yes.

40

*Petitioner's Witness, Nathaniel Franzblau,
Cross*

Q. That was the end of that? A. Mr. Kerber made it the end. He broke it up.

10 Q. You say her home was untidy? A. I slept at the South 7th Street house two consecutive nights before the Loomis incident to keep Mr. Kerber company. When we came up there the house was in terrible shape, a pile of dishes in the sink, mold over them. When I wanted to get a drink I opened the icebox and closed it just as fast. She hadn't been home those two nights.

Q. Nevertheless you ate at that house many times? A. I ate there once.

20 Q. You have been there many times? A. I have been there about three or four times.

Q. You were there at that time with your intended wife? A. Not that time.

Q. Before that? A. Sometime before I came to visit them with my intended wife.

By the Master:

Q. Where were they living? A. At the South 7th Street address.

30 By Mr. Smith:

Q. You thought well enough of her to have your intended wife go on a vacation with her?

A. She was my cousin's wife and I had absolute implicit faith until I found out to the contrary.

Q. You say on March 17 you did some more shadow work? A. We followed Mr. Goodman.

40 Q. How did you know where to find him? A. We knew he hung out in a candy store in back

*Petitioner's Witness, Nathaniel Franzblau,
Cross*

of the Mosque. We found that out from his wife. I spoke to his wife.

Q. Who was with you? A. Mr. Kerber and this other gentleman, a friend of his, Chick. 10

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

Q. Didn't you get his name? A. No.

Q. Weren't you conducting the investigation?
A. I was not.

Q. You are a lawyer? A. I am.

Q. Why didn't you get his name? A. I know his name.

Q. Is he in court today? A. No, he isn't.

By the Master: 20

Q. Do you know where he lives? A. I know where he was in business. He just recently moved his business to Elizabeth. I have been trying to find him for two days.

By Mr. Smith:

Q. Where were you peeking from? A. I wasn't peeking.

Q. Did you see anything? A. I saw the two of them in the room as I drove by in my car. 30

Q. How fast were you driving? A. I do not think I was doing more than five miles an hour.

Q. You say from the street you could observe Mrs. Kerber? A. I could certainly look right in the window.

The Master: What he says is that Mrs. Kerber and this gentleman were in the same room. 40

Q. You could not determine who the man

Petitioner's Witness, Sam Oberman, Direct

was from the automobile? A. Yes, I knew it was Mr. Goodman. You can't miss him.

10 SAM OBERMAN, being duly sworn on his oath, testifies as follows:

Direct-examination by Judge Howe:

Q. Where do you live? A. 1081 Stuyvesant Avenue, Irvington.

Q. What is your business, Mr. Oberman? A. Investigator of accounts for Tappins Jewelry Store, 783 Broad Street, Newark.

20 Q. Are you acquainted with Mrs. Kerber?
A. I am.

Q. How did you become acquainted with her? Tell us the manner in which you learned to know her and her name and the entire incident? A. I am in charge of the delinquent accounts. This party Howard Loomis was delinquent on our books. They had sent me out on that account to find out just why he was delinquent. I went up to his house on North
30 11th Street and spoke to his mother and his mother told me—

The Master: Never mind what she told you. As a result of what she told you what did you do?

A. I had to go find who the party was who had the merchandise as long as I could not find him.

40 Q. What was the merchandise? A. It was a flexible diamond bracelet for \$100 and a diamond ring for \$100.

Petitioner's Witness, Sam Oberman, Direct

Q. Who purchased those goods? A. Mr. Howard Loomis.

Q. Do your records show who received the goods? A. Yes, sir.

Q. Who did receive them?

10

Mr. Smith: I object to that.

The Master: Your record indicates who got it?

The Witness: We do not give the merchandise out to anybody, especially if it is an installment account, unless we know who is going to receive it.

Mr. Smith: Anyone can say, "I am buying this diamond bracelet for Mrs. So and So." That doesn't say she will get it.

20

By the Master:

Q. Who got this article? A. Mrs. Kerber.

Q. How do you know Mrs. Kerber got it? Were you present when she got it? A. He had sworn to that statement down at the store.

The Master: It will be stricken out. You can prove that by Mr. Howard Loomis when he takes the stand by cross-examination.

30

By Judge Howe:

Q. Did you ever see the goods after they left your store, the goods in question? A. No, sir.

Q. Did you ever have any conversation with Mrs. Kerber relative to those goods? A. I did.

40

Petitioner's Witness, Sam Oberman, Direct

Q. What was the conversation? A. I called at 49 Hill Street. I had found out she lived there at that time. I went upstairs. She was there. I had another man with me. The firm sent out two men at the time. I asked Mrs. Kerber where this diamond bracelet and diamond ring was, that Mr. Loomis wasn't paying for it and I called there to take them back. She told me that she hasn't got the merchandise any more that going out on several parties with Mr. Loomis she left it in her purse while on these parties with him. She was intoxicated, partially under the weather, and she said that Mr. Loomis had gone into the room where her purse was and her clothes and had taken out the two articles of jewelry she had in the purse. I told her I would have to see Mr. Loomis and get a statement to the effect that he hasn't got the merchandise or she has it. In passing she was telling me different stories about her going out on different parties with Mr. Loomis.

Q. Did she mention anything to you about whether or not the merchandise was paid for? A. She said she thought it was paid for.

By the Master:

Q. Can you tell me when the jewelry was procured? A. The diamond flexible bracelet was bought on December 21, 1925. That was the first article purchased. The second article was purchased on December 23, 1926.

By Judge Howe:

Q. Can you fix about the time when you called

Petitioner's Witness, Sam Oberman, Cross

on her on Hill Street? A. It was February, 1928, I think it was.

By the Master:

Q. Have the articles been paid for as yet?

A. No, there is still a balance due. 10

Q. You never received the articles back? A. No.

By Judge Howe:

Q. Have you collected the balance of this money? A. No.

By the Master:

Q. You haven't found him? A. I seen him once the other night. 20

By Judge Howe:

Q. Do you know where he was when you could not find him? A. I run across him down on Market Street one time.

Q. Do you know where he was during the period when you could not find him? A. No, sir.

By the Master: 30

Q. He did not tell you where he was living? A. No, sir.

CROSS-EXAMINATION by Mr. Smith:

Q. You spoke to Mr. Kerber before you went down to the Hill Street address? A. To find the address.

Q. You knew Mr. Kerber before that? A. I beg pardon, I never did, sir. 40

Petitioner's Witness, Sam Oberman, Cross

Q. How did you know where to go? A. The superintendent of the house at 19 South 7th Street had told me Mr. Kerber had a business on High Street corner of Central Avenue.

Q. You went to Mr. Kerber? A. Yes, sir.

10 Q. What did you say? A. I asked Mr. Kerber where I can get in touch with Mrs. Kerber not divulging my business.

Q. You had a conversation about his marital affairs? A. No, sir, I did not know nothing at all about it.

Q. Did he tell you anything about it? A. No, sir.

20 Q. You saw Mrs. Kerber? A. He told me where she lived.

Q. Didn't she deny she ever received any goods or had any goods? A. She told me she received them and told me the time just as the contract called for.

Q. Why were you interested in listening? A. She told me how it come about. She had lost these two articles.

Q. She volunteered everything to you? A. Yes, sir.

30 Q. She volunteered the fact she was drunk? A. Yes, that is how she told me.

Q. You don't do any investigating? A. Yes, sir, for the firm.

Q. You are a sort of detective? A. No, I wouldn't call it detective.

PETITIONER RESTS.

Defendant's Witness, Wallace L. Jacobus, Direct

WALLACE L. JACOBUS, being duly sworn on his oath, testifies as follows:

Direct-examination by Mr. Smith:

Q. Are you a brother of Mrs. Kerber? A. I am. 10

Q. Where did you live in Newark? A. On Hill Street and 25 Astor Street.

Q. For how long a period of time and when did you start to live at Hill Street? Is that the first place you lived with your sister? A. That was in 1928.

By the Master:

Q. At 49 Hill Street? A. Yes. 20

Q. What did you have there an apartment or a room? A. I shared a room with a brother of mine. We slept on a daybed. My sister slept in the only bedroom we had.

Q. You all slept in one room? A. No.

Q. How many rooms did you have there? A. Living room, bedroom, kitchen and bath.

Q. You and your brother occupied the living room at night and she slept in the bedroom? A. Yes. 30

Q. Who did you hire the rooms from? A. The owner of the building.

Q. Who is he? A. My sister took care of that. She hired the rooms.

Q. She hired the rooms and you lived with her? A. Yes.

By Mr. Smith:

Q. How long did you live on Hill Street? A. About six months. 40

Q. That was during 1928? A. Yes.

Defendant's Witness, Wallace L. Jacobus, Direct

Q. From there you moved to what street?

A. I was away from Newark the intervening period. Then my sister moved. When my sister moved to Astor Street I went down there the 1st of September until the first of this year.

10 Q. First of September, 1929? A. Yes, until January 1, 1930.

By the Master:

Q. You have not lived with her this year at all? A. No.

By Mr. Smith:

20 Q. Did you have your meals there? A. Breakfast in the morning.

Q. Who else had their meals there? A. Mr. Goodman.

Q. Did he come there every night for his meals? A. Yes.

Q. Do you know how he came to get his meals in your sister's home? A. I know he paid her for them. He paid his board.

30 Q. How did he happen to come to that place, if you know? Did he come through you or your sister? A. He came through me.

Q. Did you arrange with your sister for his meals there? A. I knew she needed more support so I arranged to have a boarder. I knew Mr. Goodman and asked Mr. Goodman to come in.

By the Master:

40 Q. Where did Mr. Goodman live? A. That I could not tell you.

Defendant's Witness, Wallace L. Jacobus, Re-direct

Q. Do you know whether he was married or single? A. That I could not say.

Q. The only arrangement you made was to get him to take his meals? A. Only to take his meals and that is all he had there. He used to come there in the evenings and he and I played cards. 10

CROSS-EXAMINATION by Judge Howe:

Q. You did not know him very well? A. Very well.

Q. You did not know where he lived? You don't know whether he is married or single? A. I know he always posed as a single man. 20

Q. Are you working at the present time? A. No, I am not.

Q. How long have you been out of work? A. I haven't worked steadily for the last eight years. I am going over to see about compensation today from the Government.

Q. How long have you known Mr. Goodman? A. Over three years, four years.

Q. Where did you meet Mr. Goodman? A. Why up at the 113th Armory. 30

Q. You have not been living with your sister any time this year? A. No, I have not.

RE-DIRECT EXAMINATION by Mr. Smith:

Q. Why are you out of work?

The Master: He was in the army and was gassed. 40

Defendant's Witness, Ruth Kerber, Direct

Q. Do you know, Mr. Jacobus, whether or not your sister has another roomer since you left? A. Yes.

10 Q. Do you know who he is? A. I don't know his name. I tried to get in my sister's home and the boarder came to the door. I made inquiries and he said, "I am the boarder here."

