

INDEX.

	Page
Writ of Certiorari	1
Return to Writ	2
Reasons	7
Testimony	8
Stipulation	53
Stipulation	54
Opinion of New Jersey Supreme Court	55
Notice of Appeal to Court of Errors and Appeals	60
Grounds of Appeal	61

WITNESSES FOR PROSECUTOR.

Anna E. Moore:	
Direct	8
Cross	13
Redirect	18
John A. Huggs:	
Direct	19
Cross	20
John W. Kline:	
Direct	22
Cross	23
Redirect	24
Anna L. Newkirk:	
Direct	25
Cross	26
Katherine Thompson:	
Direct	27
Cross	28
Mrs. Gussie Banks:	
Direct	29
Cross	30

John J. Mayer:	
Direct	31

WITNESSES FOR DEFENDANT.

Frank Hailstock:	
Direct	33
Charles Carola:	
Direct	35
Cornelius Hartley:	
Direct	36
Cross	36
James A. Young:	
Direct	37
Cross	37
James R. Kehoe:	
Direct	38
Cross	41
Mrs. Nettie Turner:	
Direct	41
Cross	43
Mrs. Ida C. Stewart:	
Direct	44
Cross	49
Harris Cohen:	
Direct	50

Writ of Certiorari.

Filed March 27, 1931.

New Jersey, ss:

The State of New Jersey to
Fire and Police Pension Fund 10
Commission of the City of Pater-
son.

GREETING :

We being willing for certain reasons to be cer-
tified of a certain decision rendered December
9, 1930 by the Fire and Police Pension Fund Com-
mission of the City of Paterson in relation to the
application for a pension by Anna E. Moore
whereby said Anna E. Moore was refused such 20
pension, do command you that you certify and
send, under your seal, to our Justices of our Su-
preme Court of Judicature at Trenton, on the 26
day of March, 1931, the said decision of said Fire
and Police Pension Fund Commission above men-
tioned, together with all things touching and con-
cerning the same, as fully and completely as they
remain before you, together with this our Writ,
that we may cause to be done thereupon what of 30
right and justice and according to the laws of the
State of New Jersey ought to be done.

Witness WILLIAM S. GUMMERE, Chief Justice
of our Supreme Court at Trenton, this 7th day of
March, in the year of our Lord, one thousand nine
hundred and thirty-one.

FRED L. BLOODGOOD,
Clerk.

RANDALL B. LEWIS,
Attorney for Prosecutor.

40

Writ of Certiorari.

I allow this writ. Let it be sealed. Each side to take depositions on notice to be used at the hearing.

Dated: March 7/31.

PETER F. DALY,
J. S. C.

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Return to Writ.

Filed March 27, 1931.

NEW JERSEY SUPREME COURT.

20

ANNA E. MOORE,
Prosecutor,

vs.

FIRE AND POLICE PENSION FUND
COMMISSION OF THE CITY OF
PATERSON,
Defendant.

On Certiorari.

*To the Honorable the Justices of the Supreme
Court of Judicature of New Jersey:*

30

The Fire and Police Pension Fund Commission of the City of Paterson, by its Secretary Arthur J. Donnelly, in obedience to the command of the writ hereto annexed, to it directed, does hereby certify and send to you, the said Justices, all excerpts from the minutes of the Fire and Police Pension Fund Commission of the City of Paterson relative to the application for a pension by Anna E. Moore, whereby said Anna E. Moore was refused such pension, together with all things

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Return to Writ.

touching and concerning the same, as fully and completely as they remain, as by the said writ is commanded to do, and as appears by the schedule hereto annexed.

Signed this 23rd day of March, A. D. 1931.

Fire and Police Pension Fund Commission
of the City of Paterson, 10

By ARTHUR J. DONNELLY,
Secretary.

Extracts from minutes of the Fire and Police Pension Fund Commission, of Paterson, New Jersey, relative to the application of Annie E. Wilson Moore, for pension as the widow of the late Police Chauffeur Peter Moore.

Regular meeting, 11 a. m., September 9, 1930, with Commissioners Aloysius J. Farrell, John V. Hinchliffe, Albert C. Stengel and President Carl Holderman, present. 20

“Mrs. Annie E. Wilson Moore, of 237 Sandwich Street, Plymouth, Mass., appeared before the meeting with Lawyer Elliot Chapman, her counsel, and made application for pension as the widow of the late Police Chauffeur Peter Moore, who died in July 1925, while a member of the department. Mrs. Moore stated that she was married to the police chauffeur in March 1884, but separated from him in 1899 and never lived with him again, but there had been no divorce nor legal separation. She said that during the time she lived with Chauffeur Moore she was forced to take in washing and ironing in order to properly support herself as he drank heavily and gambled. 30

After she separated from him, she said she saw 40

Return to Writ.

the late police chauffeur every year up until 1919, but did not see him after that time. When she learned of his death she did not come to Paterson for his funeral and soon afterward destroyed the certificate of their marriage. She claims they were married by the Rev. Wiggins, a traveling preacher, in the Park Avenue Baptist church, but there is no record of the marriage at the church. Her counsel stated that he had searched the records at Trenton, and also at the Paterson office of the Registrar of Vital Statistics, but he could find no record of the marriage in either place. He stated to the board that efforts were being made to locate survivors of the late Rev. Wiggins, to learn whether or not they have any of the private records of the late minister.

Commissioner Stengel offered a motion to lay this matter over for further investigation and to request the city counsel to be present at the next meeting, and after this motion was seconded by Commissioner Farrell, it was unanimously adopted.

Regular meeting—November 18, 1930 with Commissioners Aloysius J. Farrell, Samuel Fielding and Albert C. Stengel, present:

The commission next called Lawyer Elliot Chapman, counsel for Mrs. Annie E. Wilson Moore, before the board with his client and requested that he produce any additional proof he had in support of the application of Mrs. Moore for pension as the widow of the late Police Chauffeur Peter Moore. The commission heard testimony by Mrs. Moore, Charles Black, Gussie Bankes, John Huggs, Charles Bankes, Mrs. Peg Thompson and Mrs. Newkirk, and on motion of Commissioner Fielding, seconded by Commission-

Return to Writ.

er Stengel, it was voted unanimously to lay this matter over for consideration by the full membership of the commission.

ARTHUR J. DONNELLY,
Secretary.

Extracts from minutes of the Fire and Police Pension Fund Commission of Paterson, New Jersey, relative to the application of Annie E. Wilson Moore, for pension as the widow of the late Police Chauffeur Peter Moore.

10

Regular meeting, December 9, 1930, Commissioners Aloysius J. Farrell, Samuel Fielding, Albert C. Stengel and Carl Holderman, present.

Commissioner Stengel addressed the commission and stated that at the November meeting of the commission, several witnesses were heard in support of the application for pension made to the board by Annie E. Wilson Moore, who claims to be the widow of the late Peter Moore, formerly a chauffeur in the police department. Commissioner Stengel stated that there had been no proof that she was ever married to the late chauffeur and he introduced a motion that her application be received by the commission and denied. This was seconded by Commissioner Fielding and adopted by unanimous vote.

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ARTHUR J. DONNELLY,
Secretary.

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Return to Writ.

City of Paterson, New Jersey

WIDOW'S APPLICATION FOR PENSION

Police and Fire Pension Fund Commission,
City of Paterson, New Jersey

Gentlemen:

- 10 As the widow of the late Peter Moore who was a member of the Police Department of the City of Paterson, I do hereby apply for a pension in accordance with Chapter 160, P. L. 1920.

Signed ANNIE E. MOORE.

8 (Mos.) 29 (Day) 1930 (Year)
(Date of Application)

- 20 Amount of husband's salary—\$2,200.00.
Date of husband's death—July 17, 1925.
Age of husband at time of marriage to the applicant—23.
Home address of widow—237 Sandwich Street, Plymouth, Mass. Works in service for Charles A. Coates for past five years.
Names of children under 16 years of age: No children.

- 30 The above facts are stated with the knowledge that the Police and Fire Pension Fund Commission relies upon the accuracy thereof.

(Signed) ANNIE E. MOORE.
(Signature of Applicant)

Denied December 9, 1930.

A true copy.

ARTHUR J. DONNELLY,
Secretary.

Reasons.

Filed March 30, 1931.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">ANNA E. MOORE, Prosecutor, vs. FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON, Defendant.</p>	}	<p>On Certiorari. 10</p>
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The said prosecutor by her attorney comes and prays that the decision and proceedings whereby the defendant refused to grant a pension to the prosecutor may be set aside and reversed for the following reasons: 20

1. That said prosecutor was the lawful wife of Peter Moore who was a member of the Police Department of the City of Paterson at the time of his death and in good standing in the pension fund of the Fire and Police Pension Fund Commission of the City of Paterson;

2. That the defendant was biased and prejudiced in refusing to grant prosecutor said pension; 30

3. Because the proceedings of the defendant are, in divers other respects, irregular, illegal, oppressive and unjust to the prosecutor.

RANDAL B. LEWIS,
Attorney of Prosecutor.

Testimony.

Filed April 21, 1931.

NEW JERSEY SUPREME COURT.

10	ANNA E. MOORE, Prosecutor, vs. FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON, Defendant.	}	On Certiorari. Hearing.
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April 8th, 1931.

APPEARANCES:

20 BERNARD L. STAFFORD, ESQUIRE,
 Supreme Court Commissioner.

 RANDAL B. LEWIS, ESQUIRE, and ELLIOT
 CHAPMAN, ESQUIRE, Attorneys for
 Prosecutor.

 SALVATORE D. VIVIANO, ESQUIRE, Attor-
 ney for Defendant.

30 ANNA E. MOORE, being duly sworn, on her
 oath, according to law, testified as follows:

Direct-examination by Mr. Lewis:

Q. Your full name and address? A. Anna E.
 Moore, 237 Sandwich Street, Plymouth, Mass.

Q. How old are you, Mrs. Moore? A. 69 the
 17th of September.

Q. You are the widow of Peter Moore, form-
 erly of the Paterson Police Department? A. I
 40 am.

Anna E. Moore—Direct.

Q. When were you married? A. I can't name the month, but it was in the year 1884.

Q. By whom were you married? A. By the Reverend Wiggins. I guess they call it Park Avenue now. It was Willis Street then.

Q. Who were the witnesses to the marriage?
A. No one but he and his wife.

Q. I presume there was another witness? A. 10
No one else; just he and his wife.

Q. Of course, that is taking your memory back a good many years but the minister married you and his wife was present. Wasn't anybody else there? A. No.

Q. Did anybody sign the certificate besides the minister and his wife? A. No; no one else was there to sign it. I think so.

Q. You think. Do you know? A. I know.

Q. Do you know anything about the Reverend 20
Wiggins? A. I heard he was dead. He was an old man at that time, when he married Peter and I.

Q. Is his wife alive or dead? A. She's dead.

Q. Have you your marriage certificate? A. No; I haven't.

Q. What happened to it? A. I was getting ready to go away from Plymouth one time and was looking over some old papers and letters and things I had kept a long time. I came across the marriage certificate and I said, "This is no good to me. Peter's been dead now two years." So, I done away with it. 30

Q. You were not living together? A. No.

Q. Where did you live after your marriage? A.
At 95 Straight Street.

Q. Paterson? A. Yes.

Q. How long did you live there? A. Two or
three years. 40

Anna E. Moore—Direct.

Q. How long did you live with him altogether?

A. 15 years.

Q. You slept with him? A. Yes.

Q. You had sexual intercourse with him? A. Yes.

Q. You had no children? A. No.

10 Q. You were known around generally as husband and wife? A. Yes.

Q. You were known and introduced to people as his wife? A. Yes. I was to Washington, D. C. with him and was known as his wife.

