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Petition for Divorce.

Filed March 19, 1927.

In Chancery of New Jersey.

To HIS HONOR EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey. 10

The petition of Doris Naylor of the City of East Orange in the County of Essex and State of New Jersey respectfully shows:

1. Your petitioner, whose maiden name was Doris A. McLaughlin, was lawfully joined in the bonds of matrimony to her present husband, Frederick W. Naylor, Jr., on the 2nd day of November, 1925 by a minister of the gospel at St. Paul's Church, in the City, County, and State of New York. 20

2. Defendant, since his marriage to petitioner, on the 20th day of December (and on other days in said month of December) Nineteen hundred and Twenty-five 1925, and on various days in 1926, wickedly disregarding the solemnity of his vows and the sanctity of the marriage state, committed adultery with Dorothy Louise Griffin at East Orange in the County of Essex and State of New Jersey. 30

3. Petitioner was a bona fide resident of this State, having her permanent home at East Orange in the County of Essex, when this cause of action arose as aforesaid and has ever since continued to be such resident down to the time of the com- 40

Petition for Divorce.

mencement of this suit, residing continuously in East Orange aforesaid.

4. No children were born of the marriage aforesaid.

10 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, that she may resume her maiden name and that she may have such further relief as may be just,

And your petitioner will ever pray, etc.

SAMUEL W. BOARDMAN, JR.,
Solicitor for and of Counsel with
20 Petitioner, Doris A. Naylor.

State of New Jersey }
County of Essex. } ss.:

30 Doris A. Naylor, being duly sworn according to law, upon her oath deposes and says, that she is the petitioner named in the foregoing petition; and 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.

DORIS A. NAYLOR.

Subscribed and sworn to this 18th }
day of March, 1927, at Newark, }
N. J., before me, }
John Q. Frey,
A Master in Chancery
of New Jersey.

Answer.

Filed April 28, 1927.

IN CHANCERY OF NEW JERSEY.

Between
DORIS A. NAYLOR,
Petitioner, }
and } On Petition. 10
FREDERICK W. NAYLOR, JR., }
Defendant. } Answer.

The defendant, Frederick W. Naylor, Jr., of the City of East Orange, County of Essex and State of New Jersey, by way of answer to the petition says that: 20

1. He admits that petitioner and defendant were married as alleged in said petition.

2. This defendant denies that since his marriage to petitioner or on the 20th day of December, 1925 or on other days in said month of December, 1925 or on various days in 1926 he did 30
commit adultery with Dorothy Louise Griffin at East Orange, Essex County, New Jersey, as in said petition is alleged, or that he committed adultery with said person or with any other person at any other time or place.

3. This defendant admits that petitioner and defendant were bona-fide residents of this State when this supposed cause of action arose, and that this defendant has ever since continued to be a 40

Answer.

10 bona fide resident of this State down to the time of the commencement of this action, residing at 3 Grove Place, East Orange, Essex County, New Jersey, but whether or not said petitioner has, ever since said supposed cause of action arose, continued to be a bona fide resident of this State, as alleged in said petition, this defendant has no knowledge or information sufficient to form a belief, and neither admits nor denies the same.

4. This defendant admits that there were no children born of the marriage between him and said petitioner as is alleged in said petition.

20 5. This defendant says that the petitioner condoned said supposed acts of adultery in that, with knowledge, she did continue matrimonial cohabitation with this defendant up to and including the latter part of January, 1926; and that during such cohabitation, and ever since, this defendant has treated said petitioner with conjugal kindness.

This defendant prays for a dismissal of the petition herein, and will ever pray, etc.

30 JOSEPH E. WORTHINGTON, JR.,
Solicitor for Defendant.

Petition.

April 30

Filed ~~July 2~~, 1927.

IN CHANCERY OF NEW JERSEY.

Between DORIS A. NAYLOR, Petitioner, and FREDERICK W. NAYLOR, JR., Defendant.	}	On Petition for Divorce. Petition.	10
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To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:

20

The Petition of Dorothy Louise Griffin of the City of East Orange, in the County of Essex and State of New Jersey, respectfully shows that:

1. She is charged in the Petition for Divorce filed in this cause, with having committed adultery with the defendant, Frederick W. Naylor, Jr. as will appear by reference to the said Petition, and she says that said charge is wholly unfounded and untrue, either as to the dates and places alleged in said petition or as to any other dates or places whatsoever.

30

2. Your petitioner prays that she may be made a party to this cause, upon such terms and conditions as shall seem to your Honor fit and proper.

And your petitioner will ever pray, etc.

J. GLENN ANDERSON,
Solicitor of Petitioner, Dorothy Louise Griffin. 40

Petition.

State of New Jersey }
County of Essex. } ss.:

Dorothy Louise Griffin of full age being duly sworn upon her oath according to law deposes and says that:

10 1. I am the petitioner named in the foregoing Petition.

2. The charge of adultery whereof mention is therein made is untrue, either as to the dates and places alleged in said Petition or as to any other dates or places whatsoever.

DOROTHY LOUISE GRIFFIN.

Sworn and subscribed to before me }
this 29th day of April, 1927. }

20 Harry Nadell,
An Attorney of N. J.

30

40

Testimony.

IN CHANCERY OF NEW JERSEY.

Between
DORIS A. NAYLOR,
Petitioner,
and
FREDERICK W. NAYLOR, JR.,
Defendant.

10

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, ALONZO CHURCH, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of SAMUEL W. BOARDMAN, JR., for Petitioner; JOSEPH E. WORTHINGTON, for Defendant; J. GLENN ANDERSON, for Dorothy Louise Griffin.

20

October 19, 1927.

DORIS E. NAYLOR, sworn for petitioner.

Direct-examination by Mr. Boardman:

Q. Mrs. Naylor, you are the petitioner in this case? A. Yes, sir. 30

Q. And who is your husband? A. Frederick Naylor, Jr.

The Court: How old are you?

The Witness: Twenty two.

Q. He is the defendant in this case? A. Yes, sir.

Q. When were you married? A. November 2nd, 1924. 40

Doris A. Naylor—Direct.

Q. And where? A. In New York.

Q. I show you a paper. What is that? A. Marriage certificate.

Q. You obtained that from the clergyman there?

A. Yes.

The Court: Any objection?

10

Mr. Anderson: No objection.

The Court: It will be received.

(Marriage certificate marked Ex. P-1.)

Q. Where did you live after the marriage? A. Number 9 West 84th Street, New York.

Q. And how long did you live there? A. From November 2nd, until December 13th, in New York.

Q. Then what happened? A. I came to East Orange and I have lived with my aunt since at 20 97—(interrupted)

Q. East Orange, New Jersey? A. Yes.

Q. And where are you living now? A. In East Orange.

Q. Have you lived there continuously through this time? A. I have.

Q. And that is your home? A. It is.

Q. Are you living with your husband? A. I am not.

30 Q. How long since you have lived with him? A. Since December 13th. I have not lived with him since December 13th, 1924.

Q. And why did you leave him, if you left him? A. Because—

Q. Or, was there a separation? A. —I suspected him of having something to do with Miss Griffin. I suspected him of having her in his home.

Q. And after you came to New Jersey, what was the relation between you and your husband? 40 Did he live with you or have anything more to do

Doris A. Naylor—Direct.

with you? A. He did not; he lived with his mother and father and I lived with my aunts.

Q. In the summer of 1925 did anything occur to affect your suspicions? A. Why, no. I saw him quite often on Miss Griffin's porch.

Q. Well, when was this?

The Court: Was that before you left 10 him.

The Witness: No.

Q. About when? A. After I left him.

The Court: Well, what circumstances, what facts led you to leave him? That is what Mr. Boardman wants to know. What did you see or know that caused you to leave him? 20

The Witness: Why, I went over there one Sunday and rung the bell and I waited fully fifteen minutes before he came to the door—and his mother and father were out—and I waited fully fifteen minutes before he came to the door, and when he came I asked him what kept him so long and he told me he took his own damn time about coming and I suspected him of having someone over there. 30

The Court: What was said before you left him?

The Witness: That was why I left him.

The Court: Now, we have the reason why she left him. She says, he took his own damn time. She says she left him because he said he would take his own damn time for coming to the door.

The Witness: I didn't leave him because 40 of that.

Doris A. Naylor—Direct.

Q. What other cause did you have for leaving him? A. Well, he abused me when I was in New York and when I came home I didn't have anything to eat.

Q. How long before you separated? A. We separated January 29, 1926.

10 Q. Well, how long before you left him in December was it that you were without anything to eat? A. Why, there was a great many days we would not—when we didn't have anything to eat.

Q. Now, you suspected him of connection, you say, with Miss Griffin? A. Yes.

20 Q. What, if anything, did you see in the summer of 1925 that confirmed your suspicions or that caused your suspicions? A. Well, he was on Miss Griffin's porch quite early in the summer and then we saw him—watching him later.

Q. And what was the chief cause of your starting to watch? A. Because we noticed Miss Griffin's condition.

Q. When did you first notice that? A. In June.

Q. And what was her condition? What do you refer to? A. Why, I believe she was in a family way.

Q. She had that appearance? A. She did.

30 Q. And what watching did you do—or, first, who watched with you, if anybody? A. My aunt, Miss McLaughlin.

Q. What was the first time that you watched with her? A. July seven.

40 Q. What did you see on that occasion? A. Why, the Griffin family were out on the porch and Frederick came out at eleven o'clock with Dorothy. They appeared to be pulling each other across the porch.

Doris A. Naylor—Direct.

Q. Where does your husband live? A. 3 Grove Place.

Q. And where does Dorothy Griffin live? A. 5 Grove Place.

Q. How far apart are the houses? A. Why, I should say about four feet or so apart.

Q. What else did you see, if anything, that night? A. That is all that night. 10

Q. July seventh? A. Yes.

Q. When did you watch again? A. July eighth.

Q. What did you see then? A. The Griffin house was dark and at eleven fifteen Frederick came out with Dorothy and went into his own home and in a few seconds later Dorothy came out alone and stood on the porch for a second and went in. 20

Q. Was there anything else that you saw at that time? A. That is all. 20

Q. When was the next time that you watched? A. July seventeenth.

Q. What did you see then? A. At eleven thirty Frederick came out. His mother called him at eleven o'clock; she came to the door and called him. He was with Miss Griffin. The house was dark. The family were on the porch.

30 Q. On what porch? A. On the Griffin porch. His mother called him at eleven o'clock and he came out at eleven thirty. That was in the summer, and from where we were standing it sounded as though his mother and father were both scolding him when he came into his own home.

Q. Was there anything else that you saw that night? A. That is all.

40 Q. Did you see Frederick himself any further? A. From where we stood we could see him in his own bedroom. He seemed to be examining the 40

Doris A. Naylor—Direct.

side of his face.

Q. Had you seen Dorothy Griffin that night? A. She came to the door with him.

Q. Were there any lights in the Griffin house? A. There was a light in the hall and a light in the back of the house, I suppose in the bedroom, as it was on the second floor.

10 Q. Yes. What about the shades? A. The shades on the bedroom were up, but the shade on the hall was down.

Q. And did you see any change of the shade? A. Why, after he left, I presume Dorothy went to bed and we waited and then the light went out in the bedroom, and in the hall, too.

Q. Well, after July seventeenth when was the next night you watched? A. July twenty first.

20 Q. What did you see then? A. Frederick came from Dorothy's and went up to his own porch and as he did he saw us watching him and he stood behind his own screen door watching us and we walked up Greenwood Avenue and when we came back to Grove Place he was sitting on his porch and his mother came along and saw us and as she did she took hold of John Crowell's arm and I presume she said something to him and as she got closer she said, "Frederick, were you waiting for me?" She said it loud enough that we could hear.

30 Q. You say he was back of the screen door? A. Yes, sir.

Q. How could you see him? A. Why, he had a cigarette and we could see the light of the cigarette where he was standing.

40 Q. After July twenty-first what happened? A. Why, we went away then. We didn't watch any more, but when we come back on September eighth Miss Griffin's child was born.

Doris A. Naylor—Direct.

Q. Did you—

The Court: When did you say you left him?

The Witness: January twenty-ninth.

The Court: Well, this was all after you left him?

The Witness: Yes.

The Court: All right.

10

Q. After that did you ever watch any more? A. Yes, we watched in October.

Q. When in October? A. The seventeenth of October.

Q. And what did you see that time? A. We didn't see him come from the house at that time, but we saw him come from the side of the house, the passage at the side of the house and go up his own porch.

20

Q. When did you see him come—was it—why did you watch on October seventeen when you had not been watching before that? A. Well, I didn't really think he would have the nerve to go in there after what happened.

Q. And why did you watch on October seventeenth? A. Because on the evenings he was there in July the house was always in darkness with the exception of the light in the hall and the shades were always drawn nights that we saw him come out of there and on this particular night the shades were drawn also and the house was in darkness and we suspected that he was there.

30

Q. Well, after that did you watch any other night? A. The twenty-fourth of October.

Q. What did you see then? A. We watched that night and at one o'clock he came out on the porch and saw us and went back again. They

40

Doris A. Naylor—Direct.

kept looking from underneath the shade on the hall and later we heard sounds at the rear of the house and at twenty minutes of two he came along in a taxi and went in to his own home.

Q. You saw him get out of the taxi, did you? A. I did.

10 Q. And earlier that evening you had seen him where? A. He came out at one o'clock.

Q. From where? A. On the porch of Miss Griffin's house.

Q. Did you see her? A. She came to the door with him. They both saw us and went back.

Q. While you were living with your husband, did he ever speak to you about Dorothy Griffin? A. Yes; he did.

20 Q. What did he say? A. He told me that one could do just exactly as they pleased with her.

Q. Did he say anything about his relationship with her? A. He said that no one ever went in there but himself, that no one ever went with her but himself.

Q. Did he give any reason? A. He told me that no fellow would bother with her.

30 Q. What did you say? A. I asked him what the attraction was then that he bothered with her and he said that he felt sorry for her.

Q. Has he ever said anything else to you about his conduct with her or with any other girl? A. Why, he has told me of places he went before he got married.

The Court: No.

