INDEX

PLEADINGS, ETC.

TESTIMONY

EXHIBITS

(Figures in parentheses indicate the page on which the exhibit was offered in evidence.)

Served Nov. 9, 1918.
Filed Nov. 12, 1918.

In Chancery of New Jersey

Between HENRY HYER, *Petitioner,* and SOPHIE HYER, *Defendant.*	*On Petition, etc.*

10

NOTICE OF APPEAL.

Henry Hyer, the above named petitioner, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from so much of the final decree filed in this cause and dated October 19, 1918, as recites and adjudges that he is not entitled to the relief sought and prayed for by him in his petition, and that his said petition be dismissed, and that he do pay to the solicitor of the defendant the costs of the defendant to be taxed and also a counsel fee of $150.

20

Dated Nov. 9, 1918.

Henry Hyer, *Petitioner.*

30

Addison P. Rosenkrans,
Solicitor for and of Counsel with Petitioner.

Service of the within Notice of Appeal is acknowledged this Nov. 9th, 1918.

John F. Kerr,
Solicitor for Sophie Hyer,
Defendant.

Filed Feb. 4, 1918.

IN CHANCERY OF NEW JERSEY

Between HENRY HYER, *Petitioner,* and SOPHIE HYER, *Defendant.*	*On Petition, etc.*

10

AMENDED NOTICE OF APPEAL.

Henry Hyer, the above named petitioner, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from so much of the final decree filed in this cause and dated October 19, 1918, as recites and adjudges that he is not entitled to the relief sought and prayed for by him in his petition, and that his said petition be dismissed, and that he do pay to the solicitor of the defendant the costs of the defendant to be taxed and also a counsel fee of $150.

20

Dated Nov. 9, 1918.

Addison P. Rosenkrans,
Solicitor for and of Counsel with Petitioner.

30

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

William V. Rosenkrans,
Of Counsel.

I hereby consent to the filing of the within amended notice of appeal as of the date of the filing of the original notice of appeal, and further consent that the amended notice shall have the same force and effect as the original notice would have had, if said original notice, heretofore served upon me, had been in the same form as the within amended notice. 10

John F. Kerr,
Solicitor for Sophie Hyer
Defendant.

20

30

Filed Feb. 4, 1919.

IN CHANCERY OF NEW JERSEY

Between HENRY HYER, *Petitioner,* and SOPHIE HYER, *Defendant.*	*On Petition, etc.*

10

ORDER FOR FILING AMENDED NOTICE OF APPEAL NUNC PRO TUNC

The petitioner in the above entitled matter having filed his original notice of appeal with the Clerk of this Court on or about November 12, 1918; and it appearing that through inadvertence there was omitted from said notice the certificate of counsel that he conceives there is good cause for said appeal; and an amended notice of appeal having been served upon the solicitor of the defendant, correcting such oversight, and the said solicitor of the defendant having signed his consent on said amended notice of appeal that the same be filed as of the date of the filing of the original notice of appeal and that said amended notice should have the same force and effect as the original notice would have had, if such original notice, theretofore served upon him had been in the same form as said amended notice:

20

30

V

Order for Filing Amended Notice of Appeal

It is, on this 4th day of February, 1919, on motion of Addison P. Rosenkrans, solicitor of petitioner, ordered, that said amended notice of appeal be now filed as of the date of the filing of said original notice of appeal and with the same force and effect as the original notice would have had, if said original notice had been in the same form as the amended notice. 10

Respectfully advised,
Bayard Stockton, A. M.

E. R. Walker,
C.

20

30

Filed Nov. 27, 1918.
Served Nov. 29, 1918.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between HENRY HYER, *Petitioner-Appellant,* and SOPHIE HYER, *Defendant-Respondent.*	*On Appeal from Chancery*

10

PETITION OF APPEAL.

20

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Henry Hyer, appellant, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 19, 1918, in a cause wherein the said Henry Hyer was petitioner and the said Sophie Hyer was defendant, in that the said decree recites and adjudges that your petitioner is not entitled to the relief sought and prayed for by him in his petition; and doth decree that your petitioner's said petition be dismissed; and that he do pay to the solicitor of the defendant the costs of the defendant to be taxed and also a counsel fee of $150. And your

30

petitioner appeals from that part of the said decree which recites and adjudges that your petitioner is not entitled to the relief prayed for in his said petition, and that said petition be dismissed, and that he do pay to the solicitor of the defendant the costs of the defendant to be taxed and also a counsel fee, as aforesaid, on the ground that the same is erroneous, and that the Chancellor should have found and adjudged the several ellegations of your petitioner's petition to have been proved, and the respondent, Sophie Hyer, to have been guilty of willful, continued and obstinate desertion by her of your petitioner for the term alleged in your petitioner's petition, and should have ordered, adjudged and decreed that your petitioner be divorced from the bonds of matrimony with the respondent for the cause aforesaid.

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

Henry Hyer,

Petitioner.

Addison P. Rosenkrans,

Solicitor for and of Counsel with Petitioner-Appellant.

Filed Feb. 8, 1919.

ANSWER TO PETITION OF APPEAL

Between HENRY HYER, *Petitioner-Appellant,* and SOPHIE HYER, *Defendant-Respondent.*	*On Appeal from Chancery.*

10

ANSWER.

The answer of the above named respondent to the petition of appeal of the above named appellant.

20

The respondent admits it to be true that a final decree was, on October 19, 1918, made and entered in the Court of Chancery, as in the petition of appeal is 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 said decree is agreeable to law and equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

30

John F. Kerr,

Solicitor and of Counsel with Respondent, Sophie Hyer.

IN CHANCERY OF NEW JERSEY.

Between

HENRY HYER,

Petitioner,

and

SOPHIE HYER,

Defendant.

10

Sidney Adlman, Atty-at-Law,
120 Washington St., Paterson, N. J.

PETITION.

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

20

The petition of Henry Hyer, of the Township of Little Falls, in the County of Passaic and State of New Jersey, respectfully shows:

First. Your petitioner was lawfully joined in the bonds of matrimony to Sophie Hyer, the defendant in this suit, on the seventeenth day of October, Nineteen Hundred and Four, by the Reverend John J. Young, pastor of Saint John's Lutheran Church, in the City of New York and State of New York.

30

Second. Defendant deserted petitioner about the first day in November, Nineteen Hundred and

Eight, and on the tenth day of December, Nineteen Hundred and Twelve; ever since which time, and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner.

Third. Petitioner and defendant have been bona fide residents of the State of New Jersey continuedly since the first day of May, Nineteen Hundred and Six, residing at Little Falls, in the County of Passaic and State of New Jersey.

Four. No children were born of the marriage aforesaid.

Five. Your petitioner prays, that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid; and that your petitioner may have such further relief as may be just.

And your petitioner will pray, &c.

Sidney Adlman,
Solicitor of Petitioner.

County of Passaic. }
State of New Jersey, } ss.

Henry Hyer, 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 said defendant but in truth and good faith for the cause set forth in the said petition.

Sworn to and subscribed before m e this day of January, 1917. } Henry Hyer. 10

20

30

Filed May 22, 1917.

IN CHANCERY OF NEW JERSEY

Between HENRY HYER, *Petitioner,* and SOPHIE HYER, *Defendant.*	*On Petition, &c.*

10

Amended Answer Denying Desertion and Setting up the Petitioner's Desertion, Abandonment and Refusal and Neglect to Properly Maintain and Provide for Defendant by way of Cross-Petition.

20 The answer of Sophie Hyer, defendant, to the petition of Henry Hyer, petitioner.

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

2. This defendant denies it to be true that defendant deserted petitioner about the 1st day of November, 1908, and on the 10th day of December, 1912, and that ever since said time, "and for more than two years last past," she has wilfully, continuedly and obstinately deserted petitioner; but, on the contrary, defendant says that the petitioner deserted this defendant in the manner particularly stated in the next succeeding part of this answer which is in the nature of a cross-petition.

30

3. This defendant admits it to be true that petitioner and defendant have been bona fide residents of the State of New Jersey since the 1st day of May, 1906.

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

10

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

And this defendant by way of cross-petition exhibited against the petitioner, says:

1. Defendant cohabited with petitioner for about eight years after their marriage, and during the early part of this period the petitioner treated this defendant with kindness and maintained and supported her, but was always very close in money matters, and exacted from petitioner a strict accounting to a penny, of the money spent by this defendant.

20

The said petitioner had a daughter by a former marriage and this defendant had a daughter by a former marriage, both girls being about the same age, and the said petitioner was very fond of this defendant's daughter to whom he was as kind as he was to his own daughter; but, on the 9th day of December, 1912, in the evening, this defendant was playing cards in the dining room with petitioner's daughter, Louise Hyer, and this defendant's daughter, Helen, was in the kitchen talking to a young man caller. Louise went upstairs and the petition-

30

er, Henry Hyer, then burst into the dining room, as exited as a maniac, and rushed into the kitchen. The defendant's daughter, Helen, screamed and defendant ran into the kitchen and found her daughter, Helen, lying on the floor by the range and her husband, the petitioner, said to the young man, "God damn you, I'll kill you yet; get the hell out of here." The petitioner then turned to defendant's daughter and said, "You God damned whore." This defendant inquired what was the matter and her daughter said that petitioner had struck her and had thrown her down. This defendant then asked her husband, the said petitioner, if it was true that he had struck Helen and the petitioner said, "Yes, I hit her and I'll hit you too," and said that defendant was running a whore house and that defendant was "nothing but a whore and a thief," and said, "You and Helen get to hell out of here." That this defendant then said, "If you mean that, I'll go." And the petitioner then said, "You can bet your God damned life you'll go, and her with you." Defendant then said to petitioner, "If you put me out, you will have to support me," and petitioner said, "I'll give you $5.00 a week to get rid of you." He used other language not fit to utter and told this defendant to take every stick of furniture which belonged to her out of the house. Defendant stayed up nearly all night packing up her furniture, and the next day she secured a truck to take the things away. While they were being removed, the petitioner came home. He watched everything, looked through the sideboard, got a bunch of keys from defendant's daughter for the purpose, and retained the keys of the front and back doors of the house,

saying that they belonged to him too; he took a little sugar that was in the sugar-bowl and a half a piece of laundry soap, claiming that they belonged to him. Defendant secured rooms in Little Falls village, a short distance from the petitioner's home, which was on Second Avenue. After being away a couple of weeks, this defendant returned to her husband's home to have a talk with him. The petitioner was just coming out of the house and when he saw the defendant he ran back and shut the door. Defendant rang the bell and knocked on the window, but petitioner would not let her in. Defendant went to the bank one night to see the petitioner where a meeting was being held. One of the directors saw defendant waiting outside and went back into the bank. The petitioner did not come out and must have gone out the back way. The next day defendant went to the bank with a friend and found the petitioner alone in the Little Falls National Bank, of which he was the cashier. Petitioner asked defendant what she wanted. Defendant answered, "I want to come home. Will you please let me have the keys so that I can get in?" The petitioner replied, "You can't get in and you can't have the keys either, and if you don't get out of here I'll have you arrested." Two weeks later, what little money this defendant had was gone and this defendant complained to Poor-Master Stanley. Petitioner then paid the defendant $6.00 per week, and about a month later he met this defendant outside of the bank and agreed to meet her that night, and did meet her and made up again and came to defendant's house where she lived, on Maple Street, in Little Falls, and promised defendant he would take her back again, that he would find a good place and build a bungalow for him and

10

20

30

her, away from Little Falls. Petitioner then frequently called upon defendant, in the evenings, took her out riding in his automobile and defendant thought that she and the petitioner were the best of friends once more. Defendant relied upon petitioner's promise. He asked for and received all the privileges of a husband. Petitioner took defendant automobiling to different parts of the country to find a place suitable to build a bungalow, as he said, "For just we two."

Petitioner advised defendant to take her daughter, Helen, to Bridgeport to break up the attachment between Helen and Frank, the young man hereinbefore mentioned, and promised defendant that he would give up his position as cashier, sell his property and go to live with defendant.

This defendant believed the petitioner and agreed to go, and did go to Bridgeport, where the petitioner and his daughter, Louise Hyer, visited this defendant in July, August and September, 1913, and kept up his payments until October, in said year, when he ceased his attentions to this defendant.

This defendant was compelled three times to lodge complaint before Poor Master Stanley of Little Falls, Passaic County, New Jersey, for nonsupport, and in January, 1915, had a warrant issued by Justice of the Peace, John Keys, of Paterson, N. J., and went before the Passaic County Grand Jury on subpoena, but pleaded with the Grand Jury not to indict the said petitioner.

This defendant was living in Paterson, at No. 370 Ellison Street, where she has since resided; wrote to her husband, the said petitioner, through her attorney, on January 8, 1915, and wrote her-

self on January 28, 1915, that she was despondent and downhearted and pleaded with him to come and see her and talk to her—to forget the past and be friends again.

This defendant again sent a pleading letter to her husband, the said petitioner, on January 6th, 1917, but her husband never answered said letters. This defendant made numerous other attempts to induce her husband to allow her to return to him and resume cohabitation, but petitioner persistently refused them, has never sought her return to him and has never, since October, 1913, given this defendant any hope or assurance of resuming cohabitation with this defendant.

The petitioner, by the true intent and meaning of the Statute in such case made and provided, has, ever since the 7th day of January 1915, and for more than two years last past, wilfully, continuedly and obstinately deserted this defendant.

2. Defendant, this cross-petitioner, was a bona fide resident of this State, having her permanent home at 370 Ellison Street, Paterson, N. J., when this cause of action arose as aforesaid, and has ever since, and for more than two years next preceding the commencement of this action, continued to be such resident, residing continuously at 370 Ellison Street, aforesaid.

3. Defendant is past 55 years of age, and she has no means of support except from her own exertions, except the sum of $26.00 per month now received from her said husband.

And this defendant, by way of cross-petition exhibited against the petitioner, for a further cause of action, says:

Second Cause of Action:

1. Defendant cohabited with petitioner for about 8 years, separated and agreed to marital relations while in said state of separation until October, 1913, as hereinabove stated. Since that time the petitioner has broken off all relations with the defendant
10 and on the 7th day of January, 1915, defendant, through her attorney, requested petitioner to allow her to return to him but petitioner absolutely refused to ever live with her again, and from that time on this petitioner has repelled all advances made by this defendant to have said petitioner allow her to return to live with him.

2. Defendant, this cross-petitioner, was a bona fide resident of this State, having her permanent home at
20 370 Ellison Street, Paterson, N. J., when this cause of action arose as aforesaid, and has been ever since, and for more than two years next preceding the commencement of this action, continued to be such resident, residing continuously at the address aforesaid, and the petitioner was a bona fide resident of this State, having his permanent home at Little Falls village, in the County of Passaic, where he has continuously resided for the same space of time and where he still resides.

30

3. Defendant, this cross-petitioner, charges that on or about the 9th day of January, 1915, the petitioner abandoned her and separated himself from her and charges that ever since the 9th day of January, aforesaid, petitioner has abandoned the defendant, this cross-petitioner, without justifiable

cause and has refused and neglected, and still does refuse and neglect to properly maintain and provide for her.

4. Defendant, this cross-petitioner, is over 55 years of age and is dependent for the support of herself upon her own exertions, has no real or personal property and no money in her possession or held in trust for her by anybody and is now receiving from her husband the sum of $26.00 per month, which is inadequate to provide for her support.

5. Defendant, this cross-petitioner, charges that the said petitioner was, until recently, possessed of a large amount of real and personal property, amounting to about $30,000.00 which she verily believes is now held in trust for the benefit of said petitioner or which the said petitioner is endeavoring to secrete; that during the last 10 years during which petitioner resided in Little Falls, he has received in salary, as cashier of the Little Falls National Bank, over $8,000.00, and that the balance of the said $30,000.00 hereinbefore mentioned, consisted of moneys, the proceeds of bonds and mortgages held by said petitioner, including a house on Second Avenue, Little Falls, Passaic County, N. J., which said petitioner conveyed to his sister, Annie Hart, of Brooklyn, New York, for the consideration of $1.00; that said petitioner has rented said house for $40.00 per month, has removed his furniture to parts unknown, has sent his daughter to live in Brooklyn with his said sister, Annie Hart, has removed to parts unknown the automobile which he possessed and is now boarding in Little Falls, N. J., where he has no suppers on week days and no meals on Sun-

days; that he is now receiving an annual salary of $1200.00 and that he is abundantly able to properly maintain and support this defendant, the cross-petitioner, as his wife, and according to her age. Said petitioner also received a legacy and money from a life insurance policy which would increase the amount of money received by said petitioner to
10 about $38,850.00, which your cross-petitioner charges he is attempting to conceal for the purpose of defeating your cross-petitioner and to prevent her from getting proper maintenance and support from him. The said petitioner is 54 years of age.

6. Defendant, this cross-petitioner, prays that her husband, the said petitioner, Henry Hyer, may be required to pay to her a proper allowance for her suitable support and maintenance, to be paid and
20 provided by him, or made out of his property, for your cross-petitioner, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said petitioner may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court, as provided by the Statute; and that the said petitioner may be required to pay to your cross-petitioner a proper
30 amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

And this defendant, the cross-petitioner, will ever pray, &c.

Sophie Hyer, *Defendant.*
The Cross-Petitioner.
and
John F. Kerr,
Solicitor of Def't. the Cross-Petitioner.

County of Passaic.
State of New Jersey, } ss.

SOPHIE HYER, being duly sworn according to law upon her oath deposes and says that she is the cross-petitioner named in the foregoing cross-petition and that her cross-petition is not made by any collusion between her and the defendant therein, but in truth and good faith, for the causes set forth in said cross-petition. 10

Sophie Hyer.

Subscribed and sworn to before me this 21st day of May, A. D., 1917.

Geo. T. Anderson, Jr., 20
Master in Chancery of N. J.

30

IN CHANCERY OF NEW JERSEY

Between

HENRY HYER,

Petitioner,

10 and

SOPHIE HYER,

Defendant.

Amended Answer to Cross-Petition, &c.

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

20

The answer of Henry Hyer, the above named petitioner, to so much of the answer of Sophie Hyer, the above named defendant as in the nature of a cross-petition.

1. Your petitioner as defendant in said cross-petition admits that on the ninth day of December, 1917, in the evening, the defendant, Sophie Hyer, was playing cards in the dining room with petitioner's daughter, Louisa Hyer, and the defendant's daughter, Helen, was in the kitchen talking to a young man caller, but your petitioner denies that he burst into the dining room as excited as a maniac and rushed into the kitchen. Your petitioner further denies that defendant's daughter, Helen, screamed and that the defendant ran into the kitchen and found her daughter, Helen, lying on the

30

floor by the range and that the petitioner said to the young man, "God damn you, I'll get you yet; get the hell out of here," and that the defendant inquired what was the matter and her daughter said that petitioner had struck her and had thrown her down, and that this defendant then asked her husband, the said petitioner, if it was true that he had struck Helen and the petitioner said, "Yes, I hit her and I'll hit you too," and said that defendant was running a whore house and that defendant was "nothing but a whore and a thief," and said, "You and Helen get the hell out of here," and that this defendant then said, "If you mean that, I'll go." And the petitioner then said, "You can bet your God damned life you'll go and her with you," and that defendant then said to petitioner, "If you put me out, you will have to support me," and petitioner denies that he said, "I'll give you $5.00 a week to get rid of you," and further denies that he used other language not fit to utter and told this defendant to take every stick of furniture which belonged to her out of the house, and that defendant stayed up nearly all night packing up her furniture, and the next day she secured a truck to take the things away and while they were being removed, the petitioner came home. Petitioner denies that he watched everything, looked through the side-board, got a bunch of keys from the defendant's daughter for the purpose, and retained the keys of the front and back doors of the house, saying that they belonged to him too; and petitioner further denies that he took a little sugar that was in the sugar bowl and a half piece of laundry soap, claiming that they belonged to him, and that defendant secured rooms in

Little Falls village, a short distance from the petitioner's home which was on Second Avenue. Petitioner further denies that after being away a couple of weeks, this defendant returned to petitioner's home to have a talk with him. The petitioner further denies that he was just coming out of the house and when he saw the defendant he ran back and shut the door, and that defendant rang the bell and knocked on the window, but petitioner would not let her in, and that defendant went to the bank one night to see the petitioner where a meeting was being held, and that one of the directors saw defendant waiting outside and went back into the bank. The petitioner denies that he did not come out and must have gone out the back way, and that the next day defendant went to the bank with a friend and found the petitioner alone in the Little Falls National Bank, of which he was cashier. Petitioner denies that he asked defendant what she wanted, and that defendant answered, "I want to come home. Will you please let me have the keys so that I can get in?" The petitioner denies that he replied, "You can't get in and you can't have the keys, either, and if you don't get out of here I'll have you arrested." Petitioner admits that after his wife deserted him in the manner alleged in his petition and that after she was away for a short while a complaint was entered against him for non-support before Poor Master Stanley, of the village of Little Falls, and that immediately thereupon he agreed to contribute to the support of his wife by paying her $6.00 each and every week, and this, your petitioner has been doing from on or about the early part of March, 1913, up until the present time.

Petitioner denies that about a month later he met this defendant outside of the bank and agreed to meet her that night, and did meet her and make up again and came to defendant's house where she lived, on Maple Street, in Little Falls, and promised defendant that he would take her back again, and he would find a good place and build a bungalow for him and her, away from Little Falls. Petitioner denies that then frequently he called upon defendant, in the evenings, took her out riding in his automobile and defendant thought that she and the petitioner were the best of friends again, and that defendant relied upon petitioner's promises, and that he asked for and received all the privileges of a husband. Petitioner denies that he took defendant automobiling to different parts of the country to find a place suitable to build a bungalow, as he said, "for just we two."

Petitioner denies that he advised defendant to take her daughter, Helen, to Bridgeport to break up the attachment between Helen and Frank, the young man hereinbefore mentioned, and promised defendant that he would give up his position as cashier, sell his property and go to live with defendant.

And your petitioner further denies that he either by words or by his conduct indicated or represented to the defendant that she should go to Bridgeport or that there was any cause for her to believe that that was the desire of this petitioner, but on the contrary your petitioner charges that he represented to the defendant otherwise, and that it was his expressed desire that his wife should always return to him to her home in Little Falls, and it was for

this purpose that petitioner and his daughter, Louisa Hyer, visited this defendant in 1913 at Bridgeport.

And your petitioner further denies that she was compelled three times to lodge complaint before Poormaster Stanley of Little Falls, Passaic County, New Jersey, for non-support, and in January, 1915, had a warrant issued by Justice of the Peace, John Keys, of Paterson, New Jersey, and went before the Passaic County Grand Jury on subpoena.

But your petitioner charges that when the defendant in this suit deserted him wilfully, as is alleged in his petition he had no knowledge as to his legal obligations to this defendant and when the complaint was made before Poormaster Stanley and that he was advised that even though his wife did desert him he was legally obligated to support her he did make immediate provision for her support and has continued to make such provision from that time up until the present and that these other complaints which are referred to, the one before Justice Keys and the other before the Grand Jury was made by the defendant in this suit when there was a short lapse of payment on the part of your petitioner and your petitioner charges that these intervals which did occur, short as they were, were due to his inability to conduct his work while he was sick and that when the lapses were made such explanations were given to the solicitor of the defendant and that when your petitioner resumed his duties he not only continued to make the payments in accordance with his promise but also made good any lapses that did occur.

And this petitioner further denies that while the defendant was living in Paterson, at No. 370 Ellison St., where she has since resided, wrote to her husband, the said petitioner, through her attorney, on January 8, 1915, and wrote herself on January 28, 1915, that she was despondent and down-hearted and pleaded with him to come and see her and talk to her, to forget the past and be friends again. 10

And your petitioner further denies that this defendant again sent a pleading letter to her husband, the said petitioner, on January 6th, 1917, but her husband never answered said letters, and that this defendant made numerous other attempts to induce her husband to allow her to return to him and resume cohabitation, but petitioner persistently refused them, has never sought her return to him, and has never, since October, 1913, given this defendant any hope or assurance of resuming cohabitation with this defendant. 20

The petitioner denies that by the true intent and meaning of the statute in such case made and provided, has, ever since the 7th day of January, 1915, and for more than two years last past, wilfully, continuedly and obstinately deserted this defendant, but on the contrary, he says that the said cross-petitioner has been guilty of a wilfull, continued and obstinate desertion of this petitioner, in manner and form as before alleged by this petitioner in his petition. 30

Second Cause of Action:

1. Petitioner denies that he cohabited with defendant for about 8 years, separated and agreed to marital relations while in said state of separation

until October, 1913, as is stated in the amended answer. Petitioner denies that he has broken off all relations with the defendant and on the 7th day of January, 1915, petitioner denies that the defendant, through her attorney, requested petitioner to allow her to return to him but petitioner absolutely refused to ever live with her again, and petitioner denies that from that time on he has repelled all advances made by this defendant to have said petitioner allow her to return to live with him.

2. Petitioner admits it to be true that the defendant, this cross-petitioner, was a bona fide resident of this State, having her permanent home at 370 Ellison Street, Paterson, N. J., when this cause of action arose as aforesaid, and has ever since, and for more than two years next preceding the commencement of this action, continued to be such resident, residing continuously at the address aforesaid.

3. This petitioner denies that on or about the 9th day of January, 1915, he abandoned the defendant and separated himself from her and this petitioner further denies that ever since the 9th day of January, aforesaid, he has abandoned the defendant, this cross-petitioner, without justifiable cause and has refused and neglected, and still does refuse and neglect to properly maintain and provide for her.

4. Petitioner denies that the defendant in this suit is receiving $26.00 per month but on the con-

trary charges that by an order entered in this proceeding by this Honorable Court she is receiving the sum of $30.00 each and every month for her support which this petitioner maintains is adequate to provide for her support.

5. This petitioner denies that until recently he was possessed of a large amount of real and personal property, amounting to about $30,000.00 which the defendant verily believes is now holding in trust for the benefit of said petitioner or which said petitioner is endeavoring to secrete. Petitioner admits that during the last ten years while the petitioner has resided at Little Falls he has received in salary, as cashier of the Little Falls National Bank, about $8,000.00, but your petitioner denies that he ever received the sum of $30,000.00 as is alleged in the Second Count of the amended answer and your petitioner further denies that he has made any concealment of any automobiles which were formerly his property but on the contrary your petitioner charges that he is at present receiving the sum of $1200.00 in salary as cashier of the Little Falls National Bank, out of which sum he is compelled to partially support his daughter who is residing with his sister in the City of Brooklyn, in the State of New York, and part of his salary is necessary for medical services and medicines as petitioner charges he is sick and afflicted with bronchial troubles, and that the petitioner further believes that the sum of $30.00 a month which he is now paying the defendant in this suit as ordered by this Honorable Court is fully sufficient to support and maintain this defendant.

This petitioner prays that said cross-petition of the defendant may be dismissed, and that the petitioner may have the relief prayed for in his said petition.

10 Henry Hyer,
Signature of Petitioner.

and

Sidney Adelman,
Signature of Solicitor.

Dated July 20, 1917.

20

30

IN CHANCERY OF NEW JERSEY.

Between HENRY HYER, *Petitioner,* and SOPHIE HYER, *Defendant.*	*On Petition for Divorce.*

10

Chancery Chambers, Paterson, N. J., Thursday, March 14, 1918.

Before Honorable Eugene Stevenson, Vice Chancellor.

20

Mr. Sidney Adlman and Mr. Addison P. Rosenkrans for the petitioner.

Mr. John F. Kerr for the defendant.

HENRY HYER, the petitioner, sworn.

Direct Examination by Mr. Rosenkrans.

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

30

Q. Where do you reside? A. Little Falls, New Jersey.

Q. How long have you lived there? A. Since 1906, the first of May, 1906.

Q. What is your business? A. Cashier of the Little Falls National Bank.

Q. How long have you held that position? A.

Ever since the bank opened, the first day it opened up in August, 1907.

Q. How old are you? A. Fifty-five.

Q. The defendant Sophie Hyer is your wife? A. Yes, sir.

10 Q. When were you married to her? A. In October, 1904.

Q. Where? A. New York.

Q. By whom? A. Minister Young of the Christopher Street Lutheran Church.

Q. Upon your marriage to her did you keep house together? A. Yes, sir.

Q. Where? A. In Brooklyn.

Q. What was your family at that time? A. My wife and my daughter and her daughter and myself, her son and my son.

20 Q. You had a daughter by a prior marriage? A. Yes, sir, and a son by a prior marriage.

Q. Your first wife was dead at the time you married the defendant? A. Yes, sir.

Q. Had she been married before? A. Yes, sir.

Q. And had a daughter by a former husband? A. Yes, sir.

Q. Her former husband was deceased at the time of the marriage? A. No; she got a divorce, or he got a divorce.

30 Q. How long did you live together in Brooklyn? A. To the first of May, 1906.

Q. Where did you move to at that time? A. Little Falls, New Jersey.

Q. Who went with you? A. My wife and daughter, and my daughter and myself, and then she asked me to have her mother with us and I said Yes, and she brought her mother along with us.

Q. Did you commence housekeeping in Little Falls? A. Yes, sir.

Q. Where? A. Cedar Grove Road.

Q. How long did you continue to live with the defendant, and she with you? A. Until 1908. We moved up to Second Avenue, Little Falls.

Q. After 1908 did you continue to live at Little Falls? A. Yes, sir. 10

Q. Until what date, together? A. Until 1912 when she left me, December 10, 1912.

Q. Had any separation ever occurred between you, a temporary separation? A. Yes, sir. She left twice before that, she left in 1906, and in 1908.

Q. In 1906 how long was she gone? A. She left on a Friday afternoon, and I went after her on Saturday afternoon and brought her back.

Q. Where did you find her? A. Over in Brooklyn, in a furnished room there. 20

Q. In 1908 you say she absented herself from your home? A. Yes, sir, she took a load of furniture from the home and went over to Brooklyn, and opened a furnished room house over there.

Q. How long was it before she came back? A. About two months.

Q. In 1906 did you offer any inducements to get her to return? A. Yes, sir, to get her to come back I gave her a $200.00 check, to get her to come back, or else she would not come back. 30

Q. You say she was gone about two months in 1908? A. Yes, sir.

Q. And was living where during that period? A. At Gates Avenue, Brooklyn, I forget the number now.

Q. Did you see her over there? A. I went over

when I found out where she lived; I went over there and when I got over there she was sitting at a table and three men and two other women.

Q. Did you ask her to come back? A. Yes, sir.

Q. And she came? A. About two months afterwards; I went over there two or three times, and I finally got her to come back.

Q. On December 10, 1912, you say she left again? A. Yes, sir.

Q. Did anything happen just before she left? A. The night before. I had warned her not to leave her daughter Helen, bring a certain party there, that I objected to, into my house.

Q. Who was the certain party to whom you objected? A. A man by the name of Frank Marley, a young fellow.

Q. Was he calling on your wife's daughter? A. He was not. He was keeping company with her as far as I know.

Q. And you objected to his calling at your home, upon your wife's daughter? A. Yes, sir.

Q. Had you ever said anything to your wife or daughter about Marley's calling to your home, prior to this night of which you speak? A. Yes, sir, half a dozen times.

Q. What did your wife say in reply? A. She said she would not allow him to come in the house or to meet her daughter there, she would meet him on the outside. Of course I told her I had no jurisdiction over her daughter she could meet him where she liked to, but she could not bring him in my house.

Q. Did you think you had some valid reason for barring Mr. Marley from your home? A. Yes, sir, I did.

Q. Did you communicate that reason to your wife? A. I did.

Q. You say that on the night before your wife left, Mr. Marley called notwithstanding? A. Yes, sir, he was in the house.

Q. Did you meet him there? A. I was out, and I heard he had got in; he was waiting for me to go out, and he would go in, as he had done several times when I was out, so I went in and found him in the house.

Q. About what time was that? A. About eight o'clock in the evening.

Q. Who else was in the house at that time? A. My daughter, and her daughter, and Mrs. Hyer.

Q. In what part of the house, were your wife's daughter and Mr. Marley? A. In the kitchen.

Q. Where was your daughter at that time? A. I believe she was upstairs in her room at the time.

Q. Where was your wife? A. Sitting in the dining room.

Q. Is there a door between the dining room and the kitchen? A. Yes, sir.

Q. What did you do if anything when you came in and found Mr. Marley in the kitchen with your wife's daughter? A. I went in the front door and as I went in the front door to go in the kitchen Mrs. Hyer yelled to Helen to give her a warning and when I got in the kitchen Mr. Marley was ready to go out of the back door and I said, "Don't you come in this house any more," and he said, "Let me get my hat and coat," and I said "Where are they?" He said it was hanging right by the back door. He had it ready so that at any time I came in he could get out.

Q. Did he go out? A. Yes, sir.

Q. What did you do after his leaving? A. I told the daughter if she didn't like it she could pack up too and go with him, that I wasn't charging her any board and she was getting a good home there, and she ought to do as I said, and if she wanted to meet him she should go outside and meet him, and then, to keep cool and not have any more arguments, I went out and went up to the village.

Q. Have you stated all that occurred between your wife and her daughter and yourself that evening? A. Yes, sir.

Q. You went out you say? A. Yes, sir.

Q. At what time did you return? A. About ten or half past ten.

Q. Was anything said on your return by your wife? A. No, they were all in bed when I got home.

Q. Was anything said next morning? A. Next morning when I got up, Mrs. Hyer and her daughter were in another room and did not show up until I went out, and that day my daughter and I had our breakfast because we had to go to work.

Q. Your daughter was employed where at that time? A. At Quackenbush's in Paterson.

Q. Did you see your wife before you left the house that morning? A. No, sir.

Q. Did you go to the Bank as usual? A. Yes, sir.

Q. Did you come home at noon? A. About one o'clock, my time to come back.

The Vice Chancellor.—Did you and your wife occupy separate rooms at that time?

The Witness.—No, sir; only that evening she stayed in her daughter's room.

Q. Upon your return to your home about one o'clock did you find your wife there? A. No, she was gone and a load of furniture gone.

Q. Had you received any intimation from her or from any other source that she was going to go that morning? A. No, sir.

Q. Did you know where she went to? A. I could not tell that at the time, no. 10

Q. How soon afterwards did you see her again? A. Probably three or four nights after that, down at Paterson one night.

Q. Where did you see her in Paterson? A. She was standing on the corner of Ellison and Main Strs., waiting for her daughter and she had Frank Marley with her.

Q. You met her by chance? A. Yes, sir, and when they saw me coming they walked away. 20

Q. When did you see her again? A. When she lived in Maple Street, Little Falls. She moved back to Little Falls about March, 1913.

Q. She left on the 10th of December, 1912? A. Yes, sir.

Q. And then she came back to Little Falls on Maple Street? A. Yes, sir.

Q. In March, 1913? A. Yes, sir.

Q. Did anybody come back with her there? A. I could not tell you. 30

Q. Her daughter? A. Her daughter I believe; her daughter was with her.

Q. Her daughter left your home at the same time as your wife left? A. Yes, sir.

Q. Did they keep house on Maple Street, Little Falls? A. Yes, sir.

Q. In March, 1913? A. Yes, sir.

Q. You saw her about that time? A. Yes, I saw her after she went to the Poor Master of the Town, I saw her after that.

Q. Where did you see her first? A. Mr. Stanley the Poor Master told me he had a letter from her that she wanted support from the Town, and Mr. Stanley thought it was up to me to support her and instead of the town, and of course I told Mr. Stanley —I got my brother-in-law over there for those two to go down to see Mrs. Hyer, and see what could be done in the matter, if it could be straightened up, and Mr. Stanley and my brother-in-law went over there, and Mr. Stanley came after me to come down to Mrs. Hyer's house.

Q. Did you go? A. Yes, sir.

Q. This was in March, 1913? A. Somewhere around that time, early in the Spring.

Q. Who were there at that time? A. Mrs. Hyer and Mr. Stanley, and my brother-in-law and myself.

Q. What is your brother-in-law's name? A. Hart.

Q. Where does he live? A. Brooklyn.

Q. And did at that time? A. Yes, sir.

Q. Had your wife been friendly with him? A. Yes, sir.

Q. Their relations were pleasant, were they? A. Yes, sir.

Q. You say you went to your wife's home; who let you in? A. Mr. Stanley walked in first. and I walked right in after him.

Q. Did any conversation take place there? A. When I walked in she said, "What do you want here, you big stiff?"

Q. What did you say? A. I did not say anv-

thing. I turned right around to Mr. Stanley and I said I thought I was not wanted there, and he said, "Yes, sit down," and I waited and Mr. Stanley did the talking.

Q. Your wife was present? A. Yes, sir.

Q. And Mr. Stanley talked to whom? A. To Mrs. Hyer. 10

Q. What did he say? A. Well, I can't just recall.

Q. As nearly as you can? A. About support, talking about support; why didn't she come back to live with me, and she refused to come back, all she wanted was support.

Q. Did you say anything about her returning to you? A. Why yes, that was my intention in going there, to get her back.

Q. What did you say to her? A. She was so hot there, I could not talk very much to her; I let Mr. Stanley do the talking. 20

Q. Did you undertake to talk to her? A. I did, but she would not listen to me.

Q. What did you say to her about returning? A. I told her I had a good home there yet, and why didn't she come back home. She refused, she would not listen to it at all; all she wanted was support.

Q. Was any arrangement made that day for her support? A. I believe it was. I was willing to pay her $6.00 a week. The Poor Master told me that was the minimum rate, — or the maximum rate; I don't know just what he did call it. 30

Q. How long were you there then? A. About fifteen to twenty minutes. I had to go back to the Bank again.

Q. They called you out during banking hours? A. Yes, sir.

Q. What became of your wife after your visit to her home in Maple Street on that occasion? A. She went up to Bridgeport to live, after she left there.