Q. You were a member at one time, were you not, of Queen Esther's Court of Galanthe? A. I was.

Q. And that is a women's branch of the Knights of Pythias? A. Yes, sir.

20 Q. Do you have to be married to a member of the Knights of Pythias? A. Yes. You had to be a relation to some of the people in the Knights of Pythias.

Q. When did your husband die? A. 1925.

Q. He was then a member of the Police Department of the City of Paterson? A. Yes, sir.

30 Q. How did you and your husband come to separate? A. Well, in this way. For quite a few years I knew that he was running around. After he got to be a driver of the patrol—three years after—we moved into a five-room apartment over on Warren Street. We had to get more furniture. I got it. Paid for it. After that, Mr. Moore every month had some bill he owed and couldn't give \$20.00 of his pay at home. I found out he was going around with a girl named Sally Kid. Then, we dealt with Archabold Smith Co. for our coal. One day I went down there to order some coal or rather to see why they hadn't

Anna E. Moore—Direct.

sent it to me. Mr. Smith said, "You got coal yesterday." I said, "No." He looked on his books. He said he sent half a ton of coal for Peter to High Street. I said, "I will be dog-gone." That's just what I said. That coal was for a woman by the name of Phoebe Sherman.

Q. How did you find that out? A. Mrs. Hicks told me. She said Peter came over there.

10

Q. What was the result of your finding this out? A. I continued to live with him and the last time there was a reception of the Knights of Pythias, they had a concert. Someone came downstairs to me—a friend—and said, "Look up in the gallery. See who's up there. Peter and some woman." I never turned my head; I didn't look up. After the concert was over, we got up and a woman came over to me and said, "I am Delia Ford. I heard what you said you'd do to me if you ever caught me with your husband." We got to fighting.

20

Q. Well, but what was the result of all this? A. Well, I went on Sunday afternoon to New York City to work. That was in June.

Q. What year was that? A. 1899.

Q. Then you came back to him? A. No.

Q. You came back to Paterson? A. Yes, sir.

Q. How long did you stay in Paterson after

30

Q. What did you do then? A. I worked.

Q. Where did you go after 1904? A. Plymouth.

Q. How did you happen to go there? A. Through Mr. A. R. Turner. My nephew was butler there.

Q. Why did you go there? A. Because Mrs. Turner asked me to help them out. She asked John—my nephew—to take the caretaker's job and there was a woman needed there, so I went.

Q. How did you happen to go—because you

40

Anna E. Moore—Direct.

had friends in Paterson, who got you a job there?

A. Yes.

Q. And you are still there? A. I am.

Q. Why did you wait so long before you applied for a pension? A. The last time I was in Paterson was in 1919. We always were friendly whenever we met. I hadn't been here since 1919. I came back here last August, 1930, and went to Church on Sunday morning and this lady here, (pointing) Mrs. Thompson, said, "I am glad you are here, because Mr. Lammella said that there is something due that nobody can get except Mr. Moore's widow." She said to go to see Mr. Huggs. He said it was a pension and to go see Chief Tracy.

Q. Did you? A. Yes, sir.

Q. What did he say? A. He said to get Mr. Huggs or a lawyer.

Q. What did you do? A. I went back to Mr. Huggs.

Q. And the result was that you made an application for the pension? A. Yes; that is the way I came to do it.

Q. While you were separated from your husband, were you supported by him? A. I got \$8.00 a month while I was here in Paterson.

Q. Do you remember working for Mrs. Newkirk? A. I do.

Q. Did you work for her very long? A. Yes.

Q. Before you were married, you were insured in the Prudential Insurance Co.? A. Yes, sir.

Q. First in your maiden name—Anna E. Wilson? A. Yes.

Q. You had it changed to Moore in 1884? A. Yes; I notified my agent here.

Q. Have you any certificate showing the change

Anna E. Moore—Direct.

of your name? A. Yes. (Witness produces certificate.)

Mr. Lewis: I offer a true copy of certificate of The Prudential Insurance Co. of original policy #602102. This shows the endorsement on the back of change of name to Anna Moore.

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(Received in evidence and marked "Exhibit P-1.")

Mr. Viviano: I object. It is not the best evidence in the case; the records of the insurance company are the best records. I further object on the ground that it is a self-serving declaration, and that it does not establish the question of whether or not she was legally married—mere change of name.

20

Mr. Lewis:

Q. Mrs. Moore, do you know Catherine Thompson? A. Yes.

Q. You lived with her at one time in the same house? A. I did.

Q. Did you know Mrs. Banks? A. Yes.

Q. Did you live in the same house at 95 Straight St.—her father's house? A. Yes.

Q. Did your husband live there at the same time? A. Yes.

30

Q. And he lived with you when you were living with Catherine Thompson? A. Yes.

Cross-examination by Mr. Viviano:

Q. Who was this girl by the name of Sally Kidd? A. She was a colored woman—a single woman. She used to visit my house. I was her

40

Anna E. Moore—Cross.

Sunday School teacher in the Calvary Baptist Church.

Q. How long after you claim you were married to your husband, did he go with her? A. Nine years any way. He had his job of patrol driver quite awhile before that.

10 Q. Don't you know that he knew this girl before he married you? A. No; she came from the South.

Q. You don't recall the day you were married? A. No.

Q. You are positive that you and Mr. Moore, the Reverend and his wife were present? A. No one else that I know of.

Q. Do you recall testifying before the Pension Board sometime in the month of September, 1930?

20 A. Yes; I think the 9th of September was the first time.

Q. Was your testimony to the same effect that day? A. No; I didn't tell them of the women that he run with.

Q. But regarding who was present at the marriage ceremony? A. I don't know if the question was asked me; was it? I am sure you didn't.

Q. Your husband died in July, 1925? Do you recall the date? A. The 17th of July.

30 Q. Where were you at that time? A. In Plymouth.

Q. When did you first hear of his death? A. The 24th of August, when I came on here to visit. The day he died I went down to the office and got the message that he had died on the 17th day of July, 1925.

40 Q. How do you know it was the same day he died that you received word? A. By the telegram from Mrs. Banks. It said he had died some hour in the morning and to come on.

Anna E. Moore—Cross.

Q. What did you think she meant by that? A. To get his insurance.

Q. Did you actually attend the funeral? A. No.

Q. Why didn't you? A. Because there was nothing to come for. I didn't want to disgrace myself, I guess.

Q. You, at that time, knew and claimed to be his wife? A. I am his wife. I was married. 10

Q. If there was insurance, would you have come? A. If there was, no, I wouldn't have come then just for insurance.

Q. Nor would you have come to attend his funeral? A. Yes; if we were friends. But not to just come and get a few dollars.

Q. Weren't you interested to see how he looked? A. No; I had heard how he looked and I didn't want to see him. 20

Q. When did you first learn about a pension, or if there was such a thing? A. About the 25th day of August, 1930.

Q. Who was your informer? A. Mrs. Thompson.

Q. Did she write you a letter? A. No; I was here.

Q. What did Mrs. Banks tell you? A. You mean Mrs. Thompson? 30

Q. Yes. What did she tell you about the pension? A. She said this man had asked her a few times about it and she said she didn't know. Only I was in Massachusetts. She said there was something due from the Police Department to Pete's widow. I didn't know about it. I went to see Mr. Huggs.

Q. You made application? A. Yes.

Q. Did you go to Mr. Huggs first? A. Yes; then I went to Chief Tracy. 40

Anna E. Moore—Cross.

Q. On your direct-examination, you stated that you went to Chief Tracy first and then to Mr. Huggs. A. I did not. I said I went to Mr. Huggs first and then to see Chief Tracy.

Q. How long did you live apart from your alleged husband? A. Since 1899 up until he died.

10 Q. How many years? A. You can count it up.

Q. 26 years? Is that right? A. I guess so.

Q. During that time, did you talk to or communicate with him? A. Yes; every year I would come here for the Queen Esther Reception and I would see him.

Q. Did you cohabit or live with him that particular day you saw him? A. Do you think I am a dog to want him after other women? No. He used to come to my house at #9 Lewis Street, to see me.

20 Q. How long were you here then? A. Three or four days. The Queen Esther Reception was on Easter Monday.

Q. You never lived with him during that time? A. No; I didn't.

Q. How long a time did you receive that \$8.00 a month? A. From 1899 to 1904.

30 Q. Why didn't you receive it any more? A. The lawyer said I was going out of the State and I couldn't get anything. That was when I moved to Massachusetts.

Q. So you received support for five years? A. Yes.

Q. How did you get that money? A. I think I went to a lawyer's office on Market St.

Q. Once a month? A. Yes; on the first.

Q. For a period of five years? A. From 1899 to 1904.

40 Q. And you do not recall his name? A. No, I can't. Not the lawyer.

Anna E. Moore—Cross.

Q. Prior to 1930, the last time you were in Paterson was in 1919—is that true? A. Yes. Up until 1930.

Q. Do you recall the occasion for your coming to Paterson in 1919? A. It was my vacation.

Q. What papers of any importance did you destroy at the time you destroyed the marriage certificate? A. A lot of letters I had for years; policy. 10

Q. Was the policy void or in force? A. Some books I destroyed then, too. I got the policy out to Youngstown. I found out I had no policy, so I went there, and I got a duplicate. I think I could get a duplicate of my marriage certificate.

Q. Have you any sisters or brothers? A. I have a sister in Youngstown, Ohio and a brother in Columbus, Ohio. 20

Q. You know that as a matter of fact a sister of a Pythias brother may be and is admissible in the Association you just mentioned—the Queen Esther Court? A. Yes; my sister's husband was in the Knights of Pythias.

Q. You stated, on former hearings, that your husband had an insurance policy? A. Yes.

Q. Do you know who the policy was for—the beneficiary? A. No.

Q. Did you take the trouble to inquire whether you were the beneficiary? A. No; he told me that. 30

Q. Weren't you interested, as his wife, to find out whether there was any moneys due you under the policy? A. I knew, according to burial, if there was only \$500.00, there wouldn't be much left for anyone.

Q. When did you make that inquiry? A. I told you that he told me. He told me that, himself, over in the patrol stable. 40

Anna E. Moore—Cross.

Q. When did he tell you that?

Q. After he died, did you make any inquiries concerning any insurance policies on the life of your husband? A. No.

Q. Were you ever legally separated from your husband? A. I don't know what you mean.

10 Q. Were you ever separated from your husband by any Court proceedings? A. No.

Q. You know, Mrs. Moore, that another woman by the name of Stewart, also alleges that she was his lawful wife? A. No; I didn't know anything of that.

20 Q. Tell us what you do know about her. A. I don't know anything about it. I have only heard of it. He had a brother, Alex, who lived in Philadelphia. A few years after I went to Plymouth, Alex wrote to me. He said that Peter was on a vacation in Philadelphia with this woman.

Q. Did you ever meet her? A. Yes; when she was living with her husband.

Q. And you also visited her when you were living with your husband? A. Yes, sir.

30 Q. You quarreled with your alleged husband over her, didn't you? A. No. He wasn't living with her when I was living with him. She claimed she had him as a boarder, that he wasn't nothing but a boarder, when he was laying dead there. We never had words over her. No.

Q. Why didn't you receive support from your husband from 1904 until his death in 1925? A. I don't know. I was told in 1904 I couldn't have any more, because I was leaving the State.

Redirect-examination by Mr. Lewis:

40 Q. You have testified that you tried to get a copy of the marriage certificate in Trenton and Paterson? A. Yes.

Anna E. Moore—Redirect.

