Petition for Divorce 1
Answer to Petition for Divorce 3

TESTIMONY.

FOR PETITIONER:

CAROLINE ADA SYKES:
Direct 5
Cross 23
Re-Direct 47
Recalled:
Direct 128
Cross 133

JOHN LAUG:
Direct 52

MRS ETTA LANE:
Direct 54
Cross 62

SARAH BIAS:
Direct 64
Cross 66

WILLIAM NORTON:
Direct 68
Cross 71

WILLIAM CRANE: ....
Direct 72
Cross 76

WILLIAM C. MULLER:
Direct 78

FOR DEFENDANT:

LUTHER H. SYKES:

Direct 82
Cross 94
Re-Direct 127
Re-Cross 127
Recalled:
Direct 34

Remarks by the Court 135
Conclusions 138
Decree Nisi 142
Notice of Appeal 145
Petition of Appeal 146
Answer to Petition of Appeal 148

Petition for Divorce.

(Filed August 17, 1925.)

IN CHANCERY OF NEW JERSEY

TO HIS HONOR EDWIN ROBERT WALKER,

CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Caroline Ada Sykes, of the Township of Lakewood, in the County of Ocean and the State of New Jersy, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Luther Harrison Sykes, the defendant in this suit on the fourteenth day of November, Eighteen Hundred and ninety-five, by the Rev. D. L. Schwartz, a minister of the Gospel, at All Saint's Memorial Church, Lakewood, New Jersey.

2. The defendant deserted petitioner in the month of February, Nineteen Hundred and twenty-three, ever since which time, and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner and defendant have been bona fide residents of the State of New Jersey continuedly since their marriage up to the time of the commencement of this desertion in the month of February, 1923, since which time defendant has

been residing somewhere within the State of New York, and petitioner has continued to reside, as theretofore, at her home in the Village of Lakewood, County and State aforesaid.

4. One child was born of the marriage aforesaid, to wit: William Alfred Sykes, who was born November 1, 1900 and who died December 22, 1918.

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

And your petitioner will ever pray, &c.

HOWARD EWART,
Solicitor for Petitioner.

State of New Jersey, }
County of Ocean, } ss.:

CAROLINE ADA SYKES, being duly sworn according to law upon her oath deposes and says that she is the petitioner named in the foregoing petition; that her said petition is not made by any collusion between her and the defendant, but in truth and good faith, for the causes set forth in the petition.

CAROLINE ADA SYKES.

Sworn and subscribed before me
at Toms River, New Jersey, this 15
day of August, A. D., 1925.
Elsie M. Faby,
Notary Public of N. J.
My commission expires May 25, 1930.

Answer.

(Filed May 14, 1926.)

IN CHANCERY OF NEW JERSEY

BETWEEN: CAROLINE ADA SYKES, *Petitioner,* and LUTHER HARRISON SYKES, *Defendant.*	On Petition for Divorce.

The answer of Luther Harrison Sykes, defendant, to the petition of Caroline Ada Sykes, petitioner:

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

2. This defendant denies that he deserted the petitioner in the month of February, 1923, and denies that ever since that time, and for more than two years next preceding the commencement of this action, he had wilfully, continuedly and obstinately deserted your petitioner; but on the contrary, defendant says that the petitioner deserted the defendant; she separated herself from the defendant, refused to live and co-habit with him as husband and wife, and her actions, treatment and conduct toward defendant were such that it became impossible for defendant to reside with petitioner.

Answer.

That on or about February 14th, 1923, defendant, under the circumstances hereinabove related separated from the petitioner with the petitioner's consent for the purpose of obtaining employment of which he was then in want. That defendant was at all times ready and willing to reside with petitioner, as husband and wife and repeatedly requested petitioner so to do, and she refused; and defendant is now ready and willing and has been at all times to live and cohabit with the petitioner as husband and wife.

3. This defendant admits it to be true that petitioner and defendant were bona fide residents of the State of New Jersey continually since their aforesaid marriage up to the month of February, 1923 and that the defendant, since 1923, has been a resident in the City of Tarrytown, County of Westchester and State of New York, and defendant admits that the petitioner has continually resided in the Village of Lakewood, County of Ocean, and State of New Jersey, but denies each and every other allegation in Paragraph three.

4. This defendant admits it to be true that one child was born of the marriage, to wit: William Alfred Sykes who died on December 22, 1918.

This defendant prays that the petitioner's petition be dismissed.

O'BRIEN & TARTALSKY,
Attorneys for defendant.

Testimony.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CAROLINE ADA SYKES,
Petitioner,

and

LUTHER HARRISON SYKES,
Defendant.

Transcript of stenographer's notes of evidence in the above entitled matter, taken before Hon. Maja Leon Berry, Vice-Chancellor, at Chancery Chambers, Long Branch, New Jersey, on Thursday, the 28th day of October, 1926, at ten o'clock in the forenoon.

Appearances:

HOWARD EWART, Esq.,
Solicitor of Petitioner.
MESSRS. O'BRIEN and TARTALSKY,
SAMUEL TARTALSKY, Esq. (Present),
Solicitors of Defendant.

MRS. CAROLINE ADA SYKES, the petitioner, being duly sworn according to law, in her own behalf, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. Mrs. Sykes, you are the petitioner in this case asking for this divorce? A. Yes.

Q. When were you and Mr. Sykes married? A. Really, I forget the date. You have it there.

Q. 'Ninety-five, I think. This is the original marriage certificate? A. Yes.

MR. EWART: I offer this in evidence. Marked Exhibit P-1.

THE COURT: The petition alleges the marriage on the 14th of November, 1895.

MR. TARTALSKY: That is admitted.

Q. Mrs. Sykes, after your marriage where did you and Mr. Sykes take up your residence? A. In Lakewood in my mother's house on Spruce Street.

Q. And how long did you continue residing in Lakewood?

MR. TARTALSKY: We will admit the residence. I don't think there is any question about it, unless your Honor wants it.

THE COURT: I think you had better go on and prove it. It is always a question of just how much you can admit in a divorce case.

A. We lived first in my mother's house on Spruce Street, and then my mother gave the property to me, and she also gave me a lot on Fifth Street, which we built a house afterwards there.

Q. This is in Lakewood? A. In Lakewood, which until eight years ago when I sold it and bought on Second Street in the house I am now living in.

Q. That is, you sold the Fifth Street property eight years ago? A. Fifth Street property.

Q. And moved to Second Street? A. Yes.

Q. What place on Second Street? A. Well, the Pinemere on Second Street.

Q. Was Mr. Sykes living with you during this time? A. Part of the time. He was away a lot of the time on Fifth Street. One year he was away nearly the entire year.

Q. But did you ever have any other residence but Lakewood? A. No; never.

Q. You say you moved to Second Street eight years ago. Did he move there with you? A. Well, he was in New Brunswick, I think it was, and came there—yes, came to the house there.

Q. Well, did he live at the Second Street house with you? A. Yes; the first part of the time.

Q. You say you are still living there? A. Yes.

Q. Up to what time did Mr. Sykes live there? A. Well, he was there on and off until 1923 when he left entirely.

Q. What time in 1923? A. I think it was in February.

Q. When he left in February of 1923 do you know where he went? A. I didn't know at first, No. He went to Tarrytown afterwards, I understand.

Q. Since February, 1923, has he resided in Lakewood? A. No; he came once. He came in at a wedding anniversary—

Q. That is the anniversary of your own wedding? A. Mr. Charlie Le Compte, Junior. We were giving a wedding dinner there for them because I was paid for it.

THE COURT: You mean at your hotel?

THE WITNESS: Yes.

Q. And when was that? A. Well, it was either June or July. I think it was in June.

Q. Of what year? A. 1923.

Q. You say Mr. Sykes was there that night? A. Yes; came that night to the room upstairs; came to get some things of his, I believe.

Q. Did you know that he was coming? A. No; I didn't know he was coming. No.

Q. What time of the day or evening did he arrive? A. Well, the dinner was at six o'clock, and I suppose he came in on that last train. I know the dinner was very nearly over with.

Q. Did you see him when he arrived? A. I saw him, and I was very busy then; I attended the dinner. I saw him come in.

Q. Did you have any conservation with him at that time? A. Not of any account.

Q. You say he remained there that night? A. Yes.

Q. Where do you room in that hotel? A. My room is on the first floor. My mother and I have connecting rooms on the first floor. There is one other bedroom right near us that Mr. and Mrs. Norton, guests of the house, had.

Q. How long did he remain in Lakewood on that occasion? A. One night. He left the next morning. I thought first he might have stayed two nights.

Q. Did you see him when he left? A. I don't remember seeing him when he left.

Q. Were you there when he left? A. I probably was in the house. I may have gone out.

Q. Now, you say that was in June or July, 1923? A. 'Twenty-three.

Q. That was the same year that he left in February? A. Yes.

Q. Well, what attitude did he display toward you when he came? A. He just said, "How do you do."

Q. Well, did he embrace you when he came there? A. Oh, no.

Q. Did he offer to? A. No, indeed.

Q. Did he ask for a room that night, or how did he happen to sleep on the top floor? A. He said he would like to stay over night, so I gave him a room on the second floor.

Q. Did he say anything about what room he should have? A. He asked what room he should have, and I told him and the maid prepared the room for him.

Q. Did he make any suggestion about occupying your room? A. No; he did not.

Q. Did he pay for his lodging that night? A. No; he said nothing about paying that time for his lodging.

Q. When did you see Mr. Sykes again? A. Then he came again in 1924, I think it was.

Q. What time in 1924? A. It was either June or July, and he remained one night then.

Q. Will you tell the Court the circumstances? A. He came in the—I went to telephone and I saw someone sitting out on the piazza.

Q. Tell us what time of the day this was and the circumstances under which you found him there? A. This must have been about a quarter of eight. He had come on that early train in the morning, and I went to telephone and I saw someone seated out there—

Q. Out where? A. He was sitting on the front piazza with a paper, and then I went in to my breakfast and I said to the maid, "Mr. Sykes is out on the piazza. You can ask him in to breakfast." She went out. She came back and said, "Mr. Sykes will not come in unless you invite him in." I went out to the door and said, "If

you want your breakfast, came in and have it."

Q. Did he come in? A. He came in, and then went down to the storeroom, and then went out and I think came in to some other meal.

Q. Where did he go? A. Around the town, I suppose.

Q. You mean he went away from the house temporarily? A. Yes.

Q. Then was he back to the house that same day? A. Then he said he wouldn't be in to dinner he would be out late and wanted to know if the door would be left open because he didn't know what hour he would return.

Q. Was the door left open for him? A. The door was left open.

Q. He stayed there that night? A. Yes; he did.

Q. Where? A. He had a room on the second floor right at the head of the stairs.

Q. And did he occupy the same room with you that night? A. No; he did not.

Q. Where was your room? A. On the first floor next to my mother.

Q. Same place it had been the time before? A. Just the same.

Q. Did Mr. Sykes say anything about returning to live with you? A. No; he did not.

Q. On this second occasion? A. No; he did not.

Q. Or on the first occasion? A. No; he did not.

Q. Did he embrace you when he came the second time? A. No; he did not.

Q. Did he offer to? A. No indeed.

Q. You say he stayed there that night? A. Yes.

Q. Did you see him the next day? A. No; I

went out to my dressmaker's to get a dress fitted, and when I came back he had gone on the ten-something train.

Q. That was the following morning you went out? A. Yes.

Q. What time did you leave the house? A. Well, it must have been around ten when I left.

Q. Was he there at that time? A. He was around the house somewhere, I don't know where; I didn't see him just before I left.

Q. Did he pay for his lodging? A. He offered to pay that morning, early in the morning—rather he had a five dollar bill in his hand. He said, "How much do I owe for staying here all night?"

Q. Who did he say that to? A. I said, "Oh, that is nothing." He said, "Thank you."

Q. Now, had you heard from Mr. Sykes between June or July of 1923 when he was there and the following year in 1924, in June or July, the occasion you have just been speaking of when he came to Lakewood again? A. I don't remember hearing from him outside of——

Q. Did you receive a letter from him?

THE COURT: Outside of what?

THE WITNESS: Outside of a little noice enclosing two dollars to put flowers on my boy's grave and as I had already covered the grave with flowers I didn't bother any more.

Q. I show you a letter dated "North Tarrytown, New York, April 15th, 1925," signed "Lou." A. Yes.

Q. Is that your husband's handwriting? A. Yes, sir.

Q. Is that the letter you received from him? A. Yes; it is the last letter.

THE COURT: Photograph attached?

THE WITNESS: Yes.

Q. It was attached to the letter when you received it? A. Yes; just as it is.

MR. TARTALSKY: No objections.

MR. EWART: I offer the letter and would like to read it. "North Tarrytown, New York, April 15, 1924. Dear Carrie: I am enclosing check for two dollars. Will you kindly buy some flowers to put on Alfred's grave Easter Sunday. I hope this finds all well at home. My knee is troubling me lately. Otherwise I have kept good health. Thanks in advance for getting the flowers. Lou."

Q. I show you check dated April 14th, 1924, on the Tarrytown National Bank, and signed "Luther H. Sykes," payable to Mrs. C. L. Sykes. Is that the check which accompanied the letter? A. Yes.

MR. TARTALSKY: I don't think there is any objection to that.

MR. EWART: I offer the two papers in evidence.

Letter marked Exhibit P-2.

Check marked Exhibit P-3.

Q. That letter bears date April 15th, 1924. Is that about the date you received it? A. Yes.

Q. How long had it been prior to that since you had heard from or seen Mr. Sykes? A. Well, not since that time that I can remember.

Q. Not since what time? A. When he was there in July.

Q. Of the previous year? A. Yes.

Q. Then you say following that letter and check he was there this once in June or July of 1924, over night? A. Yes.

Q. Since that occasion in June or July of 1924 when he came there, have you seen him since that time? A. No.

Q. Have you heard from him since that time? A. No.

Q. Did you know where he was? A. I didn't know where he was until, I think, Mr. Reilly went to serve the papers on him and then he came back and told me.

Q. Mrs. Sykes, going back to February, 1923, when Mr. Sykes departed from the house in Lakewood. What room did he occupy at that time? A. Well, in the summer that he was there a room on the first floor, a room that Mr. and Mrs. Norton always have, with my stepbrother—half brother Mr. Crane, and then when Mr. and Mrs. Norton came back——

Q. You say "that summer." That is the summer of 1923? A. 1923—summer of 1922, that would be. That summer of 1922, and then when the guests Mr. and Mrs. Norton came back he went upstairs and had room 10 on the third floor.

Q. Was he rooming with anyone up there? A. My brother Mr. Crane.

Q. And you were rooming where? A. Connecting room to my mother on the first floor.

Q. That was true in the summer of 1922? A. Yes.

Q. And in the winter season of 1922-23? A. Yes.

Q. Have you and Mr. Sykes had any children? A. One boy.

Q. His name was Alfred? A. Alfred.

Q. He is dead now, is he not? A. Yes.

Q. When did he die? A. 1918.

Q. At what age? A. Eighteen.

Q. Were there any other children? A. No.

Q. Will you tell us, Mrs. Sykes, what the circumstances were, if any, that were responsible for you and Mr. Sykes occupying separate rooms in the hotel during that time? A. We had lived a very unhappy life for a number of years, very unhappy; a great many things had occurred while we were on Fifth Street.

Q. What were they? A. Well, one was one morning—the first thing, I went to New York, and I don't know, I had a sort of presentiment that something was wrong at home——

Q. Just what you saw or what conversation you had with Mr. Sykes? A. So I came home, and this morning he got up to tend the furnace, and I pretended I was asleep, and I wasn't asleep at all, I was wide awake, and I didn't hear anyone at the furance, so I got up, and I imagined, as I had a white chambermaid, that he had probably gone up there, so I climbed up the two flights of stairs and listened, and I just heard a mumbling sound at this door, and I stood outside for about fifteen minutes and he came out in his nightshirt out of this bedroom.

Q. Out of what room? A. This maid's room.

Q. Was the maid there at that time? A. She was there in that room and I discharged her right there.

MR. TARTALSKY: I don't want to interrupt, but I would like to have a time fixed for this.

THE COURT: When was it?

THE WITNESS: I don't remember the year. It was about, I should imagine, 1910, in the spring.

MR. TARTALSKY: I have no objection to its admission.

Q. Now, you and Mr. Sykes continued to live together after that? A. Yes; then we did on account of my boy, and everything passed all over and was forgotten.

Q. You passed over that occurrence? A. Then there was other little occurrences on Fifth Street which everyone knows of.

Q. You moved from Fifth Street when? A. In 1919.

Q. What if anything happened while you were living there, that is, on Second Street? A. Well, the first thing, he brought a young girl down, which he said was a stenographer in a place where he was learning——

Q. What was the young girl's name? A. Her first name was Violet. I have forgotten her last name.

Q. How old a girl was she? A. I should judge she was in the twenties; might have been older; I don't know.

Q. You say he brought her down. Brought

her down from where? A. He said he was going to bring her down because she had been very kind to him in this place, office, and he would like to bring her down, and he brought her down. She came——

Q. When was that, Mrs. Sykes? A. I don't remember the year. It must have been 'twenty-one, I think; 'twenty or 'twenty-one. It was in either one of those years. Then we didn't fancy her, my mother or I, and I don't think any of the guests did. She was a different class of person than we were, so one morning I was combing my mother's hair and I made the remark that I wished this girl would go; I would be glad when she went away. She happened to hear me. She said, "I will get right out, Mrs. Sykes; I only came on Mr. Sykes's invitation," So time passed and I received a letter from her——

MR. TARTALSKY: Just a moment. Of course this is immaterial because it wasn't in the presence of the defendant.

MR. EWART: That part of the conversation is, and I think the letter is immaterial.

Q. Without stating what was in the letter, did you see this girl afterwards. A. Yes; she called me on the telephone.

Q. Now, don't state the conversation. As a result of this letter and telephone conversation, did you see her? A. Yes; I met her at Lawyer Norman's office, 299 Broadway, New York. He was very kind and had a detective find this girl.

Q. You did meet here there? A. Yes.

Q. When was that? A. That was 1923, I think.

Q. That was after Mr. Sykes had left? A. Yes; after he had left.

Q. Did this young lady state anything to you at that time? A. Yes; she had a stack of envelopes and letters about that high (indicating) that she showed us all.

Q. By whom were the letters written? A. By Mr. Sykes.

Q. And addressed to whom? A. "My darling daughter," it was most of them was.

MR. TARTALSKY: I think the letters are the best evidence.

THE COURT: Have you the letters?

MR. EWART: We haven't and cannot produce them. They are in the possession of this young lady.

Q. Could you recognize the handwriting of your husband? A. Certainly.

Q. How many of the letters were there? A. Well, she had a large pack of them. Her lawyer only opened three of them for us and read out loud and then passed them over for both Mr. Norman and I to look at.

Q. That was, you say, after your husband had left in February, 1923? A. Yes.

Q. Was there anything else? Did you receive a letter in or about 1921? A. Yes; I did. I received a letter which supposed to have been written to somebody in Bound Brook and it was put in an envelope addressed to me, and it caused a great deal of commotion——

Q. Who wrote the letter? A. Mr. Sykes's writing.

Q. I show you a letter, no place on the date line, dated "Friday," and signed "Lovingly. You know. Oh you Mabie." Whose handwriting is that? A. That is Mr. Sykes'.

Q. I show you envelope post marked "Nyack, New York, June 18th, 1921, addressed Mrs. L. H. Sykes." A. Yes; that was the letter came—I thought it was for me, of course, when it came.

Q. Did the letter come in this envelope? A. Yes.

Q. Did you ever talk with Mr. Sykes about this paper? A. Yes; I wrote him about it.

Q. Did you ever talk with Mr. Sykes about it afterwards? A. Well, when he came home I said I was thoroughly disgusted with the letter, and he told me that his cornet player was an Italian and couldn't write English so he wrote it for him.

Q. So he, Mr. Sykes— A. Wrote the letter, but it says he will be there.

Q. Did he give any explanation of how he happened to send it to you? A. "Why, it was a mistake, that was all; it was intended for the other party and my letter must have went to the other party," that he had written me.

MR. EWART: I offer the envelope and letter in evidence, if your Honor please.

Marked Exhibit P-4.

MR. EWART: It bears date "Friday," which is the only date on the letter.

THE COURT: What is the postmark on the envelope?

MR. EWART: Nyack, New York, June 18th, 6 A.M., 1921." The envelope is addressed, "Mrs. L. H. Sykes, 424 Second Street, Lakewood, N. J." The letter reads, "Friday." Written in the upper left hand corner is "I love you my darling." The body of the letter reads, "My dear sweet darling, lovely sweetheart and baby: Just a line to tell you I will see you Sunday. Expect to go from here to New York by auto Sunday. If everything goes all O. M. will be in B. Brook earlier than usual. Hope I can as I have an Italian wedding to play Sunday at 110th Street, New York, and you know it would never do to be late and disappoint the *bride*. She no doubt would be excited if she expressed her feelings. Italian 'you can picture' and 'poor me.' I will come to see you first thing just as soon as I arrive, for you know you are more to me than all the people in B. B.; yes indeed, you occupy a place in my heart that is all your own. No one has any claim on that particular spot, and it is a very large spot, as you know. I must hurry. I am feeling all O. K. Lots of love, hugs and kisses for your dear sweet self, mother and sister. A kiss for the children. Lovingly, you know. Oh you Mabie."

Marked Exhibit P-4.

Q. What is your husband's occupation? A. Musician.

Q. That has been his occupation all during your married life? A. Yes.

Q. You say these things about which you have been speaking led to the feeling between you

and your husband that existed when he went away? A. Yes.

Q. Did you consent to his going? A. No.

Q. Did you know that he was going until he told you so? A. No; I didn't know.

Q. He did tell you he was going, didn't he? A. Yes; he said he was going away to look for work.

Q. Did he tell you when he was coming back? A. No; he did not.

Q. Had you asked him to go? A. No.

Q. Told him to go? A. No.

Q. How was he obtaining his support at that time? A. Why, I think he worked in the Free Press doing some printing for the Free Press for a while, and then he played that summer at Ferber's Strand Theater, Lakewood. I know he paid $15 a week board. He said that is what some of the others were paying, so he paid that during that time.

Q. Did he assist in the management of the hotel business? A. No; never.

Q. Do anything about the hotel? A. Never.

Q. You say he paid fifteen dollars a week? A. Yes; that was during that time that he was there at the house.

Q. What time? A. Well, that summer after he left Freehold he came over there and stayed.

Q. That summer of 1920, is it? A. I imagine it must have been 'twenty-one; 'twenty or 'twenty-one.

THE COURT: The same summer you re-received this letter?

THE WITNESS: No; the letter was received afterwards. He was in Tarry-

town when that letter was received.

THE COURT: That was 1921, was it not, that letter was postmarked?

MR. EWART: The letter is dated, Nyack, 1921.

THE COURT: Well, that is right across from Tarrytown; right across the river.

THE WITNESS: Yes; but then that wasn't the same place.

Q. Well, during that part of 1923 up until February 1923, that your husband lived with you at the hotel in Lakewood, did he pay board then? A. Why, he paid $15. a week he gave me.

Q. And during the year 1922 when he was there, did he pay board? A. When he worked he gave me some, yes.

THE COURT: Did he work all the time?

THE WITNESS: No; he didn't work all the time.

THE COURT: Well, did he pay you board continuously or intermittently?

THE WITNESS: Well, when he had it, he gave some.

THE COURT: When he had it he paid it and when he didn't have it he didn't pay it?

THE WITNESS: That is right. When he went away he gave me $5. a month; sent a check, gave me—he went away in February and in March he sent me $5. for that month; April he sent me five; May five, June five, July five; Peoples' Bank the check was.