Q. How soon? A. I think it was about the tenth of June or the first of June; when she moved there.

10 Q. To Bridgeport? A. Milford Beach.

Q. In the State of Connecticut? A. Yes, sir.

Q. Prior to her actually going did you know she was going to go there? A. Not at the time, no.

Q. How did you learn that she had gone there? A. She wrote me a letter to send the checks up there.

Q. That was about the first of June, 1913? A. Yes, sir.

Q. Is Midland Beach a summer resort?. A. Milford Beach.

20 Q. Is that a summer resort? A. Yes, sir, all cottages along there.

Q. Do you know what your wife did up there during that summer? A. As far as I know she had furnished rooms and let them out.

Q. During that summer did you continue to pay the $6.00 a week? A. Right along; I paid her by the month.

Q. When did you see her again? A. I believe it was around the 4th of July of that year; I motored up from Little Falls to Milford Beach.

30 Q. Why? A. To see what I could do to get her back.

Q. Did you have anyone with you? A. My daughter.

Q. Your daughter? A. Yes, sir.

Q. Did you go to your wife? A. Yes, sir.

Q. And spent some time there, with her? A. Yes, sir; we took her to New Haven with us, for a ride to New Haven, and stayed there.

Q. You and your daughter? A. My daughter and my wife.

Q. How long did you stay together at Bridgeport? A. I think it was two nights and one day or two days and one night, I am not sure which.

Q. Did you speak to your wife at that time about returning to you? A. Yes, sir. 10

Q. What did she say? A. She said why didn't I give up Little Falls, and come and live at Bridgeport, it was a nice place to live and I could get a job there, and I told her no, I had a good steady job at the bank for life if I took care of myself; and she didn't care about coming back to Little Falls.

Q. Did you speak to her more than once, during this trip to Milford Beach and New Haven, about her returning to you? A. Yes, sir, we spoke right along about it. 20

Q. When did you see her again? A. In the early fall of 1913.

Q. The same year? A. Yes, sir.

Q. Where was she at that time? A. Living on Park Avenue, Bridgeport; she had a flat there.

Q. In the State of Connecticut? A. Yes, sir.

Q. Do you recall when you went there? A. I think around September.

Q. What did you go there for at that time? A. To see to what I could do to get her back again. 30

Q. Did you go alone? A. I went alone that day.

Q. Did you see your wife? A. Yes, sir.

Q. Did you have any special reason at that time to believe that you might be able to induce her to come back to you? A. I always got her back before and I thought there was a chance to get her back again.

Q. Had you heard she had moved from Milford Beach to Bridgeport? A. Yes, she wrote me a letter to send the checks there.

Q. Did she tell you prior to your trip to Bridgeport, where she was living there? A. Yes, sir.

Q. What did she say? A. When I wrote her I would like to come up there, she told me how I could get there.

Q. You wrote her that you would like to come there? A. Yes, sir.

Q. At what kind of a place was she living? A. A flat, a two family flat house, I think it was.

Q. Was she living in a flat? A. Yes, sir.

Q. Who was living with her? A. Her daughter and her son.

Q. Has she a son? A. Yes, sir, by her first marriage.

Q. Did you meet her in her flat in Bridgeport? A. Yes, sir.

The Vice Chancellor.—When was this?
The Witness.—In September, 1913.

Q. What day of the week? A. Saturday, Saturday afternoon.

Q. You say you went there for the purpose of getting her to come back to Little Falls? A. Yes, sir.

Q. Did you speak to her about it? A. Yes, sir.

Q. What did she say? A. I told her "What is the good of living up here, why don't you come back to Little Falls, and live there?" and she said she would come back, and of course I took it for granted she would come back, and she asked me to stay over-

night, and come back next day, so I stayed there that night until the next day.

Q. Who was there that night besides you and your wife? A. We were alone when we were talking; the daughter came in, and the son came in to supper, and he dressed himself to go out, and I didn't see him again, until I left on Sunday afternoon; he did not come back that night.

Q. What became of the daughter? A. She went to work and came in about half past eight and I didn't see her on Sunday morning, I didn't see her until about dinner time.

Q. Did you stay overnight? A. Yes, sir.

Q. You occupied the same bed with your wife? A. Yes, sir.

Q. Was anything said on this Saturday night as to when your wife would come back to Little Falls? A. She would come back the next Sunday afternoon, when I was going home.

Q. The following day? A. Yes, sir.

Q. With you? A. Yes, sir.

Q. Was anything said about the disposition of the furniture in the flat? A. The furniture she was going to give to the daughter, let the daughter take it; pack up her grip and come with me.

Q. Her daughter was to continue to live in Bridgeport? A. Yes, sir.

Q. Do you know whether or not her daughter was engaged at that time, and about to be married? A. She was keeping company up there with a party.

Q. On the following morning, Sunday morning, was anything more said about coming back to Little Falls? A. We had breakfast and I told her I would take a walk around the town and see Bridgeport, and

I told her I would take a walk around the town, while I was up there, and I went out for an hour or two and came back and had dinner, and the daughter went out and we were alone about two hours, and I spoke about it and she changed her mind and wanted a couple of days to pack up; I told her there was
10 nothing to pack up, and she says she wanted a couple of days time, and I went home without her.

Q. When you left that day did you think she would follow you up and come back? A. I had that idea in my mind.

Q. You went home then? A. Yes, sir.

Q. Did she come to Little Falls, in two or three days? A. No, sir.

Q. Or any time after that, to live with you? A. No, sir.

20 Q. Did you do anything about it? A. I received a letter then, I don't know how long afterwards, but I received a letter and she stated that she wanted money. I should send her money up there, that she did not care to come back to Little Falls, or didn't care about living in Little Falls.

By the Vice Chancellor :

Q. Have you that letter? A. No, sir, I did not keep it. I did not think anything like this would
30 come up.

Q. Have you no letters you received from her? A. A few, I found a few. Mr. Adlman has them there.

Further Direct Examination:

Q. About how long after your trip to Bridgeport did you receive the letter which you have described?

A. Three or four weeks; three weeks probably, or four weeks.

Q. Did you reply to that letter? A. I did.

Mr. Rosenkrans.—Have you the letter?

Mr. Kerr.—What letter?

Mr. Rosenkrans.—The letter written in the Fall of 1913. 10

Mr. Kerr.—By whom?

The Witness.—It might be in January when the letter was writen, I can't just tell; it was quite a while after.

Q. You say that within two or three weeks after you came back from Bridgeport, your wife wrote to you? A. Yes, sir.

Q. Did you reply to that letter? A. I replied to it, yes, sir. 20

Q. When, how soon after its receipt? A. It might be a month afterwards, I believe, or two months, or a month, I can't just exactly tell; I cannot recall it.

Q. Did you ever afterwards ask your wife to come back with you? A. No, sir.

Q. Why not? A. Because she had fooled me that time, and I thought it was no use my going after her any more; she had fooled me that night, and I thought it was no use going any more. 30

Q. You say she fooled you that night, what do you mean? A. By telling me she would come back and making me stay there overnight and next day not coming with me.

Q. Did you think if you renewed your efforts there would be any chance of success, of inducing

your wife to come back? A. I think it was a year or two afterwards I got Mr. Kramer and my daughter to speak to her.

Q. Within the first three months, after your Bridgeport trip, did you think there was any use of making further efforts?

10

Mr. Kerr.—I object to that question. I think he should ask him, "Did you ever make any further efforts," but to put the question in that way I think is instructing the witness and I object to it.

The Vice Chancellor.—The question is proper and will be allowed.

A. Not after she had fooled me that night I didn't

20 think so.

Q. Did you see her at any time between your Bridgeport trip and the institution of this suit? A. Yes, sir, several times she came to the Bank.

Q. This suit was brought in the first of the year 1917? A. Yes, sir.

Q. When did she come down to the Bank? A. 1915; I think it was in the year 1915, during the summer.

Q. Do you know what she came to the Bank for?

30 A. She came in there demanding money.

Q. Was anyone there at the time? A. The President of the Bank was with me.

Q. What is his name? A. S. D. Francisco.

Q. Dis you give her money? A. Yes, sir. I had $7.00 in my pocketbook, and I handed her $6.00 and she said "I want more," I said "I have no more but I will give you the last dollar I have got," and I gave her every dollar, and she said "You have a

lot more in there", and I said "That does not belong to me. I cannot give you any more than I have in my pocketbook."

Q. What time was that? A. About dinner time.

Q. During banking hours? A. Yes, sir.

Q. Were other people in there? A. They were in and out all the time. 10

Q. Did you see her after that? A. After that time in the Bank?

Q. Yes, after her visit to the Bank at Little Falls in 1915, did she ever visit the Bank again? A. No, I don't think I ever saw her after that.

Q. You spoke about Mr. Kramer; you got him to speak with her? A. Yes, sir.

Q. Who is he? A. Baker up there.

Q. In Little Falls? A. Yes, sir. 20

Q. Will you tell us why you selected him to speak to your wife? A. Because he was very friendly with her and she was visiting in his house all the time and I thought it was a good chance for him to speak to her.

Q. Was she living in Little Falls at that time? A. Yes, sir.

Q. With whom? A. Her daughter. And he had a sister.

Q. Keeping house there? A. Yes, sir. 30

Q. Was your wife acquainted with the sister? A. Yes, sir.

Q. Had she been accustomed to go there? A. Yes, sir, she was going there right along as far as I knew.

Q. You did know that? A. Yes, sir.

Q. What did you ask Mr. Kramer to do for you? A. To see what he could do to get her back.

Q. Did you ask him on more than one occasion? A. I think it was twice I asked him.

Q. How far apart were those occasions? A. It might have been a month or so.

By the Vice Chancellor

10 Q. When was it you made the first effort? A. In 1914.

Q. What time of the year? A. Summer time.

Q. How long after? A. It might have been 1916; I aint sure of the year. I think it was 1916.

Q. How long after the first time did you make another effort? A. About a month afterwards I suppose.

Q. You can tell us what Mr. Kramer reported to you? A. He came back to me and told me she 20 would not have anything to do with Little Falls, that she would not have anything to do with the people in it, that they were all hypocrites, and no good, Church goers, and she didn't want to come back and live in Little Falls.

Q. Do you know where she was living at that time? A. In Paterson.

Further Direct Examination:

Q. Do you know what she was doing there? A 30 At one time she was working in the Y. W. C. A.

Q. Did you ask anyone else to speak to her? A. My daughter.

Q. With the object to getting her back to your home? A. My daughter.

Q. In what year was that? A. In 1916.

Q. Where was your wife living at that time? A. In Paterson, 370 Ellison Street.

Q. Do you know what she was doing there? A. She had a furnished room there I believe.

Q. Did your daughter say what occurred between your wife and herself? A. She would not listen to my daughter at all ,because my daughter went to the Y. W. C. A., and she would not listen to her at all, she said it was no place to talk over such matters and another thing—

10

The Vice Chancellor—You do not know anything about that, excepting what your daughter told you.

The Witness—No, sir.

By the Vice Chancellor

Q. What did you tell your daughter to say to your wife? A. To see if she could not get her back.

Q. You can tell what your daughter reported. A. That she did not want to have anything to say in the Y. W. C. A., that was no place to discuss the matter, and she didn't want to have any discussion about the matter anyway.

20

Q. Your daughter reported that as what your wife said to her? A. Yes, sir.

Q. Anything else? A. Nothing else that I can recall now.

Further Direct Examination:

30

Q. From the time of your trip to Bridgeport, in September, 1913, up to the time of the bringing of this suit, did you have anything to do with your wife? A. No, sir.

Q. In the way of exercising your marital rights? A. No, sir.

Q. From December, 1912, up to the time you

brought this suit if your wife had wished to return to her home at any time, will you state whether or not you would have taken her back? A. Yes, sir.

Cross Examination by Mr. Kerr.

10 Q. You remember the last day you were here taking testimony in this case? A. Yes, sir.

Q. Did you have any attorney, instruct any attorney, to come and see me to ask to settle this case, for $1,500.00? A. Did I what?

Q. Did you instruct any lawyer in the City of Paterson to see me and try to settle this case for $1.500.00? A. Me? No, sir; I never sent no lawyer.

Q. When did you hire Mr. William Elliott, as attorney in this case? A. I don't know the man, I 20 never saw him.

Q. He was here asking questions to you? A. I did not know what his name was; Mr. Adelman brought him along.

Q. Did you hire him? A. No, Mr. Adelman is my counsel.

Q. Then you did not know this man and never saw him in your life? A. Not until I saw him here in the Court room.

Q. When did you employ Mr. Rosenkrans? A. 30 I have not employed him even.

Q. When did you see Mr. Rosenkrans to cover this case with him? A. I was in Mr. Adelman's office, when Mr. Adelman called him in.

Q. When was that?

Mr. Rosenkrans—Tell him, Mr. Hyer.

Mr. Kerr You don't need to tell him to tell it.

Mr. Rosenkrans—It was on a Sunday morning was it not?

The Witness—On a Sunday morning.

Mr. Rosenkrans—That is why he hesitated, —last Sunday morning.

10

Q. You know, do you, or don't you know, that the testimony taken at the last hearing was lost? A. Mr. Adelman told me.

Q. Have you see that testimony since that day? A. No, sir.

Q. Have you heard anything about that testimony since that day? A. Only that Mr. Adelman told me it was lost and we would have to have a new trial.

Q. When did Mr. Adelman tell you it was lost? A. Two days before we were to meet here again, I forget the date.

20

Q. When did Mr. Adelman first tell you the testimony was lost? A. A few days before we were to come here to finish the trial, I cannot just recall the date.

The Vice Chancellor—I do not see the relevency of this testimony. We have occupied five or ten minutes to listening to what is of no value whatever. This case must be tried differently from the way it was tried before. We have lost a large amount of time. The issue is quite simple. It is true there is a wide field here over which counsel may ask questions, but most of those questions are of no value whatever.

30

Q. Will you please produce the letter I wrote you on January 7, 1915? A. All the letters I had Mr. Adelman has.

Mr. Adelman.—January 7, 1915?

Mr. Kerr.—Yes.

10 *Mr. Rosenkrans.*—I have not any such letter.

Q. Did you not receive from me a letter with regard to the differences between you and your wife, a letter dated January 7, 1915? A. I do not remember any letter of that kind.

Q. I show you a letter dated January 8, 1915, and ask you if you wrote me that letter? A. Yes.

20 *The Vice Chancellor.*—That letter has already been marked D12 for identification and it will retain that marking.

Mr. Kerr.—I offer it in evidence.

Mr. Rosenkrans.—I object to it on the ground that this is not the proper time.

The Vice Chancellor.—I regard it as good practice to put in the documentary evidence when it is produced on cross examination. The rule is, generally, as Mr. Rosenkrans has
30 suggested, but the witness is shown the paper and the examination proceeds and if the paper is not in evidence the Court, very often, does not know what the witness is testifying to. And I find it a good rule to put in the documentary evidence as the case proceeds.

Mr. Rosenkrans.—I withdraw my objection, but I would like to see if it is relevant.

The Vice Chancellor.—It is a statement by the witness, party in the cause, therefore it is relevant. Will you read it, Mr. Kerr?

Mr. Kerr read D 12 for identification, being a letter from the petitioner to Mr. Kerr, dated January 8, 1915.

Mr. Kerr.—I offer that in evidence. 10

The Vice Chancellor.—It is in evidence. Proceed.

Q. I will show you a copy of my letter dated January 7, 1915, and ask you if you can recollect, after reading it, that that is the letter which you referred to in your letter of January 8, 1915, (D 12)? A. No, sir, it is not.

Q. You have not read it? A. I can see right here..... 20

Q. You have not read it sir; please read it? A. (Witness peruses copy of letter.)

Q. You have read enough now, I guess to tell. A. I did not answer this letter with that one (referring to D 12).

Q. Tell me whose letter, or to which letter, you referred in that letter? A. It was a notice that she would have me locked up, had a warrant out for me, for my arrest, and I came down to see you after Judge Keys told me who her counsel was and I told you I had sent her two checks to Bridgeport. 30

Q. Didn't you come down to see me that Saturday afternoon in reference to that letter? A. I cannot tell you whether it was Saturday afternoon, it is so long ago, but I came down one day and told you I had sent her two checks.

By the Vice Chancellor:

Q. In this letter which you wrote to Mr. Kerr on January 8, you say "Received your letter last night, and contents noted"? A. Yes, sir.

Q. What letter was it you had received? A. In regard to money matters. He wanted to know something about the deed most of the time, that is what he wrote me letters about, about bringing the deed down of the property that I had sold.

Q. Do you recollect the date of the letter which you acknowledge here? A. I cannot recall that.

Q. Your letter was dated on the 8th of January? A. Yes, sir.

Q. And in it you say "Received your letter last night"? A. Yes, sir.

Q. Cannot you tell whether the letter to you was dated on the 7th or not? A. It may have been, at that. I could not tell now. I would not want to swear to that.

Further cross examination:

Q. You will not deny that you got that letter from me ..... A. I don't know anything about that letter.

Q. the night before you wrote this letter? A. I don't know anything about that.

The Vice Chancellor.—Referring to what?

Mr. Kerr.—My letter dated Jan. 7th.

The Vice Chancellor.—A copy of the letter.

Mr. Kerr.—Yes, sir.

The Vice Chancellor.—A typewritten copy of a letter written by you to Mr. Hyer, Jan. 7, 1915?

Mr. Kerr.—Yes, sir.

The Vice Chancellor.—What do you say about that, Mr. Hyer?

The Witness.—I do not remember receiving such a letter.

10

Q. You came, as you stated in your letter of January 8, 1915, to see me, together with your brother-in-law, Mr. Hart, did you not? A. Yes, sir.

Q. Why didn't you want me to have Mrs. Hyer there to meet you and Mr. Hart? A. Because I wanted to speak to you alone about this deed and money matters.

Q. The letter that you got, that you referred to, that you got from me, was a letter asking you to meet your wife, and settle your family difficulties, was it not? A. No, sir.

20

Q. What was that letter about that you got that night? A. I told you that it was to bring the deed down, and money matters, straighten out money matters.

The Vice Chancellor.—What deed?

The Witness.—The deed of the property I had sold in 1908. He wanted to know about the deed, and I told him I did not have it. He insisted on my bringing it down, and I told him that the party who bought the house had the deed.

30

Q. Where is the letter you got? A. I don't know.

Q. I will show you a copy and ask you if that is

not a copy of the letter I wrote to you about the deed?

Mr. Kerr.—Showing witness a typewritten copy of a letter by me to him dated January 13, 1915.

10

A. I cannot remember that by looking at that date, because I only went down to your office once.

Q. Read that letter out loud, and see if that is not the letter? A. You can read it. I have read it. If the Judge tells me to read it, I will read it; it is your letter, not mine.

The Vice Chancellor.—It is not necessary to read it out loud. Both of those letters may be marked for identification.

20

(Typewritten copy of letter from Mr. Kerr to Mr. Hyer, dated Jan. 7, 1915, marked D No. 1 for identification.

Typewritten copy of letter from Mr. Kerr to Mr. Hyer, dated Jan. 13, 1915, marked D No. 2 for identification.)

Q. Did you write me a letter in reply to my letter of Jan. 13, 1915? A. That is the question you just asked me, and I told you I did not remember.

30

Q. I didn't ask you that question. A. That is what you just showed me and had put in evidence there.

Q. Did you write me a letter in answer to my letter of Jan. 13? A. I cannot recall it.

Q. I show you a letter and ask you if you wrote me that letter? A. Yes, I wrote that letter.

Mr. Kerr.—I offer this letter in evidence Letter from Mr. Hyer to Mr.Kerr, dated January 15, 1915, received in evidence and marked exhibit D 3, March 14, 1918, H. W. K.

(Mr. Kerr read exhibit D 3.)

10

Q. Is not that the letter which you wrote to me in answer to my letter of January 13? A. Well, I could not remember that now, whether it is or not.

Q. Why cannot you say? A. Well, of course it is for you to say. I am not sure; I do not remember if it is the answer to that letter or not; it may be at that. I won't dispute you as to that. I won't swear to anything I don't know.

Q. You have read this letter and it calls on you to produce that deed at my office? A. It may be the answer to that.

20

Q. Well, is it not?

The Vice Chancellor.—The witness answered your question, and said he cannot recollect; he said it may be; he said he cannot recall the copy you showed him of your letter.

Q. After reading that letter do you still say that you came to see me in reference to that deed, when you came with your brother-in-law? A. No, we came there—you asked me about the deed, but I came there to settle up with you, telling you I had sent two checks to Mrs. Hyer at Bridgeport. She had a warrant out for my arrest, for non-support.

30

Q. Did I not ask you on that occasion to go back to your wife? A. No, sir, we were talking about

money matters. I sent my wife two checks to Bridgeport, and she had a warrant out.

Q. Did you not tell me there, that you would never live with her again? A. No, sir.

Q. And didn't your brother-in-law, Mr. Hart, also say the same thing? A. No, sir. I cannot remember what he said.

10 Q. And didn't your brother-in-law say that his son was studying with the late Mayor Mitchell, and that he knew all about it, and you could not be compelled to take her? A. I don't recollect anything of that kind.

Q. Do you remember my telling Mr. Hart, that he might know a lot about New York law, but that in New Jersey a man had to support his wife—or take her back if she demanded it? A. No, sir.

20 Q. You don't remember that? A. No, sir.

Q. You do know that your wife had a warrant taken out against you before the Justice of the Peace, in the early part of 1915, because you were not paying her any money? A. 1914, the latter part of 1914, in December, 1914.

Q. In December, 1914? A. Yes, sir, as near as I can remember it.

Mr. Kerr.—Perhaps you are right.

30 *By the Vice Chancellor*:

Q. I understood you to say that in January, 1915, when you went down to see Judge Kerr in his office, that then your wife had a warrant out for you? A. Well, it was 1914 or 1915, somewhere around that time.

Q. Do you recollect whether the warrant was out when you went down to Mr. Kerr's office? A. It was out four or five days before I went to see Mr. Kerr at all, probably a week.

Q. Or it might have been in the latter part of 1914? A. Yes, or the first part of 1915, I cannot recall it. 10

Mr. Rosenkrans.—That is, when the warrant was out?

The Witness.—Yes, sir, when the warrant was out.

Further Cross Examination:

Q. How often did you and Mr. Hart call at my office? A. Once, that I remember, only once. 20

By the Vice Chancellor:

Q. How long was that after you had written that letter, January 8, 1915. Do I understand you to say it was the Saturday following? A. It was at the time the warrant was issued.

Q. No, now listen. You have seen this letter which you have identified, as the letter you wrote to Judge Kerr? A. Yes, sir. 30

Q. Which is dated January 8, 1915? A. Yes, sir.

Q. You say there that you will be down to his office and you express a wish to see him alone. How long after you wrote that letter was it, that you and your brother-in-law went down to Judge Kerr's office? A. My brother-in-law and I went down before that time, if I am not mistaken.

Q. You say in this leter of January 8, 1915, to Mr. Kerr, "Received your leter last night and contents noted. Will be down Saturday afternoon about three o'clock if convenient for you. You can telephone me if this agrees with you." Did you go down the following Saturday? A. I believe I did.

10 Q. Then your interview with Judge Kerr was on the Saturday following January 8th? A. Yes, sir.

Further Cross Examination:

Q. Do you remember receiving a letter from me about January 15? A. In regard to what?

Q. In regard to the matter of your wife going to the Grand Jury? A. I do not recall that at all.

20 *Mr. Rosenkrans.*—January 15, of the same year.

Mr. Kerr.—January 15, 1915.

Q. I will show you a typewritten copy of a letter and ask you if you did not get the original of that?

(Handing witness a paper.)

A. (After perusing the paper.) I do not recall that letter.

30

(Typewritten copy of letter from Judge Kerr, to Henry Hart, dated January 15, 1915, marked D. No. 4 for identification.)

Q. Did your wife ever return to you while you were at the Bank for the purpose of getting permission of coming back home, and did she on that occasion ask you for the keys of the house? A. No, sir.

Q. Did she on any occasion call to see you to get the keys of the house, with Mrs. Hill who resides in Little Falls? A. No, sir.

Q. Do you remember her ever calling at the Bank and asking you for the keys of the house? A. No, sir.

10

Q. When you told her if she didn't get out of there you would have her arrested? A. No, sir.

Q. Did I ever write to you asking you to take your wife back? A. Not that I remember, I cannot recall it.

Q. Don't you think you would remember an important matter as that? A. I do not recall a letter I received from you asking me to take her back.

Q. You cannot? A. No, sir.

Q. Your memory is good, is it not? A. Pretty fair.

20

Q. Do you remember her calling at your house one evening in the company of Anna ..... I don't remember last name .....

Mr. Adelman.—Kein.

Q. Anna Kein, and seeking admission to your house? A. Do I remember that?

Q. Yes. A. No, sir.

30

Q. Don't you remember that you refused to talk to your wife? A. When was this, Mr. Kerr?

Q. When Miss Kein and your wife came to your house. A. Yes?

Q. Then you do remember their coming? A. I am only asking when it was.

Q. At a time when you had been ill. A. When I was very sick.

Q. I don't know. A. That is what I want to know, so that I can put my memory back.

Q. Don't you remember you shut the front door, and put out the electric light on the stoop and left them standing in the dark? A. I didn't see them at all.

10 Q. Didn't you see them before you put out the the electric light? A. No, sir; I was not downstairs to see them, that they were there.

Q. Didn't you tell your wife she could not come in? A. No, sir; nothing of the kind. I did not see them.

Q. Didn't your daughter tell you they were there? A. She might have told me. I don't know anything about it.

Q. Didn't she tell you? A. I heard they were
20 there.

Q. Who told you? A. My sister or my daughter might have told me, they were at the house at some time when I was sick.

Q. You did not go to the door? A. No, sir.

By the Vice Chancellor:

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

Q. Downstairs or upstairs? A. Upstairs.

30 *Mr. Rosenkrans*—When? That has not been brought out yet.

The Witness—The last week in December, 1914, and the first week in January, 1915.

Further Cross Examination.

Q. That was the time? A. That was when I was very sick; I have been sick off and on and had

the doctor attending me right along for the last two years, but that is the time I was layed up in bed for over two weeks.

(Handing witness a paper.) Is that your handwriting, Mr. Hyer?

10

A. (Witness proceeds to peruse the paper.)

Q. I ask you if it is your writing, I do not ask you to read the letter? A. It looks like my writing.

Mr. Kerr—I offer that in evidence. It is a letter from Mr. Hyer to his wife, dated Feb. 12, 1914.

Marked Exhibit D No. 5, March 14, 1918, H. W. K. (Mr. Kerr read Exhibit D 5.)

20

The Vice Chancellor—It will be received in evidence.

Q. I show you a letter and ask you if you received that letter? A. Yes.

Mr. Kerr—I offer the letter in evidence. It is dated September 13, 1915, and is from the defendant to the petitioner.

The Vice Chancellor—It will be received in evidence.

30

(Marked Exhibit D 6, March 14, 1918, H. W. K.)

By the Vice Chancellor:

Q. Did you mail that letter? A. Yes, sir.

Q. To what place? A. Bridgeport.

Q. Was that after you had returned home from your visit to Bridgeport? A. Yes, sir.

Further Cross Examination.

Q. I show you a letter. Did you write that letter to your wife? A. (Witness proceeds to peruse letter.)

Q. I ask you if you wrote it, you need not read
10 it; didn't you? A. Yes, sir.

Mr. Kerr—I offer the letter in evidence. It is a letter dated September 6, 1913, from the petitioner to the defendant.

The Vice Chancellor—It will be received.

Marked Exhibit D No. 7, March 14, 1918, H. W. K.

Q. (Handing witness a letter.) You wrote that
20 letter to your wife? A. Yes, sir.

Mr. Kerr—I offer the letter in evidence. It is a letter from the petitioner to the defendant, dated August 15, 1913.

The Vice Chancellor—It will be admitted.

(Marked Exhibit D, No. 8, March 14, 1918, H. W. K.)

Q. (Handing paper to witness.) You wrote that
30 to your wife? A. That is my writing.

Mr. Kerr—I offer in evidence letter from petitioner to defendant, dated July 25, 1913.

(Marked Exhibit D, 9, March 14, 1918, H. W. K.)

The Vice Chancellor—What is the importance of that letter?

Mr. Kerr—The importance is that Mrs.

Hyer claims she had deserted him.

The Vice Chancellor—He said himself, he made approaches, and he went to Bridgeport just about that time, in the summer of 1913, and there was reconciliation, whatever had occurred between them in the past was practically blotted out, so that is unnecessary to produce letters written during that period.

Mr. Kerr—The idea is to show there was no such thing as desertion during this whole period.

The Vice Chancellor—Nobody claims there was. The petitioner has admitted fully, that in the summer of 1913 they came together. He went to Bridgeport and had pleasant intercourse with his wife, and occupied the same bed, and he says he expected she was going to come back the next day—he expected she would return with him, or she was to come the next day. That letter does not help the case one way or the other, it does not affect it in any way; it shows what we all know. Of course you may, for some reason, wish to contradict him, and show their relations were not friendly then, but that letter does not carry out that view at all.

Mr. Kerr—My object is to show, that during all the time he was down there, they had friendly relations.

The Vice Chancellor—It is not necessary to prove that, when it is not disputed. We are going very slowly with this witness.

Q. Why didn't you testify on the last day, to the story that you now testify to, that your wife agreed to return with you; what has changed your mind, after the night that you slept with her in Bridgeport?

10 *Mr. Rosenkrans*—I object to that, there is no evidence that he did not so testify when he was here before.

Mr. Kerr—Let him say if he did say that before.

The Vice Chancellor—That would be the proper question. Ask him if he did so testify.

A. At the last trial do you mean?

20 Q. At the last time when you testified here. Did you testify that your wife agreed to come back here with you, the night that you slept with her in Bridgeport, and that she fooled you and would not come back after? A. I believe I said something like that about it, as near as I can remember. I cannot just recall what I said now.

Q. Did you say anything of the kind on the last day you testified? A. If I can think of it just now, yes.

30 Q. What did you testify in regard to that, the last time you were testifying? A. What did I testify, what?

Q. On the last day you were here. A. On what question was that?

Q. About your sleeping with your wife that night in Bridgeport, and what occurred during that visit there? A. I mentioned right here what I done, as

near as I remember now I testified right here.

Q. Did you testify to anything like that? A. As near as I can remember, yes, sir.

Q. Didn't you testify on the last day you were here, that you met here in a house, and you do not know whose house it was? A. I do not recall that at all. 10

Q. And all that sort of thing? A. I do not recall that at all, the way you mention it.

Q. Didn't I ask you who lived in that house? A. You may have asked me, I did not know who lived in the house; there were two families in the house, that is all I know.

Q. Did you finally admit that it was her son's house? A. Did I admit it? No, sir.

Q. Whose house was it? A. The landlord's, the man who owned the house. 20

Q. Who was living with her there? A. Who?

Q. Your wife? A. Her daughter and son were living there.

Q. Her daughter and son? A. Yes, sir; that is what she told me.

Q. Why did you tell me it was the landlord's house? A. You asked me who owned the house; I don't know who owned the house. If you ask who owned the flat, I might have answered.

Q. I did not say anything of the kind, I don't think; I want to know whose house you were visiting on the visit that you made to your wife and had intercourse with her? A. I suppose it was her flat. 30

Q. Why? A. Because she told me it was her flat, and I had to take her word for it.

Q. Was your daughter with you at the time? A My daughter?

Q. Yes? A. No, sir.

Q. Did you go to the Hotel Taft with her and stay two nights and a day at the Hotel Taft? A. For two days and one night, or two nights and one day, I cannot remember which now, on July 4, 1913.

Q. Did you sleep with her that night? A. No, sir.

10

Q. Why didn't you sleep with her? A. My daughter was with us.

Q. Your daughter lived with you and your wife in Little Falls, didn't she? A. There were two rooms, two adjoining rooms; two rooms and four beds in the two rooms, four twin beds as they call them.

Q. What did that have to do with i t? A. I don't know what it had to do with it.

20

Q. Why didn't you sleep with your wife? A. Because there was only one bed, a bed for each person.

Q. What do wou mean? A. Single beds, four beds in the rooms and each had their own bed, my wife and daughter slept in one room, and I slept in the other room.

Q. Do you say your wife and daughter slept in one room? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

30

Mr. Rosenkrans—I do not know what difference it makes, because he says that in the September following, he went to Bridgeport and there he slept with his wife. I do not see how it is usefull to establish, whether or not, as a matter of fact, he slept with his

wife in this New Haven Hotel, two months prior to September, 1913.

The Vice Chancellor—The whole married life of the couple is open to investigation. It is a question, of course, to a certain extent, how far the Court will allow a minute and useless investigation; it is left largely to the common sense of counsel, as to how far these details shall be brought out. There has been very little brought out, during this whole cross examination which will be of the slightest use in the determination of the case. The minutiae of this episode when they went to the Hotel Taft, cannot possibly be of any value. As counsel has stated, it is admitted the couple slept together afterwards in Bridgeport.

Q. Did you receive a letter from your wife, dated Dec. 15, 1914? A. I cannot recall that letter.

Q. Did you receive a letter from your wife, dated Dec. 22, 1914? A. I do not recall that either. The letters are lying there with Mr. Adelman. I cannot recall any letters now.

Mr. Kerr—(Addressing Mr. Adelman.) Have you got a letter dated from Bridgeport to Mr. Hyer, December 17, 1914?

Q. (Handing witness a card.) It that your signature? A. Yes, sir.

Q. A registered letter you got from your wife?

Mr. Rosenkrans—What is the date of that?

The Witness—December 23rd.

(Return registry card just shown witness marked D 10 for identification.)

Mr. Adelman—Here is a letter dated Dec. 22. (Handing same to Mr. Kerr).

Mr. Kerr—Have you the letter of Dec. 17?

10

Q. (Handing witness a registry card.) It that your writing? A. Yes, sir.

(Marked D 11 for identification.)

The Witness—That is September 7, 1917.

Mr. Rosenkrkans—I object to that letter being produced.

20

The Vice Chancellor—It is a statement made by a party to the cause.

This documentary evidence should not be put in in this way. In a divorce case where there are a lot of matters in writing it is convenient to put the papers all together and ask the witness if they are his or her writings, or letters. They all have to be read in order that the Court may determine whether they are relevant. We have now taken more than half an hour to put in letters which might have been put in in a few minutes, if they had been put together and shown the witness at once, and I suppose most of those letters were produced at the last hearing and shown to the witness, and identified by him, and afterwards marked for identification.

30

Mr. Kerr—When was the petition filed? Was it not January 3, 1917?

Mr. Adelman—Yes.

Mr. Kerr—I understand you to claim the suit had been brought at the time these letters were written, why are not the letters of 1915 relevant?

Mr. Adelman—Only the last one, I said. 10

Q. Did you get a letter from your wife on Jan. 6, 1917? A. January 6, 1917?

Q. Yes. A. I do not remember. I do not recall any letter in January 1917.

Mr. Adelman—1915 is the last letter we have got.

Q. Did you in January, 1916, get a letter from Mrs. Hyer, your wife, in regard to your shutting the door in her face, the night before when she called to see you? A. No, sir. 20

Q. You never got such a letter? A. Never got such a letter, no, sir.

Q. And you say that since you slept with her in Bridgeport that night, she has never sought to return to you? A. Never asked me?

Q. Yes. A. No, sir.

Q. And nobody for her has asked you to take her back? A. No, sir. No one has ever asked me. I have sent people after her. 30

Q. No one ever asked you to take her back? A. No, sir.

Q. And she has never asked you to take her back? A. No, sir.

Q. Were you not sick from the first of January until after the fifth or sixth of January, 1916? A.

Yes, I was sick that time, in bed, January one, two, three, four, and up pretty nearly to the eighth.

Q. Were you not downstairs? A. I might have been down in the afternoon.

Q. Were you not down on the night of the 6th? A. I cannot recall whether I was downstairs, in
10 the night time. I was up one afternoon.

Q. Was it about that time you heard that Anna and your wife had been to the door there to see you? A. I cannot recall that.

Q. I show you a copy of a letter dated Jan. 6, 1917, and ask you if you can now remember that you got a letter to that effect, from your wife? A. I never got a copy of that letter, I never got a letter of that kind.

20 (Letter shown witness marked D 10 for identification.)

Q. Why didn't you go down and see your wife after that visit in Bridgeport when you slept all night with her? A. Because she fooled me and didn't come back to me, that is the reason I thought it was no use, my going after her any more.

Q. When you left her in the morning you left her on good terms, did you not? A. I always left
30 her friendly, every time I met her.

Q. You said good-bye to her? A. Yes, sir.

Q. You kissed each other when you left Bridgeport? A. Yes, sir, thinking there might be some sort of a change in her, that she might return.

Q. Did you ever write her a letter, asking her why she did not come back? A. No, sir.

Q. Why didn't you? A. Because it was no use,

when she returned so often and fooled me. I didn't want to write any more then.

Q. You got her every time you wanted her, from the time she went to Bridgeport all through that year, 1913, down to October, you got her whenever you wanted her? A. Up to what time?

Q. Down to late in October? A. Of 1913?

Q. Yes. A. September was the last time I saw her in Bridgeport, not October, September.

Q. You got her whenever you wanted her and she was always friendly with you and all that; didn't you think that was an indication she wanted to come back to you and would come back here any time you wanted her? A. My understanding was she did not want to come back to Little Falls, but wanted to stay in Bridgeport.