Q. And you stopped cohabiting with your husband as soon as you found he was going with other women? A. No.

Q. When he was supporting other women? A. No.

Q. Why didn't you go back to him? A. He used to come see me early in the mornings. I said that when he had his payroll signed in my name we would live together. 10

Q. Why did you leave him? A. Too many women. There was nothing to support the house with.

Q. And you didn't go back for that reason? A. Yes.

JOHN A. HUGGS, being duly sworn, testified as follows: 20

Direct-examination by Mr. Lewis:

Q. Your full name and address? A. John A. Huggs, 130 Franklin St., Paterson, N. J.

Q. Your occupation? A. Department of Labor—examining department.

Q. You have lived in Paterson for how long? A. 40 years.

Q. You knew both Peter and Anna Moore? A. Yes, sir. 30

Q. For about that time? A. I have known Peter since about 1892 or 1894.

Q. You were not present at their wedding? A. No.

Q. You recognized them as man and wife? A. Yes.

Q. Why? A. The night he got the job driving the ambulance—that was before he drove the pa-

John A. Huggs—Direct.

trol—there was a lodge meeting that night. He told me at that meeting that he had this new job. He lived then at 95 Straight St. He being her husband, and a member of the Knights of Pythias, she made application for membership in the Queen Esther Lodge. I met them and knew them. I knew them when they lived at Warren St. I
10 I knew about the trouble he had with the women he was keeping. Knew about Phoebe Sherman.

Q. You say that Mrs. Moore made application and was accepted? A. Yes, sir.

Q. On what ground? As the wife of Peter? A. Yes.

Q. She was a member of that organization then? A. Yes.

Q. Had you been out with them? A. Yes; at
20 different receptions and parties.

Q. You heard them referred to as husband and wife? A. Yes.

Q. Did you visit them at home? A. At 76 Warren St. There was a party there one time.

Q. Did you visit them frequently? A. Yes. They maintained a very splendid home there.

Q. Did you see their sleeping apartments? A. Oh, yes.

Q. And went through the house generally? A.
30 Yes.

Q. They lived there and were accessible to their neighbors and friends? A. Yes.

Q. They were recognized by them as husband and wife? A. Yes.

Cross-examination by Mr. Viviano:

Q. You have just referred to a Phoebe Sherman being kept by Mr. Moore—who was she? A.
40 A woman who came to Paterson in 1894 from

John A. Huggs—Cross.

Philadelphia. She was a great friend of the Anderson family at that time. She kept house at #7 High Street.

Q. How long, to your knowledge, did Moore know this Phoebe Sherman? A. I don't know.

Q. How often did you see them in company with each other? A. Several times.

Q. How do you know Moore was keeping this woman? A. Phoebe said so. We would see Peter go there. 10

Q. Was Moore also living with his alleged wife, Anna E. Moore, at that time? A. Yes, sir.

Q. Do you know, from your own knowledge, when Anna E. Moore separated from her alleged husband? A. I do not know just that, Mr. Viviano.

Q. Do you know, from your own knowledge, how many years they had cohabited together? A. I do not; no. A number of years. 20

Q. Do you know when Mr. Moore died? A. Yes.

Q. Were you present at that funeral? A. Yes.

Q. He was a dear friend of yours? A. Yes.

Q. Prior to Mrs. Moore making her application for a pension, when was the last time you saw her? A. I can't answer that; I can't answer that. Mrs. Moore would come in to see me; just come in to see me, when she was here in Paterson. She would just come for a visit. I don't like to say, for fear I would make a mistake. 30

Q. Have you any interest in the outcome of this controversy or litigation or application for the pension? A. No.

Q. You are interested in seeing Mrs. Moore get a pension, if possible? A. Yes.

Q. And you are here to assist her, if possible? A. Yes. 40

John W. Kline—Direct.

JOHN W. KLINE, being duly sworn, testified as follows:

Direct-examination by Mr. Lewis:

- Q. What is your full name and address? A. John W. Kline, 94 Governor Street, Paterson, New Jersey.
- 10 Q. How old are you, Mr. Kline? A. 78 years.
- Q. Did you know the Reverend Wiggins? A. Yes, sir.
- Q. Did you ever hear him preach? A. Yes. He was bigger than any man here. He was a white man, but he always preached among the colored people.
- Q. Was he well-known around town? A. Yes. He always preached among the colored people.
- 20 Q. He preached in the Bethel M. E. Church in the year 1884? A. About that time.
- Q. You have lived in Paterson since 1853? A. I was born on Paterson Street, where Florence Bros. shop is now.
- Q. You knew Peter and Anna Moore? A. Yes, sir.
- Q. Have you been out in company with them? A. Yes.
- 30 Q. You didn't attend their wedding? A. No; but Mr. Moore told me the day after that he was married. Me and him met and went to have a drink that time.
- Q. He told you of the marriage then? A. Yes.
- Q. You said you were out in company with them? A. Yes.
- Q. How did he introduce you to the alleged Mrs. Moore? A. He introduced me to her. To his wife, as Mrs. Moore.
- 40 Q. Did you go to their house? A. One time I was there in the day-time, but he wasn't there

John W. Kline—Cross.

then; he was working. One evening I went there and then they were both there. That was 95 Straight St.

Q. You were a close acquaintance of both of them? A. I knew Pete a long time. I played right field and he played left field, so I know him well.

Q. Mrs. Moore's reputation is O. K.? A. Always heard the best of her. 10

Cross-examination by Mr. Viviano:

Q. You knew Mr. Moore very well? A. Yes; both joined the same lodge.

Q. You were pals and chums? A. Yes, sir.

Q. Did you go to their wedding? A. I didn't think that they had any wedding, so I didn't think I was invited. 20

Q. Did you go to the church? A. There wasn't any church to go to.

Q. Do you know when Mr. Moore died? A. Yes; I was to his funeral.

Q. Do you know where Mrs. Moore lived at that time? A. Out of Paterson; but where, I don't know. I couldn't tell you.

Q. You say you were a member of the Knights of Pythias with Mr. Moore? A. Yes. Secretary. 30

Q. Just explain to us in what manner or fashion Mr. Moore introduced Mrs. Moore to all his friends or acquaintances. A. I can't tell how he introduced her to all his friends or acquaintances, because I don't know. I can only tell you how he introduced her to me. He said, Mr. Kline, Mrs. Moore—my wife. That's what he said to me.

Q. Did he ever introduce you to the Sherman 40

John W. Kline—Redirect.

woman? A. I saw her a number of times. I never had anything to say to her.

Q. Did you see them in each other's company?

A. I didn't see them at all no time. I knowed this lady by sight when I seen her.

10 Q. Also know the Stewart woman? A. Yes; when she was a little girl.

Q. Also know that Moore and the Stewart woman were friendly? A. Yes. Mr. Moore always said he boarded there. He got buried from her house.

Q. Was her husband living at the time he boarded there? A. No; when Moore was there he was working some place and he ruptured himself and died.

20 *Redirect-examination by Mr. Lewis:*

Q. You say you were secretary of the Knights of Pythias Lodge when Mrs. Moore joined the Queen Esther Court? A. Yes, sir. It is written in the minutes.

Q. She joined the Queen Esther Court by being a connection of whom? A. I thought she was married to Mr. Moore at the time.

Q. Because she was married? A. Yes.

30 Q. She could have joined if she was a relative of a member? A. Yes, sir.

Anna L. Newkirk—Direct.

ANNA L. NEWKIRK, being duly sworn, testified as follows:

Direct-examination by Mr. Lewis:

Q. Mrs. Newkirk, you are the widow of William Newkirk? A. William T. Newkirk. Yes.

Q. Where do you live? A. 619 E. 28th St., Paterson, N. J. 10

Q. How long has he been dead? A. About 2½ years.

Q. What was his business? A. Confidential man in particular business.

Q. Was he with Edward Sweet and Company in New York City? A. Yes; that's the company.

Q. You have lived at the present address for about 40 years? A. I have been married for over 40 years. I lived there for about 36 years. 20

Q. Have you known Anna Moore long? A. Since 1887, when I was first married. 20

Q. She worked for you? A. Yes; she worked for Will Blauvelt's mother.

Q. In what capacity? A. Laundress and houseworker.

Q. Did you know of her marriage to Moore? A. Yes. She was introduced to me that way by Mrs. Blauvelt.

Q. Did you see her husband? A. Yes; I met Peter. 30

Q. Did he call for her sometimes? A. No; I've seen him drive through with the patrol wagon.

Q. What would you say of Mrs. Moore as to her reputation? A. I want to say that it is of the highest and if we white people would shine as she does and if we lived up to our ideals in every way, the way Anna always has done we would be doing a whole lot. She is honest, up- 40

Anna L. Newkirk—Cross.

right and capable. Everything about her is of the highest and best. A No. 1.

Q. You would leave her in charge of your house—complete charge? A. Yes; and complete charge of the pocket-book, too.

10 Q. She would have no object in trying to appear to be married? A. No. We knew things were pending; knew she had had trouble with Peter.

Q. Did she talk to you about Peter? A. Not all about it. Anna was a very high-class woman. High-grade. If she had trouble, she wouldn't talk about it to everybody, and make it common talk. Just the same as I wouldn't if I had trouble. I would keep it sacred. I wouldn't tell everyone all about it.

20 *Cross-examination by Mr. Viviano:*

Q. Mrs. Moore came into your employ in 1887? A. Yes.

Q. And left when? A. Now, I will have to see about our children. The oldest one was about 14 years old when she left.

30 Q. During a period of 14 years were you ever introduced to Mr. Moore by Mrs. Moore? A. In some way I met him in 1888 or 1889. In some way, by his wife. I have had cooks, if they were specially high-grade women, that have visited her in her home.

Q. Did Mrs. Moore introduce you to Mr. Moore as her husband? A. I don't remember; she might have. I met Peter through Anna—through Mrs. Moore.

Q. Do you know when Mr. Moore died? A. Yes; I read it in the paper.

40 Q. Did Mrs. Moore live at your home or come

Katherine Thompson—Direct.

to work there? A. She would come to work there. If we were away she would come and stay there for me.

KATHERINE THOMPSON, being duly sworn, testified as follows:

10

Direct-examination by Mr. Lewis:

Q. What is your full name? And address? A. Katherine Thompson, 104 Governor St., Paterson, N. J.

Q. And you have lived in Paterson for about 59 years? A. For over 69 years, I guess.

Q. How long have you known Anna Moore? A. For about 50 years, I guess.

Q. Did you know Peter, too? A. Yes; both of them. 20

Q. How did you come to know them? A. Through Gussie Banks' mother—Mrs. Jackson. Peter introduced me to Anna as his wife, one night at a party at 94 Straight St.

Q. After that you lived in the same house with them? A. Yes, sir; about 10 years together.

Q. That was on Warren Street? In Paterson? A. Yes.

Q. Did you know them intimately? A. Yes. 30 She partly kept my children.

Q. Peter and she would sleep together and eat together? A. Yes; we would all eat together.

Q. And they held each other out as man and wife to their friends and acquaintances? A. Yes, sir.

Q. Anna Moore was known generally as Mrs. Moore? A. Yes. She joined the Queen Esther Court as his wife. I was a member of that.

40

*Katherine Thompson—Cross.**Cross-examination by Mr. Viviano:*

Q. Did you know Mrs. Moore before her marriage to him? A. No.

Q. Do you recall the occasion when you first met Mrs. Moore? A. Yes; it was at a party at 94 Straight St.

10 Q. About what year? A. I couldn't tell you that; it was about 50 years ago.

Q. And you knew Mr. Moore? A. Yes.

Q. What did he say to you on that occasion? A. We were all out on that occasion to that party. He said, "I give you an introduction to my wife, Mrs. Moore."

Q. You remember those particular words 50 years ago? A. Yes.

20 Q. Did you attend his funeral? A. No.

Q. Did you know of his death? A. Yes.

Q. Were you in Paterson at that time? A. Yes.

Q. Did you know where Mrs. Moore lived at that time? A. No.

Q. Did you know when they separated? A. Yes; we all lived together in the same house.

Q. Did you know why? A. That was between them. I come down and helped her to pack up. I didn't want her to leave.

30 Q. Did you know it was some woman? A. Sally Kidd.

Q. Did you know about the Sherman woman? A. No.

Q. Didn't you know a little bit about it? A. Yes; a little.

Q. And that's what broke up the home? A. I should think it would have done it; it would with me.

Mr. Viviano: It is stipulated by counsel

Mr. Gussie Banks—Direct.

for the defendant that at the time of his death, Peter Moore was in good standing in the Fire and Police Department and in good standing in the Pension Fund.