RE-CROSS EXAMINATION by Judge Howe:

Q. Is anyone living there besides this boarder and your sister? A. That I could not tell you.

20

RUTH KERBER, the defendant, being duly sworn on her oath, testifies as follows:

Direct-examination by Mr. Smith:

Q. You are the wife of Mr. Kerber? A. Yes, sir.

30 Q. Will you tell the Court just what took place as your married life went on? A. When we got married, immediately after we got married we lived with my mother for a time, August, September, October, and I wanted to be in my own home for Christmas. I came to Newark and looked for rooms. Mr. Kerber did not want to pay an awful lot of rent. I was never used to living in apartments so I took a first floor apartment at 19 South 7th

40 Street, \$55 a month four rooms. We got along very nicely when I first came to Newark until

Defendant's Witness, Ruth Kerber, Direct

a party told me that Mr. Kerber was intimate with some woman.

By the Master:

Q. As a result of what you heard about his goings on, what did you do? A. I told Mr. Kerber, "We are only married a short time. I can't stand this type of thing. If you are not willing to do different, then I am through." His mother came over. She asked him what he is thinking about. 10

Q. In your presence? A. Yes. "You wanted to get married so badly with Ruth, now what are you doing." "You know, Ruth, if I could have only talked to you before you married him." 20

Q. Was that in the presence of her son? A. Yes. "I would have told you. I have had trouble with Nate since he is a boy. He is never satisfied with someone of his own but wants someone that belongs to somebody else."

By Judge Howe:

Q. That was in the presence of Mr. Kerber? A. Yes. I pleaded with Mr. Kerber. My only wish was to be with Mr. Kerber. He always seemed to want to get rid of me to go to my mother's, go to my sister's or get rid of me in some way. 30

By Mr. Smith:

Q. When did he start to try to get rid of you? A. I went to Bradley Beach with Mr. Franzblau's wife.

Q. When was that? A. That was while we lived on South 7th Street. 40

Defendant's Witness, Ruth Kerber, Direct

By the Master:

10 Q. What year was that? A. 1926 or '25. Mr. Franzblau asked why didn't my husband let me go on a vacation. I went and all the while I wanted to come home. Mr. Kerber called me every night and came down with Mr. Franzblau. I pleaded continually to go home but he would not take me. If he was angry with me he would go out of the store for two days and I would not hear from him. I would not know where he was. I believed in him, in fact I did not want to doubt him. Then I began to doubt him.

20 Q. When was it you lost faith in him after you began to doubt him? A. It seemed that Mr. Kerber did not want me in that store. Every time I went there for something he did not want me to come in. Then there was this girl Helen O'Hara, I knew he had been going with her before we were married. I heard from Mrs. Kerber that he had promised to marry this O'Hara girl.

30 Q. Was he present at that time or not? A. No.

The Master: Strike that out.

Q. I want to know this. When did you lose faith in your husband's honesty of purpose or chastity? A. That was when we lived on South 7th Street.

Q. When? A. I imagine 1925 directly after we were married.

40 Q. What part of 1925? A. Around, I should imagine it was around October.

Q. You say you lost faith in him in October,

Defendant's Witness, Ruth Kerber, Direct

1925. Did you ever regain that faith? A. Yes, I was very forgiving.

Q. Tell me when you lost faith in him for the last time or have you still faith? A. I have faith.

Q. Notwithstanding your belief that he has had relations with other women you still have faith in him? A. Yes, I have. 10

Q. You still love him? A. I do.

Q. You have never ceased to love him? A. Never.

By Mr. Smith:

Q. You are ready and willing to live with him? A. I have a home and Mr. Kerber can come with me today. 20

Q. Mrs. Kerber, your husband stated that he had disputes with you about your conduct and that you drank a whole lot? A. I would take a drink occasionally.

By the Master:

Q. Were you in the habit of getting intoxicated? A. No, I don't think anyone can say that. 30

By Mr. Smith:

Q. Did you drink to excess? A. I did not. Sometimes when I would be upset—liquor has the ability to make you forget—I used to take a drink.

By the Master:

Q. Then you think you might have been under the influence of liquor on occasions? A. Never to be disorderly. 40

Defendant's Witness, Ruth Kerber, Direct

By Mr. Smith:

Q. Did you ever drink with your husband?

A. Before we were married he was very sociable.

10 Q. Did you ever come home drunk from outside places? A. Not drunk. I had a couple of glasses of wine. I can't stand any alcohol.

Q. Did you at any time call him the vile names he says you called him? A. I did not like to insult him. He used to call me dirty bitch and son-of-a-bitch and things I could not stand.

By the Master:

20 Q. Then you would return the compliment? A. I only did it once.

By Mr. Smith:

Q. Did you at any time up to the time he left your home go out with any other men?

A. No, I don't care about other men. I have been in men's company.

30 Q. When you were in men's company was it under proper circumstances? A. Yes.

Q. Getting down to June 1, 1927, was that the way that Mr. Kerber moved out? A. Yes.

Q. Will you tell the Court the circumstances of that day? A. I was there and Mr. Kerber had the moving men there to have my furniture moved. My mother was there and my stepfather. They had been there for about ten days or a week.

40 By the Master:

Q. Who had been there? A. My mother and

Defendant's Witness, Ruth Kerber, Direct

stepfather. We had a quarrel. I said, "No, Nate, you have done lots of wrong things. I am willing to forget them. Why not live like other people?" He said, "I am through. I am going to have a van up here and take this furniture." So on the first day of June Mr. Kerber and this gentleman that testified that he was there the day that he moved came up. Mr. Kerber had a colored man taking the mirrors off the dresser and had all his things packed. I said, "What does this mean?" "Just this. This stuff is going out of here." I said, "You won't take this. You can't take this furniture unless it is over my dead body. You are not going to break my home up." He said, "If you don't get our furniture out of here you will be on the street because I won't pay any more rent." My mother said, "Nate, you can't break up Ruth's home. You can't take a piece of that furniture." Then the moving man said, "Why didn't you inform me that Mrs. Kerber did not know that was going to be moved?" "He isn't man enough. He would rather humiliate me." We had an argument. Then he left the furniture and took his clothes. I stayed there while he talked to my mother. Mother said, "If you don't intend to live with Ruth, you must have an understanding as to her support." He said, "Mother, I am willing to give Ruth \$25 a week. Furthermore, if she wants a divorce I will go to the extent of letting her find me in bed with another woman." I said, "I never want a divorce." I don't want a divorce now. If Mr. Kerber will come back and live with me, I will live with him.

Defendant's Witness, Ruth Kerber, Direct

By Mr. Smith:

Q. Did you continue to live in that apartment? A. I did until the first of July. The landlord came for the rent, Mr. Benjamin Cohen. He owed two months rent. I said, "I don't think I will pay you another month."

By the Master:

Q. So you moved out? A. Yes.

By Mr. Smith:

Q. After that time you went where—did Mr. Kerber ever come there after that? A. No, he never came there.

20 Q. Then you moved from there to where? A. To Hill Street.

Q. Who did you live there with? A. I lived there with my two brothers, Russell and Wallace.

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

Q. During that time did you have any friendly relations with anybody or have any men callers?

30 A. No, I did not.

Q. After that where did you go to? A. After I put my stuff in storage because Mr. Kerber told me he would not pay me \$25. Then he wanted it reduced to \$15. You can't expect me to live on \$15.

Q. How long did he pay the \$25? A. For a year.

Q. Then he reduced it to what? A. I had to go to court.

40 Q. What happened after that? A. Judge Siegler heard the case. He awarded me \$20 and we had another hearing and awarded me \$10.

Defendant's Witness, Ruth Kerber, Direct

Q. For how long a period of time was the \$10 paid? A. There was no stipulated time.

Q. Until what date? A. He never was regular in sending my checks. I had to go up to his store and he would snicker and laugh at me and do everything he could to humble me. 10

Q. Up until what time—what was the last check you got from him? A. The last check I received was the 4th of September. Then he was five weeks in arrears.

Q. During that time did Mr. Kerber ever ask you to come back and live with him? A. Never.

By the Master:

Q. From the time he separated up to the present time has he ever written you any letter asking you to come back and live with him? A. No. 20

Q. Has he ever sent anyone to you on his behalf to try and effect a reconciliation? A. No.

By Mr. Smith:

Q. Since the time of the separation have you ever spoken to him about coming back? A. Yes, I have. 30

Q. On how many occasions? A. I went up to his store one night for my check.

By the Master:

Q. Give us an idea when? A. It was when I lived on Hill Street about 1927.

By Mr. Smith:

Q. What part of the year? A. In the latter part of the year. I imagine September. I 40

Defendant's Witness, Ruth Kerber, Direct

went in. I said, "Nate, why don't you overlook this? We went together for so many years. We wanted one another so much. How can you forget so easily?"

10 Q. What did he say to you? A. "I am through. I don't want nothing to do with you. You are a young woman. Don't wait until you are too old and nobody will want you." I said, "I want you. Come back." He said, "You always told me when I had somebody else you wanted me to tell you. I have somebody else. I never intend to live with you."

Q. Did you ever write him a letter? A. Yes, I did.

20 Q. In response to that letter did you receive that card? A. Yes, I did.

Q. Did you register the letter? A. Yes, I did.

Mr. Smith: I offer this card, Exhibit D-1 for identification in evidence.

Q. Have you a copy of the letter you sent registered? A. Yes.

30 Q. Is that in your handwriting? A. No, that isn't in my handwriting. I wrote the letter and Mr. Friedman copied it.

Q. Who is Mr. Friedman? A. My former attorney when I went to Judge Siegler. I told him, "We only have a little time to live and be happy. We are young. We have a lot to look forward to." I said, "I love you regardless of whether you love me." I said, "In the eyes of God I am your wife." He said,
40 "No, not in the eyes of God, in the eyes of the law."

Defendant's Witness, Ruth Kerber, Direct

Q. Did he say anything else? A. He said, "You must know we are not man and wife. How can I live with you a whole year after I haven't cohabited with you." I said, "You are not fooling me. You are only fooling yourself." He said, "You ought to be glad that I don't have anything to do with you when I am out with other women." 10

Q. For how long a period of time didn't you have relations with him? A. Never while we lived on High Street or on Roseville Avenue.

Q. For how long a period of time, over a year? A. I would say about nine months.

Q. Did you make any efforts? A. I begged him just to have a child but he did not want me to. 20

By the Master:

Q. Did he assign any reason why he would not have relations? A. Only, "You must know I have somebody else." That was his only answer.