Q. Can you cite a single instance where your wife met you in an unfriendly manner or turned you down in any way? The very last visit you made up there you slept all night together. Can you cite any instances after that when she ever wrote you or said anything ——— A. When she came in the Bank one day, she came in there in so boisterous a way and everything else, and demanded money.

Q. When was that? A. 1915.

Q. She was your wife; didn't you think she had a right to demand money? A. No, not in the way she did.

Q. Who was with her? A. Herself.

Q. She was alone? A. Yes, sir.

Q. When was that? A. In 1915, in the summer time.

By the Vice Chancellor:

Q. Was there anyone else in the Bank besides

yourself then? A. The President, Mr. Francisco.

Q. Could he hear what was said? A. Yes, sir.

Further Cross Examination.

Q. All during that time when she was living in Bridgeport didn't you take her out riding in an automobile? A. No, sir.

Q. After she left your house you took her out riding and visited her in Little Falls? A. I went to the house with Mr. Stanley.

Q. Not that time. Didn't you call on her regularly in the evening? A. No, sir.

Q. And didn't you make it a point to call in the evening? A. No, sir.

Q. When you would not be seen? A. No, sir.

Q. Didn't you tell her you would sell out and leave the Bank and go and build a bungalow for yourself and her? A. At that time? No, sir.

Q. While she was living separate from you? A. No, sir.

Q. In Little Falls? A. No, sir. I did not.

By the Vice Chancellor:

Q. Did you ever tell her that at any time? A. I told her when we were——the second time she came back I said one day, the house was too big a place, and we would have a small bungalow for the two of us. That was in 1908, when I took her back the second time.

Q. When she left you in December 1912, and went to live with her daughter in a flat on Maple Street, did you call and take her out automobile riding? A. No, sir. The only time I went out automobile riding, I went down to Hoboken to a funeral; we went down there.

Q. Whose funeral? A. Her cousin's husband's funeral, the husband had died.

Q. When was that? A. In the summer of 1913, I believe.

Q. Where was she living at that time? A. I think she was living in Maple Street at that time; as near as I can remember it was in the summer of 1913. 10

Q. You and she went there together? A. I didn't go to the funeral. I went there the evening before to see the corpse.

Q. You took her down? A. No, she was down.

Q. You took her out automobile riding? A. The following Sunday I went down and visited.

Q. Was that the last time you took her automobile riding? A. Yes, sir. 20

Further Cross Examination.

Q. You wrote her a letter while she was down there, saying that you could come down on Sunday afternoon? A. Did I write a letter? When?

Q. When she was at Hoboken, at her cousin's, that you would come down there and see her? A. I don't recall it.

Q. Didn't you give her diamonds when you married her? A. I did. 30

Q. And you had them sold? A. I did?

Q. Took them away from her and sold them? A. No, sir.

Q. Didn't you sell them to George W. Sherman of Little Falls? A. No, sir.

Mr. Rosenkrans: I object to that as not cross examination.

The Vice Chancellor: It certainly is not cross examination.

Q. Can you show us copies of any letters you ever wrote to your wife, asking her to come back? A. I never kept any copies, never made any copies.

10 Q. Who ever heard you ask her to come back to you; name one person? A. Heard me say so? Heard me ask her?

Q. I am examining you. A. I am not asking you a question; if you will speak plain, so that I can answer you.

Q. (Former question read as follows: "Who ever asked her to come back to you, name one per son?") A. Mr. Stanley, and Mr. Hart.

Q. You made up after that, didn't you? A.

20 What time is this?

Q. After the time you speak of. A. Up in Bridgeport, yes, I was up in Bridgeport.

Q. No, I am not talking about Bridgeport. You say Mr. Stanley: did you ask her to come back? A. Yes, sir.

Q. After you made up, you were good friends after that? A. Yes, sir, up in Bridgeport.

Q. Since you were in Bridgeport? A. Nobody ever heard me.

30 Q. You never asked her to come back after that? A. Not personal.

Q. You never wrote her to come back after that date? A. Not personally, no; I got other people to do it for me.

Mr. Kerr.—That is all.

The Vice Chancellor—Is the cross examination finished?

Mr. Kerr.— As to the divorce part of the proceedings.

The Vice Chancellor.—The cross examination of the witness must be concluded, continuously.

10

Q. What is your business? A. Cashier of the Little Falls National Bank.

Q. What is your salary? A. $100.00 a month just now. For several years I got $50.00;; one year I got $75.00, and since that time $100.00.

Q. When did you retire from business? A. The doctor ordered me to get out of business in 1905, and as my throat was very bad, I had to quit business then, in New York.

20

The Vice Chancellor.—I will say to counsel that they need not go into the matter of the faculties of the respective parties; that will be reserved until the main issue in the cause is determined.

Mr. Kerr.—That is what I was leaving out.

The Vice Chancellor.—Yes, I say you may leave it out.

Mr. Kerr.—I understood you to say we must conclude the whole thing.

30

The Vice Chancellor.—No, not that.

Mr. Kerr.—(Addressing Mr. Adelman.) You have not got the December 15 letter, have you?

Mr. Rosenkrans.—What year was that?

Mr. Kerr.—1914.

Mr. Rosenkrans.—No, we have looked for it.

Mr. Kerr.—Have you got a letter of January 28, 1915?

Mr. Adelman.—I have one of January 12, 1915.

Mr. Kerr.—Let me see that.

(Letter handed to Mr. Kerr, by Mr. Rosenkrans.)

10

Mr. Rosenkrans.—Is there anything else you called on us to produce?

Mr. Kerr.—Yes, I have notified Mr. Adelman to produce all letters ever received from this defendant. You only have one letter, that one you showed me?

Mr. Adelman.—Yes, outside of the registered letters.

20

Q. I show you copy of the letter sent you by your wife, dated January 28, 1915, and ask you if you received the original of that letter? A. I do not recall that letter. That is a copy you say?

Q. Yes. A. I do not recall the letter.

(Copy of letter from the defendant to the petitioner dated Janaury 20, 1915, marked D-11 for identification.)

30

Q. I show you another letter and ask you if that is the letter written by you to your wife? A. I believe that is a letter in reference to the time I said I would come down to Hoboken.

Q. What year was that? A. 1913, as near as I can remember; her cousin's husband died and I went down there.

(Marked D-12 for identification.)

Mr. Kerr: That is all of the cross examination, except with reference to the faculties.

Re-Direct Examination:

Q. On the Saturday following January 8th, you say you visited Judge Kerr in his office in company with Mr. Hart, your brother-in-law? A. Yes, sir. 10

Q. You went there because of the letter which you received from Judge Kerr, did you? A. Well, I went there that Saturday when Judge Keys told me there was a warrant out for me. I went to Judge Keys first to find out what the charge was, and he told me the charge was non-support, and I told Judge Keys I had sent her two checks and I didn't owe her anything until the first of the next month again, and Judge Keys told me who her counsel was, and my brother-in-law and I went to Judge Kerr's office then. 20

Q. Did you go there on more than one occasion? A. Only on one occasion.

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

Q. What was the topic of conversation? A. About the checks I sent her, and she got a warrant out for me, and I had sent her two checks to Bridgeport, and if she was not there to receive them that was not my fault. 30

Q. You had sent them? A. Yes, sir, and she was not at home.

Q. And the warrant proceedings were dropped? A. Yes, sir.

Q. There was a misunderstanding as to her two checks? A. I believe there was.

Q. Was that the topic of conversation between you and Judge Kerr and your brother-in-law? A.

Yes, sir, about the checks, that I had always paid my checks. I told him I had been a little sick and a little back but I had sent the two checks.

Q. Was there any other talk between you. A. He asked me about the deed of the property.

Q. Was there anything said on that occasion by any of you touching on a reconcilliation or a reunion with your wife?

Q. In the letter dated Feb. 12, written by you to your wife and marked Exhibit D-5, you say "And as to not having time to send the money on account making dates with other women you want to see it and not hear it," why did you write that in your letter? A. Because I had received a letter stating that she was saying I was going out with other women. I had always been too busy in the evening to go out with anyone else. Those years I was working pretty nearly every night.

Q. Was there any basis for the charge your wife made? A. Yes, sir.

Q. You do not understand me? A. What do you say?

Q. You didn't go out, as a matter of fact, with other women? A. No, sir.

Q. What effect upon your temper did that charge of your wife have at the time you read this letter? A. That aggravated me, when anyone spoke to me or wrote a letter to me in that way.

Q. Is that why you concluded your letter with the expression you use here "You can come up to Little Falls as much as you like for all I give a Damn, for you have made one Damned fool out of yourself, and you don't care whether you put me on the bum or not, and I got so I don't care either."? A. Yes, sir.

Q. You were exasperated at the time you wrote that letter? A. Yes, sir.

Q. Did this letter represent your real feelings to your wife at that time or only temporarily? A. Temporarily.

10

Re-Cross Examination.

Q. You never went anywhere with other women? A. No, sir, except my sister or daughter.

Q. Give me the name and address of the lady you were dining with at a restaurant on Broadway in the Spring of 1916? A. Her address now I don't know; she was a niece of mine.

Q. What is her name? A. Mary Talson, was her name.

Q. A niece of yours? A. Yes, sir, by my first marriage. 20

Q. Is she here in the court room? A. No, sir, she is not living in the town here.

Q. Where does she live?

> *Mr. Rosenkrans*: I object.
>
> *The Vice Chancellor*: You opened this matter and if Judge Kerr thinks it worth while, he may prosecute the inquiry.

30

A. I cannot tell you where she lives just now. My sister knows her and my daughter knows her.

Q. Can you get her here? A. I cannot get her.

Q. How do you know that? A. She is out of the State.

Q. How do you know that? A. Because she ain't living here anymore.

Q. How do you know that?

The Vice Chancellor: Is counsel under the impression the lady would be allowed to testify?

Mr. Kerr: No, sir.

The Vice Chancellor: Then why ask the witness if he can produce a person who cannot be a competent witness? We cannot try the whole life of Mr. Hyer. He is not charged with adultery. The only force of this is in reference to what was brought out some time ago, about a letter written by him in response to one of his wife's about going out with women and which referred to the state of mind in which he wrote that letter on Jan. 12. What the fact was about his private habits in that connection is not relevant to anything in this suit.

Q. Do you remember seeing your wife in that restaurant? A. Yes, I don't deny it.

Q. You remember your wife tapping you on the shoulder and asking you who was your friend? A. Yes, I remember that.

Q. Why didn't you tell her who it was? A. Who the friend was? I didn't want to make any disturbance.

Q. Why didn't you tell her? A. I didn't want to make any disturbance in the restaurant.

JOSEPH HART, sworn for the petitioner.

Direct examination by Mr. Rosenkrans:

Q. Where do you reside? A. 42 Howard Ave., Brooklyn.

Q. Are you a brother-in-law of the petitioner, Mr. Hyer? A. Yes, sir. 10

Q. And acquainted with his wife, the defendant? A. Yes, sir.

Q. How long have you known her? A. Since they were first married.

Q. Do you remember the fact of their separation in December 1912? A. I do.

Q. Did you take any steps after their separation to reconcile them? A. I did.

20

Mr. Kerr: I would like to ask if your Honor please if counsel will consent to my asking Mr. Hyer one more question.

The Vice Chancellor: What is the question?

Mr. Kerr: Are you willing to take your wife back now if she is willing ——— she is willing to go back?

The Vice Chancellor: How is that important?

30

Mr. Kerr: To show her state of mind, and she always has been of that mind, her letters before this suit was brought show that.

The Vice Chancellor: Mr. Hyer is asking for a divorce on the ground of a completed matrimonial offense, desertion, and the law does not compel the party to condone. It does not seem to be at all important what his

state of mind now is; in fact I suppose the very existence of this suit is an admission on his part that he wants to get rid of his wife—wants to get a divorce. The situation is the same in that respect where the offense is adultery, and the injured spouse begins suit and charges adultery and claims a divorce. In such a case you would not think of asking the petitioner whether he or she, as the case might be, would be willing to take the offending spouse back, the truthful answer would be "No, she has committed a complete matrimonial offense and I am seeking my remedy on that ground."

Q. You say you made some effort to effect the reconciliation? A. I did.

Q. Between Mr. Hyer and his wife? A. Yes, sir.

Q. Did you do that on his suggestion, or on your own motion? A. I told him any time he wanted me to let me know and I would come out and do what I could for him. I received a letter to come out and I went to Little Falls and he said "Joe, I don't seem to make no headway, will you go down and see what you can do?"

The Vice Chancellor—When was this?

The Witness—In the beginning of March 1913. I went to see her. Me and a gentleman named Stanley.

Q. At that time had any steps been taken by

Mrs. Hyer to compel Mr. Hyer to support her? A. I believe so. I don't know.

Q. You went down with Mr. Stanley? A. Yes, sir.

Q. Did he hold any official position in the township of Little Falls? A. I believe he did.

Q. Overseer of the Poor? A. I believe so, yes, sir.

Q. When did you meet him? A. At the Bank, we both went down together.

Q. By some previous arrangement with Mr. Hyer? A. He happened to be there when I got in there, and he said "I sent for my brother-in-law and suppose he goes with you and sees if he can do any good," that is the intention I went down on.

Q. You and he together? A. Yes, sir.

Q. Will you tell us what took place? A. We went in, and as I came in she made a very pretty remark, and I didn't like it particularly.

The Vice Chancellor: What did she say?

The Witness—She said, "What do you want here, you big stiff?"

Q. What had been your previous relations toward her? A. Good, always was and is today, I never had hard feeling against nobody. Well, I spoke to her about it and asked her what she intended to do and she said "I will never go back to him, Joe." I said, "You can't live on what you are getting," she said, "Well, I will try to do the best I can." Then I offered her a thousand dollars.

Q. What did you say when you offered her a

thousand dollars? A. I told her what she was getting was a very paltry amount, and I thought I would help her out.

Q. With what object did you make that offer? A. Well, that she could open a little store somewhere, both her and her daughter.

Q. What did she say? A. Well, she said, "I will consider that," but that is the last I spoke to her about it. I believe she went to another lawyer and spoke to him about it; what he advised her I don't know.

Q. Was Mr. Stanley there? A. He was.

Q. Did he say anything to her about returning to Mr. Hyer? A. Yes, he said "Well, now, why don't you take Mr. Hart's advice, he seems right, he is doing right, and" he said, "what is the matter if I go up and bring Mr. Hyer down." I don't remember what Mrs. Hyer did say to that, but he went up and brought Mr. Hyer down, they both came in and she said the same thing to him as she said to me.

The Vice Chancellor—What was that?

The Witness—That remark, "What do you want here, you big stiff." As I look at it, she knew he was coming down because Mr. Stanley went after him. They talked it over and could not make any reconciliation at all.

The Vice Chancellor—Tell us what they said.

The Witness—He didn't have a chance to say much.

Q. What did he say? A. I can't remember that.

Q. Do you remember what she said? A. No, only that first remark that she made.

Q. Is your recollection clear enough, about what took place on the arrival of Mr. Hyer at the home of Mrs. Hyer to tell us what took place? Can you tell us whether or not he made an offer to her— A. He did.

Q. —to come back to her home? A. Yes, sir.

Q. What did she say? A. She would not have no trouble at all—she would not go back under no circumstances. As to what I offered her she said she would wait and see her lawyer. That I suppose brought on the whole transaction.

Q. Was anything said there about weekly payments or other means of support? A I cannot remember.

Q. Did you see her again at any time? A. Not after that, only once I believe when she was in Paterson, but not to speak to.

Cross Examination by Mr. Kerr:

Q. What do you say was the date of that interview? A. The what?

Q. When that interview took place between you and her and Mr. Hyer? A. The early part of March 1913.

Q. 1913? A. Yes, sir.

Q. That was the last time you ever tried to— A. Yes, the last time.

BERTRAND A. STANLEY, sworn for the petitioner.

Direct Examination by Mr. Rosenkrans.

Q. You live in Little Falls Township? A. I do.

10 Q. And did in March, 1913? A. Yes, sir.

Q. At that time you were Overseer of the Poor? A. Yes, sir.

Q. In that Township? A. Yes, sir.

Q. Did Mrs. Hyer see you about that time in regard to obtaining support from her husband? A. Yes, she first wrote me a letter on February 28.

Q. Of what year? A. 1913, and then later called at the office on, I think it was, March 3rd.

Q. Did you make any complaint? A. I went
20 over to the bank to see Mr. Hyer and asked him what he would do. I did not make any complaint before the Justice of the Peace.

Q. You made an effort to settle the matter between the parties? A. Yes, sir.

Q. What effort did you make? A. I told Mr. Hyer that he was responsible for the support of his wife and that the Township would not support her.

Q. Did you make any effort towards reconciling these parties, bringing them together again? A.
30 Why, nothing more than on March 4th, when Mr. Hart and I went to Mrs. Hyer's house on Maple Street.

Q. By Mr. Hart you refer to the witness last upon the stand? A. Yes, sir.

Q. Did you meet Mr. Hart by chance that day or by pre-arrangement? A. I think Mr. Hyer told me in the morning, possibly on my way to the

office, I am not just positive where it was, but sometime in the morning, Mr. Hyer asked me if I would meet him at the bank and go down to see Mrs. Hyer.

Q. You and Mr. Hart went together to Mrs. Hyer's home in Little Falls? A. Yes, sir, on Maple Street. 10

Q. And you saw her that day? A. Yes, sir.

Q. What did you say to her and she to you? A. Why, I told her that Mr. Hart was representing Mr. Hyer, to reach a settlement of care for her maintenance in some way, and there was more or less discussion. I do not just remember what words were said. I remember that as we went in the house Mrs. Hyer said, "What do you want here, Joe Hart, you big stiff?" and I replied that Mr. Hart was there representing Mr. Hyer and I was there for her benefit. 20

Q. If you do not recall in detail just what words were used can you say whether or not Mr. Hart urged her at that time, to rejoin her husband in his home? A. Why, I don't remember Mr. Hart making an offer that way. Mrs. Hyer said, "Why don't Henry come down and talk to me?" There was something said about it. I don't remember—

Q. About getting together again? A. Yes, sir. 30

Q. Who said it, who suggested it? A. Mr. Hart.

Q. Then upon his suggestion that they get together the wife proposed that the husband be called? A. Yes, sir.

The Vice Chancellor—Let the witness give the testimony.

Go right on, Mr. Stanley, and tell us what was said or done after Mrs. Hyer said, "Why does not Henry come down?"

The Witness.—I went to the Bank and asked Mr. Hyer to come to see Mrs. Hyer at Maple St., which he did, and after talking quite a little while, Mr. Hyer said, "Now, Sophie, you have left me before; why don't you come back?" She made the remark that she would never come back to him. During the conversation, there was an offer of—I think $500.00, first; I think Mr. Hart made that offer, that she take $500.00 and establish herself either in business or in Bridgeport in a rooming house.

The Vice Chancellor.—Was anything said about divorce?

The Witness—Not that I recall.

The Vice Chancellor—Was anything said as to who was to furnish the money to get the furnished room house?

The Witness—No.

Q. Can you say when something was said about the $500.00 with reference to the time when Mr. Hyer got there? A. Do I say—

Q. Was the $500.00 mentioned before or after the arrival of Mr. Hyer? A. I am not positive, but I think it was while Mr. Hyer was there.

Q. If it was made before Mr. Hyer's arrival it was mentioned by Mr. Hart and not by you? A. No, by Mr. Hart.

Q. What did Mrs. Hyer say in reply to the proposal that she— A. She said she first wanted—

Q. —take $500.00 or some other sum? A. She said she first wanted to see her counsel.

Q. Did you remain at the home of Mrs. Hyer after Mr. Hyer left? A. No, I think we all went out together.

Q. Before you all left together, was there any arrangement made providing for the future support by Mr. Hyer of his wife? A. An arrangement was made with me at the office of Ward and McGinness, in the afternoon, at which time, Mr. Hyer and Mrs. Hyer, and myself met there. 10

Q. Do you know from whom that suggestion came? A. From Mrs. Hyer.

Q. And what was done? A. That was done, and that time the support of $6.00 a week was agreed upon.

20

By the Vice Chancellor:

Q. Was anything said about their living together in the office of Ward & McGinness? A. Not that I recall. You see my interest in the case was to protect the Township.

Q. Do you recollect about the date of this meeting in Ward & McGinness' office? A. That was on the afternoon of March 4, now I might be wrong by a day.

30

Further Direct Examination:

Q. Was it the following day? A. No, it was the same day; it was either March 3rd, or March 4th,

Cross Examination by Mr. Kerr:

Q. Did Mrs. Hyer have to go to you more than once concerning support from her husband?

Mr. Rosenkrans—I object to the form of that question.

10 *The Vice Chancellor*—What form do you suggest would be correct?

Mr. Rosenkrans—Did she ever go again?

The Vice Chancellor—That is exactly what the question is.

Mr. Rosenkrans—He said, "Did she have to."

Q. Did she ever come to you more than once about that? A. She called at my office and my

20 house several times. The case so far as I was concerned, representing the Township, was disposed of on March 4th.

Q. Do you recollect that she had trouble in getting support after that and that she went to the Justice of the Peace and had a warrant issued for non support? A. I don't know that, only hearsay.

By the Vice Chancellor:

30 Q. When you went over to the Bank and had the first interview with Mr. Hyer did he authorize you to communicate with Mrs. Hyer, and make any offer to her? A. No, sir.

Q. How long was that, that first interview, before the occasion when you met Mr. Hart? A. Now just a minute. I think I went to see Mr. Hyer on

Feb. 28, on the receipt of Mrs. Hyer's first letter.

Q. Did Mr. Hyer at that time say anything to you about his sending for Mr. Hart? A. No, not that I recall.

Q. Was your sole object in going there to arrange for the relief of the Township? A. Solely. 10

Q. And on March 4th, when you met Mr. Hart at Mr. Hyer's Bank, did Mr. Hyer authorize you to make any statement to his wife? A. Nothing was said about it.

Q. All you had to do was to relieve the Township? A. Yes, sir, as I had had several of those cases.

Q. Did you understand why Mr. Hart was going along with you? A. No, no more than it seemed—knowing that he was a brother-in-law, I presumed he was there for general reasons. 20

Q. Did you hear Mr. Hyer say anything of that sort to Mr. Hart? A. No, I did not.

Q. I suppose you did not require Mr. Hart's services in relieving the Township? A. None whatever.

Further Cross Examination.

Q. (Showing witness a paper.) Is that a letter which you wrote to Mrs. Hyer subsequent to the first time? A. That is a letter written by my office, not by me. 30

Q. Sent from your office to Mrs. Hyer? A. Yes, sir.

Q. Did you dictate that letter? A. Undoubtedly I did.

Q. You were not giving advice to Mrs. Hyer at all, you were merely looking after the interests of the Township? A. What's that?

Q. You were not giving advice to Mrs. Hyer, you were merely looking after the interests of the Township? A. Yes, sir.

10 Q. And you merely went after Mr. Hyer, because Mrs. Hyer suggested why didn't he come down? A. Yes, sir, that had nothing to do with this matter.

Q. That first occasion was March 13th? A. Yes, sir.

Q. And this letter which I show you was written April 13, 1914? A. Yes, sir.

Q. To Mrs. Hyer from your office? A. Yes, sir.

20 Q. Do you know concerning what that letter was written to Mrs. Hyer? A. I received a letter from Mrs. Hyer on April 28th.

Q. 1914?

Mr. Rosenkrans.—I do not quite understand the object of the examining counsel.

Mr. Kerr.—I will offer the letter in evidence.

Mr. Rosenkrans.—It cannot bind the petitioner of course, and I do not understand it

30 is for the purpose of contradicting this witness.

Mr. Kerr.—No, it is not. This letter corroborates Mr. Stanley.

The Vice Chancellor.—Do I understand objection is made to the letter?

Mr. Rosenkrans.—I would like to know then what object it is offered for.

Mr. Kerr.—I will read it.

The Vice Chancellor.—The time to do that is when it is received in evidence.

Mr. Kerr.—I offer it in evidence.

The Vice Chancellor.—Is there any objection?

Mr. Rosenkrans.—Yes, I do not know what the object is. 10

The Vice Chancellor.—If that is the sole reason.....

Mr. Rosenkrans.—No, I object on the ground it cannot bind the petitioner.

The Vice Chancellor.—Counsel seems to be objecting now, on the ground it is not competent. How is it competent? The witness may testify; he cannot write letters to be put in evidence. His own letters may be produced to contradict him, or to fix a date, or possibly some other matter in the case, but they are not evidential. 20

Q. Explain what caused the letter to be sent to Mrs. Hyer from your office? A. I received a letter from Mrs. Hyer on April 28th, in which letter Mrs. Hyer said that——

Mr. Rosenkrans: I still object; I object to that. 30

The Vice Chancellor: Yes, how is that competent, really I cannot see how this matter can be relevant at all. It was a year after the transaction about which the witness has testified, the transaction in regard to which his testimony was absolutely confined. It is

a transaction in April, 1914, more than a year after the transaction took place, about which he has testified.

The Witness: The case was out of my hands on March 4th, and this was simply a friendly letter that I wrote. I had no authority as overseer of the poor in regard to that case at that time.

10

LOUISE HYER, sworn for the petitioner.

Direct Examination by Mr. Rosenkrans.

Q. You are a daughter of the petitioner? A. Yes, sir.

20

Q. You lived at your father's home at Little Falls? A. Yes, sir.

Q. Are you living with him still? A. I am living with my aunt.

Q. In December 1912, where did you make your home? A. With my father and mother.

Q. By "Mother," you refer to your father's second wife, the defendant here? A. Yes, sir.

Q. Who else were living in your father's home at that time? A. Just the four of us.

30

Q. The four were, the daughter of your mother by a former husband, Mrs. Hyer, your father and yourself? A. Yes.

Q. Do you remember the separation, in December, 1914, of your stepmother from your father? A. 1912?

Q. Yes, I mean 1912. Were you at home on the night preceding the separation? A. Yes, sir.

Q. Can you tell what occured, if anything, that evening between your father and his wife? A. Why, Mr. Marley came to the house and Helen was sitting in the kitchen and I was upstairs and I hears Papa come in and tell Frank to get out of the house, and shortly after that he went out.

Q. Do you know whether prior to that, anything had ever been said by your father with regard to Mr. Marley calling at the home? A. Yes, he always objected. 10

Q. Upon whom did he call there? A. Helen Hyer, my sister.

Q. Tell us now, as nearly as you can recall what occurred on the evening before your step-mother separated from your father? A. Helen was sitting in the kitchen with Frank Marley and I was upstairs and I heard Papa come in and he said that —he found out that Frank was in the house, and he was not going to have him in there and he put Frank out, and he said to Mrs. Hyer that he thought he had told her several times not to have Frank Marley in the house and that she said she would not, and Mrs. Hyer said she did not know he was coming home that night, and I went upstairs and shortly after that Papa went out and Helen and my mother came running upstairs and started to dance and to kiss me and said they were going to get out. 20 30

Q. About what hour did your father find Mr. Marley in his house? A. I should think it was about eight o'clock.

Q. Then you say he went out, your father went out? A. Yes, sir.

Q. Did you hear him come back? A. Why, I was in bed at the time.

Q. Did you hear him return? A. Yes, sir.

Q. Can you tell about when? A. I should think it might have been about ten, it might have been a little after.

Q. What had become of Mrs. Hyer and her daughter? A. They slept in the other room.

10 Q. Had it been the custom of Mrs. Hyer to sleep in that other room? A. No, sir.

The Vice Chancellor.—When you say the other room do you mean Helen's room?

The Witness.—Yes, sir.

Q. The room occupied by Helen? A. Yes, sir.

Q. Do you know if anything was said on that evening by your father to his wife, did you hear 20 anything said, anything further, upon the return of your father about ten o'clock? A. Nothing further.

Q. Did you see Mrs. Hyer in the morning? A. No, sir.

Q. Did you get up at the usual time? A. Yes, sir.

The Vice Chancellor.—When?

The Witness.—It must have been about 30 half past six.

Q. Did anybody make breakfast there? A. My father.

Q. Did you have breakfast? A. Yes, sir.

Q. Was anyone at breakfast besides you and your father? A. No, sir.

Q. Do you know where Mrs. Hyer and her daughter were? A. They were sleeping.

Q. Was it customary for your father to get the breakfast? A. No, sir.

Q. Who usually did it? A. My mother.

Q. What did you do after breakfast? A. I went to business.

Q. Do you know what your father did? A. He went to business also. 10

Q. Who left the house first? A. We both left together.

Q. What time did you come back? A. I did not get back until late that night, nine o'clock.

Q. You were working at Paterson at that time? A. Yes, sir, in Quackenbush's.

Q. This was during the Christmas holidays? A. Yes, sir.

Q. You were working late in the store at night? A. Yes, sir. 20

Q. When you returned about nine o'clock did you find Mrs. Hyer there? A. No, sir.

Q. Or her daughter Helen? A. No, sir.

Q. Had any change been made in the appearance of the house? A. Yes, some of the furniture had been taken, and dishes, which had been hers before.

Q. Did you learn on that night where Mrs. Hyer and her daughter had gone to? A. No, I did not; I tried to find out, but I could not. 30

By the Vice Chancellor:

Q. Did you miss any of the clothing belonging to Mrs. Hyer? A. Yes, sir, everything that belonged to her.

Q. Did you look in the places, bureaus, etc., where clothing was kept? A. Yes, sir.

Q. What did you find? A. I did not find anything, they were empty.

Q. How about the closets? A. They were also empty.

Q. Were there no dressers there? A. No dressers.

10 Q. Do you know whether they had taken a trunk? A. No, I could not tell that.

Q. You could not tell from your inspection whether the things had been taken in a trunk or a valise? A. Well, I understood——

Q. No, never mind.

Further direct examination:

Q. Had a part of the household goods and furniture been the property of Mrs. Hyer? A. Some
20 of them.

Q. Any considerable part of them? A. There were a few pieces she brought in and a few pieces Grandmother had given both Mrs. Hyer and my father.

Q. Were the pieces left there that Mrs. Hyer had brought to your father's house? A. No, sir.

Q. Were those pieces left there that were given to Mr. Hyer and Mrs. Hyer in company? A. They were not there, they were taken away, too.

30 Q. They were there in the morning? A. Yes, sir.

Q. And gone in the evening? A. Yes, sir.

Q. When did you see Mrs. Hyer next? A. I saw her a couple of days after on the street, while I was with my father in Paterson, and I went up to speak to her; she was with Frank Marley and Helen and she would not listen to us, and I called to her

and she would not answer so I said to my father "I guess she does not want to speak to us."

Q. Where did you see her? A. At Main and Ellison Streets, Paterson.

Q. At what time of the day? A. About six o'clock at night.

10

By the Vice Chancellor:

Q. You were with your father? A. Yes, sir.

Q. How long was this after Mrs. Hyer left the house? A. A couple of days later.

Further direct examination:

Q. You approached Mrs. Hyer? A. I called to her and told her to wait a minute, I wanted to talk to her, but she went right on and would not listen to me.

20

Q. Do you know whether she heard? A. She could not help hearing me.

Q. Do you know whether she looked at you and recognized you? A. She could not help seeing me, I was right behind her when I called to her.

The Vice Chancellor:

Q. How could she see you when you were behind her. A. She could tell my voice, I know, recognize my voice.

30

Q. You were walking with your father? A. Yes, sir.

Q. Did she turn to look? A. Yes, sir.

Further direct examination:

Q. Mrs. Hyer's daughter was working in Paterson then? A. Yes, sir, at Rodesky's, on Main Street.

Q. Was it the custom of Mrs. Hyer to meet her daughter at that place, to meet on the corner? A. Yes, sir.

Q. And that was where you met her on this night. A. Yes, sir.

Q. Did you see Helen at any time, between the day when she and your mother left your father's home, and the night of the accidental meeting? A. No, sir. I went to Rodesky's the night after she left, and inquired if she was there, and they told me she was not working there that day.

Q. Were you in the habit of returning to Little Falls together from work with Helen? A. Yes, sir.

Q. Did you go there to resume that habit? A. Yes, sir.

Q. Did you see them again, either Mrs. Hyer or her daughter Helen? A. I met Mrs. Hyer one day in Little Falls, when she was living in Maple Street.

Q. How long after the night of this chance meeting in Paterson? A. That was in 1913, in March I think.

Q. Was anything said about returning to your father's home? A. Yes, I told her Pa wanted her to come back, and he always told me; he spoke of it quite often, that he always wanted her to come back and have a happy home, and she said no, she would never come back to father, that she was there for support and when she got that she was going away.

Q. Had any word reached you at the time you spoke to Mrs. Hyer that Mrs. Hyer was looking for

support from your father? A. Yes, sir, I knew she had been looking for support.

Q. Did you tell your father what she said to you? A. Yes, sir.

Q. Did you see her again during that year, 1913? A. I saw her up at Milford Beach the fourth of July. 10

Q. Did anyone go with you to Milford Beach? A. My father.

Q. On this motor car trip that he has described? A. Yes, sir.

Q. Did you see Mrs. Hyer there? A. Yes, sir.

Q. What was done? A. We went to Milford Beach for the purpose of bringing Mrs. Hyer back; Papa wanted to go up there and asked me to go; he said probably I could do something, say something to her to bring her back, so we went up there, 20 and when we got to the cottage she greeted us very nicely and we had a very nice time and asked her to go to New Haven with us, which she did, and on the way I sat in the back seat of the machine speaking to her about coming back, and I said "Why don't you come back with us this time, on this trip," and she said No, she would not, she did not care for Little Falls, and she would not come back.

Q. Did you see her again in that year, 1913? A. No. 30

Q. When did you see her again? A. I saw her at the Y. W. C. A. in 1916.

Q. In Paterson? A. Yes, sir.

Q. What time of the year? A. Sometime in the summer.

Q. What was she doing there, do you know? A. She was employed there, working there.

Q. In what capacity? A. I believe she was in the kitchen.

Q. Did you speak to her then? A. I saw her several times, and I always spoke to her whenever I could, and Papa had sent me up there to ask her to come back.

10

Q. At the Y. W. C. A.? A. Yes, sir.

Q. When you first saw her there, you saw her by accident? A. Yes, sir.

Q. Did you tell your father about it? A. Yes, sir.

Q. What did he say to you if anything? A. He told me to go up there; he said he did not care to have her working there, that there was a nice home waiting for her in Little Falls, and he asked me to go up and try to get her back. I went up there and asked her to come back and she said I must be very careful and quiet and not talk about it as she was posing as a widow.

20

Q. Did you tell her at that time your father had asked you to come to her? A. Yes, sir.

Q. And invite her back? A. Yes, sir.

By the Vice Chancellor:

Q. What did she say? A. She said she would not go back to him; she said she had spoken many times to me and not to speak to her about it again, that she would not go back to him at Little Falls.

30

Q. Would not go back to hime at Little Falls? A. She would not go to Little Falls.

Q. Did she say she would be willing to live with him anywhere else? A. No, she did not.

Further direct examination:

Q. Can you recall how often you talked with

her at the Y. W. C. A.? About coming back to your father? A. I talked to her a couple of times, but that was the time Papa sent me up there.

Q. Did you see her after the time that she was at the Y. W. C. A. and before your father started the present suit? A. No, sir. 10

Cross examination by Mr. Kerr:

Q. When did you see her at the Y. W. C. A.? A. In 1916.

Q. Where was she when you saw her? A. At the window, there was a window there, where they take the dishes.

Q. Where were you? A. I was out in the Y. W. C. A.

Q. You were eating? A. Yes, sir, having dinner. 20

Q. You were not talking to her while you were eating? A. No, sir, but after I got through, I went and spoke to her.

Q. Where? A. At the window.

Q. Not in the dining room where you ate? A. There is a place where you hand in the dishes.

Q. Did she work in the kitchen? A. Yes, sir.

Q. Was it her business to hand out dishes through that opening? A. Sometimes she took them. 30

Q. Was that her business, do you think, did you ever see her handing anything from that window? A. No.

Q. You stood at that window and spoke to her? A. Yes, sir.

Q. Is that the only time you spoke to her at the Y. W. C. A.? A. I always said "Hello."

Q. I mean at the Y. W. C. A., is that the only time you spoke to her? A. Yes, sir.

Q. How long did you stand there talking to her? A. Just a few miutes.

Q. Were they handing out—— A. They were taking in dishes there.

10 Q. You go and get dishes for yourself when you get there? A. Yes, sir.

Q. And take them to the table and eat? A. Yes, sir.

Q. You don't take your dishes to that opening in the window? A. Yes, sir, you do.

Q. When you had your lunch that day——was it lunch time? A. About lunch time.

Q. What time? A. About twelve or a little after or maybe one.

20 Q. Noon time? A. Yes, sir.

Q. You had your lunch? A. Yes, sir.

Q. How did you know she was in that little opening? A. I saw her.

Q. You can't see a person's face through there? A. Oh yes, you can see the upper part of the body.

Q. You took your dishes over to that window and spoke to her? A. Yes, sir.

Q. What did you say? A. I told her Papa had sent me down there for her to come back, to ask——

30 Q. Was that——

The Vice Chancellor.—Do not interrupt the witness' reply.

The Witness.—To ask her to come back. She said she would not come back, and I must be very careful and talk very low, because she was posing as a widow.

Q. You did not know she was working there until you saw her through the window? A. I saw her before.

Q. What? A. I heard she was there.

Q. You never saw her before? A. I did, I saw her working there inside.

Q. How often had you seen her before? A. Once or twice.

Q. You never spoke to her? A. I said "How do you do?"

Q. On this day you went there to have lunch from your work? A. I was not working then.

Q. Why didn't you go and ask for her when you went in there? A. Because I didn't know where she was, I didn't know where to ask.