THE COURT: What did he send them for?

THE WITNESS: I suppose that was supposed to help in the living expenses.

Q. What year were these checks sent? A. 1923 and 1924.

Q. You say March, April, May, June and July? A. Yes, five dollars a month.

Q. For how many months? A. Well, that was March, April, May, June and July. That was the last I received any.

Q. What year? A. 1923.

Q. You said 1923 and 1924. Did you mean 1924? A. 1924, that was the last one.

MR. EWART: I don't want to lead the witness, but I think I know the witness is confused.

Q. When did your husband leave Lakewood? A. 1923, February.

Q. When did he send you the last of these five checks? A. He went in February 1923, you see. Then that was in July was the last one was received.

THE COURT: Of the same year he left?
THE WITNESS: The same year.

Q. Did he send you any five dollar checks in 1924, the next year? A. No; I guess it was all 1923, then.

Q. Did your husband ever make any claim upon you, or say anything about this property that you own? A. Well, once when we had a little dispute, words over something, he said, "Well give me some of this property and you

can get a divorce if you want it."

Q. When was the last time, prior to this morning, that you saw your husband? A. That was in 1924, that time I told you he stayed one night; June or July, and I have never seen him since until now.

Q. Have you heard from him by letter or other messages? A. No; even my brother even, addressed some letters that were directed to him there. I didn't even bother addressing them. He addressed them back to him. Once some of the guests did.

Q. I show you a letter addressed. "Dear Mr. Sykes," dated 2/18/1921—— A. Yes, that letter came——

Q. You received this letter? A. Yes; I opened it because I thought it was a letter for board.

Q. Have you ever shown it to Mr. Sykes? A. No.

Q. Have you ever talked to him about it? A. No.

Q. Did you know the writer of the letter? A. No, I do not.

CROSS EXAMINATION BY MR. TARTALSKY:

Q. When did you find out where Mr. Sykes was, Mrs. Sykes, after he left you? A. Where did I find it?

Q. When did you find out where Mr. Sykes was after he had left you in February, 1923? A. Well, he wrote for a while. He sent those checks.

Q. Well, you knew where he was, didn't you? A. I knew where he was then yes.

Q. Didn't you know right along where he was? A. No; I didn't have. I stopped writing to him and he stopped writing—in fact, I heard

he had left the Strand Theatre that he played in. I was told that by some people that came from Tarrytown that he wasn't playing there any more.

Q. Didn't you receive any letters from him at all in addition to the checks that you received? A. Yes.

Q. And did you answer those letters? A. I may have answered some; I don't remember that myself.

Q. And a great many of them you had your brother write, didn't you? A. No; my brother—he only addressed some letters that came for him from other people.

Q. Why didn't you address them? A. Why, I just hadn't heard from him hadn't had any correspondence with him. I just let Mr. Crane address them for me.

Q. You weren't sorry he had left you, were you? A. Well, I don't think any one would be so particularly sorry in that case.

Q. Let us see, you were married 36 years, weren't you? A. I don't know just how long —31, I think.

Q. Thirty-one years. Do you know that Mr. Sykes is 62 years old? Do you know he is about that? A. Sixty-two, sixty-four, I don't know what he is.

Q. You know when his birthday is don't you, Mrs. Sykes? A. Yes; I do.

Q. He is now about 62 years old? A. Sixty-two or sixty-four, somewhere around there.

Q. And your son who died in 1918, he was in

the service and was in college at the time, wasn't he? A. Yes;

Q. And when was the first time that you ever suspected, as you say, that Mr. Sykes was unfaithful if you did suspect that? A. Well, that was the time I told you—well there were lots of little things that led up—I had a maid that left me, a white maid working for me. She said, "Mrs. Sykes, I can't stand Mr. Sykes always bothering me."

Q. You never gave him cause for complaint did you? A. I don't know as I have.

Q. Did you ever deny him any privileges that a husband should have? A. I don't know.

Q. Did you ever lock your bedroom door? A. Lock it? Why, I always keep my door locked on the first floor where I am now.

Q. From your husband too? A. I locked my door usually at night when he was rooming upstairs, that is the only time.

Q. For how long a time prior to 1923 did you have the door locked insofar as Mr. Sykes was concerned? A. Why, I have always locked my door because he wasn't there very much.

Q. Well, when was the first time prior to 1923 that you didn't occupy the same room as husband and wife? A. Well, I don't know just how long.

Q. Was it a year before or two years before? A. No; he was away and when he came home Saturdays at first we did occupy the same room, and then after that he went upstairs.

Q. Well, how long prior to February, 1923, was he at the house almost continuously? A. How long, you mean?

Q. For how long a time prior to the last time

of the desertion that you charge in February, 1923, for how long a time was he at the house, living at the house? A. Well, I suppose—he played at Ferber's and worked in the printing office up there. Before that he was over in Freehold.

Q. Well, how long did he live at the house, for a year, six months? A. It wasn't more than four or five months, six months.

Q. During those four five or six months did you occupy the same room? A. I think we did at the first part of it.

Q. Well, for how long a time? A. Well, just —I don't know. He would go away and then he would come back and even that time go to New York over the week end, or something.

Q. How long prior to February, 1923, did you occupy separate rooms? A. Well it must have been nearly a year.

Q. And was that at your request or his request? I don't think anybody requested it; just had words.

Q. Was there any condition that brought that separation about? A. Yes; we argued on different subjects; we didn't get along very well.

Q. Well, did you give him any cause for argument at any time? A. Well, of course, he probably did find fault with me and did things that I thought were perfectly terrible.

Q. Did he ever complain to you about anybody, or anybody's conduct toward you, or your conduct toward that person? A. Did he complain to me?

Q. Did he ever complain to you? A. He found fault with different things, yes.

Q. What things, for example? A. Well, he found fault with someone that was at the house there.

Q. Who was that someone? A. Well, that was a gentleman that was boarding there.

Q. And who was the gentleman, what was his name?

MR. EWART: Just a moment. I object to this, if the Court please. There is no such charge in the answer to this petition.

MR. TARTALSKY: What charge?

THE COURT: There is the charge in that answer that she herself separated from her husband and refused to cohabit with him. Now, she said that, for a year prior to the separation they hadn't cohabited. I think it is pertinent as to why—to make inquiry to find out why they didn't cohabit.

MR. TARTALSKY: The answer itself says that her conduct toward him changed that he couldn't reside with her. Now, certainly, I have a right to show what brought about that condition. Of course, this is cross-examination at the best.

MR. EWART: Well, I will withdraw the objection. Go ahead. The answer simply charges desertion. There is no such charge in the answer, as I read it.

MR. TARTALSKY: The answer that we have is this: this defendant denies that he deserted petitioner in the month of February, 1923, denies that ever since that time and for more than two years—statutory answer—on the contrary, petitioner deserted defendant, refused to live and cohabit with him as husband and wife and her action, treatment and conduct toward

the defendant was such that it became impossible for defendant to reside with petitioner. That on or about February 14th, defendant under the circumstances hereinbefore related, separated from the petitioner with petitioner's cousent for the purpose of obtaining employment, and so on.

THE COURT: The excuse on petitioner's side for failure to cohabit is her suspicions of infidelity on his part. Now, these questions are directed, as I understand it, to the same reasons on his part.

MR. TARTALSKY: We don't say we refused to cohabit.

THE COURT: I will permit the question any way. The objection has been withdrawn.

Q. (Question read by stenographer) Will you please answer that question? A. I suppose he referred to a man named Mr. Chamberlain who coming over to the house.

Q. Didn't he talk to you about Mr. Chamberlain? A. I don't just remember what it was. he just asked me——the man came there to board anyway.

Q. Is that all he was, a boarder? A. He was a boarder, yes.

Q. Is that all? A. And he had a car and I had made arrangements with him before to take my mother out and I to the 'shore, and we went with him sometimes, and sometimes this man's wife went along, and his wife died very suddenly, and when he came to the house he took us out, and I said to him then, I said "William, where are you staying?" He said he hadn't any home

of any account because he didn't want to be in his house. I said "You can come here and have a room in the summer if you want it."

Q. When was that? What year was that? A. That was in 19——1922 I think. He came in June, 1922.

Q. So, at your request, because of the sympathy that you had that his wife had died, you asked him to come and make his home in your house? A. Well, he wanted a place to board, so, of course, my mother liked him very much and all, and it was a boarding house, and so he asked me if he couldn't come there to board.

Q. Well, didn't you really ask him to come there? A. I asked him if he would like to come there to board, yes.

Q. Was he a boarder? A. Yes, he was a boarder. Yes.

Q. And he still is a boarder, isn't he? A. Yes, he is still there.

Q. And you kept him as a boarder even after your husband had complained to you about it? A. Why, certainly. There are other people that he complained about.

Q. What did your husband complain about? A. I don't know.

Q. Didn't he tell you? Didn't Mr. Sykes tell you in his conversation? A. Well, he complained about this man. I don't know exactly what because the man was perfectly innocent, he was just the same as any other boarder there, in fact he wasn't as friendly as some of the other boarders that are there.

Q. You weren't very friendly with him at all during the time that he lived there? A. I went

out riding in his car with my mother. We paid for our rides and when we went on trips we paid for the gas and oil and everything.

Q. Just what did Mr. Sykes say to you about Mr. Chamberlain? What specific complaint did he have, if you recall? A. I don't know what complaint he could have about him.

Q. Was Mr. Chamberlain's conduct toward you, or your conduct toward him, such that would cause Mr. Sykes to complain? A. No; it was not. He hadn't any reason to complain.

Q. Your room ,you say is on the first floor? A. It is.

Q. And you have a private bathroom, haven't you? A. Yes.

Q. Did Mr. Chamberlain ever use that private bathroom? A. Yes; and several guests in the house. I could bring any number of guests even now that use it because there is no other bathroom on that floor. There is a gentleman and his wife that there are now that have been using it all fall.

Q. Do you ever take any week-end trips with Mr. Chamberlain? A. Never alone.

Q. I mean where Mr. Chamberlain was present? A. With my mother on trips we have gone, yes.

Q. Was Mr. Chamberlain present? A. Yes; because he drives the car. No one else drives the car. My mother and I can't drive.

Q. So that is all he was a chauffeur? A. Yes; he was in the——he drives for people in the house now.

Q. Did you ever display any affection toward him? A. No. I can prove that by anyone in my house.

Q. Did you never go to any games with Mr. Chamberlain? A. What do you you mean by that?

Q. College games; sports? A. Well, I went with Mr. and Mrs. Laurie, whose son was over in Princeton. Mr. Chamberlain drove the car. We went to the football game, Mr. and Mrs. Laurie, Mr. Chamberlain and another lady that had been at the house.

Q. Mr. Sykes wasn't there? A. He wasn't living at home.

Q. He wasn't invited? A. He wasn't living at home. He was away when I went to this game.

Q. Did you ever take a motor trip around Bear Mountain, the Storm King road? A. Yes; with the Miss Kinnears; they invited us.

Q. Mr. Chamberlain was there was he? A. He was the driver, and they paid him for the trip and I was invited by the Miss Kinnears to go.

Q. Did you ever go to the theaters with Mr. Chamberlain in New York? A. Yes; lots of times with friends.

Q. Mr. Sykes wasn't there? A. No; because he drove us up, different guests in the house.

Q. Mr. Sykes wasn't on that Palisades trip? A. What trip?

Q. Storm King road? A. No; Mr. Chamberlain drove the Miss Kinnears and they invited me.

Q. Did you visit anybody on that trip? A. We visited——called on friends at Palisades Park, Mr. and Mrs. Roberts.

Q. Mr. Chamberlain was there? A. Yes, he was there. He drove the car. We couldn't go on without him. He was paid for the trip.

MR EWART: I don't want to interrupt but it seems to me there is no charge here against Mr. Chamberlain or any other person and it seems to me it is unfair to the petitioner's case to permit a thing like this thing to be pressed without notice to us that it was going to be pressed and give us an opportunity to produce this witness.

THE COURT: If it is necessary, I will give you the opportunity, but I think it is pertinent to inquire as to whether or not there was some other reason for the cessation of cohabitation than that alleged by the petitioner.

MR. EWART: Then I presume these inquiries ought to be directed to the time prior to the cessation of the cohabitation.

THE COURT: I think that is so.

MR. TARTALSKY: Or if they continued since.

MR. EWART: There is no charge here—

MR. TARTALSKY: The only charge we charge is that—I believe I will lead up to it if your Honor please, that there was a change of attitude toward this man, that is what the purpose is.

THE COURT: Certainly, what has happened since wouldn't be the cause for the desertion.

MR. TARTALSKY: I appreciate that but it was a continued thing.

THE COURT: I won't permit any further examination as to any relationship after the separation.

MR. TARTALSKY: I am referring now continuing from 1922 on, and prior to the separation.

THE COURT: Up to the separation.

MR. TARTALSKY: Up to and even beyond, I think.

THE COURT: I don't think that anything that happened after the separation is pertinent unless you are charging infidelity.

MR. TARTALSKY: We are not charging infidelity.

THE COURT: And that you haven't charged.

MR. EWART: The separation your Honor refers to is the separation——

THE COURT: The sparation of 1923.

MR. EWART: Mr. Tartalsky is introducing this under the theory—to the time the parties refused to cohabit.

THE COURT: That continued until the separation.

Q. You say Mr. Chamberlain came in 1922, didn't he? A. Yes.

Q. Before the separation? A. Yes.

Q. And he has been at your house since? A. He has been there ever since. Some of the people have been there seventeen and eighteen years; twenty.

MR. TARTALSKY: I think I am entitled to attack her credibility.

THE COURT: How are you going to affect her credibility with that line of testestimony?

MR. TARTALSKY: If she denies it and we can prove it.

THE COURT: She hasn't denied it.

MR. TARTALSKY: I mean with regard to other questions. I think Mr. Ewart was objecting to questions on that line.

THE COURT: If you want to ask a question, ask it and I will rule on it when you have asked it.

Q. Now, do you remember taking a fifteen-day motor trip to various parts of New York on which Mr. Chamberlain was present?

THE COURT: When?

Q. Was that before or after the separation? A. That was after.

Q. And did you take a motor trip with Mr. Chamberlain to Philadelphia before the separation?

THE COURT: Now, just a moment. You needn't answer that question. If you want to ask about any motor trips, fix the time and then ask her. If the time is after the separation, I will not allow it, if it is before I will allow it, but you fix the time of your question.

Q. Now, did Mr. Chamberlain eat at the same table at which you dined while your husband was living with you? A. Yes; he did. He sat at that table. We have small tables in the dining-room.

Q. How many people occupied that table? A. Sometimes three there; sometimes four, five six, sometimes eight, especially over Sundays.

Q. Now do you recall a time when Mr. Chamberlain—or Mr. Sykes came into your house, into your room, and Mr. Chamberlain was there, or had gone into your private bathroom, and that he

at all as compared with the time—— A. Yes; I complained about it? Do you remember that conversation? A. Why, I don't know what he would complain about——

THE COURT: No; but did he?

THE WITNESS: Yes, I think he did say something about him going in that bath, what right did he have to go in that bath. He went in to wash his hands, I think.

Q. And did Mr. Sykes ask you to have Mr. Chamberlain removed from the house? A. No; I don't ever remember him saying that.

Q. Did you hear any conversation between Mr. Sykes and Mr. Chamberlain at which Mr. Sykes said that he would compel him to get out? A. No; I never heard anything like that.

Q. Was your attitude toward Mr. Sykes in 1922 and 1923 while Mr. Sykes was there, altered told you I had received letters—at least I told my lawyer that we had received letters and those things led up to a dispute, in fact I had written to him about getting this, and I was disgusted because there was things had happened, and after it passed over and when he received this kind of letters, naturally I didn't have a very lovable feeling toward him, I am sure.

Q. Was that what changed your attitude? A. Yes; it was.

Q. That was in 1921? A. It was nothing else, I am sure.

Q. Those letters you got in 1921, didn't you? A. Yes. Well all that year for quite a long time we had disputes over things. We hadn't been very friendly.

Q. Well, you lived together and occupied the same room for a year—— A. Yes but we weren't very friendly.

Q. Did Mr. Chamberlain's attitude, or his presence in the house cause any change in your attitude towards Mr. Sykes? A. I don't know why it should. People living there can testify to that.

THE COURT: Did it?

THE WITNESS: No. People can testify to that that is right here now with me. Why should it?

THE COURT: Did you continue to cohabit with your husband after the receipt of that letter which I might call the Bound Brook letter?

THE WITNESS: Yes; I talked to him about that and he said, "Let me have that letter." Yes, he stayed there then after that.

THE COURT: You occupied the same room?

THE WITNESS: For a short time, yes.

THE COURT: How long after that?

THE WITNESS: Well, really, I don't know. I don't remember just how long. It wasn't so very long. That was in 1921.

THE COURT: That was June, 1921.

THE WITNESS: Because he said he had written it for his cornet player and all this business.

THE COURT: Did you believe him then?

THE WITNESS: No; I did not.

THE COURT: Why didn't you stop cohabitation then?

THE WITNESS: I don't know why I didn't just then.

THE COURT: What happened after that, if anything, which impelled you to cease cohabitation?

THE WITNESS: Well I just didn't like his attitude and things to me—when I told him things about what had happened and this girl altogether, and then when I got a telephone message from her and she told me he was either crazy, or he ought to be locked up, she told me——

THE COURT: Is that the girl——

THE WITNESS: That he brought down there, yes. Then I went up and saw her and she told me——

THE COURT: Was that after the receipt of this letter that she telephoned you?

THE WITNESS: Yes.

THE COURT: How long after?

THE WITNESS: Oh it was quite some time after, a few months afterwards. She told me he had bought her beautiful dresses——

THE COURT: Never mind what she told you. Did you communicate to him what she told you?

THE WITNESS: No; I never told him I went up to New York.

THE COURT: No, but did you tell your husband what she told you over the telephone?

THE WITNESS: No.

THE COURT: Well, then don't tell me. You may proceed.

Q. Now, wasn't it in about July, 1922, that you put a bolt or hook on the inside of your door to prevent Mr. Sykes from going into your

room? A. No; there is a bolt, but I didn't put it on for any reason. There is a keyhole; I could lock it with a key. Why should I put a bolt especially?

Q. Wasn't there some additional lock or bolt put on your door in about July, 1922? A. Yes; there was a hook there——

THE COURT: Did you put it on about July, 1922?

THE WITNESS: Well, I don't know when it was put on, I am sure.

Q. Was it put on in the summer prior to the separation? A. Well, that I don't know, I am sure it would be put on simply because it is simple looking. Always keys—you have to take keys when you go out, and when you go out the side door, it is easy to hook it.

Q. Was that your only purpose? A. Yes; because there was no pass keys could go in if it was always hooked. I always leave all my things in there and, of course, it was better to have it locked securely.

Q. About July 25, 1922, did Mr. Sykes ask you to go to the theatre at which he was playing, at the Strand Theatre? A. That I don't remember.

Q. And don't you recall on the same day, although your husband had invited you to go to Strand Theatre, instead of that, you and Mr. Chamberlain your mother and brother all went to Asbury Park? A. Well, I don't remember. We probably did. I don't know.

Q. And on that occasion, do you recall that Mr. Chamberlain and you went in the theatre while your brother and your mother waited in the car? A. Well, I don't know. We may have

went to the theatre. That I couldn't tell you.

Q. In other words, at that time didn't you accept the invitation of Mr. Chamberlain to go to he theatre rather than your husband's? A. No; because he never invited me. He always got the car, so my mother wanted to drive and we paid him for driving.

Q. Your husband was a musician in the theatre in July, 1922? A. Yes; he was playing in the Strand, I think. My mother can't walk, and, of course, we did drive a lot.

Q. On that occasion, didn't your mother and brother remain in the car and you and Mr. Chamberlain go in the theatre in Asbury Park? A. I know my mother would, because she couldn't get out. I don't know about Mr. Crane whether he went in.

Q. Not Mr. Crane, Mr. Chamberlain? A. That is my brother.

THE COURT: Do you remember whether you did go to the theatre or not?

THE WITNESS: No; I don't remember it.

Q. On July 27th, 1922, do you remember Mr. Chamberlain starting on a trip to pick huckleberries? A. Yes; he went out and picked huckleberries many a time.

Q. Do you remember that particular time about July 27th? A. I don't know. We all went out and picked huckleberries several times.

Q. Did anything occur on that occasion which caused your husband to complain to you? Do you recall that? A. I don't know what would be

———

THE COURT: Do you recall any complaint that he made at that time?

THE WITNESS: Yes. I will tell you, "Oh good-bye," like that (gesturing). Why, I do that to any of my friends. They will all tell you that. We hadn't any particular feeling.

THE COURT: Was that what he complained of?

THE WITNESS: He said I threw a kiss to him. Why, I can go in any of the stores and do that. Mr. Lang for instance, or any of them.

Q. What did your husband say at that time? A. That I don't remember just what he said; I couldn't tell you.

Q. Didn't he complain to you about throwing a kiss or kisses at him? A. He said. "Oh, you threw a kiss to him." Or something in that manner, don't you know?

Q. Now while your husband was at home in July, 1922, did you ever take trips at which Mr. Chamberlain was present and didn't invite your husband? A. Well, we took trips because I had him to take us in the car several times before when——

Q. Well you didn't want your husband's company on those trips, did you? A. I don't know. We had made up our parties; we weren't in the habit of going out. I went to all card parties alone, like all my friends invited me alone and different things.

Q. For how long a time prior to the separation was it that you had your card parties or trips alone without the companionship of your husband? A. All my married life, practically.

Q. Prior to the time definitely before 1923? A. Why, as I say, all my life my friends invited me to dinner and card parties and things.

THE COURT: Why go into that? Isn't it quite plain there is an estrangement between the parties, and if what she says is true, nobody could blame her.

MR. TARTALSKY: Precisely; I agree with you there, but merely showing it was mutual.

THE COURT: It is admitted there was an estrangement.

Q. Now, this estrangement between you and your husband was caused by the fact that you found this letter, and prior to that time you thought he had visited the room of the chambermaid, is that right? A. That was the first thing that really upset us, yes.

Q. And the other thing was that you received a letter—this letter, referring to the Italian girl or Italian wedding? A. That was in this house on Fifth Street, yes, where those two letters came and the telephone call.

Q. Was there anything else besides those two which caused the estrangement? Did he ever ill-treat you? A. When we were on Fifth street we had great difficulty because he played at a house, I asked him to stop playing in there—my mother and I both asked the lady if she wouldn't have him not play there, we didn't want him to. She said she would continue as long as they wanted him to, and there was great trouble, which I think everyone in Lakewood knows about, but I don't think it is necessary to go into a discussion. I could bring witnesses galore if you wanted that.

THE COHRT: Why did you object to his playing there?

THE WITNESS: Well because I thought that on account of the woman that we went with there—that he went in there so many times, three times a day at least. Then I can tell an incident, if you would like to hear it.

THE COURT: That is what we are asking for.

THE WITNESS: Well, there was one occasion where I could have brought witnesses galore to this, that I thought that he was going in there for other things besides giving lessons, and so I knew that they were going out to this woman's mother, the little boy and girl, and so I said to my boy Alfred, I said, "We are going across the way to one of my neighbors," which is Mr. Fred Hurlburt, who lived right opposite, and I said, "We will stay over there and see if he comes in there." That night my little boy went and got under the back stoop and stayed under the back stoop, and I stayed in front with the Hurlburt family looking out the window, and the lights went out in the house and we stayed there and we could see just a little fire burning in the front, and then in a little while the boy came over. He said, "Mother Mother; he has gone in the back door."