By Mr. Smith:

Q. You went to the Veterans' Club, did you not? A. I did. 30

Q. What kind of a club is it? A. A club you could take anyone to. My own brothers have been there with their wives.

Q. Who did you go to that club with? A. To meet Mrs. Welch.

Q. Do ladies go to that club? Is there any secrecy about the place? A. It is for ex-veterans. There is a bell to ring. There is no secrecy. 40

Defendant's Witness, Ruth Kerber, Direct

By the Master:

Q. You don't have to have a special key? A. You ring the bell.

By Mr. Smith:

10 Q. Are there other women in the club? A. Yes.

Q. Is it a barroom or speakeasy? A. No, it is not. I took my own mother in there.

By the Master:

Q. Do they serve drinks? A. Serve beer and sandwiches. There are people who do have a bottle.

20 Q. They don't sell liquor there? A. No, they don't.

By Mr. Smith:

Q. Mr. Kerber says Mr. Loomis was in your house at one time, will you tell the Court what took place at that particular time? A. Mr. Kerber went out the day before that. He got in a fit of temper. He went out the day before. Miss Beckett, a lady friend of mine, stayed 30 with me all night. In the morning her gentleman friend came up, Mr. Riegel. He called up his place of business. They said this man had called and wanted to talk to him. He asked me if I objected having Mr. Loomis come up.

By the Master:

Q. He came up to see Mr. Riegel? A. Yes. I wasn't in the bedroom. I was in the bathroom 40 while he was there. I was in the bathroom when Mr. Kerber came in. He says to Miss Beckett,

Defendant's Witness, Ruth Kerber, Direct

"Where is Riegel?" He said to Mr. Riegel,
"Who is this man, Mr. Riegel?"

By Mr. Smith:

Q. Were you in your nightgown at that time?

A. I was not. 10

Q. How were you attired? A. I had a smock
on.

Q. Is that a proper attire? A. Yes, a blue
smock.

Q. What was under the blue smock?

By the Master:

Q. Did you have on your underwear? A. I
can't recall. Possibly I did have my nightdress
under my smock. 20

By Mr. Smith:

Q. Was there any improper relations at that
meeting? A. Absolutely not.

Q. Was that in broad daylight? A. Yes.

By the Master:

Q. Did you have any improper relations on
that occasion or any other occasion? A. No. 30

Q. Were you drunk? A. I wasn't drunk. I
get sick.

Q. Was there any whiskey in a pitcher? A.
Yes, there was.

Q. Mrs. Kerber, notwithstanding that your
husband continually, according to your statement,
used very vile language towards you and did
not treat you affectionately nor kindly, you still
have affection for him? A. I do. 40

Defendant's Witness, Ruth Kerber, Direct

By Mr. Smith:

Q. Did Loomis hide in the closet at that time?

The Master: That was another incident.

10 A. It was at a house party at Mrs. Johnson's.

Q. How many people were at that house party?

A. Fifteen or sixteen.

Q. Your husband knew you were going to be there? A. I had his daughter.

By the Master:

Q. Has he a daughter by a previous marriage?

A. Yes.

20 Q. How old was the daughter? A. Eunice was about six years old then. Because she was with me we had punch.

By Mr. Smith:

Q. Did you have occasion to see Mr. Loomis at any other place, Mrs. Kerber, after that? A. No, I never had occasion to see him.

30 Q. Did you at any time receive any jewelry from Mr. Loomis? A. No, I would have no place to wear it.

Q. Did you receive any? A. No.

Q. Do you remember the investigator of delinquent accounts who was on the stand here?

A. Yes.

Q. Did he come to your house? A. He came to my house. My sister was there from Connecticut with her husband and her baby.

40 Q. Tell us what he said to you and what you said to him. A. He rang the bell. I said, "What is it?" He said, "You don't want everybody

Defendant's Witness, Ruth Kerber, Direct

to know your business." I said, "I have no business for anyone to know; I am not indebted to anyone." He said, "I have an affair here. Did you ever receive jewelry from Mr. Loomis." I said, "No." He said, "You didn't?" I said, "No." He said, "You didn't receive a bracelet and a ring?" I said, "Absolutely not. I have plenty of rings myself." He says, "You didn't." I said, "No." He says, "As long as you don't know about Mr. Loomis would you sign a paper for his release? That will end it all." I said, "No, I won't." 10

Q. He wanted your signature? A. Yes, he wanted my signature. He said, "There is nothing to it at all." I spoke to my brother and he said, "Don't you sign any papers." 20

By the Master:

Q. Did he tell you in that interview that Mr. Loomis had said that he had purchased the jewelry for you? A. I said anybody could go in and say that.

By Mr. Smith:

Q. Did Mr. Loomis purchase any jewelry for you? A. No. 30

Q. You were up to Dinnie Brook Farm with some of your friends? A. With Mrs. Oliver and a friend of hers.

Q. You know Mr. Franzblau, the attorney? A. I do.

Q. Has he been to your house? A. He has.

Q. How many times has he been there? A. He was to dinner a couple of times, once with his intended wife. 40

Defendant's Witness, Ruth Kerber, Direct

Q. Was he there alone at any time? A. He came up one time to play cards.

Q. In your home? A. Yes.

10 Q. In what condition did you keep your home, Mrs. Kerber? A. I always lived in cleanliness.

By the Master:

Q. Keep it tidy? A. I always do.

By Mr. Smith:

Q. At any time were there foul odors in the ice box? A. They had exterminators come in when the cockroaches were there.

20 By the Master:

Q. Did you allow stuff to decay in the ice box? A. No, I did not.

By Mr. Smith:

30 Q. What did you do with respect to Mr. Franzblau in regards to a reconciliation? A. I asked him if he would ask Mr. Kerber to come up together. I said, "You know there was nothing to it. You did not see me with that man and he knows as true as he sits that he did not see me."

By the Master:

Q. Speaking of Mr. Franzblau now? A. Yes, I am.

By Mr. Smith:

40 Q. What did he say? A. He said, "I will go up and see Nate," and he did.

Defendant's Witness, Ruth Kerber, Direct

By the Master:

Q. That was the incident that occurred in the rear of the Public Service Building? A. Yes.

By Mr. Smith:

Q. You say that did not take place at all? A. It did nothing of the kind, no. 10

By the Master:

Q. You mean that isn't the fact that they rode with their automobile in the rear of the Public Service building? A. Yes. Mr. Franzblau testified to that. He never saw me there with Mr. Loomis.

Q. You were there on one occasion when he was there in the rear of the Public Service building? A. No, I wasn't. 20

By Mr. Smith:

Q. Later on you moved to Astor Street? A. Yes. I was living at Mrs. Schrader's, 1083 Broad Street. Through Mr. Kerber's not paying me I could not stay there and pay for my room. I had my furniture in storage. My brother got a position and he said he would maintain the place if I put my furniture there. I had to have a place to live, so I agreed. 30

Q. Who lived at the apartment? Did you have any roomers or boarders? A. I have one now.

Q. What is his name? A. Mr. Evans.

Q. Does he get his meals there? A. No, he doesn't. He rooms there.

Q. Is he in court? A. No, he isn't. 40

Defendant's Witness, Ruth Kerber, Direct

Q. Was Mr. Goodman ever there? A. Yes, he was.

Q. What did Mr. Goodman do? A. He had his meals, his lunch and his dinner at night.

10 Q. How did you come to meet him? A. Mr. Goodman had met me a good many years ago through Mr. Murphy, my former husband. Through his business he went to different theatres and he knew Mr. Goodman.

Q. You met him through your brother? A. Through my former husband.

Q. Did you have any improper relations with any one of these men or any man? A. Never.

20 Q. Your husband bought a delicatessen store. Will you tell us the circumstances about that? A. Mr. Kerber bought that because he said he did not want another drug store in opposition to him if he had to rent the place and leave it empty.

By the Master:

Q. Where was that delicatessen? A. On the corner of New Street and High Street.

30 Q. So that he bought that not to have any drug store open near him? A. Yes.

Q. You ran that as best you could? A. I did. I could see Mr. Kerber was losing money. I told him he had better get out before he did not have a penny left.

By Mr. Smith:

Q. Which property did you sell? A. 266 High Street.

40 Q. How much did he get for that? A. \$20,000.

Defendant's Witness, Ruth Kerber, Direct

By the Master:

Q. How much mortgage was on it? A. That I could not tell you.

By Mr. Smith:

Q. Did you get anything out of that? A. I did not ask for anything. He said that he wanted to sell it because it needed a lot of repairs and he would buy another place across the street. 10

Q. Did he ever buy another place across the street? A. No.

Q. On March 17 were you in a room with a man in your home at 2:30 or 11:30 to 2:30? A. No. 20

Q. Does Mr. Goodman still live there? A. He doesn't live at my home. He lives on High Street.

Q. He boarded there? A. He took his meals because I had no other way of maintaining myself. I took a roomer to pay my rent. I had to have a home. I wasn't going to depend on my people. Probably I would not have had anything to eat. 30

Q. Do you know how much your husband made in his business, Mrs. Kerber, did he ever tell you? A. I never really asked him. I have heard him say from \$15,000 to \$20,000 a year.

By the Master:

Q. That he takes in or makes? A. That he takes in. I don't say that is profit.

The Master: That is pretty near what he said himself on the witness stand. 40

Defendant's Witness, Ruth Kerber, Direct

By Mr. Smith:

Q. During any time of your marital life were you ever drunk or disorderly or have any improper relations with any men? A. Never, no.
 10 men, no. Mr. Kerber stated that before Judge Siegler, that morally he trusted me. He also stated to his brother-in-law that he would trust me with an army of men, he would know I would come back the same way.

By the Master:

Q. When did he make that last remark? A. When we were in the delicatessen store.

20 By Mr. Smith:

Q. How did your husband act towards you during your married life with respect to taking you out different places? A. I was always desirous of my husband's company. That was our biggest trouble. I wanted to be in his company.

Q. Were you? A. No.

Q. What caused that condition? A. He always said he was busy but he always found time to
 30 come to Bloomfield or to Connecticut before he married me. I was up there in the summer.

By the Master:

Q. What part of Connecticut? A. Stamford.

By Mr. Smith:

Q. You lived in Bloomfield? A. Yes.

Q. For how long did you live in Bloomfield?
 A. About a year or six months.

40 Q. Is your mother in Connecticut? A. Yes, she is.

Defendant's Witness, Ruth Kerber, Cross

CROSS-EXAMINATION by Judge Howe:

Q. You say that Mr. Goodman just takes his meals at your home? A. Yes.

Q. Was he served last night with a paper at your home? 10

Mr. Smith: I object to that.

The Master: Sustain the objection.

Q. Was he at your home last night? A. That I could not say. I was not home.

Q. Has Mr. Goodman a key to your home? A. He has not.

By the Master:

Q. Is Mr. Goodman here in court? A. Yes, he is. 20

By Judge Howe:

Q. Was Mr. Goodman at your home on March 17 between 11 and 2:30 in the morning? A. No, because I wasn't home.

Q. Who was in your apartment? A. Possibly my roomer. 30

By the Master:

Q. You weren't home? A. No, I wasn't.

Q. You don't know whether your roomer was there or not? A. No.

By Judge Howe:

Q. Mr. Goodman has been in your home late in the evening? A. Yes, he has.

Q. He is only there to get his lunch and his supper? A. Yes. 40

Defendant's Witness, Ruth Kerber, Cross

Q. How much does he pay you for lunch and supper a week?

Mr. Smith: I object.