Q. You didn't know where she was until you had finished your dinner? A. Not until I saw her, I saw her then.

Q. While you were eating your lunch you saw her? A. Yes, sir.

Q. You had not inquired for her when you went there——you had to pass through the office, didn't you? A. Yes, sir.

Q. In passing through the office did you inquire for her? A. I was going to do that if I did not see her.

Q. Did you? A. No, sir, I did not.

Q. Where had you been before you went to lunch? A. I was shopping, doing a little shopping around.

Q. Then you had not come directly from your father to go there and tell her that? A. Yes, I did go there——

Q. You did not go there from Little Falls, from

your father to go and tell her that? A. Yes, I did, but they did not serve lunch until eleven o'clock and I had a little time to spare so I waited to see if I could see Mrs. Hyer and speak to her; I did not want to make any disturbance in there about asking for her or anything, I wanted to talk to her personally.

10

Q. Where did you wait, you say you did not go there directly? A. I did a little shopping.

Q. Then you had your lunch? A. Yes, sir.

Q. And you happened to see her through the window and went and spoke to her? A. Yes, sir.

Q. What year was that, what date? A. 1916, I do not know what date.

Q. What month? A. During the summer.

Q. During the summer of 1916? A. Yes, sir.

20

By the Vice Chancellor:

Q. Did you report back to your father what Mrs. Hyer said on this occasion? A. Yes, sir.

Q. Just as you have stated? A. Just as I have stated.

Further cross examination:

Q. How long do you say you spoke at the window with her? A. A few minutes, long enough to ask her to come back and get her reply.

30

Q. She met you, did she not, on Maple Street, shortly after she left your house? A. Yes, sir.

Q. You spoke to her? A. Yes, sir.

Q. Didn't she ask you to go with her over to Astoria to see her mother? A. No, sir.

Q. And did you not refuse? A. No, sir.

Q. And didn't you say you were never going to talk to Helen again? A. No, sir, I never said that; I am as good a friend today as ever I was of Helen.

Q. This night that the trouble occurred at your father's home you were upstairs, were you? A. Yes, sir.

Q. And you only know what was told you? A. No, sir, I could hear it from where I was

Q. Hear your father swear and use profane language? A. I never heard my father swear that night.

Q. You did not? A. No, sir, I did not.

Q. What did you hear your father say that night? A. He told Frank Marley to get out, that he didn't want him——

Q. Where were you? A. At the head of the stairs.

Q. Listening? A. Yes, sir.

Q. Did you go out and tell your father Frank was there? A. No, sir, I didn't know father was coming in at all.

Q. You were playing cards in the dining room with Mrs. Hyer, were you not? A. Yes, sir, and I excused myself and went upstairs.

Q. You never came down again? A. When I heard father there I did not come down again.

Q. What occurred in the kitchen you could not see? A. No, sir.

Q. All you heard was while standing at the top of the stairs? A. Yes, sir.

Q. You could not hear everything? A. Mostly everything, the doors were all open.

Q. Did you ever go to see Mrs. Hyer at any time where she lived in Ellison Street? A. No, sir.

A recess was then taken.

Paterson, New Jersey,
Monday, March 14, 1918.

After recess.

LOUISE HYER resumes the stand.

10

Cross examination resumed by *Mr. Kerr.*

Q. Where did you sit that day having lunch? A. On the right hand side.

Q. Right hand side going in? A. The left hand side going in.

Q. You say you sat on the right hand side? A. The left hand side going in, but when you sit down, to look in the window, it is the right hand side. Just as I am sitting now; it is the right hand side where I am sitting now.

20

Q. Suppose you were sitting now at the table having your lunch; where was this window? A. Right in front of me.

Q. Where is that place where you got your victuals? A. On the side.

Q. Which side? A. The left hand side.

Q. It was the left hand now? A. On my left. As you go in it is on the right and then you turn around, you sit facing the other way.

30

Q. Who did you hand your dishes to? A. When? The day I spoke to my mother?

Q. Yes, what did you do with your dishes?

The Vice Chancellor.—The witness testified to that, and this is only a repetition, and I think her reply was in response to a question by you. She said she took her dishes

and passed them through the window and that such was the custom of the place.

Q. To whom did you give them? A. To Mrs. Hyer.

10

ANNIE HART, sworn for the petitioner.

Direct Examination by Mr. Rosenkrans.

Q. You are a sister of the petitioner? A. Yes, sir.

Q. And the wife of Mr. Hart who was a witness this morning? A. Yes, sir.

Q. You reside where? A. 42 Howard Avenue, Brooklyn.

20

Q. Did you reside there in the early part of 1913? A. Yes, sir.

Q. You knew, of course, Mrs. Hyer, the defendant? A. Yes.

Q. Did she call upon you early in 1913? A. Yes, sir.

Q. Do you know whether at the time of her call she was separated from her husband? A. Yes, I had heard of it.

30

Q. Did you say anything to her on that occasion about going back to her husband's home? A. We got talking about it and I told her she was very foolish, I was sorry to hear things happened the way they did, but I didn't know anything about it until shortly before. I said she was very foolish. I thought they ought to make up, and that is how I came to talk to her.

Q. What did she say to you in reply to your suggestion that she and her husband ought to bury their differences and get together again? A. She did not seem to want to go back, she did not want to ever go back.

10 *By the Vice Chancellor*:

Q. What did she say? A. I asked her "What is the trouble? I am awful sorry to hear it, Sophie, I think you ought to live at home, you have a nice home, why don't you make up and go back?" and she said, "No, I won't go back there," and I said "Why not?" and she said, "No, I will never go back."

Q. Did you see Mr. Hyer soon after that? A. A couple of days after.

Q. Did you tell him about it? A. I told him
20 the same as I just told you.

Cross examination by Mr. Kerr:

Q. When was that? A. I think it was the early part of January 1913, I am not sure of the date, but I think it was in January.

Q. When was it she and Mr. Hyer parted? A. In December, 1912.

Q. What part of December? A. I think it was
30 the 10th of December.

Q. Was this about the first of January? A. No, it was not the first of January, it was some time in January, I think the middle or the latter part, I cannot say when it was.

Q. Who was with her? A. Mrs. Frederick (?) her cousin.

Q. They called to get a doll belonging to some-

one? A. Yes, it belonged to Helen, but it was at my house. We got to talking and I told her I was very sorry to see that they had parted, I did not think it was necessary.

Q. Did she tell you the circumstances leading up to her leaving the house? A. No, we didn't go into details; she didn't stay long, she just stayed a little while. 10

Q. When did you see Mr. Hyer? A. A couple of days after that.

Q. When? A. I went up to Little Falls a couple of days after that.

EDMUND KRAMER, sworn for the petitioner. 20

Direct Examination by Mr. Rosenkrans.

Q. You reside in Little Falls? A. Yes, sir.

Q. What is your business? A. Baker business.

Q. How long have you been in that business in Little Falls? A. Ten years.

Q. Do you know Mr. Hyer, the petitioner? A. Yes, sir.

Q. And Mrs. Hyer, his wife? A. Yes, sir. 30

Q. How long have you been acquainted with them? A. About nine years.

Q. Have you been well acquainted with them during that period of time? A. Yes, sir.

Q. You are unmarried, I believe? A. I am unmarried.

Q. With whom do you live? A. My sister kept house for me, and her daughter.

Q. Was Mrs. Hyer in the habit of calling at

your home? A. She was over there quite a lot, yes.

Q. Was she friendly with any member of your household? A. She has been, yes.

Q. With whom? A. My sister and her daughter.

10 Q. Did she call on your sister? A. Yes, sir.

Q. Frequently? A. Quite frequently.

Q. Before the separation from her husband? A. Not very often until afterwards.

Q. You remember the fact of their separation? A. I do.

Q. In 1912? A. Yes, sir.

Q. Did Mr. Hyer ever ask you to see his wife and use your endeavors to induce her to return to him? A. He did.

20 Q. Can you say in what year? A. 1914, or 1915, a year or two after they had separated.

Q. On more than one occasion, did he ask you? A. He asked me twice.

Q. How far apart? A. Oh, it might have been a couple of weeks apart and it might have been four weeks.

Q. Did you do what he asked you to do? A. Yes, sir.

30 *The Vice Chancellor.*—What did he ask you to do, give us his language as nearly as you can.

The Witness.—He asked me if I would not ask her to come back and what she would say if he asked her to come back to him to live with him.

Q. Did she come to your home after that? A. Yes, sir.

Q. Did you see her? A. Yes, sir.

Q. Did you say anything to her? A. I spoke to her on several occasions.

Q. What did you say to her? A. I told her a lady of her age should absolutely go back with Mr. Hyer and make up with him; that she had a home there and she should not stay away from such a good home.

Q. What did she reply? A. Under no conditions in Little Falls, would she come back to Mr. Hyer. She was tired of Little Falls, she was through with it. It was nothing but hypocrites, and church goers, spying into everybody's business——and church members; if he would make his home out of Little Falls, she would come.

Q. Did you make any reply to that? A. I said I was in Little Falls quite a lot even in night.

Q. What was her answer? A. I don't know what it was; she said she knew better or something like that.

Q. Did you report to Mr. Hyer what you said to his wife and what she said to you? A. Yes, sir, I told him the same thing.

Q. You say he asked you twice to make some effort to get her back; did you try twice at his request? A. Yes, sir.

Q. On the second occasion what did you say and what did she say? A. He said "Try her again, talk to her again," that was all I think was said.

Q. On the same lines? A. Yes, sir.

Q. What was the result? A. The same thing, she would not go back to Little Falls.

Q. Did you tell Mr. Hyer what she said? A. I did tell Mr. Hyer.

The Vice Chancellor.—When was this?

The Witness.—This must have been in 1915 sometime, the latter part of 1915, I think.

Cross examination by Mr. Kerr:

10 Q. How long have you lived in Little Falls? A. About ten years.

Q. Did Mrs. Hyer come to your house quite frequently? A. Quite frequently.

Q. Did you call at Mr. Hyer's house while Mr. and Mrs. Hyer were living together? A. I never called at the house; at the Bank I was over there quite often.

Q. To whom did Mrs. Hyer speak when she came to your house? A. To my sister and daughter and
20 she spoke to me.

Q. Whom did she visit at your house? A. She was supposed to visit my sister.

The Vice Chancellor.—Is your sister here?

The Witness.—Yes, sir.

Q. You said a moment ago your sister kept house for you? A. Yes, sir.

Q. Until when? A. Until about two months
30 ago.

Q. The last day that you were here you discharged your sister and put her out, because she came here and testified for Mrs. Hyer? A. I told her she must cut off relations with Mrs. Hyer or leave my house.

Q. You put her out? A. I told her that.

Q. So that she is not living with you now? A. No.

Q. You had frequent conversations with Mrs. Hyer concerning her husband, did you not? A. Quite often.

Q. You told her once why Mr. Hyer would not take her back? Did you not? A. I don't know anything about that. 10

Q. You do not remember that? A. No, sir.

Q. In the presence of your sister did you not say to Mrs. Hyer, "the reason your husband will not take you back is because he has another girl and I can take you to her house, show you the very house where she lives"? A. I could not tell the house; I don't know anything about it; I never said such a thing.

Q. Where is your sister living now? A. I do not know where she is living. I believe she is living out. 20

Q. Has she any other relations besides you in the State of New Jersey? A. Oh yes, yes, there are seven of us sisters and brothers.

Q. You cannot give the date, can you, when you asked Mrs. Hyer to go back to her husband? A. I never thought of the date;; it was in 1915 or 1916.

Q. It was in 1915 or 1916? A. Either one.

Q. Did you say that the last time you testified here? A. I think I did, yes, sir. 30

Q. What? A. I am sure I did.

Re-direct examination.

Q. Were there any other differences between you and your sister which led to her leaving your home? A. Well, my sister——

Q. Yes or no? A. Yes, there were other differences quite often.

Mr. Rosenkrans.—That concludes our direct case with t he exception of the witness, Mr. Francisco, the President o f the Little Falls Bank. He was to be here, but he has gone to Washington, on some large contract with the U. S. Government, and we would like to reserve the right to call him. He might possibly be here today, and we telephoned Little Falls to have him come down here if he arrived this afternoon.

The Vice Chancellor.—Subject to that reservation the Petitioner rests. Proceed with the defense.

Petitioner Rests.

JOHN F. KERR, ESQ., sworn for the defense.

Witness.—In the early part of 1915, or the latter part of December 1914, Mrs. Hyer called on me, and at her request I wrote a letter, dated January 7, 1915, directed to Mr. Henry Hyer, Little Falls National Bank, Little Falls, New Jersey, of which I hold the copies in my hand. It has been marked for identification, and I now offer it in evidence, as I have demanded the original of the petitioner who says he has not got it.

The Vice Chancellor.—Is there any objection?

By Mr. Rosenkrans:

Q. Have you any recollection of having personally mailed that letter? A. Well, from recollection I cannot say whether I mailed it, or someone in my office, but I know that that letter was mailed by either myself or my stenographer and I got an answer immediately from Mr. Hyer, acknowledging the receipt of it. That is the only letter I wrote him prior to getting that letter from him so that I feel sure that I wrote the letter, so that I have no earthly doubt about it at all.

Q. That letter which you have in your hand which is marked—— A. D No. 1 for identification.

Q. Is that the only letter you wrote to Mr. Hyer prior to his call upon you? A. I think that is the first letter.

Q. There had been some proceedings taken, or contemplated being taken, before Justice of the Peace Keys, by you on behalf of Mrs. Hyer? A. No, sir.

Q. Before that letter was written she had begun some proceedings to your knowledge, did she not? A. I know that she went to Justice Keys, I cannot say whether it was before that or after. Very likely it was before that, but not by my instructions; she never came to see until she had a warrant issued by Justice of the Peace, Keys.

Q. I notice that you said that she called on you late in 1914, or early in 1915? A. Yes, sir.

Q. Are you able to fix the exact time? A. I cannot fix it except by the date of this letter; I know it was just about the time of my letter which is dated January 7, 1915.

Q. You cannot fix the date? Of her original call any nearer than by saying it was the latter part of December, 1914, or the early part of 1915? A Not at present. I might have it on the diary.

Q. Did she call on you on more than one occasion before you wrote that letter? A. I am not positive, but I think once before I wrote that letter.

Q. So that you probably had at least two conferences with her before writing the letter of January 7, 1915? A. I am not positive. I think that is the first thing I did after she came to see me.

Q. You are unable to say whether or not you had written Mr. Hyer prior to the letter of January 7, 1915? A. I would not say positively, I know I have written after, because I have copies of letters I wrote after, but none before.

Q. You sometimes write letters without making copies? A. Occasionally.

Q. And sometimes copies get mislaid, when made? A. Possibly.

Q. So that your recollection is not clear enough to say with any degree of positiveness that the letter of Jan. 7, is the first letter written by you to Mr. Hyer? A. I am not here at present to do any more than to prove I wrote this letter of January 7, and that I got a reply to it on January 8th.

Mr. Rosenkrans.—I move that be stricken out as not responsive.

The Vice Chancellor.—It will be stricken out.

Q. (Last question repeated.) A. I repeat my recollection is that this is the first letter I wrote to Mr. Hyer.

Q. But you are unable to say, as a matter of fact, whether that was your first communication by letter to Mr. Hyer? A. I think it was my first letter to Mr. Hyer after Mrs. Hyer came in.

Q. But there might have been a prior letter? A. I do not think there was. 10

By the Vice Chancellor:

Q. Might there have been a prior letter on that same day? A. No, sir.

Q. Might there have been a prior letter two days before? A. I think not. I think this is my first action in her case.

Q. Is that a carbon copy of the letter which you signed and sent? A. Yes, sir.

Q. Was the letter which you signed and sent 20 written on your office note heads or letter heads? A. On my office note heads, yes, sir.

Q. And this paper which you hold in your hand, exhibit D No. 1 for identification, do I understand, that that writing was made from a carbon sheet by your typewriter? A. Yes, sir.

Q. At the time the original letter was printed? A. Yes, sir.

By Mr. Rosenkrans: 30

Q. You say you have no personal recollection of having mailed that letter? A. I am as morally certain as any lawyer can be that the original of that letter was mailed, and I am more than morally certain because I had an answer to that letter from Mr. Hyer, which I could not have gotten from him, unless he received that letter from me and he wrote

me he would come and he did come with his brother-in-law, and we talked over the subject of this letter.

Q. You say you are not certain there was not a prior letter? A. I am positive that this was the first letter I wrote him.

10 Q. You have become positive since you were first interrogated on the point, have you? A. I have been positive, Mr. Rosenkrans, since I got his letter, January 8, that he received this letter.

Q. Let us see how that leaves you. That acknowledges the receipt of some letter, does it not? A. It acknowledges the receipt of this letter, because this is the only letter which I wrote him, to which he could have written that answer, and the subject that he said he wrote about was not spoken

20 about in any letter from me until I wrote him on January 13, or about that date.

Q. Is it not true that he says in this letter of January 8, that he has your letter and the contents have been noted—— A. He says he got it "Last night."

Q. Without mentioning the date of the letter? A. Yes, but the only letter he could have got "Last night," was this letter of January 7th.

30 *Mr. Kerr.*—I offer this letter in evidence.

The Vice Chancellor.—It will be received.

(Mr. Kerr then read D No. 1 for identification.)

The Witness.—In answer to that letter——

The Vice Chancellor.—Cannot you pass over that? The reply is in evidence.

The Witness.—Yes, I can pass over that. Mr. Hyer called——

The Vice Chancellor.—Alone or with someone else?

The Witness.—With Mr. Hart. I tried to bring about the reconciliation mentioned in my letter but could not succeed in doing it. 10

The Vice Chancellor.—Just give us the conversation. What was said?

The Witness.—Mr. Hyer said he would never live with her again, and his brother-in-law said that no one could make them live together again, there was no law——the conversation was lengthy, we talked I think for half an hour and I made no memorandum of what was said, and had no memorandum made by anybody else of what was said, so that at this late day I can only give my recollection and the result or words explaining the result. To repeat that conversation, all that was said there, would be an impossibility for me to do. I only know that I tried and failed and that they both refused to entertain my suggestion. That is all I can say about that incident. There was talk about the law in New York in New Jersey. 20 30

The Vice Chancellor.—The law in regard to what?

The Witness.—In regard to separation and divorce.

The Vice Chancellor.—Also the law in regard to the obligation of a man to support his wife?

The Witness.—Yes. I told Mr. Hart that

notwithstanding the knowledge he seemed to think he had that the law of New Jersey was that a man had to support his wife no matter where she was until he had a divorce from her.

The Vice Chancellor.—What did you mean by the expression "No matter where she was?"

The Witness.—I meant whether she was with him or away from him. Mr. Hart seemed to think that she had left him and deserted him and therefore that Mr. Hyer did not have to take her back, that was Mr. Hart's idea.

The Vice Chancellor.—Did Mr. Hart or Mr. Hyer say in effect that Mr. Hyer was not compelled to support her unless she returned to Little Falls?

The Witness.—That was never mentioned. Mr. Hyer said he would not live with her again.

The Vice Chancellor.—Yes, you have told us that. Did Mr. Hyer say he was not compelled to support her if she staid away from him?

The Witness.—There was never anything said about her not going back——

The Vice Chancellor.—No. Did he take that position distinctly, that he was not obliged to support her as long as she staid away?

The Witness.—No, he did not say that.

The Vice Chancellor.—Then why did you say that in New Jersey the law required a

man to support his wife no matter where she was?

The Witness.—His brother-in-law was doing most of the talking. Mr. Hyer merely said he never would live with her again, but the brother-in-law, Mr. Hart, said she had run away from him and left him and he did not have to support her.

The Vice Chancellor.—And when he said that, you said the law in New Jersey was, that a man was bound to support his wife wherever she was?

The Witness.—Yes, sir

The Vice Chancellor.—Proceed.

The Witness.—The question of the deed was not taken up that afternoon at all, but on January 13, 1915, I wrote a letter to Mr. Hyer, a copy of which I have in my hand and which I offer in evidence.

The Vice Chancellor.—A carbon copy?

The Witness.—Yes, sir.

The Vice Chancellor.—Made at the time the original was?

The Witness.—Made at the time the original was. And to this I got a reply from Mr. Hyer also.

I offer this letter in evidence.

The Vice Chancellor.—Is there any objection?

Mr. Rosenkrans.—No.

Mr. Kerr.—It is already marked D 2 for identification.

(Mr. Kerr then read D 2 for identification in evidence.)

The Witness.—To that letter I got a reply from Mr. Hyer dated Jan. 15, which is marked exhibit D 3.

(Mr. Kerr then read D 3 in evidence.)

Cross examination by Mr. Rosenkrans:

10 Q. Where was Mrs. Hyer living in January 1914? A. January 1914?

Q. Yes, ——1915.

The Vice Chancellor.—The date of this correspondence is 1913, is it not?

Mr. Rosenkrans.—No, it is not, not as I understand it; no, 1915, beginning in January 1915.

The Witness.—She called upon me late in 20 1914, or early in 1915.

Q. Where was Mrs. Hyer living in January 1915? A. I have always had difficulty in remembering her address, the number of the house.

Q. In what city? A. In January 1915?

Q. Yes, or December 1914, at the time of her first call upon you? A. I think that she was living on Ellison Street.

Q. In Paterson? A. Yes, sir.

30 Q. And you say she had already started some proceedings before Justice Keys, or had been to see him? A. Yes, I think so. Well, I have another letter here, the original of which I sent to Mr. Hyer.

Q. When Mrs. Hyer first called on you late in 1914, or early in 1915, did she then tell you that she had started some proceedings against her husband? A. That is my recollection, yes.

Q. And she told you, or you inquired of her, what sort of proceeding that was? A. I beg your pardon.

Q. You learned of her what the object of the proceeding before Judge Keys was? A. Very likely.

Q. Unmistakably likely, is it not? A. I think it is very likely, yes.

Q. And that object was to get money out of Mr. Hyer, that was her object? A. For non-support.

Q. To compel her husband to support her was the object of the proceedings she instituted before Judge Keys, or talked to him about bringing, was it not? A. I think probably it was, under the law, called desertion, and she had a warrant issued. I would like to read a copy——

Q. No, wait. You went over and saw Justice Keys; she told you she had been there, and told the Justice you represented her? A. I do not think I ever saw him about it.

Q. Let me refresh your recollection. Mr. Hyer said this morning, that he visited the Justice of the Peace with his brother-in-law, and the Justice referred them to you as being Mrs. Hyer's lawyer; does that help you to remember? A. Yes, that does. I remember that when Mrs. Hyer came to me she came with a little note written by Judge Keys, and I think I have that somewhere amongst my papers, saying "This woman needs a lawyer, see what you can do for her," something to that effect, and very likely, most likely, she told me what the Justice had done.

By the Vice Chancellor:

Q. Did you learn whether she had made a com-

plaint before Justice Keys? A. Yes, sir.

Q. Did you learn whether a warrant had been issued before Justice Keys? A. Yes, sir.

Q. It had been issued? A. Yes, sir.

Q. Do you know whether the warrant had been served? A. Yes, because she came to me with a subpoena afterwards to go before the Grand Jury and she said "I have received now, checks from my husband for the period that he failed to send checks, and I have to go before the Grand Jury; what will I do?" My recollection is I told her to go before the Grand Jury and if she didn't want to prosecute her husband, I said "Just tell them he has sent you checks since you had the warrant issued and you don't want him arrested," and the Grand Jury will tell you to go home, and my recollection is she came back and told me what happened in the Grand Jury room, and then I wrote a letter to Mr. Hyer, a copy of which I have here, on January 15, 1915.

Further cross examination:

Q. You say she had been to see the Justice of the Peace, about the failure of her husband to support her, before she came to you? A. Yes, sir.

Q. And that Mr. Keys wrote you a note saying "Here is a woman who is in need of counsel"? A. Yes.

Q. The thing Mrs. Hyer wanted was support, when she first came to you? A. No, sir, she had done her bit and I wrote my first letter to bring them together, that was my idea.

Q. That was your idea? A. That was her idea. I carried into effect her instructions. She was getting old and feeble and I guess she would have been

very glad to have gotten back, from the way she spoke to me.

Q. Mr. Hart told you upon their entering your office, they had come directly from Judge Keys's office? A. I do not recollect that.

Q. Your recollection is imperfect about that whole conversation? A. No one can make me recollect that, for I do not recollect any such thing. 10

Q. Your whole recollection of the occasion is imperfect, hazy? A. No more imperfect than any lawyer who has a lot of things to attend to.

Q. I know, but this thing happened three years ago? A. Yes, sir.

Q. You do not pretend to be able to recall in its entirety what occurred, but just the main features? A. No, no, I could not.

Q. Of course when Mr. Hyer came into your office, what was uppermost in his mind, was the wife's claim for money? A. No, the thing that was uppermost in his mind was that he didn't want want her any more. I was trying to bring them together, and he did not want to. 20

Q. The matter of the support was discussed, was it not? A. It may have been mentioned, most likely it was mentioned, because—— I wish you would look it up if you can, I intended to look it up when I went home, to see what was the date of the Saturday——after the 8th of January, 1915. 30

Q. Mr. Hart and Mr. Hyer called on you—— A. I think they called on me on the Saturday following the 8th; if the 8th was not Saturday it must have been the Saturday following the 7th of January.

Q. Did they call on you more than once? A. Only once.

Q. Did Mr. Hyer come alone at any time to your office? A. No, I think not. I am quite positive. I never saw him but the once, or Mr. Hyer, except afterwards, when I saw Mr. Hyer occasionally.

Q. That is the time when Mr. Hyer or Mr. Hart told you they had just come from the Justice of the Peace office? A. They never told me any such thing that I can remember. I don't believe they ever told me anything like that. It is possible they did, but I do not recall.

Q. Do you know whether the warrant had been issued prior to their call at your office? A. I do not know, but my impression is that it was. I think Mr. Keys turned them over to me when he had done all he could do.

Q. Do you know how far he had gone before he exhausted his resources? A. No, I cannot say, because I never had any talk with him on the subject, either before or after.

Q. Then you say, that when Mr. Hyer came to your office, he had already had the warrant served upon him? A. I did not say that.

Q. You think so, that is your opinion? A. I think so. Don't you think so?

Q. And you knew at least of his wife's demand to the Justice for money? A. I never saw any of the papers in the case, and I don't know the first thing about it, except——

Q. Was there not something dropped in the conversation in the beginning that showed you Mr. Hyer knew that his wife was claiming that he did not then support her? A. No, sir, they came in answer to my letter, and my full effort was to get him to take her back, and he refused, and his

brother-in-law from New York said no one could compel him to take her back when she had run away from him and that a man did not have to take his wife back when she had run away from him.

Q. Can you tell us what was said about money matters? 10

By the Vice Chanecllor:

Q. Do I understand that Mr. Hyer or his brother-in-law said that when a man's wife had run away he was not compelled to take her back? A. Yes, sir.

Q. He also said that if a man's wife ran away, he was not obliged to suport her? A. Yes, sir.

Further cross examination: 20

Q. Those are simply generalities which were spoke of there by one of these men, were they not, introductorally, if said at all? A. I introduced the matter I wrote him about and I exhausted it thoroughly and they left refusing to entertain my ideas at all. That is what I was talking about.

Q. You said money matters were discussed? A. I never said they discussed money matters. I do not believe they did, excepting to say a man did not have to take her back because she had run away. 30

Q. If your letter had been received before Mr. Hyer called at your office and he would not listen as you say to the suggestion you made there, then, as her lawyer, did you not take up the question of his support of her? A. No, sir.

Q. Why not? A. My object was first to bring about a reconciliation.

Q. You say that—— A. And——

Q. Excuse me. A. And the other matter was being attended to by Justice Keys evidently, and I had nothing at all to do with it.

Q. You say Justice Keys had already written you that he had exhausted—— A. I never said anything of the kind, I beg your pardon, I said that I supposed he had sent her to me, when he had exhausted all the remedies he had.

Q. Then that was the time for you to act for her as her lawyer. A. I think I acted pretty good too. Read that letter and you will see what I did.

Q. You say that it is your present recollection that you understood that Mr. Hyer refused to become reconciled with his wife? A. He certainly did.

Q. What was said about money matters? A. I had nothing at all to do with money matters.

Q. You were representing the wife, were you not, and trying to get her rights established? A. The warrant was issued by Justice Keys, to try to have him indicted; the first thing I had to do with it, was when I wrote and told Mr. Hyer what his wife had done.

By the Vice Chancellor:

Q. At that time, Judge, you say you had nothing to do with the criminal charge? A. No, sir.

Q. Were you not concerned in collecting the sums of money that were owing then? A. I think that Mr. Hyer made good.

Q. That was afterwards, was it not? A. It was made good after the warrant was issued, I guess. Let me see——

Q. I will refresh your recollections. You testified a little while ago, that some time after, I think some days after, Mrs. Hyer came to you with a subpoena to appear before the Grand Jury? A. Yes.

Q. And she then informed you that he had been paid up? A. Her checks, yes. 10

Q. Then when you saw her and afterwards wrote this letter, the first letter to Mr. Hyer, you knew that he was in default, did you not? A. I knew he was in default when I wrote the first letter? I presume I did, yes.

Q. Do I understand that you did not concern yourself at all, about the collection of these back installments? A. I thought they were in the hands of the criminal law, and I was trying to bring about a reconciliation. I was hired first for that consideration. 20

Q. You were hired in the second place for something else? A. Well, I would naturally look after her interests.

Q. Did you suppose these installments could be collected through the instrumentality of the criminal law? A. No, I did not think that, but I felt quite sure that would be the result.

30

Further cross examination:

Q. Was not the main topic of conversation between you on that occasion, the topic of the support of Mrs. Hyer by her husband? A. If you will tell me——

Q. No. Was it not? A. ——what was the——

Q. No. Was it not? A. If you will tell me what was the date of the following Saturday, I might be able to help you out.

Q. But without that date you cannot? A. I don't think I can, because if the Saturday following the 8th of January, 1915, was about January 15th, why then I would have known at that time.

Q. Then in the absence of that information you cannot tell what the main topic of conversation between you and Mr. Hyer and Mr. Hart was, can you? A. I do know what the main topic was and I have told you. You are trying to find a difference, and ascertain whether there was not brought in at some time during that interview talk about support. The main topic of conversation was the reconciliation of this man and woman, to bring them together again.

Q. Have you not just said you could not recollect the main topic of the conversation? A. No, sir. If I did, it was the slip of the tongue, because all the talk and conversation was——

Q. Have you not just said that you are unable to state the main topic of this conversation between you and Mr. Hart and Mr. Hyer, unless I could first furnish you with the date? A. I don't believe I ever said anything of the kind, and I know I did not, and I will call on the stenographer to read his notes. Do you think I am an ass to send for a man to come and talk upon a subject, and then not talk about the subject, and not make that the main topic of conversation? What kind of a lawyer do you think I am?

Q. Was not the main subject of the conversation the question of support by Mr. Hyer? A. It was not, no.

Q. Was that touched upon at all in that conversation? A. If it was, it was merely——I don't

know, I don't remember. I don't think it was ever touched upon. I am inclined to think that when he came there, or after he had paid her those three checks, there was nothing to talk about on that subject, that is what I am inclined to think, and that is why I would like to find out what the date of the Saturday after that was. 10

Q. You say there was a point reached in that conversation, when you became convinced that Mr. Hyer did not want his wife back with him, didn't you? A. There came a point? It was that way all through, there was no point about it, or beginning. We were there talking half an hour and there was no single point where he was willing to have her go back.

Q. At some point in that conversation, didn't you make some allusion to his future support of her? A. I don't think I did. 20

Q. Why not? A. Because I thought he had made good and sent her his checks, and there was no object in talking any further aobut that.

Q. I am talking about the future support that he should give her. A. I have been after him for future support for the last three years, since 1915, and I think I have been after him for her support ever since; it has been one continuing forcing of the support of the woman, and I wish some one had wished the job on someone else, and not on me, because I got $15.00—— 30

The Vice Chancellor.—Your manner is not becoming for a lawyer of your standing, you must moderate your manner.

Q. I ask you if you did not take up with Mr. Hyer the question as to whether in the future he was going to keep on sending money to Mrs. Hyer? A. I cannot recall any talk on that subject.

10 Q. Shortly afterwards you wrote a letter to him about certain deeds? A. Yes, sir.

Q. Did you have in mind at the time you wrote that letter anything about his future support of his wife? A. I think that I had in mind——

Q. Just answer the question, yes or no, if you will? A. I merely wanted to use that——

Q. No, that is not an answer. It can be answered affirmatively or negatively, it seems to me. A. I think I was particularly concerned in then—

20

Mr. Rosenkrans.—No, I object to that. I want an answer.

The Vice Chancellor.—The question calls for a categorical answer.

A. I think I had the interest of my client at heart when I wrote that letter.

Mr. Rosenkrans.—I move that be stricken out.

30

The Vice Chancellor.—It will be stricken out.

The Witness.—What is the question?

(Former question read as follows:—"Did you have in mind at the time you wrote that letter anything about his future support of his wife?") That is the letter relating to the deed from Mr. Hyer to his sister?

A. I think it is possible that had something to do with it, and I might add, thinking about something about her future support.

Q. When did you first have the question in mind of future support if you did not have it in mind, at the time of the call upon you by Mr. Hyer and Mr. Hart? A. Well, I suppose I had her income or her support in mind from the very instant that she came to me but that the principal thing she wanted was, as I said, and as I wrote that letter for that purpose.

Q. When Mr. Hart and Mr. Hyer called at your office, you think now, that they told you that the money was paid up, the back money was paid up? A. I am not positive about that; I cannot be any more positive than I have been.

Q. You are not positive as I understand it, whether or not you talked at that time to Mr. Hyer and Mr. Hart about his making future provisions for the support of his wife; you swear you do not know whether you broached that topic to them or not, do you? A. I don't think I did; I don't think it came up then; it may have come up but I do not think so, because they came immediately after my first letter of the 7th, and that was my——the first initial step I think I took in the whole matter, and I know she wanted me to try to bring about a reconciliation, and I tried to do that, and after that I took up the whole——there may have been something else crept in, but that first interview was on that.

Q. You say you learned in the beginning that Mr. Hyer would not be reconciled with his wife? A. What?

Q. Did you? A. What?

Q. You say you learned at the beginning, as soon as they entered almost, the first words they said, that Mr. Hyer would not have his wife back. That is your testimony, is it not? A. No, it is not. I never said anything of the kind, neither first, second or third. They came in and the conversation started in the ordinary manner, and I am telling you how it proceeded and went through, and the result. I did not send for them to come there to collect anything from Mr. Hyer. I was not collecting anything from Mr. Hyer that day.

Q. You say that all through the conversation, according to your recollection, Mr. Hyer refused to have his wife back? A. He never for one instant said he would accept her back, under any condition or consideration, he didn't want her and his brother-in-law didn't want her to come back either.

Q. When you got that in your head, that the object of your letter would bear no fruit, did you not then take up the question of support for his wife? A. I don't think I did.

Q. Why not? A. Well, that is my recollection, and I cannot tell you why or wherefore. I think I had enough to do. I think that after I had talked for quite a long time to two men, to try to induce them to take the woman back I was exhausted. I did enough for one day. I saw them afterwards and wrote them afterwards, about support, many times. I do not know why you are so insistent on bringing out they talked about her support that day. I don't know, perhaps they did talk about it. I don't remember it. I do not think I did.

Q. You do not remember whether you talked about it, as her lawyer? A. I do not remember

whether I did; I may have done so. I do not remember that I did. I cannot swear to a thing if I do not know it, and my recollection is just as I said.

Q. And you admit that your recollection about the whole conversation is hazy? A. I never said anything of the kind. There may be some parts that I do not recollect, but as to my recollection being hazy about the whole thing, no. I never said anything of the kind, it is very positive and fresh, and I recollect distinctly what I said.

Q. But you do not recollect, whether distinctly or otherwise, whether this important subject was talked of or not? A. I have had three years on this subject since and I do not think I touched on it that day. I may have and I may not. Now what is the use?

Q. Then you do not recollect whether this important subject was tapped on that day or not?

The Vice Chancellor.—Have you not exhausted, Mr. Rosenkrans?

By the Vice Chancellor:

Q. I call your attention to the carbon copy of your letter to Mr. Hyer, dated January 7, 1915; did you dictate that letter to a stenographer? A. I think I did.

Q. Who is your stenographer? A. At that time, 1915; I would have to figure up, I don't think I can quite tell.

Q. I suppose if you cannot tell now, you can very easily ascertain? A. I think so.

Mr. Rosenkrans.—There may be an initial at the close of the letter, there sometimes is.

The Vice Chancellor.—No, there does not seem to be on this letter.

The Witness.—I have had several girls in the office in the last three years. ——Bessie Berliner.

10 Q. Is she in Paterson now? A. Yes, sir, her father is in business, and she is working for him. She was with me four years, and I think that came within her time.

Q. Did she type this letter on the typewriting machine? A. Yes, sir, I never did that myself.

Q. Do you know whether the books in which she took your dictation are preserved? A. Very likely.

Q. You keep them, do you not, in your office?
20 A. We have kept them. I never have thrown any away, unless the girls have.

Q. You would have no difficulty in producing Miss Berliner here, would you? A. I don't think I would.

Q. That is all.

Mr. Kerr.—When shall I bring her, tomorrow?

The Vice Chancellor.—I am only asking
30 you the question, because some doubt perhaps may be cast on the letter, and you may deem it worth while to bring her here.