THE COURT: Never mind what your boy said. Yon can tell us what you saw, but don't tell us what the boy told you unless your husband was present.

THE WITNESS: I went over then and rang the door bell and asked for him and she said, "Come in, he isn't here." My boy hollered "Here. There he goes, mother, over the back fence." And he had a piece torn from his pants. He ran over to John Meyers' and said he had walked over very fast and was all out of breath. From that there were disputes all the time in our family. That was one great trouble in my life, which my boy from school, called up from school many a time because someone——

THE COURT: Don't tell me that. That is all hearsay. You may tell me anything that anybody told you in the presence of your husband or anything that you said to to your husband, or anything that occurred when your husband was present, but don't tell me of conversations that took place when he wasn't there.

Q. Your husband worked evenings, didn't he, as a musician in a theatre? A. He did when he was playing, yes. Lots of times he didn't. He didn't work lots of times.

Q. When he was working, his duties required him to work as a musician at night? A. Sometimes he played at the Belmar House.

Q. And he has been in that occupation many years, hasn't he? A. Yes.

Q. Now, about February 11, 1923, did your husband tell you that he was going to New York to see about a position? A. When he was getting ready to go, he said, "Well, I am going away to look for work."

Q. And you were on the piazza at that time, weren't you? A. I couldn't tell you.

Q. Do you recall that he said goodbye to you on that day when he was going to New York for a position? A. No; I don't remember going out on the piazza.

Q. Do you remember saying to him, "I hope you never return"? A. No; I don't remember.

Q. Do you recall him saying, "If the good Lord spares me, I will return"? A. No; I don't remember that; positively.

Q. Did he leave definitely at that time on February 11th, or did he come back? A. He left then. I don't know what day it was. I know it was in February, 1923.

Q. Do you recall what day of the week it was? A. No; I don't. I can't remember dates.

Q. Do you recall him coming back a couple of days after the time he said he was going to New York? A. No; I do not.

Q. Now, did he come back on Friday for music and for clothes and didn't he tell you he secured a position in North Tarrytown? A. That I don't remember, I am sure.

Q. Well he was out of work for some time prior to the time that he had left you, isn't that so? A. He was out of work only about two weeks that he was at the house, and then he went away.

Q. You knew he went to New York for the purpose of looking for a position? A. He said he was going to look for work.

Q. And you don't recall him telling you that he had secured a position in Tarrytown, New York? A. No; I thought he wrote me there and said he had work.

Q. You didn't know where he was going? A. No; I did not.

Q. Well, didn't you ask him? A. No; I did not. I got a letter saying where he was. Why, he went away once before and stayed a long time and I didn't know where he was.

Q. Just at this time didn't you think it was necessary to ask him where he was going and when he would come back? A. No; I didn't ask him.

Q. Or didn't you care? A. Of course, if he was coming back I would care.

Q. You didn't want him to come back, did you, Mrs. Sykes? A. I had no objection to his coming back.

Q. And didn't he ask you that he wanted to live there at the house? A. No, he did not.

Q. Would you have accepted him if he had? A. Why I don't know why. I didn't care to live with him, and so it was. You heard conditions before. You can't live with anyone that you are not pleasant with.

MR. EWART: I think the word "accept" ought to be defined.

MR. TARTALSKY: I think I will change the question.

Q. You say he left you in February, 1923, is that right? A. Yes.

Q. Now if prior to that time, or after that time, he had said to you that he wanted to come back and live at the house and cohabit with you as husband and wife, would you have accepted him? A. We hadn't been living as husband and wife—

THE COURT: No. Would you have accepted him if, is the way the question is put.

THE WITNESS: Why yes, if he had come back and done what was right and lived there a right life, yes.

Q. What do you mean by a right life? A. Well, stay and look after things, probably, and been as he should have been, but things were so we were always having words and trouble.

Q. Did he ever offer to come back and to stay home? A. No, he did not.

Q. And you didn't tell him to stay away? A. No; I did not.

Q. Now do you recall November 1st, 1920, that was your boy's birthday, wasn't it? A. Yes.

Q. And do you remember going to church with your husband. Your boy was dead at that time, wasn't he? A. Yes.

Q. Do you recall going to church on the anniversary of your boy's birthday? A. I think I went to church but I don't know whether it was on that day. I couldn't swear to that.

Q. On that day with your husband? A. We may have gone to church; I don't know. I could not swear to that now.

Q. And didn't he say to you, your husband, that he was going to place a wreath over the boy's plot? A. I don't think he ever bought a wreath. I always bought all the wreaths. And paid for them. I have bills galore of the florists.

Q. Didn't your husband want to go home with you at that time with a wreath and you refused to go with him? That was on November 21st, 1922? A. I don't remember that.

THE COURT: They were still living together then?

MR. TARTALSKY: Yes, but they were estranged at that time. That is the purpose of the question.

Q. Now, did you ever strike your husband? A. No, I don't know as I ever struck him. When we were angry I said to him—when we were on Fifth Street and he shook my boy. Yes, because he told him if he dared pry on your business, the night he went under the piazza.

Q. Now, you say that when your husband came home you had a room upstairs prepared for him. That was the first time after he left for New York? A. I didn't have a room prepared. The maid prepared it when he came.

Q. And that was a room upstairs? A. Yes.

Q. Was there room available for him to sleep in your room? A. No; I had a single bed there now and have had for three or four years now.

Q. Then when he came back the next time you had a separate room for him, didn't you, on the second floor? A. The house is a boarding house. When he came back he had to have a room and he was put upstairs.

RE-DIRECT EXAMINATION BY MR. EWART:

Q. How many rooms are there in this boarding house? A. Well, I think there are about 18 now, sleeping rooms.

Q. Eighteen guest rooms? Yes.

Q. That you could rent out. Who was the maid that made up Mr. Sykes's bed? A. Well the chambermaid was Sarah Bias and then another was Etta Lane who is there in the summer with us.

Q. They are here in court? A. Yes.

Q. Do you own an automobile? A. No, I do not.

Q. Did you own an automobile in 1922, 1923 or 1924? A. I never owned an automobile.

Q. Does you mother own an automobile? A. No.

Q. How old is your mother? A. Mother will be 86 her coming birthday.

Q. She lives with you in Lakewood? A. Yes.

Q. Still does. You say on this first floor that you and your mother have adjoining rooms? A. Yes.

Q. And where is the bathroom with reference to your room there? A. Just as you come in the hall the bathroom is up there and you have to come this way to come to our room.

Q. Can people enter the bathroom without entering your room? A. Oh my, yes.

Q. Your room is beyond the bathroom? A. Yes.

Q. Your mother uses that bathroom? A. Yes.

Q. You use it? A. Certainly.

Q. Who else, guests in the house use it? A. Often people who have been on the first floor don't care like running upstairs.

Q. Anyone there now use it? A. Well the people went away day before yesterday that did. There is an old lady using it now. There is a gentleman when he wants to go in through the house he uses it, doesn't care to go upstairs, and he isn't well.

Q. How long have you occupied that room on the first floor? A. Ever since I bought the house.

Q. And has that been true all during that time that other people have used your bathroom? A. Yes; always used our bathroom, any one, even people that come in, you know, come in on business

and want to go to the bathroom, instead of going upstairs, use mine, and especially people that just come for dinner or a meal like that, they use it always.

Q. This bathroom of yours wasn't so private, then? A. No; I wouldn't call it private that way.

THE COURT: Public bath with private entrance, is that the idea?

THE WITNESS: Well, it is in our own part.

Q. You said with reference to some of these disagreements with your husband that when Mr. Tartalsky asked you if you ever struck your husband you said one occasion your husband was shaking your boy? A. That was the night he ran out and stayed under the piazza.

Q. Did you see your husband do anything to your boy? A. He said "Don't you ever pry on my affairs again."

MR. TARTALSKY: I think that is quite remote.

MR. EWART: It was remote enough for you to go in it.

THE COURT: You brought it out.

MR. TARTALSKY: I didn't think it was at that time.

Q. What did Mr. Sykes say to your boy at that time? A. He said, "I don't want you prying in my affairs again."

Q. How soon or how long was it after this

escapade in which your boy hid under the steps? A. That was that night.

Q. The same night? A. Yes.

Q. When Mr. Sykes came back to that house in June or July as you have said, in 1923 did you have any previous notice of his coming? A. No; the last time he sat out on the piazza there. I didn't know. I was so surprised to see him there.

Q. Either time. A. The first time I think he said he was coming home to get some things. He wrote a note and said, "I am coming home to get some things", in 1923.

Q. Did you ever offer any objection to his coming? A. No.

Q. Did you ever tell him you didn't want him to come? A. No.

Q. You say the last time he was there he offered to pay for his room? A. Yes, he had the bill in his hand.

THE COURT: On his first return after the separation in February, did you have any conversation with him as to why he was remaining away?

THE WITNESS: No.

THE COURT: Did you have any conversation of any kind except just what was necessary?

THE WITNESS: No; nothing at all.

THE COURT: And on the second occasion, the last occasion that he was there, 1924, did you have any conversation with him then?

THE WITNESS: No.

THE COURT: With respect to why he had remained away from home?

THE WITNESS: No; I never asked him.

THE COURT: Did you discuss it at all in any way shape or form?

THE WITNESS: No.

THE COURT: All right.

Q. Did he on either of those occasions say anything about returning to Lakewood? A. No he did not.

Q. Did he make any suggestion about your going to New York or elsewhere with him? A. Never.

Q. Did he invite you to go anywhere with him on either of those occasions? A. You mean away?

Q. Yes. A. No. To support me, you mean?

Q. On either of these occasions in 1923 or 1924, when he returned to Lakewood over night, did he invite you to go away with him or suggest that you go away together? A. No, he did not.

Q. Or say anything about his returning to Lakewood? A. Positively did not.

Q. Did he tell you why he was in Lakewood on those occasions? A. The first time he said he came for some things.

Q. What things, do you know? A. A printing press, or something. He did it up and asked that it be sent to him.

Q. And on the second occasion did he say why he came? A. No; I don't know whether he came for anything or not. I didn't ask him.

Q. You had no notice of his coming? A. No.

JOHN LAUG, produced as a witness on behalf of the Petitioner, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. Mr. Laug, you live in Lakewood? A. I do.

Q. And you are acquainted with both Mr. and Mrs. Sykes? A. I am.

Q. And have known both of them for a number of years, have you not? A. Yes, I have.

Q. Do you have occasion to see Mrs. Sykes with any degree of regularity? A. I do.

Q. What is the occasion? A. All of my family, we have been eating at Mrs. Sykes's for three or four years and she patronizes me in the way of buying candy and ice cream for her house, and I see her very often.

Q. Did you ever see Mr. Sykes at the house? A. I have never since I have been eating there.

Q. Can you fix with any degree of certainty at all, the time when you began eating there? A. Well, I would say—well, I know I have been eating there three or four years.

Q. You can't fix the date with more certainty than that? A. I can only say this: I could positively say; I was asking Mrs Lau.g how long we had been eating at Mrs. Sykes's to clarify my mind and she said—I said, "We have been eating there three years." She said, "I know four years I have been eating there."

Q. But you have never seen Mr. Sykes there? A. On no occasion.

Q. Have you ever seen him in Lakewood dur-

ing that time? A. I am not so clear about that.

Q. Prior to this three or four years ago when you began eating there, did you see Mr. Sykes in Lakewood? A. That I can't say.

Q. You say you are acquainted with him? A. I feel quite sure I have seen him once or twice; positively.

THE COURT: How could you have——

THE WITNESS: I have known him for a great many years. I think on this occasion——

THE COURT: The question was: had you seen Mr. Sykes in Lakewood prior to the time that you began eating at the Sykes Hotel?

THE WITNESS: Oh yes; for years.

Q. But after you began eating there you never saw him at the house? A. No; I never have.

Q. You think you might have seen him once or twice in Lakewood? A. I might have; yes.

MRS. ETTA LANE, produced as a witness on behalf of the Petitioner, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. Mrs. Lane, you formerly worked for Mrs. Sykes? A. Yes.

Q. During what period of time did you work for her? A. From 1918 until 1925.

Q. Have you worked for her since 1925? A. No.

Q. Where do you work now? A. I work at 419 Fifth Street, Sunway Cottage. Mrs. A. V. Merrill, proprietor.

Q. Do you know Mr. Sykes? A. Yes.

Q. You say you began working for Mrs. Sykes in 1918. At what house was that? A. At Fifth Street; the address I don't remember.

Q. And did you go with her when she moved to Pinemere? A. I did.

Q. That is on Second Street? A. On Second Street, between Forest and Madison.

Q. Did you see Mr. Sykes at the house? A. I did.

Q. What were your duties at the house? A. Head waitress.

Q. And did you do some other work besides that? A. In the summer I done general; I worked in general.

Q. Have anything to do with Mrs. Phillips? A. Yes; I had a good bit of attention with Mrs. Phillips.

Q. Mrs. Phillips is the mother of Mrs. Sykes? A. Is the mother of Mrs. Sykes.

Q. Now you say you did see Mr. Sykes at the house? A. Yes.

Q. Do you know when he ceased staying at the house? A. If I remember correctly it was in February—no, later than that—I presume in the year of 1923 or '4, in June or July, if I remember correctly, the last time I seen him at the house.

Q. I think you misunderstood my question. When did he stop living there regularly? A. In February, if I am not mistaken.

Q. Of what year? A. Of '23.

Q. Do you know what room he occupied prior to his leaving the hotel? A. The last time?

Q. No; I don't refer to this one occasion when he came back. The room that he occupied while he was at the hotel? A. Room 10 on the top floor.

Q. Do you know where Mrs. Sykes roomed? A. Yes, on the first floor.

Q. Do you know where her mother roomed? A. Yes; adjoining her room.

Q. They had two adjoining rooms? A. Yes; stepped out the hall from one door to the other.

Q. That was a private or public hall? A. That is public—private hall.

Q. Do you know how long Mr. Sykes occupied a separate room from Mrs. Sykes—how long before his departure in February? A. How long before his departure? As far as I can remember each time he came he had a separate room.

Q. No; you misunderstand me; he lived at the hotel regularly, did he not, up until February, 1923? A. I presume so.

Q. Well, you saw him around there, did you? A. Yes; he was around there.

Q. Before he left, you say he occupied room 10 on the top floor? A. Yes, room 10.

Q. Now, how long prior to that time, prior to his leaving, in February, 1923, had he occupied a room separate from Mrs. Sykes? A. I don't think I can recall that so very well.

Q. Would you say whether it was a week or month or several months, or a year?

THE COURT: How long before he left in February had he been occupying a room separately from Mrs. Sykes?

THE WITNESS: Well, it has been a few months, but just the amount of months I can't explain. I don't remember just how many months prior to that.

Q. Now, after he stopped living at the hotel regularly, did you see him back there at any time? A. Yes; I saw him most every time he came back.

Q. When did you see him after that? A. After he was there in February?

Q. You say he left in February. Now when did you next see him? A. It was in the summer months after that he came in——

Q. The first summer after or some other summer? A. No; it was the summer following that month of February. I don't know whether it was in June or July; I don't just remember, but he came in during the summer months.

Q. What was the occasion, was there any particular thing going on around there at that time? A. No; not that I know of; just came home when he got ready; came in for his music or for some of his belongings.

Q. Was there any wedding celebration? A. There was the wedding of Mr. Le Compte it was a very busy day, and I remember he came in right after the serving of the meals.

Q. Did you serve him at the table at that time? A. I don't remember whether he dined at that time or not; I don't remember; he may have, but I don't recall it at the present time.

Q. Do you know whether he stayed there over night? A. He stayed over night.

Q. Do you know what room he occupied? A. Yes; I know what room he occupied.

Q. Which one was it? A. It was number 3.

Q. On what floor is that on? A. On one floor up; second floor.

Q. Do you know what room Mrs. Sykes occupied that night? A. I do.

Q. What room did she occupy that night? A. First floor.

Q. Same room she usually did? A. Yes.

Q. Who made up the room Mr. Sykes occupied, did you? A. I did, in the summer.

Q. Did you have any occasion to go in and out of the apartment or room of Mrs. Sykes on the first floor? A. I certainly did.

Q. What was the occasion? A. To give her mother my full attention.

Q. What was the reason for doing it? A. To give her mother my full attention.

Q. Do you know whether or not Mrs. and Mr. Sykes occupied the same room that night? A. No; they did not. He was upstairs and she was downstairs.

Q. Now were you there at the hotel upon any later occasion when he came there? A. You mean after that date?

Q. Yes; after this wedding celebration. A. Yes; I was there when he came again.

Q. When was that? A. I think that was the last time I seen him. I think that was in the year 1923-'24.

Q. What year? A. Either '23 or '24. I presume it was '24.

Q. What season of the year? A. In the summer, about June or July. That is the last time I saw him.

Q. Tell us the circumstances under which you saw him? What time of day was it and where did you see him? A. That time of day——

Q. What time of day was it? A. It was in the A. M. hours; in the morning.

Q. How early in the morning? A. I presume eight o'clock or probably a few minutes after.

Q. Where was he? A. Sitting on the front porch.

Q. Did you have anything to say to him at that time? A. I was sent out to him with a message, or invitation to come in.

Q. Who sent you out? A. Mrs. Sykes sent me out.

Q. Did you go out? A. I did.

Q. What did you have to say to Mr. Sykes? A. I invited him in.

Q. For any purpose? A. Mrs. Sykes sent me to ask him in. He refused and said "Not until she gives me the invitation will I come in." I returned to her with the same.

Q. Did she go out then to the porch? A. She did.

Q. Did Mr. Sykes come in then? A. He did.

Q. What did she do? A. She ordered breakfast prepared for him and I served him.

Q. Do you know how long he remained there on that occasion? A. I presume—not sure—I presume he was there part of the day of the A. M. hours.

Q. Did he stay over night, do you know? A. Yes; he stayed over night.

Q. Do you know what room he occupied? A. He occupied room number three, or room number six at that time.

Q. Was it on the second, first or third floors? A. One flight up, either room three or six.

Q. That was during the summer season? A. tions were, how long he was going to be away, Yes; summer season.

Q. You say you did general work during the summer? A. Yes.

Q. Do you know whether he occupied a room that night? A. He did.

Q. Did you make up the room for him? A. I did.

Q. Were you there after he left? A. I was.

Q. Anyone else occupy it with him? A. Not at that time; not on that floor.

Q. Did Mr. Sykes ever say anything to you about his leaving Lakewood, or what his inten-

or anything of that sort? A. The last time that I recall Mr. Sykes said anything—not to me personally, but in the kitchen——

Q. Did you hear it? A. Yes; the last time he was going away he told us he was going to Tarrytown to work and this is the first I seen of him. He didn't tell it to me personally; he just told it in the kitchen he was going to Tarrytown to work, good-bye all.

Q. Upon any of these occasions when he came back there, did you have any conversation with him? Did he say anything to you about how long he was going to be away or when he was coming back? A. No; I never had any personal interview with him.

Q. Did you hear him make any statements? A. Oh, except the only thing. Mr. Sykes left a printing outfit crated, ready to be delivered to him, and he asked me if I would intercede in giving it to the expressman if he sent one for it. I told him I would rather not, I would rather he put the affair in Mrs. Sykes's hands and let her tend to it. The printing press never went off until he went off and got King's Express and took it away. It rested there in the dining room for so long.

Q. When was this episode about the printing press? A. Oh, it was during the—just before the end of the season. I think it was before the other girls went off.

Q. Was that on one of these occasions when he came back to Lakewood or was that before he went away? A. That was before he went away the last time.

Q. Now, you say you continued to work for Mrs. Sykes until 1925? A. Yes.

Q. And just when did you stop working for her? A. In August, 1925; the date I can't exactly remember.

Q. August 1925? A. Yes.

Q. Did you see Mr. Sykes back there any more up to that time? A. During that time? No; I think it was in July the last time I saw him back there.

THE COURT: 1924?

THE WITNESS: 1924.

Q. Did you ever have any conversation with Mr. Sykes, or he with you, about the difficulties between him and Mrs. Sykes? A. No.

Q. Did he ever tell you anything about it, or make any complaints to you? A. No; he has never because I never entertained him.

Q. Did he attempt to tell you anything? A. If he attempted to tell me anything, I always told him I had duties to attend to.

Q. Did he attempt it? A. I never stopped to listen to what Mr. Sykes said. I always considered this way: it was no affair of mine, and I was disinterested in it and I never listened to any conversation from Mr. Sykes about Mrs. Sykes. If he would ask me sometimes where she had gone I would tell him. If I didn't know, I couldn't tell him. I would just say, "She is out."

Q. Did he ever make any statements to you concerning Mrs. Sykes or any other men or man? A. No.

Q. Did you see Mr. Sykes when he left on this second occasion, on the occasion of his second visit to Lakewood? You say you found him on the porch one morning and he was invited in to breakfast? A. Yes; that time.

Q. Now, he stayed over night, you said? A. He stayed over night.

Q. Did he leave the next morning? A. He left the next morning, if I am not mistaken.

Q. Do you know when he left? Did you see him leave? A. I don't think I did that morning.

CROSS EXAMINATION BY MR. TARTALSKY:

Q. Who was present when Mr. Sykes said he was going to North Tarrytown for a job? A. The cook and the waitress at that time.

Q. Mrs. Sykes there? A. No; she wasn't in the kitchen then.

Q. Could she hear it? Was she in hearing distance? A. I don't think she was in the house.

Q. Now, you say at the first occasion that Mr. Sykes came back he occupied room ten, is that right? A. I did.

Q. And the second occasion what room did he occupy? A. Room six.

Q. And those rooms were assigned to Mr. Sykes at whose instance? Who told you to prepare those rooms? A. Mrs. Sykes.

Q. She told you to prepare the separate room? A. Yes; the room on the top floor. Mr. Crane and Mr. Sykes occupied together room ten.

Q. Did you ever hear any complaints or conversation between Mr. and Mrs. Sykes, or did

you say you heard them and wouldn't testify to to that? I didn't understand that last part. You said it was none of your business.

THE COURT: She didn't say anything about any controversies between the two. The question was whether Mr. Sykes had ever said anything to her with respect to the differences between Mr. and Mrs. Sykes, and she said no, and if she had she wouldn't listen to him.

THE WITNESS: Exactly.

MR. TARTALSKY: I misunderstood her.

Q. And while you were there, was Mr. Chamberlain working around the house, or was he just a guest? A. Well, he was just a guest there, just around the house, tended to his car and went out to the garage, and so forth.

Q. Take care of the furnace, and so forth? A. Yes; looked after the furnace before he went out.

Q. Was he ever in the kitchen doing work there? A. Oh, he would come in and out of the kitchen. If we wanted anything in the storeroom, he would willingly get it for us.

Q. Did you ever hear any conversation between Mr. and Mrs. Sykes concerning Mr. Chamberlain? A. No; I haven't. My business is mostly in back of the kitchen—dining room, pantry and kitchen.

SARAH BIAS, produced as a witness on behalf of the petitioner, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. You work for Mrs. Sykes, do you not? A. Yes.

Q. And you have worked for her for the past nine seasons, is that right? A. That is right.

Q. Do you stay at her house during the summer? A. No.

Q. What is the season that you work at the house? A. Why, from September to the first of June.

Q. What is your work in the house? A. Chamber work.

Q. Do you know Mr. Sykes? A. I do.

Q. Do you remember his having lived at the Sykes house? A. Yes.

Q. Do you remember when he stopped living there? A. Yes; I do.

Q. When was it, if you know, that he stopped living there? A. I think it was in February, 1923.

Q. Do you know what date in February? A. I do not.

Q. Did you ever see Mr. Sykes after that? A. Once.

Q. When? A. It was in June, the latter part of June or the first of July, 1904.

THE COURT: 1924, you mean?