The Witness: With fellows.

Q. Has he compared himself with anyone else?

40 The Court: What—

Q. Has he made any admission to you?

Doris A. Naylor—Direct.

Mr. Worthington: I object to that, your Honor please.

The Court: You can ask him— Is this before the marriage? What he did before the marriage you are asking now?

Mr. Boardman: No. After the marriage.

The Court: Well, after the marriage is 10 all right; not before.

The Witness: Why, he admitted he was with someone.

The Court: Is that set up in the petition?

Mr. Worthington: No.

The Court: You specify one particular correspondent, don't you?

Mr. Boardman: Yes.

20 The Court: Well, then, you must stick to that proof except that you can introduce the fact that he was of loose morals; is that your idea?

Mr. Boardman: That was the idea.

The Court: All right. You can do that. (To witness:) Did he say anything to you about running around with other women?

The Witness: Why, yes; he said he wished he was free again. 30

Q. What was that? A. He said he wished he was free again so that he could go around as he used to before he was married.

Mr. Worthington: I object to that.

Mr. Boardman: On the point of character, I submit that it is proper.

40 Q. What did he say, if anything, about—I don't want to lead the witness; but—what else has he

Doris A. Naylor—Direct.

said in an admitting way, or in a way of comparing himself with anyone else in his course of conduct? A. Well, when I left him, he told me I had been with someone else, and so had he, and when I picked him up on that he said, oh, no, he didn't mean that, he didn't mean that.

10 Q. And do you remember his ever speaking of—his relationship like that with another person? A. (Witness pauses.)

Q. Have you ever forgiven him for his unfaithfulness? A. I have not.

Mr. Boardman: That is all.

The Court: You gentlemen have the same interest, of course?

Mr. Anderson: No, your Honor, I have not the same interest.

20 The Court: I say, you—

Mr. Worthington: I represent the defendant, Mr. Anderson represents the intervenor. I do not think our interests are the same.

The Court: All right. Go on.

Cross-examination by Mr. Worthington:

30 Q. Mrs. Naylor, you say you were married on what date? A. November second.

Q. After your marriage, where did you say you lived? A. In New York.

Q. Where did you live? A. Number 9 West 84th Street.

Q. And how long did you live there? A. Well, we lived in New York—

The Court: Don't go over all that again.

40 Mr. Worthington: If your Honor please,

Doris A. Naylor—Cross.

I want to bring out—

The Court: If you want to address the Court, you must rise.

Mr. Worthington: Pardon me. Your Honor please, I want to bring out the facts as to the witness' memory as to these dates.

The Court: It doesn't seem to me it is important at all. She says she went to New York to live and she left him on such and such a date. Your cross-examination should be as to whether or not she went and saw these things she said she saw. 10

Q. Mrs. Naylor, you said that when you were living in New York you didn't have anything to eat at times? A. Yes.

Q. Was your husband working at that time? A. 20 He was.

Q. Were you working? A. No, I was not.

Q. How much salary was he making? A. Sixty five dollars a month.

Q. Do you know what he did with his salary? A. Why, he didn't always bring it all home.

Q. But he brought most of it home? A. I am positive—I wouldn't say "most of it"; he always owed somebody money; he didn't always bring it all home. 30

Q. Now, you said that on July seventh you watched Mr. Naylor's house, didn't you? A. Yes.

Q. And Miss Griffin's house. What time of the night were you watching? A. Eleven o'clock.

Q. And you say you saw Mr. Naylor come out of the house? A. I did.

Q. Was it dark at that time? A. At that time the family was on the porch and the house was dark. 40

Doris A. Naylor—Cross.

Q. How do you know it was Mr. Naylor? A. Well, I certainly know him.

Q. How far away were you? A. Not so very far. We were standing on Greenwood Avenue opposite Grove Place, and there is a lamp post on the corner of Grove Place and a light shines right on that porch. I was not mistaken.

10 Q. About how far away would you say you were from the house? A. I can't exactly say just how many feet, but, we will say from the back of that room to here.

Q. And when was the next night you say you watched the house? A. July eighth.

Q. And it was dark that night? A. It was.

Q. Mrs. Naylor, do you know how many daughters there are in the Griffin family? A. 20 Yes; three.

Q. Then, at the distance that you were standing, it might have been any one of the daughters that came to the door as testified? A. No.

Q. It might have been Mrs. Griffin? A. No; I was not mistaken. I could see her distinctly from where we stood and I was not mistaken.

Q. When was the next day that you claim you watched? A. July seventeenth.

30 Q. And when was the next day? A. July twenty-first.

Q. How do you happen to remember these dates so well? A. Because every night I came home I wrote these dates all down so that I would have it.

Q. And you have memorized these dates? A. I remembered them.

Q. Is there any other—is there any other way by which you remember them? Do you remember 40 them as being so many days after the fourth of

Doris A. Naylor—Cross.

July or— A. No. I wrote my dates down each night when I would come in after seeing him come out of there. I wrote my dates down and kept them all.

Q. When was the next time you watched the house? A. October twenty-fourth—October seventeenth and then October twenty-fourth. 10

Q. And October seventeenth you testified you saw Mr. Naylor come out of the house at one o'clock? A. Yes.

Q. And come back? A. No. That was October twenty-fourth. October seventeenth his mother called him or—rather, no—I have made a mistake there. October seventeenth we saw him come from the side of Miss Griffin's house. We didn't see him come out. We saw him come from the side of Miss Griffin's house. October twenty-fourth we 20 saw him come out.

Cross-examination by Mr. Anderson:

Q. Now, Mrs. Naylor, on July seventh when you first watched him— A. Yes.

Q. —what was it that aroused your suspicions first? A. Well, we saw Dorothy's condition.

Q. And why did you connect that with him? A. 30 Because earlier in the spring and in the summer he was on their porch a great many evenings with Dorothy.

Q. And who else was on the porch on those occasions? A. The rest of the family on some occasions.

Q. And then on July seventh when you first watched, you were standing as far away as the length of this room, is that right? A. Yes.

Q. And then it was about eleven o'clock at 40 night? A. It was.

Doris A. Naylor—Cross.

Q. How dark was it that night? A. Why, there is a lamp post right there on the corner that throws light over on the porch.

Q. How light would that make it? A. Well, that would make it light enough for anyone—for a person to know who they are seeing.

10 Q. To identify them? A. It does.

Q. And you identified him without any question? A. I did.

Q. And who else did you identify without any question on that occasion? A. Dorothy.

Q. And was there anybody else that came out there? A. There was not.

Q. And the light was burning in the hall at that time? A. It was.

20 Q. And there was a light inside the house? A. The house was in darkness.

Q. Except for the hall? A. Except for the hall.

Q. The light from the hall was still lit? A. It was.

Q. Downstairs—and that is the only light? A. Yes.

Q. And when he came out in what direction did he go? A. He went to his own home.

30 Q. Where, which door? A. The front door, of course.

Q. The front door of his own home. A. Yes.

Q. So that he came out of the front door of that house and went into the front door of his own home? A. He did.

Q. On July eighth what kind of night was that, that you were watching? A. Well, the same kind of a night.

Q. Clear? A. Yes, sir.

40 Q. And what was the situation with respect to the darkness? A. The house was all in darkness

Doris A. Naylor—Cross.

with the exception of the hall light.

Q. The hall light again was the only thing that was lit? A. Yes.

Q. And was anybody else home? A. No one was on the porch.

Q. You don't know whether anybody was inside or not? A. Well, I don't suppose the whole family was sitting in the dark. 10

Q. Well, you don't know that they were not there, do you? A. No.

Q. And on July seventeenth on that occasion there was a light in the hall? A. There was.

Q. Was there a light in any other part of the house? A. No; there was not.

Q. And you said there was a light upstairs, didn't you, on that occasion, July seventeenth? A. Yes; in what I supposed to be a bedroom. 20

Q. In what you supposed to be a bedroom? A. Yes.

Q. Whose bedroom is that supposed to be?

The Court: Well, that is not important. She doesn't know.

Mr. Anderson: Well, she has testified to it, your Honor.

The Court: She says that there was a light in the bedroom up there and she supposed it was somebody's, but—(interrupted) 30

Mr. Anderson: On direct she testified it was Dorothy's bedroom.

The Court: Well, she doesn't know. She says she doesn't. (To witness) Do you know whether it was Dorothy's bedroom or not? 40

Doris A. Naylor—Cross.

The Witness: I couldn't say whether it was Dorothy's bedroom.

The Court: Well, that is the end of that.

Q. Aside from those two lights, on July seventeenth, you didn't see any other light. A. No; I did not.

10 Q. And is the kitchen on the side of the house that you were on or is it on the opposite side?

Mr. Boardman: The Griffin house?

Mr. Anderson: The Griffin house.

A. Why, I believe it is on the side of the house we were on. I imagine so.

Q. You don't know? A. No; I do not.

20 Mr. Boardman: Your Honor please, I think it would be well to learn, first, whether she is acquainted with the inside of the Griffin house.

The Court: Yes, it would be better. (To witness:) Have you ever been in the Griffin house?

The Witness: No; I have not.

The Court: That is the end of that.

30 Q. Now, on all of these occasions you say it was about eleven or eleven thirty that Mr. Naylor came out? A. Yes.

Q. And on October seventeenth you say that you didn't think he would have the nerve to go in. What did you mean by that? A. Well, after Dorothy's child was born I certainly didn't think he would have the nerve to go in there, especially if he thought I was watching him.

40 Q. You didn't know she had a child born, did you? A. I did.

Doris A. Naylor—Cross.

Q. How did you know? A. From things we saw on the line.

Q. You suspected it from things you saw on the line? A. I did.

Q. You what? A. I suspected it from things we saw on the line.

Q. But that is all. A. That is not all.

10

Q. What else was there? A. Why, I came to see Mr. Boardman and he had the records hunted up, the birth certificate, so that I knew there was a child born.

Q. And you were satisfied of that? A. I was.

Q. And you were also satisfied it was Mr. Naylor that was the father, weren't you? A. Yes, I was.

Q. And why were you satisfied of that? A. Because if he was not guilty he never would have gone over to see a girl in that condition as often as he did and especially with the house in darkness.

20

Q. He always used the front door, didn't he? A. He did.

Q. Now, you say, that on the occasion of October seventeenth he came out of the side of the house. A. Yes.

Q. Which side, the side you were on? A. Yes.

Q. And was there a door on that side? A. Well, I don't really know. He came—appeared to come from the passageway between the two houses, the Naylor house and the Griffin house.

30

Q. So that on that occasion you don't know whether he was in the house or not. A. No, I do not.

Q. Now, on October twenty-fourth you say you heard sounds at the rear of the house? A. No.

Q. Dorothy's house. A. Why, he came out on the front porch first, October twenty-fourth, and

40

Doris A. Naylor—Cross.

saw us and went in again and they watched under the shade on the hall door and then later we heard sounds in the back of the house.

Q. Then there were lights in the house that night? A. There were not any lights in the house except the hall light.

10 Q. Except the hall light? A. Yes.

Q. What shade were they looking out of? A. The shade on the hall door, the front door.

Q. It was on that occasion he came—you say he went around to the rear of the house? A. I believe he must have come out of the rear of the house. We heard sounds back there.

Q. You didn't see him? A. He came up in a taxi at twenty minutes to two.

20 Q. You didn't see Mr. Naylor come out of the house? A. We saw him step out on the front porch at one o'clock and he went back again, so he must have gone out the back to come home—to come around in a taxi.

Q. But the man that came out on the porch you are sure was he? A. Positive.

Q. Although you never saw him come out? A. I saw him come out on the front porch.

30 Q. You never saw him come out of the house other than on the front porch? A. No. I saw him step out on the front porch.

Mr. Anderson: That is all.

The Court: That is all. Have you got this birth certificate?

Mr. Boardman: Yes, sir. I would like to offer that at this time.

(Birth certificate marked Exhibit P-2.)

40 The Court: Let me see it. Go on, Mr. Boardman.

Mr. Boardman: Robert Monnemacher.

Robert Monnemacher—Direct..

ROBERT MONNEMACHER, sworn for the petitioner.

Direct-examination by Mr. Boardman:

Q. Mr. Monnemacher, where do you live? A. 48 North 19th Street, East Orange, New Jersey.

Q. How long have you lived there? A. All my life. 10

Q. How long? A. All my life, eighteen years.

Q. Do you know Fred Naylor, the defendant in this case? A. I do.

Q. Where does he live? A. 3 Grove Place.

Q. Do you know how long he has lived there? A. I don't know exactly. He has been there quite awhile.

Q. How many years? A. Well, ever since I have known him, about ten years or more. 20

Q. And how long have you known him? A. About six or seven years, I would say.

Q. Do you know his reputation in the neighborhood?

Mr. Anderson: Your Honor please, I object to that. General reputation in a suit brought for divorce is not proper—on the ground of adultery. I think that is well held. 30

Mr. Boardman: Well, if your Honor please, I want to limit my question: Do you know his reputation for chastity or for his relation with women and girls?

Mr. Anderson: It is exactly the same.

The Court: I will sustain the objection. You must prove this specific act of adultery. I have no papers. You haven't given me any papers, but I assume your allega- 40

Robert Monnemacher—Direct..

tion is confined to adultery with this woman, Dorothy?

Mr. Boardman: Yes, sir.

The Court: Then you must prove it.

Mr. Boardman: The papers are here.

The Court: All right.

10 Q. Do you know this Dorothy Griffin? A. I do.

Q. Do you know of any peculiar condition that arose in the summer of 1925? A. I did.

Q. Did you have any conversation with Fred Naylor about it, or did you hear him talk about it?

A. I heard him talk about it once.

The Court: What did he say?

20 The Witness: I was in front of Savacool's store at 95 Greenwood Avenue, and he came over one night after supper and told us that Dorothy Griffin had a baby and that the father was—the father was a married man named Smith.

Q. Did Fred say anything more about it? A. He did not.

30 Q. Who were present? A. Mr. Savacool, his son, Millard Savacool and William L. Rowe.

Cross-examination by Mr. Anderson:

The Court: That doesn't prove anything. The birth certificate that you have introduced shows that this woman had an illegitimate child.