Mr. Kerr.—I certainly will bring her.

Mr. Rosenkrans.—With the stenographic note book in which the dictation was taken down.

Mr. Kerr.—I will make a search. It will be like looking for a needle in a haystack perhaps.

10

CLARA FERICHS, sworn for the defendant.

Direct examination by Mr. Kerr:

Q. Are you related to Mrs. Hyer? A. I am her cousin.

Q. You live where? A. Woodcliffe, N. J.

Q. Did you formerly live in Hoboken? A. Yes, sir.

Q. Were you here this morning when Mrs. Hyer testified about attending a funeral? A. No, I was not. 20

Q. Did your husband die while you were in Hoboken? A. My husband died in May 1913.

Q. Was Mr. Hyer at the funeral? A. He was not at the funeral, he was there at the time the corpse was laid out.

Q. Who did he come to see? A. He came to see Mrs. Hyer.

Q. Was Mrs. Hyer staying with you then? A. Yes, sir. 30

Q. How long did she stop with you? A. About four or five days.

Q. How long did Mr. Hyer stop there? A. He went home the same evening that he called, and he called the Sunday after that and staid that afternoon; we went out that afternoon and left Mr. and Mrs. Hyer alone, and I got back in the meantime to get tea ready and they both greeted me, saying

"We had a very pleasant afternoon; had a good time, Clara." I also heard Mr. Hyer say, "Well, Sophie, when I build a bungalow we will be happier," and Mr. Hyer called once after that with Mrs. Hyer in an automobile and took me out for a little
10 ride and once after that when I was not at home. Those were the only times Mr. Hyer called.

The Vice Chancellor.—What year was this?
Witness.—1913, in the month of May.

No cross examination.

THERESA HILL, sworn for the defendant.

20

Direct examination by Mr. Kerr:

Q. Did you ever live in Little Falls? A. Yes, sir.

Q. What year? A. I was living in Little Falls in 1913.

Q. Did you know Mrs. Hyer then? A. Yes, sir, she lived downstairs, in the rooms downstairs.

Q. In the same house where you lived? A. The same house, yes, sir.

Q. Who was living with her? A. Her daugh-
30 ter.

Q. Helen? A. Yes, sir.

Q. Did you know Mr. Hyer? A. No, no, just by seeing him, that is all.

Q. Were you living in that house when Mrs. Hyer first came there? A. Yes, sir.

Q. In that house on Maple Street? A. On Maple Street.

Q. Did you have any talk or hear any talk——
A. Yes.

Q. ——between Mrs. Hyer and her husband?
A. Yes, sir. In 1913, in January, I went up to the bank with her and she went in somewhere around ten o'clock I guess it was. 10

Mr. Rosenkrans.—January 1913?

Witness.—Mr. Hyer was there and he had his back to her when we went in there and Mrs. Hyer said "Good morning, Henry;" for a couple of minutes he did not turn around, he was looking at a book, so he turned around and saw her and said, "What do you want?" and she said, "Henry, I want the keys to the house. I want to go up home," and he said, "You can't have the keys, there is no home there for you." She said, "Why not, why can't I have the keys?" and he said, "You cannot have them, that is all, and if you say any more I will call a policeman and have you put out." 20

By the Vice Chancellor:

Q. When was this? A. 1913, I don't know just the date. 30

Q. What time of the year? A. January, I think it was on a Monday, it was a rainy day and I was going to Paterson at the time.

Cross examination by Mr. Rosenkrans:

Q. You are quite certain of the date? A. No, I am not certain of the date; it was in January but I don't know the day.

Q. You are certain it happened in the month of January 1913? A. Yes, sir, 1913.

Q. You say that Mr. Hyer said "If you say anything more I will call a policeman and have you put out?" A. Yes, sir.

Q. Do you know what occasioned him to make
10 that remark, that threat? A. I do not know of any occasion only she asked for the keys to go up home, she wanted the key of the house.

Q. Had she been threatening or boisterous? A. No, she spoke very nice to him.

Q. Can you suggest any reason why he should have said "If you say anything more I will call a policeman and have you put out?" A. No, he didn't say anything more.

Q. It struck you as a rather surprising remark
20 from him, didn't it? A. Well, I thought so.

By the Vice Chancellor:

Q. Was Mr. Hyer inside the enclosure where the officers of the bank are? A. Yes, sir, he was inside when she spoke to him.

Q. Was anybody else in there? A. No, sir.

Q. Was anyone else in the bank besides Mrs. Hyer and you two? A. No, I didn't see anyone only Mrs. Hyer and myself.

30

Further cross examination:

Q. At what hour of the day did you make this call? A. About ten o'clock in the morning.

Q. Shortly after the bank opened? A. Yes, sir.

Q. Do you know Mr. Francisco? A. No, I do not know him.

Q. The president of the bank? A. No, I do not know him.

Q. Did you notice anybody else in the bank? A. I did not notice anyone.

Q. Any depositors? A. There wasn't anybody depositing there when we went in there.

Q. Was the bookkeeper there? A. Mr. Hart was there and I didn't see anybody else; he was looking at the book when we went in, his back was turned.

Q. The bank had opened, had it not, for business? A. Yes, sir, the bank had opened.

Q. You think it was after ten o'clock? A. Well, I would not say, about ten o'clock I guess.

Q. You cannot say whether or not the bookkeeper was there? A. I did not notice anyone else but Mr. Hyer.

Q. Do you know whether all of the offices in the bank were open to view to anyone in the main banking rom? A. No, I do not.

Q. Had you been there before——or since? A. I have not been there since.

Q. Or before? A. No, I do not think I was there before, that is the only time I remember being there with Mrs. Hyer.

Q. Did Mrs. Hyer ask you to acompany her to the bank? A. She said, "Where are you going?" and I said, "I am going to Paterson," and she said, "I am going up to the bank; walk up with me," and I said, "Yes," and I had to wait that time and I went up with her.

Q. Did she ask you to come in? A. Yes, she said, "Come into the bank out of the rain."

Q. Did she say what she was going to do in the bank? A. No, sir.

Q. How long had you been living in Little Falls prior to that? A. Oh, a good many years.

Q. In Little Falls? A. Yes, sir.

Q. Are you a married woman? A. I am, my husband is dead.

Q. You heard about the separation of Mr. and
10 Mrs. Hyer, didn't you, in 1912? A. Yes, sir, I heard of the separation.

Q. And that was about a month or so before this call at the bank? A. Well, I could not just say how long it was.

Q. Well, a few weeks only before? A. No, I guess it was longer; I do not remember, but that was about the time; I do not know how long they were separated. I think it was in December,——I don't know just when it was they separated.

20 Q. How long had Mrs. Hyer been living in the same house you lived when this call was made? A. Well, I could not say, she lived there only a few months; not before the call, she was not living there so long.

Q. I ask you how long before the call she was living in the house where you occupied one floor? A. I think she moved in there right after New Year's.

Q. Right after the first of January? A. Yes,
30 sir.

Q. How long in days or weeks after she was in did you and she make this call? A. I don't just remember the date.

Q. The next day? A. No, not the next day.

Q. Two or three weeks, probably? A. A couple, I guess, I don't just remember any dates.

Q. In that month? A. I do not remember, it

was in that month I know, but I do not remember the date.

Q. I ask you approximately how long after she moved into the house did you and she make this call at the bank? A. I do not recall how long it was; it was not very many weeks I know.

10

Q. It was some weeks? A. Well, it was a couple of weeks, I guess.

Q. Did you know the place of residence where Mr. Hyer resided with his wife at Little Falls? A. Did I what?

Q. Did you know where Mr. Hyer and his wife resided together in Little Falls? A. I know they resided in Second Avenue but I never was there.

Q. How far is that from Maple Street? A. Not very far.

20

Q. In blocks how far? A. I don't know.

Q. Five minutes' walk? A. Well, I guess it is more than that. I can't say for sure because I never walked out there and don't know.

Q. Four or five blocks? A. I could not tell you.

Q. You know where this street is? A. I know it is Second Avenue, that is all I know.

Q. You cannot tell us in blocks how far it is away from Maple Street? A. No, sir, I do not know how many blocks it is.

30

Q. Have you ever been on that street where they formerly resided? A. No, I do not think I have ever been up that way.

Q. Did Mrs. Hyer go to Paterson with you after you came out of the bank? A. Yes, sir.

Q. Did you come home together? A. Yes, sir.

Q. How long did she live on Maple Street after

this call? A. When she moved away, I was away; it was in the summer time; I do not remember the date she moved away from there.

Q. Had she visited you and you her prior to this call at the bank? A. She lived downstairs in the same house.

Q. But had you talked together? A. About that call before we went there? No, sir.

10 Q. No, talked together generally? A. Oh, usually every time we met we generally spoke.

Q. She was sometimes up in your house, was she not? A. Yes, sir, and I had been downstairs, but not very often.

Q. You knew she was separated from her husband at that time? A. Yes, sir.

Q. Did you discuss that together? A. No, sir.

Q. Never? A. Didn't say anything at all about it.

20 Q. Never had? You neither? A. No, only when I went up that morning to the bank she said, "I am going to see Henry, come on in."

Q. Then her personal affairs were never the subject of conversation between you and her prior to this call at the bank, is that right? A. No, she never told me anything about her personal affairs at all and I never asked her.

Q. Were you not surprised that she should take you, a perfect stranger, into the bank? A. No, I

30 was not surprised; I spoke to her going back and forwards lots of times; we had lived downstairs, and my daughters used to visit them.

Q. But you say you never discussed her personal, intimate affairs with her? A. No, I did not talk about her husband's affairs and her's.

Q. Yet you say she invited you in the bank? A. Certainly.

Q. At the time she asked her husband for the keys of the house? A. Yes, sir.

Q. You have told us all that she said to her husband, as you recollect it, on that occasion? A. Yes, that is all she said to him, that is all he said. 10

Q. What did she say, can you tell us again? A. Yes, I can tell you again. When we went in the bank Mr. Hyer was looking at his books and she said, "Good morning Henry," and he didn't say anything for a minute or so and then he said, "Well, what do you want?" and she said, "I want the keys of the house," he said, " You can't have them." She said,"Why not, Henry; I want to go up home;" he said, "There is no home there for you." So she said it again to him, "Why not," and he said, "Well now, if you say any more I will call a policeman and have you arrested." 20

Q. You have talked over with Mrs. Hyer what was said by her husband on that occasion? A. No, we did not talk over it at all, nothing more about it.

Q. Never since that call have you referred to it? A. Oh, we spoke of it once of course. I saw her a couple of times but we never bothered about it until her trial, the day before. It was on Sunday night she came over and I was sick and I got out of bed and she said she wanted to see me and I said, "Why?" and she said, "Will you come over to the court without being subpaenaed?" and I said, "Certainly I will." 30

Q. That is all that was said? A. Yes, sir.

Q. So that when you took the stand she had no means of knowing what you were going to testify to?

A. Of course she knew I was going to testify to the truth.

Q. She had no idea what your recollection of the matter was? A. She asked me if I remembered what Mr. Hyer said that morning and I said, "Yes."

10 Q. What did she say Mr. Hyer said that morning? A. She did not say anything about it. I told her what I knew and said, "That is all I know about it, I don't know anything more about it."

Q. She asked you when she came up there whether you recollected what Mr. Hyer said? A. Yes, sir.

Q. And you said you did? A. Yes, sir, I did.

Q. What else was said between you? A. Nothing else.

20 Q. Nothing else? A. No, sir, she did not have long to stay and went out.

Q. So that when you took the stand to testify at the former hearing of this case Mrs. Hyer did not know what your recollection was? A. Yes, Mrs. Hyer knew what my recollection was.

Q. When did she learn it? A. Was she not over there the night of the trial?

Q. You say on that occasion she only asked you if you recollected what her husband said? A. I told her I did and told her what he said. Of course

30 I recollected. I would not come here to tell wrong.

Q. Did she help search your recollection? A. No, sir.

Q. You do not recall the dates, the month that conversation occurred, not with her assistance? A. Yes, sir, I recollected the month.

Q. That it occurred in January 1913? A. 1913.

Q Did you recollect the date? A. I said to Mrs. Hyer, "Is it 1913?" and she said, "That's right," and I said I didn't remember no dates and she said, "All right if you don't."

Q. Who recollected the month? A. Myself.

Q. Did you confirm any other part of her recollection with your aid? A. No. 10

Q. Do you know the date of the former hearing in this case when you testified here before? A. I do not really remember, I know that it was to be, we were to testify again and it was put off.

Q. You do not recall the month? A. I think it was the first part of the month, I don't just remember.

Q. What month? A. I think it was January or the first of February. 20

Q. What year? A. What year?

Q. Yes. A. 1917.

Q. A year ago? A. No. 1918.

By the Vice Chancellor:

Q. When did Mrs. Hyer agree to go to Paterson with you, did she start out with that intention from the house? A. Yes, sir.

Q. You remained together until you got back, did you? A. Yes, sir, she went shopping with me 30 and did some shopping for herself and we both went together.

Further cross examination:

Q. You did not know when she stepped into the bank what her object was? A. Who, me?

Q. Yes. A. No, I did not know what she was going to say when she went in, I did not.

Q. How far into the bank did you go? A. Right in by the counter.

Q. Right by her side? A. Yes, sir.

Q. While she was talking personal matters with her husband? A. While she was talking to her husband, yes, sir, I stood right there.

Q. While she was talking to her husband where was he in the bank? A. Behind the counter of the bank, whatever you might call it.

Q. Is there more than one desk in the bank? A. I didn't look to see; I don't know.

Q. How near the entrance door? A. I don't know; it was not very far away.

Q. Can you give us any idea with reference to any object in this room? A. I guess about as far as I am from the judge; I didn't notice particularly how far.

Q. Do you know what Mrs. Hyer wanted the keys to the house for? A. She wanted to get home she said, that is all I know.

Q. When did she say that? A. When she was in the bank.

Q. You have not told us that. A. Yes, I did.

Mr. Kerr.—Yes, she did, sure, three times she did.

The Vice Chancellor.—One moment. The witness stated that; she said that Mrs. Hyer said she wanted to go home and the witness said Mr. Hyer said there was no home there for her.

ANNA KEIND, sworn for the defendant.

Direct examination by Mr. Kerr:

Q. Do you live in Little Falls? A. No, not now.

Q. Where did you live when you lived in Little Falls? A. I was working for my brother. 10

Q. Mr. Kraemer? A. Yes, sir.

Q. The witness who was on the stand today? A. Yes, sir.

Q. Did you see him on the stand? A. Yes, sir.

Q. When did you leave him? A. I think it was in February.

Q. The day that you were here to testify last for Mrs. Hyer? A. Yes, sir.

Q. Why did you leave that day? A. My brother told me if I stand for Mrs. Hyer I should go out from there so I went to my sister. 20

Q. What are you doing now? A. Working in a place as cook.

Q. Where are you living? A. Secaucus.

Q. How long did you live with your brother Mr. Kraemer in Little Falls prior to that? A. About nine years.

Q. What did you do there? A. Keeping house for him. 30

Q. Did you get any pay for it? A. Yes, sir.

Q. You were paid so much a month? A. So much a week, yes.

Q. What work did you do for him? A. Everything, cooking and attending to the store.

Q. Were you not working in the store, too? A. Yes, sir.

Q. Did you take charge of any books there? A. I counted the money.

Q. Did you ever talk with Mrs. Hyer when she called to see you there? A. Yes, sir.

Q. Do you recollect any conversation occurring there between you and Mrs. Hyer and your brother
10 Mr. Kraemer? A. My brother was talking one day and he said that he would give a thousand dollars to settle it—Mr. Hyer.

Q. Your brother asked you if Mrs. Hyer —— A. If Mrs. Hyer is home I should tell her if she would be satisfied with a thousand dollars.

Q. Who told him that? A. Mr. Hyer told my brother.

The Vice Chancellor.—Your brother told
20 you?

The Witness.—Yes, sir.

Q. Did you ever hear your brother talking to Mrs. Hyer at your house about Mr. Hyer not living with her or not going back to her? A. At that time he told her that Mr. Hyer has a girl, he could tell the house.

Q. Was Mr. Hyer there at that time? A. My brother and Mrs. Hyer.

30 Q. You heard your brother telling Mrs. Hyer that? A. Yes, sir.

The Vice Chancellor.—Where were you?

The Witness.—Upstairs.

Q. Where was that, up over the store? A. Yes, sir.

Q. Did you ever hear your brother ask Mrs. Hyer to go back to her husband? A. I did not hear that.

Q. Did you ever hear your brother say to Mrs. Hyer that her husband wanted her to go back to him? A. I do not remember that. 10

By the Vice Chancellor:

Q. Did you ever hear Mrs. Hyer say anything about her going back to her husband? A. Sometimes my brother told her she should go back home.

Q. What did she say? A. She did not say anything.

Q. Did you hear, more than once, your brother say she should go back to her husband? A. Yes, he told her many times, I do not know how many 20 times.

Q. What did she say? A. I do not know what she said.

Q. Cannot you remember what she said? A. She said she would not go to Little Falls with him, that is what she said.

Further direct examination:

Q. Did you ever go with Mrs. Hyer to her husband's house? A. Yes, sir. 30

Q. When was that? A. January 6th, 1917.

Q. What did you and she go to Mr. Hyer's house for? A. She read the paper and it said Mr. Hyer is sick and she said, "I would like to go up there, will you go with me?" and I said "Yes," so the next night I met her and we went up there and it was awful dark that night and she rang the bell and Lulu Hyer came to the door and Mrs. Hyer said, "Can I talk to you, can I talk to Henry?" and she did not answer she went right in the house and afterwards

Mr. Hyer comes down and Mrs. Hyer says, "Can I talk to you?" and he said, "No you cannot come in, you cannot talk to me," and after that he turned out the porch light and we went home.

Q. Was the porch light an electric light? A. I don't know if it was gas or an electric light.

10 Q. Was it a dark night, a rainy night? A. Yes, sir, an awful dark night.

Q. What time was it you called at Mr. Hyer's house? A. About eight o'clock.

Q. Can you give the date? A. It was 1917, in January, I think it was the sixth.

Q. How do you fix it as the 6th? A. It was on Friday; it was in the paper first that Mr. Hyer was sick.

Q. In which paper was that, do you remember?
20 A. In the Call, I think.

Q. The Paterson Call? A. Yes, sir.

Q. In Little Falls notes? A. News.

Q. Where did you meet Mrs. Hyer? A. At the grocery store.

Q. Which grocery store? A. On Main Street, Little Falls.

Q. Whose grocery store? A. It was Pilsner's.

Q. Where was it that you and Mrs. Hyer agreed to go up there? Where was it you decided to go
30 there, where were you when you both decided to go there? A. I was down in her house the day before, in Ellison Street.

Q. Was it there that the paper had the item in? A. Yes, she was reading the paper.

Q. Was it a paper of that day? A. I think it was the 4th.

Q. The 4th of January? A. Yes, sir.

Q. It was there, in the house at Paterson, that she asked you? A. She asked me if I would go up with her and I said yes, the next night, if she comes in.

Q. Have you told all that Mr. Hyer said at the house that night, is that all you recollect? A. Yes, sir. 10

Q. Were you there before Mr. Hyer came to the door? A. Yes; first Lulu Hyer came, and then Mr. Hyer came.

Q. You know both Lulu Hyer and Mr. Hyer? A. Yes, sir.

Q. They used to trade in your brother's store? A. Yes, sir.

The Vice Chancellor.—Did you converse in English or German with Mrs. Hyer? 20

The Witness.—In English.

Q. Did you and Mrs. Hyer ever meet Mr. Hyer in Paterson? A. Yes, sir, in the restaurant.

Q. Where? A. In a restaurant in Broadway.

Q. What happened? A. Mrs. Hyer and I were at a table and Mr. Hyer was sitting with another woman on the other side of the table, so Mrs. Hyer got up and went over to him and said, "Who is your friend?" and he did not answer her; so she went to the lady and said, "You know that is a married man," and she did not answer; so he said, "You know what you can do if you don't like it." After that they went out together. 30

Q. Do you remember what year that was? A. It was 1816.

Q. Morning or afternoon or evening? A. In the evening.

Q. About what time? A. I believe it was about eight o'clock.

Q. Did you ever go on any errand to the Bank for Mrs. Hyer, or did you ever go there of your own accord? A. I went one day for Mrs. Hyer, to cash a check, and Mrs. Hyer was sick, and I said, "Mrs. Hyer is very sick, Mr. Hyer," and he said, "Ain't she dead yet?"

10

Cross examination by Mr. Rosenkrans:

Q. You say that when you and Mrs. Hyer went to Mr. Hyer's home, in January 1917—— A. Yes.

Q. He was sick at that time? A. Yes, sir.

Q. You had heard of his sickness before, you had read the paper at Mrs. Hyer's home, on January 4th? A. I did not hear before, I only heard from Mrs. Hyer.

20

Q. You are certain it was January 4th, that you were shown the newspaper speaking of Mr. Hyer's sickness? A. I think it was the 4th, or the 5th, I cannot remember that.

Q. Do you recollect testifying here at the former hearing that it was the 5th that you called at the home of Mr. Hyer? A. I think it was the 5th.

Q. Do you remember that you testified so at the former hearing? A. I guess so.

30

Q. Do you think that was the date, the 5th? A. I think it was the 5th.

Q. Have you any reason, or any means, by which you fix the dates? A. No.

Q. Why then do you say it was the 5th, why do you say it was the 4th, that you looked at the paper in Mrs. Hyer's home in Iaterson? A. I cannot give the date; I know it was the time that I was

down at her house, I think it was the third or fourth.

Q. Why do you come into court if you have no means of fixing the date, and saying it occurred on January 5th; did anybody help you out with the date? A. No.

Q. Will you tell the court why, if you have no means of determining the date, you hit upon January 5th, as the date of this call? A. (Not answered.) 10

Q. You say you met Mr. Hyer's daughter at the door? A. Yes, I first met Lulu Hyer and then Mr. Hyer came down.

Q. Why did you go with Mrs. Hyer? A. She asked me.

Q. But why did you go with her? A. She did not want to go alone.

Q. But why did you go with her? A. She did not want to go alone, and she asked me to go. 20

Q. Did she say why she did not want to go alone to see her sick husband? A. She wanted somebody with her.

Q. Did she say why she didn't want to pay a visit on her sick husband alone? A. She just asked me to go along, and I did go.

By the Vice Chancellor:

Q. Did she say aything about wanting you for a witness? A. She did; she did not want to go alone. 30

Q. She wanted you for a witness? A. Yes, sir.

Further cross examination:

Q. You say that you saw Mr. Hyer come to the door or towards the door? A. Yes, sir.

Q. Where did he come from? A. I came from Little Falls.

Q. Where did he come from? A. He came in the door.

Q. And this was about eight o'clock in the evening? A. About eight or half past eight.

10 Q. And the door stood open, you had not been admitted to the house, had you? A. The door was not open; it was dark.

Q. Who first came down the stairs as you were there standing on the porch with Mrs. Hyer? A. Yes, I did.

Q. And the door stood ajar so that the night air came in, is not that right? A. No.

Q. Was the door closed? A. The door was closed, they shut the door.

20 Q. When did the door close? A. Miss Lulu Hyer opened the door.

By the Vice Chancellor:

Q. When you say that Lulu Hyer opened the door, did you and Mrs. Hyer go in the house? A. No, sir.

Q. You remained on the outside? A. Yes, sir.

Q. Did the door remain open or was it closed? A. It was closed.

30 Q. So you stood on the outside? A. Yes, sir.

Q. When was the door next opened? A. There was only one door.

Q. Was it opened again while you were there? A. There was only one door; Lulu Hyer closed the door, and after that she went in and called her Papa and he came down and Mrs. Hyer asked, "Henry, can I talk to you?"

Q. Where was she when she made that remark? A. She was right in the door and I was behind her.

Q. Was the door open? A. No.

Q. Shut? A. It was shut.

Q. Then she called through the door to her husband? A. Yes, sir. He opened the door a little bit. "Can I talk to you," she said, and he said, "No." 10

Q. Then the door was opened the second time? A. He opened it, yes.

Q. Was it opened the third time? A. He said, "You cannot come in."

Q. Was it opened the third time? A. No.

Q. How was the porch light turned out? A. It was dark when he turned it out.

Q. Did he turn it out from the inside? A. Yes, from the inside. 20

Further cross examination:

Q. Miss Hyer met you at the door? A. Yes.

Q. And Mrs. Hyer said something to her about seeing her father, didn't she? A. Yes. Mrs. Hyer wanted to see her father.

Q. Then Miss Hyer closed the door? A. Yes, sir.

Q. Mr. Hyer was not there then? A. No, the first time he was not. 30

Q. Louise closed the door? A. Yes, sir.

Q. What kind of a door was it? A. I don't know.

Q. Just a wooden door? A. Yes it was a glass door.

Q. A glass door? A. Yes, sir.

Q. How large was the glass in the door? A. There was a curtain on it.

Q. How far down did the glass extend in the door? A. I cannot remember that.

Q. Was it the full length of the door? A. No, it was the upper part.

10 Q. What happened next, after Louise closed the door? A. She called her father and he came down.

Q. Did you hear that? A. I did not hear, the door was closed.

Q. You did not hear her call her father? A. I did not hear that, but he came right down.

Q. Where was Louise in the meanwhile? A. She went inside.

Q. Where? A. I don't know where.

Q. In what direction from the door did she go?
20 A. This way (indicating).

Q. In the back part of the house? A. Yes, sir.

Q. In the rear of the house? A. Yes, sir.

Q. And the stairs, down which you say her father came, where were they located with reference to the front door? A. He comes down to the door——

Q. Were the stairs right in front of the door? A. Yes, sir, the stairs go right upstairs.

Q. So Louise went in one direction away from
30 the door and her father came down the stairs? A. Yes, sir.

By the Vice Chancellor:

Q. Did you see Mr. Hyer at all? A. Yes, I saw him.

Q. How could you see him? A. From inside, it was light, it was light outside, and you could see.

Q. Could you see through the glass? A. Yes, sir.

Q. Is that the way you saw him? A. Yes, sir.

Q. Looking through the glass door? A. Yes, sir.

Q. I understood you to say there was a curtain over it? A. It was a thin curtain. 10

Q. And you could look through it? A. Yes, sir, I saw Mr. Hyer come right down.

Further cross examination:

Q. You say that your brother told you to tell Mrs. Hyer that Mr. Hyer would give her a thousand dollars if she would get a divorce, or something? A. Yes, my brother told me that if I saw Mrs. Hyer—Mrs. Hyer was not there at the time—he said to me to ask her if she wants a thousand dollars, if she is satisfied with a thousand dollars. 20

Q. When did you say your brother told you to say that? A. It was in 1917.

Q. Sometime after this visit? A. I think it was October, something like that.

The Vice Chancellor.—Last October?
The Witness.—Yes, sir.

30

Adjourned until Monday, March 18, 1918, at Chancery Chambers, Paterson, N. J.

Trial resumed pursuant to adjournment..

BESSIE BERLINER, sworn for the defendant.

Direct examination by Mr. Kerr:

Q. You were at one time stenographer in my office? A. Yes, sir.

10 Q. Do you remember Mrs. Hyer coming there to retain me in regard to her case? A. I do.

Q. Did you write any letters at my dictation to Mr. Hyer, her husband? A. Yes, I wrote a number of letters.

Q. I show you a carbon copy of a letter marked D No. 1 for identification; do you recollect writing the letter of which that is a copy? A. Yes, I do.

Q. Did you make this carbon copy at the time you made the original? A. Yes, at the same time.

20 Q. Do you recollect whether or not you mailed that letter? A. Yes, I mailed that letter myself.

Q. I show you another letter, carbon copy, which has been marked D No. 2 for identification, and I ask you if you remember writing the original of that letter? A. Yes, I remember it.

Q. Do you recollect whether or not Mr. Hyer called to see me shortly after the letter which is marked D No. 1 was sent to him? A. I never saw him there.

30 Q. Did you ever work on Saturday afternoons in my office? A. No, sir.

Q. I will show you another carbon copy of a letter which has been marked D No. 4 for identification, and is dated Jan. 15, 1915, do you remember writing that letter? A. Yes, sir.

Q. These are each carbon copies of the three letters? A. Yes, sir.

Q. One dated January 7, 1915, one January 13,

1915, and one January 15, 1915, all addressed to Mr. Henry Hyer, care of Little Falls National Bank, Little Falls, N. J.? A. Yes, sir.

Q. How long is it since you left my office? A. Two and one half years.

Q. Since then you have been working for whom? A. My father.

Q. Have you done stenographic work for your father? A. No, just typewriting and bookkeeping.

Q. Did you look in my office to see whether you could find these stenographic notes of letters you wrote at my dictation, in the year 1915—January? A. Yes, I looked for the books, but I could not find them.

Q. Was it customary for you to mail all letters that I dictated to you? A. Yes, sir, I mailed all the letters.

Mr. Kerr.—I offer these three letters in evidence.

The Vice Chancellor.—They were offered before.

Mr. Kerr.—They were marked for identifiication.

The Vice Chancellor.—I think the record shows they were received in evidence, but you can offer them again. They will be received and retain the same marking.

Cross examination by Mr. Rosenkrans:

Q. You say you left Mr. Kerr's office about two and one half years ago? A. Yes, sir.

Q. Can you fix the month of your leaving? A. In July.

Q. July 1915? A. July 1915, yes.

Q. Were you accustomed to take dictation in a note book? A. Yes, sir, in a note book.

Q. Was it not your habit to preserve those note books? A. Yes, I used to preserve them while I was there.

10 Q. Did you make a search for the note book in which any of these dictations might be found? A. Yes, I looked for them at Judge Kerr's office, but could not find it.

Q. Did you find any note book? A. No, sir, I did not find any note book.

Q. How long were you in Judge Kerr's office? A. Four years.

Q. As a stenographer? A. Yes, sir.

Q. And you found no book in which you had
20 taken down dictation during that period? A. No, sir, I did not find a note book at all.

Q. When did you make this search? A. I made my search this morning.

Q. At what time? A. About ten o'clock.

Q. At what time did you arrive here? A. About a quarter of eleven.

Q. Was Judge Kerr at the office at the time you made your search? A. No, the stenographer was there.

30 Q. Did you find a deposit of note books there? A. Yes, sir, there were some note books there.

Q. Any note books any earlier than the period of your service? A. No, sir.

Further cross examination:

Q. Before Judge Kerr showed you, while you were on the witness stand, the letter marked D No.

1 for identification, had you seen that letter? A. Yes, sir, I seen the letter this morning.

Q. Where? A. At Judge Kerr's office.

Q. Did you read it? A. Yes, sir.

Q. Was he there at the time? A. No, sir.

Q. Did you bring the letter to the Court room? A. No, sir, Mrs. Hyer brought it here. 10

Q. You say that you mailed the original of the letter, the copy of which is marked D No. 1? A. Yes, sir.

Q. You have no personal recollection of having mailed it? A. No, sir, but I mailed all letters dictated to me.

Q. Judge Kerr sometimes mailed them? A. No, sir, I mailed them myself.

Q. But occasionally he might? A. Occasionally. 20

Q. Sometimes you completed the letters in the late afternoon or at an hour he was not present, left the office, leaving the letters unsigned, to be signed by him on his return? A. If a letter was important I would leave it for him to sign, if not I would sign it myself.

Q. Can you swear whether or not, Judge Kerr signed these letters, D 1, 2 and 3? A. No, I cannot swear whether Judge Kerr signed them.

Q. You have not answered my other question. Is it not a fact that you sometimes wrote letters at Judge Kerr's dictation and transcribed them in his absence, and left them on his desk for his signature? A. Yes, I did sometimes. 30

Q. And knew nothing personally of what became of them? A. Well, I would know he mailed them in the morning, otherwise they would still be on the desk.

Q. Unless he tore them up, changed his mind about it? A. Then I could not say.

Q. You assume that because you sometimes mailed letters, you may have mailed this one? A. I did not sometimes mail them, I usually mailed them.

Q. You assume that because you usually mailed them, you mailed this one? A. No, he was present while it was dictated and I completed it while he was there, and naturally I must have mailed it while he was there too.

Q. You say you do not recall whether Judge Kerr signed these letters, or any of them? A. No. I presume if they were important he must have signed them himself.

Q. You say that Mrs. Hyer was present when you wrote this letter? A. Yes, sir.

Q. Was she present when you wrote all three of them? A. I don't recollect that.

Q. But you say she was there when you wrote that one? A. The first one.

Q. What time of the day was it? A. I cannot remember that.

Q. Cannot you tell us whether it was morning or afternoon? A. No, I cannot remember that.

Q. Do you remember whether he wrote any other letter on the day you say he wrote D 1? A. Any other letter to Mr. Hyer do you mean?

Q. No, to any person? A. I don't recollect, but most likely I did.

Q. What? A. I don't recollect whether I wrote any other letters, but most likely I did.

Q. Can you recall any other work of any nature which you did, on the day you wrote Exhibit D 1? A. No, sir, I cannot.

Q. On the day that you say you wrote the original of D 1, and made this carbon copy, was that the first occasion that you saw her there in Mr. Kerr's office? A. Yes, sir, the first time.

Q. You are quite certain of that, are you? A. Quite certain.

Q. As certain of that, as that he wrote the letter marked D 1? A. Certain, positively. 10

Q. Did you hear the conversation that took place on that day, between Judge Kerr and Mrs. Hyer? A. No, not previous to the time I took the letter.

Q. You know whether or not you wrote other letters, at Judge Kerr's dictation, to Mr. Hyer? A. Yes, sir, I did write other letters.

Q. Do you know whether you wrote any such letter, prior to January 7th? A. No, sir, I did not write any prior to that. 20

Q. Why do you say that you wrote no letters to Mr. Hyer at Judge Kerr's dictation, prior to January 7th? A. Why, I remember that Mrs. Hyer came in at that time, and that was the first time that Judge Kerr wrote any letter at all to Mr. Hyer.

Q. And you are cerain that is the day, that Judge Kerr wrote Mrs. Hyer? A. Positive.

Q. Quite as positive as that you transcribed the letter marked D 1? A. Yes, sir. 30

Q. Did you recall the contents of that letter, when you read it this morning? A. Yes, sir.

Mr. Kerr.—I can just say myself, that I looked for the note books and could not find them. I had a couple of house cleanings

there. I moved from one floor to another in the building.

A recess was then taken.

10 After recess, March 18, 1918.

HELEN NEWBAUER, sworn for the defense.

Direct examination by Mr. Kerr:

Q. Are you a married lady? A. I am.

Q. Where are you living now? A. I am living with my mother at 270 Ellison Street.

Q. Who is living with you and your mother? A.
20 My little girl and myself are living with my mother.

Q. How many rooms have you there? A. One room, an attic.

Q. More than one bed? A. There is one bed and an old couch in the room.

Q. Where is your husband living? A. My husband is in the army, up in a camp in Massachusetts.

Q. Is that why you are now in Paterson with your mother? A. Yes, sir.

Q. How old is your little girl? A. Three years.

30 Q. Where were you living before you came to live with your mother in Paterson? A. Bridgeport, Conn.

Q. Were you married there? A. Yes, sir.

Q. What was your husband's business? A. Dentist.

Q. Is he an officer, or a private? A. A private.

Q. Have you been sick recently? A. Yes, sir, I have.

Q. Where were you sick? A. I was in the Paterson General Hospital.

Mr. Rosenkrans.—I object to this as irrelevant.

10

Q. Did you ever ask permission to leave the Paterson General Hospital, before you were regularly discharged?

Mr. Rosenkrans.—I object to that.

The Vice Chancellor.—Yes, we are taking a great deal of irrelevant testimony. I must exclude it.

Q. Do you remember when the separation took place between Mr. and Mrs. Hyer at Little Falls? A. I do.

20

Q. When was that? A. December 10, 1912.

Q. Tell the court what took place in the Hyer household just before the separation. A. Do I have to use the exact language that was used on that night?

Q. Yes, tell the exact language if you remember it. A. Frank Marley and I were keeping company, and I and he were seated in the kitchen at my folks' home on Second Avenue; my mother and Lulu were playing cards in the dining room, and all of a sudden my father burst into the kitchen, came over and struck me, throwing me to the floor, and calling me a God damned whore, and I called to my mother, and my mother came out, and found me on the floor crying, and asked me what was the trouble, and I told her that my father had hit me, and

30

thrown me to the floor, and called me a bad name, and she said, "What name did he call you?" and I told her a God damned whore, and she told me to go upstairs, that was unfit language to hear, as he was swearing and cursing at the time. So I went upstairs and sat on the stairs, and listened to the argument, and I could hear my father, swearing and cursing to my mother. Then I heard my father say, that my mother was running a whore house, trying to run a whore house, and I came down and listened in the kitchen a moment, and I heard my mother ask my father why he struck me, that he had no business to strike me, and he said he did strike me and he would strike her too. I rushed in the kitchen and he had his hand raised to strike my mother and I jumped over and said, "Don't you dare strike my mother," and he lowered his hand and said to my mother, "I want you both to get to hell out of this house, and take every God damned stick of furniture with you." My mother told him, if he put her out he would have to support her and he told her she would have to get out, it was worh $5.00 a week to get rid of her.

Q. What happened to Frank Marley? A. After striking me, my father turned to Frank Marley, and told him to get to hell out of the house, and said, "I will kill you yet."

Further direct examination:

Q. Had Mr. Frank Marley been coming to see you there? A. No, I had been meeting him on the outside, and as I had a very bad cold that night, and it was a bitter cold night out, my mother gave me permission to have him in the house a few minutes.