It is further stipulated by and between counsel for the plaintiff and for the defendant that these depositions need not be signed. 10

Hearing adjourned until April 16th, 1931.

April 16th, 1931.

MRS. GUSSIE BANKS, being duly sworn, testified as follows:

Direct-examination by Mr. Lewis:

Q. What is your full name and address? A. Gussie Banks, 197 Godwin Avenue. 20

Q. Did you know Peter and Anna Moore? A. Very well.

Q. How long did you know them? A. The past 40 years.

Q. Did they live in your father's house at 95 Straight St., Paterson, N. J.? A. Yes, sir.

Q. Did they live together there as man and wife? A. Yes. 30

Q. How long did they live there? A. 15 years. All the while I was going to school.

Q. Did you hear them refer to each other as husband and wife? A. Yes; because the receipts were paid in that way to Mr. Peter Moore.

Q. I mean, did you hear him refer to her as his wife? A. Yes. Peter always spoke of Anna as "my wife."

Q. And they lived there while you were living 40

Mrs. Gussie Banks—Cross.

there in the same house? A. Yes, sir; for over 10 years.

Cross-examination by Mr. Viviano:

10 Q. How long have you known Mrs. Anna Wilson or Mrs. Anna Moore?

Mr. Lewis: I object to that question. I object to the form of that question. There is no Mrs. Anna Wilson in this case.

By Mr. Viviano:

Q. I will withdraw that question. How long have you know the alleged Mrs. Anna Moore? A. A good 40 years.

20 Q. No question about that in your mind? A. None whatever.

Q. You executed an affidavit on the 12th day of January, 1931, wherein you stated that you had known them 30 years. Which statement is true—that one or the one you just made? Which is true? 30 or 40 years? Which statement is correct?

Mr. Lewis: Mr. Commissioner, they could both be true. There is nothing incongruous in both statements.

30 Mr. Viviano: That is very nice of you to help her out, Mr. Lewis.

A. I am 54 years old. She was there when I was going to school.

Q. How old were you when you were going to school? A. I must have gone when I was 5.

Q. Did Mr. Moore introduce Anna Moore to you at that time? A. No; not to me. He introduced her to my family—my mother and father.

40

John J. Mayer—Direct.

Q. And were you present? A. Always.

Q. Always present? A. I was always around the family.

Q. At the age of 5? A. Yes, sir.

JOHN J. MAYER, being duly sworn, testified 10
as follows:

Direct-examination by Mr. Lewis:

Q. What is your position in the Prudential Insurance Co.? A. Manager of the Tracer Department.

Q. Just what does that comprehend? A. That is a department where we have the history of all the industrial policies. We trace through all these binders or registers in order to ascertain the final status of the policies, to see whether they have 20
lapsed or if not, if they are in force.

Q. That is your book of records? (Pointing to book.) A. Yes.

Q. Will you tell us what that shows about the policy of Mrs. Anna E. Moore? A. It shows that about October 8th, 1883 she changed the name on her policy from Anna E. Wilson to Anna E. Moore. 30

Q. What is the number on that policy? A. #602102.

Q. Prior to that date it had been in the name of Anna E. Wilson? A. Yes. Prior to that date it had been in the name of Anna E. Wilson.

By Mr. Viviano:

Q. Does it disclose at whose request that change was made? A. No; it does not.

John J. Mayer—Direct.

By Mr. Lewis:

Q. Would there be any signature necessary at all? A. No. About 40 years ago a form #47 was instituted upon which a policy holder was changed, and has been used ever since. Prior to 40 years ago, there was no such form. This change here must have been requested by correspondence through the Home Office, and that old correspondence would be destroyed by now.

Q. The change of name could not be made except by the request of the policy-holder? A. No.

By Mr. Viviano:

Q. Does your record show who the beneficiary of the policy was? A. Not stated there; no. Of course, in case of a claim the Company would pay it to—. The policy is in force now, in Taunton, Massachusetts.

By Mr. Lewis:

Q. In the name of whom? A. Anna E. Moore.

Q. On the life of Anna E. Moore? A. Yes.

Q. It holds the same number as it did before when it was in the name of Anna E. Wilson? A. Yes, sir. Mr. Shields is the name of the agent.

By Mr. Viviano:

Q. Does your record disclose any record of a document setting forth the marriage of Peter Moore and Anna E. Moore? A. No.

Frank Hailstock—Direct.

FRANK HAILSTOCK, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

Q. What is your full name and address? A. Frank Hailstock, 272 Hamilton Avenue, Paterson, N. J.

Q. How old are you? A. I will be 56 the 29th day of this coming August. 10

Q. How long have you lived in Paterson? A. Since 17.

Q. Did you know Peter Moore, a chauffeur in the Police Department in the City of Paterson?

A. Yes; when he got appointed.

Q. At that time, was he married, to your knowledge? A. Was he married? He was supposed to be. 20

Q. With whom was he living at that time? A. I really couldn't answer that. I just knew him by being the first colored man on the police force. Everyone was pointing him out. After that, I became very well acquainted with him. 20

Q. How did you become acquainted with him? A. I used to go around places where he would hang out. We used to play pinochle together a lot. He was very fond of pinochle and so was I and we used to have some keen competition. Afterwards, I got real well acquainted with him and years after that he was living with that lady there. (Pointing to Mrs. Stewart.) 30

Q. Of your own personal knowledge, did you know Mr. Moore to live with Mrs. Stewart? A. I certainly did.

Q. Do you know how long? A. Over 25 years.

Q. At what address or street? A. I think it was Lawrence Street, if I am not mistaken. 40

Frank Hailstock—Direct.

Q. Did Peter Moore ever introduce you to Mrs. Stewart as his wife? A. No; I was never introduced to her. He didn't have to. We become acquainted at parties and things.

Q. Did you visit him at his home? A. Yes, sir.

Q. Was she there? A. She certainly was.

10 Q. What was their relation there? A. Same as any other.

Q. How did they address each other? A. She addressed him by his first name and he addressed her by hers. In the house and with their friends. How would he address his wife?

Q. Just answer the questions, please. I am not here to argue about it with you. Do you recall when Peter died? A. Yes. I should imagine it was about 5 years ago.

20 Q. Did you attend the funeral? A. No; my occupation wouldn't allow me to. I couldn't get off. But I saw him when he was sick.

Q. Who took care of him? A. Mrs. Stewart.

Q. Mrs. Stewart also had children at home of her own? A. They were grown up, her children were. She had grandchildren there.

Q. Were you present at any time when the grandchildren would address Mrs. Stewart? A. Yes.

30 Q. How would they address her? A. "Grandma."

Q. How would they address Mr. Moore? A. "Grandpa."

Mr. Lewis: No questions.

Charles Carola—Direct.

CHARLES CAROLA, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

Q. What is your full name and address? A. Charles Carola, 112 Graham Ave., Paterson, N. J.

Q. You were a member of the Police Department of the City of Paterson? A. Yes, sir. 10

Q. Between what period of time? A. I was appointed the 15th day of June, 1912.

Q. And you resigned when? A. In 1919; June.

Q. Were you acquainted with Mr. Moore, the chauffeur, who drove the patrol wagon? A. Yes, sir.

Q. How long did you know him? A. Before I went on the police force I knew him.

Q. How long? A. Well, I used to live on Lawrence Street and he used to live across the street from where I used to live. 20

Q. Did you see him together with Mrs. Stewart? A. Yes. I was introduced to her.

Q. Where were you introduced to her? A. On the corner of River and Lawrence Streets, while I was on patrol duty there.

Q. By whom were you introduced? A. Mr. Moore. She was his wife, as far as I know. As long as I was on the beat. 30

Q. Did you ever visit them at their home? A. No.

By Mr. Lewis:

Q. When did he introduce you? A. I don't know. It was after I was on the force.

Cornelius Hartley—Direct.

Cornelius Hartley—Cross.

CORNELIUS HARTLEY, being duly sworn,
testified as follows:

Direct-examination by Mr. Viviano:

Q. What is your full name and address? A.
Cornelius Hartley, 134 Butler St., Paterson, N. J.

10 Q. You are a member of the Paterson Police
Department? A. Yes.

Q. How long have you been a member? A. 15
years.

Q. Were you acquainted with Moore, the police
chauffeur? A. I was.

Q. How long did you know him? A. I'll say
about 17 or 18 years.

Q. Did you know Mr. Moore before you went
into the Police Department? A. I did.

20 Q. Where did he live? A. On Lawrence Street;
half a block in from River.

Q. With whom did he live? A. With Mrs.
Moore, as I always knew.

Q. Did you ever meet Mrs. Stewart, whom you
have just called Mrs. Moore? A. Yes.

30 Q. How? A. About a year after I went on the
force, in 1916 or 1917, there was a street fight
down on River Street, and Peter come along and
the women were standing out around there. I
thought she was his wife and still think so. He
introduced me to her as his wife.

Q. Of your own personal knowledge, did you
see Peter and Mrs. Moore together? A. Yes.

Cross-examination by Mr. Lewis:

40 Q. How long ago is it since he introduced you?
A. 1916 or 1917. During the first year or so that
I was patrolling around there.

James A. Young—Direct.

JAMES A. YOUNG, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

Q. Your full name and address? A. James A. Young, 30 Sheridan Ave., Paterson, N. J.

Q. You are employed by the City of Paterson? A. Yes, sir. 10

Q. The Register of Vital Statistics? A. Yes, sir.

Q. As such have you the custody of all records of marriages? A. I have.

Q. After consulting your records, have you been able to find any record of the marriage of Anna E. Wilson to Peter Moore? A. I haven't any records prior to 1902. They were all destroyed by the fire. 20

Q. Have you any records after 1902? A. I recall Mrs. Moore, about a year ago, coming in and she told me where she was living—somewhere in Massachusetts—and she asked me for a record of her marriage. That would be prior to the records that I have. I have no occasion to make any search before that date.

Q. If there was a record of the marriage, where could it be found? A. Prior to February, 1902, it would be in the State Department of Health at Trenton, N. J. 30

Q. At the State Bureau of Vital Statistics? A. Yes, sir.

Cross-examination by Mr. Lewis:

Q. That doesn't go back after 1885? A. To 1879—the marriage records. The law requiring the reporting of marriages was passed in 1878, and they have records in 1879. 40

James A. Young—Cross.

Q. They have them, if they are recorded? A. That's it.

Q. You are familiar, aren't you, with the recording of births, marriages and deaths? A. Yes, sir.

10 Q. And you know that it is very difficult to get any records of Vital Statistics accurately back of 1885 or 1886? A. Yes.

Q. You know that quite often there were mistakes made and that these records were very carelessly and incompetently kept? A. Yes, sir.

Q. And these facts are recognized by health authorities throughout the State? A. Yes.

20 Mr. Viviano: I wish to offer certificate from the Department of Health, of the State of New Jersey, Bureau of Vital Statistics, bearing date of April 13th, 1931, executed by David S. South, State Registrar of Vital Statistics, which certifies that there is no record of a marriage between Peter Moore and Anna E. Wilson anywhere in Passaic Co., N. J., including cities between July 1, 1879 and July 1, 1887.

30 Mr. Lewis: I move the tender be stricken out as we are not trying to prove a ceremonial marriage.

(Received in evidence and marked "Exhibit D-1.")

JAMES R. KEHOE, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

40 Q. What is your full name and address? A. James R. Kehoe, 131 Pearl St., Paterson, N. J.

James R. Kehoe—Direct.