The Master: I will allow it.

10

Q. \$8 a week.

Q. You have a roomer now, Mrs. Kerber? A. Yes.

Q. A man? A. Yes.

Q. How many rooms have you there? A. Three rooms.

Q. Does anyone else live with you besides this boarder? A. No.

20 Q. Have you tried to get a woman to room with you there? A. Yes, I have tried but women won't give you the money that a man will. That is what I have to look after to pay my rent.

Q. What rent do you pay there? A. \$50. I pay \$25 the first of the month and \$25 the middle.

Q. Are you working? A. No, I am not working.

Q. Where do you get that \$50?

30

Mr. Smith: I object.

The Master: I will allow it.

A. I get it from my roomer.

Q. How much does your roomer pay? A. \$10 a week, because it is a beautifully furnished room.

Q. That is approximately \$40 a month, isn't it? A. Yes.

40 Q. Where do you get the balance? A. From what I get from Mr. Goodman. My people always help me. My mother gives me at the rate of \$5 a week.

Defendant's Witness, Ruth Kerber, Cross

By the Master:

Q. You get \$8 a week from Goodman? A. Yes.

By Judge Howe:

Q. You testified that when Loomis was there that was the first time you had seen him? A. Yes, I did. 10

Q. You had never seen him before? A. Never.

Q. Did you ever see him again? A. Yes, I did.

Q. On how many occasions? A. Possibly four or five, six possibly.

Q. You were with him in an automobile at the time your husband drove into the automobile and struck it? A. That I can't remember. 20

Q. You don't remember your husband running into Loomis' car when you were in it with him on Marshall Street? A. Yes, I do remember that Mr. Kerber wanted me to go there to see this man he was going to sell the house to.

Q. You were with Mr. Loomis in the Veterans' Club on several occasions? A. No, I was not.

Q. Were you never at the Veterans' Club with Mr. Loomis? A. Never. 30

Q. Were you ever out with Mr. Loomis other than at the Veterans' Club? A. No.

Q. You were with him on five or six occasions? A. I was not.

Q. Didn't you just say that? A. I said I saw him on five or six occasions. That doesn't mean I was with him. I have seen him on the street.

Q. You were not behind the Public Service 40

Defendant's Witness, Ruth Kerber, Cross

Terminal on the occasion your husband and Mr. Franzblau mentioned, is that true? A. Yes, sir, it is.

By the Master:

10 Q. It is true she was not there? A. Yes.

Adjourned until two P. M.

Afternoon session.

RUTH KERBER, continued.

20 *By Judge Howe:*

Q. You testified you had your smock on when your husband came to your home on the occasion when he found Mr. Loomis there? A. Yes.

Q. You might have had your nightgown underneath that? A. Yes.

30 Q. This woman told you that she was going to have her friend call at your home? A. She did not.

Q. Did you know before she came there with that gentleman he was coming? A. She did not come with him.

Q. When did the man come? A. He came at noontime.

Q. Did you know he was coming? A. No, I did not.

40 Q. Didn't he tell you he was going to call for Loomis and ask you whether Loomis might come to your home? A. He wasn't there at the time.

Defendant's Witness, Ruth Kerber, Cross

Q. Didn't you testify this man said Mr. Loomis would like to come up? A. That was after.

Q. When he came you were still in your nightgown? A. With my smock over it, yes.

Q. You said on your direct-examination, "I have been in other men's company," didn't you? A. Yes. 10

Q. That was while you were married and living at home with your husband? A. At various friends'.

Q. While you were married and living with your husband? A. Yes.

Q. You said too, "I don't get drunk, I get sick"? A. That is possible. 20

Q. When you get sick you are compelled to lie down? A. Not always.

Q. You get dopey? A. Not necessarily.

Q. You never get dopey when you get sick? You never have to lie down? A. Not necessarily.

Q. Don't you have to lie down when you get sick from liquor?

Mr. Smith: I object to that. 30

The Master: I think that is perfectly proper.

Q. Have you ever had to lie down when you got sick from drinking liquor? A. No, it would be time to go to bed.

By the Master:

Q. Did you ever have to lie down as a result of drinking liquor because you became sick? A. Yes. 40

Defendant's Witness, Ruth Kerber, Cross

By Judge Howe:

Q. You do get sick? A. Occasionally.

Q. You get sick to your stomach? A. Occasionally.

10 Q. From drinking liquor? A. Not always liquor.

Q. When you do drink liquor you occasionally get sick? A. Once in a while.

Q. Wouldn't you say that was a condition of drunkenness? A. No, I wouldn't.

Q. How did one gain admission to the Veterans' Club while you were there? How could anyone who came there gain admission? Was there a card necessary? A. You rang the bell.

20 Q. Who would answer the bell? A. Whoever might be there.

Q. Did they allow everyone to come in? A. Yes.

Q. Anyone at all who rang the bell? A. To my knowledge, yes.

Q. You said the club was for veterans? A. For them to come there and bring their sweethearts and wives.

30 Q. How did you get in? A. I was a friend of Mrs. Welch. Her husband had the lease at that time.

Q. You said this morning they did not sell liquor there? A. Yes.

Q. Didn't they ever sell liquor there?

The Master: They are not on trial for selling liquor.

Q. Did you drink liquor there? A. No.

40 Q. Did you drink wine there? A. I drank beer there.

Defendant's Witness, Ruth Kerber, Cross

Q. Do you recall your testimony in Judge Siegler's court with reference to your being found by your husband in the Veterans' Club?

The Master: Direct her attention to the question.

10

Q. When the Court says, "Let me know when it took place (referring to a certain event) when did it happen?" Do you recall your answer? "A. That happened last May when I was out with a girl in the club and this girl I was with she had a sweetheart. He had a young man with him. He got very jealous. We were sitting there drinking wine." Do you recall giving that testimony?

20

By the Master:

Q. Did you say that at that time or don't you recall saying that? A. I don't recall saying it.

By Judge Howe:

Q. Would you say you didn't say that?

Mr. Smith: I object to that.

The Master: She says she don't recall saying it.

30

Q. Did you ever sit in there drinking wine with a girl friend and two gentlemen? A. Never in the Veterans' Club; no.

Q. Does your husband drink? A. Yes.

Q. Do you recall the testimony given before Judge Siegler that your husband hated wine and liquor? A. I never said that.

Q. Do you remember your stepfather saying that in your presence?

40

Defendant's Witness, Ruth Kerber, Cross

Mr. Smith: I object to that.

The Master: She isn't bound by what her stepfather said.

10 Q. What did you mean when you said this morning sometime after you and your husband separated you said, "Nate, why don't you overlook this?" A. Our quarrels.

Q. Is that what you meant, the quarrels? A. The quarrels.

Q. Weren't your quarrels brought about by the fact of your drinking and seeing you with other men? A. No, mostly by other women on his part.

20 Q. What were your husband's hours in this drug store, approximately? A. When he felt like it he was there all day. When he didn't he wasn't.

Q. Isn't it true he usually worked in that drug store all day and a great part of the evening? A. Not when he had a quarrel with me.

By the Master:

30 Q. Outside the times when he had the quarrel, when did he go to work and when did he return home? A. Around ten o'clock in the morning.

Q. What time did he come back? A. Come back for dinner, then usually come home 12 or 12:30.

By Judge Howe:

Q. He did take you out to the movies occasionally in the evening? A. Yes.

40 Q. This letter you showed a yellow copy of,

Defendant's Witness, Ruth Kerber, Cross

you wrote that under the direction of a lawyer? A. No, under the direction of myself.

Q. Why did you go to a lawyer's office?

Mr. Smith: I object.

The Master: I will allow it.

10

A. I wrote a letter to Mr. Kerber wanting to start housekeeping. He said, "Let me copy that letter." He copied the letter.

Q. You testified at the time your husband came in your home and found Loomis that that was the first you met Loomis? A. Yes, the very first time.

Q. A short time later you were at a house party with him? A. I was not.

20

Q. Wasn't he there at the party? A. That wasn't my fault. I was with Mr. Kerber's daughter.

Q. You also were found with him in a car at the time your husband ran into the car? A. That I can't remember definitely.

Q. Wouldn't you remember if you were in an automobile with which your husband collided with his car? A. No.

Q. Didn't you testify in Judge Siegler's court to remembering it? A. I don't recall.

30

Q. You never knew Loomis before that day when your husband came home and found you there with him? A. No.

Q. Do you remember this in Judge Siegler's court: "Q. How many times have you been in that car with Loomis? A. I don't know. Q. Quite a few? A. No, I wouldn't say that." Do you remember testifying to that? A. No.

40

Q. Do you remember testifying to this in

Defendant's Witness, Ruth Kerber, Cross

10 connection with your husband's statement that this is the finish in one of your quarrels, "And I went to his store after that. I expected him to come home. I told him if he would be different, I would be different." Do you remember making that statement? A. Yes, I do.

Q. Do you remember when you were asked what happened when you said to your husband if he would be different you would be different what led you to make that statement? Do you remember your answer? "A. Because he said if I went out he would go out." A. No, I don't remember that.

20 Q. Do you remember this question: "How many times have you been in the Veterans' Club?" A. Oh, on many occasions with Mrs. Welch. She owned it." A. Yes.

Q. This question: "Were you ever in an automobile with another man?" A. Yes, but with other people. Q. The man's name is Loomis? A. Yes, sir." A. No.

Q. You don't remember that? A. No, I never said that.

30 Q. At that house party which you testified Mr. Loomis and Mr. Kerber's daughter were present, didn't Mr. Kerber ask you if he could call and take you home after the party? A. He did come and call for me.

Q. Isn't it true that you said, "No, don't call for me, I will be home early myself"? A. He came and called for me. How would he know where I was?

40 The Master: Just answer the question.

Q. You were at Dinnie Brook Farm, were you not? A. I admitted that.

*Defendant's Witness, William C. Goodman,
Direct*

Q. Do you know whether or not your husband knew you were at Dinnie Brook Farm?

Mr. Smith: I object to that.

The Master: I will allow it.

10

A. I called him up and told him.

WILLIAM C. GOODMAN, being duly sworn on his oath, testifies as follows:

Direct-examination by Mr. Smith:

Q. Mr. Goodman, are you the man who was subpoenaed by Mr. Powers, the constable, last night? A. Yes, sir. 20

Q. Subpoenaed here on behalf of the petitioner? A. Yes.

Q. Did you get your meals at Mrs. Kerber's house? A. Yes, sir.

Q. For how long a period of time did you get your meals there? A. Since this year, since her brother left.

Q. Did you have any improper relations with Mrs. Kerber? A. No, sir. 30

Q. What did you observe about Mrs. Kerber, her demeanor in her household? A. She was a perfect lady. Her house was always neat. She made good meals. That is all I can say.