Q. Were you engaged to Frank Marley? A. I was engaged to be married to Frank Marley at that time.

Q. Was there anything that transpired which showed you and he were engaged to be married? A. He was saving money every week, and he came in every night for the purpose of giving me some money which I was saving towards my marriage.

Q. How were you saving money which he gave you towards your marriage? A. He gave me a certain amount of money every week to put by, and I passed it over to my mother, and she was keeping it for me.

Q. Do you know what your mother did with the money you turned over to her?

Mr. Rosenkrans.—I object to that as irrelevant.

The Vice Chancellor.—Is that important?

Mr. Kerr.—Only as it shows the relations between them.

Q. After this, what about your retiring that night, and Mr. Hyer returning, or Lulu; what became of Lulu and Mrs. Hyer? Where was Lulu? A. Lulu had gone upstairs. She and my mother were playing cards in the dining room, but a very little while, when I heard Lulu going upstairs, and after my step-father ordered my mother and I out of the house, he went out of the house also.

Q. What time did you retire, you and your mother? A. It was around ten thirty that night.

Q. Did you see Mr. Hyer again that night, after he left the house? A. No, I did not.

Q. Did you see Lulu again that night? A. Lulu had gone upstairs to her room and shut the door.

Q. Where did you and your mother sleep that night? A. In the front bedroom.

Q. You slept together? A. Yes, we did.

Q. Had you been sleeping together before that
10 night? A. No, Lulu and I slept together and my mother was in the habit of sleeping with my father in their bedroom.

Q. What occurred the next morning? A. The next morning Lulu went to business, and my father went down to his bank, and my mother had started for Paterson, saying she was going to get a truck man to move the furniture, and told me to wait there, until the truckman came there. Around noon the truckman came there and my father came home
20 from the bank to dinner, and we had the furniture all packed and ready to move, and he went over the soap box and took out a half bar of soap and also a little sugar and said they belonged to him, and he said he would like to go through everything, so I handed him a bunch of keys and told him to go ahead, and he opened the sideboard door and after satisfying himself we were not taking anything but what belonged to us, he turned the keys back to me, but before doing that he took two keys off the ring,
30 saying they belonged to him, they were the keys of the house.

Q. What keys were they? A. To the front and back doors of the house.

Q. What else occurred that day while he was there? A. That was all that took place on that day.

Q. Did the truck come there that day? A. Yes, sir, around noon, around twelve o'clock.

Q. What things were put on the truck? A. Just things that belonged to my mother, that she had before she was married to Mr. Hyer.

Q. Where were those things taken to? A. To Paterson.

Q. Did you go to Paterson, you and your mother then? A. Yes, sir. 10

Q. Where did you go? A. We went to the rooms my mother had got.

Q. Where she is now? A. No.

Q. Other rooms? A. Yes, sir.

Q. Where were they? A. I believe they were in Lafayette Street.

Q. How long did you stay there? A. A very short time, I think two weeks.

Q. Then where did you go? A. Then we moved back to Little Falls, and had two rooms with 20 Mrs. Hill on Maple Street.

Q. Since that night have you ever seen Lulu to converse with her or talk with her? A. Yes, sir, once.

Q. Where? A. At Bridgeport, she and my father came in the store I was working in on Main Street, to bid me goodbye, and they had made a visit to my mother, and they came in and kissed me good-bye and left.

Q. Have you ever seen them since? A. No, 30 the last time I saw them was here, when the case came up on January 14th.

Q. And both your father and Lulu kissed you good bye in Bridgeport? A. In the store I was working in at Bridgeport.

Q. Where was your mother living at that time, at Bridgeport? A. At that time when he came

with Lulu? Yes. We were living at the beach, Milford Beach.

Q. You never talked to him after that in Bridgeport? A. Yes, I saw Mr. Hyer after that.

Q. Where? A. On Park Avenue.

Q. Was there anybody else with him? A. No, he was alone.

Q. Was he friendly towards you then? A. Very friendly, and he kissed me when I came in from business on Saturday night, and he was talking with my mother, and my intended husband at that time, and myself.

Q. Were you asked to go to New Haven with Mr. Hyer? A. I was not.

Q. You were working then? A. Yes, sir.

Q. On Main Street? A. Yes, sir.

Q. When was it they came in the store to bid you good bye? A. On the 5th of July.

Q. On their return from——. A. They had been up to New Haven, and it was on the return I believe, they came into the store to bid me good bye.

By the Vice Chancellor:

Q. Here, in Paterson? A. No, Bridgeport.

Q. You spoke of Main Street, was that in Bridgeport? A. Main Street, Bridgeport, yes, sir.

Further direct examination:

Q. What kind of a store was it? A. A millinery store.

Q. Had you had any conversation with Mr. Hyer, since the last time you saw him in Bridgeport? A. Yes, sir; shortly before I was taken to the hospital,

I called him up and told him, I would like to speak to him, and he said, "In regard to your mother?" and I said, "Yes," and he said, "You cannot see me unless you want to go to my lawyer's office."

Q. How soon after that did you go to the hospital? A. Four days.

Q. You called him on the telephone? A. Yes, sir, I did. It was the latter part of November, 1917.

Q. Did you ever write any letters to Mr. Hyer? 10
A. I wrote him one letter, shortly before my baby was born in 1915, asking him——

Mr. Rosenkrans.—I object to that.

Q. Did you keep a copy of that letter you wrote to him? A. Yes, sir, I did.

Q. I show you a letter dated Bridgeport, Connecticut, dated January 15, 1915, and ask you if that is it? A. That is a copy of the letter I wrote to Mr. 20
Hyer.

Q. Did you register the letter you sent to him? A. I cannot say that.

Q. But you posted it? A. I posted it myself.

Q. Is that a true copy of the letter? A. It is.

Mr. Kerr. I offer the letter in evidence.

Mr. Rosenkrans.—I object to the relevancy of the letter.

The Vice Chancellor.—Do you object to 30
the mode of proof?

Mr. Rosenkrans.—No.

The Vice Chancellor.—Then it will be admitted and read.

Mr. Kerr.—I demand the original too, if you have it.

(Mr. Kerr then read in evidence copy of

letter from the witness, Helen Newbauer, to petitioner, and the same was marked Exhibit D 13, of March 18, 1918, H. W. K.)

Q. After Mr. Hyer had been down to Bridgeport, was there ever any exchange of tokens or letters, during the holidays between you and Mr. Hyer?

10

Mr. Rosenkrans.—I object to that as irrelevant.

The Vice Chancellor.—I cannot say that it will be irrelevant. I will take it.

A. Yes, sir.

Q. Tell us what happened, if he ever sent anything to you or you ever sent anything to him? A. Around Christmas time, my mother and I sent both he and his daughter——

20

Mr. Rosenkrans.—What year?

Witnesss—1915. We sent both Lulu and my father some presents for Christmas, which they did not even acknowledge.

The Vice Chancellor.—Did your father answer this letter (referring to D 13)?

Witness.—No, sir.

30

Q. Do you remember anything about the first time your mother left Little Falls, and went to Brooklyn? A. No, sir, I do not.

Q. You were too young? A. Yes, sir.

Cross Examination by Mr. Rosenkrans:

Q. Let me show you a letter, dated Bridgeport, Conn., January 24, 1915. Is that the original of a letter just offered in evidence, (D 13)? A. Yes, sir.

10

Mr. Rosenkrans.—I offer it in evidence.
(Marked Exhibit P No. 1, March 18, 1918, H. W. K.)

Q. Prior to December 9, 1912, your father, as you call him, always treated you with kindness? A. Yes, sir, he did.

Q. He gave you a musical education? A. Yes, sir.

Q. As you say in this letter of January 12, 1915? A. Yes, sir. 20

Q. And in every way he treated you as he did his own daughter? A. Yes, sir.

Q. You were like sisters together? A. Yes, sir.

Q. And he had never before struck you or offered to strike you? A. He struck me once in Brooklyn.

Q. When you were a child? A. Yes, sir.

Q. I mean since you became a young lady? A. No, sir, not at all.

Q. And never used any abusive or vulgar language to you? A. Well, he had, before this time, yes. 30

Q. He objected to the attention this young Frank Marley was paying to you? A. Yes, I believe he did.

Q. And you have since realised have you not, that those objections, were well founded? Have

you not? A. He never told me his objections to him.

Q. Your relations between you and Mr. Marley, were broken off after your removal from Little Falls? A. Yes, sir, they were.

10 Q. And you have since married another man? A. Yes, sir.

Q. I notice in your letter to your step father of January 12, 1915 (Exhibit P 1) you say "I see now where you meant everything for the best", when you wrote that line, did you have this episode of December 9, 1912, in mind? A. Yes, I did.

Q. And you had in mind your father's opposition to the attention that Mr. Marley was then paying you? A. Yes, I did.

20 Q. Whatever happened on December 9, 1912, you did not bear any long resentment against your father for it? A. Why, yes, I have, ever since.

Q. But not when you wrote this letter of January 12, 1915? A As I stated in that letter I realized he meant everything for the best.

Q. As early as July 5, 1913, you say he kissed you at Bridgeport? A. Yes, sir.

Q. In the store there, where you were working? A. Yes, sir.

30 Q. And you kissed him back? A. Yes, sir.

Q. That mark of affection and esteem passed between you? A. Yes, sir.

Q. He came to Bridgeport in September 1913, again? A. Yes, sir.

Q. To see your mother? A. Yes, sir.

Q. And you saw him then? A. Yes, sir.

Q. And again you kissed him, and he kissed you? A. Yes, sir.

Q. Your father had left instructions, had he not, prior to December 9, 1912, that Mr. Marley was not to see you at his home? A. Why, he never told me.

Q. He told your mother and your mother told you? A. He told me that he objected to him, but I did not know his objections.

10

By the Vice Chancellor:

Q. Did you never learn what his objections were? A. No, I never did, only that he said that his brother was not any good; he said that Frank Marley had a bad name in the town.

Q. How long did you continue to be engaged to him, after this instance of December 9, 1912? A. Why, I was still on friendly terms with him while we were in Little Falls, and then when we went to Bridgeport, that was for the purpose of breaking our friendship up.

20

Q. Your purpose or your mother's purpose? A. My mother's, because she had told me that my stepfather said if she broke up our friendship and separated us, he would be good to her and look out for her and that after Lulu and I were married he would build a bungalow in which they would live together.

Q. Did you tell Mr. Marley when you determined to break the engagement? A. Yes, I did.

30

Q. And then it was you went to Bridgeport? A. Why, it was in Bridgeport, Conn., because Mr. Marley went out there, and secured employment out there, and it was there I told him, that I thought we had better break off.

Further cross examination:

Q. You knew, through your mother or otherwise,

on the night that Mr. Marley came to your home and sat there in the kitchen, and you were found there by your stepfather, that his presence was objectionable to your stepfather? A. Yes, sir.

Q. And he was there that night, because your step father had gone out, and you did not expect him to return? A. No, I had a very bad cold that night, and it was very cold out.

Q. If you had expected your step father to come back while Mr. Marley was there, you would not have had him in the home? A. Why, I still thought my father would not have liked it. No, I don't believe I would have had him in.

The Vice Chancellor.—Did he come to the house?

Witness.—He came to the house for me. I had been in the habit of seeing him outside, and as I said before it was very cold out, and I had a very bad cold and my mother gave me permission to have him in the house a few moments.

Q. A few moments only, because you expected the return of your stepfather? A. She knew he would not like it and she knew that he objected to Frank Marley; not that she expected his return, because he was not in the habit of returning early at night.

Q. You say Lulu was playing cards with your mother? A. Yes, sir.

Q. And you were in the kitchen, sitting with Mr. Marley? A. Yes, sir.

Q. And Mr. Hyer came in? A. Yes, sir.

Q. Where did he go first? A. Mr. Hyer?

Q. Yes? A. He came right over to me, and struck me and threw me to the floor.

Q. Just as soon as he entered the door? A. Yes, sir.

Q. What door did he enter? A. The dining room door. 10

By the Vice Chancellor:

Q. Were you seated or standing? A. Seated.

Q. On a chair? A. Yes, sir.

Further cross examination:

Q. Was Mr. Marley there with you? A. Yes, sir.

Q. Was it in the dining room that Lulu and your mother were playing cards? A. Yes, sir. 20

Q. So he came there first? A. My idea was that he must have come through the parlor, and dining room and into the kitchen.

Q. Did your mother call out to you as he came in the house? A. She called "Helen", yes.

Q. What did you do then? A. I did not do anything; he came right into the kitchen and struck me.

Q. You say he came in the dining room from the parlor? A. That is the only way he could come, unless he came around the hall and out to the kitchen that way. 30

Q. Didn't you see him enter the door? A. No, I did not.

Q. You did not know how long he had been in the house, before your mother called "Helen"? A. No, sir, I do not.

Q. How long after she said "Helen", was it before your father came into the kitchen? A. It was only a matter of a second. He came right through into the kitchen.

Q. What was Mr. Marley doing in the mean time? A. He and I were talking, seated at the
10 kitchen table.

Q. You did not continue talking when your mother exclaimed "Helen"? A. No. I did not know what she called for, I did not have time to get up and go in the dining room, before Mr. Hyer came right into the kitchen.

Q. You heard the tread, the foot fall of Mr. Hyer? A. After he came through the dining room.

Q. As soon as your mother called out, "Helen"? A. Yes, sir.

20 Q. And Mr. Marley heard it? A. Yes, sir.

Q. What did he do? A. He just stood there, until Mr. Hyer ordered him from the house.

Q. Was he seated at first? A. Yes, sir, we were both seated at the table in the kitchen.

Q. He arose just as soon as your mother exclaimed "Helen"? A. No, he arose when Mr. Hyer came in and then Mr. Hyer ordered him from the house.

Q. You were seated when your stepfather came
30 into the kitchen? A. Yes, sir.

Q. You say he struck you? A. Yes, sir.

Q. And knocked you off the chair? A. Yes, sir, onto the floor.

Q. Where did he strike you? A. Across the shoulder, with such force that it threw me to the floor.

Q. How were you seated with reference to door,

by which he came from the dining room into the kitchen? A. I was seated right near the window.

Q. With reference to the door? A. In reference to the dining room door?

Q. Yes, were you facing the door? A. Yes, sir.

Q. So your father came directly toward you? A. Yes, sir.

Q. You looking at him? A. Yes, sir.

Q. You say he struck you on the shoulder, which shoulder? A. I cannot remember that.

Q. Which hand did he use? A. His right hand.

Q. What sort of a chair were you sitting on? A. A kitchen chair.

Q. So he advanced, and continued to advance, directly towards you? A. Yes, sir.

Q. And you were seated on a chair? A. Yes, sir.

Q. He raised his right hand? A. Yes, sir.

Q. You facing him, just as you are facing me now? A. Yes, sir.

Q. And he struck you with such force, as to knock you off the chair? A. Yes, sir. I was seated in the chair as he came in, and I think when my mother called "Helen," I got up and walked over towards the stove, and then he struck me, because it was near the stove I fell.

Q. You said you were seated. A. I cannot swear whether I was seated or standing, but he came directly towards me, and when he came in he struck me.

Q. You say this was the first time since you became a young woman, that he struck you or offered to strike you? A. Yes, sir.

Q. Now, cannot you remember the details of the instance? A. I cannot say whether I was standing or——

Q. Yes? A. I cannot swear to that.

Q. You think you may have been standing? A. Yes, sir, because the window—I was sitting near the window, and where I fell was right near the stove, and that is towards the other side of the room.

Q. Did you make any effort to get out of his way? A. He came directly towards me, and I had no idea he was going to strike me.

Q. With upraised hand? How close was he when he first raised his hand? A. He came into the kitchen and raised his hand, as soon as he got in the kitchen, and came over to me and struck me.

Q. As soon as he entered through the dining room door, he raised his hand? A. I believe he did, just as soon as he entered the kitchen.

Q. Was his hand open or clenched? A. It was open.

Q. He came in threateningly, did he not? A. I cannot remember whether he threatened me, but he had his arm raised when he came in the door, but I could not——

Q. How far do you say you were from him, when you first saw him enter the kitchen with his open hand raised? A. I should judge it was about seven feet from the kitchen window to the dining room door, or more than that.

Q. You are not sure whether you were seated facing him, and he struck you with his open hand on the shoulder, and you fell, or whether you were standing? A. I rather think that I was standing, for the reason that I was near the stove when I

fell, and if I had been seated I would have been near the window, and I did not fall near the window.

Q. Whether standing or seated he was facing you and you were face to face when he struck the blow, that felled you to the floor? A. Yes, sir.

Q. Did Mr. Marley interfere—— A. He did not. 10

Q. ——in this outrage perpertrated upon you? A. He did not.

Q. Or remonstrate? A. Why, he realized——

Q. Not what he realized, did he say anything? A. No, sir, because Mr. Hyer turned right to him, and told him to leave the house, to get to hell out of his house, or he would kill him yet.

Q. And he went? A. Yes, sir.

Q. Without ceremony? A. Yes, sir.

Q. You did not directly answer Judge Kerr, I notice, when he asked you whether you saw Lulu that night again? A. When I went upstairs she was in her room with the door shut. 20

Q. But you do not answer the question? A. When I saw her again that night?

Q. Yes. A. No, I did not.

Q. She says that you and your mother came in her room and sang and danced. A. Yes, sir.

Q. And said you were going to leave next day? A. Yes, sir. 30

Q. That is so? A. No, it is not. I don't see what occasion we could have for dancing.

Q. Well, I do not know. Didn't you kiss her good-bye that night? A. No, we didn't leave that night.

Q. But didn't you? A. No, sir.

Q. You and your mother were in good spirits

that evening? A. No, we were not, because my mother was crying.

Q. You say you were actually engaged to Mr. Marley at that time? A. Yes, I was engaged to be married.

Q. Did anyone know of that engagement besides
10 you and Mr. Marley? A. I believe everyone in the town who knew us, knew there was something between us.

Q. Do you know if anyone in Little Falls, outside of you and Mr. Marley, knew that you and he were engaged in December, 1912? A. Mrs. Hill.

Q. She was the witness, in whose house on Maple Street you went to live? A. Yes, sir.

Q. Who was here on Friday, and here again today? A. Yes, sir.

20 Q. You had companions, there, girl friends? A. Yes, sir.

By the Vice Chancellor:

Q. Did your mother know it? A. Yes.

Q. Did your father know it? A. That I could not say, because I never told him.

Further cross examination:

30 Q. Did any girl friends—— A. Yes.

Q. ——or companions of yours know? A. Yes, sir, Ada Vanderhoff.

Q. Is she still in Little Falls? A. I believe she is in Paterson now, she is married herself.

Q. Do you know where she is living? A. On the East side somewhere. I could find it.

Q. Or the name of the man she married? A. No, but I could find out.

Q. Any other girl friend who still lives in Little Falls? A. Any of my girl friends, that I was going around with at that time, and I could mention several, knew the feeling that existed between Frank Marley and myself. We had no open engagement; I had no ring.

Q. Miss Vanderhoof did not know of your engagement?

The Vice Chancellor.—Let me remind counsel that although it is proper to show the circumstances, under which the separation occurred in December 1912, it is not a matter of primary importance, because it is conceded I understand, that there was a reconciliation between these parties in 1913, and they became absolutely reconciled, and the issue to be tried is whether the man did his duty in seeking to provide a proper home for himself and wife to live together, or, on the other hand, did the wife at that time make up her mind that she would not go to Little Falls, that if she went back to her husband, he would have to live where she said. That is the issue here. But all of this is very remote. We are not concerned very much with the question of which was to blame, concerning that occurrence in December 1912. One may have been wholly to blame, the other may have been wholly to blame, or both may have been partly to blame. But they separated; there is no question about that. They came together afterwards, and that, as counsel certainly were aware, effected a condona-

tion, which ever was wrong, or if both were wrong; it wiped out old scores, and the trouble started afresh. Of course what occurred before has a bearing upon what occurred in the summer of 1913, because what occurred before throws light on what was probably the state of mind of each party in the summer of 1913, and particularly during the two years preceding the commencement of this suit, which would be from January 5, 1915, to January 5, 1917. If counsel will bear that in mind they will see that this prolix examination, and cross examination as to matters very remotely connected with the case, is not very important. I am sure I cannot see what it has to do with this case as to how many peole knew this young lady was engaged or not.

Mr. Rosenkrans.—Of course not, in itself. But I take it, whether or not the wife was justified in leaving the husband in December 1912, is of prime importance in this case, and this collateral matter simply tests the general reliability of this witness.

The Vice Chancellor.—If we follow out that theory the case might last for a long time.

By the Vice Chancellor:

Q. I do not quite understand what you said about your father threatening to strike your mother. Will you state that again? A. Yes, sir. When my mother told me to go upstairs, and my father

started cursing and swearing, why I sat on the stairs as my father was talking very loud, and I came down as he was telling her that she was trying to run a whore house; I was in the kitchen when he said that, and she told him that he had no right to strike Helen, meaning me, and he said he did strike her, and would strike her too and with that I rushed into the dining room as he had his hand raised to strike my mother and he lowered his hand at the same time telling us both to leave his house. 10

Q. Did you see him strike your mother before? A. No, sir.

Q. Or try to strike her? A. No, sir.

Q. Do you mean he held up his hand while you addressed him? A. I heard him say he would strike me and would strike mother too, when I rushed into the dining room he had his hand up like that (illustrating), and I said—— 20

Q. Before he could hit her? A. Yes, sir. And I said "Don't you dare to strike my mother."

Q. With his open hand? A. Yes, sir.

Q. Did he strike you with his open hand? A. Yes, sir.

Q. On your arm? A. Yes, sir, on my shoulder.

Further cross examination: 30

Q. You stood on the stairs when you heard something said by your father; what did you hear him say? A. I heard him tell my mother that she was trying to run a whore house.

Q. What brought you downstairs? A. When he said that I came down, and I did not understand

his meaning, just because I had Mr. Marley in the house that night, and I came down, and I heard her say she was not trying to run any whore house, and he had no business to strike me.

Q. Where were you when you heard your mother say to your stepfather he had no right to strike
10 you? A. Just coming down to the kitchen from the stairs.

Q. Where were your mother and father standing? A. In the dining room.

Q. How far from the kitchen door? A. About three feet.

Q. You were then coming into the kitchen? A. Yes, sir.

Q. So that in order to get to the dining room you had to go across the kitchen? A. Yes, sir.

20 Q. Through the door? A. I believe the door was open, there was a swinging door there.

Q. Before you got to the kitchen you heard your mother say to your step-father, "You have no right to strike Helen"? A. Yes, sir.

Q. And you immediately heard your father say—— A. "I did strike her, and I will strike you," yes, sir, and then as I rushed in he had his hand up.

Q. When you heard that you say you were not
30 yet in the kitchen? A. Yes, I was in the kitchen; when he said that I was just coming down the steps into the kitchen when he said——

Q. Yes, just coming down the steps, from up above into the kitchen? A. Yes, sir.

Q. So you had to run across the kitchen? A. Yes, sir.

Q. Into the dining room? A. Yes, sir.

Q. And that took you some appreciable time, didn't it? A. It was a very short distance, from the stairs to the dining room.

Q. How wide is the kitchen, ten or twelve feet? A. About as broad as from the wall to here, I imagine, but the stairs came down to about there (indicating), and I had to go into the dining room. 10

Q. You had to go three or four feet there? A. Yes, sir.

Q. And traverse the kitchen? A. Yes, sir.

Q. And by the time you got there, your father had not yet struck your mother? A. No, he had not.

SOPHIE HYER, the defendant, sworn. 20

Direct examination by Mr. Kerr:

Q. When were you married? A. 1904, by Reverend Doctor Young, Christopher Street, New York.

Q. Was your husband in business when you married him? A. Yes, sir.

Q. What was his business? A. Wholesale produce.

Q. When did you leave New York to go to Little Falls? A. In 1906. 30

Q. Was your husband in business then? A. No, he had given up his business in 1905 and retired.

Q. Did he tell you what his financial situation was when he retired from business?

Mr. Rosenkrans.—I object to that.

The Vice Chancellor.—We are not going into that part of the case yet.

Q. Where did you go to live when you first went to live at Little Falls? A. Cedar Grove Road, yes, on Cedar Grove Road.

10 Q. How long did you live there? A. Two years.

Q. Where did you move to then? A. To Second Avenue.

Q. The house where you and Mr. Hyer were living when you left him in 1912? A. Yes, sir.

Q. Who were living in that house in December 1912? A. On Second Avenue?

Q. Yes. A. My daughter and——

20 *The Vice Chancellor.*—Is there any doubt about those facts?

Mr. Kerr.—No, I can go right on to 1913.

The Vice Chancellor.—Proceed.

Q. Do you remember when Mr. Hyer saw you the last time at Bridgeport? A. Yes, sir.

Q. Where were you living then? A. 1544 Park Avenue.

Q. Who was living with you? A. My daugh-

30 ter and my son.

Q. When was that, when was the date? A. I think it was about the 23rd of September.

Q. What year? A. On Saturday night.

Q. What year? A. September 1913.

Q. Did Mr. Hyer sleep with you that night? A. Yes, sir.

Q. He left the next morning? A. No, in the afternoon.

Q. In the afternoon of the next day? A. Yes, sir, Sunday.

Q. He had a pleasant visit? A. Yes, sir, very pleasant.

Q. Were there any signs of affection when he left you? A. Yes, sir, I took him down as far as the street, and he kissed me good-bye and said he would write to me, which he did. 10

Q. Have you got a copy of the letter he wrote you after that? A. I think you have it; I think it is dated September 30, 1913.

Q. (Showing witness D No. 6.) I ask you if that is the letter he wrote you after leaving you then? A. Yes, sir.

Q. Did you get any letter after that from him? A. The next letter I got from him was in February, telling me if I wanted money to go and work for it. 20

Q. February 23, 1914? (Showing witness letter.) A. Yes, sir, and I think I got one between then, between Sept. 30th and then. I am not sure; I think I got a letter from him in October; I am not positive though about that.

Q. But that is the letter you got from him dated February 12th? A. Yes, sir.

Mr. Kerr.—That is Exhibit D No. 5. 30
(Mr. Kerr read D 5 in evidence.)

Q. Was it true that you were giving $5.00 a month to your mother? A. Yes, sir.

Q. How old is your mother now? A. She will be 85 in May.

Q. Did Mr. Hyer ever give you anything extra

over and above the $26.00 that he was sending you? A. Never.

Q. So that the $5.00 you sent your mother, was taken out of the $26.00? A. Yes, sir.

Q. You had nothing else to live on except what he gave you and what you earned? Is that right?
10 A. Yes, sir.

Q. You heard Mrs. Hill's testimony here in this case about going to the bank and asking for the keys to the home? A. Yes, sir.

Q. Is what she swore to true? A. Yes, sir.

Q. You heard what Anna Keind swore to about your going up to the house on a rainy night? A. Yes, sir.

Q. And you heard about Lulu coming to the door, and then the father coming to the door? A.
20 I didn't hear about that, I was there.

Q. Is that true or not? A. Yes, sir, that is true.

Q. What was your object in going there? A. What was my object in going there?

Q. Yes. A. Why, I read in the Paterson Call, that he was sick and had been sick, and my friend Anna Keind came up on the 4th of January and I just showed her this paper in which it said that Mr. Hyer, cashier of the First National Bank, is re-
30 ported to be improving, after being ill for several days, and I said, "Will you go up with me, I want to go up and see him and see if I can do something for him," so she met me at the grocery store at Little Falls, and we went up there, and I rang the bell and Lulu came to the door and lit the porch light, and she opened the door and I was just going to ask her for her father when she saw me and slammed the door in my face, and she went in and a couple

of minutes after that Mr. Hyer came out, went to the door and said, "You can't come in," so I said, "Henry, I would like to come in and speak to you," and he said, "You cannot speak to me, get away from here," and he put the porch light out at that time, and left us standing out in the rain. 10

By the Vice Chancellor:

Q. When was that? A. That was January 5, 1917.

Q. You have a newspaper before you there? A. Yes, sir, I want to show what I saw in the Call.

Q. What is the date of it? A. January 4, 1917.

Q. Is that the identical paper in which you read the account of your husband's illness? A. Yes,—No, this is the Paterson Call. 20

Q. Is that the very paper in which you read the account? A. Yes, that is the paper I saw it in.

Q. How did you come to preserve it? A. Well, I don't know, I just preserved it because I preserve everything that happened since we separated.

Further direct examination:

Q. Did you write your husband a letter after that visit? A. What visit?

Q. The visit in January 1917? A. Oh, down to the house? Yes, I wrote him a letter next day. 30

Q. Did you keep a copy of the letter you wrote him? A. You have a copy of it there.

Q. (Showing witness a paper.) Is that the copy of the letter which you wrote your husband the next day? A. Yes, sir.

Mr. Kerr.—I offer this in evidence. I demand the original.

Mr. Rosenkrans.—We have no such letter.

Mr. Kerr.—I offer it in evidence. It is a letter dated January 6, 1917, a copy, from Mrs. Hyer, to Mr. Hyer.

(Marked Exhibit D 14, March 18, 1918. H. W. K.)

10

By the Vice Chancellor:

Q. This paper, Exhibit D 14, do I understand that is a copy of the letter you sent? A. Yes, sir.

Q. Did you make the copy at the time? A. Yes, sir.

Q. Which paper did you write out first, this or the one you sent? A. I wrote out this one first.

Q. And then copied it? A. Yes, sir.

20 Q. And mailed it, did you? A. Yes, sir.

Further direct examination:

Q. Did you write him a letter later than that in 1917? A. Later than 1917?

Q. Later than January 7th? A. Only at Thanksgiving time, just before Thanksgiving, I wrote him a letter.

Q. I show you a letter dated November 17, 1917.

30 *Mr. Rosenkrans.*—After the institution of this suit?

Mr. Kerr.—Yes.

Mr. Rosenkrans.—I object to it.

The Vice Chancellor.—On what ground?

Mr. Rosenkrans.—As irrelevant, a letter from Mr. Hyer to Mrs. Hyer.

The Vice Chancellor.—I do not see how it is competent.

Mr. Kerr.—It is a letter which shows the continuing position of this woman in regard to her husband.

The Vice Chancellor.—The commencement of the suit draws a very sharp line between the communications that passed from one party to the other. Those that were sent before the suit, may be very important as bearing upon the main issue, but those that are sent afterwards are mere statements. They may be put in evidence, because everything that the party says, can be offered by the other party on the trial. This letter could be put in evidence by your opponent. You cannot make declarations in the form of letters and have them received in evidence.

10

20

Q. I show you a paper dated January 28, 1915, marked D No. 11 and ask you what that is? A. That is a letter I sent him asking him to come up and see me.

Q. Is that a copy of the one you sent him? A. Yes, sir.

Q. Did you ever get any reply to that? A. Never.

Mr. Kerr.—I will offer that letter in evidence.

30

The Vice Chancellor.—If there is no objection it will be received.

(Copy of letter from petitioner to defendant, dated January 28, 1915, heretofore marked D 11, received in evidence.)

The Vice Chancellor.—Was not that just after the suit had been commenced?

Mr. Kerr.—But she had not been served yet.

The Vice Chancellor.—However it was after the suit was commenced.

10

Q. I show you a letter from Bridgeport, dated December 15, 1914, written by you to your husband, and ask you what that is, the original or copy? A. Copy.

Mr. Kerr.—I offer that in evidence. It is dated December 14, 1914.

The Vice Chancellor.—What is that?

Witness.—I wrote that.

20

Q. What is that, your letter you wrote to your husband? A. It is a copy.

Q. Did you ever get an answer to it? A. No, sir.

(Mr. Kerr read letter of December 1914, being copy of a letter from defendant to petitioner, and the same is marked Exhibit D No. 18, March 18, 1918. H. W. K.)

30

Q. Did you ever get an answer to that? A. No, sir.

The Vice Chancellor.—Did you receive an answer to either of the former letters you have identified?

Witness.—No, sir, I did not receive any

answers to any letters I wrote to him since 1914.

Mr. Kerr.—I offer another letter, dated Bridgeport, December 22, 1914, from Sophie to Henry and ask that it be marked.

(Marked Exhibit D 19, March 18, 1918, H. W. K.)

10

Q. I show you a register returned receipt which has been marked D No. 10, and ask you if that has anything to do with that paper, December 22, 1914, (D 19)? A. Yes, I registered that at the time, and I received that card showing that he had received it.

20

Mr. Kerr.—I demand the original of the Bridgeport letter dated December 22nd.

Mr. Rosenkrans.—I have not got it.

Mr. Kerr then read Exhibit D 19 in evidence.

Q. You got no answer to that? A. No, sir, but I know he received it, because I got this thing.

The Vice Chancellor.—Referring to what?

Mr. Kerr.—Referring to the register return receipt, Exhibit D No. 19.

30

Q. I show you a paper now, and ask you to state what that paper is? A. This was given to me by Judge Keys to come over to see you about this case.

Q. Did you see him write it? A. I did.

Q. What did you do with it after he gave it to you? A. Brought it over to you.

Q. And gave it to me when? A. On January 6th, I think.

Mr. Kerr.—This paper is offered in evidence.

10

(Marked Exhibit D 20, March 18, 1918, H. W. K.)

Q. Who sent you to Justice Keys? A. I can t remember whether it was Mr. Stanley, or Mr. Stanley sent me to the lawyer. I think it was in Romaine Building, I cannot remember what his name was exactly, but Mr. Stanley it was a lawyer that—

Q. Was it Joseph MacDonald? A. I think it was.

20

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

Q. Where did he send you? A. To Judge Keys.

Q. And Judge Keys sent you to me? A. Yes, sir.

Q. Did you hear your husband testify in this case last February? A. Yes, sir.

Q. Did you hear him testify again at this hearing last Friday? A. Well, I was a little late, and I didn't hear everything he said because I was up here when he came in.

30

Q. At the hearing in February did he testify that he had sent anybody to see you to ask you to come back? A. In February?

Q. Yes. A. No, sir.

Q. Did you hear him testify that he had sent his daughter to see you when he was on the stand last week? A. Yes, sir.

Q. Do you know a Mr. Hart of Brooklyn, and Mrs. Hart? A. Yes, sir.

Q. Have you ever been in their house? A. Yes, sir.

Q. From the time that you left Little Falls, did you call at Little Falls to see anybody? A. Did I what?

Q. From the time you left Little Falls, up to the present time, have you visited Little Falls? A. Oh, yes. 10

Q. Has there been any great length of time up to the present time, that you have not been in Little Falls? A. I have not been to Little Falls, since about 1914,—no, 1915.

Q. Since when? A. 1915, only January 6, when I went up to see my husband at his home there in 1917.

Q. Did you ever call on Anna Keind at Mr. Kramer's house? A. Yes, sir. 20

Q. When? A. I have been there all the time off and on until I——

Q. When were you there last? A. At Anna Keind's?

Q. Yes. A. I have not been there since 1915.

Q. Were you there in 1915? A. Yes, sir.

Q. Were you there in 1916? A. No, I was not.

Q. Is it true that on some occasion Mr. Kramer said to you, "Why don't you go back to Henry?" A. Well, he didn't exactly say, "Why didn't I go back to Henry?" but I was up there making a dress skirt for Anna Keind, which kept me in the house two or three days off and on, and he said "Why don't you go back to your house?" and I said, "I don't think he wants me to," and he said, "I know why he does not want you back, he has another woman in Passaic, and I can take you right to her house 30

if you want it," and I said, "I didn't want to go to any other woman's house."

By the Vice Chancellor:

Q. When was this? A. 1915.

10 Q. What time of the year? A. When he told me that?

Q. Yes. A. Towards the Fall.

Further direct examination:

Q. Did your husband ever tell you or ask you to keep his business secrets? A. Well, he did, yes, he said not to say anything to anybody, not even my sister, that he had eve r been up there to see me.

20 Q. I show you a letter marked D No. 6. What did he mean by saying in this letter, "I would not let her know too much"?

Mr. Rosenkrans.—Has that letter been proven?

Mr. Kerr.—That has been put in evidence, I think, it is marked.

Q. "I would not let her know too much, the less

30 you say to anybody the better you will be off. I have found that out here. I don't let anybody know anything whether you are up there or anywhere else, I always tell them I don't know, then they don't ask me any more about it. You could answer her letter, but I would not say anything about our affairs, whether I have been up there or not"?

Mr. Rosenkrans.—Read it all.

Mr. Kerr.—Oh, that first part I didn't read.

Q. What did he mean by that? A. When we made up again, he told me to keep quiet about our affairs, and tell nobody anything about that we are made up, that we would keep separated about two years, and then when the girls got married, he would sell his house, and give up his position in the Bank, and build a bunglow somewhere, just for he and I.

By the Vice Chancellor:

Q. When did he tell you that? A. In 1913.

Q. Where? A. He told me that different times; the first time he told me was in Maple Street.

Q. You said a moment ago he told you when you made up? A. Yes, sir.

Q. Where was that, Bridgeport? A. I went away in December 1912, and in April 1913, we made up.

Q. Where was that? A. In Little Falls—— well, I met him in the back of the house, where we lived on Third Avenue.

Q. Did you make up there? A. Yes, sir, and then he came around to see me in Maple Street, and he told me that, he said that he could not take me back to the house there, that he did not want me in the house, but he said we would keep separated about two years and then after the girls got married he would give up his position in the bank and sell the house, and build a bungalow some place else.

Q. What did you say to that? A. I said, "Well, alright," because I didn't care myself to go back to Little Falls, after all that notoriety.