Q. You are employed by the City of Paterson?

A. Yes.

Q. In what capacity? A. As fireman.

Q. How long have you been so employed? A. For 21 years; since 1910.

Q. Did you know Peter Moore? A. Yes; personally.

Q. For how long? A. Over 25 years. 10

Q. How did you know Peter Moore? A. I first became acquainted with him when I was working. He used to have the stripe on his pants, and he used to come around us when we were working. He was a visitor and days off he would come in to see us.

Q. Did you live in the neighborhood where he lived? A. Where he died; yes; next door.

Q. Did you visit him at his home? A. Every day off; yes. Especially when he was laid up. 20

Q. Before he was laid up? A. Yes, sir.

Q. With whom did he live? A. I always called her Ida, her first name. Mrs. Moore. Ida was a very unfamiliar way to address her but I was used to him calling her Ida, sayng "Ida" this and "Ida" that, so I got to calling her that, myself.

Q. Did Peter treat her as his wife? A. He sure did. 30

Q. Did he introduce her to you as his wife? A. Not in their home. He didn't have to.

Q. Whose children lived there with them? A. The grandchildren lived downstairs. They would run down to meet him coming up. Called him "Grandpa." One little girl he would have given his life for. He would pick her up and carry her upstairs.

Q. How long did you know him? A. 18 years. 40

James R. Kehoe—Direct.

I could almost bet on that. They lived next door to me for 10 years.

Q. You saw them daily for 10 years? A. Yes, sir.

Q. Did you visit him? A. Yes; every day I was off.

10 Q. Who took care of him? A. Mrs. Stewart. Very good, too. It was the talk of the neighborhood, the way she took care of him.

Q. Did you take care of the arrangements about the funeral? A. I stayed home around the neighborhood. No. I was there; I lived right next door.

Q. Prior to his death, did you have any conversation with him relative to any pensions? A. Yes, sir.

20 Q. In what way? A. He took it for granted. He never said anything different.

Q. Did he say to whom it would be paid? A. Thought it would go to his home, I guess.

Q. What did he say? Relating to Mrs. Stewart? A. Naturally, he thought it would go to your wife or next-of-kin, he said.

Q. He made a few wishes prior to his death to you, didn't he? A. Yes, sir.

30 Q. What were they? A. That the pension would be taken care of. He had a little grandchild there that he idolized.

Mr. Lewis: I want this whole conversation stricken out. You can't have a conversation with a dead man on record.

Mr. Stafford: I will strike that out.

Mr. Viviano: Please note my exception, on the ground that the door was opened by the prosecutor in his direct testimony with his witness, as appears from the record.

*James R. Kehoe—Cross.**Cross-examination by Mr. Lewis:*

Q. You knew Peter Moore for about 18 years?

A. Yes; longer than that. When he went on the police force.

Q. How long have you known Mrs. Stewart?

A. About 18 years—personally.

Q. How long have you known of their intimacy with each other? A. I have been to their place on Lawrence St. 10

Q. How long ago is that? A. It is 10 years back that we know they lived next door.

MRS. NETTIE TURNER, being duly sworn, testified as follows: 20

Direct-examination by Mr. Viviano:

Q. Your full name and address? A. Mrs. Nettie Turner, 61 Elmwood Avenue, Montclair, N. J.

Q. Are you acquainted with Mrs. Stewart, also known as Mrs. Moore? A. Yes.

Q. How long have you known her? A. About 30 years or more.

Q. Where did you live, prior to your present address? A. I lived on Lawrence Street. 30

Q. Paterson? A. Yes; 22 Lawrence Street.

Q. How long did you live in the same house with her? A. I was there a long time and then I moved out shortly after the flood, from there to High Street. From there I moved to Montclair, where I have been living for the last 22 years.

Q. Did you live there in the same house when Mr. Peter Moore did? A. Why, yes; I certainly did. 40

Mrs. Nettie Turner—Direct.

Q. What apartment did you have? A. The first floor.

Q. And they lived where? A. On the second floor.

Q. How long did they live together there? A. I can't say how long. It was years, I guess.

10 Q. Who else lived with them? A. The children.

Q. How did Mr. Moore address her? A. Always said Ide. Ide. Yes.

Q. How did the children address Mr. Moore? A. They called him "Daddy."

Q. Do you know whether or not Mr. Moore held her out as his wife? A. Yes; I know that.

By Mr. Lewis:

20 Q. That is merely a conclusion. How do you know it? A. They lived as man and wife, and I supposed they were man and wife; husband and wife.

By Mr. Viviano:

Q. Did they occupy the same bed? A. They occupied the same room.

30 Q. There was nothing in their relationship which would in any way militate against the way they lived? A. I guess not.

Q. Did they act as man and wife together? A. Yes; nice; agreeable. In the house and outside in company.

Q. When in company, how did he address Mrs. Stewart? A. If he introduced her, it was—

Mr. Lewis: Wait a minute. You said, "If."

By Mr. Viviano:

40 Q. Did he introduce her? A. Yes.

Mrs. Nettie Turner—Cross.

Q. How did he introduce her? A. "My wife."

Cross-examination by Mr. Lewis:

Q. How long have you known them? A. 30 years or more.

Q. When did you first meet them? A. I lived at Riverside when I first knew Ida.

10

Q. When was that? A. That is some years ago.

Q. I don't want "some years." How many years? A. About 32 or 33 years.

Q. When did you first meet Peter? A. After I moved on Lafayette St., in Paterson.

Q. How long after you had known Mrs. Stewart? A. I come to know Peter.

Q. Well, it was a number of years after you knew Mrs. Stewart. Was it 10 years? A. I don't think so; I come to know him because I—

20

Q. It was several years later you met Peter? A. Yes.

Q. About 31 or 32 years ago you met her? A. Yes.

Q. It was several years later that you met Peter? A. Yes.

Q. How long after that did you meet them, to think they were man and wife? A. Yes, sir.

30

Q. How long after that? After you moved from Riverside? A. Yes, sir.

Q. After that you met Peter? A. Yes.

Q. After that you met them living together? A. That must be 22 years ago.

By Mr. Viviano:

Q. When did you first meet them? A. It is 22 years ago since I lived with them. I been in Montclair 22 years.

40

Mrs. Ida C. Stewart—Direct.

MRS. IDA C. STEWART, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

Q. What is your full name and address? A. Ida C. Stewart, 129 Pearl Street, Paterson, N. J.

10 Q. Mrs. Stewart, how old are you? A. I will be 59; going on 60th year. About 60 or 61.

Q. What is your maiden name? A. Ida Bennett.

Q. When did you marry Mr. Stewart? Do you recall? A. No; I can't just remember the date but my oldest girl is 40 years old. I guess that would be—. I have a marriage certificate home. We lived in James Bells' for eight and a half years. My husband died up there.

20 Q. Do you recall about when your husband died? A. My youngest child was seven months old and I think she is about 30 years old now. I know I had six children; one was seven months old and the oldest was 10 years old.

Q. Was it before or after the big fire? A. He died before that. We lived in James Bells'.

Q. How many children did you have with Mr. Stewart? A. Seven.

Q. Do you know Peter Moore? A. Yes.

30 Q. When did you first meet him? A. Maybe four or five years after; something like that.

Q. Under what circumstances did you meet him? A. I met him at some friend's house. A friend of mine. Mrs. Ellsley she was at that time. And Mrs. Lee; I can't just say what her address was; where she lived.

Q. When did you begin to cohabit with Moore? A. When we hired rooms. He put me in the rooms at Harrison Street.

Mrs. Ida C. Stewart—Direct.

- Q. When was that? A. Over 20 years ago.
- Q. When? A. I can't just say when.
- Q. How did you live with Peter? A. As his wife.
- Q. Did you occupy the same bed? A. The same room.
- Q. Did you bring the children there? A. Yes; the small boy and the biggest girl. 10
- Q. How did your children address him? A. "Stepfather" or "Father Moore."
- Q. How long did you live there with him? A. 17 years on one side of Lawrence Street. I moved across the street then and lived there for three years. Then we lived up on 129 Pearl Street for three years before he died.
- Q. How did you hold yourself out to the public? A. As Peter's wife. 20
- Q. When you went to purchase furniture, how did you buy it? A. I called up to Lockwood's and went and picked out some furniture I wanted and Peter he went there and paid the bills.
- Q. How did you represent yourself there? A. As Mrs. Moore.
- Q. Did you go to any other stores? A. Yes; I went to Shoonmaker's, also. I got the boys' clothing there. At that time, they didn't carry many things for women, mostly men's things. But I did get a coat or a dress for myself once in awhile there. Mostly, I bought the things for the boys there, though. Their suits and coats and— 30
- Q. How did you buy these things? A. The same way.
- Q. By what name? A. Mrs. Moore.
- Q. Who supported you and your two children? A. Peter.
- Q. You recall Peter's last illness? A. I should say so; I took care of him to the last. 40

Mrs. Ida C. Stewart—Direct.

Q. Prior to Peter's death, did he say anything to you relating to a pension? Or to whom it was to be paid? A. Yes, he did. But like we lived I was afraid to say anything about it. I was only a common-law wife.

Mr. Lewis: That's your conclusion.

10 *By Mr. Viviano:*

Q. Did he say who you were to see? A. Yes; Captain Bott.

Q. Of the Police Department? A. Yes, sir.

Q. After his death, did you see Captain Bott? A. Yes; but I said I wasn't his wife. I thought common-law marriage wouldn't go and I didn't want to be bothered about it.

20 Q. Did you purchase a house? A. Yes; I'm trying to pay for it, yet. Still doing that.

Q. Did he contribute to the purchase of that house? A. Yes, he certainly did. If he hadn't I wouldn't have taken it over at all.

Q. Where is Peter buried? A. Valley Cemetery.

Q. Who is there? A. My husband, Mr. Stewart, my three children and Mr. Moore. There is a place alongside of him for me.

30 Q. Did you place any marker on his grave? A. Yes, sir.

Q. At whose expense? A. Mine.

Q. You still take care of the graves? A. Yes; even to the present day. Easter Sunday I was up there with one of my daughters.

Q. You knew his brother, Alex? A. Yes; he came home to the funeral and then went on back.

Q. After the death of Peter, there was some money due him from the Police Burial Fund, wasn't there? A. Yes.

Mrs. Ida C. Stewart—Direct.

Q. How much was it and who got it? A. His brother and I got it. It was \$100.00 altogether. He gave me some of it and took the rest and went on away.

Q. You knew that Peter, prior to living with you, had lived with an Anna Wilson? A. Yes.

Q. And when you commenced to cohabit with Peter, was Anna Wilson ever discussed? A. He never said anything to me about it. I said to him once, "Did you have any trouble?" He said, "No one can make any trouble for me." So I told him as long as he brought up my children and took care of me I would live with him. 10

Q. Is that what he said? A. Yes.

Q. Did Anna Wilson at any time complain to you about your living with Peter? A. Never; she certainly did not. 20

Q. Did you go with Peter on vacations during the time that you lived with him? A. Yes, sir.

Q. Where? A. Went to Washington once for ten days.

Q. Who with? A. Peter. We went to see Alex Moulton. He was police chauffeur there, the same as Peter was here. In the 10th precinct in Washington.

Q. How did he introduce to them there? A. As his wife. 30

Q. And you actually lived at the home of these friends in Washington for 10 days? A. We certainly did.

Q. Do you recall the reason for going to Washington then? A. It was vacation-time.

Q. Was it because it was any national affair? A. Not just at that time. We did stop at this friend's house there and that is where we stayed the whole 10 days. 40

Mrs. Ida C. Stewart—Direct.

