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PETITION.

IN CHANCERY OF NEW JERSEY.

(Filed July 12, 1920.)

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

The petition of William Claude Messick of Bivalve, Cumberland County, New Jersey, respectfully shows. 10

I.

Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Carolyn Messick, on or about, the sixth day of July, A. D. 1916, by a minister of the gospel, at Dividing Creek, Cumberland County, New Jersey. 20

II.

Defendant since her marriage to petitioner, on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. nineteen hundred and twenty, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Alvin Low at Bivalve in said county and state. 30

III.

Defendant since her marriage to petitioner, on the first and second day of May, and on divers other

days in said month and on the first and second day of June, and on divers other days in said month, A. D. nineteen hundred and twenty, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Herbert Jackson at Bivalve in said county and state.

IV.

10 Petitioner was a bona fide resident of this state, having his permanent home at Bivalve in said county and state, when this cause of action arose as aforesaid, that he has so resided at said Bivalve for at least eight years last past.

V.

20 One child was born of the marriage aforesaid, Bertiste Messick, 3 years of age, who is in the custody of said defendant, who is unfit to have her care, custody and education.

VI.

30 Your petitioner prays, that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that your petitioner may be awarded the custody of the said child of the marriage; and that he may have such further relief as may be just.

And your petitioner will ever pray, &c.

REX A. DONNELLY,
Solicitor of Petitioner.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss:

WILLIAM CLAUDE MESSICK, being duly sworn according to law, upon his oath, deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition. 10

WILLIAM CLAUDE MESSICK.

Sworn and subscribed before me at Bridgeton, N. J., this ninth day of July, A. D. nineteen hundred and twenty.

ORESTES COOK,
Master in Chancery of N. J.

A true copy.

JESSE R. SALMON,
Clerk.

20

30

ANSWER TO PETITION.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CLAUDE MESSICK, <i>Petitioner,</i> and CAROLYN MESSICK, <i>Defendant.</i>	}	On Petition for 10 Divorce. Answer.
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The answer of Carolyn Messick, an infant under the age of twenty-one years, defendant, by Charles H. Pettit, guardian *ad litem*, to the petition of William Claude Messick, petitioner. 20

1. Defendant admits that petitioner and defendant were married as in the petition alleged except that said marriage was on the 8th and not on the 6th day of July, 1916.

2. Defendant denies that since her said marriage to petitioner and on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. 1920, she committed adultery with Alvin Low at Bivalve in the County of Cumberland, New Jersey, as in said petition alleged or that she committed adultery with said person or with any other person at any other time or place; but to the 30

contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

10 3. Defendant denies that since her said marriage to petitioner and on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. 1920, she committed adultery with Herbert Jackson at Bivalve in said county and state as in said petition is alleged, or that she committed adultery with said person or with any other person at any other time or place, but to the contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

20 4. Defendant further says that after making allegations to her similar to those stated in the second and third paragraphs of said petition and her denial that she was guilty of any such acts petitioner on June 27, 1920, condoned said supposed acts of adultery in that he renewed matrimonial cohabitation with this defendant at the house where they had been living at Bivalve, New Jersey, and that during said cohabitation this defendant treated said petitioner with conjugal kindness.

30 5. Defendant admits that petitioner was a bona fide resident of the State of New Jersey when this supposed cause of action arose as alleged in the petition and that he has so resided at Bivalve for at least five years last past.

6. Defendant admits that one child was born of the marriage, Bertiste Messick, aged three years,

who is in the custody of defendant. This defendant denies that she is unfit to have the custody of said Bertiste Messick, but, to the contrary says that she has faithfully cared for and is now supporting said child whose welfare requires that it should continue under her care and control.

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

CAROLYN MESSICK, 10
Defendant.

FRENCH & RICHARDS,
Solicitors.

20

30

ORDER FOR TEMPORARY ALIMONY.

IN CHANCERY OF NEW JERSEY.

Between
 WILLIAM CLAUDE MESSICK,
Petitioner,
 and
 10 CAROLYN MESSICK,
Defendant. } Divorce.
 Order.

This matter being opened to the Court by French & Richards, of counsel with the defendant, and in the presence of Rex A. Donnelly, Esq., of counsel with petitioner, and good cause being shown by petition and affidavits why the defendant is entitled to relief in the premises:

20 It is thereupon on this twenty-seventh day of September, nineteen hundred and twenty, ordered, that William Claude Messick, the above-named petitioner, do pay to his wife, Carolyn Messick, the above named defendant or to her solicitors, the sum of ten dollars per week, at the beginning of each and every week, from the thirteenth day of September, nineteen hundred and twenty, until the termination of this suit, for her support and maintenance and that of Bertiste Messick, the child of the marriage, now in the custody of the said wife.

30 And it is further ordered that the said William Claude Messick do pay to the said Carolyn Messick, or to her solicitors, a counsel fee of twenty-five dollars, and the costs of this application to be taxed.

Respectfully advised,

E. B. LEAMING,
 V. C.

**ORDER OF REFERENCE TO ADVISORY
MASTER.**

(Filed Sept. 8, 1920.)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CLAUDE MESSICK,
 Petitioner,
 and
CAROLYN MESSICK,
 Defendant.

On Petition for
Divorce.
Reference.

10

This matter being opened to the Court by Rex A. Donnelly, solicitor of petitioner, and upon due notice to defendant: 20

It is, on this 8th day of September, A. D. nineteen hundred and twenty, ordered, that the above stated cause be referred to the Honorable Norman Grey, advisory master, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C. 30

We hereby consent to the entry of the above order.

FRENCH & RICHARDS,
Solrs. of Deft.

True copy,
JESSE R. SALMON,
Clerk.

ORDER FOR LEAVE TO AMEND PETITION.

IN CHANCERY OF NEW JERSEY.

10	Between WILLIAM CLAUDE MESSICK, <i>Petitioner,</i> and CAROLYN MESSICK, <i>Defendant.</i>	}	On Petition for Divorce. Order permitting amendment of peti- tion.
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20 Petitioner having made application to amend his
 petition on the trial of above cause in order to cover
 his proofs in the case.

It is therefore hereby ordered on this 27th day of
 December, A. D. 1920, but as of the twenty-third
 day of December, A. D. 1920, that the petition for
 divorce filed in this cause, be amended so that the
 same shall read as hereto attached, and that defen-
 dant shall have the right to answer said amended
 petition within 20 days of service of copy of peti-
 tion as amended and of this order, upon solicitor of
 defendant.

30 Respectfully advised,
 NORMAN GREY,
 Adv. M.

AMENDED PETITION.

IN CHANCERY OF NEW JERSEY.

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

The petition of William Claude Messick of Bivalve, Cumberland County, New Jersey, respectfully shows. 10

I.

Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Carolyn Messick, on or about the sixth day of July, A. D. 1916, by a minister of the gospel, at Dividing Creek, Cumberland County, New Jersey. 20

II.

Defendant since her marriage to petitioner, on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. nineteen hundred and twenty, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Alvin Low at Bivalve in said county and state. 30

III.

Defendant since her marriage to petitioner, on the first and second day of May and on divers other

days in said month and on the first and second day of June and on divers other days in said month, A. D. nineteen hundred and twenty, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Herbert Jackson at Bivalve in said county and state.

III & ½.

- 10 Defendant since her marriage to petitioner, on the first and second day of June and on divers other days in said month, A. D. nineteen hundred and twenty, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Herbert Jackson, at the City of Camden, County of Camden, New Jersey.

IV.

- 20 Petitioner was a bona fide resident of this state, having his permanent home at Bivalve in said Cumberland County and state, when this cause of action arose, as aforesaid, that he has so resided at said Bivalve for at least eight years last past.

V.

- 30 One child was born of the marriage aforesaid, Bertiste Messick, 3 years of age, who is in the custody of said defendant, who is unfit to have her care, custody and education.

VI.

Your petitioner prays, that the marriage between your petitioner and the defendant may be dissolved

for the cause aforesaid, according to the statute in such case made and provided; and that your petitioner may be awarded the custody of the said child of the marriage; and that he may have such further relief as may be just.

And your petitioner will ever pray, &c.

REX A. DONNELLY,
Solicitor of Petitioner.

10

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss:

WILLIAM CLAUDE MESSICK, being duly sworn according to law, upon his oath, deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith for the causes set forth in the petition. 20

WILLIAM CLAUDE MESSICK.

Sworn to and subscribed before me at Bridgeton, N. J., this 24th day of December, A. D. 1920.

ORESTES COOK,
Master in Chancery of N. J.

30

ANSWER TO AMENDED PETITION.

IN CHANCERY OF NEW JERSEY.

10	Between WILLIAM CLAUDE MESSICK, <i>Petitioner,</i> and CAROLYN MESSICK, <i>Defendant.</i>	}	On Petition for Divorce. Answer to Amended Petition.
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20 The answer of Carolyn Messick, an infant under the age of twenty-one years, defendant, by Charles H. Petitt, guardian *ad litem*, to the amended petition of William Claude Messick, petitioner.

1. Defendant admits that petitioner and defendant were married as in the petition alleged except that said marriage was on the 8th and not on the 6th day of July, 1916.

30 2. Defendant denies that since her said marriage to petitioner and on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. 1920, she committed adultery with Alvin Low at Bivalve in the County of Cumberland, New Jersey, as in said petition alleged or that she committed adultery with said person or with any other person at any other time or place; but

to the contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

3. Defendant denies that since her said marriage to petitioner and on the first and second day of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, A. D. 1920, she committed adultery with Herbert Jackson at Bivalve in said county and state as in said petition is alleged, or that she committed adultery with said person or with any other person at any other time or place, but to the contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner. 10

3½. Defendant denies that since her said marriage to the petitioner on the first and second day of June and on divers other days in said month she committed adultery with Herbert Jackson at the City of Camden, County of Camden, New Jersey, as in said amended petition is alleged, or that she committed adultery with said person or with any other person at any other time or place, but to the contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner. 20

4. Defendant further says that after making allegations to her similar to those stated in the second and third paragraphs of said petition and her denial that she was guilty of any such acts petitioner on June 27, 1920, condoned said supposed acts of adultery in that he renewed matrimonial cohabitation with this defendant at the house where they had been 30

living at Bivalve, New Jersey, and that during said cohabitation this defendant treated said petitioner with conjugal kindness.

5. Defendant admits that petitioner was a bona fide resident of the State of New Jersey when this supposed cause of action arose as alleged in the petition and that he has so resided at Bivalve for at least five years last past.

10

6. Defendant admits that one child was born of the marriage, Bertiste Messick, aged three years, who is in the custody of defendant. This defendant denies that she is unfit to have the custody of said Bertiste Messick, but, to the contrary says that she has faithfully cared for and is now supporting said child whose welfare requires that it should continue under her care and control.

20

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

Defendant.

30

Solicitors.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between				
WILLIAM CLAUDE MESSICK,	}	On Petition for	10	
<i>Petitioner,</i>				Divorce.
and				Testimony.
CAROLYN MESSICK,	}			
<i>Defendant.</i>				

TESTIMONY

taken in the above-stated cause, before NORMAN GREY, Esq., Advisory Master, at the Court House, Camden, New Jersey, on December 23, 1920, at 11.15 o'clock A. M. 20

APPEARANCES:

For the petitioner: REX A. DONNELLY, Esq., and
WILLIAM J. KRAFT, Esq.
For the defendant: THOMAS E. FRENCH, Esq., of 30
FRENCH & RICHARDS.

WILLIAM CLAUDE MESSICK, SWORN.

Direct examination.

By Mr. Donnelly:

Q. Mr. Messick, where do you live?

A. Dividing Creek.

10 Q. What is your business?

A. Oysterman.

Q. What part of the oyster business are you engaged in?

A. Planting and producing.

Q. What are the duties of your business?

A. Why, in the fall, we generally run up the river, in the fall—

Q. Are you a man known on the tug as captain?

A. Captain.

20 Q. When were you married to the defendant?

The Advisory Master: Have you a marriage certificate?

The Witness: I haven't.

The Advisory Master: Have you, Mr. French?

Mr. French: I haven't among my papers. I think
30 the date is specified in the pleadings and admitted in the answer. I am told that is correct.

Q. By whom were you married and where?

A. We were married at Dividing Creek.

Q. In this state?

A. Yes, in this state.

The Advisory Master: How long ago were you married?

The Witness: Four or five, I just can't recall.

The Advisory Master: Spring or fall?

The Witness: In the summer.

The Advisory Master: Could it have been in 10 July?

The Witness: Somewheres around the first of July.

The Advisory Master: What year do you think? How many years ago?

The Witness: About four, I should judge, last July. I don't positively know.

20

Q. Mr. Messick, when is the planting season in your business open and when does it close?

A. Opens first of May and closes last of June.

Q. Are you engaged in your capacity as captain of the oyster boat in May and June?

A. Yes, sir.

Q. Did that take you away?

A. Five days a week, Monday morning, two or three o'clock, and return Friday afternoon.

30

Q. When did you separate from your wife?

A. Why, I came home on a Friday——

Q. What month was that?

A. In June.

The Advisory Master: What year?

Q. This year?

A. Yes, this year, sure.

Q. You came home on Friday?

A. Yes, sir.

Q. Do you recall about what date that was?

A. 26th.

Q. Was your wife at home?

A. No.

Q. Do you know where she was?

10 A. I know where she told me she was going.

Q. You knew she was away or expected to be away?

A. Yes, sir.

Q. Where?

A. She told me she was going to Miss White's.

Q. Where is that?

A. Between Vineland and Newfield.

Q. What time of day did you get home?

A. About two o'clock in the afternoon, Friday.

20 Q. Did you go through the house and look for anything?

A. Yes, I did.

Q. Why?

A. Well, I had a letter, or note, unsigned, about three weeks before that. It said that a man was around my house and I was away all the time and I was a little suspicious.

Q. What did you find?

A. A couple of letters.

30 Q. Where did you find them?

A. Between the kids' bed, the feather bed, and the mattress, in a little box about that square (indicating).

Q. I show you a letter written on one side of the page, undated, and signed "Herbert Jackson," and ask if that is one of the letters that you found?

(Examining counsel hands letter to witness.)

A. Yes, sir.

(Said letter marked Exhibit P1 for identification.)

Q. I show you another letter, written upon both sides of the page, signed "Herbert Jackson," undated, and ask if that is one of the letters you found?

(Examining counsel hands letter to witness.)

10

A. Yes, sir.

Mr. French: No date?

Mr. Donnelly: No date.

(Said letter marked Exhibit P2 for identification.)

The Advisory Master: Do you offer them in evidence? The testimony so far is, the letters were found by the petitioner in the—

20

The Witness: In the little children's bed.

The Advisory Master: He offers them in evidence without any statement as to whose letters they are?

Mr. French: No objection.

30

The Advisory Master: Were these letters in an envelope?

The Witness: In an envelope but I don't think they were in the one—just notes.

Q. Both in one envelope?

A. Yes.

Q. Where is the envelope and where is the box?

A. I haven't got that.

Q. Was the envelope addressed to anybody?

A. No.

Q. Nothing written on it at all?

A. Not as I know of.

10 The Advisory Master: I will admit them in evidence.

(Said letters marked respectively Exhibits P1 and P2.)

Q. Now, Mr. Messick, when did your wife return?

A. On Saturday afternoon.

Q. Know about the time?

A. About six o'clock.

20 Q. Were you at the house when she got there?

A. No, sir.

Q. How did you learn of her return?

A. I was up to her father's and her sister came over and said she was home.

Q. What is the sister's name?

A. Carolina.

Q. What did you do then?

A. I went down there. She and the little girl was on the porch, but I had taken her up to her grandfather's—

30 Q. Your daughter's name?

A. Bernice.

Q. How old?

A. Between 3 and 4.

Q. When was she 3 and when 4?

A. 3 in September, I think.

Q. Last September?

A. Yes, sir, I think, to the best of my recollection.

Q. You found the little girl sitting on the porch and you took her up to her grandfather's?

A. Yes, sir.

The Advisory Master: Is that the only child?

Mr. Donnelly: Yes, sir.

Q. What is the grandfather's name?

10

A. Charlie Pettitt.

Q. Is he the guardian of the defendant?

A. I think so; I don't know.

Q. Then what did you do?

A. I went down. I had to walk her down.

Q. You went in the house?

A. I went in the house, toward her, where she was at, I asked her, and she said she was up to Miss White's, and finally she changed her tune, and when I knowed better I told her she was away with this man Jackson, but she denied it. 20

Q. Then what did you say or do?

A. I told her she would have to leave.

Q. Did she leave or didn't she?

A. No. She begged so she could stay there that night and I told her all right.

Q. She had no place to go?

A. Yes.

Q. Did you leave or stay there?

30

A. I went to her father's and stayed all night.

Q. How long were you there to talk to her?

A. Not over a half hour, something like that.

Q. Did you see her any more that afternoon?

A. No. Yes, I went down that night, but her father went with me.

- Q. About what time was that?
A. I should judge around 9 or 10 o'clock.
Q. What for?
A. Went down, he seemed to want to know how she was getting along or making out.
Q. Her father was with you?
A. Yes, sir.
Q. Did you go in the house?
A. I did. He didn't, he stayed under the window.
10 Q. How long were you there then?
A. Under 20 minutes, something like that.
Q. Then left and went to Mr. Pettitt's?
A. Yes, sir.
Q. Did you see her any more that night?
A. No, sir.
Q. See her the next day?
A. Sunday morning.
Q. About what time?
A. Between 7 and 8, something like that.
20 Q. Did you go to the house?
A. Yes, sir.
Q. How long were you there?
A. Not over 3 or 4 minutes.
Q. What for?
A. I went there for something, got my tooth brush. That was before breakfast.
Q. Just a few minutes, and then left?
A. Yes.
Q. Did you see her again that day?
30 A. Yes. I went to her father's and stayed there until around noon, something like that, 11 or 12. Her sister went down with me that time, she followed me down, and the mother too.
Q. Did you go in the house?
A. Yes.
Q. Did you talk to your wife?

A. Yes.

Q. What did she say to you? The sister came in while you were there?

A. Yes.

Q. Anybody else come in?

A. Yes, her mother came in.

Q. And you were talking to your wife?

A. Yes.

Q. What did your wife say to you?

A. Well, that was the time she was going to leave, 10
about one o'clock, on the jitney.

Q. Did she make any statements to you then?

A. She owned up to me she was away with Herbert Jackson.

Q. She did admit she had been away?

A. Yes.

Mr. French: Objection. One objection is, he says she admitted. He doesn't say what she said.

Q. Just what did she say? 20

The Advisory Master: I will strike out the other question and answer.

Q. What did she say?

A. I accused her of being away with him and she admitted she had roomed with him a week.

The Advisory Master: What did you say? Being 30
away with him, where and when?

The Witness: I accused her of being in Philadelphia with him.

Q. What did you say?

A. Well, I couldn't just place the words I said at that time.

Q. You accused her of what?

A. I accused her of being away with Herbert Jackson.

Q. What did she say?

A. She owned up to me she did.

Q. Can't you tell what she said?

A. She said, "Yes, I was away with him and
10 roomed for a week."

Q. Who was present?

A. Her sister.

Q. Anybody else?

A. Her mother was present but she can't hear.

Mr. French: You say she said, "Yes, I was away with him for a week"?

The Witness: No, sir. She said, "I was away
20 with him and roomed with him a week."

Q. Where did she say?

A. She told me she was 4 or 5 squares from the ferry, on Federal Street. That is what she told me.

Q. In Camden?

A. In Camden.

Q. Well, did you leave her sister there with her when you came out or did you all come out together?

A. We came out together, to the best of my recol-
30 lection.

Q. Didn't your sister-in-law stay with her after you went out?

A. I don't recollect whether she did.

Q. Didn't she talk with your wife?

A. She talked with my wife while she was there.

Q. What did she say to your wife?

A. I remember her saying my wife was away with him a week, owning up to her.

Q. Is that all you can remember of the conversation, Mr. Messick?

A. That's all I can remember, Mr. Donnelly.

Q. Well, now, you left the house then. Did you leave the defendant there in the house?

A. Yes.

Q. Did you see your wife any more that day?

A. Yes; I was up to her father-in-law when she 10
came up there.

Q. When was that?

A. In the afternoon.

Q. How long was she there?

A. Just 2 or 3 minutes and then went back again.

Q. Say anything to you while there?

A. Not that I remember.

Q. Did you see your wife any more that day?

A. Well, along 6 or 7 in the evening, I went aboard
the boat to go to bed and my father-in-law seen me 20
and said my wife had taken poison and I went over
there.

Q. About what time in the evening?

A. 7 or 8, something like that.

Q. Your father-in-law came aboard the boat and
said your wife had taken poison and you were
wanted at the house?

A. Yes, sir.

Q. Did you find your wife there?

A. Yes, sir; she was there on the floor. 30

Q. Who else was there?

A. Doctor there and her sister.

The Advisory Master: About when was this?

The Witness: About 7 in the evening.

The Advisory Master: What day and month and what year?

The Witness: This was the 27th, if I remember right, Sunday.

The Advisory Master: Of what?

The Witness: June.

10

Q. Did you speak to your wife?

A. No, I didn't speak to her that time.

Q. Was there a number of people around the house?

A. All the neighbors, quite a number of them.

Q. Did you see her any more that day?

A. No, not that day. I went aboard the boat. I went back aboard the boat and went to bed.

Q. Have you ever had any relations with your wife at all since the time you separated?

20

A. No, sir.

The Advisory Master: You mean marital relations, sexual relations?

Mr. Donnelly: Yes.

Q. Have you had any sexual relations with her since last June, was it, since the day you left, that Saturday afternoon you left her in the house last June?

30

The Witness: I didn't have any then.

The Advisory Master: Since then have you any?

The Witness: No, sir.

The Advisory Master: Have you lived with her since?

The Witness: No, sir.

The Advisory Master: In the same bedroom?

The Witness: No, sir.

The Advisory Master: Have you lived in the same house with her since? 10

The Witness: No, sir.

Q. Mr. Messick, after these circumstances that you have already testified to, did you have anybody inquire for you through the neighborhood, as to whether anybody had seen Mr. Johnson at your house?

A. I inquired after this happened.

Q. Did you have somebody inquire for you through the neighborhood, as to whether anybody had seen Mr. Johnson there? 20

A. Why, I got Mr. Robbins to inquire for me.

Q. And he, upon inquiry, told you what he knew and also brought another man in the case, did he not?

A. Yes, sir.

Q. Was that the first you knew of the second man?

A. Yes, sir.

Q. And that was several days after the 27th? 30

A. Quite a few days afterwards.

Q. Was that the first that you knew of Alvin Low being around the house?

A. Yes, sir.

Cross-examination.

By Mr. French:

- Q. Bivalve is a rather small place, single street?
 A. One street is.
- Q. The rest of the stores on the wharf?
 A. No, a street on the back, supposed to be.
- Q. Are there any houses on the street?
 10 A. Yes.
 Q. Many?
 A. Little shacks.
 Q. The houses are on this street the car comes
 down?
 A. The main part of the houses.
 Q. And the stores are on the wharf?
 A. Yes, sir.
 Q. The built up portion of the street is about 4
 or 5 or 600 feet long, about an ordinary city square?
 20 A. Yes; a good long one, too.
 Q. Your house was about in the middle of it?
 A. No.
 Q. Toward the——
 A. In from the end of the trolley line.
 Q. And Captain Pettitt's was on the opposite side
 of the street, about how far from your house?
 A. Well, there is no way of knowing.
 Q. Well, a couple of hundred feet?
 A. I should judge 75 yards.
- 30 Q. And the ground is very marshy, the walking
 part is along the street, isn't it?
 A. That is about all.
 Q. The houses are close together?
 A. On my side of the street they was, on the side
 I lived on.
 Q. And most of the oystermen, in planting sea-

son, go away on Monday morning or Sunday and come back on Friday?

A. Some go on Sunday. I don't. I go on Monday morning.

Q. When did you first know of these relations you claim your wife had with Herbert Jackson?

A. Well, really, I didn't know at all only by those letters. I got a letter before I found these letters, where they had said a man was hanging around my house when I was away all the time. I didn't know 10 until I found these letters. That put me wise.

Q. That was the first information you had that Jackson was attending to your wife, was it?

A. Yes.

Q. And that was on June 26th, you received these letters, Saturday afternoon?

A. I received them before they had left, the week before, I guess.

Q. You didn't get them until June 26th?

A. No.

20

Q. And you didn't know about them until June 26th?

A. I knew about them June 25th, on a Friday.

Q. Afternoon?

A. Yes.

Q. Now, you notified the storekeepers not to trust Mrs. Donnelly?

A. Not to trust my wife.

Q. Pardon me. Not to trust your wife, Mrs. Messick?

30

A. Yes, sir.

Q. When did you give that notice?

A. I gave that on a Friday.

Q. The same day you found the letters?

A. Yes, sir.

Q. And you consulted Mr. Donnelly about this case?

- A. Not on Friday, no.
- Q. What day?
- A. On Saturday.
- Q. The next day?
- A. Yes, sir.
- Q. Prior to that time you had forbidden your wife to go or take the children to your father's house?
- A. No, sir.
- Q. You had not?
- 10 A. No, sir.
- Q. And so far as you know, she had remained away from your father's house with the child?
- A. She did in the spring, so far as I know, but I didn't tell her to go.
- Q. You didn't tell her to go?
- A. No, sir.
- Q. Now, on Sunday morning you visited the house?
- A. Yes, sir.
- 20 Q. What part of the house was she in between 7 and 8, when you saw her?
- A. In the bedroom.
- Q. And she was in bed?
- A. So far as I know.
- Q. Were you in the room with her?
- A. No, I didn't even go in the room, the bedroom door was open, I could see her in there.
- Q. Where is the bedroom, first or second floor?
- A. First floor.
- 30 Q. Those houses in Bivalve are largely a story and a half or 2 story?
- A. Story and a half I was in.
- Q. And the bedroom on the ground floor?
- A. On the end, little shed like.
- Q. You didn't go inside the room?
- A. No, sir; not then.