THE WITNESS: 1924.

Q. That is the same year or the following year? A. Following year.

Q. What was the occasion you saw him? A. Well, I don't know. He came home along at that time.

Q. Was there any particular thing going on at that time? A. Yes; there was a wedding party on that day.

Q. Whose wedding party? A. I don't know; some Lakewood people. I don't know their names.

Q. You said you didn't ordinarily work there at that season of the year? A. I had got through but Mrs. Sykes got me back to help out the cook for just that day. I had finished my season there.

Q. But you saw Mr. Sykes that day? A. I saw Mr. Sykes that day.

Q. How long did you remain there that day? A. Until evening.

Q. When did you see Mr. Sykes? A. That afternoon he came and I left that evening—or night rather.

Q. He was there when you left? A. I left him there.

Q. Did you come back the next day? A. I did not.

Q. You had finished that special work you were brought there for? A. Yes.

Q. Did you ever see Mr. Sykes around the house after that? A. No; I never saw him again.

Q. Now you say you worked there during the season of 1923, 1924, 1925 and 1926? A. Yes.

Q. You are still there? A. Yes.

Q. Do you know what room—you don't know

whether Mr. Sykes stayed over night or not on this occasion? A. No; I don't know.

Q. You say you went home about 8 o'clock. While Mr. Sykes was living at the house up to February 1923, what room did he occupy? A. Room ten, third floor.

Q. Roomed alone or with someone? A. Mr. Crane, Mrs. Sykes's brother, was with him.

Q. How did you know that? A. Two beds there. I really don't know that, but two was supposed to sleep there.

Q. You were the chambermaid who worked there at that time? A. Yes.

Q. How long had Mr. Sykes occupied that room, do you know? A. I imagine it must have been all winter up until February, as far as I can remember.

Q. So far as you know, that is true? A. Yes.

Q. Do you know where Mrs. Sykes's room was? A. First floor.

Q. Do you know where Mrs. Phillips's room was? A. First floor, communicating rooms.

Q. Were you present when Mr. Sykes went away in February, 1923? A. I might have been around the house, but I didn't know when he left. I didn't see him when he left.

Q. You just know that he ceased being there? A. Yes.

CROSS EXAMINATION BY MR. TARTALSKY:

Q. Do you know that he went to Tarrytown for a job? A. I don't. I wasn't around at that

time. I worked upstairs and I wasn't around at that time. I didn't get that.

Q. Do you remember in January, 1923, when Mr. Sykes was sick? Have you recollection of that? A. Yes.

Q. Do you know whether Mrs.—to your knowledge whether Mrs. Sykes visited him while he was sick? A. Why, yes, she used to go up.

Q. And did you ever hear any quarrel between Mr. and Mrs. Sykes? A. Not any.

Q. Or hear any complaints made about any of them? A. No.

Q. Did you ever observe anything between Mrs. Sykes and anybody else and talk about it upstairs to Mr. Sykes?

MR. EWART: This isn't cross-examination. I have no particular objection except that—to going on with this thing except I suppose Mr. Tartalsky is binding himself by the answers of this witness.

MR. TARTALSKY: I am asking her to affect her credibility.

THE COURT: Oh, go on. I don't think that amounts to anything, but you may inquire into it if you want to.

Q. Didn't you complain to Mr. Sykes about somebody who was at the house? A. I?

Q. Yes. A. No; I had no way to complain about anybody.

Q. Didn't say anything to him? A. No, sir.

Q. Didn't you say to him, "If I were you, I would throw him out of the house"? A. No.

Q. Sure of that? A. Sure I am sure of it.

WILLIAM NORTON, produced as a witness on behalf of the petitioner, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. Mr. Norton, you are living at Lakewood at this time? A. Yes.

Q. At the Pinemere Hotel? A. Yes.

Q. How long have you been coming to Mrs. Sykes's house? A. Since 1907.

Q. What part of the year do you spend in Lakewood? A. Well, seven months; usually from the middle of October to the middle of May.

Q. Where did Mrs. Sykes keep a house when you first came to her place? A. On Fifth Street.

Q. And since 1907, have you been there every year, or occasionally only? A. Every year. Oh, once in a while, probably three or four weeks down south, something to that effect, and then come back again; still retain my home, practically.

Q. Have you lived there every year since 1907? A. Yes.

Q. And you customarily stay there from October to May? A. Yes.

Q. You are married? A. Yes.

Q. Mrs. Norton stays there with you? A. Yes.

Q. Do you know Mr. Sykes? A. Yes.

Q. Did you ever see him at the Sykes home? A. Yes.

Q. Do you know anything about his departure? A. Well——

Q, Did you know when he departed? A. Yes; I knew.

Q. Were you living at the house at the time? A. Yes.

Q. When did he depart? A. It was in February, 1923.

Q. How long after February, 1923, did you continue that season at the house? A. Until May 20th, I think it was that year.

Q. And then you and your wife left there? A. For that summer, yes.

Q. When did you return there at all? A. In October; about October—well, we returned between October fifteenth and twentieth; always around those dates.

Q. Did you spend the winter of 1923-24 there? A. Yes.

Q. And '24-'25? A. Yes.

Q. And '25-'26? A. Yes.

Q. You are there now? A. Yes.

Q. Have you seen Mr. Sykes back there since then? A. Not since then.

Q. Have you seen him at all? A. No.

Q. Until this morning? A. No.

Q. Since he left in February, 1923? A. No.

Q. Do you happen to know what room Mrs. Sykes occupies in the hotel? A. Ground floor.

Q. Same floor as the office? A. Yes; main floor, rather, of the hotel.

Q. Do you know whether she rooms alone or with someone? A. Well, she rooms alone, with her mother adjoining.

Q. How old a woman is her mother, if you know? A. Well, her last birthday she was eighty-five; I remember that.

Q. She is more or less of a cripple, is she? A. Yes; very much so.

Q. Not able to get about? A. No.

Q. Can she walk alone? A. Well, with the aid of a cane and holding onto someone she can go just a few steps, but she has to have help always.

Q. Do you know where Mr. Sykes roomed when he was living at the hotel—or at the Pinemere House? A. I did understand he was in room ten, upstairs.

Q. Do you know whether he occupied a room with Mrs. Sykes? A. I don't believe he did.

Q. Are you familiar with the location of this bathroom on the first floor? A. Yes.

Q. Do you and your wife ever use it? A. Yes.

Q. Frequently? A. When we have occasion to.

Q. And that is the same bath as has been spoken of as being located near Mrs. Sykes's room? A. Yes.

Q. Do you have to go through Mrs. Sykes's room to get to this bathroom? A. No.

Q. Do you know William Chamberlain? A. Yes.

Q. He is a guest at the hotel, isn't he? A. Yes.

Q. Do you know how many years he has been a guest there? A. Well, I can't tell you just how many years he has been there; a number of years, but how many I don't just remember now.

Q. Did you ever observe anything objectionable about the conduct of Mrs. Sykes and William Chamberlain? A. No; I never did.

Q. During this period from 1907, continuing

up until 1923, do you know who operated the Sykes house? A. Mrs. Sykes.

Q. Do you know whether Mr. Sykes had any employment? A. Not that I know of, I never seen him.

Q. Did he spend much time about the house? A. Well, no; not a whole lot.

Q. Did he, so far as you could observe, take any part in the operation or management of the house? A. No; he did not; not the management of the house; no.

Q. Did you ever hear Mr. Sykes make any statement as to why he left the hotel, or when he was going to return? A. No.

Q. Did you ever talk to him about it? A. No.

Q. Since you have been coming to the Sykes house, up until 1923, was Mr. Sykes always there or was he away? A. Not always; he wasn't always there.

Q. Were there any long periods of time when you didn't see him there? A. Sometimes a month or so at a time, a week or so at a time, Just as he felt like it was the way I looked upon it.

CROSS EXAMINATION BY MR. TARTALSKY:

Q. Mr. Norton, don't you know that upon occasions that Mr. Sykes was away, that he was away because his work brought him out of town? A. No; I didn't.

Q. Well, what did you think brought him away?

THE COURT: Does it make any difference what he thinks?

MR. TARTALSKY: I will withdraw that.

Q. Did you know why he went away on trips? A. No.

Q. Didn't you know he was employed in New Brunswick? A. I knew he was at New Brunswick, but whether he was employed there or not I couldn't tell you, but he stayed there, I know that. I know that he was in New Brunswick.

Q. Do you know that Mr. Sykes taught music in the Lakewood Public Schools for about eleven years? A. Off and on I suppose he did.

WILLIAM CRANE, a witness produced on behalf of the petitioner, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. Mr. Crane, you are a half-brother to Mrs. Sykes? A. Yes, sir.

Q. You live at her house? A. I do, at present.

Q. How long have you been living there? A. Since the middle of July of this year.

Q. Did you live there in 1923? A. Yes, sir.

Q. And in 1922? A. Well, I think I did, in the summer.

Q. And also the winter season of 1922-'23 did you live there? A. Well, I was there 1922, I think in the summer of 1923 I was there in the summer and part of—mostly the whole winter.

Q. You know Mr. Sykes? A. I ought to.

Q. You and he roomed together, did you not? A. Yes, sir.

Q. In what room? A. Number ten; and previous to that we roomed in Mr. Norton's room when Mr. and Mrs. Norton was away. That is on the ground floor off the reception room.

Q. Whose is on the reception room? A. Mr. Norton's room.

Q. You and Mr. Sykes roomed in that together? A. First, before we went up to number ten on the second floor.

Q. And you went up to number ten when the Nortons came for the season? A. Came.

Q. You say ten is on the second floor? A. Yes; second floor.

Q. Or third floor? A. Third floor, that is right. I almost forgot myself. Third floor.

Q. Do you know when Mr. Sykes left the hotel? A. When she left?

Q. When Mr. Sykes left. A. What year?

THE COURT: Do you know when he left —the date?

THE WITNESS: Oh, when he went away that time?

THE COURT: Yes.

THE WITNESS: Not the date, but I know it was around the middle of February, 1923.

Q. Were you rooming with him at that time? A. That is the time I was rooming with him, before he went away.

Q. How long did you continue then to live at

the house after that? A. I think it was along in March; I went up to Long Branch then.

Q. Did you see Mr. Sykes back at the house while you were there? A. No, sir; I haven't seen him until today since that time.

Q. You say you went to Long Branch in March? A. Yes; March.

Q. Did you return to Mrs. Sykes's house afterwards? A. Not during the sumer.

THE COURT: Well, did you return?

THE WTINESS: Yes; I returned.

THE COURT: Well, when did you return?

THE WITNESS: In July, I think it was.

THE COURT: And then how long did you stay?

THE WITNESS: I stayed there until January 19th, when I went to Florida, in 1924.

THE COURT: And then when did you come back?

THE WITNESS: I came back in March.

THE COURT: 1924?

THE WITNESS: 18th or 19th, 1924.

THE COURT: How long did you stay then?

THE WITNESS: A week or two, and then I went back to Long Branch.

THE COURT: How long did you stay in Long Branch?

THE WITNESS: All summer—or all spring and summer.

THE COURT: What time did you get back to Lakewood?

THE WITNESS: About July, some time during July.

THE COURT: And then how long did you stay there?

THE WITNESS: Until spring, I think it was.

THE COURT: Until the following spring?

THE WITNESS: Following spring.

Q. You say you have never seen Mr. Sykes since he left in February? A. 1923.

Q. Did you have any conversation with him or he with you, about his departure? A. No, sir; not that I remember; nothing whatever.

Q. Did he tell you he was going? A. No.

Q. Did he tell you he was going away at all? A. No; I didn't know he was going away; I didn't know he had gone until after he had gone.

Q. Did he communicate with you after he went? A. No; I don't think so.

Q. You say you don't think so. Do you know whether he did or not? A. I am not sure. One time he said whether I got the letter and if not, I don't know now, about some music he wanted shipped to him. He wanted to know if I would pack it up. Whether the letter was sent to me or Mrs. Sykes I have forgotten now, but I know I packed the music up and sent it to him, but I think it was Tarrytown.

Q. Where was Mrs. Sykes rooming while you and Mr. Sykes occupied number ten? A. Same room she has always occupied since she has been in that house, from what I understand.

Q. That is the room on the first floor? A. First floor.

CROSS EXAMINATION BY MR. TARTALSKY:

Q. How long did you and Mr. Sykes occupy the same room? A. Oh, I don't know; several weeks in Mr. Norton's room. That was in the summer.

Q. Was it only in summer? A. And then when Mr. and Mrs. Norton came home, in October, I think it was, we went up to number ten on the top floor together.

Q. For how long a period of time did you and Mr. Sykes occupy the same room, taking into consideration the room on the first floor and third floor? A. Two or three weeks.

Q. No, no.

THE COURT: Now, you say Mr. Norton came back in October and you left in March and Mr. Sykes left in February. Did you occupy room number ten in that period from October until February?

THE WITNESS: Yes; that is the only room.

THE COURT: Well, did you and Mr. Sykes room together during that period?

THE WITNESS: Roomed together; twin beds. We had had a bed.

THE COURT: How long previous to that did you occupy the room—previous to that on the first floor that Mr. Norton occupies now?

THE WITNESS: During the biggest part of the summer. The time I went there I don't remember exactly, in July.

THE COURT: Then that means from

somewhere in the summer of 1922 until February, 1923, you and Mr. Sykes roomed together?

THE WITNESS: Yes, sir.

Q. Do you know how that came about—how it came about that you and Mr. Sykes occupied the same room? A. No; I do not.

Q. Didn't you ask why? A. No; I did not.

Q. Didn't ask your sister why either? A. No.

Q. Did they have any trouble that caused this change?

MR. EWART: He said he didn't know.

A. If they did, I didn't know anything about that. That didn't interest me, whatever it was.

Q. Well, wasn't it change enough for you to ask why it should come about? A. Well, I wasn't as inquisitive as some people, see?

Q. Didn't Mr. Sykes tell you he was going to North Tarrytown to work? A. Not that I remember.

Q. Weren't you there when he was packing his music? A. What?

Q. Weren't you there when he was packing his music? A. Pack what?

THE COURT: His music?

THE WITNESS: Oh, I packed the music myself after he had gone away, and sent him some music.

Q. Didn't he take some of the music when he left? A. I don't know. If he did, I didn't know of it. In fact, I didn't see him go, just what time he went, the day or hour.

WILLIAM C. MULLER, produced as a witness on behalf of the petitioner, being duly sworn according to law, on his oath testified as follows:

DIRECT EXAMINATION BY MR. EWART:

Q. You live in Lakewood? A. I do.

Q. And are the Police Recorder there? A. I am.

Q. Do you know Mr. and Mrs. Sykes? A. I do.

Q. Ever live in their house? A. Yes, sir.

Q. When? A. I lived in the house on Fifth Street from July, 1916 until February, 1917, and I left then for California and returned May 20th, of that same year, 1917, and lived there until July 3rd, 1918, about 22 months altogether.

Q. You are a married man? A. I am married.

Q. Your wife lived there with you? A. No; my wife and children were in California at the time, and that was my reason I was boarding at Mrs. Sykes's, at the Pinemere.

Q. You knew Mrs. Sykes before that, and Mr. Sykes? A. I have known them for thirty years.

Q. Since 1918, July 3rd, when you ceased living at the Fifth Street house, have you had occasion to visit the Sykes house? A. On Second Street?

Q. Yes. A. Yes; very often.

Q. That is where they live now? A. Yes; very often.

Q. What would take you there? A. Well——

Q. Ever take meals there? A. I take meals there; invited around to dinner, attended birthday parties— her mother—and also went there to transact business with Mrs. Sykes.

Q. What sort of business? A. Painting and decorating; I am in that business also.

Q. At the Sykes house? A. At the Sykes house.

Q. Did you ever see Mr. Sykes there? A. Not since 1923.

Q. Have you seen Mr. Sykes at all since 1923? A. Only when I saw him here this morning.

Q. Well, during and since 1923, how frequently would you be at the Sykes house? A. Well, I should say on an average of four times a

Q. Which is once a week, practically? A. Yes. month.

Q. You and Mrs. Muller take your meals there? A. We take Sunday dinners there and sometimes during the week.

Q. Prior to 1923 you saw Mr. Sykes around there? A. Yes; I did.

Q. Did you ever have any conversation with Mr. Sykes concerning the dispute between him and Mrs. Sykes? A. Yes.

Q. When? A. In the latter part of January, 1923.

Q. And where? A. On the corner of Second Street and Clifton Avenue.

Q. Tell us what the conversation was and what happened? A. Mr. Sykes, he started to tell me a tale of woe and to find fault with his wife and her actions with a Mr. Chamberlain, and he made statements that I resented, knowing Mrs. Sykes as I have for the last thirty years, and especially having lived in her house for practically two years. And he found fault because Mr.

Chamberlain was allowed to use Mrs. Sykes's bathroom. I told Mr. Sykes at the time, I said, "Mr. Sykes, you are very foolish," I said, "to suspect Mrs. Sykes of any wrongdoing, just simply because Mr. Chamberlain uses the bathroom," I said, " that is the only bathroom I use when I go around there, and you know how it was up in the Fifth Street house", I said "You know that your wife's success as a boardinghouse keeper is due to her friendly manner toward the guests in the house."

Q. Can you describe to us, Mr. Muller just what you mean by that friendly manner towards guests. A. Anybody that stops at the Pinemere, they are not there a week but what they feel that they are one of the family. There is that homey atmosphere about it.

Q. Well, is Mrs. Sykes given to being friendly with her guests? A. Very friendly indeed.

Q. Talking with them, joking with them, things of that—— A. Very friendly. It was nothing when I stopped there— why, in the Fifth Street house very often the bunch of us, the guests, would go into Mrs. Sykes's bedroom and she would have the Victrola, and we would stay there for an hour or two, chat and talk, and she would give parties for the different guests. If she heard that the guests had a birthday, she would get up a little party for them——

THE COURT: This is all a matter of rebuttal, I should imagine—this part of it —and I don't think you have been put on your defense as to that question anyway. Of course, it has been brought out, but it is a matter of rebuttal.

MR. EWART: That is perfectly true.

THE COURT: What I am particularly interested in is this conversation between Mr. Muller and Mr. Sykes.

THE WITNESS: Well, he found fault with Mrs. Sykes because he claimed she was too friendly with Mr. Chamberlain.

Q. Do you know Mr. Chamberlain? A. I do.

Q. Did you ever see any impropriety in the conduct of Mrs. Sykes towards Mr. Chamberlain? A. Never; and her actions toward Mr. Chamberlain, as I saw them, were no different than her actions toward me when I was at the Fifth Street house. Very often I would be asked to do little errands, or something about the house and I would do it.

CROSS EXAMINTION BY MR. TARTALSKY:

Q. At this conversation, Mr. Muller, you don't recall saying to Mr. Sykes, referring to Chamberlain, "I would kick him out"? A. I never made that remark.

Q. Do you know where Mr. Sykes went? A. No; I do not.

RE-DIRECT EXAMINATION BY MR. EWART:

Q. What was the feeling between you and Mr. Sykes when you parted? A. He got sore at me because I wouldn't take his part.

(At this time the taking of testimony was adjourned until 2:00 P. M.)

MR. EWART: Petitioner rests.

PETITIONER RESTS.

THE CASE FOR THE DEFENDANT.

LUTHER H. SYKES, the defendant, being duly sworn according to law, testified as foollows:

DIRECT EXAMINATION BY MR. TARTALSKY:

Q. Mr. Sykes, how old are you? A. Sixty-two last June; first of June, last June.

Q. And you have been married about thirty-one years? A. Yes; married 1925. Yes, married 1905, November 14th.

THE COURT: You mean 1895?

THE WITNESS: 1895, that is it.

Q. And your son died in 1918? A. Yes.

Q. And you lived in Lakewood with your wife? A. I did.

Q. Now, in or about February, 1923, were you living in Lakewood? A. Up until February fourteenth when I went to Tarrytown to work.

Q. Where had you been employed before you went to Tarrytown? A. The summer before that I was in Ferber's Theater.

Q. Where was Ferber's Theater? A. Ferber's Theater in Lakewood.

Q. How long had you worked there? A. I worked there all summer.

Q. What is your occupation? A. I am a musician by profession.

Q. How long have you been a musician? A. All my life.

Q. And as a musician, what instruments do you play, or what kind of work do you do? A. Well, I—principally piano.

Q. Well, I mean where? Do you give concerts in the Metropolitan Opera House? A. No; I play in the moving picture house.

Q. Had you done that for a number of years? A. Yes; off and on ever since pictures.

Q. So that the employment you had prior to Tarrytown was at Ferber's in Lakewood, is that right? A. Yes.

Q. Now, how long were you out of employment before you got the job in Tarrytown? A. Oh, I was in Freehold before that, and the theater caught fire the first of April, and then I went on the road with Virginia Pearson for five or six weeks. That led up to sometime in May. Then I came home to Lakewood.

Q. May, 1925? A. 1922.

Q. Then you got employment in Ferber's Theater? A. Ferber's Theater. I went in there substitute for a man.

Q. How long were you out of employment prior to February, 1923? Before you got a job in Tarrytown how long were you out of work? A. I wasn't out of work, I was—just for five weeks—I went to New Brunswick and I played the rehearsal and matinee and I fell and I sprained my left hand, and it was in splints for five weeks. Then when I was able to use it, I went to Tarrytown.

Q. Could you have had a position in Lakewood or New Brunswick? A. New Brunswick I went there for a position; but there wasn't anything for me in Lakewood.

Q. So what kind of employment did you get in Tarrytown? A. In the theater.

Q. Did you tell your wife that you were going to Tarrytown? A. I told her I was going to New York on a Wednesday morning. I told her that I was going to New York. She came out on the piazza—when I was going to return—I said "Good bye, Carrie" She said, "I hope you never return." I said, "If the good Lord spares me I will be back."

Q. Did you come back? A. On Friday, packed up my music, stayed over there that night, said I had a job in North Tarrytown, and I left Saturday morning.

Q. Did your wife object to your leaving? A. Not at all; she was perfectly willing for me to go.

Q. Now, you and your wife didn't occupy the same room or cohabit as husband and wife for sometime prior to February, 1923? A. Not since June, 1922.

Q. Since June, 1922, with whom were you rooming? A. With my wife.

THE COURT: No; since?

THE WITNESS: Oh, since.

Q. Since June, 1922, with whom did you occupy a room? Did you have a room alone, or were you with anybody else? A. Up to June I was with Mrs. Sykes.

Q. After June? A. After then I roomed with my brother-in-law.

Q. And at whose instance did you room with your brother-in-law? A. Mrs. Sykes's. Mrs. Sykes said—this was in June—she said the weather was so warm; she asked me if I wouldn't

occupy another room, it was too warm. There was a double bed in our room, and I said, "To please you I will," and she gave me the room with her brother.

Q. After that time did you ever ask her to occupy the room with her? A. Why, she got so that she would ignore me.

Q. Now, when did this come about?

THE COURT: Answer the question.

A. No; because in the summer, the warm weather, Mrs. Sykes——

Q. Before that time was there anything that occurred which created a change, if any, in her attitude towards you? Was her attitude the same towards you, or did anything happen which changed—— A. Mr. Chamberlain came in between us.

Q. When did he come into the house? A. He came in along about May, I think it was.

Q. 1922? A. Yes; 1922, May.

Q. Just tell the Court what occurred? A. Well, Mrs. Sykes said she wanted to bring him in because his wife had died and she wanted to bring him in for a boarder; she felt sorry for him and she wanted him to come in the house, and, of course, at the time there was no objection on my part because everything was all right, as far as I could see. After he came in the house Mrs. Sykes began quietly to ignore me.