Mr. Boardman: Yes.

40 The Court: The father is unknown. Now, all you have proved by this witness is that

Robert Monnemacher—Cross.

the defendant said that the father was Mr. Smith. I don't think it is necessary to cross-examine on that. That is all.

Mr. Boardman: Well, I recognize that this testimony, like that of some other witnesses that I have here, is either hostile, or, at least, very weak, but this, at any rate, indicates Fred Naylor's knowledge and interest in the matter. 10

The Court: Well, it seems quite clear to me— Of course, it has already been proven that this woman is immoral, there is no doubt about that, because she has had an illegitimate child, but, unfortunately, you have got to prove that this man was the father to sustain your case.

Mr. Boardman: I appreciate that. That is all. Miss McLaughlin. 20

LILLY McLAUGHLIN, sworn for the petitioner.

Direct-examination by Mr. Boardman:

Q. Miss McLaughlin, where do you live? A. 97 Greenwood Avenue, East Orange. 30

Q. And are you related to the petitioner? A. What is that?

Q. Are you related to the petitioner? A. Yes, sir. I am her aunt.

Q. You knew of her marriage, did you? A. What is that?

Q. You knew of her marriage? A. Yes; I did.

Q. To Fred Naylor, the defendant? A. Yes.

Q. Have you ever seen her in New York? A. 40 Yes; I did.

Lilly McLaughlin—Direct.

Q. And found her living there with her husband? A. Yes.

Q. As husband and wife. And how many times did you visit her there? A. Three times.

Q. And when did she come from New York, if you know? A. Well, it was about December thirteenth.

10 Q. And where did she come to? A. To my home, 97 Greenwood Avenue.

Q. East Orange, New Jersey? A. East Orange, New Jersey.

Q. And she has been living with you since that time? A. Ever since.

Mr. Anderson: What is the answer?

20 The Witness: She has been living with me ever since.

Q. In the summer of 1925 did you see Dorothy Griffin? You know Dorothy Griffin? A. I do.

Q. Did you hear or notice anything unusual about her? A. Why, yes.

The Court: You need not prove the birth of the child. We have established it by the

30 Mr. Boardman: I was just leading up.

Q. When you did, what did you do after that? A. Why, we watched—well, that evening I sat on the porch, you know, and I saw—do you mean that?

Q. Yes. And when? A. I saw—

Q. When did you first watch? A. On the seventh of July.

40 Q. What did you see at that time? A. Why, I saw the Griffin house was dark and I saw Fred-

Lilly McLaughlin—Direct.

erick Naylor and Dorothy come out on the porch, and then Frederick was on his own porch and they both put their hands out and they seemed as though they were trying to catch each other across the ends of the porch to pull each other back and forth, but I don't believe they could reach. It was just about four feet apart.

10 Q. Is there a railing around each porch? A. There is a railing at the end of each porch.

Q. And the fronts of the houses are even with each other, are they? A. Yes.

Q. And the porches even with each other? A. Yes.

Q. What else, if anything did you see on the seventh of July? A. Well, I guess that was about all that I saw them come out and just take hold 20 of their hands and pull back and forth as I said they did—reached their hands out.

Q. Before this, do you remember anything that happened about the end of June, the last days in June what did you see that had any bearing on this? A. Why, on the twenty-ninth of June I saw Dorothy Griffin cross the school yard.

Q. Where were you? A. I was on my own porch right opposite the school yard.

30 Q. Yes. The school is— A. Is right—

Q. —on what street? A. On Greenwood Avenue right opposite my home.

Q. On the corner of Greenwood Avenue— A. Yes; and Williams Street.

Q. And is William Street the next street to Grove Avenue? A. To Grove Place.

Q. To Grove Place, and Grove Place runs from what street? A. From Greenwood Avenue up to Grove Street. It runs the same as William.

40 Q. And you on your porch—which side of

Lilly McLaughlin—Direct.

Greenwood Avenue is your house? A. Why, it is on the west side.

Q. The school is on the east side? A. East side.

Q. And what did you see at that time? A. Why, I saw Dorothy Griffin cross the school yard about eight o'clock; she went across toward Nineteenth Street, and I was still sitting on the porch about eleven o'clock when she came back again and she went over to her own home.

Q. And what did you notice? A. Well, I noticed that she was in a family way.

The Court: Well, you need not go over that.

Q. Well, who was with you or near you at that time? A. Why, my niece, Doris Naylor, was with me.

Q. And anyone else? A. And Mrs. Savacool was on the porch next door.

Q. Hers is also on Greenwood Avenue? A. Yes; it is right next door.

The Court: When did you see, if you did see, Dorothy with this defendant? When was the first time you saw them together, after the incident you have testified to?

The Witness: Oh, on the seventh of July.

The Court: Well, you told us about that.

The Witness: Yes. Then on the eighth of July, the Griffin house was in darkness, except the light in the hall and I saw Dorothy Griffin and Fred Naylor come out and Frederick went into his own home.

The Court: What time was that?

The Witness: That was about eleven fifteen.

Lilly McLaughlin—Direct.

The Court: Yes. You saw them both come out of the house and Naylor went in to his own house.

The Witness: Into his own home, and Dorothy went and stood in the dark a little while and then she went into her own home.

The Court: Yes. Now, when was the next time you saw them?

The Witness: Well, on the seventeenth of July.

The Court: Well, what happened then? What did you see then?

The Witness: Well, that time it was about eleven o'clock and Mrs. Naylor came to her front door. There was a screen on it and—

Q. You mean, Mrs. Naylor, the mother? A. Fred's mother and I heard her call Frederick and we waited fully half an hour. I guess it was half past eleven when Frederick came out of the Griffin home and he went into his own home. And then we heard voices upstairs, and it sounded as if his mother was scolding, the way her voice sounded, and then his father, we heard his voice, and then we saw Frederick in his own bedroom. There is a window at the side and one at the back and we saw him at the side, looking at the mirror and he had his hands up to his face.

Q. When did you next see them? A. On the twenty-first of July he came out of the Griffin home and he saw my niece and I watching and he went into his own home and he stood behind the screen door and he was watching us. We could see the light of his cigarette in the darkness, and then he walked—we walked down Green-

Lilly McLaughlin—Direct.

wood Avenue and just as we came back again and was crossing Grove Place, we saw his mother coming from Grove Street and she had John Crowell with her, her son-in-law.

10 Q. She was coming from Grove Street on what street? A. On Grove Place, coming toward her own home, and when she saw my niece and I crossing Grove Place at Greenwood Avenue she stopped and she just caught John Powell by the arm just like that, as if she was surprised, you know, see? So, and then when she came up to the porch she said, "Oh, Frederick, were you waiting for me?"

20 Q. And what, if anything, did you see or hear after that, that night? A. Well, we didn't see anything after that until—it was—because I went away on my vacation for the month of August, and I think Frederick went away the latter part of July, and I went away for the month of August and I came back on the seventh of September, and then on the eighth of September, I believe, Dorothy's baby was born, and then I didn't—I didn't watch them any more until the seventeenth of October.

30 Q. And why did you watch then? A. Well, just as my niece has said, we didn't think that he would go in there after what happened—afraid he would be suspected.

The Court: What did you see on the seventeenth?

The Witness: Why, on the seventeenth I saw him come through the passageway from Griffin's home and he went up on his own porch and went in the house.

40 Q. What later day did you see anything? A.

Lilly McLaughlin—Direct.

On the twenty-fourth of October I saw him come out the front door and they must have seen us and he jumped back again and went into the house. He had on a gray overcoat and a black derby, and we waited and saw them look—Dorothy and Frederick look under the shade on the hall door, front door, and we waited quite a while and then we heard a noise in the back as if there was a door and voices, and then, about twenty minutes of two, an Orange taxi drove up to the door and Frederick got out. He had a gray overcoat and a black derby on and he got out and went into his own home. 10

The Court: Well, is that all?

The Witness: That is all I know.

Mr. Boardman: All right.

Cross-examination by Mr. Worthington: 20

Q. Miss McLaughlin, could you see the Naylor house from your porch, the porch of your house? A. No. Not from my porch, but I stood on Greenwood Avenue right opposite Grove Place.

Q. And could you see the porch? A. I could.

Q. Of both houses? A. I could see both houses.

Q. Could they see you? A. Why, certainly they could see me. There was a large tree there. We tried to stand behind that tree, but they could see us if they looked. 30

Q. You said that on the seventeenth you saw Mr. Naylor, the defendant, come out of the alley. Do you know that he was in the house on that evening, on the seventeenth day of October he came out of the Griffin alley way? A. I couldn't say whether he was in the house, but he came out and he went up on his own porch and went in the house, but he always came out—when he did come 40

Lilly McLaughlin—Cross.

out, he always came out so fast, he would rush up the stoop and stumble sometimes on the steps, he was going so fast.

Q. On October twenty-fourth you have testified that he came out on the porch and went back. A. I have.

10 Q. And then you saw him and Dorothy Griffin looking under the shade? A. Yes, sir.

Q. How much of a space between the bottom of the window and the opening did they leave? A. Why, I guess there was a space about that big under the shade and they would raise it and peak under.

Q. How far away were you?

20 Mr. Anderson: Well, "that big" about eight inches, would you say?

The Witness: Let me see.

Mr. Anderson: (Indicating eight inches.)

Mr. Boardman: All right.

Q. Could you see their faces from where you were standing? A. I could, because there was a light in the hall.

30 Q. The light was in back of them? A. In back of them, yes, and a lamp post was on the corner, by the porch, yes.

Q. You are positive you saw both of their faces looking out through— A. I am.

Q. —through—underneath the curtain? A. Yes.

Q. You testified that you went to New York to call on your niece on three occasions? A. Yes, sir.

Q. Is that right? A. That is right.

40 Q. They were living in a furnished room? A. Furnished room.

Lilly McLaughlin—Cross.

Q. Did you approve of this marriage when it took place?

The Court: What is that?

A. Why, certainly.

Mr. Worthington: I asked whether she approved of this marriage when it took place. 10

The Witness: Approved of it?

The Court: No. Do not answer it.

Q. Miss McLaughlin, did your niece inform you that she was going to get married? A. She did not.

Q. When did the marriage take place? A. She didn't inform me that she was going to get married. 20

Q. She went to New York without your consent? A. She went to New York without my consent. Frederick said he was going to take her to a dance to the Women's Club, I believe it was.

Mr. Worthington: That is all.

Cross-examination by Mr. Anderson:

Q. Miss McLaughlin— 30

The Court: I do not see, Mr. Anderson, why your interest is antagonistic to the defendant at all. You are both trying to prove that he was not the father of this child.

Mr. Anderson: No; I am not interested in that—Yes, yes; that is—

The Court: Well, then, your interests are the same. 40

Lilly McLaughlin—Cross.

Mr. Anderson: Well, mine goes even further than that.

The Court: I do not see how it can go any further. I will allow you to cross examine this witness, and after this, either one or the other must cross-examine for both.

10

Q. Miss McLaughlin, do you know how long the Griffins and Naylor have lived next door to each other as next door neighbors? A. Well, I really do not, but I believe Frederick has lived there the best part of his life.

Q. How long have you lived in that neighborhood? A. Four years.

Q. And since you have lived there they have lived next to each other continuously? A. Yes, sir.

20

Q. Do you know whether or not they visited each other prior to the marriage of your daughter? A. She is my niece.

Q. Or, your niece. A. Why, yes, sir.

Q. They did, did they not? A. They did.

Q. And after his marriage to your niece, he discontinued going over there, didn't he? A. Well, I don't know whether he did or not.

Q. You really don't know whether he did or not? A. No; but I saw him on the porch early in June.

30

Q. Now, on the first occasion that you saw them reaching across the porches, trying to reach each other's hands, did you consider that as indiscrete for a married man?

By the Court:

Q. It doesn't make any difference, it calls for a conclusion. A. Why, no.

40

Lilly McLaughlin—Cross.

Q. There was no fault you had to find with the conduct of either party? A. No. But I only wanted to prove that he was in the Griffin home and that is what I saw when he came out.

Q. And on any of these occasions did you see anything that you did feel was indiscrete? A. No.

10

The Court: Don't you think it is slightly indiscreet to leave an unmarried woman's house at two o'clock in the morning?

Mr. Anderson: Certainly it would be, your Honor, if the family was not home, but there is no such fact been proved here.

The Court: All right.

The Witness: The house was in darkness, as if the family had retired.

20

Q. And this conversation on October seventeenth between the mother and Mr. Naylor, where did that take place? A. October seventeenth?

The Court: Yes.

Mr. Boardman: That is not the date.

Q. When was the date of that conversation? A. That was July, wasn't it? No, no, that was July twenty-first.

30

Q. July the twenty-first? A. Yes, I believe.

Q. And what was that conversation—well, where were you when that conversation was held? A. Why, I was right on the corner of Greenwood Avenue and Grove Place crossing and I just reached the other side when she reached her own door and she said to Frederick, "Oh, are you waiting for me?"

Q. And you were visible right there at that

40

Lilly McLaughlin—Cross.

time, weren't you? A. Yes; she saw us; she saw us and she came down the block with John Crowell?

Q. And you saw her? A. I did.

Q. And did you speak? A. Why, no, I didn't speak to her.

10 Q. Did you ever speak to her? A. I did.

Q. And when had you spoken to her last? A. Well, now, I really don't remember when I spoke to her last. It is some time since I have spoken to Mrs.—(interrupted)

20 Q. Did you visit the Naylor home when your niece was married to Mr. Naylor and living with him? A. I was not a visitor at the home, but I went over the evening that she suspected that he had somebody in the house and I went over and I told Mrs. Naylor and Mr. Naylor how he had been treating her.

Q. That is, as to what you thought was his unfair conduct towards his wife; is that it? A. Yes.

Q. And what did they say? A. Well, I don't just remember the conversation we had at the time, but I do remember Mrs. Naylor saying to Frederick, "Oh, how could you, Frederick?" And he hung his head.