Q. On these occasions did he spend the night? A. Not there, no, sir, he did stay about an hour or two.

Further direct examination:

10 Q. Did he take you out during that time? A. He took me out every Sunday in the automobile, and we went around to different parts of the country, and he asked me how I liked this place and that place, and how I would like to locate there.

Q. Did you ever stop at hotels? A. Once, one Sunday.

Q. Where was that hotel? A. I do not know where it was now, I cannot tell now; I think it was called the Newark House, but I pass it when I take the car going to Newark, and I can tell where it is 20 then.

Q. Did you go as man and wife on that occasion? A. Yes, sir.

Q. Did that continue all during your stay in Bridgeport, and up to September 1913, when he left you? A. Yes, sir.

Mr. Kerr.—I offer all these in evidence, they go right through to June 1913, they have been marked D 6, D 7, D 8, and D 9 and D 30 10.

The Vice Chancellor.—Do I understand that the witness says that these were letters that she received?

Mr. Kerr.—Yes, sir.

Mr. Rosenkrans.—All in the summer of 1913?

Mr. Kerr.—Yes.

Q. Are these all letters that you received? A. Every one, yes, sir.

By the Vice Chancellor:

Q. From your husband? A. From my husband. 10

Q. Through the mail? A. Through the mail.

Q. Did you reply to them? A. Every one.

Q. Have all of your replies been put in evidence? A. Well, no; he said I did not send any letters to him.

Q. Did you keep copies of your replies? A. No, sir, I did not, not then.

Q. When did you begin to do that? A. After I wrote him a few letters and he paid no attention to them, and would not answer them or talk to me 20 when I came in the Bank or anything, then I kept copies of the letters.

Further direct examination:

Q. Do you remember having any talk with your husband in a restaurant in Paterson? A. Only when I went in there with my friend, Miss Anna Keind.

Q. What year was that? A. In the Spring of 1916. 30

Q. Tell the court what occurred. A. She and I used to go there once and a while for supper.

Q. What is the name of the restaurant? A. The Connet Restaurant, and just as I came in the door I saw the back of my husband's head, and I kind of recognized him, and he was seated there with a lady. I didn't say anything to Anna Keind,

but the two of us went in the back room, and he was there, and he sat on this side, and I was on that side, (indicating), and when we sat down, my friend asked me if I saw who was on the other side, and I said, "Yes, I saw it when I came in," and she said, "Ain't he fresh?" and I didn't say anything, but a
10 little while after I walked over and tapped him on the shoulder; he looked up, and I said, "Who is your friend?" He did not answer and I turned to her and I said, "Do you know this is a married man you are with?" and she made no answer but looked down in her plate. My husband said, "If you don't like this you know what you can do," and shortly after this they went out and he helped her on with her coat, and I said to the manager in there, "Do they come in very often?" and he said, "No."
20

Mr. Rosenkrans.—I object to that.

Q. Have you had any talk with your husband since that meeting in the restaurant? A. Talked with him?

Q. Have you ever spoken to him since that night? A. Only when I went to his house on January 6, 1917.

30 *The Vice Chancellor.*—When was this incident when you saw him in the restaurant?

Witness.—In the early spring of 1916.

Q. Did he ever write you a letter or ever say anything to you, charging you with fooling him the last night he was in Bridgeport? A. No, sir, never.

Q. What has been your desire ever since you made up with Mr. Hyer, and up to the present time, in regard to resuming your marital relations, what has been your desire? A. Always to go back to him.

Q. And if he won't take you back, what then? A. Why, then I asked Judge Keys——I went up to the Bank and he never gave me any satisfaction, and I said to Judge Keys—— 10

Mr. Rosenkrans.—I object to that.

Q. Never mind. You can tell what your desire has been, whether you want to go back again. A. I want to go back.

Q. And if he won't do that, then what? A. Then to support me away from him. 20

Q. When did you first know there were any divorce p roceedings intended against you? A. I hadn't any idea of it until I got a letter from a party named Isadore Klenert, I believe he is a lawyer, on January 23rd, 1917; a young man came up to the house, and handed me this letter and I had been quite ill with the grippe, so I said to this young man———

Mr. Rosenkrans.—I object to that. 30

Q. Go on. A. "What does he want to see me about?"

The Vice Chancellor.—One moment.

Mr. Rosenkrans.—I object on the ground that it is immaterial what she said to some young man who came to her house, after divorce proceedings were pending.

The Vice Chancellor.—What he said to her has a bearing on this case and I will take that, and I cannot take what he said to her, without taking what she said to him. This was on January 23rd; that is the date of the filing of the petition, or the making of the affidavit——

10

Mr. Rosenkrans.—I understand Mr. Adelman was the solicitor of record. What some young man of Mr. Klenert's office may have said to her——

The Vice Chancellor.—I will take what she said, so far as it goes to show she had notice of the proceedings for divorce.

By the Vice Chancellor:

20

Q. What was said about the suit between you and this young man? A. This man called to see me and I had been quite sick with the grippe and I said "I can't go out tonight, I only just got out of the sick bed," and he said "When will you be down?" and I said "I will be down on Thursday."

Q. Did you learn about the divorce suit then? A. No, sir, I did not.

Q. Did you know what he was talking about? A. No, sir.

30

Q. Or why Mr. Klenert wished to see you? A. No, I did not.

The Vice Chancellor.—If counsel moves to strike it out, I will entertain such a motion.

Mr. Rosenkrans.—I make such a motion.

The Vice Chancellor.—It will be stricken out.

Q. When did you get notice of the intended divorce suit? A. About February 2nd.

Q. How? A. By the Sheriff——

Q. Through the Sheriff serving you with the paper? A. I think so; I don't know who it was, a man came down.

Q. You have a copy of the paper that he served? A. I gave it to the Judge. 10

Q. Accompanying that paper, was there a copy of the petition of your husband? A. No, just the paper.

Further direct examination:

Q. (Showing witness petition.) Did you give me any paper like this? A. I gave you the paper that—

Q. You gave me all the papers that were given you by the Sheriff? A. Yes, sir. 20

(Copy of petition marked D 21 for identification.)

Cross examination by Mr. Rosenkrans:

Q. I show you exhibit D 1; this you say is a copy of your letter dated July 6, 1916, written by you to your husband? A. Yes, sir.

Q. I call your attention to the words at the bottom of the letter, "No answer as usual?" A. Yes, sir. 30

Q. Were not those words written by you with the same pen and ink and at the same time, as the body of the letter above them was written? A. It was not written at the same time, no.

Q. How soon after the writing of the body of the letter did you write the words at the bottom? A.

Well, I guess about a week or so, when I didn't get any answer I put that at the bottom.

Q. Why? A. So as to find out whether I got an answer to it or not, the same as I did the other ones.

Q. You say in that letter that you are sorry
10 you were not let in the night before and you wanted to nurse or take care of him, or something to that effect, but you didn't go up there for that purpose? A. Did I what?

Q. You did not go up there to Little Falls, to Mr. Hyer's home for the purpose of taking care of him? A. I did.

Q. You say that on the 4th of January you read in the Call that he was sick? A. The 4th of January?

20 Q. Yes? A. No, on the 23rd I was sick.

Q. Didn't you say it was on the 4th of January, 1917, that you saw in the Paterson Call an item in the Little Falls notes, to the effect that your husband was sick? A. Yes.

Q. On that date, January 4th? A. Yes, sir.

Q. And you say you went up there on the 5th? A. Yes, sir.

Q. What did you go up there for? A. To see if I could go in to see him.

30 Q. And nurse him, as you say in the letter of January 6th? A. Yes, sir.

Q. Why did you take a woman companion with you if you were going to see your sick husband for the purpose of staying there and nursing him? A. Well, I didn't expect to stay there right then; I expected him to ask me to stay though after I seen him.

Q. If that be so, why did you take someone with you? A. Because every time I wrote to him, I got no answers to my letters, and he denied getting any letters from me, and I thought I would take her along to see, to testify to anything that happened then.

10

Q. In other words, you took her along as a witness? A. Yes, sir, I did.

Q. You did not really intend to enter his home and nurse him back to health if you had the opportunity? A. I certainly would if he had asked me in to stay.

Q. In order to make arrangements to return to his home, and nurse him back to health, you would have to talk personally to him? A. I don't understand you.

20

Q. Would you not have had to have a personal, intimate talk with your husband, before you could make arrangements to go back to his home, and nurse him back to health? A. Well, yes, but if he had——

Q. All right. Why did you take a stranger with you—— A. She was no stranger to me.

Q. She was a third party? A. Yes, sir.

Q. No member of your family? A. No, sir, I had no one in my family there to call on, and I had no time to send for any of my family.

30

Q. If you are sincere in your claim, that you went there then for the purpose of inducing your husband to let you nurse him, can you explain why you took this woman companion with you? A. I have told you why.

Q. Why? A. Because I wanted somebody to go along as a witness, to testify to just what was said and took place that night.

Q. You have produced a number of copies of letters, which you say you sent to your husband; when did you first commence to make copies of your communications to him? A. After he refused to answer my letters, and did not call on me any more.

Q. What year was that? A. 1914.

10 Q. What part of the year? A. The beginning of the year.

Q. How early? A. January.

Q. So that in January, 1914, you commenced to make copies? A. I did.

Q. Of every communication sent by you to him? A. Yes, sir.

Q. And you have copies of each communication? A. I have, those that I sent.

Q. And you preserved every scrap of writing that
20 he has sent you? A. He never sent me any since 1914.

Q. He sent you money? A. Nothing at all except the checks.

Q. Letters accompanied those checks? A. Nothing in the envelope but the check.

Q. Was there not some enclosure, something saying that he enclosed checks? A. Nothing at all, because I could show you a number of envelopes where I have put on there was nothing but checks,
30 only checks.

Q. I show you a letter purporting to be written by you to him, and an envelope bearing the postmark, "New York, N. Y., May 11th, 1914." A. Yes, sir.

Q. I ask you if that is a letter sent by you to your husband, and whether or not it was enclosed in the envelope marked May 11, 1914? A. I don't know that exactly, but I know——

Q. Read the letter. A. I wrote this, (indicating letter). I don't know if that is the envelope for it.

Q. See if the contents of the letter will not refresh your memory and enable you to say whether it was not sent about May 11, 1914? A. Yes, I sent that.

Q. About that time? A. I do not know, because I have not got that dated. I do not know whether that is the envelope or not.

Q. You say here, "Thought I would let you know I am no longer in Bridgeport, but living at 900 Garden Street," is that Garden Street, Hoboken? A. Yes, sir.

Q. Don't you know when you left Bridgeport for Hoboken? A. Yes, sometime after my daughter was married.

Q. In 1914? A. Yes, sir.

Q. Early in 1914? A. Yes, sir.

Q. In the month of May? A. Before that.

Q. How long before that? A. Maybe March or April, something like that.

Q. How soon after your arrival in Hoboken, did you write your husband? A. Well, that must have been the first.

Q. Then you probably sent this letter on May 11, 1914, and this is the envelope which enclosed it? A Oh, I cannot say; I am not sure whether that is the envelope that belongs on that or not, because this, (indicating the letter), is not dated, and that, (indicating the envelope), is.

Q. You say you moved to Hoboken in March or April 1914, and that is the letter you wrote and—— A. I don't know if that is the first letter or not, because it is not dated.

Q. This letter was written sometime in the Spring of 1914? A. I can't say that either, because the date is not on there.

Q. Cannot you tell, with reference to the time of your removal from Bridgeport to Hoboken, when this letter was written? A. I already lived with
10 my cousin in Hoboken——

By the Vice Chancellor:

Q. When did you say you moved from Bridgeport to Hoboken? A. I cannot say exactly when I moved there, but I have been going there off and on.

Q. When did you change your residence at Bridgeport, after your daughter's marriage, to go to Hoboken? A. In February, about the 15th.

20 Q. After that did you ever go back to Bridgeport to live? A. Yes, on and off I did.

Q. How soon after you got to Hoboken, did you notify your husband of your change of residence? A. Well, I guess that must be the letter that I had written to him, to tell him that I was down there, but I didn't know I was going to stay all the time.

Q. You were receiving a monthly check? A. Yes, sir.

Q. Have you any doubt you notified your hus-
30 band of your removal from Bridgeport to Hoboken, a few days after you got to Hoboken? A. No, but I don't know when I wrote him that letter exactly now; I wrote him more than one letter from Hoboken.

Q. That letter states that you have changed your residence? A. Yes, sir.

Q. Have you any doubt you sent a letter soon after you got to Hoboken? A. Not at all.

Q. You must have written it within two or three days? A. No, sir, because my daughter sent me my checks, maybe one or two, from Bridgeport to my cousin's house, that came to Bridgeport; then I wrote to him that I was living in Hoboken.

10

Mr. Rosenkrans.—I offer in evidence the letter from the defendant to the petitioner.

(Mr. Rosenkrans read the letter in evidence and it was marked Exhibit P 2, March 18, 1918, H. W. K.)

Further cross examination:

Q. You say after your husband visited you in Bridgeport in September 1913, he wrote you but two letters, one September 30, 1913, and one February 12, 1914? A. That is all.

20

Q. You say that he left in a very friendly mood? A. He did.

Q. I notice that in this undated letter I have put in evidence, (Exhibit P 2), you express a hope that he is not angry any more? A. Yes.

Q. You knew at the time that you wrote that letter that he was angry because you had fooled him about coming back to Little Falls, did you not? A. No, I did not; I did not know why he was angry. The only reason I could guess for his anger, was because I gave my mother $5.00 a month, that was the only reason he had to be angry, and he never gave me any satisfactory reason why he was angry, but I took it for granted that he must be angry at something.

30

Q. The absence of letters from him, led you to believe he was angry with you? A. Yes, sir.

Q. Having in mind the fact that he had sent you but two letters since this trip to Bridgeport, in September 1913, one on September 30, 1913, and the other on February 12, 1914, you wrote him this letter in the Spring of 1914, saying that you hoped he was not angry any more?

10

The Vice Chancellor.—Let me see those two letters you have referred to.

Q. I show you a letter purporting to be written by you to your husband, dated November 5, 1913, and ask you if that is a letter from you to him? A. Yes, that is my writing, anyway.

Q. And I show you an envelope which is stamped on the back, Bridgeport, November 5, 1913, a registered letter? A. Yes, sir.

20

Mr. Rosenkrans.—I offer that letter in evidence.

(Marked Exhibit P No. 3, March 18, 1918, H. W. K.)

Q. Why did you write in that letter, "I hope you are not angry at anything?" A. Simply because I got no answers from him and no letters from him, that is why I thought there must be something wrong.

30

Q. Is not the reason you wrote these words, the true reason, because you knew he had occasion to be angry with you, in that you had fooled him about coming back to Little Falls? A. No, sir, it was not.

Q. Did you give him any occasion to be angry? A. Only through his telling me that I should not

give my mother $5.00 a month, that is the only reason.

Q. He had not said anything about your giving your mother $5.00 a month, as early as November 5, 1913, when you wrote this letter to him, had he? A. 1915? Yes.

10

Q. No, 1913. Where is there a letter from him bearing an earlier date than November 15, 1913, in which he complains about your giving money to your mother? A. There was not any before that, but that is right after he left me in September.

Q. Then the thing he was angry about, that you thought he was angry about, when you wrote this letter of November 5, 1913, was not the giving by you of money to your mother, and—— A. No, I guess it was not.

20

Q. What did you think he was angry about? A. I don't know. I don't know to this day what has caused the change in him to me.

Q. Had you given him any reason to be angry? A. Not a thing; I have gone down to the Bank time and time again and asked him what the trouble was.

Q. This was in the Fall of 1913? A. No, I don't; I did not then or at any other time.

By the Vice Chancellor:

30

Q. What was the arrangement between you and him in Bridgeport when he visited you, when he left and came back to Little Falls? A. The arrangement was before I left Little Falls——

Q. No, what was the arrangement then? A. It was the same then, that we keep separate for a couple of years, and until the girls got married, and then he was going to sell the house, and give up his

position in the Bank and build a bungalow for him and I.

Q. And that arrangement was confirmed during the visit to Bridgeport? A. Yes, sir.

Q. With that arrangement fully made he left Bridgeport and came back to Little Falls? A. Yes, sir.

Q. Was anything said about your corresponding or writing letters? A. No; after he came up to my house in Bridgeport in September, I got a check from him, and then in January I went down to the Bank and asked him——no, then I got a letter from him in February and I went down to Paterson, and telephoned him, and asked him, would he not meet me in Paterson, and he said Yes, he would, and he met me that night in front of the Romaine Building, and he said, "What do you want to see me about?" and I said, "I want some money," and he said, "I have not got any and you don't need any when you are giving your mother $5.00 a month," and I said, "What can I do, she is an old woman, and there is no one but my sister and I to help her, and that is all she has to live on," and he said, "I have no money to give you."

Q. When was this? A. This was in February 1914, after he sent me that letter.

Q. After he sent you the letter in which he said you should come to Little Falls? A. Yes, sir.

Q. Had you, before he sent you that letter, accused him of going with other women? A. No, sir.

Further cross examination:

Q. Can you suggest why he should write you in apparent anger at some supposed claim on your part

that he was running with women? A. Yes.

Q. Well, explain it? A. What is that?

Mr. Rosenkrans.—I offer the letter in evidene of November 5, 1913, written by the defendant to the petitioner.

(Marked P No. 4, March 18, 1918, H. W. K.)

Mr. Rosenkrans.—I also offer the envelope accompanying the letter of November 5, 1913.

(Marked P No. 5, March 18, 1918, H. W K.)

Q. In the letter dated February 12, 1914, written by your husband to you, which is marked Exhibit D 5, he says, "And as for not having time to send you money on account of making dates with other women, you want to see it, and not hear it. You come up Little Falls as much as you like, for all I give a damn." Had not you accused him of going with other women? A. I never accused him of it, but I came in the Bank one day in January, and as I came in he was sitting at the table telephoning——

Q. What year? A. 1914. He was sitting at the table telephoning to some woman, because I heard him say, "I can meet you another night, I would like to take you out to supper," and I don't know what she said, and he said, "Oh, yes, I will come any night whenever you have time."

Q. You say this took place in the Bank at Little Falls? A. Yes, sir.

Q. During business hours? A. Yes, sir.

Q. Your husband is the cashier there? A. Yes, sir.

Q. And was in January 1914? A. Yes, sir, and still is.

(By consent this witness was withdrawn.)

10

EDWARD IRVING IVES, sworn for the petitioner, in rebuttal.

Direct examination by Mr. Rosenkrans:

Q. You are a practicing physician of New Jersey? A. Yes, sir.

Q. Your office is located in Little Falls? A. Yes, sir.

20

Q. You were located there in January 1917? A. Yes, sir.

Q. Was Mr. Hyer a patient of yours during that month? A. Yes, he was.

Q. Can you tell from your recollection, or notes, what his condition was on the 5th of January 1917? A. Suffering from a severe attack of bronchitis and grippe.

Q. Did you see him at his home that day? A. January 5th, yes.

30

Q. Where was he? A. In bed.

Q. Was he physically able to get out of bed upon that day? A. He had been in bed for over nine days or more, during that time.

Cross examination by Mr. Kerr:

Q. Have you got your diary with you of your visit? A. Yes, sir.

Q. Just look at January 5th, and tell us——what year was that? January 5th of what year? A. January 5, 1917. 10

Q. At what time did you call to see Mr. Hyer? A. I think sometime in the afternoon.

Q. Had you seen him before that in the morning? A. No, sir.

Q. Did you see him after that in the evening? A. No, sir.

Q. What time in the afternoon of that day, was it that you saw him? A. I don't know, some time after office hours; between two and three are office hours. 20

Q. You did not see him after that day? A. No, sir.

Q. What have you down for the next day? A. Nothing down for the next day.

By the Vice Chancellor:

Q. And the following day, the second day after? A. Nothing down.

Q. Did you visit him professionally, after January 5? A. I called in to see him on Sunday afterwards, with his bookkeeper from the bank. 30

Q. You mean you made a special call? A. I was up in the neighborhood, and dropped in to see how he was.

By Mr. Rosenkrans:

Q. Was he still confined to his house on Sunday? A. Yes, sir.

(Adjourned until Tuesday, March 19, 1918, at ten o'clock A. M. at Chancery Chambers, Paterson, N. J.)

Chancery Chambers, Paterson, N. J.
10 Tuesday, March 19, 1918.

Trial resumed pursuant to adjournment.

Mr. Kerr.—I would like to correct something. The Sheriff came to my house last night and claimed that someone had sworn that he did not serve the citation and petition in this case. That is something I would like to have corrected, both for his sake and
20 mine.

The Vice Chancellor.—That is not a matter of any importance in this trial now. Of course the papers were served according to law and the return so shows.

SOPHIE HYER, resumes the stand.

Further cross examination by Mr. Rosenkrans:

30 Q. You say that in the Spring of 1913, some arrangement was made between you and Mr. Hyer looking towards living in a bungalow together after two years had gone by, do you? A. 1913?

Q. Yes? A. After two years had gone by?

Q. You say that in the Spring of 1913, you and Mr. Hyer made an agreement that two years later you would live together in a bungalow? A. He

said we would keep apart until two years, or until the two girls were married, and then he would give up his position in the bank, sell his house, and go away and build a bungalow.

Q. Precisely. When was that arrangement first suggested, if at all? A. When was it first suggested, did you say? 10

Q. Yes. A. Well, I went away in 1912, and in 1913, in March, Mr. Hyer and Mr. Hart and Mr. Stanley came around to my house. After that I went to the Bank and one day when I was at the Bank, my husband came out and I walked out to go to Maple Street to go to my house and he came out and walked ahead of me, and so I asked him if he would meet me that night.

Q. What month was that? A. That was in March——April, when I went in April to cash my check. 20

The Vice Chancellor.—What year?
Witness.—1913.

Q. At that time had you already made up your mind to go to Milford Beach? A. No, sir, not then.

Q. Was that arrangement satisfactory to you? A. It was. 30

Q. It was a very definite arrangement was it not? A. No, not our arrangement together.

Q. At the time it was made it was definite? A. No, sir.

Q. You say you were to get together again in this bungalow after two years, or after the girls were married? A. Yes, sir.

Q. There was no prospect of Lulu marrying then? A. No, sir.

Q. No young man was calling on her? A. No, sir.

10 Q. For all you knew and all Mr. Hyer knew at that time, it might be twenty years before the girls were married? A. Well, we were to stay apart two years, or until the girls got married.

Q. Under that arrangement did you understand that you might remain apart for ten years? A. No, I didn't; I understood that we were to keep apart two years or until the girls got married.

Q. But they might not get married in two years? A. Well, to keep apart two years whether they were married or not, then.

20 Q. You lived in Bridgeport, in the Fall of 1913, until the Spring of 1914? A. No, I did not; I moved to Bridgeport the first of June, 1913, and stayed there until 1914.

Q. Until February, 1914, —— or March? A. About that time.

Q. Then you came to Hoboken, N. J.? A. Yes, sir.

Q How long did you remain at Hoboken? A. That summer.

30 Q. In the Fall of 1914, where did you go to? A. To Bridgeport again.

Q. How long did you then remain at Bridgeport? A. Until January.

Q. 1915? A. Yes, sir.

Q. That was the month in which you saw Judge Kerr first about your matrimonial difficulties? A. Yes, sir.

Q. That was about the time that you made a

complaint before Judge Keys against your husband for non support or desertion or whatever it was? A. Yes, sir.

Q. You came on from Bridgeport, Connecticut, to see about some back alimony? A. I did.

Q. How long had you been in Paterson, before you made the complaint before Judge Keys? A. I made the complaint in January, and I just came to Paterson then. 10

Q. How many days were you in Paterson before you went to Judge Keys's office? A. I guess I was not there more than a day or two.

Q. You first saw Joseph MacDonald, who is counsel for Little Falls Township? A. Yes, sir.

Q. He sent you to Judge Keys? A. I think so. 20

Q. So that when you came to Paterson you had support in your mind? A. I had both in mind, because they told me if he did not want to take me back—I told him my story and he said, "If he does not want to take you back, if he does not want to give you a home with himself, he is supposed to give you a home away from him."

Q. If you had anything in mind besides support, why did you not make a personal approach to your husband on your return to Paterson? A. I did. 30

Q. When? A. I went in the bank several times.

Q. I mean in January 1915. A. I did; I wrote him a letter in 1915.

Q. If you had reconciliation with your husband in mind, when you took this journey from Bridgeport, in January 1915, why did you not meet your husband in person—— A. I did.

Q. ——upon your arrival here before visiting any lawyer or any Justice of the Peace? A. I did go to the Bank and he would not speak to me.

Q. In January 1915? A. Yes, sir, and before, I went in 1914, too; I went between Christmas and New Year's.

10 Q. What year? A. Between 1913 and 1914. The Christmas was 1913, and January was 1914.

Q. I am asking you now why you did not go to the Bank, or, not to the Bank, but to your husband, where you could see him privately, in the month of January, 1915, if when you returned from Paterson to Bridgeport you entertained the hope of reconciliation with your husband? A. I did, I told you I went to the Bank and tried to speak to him.

Q. Do you say you went to the Bank in the 20 month of January, 1915? A. Before——

Q. No, answer yes or no. Do you say that you went to the Bank in quest of your husband, in the month of January, 1915? A. In the month of January, no.

Q. You did not? A. I said it was between Christmas and New Year's.

Q. You did not go to the Bank in January 1915? A. Eh?

Q. You understand, don't you? A. I do not 30 understand that, no.

Q. You did not go to the Bank at Little Falls, for your husband, to see your husband in the month of January, 1915? A. No, sir, I did not.

Q. Why didn't you, if you came here with the expectation or hope of being reconciled with your husband? A. I didn't go that month, but I went before.

Q. Why didn't you go that month? A. Because it was no use to go, when I went there the last time he said he would not have anything to do with me and to keep away from him, not to come in the Bank.

10

By the Vice Chancellor:

Q. When was the last time? A. Between Christmas and New Year's.

Q. What year? A. 1913.

Q. You mean between Christmas of 1913, and New Year's of 1914? A. Yes, sir.

Q. Is that the last time you ever called at the Bank? A. No, sir.

Q. When did you call next? A. I went there in the summer of 1914, several times to cash my checks, and have a talk with him, but he never would talk with me.

20

Further cross examination:

Q. Do I understand you to say that you went to the Bank at Little Falls, between December 1913, and January, 1914? A. Yes, sir.

Q. You were living in Bridgeport at that time? A. I was living there, but I came down the week before to see him, and I went back and got my things, and came down in January and took a room in Paterson, where I have been ever since.

30

Q. Did you take a room in Ellison Street in January 1914? A. No, I got that room in 1915.

Q. You were not in the Bank at Little Falls at any time, in the month of December, 1913, or the month of January, 1914? A. No; I lived in Bridgeport. It was 1915 I came down.

Q. Then you correct your statement? A. Yes, that is right.

Q. Then you have not answered the court's question as to the last time you saw Mr. Hyer prior to 1915? A. When did I see him before that?

Q. Yes. A. Well, I don't exactly know the
10 date, but several times I went down, mostly the first of the month to cash my check.

Q. You were in Bridgeport, you did not go to the Little Falls Bank? A. I did then, I came down once a month sometimes to cash my check, purposely to come down and see him.

Q. What year was that? A. Sometimes I came down once a month.

Q. In what year? A. In 1914 and in 1915 I left there.

20 Q. You came down to cash a check? A. To cash a check and visit my sister and my cousin and visit Mrs. Hill; I had no permanent home in Bridgeport then.

Q. How often do you say you were in the Bank in Little Falls to cash checks? A. Three or four times.

Q. Is it not a fact that you only made one call at the Bank and that was in the year 1915? A. No, sir, I was there in 1914.

30 Q. Let me see if I can refresh your memory. Was Mr. Francisco the president of the Bank there at the time? A. He was there at one time when I was there, in February, 1914.

Q. Were you not there in the summer of 1915, at a time when you were noisily demanding money of your husband, and Mr. Francisco ordered you from the Bank? A. No, sir. Mr. Francisco did not order me from the Bank.

Q. Do you remember calling your husband a crook? A. Calling what?

Q. Your husband a crook, in the Bank, in the summer of 1915? A. No, sir, it was in February 1914 that I was there.

Q. That you called him a crook? A. Called him what? 10

Q. A crook? A. No, sir.

Q. You never called him a crook? A. No, I did not.

Q. In the presence of Mr. Francisco, president of the Little Falls Bank? A. No, sir.

Q. You say that some time early in 1913, you and your husband visited some hotel together? A. Yes, sir.

Q. Before you left for Milford Beach? A. Yes, sir. 20

Q. You have got the date? A. It was some time in May. I have not got the date.

Q. What hotel? A. That I cannot say either, because I never was there before or since, but when I passed it in the car going to Newark, I recognized the hotel; I think it was called the Newark, I am not certain.

Q. That is on the road between Paterson and Newark? A. Yes, sir.

Q. You know its location? A. I could tell, I could find it by going to Newark from here. 30

Q. You recognized it going out in the car? A. Yes, sir.

By the Vice Chancellor:

Q. Do you mean by going out in the trolley car? A. Yes, sir.

Q. You say you occupied a room there that night with your husband? A. Yes, sir, it was in the evening about six or seven o'clock.

Q. Have you looked at the register? A. No, sir.

Q. Did you tell your counsel about this? A. No, sir.

10 Q. Before the trial of this case? A. No, sir.

Q. You have not made any effort to find out whether there is any registration there? A. Why, no, I did not think it was necessary.

Q. Can you locate that hotel? A. Yes, sir.

Q. More precisely than you have? A. It is nearer to Newark than it is to Paterson.

Q. On which side of the road? A. When you go from here to Newark it is on the right hand side of the road. It is a kind of a road house; we stopped

20 there——

(A page in stenographer's transcript missing.)

30

Q. I say you established your residence in Paterson, right after your first interview with Judge Kerr? A. Yes, sir.

Q. At his suggestion? A. No, sir.

Q. Why did you change your residence at that time, from Bridgeport to Paterson? A. Because I did not think I could afford to go back and forth and have arguments with him, and it was immaterial to me where I lived, as I had no permanent home, and I thought it was just as well for me to stay in Paterson.

Q. I fail to notice in any of the letters that you have put in evidence, as having been written by you to your husband, any allusion to this bungalow arrangement. A. No, sir, it was not put in any of the letters.

Q. You say he was to build a bungalow for you within two years, or after the girls were married. Your girl was married in the early part of 1914, was she not? A. Yes, sir, February.

Q. Did you ever allude to the bungalow program after that? A. No, sir, I did not in a letter or anything only when we were together.

Q. Never in the letters? A. No, sir, neither did he.

Q. Why did you not remind him that was to be the program? A. Why didn't I allude to it?

Q. Yes, two years had gone by and one girl was married. A. I was waiting for the other one to be married. When I went up to the Bank and spoke to him about that, he never would answer me, after sending me that letter in 1915.

Q. You have never been willing to live with your husband in Little Falls, since you left? A. He did not want me there.

Q. You have never been willing to live with your husband in Little Falls, since December 1912? A. Yes, I was willing, but he did not want me there.

Q. You testified yesterday, on your direct examination, when Judge Kerr was asking you about your conversation with Mr. Kramer, that Mr. Kramer did talk with you about going back with your husband and, in connection with that subject, you said, you did not ever want to live in Little Falls again? A. Not to him, I never said that to him.

Q. You said so yesterday afternoon, did you not? A. I do not think I did.

Q. Did you not say in your direct examination yesterday afternoon the fact was that it was your desire never to reside in Little Falls again? A. No, my desire was never that, but he never wanted me back in Little Falls.

Q. As a matter of fact you do not want to live in Little Falls, do you? A. I would, yes.

By the Vice Chancellor:

Q. Did you say to Mr. Kramer, in the presence of his sister, Miss Anna Keind, that you did not wish to go back to Little Falls? A. Well, I might have said I didn't wish to go back, but if my husband wanted me back I would go. I would go wherever he wanted me to, but he didn't want me in Little Falls.

Further cross examination:

Q. It was you who proposed this bungalow to be built somewhere out of Little Falls? A. No, sir, it was not me who proposed it at all.

Q. In the summer of 1912—— A. 1913.

Q. 1913, July, it was you who asked your husband to leave Little Falls, and get a job at Milford Beach, or in that neighborhood? A. No, sir, it was at his suggestion that I went.

Q. But after you had gone and he had come to Milford Beach to visit you, did you not say to him that you wanted him to give up his position in Little Falls, and get a place in Connecticut? A. No, sir, I did not. 10

Q. Little Falls is distasteful to you as a place of residence? A. Well, no, if he didn't object to what people said, I didn't either, I told him that in my letter.

Mr. Rosenkrans.—That is all.

The Vice Chancellor.—Is that the end of the cross examination? 20

Mr. Rosenkrans.—Yes.

Mr. Kerr.—I overlooked something.

The Vice Chancellor.—What is it?

Mr. Kerr.—I forgot to ask Mrs. Hyer if she and her husband indulged in marital intercourse at the Hotel Taft?

Witness.—Yes, sir.

Re-direct examination:

Q. Both nights? A. Yes, sir. 30

Q. Did you sleep in the room with Lulu at the Hotel Taft? A. No, sir, I did not.

Q. Were you in that room at all? A. No, sir.

Q. When did your husband have intercourse with you during those two days, night or morning? A. Both.

Q. And did you continue to sleep in one bed all night? A. No, sir.

Q. What was the nature of those beds, were they wide or narrow? A. They were twin beds.

Q. Did you go to his bed or he come to yours? A. I went to his bed sometimes and he came to mine sometimes.

Q. Has anybody, since January 7th, 1915, come to you, either Mr. Hyer, or anybody, asking you to return to him? A. No, sir, they did not.

10

Mr. Rosenkrans.—She has already said that Mr. Kramer did.

Mr. Kerr.—That was merely a passing remark, "Why don't you go back to your husband?"

Q. Did Mr. Kramer ever tell you he was sent by your husband to ask you to come back to him? A. No, sir.

20

Q. Did you ever see Lulu Hyer while you were a dish washer in the Y. W. C. A.? A. No, sir.

Q. When was the last time you saw her? A. When I left her and her father on Sunday morning at Bridgeport, after being at the Hotel Taft, and bid her good bye, I never saw her until I saw her here on January 14th.

Q. Did you ever see her on the corner of Main Street and Ellison Street, or any other corner? A. No, sir, not to my knowledge.

30

Q. What is the meal time, around noon time, at the Y. W. C. A.? A. What is the meal time?

Q. Yes. A. Around noon.

Mr. Rosenkrans—What do you refer to?

Witness—From eleven to two.

Mr. Kerr—In the summer of 1916.

Witness—From eleven to two all the year round.

Q. Is it a very busy time around twelve o'clock? A. From twelve to one is very busy.

Q. Would there be any opportunity or chance for anyone who is getting lunch there to speak to the dishwasher on the opposite side of the open window where the dishes came through? A. No, sir.

Q. If Lulu had ever called to see you there and talked with you would you remember that? A. Yes.

Q. And you say that never happened? A. No, sir.

Q. Did you ever in your life, from 1912, receive a letter from your husband asking you to return to him? A. Never.

20

By the Vice Chancellor:

I think counsel is traveling over the same ground that he did before and he said there was one matter which he had overlooked. Now, is there any other such matter—

Mr. Kerr—I want to ask her if she understood what the question meant, about establishing her residence.

30

Q. Where were you living when you came to see me in January? A. In Ellison Street.

Q. Where were you living when you went to see Mr. MacDonald? A. I had no permanent home then, I was in Bridgeport, at my sister's.

Q. When you went to see Judge Keys, where were you living? A. Ellison Street.

Q. Can you give the date when you took the rooms in the Ellison Street home? A. Not exactly. I could ask my landlady about that.

Q. Did you know me at all when you went to
10 live in Ellison Street? A. No, sir; I never saw you in my life before.

Q. What has been your intention since you first left Mr. Hyer in regard to living with him?

The Vice Chancellor—That is not in response to anything brought out on the cross examination.

Q. Is there any other matter that I have failed
20 to ask you about with regard to this matter that I have forgotten to ask you about. Is there anything that I have forgotten to ask you about?

Mr. Rosenkrans—I object to that.

The Vice Chancellor—That question is often put at the end of the examination in chief, but not now.

Mr. Kerr.—That is all on the divorce matter.

30

(Defendant rests.)

LOUISE HYER, recalled in rebuttal.

Direct examination by Mr. Rosenkrans:

Q. Do you recollect the sickness of your father in January, 1917? A. Yes, sir.

Q. Do you remember your stepmother coming to your home on that night? A. No, sir.

Q. Do you know whether or not she called with Miss Keind? A. No, sir.

Q. At night time on January 7th? A. No, sir.

Q. Did you open the door? A. I did not see anybody there.

10

Cross examination by Mr. Kerr:

Q. You have no recollection of the occurrence, of any such thing? A. No, sir; I have not.

Q. Who told your father that they had been there?

Mr. Rosenkrans—I object to that.

Q. Who told your father they had been there? Look at me, don't look over there. Who told your father they had been there? A. I don't know.

20

Q. How is it you don't know whether they were there or not? A. Because I do not know. I did not see them.

Q. You did not see them? A. No, sir; I did not see them.

Q. Has your father told you to say that you never saw them there that night? A. No, sir; he has not.

30

Q. Has your father told you to say you went to the Y. W. C. A. to see your mother? A. No, sir.

Q. Has anybody told you, Mr. Rosenkrans, or anybody else, told you, to say that? A. No, sir.

Q. Did you meet Mr. Rosenkrans in his office

one Sunday morning to talk over this case? A. I have talked with him.