Q. What did she do? Tell the Court so we know what you mean? A. Well, she would speak any more than say "good morning" or "good evening" at the table. All her conversation was

addressed to Chamberlain. She played cards with the party and I was left out. She would go on the 'shore over to Point Pleasant and different places, for instance, going to Point Pleasant for bathing. She would go with Mr. Chamberlain and wouldn't say a word to me about it. Then I protested a few times, but I saw it didn't amount to much.

Q. Did anything else occur while Mr. Chamberlain was in the house? A. Yes; Mr. Chamberlain went in our room. I saw him going in to occupy her private bath. When I roomed there nobody occupied it but just the family, and I told him that I would like him to keep out of the bath, out of the rooms.

Q. Did anything occur after that? A. Yes. I found him in the room there. I said, "William, I have asked you on two different occasions to keep out of this room. Now, if you don't keep out I will put you out. Keep out and save me the trouble of putting you out."

Q. Did he stay out? A. As far as I know.

Q. At that time you continued to live with your wife? A. No. That is, while—that occurred in July. I was rooming alone then just with my brother-in-law.

Q. Were there any changes made in the room of your wife, or the door leading to her room, at any time in 1922? A. Mrs.——

Q. Could you get into her room? A. When I put him out then my mother-in-law refused to speak to me. Then Mrs. Sykes had a latch put on her door so I couldn't enter when she was in there. Every time she would go in she would

put this latch on so I couldn't enter the room while she was in there.

Q. Did you have any conversation with your wife about it? A. I said—I spoke to her about it but she kind of—sort of shrugged her shoulders and that is all; she wouldn't do anything about it.

Q. Now, did you, after June of 1922, did you attend any parties or go to any affairs with your wife, or would you go along alone? A. Two or three times I asked her to go to the theater, being employed in the theater there. She said she wouldn't go alone. I said, "I will come home between the shows and take you. Then she said she wouldn't sit alone. On one occasion I asked her if she wouldn't go see a play called "Shuffle Along." She said she would let we know later on. About six o'clock I asked her. She said no, she decided she would go riding. She wouldn't be present in the theater, of course, alone, because I worked there.

Q. Your work was at night? A. Well, it was at night during that summer.

Q. Were you present in or about July, 1922, when Mr. Chamberlain was going on a trip for huckleberries? Do you recall that? A. Yes.

Q. Tell the Court what happened on that occasion? A. Mr. Chamberlain's car was under the porte cochere and he just got in the car, and Mrs. Sykes stood there, and I came in by the door there. When he parted Mrs. Sykes just put her hand this way (indicating) I said "Is it necessary to throw him kisses?" She didn't make any reply and I didn't say anything more.

Q. Now, after that did your wife's attitude toward you become friendly, or colder, or what was it? A. After I put Chamberlain out of the room, of course she became very cold like ice. She didn't have anything to say to me any more in the morning. She wouldn't kiss me, she wouldn't shake hands with me.

Q. Still you occupied—— A. I occupied a room with her brother at her request. I have never spoken unkindly to Mrs. Sykes, never been cross to her, never used profanity; she never heard me even say the word "damn" all the years

Q. Now, do you recall the occasion of your we have been married.

son's birthday in 1922, the anniversary of your son's birthday? A. Yes.

Q. What occurred on that day? A. I was working in the Free Press, Lakewood Free Press, and I worked all night, it was Tuesday night, to get the paper out. I was bookkeeper there, and I hurried home. I worked until eleven o'clock and I hurried home and I dressed and I went to the church, and Mrs. Sykes was in the pew. I got there quarter past eleven and I sat in the pew with Mrs. Sykes, alongside of her, in the Episcopal Church, a half block from our house. I said my prayers, a Litany with her, and after service, there was a wreath on the altar. I knew it was for the boy. I said, "Carrie, do you wish me to carry the wreath over to the house?" She said, "No; I am not going back, I am going to wait for the automobile." So I said to her, "You had better let me carry it." No, she wouldn't, so I said, "Come over to the house with me."

She refused to walk to the house with me and when I got home there I sat on the piazza and the telephone rang and I went to it and it was the minister's wife. She said, "Please tell"——

Q. You can't tell what happened over the 'phone. A. I was only going to tell why——

Q. You can't tell. Well, did you talk to your wife during this time about this attitude that you explained? A. If I would speak to her she would walk away from me; she didn't want anything to do with me; she ignored me.

Q. Did you say anything to her about it? A. I had spoken to her about it.

Q. What was her answer? A. I spoke to her at the church about her attitude.

Q. What was her answer to you and the conversations that you had and the protests that you made? A. She wouldn't say anything to me; she would walk away from me.

Q. Now, was it unusual for you to work out of town? A. Yes; I would get positions out of town.

Q. I say was it unusual for you to work out of town? Did you ever work out of town before? A. Yes.

Q. Frequently? A. Very often. When I was in the public schools in Lakewood, I taught music there for eleven years. Somehow politicians got hold of it and put me out, and I went and got a position in New York, and I was away a year, and I would come home Friday nights and leave Sunday nights.

Q. While you were in Tarrytown did you write any letters to her? A. When I first went to

Tarrytown I wrote some letters to her but she never replied to them. Never once——she wrote me about the music, but when I would write home for anything she had her brother answer the letters; she wouldn't answer me at all,—wouldn't answer my letters.

Q. Did you have any intention of deserting your wife? A. I didn't. I left to go to work and I told her I was going to get a position and she was perfectly willing. It was given out first that Virginia Pearson was going—one time that Virginia Pearson was going to go to California. Mrs. Sykes was perfectly willing for me to go to California. She wanted me out of the way.

Q. Did she tell you that? A. She told me she didn't want me to come back again; hoped I wouldn't come back when I went away.

Q. Now, you came back on two occasions, didn't you? A. I did.

Q. And did your wife greet you then? A. No; she just merely said to me "hello."

Q. Did you ask to have a room separate and apart from her? A. When I came in she said to Etta—Mrs. Lane testified here—she said, "Etta, prepare a room for Mr. Sykes." She didn't know whether I was going to stay all night or not.

Q. Where was that room, with Mrs. Sykes? A. No, no. The last time was room number three on the second floor. That was July, 1924.

Q. Did you have any conversation with her on either of these two occasions when you came home? A. Mrs. Sykes would walk away from me; she wouldn't talk to me, wouldn't even talk to me at the table; all her conversation was ad-

dressed to Mr. Chamberlain, even when I talked then.

Q. Something mentioned here about a girl Violet; who was that and what was the occasion or circumstances under which she came to the hotel? A. Oh, her name was Wallace. She was secretary—I was studying in a school in New York called Standard Player Action where they taught musicians the intricate parts of player pianos, and I went to this school to learn about player pianos for our tuners and salesmen,—It was a gratis school, and there was a principal by the name of Milton L. Cheek. This young lady was stenographer in this school; she was employed—the school was supported by the Standard Pneumatic Action Company, Fifty-first Street and Twelfth Avenue, that is where it was, New York. That is where the Pneumatic Action Company is, so of course, this young lady was very pleasant to everybody in school because she was private secretary there, and I was talking with Mr. Cheek, and he was speaking about her, how sorry he felt about her——

Q. As a result of the conversation that you had did this girl go to your house, or did you bring here there? A. I said to Mr. Cheek——

Q. You can't tell what you said to Mr. Cheek. As a result of the conversation that you had with Mr. Cheek did this girl go to your house, or to the hotel with you, or for what purpose? A. I asked Mrs. Sykes about it. Mrs. Sykes said it——

Q. What did you ask Mrs. Sykes? A. If I could bring the girl down for a few days. I told

her she was the secretary. Mrs. Sykes said, "Yes," and I was working at Nyack at the time and I came home Sundays.

Q. Was the girl in good health or poor health? A. The girl was tired out from work, Mr. Cheek told me.

Q. Did you tell your wife of the conversation that you had with Mr. Cheek? A. Yes.

Q. What did you tell your wife and what did she say to you? A. I told her just what Mr. Cheek told me.

Q. What did you tell your wife? A. That this young lady was the secretary in the school.

Q. Did you tell her anything else? Did you tell her why she was coming down? A. Yes.

Q. Tell the Court what you said to your wife? A. I told her the young lady was coming down for a rest, and I had spoken to Mr. Cheek about it, and she said all right, and I brought the young lady down with me on a Sunday morning, and I left on Monday morning, and the young lady remained, I think, until Thursday.

Q. How old was this girl? A. I imagine she must have been twenty-one, twenty-two.

Q. Did you have any relations with this girl? A. Not at all; no, sir.

Q. Now, there was a letter introduced here, a letter marked Exhibit P-4, which is in your handwriting. Do you recall that letter and the circumstances under which that came into the possession of Mrs. Sykes? A. Yes; that is my handwriting.

Q. Will you tell the Court under what circumstances Mrs. Sykes got that? A. I was working—this man was violin player at Nyack at the time and he was an Italian fellow, and he couldn't write English, and he asked me if I would write a letter to the——

Q. To whom? A. To this young lady. So I just wrote it out for him.

Q. How did it come—— A. Why, I wrote this letter and I wrote one for Mrs. Sykes, and I put this one—happened to get in the envelope to Mrs. Sykes, and then when I discovered my mistake I wrote and told her the circumstances, that the letter had gotten in by mistake and I sent her the letter that I had written.

Q. Now, do you know anybody in Bound Brook? A. I have worked in Bound Brook.

Q. Did you know any girl there? Were you addressing any letter to a girl in Bound Brook? A. Not to my own girl; not anyone that I know.

Q. When this letter says here, "I am feeling fine"—— A. He asked me to write a letter for him and I wrote the letter for him.

Q. It says, "Lots of love and kisses for your dear sweet self, mother, sister." What sister, mother and children were you referring to? A. He told me that is the family of this girl. He was keeping company with this girl and he was working with me, so he asked me to write a letter for him because he couldn't write English. I told Mrs. Sykes at the time, and I said to her, "If you feel that way about it I will have the thing straightened out for you," but she didn't ask me to. That was the time to have done it then when I offered to straighten the matter out for her satisfaction.

Q. That was two years before the separation? A. Yes; and I offered to straighten the matter out for her. I know pretty much what I am doing, because I don't even know the taste of alcohol or tobacco, so I don't do a thing under any wrong influence.

CROSS EXAMINATION BY MR. EWART:

Q. How did you discover your mistake, Mr. Sykes, in directing this letter to your wife? A. I saw the letter on the table in my room; the letter on the table in my room.

Q. Is that when you discovered the mistake? A. Yes.

Q. Where was your room? A. I was rooming in Nyack in the house there on, I think, First Avenue.

Q. How did that show you your mistake? A. I knew I mailed a letter to Mrs. Sykes and Mrs. Sykes's letter was on the table.

Q. What was this Italian's name? A. I couldn't tell you. We always called him Joe. I heard since that he has died.

Q. He has died since? A. Yes; it was told me in New York that he had died.

Q. Did you and he rooom together? A. We were in the same house; not the same room, in the same house.

Q. Did you write any other letters for him? A. Yes; I had written other letters for him.

Q. The same kind of letters as this? A. Yes; he asked me to write letters because he couldn't write English.

Q. Did he dictate the letters? A. No; he said to me, "Write." I said, "What do you want?" He said, "Well, I can't tell you, explain really so much in English, but you just write a letter just as—you know how to write one in English."

Q. So you did know how to write one and you wrote it for him? A. Yes.

Q. This was your own composition? A. No, sir; any more than it is for him, but it wasn't my letter to a girl.

Q. But it was your expressions that you used, he didn't dictate it, you say? A. He couldn't dictate it. He wasn't well enough educated to dictate.

Q. So you put the thing into words for him? A. Yes; I certainly did; I can't deny that.

Q. What does this mean, "Oh you Mabie"? A. He used to call her Mabie.

Q. Why didn't you sign his name to it? A. I couldn't spell his name.

Q. Couldn't you spell Joe? A. Yes; I can spell Joe.

Q. Why didn't you sign Joe to it? A. That is the name he always told me to put down, Mabie.

Q. That was his name and not hers? A. No.

Q. I thought you said it was her name? A. That name I don't know what it means in Italian, but he always used the word Mabie. I can't tell you what it means in Italian.

Q. Was it his name, do you understand? A. No; he always told me to put down Mabie.

Q. How did he spell Mabie? A. M-a-b-i-e.

Q. That was her name, was it? A. I don't know what her name was.

Q. Well, it wasn't his name, was it? A. No; he always used that word when I asked him. Then he asked me to use that word Mabie.

Q. Why didn't you sign his name to it? A. Because I had signed other letters the same way for him.

Q. But it wasn't his name, you understood that? A. I knew that wasn't his name.

Q. You generally sign your name to letters you write, don't you? A. Yes, sir.

Q. You know it is customary to sign a name to a letter, don't you? A. Yes; I always sign my name when I write a letter. I might not use my Christian name, I might use my initials.

Q. You didn't think it was necessary to sign his name to this letter that you wrote for him? A. I never signed his name. I just told you I have written several letters for him.

Q. What does "B. B." mean? A. Bound Brook.

Q. What did he mean by the expression in quotations "You can picture poor me"? A. Why, he was working. He was going to play a wedding.

Q. Did you play at the wedding? A. I played at the wedding, New York.

Q. This same wedding? A. I don't know whether I played that one or not. I remember I played a wedding Sunday night and I wrote Mrs. Sykes I wouldn't be home that Sunday because I had a wedding to play in New York, and I would be home the following Sunday.

Q. Did you ever write any other love letters for anybody else? A. I am not in the habit of writing love letters. I only wrote Mrs. Sykes.

Q. This was a new experience for you, was it?

A. What do you mean, a new experience?

Q. You are not in the habit of composing love letters, this was a new experience for you? A. Oh, I have written many love letters to Mrs. Sykes.

Q. But not for other people? A. For that young man, that is all.

Q. How many did you write for him? A. Oh, possibly four or five.

Q. Was this the first or the last? A. That was the last one I wrote for him.

Q. Did you address the envelopes for him? A. Yes, because he couldn't write English.

Q. Who did you address them to? A. I don't remember. It was an Italian name; I couldn't recall the name.

Q. You knew the lady's name then when you were writing the letters? A. I had the name written out; I couldn't even spell it.

Q. You had the name before you at that time? A. Yes.

Q. You must have had it before you or you couldn't have addressed the letter? A. I couldn't remember the name; I couldn't even spell it.

Q. Then why didn't you use the name in the letter? A. Well, I don't know why, any more than just writing the letter offhanded.

BY THE COURT:

Q. Now, you start this out "My dear darling lovely sweetheart and daughter." A. Yes; may be so.

Q. Now, it takes two lines to write all that clear across the page. Would it have been more

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difficult for you to have written the lady's name at the beginning of the letter than it was for you to write those two lines? A. No, I thought, "Here, I will make the letter for him,"—which was a love letter,—make it just as well as I could for him, you see? If I had written the lady's name I would consider it as though almost a formal letter. A. I wrote it just as though I thought I would write it because he expressed to me he would like to have the letter written.

Q. But not his dictation? A. No; he couldn't dictate it to me.

Q. Could he talk English very well? A. Not very well, no.

Q. You had to imagine a lot what he wanted to say? A. I put down as he tried to express it to me what he would like to have said.

Q. Did he tell you to put up in the corner here, "I love you, my darling"? A. May I see that?

Q. I guess it is the same handwriting. It looks like it. Did he tell you to put that in? A. I guess that is my handwriting.

Q. Well, did he tell you to put it in? A. Yes; what is in there he expressed me——

Q. Why did you put it up in the corner of the letter instead of in the body. A. After I wrote the letter I read it to him, tried to explain it to him.

Q. Why didn't you put it down at the bottom? A. I was through with the letter. Then he asked me to put that in and I just naturally put it across the top. I offered to straighten the matter out for Mrs. Sykes when she had the letter.

Q. How were you going to straighten it out? A. I told her I would bring the man to her.

Q. How soon after you had written the letter did you talk to her about it? A. When I came home. I stayed there one or two days; afterwards I found the letter and explained it to her, and then when I came home on Sunday I talked to her about it.

Q. Did she tell you that she believed your explanation? A. At the time she didn't complain about it.

Q. You didn't think it important enough to bring this Italian musician down there to explain to her? A. I offered to explain it to her but she didn't ask me to do it. She didn't press me to do it. I felt as though I offered to do it and straighten the matter out if she had any doubts about it.

Q. Were the other letters that you wrote similar in form to this? A. Something on the style of that, as he explained to me.

CROSS EXAMINATION (continued) BY MR. EWART:

Q. Mrs. Sykes wrote to you about this matter? A. No; she spoke to me about it when I came home Sunday.

Q. Did you come home the following Sunday? A. Yes.

Q. Then why did you write to her about it? A. I sent her the letter and told her I had made a mistake.

Q. You mean you wrote to her between the time you sent this letter and the following Sun-

day? A. No; there was two letters on that table.

Q. You said on your direct examination that when you discovered your mistake, you wrote and told Mrs. Sykes?

MR. TARTALSKY: He said he had two letters.

A. Her other letter, I mean. I sent her the other letter and told her I had made the mistake in the letter, and I would explain to her Sunday all about it.

Q. As a matter of fact, wasn't it after she wrote and spoke to you about it that you first made explanation of it? A. No, sir; I was home on the following Sunday.

BY THE COURT:

Q. What do you mean "following Sunday?" This was written when? What day of the week, do you know? A. No; I couldn't tell you. I can't recall that. I can't tell you just what week.

Q. The date is what?

MR. EWART: June 18th, Nyack, New York.

A. I came home every two weeks from Nyack, if I remember.

MR. EWART: 1921?

THE WITNESS: I came home every two weeks from Nyack.

Q. Now, you say that it was the Sunday after you wrote the letter—— A. When I say "the Sunday after" was the time I came home every

two weeks. I don't remember whether it was just that following Sunday or the Sunday afterwards.

Q. Well, did you have any communication with your wife with reference to this letter between the time you wrote it and the first time you went home after you had written? A. I can't recall that; I don't remember that at all.

Q. Now, you said a few moments ago that after you had written this letter you mailed it and then discovered that the letter which you had written your wife at the same time was still on your desk? A. Yes.

Q. And you also said that you then mailed that and told her that you had made the mistake in sending that letter to her? A. Yes; I did tell her.

Q. Now, had you finished the letter to your wife which you had failed to mail? A. Yes.

Q. Well, what did you do then, did you put on a postscript to your letter and explain about the letter which you had sent her? A. I don't know whether I put it on the same letter or whether it was an extra piece of paper; I am not sure.

Q. It was either one or the other? A. Yes.

Q. You didn't write a whole new letter to her explaining it? A. No.

CROSS EXAMINATION (cntinued, BY MR. EWART:

Q. Then you had finished your letter when you discovered your mistake? A. Yes.

Q. Did you write your both letters at the same

time? A. While I was sitting at the table there. Then——

Q. Did you write both letters at the same time? A. When I was sitting at the table. One would have to be after the other.

Q. On that same occasion at the same sitting? A. When I was sitting there at the table.

Q. You did? A. Yes.

Q. Then you went out and mailed one of them? A. One of the men called me about some music, and I stopped writing, and I went and looked through the music on the table, and that is how the letter got mixed up.

Q. You say you were acquainted in Bound Brook? A. I have worked in Bound Brook one time.

THE COURT: Did you use the same pen and ink with which to write both letters?

THE WITNESS: Yes.

Q. I show you envelope postmarked, "New York, N. Y., February 18, 2 P. M., 1921," addressed "Professor L. H. Sykes, No. 424 Second Street, Lakewood, N. J.," with return address, "Ampico Music Company" in the corner. And the letter contained therein, dated "2/18/21 N. Y. C. Dear Mr. Sykes: Won't you tell me where you are located and why you——

MR. TARTALSKY: Show it to him.

THE COURT: Don't read it in evidence.

Q. Can you tell me who that letter is from? A. May I read it first?

Q. Surely (hands letter to witness).

THE WITNESS: Excuse me, Judge.

A. What name is signed to it?

Q. It is another one of those letters that has no name signed to it. You read it and perhaps you can identify it. A. I can't tell that—whoever C. C. Bower—it says, "Do you know is it C. C.Brower"?

Q. I am asking you to identify the letter? A. I don't know anything about this letter.

THE COURT: Do you know the handwriting?

THE WITNESS: No; I don't know the handwriting even.

THE COURT: Did you ever receive the letter?

THE WITNESS: No, sir; I never saw it until just now. Oh, those things can very easily happen, because I remember——

Q. You haven't finished the letter yet. Maybe you can identify the writer if you read it all through? A. That is a mystery to me.

Q. You don't know who the person is who wrote that letter? A. No; I don't know, sir.

THE COURT: Wasn't there a return address on that envelope?

MR. EWART: Yes; Ampico Music Company.

Q. This young lady you say you brought to Lakewood, was Miss Violet Wallace? A. Wallace.

Q. When did you first become acquainted with her? A. Oh, I couldn't recall that time. I was working in New Brunswick at the time, and went back to school. I had been to school for two years and then I went back again. It must have been along about 'seventeen.

Q. You wrote numerous letters to her, did you not? A. No; nothing of great importance, anyway.

Q. I didn't ask you of how much importance it was. You did write numerous letters to her? A. I guess I wrote two or three letters to her.

Q. A good many more than that, weren't there? A. No; I don't think so.

Q. You say she was a woman in her twenties? A. I think so; I am not sure; I couldn't tell her age.

Q. Did you talk to her about Mrs. Sykes? A. No; any more than I was going to bring her down there and Mrs. Sykes was perfectly willing.

Q. Did you refer to her as your daughter? A. Oh, I don't know whether I did or not. I can't recall that.

Q. Did you tell her that you were a very rich man, that your boy had died and you were looking for someone to take his place in your home? A. How could I be rich when she knew I was working in the theater? No musician is rich.

Q. And asked her if she would like to be your daughter? A. No, sir.

Q. Did you tell her if Mrs. Sykes didn't want her to stay at the house in Lakewood that you would build a bungalow over on the beach at Point Pleasant for her? A. I couldn't do that.

Q. You didn't? A. I couldn't build it.

THE COURT: No; but did you tell her that?

THE WITNESS: No; I didn't tell her that.

Q. Did you promise to give her a certain allowance per week? A. No, sir; I couldn't do that. I couldn't because I was giving Mrs. Sykes all I made.

Q. How much were you giving Mrs. Sykes? A. All I made. I have always given her all I made. I have never kept anything out; she would even buy a shirt for me; I always gave her everything.

Q. In February, 1923, before you left, how much were you giving her then? A. Mrs. Sykes said I gave her fifteen dollars. That is all the salary I received from the paper. It was a young paper, just starting. Do you remember it, Judge?

Q. Then you went to New York to obtain a position? A. Yes.

Q. How much did you send her when you went to New York? A. I spoke to Lawyer Stout when Mrs. Sykes refused to cohabit with me and he told me not to give her any money.

Q. You had sent her money? A. I sent her a few dollars.

Q. How much? A. Oh, I occasionally sent her five dollars.

Q. Five dollars a month? A. I don't know; Mrs. Sykes said so, but I don't know.

Q. You wouldn't deny that is the fact? A. I admit I did send her a few dollars.

Q. When did you discontinue? A. Mrs. Sykes wouldn't answer my letters.

Q. When did you discontinue sending her the money? A. Oh, if I had five dollars to spare I felt as though I would like to send it to Mrs. Sykes.