30 Q. And did you speak to the Naylor after that? A. Well, I think I have spoken to Mrs. Naylor in the grocery store.

Q. When you were sleuthing around the residence, did you ever run into them on any other occasion? A. No; I don't think I did.

Q. Do you know whether or not they were present on any of these dates that you have mentioned? A. Who, the Naylor?

40 Q. The Naylor. A. Present where, in the Griffin home?

Lilly McLaughlin—Cross.

Q. In the Griffin home or in their own home? A. I don't know, but I shouldn't—I wouldn't think they could be, when the house was in darkness.

Q. Were there any people on the street while you were on the opposite side of the street? A. I didn't see anybody on the street, but I saw Mrs. Lewis in the window on the corner house, number 2 Grove Place. 10

Q. And you don't remember seeing anyone on the street corner or in front of the Naylor or Griffin home other than the parties you testified to; is that right? A. I don't remember.

Q. No one else? A. Well, I don't remember.

Q. Now, on these occasions—on these occasions you heard the description of the weather conditions which was given by your niece. Do you remember whether that was correct? A. Well, I think it was correct. 20

Q. And every night it was a dark night? A. No, it was not a dark night.

Q. What was the condition of the night? A. Why, as she said, the light on the corner lit up the block—lit up the corner right there and would show up the two porches.

Q. That is, the night was dark but the porch was lit? A. No; it was not a real dark night; it was not so dark that I couldn't see. 30

Q. So, if there had been anyone else on the street, you would have seen them, wouldn't you? A. Naturally.

Q. You don't remember seeing anybody? A. No; I do not.

Q. Now, on these occasions, how long did you stay out in front of the houses there with your niece? A. Well, I generally went out around ten 40

Lilly McLaughlin—Cross.

or half past ten and I waited until I saw them and the last night we saw them I stayed out until twenty minutes to two.

Q. How many occasions were you out there that you did not see them? A. Well, I really can't tell you how many times.

10 Q. Well, they were innumerable, were they not? A. No; they were not so many when we were out that I did not see them.

Q. Would you say there were a dozen? A. No; I don't think so. I couldn't tell you exactly.

Q. There were quite a few though, weren't there? A. No; not quite a few.

Q. Well, how many? A. Well, I guess about four or five times that I didn't see them.

20 Q. That is all you remember being out there when you did not see one or the other? A. Yes.

Q. So there were just as many times that you were out that you did not see them as there were that you did? A. Yes; when I would see the shades all drawn down on the house and just the light in the hall, then we thought, well, that would be a good night to watch; we suspected that he was there.

30 Q. And who else lived with you, Miss McLaughlin? A. My sister.

Q. Yes. Is she in court? A. She is not.

Q. Did she ever do any of this detective work? A. She did not.

Q. Why didn't she?

The Court: Don't answer that question.

Mr. Anderson: That is all.

(Short recess.)

Bertha M. Lewis—Direct.

Mr. Boardman: Before we go any further, I would like to have a correction made in the matter of dates. I will recall the petitioner to ask her the year in which these watchings occurred.

10

DORIS NAYLOR, recalled.

Direct-examination by Mr. Boardman:

Q. What year was it in which you watched with your aunt? A. 1926.

Q. And all these dates in July and October are of that year? A. Are of 1926.

The Court: All right. Anything further? 20

Mr. Boardman: Mrs. Lewis, take the stand.

BERTHA M. LEWIS, sworn for petitioner.

Direct-examination by Mr. Boardman:

Q. Mrs. Lewis, where do you live? A. 131 Greenwood Avenue, East Orange. 30

Q. And where did you live in the summer of 1926? A. 2 Grove Place, East Orange.

Q. While you lived there did you ever see Mrs. Naylor and Miss McLaughlin? A. I did.

Q. In the late evening? A. I did.

Q. Can you tell about what times, what dates? A. I couldn't say in regard to the date. It was late in the evening and I couldn't say about the date, because I was not interested. 40

Bertha M. Lewis—Cross.

The Court: About when?

The Witness: I couldn't say about the date. It was late in the evening.

The Court: Was it in the summer?

The Witness: Yes.

The Court: All right.

10 Q. Your house was on the corner, wasn't it? A. It was at that time.

Q. Yes, I mean at that time. And is there a street light there? A. Yes. There was.

The Court: What did you see?

The Witness: Well, nothing, only Mrs. Naylor, Jr., and her aunt standing on the corner, but it meant nothing to me.

20 The Court: Is that all?

Mr. Boardman: That is all.

The Court: Well, that is all.

Cross-examination by Mr. Anderson:

Q. Mrs. Lewis—

The Court: Why, there is not any cross examination on that.

30 Mr. Anderson: I just wanted to bring out what kind of light it was.

Q. What kind of light was that? A. I believe it is a gas street light.

Mr. Anderson: That is all.

The Court: That is all.

40 Mr. Boardman: Your Honor please, these witnesses are naturally hostile, but I have called Mrs. Griffin, the mother of Dorothy Griffin.

Jennie Griffin—Direct.

The Court: All right.

JENNIE GRIFFIN, sworn for the petitioner.

Direct-examination by Mr. Boardman:

Q. Where do you live, Mrs. Griffin? A. 5 Grove Place, East Orange. 10

Q. And how long have you lived there? A. About eleven years.

Q. What family lived next door? A. Mrs. Naylor.

Q. To the east? A. Mr. Naylor, Mrs. Naylor and Frederick.

Q. Who are there in the Naylor family living next door? A. Mr. and Mrs. Naylor and Frederick Naylor. 20

Q. And who are there in your family? A. I and my husband and Dorothy and Elizabeth and Jane.

Q. Now, you knew Dorothy's condition in the summer of 1926, didn't you? A. Yes.

Q. Did you call a physician? A. At the time.

Q. About what month? A. September.

Q. Well, wasn't there—no physician until September? Didn't you have any physician before then? A. No. 30

Q. What did Dorothy say as to the father of the child?

Mr. Anderson: I object to that.

The Court: No, I will allow it.

Q. It incriminates no one in this case. It is a party outside of this action entirely.

Q. Whom did she say was the father of the child? A. That I refuse to answer. 40

Jennie Griffin—Direct.

The Court: You will have to answer.

Mr. Anderson: Your Honor please, perhaps the party testifying would incriminate not only herself but another party, and I think that under the cases it has been held that where testimony will incriminate—(interrupted)

10 The Court: It wouldn't incriminate this woman.

Mr. Anderson: It would, if she did not disclose—(interrupted)

The Court: If she says Mr. Jones or Mr. Smith is the father of the child, why, then, I suppose you will have to get Mr. Jones and Mr. Smith to find out what he says about it.

20 Mr. Anderson: I feel that for the purposes of this case the answer, "It was some other," should suffice and I would like to have it rest that way.

Mr. Boardman: Your Honor, I am perfectly willing at this point the room should be cleared if that is any help, but I call for an answer.

30 The Court: The defense in this case is that this man, Naylor, is not the father of the child. Well, there is a child and there must have been some father. Now, if you want to clear Naylor, you must indicate who else was the father.

40 Mr. Anderson: That would be true, your Honor, if they had proved that there were any facts which would raise the presumption of his being, but the facts which have been proved, all point practically at the time of the birth and therefore there is no

Jennie Griffin—Direct.

presumption at all on the basis of any facts which are already in the case that he was the father of the child or that he knew anything about the child until the testimony that there had been a child born, when he made such a statement. He couldn't have been the child's father from the standpoint of the testimony which is in, which is the only testimony before your Honor of his relationships at a period so there is no such presumption. 10

The Court: I will reserve decision about that until after luncheon and think it over. Go on. Is that all you want to ask her?

Q. Well, I was going to ask further of you about what talk you have had with Fred Naylor. 20

A. None whatever; never spoken to him since he was married, except to say "How do you do?" to him when he passed.

Q. Mrs. Naylor, or his mother, assisted you, or helped at the time of the—(interrupted) A. No; she did not.

Q. She was at your house, wasn't she? A. No.

Q. Who did assist? A. I and the doctor.

Q. And who was that doctor? A. Dr. Stout. 30

Q. That was in September? A. In September.

Q. What did Dorothy say about it in September? A. Nothing. Didn't tell me until the day the child was born.

The Court: Did she tell you who the father was?

The Witness: Yes.

The Court: And you say—

The Witness: It is not Frederick Naylor. 40

Jennie Griffin—Direct.

Q. Have you known of other men attending on your daughter? A. No; she has not had other men at all.

The Court: She must have had, according to your own theory. She must have had one.

10 The Witness: Just this one gentleman, yes, in her life.

Q. How many times have you seen Fred Naylor in the house? A. In our house?

Q. Yes. A. He has not been in since three years—

The Court: Wasn't he there in July—

20 The Witness: He was not in our house in three years next January—next September. In the spring I had an occasion to go out with Mrs. Naylor and Frederick and my oldest daughter, Dorothy, to the cemetery in her old Ford car. The reason I know, I was making two spring coats for my daughters for Easter, and after we came back he came in the house at dinner and that is the last time he has been inside the house. My daughter is wearing one of the spring coats now, if that makes any difference.

30 The Court: I shouldn't think this was any laughing matter for a mother who should have some respect for the morals of her daughter.

The Witness: Well, your Honor—

The Court: No. You need not argue with me.

40 The Witness: I am not laughing.

Jennie Griffin—Direct.

The Court: You should not. This is a very serious matter for your daughter's reputation, at least.

Have you any further questions?

Q. What occasion for association or familiarity was there between your daughter and Frederick Naylor in former times? A. Oh, they saw each other, talked to each other from one porch to the other and when he was getting the cars or something like that, talking. He had her out to a dance once. 10

Q. There was a time when he was a frequent caller, wasn't there? A. Never a frequent caller, just come in as a neighbor.

Q. One period he was a caller? A. No, never no steady caller; no. 20

Mr. Boardman: Cross-examine.

Cross-examination by Mr. Anderson:

Q. Mrs. Griffin, did your other daughters—were your other daughters keeping company during the period you mentioned? A. Yes, sir.

Q. Both of them? A. No, one.

Q. One of them? A. Yes. 30

Q. Who was the man that was calling on one of them at that time? A. A young man by the name of Gordon Stevens, who looked very much like Frederick. In fact, one evening I went to the door and spoke to him as Frederick. I first thought it was he.

Q. And where does he live? A. Well, he lives in East Orange on Munn Avenue.

Q. Do you know where he is now? A. In college. 40

Jennie Griffin—Cross.

Q. Did you ever hear anybody comment upon the fact that they looked very much alike? A. Yes; we did in our own home. My daughter and all of us thought he put us so much in mind of Frederick; he had a long chin and looked very much like him.

- 10 Mr. Anderson: That is all.
The Court: That is all, madam.
Mr. Boardman: Mrs. Naylor, the mother,
Mrs. Ethel Naylor.

ETHEL NAYLOR, sworn for the petitioner.

Direct-examination by Mr. Boardman:

- 20 Q. Mrs. Naylor, where do you live? A. 3 Grove Place, East Orange, New Jersey.
Q. How long have you lived there? A. Twenty two years last April.
Q. Your family consists of whom? Who lives there? A. My husband, my daughter who is married now, she is not home, she was there, and my son; my daughter does not live home; she has her own home now.
30 Q. Does your daughter's husband live with her? A. Why, certainly. You mean my own daughter—I said—

Mr. Anderson: I beg your pardon. Did you ask if her own daughter—

The Witness: I don't understand the question.

Mr. Anderson: I object.

- 40 Mr. Boardman: I am simply asking about who lived there, and I understood

Ethel Naylor—Direct.

you to say yourself and your husband and your son.

The Witness: Yes.

Q. And also a daughter? A. She did live there until her marriage three years ago.

Q. Oh. A. That was our family, I understood you to ask. 10

Q. And what is the name of your son-in-law, your daughter's husband?

Mr. Boardman: My purpose, your Honor, is with reference to the allusion that has already been made in the testimony of petitioner—what is the name of your—

Mr. Anderson: What allusion?

The Witness: What has that got to do with it? 20

Mr. Boardman: Why, the allusion of Mrs. Naylor coming with John Crowell.

The Court: All right.

Q. That is your son-in-law, is it, John Crowell? A. John Durant Crowell.

Q. Who lived next door to you on the west? A. Why, the Griffins were on the west side.

Q. And the Griffin family consists of whom? A. Mr. and Mrs. Griffin, Elizabeth, Dorothy and Jane. 30

Q. And you, of course, observed Dorothy's condition last summer or the summer of 1926? A. I did.

Q. And did you speak to your son about it? A. Not until, I guess, the child was born, I think I spoke to him about it.

Q. And what did you say? A. I told him that I heard that Dorothy had a baby. 40

Ethel Naylor—Direct.

Q. What did he say? A. And, of course, he was—he says,—well, he had seen Dorothy at a distance, and of course, he didn't—he didn't surmise much, as a boy that age would.

Q. Under your observation, how much had Fred associated with Dorothy? A. He never associated with Dorothy my—that is to associate with her, no, never, and he has not been to their house for about three years and a half, and I think, at that time, around that time, it was in the winter, Dorothy gave him an invitation to a sorority dance and he went with her, but as to associating with Dorothy and taking her out he never did, never.

Q. Was Fred interested in any other of the girls in the Griffin family? A. He was never interested in any of the girls of the Griffin family.

Mr. Boardman: That is all. Cross-examine.

Mr. Anderson: That is all.

The Court: That is all, madam.

Mr. Boardman: Mrs. Savacool.

30 SUSY SAVACOO, sworn for the petitioner.

Direct-examination by Mr. Boardman:

Q. Where do you live? A. 95 Greenwood Avenue, East Orange.

Q. And do you or your husband keep a store? A. We do.

Q. What is the location of that? A. On the same street. That is 91.

Q. Is it near Grove Place? A. Yes; only one

40

Susy Savacool—Direct.

house between the store and Grove Place, that is Mrs. Lewis'.

Q. Are you acquainted with the Naylor family? Do you know the Naylor family? A. I am in a casual way.

Q. They are customers at your store? A. Yes.

Q. Are you acquainted with the Griffins? A. I am, in the same manner.

Q. Do you remember a night, late in 1926, late in June, sitting on your front porch, as has already been testified by Miss McLaughlin, do you remember seeing Miss Griffin cross the school lot? A. I do.