By the Master:

Q. Where do you live? A. 725 High Street, corner of Spruce. 40

Q. Are you married or single? A. Married.

*Defendant's Witness, William C. Goodman,
Cross*

Q. Separated from your wife? A. Yes.

Q. For how long have you been separated? A.
A year and a half.

Q. What is your business? A. Musician.

10 Q. How did you come to meet this lady? A.
I met her through her brother. I met her years
ago. I never seen her again until I met her
brother at the armory one night. I met her
brother and he asked me would I introduce him
to some of the electricians in the different
houses. I went over to the house to dinner one
night. At that time she lived on Hill Street.
That is how I met her.

20 Q. How much do you pay her for the meals?
A. \$8.00 a week.

CROSS-EXAMINATION by Judge Howe:

Q. Were you at the apartment last night? A.
Yes, sir.

Q. How did you get in? A. With Mr. Hogan.

30 Q. How did you get in? A. Mr. Hogan had
the keys. He gave me the keys and said unlock
the door. He had a dog. He said, "Unlock
the door and go in. There is a package I want
to get."

By the Master:

Q. Who is Mr. Hogan? A. He is a friend of
mine who lives at 1083 Broad Street, the man I
visit.

By Judge Howe:

40 Q. Mr. Hogan had a key with which to get in

*Defendant's Witness, William C. Goodman,
Cross*

the apartment? A. Yes, and give it to me. He said, "Unlock the door."

Q. Why did you go in the apartment? A. I was taking a walk and I met Mr. Hogan.

Q. Do you know what was in the package? A. No. 10

Q. Were you there in that apartment on March 17 at night? A. No, sir.

Q. You didn't go in at 11:00 and come out at 2:30? A. No, sir, not on the 17th.

Q. Any other night? A. While her brother was there there were several other nights.

Q. You have been there with her brother? A. Yes.

Q. You have never been there alone with Mrs. Kerber when her brother wasn't there? A. No. 20

Q. Know where Martinsville is? A. Yes.

Q. You have been there too? A. Yes.

Q. Who lives in Martinsville? A. Miss Jacobus' mother and father.

Q. How long were you in Martinsville the last time you were there?

Mr. Smith: I object to that. 30

The Master: I will allow it.

A. Just visit there and came back after the show at night.

Q. When did you assume your friendship, friendly relations, with Mrs. Kerber? How long ago?

Mr. Smith: I object to that.

The Master: I will allow it. 40

A. I met her a long time ago. I haven't seen her in a period of years.

Defendant's Witness, Ethel L. Sipp, Direct

Q. Until when, a year ago? A. No, it was two years ago I would say.

Q. One time since you met her two years ago you went back to Martinsville and stayed there for six weeks? A. No.

10 Q. How long did you stay there? A. I stayed there different times on the invitation of Mr. Sipp and Mrs. Sipp.

Q. Mrs. Kerber was there? A. She has been there some of the times. Lots of times she wasn't there.

Q. Isn't it since you met Mrs. Kerber two years ago that your wife stopped living with you? A. That is a year and a half ago.

20 Q. Since you met Mrs. Kerber the second time? A. That had nothing to do with it.

RE-DIRECT EXAMINATION by Mr. Smith:

Q. What relation had your wife leaving you or not living with you with your meeting Mrs. Kerber? A. None whatever. That was a matter of money.

30

ETHEL L. SIPP, being duly sworn on her oath, testifies as follows:

Direct-examination by Mr. Smith:

Q. Mrs. Sipp, you are the mother of Mrs. Kerber? A. Yes, I am.

40 Q. And have you had occasion to visit the home of your daughter and her husband on South 7th Street, Newark? A. Yes, indeed.

Defendant's Witness, Ethel L. Sipp, Direct

Q. When was the first time you visited there?

A. I just can't recall.

Q. 1926—'27? A. Right after they moved there. I was a frequent visitor at their home at all times.

Q. Did you observe any conditions in that home in respect to Mrs. Kerber and her husband? A. No, only occasionally they would have little arguments but nothing very serious. 10

Q. Did you ever stay there over night with Mrs. Kerber? A. Yes.

Q. Was her husband there during that time?

A. Some of the times; some of the times he would be away.

Q. How long would he stay away? A. Sometimes he would stay away a night and a day, sometimes two. When he would come back I would always ask him where he had been. He said he had been at the Turkish Bath. I was always very friendly with him. Whenever he would come back I would say, "Where have you been? Why didn't you come home?" He would say, "I didn't want to come home." 20

Q. Would he say anything else? A. No, not at that time. 30

Q. Did you observe the household Mrs. Kerber ran? A. Yes.

Q. What kind of a household was it? A. She was always a very good housekeeper.

By the Master:

Q. Cleanly? A. Cleanly.

Q. Tidy? A. She was brought up that way.

By Mr. Smith: 40

Q. Then after they moved from 7th Street to

Defendant's Witness, Ethel L. Sipp, Direct

High Street did you have occasion to go to the High Street house? A. Yes, indeed.

Q. Did you stay in her home? A. I did.

10 Q. What condition prevailed there in respect to Mr. Kerber's leaving the house or leaving the home? A. He would go away and stay the same as he did before.

Q. How long would he stay away? A. A day or two days, a night.

Q. Did you question him then? Did you ask him where he was? A. Yes, and so did my daughter.

Q. What did he say? A. He would invariably say he had been at the Turkish Bath.

20 Q. Was it always that? A. When my daughter would question him then he would say he was out and it was none of her business where he was.

Q. Did you hear that? A. Yes.

Q. With your own ears? A. I did.

Q. What did you observe about him in relation to his wife, was he kind to her? A. When they were all right, yes. When he was quarreling with her he was very unkind.

30 Q. Tell the Court just what would happen? A. Beat her and has struck her and all those sort of things.

Q. Were you present at the time that your son-in-law left the house? A. I was present.

Q. Tell the Court the circumstances of his leaving? A. I was there, staying there, about ten days.

40 Q. Were you there the night before he left? A. I was there the night before and I was there the morning.

Defendant's Witness, Ethel L. Sipp, Direct

Q. Was he there the night before? A. He was not.

Q. Where was he, do you know? A. I don't know.

Q. What time did he get in? A. He came there around nine o'clock or eight-thirty. The moving men were there. The night before he came up to me and he said, "Mother, I am going to move out of here." He said, "Will you pack up the things?" I said, "Nate, you could not ask me to pack up Ruth's things." He said, "It don't make any difference. I am not going to pay rent when she isn't here." I said, "Nate, how can you expect her to give up her home?" He said, "I don't care. I am not going to pack the things up. I will have the moving men here in the morning." I said, "Nate, don't do that. Just forget all those things. Come on back home and be yourself again." He said, "No, I won't." He would not listen to me. I put my arms around him. I was always very fond of Mr. Kerber. I coaxed him. I did everything. I could not make peace that time. That was one time I could not make peace.

Q. At any time was there any reference made by him relative to your daughter going out with other men? A. Yes, he used to say that to me. I said, "Nate, you know Ruth would not go out with other men. As far as being unfaithful to you, she never would."

By the Master:

Q. You said you were there the night before and that you were there for ten days, were

Defendant's Witness, Ethel L. Sipp, Direct

you living there for ten days with your daughter? A. I was living there with my daughter. My daughter only had one sleeping room. My husband was with me. She would go down to her friend's and stay at night so we might stay there.

10 Q. You were there continuously for ten nights? You and your husband slept there in that apartment. Did Mr. Kerber come home during those ten nights? A. He was there after we were there about four days. He came in. I was much surprised to see him. Of course, I was always friendly with Mr. Kerber. He came in and went around through the house.

20 Of course I had stayed there. I had everything in order.

Q. Did he say anything about his wife, ask where she was? A. He did not.

Q. He didn't ask about her? A. No.

Q. That was four days after. When was the next time you saw him? A. During that time we were there he came in about three times.

Q. He never stayed there over night? A. He could not stay if he wanted to.

30 Q. He could have told you to go home. I am asking whether he ever came and remained over night? A. He did not show any desire to stay over night.

By Mr. Smith:

Q. Was he satisfied to have you stay there? A. He was satisfied.

Q. He knew where his wife was? A. I told him where she was.

40 Q. On June 1 he came there about 9:30 in

Defendant's Witness, Ethel L. Sipp, Direct

the morning? A. I imagine it was earlier than that.

Q. Go on from there. A. He came in and in the meantime I went out.

By the Master:

10

Q. Was your daughter there? A. No, I called her up. I told her, "Ruth come right home."

Q. As a result of what you said Ruth did come home? A. Yes, before she got home the moving men were taking the mirrors off the dressers. They were piling up the bedding to take out. In the meantime Mr. Kerber came in and he took things of his, clothes and radio.

20

He walked out and went downstairs with those things. He came back. In the meantime my daughter came home. She asked him what he meant. He said he was going to move the things. She said, "You don't dare to. If you do, you will move them over my dead body."

Then I tried to make peace. I called him in and talked to him. She told the moving men not to take another thing. Then they got the manager of the moving company and he came there and

30

of course they were having a hot argument by that time. I tried to get Mr. Kerber to make peace and stay home. He said, "No, I will never stay here. No, I will never live with her again as long as I live. I don't want anything to do with her. I will give her \$25 a week. I will even perjure myself that she can get a divorce." I said, "Nate, you don't mean that. Just try and patch things up and don't do this."

I tried to patch things up.

40

Defendant's Witness, Ethel L. Sipp, Cross

By Mr. Smith:

Q. Did you remain there? A. I stayed there that day. We went downtown. I was so terribly upset then I told my daughter—

10 Q. Did your daughter order him out of the house? A. She did not. He ordered her.

Q. Was the moving wagon there before your daughter came home? A. Yes.

Q. Did you see Mr. Kerber after that? A. No.

Q. You did not see him after that day at all? A. Never.

By the Master:

20 Q. He never called at your house? A. No, several times I have been prompted to call on him.

Q. You did not call on him? A. I did not, no.

CROSS-EXAMINATION by Judge Howe:

30 Q. You say you have considerable affection for Nate? A. Yes.

Q. He has always been very kind to you? A. The best in the world.

Q. The last ten days of May, 1927, when you were at the home he wasn't there because he was giving up his bedroom to you and your husband, is that correct? A. No, he did not give it to me. He did not know I was there.

40 Q. Didn't you say he could not have stayed there if he wanted to? A. I said he could not stay.

Defendant's Witness, Ethel L. Sipp, Cross

Q. Because you and your husband were there?

A. But four days prior to that he wasn't home.

Q. Your daughter was not there during that time? A. She would come home during the day and come there in the evening.

Q. Nate told you he was giving up the home because he would not pay rent if she wasn't there? A. Yes. 10

Q. You knew what he meant, didn't you, Mrs. Sipp? You knew that it was because your daughter had not been in the home that month? A. She had been in the home and had friends there prior to my coming.

Q. Were you there prior to those last ten days? A. Yes, I was. 20

Q. At night or in the daytime? A. In the daytime.

Q. Does your daughter drink? A. She might take a friendly drink.

Q. Mr. Kerber complained to you a good deal about her excessive drinking? A. Yes, he complained but he had it in the house for her to drink.