- Q. Sunday morning?
A. No, sir.
Q. No time on Sunday?
A. Yes, on Sunday, about noon.
Q. Was she in there at that time?
A. Yes.
Q. In bed?
A. She was lying in the bed.
Q. Was that the time you put your arm around
her? 10
A. No, sir; I didn't put any arm around her.
Q. And told her you knew people had lied?
A. No, sir; I didn't say anything like that.
Q. And didn't you then have marital relations
with her on that day?
A. No, sir.

PEARL ANDERSON, SWORN.

20

Direct examination.

By Mr. Donnelly:

- Q. Mrs. Anderson, where do you live?
A. I live about 4 doors from my sister's house,
where she lived.

The Advisory Master: Bivalve?

30

The Witness: Yes, sir.

- Q. You are a sister of the defendant?
A. Yes, sir.
Q. Were you home in June last, the week that
your sister was away?

A. I was.

Q. Did you know of her being away?

A. I did.

Q. Did you know of her returning?

A. Yes, sir.

Q. Did you go down to the house to see your sister?

A. I didn't go until Monday, just before one o'clock, or Sunday, just before one.

10 Q. Did Mr. Messick go down ahead of you?

A. Yes, sir.

Q. Did you go in the house?

A. Yes, sir.

Q. Was Mr. Messick in there?

A. Yes, sir.

Q. Did you have a conversation with your sister?

A. Yes, sir.

Q. About where she had been?

A. Yes, sir.

20 Q. What did she say?

A. Well, when I walked in the door, she said, "I have done it; I have done it." And I asked her why she went away and that is what she said.

Q. Well, is that all she said?

A. Well, she went on and told me some more things after that.

Q. What was that?

A. Well, she said she had been away with Herbert Jackson, had roomed a week with him in Camden,
30 not in Philadelphia.

Q. Did she say whether she was going to admit it or not, or didn't you ask her about that?

The Advisory Master: I think the witness had better state what she did say.

The Witness: She just said she had been away with him for a week and had roomed with him in Camden, not in Philadelphia.

Q. Did she say whether she had the child with her?

A. She said she had the child.

Q. You are married, are you not?

A. I am.

Q. Did she tell you whether or not she and Jack- 10
son left Bivalve together when they went away?

A. She said they went on the same train but that they didn't sit together.

Q. Do you know this Herbert Jackson?

A. I do.

Q. Do you know whether or not he is a married man?

A. I couldn't say. I have heard but I couldn't say.

Q. He is reputed to be a married man? 20

A. Yes, sir.

Q. Do you know whether or not your sister has a photograph of him?

A. No.

Q. You never saw that?

A. No.

Q. Do you know whether Mr. Jackson has been to the house to see your sister since June last?

A. What house?

Q. At your father's house? 30

A. Why, I couldn't say whether he went to see her or not. He was there.

Q. Did he come to the house?

A. Yes.

Q. When was that, Mrs. Anderson?

A. That was in the evening, sometime in the summer, I couldn't be sure.

Q. Was it before the oyster boats went to work?

A. Not, it was this early fall, early September.

Q. Has your sister ever shown you any letters she has received from Jackson?

A. No.

Q. She has talked to you about Jackson, has she not?

A. Yes, some.

Q. Has she ever spoken to you about Jackson
10 promising her to get a divorce?

Mr. French: The charge here is adultery and I think this examination is far afield. I do think it is unnecessary.

The Advisory Master: What statement Jackson made to her, what Jackson said about getting a divorce—how do you justify the question?

20 Mr. Donnelly: Intimate relations existing between her and Jackson.

The Advisory Master. I will admit it.

(Objection withdrawn.)

A. She said he was going to get a divorce in September.

30 (Question repeated.)

A. Yes; she said that he had applied for his divorce and would get it in September.

Q. Mrs. Anderson, this Sunday you went down to the house, over to the house, over to your sister's house, did you go over there in the evening when your sister was—

A. Father came after me.

Q. What did you find when you got over there?

A. I found her on the floor.

Q. Where did the statement or where did the information arise that she had taken poison, if there was any such statement?

A. Father told me.

Q. Was there a physician sent for?

A. Yes, sir.

Q. Was your sister ill from something or did she appear to be ill? 10

A. Well, she appeared to be ill, yes.

Q. Did you see Mr. Messick there that night, when he came?

A. Yes, sir.

Q. Did he stay there very long?

A. No, sir.

Q. Just there a few minutes?

A. He wasn't in the house but a very few minutes.

Q. And then after that he left the house. You don't, of course, know where he went? 20

A. I couldn't say.

Cross-examination.

By Mr. French:

Q. Your sister, Mrs. Messick, is a very nervous sort of girl?

A. What did you say? 30

(Question repeated.)

A. I guess she is at times.

MABEL CAMP, SWORN.

Direct examination.

By Mr. Donnelly:

- Q. How old are you, Mabel?
 A. Going on 16.
- 10 Q. You live at Bivalve?
 A. Yes, sir.
- Q. How far from where Mrs. Messick lives?
 A. Right next door.
- Q. Were you in there a good deal last May and
 June?
 A. Yes, sir.
- Q. Did you ever see Herbert Jackson there?
 A. Yes, sir.
- Q. When?
 20 A. In June.
- Q. In June?
 A. Yes, sir.
- Q. What day of the week was it?
 A. Friday night.
- Q. Was her husband home then?
 A. No, sir.
- Q. Where was he?
 A. He was out on the boat, I suppose.
- Q. He was away from the house?
 A. Yes, sir.
- 30 Q. What time did you go there?
 A. 5 o'clock.
- Q. Was he there when you went there?
 A. Yes, sir.

The Advisory Master: Whom do you mean by
 "he"?

Mr. Donnelly: Herbert Jackson.

The Advisory Master: What Friday was it?

The Witness: I don't know what date.

The Advisory Master: Was it early in June or late?

The Witness: It was late in June.

10

The Advisory Master: Do you know the date, the Friday when Mr. Messick came home?

The Witness: She came home on Saturday.

The Advisory Master: No, Mr. Messick, the Friday he came home?

The Witness: No, sir.

20

The Advisory Master: Do you remember that Friday?

The Witness: No, sir.

The Advisory Master: You don't know, then, whether the Friday you refer to was the Friday he came home or not?

30

The Witness: I wasn't there when he came home.

Q. Mr. Jackson was there when you went to the house this day?

A. Yes, sir.

Q. And Mrs. Messick was there?

A. Yes, sir.

Q. Alone with him?

A. Yes, sir.

Q. What did you do while you were there together?

A. We was eating ice cream.

Q. While you were there in the house, did Mr. Jackson and Mrs. Messick do anything?

10 A. Well, I seen him hug and kiss her.

Q. You saw him stand and hug and kiss her?

A. Yes, sir.

The Advisory Master: You didn't say anything about standing.

The Witness: Yes, sir; they were standing.

Q. In the same room you were?

20 A. Yes, sir.

Q. What did they say while they were hugging and kissing each other?

A. Nothing at all.

Q. Did you ever see that more than once?

A. No, sir.

Q. Now, did you ever see Herbert Jackson around the house?

A. Yes, sir.

Q. Frequently?

30 A. Yes, sir.

Q. How frequent?

A. He was in the Sunday afternoon he stood on the porch, I never saw him in the house but once.

Q. Did he talk to her at other times?

A. Yes, sir.

Q. How long did these conversations last when he talked to her?

A. Well, sometimes 20 minutes or half hour, whatever time she had.

Q. I don't suppose you timed these conversations?

A. No, I wasn't paying no attention to that.

Q. Did you ever see them talking to each other on the veranda in the evening?

A. Yes, sir.

Q. In May or June last?

A. In May and June both.

Q. How late in the evening would you see them talking there? 10

A. 9 o'clock.

Q. What time did you leave on this Friday night?

A. Half past five.

Q. And Mr. Jackson was still there with Mrs. Messick?

A. Yes, sir.

Q. What time did you say you got there?

A. 5 o'clock.

Q. So you were there about a half hour? 20

A. Yes, sir.

Q. Did Herbert Jackson give you his address before he went away in June?

A. Yes, sir.

Q. Did he sign it in your presence?

A. Yes, sir.

Q. Where did he give it to you?

A. In Sunday school.

Q. Look at this paper—no mark to it—and say whether that is the paper with his address upon it? 30

(Examining counsel hands paper to witness.)

A. Yes, sir.

Mr. Donnelly: I don't suppose there is any objection to that, Mr. French?

Mr. French: He gave her that paper, I suppose.

Mr. Donnelly: We offer it.

Q. You say he gave you that in your presence?

A. Yes, sir.

10

The Advisory Master: To you he gave it?

The Witness: Yes, sir.

The Advisory Master: Why did he give it to you?

The Witness: Because I asked him for it.

20 (Said paper marked Exhibit P3.)

Q. Have you ever seen Herbert Jackson give Mrs. Messick anything?

A. Yes, sir.

Q. What?

A. A dollar bill.

Q. When was that?

A. That was in June, Friday night.

Q. Did you hear what was said?

30 A. Yes, sir.

Q. What was said?

A. She was in the store. She got some candy. She offered him some and he offered her the dollar and told her to treat herself.

Cross-examination.

By Mr. French:

Q. Did you say you lived next door to Mrs. Messick?

A. Yes, sir.

Q. Toward the end of the trolley or the other way?

A. The last end lane toward where the trolley stops.

Q. And how far is that house from Mrs. Messick's house? 10

A. Right across the road, there is a road runs between the houses.

Q. About room enough for a wagon to go through?

A. Just room enough for an automobile or wagon to go through.

Q. This was in the summertime?

A. Yes, sir.

Q. And you were out on the porch a good bit of the time? 20

A. Yes, sir.

Q. Each of the houses have small porches in front of them?

A. Yes, sir.

Q. And did I understand you to say you only saw Herbert Jackson in Mrs. Messick's house the one time?

A. Yes, sir.

Q. And that one time you went in and had some ice cream with them? 30

A. Yes, sir.

Q. Now, were they hugging and kissing each other when you went in there?

A. No, sir.

Q. What were they doing?

A. They were sitting in chairs.

Q. When did the hugging and kissing commence?

A. Before I left she got up and he got up and hugged and kissed her.

Q. Then did he go out or did you go out?

A. I went out.

Q. All the other times you saw Herbert Jackson there he was standing on the veranda or ground when Mr. Messick was talking?

10 A. One foot on the ground and one on the porch, every time I saw them.

Re-direct examination.

By Mr. Donnelly:

Q. Did you ever see Alvin Low talking to her?

A. I saw him to the porch.

Q. When was that?

20 A. That was in June.

Q. What time of day?

A. It was getting toward night.

Q. Did you see him there more than once?

A. No, sir.

Q. Do you recall what day of the week it was?

A. No, sir; I didn't pay no attention to that.

Q. Did you ever see him in the house?

A. No, sir.

Q. Did you ever see Mrs. Messick talking to Mr.
30 Low anywhere else around the house?

A. No, sir.

ROBERT DILLAHOY, SWORN.

Direct examination.

By Mr. Donnelly:

Q. Mr. Dillahoy, where do you live?

A. Port Norris.

Q. What is your business?

A. Well, oystering, generally. I am working for
the Central Railroad now. 10

Q. Have you got a son that lives in Port Norris?

A. Yes, sir.

Q. In November last, were you at his house?

A. Yes, sir.

Q. Did you have an errand there?

A. Yes, sir.

Q. Whom did you find there when you went there?

A. Well, when I knocked on the door, Mr. Low. 20

Q. What Low? Alvin Low?

A. Yes, sir.

Q. Well, what did you see?

A. I asked him if my daughter-in-law was home.
My son was working in Philadelphia. He said, "No,
but she left to take her mother and her aunt, I think,
at six o'clock, to Bridgeton."

Q. What time was this when you were there?

A. Somewheres between 7 and 8 o'clock.

Q. At night or the daytime?

A. At night. 30

Q. Well, what else did you see?

A. Well, I walked inside and the keyhole was
blocked up and I thought that was very unusual.

The Advisory Master: Whose house was this?

The Witness: My son's.

Q. What is his name?

A. John Dillahoy, and Mr. Low was there and Mrs. Pettitt, or Mrs. Messick.

Q. Where was Mrs. Messick? In the same room as Mr. Low?

A. No, sir.

Q. Where was she?

10 A. In the other room.

Q. Could you see her when you first went in the room?

A. No, sir. I didn't go in the room right away. He asked me in and I just stepped inside the door.

Q. How did you come to see Mrs. Messick there?

A. Why, because the crack of the door was open.

Q. There was enough open to see through the room?

A. Yes, sir.

20 Q. Anybody else in the house, so far as you could see?

A. Not that I knew of.

Q. How long were you there?

A. Not over 10 minutes, I don't think.

Q. Then as far as you know, as far as you could see, Mrs. Messick and Low were alone in the house?

30 A. Yes, sir; and then I went up the street, thought something unusual, my daughter-in-law don't often give anybody the key, and I went back and there was a crack in the curtain, about that far (indicating) and I saw Mr. Low and her there.

Q. What were they doing?

A. They were sitting on the couch, I think. I couldn't just tell.

Q. They were sitting on the couch?

A. Yes, sir.

Q. Could you see anything they were doing?

A. Nothing more than that.

Q. This was in November last?

A. This was the 20th of November last.

Q. And this was Alvin Low?

A. Yes, sir.

Mr. French: I move to strike that out. The allegation is May and June, 1920. This is something that happened on the 20th of November.

10

The Advisory Master: The petition was filed prior to the occurrence referred to. I just want to get this on the record before you make any argument about it. The petition was filed July 12, 1920, and the answer filed August 3, 1920.

Mr. Kraft: If your Honor please, my thought is this: That notwithstanding the fact it occurred in November—I don't know what Mr. Donnelly's proof is in May and June—if we connect that up with May and June, while you couldn't grant a divorce on that, it would be corroborative of the conduct of these people; and it occurs to me that I have read divorce cases where they have been able to prove adultery in cases that happened long before the allegations. This man, of course, couldn't prove the allegation in November, but it is surely admissible for the purpose of proving their course of conduct, which would justify an inference that she committed adultery in June.

20

30

The Advisory Master: Mr. Kraft, your petition alleges definite and distinct acts of adultery, which it has to do to be a good petition, and that pleading is met by the answer denying specifically the acts

complained of. Now you go to trial on that and you are attempting to prove the allegations in your petition, and you offer proof of something that occurred months after issue was joined, and the defendant very correctly states he is not here to meet any such proof as that. He has had no notice of it from the pleading, and on that objection I don't see how I can admit that testimony.

- 10 Mr. Kraft: I take it the course of conduct afterward is just as important as before, for the purpose of proving the credibility of the thing happening in May or June. And then it has a bearing with regard to whether or not this lady is a proper person to have the custody of this child.

- The Advisory Master: It might have a bearing if it were within the pleadings. Against the objection, I don't see how I can force the defendant to
20 meet this proof now without amending the pleading. I will overrule the question.

No cross-examination.

ELIZA J. CAMP, sworn.

Direct examination.

- 30 By Mr. Donnelly:

Q. Mrs. Camp, do you live at Bivalve?

A. I live at Bivalve.

Q. You live the house below, I would call it, from where Mrs. and Mr. Messick lived?

A. I live within one house, the last house, I live neighbors to Mrs. Messick, next door.

The Advisory Master: Next door to whom?

The Witness: Mrs. Messick.

Q. Do you know Herbert Jackson?

A. I know him at sight; yes, sir.

The Advisory Master: What relation is Mabel
Camp to you? 10

The Witness: My daughter.

Q. Have you ever seen him around there in May
and June last?

A. I have.

Q. What time of the day would you see him there?

A. Sundays, between 3 and 4 o'clock, Fridays at
5, half past. 20

Q. Did you see him there more than once?

A. Yes, sir.

Q. More than twice?

A. Yes, sir.

Q. Several times?

A. Yes, sir.

Q. Would these times be when Mr. Messick was
away or home?

A. Yes, sir.

Q. Which, when he was away or home? 30

A. When he was away.

Q. When he was away?

A. Yes, sir.

Q. How long would they talk there together?

A. Oh, sometimes for a half hour. I have saw him
for 3.

The Advisory Master: Three half hours?

The Witness: Three hours on Sunday.

Q. Ever see him talking with her there in the evening, in May and June last?

A. Yes.

Q. What time in the evening?

A. Early in the evening.

10 Q. Early in the evening?

A. Early in the evening.

Q. Did you ever see him in the house, Mrs. Camp?

A. Saw him the day my daughter was there. I saw him go in the day my daughter was there but never was in Mrs. Messick's house when he was there.

Q. You never were in there yourself?

A. No, sir.

20 Q. Did you see him come out the day your daughter was there?

A. No, sir.

Q. Do you know Alvin Low?

A. I know him at sight.

Q. Ever see him around the Messick house?

A. I have.

Q. When was that?

A. In June.

Q. What time was it when you saw him there?

A. I saw him there at half past 10 o'clock.

30 Q. In the evening?

A. Yes, sir.

Q. In June?

A. Late in June.

Q. That was before Mr. and Mrs. Messick separated?

A. That was.

Q. How did you come to see him?

A. Why, I was going across—I keep a boarding house—I was going across when the tide was in. I had a lantern, and Mr. Low, if he had kept right quiet, but cleared up his throat. I think he is a cigarette smoker. He cleared up and he was sitting on the corner of Mr. Emmett's pool room step, and I had a lantern in the house, and I think he did. I heard footsteps.

Q. You saw him go up on the steps?

10

A. Yes, sir.

Q. Was Mrs. Messick in the house?

A. Indeed she was.

Q. Light in the house?

A. Yes, sir.

Q. Curtain up?

A. Yes, sir.

Q. What was she doing?

A. Playing the victrola. I saw him go up the steps and heard his footsteps, but after that I didn't see, 20 and so that night I went to bed.

Q. Before you went to bed did you look out again?

A. I went right on to bed.

Q. Was the light lighted?

A. Curtain was down.

The Advisory Master: Was the curtain down before?

The Witness: No, sir.

30

The Advisory Master: It was pulled down between the time you first saw them there and the second time?

The Witness: Yes, sir.

The Advisory Master: What curtain was it, in what room?

The Witness: Kitchen.

The Advisory Master: And what step was it you heard these footsteps go up?

The Witness: Front step.

10

Q. Mr. Messick wasn't home that time, was he?

A. No, sir.

Q. How long previous to this time did you see an incident in connection with Mrs. Messick and her daughter?

A. Her child, whip it?

Q. Yes.

A. I think the child whipping was before this.

20 Q. Now, Mrs. Camp, were you home the Sunday that Mr. Messick separated?

A. Yes, sir.

Q. Did you see Mr. Messick the Sunday morning he went in?

A. I did.

Q. How long was he in the house?

A. About 2 or 3 minutes.

Q. Anything particular attract your attention to it?

A. Yes, sir.

30

Q. What was that?

A. I thought maybe the lady had taken and put herself out of the way, that is what drew my attention, saw him go in so quick and out so quick.

Q. Was anything in his hand when he came out?

A. Yes, sir; tooth brush.

Cross-examination.

By Mr. French:

Q. When was this night that you say you went out with the lantern?

A. This was late in June. I keep a boarding house and I was going to see if any of my fishermen got in, and I have supper for them. I had gumboots on. It was half past 10 at night. It was earlier than that when I went out. 10

Q. Then you saw him when you came back?

A. Saw him when I came back.

Q. It was somewhere about half past 10?

A. Yes.

Q. Now, when you had the lantern, what did you see with the lighted lantern?

A. I saw Mr. Low sitting on the pool room porch.

Q. On Messick's porch?

A. No, on Marcy Emmett's, right across from my house. 20

Q. Isn't Messick's right across?

A. Right across the other way.

Q. Alvin Low was on the porch, on the main street, opposite your house?

A. Yes, on the pool room step.

Q. What did you see him do?

A. He got up and went across to Mrs. Messick's and I heard the footstep and I looked and it was Mr. Low. 30

Q. That is to say, you saw him on the porch, by the light of the lantern?

A. I saw him. He cleared up his throat and he startled me. I ain't cowardly, but anything like that—

Q. You heard somebody clear up his throat?

A. Yes.

Q. And you looked and saw it was Mr. Low sitting on somebody's porch on the opposite side of the street?

A. Yes.

Q. Did you keep the light on him?

A. I had the lantern in my right hand.

Q. It was so dark you couldn't see without a lantern?

10. A. No, it wasn't quite dark, half past 10.

Q. You couldn't recognize anybody without a lantern?

A. Well, I could if I was real well acquainted with him, but I wasn't well acquainted with him, Alvin Low. He was in his work clothes.

Q. This porch was right opposite your house?

A. Yes, sir.

Q. And you went across the road to your house?

A. I did.

20. Q. When did you hear the footsteps behind you?

A. Just as soon as I put myself on my shed.

Q. Then you got across the road, on your porch?

A. Yes, it is only 2 or 3 steps.

Q. You didn't know whose footsteps?

A. He was gone, because I turned around to see.

Q. Could you see across the street without the lantern?

A. I could see across the street with the lantern, I had the lantern.

30. Q. And you could see with that lantern across the street and you heard footsteps?

A. Very well.

Q. And then you went in the house, did you, after the footsteps on Messick's porch?

A. I did.

Q. Heard no other sound that you recollect?

A. No.

Q. Then you went in your house and looked out the window?

A. I went in my house and set off the stuff and right on upstairs. There was no light when I went upstairs, the curtain was down.

Q. You said the curtain was up. When was that when you saw the light in the window?

A. When I was going across home, that was in the front kitchen window. 10.

Q. Is the kitchen in the front of the house?

A. Yes.

Q. A door in the center of the house, is there, and a kitchen on one side and another room on the other side?

A. Yes.

Q. And the kitchen toward your house?

A. The kitchen joins my house.

Q. There is a road between the kitchen and your house? 20

A. There is.

Q. And there was a light in the kitchen?

A. Yes, there was.

Q. And when you got upstairs the curtain was down?

A. Down.

Q. Was the light still burning?

A. I couldn't see none then.

BESSIE PERRY, SWORN.

Direct examination.

By Mr. Donnelly:

Q. Miss Perry, how old are you?

A. 24 years old.

10 Q. Do you live at Bivalve?

A. Yes, sir.

Q. You know the defendant, Mrs. Messick, in this case?

A. I only seen her talk to the man.

Q. Do you know Herbert Jackson?

A. Yes, sir.

Q. Did you ever see Herbert Jackson at Mrs. Messick's house when she was living with her husband?

A. No, sir.

20 Q. Did you ever see her talking to Herbert Jackson?

A. Yes, sir.

Q. Where did you see her talking with him?

A. On the wharf.

Q. Day or night?

A. It was in the afternoon.

Q. Did you see him talking with her on the wharf more than once?

A. No, sir.

30 Q. Was this in May or June that you saw him talking to her? Do you know whether it was May or June?

A. No, I don't.

Q. Was it in warm weather?

A. Yes, sir.

Q. This year?

A. No, sir.

The Advisory Master: What year was it?

The Witness: Last year. We had swings on the wharf.

The Advisory Master: You mean last spring, last June, or a year ago?

The Witness: Last year, a year ago.

The Advisory Master: Nearly 2 years ago, a year and a half? 10

The Witness: Yes, sir.

Q. Mrs. Messick is living with her father, Mr. Pettitt, now, is she not?

A. Yes, sir.

Q. Have you been up to her house to see her recently? 20

A. Yes, sir.

Q. Did she show you a photograph of Mr. Jackson?

A. Yes, sir.

Q. When was that?

A. It must have been about a month ago.

Q. Did she show you some letters she had received from Mr. Jackson?

A. Yes, sir.

Q. Did she read any part of them to you or tell you what was in them? 30

A. She read one part where he called her his dear wife.

Q. She read one to you where Mr. Jackson called her his dear wife?

A. Yes, sir.

Q. And this was about a month ago?

A. Yes, sir.

Q. Are you related to Mrs. Messick?

A. Yes, sir.

Q. How are you related?

A. She is my cousin.

No cross-examination.

10

DAVID PERRY, SWORN.

Direct examination.

By Mr. Donnelly:

Q. Mr. Perry, you live at Bivalve?

A. Yes, sir.

20 Q. How far do you live from Mr. and Mrs. Messick, that is, when they lived with each other?

A. Right directly across the river.

Q. Directly across the street or road?

A. Yes, sir.

Q. Do you know Herbert Jackson?

A. No, sir.

Q. Do you know Alvin Low?

A. No, sir.

Q. Are you related to the defendant?

30 A. No, sir.

The Advisory Master: What relation is Bessie Perry to you, if any?

The Witness: I am her uncle.

No cross-examination.

BERTHA EMMETT, SWORN.

Direct examination.

By Mr. Donnelly:

Q. You live at Bivalve?

A. Yes, sir.

Q. How far from Mr. and Mrs. Messick?

A. Well, Mr. Perry lives right straight across the 10
street and I live next door to him.

Q. Do you know Herbert Jackson?

A. By sight.

Q. Know Alvin Low?

A. By sight.

Q. Ever see Herbert Jackson around the Messick
house last May or June?

A. Yes, sir.

Q. More than once?

A. More than once. 20

Q. How many times do you suppose you saw him
in May and June last?

A. Several times, that is all I can tell you.

Q. Day or night time?

A. Well, I never saw him there after dark. I saw
him early in the evening but never after night time.

Q. What was he doing?

A. Standing there talking to her at the porch.

Q. On the porch?

A. No, he wasn't on the porch, don't know as I 30
ever saw him on the porch, one foot on and one foot
off.

Q. Would he talk to her very long?

A. Yes, sir; sometimes; sometimes not very long.

The Advisory Master: How long is very long and——

The Witness: Well, from a half hour to 2 and a half, 3 hours.