The Court: Was anybody with her?

The Witness: What is that, sir?

The Court: Anybody with her?

The Witness: No.

20

Q. Did you notice her condition? A. I did.

The Court: Don't bother with that. You have proved it overwhelmingly, about the condition, the baby.

Q. Since that time, what conversation have you heard from Fred Naylor, or in the presence of Fred Naylor?

30

The Court: About what?

Mr. Boardman: About the child of Dorothy Griffin.

A. Why, nothing more than what has been stated here before.

The Court: Did Fred Naylor say anything to you about the paternity of this child?

40

Susy Savacool—Direct.

The Witness: He did not.

Q. Well, did you hear any conversation in a group of which he was one? A. Why, not—

Q. (Continuing) About this? A. Not especially about the child.

10 The Court: What?

Q. Well, what did he say, as near as he came to it? A. Well, I don't remember now.

The Court: Was the subject of the child discussed?

The Witness: Well, not in my presence.

The Court: Well.

20 The Witness: That was discussed on the outside, but I was not there.

The Court: Well, if you were not there, you cannot testify.

Mr. Boardman: That is all.

Mr. Anderson: That is all.

The Court: That is all.

Mr. Boardman: Millard Savacool.

30 MILLARD SAVACOOOL, sworn for the petitioner.

Direct-examination by Mr. Boardman:

Q. Mr. Savacool, you are the son of the last witness, are you? A. I am.

Q. And live on Greenwood Avenue, East Orange? A. I do.

Q. Do you know Fred Naylor? A. I do.

40 Q. How long have you known him? A. A good ten years.

Millard Savacool—Direct.

Q. You have been around with him a good deal, haven't you? A. I have.

Q. Have you heard him talk about this child of Dorothy Griffin? A. He passed a remark in front of me about the child being born, it was a boy, it weighed nine pounds and the father's name was Smith.

10

Q. And what else have you heard him say about the child? A. I believe that is all I heard him say about it.

Q. Well, what else have you heard said in Fred's presence? A. About the child?

Q. Yes. A. There is nothing that I remember about it, because right after that there he was not around very much.

Q. When was this? A. The date?

Q. Yes. A. I couldn't say. It seems to me it was right after the child was born.

20

Q. September, 1926? A. It was in 1926, I know.

Q. You used to go with Fred Naylor a good deal, didn't you? A. I did. We had a club and we belonged together.

Q. And you still go with him? A. No, he doesn't come around any more at all.

Q. When did you drop off your acquaintance? A. It was after the child was born. As I say, he didn't show up any more.

30

Mr. Boardman: Cross-examine.

Mr. Anderson: That is all.

The Court: Now, I don't want to hear any more testimony that he said that the father was Mr. Smith, because that doesn't mean anything from my standpoint. It is really against you.

Have you anything else?

40

Edward Long—Direct.

Mr. Boardman: Well, I will call Mr. Long. Edward Long.

EDWARD LONG, sworn for the petitioner.

10 *Direct-examination by Mr. Boardman:*

Q. Mr. Long, where do you live? A. At 10 North 18th Street.

Q. And how long have you lived there? A. Why, I have lived there at that present residence only a few months, but I have lived on Beam Place for four years and in East Orange seven years.

20 Q. How long have you known Fred Naylor? A. I will say, close to five years, six years.

Q. And you have gone with him quite a good deal? A. Why, no, not so much. I met him at school and going around at school. That is about all I knew of Fred Naylor. I have seen him on the street.

Q. You know where the Naylor's live, of course.

Q. You know where the Griffins live. A. Yes.

30 Q. Next to each other. What do you know, if anything, about Fred Naylor's calling on Dorothy Griffin? A. Why, after—in the spring of this past year I met Fred and he told me that he had gone to the Griffin house to play cards. That was all. He admitted being in Griffins' home.

Q. When was it that he said this to you, about when? A. Oh, in the spring.

Q. Of this year? A. Spring of the past year.

Q. '27 or '26? A. 1927.

40 Q. 1927. And he alluded to what period being there to play cards? A. Why, at the period in

Jennie Griffin—Recalled.

question. Of course, I hadn't known anything about the condition of the girl at the time, but he told me of the charges that were being brought up and he said that at the time in question he did go in the house to play cards, but I don't remember whether he said anyone was present or not, now.

10 Q. You don't remember whether he said anything about what? A. Whether there was anyone else there—who was there.

Q. Well, he didn't speak as though he was talking about something three or four years ago, did he? A. Why, no. He seemed to be talking of the time in question.

Q. 1926? A. 1926.

20 Q. Have you ever heard him say anything about Dorothy Griffin's baby? A. Why, the only thing he said to me, he said there was a child born, but the father was unknown and it was a matter—First, he said it was unknown, then he said it was a married man in Irvington or Maplewood, I don't remember which now, it was a married man, and didn't give out his name.

Mr. Boardman: That is all.

Mr. Anderson: That is all.

30 The Court: That is all.

Mr. Boardman: I would like to ask another question of Mrs. Griffin.

JENNIE GRIFFIN, recalled.

Direct-examination by Mr. Boardman:

40 Q. Who is providing for the support of that child? A. Why, the father.

Jennie Griffin—Recalled.

Mr. Anderson: I object to that, your Honor.

The Court: No. I will allow it.

Mr. Anderson: I object on the same ground as the other objection.

The Court: Well, ask her the other way.

10 Mr. Anderson: There has been no parent-hood of the child proven.

The Court: Is Fred Naylor supporting this child?

The Witness: No, sir.

Mr. Boardman: That is all, with the exception of Mr. Savacool, who was to come at two o'clock.

The Court: Well, what is he going to say?

20 Mr. Boardman: He overheard, if I understand it, the same conversation that Millard Savacool heard.

The Court: Well, Mr. Boardman, it seems to me that you are putting in evidence that is against your own case, because these witnesses have all testified that someone other than Naylor was the father of this child and I do not see why you want to multiply that.

30 Mr. Boardman: No. Your Honor will recognize, I think, that the situation is a peculiar one, where many that might be supposed to be able to testify are nevertheless hostile, but, such being the case, that is our case, and, of course, my main reliance for corroboration is on Miss McLaughlin who has already testified.

The Court: All right. Well, go on.

40 Mr. Anderson: Your Honor please, I will

Motion to Dismiss.

Fred Naylor, Jr.—Direct.

move for a dismissal of the case, on the basis of the case of Luderitz against Luderitz in 88 Equity, 103.

(Discussion.)

The Court: I will deny the motion. Let the defense proceed.

Mr. Worthington: Mr. Naylor, Junior. 10

FRED NAYLOR, JR., sworn for defendant.

Direct-examination by Mr. Worthington:

Q. Mr. Naylor, you are the defendant in this suit? A. I am.

Q. And the husband of Doris Naylor? A. Yes, sir. 20

Q. Mr. Naylor, did you ever have any illicit relations with Dorothy Griffin? A. None.

Q. Did you ever have any illicit relations with Dorothy Griffin on the occasion mentioned by the petition? A. I never had any.

Mr. Worthington: That is all. Cross-examine.

The Court: Well, wait a minute. 30

Examined by the Court:

Q. How often in 1926 did you go and see Dorothy? A. I have not been in their house for over two years.

Q. There is testimony here that you were seen in that house in July, 1926, and also twice in October, 1926. What do you say to that? A. In July, 1926, I was working for the American Coin Lock Company practically the whole month of July, I 40

Fred Naylor, Jr.—Direct.

was in Philadelphia working at the Sesquicentennial.

Q. How about October seventeenth and twenty-first? A. I have not been in that house.

Q. You were not in that house? A. No, sir.

10 Q. You heard the witness say that you came out on the piazza and then went back and arrived subsequently, in a taxi and went into your own house; is that so? A. Yes; that is what they say.

Q. Is that so, that you did that? A. It is not so, no, sir.

The Court: Cross-examine.

Cross-examination by Mr. Boardman:

20 Q. Didn't you come to your own home late that night? A. I did.

Q. And was that while you were working in Philadelphia? A. No, sir. I said I was down there practically the whole month of July, not every day.

Q. You told several of your friends that Dorothy had had a fine nine pound boy, didn't you?

Mr. Anderson: I object to that.

The Court: I will allow it.

30 Q. You told them, didn't you? You told several of your boy friends? A. Told them, knowing it and I was accused jokingly as being the father of the child, knowing that it was only a joke, I have let the matter slip over. It was a neighborhood joke among the boys for two or three days.

Q. Did anybody say to you, "Be home with the baby?" A. No one ever said—

40 The Court: No, wait a minute. That doesn't prove adultery.

Fred Naylor, Jr.—Cross.

Q. Wasn't it Dorothy Griffin told you she had this baby? A. No, sir; my mother told me.

Q. What did you say when she told you? A. I didn't say anything. It surprised me. Later I asked who the father was.

Q. She was all fussed up about it, wasn't she? A. Who? 10

Q. Your mother. A. Why should my mother be fussed up about it?

The Court: Well, was she or was she not.

The Witness: No, sir, she was not.

Q. How much have you been in the habit of going with Dorothy Griffin? A. How much? I never went with Dorothy Griffin. I have been out with her on one or two occasions, such as a dance 20 she gave me an invitation to, and the invitation was given so late that I didn't know whether I was a substitute or not, but I accepted, having nothing else to do that evening. I have been over at their house one or two times for supper, leaving right after supper, with the exception of there being a party there or something similar, and on one or two occasions—

30 The Court: Do not volunteer. Just answer counsel's questions.

Anything else?

Mr. Boardman: No, I think not.

Mr. Anderson: That is all.

The Court: That is all. Is that the case?

Mr. Anderson: I will just put on Miss Griffin, if you wish her to go on. 40

Dorothy L. Griffin—Direct.

DOROTHY L. GRIFFIN, sworn for the defendant.

Direct-examination by Mr. Anderson:

Q. Where do you live, Miss Griffin? A. 5 Grove Place, East Orange.

10 Q. And that is right next door to Mr. Naylor's, the defendant in this action? A. It is.

Q. And how long have you known Mr. Naylor? A. As long as I can remember.

Q. What has been your relationship with him? A. Nothing but just as a neighbor, friendly neighbor.

Q. Did you ever have any illicit relations with him of any kind? A. Not any.

20 The Court: Wait a minute.

Cross-examination by Mr. Boardman:

Q. When this child was born you told the doctor that you did not know the father of the child, did you not? A. I did not.

Mr. Anderson: I object. The doctor's testimony is the best testimony in that question.

30 The Court: Yes— No, this might be an admission. She says she didn't say that.

Did you tell him the name of the father?

The Witness: I did.

The Court: Well, did you tell him that it was Fred Naylor?

The Witness: I did not.

The Court: All right.

40 Q. Do you know at what date this baby was be-

Dorothy L. Griffin—Cross.

gotten? Do you know at what date you had the sexual intercourse? A. I certainly do.

Q. Can you give the date? What is it? A. It is about the twentieth of December.

Q. Where were you at that time?

The Court: Well, I won't force this witness to testify to that. This child was born on September sixth and the conception must have taken place, well, at least eight months, if it was a living child, probably nine months before that. That would bring it about December as she says.

Anything further.

Q. Wasn't it a fact that you had had intercourse with different men, such as—

The Court: No, no. I won't allow that.

Mr. Anderson: I object.

Mr. Boardman: My justification, your Honor, is the word "unknown" on that.

The Court: No. To succeed in your case, you must prove that Fred Naylor was the father of this child, and I don't think it is necessary to drag her name in the dust any further.

Mr. Boardman: All right. That is all.

The Court: It is a very unfortunate thing.

Mr. Anderson: That is all.

The Court: It is a very unfortunate thing that she has to come to court here and have her sin and misery dragged through these channels, but that you have a right to do, but you have not the right to go on any further fishing excursion.

Dorothy L. Griffin—Cross.

Is that the end of the case?

Mr. Anderson: That is all.

The Court: That is all, madam.

Now, this is an action for adultery, and the ground of adultery is the birth of the child to one Dorothy Griffin, which took place on September sixth.

10

The only evidence of any intimacy between the husband and Dorothy Griffin occurred in July, 1926, just before the birth of the child, and in October, after the child was born. There is no evidence that would support the supposition that this man is the father of this child.

Mr. Boardman: If your Honor please, may I have a word?

20

The Court: Yes, you can have all the words you want.

Mr. Boardman: I wish to recall your Honor's attention to the testimony of the petitioner in connection with the admission of Fred Naylor, and Fred Naylor called to the witness stand did not deny that he had said those things which petitioner says that he said.

30

The Court: Yes.

Mr. Boardman: With reference to Dorothy Griffin.

And, moreover, the evidence of the last young man, who was on the witness stand, corroborates the testimony of the petitioner and Miss McLaughlin and certainly shows to be false, if it is believed, the testimony of Mrs. Griffin and Mrs. Naylor.

40

The Court: I still think that the testi-

Dorothy L. Griffin—Cross.

mony is absolutely insufficient to sustain this charge of adultery.

As counsel for the co-respondent has justly said, in cases of adultery, the rules of evidence in equity are tightened almost to a legal basis and the Court must be convinced that there was desire and opportunity and that beyond—almost beyond a reasonable doubt.

10

Now, this child must have been conceived some time in December and there is not one shadow of proof that they were anywhere near each other in December. The fact that he went to see her, if he did go to see her in July—and that is also denied—could not possibly make him the father of that child, because the child was eight months on the way then.

20

I will dismiss the bill.

30

40

Exhibit P-1.

In the Name of the Father, and of the Son, and
of the Holy Ghost, Amen,

This is to Certify, that

10 on the second day of November in the year of Our
Lord, One Thousand Nine Hundred and twenty-
five at Sixty-one Church St, in the City of New
York,

Frederick Wadsworth Naylor, Jr.
Doris Althea McLaughlin

Were joined together by me in

HOLY MATRIMONY

according to the Rites of
THE EPISCOPAL CHURCH

20 in the United States of America and in Conform-
ity with the Laws of the State of New York.