Q. Do you recall this question, "Did Mr. Kerber complain to you that she was drinking excessively," and your answer, "Yes, he did"? A. He did, yes. 30

Q. "What would he say? A. He said that she would come in intoxicated"? A. Yes.

Q. "Did you speak to Ruth about it? A. I did and she said that wasn't it, that he was just trying to get rid of her"? A. Yes.

Q. Do you recall this, "Q. One of the differences at that time was the fact that his wife stayed out? A. Yes, and he stayed out too and 40

Defendant's Witness, Ethel L. Sipp, Re-direct

that caused all the disturbance. Q. Just answer the question now, we will get along better. That was one of the chief complaints, that she was not there when he came there? A. Yes, I suppose so''? A. I don't recall that.

10 Q. He frequently complained to you his wife was away? A. He would come in and ask me but I did not pay much attention to it. She was young. She could not sit and look at four walls all day.

By the Master:

Q. Did he complain to you that she went out at night with other men? A. No, he did not.

20 By Judge Howe:

Q. That was your daughter's attitude, she could not look at four walls all day? A. She was in that house from morning until night, sometimes two or three o'clock in the morning and not a living soul there with her.

Q. You knew Mr. Kerber's hours were long? A. He did other things.

30 Q. Didn't Mr. Kerber ever take your daughter out to your knowledge? A. Yes, indeed.

RE-DIRECT EXAMINATION by Mr. Smith:

Q. Was there any whiskey in that household? A. There was by the bottle.

Q. Where was it? A. In the house.

Q. Whose whiskey was it? A. Mr. Kerber's.

Defendant's Witness, Mary Welch, Direct

RE-CROSS EXAMINATION by Judge Howe:

Q. Do you recall the testimony in the Domestic Relations Court where Mr. Kerber asked if—

Mr. Smith: I object.

10

The Master: I won't allow that.

MARY WELCH, being duly sworn on her oath, testified as follows:

Direct-examination by Mr. Smith:

Q. Mrs. Welch, do you know Mrs. Kerber? 20

A. I do.

Q. You are a friend of hers? A. I am.

Q. Did you have occasion to go up to Mr. Kerber's drug store sometime in the fall of 1927? A. I used to drive her up in my car.

By the Master:

Q. Did you go up in the fall of 1927? A. I did.

Q. Can you fix the time? A. In the evening about eight o'clock. 30

Q. What month of the year? A. In the fall of the year.

Q. September or October, 1927? A. About September I imagine.

By Mr. Smith:

Q. Did you go into the drug store with Mrs. Kerber? A. Yes, sir. 40

Defendant's Witness, Mary Welch, Direct

Q. Were you present at the conversation between Mrs. Kerber and Mr. Kerber? A. Yes.

10 Q. Tell the court what took place? A. Mrs. Kerber went up there for her check that had been overdue. She got in a conversation with Mr. Kerber. She asked him if he would not go back and live with her again, they had the furniture and she cried to him. He said absolutely he would not. She often asked him if there was another woman involved and he said, "Now, I am telling you there is." He said, "Why don't you get yourself another man. I don't care if you had a dozen men."

20 Q. How many times were you up there? A. On several occasions.

Q. What was the conversation you say? A. That was the conversation on the first occasion.

Q. You were there on several occasions? A. I have been up there a couple of times.

By the Master:

30 Q. He would not always say the same thing? A. I think that was the last time I took Mrs. Kerber up there and he told her not to come any more. It would be better for him and also herself that she should not come there.

By Judge Howe:

Q. Were you present at the hearing in the Domestic Relations Court? A. Yes, sir.

Q. Did you testify? A. No, I did not.

40 Q. Are you the lady who ran the Veterans' Club? A. My husband is president of that organization.

Defendant's Witness, Margaret Schrader, Direct

Q. What was it a corporation? A. It was incorporated, yes, sir.

MARGARET SCHRADER, being duly sworn 10
on her oath, testified as follows:

Direct-examination by Mr. Smith:

Q. Mrs. Schrader, do you conduct a rooming house at 1083 Broad Street? A. Yes.

Q. You are a widow? A. Yes, I am.

Q. Did Mrs. Kerber ever live at your place? A. Yes, she did.

Q. When did she leave, Mrs. Schrader? A. 20
She moved—I lived at 77 Sixth Avenue—after Mr. Kerber had their trouble she came to live with me when I moved in that house.

Q. When was that? A. That was in May, 1928, two years this May.

Q. How long did she live with you there? A. She lived with me until last September when her brother came. He got a position and she took an apartment on Astor Street. She was putting her things in storage. Then he came and told her he would take the things and they would take this apartment. 30

Q. Did you observe Mrs. Kerber's demeanor while she was in your rooming house?

Judge Howe: I object to that.

The Master: I think he is entitled to have her testify as to that.

A. Yes, always. 40

Q. What was her conduct while she was in

Defendant's Witness, Thomas Hogan, Direct

your place? A. Her conduct was always as a lady.

By the Master:

10 Q. As far as you observed she always conducted herself properly? A. As a lady.

THOMAS HOGAN, being duly sworn on his oath testified as follows:

Direct-examination by Mr. Smith:

20 Q. Mr. Hogan, did you assist Mrs. Kerber in moving in July, 1927? A. I did, sir. I went up there to help her.

Q. Are you a friend of the Sipp family? A. I have known them for years.

Q. Was Mr. Kerber there at that time? A. He was not.

Q. Were you at Mrs. Kerber's last night? A. I was.

Q. What was that address? A. 25 Astor Street.

30 Q. You went in there? A. I did.

Q. You had Mrs. Kerber's keys? A. I had the keys.

Q. What was your purpose in going there? A. Mrs. Kerber asked me if I would get an envelope that she might need and bring it back to the house so that she could get it ready.

Q. Where was Mrs. Kerber when she gave you the keys? A. 1083 Broad Street.

40 Q. At whose home was that? A. Mrs. Schrad-
der's.

Defendant's Witness, Margaret Schrader, Direct

Q. Was Mrs. Schrader there when she gave you the keys? A. Yes, she was there.

CROSS-EXAMINATION by Judge Howe:

Q. What time was it that you went to the house? A. That was about 11:30. 10

Q. Where did you go when you left there?
A. When I left the house I went back to 1083 Broad Street.

By the Master:

Q. Do you live there? A. I live there.

By Judge Howe:

Q. How long have you lived at 1083 Broad Street? A. Ever since Mrs. Schrader has lived in the house. I moved with her from the other house. 20

Q. That is about two years? A. That is about two years.

MARGARET SCHRADER, recalled: 30

By the Master:

Q. Is that gentleman living at your house for the past two years? A. Yes.

Q. Were you present last evening when this lady gave him the keys? A. Yes.

Q. Is that correct as he told it? A. Yes.

Q. You heard her give him the keys? A. He was to go over early. He said he will wait until he takes the dog out for an airing. 40

Petitioner's Witness, Nathan Kerber, Direct

NATHAN KERBER, recalled:

Direct-examination by Judge Howe:

Q. Did you ever make these statements to
your wife that you had other women besides
10 her? A. No.

Q. Did you tell her to go out and get other
men? A. No, sir.

Q. Did you tell her you did not care whether
she had a dozen other men? A. No, sir.

Q. Did your mother in your presence ever
tell your wife that it was too bad that your
wife did not see your mother before she mar-
ried you? A. No, my wife knew her long be-
20 fore I married her. No, sir, she did not say
anything of the kind.

Q. Did your mother in your presence ever
make any statements to your wife about your
conduct prior to your marriage? A. No, sir.

Q. How long did your mother know Mrs. Ker-
ber before you were married?

Mr. Smith: I object to that.

The Master: I will allow it.

30 A. Five or six years.

Q. Why isn't your mother here?

Mr. Smith: I object to that.

The Master: I will allow it.

A. My mother is a sickly woman, very nerv-
ous.

Q. Are you at the present time supporting or
assisting in supporting any persons beside your-
self? A. Yes, sir.

40 Q. Are you helping to support your mother?
A. Yes.

Petitioner's Witness, Nathan Kerber, Cross

Q. Is your father living? A. He is.

Q. Isn't he working? A. He doesn't make much.

Q. How much do you give your mother? A. I give her sometimes \$20 a week, sometimes \$15 a week as much as I can. I have my daughter to support too. 10

Q. Where is your daughter? A. In Long Branch.

Q. How old is she? A. She will be 12 years old.

Q. Daughter by a former marriage? A. Yes.

Q. Who does she live with? A. My first mother-in-law.

Q. Do you pay anything toward her board? 20
A. Yes, sir.

Q. How much? A. \$10 or \$12 a week.

Q. Do you pay any extras? A. I buy her clothes.

Q. What happened to your first wife?

Mr. Smith: I object.

The Master: He has a right to answer that.

A. She died. 30

Q. Do you live with your mother? A. Yes, sir.

CROSS-EXAMINATION by Mr. Smith:

Q. Your father has a place of business? A. He has a small tailor shop, does repairing.

Q. You never had to support your mother?

A. I always have from the time I first started to work. 40

Q. Your father is living at home with your mother? A. Yes.

Petitioner's Witness, Nathan Kerber, Cross

By the Master:

Q. Has your father got a regular business?

A. He has a tailor shop where he does cleaning and repairing.

10 Q. Where is it located? A. On Norfolk Street.

Q. How long has he been there? A. About two years.

Q. Are there any other members in your family besides yourself? A. My sister.

Q. What does she do? A. She is married.

Q. Your father and mother are the only ones living home? A. And myself.

20 By Mr. Smith:

Q. How much rent does your father pay for the store?

The Master: Don't go into that.

A. \$15.00 a month.

Q. Where does he live? A. Home with my mother on Belmont Avenue.

Q. What number? A. 322.

30 Q. That is an apartment house? A. Yes.

Q. Is that beyond Clinton Avenue? A. No, this side of Clinton Avenue.

Q. How many rooms have they there? A. Five rooms.

Q. How much rent do they pay? A. \$55.00.

Q. Just the two of them live there? A. I live there.

Q. You pay board there, don't you? A. Yes.

40 Q. That is what you contribute to your mother? A. I give her as much as I really can. My father sometimes doesn't make \$10. Sometimes he makes \$15 or \$20. I have to give the rest.

Defendant's Exhibit D1.

Post Office Department
 Official Business

Registered Article

No. 213996

Insured Parcel 21730

No.

10

Return to R. Kerber

Street and Number,) 1083 Broad St.
 or Post Office Box) Newark, New Jersey.

Return Receipt.

Received from the Postmaster the Registered
 or Insured Article, the original number of which
 appears on the face of this card.

20

KERBER

(Signature or name of Addressee)

SCHAEFFER

(Signature of addressee's agent)

Date of delivery 5/5/28

30

40

New Jersey Court of Errors and Appeals

Between

NATHAN KERBER,
Petitioner-Appellant,

and

RUTH KERBER,
Defendant-Respondent.