- Q. Was this when her husband was home or away?
 A. Well, he was home from the boat, it would be the last of the week, he was ashore but he wasn't up at home at the time, of course.
- 10 Q. These conversations were when he was away from the house?
 A. Yes, sir; always.
 Q. How many times did you say in May and June?
 A. Well, I couldn't count how many times, but several times.
 Q. Was it a daily occurrence?
 A. Yes, daily occurrence on Friday afternoon, Saturday and Sunday.
- 20 Q. At other times I suppose he was away?
 A. Yes, he was on the boat too.
 Q. What would they do when they were talking?
 A. I couldn't hear; just stand and talk.
 Q. Is that all you could see?
 A. That is all I ever saw.
 Q. Did you see Mr. Low around there?
 A. At the porch.
 Q. How many times have you seen him there?
 A. Well, I don't know as I remember but one time
- 30 in particular.
 Q. Was that in the daytime or ——
 A. In the evening.
 Q. May or June?
 A. The last of June, if I am not mistaken, it was in fishing season.
 Q. Do you know how long he stayed there?

A. No, I—it was the night the tide was up, I don't know the same night Mrs. Camp alluded to or not, but my husband has a pool room. I went in for something. He was fishing. Mr. Low came in and had his boots on. He waded across the road, and whether he went in the house I don't know or not, but I saw him light his cigarette there, and I suppose he must have been there if his cigarette was there.

Q. You didn't see him come away?

A. No.

10

Cross-examination.

By Mr. French:

Q. Mrs. Emmett, men on Captain Messick's boat have been hurt?

A. Yes, sir.

Q. And one of them was a friend of Herbert Jackson?

A. I don't know the names.

Q. They were taken to a hospital?

A. Yes.

Q. And didn't the men stop to see Mrs. Messick, to find out how the men were?

A. I couldn't tell what they asked her. I saw them talking to her. Whether they asked her how the men were, I don't know.

20
30

ETTA DONNELLY, SWORN.

Direct examination.

By Mr. Donnelly :

Q. Mrs. Donnelly, you live at Bivalve?

A. Yes, sir.

10 Q. You are the mother of Mrs. Emmett, just on the stand?

A. Yes, sir.

Q. Did you visit your daughter's house frequently?

A. Yes, sir.

Q. You live up the road or street from where she does?

A. Yes, sir; I suppose about 150 or 200 yards.

Q. Do you know Herbert Jackson and Alvin Low?

20 A. I know them by sight. I never spoke to either one of them.

Q. In May and June last, which was during the planting season, you are familiar with that, did you see either one of them around Messick's house, where they were living at the time?

A. Yes.

Q. More than once?

A. Yes.

Q. Now, take Herbert Jackson. Did you see him around the house more than once?

30 A. Yes.

Q. In May and June last?

A. Yes, sir.

Q. What time would you see him there?

A. Well, as the rest would say, on a Friday and Saturday and Sunday, when he was away from the boat, and generally in the afternoon, towards evening or early in the evening.

Q. Where would he be?

A. On the porch or somewhere around the porch. I never saw him in the house because I was never in the house.

Q. You would see him there when you passed by the house to go to your daughter's house?

A. Yes, sir.

Q. How many times did you see him talking there in May and June?

A. I couldn't begin to tell you.

10

Q. It was quite frequent?

A. Yes, sir.

Q. Have you seen Alvin Low there?

A. Yes, sir.

Q. Have you seen him there many times?

A. Not as many as Jackson.

Q. When would you see him there?

A. Generally Friday night when he would come from the boat, maybe Saturday afternoon.

20

No cross-examination.

BERTHA FAUBER, SWORN.

Direct examination.

By Mr. Donnelly:

Q. Mrs. Fauber, you live at Bivalve?

30

A. Not now. I did.

The Advisory Master: Is this testimony cumulative, of the same general trend?

Mr. Donnelly: Yes, sir.

Q. Did you live there in May and June last?

A. Yes.

Q. You are a friend of Mrs. Emmett?

A. Yes, I was at her house.

Q. Visit her house frequently?

A. I did.

Q. Do you know Herbert Jackson and Alvin Low?

A. Well, I just know them by sight, not to say anything to, and I didn't know Herbert Jackson until
10 he was pointed out to me.

Q. In May and June last, did you see them around the Messick house?

A. I never saw Mr. Low.

Q. Have you seen Mr. Jackson there?

A. Once or twice I will say, not over that.

Q. Where was he?

A. There by the porch, as the others say, or one foot on the ground and the other on the step.

Q. You saw him there once or twice?

20 A. Yes.

Q. How long did he talk?

A. I didn't notice. I was going from Mrs. Emmett's to my home.

Q. This was either in May or June?

A. Yes, but I wouldn't say what month.

No cross-examination.

DEFENDANT'S TESTIMONY.

ALVIN LOW, sworn.

Direct examination.

By Mr. French:

Q. Where do you live, Mr. Low? 10

A. Sir?

Q. Where do you live?

A. Port Norris.

Q. Do you know Mr. Messick and Mrs. Messick?

A. I don't know him. I know her to talk to the same as anybody else I know.

Q. Were you in the oyster business?

A. Yes, sir.

Q. And on a boat?

A. Yes, sir. 20

Q. Did Captain Messick have a boat?

A. Yes, sir; I think so.

Q. Did some of his men get injured?

A. They did.

The Advisory Master: Do you live at Bivalve?

The Witness: No, sir; Port Norris.

Q. How far is Port Norris from Bivalve? 30

A. About a quarter of a mile, I judge.

Q. Did you know the men on Captain Messick's boat that were injured?

A. No, I didn't know them.

Q. Did you ever talk with Mrs. Messick in the afternoon or evenings of May and June, 1920?

A. I have.

Q. What did you talk about?

A. Well, I don't remember what the speech was about. I don't remember what it was now.

Q. Where was the conversation held?

A. Over by the porch.

Q. Of Mr. Messick's house?

A. In front, yes, sir; by the porch.

Q. Did you at any time go in the house?

10 A. No, sir.

Q. You heard Mrs. Camp's testimony that some evening you were sitting on a porch on the opposite side of the street and you went across the street. Do you remember the instance?

A. I sat on the pool room porch; yes, sir.

Q. Remember the instance she detailed?

A. Yes, sir.

Q. Remember that night?

20 A. I don't remember being that time of night but I often sat on the pool room porch.

Q. You don't remember seeing her go across the street with a lantern?

A. Well, if I did, I don't remember it.

Q. Did you at any time, on any night, go into Mr. Messick's house?

A. No, sir. I was never on the porch, only one night, or evening, whenever it was, the tide was coming up on the road, and I sat on the top step.

Q. Anybody else there?

30 A. Mrs. Messick.

Q. And were you talking to her?

A. Yes, sir.

Q. What were you talking about?

A. That I don't remember now what the conversation was about.

Q. Were you ever in a room alone with her at Port Norris?

A. Never remember being alone with her.

Q. What do you know about the circumstances detailed by the witness Dillahoy, that he came and saw you at the house and Mrs. Messick was there? What were the circumstances?

A. Mrs. Dillahoy is my cousin and I go there so much I don't think nothing of it.

Q. Was Mrs. Messick there any time in May or June when you were there?

A. No.

10

Q. Was he?

A. Not in Port Norris, no,

Q. Not in this house of your cousin's?

A. No, not May and June.

Mr. Donnelly: This was November.

Mr. French: That testimony was stricken out.

The Advisory Master: There was no objection until a certain question that I struck out. 20

Q. In November of this year were you there and Mrs. Messick was there?

A. I went there when she was there; yes, sir.

Q. Will you state the circumstances, what happened, how you came to be there together?

A. I don't know as we was together. I just went down there on a visit and she was there.

Q. Did you sit on a couch together?

30

A. No, sir.

Q. What did you do? What was the occasion of your being there? She was there on a visit?

A. I don't know what she was doing there, working there or on a visit or what.

Q. Was there anybody else in the house?

A. Mrs. Dillahoy.

Q. Mrs. Dillahoy was there all the time Mrs. Messick was there?

A. As far as I know.

Q. I want to find out the circumstances.

A. If she was there when Mrs. Dillahoy wasn't there, if she was, why she just came there a short while, waiting until she came back.

10 Q. Have you at any time ever been intimate with Mrs. Messick?

A. No, sir.

Cross-examination.

By Mr. Donnelly:

Q. Did you say you were visiting Mrs. Dillahoy's?

A. Yes, sir; I visit there quite often. It doesn't matter who is there, if I go on a visit I stay until I
20 come back.

Q. How long did you visit there?

A. Well, I don't know. I never counted how often I went there or stayed.

Q. Were you there all day?

A. Sometimes I stay there.

Q. On this evening that Mr. Dillahoy speaks of, did you stay there that evening?

A. I was there a while, yes, sir.

30 Q. How late did you stay? Do you remember how late you stayed?

A. No, sir.

Q. Was it after dark before you left?

A. Yes, sir; it was after dark when I went there.

Q. Did you see Mrs. Messick there?

A. Yes, sir.

Q. How long was she there?

A. I don't know.

Q. Was she there when you left?

A. Yes, sir.

The Advisory Master: Was she there when you went in?

The Witness: No, sir.

The Advisory Master: She wasn't there when you first got there? 10

The Witness: Not when I first got there. She came in, inquiring for Mrs. Dillahoy and I told her she had gone away and I expected her back at any time.

The Advisory Master: You went out before she did, before Mrs. Messick did?

The Witness: She was there when I left; yes, sir. 20

Q. What time did you leave, Mr. Low?

A. I don't remember.

Q. Had Mrs. Dillahoy got back when you left?

A. Yes, sir.

Q. You don't remember how long you were there that day or not?

A. No, sir.

Q. Were you there an hour?

A. Oh, a couple of hours, something like that. 30

Q. How long were you there with Mrs. Messick?

A. Oh, I don't know, just a short while. She came in and inquired about Mrs. Dillahoy and I told her she would be back shortly, and so she waited until she came back.

Q. She came in and Mrs. Dillahoy was away?

A. Yes, sir.

Q. And she waited until Mrs. Dillahoy came back?

A. Yes, sir.

Q. How long was it after she came in before Mrs. Dillahoy came back?

A. Maybe a half hour, maybe not that long.

The Advisory Master: How long had you known
10 Mrs. Messick before this?

The Witness: Oh, I have been acquainted with her all my life, I guess.

The Advisory Master: Did you ever have any sexual relations with Mrs. Messick?

The Witness: Never.

20

CAROLYN MESSICK, the defendant, sworn.

Direct examination.

By Mr. French:

Q. Mrs. Messick, you are the wife of the petitioner?

A. I am.

30 Q. And in speaking to him, you use a nickname or term of endearment?

A. I call him "Beck."

Q. Is that a name he is commonly known by?

A. Yes, sir.

Q. What were the circumstances of your going away, in June of 1920, for a week?

A. I had had the "flu" and he went down home.

Q. Whom do you mean by "he"?

A. Beck went down home to his home in Maryland, where his people lived, and I didn't go, and the doctor wanted me to go a week before we moved and Mr. Winford had bought a house for Mr. Messick, and before I moved the doctor wanted me to go away with him, so I went.

Q. Now, then, had there been any conversation between Mr. Messick and yourself about your going 10 away?

A. Yes, sir.

Q. What was the understanding?

A. That I was supposed to go to Mrs. John White's for a week. Well, I didn't go a week. It wasn't a week.

Q. Did you go away?

A. I did.

Q. And where is Mrs. John White's?

A. Well, I couldn't just tell where they lived in 20 Vineland before they moved.

Q. What is the station?

A. I was supposed to get off at Vineland and they were to meet me in an automobile.

Q. What day did you start?

A. The 21st day of June, Monday, 1920.

Q. And where did you get off the train?

A. At Vineland.

Q. And was there anybody there to meet you?

A. No, sir.

30

Q. What did you do then?

A. Well, I got on the train with my baby and went to my uncle's, at Penn Street, Camden.

Q. Was there anybody with you on the train before you got to Vineland?

A. Where do you mean?

Q. From Maurice River.

A. Mrs. Cirpin was with me until I got off at Millville.

Q. Then you went from Millville to Vineland. Was anybody with you?

A. No, sir; nobody but my baby.

Q. Now, after you got off at Vineland, you remained there until another train came?

A. Yes, sir; the next train.

10 Q. Who was with you on that train?

A. Nobody but my baby.

Q. And when you got off that train, did you meet anybody at the station?

A. I did not.

Q. Where did you go?

A. To Penn Street, Camden.

Q. Who lives on Penn Street?

A. My uncle did, but he moved.

Q. What is his name?

20 A. Shepard Bishop.

Q. After you got there, what did you do?

A. Didn't do anything only stayed there from Monday until Saturday and I was supposed to come home on Friday and I was sick.

Q. Between Monday and Friday, was there anybody there with you?

A. There was not.

Q. Anybody call on you?

A. There was not.

30 Q. Did you go out any?

A. I did not. I went to the store with my sister—with my aunt—with my uncle's wife, I went to the store, Broadway.

Q. Was Herbert Jackson there at any time?

A. I did not see him.

Q. Did you see him on the train?

A. I did not.

Q. When did you return home to Bivalve?

A. On the 26th of June, on the 6 o'clock jitney, 1920.

Q. And where did you go when you got to Bivalve?

A. I got right off to my door and went in the house.

Q. Anybody in the house?

A. Not a soul.

Q. The baby with you?

A. Yes, sir.

10

Q. When did Mr. Messick come in?

A. About—well, I couldn't just say, but shortly after I got there.

Q. Now, when he came in, what did he say to you and you to him?

A. Well, I was out in the shed, I guess that is what to call it, washing my hands to the pump, to the sink. When he came in he looked black and I asked him what was the trouble and he said, "You know," and he called me every kind of vulgar names he could think of.

20

Q. Just say what he said to you.

A. Well, he called me whore and bitches.

Q. What did you say to him?

A. I called him a son of a bitch.

Q. Anything else?

A. Called him a God damn liar.

Q. Did he charge you with being intimate with Mr. Jackson?

A. He said I had been away sleeping with him a week.

30

Q. What did you say in answer to that?

A. I said that he was a God damn liar.

Q. Anything else said about it?

A. Well, I walked in the room and of course I was called whores again and he went in the bed-

room and picked up the gun and deliberately pointed it right to my face and said vulgar names again and said, "You ought to be dead."

Q. What did you do?

A. I didn't do nothing, only I went to holler and he put the gun in his back pocket and walked to my father's. My father saw the gun and asked him for it and he gave it to my father, loaded.

10 Q. Prior to that time, had he made any charges against you of being intimate with either of these men, before then?

A. Well, not only those two men, but he was always accusing me of men.

Q. Had you had any other encounters with him in which he used a gun?

A. Just then.

Q. Had he before that done that?

A. He had.

Q. Was that frequent or infrequent?

20 A. Every time he would get mad he would do it.

Q. Well, now, how was it that you went home to your father's house, after you came home?

A. Why, because he said he would kill me and my baby if I ever stepped my foot over my father's doorstep.

Q. When?

A. In the first part of the spring.

Q. What was the result of his telling you that, as to your going to your father's house?

30 A. What I done.

Q. What did you do?

A. I did not go.

Q. Was he at home with you during this time, during the summer?

A. No, sir; he was home and he wasn't home, that is the way you get about it.

Q. Well, during the oyster season, what were his habits?

A. What made him not be home?

Q. I mean was he home or wasn't he, during the time they were dredging for oysters?

A. Well, he came home Friday afternoons and went away Monday mornings.

Q. Was he home with you during the time from Friday until Monday?

A. He was not.

Q. What time did he come home?

A. From up the bay?

Q. Yes.

A. Anywhere in the afternoon. Once in a while he would get home Saturday morning.

Q. Did he spend his Saturdays and Sundays with you?

A. He did not.

Q. Anybody with you during these Saturdays and Sundays?

A. No, sir; only unless a neighbor came in once in a while.

Q. And during the week, during the planting season or during other times he was away, was there anybody in the house with you or did you have to stay alone?

A. No, sir; Mrs. Allen's daughter stayed with me.

Q. Where did Mrs. Allen live?

A. Right next door, on this side (indicating).

Q. On the side toward Port Norris?

A. Yes, sir.

Q. After he went out and went to your father's house, on Friday afternoon, or Saturday afternoon, wasn't it, you came home from Camden?

A. Saturday afternoon, on the 6 o'clock jitney.

Q. Did you go to your father's house?

10

20

30

A. Well, he came back several times that night, and the last time he came back was half-past 12 Saturday night, and then he didn't come back any more. That was the time my father stood under the window, that he got the hour wrong, it was between half-past 12 and 1 o'clock.

Q. When he came the last time?

A. Yes, sir; when he and my father came.

Q. Had he been there between the time he went
10 away and half-past 12?

A. Sure.

Q. Had you had conversations?

A. Yes, sir.

Q. What were they about? What did he say and
you say?

A. Well, he wanted me to own up that I was rooming in Philadelphia with this Herbert Jackson.

Q. What did you say?

A. I told him that I was not, that he was not. I
20 said, "I never lied on you and I won't lie on him or
nobody else."

Q. Was that the substance of your conversation
each time he was there?

A. It was.

Q. When he came there at half-past 12 with your
father, what did he say to you and you to him?

A. Well, I can't remember that, but the conversation was all on Herbert Jackson every time we talked.

Q. What did you say to him that would lead him
30 to believe you had admitted you had been with Herbert
Jackson in Camden and roomed with him for
a week?

A. Well, he wouldn't listen. He is one of these strong headed men, that he won't listen to nothing. He wants his own way at everything, so first I told him, "If I have been with Herbert Jackson, find it out the best way you can."

Q. That is the reason you think he says you admitted it?

A. Yes, sir.

Q. Now, then, after half-past 12 Saturday night, did he go away?

A. He did. Went to my father's and stayed all night.

Q. You don't know that except from hearsay?

A. Only my father said.

Q. Did he come back Sunday?

10

A. He did.

Q. What time?

A. Between half-past 7 and 8.

Q. Where were you?

A. I was in the bedroom, in the bed.

Q. What did he do?

A. He came in the bedroom.

Q. What did he say to you?

A. Well, I don't know just what he said at first, but he talked on Herbert Jackson and then he sat down on the bed, put his arm over me and his hand under my head. I was lying on my back at the foot of the bed. 20

Q. What did he say?

A. Well, he said, "It is the people's talk," and he cursed and says, "I don't believe nothing they say," so then he wanted intercourse, he had it, he made up, the 27th day of June.

Q. Then what happened? Did he leave the house?

A. After this he cursed all the vulgar names he could think of. 30

The Advisory Master: Against you he cursed or somebody else?

The Witness: Against me, and he went down to

Mrs. Reba Moore's boarding house and got his breakfast.

Q. Didn't stay for breakfast?

A. He did not. There was nothing in the house to eat.

Q. Did he come back again?

A. He did.

Q. When?

10 A. Well, I couldn't tell how many times but he was off and on all day Sunday.

Q. What was the substance of the conversation between you and him?

A. Of course, every time he came in he would be cursing about Herbert Jackson.

Q. On Sunday night did you go to your father's?

A. I went to my father's house around 2 o'clock Sunday afternoon.

Q. What happened then?

20 A. Well, he sat there. We was all in the kitchen.

Q. Did he say anything more about Herbert Jackson or you?

A. I don't remember that.

Q. What was the instance about this testimony that you had taken poison and the doctor came?

A. He took my baby and said I would never get another glance at it, so I thought if I couldn't have my baby I was better off dead, for I didn't want him.

Q. Did he take the baby away?

30 A. He did. He took it to my father's.

Q. And you went to your father's house for it?

A. I did. My father sent for me and I went.

Q. Now, how long have you known Herbert Jackson?

A. At least 9 or 10 years.

Q. Where does he live?

A. Cambridge, Maryland, as far as I know.

Q. Did he or not frequently call to see you while your husband was away?

A. He did.

Q. And what time in the week did he come?

A. Well, he was always up the bay when my husband was, but there was 2 men hurt on my husband's boat the first day of May, the first planting season, and they live—I don't know right where—but they were friends of Mr. Jackson's and he came there to see how they was getting along, and one Sunday he was there and my husband came home, standing outside, and he also talked to him. 10

Q. Was Herbert Jackson ever in the house with you?

A. No, sir.

Q. What about this instance Miss Camp testifies to, you were in the room there together and she had ice cream with you?

A. He has been to the door but I never remember him being inside. 20

Q. Ever eat ice cream with Miss Camp in the house?

A. No, sir. I have ate ice cream but not when Herbert Jackson was there or no other man.

Q. Miss Camp was with you?

A. Yes; she used to come to my house right often.

Q. Was Herbert Jackson ever there when she was?

A. Not that I remember.

Q. What about her statement that she saw Herbert Jackson kissing and hugging you? 30

A. If she did, she must have been blind.

Q. Did he?

A. No, he never did.

Q. Was he ever in your house?

A. No.

Q. When he did talk to you and when Alvin Low talked to you, where were you?

A. I was in the rocking chair and the porch is high, which you saw yourself, and I was sitting in a rocking chair and there are steps and they would stand right in front of the steps and talk.

Q. As I understand you to say, neither was ever in the house?

A. No, sir.

10 Q. What is this occurrence of November, 1920, that Mr. Dillahoy testifies to?

A. November 20th I was in Bridgeton.

Q. Is Mr. Dillahoy mistaken when he says he saw you?

A. He was.

Q. And were you in the house with Alvin Low at that time?

20 A. I went there as Mrs. Dillahoy and her mother wanted to go to Bridgeton. That is how I know it was November 20th. They had a shoe sale and they wanted me to go with them and she was around to their grandfather's and he was in there, he was there.

Q. Did you go in when you got there?

30 A. I did. He calls her Tillie. He says, "Come in, Tillie will be home in a few minutes." I went in and waited, and I walked around to Mr. Barry's and I went around and walked with Mrs. Beard, Tillie's mother, and waited at the house until Mrs. Dillahoy came, and I went to Bridgeton to the shoe sale, with the 3 of us.

Q. What time did you get back?

A. Between half 10 and a quarter of 11.

Q. In the evening?

A. Well, I don't know whether you call that evening or what?

Q. Night?

A. Yes.

Q. Was Alvin Low there when you got back?

A. No, sir.

Q. During the time that you were at Dillahoy's, were you sitting on the couch with Alvin Low at any time?

A. I was not.

Cross-examination.

10

By Mr. Donnelly:

Q. Mrs. Messick, what time did you get back home when you were away that week?

A. I got home on the 6 o'clock jitney, the 26th of June, 1920.

Q. Where did you come from by jitney?

A. From Millville.

Q. How did you get in Millville that day?

20

A. I came from the train, electric train from Camden, got on at Broadway.

Q. Where had you been in Camden?

A. My uncle's, Shepard Bishop.

Q. Is he in court?

A. I don't see him.

Q. What number on Penn Street?

A. Well, he don't live on Penn Street now. He lives 437 Stevens Street.

Q. What number on Penn Street?

30

A. I forget. 5 something. I couldn't just tell you.

Q. 5 something Penn Street?

A. I wouldn't put it down.

Q. Did you go out from there many times when you were there?

- A. I did not; only to the store with my aunt.
 Q. Only once?
 A. No, I went out several times.
 Q. Alone?
 A. No, sir.
 Q. Always with your aunt?
 A. I did.
 Q. And you don't know the number of the house?
 A. No. It was on Penn Street. I could soon find
 10 out.
 Q. It was 500 something?
 A. No, I couldn't say that.
 Q. How does Penn Street run?
 A. I don't know nothing about Camden. It runs
 off Federal Street.
 Q. How far off Federal Street did you go?
 A. I couldn't just tell you that.
 Q. How many squares?
 A. I couldn't tell you that.
 20 Q. You know you went off Federal Street to get
 on Penn Street?
 A. I did.
 Q. Was it north or south of Federal Street?
 A. I don't know north from south or south from
 west.
 Q. Where did you get off at the railroad station?
 A. At the Market Street ferry, or down here, I
 don't know what you call it.
 Q. You got off at the ferry?
 30 A. Camden.
 Q. And where did you go?
 A. Walked right down Federal Street and went to
 my uncle's on Penn Street.
 Q. You walked right down Federal Street?
 A. I did.
 Q. And went to your uncle's?
 A. I did.

Q. When you got to Penn Street, which way did you turn, come out Federal Street to your right or left?

A. I tell you I don't know nothing about Camden.

Q. Do you know your left from your right?

A. Yes.

Q. When you went out Federal Street and got to Penn Street, did you turn to the right or left?

A. I don't know. I asked a policeman where it was.

10

Q. When you found out your way, did you go to the right or left? What did you ask the policeman?

A. I asked the policeman where Penn Street was.

Q. What did he say?

A. He said a couple of more blocks up.

Q. Then which way did you turn, right or left?

A. I couldn't say sure but I think I turned to my left.

Q. And after you turned to your left from Federal Street, how many blocks did you go up before you got to your uncle's house?

20

A. I couldn't say that.

Q. One square or 2 squares did you go?

A. Well, I wasn't counting squares with a baby and dress suit case.

Q. Or 3 squares?

A. I couldn't tell you.

Q. What was the number of the house?

A. I don't know.

Q. And you stayed there how long?

30

A. I stayed there from Monday morning, I know I got there at 11 o'clock. I stayed there from Monday morning until Friday or Saturday, when I left.