In Witness Whereof, I have hereunto affixed
my name this second day of November, One Thou-
sand Nine Hundred and twenty-five.

G. LA PLA SMITH
of Trinity Church

Witnesses

30 Charles W. MacLean
Effie I. Armstrong

"Those whom God hath joined together, let no
man put asunder."

40

Exhibit P-2.**STATE DEPARTMENT OF HEALTH****Bureau of Vital Statistics**

Place of Birth

County Essex State New Jersey

City East Orange No. 5 Grove Place

Full name of child Griffin

Sex of child: Male

10

Legitimate? No.

Date of birth: Sept. 8, 1926

Father

Full name: Unknown

Residence: Unknown

Color or Race: Unknown

Age at last birthday: Unknown

Birthplace: Unknown.

Occupation

20

(a) Trade, profession, or particular kind of
work: Unknown

No. of children born to this mother, including
present birth: 1

No. of children of this mother now living: 1

Mother

Full Maiden Name: Dorothy Louise Griffin

Residence: 5 Grove Place

Color or Race: White

30

Age at last birthday: 19 years

Birthplace: U. S.

I hereby certify that I attended the birth of this
child, who was born alive on the date above stated
at 8:15 P. M.

(Signature) H. V. S. STOUT,
Physician,

Address: 114 William Street, E. Or.

Received 9/13/26

F. J. OSBORNE,

40

Local Registrar.

Application for Rehearing.

Filed Dec. ³¹~~10~~, 1927.

IN CHANCERY OF NEW JERSEY.

Between

10 DORIS A. NAYLOR,
Petitioner,

and

FREDERICK W. NAYLOR, JR.,
Defendant.

On Petition
for Divorce.
Application
for
Rehearing.

20 To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:

The petition of Doris A. Naylor of the city of East Orange, County of Essex and State of New Jersey respectfully shows that:

1. Petitioner is the petitioner in the petition herein, which was filed to obtain a divorce from the bonds of matrimony between the petitioner and defendant.

30 2. The defendant, Frederick W. Naylor, answered said petition and Dorothy Griffin, who is named in said petition as one with whom the defendant had committed adultery was admitted as an intervening defendant.

40 3. The cause having been duly referred to the Honorable Alonzo Church, one of the Vice-Chancellors of this Court, witnesses were examined and the proofs submitted, and a decree made thereon on

Application for Rehearing.

the 19th day of October, 1927, wherein and whereby it was adjudged that your petitioner's petition should be dismissed for failure to establish by satisfactory proof the adultery charged in said petition.

4. Since the making of the aforesaid decree 10 and shortly prior to the filing of this petition, petitioner has discovered two new witnesses, Mr. Underheinert and Mrs. Underheinert whose testimony is material to the issue in this cause; this and evidence was unknown to the petitioner at the time of the hearing of this cause and could not have been known by the exercise of ordinary diligence prior to the closing of the case.

5. The witnesses Mr. Underheinert and Mrs. 20 Underheinert will testify that the defendant was frequently at the residence of said intervening defendant during the year 1926, being the period during which the defendant and intervening defendant and the mothers of said defendant and intervening defendant all testified that said defendant had not been at any time in the residence of the intervening defendant.

Petitioner therefore prays that said decree may 30 be opened, vacated and set aside, to the end that a re-hearing of this cause may be had for the purpose of enabling your petitioner to produce the testimony of the said witnesses, Mr. Underheinert and Mrs. Underheinert.

Doris A. Naylor, Petitioner
(Signed) Samuel W. Boardman, Jr.
Solicitor of Petitioner.

State of New Jersey }
County of Essex. } ss.:

Doris A. Naylor, of full age, being duly sworn according to law upon her oath deposes and says:

1. I am the petitioner in the foregoing petition named and the matters and things therein contained are true.

10 2. All evidence with regard to the movements of the defendant in his relations with the intervening defendant was sought before the hearing but no evidence additional to that then and there produced was found or could be found. After the hearing however your petitioner heard through Mrs. Susy Savacool that Mr. Underheinert and Mrs. Underheinert who live on Grove Place, East Orange almost opposite to the defendant and intervening defendant but a little further from Greenwood Avenue, were witnesses to the frequent calls of defendant upon the intervening defendant during the winter, spring and summer of 1926 and your petitioner has spoken to said ~~Mr.~~ Underheinert, ^{and Mrs. Underheinert} and verified their knowledge along this line.

DORIS A. NAYLOR.

Subscribed and sworn this 12th day
of December, 1927, at Newark,
N. J., before me,

30 ^(signed) Harvey G. Stevenson
Attorney at Law of N.J.

Order Denying Rehearing.

IN CHANCERY OF NEW JERSEY.

Between

DORIS A. NAYLOR,
Petitioner,

and

FREDERICK W. NAYLOR, JR.,
Defendant.

Order
Denying
Re-hearing.

10

A petition duly verified, having been presented herein by the petitioner Doris A. Naylor, praying that the decree of dismissal made in this cause on the 19th day of October, 1927, might be opened, vacated and set aside, to the end that a re-hearing might be had in this cause for the purpose of taking newly discovered evidence, which at the hearing was unknown to the petitioner and which could not have been known to her by the exercise of ordinary diligence prior to the closing of the case, according to the verified allegation of said petitioner.

20

And it appearing to the court that such newly discovered evidence would be only cumulative and ineffective to change the decree made as aforesaid;

30

It is, on this 13th day of December, 1927 ORDERED that the petitioner's said petition for re-hearing be denied.

Respectfully advised

Notice of Appeal
filed - Jan. 18, 1928.
Jan. 27, 1928.

Petition of Appeal.

Filed Feb. 8, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between DORIS A. NAYLOR, Petitioner-Appellant, and FREDERICK W. NAYLOR, JR., Defendant-Appellee.	}	On Appeal from the Court of Chancery. Petition of Appeal.
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20 *To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes.*

The petition of Doris E. Naylor, the appellant in the above entitled cause, respectfully shows that:

1. The petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 19, 1927, in a certain cause in said Court of Chancery wherein the said Doris E. Naylor was petitioner and the said Frederick W. Naylor, Jr., was defendant (and Dorothy Louise Griffin, intervenor) in this respect to wit that the said decree adjudges that the prayer in the petition of the petitioner asking for a dissolution of the marriage between the petitioner and the defendant therein (appellant and appellee respectively herein) and for permission of the petitioner to resume her maiden name be denied and the petition dismissed.

40 The petitioner appeals from the decree of the

Petition of Appeal.

Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the court held that the testimony was insufficient to sustain the charge of adultery alleged in the petitioner's petition, whereas the testimony was in fact sufficient for that purpose.

2. In that the court held in effect that the proof of desire and opportunity to commit adultery must convince the court beyond—almost beyond—a reasonable doubt. 10

3. In that the court held in effect, that the petitioner's case depended upon proof of adultery in or about December, 1925, whereas petitioner submits that her case is established by proof of adultery between the defendant and intervenor at any time in 1926 as well as in December 1925. 20

4. In that the court held that the petitioner's case depended upon that adultery between the defendant and the intervenor as a result of which the child was born to the intervenor September 8, 1926. Whereas the petitioner submits that her case is established by proof of adultery between the defendant and the intervenor on any other occasion before the end of 1926 as alleged in her petition. 30

5. In that the court overlooked the testimony evidencing illicit relations between the defendant and the intervenor on December 20, 1925.

6. In that the court overlooked the testimony given or countenanced by practically all the witnesses that there was "only one man in the life of" the intervenor.

7. In that the court directed the defendant not 40

Petition of Appeal.

to volunteer, when he was disclosing important evidence.

8. In that the court held that the petitioner was bound by quotations and allusions made by hostile witnesses called by the petitioner.

10 9. In that the court declined to hear reargument at the date of settling the form of decree, notice of application for which had been duly given to the solicitors of the defendant and of the intervenor, and agreed to by them.

10. In that the court declined to open the case for the submission of newly discovered evidence.

20 Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have all the relief prayed for in her original petition in the Court of Chancery and such other relief in the premises as to this court shall seem proper.

SAMUEL W. BOARDMAN, JR.,
Solicitor for and Counsel with Appellant.

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Answer to Petition of Appeal.

Filed Feb. ¹⁸~~17~~, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	}	On Appeal from the Court of Chancery.	10
DORIS A. NAYLOR, Petitioner-Appellant,			
and			
FREDERICK W. NAYLOR, JR., <i>et al.</i> Defendants-Respondents.		Answer to Petition of Appeal.	

To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes.

The answer of Dorothy Louise Griffin, intervenor, and one of the above defendants-respondent to the petition of appeal of the above named appellant. 20

This respondent, in acknowledging all or any of the matters which in the said Petition of Appeal are contained, to be true, for answer thereto, nevertheless says and admits that a final decree was on the 19th day of October, 1927, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said Petition of Appeal as is therein stated; but as to the substance and form thereof, this respondent prays to refer there- 30 to when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

J. GLENN ANDERSON,
Solicitor for and of Counsel with Intervenor, Defendant-Respondent, Dorothy Louise Griffin. 40

Answer to Petition of Appeal.

Filed Feb. 18, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between DORIS A. NAYLOR, Petitioner-Appellant, and FREDERICK W. NAYLOR, JR., <i>et al.</i> Defendants-Respondents.	}	On Appeal from the Court of Chancery. Answer to Petition of Appeal.
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*To the Honorable the Court of Errors and Appeals
in the Last Resort in all Causes.*

20 The answer of the above named respondent, Frederick W. Naylor, Jr., to the Petition of Appeal of the above named appellant.

30 This respondent, in acknowledging all or any of the matters which in the said Petition of Appeal are contained, to be true, for answer thereto, nevertheless says and admits that a final decree was on the 19th day of October, 1927, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said Petition of Appeal as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

40 JOSEPH E. WORTHINGTON, JR.,
Solicitor for and of Counsel with Frederick W. Naylor, Jr., Defendant-Respondent.

New Jersey Court of Errors and Appeals

Between DORIS A. NAYLOR, Petitioner-Appellant, and FREDERICK W. NAYLOR, JR., Defendant-Appellee.	}	On Appeal from Court of Chancery.
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Appellants' Brief.
I. ABSTRACT OR STATEMENT OF THE CASE.

— This is an appeal from a decree dismissing appellants petition for divorce on the ground of adultery between the defendant husband and the intervenor.

The petitioner and original defendant were married November 2, 1925 in New York City, New York (Exhibit P-1; Case p. 64). (The petitioner was originally confused in her year dates, naming dates one year earlier than the correct dates, but was recalled for correction. Case p. 41). They had previously resided in East Orange, Essex County, New Jersey. Immediately after marriage the parties lived together in New York City until December 13, 1925, when the petitioner no longer able to endure the lack of support returned to her previous home with her aunt at 97 Greenwood Avenue, East Orange, New Jersey. The defendant returned the same day to his previous home with his parents, 3 Grove Place, East Orange, New

Jersey. Both have resided in these respective homes ever since. For one week the parties appeared to have been on good terms, although there is no evidence that the defendant sought to live with his wife, nor sought to have her live with him.

Now next door to the Naylor's house, 3 Grove Place, was the house 5 Grove Place, where there lived Mrs. Jennie Griffin and her three daughters, Dorothy, Elizabeth and Jane. These families, the Griffins and the older Naylor's, had lived thus side by side for about eleven years and the defendant had accompanied Dorothy to a Sorority Dance and had been out with her on one or two occasions according to his own testimony; while according to the petitioner's testimony, which the defendant did not deny when on the witness stand, he had told the petitioner that no one ever went with Dorothy Griffin but himself and that no fellow would bother with her; also that one could do just exactly as they pleased with Dorothy Griffin. Dorothy testifies she has known the defendant as long as she can remember.

On Sunday, December 20, 1925 the petitioner went over to the older Naylor's home for her husband and rang the bell, but had to wait fully fifteen minutes before he came to the door. When he did come, she asked him what kept him so long and he told her that he took his own damn time about coming.

Now according to her own testimony, Dorothy Griffin had sexual intercourse with a man on the 20th day of December 1925, the very day that the defendant kept the petitioner waiting fifteen minutes at the door before he would open it, from which time on, the petitioner so suspected the defendant that she had no further connection with

him. She has never condoned her husband's infidelity as claimed in the answer.

According to the testimony of the petitioner, p. 19, lines 30-32, defendant was on the Griffin porch with Dorothy a great many evenings in the spring and summer of 1926 and she is corroborated by Miss Lilly McLaughlin in testifying to seeing Dorothy "in a family way" in June and consequently watching the relations of the defendant with Dorothy. Watching from under a street light at the nearest corner on a number of nights late, they saw on July 7, July 8, July 17 and July 21, 1926 the defendant and said Dorothy Griffin together at the Griffin house. They were seen holding hands and pulling each other back and forth July 7; the other nights they were more secretive. The petitioner went on vacation with her aunt for the month of August returning on September 7, 1926. On September 8, 1926 Dorothy's baby was born (Exhibit P-2; Case p. 65). According to the defendant's own testimony it was a neighborhood joke among the boys that he was the father of the child, but (as he says) knowing it was only a joke he let the matter slip over. The petitioner and her aunt saw the baby's things on the line and confirmed their suspicion of the baby's birth by obtaining Exhibit P-2. Supposing the defendant would not have the nerve to go to Dorothy's house after that they did not watch in September, but when they again noticed drawn shades with light only in the hall, just the same as they had seen in July, they watched and on October 17th, they saw the defendant come out of the alley (about four feet wide) between the two houses and stumble up the steps of his own house going so fast, and on October 24th, saw him with Dorothy Griffin on the Griffin porch and in back of the front hall door

curtain peeking out after they returned into the house. When the defendant and Dorothy Griffin retired further and ceased to be seen, the petitioner and Miss McLaughlin heard a noise in the back of the Griffin house. At 20 minutes of two A. M., a taxi drove up to the Naylor door and the defendant got out wearing the same gray overcoat and black derby which they had seen him wear when he ventured out on the porch with Dorothy Griffin that evening. On March 18, 1927, the petitioner executed her petition for divorce and the same was filed the following day. Not only did the defendant answer, but Dorothy Griffin petitioned for admission as an intervening defendant and was so admitted and has also answered.