Q. Are you still sending it to her? A. No, sir.

Q. When did you stop? A. I couldn't tell you that.

Q. You are not still sending it to her? A. No, sir; I am not.

Q. When did you stop sending it? A. It must have been in the summer of 1923, somewhere along there.

Q. Are you still friendly with this young lady, Miss Wallace? A. No; I don't know where she is. I never saw her.

Q. Did she threaten to have you arrested? A. No, sir.

Q. She didn't? A. No, sir. May I speak to my counsel just a moment?

THE COURT: No; you just answer the questions.

Q. Do you remember the controversy you had with Mrs. Sykes in the Fifth Street house about the maid she had at that time? A. We have had quite a few. Mrs. Sykes was always jealous. If I would go out to give lessons she always found fault.

Q. Did she find you coming out of the maid's room that morning? A. No, sir; she did not.

Q. Didn't have any controversy? A. Mrs.

Sykes used to rave once in a while about things that never did happen.

THE COURT: Answer the question. Did she have any controversy with you about your coming out of the maid's room?

THE WITNESS: Mrs.——

THE COURT: Did she or did she not?

THE WITNESS: I didn't come out of her room, sir.

THE COURT: That isn't what I asked you. Did she have any controversy with you about your coming out of the maid's room?

THE WITNESS: Mrs. Sykes thought I did; she accused me of it, but I didn't do it.

THE COURT: You did have a controversy about it?

THE WITNESS: Yes; Mrs. Sykes—yes. I didn't say anything to Mrs. Sykes; I never spoke cross or ugly to Mrs. Sykes.

Q. As I understand you, in the summer of 1922, you worked at Ferber's Theatre in Lakewood? A. Yes; the summer.

Q. And you continued working there up until what time? A. October.

Q. Then where did you work after that? A. Then I went to work for the Free Press.

Q. While you were working at Ferber's, how much money did you pay to Mrs. Sykes? A. I paid Mrs. Sykes fifteen dollars.

Q. Was that all you made? A. No; I was making twenty dollars at Ferber's.

Q. Then you don't mean to say you paid Mrs. Sykes all you made; you merely paid board? A. Well, I furnished my own shirts and things; I had to buy my own wearing apparel.

Q. When you didn't have work you didn't pay board, did you? A. No, sir; but when I did work I paid—up to that time in Ferber's I had given Mrs. Sykes everything I made.

Q. You didn't pretend to support Mrs. Sykes? A. I gave her everything I made.

Q. The last ten years before 1923 you didn't pretend to support her? A. I gave her all I made; what more could I do?

Q. That was fifteen dollars a week? A. No; that was only just when I went in Ferber's there, and that was because Mrs. Sykes was so mean to me.

Q. How long did you work at Ferber's? A. For the summer.

Q. Where did you work before that? A. I had been in New Brunswick and I had been in Tarrytown.

Q. How much did you give Mrs. Sykes when you were working in New Brunswick? A. I used to send Mrs. Sykes twenty-five dollars a week, and every week I brought home a big bundle of eatables.

Q. This was every week, was it? A. Yes.

Q. Twenty-five dollars a week regularly? A. Yes.

Q. Over what period of time? A. All the time I was in New Brunswick.

Q. That was your salary there, was it? A.

No; I had to pay my own room rent there and everything.

Q. You don't mean to say you always gave Mrs. Sykes all you made? A. When I was home I did; when I was away I had to keep myself.

THE COURT: How much salary did you get while you were in New Brunswick?

THE WITNESS: I got 32. a week—no; 28. at first and then got $32. a week. That was right after the war started.

Q. Now, when you went away in February, 1923, you didn't know yourself just where you would be when you located work, did you? A. Yes; I knew I was going to Tarrytown.

Q. Didn't you testify that you said you were going to New York to look for work? A. Well, it was only two days before I went to Tarrytown.

Q. When you left Lakewood in February, 1923, you told Mrs. Sykes, you say, you were going to New York to look for work? A. Yes; that was on Wednesday, February 11th.

Q. Did you know where you were going to get work when you went away? A. No.

Q. You couldn't tell her where you were going to be? A. No; that day I didn't because I didn't know, but I came back Wednesday, forty-eight—a few hours afterwards, I came back on Friday the thirteenth and told her I was going to Tarrytown and then sent a trunk, some of my things—some of my music.

Q. Friday the thirteenth of what? A. Thirteenth of February, and I left on the fourteenth of February. I started St. Patrick's day.

Q. That was 1923? A. Yes.

Q. Did you see Mrs. Sykes when you came back? A. Yes, I was at the house Friday night.

Q. What conversation did you have then? A. I told her I had a job in North Tarrytown. She was perfectly willing for me to go; she didn't want me there; she wanted me out of the house because I was in the way of that Chamberlain.

Q. Is that the reason you went away, to comply with her wishes? A. I wanted work. There wasn't anything in Lakewood for me to do.

Q. Did you go away to get work to please her? A. I wanted to get work for myself.

Q. When you got away, you sent her five dollars a month, that is right, isn't it? A. It might have been that.

Q. For about five months, and then you discontinued writing, didn't you? A. Yes.

Q. Where did you see Mrs. Sykes when you went away, at what place in the hotel or house? A. What do you mean?

Q. Did you go to her room, or in the kitchen, or on the porch? A. No; I bid her good-bye Friday night. I left first train on Saturday morning. I said good-bye to her Friday night.

Q. Where? A. In the house.

Q. Whereabouts in the house? A. Pinemere.

Q. Where. Up on the second or third floor, or on the porch—— A. In the parlor, in the reception room.

Q. What did you say to her? A. I told her I was leaving on the first train in the morning. I said good-bye. She walked in her room.

Q. Was it then she said she hoped you would never come back? A. Wednesday morning when I was going to New York.

Q. Where was that? A. I was on the sidewalk and she came out on the piazza. I said to her, 'Good-bye, Carrie." She said, "I hope you never come back."

Q. Who else was there? A. Nobody. She came right out. It was seven o'clock. I left seven, the first train out in the morning, 7:30, or whatever it was.

Q. Now, this Friday night when you bid her good-bye, you say she made no response? A. No.

Q. Who was there beside her? You say that happened in the parlor? A. In the reception room.

Q. Who was there beside her? A. A lot of guests were in the guest room playing cards there.

Q. She wasn't sitting alone in the parlor? A. She was in the reception room. I went upstairs to my room.

Q. Who else were there and heard you? A. I couldn't tell you the names of the guests.

Q. You will have—you know their names? A. Oh, no; I don't know their names.

Q. How long had you lived there before this time? A. Guests coming and going all the time. You go to the hotel, unless it is the clerk, they can't tell you the names of the people.

Q. Were the Nortons in the room at that time, Mr. and Mrs. Norton? A. I can't recollect that.

Q. Can't you recollect any guests that you knew that were there? A. I never went in the

parlor because Mrs. Sykes always ignored me, always had guests, playing cards with Chamberlain; she was teaching him how to play bridge; I was never invited and never taken in at all.

Q. And there were a lot of guests in there? A. In the parlor, which room adjoining—there is

Q. Answer my question. You said you went into the parlor? A. Into the reception rom. two rooms, reception room and parlor.

Q. The people were in there with her? A. Yes.

Q. Can't you recall the names offhand? A. I didn't pay any attention to them. I was downstairs in the storeroom and I came upstairs, so I was going up to my bedroom so I said to her, "I will say good-bye to you because I am going to leave on the first train in the morning."

Q. You say it was in June, 1922, that you and Mrs. Sykes first occupied separate rooms? A. Yes.

Q. And you never asked her after that to resume the same room with you? A. She put a bolt on the door, how could I?

Q. You didn't, did you? A. Why, she put a bolt on the door and wouldn't let me in the room.

Q. Did you? A. I didn't ask her to let me go in the room because if I wanted to go in the room, because the lawyer told me to take an axe and break the door down.

Q. Did you ever ask her to occupy the same room with you again? A. She refused to have anything to do with me.

THE COURT: Answer the question; did you ever ask her?

THE WITNESS: I had asked her before.

THE COURT: Afterwards, he says. The question is after she put the lock on the door did you ever ask her to permit you to occupy the same room with her?

THE WITNESS: No; because she had refused to live with me as my wife. Must you get down on your knees and beg of a woman when she positively refuses?

Q. This bathroom you speak of is on the first floor? A. Yes.

Q. Did you ever see the Nortons use that bathroom? A. No, sir; never; only the family used it when I was there. Nobody used it at all.

Q. Don't you know that the people on the first floor used it? A. No, sir; this was our private apartment.

Q. You didn't have to go in the private apartment to get into the bathroom? A. There never was a door on Mrs. Sykes's room from the hall. There is another door on her room.

Q. You don't have to go through Mrs. Sykes's room to go to the bathroom? A. It was our own private bath.

Q. Did you ever see Miller enter it when he was there? A. No, sir.

Q. Did you ever see Mr. and Mrs. Norton use it? A. No, sir; they always used the one upstairs.

Q. While they were on the first fioor they used the one upstairs? A. Yes.

Luther H. Sykes—Cross.

THE COURT: Is there a door from Mrs. Sykes's bedroom directly into the bathroom? Is there or is there not?

THE WITNESS: No; there is no door on her bedroom——

THE COURT: Then the door from the bathroom enters from what place? Does it go in from the hall?

THE WITNESS: Yes; but it was shut off from the parlor.

Q. It was necessary to go by Mrs. Phillips's bedroom to go to the bath? A. Yes.

THE COURT: Mrs. Phillips's room also opened onto the hall?

THE WITNESS: The door from Mrs. Phillips's room.

THE COURT: Onto the hall or the bathroom?

THE WITNESS: Onto the hall.

THE COURT: Is there any bedroom which opens directly into the bathroom?

THE WITNESS: No, sir; just the hall, that is all. It is a private room.

THE COURT: Well, the bathroom is separate and distinct from any other room?

THE WITNESS: Yes; there is a door that separates.

Q. Mr. Sykes, when you came back in June or July, 1923, that was at the wedding celebration of Le Compte? A. No.

Q. Don't you remember that? A. Yes, sir; that was '24.

Luther H. Sykes—Cross.

Q. Well, you were back in '23 and again in '24? A. Yes; but the wedding celebration was '24—July 18, 1924.

Q. You came back to that? A. No; I didn't know that was taking place. I didn't know that was going to be there.

Q. You arrived very early in the morning, didn't you? A. Yes, sir.

Q. And sat out on the porch? A. Yes; because the door wasn't opened yet.

Q. Mrs. Sykes asked you to come in to breakfast, didn't she? A. No; Etta came out and said to me, "Come in and get breakfast." So I said, I wouldn't come in; I wouldn't eat breakfast without Mrs. Sykes asking me.

Q. Then Mrs. Sykes asked you? A. I wouldn't go in there on Etta's invitation.

Q. Then Mrs. Sykes came out and you went in? A. I went in and sat at the table.

THE COURT: Did you consider you had to have an invitation?

THE WITNESS: No; but I didn't want to take the invitation from the maid.

THE COURT: Why didn't you go in without an invitation?

THE WITNESS: In the dining room? She asked me to go in the dining room.

THE COURT: Did you consider you had to have an invitation to go into your wife's home?

THE WITNESS: No; but I didn't want to to go and sit at her table without Mrs. Sykes being agreeable, because she always ignored me.

Q. When she came and asked you you went in? A. Yes.

Q. You went in the dining room? A. Yes.

Q. What table did you sit at? A. At the table with Mrs. Sykes.

Q. Who else was there? A. Mr. Chamberlain was there if I remember.

Q. Are you sure of that? A. I think so. I am not sure, but I think so.

Q. Mrs. Phillips was there? A. I don't know whether she came out to breakfast or not. Mrs. Phillips was in the room, in the house. Whether she came out for breakfast I can't say.

Q. Mrs. Phillips is mother to Mrs. Sykes? A. Yes.

Q. Mrs. Sykes was there to eat breakfast? A. Yes.

Q. And you sat down at the table and had your breakfast? A. Yes.

Q. This was in 1924? A. Yes.

Q. Then where did you go after breakfast? A. Oh, I just went around town and saw some of my friends, that is all.

Q. You spent the day outside, didn't you? A. Was back and forth; came in the house and went out.

Q. Was that the day you asked them to leave the door unlocked at night so you could get in? A. Yes.

Q. Is that the time you came for your printing press? A. No, the other time I packed up the press, the first time.

Q. That was in June or July, 1923, when you came back? A. Yes, if I remember.

Q. This occasion in 1924, what particular purpose did you come for? A. Why, I came down just to visit; that is all. I came down to see if everybody was all right, and I wanted to get some things there; I have lots of things there now.

Q. You had come there for some things? A. Yes.

Q. You didn't notify anybody you were coming? A. Every time I came down I wrote and told her I would be there.

Q. Did you get your things? A. Some of them; what I wanted.

Q. And went away next day? A. I went away next day.

Q. Is that the time you offered to pay Mrs. Sykes for your room? A. I just had the money. I said, "Do I owe you anything for the night?" She said "No."

Q. Did you ask your wife anything at that time about coming back to live there at Lakewood? A. No; I didn't ask her to come back because she wouldn't live with me. I hadn't left Lakewood. I didn't leave Lakewood. I didn't desert Mrs. Sykes; I went away to work. I couldn't ask to come back; I was working.

Q. That was in July 1924. When had you been in Lakewood before that? A. In June the year before, 1923.

Q. That was thirteen months before, approximately? A. Yes.

Q. And you hadn't been in Lakewood since? A. No; I was working seven days a week; I couldn't get away.

Q. And you hadn't written to Mrs. Sykes during that time, had you? A. I don't think so, no. She wouldn't answer my letters, what was the use of writing? If I would write to her——

Q. Did you say anything to Mrs. Sykes about her going up to Nyack or those other places with you, North Tarrytown? A. Oh, Mrs. Sykes wouldn't leave.

Q. Did you say anything to her about it? A. What do you mean? Did I ask her to come and live with me? Is that what you mean, away?

Q. Did you say anything on this occasion in July, 1924, when you came back to Lakewood, about you and her taking up your life together? A. At Nyack?

Q. Anywhere? A. I asked her what she was going to do about it, if she was going to continue the same way. She wouldn't talk to me. My wife won't talk to me.

Q. On this occasion, in July, 1924? A. She wouldn't speak to me; she would walk away.

Q. You say she did come and invite you to come in to breakfast? A. She just came to the screen door.

Q. What time the next day did you leave? A. That is hard work for me to recall whether I left in the morning at 10:45 train, or whether I left after dinner.

Q. You didn't say good-bye to your wife that time? A. I didn't see her; she went away. I think I left in the morning.

Q. She was in the house that morning? A. Yes, at the table.

Q. That was when you offered her five dollars for your lodging? A. She had the maid there and I didn't want her to go to the expense of paying the maid anything extra. The maid came in there extra on account of that wedding and I didn't want to feel Mrs. Sykes ought to pay just for my staying over night, so I offered her the money if she wanted to give the maid anything extra.

Q. It was a tip for the maid? A. She could use it just as she wanted to.

Q. Did you offer her any more money at the time? A. No, sir.

Q. You never took part in the management or operation of this tourist boarding house? A. I was a slave there; I did everything. That summer I worked in the Free Press I scrubbed the floor and did the laundry.

Q. The summer of 1922? A. And in the first house I scrubbed all the floors.

Q. What did you do around the house? A. Carpenter work; anything to be done—plumber.

Q. That was in 1922? A. Always worked around the house, tend the furnace, or anything I didn't tend the furnace in the new house because I wasn't home much until that winter, and then Mrs. Sykes had Chamberlain take care of it.

Q. You employed counsel up in Tarrytown, New York, when this litigation first started? A. I don't know whether you would call it employed; I went to see him and gave him a letter that you had sent.

Q. Yes. That was Mr. Ashworth? A. Yes; David Ashworth.

Q. At Tarrytown, New York? A Yes.

Q. He is an attorney up there? A. Yes.

Q. And you know that some correspondence passed back and forth between his office and my office? A. I never read them.

Q. You told him what the situation was and what to write, did you? A. I told him; yes, that I was perfectly willing then and always to support Mrs. Sykes, if she would live with me, to the best of my ability.

Q. You told him the other circumstances and arrangements, did you? A. What do you mean? What other?

Q. Did you tell him about the controversy between you and your wife and how long you had been away, what your wife was doing, about her business, and so on? A. Yes; I explained to him.

Q. And directed him in a general way what to write? A. I never read his letter he wrote you.

Q. Did you ask him to write to me as follows: "There are property matters involved which will necessitate litigation, unless satisfactory arrangements are made beforehand, and those matters I would like to take up with you with a view to their satisfactory adjustment".

MR. TARTALSKY: Now, if your Honor please, I don't think the letter or communication of the attorney is binding.

THE COURT: Testing his credibility, as I understand it.

Q. Did you tell Mr. Ashworth—— A. I didn't dictate any letters.

Q. Did you tell him in effect to write that? A. I had talked with him before about Lakewood. I have known him ever since I have been in Tarrytown.

Q. Well, he had authority to write that letter for you, did he? A. Well, I told him to correspond with you, what was necessary to take care of this; I don't know the proceedings of law.

Q. No, no. Was that all right what he wrote to me? A. I don't know; I didn't read it.

THE COURT: Show him the letter.

THE WITNESS: I never saw it.

Q. (Mr. Ewart hands letter to witness.) A. I even asked him to send me copy of the letters so I could bring them down here.

THE COURT: Read the letter and then tell us whether that was written with your authority.

THE WITNESS: I never told him to write this letter.

THE COURT: Did you know that he did write it?

THE WITNESS: No, sir. I knew he had written, but I didn't know what the correspondence was. He had written about the—first off I received a letter. It was addressed to Strand Theatre—wasn't that letter addressed to the Strand Theatre—to a Mr. Manager, Strand Theatre there,

trying to locate me, saying Mrs. Sykes wanted to start divorce proceedings—are you the attorney that sent that letter?

Q. Well, you are on the stand, Mr. Sykes, I am not. Let me ask you this: Did you tell Mr. Ashworth, your attorney in Nyack, that certain property rights and matters were involved and would have to be settled? A. No, sir; I never told him that. I had talked to him before about this house, you know——

Q. Did you tell him your wife owned this hotel? A. I told him it was in Mrs. Sykes's name before I ever thought of any proceedings or anything like that, in speaking to him about the place.

Q. Did you tell him what it was worth? A. I don't know, really, what it is worth.

Q. Did you tell him that you thought you ought to have a certain interest in it, or certain money out of it? A. I never talked to him on that question at all.

Q. Did you tell him that if a satisfactory money arrangement could be made that you wouldn't litigate this action? A. Oh, no; I never said anything like that.

Q. Then he had no authority at all in writing such a letter as that? A. I never saw that letter or know nothing about it. I don't know the first thing about that correspondence at all; nothing. I have known Mr. Ashworth—I thought of Mr. Ashworth, and then—when I first went there, he was a Mason, I used to go in and talk to him. He was a patron of the Eastern Star at Dobbs Ferry——

Q. There is no question pending, Mr. Sykes. Now, you say that you ordered Chamberlain out of this apartment, or room? A. Yes.

Q. In 1922. He was in the room of Mrs. Phillips, was he not? A. He was in the apartment. I asked him to keep out of the apartment.

Q. You answer my question. There are two rooms, and he was in the room of Mrs. Phillips, was he not? A. Yes.

Q. And he assisted Mrs. Phillips about the hotel, more or less, didn't he? A. Made himself too officious.

Q. Did he assist Mrs. Phillips around to walk? A. When he would take her out in the automobile he would. She wouldn't let me do anything for him.

Q. She was very fond of him? A. Very. She told me he was her son.

Q. You say she refused to speak to you after you put him out of the room? A. After I put him out of the apartment.

Q. Oh, it wasn't the bedroom of the apartment, Mrs. Phillips's room? A. Yes.

Q. Not in the room of Mrs. Sykes? A. No; but he was using the bath. I will tell you privately why I objected to it. There is ladies in the room and I don't want to tell why I objected to him going in the bathroom. I saw things——

THE COURT: If you will just confine your testimony to the questions that are asked you, we will get along a whole lot faster.

Q. Do you know Mr. Laug? A. Yes.

Q. And you know Mr. and Mrs. Norton? A. Yes.

Q. They were guests at the Sykes house at various times? A. About twenty years.

Q. You know Judge Muller? A. Yes.

Q. Mrs. Sykes was very friendly with those people always, wasn't she? A. Always on the best of terms, as far as I know.

Q. Did you ever know that she gave a birthday party to Mr. Laug? A. No, sir.

Q. You did not object to her friendliness with the Laugs? A. Well, her friendliness with the Laugs and the Chamberlains was different.

Q. You didn't object to her friendliness with Laug? A. I didn't know she had any friendliness with him any more than being polite and courteous.

Q. You say the most letters you wrote to this girl in New York were two or three? A. I think so.

Q. Might not have been as many as twenty-five or thirty, or fifty? A. Oh, no, no, no, no, no, no; nothing like that.

Q. Were your letters to her couched in affectionate terms? A. No, on, no, no; not at all.

A. I wouldn't consider them affectionate terms.

Q. Did you refer to her as your daughter and ask her if she wanted to be your daughter? A. I don't remember.

Q. Do you think you may have done so? A. If I did so, it was because I was lonesome after losing the boy, and Mrs. Sykes adopted a young man as her son.

Q. Mr. Sykes, you don't mean to accuse Mrs. Sykes of any wrong actions with Mr. Chamberlain or anyone else, do you? A. I never looked for anything.

Q. You don't accuse her of it, do you? A. I didn't want anything brought in here. No; I don't accuse Mrs. Sykes of anything. What I know I will keep to myself. I don't want to accuse Mrs. Sykes of anything that I would think improper.

BY THE COURT:

Q. When did you and Mrs. Sykes cease cohabitation? A. It was in June.

Q. June of what year? A. 'Twenty-two.

Q. 1922. What was the reason? A. Why, Mrs. Sykes's attitude toward Mr. Chamberlain, that is all.

Q. Did you refuse to have intercourse with her because of her relations with Mr. Chamberlain? A. No; not at all.

Q. Well, did she refuse to have intercourse with you? A. She wouldn't have anything to do with me because I was opposed to Mr. Chamberlain.

Q. Was that the reason she refused to have intercourse with you? A. Yes. Before that she told me she didn't want me. When I was at Freehold, she said she objected to me coming home on Saturday night. She told her mother she would stand me one night, and that was all.

Q. That is the only reason she gave for refusing cohabitation? A. Yes; as far as I know.

By Mr. Ewart:

Q. She wasn't disturbed then at all about this letter addressed to the girl in Bound Brook? A. Oh, no; that was two years before.

Q. Nor she wasn't disturbed about Miss Wallace that you brought there from New York? A. I took the letter to Judge Newman and asked his advice about it, and he told me to go up to New York to the firm where she worked, and I visited the firm and I tried to find her.

Q. Did you know your wife received this letter addressed to you from the Ampico Music Company? A. No, sir; I never saw that until you handed it to me.

Q. That had nothing to do with the disagrement? A. No; that was a couple of years before that.

Re-Direct Examination by Mr. Tartalsky:

Q. When was the Wallace girl at the house? A. I can't recall the year, but it must have been two—it must have been around 1920 or '21, somewheres along there.

Re-Cross Examination by Mr. Ewart:

Q. As a matter of fact, it was in '21, wasn't it? A. I can't say positively.

Q. You said you worked in Freehold before you worked at Ferber's? A. Yes.

Q. How long had you been working at Freehold? A. Six months, when the theatre caught fire.

Q. When did you quit at Freehold? A. First of April.

Q. 1922? A. Yes.

Q. It was then that Mrs. Sykes was objecting to rooming with you? A. Oh, no.

Q. You just said so, she didn't want you to come home Saturday nights from Freehold? A. She didn't object to rooming with me, she said it was all——

Q. Chamberlain wasn't there at that time, was he? A. Chamberlain came in along about May, I think.

Q. And you quit at Freehold in April? A. I would come home at twelve o'clock at night and Mrs. Sykes objected to me coming in at twelve o'clock at night. I finished the theatre at eleven o'clock.