Q. How did you leave Bivalve when you went away?

A. I left—I don't know what time she leaves but I think a quarter of 7.

Q. Did you go up on the Maurice River side?

A. I did.

Q. Was Herbert Jackson on that train?

A. I did not see him. If he was I do not know.

Q. Didn't he ride on the same train you did as far as Millville?

A. I didn't see him, not in the car I was in.

Q. Do you know Harry Barson, the man who keeps the hotel?

10 A. I do.

Q. Did you ask him about Jackson that morning?

A. No, sir.

Q. Didn't you ask him if Jackson was over there or whether he had taken that train?

A. I did not. Mrs. Cirpin sat right by me when Mr. Barson and I was talking.

Q. Did you speak at all about Jackson to Mr. —

A. I did not mention his name.

20 Q. Mrs. Messick, I didn't understand your direct examination about Sunday evening, this Sunday evening, the 27th of June, I guess that was, you went back to the house of your father and mother late in the evening?

A. I did.

Q. Were you sick and had a doctor?

A. I was sick and fell. I took the poison and fell.

Q. This was Sunday evening?

A. This was Sunday evening, the 27th day of June.

30 The Advisory Master: Your husband said on the witness stand that you admitted to him that you had roomed with Jackson in Camden for a week. Do you deny that?

The Witness: I said if I roomed in Camden with Herbert Jackson, you find it out the best way you can, because he would not listen to what I said.

Q. Now, your sister, Mrs. Anderson, you talked to her about Jackson, did you?

A. I said the same as I said to my husband.

Q. What did she say to you that brought that out?

A. I don't know, I was too excited to know.

Q. When was it you talked to your sister about it?

A. Well, my mother and Beck and my sister was all in the bedroom, all in the house. I don't know as they were all in the bedroom, and my husband went out, I think it was for his dinner, if I am not mistaken, he went to Mrs. Moore's, anyway, and my sister and mother was there, and of course I don't know what they said and didn't pay no attention and didn't care, but my sister says, "I have my beans on the stove and I must go home," and that left my mother there with me, and while Mr. Messick was in the house I didn't open my eyes all the time he was there. 10

Q. I want to know what it was you said to your sister. You say Messick went out and your mother and your sister were there with you. Did you have some talk that day with your sister about Jackson? 20

A. I said the same as to my husband.

Q. What occasion was there to say that to your sister? She had no interest to find it out?

A. There they are all so snippy to find out, that is the answer they got. I said if I roomed in Camden, let them find it out the best way they could.

Q. Did you use any language other than that, denying the accusation of Messick? 30

A. I don't understand you.

Q. Did you use any other words than that when he charged you living with Jackson? Did you use any other language? Did you say, "I did not, and you can find out if you want to"?

A. Yes. He wouldn't listen.

Q. Did you deny you had roomed with Jackson?

A. I did. What do you mean?

Q. Did you own up to it?

A. I denied it.

Q. What language did you use?

A. I told him he was a damn liar.

Q. Now, Mabel Camp says that she was in your house one afternoon last June, with you and Jackson?

10 A. Yes.

Q. And that you got up, then Jackson got up and came over and hugged and kissed you. Is that true?

A. He did not.

Q. Do you remember the 3 of you being there together?

A. He never was over my door sill in his life, never to my house.

Q. Now, the time that Alvin Low was at Port Norris. How did you two happen to be alone together in the house?

20 A. At Mrs. Dillahoy's?

Q. Yes.

A. I don't know how it came to be he was there. I don't go in strange houses unless I knock. She is no stranger.

Q. Who got there first?

A. I knocked on the door and Alvin Low came to the door, and of course I didn't know but what Mrs. Dillahoy was home. I said, "Where is Mrs. Dillahoy?" He said, "She will be home in a minute; come in and sit down."

30 Q. Then what happened?

A. Well, I sat there. I couldn't just tell you how long it was, but I sat there, and I went over to Tillie's grandfather.

Q. And when you left, was Low still in the house?

A. He was.

Q. And Mrs. Dillahoy hadn't come back?

A. She hadn't.

Re-direct examination.

By Mr. French:

Q. There is one thing I forgot. Did you say in 10
this conversation, when your sister was there at the
home on Sunday, "I have done it, I have done it"?

A. I did not, to the best of my knowledge.

Re-cross examination.

By Mr. Donnelly:

Q. Mrs. Messick, look at these letters and say
whether or not you ever received them from Mr. 20
Jackson.

(Examining counsel hands letters to witness.)

A. I did.

Re-direct examination.

By Mr. French:

Q. How did these letters come to be written? 30

A. Well, my husband was never home. He was
always to a gambling table or den, he was never
home when he was home, and I got this Mr. Jackson,
or this Herb Jackson, to write these notes, and he
says, "If I write these notes, don't let him see them

until after I get home," and when I left that morning the notes was on the baby's crib.

Q. Not between the mattress?

A. That is where they laid.

Q. What was your idea?

A. To make him jealous, to make him stay home with his wife and baby from the gambling table.

Re-cross examination.

10

By Mr. Donnelly:

Q. Why did you get Herbert Jackson to do it?

A. Well, I don't know why I got him. I would have got anybody. If your man was never home with you and never took any pride in the home, you are liable to do anything.

Q. Have you received letters from Mr. Jackson?

A. I never have but those two notes.

20 Q. Did you show her such a letter?

A. I did.

Q. That you showed her a letter in which Mr. Jackson called you his dear wife?

A. I heard it.

Q. Did you hear the testimony of Bessie Perry?

A. I did not, because there was only a few letters wrote and they was wrote to my father and they have the letters home.

30 The Advisory Master: Did you write any letters to Jackson at all?

The Witness: I did not.

ETTA ALLEN, SWORN.

Direct examination.

By Mr. French:

- Q. Mrs. Allen, where do you live?
A. Right next door to Mrs. Messick.
Q. Toward Port Norris? 10
A. Toward Port Norris.
Q. How near is her bedroom window to your house?
A. Between 8 and 9 feet.
Q. Anything between your house and the window?
A. No, sir.
Q. During May and June of this year, what have been her habits there? You have seen her every day?
A. I seen her most every day. 20
Q. What has she been doing?
A. General housework, washing and things like that.
Q. Taking care of the child?
A. Yes, sir.
Q. During that time have you seen any men around the house, if so, what men?
A. I have never seen no man there but Alvin Low, and that was standing by the porch.
Q. What about the other man, Jackson? 30
A. I don't know him and I have never saw him there.

The Advisory Master: How could you tell?

The Witness: I don't know him.

Q. Don't know him when you see him?

A. Don't know him at all. Only saw him, and that was the second, in your office.

Q. In my office?

A. Yes, sir.

Q. You know who I mean, then?

A. Yes, sir.

Q. Did you see that man around the house any time in May and June of this year?

10 A. No, sir.

Q. When you saw Alvin Low, where did you see him?

A. Standing by the porch.

Q. Talking with Mrs. Messick?

A. Yes, sir.

Q. Ever see any man in the house except Mr. Messick?

A. No, sir.

20 Q. If any man had been in the habit of coming to the house, would you have known it?

A. Well, I don't know whether I would or not. I never watched her.

Q. Would you have been likely to have known it?

A. I should have thought so.

Q. You have several children of your own?

A. Yes, sir.

Q. What has been her custom in taking care of the child? Has she been a good or a bad mother?

30 A. Well, I think she has been a good mother to the child, so far as I know.

Q. Ever see her correct the child?

A. Once.

Q. What was the occasion? Deserve it?

A. Yes, sir.

The Advisory Master: What was the character of the correction?

The Witness: She gave the child a bath and set her on a little stool and she said, "You sit there until I get your clothes." She got the clothes and she forgot something else and the child picked up the shoes and threw them in the tub of water.

Q. That the only instance you saw her abuse the child?

A. Yes, sir.

Q. Was Mr. Messick home very much during May 10 and June?

A. I don't think he was. I never saw him around very much.

No cross examination.

EDWARD B. COBB, SWORN.

Direct examination.

20

By Mr. French:

Q. Mr. Cobb, you live in Bivalve?

A. Yes, sir.

Q. Have a sail loft there?

A. Yes, sir.

Q. Know the people generally in the town?

A. Yes, sir.

Q. Know the gossip of the town?

30

A. I do.

Q. If you know it, will you state what Mrs. Messick's reputation is for morality in the town?

Mr. Kraft: Objection, on the ground it is irrelevant and immaterial.

(Objection overruled.)

Q. State what it is.

A. I don't quite grasp this.

The Advisory Master: Perhaps the word chastity might be inserted.

10 The Witness: As far as I know, she is a pretty rough figure.

The Advisory Master: What is her reputation for chastity, sexual decency?

The Witness: As far as I know, good.

The Advisory Master: Did you ever hear anybody talk about it at all?

20 The Witness: About her character?

The Advisory Master: Yes.

The Witness: Only just by her talk, that is all.

Q. Did you hear anybody else talk about her character?

A. No, only through her talk.

Cross-examination.

30

By Mr. Donnelly:

Q. What do you mean by her talk?

A. The same as she said here, she called Beck a God damn liar. She would call me one or you one, anybody else she thought so.

Q. Anything else?

A. Yes. Ask me if I was getting anything.

The Advisory Master: What do you mean?

The Witness: Getting any skin, I expect.

Q. That is what she asked you?

A. Yes. I did her the same thing.

Q. You mean you would ask her the same thing? 10

A. Yes.

Q. Had you asked her the same thing?

A. I expect I had.

Q. What did she say?

A. She is married, you know, and she said certainly she was.

DEFENDANT RESTS.

20

PETITIONER'S REBUTTAL TESTIMONY.

WILLIAM CLAUDE MESSICK, recalled.

Direct examination.

By Mr. Donnelly:

Q. Mr. Messick, you heard your wife's testimony on the witness stand that during the interviews you had with her on Saturday and Sunday, previous to your separation, you used a revolver and threatened to take her life? 30

A. I did not. She threatened to take her own life and I took the revolver and took it up to her father.

Q. She also claims you had sexual intercourse with her on Sunday morning. Is that true?

A. I did not; no, sir.

By the Advisory Master:

Q. You talked to your wife about these letters?

A. What ones? When she came home?

Q. Yes.

10 A. Mr. Donnelly had them then. I talked to her about them. I asked her what they were doing there.

Q. What did she say?

A. She said she forgot to take them with her.

Q. What else did she say about the letters, anything more about them?

A. She said, when I first made the remark, "You son of a bitch, he is better than you are." She had some kind of a picture, some kind of photograph. I couldn't say what it was.

20 Mr. French: Did you say that when she came home, Mr. Donnelly had these letters?

The Witness: Yes, sir.

CAROLYN MESSICK, recalled.

30 By the Advisory Master:

Q. Did you have a photograph of Jackson?

A. I have.

Q. How did you happen to have that?

A. I have had it for years. I had it before I ever thought of Mr. Messick.

Q. And you still keep it?

A. I have. My father and mother knows that.

Q. Did Mr. Messick know it?

A. I don't know that. It was up in my mother's bureau drawer, front room, in the spare room.

Q. Did you have a letter from Jackson which you showed to Miss Perry, in which letter the expression was used by Jackson that he called you his dear wife?

A. I never received a letter from Mr. Jackson only 10
the two notes you have right there; none whatever.

Mr. Kraft: We will now make a motion that our petition be amended to embrace the charge of adultery with this man Jackson in the City of Camden, New Jersey, in the month of June, 1920. 20

Mr. French: We of course will have an opportunity to answer that amended petition.

The Advisory Master: That is only fair. We will now fix a future day, giving an opportunity to amend the pleadings.

(Hearing adjourned to January 20, 1921, at 11.15 o'clock A. M., at the Court House, Camden, New Jersey.) 30

EXHIBIT P1.

My little girl:

Just a line to let you hear from me, darling, you say if I don't go on a trip next week I don't love you, but, dear, that is a mistake, for I do love you, and some day I will prove it to you. I want to go with you, but, darling, I hate to miss a week when I have the chance to make it, for I need the money, 10 so please don't think hard of me. I want to go, for I am willing to do anything you ask me. I set on the porch last night and looked at you through the window. It broke my heart for to look at you and could not have the pleasure to talk with you, darling. I want to write to you when I leave, so where can I send your letters so Beck can't get them? Let me know. I will close with all my love and best wishes to you forever, from your little boy, one would like to be with you forever. Good bye, may God bless 20 you and be with you in the dark hours of troubles. Kisses for you, dear. X X X X X X X.

(Signed) Herbert Jackson.

EXHIBIT P2.

Dear, I waited for you last night but I never saw anything of you. I heard that you had more trouble last night. I am sorry. Look, dear, don't have any- 30 thing to say to me for a while, let things die out, people is talking too much. Don't have anything much to say to me and maybe he will treat you better. This morning, when you waved at me, I saw Beck, that is why I never waved back at you. I have something to tell you when I get a chance. I will close, wishing you joys and pleasure to your joys. Yours ever.

(Signed) Herbert Jackson.

January 20, 1921.

APPEARANCES:

For the Petitioner: REX A. DONNELLY, ESQ.,
WILLIAM C. KRAFT, ESQ.
For the Defendant: FRENCH & RICHARDS, ESQS.

10

Before GREY, Advisory Master.

Mr. French: The petition was amended as to paragraph 3½. “Defendant since her marriage to petitioner, on the first and second day of June and on divers other days in said month, A. D. 1920, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with Herbert Jackson, at the City of Camden, County of Camden, New Jersey.” That was an amendment that was allowed, answered and denied, and I presume the Court desires further testimony on the matter. 20

The Master: It seems so.

30

HARRY BARTLESON, SWORN.

By Mr. Donnelly:

Q. Mr. Bartleson, where do you live?

A. Maurice River, New Jersey.

- Q. Is that opposite Bivalve, New Jersey?
 A. Right across the river.
- Q. Do you know the defendant, Carolyn Messick?
 A. Yes, sir.
- Q. Do you know a man by the name of Herbert Jackson?
 A. Yes, sir.
- Q. What is your business?
 A. I am working in the oyster business and run a
 10 boarding house there at Maurice River.
- Q. Did Mr. Jackson stay at your house at any time in June last?
 A. Yes, sir.
- Q. Do you know about when it was, the first or last or what?
 A. The last of June sometime.
- Q. Do you remember what day of the week it was?
 A. Sunday night.
- Q. It was Sunday night?
 20 A. Yes, sir.
- Q. When did he leave your house?
 A. Monday morning.
- Q. Monday morning?
 A. Yes, sir.
- Q. Did the defendant make any inquiry of you in regard to Jackson while he was there or about the time he was leaving?
 A. She came across on the boat that morning.
- Q. Monday morning?
 30 A. Yes, sir, talked with her there on the wharf.
- Q. What did she say to you?
 A. She asked me if a strange fellow stayed at our house and I told her yes.
- Q. Did anybody but Jackson stay at your house?
 A. No, he was the only one; me, my wife and little boy, four of us.

- Q. What else did she say?
A. That is all she said just then, sat there talking.
Q. While you were there did Jackson come out?
A. Yes, out of the hotel.
Q. Had a traveling bag in his hand?
A. A dress suit case.
Q. Did he take a train out?
A. He took the seven o'clock train that morning.
Q. Monday morning?
A. Monday morning. 10
Q. Did Mrs. Messick take that train out?
A. Both got on the same train.
Q. Did she say anything to you about not saying anything about it?
A. She said she was going away for a week.
Q. She said she was going away for a week?
A. That is what she said.
Q. Did she ask you not to say anything about it?
A. That is what she said.

By the Master:

20

- Q. Not say anything about what?
A. I suppose that this fellow stayed there that night, I don't know what else it was.
Q. Not anything about her going away for a week?
A. I don't know, I think she asked if this fellow stayed, I don't think anything else.

Cross-examination.

By Mr. French:

30

- Q. Did you see them get on the cars?
A. Yes, sir.
Q. Both get on the cars together?
A. She got on the head car and he got in the smoker.

MRS. SHEPPARD BISHOP, SWORN.

By Mr. French:

Q. Mrs. Bishop, do you know Carolyn Messick, the defendant here?

A. Yes, sir.

10 Q. And your husband is a brother of her mother, is he not?

A. Yes.

Q. And you are her aunt by marriage?

A. I am.

Q. Do you remember a circumstance of her visiting your house in 1920, last year?

A. I do.

Q. Will you state when it was she came there?

A. She came in the early part of the summer and she stayed with me a week.

20 Q. Do you know what month it was in?

A. The early part of the summer.

Q. Do you know what month?

A. I think it was in June.

Q. Was it in the forepart of the month or the latter part of the month?

A. In the latter part.

Q. What day of the week did she come?

A. The first day of the week.

Q. On Monday?

30 A. Yes, sir.

Q. What time of the day, about?

A. I judge sometime in the morning, I just can't recall what time.

Q. Where did you live at that time?

A. 527 Penn Street.

Q. In the City of Camden, New Jersey?

A. Yes, sir.

Q. How long did she remain at your house?

A. One week.

Q. Do you remember the day of the week that she left?

A. I just can't recall the day, but it was around the last of the week.

Q. While she was there did she go out or stay around the house?

A. She went out with me, no one else. 10

Q. She always went out with you?

A. She had no reason to go out with anybody else but me.

Q. Did she have any callers while she was there?

A. Not at my house, no, sir.

Q. Neither men or women callers?

A. No, sir.

Q. Do you know Herbert Jackson who has been mentioned here?

A. No, sir, I do not. 20

Q. Ever see him?

A. Never.

Cross-examination.

By Mr. Donnelly:

Q. Mrs. Bishop, how do you fix this time?

A. Fix the time, I don't understand. It was in the summer. 30

Q. What part of the summer?

A. In June.

Q. What other time or times did Mrs. Messick come to your house?

A. She came there a few times after that, but not on Penn Street.

Q. When was that she came to your house in Camden?

A. I can't recall when it was.

Q. You say you can't recall the time in June?

A. Sometime in July she came to my house, but I didn't keep any dates.

Q. Sometime in July?

A. She came in June and sometime after that.

Q. She came there in June and she came there in
10 July?

A. Yes, sir.

Q. Did she come there any other time?

A. I believe she was to my house twice since we lived on Penn Street, once in July and once —

Q. When did you move away from Penn Street?

A. The last week in June.

Q. You moved away from Penn Street the last week in June?

A. Yes, sir.

20 Q. Can you give me the date when you moved from Penn Street?

A. Tuesday, June 29th.

Q. Do you know that two gentlemen came to your house on the 23rd of December last?

A. Two gentlemen?

Mr. Donnelly: Mr. Robbins, will you stand up?

Q. Did that gentleman come to see you December
30 23rd?

A. Yes, sir.

Q. Was that gentleman with him? (Pointing to gentleman in audience.)

A. Yes, sir, they were both together, but I don't know what it was.

Q. And you had a conversation with these two

gentlemen in regard to Mrs. Messick being in your house?

The Master: What are the names of these two gentlemen?

Mr. Donnelly: Mr. Moore and Mr. Samuel Robbins.

Q. They came to see you and they inquired of you 10
as to whether Mrs. Messick had been to your house
last summer, did they not?

A. Yes.

Q. And did you or did you not tell these gentlemen how long she was there?

A. I told them that she stayed at my house, but I don't recall what day or date.

Q. And you told them she was there two or three days?

A. I didn't tell them nothing of the sort; I didn't 20
remember what day or date she was there.

Q. Did Mr. Robbins ask if it was two or three days or a week and you said you did not know.

A. I didn't say how long it was.

Q. Did he ask how long she was there?

A. I don't remember if he asked me that or not; I was sick with a nervous headache that day and I don't recall.

Q. Did you in reply to his questions ask him how long she said she had been at your house? 30

A. I did.

Q. You did ask that question?

A. Yes, sir.

Q. Why did you do that?

A. Why did he question me?

Q. Did you ask Mr. Robbins how long Mrs. Messick had been to see you?

A. I asked him to make sure whether he knew right whether I was telling the truth or not.

Q. You did that to see whether you were telling the truth?

A. No, I am telling the truth; I wouldn't be sitting here for anything else.

Q. You did not know at that time whether Mrs. Messick was at your home for two or three days or a week?

10 A. I did.

Q. Why didn't you tell Mr. Robbins?

A. Because I didn't think he had any right to question me.

Q. And that was the reason?

A. Yes.

Q. What street did you tell Mr. Robbins you lived on in June last?

A. I told him we lived on Penn Street.

Q. Didn't you tell him you lived on Steven Street?

20 A. We didn't leave —

Q. But you told him?

A. No, not until the last week in June.

By the Master:

Q. Now, I understand you to say that Mrs. Messick came to your house on Steven Street in June?

A. No, my house on Penn Street in June.

Q. And that was what part of June?

30 A. The latter part of June.

Q. Was anyone with her?

A. Her little girl.

Q. And the little girl stayed with her until she went away?

A. Yes, sir.

Q. She came back to visit you in July?

- A. I recall it was in July sometime.
- Q. Where was that?
- A. On Steven Street.
- Q. Was anybody with her then?
- A. Her father.
- Q. And how long did she stay that time?
- A. Just that day.
- Q. The child was not there?
- A. No.
- Q. Did she visit you again after that? 10
- A. Yes, sir.
- Q. When was that?
- A. I can't recall when that was and her little girl was there and she stayed with me that one night.
- Q. How long after July was that?
- A. I don't know just what date it was.
- Q. Was it in August, September or October?
- A. The last time this case was on.
- Q. Last December?
- A. I think it was once before that. 20
- Q. Let's go back to July; she was there in July and stayed over night with the little girl?
- A. She didn't stay over night.
- Q. But she did stay over night with the little girl?
- A. Yes.
- Q. When was that?
- A. One time she came to court here.
- Q. After that time did she come again?
- A. She came to my house the other day.
- Q. In December you mean? 30
- A. Yes.
- Q. Did she stay over night that time?
- A. No, sir.
- Q. On any of these occasions did anyone come to see her?
- A. No, sir.

By Mr. Donnelly:

Q. Mrs. Bishop, why did Mrs. Messick come to see you?

A. She was going away for a week and she thought she would come to see me.

Q. Had she been to see you before that?

A. No, sir.

Q. She was going away for a week and so she
10 came to see you?

A. She presented herself.

Q. That is the first time you met her?

A. What?

Q. This was the first time you met her?

A. Yes, sir.

Q. And she told you —

A. She presented herself as my husband's niece,
and naturally I told her to come in, and when he
came home he didn't know she was there; the doctor
20 said she should go away for a week, and I suggested
she could stay there, because we had to move the
next week, anyway.

MR. SHEPPARD BISHOP, SWORN.

By Mr. French:

30 Q. Mr. Bishop, do you know Carolyn Messick?

A. Yes, sir.

Q. And her mother is your sister?

A. Yes, sir.

Q. Do you remember her being at your house in
Camden last summer?

A. Yes.

- Q. What time in the summer was it?
A. About the last week in June.
Q. Do you know what day of the week she came there?
A. Monday, I think.
Q. When did you first see her?
A. Monday night.
Q. What is your business?
A. Shipyard, was then.
Q. And were you working every day then? 10
A. Yes, sir.
Q. How long had you been married at that time?
A. About a year and a half, I guess.
Q. You remember taking your wife to Bivalve to see your sister?
A. Yes, sir.
Q. And Mrs. Messick had not come up to see you?
A. Not that I know of.
Q. How long did she remain there?
A. I guess she stayed the week out. 20
Q. Do you remember whether she was there Saturday night when you came home?
A. I don't remember.
Q. Was she there Friday night?
A. I think she was.
Q. Was anybody with her?
A. Nobody but the little kid.
Q. Did anybody come to see her while you were there?
A. Not that I know of. 30
Q. Do you know of her going out alone?
A. No, sir.
Q. What time during the day were you at home?
A. Well, I leave home about quarter of seven in the morning and get back five o'clock, I guess quarter after five, after that.

Q. And remained in in the evenings, did you?

A. Who, me?

Q. Yes.

A. No, not every evening.

Q. Where did you live at the time?

A. 527 Penn Street.

Q. And when did you move from 527 Penn Street, Camden?

A. The 29th of June, Tuesday.

10 Q. And where did you move to?

A. 437 Stevens.

Q. And do you live at 437 Steven Street, now?

A. Yes, sir.

Cross-examination.

By Mr. Donnelly:

20 Q. How many times has Mrs. Messick visited your house, Mr. Bishop?

A. Two or three times, I guess.

Q. Two or three times you guess; do you know?

A. Three times that I know of, maybe more, I don't know.

Q. Now, when were these times?

A. Well, the first time was when I just told you, in June.

Q. In June; well, now, when in June?

30 A. About the last week in June it must have been, we moved the 29th of June.

Q. And when was the next time?

A. The next time was in July or August, I guess.

Q. Are you guessing now, Mr. Bishop?

A. I am guessing, I did not put the dates down.

Q. You don't know as a matter of fact that she was there in June?

A. Yes.

Q. Do you know whether she was there two or three times more?

A. In June?

Q. Yes.

A. Whether she was there two or three times?

Q. Yes.

A. Yes, she was there once and she has been there a couple of times since.

Q. How long did she stay when she has been there? 10

A. The first time?

Q. No, the last time, how long did she stay there?

A. The last time she was there—when was this case first on?

Q. You are on the witness stand.

A. That is when she stayed, that night.

Q. When this case was tried the first time?

A. Yes, I was called as a witness and the case was called off, and she stayed at my house that night.

Q. Did you talk to her that night? 20

A. Yes, sir.

Q. Did she talk to you about this case?

A. Sure she did, I guess she said something about it.

Q. Did you hear her talking about the case?

A. We were talking.

Q. Did she try to get you to fix this time?

A. No, nothing about that.

Q. Did she say anything about any time?

A. Not about any time. 30

Q. When was the time before the last she was at your house?

A. There in July or August.

Q. And how long did she stay?

A. Well, I guess she got there—she was there when I got home from work anyway, and left eight or nine o'clock at night.

Q. Where did she go?

A. She went home.

Q. She went home?

A. Yes.

Q. She was only there, as far as you know, just for part of the night?

A. That is all.

Q. When was the other time she was to your house?

10 A. Let's see; that is, she was there last Saturday, I guess.

Q. She was there last Saturday?

A. One day last week.

Q. Was there any other time now?

A. That is all.

The Master: Any further with this witness.