II. Specifications of Grounds of Appeal, of Errors in Decree.

The decree is erroneous in:

1. Ordering a dismissal of petitioner appellant's petition when it should have granted the divorce and other relief prayed, (Case p. 67, line 21; p. 63, line 22);
2. In declaring that the adultery set up in said petition was not established, (Case p. 66, lines 35-37; p. 62, line 15) when, appellant submits, the same was established;
3. In declaring that no proof was submitted sufficiently clear and positive to justify a finding of the existence of adultery, (Case p. 66 foot, p. 67 top; p. 62 foot, p. 63 top) when, appellant submits, there was such proof;
4. In declaring that no proof was submitted to justify a finding of the existence of a criminal dis-

position or desire in the minds of the defendants and an opportunity to commit the crime, sufficient to establish circumstantial evidence for the rendering of a decree of divorce, (Case p. 67, lines 3 *et seq.*; p. 63 lines 10 and 11) when, appellant submits, such evidence was abundant;

5. In involving a declaration that the proof of desire and opportunity to commit adultery must convince the court beyond—almost beyond a reasonable doubt, (Case p. 63) whereas, appellant submits, such proof in a civil case needs only a preponderance of evidence;

6. In necessarily depending upon the principle that the proof of desire and opportunity to commit adultery must convince the court beyond a reasonable doubt; whereas, appellant submits, such proof in a civil case needs only a preponderance of evidence;

7. In depending upon the conclusion that petitioner's case depended on proof of adultery in or about December, 1925, (Case p. 63 lines 13 *et seq.*) whereas petitioner submits that her case is established by proof of adultery between the defendant and intervenor at any time in 1926 as well as in December 1925;

8. In involving the conclusion that petitioner's case depended upon that adultery between the defendant and the intervenor as a result of which the child was born to the intervenor September 8, 1926, (Case p. 62, lines 6 *et seq.*) whereas the petitioner submits that her case is established by proof of adultery between the defendant and the intervenor on any other occasion before the end of 1926 as alleged in her petition;

9. In involving the disregard of testimony evi-

dencing illicit relations between the defendant and the intervenor on December 20, 1925, (Case pages 62 and 63) ;

10. In depending on holding that petitioner was bound by surprising quotations and allusions (out of the mouth of defendant) testified to by hostile witnesses, necessarily (as she believed) called by her (Case p. 53, line 39) ;

11. In being maintained unopened, when the same should have been opened for the admission of newly discovered evidence (Case pp. 71 and 68 *et seq.*) :

12. In sustaining the objection to the question "do you know defendant's reputation for chastity or for his relation with women and girls?" (Case p. 25, line 36) ;

13. In disallowing the question asked by petitioner's counsel of Dorothy Griffin "where were you at that time?" (referring to time of sexual intercourse December 20, 1925) (Case p. 61, lines 8 & 9).

III. BRIEF OF THE ARGUMENT.

1. Law Points.

(1) The Court below erred in requiring proof of adultery beyond (or almost beyond) a reasonable doubt.

Adultery which is one of the grounds for divorce is also a crime although the defendant in the present case, guilty of adultery warranting a divorce, would not be guilty of the *crime* of adultery.

State vs. Lash, 16 N. J. L. 380.

In civil cases the measure of persuasion necessary in criminal cases is not to be applied.

The Court below held that "in cases of adultery the rules of evidence in equity are tightened almost to a legal basis and the Court must be convinced that there was desire and opportunity and that beyond—almost beyond a reasonable doubt" (Case p. 63, lines 5-12). This language of the Court below and of the Court of Chancery in some reported cases appears to be based upon a dictum in the Berckmans Divorce Case, 16 N. J. Eq. p. 453, where this Court unanimously affirmed a dismissal of the husband's petition. The decision of the Court of Chancery invoked no such extreme rule of evidence and a careful consideration of the evidence in that case as analyzed both in the report of the Chancery Case and in the report of the same case on appeal, shows that it was not necessary. It is interesting to note that where this Court has cited the Berckmans Case and quoted from it, case has been taken to avoid repeating the doctrine that adultery must be proved beyond a reasonable doubt in divorce cases.

Indeed this Court in cases where other aspects of this rule of evidence have been involved, has expressly stated that the law is otherwise. For instance, where the crime of assault and battery was involved in a civil suit for damages for such tort, this Court speaking through Justice Garretson said "while it may be that in some jurisdictions the rule may have formerly prevailed, that where the injury sued for is the result of a criminal act, the proof of the crime must be beyond reasonable doubt, such is not the law of this State."

Blackmore vs. Ellis, 70 N. J. L. 264; 557 Atlantic 1047.

Citing Kane vs. Hibernia, 39 N. J. L. 697; 23 Amer. Reports 239, where arson was the defense to a suit on an insurance policy.

To bring the subject matter nearer home, it will be noticed that in cases of bastardy this Court has distinctly held that although a crime is alleged, the proceeding is a civil proceeding and where the Court below had been instructed that the jury could find against appellant "if the Town had sustained the burden of proof by a fair preponderance of the testimony that appellant was the father of the child, this instruction was correct."

Overseer of Montclair vs. Eason, 92 N. J. L. 199; 104 Atlantic, 291.

It is of course, proper that the most careful consideration should be given to cases charging adultery, especially where the charge is made by a husband against his wife as in the Berckmans Case and in most of the cases where that case has been cited, it being a sort of cruelty for a husband to accuse a wife of infidelity. In the case at bar

however, it is not only the reverse, where a wife is accusing her husband of adultery, but it is very much of the same nature as a bastardy proceeding, since the co-respondent in this case has actually borne a child. The rule of evidence should therefore on every ground be that which has been established for bastardy cases.

The text book writers on evidence, from Greenleaf to Wigmore declare that policy suggests that the requirements of proof beyond a reasonable doubt should be strictly confined to its original field and that there ought to be no attempt to employ it in any civil case, citing (in 5 Wigmore, section 2, 498 2) not only cases involving other crimes in other suits, but also involving adultery in divorce suits as follows:

Neff vs. Neff, 96 Conn. 273; 114 Atlantic, 126.

Lenning vs. Lenning, 176 Ill. 180; 52 N. E. 46.

Heyman vs. Heyman, 210 Ill. 524; 71 N. E. 591.

Jenkins vs. Jenkins, Or. ; 204 Pac. 165.

Lindley vs. Lindley, 68 Vt. 421; 35 Atl. 349.

That this is the correct rule in this State where a crime is involved in a divorce suit is recognized in the case of

State vs. Sharkey, 73 N. J. L. 491; 63 Atlantic 866,

where in a trial for bigamy, evidence of a decree of divorce for the same cause was held inadmissible, on the very ground that in the divorce case, a civil case, a preponderance of evidence had been all that

had been required. It must therefore be found that the learned Vice-Chancellor erred in requiring proof beyond, or almost beyond a reasonable doubt. (2) The Court below erred in holding (or apparently basing his decision upon a holding) that the petitioner was bound by adverse statements of her own witnesses quoting the defendant.

Such a rule is unreasonable. A prosecutor "would not undertake to say that the witnesses he would be obliged to produce were entirely trustworthy in all respects or in general worthy of belief but as they were the only ones who could be had, because the only ones who knew whereof they were about to affirm, it was his duty to ask a careful consideration of their several stories in the hope that the Court would find enough in them that was reliable to indicate the path which justice ought to pursue."

J. Wilder May, in 11 Amer. Law Review, 261 at 265.

So it is in the great majority of civil cases. * * * Witnesses to the material facts in dispute are such persons as happen to have been cognizant of the facts and not such as the parties have selected at their pleasure. * * * The party has a right to the truth and he does not see, neither can we, why he should be punished if he fails to get it. It is not his fault if the witness is unsafe, though it may be his misfortune, but where is the wisdom or fairness of aggravating that misfortune by giving the defendant, who stood ready to impeach the witness if he did tell the truth, the fruits of the betrayal.

Ibid. at p. 267.

In the case at bar the witnesses who quoted the defendant as naming the father "Smith" have dis-

appointed the petitioner, but have not necessarily themselves falsified. It is possible that the defendant did say such things, although he avoids any accusation of another person when he takes the stand himself. To hold the petitioner bound by indirect report of what the defendant said, when not bound by what the defendant testified to directly (and of course she is not bound by that) would be extremely unfair.

2. Argument on the Facts.

The adultery charged in this case is shown not by direct, but by circumstantial evidence, but the circumstantial evidence is abundant. The petitioner's main case is given mainly in her own testimony, which is corroborated by that of Miss Lilly McLaughlin, but many interesting and corroborating side lights are thrown upon her case by testimony of other witnesses, including the testimony of the defendant and the intervenor themselves. The testimony of Miss McLaughlin as indeed that also of the petitioner herself was given in a straightforward way, was unshaken on cross-examination, and appears to have impressed the Court below as entirely trustworthy. The Court below was so controlled by the view that the petitioner's case depended on the paternity of the intervenor's child, that he appears to have regarded the testimony of the petitioner and of Miss McLaughlin to the events of July and October, 1926 as immaterial. Their testimony however, strengthened and not weakened by that of the other witnesses (except Mrs. Griffin and Mrs. Naylor, Sr., who were so sweeping in their statements as not to be worthy of credit), shows clearly both opportunity and desire for illicit relations. Aside from

the honest impression which the petitioner and Miss McLaughlin made, their testimony is shown clearly not to be a fabrication by the testimony of Mrs. Lewis who testified that she had seen them watch on a number of occasions and that there was a street light on the near corner of Grove Place and Greenwood Avenue, giving the light which the petitioner and Miss McLaughlin said had made easy the identification of persons on the Griffin porch at night. The testimony of Mrs. Griffin that the defendant had not been at their house "for three years next January—next September" and that of Mrs. Naylor, Sr., that the defendant had not been to the Griffin house "for about three years and a half" is shown to be untrue by the disinterested testimony of Edward Long, who has known the defendant for five years or more, who testified that the defendant admitted to him in the Spring of 1927 that he had been to the Griffin house to play cards in 1926. Mrs. Griffin was quite flippant and unappreciative of the seriousness of the case as indicated by the Vice-Chancellor's remarks (Case middle of page 46); notice also her defiant attitude, (Case page 43 foot).

The defendant and intervening defendant have attempted a number of schemes to throw off suspicion from the defendant. For instance, they referred to a Mr. Gordon Stevens who had been keeping company with one of the younger Griffin girls and whom Mrs. Griffin swore looked so much like the defendant that she herself mistook him for him. Another suggestion was that the defendant in calling at the Griffin's had been interested in one of the younger daughters, but the defendant's mother testifies the defendant was never interested in any of the girls of the Griffin family. Her testimony, like that of Mrs. Griffin cannot be re-

conciled with what is evidently the truth except upon the theory that they did not know what they were talking about, that is, that Mrs. Griffin was either out or fast asleep in bed on the various occasions when the defendant was at the Griffin house.

The defendant opposes an alibi to the charges of association in July 1926 but admits that his absence in Philadelphia then was "not every day". (Case p. 58, line 23) He also corroborates a part of the "watch" testimony of petitioner and of Miss McLaughlin by admitting that he came to his "own home late that night", October 21, 1926 when in a gray overcoat and black derby they saw him come in at 1:40 A. M. after leaving Dorothy at 1 A. M.

The defense attitude as to the paternity of the child is curious. The certificate of the birth of Dorothy's child over the signature of a regular Physician presumed to have the highest integrity, is that the father of the child was unknown, whereas the intervening defendant denies with positiveness that she told the Doctor that she did not know the father of the child, and goes further and swears that she did tell the Doctor the name of the father. Mrs. Griffin also swears that her daughter told her who the father was. Neither the defendant, nor the intervening defendant, nor their mothers who naturally favor the defendants and who might have means of knowing, give one word of evidence as to who the father of the child was and in answer to the question of petitioner's counsel as to whom Dorothy Griffin said was the father of the child, Mrs. Griffin answered "that I refuse to answer." The Court in announcing that he would take the matter under advisement said "if she says Mr. Jones or Mr. Smith is the father of

the child, then I suppose you will have to get Mr. Jones and Mr. Smith to find out what he says about it". Certainly the petitioner is entitled to have this discovery. The defendant should not be allowed to fool with the Court in hiding behind an unknown father. It is as essential to justice to disclose guilt as it is to shield innocence. The defendant, please note, has chosen that very name "Smith", as indicated in the testimony quoting defendant, the name "Smith" of course, being the hardest one of any last name to identify with any particular man.

The defendant knowing his own guilt seems first not to have realized the situation, but after the birth of the child and after time to acquire a realization of the value it would be to him to show curiosity "later asked who the father was." Edward Long testifies that defendant told him of the charges that were being brought up and the defendant in his own testimony states that he was accused jokingly as being the father of the child, that it was a neighborhood joke among the boys for two or three days. Joke or no joke, of all "the boys" he only was accused of being the father, which certainly indicates that the boys knew of his familiarity with Dorothy Griffin.

The defendant's testimony as to the adultery charge is the barest denial; he does not deny that he kept his wife waiting fifteen minutes on the day of Dorothy's violation, nor does he explain what he was doing that he should take so long to come. The language he used to his wife, that he would take his own damn time, is exactly the language a guilty husband might be expected to use when confronted by his wife.

After Dorothy Griffin's baby was born it is natural that from the view of the petitioner and from

the view of the general public, the defendant should retire and keep his association with Dorothy Griffin out of sight, more so as the father of her child than if not the father; while his continued association with her was a reasonable and just attitude *toward her*, if he was the father, while it would be utterly unreasonable if he were not. Therefore, the associations in October as testified to by the petitioner and Miss McLaughlin are exactly what would be expected of the defendant as father of Dorothy's child. Disinterested persons, as well as the interested petitioner, must agree that "if he was not guilty he never would have gone over to see a girl in that condition as often as he did and especially with the house in darkness" (Case p. 23, lines 20-23).