Q. Did you meet in his office one Sunday morning to talk over this case? A. No, sir.

Q. Where did you meet Mr. Rosenkrans to talk over this case? A. At Mr. Adelman's office.

Q. On Sunday morning? A. I cannot remember.

10

Q. You do not remember whether it was Sunday morning or not? A. No, sir.

Q. Don't you want your father to take your mother back?

Mr. Rosenkrans—I object to that.

The Vice Chancellor—How is it competent?

Mr. Kerr—It is competent to show what her interest is in this case.

20

The Vice Chancellor—I will allow it.

A. Yes, I do want my father to; that is the reason why I went after Mama several times.

Q. Several times? A. Yes, sir.

Q. Before you said you went to see her once; when did you go after her several times?

Mr. Rosenkrans.—I object to that, your Honor.

30

The Vice Chancellor—You said to her that she said she went after her mother only once. I have no recollection of any such testimony. She described one occasion, but she did not say that was the only occasion; she was not interrogated on that subject according to my recollection.

Q. You said you went to see your mother at the Y. W. C. A.? A. Yes, sir, I did.

Q. Did you say you went after her and asked her to come back on any other occasion? A. Yes, sir, I went up to New Haven; when I was up there I asked her to come back; and shortly after she left I tried to call to her and she would not listen to me.

10

Q. When did you think of that, since you were testifying last on the stand?

Mr. Rosenkrans—No, she testified to that before.

Q. Why did you not testify to that when you were on the stand the other day? A. I did testify to that.

20

Q. You did? A. Yes, sir, I did.

Q. I fail to remember it; are there any other times when you went after your mother and asked her to come back? A. On the street, on Maple Street when I met my mother I asked her to come back. That was in the year 1913, I believe.

Q. Why didn't you tell that when you were on the stand the other day? A. I did tell that incident.

Q. Then you really would like to have your mother go back to your father? A. Yes, sir. I always had that idea.

30

Q. You always did? A. Yes, sir.

Q. Did your father ask you to tell your mother, while you were in New Haven, to come back? A. Yes, he did, he always wanted her back.

Q. When did he seek to want her back, does he still want her back?

Mr. Rosenkrans—I do not think this is cross examination, if your Honor please, and I object to it on that ground.

The Vice Chancellor—I will allow it.

Q. Your father still wants her back, does he not? A. I don't know.

10 Q. Don't look at your father; look at me.

Mr. Rosenkrans.—I object to that.

Q. Since January, 1915, has your father ever told you to ask your mother to come back? A. Yes, sir.

Q. When since January, 1915—

Mr. Rosenkrans—I object to that on the
20 ground that was a proper subject of the original cross examination.

The Vice Chancellor—Yes. Counsel is far away from the narrow limits, in which he can question this witness. He is confined to the matters brought out in her examination in rebuttal and I think there are but one or two matters. I cannot permit this witness to be cross examined over the whole field that she traversed when on the stand
30 before.

Q. Didn't you think it was rather a strange thing for you to go and talk to your mother on a matter like that at the Y. W. C. A., at twelve o'-clock?

Mr. Rosenkrans—I object on the ground that that it not a proper subject for cross examination.

The Vice Chancellor—The witness was interrogated on that subject.

Mr. Rosenkrans.—No, sir. My rebuttal was confined to what took place on January 7th, 1915, entirely.

The Vice Chancellor—Yes, you are right.

10

Q. Did you ever tell your father that Mrs. Hyer, your mother, and Anna Keind were at your house on the night of January 5th? A. No, sir.

Q. Did you ever have any talk with your father about their being at your house on the night of January 5th? A. No, sir; I did not know they were there. I did not see them; how could I talk to him?

Q. Was anybody living in that house but you and your father on the night of January 5th? A. My aunt was there.

20

Q. Look at me. A. My aunt was there.

Q. I don't like to insist on that, but I do not like to see your eyes wandering to your father whenever I ask you a question. You are very much interested in having your father win this divorce suit, are you not? A. I do not know. I have always liked my mother.

Q. You are anxious to have him win this suit, are you not? A. I don't know.

30

Q. What? A. I suppose anybody would be after the way she has treated him.

Q. Then you want him to win this divorce suit? Have you talked with him frequently about this case? A. Yes, sir.

Q. And you know your father wants to win this case, do you? A. I guess he does.

Q. Don't look at your father, please.

Mr. Rosenkrans—That is not fair.

Q. Your father has told you that he wants to win this divorce suit? A. No, sir; he has not said anything of the kind.

Q. Then why do you think he does? A. I don't suppose he would be fighting it if he did not want to win it.

Q. You have talked with him about it? A. Yes, sir.

Q. And you have frequently talked about the testimony you would give in this case? A. Sometimes.

Q. You have been to the lawyer's office to talk over this matter? A. Yes, sir.

Q. And you have been there since the last hearing in this case, have you not? A. Yes, sir.

Q. Did you know that your mother was living at 370 Ellison Street since January, 1915?

Mr. Rosenkrans—I object to that as not cross examination.

SHERMAN G. FRANCISCO, sworn for the petitioner.

Direct examination by Mr. Rosenkrans:

Q. You are President of the Little Falls Bank? A. Yes, sir.

Q. And were in the summer of 1915? A. Yes, sir.

Q. Do you know Mr. Hyer? A. Yes, sir.

Q. Do you know Mrs. Hyer, his wife? A. I met Mrs. Hyer several years ago.

Q. Mr. Hyer is your cashier up there? A. Yes, sir.

Q. Do you recall any occasion on which Mrs. Hyer called at the Bank? A. She called one morning between ten and eleven.

Q. What year? A. 1915.

Q. What time of the year? A. To the best of my recollection it was summer time because the net doors—that is the reason I recall it, were on the bank.

Q. Did you hear the conversation between her and her husband? A. I did.

Q. Tell us what it was. A. Mrs. Hyer came in and made a demand for money, and Mr. Hyer said he had sent her a check, and she said it did not make any difference, she wanted money and she wanted it then. He said "You cannot get it until I get mine," and the conversation became quite loud and customers were coming in the bank and I told Mr. Hyer he would have to stop arguing, because people were coming in the bank, and he requested Mrs. Hyer to go out of the bank, and as Mrs. Hyer turned to go out of the bank she said he was a crook and she would show him up.

Q. That was during business hours you say? A. Yes, sir.

Q. People were coming in and out? A. People were coming in the bank when I spoke to Mr. Hyer.

Cross examination by Mr. Kerr:

Q. What month was this? A. It was in the summer, I could not recollect exactly. The reason I recall it was in the summer, is because the net

doors were on the Bank, I remember that because Mrs. Hyer slammed the door when she went out.

By Mr. Rosenkrans:

Q. Is that the only occasion when you saw her
10 at the Bank? A. That is the only occasion I ever saw her at the Bank. I was there at the time signing some bank notes.

By Mr. Kerr:

Q. Do you recollect someone coming there to cash a check for Mrs. Hyer? A. I only saw her once.

Q. No, she was not there?

20 *Mr. Rosenkrans*—Objected to as not cross examination.

Q. I ask you if you do not remember seeing or knowing of somebody else being there and cashing a check for Mrs. Hyer and telling Mr. Hyer his wife was sick, and his saying "Ain't she dead yet"? A. No, sir; it was never said in my presence.

30 HENRY HYER, the petitioner, recalled.

By Mr. Rosenkrans:

Q. I show you exhibit D 14, and ask you whether you ever received the original of which that is a copy? A. No, sir; I never received anything like that.

Q. I show you a letter Exhibit D 11 and ask you if you ever received an original of which that is a copy? A. I don't remember receiving anything like that.

Q. Just read it and say yes or no if you can? A. (After perusing letter) No.

10

TESTIMONY CLOSED.

Adjourned for argument until Monday, April 15, 1918, at Chancery Chambers, Paterson, N. J.

20

30

EXHIBITS

Exhibit P-1.

Bridgeport, Conn.,
January 12, '15.
331 Connecticut Ave.

10 Dear Dad:—

After Mother left the other day your check came for her and as she told me to open any mail that came for her, I did so, and sent it to her. Now that I am married to a good man I want to thank you for bringing this about for me. I see now that you did the right thing and I am sure Mother will think the same.

In about a couple of more moths, I expect to be the proud mother of a little baby and both my husband
20 and myself would like to have you and Lulu call on us where we are living, should you again come to Bridgeport.

I also want to thank you for your kindness to me in giving me a musical education. I see now where you meant everything for the best and my music has helped me to spend many happy hours.

Hope I will have the pleasure of having you, Lulu and Mother come up when my baby is here.

I would love to have Lulu or both of you write
30 me a few lines to let me know that you forgive me for anything which I, in my ignorance may have done.

Hoping to hear from you,

I am, with love to both,

Your Daughter,

Helen Neubauer,
331 Connecticut Ave.,
Bridgeport, Conn.

Exhibit P-2.

Henry:

Thought I would let you know that I am no longer in Bridgeport, but am living with my cousin at 900 Garden St., so will you please send my money there after this, and I would like to ask if you would send it a little earlier, as you know according to your promise it is due since the first.

Hope you are not angry any more.

From your wife
Sophie.

900 Garden St.,
Hoboken, N. J.
Care of Frerichs.

Exhibit P-3.
Same as Exhibit P-4.

Exhibit P-4.

1544 Park Ave.,
Bridgeport, Conn.
Nov. 5, 1913.

Dear Henry:

I wrote to you Oct. 1st, and so far have received no answer; it can't be possible that you cannot find time to write me a few lines as we parted the best of friends when you came up to see me.

I received two Little Falls Eagles, one from Oct. 11th and one from Oct. 25th. Waited also for the balance of my money as you know you only gave me ten dollars in September and 25 in Oct.

Will expect the balance in this month's check if you haven't sent it yet, let me have it this week.

I would take a trip down but it is getting too cold to meet you on the street and I don't suppose you would come down to my cousin's to see me, would you?

If you don't care to hear from me just drop me a line and let me know and I won't annoy you by sending unwelcome letters but if you want to receive any letters from me, you must answer mine.

With love from
Your wife,
Sophie.

P. S. Hope you're not angry at anything.

Exhibit P-5.

Envelope enclosing Exhibit P-4.

Exhibit D-1.

January 7, 1915.

Mr. Henry Hyer,
Little Falls National Bank,
Little Falls, N. J.
Dear Sir:—

Mrs. Hyer, your wife, has retained me in the first instance for an endeavor to bring about a consummation of the agreement made by you and your wife to resume marital relations. She has been willing, she tells me, ever since the night that you broke up the family, and is now ready and willing that you should return to her. I see from all your letters that there was the most friendly and affectionate

relations existing between you and your wife during this long separation; and I understand that the letters that you have received from her are as affectionate and loving, if not more so, than are yours.

Whenever you met, you and your wife, you were the same old lovers that you were when you asked her to marry you, and I judge from what she says that her affections for you are as strong as ever. I am told that she alweys had and still has a sincere regard for your daughter Lulu; that your daughter Lulu and her daughter Helen were always the chummiest of pals; and it seems to me that I can do her and you no better service than endeavoring to bring about a happy reunion.

Two people who during an alleged separation of two years, (because it was not a separation strictly speaking) who were like two birds in a nest when they met, ought not in my opinion be kept apart. Please do not think me impertinent, but weigh my words in the spirit in which I am writing them. You are both past the half century mark. Do you know of a better, more staid, sincere help-mate, a good house-keeper, one who would make a kind and good nurse if you should fall ill? Do you know of any one in the world that would be more tender and affectionate if illness should overtake you than your wife? She will keep your household in order and everything will be neat and at your hand when you want it. You cannot get that from a servant or one who is doing it for hire.

She likes you and she likes your daughter and she likes her home, and she needs you and she needs her home. She too is past the half century mark. She has always been faithful and true. There will be

no disgrace in you two people coming together, no scandal, no gossip, no talk. Everyone will say, that is a good thing and I am glad to hear that they are good friends. Why keep up this friendly relation between you and at the same time letting the public
10 believe that you are separated when you are not?

Will you kindly call and see me at my office. I would rather have spoken these words to you, because I could speak them in a way that would show you the sincerity of my motives and the way I am speaking them, while on paper they might seem a little harsher or impertinent.

It should not be necessary, I think, to undertake any legal proceedings. I for one would not entertain the idea of any legal proceedings in regard to
20 the affairs of you and Mrs. Hyer, unless it is made a necessity by either your or her actions.

Will you see Mrs. Hyer at my office, or will you make an appointment at your home for Mrs. Hyer to meet you there, which is better, I believe, and you and she have a heart-to-heart talk, and settle your difficulties there between yourselves without any Courts, and lawyers and newspaper reporters and scandal. You people like each other, and it is a shame for you to be apart, and as it has been said
30 to me when the ceremony is performed, as Christ said, "What God has joined together let no man put asunder." You two people are fond of each other, and you are letting the public believe that you are not. That is not fair to yourselves. I think that my last suggestion is the best. Call and see me or write me and make an appointment for your wife to go home to you. You ought certainly to receive her in as affectionate a manner in her own home as

she received you in Bridgeport and New Haven and Hoboken.

Please let me hear from you at once and let this matter be settled quietly and amicably without newspaper notoriety, and costs of court.

Yours very truly,
John. F. Kerr.

Exhibit D-2.

January 13, 1915.

Mr. Henry Hyer,
Care of Little Falls National Bank,
Little Falls, N. J.

Dear Sir:

I would like to have you call at my office and bring with you the deed which you say you and your wife signed conveying your home on Second Avenue to your sister, Mrs. Annie Hart. Come as soon as possible. Very important.

Yours very truly,

Exhibit D-3.

Little Falls, N. J.,
Jan. 15, 1915.

Mr. John F. Kerr.

Dear Sir:

Referring to the deed you ask for will say that I have not got the deed; if you want to know anything about it, it is on record in the County Clerk's office, where you can see it.

Yours truly,
Henry Hyer.

Exhibit D-4.

January 15, 1915.

Mr. Henry Hyer,
Care of Little Falls National Bank,
Little Falls, N. J.

10 Dear Sir:

Mrs. Hyer received the usual subpoena to come before the Grand Jury last Wednesday, and she told the Foreman and the Jury that she wished to discontinue the matter, as her husband had sent her two checks recently; that she had retained a lawyer and that her lawyer was in correspondence with her husband, endeavoring to bring about a reconciliation, and that her husband was considering the matter. The Foreman of the Jury told Mrs. Hyer that

20 she was excused. There was nothing further said or done.

When will it be convenient for you to call and see me and bring the deed to Mrs. Hart for the Second Avenue property.

Yours very truly,

Exhibit D-5.

Feb. 12, 1914.

30 Sophie:

Enclosed find check for the balance that I owe you. You say you can't live if you don't get money. Go out and work for it the same as I do. I think you don't need it very bad as I found out you are giving your mother five dollars a month, and I have to pay for it, and as for not having time to send you money on account of making dates with other women, you want to see it and not hear it. You can come up to Little Falls as much as you like for

all I give a damn for you have made one damn fool out of yourself and you don't care whether you put me on the bum or not but I got so I don't care either.

Henry.

Exhibit D-6.

10

Little Falls, N. J.,
July 10, 1913.

Dear Sophie:

Received your letter today with Bertha's letter. Now, I don't know what to say about her letter; of course the way she states in her letter it may be all right about telling your mother, maybe Clara did not say anything to her at all.

About her trying to get a place for little Bertha it looks to me a kind of funny as her friend is going to Plainfield why don't she go there, but I think she is looking for a soft snap and trying to rope in little Bertha on to you, but you can do as you like about it. I would not let her know too much. The less you say to anybody about your business the better you would be off. I found that out here. I don't let nobody know anything, whether you are up there or anywhere else. I always tell them I don't know. Then they don't ask me any more about it. You could answer her letter, but I would not say anything about our affairs whether you see me or whether I have been up there or not.

20

30

From Husband,
Henry.

Exhibit D-6.

Little Falls, N. J.
Sept. 30, 1913.

10 Dear Sophie:

I got home all right Sunday when I got to Jersey City I met Lulu on the train. I did not get my salary yet but I send you a check for Twenty-five dollars that will not get back here before I get my pay so it will be all right.

From

Henry.

Sent right after he came up to see me at 1544 Park Ave., Bridgeport.

20

Exhibit D-7.

Dear Sophie:

July 7, 1913.

Enclosed you will find check for Twenty-five dollars. We got home all right; struck Little Falls after 4 o'clock; we stopped 2 or 3 times on the road and got sodas but did not get our dinner until we struck Passaic. I think we made good time com-
30 ing home, we came down N. Y. City to 23rd St. ferry to Hoboken and came home that way. I suppose you will feel lonesome now for a while.

I will send you up the Little Falls Eagle to-morrow, as Lulu wants to read it first.

Eddie went up to Carrols' for the fourth; he wrote a letter to Lulu and he wants Lulu to come to Highland for two weeks in August, about the 9th to 23rd, that will be his vacation, he is making ar-

rangements for then. I have got to work 3 or 4 nights this week to catch up with the work in the bank. I suppose you got home all right from Bridgeport after you left us.

I thought F. Marley was up there as he has not been around here for quite a while. Is he up there?

Your Husband,
Henry.

10

Exhibit D-7.

Dear Sophie: Sept. 6, 1913.

I only received your letter a few days ago as I have been away, and when I came back I had to work all day and night to get the books straightened up again.

20

I may be up some Sunday to see you and will bring your tin box with me. I hear Frank Marley is living up there as he was down here and told some people he was up there and still living.

Henry.

(Sent just before coming to see me in Park Ave., Bridgeport.)

Exhibit D-8.

30

Little Falls, N. J., July 1, 1913.

Dear Sophie:

Enclosed you will find check for twenty dollars.

It is awfully hot here, the only thing to do is to sit still. I suppose it is nice and cool up there.

I see your rooms are let again to Vangiessen's son.

He is going to get married and he is going to live there. Everything is quieting down now. I see the Dressig sold their house and they are moving today back to Bayonne again.

I suppose you are having a fine time up there, and getting along all right with Helen.

10 From your husband,

Henry.

(Nothing special in this.)

Exhibit D-8.

Little Falls, N. J., Aug. 16, 1913.

Dear Sophie:

Received your letter today. I was away all week and had to come back today to work and stay Mon-
20 day, but will go away again on Tuesday morning to finish up my vacation. I was down to Red Bank and stopped there. I took the auto with me and drove all around; was to Atlantic Highlands, Seabright, Ocean Grove, Asbury Park and all over, so I will not be here next week to see you. I may take a run up probably the week after.

Henry.

(Telling about taking auto on his vacation through Red Bank, Atlantic Highlands, Ocean
30 Grove, Asbury Park, etc.)

Exhibit D-9.

Little Falls, N. J., July 25, 1913.

Dear Sophie:

I received your last letter all right but I have been awful busy. Breaking in a new lad here every day

I had to go over his book after we were through to get him straightened out which took quite a while, and I had to come in and work some nights but he is getting along pretty well now. You look good sitting on the wagon in the picture. Lulu, Eddie, Lester and Minnie are going down to Red Bank for two weeks, going away Aug. 9th. It was very hot down here. I am all through with picking raspberries. I sold them to the pedler for 10 cents a pint. I am now picking blackberries and he is taking all we can't eat ourselves and paying me 12 cents a quart for them. He bought all my currants for 12 cents a quart. I guess I will get about twenty dollars out of all the berries besides what we used ourselves. I picked 8 quarts of blackberries so far this week.

Lulu got a letter from Minnie yesterday and say she and Clara were down to Rockaway Beach together and had a fine time; she must mean Clara Engelman. Now this is all I know.

From

Henry.

(Nothing special in this letter.)

Exhibit D-9.

Little Falls, N. J., June 17, 1913.

Dear Sophie:

I received your letter saying that your mother knows all about it and that you don't care for anything. I have dropped all that long ago but I thought I would write to you and let you know what Mrs. Hill said, but I will not say any more about that either. People around town has been asking Lulu about you if she knew you had moved and I told her to say that she did not know anything about it.

Now as for hiring a place for 33 dollars a month is too extravagant. I don't see what you wanted to hire a place like that for, just for you and Helen. Then you say I should send you a hundred dollars; where am I going to get $100.00 from just now, when the 1st of July comes I will send you a check for your month's money, you know I did not take off anything when you went away from here. I think I done pretty good with you. I suppose you are having a fine time up there; poor me has got to work in this hot place. It is some thing hot here just now. I would like to have been up there myself and have it easy. I may come some Saturday and stay over to Sunday pretty soon. I am picking lots of strawberries just now and selling quite a few of them they are pretty scarce around here, bringing 15 cents a quart. I will not have as many as last year, but I am going to have a big lot of currants, raspberries and blackberries, the bushes are loaded with them. There is nobody coming out to look at houses this summer. I think I will have a hard time selling it this year. Mr. Strong was off all last week and I was all alone here in the bank, so I had plenty of work. We had a big fire here last Sunday afternoon, the High Bridge was all ablaze and had all the firemen out from here and Totowa and Paterson. There was a terrible crowd down to see it. Last Saturday afternoon I went to Meadow Brook, Long Island, and seen the great Polo game between the English and American champions. I got tickets from Mr. Strong's friend Mr. Ireland from Fifth Ave., N. Y. This is all I know just now.

From your husband,
Henry.

Exhibit D-10.

Post Office Department.
Original Reg. No. 3764.
Return to:
Mrs. Henry Hyer,
331 Connecticut Ave.,
Bridgeport, Conn.
Register Return Receipt.

10

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

Date of delivery, Dec.——, 1914.

Henry Hyer.
(Signature or name of addressee.)
Little Falls, N. J.
(Signature of addressee's agent.)

20

Exhibit D-10.

Little Falls, N. J., June 11, 1913.

Dear Sophie:

Received your letter Tuesday morning. I was over to Brooklyn Sunday and Annie told me that Bertha and your mother knew all about it and that Bertha and Clara are laughing over you talking the way you did about renting the house and me boarding. I think the trouble is you talk too much to everybody your private affairs. You were no sooner gone from here before Policeman Hogan came up to me and said do you know your wife is gone from here, and I asked him how he knew it and he said Mrs. Hill had told him that you had gone to your son's up in Bridgeport, so I said that

30

was more than I knew. Otherwise there is not much said. If I was you I would not say too much to Clara as she is telling everything over home even at Annie's they seem to know everything; they even said that you have got settled and that Helen is working up there. Maybe she will like it up there after a while. Did she get any letter from Frank yet? She better drop him, he is going down to Paterson quite often. I don't think he is working.

With love,
from
Henry.

Exhibit D-11.

Post Office Department.
Registered Article No. 2628.
Return to Henry Hyer,
370 Ellison St.,
Paterson, N. J.
Return Receipt.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this card.

Henry Hyer
(Signature or name of addressee.)

Date of delivery, 11-28, 1917.

Exhibit D-11.

Paterson, Jan. 28th, 1915.

Dear Henry:

Thought I would let you know that I am living at 370 Ellison St., Paterson.

I hope you are not so bitter against me any more. I want to ask you to forgive me, if you can, for everything which I have done. I am truly sorry for everything, and I am willing to forget the past and be friends again.

I feel very despondent and downhearted tonight so I am writing this to you hoping that it will soften your heart, and that you will come to see me and talk things over. Life is short, Henry, and we are here to-day and gone to-morrow, and I still care as much for you as I ever did. Please come and see me Sunday night and let's have a talk, won't you?

Will you answer this and let me know if I can expect you Sun.?

With love
from your wife,
Sophie.

370 Ellison St.
Get transfer to Park Ave. car and get off at Carrol St., and walk over 3 short blocks.
Jan. 28, 1915.
Letter sent to Mr. Hyer by Mrs. Hyer Jan. 28, 1915, asking him to come and see her.
No answer to this.

Exhibit D-12.

Dear Sophie:

I will come down Sunday afternoon to your cousin's house. I will leave here some time between half past one or two o'clock in the afternoon, that will bring me down there about 4 o'clock and we can talk matters over.

Yours
Henry.

Exhibit D-12.

Little Falls, N. J., Jan. 8, 1915.

Mr. John F. Kerr.

Dear Sir:

10 Received your letter last night and contents noted. Will be down Saturday afternoon about three o'clock if satisfactory to you. You can telephone me if this agrees with you.

But I want to see you alone so do not have Mrs. Hyer there.

Yours truly,
Henry Hyer.

Jan. 8th. Letter to Judge Kerr, from Mr. Hyer.

20 Exhibit D-13.

Bridgeport, Conn.,
Jan. 19, 1915.

331 Connecticut Ave.

Dear Dad:

After mother left the other day, your check came, and as she told me to open any mail that came for her, I opened it and seeing it was from you, I sent it to her.

30 Now that I am married to a good man I want to thank you for bringing this about for me. I see now that you did the right thing and I am sure mother thinks the same. In about a couple of more months I expect to be the proud mother of a little baby, and both my husband and myself would like to have you and Lulu come to see us and see the baby, should you come up to Bridgeport again.

I also want to thank you for your kindness in giving me a musical education; it has helped me to pass

many a happy hour. I see now where you meant everything for the best.

Hope I will have the pleasure of having you, Lulu and mother come up when my baby is here.

I would love to have Lulu or both of you write me a few lines to let me know that you forgive me for anything which I, in my ignorance, may have done. 10

Hoping to hear from you,

I am with love to both,

Your daughter,

Helen.

Exhibit D-14.

Jan. 6, 1917. 20

My dear husband:

Am very sorry that you closed the door in my face last night, as I was very anxious to see you and have a talk with you and ask you to let me come back to you and take care of you, and let the past be buried. I only heard yesterday that you were sick, so please let me come to you.

Please answer

Your wife,

Sophie.

(No answer as usual.) 30

Exhibit D-18.

Bridgeport, Conn.,
Dec. 15, 1914.

Henry:

Thought I would write and ask you if you had

sent my check for my November money. It is now the 15th of Dec., so thought you might have sent it to the wrong address again.

Will you please let me know what's wrong? I expect to be in Little Falls the end of this month and if you care to see me and have a talk about our affairs let me know when you answer this which I hope will be soon.

Your wife,
Sophie.

Exhibit D-19.

Bridgeport, Dec. 22, 1914.

Henry:

I cannot understand what your object is in keeping back my check for my November money, nor why you don't answer my letter which I sent you a week ago.

I will wait the rest of this week, and unless I hear from you, I am coming down to Little Falls, and will not rest until the question of my support is decided one way or the other. It seems you are not satisfied to have our troubles hushed up.

I have kept out of your way and minded my own business as long as you did something for my support, but you don't seem to want it that way.

If you feel that you would like our troubles brought before the public again, why do as you are doing now, if not, send me my check by return mail.

You have had plenty of time to think this thing over and no doubt know what is best to do.

Your wife
Sophie.

(No answer to this letter, but know it was received by Henry Hyer as it was registered and receipt returned with Henry Hyer's signature.)

Exhibit D-20.

City, Jan. 6, 1915. 10

Dear Judge:

This lady's husband is cashier of the Little Falls Bank. She has made a complaint against him before me for nonsupport.

I thought I would introduce her to you and after hearing her story

(Rest of letter missing.)

20

30

Filed October 28, 1918.

IN CHANCERY OF NEW JERSEY

Between HENRY HYER, *Petitioner,* *Complainant.* and SOPHIE HYER, *Defendant and* *Cross-Petitioner.*	*On Petition, &c.*

10

DECREE

This cause coming on to be heard before his Honor Eugene Stevenson, one of the Vice Chancellors of this Court, pursuant to the reference made to him, and in the presence of Addison P. Rosenkrans and Sidney Adlman, of Counsel with the petitioner, and John F. Kerr, of Counsel with the defendant and cross-petitioner; whereupon and upon considering the petition of the petitioner, Henry Hyer, and the answer and cross-petition of the defendant and cross-petitioner Sophie Hyer, and the answer of the petitioner to said cross-petition, and the evidence offered to sustain the allegations thereof, and the arguments of the respective counsel having been heard and considered, and the Court having considered the said pleadings, evidence and arguments; and it appearing to the Court that the petitioner Henry Hyer is not entitled to the relief sought and prayed for by him in his petition; and that the defendant and cross-petitioner Sophie Hyer is not

20

30

entitled to the relief by her sought and prayed for in her cross-petition:

It is, on this 19th day of October, A. D. 1918, by Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, that both the original petition and the cross-petition be and the same are hereby dismissed.

10

And it is further ordered and decreed, that the petitioner Henry Hyer do pay to the Solicitor of the defendant the costs of the defendant to be taxed and also a counsel fee of One Hundred and Fifty Dollars;

And it is further ordered and decreed, that the whole amount or sum total of the costs and counsel fee be paid to John F. Kerr, the Solicitor of the defendant, in installments of not less than Fifty Dollars per month, beginning on the First day of November, A. D. 1918;

20

And it is further ordered and decreed, that should the said petitioner default in the payment of any of the said installments for the period of ten days the whole amount of the counsel fee and costs then shall immediately be payable, and that execution issue therefor according to the practice of this Court.

Respectfully advised, } E. R. Walker,
Eugene Stevenson, V. C. } C.

30

New Jersey Court of Errors and Appeals

Between HENRY HYER, Petitioner-Appellant, and SOPHIE HYER, Defendant-Respondent.	On Appeal from Chancery.

BRIEF FOR DEFENDANT-RESPONDENT.

The husband prayed for a divorce on the ground of desertion, which he alleged was wilful, obstinate and continuous from December 10th, 1912, to January, 1917. The wife denied such desertion, and Vice-Chancellor Stevenson, after hearing the testimony, refused to grant the divorce, and dismissed the petition, from which decree the husband has appealed.

The couple, at the time of the alleged desertion, were living on Second Avenue, in Little Falls (p. 164). They separated at this time, and there is some conflict in the testimony as to the exact cause

of the separation. The defendant says it was because of his treatment, and a quarrel which they had, in which she is corroborated by her daughter (pp. 141, 142). The husband, never after this, according to the defendant, asked her to return. He wrote many letters to her, but in none does he ask her to return to him (p. 207).

After this separation Mrs. Hyer applied to the poormaster for support (p. 58). Mrs. Hyer was then living at Little Falls. There was some talk about reconciliation when Mrs. Hyer asked that her husband be called in before such subject was discussed. It was then agreed that the petitioner pay his wife $6 per week for her support. This occurred in March, 1913. The next incident of importance is the wife's moval to Connecticut. She says that it was at his suggestion that she went to Milford Beach (p. 205). After the arrangement made between the parties with the poormaster's assistance, it was her custom to call at the bank where her husband worked in an endeavor to see her husband and to cash her check for alimony. At one of these visits her husband walked with her (p. 195), and it was then that he suggested that she leave Little Falls. This was in the spring—in the month of April, 1913.

The defendant says (p. 194) that her husband requested that they live apart for two years, and that he would then sell his house and build a smaller place where they two could live alone. On page 7 of the petitioner's brief he says that the defendant moved to Milford Beach, Connecticut, about June 1, 1913, without notice to him that she was going. However, we find that on June 11th, 1913—only about a week after this alleged sudden disappearance—he wrote a letter to his wife (Exhibit D-10, p. 231), in which he addressed her as "Dear Sophie," and concluded it "With love from Henry." He speaks in this letter of her departure, and shows that it was with his full knowledge that she had left. He says that he had been to Brooklyn the Sunday previous, and that he had learned that her mother also knew all about it, and in which he also says that others "are laughing over you talking the way you did about renting the house, and me boarding." This clearly shows that she had left after a conversation and understanding with her husband. He then cautioned her to be more secret in their affairs. He further refers in this letter to her departure, which also conclusively shows that he was cognizant of it, as follows: "You were no sooner gone from here before Policeman

Hogan came up to me and said: 'Do you know your wife has gone from here?' and I asked him how he knew it, and he said Mrs. Hill had told him that you had gone to your son's up in Bridgeport, so I said that was more than I knew." It is a friendly letter, and certainly not of a tone which would indicate that he was at all aggrieved by her departure, and yet, on page 10, he says he thought it was the 10th of June that she moved, and that he did not know she was going. His letter, however, of June 11th clearly contradicts him, and on June 17th, he again wrote to her (Exhibit D-9), in which he said that people around town had been asking his daughter if she knew that her mother had moved, but that *he had instructed* her to say "That she did not know anything about it." In this letter he speaks of selling his house, which confirms the fact that he had assured her that he would sell it, as she testified. It is a friendly letter, and in it he speaks of visiting her soon. And on July 4th he did visit her. He motored from Little Falls to the beach, and spent three days with her. She says it was a pleasant visit, and they cohabited as husband and wife (p. 205). He denies this. We find, however, on July 7th, 1913 (Exhibit D-7), immediately upon reaching home, he wrote to his wife and said he had a safe journey, and said he now supposed she would

be lonesome for a while. It is another very friendly letter to his wife. He again wrote to his wife on July 10th (Exhibit D-6), in which he advises his wife, as follows: "But I would not say anything about our affairs, whether you see me, or whether I have been up there or not." He further says that he does not tell anyone of her whereabouts. This is a very friendly letter. He addresses her as "Dear Sophie," and concludes with "Husband Henry."

He again visited his wife in September, and immediately upon returning to Little Falls, on September 30th, 1913, he wrote to his wife, saying that he got home safely. At this visit, on page 13, he testified that he stayed over night with his wife, and to the question by his counsel: "Did you occupy the same bed with your wife," he answered: "Yes, sir." Therefore, assuming that the original separation could be construed to be a desertion on her part, the subsequent facts—the friendly and loving correspondence, his visits to her when they occupied the same bed as husband and wife is, in law, condonation.

After this letter of September 30th, he does not appear to have written to his wife again until February 12th, 1914, although his wife had written several times to him. On November 5th, 1913 (Exhibit P-4), she expresses her surprise in not having

received replies to her letters. She says they parted the best of friends, and that she would come down to see him, but that it was too cold to meet on the street, and then suggested that he meet her at her cousin's. She addresses him in the same friendly spirit that they had been accustomed to use, and in a postscript said that she hoped he was not angry. Of course, in view of her unanswered letters it was but natural for her to believe that something had happened which displeased him. He attempts to explain this by saying that he expected her to return to Little Falls two days after his last visit, and that she had not done so, which angered him, although in his letter of September 30th he does not speak of her return, and refers to the fact of sending her alimony out of his next pay. The only reason his wife could infer for his sudden coolness was, as he said in his letter of February 12th, 1914 (Exhibit D-5), that she was giving her mother $5 a month, "and I have to pay for it." He refers to the fact that she spoke of coming to Little Falls, where he lived, when he says: "You come up to Little Falls as much as you like for all I give a damn, for you have made one damned fool out of yourself." This, certainly, was not an invitation to return home, but it is the last letter that he ever sent to his wife.

The husband does not pretend that from this time on he personally ever asked his wife to return to him. Whatever the cause of their original separation, it certainly was not obstinate and wilful, in view of their friendly relations up to this date.

Of course, mere separation and living apart is not such desertion as justifies divorce, or where such separation is acquiesced in, or by agreement. The facts in this case, however, show very clearly that the separation in its inception was agreeable to the husband, and during its continuance he has supported her. It could be very well said of the facts in this case, as Chancellor Zabriskie said in *Goldbeck* v. *Goldbeck,* 3 *C. E. Green,* 42:

> "The desertion in this case is not such as is intended by the act as a ground for divorce. When a husband, upon disagreement with his wife and her declaring that she will not live with him, assents to her going where she chooses, and furnishes her with money for her support, and never insists, as a condition of her support, that she shall perform her duties as a wife, although he asks and entreats her to come back, it has too much the character of a friendly arrangement to be called wilful, obstinate, and continued desertion."

Of course, the marital intercourse, admitted by the husband, is condonation, and forgiveness for any prior desertion is presumed. *Rogers* v. *Rogers,* 1 *Rob.,* 534; affirmed 3 *Rob.,* 778, on another point.

Since this condonation, if forgiveness were necessary, the petitioner sent his wife one letter—the insulting letter of February 12th, 1914. That letter showed his attitude toward his wife, and although she wrote to him thereafter, he made no reply. On January 28th, 1915 (Exhibit D-11), she informed him that she had moved to Paterson, and begged him to answer her, and come to see her, to which, however, he made no reply. During the last of December, 1914, or the first part of January, 1915, she called at his home at Little Falls, but was refused admission by both him and his daughter, and, as she says, the door was slammed in her face. His daughter denies any knowledge of such visit, although he admits, on page 32, line 19, that he heard that they had called, and says that either his sister or his daughter told him, but he is not sure which. This corroborates the wife in this respect. He makes no pretence of having called upon his wife in person for the purpose of persuading her to return to him, or does he says that he ever requested such return by letter. It is clearly estab-

lished that his wife invited him to her for the purpose of a reconciliation, but he refused to call. He says he asked friends to intercede for him with his wife, and yet he made no advances himself in that direction. He, apparently, preferred to be relieved of the obligation of a husband by paying his wife $6 a week, and that irregularly. While he complained of financial difficulties, he was motoring from Little Falls to Bridgeport, while his wife was endeavoring to maintain herself with summer boarders. If his letter of February 12th only represented his temporary feeling toward his wife, and a passing mood, as pointed out on page 21 of his brief, then why, after such temporary mood had passed, did he not again write to her and ask her pardon for such an uncalled for and ungentlemanly display of his temper?

The conclusion is irresistible, after reading the letters and the testimony of the parties, that the separation which existed was fully acquiesced in by the husband and its continuance against her will, therefore the defendant is not guilty of obstinate, continued and wilful desertion for the statutory period.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

JOHN F. KERR,

Solicitor for Defendant-Respondent.

ALBERT COMSTOCK,

Of Counsel.

Southern Scot