By Mr. Donnelly:

20

Q. Have you got a brother?

A. Yes, sir.

Q. What is his business?

A. Oyster business.

Q. Were you aboard his boat last October in Cooper's Creek?

A. No, sir.

Q. Were you aboard his boat in Cooper's Creek last October, your brother's —

30 A. Not on my brother's.

Q. When a man by the name of Henderson —

A. Henderson —

Q. Was your brother there?

A. No, not in Cooper's Creek; my brother didn't have no boat in Cooper's Creek that I know of.

Q. Is your brother here?

A. Yes, sir.

Q. Did you have a conversation with this brother that stood up in the court room at Bivalve?

A. I was down there for a day.

Q. Did you talk with your brother about Mrs. Messick being to the house?

A. No, he talked to me about it.

Q. He talked to you about it?

A. Yes, sir.

Q. And did you tell him that you had seen her there two or three times but she did not stay there? 10

The Court: Where?

Mr. Donnelly: At his house.

Q. And you also said to him you were not keeping any lodging house?

A. I said she was not at our house with no man.

Q. And you did not say she was there two or three times? 20

A. No.

Q. And you did not say you did not keep a lodging house or a boarding house?

A. I may have said that; they had it reported she was at my house with a man.

Q. And didn't say she had not been there two or three times?

A. No, sir.

Q. And she was not there and you were not going to lie for her? 30

A. I didn't say that.

Q. You didn't say that?

A. No, sir.

Q. Have you got a brother-in-law by the name of Anderson?

A. A brother-in-law?

Q. Yes.

A. No, sir.

Q. Do you know a man by the name of Archibald Anderson?

A. Yes.

Q. Did you have a conversation with him in October?

A. I saw him, the date I don't recall about.

10 Q. Mr. Anderson married a sister of Mrs. Messick's, didn't he?

A. Yes, sir.

Q. Were you and Mr. Anderson talking about Mrs. Messick being to your house in June?

A. No, sir; I don't think so.

Q. Did you say she was up to your house two or three times but she did not stay there?

A. No.

20 Q. And you did not keep any lodging house or boarding house and you were not going to do that yet for her?

A. No, sir, I didn't say that.

Q. You did not say that?

A. No, sir.

By Mr. French:

Q. Do you know Herbert Jackson?

A. No, sir.

30 The Master: I would like to recall Mr. Bartleson for a moment.

HARRY BARTLESON, recalled.

By the Master:

Q. That Monday that you saw Mrs. Messick on the boat, did she have anybody with her when she took the train?

A. A little girl.

Q. A little girl with her?

A. Yes, sir.

10

Mr. French: If the Court please, that is the testimony with respect to the amended petition, except the testimony of Herbert Jackson. I wrote him a letter—if I might say, he was here at the date first fixed for the hearing, at my office, and he was notified to be here; on the day you heard part of the case, after the conclusion I wrote him a letter—I don't seem to lay my hands on the copy.

20

Mr. Kraft: Might we ask Mrs. Bishop one more question?

MRS. SHEPPARD BISHOP, recalled.

By Mr. Kraft:

30

Q. Mrs. Bishop, will you say you did not move all of your goods out of 527 Penn Street on June 20, 1920?

A. Will I say we did not; I didn't say —

Q. Will you say that was the day you moved out, that day?

A. We didn't move out that day.

Q. That was not the day you moved out of that house?

A. You didn't —

Q. Who moved you?

A. Mr. Warner.

Q. Of Camden?

A. Yes.

10 The Master: How is that important, Mr. Kraft, whether it was the 20 or 29th, what difference does it make?

Mr. Kraft: It would make a great deal of difference, if the Court please, if it were not so it would certainly affect her credibility.

The Witness: We didn't move on a Saturday, we moved on a Tuesday.

20

CAROLYN MESSICK, sworn.

By Mr. French:

Q. What day of the week did you leave your uncle's house?

A. On Saturday.

30 Q. From your uncle's house in Camden, on Penn Street?

A. Yes.

Q. And had they moved then?

A. No, sir.

Q. Were they preparing to move?

A. Yes, sir, I helped them pack.

Cross-examination.

By Mr. Donnelly:

Q. Was Mr. Jackson at Bivalve the day after this last hearing in court?

A. If he was I didn't see him.

Q. Did you hear he was there?

A. I heard he was there, if I seen him I didn't know him.

10

Mr. French: On December 23rd: "This case came on for trial today and you were not present. As I told you when you were here, you are an important witness for Mrs. Messick and considerable comment was made about your absence. I understood from Capt. Pettitt that you were ill. Testimony was taken and the case closed. Afterwards, on the allegation that you were with Mrs. Messick in Camden the week she came up, the case was opened to allow the petitioner to amend his petition alleging that fact, and January 20, 1921, fixed as the day to hear testimony on that point. 20

Please let me know in the enclosed stamped envelope whether you will be here on January 20th, and oblige." Under date of January 2nd: "Your letter of the 23rd received and in regards to me going the 20th of this month I will be there if it is so I can, as I told you before I would be there but I was ill at the present time. Very truly yours, Herbert Jackson." 30

The Master: What is the date of that letter?

Mr. French: January 2nd.

The Master: Saying he was sick that day?

Mr. French: As I read that, the way he writes he was sick at the time. If your Honor desires his testimony I will have to ask for a commission to be appointed to take his testimony.

The Master: "I was ill at the present and could not go."

10 Mr. French: I understand from that he was ill at the time the case was set for hearing; I don't know what that means.

The Master: Mr. French asks leave to take Mr. Jackson's testimony, what is the objection?

Mr. Kraft: We can't have any objection to that.

20 The Master: I will make an order accordingly. In view of these letters and some of the testimony I think his testimony had better be taken, or he had better be produced; I would rather have him here.

Mr. French: So would I.

CHARLES MOORE, SWORN.

30 By Mr. Donnelly:

Q. Where do you live?

A. Bivalve.

Q. Do you know Herbert Jackson?

A. Yes, sir.

Q. Were you here on the 23rd day of December, the first day?

A. Not the first day.

Q. You were here on the 23rd of December?

A. Yes, sir.

Q. Did you see Mr. Jackson the next day?

A. Yes, sir.

Q. Whereabouts?

A. Bivalve.

Q. Was he sick or well, or how did he appear?

A. He appeared to be walking, when I am sick I am down bedfast.

10

Q. Did he appear to be sick?

A. No.

Q. He appeared to be in usual health?

A. Yes, sir.

Q. Mr. Moore, you and Mr. Robbins were at Mr. Bishop's house on the 23rd of December, of last December, were you not?

A. Yes, sir.

Q. You had a conversation with Mrs. Bishop in regard to Mrs. Messick being to her house last summer?

20

A. Yes, sir.

Q. What did she say in regard to how long she was there?

A. She said she couldn't recall, two or three days she thought.

Q. She said she couldn't recall?

A. How many days she was there.

Q. What street did she say she lived on then?

A. Penn Street.

30

Q. Penn Street?

A. Yes.

Q. Did Mrs. Bishop ask you how long Mrs. Messick said she had been there, did you hear her ask you that?

A. Yes, sir.

Q. Did she ask you that?

A. Yes, sir.

Q. Did she tell you that they lived on Penn Street or Steven Street, Mr. Moore, or don't you remember?

A. She said she lived on Penn Street and moved sometime in April to Steven Street.

By the Master:

10 Q. You say in April?

A. Yes.

Q. Are you perfectly sure about that?

A. Only what she said.

Q. Are you sure that is what she said?

A. Yes.

By Mr. French:

20 Q. Did Herbert Jackson say anything to you about being a witness in this case on the 23rd?

A. No.

Q. Didn't say he was here or wasn't here?

A. I wasn't talking with him.

Q. You weren't talking with him?

A. No, sir.

By the Master:

30 Q. Do you know what Mr. Jackson was in Bivalve for, what was he doing there that day?

A. No.

Q. Did you see him more than once that day?

A. No, I saw him coming off the boat.

By Mr. French:

Q. Where was it?

A. Coming from the end of the wharf to the boarding house.

Q. How far away from you was he when you saw him?

A. I imagine two hundred yards.

By Mr. Kraft:

Q. What business is this man Jackson in? 10

A. I don't know, I imagine he is an oyster man, he comes here in the spring of the year.

Q. He works on an oyster boat?

A. Yes.

By the Master:

Q. You are quite sure it was Jackson you saw two hundred yards away?

A. Yes, sir. 20

SAMUEL ROBBINS, SWORN.

By Mr. Donnelly:

Q. Mr. Robbins, were you at Mrs. Bishop's house on December 23rd last together with Mr. Moore?

A. I was. 30

Q. Did you make inquiry concerning the whereabouts of Mrs. Messick up at her house with Mr. Moore?

A. I did.

Q. Did she or did she not say—what did she say about the time?

A. I asked her if Mrs. Messick had been up to see her, and she said, "Yes," and I asked her how long she stayed, "Well," she said, "I don't know." I said, "Don't you know whether she stayed one or two or three days?" and she said, "I don't know, she was here and that is all I know." I said, "Does she visit you frequently?" "No," she said, "that is the first time, and I can't tell how long she stayed," and I said, "Where did you live?" And she stated where she lived, she said, "I live on Steven, I got my notice to move off Penn Street in April." I said, "You are sure, we want to get this right," and she said, "I guess I know where I live," and I said, "You are positive of that?" and she said, "I am positive."

Q. Did she ask you how long Mrs. Messick had said she was there?

A. She asked how long Mrs. Messick had said she had stayed there, and I said, "I don't know, I am only asking you," and I impressed it on her mind very forcibly if she was positive she lived on Steven Street when she stayed there and she said she was, because, she said, "I got my notice to move off Penn Street in April."

No cross-examination.

Hearing continued in the above entitled cause at Camden County Court House, February 3rd, 1921, before Norman Grey, Esq., Advisory Master.

APPEARANCES:

REX A. DONNELLY, Solicitor of Petitioner.

THOMAS E. FRENCH, of FRENCH & RICHARDS, 10
Solicitors of Defendant.

HERBERT JACKSON, SWORN.

By Mr. French:

Q. Mr. Jackson, where do you live?

A. Cambridge, Maryland.

Q. That's on the Chesapeake Bay?

20

A. On the Chesapeake Bay, yes, sir; on the eastern side of the Choptank River.

Q. You arranged with me to be here on December 23rd last. You weren't here. Why were you not here?

A. Because I got in the fog and couldn't get up. Didn't have any compass.

Q. What is your business?

A. Oysterman.

Q. Were you in Bivalve, New Jersey, on that date?

30

A. Yes, sir.

Q. You also undertook to be here at the day just preceding this, when the case was to be heard and you were not here. Why weren't you here?

A. Because I was sick.

Q. Do you know Carolyn Messick, the petitioner in this case?

A. Yes, sir.

Q. Do you know the petitioner, William Messick?

A. I know him when I see him.

Q. In the summer of 1920 were you at Bivalve in May and June?

A. May and June and part of April.

Q. Was there some man injured that was a friend
10 of yours?

A. Yes, sir; couple of them.

Q. Who were they?

A. One was Ruf Deans and the other Courtney Deans.

Q. Upon whose boat did they work?

A. They were on Captain Messick's boat.

Q. And how did you find out how they were getting along?

A. I went to Mr. Messick's house.

20 Q. From whom did you get the information?

A. I got it from him.

Q. Did you see Mrs. Messick about it?

A. Saw her, and she says she didn't know how they were getting along. She says, "Wait a few minutes;" he had gone to Bridgeton. I waited a few minutes.

Q. Were you in the house?

A. No, sir; never was in the house. I have been to the porch.

30

(Witness being shown Exhibits 1, 2 and 3 for petitioner, is asked):

Q. In whose handwriting are those papers?

A. Mine.

Q. Exhibits 1 and 2 are the letters. State under what circumstances you wrote those letters.

A. Why, I met Mrs. Messick on the wharf one days—on the boardwalk, rather—and she was telling about how her husband treated her and asked me to write these notes and make him jealous and keep him home from shooting crap and playing cards. There was no misbehavior in regard to the notes or anything else.

Q. Where did you write the notes?

A. I wrote them aboard the boat.

Q. Did you mail them?

10

A. No, sir; gave them to her on the porch.

Q. Do you remember when you left Bivalve, in the latter part of June; what day of the week was it?

A. I don't remember what day; it was on Monday, I don't remember the date.

Q. Forepart of June or the latter part?

A. Latter part.

Q. Did you see her at—where did you get on the train opposite Bivalve?

20

A. Got on the Maurice River side.

Q. Did you see her at Mauricetown?

A. No, sir.

Q. Didn't see her get on the train?

A. No, sir.

Q. What car of the train did you ride in?

A. The smoker.

Q. Did you see her in Manumusken, when she changed cars?

A. Yes.

30

Q. See her to speak to?

A. No, sir.

Q. See her after that?

A. No, sir; I don't know where she got off at.

Q. Did you get off at Manumusken?

A. Yes.

- Q. What did you do then?
 A. Waited for another train.
 Q. You got into another train?
 A. Yes, sir.
 Q. Where did that train take you?
 A. Right here to Camden.
 Q. Do you know about what time you arrived at Camden?
 A. About ten o'clock, I suppose, when she gets
 10) here.
 Q. Where did you go after getting off the train?
 A. Right across to Philadelphia, Broad Street Station.
 Q. Where did you go from Broad Street Station?
 A. I went out to a restaurant and got my dinner.
 Q. Did you leave Broad Street Station for any other place that day?
 A. Yes, sir; three o'clock.
 Q. What place?
 20) A. Cambridge.
 Q. Did you get to Cambridge, Maryland, that day?
 A. That night, eight o'clock.
 Q. Did you leave Cambridge, Maryland, any day that week?
 A. No, sir; I haven't left there since the day I came up here—not since I went home.
 Q. Did you ever —
 A. Hold on! Not too fast. I went oystering down Delaware the first week in September.
 30) Q. I mean the last week in June or the first week in July, did you leave Cambridge, Maryland?
 A. No, sir.
 Q. Do you know a girl named Mabel Camp?
 A. Yes, sir.
 Q. Do you remember eating ice cream with her and Mrs. Messick in Mr. Messick's house one day?

- A. No, sir; I haven't been in his house.
Q. Did you ever hug and kiss Mrs. Messick?
A. No, sir.
Q. Ever have anything to do with her sexually?
A. No, sir.

Mr. French: Cross-examine.

Cross-examination.

By Mr. Donnelly:

10

- Q. Mr. Jackson, how long have you known Mrs. Messick?
A. How long have I known her?
Q. Yes.
A. Why, somewhere around five years to the best of my knowledge.
Q. When did you go to work last spring?
A. I went down on the tenth of April.
Q. How long did you work—you worked at the oyster business, didn't you? 20
A. Yes, sir.
Q. When did you quit the oyster business?
A. The latter part of June.
Q. Do you remember what day of the week it was you were paid off?
A. Paid off on Friday.
Q. When did you leave for home?
A. I left for home Monday morning.
Q. Where did you stay Sunday evening? 30
A. I stayed aboard the boat.
Q. Do you know Harry Batterson?
A. No, sir.
Q. Do you know the Maurice River Hotel?
A. Yes, sir.

- Q. Did you stay at Mr. Batterson's hotel?
 A. I stayed there Sunday night.
- Q. And you left there and went by train from Maurice River to Millville, didn't you?
 A. Yes, sir; changed at Manumusken.
- Q. Well, after you got on the train at Manumusken where was the next place you got off?
 A. Got off at Millville.
- Q. When you got to Millville, where did you go?
 10 A. I boarded the trolley for Camden.
- Q. Then you went where, right to Camden?
 A. I come right here to Camden and went across to Philadelphia to go home.
- Q. What time did you get in Camden that morning?
 A. Ten o'clock.
- Q. Where did you get off the train in Camden?
 A. Here at the station.
- Q. Broadway station or down at the ferry?
 20 A. Down at the ferry.
- Q. Who was with you that morning?
 A. No one with me.
- Q. Did you see Mrs. Messick get on at Maurice River that morning?
 A. No, sir.
- Q. Look through the coaches to see if she was there?
 A. No, sir.
- Q. When was it you wrote these letters?
 30 A. I don't know what—it was in May—I don't remember. I won't say.
- Q. You wrote them on the boat?
 A. Yes.
- Q. What boat?
 A. The "Samuel Lake."
- Q. Where was that boat lying when you wrote those letters?

A. She was made fast to floats.

Q. Which side of the river, Bivalve or Maurice River?

A. On the Bivalve side.

Q. And Mrs. Messick asked you to write those letters?

A. Yes, sir.

Q. When did she ask you?

A. I don't remember.

Q. What day of the week did you write them? 10

A. I don't remember.

Q. Do you remember when she asked you?

A. No, sir.

Q. Was it the same day you wrote them or before that time?

A. I don't remember whether I did or not. I won't say because I don't remember.

Q. These letters were written to make Mr. Messick jealous?

A. Yes. 20

Q. Why did you write two letters?

A. She wanted him to stay at home.

Q. Why was it necessary to write two letters to make him jealous?

A. Two notes.

Q. Why did you write two?

A. I don't know.

Q. Have you been sending her letters regularly through the mail?

A. Regularly? No, sir. 30

Q. Addressed to her at Bivalve?

A. No, sir.

Q. And received there at the post office? You are willing to swear to that?

A. I have sent her some letters, but not regularly.

Q. You have sent some letters to her?

A. I have sent some to her father—in her father's name.

Q. Why did you do that? In care of her father, you mean?

A. Yes, in care of her father, I mean.

Q. That's since she ceased living with her husband? How about before that?

A. I never sent her any.

Q. Mrs. Messick ever send you notes or letters
10 when you were aboard the boats?

A. No, sir.

The Master: Didn't she ever answer any of the letters you wrote her?

A. Yes, but I never wrote her any letters until this law suit came up.

The Master: Did she ever answer any of these
20 letters?

A. She answered one; one is all she answered. I wrote and told her, and her father also, that I would be here if nothing happened on the day of the trial.

By Mr. Donnelly:

Q. Are you a married man, Mr. Jackson?

A. Yes, sir.

Q. Any children?
30

A. One.

Q. How old?

A. Nine year old.

Q. Did Mrs. Messick ever send you any notes by anybody aboard the boat?

A. No, sir; I told you she never sent me any notes.

Q. Ever get any letters from a man by the name of Simmons who worked on the boat with you?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. In May and June when you got to the river for your week's work, what time did you generally get to the wharf?

A. Sometimes about three or four o'clock.

Q. What did you do, grub up?

10

A. Grub up and get wood and water.

Q. What did you do then, stay aboard or go on shore?

A. Sometimes go on shore.

Q. In May and June didn't you leave the boat and not come back until two or three o'clock the next morning?

A. No, sir.

Q. Who was working aboard this boat with you—you worked on two boats, didn't you?

20

A. Yes, sir.

Q. What was the name of the first?

A. "The Admiral."

Q. How long did you work on her?

A. I don't know. It was in June when I quit.

Q. Then you worked on another boat for a short time before you left?

A. Yes, sir.

Q. While you were working on "The Admiral" didn't you frequently, or two or three times on Friday afternoon, when the boat was grubbed, leave the boat and not come back until two or three o'clock?

30

A. No, sir.

Q. Was there a man by the name of Jones working aboard "The Admiral" with you?

A. Yes, sir.

Q. Was there a man by the name of Simmons working with you on one of these boats?

A. Yes, sir; on the "Admiral."

Q. You say you never received any notes?

A. No, sir.

Q. Mr. Jackson, you say in one of these letters, "Dear, I waited for you last night but never saw anything of you." Did you have an engagement
10 with Mrs. Messick at the time you wrote the letter?

A. No, sir.

Q. So that is untrue?

A. Yes. So was that I wrote about taking a trip.

Q. In what respect was it untrue?

A. I don't remember what was in it, but it was in respect to taking the trip.

Q. What was untrue about it?

A. About taking the trip.

20 The Master: What was there in it about taking a trip?

A. I say it was in respect to that. I don't remember how I had it wrote in the letter.

The Master: You say it was untrue about the trip. You said you wouldn't be able to take the trip. Is that untrue?

30 A. Yes, sir.

The Master: And you didn't take the trip?

A. No, sir; I never took it.

The Master: All right.

By Mr. Donnelly:

Q. Are you acquainted with Mrs. Messick?

A. I talked with her.

Q. Where?

A. On the boardwalk.

Q. Didn't you go to the veranda of the house and talk by the hour?

A. No, sir.

Q. Wasn't it a common occurrence for you to go 10 to the veranda and talk to Mrs. Messick?

A. No, sir.

Q. You say you are not interested in her?

A. No, sir; she would have other girls with her and I would talk with all of them.

Q. Is this true in the letter: "Dear, don't have anything to say to me for quite a while. Let things die out. People are talking too much"? Is that true, that people were talking about you and Mrs. Messick?

20

A. No, sir.

Q. So that is another untruth?

A. Yes, sir.

Q. Why did you put it in the letter?

A. So as to make him jealous.

Q. You say you weren't interested in Mrs. Messick.

A. I said I was. I talked to her whenever I met her.

Q. You wrote that letter to make Mr. Messick 30 jealous?

A. Yes, sir.

Q. Just pay attention to this: "When you waved to me I saw 'Beck.' That was why I never waved back to you." Now, if you were trying to make Mr. Messick jealous why didn't you wave back?

A. Why didn't I wave back?

Q. If you were trying to make Mr. Messick jealous, why didn't you wave back?

A. I saw her husband.

Q. Why didn't you wave back?

A. I didn't want to wave back. I didn't want him to see me wave back at his wife.

Q. But you wanted to make him jealous. You were writing these letters for this very purpose.

10 A. Yes.

Q. When you had a chance you didn't make him jealous. Here is something else: "I have something to tell you when I get a chance." Did you have something?

A. I do not remember.

Q. You don't know whether that is true?

A. No, sir.

Q. So that this letter to which you signed your name was untrue? Although you put your name to
20 them?

A. All false, although I signed my name.

Q. This second letter was also to make him jealous? You didn't think the first letter made him jealous, so you wrote the second?

A. Yes.

Q. Now, I will read this to you: "Just a line to let you hear from me. Darling, you say if I don't go on a trip next week I don't love you." Did Mrs. Messick tell you that?

30 A. No, sir.

Q. So that is not true?

A. No, sir.

Q. So that is falsehood No. 1 in that letter. You say: "This is a mistake for I do love you and some day I will prove it to you." Is that true or false?

A. No, that's false.

Q. You didn't love Mrs. Messick at that time?

A. I never have loved her.

Q. So that's false? "I will prove it to you,"—is that true, that you were to prove you loved her, or is that false?

A. That is false.

Q. "Darling, I want to go with you, but I hate to lose a week when I can make money." Is that true?

A. That is untrue.

Q. Then it wasn't the money that kept you away 10
from Mrs. Messick, but that was untrue?

A. Yes, sir.

Q. You also say: "Please don't think hard of me. I want to go for I am willing to do anything you ask of me." Is that true?

A. No, sir.

Q. Why did you write it, just to make this man
jealous?

A. Yes, sir.

Q. How much do you think it takes to make a man 20
jealous? Don't you think that first paragraph in the
letter is sufficient to make a man jealous, or did you
want to load the elephant down?

A. I didn't want to load the elephant down.

Q. Did you sit on the porch and look through the
window and see Mrs. Messick in her house, as said in
this letter?

A. No, sir.

Q. Did your heart break then and there, or did
you piece it together afterwards? 30

A. No, sir.

Q. Then that is all false?

A. Yes.

Q. You were writing these letters to make Mr.
Messick jealous?

A. Yes, sir.

Q. "I want to write to you * * * so where can I send you letters so 'Beck' can't get them. Let me know." How could you make him jealous if he couldn't get hold of the letters?

A. I didn't want to write any.

Q. Why did you put it in the letter?

A. That was all false.

Q. That was a falsehood, too? Now, was this true: "I will close with all my love and best wishes
10 forever, from your little boy." Was that true, were you closing with all your love?

A. No, sir; didn't have any love. It was false.

Q. "One who would like to be with you forever." Is that true?

A. No, sir.

Q. That was false?

A. Yes, sir.

Q. "Goodbye, may God bless you and be with you
20 in the dark hours of trouble." Now, Mr. Jackson, if you wanted to make Mr. Messick jealous why didn't you simply write him a little note telling him to stay home and attend to his wife and watch her? Wouldn't that have been the easiest and simplest thing to do in the world if you wanted to make him jealous—for him to stay home and watch his wife?

A. Probably it would.

Q. That would have incriminated nobody. But you preferred to do it this way. Is that the idea?

A. Yes, sir. I met her on the boardwalk one day
30 and she was talking about the way Mr. Messick treated her. I says, "Be good to him, treat him all right and probably he will make a change."

Q. She then, without any more talk between you, suggested that you write two letters?

A. Two notes.

Q. Leaving them with her at the house?

A. She didn't say anything about that.

Q. How did you get them to her?

A. She was on the porch and I gave them to her.

Q. It wasn't arranged, then, where you were to give her the notes?

A. No, sir.

Q. It wasn't arranged, then?

A. No, sir; I was coming from Port Norris, and I gave them to her on the porch.

Q. Did you call at Mr. Charles Pettit's house last 10 September?

A. Yes, sir.

Q. That's at the home where Mrs. Messick has been living since her husband separated from her?

A. Yes, sir.

Q. Did you see Mrs. Messick?

A. Yes, sir.

Q. What was the purpose of your visit?

A. Mr. Pettit sent for me about this trouble that started. 20

Q. Where were you?

A. On the boardwalk.

Q. In Bivalve?

A. Yes, sir; in Bivalve.

Q. Who did Mr. Pettit send you word by?

A. Bessie Perry.

Q. Mr. Jackson, do you live with your wife?

A. No, sir.

Q. Separated?

A. Separated. 30

The Master: How long have you been separated?