- Q. Do you recall going to the Lincoln's Memorial? A. Yes; we stayed on Sunday and stayed over in Philadelphia. That was another time, though. We stayed there until Tuesday; then we come back to Paterson.
- Q. How were you introduced there? A. Mrs. Moore.
- 10 Q. Did you take trips together? A. Yes. Atlantic City we went to on a vacation and stayed there for 10 days.
- Q. With whom? A. Hotel Deal.
- Q. You also went to Philadelphia? A. Yes.
- Q. With whom did you stay there? A. Mrs. Ellsley.
- Q. How long did you stay there? A. 10 days.
- Q. How were you introduced there? A. Yes; Mrs. Moore.
- 20 Q. Was Anna Wilson to the funeral? A. No; she was not.
- Q. How were you known in the neighborhood, where you lived with Peter? A. Some would call me after my daughter, Thompson, some Mrs. Stewart or Mrs. Moore. There was only people living on one side of the street; none on the other side of the street. Their yards were right next to ours.
- 30 Q. Do you know a Mr. Cohan? A. He used to live on Lawrence St.
- Q. Where do your people live? A. Warwick.
- Q. Did you ever introduce them to Peter? A. Yes; they kept my children for me awhile. When I took him out there as my husband, he said he would take two of them away and he did; the youngest and the oldest boy.

Mrs. Ida C. Stewart—Cross.

Cross-examination by Mr. Lewis:

Q. Alex Moore paid for his brother's funeral?

A. Yes.

Q. Then he collected money from the Police Burial Fund? A. Yes.

Q. Did he give you some money on account of nursing him? A. Yes. No. He said he would give me some money. He had a burial policy, made out to the brother, for \$500.00. 10

Q. You had taken care of him in his illness and nursed him well? A. Yes; I certainly did. Night and day.

Q. When you got the idea of a pension, you went to see Captain Bott? A. Yes.

Q. And he said that you wouldn't get a pension, because Peter had a wife living? A. He didn't say a wife. He said a woman. I never knew it was a wife. I thought she was the same as myself. 20

Q. When did you say you first lived with Peter? A. It is over 25 years. I can't say.

Q. You are under oath. Say so; if not, don't guess at it. A. Yes; well, about 25 years.

Q. Now, in the stores you said that you went to—Lockwoods and Schoonmakers—what did you say to them, "Charge it to Peter Moore?" A. Yes; and he paid it. 30

Q. You have always held yourself out as the widow of Edward Stewart? A. No; not after I went out there.

Q. What information do you give the directory people—widow of Edward Stewart? A. No.

Q. I show you this directory for year 1925 and for year 1931 and it says here you are listed as the widow of Edward Stewart? A. Oh, yes. 40

Mrs. Ida C. Stewart—Cross.

Q. How is that? A. I can't say why. I don't know.

Mr. Viviano: This is not admissible; no proper basis has been laid.

Mr. Stafford: Sustained.

Mr. Viviano: Exception, please.

10 A. I was only the common-law wife of Peter Moore.

By Mr. Lewis:

Q. Why did you hold yourself out as the widow of Edward Stewart? A. No; I didn't.

Q. Why did you give this information to the directory people? It really was a habit, wasn't it, to think of yourself as Mrs. Stewart? That is how you were known, isn't it? A. Yes; and as
20 Ida Moore. Known as Ida Moore when I lived with Moore.

Q. And this cohabitation began 25 years ago? A. Very near that.

HARRIS COHEN, being duly sworn, testified as follows:

Direct-examination by Mr. Viviano:

30 Q. What is your full name and address? A. Harris Cohen, 187 Governor Street, Paterson, N. J.

Q. How old are you? A. 64 or 65 years old.

Q. Where do you live? A. I am living now at 187 Governor Street. I got my own house. I used to live at 119 Lawrence St.

Q. How long did you live there? A. Nine years.

Q. Is your place of business there also? A.
40 Live there with my family.

Harris Cohen—Direct.

Q. Did you know Peter Moore? A. Oh, yes.

Q. Did you know Mrs. Stewart, who has just testified? A. Oh, yes.

Q. By the name of Moore? A. Yes.

Q. By the name of Mrs. Moore? A. Yes. And the children used to say to me sometimes, "I'll tell my Father on you."

Q. Who did they mean? A. "I will tell my Father on you." 10

Q. Did Mr. Moore ever come to your place? A. One time; I don't remember how many years ago. He said, "My wife said to get a curtain-stretcher," and he asked me to give it to him. The day after he brought it in.

Q. Who was Peter living with at that time? A. He came in to borrow the stretcher.

Q. Who was he living with then? A. With that lady. (Pointing to Mrs. Stewart.) 20

Q. The one who just testified? A. Yes.

Q. And he referred to her as his wife? A. Yes.

By Mr. Lewis:

Q. You have known them for 28 years? A. Yes.

Mr. Lewis: I want to move that all testimony pertaining to the cohabitation of Ida Stewart and Peter Moore be stricken out, as not being material. Peter Moore and Mrs. Anna Moore ceased cohabitation in 1899, when she left him, and any relations with any other women, without having first secured a divorce from Anna Moore, would have been illicit and spurious. 30

Mr. Stafford: I will deny the motion.

Mr. Lewis: Please note my exception.

Mr. Viviano: It is admitted by counsel for the 40

Colloquy.

defendant that Peter Moore, at the time of his death, was a member in good standing of the Paterson Police Department and also was a member in good standing of the Paterson Police Pension Fund.

10 Mr. Lewis: I wish to offer the Paterson City Directory for the year 1925—the year in which Peter Moore died—showing Ida Stewart, the witness offered by the defense, set forth in said Directory as follows: “Ida Stewart, widow of Edward, 129 Pearl Street.”

Also, for the year 1931, Directory showing the witness, Ida Stewart, set forth in said Directory as: “Ida C., widow of Edward Stewart, 129 Pearl Street.”

Mr. Stafford: Exception taken.

20 Mr. Viviano: I object, on the ground that there is no basis of proof setting forth the fact that the information which appears in said Directories was furnished by Ida Stewart. Nor is there any evidence that that information was furnished by Ida Stewart.

Mr. Stafford: Objection sustained.

Mr. Lewis: Exception taken.

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Stipulation.

Filed April 27, 1931.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">ANNA E. MOORE, Prosecutor, vs. FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON, Defendant.</p>	}	On Certiorari.	10
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It is stipulated by and between the attorney for the prosecutor and the attorney for the defendant that Peter Moore was thirty-two years of age when he became a member of the Paterson Police force on March 1, 1894. 20

RANDAL B. LEWIS,
Attorney of Prosecutor.

SALVATORE D. VIVIANO,
Attorney of Defendant.

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Stipulation.

Filed January 14, 1932.

NEW JERSEY SUPREME COURT.

10

ANNA E. MOORE,
Prosecutor,

vs.

FIRE AND POLICE PENSION FUND
COMMISSION OF PATERSON,
Defendant.

} On Certiorari.

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It is hereby stipulated by and between the parties hereto that Anna E. Moore, the prosecutor herein never married after the death of Peter Moore, formerly of the Paterson Police Department.

Dated: January 14, 1932.

RANDAL B. LEWIS,
Attorney of Prosecutor.

SALVATORE D. VIVIANO,
Attorney of Defendant.

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Opinion.

NEW JERSEY SUPREME COURT.

ANNA E. MOORE, Prosecutor,	}	On Certiorari.	10
vs.			
FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON,	}	Respondent.	
Respondent.			

Submitted June 9, 1932; decided June 14, 1932.

For the Prosecutor, RANDALL B. LEWIS, ESQUIRE.

For the Respondent, SALVATORE D. VIVIANO,
ESQUIRE. 20

BROGAN, *J.*

The writ brings up the decision of the Fire and Police Pension Fund Commission of the City of Paterson denying the application of Anna E. Moore for a pension as the widow of the late Peter Moore, police chauffeur of the Police Department of the City of Paterson and the matter was, under the statute, brought on before me as a single Justice of the Supreme Court. 30

The return of the Respondent discloses the following facts; that the applicant, Anna E. Moore, a resident of Massachusetts, appeared before the Pension Fund Commission on September 9, 1930, and made application for pension as the widow of Peter Moore, who died in July, 1925, while a member of the Police Department and while in good standing as a member of the Pension Fund for said Police Department; that the applicant 40

Opinion.

10 stated that she had been married to the deceased since March, 1884, had lived with him as wife for fifteen years, but had been separated from him since 1899; that she had never been divorced or legally separated from him down to the time of his death; that she had seen him at stated intervals at least once a year up to 1919; that she
20 claimed to have been married to decedent by a Minister, at the Park Avenue Baptist Church in Paterson but there is no record of the marriage at the church nor were any records of such marriage found in any state or local Bureau; that the said Minister has since died and no one has been found who has any of his records concerning marriages performed by him. These facts appear in the return of the Respondent and were brought out at the meeting of Respondent Commission on
20 September 9, 1930.

The return shows another meeting held on November 18, 1930, in which the said application again engaged the attention of the members of the Pension Fund Commission. At this second meeting the applicant produced witnesses in addition to herself, one who had known the applicant and the decedent for forty years and that for fifteen years they lived together as man and wife
30 in the same house as the witness and were known as man and wife; another, an employee of the Department of Labor of the State of New Jersey, who testified that he likewise had known the applicant and the decedent for forty years and that he, too, knew them as man and wife and had met them at social affairs where they held each other out as man and wife; still another that he had known these parties for many years and had visited them at their home where the decedent introduced the applicant as his wife; still another
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Opinion.

who had employed the applicant as a domestic in her home, who knew the parties, applicant and decedent, as man and wife.

There were other witnesses who testified along similar lines.

At a subsequent meeting, December 9, 1930, the Commission adopted a resolution denying the application of the said Anna Moore on the ground "that there had been no proof that she was ever married * * *" which resolution was unanimously adopted and, consequently, the application for pension failed. 10

This resume constitutes all the information contained in the return.

At this juncture of affairs it will be observed that all the proof appearing in the return tended to prove and did prove if not a ceremonial marriage at least a common-law marriage. 20

In April, 1931, the parties hereto took testimony before a Supreme Court Commissioner in which the matter in controversy was fully discussed by both sides. All of the witnesses mentioned above were heard and others in addition to that list. It further appeared that at or about the time of the alleged marriage the applicant had gone to the Prudential Insurance Company, in which company she carried a policy of insurance, and had had her name changed in the policy from her maiden name, Annie E. Wilson, to Annie E. Moore. 30

The testimony produced by the Respondent, Pension Commission, to offset the Prosecutor's proof is at best negative in character. It tended to show and did show that from the time the Prosecutor left the deceased that he had lived with another woman and that she had held herself out or for that matter had been held out, by 40

the decedent, as wife. It is a significant fact that although the said Peter Moore died in July, 1925, at no time did the second woman in the case make application as the wife of the decedent for the pension that would have been her due under the law as widow of a deceased member of said Police Pension Fund of the City of Paterson if she were in fact lawfully such widow. The testimony of the Respondent attacks the Prosecutor's case by indirection and negatively. Testimony of this kind is never convincing in the face of affirmative proof to the contrary.

10

The Respondent, The Pension Commission, takes the position that this court will not review evidence with a view to ascertaining whether it might have reached a different conclusion from the tribunal below and that if the judgment of the Pension Commission can be supported it will not be disturbed.

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This generally states the law on this question, but there are certain exceptions thereto and the instant case is one of them. The facts in this case are reviewable in this court. (Cf. *Statute on Certiorari, Section 11, Compiled Statutes of New Jersey, Volume 1, Page 405.*) In the case at hand, however, an examination of the return of the Respondent and the testimony taken compels the conclusion that there is no justification for the finding that the Prosecutor was not married to the decedent, while there is plenary evidence, affirmative in its nature, to justify the finding that the Prosecutor was married to the decedent.