*On Petition
for Divorce.*

*On Appeal
from
Chancery.*

BRIEF FOR PETITIONER-APPELLANT.

This is a contested desertion case in which the petitioner's petition was dismissed in a decree advised by Advisory Master, Jacob L. Newman of Newark, N. J., on the ground that the petitioner had not sustained the burden of establishing the facts by the greater weight of the evidence.

The husband, petitioner-appellant, claims that the evidence did not warrant the Court in dismissing the petition, that the petitioner did sustain his burden of proving that the defendant was guilty of continued, wilful and obstinate desertion within the meaning of the statute, that there was sufficient corroboration of his testimony and that the decree is contrary to the evidence and contrary to law.

Petitioner's Case.

The petitioner and defendant were married on August 27, 1924, at Stamford, Connecticut, and lived together with certain brief interruptions until May 1, 1927, when the defendant deserted petitioner at Newark, N. J.

After living for a short period of time in Stamford, Connecticut, the petitioner and defendant moved to 19 South Seventh street, in the City of Newark, N. J., where they resided for one year; from here they moved to 266 High street, where they lived for approximately one year, moving thence to Roseville and Fourth avenues, Newark, N. J., their last residence, where they remained for approximately six months, until May 1, 1927, when the separation occurred.

Shortly after moving to Newark, N. J., the petitioner and the defendant had quarrels over the wife's conduct with other men and her excessive drinking.

The defendant left the petitioner without explanation, on several occasions, remaining away for periods lasting from three days to one week. Upon her return, the petitioner would demand of the defendant an explanation of her absence, to which she would invariably reply either that she was to her sister's or that it was none of his "damn business where she was" (p. 19, fol. 1-23).

On many occasions after these absences she would return under the influence of liquor (p. 19, fol. 28). She would on innumerable occasions return to her home intoxicated (p. 19, fol. 23). The petitioner also found her at a place of low repute, known as the Veterans' Club, drinking with several men and under the influence of liquor. He also found her at his home drunk on several occasions.

On one occasion, while they were residing at South Seventh street, Newark, the petitioner returned unexpectedly to his home one morning and found his wife and a man by the name of Loomis running out of one of the bedrooms; and in the rear bedroom found another couple. The

wife upon being discovered ran into the bathroom where she locked herself in; and the petitioner put Loomis and the other couple out of his home. They were all under the influence of liquor and the wife wore only a night gown (p. 21, fol. 32, to p. 22, fol. 28).

Several months later the petitioner discovered his wife with the same Loomis at the home of a friend in Newark, where he found Loomis hiding in a closet. Subsequent to this occasion the petitioner saw his wife with Loomis several times.

About a year before the desertion petitioner found his wife and Loomis coming out of the Veterans' Club and getting into an automobile. On this occasion the petitioner followed them with his automobile and stopped them by running them into the curb (p. 24, fol. 21 to 32). Later the petitioner followed Loomis from a saloon on Sixth street to the rear of the Terminal Building in Newark, where Loomis met the defendant (p. 26, fol. 19).

He also learned from a representative of Tappin's Jewelry Store of Newark, that his wife had received certain articles of jewelry from Loomis, which were unpaid for, and which the defendant claimed Loomis had retaken from her while she was intoxicated. This jewelry was purchased on December 21, 1925, and December 23, 1926 (p. 74, fol. 5).

The petitioner continually begged his wife to desist from her conduct in going out with men and becoming habitually intoxicated, and as early as 1925, in an effort to keep his wife occupied, purchased for her a delicatessen near his drug store on High street, Newark (p. 27, fol. 24 to 38); but he was compelled to close this after two months due to the defendant's neglecting to take

proper care of it. The petitioner also placed a deposit upon a small farm in order to remove his wife from her associations around Newark, but due to the inability to complete arrangements, the proposition was dropped (p. 28, fol. 40).

The defendant's conduct, as aforesaid, finally culminated with her leaving petitioner on May 1, 1927, after the petitioner had admonished her for coming home drunk the night previous, to which she replied by calling him "a God damn rotten Jew bastard, that I did not have to live with her if I did not want to, that she could get all the men she wanted. I thought that if that was the way she wanted to live we could not live together any longer" (p. 16, fol. 24). The petitioner told defendant that he would give her two weeks to return; that if she did not come back in two weeks, he was going to move the furniture to storage on June 1st (p. 16, fol. 3 to 9). Defendant, after removing all of her clothing from the home, did not return until the morning of June 1st, when the moving men were about to move the furniture from his home. The defendant at that time told petitioner that he didn't dare to take the furniture, that it was hers and for him "to get the hell out, she could keep that apartment going, she did not need his assistance" (p. 18, fol. 9). The petitioner had kept the home open the entire month of May, but the defendant did not return to his home.

Subsequent to the defendant's leaving, petitioner paid her \$25.00 a week in the hope that she would conduct herself better (p. 33, fol. 14). This the petitioner did voluntarily for nine months after the defendant's leaving, subsequent to which he paid her \$10.00 per week until ordered to stop by Judge Siegler of the Essex County Juvenile Court (p. 33, fol. 34 to 40).

The defendant's course of conduct did not change after leaving the petitioner, but she continued to persist in going out with other men. During the year 1928, the petitioner saw defendant several times in the company of a Mr. Goodman, on several occasions following them to her home at 1083 Broad street, Newark (p. 34, fol. 34 to 39). He also saw them several times coming from the Veterans' Club and going to her home at 49 Hill street, Newark (p. 31, fol. 17 to 20). He also saw the defendant meet Goodman on several occasions in the rear of the Mosque Theatre in Newark, from where he followed them to the defendant's home at 1083 Broad street. On many occasions he saw the defendant and Goodman enter the defendant's apartment at 49 Hill street, where he would wait three or four hours to see if Goodman would come out; but on no occasion did he see Goodman leave the apartment.

Finally on the 17th of March, 1930, the petitioner followed the defendant and Goodman to 25 Astor street, Newark, where the defendant was then living (p. 29, fol. 41, to p. 30, fol. 20). On this occasion the petitioner was lifted to the window sill of his wife's bedroom and looked in, to find his wife, the defendant, sitting on a bed beside Goodman. She was in a night gown and he had his coat off (p. 30, fol. 19 to 30). They were in the apartment from 11:30 until 2:00 in the morning (p. 30, fol. 35).

Petitioner's Corroboration.

Every material factor in the petitioner's case is corroborated either by the testimony of disinterested witnesses, the admissions of the defendant or her witnesses, or the feeble and incredible explanations given by the defendant and

her witnesses to the various incidents brought out in the petitioner's testimony.

The defendant admits that the petitioner found her in their home with the party Loomis when she was clad in a blue smock (p. 91, fol. 10), but does not recall whether she had any underwear underneath the same (p. 91, fol. 29) stating "possibly I did have my night dress under my smock," and further admits that they had a pitcher of whiskey (p. 91, fol. 32). This perfectly corroborates the petitioner's version of this incident, although she claims she was not drunk as she gets sick (p. 91, fol. 31). She also admits that her husband found her at a house party at a Mrs. Johnson's where he found Loomis hiding in a closet (p. 92, fol. 7) although she naively states that there was nothing to this incident because there were fifteen or sixteen persons at this party (p. 92, fol. 15).

As to her repeated intoxication, she gives the explanation that she doesn't get drunk, she gets sick (p. 103, fol. 19).

The following, taken from the defendant's testimony at p. 103, fol. 39, sums up her version of her intoxication.

By the Master.

Q Did you ever have to lie down as a result of drinking liquor because you became sick? A Yes.

By Judge Howe.

Q You do get sick? A Occasionally.

Q You get sick to your stomach? A Occasionally.

Q From drinking liquor? A Not always liquor.

Q When you do drink liquor you get sick? A Once in a while.

Q Wouldn't you say that was a condition of drunkenness? A No, I wouldn't.

The defendant also testified with respect to her intoxication as follows (p. 84, fol. 10):

Testified on direct examination:

Q Did you ever come home drunk from outside places? A Not drunk. I had a couple of glasses of wine. I can't stand any alcohol.

and on page 83, fol. 37:

By the Master.

Q Then you think you might have been under the influence of liquor on occasions? A Never to be disorderly.

Testifying to her conduct after her desertion of the petitioner, the defendant admits that Mr. Goodman, (whom the petitioner testified following to the home of the defendant after their separation, and whom he testified he saw sitting on a bed with the defendant, who was clad in a night gown) was an old friend whom she met many years before through her former husband. She further testified that this Mr. Goodman, who is a married man living apart from his wife (p. 110, fol. 8), took his meals, lunch and dinner at night, at her apartment (p. 96, fol. 9), and that she also had a boarder at her apartment, which consisted of only three rooms. She also admitted that Mr. Goodman has been at her home late in the evening, although he was only there to get his lunch and supper (p. 99, fol. 38 to 40).

The testimony further shows that this Goodman was found in the home of the defendant on the night before the hearing in this cause, where he was served with a subpoena. The explanation given by Goodman for his being found here at this time, was that a Mr. Hogan, who also

rooms with the defendant at her three room apartment, gave him his key and requested that he go to the apartment and obtain a package for him (p. 110, fol. 26).

The petitioner is further corroborated by one Nathaniel Franzblau, who had visited his home on several occasions and at times acted as a mediator in their family disputes. It was while in the company of Mr. Franzblau that the petitioner found his wife together with Loomis in the rear of the Public Service Terminal Building, in the City of Newark (p. 66, fol. 19). It was Mr. Franzblau who also found the defendant at her home intoxicated, on the occasion she called the petitioner "a Jew bastard" and other vile names (p. 67, fol. 30 to 40). Mr. Franzblau also was with the petitioner when the incident occurred on the evening in March of this year when they saw Mr. Goodman enter the apartment of the defendant on Astor street, Newark (p. 68, fol. 20 to 40), where Goodman stayed from 11:30 until 2:30 in the morning, from whence they followed him to his apartment at Spruce and High streets, Newark.

As to the occasion of the separation: The petitioner testified that the defendant left on May 1, 1927, after he had admonished her for coming home intoxicated the previous evening. He kept their apartment open for the entire month. He is corroborated as to this, by the testimony of two disinterested witnesses, Mr. Benjamin Lasinsky, who slept at his home about twelve or fifteen times during the month of May, 1927, where he found the house in a filthy and disordered condition, and Mrs. Kerber absent (p. 60, fol. 6 to 10). Mr. Lasinsky further testified that he was at the Kerber home on the morning of June 1st when the moving men were about to move out the

furniture, and he heard Mrs. Kerber tell the petitioner to get out and leave the furniture as she would take care of it herself. The defendant's mother, Ethel Sipp, a witness for the defendant, testified that on the morning of June 1, 1927, she was at the Kerber home when Mr. Kerber had the moving men move the furniture and that the petitioner at this time told her, in answer to her question what he meant by having the furniture moved, that he was not going to pay rent when she, the defendant, was not there (p. 115, fol. 17).