A. Two year last March.

By Mr. Donnelly:

Q. Mr. Jackson, why did Mrs. Messick pick you out to write these letters?

A. I don't know anything about that.

Q. Why did you consent to do it?

A. Because I had been acquainted with her a good many years.

Q. Didn't you know the consequences of writing such letters as this?

A. No, sir; I never thought anything about it.

10 Q. Didn't you know that such letters would lead to difficulty with her husband and make trouble rather than get her out of trouble?

A. I didn't think so.

Q. Mr. Jackson, did you ever talk to Mrs. Messick either last May or June back of the house where they were residing at Bivalve?

A. No, sir.

The Master: How do you mean, "back of the
20 house?" As I understand it, the kitchen of the house fronted on the street and the other end was out over the water. Which would be the back of the house?

Mr. Donnelly: The side toward the street.

A. No, sir.

Q. Where did you talk to Mrs. Messick?

A. On the boardwalk.

30 Q. Did you ever talk to her at the house?

A. At the porch.

The Master: And the porch fronts on the street?

A. Yes, sir.

The Master: Is there a porch over the water, over the other end of the house?

A. Over the water? No, sir.

The Master: What is it over? What does it face?

A. Faces a meadow.

The Master: Is there a porch on that end of the house? 10

A. I don't know whether there was or not. I never got around to see.

The Master: Could you get around there without going through the house?

A. I suppose so, by walking around the house. There was an alley in there between her and Miss Camp's. 20

By Mr. Donnelly:

Q. How many times did you see Mrs. Messick last spring before you wrote this letter?

A. I don't know.

Q. More than once?

A. I would see her probably every week I was in there. 30

Q. Did you talk to her every week?

A. No, sir.

Q. Did you ever see her in Port Norris?

A. No, sir.

Q. Ever at Port Norris Saturday evenings, Friday evenings?

A. Yes, sir.

Q. She ever see you up there and talk to you?

A. No, sir; I never saw her there.

Q. Did Mrs. Messick come up on the same train that you did to Camden that day?

A. I don't know where she came to. I don't know where she got off the train at.

Q. Where did you see her on the train?

A. I didn't see her on the train.

10 Q. Didn't you see her at all?

A. I saw her at Manumusken, where we changed cars. She got on the same train.

Q. Did you talk to her?

A. No, sir.

Q. Why didn't you? You were friendly with her.

A. Ladies don't usually sit in the smoker.

Q. How far did that train go before it stopped?

A. Millville.

Q. Did she get off at Millville?

20 A. I don't know.

Q. How many stops are there between Manumusken and Millville?

A. I don't know; I never counted.

Q. Mr. Jackson, there are no stops between Manumusken and Millville.

A. There is unless they moved them.

Q. Where does the train stop between Manumusken and Millville?

A. I don't know.

30 Q. You saw this lady at Manumusken?

A. Yes.

Q. And the train went as far as Millville and you didn't ask her where she was going?

A. No, sir; I never spoke to her.

Q. Did that train make any stops between Manumusken and Millville?

A. Yes, sir.

Q. Where?

A. I don't know.

Q. Is there any stop between Manumusken and Millville besides Nanticoke Springs, which is a sand wash?

A. There was the last time I was there.

Q. What were they?

A. I told you I don't know.

Q. You know there are no stops between Manu- 10 musken and Millville except Nanticoke Springs, which is a sand wash.

A. I don't know what stops.

Q. There is only Nanticoke Springs.

A. I never heard of that before.

Q. But you say there was a stop?

A. Yes; I don't know how many stops there is.

Have you ever been down on that line?

Q. Yes, that's my home.

A. Isn't but one stop?

Q. Just one stop. Now, Mr. Jackson, you saw 20 Mrs. Messick at Manumusken?

A. Yes, sir.

Q. Did she have the child with her?

A. Yes, sir.

Q. Have her grip?

A. Yes.

Q. Did you have a grip?

A. Had a suit case. I was on my way home.

Q. Did you help her up?

A. No, sir; never saw her any more. 30

Q. Why didn't you speak to her?

A. I see plenty of people I don't speak to. I didn't have any desire to speak to her.

Q. You were friendly enough to write these letters, but you didn't want to speak to her?

A. I didn't get close enough. Always would speak to her when I met her.

Q. How was it that particular day, for some reason or other, you didn't speak to her?

A. I wasn't up close enough to speak to her, because the train was coming. When we got off she just walked right over and boarded the other train.

Q. How many coaches were on that train?

A. I don't know; I didn't notice.

10 Q. Did you get in the same coach with Mrs. Messick?

A. I told you I was in the smoker.

Q. After that did you go into another coach?

A. No, sir; stayed in the smoker all the time.

Q. Until you got to Millville?

A. Until I got to Millville.

Q. When you got there where did you go?

A. Went aboard the trolley.

Q. You mean the electric?

20 A. The electric.

Q. About what time was it you took this train?

A. I don't know just what time.

Q. Did you see Mrs. Messick in Millville?

A. No, sir.

Q. See her get on the train?

A. No, sir; I never saw her any more after Manusken. Don't know where she got off at, and I don't know what time the train is due in Camden.

30 Q. When you got on the train at Millville, bound to Camden, what coach did you sit in then?

A. The smoker. I ride in the smoker always because I have a great habit of smoking.

Q. Then where did you get off?

A. Here at the ferry.

Q. Get off any other place?

A. No, sir.

Q. Change cars at Newfield?

A. No, sir.

Q. Get off at Vineland?

A. No, sir; not until I got to the ferry.

Q. See Mrs. Messick at the ferry?

A. Never saw her except at Manumusken. I saw her at Manumusken and there was some lady with her.

Q. Mr. Jackson, you were anxious to get home, weren't you?

10

A. Yes, sir; always anxious to get home.

Q. You were paid off Friday night?

A. Yes, sir.

Q. Why didn't you leave right away and not pay board at the hotel?

A. Because I went to Port Norris on Saturday and got some things.

Q. Then you weren't in a hurry to get home?

A. I had some business to 'tend to—to get some things.

20

Q. What things?

A. Clothes—hats and shirts.

Q. Was that the only reason?

A. Yes, sir; that was on Saturday. I couldn't get home on Sunday, but would have to wait until Monday. I could come to Philadelphia or go down as far as Seaford, but couldn't get any further.

Q. Mr. Jackson, are you sure on that train out of Maurice River on that Monday morning you had to change cars at Manumusken?

30

A. Yes, sir.

Q. Sure of that?

A. Yes, sir.

Q. Sure that train didn't go right on to Millville?

A. No, sir.

Mr. Donnelly: That's all.

By the Master:

Q. You wrote these letters to make Mr. Messick jealous, and you gave them to Mrs. Messick?

A. Yes, sir.

Q. Ever talk to her about the letters or what became of them?

10 A. No, sir.

Q. Don't know whether they made him jealous or not?

A. No, sir.

Q. Ever get her to talk about that?

A. No, sir.

Q. When was this?

A. In June.

Q. After this case started you wrote her the letters and she answered one?

20 A. Yes.

The Master: Mr. French, I would like to have the witness examined about the events detailed by Miss Camp.

Mr. French: He says he was never in the house.

The Master: Yes, but his testimony is so specific, and she says he gave this address.

30 Mr. French: (Showing witness Exhibit 3.) Do you remember giving that address to Miss Camp?

A. Yes, sir.

Q. When and where was it that you gave it to her?

A. I gave her my address, this at the top.

Q. Where?

A. I gave her that in Sunday School.

Q. In June, 1920?

A. Yes, sir. She asked me for my address before I went home and I gave it to her.

Q. Did you ever take ice cream with Miss Camp and Mrs. Messick at Mr. Messick's house?

A. No, sir; never was in Messick's house.

10

The Master: Anywhere else?

A. No, sir.

Mr. French: Ever hug Mrs. Messick in Miss Camp's presence, or when Miss Camp was not around?

A. No, sir.

20

The Master: Then there was the night that Miss Camp says she saw him go into Messick's house and the curtain was up, and the curtain went down and the light went out.

Mr. Donnelly: That was the other co-respondent.

The Master: That was Low, was it?

Mr. Donnelly: Yes.

30

The Master: That's all.

(After considerable discussion between counsel and the Master.)

The Master: I will re-open the whole case and if Mr. French is surprised I will allow an adjournment.

10

ELLSWORTH EDWARD JONES, SWORN.

By Mr. Donnelly:

Q. Mr. Jones, where do you live?

A. Morristown, New Jersey.

Q. Do you know Herbert Jackson?

A. Yes, sir.

Q. Did you work on the same boat with him last
20 spring?

A. Aboard the same boat with him in May.

Q. Who else worked on that boat?

A. Fellow named Simmons, one man named Seabreeze, Clarence Rogers, and Will Hoffman.

Q. You know Mrs. Messick, the defendant in this case?

A. Yes, sir.

Q. Have you ever seen her and Mr. Jackson talking with each other?

30 A. Seen them on the wharf several times.

Q. When?

A. In the month of May and June last.

Q. Where did you see them, at the wharf at Bivalve?

A. Near the tug-boat wharf and further down.

Q. Did you notice how long they talked?

- A. Never paid any attention to them.
Q. You know Mrs. Messick, too, don't you?
A. Yes, sir.

The Master: He said that before.

Mr. Donnelly: I guess that's right. Any time last year did you have any conversation with her in reference to Mr. Jackson?

- A. She told me once on the boardwalk — 10
Q. When was that?
A. In June after I quit. She told me she was going to go live with him in Cambridge, Maryland. She didn't say when. She said she was going.
Q. Tell you that any other time?
A. Once before Christmas, in the post office.
Q. Have anything in her hand at that time?
A. She showed me a letter she got out of the mail.
Q. Who did she say the letter was from? 20
A. From Herbert Jackson.
Q. Did she at any time last spring ask you to take a note to Mr. Jackson for her?
A. The day we quit on "The Admiral."
Q. When was that?
A. Last April—the last Friday in April. Me and Summers was standing in front of the pool room, and she asked me to take it to him, and I said I wasn't on the boat any more, and she gave it to Summers. 30
Q. Right in your presence?
A. Yes, sir.
Q. Saw her do it?
A. Seen her do it; yes, sir.
Q. Did she repeat the same conversation to you?
A. She said she was going to live with him.

Q. Repeated that in December last, around Christmas time?

A. Yes, sir; just before Christmas.

Q. Last June did you see Mrs. Messick in Port Norris one evening?

A. One Saturday evening I did. I was up to town and she asked me if I seen Herbert, and she told me if I seen him to tell him she wanted to see him, but I didn't see him.

10 Q. Did you ever see Mrs. Messick and Jackson talking at the porch?

A. I seen him go over to the porch one Saturday afternoon and talk about five minutes.

Mr. Donnelly: That's all.

Mr. French: No questions.

20

MYRTLE PERRY, SWORN.

By Mr. Donnelly:

Q. Miss Perry, where do you live?

A. Bivalve.

Q. Do you know Mrs. Messick?

A. Yes, sir.

Q. Know Herbert Jackson?

30 A. Yes, sir.

Q. Ever see Mrs. Messick and Mr. Jackson talking with each other last year, previous to last July?

A. Yes; last spring I saw them several times on the wharf when they were going for mail back and forth.

Q. Did you ever see Mr. Jackson and Mrs. Messick talking together in the back part of the house?

A. Yes.

The Master: Which is the back part of the house?

Mr. Kraft: Suppose we let this witness describe the house.

A. The front of her house faces the road like this (indicating)—this side, around this way (indicating) then Camp's restaurant is on the other side. She 10 was out in back of the house where you can see very plainly going to and fro, and Mr. Jackson stood there.

By Mr. Donnelly:

Q. How long did he stand there?

A. I didn't notice. It was on Saturday afternoon. I was going to my sister's up the road.

Q. Ever see Mr. Jackson and Mrs. Messick kiss 20 each other?

A. No, sir.

Mr. Donnelly: Cross-examine.

Cross-examination.

By Mr. French:

Q. Miss Perry, Mr. Jackson was standing in the 30 lane between Camp's and Messick's?

A. In the lane, alongside of the house.

Q. Yes, in back of the house, but right alongside of the house?

A. Yes.

Mr. French: That's all.

Re-direct examination.

By Mr. Donnelly:

Q. Miss Perry, are you related to Mrs. Messick?

A. I am a cousin.

Mr. Donnelly: That's all.

10

The Master: Cousin of Mrs. Messick?

A. Yes, sir.

The Master: All right. That's all.

MRS. EMMA COBB, SWORN.

20

By Mr. Donnelly:

Q. Mrs. Cobb, where do you live?

A. In Bivalve at present.

Q. Did you live there last May and June?

A. Yes, sir.

Q. How far did you live from where Mr. and Mrs. Messick lived?

A. I lived in the same house she lives in now and also next door but one.

30

Q. Do you remember last June when Mrs. Messick went away?

A. Yes, we were to go together—to start together.

Q. Did you start together?

A. No. She came in and asked me if I would go, and I said "Yes," and she said, "What time?" and I said, "On the nine o'clock jitney."

The Master: You missed the train?

A. No, sir. She came in the evening and told me she was going over the river, and I went on the jitney.

By Mr. Donnelly:

Q. Did you have a conversation with her after she came back as to where she had been? 10

A. Yes; she said she was to a Mrs. White's at North Vineland—on the road from Vineland to Newfield.

Q. Didn't say she was in Camden?

A. No, she never said that. She told both me and my husband that she was in North Vineland.

Q. You mean in June, when she was away?

A. Yes, in June.

Q. Did she have a conversation with you about locating Mr. and Mrs. Bishop's place in Camden? 20

A. Yes; that was in the middle of July.

Q. When did she tell you about this trip in June?

A. I was in Camden the same week, and —

Q. When did she make this statement to you about the first week in June?

A. Right after that.

Q. How soon?

A. A few days after that. It might have been the first of July, or something like that. It was a few days after she came back. 30

Q. What conversation did you have with Mrs. Messick about locating these Bishop's in Camden?

A. I came up on the fifth or sixth of July and went home on the eleventh—I had a five day ticket. She stopped at the gate one day and she says, "We was up looking for my uncle and he lives just next

door to where you visit." She says, "We went up in the afternoon and couldn't find them."

Q. Who did she mean by "we"?

A. Her and her father. She says they went somewhere and stayed all night, and the next morning she phoned to Mrs. Henderson at Bivalve and somebody phoned the address up to her and they found where she lived.

10 Mr. Donnelly: Cross-examine.

Mr. French: No questions.

CHARLES MOORE, SWORN.

By Mr. Donnelly:

20 Q. You testified at the previous hearing in this case, did you not?

A. Yes, sir.

Q. Do you recall when that was?—Of course the record shows. That just takes up time. Previous to your testifying did Mrs. Sheppard Bishop come to you and have a conversation?

A. Yes.

Q. What did she say to you?

A. Not to deny what I heard around the house
30 when Constable Robbins was there.

Q. She asked you not to deny what she said?

A. Yes, sir.

Mr. Donnelly: That's all.

Mr. French: May I examine this witness about what was said that day? It's a little irregular.

The Master: If there is no objection.

By Mr. French:

Q. What was said by Mrs. Bishop that day about them moving?

A. Said they moved some time the latter part of April.

Q. Didn't she say they got a notice to move in April? 10

A. I don't recall them —

Q. Do you recall whether they said they got a notice to move or moved in April?

A. They got a notice to move, got a notice to move in April.

Mr. French: That's the way I understood it. That's all.

20

WELLS PHILLIPS, SWORN.

By Mr. Donnelly:

Q. Mr. Phillips, where do you live?

A. Bivalve.

Q. Do you know Mrs. Messick?

A. Yes, sir.

Q. Know Herbert Jackson? 30

A. Know him when I see him.

Q. Ever see Mrs. Messick and Jackson together in the spring?

A. Yes, sir.

Q. Where?

A. Saw them on the wharf at Bivalve.

- Q. When?
 A. Last May and June.
 Q. What time was it?
 A. Saturday afternoons and Sundays.
 Q. See them more than once?
 A. Yes, sir.
 Q. Ever see them any other place but Bivalve?
 A. Between Port Norris and Bivalve.
 Q. Whereabouts?
 10 A. On the Shell Road.
 Q. Walking?
 A. Yes, sir.
 Q. When was that?
 A. A little after dark Saturday afternoon.
 Q. About what time was it?

The Master: After dark he says.

- A. Before the show starts; the show starts at
 20 half-past seven.
 Q. Ever see them together any other place?
 A. On the wharf.
 Q. Did you ever see them going together over to-
 wards Maurice River?
 A. On the wharf at Maurice River.
 Q. When was that?
 A. Saturday, twelve o'clock.
 Q. How were they going across?
 A. On the ferry boat.
 30 Q. Did you see them together on the Maurice
 River side?
 A. Saw them on the Maurice River side.
 Q. What were they doing there?
 A. Talking; his boat was on the Maurice River
 side.
 Q. Anybody with her?

A. A little child.

Q. When was this?

A. I don't know just the date it was; on Saturday.

Q. Was it in May or June?

A. In May, when I was aboard the Admiral.

Q. Do you know what time it was when you saw them on the Shell Road?

A. It was before the show started.

Q. But what time of the year?

A. On Saturday afternoon.

10

Q. May, June, July, or what?

A. I forget; it was either May or June. I was at my home waiting for a trolley car and a fellow came by and he says, "Let's walk," and we saw Jackson stop, and I says to this fellow, "Stop and see some fun." She come along and they met.

Q. What did they do?

A. I don't know.

Q. Did they walk up the road?

A. They was standing there talking.

20

Q. What did you fellows do?

A. Stood looking back.

Q. You stood and watched them? What did they do?

A. They were there when we got out of sight going to town.

Mr. Donnelly: Cross-examine.

Mr. French: No questions.

30

The Master: That's all.

CAROLYN MESSICK, recalled.

By Mr. French:

Q. Mrs. Messick, do you know Ellsworth Jones?

A. I know him by sight and know his name.

Q. You heard his testimony about conversations with you. Are they true?

10 A. I never had no conversations with him, but I walked up the wharf and he asked me for a date Saturday night, and I was afraid of him since.

Q. Did you ever make the statements he says?

A. No, sir; never made no statements or sent no notes to anyone.

Q. Did you ever make statements about going away or living with Herbert Jackson?

A. No, sir; I don't have to go with Herbert Jackson, or I am not concerned in any way about him.

20 Q. Hear Mr. Phillips' testimony?

A. I certainly did. If he is not mistaken, it is not dark when the picture show started there at half-past seven. I never met him on the Shell Road in my life.

Mr. French: Cross-examine.

Mr. Donnelly: No questions.

30 The Master: That's all.

HERBERT JACKSON, recalled.

By Mr. French:

Q. Mr. Phillips testified seeing you talking with Mrs. Messick on the Shell Road in May or June or July, just about dark, or before the moving pictures opened. Were you talking with her there? 10

A. I don't remember anything of it.

Q. No—I mean did you?

A. No, sir.

Mr. French: That's all. Cross-examine.

Mr. Donnelly: No questions.

The Master: Anything further, Mr. French?

Mr. French: No. 20

The Master: Mrs. Messick, will you take the stand a moment?

MRS. CAROLYN MESSICK, recalled.

By the Master: 30

Q. Did you get some letters from Mr. Jackson through the mail?

A. I got one which was addressed to me care of my father, and it was more to my father than to me, as to when this case was, because he wanted to be there.

Q. Have you that letter with you?

A. No, sir.

Q. Did you answer it?

A. If I am not mistaken, my father and I both answered it. I had some writings on the bottom. He started it and I ended it.

Q. What was it about? Just about the case?

A. Yes, sir; nothing else.

Q. Your father here this morning?

A. Yes, sir; he sits right there (indicating).

CHARLES PETTIT, SWORN.

By the Master:

Q. You are the father of Mrs. Messick?

A. Yes, sir.

20 Q. Tell me what you know about the letters from Mr. Jackson and what you answered.

A. You mean what we have written since?

Q. Yes.

A. Just concerning him getting here, and if he could get here and what we could do to get him in shape to get him here. We wanted his evidence.

Q. The letters your daughter referred to. How many letters did you see from him?

30 A. Not over one or two. I couldn't recall. Not over one, I think; one anyhow.

Q. Who was the letter addressed to?

A. I think it was addressed to her—I couldn't tell you, but I think it was addressed to her care of me.

Q. And it was the one concerning his being here about the case, to which you replied?

A. Yes, sir.

Q. How did it happen he wrote first?

A. Well, I don't know whether he did or not. I made up my mind to write a letter to him and I found out he was here and I had the girl call him into my house, and I thought I had a right to call him in.

Q. Where is your house?

A. At Bivalve.

Q. How near do you live to the Messick house?

A. Well, I should judge not over 250 yards, maybe 10
it ain't that far. I never measured it.

Q. Did you see Jackson around the house at all talking to your daughter?

A. I never saw him there as I know of; I don't think I did.

Q. How long have you known him?

A. Never knew—never knew what kind of a looking man he was, and that's why I didn't know what man to look for to have a talk with him, so I got Bessie Perry to call him into the house. 20

Q. Did you know Alvin Low?

A. Just heard of him, didn't know what he looked like.

Q. Ever see a man you didn't know talking to your daughter?

A. No, sir; I think I saw Jackson once on Saturday afternoon talking. From my house down I can look through my window and see everything in front of the house.

Q. Was this in daylight? 30

A. Yes; Saturday afternoon about two o'clock, when I saw him. I never saw him but the once.

The Master: Any questions, gentlemen?

By Mr. Donnelly:

Q. You say you don't know Mr. Jackson? You had to inquire? How did you know the man out front was Jackson?

A. I didn't know he was out front. I told Bessie Perry if she seen this man to tell me.

Q. You don't understand. I mean when he was talking to Mrs. Messick in front of the house, how
10 did you know it was Mr. Jackson?

A. I saw a man standing there, but I didn't know it was Jackson.

By the Master:

Q. When was it you asked Jackson to come to your house?

A. I don't recollect the date, but I think it was in September.

20 Q. He came to your house?

A. I asked him to come—why, Bessie Perry, I asked her. I got him into my house and asked him. When he went out he went out the back way and I took him out myself, and we had a little conversation before he left. I went on in and went to bed and he went away, and my daughter went to bed a little before he left the house.

Q. Is your wife living?

A. Yes, sir.

30 Q. Mrs. Messick's mother?

A. Yes, sir.

The Master: That's all. Anything further?

Mr. Donnelly: I would like to recall Mr. Jones.

ADOLPH ANDERSON, sworn.

BY MR. DONNELLY:

Q. Mr. Anderson, where do you live?

A. At Bivalve.

Q. Your wife is a sister to the defendant, is she not?

A. Yes, sir.

Q. Do you know Mr. Sheppard Bishop, the gentleman on the witness stand?

A. Yes, sir.

10

Q. Did you have a conversation with him at Bivalve?

A. No, it was Cooper's Creek.

Q. Did you make inquiry as to whether or not she was at his house last summer.

A. Naturally we were talking to Mr. Bishop.

Q. And what did Mr. Bishop say about her being at his house last?

A. He says, "I seen her two or three times," he said, "but that is all, and she didn't stay at my place, and people must think I am running a rooming house the way they are talking." 20

Q. Did he say anything else, Mr. Anderson?

A. Well, I don't really recall what he did say, he was talking so much about it; of course, I am a relative to him, you know.

Q. Did he use the expression, "He wasn't going to lie for her."

A. Yes, sir; he said, "I won't lie for none of them, either party." 30

CROSS EXAMINATION.

BY MR. FRENCH:

Q. You haven't a very clear recollection of the things he told you?

A. Yes, sir.

Q. Let us have the conversation what he said to you; in the first place, what did he say to you, who spoke first?

A. I can't recall that, we said so much.

Q. How did it begin?

40

A. Well, we was talking about this thing.

Q. What thing?

A. About Mrs. Messick.

Q. What did he say about it, what were his words, what did he say to you about it first?

A. I can't recall that.

Q. What did you say to him at first?

A. We was talking about the case, saying about it was too bad and one word brought out another.

BY THE COURT:

Q. What month was it you had this talk?

A. Either the last of October or the first part of November, I can't recollect the week.

BELFORD BISHOP, sworn.

BY MR. DONNELLY:

10

Q. Mr. Bishop, are you a brother of Sheppard Bishop?

A. Yes, sir.

Q. Was he at Bivalve last fall?

A. He was at Bivalve last fall, I would say it was on a Tuesday, he came to my house election day, my father was buried the day after election day. My father lay dead in the house.

Q. Did you have a conversation with reference to Mrs. Messick being to his house last summer?

20

A. Yes, sir.

Q. What did he say and what did you say?

A. I asked my brother if Mrs. Messick was ever to his house with a man and he said, "She was never to my house in my life with any strange people, she has been there by herself a few times.

Q. How long did she stay there?

A. No more than a day; at that time my father lay dead in the house, and he wasn't coming, and that was all that was said.

30

Q. That is all he said?

A. That is all he said to the best of my knowledge.

ELLSWORTH EDWARD JONES, recalled.

By Mr. Donnelly:

Q. Mr. Jones, do you know where Mr. Simmons is, that was aboard the boat with you?

A. Do I know where he is now?

Q. Yes.

A. I know where his home is.

Q. Where?

10

A. Tillman's Island, Maryland.

Q. Don't you know where he is at the present time?

A. No, sir; don't know where he is.

Q. Did you try to make an engagement with Mrs. Messick, as she testified to here on the witness stand?

A. No, sir.

The Master: Are you married?