30

The second point in the Respondent's brief argues that the Prosecutor is in laches and therefore entitled to no relief. It must be presumed that this substantial question was raised at the time application was made for the writ and the writ allowed, so, apparently, the court, at the time the

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Opinion.

application was made, concluded that under all the circumstances of this case the Prosecutor was not in laches. Her delay in making this application militated against herself and not at all against the Respondent. Living as she did in the State of Massachusetts, the Prosecutor was far away from the place where she might have gotten information about her rights. The Respondent is a continuous body. Its records are permanent and laches may not generally be invoked under these circumstances. There is no inequity worked upon the Respondent by the recognition of this claim. It is not such a delay as worked to the disadvantage of the Respondent. 10

As to the third point that the Prosecutor has failed to establish that she was the wife of Peter Moore at the time of his death and that she still remains unmarried, suffice it to say that there is a stipulation in the record that the Prosecutor remains unmarried. 20

The proofs before the Respondent, Pension Commission, sufficiently proved that the Prosecutor was in fact the wife of the decedent and no evidence was presented to controvert it.

The resolution, therefore, of the Pension Commission of the Fire and Police Pension Fund Commission of the City of Paterson will be set aside and a rule may be entered to that effect. 30

Grounds of Appeal.

Filed May 24, 1933.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">ANNA E. MOORE, Prosecutor, vs. FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON, Respondent.</p>	}	<p>On Certiorari. 10</p>
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To: RANDAL B. LEWIS,
Attorney for Prosecutor.

Sir:

Please Take Notice that the respondent in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause, for the following reason:

The Supreme Court erred in giving judgment for the prosecutor instead of for the respondent.

Respectfully,

SALVATORE D. VIVIANO,
Attorney of Respondent.

Council of Appeal

Filed May 21 1933

NEW JERSEY SUPREME COURT

IN AND FOR THE COUNTY OF MIDDLESEX

ARZA E. MOORE,

Prosecutor,

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Respondent.

On Petition for Writ of Habeas Corpus.

Presented by the Respondent.

To: HAZARD B. LARSEN,

Attorney for Respondent, 400 Broadway,

New York City.

Please take notice that the respondent in the above entitled cause appeals to the Council of Appeal and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause for the following reason:

The Supreme Court erred in either judgment for the prosecutor instead of for the respondent.

Respectfully,

HAZARD B. LARSEN,

Attorney of Respondent.

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58 OCT. 1. 1933

New Jersey Court of Errors & Appeals

Anna E. Moore, Prosecutor-Respondent, vs. Fire and Police Pension Fund Commission of the City of Paterson, Defendant-Appellant.	}	On Certiorari.
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ON APPEAL FROM THE SUPREME COURT

Brief for Prosecutor-Respondent

STATEMENT

THE MAIN QUESTION INVOLVED IN THIS APPEAL IS WHETHER ANNA E. MOORE, THE PROSECUTOR-RESPONDENT, WAS MARRIED TO PETER MOORE (WHO WAS A MEMBER OF THE POLICE DEPARTMENT OF THE CITY OF PATERSON AT THE TIME OF HIS DEATH, AND IN GOOD STANDING IN THE PENSION FUND OF THE FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON) AND REMAINED UNMARRIED AFTER HIS DEATH.

FACTS

Anna E. Moore and Peter Moore were married in 1884. (Case, page 3, line 30; page 9, line 1.)

Peter Moore joined the Paterson Police force on March 12, 1894, at the age of thirty-two years, at which time he and prosecutor were living together as man and wife. (Case, page 53; page 3, line 30; page 10, line 1; page 19, line 38 to line 34 on page

20; page 22, line 23 to line 10 on page 23; page 25, line 27; page 27, line 21 to line 20 on page 28; page 29, line 22 to line 2 on page 30.)

Prosecutor and Peter Moore were never divorced or separated by any decree of court (case, page 18, line 10) and Anna Moore never remarried after the death of Peter Moore. (Case, page 54.)

Peter Moore died July 17, 1925, in good standing in the Police Department and in the Pension Fund. (Case, page 6, line 20; page 29, line 1; page 52, line 1.)

Anna E. Moore made application to the Fire and Police Pension Fund Commission of the City of Paterson on August 29, 1930, (Case, page 6, line 10).

On December 9, 1930, after hearing had in the matter, the Pension Fund Commission refused to grant Anna E. Moore a pension on the ground that she was not married to the late Peter Moore (Case, page 5, line 25).

ARGUMENT

POINT I.

THAT SAID ANNA E. MOORE WAS MARRIED TO PETER MOORE, (WHO WAS A MEMBER OF THE POLICE DEPARTMENT OF THE CITY OF PATERSON AT THE TIME OF HIS DEATH, AND IN GOOD STANDING IN THE PENSION FUND OF THE FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON) AND REMAINED UNMARRIED AFTER HIS DEATH.

It is admitted that Anna E. Moore's husband, Peter Moore, at the time of his death, was a member in good standing of the Paterson Police Department

and also was a member in good standing in the Paterson Police Pension Fund (Case, page 52, line 1).

Anna E. Moore was never divorced from her husband (Case, page 18, line 10) and remained unmarried after the death of her husband (Case, page 54).

The remaining question therefore is as to the marriage.

It is immaterial to this issue whether or not Anna E. Moore became the wife of Peter Moore through a ceremonial marriage or was his common law wife. The prosecutor is the only witness to the ceremonial marriage. Her statement is that she was married by the Reverend Wiggins to said Peter Moore in Paterson in 1884; that the minister and witnesses to the marriage are dead; that she destroyed the certificate of marriage and has no documentary proof of it and has been unable to obtain such proof. She further testifies that after the marriage they lived together as husband and wife.

There is no testimony by the defendant to refute this proof and so it must stand (in re Brugnoli, 2 Misc. R. 422). Therefore, under the rule laid down by the Court of Chancery, in *Ross vs. Spark*, 81 Equity, page 117, unanimously affirmed by the Court of Errors, 81 Equity 211, our proof need go no further for in that case the Court held that the testimony of one of the parties to a marriage was sufficient to prove it.

Now as to the proof of a common law marriage, there is abundance of proof on the part of the prosecutor and witnesses who testified in her behalf, that Anna E. Moore and Peter Moore co-habited and were generally regarded as man and wife for a great many years after their marriage, which Anna E. Moore states, with no denial of the fact, occurred in 1884.

Striking proof of this is obtained through the rec-

ords of the Prudential Insurance Company which show that about the time she says she married Peter Moore she had her insurance policy changed from her maiden name, Anna E. Wilson, to Anna E. Moore, which policy is still in force. (Case, page 31, line 27 &c.; page 32, line 16 &c.)

John A. Huggs, who was on the examining board of the Department of Labor of New Jersey, testified that he knew Peter Moore and Anna E. Moore, for about forty years; he knew them as man and wife, and he met them at receptions and parties where they were referred to and known as such; that Anna E. Moore joined a women's branch of the Knights of Pythias by reason of her claim to be the wife of Peter Moore (Case, page 19, line 22 to 34 on page 20).

John W. Klein had known Peter Moore and Anna E. Moore as man and wife many years; visited them at their home and knew that they lived together, and he was introduced to Anna Moore as Peter Moore's wife (Case, page 22 to line 10, page 23).

Anna L. Newkirk employed Anna Moore for many years and knew her and Peter Moore as husband and wife (Case, page 25 to line 20, page 26).

Katherine Thompson knew Peter Moore and Anna Moore for a long time, and was introduced to Anna Moore as Peter Moore's wife at a party. Peter Moore and Anna Moore lived in the same house with her for about ten years. They slept together, ate together, and held each other out as man and wife (Case, page 27, line 10 to line 19, page 28).

Gussie Banks testified that she had known Anna Moore and Peter Moore for forty years; that for fifteen years they lived and kept house in her father's home where she was living, and they were known as husband and wife (Case, page 29, line 20 to line 2, page 30).

All this testimony is unrefuted by the defendant and must stand, and we submit that it clearly establishes the marriage between Anna E. Moore and Peter Moore.

In re Brugnoli, 2 N. J. Misc. R. 422; Jackson vs. Jackson, 94 Eq. 233; Bey v. Bey, 83 Eq. 239; Ross vs. Sparks, 81 Eq. 117, affirmed 81 Eq. 211; Bolmer vs. Edsall, 90 Eq. 299; State vs. Thompson, 76 Law 197; Voorhees vs. Voorhees, 46 Eq. 411; 47 Eq. 315; Atlantic City R. Co. vs. Goodin, 62 Law 394; West vs. Pearson, 16 N. J. L. J. 184; In re Wallace, 49 Eq. 530; Clark vs. Clark, 52 Eq. 650; Stevens vs. Stevens, 56 Eq. 488; Mullaney vs. Mullaney, 65 Eq. 384; Maxwell vs. Maxwell, 98 Eq. 493; Sturm vs. Sturm, 111 Eq. 579.

Counsel for appellant comes before this court on three points argued in his brief:

1. On certiorari to review proceedings of a Board, the Court will not review evidence with view to ascertaining whether it might reach a different conclusion from that reached by the Board, but if the Board's judgment can fairly be supported by evidence, it will not be disturbed.

2. Granting a writ of certiorari is a matter of discretion, where party in interest has slept long over supposed rights, the court will not grant relief.

3. The burden of proof is on the prosecutor-respondent to establish that she was the wife of Peter Moore at the time of his death.

In answer to these points we say:

1. The matter was reviewable by the Court.
2. The prosecutor-respondent was not in laches, and if she were the appellant could not set it up as a defense.
3. Prosecutor-respondent has established that she was the wife of Peter Moore at the time of his death.

THE MATTER WAS REVIEWABLE BY THE COURT.

Compiled Statutes Vol. 1, p. 405, Sec. 11.

There was no evidence adduced before the Pension Fund Commission to refute the prosecutor's proof of her marriage.

THE PROSECUTOR-RESPONDENT WAS NOT IN LACHES, AND IF SHE WERE THE APPELLANT COULD NOT SET IT UP AS A DEFENSE.

We respectfully submit that defendant has confused the application for a writ of certiorari with the application for pension made by Prosecutor five years after her husband's death.

The certiorari was obtained to review the proceedings of the Pension Fund Commission in refusing prosecutor's application for a pension on December 9th, 1930. The writ was allowed March 9th, 1931 (Case, page 2).

Surely there are no laches in this period of time.

The point, I presume, defendant is aiming at is the delay of prosecutor-respondent in making her application for the pension constitutes laches.

This, we submit, is not a defense at law and is beside the question; and, if it had any merit, defendant was too late to claim laches, if there were laches it should have made its application at the time the writ was applied for, or should have moved to dismiss the writ.

“If the propriety of granting a writ was considered when the application was made the laches of the prosecutor cannot be again brought up.”

State Woodruff, Prosecutor vs. Orange, 32 Law 49.

“Defendant could not claim prosecutors were in laches in applying for writs where no motion is made for dismissal.”

Kayes vs. Town of Newton, 140 Atl. 425.

Even if defendants' objections on the ground of laches were timely, we respectfully submit that the defense of laches is not applicable to this matter. So long as the action is within the statutory period laches, we submit, are only considered when there will be injury to the public or to a third person through delay. There is no injury to any one by this delay except it be to the prosecutor herein. Prosecutor had no knowledge of her right until a late day (Case, page 12, line 3); and it would be immaterial whether she applied the day after her husband's

death or ten years after, as long as she is entitled to such pension as the widow of Peter Moore. Any delay would work harm to prosecutor and not to defendant, so that defendant could not set up laches as a defense even if such objection were made in time, as it was not in this instance, being unharmed by them if they existed.

“The generally accepted doctrine appears to be that laches is not like limitation, a mere matter of time, but is principally a question of the inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition or relations of the property or the parties. Since lapse of time has a tendency to obscure evidence, and often makes it impossible to discover the truth, it is, of course, one of the elements to be considered by the court in applying laches to stale claims, but it is only one, and, while important, it is not ordinarily the controlling or most important one. Hence, it has been said laches in legal significance is not mere delay, but delay that works a disadvantage to another. So long as the parties are in the same condition it matters little whether one presses a right promptly or slowly within limits allowed by law.”