He is also corroborated by Mr. Edward Taug, who also spent a few nights with Mr. Kerber at the Kerber home on Roseville avenue, Newark, during the month of May, 1927. Mrs. Kerber was not at home and the house was found in an untidy condition (p. 62, fol. 7 to 20).

A Mr. Powers also testified that on the night before the hearing he followed Mr. Goodman to the home of Mrs. Kerber on Astor street, Newark, where he entered with a pass key about 11:30 at night.

Defendant's Story.

The defendant's story is remarkable. She does not deny that she left the petitioner on May 1, 1927, as related by him in his testimony. (Testimony of Ruth Kerber, p. 80, fol. 23, to p. 109, fol. 12.) Neither does she deny substantially the testimony of the husband relative to their life between the time of his marriage and her desertion. Her whole testimony consists mainly in broad denials of any improper relationship with Loomis or any other man, although she admits being found by her husband in their home with Loomis when she was clad in what she

termed a "smock" under which, she may, or may not have had a night gown, and also being found with Loomis on several other occasions; she also admits being found by her husband on several occasions in the place referred to as the Veterans' Club, which she states was a club for veterans where they could bring their wives and sweethearts (p. 104, fol. 27), although on no occasion was she there with her husband. She also admits the occasion when her husband found her in Loomis' car on Marshall street, when the petitioner forced them into the curb in order to stop them. She also admits the incident when the petitioner found her at a Mrs. Johnson's, where Loomis was found hiding in a closet (p. 92, fol. 8).

Although the defendant testified that subsequent to the desertion she wrote the petitioner a letter in a lawyer's office stating that she wanted to start housekeeping (p. 107, fol. 11) there is nothing in the record to show of what the contents of the letter consisted, as a copy of the letter was not offered in evidence. She also testified that on one occasion when she went up to the petitioner's store to get her check, she asked him to effect a reconciliation. However, she admits that subsequent to the desertion she renewed a friendship with a Mr. Goodman, a married man living apart from his wife, whom she had known before she married the petitioner and that he took his meals at her apartment, although he did not live there and that he frequently would stay there late in the evening. She also admitted having a roomer, a Mr. Hogan, in her three room apartment.

Defendant's Corroboration.

The defendant's attempted corroboration is as remarkable as is her own story. The principal witness for the defendant was her mother, who admitted that the petitioner complained to her, the defendant's mother, about the defendant's conduct with other men (p. 115, fol. 31), and also her drinking. She also corroborates the petitioner in her story that her daughter was not staying at her, the defendant's home, during the month of May, 1927 (which was subsequent to the desertion), but states that she, the mother, was occupying the only bedroom in said house during the last ten days in May, 1927, and further that the petitioner, Mr. Kerber, could not have stayed there himself at night if he wanted to, since she and her husband were occupying the only bed in his, the petitioner's home (p. 116, fol. 28). Although she testified that her husband, the defendant's step-father, was also present during this time and was present when the furniture was moved on June 1st, the husband for some unaccountable reason is not produced as a witness by the defendant, nor is his absence explained.

The rest of the defendant's attempted corroboration is unimportant except that the witness Goodman, although denying that there was any wrongdoing between himself and Mrs. Kerber, admits that, though married, he had been living apart from his wife about a year and a half, which was about the time that he met Mrs. Kerber and began taking his meals at her home; and further that, although he had known Mrs. Kerber for several years, he took up his friendship with her again about two years ago.

THE LAW.

1.

The petitioner has established a wilful, continued and obstinate desertion on the part of defendant.

The record amply proves that the defendant, without justification, left the petitioner in May, 1927. No denial of this fact is made by the defendant or any of her witnesses, nor is any explanation whatever given by her on this score. (Testimony offered by defendant and her witnesses, pp. 109 to 121.)

2.

The law imposed no duty upon the petitioner to seek the return of defendant after her desertion, under the facts in this case.

The Advisory Master in dismissing the petition herein predicated his finding upon the fact that the "husband made no such advances and concessions to resume the marital relations, as the law requires, although the evidence indicates that the defendant was willing to resume marital relations with the petitioner." (Conclusions of Advisory Master, p. 8, fol. 38.)

This is not justified by the proof or the law.

The rule requiring a husband to make overtures to seek the return of his wife is not inexorable. This was clearly stated by Mr. Chief Justice Gummere in the case of *Hall v. Hall*, 60 N. J. Eq. 469 at 470 (Errors and Appeals), as follows:

But the law does not impose this duty upon the husband in every case arbitrarily and without regard to the facts and circumstances by which it is surrounded.

In *Smith v. Smith*, 95 N. J. Eq. 657, the Court of Errors and Appeals cites with approval the statement of Vice-Chancellor Pitney, in *Hall v. Hall*, 53 Atl. Rep. 455.

In my opinion, a woman who deserts her husband, whether as a result of a sudden freak or deliberately, must, in order to entitle herself to the benefit of the rule that the husband must seek his wife, and endeavor to induce her to return, be careful to comport herself during her separation in such manner as not to give her husband just cause to suspect her chastity.

This rule clearly absolved the petitioner from any duty to seek the return of the defendant in the present case. The Advisory Master found as a fact that the defendant's conduct was of the character which the Court in the *Hall* case indicated absolved the husband of any obligation to effect a return of the wife. The Court in the present case severely condemned the conduct of the defendant, in its opinion stating,

The attitude of the defendant does not commend itself to the approval of the court, and she seems to have been guilty of gross indiscretions. (Conclusions of Advisory Master, p. 9, fol. 7.)

During the time they lived together, the testimony reveals that the wife had, not only no conception of her marital duties and obligations, but also that she was devoid of any understanding of moral rectitude. Her conduct and relationship with other men, her excessive drinking, both were sources of much grief to the petitioner. He appealed to the defendant's mother to help him (p. 115, fol. 31). He endured the defendant's actions to the point of subverting his own self respect—all in the hope of her amending her ways.

The defendant's conduct became so brazen as even to bring the man Loomis into her home, while her husband was at his drug store.

She complains that her husband did not take her out sufficiently, although he occasionally took her out evenings. Yet she admitted that he would be at his drug store from ten o'clock in the morning until after midnight (p. 106, fol. 31). The operation of his pharmacy manifestly required long and constant hours of labor. This probably was the crux of the situation. The wife was pleasure mad—the husband's business required his constant attendance. This attitude is summed up in the testimony of the defendant's mother, her own witness (p. 120, fol. 11):

Q He frequently complained to you his wife was away? A He would come in and ask me but I did not pay much attention to it. She was young. She could not sit and look at four walls all day.

She was young. She could not sit and look at four walls all day— This is the excuse for the wife's carousals, her intoxication, her loose morality.

She also accepted jewelry from Loomis, this however the husband did not discover until after the defendant left.

The petitioner did everything humanly possible to amend the error of his wife's ways. He purchased a business for her; he took her out of the Veterans' Club; took her home from the party where he found his wife and Loomis, who was hiding in a closet. This action on Loomis' part—the guilty conscience—shows the relationship which existed between the defendant and Loomis. The petitioner appealed to the one whom he thought could do most with the defendant, her mother (p. 119, fol. 29), also (p. 115, fol. 31), but all to no avail.

After the defendant left petitioner she continued in her ways. She took up a friendship with a Mr. Goodman, a married man living apart from his wife—incidentally this separation between Goodman and his wife came about the time that he again renewed his friendship with the defendant. Goodman and the defendant were seen together innumerable times, were seen going into the defendant's apartment, they were seen coming out of the Veterans' Club and going into the defendant's apartment at 49 Hill street, Newark. On several occasions the petitioner saw his wife and Goodman enter her apartment after eleven o'clock in the evening. Neither came out although he waited two or three hours. On the night of March 17, 1930, the petitioner was lifted up to the sill of one of the windows in defendant's apartment where he saw her in a night gown seated on a bed beside Goodman. The only explanation offered by the defendant regarding Goodman is that he merely took his meals at her apartment, although she admits he stayed there late at night. She also had a male boarder in her apartment, which consisted of only three rooms.

The conduct of the defendant after leaving the petitioner was clearly of the kind indicated by Vice-Chancellor Stevenson in *Hall v. Hall*, as relieving the petitioner of the duty of inducing defendant's return.

Certainly the defendant did not "comport herself during the separation in such a manner as not to give her husband just cause to suspect her chastity." On the contrary her conduct was such as to dispell the faith of any husband.

Lister v. Lister, 65 N. J. Eq. 110 affirmed
66 N. J. Eq. 434;

Rogers v. Rogers, 81 N. J. Eq. 479 at 485;
Fisler v. Fisler, 85 N. J. Eq. 194 at 199;
Marsh v. Marsh, 86 N. J. Eq. 419 at 422;
Hyer v. Hyer, 91 N. J. Eq. 147 at 148;
Danielly v. Danielly, 93 N. J. Eq. 556 at
 559.

In the case of *Smith v. Smith*, 95 N. J. Eq. 657, a case directly in point, the Court of Errors and Appeals in reversing the action of the Vice-Chancellor in dismissing the husband's petition for his failure to make overtures to seek his wife's return (the ground upon which this petition was dismissed by the Advisory Master) said that while it is the general rule that the husband must make a reasonable effort to induce the deserting wife to return to him,

Nevertheless in its application it is not unbending, and like every other general rule, is subject to exceptions and therefore it is quite obvious that the applicability of the rule in its full rigidity must be dependent upon and governed by the circumstances of each individual case.

3.

The conduct of the wife, to relieve the husband of the duty to make overtures for her return, need not be such as would be necessary to sustain an action for divorce on the ground of adultery.

In the case of *Smith v. Smith*, 95 Eq. 657 at 660 the Court of Errors and Appeals said,

In the light of this testimony, which revealed the relationship existing between petitioner's wife and McCullough, though such testimony would have been inadequate to establish adulterous intercourse between them, as a ground for divorce for adultery, nevertheless the circumstance was sufficient

to furnish a reasonable ground for suspicion in the mind of the husband that his wife was unchaste, and that being so he was relieved from any effort to induce her to return to him. The spirit of the law is not so unreasonable and cruel as to compel a husband to forfeit all his self respect and debase himself by requiring him to make overtures to his wife to return to his hearth in a case where she has deserted him for another man.

Certainly the conduct of the defendant in this case was within that contemplated by the Court in the case of *Smith v. Smith*.

In view of the defendant's actions and conduct while living with the petitioner, and in view of her subsequent conduct during the separation, for the petitioner in this case to have sought her return would have been for him to completely debase himself and forfeit his own self respect as a man.

In conclusion we repeat that the evidence in this case clearly establishes that the petitioner-husband is entitled to a divorce on the ground that his wife has wilfully, continuedly and obstinately deserted him within the meaning of the statute in such case made and provided.

We respectfully submit that the decree dismissing the petition be reversed with the direction to the Court of Chancery to decree a divorce in favor of the petitioner and against the defendant on the ground of desertion.

Respectfully submitted,

JOHN C. HOWE,
Counsel with Petitioner-Appellant.

RUDOLPH A. HUEBNER,
Of Counsel.

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