20

A. No, sir.

The Master: That's all.

(Then follow the argument of counsel.)

The Master: I will announce the decision in this case on Monday.

30

EXHIBIT 1 FOR PETITIONER.

My little girl just a
line to let you here from
me Darling you say if
I dont go on a trip next
week I dont love you
but Dear that is a mistake
for I do love you and
10 some day I will prove
it to you I want to go
with you but Darling I
hate to miss a week when
I have the chance to make
it for I need the money
so please dont think
hard of me I want to
go for I am willing to do
anything you ask me
20 I set on the porch last
night and looked at you
throw the window it
broke my heart for to
look at you and could
not have the pleasure to
talk with you Darling
I want to write to you
when I leave so where
can I send your letters
30 so Beck cant get them
let me no I will close
with all my love and
best wishes to you for
ever from your Little
Boy one would like to
be with you fore ever
good Bye may god bless

you and be with you
in the dark hours of
trubles kisses for you
Dear X X X X X X X
Herbert Jackson.

EXHIBIT 2 FOR PETITIONER.

Dear I waited for you last 10
night but I never saw any
thing of you I herd that you
had more truble last night I
am sorry look Dear dont have
any Thing to say to me for a
while let Things die out people
is talking to much dont have
any thing much to say to me
and maby he will treat you
better this morning when you 20
wave at me I saw beck that
was why I never wave back
at you I have something to
tell you when I get chance
I will close wishing you health
and pleasure to your joys end
From Your Friend
Herbert Jackson

30

EXHIBIT 3 FOR PETITIONER.

Herbert Jackson,
481 Willis St.
Cambridge
Md.

CONCLUSIONS OF ADVISORY MASTER.

February 7, 1921

10. Rex A. Donnelly, Esq.,
Bridgeton, N. J.
Messrs. French & Richards,
106 Market Street,
Camden, N. J.
William J. Kraft, Esq.,
207 Market Street,
Camden, N. J.

Re: Messick vs. Messick.

Gentlemen:

20 I have concluded that the allegations of the petitioner have been sustained by the proofs. I will therefore, advise a decree accordingly.

As to the custody of the child, in view of its extreme youth, and unless counsel makes some application, I will award the child to the mother with leave to the petitioner to apply at any time in the future to modify the decree in this respect.

Counsel for petitioner should prepare a decree and submit the same to counsel for defendant before submitting same to me.

30

Yours very truly,
Norman Grey.

DECREE.

(Filed Feb. 28, 1921.)

IN CHANCERY OF NEW JERSEY.

10

Between
 WILLIAM CLAUDE MES-
 SICK,
Petitioner,
 and
 CAROLYN MESSICK,
Defendant.

On Petition for
 Divorce.
 Decree Nisi.

20

This cause coming on to be heard in the presence of Rex A. Donnelly, counsel with *petition* and French & Richards of counsel with defendant, on petition, amended petition, answer and amended answer, and oral proofs taken in open court; whereupon, and upon duly considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the sixth day of July, A. D. nineteen hundred and sixteen and that defendant has been guilty of the adultery charged against her in said petitions and that at the time the cause of ac-

30

tion for divorce therefor arose the said William Claude Messick and the said Carolyn Messick were *bona fide* residents of this state and that the said William Claude Messick has been such a resident for at least five years prior to the commencement of this action and has continued so to be down to the time of the commencement of this action and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this state;

10 It is thereupon, on this 28th day of February, A. D. nineteen hundred and twenty-one, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, and of the acts of the legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, William Claude Messick and the said defendant,

20 Carolyn Messick be divorced from the bonds of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligation thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute, within six months from the date hereof.

And it is further ordered, adjudged and decreed that the defendant have the custody, care and education of Bertiste Messick, infant child of the marriage, with leave to the petitioner to apply at any

30 time in the future to modify this decree in this respect; that defendant shall permit petitioner to have free access to the said child at any residence of defendant in this state, at all reasonable times during the day time, particularly on Saturday afternoon from two to four o'clock in the afternoon, and

that said defendant shall not at any time hereafter remove or permit to be removed the said child from this state.

E. R. WALKER,
C.

Respectfully advised,
NORMAN GREY,
Adv. M.

We have no objection to the form of the decree nisi. 10

FRENCH & RICHARDS,
Solrs. for Defendant.

(Seal) I, JESSE R. SALMON, clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the decree nisi in the cause wherein William Claude Messick is petitioner, and Carolyn Messick is defendant, now on the files of my office. 20

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 4th day of March, A. D. nineteen hundred and twenty-one.

JESSE R. SALMON,
Clerk. 30

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

10 Between
 WILLIAM CLAUDE MES-
 SICK,
 Petitioner,
 and
 CAROLYN MESSICK,
 Defendant.

} Notice of Appeal.

20 The defendant hereby appeals from so much of
 the final decree made in this court in the above-
 stated cause as decrees that the petitioner William
 Claude Messick and the defendant Carolyn Messick
 be divorced from the bonds of matrimony for the
 cause aforesaid and the said parties and each of
 them be freed and discharged from the obligation
 thereof unless sufficient cause be shown to the Court
 why the decree should not be made absolute within
 six months from the date thereof and also from that
 part of the said decree that decrees that the defen-
 30 dant shall not at any time thereafter remove or per-
 mit to be removed the child Bertiste Messick from
 this state, to the Court of Errors and Appeals in
 the last resort in all causes.

FRENCH & RICHARDS,
 Solicitors of Defendant.
 THOMAS E. FRENCH,
 Of Counsel.

Dated May 17, 1921.

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

THOMAS E. FRENCH,
Of Counsel with Defendant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

Between
WILLIAM CLAUDE MESSICK,
Petitioner-Respondent,
and
CAROLYN MESSICK,
Defendant-Appellant. } Petition. 20

The petition of Carolyn Messick the appellant in the above-stated cause respectfully shows that this petitioner finds herself aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-eighth day of February, in the year nineteen hundred and twenty-one, wherein the said William Claude Messick was petitioner and the said Carolyn Messick was defendant, in this respect, to wit: that the said decree adjudges 30

that the said petitioner William Claude Messick and the said defendant Carolyn Messick be divorced from the bonds of matrimony for the cause aforesaid and the said parties and each of them be freed and discharged from the obligation thereof, and that the defendant shall not at any time thereafter remove or permit to be removed the child Bertiste Messick from this state. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground
10 that the same is erroneous, for that your petitioner is not guilty of the several charges set forth in the petition of the petitioner, and that the proofs in the case did not sustain the allegations of the said petition.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioner may have such relief in the
20 premises as to this Honorable Court shall seem meet.

FRENCH & RICHARDS,

Solicitors of Appellant.

THOMAS E. FRENCH,

Of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
 WILLIAM CLAUDE MES-
 SICK,
*Petitioner-
 Respondent,*
 and
 CAROLYN MESSICK,
*Defendant-
 Appellant.*

} On Appeal. 10
 Answer.

The answer of the above-named respondent to the petition of appeal of the above-named appellant: 20

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was on the twenty-eighth day of February last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to law and equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent. 30

REX A. DONNELLY,
*Solicitor and Counsel for
 Respondent.*

LETTERS TO THE EDITOR

THE EDITOR

1911

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter mentioned therein. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand my position.

I am, Sir, very respectfully,
Yours truly,
J. A. [Name]

[Name]
[Address]

New Jersey Court of Errors and Appeals

WILLIAM CLAUDE MESSICK,
Petitioner-Respondent,

vs.

CAROLYN MESSICK,
Defendant-Appellant,

On Petition for Divorce.
Appeal from Court of Chancery.

BRIEF OF PETITIONER-RESPONDENT.

FACTS.

The petition alleges adultery with Alvin Low and Herbert Jackson in May and June, 1920, at Bivalve, Cumberland County, in this State (1, 2). The amended petition also alleges adultery with Jackson in Camden, N. J., in June, 1920 (12). Defendant answering denies the allegations of the petitions, but also pleads condonation (5, 15). Both parties live at said Bivalve (73, 88). The jurisdictional facts are admitted in the pleadings. The Court below found (162) that the allegations had been sustained by the proofs.

ARGUMENT.

The Court below was warranted in its findings for the following reasons, viz.:

I.

The letters offered in evidence alone proved the allegations (160, 161). The explanation given by defendant how these letters came to be written by Jackson to her (87) is unbelievable. Defendant's own testimony shows that said explanation was untrue. Jackson testified (132) that the contents of said letters were false, though he signed his name to such falsehoods, but at the top of the same page of testimony his testimony shows that said letters were not false but conveyed the exact situation between him and defendant, for when asked why he did not wave his hand back at defendant when she waved to him, if he wished to make petitioner jealous, his answer was, "*I didn't want to wave back. I didn't want him to see me wave back at his wife.*"

There was no explanation why two letters were necessary to cause jealousy, nor how petitioner was to receive them to make him jealous. Jackson's explanation (134) how he came to write them is to say the least unusual. He says he has been separated from his wife over two years (135) and has been acquainted with defendant a good many years (136). His testimony as a whole and particularly from page 131 to 136 inclusive, together with his demeanour upon the witness stand would have convinced any Court that the explanation given of the letters were untrue, but that they showed the exact relations between him and defendant.

In *Stickle vs. Stickle*, 48 N. J. Eq. 336, Chancellor McGill found that certain letters with other circumstances proved adultery.

II.

Was defendant of such a disposition and character as likely to commit the offences charged?

Profanity came from her lips (73) without apology or hesitation and she admitted she called her husband, the petitioner, a name which should never come from human lips. Edward B. Cobb, called by defendant to prove her reputation, on cross-examination did so (92, 93), he testified that she not only cursed her husband, but anybody else she saw fit and that she asked him a question which is a close equivalent to soliciting sexual intercourse.

In *Black vs. Black*, 30 N. J. Eq., Chancellor Runyan said, that a wife who showed lustful desires in a letter which she had written, needed only a slight opportunity to complete her degradation and that in mind and heart she is already defiled.

III.

The defendant's own testimony indicates her guilt.

The Dillahoy incident, 45 to 48 inclusive, which was highly damaging to defendant, was not excluded by the Master as stated in defendant's brief, the ruling is explained by the Master on page 67 and only covered a question asked, which was struck out. It was properly admissible for the purpose of showing the relations of the parties even though

it occurred after the charges alleged in the petition. *Whitenack vs. Whitenack*, 36 N. J. Eq. 474. Counsel is mistaken when he says in his brief that the testimony was excluded, it was dangerous testimony and he again brings it into the case on his direct examination of defendant at page 80, viz.:

“Q. What is this occurrence of November, 1920, that Mr. Dillahoy testified to?

A. November 20th I was in Bridgeton.

Q. Is Mr. Dillahoy mistaken when he says he saw you?

A. He was.

Q. And were you in the house with Alvin Low at that time?

A. I went there as Mrs. Dillahoy and her mother wanted to go to Bridgeton. That is how I know it was November 20th. They had a shoe sale and they wanted me to go with them and she was around to their grandfather's and he was in there, he was there.

Q. Did you go in when you got there?

A. I did. He calls her Tillie. He says, ‘Come in, Tillie will be home in a few minutes.’ I went in and waited, and I walked around to Mr. Barry's and I went around and walked with Mrs. Beard, Tillie's mother, and waited at the house until Mrs. Dillahoy came and I went to Bridgeton to the shoe sale, with the three of us.”

But on cross-examination, she tells this story, p. 86:

“Q. Now, the time that Alvin Low was at Port Norris. How did you two happen to be alone together in the house?

A. At Mrs. Dillahoy's?

Q. Yes.

A. I don't know how it came to be he was there. I don't go in strange houses unless I knock. She is no stranger.

Q. Who got there first?

A. I knocked on the door and Alvin Low came to the door, and of course, I didn't know but what Mrs. Dillahoy was home. I said, 'Where is Mrs. Dillahoy?' He said, 'She will be home in a minute; come in and sit down.'

Q. Then what happened?

A. Well, I sat there. I couldn't just tell you how long it was, but I sat there, and I went over to Tillie's grandfather.

Q. And when you left, was Low still in the house?

A. He was.

Q. And Mrs. Dillahoy hadn't come back?

A. She hadn't."

Hence the testimony of Dillahoy becomes of vital importance, since Low, p. 68, says he was not there at all only when Mrs. Dillahoy was there. Defendant's first denial and then her unwilling admissions shows clearer than any argument how far she is worth of belief.

The confessions of guilt of defendant testified to by petitioner (25) and corroborated by defendant's sister, pp. 34, 35, have never yet been but *partially denied*, her answer (85, line 26) is a good sample of this, when in the presence of her mother, sister and husband she said, "A. There they are all so snippy to find out, that is the answer they got. I said if I roomed in Camden, let them find it out the best way they could." This aspersion about "all so snippy" included her mother and when such a grave accusa-

tion was under discussion she should have answered fully, especially in the presence of her mother. It is significant that the mother was not called, for while she may have been hard of hearing a mother's ears are keen and it is inconceivable that if the husband and sister were telling untruths about her admissions, her mother would have been the first to rush to the witness stand to contradict their testimony. Defendant's counsel says there was no corroboration of these admissions, he apparently overlooks the letter in which defendant and co-respondent were planning for a trip away or that she was in Camden according to her own admissions at the very time alleged and Jackson, p. 141, was paid off on Friday and was anxious to get home, but did not leave Maurice River which is on the opposite side of the river from Bivalve until the following Monday morning, because as he said he had some business to attend to to get some clothing, hats and things at Port Norris, but left on the same train with the defendant for Philadelphia, Pa. (140). Bertha Emmet says, p. 59, l. 21, that she saw Jackson several times standing and talking with defendant and on p. 60, l. 18, that it was a daily occurrence. Mabel Camp says Jackson and defendant talked together in May and June (p. 41, l. 10) as late as 9 o'clock in the evening, and (40) that they hugged and kissed each other and she left them alone in the house. Eliza Camp, p. 50, has seen defendant and Jackson talking with each other several times early in the evening. Mrs. Etta Donnelly (pp. 62, 63) has seen both Low and Jackson talking several times in the afternoon and evening. These conversations were at the porch. Jackson denies these frequent talks, p. 131. Defendant, p. 79, admits he came there to inquire about two men who were injured, how Jackson was inter-

ested in these men does not appear, that defendant and Jackson were interested in each other does appear, defendant (p. 94) had a photograph of Jackson which she had kept for years before she ever thought of petitioner and she kept it (95) in a bureau in her mother's house where her husband of course could not see it. Much is made of Eliza Camp's testimony not being corroborated as to the incident with Low, but on p. 66, l. 26, Low admits he *sat on the top step* one evening, *the tide was coming up on the road*. Much is also made of numerous denials of defendant as showing innocence, but a directly opposite view has been taken by our Courts and that where denials are shown to be false, all doubt respecting innocence disappears. "Falsehood is the shield of guilt."

Whitenack vs. Whitenack, Id., p. 477.

The Wells Phillips testimony, pp. 151 to 153, is made light of by defendant's brief because it took place on the shell road somewhere between Port Norris and Bivalve, but as it was only a walk for the witness from Bivalve to Port Norris to the moving pictures it was in close proximity to Bivalve and the testimony is important because Jackson in denying the incident on p. 155, qualifies it by saying, line 11, "A. I don't remember anything of it." It is also important in showing that defendant and Jackson sought every opportunity to be with each other.

IV.

Defendant failed in her plea of condonation.

She charges condonation by one act of intercourse, p. 77, l. 25, "he made up," but it was a strange reconciliation for immediately thereafter, line 30, of

the same page, "he cursed all the vulgar names he could think of." This is denied by petitioner. Mrs. Camp's testimony (p. 52, ll. 22 to 35) wholly refutes it. (94) It happened according to defendant between 7 and 8 o'clock in the morning (p. 77, l. 12). He did not stay for breakfast (p. 78, l. 3). But her claim of condonation fell to the ground when it appears that on Sunday evening she took poison, p. 84, l. 25:

"Q. Were you sick and had a doctor?

A. I was sick and fell. I took the poison and fell.

Q. This was Sunday evening?

A. This was Sunday evening, the 27th day of June."

It is impossible to believe that if there was condonation and reconciliation between 7 and 8 o'clock in the morning, there was any occasion to take poison over the trouble in the evening.

Condonation implies guilt on the part of one and knowledge on the part of the other. By this defence the wife practically says: "I was guilty of adultery, and my husband, knowing the fact, willingly returned to my embraces." The burden was on defendant. She did not sustain it. *Graham vs. Graham*, 50 N. J. Eq. p. 708. If her testimony was false in this respect, in what respect can it be believed?

V.

Defendant failed to prove innocence by claiming she was at her uncle's house in Camden in June, when she was away. She showed a strange unfamiliarity with the location of the uncle's home. She could

not give the number (p. 81, l. 31), she says she was out several times (p. 82, l. 3), but could not give one of the figures of the house number (p. 82, l. 12). She could not tell when she went out Federal Street (83), whether she turned to the right or left. She could not tell how many blocks she went up Penn Street from Federal Street (p. 83, l. 21) before she got to her uncle's house. A policeman (p. 83, l. 15), she says, told her Penn Street was two blocks up. *But it does not appear how she found her uncle's house by such directions not knowing the number or one of the figures of the number.* This testimony together with the manner given undoubtedly influenced the trial Court in its decision. Mrs. Cobb says (149) that defendant told her sometime after July 11th, that she and her father (p. 150, l. 4) could not locate the Bishops, but had to phone to Bivalve for their address. This seems very strange if defendant was at the Bishops a week before they moved as testified to by Mrs. Bishop (p. 106, l. 22). Mrs. Cobb's testimony was not contradicted either by the defendant or her father. Bishop does not seem to know much about defendant being at his house, he says (p. 107, l. 20), "I guess she stayed the week out," and being further questioned (pp. 109, 110), the "week's visit" slipped his mind altogether. He is flatly contradicted by Archibald Anderson who is the husband of Pearl Anderson and a brother-in-law of defendant who says Bishop told him defendant was not at his house in June and that he was not going to lie for her. Anderson's testimony for some reason does not appear in the book. Mrs. Bishop says defendant was at her house at the said time (100), she says defendant (106), presented herself at the door as her husband's niece, and while this was the first time they met she suggested she stay a week.

But her testimony is strongly impeached by Chas. Moore (117) and Samuel Robbins (120) who say when she was asked if defendant had been there in June, herself asked the significant question, how long does Mrs. Messick say she was here? (p. 117, l. 33) (p. 120, l. 18).

VI.

It was a great hardship for Mrs. Anderson to testify against her sister, the defendant. The admissions came out with frankness at a family council before defendant even thought of contesting a divorce case, the admissions only enlarged on the letters already found by the husband, there was no occasion for the sister telling an untruth. The testimony of Mabel Camp and her mother, Eliza Camp, who were defendant's neighbors and friends, was given reluctantly. It was hard for Bessie Perry, a cousin (56), to testify about Jackson's letter in which he called defendant his wife, or for Myrtle Perry, another cousin to testify (148). How difficult it was for counsel to wring this testimony from the witnesses is alone known by the Court below. This reluctancy places upon it the seal of truth.

It was a poor attempt made by defendant's counsel in his brief to create the impression that Bivalve was lacking in refinement in order to justify the unwarranted language and conduct of defendant. But the record silently refutes this, the defendant being the only witness using vulgarity and profanity in testifying and the testimony of her sister, Mrs. Anderson, is not only a crushing comparison, but also shows how far below her station defendant has fallen. The language and conduct of the petitioner

is also in striking contrast to defendant's and refutes the charge of cursing, which defendant made against him, but defendant says it immediately followed condonation and forgiveness—the one destroying the other.

There are numerous other incidents and circumstances in the record, but they do not change or weaken the main circumstances of guilt. An innocent married woman does not continually seek the society of a married man separated from his wife, nor does she allow him to write her letters full of love to make her husband jealous or for any other reason nor does she say, when accused of misconduct, in the presence of her mother, "If I roomed with him in Camden, find out the best way you can."

It is respectfully submitted that the Court below was fully warranted in its findings and that the decree should be affirmed.

REX A. DONNELLY,
Solicitor and of Counsel with
Petitioner-Respondent.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILLIAM CLAUDE MESSICK,
Petitioner-Respondent,
vs.
CAROLYN MESSICK,
Defendant-Appellant. } Appeal from Court
of Chancery.

BRIEF OF DEFENDANT-APPELLANT.

This appeal is taken from a decree of the Court of Chancery dated February 28, 1921, granting the petitioner a divorce from his wife on the grounds of adultery as set forth in the petitions and also from that part of the decree which forbids the defendant from removing or permitting to be removed her child, Bertiste Messick, from this state.

STATEMENT OF THE CASE.

On July 12, 1920, the petition for divorce was filed in this cause by William Claude Messick against his wife, Carolyn Messick, on the grounds of adultery. At the time of the filing of this petition, the defendant was an infant under the age of twenty-one years and Charles H. Pettit was duly appointed guardian *ad litem*.

The parties in this cause were married at Dividing Creek, Cumberland County, New Jersey, on July 8, 1916, and at the time of the alleged adulterous acts, resided at Bivalve, a small fishing village in the same county. The only child of this marriage was a daughter, Bertiste, born in the month of September, 1917.

These parties cohabited from the time of their marriage until sometime during the month of June, 1920. Shortly before this time, Mr. Messick had planned a trip to visit his relatives in Maryland and as Mrs. Messick had had the influenza and their family was shortly to move into another house, the doctor thought she should go away for a week during her husband's absence. It was finally arranged that Mrs. Messick should visit Mrs. John White, who resided somewhere between Vineland and Newfield. On June 21, 1920, Mrs. Messick, with her daughter, started for Vineland where she was to be met with an automobile and taken to Mrs. White's home. For some reason she was not met at this station and so she therefore boarded the next train for Camden and there visited her uncle Mr. Bishop, at 527 Penn Street. She arrived in Camden on Monday, June 21, 1920, and did not return home until Saturday of that week. During this time she never left her uncle's home alone nor did anyone visit her there.

For a considerable period before the visit, Mr. Messick had spent most of his spare time in gambling and rarely stayed at home. With the idea of making her husband jealous and keeping him home with her and the baby, Mrs. Messick had Herbert Jackson write two notes, which he handed to her and she left them on the baby's crib, where her husband would easily find them when he returned home.

Her husband returned home on Friday and immediately took these notes to Rex A. Donnelly, Esq., and stopped her credit with the storekeepers the following day before she returned home. Mr. Messick also alleged that he received an anonymous letter shortly before this time stating that a man was hanging around his home while he was away, and this made him suspicious.

Upon Mrs. Messick's return home, her husband took their child, whom he found on their porch, to the residence of his father-in-law. He then returned home and accused his wife of being away with Herbert Jackson, for a week. This charge was vehemently denied by Mrs. Messick but being unable to convince him of her innocence she said, "If I have been with Herbert Jackson, find it out the best way you can." A very bitter quarrel ensued during which time a gun was displayed but by whom, the evidence is in dispute. Mr. Messick then ordered his wife to leave his home but finally consented to let her remain until the following day. Several times that evening and the next day he visited Mrs. Messick at their home and the discussion was always about the same subject—Herbert Jackson—Mrs. Messick alleges, that on one of these visits on Sunday, while she was in bed, he stated that he did not believe the idle gossip, that he put his arm around her and that they made up their differences and he asked for, and had sexual intercourse with her. She went to her father's house on Sunday afternoon and after another argument during which her husband told her, she would never get another glance at her child, she took poison which necessitated the attendance of a physician.

While there are three allegations in the amended petition charging the defendant with committing

adultery with Alvin Low and Herbert Jackson, it may be important to note that the accusations leading up to the separation on June 27, 1920, were confined entirely to the conduct of the defendant with Herbert Jackson in connection with their alleged visit to Camden.

The answer to the petition and amended petition denies each and every of the said allegations and further sets up a condonation by the petitioner of said allegations of supposed misconduct.

As the conclusions of the Advisory Master, Grey, fail to set forth at length his reasons for advising a decree in this cause, we have deemed it necessary to argue each of the three allagations separately.

ARGUMENT.

At the outset we would call the Court's attention to Bivalve, where the parties to this suit resided. It consists of a main street about six hundred feet long with small houses on each side facing the marshes and a few shacks on a back street. The ground is very marshy and the only place one can walk is in this main street. The stores are on the wharf at the end of the street, and the residents are engaged in the oyster trade. One finds the typical rough inhabitants at Bivalve that would naturally reside in such a place and the culture and refinement of the large city is not to be found there. This will account for the rough language found in this testimony and to decide the guilt or innocence of the defendant based upon the circumstantial evidence in this case, the conduct of the parties must be considered in connection with the environment and customs at Bivalve.

A. FIRST CHARGE OF ADULTERY.

The first allegation of misconduct as set forth in the petition and amended petition, is, that on the first and second days of May and on divers other days in said month and on the first and second days of June and on divers other days in said month, A. D., 1920, the defendant committed adultery with Alvin Low at Bivalve (Case, page 1, par. II and page 11, par. II).

There was no direct evidence offered to substantiate this charge and the petitioner never testified that he complained to his wife about her alleged intimacy with Alvin Low, at Bivalve or at any other place. In fact, he did not think of any improper conduct between Alvin Low and his wife until after they had separated for he says (page 29, lines 28-34):

“Q. Was that the first you knew of the second man?

A. Yes, sir.

Q. And that was several days after the 27th?

A. Quite a few days afterwards.

Q. Was that the first that you knew of Alvin Low being around the house?

A. Yes, sir.”

There was no circumstantial evidence introduced to substantiate this allegation, except the testimony of Mabel Camp and her mother, Eliza J. Camp.