10 R. C. L. 396.

We submit there was no laches and if there were defendant cannot use it as a defense in this case.

PROSECUTOR-RESPONDENT HAS ESTABLISHED THAT SHE WAS THE WIFE OF PETER MOORE AT THE TIME OF HIS DEATH.

The prosecutor assumed the burden, and proved that she was the wife, and became the widow of Peter Moore, as is fully set forth in the statement of facts at the head of this brief. As soon as that proof was in by the prosecutor the burden of proof immediately changed to the defendant to prove that no such marriage existed. This the defendant has failed to do, and there is no proof that in the least assails the proofs of the prosecutor's wifehood and widowhood.

Prosecutor-respondent respectfully submits that the resolution of the Fire and Police Pension Fund Commission of the City of Paterson, denying the application for a pension, be set aside.

Respectfully submitted,
RANDAL B. LEWIS,
Attorney of Prosecutor-Respondent.

New Jersey Court of Errors and Appeals

ANNA E. MOORE, Prosecutor-Respondent.	}	On Certiorari.
vs.		On Appeal
FIRE AND POLICE PENSION FUND COMMISSION OF THE CITY OF PATERSON, Defendant-Appellant.		from New Jersey Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT.

Facts.

The return shows: That on August 29th, 1930, the prosecutor-respondent filed her application for a widow's pension with the Fire and Police Pension Fund Commission of the City of Paterson. (Page 6, line 17.)

That on September 9th, 1930, the prosecutor-respondent appeared with counsel before the Pension Commission and alleged that she was the widow of the late police chauffeur, Peter Moore, who died July 17th, 1925, while a member of the Police Department. (Page 3, lines 20-25.)

She said that she was married to Peter Moore in March 1884. That in 1899 she separated from him and never lived with him again. (Page 3, lines 30-35.)

That she destroyed her marriage certificate. She did not produce any evidence whatsoever of a ceremonial marriage. (Page 4, lines 2-7.)

The application was considered at the regular meeting held November 18th, 1930. The application was again considered at the regular meeting held December 9th, 1930. The pension Commission found as a fact from all the testimony in the case, that Anna E. Moore was never married to Peter Moore and her application for a pension was denied unanimously. (Page 5, lines 10-32).

It is conceded that she did not file her application for a pension until August 25th, 1930 and her alleged husband, Peter Moore, died July 17th, 1925, her explanation for the delay of five years being that she did not know about a pension until August 25th, 1930. (Page 15, lines 22-25.)

It further appears from her deposition that her conduct and attitude towards her alleged husband was not that of a lawful wife. On the day that her alleged husband died, she was notified by telegram but she did not make any effort to attend the funeral, and on cross-examination, she was asked the following questions and gave the following answers (page 14, lines 36-40; page 15, lines 1-10) :

Q. How do you know it was the same day he died that you received word?

A. By telegram from Mrs. Banks. It said he had died some hour in the morning and to come on.

Q. What did you think she meant by that?

A. To get his insurance.

Q. Did you actually attend the funeral?

A. No.

Q. Why didn't you?

A. Because there was nothing to come for. I didn't want to disgrace myself, I guess.

We respectfully invite the Court's attention to the deposition of Ida C. Stewart, who cohabited

with Peter Moore as his common law wife for a period of more than twenty years. She was known in the neighborhood and community as the wife of Peter Moore, and Peter Moore in fact did introduce her as his wife to his friends and members of the Police Department, as appears from depositions filed with the Court.

(Page 35, lines 22-30; page 36, lines 20-35; page 39, lines 20-30; page 41, line 1; page 42, lines 1-40; page 45, lines 1-40; page 47, lines 20-33; page 48, lines 1-29; page 51, lines 1-24.)

Ida Stewart further testified that Peter Moore was buried in her family plot together with her first husband and three children and that to the present day she visits the cemetery and takes care of the grave. It further appears, that the prosecutor-respondent knew that Peter Moore and Ida Stewart cohabited as man and wife and that at no time did she complain or object to such cohabitation. (Page 46, lines 25-35; page 47, lines 10-20.)

After the death of Peter Moore, Ida Stewart applied for a pension as the widow of Peter Moore, but did not prosecute it because she was advised that a common law wife is not entitled to a pension. (Page 46, lines 1-18.)

A perusal of all the depositions filed with the Court convincingly shows that the Pension Commission was justified in finding, as a fact, that Anna E. Moore was not the wife of Peter Moore, and therefore, not entitled to a pension.

POINT I.

On certiorari to review proceedings of a Board, the Court will not review evidence with view to ascertaining whether it might reach a different conclusion from that reached by the Board, but if the Boards judgment can fairly be supported by evidence, it will not be disturbed.

(*Zober v. Turner*, 144 Atlantic 608; *Marin v. Smith*, 10 New Jersey Law 50; *Alcott v. Police Commissioners of Trenton*, 66 New Jersey Law 173; *Devault v. Mayor of Camden*, 48 New Jersey Law 433; *Riley v. Jersey City*, 64 New Jersey Law 508.)

POINT II.

Granting a Writ of Certiorari is a matter of discretion, where a party in interest has slept long over supposed rights, the Court will not grant relief.

(*State v. Hudson City*, 29 N. J. L. 115; *State v. Water Commissioners of Jersey City*, 30 N. J. L. 247; *State, Wakeman, Pros., v. Mayor and Aldermen of Jersey City*, 35 N. J. L. 455; *Budd v. Camden*, 69 N. J. L. 193; 21 *Corpus Juris* 210.)

In the case of *Ware v. Rutherford*, 55 N. J. L. 450, the Court said: "It is an essential element of laches that the party charged with it should have knowledge of the facts constituting his title to relief or have failed or omitted to obtain such knowledge when it was obtainable or that there should be circumstances which should have induced an inquiry in an effort to obtain knowledge."

21 *Corpus Juris* 240 holds: "By the modern rule, voluntary absence or non-residence, if it presents no legal obstacle to a suit, is of itself insufficient to excuse delay; and relief may be denied for laches."

21 *Corpus Juris* 247 holds: "By the weight of authority, where the facts were known to plaintiff, ignorance of the law applicable thereto and consequent ignorance of his legal rights will not ordinarily excuse delay in suing, especially where no fraud or concealment is charged; nor will the fact that plaintiff received erroneous advice from a reputable lawyer and delayed action in reliance thereon be sufficient of itself to excuse a delay otherwise negligent."

POINT III.

The burden of proof is on the prosecutor-respondent to establish that she was the wife of Peter Moore at the time of his death.

The prosecutor-respondent has failed to sustain the burden of proof required by the statute. It is a condition precedent that she establish said jurisdictional fact. (Laws of 1920, page 324.)

Conclusion.

The prosecutor-respondent was given a fair and impartial trial by the defendant-appellant. Her cohabitation with Peter Moore was meretricious and there is ample proof in the case showing an abandonment of the illicit relation in 1899 when she separated from Peter Moore and never again cohabited with him. Peter Moore subse-

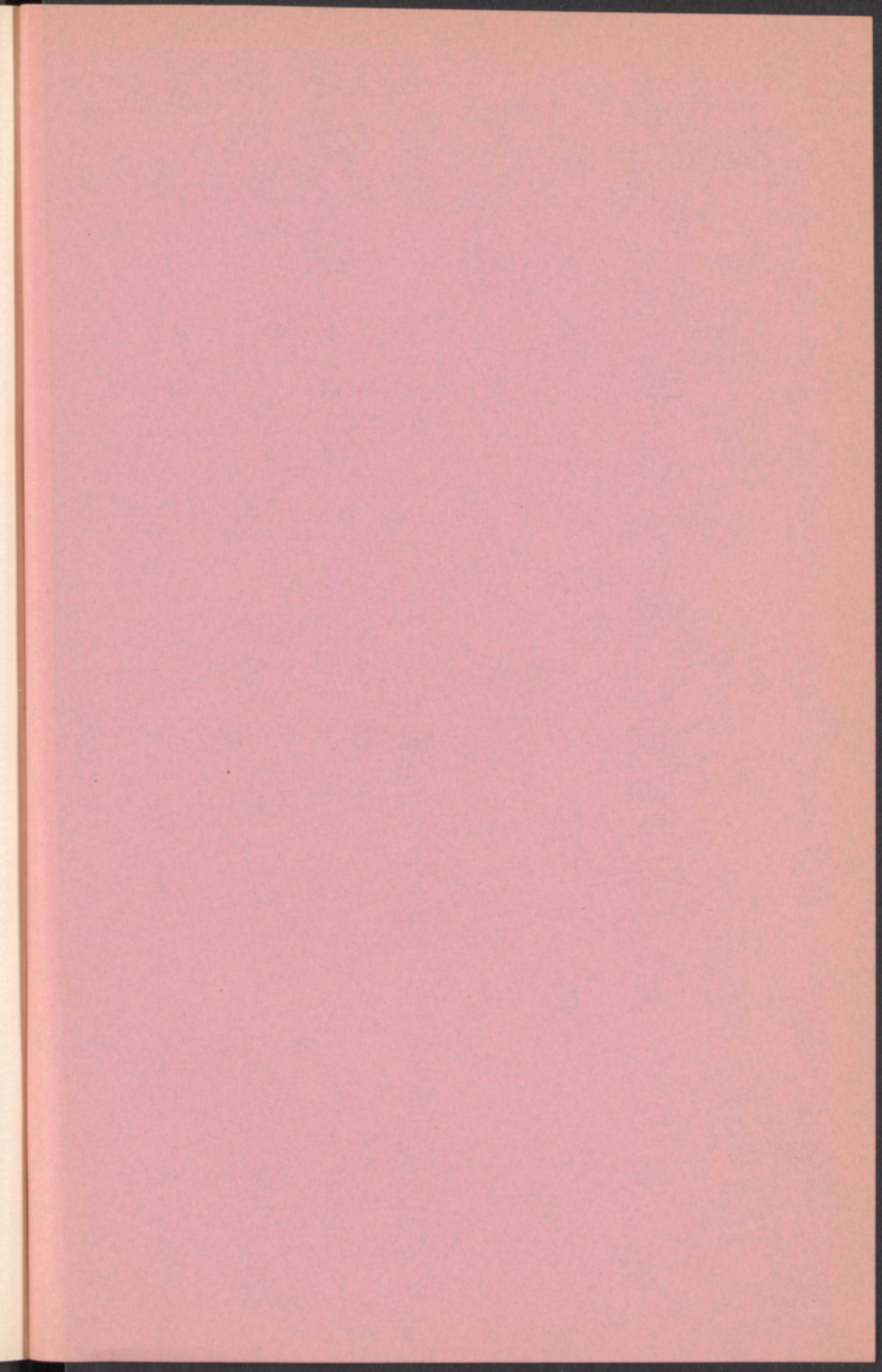
quently cohabited with Ida Stewart for more than twenty years as man and wife and were known as such in the neighborhood and community, and were known as such to their friends and to members of the Police Department. The Prosecutor had knowledge of such cohabitation with the Stewart woman and never complained about it either to her alleged husband, Ida Stewart, or the Police Department, bearing in mind that Peter Moore at that time was a member in good standing of the Paterson Police Department.

The denial of prosecutor-respondent's application is justified by the record which forms a rational basis for the judgment. More than a reasonable doubt is present in the case as to whether or not the prosecutor-respondent was ever married to Peter Moore, and the continued, uninterrupted, open and notorious cohabitation of the Stewart woman with Peter Moore, as man and wife, is worthy of serious consideration.

For the reasons aforementioned the defendant-appellant respectfully submits that its action in denying the application of the prosecutor-respondent for a widow's pension be sustained and the Writ dismissed.

Respectfully submitted,

SALVATORE D. VIVIANO,
CHARLES F. LYNCH,
Attorneys for Defendant-Appellant.



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