When the Court below asked counsel for intervenor "don't you think it is slightly indiscreet to leave an unmarried woman's house at 2 o'clock in the morning", counsel replied "certainly, it would be, your Honor", if the family was not home, but there is no such fact been proved here. It was proved that the house was in darkness and after Mrs. Griffin had testified it necessarily follows that the family was not at home, or if at home, was fast asleep, or the defendant's calls in the last three years would have been known.

On cross examination, Miss McLaughlin when asked about her visiting the home of the older Naylor said "I was not a visitor at the home, but I went over the evening that she (the petitioner) suspected that he had somebody in the house and I went over and I told Mrs. Naylor and Mr. Naylor how he had been treating her." I don't just remember the conversation we had at the time, but I do remember Mrs. Naylor saying to Frederick, "Oh! how could you Frederick", and he hung

his head. (Case p. 38, lines 17-21 and 25-29). Mrs. Naylor, Sr., and the defendant "Frederick" were both later on the witness stand but neither of them deny one word of this testimony.

In many divorce cases reported there is an attempt by defense to show that the petitioner's witnesses could not have seen what they testified to, having seen because of the physical circumstances surrounding vision. In this case there was no attempt outside of cross examination and that only strengthened the credibility of the petitioner's testimony and that of Miss McLaughlin. The street light shining on porches, the nearness of the porches to the street light and to the watchers, and the visibility of the parties on the porch, back of the half drawn door curtain, and in back of the Naylor screen door, were evidently all not denied because they could not be denied.

When Mrs. Griffin referring to the defendant was asked, have you known other men attending on your daughter, she answered "no; she has not had other men at all," and when the Court then said "she must have had, according to your own theory. She must have had one." Mrs. Griffin answered "just this one gentleman, yes, in her life." How surprising it is that when the other testimony, particularly the defendant's admissions to the petitioner, show that the defendant was the only man who would bother with Dorothy, and when Dorothy's mother says that no other men had attended her, the mysterious Mr. Smith should have dropped in on her on December 20, 1925, a married man. How convenient it is for the defendant not only to pick the name "Smith", but to describe him as "a married man", who therefore presumably could not be brought to Court to "admit" his supposed guilt without cast-

ing a shadow over his own home. This Court should blast such tricks. "Courts of justice must not be duped."

Luderitz vs. Luderitz, 88 N. J. Eq. 103;
102 Atl. 661, end.

Considering the character of Dorothy Griffin, it may all be true that the defendant never took her *out* and yet constantly sought her society. The defendants and their mothers really avail nothing against the petitioner in saying that the defendant never took the intervenor *out* to any function except that one dance which they all remember so well.

The birth of Dorothy's child had a real effect upon the defendant's social standing; Millard Savacool testifies that he used to go with Frederick Naylor a good deal but the acquaintance was dropped after the child was born, the defendant not showing up any more.

After all, however, the evidence about Dorothy's child need not be viewed as the main case; it furnishes a setting for the main case in showing what sort of woman defendant was associating with throughout 1926. If the petitioner and Miss McLaughlin are to be believed, the defendant and intervenor had ample opportunity as well as desire for illicit relations in July and October and probably in all other months of 1926. The game of cards at the Griffin's which defendant admitted to Long was naturally followed by more intimate connections in the dark house, from which the petitioner and Miss McLaughlin saw defendant emerge not far from midnight on many different nights.

Petitioner therefore submits that there is suffi-

cient evidence of disposition and desire and also of opportunity to satisfy the guarded discretion of a reasonable and just mind that adultery has been committed by the defendant. She therefore respectfully prays that the decree dismissing her petition be reversed and that she be granted a decree of divorce for the cause aforesaid with the right to resume her maiden name.

Respectfully submitted,

SAMUEL W. BOARDMAN, JR.
Solicitor for and of Counsel with
Petitioner-Appellant.

45 MAY.T.1928

Filed after the Oral Argument
by leave of Court.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

DORIS A. NAYLOR,
Petitioner-Appellant,

and

FREDERICK W. NAYLOR, JR.,
et al.,
Defendant-Respondent.

*On Appeal
from the
Court of
Chancery.*

BRIEF FOR FREDERICK W. NAYLOR, Jr., Defendant-Respondent.

This is an appeal from a decree of the Court of Chancery dismissing the petition of the appellant for divorce on the ground of adultery.

Facts.

The petitioner-appellant and this respondent, the original defendant, were married in New York City on November 2, 1925, by a minister of the Gospel (Ex. P. 1, p. 64). Subsequent to the marriage, they took up a residence in New York City, where they continued to live together until December 13, 1925, when petitioner-appellant left her husband and returned to her previous home in East Orange, where she had lived with her aunt at 97 Greenwood avenue. This respondent, after her desertion, returned to his previous home with his parents at 3 Grove Place, East Orange, and both have since continued to live in their respective homes.

The petitioner-appellant claimed in her petition that this respondent committed adultery with one Dorothy Griffin, who lived next door to his

parents at 5 Grove Place, East Orange, and said Dorothy Griffin, by leave of court, intervened in the action and was represented by counsel. Both this respondent (the original defendant) and Dorothy Griffin filed answers denying the charge of adultery.

LAW.

I.

The burden of proof of adultery was not sustained by the petitioner-appellant in the Court below.

This respondent takes issue with the statement of case of the petitioner-appellant (pp. 1-4 of her brief) and asserts that the inferences and innuendoes drawn from the testimony are not justified and that a careful reading of the record will show the absence of any proof of adultery. The only evidence which the petitioner-appellant adduced raising any such inference was that this respondent and the defendant-respondent, Griffin, were seen together in the months of July, 1926, and October, 1926, but there is no evidence of criminal desire or of opportunity to commit the offense alleged. The respondent, Griffin, resided next door to this respondent with her mother, father and two sisters and there is no evidence that members of her family were absent on the dates on which petitioner claims this respondent was seen in her society and there is a specific denial that the person seen with her was this respondent.

In fact, all the inferences drawn from the testimony by the petitioner-appellant are refuted by a denial under oath by both this respondent and the respondent, Griffin, that they ever had

any illicit relations with each other and by testimony of the witnesses which the petitioner-appellant called on her own behalf. There are no statements under oath to support the inferences drawn by counsel of the petitioner-appellant and the suspicions of petitioner-appellant and her aunt were apparently the product of a distorted imagination in interpreting commonplace conduct, whether of this respondent or of another. The case of *Hurtzig v. Hurtzig*, 15 Atl. 537, lays down the rule as follows:

“If the circumstances, taken both singly and together reasonably admit of two interpretations, that interpretation which favors innocence should be adopted.”

See also *Torrens v. Torrens*, 120 Atl. 189, to the same effect.

II.

The adultery was not proved beyond a reasonable doubt.

The rule is well-settled in New Jersey in cases where a spouse is charged with matrimonial misconduct that the petitioner must satisfy the Court, not merely by a preponderance of the evidence, but must prove the adultery beyond a reasonable doubt to the satisfaction of the Court. (*Berckmans v. Berckmans*, 17 N. J. Eq., 453, 454.) The rule as set forth in the *Berckmans* case (*supra*) is quoted with approval in *Luderitz v. Luderitz*, 88 N. J. Eq., 103, 104. An analysis of the testimony cannot fail to show the futility of the petitioner-appellant's contentions that there is in the record, evidence sufficient to satisfy the Court of the commission of adultery, and this would be true also even if it were only necessary to prove it by a preponderance of the evidence.

III.

The Court below was correct in refusing to admit evidence of this respondent's reputation.

The petitioner-appellant contended that evidence of the defendant's reputation for chastity or for his relations with women and girls should have been admitted, but it is submitted that the rule is to the contrary and that the Court below was correct in his refusal to grant the admission of such evidence.

The rule is well stated in 19 C. J., 127, "Where adultery is charged, evidence of reputation has been held admissible to prove the good character of the defendant, although *it is not admissible as substantive proof of adultery*. Citing *Miller v. Miller*, 20 N. J. Eq., 216, and *Budd v. Budd*, 55 App. Div. (N. Y.), 113. The general rule is that unless directly put in issue (which is not the case here), evidence is not admissible to show the general character or reputation of either party to a suit, and the ruling of the Vice-Chancellor was therefore correct.

CONCLUSION.

This respondent deems it unnecessary to burden this court with a fuller and more detailed refutation of the specific grounds of appeal on which petitioner-appellant bases her case, as he is convinced that even a cursory reading of the record will show them to be drawn from erroneous conclusions, and that there is no foundation in fact for the inferences drawn, and this respond-

ent believes that their tenuous character will be patent to this court.

The appeal should therefore be dismissed.

Respectfully submitted,

JOSEPH E. WORTHINGTON, JR.,
Solicitor for and of Counsel with
Defendant-Respondent, Frederick
W. Naylor, Jr.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

DORIS A. NAYLOR, <i>Petitioner-Appellant,</i>	}	<i>On Appeal from the Court of Chancery.</i>
<i>and</i>		
FREDERICK W. NAYLOR, JR., <i>et al.,</i>		
<i>Defendant-Respondent.</i>		

BRIEF FOR DOROTHY L. GRIFFIN, a Defendant-Respondent.

This is an appeal from a decree in the Court of Chancery, dismissing the petition of the appellant for divorce on the ground of adultery, in which suit this defendant-respondent intervened and was joined as a party defendant.

There are thirteen grounds upon which the decree is alleged to be erroneous.

Statement of Facts.

The petitioner-appellant and the original defendant were married November 2, 1925, in New York City by a minister of the Gospel (Ex. P. 1, p. 64). On December 13, 1925, appellant left her husband, the original defendant in New York City where they were living, and returned to her previous home at 97 Greenwood avenue, East Orange, New Jersey, where, previous to her marriage, she had lived with her aunt. The original defendant returned to his previous home with his parents at 3 Grove Place, East Orange, New Jersey, and both have since lived in their respective homes.

This defendant-respondent resides next door to the home of the original defendant where she has lived for about eleven years with her parents and two younger sisters. She has known the original defendant as long as she can remember as a friendly neighbor and denies any illicit relations with him (p. 60) and he denies any illicit relations with her (p. 57).

This defendant-respondent had a child by a married man named Smith (p. 53, ll. 3-10; p. 55, ll. 19-27) which was conceived in December, 1925.

Petitioner, in the summer of 1926 (p. 10, l. 16) as corrected by petitioner (p. 41, l. 15) became suspicious of her husband and apparently kept the original defendant under constant surveillance from July 7, 1926 (p. 18, l. 32).

She first began to watch when she noticed this defendant's condition (p. 19, ll. 25-27) and saw things on the line (p. 23, l. 5).

There was considerable testimony as to this defendant-respondent and the original defendant having been seen together at this defendant's home, but this was denied and was explained as having been a case of mistaken identity (p. 47, l. 31; p. 50, l. 8; p. 57, l. 35; p. 59, l. 19).

LAW.

I.

There was no testimony of the existence of any affection between this defendant-respondent and the original defendant; no proof of previous familiarity; no correspondence; no compromising situations, and no secret meetings.

It is well settled that under such circumstances the proofs will be held not to warrant a finding of

adultery. This doctrine was clearly stated in the case of *Berckmans v. Berckmans*, 17 N. J. Eq. 453 at p. 454. The Court of Errors and Appeals said in that case:

The charge made by the complainant, if true, is known to our law as a crime; consequently this prosecution partakes strongly of the nature of a criminal proceeding, so much so as to place the complainant under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of proving it to the satisfaction of this court, beyond a reasonable doubt. I do not mean to say that it must be done by such an amount of overwhelming and unmistakable evidence as to render it impossible to be otherwise, but the evidence must be such as to satisfy the human mind, and leave the careful and guarded judgment of the court, free from any conscientious and perplexing doubts as to whether the charge be proved or not. If, after a careful examination of all the competent testimony, such doubts remain immovable, it is clearly our duty to give the defendant the benefit of such doubts, and to refuse the prayer of the complainant.

Another case, *Culver v. Culver*, 38 N. J. Eq. 163 at p. 165, phrases the rule thus:

The circumstances must be such as will lead the guarded discretion of a reasonable and just mind to the conviction that the crime has been committed.

II.

The circumstances, if admitted as detailed by petitioner's witnesses alone, would not prove the charge beyond all reasonable doubt.

The evidence in a divorce case where the petition is based upon adultery, makes necessary the proof of some specific act, or facts from which

such act must be inferred, in order to warrant a decree for divorce.

In the case of *Larrison v. Larrison*, (20 N. J. Eq. 100) Chancellor Abraham O. Zabriskie stated the rule thus:

Proof that the parties were together in a place and at a time where and when it was possible for them to have been guilty is not sufficient. This defect of proof will not be supplied by proof that the defendant had for a period lived in concubinage with a married man.

To the same effect was *Mayer v. Mayer*, (21 N. J. Eq. 246); *Messick v. Messick*, (93 N. J. Eq. 220); *Sargent v. Sargent*, (114 Atl. 439); *Torrens v. Torrens*, (94 N. J. Eq. 480); *Grundy v. Grundy*, (92 N. J. Eq. 687).

III.

Any intimacy between this defendant-respondent and the original defendant was expressly and positively denied.

The Court of Errors and Appeals in the case of *Cartan v. Cartan*, (93 N. J. Eq. 175) stated at page 177:

“To justify a decree for divorce on the ground of adultery, the evidence of the defendant’s guilt must be clear and satisfactory. A full and explicit denial of the charge by the defendant and the alleged *particeps criminis* should be regarded as decisive in a case of doubt, citing *Reed v. Reed*, (17 N. J. Eq. 101).”

CONCLUSION

It is respectfully submitted:

1. That there was no proof of adultery nor proof of desire and opportunity to commit adultery at any time in December, 1925, nor in the year 1926.

2. That there was no evidence submitted as to any illicit relation between the defendant and the intervenor.

3. That the dismissal of petitioner-appellant’s petition was justified and proper.

It is therefore respectfully submitted that the decree entered in the Court of Chancery on the advice of the learned Vice-Chancellor should be affirmed.

J. GLENN ANDERSON,
Solicitor for and of Counsel with
the Defendant-Respondent, Dorothy
L. Griffin.