Mabel Camp lived next door to the Messicks and the houses were very close together. In fact they were separated by a road only large enough for a wagon to pass through. The houses had porches on the main street (page 43, lines 1-25). Her testi-

mony concerning this allegation fails to disclose anything of importance, when she says (page 44, lines 16-31):

“Q. Did you see Alvin Low talking to her?

A. I saw him to the porch.

Q. When was that?

A. That was in June.

Q. What time of day?

A. It was getting toward night.

Q. Did you see him there more than once?

A. No, sir.

Q. Do you recall what day of the week it was?

A. No, sir; I didn't pay no attention to that.

Q. Did you ever see him in the house?

A. No, sir.

Q. Did you ever see Mrs. Messick talking to Mr. Low anywhere else around the house?

A. No, sir.”

On direct examination Eliza J. Camp said, she went out with a lantern and saw Alvin Low sitting on Marcy Emmett's pool room porch and then go up on Mrs. Messick's steps (page 50, line 22, to page 51, line 34). On cross-examination, however, she admits that she merely heard footsteps and turning, found the person sitting on the pool room steps had gone. This cross-examination of this witness is as follows (pages 53 and 54):

“Q. When was this night that you say you went out with the lantern?

A. This was late in June. I keep a boarding house and I was going to see if any of my fishermen got in, and I have supper for them. I had gumboots on. It was half past 10 at night. It was earlier than that when I went out.

Q. Then you saw him when you came back?

A. Saw him when I came back.

Q. It was somewhere about half past 10?

A. Yes.

Q. Now, when you had the lantern, what did you see with the lighted lantern?

A. I saw Mr. Low sitting on the pool room porch.

Q. On Messick's porch?

A. No, on Marcy Emmett's, right across from my house.

Q. Isn't Messick's right across?

A. Right across the other way.

Q. Alvin Low was on the porch, on the main street, opposite your house?

A. Yes, on the pool room step.

Q. What did you see him do?

A. He got up and went across to Mrs. Messick's and I heard the footstep and I looked and it was Mr. Low.

Q. That is to say, you saw him on the porch, by the light of the lantern?

A. I saw him. He cleared up his throat and he startled me. I ain't cowardly, but anything like that——

Q. You heard somebody clear up his throat?

A. Yes.

Q. And you looked and saw it was Mr. Low sitting on somebody's porch on the opposite side of the street?

A. Yes.

Q. Did you keep the light on him?

A. I had the lantern in my right hand.

Q. It was so dark you couldn't see without a lantern?

A. No, it wasn't quite dark, half past 10.

Q. You couldn't recognize anybody without a lantern?

A. Well, I could if I was real well acquainted with him, but I wasn't well acquainted with him, Alvin Low. He was in his work clothes.

Q. This porch was right opposite your house?

A. Yes, sir.

Q. And you went across the road to your house?

A. I did.

Q. When did you hear the footsteps behind you?

A. Just as soon as I put myself on my shed.

Q. Then you got across the road, on your porch?

A. Yes, it is only 2 or 3 steps.

Q. You didn't know whose footsteps?

A. He was gone, because I turned around to see.

Q. Could you see across the street without a lantern?

A. I could see across the street with the lantern, I had the lantern.

Q. And you could see with that lantern across the street and you heard footsteps?

A. Very well.

Q. And then you went in the house, did you, after the footsteps on Messick's porch?

A. I did.

Q. Heard no other sound that you recollect?"

A. No.

An effort was made by the counsel for petitioner to offer further testimony of alleged occurrences in November, 1920, after this action was instituted but the testimony (pages 45-48) was overruled by the Advisory Master (page 48, lines 17-21), and can have no bearing upon the charge in question.

This charge is emphatically denied by the defendant (page 80, lines 1-9):

“Q. When he did talk to you and when Alvin Low talked to you, where were you?

A. I was in the rocking chair and the porch is high, which you saw yourself, and I was sitting in a rocking chair and there are steps and they would stand right in front of the steps and talk.

Q. As I understand you to say, neither was ever in the house?

A. No, sir.”

Alvin Low also denies this charge (page 65, line 35, to page 66, line 9):

“Q. Did you ever talk with Mrs. Messick in the afternoon or evenings of May and June, 1920?

A. I have.

Q. What did you talk about?

A. Well, I don't remember what the speech was about. I don't remember what it was now.

Q. Where was the conversation held?

A. Over by the porch.

Q. Of Mr. Messick's house?

A. In front, yes, sir; by the porch.

Q. Did you at any time go into the house?

A. No, sir.”

(Page 66, lines 24-29):

“Q. Did you at any time, on any night, go into Mr. Messick's house?

A. No, sir. I was never on the porch, only one night, or evening, whenever it was, the tide was coming up on the road, and I sat on the top step.”

(Page 70, lines 15-18):

"The Advisory Master: Did you ever have any sexual relations with Mrs. Messick?

The Witness: Never."

It must be apparent, that the petitioner has failed to introduce any evidence to support the first allegation and it is respectfully submitted that this testimony is more consistent with the defendant's innocence than guilt.

B. THE SECOND CHARGE OF ADULTERY.

The second allegation of martial unfaithfulness, as set forth in the petition and amended petition is, that on the first and second days of May and on divers other days in said month and on the first and second day of June and on divers other days in said month, 1920, the defendant committed adultery with Herbert Jackson at Bivalve.

As in the first allegation there is no direct evidence to support this alleged offense and it must stand or fall upon the probability of the circumstantial evidence presented.

This charge is based principally upon the testimony of Mabel Camp who testified that she went next door to Mrs. Messick's house about 5 o'clock P. M. one Friday late in June and ate ice cream there with Mrs. Messick and Herbert Jackson. That while she was there, they stood up and Herbert Jackson hugged and kissed Mrs. Messick but they didn't say anything (pages 38, 39, and at page 40, lines 1-26):

"Q. What did you do while you were there together?"

A. We was eating ice cream.

Q. While you were there in the house, did Mr. Jackson and Mrs. Messick do anything?

A. Well, I seen him hug and kiss her.

Q. You saw him stand and hug and kiss her?

A. Yes, sir.

The Advisory Master: You didn't say anything about standing.

The Witness: Yes, sir; they were standing.

Q. In the same room you were?

A. Yes, sir.

Q. What did they say while they were hugging and kissing each other?

A. Nothing at all.

Q. Did you ever see that more than once?

A. No, sir."

This witness says, she remained a half hour, but left Herbert Jackson and Mrs. Messick there together (page 41, lines 12-20). There is no testimony offered as to how long he is alleged to have remained there. This was the only time she ever saw Herbert Jackson in Mrs. Messick's house (page 43, lines 26-29) and at all other times he merely had one foot on the porch and one foot on the ground (page 44, lines 7-11). Mabel Camp is a witness under 16 years of age (page 38, line 9), and spent a great deal of time in Mrs. Messick's house (page 38, lines 14-16; page 79, lines 26-27). It seems incredible that Herbert Jackson would hug and kiss Mrs. Messick in the presence of this girl, when it was the first time, these three people were ever together. Had this alleged occurrence really happened, would not Herbert Jackson have cautioned Mabel Camp to keep it a secret? Or would not Mabel Camp have told her mother about it? The only evidence to

corroborate Herbert Jackson's presence in the Messick house that day was that of Eliza J. Camp, who testified as follows (page 50, lines 12-21):

“Q. Did you ever see him in the house Mrs. Camp?

A. Saw him the day my daughter was there. I saw him go in the day my daughter was there but never was in Mrs. Messick's house when he was there.

Q. You never were in there yourself?

A. No, sir.

Q. Did you see him come out the day your daughter was there?

A. No, sir.”

This witness did not see the alleged demonstration of affection as related by her daughter nor can we say she is speaking of the same day for, her daughter was a very frequent caller at the Messick home. But as this witness was so unfair about swearing that Alvin Low had gone into Mrs. Messick's house, we should not give much credence to her testimony. This is the only testimony in the whole case, except Exhibits 1 and 2 for petitioner, that evidences any familiarity or affection of Herbert Jackson or Alvin Low for the defendant. But Mabel Camp does not say that Mrs. Messick kissed Herbert Jackson or that she hugged him or held his hand or even gave him any sign of encouragement whatever. And so far as her story goes, we are asked to believe that in the midst of eating this refreshment, in her presence, Mrs. Messick and Herbert Jackson stood up, he hugged and kissed her once and sat down without a word being said by anyone.

Regardless of any denials by the defendant and Herbert Jackson no adultery could have been com-

mitted on that occasion. In the first place, it was on Friday the afternoon of the very day that the petitioner always returned home from work (page 19, lines 29-30) and there would have been no opportunity of committing the act then or later in the evening by keeping Herbert Jackson in her house without great fear of detection.

This same witness is the one who produced Exhibit 3 for the petitioner which is the address of Herbert Jackson, No. 481 Willis St., Cambridge, Md. Evidently Mabel Camp produced same to show that Herbert Jackson was a bold, bad man in giving his address to young girls (page 41, lines 21-28) but she did not state on direct examination that he gave it to her because she asked him for it, while they were in Sunday School (page 42, lines 16-20). It would seem that there can be but little significance to attach to this exhibit.

The defendant denies this alleged occurrence and stated that Jackson was never in her house (page 79, line 14, to page 80, line 9):

“Q. Was Herbert Jackson ever in the house with you?

A. No, sir.

Q. What about this instance Miss Camp testifies to, you were in the room there together and she had ice cream with you?

A. He has been to the door but I never remember him being inside.

Q. Ever eat ice cream with Miss Camp in the house?

A. No, sir. I have ate ice cream but not when Herbert Jackson was there or no other man.

Q. Miss Camp was with you?

A. Yes; she used to come to my house right often.

Q. Was Herbert Jackson ever there when she was?

A. Not that I remember.

Q. What about her statement that she saw Herbert Jackson kissing you and hugging you?

A. If she did, she must have been blind.

Q. Did he?

A. No, he never did.

Q. Was he ever in your house?

A. No.

Q. When he did talk to you and when Alvin Low talked to you, where were you?

A. I was in the rocking chair and the porch is high, which you saw yourself, and I was sitting in a rocking chair and there are steps and they would stand right in front of the steps and talk.

Q. As I understand you to say, neither was ever in the house?

A. No, sir."

(Page 86, lines 7-17):

"Q. Now, Mabel Camp says that she was in your house one afternoon last June, with you and Jackson?

A. Yes.

Q. And that you got up, then Jackson got up and came over and hugged and kissed you. Is that true?

A. He did not.

Q. Do you remember the three of you being there together?

A. He never was over my door sill in his life, never to my house."

Herbert Jackson emphatically denies the whole alleged occurrence (page 122, lines 27-29):

“Q. Were you in the house?

A. No, sir; never was in the house. I have been to the porch.”

(Page 124, line 33, to page 125, line 5):

“Q. Do you know a girl named Mabel Camp?

A. Yes, sir.

Q. Do you remember eating ice cream with her and Mrs. Messick in Mr. Messick’s house one day?

A. No, sir; I haven’t been in his house.

Q. Did you ever hug and kiss Mrs. Messick?

A. No, sir.

Q. Ever have anything to do with her sexually?

A. No, sir.”

(Page 142, line 22, to page 143, line 19):

“The Master: Mr. French, I would like to have the witness examined about the events detailed by Miss Camp.

Mr. French: He says he was never in the house.

The Master: Yes, but his testimony is so specific, and she says he gave this address.

Mr. French: (Showing witness Exhibit 3.) Do you remember giving this address to Miss Camp?

A. Yes, sir.

Q. When and where was it that you gave it to her?

A. I gave her my address, this at the top.

Q. Where?

A. I gave her that in Sunday School.

Q. In June, 1920?

A. Yes, sir. She asked me for my address before I went home and I gave it to her.

Q. Did you ever take ice cream with Miss Camp and Mrs. Messick at Mr. Messick's house?

A. No, sir; never was in Messick's house.

The Master: Anywhere else?

A. No, sir.

Mr. French: Ever hug Mrs. Messick in Miss Camp's presence, or when Miss Camp was not around?

A. No, sir."

It is true that other witnesses testified to having seen Herbert Jackson talking with Mrs. Messick in front of her porch. But as Mrs. Messick was on her porch and none of these casual conversations appeared suspicious there were no inferences from which one could reasonably find either the inclination or the opportunity to commit adultery.

The reason for these calls was to inquire about two men who had been hurt on Mr. Messick's boat and whom Herbert Jackson knew (page 79, lines 2-13; page 122, lines 9-26).

Wells Phillips stands alone in testifying that on a Saturday afternoon in May or June he saw Mrs. Messick and Herbert Jackson on the Shell Road between Port Norris and Bivalve, (page 152, lines 1-15). This testimony of an act of alleged adultery *between* Port Norris and Bivalve does not come within the allegations of the petition for an offense *at* Bivalve. He first says, they were walking (page 152, line 11) and later he says, they were standing there talking (page 153, line 20). While he also testified that the time was a little before dark Saturday afternoon (page 152, lines 14-15) he further stated that it was before the show started at half past seven (page 152, lines 19-20). The Court will take judicial notice of the fact that it is not dark in May or June before half past seven.

Mrs. Messick says it is not dark at that hour and that she never met Herbert Jackson on the Shell Road in her life (page 154, lines 20-24). Herbert Jackson also denies this alleged meeting (page 155, lines 1-13).

We can find nothing in the testimony concerning this allegation, that would justify a Court in finding the defendant and Herbert Jackson guilty of adultery. Mere imprudence, indiscretion or folly is not conclusive evidence of guilt, and we urge that this alleged episode is entirely consistent with the innocence of the parties.

C. THE THIRD CHARGE OF ADULTERY.

The third allegation of marital infidelity as set forth in the amended petition, is, that on the first and second day of June and on divers other days in said month, A. D. 1920, the defendant committed adultery with Herbert Jackson in the City of Camden (Case, page 12, par. III & 1/2).

While greater stress was laid upon this last charge than the two preceding ones, owing to the alleged confessions of the defendant, yet the corroborating testimony wholly fails to show that the defendant and Herbert Jackson were ever in Camden together.

This charge is based upon the finding of the two notes (Exhibits 1 and 2 of the petitioner, pages 160-161) which the said Herbert Jackson handed to Mrs. Messick (page 123, lines 1-10) at her request to make her husband jealous (page 87, line 30; to page 88, line 18):

“Q. How did these letters come to be written?”

A. Well my husband was never home. He was always to a gambling table or den, he was

never home when he was home. and I got this Mr. Jackson or this Herb Jackson, to write these notes, and he says, 'If I write these notes, don't let him see them until after I get home,' and when I left that morning the notes was on the baby's crib.

Q. Not between the mattress?

A. That is where they laid.

Q. What was your idea?

A. To make him jealous, to make him stay home with his wife and baby from the gambling table.

Re-cross examination.

By Mr. Donnelly:

Q. Why did you get Herbert Jackson to do it?

A. Well, I don't know why I got him. I would have got anybody. If your man was never home with you and never took any pride in the home, you are liable to do anything."

(Page 122, line 34, to page 123, line 7):

"Q. In whose handwriting are those papers?

A. Mine.

Q. Exhibits 1 and 2 are the letters. State under what circumstances you wrote those letters.

A. Why, I met Mrs. Messick on the wharf one days—on the boardwalk, rather—and she was telling about how her husband treated her and asked me to write these notes and make him jealous and keep him home from shooting crap and playing cards. There was no misbehavior in regards to the notes or anything else.

(a) **Alleged Confession.**

On Friday, June 25, 1920, when the petitioner found these two notes, Mrs. Messick was in Camden visiting her uncle, Sheppard Bishop of 527 Penn Street. Upon her return home the following day her husband accused her of being away with Herbert Jackson and it was on Sunday, June 27, 1920, that the alleged confessions were made in the presence of the husband and Pearl Anderson, a sister of the defendant, which are alleged to have been as follows:

(Petitioner's testimony, page 25, lines 26-28):

“Q. What did she say?”

A. I accused her of being away with him and she admitted she had roomed with him a week.”

(Page 26, lines 9-10):

“A. She said, ‘Yes, I was away with him and roomed for a week.’”

(Page 26, lines 19-25):

“The Witness: No, sir. She said, ‘I was away with him and roomed with him a week.’”

Pearl Anderson's testimony corroborates the petitioner concerning the alleged confession (page 34, line 21, to page 35, line 3).

The defendant, however, denies that she made these alleged confessions (page 73, lines 29-34):

“Q. Did he charge you with being intimate with Mr. Jackson?”

A. He said I had been away sleeping with him a week.

Q. What did you say in answer to that?

A. I said that he was a God damn liar.”

(Page 76, lines 16-24):

“A. Well, he wanted me to own up that I was rooming in Philadelphia with this Herbert Jackson.

Q. What did you say?

A. I told him that I was not, that he was not. I said, ‘I never lied on you and I won’t lie on him or nobody else.’

Q. Was that the substance of your conversation each time he was there?

A. It was.”

As she was unable to convince her husband of her innocence, she said (page 76, line 32, to page 77, line 3):

“A. Well, he wouldn’t listen. He is one of these strong headed men that he won’t listen to nothing. He wants his own way at everything, so first I told him, ‘If I have been with Herbert Jackson, find it out the best way you can.’

Q. That is the reason you think he says you admitted it?

A. Yes, sir.”

(Page 84, lines 30-37):

“The Advisory Master: Your husband said on the witness stand that you admitted to him that you had roomed with Jackson in Camden for a week. Do you deny that?

The Witness: I said if I roomed in Camden with Herbert Jackson, you find it out the best way you can, because he would not listen to what I said.”

(Page 85, line 32, to page 86, line 6):

“Q. Did you use any other words than that when he charged you living with Jackson? Did

you use any other language? Did you say, 'I did not, and you can find out if you want to'?

A. Yes, he wouldn't listen.

Q. Did you deny you had roomed with Jackson?

A. I did, what do you mean?

Q. Did you own up to it?

A. I denied it.

Q. What language did you use?

A. I told him he was a damn liar."

The defendant made the same statement to her sister in her husband's presence (page 85, lines 1-3), but had no recollection of saying, "I have done it, I have done it" (page 87, lines 10-13).

If we believe that this alleged confession was made by the defendant in the presence of the petitioner and her sister, it is presumed to have been made by his coercion and is therefore not legal evidence.

Garrett vs. Garrett, 98 Atl. 848, at 850.

Summerbell vs. Summerbell, 37 N. J. Eq. 603.

Perkins vs. Perkins, 59 N. J. Eq. 515.

(b) Failure to Corroborate Alleged Confessions.

The petitioner has wholly failed to corroborate the alleged confession by any testimony whatever showing, that the defendant and Herbert Jackson were ever in Camden together. An attempt was made to prove this by showing that they left Bivalve together. But the evidence is uncontradicted that they got on different coaches. Herbert Jackson sat in the smoker (page 123, lines 26-27) as was also testified to by the petitioner's witness, Harry Bartle-

son (page 99, lines 32-36), and he saw her only once when they changed cars but didn't speak to her (page 123, lines 19-34). He came directly to Camden, thence took the ferry boat to Philadelphia and left Broad Street Station for his home in Cambridge, Maryland, arriving there that night at eight o'clock (page 124). He didn't leave his home that week (page 124, lines 30-32).

Mrs. Messick never saw Herbert Jackson on the train and got off the train at Vineland. As she was not met at the station, she took the next train for Camden, and went directly to her uncle's house, 527 Penn Street where she remained that week. The fact that she visited them at this time is well corroborated by her uncle (pages 106-108) and his wife (pages 100-102).

As the petitioner has wholly failed to produce any evidence of opportunity for the commission of this offense, it necessarily follows that this charge of the misconduct of the defendant must fail. To convict the defendant of adultery with Herbert Jackson in Camden, we must totally disregard the testimony in this case by substituting suspicion for proof and by relying upon speculation and conjecture for the corroborating circumstances.

D. THE EVIDENCE DOES NOT ENTITLE THE PETITIONER TO A DIVORCE.

1. Defendant's Character.

It cannot be contended that the defendant was a highly refined woman according to the usual standards, for her own testimony shows that she called her husband vulgar names and indulged in pro-

fanity when accused of adultery. A character witness called on her behalf designated her "as a pretty rough figure" (page 92, lines 9-10) but he knew all the gossip of the town (page 91, lines 31-32) and said her reputation for chastity and sexual decency was good, as far as he knew. He further stated, that she would call anybody "a God damn liar" as she called Beck, her husband. This witness testified, that she had asked him if he was "getting anything" and that he had probably asked her the same thing and as she was married she said, certainly she was (page 92, line 14, to page 93, line 15).

It may seem paradoxical for this witness to testify that the defendant's reputation for chastity and sexual decency was good and yet freely tell about his queer conversations with her. This probably did not seem inconsistent to the witness nor did he seem to think he was compromising himself by so testifying. The fact that she was married, seemed to enlarge upon his rights to discuss such usually intimate and secret matters—and however unusual, such must have been the common practice in this quaint fishing village. But she was not probably any different from her husband in respect to vulgarity and profanity, for she testified that her husband called her every kind of vulgar names including "whores and bitches" (page 73, lines 20-34; page 78, lines 14-15) and had pointed a gun at her previously whenever he had become angry (page 73, line 34, to page 74, line 20) even threatening her life and that of the child, if she ever went inside her father's house (page 74, lines 20-27). The petitioner did not deny that he had called her these vulgar names or that he had previously threatened her with a gun, except on the Sunday when they separated

(page 93, lines 29-35). The fact that he had done so must have seemed inconsequential to him.

From this evidence, we must conclude that the petitioner and defendant were both rough characters living in this quaint village of Bivalve, where strong, vigorous language is used and where a woman can be perfectly virtuous and yet discuss subjects concerning marital rights usually avoided in cultured communities. But as she would call her husband a "God damn liar" when he accused her of being unfaithful, this clearly shows that she was no weak-minded woman to be easily led from the path of virtue. The fact that she was truthful must be taken for granted, for her husband did not deny her previous reputation for truthfulness, when she said (page 76, lines 16-21) :

"A. Well, he wanted me to own up that I was rooming in Philadelphia with this Herbert Jackson.

Q. What did you say?

A. I told him that I was not, that he was not. I said, 'I never lied on you and I won't lie on him or anybody else.' "

It is here contended, that in accordance with the evidence in this case, the use of vulgarity and profanity does not convict this defendant of adultery, nor does it show lewdness nor moral depravity. Mrs. Messick was an infant under the age of twenty-one years, when this suit was instituted, and has a daughter nearly four years old who needs her motherly care and guidance. All that can be urged against this defendant, is an alleged uncorroborated confession and some suspicious circumstances caused by the finding of the two notes, the discovery of which she childishly determined would make her

husband jealous and keep him from the gambling table. Since Herbert Jackson had often conversed with the defendant by stopping at her porch and had had plenty of opportunities of saying what was in these notes, and since these notes were handed to her and did not come through the mail, we must conclude that there could have been no purpose for writing them, except for the reasons given by Herbert Jackson and the defendant.

Before the Court can properly condemn this young wife to a life of dishonor and her child to shame, all justice and reason require, that the complainant's proofs must be clear and convincing of the defendant's guilt and inconsistent with her innocence.

2. Citations.

There are a few decisions in this state involving adultery to which the attention of the Court is directed.

To establish the existence of adultery the circumstances must be such as would lead the guarded discretion of a reasonable and just man to that conclusion. It must not be a rash intemperate judgment moving upon appearances that are equally capable of two interpretations. The facts proven, must be such as cannot be reconciled with probability and the innocence of the parties. Mere imprudence, indiscretion or folly is not conclusive evidence of guilt. The mind of the Court must be satisfied that there was an intimacy between the parties entirely inconsistent with the duties, which a virtuous wife owes to herself and to her husband.

Berckmans vs. Berckmans, 16 N. J. Eq. 122.

Under the rule that the commission of adultery will be inferred from proof of desire and opportunity, the circumstances must be such as to leave the guarded discretion of a reasonable and just man to the conclusion of guilt and the conclusion must not be based upon appearances equally capable of two interpretations.

McKenna vs. McKenna, 96 Atl. 890.

In proceedings where the defendant wrote the co-respondent a love letter evidencing willingness to commit adultery, if opportunity offered, the Court refused the divorce because the evidence failed to show the parties ever met after the letter was written.

Waer vs. Waer, 90 Atl. 1039.

Where a wife had entertained the co-respondent at her home, went out with him to public places, visited him at his office and he upon two occasions had kissed her, V. C. Backes held that although these circumstances aroused suspicion that all was not right between the two, yet he was not satisfied that she took the fatal step, that she broke her marriage vow, that she committed adultery. In reaching this conclusion, the Court said: "There is no testimony indicating that she was amourosly inclined toward the co-respondent and disposed to commit the crime charged against her. While the two had many opportunities to gratify lustful desires yet there is no evidence manifesting that the defendant had such desires toward Bumstead, the co-respondent. There is no evidence of lust or of lewdness on the part of the defendant. She is not shown to be depraved. She was a flirt and a fool but not a criminal."

Cooper vs. Cooper, 91 Atl. 731.

Evidence in a divorce suit on appeal to this court, was held insufficient to sustain the charge of adultery, where the defendant and co-respondent had been very friendly for several months and the petitioner had requested him to keep away from the defendant. The co-respondent refused to cease paying attention to the defendant and called to see her at a hospital in New York City, held her hand and kissed her upon arriving and departing. They had often kissed each other in the presence of the petitioner and his friends while it is admitted, that her conduct in this and other respects is reprehensible, there is no evidence of lewdness on her part or any indecent language or action and she is not shown to be depraved.

Slattery vs. Slattery, 102 Atl. 873.

CONCLUSION.

It is respectfully submitted, that the evidence in this cause fails to prove the defendant guilty of any of the acts of adultery as charged in the petitions, and the Court should therefore set aside the decree of divorce heretofore entered in this cause, **with costs.**

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