Mr. Tartalsky: That is the defendant's case.

Defendant Rests.

REBUTTAL TESTIMONY.

MRS. CAROLINE ADA SYKES, *recalled.*

DIRECT EXAMINATION BY MR. EWART:

Q. Did you say to Mr. Sykes that you hoped he would never come back? A. I don't remember ever saying that.

Q. Well, did you say it or did you not say it? A. I didn't say it. I don't remember ever saying it, but I did write him about receiving that letter.

Q. I wanted to ask you about that. You refer to what letter? A. I wrote him that I had received that letter and he wrote me that he

Q. What sort of terms were they couched in? would explain it when he came home.

Q. Is that the letter marked Exhibit P-4, dated Friday? A. Yes.

Q. And not signed? A. Yes.

Q. Had you heard anything from Mr. Sykes about that letter before you wrote to him? A. No; I hadn't.

Q. Then it was after you wrote to him that he endeavored to give an explanation of it? A. He wrote and said he had written it for the cornet player; that is what he told me.

THE DEFENDANT: It was the violinist, Carrie.

A. After I sent word and I said I was done with him forever after I read that letter, and he said he will go west and stay forever, or some-

thing like that, in the letter, and then this other girl, she called me on the telephone——

MR. TARTALSY: I object to that.

THE COURT: Don't tell us about the telephone conversation.

Q. Is that the same girl? A. The Wallace girl.

Q. That Mr. Sykes brought to Lakewood? A. Yes, it was.

Q. When was this Wallace girl in Lakewood? A. In 1921, I think.

Q. What time in 1921? A. Well, it was races on the Speedway; it must have been either spring or fall, because I know there was races on the Speedway.

Q. You testified on your direct examination that you had met this girl in New York? A. I did; yes.

Q. How many letters, if you can tell us, did you see in her possession from Mr. Sykes? A. I think she must have had fifteen or twenty.

MR. TARTALSKY: They should have produced the letters.

MR. EWART: We would, if we could.

MR. TARTALSKY: I don't see why you couldn't. You certainly could have the testimony taken in New York.

THE COURT: He said he wrote her not more than three. Certainly, any testimony which will contradict that statement is competent. If she says that she saw fifteen or twenty letters in Mr. Sykes's

handwriting in the possession of Miss Wallace, it is certainly competent testimony, and that is what I understood her testimony to be.

THE WITNESS: I did see them.

THE COURT: What did you say?

THE WITNESS: I saw them in Mr. Norman's office in New York.

Q. Who is Mr. Norman? A. Mr. Norman and his wife boarded with us for three or four months.

Q. Do you know where the letters went after you left New York? A. She had them, the girl, and she had a lawyer with her.

Q. While Mr. Sykes was living at the hotel up until February, 1923, who besides yourself and mother used this so-called private bathroom? A. Well, Mrs. Norton was ill——

THE COURT: She has gone into that. She has explained that.

A. Mrs. Norton used it because she was ill; different ones have used it.

Q. Can you tell us when this latch was put on the door, your door? A. I don't remember exactly the date. I do remember on account of the pass keys, leaving our money and things around, we thought it was best when we went out our side door to put another lock on that. It is just a hook, that is all it is.

Q. Which door is that on? A. Well, that goes into the parlor, living room, and then we have an entrance out on the street, and, of course,

the street entrance was nearer for mother than going around through the rooms.

Q. There are two doors out of your room then? A. Two doors from the hall.

Q. This latch was put on one of them? A. It was put on the door going in from the room, because we have a key to the other one.

THE COURT: Mrs. Sykes, when do you say cohabitation between you and your husband ceased?

THE WITNESS: Well, after this letter I was simply done and disgusted with him.

THE COURT: Was that in 1921?

THE WITESS: Yes, and 'two.

THE COURT: Has there been any intercourse with you since that time?

THE WITNESS: I don't remember any.

THE COURT: What was the reason that you stopped cohabitation with your husband?

THE WITNESS: Simply because I couldn't bear him around me on that account. I felt from all appearances and things that I knew. other little things, that I didn't want him.

THE COURT: Well, was it because of your suspicion of his relation with other women that you refused?

THE WITNESS: That was a great deal, yes.

Q. Were you consulted about this girl coming

to Lakewood? A. Yes; he wrote and said he was going to bring down the stenographer. She was after that a manicurist in one of those barber shops.

Q. Did you tell him that would be all right, or consent to it? A. Yes.

Q. How long was she there at the house? A. I think she was there about four days, something like that.

Q. Was Mr. Sykes there during that time? A. No; he went away over Sunday. Went away on Monday, I think.

Q. He was there part of the time? A. Part of the time.

Q. That was the same girl you later met in New York? A. Yes.

Q. Can you state with more definiteness than you have, when you ceased cohabiting with Mr. Sykes? A. Well, I don't remember. I think it must have been 1921, I think.

Q. After the receipt of these letters? A. Yes.

Q. What, if anything, did Mr. Sykes contribute toward your support before he left you in 1923? A. Well, he gave me $15. a week. He said that is—he said board, during that year 1921-'2.

Q. Before that, what had he contributed? A. Well, there wasn't any set amount. Sometimes it would be fifteen, sometimes ten, sometimes five, sometimes twenty-five

Q. After he left in February, 1923, did you write him any letters or didn't you? A. No; not after 1923, not after that. The first few times

I did just acknowledge a check, first two or three times. After that I stopped writing.

Q. Did anyone else write to him for you? A. No, excepting my brother, I think, addressed a package to him, music or something.

Q. Was that package from you? A. No; it was music that he had done up himself.

Q. Did you have your brother write any letters for you to your husband? A. Oh, no; never.

CROSS EXAMINTION BY MR. TARTALSKY:

Q. Did I understand you to say, Mrs. Sykes, that when you received that letter in 1921, you said to your husband "I am done with you forever"? A. Yes; because he gave music lessons to an Italian girl in Bound Brook.

Q. Did you say to him, "I am done with you forever" at that time in 1921? A. I wouldn't be surprised. I said similar to him in that letter, because I was so disgusted——

Q. I mean when you received that letter, referring to this Exhibit P-4, did I understand you to say in answer to Mr. Ewart's question that you then said to him, "I am done with you forever"? A. Well, I don't remember whether I just said those words or not.

Q. Well, you said something to that effect? A. I wrote him I was terribly put out about it.

Q. Then when he came home, did you say that to him? A. He wrote a letter and said that he had mailed it by mistake.

Q. I mean when he came home after you received that letter, did you say to him, "I am

done with you forever", or use words to that effect? A. That I don't remember; I can't say.

Q. Did you say in answer to Mr. Ewart's question that you had written? A. I wrote him that I received this letter, yes.

Q. Now, you and your husband occupied the same room until June, 1922, or thereabouts? A. Well, he only came home Saturday nights for a half year, pretty near.

Q. And there was but one bed in that room? A. Yes.

Q. And it was at your instance, wasn't it, in June, 1922, that Mr. Sykes slept in another room? A. Yes; I suppose so. I said it was so warm I was going to have a single bed in there and have the room for myself.

SUR-REBUTTAL TESTIMONY.

LUTHER HARRISON SYKES, recalled.

DIRECT EXAMINATION BY MR. TARTALSKY:

Q. Mr. Sykes, did you have intercourse with your wife until what time, or about what time? A. Until June, until she asked me——

Q. What time? A. Until June, 1922.

Q. Occupied the same room and same bed? A. Yes.

BOTH SIDES REST.

Remarks by the Court:

THE COURT: You may confine yourself to one point. If there is any way I can, legally, I am going to grant this woman a divorce, but there is a very serious question in my mind as to whether I can. I believe her testimony, and accept it in toto. On the other hand, I believe the defendant is a perjurer. I am myself convinced of that. If I could bring legal proof of that to the attention of the Prosecutor of this County, I would hand him over to the authorities today. I would not believe a word he says. After his testimony in reference to this Bound Brook letter no one could possibly give anything he said any credence whatever. I believe he lied continuously while he was answering my questions and while he was answering questions of counsel for the petitioner, so that so far as his testimony is concerned, I disregard it entirely. I cannot place any dependence in him whatever. But that isn't the question. I think his whole object here is to prevent a divorce, if he can, for mercenary reasons. It is possible that he may do it. But it is only on the legal point of desertion that I desire to hear any argument at all. Admittedly, there was a cessation of cohabitation, more than two years ago; probably four years before the filing of

this petition. I think it conclusively appears that the cessation of cohabitation was due to the refusal of the wife to cohabit with the husband. When the husband left in February, 1923, he may have intended to leave permanently, or he may not have. But, irrespective of whether he did or not, I could hardly find under the testimony that his leaving was against the will of the petitioner. I think that she was entirely willing, in fact, glad to have him go, and I do not blame her if she was. I think she would have been perhaps less than human if she had not been glad to see him walk out. The question is, Can I grant her a divorce under those circumstances. There may have been a constructive desertion here on his part some two years prior to the time of the actual desertion alleged, but the petition for divorce is not based upon the grounds of constructive desertion. It isn't based on the ground of infidelity, and even if it had been, so far as the acts of infidelity are concerned, if there were any which were within the knowledge of the petitioner at the time of the cessation of cohabitation, I think it appears reasonably certain that they were condoned. Now, I would be glad to have a memorandum from each of you, or both of you, on that one point. There is no use of you discussing the credibility of the witnesses because, as I said before, I give face value

to the testimony of the petitioner herself and all of her witnesses, and I place at zero the testimony of the defendant. It is just the same to me as though no defense whatever had been offered, because I would not believe a word the man says if he swore to them on a pack of Bibles as high as this building. So you can judge from that what my opinion of his testimony is. The only question is whether I can or cannot. If I can, I will. You may submit the memorandum within a week. If you want to exchange memorandum, I will direct that the petitioner file memorandum within a week and serve it, and that the counsel for the defendant make his reply within a week thereafter.

Conclusions.

(Filed December 2, 1926.)

BETWEEN.

CAROLINE ADA SYKES,
Petitioner,

and

LUTHER HARRISON SYKES,
Defendant.

On Petition for Divorce. Not to be printed or published in any Report, Official or unofficial.

HOWARD EWART, for Petitioner,
O'BRIEN & TARTALSKY, for Defendant.

The petition for divorce is based upon the desertion alleged to have occurred in February, 1923. The parties were married on November 14, 1895 and had resided in Lakewood, New Jersey, continuously thereafter until the date of the desertion alleged and the petitioner still resides there. The petitioner always provided the home for the family. She conducted a small hotel or boarding house in Lakewood and the defendant did odd jobs about the house and at times was employed as a musician in various theatres. When employed he sometimes paid small sums to the petitioner as board. His position in the home was more that of a "Prince Charming" than that of a bread-winner. One child, a boy, was born of the marriage, but died when he was about 18 years of age.

For several years prior to the date of the alleged separation the parties had gotten along rather in-

differently, because of the defendant's relations with other women. It is unnecessary for me to go into details with reference to the evidence concerning these incidents. Suffice it to say that there was

ample evidence of such relations to justify the attitude of the petitioner toward him, although perhaps not sufficient evidence on which to base a decree for divorce on the ground of adultery. As a result of this situation in June, 1922, and at the suggestion of the petitioner, the parties ceased to occupy the same bedroom, but resided in the same house, the defendant thereafter occupying a room with the petitioner's brother. This arrangement seems to have been one of mutual consent. It was at least acquiesced in by the defendant and no protest of the denial of marital rights was made by him.

The defendant left the home of the petitioner in Lakewood in February, 1923, stating that he was going to New York to work. As he had gone away from home on various occasions before to look for work, no objection was made by the petitioner, and there was no indication then that it was the intention of the defendant to leave for good. Subsequent events, however, prove to my satisfaction that the defendant did then leave Lakewood with the intention of remaining away permanently. He returned to Lakewood twice after that, but only for the purpose of obtaining some of his personal belongings from the hotel conducted by the petitioner. On these occasions the petitioner treated him with due respect and cordiality and at her invitation the defendant ate at her table in the din-

ing room. As had been his custom prior to his departure, he occupied a room separate and apart from the petitioner and remained only overnight. He made no overtures to the petitioner for a reconciliation, made no demands upon her for resumption of marital relations and made no suggestions to that end. There was no indication that he had reformed or changed his habits with respect to relations with other women; in fact, there was then evidence in the possession of the petitioner, which it is not now necessary to detail, indicating that there had been no change in the defendant in this respect. There was, however, an attitude of willingness on the part of the petitioner to resume marital relations under proper circumstances and she testified to such willingness while on the witness stand. It would serve no useful purpose for me to discuss the testimony in detail, but I am convinced that under the circumstances disclosed by that testimony there was no obligation whatever on the part of the petitioner to seek a reconciliation or change her attiude toward the defendant. In view of the circumstances disclosed by the testimony, there was, however, a distinct obligation on the part of the husband to make advances to the petitioner tending toward a reconciliation and to accompany these advances with satisfactory evidence of his reformation and right living. This he did not do. The only evidence offered in defense of this suit was the testimony of the defendant himself. His testimony on the witness stand, particularly with reference to a letter introduced in evidence and referred to as the

"Bound Brook" letter, indicated very clearly to the Court that the defendant was deliberately perjuring himself. I announced at the time that his attitude and testimony were such that I could place no credence whatever in anything he said and I could not give any weight whatever to his testimony.

It has been argued by counsel for the defendant that there was a condonation on the part of the petitioner of the defendant's marital offense, particularly the episode referred to in the Bound Brook letter, and that for this reason the cessation of cohabitation in June, 1922, constituted desertion on the part of the petitioner herself. I cannot agree with this argument. Whatever condonation or excuse there may have been on the part of the petitioner was based upon the defendant's assertions of innocence, which were afterwards shown to be false, and the arrangement for the occupancy of separate rooms, as already indicated, was one of mutual consent. I am of the opinion that the defendant deserted the petitioner in February, 1923, and that such desertion was wilfull, continued and obstinate for a period of two years preceding the filing of the petition within the meaning of the statute as construed by our highest court, and I will, therefore, advise a decree, for the petitioner.

Heard October 28, 1926.

Submitted November 24, 1926.

Decided November 26, 1926.

Decree Nisi.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CAROLINE ADA SYKES,
Petitioner,

and

LUTHER HARRISON SYKES,
Defendant.

This cause coming on to be heard in the presence of Howard Ewart, Esq., of counsel with the petitioner, and Samuel Tartalsky, Esquire, of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the fourteenth day of November, A. D. one thousand eight hundred and ninety-five, and that the defendant has been guilty of wilful continued and obstinate desertion of the petitioner for the term of two years as alleged in the said petition; and that at the time the cause of action for divorce for the said desertion arose the petitioner was a bona fide resident of this State, while the defendant ever since February, 1923, had made his residence in the State of New York; that both petitioner and defendant were bona fide residents

of this State for more than two years prior to February, 1923. and that the said petitioner has continued so to be down to the time of the commencement of this action and for more than two years immediately preceding the institution of this suit; and it further appearing that the defendant could not be served personally with process within this State, and that (the petitioner being at the time of the commencement of this action a bona fide resident of this State) jurisdiction herein has been acquired by publication of notice to the defendant of this suit, followed by notice to the defendant without this State, as service substituted for personal service within this State, pursuant to the orders heretofore made by the Court in this cause for that purpose, and as prescribed by law and the rules of this Court, as well as by the appearance and answer of the defendant:

IT IS THEREUPON, on this sixteenth day of December, A. D. nineteen hundred and twenty-six, by HIS HONOR, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, that the said Chancellor. by virtue of the power and authority of this Court, and the acts of the Legislature in such case made and provided, doth hereby ORDER, ADJUDGE AND DECREE that the said petitioner, Caroline Ada Sykes, and the defendant, Luther Harrison Sykes, be divorced from the bond of matrimony for the cause aforesaid, and that the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be

Decree Nisi.

made absolute, within six months from the date hereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendant do pay to the said petitioner the costs of this suit, incurred and to be incurred, to be taxed, and that the said petitioner do have execution therefor according to the practice of this Court.

EDWIN ROBERT WALKER,
Chancellor.

Respectfully advised,

MAJA LEON BERRY,
V. C.

We consent to the form of the foregoing decree.

O'BRIEN & TARTALSKY,
Of Counsel with Defendant.

Notice of Appeal.

(Filed March 2, 1927.)

IN CHANCERY OF NEW JERSEY.

BETWEEN CAROLINE ADA SYKES, *Petitioner,* and LUTHER HARRISON SYKES, *Defendant.*	On Petition for Divorce.

Luther H. Sykes, the above-named defendant, hereby appeals from the decree nisi filed in this cause and dated December 16th, 1926, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.
February 24, 1927.

O'BRIEN & TARTALSKY,
Solicitors for and of Counsel
with Defendant.

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

SAMUEL TARTALSKY,
Of Counsel.

Petition of Appeal.

(Filed March 2, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
CAROLINE ADA SYKES,
Respondent,
and
LUTHER HARRISON SYKES,
Appellant.

To the Honorable, THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Luther Harrison Sykes, Appellant, respectfully shows, that your Petitioner finds himself aggrieved by a decree nisi made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 16th day of December, 1926, in that the said decree recites and adjudges, that the defendant is guilty of wilful, continued and obstinate desertion of the respondent for the term of two years, as alleged in the petition for divorce filed by the said respondent and doth decree that the marriage existing between your petitioner and the respondent, Caroline Ada Sykes, be dissolved for the cause aforesaid. And your petitioner appeals from the said decree and from every part thereof, on the ground that the same is erroneous, for that the said Chancellor

should have recited and adjudged that your petitioner was not guilty of wilful, continued and obstinate desertion of the respondent, and should have dismissed the petition of the respondent.

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

O'BRIEN & TARTALSKY,
Solicitors.

SAMUEL TARTALSKY,
Of Counsel.

Answer.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN:

CAROLINE ADA SYKES,
Petitioner,

and

LUTHER HARRISON SYKES,
Defendant.

The answer of the respondent to the petition o fappeal of the appellant.

The respondent admits it to be true that a certain Decree Nisi was, on December 16, 1926, 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 he prays that the same may be affirmed, with costs to be adjudged to this respondent.

HOWARD EWART,
Solicitor and of Counsel
with Respondent.

New Jersey Court of Errors and Appeals

CAROLINE ADA SYKES,
Petitioner-Appellee,

and

LUTHER HARRISON SYKES,
Defendant-Appellant.

BRIEF OF THE DEFENDANT-APPELLANT.

Statement.

This is an appeal from a decree Nisi advised by Vice Chancellor Berry in an action for divorce instituted by petitioner, Caroline Ada Sykes, against her husband, Luther Harrison Sykes. The petition for divorce is based upon desertion alleged to have occurred in the month of February, 1923. An oral opinion was rendered by the Court at the conclusion of the trial on October 28, 1926 (Case p. 135 *et seq.*) and written conclusions were filed on December 2, 1926 (Case, p. 138 *et seq.*). We respectfully urge that these opinions are inconsistent and reference to them will be made hereafter.

The Vice Chancellor disbelieved the defendant and though such a conclusion would not be binding upon this Court, nevertheless, we respectfully contend that the petitioner failed in her proof, and upon her own case the petition should have been dismissed. Nothing in the defendant's testimony changed the status of the parties, nor did it supply anything which the petitioner's case lacked; on

the contrary, the testimony of the defendant bears out the testimony of the petitioner in instances.

Because we believe that the petitioner failed to make out a case, argument will be made only upon the evidence submitted by the petitioner and her witnesses and under the heading of facts we will but briefly advert to the testimony of the defendant.

The matters advanced in this Brief refer to but one point and that is that the desertion was not wilful and obstinate, but on the contrary, with the acquiescence and consent of the petitioner.

The Facts.

The defendant is about sixty-two years of age, and though the age of the petitioner is not stated, it appears in the testimony that they were married on November 14, 1895 and that a son born of the marriage died on December 22, 1918, at about the age of eighteen years. The parties resided in Lakewood, New Jersey, and the petitioner conducted a hotel and boarding house there. Until June, 1922, they cohabited as husband and wife in spite of various differences which had arisen between the parties prior to that time.

In June, 1922, at the instance and request of the petitioner, defendant occupied a room apart from his wife. Petitioner's testimony concerning this matter appears in Case at page 134:

> "Q. Now, you and your husband occupied the same room until June, 1922, or thereabouts? A. Well, he only came home Saturday nights for a half year, pretty near.
>
> Q. And there was but one bed in that room? A. Yes.
>
> Q. And it was at your instance, wasn't it, in June, 1922, that Mr. Sykes slept in another room? A. Yes; I suppose so. I said it was so warm I was going to have a single bed in there and have the room for myself."

The petitioner gave various reasons for the cessation of cohabitation with her husband, one of which referred to the weather above quoted. In response to questions of her solicitor she said, Case, page 14:

> "Q. Will you tell us, Mrs. Sykes, what the circumstances were, if any, that were responsible for you and Mr. Sykes occupying separate rooms in the hotel during that time? A. We had lived a very unhappy life for a number of years, very unhappy; a great many things had occurred while we were on Fifth Street."

At Case, page 26 she said:

> "Q. How long prior to February, 1923, did you occupy separate rooms? A. Well it must have been nearly a year.
>
> Q. And was that at your request or his request? A. I don't think anybody requested it; just had words.
>
> Q. Was there any condition that brought that separation about? A. Yes; we argued on different subjects; we didn't get along very well.
>
> Q. Well, did you give him any cause for argument at any time? A. Well, of course, he probably did find fault with me and did things that I thought were perfectly terrible."

In response to questions by the Court petitioner at Case, page 131 said:

> "The Court: What was the reason that you stopped cohabitation with your husband?
>
> The Witness: Simply because I couldn't bear him around me on that account. I felt from all appearances and things that I knew, other little things, that I didn't want him.
>
> The Court: Well, was it because of your suspicion of his relation with other women that you refused?
>
> The Witness: That was a great deal, yes."

Concerning this aspect of the case the Court in its oral conclusions made immediately after the close of the case at the bottom of page 135 and on page 136 said:

> "Admittedly, there was a cessation of cohabitation, more than two years ago; probably four years before the filing of this petition. *I think it conclusively appears that the cessation of cohabitation was due to the refusal of the wife to cohabit with the husband.*" (Italics are ours.)

In its written conclusions on page 139 the Court at line 12 said:

> *"As a result of this situation in June, 1922, and at the suggestion of the petitioner, the parties ceased to occupy the same bedroom, but resided in the same house, the defendant thereafter occupying a room with the petitioner's brother. This arrangement seems to have been one of mutual consent."*

The petition alleges a strict desertion in February, 1923 (Case, p. 1). In February, 1923, the defendant who was a musician by occupation, secured employment in Tarrytown, New York. At Case, page 7, line 18, the petitioner testified:

> "Q. Up to what time did Mr. Sykes live there? A. Well, he was there on and off until 1923, when he left entirely.
> Q. What time in 1923? A. I think it was in February.
> Q. When he left in February of 1923 do you know where he went? A. I didn't know at first, no. He went to Tarrytown afterwards, I understand."

At page 20 petitioner said:

> "Q. Did you know that he was going until he told you so? A. No; I didn't know.

> Q. He did tell you he was going, didn't he? A. Yes, he said he was going away to look for work."

Again at bottom of page 43:

> "Q. Now, about February 11, 1923, did your husband tell you that he was going to New York to see about a position? A. When he was getting ready to go, he said, "Well, I am going away to look for work."

At bottom of Case, page 44:

> "Q. You knew he went to New York for the purpose of looking for a position? A. He said he was going to look for work.
> Q. And you don't recall him telling you that he secured a position in Tarrytown, New York? A. No; I thought he wrote me there and said he had work."

The defendant returned to the household on two occasions, once in June or July, 1923 (Case, p. 7, l. 40) and again in 1924 (Case, p. 9, l. 24). At this time the petitioner occupied a room on the first floor of her hotel (Case, p. 8, l. 21). Upon these occasions when the defendant returned to the home the petitioner assigned to defendant a room separate and apart from the room occupied by her. She testified (Case, p. 9, l. 8):

> "Q. Did he ask for a room that night, or how did he happen to sleep on the top floor? A. He said he would like to stay over night, so I gave him a room on the second floor.
> Q. Did he say anything about what room he should have? A. He asked what room he should have and I told him and the maid prepared the room for him."

Concerning his second visit she testified (Case, p. 10, l. 20):

"Q. He stayed there that night? A. Yes, he did.

Q. Where? A. He had a room on the second floor right at the head of the stairs.

Q. And did he occupy the same room with you that night? A. No; he did not.

Q. Where was your room? A. On the first floor next to my mother.

Q. Same place it had been the time before? A. Just the same."

The chambermaid, Etta Lane, a witness for the petitioner, testified that she was directed by petitioner to prepare the room to be occupied by the defendant (Case, p. 62, l. 25) she said:

"Q. Now, you say at the first occasion that Mr. Sykes came back he occupied room ten, is that right? A. I did.

Q. And the second occasion what room did he occupy? A. Room six.

Q. And those rooms were assigned to Mr. Sykes at whose instance? Who told you to prepare those rooms? A. Mrs. Sykes."

The grievances concerning which petitioner testified, were three in number: one, which occurred in 1910 (Case, p. 15, l. 13); the other in 1920 or 1921 (Case, p. 16); and the last, was the receipt of a letter in June of 1921 (Case, p. 18). The petitioner continued to cohabit with the defendant for a year subsequent to the last occurrence in 1921 and therefore all of these matters were condoned. Concerning this feature of the case the Court in its oral opinion (Case, p. 136, l. 26) said:

"It (referring to the Petition) isn't based on the ground of infidelity, and even if it had been, so far as the acts of infidelity are concerned, if there were any which were within the knowledge of the petitioner at the time of the cessation of cohabitation, I think it appears reasonably certain that they were condoned."

In brief, the defendant bore out the testimony of the petitioner that they both cohabited as husband and wife until June, 1922, occupying the same room. At that time the petitioner asked him to occupy another room and that thenceforth he did occupy a bedroom with the petitioner's brother. He complained of the conduct of his wife toward one, William Chamberlain (Case, p. 85) and testified of trips on which he accompanied petitioner. He testified that he told his wife in February, 1923, that he secured employment in Tarrytown, New York, and she said, "I hope you never return"; that she was perfectly willing for him to go (Case, p. 84) and that she wanted him out of the way (Case, pp. 90, 110-111). He said that he returned to the household on two occasions and that his wife did not greet him, but merely said "Hello" and that a room apart from his wife was assigned to him (Case, p. 90).

At Case, page 117, the defendant insisted that he did not leave Lakewood; didn't desert petitioner, but he was merely away at work. In response to questions by the Court at page 125, defendant said cohabitation between petitioner and defendant ceased in June, 1922, at the instance of the petitioner and he attributed this change to the attitude of the petitioner toward Mr. Chamberlain. At page 134 he testified that until June of 1922 he and the petitioner occupied the same room and bed.

Remarks on Conclusions of Court.

We respectfully direct the attention of this Court to the fact that the Vice Chancellor at the close of the case rendered an oral opinion which appears in the Case at page 136, *et seq.*, wherein the Vice Chancellor indicated that upon the evidence he could not advise a decree for the petitioner upon three grounds which may be thus summarized:

First, that the petition charged on actual desertion in February, 1923, and the facts adduced at the trial did not substantiate the allegations in the petition.

Second, that the desertion was not obstinate and against the will of the petitioner, but on the contrary, entirely with her acquiescence and consent and that cessation of cohabitation between the parties occurred not in February, 1923, but much prior thereto, because of the refusal of the wife to cohabit with her husband.

Third, that any indiscretion committed by the defendant was condoned.

Upon the same evidence the Vice Chancellor on December 16, 1926, filed written conclusions wherein he advised the decree Nisi and in that opinion the court found the following facts which may be summarized in this manner:

(a) that the petition for divorce is not based upon adultery and even if it were there was not sufficient evidence.

(b) that in June, 1922, at the suggestion of the petitioner the parties ceased to occupy the same bed room and that this arrangement was one of mutual consent.

We respectfully urge that the opinions upon the findings of the facts are consistent and established conclusively that there was not a desertion by defendant of the petitioner in the legal contemplation of that term as defined by the cases, but that the finding for a decree nisi in the written opinion is inconsistent with the findings of the Court.

THE LAW.

Desertion in order to be a ground for divorce under our Statute must not be with the acquiescence or consent of the petitioner but against the will of the complaining spouse.

It is an elementary principle of law requiring no citation of authority that the continued cohabitation of the petitioner with the defendant after her knowledge of the conduct of the defendant and the suspicion which she inferred therefrom that the offenses of the defendant, if any, were condoned.

The last complaint which the petitioner had against the defendant referred to the receipt of a letter in June, 1921, which appears in the Case at page 19 and in spite of the knowledge which the petitioner had she continued to cohabit with the defendant as husband and wife until June, 1922, about a year after the receipt of that letter. The cause of action therefore must be based upon grounds which arose subsequent to that time.

The petition is for a strict desertion. Constructive desertion is not charged. It would have been necessary to plead a constructive desertion if the petitioner desired to base her case upon constructive desertion;

Smithkin vs. *Smithkin,* 62 Eq. 161 at 163.

It appears conclusively that in June, 1922, the parties ceased to cohabit as husband and wife at the instance and request of the petitioner. She testified to that state of facts and the Court in both its oral and written opinion determined that as a fact.

At Case, page 135, line 31, the Court in its oral remarks said:

> "But it is only on the legal point of desertion that I desire to hear any argument at all. Admittedly, there was a cessation of cohabitation, more than two years ago; probably four years before the filing of this petition. *I think it conclusively appears that the cessation of cohabitation was due to the refusal of the wife to cohabit with the husband.* When the husband left in February, 1923, he may have intended to leave permanently or he may not have. But, irrespective of whether he did or not, *I could hardly find under the testimony that his leaving was against the will of the petitioner. I think that she was entirely willing, in fact, glad to have him go, and I do not blame her if she was.*"

In its written conclusions the Court at page 139, after referring to some of the facts, said:

> "As a result of this situation, *in June, 1922, and at the suggestion of the petitioner, the parties ceased to occupy the same bedroom, but resided in the same house, the defendant thereafter occupying a room with the petitioner's brother. This arrangement seems to have been one of mutual consent.*"

It is true that in February, 1923, the defendant left the household of the petitioner and secured employment in Tarrytown but his removal from the household in February, 1923, constituted and brought about no change in the status of the parties than that which had existed since June, 1922. From and after June, 1922, the petitioner and defendant were husband and wife in name only. Departing in February, 1923, for the purpose of seeking employment did not cause the desertion or the estrangement of the parties; *they were estranged in*

June, 1922, at the instance of the petitioner, with her consent and absolute acquiescence.

No matter how unfortunate or unhappy the parties are does not constitute a ground for divorce in this State.

It is well settled by our decisions that a desertion cannot be considered as obstinate on the part of one when the separation is acquiesced in by, or is satisfactory or agreeable to the other.

> *Chipchase* vs. *Chipchase,* 48 Eq. 549 (aff'd 49 Eq. 594);
> *McGean* vs. *McGean,* 63 Eq. 285.

As was aptly said by Vice Chancellor Bentley in *Lederer* vs. *Lederer,* 95 Eq. 558, at the bottom of page 560:

> "* * * The separation of these parties was quite as agreeable to her as it was to him, and she certainly cannot now be heard to complain against it and ask the assistance of this court."

We respectfully urge that from the evidence it conclusively appears that there was no desertion of the petitioner. That the separation of the parties occurred in June, 1922, at the instance of the petitioner and was acquiesced in by and was satisfactory and agreeable to the petitioner.

When separation of parties is by consent or acquiescence petitioner must make sincere overtures to terminate it before statutory desertion can be alleged.

The rule unquestionably is that where the separation is shown or may be inferred to have originated with the wife's consent, it will become desertion from the time the complaining party makes sincere overtures to terminate it.

Hague vs. *Hague,* 85 Eq. 537;
Hankinson vs. *Hankinson,* 33 Eq. 66.

Mere declarations of a willingness to resume marital relations without any efforts to put an end to a separation, are of little weight in an action for divorce on the ground of desertion.

Broom vs. *Broom,* 47 Eq. 215.

The petitioner made no overtures to terminate the separation. On the two occasions in 1923 and 1924 when defendant came to the household, petitioner made no suggestion whatsoever that the marital status be resumed. On the contrary the evidence implies quite a contrary state of mind, for she assigned to the defendant a room apart from her.

The chambermaid, Etta Lane, a witness for the petitioner *testified that she was directed by petitioner to prepare the room to be occupied by the defendant apart from petitioner* (Case, p. 62).

The petitioner by no act of her evinced the intention or desire to terminate the separation, on the contrary, she was satisfied with the situation.

Again referring to the oral opinion of the Court at (Case, p. 136) it said:

> *"I think that she was entirely willing in fact, glad to have him go, and I do not blame her if she was."*

In its written conclusions (Case, p. 140, l. 4) it said:

> "He made no overtures to the petitioner for a reconciliation, made no demands upon her for resumption of marital relations and made no suggestions to that end."

We respectfully submit that under the authorities he was under no such obligation.

The separation of the parties having been one of mutual consent and acquiescence on the part of the petitioner in order to terminate that state it was necessary for her to make sincere overtures to terminate it. She made no overtures whatsoever. Any evidence of sincere overtures must be gathered from her testimony. The petitioner's conduct by the assignment to the defendant of quarters apart from those occupied by her indicated in a manner more forceful than words that she desired to have him away from her.

We respectfully urge that under the facts and authorities cited the Court erroneously advised a decree and we urge that the decree be reversed.

Respectfully submitted,

O'Brien & Tartalsky,
Solicitors for Defendant-Appellant.

Samuel Tartalsky,
Of Counsel.

84 MAY.1.1927

New Jersey Court of Errors and Appeals

Between
CAROLINE ADA SYKES,
Petitioner-Appellee
and
LUTHER HARRISON SYKES,
Defendant-Appellant

BRIEF FOR PETITIONER-APPELLEE

Prefatory Statement

This was a suit for divorce a vinculo based upon the desertion of the petitioner-appellee by the defendant-appellant in the month of February 1923. The petition was verified August 15, 1925 and filed August 17, 1925. From a Decree Nisi advised by Vice Chancellor Berry the defendant appeals.

At the conclusion of the hearing, the Vice Chancellor stated that he believed the defendant to be a perjurer and that he would disregard entirely the defendant's testimony (Case p. 135). In his brief, the defendant-appellant confines himself to the single proposition that the petitioner did not make out a case (disregarding the defendant's testimony) and this brief will accordingly be restricted to answering that contention.

The Facts

Petitioner and defendant were married November 14, 1895 (Case pp. 6 and 82). After their marriage they took up their residence in the home of petitioner's mother in Lakewood (Case p. 6). Afterwards the petitioner's mother gave petitioner the property and petitioner and defendant continued living in that house in Lakewood until petitioner built another house on a lot on Fifth Street in Lakewood (which lot had also been given petitioner by her mother) and petitioner and defendant lived on Fifth Street in Lakewood until about 1918, when petitioner bought a property known as the "Pinemere" on Second Street in Lakewcod, where petitioner and defendant continud to reside until the desertion in February 1923. (Case pp. 6, 7, 54, 68 and 78).

The defendant deserted petitioner and left Lakewood in the month of February 1923 (Case pp. 7, 55, 64 and 69), stating that he was going to New York to look for work. He returned for just one night in June 1923 and departed the next morning. He returned again for one night in June or July of 1924 and since that time petitioner, while continuing to live in Lakewood, neither saw nor heard from the defendant until the hearing before Vice Chancellor Berry.

The petitioner had for years operated a boarding house or hotel in Lakewood and had apparently supported herself, and to a greater or less extent the defendant for a number of years prior to his departure in 1923 (Case pp. 20, 21, 68, 70 and 71). Because of the escapades of the defendant with other women, an estrangement arose between the petitioner and defendant and, beginning some time in the summer or fall of 1922, they occupied separate bedrooms (Case pp. 14 et seq.).

The communication sometimes referred to as the "Bound Brook letter" received by the petitioner in June of 1921, marked Exhibit P-4, was one of the things that led to the estrangement (Case pp. 18 and 19). In addition, the defendant brought to petitioner's home the latter part of 1921 or the first part of 1922, a young lady from New York, who finally left when she overheard the petitioner remark to petitioner's mother that she would be glad when the visitor took her departure (Case pp. 15 and 16). After the defendant left in February 1923, petitioner received telephone calls from young ladies about him and one of the young ladies she met in New York in an attorney's office and at that time had exhibited to her a "stack" of affectionate letters addressed to the young lady in the handwriting of her husband (Case pp. 16, 17). And, in addition to that, some years before while the parties were living on Fifth Street there had been trouble about a visit of the defendant to one of the maids employed in the house of petitioner, in the maid's bedroom (Case pp. 14 and 15) and, on another occasion, there had been difficulty about defendant's constant visits at night to one of his music pupils (Case, pp. 42, 43, 49 and 50).

And, after the defendant left in February 1923, the petitioner had evidence of his continued unfaithfulness in the messages received by her from girl friends of the defendant in New York and in the stack of letters exhibited to her by one of the girls in the office of the New York attorney, which letters were couched in affectionate terms and written in the hand of the defendant (Case pp. 16-17).

It appeared by the testimony that when the defendant was working he paid board at the rate of $15.00 per week; that when he had no

work he paid no board; and that when he had some money he paid what he could (Case p. 21).

Notwithstanding the defendant's misconduct, he continued, with the consent of the petitioner, to live in her house and be supported, at least in part, by her. She testifies that she had no knowledge of his departure for New York in February of 1923 until he announced that he was going to look for work; that he didn't tell her where he was going, where he would be, or when he would be back; that she was not surprised because he had done the same thing before (Case pp. 7, 20, 109).

This statement is in general confirmed by Mrs. Etta Lane who testified that Sykes came in the kitchen one day and announced that he was going to New York or Tarrytown for work and bid them all goodbye (Case p. 60).

The petitioner testified that she neither directed nor requested the defendant to leave her home; that she had no knowledge of his intention to leave except his announcement that he was going; and that she said nothing by way of objection to his returning (Case pp. 20, 45).

Her attitude toward the defendant is shown by testimony of Mrs. Bias, who testified that as late as January 1923, when the defendant was confined by illness, to his room on one of the upper floors, Mrs. Sykes used to go up to visit him during such illness (Case p. 67).

After leaving in February 1923, Sykes came back for one night in June 1923. He came unannounced but when he got there, said he had come to get some of his things. This is corroborated by Mrs. Etta Lane, who says Sykes came back to get some music and some of his belongings (Case pp. 7, 8, 57).

At that time Sykes departed the next morning without seeing his wife; said nothing while he was there about returning to live or about her going to New York with him; and offered no evidence whatever of reformation or his intention to conduct himself differently thereafter than he had theretofore (Case pp. 8, 9, 10, 11, 50 and 51).

Again in June or July 1924, Sykes came back for one night and again he said nothing about resuming cohabitation with the petitioner; offered no evidence of his intention to do differently than he had done; offered to pay for his lodging and apparently after getting what he came for departed and never communicated with his wife thereafter (Case pp. 9, 10, 11 and 51). In fact, Sykes made no advances whatever looking to a reconciliation with his wife. The attitude of Mrs. Sykes even at that time is shown by the fact that while Sykes came unannounced and while she had not heard from him for a year, she sent the maid out to ask him in to breakfast. He refused without her personal invitation and she then went to the door and asked him to come in to breakfast, which he consented to do, and she placed him at her own table (Case pp. 9, 10, 59, 115 and 116).

The testimony of not only the petitioner but also the maid, Mrs. Etta Lane, and of the defendant himself establishes these facts.

While on the stand, the petitioner, in response to the question as to whether she would have accepted her husband if he had offered to return, answered:—

> "Why, yes, if he had come back and done what was right and lived there a right life, yes." (Case pp. 45, 46).

The attitude of the defendant in this matter is shown not only by his conduct toward the petitioner, and with other women, but his remark addressed to the petitioner to the effect that if she would give him some of the property to which she has title, she could get a divorce if she wanted it (Case pp. 22, 23) (See also Case pp. 119-122).

The Law

Failure to make out the special charge of desertion does not preclude the petitioner from proving, under the general charge, desertion continued for two years before filing the petition.

GRADY vs GRADY, 64 Atlantic, 440 (Not officially reported).

BIDDLE ON DIVORCE—pp. 93, 94.

"It is not necessary to begin a desertion that the deserter intends to desert at the time he leaves his home. If the proof establishes that he, at any time while absent from his home, determined that from henceforth he would desert his wife, and that determination is persisted in wilfully, continuously and obstinately for the statutory period, that will constitute desertion within the statute."

FOOTE vs FOOTE, 71 Eq. 273, at p. 279.

Testimony of other witnesses is not a necessary requisite as corroborative evidence if the circumstances of the case, as shown by the expressions and conduct of the defendant, together with letters are corroborative of the testimony of the petitioner.

FOOTE vs FOOTE, supra, 280.

See also HAGUE vs HAGUE, 85 Eq. 537.

"The desertion was wilful on the part of the husband in that he purposely created the situation that made separation inevitable."

MOUNTFORD vs MOUNTFORD, 94 Eq. 629.

A separation of husband and wife caused by the cruel conduct of the husband; or by his conduct which led to the separation, creates a situation where the law imposes upon him the duty of reforming his ways; giving his wife reasonable assurance of his sincerity; and seeking out his wife and applying for restoration of the marital relations.

CSANYI vs CSANYI, 93 Eq. 11, p. 16.

And until she receives reasonable assurance of his honest reformation, she is justified in refusing to answer his communications and even in evading a meeting with him.

CSANYI vs CSANYI, supra.

And where the circumstances are such as to reveal illicit relations between one of the spouses and another person, the offended party, even the husband, is under no duty of making any effort looking to the return of the offending spouse, even though the evidence of infidelity be insufficient to establish adultery in a suit for divorce.

SMITH vs. SMITH, 95 Eq. 660 (Court of Errors and Appeals).

Argument

In the case now before the Court, while the petition alleges the desertion to have occurred in the month of February 1923, yet, if by the proofs it be established that the desertion really began in June or July of 1923, which

would be more than two years before the institution of the suit, such proof, supposing the desertion to have been wilful, continued and obstinate from that date, would be sufficient to entitle the petitioner to a decree (GRADY vs GRADY and BIDDLE ON DIVORCE, supra).

In the instant case the defendant departed in February 1923, and first returned in June 1923. He came unannounced; said that he came for certain of his things; went away the next morning and did not again appear for a year. His second and last visit was in June or July of 1924 when he again came for one day and one night and departed the following morning without bidding his wife good-bye. During that year she had heard nothing from him. After the departure in June or July 1924, the petitioner neither saw nor heard from defendant until they met in Court at the trial of the divorce suit.

In the meantime, however, and after the departure of the defendant in February 1923, petitioner was annoyed with telephone calls from young ladies with whom the defendant was apparently carrying on affairs and on a visit to New York had exhibited to her by one of these girls a stack of affectionate letters addressed to the girl by the defendant. The things that had happened before the defendant's departure in February 1923 were certainly of such a nature as to warrant the petitioner in taking the attitude which she did toward the defendant. To maintain her self respect she could have done no less than she did. It was a situation created by the conduct of the defendant himself. She did not compel him to leave her house, nor suggest that he go. She even administered to him during his illness a short time before his departure. And

after his departure the new evidence she had of his continued unfaithfulness surely justified her not only morally but as a matter of law, in requiring evidence of his reformation before taking him back. The duty became his to seek out his wife and give her evidence of his reformation and seek a reconciliation with her.

CSANYI vs CSANYI, supra

MOUNTFORD vs MOUNTFORD, supra

SMITH vs SMITH, supra

On the occasion of both of his return visits, one in June of 1923 and the second and last in June or July of 1924, he had ample opportunity to seek a reconciliation. The petitioner accepted him in her home; provided him with room and lodging; and the second time personally invited him into the house and seated him at her own table. The defendant himself admits that he made no effort toward any reconciliation with his wife but after serving the purpose for which he had come departed without so much as an adieu.

These circumstances we contend and this testimony is sufficient to show the desertion was a wilful desertion on the part of the husband and was without the wife's consent. Because of the situation created by the defendant's conduct, she was certainly under no legal obligation to humble herself by seeking a reconciliation with him. And even after what happened she was ready to take him back, as she testified in Court, if he had come back and done what was right and lived a right life. In CSANYI vs CSANYI, supra, decided by Chancellor Walker, the Chancellor in awarding a

decree to the wife, even justified her in refusing to answer letters from the husband and in evading an interview with him.

As the Court said in HAGUE vs HAGUE, 85 Eq. 537:

> "He never sought her out, clearly evincing his determination to be rid of his wife. These things are sufficient corroboration."

In a suit for divorce on the ground of desertion, the things required by law of the offended party in her attitude toward the offender will depend very largely upon the circumstances of each particular case, as we believe a reading of the cases above cited will show, particularly the case of CSANYI vs CSANYI, decided by the Chancellor, and the cases of MOUNTFORD vs MOUNTFORD and SMITH vs SMITH. In the instant case, the evidence showed the defendant was in the habit of going away and staying for considerable periods of time all during the course of the married life of these parties. After what happened prior to the defendant's departure in February 1923, the wife could not reasonably have been required to seek a reconciliation and return of her husband. Certainly, she did not consent to the course of conduct pursued by him that resulted in a situation, prior to his departure, which made his remaining at home less attractive than it might otherwise have been. But, notwithstanding his conduct, she did give him every opportunity to himself seek a reconciliation with her and that, we believe, is sufficient to show her lack of consent to his course of conduct that resulted in the separation.

While it cannot be proven by the words of the defendant himself, yet the circumstances, we believe, are sufficient themselves to show

the intent in the mind of the defendant to desert the petitioner. Having departed in February 1923, he has never returned to live with her, nor has he ever sought a reconciliation with her. He has had ample opportunity. His continued absence and silence are in themselves strongly evidential of the intent in his mind. And if he had not intended to desert in February 1923, certainly the circumstances of this case strongly evince an intent on his part when he departed in June 1923, never to return and live with his wife. He never communicated with her after that date and saw her only once when he offered to pay his board and a night's lodging and said nothing about a resumption of cohabitation. There is ample authority in law to support the proposition that such circumstances and conduct are corroborative of his wilful intent to desert. See KELLY vs KELLY, 94 Eq. 248; HAGUE vs HAGUE, 85 Eq. 537; MOUNTFORD vs MOUNTFORD, 94 Eq. 629.

It is respectfully urged that the petitioner was entitled, under the law and facts, to a decree of divorce and that this Court ought to affirm the Decree of the Court of Chancery.

Respectfully submitted,

HOWARD EWART,

Solicitor for and of Counsel with Defendant-Appellee.